



Shire of
Peppermint Grove

SPECIAL COUNCIL MEETING

AGENDA

**TO BE HELD ON
TUESDAY 12th September 2023
AT
5.45PM**



Shire of Peppermint Grove

NOTICE OF MEETING

Dear Councillor

It is advised that the **SPECIAL COUNCIL MEETING** will be held in the Council Chamber of the **Shire of Peppermint Grove**, 1 Leake Street, Peppermint Grove, on 12th September 2023, commencing at 5.45pm.

MEETING AGENDA ATTACHED

Regards,

A handwritten signature in black ink, appearing to read 'Don Burnett'.

Don Burnett
CHIEF EXECUTIVE OFFICER

7th September 2023

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 Shire of
 Peppermint Grove

ITEM	SUBJECT HEADING	PAGE
Contents		
SPECIAL COUNCIL MEETING AGENDA		5
1	DECLARATION OF OFFICIAL OPENING.....	5
2	RECORDING OF ATTENDANCE, APOLOGIES AND LEAVES OF ABSENCE.....	5
2.1	ATTENDANCE.....	5
2.2	APOLOGIES.....	6
3	DELEGATIONS AND PETITIONS.....	6
3.1	DELEGATIONS.....	6
3.2	PETITIONS.....	6
3.3	PRESENTATIONS FROM THE PUBLIC.....	6
4	PUBLIC QUESTION TIME.....	6
4.1	RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE FROM A PREVIOUS MEETING.....	7
4.2	QUESTIONS FROM MEMBERS OF THE PUBLIC.....	7
4.3	DEPUTATIONS OF THE PUBLIC.....	7
5	DECLARATIONS OF INTEREST.....	7
5.1	FINANCIAL INTEREST.....	7
5.2	PROXIMITY INTEREST.....	7
5.3	IMPARTIALITY INTEREST.....	7
5.4	INTEREST THAT MAY CAUSE A CONFLICT.....	7
5.5	STATEMENT OF GIFTS AND HOSPITALITY.....	7
6	ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT	

Special Council Meeting - **Agenda**
12th September 2023

	DISCUSSION).....	7
7	CONFIRMATION OF MINUTES.....	7
8	OFFICER REPORTS	8
8.1.1	12 The Esplanade, Peppermint Grove – Works Ancillary to a Single House (Siteworks, Retaining Walls and Fencing).....	8
9	NEW BUSINESS OF AN URGENT NATURE.....	16
10	MOTIONS ON NOTICE.....	16
11	CONFIDENTIAL ITEMS OF BUSINESS.....	16
12	CLOSURE.....	16

Shire of
Peppermint Grove

SPECIAL COUNCIL MEETING AGENDA

1 DECLARATION OF OFFICIAL OPENING

At ___pm, the Shire President declared the meeting open and requested the recording of attendance and apologies.

Council recognises that it is permissible to record the Shire's Council and Forum Meetings in the written, sound, vision medium (or any combination of the mediums) when open to the public, however, people who intend to record meetings are requested to inform the Presiding Member of their intention to do so.

Affirmation of Civic Duty and Responsibility

I make this Affirmation in good faith on behalf of Councillors and Officers of the Shire of Peppermint Grove. We collectively declare that we will duly, faithfully, honestly, and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgment and ability. We will observe the Shire's Code of Conduct and meeting procedures to ensure efficient, effective and orderly decision making within this forum.

2 RECORDING OF ATTENDANCE, APOLOGIES AND LEAVES OF ABSENCE

2.1 ATTENDANCE

Shire President	Cr R Thomas
Deputy Shire President	Cr C Hohnen
Elected Member	Cr K Farley
Elected Member	Cr D Horrex
Elected Member	Cr P Macintosh
Elected Member	Cr D Jackson

Chief Executive Officer	Mr D Burnett
Manager Corporate & Community Services	Mr J Clapham
Manager Development Services	Mr J Gajic
Manager Infrastructure Services	Mr D Norgard

Gallery _____ Members of the Public
 _____ Members of the Press

2.2 APOLOGIES

Elected Members

Cr P Dawkins

3 DELEGATIONS AND PETITIONS

3.1 DELEGATIONS

NIL

3.2 PETITIONS

NIL

3.3 PRESENTATIONS FROM THE PUBLIC

4 PUBLIC QUESTION TIME

The Presiding Member will open council for public question time by asking the gallery if there were any questions or deputation for council.

- The Agenda
- Question to Council Forms and
- Deputation Forms

Have been placed at the end of the Council Meeting table in front of the public gallery, for the public, as well as on the Shire Webpage.

In the event there are no public members present, the Presiding Member will dispense with Public Question Time.

Rules for Council Meeting Public Question Time

- Public Question Time provides the public with an opportunity to put questions to the Council. Questions should only relate to the business of the Council and should not be a statement or personal opinion.*
- During the Special Council meeting, after Public Question Time no member of the public may interrupt the meeting's proceedings or enter into conversation.*
- Whenever possible, questions should be submitted in writing at least 48 hours prior to the start of the meeting.*
- All questions should be directed to the President and only questions relating to matters affecting Council may be answered at an Ordinary meeting, and at a Special meeting only questions that relate to the purpose of the meeting may be answered. Questions may be taken on notice and responded to after the meeting, at the discretion of the President.*
- The person presiding will control Public Question Time and ensure that each person wishing to ask a question should state his or her name and address before asking the question. If the question relates to an item on the agenda, the item number should also be stated. In general, persons seeking to ask a question will be given 2 minutes within which to address their question to the Council. The person presiding may shorten or lengthen this time in their discretion.*

4.1 RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE FROM A PREVIOUS MEETING

NIL

4.2 QUESTIONS FROM MEMBERS OF THE PUBLIC**4.3 DEPUTATIONS OF THE PUBLIC****5 DECLARATIONS OF INTEREST****5.1 FINANCIAL INTEREST****5.2 PROXIMITY INTEREST****5.3 IMPARTIALITY INTEREST****5.4 INTEREST THAT MAY CAUSE A CONFLICT****5.5 STATEMENT OF GIFTS AND HOSPITALITY****6 ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)**

Written announcements by the Presiding Member or important forthcoming functions to be tabled at this point. The Presiding Member may, at their discretion, wish to make verbal announcements.

7 CONFIRMATION OF MINUTES

Nil adoption of Minutes at this meeting.

8 OFFICER REPORTS

8.1.1 12 The Esplanade, Peppermint Grove – Works Ancillary to a Single House (Siteworks, Retaining Walls and Fencing)

ATTACHMENT DETAILS

Attachment No	Description
Attachment 1	Development Application Submissions and Drawings (Redacted)
Attachment 2	Item 8.1.2, 22 August 2023 Ordinary Council Meeting
Attachment 3	Landscaping Treatment Submission - Allering and Associates
Attachment 4	Stewart's Boundary Suggestion – Grounds Kent Architects
Attachment 5	Site Plan with Shire Hatching and Boundary Fencing Restriction

Voting Requirement	:	Simple Majority
Location / Address	:	12 The Esplanade, Peppermint Grove
Application Number	:	DA2022/00029
LPS No 4 Zoning	:	Residential R10
Land Use	:	Single House
Lot Area	:	1597m ²
Disclosure of Interest	:	Nil.
Previous Items	:	Item 8.1.2, 22 August 2023 Item 8.1.1, 28 February 2023 Item 8.1.4, 23 August 2022 Item 7.1, 10 December 2019 Item 8.1.3, 23 July 2019
Applicant	:	Planning Solutions
Owner	:	Theresa Lynn Smith
Assessing Officer	:	Mr J Gajic
Authorising Officer	:	Mr J. Gajic

PURPOSE OF REPORT

Council considered the attached report (Item 8.1.2) at the 22 August Ordinary Council Meeting (OCM) and deferred a decision pending further consideration at a Special Council meeting. The deferral related to final determination of landscaping conditions considered reasonable for Council to recommend to the State Administrative Tribunal (SAT).

SUMMARY AND KEY ISSUES

- Council refused DA2022/00029 for siteworks, retaining walls and fencing for the subject site.
- The decision was appealed, and following mediation is now subject to a SAT Order for Council to reconsider the application before 6 October.
- At the August OCM Philip Dobson - Hotchkin Hanly Lawyers made a deputation on behalf of the affected neighbours to the south of the subject site that included concerns relating to the risk of fall, and the suitability and ability to maintain in perpetuity landscaping.
- An alternative Council Motion to approve Development Application DA2022/00029 subject to further design changes was moved and seconded at the August OCM but not voted upon

following discussion regarding the potential risk of fall and suitability of landscaping as it related to the neighbouring property to the south.

- A Procedural Motion was subsequently unanimously carried to defer determination of DA2022/00029 pending clarification on landscaping and levels.
- The assessing officer liaised with Allering and Associates representing the affected neighbour to confirm what design outcome was acceptable to further inform the drafting of the alternative Council Motion.
- This report should be read in conjunction with previous items listed above that provide a chronology of previous development application determinations.

LOCATION

12 The Esplanade, Peppermint Grove

BACKGROUND

The report (Item 8.1.2) to the 22nd August OCM meeting provides comprehensive background to this matter. A procedural motion at the August OCM meeting meant that Council did not make a determination. Further information for Council was to be provided by officers on landscaping requirements for the approval.

Subsequent to the August OCM the assessing officer liaised with representatives for the affected neighbours at 14 The Esplanade to confirm what design outcome was acceptable to further inform the drafting of the officer recommendation.

The Allering and Associates (Allering) written response on behalf of the affected neighbours was informed by the attached Grounds Kent Architects (GKA) perspective. This perspective has modelled the foreshadowed 600mm reduction in driveway and selected terrace levels to the 22.75m level. The modelling assumed a 3-degree driveway gradient rising to the repurposed former stables to the rear of the subject site. The modelling found that a separate safety barrier adjacent to the boundary was not required.

CONSULTATION

The representatives of the affected neighbours were consulted.

STRATEGIC IMPLICATIONS

There are no Strategic Plan implications evident at this time.

LOCAL PLANNING POLICY IMPLICATIONS

The proposal complies with relevant Local Planning Policy.

STATUTORY IMPLICATIONS

The SAT has ordered that pursuant to s 31(1) of the State Administrative Tribunal Act 2004 (WA) the respondent is invited to reconsider the decision on or before 6 October 2023. Furthermore, the matter is listed to a Directions Hearing on 13 October 2023 to afford the Applicant an opportunity to seek a hearing date to set aside any Council refusal or challenge any condition of

approval.

FINANCIAL IMPLICATIONS

There are no financial implications evident at this time.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications at this time.

SOCIAL IMPLICATIONS

There are no social implications at this time.

OFFICER COMMENT

The Allerding submission assumes a 3-degree driveway gradient rising from the 22.75m level to the proposed level of the forecourt area forward of the former stables repurposes for garaging. This gradient is also applied across the proposed visitor parking bays (crossfall). The GKA modelling also reinstates a section of previously proposed 1000mm steel railing fencing. It has been requested that the GKA modelled driveway gradient informs any subsequent endorsed plans. The accuracy of the GKA modelling has not been rigorously tested. The modelled gradient is well within tolerances prescribed by AS2890.1 for off-street car parking and a uniform driveway gradient is a logical design response.

The reduced levels, existing boundary wall and reintroduction of formerly proposed 1000mm steel railing fencing results in a barrier acceptable to the affected neighbours. The Allerding submission does not address a contingency should the existing boundary wall be modified.

It is impractical to model and assess all scenarios in response to a reduction to the nominated terraces and driveway. The Shire has overlayed the driveway assuming a uniform slope on the South Boundary Retaining and Fence Plans (PA09F rev. F & PA09H rev. H). The uniform driveway gradient was assessed to be 3.07 degrees. The barrier height was not less than 500mm at any point.

The Applicant should be afforded the ability to determine their own design response rather than a uniform driveway gradient being a conditional requirement. The Council has before it sufficient evidence that the driveway and visitor parking bays will be functional, and the GKA modelling has determined that the reduced levels prescribed by the Council Motion will result in a barrier to their satisfaction.

AS2890.1 permits a gradient up to 14-degrees. To mitigate a driveway with steeper initial incline that provides an inadequate height barrier, it is recommended that an advice note references the logical application of a 3-degree driveway gradient shown on the GKA modelling and a condition requires a minimum 500mm barrier.

The Allerding submission seeks further consultation with the affected neighbour for any modified landscaping plan. The neighbour's comment on matters pertaining to landscaping has now been suitably sought and obtained as encouraged by SAT at mediation. It is the officer's view that CEO

approval of the landscaping plan should not be determinate upon further formal consultation with the affected neighbour.

The recommendation below generally accords with the Council Motion moved at August OCM, but deferred on a Procedural Motion. The conditions and advice notes that pertain to landscaping elements have been further informed by the Allerding submission, the deputations and Councillor discussion at the August OCM.

Notable revisions to the previously considered landscaping and fencing design elements include:

- Improved physical barrier guidance based on Main Roads standards for non-mountable kerbs.
- Requirement for selected species along the southern boundary to be established in a state of maturity.
- Requirement for a barrier no less than 500mm along the southern property boundary augmented by 1000mm high steel railing as shown on the GKA modelling.
- Conditions and advice notes reordered and renumbered.

OFFICER RECOMMENDATION/S

That Council approve the amended plans submitted on 21st and 27th July 2023 in response to State Administrative Tribunal mediation associated with DA2022/00029 for Works Ancillary to a Single House (Siteworks, Retaining Walls and Fencing) lodged on subject to the following conditions:

- 1. Prior to this permit having force or effect amended plans generally in accordance with the submitted plans submitted on 21st and 27th July 2023 shall be submitted to the satisfaction of the CEO and endorsed. The amended plans shall have further regard to the following:**
 - (i) The extent of the driveway and associated terrace at the 23.35m and 23.45m levels hatched with red ink on plans modified by the Shire shall be lowered to no greater than at the 22.75m level.**
 - (ii) A physical barrier (nominally a 150mm barrier kerb) shall be installed along the south side of the driveway to delineate and prevent access into the adjacent landscaping.**
 - (iii) A minimum 500mm physical barrier along the southern boundary of the driveway to mitigate the risk of fall.**
 - (iv) The establishment of the Bay Laurel, Sweet Viburnum and Indian Hawthorn plant species to be established in a state of maturity, and that the revised pot sizes are reflected on the landscaping plan.**

Once endorsed, the revised plan set shall form part of this permit.

- 2. The approved building works and layout as identified on the endorsed plans together with any requirements and annotations detailed thereon shall not be altered without the prior written consent of the CEO.**
- 3. Prior to this permit having force or effect, revised construction and engineering drawings and a traffic management plan associated with the relocation of the**

existing crossover and modifications to The Esplanade median strip must be submitted for the approval of the CEO. The detailed drawings and traffic management plan shall be verified by Porter Consulting Engineers (the Shire's contracted engineers) and provide for all vehicle manoeuvres and accord with the Shire of Peppermint Grove Vehicular Crossovers General Requirements and Specifications. Suitable controls shall be implemented to ensure that at least one lane of The Esplanade always remains open to vehicular traffic.

Once approved, the detailed and engineering drawings and a traffic management plan shall form part of this permit.

4. Prior to endorsement of the detailed engineering plans and traffic management plan the proponent must pay the Shire's costs for Porter Consulting Engineers to review the Pertias plans dated 10/02/2023, and all verification costs associated with the review of revised construction and engineering drawings and the assessment of the traffic management plan.
5. Prior to this permit having force or effect a Section 70A notification under the Transfer of Land Act shall be placed on the land title notifying prospective purchasers of the land of the requirement to adhere with the approved landscaping plan, and restrictions pertaining to dividing fencing along the southern property boundary.
6. Prior to this permit having force or effect the applicant shall submit for approval and to the satisfaction of the CEO a Construction Management Plan (CMP) binding all contractors working on the site.

Once approved, the CMP shall form part of this development approval.

7. Within six (6) months of the commencement of works or within three (3) months of the relocated crossover being open to traffic (whichever is the lesser) the landscaping shall be established and, thereafter, be maintained in accordance with the endorsed plan to the satisfaction of the CEO. Dead or diseased plants shall be replaced as soon as practical.
8. Spray drift and soil must be contained within the subject site.
9. Dividing fencing shall not be erected where indicated by red ink on the endorsed site plan without the prior written consent of the CEO.
10. Within six (6) months of the commencement of works or within three (3) months of the relocated crossover being open to traffic (whichever is the lesser) the redundant vehicular crossover must be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare reinstated in accordance with the Shire of Peppermint Grove Vehicular Crossovers General Requirements and Specifications.
11. Prior to removal of the juvenile verge tree to facilitate construction of the relocated crossover, a replacement *Agonis flexuosa* (WA Weeping Peppermint) shall be established in accordance with the Tree Planting Specification contained in the Shire's Public Tree Management Strategy 2022. Once established, the replacement Peppermint tree shall be maintained in a healthy condition at no cost to the Shire

for a period of twelve (12) months to the satisfaction of the CEO.

12. In accordance with the Shire of Peppermint Grove Local Planning Policy 9 – Development Bonds a \$5000 development bond must be submitted to the Shire prior to the issuance of a Building Permit to ensure any damage to public property caused by building works is rectified and the satisfactory completion of the development including works within the road reservation.
13. All works identified on the endorsed plans shall be wholly located within the lot boundaries of the subject site.
14. The ongoing use of the site and approved development works shall not cause erosion or degradation to the subject or surrounding land. Should the CEO deem it necessary to undertake mitigation works; plans, specifications and work schedules may be required to be submitted and the works undertaken by the proponent at no cost and to the satisfaction of the CEO.
15. The construction works shall only occur between the hours of 7.00am and 7.00pm, Monday to Saturday, and not at all on Sunday or Public Holidays. Any variation to the above hours must be identified in an approved Construction Management Plan or, the prior written consent of the CEO otherwise obtained.
16. This approval shall remain current for development to substantially commence within two years of the date of issue of this notice. All works associated with this approval (once commenced) shall be completed before the end of the third year from the date of issue of this notice.

Advice Notes.

1. In approving this application Council has assessed the proposal against Local Planning Scheme No. 4, Local Planning Policies and the Design Principles of the Residential Design Codes of Western Australia and has exercised its discretion in relation to the following matters:
 - Site works.
 - Street walls and fences.
 - Sightlines.
2. This is a Development Approval only and does not remove the responsibility of the proponent/owner to comply with all relevant building, health, engineering or Local Laws requirements of the Shire, any obligations under the Environment Protection Act 1986, or the requirements of external agencies.
3. In respect to condition 1, your attention is drawn to the GKA modelling dated 28 August 2023.
4. In respect to condition 3:
 - (i) Porter Consulting Engineers have recommended that in lieu of *relaying existing pavers to suit proposed levels* as stated in drawing CI-03.50 “Re-grading existing raised slow point” that the surface of the plateau be relayed

with red asphalt to reduce maintenance. Prior to preparing revised construction and engineering drawings you are encouraged to make contact with the Shire's Manager of Infrastructure Services.

- (ii) The traffic management plan is to be prepared by a registered Roadworks Traffic Manager.
 - (iii) The Shire will provide tax invoices from Porter Consulting Engineers and may charge an administration fee for project management services.
5. In respect to condition 5:
- (i) The proponent is encouraged to make contact with the Shire's Manager of Development Services to confirm wording of the notification prior to preparing your Form N1 for local government attestation.
 - (ii) The endorsed landscaping plan shall not be modified without the prior written consent of the CEO.
6. In respect to condition 6, your attention is drawn to '[Guideline for managing impacts of dust \(www.wa.gov.au\)](http://www.wa.gov.au) (DEC, March 2011) and, specifically, Appendix 1 Site risk assessment/classification for activities generating uncontaminated dust. The Shire will accept the provisions and contingencies arrangements for a medium risk activity as outlined on page 38 of the Guideline.
7. In respect to condition 8, Spray drift includes both agricultural chemicals and reticulation.
8. In respect to condition 11, a tree protection fence for the replacement Peppermint tree must be installed on the verge at no cost to the Shire. The type of fencing must be in line with the Australian Standard for Protection of Trees on Development Sites AS4970-2009. At a minimum the tree protection zone fencing will cover 2m x 2m around the trunk.
9. No building works are to be undertaken prior to the issue of a Building Permit. Your Building Application plan set must align with the plans approved as part of any Development Approval granted by the Shire in relation to the street wall and retaining walls subject of this Permit.
10. Building Applications will be placed on hold unless the plan set include duplicates of those endorsed as part of any corresponding Development Approval, or the applicant certifies that the plan set is consistent with those endorsed as part of any corresponding Development Approval or demonstrates to the satisfaction of the CEO that any variations are trivial.
11. In respect to Development Bonds, the Shire requires the applicant to arrange for the inspection of all Shire infrastructure including the street verge adjacent to the property post completion to confirm the satisfactory completion of works and determine any necessary remediation of impacts on public infrastructure and lands. Should any necessary remediation works not be satisfactorily completed by the proponent in a reasonable time frame, funds from the bond may be used to satisfactorily complete the works. Project management and/or administrative fees may also apply.

12. In respect to Development Bonds, should the situation on the street verge be dangerous in the opinion of the CEO, funds from the bond may be used to make the site safe or to a standard under any approved Construction Management Plan. Project management and/or administrative fees may also apply.
13. The Shire does not warrant or exempt the applicant from any civil claim(s) arising from damage to private property and associated with the approved works.
14. Unless otherwise varied by a permit under the Activities in Thoroughfares and Public Places and Trading Local Law 2021 or an approved Construction Management Plan, all construction materials associated with the approved works shall be wholly stored within the subject land.
15. Prior written approval of the CEO is required for the temporary closure of any footpath, road or laneway.
16. The proponent is responsible for ensuring all contractors adhere to the construction hours. In the event of enforcement action being undertaken, infringement notices will be issued to the proponent.
17. It is the responsibility of the proponent to search the title of the property to ascertain the presence of any easements that in any case must not be built upon without the prior consent of the affected party.
18. During the construction stage adjoining lots are not to be entered without the prior written consent of the affected owner(s).
19. In respect to condition 16, a further two years is added to the decision date by which the development shall be substantially commenced, pursuant to Schedule 4, Clause 4.2 of the Clause 78H Notice of Exemption from Planning Requirements During State of Emergency signed by the Minister for Planning on 8 April 2020 (as amended).
20. Boundary walls performing a retention function shall be suitably designed and constructed to prevent water penetration and articulated as part of your Building Application.
21. Should the proponent and/or owner be aggrieved by this decision, or any of the conditions imposed, there is a right of review under the *Planning and Development Act 2005*. An application for review must be submitted in accordance with Part XIV of the *Planning and Development Act 2005* within 28 days of the date of this decision to: the State Administrative Tribunal, GPO Box U1991, Perth, WA 6845. Further information regarding this right of review is available on the SAT website www.sat.justice.wa.gov.au or by phoning 9219 3111 or 1300 306 017.

9 NEW BUSINESS OF AN URGENT NATURE

NIL

10 MOTIONS ON NOTICE

(Automatically sent back to Administration for consideration at the next Council meeting)

11 CONFIDENTIAL ITEMS OF BUSINESS

NIL

12 CLOSURE

At ___pm, there being no further business the meeting closed.