



Ordinary Council Meeting

27 March 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.

Tabitha Bateman

ACTING CEO



Our Vision, Purpose and Values

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

Our Vision

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

Our Purpose

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

Our Values

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

- **Integrity** - we behave honestly to the highest ethical standard;
- **Accountability** – we are transparent in our actions and accountable to the community;
- **Inclusiveness** – we are responsive to the community and we encourage involvement by all people; and
- **Commitment** – we translate our plans into actions and demonstrate the persistence that will provide results.

Community Aspirations

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

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

Disclaimer

Any discussion regarding a planning matter or other application that any statement or intimation of approval made by any member or officer of the Shire of Toodyay during the course of any meeting is not intended to be and is not to be taken a notice of approval from Council. No action should be taken on any item discussed at a Council Meeting prior to written advice on the resolution of the Council being received. Any plans or documents contained in this document may be subject to copyright law provisions (*Copyright Act 1998*, as amended) and the express permission of the copyright owner(s) should be sought prior to reproduction.

Availability of Meeting Agenda and its Attachments

Information about Council Meetings is located on the website

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

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

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

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



CONTENTS

1	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS	6
2	RECORDS OF ATTENDANCE	6
2.1	APOLOGIES	6
2.2	APPROVED LEAVE OF ABSENCE	6
2.3	APPLICATIONS FOR LEAVE OF ABSENCE	6
3	DISCLOSURE OF INTERESTS	7
4	PUBLIC QUESTIONS	7
4.1	RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	7
4.1.1	Community Questions - Taken on Notice from S Pearce	7
4.2	PUBLIC QUESTION TIME	9
4.2.1	L Graham - Questions with notice	9
4.2.2	A Henshaw - Question without notice	13
4.2.3	G Hill - Question without notice	13
4.2.4	B Ruthven - Questions without notice	14
4.2.5	P Sydes - Question without notice	15
4.2.6	S Pearce - Questions without notice	15
4.2.7	G Hill - Moondyne Men	17
4.2.8	B Ruthven - Questions without notice	17
5	CONFIRMATION OF MINUTES	19
5.1	Ordinary Meeting of Council held on 28 February 2024	19
5.2	Special Meeting of Council held on 13 March 2024	19
5.3	Agenda Briefing held on 20 March 2024	20
6	PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS	20
6.1	PETITIONS	20
6.2	DEPUTATIONS	20
6.3	PRESENTATIONS	20
6.4	SUBMISSIONS	20
7	BUSINESS FROM PREVIOUS MEETING (IF ADJOURNED)	20
8	ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)	21
8.1	Shire President activities	21
9	OFFICER REPORTS	22

9.1	DEVELOPMENT AND REGULATION	22
9.2	CORPORATE AND COMMUNITY SERVICES	22
9.2.1	MOU Approval for Avon Valley Alliance	22
9.2.2	Monthly Financial Statements - February 2024	25
9.2.3	Mid-Year Budget Review 2023/2024	28
9.2.4	List of Payments - February 2024.....	33
9.3	EXECUTIVE SERVICES	36
9.3.1	Adoption of Amended Local Laws: Cats and Dogs	36
9.3.2	Committee Membership: Deputy Committee Members	42
9.3.3	Department of Local Government, Sport & Cultural Industries correspondence	43
9.4	INFRASTRUCTURE AND ASSETS.....	45
9.4.1	Bush Fire Mitigation Works Program Tender	45
9.4.2	Bush Fire Advisory Committee Recommendations - 7 February 2024.....	50
9.5	COMMITTEE REPORTS.....	53
9.5.1	EAC recommendations from meetings held on 29 November 2023 and 10 January 2024.....	53
9.5.2	ARC recommendations from meeting held on 14 Feb 2024.....	58
9.5.3	ARC Recommendations from Meeting held on 6 March 2024....	64
10	MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	77
11	NOTICES OF MOTION GIVEN AT THE MEETING FOR CONSIDERATION AT NEXT MEETING	77
12	QUESTIONS OF MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN	77
12.1	Questions from the February 2024 Council Meeting	77
12.2	Questions raised by Cr Madacsi.....	78
13	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING	80
13.1	MEMBERS	80
13.2	EMPLOYEES	80
9.1.1	Lot 11 Chitty Road Hoddys Well - Temporary extension of Development Approval and Extractive Industry Licence - Midland Brick	80
14	CONFIDENTIAL BUSINESS	91
14.1	Deed of Release	91
15	NEXT MEETINGS.....	94
16	CLOSURE OF MEETING.....	94

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 9 April 2024.



Tabitha Bateman
ACTING CEO

Confirmed Minutes

These minutes were confirmed at a meeting held on 24 April 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 1.05pm 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 read through other preliminaries.

2 RECORDS OF ATTENDANCEMembers

Cr M McKeown	Shire President
Cr S Dival	Deputy Shire President
Cr C Duri	Councillor
Cr S McCormick	Councillor
Cr R Madacsi	Councillor
Cr J Prater	Councillor
Cr D Wrench	Councillor (<i>via zoom</i>)

Staff

Ms T Bateman	Acting Chief Executive Officer
Mr C Sullivan	Executive Manager Infrastructure, Assets & Services
Mr H de Vos	Executive Manager Development and Regulation
Mrs N Mwale	Finance Coordinator
Mr M Werder	Project Manager
Mr R Koch	Community Emergency Services Manager
Mrs M Rebane	Executive Assistant

Visitors

G Hill	B Ruthven
P Ruthven	S Hefferon
A Henshaw	S Pearce
L Graham	P Sydes

2.1 APOLOGIES

Nil

2.2 APPROVED LEAVE OF ABSENCE

Nil

2.3 APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

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 in Agenda Item 9.2.3 Mid-Year Budget Review pursuant to Regulation 22 of the Local Government (Model Code of Conduct) Regulations 2021 in relation to the allocation for the Race Club in the mid-year budget; as he is a past President of the Race Club, no longer on the Committee but still a life member. He declared that he would consider the matter on its merits and vote accordingly.

4 PUBLIC QUESTIONS

4.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

At the Ordinary Meeting of Council held on 28 February 2024, the following questions were taken on notice:

4.1.1 Community Questions - Taken on Notice from S Pearce

Question One

S Pearce

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 Toodyay Tennis Club.

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

Response from the Acting CEO

The Shire is currently reviewing all properties owned by the Shire that are available for rent or lease. Once the review of available local government properties is completed, a report will come to Council.

Question Two and Three

S Pearce

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?

Response from the Acting CEO

It is up to Council to adopt the Charter for the Audit and Risk Committee. The Committee may recommend a charter to the Council however prior to presentation to Council, Officers can address any compliance risks and propose an alternative document.

4.2 PUBLIC QUESTION TIME

4.2.1 L Graham - Questions with notice

Question 1

s5.36(4) of the *Local Government Act 1995* and Local Government Regulation 18a requires the council to advertise the CEO position statewide. I ask:

- (a) On what date in 2020 did this legally required advertisement appear?

Response from Acting CEO:

Saturday 8th February 2020.

- (b) In which statewide publications did this legally required advertisement appear?

Response from Acting CEO:

The "Weekend West"

- (c) As it was a public advertisement, will Council provide a copy of the advertisement it placed? If yes, when? and If not, why not?

Response from Acting CEO:

It will be included within the minutes of this meeting.

Chief Executive Officer

- Visionary Leadership and Challenge
- Engage, Respond and Innovate



The Shire of Toodyay is a local government area in the Wheatbelt region of Western Australia, beyond the north-eastern limits of the Perth metropolitan area. The Shire covers an area of 1,694 square kilometres, and its seat of government is the town of Toodyay. The town site is located approximately 85 kilometres east of Perth in the picturesque Avon Valley. It has a population of 4,427 people and lays claim to some of the most magnificent examples of natural and cultural heritage in Western Australia. The Shire is seeking in its new CEO an energetic, visionary and consultative leader who can work constructively at both the operational and strategic levels.

Reporting to Council and with the support of the Executive team the CEO will engage with the community, and provide strong leadership to implement the strategic goals and objectives of the Shire. You will seek out opportunities for commercial growth, maintain an effective and responsive administration and provide prudent and timely advice on all relevant issues to Council with particular emphasis on financial management, economic growth and governance. With a flexible management style, you will also create and maintain effective relationships with all key stakeholders including government, business leaders and the community.

To be considered for this role you will be tertiary qualified and have a successful track record of accomplishment in a senior executive position in relevant service based organisations. With a strategic focus, you will have the ability to drive and foster creativity and innovation. This will be matched by your strong background in financial management, sound commercial acumen, and excellent communication and negotiation skills.

An attractive salary package will be offered to the successful candidate on a four year term. The package will be in the range of \$157,920 to \$259,278 and will include base salary, superannuation and other benefits as negotiated.

Please apply online at www.beilbydt.com.au quoting reference **45881**. For initial enquiries or for any assistance you may need in making your application, please call **Peter Casey** on (08) 9323 8809.

Applications close at 5pm WST on Monday 24th February 2020

YOUR EXPERT FOR EXECUTIVE SEARCH, PROFESSIONAL
RECRUITMENT AND OUTSOURCED RECRUITMENT SOLUTIONS

www.beilbydt.com.au

**beilby
downing
teal.**

Question 2

EFT 28472 to the value of \$2,309.13 was paid on 30/06/2020; who authorised that payment?

Response from Acting CEO:

Documents have been archived. Officers will require more time to provide them through normal business correspondence.

Question 3

Payment no 252 to the value of \$2797.47 was paid on 30/11/2021; who authorised that payment?

Response from Acting CEO:

Executive Manager Corporate and Community Services & Project Manager

Question 4

Payment no 97 to the value of \$2,874.25 was paid on 15/02/2023; who authorised that payment?

Response from Acting CEO:

Executive Manager Corporate and Community Services & Project Manager

Question 5

EFT 28472 to the value of \$2,309.13 was paid on 30/06/2020; who approved that payment?

Response from Acting CEO:

Documents have been archived. Officers will require more time to provide them through normal business correspondence.

Question 6

Payment no 252 to the value of \$2,797.47 was paid on 30/11/2021; who approved that payment?

Response from Acting CEO:

Executive Manager Corporate and Community Services on the basis of having relevant paperwork (Reimbursement request signed by the Shire President).

Question 7

Payment no 97 to the value of \$2,874.25 was paid on 15/02/2023; who approved that payment?

Response from Acting CEO:

Executive Manager Corporate and Community Services on the basis of having relevant paperwork.

Question 8

At the April 2020 OCM, Council was advised that s5.39(3) says a contract has no effect unless it contains performance criteria. So, I ask

- (a) Did the CEO's contract contain the specified performance criteria? If so, in which clause of the contract are these located?

Response from Acting CEO:

Section 4.1 in the contract dealt with the negotiation and agreement of the Performance Criteria with the CEO once the CEO was appointed.

The performance criteria was adopted by Council at the Special Council Meeting held on 22 September 2020.

Question 9

Admin regulation 18(f) stipulates that there can be no difference between the remuneration paid and other benefits contained in the advertisement for the position and what is paid.

- (a) Is there a difference? If so what is/are that/those difference/s?

Response from Acting CEO:

No. The contract that was agreed on and signed was within the range advertised for the position.

Clarification from Mr Graham

That response does not quite answer the question. The question was about remuneration and other benefits, not simply remuneration.

Response from Acting CEO:

The package was within the parameters of the advertisement.

Question 10

In what I consider to be a clear breach of those regulations, the Shire President was authorised (Special Meeting 14 April resolution 119/04/20) to negotiate conditions that were not contained in the advertisement.

- (a) What action is Council prepared to take to ensure that the regulations are in fact complied with?

Response from Shire President:

Section 18FB of the Local Government (Administration) Regulations 1996, inserted into the regulations in 2021, deals with the Certification of compliance with adopted standards for CEO recruitment. Section 18FB (3) requires that "As soon as practicable after the person is employed in the position of CEO, the local government must, by resolution, certify that the person was employed in accordance with the local government's adopted standards in relation to the recruitment of CEOs." Schedule 2 of the Local Government (Administration) Regulations 1996 specifies the Model Standards for CEO recruitment, performance and termination and Council is obliged to comply with those standards and will comply with those standards in the current recruitment of a CEO.

Question 11

Mr Graham withdrew the following question submitted prior to the meeting, and reserved his right to ask the question again at a future meeting.

In the local government employees section of its 2020 compliance audit return, Council reported that the requirements of the regulations (at points 2, 3, and 4) were complied with when they clearly were not.

- (a) What are the implications to the Shire for falsely reporting compliance?
- (b) What action is the Council prepared to take to ensure future compliance?

Question 12

The advertisement you referred to before was placed by the Consultants hired by the Shire. That does not contain the required details of the remuneration and benefits being offered, and it did not comply with Admin Regulation 18A. So I ask:

- (a) When did Council authorise that advertisement?
- (b) How did Council authorise that advertisement?
- (c) What actions did the Council take to ensure the advertisement complied with the regulations?

Response from Shire President:

I will take this question on notice.

Question 13

What are the implications to the Shire of not having a compliant audit for a number of years while having no valid CEO contract?

Response from Shire President:

I will take this question on notice.

Question 14

What action is the Council going to take to remedy its:

- (a) Non-compliance, and
- (b) False reporting.

Response from Shire President:

I will take this question on notice.

4.2.2 A Henshaw - Question without noticeQuestion 1

My question refers to the selection and appointment of the independent member for the purpose of CEO Recruitment and Selection panel. I would like congratulate Mr Flaherty on his selection.

- (a) the Shire specifically stated that the Expressions of Interest were to be received no later than 13 February 2024. Were all the expressions of interest received by this date?
- (b) Four demonstrable criteria were set by the Council. Was the successful candidate able to demonstrate his ability to meet the set criteria?

Response from Shire President:

(a) The advertisement for the independent person did not state that the expressions of interest were to be received by a certain date but that they should be received by a certain date.

(b) Taken on notice.

4.2.3 G Hill - Question without noticeQuestion 1

I am here representing the men on the Committee for Moondyne Men. We are a group of 40 men whose mantra is "Men looking after Men in the community." We are the largest men's group in Toodyay.

In October 2023 the Moondyne Men wrote an expression of interest to the Shire in regard to renting the old Tennis club; as the Tennis Club has now moved to new facilities at the Toodyay Recreation Centre. As a courtesy to us the Tennis Club were able to show us through the facility to ensure that it was fit for purpose.

We again wrote to the Shire on two further occasions in 2023 and 2024; writing to all Councillors on 30 Nov 2023 and writing to the Shire to obtain any lease agreements on the 3 March 2024.

We heard that there was no lease between the Shire and the Toodyay Tennis Club but in fact a letter of agreement and a peppercorn rent paid by the Tennis Club to the Shire.

Mr President, this building has been empty for almost a year and at the moment the Moondyne Men are homeless as our former meeting place at the RSL is needed for storage.

The Moondyne Men meet on Monday and Thursday morning each week and have a committee meeting and breakfast meeting on the first Saturday of each month.

Why not lease the old Tennis Club building to the Moondyne Men and receive almost \$2,500 a year in rent? So that when anyone walks out of the Shire office they can look across the road and see a building that is being used and not decaying from lack of use.

Response from Shire President:

I will take that question on notice.

4.2.4 B Ruthven - Questions without notice**Question 1**

The Audit and Risk Committee meeting held on 14 February was a special meeting because it fell outside the scheduled meeting calendar as adopted by Council on 22 November 2023.

The meeting was called on 7 February, by resolution ARC001/02/24 for a specific purpose, which was to review the Financial Management Review (and Audit Reg 17 review) report.

Standing Order local law 4.1(3) states that “no business is to be transacted at a committee meeting other than that specified in the agenda or in the notice as the purpose of the meeting, without the approval of the committee”.

The proposed new charter was clearly not part of the purpose of the 14 February ARC special meeting, so when did the committee approve the inclusion of the new charter item on the agenda?

Response from Shire President:

The committee meeting held on that date was not a special committee meeting. It was a committee meeting called under Standing Orders Local Law 17.10 which allows a meeting of a committee to be held if called for by the Presiding Member of the committee. In this case, Standing Orders 4.1 does not apply.

Question 2

The minutes of the ARC special meeting of 14 February, which were confirmed on 6 March, show that the committee rejected the Officer Recommendation to workshop the new charter but, instead, recommended that Council adopt the charter. The reason given was that the committee had already conducted a review.

Did the review take place between the calling of the special ARC meeting on 7 February and the convening of the special meeting on 14 February?

- (a) How was the decision to conduct the review made and by whom?
- (b) When, how and where did the review of the proposed new charter take place?
- (c) Which ARC members took part in the review of the proposed new charter?

Response from Shire President:

I will take that question on notice.

4.2.5 P Sydes - Question without noticeQuestion 1

When is the Shire going to rezone lots 4.1ha and above as rural small holdings as opposed to rural residential as they were directed to do so by the Department of Lands more than 12 months ago.

The Shire President deferred the response to the Executive Manager Development and Regulation

Response from Executive Manager Development and Regulation:

The Shire is currently finalising the draft Local Planning Scheme No. 5.

I will seek further advice from the Department.

Question 2

Is there a plan for pruning trees along the Bindoon Dewars Pool Road in the foreseeable future. The branches are meant to be 4.2m away from the road and I have taken out so many mirrors, as have other drivers along that road?

The Shire President sought clarification on the question and deferred the response to the Executive Manager Infrastructure, Assets and Services

Response from Executive Manager Infrastructure, Assets and Services:

There is not a specific plan for pruning trees on that specific road. Works requests are responded to when vegetation causes a problem in terms of site distance or obstruction. The maintenance crew will inspect the site tomorrow to ascertain what the extent is of pruning required.

4.2.6 S Pearce - Questions without notice

Clarification was sought in regard to whether the response was read out.

Question 1

- (a) When did Council pass a resolution to review the properties owned by the Shire that are available for rent or lease and when completed a report would come to Council?
- (b) Why did the recent request from the Moondyne Men not come to the Council for deliberation given it has financial nature implications and was related to Shire property?
- (c) Who decided that the request was to wait until the review of the Shire properties was completed?

Clarification was sought on the recording of questions correctly by the Shire President.

The Shire President deferred the response to the Acting CEO.

Response to (a) from Acting CEO:

Council resolved to review all leases and contracts in 2022 and we have been working through the list.

Question 2

This was two years ago that a resolution was passed, and has not been completed. Is that what you are saying?

Response from Acting CEO:

Yes.

Response to (b) from Shire President:

It did come to Council in December 2023. Council received the expression of interest from Moondyne Men regarding the possible lease of the old Tennis Club facilities at Fiennes St Toodyay and requested the CEO to liaise with the Moondyne Men to seek further information regarding their proposal to lease the old Tennis Club facilities and bring the matter to a Council workshop in February 2024 and provide a report to the February 2024 Council Meeting for consideration.

Question 3

The resolution said that it was to be workshopped and then to be brought back to the Council at the February 2024 Ordinary Council Meeting (OCM). This is the OCM today? Is it being discussed today?

Response from Acting CEO:

The process to be followed in terms of leasing and disposing of property is pursuant to the Local Government Act 1995. It is not being discussed today.

Question 4

Where is the Shire at with the EOI process for the Moondyne Men?

Response from Shire President:

I will take the question on notice.

Question 5

Last year, as a Councillor, there was an expectation, based on additional assistance that the CEO obtained that the 22/23 audit would be lodged early in 2024. Has the 22/23 audit been completed and lodged?

Response from Shire President:

We do not lodge the audit. Are you asking whether we have submitted the financial reports for audit?

Clarification from S Pearce

Yes. Has the 22/23 audit been completed and what happens once it has been completed?

The Shire President deferred the response to the Acting CEO.

Response from Acting CEO:

The draft financials were submitted to the Auditor in accordance with the timeline that had been developed between the Auditors and the Office of the Auditor General (OAG). The OAG is yet to complete their review of the financials.

Question 6

So the answer to my question is that at this stage it has not been completed, but you are on track to have it completed? Is that correct?

Response from Acting CEO:

Yes.

4.2.7 G Hill - Moodyne Men**Question 2**

The Moodyne Men have liaised with the Toodyay Tennis Club and the Tennis Club, as far as I am aware, are not adverse to us occupying the building which they no longer use. This building has been left open for more than a year. Having said that, the Shire owns the building, not the Toodyay Tennis Club. Why not lease the old tennis club building to the Moodyne Men?

Response from Shire President:

At the moment the Tennis Club is in occupation of the building under agreement with the Shire.

4.2.8 B Ruthven - Questions without notice**Question 3**

The ARC minutes show that the only consultation done by the ARC was with the OAG Better Practice Guide, despite the inclusion of the following passages:

Firstly, from the Auditor General's overview:

"... it is therefore difficult to have a 'one-size-fits-all' approach for better practice guidance. Entities need to consider their relevant legal and regulatory requirements as well as operating environment when using this guide."

Then, from within the document:

For local government entities, the role of audit committee is prescribed by the *Local Government Act 1995* and *Local Government (Audit) Regulations 1996*. They do not have powers or authority to implement actions in areas over which the CEO has legislated responsibility and they do not have any delegated financial responsibility. The committee does not have management functions and cannot involve itself in management processes or procedures.

Given that information which was in the Better Practice guide, would you, as a member of the ARC, please explain why the ARC did not consult with the Department of Local Government or any local government legislation before recommending the charter to Council?

Response from Shire President:

I will take that question on notice.

Question 4

A legislated role of the CEO and administration to advise Council and provide relevant information for decision-making and the importance of risk management to the organisation. The Responsible Officer recommended workshopping the charter before putting it to Council.

What consideration did the Audit and Risk Committee give to the risks of legislative non-compliance and reputational damage to the Shire when rejecting the advice and recommendation from the responsible officer regarding the new charter?

Response from Shire President:

I will take that question on notice.

Question 5

Item 9.5.2 in this agenda includes an Officer's Recommendation for Council to note the ARC recommendation to Council and to adopt a REVISED ARC charter. The revised charter proposed by the Officer is very different to the version recommended by the ARC for adoption by Council.

Has there been any advice from the Department of Local Government about the appropriateness or legality of the ARC-proposed charter? If so, what form did this advice take?

The Shire President deferred the response to the Acting CEO

Response from Acting CEO:

Officers only received the advice from the Department yesterday and based on that information and the additional guidance on the clauses we are proposing to withdraw the Charter and take the opportunity to incorporate the advice from the department.

Question 6

Through the Chair I would like to ask the A/CEO approximately how much officer time was spent on checking and revising the ARC presiding member's charter so that it will meet local government legislation?

The Shire President deferred the response to the Acting CEO.

Response from Acting CEO:

That is hard to quantify but it was a few hours.

Question 7

At the rear of 15 Clinton St, near the police lockup is an old shed which has exposed broken asbestos and termite damage.

Does the Shire own this shed?

What is the risk to the shire associated with this exposed broken asbestos in a public space?

Clarification sought as to whether the shed was on museum precinct grounds.

Response from Shire President:

If the shed is on the museum precinct grounds it would be a shire owned property.

Question 7

It does not appear that way. Could it be checked?

The Shire President deferred the response to the Executive Manager Development and Regulation.

Response from Executive Manager Development and Regulation:

This question is taken on notice.

Question 8

What is the risk to the Shire associated with the broken asbestos in a public space?

Response from Executive Manager Development and Regulation:

This question is taken on notice.

5 CONFIRMATION OF MINUTES

5.1 Ordinary Meeting of Council held on 28 February 2024

OFFICER'S OCM089/03/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
MOVED	Cr S Dival		
SECONDED	Cr J Prater		
That the Unconfirmed Minutes of the Ordinary Council Meeting held on 28 February 2024 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 13 March 2024

OFFICER'S OCM090/03/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
MOVED	Cr J Prater		
SECONDED	Cr S Dival		
That the Unconfirmed Minutes of the Special Council Meeting held on 13 March 2024 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

5.3 Agenda Briefing held on 20 March 2024

OFFICER'S OCM091/03/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
MOVED	Cr C Duri		
SECONDED	Cr J Prater		
That the Notes of the Agenda Briefing held on 20 March 2024 be received.			
<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
Attachments			
1	Agenda Briefing Notes 20 March 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)

The Shire President's announcement, in accordance with the *Shire of Toodyay Standing Orders Local Law 2008* (Section 4.3) is as follows:

8.1 Shire President activities

- Visited the Evacuation Centre in the Memorial Hall on 21 and 22 December.
- With the CEO, met with the Sergeant of the Toodyay Police on 16 January.
- With the CEO, met with the Editor of the Toodyay Herald on 18 January.
- Attended the Australia Day celebrations and Citizenship Ceremony at the Toodyay Recreation Centre on 26 January.
- Attended the opening of the half court-basketball facility at Morangup on 29 January; this event was also attended by Melissa Price MP.
- Attended the Wheatbelt Secondary Freight Network Steering Committee meeting in Midland on 30 January.
- Attended the Regional Road Group Avon Sub-Group meeting in Toodyay on 15 February.
- With the Deputy President, met with the Executive Director of the Department of Local Government Sport and Cultural Industries by Zoom on 12 February.
- Met with finance and governance officers of the Department of Local Government Sport and Cultural Industries in Toodyay on 16 February.
- Attended the WALGA Avon-Midland Zone meeting in Gingin on 23 February.

9 OFFICER REPORTS**9.1 DEVELOPMENT AND REGULATION**

Nil.

9.2 CORPORATE AND COMMUNITY SERVICES**9.2.1 MOU Approval for Avon Valley Alliance**

Date of Report:	23 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	TOU5
Author:	K Hardie – Economic Development Coordinator
Responsible Officer:	T Bateman – Acting CEO
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Avon Valley Alliance MOU; ↗ 2. Avon Valley Alliance Minutes of a Meeting that was held on 15 Feb 2024; ↗ 3. Destination Perth Corporate Membership Report FY 2023. ↗

PURPOSE OF THE REPORT

To present the Avon Valley Alliance Memorandum of Understanding (MOU) for Council's consideration and support.

BACKGROUND

The Avon Valley Alliance began in 2019 when Avon Valley Inc. folded. An informal group worked together on regional tourism and marketing projects until the formation of the partnership with Destination Perth. A formal MOU had not been drawn up.

The Avon Valley Alliance currently comprises five (5) member councils, including the Shires of Toodyay, Goomalling, Beverley, Northam, and York. Each member council contributes annually towards the marketing and promotion of the Avon Valley.

The MOU for Avon Valley Alliance is asking Councils to commit from 2024 - 2027.

The Shire's Economic Development Officer attends the Avon Valley Alliance meetings as a Shire of Toodyay representative.

COMMENTS AND DETAILS

The Advisory Group met in February 2024 to discuss the following:

- Drafting of the MOU;
- Presentation of the draft to Councils in February and March for endorsement;
- Website planning and;
- Strategic planning.

For the 2023/24 financial year, of \$27,500. \$5,500 per Shire to Destination Perth.

Budget report from 2022/2023 attached.

The financial commitment of \$2,500 per annum is the maximum requested on any given year unless unanimously agreed upon by parties. Investment will be contributed on a project basis, with no monies held on account.

The Avon Valley Alliance and Destination Perth has been a positive and productive collaboration.

MOU attached **Attachment 1**. Minutes of the Advisory Group meeting held 15 Feb 2024 are attached at **Attachment 2**. Annual Report 2022/2023 from DP at **Attachment 3**.

IMPLICATIONS TO CONSIDER

Consultative:

Member Councils of the Avon Valley Alliance – Toodyay, Goomalling, Northam, York and Beverley.

Destination Perth

Strategic:

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

Outcome 8: Toodyay is a popular tourism destination.

08.1: Collaborate with local businesses to promote and deliver exceptional tourism experiences.

08.1.1 Provide funding contribution to the Destination Perth Avon Valley Alliance to market Toodyay to Tourists and visitors.

Policy related:

Nil.

Financial:

Commitment to The Avon Valley Alliance will require an ongoing budgetary allocation of \$2,500 per financial year for the life of the MOU. This amount can be accommodated within the Shire's annual marketing and promotion budget. The expenditure has been included in the annual budget since 2017.

Legal and Statutory:

Nil

Risk related:

Financial or reputational risks associated with this report are considered moderate. The Avon Valley Alliance has steadily grown since its formation. With the assistance of Destination Perth's support and substantial marketing, the Avon Valley region is gaining momentum. Once the MOU is signed, Officers will maximise on the use of shared branding, website, social media, and marketing campaigns. In the event Council chose not to support the MOU, there could be a financial and reputational implications in addition to reduced tourism opportunity, not only for the Shire but also for local businesses.

Workforce related:

The actions arising from the Officers recommendation can be managed within existing Shire resources. Officers from the member councils, and with the support of Destination Perth, will continue to collaborate and expand on the opportunities and future projects as developed.

VOTING REQUIREMENTS

Absolute Majority

The Acting CEO provided an overview of the item.

Cr Duri moved the Officer's Recommendation

Cr Dival seconded the motion.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM092/03/24

MOVED Cr C Duri

SECONDED Cr S Dival

That Council:

1. Approves Avon Valley Alliance Memorandum of Understanding, as attached (**Attachment 1**) with an expiry date of 30 June 2027.
2. Requests the CEO to include an allocation of \$2,500 in the 2024/25 draft budget as the Shire of Toodyay's contribution to the Avon Valley Alliance.

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

9.2.2 Monthly Financial Statements - February 2024

Date of Report:	23 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	N Mwale – Finance Coordinator
Responsible Officer:	T Bateman – Acting CEO
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 Statement as at 29 February 2024 ⇨ 2. Supplementary Information as at 29 February 2024 ⇨

PURPOSE OF THE REPORT

This report provides Council with financial information for the period ending 29 February 2024.

BACKGROUND

Regulation 34 (1) of the *Local Government (Financial Management) Regulations 1996* requires a local government to prepare each month a statement of financial activity including the sources and applications of funds, as compared to the budget and the year-to-date budget.

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. 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 29 February 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 in full or by 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 February 2024 was \$2,508,825.47 compared to the January 2024 closing balance of \$3,113,935.82.

Outstanding Sundry Debtors

The total outstanding sundry debtors balance at the end of February 2024 was \$600,182.25 broken down as follows:

Category	31/01/2024	29/02/2024
> 90 days and over	\$ 20,809.65	\$ 12,605.15
> 60 days and over	\$ 8,058.17	\$ 7,303.60
> 30 days and over	\$ 12,521.17	\$ 5,127.24
Current	\$ 59,979.58	\$ 575,146.26
TOTAL	\$101,368.57	\$600,182.25

The table above shows an increase in the outstanding sundry debtors balance due to progress claim invoices approximating \$522,535 for the grants that have been sent.

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.
DLGSC

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 29 February 2024, the balance of funds held in the Shire's operating accounts was \$218,373.48 and the total of all interest bearing term deposits invested for the period ended 29 February 2024 was \$5,717,100.27

Of the \$5,717,100.27 invested in interest bearing deposits, \$2,531,145.57 relates to reserve funds.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

Cr Prater moved the Officer's Recommendation.

Cr Duri seconded the motion.

Clarification was sought.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM093/03/24

MOVED Cr J Prater

SECONDED Cr C Duri

That Council receives, for the month ending 29 February 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

9.2.3 Mid-Year Budget Review 2023/2024

Date of Report:	12 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN28
Author:	N Mwale – Finance Coordinator
Responsible Officer:	T Bateman – Acting CEO
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. Mid-Year Budget Review 2023/24 Summary of Proposed Amendments; ⇒ 2. Forecasted Statement of Financial Activity as at 30 June 2024 ⇒ 3. Mid-Year Budget Review 2023/24 - Revised Capital Program; and ⇒ 4. Mid-Year Budget Review - Reserves Information. ⇒

PURPOSE OF THE REPORT

To consider the Mid-Year Budget Review 2023/2024 (**Attachments 1, 2 and 3**) and adopt budget amendments as presented pursuant to r.33A(3) of the *Local Government (Financial Management) Regulations 1996*.

BACKGROUND

Council is required to review the adopted budget and assess actual values against budgeted values for the period at least once a year, after the December quarter pursuant to the *Local Government Act 1995* and the *Local Government (Financial Management) Regulations 1996*.

The results of the mid-year budget review assist with not only forecasting the year-end position but also the following year's budget planning process by highlighting variations to estimated income and expenditure.

The 2023/24 Annual Budget was adopted by Council on 28 August 2023. At the time of adopting the budget, the following was also resolved:

That Council, in accordance with Regulation 34 of the Local Government (Financial Management) Regulations 1996 and AASB 1031 Materiality, resolves that the level to be used in statements of financial activity in 2023/2024 for reporting material variances shall be 10% for variances with a dollar value greater than \$5,000.

Officers use the above resolution as a guide for highlighting any variations and as a basis for any budget amendment requests.

A review of the 2023/24 Adopted Budget and year to date actuals to 31 December 2023 has been undertaken. Officers have reported on major variances in accordance with the above resolution and provided comments where applicable.

COMMENTS AND DETAILS

As part of the annual budget preparation, Officers across the organisation are assigned projects and accounts within the budget for which they are responsible to monitor and manage.

During February 2024, responsible Officers met with the Finance Coordinator to analyse budgets and consider any variations to the adopted budget. The review takes into account a number of factors including what has occurred during the first half of the financial year, the likely operating environment over the remaining months and the estimated impact on the Shire's financial position at year-end.

That being said, the budget review maintained a conservative budget approach but at the same time, budgets were proposed to be increased or decreased to a more realistic estimate where necessary.

The budget amendments from this review incorporate the following adjustments as detailed in the documents tabled to this report:

- (a) Adjustments to the budget include:
- (i) The CEO recruitment process not included in the adopted budget - estimated to require approximately \$50,000.
 - (ii) The implementation of a fit-for-purpose Records Management System, estimated to be \$96,158.
 - (iii) The costs for the Heritage Survey project not included in the adopted budget totalling \$30,000 - dependent on grant approval.
 - (i) A timing variance is also expected to affect the capital budget due to projects anticipated to be deferred or carried forward. These include some of the following items:

Project	Expenditure	Revenue
Bejoording Fire Station	\$ 135,000	\$ 135,000
Non-Crown Land Mitigation	\$ 275,539	\$ 137,770
Nottingham Road	\$ 166,976	\$ 83,488
North Street	\$ 145,903	\$ 72,951
Plant & Equipment purchases	\$ 654,769	\$ 242,381
	\$ 1,378,187	\$ 671,590

Construction of the Bejoording Fire Station has been delayed due to an unsuccessful grant application for the 2023/24 financial year. Officers will apply for funding from DFES again for consideration in the 2024/25 budget.

Road projects noted above, have been delayed as a result of unsuccessful grant applications in 2023/2024 however, Officers are confident that these grants would be considered for approval by the State Government, based upon feedback from the funding agencies.

Proposed adjustments to the plant and equipment purchases are a result of high demand for vehicles and extra funds required for the grader. The adjustment for the generator is a result of delays to the signing of the grant agreement.

Additional funds are required from the Asset Development Reserve to fund the roof sheeting renewals, gutters of the building, the Tote area and Horseshoe Bar at Toodyay Racecourse for \$200,000. Officers are unsure how much of these funds will be required prior to 30 June 2024.

IMPLICATIONS TO CONSIDER

Consultative:

Workshops were held with responsible officers. The results of these discussions assisted in the development of the proposed budget amendments as attached to this report.

Information was provided to Councillors on 12 March 2024 for discussion.

Strategic:

The way the Shire leads and operates:

O 2: Consistently improve our governance practices.

O 3: Ensure rigorous organisational systems.

Policy related:

F6 Significant Accounting Policy

F16 Financial Governance Policy

Financial:

The financial impact of the mid-year budget review is detailed within the tabled reports.

Legal and Statutory:

Local Government Act 1995

Section 6.2 Local government to prepare annual budget

Section 6.10 Financial management regulations

Local Government (Financial Management) Regulations 1996

Part 2. Reg 5(g) CEO's duties as to financial management

Part 3. Reg 33A Review of budget

Regulation 33A of the *Local Government (Financial Management) Regulations 1996* requires a Local Government to conduct a mandatory review between 1 January and 31 March each year and a copy to be forwarded to the Department of Local Government within 30 days.

Risk related:

It is a legislative requirement to undertake a review of the budget and to lodge it with the Department of Local Government, Sport and Cultural Industries. Failure to monitor and financially manage budgeted projects exposes the Shire to significant financial risk. This report helps to mitigate this risk.

It is critical that any projects required to be carried forward are identified and quarantined in order that expenditure is catered for in development of the 2024/25 annual budget. Additionally, grant income received to date for these projects must be recognised as a contract liability at year end and included in the upcoming budget. These funds must not be recognised as revenue for the current year.

The review does not seek to make amendments below the materiality threshold unless strictly necessary. The materiality threshold is set at \$5,000 as adopted by Council. Should a number of accounts exceed their budget within these thresholds, it poses a risk that the forecasted year end position may be understated.

Workforce related:

The budget review process has been managed within current resources.

VOTING REQUIREMENTS

Absolute Majority

Cr Prater moved the Officer's Recommendation 1 as follows:

That Council:

- 1. Adopts the mid-year budget review and supporting information as tabled to this report.**
- 2. Requests the Chief Executive Officer to forward the adopted 2023/24 mid-year budget review to the Department of Local Government, Sport and Cultural Industries within 30 days of Council's adoption.**

Cr Dival seconded the motion.

Clarification sought.

Cr Madacsi foreshadowed an alternate motion as follows:

That Council:

- 1. Adopts the mid-year budget review and supporting information as tabled to this report excluding the \$200,000 additional funds required from the asset development reserve to fund the roof sheeting renewal, gutters on the buildings, the tote area and horseshoe bar at Toodyay Racecourse.**
- 2. Requests the Chief Executive Officer to forward the adopted 2023/24 mid-year budget review to the Department of Local Government, Sport and Cultural Industries within 30 days of Council's adoption.**

Cr Madacsi objected to the motion.

Debate commenced.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM094/03/24**MOVED** Cr J Prater**SECONDED** Cr S Dival

That Council:

1. Adopts the mid-year budget review and supporting information as tabled to this report.
2. Requests the Chief Executive Officer to forward the adopted 2023/24 mid-year budget review to the Department of Local Government, Sport and Cultural Industries within 30 days of Council's adoption.

Voted For: Crs S McCormick, M McKeown, S Dival and J PraterVoted Against: Crs R Madacsi, C Duri and D Wrench**MOTION CARRIED 4/3 BY ABSOLUTE MAJORITY**

9.2.4 List of Payments - February 2024

Date of Report:	11 March 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	N Mwale – Finance Coordinator
Responsible Officer:	T Bateman – Acting CEO
Previously Before Council:	NA
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. Creditor Payments Listing - February 2024 ⇨

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 February 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 February 2024 total \$899,394.15.

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. OCM095/03/24	
MOVED	Cr S McCormick
SECONDED	Cr C Duri
That Council notes as being paid, payments listed and presented for the month of February 2024 as attached to this report, summarised as follows:	
Municipal Cheques	761.00
Electronic Funds Transfer Payments	832,561.67
Direct Debits	

Payroll	54,342.73
Purchasing Cards	11728.75
TOTAL	899,394.15

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 Adoption of Amended Local Laws: Cats and Dogs

Date of Report:	10 March 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	LAW1
Author:	M Rebane – Executive Assistant
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	Nov 2023 – Local Law Review
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Amended Cat Local Law 2024; ⇒ 2. Advert - Cat Local Law; ⇒ 3. Amended Dog Local Law 2024; ⇒ 4. Advert - Dog Local Law; ⇒

PURPOSE OF THE REPORT

To consider the adoption of the:

1. Cat Local Law 2024 (refer to **Attachment 1**); and the
2. Dog Local Law 2024 (refer to **Attachment 3**).

BACKGROUND

Local laws can only be made when authorised by the *Local Government Act 1995* (the Act) or other written laws but cannot be inconsistent with any State or Federal law.

At the November 2023 Council Meeting it was resolved that:

That Council:

1. Pursuant to section 3.16(4) of the *Local Government Act 1995* (the Act), resolves its intent to not change the *Cemeteries Local Law*; and
2. Pursuant to section 3.16(4) of the Act, resolves its intent to repeal the *Pest Plants Local Law* subject to the *Repeal Local Law 2023* being workshopped by Council;
3. Pursuant to section 3.16(4) of the Act, resolves its intent to workshop and amend the following local laws:
 - (a) *Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law*;
 - (b) *Cat Local Law*;

- (c) *Dogs Local Law;*
 - (d) *Extractive Industries Local Law;*
 - (e) *Fencing Local Law;*
 - (f) *Health Local Laws;*
 - (g) *Local Government Property Local Law;*
 - (h) *Parking and Parking Facilities Local Law;*
 - (i) *Standing Orders Local Law.*
4. *Determines that the periodic review of the local laws for the Shire of Toodyay has concluded.*

COMMENTS AND DETAILS

There are two local laws that have been amended thus far, by the Officers who enforce these local laws. Pursuant to section 3.12 of the *Local Government Act 1995* (the Act) the Shire of Toodyay, in making a local law, must follow the procedure described, in the sequence in which it is described. Now that the two local laws have been amended significantly, using the WALGA model local laws where available, and through workshopping and desktop reviews by Shire Officers, they are presented to Council for consideration to make them local laws pursuant to section 3.12 of the Act.

It is recommended that Council resolve its intent to adopt the following local laws:

- *Shire of Toodyay Cat Local Law 2024.*
- *Shire of Toodyay Dog Local Law 2024.*

Section 3.12 (2) states:

"At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner."

It is recommended that the Presiding Person read out the following:

Cat Local Law

1. Pursuant to section 3.12 of the *Local Government Act 1995* the Shire of Toodyay resolves its intent to adopt the *Shire of Toodyay Cat Local Law 2024*:
 - (a) The **purpose** of which is to improve the permit conditions, definitions of nuisance behaviour, modification of penalties, and to continue to provide the Shire of Toodyay with measures in addition to those under the *Cat Act 2011* to control the keeping of cats.
 - (b) The **effect** of which will repeal the previous local law, and continue to control cat ownership, to limit the number of cats that can be kept and to specify the places where cats can be kept.
 - (c) The **justification** of which is that it will provide enforcement options for issues that previously were unable to be dealt with by the Shire's authorised officers pursuant to the *Cat Act 2011* and the provisions of its subsidiary legislation.

Dog Local Law

2. Pursuant to section 3.12 of the *Local Government Act 1995* the Shire of Toodyay resolves its intent to adopt the *Shire of Toodyay Dog Local Law 2024*:

- (a) The **purpose** of which is to make provisions about the transferring of dogs to another person, modification of penalties, impounding of dogs, and to control the number of dogs that can be kept on premises and the manner of keeping those dogs, including fencing measures; and to prescribe areas in which dogs are prohibited and as dog exercise areas .
- (b) The **effect** of which will repeal the previous local law, and put in measures related to dog ownership, to limit the number of dogs that can be kept and to extend the controls over dogs which exist under the *Dog Act 1976* .
- (c) The **justification** of which is that it will provide enforcement options for issues that previously were unable to be dealt with by the Shire's authorised officers pursuant to the *Dog Act 1976* and the provisions of its subsidiary legislation.

IMPLICATIONS TO CONSIDER

Consultative:

A workshop on 12 February 2024 with councillors was held to go through the amended local laws being presented with this report. All Councillors were in attendance.

National Competition Policy: Local Laws Review Guidelines

WALGA

Strategic:

Shire of Toodyay Council Plan 2023-2033

The Shire regulates compliance with legislation, regulations, local laws and policies.

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

5.1. Provide responsible planning and development.

Outcome 9. Responsible and effective leadership and governance.

9.1. Provide strong, clear, and accountable leadership.

Policy related:

Dogs Policy

Financial:

This proposal will require local notice/advertisement to the value of approximately \$300.00.

Legal and Statutory:

Section 3.12 of the *Local Government Act 1995*

Risk related:

If Council chooses to delay the making of these amended local laws there would be moderate reputational and compliance risks. This report mitigates the risk.

Workforce related:

Council's decision can be implemented with existing resources.

VOTING REQUIREMENTS

Absolute Majority

The Presiding Member read aloud Officer’s Recommendation 1.

Cr McCormick moved the Officer’s Recommendation 1 as follows:

That Council, pursuant to the provisions of section 3.12(3) of the Local Government Act 1995:

- 1. Resolves its intent to adopt the *Shire of Toodyay Cat Local Law 2024*:**
 - (a) The purpose of which is to improve the permit conditions, definitions of nuisance behaviour, modification of penalties, and to continue to provide the Shire of Toodyay with measures in addition to those under the *Cat Act 2011* to control the keeping of cats.**
 - (b) The effect of which will repeal the previous local law, and continue to control cat ownership, to limit the number of cats that can be kept and to specify the places where cats can be kept.**
 - (c) The justification of which is that it will provide enforcement options for issues that previously were unable to be dealt with by the Shire’s authorised officers pursuant to the *Cat Act 2011* and the provisions of its subsidiary legislation.**
- 2. Requests the CEO to advertise a local public notice (Attachment 2);**
- 3. Requests the CEO to send to the Minister a copy of:**
 - (a) The proposed local law – Refer to Attachment 1; and**
 - (b) A copy of the public Notice – Refer to Attachment 2.**
- 4. Requests the CEO to provide a copy of the proposed local law, in accordance with the notice to any person requesting it.**

Cr Prater seconded the motion.

Cr Madacsi objected to the motion and foreshadowed an alternate motion to defer the adoption of the Cat Local Law 2024.

Debate commenced.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM096/03/24

MOVED Cr S McCormick

SECONDED Cr J Prater

That Council, pursuant to the provisions of section 3.12(3) of the *Local Government Act 1995*:

- 1. Resolves its intent to adopt the *Shire of Toodyay Cat Local Law 2024*:**
 - (a) The purpose of which is to improve the permit conditions, definitions of nuisance behaviour, modification of penalties, and to continue to provide the Shire of Toodyay with measures in addition to those under the *Cat Act 2011* to control the keeping of cats.**

- (b) The **effect** of which will repeal the previous local law, and continue to control cat ownership, to limit the number of cats that can be kept and to specify the places where cats can be kept.
 - (c) The **justification** of which is that it will provide enforcement options for issues that previously were unable to be dealt with by the Shire's authorised officers pursuant to the Cat Act 2011 and the provisions of its subsidiary legislation.
2. Requests the CEO to advertise a local public notice (**Attachment 2**);
 3. Requests the CEO to send to the Minister a copy of:
 - (a) The proposed local law – Refer to **Attachment 1**; and
 - (b) A copy of the public Notice – Refer to **Attachment 2**.
 4. Requests the CEO to provide a copy of the proposed local law, in accordance with the notice to any person requesting it.

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

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM097/03/24

MOVED Cr R Madacsi

SECONDED Cr C Duri

That Council defers consideration of the Shire of Toodyay Cat Local Law 2024 pending further review.

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 2

That Council, pursuant to the provisions of section 3.12(3) of the *Local Government Act 1995*:

1. Resolves its intent to adopt the *Shire of Toodyay Dog Local Law 2024*:
 - (a) The **purpose** of which is to make provisions about the transferring of dogs to another person, modification of penalties, impounding of dogs, and to control the number of dogs that can be kept on premises and the manner of keeping those dogs, including fencing measures; and to prescribe areas in which dogs are prohibited and as dog exercise areas .
 - (b) The **effect** of which will repeal the previous local law, and put in measures related to dog ownership, to limit the number of dogs that can be kept and to extend the controls over dogs which exist under the *Dog Act 1976* .

- (c) The **justification** of which is that it will provide enforcement options for issues that previously were unable to be dealt with by the Shire's authorised officers pursuant to the *Dog Act 1976* and the provisions of its subsidiary legislation.
2. Requests the CEO to advertise a local public notice (**Attachment 4**);
 3. Requests the CEO to send to the Minister a copy of:
 - (a) The proposed local law – Refer to **Attachment 3**; and
 - (b) A copy of the public Notice – Refer to **Attachment 4**.
 4. Requests the CEO to provide a copy of the proposed local law, in accordance with the notice to any person requesting it.

Cr Madacsi foreshadowed an alternate motion for Officer's Recommendation 2 as follows:

That Council defers consideration of the Shire of Toodyay Dog Local Law 2024 pending further review.

The Shire President asked for a mover for Officer's Recommendation 2.

There being no movers of the motion, the foreshadowed motion was moved.

MOTION/COUNCIL RESOLUTION NO. OCM098/03/24

MOVED Cr R Madacsi

SECONDED Cr S Dival

That Council defers consideration of the Shire of Toodyay Dog Local Law 2024 pending further review.

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 Committee Membership: Deputy Committee Members

Date of Report:	10 March 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	GOV1
Author:	M Rebane – Executive Assistant
Responsible Officer:	T Bateman – Acting CEO
Previously Before Council:	October and November 2023 OCM
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	Nil

The CEO withdrew this item under Standing Orders Local Law 2008

9.3.3 Department of Local Government, Sport & Cultural Industries correspondence

Date of Report:	15 March 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	MTG7/ICR94409
Author:	M Rebane – Executive Assistant
Responsible Officer:	T Bateman – Acting CEO
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	1. DLGSC Correspondence. ↔

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).

BACKGROUND

Council resolved in 2018:

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

DLGSC described in the table below is attached (**Attachment 1**).

Document Number	Date sent / received	File Ref	Description
ICR94680	29/02/2024	STR87	Shire of Toodyay - outcomes regarding Temporary CEO
ICR94683	01/03/2024	MEM1	Meeting Minutes - 16 February 2024

At the February 2024 Council Meeting Council resolved to receive correspondence dated 21 December 2023 that had been missing from the February 2024 DLGSC Correspondence report. This is also attached together with the above correspondence.

It is recommended that Council receive the correspondence.

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:

The risk in Council not choosing to receive the DLGSC correspondence is moderate however from a reputational and compliance perspective the risk could be high. This report mitigates the risk.

Workforce related:

Officers are required to formally report on all correspondence with the DLGSC. There is no action to be taken once Council receives the correspondence.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM099/03/24

MOVED Cr S McCormick

SECONDED Cr S Dival

That Council receives the correspondence with the Department of Local Government, Sport and Cultural Industries as attached to this report.

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 INFRASTRUCTURE AND ASSETS

9.4.1 Bush Fire Mitigation Works Program Tender

Date of Report:	28 February 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:	Nil
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Bush Fire Mitigation Program of Works (Treatments) MAF 2023/24 Round 2; ↗ 2. Evaluation Report – Bush Fire Mitigation Works Program Tender (TEN94/2024). (confidential) <i>Section 5.23(2)</i> <ul style="list-style-type: none"> (c) 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 (e)(iii) a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person where the trade secret or information is held by, or is about, a person other than the local government (e)(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 (e)(ii) 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. (under separate cover)

PURPOSE OF THE REPORT

To consider awarding the tender for the Shire’s Bush Fire Mitigation Works Program utilising the Mitigation Activity Fund (MAF) Grant funding.

BACKGROUND

The Shire of Toodyay (the Shire) is an extreme bushfire risk area, as highlighted in the Shire’s Bush Fire Risk Management Plan (BRMP), and associated Bush Fire Risk Management Software (BRMS) assessments.

To assist in managing these risks, the Shire successfully secured external funding of \$215,000 (ex GST) through the Mitigation Activity Fund (MAF) for the 2024 calendar year. The expenditure will therefore span the 2023/24 and 2024/25 financial years. Calendar year-based mitigation programs are more suited to the seasonal conditions which are critical to best practice mitigation.

The Shire recently publicly advertised a tender (TEN94/2024) for the execution of bush fire mitigation program works around the Shire. These works encompass firebreak and access track construction/upgrades, and vegetation management via several methods including mechanical, chemical, biological (grazing) and hazard reduction burning.

COMMENTS AND DETAILS

The tender was advertised with each of the 49 treatments assigned to one of four categories of work:

1. Fuel Reduction - Prescribed Burning

May include mechanical elements in creating and maintaining control lines.

2. Fuel Reduction - Mechanical Works

May also involve elements of chemical treatment(s).

3. Fuel Reduction - Chemical Works

May also involve elements of mechanical treatment techniques (i.e., slashing).

4. Fire Access Track Works

Includes associated manual or mechanical vegetation management.

Tenders were invited for all treatments in one or more of the above categories.

Details of the program of works and category allocation is included as **Attachment 1 - Bush Fire Mitigation Program of Works (Treatments)**.

Four tenders were received from four different firms:

1. Avon Earthworks (Buckland, WA);
2. Fire Mitigation Services (Northam, WA);
3. Martins Environmental Services (Harvey, WA);
4. Intelife (Balcatta, WA).

While some tender categories exceeded estimates for the category, all tenders may be considered within overall estimates (allocated funding), and thus the evaluation focused on the tender with best capabilities to deliver.

Evaluation Summary:

A tender evaluation process was conducted by the following Officers:

- Community Emergency Services Manager.
- Executive Manager Infrastructure, Assets and Services; and the
- Reserves Management Officer.

The tender evaluation process rated the tenders on the following factors and weightings:

Item	Evaluation Criteria	Weight (%)	Scoring Methodology
1	Company Experience & Capability	40	A score out of 40 will be assigned to each Tenderer based on the evidence provided by the Tenderer of their firm's previous experience on similar projects and capability.
2	Nominated Project Team	10	A score out of 10 will be assigned to each Tenderer based on the evidence provided by the Tenderer of the experience and capabilities of their nominated project team members.
3	Program	20	A score out of 20 will be assigned to each Tenderer based on the evidence provided by the Tenderer in the form or a proposed construction program to undertake the Works.
4	Tendered price	30	A score out of 30 will be assigned to each Tenderer based on the best value for money offer by the Tenderer.
TOTAL		100%	

The evaluation criteria weightings emphasise experience and capability with bush fire mitigation projects. Funding for the project is fixed by the MAF Funding allocation and thus overall value within the budget, accounting for experience, project team and program timeline was the objective of the tender.

IMPLICATIONS TO CONSIDER

Consultative:

Department of Fire and Emergency Services Regional Superintendent (MAF application approval).

Department of Fire and Emergency Services Goldfields-Midlands Bush Fire Risk Management Officer.

Department of Fire and Emergency Services Bush Fire Risk Mitigation Branch (assessment of MAF application and awarding of grant).

Strategic:

This program of works addresses actions in the Shire of Toodyay *Bush Fire Risk Management Plan*. The program also uses a range of methods best suited to various vegetation and terrain types as per the council endorsed *Bush Fire Preparedness and Strategies Report*.

Policy related:

Purchasing Policy (FIN3).

Financial:

The tender amount is fully funded by the Mitigation Activity Fund 2023/24 Round 2 grant awarded by Department of Fire and Emergency Services.

Legal and Statutory:

All works will be carried out under *Bush Fires Act 1954* Section 33 Notice to the Shire of Toodyay which provides clearing of vegetation exemption under Schedule 6, Clause 1 of the *Environmental Protection Act 1986*. The *Bush Fires Act 1954* Section 36 also applies to these works which provides clearing of vegetation exemption under Schedule 6, Clause 1 of the *Environmental Protection Act 1986*.

Checks in relation to Declared Rare Flora and Fauna (DRF) are to be carried out prior to commencement of works and appropriate permits sought from the Department of Water and Environmental Regulation where the treatments cannot be modified to avoid the taking of the identified DRF.

Should there be any location where ground disturbance may require an approval under the Aboriginal Heritage Act legislation, consultation will be carried with the relevant Aboriginal representative group prior to consultation with the Department of Planning, Land and Heritage.

Risk related:

The program of mitigation works related to this tender and report is designed to minimise the severity and impacts of bush fire.

There is a risk that not awarding this Bushfire Mitigation Works Tender would severely affect the Shire's obligation to mitigate land which it manages, leading to increased bush fire impact severity and impact on property and life.

Consequence: Catastrophic (5)

Likelihood: Possible (3)

Calculated Risk: High (15)

There is a risk that not awarding this Bushfire Mitigation Works Tender would severely affect the Shire's obligation to mitigate land which it manages leading to a negative public perception (reputation) of the Shire.

Consequence: Moderate (3)

Likelihood: Almost Certain (5)

Calculated Risk: High (15)

Workforce related:

While the mitigation works are directly and fully funded by the Mitigation Activity Grant, project management costs are not. These are borne by the Shire in the form of in-kind resourcing from existing staff (in this case Community Emergency Services Manager and Reserves Management Officer). MAF projects of this size and scale represent a significant component of officer workloads. Selection of Fire Mitigation Services & Avon Earthworks, who have previously completed MAF treatments for the Shire (in all four treatment type categories), will reduce this overhead by selection of contractors with existing local knowledge of the Shire, treatment sites and treatments.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM100/03/24**MOVED** Cr S McCormick**SECONDED** Cr C Duri

That Council awards tender TEN94-2024 to the following contractors, for the treatment categories and contract values below:

1. Fuel Reduction - Prescribed Burning: Fire Mitigation Services Pty Ltd to the value \$30,864.00 excluding GST.
2. Fuel Reduction - Mechanical Works: Fire Mitigation Services Pty Ltd to the value \$58,335.00 excluding GST.
3. Fuel Reduction - Chemical Works: Fire Mitigation Services Pty Ltd to the value \$52,097.00 excluding GST.
4. Fire Access Track Works: Avon Earthworks Pty Ltd to the value \$8,230.00 excluding GST.

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

9.4.2 Bush Fire Advisory Committee Recommendations - 7 February 2024

Date of Report:	28 February 2024
Applicant or Proponent:	Bush Fire Advisory Committee
File Reference:	FIR1
Author:	R Koch – Community Emergency Services Manager
Responsible Officer:	C Sullivan – Executive Manager Infrastructure, Assets & Services
Previously Before Council:	Nil
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Executive
Attachments:	1. BFAC Minutes from 07 February 2024 Meeting ↔

PURPOSE OF THE REPORT

To receive the minutes (**Attachment 1**) from the Bush Fire Advisory Committee Meeting (BFAC) held on 7 February 2024 and consider a recommendation made by the BFAC.

BACKGROUND

The BFAC made a recommendation to Council at their February 2024 meeting as follows:

That Council considers an increase in the CESM’s credit card to enable an adequate limit for support during emergencies.

COMMENTS AND DETAILS

The BFAC raised the CESM Corporate Credit Card as an item, in response to the CESM needing to expend personal funds to meet the welfare and other incidental requirements of the Bush Fire Service during December 2023; which was not the first occurrence of that need and is therefore not limited to the December event.

The current Corporate Credit Cards Policy (FIN11) assigns a credit limit of \$2,000 to the CESM role. Welfare and incidental expenditure in December in support of the Bush Fire Service was over \$4,000. While some expenditure was put ‘on account’ by suppliers, the majority required upfront payment.

It is recommended that Council endorses the Committee’s recommendation.

IMPLICATIONS TO CONSIDER

Consultative:

Nil.

Strategic:

Shire of Toodyay Council Plan 2023-2033

Outcome 1. A safe and healthy community.

1.1. *Facilitate community safety.*

Recognising the role volunteers play in our community and the need to support and foster volunteering.

Policy related:

Corporate Credit Cards Policy (FIN11).

Financial:

Nil.

Legal and Statutory:

Bush Fires Act 1954

Workplace Health and Safety Act 2020

Risk related:

Safe and effective management of Bush Fire Brigades is a responsibility of Local Government under the *Bush Fires Act 1954* and other legislation, most notably the *Workplace Health and Safety Act 2020*.

Improving and reviewing procedures and standards in relation to the operation of our Bush Fire Service personnel reduces exposure to risk.

Workforce related:

Officers will present the proposed Transaction Cards Policy at a Council Workshop, prior to being considered by Council Ordinary Council Meeting.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM101/03/24

MOVED Cr J Prater

SECONDED Cr C Duri

That Council receives the extract of the Bush Fire Advisory Committee Minutes of meeting (**Attachment 1**) held on 07 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

Cr Duri moved the BFAC Recommendation 2

Cr McCormick seconded the motion.

Clarification was sought.

Cr Dival moved an amendment to the motion as follows:

That the word “considers” is replaced with the word “support”

Further clarification was sought.

Cr Dival withdrew the amendment.

The motion was put.

BFAC RECOMMENDATION/COUNCIL RESOLUTION NO. OCM102/03/24

MOVED Cr C Duri

SECONDED Cr S McCormick

That Council considers an increase in the CESM’s credit card to enable an adequate limit for support during emergencies.

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 COMMITTEE REPORTS

9.5.1 EAC recommendations from meetings held on 29 November 2023 and 10 January 2024

Date of Report:	10 January 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	COC14
Author:	M Rebane – Executive Assistant
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
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. EAC Minutes from 29 Nov 2023; and ↗ 2. EAC Minutes from 10 Jan 2024. ↗

PURPOSE OF THE REPORT

To receive the minutes of the Environmental Advisory Committee (EAC) Meeting held on 29 November 2023 and 10 January 2024, and consider the recommendations made by the EAC at those meetings (Refer to **Attachment 1** and **Attachment 2**).

BACKGROUND

The EAC met on 29 November 2023 and considered the following items:

1. Community Membership
2. Purpose and objectives of the Environmental Advisory Committee meeting; and
3. Status of Environment Sustainability Officer

The EAC met again on 10 January 2024 and considered the following items:

1. Local Biodiversity and Native Vegetation Management Project Update
2. Polyphagus Beetle Threat; and
3. Status of Environment Sustainability Officer

COMMENTS AND DETAILS

At the EAC meeting held in November 2023:

- (a) The Executive Manager Development and Regulation discussed Community membership on the EAC. No formal recommendation was made by the Committee to Council.

- (b) Cr Madacsi raised the “Purpose and Objectives” of the Committee as an item of new business during the meeting held in November 2023 to give the new membership on the Committee an opportunity to consider whether the purpose and objectives were still relevant and achievable. The move to discuss the matter was for the purpose of ensuring the objectives were realistic, given resourcing challenges and the like. It is recommended that the recommendation made by the Committee be endorsed by Council.
- (c) The recommendation made by the EAC in regard to receiving an update on the status of the advertisement of the Environmental Sustainability Officer position was in fact to receive a copy of the application package for that role. This was achieved by making the application package an attachment to the minutes of that meeting.

At the EAC Meeting held in January 2024:

- i. The Executive Manager Development and Regulation provided an overview of the progress made for the recruitment of the Environmental Sustainability role. At the time the role had been re-advertised. The Committee made a recommendation to Council as follows:

That Council:

1. Notes the progress of the recruiting for the Environmental Sustainability Role.
2. Requests a further update on this no later than the April 2024 OCM.

There had been no further applications received for this position following its readvertising. Officers, in liaison with the CEO at the Shire of Victoria Plains determined to amend the wording of the advertisement for the position and re-advertise for a third time on the Seek and Careers at Council platforms.

At the date of writing this report there have been nine applications. The closing date is 22 March 2024, and interviews will be conducted within two weeks from that closing date. It is the intention of Officers to further update Council through Council Forums and Workshops.

For the purposes of this report, it is recommended that Council endorse the Committee’s recommendation; noting that the above information responds to the recommendation made.

At the EAC meeting held in January 2024:

- (d) The Committee were made aware that until an ESO is appointed, the progress with respect to the Local Biodiversity and Native Vegetation Management Project has been put on hold. It is recommended that Council endorse the Committee’s recommendation.
- (e) The Polyphagus Shothole borer beetle information provided by Cr Madacsi was considered and the Committee asked for Council to request the CEO inform all Shire personnel of the risks. It is recommended that Council endorse the recommendation provided.

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 Provide strong, clear and accountable leadership.*****Policy related:**

Nil.

Financial:

Nil.

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

s.1.7 Local Public Notice

s.5.8 Establishment of Committees

s.5.9 Type of Committees

Risk related:

There are no risks of note related to this report.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM103/03/24**MOVED** Cr R Madacsi**SECONDED** Cr C DuriThat Council receives the minutes of the meeting of the Environmental Advisory Committee held on 29 November 2023 (**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**

OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM104/03/24**MOVED** Cr M McKeown**SECONDED** Cr S Dival

That Council receives the minutes of the meeting of the Environmental Advisory Committee held on 10 January 2024 (**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

Clarification was sought in regard to EAC Recommendation 1.

EAC RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM105/03/24**MOVED** Cr R Madacsi**SECONDED** Cr C Duri

That Council:

1. Amends the purpose and objectives of the Environmental Advisory Committee to be:

Purpose

Provide guidance and assistance to Council where possible on matters relating to the environment within the Shire of Toodyay.

Objectives

- (a) make recommendations to Council on matters relating to the environment including but not limited to:
 - Protect and enhance natural resources.
 - Reduce, Reuse, Recycle and Recover
 - Sustainability;
 - Climate change resilience and action;
 - (b) educate and generate community interest and participation in matters relating to the above items;
 - (c) provide feedback to Council in relation to point (b) above;
 - (d) provide input and advice to Council on the implementation of environmental strategies and policies.
2. Requests the CEO to update the Committee Book with the above details.

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

EAC RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM106/03/24**MOVED** Cr R Madacsi**SECONDED** Cr J Prater

That Council:

1. Notes the progress of the recruiting for the Environmental Sustainability Role.
2. Requests a further update on this no later than the April 2024 OCM.

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**EAC RECOMMENDATION 3/COUNCIL RESOLUTION NO. OCM107/03/24****MOVED** Cr S McCormick**SECONDED** Cr S Dival

That Council:

1. Requests the CEO inform Shire personnel of the risks of the Polyphagus Shothole borer beetle and recommend they adjust activities to address this issue.
2. Requests the CEO advertise the issue of the Polyphagus Shothole borer beetle as widely as possible including roadside signage, social media, the Shire website and fact sheet at the Waste Transfer Station.

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 14 Feb 2024

Date of Report:	15 February 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	COC2/FIN7
Author:	M Rebane – Executive Assistant
Responsible Officer:	T Bateman – Acting CEO
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. ARC Minutes from 14 Feb 2024 meeting. ↔ 2. FMR Report (Review of Financial Management, Risk Management, Legislative Compliance and Internal Controls Final Report); (confidential) Section 5.23(2) <i>(f)(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> <i>(f)(ii) a matter that if disclosed, could be reasonably expected to endanger the security of the local government's property (under separate cover)</i> 3. PRIS Fact Sheet; ↔ 4. CURRENT Audit and Risk Committee Charter; ↔ 5. DRAFT Audit and Risk Committee Charter presented by Chair of the Audit and Risk Committee. ↔ 6. REVISED Audit and Risk Committee Charter. ↔

PURPOSE OF THE REPORT

To receive the minutes of the Audit and Risk Committee (ARC) Meeting held on 14 February 2024 and consider the recommendations made by the ARC at that meeting (Refer to **Attachment 1**).

BACKGROUND

When Council establishes an audit committee as per the Act and Regulations, the Audit in Local Government guideline published by the Department of Local Government, Sport and Cultural Industries states:

The only powers and duties that can be delegated to a committee are any of the powers and duties of the local government under Part 7 of the Act; that is, those relating to Audit. The committee cannot on-delegate the powers and duties delegated to it.

The ARC met on 14 February 2024 and considered the following Officer reports:

- (a) Item 4.1 Financial Management, Risk Management, Legislative Compliance and Internal Controls;
- (b) Item 4.2 Privacy and Responsible Information Sharing Legislation; and
- (c) Item 4.3 Audit and Risk Committee Charter.

COMMENTS AND DETAILS

The role of the audit committee is to support Council in fulfilling its governance and oversight responsibilities in relation to financial reporting, internal control structure, risk management systems, internal and external audit functions, and ethical accountability.

Recommendation 1 – Financial Management, Risk Management, Legislative Compliance and Internal Controls

The ARC Members considered the Officer's Report and the attached FMR Report from Moore Australia. (**Attachment 2**).

At the meeting, the CEO also provided an overview of the Risk Assessment (Audit Regulation 17) report that was provided by Moore Australia as part of their review, advising that she was in the process of writing up actions to address the risks contained in the report. In consultation with the DLGSC, it was intended that this report become the basis for an Improvement Plan, for endorsement by Council.

The ARC requested the CEO to provide an action plan to respond to the actions contained in Moore's Final Report, for review at its meeting to be held 6 March 2024. This is the subject of another report within this agenda.

Recommendation 2 – Privacy and Responsible Information Sharing Legislation

The WA Government drafted new Privacy and Responsible Information Sharing (PRIS) legislation regarding personal privacy protections and the accountability of information sharing within government. The intent of the legislation is to provide Western Australians with more control over their personal privacy, improve the delivery of government services and create local research and development opportunities (**Attachment 3**).

The Officer's report was prepared to inform the ARC members and Council about the upcoming legislation.

Recommendation 3: Audit and Risk Committee Charter

The current charter was adopted by Council at its meeting held on 24 January 2024 (**Attachment 4**).

This charter was initially developed in 2020 and adopted by Council, using the [Office of the Auditor General's Better Practice Guide for Western Australian Public Sector Audit Committees](#) (the Guide) as the basis for its development. This Guide was for the purpose of providing public sector entities with templates to help them establish and maintain an effective Audit Committee.

The Guide states that:

Entities should take care to modify the tools to reflect their legal or regulatory requirements. For example, local government entities will need to adapt these

templates to address the specific requirements of the Local Government Act 1995 and relevant regulations.

The Guide also states that:

The following part of the model charter provides an extensive list of many functions that the audit committee can perform. It is not intended that entities copy all of the functions in these lists. Instead, the accountable authority should review and modify the functions to suit the entity. It is important that the accountable authority and the audit committee agree on these functions.

The ARC met on 14 February 2024 and considered the Item 4.3 Audit and Risk Committee Charter. At this meeting, the Officer recommended that the ARC review the wording of the draft provided by the Chairperson (**Attachment 5**). However, due to timing constraints, Officers were unable to provide timely input prior to production of the ARC agenda, and the Charter was recommended to Council for adoption without amendment.

The draft Charter as presented to the ARC included all of the functions contained within the Guide's template, however as the Guide indicates, the charter should be reviewed to suit the functions of the entity and consider potential compliance risks.

Following the ARC meeting, Officers reviewed the draft Charter as presented to the ARC (**Attachment 5**) and made amendments based on the Guideline Number 9 – Audit on Local Government and advice from the DLGSC.

A REVISED Audit and Risk Committee Charter was prepared by Officers for consideration (**Attachment 6**).

It is recommended that the REVISED Audit and Risk Committee Charter be adopted by Council.

IMPLICATIONS TO CONSIDER

Consultative:

Department of Local Government, Sport and Cultural Industries

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

Council delegates roles and responsibilities

Financial Governance

Internal Control

Legislative Compliance.

Risk Management

Financial:

Nil.

Legal and Statutory:

- r.16. *Local Government (Audit) Regulations 1996*
- r.17 *Local Government (Audit) Regulations 1996*
- r.5 *Local Government (Financial Management) Regulations 1996*
- s.1.7, s.5.20, s.7.12A, and s.7.9 *Local Government Act 1995*

[*Audit in Local Government – operational guidelines for Audit Committees*](#)

Risk related:

This report mitigates the following risks:

Financial Management, Risk Management, Legislative Compliance and Internal Controls

Elevating risk management, internal controls, financial management, and legislative compliance practices is imperative to uphold the Shire’s commitment to excellence, transparency, and accountability. By prioritising these areas and implementing requisite actions, the governance framework will be fortified, and risks will be mitigated while fostering sustainable growth and development for our community.

The risk in Council not receiving the reports, using the current Shire of Toodyay Risk Matrix is moderate (5).

Recommendation 2 – Privacy and Responsible Information Sharing Legislation

There is a moderate risk should ARC and Council not be kept abreast of legislative updates or changes.

Audit Committee Charter

There is a risk of non-compliance if the Council was to proceed with adopting the Draft Charter as provided to the ARC (**Attachment 5**). The risk is considered a moderate (5) and high (15).

Workforce related:

Significant Officer time is involved in developing the Action Plan and continuing to make improvements that were addressed in the FMR Report.

A significant amount of Officer time is also required towards the completion of all the milestones for the PRIS legislation.

VOTING REQUIREMENTS

Simple Majority

Clarification was sought about the minutes of 7 February 2024 that were confirmed at the 14th Feb meeting – identifying that two members were present and not recorded.

Cr Prater moved the Officer's Recommendation as follows:

That Council receives the minutes of the Audit and Risk Committee Meeting from their meeting held on 14 February 2024 (Attachment 1)

Cr Dival seconded the motion.

Clarification was sought.

Cr Madacsi moved an amendment to the motion as follows:

That the words "subject to the inclusion of two councillors in observance at the meeting dated 7 February 2024" be included after the words "Attachment 1".

Further clarification was sought.

The mover and seconder of the motion did not object to the amendment.

The motion was put.

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM108/03/24

MOVED Cr J Prater

SECONDED Cr S Dival

That Council receives the minutes of the Audit and Risk Committee Meeting from their meeting held on 14 February 2024 (**Attachment 1**) subject to the inclusion of two councillors in observance at the meeting dated 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

ARC RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM109/03/24

MOVED Cr J Prater

SECONDED Cr S Dival

That Council:

1. Receives the Final Report from Moore regarding the Review of Financial Management, Risk Management, Legislative Compliance and Internal Controls (**Confidential Attachment 2**).
2. Requests the CEO to develop and provide an action plan to respond to the actions contained within the Final Report from Moore for consideration and review by the ARC at their March 2024 meeting.

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

ARC RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM110/03/24**MOVED** Cr M McKeown**SECONDED** Cr J Prater

That Council notes the Officer's Report relating to Privacy and Responsible Information Sharing legislation recently introduced.

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**PROCEDURAL MOTION/COUNCIL RESOLUTION NO. OCM111/03/24****MOVED** Cr S Dival**SECONDED** Cr R Madacsi

That the meeting proceed to the next item of business (Agenda Item 9.5.3 ARC Recommendations from Meeting held on 6 March 2024) at 2.43pm in accordance with Standing Order 10.1(a).

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 2**

That Council:

1. Notes the Audit and Risk Committee recommendation made at their meeting held on 14 February 2024; and
2. Adopts the REVISED Audit and Risk Committee Charter as attached (**Attachment 6**) to this report.
3. Requests the CEO make typographical amendments to the Audit and Risk Committee Charter, including formatting to ensure its consistency with the Corporate Documents Policy.

9.5.3 ARC Recommendations from Meeting held on 6 March 2024

Date of Report:	9 March 2024
Applicant or Proponent:	Audit and Risk Committee
File Reference:	COC2
Author:	M Rebane – Executive Assistant
Responsible Officer:	T Bateman – Acting CEO
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. Audit and Risk Committee Minutes of meeting held on 6 March 2024; ⇒ 2. 2023 Compliance Audit Return; ⇒ 3. CURRENT Local Government Payments and Gifts to Members Policy; ⇒ 4. REVISED Local Government Payments and Gifts to Members Policy; ⇒ 5. Datascope Migration Action Plan (confidential) Section 5.23(2) <i>(f)(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> <i>(f)(ii) a matter that if disclosed, could be reasonably expected to endanger the security of the local government’s property (under separate cover)</i> 6. Implementation Quote; (confidential) Section 5.23(2) <i>(e)(ii) 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. (under separate cover)</i> 7. REVISED Risk Management Framework; ⇒ 8. REVISED Risk Management Policy; ⇒ 9. DRAFT Risk Assessment & Improvement (Action) Plan; (confidential) Section 5.23(2) <i>(f)(i) a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting,</i>

	<p><i>investigating or dealing with any contravention or possible contravention of the law.</i></p> <p><i>(f)(ii) 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 receive the minutes of the Audit and Risk Committee (ARC) Meeting held on 6 March 2024 and to consider the recommendations made by the ARC at that meeting (Refer to **Attachment 1**).

BACKGROUND

The ARC met on 6 March 2024 and considered the following Officer reports:

- (a) 4.4 Compliance Audit Return 2023;
- (b) 4.2 Local Government Payments and Gifts to Members Policy;
- (c) 4.3 Update on the Datascape Migration Project;
- (d) 4.1 Records Management Project 2023/2024;
- (e) 4.5 Risk Management Updates; and
- (f) 4.6 Risk Assessment and Improvement Plan.

COMMENTS AND DETAILS

In addition to the above items, ARC resolved the following as a result of receiving two resignations from deputy members:

That Council requests the CEO to review procedures for the appointment of deputy members of committees in accordance with legislative requirements.

Appointment of members to committees is covered within the legislation which provides that following ordinary elections, Council:

1. Must establish the Audit Committee - with membership of 3 or more persons, by Absolute Majority, and appoint committee members and deputies. [Legislative references: s.7.1A, s.5.8, s.5.9, s.5.10, s.5.11A, and s.5.11 of the Local Government Act 1995](#); and
2. May establish committees (other than Audit) of 3 or more persons, by Absolute Majority, and appoint committee members and deputies. Each Elected Member is entitled to be a member of at least one committee. [Legislative reference: s.5.8, s.5.9, s.5.10, s.5.11A, and s.5.11 of the Local Government Act 1995](#)

In the past, deputy Council Members have been appointed under s.5.11A of the legislation to the degree that they are appointed to replace any of the members who have been appointed primary members, however the legislation requires Council to appoint deputy members to a primary member of a specific committee, and if more than one person is nominated as a deputy for one, or for all members, there needs to be an order of preference as part of Council's decision to appoint deputy members. Officers have provided a report to the March 2024 Council meeting. Please refer to that report for further information.

Recommendations made by the Committee connected with Officer Reports are explained below.

(a) 4.4 Compliance Audit Return 2023 (Refer to Attachment 2)

Local governments are required by legislation to complete an annual Compliance Audit Return by 31 March each year. The Compliance Audit Return (CAR) is a checklist of the Shire of Toodyay's (the Shire) statutory compliance with the *Local Government Act 1995* and its Regulations, which focuses on high-risk areas of statutory reporting as prescribed in Regulation 14 of the *Local Government (Audit) Regulations 1996*.

The Department of Local Government, Sport and Cultural Industries provides the questions in the CAR to all local governments. The questions contained in the Compliance Audit Return have been responded to by Officers.

The return was presented to the ARC and a recommendation made. It is recommended that Council resolve the ARC's recommendation.

(b) 4.2 Local Government Payments and Gifts to Members Policy

Officers have reviewed the current policy (**Attachment 3**), giving consideration to the FMR recommendations and recent changes to the Act and regulations. The detail of the Officer's review of this policy is contained in the report that was provided to the Audit and Risk Committee at its meeting held on 6 March 2024.

The policy was revised to provide clarity in reference to the annual determination made by the Salaries and Allowances Tribunal as recommended in the FMR Review, and incorporated recent changes to the Act such as payments made to Committee Members of the following Committees:

- Audit and Risk Committee;
- Environment Advisory Committee; and
- Heritage Advisory Committee

When the Audit and Risk Committee Members were asked to review the REVISED Policy they requested that Clause 4 be amended as it was different to the current policy.

Officers reviewed the current SAT Determination which states:

7.3 Annual Allowance for a Deputy Mayor, Deputy President Or Deputy Chair

1. *The percentage determined for the purposes of section 5.98A(1) of the LG Act is 25 per cent.*
2. *If the office of mayor or president is vacant under section 5.34(a) of the Local Government Act 1995, and the deputy performs the functions of mayor or president for a period of no less than four months, the deputy will be entitled to receive the mayor or president allowance according to the applicable local government band in 7.2 of the Determination.*

Having reviewed the above determination, and the provisions of the *Local Government Act 1995* (the Act), Clause 4 was amended. In addition to that change, the headings of the policy were amended to bring them into line with the wording in the SAT Determination. References to the correct sections in the Act were also amended.

The REVISED policy is provided at **Attachment 4** and is recommended for adoption.

(c) 4.3 Update on the Datascope Migration Project

The Shire resolved to transition to new software in 2018.

For various reasons including significant staff changeover, reduced capacity and resources, and COVID-19, the transition was especially difficult. Officers report to the Audit and Risk Committee and Councillors regularly to provide an update on the ongoing challenges and the remaining aspects requiring attention

The Datascape Migration Action Plan (**Attachment 5**) was provided to the ARC in December 2023. The Shire and Datacom have dedicated significant resources to work through the actions identified in the plan.

It is recommended that Council resolve the Committee's recommendation.

(d) 4.1 Records Management Project 2023/2024;

In 2018, an assessment was made of the Shire's existing ICT infrastructure, prompting the decision to move to a cloud-based Enterprise Software solution. The transition to Datascape commenced in 2019 with the goal of decommissioning SynergySoft as it was coming to end-of-life and transferring records management to SharePoint. Currently, the Shire's corporate records continue to be managed in Synergy Soft.

As part of a 5-year Record Keeping Systems Review, the Shire is required to undertake a review of the efficiency and effectiveness of the organisations record keeping systems ensuring that records and documents are properly kept. The evaluation raised concerns regarding compliance with the State Records Act and, after seeking advice from external consultants, SharePoint is not seen as a sustainable choice as previously thought.

Officers have reviewed alternative, fit-for-purpose records management systems and are proposing to implement OpenText Content Manager (CM). Other options considered included Altus Records and TechOne, in addition to the existing SynergySoft and SharePoint options. CM is specifically designed for records management and manages the lifecycle of records from creation to disposal. Additionally, CM is built to comply with legislation and manage security and access levels appropriately.

The project scope includes implementation of the software including system configuration, training of staff in the configuration and use of the Content Manager software and ongoing software support and integration with Datascape (**Confidential Attachment 6**).

Significant work has commenced in reference to the management of data, security, access to records and policies for retention and disposal. Preliminary training has been provided to staff in relation to the transition and moving forward, records training will form part of the organisation's annual training schedule.

It is recommended that Council resolve the Committee's recommendation.

(e) 4.5 Risk Management Updates

Please note that the current risk management framework was an attachment to the agenda of the Audit and Risk Committee. It has not been included with this report due to its size.

The REVISED Risk Management Framework 2024 (RMF) is provided (**Attachment 7**).

The revised RMF was reviewed by Shire Officers and updated to reflect the most recent Australian Standard for Risk Management, ISO 31000:2018.

The REVISED Risk Management Framework was reviewed by LGIS with the following notes:

- the framework relies on the development of risk profiles.
- the proof of adequacy of the framework lies in the implementation and whether risks are being managed.
- the framework is consistent with what we see across the member base and in the main follows the principles identified in ISO31000.
- the Shire has chosen to use its risk acceptance criteria as its risk appetite.

The risk acceptance criteria was amended by Officers following LGIS advice so that *extreme risk* was unacceptable.

The REVISED Risk Management Policy is provided (**Attachment 8**).

The risk acceptance criteria in the current Risk Management Policy was developed and endorsed by Council on 24 Aug 2021 (CRN: 175/08/21). The risk acceptance criteria in the REVISED Risk Management Policy will mirror the criteria in the RMF.

It is recommended that the REVISED Risk Management Framework and policy be recommended for adoption by Council.

(Please note that the two recommendations made by the Committee have been merged due to software limitations).

(f) 4.6 Risk Assessment and Improvement Plan (Refer to Attachment 9)

In August 2023, the Shire President and Chief Executive Officer (CEO), met with representatives of the Department of Local Government, Sport and Cultural Industries (DLGSC) to discuss the outcomes of the 2021 audit and issues raised by the Auditor.

Officers have met with DLGSC representatives monthly to provide an update on the progress of the Plan which has been delayed due to several factors.

The Shire engaged Moore Australia to assist the CEO to undertake reviews on the appropriateness and effectiveness of the Shire's risk management, internal controls and legislative compliance systems and procedures as required by the Local Government (Audit) Regulations 1996 (Regulation 17). At the same time, an examination of the Shire's financial management systems and processes was carried out pursuant to Local Government (Financial Management) Regulation 5(2)(c).

Officers have used the Risk Assessment Report developed by Moore Australia as the basis for the draft Risk Assessment and Improvement Plan (the Plan) with columns added to capture comments and progress, articulation of the specific officer responsible for each action, and a timeframe for completion.

In addition, following feedback from the DLGSC and the ARC, several 'additional' actions have been added to the Plan which was placed on Teams for Councillors and ARC members to provide comment on before the OCM.

Officers are proposing that the Plan is reviewed by the ARC quarterly and recommended to Council before updates are provided to the DLGSC.

It is recommended that the ARC recommendation be resolved by Council.

IMPLICATIONS TO CONSIDER

Consultative:

Datacom

Department of Local Government, Sport & Cultural Industries

Dry Kirkness
Information Proficiency
Office of the Auditor-General
Other Local Governments
WALGA
XL2

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

9.1.4. Undertake regular reviews of organisation and Council culture and implement initiatives to improve.

9.1.5. Establish a Risk Working Group.

O9.2. Govern Shire finances, assets, and operations responsibly.

Policy related:

Disposal of Property Policy (FIN12).

Attendance at Events Policy (GOV14).

Continuing Professional Development Policy (GOV9).

Council Delegates Roles and Responsibilities Policy (GOV12).

Risk Management Policy (ADM18).

Internal Control Policy (ADM19).

Legislative Compliance Policy (ADM20).

Financial:

Records Management System

There will be a one-off implementation cost for Content Manager of \$90,182 plus ongoing annual maintenance fees of \$5,976. Currently, the Shire pays approximately \$40,000 annually for 10 SynergySoft software licences and \$2,725 for an annual AvePoint licence.

Whilst there is a significant implementation cost to consider, ongoing costs for records management will reduce from approximately \$43,000 to \$6,000.

Officers are proposing to include these costs for consideration during the mid-year budget review.

Local Government Payments and Gifts to Members Policy

The current determination stipulates the minimum and maximum allowance to be paid to committee members.

The range for the Shire of Toodyay as a Band 3 Local Government is set at \$0 to \$215 per meeting. Officers are proposing that the fee payable is set at 85% of the maximum, consistent with the allowances paid to Elected Members.

Should Council adopt the fee as recommended, the financial impact on the annual budget would equate to approximately \$5,000 based on quarterly meetings.

Datascope

Expenditure above existing budget allocations will be managed at the mid-year budget review. Datacom has provided significant resources and continue to work with the Shire to address these outstanding actions.

Implementation Plan

The Plan has been developed on the assumption that actions are completed in-house within the current organisational structure and budgeted resources. In the event of ongoing staff vacancies, there may be a requirement to engage contractors to meet timeframes detailed in the Plan. Additional funding requests, if required, will be presented to Council for consideration and approval.

Legal and Statutory:

Regulation 14 of the Local Government (Audit) Regulations 1996

Local Government Act 1995

Salaries and Allowances Tribunal Determination

Division 8 Local Government payment and gifts to members

State Records Act 2000

State Records Principles and Standards 2002 - Principle 6

Record Management Plan

Local Government Act 1995 - s.5.41(h)

Risk related:

This report mitigates the following risks:

Compliance matters

The requirement to lodge an adopted Compliance Audit Return with the DLGSC is a legislative obligation. Failure to do so exposes the Shire to significant risk.

Policy update

The review of this policy is the role of Council and is essential to good governance as it demonstrates the Shire's ability to adapt to changing circumstances to ensure that its policies remain contemporary, compliant with existing legislation, and relevant.

If the Shire chooses to delay the review of this policy, it is considered a medium risk.

Update on Datascope Management

There is a low risk in Council not accepting the recommendation from the ARC which is why the recommendation is being brought to Council. The ARC is established by Council pursuant to Section 7.1A of the Act. It is the ARC's role to assist Council and make recommendations to Council on matters that Council has a strategic interest in.

Record Management System

There is a significant compliance risk of not meeting the record keeping requirements as stipulated in the *State Records Act 2000*.

Reputational and financial risks also exist in the event the Shire is forced into migrating to a new system prematurely without allocating resources to the project, therefore leading to reputational risk in the event records are not managed appropriately.

Risk Updates

Elevating risk management, internal controls, financial management, and legislative compliance practices is imperative to uphold the Shire’s commitment to continuous improvement. By prioritising these areas and implementing requisite actions, the governance framework will be fortified, and risks will be mitigated while fostering sustainable growth and development for our community.

The Moore Australia reports clearly identified the need for improvement to the Shire’s risk management processes and recommended they be reviewed and updated. There is a moderate (3) risk presently, however inaction may mean that the risk is increased to Major (4).

Local Government Payments and Gifts to Members Policy

The review of this policy is the role of Council and is essential to good governance as it demonstrates the Shire’s ability to adapt to changing circumstances to ensure that its policies remain contemporary, compliant with existing legislation, and relevant.

If the Shire chooses to delay the review of this policy, it is considered a medium risk.

Workforce related:

The workforce related risks associated with this report are as follows:

Datascape transition

The transition to Datascape and associated challenges have had a significant impact on the Shire staff.

Records Management system

Information Proficiency will provide qualified technical consultants for this project to cover training of staff in the configuration and use of the Content Manager software.

Significant Officers time will be required for the implementation testing and training of the new system.

Implementation of the RMF and policy

Collaboration across the organisation is required to focus on the actions contained in the Audit Reg 17 report as well as developing the Shire’s risk register, in line with the principles and procedures contained in the RMF. Additional Officer time will be required in order that risks are clearly communicated throughout the organisation.

Improvement Plan

There is significant officer time required to deliver the actions identified in the Plan. Currently, the Shire is experiencing extreme challenges in attracting and retaining staff which must be taken into account during regular reviews.

VOTING REQUIREMENTS

Absolute Majority

Cr Madacsi departed Council Chambers at 2.44pm.

Cr Madacsi returned to Council Chambers at 2.45pm.

Cr Dival moved the Officer’s Recommendation 1 as follows:

That Council receives the minutes of the Audit & Risk Committee Meeting held on 6 March 2024 (Attachment 1).

Cr Prater seconded the motion.

Clarification was sought.

Cr Madacsi moved an amendment to the motion as follows:

That the words “subject to the inclusion of two councillors in observance at the meeting dated 14 February 2024” be included after the words “Attachment 1”.

Further clarification was sought.

The mover and seconder of the motion did not object to the amendment.

The motion was put.

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM112/03/24

MOVED Cr S Dival

SECONDED Cr J Prater

That Council receives the minutes of the Audit & Risk Committee Meeting held on 6 March 2024 (Attachment 1) noting there were two observers at the meeting in March 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 BY ABSOLUTE MAJORITY

ARC RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM113/03/24

MOVED Cr S Dival

SECONDED Cr J Prater

That Council adopts the attached Compliance Audit Return for the period 1 January 2023 to 31 December 2023, pursuant to Regulation 14(3) of the *Local Government (Audit) Regulations 1996* as attached (**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

OFFICER'S/ARC RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM114/03/24**MOVED** Cr M McKeown**SECONDED** Cr J Prater

That Council:

1. Adopts the REVISED Local Government Payments and Gifts to Members policy as attached to this report (**Attachment 4**); 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**ARC RECOMMENDATION 3/COUNCIL RESOLUTION NO. OCM115/03/24****MOVED** Cr J Prater**SECONDED** Cr S Dival

That Council:

1. Notes the progress made to date on the Datascape transition.
2. Requests the CEO to provide quarterly updates including provision of completion dates and budgetary implications until the tasks identified on the Datascape Migration Action Plan have been finalised.

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 Acting CEO provided an overview in regard to this item.

Clarification was sought.

Cr Dival moved ARC Recommendation 4.

Cr Duri seconded the motion.

The motion was put.

ARC RECOMMENDATION 4/COUNCIL RESOLUTION NO. OCM116/03/24**MOVED** Cr S Dival**SECONDED** Cr C Duri

That Council:

1. Supports the implementation of a new, fit-for-purpose records management system, and the allocation of additional funds as part of the mid-year budget review of \$96,158.
2. Requests the CEO to monitor the expenditure and inform the Audit and Risk Committee on a regular basis, of the progress of the project implementation with regard to schedule and budget.

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**ARC RECOMMENDATION 5/COUNCIL RESOLUTION NO. OCM117/03/24****MOVED** Cr J Prater**SECONDED** Cr S Dival

That Council:

1. Receives the Risk Assessment (Audit Regulation 17) Report from Moore (**Confidential Attachment 9**);
2. Notes the actions contained in the report;
3. Requests the CEO report regularly to the Audit and Risk Committee on the actions undertaken toward the completion of the risks identified in the Report.

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

ARC RECOMMENDATION 6 & 7/COUNCIL RESOLUTION NO. OCM118/03/24**MOVED** Cr M McKeown**SECONDED** Cr R Madacsi

That Council:

1. Adopts, by absolute majority, the REVISED Risk Management Framework (**Attachment 7**) as amended;
2. Adopts, by absolute majority, the REVISED Risk Management Policy (**Attachment 8**); and
3. Requests the CEO make any typographical amendments to the Risk Management Framework and Risk Management Policy as required.

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/ARC RECOMMENDATION 8/COUNCIL RESOLUTION NO. OCM119/03/24****MOVED** Cr J Prater**SECONDED** Cr S Dival

That Council:

1. Endorses the draft Shire of Toodyay Risk Assessment Improvement Plan developed following finalisation of the report on the Review of Financial Management, Risk Management, Legislative Compliance and Internal Controls.
2. Requests the CEO to forward a copy of the Improvement Plan to the Department of Local Government, Sport and Cultural Industries and the Office of the Auditor General; and
3. Requests the CEO to provide quarterly updates to the Audit and Risk Committee on the actions taken, including placing a live version of the plan on the teams environment for the ARC.

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

ARC RECOMMENDATION 9/COUNCIL RESOLUTION NO. OCM120/03/24**MOVED** Cr S Dival**SECONDED** Cr J Prater

That Council requests the CEO to review procedures for the appointment of deputy members of committees in accordance with legislative requirements.

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 from the February 2024 Council Meeting**

The following question on notice was received from Councillor Prater.

Question from Cr Prater

On page 20 the area approved for Stage II A1 Gravel application says the additional bond applied was not collected at the time. What was the reason why it was not collected at the time?

Response from Executive Manager Development and Regulation

This has been identified as a possible compliance issue by the Shire. The Shire is currently working with the applicant and reviewing the application of rehabilitation bonds in general. The applicant has already paid a rehabilitation bond for the other extractive industry operation on the land.

VOTING REQUIREMENTS

Simple Majority

Clarification was sought.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM121/03/24

MOVED Cr C Duri

SECONDED Cr M McKeown

That the response to the questions raised by 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 raised by Cr Madacsi

Cr McCormick departed Council Chambers at 3.03pm

The following questions on notice were received from Councillor Madacsi on 14 March 2024.

Background

This memorandum is notice, in accordance with Section 6.1(1) of the Shire of Toodyay Standing Orders of questions I wish Council to consider at the next Ordinary Meeting of Council as follows:

At the Ordinary Council Meeting of the 28 February 2024, I asked several questions and the answers to Question 2 were provided on page 126 of the Unconfirmed Minutes –

Question 2

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?
- (b) without a formal decision of the Audit and Risk Committee?

Question

Please explain why the reply to question 2(a) included, *“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”* when -

- (a) the two council observers were told in front of the committee and attending Shire Staff, that the meeting would not commence until they left, and
- (b) Standing Order 5.13(2) stated - A member may attend, as an observer, any meeting of a committee of which he or she is not a Member or a Deputy of a Member but is to sit in an area set aside by the CEO for observers separated from the committee members. Which is what had occurred.

Response from the Shire President

I was at the discussion before the meeting opened and the Presiding Member did not make a decision. There was discussion regarding deputy members and my clear recollection of what happened is that you voluntarily left the room before the meeting started.

Question

What is the relevance of the legitimacy of the appointment of deputy committee members, to the answer as to why the observers were asked to leave?

Response from the Shire President

The Councillors who thought they were deputies left the meeting voluntarily.

Question

Why was the decision made outside the committee meeting and were all committee members consulted?

Response from Shire President

No decision was made.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM122/03/24

MOVED Cr J Prater

SECONDED Cr S Dival

That the responses to the questions raised by Councillor Madacsi 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

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

13.1 MEMBERS

Nil.

Cr McCormick returned to the Council Chambers at 3.15pm.

13.2 EMPLOYEES

9.1.1 Lot 11 Chitty Road Hoddys Well - Temporary extension of Development Approval and Extractive Industry Licence - Midland Brick

Date of Report:	26 March 2024
File Reference:	11CHI/A4273/EXT1
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	Item 9.5.1 OCM 25 March 2014
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. Item 9.5.1 OCM 25 March 2014; 2. Email correspondence between the Shire and WALGA - 26.3.24; 3. Extractive Industry Management Plan for Brikmakers - October 2013.

SUMMARY

- Applicant:** Midland Brick
- Owner:** SJ Farrell & ML Farrell
- Proposal:** Temporary extension of Development Approval and Extractive Industry Licence.
- Location:** Lot 11 Chitty Road HODDYS WELL

PURPOSE OF THE REPORT

Council is requested to consider an application for a temporary extension to the existing development approval and extractive industry licence issued to Midland Brick to allow for the operation to remain compliant whilst a formal renewal application process takes place.

BACKGROUND

History

At the Ordinary Council Meeting on 25 March 2014, the Council granted development approval and an extractive industry licence to Brikmakers (now operating as Midland Brick) as part of a renewal of existing approvals for clay extraction operations at Lot 11 Chitty Road in Hoddys Well. For more details, please refer to **Attachment 1 – Item 9.5.1 OCM 25 March 2014**.

The Notice of Determination (Development Approval) and the Extractive Industry Licence paperwork list an expiry date of **2 April 2024** which reflected the ten-year period granted to Midland Brick in the resolution.

However, the signature at the bottom of each document from the Chief Executive Officer at the time is dated **5 August 2014**. Given the passage of time, it is unclear why there is such a delay in dates.

The Shire's Executive Manager Development and Regulation was contacted by the Officer dealing with approvals at Midland Brick on 25 March 2024 seeking clarification and the Shire's position on the two dates. To which written advice was provided stating that the date of expiry was confirmed as **2 April 2024**.

Issue

Given Midland Brick have been operating on the assumption that the expiry date is 5 August 2024, the application process for the renewal of this extractive industry has not commenced.

Thus, with the existing approvals due to expire on 2 April 2024, Midland Brick will be non-compliant after this time and effectively in breach of the *Planning and Development Act 2005* and the *Shire of Toodyay Extractive Industry Local Law*.

COMMENTS AND DETAILS

Midland Brick is in a predicament because of this issue with the dates. The company has written to the Acting Chief Executive Officer requesting that consideration be given to a two-month extension, and they have specified that the intent of the extension would not be for clay extraction but would allow the company to continue cartage to their manufacturing plants.

Historically, Midland Brick have demonstrated themselves to be good corporate citizens and have a good compliance history with the Shire. The Shire has been advised that a new renewal application is in its drafting phase and will be received for consideration in the near future. Given that there is no current application before the Shire, it is recommended that a longer extension of four months is granted. This will allow for any delays caused by reduced resourcing capacity.

IMPLICATIONS TO CONSIDER

Consultative:

Given the urgency of this request, no community or stakeholder consultation has been undertaken. In this instance it is not considered necessary as the future application will be required to undergo normal community consultation process.

However, the Shire has sought advice from the Western Australian Local Government Association (WALGA) on how best to approach this issue procedurally.

The particulars of this advice are noted further in this report under Legal & Statutory implications.

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.

Policy related:

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:

The process for amending a development approval is outlined in Clause 77 of the deemed provisions. The provisions outline that these changes are to be made in accordance with Part 8 of the provisions, i.e. as a normal application for development approval. Hence there would be, in normal circumstances, a requirement for the payment of standard development application fees. However, subclause (3) specifies that the local government may waive or vary a requirement in Part 8 or this Part in respect of an application if the local government is satisfied that the application relates to a minor amendment to the development approval. In this instance, as it is merely an administrative function, it is being treated in this manner.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development Regulations 2009

Planning and Development (Local Planning Schemes) Regulations 2015

Clause 77 of the Deemed Provisions deals with amending or cancelling development approval.

Subclause (1)(b) allows the local government to amend or delete any condition to which the approval is subject.

Shire of Toodyay Local Planning Scheme No. 4

Shire of Toodyay Extractive Industry Local Law

Part 4.3 sets out the provisions for renewal of a licence.

The Local Law is not considered fit for purpose to deal with this situation as, unlike the Deemed Provisions under planning, there is no mechanism in the Local Law to amend an existing Extractive Industry Licence. Accordingly, on the basis of the information the Shire has provided to WALGA, the advice received from is to set aside deciding under the Local Law and instead the decision-making process should be based on relevant planning considerations and dealt with as a Development Approval only. For more details please refer to **Attachment 2 - Email correspondence between the Shire and WALGA - 26.3.24**

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:

This process is administrative and of a temporary nature with minimal impact on staffing as a full renewal application will follow this at a later date.

VOTING REQUIREMENTS

Simple Majority

Clarification was sought.

The Shire President called for a motion to adjourn for ten minutes.

MOTION/COUNCIL RESOLUTION NO. OCM123/03/24

MOVED Cr S McCormick

SECONDED Cr S Dival

That the meeting be adjourned at 3.16pm and resumed at 3.26pm.

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 meeting resumed at 3.29pm.

The Executive Manager Development and Regulation provided an overview.

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM124/03/24

MOVED Cr S McCormick

SECONDED Cr J Prater

That Council, in accordance with Standing Order 4.5, considers Item 13.2.2 Lot 11 Chitty Road Hoddys Well - Temporary extension of Development Approval and Extractive Industry Licence - Midland Brick as new business of an urgent nature.

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 2

That Council

1. Notes the written advice received from the Western Australian Local Government Association on 26 March 2024 outlining an appropriate decision solution.
2. Pursuant to Clause pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, approves the development application for a clay extractive industry to be operated at Lot 11 Chitty Road in Hoddys Well, subject to the following conditions:
 - (a) Pursuant to Clause 72 of the deemed provisions, this approval is time limited to a period of four (4) months from the date of this approval.
 - (b) Development shall be carried out only in accordance with the terms of the application as approved herein, any approved plan as detailed in the document, Brikmakers Extractive Industries Licence Variation Application dated October 2013, (**Attachment 3 of this report**) including any amendments placed thereon by Council and except as may be modified by the following conditions:
 - (i) The location and total area of the excavation is to be limited to 21.5ha as depicted on the application;
 - (ii) The term of the Planning Approval is for four (4) months from the date of this approval;
 - (iii) The applicant shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire which are used by heavy haulage traffic associated with the clay 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 Applicant, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay Chief Executive Officer;

1. an audit of the condition of relevant roads prior to the commencement of the operation of the Facility;
 2. appropriate maintenance standards and associated requirements and responsibilities;
 3. the estimated average annual cost of road maintenance and repairs for the duration of operation of the Facility; and
 4. the amount of the contribution to such cost to be paid by the applicant.
- (iv) The proponent is to pay to the local government a bond or equivalent acceptable to the local government sufficient to secure the road maintenance and repair obligations contained in the approved Road Maintenance Plan, prior to the commencement of the development. The cash bond or approved equivalent is to be reviewed annually. The applicant will further be required to enter into an agreement with the Shire of Toodyay in relation to the above.
- (v) The Proponent is to pay to the Shire of Toodyay a proportionate sum, to the satisfaction of the Shire's Chief Executive Officer, for the undertaking of the required and recommended works as determined in the Road Safety Audit, Intersection of Fernie Road and Toodyay Road by Tony Shaw of Shawmac, dated 28 August 2013. Such payment will take account of the existing unexpended road contributions paid by the applicant;
- (vi) A Dieback and Disease Management Plan is prepared and implemented, to the satisfaction of the Shire of Toodyay Chief Executive Officer, prior to the commencement of development.
- (vii) A Water Management Plan is to be prepared by a suitably qualified professional which considers management of erosion, water use, identifies water supply, surface water management, stormwater management, displays catchments, identifies all water sources, and minimises any potential impacts on downstream users to the satisfaction of the Shire of Toodyay and the Department of Water.
- (viii) The Proponent to provide evidence that they have sufficient water supply available to be able to implement approved dust suppression activities.
- (ix) The Proponent obtaining all required environmental approvals from the Department of Environment Regulation including satisfactory resolutions of the concerns in relation to the wildlife corridor.
- (x) The proposal is to comply with the Department of Environment and Conservation (2011) publication "A guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites remediation and other related activities".
- (xi) Section 5.2 titled Rehabilitation is to be amended to incorporate a

monitoring program which establishes key performance indicators to determine that the rehabilitation program has been successful.

Conditions contained on existing Extractive Industry Licence approval to form conditions of development approval.

- i. The Proponent is to provide evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public road or such other land in the vicinity.
- ii. The applicant is required to provide to the local government a surveyor's certificate prior to the annual renewal fee 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.
- iii. The licensee 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 claim relating to any of the excavation and transport operations.
- iv. Working hours within the extraction area and transportation of materials shall be restricted to the hours between 7:00am and 5:00pm Monday to Friday (excluding public holidays) subject to further negotiation pending the outcome of current SAT mediation in relation to Morangup.
- v. All trucks entering the Shire of Toodyay shall comply with the Shire of Toodyay's Policy A.8 - Oversize Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- vi. All truck loads leaving the site with materials are to be covered.
- vii. The excavation site is to be rehabilitated in accordance with the approved Extractive Industry Licence Application dated October 2013 (or an alternate staging plan, referenced at Condition (n) below), the subject Lot and the Shire of Toodyay's Extractive Industry Local Law. 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 or if the excavation is not active for a period of 24 months (2 years) of operation or inactivity rehabilitation works must be undertaken.
- viii. Prior to the commencement of operations, the applicant shall provide a cash bond of \$258,000 to the Shire of Toodyay as a performance guarantee against the satisfactory completion of the rehabilitation of the site. 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. The bond is to be accompanied by a bonding agreement and written Authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. The Shire will recover the

bond, or part thereof as appropriate, for any costs to the Shire in completing and/or rectifying the outstanding works. Should the rehabilitation costs incurred by the Shire of Toodyay exceed the amount of the bond, the balance will be a debt recoverably from the licensee in accordance with the Shire of Toodyay Extractive Industry Local Law. The bond will include the bond held by the Shire for the existing extractive industry approval.

- ix. No blasting on the site is to occur without the written permission of the Shire of Toodyay.
- x. The excavation site is to be maintained in a safe manner and a secure gate is to be installed and kept locked when the site is unmanned to prevent access to the general public.
- xi. In the event the Proponent wishes to continue Operating under its present Development Approval it shall be required to advise the Shire of Toodyay when it has completed extracting clay from the currently approved 8ha to a depth of 15m within 60 days. A Plan and a certificate from a licensed surveyor will be required to certify the correctness of that advice. Or if it believes that that resource has already been extracted it should notify the local government in writing to determine that it is operating the extractive industry on the subject Lot under this approval.

Clarification was sought.

Cr Dival moved the Officer's Recommendation 2.

Cr Prater seconded the motion.

Cr Madacsi objected to the motion.

Debate commenced.

The motion was put.

OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM125/03/24

MOVED Cr S Dival

SECONDED Cr J Prater

That Council

1. Notes the written advice received from the Western Australian Local Government Association on 26 March 2024 outlining an appropriate decision solution.
2. Pursuant to Clause pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, approves the development application for a clay extractive industry to be operated at Lot 11 Chitty Road in Hoddys Well, subject to the following conditions:
 - (a) Pursuant to Clause 72 of the deemed provisions, this approval is time limited to a period of four (4) months from the date of this approval.
 - (b) Development shall be carried out only in accordance with the terms of the application as approved herein, any approved plan as detailed in the

document, Brikmakers Extractive Industries Licence Variation Application dated October 2013, (**Attachment 3 of this report**) including any amendments placed thereon by Council and except as may be modified by the following conditions:

- (i) The location and total area of the excavation is to be limited to 21.5ha as depicted on the application;
- (ii) The term of the Planning Approval is for four (4) months from the date of this approval;
- (iii) The applicant shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire which are used by heavy haulage traffic associated with the clay 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 Applicant, throughout the duration of the operation of the development to the satisfaction of the Shire of Toodyay Chief Executive Officer;
 1. an audit of the condition of relevant roads prior to the commencement of the operation of the Facility;
 2. appropriate maintenance standards and associated requirements and responsibilities;
 3. the estimated average annual cost of road maintenance and repairs for the duration of operation of the Facility; and
 4. the amount of the contribution to such cost to be paid by the applicant.
- (iv) The proponent is to pay to the local government a bond or equivalent acceptable to the local government sufficient to secure the road maintenance and repair obligations contained in the approved Road Maintenance Plan, prior to the commencement of the development. The cash bond or approved equivalent is to be reviewed annually. The applicant will further be required to enter into an agreement with the Shire of Toodyay in relation to the above.
- (v) The Proponent is to pay to the Shire of Toodyay a proportionate sum, to the satisfaction of the Shire's Chief Executive Officer, for the undertaking of the required and recommended works as determined in the Road Safety Audit, Intersection of Fernie Road and Toodyay Road by Tony Shaw of Shawmac, dated 28 August 2013. Such payment will take account of the existing unexpended road contributions paid by the applicant;
- (vi) A Dieback and Disease Management Plan is prepared and implemented, to the satisfaction of the Shire of Toodyay Chief Executive Officer, prior to the commencement of development.
- (vii) A Water Management Plan is to be prepared by a suitably qualified professional which considers management of erosion, water use, identifies water supply, surface water management, stormwater management, displays catchments, identifies all water sources, and

- minimises any potential impacts on downstream users to the satisfaction of the Shire of Toodyay and the Department of Water.
- (viii) The Proponent to provide evidence that they have sufficient water supply available to be able to implement approved dust suppression activities.
 - (ix) The Proponent obtaining all required environmental approvals from the Department of Environment Regulation including satisfactory resolutions of the concerns in relation to the wildlife corridor.
 - (x) The proposal is to comply with the Department of Environment and Conservation (2011) publication "A guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites remediation and other related activities".
 - (xi) Section 5.2 titled Rehabilitation is to be amended to incorporate a monitoring program which establishes key performance indicators to determine that the rehabilitation program has been successful.

Conditions contained on existing Extractive Industry Licence approval to form conditions of development approval.

- i. The Proponent is to provide evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public road or such other land in the vicinity.
- ii. The applicant is required to provide to the local government a surveyor's certificate prior to the annual renewal fee 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.
- iii. The licensee 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 claim relating to any of the excavation and transport operations.
- iv. Working hours within the extraction area and transportation of materials shall be restricted to the hours between 7:00am and 5:00pm Monday to Friday (excluding public holidays) subject to further negotiation pending the outcome of current SAT mediation in relation to Morangup.
- v. All trucks entering the Shire of Toodyay shall comply with the Shire of Toodyay's Policy A.8 - Oversize Vehicles and shall seek the approval of Main Roads Western Australia as appropriate.
- vi. All truck loads leaving the site with materials are to be covered.
- vii. The excavation site is to be rehabilitated in accordance with the approved Extractive Industry Licence Application dated October 2013 (or an alternate staging plan, referenced at Condition (n) below), the subject Lot and the Shire of Toodyay's Extractive Industry Local Law. 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 or if the excavation is not active for a period of 24 months (2 years) of operation or inactivity rehabilitation works must be undertaken.

- viii. Prior to the commencement of operations, the applicant shall provide a cash bond of \$258,000 to the Shire of Toodyay as a performance guarantee against the satisfactory completion of the rehabilitation of the site. 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. The bond is to be accompanied by a bonding agreement and written Authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. The Shire will recover the bond, or part thereof as appropriate, for any costs to the Shire in completing and/or rectifying the outstanding works. Should the rehabilitation costs incurred by the Shire of Toodyay exceed the amount of the bond, the balance will be a debt recoverably from the licensee in accordance with the Shire of Toodyay Extractive Industry Local Law. The bond will include the bond held by the Shire for the existing extractive industry approval.
- ix. No blasting on the site is to occur without the written permission of the Shire of Toodyay.
- x. The excavation site is to be maintained in a safe manner and a secure gate is to be installed and kept locked when the site is unmanned to prevent access to the general public.
- xi. In the event the Proponent wishes to continue Operating under its present Development Approval it shall be required to advise the Shire of Toodyay when it has completed extracting clay from the currently approved 8ha to a depth of 15m within 60 days. A Plan and a certificate from a licensed surveyor will be required to certify the correctness of that advice. Or if it believes that that resource has already been extracted it should notify the local government in writing to determine that it is operating the extractive industry on the subject Lot under this approval.

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

Voted Against: Cr M McKeown

MOTION CARRIED 6/1

14 CONFIDENTIAL BUSINESS**14.1 Deed of Release****OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM126/03/24****MOVED** Cr M McKeown**SECONDED** Cr J Prater

That Council in accordance with Standing Order 4.5, considers Item 14 Deed of Release as new business of an urgent nature at 3.47pm.

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

Cr McKeown moved a Procedural Motion as follows:

That:

- 1. the meeting be closed to the public in relation to Agenda Item 14.1 Deed of Release at 3.47pm in accordance with Standing Order 10.1(e);**

The Presiding Member advised, in accordance with Standing Order 10.9 that Points 2 of the motion would be stated as follows:

- 2. That 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 —**
 - (a) a matter affecting an employee or employees; and**
 - (b) the personal affairs of any person; and**
 - (c) 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; and**
 - (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and**
 - (e) a matter that if disclosed, would reveal —**
 - (ii) information that has a commercial value to a person; or**
where the trade secret or information is held by, or is about, a person other than the local government.

Cr Prater seconded the motion.

Clarification was sought.

The Procedural Motion was put.

PROCEDURAL MOTION/COUNCIL RESOLUTION NO. OCM127/03/24**MOVED** Cr M McKeown**SECONDED** Cr J Prater

That:

1. the meeting be closed to the public in relation to Agenda Item 14.1 Deed of Release at 3.47pm in accordance with Standing Order 10.1(e);
2. That 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 —
 - (a) a matter affecting an employee or employees; and
 - (b) the personal affairs of any person; and
 - (c) 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; and
 - (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and
 - (e) a matter that if disclosed, would reveal —
 - (ii) information that has a commercial value to a person; orwhere the trade secret or information is held by, or is about, a person other than the local government.

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 the public gallery and the Executive Managers to leave and requested that the Members, the Acting CEO and the Executive Assistant remain in the Chambers.

All members of the public departed the Council Chambers at 3.48pm.

The livestream from Council Chambers went behind closed doors at 3.50pm.

PROCEDURAL MOTION/COUNCIL RESOLUTION NO. OCM128/03/24**MOVED** Cr M McKeown**SECONDED** Cr R Madacsi

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 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

Discussion ensued behind closed doors.

PROCEDURAL MOTION/COUNCIL RESOLUTION NO. OCM129/03/24**MOVED** Cr R Madacsi**SECONDED** Cr J Prater

That Council resume Standing Orders at 4.29pm.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J PraterVoted Against: Nil**MOTION CARRIED 7/0****OFFICER'S RECOMMENDATION 2/COUNCIL RESOLUTION NO. OCM130/03/24****MOVED** Cr C Duri**SECONDED** Cr S Dival

That Council

1. Approves the Deed of Release as attached (**Attachment 1**); and
2. Appoints the Shire President as the Authorised person for the purposes of signing the Deed of Release.
3. Directs the Shire President to sign the Deed of Release on 28 March 2024.
4. Directs the Acting CEO to forward the Deed of Release to Mrs S Haslehurst after execution.

Voted For: Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, S Dival and J PraterVoted Against: Nil**MOTION CARRIED 7/0****MOTION/COUNCIL RESOLUTION NO. OCM131/03/24****MOVED** Cr M McKeown**SECONDED** Cr C Duri

That Council move from behind closed doors at 4.31pm.

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 Council Chambers were re-opened at 4.32pm.

The live-stream resumed at 4.32pm.

In accordance with Standing Order 5.2(7), the Presiding Member read aloud the following resolution for the benefit of members of the public:

OCM130/03/24 – Resolution made by Council in regard to the Deed of Release.

15 NEXT MEETINGS

Ordinary Council Meeting	24 April 2024
Agenda Briefing	17 April 2024
Environment Advisory Committee Meeting	10 April 2024

16 CLOSURE OF MEETING

The Shire President declared the meeting closed at 4.34pm.