



Ordinary Council Meeting

27 July 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 July 2022, commencing at 1.00pm 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 and 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**2.3.1 Cr Hart - Application for Leave of Absence**

Cr P Hart requested to be granted Approved Leave of Absence from 27 August 2022 to 5 September 2022 (inclusive) and from 24 September 2022 to 1 October 2022 (inclusive).

OFFICER'S RECOMMENDATION

That the Application for Leave of Absence by Cr P Hart from 27 August 2022 to 5 September 2022 (inclusive) and from 24 September 2022 to 1 October 2022 (inclusive) be granted.

2.3.2 Cr Madacsi - Application for Leave of Absence

Cr R Madacsi requested to be granted Approved Leave of Absence from 1 August 2022 to 22 August 2022 (inclusive).

OFFICER'S RECOMMENDATION

That the Application for Leave of Absence by Cr R Madacsi from 1 August 2022 to 22 August 2022 be granted.

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 22 June 2022****OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Ordinary Council Meeting held on 22 June 2022 be confirmed.

5.2 Special Meeting of Council held on 6 July 2022**OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Special Council Meeting held on 6 July 2022 be confirmed subject to a typographical amendment being made to CRN SCM116/07/22 – At Point 1 the figure “\$63,800” be amended to read “\$64,800”.

5.3 Special Meeting of Council held on 13 July 2022**OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Special Council Meeting held on 13 July 2022 be confirmed.

5.4 Agenda Briefing held on 20 July 2022**OFFICER'S RECOMMENDATION**

That the Notes of the Agenda Briefing held on 20 July 2022 be received.

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 Proposal to gift land to the Returned and Services League - Toodyay Sub-branch**

Date of Report:	11 July 2022
Applicant or Proponent:	Shire of Toodyay / Returned and Services League – Toodyay Subbranch
File Reference:	A1972/6CLI
Author:	H de Vos – Manager Development and Regulation
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	Item 9.1.6 25 May 2022
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. MAP - Proposed land to be gifted ⇒

PURPOSE OF THE REPORT

To brief the Council on the process of gifting land in the event the Council resolves to gift the land located at the former Shire Parks and Gardens Depot located at Lots 3-6 Clinton Street in Toodyay. For more details please refer to **Attachment 1 – Map**.

BACKGROUND

The project between the Shire of Toodyay and the Returned and Services League (RSL) Toodyay Sub-Branch continues to be a focus. It has entered a new round of discussions which have resulted from the initial project being beset with problems.

The RSL still sees the Clinton Street site as the best location for the new headquarters given the size of the land, its central location and most importantly, its proximity to the ANZAC Memorial. The Shire of Toodyay shares this appraisal of the site and is keen to progress this project so it can realise completion in a timely manner.

The previous proposal involved repurposing and refitting the original shed on site, however the RSL is now investigating options to have that structure demolished and to instead build a purpose-built structure for a new clubhouse.

Currently, the RSL has a lease agreement with the Shire of Toodyay for the use of the site up until 2028.

Most recently, the Shire of Toodyay has been in discussion with the RSL Toodyay Sub-Branch about the possibility of gifting the property to the organisation as a means to support the future development of the site.

COMMENTS AND DETAILS

Gift of land

The Shire can if it wishes, transfer Lots 3, 4, 5 and 6 Clinton Street, Toodyay (Land) to Returned & Services League of Australia WA Branch Incorporated (RSL) as a gift. The gift should have a condition attached that provides a financial return to ratepayers (as it is their land) should the gifting proceed and the RSL at a later date decides to divest itself of the property. This would not apply if the sale was to be used to supply another RSL building within Toodyay. However, if the sale resulted in the Toodyay RSL no longer having its own premises, then the Shire should receive some of the proceeds of the sale as it is considered a community asset.

IMPLICATIONS TO CONSIDER

Consultative:

Given the legal advice received states that this gifting is exempt from the provisions of s.3.58 of the *Local Government Act 1995*, there is no statutory requirement for advertising this proposal. Whilst the Shire can still choose to notify the public of its intention to dispose of this property – it is not deemed necessary in this instance. This is because there has already been extensive previous consultation with the community regarding the RSL in association with the subject site.

Notwithstanding the above, the Shire has sought independent legal advice since the matter was last before the Council. The purpose of this was to gain input and assistance regarding the drafting of an appropriate recommendation and set of conditions.

In addition to this, the matter was workshopped with elected members at the Council workshop held on 13 July 2022 attended by seven councillors.

Strategic:

Shire of Toodyay Strategic Community Plan – Toodyay 2028

A Council that engages with the community and provides good governance on behalf of the community.

Policy related:

Shire of Toodyay F12 Disposal of Property Policy

Where assets have been identified as being surplus to the Shires requirements, due for replacement or is deemed appropriate for disposal through the relevant act, the following procedures will apply to the disposal of that asset.

- Section 3.58 of the *Local Government Act 1995* requires Council to dispose (sell, lease or otherwise dispose) of property assets either by public auction or public tender in accordance with the legislated requirements. **Section 3.58 5(d) allows for certain dispositions to be exempted from these requirements through regulation.**
- The disposition of which shall be an exempt disposition pursuant to Regulation 30(2) and (3) of the *Local Government [Functions and General] Regulations 1996*.

Financial:

The gift should have a condition attached that provides a financial return to the ratepayers (as it is their land) should the gifting proceed and the RSL at a later date decides to divest itself of the property. This would not apply if the sale was to be used to supply another RSL building within Toodyay. However, if the sale resulted in the Toodyay RSL no longer having their own premises, then the Shire should receive some of the money of the sale as it is considered a community asset.

A further proposed condition of the gift is that the RSL is required to cover the associated with the transfer of land, including:

- Legal fees;
- Stamp duty;
- Document lodgement with Landgate;
- Valuations;
- Land Surveys.

Legal and Statutory:*Local Government Act 1995*

Section 3.58 of the *Local Government Act 1995* sets out the process that local governments follow in relation to the disposition (i.e. sale, transfer, or lease) of local government property. However, section 3.58(5) provides that the requirements of section 3.58 will not apply to dispositions that are excluded by regulations.

In that regard, the exclusions are set out in Regulation 30 of the *Local Government (Functions and General) Regulations 1996*. Regulation 30(2)(b) sets out the exclusion, which is application to the proposed gift, and provides as follows:

a disposition of land is an exempt disposition if.... the land is disposed of to a body, whether incorporated or not:

- (i) *the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and*
- (ii) *the members of which are entitled or permitted to receive any pecuniary profit from the body's transaction.*

The proposed gift to RSL will fit within the Regulation 30(2)(b) exemption, given that RSL is incorporated under the *Associations Incorporation Act 2015* and the requirements set out in (i) and (ii) above are pre-conditions to incorporation under that Act.

So, in conclusion, Council of the Shire may simply resolve to gift the land to the RSL. To give effect to the gift, it will largely be a matter of lodging a transfer of land document with Landgate and comply with Landgate's registration requirements. The RSL would be responsible for any of the associated costs involved with this process such as stamp duty.

Risk related:**Reputational**

The Shire of Toodyay is under scrutiny from the RSL to provide appropriate support to see this project completed. Therefore, should this process continue to be a protracted one, it could do reputational damage.

Workforce related:

This project will require staff resources but it will be limited initially to the Development and Regulation department and Senior Management.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council agrees to transfer Lots 3, 4, 5 and 6 Clinton Street, Toodyay (**Land**) to Returned & Services League of Australia WA Branch Incorporated (**RSL**) for nil consideration on the following terms and conditions:

1. If RSL elects to sell the Land and any improvements in the future, the Shire will be entitled to 30% of the proceeds following the deduction of any reasonable costs and expenses incurred by RSL in respect of the sale;
2. In order to ensure compliance with paragraph (a), RSL and the Shire will enter into a legal agreement prior to the transfer of the Land, and such agreement will include 'charge and caveat' provisions which will allow the Shire to lodge an absolute caveat over the Land;
3. All costs associated with the transfer of the Land, the agreement and caveat must be fully borne by RSL.

9.1.2 Lot 18 Timber Creek Crescent, Coondle - Proposed Outbuilding and water tank - Setback Variation

Date of Report:	6 July 2022
File Reference:	P2022-42/A1165/18TIMC
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. P2022-42 - Application Plans ⇒ 2. P2022-42 - Schedule of Submissions ⇒

SUMMARY

Applicant:	Shane and Lola Jones
Owner:	Shane and Lola Jones
Proposal:	Outbuilding and Water Tank – Setback Variation
Location:	Lot 18 Timber Creek Crescent, Coondle

PURPOSE OF THE REPORT

To consider a setback variation of 16.88m for an outbuilding and 27m for a water tank in lieu of 30m off the northwestern boundary at Lot 18 Timbercreek Crescent, Coondle.

This application has received a submission, and therefore needs to be referred to Council for determination.

BACKGROUND

The proposal seeks to develop an outbuilding and water tank on site at Lot 18 Timbercreek Crescent, Coondle. Lot 18 is 2.02 hectares and is zoned 'Rural Residential' under the Shire's *Local Planning Scheme No. 4* ("the Scheme").

Proposal

An application was received for development approval for a setback variation of 16.88m for an outbuilding and 27m for a water tank in lieu of 30m. The property consists of steep terrain which makes it difficult to achieve the setback of 30m. For more information, please refer to the **Attachment 1- P2022-42 Application Plans**.

Timeframe to determine.

On 9 May 2022, the Shire received an application for development approval for an outbuilding and water tank. The proposed siting requires a boundary setback variation for consideration.

Given this application requires advertising, Council must determine the application within 90 days which is 7 August 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 difficult to achieve.

The Scheme recognises this and provides 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 difficult 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 mail out including covering letter and plans was sent to adjoining affected landowners who were given 14 days to comment. This period expired on 14 June 2022 and one submission was received.

The main issue raised in the submission was if the setback variation was allowed and the owners then decided to sell or used the property as an investment and rented it out, the people who may then live at the property, may not be as nice as the current owners.

As previously outlined the topography on this land parcel makes adhering to the 30m setbacks difficult. 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**.

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. It is noted that this policy has been updated and reviewed since consultation for this application was conducted.

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*.

Strategic

Strategic Community Plan – Toodyay 2028

Objective 3: Improve processes to support the built environment

S 3.1 Adjust regulatory processes to be more enabling and accessible.

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.

Risk related:

If Council is of a mind to refuse the application, Council is reminded that the applicants might have a right of appeal to the State Administrative Tribunal (SAT). Should the applicants elect to appeal Council’s decision (refusal or dissatisfied with conditions of approval), the Shire may be required to assign resources to defend its position at SAT.

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 an outbuilding and water tank at Lot 18 Timber Creek Crescent, Coondle subject to the conditions:

1. The development hereby permitted must substantially commence within two years from the date of this decision letter.
2. The development hereby permitted taking place in accordance with the plans submitted with the application.
3. 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.

4. Use of the outbuilding shall be for domestic purposes only and not for human habitation.

9.1.3 Lot 106 Roberts Vale, Hoddys Well - 3 Dog Application

Date of Report:	12 July 2022
Applicant or Proponent:	Gavin and Sue Hammer
File Reference:	A3657/106ROB
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:	Nil

PURPOSE OF THE REPORT

For Council to consider an application for the keeping of 3 dogs at Lot 106 (24) Roberts Vale, Hoddy's Well as it does not meet the requirements of the 'Keeping of 3 to 6 Dogs' policy.

BACKGROUND

The Applicant is seeking approval to have 3 dogs at Lot 106 (24) Roberts Vale, Hoddy's Well as follows:

No.	Breed	Colour	Name	Sex	Sterilised	Age
1	German Shepherd	Sable	Aria	F	N	3 Years
2	Swiss Shepherd	White	Rocky	M	N	1 Year
3	Maltese Shih Tzu	Black and White	Narla	F	N	11 Years

COMMENTS AND DETAILSEarlier Approvals

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

Applicant's Justification

The Applicant's justification for keeping more than two dogs at the application address is the dogs are sheep dogs and in his spare time he uses the dogs to unload trucks and muster sheep.

The Property

Lot 106 (24) Roberts Vale, Hoddy's Well has an area of 4.5ha and is zoned 'Rural Residential' under the Shire's Local Planning Scheme No 4.

Ranger Inspection

The Shire's Ranger Services inspected the property on 21 April 2022. The Rangers' findings are listed below:

Aspect	Ranger Comments
Fencing	The area built to effectively confine the dogs has several different fencing and gate types.
Materials and Height of Fencing	A combination of Colourbond fence approximately 1600mm high, pool fencing 1200mm high, standard pool gate 1200mm high, treated pine post / heavy galvanised mesh fencing 100 x 50 x 1300mm high, a large wooden gate 1200mm high, a small wooden gate 1200mm high and a standard rural farm gate 900mm high.
Locking Devices on Gates	The pool fencing gates have standard D locking latches, the large wooden gate has a horse lead rope / snap hook and the small wooden gate at point of inspection had a small drop latch.
Housing	All of the dogs are reportedly allowed inside and outside of the house. The Maltese Shih Tzu reportedly spends the majority of its time inside of the house. The two Shepherds reportedly spend the majority of their time in their containment area and are crated under the veranda between 9:00pm – 5:00am every day. Between Sue, Gavin and their daughter Ashleigh, the dogs are reportedly walked twice daily.
Condition of Existing Dogs	The two Shepherds appeared to be in good physical condition and the Maltese Shih Tzu appeared to be in good condition for a dog of its age.
Dog(s) / Owners History	The Rangers have attended the property on multiple occasions regarding the dogs barking, with no suitable outcome achieved.

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

Whilst the dogs are in good health, and the Ranger supports this application - the dogs are proven nuisance barkers. There have been multiple instances of complaints regarding these dogs barking. Allowing multiple dogs is likely to exacerbate this issue. Therefore, officers do not support the application on these grounds.

However, should Council be of a mind to support the application, it is recommended that a condition requiring barking collars for the animals be included.

IMPLICATIONS TO CONSIDER**Consultative:**

Consultation was undertaken in accordance with section 5 of Council's 'Keeping of 3 to 6 Dogs' Policy. Ten (10) landowners were contacted with one submission received.

Please see **Attachment 2 – Schedule of submissions** for further details.

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:

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

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

Under section 4 of the Policy, an application to have more than 2 dogs on a property must, among other things, be accompanied by the reason(s) for which the applicant requires the permit.

In the current 3 -6 Dog Policy, there are no clearly defined reasons for exemptions for the assessing officer or Council to consider when determining applications for more than two dogs.

Therefore, each case is judged on its own merits. In this regard, there are no defined controls or standards to guide a decision and therefore the Council should be relying on the

Financial:

Nil.

Legal and Statutory:

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

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

Risk related:

If Council is of a mind to refuse the application, Council is reminded that the applicants might have a right of appeal to the State Administrative Tribunal (SAT). Should the applicants elect to appeal Council's decision (refusal or dissatisfied with conditions of approval), the Shire may be required to assign resources to defend its position at SAT.

Workforce related:

This matter has been delayed in being brought to the Council due to resourcing and staffing restrictions which have resulted in longer than normal wait times.

Whilst it is regrettable, 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 refuses the keeping of three (3) dogs on Lot 106 (24) Roberts Vale, Hoddy's Well for the following reasons:

- (a) Multiple dogs on the property have a proven history of nuisance barking which have been shown to be allowed to behave consistently in a manner contrary to the general interest of the community.
- (b) Council advises the applicant that only (2) two dogs are authorised on the property which must be confined to the property and kept under control.
- (c) Fencing and gates on the premises or a portion of the premises where the dogs are to be contained, must be of a suitable type, height and construction to prevent the dogs at all times from passing over, under or through it.
- (d) The third dog must be removed from the property or surrendered to the Ranger within 28 days.

9.1.4 Lot 142 Powder Bark Road, Julimar - 3 Dog Application

Date of Report:	12 July 2022
Applicant or Proponent:	M Clarke
File Reference:	A1573/142POW
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"> 3 to 6 Dog Ranger Inspection Report ↔ Schedule Of Submissions ↔

PURPOSE OF THE REPORT

For Council to consider an application for the keeping of 3 dogs at Lot 142 (49) Powder Bark Road, Julimar.

BACKGROUND

The Applicant is seeking approval to have 3 dogs at Lot 142 (49) Powder Bark Road, Julimar as follows:

No.	Breed	Colour	Name	Sex	Sterilised	Age
1	Retriever x Rottweiler	Black	Shadow	M	Y	6 Years
2	Kelpie x Border Collie	Black	Poppy	F	N	6 Months
3	Kelpie x Bull Arab	Black and Brown	Jack	M	N	6 Months

COMMENTS AND DETAILSEarlier Approvals

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

Applicant's Justification

The Applicant's justification for keeping more than two dogs at the application address is the two puppies were bought after moving to the property for their children.

The Property

Lot 142 (49) Powder Bark, Road, Julimar has an area of 4.00ha and is zoned 'Rural Residential' under the Shire's *Local Planning Scheme No 4*.

Ranger Inspection

The Shire's Ranger Services inspected the property on 28 April 2022. The Rangers' findings are listed below:

Aspect	Ranger Comments
Fencing	Not Suitable for the breed of dogs.
Materials and Height of Fencing	Multiple products including ring lock, old gates, star pickets, perma poles and old security doors. Fencing height is approximately 1.2m tall. Rural fence gates approximately 1.2m tall.
Locking Devices on Gates	No locks on the gates only twisted wire to secure.
Housing	Dogs sleep inside an IBC* container outside. Dogs have access to the couch when sleeping inside.
Condition of Existing Dogs	Shadow is in good condition. Poppy looks under nourished. Jack looks under nourished.
Dog(s) / Owners History	<ul style="list-style-type: none"> 02/02/2022. Dog attack involving all three dogs. Eldest dog Shadow was witnessed biting a horse causing puncture wounds. Multiple cases of dogs wandering involving all three dogs. Multiple complaints from residents regarding the wandering.

* IBC is an acronym for **intermediate bulk container**, a large, reusable container used for storage or transport of industrial goods. Versatile IBCs have a long list of potential uses, from carrying chemicals to storing sand, and they're a popular choice across a range of sectors. They are commonly seen being used around the Shire for water storage.

Please see **Attachment 1** for further details.

As outlined under the 'ranger inspection' section of this report, the applicant's oldest dog has been involved in an attack against a horse and on multiple occasions all three dogs have been picked up the ranger for wandering or sighted by neighbours wandering outside the property.

The Ranger has shown leniency and has made multiple attempts to educate and assist the owners in providing adequate fencing to control their dogs.

With the information provided, officers recommend that this application be refused.

IMPLICATIONS TO CONSIDER**Consultative:**

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

Seven (7) landowners were contacted with one objection received.

Please see **Attachment 2** for a Schedule of submissions.

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

A Council that engages with the community and provides good governance on behalf of the community.

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:

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

Under the Policy, the maximum number of dogs that could be approved by Officers in the 'Rural Residential' zone is 3.

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.

In the current 3-6 Dog Policy, there are no clearly defined reasons for exemptions for the assessing officer or Council to consider when determining applications for more than two dogs.

Therefore, each case is judged on its own merits. In this regard, there are no defined controls or standards to guide a decision and therefore the Council should be relying on the advice of the Rangers and Officer writing this report.

Financial:

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

Legal and Statutory:

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

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

Risk related:

If Council is of a mind to refuse the application, Council is reminded that the applicants might have a right of appeal to the State Administrative Tribunal (SAT). Should the applicants elect

to appeal Council's decision (refusal or dissatisfied with conditions of approval), the Shire may be required to assign resources to defend its position at SAT.

Workforce related:

This matter has been delayed in being brought to the Council due to resourcing and staffing restrictions which have resulted in longer than normal wait times.

Whilst it is regrettable, 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 three (3) dogs on Lot 142 Powder Bark Road, Julimar, due to failure to effectively confine the dogs to the property.
2. Council advises the applicant that only (2) two dogs are authorised on the property which must be confined to the property and kept under control.
3. Fencing and gates on the premises or a portion of the premises where the dogs are to be contained, must be of a suitable type, height and construction to prevent the dogs at all times from passing over, under or through it.
4. The third dog must be removed from the property or surrendered to the Ranger within 28 days.

9.2 CORPORATE AND COMMUNITY SERVICES

9.2.1 Monthly Financial Statements - June 2022

Date of Report:	11 July 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN24
Author:	N Mwale– Finance Coordinator
Responsible Officer:	T Bateman – Manager Corporate and Community Services
Previously Before Council:	NA
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative/Review
Attachments:	1. Monthly Financial Statement as at 30 June 2022 ⇒

PURPOSE OF THE REPORT

This report provides Council with monthly financial information for the period ending 30 June 2022.

BACKGROUND

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

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

DETAILS:

The following documents, included as **Attachment 1**, comprise the statement of financial activity for the period ending 30 June 2022:

Note	Description	Page
1.	Statement of Financial Activity by Program Report	1
2.	Variance Analysis Report	2
3.	Rating Information	3
4.	Debtors Report	4
5.	Budget Amendments to Original Budget	5-6

COMMENTS AND DETAILS

The Statement of Financial Activity summarises the Shire's operating and capital activities and provides an indication of the Shire's financial performance as the year progresses. In accordance with *FM Regulation 34(1)* this statement is to include comparisons with the annual budget and the year-to-date budget. It is noted however, that the year-to-date actuals reported for June 2022 are an estimate only and are subject to audit adjustments. Many factors can affect timing for completion of projects, emphasising discrepancies between budgets and actuals.

The attached reports include the Statement of Financial Activity (SFA) for June 2022. Datacom has done some advanced work on reports supporting Annual Financial Statements in Datascape. However for monthly reports, officers are still using excel spreadsheets to construct the reports. Officers continue to work alongside Datacom to rectify the situation.

Key Financial areas

The following information provides balances for key financial areas for the Shire of Toodyay's financial position as at 30 June 2022.

Outstanding Rates and Services

Rating Information

The notices for rates and charges levied for 2021/22 were raised on 13 October 2021 after the adoption of the budget.

The *Local Government Act 1995* provides for ratepayers to pay rates by four instalments. The due dates for each instalment are:

	Due Date
First Instalment	17 November 2021
Second Instalment	17 January 2022
Third Instalment	18 March 2022
Fourth Instalment	18 May 2022

The total outstanding rates and charges balance at the end of June was \$767,236.36 compared to May 2022 closing balance of \$1,205,647.74.

After last instalment rates were sent out on 18 May 2022, all ratepayers with outstanding balances were contacted either by email or letter. As a result of this approach, most rate payers were able to pay for their outstanding rates.

Further detail regarding the composition of outstanding rates is included in **Attachment 1**.

Outstanding Sundry Debtors**Sundry Debtors Information**

The total outstanding sundry debtors balance at the end of June was \$379,903.71 broken down as follows:

Category	31/05/2022	30/06/2022
> 90 days and over	143,970.44	142,076.38
> 60 days and over	1,156.54	6,316.37
> 30 days and over	307,230.97	-327.71
Current	223,067.56	231,838.67
TOTAL	673,425.51	379,903.71

The table above shows a relative decrease in the outstanding sundry debtors balance in the 90 days category. An overdue amount of \$124,980 is owed by ADCO Construction Pty Ltd water charges at the Toodyay Recreation Centre. This amount will be recognised as a doubtful debt as part of the 2020/21 financial audit.

IMPLICATIONS TO CONSIDER**Consultative:**

Datacom

Strategic:

Governance: The way the Shire leads and operates.

Objective 3: Ensure rigorous organisational systems.

Policy related:

F.02 Authorised Signatories

F.03 Purchasing

F.11 Corporate Credit Cards

F.16 Financial Governance

CS.1 Payments from the municipal or trust fund (referred to in Section 6.10 "Financial management regulations" of the Local Government Act 1995)

Financial:

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

Legal and Statutory:

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

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

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

Risk related:

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

Workforce related:

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council receives the Monthly Financial Statements for the month ending 30 June 2022.

9.2.2 List of Payments - June 2022

Date of Report:	12 July 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN24
Author:	C Murcott – HR/Payroll Officer
Responsible Officer:	N Mwale – Finance Coordinator
Previously Before Council:	NA
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. List of Payments - June 2022 ⇒

PURPOSE OF THE REPORT

To present cheques and electronic payments raised during June 2022.

BACKGROUND

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

COMMENTS AND DETAILS

The list of all payments processed under delegated authority during June 2022 are attached at **Attachment 1**.

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:***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 June 2022 are in accordance with Council's 2021/2022 Budget.

Legal and Statutory:

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

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

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

Risk related:

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

Workforce related:

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

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

Direct Debits	\$ 24,942.42
EFTs	\$ 909,792.32
DD Loans	\$ 198,735.80
Payroll	\$ 230,344.56
Municipal Cheques	\$ 13,017.73
TOTAL	\$1,376,832.83

9.3 EXECUTIVE SERVICES

9.3.1 Discussion Paper - Review Councillor Representation

Date of Report:	24 June 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	ELT2/MEM1
Author:	S Haslehurst – Chief Executive Officer
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	OCM 23 March 2022 Item 9.3.2
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Representation Discussion Paper ⇒

PURPOSE OF THE REPORT

To seek Council's approval to advertise the DRAFT Discussion Paper for Review of Councillor Representation (**Attachment 1**) for public feedback.

BACKGROUND

At the Ordinary Council Meeting held on 23 March 2022, Council resolved as follows:

That Council:

1. *Notes the approval received from the Electoral Commissioner to defer filling the current elected member vacancy until the 2023 ordinary elections.*
2. *Determines to undertake a review of Councillor representation in accordance with Schedule 2.2 of the Local Government Act 1995 and the process and timeline outlined in this report.*

The timeline referred to in the above resolution is provided below.

Date	Action	Progress
March 2022	<i>Council resolves to undertake a review of representation</i>	Complete
July 2022	Discussion paper workshopped with and then presented to Council for approval	In progress
August 2022	Local Public Notice and distribution of Discussion Paper Community engagement	

<i>Date</i>	<i>Action</i>	<i>Progress</i>
30 September 2022	Closing date for submissions (9 weeks)	
November 2022	Council workshop to consider submissions	
	Council decision	
30 January 2023	Deadline for submission of a report to the Local Government Advisory Board to allow any changes to be implemented as part of the 2023 ordinary elections.	

COMMENTS AND DETAILS

The DRAFT Discussion Paper (the Discussion Paper) proposes several options for consideration and has been developed in accordance with the guidelines provided by the Department of Local Government, Sport and Cultural Industries (DLGSC). Once the discussion paper is approved, local public notice will be provided in the Toodyay Herald, on the Shire's website and social media seeking public submissions. In addition, the Shire President will be asked to encourage feedback during her monthly "Around the Towns" interview on Triple M.

The closing date of 30 September 2022 provides 9 weeks for submissions and allows time for Council to consider the feedback received and make a decision prior to the deadline for submission of a report to the Local Government Advisory Board (the Advisory Board).

The Advisory Board will consider the recommendations of Council and make recommendations to the Minister for Local Government. If approved, the changes will be subject to a Governor's Order and publication in the Government Gazette before they can be implemented.

The deadline imposed by the Advisory Board means that any changes to Councillor represented can be implemented in time for the 2023 ordinary elections.

Local Government Reform

In November 2021, the Minister for Local Government released a suite of proposed local government reforms. One of the recommendations was that for local governments with a population of less than 5,000 people, the maximum number of elected members be reduced to five.

Through its input into the submission by the WA Local Government Association, the Shire of Toodyay opposed the recommendation, maintaining that a minimum of five councillors is too few to ensure adequate representation and efficient operation of the Council.

In early July 2022, it was announced that the reform package had been finalised with legislation expected to be presented to Parliament by the end of the year. The amended proposal allows local governments with a population of up to 5,000 people to decide to have 5, 6 or 7 councillors. Officers sought advice from the Department of Local Government, Sport and Cultural Industries on whether the current review process should be continued and received the following response:

As the Shire of Toodyay has already commenced investigating the possibility of reducing councillor numbers, the Department's view would be that it would be appropriate to continue with progressing your review process, ahead of the 2023 LG elections.

IMPLICATIONS TO CONSIDER**Consultative:**

- Department of Local Government, Sport and Cultural Industries.
- The notion of Councillor representation was raised at the 'Let's Talk community engagement sessions' conducted between February and June this year, and although those sessions were poorly attended, those that did attend did not express any strong opinions on the matter.
- Other proposed engagement outlined above.

Strategic:

Governance: the way the Shire leads and operates

Objective 2: Consistently improve our governance practices.

Policy related:

Nil

Financial:

Costs for advertising and promotion of the review have been considered as part of the 2022/23 budget process.

Legal and Statutory:

Local Government Act 1995

Schedule 2.2 Provisions about names, wards and representation.

Risk related:

There is a potential reputational risk associated with a reduction in elected members, should that be the final recommendation of Council. The proposed review process aims to mitigate this risk by seeking community feedback to inform any decision.

Workforce related:

The added workload resulting from the proposed review is anticipated to be met within existing resources.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council:

1. Approves for public advertising the Discussion Paper – Review of Representation provided at **Attachment 1** to this report.
2. Requests the CEO to provide local public notice seeking submissions on the Discussion Paper with a closing date of 30 September 2022.
3. Authorises the CEO to make any minor typographical amendments to the Discussion Paper prior to publication.

9.3.2 Shire of Toodyay Information Statement

Date of Report:	12 May 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:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. REVISED Information Statement. ↗

PURPOSE OF THE REPORT

To endorse the REVISED Information Statement (**Attachment 1**) for publication on the Shire's website and submission to the Office of the Information Commissioner.

BACKGROUND

Section 94 of the *Freedom of Information Act 1992* requires local governments to publish an up-to-date Information Statement, reviewed annually. Section 97 requires the updated statement to be provided to the Office of the Information Commissioner.

A local government agency's Information Statement should inform the public of the structure and functions of the agency, outline the types of documents held by the agency, and explain how the agency's documents can be accessed by the public ([section 94](#)).

COMMENTS AND DETAILS

The Shire of Toodyay's [Information Statement](#) was last published in November 2019.

Section 94 of the *Local Government Act 1995* provides a list of local government information that the public can inspect. The Information Statement contains a Document Access Table that further delineates whether the information listed is available in hardcopy or on-line. Requests for information outside of what is listed on the Document Access Table may fall into the parameters of an Freedom of Information Application.

The Information Statement contains information about the process the Shire follows with respect to applications and provides a form for a member of the public to make an application under FOI and/or to change their details.

There is no statutory requirement for the Information Statement to be approved by Council. However, it is presented to Council for information and endorsement.

IMPLICATIONS TO CONSIDER**Consultative:**

Office of the Information Commissioner.

Strategic:

Strategic Community Plan – Toodyay 2028 (SCP)

Governance – the way the Shire leads and operates.

O2: Consistently improve our governance practices.

Policy related:

Nil.

Financial:

Nil.

Legal and Statutory:

Freedom of Information Act 1992 – Sections 94 – 97.

Risk related:

The Shire is non-compliant in relation to current FOI legislation as an Information Statement has not been updated, nor provided to the Office of the Information Commissioner since November 2019. The endorsement of the REVISED Information Statement will mitigate any further risk of non-compliance.

Workforce related:

Following the endorsement of the Information Statement, a Shire Officer will publish it on the Shire's website, and forward it to the Office of the Information Commissioner.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council:

1. Receives and endorses the REVISED Information Statement as attached to this report at Attachment 1.
2. Authorises the Chief Executive Officer to make any necessary minor typographical changes, prior to publication on the Shire's website and forwarding to the Office of the Information Commissioner.

9.3.3 Chief Executive Officer Performance Review 2022

Date of Report:	14 July 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	HR421
Author:	T Bateman – Manager Corporate and Community Services
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Process for CEO Performance Review 2022. ⇒ 2. Quotations - CEO Performance Review 2022. Confidential for the reasons in Section 5.23(2) (e) of the Act. (confidential) (under separate cover)

Attachment 2 to this report is confidential under section 5.23(2)(e)(ii) of the Local Government Act 1995 as it contains information that has a commercial value to a person. Regulation 14(2) of the Local Government (Administration) Regulations 1996, enables the CEO to make the attachment confidential. Councillors may decide to move behind closed doors to discuss the content of the attachment.

PURPOSE OF THE REPORT

To determine the process for the review of the Chief Executive Officer's (CEO)'s annual performance and remuneration package and the development of performance criteria for the next twelve months.

BACKGROUND

In February 2021, the *Local Government (Administration) Amendment Regulations 2021* (the Regulations) were enacted which prescribe model standards for the recruitment, selection, performance review and termination of local government CEOs. Local governments are required to adopt as a minimum, the model standards and publish them on their official website.

At the Ordinary Council Meeting held 27 July 2021, Council adopted policy *G.5 Standards for CEO Recruitment and Selection, Performance Review and Termination* in accordance with the above legislation.

In 2021, Council engaged Price Consulting to undertake the annual review of the CEO's performance and to develop key performance indicators for 2022. This process was finalised in October 2021.

Officers developed an outline of the process for the 2022 review of the CEO's performance which is provided at **Attachment 1**. This was emailed to all Councillors on 8 July 2022 and

discussed at a workshop held on 13 July attended by 8 Councillors. The proposal was sent to two consultants for quotation in accordance with the Shire's *Purchasing* policy. 2 quotations were received and are attached at **Confidential Attachment 2**

Council is now requested to consider the process for a review of the CEO's performance and remuneration and the selection of an independent consultant to undertake the review and to assist Council to determine the CEO's performance criteria for 2022/23.

COMMENTS AND DETAILS

Officers have asked for quotations based on the outline developed and adopted in 2021 with the following as optional additions:

Council Training Session

Training for *CEO Performance Appraisals* was attended by five of the currently elected members in August 2021. The three new members elected in October 2021 have not undergone this training as yet.

360-degree Assessment

This is intended to provide the option to invite executive staff to provide comment, adding further depth to the appraisal process. This is generally useful where there are perceived cultural issues within the organisation.

CEO Remuneration Report

A review report that provides benchmarking of the CEO total remuneration package and consideration of other relevant factors.

Options

The officer recommendation proposes none of the above additional options for inclusion. However, Council could choose to include all, some or none of the above options, noting that each option will incur an additional cost.

Council could if it wished, establish a CEO Employment Committee with Councillors appointed to work with the Consultant to finalise the review. Alternatively, all Councillors could participate in the process. The quotations attached are based on all Councillors participating.

IMPLICATIONS TO CONSIDER

Consultative:

The proposed process for the CEO Performance and Remuneration Review 2022 was discussed at a workshop with Council held on 13 July 2022 attended by 8 Councillors.

Strategic:

Shire of Toodyay Strategic Community Plan 2028

Governance: The way the Shire leads and operates

O 2: *Consistently improve our governance practices.*

O 3: *Ensure rigorous organisational systems.*

Policy related:

Standards for CEO Recruitment and Selection, Performance Review and Termination: Part 3.

Financial:

Officers have included in the draft budget an allocation for consultants' fees. It is recommended that Council considers the proposed fee for the CEO Performance and Remuneration Review from this allocation.

Legal and Statutory:

Local Government Act 1995 (WA): s5.38 – s5.40

Local Government (Administration) Regulations 1996: Reg 18FA

CEO Contract of Employment: clauses 4.3 and 4.4

Risk related:

There is a compliance risk if Council chooses to delay the process that is the subject of this report. This risk is rated 'high'.

Workforce related:

The timely setting of CEO Key Performance Indicators is important to allow for a) the setting of operational KPI's across the organisation and b) sufficient time for achievement.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council

1. Appoints _____ to assist Council to:
 - (a) Undertake the annual review of the CEO's performance;
 - (b) Review the CEO's remuneration for 2022/23; and
 - (c) Determine the CEO's performance criteria for 2022/23;
2. Endorses the methodology proposed by the selected Consultant for the CEO Performance and Remuneration Review and development of Performance Criteria.
3. Determines that all Elected Members may participate in the CEO Performance and Remuneration Review and development of Performance Criteria.
4. Notes that:
 - (a) An allocation to engage an external Consultant has been included in the draft 2022/23 Annual Budget for Council's consideration; and
 - (b) A report will be presented to Council as soon as is practicable to endorse the outcomes of the CEO's probation and remuneration review.

9.3.4 Copyright Policy.

Date of Report:	13 July 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	MAN6/PCY2
Author:	M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	April 2022 OCM
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Current Copyright Policy; and ⇒ 2. Appendix 2 Deed of Gift (Attachment 5) ⇒

PURPOSE OF THE REPORT

To consider revoking the Shire's Copyright Policy (**Attachment 1 and 2**).

BACKGROUND

Council authorised a review of all Shire Policies in February 2022.

The Copyright Policy was provided to Council as part of the Ordinary Council Meeting Agenda in April 2022. At that meeting Councillors deferred it to a workshop in May 2022.

COMMENTS AND DETAILS

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

The [Shire of Toodyay Copyright Statement](#) appearing on the Shire's website asks anyone wishing to reproduce material for commercial or non-personal use, to request permission to do so. This statement can be reworded to say, "*nothing on this website should be used for commercial reasons, except through permission from the CEO.*" Advice received from the WA Local Government Association (WALGA) indicated that broadly speaking, everything that the Shire puts on its website is owned by the local government, including documents, master plans, and other integrated strategic planning and operational materials that the Shire creates under the Act.

Councillors had concerns with the first revision of the policy provided to them at the 4 May 2022 Council workshop. A revised draft policy was provided to Councillors via teams on 20 June 2022. Comments and queries received prompted further research which identified that no other West Australian local governments have a copyright policy. Officers also liaised with the Governance Team at WALGA.

The *Local Government Act 1995* identifies a range of information that the local government is statutorily required to make available for public inspection as well as publishing on the local government's website for a community purpose.

Advice from WALGA indicated that *if the Shire had a Copyright Policy, it would be more appropriate as an Administration Policy/procedure, as it related to the day-to-day management issues, and therefore does not need to come to Council for approval.*

A range of operational procedures have been developed and are currently used to ensure compliance with copyright law including (but not limited to):

- Officers and Volunteers of the Shire Museum follow by way of a form for release (Attachment 5 – Appendix 2 Deed of Gift).
- Release forms for photographs taken by Shire Officers are utilised when photographs are taken of individuals.
- Forms are provided where personal information is to be placed upon the website of Councillors and other Shire Officers.
- Any applications made to the Development and Regulation team also have information on them whereby the Shire is seeking approval for plans and information to be shared publicly through of course, a Council Meeting Agenda.
- All Shire Officers and other Workers performing a service on behalf of the Shire sign agreements whereby anything that is created for the Shire becomes the intellectual property of the Shire.
- On the Shire website as well, if anyone was to read the copyright disclaimer (available at the footer of every page of the website) and wish to make a request for use of any information they are led to the 'Contact the Shire page' and can email the Records Management Officer by clicking on the email provided on the page.

Given the complexity of copyright laws and the fact that legislation supersedes policy, it is recommended that the policy be revoked.

IMPLICATIONS TO CONSIDER

Consultative:

Advice was sought from the Governance Department of the Western Australian Local Government Association (WALGA).

Councillors were apprised of the proposal by the Shire Officer to request that Council revoke the Copyright Policy at a Council Workshop in July 2022. This is despite the amount of work that had been done by both Shire Officers and Councillors.

Strategic:

- Shire of Toodyay Strategic Community Plan 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.

Policy related:

The Public Art Policy contains a paragraph related to copyright and this paragraph ought to be amended when the Public Art Policy is revised by putting it into the new format as per the Corporate Documents Policy adopted by Council in November 2021.

Financial:

Nil

Legal and Statutory:

Local Government Act 1995

Copyright Act 1968

Copyright Amendment Act 2017

Risk related:

In terms of risk the risk rating is low because this report is recommending that the Copyright Policy be revoked, understandably, due to the Federal Copyright Law being complex and given that procedures and some rules exist already the revoking of this policy ought not to pose any risks.

Workforce related:

A Shire Officer will remove the REVOKED policy from the Shire of Toodyay website.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council revokes the Shire of Toodyay Copyright Policy.

9.3.5 Toodyay Recreation Centre - Management Reporting

Date of Report:	13 July 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PRO15
Author:	M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	SCM 6 July 2020 – May management pack included as a confidential attachment to Item 7.2.
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	1. June Quarter Management Pack. (confidential) (under separate cover)

The attachment to this report is confidential under section 5.23(2)(e)(ii) of the Local Government Act 1995 as it contains information that has a commercial value to a person. Regulation 14(2) of the Local Government (Administration) Regulations 1996, enables the CEO to make the attachment confidential. Councillors may decide to move behind closed doors to discuss the content of the attachment.

PURPOSE OF THE REPORT

To receive the Management Reporting Pack for the June quarter from Clublinks Management Pty Ltd for the Toodyay Recreation Centre (TRC) in accordance with the management contract.

BACKGROUND

A contract for the management of the Toodyay Recreation Centre was entered into between the Shire of Toodyay and Clublinks Management Pty Ltd on 30 November 2020.

As Venue Manager for the Toodyay Recreation Centre, Clublinks Management Pty Ltd is obligated to submit a monthly report to the Shire that details monthly activities, in accordance with clause 17.19 of the contract.

Council last considered the receipt of the Management Pack Reports for July 2021 to March 2022 at the Ordinary Council Meeting held on 25 May 2022. At that meeting, the Officer's Report cited that Council would receive quarterly reports.

COMMENTS AND DETAILS

As Venue Manager of the Toodyay Recreation Centre, Clublinks Management Pty Ltd is obligated to submit a monthly report to the Shire that details monthly activities, in accordance with clause 17.19 of the contract.

The reports for April, May and June 2022 are attached as **Confidential Attachment 1**.

The following points were raised by the Venue Manager that applied to this quarter:

- A lack of qualified instructors to run budgeted aquatic and recreation programs. Inversely, employment expenses are below budget as a result.
- Lack of uptake of social sports and children's programs.
- Decline of casual aquatic patronage from cooler weather and therefore decreased secondary spending across cafe and merchandise.
- Water expenses decreased significantly in the aquatic offseason due to the time of year. However, water and electricity costs have been significantly higher than budgeted.

IMPLICATIONS TO CONSIDER

Consultative:

The Venue Manager and the Shire are in constant communication.

Strategic:

Key objectives from the Strategic Community Plan – Toodyay 2028 are:

- *Social Objectives – Our community wellbeing and connection:*
 - 1: *Maintain and develop services that meet the requirements of our diverse community.*
 - 2: *Facilitate community safety and wellbeing.*
 - 3: *Support the development of places and spaces for recreation, learning, art and culture.*
- *Economic Objectives – Business and jobs in the community*
 - 2: *Promote Toodyay as a tourism destination.*
 - 3: *Encourage economic diversification.*

Policy related:

Nil.

Financial:

There is a significant commitment required from the Shire in the operational costs of the TRC, with an expectation that the TRC is being operated to best practice standards and the community's needs are being met.

The Venue Manager has worked in close partnership with Shire Officers to accommodate the expectations of the community, user groups and sporting clubs to this end and with a clear understanding of fiscal responsibilities.

Legal and Statutory:

It is a requirement of the Management Contract that the Venue Manager provides monthly reports to the Shire.

Risk related:

The Shire has been receiving these reports via email, through the Office of the CEO. It is recommended Council receives the management packs for the quarter, as presented.

Workforce related:

The Shire has an ongoing commitment to the contract in regard to the Management and Operation of the TRC.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council receives the Management Reporting Packs for the June 2022 quarter, as attached to this report.

9.3.6 Correspondence - Department of Local Government, Sport & Cultural Industries

Date of Report:	14 July 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	MTG7
Author:	M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	1. Correspondence with DLGSC. ⇒

PURPOSE OF THE REPORT

To receive and note correspondence between Shire Officers and the Department of Local Government, Sport and Cultural Industries (DLGSC) between 9 June 2022 to 14 July 2022.

BACKGROUND

A June 2018 Council Resolution (CRN. 122/06/18) stated the following:

That the CEO submit a report to Council at each Ordinary Council Meeting detailing correspondence of a Local Government governance nature or non-compliance matters between the Shire of Toodyay and the Government of Western Australia's Department of Local Government, Sport and Cultural Industries (including with the relevant Minister) since the report to the previous Ordinary Council Meeting.

A report will be presented whenever there has been such correspondence.

COMMENTS AND DETAILS

Correspondence between the Shire of Toodyay and the DLGSC is provided at **Attachment 1** and includes:

- Advice regarding local laws review;
- Advice regarding Council Representation; and
- Advice regarding Council's Differential Rates decision at their Special Council Meeting held on 13 July 2022.

IMPLICATIONS TO CONSIDER

Consultative:

Department of Local Government, Sport and Cultural Industries

Strategic:

Governance: The way the Shire leads and operates

Objective 1 Provide accountable and transparent leadership for the community

Objective 2 Consistently improve our governance practices

Policy related:

Nil.

Financial:

Nil.

Legal and Statutory:

Local Government Act 1995

It is a function of CEO to give effect to the decisions of Council in accordance with section 5.41 of the *Local Government Act 1995*.

Risk related:

There is a reputational and compliance risk if a Council resolution is not implemented. These are both rated high.

Workforce related:

Officer resources are required to formally report on all correspondence with the DLGSC.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council receives and notes the correspondence between the Shire of Toodyay and the Department of Local Government, Sport and Cultural Industries between 9 June 2022 to 14 July 2022, as attached.

9.4 INFRASTRUCTURE AND ASSETS

Nil.

9.5 COMMITTEE REPORTS

Nil.

10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

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

12 QUESTIONS OF MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil.

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

13.1 MEMBERS

Nil.

13.2 EMPLOYEES

Nil.

14 CONFIDENTIAL BUSINESS

Nil.

15 NEXT MEETINGS

Ordinary Council Meeting	24 August 2022
Agenda Briefing	
Audit & Risk Committee Meeting	
Bushfire Advisory Committee Meeting	
Environment Advisory Committee Meeting	
Local Emergency Management Committee Meeting	
Museum Advisory Committee Meeting	

16 CLOSURE OF MEETING