

9 OFFICER REPORTS

9.1 PLANNING AND REGULATORY SERVICES

9.1.1 Initiation of Amendment 1 to Local Planning Scheme No.5

Date of Report:	6 March 2025
File Reference:	PRO18
Author:	P Nuttall – Executive Manager Planning and Regulatory Services
Responsible Officer:	P Nuttall – Executive Manager Planning and Regulatory Services
Previously Before Council:	no
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. Shire of Toodyay - Scheme Amendment 1 Report. ↗

SUMMARY

Applicant:	Shire of Toodyay
Owner:	Shire of Toodyay
Proposal:	Amendment 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 preparation of Scheme amendment No.1 to the Shire's Local Planning Scheme No.1 to rezone two portions of land as shown on the attached plan in Nunile, being:

1. A portion of lot 9508 from Public Open Space to Residential;
2. All of lot 8006 from Residential to Public Open Space;
3. Creation of a road reserve being known as Jarratt Pass.

BACKGROUND

Council purchased the 14ha Lot 9508 Burt Parkway, Nunile in 2013 to provide land for the Toodyay Sporting and Recreation Complex. Stage 1 of the Complex has since been constructed and land set aside for Stage 2 (football/cricket oval and associated buildings). Overall, approximately 10ha of Lot 9508 will be utilised for the Complex, leaving a remaining 4ha portion available for other purposes.

In recent years the Shire has participated in studies to identify the current and projected need for housing in the Shire and wider region. This work has identified a housing shortfall which the Shire is eager to address where it can. One solution is the residential development of the remaining 4ha of Lot 9508. To allow for this to occur, a Scheme Amendment is necessary to reclassify the Public Open Space reserve to the Residential zone. Reclassification of Jarratt Pass to Local Roads reserve is also proposed.

In addition to reclassifying portion of Lot 9508, the opportunity is being taken to also reclassify Lot 8006 to Public Open Space. This lot is located on the northwestern corner of Murray Walkway and Drummond Street and is developed as a drainage sump with surrounding open space. Lot 8006 is currently zoned Residential, which is not reflective of its current and ongoing use.

Further development of land on the southern portion of Lot 9508 shown in the report is a concept of the potential that can be realised from the land and is not subject to this Council report. Only after Council endorsement and WAPC approval can the Shire consider the final detailed outcomes of the site.

Full information on the proposed Scheme Amendment is included at **Attachment 1 – Amendment Document**.

COMMENTS AND DETAILS

Location Characteristics

The proposed rezoning site is sloping and contains little natural environment and would be expensive to level, retain and develop for recreational or community use. Also being close to other larger public reserves would not detrimentally reduce the required 10% open space requirements of the Foggarthorpe Structure Plan. Even with this proposal approved the required open space of this estate is much greater than the state mandate. The proposed site is in effect a prime location for houses, permitting excellent views from most sites and is near the local school.

Amendment process:

Council has an administrative function rather than the normal quasi-judicial decision-making role it has with development proposals. If it is comfortable with the proposed Amendment, it will formally resolve to “prepare” (initiate) the Amendment. This then triggers a number of processes that Shire staff will undertake, including:

1. Referral of the Amendment to the Environmental Protection Authority (EPA) for assessment;
2. Submission to the WAPC of the Amendment and the EPA decision for suitability of advertising;
3. WAPC makes a recommendation to the Minister for Planning on whether the Amendment can be advertised;
4. The Amendment is approved for advertising, modified or refused by the Minister;
5. Once approved, the Amendment is advertised for public comment for a minimum of 42 days;
6. After submissions close, Council will consider all comments received and resolves to support, not support or support with modifications the Amendment; and

7. Council's recommendation is forwarded to the WAPC for assessment and a determination by the Minister for Planning. The Minister is able to approve, refuse or modify an Amendment.

Once initiated by Council, there will be a number of time limits the Shire will need to meet as it processes the Amendment. However, as this is a priority project for the Shire, staff and consultants will be working towards processing the Amendment as quickly and efficiently as possible. It is also prudent to note that there is no right of review of the Minister's decision.

Rationale of proposed zoning

It is proposed to reclassify from Public Open Space reserve a 4ha portion of Lot 9508 bounded by Murray Walkway, Jarratt Pass and Rayner Loop. Most of the amendment site will be reclassified to the Residential zone with a density code of R20. Jarratt Pass is currently within Lot 9508 and in the POS reserve and is proposed to be reclassified as Local Road reserve, which will then allow for the roadway to be dedicated as a public road through a subdivision process.

A density of R20 is proposed for the single residential portions of the site for a number of reasons, including:

1. The amendment site is fully serviced with water, sewer and electricity connections at three frontages and acts as a stand-alone site with no shared boundaries to lower-coded lots;
2. Given the availability of sewer R20 is deemed to be a reasonable density code, no dual coding is required.
3. The R20 density is used on large areas of the Toodyay townsite with the proviso of sewer being made available; and
4. The R20 density would allow for a range of dwelling and tenure types to be explored for the amendment site, consistent with the Shire's intent and commitment to the Federal Housing Support Program.

Two grouped dwelling sites are proposed to have a higher density of R35 to allow for a wider range of housing types and sizes in the development. The R35 density remains low enough to prevent apartment (multiple dwelling) development, thereby maintaining a relatively "low rise" residential outcome.

Reclassification of Lot 8006 from Residential zone to Public Open Space reserve reflects its current and ongoing use for drainage and open space.

IMPLICATIONS TO CONSIDER

The decision to prepare Amendment No. 1 rests with Council. The final decision on whether the scheme amendment is approved rests with the Minister of Planning.

Should Council choose not to prepare Amendment No. 1, the applicant has no review pathway through the State Administrative Tribunal. However, the applicant may request the Minister for Planning to order the local government to prepare and submit the scheme amendment to the Minister for approval, in accordance with Part 5, Division 2 Section 76 of the *Planning and Development Act 2005*. In this case, the applicant is the Shire of Toodyay.

Consultative:

There has been no consultation on the proposed Amendment at this stage. If Council formally prepares the Amendment, community consultation will form a major focus for the Amendment process once the Minister for Planning has provided approval to advertise.

It is proposed that the following community consultation is undertaken:

1. Notification on the site through the installation of signage informing the public of the existence of the proposed Amendment.
2. Letters to the registered owners of all private property surrounding the amendment site.
3. Public notice in a local newspaper circulating in the Shire, such as the Toodyay Herald.
4. Directly informing the Principal of the Toodyay District High School, as well as the Department of Education.
5. Placement of the Amendment Document and supporting information onto the Shire website.
6. The use of the Shire social media presence to inform the wider community.

Strategic:

Plan for the future: Council Plan 2023-2033

Outcome 5. High quality town planning complements our rural ambience and heritage.

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

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

5.2.2 Advocate for developers to build more affordable housing options.

Shire of Toodyay Local Planning Strategy

The proposed Amendment outlines in detail how it addresses the various objectives and strategic directions of Council's Local Planning Strategy. In summary, the proposed Amendment is considered to complement the objectives of the strategy, including:

1. Planning for the sustainable provision of land to meet existing and future needs;
2. Ensuring development appropriately considers potential hazards such as flood and bushfire; and
3. Ensuring future development takes advantage of and makes the most efficient use of available infrastructure (i.e. roads, water, sewer, power, etc).

In addition to the strategy objectives, the proposed Amendment is also consistent with the strategic directions and strategies for growth and settlement, including:

1. Providing for a range of residential densities in the Toodyay townsite to facilitate the development of various housing types; and
2. Promoting the consolidation of the townsite to reduce development costs, improve access to services, and limit the impact on natural environmental resources associated with urban expansion.

As the proposed Amendment is consistent with the Strategy, it can be classed as a standard amendment for the purposes of processing the amendment.

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 by Council's adopted Budget.

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 for Planning, who is able to approve, modify or refuse any amendment. Council's 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/or Minister for Planning.

Workforce related:

The proposed amendment has been prepared by consultant town planners given the limitations of the in-house planning response at this time. Ongoing processing and advertising of the amendment will be predominantly undertaken by shire staff, with technical assistance from the consultant.

VOTING REQUIREMENTS

Simple Majority

Cr Duri departed Council Chambers at 6.35pm due to a disclosure of interest

ALTERNATE MOTION/COUNCIL RESOLUTION NO. OCM050/03/25

MOVED Cr M McKeown

SECONDED Cr J Prater

That Council:

1. supports the proposed scheme amendment pursuant to section 75 of the Planning and Development Act 2005, to amend the Shire of Toodyay Local Planning Scheme No.5 by:
 - (a) reclassifying portion of Lot 9508 Burt Parkway, Nunile from Public Open Space reserve to:
 - (i) Residential zone and applying a density coding of R20 and R35; and
 - (ii) Local Road reserve; and
 - (b) Reclassifying Lot 8006 Murray Walkway, Nunile from Residential zone to Public Open Space reserve and removing the R10 density coding from the affected parcel.as outlined in the scheme amendment document - Attachment 1.
2. determines that Amendment No.1 to Shire of Toodyay Local Planning Scheme No.5 is a standard amendment for the purposes of the *Planning and Development (Local Planning Schemes) Regulations 2015* as it is consistent with a local planning strategy for the scheme that has been endorsed by the Commission.
3. refers the amendment to the Environmental Protection Authority (EPA) for assessment; and
4. submits this amendment to the WAPC and the EPA for a decision for the suitability of advertising under Regulation 76A.
5. Notes that *figure 5.1 - Development Concept* is not a detailed subdivision plan and is provided to illustrate how the amendment site could be, and further refinement is required prior to application for subdivision.

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

Voted Against: Nil

MOTION CARRIED 5/0

In accordance with regulation 11(da) of the Local Government (Administration) Regulations 1996 Council's reason for including Point No. 5 was the make clear that the Development Concept is not a detailed subdivision plan and is provided to illustrate how the amendment site could be, and further refinement is required prior to application for subdivision.

Cr Duri returned to Council Chambers at 6.38pm.