

9 OFFICER REPORTS**9.1 PLANNING AND REGULATORY SERVICES****9.1.1 Scheme Amendment 1- of LPS No.5 - report on submissions and request to resolve on the Amendment.**

Date of Report:	2 July 2025
File Reference:	PRO 18
Author:	P Nuttall – Executive Manager Planning and Regulatory Services
Responsible Officer:	P Nuttall – Executive Manager Planning and Regulatory Services
Previously Before Council:	OCM 6/03/2025
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	- Attachment 1 - Scheme Amendment 1 Report ⇒ - Attachment 2 - Petition received OCM 22/05/2025 ⇒ - Attachment 3 - Table of Submissions ⇒ - Attachment 4 - Design Working Plan ⇒

At 6:16 pm, Cr Duri left the meeting.

SUMMARY

Applicant: Shire of Toodyay

Owner: Shire of Toodyay

Proposal: Amendment 1 to Local Planning Scheme 5

Location: Lot 9508 and Lot 8006, Drummond Street and Burt pass, Nunile

PURPOSE OF THE REPORT

For council to consider the submissions received in relation to this proposed amendment to the Scheme, and to resolve the progress of this amendment.

BACKGROUND

Council was presented at the OCM 27th March a request to commence advertisement of a proposal to change the Scheme. This proposal involved the rezoning of a portion of freehold Council land (Lot 9508) from Public Open Space to road and residential zoning, and the rezoning of Lot 8006 from Residential zone to Public Open Space. This application is deemed to be a Standard amendment and was to be advertised for 49 days. The report that was advertised is contained in **Attachment 1**.

As a result of this advertisement, one petition containing 48 signatures **Attachment 2** and a total of 24 submissions were received **Attachment 3**.

Both the EPA and the WAPC have consented to this amendment and now the Council is required to determine the progress of this amendment based upon the submissions received.

Council can choose to either; support, support - subject to proposed modifications, or not to support the amendment.

COMMENTS AND DETAILS

Hindsight

The Shire in March 2025 was presented with a proposal to Council to decide on returning a portion of lot 9508 (public open space), to a residential land use and road reserve. A proper process would have seen the scheme maps align with the 2019 Sporting Complex Master Plan in time for the new Local Planning Scheme No.5 which was gazetted 22 August 2024. Indications within that sporting complex masterplan demonstrated a reduced appetite for the land to the south of Lot 9508 to be developed for recreational purposes.

This oversight could have left this subject land as an Urban Development Zone and thus any proposed housing estate would have been subject to an amended Foggarthorpe structure plan advertised to the community. While this process may have resulted in the same community responses and sentiment, it would have been a more transparent open process. Advertisement of the new scheme contained community workshops, consultation and reports to Council in 2023 giving a clearer intent to prospective landowners long before the events of this amendment. Compilation of the new Scheme No.5 occurred over many years.

Consultative process:

As with all community consultations, there are community members that will and won't support amendment proposals. In this case there were 24 written comments received and a petition of 38 signatures.

As per the requirements of the Act the Local Government must advertise the amendment for at least 42 days and consult all landowners within 200m of the boundary of the proposal. The Shire exceeded these requirements by advertising for 49 days and directly contacted landowners in a 300m area.

The Shire undertook a direct email and letter campaign to all landowners within 300m of the boundaries of this proposal, advertised on the Shire website and was the subject of at least 2 stories within the local community newspaper "The Herald".

Further to this consultation and on request from Councillors, a face-to-face workshop was conducted at the recreation centre 8/5/2025 which was attended by 13 people. This open house event reached out to all the original mailout landowners offering the opportunity to attend.

The planning office received a further 30 in-person and email requests for information.

Protest rally

A community member had organised a protest rally on Saturday 31 May 2025 which was subsequently reported in the Toodyay Herald and was attended by 16 people and two poodles. This event generated two late submissions.

It should be noted that the rally occurred after the closing date of the submissions period which was 26 May 2025. This event inadvertently provided false hope for residents to contribute to the table of submissions. The Shire recognises this and has included received submissions after the rally, although it was not obliged to do so.

Petition received OCM 22/05/2025

A petition was received and presented to Council during the Ordinary Council Meeting 22/5/2025. The petition objected to the proposed Scheme Amendment 1. The petition can be viewed in **Attachment 2** and officer comments been included at the end of the table of submissions **Attachment 3** for reference.

Outcomes of consultation

Of the written comments received 20 objected, 2 supported and 2 neutral comments were received. Most of those comments received were from residents within the 300m shire consultation radius, and the remainder from within the Shire.

All the signatories on the petition were Nunile based, with the majority of landowners who signed being within the 300m area of consultation.

Attachment 3 details the comments received from the community and is paired with officer comments in response. These comments generally fell into themes, and this will be expanded in sections below.

Other comments of note were that the land was donated to the shire, which is inaccurate as the Shire purchased Lot 9508 for recreational uses. However, the comment made may refer to the ceding of land for public open space which is required as a subdivision requirement and that is generally located further to the north in the Foggarthorpe estate being the Boyagerring parklands.

Valid planning considerations

A comment made in relation to a planning proposal must acknowledge the concerns of the submitter and comply with the requirements of being related to the proposal and be based on valid planning concerns.

“Public submissions must be given due regard by decision-makers and typically comments or submissions will be upheld (supported), partially upheld, dismissed (not supported) or noted (where the submission does not relate to a planning matter or is out of scope). Public consultation is an important element in planning decision-making, but the popularity (or otherwise) of a proposal is not the only factor to consider. Public submissions are most effective where they focus on planning issues, and the impact a proposal may have on the affected person”.(WAPC 2025)

<https://www.planning.wa.gov.au/how-does-planning-work/making-good-planning-decisions>

In the table of submissions, you will see comments that this proposal ‘will devalue my property’. This is a subjective comment as the actual change of value has not yet been calculated and couldn’t be known until the proposal has been completed. It is acknowledged that this is a concern to a landowner but not considered to be valid for planning purposes.

Comments made in relation to the ‘quantity of public open space’ is a valid planning condition, however the overall loss of a portion of Lot 9508 to a residential zone and a road, does not constitute a net loss that would reduce the overall Foggarthorpe structure plan area falling below a required gross 10% open space. These comments are valid, but a calculation determines that an adequate supply of open space will continue to exist in the structure planning area.

Based on all the received comments, all the valid planning considerations have been answered and dismissed, and it is deemed that all comments have been suitably addressed.

Lastly there was a reasonable scare campaign undertaken by a few residents of Nunile who expressed their comments and fears as facts. While the table of submissions has sought to address these concerns, misinformation may continue, for the purpose of trying to influence the decision-making role of Councillors.

IMPLICATIONS TO CONSIDER

Responses from the community

All of the consolidated responses have generally followed five key themes related to; lot sizes, the inclusion of social housing, distrust of Council, lack of open space, and changing community expectations.

These are not the only categories of issues and there are also good points and suggestions provided by the community as well.

Lot sizes

The rationale for utilising the R20 development code was that it is the most common code used in Western Australia and has a good track record of meeting the expectations of communities with varied housing types. The developer can choose lots as small as 450m² and as large as 850m² without triggering a duplex development.

During interactions with the community, there was a perception that the shire would choose to maximise the most lots out of the estate making all the lots as small as possible. This was perhaps a failing of the Shire to communicate its intention of having a wide selection of lot sizes large and small. Some communication with officers was received that even these lots proposed would be too large for first homeowners and that we should respond with even smaller lots. Other comments received was to increase the R20 coding to R15 to guarantee larger lots, which will be explored later in this report.

It was strongly communicated that if this amendment were to proceed then lots facing Drummond Street should be as large as possible to be complementary with the larger lots of opposite. It should be noted (via strong comments) that a park view was the first preference.

The R35 areas selected for housing reflects the need for lower cost housing on smaller lots for Aged Persons Housing (over 55's) and for Staff accommodation. This code will not permit apartments but will encourage grouped housing solutions and is the better code to use for such developments, as it offers a greater flexibility in design options.

The two proposed grouped housing sites are relatively small in relation to the area of the site and in development yield. It is expected that up to 14 such dwellings may be possible from a development expected to realise 50 dwellings in total.

Social Housing

There are many categories of 'social housing', but the categories chosen by the Shire are Key Worker Housing and Aged Persons Housing. The term 'social housing' is a catch all phrase that often gives a negative impression in the minds of many, and these fears were realised in comments in the submissions table, and verbally in other interactions.

It is a Shire objective within the *Plan for the Future 2023 – 2033* document to broaden social housing options 5.2.1. *Advocate for more social housing in the Shire of Toodyay*. However, the Shire has chosen to support just two of those categories in this location. It is important

that the Shire supports all members of the community and in doing so supports the provision of housing diversity and social inclusion.

Aged person housing is identified as being in critical demand with long waiting lists for few dwellings, and the Shire has almost no housing for staff. With very high rental prices in Toodyay attracting new employees to the Shire has become difficult (recruiting without a housing package places the shire at a disadvantage).

Distrust of Council and officers

The history of the site is contained within the report and proposed a low-density residential estate. Then the Shire reduced the size of the estate through a purchase of land from the developer for the new recreation centre, and now to return a small portion of that open space back to housing. This change of plans, while not uncommon, does not support confidence with the Shire intentions, and can instil concerns about other locations and the outcomes of their open spaces.

It is acknowledged that people did purchase lots in the River Hills Estate with the understanding that Lot 9508 was to be Open Space, as most of the lots close to this proposal were purchased after the Shire purchased Lot 9508. It is not confirmed whether this communication was from real estate agents or shire staff. The site was always intended to be developed for something, but now Council has chosen to use the land for housing. This is the core issue of mistrust in the community.

Administration and elected officials may have also had slightly different opinions or points of view on particular issues of this proposal, and this has also reduced community perceptions of what the outcomes may be. Certainly, if this proposed amendment were to be approved by the WAPC then mistrust of the Shire may increase despite the intent to support the wider community.

Community expectations

With all plans in a shire there lies the risk to community that the 'Council of the day' may change plans. This is demonstrated with the most recent *Toodyay Plan for the Future 2023-2033* which is a response to the changing needs of the Toodyay community. Within this report is an emphasis on meeting community housing needs that change over time.

A key consideration is that the shire has an aging demographic and few places that our older community can live. Smaller land parcels with smaller dwellings is an option, and it allows our community to age in place, with supported care packages. This amendment and its resulting dwellings may provide those options. However, the larger first homeowner market is also attracted to estates with more affordable lots and homes.

Local expectations for sporting and recreational activities are shown within the 2007 sporting master plan for Lot 9508. In 2014 a new masterplan was developed with most of the sporting activities focused to the north of the Lot. Within this plan, there are no specific developments proposed for the land to the south. Again, this demonstrates that Shire plans for land can change over time and that local government has an obligation to respond to wider community expectations.

It should also be noted that Lot 9508 is freehold, in the name of the Shire of Toodyay. This is unusual as recreational facilities or ovals are normally Crown Land vested in a Shire. It has also provided the Shire with a unique development opportunity unavailable to other local governments.

Lack of open space.

The original Foggarthorpe Structure Plan (SP) designed the road network, lots, and public open space and addressed other planning matters. As the Foggarthorpe SP has been

approved, consideration must be made to Development Control policy 2.3 – *Public Open Space in residential areas*. Based on the original Foggarthorpe plan, the WAPC approved the Structure Plan as meeting the requirements of adequate public open space, being 15.6% of that area. An additional 14.0650ha of open space was added to the structure plan in that amendment 1, and this Scheme amendment will remove only 4.8190ha from this reserve. This proposed residential subdivision that would fit within the SP without needing additional open space as the original SP already anticipated that this land was to be developed as houses.

A further argument that could be used is that the surrounding area has substantial amount of existing open space, being the Avon River parklands, and that the subdivision proposal could rely partly on that open space within its calculations to not need to provide any more open space. However, this argument is not needed, due to the large amount of open space within the current SP.

In the original Foggarthorpe SP, three drainage sumps were created on Drummond Street to slow down the road water and to provide silt traps and filtering before discharge into the Avon River. The current Scheme 5 has erroneously classified this land as being residential R10, alluding to the fact that the land could be developed for housing. The actual land ownership is a Crown Reserve for the purposes of drainage and can't be developed for anything other than drainage. This amendment sought to correct this zoning error but inadvertently generated a conversation around these drainage reserves being an open space alternative.

Land development convention encourages drainage reserves that are unfenced to be zoned as public open space. In these three instances they are classified under DC 2.3 as restricted open space and cannot be fully used as credits towards the overall SP open space calculations, as the entire estate is in excess of its required 10% open space obligations. The change of lot 8006 to public open space is to correct an administrative error in the Scheme.

Useful and positive suggestions

It is important to note that consultation is a valuable community tool and can positively enhance a proposal, this has been demonstrated in community comments. Community members have made suggestions that can be incorporated into the project that will benefit the wider community and lessen the impact to landowners in the River Hills estate.

1. *Relocate the access leg to the Shire group housing site from Drummond Street to Batty Pass.* While this is deemed to be a minor change to the concept plan, it would reduce headlights and traffic impact to homes across the road from the proposed dwellings that the Shire would use. No changes to the advertised codes would be required as it would not materially affect a future subdivision design.

Recommendation - Support the design change.

2. *Restrictive covenant on the larger grouped housing site.* It was intended that a responsible developer would be encouraged to purchase the lot to be for Aged Persons Housing. However, the Shire is encouraged prior to sale to Covenant the new lot to restrict occupancy of any dwelling to over 55's residents. The downside for the Shire is that it is that the shire would not be able to sell the lot for a higher price,

due to the Covenant restriction. The Shire will still meet its obligations to the community through guaranteeing Aged Persons Housing on the new lot.

Recommendation – covenant the larger grouped housing lot for over 55's Aged Persons Housing.

3. *Road design changes to the new Burt Parkway extension.* In response to verbal and written comment regarding this new intersection, a realignment is proposed to intersect the new Burt Parkway at Rayner Loop further north. The result of this change would be to reduce the number of intersections and prevent vehicles headlights from shining into houses directly opposite the intersection. This change would not facilitate a need to amend the current Scheme proposal or zones.

Recommendation – realign Burt Parkway to the Raynor Loop intersection.

To indicate the Shire's intentions and incorporate the community feedback received, **Attachment 4** shows the post-consultation design working plan to instruct survey instructions for the final subdivision layout. Please note this plan is to guide subdivision and some areas and boundaries may change slightly.

Response to the petition

The petition to council was based upon three primary elements. Objection to;

1. A portion of Lot 9508 Public Open Space to residential
2. All of Lot 8006 from residential to public open space
3. Creation of a road reserve to be known as Jarrett Pass.

The primary change is the change of portion of Lot 9508 to residential, the other two elements are administrative actions to properly administer the Shires land reserves.

Lot 8006 is discussed within this report as being relevant to representing land with an appropriate zone or reserve designation. A drainage reserve is properly designated as open space rather than being zoned for housing development. As such this is an appropriate scheme reserve of land, suitable for purpose.

Jarrett Pass is a fully constructed road but does not have the appropriate land tenure or scheme reserve for purpose. Development of a subdivision resulting from amendment 1, would create a lot suitable for the purposes of a dedicated road, the appropriate zone then would be "Local Road" in the Scheme. As an administrative measure, this amendment is proposing to Reserve land in the scheme for an appropriate purpose. It should be noted that the Shire is not intending to close this road, and make the land as a park, rather it is seeking to represent the road appropriately in the Scheme.

Other responses to individual points are contained at the end of the Table of Submissions **Attachment 3**.

Strategic:

From the Shire – ***Plan for the Future 2023 - 2033***

5.2. Enable access to affordable, sustainable, and diverse housing options.

The Scheme Amendment 1 proposal will lots that will be relatively affordable compared with other estates, due to the Commonwealth Grant assisting with construction costs. There will be a selection of different lot sizes to the housing market.

5.2.1. Advocate for more social housing in the Shire of Toodyay.

The categories of social housing proposed will be for Key Worker housing (shire Staff), and a development site for Aged Persons Housing which could be deemed as retirement homes.

5.2.2. Advocate for developers to build more affordable housing options.

With the provision of a range of lot sizes, developers will be able to provide homes to suit the lot sizes. Smaller lots will result in smaller houses (proportionally) as the R20 code requires 50% open space per lot.

Policy related:

This proposal has been considered against the Special Control Area No.5 (SCA5) contained within the Scheme. The SCA5 – Landscape Protection Special Control Area requires consideration to be made to maintain the integrity of landscapes for land within the control area. In this case those consideration would have been considered in the Foggarthorpe Structure Plan which predates this SCA5. Therefore, it is deemed that these values have been considered accordingly.

Financial:

In accordance with the *Planning and Development Regulations 2009* and *Planning and Development (Local Planning Schemes) Regulations 2015* the costs associated with the assessment, advertising and gazettal of the scheme amendment are met by the applicant.

As the Shire has prepared this Amendment rather than a proponent, all costs associated with preparation, advertising and processing will be borne within Council's adopted Budget.

This project will be funded through a commonwealth grant to support housing in the regions in conjunction with the AROC housing initiative.

General Function:

The *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015* gives local governments powers in relation to Local Planning Schemes and Local Planning Policies. The above provisions of the *Planning and Development Act 2005* require a decision to amend a Local Planning Scheme by Council resolution.

Legal and Statutory:

1. Planning and Development Act 2005

- Section 75 provides legislative power to the Council to prepare changes to its local planning scheme.
- Section 81 requires referral of scheme amendments to the Environmental Protection Authority prior to advertising.
- Section 83A requires referral to the Minister for approval to advertise.
- Section 84 requires a scheme amendment to be advertised and for submissions to be considered by the local government.

2. Planning and Development (Local Planning Schemes) Regulations 2015

- Regulations 34 and 35(2) require an amendment to be classified as basic, standard or complex.
- Regulation 47 specifies requirements for advertising a Standard Amendment.

- Regulation 76A specifies requirements for making documents available to public.

Risk related:

Scheme amendments are ultimately determined by the Minister of Planning, who can approve, modify or refuse any amendment. Councils' role is to prepare and process an amendment at its cost with the greatest risk being the amendment is not supported by the WAPC and the Minister.

Workforce related:

the proposed amendment has been prepared by consultant town planners under the direction of senior staff. The community consultation undertaken has been conducted by Shire staff within normal operating budgets and working hours.

Actions:

The Shire is now required to resolve to the future of Scheme Amendment 1 as per the requirements of the Western Australian Planning Commission. A response must then be forwarded to the WAPC to inform the Minister of Planning of Councils decision.

Council has three presented options as per the Act.

- Support; or
- Support, subject to proposed modifications; or
- to Not Support this proposal.

Support

The preferred option is to support the advertised Amendment 1, to the Shire of Toodyay Local Planning Scheme No.5. without modification.

To the WAPC-

What has been advertised does not require modification and the subsequent land subdivision can be modified with minor changes to effect the recommended changes made by the community.

Support subject to proposed modifications

An alternate option is to modify the Amendment 1, based upon community responses and then upon WAPC advice proceed with an approval. If the WAPC deems that Council proposed changes to be substantial, then the WAPC may require Council to readvertise the amendment for a further 42 days on matters changed by Council. Community may or may not receive greater community support with proposed changes in an amended Scheme Amendment 1.

An example of a modification may be to change any of the residential R-Codes or a portion of the site to a different development R-Code. This may also relate to the change of the shape of the proposed R-Codes or proposed zones. Placing a covenant on land is not appropriate within the scheme amendment process, as this is a subdivisional matter.

Council may choose at this point to proceed with the administrative change to the zones and reserve land for Jarratt Pass and change the drain reserve to public open space and not proceeding with the residential proposal.

Delay that may result from WAPC imposing readvertising may also jeopardise the substantial grant application for this project.

To the WAPC –

What has been advertised does require minor modification to support a future subdivision, and to support the adjacent community with higher levels of surety of the outcomes of that future subdivision.

Not Support the proposal

If Council were to not support this scheme amendment, then notification will be made to the WAPC of the failure of this proposal. The rezoning of land would not proceed, and future subdivision could not occur.

There are still two remaining pieces of land within this proposal that are not appropriately reserved, that would need to be rectified at some later date. A road would continue to run through a public open space, and a drainage reserve would continue to be zoned for residential development.

To the WAPC –

What has been advertised does not meet community expectations, and Council has chosen to not proceed with the Amendment 1 to Local Planning Scheme No. 5.

Conclusion:

It is recommended that Council support the Amendment 1 to Local Planning Scheme No.5 as presented to the community through advertising. Matters raised by the community may be resolved through subdivision design changes presented in this report and would not detrimentally change the housing yield or financial return to the Shire.

VOTING REQUIREMENTS

Simple Majority

REVISED	OFFICER'S	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
OCM129/07/25				
MOVED	Cr M Dival			
SECONDED	Cr D Wrench			
That Council				
1.	Considers and recognises the responses received from the community regarding the proposed Scheme Amendment No.1 Attachment 3.			
2.	Supports with amendment, the proposed Scheme Amendment No. 1 pursuant to section 75 of the Planning and Development Act 2005, to amend the Shire of Toodyay Local Planning Scheme No.5 by:			
3.	reclassifying a portion of Lot 9508 Burt Parkway, Nunile from Public Open Space reserve to:			
	a. Residential zone and applying a density coding of R12.5, R20 and R35; and			
	b. Local Road reserve; and			
4.	Reclassifying Lot 8006 Murray Walkway, Nunile from Residential zone to Public Open Space reserve and removing the R10 density coding from the affected parcel.			

5. Recommends that a review of a future subdivision design be made in accordance with community recommendations within this report to:
6. Relocate the access leg to the Shire group housing site from Drummond Street to Batty Pass; and
7. Place a Restrictive Covenant, at the time of subdivision, on the larger grouped housing site for the purposes of Aged Persons Housing
8. Make design changes to a future subdivision that relocates the intersection of the new Burt Parkway to Raynor Loop.
9. Forwards this report to the WAPC to inform the Minister of planning Councils decision and;
 - a. requests the minister to amend the zoning plan to incorporate a strip of Residential R12.5 zone fronting Drummond Street, Nunile, and
 - b. readvertise the change in the plan accordingly.

Voted For: Crs M McKeown, M Dival, R Madacsi, S McCormick, J Prater and D Wrench.

Voted Against: Nil

MOTION CARRIED 6/0

At 6:22 pm, Cr McCormick left the meeting.

At 6:23 pm, Cr Duri returned to the meeting.