



Shire of  
**Peppermint Grove**

# **SPECIAL MEETING OF COUNCIL**

# **AGENDA**

**HELD ON  
TUESDAY 4 OCTOBER 2016  
AT  
5.30 PM**



# Shire of Peppermint Grove

## Notice of Meeting

Dear Councillor

It is advised that the **SPECIAL MEETING OF COUNCIL** will be held in the Council Chamber of the **Shire of Peppermint Grove**, 1 Leake Street, Peppermint Grove, on Tuesday 4 October 2016, commencing at 5.30 pm.

### **MEETING AGENDA ATTACHED**

Yours faithfully

**Mr Paul Rawlings**  
**Acting/CHIEF EXECUTIVE OFFICER**

4 October 2016

---

### **DISCLAIMER**

*Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material.*

*Any statement, comment or decision made at a Council or Forum meetings regarding any application for an approval, consent or licence, including a resolution of approval, is not effective as an approval of any application and must not be relied upon as such.*

*Any person or entity who has an application before the Shire must obtain, and should only rely on, written notice of the Shire's decision and any conditions attaching to the decision, and cannot treat as an approval anything said or done at a Council or Forum meetings.*

*Any advice provided by an employee of the Shire on the operation of a written law, or the performance of a function by the Shire, is provided in the capacity of an employee, and to the best of that person's knowledge and ability. It does not constitute, and should not be relied upon, as a legal advice or representation by the Shire. Any advice on a matter of law, or anything sought to be relied upon as a representation by the Shire should be sought in writing and should make clear the purpose of the request.*

---



# Shire of Peppermint Grove

## TABLE OF CONTENTS

ITEM	SUBJECT HEADING	PAGE
1.	<b>DECLARATION OF OFFICIAL OPENING</b>	<b>5</b>
2.	<b>RECORDING OF ATTENDANCE, APOLOGIES AND LEAVES OF ABSENCE</b>	<b>5</b>
	2.1 Attendance	6
	2.2 Apologies	6
	2.3 Leaves of Absence	6
3.	<b>DELEGATIONS AND PETITIONS</b>	<b>6</b>
	3.1 Delegations	6
	3.2 Petitions	6
4.	<b>PUBLIC QUESTION TIME</b>	<b>7</b>
	4.1 Response to previous Questions taken on notice	8
	4.2 Questions from members of the public	8
	4.3 Deputations from members of the public	8
5.	<b>DECLARATION OF INTEREST</b>	<b>9</b>
	5.1 Financial Interest	9
	5.2 Proximity Interest	9
	5.3 Impartiality Interest	9
	5.4 Interest that may cause a conflict	9
	5.5 Statement of Gifts and Hospitality	10
6.	<b>ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)</b>	<b>10</b>



<b>ITEM</b>	<b>SUBJECT HEADING</b>	<b>PAGE</b>
<b>7.</b>	<b>CHIEF EXECUTIVE OFFICER REPORTS</b>	<b>11</b>
7.1	<b>Urban Planning</b>	<b>11</b>
7.1.1	Adopted Local Planning Scheme No. 4 (March 2016) Department of Planning Response	<b>11</b>
7.2	<b>Infrastructure</b>	<b>17</b>
7.3	<b>Community Development</b>	<b>17</b>
7.4	<b>Corporate</b>	<b>17</b>
<b>8.</b>	<b>NEW BUSINESS OF AN URGENT NATURE</b>	<b>17</b>
<b>9.</b>	<b>MOTIONS TAKEN ON NOTICE</b>	<b>17</b>
<b>10.</b>	<b>CONFIDENTIAL ITEMS OF BUSINESS</b>	<b>17</b>
<b>11.</b>	<b>CLOSURE</b>	<b>17</b>



# Shire of Peppermint Grove

## SPECIAL MEETING OF COUNCIL

### 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.

### 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 S Fleay
Elected Member	Cr D Horrex
Elected Member	Cr P Macintosh
Elected Member	Cr G Peters
Manager Library and Community Services	Ms D Burn
Manager Corporate Services	Mr P Rawlings Acting CEO
Manager Infrastructure Services	Mr D Norgard
Manager Development Services	Mr M Whitbread
Executive Officer	Ms M Tabbakh (Minutes)

**Visitors** \_\_\_\_\_, from \_\_\_\_\_

**Gallery** \_\_\_\_\_ Members of the Public

\_\_\_\_\_ Members of the Press



**2.2 APOLOGIES**

**2.3 LEAVES OF ABSENCE**

Chief Executive Officer, Mr John Merrick

**3. DELEGATIONS AND PETITIONS**

**3.1 DELEGATIONS**

**3.2 PETITIONS**

#### 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**
- 4.2 QUESTIONS FROM MEMBERS OF THE PUBLIC**
- 4.3 DEPUTATIONS OF THE PUBLIC**



## **5. DECLARATIONS OF INTEREST**

*Councillors / Staff are reminded of the requirements of section 5.65 of the Local Government Act 1995, to disclose any interest during the meeting when the matter is discussed, and also of the requirement to disclose an interest affecting impartiality under the Shire's Code of Conduct.*

*Councillors / staff are required to submit declarations of interest in writing on the prescribed form.*

### **5.1 FINANCIAL INTEREST**

*A declaration under this section 5.60 of the Act requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration.*

*Other members may allow participation of the declarant if the member further discloses the extent of the interest and the other members decide that the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.*

### **5.2 PROXIMITY INTEREST**

*A declaration under this section 5.60 of the Act requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration.*

*Other members may allow participation of the declarant if the member further discloses the extent of the interest and the other members decide that the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.*

### **5.3 IMPARTIALITY INTEREST**

*Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member / employee is also encouraged to disclose the nature of the interest. The member / employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member / employee declares that their impartiality will not be affected then they may participate in the decision making process.*

### **5.4 INTEREST THAT MAY CAUSE A CONFLICT**

*Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member / employee is also encouraged to disclose the nature of the interest. The member / employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member / employee declares that their impartiality will not be affected then they may participate in the decision making process.*

## **5.5 STATEMENT OF GIFTS AND HOSPITALITY**

*Councillors and staff are required (Code of Conduct), to disclose gifts and acts of hospitality which a reasonable person might claim to be a conflict of interest. Gifts and acts of hospitality which exceed that amount of prescribed by regulation are to be recorded in the Councils Gift Register.*

## **6. ANNOUNCEMENTS AND DECLARATIONS BY ELECTED MEMBERS**

### **6.1 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. CHIEF EXECUTIVE OFFICER REPORTS

### 7.1 URBAN PLANNING

8.1.2 Adopted Local Planning Scheme No.4 (March 2016): Department of Planning Response.

### URBAN PLANNING

#### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
Attachment 1	Nil

Voting Requirement	:	Simple Majority
Subject Index	:	LPS 4
Location / Property Index	:	N/A
Application Index	:	N/A
TPS No 3 Zoning	:	N/A
Land Use	:	N/A
Lot Area	:	N/A
Disclosure of any Interest	:	Nil
Previous Items	:	N/A
Applicant	:	N/A
Owner	:	N/A
Responsible Officer	:	Michael Whitbread, Manager of Development Services

#### COUNCIL ROLE

- Advocacy** *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
- Executive** *The substantial direction setting and oversight role of the Council eg. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.*
- Legislative** *Includes adopting local laws, town planning schemes & policies.*
- Review** *When Council reviews decisions made by Officers.*
- Quasi-Judicial** *When Council determines an application / matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include town planning applications, building licences, applications for other permits / licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.*

## **PURPOSE OF REPORT**

For Council to consider a response to the request for public comment period initiated by the Western Australian Planning Commission (WAPC), in regard to proposed changes to the R-Codes.

## **SUMMARY AND KEY ISSUES**

- The Department of Planning has proposed further amendments to draft Local Planning Scheme No.4.
- Some changes are administrative and are the result from the introduction of the Planning and Development Regulations 2015.
- Several proposed changes are contrary to previous advice received and would have a detrimental effect on the character of Peppermint Grove in the longer term.
- A response contesting these issues has been recommended.

## **LOCATION**

N/A

## **BACKGROUND**

The Shire submitted its draft Local Planning Scheme No.4 and Local Planning Strategy in September 2012 to the Department of Planning for approval to advertise. The overall tenor of the draft Scheme drafted on the basis of community workshops and survey held between 2007 and 2011, was to provide additional density along Stirling Highway to meet Direction 2031 housing targets

Approval to advertise was granted in October 2014 subject to a number of changes to the Scheme text to meet the Model Scheme Text of the Town Planning Regulation 1967.

Following three months of public consultation beginning further changes to the Scheme text resulted from public comments received as well as the need to respond to the Planning and Development (Local Planning Scheme) Regulations 2015. It was also necessary to rewrite substantial sections of the Local Planning Strategy in response to several changes to State Planning Policy, such as the Activity Centres Policy and Direction 2031. The final version adopted by Council in March 2016 and forwarded to the WAPC.

## **CONSULTATION**

The current draft scheme was advertised extensively from July to October 2015. Copies of the draft scheme and strategy Scheme have remained available

## **STRATEGIC IMPLICATIONS**

There are no Strategic Plan implications evident at this time.

## **POLICY IMPLICATIONS**

One of the unintended consequences of the 2015 Planning and Development (Local Planning Scheme) Regulations 2015, appears to be that discrete development standards in Local Planning Schemes applicable to residential development in order to maintain the character and amenity of a locality may have been extinguished.

In response the Department of Planning has proposed that such unique Scheme provisions now be included into a Local Planning Policy (LPP). This would avoid the need to correct Planning and Development (Local Planning Scheme) Regulations 2016. The proposed amendments to the R-Codes, as outlined in the report to Council on the 27 September 2016 (item 9.1.2 refers), would now contain a new clause allowing LPP to deal with these streetscape matters.

However, whereas planning policy is currently done at a local government level the proposed R-Code amendment, if successful, would require WAPC to grant approval for any policy made under the amended clause.

## **STATUTORY IMPLICATIONS**

Although the Planning and Development (Local Planning Schemes) Regulations 2015, were introduced in 2015, the exact implications for both existing and draft Local Planning Schemes are still to be fully appreciated. The emphasis on the imposing standardised R-Codes provision in Local Planning Schemes without due regard of the local context will almost certainly necessitate further changes in the coming months.

## **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**

Since the first submission to the Department of Planning the feedback has been helpful in so far as updating the draft Scheme to meet the Model Scheme Text and making amendments in order for the Local Planning Strategy to reflect current State Government Policy.

The table below summaries the changes proposed by the department with a planning comment provided in response.

<b>LPS 4 Provision</b>	<b>Dept. of Planning Comment</b>	<b>SPG Planning Comment</b>
Model Scheme Text format	Revamped to reflect the LPS Regulations 2016	No objection. Regulation section is in a schedule that can be updated as necessary without affecting the entire document.
Zoning Table within the Scheme	Shire can choose the location	Preferably within the Scheme and not as a Schedule in the scheme provisions.
Local Centre Zone	Mixed-Use is the preferred term now.	The definition of Mixed Use is somewhat clear in regard to residential development than Local Centre. Can be supported.
Mapping Anomalies	A) Re-zoning of ROW and ST Hilda's Principal's house needs further explanation. B) Public ROW to be shown as Local Roads on Scheme Map	Minor details but the intention of the current zoning should be maintained by whatever method is acceptable to both the Shire and the WAPC. .
ROW shown as zoned land	ROW should be zoned Mixed Use/Commercial R80 to match with the adjoining commercial land	No Objection.
Scheme Objective and Definitions	Amend to reflect Model provisions.	No objection, very similar wording and includes by reference the objectives in the Local Planning Strategy
Additional Uses PLC site.	PLC 'Office Use' to be broadened as per PLC Submission for Educational Establishment	<b>OBJECT</b> These former dwellings are still zoned residential and forms a buffer between the school and nearby housing. The Educational Establishment 'additional use' proposed is rezoning by stealth.
Use Class Table	Recommends adopting definitions of liquor store <i>large</i> and <i>small</i> .	No objection; precludes the development of large format liquor outlets in Local Centres.
Structure Plans/ Development Plan	Should be re defined as an Activity Centre Structure Plan	No objection as the requirement to resolve access issue is identical. Different zoning required.
Star of the Sea; Proposed zoning to Residential R80	Proposes to retain current zoning educational zoning on the basis that the current land-uses will 'outlive' the new scheme.	<b>OBJECT</b> It is important to ensure incremental creep, in the form of non-residential

		land uses, does not permeate the site. .
<b>LPS 4 Provision</b>	<b>Dept. of Planning Comment</b>	<b>SPG Planning Comment</b>
Irvine Street to Keane Street	Non-Conforming Use (Pool shop and Liquor Store) should be re-zoning to Mixed Business	<i>OBJECT</i> ; this would require re-advertising and therefore slow down the final adoption of the Scheme. Suggest this be dealt with by a separate amendment.
Ancillary Accommodation (120m <sup>2</sup> and single storey)	Suggests that the increased floor area and height restrictions be included in a policy. If in the scheme a DA is not required.	No objection. A policy outlining Council's position under the Design principals would ensure that a DA is required and assessed under preferred planning criteria for floor areas larger than 60m <sup>2</sup>
Oswal Site	Proposes to retain the current R10 and portion R25 zoning.	<i>Object</i> The small area of the site at the northern end of Bungalow Court is zoned R25. This would lead to awkward lot boundaries if Lot 2 was subdivided and additional traffic in Bungalow Court.
Plot Ratio	This is not available in any other low density areas in WA	<i>Object</i> ; This unique provision has shaped the Shire's built form for over 50 years.

The Planning and Development (Local Planning Scheme) Regulations 2016 has raised a plethora of questions in regard to the types of provisions that can be incorporated into the draft Scheme due to the Deemed provision being imposed. This situation of course poses exactly the same questions as to the validity of the current Scheme.

Councillors and staff are able to attend this meeting and make a presentation to the WAPC on the issues raised.

Given that several other LGA's are also in the process of seeking Ministerial Approval of Local Planning Schemes, it is important that the Shire is able to put its case forward in this forum especially as there appears to be some scope at this stage for interpretation.

#### **OFFICER RECOMMENDATION/S – ITEM No. 8.1.2**

- 1. That Council advises the Department of Planning that it supports the proposed changes to bring it into line with the Planning and Development (Local Planning**

---

**Scheme) Regulations 2015, in regard to the zoning of the Cottesloe Shopping Centre as an Activity Centre rather than a Development Zone.**

2. That Council advises the Department of Planning that it does not support some aspects of the proposed amendments to draft Local Planning Scheme No. 4, to bring it in line with the Model Scheme provisions of the Planning and Development (Local Planning Scheme) Regulations 2015, for the reasons outlined below.
- a) **Plot ratio** has been a development standard applied in the Shire since the 1960's and has successfully prevented over development of sites by limiting bulk and scale of new dwellings. This has significantly contributed to the retention of Peppermint Groves garden suburb character. The removal of plot ratio will over time, erode the character of the Shire.
  - b) **The Star of the Sea site** has been earmarked for residential development. The owners of the site, the Catholic Church has not objected to the proposed zoning. It is important to ensure incremental creep in the form of non-residential land uses permeate the site. The Director General has in writing supported the planned residential zoning in the face of the unfortunate decision by the DAP.
  - c) **The PLC land zoned residential** and this zoning is in place to ensure a buffer exists between the school and adjoining private housing. The additional use proposed by PLC's Planning Consultant of 'Educational Establishment' is in effect rezoning by stealth and would allow uses that exceed the previously agreed non-teaching administrative function to free up land within PLC for educational purposes.
  - d) **Mapping Anomalies.** The rationale behind the two separate zones on the one lot at St Hilda's is the result of the building of a Principals house on a portion of land that is in Peppermint Grove. The background was that there was to be no intrusion of non-residential land uses into the adjoining residential land. The Shire will support an alternative means providing that the intent of the original zoning can be maintained.
  - e) **Oswal Site:** This is the former site of the Oswal Mansion. The R25 zoning is over a small portion of the land and its inevitable re subdivision would result in illogical lot boundaries.





**7.2 INFRASTRUCTURE**

**7.3 COMMUNITY DEVELOPMENT**

**7.4 CORPORATE**

**8. NEW BUSINESS OF AN URGENT NATURE**

**9. MOTION TAKEN ON NOTICE**

**10. CONFIDENTIAL ITEMS OF BUSINESS**

**11. CLOSURE**

At \_\_\_\_\_ pm, there being no further business the meeting closed.