



Ordinary Council Meeting

23 August 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 16 August 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's Plan for the Future (Council Plan 2023-2033) is the Community's Strategic Plan outlining the direction that the Shire is undertaking to meet the needs and aspirations of its community.

Our Vision

A caring and visionary rural community, working together to preserve and enrich Toodyay's environment, character and lifestyle.

Our Purpose

The Shire of Toodyay exists to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

Our Values

We conduct ourselves in line with values the local community cares deeply about:

- **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; and
- **Commitment** – we translate our plans into actions and demonstrate the persistence that will provide results.

Community Aspirations

There are five core performance areas in this plan: People, Planet, Place, Prosperity, and Performance. These areas are interrelated, and each must be satisfied to deliver excellent quality of life in the Shire of Toodyay.

For each area, there is an overarching aspirational statement and desired outcomes, summarised in the Council Plan which is available on the Shire's website at: <https://www.toodyay.wa.gov.au/documents/432/council-plan-plan-for-the-future-2023-2033>

Disclaimer

Any discussion regarding a planning matter 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 a notice of approval from Council. No action should be taken on any item discussed at a Council Meeting prior to written advice on the resolution of the Council being received. Any plans or documents contained in this document may be subject to copyright law provisions (*Copyright Act 1998*, as amended) and the express permission of the copyright owner(s) should be sought prior to reproduction.

Availability of Meeting Agenda and its Attachments

Information about Council Meetings is located on the website

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

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

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

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



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

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

At the Ordinary Meeting of Council held on 26 July 2023, the following questions were taken on notice:

4.1.1 A Wroth - Terrace Bar Structure

The following questions on notice were received from A Wroth:

Summary of Question Two

How long has the Shire been in control of the buildings on the showground, and how long has the Shire been maintaining them?

Response

I'm unable to confirm how long the Shire has been in control of the buildings at the showgrounds however, I'm told it is over 30 years.

Summary of Question Three

Why has the bar been allowed to reach this state of disrepair if the Shire were in control of the maintenance? The Agricultural Society were previously maintaining all buildings a long time ago and we maintained them well. Why did we reach this point?

Response

Due to limited funds, the Shire must prioritise expenditure on asset management according to safety and community benefit. I understand that given its limited use and poor condition, the Shire's previous Building Maintenance Officer issued a letter to the Toodyay Agricultural

Society (TAS) in 2018 advising that the Shire intended to demolish the Bar in 2021. As a result, little or no maintenance has been undertaken since.

This letter was referred to by representatives of the TAS at a meeting held at the Shire Administration Office in 2022. The bar was not demolished in 2021 and at the above meeting, the TAS requested the bar to be used for one more year (2022) and to be reassessed or demolished the following year. The Shire provided temporary repairs to accommodate this request. As part of the reassessment following the 2022 show, a building inspection report was commissioned which identified significant safety concerns. This report has been provided to the President of the TAS.

4.2 PUBLIC QUESTION TIME

5 CONFIRMATION OF MINUTES

5.1 Ordinary Meeting of Council held on 26 July 2023

OFFICER'S RECOMMENDATION

That the Unconfirmed Minutes of the Ordinary Council Meeting held on 26 July 2023 be confirmed.

5.2 Agenda Briefing held on 16 August 2023

OFFICER'S RECOMMENDATION

That the Notes of the Agenda Briefing held on 16 August 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)

The Shire President may make an announcement, in accordance with the *Shire of Toodyay Standing Orders Local Law 2008* (Section 4.3).

9 OFFICER REPORTS

9.1 DEVELOPMENT AND REGULATION

9.1.1 Lot 3 Stirling Terrace, Toodyay - Construction of new staircase and internal alterations

Date of Report:	29 June 2023
File Reference:	P2023-40 / A2021/3STIT
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	No
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. P2023 - 40 - Application and Plans; and 2. P2023 - 40 - HCWA Submission.

SUMMARY

Applicant: Cheryl Jean
 Owner: Cheryl Jean
 Proposal: Construction of new staircase and internal alterations.
 Location: Lot 3 Stirling Terrace, Toodyay

PURPOSE OF THE REPORT

To consider an application for development approval for a new staircase and interior alterations at “The Ship” Lot 3 Stirling Terrace in Toodyay. As this application relates to a property located in the Roman Catholic Church precinct, it may only be determined by Council.

BACKGROUND

Lot 3 Stirling Terrace in Toodyay is a 2,034m² (0.2034 ha) property within the Central Toodyay Heritage Area. It is currently zoned ‘Mixed Business’ under the Shire of Toodyay’s *Local Planning Scheme No. 4* (LPS4).

The property is also within the Roman Catholic Church Group, which has been included in the *State Register of Heritage Places* (Place No. 4125) since 2019.

Proposal

On 10 May 2023, the Shire of Toodyay received an application to remove the walls between bedrooms 1 and the office, and bedrooms 2 and 3 to create two large bedrooms on the first floor. Additionally, the existing spiral staircase is to be replaced with a wooden staircase and balustrade. Due to the size of the proposed staircase both the upstairs and ground floor bathrooms will require the repositioning of the inward facing walls.

For more information, please refer to the **Attachment 1: P2023-40 - Application and Plans**.

Timeframe to determine.

The Shire received this application on 10 May 2023, which required advertising. Pursuant to Schedule 2, clause 75(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, this application must be determined within 90 days, being 8 August 2023.

In light of this date not aligning with scheduling for this Ordinary Council Meeting, written consent has been sought from and provided by the applicant, to determine this application after the 90-day period.

COMMENTS AND DETAILS

The first-floor layout consists of three bedrooms and an office. The applicant proposes to remove the dividing walls between bedroom one and the office, and bedrooms two and three to create two large bedrooms.

The existing spiral staircase is constructed of black painted steel which is unsafe to climb due to its design and narrow steps and typically would not have been constructed in the 1860 era when the “The Ship” was built.

The applicant proposes to replace the existing staircase with a wooden staircase that will complement “The Ship’s” architecture and heritage, whilst providing a safe passage from the ground to first floor. The proposed staircase has a much wider footprint than the existing staircase and requires the repositioning of both the ground and first storey bathrooms inward facing walls.

Neither the staircase nor creation of two new bedrooms are considered to have a negative impact on the cultural heritage significance of “The Ship”.

It is recommended that Council approves this application.

IMPLICATIONS TO CONSIDER

Consultative:

As the development site is located within a Heritage Place and is under the State Heritage Register (Place No. 4125), the development application must be formally referred to the Heritage Council of Western Australia (HCWA). This was done in accordance with the referral process under Division 2, Section 73 of the *Heritage Act 2018*.

The HCWA, in its submission, stated support for the proposed development.

For more information, please refer to the **Attachment 2: P2023-40 – HCWA Submission**.

In addition, the application was also referred to the Toodyay Historical Society (THS). The THS is supportive of the development proposal.

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

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

O5.3: *Preserve and showcase local history and heritage.*

Shire of Toodyay Heritage Master Plan 2015

2.2.1 Place No.11; Catholic Church Precinct

Encourage the private owners to retain and conserve the area.

Shire of Toodyay Local Planning Strategy 2018

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

Policy related:

State Planning Policy 3.5 Historic heritage conservation

6.6 Development control principles

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

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

Alterations, extensions or change of use affecting a heritage place.

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

Shire of Toodyay Local Planning Policy No. 20

Objectives

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

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

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

Principles of Development

All applications within the Central Toodyay Heritage Area shall have regard to and respect the following principles of development:

- a) All development shall enhance and reinforce the historic character of the Central Toodyay Heritage Area.
- b) New construction, demolition, intrusions, or other changes that would adversely affect the setting or relationships within the Central Toodyay Heritage Area are not appropriate.
- c) Additions to heritage places must ensure that they do not visually intrude on the existing building or street context and that they are in sympathy with the character of the existing property. Additions should be distinguishable from the original building and the distinction may be subtle if desired.

Financial:

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

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

Legal and Statutory:

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Planning and Development Regulations 2009

Heritage Act 2018

Heritage Regulations 2019

Shire of Toodyay Local Planning Scheme No. 4

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

Risk related:

Should Council refuse the application, the applicants 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 development application for Construction of new staircase and internal alterations at Lot 3 Stirling Terrace, Toodyay, subject to the following conditions:

- (a) The development hereby permitted must be commenced within two years from the date of this decision letter.
- (b) The development hereby permitted taking place in accordance with the approved plans.
- (c) A photographic archival record shall be made according to the *Heritage Council - Guide to preparing an archival record – July 2019*

9.1.2 Lot 5 Mercy Retreat , Toodyay - "Mercy House" - Restoration and change of use – Convent to Single Dwelling and Short-Term Accommodation

Date of Report:	30 June 2023
File Reference:	P2023-26 / A5622/5MER
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. P2023-26 - Application and Plans; 2. P2023-26- HCWA Submission; and 3. P2023-26 - THS Submission.

SUMMARY

Applicant:	Kinross Creasy Investment Pty Ltd
Owner:	Kinross Creasy Investment Pty Ltd
Proposal:	"Mercy House" - Restoration and change of use – Convent to Single Dwelling and Short-Term Accommodation.
Location:	Lot 5 Mercy Retreat, Toodyay

PURPOSE OF THE REPORT

To consider an application for development approval for the restoration and change of use – convent to single dwelling and short-term accommodation, at "Mercy House" Lot 5 Mercy Retreat in Toodyay. As this application refers to a property located within the Roman Catholic Church precinct, it may only be determined by Council.

BACKGROUND

Lot 5 Mercy Retreat in Toodyay is a 2,210m² (0.2210 ha) property within the Central Toodyay Heritage Area. It is currently zoned 'Mixed Business' under the Shire of Toodyay's *Local Planning Scheme No. 4* (LPS4).

The property is also within the Roman Catholic Church Group, which has been included in the *State Register of Heritage Places* (Place No. 4125) since 2019.

Proposal

On 4 April 2023, the Shire of Toodyay received an application from Botica Architects on behalf of the owners Kinross Creasy Investment Pty Ltd for the restoration and change of use from convent to single dwelling and short-term accommodation for "Mercy House".

Included in this application is refurbishment to verandahs, repainting, landscaping, new fencing, swimming pool and adaptation of former kitchen and laundry, and demolition of boiler room.

The development will consist of:

1. A holiday residence for the owners.
2. Four luxury short stay rooms with ensuite.
3. A one-bedroom studio "The Laundry".

A maximum of ten guests at any time with a maximum of two guests per room.

The following works are proposed:

AREA	PROPOSED WORKS
All buildings	Remediation to address any subsidence to buildings and repointing existing brickworks using City of Fremantle's <i>Technical Advice Sheet – Repointing lime mortar joints</i>
Exterior	<p>Balcony and verandahs repair and maintenance.</p> <p>Balcony balustrading to be removed and replaced with National Construction Code (NCC) compliant timber balustrading.</p> <p>Removal of timber staircase.</p> <p>Remove asbestos verandah frieze and replace with timber frieze.</p> <p>Removal of enclosures to all verandahs and balconies.</p> <p>Audio room door to verandah to be bricked in with matching bricks.</p> <p>Fenestrations (the arrangement of a window in a building) to be created in dining room and passage adjacent to library.</p> <p>West wall of dining room – removal of window and door to create wider opening for timber folding doors.</p>
Interior	<p>Ground Floor – replan internal rooms.</p> <p>Audio and computer rooms to create the kitchen.</p> <p>Meeting room and passage to create sitting room.</p> <p>Dining room to remain and walls to be removed from either side of fireplace to connect the dining and living spaces.</p> <p>Upper Floor – replan internal rooms.</p> <p>Current northeast bathroom and all piping currently visible on the balcony to be removed and create a bedroom.</p>

AREA	PROPOSED WORKS
	<p>Iron and linen store to be combined to create lounge and coffee room.</p> <p>Dividing timber partition between bedrooms F & G in southeast corner removed to create a single bedroom (bed 3).</p> <p>Dividing timber partition between bedrooms D & E in south side removed to create an ensuite for bed 3, shared bathroom and linen cupboard. Bed E door opening widened to facilitate the linen cupboard doors.</p> <p>Robe room replanned to an ensuite for bedroom 2.</p> <p>Dividing timber partition between bedrooms C & Sacristy in south side removed to create a single bedroom (bed 2) Sacristy doors closed off.</p> <p>Dividing timber partition between bedrooms A & B in north side removed to create a single bedroom (bed 5).</p> <p>Chapel on the west side was replanned within the existing walls to be the main bedroom with ensuite. A section of the southern side of the room will be partitioned to form the ensuite.</p> <p>Existing stairs to remain as is.</p>
Kitchen Building	<p>Replan within the existing walls a new country style alfresco kitchen.</p> <p>Extend the existing eastern verandah to wrap the building on the north and west.</p> <p>New timber decking to the verandahs</p>
Laundry Building	<p>It is proposed to replan and upgrade the interior of the building to a one-bedroom suite.</p> <p>Apart from remediation work, there are no changes planned for the external fabric.</p>
General Site	<p>Pergolas</p> <p>Two timber pergola / arbours are proposed, one is over the parking for 3 car spaces located adjacent to the Mercy Retreat boundary. The second is to the outdoor alfresco adjacent to the kitchen building.</p> <p>Parking areas</p> <p>Paved hardstand parking for 6 cars is proposed, accessed from the Mercy Retreat crossover.</p> <p>Secure and screened paved hardstand adjacent the laundry building is provided for 2 cars.</p>

AREA	PROPOSED WORKS
	<p>Swimming pool</p> <p>Swimming pool and associated metal spear barrier fencing is proposed to the west side of the site.</p> <p>New fencing is proposed for the site.</p> <p>Fencing to streets and fronting the Catholic buildings precinct. 1.2m high fencing is noted as wrought iron and brick piers in line with LPP 20.</p> <p>Dividing fencing</p> <p>Proposed 1.8m high brick dividing fence to pool area only.</p> <p>Remainder proposed as 1.8m high timber lap fencing.</p>

For more information, please refer to the **Attachment 1: P2023-26 - Application and Plans.**

Timeframe to determine.

The Shire received this application on 4 April 2023, which required advertising. Pursuant to Schedule 2, clause 75(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, this application must be determined within 90 days, being 7 July 2023.

Due to additional information being requested by the Heritage Commission of Western Australia (HWCA), written consent has been sought from and provided by the applicant, to determine this application after the 90-day period.

COMMENTS AND DETAILS

This application proposes to preserve “Mercy House’s” character and history with extensive restorations and changing its use from a convent to a single dwelling and short-term accommodation.

Short term accommodation for guests with onsite facilities will be consistent with the proposed use of “Tourist Development” and may be approved subject to a period of advertising in accordance with Clause 64 of the deemed provisions.

The short-term accommodation is anticipated to create minimal disturbance to the other residents of the Catholic Church Precinct as “Mercy House” is accessed via Mercy Retreat. Guests using the accommodation will enter via Mercy Retreat and use the onsite parking provided. Additionally, proposed fencing and landscaping will provide privacy for both guests and the other residents within the precinct.

The change of use to a single dwelling is also supportable as there are already examples of single dwellings in the precinct.

The HCWA, in its submission, has stated that the proposed development is supported subject to conditions. Further information is provided in the consultative implications to consider following this section of the report.

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

IMPLICATIONS TO CONSIDER**Consultative:**

As the development site is located within a Heritage Place and is under the State Heritage Register (Place No. 4125), the development application must be formally referred to the Heritage Council. This was done in accordance with the referral process under Division 2, Section 73 of the *Heritage Act 2018*.

The HCWA, in its submission, provided support for the proposed development subject to the following conditions:

1. Walls nibs and substantial down stand to be retained to interpret original configuration where internal masonry walls being removed.
2. Construction of early timber partitioning to the first floor to be documented prior to their removal.
3. Infill to internal door openings should be lightweight and capable of reversal.
4. Proposed works to minimise impact on original fabric and retain as much as practical.
5. Removed floorboards to be retained on site for potential future reinstatement or re-use.

It is recommended that the HCWA conditions are applied to any development approval. For more details, please refer to **Attachment 2: HCWA Submission**

In addition, the application was also referred to the Toodyay Historical Society (THS). The THS is supportive of the development proposal. Refer **Attachment 3: THS Submission**

The application was advertised in accordance with the Local Planning Policy – *Advertising for Planning Proposals*. Tourist Accommodation is an ‘A’ use in the Mixed Business zone and therefore this warrants an E- level consultation.

The consultation period ended on 12 June 2023 after being advertised for a period of thirty-three (33) days with no public submissions received.

Strategic:***Plan for the Future: Shire of Toodyay Council Plan 2023-2033***

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

O5.3: Preserve and showcase local history and heritage.

Shire of Toodyay Heritage Master Plan 2015

2.2.1 Place No.11; Catholic Church Precinct

Encourage the private owners to retain and conserve the area.

Shire of Toodyay Local Planning Strategy 2018

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

Policy related:***State Planning Policy 3.5 Historic heritage conservation***

6.6 Development control principles

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

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

Alterations, extensions or change of use affecting a heritage place.

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

Shire of Toodyay – Local Planning Policy - Car Parking

Objectives

- Ensure adequate and safe access to facilities and services, whilst maintaining and complementing the amenity and character of the Shire.

Shire of Toodyay Local Planning Policy No. 20

Objectives

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

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

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

Principles of Development

All applications within the Central Toodyay Heritage Area shall have regard to and respect the following principles of development:

- a) All development shall enhance and reinforce the historic character of the Central Toodyay Heritage Area.
- b) New construction, demolition, intrusions, or other changes that would adversely affect the setting or relationships within the Central Toodyay Heritage Area are not appropriate.

- c) Additions to heritage places must ensure that they do not visually intrude on the existing building or street context and that they are in sympathy with the character of the existing property. Additions should be distinguishable from the original building and the distinction may be subtle if desired.

Financial:

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

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

Legal and Statutory:

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Planning and Development Regulations 2009

Heritage Act 2018

Heritage Regulations 2019

Shire of Toodyay Local Planning Scheme No. 4

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

Risk related:

Should Council refuse the application, the applicants 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 development application for the restoration and change of use from convent to single dwelling and short-term accommodation for "Mercy House". at Lot 5 Mercy Retreat, Toodyay, subject to the following conditions:

- (a) The development hereby permitted must be commenced within two years from the date of this decision letter.
- (b) The development hereby permitted taking place in accordance with the approved plans.
- (c) Walls nibs and substantial down stand to be retained to interpret original configuration where internal masonry walls being removed.
- (d) Construction of early timber partitioning to the first floor to be documented prior to their removal.
- (e) Infill to internal door openings should be lightweight and capable of reversal.
- (f) Proposed works to minimise impact on original fabric and retain as much as practical. Removed floorboards to be retained on site for potential future reinstatement or re-use.
- (g) A photographic archival record shall be made according to the *Heritage Council - Guide to preparing an archival record - July 2019*.

9.1.3 Lot 101 Nunile Road, Nunile - Ancillary Accommodation.

Date of Report:	4 August 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	P2023-47 - A453/101NUN
Author:	T Prater – Planning and Compliance Officer
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. P2023 - 47 - Application & Plans

SUMMARY

Applicant:	Modular WA
Owner:	Jane Torry
Proposal:	Ancillary Accommodation
Location:	Lot 101 Nunile Road, Nunile

PURPOSE OF THE REPORT

Council is requested to consider an application for development approval for a proposed ancillary accommodation at Lot 101 Nunile Road, Nunile. The reason this application is being brought to Council for determination is that the applicant has requested a variation to the *Local Planning Policy No.2 – Ancillary Accommodation*. There is no delegated authority to determine this application at an Officer level.

BACKGROUNDProperty Information

Lot 101 (No. 539) Nunile Road, Nunile is a 43,459 m² (4.34ha) property in Nunile.

The property is zoned Rural 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, water tank, and an outbuilding.

Proposal

The applicant seeks development approval to construct an ancillary accommodation.

The proposed application has the following variations to *Local Planning Policy No. 2 – Ancillary Accommodation*, and *Local Planning Scheme No. 4*

The proposal is a variation to the following provisions of the policy:

- (a) Must be located within 20m of the main house.
- (b) Must be positioned behind or in line with the building line of the existing house.

and a variation to the following provision of the *Local Planning Scheme No. 4*.

- (a) Setback variation 45m in lieu of 50m.

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

Time to determine.

The application was received on 31 May 2023. 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 29 August 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:

- must be located within 20m of the main house; and
- must be positioned behind or in line with the building line of the existing house.

The intent of these two points is to show the relationship between the two structures. In this instance the main dwelling is located at the rear of the property and positioning the ancillary accommodation in line with or behind this dwelling, is not achievable.

Additionally, to achieve a lower Bushfire Attack Level (BAL) rating the ancillary accommodation is to be located at 42m in lieu of 20m which is a variation to *the Local Planning Policy – Ancillary Accommodation*. This application also proposes a 45m in lieu of 50m setback from the boundary which is a variation to *Local Planning Scheme No. 4*

It should be noted however, that the ancillary accommodation will be obscured from view from both the neighbouring property and Nunile Road and screened by trees at the front and side of the property. This proposal is not envisioned to have a negative impact on the amenity of the area.

This application is consistent with the remaining requirements listed in *Local Planning Policy Ancillary Accommodation*.

It is recommended that Council approves this development with conditions.

IMPLICATIONS TO CONSIDER

Consultative:

Local Planning Policy – Advertising for Planning Proposals.

This application has been advertised in accordance with the local planning policy and to the affected adjoining landowner with no submissions received.

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

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

O5.2: Enable access to affordable, sustainable, and diverse housing options.

The adoption of the revised policy will demonstrate the Shire of Toodyay’s continued commitment to this objective.

Policy related:

Local Planning Policy Ancillary Accommodation

Clause 1.0 of the policy states:

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

- (a) must be located within 20m of the main house.*
- (b) must be positioned behind or in line with the building line of the existing house.*

Under Section 3.0 of the policy:

Council may vary the requirements of this Local Planning Policy 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:

Should Council refuse the application, the applicants 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 development application for an ancillary accommodation at Lot 101 Nunile Road, Nunile, 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.

9.1.4 Proposed Scheme Amendment No. 12 - Additional Use Proposed Additional Use “Brewery, Cidery or Distillery, Restaurant Café, Tourist Development.” Lot 4 (447) Morangup Road, Morangup

Date of Report:	7 August 2023
File Reference:	PLA1
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	Item 9.1.3 OCM 26 April 2023
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> Item 9.1.3 OCM 26 April 2023 Amended Scheme Amendment 12 proposal

SUMMARY

Applicant:	Land Insights / Toutikian
Owner:	HK & S Toutikian
Proposal:	Scheme Amendment – Proposed Additional Use “Brewery, Cidery or Distillery, Restaurant Café, Tourist Development.”
Location:	Lot 4 (447) Morangup Road, Morangup

PURPOSE OF THE REPORT

Council is requested to consider an application to re-initiate a Scheme Amendment process for a proposed additional use “Brewery, Cidery or Distillery, Restaurant Café, Tourist Development.” at Lot 4 (447) Morangup Road in Morangup.

BACKGROUND

Scheme Amendment History

This matter was last discussed at the Ordinary Council Meeting held on 26 April 2023 where Council resolved to initiate the Scheme Amendment for the purpose of advertising. For more details, please refer to **Attachment 1** – Item 9.1.3 OCM 26 April 2023.

Subsequent to this resolution, the Scheme Amendment was then required to be submitted to the Environmental Protection Authority (EPA) pursuant to section 48A of the *Environmental Protection Act 1986* (EP Act).

Despite the Shire submitting all available information supplied with the application, the advice received from the Department of Water and Environmental Regulation (DWER) on

6 June 2023 was that the information supplied was insufficient for the EPA to comply with section 48A.

Accordingly, the Shire, DWER and applicants had further discussions which has resulted in a modified proposal.

Modified Proposal

The modified proposal is now as follows:

The Land

Lot 4 (447) Morangup Road, Morangup is located in the Gidgegannup Springs subdivision estate. The lot is zoned Rural Residential under the Shire of Toodyay's *Local Planning Scheme No. 4*.

Development history

A small-batch distillery was approved and built at Lot 4 Morangup Road Morangup in the Shire of Toodyay. It has operated for several years as a Home Business within the Rural Residential zone.

The Shire of Toodyay is responsible for the approval and management of development which relates to Scheme permitted uses. Expansion or change would require development assessment and approval.

Site activity combines the orchard produce (operated on the site for decades), with other ingredients to make small-batch liquor products.

The orchard, distillery and associated land use of Lot 4 has been established for several years without detriment or report of impact to natural waterways and drainage or nearby bushland reserve.

Proposal

The operator of the business seeks to open the premises to tourism visitors, to showcase local production and build an awareness of Toodyay as a location of fine quality produce. A tasting room is to be developed where sampling of produce and accompanying food from the site can occur (a cellar-door operation).

This is similar to businesses which operate throughout other rural production areas and is intended to build the Shire economy based upon existing business enterprise.

The Scheme is to be modified to introduce the uses of Tourism Development and Restaurant Café and recognise the current Distillery (which has been operating with Shire approval as a discretionary use within the Rural Residential zone) on the site.

Potential for Environmental Effect

The land is zoned Rural Residential, and the Scheme Amendment will add three selected uses to formalise what is an operating and approved business on the property, to better control development and to recognise the potential for development to boost tourism attraction for the Shire.

The distillery operates subject to the current Shire and Scheme controls, including a need to obtain a planning approval for any further development on the site. To achieve the proposed tourism cellar door operation will require development of an enlarged shed to adequately provide shelter and space for visitors, a tasting area and logistics associated with the business.

A constructed car park will formalise what is currently a cleared and unestablished yard and manoeuvring area. All works will be on Lot 4, a site which has been substantially cleared and used for orchard and home business purposes for many years.

Vegetation will be protected on the site- replanting can be done to reinforce and buffer adjacent remnant species.

Water management of any stormwater run-off will collect and infiltrate/distribute within the site. The distillery operates as a small scale (300 litres capacity still) boutique operation of up to 5 runs per week. Waste is managed by feeding recovered solids to livestock on the farm, and wastewater (up to 800 litres) is discharged to site via the current on-site wastewater system managed by the owner to the approval of the Shire's Environmental Health officer (2 x 1800 mm leach drain).

For more details please refer **Attachment 2**.

Requirement to reinitiate modified scheme amendment.

The Department notified the Shire on 20 July 2023 that it is the EPA's preference for the modified amendment to be taken back to Council for formalisation, prior to resubmission. This would allow the vegetated Lot 5 Morangup Road to be omitted from the amendment, thereby removing the need to demonstrate management of impacts to threatened fauna on Lot 5.

COMMENTS AND DETAILS

It is acknowledged that the community in Morangup is underserved when it comes to this sort of development. Where the intent as a tourism venue is to attract visitors into the Shire, the proposal will provide options for the local community to enjoy.

Transition to Local Planning Scheme No. 5

One issue being considered are the implications relating to the adopted *Local Planning Scheme No. 5*.

At a Special Council Meeting on 29 March 2023, the Council adopted the Draft *Local Planning Scheme No. 5* and this has now been sent to the Western Australian Planning Commission (WAPC) for review and ultimately it is expected that the Minister for Planning will sign off on it. The Shire has been advised that this process may take up to six months and potentially more.

The applicant is taking a risk to request a Scheme amendment under the current Scheme as outlined in the following possible scenarios:

Scenario 1

If this Scheme Amendment progresses smoothly and is finalised prior to the *Local Planning Scheme No. 5* coming into effect, then the amendment will be incorporated into the *Local Planning Scheme No. 5* as part of the WAPC processing.

Or

Scenario 2

If this Scheme Amendment process is stalled (perhaps due to delays with the EPA referral and is not resolved when the *Local Planning Scheme No. 5* comes into effect, then this amendment will be dead, and the applicant will be required to start the process all over again.

This has been conveyed to the applicant (Land Insights) who have subsequently sought instruction from the owner who has requested that the proposal to initiate the Scheme Amendment should proceed.

It should also be noted that this Scheme Amendment process will have no impact on the passage of the *Local Planning Scheme No. 5*.

With there being no planning reasons identified to not proceed with the initiation of this amendment, it is recommended that the Council resolves to proceed to allow advertising to occur.

IMPLICATIONS TO CONSIDER

Consultative:

If Council considers this application has merit, it may resolve to initiate a scheme amendment for the purposes of public advertising.

Referral to State Government agencies

If Council resolves to initiate the amendment for the purposes of advertising, the Shire will prepare the amendment documents by way of a report and plans depicting existing and proposed zoning based on the proposal submitted and any changes required by Council.

The amendment documents will then be referred to the Environmental Protection Authority (EPA) to determine whether there is a need for an environmental assessment to be undertaken and to seek approval to advertise the proposed amendment.

If it is determined that the amendment is a complex amendment, the Shire must also seek approval to advertise from the Western Australian Planning Commission (WAPC).

Advertising (applicable to standard and complex amendments only)

On receipt of approval to advertise the amendment, the Shire will arrange advertising in accordance with the Regulations. The consultation period is a minimum of 42 days in the case of a standard amendment, and a minimum of 60 days in the case of a complex amendment.

The Regulations require the amendment to be advertised in the following manner:

- publish on the website of the Shire of Toodyay;
- make a copy of the document available for public inspection at a place in the Administration Office during normal business hours;
- publish a notice in the Toodyay Herald; and
- mail out to affected landowners and stakeholders.

In this case, it is also recommended that a sign be erected advertising the Scheme amendment outside the property. This is to be done at the applicant's expense.

According to the Planning and Development (Local Planning Schemes) Regulations 2015, a complex amendment is for scheme amendments that are significant in scale and/or inconsistent with the planning framework.

This Scheme amendment fits the definition of a complex amendment and therefore the consultation period will be for 60 days.

Report of the submissions received during public advertising.

Following the advertising period, a report on any submissions received will be prepared and referred to Council. Should Council resolve to adopt the scheme amendment with or without

modifications, the Shire will forward the submissions together with Council's comments and recommendations to the WAPC. Should Council resolve not to adopt the scheme amendment, documentation must still be submitted to the WAPC.

Final determination

The WAPC will make a recommendation to the Minister for Planning who makes the final determination on all scheme amendment applications. If the Minister agrees to grant final approval, the Shire will then arrange for the scheme amendment to be published in the Government Gazette, at which point it legally comes into effect.

Strategic:

Plan for the future – Shire of Toodyay Council Plan 2023-2033

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

O5.1. Provide responsible planning and development.

Outcome 8. Toodyay is a popular tourism destination.

O8.1. Collaborate with local businesses to promote and deliver exceptional tourism experiences.

Shire of Toodyay Local Planning Strategy 2017

Clause 5.2 of the Local Planning Strategy (LPS) relates to the objectives of the strategy with the following being applicable to the proposed scheme amendment:

- *provide for economic diversification in rural and rural living areas by providing small scale and business opportunities compatible with the surrounding areas;*
- *retain, enhance, protect and promote the ecological integrity and biological diversity of the Shire;*

Clause 2.3.2.1 relates to Rural Tourism and states;

This Strategy recognises the importance of tourism to the local economy as consistent with the objective to encourage farm diversification, acknowledges that tourism may, where appropriate, form part of farm diversification activities. These activities may include short-term accommodation, cafes and restaurants, and recreation facilities.

The proposed scheme amendment provides for achievement of these objectives for economic diversification within a rural living area. It would enable a small-scale business opportunity to be established using produce grown on the subject site and for this to be part of a tourism industry featuring food and related products.

Policy related:

[Local Planning Policy – Advertising of Planning Proposals](#)

[State Planning Policy 2.5 – Rural Planning](#)

[State Planning Policy 3.7 – Planning in Bushfire Prone Areas](#)

[Government Sewerage Policy](#)

[Draft Position Statement – Planning for Tourism](#)

Financial:

The cost of a scheme amendment application depends on its complexity. Following preliminary review of the amendment, an invoice is sent. The most recent applications have incurred fees of approximately \$3,500.

The fees cover the costs associated with the progressing the amendment such as:

- Assessing the scheme amendment application including carrying out relevant research, a site inspection and if necessary meetings with the applicant to discuss the amendment;
- Preparing the reports to Council pre and post advertising, and analysing the submissions received;
- Preparing the scheme amendment documents;
- Amending maps or scheme text; and
- Responding to public enquiries during the advertising period.

Should a scheme amendment be initiated for public consultation, the costs associated with the advertising processes will also apply, including letters to affected landowners, notices in the newspaper and Government Gazette, and on-site signs.

The external peer review of technical reports that are submitted as part of the scheme amendment proposal may be required. This will occur where the Shire does not have the appropriate technical expertise to assess the reports, and the external review will be organised by the Shire at the cost of the applicant.

Processing fees for a Scheme Amendment are in accordance with [Reg 48\(3\)](#) of the *Planning and Development Regulations 2009*.

Legal and Statutory:

[Planning and Development Act 2005](#)

[Planning and Development Regulations 2009](#)

[Planning and Development \(Local Planning Schemes\) Regulations 2015](#)

When undertaking a scheme amendment, the Shire must follow the process contained in the State Government's *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations).

The Regulations identify three different scheme amendment streams, as follows:

- Basic amendment – a streamlined process for predominantly administrative scheme amendments;
- Standard amendment – for scheme amendments of less strategic significance or complexity that are neither a basic or complex amendment; and
- Complex amendment – for scheme amendments that are significant in scale and/or inconsistent with the planning framework.

According to the Planning and Development Act Regulations criteria this amendment is deemed to be a complex amendment because the proposed use for the site is one not contemplated in the Local Planning Strategy when it was last prepared by the Shire. The procedure applies to its initiation and advertisement for public comment.

Shire of Toodyay Local Planning Scheme No. 4

Risk related:

Should Council elect not to proceed to advertise the amendment, the amendment will not progress any further unless Council is directed by the Minister for Planning under Section 76 of the *Planning and Development Act 2005*. Were this to happen, it would be insignificant to our reputation (1) and in saying that this would usually only occur in exceptional circumstances (1). This equates to a low risk score with this item.

Workforce related:

Generally, the amount of administrative work associated with a Scheme Amendment is a higher burden on workforce resources.

VOTING REQUIREMENTS

Simple Majority

OFFICER’S RECOMMENDATION

That Council:

1. In accordance with section 75 of the *Planning and Development Act 2005* and Regulation 35 (1) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, adopts for the purposes of advertising, an amendment to the Shire of Toodyay *Local Planning Scheme No. 4* to:

1.1. insert additional use No. 11 in Schedule 2 – Additional Uses as follows:

No	Description of Land	Additional Use	Conditions
12	Lot 4 (447) Morangup Road, Morangup	Brewery, Cidery or Distillery (D) Restaurant/Café (I) Tourist Development (I)	a) Development shall be in accordance with site plans approved by local government and will require the issue of development approval. b) Each additional use requires development approval of the Local Government. c) Car parking and service access and loading requirement will be determined by local government as a condition of development approval, considering the number of spaces estimated to be necessary. Commercial vehicles would not enter or leave the premises earlier than 9:00am or later than 5:00pm on Monday to Saturdays. No freight access to occur on Sundays.

- 1.2. amend the Scheme Map to designate the Additional Use by including an 'A12' notation over Lot 4 (447) Morangup Road, Morangup; and
2. In accordance with Regulation 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* determines that the Scheme amendment is a complex amendment as the proposed use for the site is one not contemplated in the Local Planning Strategy when it was last prepared by the Shire.
3. Requests the CEO to advertise the proposed Scheme amendment for a period of 60 days and bring a report to the December 2023 Ordinary Council Meeting to consider submissions received.

9.2 CORPORATE AND COMMUNITY SERVICES

9.2.1 List of Payments - July 2023

Date of Report:	9 August 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	Y Tyson – Accounts Payable/Payroll Officer
Responsible Officer:	T Bateman – Executive 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 July 2023

PURPOSE OF THE REPORT

To present cheques and electronic payments raised during July 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 July 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:

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

Outcome 9. Responsible and effective leadership and governance.

09.1: Govern Shire finances, assets, and operations responsibly.

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 July 2023 total \$637,698.21.

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 July 2023 as attached to this report, summarised as follows:	
Direct Debits	17,438.83
EFTs	327,592.91
DD Loans	
Payroll	251,844.34
Municipal Cheques	40,822.13
TOTAL	637,698.21

9.3 EXECUTIVE SERVICES

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

Date of Report:	10 August 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	MTG7
Author:	M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	<ol style="list-style-type: none"> 1. Incoming Correspondence from the Department; and 2. Outgoing Response to the Department.

PURPOSE OF THE REPORT

To present details of correspondence with the Department of Local Government, Sport and Cultural Industries (DLGSC) from 13 July 2023 to 10 August 2023.

BACKGROUND

Council resolved in 2018 the following:

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

COMMENTS AND DETAILS

On 30 June 2023, the Shire received correspondence from the DLGSC in respect to Annual Financial Report Audit 2020-2021 non-compliance. This was presented to Council at the July 2023 Ordinary Council Meeting.

The Shire President and senior Shire Officers met with representatives of the DLGSC on 2 August 2023 to discuss the Shire's response.

At **Attachment 1** is an email from the Department regarding the discussion at that meeting.

At **Attachment 2** is correspondence to the Department from the Chief Executive Officer.

IMPLICATIONS TO CONSIDER**Consultative:**

Department of Local Government, Sport and Cultural Industries.

Strategic:

Plan for the future: Shire of Toodyay Council Plan – 2023 to 2033

Outcome 9: Responsible and effective leadership and governance

O9.1. Provide strong, clear, and accountable leadership.

Outcome 10: Happy community members who feel heard, valued and respected

O10.1 Keep community members informed and engaged on local matters.

Policy related:

Nil.

Financial:

Nil.

Legal and Statutory:

Local Government Act 1995

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

Risk related:

Council may invoke a high reputational and compliance risk if the recommendation below is not resolved.

Workforce related:

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council notes the correspondence with the Department of Local Government, Sport and Cultural Industries from 13 July 2023 to 10 August 2023, as attached to this report.

9.3.2 Voting Delegates for the 2023 WALGA AGM

Date of Report:	7 July 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	WAL1
Author:	M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Local Government Convention Program; 2. Voting Delegate form.

PURPOSE OF THE REPORT

To consider appointing voting delegates for the 2023 WALGA AGM before the deadline of Friday 8 September 2023.

BACKGROUND

Each year, the Western Australian Local Government Association (WALGA) holds an **Annual General Meeting** (AGM) of Members. The 2023 WALGA AGM will be held from 2pm on Monday, 18 September 2023 at Crown Perth.

WALGA's AGM is held alongside the annual WA Local Government Convention (**Attachment 1**).

Council is required to nominate voting delegates for the 2023 WALGA AGM. Council should nominate two voting delegates and two proxy voting delegates. Ideally the delegates would be those attending the WA Local Government Convention. Only registered Voting Delegates (or Proxies) are permitted to exercise voting entitlements on behalf of Members. Delegates must be elected members or serving officers.

COMMENTS AND DETAILS

It is proposed that Council nominates the Shire President and Deputy Shire President as voting delegates with proxy voting delegates to be determined.

IMPLICATIONS TO CONSIDER**Consultative:**

Information about the WALGA Local Government Convention was distributed to Councillors electronically via the Council Hub. Councillors have the opportunity to register as delegates to the Convention through the Office of the CEO.

Strategic:***Plan for the Future: Shire of Toodyay Council Plan 2022-2033*****Outcome 9 Responsible and effective leadership and governance**

The Convention provides professional development and networking opportunities for elected members.

Policy related:

Council's policy *Continuing Professional Development* provides for all elected members to attend the WALGA Annual Local Government Week Conference.

Financial:

Council's policy *Continuing Professional Development* provides that the Shire will meet the full cost of registration, travel, accommodation, meals, transport, and parking; verified through the provision of receipts, subject to the Local Government Payments and Gifts Council Policy, and other conditions specified in the *Continuing Professional Development* policy.

Legal and Statutory:

Section 5.98 (2) of the *Local Government Act 1995* provides for the payment of reimbursement of costs for Council Members.

Expenses that may be approved for reimbursement are covered under r.32 of the *Local Government (Administration) Regulations 1996*.

Risk related:

It is recommended that Council nominate voting delegates. To not do so would be seen as a low risk from an advocacy perspective. This report mitigates the risk.

Workforce related:

Officer time required to administer the requirements for attendance at the Convention can be managed within existing resources.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council nominates the Shire President and Deputy Shire President as voting delegates and Councillors _____ and _____ as proxy voting delegates for the 2023 WALGA AGM.

9.4 INFRASTRUCTURE AND ASSETS**9.4.1 Request for Speed Zone Review - Campbell Chase in Glencoe Estate**

Date of Report:	10 August 2023
Applicant or Proponent:	Glenn Shelton
File Reference:	ICR91252
Author:	N Rodger – Operations 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:	Nil

PURPOSE OF THE REPORT

To seek Council approval to request a speed zone review to the relevant regulatory body, Main Roads WA for Campbell Chase – Glencoe Estate.

BACKGROUND

The Glencoe Estate is a 17 lot subdivision which was approved for clearance in 2007. The entrance and exit to the estate is via Campbell Chase off Northam Toodyay Road.

Northam Toodyay Road is a sign posted 90kmh speed limit and motorists turning into Campbell Chase are unaware of a reduced speed zone (50kmh) within the estate due to lack of signage.

The Glencoe Estate backs onto the Avon River and is a popular picnic spot, walk trail and a viewing area to watch the Avon Descent.

Speed limit signs in Australia are erected in accordance with national standards. In Western Australia, the agency responsible for determining road speed limits is Main Roads WA (MRWA).

COMMENTS AND DETAILS

The Shire of Toodyay received correspondence on 6 August 2023 regarding the traffic movements within the Glencoe Estate and the elevated traffic numbers and speed during and in the week leading up to the Avon Descent.

A request was made for permanent speed signage to be erected before the Avon Descent and if this was not possible, that temporary signage be installed.

There is currently no posted speed limit signage within the estate however officers from MRWA have advised that should we meet the conditions of a "built up area", the Shire can submit an application for speed zoning to MRWA.

In accordance with the *Roads 2000 Traffic Code*, a built-up area:

means the territory contiguous to and including any road —

(a) on which there is provision for street lighting at intervals of not over 100m for a distance of at least 500m or, if the road is shorter than 500m, for the whole road;

or

(b) which is built up with structures devoted to business, industry or dwelling houses at intervals of less than 100m for a distance of one half kilometre or more.

Officers have attended site and confirmed that the estate meets the conditions of a “built-up area”.

It should be noted that there is no guarantee that MRWA will consent to the Shire’s request for a review of the speed zones. However, Council approval is required prior to an application being submitted.

IMPLICATIONS TO CONSIDER

Consultative:

Consultation has occurred with Infrastructure and Assets staff as well as Main Roads WA (MRWA).

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2022-2033

Outcome 1. A safe and healthy community

01.1 Facilitate community safety.

Outcome 6. Safe, sustainable, and affordable transport options

06.1 Keep a persistent focus on building a safe, efficient road network.

Policy related:

Risk Management

Asset Management

Financial:

Nil

Legal and Statutory:

The *Road Traffic Act 1974*, and the subsidiary regulations under the *Road Traffic Code 2000 (WA)* set out the requirements in relation to speed limits and other traffic controls.

Risk related:

Nil

Workforce related:

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council authorises the CEO to submit a request to Main Roads WA on behalf of the Shire of Toodyay to review the speed limits in the Glencoe Estate.

9.5 COMMITTEE REPORTS

9.5.1 Bush Fire Advisory Committee Recommendations - 2 August 2023.

Date of Report:	3 August 2023
Applicant or Proponent:	Bush Fire Advisory Committee
File Reference:	FIR3
Author:	R Koch – Community Emergency Services Manager E Francis – Emergency Management Officer
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	Nil
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Executive
Attachments:	1. Extract of BFAC Minutes from 2 Aug 2023; 2. FCO Nomination Report 2023/2024 (confidential) <i>Section 5.23(2)</i> <i>(b) the personal affairs of any person (under separate cover)</i>

PURPOSE OF THE REPORT

To receive the minutes of the Bush Fire Advisory Committee (BFAC) and consider recommendations made at the meeting held on 2 August 2023 regarding the appointment of Bush Fire Control Officers (FCOs) and the designation of Chief and Deputy Chief Bush Fire Control Officer roles.

BACKGROUND

At the BFAC meeting held on 2 August 2023, a process was held to formulate and recommend FCO candidates to Council for appointment.

The process was conducted in accordance with items 11.4 and 11.5 of the *Shire of Toodyay Bush Fire Operating Procedures*, which outlines the method for making/receiving nominations and recommending candidates to Council. In this instance, all seven candidates are recommended to Council as FCOs.

COMMENTS AND DETAILS

A report outlining the particulars, of the candidates is available to Councilors via the confidential attachment (**Attachment 2**).

IMPLICATIONS TO CONSIDER

Consultative:

The recommendations in this report have been compiled in line with the recommendations made by the BFAC at the meeting held on 2 August 2023.

A confidential report, (**Attachment 2**) was provided to the BFAC membership fourteen days prior to the 2 August 2023 BFAC meeting for consideration. This included candidates, levels of training and levels of activity with respect to turnouts to bush fire incidents.

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

Outcome 2: An inclusive and connected community.

O2.6: Grow community capacity by attracting and supporting volunteers

Outcome 4: Climate resilience.

O4.3: Improve the ability to prepare for, respond to, and recover from the impacts of hazardous climatic events and other emergencies.

Policy related:

Section 11.3 of the *Shire of Toodyay Bush Fire Operating Procedures* outlines the role, duties, responsibilities and qualifications of a Bush Fire Control Officer.

Financial:

There are no financial implications with respect to the recommendation contained in this report.

Legal and Statutory:

Local Governments appoint Bushfire Control Officers under Sections 38 and 38A of the *Bushfires Act 1954* and the duties of Bush Fire Control Officers are set out in the legislation. The Shire must appoint, at a minimum, a Chief and Deputy Chief Bush Fire Control Officer.

Risk related:

FCOs are provided powers under Section 39 of the *Bush Fires Act 1954*. While the appointment of FCOs aim to reduce risk to the community by providing leadership in control of bush fire incidents, having an untrained or under-skilled FCOs increases the potential exposure to the following risks:

Risk 1: *Reputational* – There is a potential reputational risk to the Shire should review of a major incident expose unacceptable levels of training/skill or oversight in the appointment of FCOs. Rated: Medium

Risk 2: *Social/Economic/Environmental Risk* – There is the potential for social, economic and environmental impact of incidents, where life or property or other significant asset is lost due to unacceptable levels of training/skill or oversight in the appointment of FCOs. Rated: High

In response to this risk, Council adopted the *Shire of Toodyay Bush Fire Operating Procedures* as Council's Interim Policy on 24 June 2014 (with most recent amendments adopted 28 June 2023) which sets out the qualities and qualifications of a FCO.

Workforce related:

Shire Staff FCOs – The Shire also requires a number of staff members to be appointed FCOs to perform the function of their employment. As these appointments relate to the management of Shire staff, delegation to the CEO exists under the Shire's delegation register (Item ES8) in relation to Section 38 "Local Government may appoint bush fire control officers" of the *Bush Fires Act 1954*.

Historically this includes the individuals holding the following positions:

1. Community Emergency Services Manager (CESM)
2. Emergency Management Officer (EMO)
3. Reserves Management Officer (RMO)
4. Ranger 1
5. Ranger 2

The Shire of Toodyay has a Memorandum of Understanding (MOU) with the Department of Fire and Emergency Services (DFES) that the person employed in the CESM role will be appointed an FCO for the Shire of Toodyay. This extends to any staff member who is appointed to act in the role when the incumbent is on a period of leave.

The committee elected to recommend appointment of Robert Koch (CESM) as Deputy Chief Bush Fire Control Officer 2. The designation of this rank does not constitute any extra work in comparison to the Bush Fire Control Officer requirement for the role (explained above).

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council receives the Bush Fire Advisory Committee Meeting Minutes from the meeting held on 02 August 202.

BUSH FIRE ADVISORY COMMITTEE RECOMMENDATION 1

That Council appoints Bush Fire Control Officers as follows:

Appointment of (to Position)

1. Craig Stewart (Chief Bush Fire Control Officer)
2. Nicholas Griggs (Deputy Chief Bush Fire Control Officer 1)
3. Robert Koch - CESM (Deputy Chief Bush Fire Control Officer 2)
4. Garry Forsyth (Bush Fire Control Officer)
5. Charles Wroth (Bush Fire Control Officer)
6. Jeffrey Venn (Bush Fire Control Officer)
7. Ian MacGregor (Bush Fire Control Officer)
8. Robert Scobie (Bush Fire Control Officer)
9. The following Shire Officers as Bush Fire Control Officers:
 - (a) Ebony Francis - Emergency Management Officer
 - (b) Greg Warburton - Reserves Management Officer
 - (c) Leon Couper - Ranger
 - (d) Wade MacMillan - Ranger

9.5.2 Environmental Advisory Committee Recommendations

Date of Report:	10 August 2023
Applicant or Proponent:	Environmental Advisory Committee
File Reference:	COC14
Author:	M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Extract of Minutes from EAC Meeting held 2 Aug 2023.

PURPOSE OF THE REPORT

To receive the minutes of the Environmental Advisory Committee (EAC) meeting held on 2 August 2023 and consider recommendations made by the EAC.

BACKGROUND

At the EAC meeting held on 2 August 2023, the EAC made recommendations to Council as follows:

Recommendation 1 – Local Biodiversity Strategy

That Council:

1. Notes the delays associated with the local Biodiversity Strategy;
2. Notes the significant progress made; and
3. Welcomes the submission made for grants funding to provide necessary resources to complete this important project.

COMMENTS AND DETAILS

There have been delays associated with the development of the local Biodiversity Strategy. The Environmental Advisory Committee has recommended that Council notes the delays, significant progress made, and welcomes the submission made for grants funding.

IMPLICATIONS TO CONSIDER**Consultative:**

Nil.

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2023 – 2033

Outcome 3. Our natural assets and ecosystems are being maintained and protected for future generations.

O3.1 Preserve our land, water, and biological systems.

Shire of Toodyay Environmental Management Strategy 2015

Policy related:

Community Consultation and Engagement Policy.

Risk Management Policy

Committee Recommendations Policy

Financial:

Nil.

Legal and Statutory:

Nil.

Risk related:

The level of risk associated with Council not making a decision in regard to the EAC recommendation is insignificant. In any case, this report seeks to mitigate that risk.

Workforce related:

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council:

1. Receives the extract of the minutes of the Environmental Advisory Committee (EAC) (**Attachment 1**);
2. Notes the delays associated with the local Biodiversity Strategy;
3. Notes the significant progress made; and
4. Welcomes the submission made for grant funding to provide necessary resources to complete this important project.

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

Special Council Meeting	28 August 2023
Audit & Risk Committee Meeting	6 September 2023
Agenda Briefing	20 September 2023
Ordinary Council Meeting	27 September 2023
Local Emergency Management Committee Meeting	8 November 2023

16 CLOSURE OF MEETING