



Ordinary Council Meeting

22 February 2023

Commencing at 1.00 pm

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 15 February 2023, 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.

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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 21 December 2022****OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Ordinary Council Meeting held on 21 December 2022 be confirmed.

5.2 Special Meeting of Council held on 1 February 2023**OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Special Council Meeting held on 1 February 2023 be confirmed.

5.3 Agenda Briefing held on 15 February 2023**OFFICER'S RECOMMENDATION**

That the Notes of the Agenda Briefing held on 15 February 2023 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 Lot 54 Julimar Road, West Toodyay - Ancillary Accommodation

Date of Report:	1 February 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	P2022-115 - A1490/54JUL
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. P2022-115 - Application and Plans ⇒

PURPOSE OF THE REPORT

Council is requested to consider an application for an ancillary accommodation development at Lot 54 Julimar Road, West Toodyay. The reason this application is being brought to Council for determination is the applicant has requested a variation to the *Local Planning Policy No.2 - Ancillary*. There is no delegated authority to determine this application at an Officer level.

BACKGROUND

Property Information

Lot 54 (No. 289) Julimar Road is a 45,525 m² (4.55ha) property in West Toodyay, which is situated approximately 5km west of the Toodyay townsite.

The property is zoned Residential Development under the Shire of Toodyay's *Local Planning Scheme No. 4*. Mandatory development approval was triggered due to the Ancillary Accommodation policy requirements. The existing development on site is a single dwelling and water tank.

Proposal

The applicant seeks development approval to construct an ancillary accommodation with the following variations to *Local Planning Policy No. 2 – Ancillary Accommodation*.

The proposal does not comply with the following provisions of the policy:

- (a) Maximum 70m² maximum internal floor area.
- (b) Be a similar design and appearance as the existing house.

For more details, please refer to **Attachment 1 – Application and Plans**

Time to determine

The application was received on 12 November 2022. Pursuant to clause 75(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, this application must be determined within 90 days of the receipt of the application which was 11 February 2023. Considering this date not aligning with the scheduling for this Ordinary Council Meeting, written consent has been sought, and has been provided by the applicant, to determine this application after the 90-day period.

COMMENTS AND DETAILS

Clause 67(2) of the deemed provisions provides that in considering an application for development approval, the local government is to have due regard for a range of specified matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. The pertinent matters relating to this application are as follows:

- Be a similar design and appearance as the existing house.

The intent of this is to show a relationship between the two structures. The existing dwelling consists of brick construction and the proposed development is Hardiplank. The Council could impose a condition requiring the applicant to supply modified drawings showing works to improve the synergy between the two structures. However, this has to do with visual amenity and in this instance, there is no distinct advantage in enforcing this requirement as the development is situated directly behind the main dwelling and predominantly viewed by the residents.

- Maximum 70m² maximum internal floor area

The intent of this is to restrict the construction of a structure that could negatively impact the amenity of the locality. The proposed development is low impact and may be problematic if it was proposed on a small residential property in a built-up area. However, in this instance, given the proposal is set on a 11.26 acre property and will be positioned behind the existing dwelling, it is not envisioned to have a negative impact on amenity of the neighbouring properties.

It is recommended that Council approves this development.

IMPLICATIONS TO CONSIDER**Consultative:**

Local Planning Policy – Advertising for Planning Proposals.

This application has been advertised in accordance with the local planning policy.

Strategic:

Shire of Toodyay Community Strategic Plan – Toodyay 2028

Objective 2: Ensure our built environment meets community needs.

S 2.1 Encourage diverse housing and development options.

Policy related:

Local Planning Policy No. 2 – Ancillary Accommodation

Clause 1.0 of the policy states:

All Ancillary accommodation within the Shire of Toodyay must comply with the following:

- (a) Have a maximum internal floor area of 70m²;
- (b) Be a similar design and appearance as the existing house.

Under Section 3.0 of the policy:

Council may vary the requirements of this local planning policy *LPP.2 – Ancillary Accommodation* where it is considered that full compliance is impractical or where it's warranted due to the circumstances of the case.

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

Schedule 7 – Matters which may be dealt with by planning scheme.

Planning and Development Regulations 2009

Schedule 2 – Maximum fees for certain planning services.

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Toodyay Local Planning Scheme No. 4

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.

Financial Impact	Legal action against Shire	Moderate (9)
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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 1

That Council pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, approves the application for development approval for an ancillary accommodation at Lot 54 (No. 289) Julimar Road in West Toodyay, subject to the following conditions:

- (a) This approval relates only to the development as indicated on the plans received by the Shire of Toodyay, hereinafter referred to as the 'approved plans'.

- (b) The development, including the use approved by this development approval, must be implemented only in accordance with the approved plans.
- (c) The development must be substantially commenced within the period of two years commencing on the date of the Shire of Toodyay Council's decision to grant development approval. The development approval lapses if the development has not substantially commenced within that period.
- (d) All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
- (e) All storm water discharge from the development shall be contained and disposed of onsite unless otherwise approved by the Shire of Toodyay.
- (f) Prior to occupation, the development hereby permitted shall be connected to an approved effluent disposal system.

9.1.2 Draft Local Planning Policy - Extractive Industries

Date of Report:	7 February 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	PLA1
Author:	H de Vos – Manager Development and Regulation
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	Nil

PURPOSE OF THE REPORT

To review the new draft *Local Planning Policy – Extractive Industries* with a view to adopt for formal advertising.

BACKGROUND

Council resolved to implement a review of all Shire policies in February 2022.

This draft Local Planning Policy ('LPP') has been developed as part of the current review of the Shire's policy framework.

COMMENTS AND DETAILS

Managing the development and compliance of Extractive Industries within the Shire of Toodyay has proven to be a difficult task. Whilst the Shire has an adopted *Local Planning Policy for Extractive Industries – Road Maintenance Contributions*, it, as the title indicates, is very narrow in its scope. It is clear that the Shire would benefit from developing a new, all-encompassing Local Planning Policy which will provide a formal position on a range of factors – not just road maintenance.

The main factors that have contributed to the difficulties in regulating this form of development are as follows:

- Lack of policy position
- Inconsistency of management reports
- Inconsistency in the method data has been supplied
- Lack of a clear process and expectations between the Shire and operators.
- Lack of clear methodology to determine calculations for road maintenance contributions
- Change of staff
- Reduction in staff numbers

- Change in land tenure
- Change in licensee
- Old, outdated and substandard plans make it difficult to create a clear picture of previous approvals.

The development of this policy has been designed to incorporate the existing *Local Planning Policy – Extractive Industries (Road Maintenance Contributions)* whilst also providing a policy position on all aspects of the life of an extractive industry. This includes:

- Application requirements
- Exemptions
- Approval requirements
- Consultation
- Classification of Extractive Industries
- General Development Requirements
- Compliance, Auditing and Monitoring
- Cost recovery
- Road Maintenance
- Rehabilitation.

IMPLICATIONS TO CONSIDER

Consultative:

Local Planning Policies

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

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

Prior to being presented to the Council at this meeting for consideration, the draft Local Planning Policy has undergone an extensive collaborative exercise. A Shire of Toodyay Extractive Industry Policy Working Group was assembled to work on the development of this policy in a holistic manner. The group is comprised of a combination of members – each with a specific expertise/interest which is considered to be valuable to the drafting of this policy.

The make-up of the group is as follows:

Name	Title / Other Detail
Hugo de Vos	Manager Development and Regulation, Shire of Toodyay
Tobie Prater	Planning and Compliance Officer, Shire of Toodyay
Cr Madacsi	Elected Member, Shire of Toodyay

Name	Title / Other Detail
Cr Wrench	Elected Member, Shire of Toodyay
Bob Neville	Toodyay Roadwise
Cliff Simpson	Regional Road Safety Advisor WALGA
Bob Huston	Department of Biodiversity Conservation and Attractions
Michael Ferguson	Vernice Pty Ltd (Extractive Industry – Medium operator)
Nathan Blackwell	Midland Brick (Extractive Industry – Major operator)
Caragh Sinclair (Graduate Planning and Environment)	
Robert Pearce	Landowner in proximity to a lot of Extractive Industry activity.
Frank Panizza	Toodyay Agricultural Alliance

This is the first time the Shire of Toodyay has used such a collaborative, holistic and inclusive approach to policy development. The aim of this approach is to design a policy that is well considered from all angles, and to foster buy-in from the community and stakeholders.

Additionally, this draft Local Planning Policy was workshopped with the elected members over a period of time on the MS Teams workspace, and also at the Council Workshop held on 8 February 2023 attended by six elected members.

Strategic:

Shire of Toodyay Community Strategic Plan – Toodyay 2028

Governance: The way the Shire Leads and Operates

O 1: Provide accountable and transparent leadership for the community

O 2: Consistently improve our governance practices

Policy related:

Local Planning Policy – Advertising of Planning Proposals.

Local Planning Policies are required to be advertised for a period of 21 days. This will involve an advertisement in the Toodyay Herald, placement of a notice on the Shire's website and Facebook page with links to the draft policy, and physical copies of the policy being available for inspection at the Shire's Administration and Visitor Centres.

Local Planning Policy Extractive Industries – Road Maintenance Contribution

The current policy has been incorporated into the draft policy and as such, this policy shall be revoked upon final adoption of the Extractive Industry Policy.

Financial:

It is a requirement that Local Planning Policies undergo a formal advertising process which includes publication in a locally circulating newspaper. This cost to the Shire is

approximately \$500 for the two advertisements and this has been allocated for in the Shire's adopted budget.

Legal and Statutory:

Planning and Development Act 2005 – Part 5

Planning and Development (Local Planning Schemes) Regulations 2015 - Division 2 of Schedule 2

Local Planning Policies

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

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

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

Risk related:

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 rated medium (9).

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:

1. Adopts the following draft *Local Planning Policy – Extractive Industries* 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*.

2. Authorises the Chief Executive Officer to make any necessary minor typographical changes to the above policy, prior to advertising.
3. Requests that the draft *Local Planning Policy – Extractive Industries* is brought back to the April 2023 Ordinary Council Meeting for final adoption.

9.1.3 Draft Local Planning Policy - Compliance

Date of Report:	21 November 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	PLA1
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:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Current - Local Planning Policy - Compliance; and ⇒ 2. Draft - Local Planning Policy - Compliance. ⇒

PURPOSE OF THE REPORT

To review the Draft *Local Planning Policy No.8 – Compliance* with a view to adopt for formal advertising.

BACKGROUND

Council resolved to undertake a comprehensive review of Shire policies in February 2022. This draft Local Planning Policy (LPP) has been developed as part of that review. The existing *LPP.8 – Compliance* was last reviewed by the Council on 13 May 2010 (**Attachment 1**).

COMMENTS AND DETAILS

The Shire has researched a range of local policies from several 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, Local Planning Policies will no longer be numbered. Therefore, this Local Planning Policy will now be known as *Local Planning Policy – Compliance* (**Attachment 2**).

IMPLICATIONS TO CONSIDER**Consultative:**

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

If the local government resolves to create or amend a local planning policy, in accordance with the Regulations, the local government must, unless the WAPC otherwise agrees,

advertise the proposed policy. Advertising of Local Planning Policies must be for a period of not less than twenty-one (21) days.

The policy was made available to Councillors via the Teams environment before being discussed at the Council Workshop in December 2022, attended by seven elected members.

Strategic:

Shire of Toodyay Community Strategic Plan – Toodyay 2028

Objective 1: Provide accountable and transparent leadership for the community

Objective 2: Consistently improve our governance practices

Policy related:

Local Planning Policy No. 8 – Compliance.

This policy was last reviewed in 2010. 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 Local Planning Policies undergo a formal advertising process which includes publication in a locally circulating newspaper. This cost to the Shire is approximately \$500 for the two advertisements and has been provided for in the Shire's adopted budget.

Legal and Statutory:

Planning and Development Act 2005

Part 5 – Local Planning Schemes

Planning and Development (Local Planning Schemes) Regulations 2015

Local Planning Policies

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

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

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

Risk related:

Reputational

It is a role of Council to review policies. Regular reviews of policies result in contemporary documents reflecting the current needs of the community and consistency with the State Planning Framework.

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

1. Adopts the draft *Local Planning Policy – Compliance* as per Attachment 2 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*.
2. Authorises the Chief Executive Officer to make any necessary minor typographical changes to the policy prior to publication.
3. Requests that the draft *Local Planning Policy – Compliance* is brought to the April 2023 Ordinary Council Meeting for final adoption.

9.1.4 WAPC REF: 163122 Lots 9011 AND 9507 Drummond Street Nunile - Proposed 100 Lot Subdivision.

Date of Report:	7 February 2023
File Reference:	S163122
Author:	H de Vos – Manager Development and Regulation
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	12 February 2016 for WAPC application 152953 (lapsed)
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. WAPC 163122 - Display Plan; ⇒ 2. WAPC 163122 - Plan; ⇒ 3. WAPC 163122 - Report (including Bushfire). ⇒

SUMMARY

Applicant: Urbanista Town Planning
 Owner: Australia Q8 Pty Ltd
 Proposal: 100 lot subdivision
 Location: Lots 9011 & 9507 Drummond Street, Nunile

PURPOSE OF THE REPORT

To consider a referral from the Western Australian Planning Commission (WAPC) for a proposed 100 lot residential subdivision of Lots 9011 & 9507 Drummond Street in Nunile (WAPC Ref. 163122).

BACKGROUND

Delegations

In accordance with the current adopted [Shire of Toodyay Delegation Register 2022/2023](#), the delegation DAR13 which concerns Recommendations to the WAPC Regarding Applications for Subdivision / Amalgamation or Strata Title – provides that:

Subject to consistency with the Scheme, relevant Local Planning Policies, and/or WAPC/State Planning Policies, applications that were they approved by the WAPC, might result in a net increase of more than 10 lots, a recommendation to the WAPC may only be made under delegated authority if-

- The application is consistent with a structure plan approved by the WAPC, a local development plan approved by Council, or other plan endorsed by Council, or which forms part of the Scheme and/or a Local Planning Policy; and/or*

- b) *The application is for amended plans for an application that has been considered by Council within the last two years and the amendments are, in the opinion of the delegated officer, of a minor nature.*

Whilst there is delegated authority to provide advice to the WAPC as the application is consistent with an approved structure plan, the decision has been made to bring the matter to Council as the proposed subdivision is of significant size and the previous subdivision affecting this site was also brought before Council.

This subdivision is the biggest development proposal in the current Council's history and it will have significant impact on population, rates, infrastructure and change to the landscape in the immediate area.

The proposal

Urbanista Town Planning has been engaged by the landowners of Lot 9011 and 9507 Drummond Street, Toodyay, to prepare and submit an application to subdivide the two lots into 100 residential freehold lots and the creation of several roads.

The subject application proposes 100 freehold residential lots, which range in size from a minimum of 874.93 sqm to a maximum of 3,002 sqm in accordance with the LSP.

The structure plan does not specify a density for the area but rather identifies the predominant portion of the site as being "residential lots (average lot size 1,000m²)".

The LSP also identifies the lots that border the northern boundary as being "larger lots along development edge to reduce conflict with adjacent land use".

The proposed subdivision provides for an average lot size of 1,115m². None of the proposed lots can be further subdivided under the current planning framework, as they are subject to the structure plan's identified average lot size, unless the discretion of the WAPC is applied.

The subject site can be connected to the existing road network via Lot 9507 and into the constructed portion of Drummond Street to the west of the property. Drummond Street provides a further connection to the Toodyay Recreation Centre to the south-east.

The residential lots have been designed in accordance with the residential density and provides a road network that is consistent with the Amendment to the Structure Plan map (Figure 5) to identify land for the Toodyay Recreation Precinct and to correct a zoning anomaly relating to portions of Lot 9011 in the *Foggarthorpe Residential Estate Structure Plan*. The amendment was approved by the Western Australian Planning Commission on 23 November 2016.

Previous subdivision approval

In 2015 the Western Australian Planning Commission approved a 181 residential lot subdivision across the subject lot and six other lots within the structure plan area. Portions of this subdivision have since been developed; however, some areas were not. Given the 2015 subdivision approval has now expired, a new application is required for the subject site.

The subject application for the subdivision of lot 9011 is identical to the application previously approved by the Western Australian Planning Commission in 2015.

COMMENTS AND DETAILS

The area is still identified as appropriate for urban development and this is recognised in the Shire's *Local Planning Scheme No. 4*, the draft *Local Planning Scheme No. 5* and the *Local Planning Strategy 2017*. Therefore, there are no grounds not to support this proposal.

Additionally, it is an opportunity to attract new families to Toodyay as it will provide land supply in close proximity to the Sport and Recreation Precinct and the Toodyay District High School.

Levelling and retaining

The Shire has had considerable issues with retaining in the existing Riverhills Estate in Foggarthorpe.

The Council, at the time the original subdivision was approved, decided not to impose a recommendation to have the lots retained and levelled at the time of subdivision.

This has resulted in ad-hoc retaining solutions with each landowner required to address retaining which has resulted in additional expense to individuals.

The preferred option would be to have a consistent approach to retaining with costs borne by the subdivision developer.

Accordingly, conditions of approval will be included in the Officer Recommendation to address this.

IMPLICATIONS TO CONSIDER

Consultative:

Subdivision referrals from the Western Australian Planning Commission do not require further public consultation in accordance with *Council Policy - Community Consultation and Engagement* or in *Local Planning Policy – Advertising of Planning Proposals*.

However, historically the original structure plan (to which this proposal refers was extensively advertised to the community).

In addition, the matter was referred to the Shire's Manager Infrastructure and Assets, Engineering Technical Officer, Community Emergency Services Manager and Emergency Management Officer for comment.

Bushfire Planning Comments

Lot 9011 was identified in the Bush Fire Preparedness and Resilience Strategies report, as being a lot that if developed could provide downstream benefits to legacy problems.

The linking of Drummond Street (West) to Burt Parkway by a properly constructed road should be ensured with any development of Lot 9011. This would benefit the existing River Hills estate subdivision, providing formalised public access to the west.

It is noted that the subdivision plans do not specifically address any upgrade of Drummond Street (West) west of the Lots 9011 & 9507 – for this we refer to the unsealed portion. From a fire aspect, whether this portion road was to be sealed or unsealed is inconsequential provided the upgrade to the east is completed.

The subdivision layout fully encapsulates the West, North and East boundaries with private land, thus future linkages to either the proposed bypass to the NE, or to Lot 4/P025741 to the NW would not be possible given the proposed layout.

While noting that Lot 4/P025741 is not currently zoned for subdivision, the Shire should consider long term implications. Should further adjacent subdivision occur having it connect to existing road layouts would be advantageous.

It is proposed that reserve or road reserve allowances are made in the vicinity of proposed lot 498, and proposed lot 502 to allow linkages. Initially, these should be constructed as Fire Service Access Routes (gated) (E3.4b pp 83) of Guidelines for Planning in Bushfire Prone

Areas (v1.4) to assist fire services in accessing in/out of the subdivision for effective fire suppression operations. Easements should not be supported, as per the position the Bush Fire Preparedness and Resilience Strategies report. These could be upgraded to a road, or at least an Emergency Access Way, in the event of the Bypass coming to fruition, or a linking road should further adjacent subdivision occur in the future.

Water

Clarification is sought on the assumption that reticulated supply (and hydrants of suitable spacing) will form part of the proposal.

This lot is within the Gazetted Fire District of Toodyay Fire and Rescue Service.

These comments are noted and have been incorporated into the recommended conditions of approval for the subdivision using the required WAPC's Model Subdivision Conditions.

Strategic:

Shire of Toodyay Community Strategic Plan – Toodyay 2028

O1 - Encourage and support investment into new and existing businesses in Toodyay

S1.1 - Promote environmentally sustainable development that is consistent with our rural setting.

S1.2 - Work collaboratively with business stakeholders to minimise impediments.

O2 - Ensure our built environment meets community needs

O3 - Improve processes to support the built environment

S3.1 - Adjust regulatory processes to be more enabling and accessible.

Shire of Toodyay Local Planning Strategy 2017

Areas currently zoned as 'Residential Development' (to be renamed 'Urban Development') are not developed until a structure plan has been prepared and there is adequate connection to water, power and sewerage services. The structure plan must be prepared in accordance with Part 4 of the deemed provisions of the Regulations and must specifically provide for the staging of subdivision and development of the area and the provision of community infrastructure.

This proposal is consistent with this aspect of the Strategy as there is an approved structure plan in place covering the subject site.

The proposed subdivision application will have strategic implications for the Shire of Toodyay. The creation of 100 residential lots will result in an increase in the population of the Shire.

The aim of the Residential Development zone is to create residential areas of a high standard that will complement the character of the Toodyay town site and maintain the landscape features of the town surrounds. The Strategy also states that the Toodyay Bypass will be used to define the extent of the residential expansion to ensure that the community is not severed by this major transport route.

Policy related:

Community Consultation and Engagement

Risk Management

Local Planning Policy – Advertising of Planning Proposals.

Local Planning Policy – Subdivisional Development Guidelines

This Policy is designed to provide staff with general conditions and guidelines for the design and construction of subdivisional roads and development of land within the Shire to achieve desired outcomes.

The Policy aims to facilitate consistent decision making by the staff and provide a guide for prospective developers and the general community on the development standards for subdivisional works.

These guidelines will ensure that staff can deal with all subdivision road construction and related infrastructure equitably.

It is considered that this Policy can be addressed through subdivision conditions.

Local Planning Policy – Foggarthorpe Estate Design Guidelines

These guidelines apply to Foggarthorpe Residential Estate, previously Lot 3 Drummond Street and Lot 6 Goomalling-Toodyay Road, Toodyay.

All residential development within the Policy area will need to satisfy these guidelines. An application for planning approval will be required where compliance with this Policy or the Residential Design Codes cannot be achieved or for those properties within the Toodyay Bypass Special Control Area.

For some lots in close proximity to the proposed Toodyay Bypass Road, houses will need to be designed in accordance with the *State Planning Policy 5.4 - The Road and Rail Transport Noise and Freight Considerations in Land Use Planning*, The Road and Rail Transport Noise and Freight Considerations in Land Use Planning Implementation Guidelines to State Planning Policy 5.4 and with reference to Lloyd George Acoustics Transport Noise Assessment - Foggarthorpe Estate (8 May 2013) Reference: 608586-04a docx which forms Appendix No. 2 of this Policy.

It is considered that this Policy can be addressed through subdivision conditions.

Financial:

This subdivision application will have a long-term financial implication for the Shire. All the areas designated as the drainage sites and the roads will come under the care and management of the Shire of Toodyay and will incur future maintenance costs.

For this reason, the Shire will need to ensure that all areas that are to become a maintenance responsibility of the Shire of Toodyay are developed to the highest standard. The preparation and implementation of several plans will ensure that these areas are developed to the highest quality with the entire necessary infrastructure being provided for by the developer.

The Shire of Toodyay will not be required to pay for any physical infrastructure, such as sewer, power or water, as this will be the developer's responsibility.

The proposed subdivision application will also have financial implications for the Shire of Toodyay in terms of increase in rate collection.

Legal and Statutory:

Planning and Development Act 2005 – Part 10

Subdivision in Western Australia is administered by the WAPC. The statutory basis for broad acre subdivision is established primarily by the Planning and Development Act 2005.

Planning and Development (Local Planning Schemes) Regulations 2015 – Schedule 2, Part 2 — Local planning framework

Local Planning Scheme No. 4

The *Planning and Development Act 2005* and its Regulations provides for the creation of a Local Planning Scheme.

Shire of Toodyay Local Planning Scheme No. 4 provides the mechanism for protecting and enhancing the environment of the district and its historical associations, controlling land and building development, setting aside land for future use as reserves and other matters authorised by the *Planning and Development Act 2005*.

Under the provisions of the *Local Planning Scheme No. 4*, the subject lots are zoned Residential Development.

The objectives of the Residential Development zone are:

1. Designate land for future urban development;
2. Provide for orderly planning and development of larger areas of land for residential and associated purposes through the preparation of a Development Plan; and
3. Ensure the adequate provision of physical and community infrastructure.

A Development Plan is effectively a Structure Plan. The intention of a Development Plan is to guide subdivision and development of residential development areas.

Risk related:

The main risk associated with this proposal is related to property. High levels of development associated with increased density may result in localised damage to infrastructure – particularly footpaths and kerbs. This is a minor consequence as bonds are taken to cover damage and this can be managed by routine internal procedures. Given the likely levels of development anticipated – this is likely to occur. This equates to a risk score of 8 (Moderate).

Workforce related:

Should the WAPC resolve to approve this subdivision, there will be an increased workload relating to the clearance of numerous conditions. Upon completion of the subdivision process, additional workforce resources will be used to manage 100 new rateable parcels, future development enquiry and application processes and other regulatory processes. Additional workforce impacts may be experienced with the inevitable increase in road and infrastructure maintenance over time.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

Requests the Chief Executive Officer to advise the Western Australian Planning Commission that the Shire of Toodyay supports the application for subdivision WAPC Ref 163122 – Lot 9011 & 9507 Drummond Street, Nunile, subject to the following conditions:

Drainage and site works

1. The land being filled, stabilised, drained and/or graded as required to ensure that:
 - (a) lots can accommodate their intended development; and
 - (b) finished ground levels at the boundaries of the lot(s) the subject of this approval

match or otherwise coordinate with the existing and/or proposed finished ground levels of the land abutting; and

(c) stormwater is contained on-site, or appropriately treated and connected to the local drainage system.

2. Engineering drawings and specifications are to be submitted, approved, and works undertaken in accordance with the approved engineering drawings, specifications and approved plan of subdivision, for grading and/or stabilisation of the site to ensure that:
 - (a) lots can accommodate their intended use; and
 - (b) finished ground levels at the boundaries of the lot(s) the subject of this approval match or otherwise coordinate with the existing and/or proposed finished ground levels of the land abutting.
3. Engineering drawings and specifications are to be submitted and approved and works undertaken in accordance with the approved engineering drawings and specifications and approved plan of subdivision, for the filling and/or draining of the land, including ensuring that stormwater is contained on-site, or appropriately treated and connected to the local drainage system. Engineering drawings and specifications are to be in accordance with an approved Urban Water Management Plan (UWMP) for the site, or where no UWMP exists, to the satisfaction of the Western Australian Planning Commission.
4. Drainage easements and reserves as may be required by the local government for drainage infrastructure being shown on the diagram or plan of survey (deposited plan) as such, granted free of cost, and vested in that local government under Sections 152 and 167 of the *Planning and Development Act 2005*.

Transport I movement

5. Engineering drawings and specifications are to be submitted, approved by the Shire of Toodyay, and subdivisional works undertaken in accordance with the approved plan of subdivision, engineering drawings and specifications, to ensure that those lots not fronting an existing road are provided with frontage to a constructed road(s) connected by a constructed road(s) to the local road system and such road(s) are constructed and drained at the landowner/applicant's cost.

As an alternative, and subject to the agreement of the Local Government the Western Australian Planning Commission (WAPC) is prepared to accept the landowner/applicant paying to the local government the cost of such road works as estimated by the local government and the local government providing formal assurance to the WAPC confirming that the works will be completed within a reasonable period as agreed by the WAPC.

6. Engineering drawings and specifications are to be submitted and approved by the Shire of Toodyay, and subdivisional works undertaken in accordance with the approved plan of subdivision, engineering drawings and specifications to ensure that:
 - (a) street lighting is installed on all new subdivisional roads to the standards of the relevant licensed service provider and/or;
 - (b) roads that have been designed to connect with existing or proposed roads abutting the subject land are coordinated so the road reserve location and width connect seamlessly and/or;

- (c) temporary turning areas are provided to those subdivisional roads that are subject to future extension and/or;

to the satisfaction of the Western Australian Planning Commission.

7. Satisfactory arrangements being made with the local government for the cost of upgrading and/or construction of the portions of Drummond Street in the locations as shown on the plan dated 12 December 2022 (attached) to an 'Access Road C' standard, as per the requirements of the Revised Traffic Assessment dated March 2007.
8. Satisfactory arrangements being made with the local government for the cost of upgrading and/or construction of the Boyagerring Brook crossing in the location as shown on the plan dated 12 December 2022 (attached) to an 'Access Road C' standard, as per the requirements of the Revised Traffic Assessment dated March 2007.
9. Engineering drawings and specifications are to be submitted and approved by the Shire of Toodyay, and satisfactory arrangements being made for subdivisional works to be undertaken in accordance with the approved plan of subdivision and engineering drawings and specifications, for the construction of dual-use path(s) in the locations as shown on the plan dated 12 December 2022 (attached).
10. Suitable arrangements being made with the local government for the provision of vehicular crossover(s) to serve the lots shown on the approved plan of subdivision.

Environment

11. Prior to the commencement of subdivision, works a foreshore management plan for the site is to be prepared and approved to ensure the protection and management of the sites environmental assets with satisfactory arrangements being made for the implementation of the approved plan.
12. Prior to the commencement of subdivision works a drainage and nutrient management plan for the site is to be prepared and approved to ensure the protection and management of the sites environmental assets with satisfactory arrangements being made for the implementation of the approved plan.
13. Prior to the commencement of subdivision works a landscape management plan for the site is to be prepared and approved by the Shire of Toodyay to ensure the protection and management of the sites environmental assets with satisfactory arrangements being made for the implementation of the approved plan.

Bushfire Planning

14. Prior to the commencement of subdivision works, engineering drawings and specifications are to be submitted and approved providing reserve or road reserve allowances are made in the vicinity of proposed lot 498, and proposed lot 502 to allow linkages. Initially, these should be constructed as Fire Service Access Routes (gated) (E3.4b pp 83) of Guidelines for Planning in Bushfire Prone Areas (v1.4) to assist fire services in accessing in/out of the subdivision for effective fire suppression operations.
15. Information is to be provided to demonstrate that the measures contained in the bushfire management plan - *Bushfire Management Plan (Subdivision) Proposed subdivision at Lot 9011 Drummond Street, Toodyay November 2022, Version 2* that address the following:
 - (a) Water supply will be through a reticulated water with hydrant connections

provided in accordance with Water Corporation's No. 63 Water Reticulation Standard.

- (b) A plan showing hydrant location by an appropriate professional must be created and form part of the approval.
- (c) Have been implemented during subdivisional works. This information should include a notice of 'Certification by Bushfire Consultant'.

Notifications

16. 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 proposed lots 495 - 530, 542 and 554 – 562. Notice of this notification is to be included on the diagram or plan of survey (deposited plan). The notification is to state as follows:

'The lot is situated in the vicinity of a transport corridor and is currently affected or may in the future be affected by transport noise. Special controls may apply to development.'

17. 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 proposed 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:

'The lot is subject to the Shire of Toodyay Local Planning Policy - Foggarthorpe Residential Estate Design Guidelines (as amended).'

1. ADVICE

- 1. In relation to condition 1, the landowner/applicant is to ensure that earthworks are carried out and the land is compacted in accordance with Australian Standard AS3798-2007 "Guidelines on earthworks for commercial and residential developments" and Module 2 of IPWEA Local Government Guidelines for Subdivisional Development. The required earthworks may include backfilling, levelling, compaction and retaining.
- 2. In relation to Conditions 5, 6, 7, 8 and 9, the landowner/applicant is advised that the road reserves, including the constructed carriageways, laneways, truncations, footpaths/dual use paths and car embayments, are to be generally consistent with the approved plan of subdivision.

9.1.5 P2022-2 Lots 54-56 Railway Road, West Toodyay - Change to existing Non-conforming use.

Date of Report:	7 February 2023
File Reference:	P2022-2
Author:	H de Vos – Manager Development and Regulation
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	Nil

SUMMARY

Applicant:	J & L Jones
Owner:	J & L Jones
Proposal:	Change to an existing non-conforming use
Location:	Lots 54-56 Railway Road, West Toodyay

PURPOSE OF THE REPORT

To determine an application to change an existing non-conforming use located a Lots 54-56 Railway Road, West Toodyay.

Pursuant to the Shire of Toodyay's adopted Delegations Register 2022/23 DAR8 (1)(e), applications for development approval that must be assessed under the provisions of Part 4, clauses 3.8 up to and including 3.12 of the Scheme (the 'non-conforming uses' provisions) may only be refused under delegated authority.

BACKGROUND

Lots 54-56 Railway Road in West Toodyay make up a multi-parcel property which is owned by Mr and Mrs J & L Jones (the Applicant). Lots 54 and 55 are zoned Special Residential R2.5 under the Shire's *Local Planning Scheme No. 4* (LPS4 or Scheme). Lot 56 is dual zoned as Special Residential R2.5 and Recreation and conservation (Parks and recreation) under the Scheme. A portion of Lot 56 also falls within the Avon River Valley Special Control Area. It is also noted that the floodway and flood fringe encroach into Lots 55 and 56.

The existing development of the land consists of a carport / shed structure on Lot 56, a single dwelling which sits across the boundaries of Lot 56 and Lot 55, and a workshop and hardstand area which is predominantly Lot 55 but also encroaches into Lot 54.

This application is primarily concerned with any works and land use associated with the existing non-conforming land use which can be defined by an orange hashed area depicted

on the attached maps of approximately 3,261m². For more information, please refer to **Attachment 1 – Maps**.

Toodyay Pumps history

The Applicant has advised:

We have been operating since September 1994, during this time we have been operating as Toodyay Auto Electrics, Toodyay Auto Parts and from 2002 Toodyay Pumps. Carrying out vehicle servicing and repairs, then pump suppliers and repairs until approximately 2011 when Toodyay Pumps consumed the business.

I have had an interest in 55 Railway Road, Toodyay since June 1990 and became outright owner in July 1996.

This precedes the Shire of Toodyay Local Planning Scheme No. 4.

The Shire's Town Planning Scheme No. 1 was gazetted on 20 May 1983. At the time this land was zoned Rural 1. General and Light Industry uses required planning (development) approval in this zone. Unfortunately, a search of the records has not produced evidence of this, however this is not uncommon given the twenty-nine years that have elapsed.

It is assumed therefore that this business is operating under non-conforming use rights.

Incorrect issuing of Development Approval

The Shire initially received an application for a change to the business operating as a non-conforming use in January 2022. With elapsed time to allow for advertising and the provision of additional information – a development approval was issued on 12 April 2022.

However, during a later meeting between Officers and the Applicant about development on the site, it was ascertained that the initial development approval of 12 April 2022 was erroneously issued and was *ultra vires*. This means that a decision was made for which there was no delegated authority and therefore the existing approval is invalid.

This application clearly has exceeded the normal time frame to determine, however the Applicant is aware of the situation and has provided the necessary written consent to have the matter determined at the February Ordinary Council Meeting.

COMMENTS AND DETAILS

This business has been operating out of the location with no known complaints for many years. Whilst the land is zoned Special Residential R2.5, the Applicant has made approaches to the Shire of Toodyay to have a modification to the *Draft Local Planning Scheme No. 5* to allow for an 'Industry – Light' Additional Use to be incorporated into Schedule 1 – Additional Uses. Should Council choose to approve this extension of the non-conforming use, it will address any compliance issues with the land use in the interim.

However, there is also an option to approve the development but with a grandfather condition which will limit the development approval to the current landowner only. Given the fact that the Additional Use is currently being factored into the draft *Local Planning Scheme No. 5* – this would not be the preferred option.

Council can choose to:

- Approve this application;
- Approve this application subject to conditions; or
- Refuse this application.

It is recommended that Council approves this application subject to conditions.

IMPLICATIONS TO CONSIDER**Consultative:**

In relation to extensions and changes to a non-conforming use, clause 3.9.2 of the Scheme states that an application for development approval under this clause is to be advertised in accordance with clause 64 of the deemed provisions.

Accordingly, the application was advertised to adjoining landowners for a period of 28 days. This period ended on 1 April 2022 and the Shire received no submissions.

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

We will attract, develop and maintain business in Toodyay.

S 1.2 Work collaboratively with business stakeholders to minimise impediments.

S 3.2 Engage with local manufacturing, building and construction sectors.

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

This policy is silent on advertising requirements for applications relating to non-conforming land use development. Therefore, the advertising process for this application has defaulted to clause 64 of the deemed provisions.

Financial:

The applicant has paid the applicable fee pursuant to Schedule 2(1) of the *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**

Schedule 7 – Matters which may be dealt with by planning scheme.

Planning and Development Regulations 2009

Schedule 2 – Maximum fees for certain planning services.

Planning and Development (Local Planning Schemes) Regulations 2015**Shire of Toodyay Local Planning Scheme No. 4**

Part 3.9 of the Scheme deals with extensions and changes to a non-conforming land use.

3.9.1 A person must not —

(a) alter or extend a non-conforming use;

without first having applied for and obtained development approval under the Scheme.

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.

Financial Impact	Legal action against Shire	Moderate (9)
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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 the extension of a non-conforming land use to expand into light mechanical work and light fabrication (exhaust systems), whilst continuing to operate existing business activities at Lots 54-56 Railway Road, West Toodyay, subject to the following conditions:

1. This approval relates only to the development as indicated on the plans received by the Shire of Toodyay as attached to this report.
2. The development, including the use approved by this development approval, must be implemented (and where relevant maintained in implementation) only in accordance with the approved plans.

9.1.6 Lot 122/390 Toodyay West Road, West Toodyay - Outbuilding

Date of Report:	1 February 2023
File Reference:	P2022-116 - A2417/122TOOW
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. Site Plan and Application ↗

SUMMARY

Applicant: JENKINS Ben & SMART Samantha
 Owner: JENKINS Ben & SMART Samantha
 Proposal: PROPOSED OUTBUILDING - OVERSIZED
 Location: LOT 122/390 TOODYAY WEST ROAD, WEST TOODYAY

PURPOSE OF THE REPORT

Council is requested to consider an application for development approval for a proposed outbuilding at Lot 122 (No. 390) Toodyay West Road in West Toodyay which was previously refused by Council.

BACKGROUND

On 23 November 2022 an application for a proposed oversized outbuilding to be built in front of a dwelling was considered by Council and refused for the following reason:

The proposal was not in keeping with intent of the policy nor the R Codes. The proposal does not meet the description of what outbuildings are in the residential design codes in that it does not meet the amenity of the area, of the neighbours and surrounding residents.

Property information

Lot 122 (No. 390) Toodyay West Road in West Toodyay is an 8,001m² (0.801ha) property and is located on the west side of Toodyay West Road, West Toodyay. The property has a second road frontage, with Fitzgerald Terrace at the rear of the property.

The property is zoned Special Residential R2.5 under the Shire of Toodyay *Local Planning Scheme No. 4*. Mandatory development approval triggered due to requests for variations to the Outbuildings in Residential Area's policy.

The existing development on the site is a single dwelling with a smaller shed at the rear of the property.

Proposal

The applicant seeks development approval to erect an outbuilding of 200m² in lieu of 120m² as per the *Local Planning Policy – Outbuildings in Residential Areas*. In the previous application the proposed outbuilding was to be positioned in front of the dwelling. This application was objected to by an adjoining landowner as it would affect the visual amenity of the area with its location and bulk.

The revised application provides for the outbuilding to be located at the rear of the property, behind the dwelling. The change of location ensures the visual amenity is considered with the dwelling appropriately screening the outbuilding from the road and adjoining neighbours.

The outbuilding requires 400mm of fill with limestone retaining and will be clad in Colourbond - Deep Ocean (dark blue) For more details, please refer to **Attachment 1 – Application and Plans**

Time to determine

The application was received on 23 November 2022. Pursuant to clause 75(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, this application must be determined within 90 days of the receipt of the application which is 21 February 2023. Considering this date not aligning with the scheduling for this Ordinary Council Meeting, written consent has been sought, and has been provided by the applicant, to determine this application after the 90-day period.

COMMENTS AND DETAILS

Other variations to the R-Codes and current Local Planning Policy.

In section 5.4.3 of the R-Codes, the following deemed-to-comply standards apply under 5.4.3 C3 (ii) (B):

(iii) does not exceed a wall height of 2.4m.

(iv) does not exceed a ridge height of 4.2m.

However, the adopted Local Planning Policy – Outbuildings in Residential Areas states the following under part 5.

Residential Density Code of Property	Permitted Area of Outbuilding	Permitted Wall Height	Permitted Ridge Height
R2.5	120m ²	3.5m	5.0m

Therefore, the applicant is still proposing a variation to the policy of 200m² in lieu of 120m² and a wall height of 4.0m in lieu of 3.5m.

The application can also be assessed in this instance using the design principles of the R-Codes where the deemed-to-comply provisions cannot be met.

In this instance, the proposal is considered to meet the design principles listed under 5.4.3 (P3) which are:

Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties.

Bulk of the development

The applicant is proposing to use this outbuilding for storage. This should not be justification for approving the development. However, it does provide validity for the increased size. And

it is a logical solution to do this instead of having two smaller sheds. It is noted also that the development is well screened from the adjoining property. Whilst there will be some impact (it can never be completely avoided), it is considered that the development is appropriately sited and screened.

It is recommended that Council approves this application.

IMPLICATIONS TO CONSIDER

Consultative:

The application was advertised in accordance with the Shire's adopted *Local Planning Policy – Advertising for Planning Proposals*. This included a mail out of the plans to adjoining landowners for a period of fourteen (14) days. The period expired on the 9 December 2022 with no submissions received.

Strategic:

Shire of Toodyay Community Strategic Plan – Toodyay 2028

Objective 2: Ensure our built environment meets community needs

S 2.1 Encourage diverse housing and development options.

Policy related:

Local Planning Policy – Advertising for Planning Proposals.

This application has been advertised in accordance with the local planning policy.

Local Planning Policy 13 - Outbuilding in Residential Areas

Clause 5 of Policy states:

Residential Density Code of Property	Permitted area of Outbuilding	Permitted Wall Height	Permitted Ridge Height
R2.5	120m ²	3.5m	5.0m

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

Schedule 7 – Matters which may be dealt with by planning scheme.

Planning and Development Regulations 2009

Schedule 2 – Maximum fees for certain planning services.

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Toodyay Local Planning Scheme No. 4

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.

Financial Impact	Legal action against Shire	Moderate (9)
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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 an Outbuilding at Lot 122 (No. 390) Toodyay West Road in West Toodyay, subject to the following conditions:

- (a) This approval relates only to the development as indicated on the plans received by the Shire of Toodyay as attached to this report.
- (b) The development, including the use approved by this development approval, must be implemented (and where relevant maintained in implementation) only in accordance with the approved plans.
- (c) The development must be substantially commenced within the period of two years commencing on the date of the Shire of Toodyay Council's decision to grant development approval. The development approval lapses if the development has not substantially commenced within that period.
- (d) All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
- (e) All storm water discharge from the development shall be contained and disposed of onsite unless otherwise approved by the Shire of Toodyay.

9.1.7 Lot 394 Markey Road, West Toodyay - Proposed Additions to Single Dwelling (Overheight)

Date of Report:	3 February 2023
File Reference:	P2022-124
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. P2022-124 - Application and Plans ⇒

SUMMARY

Applicant:	Lyons Architects
Owner:	Gerard Dankert
Proposal:	Proposed Additions to Single Dwelling - Over height
Location:	Lot 394 Markey Road, West Toodyay

PURPOSE OF THE REPORT

Council is requested to consider an application for development approval for a proposed addition to a single dwelling at Lot 394 Markey Road in West Toodyay. The reason this matter is being brought to the Council for determination is that the proposal is over height (9.52m in lieu of 8.00m). There is no delegated authority to determine this application at Officer level. The proposed setback variation of 35m in lieu of 50m can be considered under delegated authority due to the proposal being correctly advertised and no objections being received.

BACKGROUND

The initial trigger for the Development Application was that the property falls within the Avon River Valley Special Control Area (ARVSCA).

Another trigger for the application is the matter of the proposed addition is over 8m in height.

Property information

Lot 394 Markey Road in West Toodyay is a 311,900² (31.19ha) property. The subject site is located between much larger properties accessed from Harders Chitty Road in West Toodyay.

Zoned Rural under the Shire of Toodyay *Local Planning Scheme No. 4* and as previously discussed; it falls within the ARVSCA which creates a mandatory trigger for Development Approval.

The existing development on the site consists of a single dwelling, outbuilding and water tank.

Proposal

The applicant seeks development approval to make alterations and additions to the existing single dwelling, consisting of a new bedroom with ensuite, living/dining room with skillion roof and an above ground concrete swimming pool. For more details, please refer to **Attachment 1 – Application Plans**

The location of the proposed alterations and additions is situated over an area of the property that falls at a steep gradient away from the house. As a result, the topography has created a building height of 9.52m. The excess height of the proposed dwelling is 1.52m higher than the prescribed limit of 8.0m in the Shire's *Local Planning Scheme No. 4*.

Time to determine

The application was received on 14 December 2022 to Pursuant to clause 75(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, this application must be determined within 90 days of the receipt of the application which is 14 March 2023.

COMMENTS AND DETAILS

Clause 67(2) of the deemed provisions provides that in considering an application for development approval, the local government is to have due regard for a range of specified matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application. The pertinent matters relating to this application are as follows:

- the aims and provisions of LPS 4 (subclause (a));

It is noted that clause 4.12.1 limits the height of a building to two storeys or 8m overall – whichever is greater. However, the Scheme does allow the Council to approve a greater height under clause 4.12.2 (a)-(c) and these will be addressed as follows.

- Will be in harmony with buildings within the locality.

The existing residence is a considerable distance from any nearby residences with the closest being 981m. The undulating topography of the area means that these residences do not visually relate with one another as would be the case for building in the town centre. The scale of the proposed alterations and additions result in a single residence that is still consistent with other the residences in the area.

- Will not be detrimental to the amenity or character of the locality or the town or district in general.

The proposed single dwelling is a permitted use for the rural zone and its design and style is consistent with the rural setting. The proposed alterations and additions are essentially an extension of the single storey scale of the existing residence. The topography quickly falls away from the existing house on the north-west and this has been utilised to create a second storey space, essentially as an 'under croft' to the single storey residence.

- Will not be detrimental to the amenity or character of the locality or the town or district in general.

Generally, over height structures are more problematic in built-up areas. This is primarily due to issues such as overlooking, or the bulk and scale of a development being such that they would impact the amenity of the locality. However, in this

instance, the closest dwelling is 981m away from Markey Road, the residence retains a single storey appearance and there would be no loss in amenity for adjoining landowners in terms of views, privacy, or solar access.

Note on the setback variation

As noted previously in this report, the proposal also involves a setback variation of 35m in lieu of 50m. The existing single dwelling is situated 44m from the boundary taking advantage of the most level of a level portion of what is an undulating property.

Under clause 4.15.4 (c)(iii) of the Scheme, the local government may permit a building to be located within the setback area when (iii) for the reason of topography or lot configuration, the prescribed setback cannot be adhered to or would be unnecessarily disadvantageous. This is the rationale for the matter regarding the setback variation to be determined under delegated authority.

It is recommended that the Council approves this development subject to conditions.

IMPLICATIONS TO CONSIDER

Consultative:

The application was advertised in accordance with the Shire's adopted *Local Planning Policy – Advertising for Planning Proposals*. This included a mail out of the plans to adjoining landowners for a period of fourteen (14) days.

The advertising period closed on 6 February 2023 and no submissions were received.

Strategic:

Shire of Toodyay Community Strategic Plan – Toodyay 2028

Objective 2: Ensure our built environment meets community needs

S 2.1 Encourage diverse housing and development options.

Policy related:

Local Planning Policy – Advertising for Planning Proposals.

This application has been advertised in accordance with the local planning policy.

Financial:

The applicant has paid the applicable fee pursuant to Schedule 2(1) of the *Planning and Development Regulations 2009*.

Legal and Statutory:

Planning and Development Act 2005

Schedule 7 – Matters which may be dealt with by planning scheme.

Planning and Development Regulations 2009

Schedule 2 – Maximum fees for certain planning services.

Shire of Toodyay Local Planning Scheme No. 4

Building Heights**4.12 HEIGHT AND APPEARANCE OF BUILDINGS**

- 4.12.1 *Within the Scheme Area no building shall be constructed in excess of two storeys or 8 metres overall, whichever is the greater, above natural mean ground level.*
- 4.12.2 *Notwithstanding the provisions of Clause 4.12.1, after following the procedures set out in Clause 64 of the deemed provisions, the local government may grant approval for the construction of a building higher than the maximum specified. Before granting its approval, the local government shall satisfy itself that the proposed building:*
- (a) *will be in harmony with buildings within the locality;*
 - (b) *will not be detrimental to the amenity or character of the locality or to the town or district in general; and,*
 - (c) *will not affect the development potential of adjoining lots by affecting design, aspect, outlook, views and privacy.*

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.

Financial Impact	Legal action against Shire	Moderate (9)
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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 an alteration and additions to a single dwelling at Lot 394 Markey Road, West Toodyay subject to the following conditions:

- (a) This approval relates only to the development as indicated on the plans received by the Shire of Toodyay as per Attachment 1.
- (b) The development, including the use approved by this development approval, must be implemented (and where relevant maintained in implementation) only in accordance with the approved plans.
- (c) The development must be substantially commenced within the period of two years commencing on the date of the Shire of Toodyay Council's decision to grant development approval. The development approval lapses if the development has not substantially commenced within that period.
- (d) All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.

- (e) All storm water discharge from the development shall be contained and disposed of onsite unless otherwise approved by the Shire of Toodyay.
- (f) Prior to occupation, the development hereby permitted shall be connected to an approved effluent disposal system.

9.1.8 Draft Local Planning Policies: Signage Outside the Central Toodyay Heritage Area; Directional Signage and Signage within thoroughfares; and non-habitable structures

Date of Report:	25 January 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	POLPOL1/PCY2
Author:	H de Vos – Manager Development and Regulation
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	26 October 2022
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. DRAFT Signage outside the Central Toodyay Heritage Area Policy; ↗ 2. DRAFT Directional Signage and Signage within thoroughfares; and ↗ 3. DRAFT Non-habitable structures. ↗

PURPOSE OF THE REPORT

To review the following draft Shire of Toodyay Local Planning Policies for final adoption:

- (a) Signage Outside the Central Toodyay Heritage Area;
- (b) Directional Signage and Signage Within Thoroughfares; and
- (c) Non-Habitable Structures.

BACKGROUND

Council resolved to implement a review of all Shire policies in February 2022.

At the Ordinary Council Meeting held on 26 October 2022, Council adopted the following draft Local Planning Policies 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*:

- (a) Signage Outside the Central Toodyay Heritage Area;
- (b) Directional Signage and Signage Within Thoroughfares; and
- (c) Non-Habitable Structures.

Council requested the policies to be brought back to the December Ordinary Council Meeting for final review. However, due to resourcing issues, the required advertising period, and the early Council meeting held in December, Officers were unable to meet this deadline.

After the expiry of the period within which submissions may be made, the local government

must —

- (a) review the proposed policy in the light of any submissions made; and
- (b) resolve to —
 - (i) proceed with the policy without modification; or
 - (ii) proceed with the policy with modification; or
 - (iii) not to proceed with the policy.

It is recommended that the Council proceeds with the policy without modifications

The final draft policies are provided at **Attachments 1, 2 and 3** for Council's consideration.

COMMENTS AND DETAILS

Officers have researched a range of local policies from a number of local government authorities to determine good policy examples. These policies have been reviewed and developed using the best elements of these.

In accordance with the new naming conventions, Local Planning Policies will no longer be numbered. Therefore, these Local Planning Policies will now be known as Local Planning Policy —

- (a) *Signage Outside the Central Toodyay Heritage Area;*
- (b) *Directional Signage and Signage Within Thoroughfares;* and
- (c) *Non-Habitable Structures.*

IMPLICATIONS TO CONSIDER

Consultative:

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

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

The policies were discussed at the Council Workshop held on 26 October 2022 and made available on the Teams environment for input by elected members.

The advertising of the draft Local Planning Policies ended on 23 December 2022 with no submissions received.

Strategic:

Shire of Toodyay Community Strategic Plan – Toodyay 2028

Governance: The way the Shire Leads and Operates

O 1: Provide accountable and transparent leadership for the community

O 2: Consistently improve our governance practices

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

Policy related:

Local Planning Policy No. 1 – Signage Outside the Central Toodyay Heritage Area.

This policy was last reviewed in 2008. 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.

Local Planning Policy No. 24 – Directional Signage and Signage within Thoroughfares.

This policy was last reviewed in 2010. 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.

Local Planning Policy - Non – habitable Structures

State Planning Policy 7.3 Residential Design Codes Volume 1 provides the following deemed-to-comply requirements for outbuildings under section 5.4.3:

C3 Outbuildings associated with a dwelling site address either:	
(i) the standards for small outbuildings (A. Small outbuilding); or	
(ii) the standards for large and multiple outbuildings (B. Large and multiple outbuildings).	
A. Small outbuilding	(i) no more than one outbuilding per dwelling site; (ii) has no more than two boundary walls; (iii) does not exceed 10m ² in area; (iv) does not exceed a wall and ridge height of 2.7m; (v) not located within the primary or secondary street setback area; and (vi) does not reduce open space and outdoor living area requirements in Table 1.
OR	
B. Large and multiple outbuildings	(i) individually or collectively does not exceed 60m ² in area or 10 per cent in aggregate of the site area, whichever is the lesser; (ii) set back in accordance with Table 2a; (iii) does not exceed a wall height of 2.4m; (iv) does not exceed a ridge height of 4.2m; (v) not located within the primary or secondary setback area; and (vi) does not reduce the open space and outdoor living area requirements in Table 1.

Notes:

- (i) An outbuilding wall that meets (ii) for small outbuildings does not contribute to the number or dimension of boundary walls under clause 5.1.3.
- (ii) An existing outbuilding that meets the development standards for small outbuildings does not need to be set back in accordance with Table 2a for additional outbuildings that are proposed under B. Large and multiple outbuildings;
- (iii) There are separate building code requirements that may also apply.

The R-Codes provide the following design principles under section 5.4.3

P3 Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties.

Pursuant to Clause 3, Division 2 of Schedule 2 ('the deemed provisions'), the local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area. However, with regards to any matters where the R-Codes are involved, there is a caveat.

A local planning policy, will only be a relevant consideration in the exercise of judgement where it is:

- (a) specifically sanctioned by a provision of the R-Codes Volume 1;
- (b) consistent with the design principles of the R-Codes Volume 1; and
- (c) consistent with the objectives of the R-Codes Volume 1.

Therefore, any changes to the Local Planning Policy which proposes to amend or replace a deemed-to-comply provision of the R-Codes must be given consent by the Western Australian Planning Commission. The modifications relating to wall height, ridge height and area for Residential and Special Residential properties (which is contained in Table 1 of the policy) – is the reason why WAPC consent is required.

Financial:

There are no immediate financial implications as a result of these policies as they do not carry a mandatory statutory advertising requirement. Were the Council to determine that some advertising was warranted – then the Shire would be responsible for the cost of this. In a newspaper, three advertisements could be approximately \$750 which could be accommodated within current budget allocations.

If and when the policies are adopted, the Shire potentially faces appeals to its decisions at the State Administrative Tribunal. Additionally, the Shire may be challenged over any punitive measures it decides to take, through the legal system.

In each instance, this is generally a costly exercise as the Shire must divert resources to pay for consultants and lawyers to navigate this process.

Legal and Statutory:

Planning and Development Act 2005

Part 5 – Local Planning Schemes

Planning and Development (Local Planning Schemes) Regulations 2015

Local Planning Policies

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

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

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

Risk related:

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

1. Pursuant to clause (3)(b)((ii) of clause 4 of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, adopts the *Local Planning Policy - Signage Outside Toodyay Heritage Area* as per **Attachment 1**.
2. Requests the CEO to publish notice of the policy in accordance with clause 87 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

OFFICER'S RECOMMENDATION 2

That Council

1. Pursuant to clause (3)(b)((ii) of clause 4 of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, adopts the *Local Planning Policy – Directional Signage and Signage Within Thoroughfares* as per **Attachment 2**.
2. Requests the CEO to publish notice of the policy in accordance with clause 87 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

OFFICER'S RECOMMENDATION 3

That Council

1. Pursuant to clause (3)(b)((ii) of clause 4 of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, adopts the *Local Planning Policy – Non-Habitable Structures* as per **Attachment 3**.
2. Requests the CEO to publish notice of the policy in accordance with clause 87 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

9.2 CORPORATE AND COMMUNITY SERVICES**9.2.1 Local Laws Review Process**

Date of Report:	30 January 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	LAW1
Author:	S Haslehurst – Chief Executive Officer 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:	Executive
Attachments:	1. Local Laws Register; and ⇒ 2. DLGSC Operational Guidelines - Local Laws. ⇒

PURPOSE OF THE REPORT

To consider a process for the review of the current Shire of Toodyay local laws.

BACKGROUND

The *Local Government Act 1995* (the Act) enables local governments to make local laws considered necessary for the good government of their districts. Laws can only be made when authorised by the Act or other written laws but cannot be inconsistent with any State or Federal law. The types of laws made by local governments cover areas such as parking, activities on thoroughfares, public places and council and committee meetings.

The Act requires the Shire to undertake a review of its local laws every eight years. The Shire of Toodyay finalised its last review of existing local laws in April 2014. Therefore, the majority of the Shire's Local Laws were due for review in 2022. However, proposed local government reforms referenced the development of a number of model local laws and many local governments have delayed the review process whilst waiting for them to be developed. Given the anticipated timeframe for release cannot currently be confirmed, this report provides a process to commence the review of the Shire of Toodyay's local laws.

It should be noted that the following matters were considered during the 2014 review;

- Health Local Law;
- Animals, Environment and Nuisance Local Law;
- Bushfire Brigades Local Law; and
- Penalty Units Local Law.

Of these, only the Health Local Law was adopted and gazetted (2017). A Bushfire Brigades Local Law was considered but deferred pending amendments to emergency management legislation. A Cat Local Law was gazetted in 2018 and in March 2020, a Waste Local Law was discussed but deferred.

A register of the Shire of Toodyay's currently gazetted local laws can be found at **Attachment 1**.

COMMENTS AND DETAILS

Section 3.16 of the Act prescribes the process that must be followed to notify the public that a local law is to be reviewed. A public notice must be issued, and submissions invited for a minimum period of six weeks. Council must consider submissions received and then determine by absolute majority whether each local law should remain unchanged or be repealed or amended.

If a local law is to be repealed or amended, section 3.12 *Procedure for making local laws* applies. The Operational Guidelines published by the Department of Local Government, Sport and Cultural Industries (DLGSC) (**Attachment 2**) provide information regarding the steps to be taken to make a local law. Notwithstanding the technical knowledge required to draft local laws, the process for adoption is complex and includes:

- State-wide public notice;
- Public consultation for a minimum of 42 days;
- National Competition Policy review;
- Provision of the proposed local law to the relevant Minister(s);
- Council consideration of submissions received;
- Council adoption by absolute majority;
- Publication of the adopted local law in the Government Gazette;
- Provision of a signed and seal copy of the local law to the relevant Minister(s);
- Further public notice advising the title, purpose, effect and commencement date of the adopted local law; and
- Provision of documents including an explanatory memorandum and checklist to the Joint Standing Committee on Delegated Legislation.

Therefore, Officers propose the following indicative process to undertake a review of the Shire's existing local laws.

Proposed Date	Activity
22 February 2023	<ul style="list-style-type: none"> • Council resolves to undertake a review of Shire of Toodyay Local Laws in accordance with s3.16 of the Act.
2 March 2023	<ul style="list-style-type: none"> • Public notice appears in the Toodyay Herald inviting submissions and notifying where the local laws can be accessed. • Public notice posted on the Shire's website, social media pages and noticeboards. • Local Laws are placed on the Teams environment for review by Councillors.

Proposed Date	Activity
20 April 2023	<ul style="list-style-type: none"> Public submission period closes (47 days).
May 2023	<ul style="list-style-type: none"> Council workshop held to consider submissions and discuss proposed changes. Council considers a project brief to engage a consultant to undertake process to amend or repeal identified local laws as part of 2023/24 budget process.
24 May 2023	<ul style="list-style-type: none"> Council considers submissions received and determines which local laws are to remain unchanged or be repealed or amended. If no changes are required, Council will note the conclusion of the Review process. Council adopts an indicative process and timeline for local laws to be repealed or amended if required.
July (indicative)	<ul style="list-style-type: none"> Council considers budget allocation for Local Laws amendment / repeal process as part of 2023/24 Budget adoption.

IMPLICATIONS TO CONSIDER

Consultative:

DLGSC Operational Guidelines.

WALGA Local Laws Manual.

The Act requires that local governments to advertise their intent to review existing local laws and provide the opportunity for public comment for a minimum of 42 days. New local laws (or amendments) also require a 42 day public advertising period.

Model Local Laws – advice received from the Senior Project Officer for Regulatory Reform in June 2022 was that the Shire of Toodyay should proceed with its review of the local laws because even though the reforms have the potential to streamline the processes for local laws, local governments are still required to comply with the current requirements of the *Local Government Act 1995*.

Strategic:

Community Strategic Plan (Toodyay 2028)

Governance: The way the Shire leads and operates

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

O 2: Consistently improve our governance practices.

O 3: Ensure rigorous organisational systems.

Policy related:

Legislative Compliance

Financial:

Initial costs will include advertising of the Shire's intention to review its local laws. These costs can be met within existing budget allocations. Should Council choose to amend or repeal any local laws, Officers are proposing that specialist expertise is engaged which will require a budget allocation in the 2023/24 Annual Budget.

In addition, the cost of gazettal i.e. advertising in the Local Government Gazette, will also need to be provided for, which is based on the length and complexity of the document. As an example, the cost of gazettal for the Health Local Law (63 pages) in 2018 was \$4,850 plus GST whereas the Repeal of Local Laws 2014 (8 pages) cost \$125 plus GST. Officers will need to seek estimates from the State Law Publisher to inform the project brief budget.

Legal and Statutory:***Local Government Act 1995.***

Section 1.7 — Local Public Notice.

Division 2 — Legislative functions of local governments.

Subdivision 1 — Local laws made under this Act.

Sections 3.1 – 3.17.

Risk related:

It is imperative that the local laws are reviewed so that the Shire of Toodyay meets its governance obligations. Should Council choose not to conduct the review, both reputational and compliance risks would be rated high.

Workforce related:

The decision to review and public advertising will be administered by Shire officers. However, given the complexity of the process to make local laws, and the capacity of staff, officers are proposing a consultant is engaged to undertake the amendment / repeal process if required.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council requests the CEO to:

1. Advertise Council's intention to review the following Local Laws in accordance with the provisions of Section 3.16 of the *Local Government Act 1995*.
 - Activities on Thoroughfares and Trading in Thoroughfares and Public Places;
 - Cat Local Law;
 - Cemeteries (Toodyay and Jimperding);
 - Dogs Local Law;
 - Extractive Industries;
 - Health Local Law;

- Local Government Fencing;
 - Local Government Property;
 - Parking and Parking Facilities;
 - Pest Plants; and
 - Standing Orders.
2. Invite public submissions regarding the Shire of Toodyay's current local laws, closing on 20 April 2023.
 3. Provide a report to the May 2023 Ordinary Council Meeting for Council to:
 - (a) consider submissions and determine which local laws are to remain unchanged or be repealed or amended; and
 - (b) adopt a process and indicative timeline for any amendments.

9.2.2 List of Payments - December 2022

Date of Report:	5 January 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	Ms Y Tyson – Accounts Payable/Payroll Officer
Responsible Officer:	T Bateman – Manager Corporate and Community Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. List of Payments December 2022. ↗

PURPOSE OF THE REPORT

To present cheques and electronic payments raised during December 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 December 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.

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:

Shire of Toodyay Strategic Community Plan 2028

Governance: The way the Shire leads and operates

O1: Provide and accountable and transparent leadership for the community.

O3: 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 and F.3 Purchasing.

Financial:

Payments made in December 2022 total \$1,008,211.78.

Legal and Statutory:

Local Government Act 1995

Section 5.42 allows the local government to delegate its powers to the Chief Executive Officer.

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

Local Government (Financial Management) Regulations 1996

Regulation 13 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 December 2022 as attached to this report, summarised as follows:

Direct Debits	\$ 76,141.31
EFTs	\$ 623,436.75
DD Loans	\$ 0.00
Payroll	\$ 286,834.02
Municipal Cheques	\$ 21,799.70
TOTAL	\$1,008,211.78

9.2.3 Monthly Financial Statements - December 2022

Date of Report:	31 December 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 31 December 2022. ↗

PURPOSE OF THE REPORT

This report provides Council with monthly financial information for the period ending 31 December 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 31 December 2022:

Note	Description	Page
1	Statement of Comprehensive Income by Nature or Type	1
2	Statement of Financial Activity	2
3	Variance Analysis	3-5
4	Rating Information	6
5	Debtors Report	7
6	Investments	8

Note	Description	Page
7	Capital Expenditure	9-11

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.

Key Financial areas

The following information provides balances for key financial areas for the Shire of Toodyay's financial position for month ending 31 December 2022.

Outstanding Rates

The notices for rates and charges levied for 2022/23 were raised on 7 September 2022 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 for 2022/23 were:

Instalment	Due Date
First Instalment	12 October 2022
Second Instalment	12 December 2022
Third Instalment	13 February 2023
Fourth Instalment	13 April 2023

The total outstanding rates and charges balance at the end of December 2022 was \$2,743,971.92 compared to November 2022 closing balance of \$3,248,522.41

The Shire of Toodyay proposed to implement a Mining Differential Rate to address the revenue requirements to maintain the additional infrastructure and road expenditure generated by the mining exploration industry in the Shire.

An application for Ministerial Approval was made, and later rejected, for a differential rate over twice the minimum in the Unimproved Value (UV) category to raise a total of \$200,000 across the 35 Mining Tenements in the Shire. As a result, the rates notices for the mining properties were held back.

The rate was quashed by the State Administrative Tribunal and a revised budget was adopted by Council on 1 February 2023 to address the matter. The rates notices for mining properties will be issued during February.

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

Outstanding Sundry Debtors

The total outstanding sundry debtors balance at the end of December 2022 was \$79,670.13 broken down as follows:

Category	30/11/2022	31/12/2022
> 90 days and over	\$178,239.35	\$47,161.41
> 60 days and over	\$35.18	\$2,338.32

Category	30/11/2022	31/12/2022
> 30 days and over	\$16,439.69	\$19,186.64
Current	\$52,294.87	\$10,983.74
TOTAL	\$247,009.09	\$79,670.11

The table above shows a decrease in the outstanding sundry debtors balance compared to the previous month. The ADCO Invoice for \$124,980.40 was cancelled during 2020/2021 financial audit process as a result of the auditors' recommendation.

The composition of outstanding debtors is included in **Attachment 1**.

IMPLICATIONS TO CONSIDER

Consultative:

Consultation with Datacom is on-going in the preparation of the monthly financial statements.

Dry Kirkness (auditor contracted by the Office of the Auditor-General)

Strategic:

Shire of Toodyay Strategic Community Plan 2028

Governance: The way the Shire leads and operates.

Objective 3: Ensure rigorous organisational systems.

Policy related:

F2 Authorised Signatories

F3 Purchasing

F11 Corporate Credit Cards

F16 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.

The Shire's surplus funds are invested in bank term deposits for various terms to facilitate maximum investment returns in accordance with the Shire's investment policy.

The Shire's investment portfolio is diversified across two accredited financial institutions.

As at 31 December 2022, the total funds held in the Shire's operating accounts (including an 11AM At Call account) is \$1,967,039.73 and the total of all interest bearing term deposits invested for the period ended 31 December 2022 was \$5,181,984.00.

Legal and Statutory:

Local Government Act 1995

Section 6.4 requires a local government to prepare financial reports.

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

Local Government (Financial Management) Regulations 1996

Regulation 34 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.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council receives the Monthly Financial Statements for the month ending 31 December 2022.

9.2.4 List of Payments - January 2023

Date of Report:	3 February 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	Ms Y Tyson – Accounts Payable/Payroll Officer
Responsible Officer:	T Bateman – Manager Corporate and Community Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. List of Payments - January 2023. ↗

PURPOSE OF THE REPORT

To present cheques and electronic payments raised during January 2023.

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 January 2023 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.

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:

Shire of Toodyay Strategic Community Plan 2028

Governance: The way the Shire leads and operates

O1: Provide and accountable and transparent leadership for the community.

O3: 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 and F.3 Purchasing.

Financial:

Payments made in January 2023 total \$1,428,038.61.

Legal and Statutory:

Local Government Act 1995

Section 5.42 allows the local government to delegate its powers to the Chief Executive Officer.

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

Local Government (Financial Management) Regulations 1996

Regulation 13 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 January 2023 as attached to this report, summarised as follows:

Direct Debits	\$ 26,686.74
EFTs	\$ 1,079,707.61
DD Loans	\$ 0.00
Payroll	\$ 260,230.17
Municipal Cheques	\$ 61,414.09
TOTAL	\$1,428,038.61

9.2.5 Monthly Financial Statements - January 2023

Date of Report:	7 February 2023
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 Statements as at 31 January 2023

PURPOSE OF THE REPORT

This report provides Council with monthly financial information for the period ending 31 January 2023.

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 31 January 2023:

Note	Description	Page
1	Statement of Comprehensive Income by Nature or Type	1
2	Statement of Financial Activity	2
3	Variance Analysis	3-5
4	Rating Information	6
5	Debtors Report	7
6	Investments	8

Note	Description	Page
7	Capital Works	9-11

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.

Key Financial areas

The following information provides balances for key financial areas for the Shire of Toodyay's financial position for month ending 31 January 2023.

Outstanding Rates

The notices for rates and charges levied for 2022/23 were raised on 7 September 2022 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 for 2022/23 were:

Instalment	Due Date
First Instalment	12 October 2022
Second Instalment	12 December 2022
Third Instalment	13 February 2023
Fourth Instalment	13 April 2023

The total outstanding rates and charges balance at the end of January 2023 was \$2,554,919.80 compared to December 2022 closing balance of \$2,743,971.92

The Shire of Toodyay proposed to implement a Mining Differential Rate to address the revenue requirements to maintain the additional infrastructure and road expenditure generated by the mining exploration industry in the Shire.

An application for Ministerial Approval was made, and later rejected, for a differential rate over twice the minimum in the Unimproved Value (UV) category to raise a total of \$200,000 across the 35 Mining Tenements in the Shire. As a result, the rates notices for the mining properties were held back.

The rate was quashed by the State Administrative Tribunal Officer and a revised budget was adopted by Council on 1 February 2023 to address the matter. The rates notices for mining properties will be issued during February.

Outstanding Sundry Debtors

The total outstanding sundry debtors balance at the end of January 2023 was \$322,521.33 broken down as follows:

Category	31/12/2022	31/01/2023
> 90 days and over	\$47,161.41	\$49,289.73
> 60 days and over	\$2,338.32	\$18,963.14
> 30 days and over	\$19,186.64	\$-1,588.04

Category	31/12/2022	31/01/2023
Current	\$10,983.74	\$255,856.50
TOTAL	\$79,670.11	\$322,521.33

The table above shows an increase in the outstanding sundry debtors balance compared to the previous month. An amount of \$33,524.98 is overdue in the 90 days and over category.

The composition of outstanding debtors is included in **Attachment 1**.

IMPLICATIONS TO CONSIDER

Consultative:

Consultation with Datacom is on-going in the preparation of the monthly financial statements.

Dry Kirkness (auditor contracted by the Office of the Auditor -General)

Strategic:

Shir of Toodyay Strategic Community Plan 2028

Governance: The way the Shire leads and operates.

Objective 3: Ensure rigorous organisational systems.

Policy related:

- F2 Authorised Signatories
- F3 Purchasing
- F11 Corporate Credit Cards
- F16 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.

The Shire's surplus funds are invested in bank term deposits for various terms to facilitate maximum investment returns in accordance with the Shire's investment policy.

The Shire's investment portfolio is diversified across two accredited financial institutions.

As at 31 January 2023, the total funds held in the Shire's operating accounts (including an 11AM At Call account) is \$2,490,955.34 and the total of all interest bearing term deposits invested for the period ended 31 December 2022 was \$5,181,984.00.

Legal and Statutory:

Local Government Act 1995

Section 6.4 requires a local government to prepare financial reports.

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

Local Government (Financial Management) Regulations 1996

Regulation 34 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.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council receives the Monthly Financial Statements for the month ending 31 January 2023.

9.3 EXECUTIVE SERVICES**9.3.1 Parking Space Lease Agreement (Avivo) - Toodyay Community Junction**

Date of Report:	11 January 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	LEG262
Author:	S Schafers – Governance Officer
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> Expired Avivo Lease Agreement; and ⇒ Parking and Parking Facilities Local Law. ⇒

PURPOSE OF THE REPORT

To determine the terms and conditions for Avivo: Live Life Inc. (Avivo) to have ongoing access to parking spaces at the Toodyay Community Junction.

BACKGROUND

Avivo is a not-for-profit organisation, which is registered with the Australian Charities and Not-for-profits Commission. Avivo provides a range of services to customers in the Toodyay area and surrounds, including aged care, disabilities, and mental health.

In December 2017, Avivo approached the Shire of Toodyay (the Shire), requesting consideration be given to renting two parking bays at a secure Toodyay location, to allow Avivo staff to park their pool cars.

A 'Parking Space Lease Agreement' (the Agreement) was subsequently executed on 25 January 2018, authorising Avivo to have unlimited access to two marked parking spaces at the Toodyay Community Junction. The term of the Agreement was for twelve months, with an option to renew for a further twelve-month period. The annual fee of \$2,000.00 (exclusive of GST) was subject to review on the anniversary of the Agreement.

Although the Agreement was for two parking spaces, Avivo have been utilising a third parking space at no additional cost. The Shire has no record of any formal agreement to this effect. Avivo was unable to provide clarification as to when this arrangement commenced and who from the Shire approved it. A physical review of the allocated parking spaces has identified that none of them are marked 'Avivo,' which is contrary to the recitals of the Agreement.

Verbal discussions with Avivo have confirmed they wish to retain the three parking spaces, however expressed concern about paying any additional costs, given they are a not for profit organisation.

COMMENTS AND DETAILS

The Chief Executive Officer (CEO) at the time, had delegated authority under ES14 of the Register of Delegations 2018, to prepare and administer *“tenancy agreements between the Shire of Toodyay (Lessor) and a Lessee occupying premises owned by the Shire of Toodyay in accordance with s. 3.18 of the Local Government Act 1995”*.

Section 3.18 requires local governments to administer its local laws, when performing their executive functions. For the benefit of Council, Part 2, s. 2.2(1) of the Local Law states *“the local government is to give local public notice of its intention to make a determination”*. This is reinforced in s. 3.58(3) of the *Local Government Act 1995* (the Act). However, under ss. 30(1) and 30(2)(b) of the *Local Government (Functions and General) Regulations 1996* (the Regulations), a disposition of land is excluded from s. 3.58 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 not entitled or permitted to receive any pecuniary profit from the body’s transactions.*

Avivo is a not for profit, charitable organisation and therefore meets the criteria of an exempt disposition under s. 30(2)(b) of the Regulations. However, in this instance consideration was not given to s.3.1(d)-(e) of the Shire’s *Parking and Parking Facilities Local Law 2000 (Attachment 2)* which states Council may by resolution, determine the ‘permitted classes’ of vehicles and persons which may park in specified parking stations; while s.3.3(b) provides for a fee to be charged for any vehicle parked in a parking station.

Officers suggest that tenancy agreements/lease agreements should only be used when the Lessee has exclusive possession of a premises. The Avivo parking spaces do not fit this criterion, as the premises is shared by a number of entities. Therefore, it is recommended that in this instance, a licence agreement would be more appropriate.

IMPLICATIONS TO CONSIDER

Consultative:

Avivo was encouraged to formally correspond with the Shire in relation to any concerns they may have about incurring costs for the additional parking space, however to date there has been no response.

Strategic:

Shire of Toodyay Community Strategic Plan – Toodyay 2028

Governance: The way the Shire Leads and Operates

0.1: Provide accountable and transparent leadership for the Community

0.2: Consistently improve our governance practices

Policy related:

Financial Governance Policy

Financial:

Shire records confirm Avivo has continued to pay rent based on the Shire’s *Schedule of Fees and Charges*. The current annual fee for Avivo for 2022/2023 is \$2,259.60. The fee for the 2023/2024 financial year will be considered as part of the Budget Adoption process.

Legal and Statutory:***Local Government Act 1995***

Section 3.18 - Performing executive functions

Section 3.58 – Disposing of property

Local Government (Functions and General) Regulations 1996

Section 30 – Disposition of property excluded from Act s. 3.58

Parking and Parking Facilities Local Law 2000

Section 3.1(d)-(e) – Determination of parking stalls and parking stations

Risk related:

Indemnification is a condition of the existing Agreement and therefore the risk of liability to the Shire is considered low. Should Council determine that a Licence is more appropriate, it is proposed that the indemnification clause is included in the Licence.

Workforce related:

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council:

1. Resolves to allocate up to three parking stations for Avivo at the Toodyay Community Junction in accordance with Part 3 of the Shire's *Parking and Parking Facilities Local Law 2000*;
2. Resolves to terminate the existing 'Parking Space Lease Agreement' with Avivo and replace it with a 'Parking Station Licence Agreement;' and
3. Authorises the Chief Executive Officer to negotiate with Avivo the terms and conditions of a licence to occupy up to three parking stations at the Toodyay Community Junction.

9.3.2 Toodyay Recreation Centre - Management Reporting

Date of Report:	3 January 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	PRO15
Author:	M Rebane – Executive Assistant
Responsible Officer:	T Bateman – Manager Corporate and Community Services
Previously Before Council:	Not applicable
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	<ol style="list-style-type: none"> TRC Management Reporting Pack - December 2022 Quarter (confidential) Section 5.23(2) <i>(e)(iii)a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person where the trade secret or information is held by, or is about, a person other than the local government</i>

PURPOSE OF THE REPORT

To receive the Management Reporting Pack for the December 2022 quarter from Clublinks Management Pty Ltd for the Toodyay Recreation Centre (TRC) in accordance with the management contract.

BACKGROUND

As Venue Manager for the Toodyay Recreation Centre, Clublinks Management Pty Ltd is required to submit a monthly report to the Shire that details monthly activities, in accordance with the contract. Council receives these reports quarterly.

COMMENTS AND DETAILS

The reports for the months of October, November, and December 2022 are attached (**Attachment 1**) and include a summary of activities during the quarter.

The attached report provides further detail on visitation and usage in addition to key financial information. Of particular note for the period was the opening of the aquatic centre on 1 October 2022, however with the cool start to the season, numbers were lower than expected when compared to October 2021. In-term swimming lessons were a highlight in November for children from Toodyay District High School, in addition to Bolgart Primary School and a group of home-schooled children.

Unfortunately, compared to the same quarter for 2021, visitation for this quarter was lower than anticipated which is reflected in the corresponding financials. It is evident however,

that a membership push through social media in November and December has contributed to higher visitation in the current quarter. Further detail will be included in the third quarter report.

IMPLICATIONS TO CONSIDER

Consultative:

Clublinks and Shire Officers meet monthly

Strategic:

Strategic Community Plan – Toodyay 2028

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

Policy related:

Nil.

Financial:

The Shire invests significantly in the operational costs of the TRC, with the expectation that Clublinks will operate the TRC to best practice standards; meeting community needs.

Legal and Statutory:

The Venue Manager is required to provide monthly reports to the Shire in accordance with the Management Contract.

Risk related:

The Shire receives monthly reports in accordance with the existing contract. Reputational and financial risks exist if the reports are not prepared and forwarded to the Shire. Receiving and reviewing the financial performance of the TRC assists the effective oversight of the management and mitigates this risk.

Workforce related:

The Shire has an ongoing commitment to the contract for the management and operation of the TRC.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

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

9.4 INFRASTRUCTURE AND ASSETS**9.4.1 Council Policies - Street Lighting; Temporary Road Closures; and Oversize Vehicles.**

Date of Report:	2 November 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:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	<ol style="list-style-type: none"> 1. CURRENT Street Lighting Policy; ⇒ 2. REVISED Street Lighting Policy; ⇒ 3. CURRENT Oversize Vehicles Policy; ⇒ 4. NEW Restricted Access Vehicles Policy; ⇒ 5. CURRENT Temporary Road Closures Policy; and ⇒ 6. REVISED Temporary Road Closures Policy. ⇒

PURPOSE OF THE REPORT

To consider:

- (a) Adopting the REVISED Street Lighting Policy;
- (b) Revoking the CURRENT Oversize Vehicles Policy; and
- (c) Adopting the NEW Restricted Access Vehicles Policy; and
- (d) Adopting the REVISED Temporary Road Closures for Events Policy.

BACKGROUND

Council resolved to implement a review of all Shire policies at an Ordinary Council Meeting held in February 2022. Information regarding when these policies were last reviewed is in the table below:

Old Ref	New Ref	Policy Name	Adoption Date	Most recent Council Resolution No. where applicable
E.4	INF3	Street Lighting	18/10/2007	CRN: 751/05/10
A.8	INF8	Oversize Vehicles	27/04/2006	CRN: 751/05/10
A.13	REG1	Temporary Road Closures	19/01/2006	CRN: 189/06/12

COMMENTS AND DETAILS

Information regarding the review of these three policies is below.

(a) Street Lighting

The current *Street Lighting Policy* is attached (**Attachment 1**).

This policy is to formalise the provision of street lighting within the Shire of Toodyay's subdivisional areas where street lighting is required.

The revised *Street Lighting Policy* has been amended as follows:

- Minor aesthetic changes have been made to policy items such as *Introduction*, *Objective*, *Scope*, and *Definitions*.
- Policy context and technical standards of the current policy have not changed.

The revised *Street Lighting Policy* is attached (**Attachment 2**).

(b) Oversize Vehicles Policy

The current *Oversize Vehicles Policy* is attached (**Attachment 3**).

The intent of this policy is to provide guidelines for Council and Council Officers in granting approval for the issuing of Main Roads WA permits to allow oversized vehicles to travel on Shire controlled roads.

The current *Oversized Vehicles Policy* has been amended as follows:

- Information contained in the current *Oversize Vehicles Policy* is superseded and a new heavy vehicle policy with new title '*Restricted Access Vehicles Policy*' was developed to consider Main Road WA's revised heavy vehicle network regulations.
- The new *Restricted Access Vehicles Policy* will allow Council, Officers, and Applicants to
 - Identify roads that are approved for RAV operation
 - Ensure that roads are suitable for the requested RAV access
 - Ensure that roads comply with Route Assessment Guidelines
 - Provide approval procedure guidance

The new *Restricted Access Vehicle Policy* (**Attachment 4**) is recommended for adoption.

It is recommended that the *Oversize Vehicles Policy* be revoked in favour of the new *Restricted Access Vehicles Policy*.

(c) Temporary Road Closures Policy

The current *Temporary Road Closure Policy* is attached (**Attachment 5**).

This policy is intended to provide clarity and guidance on the process to achieve the temporary closure of a road for public events.

The current *Temporary Road Closure Policy* has been amended as follows:

- The policy title '*Temporary Road Closure Policy*' was renamed to '*Temporary Road Closure for Public Events Policy*' to provide clarity regarding the policy limitations.
- Changes to *Policy Statement*, item 2

The amended policy requires event organiser to undertake all necessary works to install and remove signage, barriers, and other equipment for the temporary road closure. The event organiser is also required to provide Main Roads WA accredited personal a basic worksite traffic management ticket (minimum requirement) to erect and remove signage, barriers and other equipment.

The '*Temporary Road Closure for Public Events Policy*' (**Attachment 6**) is recommended for adoption.

IMPLICATIONS TO CONSIDER

Consultative:

Officers considered example policies from various other local governments, the Department of Local Government Operational Guidelines and relevant online information.

The REVISED policies and the NEW policy was made available to Councillors via the Teams environment on 4 January 2023, before being discussed at a Council workshop held on 8 February 2023 attended by six elected members.

Minor typographical amendments were made to all three policies.

Strategic:

Toodyay Strategic Community Plan – Toodyay 2028

Building Environment:

Objective 1 - Ensure safe and sustainable transport options.

Objective 2 - Ensure our built environment meets community needs.

Objective 3 - Improve processes to support the built environment.

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:

The structure of policies presented is in line with Council's Corporate Documents Policy, adopted in November 2021.

Financial:

Nil.

Legal and Statutory:

Nil.

Risk related:

The risk of these policies not being adopted at this time is Minor (2) related to Compliance Risk. Adoption of these policies mitigates any risks.

Workforce related:

The policy review is being undertaken in-house by Shire Officers.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council:

1. Adopts the REVISED Street Lighting Policy (**Attachment 2**).
2. Authorises the Chief Executive Officer to make any necessary minor typographical changes to the above policies, prior to publication.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION 2

That Council:

1. Revokes the CURRENT Oversize Vehicles Policy (**Attachment 3**).
2. Adopts the NEW Restricted Access Vehicles Policy (**Attachment 4**).
3. Authorises the Chief Executive Officer to make any necessary minor typographical changes to the NEW Restricted Access Vehicles Policy prior to publication.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 3

That Council

1. Adopts the REVISED Temporary Road Closures for Events Policy (**Attachment 6**).
2. Authorises the Chief Executive Officer to make any necessary minor typographical changes to the above policies, prior to publication.

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9.4.2 Installation of separate utility meters at the Toodyay Recreation Centre

Date of Report:	17 January 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	186/08/22
Author:	J Augustin – Manager Infrastructure and Assets
Responsible Officer:	J Augustin – Manager Infrastructure and Assets
Previously Before Council:	Item 14.1 OCM 24 August 2022
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	Nil

PURPOSE OF THE REPORT

To consider the installation of separate utility meters at the Toodyay Recreation Centre.

BACKGROUND

In the financial year 2021/22, large volumes of scheme water were required for new turf consolidation, to balance salinity levels in the water storage facility and for irrigation purposes during a period of bore pump malfunctions which had a significant impact on the maintenance budget for the Toodyay Recreation Centre (TRC). Subsequently, the operator of the facility sought financial compensation for budget overruns relating to water and power consumption of the facility.

At the Ordinary Council Meeting held on 24 August 2022, Council requested the Chief Executive Officer to investigate the installation of separate utility meters for pavilion, aquatic and dry sport facilities to enable apportioning costs. Further, Council determined that the facility operator is responsible for managing power consumption.

Therefore, this report will focus solely on the installation of separate water submeters for pavilion, aquatic centre and dry sport facilities to monitor the flow and consumption of scheme water.

COMMENTS AND DETAILS

The investigation is based on information gained from site inspections and hydraulic services plans provided by Cundall Consulting Engineers for construction of the TRC.

Services Plans

The hydraulic service plans and specifications provide detailed information about water and gas supply pipelines and valve alignments for the TRC.

For this report the following hydraulic service plans were investigated:

- (a) Hydraulic Services, drawing no. H201 - Site Plan (Attachment 1);

- (b) Hydraulic Services, drawing no. H202 - Community Pavilion and Change Room (Attachment 2); and
- (c) Hydraulic Services, drawing no. H203 - Aquatic Centre Plan (Attachment 3).

Site Inspection

A thorough site inspection was conducted on 30 January 2023 by a local plumbing firm and shire officers to find feasible locations for additional submeters and to confirm the location of property branch connection point and main meter, backflow prevention devices, existing submeters and valves.

Conclusion

The information gained from the site inspection and the hydraulic services plans, indicate that three (3) additional submeters with data loggers would be required to permit determining water usage of the Pavilion, Aquatic Centre (showers and toilets), and Water Storage Tank. The existing submeter located in the Pool Plantroom however requires one (1) additional data logger to record the water usage of the Aquatic Centre pools. The facility's main water meter located at the south-eastern property boundary records the overall consumption of the Toodyay Recreation Centre.

Proposed Locations (map below)

Submeter 1

Aquatic Centre, near the vehicle entrance gate

Submeter 2

Community Pavilion and Change Rooms, near bin storage facility

Submeter 3

Water Storage Tank, tank inlet pipe



Implementation Cost

The costs for the installation of additional water submeters and data logger on the TRC premises is estimated at \$10,000 (excl. GST).

IMPLICATIONS TO CONSIDER**Consultative:**

Nil.

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

Built environment:

Objective 2 – Ensure our built environment meets community needs.

S 2.5 Enhance and maintain our parks, gardens, and public green spaces.

Policy related:

Nil.

Financial:

The cost for the installation of additional submeters and a data logger cannot be accommodated under the current budget allocation for building maintenance. A business case proposal will need to be prepared and submitted to Council for consideration under the upcoming capital works budget for financial year 2023/2024.

Legal and Statutory:

Nil.

Risk related:

Nil.

Workforce related:

If Council approves the officer's recommendation, works will be carried out by a qualified plumbing contractor in the financial year 2023/2024.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council requests the Chief Executive Officer to include a project brief for the installation of three (3) water submeters and one (1) water data logger at the Toodyay Recreation Centre for Council's consideration as part of the 2023/24 annual budget process.

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 22 March 2023

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