



Ordinary Council Meeting

28 February 2024

Minutes

To: The President and Councillors.

Here within are the Minutes of the Ordinary Council Meeting of the Shire of Toodyay held on the above-mentioned date in the Shire of Toodyay Council Chambers, 15 Fiennes Street, Toodyay WA 6566.

A handwritten signature in dark ink, appearing to be 'Charles Sullivan', is located below the introductory text.

Charles Sullivan

ACTING 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.

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



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Preface

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following an Ordinary Meeting of Council, where the Minutes will be confirmed subject to any amendments made by the Council.

The "Confirmed" Minutes are then signed off by the Presiding Person.

Attachments that formed part of the Agenda, in addition to those tabled at the Council Meeting are put together as a separate attachment to these Minutes with the exception of Confidential Items.

Confidential Items or attachments that are confidential are compiled as separate Confidential Minuted Agenda Items.

Unconfirmed Minutes

These minutes were approved for distribution on 11 March 2024.



Charles Sullivan

ACTING CHIEF EXECUTIVE OFFICER

Confirmed Minutes

These minutes were confirmed at a meeting held on 27 March 2024.

Signed: 

Note: The Presiding Member at the meeting at which the minutes were confirmed is the person who signs above.



1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Cr M McKeown, Shire President, declared the meeting open at 1.07pm and read aloud an 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."

The Shire President acknowledged read through other preliminaries.

2 RECORDS OF ATTENDANCEMembers

Cr R Madacsi	Councillor
Cr C Duri	Councillor
Cr S McCormick	Councillor
Cr M McKeown	Shire President
Cr D Wrench	Councillor
Cr S Dival	Deputy Shire President
Cr J Prater	Councillor

Staff

Mr C Sullivan	Acting CEO/Executive Manager Infrastructure, Assets & Services
Mr H de Vos	Executive Manager Development and Regulation
Mr M Werder	Project Manager
Mr R Koch	Community Emergency Services Manager
Mrs M Rebane	Executive Assistant

Visitors

S Hefferon
S Pearce
R Mills

2.1 APOLOGIES

Nil

2.2 APPROVED LEAVE OF ABSENCE

Nil

2.3 APPLICATIONS FOR LEAVE OF ABSENCE

2.3.1 Cr C Duri Application for Approved Leave of Absence

Cr C Duri requested to be granted Approved Leave of Absence from 4 March 2024 to 18 March 2024 inclusive.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM024/02/24

MOVED Cr J Prater

SECONDED Cr D Wrench

That the Application for Leave of Absence by Cr C Duri from 4 March 2024 to 18 March 2024 inclusive be granted.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

3 DISCLOSURE OF INTERESTS

The Chief Executive Officer advised that disclosures of interest in the form of a written notice had been received prior to the commencement of the meeting as follows:

Cr Prater declared an Impartiality Interest pursuant to Regulation 22 of the Local Government (Model Code of Conduct) Regulations 2021 in regard to Agenda Item 9.1.1 Lot 3 Stirling Terrace - Removal of three (3) lemon-scented gum Trees as his brother did the tree report.

Cr Prater declared an Impartiality Interest pursuant to Regulation 22 of the Local Government (Model Code of Conduct) Regulations 2021 in regard to Agenda Item 9.1.4 Lot Forest Road, Nunile - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - Vernice Pty Ltd as he is a good friend of Stephen Ferguson who is a Director of Vernice Pty Ltd.

Cr Dival declared an Impartiality Interest pursuant to Regulation 22 of the Local Government (Model Code of Conduct) Regulations 2021 in regard to Agenda Item 9.1.4 Lot Forest Road, Nunile - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - Vernice Pty Ltd as her son works for Vernice Pty Ltd and she is friends with the Directors of the company.

4 PUBLIC QUESTIONS

4.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil.

4.2 PUBLIC QUESTION TIME

S Pearce

Question One

At the time of the expression of interest by the Moondyne Men to lease the Shire Property at the courts at Fiennes Street, the Toodyay Tennis Club (TTC) did not have a lease or tenure on the Shire property. It expired in February 2023. Considering that the TTC announced in Jan 2021 Toodyay Community Newsletter that it had moved to the Toodyay Recreation Centre and the Courts at Fiennes Street had now closed would the Presiding Member please explain:

- (a) Why the Moondyne Men were required to liaise in Nov 2023 with the TTC about leasing a Shire property when the agreement with the TTC to use the premises expired in Feb 2023.

Shire President response:

The Toodyay Tennis Club still has a lease in Fiennes Street.

Question Two

- (b) Please explain what the Shire's processes and procedures are when a lease has expired with a community organisation or a business.

Shire President response:

This is a question for the Administration. The President deferred to the Acting CEO.

Acting CEO response:

Negotiations take place as to whether the lease is to be extended or not and if not it is Council's decision whether or not to readvertise the lease for public interest.

Question Three

The Council resolution contained no time frame of what action Council would take as the result of the meeting between the Moondyne Men and the TTC.

When will the matter of the Moondyne Men EOI to lease Shire Property at Fiennes Street be brought back to Council for deliberation?

Shire President response:

I will take the question on notice to be able to check the resolution.

Question Four

Point 3 of that resolution in December 2022 reads:

- 3. Notes the SOT Recreation Strategy 2014 includes a provision that "there is some merit in relocating the tennis courts to the Toodyay Recreation and Sport Precinct and operation from shared club rooms. However the decision to relocate will have to come from the Tennis Club.*

The August 2014 OCM Minutes reads:

The tennis club requested that the Tennis Courts become a higher priority. The latest correspondence from a sports surface specialists stated that the current courts only have another five years of life left. This information was not available when the Recreation Strategy was adopted, and has only come to light late in the Master Planning process. Given the substantial costs already identified in Stage 1 it is recommended that the tennis courts be brought forward to Stage 2.

Given that the TTC requested the Tennis Courts become a high priority as surface was poor it was recommended the tennis courts be brought forward, in the Toodyay Recreation Centre Strategy of 2014.

Please explain the reasons for the inclusion of point 3 in the resolution as it appears the TTC made the decision to relocate to the new TRC not once but twice (Jan 2021 and 2023) and requested that the courts were a high priority in August 2014.

Shire President response:

The reason that item was included in the resolution was that that is the current master plan. My understanding is that there was an entry in the community newsletter in Jan 2021 saying that the Tennis Club had moved to the Toodyay Recreation Centre. I am not aware that that entry in the Toodyay Community Newsletter was made by the Tennis Club and the fact that they moved to play tennis at the Toodyay Recreation Centre does not mean that they moved from Fiennes Street.

Question Five

In the design of the Toodyay Recreation Centre four storage areas with extensive space were constructed.

Please explain why Council has not required the TTC to remove tennis belongings from the Fiennes Street Courts as agreement to use had expired.

Shire President response:

There was still a current lease agreement between the Tennis Club and the Shire of Toodyay in force for Fiennes Street.

Question Six

Please explain why Council has not released Fiennes St Courts as potential financial benefit for the community?

Shire President response:

We have not released the Fiennes Street courts as they are currently leased by the Toodyay Tennis Club.

Question Seven

Health data has shown a community garden has great benefit for mental health and establishes connectivity in the community. ABS data show Toodyay is an aged community. Given the EOI of Moondyne Men to use the vacated premises at Fiennes Street, including the support for the establishment of a community garden please explain the reasons why the community have been denied this health benefit opportunity and the associated financial benefit of an unused premises being leased?

Shire President response:

The premises are being used and the Toodyay Tennis Club has a lease on those premises.

Question Eight

From the Audit and Risk Committee (ARC) Minutes, dated 14 February 2024 the Presiding Member moved the following amendment to the Officer's Recommendation:

1. *That the ARC has reviewed the draft wording of the ARC Charter as attached, and*
2. *Recommends that Council adopt the Charter as reviewed.*

Please explain why the ARC, trusted with oversight of council's financial and risk affairs, knowingly adopted a document empowering the committee, beyond the scope of the audit regulations and containing a number of errors for example:

- (a) Membership clause 4.3 Presiding Member will be appointed for an initial period of two years after each council election and may be extended or reappointed for further periods as determined by the Committee. The Local Government Act 1995 says Membership is determined by Council which is another anomaly
- (b) At 3.0 Authority(d) states the committee can obtain legal or other professional advice to fulfill its role at Shire of Toodyay Expense. This

poses a potential financial risk as there is no limit included and can be actioned without council approval.

- (c) Clause 5.0 Responsibilities: There are many clauses appear outside the scope of ARC functions as per regulation 16 under the Local Government (Audit) Regulations 1996. For example, 5.4(a) reviewing the financial statements and providing advice to the Council about whether they should be signed by the Council. The review includes assessing whether the financial statements are consistent with the knowledge of the Committee Members.

Please explain why the Committee knowingly adopted a document beyond the scope of the Audit regulations and contained a number of errors?

Shire President response:

I am not sure you pointed out any errors to me.

S Pearce

I just did point them out. Clause 4.3 states that the Presiding Member will be appointed for an initial period of two years after each council election and may be extended or reappointed for further periods as determined by the Committee. The *Local Government Act 1995* says Membership is determined by Council.

Shire President response:

Membership is decided by Council but you are talking about the Presiding Member.

S Pearce

My point is that it says the Presiding Member for the Audit Committee will be appointed for an initial period of two years after each Council election which is as per the Act, but the words “and may be extended or reappointed for further periods as determined by the Committee” The Committee does not determine the extension of membership of the Audit Committee.

Shire President response:

Given the technical nature of your question I will take questions on notice.

Do you have many more questions Mrs Pearce?

Response from Mrs Pearce

I do.

Cr Dival moved a Procedural Motion as follows:

That the meeting proceed to the next item of business: 5. Confidential Minutes at 1.27pm, in accordance with Standing Order 10.1(a).

Cr Prater seconded the motion.

The Presiding Person asked for the mover of the motion to speak to the motion.

Cr Madacsi raised a Point of Order in accordance with Standing Order 8.4, citing Standing Order 5.4 and asking does a Procedural Motion apply to public question time?

The Presiding Person rejected the Point of Order in accordance with Standing Order 8.5, citing Standing Order 4.2 states the order of business for a Council Meeting and

public question time is specified on the order of business. The procedural motion is to move to the next item of business and public questions are an item of business.

Clarification was sought.

The motion was put.

PROCEDURAL MOTION/COUNCIL RESOLUTION NO. OCM025/02/24

MOVED Cr S Dival

SECONDED Cr J Prater

That Council move to the next item of business in accordance with Standing Order 1.3 (d)

Voted For: Crs S McCormick, M McKeown, S Dival and J Prater

Voted Against: Crs R Madacsi, C Duri and D Wrench

MOTION CARRIED 4/3

5 CONFIRMATION OF MINUTES

5.1 Ordinary Meeting of Council held on 20 December 2023

OFFICER'S	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
	OCM026/02/24		
MOVED	Cr S Dival		
SECONDED	Cr J Prater		
That the Unconfirmed Minutes of the Ordinary Council Meeting held on 20 December 2023 be confirmed.			
<u>Voted For:</u>	Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater		
<u>Voted Against:</u>	Nil		
			MOTION CARRIED 7/0

5.2 Special Meeting of Council held on 24 January 2024

Cr Dival moved the Officer’s Recommendation as follows:

That the Unconfirmed Minutes of the Special Council Meeting held on 24 January 2024 (11.00am) be confirmed.

Cr Prater seconded the motion.

Cr Wrench objected to the motion.

Debate commenced.

The motion was put.

OFFICER'S OCM027/02/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
MOVED	Cr S Dival		
SECONDED	Cr J Prater		
That the Unconfirmed Minutes of the Special Council Meeting held on 24 January 2024 (11.00am) be confirmed.			
<u>Voted For:</u>	Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench and J Prater		
<u>Voted Against:</u>	Cr S Dival		
MOTION CARRIED 6/1			

5.3 Special Meeting of Council held on 24 January 2024

Cr Prater moved the Officer’s Recommendation as follows:

That the Unconfirmed Minutes of the Special Council Meeting held on 24 January 2024 (1.00pm) be confirmed.

Cr Duri seconded the motion.

Cr Wrench objected to the motion.

Debate commenced.

The motion was put.

OFFICER'S OCM028/02/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
MOVED	Cr J Prater		
SECONDED	Cr C Duri		
That the Unconfirmed Minutes of the Special Council Meeting held on 24 January 2024 (1.00pm) be confirmed.			
<u>Voted For:</u>	Crs R Madacsi, C Duri, S McCormick, M McKeown, S Dival and J Prater		
<u>Voted Against:</u>	Cr D Wrench		
MOTION CARRIED 6/1			

5.4 Special Meeting of Council held on 31 January 2024

Cr Prater moved the Officer’s Recommendation as follows:

That the Unconfirmed Minutes of the Special Council Meeting held on 31 January 2024 be confirmed.

Cr Dival seconded the motion.

Cr Wrench objected to the motion.

Debate commenced.

The motion was put.

OFFICER'S OCM029/02/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
MOVED	Cr J Prater		
SECONDED	Cr S Dival		
That the Unconfirmed Minutes of the Special Council Meeting held on 31 January 2024 be confirmed.			
<u>Voted For:</u>	Crs R Madacsi, C Duri, S McCormick, M McKeown, S Dival and J Prater		
<u>Voted Against:</u>	Cr D Wrench		
			MOTION CARRIED 6/1

5.5 Agenda Briefing held on 21 February 2024

Cr Duri moved the Officer’s Recommendation as follows:

That the Notes of the Agenda Briefing held on 21 February 2024 be received.

Cr Dival seconded the motion.

Cr Wrench objected to the motion.

Debate commenced.

The motion was put.

OFFICER'S	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
OCM030/02/24			
MOVED	Cr C Duri		
SECONDED	Cr S Dival		
That the Notes of the Agenda Briefing held on 21 February 2024 be received.			
<u>Voted For:</u>	Crs R Madacsi, C Duri, S McCormick, M McKeown, S Dival and J Prater		
<u>Voted Against:</u>	Cr D Wrench		
			MOTION CARRIED 6/1
Attachments			
1	Agenda Briefing Notes 21 Feb 2024.		

6 PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

6.1 PETITIONS

Nil.

6.2 DEPUTATIONS

Nil.

6.3 PRESENTATIONS

Nil.

6.4 SUBMISSIONS

Nil.

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 3 Stirling Terrace - Removal of three (3) lemon-scented gum trees.

Date of Report:	5 February 2024
File Reference:	P2023-60/A2120/3STIT
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	OCM 27/09/23
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. P2023-60 - Site Map ⇒ 2. P2023-60 - Application Details and Photographs ⇒ 3. P2023-60 - Heritage Council Recommendation ⇒

SUMMARY

Applicant: C. Jean
 Owner: C. Jean
 Proposal: Removal of three mature (3) lemon-scented gum trees
 Location: Lot 3 Stirling Terrace, Toodyay

PURPOSE OF THE REPORT

To determine an application to remove three mature (3) lemon-scented gum trees from Lot 3 Stirling Terrace in Toodyay. This matter must be considered by Council as no delegated authority exists for development occurring in the Catholic Church Precinct.

BACKGROUND

Lot 3 Stirling Terrace in Toodyay is zoned Mixed Business under the Shire of Toodyay’s *Local Planning Scheme No. 4*. Please refer to **Attachment 1 – Map**.

The property is part of the Catholic Church Precinct which is recognised on the State Heritage Register (Place No. 4125) and is recognised as a landmark on the main street. The precinct is a Category 2 on the Shire’s Municipal Inventory which denotes a place of considerable cultural heritage significance. The place should be provided with an appropriate level of recognition and protection. It is recommended that maximum encouragement is provided to the owner to conserve the significance of the place.

The History

This proposal was brought to Council on 27 September 2023, where it was agreed that this proposal did not meet the definition of development under the *Planning and Development Act 2005* and therefore Council could not approve or deny as such a decision is considered outside the scope of the authority of the Council. However, Council resolved to support the application.

Since that meeting the Heritage Council of WA has clarified that the State Register of Heritage Places (P4125) not only comprises of buildings but also its surrounding landscapes and grounds. This proposal therefore meets the definition of development and must be considered by Council.

The proposal

The applicant seeks to remove three (3) mature lemon-scented gum trees - *Corymbia citriodora*, currently situated in front of the dwelling. The applicant provides the following justification for their removal as protection from the unpredictability of the 'self-shedding' tendency of this species which currently poses a risk to human safety and to the safety of this historic building.

It is the applicant's intent to plant more appropriate trees and flower beds to replace the trees if the approval is granted.

For more details, please refer to **Attachment 2 – Application details and photographs**.

COMMENTS AND DETAILS

Balancing tree removal considerations with the preservation of heritage buildings and safety requires a nuanced approach.

Tree Preservation Considerations:

1. **Ecological Importance:** Trees play a crucial role in local ecosystems, providing habitat, air purification, and carbon sequestration.
2. **Aesthetic Value:** Trees can enhance the visual appeal of an area, complementing the surroundings and contributing to the landscape's character.
3. **Cultural Significance:** Some trees may have cultural or historical importance in their own right, intertwined with local stories or events.
4. **Mental Well-being:** Natural environments, including mature trees, are known to promote mental well-being and offer spaces of relaxation and reflection.
5. **Economic Impact:** Mature trees can increase property values and attract tourism, especially in scenic or historically significant areas.

Heritage Building and Safety Considerations:

1. **Physical Safety:** The risk of falling branches or trees, especially during extreme weather, can pose a direct safety threat to people and property.
2. **Building Integrity:** Roots from large trees might compromise the foundation of heritage buildings, leading to structural issues.
3. **Fire Hazard:** In fire-prone areas, certain tree species might increase the risk of fires, endangering structures, and lives.
4. **Heritage Preservation:** Heritage buildings are irreplaceable links to the past. Their preservation ensures that history remains tangible and accessible for future generations.

5. **Maintenance and Restoration:** Close proximity of trees can complicate the process of maintaining and restoring heritage buildings.

In conclusion, while both trees and heritage buildings offer significant value, it is essential to ensure the safety and preservation of our built heritage without unnecessarily compromising the natural environment. A balanced and informed approach, involving multiple stakeholders, is crucial.

In this instance, it is noted that the response from the community is split quite evenly with good reasons for and against the removal of the trees.

It is also considered that the removal of the trees will have an obvious impact on the streetscape. These zones and elements are extremely important in terms of the place and should be conserved if the place is to retain its meaning and significance: conservation of the landscape is recommended.

It is recommended that the Council refuses this proposal as per the advice received from the Heritage Council for the following reasons:

1. The trees contribute to the significant cultural heritage fabric of the place. (Policy 19 of the Conservation Management Plan)
2. The trees contribute to the streetscape of the place. (Heritage Council Development Principle 4)

Consultative:

This application has undergone consultation in accordance with the Shire's Local Planning Policy – *Advertising of Planning Proposals*. In addition, the Shire is required to conduct mandatory notification of the proposal to the Heritage Council of Western Australia – in accordance with section 73 of the *Heritage Act 2018*. – **Attachment 3 – Heritage Council Recommendation.**

The proposal was also advertised in the August 2023 edition of The Toodyay Herald.

The Shire received seven submissions regarding the proposal. Four were opposed to the proposal and three had no objection or supported. It should be noted that the Heritage Council of WA did not support this proposal.

One submission questioned the validity of the original application under the definition of development in accordance with the *Planning and Development Act 2005*. With this question in mind and following consultation with the Heritage Council of WA, Shire Officers agree that this application should have been treated as a development application, as the removal of the three (3) Lemon Scented Gums at Lot 3 Stirling Terrace, Toodyay would significantly change the character of the Catholic Church precinct and therefore is being referred to Council for consideration. **Attachment 3 – Schedule of Submissions.**

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.

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

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:

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

[Local Planning Policy – Landscaping Plans](#)

[Local Planning Policy – Central Toodyay Heritage Area](#)

- Trees that shed branches, such as Sugar Gums and Lemon Scented Gums, are to be avoided.

Risk Management

This policy is intended to commit to organisation-wide risk management principles, systems and processes that ensure consistent, efficient and effective assessment of risk in all planning, decision making and operational processes.

Financial:

Fees were paid for the original application. d in accordance with the *Planning and Development Regulations 2009*.

Payment of additional fees has been requested.

Legal and Statutory:

[Planning and Development Act 2005 – Section 4\(1\)](#) – Terms used

“development” means the development or use of any land, including —

- c) in the case of a place to which a protection order made under the *Heritage Act 2018* Part 4 Division 1 applies, any act or thing that —
 - i. is likely to change the character of that place or the external appearance of any building; or
 - ii. would constitute an irreversible alteration of the fabric of any building;.

Risk related:

Lemon-scented gum trees near heritage buildings in the Shire of Toodyay pose several risks:

1. **Fire Risk:** The tree's oils can be flammable, increasing bushfire threats.
2. **Root System:** Roots may damage building foundations or underground structures.
3. **Branch Drop:** These trees can drop branches unexpectedly, risking damage or injury.
4. **Maintenance Challenges:** Trees close to buildings complicate restoration and upkeep.
5. **Aesthetic Concerns:** Trees should complement, not overshadow, heritage sites.
6. **Pest Attraction:** Trees might attract pests that can infest buildings.
7. **Water Consumption:** The tree's water use might impact surrounding landscaping.

In accordance with the Shire's Risk Policy's Risk Matrix table the following is noted:

Health risk

Given the tendency for this tree species to self-shed there is a catastrophic (5) risk of fatality or permanent disability. A tree branch falling and killing someone is however unlikely (2) in that it could occur at some time. This is a High risk score of (10).

Environmental risk

The removal of a mature tree is likely to have some minor (2) environmental impact. Notably the loss of habitat, nesting and roosting opportunities and food sources for wildlife. In this case, the likelihood is almost certain (5). This is a High risk score of (10).

Reputational risk

The removal of these trees on such a prominent streetscape will attract significant public attention. Any position the Council takes on this issue is likely to therefore have moderate (3) impact on the Shire's reputation. The likelihood of this being a negative impact is possible (3). This is a Moderate risk score of (9).

Workforce related:

Should this matter be referred by the applicant to the State Administrative Tribunal, significant Officer time will be required and in the event that trees are removed, Officers may experience increased numbers of complaints to handle.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council, pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, refuses the development application for the removal of 3 Lemon Scented Gums at Lot 3 Stirling Terrace, Toodyay.

Cr McCormick moved the Officer's Recommendation as follows:

That Council, pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, refuses the development application for the removal of 3 Lemon Scented Gums at Lot 3 Stirling Terrace, Toodyay.

Cr McKeown seconded the motion.

Cr Duri objected to the motion.

Cr Madacsi foreshadowed an alternate motion as follows:

That Council, pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, approves the development application for the removal of 3 Lemon Scented Gums at Lot 3 Stirling Terrace, Toodyay with the following conditions:

- (a) That within two months of the removal of the lemon scented gums a minimum of two trees are planted in the same location.**
- (b) The choices of species is decided by the SOT landscaping policy to restore the visual impact of the Catholic Precinct.**

Debate commenced.

Clarification was sought.

Debate continued.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM031/02/24

MOVED Cr S McCormick

SECONDED Cr M McKeown

That Council, pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, refuses the development application for the removal of 3 Lemon Scented Gums at Lot 3 Stirling Terrace, Toodyay.

Voted For: Cr S McCormick

Voted Against: Crs R Madacsi, C Duri, M McKeown, D Wrench, S Dival and J Prater

MOTION LOST 1/6

Pursuant to regulation 11(da) of the Local Government (Administration) Regulations 1996, the reasons for the Councillors not being in favour of the Officer's Recommendation was due to the assessed catastrophic risk of fatality, permanent disability, or damage to the heritage building or persons by leaving the Lemon Scented Gum Trees in place.

ALTERNATE MOTION/COUNCIL RESOLUTION NO. OCM032/02/24

MOVED Cr R Madacsi

SECONDED Cr C Duri

That Council, pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, approves the development application for the removal of 3 Lemon Scented Gums at Lot 3 Stirling Terrace, Toodyay with the following conditions:

- (a) That within two months of the removal of the lemon scented gums a minimum of two trees are planted in the same location.
- (b) The choices of species is decided by the SOT landscaping policy to restore the visual impact of the Catholic Precinct.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.1.2 Lot 225 Parkland Drive, Julimar - Ancillary Accommodation

Date of Report:	6 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	P2023-98 / A2637/225PAR
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. P2023-98 - Application and Plans ↗

SUMMARY

Applicant:	J & L Ortmann
Owner:	J & L Ortmann
Proposal:	Ancillary Accommodation
Location:	Lot 225 Parkland Drive, Julimar

PURPOSE OF THE REPORT

Council is requested to consider an application for an ancillary accommodation at Lot 225 Parkland Drive, Julimar. This application is being brought to Council for determination as 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 225 (No. 503) Parkland Drive is a 47,313 m² (4.73ha) property in Julimar, which is situated approximately 18km west of the Toodyay townsite.

The property is zoned Rural Residential 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, outbuilding 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 provision of the policy:

- (a) be located within 20m of the main house.

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

Time to determine

The application was received on 29 November 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 was 9 February 2024. 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 matter relating to this application is as follows:

- be located within 20m of the main house.

The intent of this point is to show the relationship between the two structures. In this instance the location proposed for the ancillary accommodation will be 100m in lieu of 20m from the main dwelling. This location was chosen as it is relatively flat and is at a sufficient distance from existing vegetation to have a Bushfire Attack Level of 19 and recommended as the preferred location by both the Bushfire Attack Level consultant and Civil Engineer. Its location is not envisioned to have a negative effect on the adjoining neighbours as mature vegetation will obscure the ancillary accommodation from view.

The proposed ancillary accommodation has a floor area of 66m², is self-contained, will be located behind the main dwelling, and have its own 110,000lt water tank. The main dwelling is proposed to be painted Woodland Grey to match the ancillary accommodation. This application is consistent with the remaining requirements listed in *Local Planning Policy No 2 - Ancillary Accommodation*.

There is a paddock East of the main dwelling, this area was considered, however the land here is on an incline and the need for additional earthworks would significantly increase the cost of the development. Additionally, ancillary accommodation in this location would obscure views from the main dwelling and prevent the paddock from being used for livestock in the future. Given the location and the low impact of the development, it can be considered as an acceptable justification as it reflects the Shire's commitment to help reduce the cost of housing, as per the *Shire of Toodyay Council Plan 2023-2033 Objective 5.2: to enable access to affordable, sustainable, and diverse housing options*.

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. No submission 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 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) *be located within 20m of the main 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/COUNCIL RESOLUTION NO. OCM033/02/24**MOVED** Cr S Dival**SECONDED** Cr S McCormick

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 225 (No. 503) Parkland Drive in Julimar, 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.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

Cr Madacsi proposed a foreshadowed motion as follows:

That Council requests the CEO bring the Local Planning Policy back to Council for review.

The Presiding Member advised that the foreshadowed motion could not be considered as the Officer's Recommendation had been passed, without debate.

9.1.3 Lot 22 Chitty Road, Hoddys Well - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - WA Gravel Pty Ltd

Date of Report:	14 February 2024
Applicant or Proponent:	D. Best / Lundstrom Environmental Consultants Pty Ltd
File Reference:	A4575
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	OCM 28 June 2016 Item 9.2.1 – WA Gravel OCM 27 February 2018 Item 9.2.1 – A1 Gravel OCM 25 October 2023 Item 9.1.2 – WA Gravel
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. Item 9.1.2 Lot 22 Chitty Road - OCM - 25 October 2023; ⇒ 2. Map - Lot 22 Chitty Road - WA Gravel Pty Ltd; ⇒ 3. Extractive Industry Application and Environmental Management Plan - WA Gravel; ⇒ 4. Discussion Paper - Staged Land Rehabilitation and the Use of Rehabilitation Bonds in the Shire of Toodyay Extractive Industries ⇒

SUMMARY

Applicant:	Lundstrom Environmental Consultants Pty Ltd
Owner:	D. Best
Proposal:	Extension of Extractive Industry
Location:	Lot 22 Chitty Road, Hoddys Well.

PURPOSE OF THE REPORT

To determine an application for development approval and for an extractive industry licence (EIL) for an extension to a gravel extractive industry operated by WA Gravel Pty Ltd at Lot 22 Chitty Road in Hoddys Well.

Under the Shire’s adopted Delegations Register, applications for extractive industries may only be refused under delegated authority.

BACKGROUND

Application history

The application was previously before Council at its Ordinary Council Meeting on 25 October 2023 where the applicant was granted a four-month limited approval for development and an extractive industry licence. The reason for this was to ensure firstly that the applicant was not operating without approvals, and secondly to allow time for the Shire to consider issues that the applicant has raised. The primary one being related to the land rehabilitation bond but others are to do with water monitoring and clarification of truck movements and equipment. Further discussion about this will occur in the Comments section of this report. For more details please refer to **Attachment 1 – Item 9.1.2 OCM 25 October 2023**

Proposal

Lot 22 (formerly Lot 8) Chitty Road in Hoddys Well is a 209.67-hectare property. It is zoned Rural under the Shire's *Local Planning Scheme No. 4*. There are no zoning changes proposed for this property under the *Draft Local Planning Scheme No. 5*. The property is situated adjacent to Chitty Road – approximately 14km south-west of the Toodyay town site. Please refer to **Attachment 2 – Map**.

The land in the locality is rural, with cropping and grazing being the predominant agricultural types. The locality is also noted as one of the main areas of extractive industry operations in the Shire of Toodyay. Chitty Road along with Fernie Road and Salt Valley Road are haulage routes for heavy vehicles operating in and out of the extractive industry pits and the waste disposal facilities.

Works and Excavation Program

The purpose of this application is to allow resumption of gravel extraction at the site given that the development approval and Extractive Industry Licence for the 5.28ha area expired on 8 March 2023.

For simplicity, the applicant is seeking a renewal of the development approval and EIL for the entire 9.57ha area under the name of WA Gravel Pty Ltd and this should supersede the existing Shire approvals.

Extraction details

- The total extraction area is 9.57ha
- Maximum depth is 5m
- Total volume of the resource to be 375,900 m³ (639,030 tonnes).
- The estimated annual volume of material to be trucked off site each year will be 54,000 tonnes.

Operating times

- Operating times are proposed to be Monday to Friday 6:00am to 5:00PM and Saturday 6:00am to 12:00pm, excluding public holidays.

Transportation

The following estimates are made:

- Total annual gravel removal: 54,000 tonnes
- Number of working days per month: 24 days
- Vehicle payloads (GAV's):

- Standard ridged truck (14 tonnes) - proportional use: occasional
- Single semi-loader (26 tonnes) - proportional use: approximately 45%
- Single semi-loader (up to 40 tonnes) - proportional use: approximately 45%

Please note, that the above vehicle details have been clarified by the applicant and differ from the October report.

For more details, please refer to **Attachment 3 - Extractive Industries Licence Application and Environmental Management Plan.**

COMMENTS AND DETAILS

Issues arising from October 2023 Development Application from Darren Best

As mentioned earlier, Council's decision to grant a temporary development approval and extractive industry licence was to allow time for the Shire to consider the applicant's submission sent via Cr Madacsi after she had met with him. The applicant's main points of contention are as follows:

Increase in rehabilitation costs

- Why has there been an increase in rehabilitation when the size of the project remains the same?

The Shire, as part of its budget process, reviews the Schedule of Fees and Charges annually. This is done to ensure that the fees are fair and adequate for the Shire to be able to perform its services. In the instance of rehabilitation bonds, the figure determined in these fees and charges will ideally reflect a per hectare cost that would be needed for the Shire to go in and complete the agreed rehabilitation to a required standard. This would be done if the developer does not meet their rehabilitation obligations.

Generally, these fees incur an agreed percentage increase which is determined by the Council. Given that the reassessment of the bond is done at the time of renewal, there may be up to ten (10) years of incremental changes to the figure calculated depending on when the application is received.

- Queried why the rehabilitation is needed at 'this level' given he intends to only batter the slopes and use a flattened area for future development for farm infrastructure.

The Shire of Toodyay currently only looks at the type of material being excavated i.e. stone, gravel, clay or sand; and the depth of the excavation. This rate per hectare is then multiplied by the entire disturbed area. The Shire does not currently consider individual rehabilitation processes and would be unlikely to do so in the future. This approach is also used by the other local government authorities that the Shire queried as part of its research.

Requirement for a piezometer

- The DPIRD request for a piezometer was included in the original conditions of approval. The applicant contends that there is no groundwater because the site is on a hill, and it drains downslope.

The Shire contacted the applicant about this as no evidence has been supplied to support this claim. The applicant says this knowledge is based on his own local knowledge of the site.

Currently there is no GIS data available to determine groundwater contours for the property or for the locality generally.

Council can ultimately choose to either apply this requirement as a condition or to remove it.

Transportation details clarified

- Vehicle payloads is not accurate and should read –
 - Standard ridged truck (14 tonnes) - proportional use: occasional
 - Single semi-loader (26 tonnes) - proportional use: approximately 45%
 - Single semi-loader (up to 40 tonnes) - proportional use: approximately 45%

These details are noted – however it will not materially affect the application before Council. Rather, Officers will use the details when making its calculations for the required road maintenance contributions.

Modification of condition

- Stated (l) under Transport Management (p.31 Agenda) reads as if two separate financial road commitments – can this be removed- and (m) modified to -

The cost for road maintenance and road rehabilitation contributions shall be calculated and reviewed annually using the method outlined in the latest version of the Western Australian Local Government Association's Heavy Vehicle Cost Recovery Policy Guidelines for Sealed Roads.

Officers see no issue with modification of this condition if it provides further clarity. Council can choose to modify or leave as is.

Specific Questions

1. Is it possible to arrive at a standard we could adopt within the timeframe?

No. The Shire has approached a number of local governments who have extractive industries operating. The consistent feedback the Shire is receiving is that the figures being used are legacy calculations and the methodology/origin has been lost. Local governments have been reviewing these figures as part of the fee review process. As such the fees specified in the Schedule of Fees and Charges are current.

However, an alternative might be to include a different condition as follows:

Within three months of the date of this approval, an independent environmental consultant specialising in land rehabilitation is to be commissioned by the Shire of Toodyay to review the rehabilitation plans and to conduct a site inspection to determine a cost per hectare for the rehabilitation of the site.

This cost will then be applied by the Shire as an upfront bond and adjusted accordingly to the annual review of fees and charges.

All costs associated with this are to be borne by the applicant.

2. Could the adoption be standalone in the November OCM with the resolution noting it is to be included within the extractive industries policy and local laws?

The application was approved at the October 2023 Ordinary Council Meeting. At the time it was granted approval for four months only to allow time for the Shire to consider these issues.

As mentioned above, there is an opportunity for the Shire to incorporate modifications into future iterations of policy or local laws and work has been started to determine a best practice approach.

3. Could the rehabilitation bond be a percent up front e.g. 25-50% with an annual assessment of the amount owing as excavation occurs? This would relieve the up front costs but ensure the area to be rehabilitated at any point in time has sufficient funds to rehabilitate if required?

The decision to apply a staged approach to the collection of the bond is one that comes with advantages and disadvantages. Ultimately the Shire of Toodyay must be satisfied that whatever method is being adopted is being done so in the best interests of the community and the environment. If the Shire were to receive only 25% or 50% of the bonds required to rehabilitate and there was an issue with the business – then the remaining burden to cover the costs to rehabilitate the land would be borne by ratepayers which is not a desirable outcome.

In saying that, the Shire acknowledges the applicant's concerns about cashflow relating to the bonds and how this may impact businesses.

For further information please refer to **Attachment 4 – Discussion Paper on Staged Rehabilitation Bonds**.

Times requested.

The applicant has requested the following operating times:

- Monday to Friday 6:00am to 5:00PM and Saturday 6:00am to 12:00pm, excluding public holidays.

In recent times the Shire, in its approvals for Extractive Industries, has chosen to separate approval times into operating and cartage.

Operating involves all on-site activities including extraction, stockpiling and rehabilitation.

Cartage involves the movement into and out of the subject site using Shire controlled roads and the transport of extracted materials.

Guidance has been taken from the work currently being done on the draft Local Planning Policy for Extractive Industries. Whilst not in force, the draft Policy currently will recommend:

Hours of operation are limited to 7:00am to 5:00pm Monday to Friday and 7:00am to 1:00pm on Saturday. No operation on public holiday days.

The Shire has recommended a slightly varied condition with a later start applicable on Monday to Friday and a later finish on Saturday.

In addition, cartage, as seen as the most significant impact on tourism and visitors, will be recommended to be limited to Monday to Friday only.

Rehabilitation Bond

The Shire recognises that the costs associated with doing rehabilitation on land at the end of an extractive industry can change over time. Accordingly, the initial rehabilitation bonds collected have been adjusted with top-ups to reflect the per hectare rate as indicated in the Schedule of Fees and Charges for the recently adopted budget. Additionally, the Shire recognises that liquidity is important for the operation of these businesses and will therefore recommend that the rehabilitation bond is collected either as cash or in the form of an unconditional, irrevocable Bank Guarantee.

The application has received no objections during the public consultation period. Accordingly, it is recommended that this application for development approval and for an extractive industry licence be approved subject to conditions.

The matters raised in the public submissions have also been mitigated through the application of appropriate planning conditions. Specifically, this is focussing on a clearer,

more structured approach to conditioning the development that addresses the whole life of the project. These conditions are consistent with the position the Shire is formulating in the development of a local planning policy for extractive industries which is still in draft phase. Key areas identified in the recommended conditions of approval address known compliance areas that have traditionally been noted with this type of land use.

Key to this is the reporting and auditing requirement, which now through conditions, formalises the Shire's expectations for regular and consistent reporting about extractive industry operations. Additionally, the conditions set out clear requirements for legal agreements to be entered into with the Shire regarding rehabilitation and bonding.

Lastly, the recommended conditions clearly indicate the Shire's intent for cost recovery for aspects of the regulation and auditing – such as pit inspections, clearance of conditions and pit close out. All of these changes are expected to have a positive and lasting impact on the overall management of these industries and will go to address some of the concerns raised in the community.

IMPLICATIONS TO CONSIDER

Consultative:

This application has been advertised in accordance with the Shire of Toodyay's *Local Planning Policy – Advertising of Planning Proposals*. This has included:

- Notice in July 2023 edition of the *Toodyay Herald*.
- Notice on the Shire of Toodyay website.
- Mail out to properties within 1,500m of the subject site.
- Mail out to government agencies (DBCA, DWER, DPIRD, DMIRS and MRWA).

The proposal was advertised for a period of twenty-eight days and the Shire received two submissions. Both were from government agencies and neither have objected to the 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.

O5.1. Provide responsible planning and development.

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

Outcome 9. Responsible and effective leadership and governance.

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

Policy related:

[State Planning Policy 2.0 – Environment and Natural Resources Policy](#)

The relevant principles from the Policy are:

- the identification and protection of important and economic mineral resources to enable mineral exploration and mining in accordance with acceptable environmental standards
- the identification and protection of important basic raw material resources and provide for their extraction and use.

State Planning Policy 2.4 – Planning for Basic Raw Materials

The Policy provides guidance to operators and decision makers regarding applications for basic raw materials extraction, as well as other types of planning applications that can potentially impact on extraction sites or significant geological supplies.

State Planning Policy 2.5 – Rural planning

The Western Australian Planning Commission seeks to protect and preserve rural land for rural purposes including primary production, basic raw materials, regional facilities, and protection of biodiversity and landscape.

Basic raw materials are essential for the construction of buildings, roads and other infrastructure, and also for the sustainability of agricultural production.

State Planning Policy 3.7 – Planning in Bushfire Prone Areas

The latest DPLH mapping (2021) identifies “Bushfire Prone Areas” across the entire site. It should be noted that Version 1.4 of the SPP 3.7 Guidelines includes a provision stating that the requirement for a Bushfire Management Plan for extractive industry is up to the discretion of the decision-maker. Clause 2.6 of the Guidelines states that:

Decision-makers can apply exemptions from the requirements of SPP 3.7 and these Guidelines where there is no intensification of land-use, and/or the proposal is not increasing the bushfire threat.

An example given in the Guidelines for the type of proposal/development which could be exempt includes extractive industries as follows:

A development application for an extractive industry where the extraction is undertaken in an open cleared area (for example, quarries and open cut mining) and no habitable buildings are proposed.

Therefore, although a Bushfire Management Plan has previously been prepared for the site to assist with site operations and compliance, the requirement for this plan is at the discretion of the Local Government and as no habitable building are located on the site, the requirement for a Bushfire Management Plan (BMP) could be waived.

The Community Emergency Services Manager (CESM) recommends the following controls as conditions in lieu of a formal BMP:

- 1. All plant & vehicle movement related to this approval on Lot 22 Chitty Road, shall maintain 5m clearance to fine fuel vegetation (less than 6mm diameter or thickness) during the Restricted Burning Period and Prohibited Burning Period.*
- 2. All plant & vehicles must carry fire extinguisher(s) of no less than 7.5 kilogram or litre capacity, suitable for extinguishing fire of plant/vehicle and vegetation.*

Accordingly, these conditions have been added in those recommended.

Local Planning Policy – Advertising of Planning Proposals

This policy provides guidance on the exercise of discretion under the Shire of Toodyay Local Planning Scheme No. 4 in terms of when public notice is given, and the means and duration of public notice periods, where these periods are not prescribed by the Local Planning Scheme.

Risk Management

This policy is intended to commit to organisation-wide risk management principles, systems and processes that ensure consistent, efficient, and effective assessment of risk in all planning, decision making and operational processes.

Financial:

Fees have been paid in accordance with the *Planning and Development Regulations 2009*. All costs associated with the development will be borne by the proponent.

This includes applicable rehabilitation bonds, road maintenance contributions and annual licence fees.

Rehabilitation Bond

In the previous approval issued to WA Gravel Pty Ltd in 2016, the Shire of Toodyay calculated a rehabilitation bond of \$52,160.40. This was for a 4.3467-hectare gravel pit. The figure was calculated using the adopted 2016 Shire of Toodyay Schedule of Fees and Charges which listed the following:

Secured sum – Rehabilitation for gravel, clay or stone greater than 3m deep per hectare (Clause 5.1) - \$12,000.00.

In 2018, the Shire of Toodyay issued an approval for A1 Gravel Pty Ltd and a rehabilitation bond was calculated as \$46,080.00 for the 2.88-hectare Stage 1. The figure was calculated using the adopted 2018 Shire of Toodyay Schedule of Fees and Charges which listed the following:

Secured sum – Rehabilitation for gravel, clay or stone greater than 3m deep per hectare (Clause 5.1) - \$16,000.00

Thus, the Shire currently holds the following bonds:

Gravel Pit (WA Gravel – 2016)	\$12,000 x 4.3467 hectares	\$52,160.40
Gravel Pit (A1 Gravel Stage 1 – 2018).	\$16,000 x 2.88 hectares	\$46,080.00
Total		\$98,240.40

The current application seeks approval to cover the whole gravel pit area of 9.57 hectares.

It is a requirement for the Shire to recalculate rehabilitation bonds from time to time to reflect change in costs over time. This is usually done as part of a development approval renewal or extractive industry licence renewal.

The currently adopted Shire of Toodyay Schedule of Fees and Charges list the following sum for rehabilitation.

- Secured sum – Rehabilitation for gravel, clay or stone greater than 3m deep per hectare (Clause 5.1) - \$19,160.00

Therefore, the collected bond will need to be adjusted to reflect these changes by topping up.

The area that was approved as Stage 2 in the 2018 A1 Gravel application will have an additional bond applied. This was not collected at the time.

Gravel Pit (WA Gravel 2016)	\$19,160 – \$12,000 = \$7,160	\$7,160 x 4.3467 hectares	\$31,122.37
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Gravel Pit (A1 Gravel Stage 1 – 2018)	\$19,160 – 16,000 = \$3,160	\$3,160 x 2.88 hectares	\$9,100.80
Additional area (Stage 2 – A1 Gravel)	9.57-4.3467-2.88 = 2.34 hectares	\$19,160 x 2.34 hectares	\$44,834.40
TOTAL			\$85,057.57

Therefore, it has been determined (in accordance with the above calculations) that there is a rehabilitation bond shortfall of \$85,057.57. It is recommended that the Council applies an appropriate condition to recover the remaining amount otherwise there is an increased risk. For consistency with current extractive industry applications, it is recommended that the condition remains unchanged.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Planning and Development Regulations 2009

Shire of Toodyay Local Planning Scheme No. 4

Shire of Toodyay Extractive Industry Local Law

The *Shire of Toodyay Extractive Industries Local Law* was endorsed by Council on 24 June 1999. It sets out the licencing requirements for an extractive industry, including the information which is required in an application and determination of the application. This application for a renewal of the extractive industry licence renewal is submitted in accordance with the Local Law.

Risk related:

In accordance with the Shire of Toodyay Risk Management Policy the following risks have been determined:

<i>Risk Type</i>	<i>Risk</i>	<i>Likelihood</i>	<i>Consequence</i>	<i>Score</i>
Financial Impact	The Applicant has the right of appeal through the State Administrative Tribunal of Council's decision on this matter. This would potentially expose the Shire to increased legal costs.	Possible (3)	Moderate (3)	Moderate (9)
Reputational	Extractive Industries are highly scrutinised by elements of the community – particularly landowners in close proximity. There is an expectation that the	Possible (3)	Moderate (3)	Moderate (9)

<i>Risk Type</i>	<i>Risk</i>	<i>Likelihood</i>	<i>Consequence</i>	<i>Score</i>
	Shire will manage and regulate these processes effectively. When this does not occur, it can lead to reputational damage.			

Workforce related:

The Extractive Industry regulation has been labour intensive for Shire Officers with workflows impacting a number of departments throughout the lifecycle of the project. The Shire is currently in the process of improving these processes so that there will be less burden in the future. By being implicit about cost recovery, many of these processes such as an audit inspection will be able to be outsourced.

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

VOTING REQUIREMENTS

Simple Majority

Clarification was sought.

Cr Madacsi moved Officer’s Recommendation 1 as follows:

That Council:

1. **Notes the submissions received relating to the Extractive Industry application for Lot 22 Chitty Road, Hoddys Well.**
2. **Pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; approves the development approval for an industry - extractive land use at Lot 22 Chitty Road, Hoddys Well, subject to the following conditions:**

(a) Management Plan

Development is to be in accordance with the approved Extractive Industries Licence Application – “*Extractive Industries Licence Application and Environmental Management Plan - Lot 22 (formerly Lot 8) on Deposited Plan 420530 Chitty Road, Hoddys Well. Prepared for WA Gravel Pty Ltd - Version 0.1 - August 2023*”, including any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

- i. **The term of the Development Approval is for ten (10) years from the date of this approval.**

Site Specific

- ii. **The location and total area of the excavation is to be limited to 9.57 hectares as depicted in the approved management plan.**

- iii. The extraction of material is limited to a depth of 5 metres (m) as depicted in the approved management plan.
- iv. The maximum permitted extraction is limited to 54,000 tonnes (t) per annum as depicted in the approved management plan.
- v. Extraction is to be undertaken entirely within the land defined as:
Lot 22 on D420530
Volume: 4015 Folio: 45
And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- vi. Hours of operation within the extraction area are limited to 6:00am to 5:00pm Monday to Friday and 6:00am to 1:00pm on Saturday. No operation on public holiday days.

Transport management

- vii. Operating hours for cartage shall be limited to between 6:00am and 5:00pm Monday to Friday. No cartage on public holidays.
- viii. All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- ix. All truck loads leaving the site with materials are to be covered.
- x. The operator shall be responsible for the cost of road maintenance and road rehabilitation to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Maintenance Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay.
- xi. The cost for road maintenance and road rehabilitation contributions shall be calculated annually using the method outlined in the latest version of the Western Australian Local Government Association's policy area relating to Recovering the Cost of Road Wear from Heavy Vehicles available at the time of application and of any future renewal.

Noise and vibration

- xii. The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

- xiii. The operations are managed in accordance with "*Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources*".

- xiv. Any dewatering shall be in accordance with “*Water Quality Protection Note 13 - Dewatering of Soils*”.

Dust

- xv. Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the *Environmental Protection Act 1986* and Department of Environmental Regulation Guidelines.

Native Vegetation

- xvi. The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- xvii. The applicant is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay.

Bushfire management

- xviii. In lieu of a formal bushfire management the development must observe the following controls:
1. All plant & vehicle movement related to this approval on Lot 22 Chitty Road, shall maintain 5m clearance to fine fuel vegetation (less than 6mm diameter or thickness) during the Restricted Burning Period and Prohibited Burning Period.
 2. All plant & vehicles must carry fire extinguisher(s) of no less than 7.5 kilogram or litre capacity, suitable for extinguishing fire of plant/vehicle and vegetation.

Reporting / Auditing

- xix. The Applicant is required to provide the local government a Surveyors Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time the Applicant will provide an update and forecast on staging for the following two-year period.
- xx. The Applicant/Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:
1. Quarry progress including photos.
 2. Progress of Rehabilitation including photos.
 3. Monitoring Results
 - a. Clearing Permits
 - b. Water Testing Results
 - c. Other Environmental Factors
 4. Safety
 5. Road Maintenance Contributions
 6. Cartage Management Report

Site Rehabilitation

- xxi. The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application “Extractive Industries Licence Application and Environmental Management Plan - Lot 22 (formerly Lot 8) on Deposited Plan 420530 Chitty Road, Hoddys Well. Prepared for WA Gravel Pty Ltd - Version 0.1 - August 2023”, and the Shire of Toodyay’s Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.
- xxii. Prior to the commencement of the development, the applicant is required to pay an additional bond of \$85,057.57 as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xx).
- This is in addition to the existing bond of \$98,240.40 which was applied to the previous approvals in 2016 and 2018. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.
- xxiii. Prior to the commencement of the development the applicant is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by the applicant.
- xxiv. The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- xxv. Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- xxvi. The Applicant must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying the Applicant and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- xxvii. Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Cr McCormick seconded the motion.

Cr McCormick moved an amendment to the motion as follows:

That the operating hours for the following conditions be reworded to read as follows:

Pit operating hours – Development approval

- vi. Hours of operation within the extraction area are limited to 6:00am to 5:00pm Monday to Friday. No operation on weekends or public holiday days.**

Transport management – Development approval

- vii. Operating hours for cartage shall be limited to between 6:00am and 5:00pm Monday to Friday. No cartage on weekends or public holidays.**

Cr Wrench seconded the amendment.

Clarification was sought.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. OCM034/02/24

MOVED Cr S McCormick

SECONDED Cr D Wrench

That the operating hours for the following conditions be reworded to read as follows:

Pit operating hours – Development approval

- vi. Hours of operation within the extraction area are limited to 6:00am to 5:00pm Monday to Friday. No operation on weekends or public holiday days.**

Transport management – Development approval

- vii. Operating hours for cartage shall be limited to between 6:00am and 5:00pm Monday to Friday. No cartage on weekends or public holidays.**

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

Cr Madacsi moved an amendment to the motion as follows:

That under the heading Transport Management, the words “contribution towards road” be included after the words “the cost of road”

Further clarification was sought.

Cr Madacsi withdrew the amendment to the motion.

Cr Dival foreshadowed an amendment as follows:

That the words “Road Maintenance Plan” be renamed “Road Transport Plan”

Further clarification was sought.

Cr Wrench seconded the amendment.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. OCM035/02/24	
MOVED	Cr S Dival
SECONDED	Cr D Wrench
That the words “Road Maintenance Plan” be renamed “Road Transport Plan”	
<u>Voted For:</u>	Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater
<u>Voted Against:</u>	Nil
MOTION CARRIED 7/0	

Cr McCormick moved an amendment to the motion as follows:

That the word “applicant” on pages 26, 26 and 29 is replaced with the words “WA Gravel Pty Ltd”

Cr Madacsi seconded the motion.

Clarification was sought.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. OCM036/02/24	
MOVED	Cr S McCormick
SECONDED	Cr R Madacsi
That the word “applicant” on pages 26, 26 and 29 is replaced with the words “WA Gravel Pty Ltd”	
<u>Voted For:</u>	Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater
<u>Voted Against:</u>	Nil
MOTION CARRIED 7/0	

Further clarification was sought.

Substantive motion reconsidered.

Cr Madacsi foreshadowed an amendment to the motion as follows:

That:

- 1. Under site rehabilitation clauses w, x, y, and z of the EIL and clauses are removed from the Officer's Recommendation; and**
- 2. Under site rehabilitation the following words be included:**
 - (a) The applicant is responsible.**
- 3. Requests the CEO bring a report to Council with review of rehabilitation requirements.**

Further clarification was sought.

At 2.24pm the Shire President adjourned the meeting to enable Cr Madacsi to put an amendment in writing.

The Executive Assistant departed the Council Chambers at 2.27pm.

Cr Duri departed the Council Chambers at 2.28pm.

The Acting CEO departed the Council Chambers at 2.31pm.

The Executive Assistant and Acting CEO returned to the Council Chambers at 2.31pm.

The Shire President resumed the meeting at 2.31pm.

Cr Madacsi moved an amendment to the motion as follows:

That:

- (a) under site rehabilitation clauses xxii, xxiii, xxiv and xxv be removed for the development approval in the Officer's Recommendation be removed.**
- (b) x, y, and z on pages 28 and 29 is retained and (w) is retained under and aa of the EIL and clauses ff 22, 23 24 and 25 (roman numerals) in the Development application are removed from the Officer's Recommendation; and subject to the review of the application of rehabilitation bonds the matter is brought back to Council to be finalised by April 2024 at the Ordinary Council Meeting.**
- (c) That under site rehabilitation clauses x, y, and z on pages 28 and 29 is retained and (w) is retained under and aa of the EIL and clauses ff 22, 23 24 and 25 (roman numerals) in the Development application are removed from the Officer's Recommendation; and subject to the review of the application of rehabilitation bonds the matter is brought back to Council to be finalised by April 2024 at the Ordinary Council Meeting.**

The Presiding Member ruled at 2.38pm that in accordance with Standing Orders 9.1.1 the amendments to the substantive motion cannot be accepted as they are negating the intent of the original motion.

Cr Duri returned to Council Chambers at 2.32pm.

Cr McCormick departed Council Chambers at 2.36pm.

M Werder departed Council Chambers at 2.39pm.

The substantive motion was reconsidered.

Cr Madacsi withdrew the amendments and foreshadowed an alternate motion.

Cr Prater moved a Procedural Motion as follows:

That the question be put in relation to Lot 22 Chitty Road, Hoddys Well - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - WA Gravel Pty Ltd at 2.40pm in accordance with Standing Order 10.1(d).

Cr Dival seconded the motion.

Cr Madacsi objected to the motion.

The Presiding Member offered the right of reply to the mover of the substantive motion, without amendment in accordance with Standing Order 10.8(1).

The Procedural Motion was put.

PROCEDURAL MOTION/COUNCIL RESOLUTION NO. OCM037/02/24

MOVED Cr J Prater

SECONDED Cr S Dival

That the question be put in relation to Officer's Recommendation 1 for Lot 22 Chitty Road, Hoddys Well - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - WA Gravel Pty Ltd at 2.42pm in accordance with Standing Order 10.1(d).

Voted For: Crs C Duri, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Cr R Madacsi

MOTION CARRIED 5/1

Cr McCormick and M Werder returned to Council Chambers at 2.42pm.

The Presiding Member confirmed that the motion is carried and in accordance with Standing Order 10.8(2), the motion was put.

The substantive motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM038/02/24

MOVED Cr R Madacsi

SECONDED Cr S McCormick

That Council:

1. Notes the submissions received relating to the Extractive Industry application for Lot 22 Chitty Road, Hoddys Well.
2. Pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; approves the **development approval** for an industry - extractive land use at Lot 22 Chitty Road, Hoddys Well, subject to the following conditions:

(a) Management Plan

Development is to be in accordance with the approved Extractive Industries Licence Application – “*Extractive Industries Licence Application and Environmental Management Plan - Lot 22 (formerly Lot 8) on Deposited Plan 420530 Chitty Road, Hoddys Well. Prepared for WA Gravel Pty Ltd - Version 0.1 - August 2023*”, including any amendments placed thereon by Council and

except as may be modified by the following conditions:

Term of approval

- i. The term of the Development Approval is for ten (10) years from the date of this approval.

Site Specific

- ii. The location and total area of the excavation is to be limited to 9.57 hectares as depicted in the approved management plan.
- iii. The extraction of material is limited to a depth of 5 metres (m) as depicted in the approved management plan.
- iv. The maximum permitted extraction is limited to 54,000 tonnes (t) per annum as depicted in the approved management plan.
- v. Extraction is to be undertaken entirely within the land defined as:
Lot 22 on D420530
Volume: 4015 Folio: 45
And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- vi. Hours of operation within the extraction area are limited to 6:00am to 5:00pm Monday to Friday. No operation on weekends or public holiday days.

Transport management

- vii. Operating hours for cartage shall be limited to between 6:00am and 5:00pm Monday to Friday. No cartage on weekends or on public holidays.
- viii. All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- ix. All truck loads leaving the site with materials are to be covered.
- x. The operator shall be responsible for the cost of road contributions towards road maintenance and road rehabilitation to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Transport Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay.

- xi. The cost for road maintenance and road rehabilitation contributions shall be calculated annually using the method outlined in the latest version of the Western Australian Local Government Association's

policy area relating to Recovering the Cost of Road Wear from Heavy Vehicles available at the time of application and of any future renewal.

Noise and vibration

- xii. The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

- xiii. The operations are managed in accordance with “*Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources*”.
- xiv. Any dewatering shall be in accordance with “*Water Quality Protection Note 13 - Dewatering of Soils*”.

Dust

- xv. Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the *Environmental Protection Act 1986* and Department of Environmental Regulation Guidelines.

Native Vegetation

- xvi. The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- xvii. WA Gravel Pty Ltd is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay.

Bushfire management

- xviii. In lieu of a formal bushfire management the development must observe the following controls:
1. All plant & vehicle movement related to this approval on Lot 22 Chitty Road, shall maintain 5m clearance to fine fuel vegetation (less than 6mm diameter or thickness) during the Restricted Burning Period and Prohibited Burning Period.
 2. All plant & vehicles must carry fire extinguisher(s) of no less than 7.5 kilogram or litre capacity, suitable for extinguishing fire of plant/vehicle and vegetation.

Reporting / Auditing

- xix. WA Gravel Pty Ltd is required to provide the local government a Surveyors Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time the Applicant will provide an update and forecast on staging for the following two-year period.
- xx. WA Gravel Pty Ltd / The Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:
1. Quarry progress including photos.

2. Progress of Rehabilitation including photos.
3. Monitoring Results
 - a. Clearing Permits
 - b. Water Testing Results
 - c. Other Environmental Factors
4. Safety
5. Road Maintenance Contributions
6. Cartage Management Report

Site Rehabilitation

- xxi. The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application “**Extractive Industries Licence Application and Environmental Management Plan - Lot 22 (formerly Lot 8) on Deposited Plan 420530 Chitty Road, Hoddys Well. Prepared for WA Gravel Pty Ltd - Version 0.1 - August 2023**”, and the Shire of Toodyay’s Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.
- xxii. Prior to the commencement of the development, WA Gravel Pty Ltd is required to pay an additional bond of **\$85,057.57** as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xx).
- This is in addition to the existing bond of **\$98,240.40** which was applied to the previous approvals in 2016 and 2018. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.
- xxiii. Prior to the commencement of the development the applicant is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by WA Gravel Pty Ltd.
- xxiv. The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- xxv. Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- xxvi. WA Gravel Pty Ltd must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying WA Gravel Pty Ltd and the Shire of

Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- xxvii. Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Voted For: Crs C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Cr R Madacsi

MOTION CARRIED 6/1

Cr Dival moved the Officer's Recommendation 2 with amendments included, highlighted in red, as follows:

That Council, pursuant to Clause 3.1(2)(b) of the *Shire of Toodyay Extractive Industry Local Law*, approves the application for an Extractive Industry Licence at Lot 22 Chitty Road, Hoddys Well, subject to the following conditions:

Licence

- The licence is granted to WA Gravel Pty Ltd.**

Management Plan

- Development is to be in accordance with the approved Extractive Industries Licence Application – “*Extractive Industries Licence Application and Environmental Management Plan - Lot 22 (formerly Lot 8) on Deposited Plan 420530 Chitty Road, Hoddys Well. Prepared for WA Gravel Pty Ltd - Version 0.1 - August 2023*”, including any amendments placed thereon by Council and except as may be modified by the following conditions:**

Term of approval

- The term of the Extractive Industry Licence is for ten (10) years from the date of this approval.**

Payment of Annual Licence Fee

- On or before 31 December in each year, a licensee must pay to the local government the annual licence fee determined by the local government from time to time.**

Transfer, Cancellation and Renewal of Licence

- Must be carried out in accordance with Part 4 of the *Shire of Toodyay Extractive Industry Local Law*.**

Site Specific

- The location and total area of the excavation is to be limited to 9.57 hectares as depicted in the approved management plan.**
- The extraction of material is limited to a depth of 5 metres (m) as depicted in the approved management plan.**
- The maximum permitted extraction is limited to 54,000 tonnes (t) per annum as depicted in the approved management plan.**

- (g) Extraction is to be undertaken entirely within the land defined as Lot 22 on D420530, Volume: 4015 Folio: 45 and must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- (h) **Hours of operation within the extraction area are limited to 6:00am to 5:00pm Monday to Friday. No operation on weekends or public holiday days.**

Transport management

- (i) **Operating hours for cartage shall be limited to between 6:00am and 5:00pm Monday to Friday. No cartage on weekends or public holidays.**
- (j) All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- (k) All truck loads leaving the site with materials are to be covered.
- (l) The operator shall be responsible for the cost of road maintenance and road rehabilitation to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Maintenance Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay.

- (m) The cost for road maintenance and road rehabilitation contributions shall be calculated and reviewed annually using the method outlined in the latest version of the Western Australian Local Government Association's *Heavy Vehicle Cost Recovery Policy Guideline for Sealed Roads* available at the time of application and of any future renewal.

Noise and vibration

- (n) The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

- (o) The operations are managed in accordance with "*Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources*".
- (p) Any dewatering shall be in accordance with "*Water Quality Protection Note 13 - Dewatering of Soils*".

Dust

- (q) Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the

Environmental Protection Act 1986 and Department of Environmental Regulation Guidelines.

Native Vegetation

- (r) The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- (s) The applicant is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay.

Bushfire management

- (t) In lieu of a bushfire management plan, the development must observe the following controls:
 - (i) All plant & vehicle movement related to this approval on Lot 22 Chitty Road, shall maintain 5m clearance to fine fuel vegetation (less than 6mm diameter or thickness) during the Restricted Burning Period and Prohibited Burning Period.
 - (ii) All plant & vehicles must carry fire extinguisher(s) of no less than 7.5 kilogram or litre capacity, suitable for extinguishing fire of plant/vehicle and vegetation.

Reporting / Auditing

- (u) The Applicant is required to provide the local government a Surveyors Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time the Applicant will provide an update and forecast on staging for the following two-year period.
- (v) The Applicant/Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:
 - (i) Quarry progress including photos.
 - (ii) Progress of Rehabilitation including photos.
 - (iii) Monitoring Results
 - (iv) Clearing Permits
 - (v) Water Testing Results
 - (vi) Other Environmental Factors
 - (vii) Safety
 - (viii) Road Maintenance Contributions
 - (ix) Cartage Management Report

Site Rehabilitation

- (w) The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application "*Extractive Industries Licence Application and Environmental Management Plan - Lot 22 (formerly Lot 8) on Deposited Plan 420530 Chitty Road, Hoddys Well.*

Prepared for WA Gravel Pty Ltd - Version 0.1 - August 2023", and the Shire of Toodyay's Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.

- (x) Prior to the commencement of the development, the applicant is required to pay an additional bond of \$85,057.57 as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xviii). This is in addition to the existing bond of \$98,240.40 which was applied to the previous approvals. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.
- (y) Prior to the commencement of the development the applicant is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by the applicant.
- (z) The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- (aa) Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- (bb) The Applicant must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying the Applicant and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- (cc) Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Cr Prater seconded the motion.

Cr Madacsi objected to the motion.

Debate commenced.

Cr Madacsi departed Council Chambers at 2.49pm.

Cr Madacsi returned to Council Chambers at 2.50pm.

Cr Prater moved a Procedural Motion as follows:

That the question be put in relation to Officer's Recommendation 2 for Lot 22 Chitty Road, Hoddys Well - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - WA Gravel Pty Ltd at 2.49pm in accordance with Standing Order 10.1(d).

The Presiding Member offered the right of reply to the mover of the substantive motion, without amendment in accordance with Standing Order 10.8(1).

Cr Dival seconded the motion.

The Procedural Motion was put.

PROCEDURAL MOTION/COUNCIL RESOLUTION NO. OCM039/02/24

MOVED Cr J Prater

SECONDED Cr S Dival

That the question be put in relation to Officer's Recommendation 2 for Lot 22 Chitty Road, Hoddys Well - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - WA Gravel Pty Ltd at 2.49pm in accordance with Standing Order 10.1(d).

Voted For: Crs S McCormick, M McKeown, S Dival and J Prater

Voted Against: Crs R Madacsi, C Duri and D Wrench

MOTION CARRIED 4/3

The Presiding Member confirmed that the motion is carried and in accordance with Standing Order 10.8(2), the motion was put.

A Point of Order was made by Cr Madacsi in accordance with Standing Order 8.4 clarifying whether the amendments were made to Officer's Recommendation No. 2 referring to the licence.

The Presiding Member upheld the Point of Order in accordance with Standing Order 8.5, as one motion can be considered at one time.

The Presiding Member requested that if anyone wished to leave the room they are to do so by advising the Presiding Member.

The Acting CEO provided clarification.

MOTION/COUNCIL RESOLUTION NO. OCM040/02/24

MOVED Cr J Prater

SECONDED Cr M McKeown

That the Procedural Motion be withdrawn at 2.52pm.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

Cr Dival moved an amendment to the substantive motion as follows:

- **That at Point (I) under the heading Transport Management the words "Road Maintenance Plan" be replaced with the words "Road Transport Plan"**
- **That the word "Applicant" be replaced with the words "WA Gravel Pty Ltd"**

Cr Madacsi seconded the motion.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. OCM041/02/24

MOVED Cr S Dival

SECONDED Cr R Madacsi

- That at Point (l) under the heading Transport Management the words “Road Maintenance Plan” be replaced with the words “Road Transport Plan”
- That the word “Applicant” be replaced with the words “WA Gravel Pty Ltd”

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

The substantive motion was reconsidered.

Cr Madacsi objected to the motion.

Cr Prater moved a Procedural Motion as follows:

That the question be put in relation to Officer’s Recommendation 2 for Lot 22 Chitty Road, Hoddys Well - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - WA Gravel Pty Ltd at 2.49pm in accordance with Standing Order 10.1(d).

The Presiding Member offered the right of reply to the mover of the substantive motion, without amendment in accordance with Standing Order 10.8(1).

Cr McKeown seconded the motion.

The Procedural Motion was put.

PROCEDURAL MOTION/COUNCIL RESOLUTION NO. OCM042/02/24

MOVED Cr J Prater

SECONDED Cr M McKeown

That the question be put in relation to Officer’s Recommendation 2 for Lot 22 Chitty Road, Hoddys Well - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - WA Gravel Pty Ltd at 2.54pm in accordance with Standing Order 10.1(d).

Voted For: Crs S McCormick, M McKeown, S Dival and J Prater

Voted Against: Crs R Madacsi, C Duri and D Wrench

MOTION CARRIED 4/3

OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM043/02/24**MOVED** Cr S Dival**SECONDED** Cr J Prater

That Council, pursuant to Clause 3.1(2)(b) of the *Shire of Toodyay Extractive Industry Local Law*; approves the application for an **Extractive Industry Licence** at Lot 22 Chitty Road, Hoddys Well, subject to the following conditions:

Licence

1. The licence is granted to WA Gravel Pty Ltd.

Management Plan

2. Development is to be in accordance with the approved Extractive Industries Licence Application – “*Extractive Industries Licence Application and Environmental Management Plan - Lot 22 (formerly Lot 8) on Deposited Plan 420530 Chitty Road, Hoddys Well. Prepared for WA Gravel Pty Ltd - Version 0.1 - August 2023*”, including any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

- (a) The term of the Extractive Industry Licence is for ten (10) years from the date of this approval.

Payment of Annual Licence Fee

- (b) On or before 31 December in each year, a licensee must pay to the local government the annual licence fee determined by the local government from time to time.

Transfer, Cancellation and Renewal of Licence

- (c) Must be carried out in accordance with Part 4 of the *Shire of Toodyay Extractive Industry Local Law*.

Site Specific

- (d) The location and total area of the excavation is to be limited to 9.57 hectares as depicted in the approved management plan.
- (e) The extraction of material is limited to a depth of 5 metres (m) as depicted in the approved management plan.
- (f) The maximum permitted extraction is limited to 54,000 tonnes (t) per annum as depicted in the approved management plan.
- (g) Extraction is to be undertaken entirely within the land defined as:
Lot 22 on D420530
Volume: 4015 Folio: 45
And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- (h) Hours of operation within the extraction area are limited to 6:00am to 5:00pm Monday to Friday. No operation on weekends or public holiday days.

Transport management

- (i) Operating hours for cartage shall be limited to between 6:00am and 5:00pm Monday to Friday. No cartage on weekends or public holidays.
- (j) All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- (k) All truck loads leaving the site with materials are to be covered.
- (l) The operator shall be responsible for the cost of road maintenance and road rehabilitation to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Transport Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay.

- (m) The cost for road maintenance and road rehabilitation contributions shall be calculated and reviewed annually using the method outlined in the latest version of the Western Australian Local Government Association's *Heavy Vehicle Cost Recovery Policy Guideline for Sealed Roads* available at the time of application and of any future renewal.

Noise and vibration

- (n) The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

- (o) The operations are managed in accordance with "*Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources*".
- (p) Any dewatering shall be in accordance with "*Water Quality Protection Note 13 - Dewatering of Soils*".

Dust

- (q) Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the *Environmental Protection Act 1986* and Department of Environmental Regulation Guidelines.

Native Vegetation

- (r) The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- (s) WA Gravel Pty Ltd is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay.

Bushfire management

- (t) In lieu of a bushfire management plan, the development must observe the following controls:

- (i) All plant & vehicle movement related to this approval on Lot 22 Chitty Road, shall maintain 5m clearance to fine fuel vegetation (less than 6mm diameter or thickness) during the Restricted Burning Period and Prohibited Burning Period.
- (ii) All plant & vehicles must carry fire extinguisher(s) of no less than 7.5 kilogram or litre capacity, suitable for extinguishing fire of plant/vehicle and vegetation.

Reporting / Auditing

- (u) WA Gravel Pty Ltd is required to provide the local government a Surveyors Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time WA Gravel Pty Ltd will provide an update and forecast on staging for the following two-year period.
- (v) WA Gravel Pty Ltd /The Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:
 - (i) Quarry progress including photos.
 - (ii) Progress of Rehabilitation including photos.
 - (iii) Monitoring Results
 - (iv) Clearing Permits
 - (v) Water Testing Results
 - (vi) Other Environmental Factors
 - (vii) Safety
 - (viii) Road Maintenance Contributions
 - (ix) Cartage Management Report

Site Rehabilitation

- (w) The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application "***Extractive Industries Licence Application and Environmental Management Plan - Lot 22 (formerly Lot 8) on Deposited Plan 420530 Chitty Road, Hoddys Well. Prepared for WA Gravel Pty Ltd - Version 0.1 - August 2023***", and the Shire of Toodyay's Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.
- (x) Prior to the commencement of the development, WA Gravel Pty Ltd is required to pay an additional bond of **\$85,057.57** as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xviii). This is in addition to the existing bond of **\$98,240.40** which was applied to the previous approvals. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.
- (y) Prior to the commencement of the development WA Gravel Pty Ltd is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding

and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by WA Gravel Pty Ltd.

- (z) The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- (aa) Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- (bb) WA Gravel Pty Ltd must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying WA Gravel Pty Ltd and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- (cc) Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Voted For: Crs C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Cr R Madacsi

MOTION CARRIED 6/1

9.1.4 Lot 1 Forest Road, Nunile - Extension of Extractive Industry (Development Approval and Extractive Industry Licence) - Vernice Pty Ltd.

Date of Report:	14 February 2024
Applicant or Proponent:	Vernice Pty Ltd
File Reference:	P2022-59/A2456/1GOOT/1EXT
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	Item 9.2.1 27 January 2015
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. Item 9.1.1 Lot 1 Forest Road - OCM 25 October 2023; ↔ 2. Map - Lot 1 Forest Road, Nunile; ↔ 3. EI Application - Clover Downs - Lot 1 Forest Road Nunile - Vernice Pty Ltd; ↔ 4. Schedule of Submissions. ↔

SUMMARY

Applicant:	VERNICE PTY LTD
Owner:	FERGUSON, Stephen William
Proposal:	Extension of Extractive Industry
Location:	Lot 1 Forest Road, Nunile

PURPOSE OF THE REPORT

Council is requested to consider an application for Development Approval and an Extractive Industry Licence for the extension of a gravel quarry at Lot 1 Forest Road, Nunile, submitted by Vernice Pty Ltd. Under the Shire's adopted Delegations Register, applications for extractive industries may only be refused under delegated authority.

BACKGROUND

Application history

The application was previously before Council at the Ordinary Council Meeting on 25 October 2023 where the applicant was granted a four-month limited approval for development and an extractive industry licence. The reason for this was to ensure firstly that the applicant was not operating without approvals, and secondly to allow time for the Shire

to consider issues that we raised by another extractive industry applicant. Further discussion about this will occur in the Comments section of this report. For more details, please refer to **Attachment 1 – Item 9.1.1 OCM 25 October 2023.**

Proposal

Lot 1 Forest Road is a 151.8-hectare property which is zoned “Rural” under the Shire of Toodyay’s *Local Planning Scheme No. 4*. The property is situated at the intersection of Forest Road and Goomalling Toodyay Road in Nunile – approximately 14km east-north-east of the Toodyay Town Centre. The subject land is partially cleared, and the general district is noted for its undulating topography with the predominant land use being broad acre farming.

It should be noted that both Forest Road and Goomalling-Toodyay Road are used interchangeably due to the dual frontage. The Shire of Toodyay’s property management system traditionally referred to the land as Lot 1 Goomalling-Toodyay Road and this is also reflected on the title of the Management Plan supplied. The street address is 81 Forest Road, Nunile. For the purposes of this application Lot 1 Forest Road and Lot 1 Goomalling-Toodyay Road is taken to mean:

Lot 1 on D077036
Volume: 1868 Folio: 145

For more details, please refer to **Attachment 2 – Map Lot 1 Forest Road, Nunile.**

History

The applicant has been operating a sand and gravel extractive industry at this location since 2015 with Council granting approval for a 4 hectare area for gravel extraction and a 2 hectare area for sand.

Sand extraction area

This application is for an expansion of the gravel operations. However, any approval shall also include the existing 2 hectare sand area. The Shire has been advised that the area granted initially in 2015 for sand extraction (total of 2 ha) is only being used to mix with the gravel material on site to enhance material for various grades. The sand is not being sold as its own product; it is being used onsite.

The applicant wishes to continue to use the sand when required and, therefore, will not be seeking an extension of the sand area and currently plans to rehabilitate when they have finished extracting gravel.

It is recommended that the Council uses this opportunity to top up the existing portion of the bond pertaining to the sand area and this is discussed in the Financial section of this report.

Proposal

A summary of the proposal is listed below:

Subject	Description
Basic Raw Material	Gravel
Term of Approval	10 years
Hours of Operation	6.30am – 5.30pm, Monday to Saturday (excluding public holidays)
Operator	Vernice Pty Ltd

Subject	Description
Volume Extracted	34,000 tonnes/year
Traffic Movements	8 - 12 truckloads per day varying from 12T to 50T.
Site Preparation	Clearing Permit has been applied for the removal of vegetation.
Depth of Extraction	Maximum depth 2m.
Extraction Methods	Excavators and front-end loaders will be used to extract the topsoil and gravel. Topsoil will be loaded into an articulated dump truck to be moved to a stockpile onsite, and gravel will be either loaded straight into trucks as raw material or be placed in the screener or crushers for the creation of other raw materials.
Access	The current access from Forest Road will no longer be used to enter the property. Access directly from Goomalling-Toodyay Road (M060) SLK 34.94 will be used. All existing internal site access tracks will be used by trucks and vehicles to enter the excavation area. In addition, a gravel access road will be constructed for trucks and vehicles to enter the excavation area from Goomalling-Toodyay Road.
Structures	The current dwelling is located onsite and has not moved. A site office is onsite with one other storage container. These are shown on the map.
Rehabilitation	At the conclusion of extraction, the site will be rehabilitated with a gently contoured depression with a cover of pasture species that will visually conform to the general rural landscape. Native trees will also be planted, and the land will be returned to a suitable state for grazing.

For more details, please refer to **Attachment 3 - EI Application - Clover Downs - Lot 1 Forest Road Nunile - Vernice Pty Ltd.**

COMMENTS AND DETAILS

Update since October 2023

The preliminary research conducted by the Shire has considered factors relating to rehabilitation bonds. At the time of writing this report, the research is still being conducted and the Shire has invited the input of other Local Governments to develop industrywide consistency.

However, an alternative is to include a different condition as follows:

Within three months of the date of this approval, an independent environmental consultant specialising in land rehabilitation is to be commissioned by the Shire of Toodyay to review the rehabilitation plans and to conduct a site inspection to determine a cost per hectare for the rehabilitation of the site.

This cost will then be applied by the Shire as an upfront bond and adjusted accordingly to the annual review of fees and charges.

All costs associated with this are to be borne by the applicant.

For consistency with current extractive industry applications, it is recommended that it is left as is.

Options

Council has the following alternate options in relation to this item:

- To determine that the proposed use is unacceptable and resolve to refuse the application; or
- To alter, amend, remove or add conditions to the approval to address potential impacts from the development.

Times requested.

The applicant has requested the following operating times:

6.30am – 5.30pm, Monday to Saturday (excluding public holidays)

In recent times the Shire, in its approvals for Extractive Industries, has chosen to separate approval times into operating and cartage.

Operating involves all on-site activities including extraction, stockpiling and rehabilitation.

Cartage involves the movement into and out of the subject site using Shire controlled roads and the transport of extracted materials.

Guidance has been taken from the work currently being done on the draft Local Planning Policy for Extractive Industries. Whilst not in force, the draft Policy currently will recommend:

Hours of operation are limited to 7:00am to 5:00pm Monday to Friday and 7:00am to 1:00pm on Saturday. No operation on public holiday days.

The Shire has recommended a slightly varied condition to the applicant's request.

In addition cartage, seen as the most significant impact on tourism and visitors, is recommended to be limited to Monday to Friday only.

The proposal is considered consistent with the objectives of the zone and the requirements of the Shire of Toodyay LPS4.

The matters raised in the public submissions have also been mitigated through the application of appropriate planning conditions. Specifically, this is focussing on a clearer, more structured approach to conditioning the development that addresses the whole life of the project. These conditions are consistent with the position the Shire is formulating in the development of a local planning policy for extractive industries which is still in draft phase. Key areas identified in the recommended conditions of approval address known compliance areas that have traditionally been noted with this type of land use.

Key to this is the reporting and auditing requirement, which now through conditions, formalises the Shire's expectations for regular and consistent reporting about extractive industry operations. Additionally, the conditions set out clear requirements for legal agreements to be entered into with the Shire regarding rehabilitation and bonding. Lastly, the recommended conditions clearly indicate the Shire's intent for cost recovery for aspects of the regulation and auditing – such as pit inspections, clearance of conditions and pit close out. All of these changes are expected to have a positive and lasting impact on the overall management of these industries and will go to address some of the concerns raised in the community.

On this basis, it is considered the proposal can be approved and appropriately managed through ongoing compliance with conditions and the Shire's annual licence renewal process for Extractive Industries.

It is therefore recommended that Council approves the proposed development, subject to the conditions provided.

IMPLICATIONS TO CONSIDER

Consultative:

The application has been advertised in accordance with the adopted *Local Planning Policy – Advertising of Planning Proposals*.

Given an extractive industry is a significant development application, the consultation period was for 21 days. This application underwent three separate lots of advertising on the Shire's website and in the Toodyay Herald. In addition, the application was advertised to adjoining properties within 1,500 metres of the property boundary and to relevant stakeholders by mail out.

The reason it was advertised three times was:

1. Initial application.
2. Initial application with extended mail outs to capture residents from adjoining local government areas.
3. Revised application with access arrangements clarified. Now direct to Goomalling Toodyay Road.

The Shire received a total of eight submissions.

Four of these were from three government agencies and four were from three landowners.

In the case of the landowner submissions, all were raising concerns or objecting to the proposal.

The main points of concern were:

- Non-compliance with existing approval/licence conditions. These were relating mainly to:
 - Hours and days of operation
 - Number of truck movements.
- Other issues raised were regarding dust, noise, and traffic impact.

The Shire recognises that there are shortcomings with the history of management of this operation. It recognises that it must do more to control Extractive Industry compliance and to address areas of concern.

The recent work on the draft local planning policy for extractive industries, along with a review of the Local Laws should strengthen compliance issues in this area.

The conditions have been drafted to reflect the stronger position taken in the draft policy particularly with regards to auditing and compliance.

For further details of this consultation please refer to **Attachment 4 – Schedule of Submissions**.

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 9. Responsible and effective leadership and governance.

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

Policy related:[State Planning Policy 2.0 – Environment and Natural Resources Policy](#)

The principles from the Policy are below:

- the identification and protection of important and economic mineral resources to enable mineral exploration and mining in accordance with acceptable environmental standards
- the identification and protection of important basic raw material resources and provide for their extraction and use

[State Planning Policy 2.4 – Planning for Basic Raw Materials](#)

The Policy provides guidance to operators and decision makers regarding applications for basic raw materials extraction, as well as other types of planning applications that can potentially impact on extraction sites or significant geological supplies.

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

The Western Australian Planning Commission seeks to protect and preserve rural land for rural purposes including primary production, basic raw materials, regional facilities, and protection of biodiversity and landscape.

Basic raw materials are essential for the construction of buildings, roads and other infrastructure, and also for the sustainability of agricultural production.

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

The latest DPLH mapping (2021) identifies “Bushfire Prone Areas” across the entire site. It should be noted that Version 1.4 of the SPP 3.7 Guidelines includes a provision stating that the requirement for a Bushfire Management Plan for extractive industry is up to the discretion of the decision-maker. Clause 2.6 of the Guidelines states that:

Decision-makers can apply exemptions from the requirements of SPP 3.7 and these Guidelines where there is no intensification of land-use, and/or the proposal is not increasing the bushfire threat.

An example given in the Guidelines for the type of proposal/development which could be exempt includes extractive industries as follows:

A development application for an extractive industry where the extraction is undertaken in an open cleared area (for example, quarries and open cut mining) and no habitable buildings are proposed.

Therefore, although a Bushfire Management Plan has previously been prepared for the site to assist with site operations and compliance, the requirement for this plan is at the discretion of the Local Government and as no habitable buildings are located on the site, the requirement for a Bushfire Management Plan could be waived.

Local Planning Policy – Advertising of Planning Proposals

This policy provides guidance on the exercise of discretion under the Shire of Toodyay Local Planning Scheme No. 4 in terms of when public notice is given, and the means and duration of public notice periods, where these periods are not prescribed by the Local Planning Scheme.

Risk Management

This policy is intended to commit to organisation-wide risk management principles, systems and processes that ensure consistent, efficient and effective assessment of risk in all planning, decision making and operational processes.

Financial:

All costs associated with the development will be borne by the proponent. This includes applicable rehabilitation bonds, road maintenance contributions and annual licence fees.

Rehabilitation Bond

In the previous approval issued in 2015, the Shire of Toodyay calculated a rehabilitation bond of \$33,000. This was for a 4-hectare gravel pit and a 2-hectare sand pit. The figure was calculated using the adopted Shire of Toodyay Schedule of Fees and Charges from 2015 which listed the following:

- Secured sum – Rehabilitation for sand or fine grain less than 3m deep per hectare (Clause 5.1) - \$4,500.00
- Secured sum – Rehabilitation for gravel, clay, or stone less than 3m deep per hectare (Clause 5.1) - \$6,000.00

Thus, the 2015 calculated figure was as follows:

Gravel Pit	\$6,000 x 4 hectares	\$24,000.00
Sand Pit	\$4,500 x 2 hectares	\$9,000.00
Total		\$33,000.00

The current application seeks approval to extend the gravel pit area from 4-hectares to 15.9-hectares.

It is a requirement for the Shire to recalculate rehabilitation bonds from time to time to reflect change in rehabilitation costs over time. This is usually done as part of a development approval renewal or extractive industry licence renewal.

The current adopted Shire of Toodyay Schedule of Fees and Charges list the following sums for rehabilitation.

- Secured sum – Rehabilitation for sand or fine grain less than 3m deep per hectare (Clause 5.1) - \$5,990.00
- Secured sum – Rehabilitation for gravel, clay, or stone less than 3m deep per hectare (Clause 5.1) - \$8,370.00

Therefore, the collected bond will need to be adjusted to reflect these changes by topping up. The additional expansion areas will have an additional bond applied.

Gravel Pit	\$8,370 – \$6,000 = \$2,370	\$2,370 x 4 hectares	\$9,480.00
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Expansion	16.04 hectares – 4 hectares = 12.04 hectares	\$8,370 x 12.04 hectares	\$100,774.80
Sand Pit	\$5,990 - \$4,500 = \$1,490	\$1,490 x 2 hectares	\$2,980.00
TOTAL			\$113,234.80

Legal and Statutory:

Planning and Development Act 2005

Planning and Development Regulations 2009

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Toodyay Local Planning Scheme No. 4

Extractive Industry is classified as a 'D' use within the 'Rural' zone under LPS4, meaning that the use is not permitted, unless the local government has exercised its discretion by granting development approval.

Council is at liberty to use its discretion to approve or refuse the proposal. An applicant aggrieved by a decision or condition may apply for a review to the State Administrative Tribunal, in accordance with Section 252 of the *Planning and Development Act 2005*.

The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval. The Shire of Toodyay may be required to defend the decision at a State Administrative Tribunal hearing.

Risk related:

In accordance with the Shire of Toodyay Risk Management Policy the following risks have been determined:

Risk Type	Risk	Likelihood	Consequence	Score
Financial Impact	The Applicant has the right of appeal through the State Administrative Tribunal of Council's decision on this matter. This would potentially expose the Shire to increased legal costs.	Possible (3)	Moderate (3)	Moderate (9)
Reputational	Extractive Industries are highly scrutinised by elements of the community – particularly landowners in close proximity. There is an expectation that the Shire will manage and regulate these processes effectively. When this does	Possible (3)	Moderate (3)	Moderate (9)

Risk Type	Risk	Likelihood	Consequence	Score
	not occur, it can lead to reputational damage.			

Workforce related:

Historically, regulation of the Extractive Industry in Toodyay has been labour intensive for Shire Officers with workflows impacting a number of departments throughout the lifecycle of the project. The Shire is currently improving these processes so that there will be less burden in the future. By being implicit about cost recovery, many of these processes such as an audit inspection will be able to be outsourced.

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.

VOTING REQUIREMENTS

Simple Majority

OFFICER’S RECOMMENDATION 1

That Council:

1. Notes the submissions received relating to the Extractive Industry application for Lot 1 Forest Road, Nunile.
2. Pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; approves the **development approval** for an industry - extractive land use at Lot 1 Forest Road in Nunile in, subject to the following conditions:

(a) Management Plan

Development is to be in accordance with the approved Extractive Industries Licence Application – “*CLOVER DOWNS – Lot 1 Forest Road (a.k.a Lot 1 Goomalling-Toodyay Road), Nunile. Prepared for Vernice Pty Ltd,*” including any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

- (i) The term of the Development Approval is for ten (10) years from the date of this approval;

Site Specific

- (ii) The location and total area of the excavation is to be limited to:

- a. Gravel 16.04 hectares (ha)
- b. Sand 2 hectares (ha) as depicted in the approved management plan.

- (iii) The extraction of material is limited to a depth of 2 metres (m) as depicted in the approved management plan.

(iv) The maximum permitted extraction is limited to 34,000 tonnes (t) per annum as depicted in the approved management plan.

(v) Extraction is to be undertaken entirely within the land defined as:
Lot 1 on D077036
Volume: 1868 Folio: 145
And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

(vi) Hours of operation are limited to 7:00am to 5:00pm Monday to Friday and 7:00am to 1:00pm on Saturday. No operation on public holiday days.

Transport management

(vii) Operating hours for cartage shall be limited to 6:00am until 5:00pm Monday to Friday. No cartage on public holidays.

(viii) All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.

(ix) All truck loads leaving the site with materials are to be covered.

(x) The operator shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Maintenance Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay.

(xi) The cost for road maintenance and road rehabilitation contributions shall be calculated using the method outlined in the latest version of the Western Australian Local Government Association's policy area relating to [Recovering the Cost of Road Wear from Heavy Vehicles](#) available at the time of application and of any future renewal.

(xii) Suitable arrangements being made with Main Roads WA for the upgrade of the existing access on Goomalling Toodyay Rd to service the lot.

Noise and vibration

(xiii) The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

(xiv) The operations are managed in accordance with "Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources".

- (xv) Any dewatering shall be in accordance with “Water Quality Protection Note 13 - Dewatering of Soils”.

Dust

- (xvi) Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the *Environmental Protection Act 1986* and Department of Environmental Regulation Guidelines.

Native Vegetation

- (xvii) The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- (xviii) The applicant is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay

Bushfire management

- (xix) Bushfire Management is to be in accordance with the Bushfire Management Plan (Version 0 August 2022)

Reporting / Auditing

- (xx) The Applicant is required to provide the local government a Surveyor’s Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time, the Applicant will provide an update and forecast on staging for the following two-year period.
- (xxi) The Applicant/Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:
- a. Quarry progress including photos.
 - b. Progress of Rehabilitation including photos.
 - c. Monitoring Results
 - (i) Clearing Permits
 - (ii) Water Testing Results
 - (iii) Other Environmental Factors
 - a. Safety
 - b. Road Maintenance Contributions
 - c. Cartage Management Report

Site Réhabilitation

- (xxii) The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application “**CLOVER DOWNS – Lot 1 Forest Road, Nunile. Prepared for Vernice Pty Ltd,**” and the Shire of Toodyay’s Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the

re-establishment of the final contour ground levels and maintained for a period of three years thereafter.

- (xxiii) Prior to the commencement of the development, the applicant is required to pay an additional bond of **\$113,234.80** as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xviii).

This is in addition to the existing bond of **\$33,000** which was applied to the previous approval in 2015. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.

- (xxiv) Prior to the commencement of the development the applicant is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by the applicant.
- (xxv) The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- (xxvi) Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- (xxvii) The Applicant must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying the Applicant and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- (xxviii) Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Advice Notes

In relation to Condition (a)(xii), the applicant is advised to contact Main Roads WA Wheatbelt Region at wheatbelt@mainroads.wa.gov.au for advice and guidance.

Cr Prater moved the above Officer's Recommendation 1.

Cr Madacsi seconded the motion.

Clarification was sought.

MOTION/COUNCIL RESOLUTION NO. OCM044/02/24**MOVED** Cr M McKeown**SECONDED** Cr R Madacsi

That the meeting be adjourned, under Standing Orders 10.10 at 3.01pm until 3.10pm.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J PraterVoted Against: Nil**MOTION CARRIED 7/0**

The Shire President resumed the meeting at 3.11pm.

The Acting CEO advised that both Officer's Recommendations would be considered as "revised" Officer's Recommendations so that the amendments made to the Officer's Recommendations in the previous Agenda Item can be duplicated for use within the two recommendations made in this report as follows:

Simple Majority

REVISED OFFICER'S RECOMMENDATION 1

That Council:

1. Notes the submissions received relating to the Extractive Industry application for Lot 1 Forest Road, Nunile.
2. Pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; approves the **development approval** for an industry - extractive land use at Lot 1 Forest Road in Nunile in, subject to the following conditions:

(a) Management Plan

Development is to be in accordance with the approved Extractive Industries Licence Application – "CLOVER DOWNS – Lot 1 Forest Road (a.k.a Lot 1 Goomalling-Toodyay Road), Nunile. Prepared for Vernice Pty Ltd," including any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

- (i) The term of the Development Approval is for ten (10) years from the date of this approval;

Site Specific

- (ii) The location and total area of the excavation is to be limited to:
 - a. Gravel 16.04 hectares (ha)
 - b. Sand 2 hectares (ha) as depicted in the approved management plan.

- (iii) The extraction of material is limited to a depth of 2 metres (m) as depicted in the approved management plan.
- (iv) The maximum permitted extraction is limited to 34,000 tonnes (t) per annum as depicted in the approved management plan.
- (v) Extraction is to be undertaken entirely within the land defined as:
Lot 1 on D077036
Volume: 1868 Folio: 145
And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- (vi) Hours of operation are limited to 6:00am to 5:00pm Monday to Friday. No operation on weekends of public holidays.

Transport management

- (vii) Operating hours for cartage shall be limited to 6:00am until 5:00pm Monday to Friday. No cartage on weekends of public holidays.
- (viii) All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- (ix) All truck loads leaving the site with materials are to be covered.
- (x) The operator shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Transport Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay.
- (xi) The cost for road maintenance and road rehabilitation contributions shall be calculated using the method outlined in the latest version of the Western Australian Local Government Association's policy area relating to [Recovering the Cost of Road Wear from Heavy Vehicles](#) available at the time of application and of any future renewal.
- (xii) Suitable arrangements being made with Main Roads WA for the upgrade of the existing access on Goomalling Toodyay Rd to service the lot.

Noise and vibration

- (xiii) The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

- (xiv) The operations are managed in accordance with “Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources”.
- (xv) Any dewatering shall be in accordance with “Water Quality Protection Note 13 - Dewatering of Soils”.

Dust

- (xvi) Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the *Environmental Protection Act 1986* and Department of Environmental Regulation Guidelines.

Native Vegetation

- (xvii) The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- (xviii) Vernice Pty Ltd is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay

Bushfire management

- (xix) Bushfire Management is to be in accordance with the Bushfire Management Plan (Version 0 August 2022)

Reporting / Auditing

- (xx) Vernice Pty Ltd is required to provide the local government a Surveyor’s Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time, Vernice Pty Ltd will provide an update and forecast on staging for the following two-year period.
- (xxi) Vernice Pty Ltd /the Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:
 - a. Quarry progress including photos.
 - b. Progress of Rehabilitation including photos.
 - c. Monitoring Results
 - (i) Clearing Permits
 - (ii) Water Testing Results
 - (iii) Other Environmental Factors
 - a. Safety
 - b. Road Maintenance Contributions
 - c. Cartage Management Report

Site Rehabilitation

- (xxii) The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application “**CLOVER DOWNS**

– Lot 1 Forest Road, Nunile. Prepared for Vernice Pty Ltd,” and the Shire of Toodyay’s Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.

- (xxiii) Prior to the commencement of the development, Vernice Pty Ltd is required to pay an additional bond of **\$113,234.80** as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xviii).

This is in addition to the existing bond of **\$33,000** which was applied to the previous approval in 2015. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.

- (xxiv) Prior to the commencement of the development Vernice Pty Ltd is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by Vernice Pty Ltd.
- (xxv) The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- (xxvi) Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- (xxvii) Vernice Pty Ltd must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying Vernice Pty Ltd and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- (xxviii) Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Advice Notes

In relation to Condition (a)(xii), Vernice Pty Ltd is advised to contact Main Roads WA Wheatbelt Region at wheatbelt@mainroads.wa.gov.au for advice and guidance.

REVISED OFFICER'S RECOMMENDATION 2

That Council

Pursuant to Clause 3.1(2)(b) of the *Shire of Toodyay Extractive Industry Local Law*, approves the application for an Extractive Industry Licence at Lot 1 Forest Road in Nunile in, subject to the following conditions:

Licence

1. The licence is granted to Vernice Pty Ltd

Management Plan

2. Development is to be in accordance with the approved Extractive Industries Licence Application – “*CLOVER DOWNS – Lot 1 Forest Road, Nunile. Prepared for Vernice Pty Ltd*”, including any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

- (a) The term of the Extractive Industry Licence is for ten (10) years from the date of this approval.

Payment of Annual Licence Fee

- (b) On or before 31 December in each year, a licensee must pay to the local government the annual licence fee determined by the local government from time to time.

Transfer, Cancellation and Renewal of Licence

- (c) Must be carried out in accordance with Part 4 of the *Shire of Toodyay Extractive Industry Local Law*

Site Specific

- (d) The location and total area of the excavation is to be limited to:
 - (i) Gravel 16.04 hectares (ha)
 - (ii) Sand 2 hectares (ha)as depicted in the approved management plan.
- (e) The extraction of material is limited to a depth of 2 metres (m) as depicted in the approved management plan.
- (f) The maximum permitted extraction is limited to 34,000 tonnes (t) per annum as depicted in the approved management plan.
- (g) Extraction is to be undertaken entirely within the land defined as:

Lot 1 on D077036
Volume: 1868 Folio: 145

And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- (h) Operating hours within the extraction area shall be restricted to 6:00am and 5:00pm Monday to Saturday (excluding public holidays);

Transport management

- (i) Operating hours for cartage shall be limited to 6:00am until 5:00pm Monday to Friday.
- (j) All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- (k) All truck loads leaving the site with materials are to be covered.
- (l) The operator shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Maintenance Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay Chief Executive Officer.

- (m) The cost for road maintenance and road rehabilitation contributions shall be calculated using the method outlined in the latest version of the Western Australian Local Government Association's policy area relating to Recovering the Cost of Road Wear from Heavy Vehicles available at the time of application and of any future renewal.

Noise and vibration

- (n) The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

- (o) The operations are managed in accordance with "*Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources*".
- (p) Any dewatering shall be in accordance with "*Water Quality Protection Note 13 - Dewatering of Soils*".

Dust

- (q) Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the *Environmental Protection Act 1986* and Department of Environmental Regulation Guidelines.

Native Vegetation

- (r) The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- (s) Vernice Pty Ltd is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay.

Bushfire management

- (t) Bushfire Management is to be in accordance with the Bushfire Management Plan (Version 0 August 2022)

Reporting / Auditing

- (u) Vernice Pty Ltd is required to provide the local government a Surveyors Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time Vernice Pty Ltd will provide an update and forecast on staging for the following two-year period;

Site Rehabilitation

- (v) The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application "**CLOVER DOWNS – Lot 1 Forest Road, Nunile. Prepared for Vernice Pty Ltd**", and the Shire of Toodyay's Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.
- (w) Prior to the commencement of the development, Vernice Pty Ltd is required to pay an additional bond of **\$113,234.80** as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xviii). This is in addition to the existing bond of **\$33,000** which was applied to the previous approval. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.
- (x) Prior to the commencement of the development Vernice Pty Ltd is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by Vernice Pty Ltd.
- (y) The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- (z) Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- (aa) Vernice Pty Ltd must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying Vernice Pty Ltd and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- (bb) Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Cr Madacsi departed Council Chambers at 3.12pm and returned to the Chambers at 3.13pm.

The Presiding Officer asked for a mover for the Revised Officer's Recommendation 1.

Cr Dival moved the revised Officer's Recommendation 1.

Cr Duri seconded the motion.

The Presiding Member ruled that the motion was out of order and unable to be considered at the moment due to there already being a motion on the table; proposing that the first motion be rejected in favour of the revised Officer's Recommendation 1.

Cr McKeown objected to the motion.

Debate commenced.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM045/02/24

MOVED Cr J Prater

SECONDED Cr R Madacsi

That Council:

1. Notes the submissions received relating to the Extractive Industry application for Lot 1 Forest Road, Nunile.
2. Pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; approves the **development approval** for an industry - extractive land use at Lot 1 Forest Road in Nunile in, subject to the following conditions:

(a) Management Plan

Development is to be in accordance with the approved Extractive Industries Licence Application – “CLOVER DOWNS – Lot 1 Forest Road (a.k.a Lot 1 Goomalling-Toodyay Road), Nunile. Prepared for Vernice Pty Ltd,” including any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

- (i) The term of the Development Approval is for ten (10) years from the date of this approval;

Site Specific

- (ii) The location and total area of the excavation is to be limited to:
 - a. Gravel 16.04 hectares (ha)
 - b. Sand 2 hectares (ha) as depicted in the approved management plan.
- (iii) The extraction of material is limited to a depth of 2 metres (m) as depicted in the approved management plan.
- (iv) The maximum permitted extraction is limited to 34,000 tonnes (t) per annum as depicted in the approved management plan.
- (v) Extraction is to be undertaken entirely within the land defined as:

Lot 1 on D077036
Volume: 1868 Folio: 145

And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- (vi) Hours of operation are limited to 7:00am to 5:00pm Monday to Friday and 7:00am to 1:00pm on Saturday. No operation on public holiday days.

Transport management

- (vii) Operating hours for cartage shall be limited to 6:00am until 5:00pm Monday to Friday. No cartage on public holidays.
- (viii) All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- (ix) All truck loads leaving the site with materials are to be covered.
- (x) The operator shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.
- (xi) Prior to the commencement of operation of the Facility, a Road Maintenance Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay.
- (xii) The cost for road maintenance and road rehabilitation contributions shall be calculated using the method outlined in the latest version of the Western Australian Local Government Association's policy area relating to [Recovering the Cost of Road Wear from Heavy Vehicles](#) available at the time of application and of any future renewal.
- (xiii) Suitable arrangements being made with Main Roads WA for the upgrade of the existing access on Goomalling Toodyay Rd to service the lot.

Noise and vibration

- (xiv) The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

- (xv) The operations are managed in accordance with "Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources".
- (xvi) Any dewatering shall be in accordance with "Water Quality Protection Note 13 - Dewatering of Soils".

Dust

- (xvii) Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the

Environmental Protection Act 1986 and Department of Environmental Regulation Guidelines.

Native Vegetation

- (xviii) The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- (xix) The applicant is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay

Bushfire management

- (xx) Bushfire Management is to be in accordance with the Bushfire Management Plan (Version 0 August 2022)

Reporting / Auditing

- (xxi) The Applicant is required to provide the local government a Surveyor's Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time, the Applicant will provide an update and forecast on staging for the following two-year period.
- (xxii) The Applicant/Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:
 - a. Quarry progress including photos.
 - b. Progress of Rehabilitation including photos.
 - c. Monitoring Results
 - (i) Clearing Permits
 - (ii) Water Testing Results
 - (iii) Other Environmental Factors
 - a. Safety
 - b. Road Maintenance Contributions
 - c. Cartage Management Report

Site Rehabilitation

- (xxiii) The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application "**CLOVER DOWNS – Lot 1 Forest Road, Nunile. Prepared for Vernice Pty Ltd,**" and the Shire of Toodyay's Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.
- (xxiv) Prior to the commencement of the development, the applicant is required to pay an additional bond of **\$113,234.80** as a performance

guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xviii).

This is in addition to the existing bond of **\$33,000** which was applied to the previous approval in 2015. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.

- (xxv) Prior to the commencement of the development the applicant is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by the applicant.
- (xxvi) The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- (xxvii) Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- (xxviii) The Applicant must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying the Applicant and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- (xxix) Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Advice Notes

In relation to Condition (a)(xii), the applicant is advised to contact Main Roads WA Wheatbelt Region at wheatbelt@mainroads.wa.gov.au for advice and guidance.

Voted For: Nil

Voted Against: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

MOTION LOST 0/7

Cr Madacsi moved Revised Officers Recommendation 1.

Cr Prater seconded the motion.

Cr Madacsi objected to the motion.

Debate commenced.

The motion was put.

REVISED OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM046/02/24**MOVED** Cr R Madacsi**SECONDED** Cr J Prater

That Council:

1. Notes the submissions received relating to the Extractive Industry application for Lot 1 Forest Road, Nunile.
2. Pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; approves the **development approval** for an industry - extractive land use at Lot 1 Forest Road in Nunile in, subject to the following conditions:

(a) Management Plan

Development is to be in accordance with the approved Extractive Industries Licence Application – “*CLOVER DOWNS – Lot 1 Forest Road (a.k.a Lot 1 Goomalling-Toodyay Road), Nunile. Prepared for Vernice Pty Ltd,*” including any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

- (i) The term of the Development Approval is for ten (10) years from the date of this approval;

Site Specific

- (ii) The location and total area of the excavation is to be limited to:
 - a. Gravel 16.04 hectares (ha)
 - b. Sand 2 hectares (ha) as depicted in the approved management plan.
- (iii) The extraction of material is limited to a depth of 2 metres (m) as depicted in the approved management plan.
- (iv) The maximum permitted extraction is limited to 34,000 tonnes (t) per annum as depicted in the approved management plan.
- (v) Extraction is to be undertaken entirely within the land defined as:
Lot 1 on D077036
Volume: 1868 Folio: 145
And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- (vi) Hours of operation are limited to 6:00am to 5:00pm Monday to Friday. No operation on weekends or public holidays.

Transport management

- (vii) Operating hours for cartage shall be limited to 6:00am until 5:00pm Monday to Friday. No cartage on weekends or public holidays.

(viii) All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.

(ix) All truck loads leaving the site with materials are to be covered.

(x) The operator shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Maintenance Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay.

(xi) The cost for road maintenance and road rehabilitation contributions shall be calculated using the method outlined in the latest version of the Western Australian Local Government Association's policy area relating to [Recovering the Cost of Road Wear from Heavy Vehicles](#) available at the time of application and of any future renewal.

(xii) Suitable arrangements being made with Main Roads WA for the upgrade of the existing access on Goomalling Toodyay Rd to service the lot.

Noise and vibration

(xiii) The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

(xiv) The operations are managed in accordance with "Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources".

(xv) Any dewatering shall be in accordance with "Water Quality Protection Note 13 - Dewatering of Soils".

Dust

(xvi) Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the *Environmental Protection Act 1986* and Department of Environmental Regulation Guidelines.

Native Vegetation

(xvii) The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.

(xviii) Vernice Pty Ltd is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay

Bushfire management

- (xix) Bushfire Management is to be in accordance with the Bushfire Management Plan (Version 0 August 2022)

Reporting / Auditing

- (xx) Vernice Pty Ltd is required to provide the local government a Surveyor's Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time, Vernice Pty Ltd will provide an update and forecast on staging for the following two-year period.
- (xxi) Vernice Pty Ltd /The Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:
- a. Quarry progress including photos.
 - b. Progress of Rehabilitation including photos.
 - c. Monitoring Results
 - (i) Clearing Permits
 - (ii) Water Testing Results
 - (iii) Other Environmental Factors
 - a. Safety
 - b. Road Maintenance Contributions
 - c. Cartage Management Report

Site Rehabilitation

- (xxii) The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application "**CLOVER DOWNS – Lot 1 Forest Road, Nunile. Prepared for Vernice Pty Ltd,**" and the Shire of Toodyay's Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.
- (xxiii) Prior to the commencement of the development, Vernice Pty Ltd is required to pay an additional bond of **\$113,234.80** as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xviii).
- This is in addition to the existing bond of **\$33,000** which was applied to the previous approval in 2015. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.
- (xxiv) Prior to the commencement of the development Vernice Pty Ltd is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by

written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by Vernice Pty Ltd.

- (xxv) The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- (xxvi) Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- (xxvii) Vernice Pty Ltd must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying Vernice Pty Ltd and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- (xxviii) Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Advice Notes

In relation to Condition (a)(xii), Vernice Pty Ltd is advised to contact Main Roads WA Wheatbelt Region at wheatbelt@mainroads.wa.gov.au for advice and guidance.

Voted For: Crs C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Cr R Madacsi

MOTION CARRIED 6/1

Cr Prater moved the Revised Officer's Recommendation No 2.

Cr Dival seconded the motion.

Cr Madacsi objected to the motion.

Debate commenced.

The motion was put.

REVISED OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM047/02/24

MOVED Cr J Prater

SECONDED Cr S Dival

That Council

Pursuant to Clause 3.1(2)(b) of the *Shire of Toodyay Extractive Industry Local Law*, approves the application for an Extractive Industry Licence at Lot 1 Forest Road in Nunile in, subject to the following conditions:

Licence

1. The licence is granted to Vernice Pty Ltd

Management Plan

2. Development is to be in accordance with the approved Extractive Industries Licence Application – “CLOVER DOWNS – Lot 1 Forest Road, Nunile. Prepared for Vernice Pty Ltd”, including any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

- (a) The term of the Extractive Industry Licence is for ten (10) years from the date of this approval.

Payment of Annual Licence Fee

- (b) On or before 31 December in each year, a licensee must pay to the local government the annual licence fee determined by the local government from time to time.

Transfer, Cancellation and Renewal of Licence

- (c) Must be carried out in accordance with Part 4 of the *Shire of Toodyay Extractive Industry Local Law*

Site Specific

- (d) The location and total area of the excavation is to be limited to:
- (i) Gravel 16.04 hectares (ha)
 - (ii) Sand 2 hectares (ha)
- as depicted in the approved management plan.
- (e) The extraction of material is limited to a depth of 2 metres (m) as depicted in the approved management plan.
- (f) The maximum permitted extraction is limited to 34,000 tonnes (t) per annum as depicted in the approved management plan.
- (g) Extraction is to be undertaken entirely within the land defined as:
- Lot 1 on D077036
 - Volume: 1868 Folio: 145
- And must be set back a minimum of 50m from the lot boundary.

Pit operating hours

- (h) Operating hours within the extraction area shall be restricted to 6:00am and 5:00pm Monday to Saturday (excluding public holidays);

Transport management

- (i) Operating hours for cartage shall be limited to 6:00am until 5:00pm Monday to Friday.
- (j) All trucks involved in the project shall comply with the Shire of Toodyay's Council Infrastructure Policy Restricted Access Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- (k) All truck loads leaving the site with materials are to be covered.
- (l) The operator shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire of Toodyay which are used by

heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

Prior to the commencement of operation of the Facility, a Road Maintenance Plan based on this principle and including the below shall be prepared and implemented, at the cost of the operator, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay Chief Executive Officer.

- (m) The cost for road maintenance and road rehabilitation contributions shall be calculated using the method outlined in the latest version of the Western Australian Local Government Association's policy area relating to Recovering the Cost of Road Wear from Heavy Vehicles available at the time of application and of any future renewal.

Noise and vibration

- (n) The noise generated by the development is not to exceed the levels as set out under the *Environmental Protection Act 1986* (and the *Environmental Protection (Noise) Regulations 1997*).

Water

- (o) The operations are managed in accordance with "*Water Quality Protection Note 15 - Extractive Industries Near Sensitive Water Resources*".
- (p) Any dewatering shall be in accordance with "*Water Quality Protection Note 13 - Dewatering of Soils*".

Dust

- (q) Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the *Environmental Protection Act 1986* and Department of Environmental Regulation Guidelines.

Native Vegetation

- (r) The Operator is required to obtain approval from the Department of Water and Environment Regulation (DWER) prior to the removal of native vegetation on site.
- (s) Vernice Pty Ltd is required to provide a Dieback Disease Management Plan to the satisfaction of the Shire of Toodyay.

Bushfire management

- (t) Bushfire Management is to be in accordance with the Bushfire Management Plan (Version 0 August 2022)

Reporting / Auditing

- (u) Vernice Pty Ltd is required to provide the local government a Surveyors Certificate every two years, prior to the annual renewal fee for that year being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved Extractive Industry Report. At the same time Vernice Pty Ltd will provide an update and forecast on staging for the following two-year period;

Site Rehabilitation

- (v) The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries

Licence Application “**CLOVER DOWNS – Lot 1 Forest Road, Nunile. Prepared for Vernice Pty Ltd**”, and the Shire of Toodyay’s Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.

- (w) Prior to the commencement of the development, Vernice Pty Ltd is required to pay an additional bond of **\$113,234.80** as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition (a)(xviii). This is in addition to the existing bond of **\$33,000** which was applied to the previous approval. The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.
- (x) Prior to the commencement of the development Vernice Pty Ltd is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by Vernice Pty Ltd.
- (y) The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.
- (z) Final sign-off and release of bonds will also require written agreement from the landowner that rehabilitation is satisfactory.

Insurance

- (aa) Vernice Pty Ltd must maintain a current public liability insurance policy in which the interests of the Shire of Toodyay are formally noted by the insurer, indemnifying Vernice Pty Ltd and the Shire of Toodyay for a sum of not less than \$20,000,000 in respect of any one claim relating to any of the excavation and transport operations.

Costs

- (bb) Cost recovery shall apply to all costs and expenses associated with monitoring during the life of the project including audits and pit closures.

Voted For: Crs C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Cr R Madacsi

MOTION CARRIED 6/1

9.2 CORPORATE AND COMMUNITY SERVICES

9.2.1 Toodyay Recreation Centre - Management Reporting

Date of Report:	15 January 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	PRO15
Author:	M Rebane – Executive Assistant
Responsible Officer:	T Bateman – Executive 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"> 1. Monthly Reports December Quarter 2023; and ⇒ 2. Marketing Reports December 2023 quarter ⇒

PURPOSE OF THE REPORT

To receive the management reporting packs for the December 2023 quarter consisting of monthly reports and a marketing report.

The management reporting packs were submitted by the Venue Manager on behalf of Clublinks Management Pty Ltd in accordance with the management contract.

BACKGROUND

Clublinks Management Pty Ltd manages the Toodyay Recreation Centre (TRC) on behalf of the Shire of Toodyay and is required to submit reports to the Shire detailing monthly activities, in accordance with the contract.

Council receives these reports quarterly.

COMMENTS AND DETAILS

The Venue Manager of the Toodyay Recreation Centre has provided the following:

1. Monthly Reports (**Attachment 1**) which includes a summary of activities for the months of October, November and December 2023; and
2. Marketing Reports (**Attachment 2**) which provide further detail on visitation and usage in addition to key financial information.

Clublinks has also provided monthly reports for the December 2023 quarter that contain financial information which is considered commercial in confidence. These reports were placed on the Council Hub as one attachment on 18 January 2024.

IMPLICATIONS TO CONSIDER**Consultative:**

Clublinks and Shire Officers meet monthly.

Strategic:

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

Outcome 1: A safe and healthy community

O1.3: Grow participation in sport and recreational activities.

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:

Receiving and reviewing the financial performance of the TRC assists the effective oversight of the management and mitigates 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/COUNCIL RESOLUTION NO. OCM048/02/24

MOVED Cr S McCormick

SECONDED Cr J Prater

That Council:

1. Receives the management reporting packs for the December 2023 quarter (**Attachment 1**); and
2. Receives the Marketing Reports for the December 2023 quarter (**Attachment 2**).

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.2.2 List of Payments - December 2023

Date of Report:	19 January 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	N Mwale – Finance Coordinator
Responsible Officer:	T Bateman – Executive Manager Corporate and Community Services
Previously Before Council:	NA
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. Creditors Payments Listing - December 2023 ⇒

PURPOSE OF THE REPORT

To present the list of payments raised during December 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* (the regulations).

The regulations were amended this year to further include the requirement for a list of all payments made using a credit, debit, or purchasing card to be prepared each month, effective 1 September 2023.

COMMENTS AND DETAILS

The list of all invoices processed under delegated authority during December 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 payments made to employees on a fortnightly basis.

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.**

O9.1: *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; Authorised Signatories, and; Purchasing.

Financial:

Payments made in December 2023 total \$524,327.72.

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.

Regulation 13A requires that if any payments are made via purchasing cards, a list 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/COUNCIL RESOLUTION NO. OCM049/02/24

MOVED Cr S McCormick

SECONDED Cr S Dival

That Council notes as being paid, payments listed and presented for the month of December 2023 as attached to this report, summarised as follows:

Municipal Cheques	-
Electronic Funds Transfer Payments	262,067.91
Direct Debits	-
Payroll	255,428.55
Purchasing Cards	6,831.26
TOTAL	524,327.72

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.2.3 Monthly Financial Statements - December 2023

Date of Report:	22 January 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	N Mwale – Finance Coordinator
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:	<ol style="list-style-type: none"> 1. Monthly Financial Statements as at 31 December 2023 ⇒ 2. Supplementary Information as at 31 December 2023 ⇒

PURPOSE OF THE REPORT

This report provides Council with financial information for the period ending 31 December 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.

COMMENTS AND DETAILS

From 1 July 2023 all local governments are required to present to Council the Statement of Financial Activity to comply with Australian Accounting Standards (AAS) and the amended *Local Government (Financial Management) Regulations 1996*.

The Statement of Financial Activity, contained within the monthly financial statements, 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. Officers have also provided additional supplementary information.

Key Financial areas

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

Outstanding Rates

The notices for rates and charges levied for 2023/24 were raised in September 2023 after adoption of the annual budget. Council approved revised rates due dates at its Ordinary Council Meeting held 25 October 2023 as a result of challenges faced during rates notice production.

The *Local Government Act 1995* provides for ratepayers to pay rates by four instalments. The revised due dates for 2023/24 are as follows:

Instalment	Due Date
First Instalment	2 November 2023
Second Instalment	2 January 2024
Third Instalment	4 March 2024
Fourth Instalment	6 May 2024

The total outstanding rates balance at the end of December 2023 was \$3,477,966.51 compared to the November 2023 closing balance of \$3,983,997.36.

Outstanding Sundry Debtors

The total outstanding sundry debtors balance at the end of December 2023 was \$187,079.92 broken down as follows:

Category	30/11/2023	31/12/2023
> 90 days and over	\$ 6,4779.25	\$ 8,300.15
> 60 days and over	\$ 7,418.82	\$ 15,522.63
> 30 days and over	\$ 125,595.66	\$ 16,828.24
Current	\$ 52,987.36	\$ 146,428.90
TOTAL	\$192,781.09	\$187,079.92

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

IMPLICATIONS TO CONSIDER**Consultative:**

Consultation with Datacom is ongoing in the preparation of the monthly financial statements.

Strategic:***Plan for the Future: Shire of Toodyay Council Plan 2023-2033******Outcome 9. Responsible and effective leadership and governance.***

9.2 Govern Shire finances, assets and operations responsibly.

Policy related:

Authorised Signatories

Purchasing

Corporate Credit Cards

Financial Governance

Delegation

CS1 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.

As at 31 December 2023, the balance of funds held in the Shire’s operating accounts was \$462,891.56 and the total of all interest bearing term deposits invested for the period ended 31 December 2023 was \$6,189,706.20

Of the \$6,189,706.20 invested in interest bearing deposits, \$2,514,056.71 relates to reserve funds.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM050/02/24

MOVED Cr C Duri

SECONDED Cr J Prater

That Council receives, for the month ending 31 December 2023 the following:

- (a) Monthly Financial Statements; and
- (b) Supplementary information

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.2.4 Annual Report 2021/2022

Date of Report:	7 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	COC2/FIN7
Author:	M Rebane – Executive Assistant
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:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Office of the Auditor General Correspondence; ⇒ 2. 2021/2022 Annual Report; and ⇒ 3. Local Public Notice - Elector's General Meeting; ⇒

PURPOSE OF THE REPORT

To:

1. Receive correspondence from the Office of the Auditor General (**Attachment 1**);
2. Accept the 2021/2022 Annual Report (**Attachment 2**); and
3. Set the meeting date for the Elector’s General Meeting (**Attachment 3**).

BACKGROUND

The Audit and Risk Committee (ARC) made a recommendation that Council adopts the 2021/2022 Annual Report, receives correspondence from the Office of the Auditor General; and set the date of the Elector’s General Meeting.

Council considered the recommendation at its Special Council Meeting held on 24 January 2024 however the motion was lost due to it not being carried by absolute majority. The decision was based on comments included in the Independent Auditors Report relating to ‘Other information’ where it states (emphasis added);

*If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact. **I did not receive the other information prior to the date of this auditor’s report.** When I do receive it, I will read it and if I conclude that there is a material misstatement in this information, I am required to communicate the matter to the CEO and Council and request them to correct the misstated information. If the misstated information is not corrected, I may need to retract this auditor’s report and re-issue an amended report.*

COMMENTS AND DETAILS

The Office of the Auditor General was consulted regarding the concern of Council and provided the following advice:

The Auditing Standards require the Auditors to review the other information (other than the financial report and auditor's report) in the Annual Report to ensure any references to the financial report are consistent with the audited financial report. Generally, at the time the audit opinion is issued the Annual Report information is not available. Our standard practice is to review the other information in the Annual Report once it's published and usually at the beginning of the next audit cycle. This is a standard paragraph that is included in all audit opinions for both local and state government entities.

In the case of Shire of Toodyay for the 2021-22 financial audit, the Annual Report was not yet finalised when the audit opinion was issued, which is consistent with other local governments, therefore the standard wording was included in our audit opinion. We will review the other information in the 2021-22 Annual Report at the start of the 2022-23 financial audit.

The above information, in an email format, was provided to Councillors on the Council Hub on 30 January 2024.

The recommendation from the ARC also included a recommendation to remove the words "it was" on page 62 of the attachments and replace with the words "Officers" to read "a cost benefit analysis abandoning process was undertaken and Officers determined to persevere with the transition". This amendment has been made to the Annual Report (**Attachment 2**).

Officers are now seeking Council's adoption of the recommendations made by the ARC at the meeting held on 6 December 2023.

IMPLICATIONS TO CONSIDER

Consultative:

ARC Meeting on 6 December 2023.

Council Workshop on 7 February 2024 (five councillors present).

Strategic:

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

Outcome 9 Responsible and effective leadership and governance.

O9.1 Provide strong, clear and accountable leadership.

Policy related:

The Audit and Risk Committee Charter:

- (a) refers to regulation 16 of the *Local Government (Audit) Regulations 1996*; and
- (b) refers to the committee's responsibilities to review the annual financial statements and the annual report.

Financial:

There will be financial costs associated with advertising for the AGM of Electors meeting.

Legal and Statutory:

r.16(f) Local Government (Audit) Regulations 1996

r.51 Local Government (Financial Management) Regulations 1996

s.1.7, s.5.27, s.5.29, s.5.53, s.5.54, s.7.9 and s.7.12A Local Government Act 1995

Risk related:

It was reported in January that the Annual Report for 2021/2022 is already overdue therefore it is imperative that the Annual Report is accepted by Council. It is a high reputational risk if Council delay the process further. This report mitigates the risk.

Workforce related:

There will be work involved through printing and distribution of the Annual Report. There will also be officer time involved in providing further updates to the ARC and to Council.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM051/02/24

MOVED Cr S Dival

SECONDED Cr C Duri

That Council receives correspondence from the Office of the Auditor General pertaining to the Management Letter and findings report (**Attachment 1**).

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0 BY ABSOLUTE MAJORITY

OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM052/02/24

MOVED Cr S Dival

SECONDED Cr J Prater

That Council:

1. Accepts the Annual Report 2021/2022 incorporating the Independent Auditor's opinion and the Audited Annual Financial Statements for the Shire of Toodyay (**Attachment 2**).
2. Notes that regarding the financial report for the year ended 30 June 2022 the independent auditor's report included a disclaimer of opinion that stated "*I was unable to obtain sufficient appropriate evidence regarding the financial report as a whole as the financial report was submitted for audit purposes without complete and accurate underlying records. I was unable to audit the financial report by alternative means. Consequently, I am unable to determine whether any adjustments were necessary to the financial report as a whole for the year ended 30 June 2022. My*

Audit opinion for the year ended 30 June 2021 was disclaimed for the same reasons.”

3. Authorises the Chief Executive Officer to make any necessary minor typographical changes to the Annual Report prior to its publication.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

OFFICER'S RECOMMENDATION 3/COUNCIL RESOLUTION NO. OCM053/02/24

MOVED Cr C Duri

SECONDED Cr R Madacsi

That Council:

1. Sets Wednesday 17 April 2024 at 6.00pm as the date and time for the next Elector's General Meeting, in the Council Chambers of the Shire of Toodyay.
2. Requests the Chief Executive Officer to give local public notice of the availability of the Annual Report (**Attachment 3**) and the convening of the Elector's General Meeting; and
3. Notes the ongoing challenges the Shire continues to manage during the transition to Datascape.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.2.5 List of Payments - January 2024

Date of Report:	9 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	N Mwale – Finance Coordinator
Responsible Officer:	T Bateman – Executive Manager Corporate and Community Services
Previously Before Council:	NA
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. Creditors Payment Listing-January 2024 ⇨

PURPOSE OF THE REPORT

To present the list of payments raised during January 2024.

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* (the regulations).

The regulations were amended this year to further include the requirement for a list of all payments made using a credit, debit, or purchasing cards to be prepared each month, effective 1 September 2023.

COMMENTS AND DETAILS

The list of all invoices processed under delegated authority during January 2024 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 payments made to employees on a fortnightly basis.

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; Authorised Signatories, and; Purchasing.

Financial:

Payments made in January 2024 total \$866,313.12.

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.

Regulation 13A requires that if any payments are made via purchasing cards, a list 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/COUNCIL RESOLUTION NO. OCM054/02/24

MOVED Cr S Dival

SECONDED Cr J Prater

That Council notes as being paid, payments listed and presented for the month of January 2024 as attached to this report, summarised as follows:

Municipal Cheques	119,360.23
Electronic Funds Transfer Payments	408,934.41
Direct Debits	-
Payroll	337,710.19
Purchasing Cards	308.29
TOTAL	866,313.12

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.2.6 Monthly Financial Statements - January 2024

Date of Report:	9 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	N Mwale – Finance Coordinator
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:	<ol style="list-style-type: none"> 1. Monthly Statement as at 31 January 2024 ⇒ 2. Supplementary Information as at 31 January 2024 ⇒

PURPOSE OF THE REPORT

This report provides Council with financial information for the period ending 31 January 2024.

BACKGROUND

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

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

COMMENTS AND DETAILS

From 1 July 2023 all local governments are required to present to Council the Statement of Financial Activity to comply with Australian Accounting Standards (AAS) and the amended *Local Government (Financial Management) Regulations 1996*.

The Statement of Financial Activity, contained within the monthly financial statements, 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. Officers have also provided additional supplementary information.

Key Financial areas

The following information provides balances for key financial areas for the Shire of Toodyay's financial position for the month ending 31 January 2024.

Outstanding Rates

The notices for rates and charges levied for 2023/24 were raised in September 2023 after adoption of the annual budget. Council approved revised rates due dates at its Ordinary Council Meeting held 25 October 2023 as a result of challenges faced during rates notice production.

The *Local Government Act 1995* provides for ratepayers to pay rates by four instalments. The revised due dates for 2023/24 are as follows:

Instalment	Due Date
First Instalment	2 November 2023
Second Instalment	2 January 2024
Third Instalment	4 March 2024
Fourth Instalment	6 May 2024

The total outstanding rates balance at the end of December 2023 was \$3,113,935.82. compared to the December 2023 closing balance of \$3,477,966.51.

Outstanding Sundry Debtors

The total outstanding sundry debtors balance at the end of January 2024 was \$101,368.57 broken down as follows:

Category	31/12/2023	31/01/2024
> 90 days and over	\$ 8,300.15	\$ 20,809.65
> 60 days and over	\$ 15,522.63	\$ 8,058.17
> 30 days and over	\$ 16,828.24	\$ 12,521.17
Current	\$ 146,428.90	\$ 59,979.58
TOTAL	\$187,079.92	\$101,368.57

Officers have sent out reminders to debtors in the 90 days and over categories prompting them to settle their debts.

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

IMPLICATIONS TO CONSIDER**Consultative:**

Consultation with Datacom is ongoing in the preparation of the monthly financial statements.

Strategic:

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

Outcome 9. Responsible and effective leadership and governance.

9.2 Govern Shire finances, assets and operations responsibly.

Policy related:

Authorised Signatories

Purchasing

Corporate Credit Cards

Financial Governance

Delegation

CS1 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.

As at 31 January 2024, the balance of funds held in the Shire's operating accounts was \$287,275.14 and the total of all interest bearing term deposits invested for the period ended 31 December 2023 was \$6,158,159.53

Of the \$6,158,159.53 invested in interest bearing deposits, \$2,496,888.90 relates to reserve funds.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM055/02/24

MOVED Cr C Duri

SECONDED Cr R Madacsi

That Council receives, for the month ending 31 January 2024 the following:

- (a) Monthly Financial Statements; and
- (b) Supplementary information

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.3 EXECUTIVE SERVICES

9.3.1 Department of Local Government, Sport & Cultural Industries correspondence

Date of Report:	19 December 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	MTG7/ICR94409
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. Improvement Action Plan Meeting 16 November 2023; and ↔ 2. Improvement Plan Meeting 19 December 2023. ↔

PURPOSE OF THE REPORT

To receive correspondence of a governance nature or non-compliance matters between the Shire of Toodyay and the Department of Local Government, Sport and Cultural Industries (DLGSC) from 8 November 2023 to 12 February 2024.

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

Governance correspondence with the DLGSC since 8 November 2023 (**Attachment 1**) includes the following:

Document Number	Date sent / received	File Ref	Description
IAM93750	16/11/2023	GOV1	Improvement Action Plan Meeting 16 November 2023
ICR94409	20/12/2023	GOV1	Improvement Action Plan Meeting 19 December 2023

Councillors are informed of any action undertaken regarding the above, through Council workshops and via notes of weekly Shire President/CEO meetings.

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 8 November 2023 to 12 February 2024, as attached to this report.

Clarification was sought.

Cr Madacsi moved the Officer's Recommendation.

Cr Wrench seconded the motion.

Cr Dival moved an amendment to the motion as follows:

That a second point be inserted to read:

- 2. Requests the CEO include correspondence received from the Department on 21 December 2023 include it in next month’s DLGSC correspondence list.**

Cr Prater seconded the amendment.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. OCM056/02/24

MOVED Cr S Dival

SECONDED Cr J Prater

That a second point be inserted to read:

- 2. Requests the CEO include correspondence received from the Department on 21 December 2023 include it in next month’s DLGSC correspondence list.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

The substantive motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM057/02/24

MOVED Cr R Madacsi

SECONDED Cr D Wrench

That Council:

- 1. Notes the correspondence with the Department of Local Government, Sport and Cultural Industries from 8 November 2023 to 12 February 2024, as attached to this report.
- 2. Requests the CEO include correspondence received from the Department on 21 December 2023 include it in next month’s DLGSC correspondence list.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.3.2 Expressions of Interest - CEO Recruitment and Selection Committee**VOTING REQUIREMENTS**

Absolute Majority

OFFICER'S RECOMMENDATION 1

That Council selects _____ as the independent person to assist Council with the recruitment and selection process for a new CEO for the Shire of Toodyay.

MOTION/COUNCIL RESOLUTION NO. OCM058/02/24

MOVED Cr M McKeown

SECONDED Cr R Madacsi

That Item 9.3.2 be considered as an item of business after the 12. Questions of Members of which due notice has been given.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

Refer to the full Officer Report and Council decision on page 130

9.4 INFRASTRUCTURE AND ASSETS**9.4.1 Bejoording Fire Station - Funding Proposal**

Date of Report:	8 January 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIR1
Author:	R Koch – Community Emergency Services Manager
Responsible Officer:	C Sullivan – Executive Manager Infrastructure, Assets & Services
Previously Before Council:	255/11/21
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Advocacy
Attachments:	Nil

PURPOSE OF THE REPORT

To advise Council on external funding options/opportunities for the Bejoording Fire Station project and to seek endorsement by resolution to support upcoming funding applications.

BACKGROUND

In 2014, the Shire of Toodyay and Department of Fire and Emergency Services (DFES) undertook a Risk to Resource (R2R) assessment of the Shire of Toodyay's Bush Fire Service facilities. The R2R identified the current Bejoording Bush Fire Brigade (BFB) facility as being 'not fit for purpose' and recommended a new facility. This has been validated by subsequent Shire and WALGA assessments of the current facility. Following new stations or upgrades for Coondle-Nunile, Morangup and Julimar facilities, Bejoording is now the only brigade in the Shire's Bush Fire Service operating out of a shed, rather than a fit for purpose facility.

The Shire has been unsuccessful in obtaining Local Government Grants Scheme (LGGS) Capital Grants in 2021/22, 2022/23 and 2023/24. This is largely due to the LGGS Capital funding pool becoming more competitive over time. The Shire has received feedback from DFES on how to make its future application(s) more competitive.

At the November 2021 OCM Council adopted a Bush Fire Advisory Committee (BFAC) recommendation supporting the seeking of funds for the project (255/11/21).

COMMENTS AND DETAILS

For past LGGS Capital grant projects, the Shire was successful in obtaining funding allocations in a single financial year. Due to the increasing competition for LGGS Capital Grant funds, the DFES Grants Allocations Officer has advised that applications split over a longer period are now favoured by the Department.

The two funding approaches advised by DFES are:

1. Self-Supporting Loan (serviced by DFES over 10 years) – DFES preferred option.
2. Requesting funding over multiple (2) financial years.

These approaches are described in more detail below.

Self-Supporting Loan

This option is DFES’ preferred approach as it spreads the grant funds over a 10-year period.

The Shire would be responsible for taking out the loan with the Western Australian Treasury Corporation (WATC), with DFES repaying the principal and interest off over 10 years. The Shire would enter into an agreement with DFES supporting this arrangement.

Using this approach, the Shire would need to consider its capacity to take on added debt and what effect that may have on other projects for which the Shire may wish to utilise a credit funding approach. With respect to the latter, no such projects have been identified as part of internal consultation.

This approach may also provide the Shire further options as to how it chooses to fund its proportion/contribution of the project. Should the Shire choose to fund all or part of its contribution through such a loan, interest earned on a Shire contribution portion would be the responsibility of the Shire.

The WATC has advised that the Shire would be required to provide audited financial statements for two years. Given the issues with the 2021 and 2022 financial audits, the Shire would not be able to produce the required documentation to support a WATC loan until the 2025/26 financial year.

The table below summarises the points for and against of the self-supporting loan approach.

Pros	Cons
Aligns application to DFES preferred funding model. i.e., Make application more competitive	May limit Shire’s ability to use financed funds for future projects.
Application more likely to succeed: – Reducing exposure to identified WHS risks. – Delivers on strategic priorities.	Public perception of public sector debt may be negative.
Provides flexible options for how the Shire chooses to fund its contribution to the project. – Potential to minimise draw down on Building Reserve, retain funds for other projects.	Project could not proceed (or be approved) until 2025/26 FY.
Costs paid by DFES	

Other Local Governments have used this approach to secure funding for their project including the following:

Local Government	Project	Year Approved
Shire of Capel	BFS Facility	2021/22
Shire of Serpentine-Jarrahdale	BFS Facility	2021/22

Local Government	Project	Year Approved
Shire of Wongan-Ballidu	BFS Facility	2023/24

All above approvals occurred in years where the Shire of Toodyay application was unsuccessful. No new capital facilities were funded in 2022/23.

Multi-Year Funding Proposal

In this approach, the Shire's application would request funding to be obtained over two financial years, without any credit facility utilised.

The Shire would not need to temporarily fund the project while waiting for the second financial year's payment, as the project will naturally span such a period when considering procurement and delivery time frames.

The table below summarises the points for and against of the multi-year funding approach.

Pros	Cons
<p>Slight improvement in chances of application succeeding (over previous application approach), in doing so:</p> <ul style="list-style-type: none"> – Reducing exposure to identified WHS risks. – Delivers on strategic priorities. 	<p>Grant less likely to be successful, as it requires greater amount upfront funding which is not DFES' preference.</p> <p>(When compared to self-supporting loan option)</p>
<p>Avoids possible negative perceptions of Shire increasing debt.</p>	

Officers are recommending the multi-year funding proposal for submission in 2024/25 which can be considered in the 2024/25 budget cycle. This option avoids the Shire of Toodyay entering a loan and is a better option for managing cashflow.

Should this option be unsuccessful, there is still the option to enter a self-supporting loan as part of a future budget consideration.

IMPLICATIONS TO CONSIDER

Consultative:

Engagement between the Shire and DFES has informed this report.

This item was introduced to Councillors at the 06 December 2023 Concept Forum.

Strategic:

Advocacy for funding for the Bejoording Fire Station project forms Objective 4.3.1 of the Shire of Toodyay *Plan for the Future 2023-2034* in the current financial year.

Replacement of the existing Bejoording Fire Station forms Objective 4.3.2 of the Shire of Toodyay *Plan for the Future 2023-2034* in the current financial year.

Policy related:

There are no policy related issues relating to the recommendation in this report.

Financial:**Shire Contribution**

Like many grants, LGGs Capital Grants have required contributions from the applicant. In the case of LGGs Capital Grants, this is not a percentage, but eligibility of specific elements of the projects. LGGs Capital Grants do not cover for example, earthworks, connections to utilities or vehicle bays beyond current LGGs funded appliances – these costs need to be considered and covered by the Shire.

Project estimates are provided in the table below.

	1st Year Estimate	2nd Year Estimate	Total Estimate
LGGs	\$232,630	\$500,000	\$732,630
Shire	\$127,650	\$ 46,920 – \$116,920*	\$174,570 – \$244,570*
TOTAL	\$360,280	\$546,920 – \$616,920*	\$837,200 – \$907,200*

* The price range variation relates to an allocation of \$70,000 for reinstalment/graveling of entire site car parking area which will serve the Bejoording Community Group and the Fire Station. This is work that the Shire may elect to complete in-kind with own resources rather than contract as part of the construction procurement.

Project estimates were updated in January 2024.

Projected Shire Debt

Should the Shire be successful for a Self-Supporting loan funded project, the following table estimates Shire total debt.

	Debt (Without Project)	Added Project Debt	Debt (With Project)
June 2024	\$5.20m	Nil	\$5.20m
June 2025	\$4.92m	Nil	\$4.92m
June 2026	\$4.64m	\$0.23m (Estimated portion of LGGs costs in FY)	\$5.87m
June 2027	\$4.36m	\$0.50m (Estimated portion of LGGs costs in FY)	\$5.09m

Please note, figures are based on:

- End of financial year estimated balances.
- Project commencement in 2025/26 FY.
- Annual paydown of \$280,000.
- Shire funds its contribution from municipal funds/building reserve.

Legal and Statutory:

The Shire of Toodyay has a responsibility to provide of a safe workplace for its employees and volunteers under the *Work Health and Safety (WHS) Act 2020*. The current Bejoording

BFB facility has identified WHS issues. Provision of a new fit for purpose facility will remove these issues and reduce liability exposure to the organisation.

Examples of identified WHS issues include:

- No training room facility (training is the most effective tool for ensuring safety during fire operations).
- No management of diesel particulate matter contaminating food preparation areas.
- No shower facilities for post incident decontamination for personnel.
- Non-compliant plumbing (gas and water).
- Heavy manual doors with pinch points.
- Difficulty/inability to meet WHS responsibilities and ensure security of assets/radio networks given current dual usage with community group.

Risk related:

There is a risk that failure to support this project designed to improve health and safety of its personnel, could result in serious illness or injury resulting and/or result in financial or compliance penalties to the Shire.

Consequence: Catastrophic (5)

Likelihood: Unlikely (2)

Calculated Risk: High (10)

There is a risk that failure to provide fit for purpose facilities for Shire personnel results in a loss of engagement of current and future potential volunteers resulting in service interruption to the community.

Consequence: Catastrophic (5)

Likelihood: Possible (3)

Calculated Risk: High (15)

Workforce related:

The endorsement of the Officer's recommendation in this report will have no negative impacts on workforce resources.

Indirectly, a successful grant application outcome will result in an actual, sizable, project which will affect officers' normal duties while delivering the project.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council requests the CEO to submit a multi-year (2) Local Government Grant Scheme (LGGS) Capital Grant funding application in 2024/25 and include such an arrangement for consideration as part of the 2024/25 budget process.

Cr Wrench moved the Officer's Recommendation.

Cr Duri seconded the motion.

Clarification was sought.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM059/02/24**MOVED** Cr D Wrench**SECONDED** Cr C Duri

That Council requests the CEO to submit a multi-year (2) Local Government Grant Scheme (LGGs) Capital Grant funding application in 2024/25 and include such an arrangement for consideration as part of the 2024/25 budget process.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.4.2 Avon Central Coast 2050 Cycling Strategy

Date of Report:	6 February 2024
Applicant or Proponent:	Department of Transport
File Reference:	CYC1
Author:	C Sullivan – Executive Manager Infrastructure, Assets & Services
Responsible Officer:	C Sullivan – Executive Manager Infrastructure, Assets & Services
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. Avon Central Coast 2050 Cycling Strategy; ⇒ 2. Avon Central Coast 2050 Cycling Strategy Notes for Council Endorsement. ⇒

PURPOSE OF THE REPORT

1. To endorse the Avon Central Coast 2050 Cycling Strategy (**Attachment 1**); and
2. To note the proposed Action Plan for future budget considerations.

BACKGROUND

In 2023, Department of Transport Urban Mobility section completed the draft of the Avon Central Coast 2050 Cycling Strategy (the strategy). The last step in the process is the endorsement by the local authorities in the region after which the Department of Transport Executive endorses and approves the strategy for publication on the Department of Transport website. A copy of the strategy is included as Attachment 1 for reference.

COMMENTS AND DETAILS

The strategy forms a part of the Western Australia Long Term Cycle Network Plan. The strategy will be subject to a five-year review by the Department of Transport into the future. Six regional strategies have been completed.

Development of the Avon Central Coast 2050 Cycling Strategy began in late 2019 with the Shires of Toodyay, Gingin, York, Northam, Dandaragan, Beverly, and Chittering all working in partnership with the Department of Transport.

The attached Notes for Council Endorsement (**Attachment 2**) details the history of the strategy development and the stakeholder consultation.

IMPLICATIONS TO CONSIDER**Consultative:**

Stakeholder consultation has previously been carried out by the Department of Transport in the development of the draft Strategy, as described in **Attachment 2**.

Strategic:**Plan for the Future: Shire of Toodyay Council Plan 2023-2033****Outcome 6. Safe, sustainable, and affordable transport options**

6.2.1. Identify required footpaths, trails and cycleways and update the Asset Management Plan: Transport and Infrastructure with costed projects to meet community needs over the next 10 years.

Policy related:

Asset Management Policy

Financial:

While the Action Plan proposes future bike network projects, future funding is entirely dependent on future State and Council budget considerations.

Legal and Statutory:

The strategy is a guideline document, not a legal or statutory requirement.

Risk related:

Should Council decide not to endorse the strategy, the risk is that the Department of Transport may not endorse and publish the strategy and hence future bike network projects would be delayed.

Workforce related:

No immediate workforce related issues would result from the Council endorsement of the Strategy. Future bike network projects would form part of the capital works delivery program.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

1. Endorses the Avon Central Coast 2050 Cycling Strategy, as attached to this report (Attachment 1); and
2. Notes the proposed Action Plan for consideration in future budgets.

Cr Duri moved the Officer’s Recommendation as follows:

That Council

- 1. Endorses the Avon Central Coast 2050 Cycling Strategy, as attached to this report (Attachment 1); and**
- 2. Notes the proposed Action Plan for consideration in future budgets.**

Cr Wrench seconded the motion.

Clarification was sought.

Cr Dival objected to the motion.

Debate commenced.

Cr Dival moved an amendment to the motion as follows:

That the words “the principles of” be inserted at Point 1 after the word “Endorses”

Cr Wrench seconded the amendment.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. OCM060/02/24

MOVED Cr S Dival

SECONDED Cr D Wrench

That the words “the principles of” be inserted at Point 1 after the word “Endorses”

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

The substantive motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM061/02/24

MOVED Cr C Duri

SECONDED Cr D Wrench

That Council

1. Endorses the principles of the Avon Central Coast 2050 Cycling Strategy, as attached to this report (**Attachment 1**); and
2. Notes the proposed Action Plan for consideration in future budgets.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.4.3 Tender for Cleaning of Shire facilities

Date of Report:	14 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	TEN93/02-2023
Author:	N Rodger – Operations Officer
Responsible Officer:	C Sullivan – Executive Manager Infrastructure, Assets & Services
Previously Before Council:	N/A
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Executive
Attachments:	<p>1. Evaluation Report (confidential) <i>Section 5.23(2)</i></p> <p>(c) <i>a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting</i></p> <p>(e)(iii) <i>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></p> <p>(e)(i) <i>a matter that if disclosed, would reveal a trade secret where the trade secret or information is held by, or is about, a person other than the local government</i></p> <p>(e)(ii) <i>a matter that if disclosed, would reveal information that has a commercial value to a person where the trade secret or information is held by, or is about, a person other than the local government.</i></p> <p>(f)(i) <i>a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law.</i></p> <p>(f)(ii) <i>a matter that if disclosed, could be reasonably expected to endanger the security of the local government’s property (under separate cover)</i></p>

PURPOSE OF THE REPORT

To request that Council awards the tender for the cleaning of Shire of Toodyay facilities in accordance with the attached Confidential Evaluation Report and authorises the CEO to enter and finalise contract negotiations with the recommended tenderer.

BACKGROUND

The RFT included information in general terms, providing flexibility in responses to demonstrate how each management component will be achieved and the cost to the shire.

The RFT requested suitably qualified organisations to clean the following facilities:

- Toodyay Public Library;
- Public Toilets located in Memorial Hall, Duidgee Park, Pelham Reserve, Toodyay Cemetery, Old Goal Museum and Duke Street North;
- Shire Depot;
- Community Centre;
- Memorial Hall;
- Showgrounds Pavilion, kitchen, change rooms, toilets, umpires' room and grandstand, including ablution facilities;
- Visitors Centre;
- Old Goal Museum and Connors Mill; and the
- Museum Workshop

A mandatory tender briefing/site inspection occurred on 11 January 2024. Potential tenderers were shown each facility and provided the opportunity to seek clarification.

COMMENTS AND DETAILS

The recommended tenderer presented a high quality proposal based on the following;

- a) High capacity and resource levels to deliver a range of cleaning services;
- b) Experience successfully managing local government facilities;
- c) Comprehensive reporting which provides transparency of service to customers; and
- d) A clear understanding of the supply of materials required to carry out the required work successfully and efficiently.

On a value for money basis, it is the Officer's recommendation that Council awards the contract for the cleaning of Shire of Toodyay facilities to the recommended tenderer as per the attached confidential evaluation report.

Officers are also recommending that Council authorises the Chief Executive Officer to negotiate and finalise the cleaning contract.

Should Council wish to discuss the contents of the evaluation report, a motion to move behind closed doors is required due to the confidential nature of the document.

IMPLICATIONS TO CONSIDER

Consultative:

A mandatory site inspection was carried out with potential tenderers.

Feedback was received from user groups and current occupiers of the buildings on some aspects of cleaning.

Strategic:

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

Outcome 9. Responsible and effective leadership and governance.

9.2 Govern Shire finances, assets, and operations responsibly.

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

10.2 Deliver excellent customer service.

Policy related:

Asset Management Policy

Purchasing Policy

Financial:

The preferred tenderer indicates minimal impact to the 2023/2024 budget however, final costs will be determined during contract negotiations by the agreed scope. Any budget amendments will be brought to Council for approval.

Legal and Statutory:

Local Government Act 1995

3.57. Tenders for providing goods or services

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.
- (2) Regulations may make provision about tenders.

Local Government (Functions and General) Regulations 1996

Division 2 — Tenders for providing goods or services (s. 3.57)

11. When tenders have to be publicly invited

- (1) Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless sub regulation (2) states otherwise.

Risk related:

Toodyay experiences a large volume of tourists and visitors to the town. One of the places that a tourist will visit is the toilet facilities. The presentation of these facilities can have an impact on the shire reputation and as to whether visitors will return to Toodyay in the future.

Workforce related:

Nil

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM062/02/24**MOVED** Cr C Duri**SECONDED** Cr S Dival

That Council:

1. Selects the successful tenderer for the cleaning of the Shire of Toodyay facilities in accordance with the recommendation contained in the **Confidential** Evaluation Report attached.
2. Authorises the Chief Executive Officer to:
 - (a) enter into contract negotiations with the successful tenderer in accordance with the provisions of the submitted tender.
 - (b) prepare and execute the necessary contract documents once negotiations have been finalised.
3. Notes that a report will be brought back to Council to approve any resulting budget amendments.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0 BY ABSOLUTE MAJORITY

9.5 COMMITTEE REPORTS

9.5.1 HAC recommendations from meeting held on 6 Dec 2023

Date of Report:	21 December 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	COC4
Author:	M Rebane – Executive Assistant
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	281/11/23 Renaming Committee
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. HAC Minutes from meeting held on 14 Feb 2024; and ⇒ 2. HAC Minutes from meeting held on 6 Dec 2023. ⇒

PURPOSE OF THE REPORT

To receive the minutes of the Heritage Advisory Committee (HAC) Meeting held on 6 December 2023 and 14 February 2024, and consider the recommendations made by the HAC at that meeting (Refer to **Attachment 1** and **Attachment 2**).

To consider the HAC Terms of Reference.

BACKGROUND

In November 2023, Council resolved to request the CEO bring the revised terms of reference for the HAC to Council at its February 2024 Council Meeting for consideration and adoption.

The HAC met on 6 December 2023 and considered the following Officer reports:

1. Membership Application;
2. Heritage Advisory Committee Update; and
3. Terms of Reference.

The recommendation report was presented to the December 2023 Ordinary Council Meeting however, no decisions were made at that meeting, due to the Julimar fire event.

The HAC met again on 14 February 2024 and considered the following Officer Reports:

1. Terms of Reference.

During the same meeting, the committee moved a motion to discuss publicly advertising Community Representatives. They recommended to Council the following:

That Council requests the Chief Executive Officer to publicly advertise for expressions of interest from community representatives to be appointed to the Heritage Advisory Committee.

COMMENTS AND DETAILS

Recommendation 1 – Membership application & advertising for more representatives

A membership expression of interest form was considered by the HAC.

The form was received by the Shire in September 2023 however there was a delay due to whether or not the committee would continue. Mr B Keens requested in December 2023 that the EOI be considered. The person who wrote the expression of interest had been contacted prior to the December 2023 HAC Meeting and confirmed their interest. The HAC considered the EOI and made a recommendation to Council.

Prior to the HAC meeting held on 14 February 2024, the Shire received written confirmation of the resignation of one of its committee members.

It is recommended that Council approves the appointment and advertise for expressions of interest for membership to the HAC.

Recommendation 2 – Heritage Advisory Committee Update

Due to a lack of a quorum at a previous Museum Advisory Committee meeting, the update for that meeting was re-presented and the HAC members reviewed the content of the update and made a recommendation.

It is recommended that the Committee's recommendation be endorsed.

Recommendation 3: Terms of Reference

Officers included a report that dealt with a draft Terms of Reference in the HAC Agenda for December 2023 because the schedule for the Committee, although not endorsed by Council in November 2023, had meant that the first meeting in 2024 was to be held on 14 Feb 2024; which was one week prior to the Council Meeting.

At the HAC Meeting held on 6 December 2023:

- The Officer's recommendation was lost, and the reason provided as to why the recommendation was not carried was that the terms of reference did not reflect the resolution of Council and the intent of the new Committee.
- A draft Terms of Reference provided by Cr Dival was tabled and became an attachment to the minutes of that meeting in accordance with Regulation 14 Notice papers, agenda etc., public inspection of (Act s. 5.25(1)(j)) and regulation 11. Minutes, content of (Act s. 5.25(1)(f))

The draft Terms of Reference was edited by Shire Officers and provided to a Council workshop on 7 February 2024, prior to the HAC meeting on 14 February 2024. HAC Members were invited to the Council Workshop in accordance with Clause 3 of the [Shire's Council Forums Policy](#).

The recommendation made at the HAC meeting in December 2023 was for the terms of reference to be workshopped.

At the HAC Meeting held on 14 February 2024 the Committee made another recommendation.

It is recommended that Council endorses the latest HAC recommendation and notes the recommendation that had previously been made at the December 2023 meeting.

IMPLICATIONS TO CONSIDER**Consultative:**

DLGSC

HAC Meeting on 6 December 2023.

Strategic:***Plan for the Future: Shire of Toodyay Council Plan 2023-2033******Outcome 9 Responsible and effective leadership and governance.******09.1 Provide strong, clear and accountable leadership.*****Policy related:**

Museum Collection and Conservation Management Policy

Financial:

Nil.

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

s.1.7 Local Public Notice

s.5.10 Committee members, appointment of

s.5.11 Committee membership, tenure of

Risk related:

There are no risks of note related to this report.

Workforce related:

Nil.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM063/02/24**MOVED** Cr S Dival**SECONDED** Cr R MadacsiThat Council receives the minutes of the meeting of the Heritage Advisory Committee held on 14 February 2024 (**Attachment 1**).**Voted For:** Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater**Voted Against:** Nil**MOTION CARRIED 7/0 BY ABSOLUTE MAJORITY**

OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM064/02/24**MOVED** Cr J Prater**SECONDED** Cr C Duri

That Council receives the minutes of the meeting of the Heritage Advisory Committee held on 6 December 2023 (**Attachment 2**).

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0**HAC RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM065/02/24****MOVED** Cr R Madacsi**SECONDED** Cr J Prater

That Council:

1. Appoints Mr Philip Roberts as a community member on the Heritage Advisory Committee; and
2. Requests the Chief Executive Officer to publicly advertise for expressions of interest from community representatives to be appointed to the Heritage Advisory Committee.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED BY ABSOLUTE MAJORITY 7/0**HAC RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM066/02/24****MOVED** Cr S Dival**SECONDED** Cr J Prater

That Council receives the Museum update report on current Activities – Shire Museum and its Collections as at 23 August 2023.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

Clarification was sought.

Cr Prater moved the Committee Recommendation.

Cr Dival seconded the motion.

Cr Madacsi objected to the motion.

Debate commenced.

Further clarification was sought.

Debate continued.

The motion was put.

HAC RECOMMENDATION 3/COUNCIL RESOLUTION NO. OCM067/02/24

MOVED Cr J Prater

SECONDED Cr S Dival

That Council adopts the terms of reference for the Heritage Advisory Committee as follows:

Purpose

The Heritage Advisory Committee will provide leadership and direction on the functions and responsibilities listed below.

Functions

The main functions of the Committee are to:

1. provide guidance and assistance to the Council on matters relating to the selection, interpretation, display of artefacts and promotion of the museums and displays in the Shire of Toodyay.
2. provide input to Council on policy and strategy aimed at the conservation of heritage places and areas.
3. promote a wider appreciation of the Shire's indigenous and post-settlement heritage including but not limited to cultural, spiritual, educational, environmental, and economic terms and all things that make up the Shire of Toodyay's identity such as spirit and ingenuity, historic buildings and our unique living landscapes.
4. provide input to Council on the maintenance, restoration, and promotion of heritage sites under the control of the Council.
5. identify places that the community recognises as being of heritage significance within the Shire of Toodyay and to encourage their inclusion on recognised heritage lists.
6. provide input to the Council and the community on matters relevant to heritage preservation, restoration, education, and promotion.
7. identify heritage related opportunities within the Shire of Toodyay requiring further research and action.
8. liaise and seek input, when necessary, from the community, and other groups and organisations including community groups who share similar heritage related values/interests/concerns or issues.
9. liaise with Shire administration to investigate sources of funding for specific heritage projects.

10. provide advice on marketing, branding and promotion of heritage related tourism within the Shire.

Powers of the Committee

This Committee does not have delegated authority. The committee is to report to Council and provide appropriate advice and recommendations on matters relevant to its terms of reference in order to facilitate informed decision-making by Council in relation to the legislative functions and duties of the local government that have not been delegated to the CEO.

Membership Composition

The Heritage Advisory Committee Membership will consist of the following:

- An upper limit of one third of elected members;
- Cultural Heritage Officer of the Shire of Toodyay; and
- Up to six representatives from the broader community with knowledge or interest in the preservation and promotion of heritage of the Shire of Toodyay.

Support Staff

- The Executive Manager of Development and Regulation, or nominee, shall provide appropriate advice and support to assist the Committee.
- The Planning and Compliance Officer, Economic Development Officer and Community Development Officer shall provide advice and support to assist the committee.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

9.5.2 ARC recommendations from meeting held on 7 February 2024

Date of Report:	16 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	COC2/FIN7
Author:	M Rebane – Executive Assistant
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:	Executive
Attachments:	1. ARC Minutes from 7 February 2024 meeting. ↔

PURPOSE OF THE REPORT

To receive the minutes of the Special Audit and Risk Committee (ARC) Meeting held on 7 February 2024 (Refer to **Attachment 1**).

BACKGROUND

A special ARC meeting, called by three committee members, was held on 7 February 2024 to consider an Officer's report for the Election of Chairperson, following the resignation of Cr McKeown as Presiding Member of the Audit & Risk Committee.

COMMENTS AND DETAILS

At the meeting held on 7 February 2024, the Audit & Risk Committee elected Mrs N Mills as Presiding Member.

There were no other recommendations made to Council at that meeting.

It is recommended that Council receive these minutes.

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 Provide strong, clear and accountable leadership.

Policy related:

The Audit and Risk Committee Charter.

Financial:

Nil.

Legal and Statutory:

r.16 (f) *Local Government (Audit) Regulations 1996*

Risk related:

There is insignificant risk should Council choose not to receive the minutes of the Audit and Risk Committee held 7 February 2024.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM068/02/24

MOVED Cr J Prater

SECONDED Cr S Dival

That Council receives the minutes of the Audit and Risk Committee meeting held on 7 February 2024.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

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

Nil.

12 QUESTIONS OF MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**12.1 Questions asked at the December 2023 Ordinary Council Meeting that were taken on notice**

The following responses to questions on notice were received.

Cr McKeown**Question**

In regard to the comprehensive income statement and the statement of financial activity: The Actuals and the Income and Expenses are identical in each statement. However, in the 2023/2024 YTD the figures are different. Which set of numbers is correct?

Executive Manager Corporate and Community Services Response

I will take the question on notice.

Executive Manager Corporate and Community Services further response after the meeting

The correct figures for 2023/2024 YTD are the ones from the comprehensive income statement.

Cr Prater**Question**

How much is a litre of water at the standpipe in town?

Executive Manager Corporate and Community Services Response

I will take the question on notice.

Executive Manager Infrastructure, Assets and Services further response after the meeting

The Shire charges \$3.66 per kilolitre.

Question

Have there been any instances in the past where water is taken without a record being made of it being taken?

CEO response

We had trouble with a controller last summer or the year before and replaced it a few times but that meant water could not be taken from it at all. As far as I understand there have been no such reports made to the Shire but I will take that question on notice.

Response from the Executive Manager Infrastructure, Assets and Services

No as the water is not able to be taken when the controller is not operational.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM069/02/24

MOVED Cr J Prater

SECONDED Cr D Wrench

That the responses to the questions raised by Councillor McKeown and Councillor Prater be received and noted.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

12.2 Questions from Cr Madacsi

The following questions on notice was received from Councillor Madacsi.

Question One

Given the Audit and Risk Committee Charter was adopted by council resolution at the Special Council Meeting on 24 January 2024 and a draft Committee Charter has now been presented to the Audit and Risk Committee on the 14 February 2024 that incorporates extensive changes:

- (a) who was the author of, or contributors to, the draft charter changes?

Response to (a) from the Shire President

The members of the Audit and Risk Committee contributed to the draft charter changes which were developed from the “Western Australian Public Sector Audit Committees - Better Practice Guide” which was published as part of the Auditor General’s Report on 25 June 2020 and which was used for the Charter adopted by Council in December 2020 and updated in January 2024.

- (b) Did the committee seek confirmation from shire staff or legal or local government authorities that the proposed changes complied with the specific functions within Regulation 16 of the *Local Government (Audit) Regulations 1996*?

Response to (b) from the Shire President

Given that the proposed Charter’s origin was the “Western Australian Public Sector Audit Committees - Better Practice Guide”, the committee did not explicitly seek confirmation from shire staff or legal or local government authorities that the proposed changes complied with the specific functions within Regulation 16 of the *Local Government (Audit) Regulations 1996*.

Question Two

Why was the decision to exclude observers, including the council appointed Audit and Risk Committee deputies from Audit and Risk committee meetings made –

- (a) by the presiding member of the Audit and Risk committee prior to the meeting convening?

Response to (a) from the Shire President

The Presiding Member of the Audit and Risk Committee did not make a decision to exclude observers, including the council appointed Audit and Risk Committee deputies from the Audit and Risk Committee meeting prior to the meeting convening.

At the Special Council Meeting held on 24 January 2024, Council adopted the following change (resolution OCM010/01/24) to the Audit and Risk Committee Charter:

The Audit and Risk Committee shall be at least 3 or more persons and the majority of the membership of the Audit and Risk Committee are to be Council Members, in accordance with s.7.1A of the Act.

Section 7.1A of the *Local government Act 1995* makes no reference to a deputy or deputies. However, Section 5.11A of the *Act* does refer to Deputy committee members and clearly

includes that Deputy committee members are “appointed as a deputy **of a member** of a committee”.

5.11A. Deputy committee members

- (1) The local government may appoint* a person to be a deputy of a member of a committee and may terminate such an appointment* at any time.

* *Absolute majority required.*

- (2) A person who is appointed as a deputy of a member of a committee is to be —

- (a) if the member of the committee is a council member — a council member; or
- (b) if the member of the committee is an employee — an employee; or
- (c) if the member of the committee is not a council member or an employee — a person who is not a council member or an employee; or
- (d) if the member of the committee is a person appointed under section 5.10(5) — a person nominated by the CEO.

- (3) A deputy of a member of a committee may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.

- (4) A deputy of a member of a committee, while acting as a member, has all the functions of and all the protection given to a member.

[Section 5.11A inserted: No. 17 of 2009 s. 20.]

At the Ordinary Council Meeting of 22 November 2023, it was resolved (OCM280/11/23) that Council:

2. Appoints the following Deputy Elected Members to the Audit and Risk Committee:
- (a) Cr Madacsi
 - (b) Cr Duri

Unfortunately, this resolution did not appoint anyone to be a deputy **of a member** of committee in accordance with the provisions of Section 5.11A of the *Act*.

- (b) without a formal decision of the Audit and Risk Committee?

Response to (b) from the Shire President

See the answer to Question Two (a)

- (c) without a supporting committee recommendation to Council?

Response to (c) from the Shire President

See the answer to Question Two (a)

- (d) or without the authorisation of Council, and

Response to (d) from the Shire President

See the answer to Question Two (a)

- (e) was the interpretation of the Standing Order used to support the decision verified to be correct by legal or local government authorities?

Response to (e) from the Shire President

Section 17.8 of *Shire of Toodyay Standing Orders Local Law 2008* includes:

17.8 Appointment of deputies

- (1) The Council may appoint one or more Members to be a deputy or deputies for a committee member and, where two or more deputies for the same Member are appointed, the Council is to determine the order of priority among those deputies.
- (2) A deputy may act temporarily in place of the committee member for whom he or she was appointed as a deputy on any occasion on which, or during any period in which, the committee member is unable to perform the functions of the position.
- (3) A member of a committee is not eligible to be appointed as a deputy in respect of the same committee.
- (4) Whenever a committee member is unable to attend a committee meeting, or part of a committee meeting, his or her deputy may:
 - (a) attend the meeting, or that part of the meeting, in place of the committee member; and
 - (b) exercise all the rights, powers and privileges of the committee member.
- (5) In any case where more than one deputy is available to act in place of the committee member, the deputy with the higher priority, as determined by the Council under subclause (1), is to act.

Where it states that “Council may appoint one or more Members to be a deputy or deputies **for a committee member**”, this Standing Order agrees with Section 5.11A of the *Local Government Act 1995*. Given that Section 17.8 of the *Standing Orders* agrees with Section 5.11A of the Act. Standing Orders are clear on the process of appointing a deputy for a committee member and describes **when they can attend meetings and exercise their rights as a deputy of a member of a committee** and there is no need for further interpretation or verification of correctness from “legal or local government authorities”.

VOTING REQUIREMENTS

Simple Majority

OFFICER’S RECOMMENDATION

That the responses to the questions raised by Councillor Madacsi be received and noted.

Cr McCormick moved the Officer’s Recommendation.

Cr Prater seconded the motion.

Cr Madacsi objected to the motion.

Debate commenced.

Further clarification was sought.

Discussion ensued.

Debate continued.

Further clarification was sought.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM070/02/24

MOVED Cr S McCormick

SECONDED Cr J Prater

That the responses to the questions raised by Councillor Madacsi be received and noted.

Voted For: Crs S McCormick, M McKeown, S Dival and J Prater

Voted Against: Crs R Madacsi, C Duri and D Wrench

MOTION CARRIED 4/3

The Shire President requested that a motion to go behind closed doors be made to allow consideration of the confidential attachment for Agenda Item 9.3.2 and other confidential matters.

MOTION/COUNCIL RESOLUTION NO. OCM071/02/24

MOVED Cr J Prater

SECONDED Cr S Dival

That:

1. The meeting be closed to the public in relation to 9.3.2 Expressions of Interest - CEO Recruitment and Selection Committee at 4.29pm in accordance with Standing Order 10.1(e).
2. in accordance with Standing Orders Clause 5.2 (2), Council close the meeting to members of the public to allow the part of the meeting that deals with confidential business to continue behind closed doors in accordance with Section 5.23 (2) of the *Local Government Act 1995* as matters being considered deal with the following —
 - (b) the personal affairs of any person.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

In accordance with Standing Orders 5.2 (3) the Presiding Member directed everyone to leave except the Members, the Acting CEO and the Executive Assistant.

The Executive Manager Development and Regulation, the Community Emergency Services Manager, and the people in the public gallery departed Council Chambers at 4.30pm

9.3.2 Expressions of Interest - CEO Recruitment and Selection Committee

Date of Report:	16 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	STR87
Author:	S Haslehurst – Chief Executive Officer M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	SCM 018/01/24 and 020/01/24
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. EOI - Independent Person; and 2. Submissions made (confidential) <i>Section 5.23(2)</i> <i>(b) the personal affairs of any person (under separate cover)</i>

PURPOSE OF THE REPORT

To appoint an independent person to the CEO Recruitment and Selection Committee.

BACKGROUND

At the Ordinary Council Meeting held on 31 January 2024, it was resolved that Council:

That Council endorses the Expression of Interest notice as per Attachment 3 to this report and requests the CEO to:

1. *Seek expressions of interest for an independent person to be appointed to the CEO Recruitment and Selection Committee.*
2. *Bring a report to Council as soon as practicable to enable Council to appoint the independent person to the CEO Recruitment and Selection Committee.*

COMMENTS AND DETAILS

The role of the independent person is to bring an impartial perspective to the recruitment and selection process and reduce any perception of bias or nepotism. To attract an appropriate person to be appointed to the Committee, an expression of interest process was conducted (refer to **Attachment 1**).

Submissions received are in the **Confidential Attachment 2**.

IMPLICATIONS TO CONSIDER

Consultative:

The timing of the Special Council Meeting time for the EOI to be advertised in The Toodyay Herald. Therefore, the Shire relied on social media, the Shire website and email networks of elected members, staff and local community groups.

Strategic:

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

Outcome 9: Responsible and effective leadership and governance.

9.1. Provide strong, clear, and accountable leadership.

Policy related:

[Standards for Recruitment, Selection, Performance and Termination of CEO](#)

Financial:

There are financial implications that will need to be considered as part of the Mid-Year Budget Review.

Section 5.100 of the Act providing for fees to be paid and expenses to be reimbursed for committee members was enacted on 1 January 2024. The Salaries and Allowances Tribunal has determined that the maximum fee for independent committee members for a Band 3 local government is \$215 per meeting.

Although Council has not yet considered amending its policy for payments to elected members to reflect the new legislation, it is proposed that Council sets the fee payable to independent committee members to be consistent with this policy. This would result in the fee for an independent committee member to be set at 85% of the maximum allowed. It is proposed that the fee is rounded to \$185 per meeting.

Legal and Statutory:

Local Government Act 1995

5.10 Committee members, appointment of

5.100 Fees paid and expenses reimbursed to committee members

Risk related:

The process to appoint a CEO is heavily regulated. Should Council choose not to engage an independent person, there is both a reputational and compliance risk to the Shire. These are both rated high.

Workforce related:

The Shire President and the Executive Assistant will provide strategic advice and administrative support respectively to the independent Committee member.

VOTING REQUIREMENTS

Absolute Majority

MOTION/COUNCIL RESOLUTION NO. OCM072/02/24**MOVED** Cr R Madacsi**SECONDED** Cr S Dival

That in accordance with Standing Orders Clause 5.2 (5) while the resolution under sub-clause 5.2 (2) remains in force, the operation of Standing Orders Clause 7.9 is to be suspended at 4.31pm until the Council, by resolution, decides otherwise

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0**MOTION/COUNCIL RESOLUTION NO. OCM073/02/24****MOVED** Cr M McKeown**SECONDED** Cr D Wrench

That Council resume Standing Order 7.9 at 4.36pm.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0**MOTION/COUNCIL RESOLUTION NO. OCM074/02/24****MOVED** Cr D Wrench**SECONDED** Cr R Madacsi

That Council selects Mrs Ruthven as the independent person to assist Council with the recruitment and selection process for a new CEO for the Shire of Toodyay.

Voted For: Crs R Madacsi, C Duri and D Wrench

Voted Against: Crs S McCormick, M McKeown, S Dival and J Prater

MOTION LOST 3/4

MOTION/COUNCIL RESOLUTION NO. OCM075/02/24**MOVED** Cr S McCormick**SECONDED** Cr S Dival

That Council selects Mr Flaherty as the independent person to assist Council with the recruitment and selection process for a new CEO for the Shire of Toodyay.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0**MOTION/COUNCIL RESOLUTION NO. OCM076/02/24****MOVED** Cr S Dival**SECONDED** Cr J Prater

That Council move from behind closed doors at 4.47pm.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

The Council Chambers were re-opened at 4.47pm.

In accordance with Standing Order 5.2(7), the Presiding Member read aloud the following resolutions for the benefit of members of the public:

OCM075/02/24 – *Resolution made by Council to appoint the independent person to assist Council with the recruitment and selection process for a new CEO.*

13 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING**13.1 MEMBERS****13.1.1 CEO Contract – Confidential Item**

Refer to pages 138 and 139 for the Council decision on this matter

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM077/02/24

MOVED Cr S Dival

SECONDED Cr C Duri

That Council consider agenda Item 13.1.1 CEO Contract – **Confidential Item** as an item of urgent business in accordance with Standing Orders 4.5.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0 BY ABSOLUTE MAJORITY

The Shire President called for a motion to go behind closed doors at 4.49pm.

MOTION/COUNCIL RESOLUTION NO. OCM078/02/24

MOVED Cr J Prater

SECONDED Cr S Dival

That:

Council go behind closed doors to discuss confidential business pursuant to Section 5.23(2) of the *Local Government Act 1995*.

In accordance with Standing Orders Clause 5.2 (5) while the resolution under sub-clause 5.2 (2) remains in force, the operation of Standing Orders Clause 7.9 is to be suspended until the Council, by resolution, decides otherwise.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

In accordance with Standing Orders 5.2 (3) the Presiding Member directed everyone to leave except the Members, the Acting CEO and the Executive Assistant.

Council Chambers was closed at 4.50pm.

REVISED OFFICER'S RECOMMENDATION 1 (ITEM 13.2.1)/COUNCIL RESOLUTION NO. OCM079/02/24

MOVED Cr S Dival

SECONDED Cr C Duri

That Council, in accordance with Standing Order 4.5, considers Item 13.2.1 Policy: Temporary Employment or Appointment of CEO as new business of an urgent nature prior to consideration of Item 13.1.1.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

13.2.1 Policy: Temporary Employment or Appointment of CEO

Date of Report:	10 January 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	PCY2
Author:	M Rebane – Executive Assistant
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:	Executive
Attachments:	1. CURRENT Appointment of Acting CEO Policy; and ⇨ 2. REVISED Temporary Employment or Appointment of CEO Policy. ⇨

PURPOSE OF THE REPORT

To consider the adoption of the REVISED Temporary Employment or Appointment of CEO policy.

BACKGROUND

The current Appointment of Acting CEO policy was reviewed and adopted by Council in April 2022 (refer to **Attachment 1**) as part of Council’s implementation of a review of all Shire policies at an Ordinary Council Meeting held in February 2022.

Given that Council is in the process of recruiting a CEO it was considered prudent to review this policy. Improvements to the policy were also proposed through the FMR Review process.

COMMENTS AND DETAILS

Officers reviewed the current policy and made changes in line with the template that the Western Australian Local Government Association publish on their website.

The revised policy was renamed “Temporary Employment or Appointment of CEO” in line with the exact wording that WALGA provides in their policy to local governments.

The REVISED policy is provided at **Attachment 2** and is recommended for adoption.

Any *minor* modifications to the policy, once adopted by Council, will consist of amending the reference, any typographical errors, version control, document information table, and the footers of the policy before publication.

IMPLICATIONS TO CONSIDER

Consultative:

Shire President

The policy was provided to Councillors through Microsoft Teams on 7 Feb 2024.

Comments were made by Councillors and responded to by Shire Officers in teams.

Shire Officers liaised with James McGovern, Manager Governance and Procurement at WALGA via email in regard to responses made by Officers. Verification was received, and proposed amendments to the policy were also included in the proposed REVISED policy.

At the time of writing this report it is intended that the policy be workshopped on the morning of 28 February 2024.

Strategic:

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

Outcome 9 Responsible and effective leadership and governance.

09.1 Provide strong, clear and accountable leadership

Policy related:

Corporate Documents Policy.

Financial:

Nil.

Legal and Statutory:

Sections 5.39(1a)(a) and 5.39C of the *Local Government Act 1995* (the Act).

Local Government (Administration) Regulations 1996.

Risk related:

It is essential to good governance to review this policy as it demonstrates the Shire’s ability to adapt to changing circumstances to ensure that its policies remain contemporary and relevant.

The risk for Council not accepting the review of this policy is moderate (3) as it could cause reputational damage for not adhering to the Council Plan, given that Council is in the process of recruiting a CEO.

If Council chooses to not update the policy there may be non-compliance implications and this is considered a high (15) risk because any non-compliance does impact the Shire from a risk management perspective as well as having an onflow affect to the Shire's reputation. This report mitigates the risk.

Workforce related:

Once the policy is adopted it will be put onto the Shire website by a Shire Officer, and it will also be disseminated across the organisation.

VOTING REQUIREMENTS

Absolute Majority

OFFICERS RECOMMENDATION 1

That Council, in accordance with Standing Order 4.5, considers Item 13.2.1 Policy: Temporary Employment or Appointment of CEO as new business of an urgent nature.

OFFICER'S RECOMMENDATION 2

That Council:

1. Adopts the REVISED Temporary Employment or Appointment of CEO as attached to this report (**Attachment 2**); and
2. Authorises the Chief Executive Officer to make any necessary *minor* typographical changes to policy, prior to publication.

REVISED OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM080/02/24

MOVED Cr S Dival

SECONDED Cr R Madacsi

That Council:

1. Adopts the REVISED Temporary Employment or Appointment of CEO Policy as amended to this report (**Attachment 2**); and
2. Authorises the Chief Executive Officer to make any necessary *minor* typographical changes to policy, prior to publication.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0

Attachments

- 1 REVISED Temporary Employment or Appointment of CEO Policy

13.1.1 CEO Contract – Confidential Item**REVISED OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM081/02/24****MOVED** Cr S McCormick**SECONDED** Cr S Dival

That Council:

1. Receives the correspondence in relation to the termination of the current CEO's employment as attached to this report at **Confidential Attachment 1**;
2. Agrees to the early termination of the CEO's employment contract with an effective date of 9 April 2024, and the arrangements set forth as mutually agreed between both parties; and
3. Requests the Acting or Temporary CEO to bring the Deed of Release to Council subject to seeking legal advice.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater

Voted Against: Nil

MOTION CARRIED 7/0**REVISED OFFICER'S RECOMMENDATION 3/COUNCIL RESOLUTION NO. OCM082/02/24****MOVED** Cr D Wrench**SECONDED** Cr S Dival

That Council

1. Confirms the 1st preference and 2nd preference candidates for the position of Temporary Chief Executive Officer (CEO) as per **Confidential Attachment 2**.
2. Confirms a Temporary CEO is to be appointed at the earliest opportunity.
3. Notes notwithstanding Clause 5 (c) of the Council Policy - Temporary Employment or Appointment of CEO (The Policy), it is expected the term of the position of Temporary CEO shall be until the appointment of a substantive CEO.
4. Request the President to, in accordance with the Policy, negotiate and agree a remuneration and benefits package with the Temporary CEO, equivalent to the value of the substantive CEO's current total package, including the provision of housing or accommodation within the Temporary CEO package if required, with administrative assistance from the Executive Manager of Corporate and Community Services.
5. In the event that the value of the total remuneration package cannot be agreed with the Temporary CEO directs the President to bring the proposed package to Council for consideration and approval, prior to agreeing with the Temporary CEO.
6. Requests the President to negotiate with and confirm the appointment of the first preference candidate as Temporary CEO in accordance with Council Policy.

<p>7. In the event that the first preference candidate is unavailable, requests the President to, in accordance with the Policy, negotiate with and confirm the appointment of the second preference candidate as Temporary CEO.</p> <p>8. Request the President to, in accordance with the Policy, execute the appointment of the Temporary CEO.</p> <p><u>Voted For:</u> Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater</p> <p><u>Voted Against:</u> Nil</p> <p style="text-align: right;">MOTION CARRIED 7/0</p>
<p>Attachments</p> <p>1 Temporary Listing with preferred person(s) identified. CONFIDENTIAL</p>

13.2 EMPLOYEES

Refer to 13.2.1 Policy report outcome on page 137.

14 CONFIDENTIAL BUSINESS

<p>MOTION/COUNCIL RESOLUTION NO. OCM083/02/24</p> <p>MOVED Cr D Wrench</p> <p>SECONDED Cr C Duri</p> <p>That Council move from behind closed doors at 6.04pm.</p> <p><u>Voted For:</u> Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J Prater</p> <p><u>Voted Against:</u> Nil</p> <p style="text-align: right;">MOTION CARRIED 7/0</p>
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The Council Chambers were re-opened at 6.04pm.

In accordance with Standing Order 5.2(7), the Presiding Member read aloud the following resolutions for the benefit of members of the public:

- OCM078/02/24** – *Resolution to consider Item 13.2.1 Policy: Temporary Employment or Appointment of CEO as new business of an urgent nature prior to consideration of Item 13.1.1.;*
- OCM079/02/24** – *Resolution to adopt REVISED Temporary Employment or Appointment of CEO Policy;*
- OCM080/02/24** – *Resolution to receive correspondence in relation to the CEO’s contract*
- OCM081/02/24** – *Resolution to confirm preferred candidates for the position of Temporary CEO*
- OCM082/02/24** – *Resolution moving from behind closed doors.*

15 NEXT MEETINGS

Ordinary Council Meeting	27 March 2024
Agenda Briefing	20 March 2024
Audit & Risk Committee Meeting	6 March 2024
Environment Advisory Committee Meeting	10 March 2024

16 CLOSURE OF MEETING

The Shire President declared the meeting closed at 6.10pm.