



# Ordinary Council Meeting

23 February 2022

Commencing at 1.00pm

## AGENDA

### Notice of Meeting.

To: The President and Councillors.

The next Ordinary Council Meeting of the Shire of Toodyay will be held at the Shire of Toodyay, Council Chambers,, 15 Fiennes Street, Toodyay WA 6566 on the above-mentioned date and time.

Elected Members are requested to familiarise themselves with the Agenda and prepare notes to help address key issues for the debate during the Ordinary Council Meeting.

Elected Members are requested to email questions to the CEO via email at [ceo@toodyay.wa.gov.au](mailto:ceo@toodyay.wa.gov.au) at the earliest opportunity so that Officers can respond to those questions prior to the Agenda Briefing.

An Agenda Briefing will be held at the same venue as above on 16 February 2022, commencing at 4.00pm to discuss the contents of this agenda.



Suzie Haslehurst

**CHIEF EXECUTIVE OFFICER**



## Our Vision, Purpose and Values

The Shire of Toodyay works together with the community to obtain the best possible social, economic, and environmental outcomes for the people of Toodyay.

**Vision:** We are a vibrant rural community that respects our environment, celebrates our past and embraces a sustainable future.

**Purpose:** Local Government and community working together to obtain the best possible social, economic, and environmental outcomes for the people of Toodyay.

**Community Values:** We value highly:

- Our sense of community support and spirit;
- Our natural environment and healthy ecosystems;
- Our rural lifestyle;
- Our historic town; and
- Our local economy built on agriculture and emerging tourism, arts and cultural opportunities.

**Shire Values:** To progress the community's aspirations, the Shire is guided by:

***Integrity:*** We behave honestly to the highest ethical standard.

***Accountability:*** We are transparent in our actions and accountable to the community.

***Inclusiveness:*** We are responsive to the community and we encourage involvement by all people.

***Commitment:*** We translate our plans into actions and demonstrate the persistence that produces results.

## **Disclaimer**

Members of the public should note that in any discussion regarding any planning or other application that any statement or intimation of approval made by any member or officer of the Shire of Toodyay during the course of any meeting is not intended to be and is not to be taken as notice of approval from Council. No action should be taken on any item discussed at a Council Meeting prior to written advice on the resolution of the Council being received. Any plans or documents contained in this document may be subject to copyright law provisions (*Copyright Act 1998*, as amended) and the express permission of the copyright owner(s) should be sought prior to reproduction.

## **Availability of Meeting Agenda and its Attachments**

Information about Council Meetings is located on the website

<http://www.toodyay.wa.gov.au/Council/Council-Meetings>

Agendas & Minutes are located under the heading "Council Meetings" at

<http://www.toodyay.wa.gov.au/Council/Council-Meetings/Agendas-Minutes-and-Notes>

Public copies are available by contacting the Shire on (08) 9574 9300.



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**ATTACHMENTS** can be found in the Attachments Paper on the Council website alongside this agenda.

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**1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**

The Presiding Member is to run through the Preliminaries on the previous page of the Agenda, and to declare the Ordinary Meeting of Council open.

Acknowledgement of Country: *"I acknowledge the Ballardong Noongar people, the traditional custodians of the land where we meet today and the Yued and Whadjuk people, who are traditional custodians of respective lands within the wider Shire of Toodyay. I pay my respect to their Elders, past, present and emerging."*

**2 RECORDS OF ATTENDANCE****2.1 APOLOGIES****2.2 APPROVED LEAVE OF ABSENCE**

Nil

**2.3 APPLICATIONS FOR LEAVE OF ABSENCE**

Nil.

**3 DISCLOSURE OF INTERESTS****4 PUBLIC QUESTIONS****4.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

**4.2 PUBLIC QUESTION TIME****5 CONFIRMATION OF MINUTES****5.1 Ordinary Meeting of Council held on 21 December 2021****OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Ordinary Council Meeting held on 21 December 2021 be confirmed.

**5.2 Special Meeting of Council held on 2 February 2022****OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Special Council Meeting held on 2 February 2022 be confirmed.

**5.3 Agenda Briefing held on 16 February 2022**

**OFFICER'S RECOMMENDATION**

That the Notes of the Agenda Briefing held on 16 February 2022 be confirmed.

**6 PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS**

**6.1 PETITIONS**

*A petition is to be addressed to the Shire President and is to be presented by a Councillor.*

**6.2 DEPUTATIONS**

*A deputation must be applied for, to the CEO in writing at least 5 working days prior to the Meeting.*

**6.3 PRESENTATIONS**

*A presentation can only be made with prior approval of the CEO.*

**6.4 SUBMISSIONS**

*A submission can be made ad hoc, but it is preferred that notice be given by midday on the day of the Meeting.*

**7 BUSINESS FROM PREVIOUS MEETING (IF ADJOURNED)**

Nil.

**8 ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)**

The Shire President's announcement, in accordance with the *Shire of Toodyay Standing Orders Local Law 2008* (Section 4.3) is as follows:

**8.1 Presidents Report**

Council has resumed with a new improved audio-visual system for Council Meetings, a change to Wednesdays at 1pm for Agenda Briefings and Ordinary Council Meetings, and preparations being made towards the WA border re-opening. Change has become the "new normal" for our community, but adaption and resilience is what we do best.

In response to the pending border re-opening, Toodyay's Local Emergency Management Committee, comprising of a variety of stakeholders, including the Department of Communities, the Toodyay Police and other first responders for emergency management services, met to plan for contingencies that may emerge. The Shire has also responded with an internal Pandemic Working Group to address organisational responses and liaise with and inform the community. The current directive requires masks be worn inside.

The school pedestrian bridge from Newcastle Park that had been reconstructed and reopened in 2011 at a cost of approximately \$900,000 and is now being vandalised by holes punched into the walkway and also by motor bikes using the access. Please take note that these actions result in ratepayer money being diverted from being spent on better purposes that would benefit the community in order to address vandalism.

Council has seen the departure of three councillors since October. Councillors Brian Rayner and Therese Chitty, who did not contest the last election in October 2021, and Councillor Benjamin Bell who resigned in January this year. Councillors Rayner and Chitty, elected in 2013 dedicated eight years to the community, in part as Shire President and Deputy President respectively. Councillor Bell was elected in 2017 and served four years. All Councillors served during the notable achievements of the completion of Butterly Cottages and the design and build of the Toodyay Recreation Centre, but also during a difficult period of political turmoil. Council recognises their contributions, their time invested and willingness to accept the price of service. Thank you.

**Shire President's Activities to the 10 February 2022**

- President/CEO Operational Briefings 14/12, 21/12, 4/1 11/1, 18/1, 25/1, 8/2
- Meeting – Audit and Risk Committee (29/12)
- Attended – Australia One meeting – TCRC as observer
- Meeting – RSL (11/12)
- Meeting – Hon. Martin Aldrich (11/12)
- Meeting - Council Agenda Forum and Concept Forum (11/12)
- Opening – Gnulla Karnany Waangkiny (Our Truth Telling) project (17/12)
- Meeting – Shane Love MLA (21/12)
- Meeting – Hon Darren West MLC (21/12)
- Meeting – Ordinary Council Meeting (21/12)
- Meeting – State Administration Tribunal Consultation (13/1)

- Workshop – Environmental Advisory Committee, Biodiversity Strategy (19/1)
- Meeting – State Administration Tribunal Consultation (19/1)
- Meeting – Preparation for Omicron (21/1)
- Meeting – Post Ordinary Council Meeting with Toodyay Herald (25/1)
- Event – Australia Day, Awards & Citizenship ceremonies (26/1)
- Meeting – Special Council Meeting (2/2)
- Tour – Shire Land and Building Assets (9/2)
- Workshop – Policy and other (9/2)
- Meeting – CESM and CEO (10/2)
- Meeting – Hon David Kelly and tour of Community Water Supply projects (10/2)
- Ratepayer Appointments – 11/12, 20/12, 21/12, 1/1, 11/1, 14/1, 18/1.



**9 OFFICER REPORTS****9.1 DEVELOPMENT AND REGULATORY SERVICES****9.1.1 5 x Tiny Cabins - Lot 2 Goomalling Toodyay Road, Dumbarton**

Date of Report:	9 February 2022
Applicant or Proponent:	Harley Dykstra Pty Ltd Bingarra Pty Ltd
File Reference:	A553/2GOOT
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Acting Manager Development and Regulation
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. Attachment 1: Application Details

**PURPOSE OF THE REPORT**

To determine an application for development approval for a proposed (5) Five Tiny Cabins at Lot 2 (No. 1230) Goomalling Toodyay Road, Dumbarton. Council is being requested to determine this application since the tiny cabin concept is still relatively new. Additionally, given this application is being considered concurrently with a separate development application for a similar development (with the total number of cabins over the two developments being 14); it is recommended that the determination is made above Officer level – despite there being delegated authority.

**BACKGROUND**Property details

Lot 2 (No. 1230) Goomalling Toodyay Road, Dumbarton is 58.59ha in size. The property is zoned 'Rural' under the Shire of Toodyay Local Planning Scheme No. 4. It is surrounded by rural properties.

Being a rural zoned property, the predominant land use is broad scale agriculture. The proposed development has a very a small environmental footprint. Each cabin is entirely off the grid, with its own solar panels and water tank. The cabins will be positioned as to not impact on the ability for rural activities to be carried out on the lot.

Development Proposal

On 2 November 2021, the Shire of Toodyay received an application from Harley Dykstra Pty Ltd on behalf of the owner, Bingarra Pty Ltd – for the development approval of 5 'Holiday Accommodation' tiny cabins.

The key points of the development are:

1. Energy and water efficient holiday accommodation units, with a small environmental footprint.
2. Cabins designed to integrate and complement the natural amenity.
3. No disruption to the existing broadacre agricultural activities on this property.
4. Two types of cabins proposed: the first is 23.9m<sup>2</sup>, 2 bedroom and 24m<sup>2</sup> decking. The second cabin is also 23.9m<sup>2</sup>, with one bedroom and no decking.
5. A maximum of four guests (2 bedroom cabin) and two guests (1 bedroom cabin) would be allowed per booking with the standard duration of a booking being two nights.

For more details, please refer to **Attachment 1: Application Details**.

#### Time to determine the application

Pursuant to clause 75(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, this application must be determined within 90 days of the receipt of the application which is by 21 February 2022. In light of this date not aligning with the scheduling for this Ordinary Council Meeting, written consent has been sought, and has been provided by the applicant, to determine this application after the 90-day period.

#### **COMMENTS AND DETAILS**

This application proposes more than two cabins which will be used by persons other than the landowner and is consistent with the proposed use of 'Holiday Accommodation' which is an "A" use under Local Planning Scheme 4 and may be approved subject to a period of advertising in accordance with Clause 64 of the deemed provisions. However, it is also recommended by Officers that the actual land use classification of this development proposal is more appropriate as 'tourism development'.

It is not anticipated that the proposed development will have any adverse impact on the amenity of the area.

In the past twelve months, Toodyay has lost several of its popular Bed n Breakfasts and cabin accommodation due to ownership changes. The proposed development will provide a much-needed boost in accommodation options available to Toodyay's tourists.

#### **IMPLICATIONS TO CONSIDER**

##### **Consultative:**

The application was advertised in accordance with the Shire of Toodyay's *M.2 Public Consultation – Formal Matters policy*. Holiday is an 'A' use in the Residential Development zone and therefore this warrants an E- level consultation.

The application underwent the following community consultation:

- Advertised in December edition of the Toodyay Herald;
- Details placed on Public Notices section of the Shire of Toodyay website;
- Details placed on the Shire of Toodyay Facebook page;
- Details made available for viewing at the Shire of Toodyay Administration Centre; and
- Mailout to adjoining landowners.

The consultation period ended on 10 January 2022 after being advertised for a period of thirty-three (33) days.

**Strategic:**

Shire of Toodyay Strategic Community Plan – Toodyay 2028

**Economic: Business and jobs in the community**

*Objective 1: Encourage and support investment into new and existing businesses in Toodyay*

*Objective 2: Promote Toodyay as a tourism destination*

**Natural Environment: Protecting where we live**

*Objective 1: Preserve and protect our natural assets for future generations*

**Built Environment: Our buildings, roads and transport**

*Objective 2: Ensure our built environment meets community needs*

Toodyay Economic Development Plan 2015

Opportunities also exist in the broader need for a diverse range of services and facilities to cater for the needs of new and existing residents. Realising these opportunities and associated benefits requires a collaborative approach to economic and community development.

Shire of Toodyay Local Planning Strategy 2018

The key strategy is to ensure that the zones reflect the existing and future uses in the Rural area and that the level of land use permissibility is consistent with the zone objectives and location to avoid amenity and land use conflict impacts.

The Strategy highlights the importance of tourism within the Rural area promoting flexibility and diversification of activities on rural land.

Tourism Planning Guidelines

4.5.3.1 Rural Tourism

The guidelines identify that small scale tourist activities could be encouraged, subject to it being secondary to agricultural land uses. It is unlikely to compete with the existing formal caravan parks as they provide a different experience, having minimal facilities.

**Policy related:**

State Planning Policy 3.7 – Planning in Bushfire Prone Areas

Development applications in designated bushfire prone areas are required to be accompanied by a BAL (Bushfire Attack Level) assessment. The applicant has supplied a BAL report with a rating of BAL 29. This BAL report has shown that any future structures within the site will be able to meet the requirements of both AS3959-2018 and the development standards of Shire of Toodyay Local Planning Scheme No. 4.

The proposed tiny cabins will be situated in grassland/pasture and the creation of asset protection zones around the cabins will not require the removal of any native vegetation.

Recommended condition of approval:

Prior to the commencement of this development, and hence maintained on an ongoing basis – the development must comply with the acceptable solutions outlined in AS 3959 BAL Assessment – Lot 2 (HN1230) Goomalling Toodyay Road, Dumbarton WA 6566 (Dated 16 September 2021).

**Financial:**

The applicant has paid the appropriate fee for an application for development approval pursuant to Schedule 2 of the Planning and Development Regulations 2009.

**Legal and Statutory:**

*Planning and Development Act 2005*

*Planning and Development (Local Planning Schemes) Regulations 2015*

*Planning and Development Regulations 2009*

*Shire of Toodyay Local Planning Scheme No. 4*

The applicant has applied for the development as 'Holiday Accommodation'. Under the Shire of Toodyay's Local Planning Scheme No. 4, this is defined as:

***“holiday accommodation”*** means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot;

*Schedule 1(1) also provides additional general definitions:*

***“cabin”*** means a dwelling forming part of a tourist development or caravan park that is –

- (a) *an individual unit other than a chalet; and*
- (b) *designed to provide short-term accommodation for guests; AMD 9 GG 30/08/2016*

***“chalet”*** means a dwelling forming part of a tourist development or caravan park that is –

- (a) *a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and*
- (b) *designed to provide short-term accommodation for guests;*

In this instance, the Scheme offers an alternative land use classification, which Officers consider is more consistent with the intent of this proposal:

***“tourist development”*** means a building, or a group of buildings forming a complex, other than a bed and breakfast, a caravan park or holiday accommodation, used to provide

- 
- (a) *short-term accommodation for guests; and*
- (b) *onsite facilities for the use of guests; and*
- (c) *facilities for the management of the development;*

**Comment**

Both the land uses 'holiday accommodation' and 'tourism development' are 'A' uses for the Rural zone. Therefore, should Council choose to reclassify this as 'tourism development' there will be no additional public consultation requirement as this has already been satisfied.

It is recommended that the development be approved as a 'tourism development'.

**Risk related:**

Should Council choose to refuse the application there is a risk of a review at the State Administrative Tribunal (SAT). This could potentially involve ratepayer funds to defend a decision.

**Workforce related:**

Should this matter be referred to the State Administrative Tribunal, significant Officer time will be required.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council, pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, approves the development application for a proposed 'tourism development' comprising of 5 Tiny Cabins at Lot 2 Goomalling Toodyay Road, Dumbarton subject to the following conditions:

- (a) The development hereby permitted must substantially commence within two years from the date of the decision letter.
- (b) The development hereby permitted taking place in accordance with the approved plans.
- (c) The stormwater shall be discharged in a manner so that there is no discharge onto the adjoining properties to the satisfaction of the local government.
- (d) Prior to occupation, the development hereby permitted shall be connected to an approved effluent disposal system.
- (e) Prior to the commencement of this development, and hence maintained on an ongoing basis – the development must comply with the acceptable solutions outlined in AS 3959 BAL Assessment - Lot 2 Goomalling Toodyay Road, Dumbarton. WA 6566. (Dated 16 September 2021).

**9.1.2 DR192 of 2021 - s.31 Reconsideration - Lot 77 Bejoording Road, Bejoording**

Date of Report:	9 February 2022
Applicant or Proponent:	GF Maxted & Shire of Toodyay
File Reference:	DR 192 of 2021/A1157/LEG1
Author:	H de Vos – Acting Manager Planning and Development
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	OCM 27 July 2021 – Item 9.1.4
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> <li>1. Item 9.1.4 27 July 2021 OCM Minutes</li> <li>2. DR192 of 2021 - Revised plans for reconsideration</li> </ol>

**SUMMARY**

<b>Applicant:</b>	<b>GF Maxted</b>
<b>Owner:</b>	<b>GF Maxted</b>
<b>Proposal:</b>	<b>Reconsideration of on-stream dam and causeway</b>
<b>Location:</b>	<b>Lot 77 Bejoording Road, Bejoording</b>

**PURPOSE OF THE REPORT**

For Council to reconsider its decision at the July 2021 Ordinary Council Meeting to refuse the application for retrospective development approval for the two (2) on-stream dams and causeway at Lot 77 Bejoording Road, Bejoording.

**BACKGROUND**

On 27 July 2021, Council resolved to refuse the development application retrospective development approval for the two (2) on-stream dams and causeway at Lot 77 Bejoording Road, Bejoording. For further details please review **Attachment 1** – Minutes – Item 9.1.4.

On 14 September 2021, the applicant exercised their right of appeal in accordance with *Planning and Development (Local Planning Schemes) Regulations 2015*, Sch 2 cl 76(2) - Review of a reviewable determination made by the local government.

An initial Directions Hearing was missed by the Shire of Toodyay on 1 October 2021 due to the failure to be notified by the Tribunal.

A second Directions Hearing was held on 6 October 2021 where the matter was set down for mediation.

On 16 November 2021, mediation occurred firstly at a site inspection conducted at Lot 77 Bejoording Road in Bejoording, followed by a formal mediation session at the Shire of Toodyay Council Chambers.

As a result of the mediation session, the following orders were issued by the State Administrative Tribunal:

*“The Tribunal Orders:*

- 1. The directions hearing listed for 3 December 2021 is vacated.*
- 2. The applicant to provide a revised proposal to the respondent on or before 10 January 2022.*
- 3. Pursuant to s 31(1) of the State Administrative Tribunal Act 2004 (WA) the respondent is invited to reconsider its decision at its meeting on or before 15 February 2022.*
- 4. The proceeding is listed for a directions hearing at 9.30am on 4 March 2022.”*

A further Order was made by the SAT to extend Point 3 to 23 February 2022 to be in sequence with the Shire’s newly adopted schedule for its Ordinary Council Meetings.

For more details, please refer to **Attachment 2: DR192 of 2021 - Revised plans for reconsideration.**

***N.B. Please be advised that “Dam 1” is also referred to as Dam 2B on plans supplied.***

## COMMENTS AND DETAILS

The mediated outcome being brought back to Council for consideration represents a compromise from both parties. On one hand, the Shire of Toodyay, in its mediation, has reached an agreement with the applicant that the newest on-stream dams and causeways will continue to be prohibited and that no further works are to be done to dam the watercourse upstream. On the other, the Shire of Toodyay considers it a reasonable mediated outcome to allow the northernmost dam to remain (dam no. 2B which is also referred to as Dam 1 on other plans) and for the applicant to be permitted to improve a causeway (2C) on its southern end to allow safe vehicle passage across the watercourse.

The reason that the Shire of Toodyay has reached this position is that there is photographic aerial evidence to indicate that this dam has been in situ for many years – prior to the applicant taking ownership of the property and prior to the development of the current Local Planning Policy No. 25 – Dams.

Whilst the particulars of the mediation remain confidential, an agreement was reached by the parties and this is reflected in the Officer recommendation.

## IMPLICATIONS TO CONSIDER

### **Consultative:**

Given there are no third-party appeal rights in Western Australia, there was no formal requirement to perform any further formal public consultation. That said, the original objector to the proposal has been advised by the Shire that mediation is underway and that they will be able to review any plans as part of this agenda and make a further submission to Council prior to the matter being determined.

**Strategic:**

Shire of Toodyay Community Strategic Plan – Toodyay 2028

***Natural Environment – Protecting Where We Live***

O1: *Preserve and protect our natural assets for future generations.*

O2: *Ensure sustainable operating practices.*

**Policy related:**

Local Planning Policy No. 25 – Dams

Council has the ability to vary any provisions of this policy if it is considered warranted.

In this instance, should Council choose to reconsider its original decision, it does set an undesirable precedent. However, on balance, this outcome is probably the best that could be achieved, given that this dam was in situ prior to the development of this local planning policy.

Council is demonstrating a commitment to the policy through the prohibition of additional damming of this watercourse.

**Financial:**

There are no direct financial implications for the Shire regarding the recommendations of this report. However, if Council is of a mind to affirm its decision of 27 July 2021, the matter may proceed to a full SAT hearing. It is certain that this will trigger legal and other expenses as legal advice will be required, and a professional witness may be required to attend the hearing in support of the Shire's case.

**Legal and Statutory:**

Section 31(1) of the *State Administrative Tribunal Act 2004* enables the SAT to invite the decision-maker (in this case the Shire of Toodyay) to reconsider the decision that is the subject of review proceedings before SAT.

While SAT mediations are generally confidential, if an amended decision is proposed during a SAT mediation, the Shire does not need to reconsider the proposal behind closed doors.

While the amended proposal can be considered in a public meeting, anything said or done during the mediation cannot be discussed in a public meeting, unless agreed by all parties to the mediation.

**Risk related:****Financial**

As discussed in the Financial Implications section of this report, if Council affirms its decision of 27 July 2021, the matter will proceed to a full SAT hearing, which may result in a financial impact on the organisation.

**Environmental**

Should Council choose to reconsider the original decision, low rainfall and the general intermittent flow of the stream could present additional environmental problems for the landowner and those further downstream.

**Workforce related:**

If Council affirms its decision of 27 July 2021, the matter will proceed to a full SAT hearing, which will impact on the organisation's workforce as Officers will need to devote additional



time to prepare for a hearing. These matters can also create additional stress which will need to be managed.

## VOTING REQUIREMENTS

Simple Majority

### OFFICER'S RECOMMENDATION

That Council, pursuant to Section 31(2)(c) of the *State Administrative Tribunal Act 2004*, resolves to set aside its decision of 27 July 2021 (Item 2 of Resolution No. 146/07/21) and substitutes it with the following decision:

That Council grants approval to Mr GF Maxted for the onstream dam (Dam 1 which is also referred to as Dam 2B) and the causeway immediately to the south of Dam 1 – referred to on the plan as 2C at Lot 77 Bejoording Road in Toodyay, subject to the following conditions:

- (a) the dam numbered '2B' on the enclosed plans ("Dam 1") will remain on the basis that Mr Maxted does not complete any further development or modifications to the dam;
- (b) the existing causeway at the south of Dam 1, will be restored and widened to enable Mr Maxted is able to drive a vehicle across for the purpose of accessing the far side of his land;
- (c) the remaining dams numbered 2 through to 5 will remain unmodified to allow for nature to 'run its course'; and
- (d) there will be no re-vegetation plan in respect of the dams as part of the resolution.

**9.1.3 9 Tiny Cabins - Lot 200 & 400 (No 230) Woodendale Road, Nunille**

Date of Report:	9 February 2022
Applicant or Proponent:	Harley Dykstra Pty Ltd Graduck Pty Ltd & Crossdale Pty Ltd
File Reference:	P2021-63 A4709/400WOOD
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Acting Manager Development and Regulation
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. Attachment 1: Application Details 2. Attachment 2: Schedule of Submission

**PURPOSE OF THE REPORT**

To determine an application for development approval for a proposed (9) Nine Tiny Cabins at Lot 200 & 400 (No. 230) Woodendale Road in Nunille. Council is being requested to determine this application since the tiny cabin concept is still relatively new.

Additionally, given this application is being considered concurrently with a separate development application for a similar development (with the total number of cabins over the two developments being 14); it is recommended that the determination is made above Officer level – despite there being delegated authority.

**BACKGROUND**Property details

Lot 200 & 400 (No. 230) Woodendale Road in Nunille Lot 200 is 116ha and Lot 400 is 420ha in size, with a combined total 536ha. The property is zoned 'Rural under the Shire of Toodyay Local Planning Scheme No. 4. It is surrounded by rural properties.

Being a rural zoned property, the predominant land use is broad scale agriculture. The proposed development has a small environmental footprint. Each cabin is entirely off the

grid, with its own solar panels and water tank. The cabins will be positioned as to not impact on the ability for rural activities to be carried out on the lot.

### Development Proposal

On 8 November 2021, the Shire of Toodyay received an application from Harley Dykstra Pty Ltd on behalf of the owner, Graduck Pty Ltd – for the development approval of 9 ‘Holiday Accommodation’ tiny cabins.

The key points of the development are:

1. Energy and water efficient holiday accommodation units, with a small environmental footprint.
2. Cabins designed to integrate well and compliment the natural amenity.
3. No disruption to the existing broadacre agricultural activities on this property.
4. Two types of cabins are proposed: the first is 23.9m<sup>2</sup>, 2 bedroom and 24m<sup>2</sup> decking. The second cabin type is also 23.9m<sup>2</sup>, with one bedroom and no decking.
5. A maximum of four guests (2 bedroom cabin) and two guests (1 bedroom cabin) would be allowed per booking with the standard duration of a booking being two nights

For more details, please refer to **Attachment 1: Application Details**.

### Time to determine the application

Pursuant to clause 75(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, this application must be determined within 90 days of the receipt of the application which is by 21 February 2022. In light of this date not aligning with the scheduling for this Ordinary Council Meeting, written consent has been sought, and has been provided by the applicant, to determine this application after the 90-day period.

### **COMMENTS AND DETAILS**

This application proposes more than two cabins which will be used by persons other than the landowner and is consistent with the proposed use of ‘Holiday Accommodation’ which is an ‘A’ use under Local Planning Scheme 4 and may be approved subject to a period of advertising in accordance with Clause 64 of the deemed provisions. However, it is also recommended by Officers that the actual land use classification of this development proposal is more appropriate as ‘tourism development’.

A portion of the property is located within the Avon River Special Control Area, (ARSCA) however the cabins have been designed to be water efficient, have virtually no impact on the environment and require minimal clearing due to strategic positioning of the cabins.

The timber materials proposed for the construction of the cabins are consistent with the provisions within the Scheme concerning the ARSCA by providing development which is sympathetic with the scenic character of the control area. The timber materials are also compliant with the associated construction requirements for a BAL (Bushfire Attack Level) assessment of 29.

It is not anticipated that the proposed development will have any adverse impact on the amenity of the area.

In the past twelve months, Toodyay has lost several of its popular Bed n Breakfasts and cabin accommodation due to ownership changes. The proposed development will provide a much-needed boost in accommodation options available to Toodyay's tourists.

## IMPLICATIONS TO CONSIDER

### **Consultative:**

The application was advertised in accordance with the Shire of Toodyay's *M.2 Public Consultation – Formal Matters* policy. Holiday is an 'A' use in the Residential Development zone and therefore this warrants an E- level consultation.

The application underwent the following community consultation:

- Advertised in December edition of the Toodyay Herald;
- Details placed on Public Notices section of the Shire of Toodyay website;
- Details placed on the Shire of Toodyay Facebook page;
- Details made available for viewing at the Shire of Toodyay Administration Centre; and
- Mailout to adjoining landowners.

The consultation period ended on 10 January 2022 after being advertised for a period of thirty-three (33) days. One submission was received. Details of the submission can be viewed in **Attachment 2: Schedule of Submissions**.

The main issue raised was regarding the number of cabins being proposed. The submitter raises the question about the number and whether future developments of a similar nature will be prejudiced by an approval now. It is important for the Council to remember that its role when determining a development is not to act as an economic regulator.

Planning decisions are merit based and have a foundation of the principles of orderly and proper planning. Therefore, this development, along with any future applications (should they eventuate), must be determined on the facts rather than on speculation.

### **Strategic:**

#### Shire of Toodyay Strategic Community Plan – Toodyay 2028

#### **Economic: Business and jobs in the community**

*Objective 1: Encourage and support investment into new and existing businesses in Toodyay*

*Objective 2: Promote Toodyay as a tourism destination*

#### **Natural Environment: Protecting where we live**

*Objective 1: Preserve and protect our natural assets for future generations*

#### **Built Environment: Our buildings, roads and transport**

*Objective 2: Ensure our built environment meets community needs*

#### Toodyay Economic Development Plan 2015

Opportunities also exist in the broader need for a diverse range of services and facilities to cater to the needs to new and existing residents. Realising these opportunities and associated benefits, requires a collaborative approach to economic and community development. Only through the collaboration of all the stakeholders of the Toodyay economy, can the economic potential of the Shire be realised and the prosperity and quality of living of residents be maximised.

Shire of Toodyay Local Planning Strategy 2018

The key strategy is to ensure that the zones reflect the existing and future uses in the Rural area and that the level of land use permissibility is consistent with the zone objectives and location to avoid amenity and land use conflict impacts.

The Strategy highlights the importance of tourism within the Rural area promoting flexibility and diversification of activities on rural land.

Tourism Planning Guidelines

## 4.5.3.1 Rural Tourism

The guidelines identifies that small scale tourist activities could be encouraged, subject to it being secondary to agricultural land uses. It is unlikely to complete with the existing formal caravan parks as they provide a difference experience, having minimal facilities.

**Policy related:**State Planning Policy 3.7 – Planning in Bushfire Prone Areas

Development applications in designated bushfire prone areas are required to be accompanied by a BAL (Bushfire Attack Level) assessment. The applicant has supplied a BAL report with a rating of BAL 29. This BAL report has shown that any future structures within the site will be able to meet the requirements of both AS3959-2018 and complying development requirements in accordance with the Shire of Toodyay.

The proposed tiny cabins will be situated in grassland/pasture and the creation of asset protection zones around the cabins, will not require the removal of any native vegetation.

Recommended condition of approval:

Prior to the commencement of this development, and hence maintained on an ongoing basis – the development must comply with the acceptable solutions outlined in AS 3959 BAL Assessment - Lot 200/400 (230) Woodendale Road, Nunile WA 6566 (Dated 20 September 2021).

**Financial:**

The applicant has paid the appropriate fee for an application for development approval pursuant to Schedule 2 of the *Planning and Development Regulations 2009*.

**Legal and Statutory:**

*Planning and Development Act 2005*

*Planning and Development (Local Planning Schemes) Regulations 2015*

*Planning and Development Regulations 2009*

*Shire of Toodyay Local Planning Scheme No. 4*

The applicant has applied for the development as 'Holiday Accommodation'. Under the Shire of Toodyay's Local Planning Scheme No. 4, this is defined as:

**“holiday accommodation”** means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot;

*Schedule 1(1) also provides additional general definitions:*

**“cabin”** means a dwelling forming part of a tourist development or caravan park that is –

(a) an individual unit other than a chalet; and

(b) *designed to provide short-term accommodation for guests; AMD 9 GG 30/08/2016*

**“chalet”** means a dwelling forming part of a tourist development or caravan park that is –

(a) *a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and*

(b) *designed to provide short-term accommodation for guests;*

In this instance, the Scheme offers an alternative land use classification, which, in the opinion of the author of this report, is more consistent with the intent of this proposal:

**“tourist development”** means a building, or a group of buildings forming a complex, other than a bed and breakfast, a caravan park or holiday accommodation, used to provide

–  
(a) *short-term accommodation for guests; and*

(b) *onsite facilities for the use of guests; and*

(c) *facilities for the management of the development.*

#### Comment

Both the land uses ‘holiday accommodation’ and ‘tourism development’ are ‘A’ uses for the Rural zone. Therefore, should Council choose to reclassify this as ‘tourism development’ there will be no additional public consultation requirement as this has already been satisfied.

It is recommended that the development be approved as a ‘tourism development’.

#### **Risk related:**

Should Council choose to refuse the application there is a risk of a review at the State Administrative Tribunal (SAT). This could potentially involve ratepayer funds to defend a decision.

#### **Workforce related:**

Should this matter be referred to the State Administrative Tribunal, significant officer time will be required.

### **VOTING REQUIREMENTS**

Simple Majority

#### **OFFICER’S RECOMMENDATION**

That Council:

1. Notes the submission received regarding the application for 9 Tiny Cabins at Lot 200 & 400 (No. 230) Woodendale Road in Nunile.
2. Pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; approves the development application for a proposed ‘tourism development’ comprising of 9 Tiny Cabins at Lot 200 & 400 (No. 230) Woodendale Road, Nunile, subject to the following conditions:

- (a) The development hereby permitted must substantially commence within two years from the date of the decision letter.
- (b) The development hereby permitted taking place in accordance with the approved plans.
- (c) The stormwater shall be discharged in a manner so that there is no discharge onto the adjoining properties to the satisfaction of the local government.
- (d) Prior to occupation, the development hereby permitted shall be connected to an approved effluent disposal system.
- (e) Prior to the commencement of this development, and hence maintained on an ongoing basis – the development must comply with the acceptable solutions outlined in AS 3959 BAL Assessment - Lot 200 & 400 (No. 230) Woodendale Road in Nunile. WA 6566 (Dated 20 September 2021).

**9.1.4 Lot 97 Beaufort Street, West Toodyay - 5 Dog Application**

Date of Report:	4 February 2022
Applicant or Proponent:	V Bassett
File Reference:	A4749/97BEAU
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Acting Manager Planning and Development
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. Attachment 1 - 3-6 Dog Permit Ranger Inspection

**PURPOSE OF THE REPORT**

For Council to consider an application for the keeping of 5 dogs at Lot 97 Beaufort St, West Toodyay.

**BACKGROUND**

The Applicant is seeking approval to have 5 dogs at Lot 97 (65) Beaufort Street in the locality of West Toodyay as follows:

No.	Breed	Colour	Name	Sex	Sterilised	Age
1	Chihuahua x	Tan	Audrey	F	Y	13
2	Schnauzer x	Grey	Charlie	M	Y	5
3	Cavalier x	White/Red	Monty	M	Y	5
4	Kelpie x	Black/White	Ode	M	Y	10
5	Maltese	White	Harry	M	Y	10

**Earlier Approvals**

Records indicate the Shire has not previously received a 3-6 Dog application for this property.

**Applicant's Justification**

The Applicant's justification for keeping more than two dogs at the application address is 'The owners have relocated from New South Wales with their five dogs'.

**The Property**

Lot 97 Beaufort Street Drive has an area of 4.93ha and is zoned 'Special Residential' under the Shire's Local Planning Scheme No 4.



Ranger Inspection

The Shire's Ranger Services inspected the property on 30 August 2021.

The Rangers' findings are listed below:

Aspect	Ranger Comments
Fencing	Suitable for the breeds of dogs.
Materials and Height of Fencing	Fencing is suitable for the breeds of dogs. Approximately 50 x 50mm mesh and steel construction. Star Picket and perma pole supports. Approximately 1.2m high.
Locking Devices on Gates	Rural gates approximately 1.2m tall. Chain latch on all gates.
Housing	Dogs live in a separate room attached to the house. All dogs have suitable bedding and cage confinements.
Condition of Existing Dogs	All dogs are in mid to later life, all in reasonable condition.
Dog(s) / Owners History	Shire of Toodyay Ranger Services has no history of any dog related issues.

Please see **Attachment 1 - 3-6 Dog Permit Ranger Inspection** for further details.

**IMPLICATIONS TO CONSIDER****Consultative:**

Consultation was undertaken in accordance with section 5 of Council's 'Keeping of 3 to 6 Dogs' Policy.

Six (6) landowners were contacted with no objections received.

**Strategic:**

There are no adverse strategic implications envisaged from this report.

**Policy related:**

The application does not meet all the requirements of Council's 'Keeping of 3 to 6 Dogs' Policy and is therefore referred to full Council for consideration.

Under the Policy, the maximum number of dogs that could be approved by Officers in the 'Special Residential' zone is 2.

Under section 4 of the Policy, an application to have more than 2 dogs on a property must, among other things, be accompanied by the reason(s) for which the applicant requires the permit. As outlined under the 'Background' section of this Report, the applicant has indicated that she wishes to have 5 dogs at the premises. The applicant has relocated from New South Wales with her five dogs' which she has had from puppies, except for Ode the Kelpie cross, which she has owned since he was 3 years old.

**Financial:**

There are no direct financial implications for the Shire as a result of the recommendations of this Report.

**Legal and Statutory:**

Section 26 of the *Dog Act 1976* outlines the limitations on dog numbers. The Act allows for the local government to create Local Laws to control the number of dogs on a property.

Clause 3.2(3) of the Shire's *Dogs Local Law* establishes that Council may approve more than two dogs on a property.

**Risk related:**

Adverse risk implications from the recommendations of this Report are not envisaged. However, if Council is of a mind to refuse the application, Council is reminded that the applicants might have a right of appeal to the State Administrative Tribunal (SAT). Should the applicants elect to appeal Council's decision (refusal or dissatisfied with conditions of approval), the Shire may be required to assign resources to defend its position at SAT.

**Work Force:**

This matter has been delayed in being brought to the Council due to resourcing and staffing shortages which have resulted in longer than normal wait times. Whilst regrettable, there is no statutory obligation to determine such a matter within a particular timeframe.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council permits the keeping of five (5) dogs on Lot 97 (65) Beaufort Street, West Toodyay subject to the following conditions:

1. All dogs must be confined to the property and kept under control. Fencing and gates on the premises or a portion of the premises where the dogs are to be contained, must be of a suitable type, height and construction to prevent the dogs at all times from passing over, under or through it.
2. Any proven complaints regarding the dogs offending against the *Dog Act 1976* may result in the permit being revoked and the number of dogs having to be reduced to a maximum of two (2) within fourteen (14) days.
3. All dogs must be registered and registration must be maintained.
4. The approval only applies to the following dogs:

No.	Breed	Colour	Name	Sex	Age	Reg No
1	Chihuahua x	Tan	Audrey	F	13	TBA
2	Schnauzer x	Grey	Charlie	M	5	L1016
3	Cavalier x	White/Red	Monty	M	5	L1017
4	Kelpie x	Black/White	Ode	M	10	TBA
5	Maltese	White	Harry	M	10	TBA

5. Upon the death or disposal of one or more of the above dogs, the permit will cease and the number of dogs permitted will revert to the lesser number.

## 9.2 CORPORATE AND COMMUNITY SERVICES

### 9.2.1 Community Funding Policy

Date of Report:	1 February 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PCY2
Author:	M Ross – Economic Development Coordinator
Responsible Officer:	T Bateman – Manager Corporate and Community Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> <li>1. Community Funding Policy</li> <li>2. Community Funding Guidelines</li> </ol>

#### PURPOSE OF THE REPORT

To present the Community Funding policy and guidelines for Council's consideration and adoption.

#### BACKGROUND

The Toodyay community is encouraged to apply for funding from the Shire as part of the annual budget adoption process. At present there is no policy to guide the community in their application process.

Development of a Community Funding policy will provide clear parameters and assist both Council and the community with budget preparations. The guidelines outline eligibility criteria and seek to assist Councillors and staff through the evaluation process.

#### COMMENTS AND DETAILS

A draft policy has been reviewed at a Council workshop held on 9 February 2022.

The aim of the policy is to provide guidance on the process and on managing expectations around community funding as part of budget deliberations. This is to ensure that the Shire's objectives and strategic priorities are met when awarding funding.

The policy will also assist with budget deliberations by outlining fair and equitable standards that can be applied to community funding applications.

The policy covers four levels of funding, with a higher level of complexity for higher requests of funding:

Ad-Hoc Community Funding is for small (under \$1,000), one off requests that will be approved by the CEO under delegation. Requests can be made year round via a letter addressed to the CEO.

Community Funding – Small Grants is for funding ranging from \$1,000 to \$3,000. Applicants will be required to submit an application form as part of the budget process, and if successful, submit an acquittal form once the funding has been expended.

Community Funding - Large Grants is for funding ranging from \$3,001 to \$10,000. The application and acquittal process is the same as the small grants category, however there will be a higher degree of complexity than the small grant category.

Events, Tourism and Economic Development Funding is for funding to a maximum of \$15,000. There is an additional level of complexity to the application and acquittal process for funding in this category, as well as the option for a multi-year (maximum three) agreement.

There are three options that Council can take:

Option 1 - Do nothing. Should Council choose not to accept the officer's recommendation, the process for considering funding requests may continue to take place during budget deliberations, however it could be perceived that this process lacks transparency and consistency and may hinder effective planning by community groups and event organisers.

Option 2 – Request changes be made to the draft policy as Council sees fit.

Option 3 – Accept the recommendation to adopt the policy as presented. Officers have developed this policy giving consideration to the needs of the community, with the vision of making the community funding process equitable to all.

Officers are recommending Option 3.

## **IMPLICATIONS TO CONSIDER**

### **Consultative:**

Example policies from the City of Busselton and the Shires of York and Chittering were considered during the development of the draft policy.

The draft policy was workshopped with Council prior to presentation as part of the agenda for the Ordinary Council Meeting.

Should Council adopt the policy, Officers intend to hold a public information session with community groups and potential funding recipients to provide a comprehensive overview of the policy, guidelines and associated documents.

### **Strategic:**

*Governance: The way the Shire leads and operates*

*Objective 2: Consistently improve our governance practices*

*Objective 3: Ensure rigorous organisational systems*

### **Policy related:**

Nil. Should the proposed Community Funding policy be adopted, it will be subject to regular and ongoing reviews as and when required.

### **Financial:**

The adoption of this policy will have implications on future budgets, as community funding applications are considered. Council has the ability to determine the financial capacity of each budget process.

**Legal and Statutory:**

Section 2.7(2)(b) of the *Local Government Act 1995* states that a role of Council is to *determine the local government's policies*.

**Risk related:**

Adoption of this policy will help to mitigate financial risk relating to budget preparation given that the value of each funding round can be offered within budgetary limits.

It may also help to mitigate potential reputational risk whereby funding requests are considered consistently and according to set criteria. Officers are however, cognisant of the fact that some groups may be disadvantaged by the additional requirements to seek funding. The policy and guidelines have been developed giving consideration to the application requirements commensurate with the funding request to address this issue.

**Workforce related:**

Officer time will be required to comply with the proposed policy, but this can be managed within existing resources.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council:

1. Adopts the Community Funding policy as attached to this report.
2. Requests the CEO to make the policy publicly available on the Shire's website.

**9.2.2 Monthly Financial Statements - December 2021 and January 2022**

Date of Report:	7 February 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN24
Author:	T Bateman – Manager Corporate and Community Services
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	NA
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative/Review
Attachments:	<ol style="list-style-type: none"> <li>1. Statement of Financial Activity - December 2021</li> <li>2. Outstanding Rates and Bank Account Balances as at 31 January 2022</li> </ol>

**PURPOSE OF THE REPORT**

This report provides Council with financial information for the periods ending 31 December 2021 and 31 January 2022.

**BACKGROUND**

Local governments are required to prepare general purpose financial reports in accordance with the *Local Government Act 1995*, the *Local Government (Financial Management) Regulations 1996* and the *Australian Accounting Standards*.

A statement of financial activity and any accompanying documents are to be presented at an ordinary meeting of the Council within two months after the end of the month to which the statement relates.

**COMMENTS AND DETAILS**

The Statement of Financial Activity summarises the Shire's operating and capital activities and provides an indication of the Shire's financial performance as the year progresses. In accordance with *FM Regulation 34(1)* this statement is to include comparisons with the annual budget and the year-to-date budget. It is noted however, that the year-to-date budget is an estimate only and many factors can affect timing for completion of projects, emphasising discrepancies between budgets and actuals.

The attached reports include a Statement of Financial Activity (SFA) for December only. The January SFA will be presented to the March Council Meeting in a different format as progress is made with the Datascape financial reporting functions. Reports were expected to be available from Datascape and ready for presentation to Council for the months of December and January. Unfortunately, the development of the Rate Setting Statement and Statement of Financial Activity has been delayed and will not be available until the end of March 2022. Officers have expressed their dissatisfaction with the process to date and while

additional resources have been allocated by both the Shire of Toodyay and Datacom to facilitate and finalise the transition, the process continues to be a point of ongoing frustration.

Officers have communicated these issues with the Shire's auditors and the Office of the Auditor General (OAG) noting that the annual financial statements are yet to be finalised for the 2020/21 financial year. The OAG acknowledges the Shire's predicament and is working with officers to determine a suitable audit timetable. Considering the complicated transition and the OAG's existing audit commitments, it is expected the 2020/21 annual audit will take place in April 2022.

#### Key Financial areas

The following information provides balances for key financial areas for the Shire of Toodyay's financial position as at 31 January 2022.

#### Outstanding Rates and Services

The total outstanding rates and charges balance at the end of January was \$2,423,271 compared to the November 2021 closing balance of \$3,171,147. Rates and rubbish charges were due 17 November 2021 and the second instalment was due 17 January 2022. Further detail regarding the composition of outstanding rates is included in **Attachment 1**.

#### Outstanding Sundry Debtors

The total outstanding sundry debtors balance at the end of December was \$428,380 broken down as follows:

Category	31/01/2022	30/11/2021
> 90 days and over	308,895.73	307,209.28
> 60 days and over	1,702.35	133,659.40
> 30 days and over	65,743.08	274.41
Current	52,038.92	16,769.26
<b>TOTAL</b>	<b>428,380.08</b>	<b>457,885.35</b>

The table above shows a material increase in the outstanding sundry debtors balance over the past three months. The associated invoices relate mainly to grant recoups and an invoice raised for the 2022 Avon Descent Family Fun Day. As previously reported, the balance in the 90 days and over category is significant and relates to two main invoices; a disputed invoice relating to water charges at the Toodyay Recreation Centre and grant funds due from DFES for the Bushfire Risk Management Planning Coordinator. Officers are following up the status of the DFES funds and intend to seek Council's approval for write off of the water charges incurred at the Toodyay Recreation Centre, following close out of the investigations.

### **IMPLICATIONS TO CONSIDER**

#### **Consultative:**

Datacom

#### **Strategic:**

***Governance: The way the Shire leads and operates.***



Objective 3: Ensure rigorous organisational systems.

**Policy related:**

- F.02 Authorised Signatories
- F.03 Purchasing
- F.11 Corporate Credit Cards
- F.16 Financial Governance
- CS.1 Payments from the municipal or trust fund (referred to in Section 6.10 "Financial management regulations" of the Local Government Act 1995)

**Financial:**

Financial implications are reported and explained in the attached financial statements.

**Legal and Statutory:**

Section 6.4 of the *Local Government Act 1995* requires a local government to prepare financial reports.

Section 6.8(1)(a) of the *Local Government Act 1995* states a local government must not incur expenditure for an additional purpose except where it is incurred before the adoption of the annual budget.

Regulation 34 of the *Local Government (Financial Management) Regulations 1996* sets out the form and content of the financial reports.

**Risk related:**

There is a compliance risk in relation to this report as it is a requirement of the *Local Government (Financial Management) Regulations 1996* that local governments prepare a Statement of Financial Activity within two months after the end of the reporting period. This report mitigates the risk of non-compliance with the regulations.

**Workforce related:**

To date, monthly financial reports for the 2021/22 financial year have lacked the level of detail previously provided to Council due to the fact the Datascope configuration was incomplete and unable to cater for effective monthly financial reporting associated with the transition. Officers' time continues to be focused on the transition of the Shire's enterprise software. It is envisaged that as the transition progresses, the presentation of the monthly financial reports will improve.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council receives the Monthly Financial Statements for the months ending 31 December 2021 and 31 January 2022.

**9.2.3 List of Payments - December 2021 and January 2022**

Date of Report:	8 February 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN24
Author:	T Bateman – Manager Corporate and Community Services
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	NA
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. List of Payments - December 2021 2. List of Payments - January 2022

**PURPOSE OF THE REPORT**

To present the cheques and electronic payments raised during the months of December 2021 and January 2022.

**BACKGROUND**

Payments made from the municipal Fund and the trust fund are required to be reported to Council for each month, under section 13 of the *Local Government (Financial Management) Regulations 1996*.

**COMMENTS AND DETAILS**

The list of all payments processed under delegated authority during December 2021 and January 2022 are attached.

Electronic Funds Transfers (EFT) are for payments transferred directly to creditor bank accounts.

Direct Debits are for direct debits against the bank account such as bank fees, leases, loans, and other charges etc.

Payroll Direct Debits are for payroll and superannuation expenditures which are paid through Council's on-line (internet) banking system.

**IMPLICATIONS TO CONSIDER****Consultative:**

Nil

**Strategic:**

***The way the Shire leads and operates***

Objective 1: Provide and accountable and transparent leadership for the community.

Objective 3: Ensure rigorous organisational systems.

**Policy related:**

Council has delegated authority to the Chief Executive Officer to make payments from the Municipal and Trust Accounts.

Creditor invoices and other charges paid have been duly incurred and authorised for payment in accordance with Shire policies F.2 Authorised Signatories Policy and F.3 Purchasing Policy.

**Financial:**

Payments of accounts made between December 2021 and January 2022 are in accordance with Council's 2021/2022 Budget.

**Legal and Statutory:**

Section 5.42 of the *Local Government Act 1995* allows the local government to delegate its powers to the Chief Executive Officer.

Section 6.8(1)(a) of the *Local Government Act 1995* states a local government must not incur expenditure for an additional purpose except where it is incurred before the adoption of the annual budget.

Regulation 13 of the *Local Government (Financial Management) Regulations 1996* states that if the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared for each month and presented to Council.

**Risk related:**

There is a legislative requirement to present the list of payments to Council. Failure to do so would pose a minor compliance risk. This report and its attachments help to mitigate this risk and gives Council the opportunity to review and question any payments made.

**Workforce related:**

Nil

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council:Notes as being paid, payments listed and presented for the month of December 2021 as attached to this report, summarised as follows:

Direct Debits	30,974.41
Electronic Funds Transfer	541,554.49
Direct Debit Payroll	242,936.48
Direct Debit Loans	198,735.80
Municipal Cheques	19,158.54
<b>TOTAL</b>	<b>1,033,359.72</b>

2. Notes as being paid, payments listed and presented for the month of January 2022 as attached to this report, summarised as follows:

Direct Debits	28,728.31
Electronic Funds Transfer	531,561.35
Direct Debit Payroll	243,057.47
Direct Debit Loans	20,752.52
Municipal Cheques	41,261.08
<b>TOTAL</b>	<b>865,360.73</b>

### 9.3 EXECUTIVE SERVICES

#### 9.3.1 Governance Review Action Plan - Progress Report

Date of Report:	7 February 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	MAN12
Author:	S Haslehurst – Chief Executive Officer
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	OCM 28 September 2021 Item 9.3.1
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Governance Review Action Plan Progress Report

#### PURPOSE OF THE REPORT

To present a progress report on the Governance Review Action Plan for Council's consideration.

#### BACKGROUND

In response to a recommendation contained in the Authorised Inquiry Report on the Shire of Toodyay, Hammond Woodhouse Advisory was engaged to conduct a Governance Review of the Shire. The final report and proposed actions to be undertaken were adopted by Council at the Ordinary Council Meeting (OCM) held on 28 September 2021 and subsequently forwarded to the Director-General of the Department of Local Government, Sport and Cultural Industries (DLGSC). Receipt was acknowledged by the DLGSC on 21 October 2021 and included in the correspondence presented to Council at the November OCM.

Officers now provide commentary on the progress of the actions contained in the adopted Governance Review Action Plan in the attached Progress Report (**Attachment 1**).

#### COMMENTS AND DETAILS

As indicated in the attached Progress Report, Officers have been progressing the endorsed actions, with a focus on those that were deemed a 'high' priority. The comments by officers have been provided using the following 'traffic light' system:

- **Green** has been used where actions are on target, ie significantly progressed or completed in accordance with the due date.
- **Orange** indicates that while some progress may have been made, there is a risk that the action will not be completed by the due date and action is required.
- **Red** signals that the action is behind schedule and immediate focus is required in the short-term to complete the action.

Significant progress has been made in the following governance areas:

- *Role of Council*
- *Culture and Dynamics*
- *Relationship between Council and CEO*
- *Management of Employees*

Due to there being no Council meeting in January, the proposed policy review plan will be workshopped with Council then presented to the February 2022 OCM. In addition, the due dates for the SCP and CBP have been modified following the CEO Performance Review and development of Key Performance Indicators and timeframes.

*Relationship between Council and Administration:* Some further work is required in this area to formalise procedures relating to concerns regarding Councillor behaviour and seeking external expert advice.

*Procurement and Probity:* While templates have been developed and informal processes and procedures are in place, work is required to formalise and embed these in the organisation. The current process for tenders follows an agreed procedure and appropriate authorisations are in place. However, there needs to be a focus on training regarding smaller requests for quotes to ensure relevant procedures are understood and followed in accordance with the Shire's Purchasing Policy.

Officers are currently focussing on those actions that are rated **red** in the attached Progress Report.

## **IMPLICATIONS TO CONSIDER**

### **Consultative:**

The Governance Review was conducted by Hammond Woodhouse Advisory. The Governance Review and Action Plan were submitted to the Director-General of the DLGSC as part of the Shire's response to the Authorised Inquiry.

The Shire President and CEO met with representatives of the DLGSC on 7 December 2021 to 'close out' the Inquiry outcomes. Council could choose to submit the Progress Report to the DLGSC, however officers have been advised verbally that this is not necessary.

### **Strategic:**

*Governance: The Way the Shire Leads and Operates*

O2: Consistently improve our governance practices.

### **Policy related:**

Nil

### **Financial:**

There are no anticipated costs related to the actions contained in the Governance Review Action Plan.

### **Legal and Statutory:**

Section 8.25 of the *Local Government Act* deals with the requirement for Council to comply with the recommendations of the Inquiry Report.

- (5) *The Minister may order the local government, or any member of its council (if the council, or the member, is not suspended or dismissed) or any of its employees to give effect to any one or more of the recommendations of the Inquiry Panel in a manner and within a time ordered by the Minister.*

**Risk related:**

Failure to address the actions contained in the Governance Review Action Plan could result in reputational risk considered high and compliance risk rated moderate. The attached Progress Report is

**Workforce related:**

Workload and staff shortages have affected the progress of a number of initiatives across the Shire. In addition, officer resources continue to be focused on the transition of the Shire's enterprise software.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council:

1. Receives the Governance Review Action Plan Progress Report as attached at Attachment 1 to this report and notes the progress made.
2. Requests the CEO to provide a final Governance Review Action Plan Progress Report to the August 2022 Ordinary Council Meeting to report on any outstanding items.

**9.3.2 Policy Review Process**

Date of Report:	10 February 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PCY2 / PLA1 / MAN6
Author:	H de Vos – Acting Manager Development and Regulation
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	OCM 25 August 2020 Item 9.3.1
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> <li>1. General Policies Review 2022</li> <li>2. Local Planning Policy Review Schedule</li> <li>3. WALGA - Local Planning Policy Guide</li> </ol>

**PURPOSE OF THE REPORT**

To present a program for the review of Council policies.

**BACKGROUND**

The *Shire of Toodyay Governance Review* (2021) included a recommendation that the Shire of Toodyay should undertake a risk-based review of all Council policies. It was noted that the review of Local Planning Policies in particular, is long overdue and that these should be afforded special attention.

The purpose of a comprehensive review is to take an in depth look at existing and associated documents such as procedures, FAQs, and appendices to:

- determine whether a policy is still needed or if it should be combined with another policy.
- determine whether the purpose and goal of the policy is still being met.
- determine whether changes are required to improve the effectiveness or clarity of the policy and procedures.
- ensure that appropriate education, monitoring and ongoing review of the policy is occurring.

This review should include the following stages:

1. Present indicative plan with timeframes to Council;
2. Consider allocation of resources to support review;
3. Hold staged Council workshops to review policies; and
4. Present draft policies to Council for endorsement for advertising if applicable.
5. Present final policies to Council for adoption.



This report represents Stage 1 of a review of the Shire's policies.

## COMMENTS AND DETAILS

Officers have considered the current suite of Council policies and have prioritised those that require immediate attention based on:

- Length of time since adoption and/or review.
- Significance of the likely amendments.
- Relevance to current issues.
- Risks to the Shire related to the above considerations.

Policies were prioritised from 1 – 3 with 1 representing a high priority for review.

Officers considered the categories of policies and have made some proposed adjustments. Where policies have become obsolete following legislative or operational changes, a recommendation will be made to remove the policy.

Officers have also had due regard for the resources required to undertake a comprehensive review of policies including officer time, Councillor input and potential expert advice required to be sourced.

A policy list with proposed review dates is attached at **Attachment 1** to this report.

It was recognised that while several Council policies have been developed, reviewed and/or adopted in the past eighteen months, the Shire's Local Planning Policies (LPPs) have not been reviewed for a number of years and that there are legislative requirements relating to LPPs. Therefore, in accordance with the recommendation of the Governance Review, LPPs will be afforded particular attention and reviewed as a separate project.

### Local Planning Policies

The Shire of Toodyay currently has twenty (20) Local Planning Policies ('LPP'). The last significant review of these policies occurred between 2010-12, which means that they are now critically overdue for review. An LPP should be reviewed regularly to ensure that they remain relevant and in line with sound town planning principles.

While a review of several LPPs was initiated in 2020, competing priorities and workloads prevented this process from continuing. In addition, several new elected members joined the Council in October 2021, so Officers recommend re-starting the process.

The age of an LPP reduces its relevance when making decision making, and thus possibly becomes a less useful tool as it ages. The State Administrative Tribunal has determined that the age of an LPP has direct relevance to the weight afforded to it, therefore regular review is warranted.

Of the current suite of local planning policies, the most critical ones to be reviewed are:

- LPP20 – Central Toodyay Heritage Area
- LPP13 – Outbuildings in Residential Areas
- LPP02 – Ancillary Dwellings
- LPP05 – Foggarthorpe Estate Design Guidelines
- LPPXX – Proposed Extractive Industry Policy

These are critical because they are used so frequently and therefore more attention needs to be given to these to ensure consistency and currency.

Where much of the review work can be handled by Officers, community consultation will be vital on these and also input from professional consultants in the fields of heritage, urban design, environment and extractive industries should be sought to assist with the development and drafting of these key policies in the future.

Officers have allowed approximately three months per policy for review and adoption

The proposed schedule for review of Local Planning Policies can be found at **Attachment 2**.

## **IMPLICATIONS TO CONSIDER**

### **Consultative:**

The policy review program was discussed at a Council workshop held on 9 February 2022 attended by six elected members.

#### Council Policies

Council has adopted a *Community Consultation – Formal Matters* policy. However, this is targeted at development matters and identifies stakeholders as those who would be affected by a decision relating to development. It is proposed that a Community Engagement policy is developed based on the International Association for Public Participation (IAP2) principles and that this is used to guide decision making regarding the level of community engagement required for each policy as it is reviewed.

#### Local Planning Policies

Clause 4(1)-(3) of Schedule 2, Part 2, Division 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* outlines the statutory requirement and process for the advertising of Local Planning Policies.

If the local government resolves to create or amend a local planning policy, in accordance with the Regulations, the local government must, unless the WAPC otherwise agrees, advertise the proposed policy. Advertising of Local Planning Policies must be for a period of not less than twenty-one (21) days.

### **Strategic:**

A review of the Shire's Policy framework is consistent with the Shire's values of integrity, accountability, inclusiveness and commitment. It is a recognised aspiration of our community that we manage Shire business effectively and continue to review governance systems for relevancy and currency.

#### *Shire of Toodyay Strategic Community Plan – Toodyay 2028*

### **Governance: The way the Shire Leads and Operates**

*Objective 2: Consistently improve our governance practices*

### **Policy related:**

#### A.1 Corporate Documents Policy

In November 2021, Council adopted its Corporate Documents Policy which outlines what is to be included in a policy document and the process for its development.

There is no statutory requirement to have a policy reviewed in a certain timeframe however best practice would suggest every 3-4 years. This is consistent with the Shire's adopted Corporate Documents Policy.

Reviews should be easy to conduct however this is not always the case and the ability to perform the reviews is often dictated by available time and resources.

### Local Planning Policies

The Western Australian Local Government Association ('WALGA') has produced a '*Local Planning Policy Guide*' which can be viewed as **Attachment 3**. This is a useful tool to aid in the writing, development and review of policy.

### **Financial:**

#### Advertising

The main cost associated with policy review is advertising. A conservative estimate for advertising cost based on recent pricing trends would be \$250 per advertisement.

Therefore, in the case of Local Planning Policies where a formal advertising notice is to be followed by a second advertisement informing of a Council resolution to proceed with a policy, advertising costs could be \$500.00 per local planning policy being reviewed. With 25 policies up for review the cost could be estimated at \$12,500.00 for the advertising component.

#### Professional Consultancy Fees

An additional cost to be considered is that of professional consultancy fees. From time to time, the Shire of Toodyay will engage the services of a suitably qualified professional contractor to assist with the development and/or drafting of policies.

This is most likely applicable for key policy areas such as heritage, environmental management and extractive industries – where the addition of professional expertise can enhance the development of these documents to provide better outcomes for the communities.

### **Legal and Statutory:**

#### Council Policies

Section 2.7(2)(b) of the *Local Government Act 1995* provides Council with the power to determine policies. The *Local Government Act 1995* does not prescribe what Council policies can be made for.

It should also be noted that this report will focus on policies relating to the role of the Council, set out in s.2.7 of the *Local Government Act 1995*, serving to provide uniformity in decision making, guidance in exercising discretion and establishing clear direction regarding the delegation of authority and exercising the role of the CEO.

#### Local Planning Policies

##### *Planning and Development (Local Planning Schemes) Regulations 2015*

Division 2 of Schedule 2 ('the deemed provisions') provides the statutory basis for local planning policies and outlines the procedure for making, amending, and revoking local planning policies.

Local planning policies are guidelines used to assist the local government in making decisions under the local planning scheme. Although local planning policies are not part of the local planning scheme, they must be consistent with, and cannot vary, the intent of the scheme provisions, including the R-Codes, unless otherwise permitted by the R-Codes and/or approved by the WAPC.

A local planning policy is not part of the local planning scheme and does not bind the local government in respect of any application for development approval, however, the local government is to have due regard to the provisions of the policy and the objectives which the policy is designed to achieve before making its determination.

**Risk related:****Financial**

Without a current suite of policies, the Shire of Toodyay exposes itself to potential financial risk associated with unsuccessful legal proceedings where the Shire is pursued or chooses to pursue compliance matters.

**Compliance**

There is no statutory requirement to have a policy reviewed within a certain timeframe however best practice would suggest every 3-4 years. Outdated policies expose the Shire to risk. Old policies may fail to comply with new laws and regulations. They may not address new systems or technology, which can result in inconsistent practices.

**Reputational**

Without a current suite of policies, the Shire of Toodyay exposes itself to reputational risk. The community could potentially lose confidence in the Shire of Toodyay if it fails to develop and maintain a suite of contemporary policies to guide the regulatory process.

Overall, as has been identified in the governance review, process controls (policies) are not operating as intended, do not exist, or are not being addressed / complied with, or have not been reviewed or tested for some time. A need for corrective and/or improvement actions is acknowledged.

**Workforce related:**

Reviews of this nature place additional yet necessary additional demands on workforce time and resources. However, successful and regular reviews of policies will ensure the Shire is operating as efficiently as possible by aligning these documents with the prevailing community expectations and state government frameworks of the day.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council requests the Chief Executive Officer to:

1. Implement a review of:
  - (a) The Shire's Local Planning Policies based on the schedule outlined in Attachment 2 of this report.
  - (b) All other Shire policies as prioritised in the policy list outlined in Attachment 1 of this report.
2. Include provision in the draft 2022/2023 budget process for any expert advice required to undertake the review for Council's consideration.
3. Provide a progress report and updated schedule for the review of remaining policies to Council at the October 2022 Ordinary Council Meeting.



**9.4 ASSETS AND INFRASTRUCTURE**

Nil.

**9.5 COMMITTEE REPORTS****9.5.1 Bush Fire Advisory Committee Recommendations**

Date of Report:	8 February 2022
Applicant or Proponent:	Bush Fire Advisory Committee
File Reference:	FIR01
Author:	R Koch – Community Emergency Services Manager
Responsible Officer:	J Augustin – Manager Infrastructure and Assets
Previously Before Council:	256/11/21
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Bush Fire Operating Procedures 2. Extract of BFAC Minutes

**PURPOSE OF THE REPORT**

To receive an extract of the minutes of the Bush Fire Advisory Committee (BFAC) and consider recommendations made at their meeting held on 02 February 2022.

**BACKGROUND**

In accordance with Council Policy A.17 – Council Consideration of Committee Recommendations “Recommendation from Council Committees will be considered by Council at the earliest opportunity.”

At the Bush Fire Advisory Committee Meeting held on 02 February 2022 a recommendation was made to Council as follows:

Recommendation – Flash Hoods

That the Bushfire Committee recommends the following:

*That Council:*

1. *Endorses the draft SOP.25 Use of Flash Hoods during Bush Fire operations; and*
2. *Approves the update of the Bush Fire (Operating) Administrative Procedures to include SOP.25 by the Community Emergency Services Manager.*

**COMMENTS AND DETAILS**

The proposal via the Chief Bush Fire Control Officer for the issuing of flash hoods to bush fire service personnel was made at the November 2021 Bush Fire Advisory committee. Council subsequently endorsed (256/11/21) the issuing and use of flash hoods subject to the creation of the development of a Standard Operating Procedure (SOP) in relation the proposed item of personal protective equipment.

This SOP has been developed by the officer in consultation with the Chief Bush Fire Control Officer and Deputy Chief Bush Fire Control Officer.

The SOP includes usage scenarios, occupational health and safety considerations (management of body heat retention), donning procedure and care and maintenance.

As per the recommendation, the Bush Fire Advisory Committee has recommended this SOP and inclusion in the Shire of Toodyay Bush Fire Operating Procedures

The issuing of flash hoods is intended to reduce the risk of injury of radiant heat exposure and/or embers which can find their way inside PPE tunics around the neck.

Cost of supplying flash hoods is approximately \$50 each. Personal Protective Equipment, which includes heat resistant garments is funded by the LGGS operational grant by Department of Fire and Emergency Services. It is anticipated that a quantity of 100-150 flash hoods would be required to facility a personal issue to fire fighters.

## **IMPLICATIONS TO CONSIDER**

### **Consultative:**

This recommendation comes via the Bush Fire Advisory Committee.

Additional consultation with the Chief Bushfire Control Officer and the Deputy Chief Bushfire Control Officer occurred during rafting of the SOP.

### **Strategic:**

A key point of the *Shire's Strategic Community Plan 2028* is:

*S 2.3 Collaborate with fire and emergency services, law and order programs and other volunteer services.*

Additionally, the Shire's Corporate Business Plan 2019-2022 lists the relevant shire response to S 2.3 above as:

*Continue budgetary funding supporting emergency volunteer services.*

### **Policy related:**

There are no policy related implications.

Changes to the council endorsed Shire of Toodyay Bush Fire Operating Procedures are however sought by this recommendation.

### **Financial:**

Total cost of this recommendation (in conjunction with resolution 256/11/21) is estimated between \$5,000 & \$7,500 which is covered by the Local Government Grant Scheme funding of the Shire's Bush Fire Service.

### **Legal and Statutory:**

This recommendation includes worker safety improvements of which the Shire has obligation for under relevant Occupational Health and Safety legislation.

### **Risk related:**

The following risks have been assessed in line with shire policy A.18 Risk Management.

*There is a risk that failure to provide fit for purpose personal protective equipment/clothing could result in injury to persons to which the Shire has legislative obligations.*



Likelihood: Possible (C)

Consequence: Major (3)

Calculated Risk: High

This recommendation (in conjunction with resolution 256/11/21) results in both administrative and equipment supply controls. Following implementation, the re-evaluated risk is:

Likelihood: Unlikely (D)

Consequence: Minor (2)

Calculated Risk: Low

**Workforce related:**

This recommendation will have limited impact on officer time allocated, with the issuing item of personal protective equipment being incorporated into existing processes and available from existing suppliers.

**VOTING REQUIREMENTS**

Simple Majority

**BUSH FIRE ADVISORY COMMITTEE RECOMMENDATION**

That Council:

1. Endorses the draft SOP.25 Use of Flash Hoods during Bush Fire operations; and
2. Approves the update of the Bush Fire (Operating) Administrative Procedures to include SOP.25 by the Community Emergency Services Manager.

**9.5.2 EAC - Native Vegetation Offset for Proposed Clearing for Roadworks**

Date of Report:	8 February 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	COC14
Author:	H de Vos – Acting Manager Development and Regulation
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-judicial
Attachments:	1. MAP Lot 108 on Plan P013653

**PURPOSE OF THE REPORT**

To provide guidance to the Council on a proposal to create a conservation covenant on Lot 108 on Plan P013653 Vol. 1606 Fol. 67 – No. 21 Hibbertia Place, Toodyay for the purpose of being able to establish environmental offsets associated with Shire of Toodyay works projects. Please see **Attachment 1: Map – Lot 108 on Plan P013653**.

**BACKGROUND**

The Shire of Toodyay's Infrastructure and Assets department is currently engaged in the planning phase of several road projects. One of these involves the widening of a section of Bindi Bindi – Toodyay Road from approximately 1.7km north of the Toodyay Cemetery and extending further north for approximately 3 kilometres.

This project requires vegetation to be cleared along the route to enable the widening of the road. Roadside vegetation along this stretch is scattered in pockets. To facilitate this process, the Shire of Toodyay has had to apply for a Native Vegetation Clearing Permit with the Department of Water and Environmental Regulation (DWER) – Clearing Permit Application CPS 9376/1.

**Purpose of clearing**

Bindi-Bindi/Telegraph Road connects the Town of Toodyay with the populated subdivision areas of Coondle (east), Woodland Heights, Dewars Pool and Bejoording.

Between these subdivisions lay extensive farming areas ranging in size and land use from horticultural operations to broad acre agricultural enterprises.

This Road continues beyond the northern Toodyay boundary into the Shire of Victoria Plains through the towns of Calingiri and Piawaning connecting to the road network of the Mid-West.

Bindi-Bindi Road is a conduit that funnels increasing volumes of traffic including heavy haulage vehicles especially during harvest season.

A growth of tourist/caravan traffic has occurred as travellers tour north from Toodyay to mid-west destinations particularly noticeable during the wildflower season.

Tragically, three fatal traffic crashes have occurred in the past five years along the section of Bindi-Bindi Road covered by the application.

Main Roads WA crash data shows these fatalities occurred on the 29/1/16, 7/11/17 and 14/3/20. The Toodyay Shire was granted Black Spot Funding to allow for safety improvements to be carried out.

Subsequently, engineering design work was completed with every effort applied to minimise the clearing of native vegetation. It was determined that to achieve the road widening and shoulder treatments necessary to gain the desired safety improvements, any reduction in the proposed clearing would severely compromise the benefits and indeed increase the hazardous nature of the road.

Mitigation treatments in the horizontal and vertical design process have been considered to minimise the clearing footprint and the installation of W-Beam barriers have been incorporated into this design.

The Shire of Toodyay is cognisant of the need to minimise environmental impacts related to this application because of the environmental, heritage and scenic values associated with this part of the road.

### **Potential actions considered**

Potential actions to address / mitigate the potential impacts of the proposed clearing (loss of native vegetation in an area that has been extensively cleared).

The following could be considered:

1. Onsite mitigation: This could be done by an onsite revegetation to 'replace' the native vegetation lost to the clearing. In this case the Shire could plant native trees on the same Road Reserve with a minimum of 1 to 1 ratio (e.g., the number of trees cleared to the number of trees planted).
2. (if option 1 is not viable or adequate) Offsite environmental offset. This could be done by rehabilitating, revegetating, or conserving an area outside of the application area to counterbalance the impacts. This usually requires larger area of rehabilitation, revegetation or conservation, a minimum of 2 to 1 ratio could be expected.

Given Option 1 is not feasible due to the nature of the project and limitations associated with the width of the road reserve Option 2 is now being explored by the Shire of Toodyay to support the clearing permit application.

### **PROPOSAL**

Lot 108 on Plan P013653 (No. 21 Hibbertia Place) in Toodyay is a 123.28 hectare irregular shaped, heavily vegetated parcel of land adjacent to the Majestic Heights and Lozanda Heights subdivision areas. Its rugged terrain and natural vegetation mean that the parcel is limited in development potential in the future. It is freehold land owned by the Shire of Toodyay.

Given the abundance of natural vegetation onsite and lack of development potential, it is considered an ideal site to be considered for this offset which has been calculated at approximately two (2) hectares - and for future environmental offsets for other projects. This would be a banked offset.

Depending on the tenure of the proposed offset land, the Shire would either:

1. Secure (in perpetuity) a conservation covenant to the offset area; or
2. Change the tenure to a reserve and / or the purpose of the land (to conservation – in perpetuity), the land could either be managed by DBCA or the Shire.

In this case it is recommended that Option 1 be undertaken and that the Shire of Toodyay arranges for a conservation covenant to be placed on the property.

### COMMENTS AND DETAILS

This matter was discussed at the most recent meeting of the Environmental Advisory Committee where the following was resolved:

The Environmental Advisory Committee recommends to Council the following:

That Council supports the placement of a conservation covenant over Lot 108 on Plan P013653 (No. 21 Hibbertia Place) in Toodyay for the purposes of creating a banked offset to address / mitigate the potential impacts of future Shire of Toodyay projects which involve proposed clearing (loss of native vegetation in an area that has been extensively cleared).

### IMPLICATIONS TO CONSIDER

#### Consultative:

There is no requirement for this matter to undergo community consultation. The matter was considered by the Environmental Advisory Committee.

#### Strategic:

Shire of Toodyay Strategic Community Plan – Toodyay 2028

#### **Natural Environment: Protecting where we live**

*Objective 1: Preserve and protect our natural assets for future generations*

S 1.2 Support the mitigation of adverse environmental impact to biodiversity and natural ecosystems throughout the Shire.

*Objective 2: Ensure sustainable operating practices*

S 2.1 Embed environmental awareness and impact into operational decision making and activities to better understand and minimise negative impacts on natural ecosystems, including erosion and sediment inflow to waterways.

S 2.5 Support conservation protection covenants and planning policies to safeguard native vegetation

#### **Built Environment: Our buildings, roads and transport**

*Objective 1: Ensure safe and sustainable transport options*

Infrastructure and Asset Management Plan 2018

#### **Service Statement**

*Infrastructure assets meet demands for performance, reliability, affordability, environmental outputs and safety for the community.*

Infrastructure assets match or exceed Council's current environmental standards. Infrastructure asset design alternatives favour high environmental outcomes.

Road network is safe to drive, meets relevant safety standards and adequate consideration to black spot locations during prioritisation of civil works.

**Policy related:**

Nil

**Financial:**

Given that the Shire of Toodyay has secured grant funding for this project, the supply of the funding is conditional on the project going ahead. The project can only go ahead if the clearing permit is granted by the Department of Water and Environmental Regulation.

**Legal and Statutory:**

Landowners who wish to protect and manage native vegetation on their property may enter into an agreement (covenant) with the Commissioner of Soil and Land Conservation under s30 of the *Soil and Land Conservation Act 1945*.

Covenants are voluntary written agreements with the Commissioner to manage a specified area of vegetation to retain and promote its growth.

**Covenants explained**

A covenant is a voluntary agreement between a landowner and the Commissioner of Soil and Land Conservation (Commissioner) that aims to conserve an area of land (or part of it) in as near to its natural state as possible.

Covenants may be registered as a memorial on the Certificate of Title for the land and can bind any future owners of the land.

Conservation Covenants and Agreements to Reserve are positive – rather than restrictive – covenants, where the landowner agrees to manage the vegetation on their property to retain and promote its growth.

The covenant does not usually contain management prescriptions beyond limiting clearing and grazing of the native vegetation and may allow uses such as removal of selected timber and seed collection. Fencing may be required to ensure livestock does not intrude into the covenanted area.

The Soil and Land Conservation Act provides for 2 types of covenants:

- Conservation Covenant, which is irrevocable. The term of these covenants is usually specified for perpetuity or a period of time. Once finalised, the Commissioner does not have statutory authority to vary or discharge these covenants.
- Agreement to Reserve (ATR), which is not expressed as irrevocable. These covenants may be in perpetuity or for a specified time and may be varied or discharged by the Commissioner.

From time to time, landowners may ask the Commissioner to discharge the ATR by applying to the Commissioner in writing, stating the reasons they would like to vary or discharge the ATR. If the Commissioner refuses to discharge the ATR, the landowner can appeal the decision by applying to the State Administrative Tribunal of Western Australia.

Conservation Covenants and ATRs bind each person who has consented in writing to the covenant. They may be registered as a 'memorial' over the property's Certificate of Title, binding successive landowners.

Landowners wishing to enter into a covenant will initially need to provide an aerial photograph or a good quality plan that outlines the vegetation to be protected, with a list of any conditions required.

### **Process to arrange a covenant**

There are a number of steps to arrange a covenant. Once the Commissioner has agreed in principle to a Conservation Covenant or ATR, the landowner will be advised of the following steps:

- If only a part of the lot is to be covenanted, the landowner must engage a licensed surveyor to draw up an Interests Only Deposited Plan (IODP) that identifies the area to be protected by a covenant. Some IODPs can be completed by the surveyor as 'desktop' work, rather than a detailed survey of the site. The surveyor will then lodge the IODP with Landgate.
- The IODP can be skipped if an entire lot (as described on the Certificate of Title) is to be covenanted.
- When the Commissioner has received advice that the IODP has been lodged and received an electronic copy, documents are prepared for the landowner's review and signing when all details are confirmed correct.
- Where covenants are required as a condition of a statutory process, such as a subdivision approval or an environmental impact assessment, the Commissioner charges a fee for preparing the documents based on the time taken to complete the task.
- If a Conservation Covenant is proposed, a statement of undertaking will be included in the documents confirming that the owners understand they are signing an irrevocable covenant.
- Signed covenants are lodged with Landgate for registration of the memorial on the Certificate of Title.

In this instance it is recommended that the Shire of Toodyay pursue the Conservation Covenant as the subject site is freehold to the Shire and this represents the most efficient process in order to achieve the desired outcome which is protection of native vegetation and to provide a landbank to support future Shire of Toodyay projects which may require an environmental offset.

### **Risk related:**

#### **Environmental**

Clearing of native vegetation will result in risk to the environment. These sporadic outcrops of native vegetation provide linkages for flora within the district and are sources of food and habitation. An offset, whilst not an ideal outcome (no one ever wants to remove native vegetation if it can be avoided), is seen as the best alternative for the Shire to consider.

Financial

If the clearing permit cannot be obtained the project will not be able to proceed and the Shire risks losing valuable funding as a result.

**Workforce related:**

Should the Council choose not to support this motion, it will put the project in jeopardy. This will result in a likely requirement for the workforce to be reorganised onto other projects which are attainable.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council supports the placement of a conservation covenant over Lot 108 on Plan P013653 (No. 21 Hibbertia Place) in Toodyay for the purposes of creating a banked offset to address / mitigate the potential impacts of future Shire of Toodyay projects which involve proposed clearing (loss of native vegetation in an area that has been extensively cleared).

**10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil.

**11 NOTICES OF MOTION GIVEN AT THE MEETING FOR CONSIDERATION AT NEXT MEETING**

**12 QUESTIONS OF MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

Nil.

**13 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING**

**13.1 MEMBERS**

Nil.

**13.2 EMPLOYEES**

Nil.

**14 CONFIDENTIAL BUSINESS**

Nil.

**15 NEXT MEETINGS**

Ordinary Council Meeting	23 March 2022
Agenda Briefing	16 March 2022
Audit & Risk Committee Meeting	2 March 2022
Museum Advisory Committee Meeting	2 March 2022

**16 CLOSURE OF MEETING**