



Ordinary Council Meeting

27 April 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 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 20 April 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

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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.

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 23 March 2022****OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Ordinary Council Meeting held on 23 March 2022 be confirmed.

5.2 Agenda Briefing held on 20 April 2022**OFFICER'S RECOMMENDATION**

That the Notes of the Agenda Briefing held on 20 April 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)

Nil.

9 OFFICER REPORTS**9.1 DEVELOPMENT AND REGULATION****9.1.1 Draft Local Planning Policy - Dams**

Date of Report:	28 March 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PLA1
Author:	H de Vos – Manager Development and Regulation
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	18 September 2012
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Draft Local Planning Policy - Dams

PURPOSE OF THE REPORT

To review the Draft Local Planning Policy No.25 – Dams with a view to adopt for formal advertising.

BACKGROUND

This draft Local Planning Policy (LPP) has been developed as part of the current review of the Shire's policy framework. The existing LPP.25 – Dams was last reviewed by the Council on 18 September 2012.

The review of this policy is timely given the following:

- The existing policy is ten (10) years old;
- The State Government has recently released its [Draft State Planning Policy 2.9 Planning for Water \(SPP.2.9\) and Planning for Water Guidelines](#) for public comment;
- A recent development proposal would have benefitted from having a more recent and robust LPP to guide development.

COMMENTS AND DETAILS

The Shire has researched a range of local policies from a number of local government authorities to determine good policy examples. This draft policy has been developed using the best elements of these.

In accordance with the new naming conventions, LPPs will no longer be numbered. Therefore, this Local Planning Policy will now be known as Local Planning Policy – Dams.

IMPLICATIONS TO CONSIDER**Consultative:**

LPPs 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 LPPs. 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 LPPs must be for a period of not less than twenty-one (21) days.

The policy was discussed with the Council at the Council Workshop in April attended by six Councillors.

Strategic:**Strategic Community Strategic Plan – Toodyay 2028**

Our Strategic Outcome: A Council that engages with the community and provides good governance on behalf of the community.

Objective 1: Provide accountable and transparent leadership for the community

S 1.1 Use the Strategic Community Plan as the blueprint for Council policy development and decisions.

S 1.2 Complete the development of a new Local Planning Scheme and related Local Planning Policies;

Objective 2: Consistently improve our governance practices

S 2.1 Build a positive culture of engagement between the Shire and the community.

S 2.2 Improve internal and external communication to maximise transparency

Policy related:**Local Planning Policy No. 25 – Dams**

This policy was last reviewed in 2012. At a very basic level, the current policy is inconsistent with the planning framework – for example, it does not reference the *Planning and Development (Local Planning Schemes) Regulations 2015* – (the deemed provisions) and therefore any future iteration of the policy will need to address these factors.

Financial:

It is a requirement that LPPs undergo a formal advertising process which includes publication in a locally circulating newspaper. The cost to the Shire is approximately \$500 for the two advertisements and this has been provided for in the Shire's adopted budget.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Risk related:**Reputational**

The *Governance Review* (2021) identified that there was a desire by the elected members to become more involved in the development and review of policies.

Review of a policy framework is essential to good governance as it demonstrates the Shire's ability to adapt to changing circumstances to ensure that its policies remain contemporary and relevant.

If the Shire ignores this requirement and does not engage in routine review of this framework it risks reputational damage which is considered a medium risk.

Workforce related:

Reviews of this nature place additional, yet necessary additional demands on workforce time and resources. However, a benefit of 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. This ultimately will reduce the burden on the workforce moving forward.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council adopts the draft Local Planning Policy - Dams as per Attachment 1 for the purpose of public advertising in accordance with the procedures set out in clause 4 of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

9.1.2 Lot Sub 101 Beaufort Street, West Toodyay - 4 Dog Application

Date of Report:	1 April 2022
File Reference:	A1320/SUB101BEAU
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. 3 - 6 Dog Permit Ranger Inspection

SUMMARY

Applicant: B Hollister and J Ryder

Owner: B Hollister and J Ryder

Proposal: 4 dog application

Location: Lot Sub 101 Beaufort Street, West Toodyay

PURPOSE OF THE REPORT

For Council to consider an application for the keeping of 4 dogs at Lot Sub 101 (17) Beaufort St, West Toodyay. Council is being requested to determine this application as it does not meet all the requirements of the Shire's *Keeping of 3 to 6 Dogs* policy.

BACKGROUND

The applicant is seeking approval to have 4 dogs at Lot Sub 101 (17) Beaufort Street in the locality of West Toodyay. The applicant has lived in Toodyay for two and a half years.

The owners have two Staffordshire Terriers and two Labrador Retrievers.

The two Staffordshire Terriers have lived with the applicant since they were puppies. Before moving to West Toodyay, both dogs were previously registered with the Shire of Northam.

The owners acquired one Labrador Retriever 2 years ago and one approximately 7 months ago - both as puppies. The Labrador Retrievers are used as therapy dogs in an aged care home.

The owners have indicated that they intend to breed from the Labrador Retrievers, and each dog will have two litters of puppies each, before being spayed. The owners have also indicated that most of the pups would be trained as therapy dogs and breeding would only occur if there were appropriate homes available.

No.	Breed	Colour	Name	Sex	Sterilised	Age	Reg. No.
1	Staffordshire Terrier, Labrador, Kelpie	Tan	Rusty	M	Y	10 Yrs	2200187

No.	Breed	Colour	Name	Sex	Sterilised	Age	Reg. No.
	Cross.						
2	Staffordshire Terrier	Brindle & White	Steve	M	Y	4 Yrs	2200193
3	Labrador Retriever	Black	Darcy	F	N	2 Yrs	TBA
4	Labrador Retriever	Golden	Koda	F	N	7 Mths	TBA

COMMENTS AND DETAILS

This application for the keeping of (4) four dogs at Lot Sub101 (17) Beaufort St, West Toodyay would be a variation to the Shire's policy as it specifies up to 2 dogs can be approved on a Special Residential zoned property.

Earlier Approvals

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

Applicant's Justification

The owners' justification for keeping more than two dogs at the address is they have two Staffordshire Terriers that are pets and have obtained two Labrador Retrievers that are used as therapy dogs in aged care facilities.

Once the Staffordshire Terriers pass away the owners do not intend having any more than two dogs.

The Property

Lot Sub 101 (17) Beaufort Street, West Toodyay has an area of 3.62ha and is zoned 'Special Residential' under the Shire's Local Planning Scheme No 4.

Ranger Inspection

Rangers inspected the property on 7 January 2022.

The Rangers' findings are below:

Aspect	Ranger Comments
Fencing	Suitable for the breed of dogs.
Materials and Height of Fencing	Fencing is suitable for the breed of dogs. Ring lock mesh. Star Picket and perm a pole supports. Approximately 1.2m high.
Locking Devices on Gates	Rural gates approximately 1.2m tall. Chain latch on all gates.
Housing	All dogs have bedding outside on raised beds. All dogs also have the inside couch to sleep on in the living room.

Aspect	Ranger Comments
Condition of Existing Dogs	All dogs are in good condition.
Dog(s) / Owners History	Shire of Toodyay Ranger Services have no history of any dog related issues at this property.

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

Whilst the Rangers have inspected the premises and determined that four dogs could be supported, additional information has been provided by the applicant stating an intention to breed puppies.

Given this information, the Officers have determined that this application cannot be supported as the breeding of the puppies will constitute an Animal Establishment which is an 'X' use for the Special Residential zone.

IMPLICATIONS TO CONSIDER

Consultative:

Consultation with eight (8) landowners was undertaken in accordance with section 5 of Council's *Keeping of 3 to 6 Dogs* policy 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 the Shire's *Keeping of 3 to 6 Dogs* policy and is being referred to 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.

Financial:

There are no direct financial implications for the Shire due to the recommendations of this Report.

Legal and Statutory:

Section 26 of the *Dog Act 1976* (the Act) 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.

Shire of Toodyay *Local Planning Scheme No. 4* refers to an animal establishment, as an X use for this zone. Given the applicants have indicated that they wish to breed their dogs, this is consistent with the definition of an animal establishment and therefore, is not permitted.

Risk related:

If Council is of a mind to refuse the application, the applicants could 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 need to assign resources to defend its position at SAT.

Workforce related:

This matter has taken time in being brought to the Council due to resourcing and staffing limitations which have resulted in longer than normal wait times.

The Shire is under no statutory obligation to determine such a matter within a particular timeframe.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

1. Refuses the application for the keeping of four (4) dogs on Lot Sub 101 (17) Beaufort Street, West Toodyay, due to the owners indicating that they wish to breed their Labrador Retrievers, which constitutes an Animal Establishment under the *Local Planning Scheme No.4* and is an X use (not permitted).
2. Requests that the applicant is advised that:
 - (a) only (2) two dogs are authorised on the property.
 - (b) the (2) two dogs on the property will be kept under control by means of Fencing and gates on the premises or a portion of the premises where the dogs are to be contained. This containment must be of a suitable type, height, and construction that prevents the dogs from passing over, under or through it always.
 - (c) the additional two dogs must be removed from the property or surrendered to the Ranger within 28 days.

9.1.3 Lot 2 Stirling Terrace, Toodyay - Proposed painting of exterior woodwork at St Aloysius Boys School / Boarding House

Date of Report:	11 April 2022
File Reference:	P2022-23 / A4364/2STIT
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. P2022-23 - Application

SUMMARY

Applicant:	J Lacy
Owner:	Lacy Family Trust
Proposal:	Proposed painting of exterior woodwork at St Aloysius Boys School / Boarding House.
Location:	Lot 2 Stirling Terrace, Toodyay

PURPOSE OF THE REPORT

To consider an application for development approval for the painting of the exterior woodwork at St Aloysius Boys School/Boarding House – located at Lot 2 Stirling Terrace in Toodyay. This application has been referred to Council as there is no delegated authority to determine applications for development within the Roman Catholic Church Precinct.

BACKGROUND

Lot 2 Stirling Terrace in Toodyay is a 2,357m² (0.2357 ha) property within the Central Toodyay Heritage Area. It is currently zoned 'Mixed Business' under the Shire of Toodyay's *Local Planning Scheme No. 4* (LPS4).

The property is also within the Roman Catholic Church Group which was placed on the State Register of Heritage Places (Place No. 4125) in 2019.

Proposal

On 18 March 2022, the Shire of Toodyay received an application for development approval to paint the exterior woodwork at St Aloysius Boys School/Boarding House as it is in an advanced state of disrepair.

The applicant is proposing to repaint using the existing colours; any additional painting will be chosen from the Toodyay Heritage colour pallet.

For more information, please refer to the **Attachment 1: P2022-23 Application Plans**.

Timeframe to determine.

The Shire received this application on 18 March 2022. Pursuant to Schedule 2, clause 75(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, this application must be determined within 90 days which expires on 16 June 2022.

COMMENTS AND DETAILS

The applicant proposes to paint the exterior woodwork at St Aloysius Boys School/Boarding house. The current exterior paint work is in an advanced state of disrepair and repainting is necessary to protect the woodwork and heritage of the building.

The applicant proposes to paint the balustrade, portico, and French doors; Midnight Hour (dark blue), the lattice within the balustrade; Old School (dark tan) and the front door mauve (from the Shire's heritage palette).

The paint colours proposed by the applicant are a close match to the existing paint colours. For more information, please refer to **Attachment 1 - P2022-23 - Application Plans**.

The Heritage Council of WA (HCWA) has stated that repainting 'like for like' colours does not require a formal referral.

The Shire recommends that Council approves this application subject to conditions.

IMPLICATIONS TO CONSIDER**Consultative:**

This was referred to Heritage Council of WA (HCWA), however they have advised that formal referral was not required if existing paint colour schemes were being applied.

Strategic:**Shire of Toodyay Strategic Community Plan - Toodyay 2028**

In the built environment, the community wants to see the heritage of the town protected and restored.

Shire of Toodyay Heritage Master Plan 2015**2.2.1 Place No.11; Catholic Church Precinct**

Encourage the private owners to retain and conserve the area.

Shire of Toodyay Local Planning Strategy 2018

A key objective of the LPS is to recognise and encourage the protection of places of cultural heritage value.

Policy related:**State Planning Policy 3.5 Historic heritage conservation****6.6 Development control principles**

The following development control principles should be applied in considering planning applications in relation to a place entered in a heritage list, a place or area entered in the state register, or a heritage area designated pursuant to a local planning scheme.

The weight given to heritage as a consideration will vary, depending on the degree of significance of a place or area, and relevant economic, social, or environmental factors that may apply.

Alterations, extensions or change of use affecting a heritage place

- Development should conserve and protect the cultural significance of a heritage place based on respect for the existing building or structure and should involve the least possible change to the significant fabric.
- Alterations and additions to a heritage place should not detract from its significance and should be compatible with the siting, scale, architectural style and form, materials, and external finishes of the place. Compatibility requires additions or alterations to sit well with the original fabric rather than simply copying or mimicking it.

Shire of Toodyay Local Planning Policy No. 20**Objectives**

- To improve quality of development within the Central Toodyay Heritage Area.
- To improve the streetscape within the Central Toodyay Heritage Area.
- To ensure that development within the Central Toodyay Heritage Area occurs in a manner that complements the existing heritage buildings within Central Toodyay.
- To retain and enhance the heritage qualities within Central Toodyay.
- To facilitate quality development within the Shire of Toodyay.

The Catholic Group in Stirling Terrace comprises a group of mostly double story brick buildings and has cultural significance for the following reasons:

- It represents associations with the sisters of Mercy, the Catholic Church and Catholic education in Toodyay since c.1863.
- The collective and individual landmark qualities of the buildings; and
- The cultural environment makes a significant contribution to the streetscape, townscape, and character of Toodyay representing a significant landmark at the southern entry into Stirling Terrace.

Principles of Development

1. All applications within the Central Toodyay Heritage Area shall have regard to and respect the following principles of development:
2. All development shall enhance and reinforce the historic character of the Central Toodyay Heritage Area.
3. New construction, demolition, intrusions, or other changes that would adversely affect the setting or relationships within the Central Toodyay Heritage Area are not appropriate.
4. Additions to heritage places must ensure that they do not visually intrude on the existing building or street context and that they are in sympathy with the character of the existing property. Additions should be distinguishable from the original building and the distinction may be subtle if desired.

Financial:

Development Application fee per *Planning and Development Regulations 2009*.

Should Council choose to refuse this application, the applicant has the right of appeal through the State Administrative Tribunal. Were this to happen, the Shire would likely have to commit additional funds to undergo this process, and there is a potential financial implication for loss of productivity due to Officer time required in dealing with such matters.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Planning and Development Regulations 2009

Heritage Act 2018

Heritage Regulations 2019

Shire of Toodyay Local Planning Scheme No. 4

The Scheme provides the mechanism for protecting and enhancing the environment of the district, controlling land, and building development, setting aside land for future reserves and other matters authorised by the *Planning and Development Act 2005*.

Risk related:

Should Council choose to refuse the application there is a risk of a review at the State Administrative Tribunal (SAT).

Workforce related:

Should this matter be referred by the applicant 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 *deemed provisions for local planning schemes*, approves the application for Development Approval for the painting of the exterior woodwork of the St Aloysius Boys School/Boarding House at Lot 2 Stirling Terrace, Toodyay, subject to the following conditions:

1. The development hereby permitted must be commenced within two years from the date of this decision letter; and
2. The development hereby permitted taking place in accordance with the approved plans.

9.1.4 Lot 18 Timber Creek Crescent, Coondle - Proposed Single Dwelling - Setback Variation

Date of Report:	6 April 2022
File Reference:	A1165/18TIMB
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. P2022-27 - Application 2. P2022-27 - Schedule of Submissions

SUMMARY

Applicant:	Evoke Living Homes
Owner:	L & S Jones
Proposal:	Single Dwelling – Setback Variation
Location:	Lot 18 Timber Creek Crescent, Coondle

PURPOSE OF THE REPORT

To consider a setback variation of 13.8m in lieu of 30m off the northwestern boundary for a single dwelling at Lot 18 Timber Creek Crescent, Coondle.

This application has received a submission opposing the development and therefore must be referred to Council for determination.

BACKGROUND

The proposal seeks to develop a single dwelling on site at Lot 18 Timber Creek Crescent, Coondle.

Lot 18 is 2.02 hectares and is zoned 'Rural Residential' under the Shire's *Local Planning Scheme No. 4* (the Scheme). The property is located approximately 14km west of the Toodyay town site.

Proposal

On 22 March 2022, the Shire of Toodyay received an application for development approval for a setback variation of 13.8m in lieu of 30m to construct a single dwelling. The property consists of very steep terrain and it is considered that for topography reasons it will be difficult to achieve the prescribed 30m setback. For more information, please refer to the **Attachment 1- P2022-27 Application**.

Timeframe to determine.

Given this application requires advertising, Council must determine the application within 90 days which is 20 June 2022 or sooner.

COMMENTS AND DETAILSBoundary Setbacks

As noted earlier, the proposal does not comply with the 30m setbacks for a Rural Residential zoned property, as prescribed under section 4.15.4(a) of the Scheme.

Whilst a Local Planning Scheme has been developed in the broadest possible way to ensure land is captured and treated homogeneously, it is recognised that there will often be instances where the provisions are impossible or at the least, difficult to achieve.

The Scheme recognises this and includes a provision allowing Council to consider varying setback requirements based on lot configuration or topography. Were it not for this provision, many parcels of land, including the subject parcel would never have the opportunity for this kind of development.

In this instance, the applicant has requested a setback variation due to the topography of the land parcel making development impossible if setbacks were adhered to.

Officers recommend that Council approves this application.

IMPLICATIONS TO CONSIDER**Consultative:**

The application was advertised in accordance with the Shire's *M2 Public Consultation* policy for a Level C classification. A mailout including covering letter and plans was sent to adjoining affected landowners who were given 14 days to comment. This period expired on 11 April 2022 and one submission was received.

The main issue raised was that if the setback variation was allowed and the owners then decided to sell or use the house as investment and rented it out, the people who may then live in the house, may not be as nice as the current owners. The submitter also questioned why suitable earthworks could not be used to address the extreme topography.

As previously outlined the topography on this land parcel makes adhering to the 30m setbacks impossible. Planning decisions are merit based and have a foundation of the principles of orderly and proper planning. Therefore, this development, must be determined on the facts rather than on speculation.

Details of the outcome of this consultation period can be viewed in **Attachment 2: Schedule of Submissions**.

Strategic:

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations encompass the "deemed provisions for local planning schemes");*
- *Shire of Toodyay Local Planning Scheme No. 4;*

The Scheme provides the mechanism for protecting and enhancing the environment of the district, controlling land, and building development, setting aside land for future reserves and other matters authorised by the *Planning and Development Act 2005*.

Policy related:

Council's policy *M.2 Public Consultation Formal Matters* was applied during the community consultation phase. Consultation was undertaken in accordance with Level C – Adjoining Landowner Comment.

State Planning Policy 3.7 - *Planning in Bushfire Prone Areas* was applied as the whole of the Shire of Toodyay has been declared bushfire prone. The Bushfire Attack Level (BAL) report which has been supplied as part of this application gives a BAL rating of FZ. (Flame Zone)

As the BAL for this property is FZ (Flame Zone) the following measures are required to be taken:

Prior to the occupation of the development, the approved Bushfire Management Statement shall be implemented, to achieve a rating of BAL-29 (or less) for the dwelling, and thereafter complied with by the landowner(s) for the life of the development and to the satisfaction of the Shire.

Financial:

Development Application fee per *Planning and Development Regulations 2009*.

Should Council choose to refuse this application, the applicant has the right of appeal through the State Administrative Tribunal. Were this to happen, the Shire would likely have to commit additional funds to undergo this process, and there is a potential financial implication for loss of productivity due to Officer time required in dealing with such matters.

Legal and Statutory:

- *Planning and Development Act 2005*;
- *Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations encompass the "deemed provisions for local planning schemes")*;
- *Shire of Toodyay Local Planning Scheme No. 4*;

The Scheme provides the mechanism for protecting and enhancing the environment of the district, controlling land, and building development, setting aside land for future reserves and other matters authorised by the *Planning and Development Act 2005*.

Risk related:

Should Council choose to refuse the application there is a risk of a review at the State Administrative Tribunal (SAT).

Workforce related:

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council grants development approval for a single dwelling at Lot 18 Timber Creek Crescent, Coondle, subject to the following conditions:

- (a) The development hereby permitted must substantially commence within two years from the date of this decision letter.
- (b) The development hereby permitted taking place in accordance with the plans submitted with the application.
- (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.

9.1.5 Lot 69 Telegraph Road, Toodyay - Amendment to development approval

Date of Report:	12 April 2022
File Reference:	P2021-7/A4336/69TEL
Author:	H de Vos – Manager Development and Regulation
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	28 September 2021
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. Minutes - 9.1.2 Lot 69 Telegraph Road, Toodyay – Proposed single house - 28 September 2021

SUMMARY

Applicant:	W Hall / Hilburn Construction
Owner:	W. Hall
Proposal:	Amendment to development approval
Location:	Lot 69 (No. 2) Telegraph Road, Toodyay

PURPOSE OF THE REPORT

To consider an application to amend an existing development approval for Lot 69 (No. 2) Telegraph Road in Toodyay.

BACKGROUND

This application was previously considered by Council at its Ordinary Council Meeting on 28 September 2021 (Council Resolution No. 186/09/21) where Council resolved:

That Council:

1. *Notes the submissions relating to the application for development approval for a single dwelling at Lot 69 Telegraph Road, which involves the proposed demolition of an existing dwelling.*
2. *Pursuant to Clause 68(2)(b) of the Planning and Development (Local Planning Schemes) Regulations 2015; approves the development approval for a single dwelling at Lot 69 Telegraph Road in Toodyay, 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) *Prior to the occupation of the development, vehicle crossover(s) shall be constructed to the specification and satisfaction of the local government.*
 - (d) *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.*
 - (e) *Prior to occupation, the development hereby permitted shall be connected to an approved effluent disposal system.*
3. *Pursuant to Clause 68(2)(b) of the Planning and Development (Local Planning Schemes) Regulations 2015; approves the development approval for the demolition of the existing dwelling at Lot 69 Telegraph Road in Toodyay, subject to the following conditions:*
- (a) *Demolition of the existing dwelling must occur within 6 months of the occupation of the approved dwelling which is the subject of Condition 2.*
 - (b) *An archival record is to be made of the building to be demolished and submitted to the local government for approval prior to the issue of a Demolition Permit and shall include:*
 - i. *A site plan prepared at 1:200 scale, floor plan(s) of the building and four elevations prepared at 1:100 scale.*
 - ii. *Digital photographs taken of the building (once vacated) to include:*
 - 1. *a general/overall photo of the building to be demolished;*
 - 2. *photos of each of the four elevations;*
 - 3. *internal photos of all rooms (2 photos from different angles of each room); and*
 - 4. *photos of any all features, such as architraves, skirtings & joinery details.*

Advice Notes:

- 1. *Given that this property is fragmented (two adjacent lots being owned by the same landowner), it is recommended that the landowner considers legally amalgamating Lot 69 and Lot 123 in the future to avoid development issues and to maximise the development potential and future enjoyment of the land;*
- 2. *The bricks from the existing dwelling to be demolished are encouraged to be reused/recycled for local use where possible.*

When the application was previously considered, the Council agreed to the recommendation to allow the existing structure to be demolished. This was due to only a single dwelling being permitted on a Residential (R10) zoned lot.

However, subsequent to this decision, there has been interest from several elected members to encourage the retention of this structure if possible. The landowner – Mr Hall, is amenable to this. The best way to resolve this would be to amend the original decision of Council and to approve the new development as a Grouped Dwelling and to remove any requirement for demolition.

Notwithstanding the above, the Shire has recently been approached by Mr Hall who has encountered issues with his application for grant funding. Mr Hall intends to partially finance this development using the:

- [Building bonus grant](#); and

- [Australian Government Home Builder grant.](#)

to such an extent that the development cannot proceed if he is not successful.

One of the conditions of the Building bonus grant is that the new detached single dwelling must be built on vacant land.

On behalf of Mr Hall, the Shire has sought clarification on what constitutes vacant land and has explained the particulars of the case to the department responsible for administering the funding.

The Shire has received written advice from the Grants and Subsidies Officer of RevenueWA (Department of Finance) that the definition of vacant can include the existing structure on the property provided that the old house is:

- Listed as a non-livable dwelling; or
- Decommissioned and is no longer habitable.

COMMENTS AND DETAILS

The proposal to amend the existing development approval is positive for two reasons.

Firstly, the Council is able to advocate on behalf of a member of the community needing assistance to progress an application for grant funding. Should Council choose to support the recommendation to amend the proposal, it will provide the required statutory function to allow Mr Hall to continue.

Secondly, and perhaps most importantly, it will correct a difficult and somewhat unpopular previous decision to demolish a structure with heritage significance to the community.

IMPLICATIONS TO CONSIDER

Consultative:

Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the deemed provisions) which form part of the *Shire of Toodyay Local Planning Scheme No. 4*, includes a number of clauses relating to public notice for development applications, Structure Plans and Local Planning Policies. Many requirements relating to public notification of development applications are mandatory, while others provide the Shire with discretion as to whether a proposal is to be advertised and the method of advertising.

Given the proposed change to the existing development effectively creates a status quo from a heritage protection and visual amenity sense, and is seen as very positive – no additional community consultation is considered necessary in this instance.

The Department of Planning, Lands and Heritage was consulted and agreed that the Shire's approach was appropriate.

Strategic:

Shire of Toodyay Strategic Community Plan – Toodyay 2028

Improve processes to support the built environment

S 3.1 Adjust regulatory processes to be more enabling and accessible

Policy related:**Draft Local Planning Policy – Advertising of Planning Proposals**

This draft local planning policy is currently undergoing a period of public consultation and is a seriously entertained document.

6.7 Additional public notice of proposal previously advertised

Additional public notice shall be given in the same manner under the provisions of this policy as if the modified/amended proposal was received as a new development application in the following instances:

- a) *Where a planning proposal is subsequently significantly modified prior to its final determination and additional variations arise from the modifications; or*
- b) *Where the application to amend an existing planning approval is received under Clause 77 of the Planning and Development (Local Planning Schemes) Regulations 2015 deemed provisions.*

For the reasons previously listed in the Consultation section of this report, no additional consultation was required as this is an administrative change and has no impact on the amenity of the locality.

Financial:

Regulation 5A of Schedule 2 of the *Planning and Development Regulations 2009* provides that the fee for determining an application to amend or cancel development approval is \$295.

Should the Council choose not to approve the application, the applicant has the right of appeal through the State Administrative Tribunal. Ratepayer money will be required to pay for any legal or consultant costs required to defend the Council's decision.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development Regulations 2009

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Toodyay Local Planning Scheme No. 4.

Clause 77 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, (the deemed provisions), outlines the process for amending or cancelling an existing development approval.

In this instance, pursuant to clause 77(3), the Shire will vary the requirement to advertise this amendment as this is an administrative change and has no negative impact on the amenity of the locality.

Risk related:**Financial Risk**

Should the Council choose to refuse this application, the applicant has the right of appeal to the State Administrative Tribunal. This could potentially involve ratepayer funds to defend a decision.

Workforce related:

If Council chooses not to support this application, the applicant has the right of review at the State Administrative Tribunal, which will impact on the organisation's workforce as Officers

will need to devote additional time to attend to the appeals process. These matters can also create additional stress which will need to be managed.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council, pursuant to Clause 77(1)(b) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the deemed provisions), resolves to:

1. Delete Condition 3 of Council Resolution No. 186/09/21 dated 28 September 2021.
2. Amend Condition 1 of Council Resolution No. 186/09/21 dated 28 September 2021 to include the following additional conditions of approval:
 - (a) The existing heritage structure is to be retained and is not to be used for human habitation.
 - (b) A notification, pursuant to Section 70A of the *Transfer of Land Act 1893* is to be placed on the certificate(s) of title of the lot(s). Notice of this notification is to be included on the diagram or plan of survey (deposited plan). The notification is to state as follows:
 - i. "The heritage cottage structure is not to be used for human habitation."*
 - (c) The costs associated with the creation of the notification per Condition (1)(b)(ii) are to be payable by the applicant.

Advice Note:

1. Application forms for establishing and withdrawing a notification are available from www.landgate.wa.gov.au

9.2 CORPORATE AND COMMUNITY SERVICES

9.2.1 March 2022 - List of Payments

Date of Report:	14 April 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN29
Author:	C Murcott – HR/Payroll Officer
Responsible Officer:	N Mwale – Finance Coordinator
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. List of Payments - March 2022.

PURPOSE OF THE REPORT

To present cheques and electronic payments raised during March 2022.

BACKGROUND

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

COMMENTS AND DETAILS

The list of all payments processed under delegated authority during March 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 online (internet) banking system.

IMPLICATIONS TO CONSIDER**Consultative:**

Nil

Strategic:

Governance 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 in March 2022 are in accordance with the adopted 2021/2022 Budget.

Legal and Statutory:

Section 5.42 of the *Local Government Act 1995* allows the local government to delegate certain 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 1

That Council notes as being paid, payments listed and presented for the month of March 2022 as attached to this report, summarised as follows:

Direct Debits	\$ 29,090.52
EFTs	\$1,252,703.76
Payroll	\$ 373,876.50
Municipal Cheques	\$ 65,470.55
TOTAL	\$1,721,141.33

9.3 EXECUTIVE SERVICES

9.3.1 REVISED Member Policies

Date of Report:	22 February 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PCY2
Author:	M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	Council Forum Policy March 2020 (Res No. 93/03/20) and Bush Fire Policy Adopted 24 June 2014 OCM (CR155/06/14)
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. REVISED Policy: Attendance at Events; 2. REVISED Policy: Copyright; 3. REVISED Policy: Continuing Professional Development; 4. REVISED Policy: Council Delegates - Roles and Responsibilities; 5. REVISED Policy: Council Forums; 6. REFORMATTED Policy: Appointment of Acting or Temporary CEO; and 7. NEW DRAFT Policy: Execution of Documents.

PURPOSE OF THE REPORT

1. To adopt REVISED policies as follows:
 - (a) Attendance at Events (Attachment 1);
 - (b) Copyright policy (Attachment 2);
 - (c) Continuing Professional Development (Attachment 3);
 - (d) Council Delegates – Roles and Responsibilities (Attachment 4); and
 - (e) Council Forum policy (Attachment 5).
2. To receive and note the REFORMATTED Appointment of Acting or Temporary CEO policy (Attachment 6).
3. To consider adoption of the new DRAFT Execution of Documents policy (Attachment 7).

BACKGROUND

Council resolved to implement a review of all Shire Policies at an Ordinary Council Meeting held in February 2022.

At a Council workshop held on 9 March 2022, the following policies were discussed:

1. Appointment of Acting CEO;
2. Attendance at Events;
3. Bush Fire Brigades;
4. Continuing Professional Development;
5. Council Delegates – Roles and Responsibilities;
6. Council Forums;
7. Execution of Documents; and
8. Local Government Payments and Gifts to Members.

The policy listed at No. 8 was reviewed and requested to be brought back for review at the May 2022 Council workshop.

The following policies were presented to a Council workshop held on 13 April 2022:

- Legal Representation and Costs Indemnification.
- Compliance and Enforcement; and
- Copyright policy.

In relation to all policies being presented:

- Definitions have been included to provide clarification;
- Duplication of text from other documents, legislative clauses, words or phrases, and sub-numbering has been removed;
- Wording and tables were revised to ensure the policies are understood;
- More legislative references have been included to ensure compliance with legislative provisions; and
- Reference information; legislation; associated documents; version control; and document control information, have been updated in each policy.

COMMENTS AND DETAILS

Further amendments were made to the REVISED policies following the March 2022 and April 2022 Council workshops as detailed below:

(a) Attendance at Events

The [Attendance at Events Policy](#) was last reviewed by Council in February 2020.

The events table was updated and new headings included.

The circular located at this link: https://www.dlgsc.wa.gov.au/docs/default-source/local-government/circulars/departamental-circular-11-2019---new-gifts-framework.pdf?sfvrsn=6bc50fd3_4 has remained and reference to gift provisions provided.

(b) Copyright Policy

The [Copyright Policy](#) was adopted by Council in 2015.

The revision of the policy addressed concerns following the Council workshop regarding out of date references.

The copyright notice in the policy, related to publications, was amended because the Shire of Toodyay has more than one logo and various graphic components of the logos contained within its current Shire Style Guide.

The Shire of [Toodyay Copyright Statement](#) appearing on the Shire's website will be updated to reflect the words specified in the REVISED policy, once adopted.

(c) Continuing Professional Development

The [Continuing Professional Development Policy](#) was last reviewed by Council in February 2020.

The revision of the policy addresses the concern about responsibility of Members to provide a report to Council about their professional development.

When the President or Deputy are unable to attend events, informal processes are undertaken through the Office of the CEO and the revised policy will give the CEO that discretion to continue the informal process.

(d) Council Delegates Roles and Responsibilities

The [Council Representatives on Committees that are not Committees of Council](#) policy was adopted in 2014.

The main amendments made to the policy were regarding the Policy Statement and changing the name of the policy to "Council Delegates – Roles and Responsibilities." Following the workshop, some references to additions from other local government policies were removed in the revision of this policy.

The revision of the policy addresses the concern about responsibility being placed upon Delegates to provide a report to Council about the meetings they attend as delegates.

(e) Council Forums Policy

The current [Council Forum policy](#) was last reviewed in July 2020.

The REVISED policy contains information around protocols, procedures and participation. It also addresses the concern about Standing Order 6.3 having been contained in the current policy as it restricted questions and answers whilst at the same time suppressing expression of opinion, statement of fact or other comment, except so far as may be necessary to explain the question or answer.

(f) Appointment of Acting CEO

The [Appointment of an Acting or Temporary CEO Policy](#) was adopted in June 2021. It is proposed to be amended only to the extent that the names of the Managers have been corrected to reflect updated titles.

(g) New Policy – Execution of Documents

The policy has been written with the intent of providing clarity so that Shire Officers, Council Members and the community understand the types of documentation that are signed throughout the Shire and the parameters for their execution.

The revision of the policy addresses the concern about the unlimited \$ value that had been previously listed in the first draft of the policy.

IMPLICATIONS TO CONSIDER

Consultative:

In reviewing all policies, the Officer referred to on-line resources and sample policies from;

- the Australian Institute of Company Directors;
- several Western Australian local governments; and
- the Department of Local Government, Sport and Cultural Industries.

Strategic:

Strategic Community Plan – Toodyay 2028 (SCP)

- *Governance – the way the Shire leads and operates.*

Council will engage with the community and provide good governance on behalf of the Community.

Shire of Toodyay Governance Framework.

Policy related:

The structure of all policies presented are in line with Council's Corporate Documents policy, adopted in November 2021.

The DRAFT Execution of Documents policy, once adopted, will be included as a reference to Delegation ES2 in the Register of Delegations. The policy seeks to ensure that consideration be given to relevant Council Policies that identify risk exposure to the Shire of Toodyay.

Financial:

Some policies will have financial implications in relation to the budget. The costs are considered as part of the annual budget process.

Legal and Statutory:

Local Government 1995 and various regulations provide the head of power for relevant policies.

Risk related:

Without the adoption of the policies being presented there is minor risk to the compliance of the organisation. Specific risks are:

Execution of Documents

The NEW policy outlines the roles and responsibilities of those signing documentation on behalf of the Shire, particularly with regard to risk. The policy mitigates the moderate risks associated with execution of documents through delegation and the adoption of this policy.

Council Forums

Council is required to make decisions at formal Council Meetings in accordance with section 5.20 of the *Local Government Act 1995*.

The *Council Forums* policy was put in place in 2014 to enable Council to have flexibility in how it approaches its meeting procedures. The risk rating is Low (1-4) in regard to holding forums, sessions and workshops.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council adopts the following REVISED policies as amended:

- (a) Attendance at Events (Attachment 1);
- (b) Copyright Policy (Attachment 2);
- (c) Continuing Professional Development (Attachment 3);
- (d) Council Delegates – Roles and Responsibilities (Attachment 4); and
- (e) Council Forum Policy (Attachment 5).

OFFICER'S RECOMMENDATION 2

That Council receives and notes the REFORMATTED Appointment of Acting or Temporary CEO Policy, as amended (Attachment 6).

OFFICER'S RECOMMENDATION 3

That Council adopts the NEW Execution of Documents Policy, as attached to this report (Attachment 7).

9.3.2 Administration and Governance Policies

Date of Report:	3 March 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PCY2/MTG7
Author:	M Rebane – Executive Assistant T Bateman – Manager Corporate and Community Services
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	Bush Fire Policy Adopted 24 June 2014 OCM (CR155/06/14)
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. REVISED Legal Representation and Costs Indemnification Policy; 2. REVISED Complaints of Alleged Breach of the Code of Conduct for Members, Committee Members and Candidates Policy; 3. REVISED Legislative Compliance Policy; 4. REVISED Compliance and Enforcement Policy; 5. CURRENT Establishment and Operation of Bush Fire Brigades Policy; 6. CURRENT Freedom of Information Policy.

PURPOSE OF THE REPORT

1. To revoke policies as follows:
 - (a) The current Establishment and Operation of Bush Fire Brigades policy; and
 - (b) The current Freedom of Information policy; and
2. To adopt REVISED Policies as follows:
 - (a) Legal Representation and Costs Indemnification;
 - (b) Legislative Compliance;
 - (c) Compliance and Enforcement; and
 - (d) Complaints of alleged breach of the Code of Conduct for Members, Committee Members and Candidates.

BACKGROUND

Council resolved to implement a review of all Shire policies at an Ordinary Council Meeting held in February 2022.

The following policies were presented to a Council workshop held on 13 April 2022:

- Legal Representation and Costs Indemnification;
- Compliance and Enforcement; and
- Copyright policy.

At a Council workshop held on 9 March 2022, a REVISED Bush Fire Brigades policy was discussed.

(a) Establishment and Operation of Bush Fire Brigades policy

The current Establishment and Operation of Bush Fire Brigades Policy is on the Shire website here: <https://www.toodyay.wa.gov.au/documents/113/a21-establishment-and-operation-of-bush-fire-brigades>

The Community Emergency Services Manager (CESM) was consulted about the revised policy following the Council workshop. The CESM proposed the current policy be revoked and stated that:

“...the current structure of the Bush Fire Operating Procedures (BFOP) is a mix of policy and procedure. A cover-to-cover review of the BFOP is needed. Thus it would be my recommendation that Council as part of such an approach, requests that BFOP are reviewed and brought back to Council via the Bush Fire Advisory Committee (BFAC).

A review would confirm and amend content (some of which has not had specific attention since 2014), as well as addressing the format so that the policy is separated from procedure and the document structure is improved...”

It is recommended that the current policy be revoked.

(b) Freedom of Information policy

The current Freedom of Information policy is on the Shire website here: <https://www.toodyay.wa.gov.au/documents/125/a16-freedom-of-information>

The administrative policy A.16 Freedom of Information was adopted by Council on 18 April 2013. It was reviewed in conjunction with the review of the Register of Delegations.

EA4 Delegation to CEO in relation to the *FOI Act 1992* was a statutory delegation made by an External Agency through the *Freedom of Information Act 1992* which defines:

- (a) an **agency** as being a public body or office and a **public body** as meaning a local government; and
- (b) a **principal officer** of an agency “(c) in relation to a local government – the Chief Executive Officer (CEO) of the local government.”

It is recommended that the Freedom of Information policy be revoked due to the existence of the statutory delegation that enables the CEO to make decisions on behalf of the Agency or direct an officer of the agency to make a decision, either generally or in a particular case in respect to an FOI Application in accordance with Section 100 “who in Agency makes decisions” of the *Freedom of Information Act 1992*.

COMMENTS AND DETAILS

In relation to all REVISED policies being presented:

- Definitions have been included to provide clarification;
- Duplication of text from other documents, legislative clauses, words or phrases, and sub-numbering has been removed;
- Wording and tables were revised to ensure the policies are understood;
- More legislative references have been included to ensure compliance; and
- Reference information; legislation; associated documents; version control; and document control Information, have been updated in each policy.

Grammatical amendments were made to the REVISED policies following the April 2022 Council workshop. Further information is provided as follows:

(a) Compliance and Enforcement Policy

The current [Compliance and Enforcement Policy](#) was adopted by Council on 13 October 2020.

WA local governments and the Department of Health are the enforcement agencies for various food businesses and other business activities across WA.

Adopting a strategic approach to the application of legislative enforcement provisions by developing a written compliance and enforcement strategy or policy ensures consistency in enforcement action taken by a local government, its Environmental Health Officer and other Authorised Persons or Officers.

Compliance and enforcement action is a graduated approach of enforcement options, commencing with issuing an improvement notice and then moving to more severe enforcement options such as prosecution. The enforcement option will depend on inherent risks and the overall performance of a business or individual.

The revision of the policy includes definitions and references to prescribed Acts and their subsidiary legislation for which the Shire enforces within the district related to any prescribed offences.

(b) Legislative Compliance policy:

The current policy titled [Legislative Compliance](#) was adopted by Council on 25 November 2014.

Included are references to:

- The Register of Delegations which is an important document for the local government
- The Integrity Strategy published by the Public Sector Commission

(c) Legal Representation and Costs Indemnification policy:

The current policy titled [Legal Representation and Costs Indemnification](#) was last reviewed by Council at an Ordinary Council Meeting held on 25 August 2020 where Council was made aware of the current policy having been amended in June 2020 to include a maximum limit of \$10,000. At the same time, in Delegation CS5 Legal Representation and Costs Indemnification, an amendment was made to remove the reference to the amount so that the policy would define what the maximum limit was.

The Department of Local Government, Sport and Cultural Industries provides a model policy for Council to consider when developing a policy for Legal Representation and Costs Indemnification.

Concerns were raised at the workshop in relation to:

- Appeal provisions - which are not specifically identified but are covered by clause 4 which reads that a further application may be made to Council in respect of the same matter;
- Delegation to the CEO to approve an application before taking it to Council – which is contained in the current policy. A Special Council Meeting could be called at the CEO's discretion, without that option being included in the policy. There is however merit in keeping it in the REVISED policy in extraordinary circumstances where it might disadvantage an applicant to defer action. Council has the option of removing it through an amendment to the policy during debate of the matter; noting that the Recommendation is to adopt the policy, as amended.; and
- Legal representation costs not being repaid to the Shire; however as clause 5.5 and clause 7 stipulate – the policy states what those parameters are. Procedurally, the Shire would enter into a signed agreement for repayment of legal costs with the Member and/or the Shire Officer. The terms of that agreement would be the instrument that says what would occur in the event of the Member or Shire Officer being or becoming financially unable to repay such costs.

(d) Complaints of alleged breach of the Code of Conduct for Members and Candidates policy:

The current policy titled [Complaints of alleged breach of the Code of Conduct for Members and Candidates](#) was adopted by Council in April 2021.

Concerns were raised at the Council workshop in relation to:

- The responsibility for appointment of an independent investigator – this has been updated to be the Complaints Officer as that role is responsible for dealing with complaint matters;
- Appeal provisions - which are not specifically identified but are covered by the fact that the report would be provided to Council as a confidential matter. If the Applicant was not happy with the decision made by the Council they would be able to make an application for Council to revoke or change its decision – but this would be subject to Part 15 of the *Shire of Toodyay Standing Orders Local Law 2008*;
- Clause 8 – which points out that a Member or a Shire Officer would be “breaking the rules of conduct as defined in the *Local Government Act 1995*” if they did not undertake actions required by Council. The policy only deals with complaints of alleged breach that are related to the Code of Conduct. The policy will not address what occurs where any subsequent breach becomes an actual rule of conduct breach/minor breach; nor does it cover processes around serious breaches as processes for minor and serious breaches are identified within the regulations and need not be duplicated in policy.

It is recommended that all REVISED policies, as amended, be adopted by Council.

IMPLICATIONS TO CONSIDER**Consultative:**

In reviewing all policies, the Officer referred to on-line resources and sample policies from:

- The Department of Water, Environment and Regulation.
- The Public Sector Commission;
- The Department of Health;
- Other local governments: the City of Wanneroo; the Shire of Serpentine Jarrahdale; the City of Karratha (which is much like the current Council policy);
- the Department of Local Government, Sport and Cultural Industries' website (link: <https://www.dlgsc.wa.gov.au/department/publications/publication/legal-representation-for-council-members-and-employees>)

Strategic:

Strategic Community Plan – Toodyay 2028

Governance – the way the Shire leads and operates.

The strategic outcome is that Council will engage with the community and provide good governance on behalf of the Community.

The Governance Framework, adopted by Council in terms of representation states that the Elected Members represent the interests of and are accountable to all electors, ratepayers and residents of the Shire.

Section 9.4.4 Protection from Liability within the Governance Framework provides for an explanation of the privilege Elected Members have in the community and that they should be mindful of their responsibilities and not, in the heat of a Council debate, to make defamatory statements which could give rise to a civil action.

Policy related:

The structure of all policies presented are in line with Council's Corporate Documents policy, adopted in November 2021.

Financial:

Nil.

Legal and Statutory:

The Local Government (Model Code of Conduct) Regulations 2021.

s.9.56 of the *Local Government Act 1995* (the Act).

s.3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district.

s.6.7(2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law.

Under these provisions, a Council can expend funds to provide legal representation for Elected Members and Shire Officers, as long as it believes that the expenditure falls within the scope of the local government's function.

Risk related:

There would be moderate risks associated with not adopting the REVISED Policies presented with this report as they may affect the Shire's compliance.

There are no risks associated with revoking the current Freedom of Information policy.

The existence of the Bush Fire Operating Procedures, being used by the Shire in the absence of creating a local law, addresses any perception of risk through revoking the Establishment of Bush Fire Brigades Policy.

Workforce related:

If Council endorses the cover-to-cover review of the BFOP this would be a lengthy undertaking that would need to be factored into the CESMs workload to occur in the latter half 2022.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council adopts the REVISED Legal Representation and Costs Indemnification policy, as amended.

OFFICER'S RECOMMENDATION 2

That Council adopts the REVISED Compliance and Enforcement policy, as amended.

OFFICER'S RECOMMENDATION 3

That Council adopts the REVISED Complaints of Alleged Breach of the Code of Conduct for Members, Committee Members and Candidates Policy, as amended.

OFFICER'S RECOMMENDATION 4

That Council adopts the Legislative Compliance Policy, as amended.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION 5

That Council:

1. Revokes the Establishment and Operation of Bush Fire Brigades Policy; and
2. Authorises the CEO to arrange for the Bush Fire Operational Procedures to be reviewed and brought back to Council through the Bush Fire Advisory Committee (BFAC) by December 2022.

OFFICER'S RECOMMENDATION 6

That Council revokes the current Freedom of Information Policy.

9.3.3 Total Project Costs - Toodyay Recreation Centre

Date of Report:	10 April 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PRO10
Author:	S Haslehurst – Chief Executive Officer
Responsible Officer:	
Previously Before Council:	22 November 2017 27 April 2021
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Toodyay Recreation Centre Project Costs

PURPOSE OF THE REPORT

To present for the information of Council and the community, an outline of the total cost of the Toodyay Recreation and Aquatic Centre including planning and expert advice, land purchase, design, project management, construction and fit out.

BACKGROUND

The development of the Toodyay Recreation Centre occurred during a period spanning over a decade. The following table provides a summary and timeline of activities undertaken during this process.

Year	Actions
2003	<ul style="list-style-type: none"> • Discussion paper re Aquatic Complex presented to Council Forum • Shire's Principal Activity Plan 2002 - 2007 includes development of an aquatic complex in 2005/2006 • Indicative cost \$2.2million
2012	<ul style="list-style-type: none"> • Acquisition of land for the purposes of recreation considered • Discussion paper presented to Council Forum with four options for land acquisition
2013	<ul style="list-style-type: none"> • Consultation and development of Strategic Community Plan • Confirmation of aquatic facility as a community priority • Finalisation of negotiations and purchase of land in Foggarthorpe estate • Adoption of Strategic Community Plan 2013-2023 which included: <ul style="list-style-type: none"> ○ <i>Establish a new recreation precinct to accommodate the long-term needs of the community, which includes a multi-purpose recreation facility with an aquatic facility (partially grant and loan funded).</i>

Year	Actions
	<ul style="list-style-type: none"> • Adoption of 2013/14 Budget which included; <ul style="list-style-type: none"> ○ \$100,000 for master planning of the Toodyay Sport and Recreation Precinct. ○ \$1,625,000 for purchase of land adjacent to Toodyay DHS ○ Reference to Recreation Centre Reserve (\$774,787) and Recreation Development Reserve (\$247,497). • Following public advertising, adoption of the Shire of Toodyay Recreation Strategy developed by SGL Consulting Group
2014	<ul style="list-style-type: none"> • Peter Hunt Architects engaged to develop a Recreation Precinct Master Plan following an EOI process • Staged Master Plan adopted following public consultation • Advocacy activities and fundraising investigations commenced
2015	<ul style="list-style-type: none"> • Endorsement of Business Case for Stage One of the Sport and Recreation Precinct (valued at \$21,854,383) to accompany National Stronger Regions Fund (NSRF) application. • Commitment of \$11,660,000 in Shire funds consisting of: <ul style="list-style-type: none"> ○ \$1,800,000 from Shire reserves; ○ \$1,860,000 over 3 financial years from Shire funds; and ○ \$8,000,000 in new borrowings. • Advocacy and fundraising activities continued
2016	<ul style="list-style-type: none"> • Community Sporting and Recreation Facilities Fund (CSRFF) funding strategy discussed and developed • Endorsement of application for CSRFF funding of \$1.5 million for: <ul style="list-style-type: none"> ○ Hockey field and shelter ○ Multi-use courts x 6 ○ Modest sports pavilion with change rooms, storage and function area ○ Associated site works. • Following advice from Department of Sport and Recreation, CSRFF application not submitted • Amendments to Works Schedule with further consideration of staged approach, funding options and schedule • Authorisation to commence procurement for road construction and site works • Advocacy and fundraising activities continued
2017	<ul style="list-style-type: none"> • Site and earth works commenced • Endorsement of a Business Case for a reduced scope Stage One of the Sport and Recreation Precinct (valued at \$12.1 million) to accompany a Building Better Regions Fund (BBRF) application for \$4,840,000 Commitment of \$6,600,000 in Shire funds if BBRF application successful consisting of: <ul style="list-style-type: none"> ○ \$2,700,000 from Shire reserves; ○ \$1,200,000 over 3 financial years from Shire funds; and ○ \$2,700,000 in new borrowings. • Advocacy and fundraising activities continued

Year	Actions
	<ul style="list-style-type: none"> • Community engagement activities undertaken
2018	<ul style="list-style-type: none"> • Advocacy and fundraising activities continued: <ul style="list-style-type: none"> ○ Successful BBRF \$4,710,000 funding announced in July 2018 ○ Lotterywest grant \$890,000 ○ Pool Working Group raised approximately \$110,000 ○ Bendigo Bank support of \$100,000 • Endorsement of CSRFF application for \$1.4 million for: <ul style="list-style-type: none"> ○ Rectangular playing field ○ Multi-purpose and tennis courts ○ Club and change rooms ○ Lighting and fencing • Following a tender process, appointment of Cameron Chisholm Nicol for design and project management • Community engagement activities continued
2019	<ul style="list-style-type: none"> • Decision to borrow up to \$4.5 million as a short-term construction loan facility • Award of construction contract to ADCO Constructions P/L for contract sum of \$13,208,132.50 plus GST • Updated total construction cost estimate of \$14,967,962 provided to Council • Construction commenced in December • Community engagement activities continued
2020	<ul style="list-style-type: none"> • Following community consultation, adoption of the name Toodyay Recreation Centre • Following a tender process, appointment of Clublinks Pty Ltd as Venue Manager • Fitout, practical completion and handover • Finalisation of management contract negotiations • Official opening of the Toodyay Recreation Centre
2021	<ul style="list-style-type: none"> • Investigation of unexpected high water usage • Investigation of pool heating and liquor licensing options • Reconciliation and acquittal of construction costs presented to Council • Conversion of \$4.5 million short-term loan to long-term facility • Adoption of Fees and Charges for Toodyay Recreation Centre

While the construction cost of the Centre was investigated as part of the grant acquittal process and provided to Council in April 2021, several questions have been raised in the community about the total cost of the facility. This report provides a reconciliation of costs including planning and expert advice, land purchase, design, project management, construction and fit out. Attachment 1 to this report provides a breakdown by category and by year of the costs incurred over the life of the project.

COMMENTS AND DETAILS

The following table outlines the costs of the Toodyay Recreation Centre broken down into categories.

Planning, development and construction of the facility

Land Purchase	\$1,679,213
Planning	\$1,055,514
Siteworks	\$543,154
Construction	\$14,398,818
Loose Fittings	\$110,576
Project catering	\$4,069
Project miscellaneous	\$25,026
Total	\$17,816,370

It should be noted that the construction cost reported to funding bodies and to Council in April 2021 (\$14,997,723) included a portion of the planning costs and the cost of loose fittings in accordance with the grant conditions. This accounts for the lower construction cost reported above.

Miscellaneous project costs include signage, legal, capitalisation and acquittal audit costs.

Management operations and utilities

During the construction of the facility and up until October 2021, all utility costs were paid by the Shire. These have since been transferred to Clublinks Pty Ltd in accordance with the conditions of the management contract. The Shire is also required to pay to Clublinks the difference between agreed operational income and expenditure on a quarterly basis. Below is an outline of these costs paid by the Shire from the opening of the centre in October 2020 to date.

Management/Operations	\$660,553
Utilities	\$175,881
Total	\$836,434

Borrowings

The Shire borrowed \$1 million for the purchase of the land for the recreation precinct in 2013 and has paid \$370,400 in interest payments year to date. \$700,991 remained unpaid at 30 June 2021.

Two short term loan facilities of \$2 million and \$2.5 million were utilised during the construction period with interest of \$46,586 paid over two years. These were converted to a long-term facility of \$4.5 million in June 2021. \$102,719 has been incurred to date.

Defects Liability

Cameron Chisholm Nicol was engaged to manage the defects liability period for the TRC on behalf of the Shire which included the investigation of high water usage.

IMPLICATIONS TO CONSIDER**Consultative:**

Nil

Strategic:

Shire of Toodyay Strategy Community Plan

Governance: The way the Shire leads and operates

O1: Provide accountable and transparent leadership for the community

Policy related:

Nil

Financial:

The financial implications have been discussed above and costings are detailed in Attachment 1.

Members of the community have often quoted and queried amounts listed in the Shire's Monthly Payments listings. However, these reports provide the gross payments made to suppliers and include GST. It should be noted that financial reporting does not include GST as this is 'claimed back' from the Australian Taxation Office. Therefore, the amounts reported in Attachment 1 are exclusive of GST and may appear lower than the figures reported in the Monthly Payments listings.

Legal and Statutory:

Local Government Act 1995

Risk related:

There have been several requests from the community for a reconciliation of the total cost of the Toodyay Recreation Centre. This report aims to respond and therefore mitigate a potential reputational risk which is rated High.

Workforce related:

The forensic research into past records to produce this report has occupied substantial officer resources, delaying progress in other areas.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council receives and notes the total cost of the Toodyay Recreation Centre as outlined in and attached to this report.

9.4 INFRASTRUCTURE AND ASSETS

9.4.1 Road Upgrade Criteria Policy

Date of Report:	2 March 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PCY2
Author:	N Rodger – Operations Officer
Responsible Officer:	J Augustin – Manager Infrastructure and Assets
Previously Before Council:	Review and amended June 2012 OCM
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Road Upgrade Criteria Policy

PURPOSE OF THE REPORT

To adopt the revised Road Upgrade Criteria Policy.

BACKGROUND

At the Ordinary Council Meeting held February 2022, Council resolved to implement a review of all Shire policies. The Criteria for Road Upgrading policy was identified as a high priority for review.

The Criteria for Road Upgrading policy was first adopted by Council at the Ordinary Council Meeting held in April 2007. This policy was last amended at the Ordinary Council Meeting held in June 2012.

COMMENTS AND DETAILS

The current *E.2 Road Criteria* policy limits the criteria for a road upgrade to Annual Average Daily Traffic (AADT) counts which is insufficient information to provide an informed decision for road upgrades.

The revised policy (Attachment 1) utilises four (4) key benefit criteria to prioritise and assess proposed road upgrades. These four (4) criteria are:

Transport Benefit

The transport benefit criteria assesses:

- The primary function and use of the road and if there is any connectivity between roads;
- Hierarchy based on Main Roads WA Guidelines; and
- Traffic volumes and the economic significance i.e. tourism, agriculture.

Community Benefit

The community benefit criteria assesses:

- Density of population on the assessed road;
- The environmental, amenity and development impacts;
- Condition of the road; and
- Requests received from adjoining land owners.

Financial Benefit

The financial benefit criteria assesses:

- Cost to the Shire and the potential of external funding;
- Review of the ratio with respect to sealed and unsealed sections of the road; and
- Current and ongoing maintenance costs.

Road Safety

The road safety benefit criteria assesses:

- Width and alignment of the road; and
- Reported crash data obtained from Main Roads WA

The amended policy with the four (4) key benefit criteria will allow a consistent and transparent approach to be applied to the evaluation for road upgrade projects and provide guidance to Council in the decision-making process. It will also provide certainty to the community on the requirements that a road needs to meet before being considered for upgrade.

IMPLICATIONS TO CONSIDER

Consultative:

All policies were provided to the Senior Management Group prior to being presented for discussion with Council at the workshop in April 2022.

Strategic:

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

- Ensure safe and sustainable transport options
- Ensure our built environment meets community needs

A key point of the Shire's *Corporate Business Plan 2019* is to facilitate community safety and wellbeing.

The adoption of the revised policy will demonstrate the Shire of Toodyay's continued commitment to these objectives.

Policy related:

This report is in line with Council's *Corporate Documents* policy, adopted in November 2021, which outlines what is to be included in a policy document and the process for its development.

Financial:

Nil

Legal and Statutory:

Nil

Risk related:

This policy will mitigate risk by providing Council with a quantifiable and transparent approach for the prioritisation of proposed road upgrades.

The selection criteria stipulated within the policy will minimise the risk of budget allocations being utilised on roads which have minimal impact to the community.

Workforce related:

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council adopts the revised *Road Upgrade Criteria* policy as provided at Attachment 1 to this report.

9.5 COMMITTEE REPORTS

9.5.1 EAC - Expression of interest to join Environmental Advisory Committee – Mr Justin von Perger

Date of Report:	12 April 2022
Applicant or Proponent:	Shire of Toodyay / Mr. Justin von Perger
File Reference:	COC14
Author:	H de Vos – 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:	Executive
Attachments:	Nil

PURPOSE OF THE REPORT

To consider an expression of interest (EOI) from Mr Justin von Perger to join the Shire of Toodyay's Environmental Advisory Committee (EAC).

BACKGROUND

The EAC is an important and proactive committee of Council. The committee is currently made up of a number of community members, elected members and Shire officers. The diverse skillset exhibited by the committee members is fundamental to the success of the committee, and membership is encouraged as new interest is shown.

Mr von Perger was present at the February meeting of the EAC and had previously expressed a desire to join the committee on a permanent basis. He has provided the following comments on his EOI for consideration:

I have 23ha in Walkley Heights that I am regenerating and would like to see Toodyay become a more sustainable and regenerative community. I am a Holistic Management Trainer and Permaculturist, and see the enormous potential of regenerative agriculture to restore soil and sequester carbon.

Relevant experience / Qualifications

I run a software company providing land management services to the Mining Sector. We encourage miners to become more sustainable. I have been associated with Toodyay for 50 years, with a hobby farm I am currently regenerating. I am working to set up an institute for Regenerative Agriculture, possible in Toodyay Shire.

COMMENTS AND DETAILS

Mr von Perger's participation in the Environmental Advisory Committee is encouraged and welcomed. External involvement by the Shire's community increases the effectiveness of

Council committees by adding a range of important skillsets and qualifications. Importantly, the collaborative approach between the Shire, elected members and the community is considered essential to successfully delivering the strategic environmental outcomes.

IMPLICATIONS TO CONSIDER

Consultative:

A call for Expressions of Interest to join Council's Committees was advertised by the Shire in the *Toodyay Herald* in the November 2021 edition.

Notwithstanding the advertisement, the Shire encourages prospective committee members to express an interest at any time, and this facility is made available at all times on the Shire's website.

No additional public consultation is required.

Strategic:

Strategic Community Plan – Toodyay 2028

Objective 2: Consistently improve our governance practices

S 2.1 Build a positive culture of engagement between the Shire and the community.

S 2.2 Improve internal and external communication to maximise transparency.

Policy related:

Nil

Financial:

Nil

Legal and Statutory:

Local Government Act 1995

Sections 5.10 provides for the types of committees and membership.

5.10. Committee members, appointment of

1) A committee is to have as its members —

a) persons appointed by the local government to be members of the committee (other than those referred to in paragraph (b));*

and

b) persons who are appointed to be members of the committee under subsection (4) or (5).

** Absolute majority required.*

Risk related:

There are no risks involved with appointment and ratification of community membership to these committees.

Workforce related:

The administration of committees involves substantial resources by way of scheduling, report writing, agenda preparation and minute-taking. Management controls by way of

appointing the CEO or the CEO's Representative in accordance with section 5.10(5) of the *Local Government Act 1995* have been included to ensure that Council Committees (including Mandated Committees) are operating consistently, within appropriate governance processes.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council appoints, in accordance with s.5.10 of the *Local Government Act 1995*, Mr Justin von Perger as a community representative to the Environmental Advisory Committee.

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**12.1 Cr McKeown Questions previously taken on notice (Responses provided)**

The following questions taken on notice, received from Councillor McKeown are responded to below:

Question – Clarification re FOI Request 4.1.2 - OCM 23 February 2022

What was the FOI about?

Response

The FOI was about contracts for the CEO and has been dealt with.

Question 1 – Item 12.1 Cr McKeown questions - OCM 23 February 2022

The Monthly Financial Report for the Period Ending 31 May 2021 reported a YTD expenditure of \$2,805,009 for Infrastructure Works in Progress. The entry was accompanied by a note that stated “Recreation Centre Precinct Project. Reduced by \$1m as the June 2020 accrual for these expenses has now been reversed”. The 2020-2021 budget (reported in the same Financial Report) included a full year budget for Recreation Precinct Buildings of \$2,355,677 and there was no other budget for any other works in the Toodyay Recreation Precinct.

- (a) What was the cause of the overspend of \$2,805,009 - \$2,355,677 = \$449,332 of the budget for the Recreation Precinct?
- (b) What was the source of the Shire funds used to pay for the overspend?

Response given at the meeting was:

Officers’ time is currently consumed with finalising the annual figures for 2020/21, refining the monthly financial reporting and troubleshooting the transition to Datascape. In addition, the mid-year budget process has commenced and is due by 31 March 2022. Therefore, there is not currently time to sufficiently analyse and respond to this question. Officers request that this question be taken on notice until the April 2022 OCM.

Response

This question was addressed at the time of the first request for an explanation with the following response.

“Recreation Centre Precinct Project. Reduced by \$1m as the June 2020 accrual for these expenses has now been reversed” means that as at 30th June 2020 there was an amount of \$1,019,228.98 representing works completed but not paid for through the Creditors system. That was ‘accrued’ as the expense belonged to the 2019/2020 financial year. As the payment was to be made in the 2020/2021 financial year, the accrual needed to be posted in early July as a credit to await the payment to the supplier ADCO Construction Pty Ltd which would have been a debit in the accounts.

The payment was made to the supplier ADCO Construction Pty Ltd – CI as a creditor payment which increased the perceived expenditure.

A reversal of the accrual was posted in a journal should have been posted in July 2020 but was posted on 30 April 2020.

Question 3 – Item 12.1 Cr McKeown questions - OCM 23 February 2022

Prior to the reduction of \$1M in expenditure described in Question 1, several Monthly Financial Reports included a YTD expenditure of \$3,824,298 for Infrastructure Works in Progress, that is, the reduction in expenditure was \$3,824,298 - \$2,805,009 = \$1,019,289. One important result of this reduction in expenditure is the effect on the Closing Funding Surplus/ (Deficit) entries in the Monthly Financial Reports prior to the correction – for example, see the table below.

At the OCM 23 March 2021, the Budget Review for Period Ending 28 February 2021 was considered. The Officers Report for this item stated that “a review has been conducted utilizing the 28 February 2021 figures ...”, that is, the budget review was based on a deficit of \$274,303 rather than a corrected surplus of \$744,986. The budget review included the reduction in capital works to arrive at a budget acceptable to Council. Given that at the time of the budget review there was over \$1m more of available funds, was the reduction in capital works really necessary?

	Closing Funding Surplus/(Deficit)	
	Reported	Adjusted for Correction
Monthly Financial Report for Period Ended 28 February 2021	(\$274,303)	\$744,986
Monthly Financial Report for Period Ended 31 March 2021	(\$698,656)	\$320,633
Monthly Financial Report for Period Ended 31 April 2021	\$420,989	\$1,440,278

Response given at the meeting was:

Officers' time is currently consumed with finalising the annual figures for 2020/21, refining the monthly financial reporting and troubleshooting the transition to Datascope. In addition, the mid-year budget review process has commenced and is due by 31 March 2022. Therefore, there is not currently time to sufficiently analyse and respond to this question. Officers request that this question be taken on notice until the April 2022 OCM.

Response

Please see the response to Question 1.

Question 6 – Item 12.1 Cr McKeown questions - OCM 23 February 2022

At a Special Meeting of Council 25 June 2019, Council approved the award of a contract for the construction of the Toodyay Sport and Recreation Centre to ADCO Constructions Pty Ltd for a contract sum of \$14,528,945.75 inclusive of GST. This figure has been confirmed by the tabling of capital expenditure for the building construction as an attachment to the minutes of the OCM 27 April 2021.

Since the contract was awarded, monthly lists of payments presented to Council show that ADCO has been paid \$14,961,436.27 (inclusive of GST) in 16 payments - see the table below.

- (a) What was cause of the overspend of \$14,961,436.27 - \$14,528,945.75 = \$432,490.52?
- (b) Why and how was the payment of the overspend authorized?

(c) What was the source of the Shire funds used to pay for the overspend?

	Date Paid	\$ GST inc.
ADCO Constructions Ltd, progress claim #1	16/09/2019	319,132.00
ADCO Constructions Ltd, progress claim #2	15/10/2019	605,618.90
ADCO Constructions Ltd, progress claim #3	15/11/2019	587,418.44
ADCO Constructions Ltd, progress claim #4	13/12/2019	888,952.91
ADCO Constructions Ltd, progress claim #5	24/12/2019	619,015.47
ADCO Constructions Ltd, progress claim #6	28/02/2020	1,739,657.54
ADCO Constructions Ltd, progress claim #7	20/03/2020	1,853,178.46
ADCO Constructions Ltd, progress claim #8	30/04/2020	1,825,336.81
ADCO Constructions Ltd, progress claim #9	15/05/2020	992,260.38
ADCO Constructions Ltd, progress claim #10	23/06/2020	1,630,248.52
ADCO Constructions Ltd, progress claim #11	31/07/2020	1,121,217.88
ADCO Constructions Ltd, progress claim #12	4/09/2020	1,267,598.87
ADCO Constructions Ltd, progress claim #13	15/09/2020	900,019.48
ADCO Constructions Ltd, progress claim #14	4/11/2020	517,590.40
ADCO Constructions Ltd, progress claim #15	17/11/2020	60,913.75
ADCO Constructions Ltd, progress claim #16	31/08/2021	33,276.46
Total		14,961,436.27

Response

A significant number of requests for variation were submitted by the Project Manager (Limnios and Johns) throughout the construction period. These related to items not included in the original plans and tender, such as grant and site signage, extra footings and structural steel reinforcement, retaining walls, electrical modifications and fencing, to name a few. The largest variation was for "Rock blasting and excavation in excess of provisional quantity" which amounted to \$199,027 plus GST.

While all variations were formally approved by the Project Manager in accordance with the conditions of contract, records indicate that the CEO and Shire officers were kept informed and variations were considered in the context of the overall budget before approval. It appears that the overspend was funded by savings in other areas. These were also the subject of contract variations.

Contract variations are anticipated with a construction project of this scale. However, the requirement for rock blasting and excavation added significantly to the variations required.

Question 7

In an attachment to the minutes for the OCM 27 April 2021, an “Approved Budget” for the Toodyay Recreation Centre Capital Expenditure was stated to be \$14,967,962.

- (a) What is the source of this “Approved Budget” figure?
- (b) When and by whom was this budget approved?

Response

Investigation by officers indicates that Council was being kept informed of the progress of the TRC project via Council forums and briefings. However, the budget figure of \$14,967,962 was presented to Council in the Confidential Minuted Item 14.3 Sport and Recreation Precinct Progress Report at the Ordinary Council Meeting held 26 November 2019.

Question 8

- (a) Does the Shire know the total cost to the Shire of the Toodyay Recreation Precinct excluding the cost of the land?
- (b) If so, what is it, inclusive and exclusive of GST?
- (c) If not, why not?

Response

This question has been addressed in the report provided earlier in this agenda.

Question – at Agenda Briefing held 16 March 2022

Cr Pearce sought clarification in regard to the question asked by Cr McKeown at the agenda briefing as follows:

Roads that we are no longer proposing to go ahead with – what are they? Geographically I am concerned that the roads may be concentrated in one area – concerned about dropping them as works?

Response given at the meeting was:

The CEO sought leave to take this question on notice.

Response

The response will be provided at the April 2022 Agenda Briefing.

VOTING REQUIREMENTS

Simple Majority

OFFICER’S RECOMMENDATION

That responses to questions taken on notice, raised by Councillor Cr McKeown be received and noted.

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	25 May 2022
Agenda Briefing	18 May 2022
Bushfire Advisory Committee Meeting	4 May 2022
Environment Advisory Committee Meeting	4 May 2022
Local Emergency Management Committee Meeting	11 May 2022

16 CLOSURE OF MEETING