



Ordinary Council Meeting

28 August 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.

Aaron Bowman

CHIEF EXECUTIVE OFFICER



Our Vision, Purpose and Values

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

Our Vision

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

Our Purpose

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

Our Values

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

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

Community Aspirations

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

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

Disclaimer

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

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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 30 August 2024.



Aaron Bowman

CHIEF EXECUTIVE OFFICER

Confirmed Minutes

These minutes were confirmed at a meeting held on 25 September 2024.

Signed: mv m k

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 Dival, Deputy Shire President, declared the meeting open at 1.00pm 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 Deputy Shire President read through other preliminaries.

2 RECORDS OF ATTENDANCEMembers

Cr M Dival	Deputy Shire President
Cr M McKeown	Shire President (<i>via zoom</i>)
Cr C Duri	Councillor
Cr R Madacsi	Councillor
Cr S McCormick	Councillor
Cr J Prater	Councillor
Cr D Wrench	Councillor (<i>arrived at 1.09pm</i>)

Staff

Mr A Bowman	Chief Executive Officer
Ms T Bateman	Executive Manager Corporate and Community Services
Mr H de Vos	Executive Manager Development and Regulation
Mr C Sullivan	Executive Manager Infrastructure, Assets & Services
Mr R Koch	CESM (<i>until 2.34pm</i>)
Mr M Werder	Project Manager (<i>until 2.34pm</i>)
Ms J O'Driscoll	Executive Support Officer
Mrs M Rebane	Governance Coordinator

Visitors

G Nelmes	B Foley	S Hefferon
A Erskine	B Ruthven	C Lefroy
T Fower	T Chrimes	M Noonan
A Muller	C de Vos van Steenwijk	
C Bird	S Buckinshan	P Ruthven

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 one disclosure of interest in the form of a written notice had been received prior to the commencement of the meeting as follows:

Cr Madacs declared an Impartiality Interest pursuant to Regulation 22 of the Local Government (Model Code of Conduct) Regulations 2021 in regard to Agenda Item 9.4.1 EOI to lease old Tennis Club Facilities. The nature of her interest is that she is associated with the applicant Toodyay Community Garden Inc who have lodged an interest in the item and her husband is associated with Moondyne Men which have also submitted an interest. The extent of her interest is that she is a committee member of Toodyay Community Garden Inc.

Mr Aaron Bowman declared an impartiality interest at 2.14pm pursuant to Regulation 22 of the Local Government (Model Code of Conduct) Regulations 2021 in regard to Agenda Item 9.3.4 Confirmation of Appointment of CEO as it is related to his appointment.

4 PUBLIC QUESTIONS**4.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

4.2 PUBLIC QUESTION TIME

A Lamas

Questions related to the proposed Extractive Industry Renewal – Clay Quarry Lot 11 Chitty Road, Hoddy's Well.

Question 1

What is the m² area of the road that will be use for the trucks to access? So in that way you can have an idea of the total cost etc.

Response provided by Executive Manager Infrastructure, Asses and Services:

The square meterage based on the route the Shire currently believes the trucks to be driving is applied as follows:

Approximately 8m wide seal x 9000m = 72,000m²

Whilst the cost estimates quoted appear to be correct – the sealing of the road is a capital works project which is based on the deterioration of the road for all traffic – not just one operator.

Question 2

Has a traffic study and road condition assessment and report been carried out? What is the current load capacity of the existing pavement condition? Will the existing condition of the road handle the increase in heavy traffic?

Response provided by Executive Manager Infrastructure, Asses and Services:

No traffic study or road condition assessment has been conducted by the Shire. Should defects appear on the road they will be repaired.

Question 3

Has a safety audit been conducted to guarantee that this will not have any effects on the public safety, especially the residents as I believe this road does not have centre line marking and the total width in some areas is less than 7.5/7m wide.

Response provided by Executive Manager Infrastructure, Asses and Services:

Whilst no safety audit has been carried out, the Shire has approached MRWA for a speed zone review for the Salt Valley Rd / Fernie Rd sector.

Question 4

What are the current traffic counts for peak season and off-peak season, including type of traffic, maximum speed, hrs, average speed and time?

Response provided by Executive Manager Infrastructure, Asses and Services:

The latest traffic count we have for Salt Valley Road is Feb/March 2024, located at SLK 8.4 km. Over the period from 6 February to 29 March the recording was 5959 vehicles in one direction and 5972 in the other. This equates to about 115 vehicles per day in either direction.

Question 5

What time the quarry open? any conditions on operating time? because I commute Toodyay Road 7 days a week and by 5.30am I have already passed 3 to 5 trucks going in that direction/ salt valley Rd? Are they allowing to go that early

Response provided by Executive Manager Infrastructure, Asses and Services:

There will be conditions of operating times which will be stipulated in the Council decision. This dictates how they can operate on Shire controlled roads. There is no control that we have on State roads such as Toodyay Road.

Saturday works have been considered and are being requested by the applicant. At this stage Midland Brick voluntarily does not operate on Saturday event days in the region. Ultimately this will be up to the Council to decide.

Question 6

How many trucks currently are using this road and has this been verified by traffic counters to make sure it matches the current conditions of the existing licence/ operations?

Response provided by Executive Manager Infrastructure, Asses and Services:

For this Midland Brick site, the current truck movements are estimated to be approximately 5 to 10 truckloads per hour on days when carting is occurring. Carting takes place for the equivalent of approximately 3.5 to 4.5 months of the year, spread out in cartage campaigns throughout the year. This equates to about 5,000 truckloads annually, although this number may vary depending on demand.

See previous answer regarding information on traffic counts.

Question 7

Will this provide job opportunities to the local community? What benefit will bring to the Shire apart from the 20cents per ton

Response provided by Executive Manager Infrastructure, Asses and Services:

This is up to Midland Brick – we have no control over local employment.

Question 8

Where will be the entry and exit road? Will, be they coming by Clackline- Toodyay Rd into Hoddy wells? Toodyay Road into Salt Valley Rd? Or Chitty Road into Great Eastern Hwy as per below map

Response provided by Executive Manager Infrastructure, Asses and Services:

This is up to the applicant what they choose.

Question 9

Shorter Route will be by Great Eastern Hwy – Chitty Road, has this been consider by the applicant?

Response provided by Executive Manager Infrastructure, Asses and Services:

This is up to the applicant what they choose.

A Lamas

Questions related to Newcastle Pedestrian Footbridge - Pile Replacement was a capital project for FY23/24.

Question 10

Why this project been conducted now during the wet season where ground conditions are not favourable, as the water level almost reach the top of some piles, also this process of the pile replacement require the excavation around the pile to expose exiting timber, then to cut back until timber is structurally sound for the steel pile to be screwed in and joined, after that the concrete footing reinforcement is installed with the form work for the final step which is the concrete pour.

Response provided by Executive Manager Infrastructure, Asses and Services:

The works were intended to be carried out during the summer months and were delayed due to the time required by the approval for ground disturbance under the Aboriginal Heritage Act.

The works were started prior to the heavy rainfall, it is not unusual to encounter ground water when conducting pile replacements due to the vicinity of the works to the Avon River.

Every mitigation is taken to ensure the work area is safe and clear of water to conduct the scope of works, which strictly adhere to the MRWA specifications for best practice.

Previous years such as 22/23 the water level from the river has flooded right up to Piers 4 & 5.

Question 11

Was the contractor able to get to the bottom of the pile to inspect the pile and cut as required?

Response provided by Executive Manager Infrastructure, Asses and Services:

Yes

Question 12

Was the contractor able to join the new steel pile without dewatering and with a clear view/vision to conduct the works?



Response provided by Executive Manager Infrastructure, Asses and Services:

The contractor removed the deteriorated section of the timber pile, then performed sectional cuts until finding structurally sound timber. The new pile is fitted with either a steel base plate, welded on site once the new pile is cut to length or with Equal Angles bolted to the new pile. Both then require deck spikes driven through the allocated holes drilled onsite, spikes driven to meet the existing timber pile. The pile is then fitted with rolled SL81 mesh and Reo bar overlapped as per the spec (prefabricated), twinned and tack welded to the new pile. Then fitted with the fabricated form prior to encasement with MRWA specification 40MPA concrete with a slump of 20 mm, the specs call for the form to remain in place for a minimum of 72 hours prior to removal. The water level was minimal during this stage and did not impact the curing, if anything it aids with moisture control to stop any unwanted fast curing causing cracking. Due to the heavy slump the chances of water ingress are minimal.

Question 13

Could you please provide some pictures of the process to see how this was joined and how the concrete form work and concrete pour was done?

Question 14

Is there any compromise in the curing time and strength of the concrete foundation? As the concrete require a curing period of at least 7 days and I believe due to the water levels the concrete foundation was submerged under water at all the time?

Response provided by Executive Manager Infrastructure, Asses and Services:

Refer to the above response in relation to concrete curing time.

Question 15

Is there going to be any variation or additional cost to the Shire?

Response provided by Executive Manager Infrastructure, Asses and Services:

There is no additional cost to the Shire in relation to delay, the additional cost is from the additional timber pier that needed to be replaced during the works as this pier was found to have failed and was no longer taking load. This became apparent from the termite inspection of the bridge substructure that was urgently carried out as soon as the contractor notified the Shire of the discovery of active termite evidence.

Question 16

Due to the ground disturbance and machinery tracking on the wet ground, existing levels on the riverbank has changed and now water is deviating closer to the riverbank which potentially will increase the risk of erosion at the riverbank and near piles, is the contractor going to come back and clean all the excess dirt and untidy site ?

Response provided by Executive Manager Infrastructure, Asses and Services:

Regrading of the site area and removal of debris was completed as soon as the weather allowed this activity

C Bird

Question 1

When will a decision be made on the lease of the reserve R21797 14 Fiennes Street Toodyay?

Response from the CEO:

That is for consideration today by Council. The recommendation mentions the Facilities and Buildings review, which would take approximately six months.

B Ruthven

Question related to Special Meeting held on 7 August 2024

Question 1

Resolution 231/08/24 included in part (b) that the Council will *approve the total reward package valued at \$245,496 being 85% of the maximum allowable and calculated in accordance with the 2024 Salaries and Allowance Tribunal Local Government Determination Band 3 range*. That was accepted by an absolute majority.

The next resolution in part 1(a) contradicts that previous resolution by including the words “progress the contract offer with the recommended candidate B for the position of CEO within the salary range agreed by Council and up to the amount of the Total Reward Package for SAT Band 3 to the value of \$288,817. That is an increase of \$43,421. It is substantially different from the previous resolution. Can you explain why one resolution contradicts the other?

The Shire President deferred to the CEO.

Response from the CEO:

It does not contradict although I acknowledge the wording could have been clearer. In the first recommendation the resolution was that they could enter into a contract of \$245,496. That would allow the deputy president to work with the candidate, being myself, for an amount of that. If that offer was rejected and further negotiations were to have occurred, as per the previous council resolution at the special council meeting, being a Tier 3 local government, the salary range was up to \$288,817. If the contract was not entered into for \$245,496 that would have had to come back to a Council Meeting again but it could only ever have been negotiated up to the range of the Tier 3 local government.

Question 2

Why have the resolution of \$245,496 if that was not going to be adhered to?

Response from the CEO:

Council has to agree to a certain amount. That amount they agreed to was \$245,496. That offer was then presented to the candidate; being myself.

If the candidate, being myself, didn't accept that then further negotiations could have occurred up to the maximum band for a Tier 3 local government. That was not required as the \$245,496 was agreed to and was what the Council had previously determined as the amount they would offer.

G Nelmes

Questions regarding Agenda Item 9.4.1

Question 1

At the end it says it is not unreasonable to defer the decision given the historical significance of the site as well as the issue of future development of the site being hampered by the existence of archaeological remains. My question is I note you are concerned about the archaeological significance to the land but I am not sure you are aware or not, but ten years ago extensive excavation was undertaken to provide lighting poles and backboard poles and underground cabling to all the lights over there on the synthetic courts. I am wondering why it is a concern now when ten years ago it was not a concern.

Shire President response:

I cannot answer for what happened ten years ago but in terms of what is happening now we are aware of the archaeological remains over there so we are just making sure we take this into consideration as part of any discussion of land use for that wider area.

A Walker

Questions in regard to Item 9.1.4

Question 1

In light of conversations I have had over the past week I would like this matter to be held in confidence behind closed doors as security breaches have already occurred from having information published. Is that possible?

Shire President response:

Council will go behind closed doors for that particular item and we will invite you to stay as part of the discussion of that item.

B Ruthven

Questions regarding the Statement of Comprehensive Income contained in the separate attachment.

Question 3

It shows against last years budgeted figures the Fees and Charges this year increase of \$292,000 approximately. Where did that money come from?

Executive Manager Corporate and Community Services response:

For the most part the increase in Fees and Charges related to income estimated to be collected from Toodyay Recreation Centre as the Shire has now taken over management.

Question 4

Employee costs: last year the budgeted figure was \$4,107,000. This year gone up by over 30% to \$5.33m. Can you explain why?

Chief Executive Officer response:

There are a number of reasons why such as: a 3.5% increase for all staff, and a 0.5% increase for superannuation; \$353,000 is for the staffing costs at the Toodyay Recreation Centre; \$84,000 is for the HR position that got taken out of the budget last year; \$41,000 is for a new position, being a trainee for the depot; a shared resource position we have with the Shire of Victoria Plains which Council approved after the budget was adopted. There is also roughly \$82,000 for Community Resource Centre staff which we will get money back from that as well.

Question 5

Materials and contracts has gone up by \$420,000. What is involved in that?

Executive Manager Corporate and Community Services response:

There are a number of large operating activities within the budget this year that are out of the ordinary. As an example we have a housing project study \$150,000. There are some other projects (e.g. the mitigation activity fund area has balanced out in this year's budget). I would have to refer to my notes for specific projects.

Question 6

Utility charges budgeted to go up by \$170,000 which seems a lot. Why has it increased by that much?

Executive Manager Corporate and Community Services response:

We have been able to identify the expected costs for the Toodyay Recreation Centre. Prior to this year they had been included in materials and contracts as a payment going out to the previous contractor. Now we can identify the water and electricity costs which have added to the figure.

Question 7

Notes to and forming part of the budget: assets to be acquired and/or disposed of during the year. Buildings (specialised) listed as \$340,000 anticipated expenditure. What is this relating to?

Executive Manager Corporate and Community Services response:

Some of the projects in this area related to the racecourse buildings carried forward from last year of \$200,000; and \$100,000 subject to funding or Memorial Hall; and some other minor projects including Duke St toilet renewals for \$35,000.

Question 8

Plant and Equipment \$1.1million. Last year the budget was \$240,000. What is included in this?

Chief Executive Officer response:

There are a number of items. Predominantly there is a \$470,000 grader as a substantial purchase and there are some other minor purchases as well in that.

Question 9

Page 18 of document on website: There is an increase of \$1.1m in property, plant and equipment however there is a reduction of \$1.1m in Infrastructure spending. Why has infrastructure planning dropped?

Chief Executive Officer response:

Taken on notice.

Question 10

Page 23 for the Reserve Accounts: Asset development \$200,000 been taken out of reserves this year. Is that the same money mentioned under property, plant and equipment for the racecourse?

Executive Manager Corporate and Community Services response:

Yes.

Question 11

Page 28 same document Fees and Charges: There is an increase in the budget for recreation and culture of \$108,000. Is that the Toodyay Recreation Centre or the racecourse?

Chief Executive Officer response:

That is for the Toodyay Recreation Centre.

Question 12

General purpose funding: What is included in this funding?

Executive Manager Corporate and Community Services response:

Fees and Charges collected in the general purpose funding area which relates to rates and also financial assistance grants predominantly rates and orders requests through settlement agents.

5 CONFIRMATION OF MINUTES**5.1 Ordinary Meeting of Council held on 24 July 2024****OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Ordinary Council Meeting held on 24 July 2024 be confirmed.

The Shire President called for a mover and seconder of the Officer's Recommendation and received no response.

Refer to the decision on page 66

5.2 Special Meeting of Council held on 7 August 2024

OFFICER'S OCM237/08/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
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MOVED Cr J Prater

SECONDED Cr C Duri

That the Unconfirmed Minutes of the Special Council Meeting held on 7 August 2024 be confirmed.

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

Voted Against: Nil

MOTION CARRIED 7/0

5.3 Elector's General Meeting held on 7 August 2024

OFFICER'S OCM238/08/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
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MOVED Cr C Duri

SECONDED Cr J Prater

That the Unconfirmed Minutes of the Elector's General Meeting held on 7 August 2024 be received.

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

Voted Against: Nil

MOTION CARRIED 7/0

5.4 Special Meeting of Council held on 12 August 2024

OFFICER'S OCM239/08/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
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MOVED Cr R Madacsi

SECONDED Cr J Prater

That the Unconfirmed Minutes of the Special Council Meeting held on 12 August 2024 be confirmed.

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

Voted Against: Nil

MOTION CARRIED 7/0

5.3 Agenda Briefing held on 21 August 2024

OFFICER'S OCM240/08/24	RECOMMENDATION/COUNCIL	RESOLUTION	NO.
MOVED	Cr C Duri		
SECONDED	Cr J Prater		
That the Notes of the Agenda Briefing held on 21 August 2024 be received.			
<u>Voted For:</u> Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, M Dival and J Prater			
<u>Voted Against:</u> Nil			
MOTION CARRIED 7/0			

Attachments

1 21 August 2024 Agenda Briefing Notes received

6 PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS**6.1 PETITIONS**

Nil.

6.2 DEPUTATIONS

Nil.

6.3 PRESENTATIONS

Nil.

6.4 SUBMISSIONS

G Nelmes, on behalf of Toodyay Community Garden Group Inc, addressed Council in regard to item No. 9.4.1 EOI to lease old Tennis Club Facilities.

C Bird, on behalf of Moondyne Men Inc, addressed Council in regard to item No. 9.4.1 EOI to lease old Tennis Club Facilities.

Mr Foley addressed Council in regard to a tabled submission he provided to Councillors at 1.33pm, on behalf of Marsupial Mamas and Papas seeking to secure a long term lease of Shire owned infrastructure being the Railway building at Toodyay Junction.

M Noonan, on behalf of the Toodyay Community Garden Group Inc, addressed Council in regard to item No. 9.4.1 EOI to lease old Tennis Club Facilities.

C de Vos Van Steenwijk, on behalf of the Toodyay Community Garden Group Inc, addressed Council in regard to item No. 9.4.1 EOI to lease old Tennis Club Facilities.

7 BUSINESS FROM PREVIOUS MEETING (IF ADJOURNED)

Nil.

8 ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

Firstly, I welcome the new CEO to his first meeting.

As President McKeown was unavailable, and therefore in accordance with section 5.34 (b) of the LG Act I performed the following functions:

- 10th August opened the International Food Festival during the Avon Descent;
- 16/17th August attended the Australian Local Government Association National Housing Summit in Adelaide;
- 18th August laid a wreath on behalf of Council and the Community at the Vietnam Veterans Day Service;
- 23rd August attended the Avon-Midland WALGA zone meeting as delegate;
- 23rd August attended the Wheatbelt Forum;
- 23rd August attended and acknowledged Country at the CRC Stargazing night - which was funded through by Inspiring WA for national science week;
- 28th August, officiated at citizenship ceremony for 2;

In relation to the recruitment of our new CEO I undertook the following functions;

- as requested by Council, I liaised and negotiated with the preferred candidate, Mr Aaron Bowman, in regard to the contract and package details;
- presided over several special council meetings in regard to the recruitment;
- under instruction by Council, I executed the CEO's contract;
- I have liaised with Mr Bowman during onboarding to his role.

Thanks to:

- everyone on the recruitment committee, including the independent member Mr Dave Flaherty;
- Mrs Maria Rebane for the administration support for the recruitment committee.

Thank you to Mrs Tabitha Bateman for taking on the Acting CEO role at the request of Council for the last 6 months.

9 OFFICER REPORTS**9.1 DEVELOPMENT AND REGULATION****9.1.1 Lot 11 Chitty Road - Renewal of Extractive Industry - Midland Brick**

Date of Report:	29 July 2024
Applicant or Proponent:	Land Insights/Midland Brick
File Reference:	P2024-52/A4273/11CHI
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	24 July 2024
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. Clay Extractive Industry Management Plan for Midland Brick Pty Ltd - Lot 11 Chitty Road, Hoddys Well ↗

PURPOSE OF THE REPORT

To determine an application for the renewal of development approval and an extractive industry licence for Midland Brick at Lot 11 Chitty Road in Hoddys Well. This matter is coming to Council as there is no delegated authority to determine this application type.

BACKGROUNDSubject Site

Lot 11 (768) Chitty Road, Hoddys Well, Western Australia, encompasses approximately 619 hectares and is zoned Rural. Located about 10 km south of the Toodyay townsite and 65 km east of Perth CBD, the site is predominantly used as the Hoddys Well (Bardya) clay quarry, operated by Midland Brick Pty Ltd. Access is via Salt Valley Road, with established internal haul roads and necessary infrastructure. The surrounding land includes another clay extraction operation and a landfill, with rural properties nearby.

History

The quarry occupies 49 hectares at the northern end of the lot and has been in operation since the 1990s, with substantial clay resources still available. The quarry, operated by Midland Brick Pty Ltd, has been active since the 1990s and includes established infrastructure such as haul roads, stockpiling areas, and drainage management systems.

Proposal

The application proposes the renewal of the Development Approval and Extractive Industry Licence for the existing Hoddys Well (Bardya) clay quarry located at Lot 11 (768) Chitty

Road, Hoddys Well. The renewal seeks to extend operations for another 10 years, allowing continued excavation within the current pit area and expansion into new areas. The proposed operation includes limited site preparation, potential clearing of degraded native vegetation, and ongoing environmental management as per the provided management plans.

Key details

Category	Details
Proposed Excavation	Continued within the current pit area, expansion into new areas
Operating Hours	07:00 to 18:00 from Monday to Saturday; no operations on Sundays or Public Holidays
Volume Extracted	Up to 200,000 tonnes annually, depending on market demand
Workforce	2-6 people during excavation and carting campaigns
Vehicle Movements	Approximately 5-10 truckloads per hour on carting days
Life of Project	Estimated 20 years, depending on market demand

COMMENTS AND DETAILS

A streamlined officer recommendation including Development Approval and Extractive Industry Licence Conditions avoiding duplication where possible has been provided.

The author of this report recommends that the Operating Hours have been kept as requested by the applicant, which includes Saturdays. However, an amendment is put forward to include the stipulation in the condition that there is to be no operations on event days occurring on Saturdays within the Shire of Toodyay. The Shire has already been advised by Midland Brick that this is a practice which is informally volunteered by the company. Including this into the condition will formalise the arrangement.

The recommendation also includes a recalculated rehabilitation bond incorporating the new area and adjusted to be consistent with the Schedule of Fees and Charges. This is calculated as follows:

1. Existing excavation (greater than 3m depth) - \$19,160/ha x 15.2ha = \$291,232
2. New excavation (greater than 3m depth) - \$19,160/ha x 17.9ha = \$342,964

TOTAL - \$634,196

Lastly, the Shire has been in discussion with the applicant and their agent from Land Insight about cost recovery.

On previous, recent extractive industry decisions, the Officer recommendation was to include a condition relating to costs as follows:

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

We have had preliminary feedback from the applicant and their agent that they would be likely to challenge this condition through the Tribunal as it is very open ended.

Initially, it was proposed that the condition be removed and there was discussion about incorporating it into a further condition of approval relating to a written agreement between the parties to be determined at a later date.

However, it is recommended that Midland Brick Pty Ltd is to enter into a formal written agreement with the Shire of Toodyay concerning cost recovery on matters pertaining to the

approved development. These costs shall be in relation to additional legal and auditing processes determining where the Shire lacks resource capacity and/or expertise. And example of this will be expert appraisal of rehabilitation milestones and pit closure.

The latest submission from the applicant is as follows:

"With relation to our discussion on the cost recovery, is it possible for the Shire to incorporate this into the Schedule of Fees or a policy (such as the draft LPP for extractive industries) separate to this application rather than it being dealt with as a condition of approval on this application? We have concerns that the condition will be difficult to 'clear' as the framework hasn't been established yet and it might hold up the continuation of operations if this condition is still being worked out. "

It is the opinion of this Officer that these matters regarding cost recovery, whilst needing finalisation – will also need time to be worked out appropriately and fairly. Given that they almost exclusively relate to events much further in the future – it is not an unreasonable request that the Shire has been presented and it is recommended that it is supported an appropriate condition has been drafted allowing enough time for the development of a policy and incorporation into fees and charges as has been suggested.

IMPLICATIONS TO CONSIDER

Consultative:

Councillors attended a workshop on 7 August 2024 at which representatives from Midland Brick were present.

Additionally, the application has been advertised in accordance with the Shire's LPP Advertising of Planning Proposals.

This included mailout to landowners within 1500 metres, and relevant government stakeholders, a notice in the Toodyay Herald and on the Shire's website.

No objections were received.

Strategic:

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

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

O5.1. Provide responsible planning and development.

Outcome 9. Responsible and effective leadership and governance.

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

Shire of Toodyay Local Planning Strategy 2017

The proposal at Lot 11 Chitty Road, Hoddys Well complies with the Local Planning Strategy 2017 by facilitating the extraction of basic raw materials with appropriate environmental management, maintaining suitable buffers to protect adjacent properties, and preserving the visual and environmental character of the area.

The land's zoning for Special Use supports the continuation of rural activities, aligning with strategic planning and resource management goals to minimise adverse impacts.

Policy related:

State Planning Policy 2.4 Basic Raw Materials

The proposal complies with State Planning Policy 2.4 by recognising the importance of basic raw materials and ensuring their efficient use before land encroachment. It includes measures to mitigate environmental impacts and maintain proper separation distances from sensitive areas. Additionally, the proposal addresses requirements for site rehabilitation and sequential land use, ensuring the site is returned to a safe condition for future use, aligning with the policy's objectives of protecting community health and environmental values.

LPP Advertising of Planning Proposals

Risk Management

Financial:

The applicant has paid the applicable fee for development approval pursuant to the *Planning and Development Regulations 2009*.

Should Council reject the Officer's recommendation, and the proponent challenges the decision in the State Administrative Tribunal (SAT) the Shire could be liable for further costs.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development Regulations 2009

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Toodyay Local Planning Scheme No. 4

Risk related:

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

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

Workforce related:

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

1. Notes the submissions received relating to the Extractive Industry application for Midland Brick at Lot 11 (768) Chitty Road in Hoddys Well.
2. Pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; approves the development approval for an industry - extractive land use at Midland Brick at Lot 11 (768) Chitty Road in Hoddys Well, subject to the following conditions:

(a) Management Plan

Development is to be in accordance with the approved Extractive Industries Licence Application – “*Hoddys Well – Bardya*” *Clay Quarry Clay Extraction Management Plan Lot 11 (768) Chitty Road, Hoddys Well Prepared For Midland Brick Pty Ltd May 2024*”, including Appendices A-J and any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

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

Site Specific

- ii. The location and total area of the extractive industry is to be limited to 49 hectares as depicted in the approved management plan. This includes an actual extraction area of 15.2 hectares existing and 17.9 hectares new area as referenced in Appendix B – Plans.
- iii. The extraction of material is limited to a depth of 30 metres (m) as depicted in the approved management plan.
- iv. The maximum permitted extraction is limited to 200,000 tonnes (t) per annum as depicted in the approved management plan.
- v. Extraction is to be undertaken entirely within the land defined as:

Lot 11 on P034937

Volume: 2535 Folio: 391

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

Transport management

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

- vii. All truck loads leaving the site with materials are to be covered.
- viii. The operator shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire of Toodyay which are used by heavy haulage traffic associated with the extractive industry operations to the extent that such traffic contributes to the need for such maintenance and repair.

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

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

Noise and vibration

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

Water

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

Site Rehabilitation

- xiii. The excavation site is to be rehabilitated in accordance with the Rehabilitation and Recommissioning Programme specified as part of the Extractive Industries Licence Application "Hoddys Well – Bardya" Clay Quarry Clay Extraction Management Plan Lot 11 (768) Chitty Road, Hoddys Well Prepared For Midland Brick Pty Ltd May 2024", listed under Appendix D and the Shire of Toodyay's Extractive Industry Local Law or any subsequent programme approved thereafter. The rehabilitation works must be completed within the first winter months following the re-establishment of the final contour ground levels and maintained for a period of three years thereafter.
- xiv. Prior to the commencement of the development, the applicant is required to pay a total bond of \$634,196 as a performance guarantee against the satisfactory completion of the rehabilitation of the site, as detailed in Condition 2(a)(xiii).

The existing bond of \$96,000 can be extinguished and cancelled/refunded depending on the format and a new one set in place for this development approval.

The performance guarantee will be refunded at a rate of 50% following completion of the final stage of rehabilitation works and 50% at the conclusion of the three-year monitoring period.

- xv. Prior to the commencement of the new development approved the applicant is to enter into a legal agreement with the Shire of Toodyay outlining the terms of bonding and rehabilitation. This is to be accompanied by written authorisation from the owner of the land that the Shire may enter the site to complete or rectify any outstanding work. All costs including legal fees associated with the creation of this agreement are to be borne by the applicant.
- xvi. The bond may either be in the form of cash or an unconditional, irrevocable Bank Guarantee.

Cost recovery written agreement

- xvii. Midland Brick Pty Ltd is to enter into a formal written agreement with the Shire of Toodyay concerning cost recovery on matters pertaining to the approved development. These costs shall be in relation to additional legal and auditing processes determining where the Shire lacks resource capacity and/or expertise. An example of this will be expert appraisal of rehabilitation milestones and pit closure.
- xviii. This agreement is to be in place no later than two years after the date of this approval.
- xix. All costs including legal fees associated with the creation of this agreement are to be borne by the applicant.

3. That Council, pursuant to Clause 3.1(2)(b) of the *Shire of Toodyay Extractive Industry Local Law*; approves the application for an **Extractive Industry Licence** at Lot 11 (768) Chitty Road in Hoddys Well, subject to the following conditions:

- (a) This licence is issued in accordance with the Shire of Toodyay's Extractive Industries Local Law and Development is to be in accordance with the approved Extractive Industries Licence Application, including any amendments placed thereon by Council and except as may be modified by the following conditions:

Licence

- (b) The licence is granted to Midland Brick Pty Ltd.

Management Plan

- (c) Development is to be in accordance with the approved Extractive Industries Licence Application – “*Hoddys Well – Bardya Clay Quarry Clay Extraction Management Plan Lot 11 (768) Chitty Road, Hoddys Well Prepared For Midland Brick Pty Ltd May 2024*” including Appendices A-J and any amendments placed thereon by Council and except as may be modified by the following conditions:

Term of approval

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

Payment of Annual Licence Fee

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

the local government from time to time.

Transfer, Cancellation and Renewal of Licence

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

Site Specific

iv. The location and total area of the extractive industry is to be limited to:

v. 49 hectares (ha) as depicted in the approved management plan. This includes an actual extraction area of 15.2 hectares existing and 17.9 hectares new area. As referenced in Appendix B – Plans.

vi. The extraction of material is limited to a depth of 30 metres (m) as depicted in the approved management plan.

vii. The maximum permitted extraction is limited to 200,000 tonnes (t) per annum as depicted in the approved management plan.

viii. Extraction is to be undertaken entirely within the land defined as:
Lot 11 on P034937
Volume: 2535 Folio: 391
And must be set back a minimum of 50m from the lot boundary.

Operating hours

ix. 07:00 to 18:00 from Monday to Saturday; no operations on Sundays or Public Holidays. No operations on event days occurring on Saturdays within the Shire of Toodyay.

Transport management

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

xi. All truck loads leaving the site with materials are to be covered.

Noise and vibration

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

Water

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

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

Dust

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

Regulation Guidelines.

Native Vegetation

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

Bushfire management

xvii. In lieu of a formal bushfire management the development must observe the following controls:

1. All plant & vehicle movement related to this approval on Lot 11 Chitty Road, shall maintain 5m clearance to fine fuel vegetation (less than 6mm diameter or thickness) during the Restricted Burning Period and Prohibited Burning Period.
2. All plant & vehicles must carry fire extinguisher(s) of no less than 7.5 kilogram or litre capacity, suitable for extinguishing fire of plant/vehicle and vegetation.

Reporting / Auditing

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

xix. The Applicant/Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year outlining:

1. Quarry progress including photos.
2. Progress of Rehabilitation including photos.
3. Monitoring Results
4. Clearing Permits
5. Water Testing Results
6. Other Environmental Factors
7. Safety
8. Road Maintenance Contributions
9. Cartage Management Report
10. Complaints Log

Insurance

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

REVISED OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO.
OCM241/08/24

MOVED Cr S McCormick

SECONDED Cr R Madacsi

That:

1. Council defers Item 9.1.1. to a future meeting of Council;
2. Council modifies condition 1 of the current Development Approval as follows:
"The term of the Planning Approval is for 9 (nine) months from 27 March 2024."
3. The Shire issue a short-term extractive industry licence until 27 November 2024;
4. The Shire of Toodyay waive the requirement specified in clause 4.31(1)(d) of the Local Law.

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

Voted Against: Nil

MOTION CARRIED 7/0

9.1.2 Lot 17 (No. 55) Toodyay Street, Toodyay - Proposed Holiday Home

Date of Report:	6 August 2024
File Reference:	P2024-49/A180/17TOOS
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. Location Plan; ↗ 2. Approved Plans; ↗ 3. Code of Conduct for proposed Short-term Rental Accommodation; ↗ 4. Management Plan for Proposed Short-term Rental Accommodation; and ↗ 5. Submission and Response. ↗

SUMMARY

Applicant: Shaun Erskine and Ann'Elisha Erskine
Owner: Shaun Erskine and Ann'Elisha Erskine
Proposal: Holiday Home
Location: Lot 17 (No. 55) Toodyay Street, Toodyay

PURPOSE OF THE REPORT

To consider an application for development approval to use the new single house due to be constructed at 55 Toodyay Street in Toodyay for an Airbnb ('holiday house') to accommodate up to 10 guests.

Advertising to surrounding neighbours has attracted one submission objecting to the proposal. The matters raised by the submitter could not be resolved by Shire staff and is therefore presented to Council for determination.

BACKGROUND

Lot 17 (No. 55) Toodyay Street, Toodyay is located approximately 700m northwest of the showground and sportsground in Toodyay as shown on the attached location plan (**Attachment 1 – Location Plan**). The property fronts the Avon River to the southwest and is 2,122m² in extent. Planning staff recently issued development approval for a single house

on the Residential-zoned property in accordance with the attached plans (**Attachment 2**). The Applicants also provided a copy of a Code of Conduct (**Attachment 3**) and Short-Term Rental Accommodation Management Plan (**Attachment 4**).

An Airbnb, defined in the Shire's Local Planning Scheme No. 4 (the Scheme) as 'holiday home', which is a *single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast*.

The term 'holiday home' is defined in Schedule 1 of the Scheme's dictionary but has been omitted from Table 1 – Zoning Table. Planning staff consider this omission an anomaly and are treating 'holiday home' as a use-not-listed. As such, it is being assessed as an 'A' use under the relevant provisions of the Scheme, requiring development approval and special notice in accordance with clause 64 of the deemed provisions.

The proposal was advertised to the immediate adjoining neighbours, and 1 submission was received objecting to the proposal.

COMMENTS AND DETAILS

The reporting officer's assessment of this application indicates that the development proposal may be incompatible with the objectives of the Residential zone, the existing and future character of the neighbourhood, and may result in adverse impacts on the amenity of the locality.

While the applicant has provided a management plan and code of conduct for the proposed accommodation establishment, which include the off-site hosts' contact details in the event of an emergency or any concerns, the assessing officer is concerned that any response to an incident at the property due to unruly behaviour or the like, will result in unacceptable delays in addressing the issues being experienced by a complainant.

It is also noted that the property backs onto the Avon River, which means the risk to human life is increased due to the guests being unfamiliar with their surroundings. It is appropriate for the management plan to include details of monitoring flood warnings and relevant evacuation measures during a major flood event.

The State Government is progressing legislation (changes to planning regulations) to improve regulation around the Short-Term Rental Accommodation (STRA) sector. STRA refers to the practice of renting out a property (or part of a property) for a relatively short period of time, usually on a nightly or weekly basis. The proposed changes to planning regulations will provide greater consistency across the State in relation to what approvals are needed for STRA proposals, as well as how these uses are defined in local planning schemes.

The applicant has had several discussions with the Shire about numbers. They have expressed that it is their intent to attract families and therefore the 10 pax they are requesting could be limited to a maximum of 6 adults the remainder being children.

Whilst this idea does have some merit, from a compliance point of view it could be harder to police. However the condition recommended may also have administrative burdens if the applicant is constantly seeking permission from the Shire for additional numbers. This, in the Officer's opinion does not outweigh an undesirable precedent if we go to 10.

Therefore, in the Reporting Officer's opinion, there are two options in determining the proposal before Council, namely to –

- Grant a 12-month time-limited approval imposing conditions that include but are not limited to approval of a management plan to cap the maximum number of guests to 6 and upgrading the vehicular access and car parking; or

- Refuse the application due to concerns that the potential amenity impacts cannot/will not be adequately managed and that the use is not deemed compatible with the residential zone, character and locality.

It is the Reporting Officer's recommendation that the application be approved for a period of 12 months subject to conditions, to enable the Applicant to demonstrate that the proposed Airbnb can be managed without any detrimental impacts, subject to an amended management plan to cap the maximum number of guests to 6, being submitted and approved by the Shire's Administration prior to commencement of the use.

IMPLICATIONS TO CONSIDER

Consultative:

External advertising

The proposal was advertised electronically to the immediate adjoining neighbours, providing details of the proposal under the provisions of clause 64 of the deemed provisions for local planning schemes from 8 July 2024 until 22 July 2024.

One submission was received by the close of advertising, objecting to the proposal.

The submitter's submission is summarised as follows:

- The potential for antisocial behaviour and noise pollution in a residential neighbourhood;
- The potential for, and risk of fire and environmental damage given the property backs onto the Avon River, and the increased chance of rubbish, bottles and general waste being left at the rear of the property, which may end up in the river; and
- The potential for disruption of the residential amenity in this part of Toodyay, further impeding the quiet enjoyment of their property.

The issues raised in the submission have been considered in the assessment of this application.

For further details please refer to **Attachment 5 – Submission and response**.

Strategic:

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

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

O5.1. Provide responsible planning and development.

O5.3. Preserve and showcase local history and heritage

Policy related:

LPP - Advertising of Planning Proposals

Risk Management

Financial:

There are no direct financial implications for the Shire of the recommendations of this report.

The applicant has paid the required fees in accordance with the *Planning and Development Regulations 2009*.

Should Council choose to refuse the application; the applicants have the right of appeal through the State Administrative Tribunal which may require additional ratepayer funds to allow the decision to be defended.

Legal and Statutory:

- *Shire of Toodyay Local Planning Scheme No. 4*
- *Planning and Development Act 2005*
- *Planning and Development (local planning schemes) Regulations 2015*
- *Planning and Development Regulations 2009*

Risk related:

The Shire of Toodyay faces risks associated with the development of short-term rental accommodation (Airbnb) in residential zones, including disruption to the residential character, potential non-compliance by applicants, and associated legal and regulatory challenges. These risks are particularly concerning as they may lead to increased noise, traffic, and community disruption, as well as legal liabilities and enforcement costs. However, these risks have been mitigated through the applicant's provision of a comprehensive Management Plan and Code of Conduct, which outline clear guidelines for operation and behaviour. Additionally, at the State Government level, the requirement for all short-term rental developments to be registered further ensures that compliance is monitored and enforced, thereby reducing the likelihood of negative impacts on the community.

It is important to note that the approval of this development may set a precedent for future applications of short-term rental accommodation in residential zones. This could lead to an increase in similar applications, potentially amplifying the associated risks. Therefore, careful consideration and consistent application of the Scheme's provisions are essential.

Risk	Likelihood	Consequence	Risk Score
Disruption to Residential Character	Likely (4)	Moderate (3)	High (12)

Workforce related:

Should this matter be referred by the applicant to the State Administrative Tribunal, significant Officer time will be required.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council grants a time-limited development approval for the change of use of Lot 17 (55) Toodyay Street, Toodyay, subject to the following conditions:

1. This approval is for a Holiday Home as defined within Shire of Toodyay Local Planning Scheme No. 4, the approved plan(s), any other supporting information and conditions of approval. It does not relate to any other development on the lot.
2. The approval period for the Holiday Home will expire 12 months from the date of occupation.

3. This approval is issued to Shaun Erskine and Ann'Elisha Erskine and cannot be transferred to another person or location.
4. The maximum number of guests accommodated at any one time shall be 6. No additional guests or visitors are permitted onsite without prior approval from the local government.
5. Prior to the commencement of operations, the management plan is to be updated and submitted to the Shire of Toodyay for approval addressing the following matters:
 - (i) No check-in or check-out between the hours of 8:00PM and 8:00AM. Where travel arrangements require a guest to check-in or check-out outside of these times, the owners are to provide clear instructions, in writing, to the guest advising of the need to minimise noise and disturbance to neighbours.
 - (ii) A template for a guest register, including full name, usual place of residence, contact details including phone number and email address and check-in and check-out dates, is to be provided.
 - (iii) A template for a complaint register, including name and address of the complainant, date and time of complaint, description of complaint and actions taken to address complaint, is to be provided.
 - (iv) The complaint register is to be maintained and made available to the Shire of Toodyay upon request.
 - (v) Given the property's proximity to the Avon River, the management plan to include details of monitoring flood warnings and relevant evacuation measures during a major flood event.
6. A copy of the code of conduct and approved management plan for the Holiday Home shall be provided to residents of adjoining and abutting properties prior to the commencement of operations.
7. The code of conduct shall be provided to guests of the Holiday Home at the time of check-in and must be displayed in a prominent location within the entrance area of the dwelling.
8. A detailed car parking plan showing a minimum of 3 on-site car parking bays and suitable vehicle access shall be submitted to the local government for approval prior to commencement of operations.
9. The approved car parking and vehicle access shall be constructed to the specification and satisfaction of the local government prior to commencement of operations.

ALTERNATE MOTION/COUNCIL RESOLUTION NO. OCM242/08/24**MOVED** Cr J Prater**SECONDED** Cr C Duri

That Council grants a time-limited development approval for the change of use of Lot 17 (55) Toodyay Street, Toodyay, subject to the following conditions:

1. This approval is for a Holiday Home as defined within Shire of Toodyay Local Planning Scheme No. 4, the approved plan(s), any other supporting information and conditions of approval. It does not relate to any other development on the lot.

2. This approval is issued to Shaun Erskine and Ann 'Elisha Erskine and cannot be transferred to another person or location.
3. When the property is occupied by guests under this approved use of "holiday home", the maximum number of guests accommodated at any one time shall be 10. No additional guests or visitors are permitted onsite.
4. Prior to the commencement of operations, the management plan is to be updated and submitted to the Shire of Toodyay for approval addressing the following matters:
 - (i) No check-in or check-out between the hours of 8:00PM and 8:00AM. Where travel arrangements require a guest to check-in or check-out outside of these times, the owners are to provide clear instructions, in writing, to the guest advising of the need to minimise noise and disturbance to neighbours.
 - (ii) A template for a guest register, including full name, usual place of residence, contact details including phone number and email address and check-in and check-out dates, is to be provided.
 - (iii) A template for a complaint register, including name and address of the complainant, date and time of complaint, description of complaint and actions taken to address complaint, is to be provided.
 - (iv) The complaint register is to be maintained and made available to the Shire of Toodyay upon request.
 - (v) Given the property's proximity to the Avon River, the management plan to include details of monitoring flood warnings and relevant evacuation measures during a major flood event.
5. A copy of the code of conduct and approved management plan for the Holiday Home shall be provided to residents of adjoining and abutting properties prior to the commencement of operations.
6. The code of conduct shall be provided to guests of the Holiday Home at the time of check-in and must be displayed in a prominent location within the entrance area of the dwelling.
7. A detailed car parking plan showing a minimum of 3 on-site car parking bays and suitable vehicle access shall be submitted to the local government for approval prior to commencement of operations.
8. The approved car parking and vehicle access shall be constructed to the specification and satisfaction of the local government prior to commencement of operations.

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

Voted Against: Nil

MOTION CARRIED 7/0

Council's reason for deciding on the alternate motion, pursuant to regulation 11. Minutes, content of (Act s. 5.25(1)(f)) of the Local Government (Administration) Regulations 1996 regulation 11(da) was to refrain from putting restraints on private citizens in their own homes, by removing the condition of approval by the local government for short term accommodation, and making it clear that there is a maximum number of guests. This decision is aligned to the Shire's Council Plan, including its tourism and economic strategies.

9.1.3 Lot 9000 Mercy Retreat - Temporary Placement of 40FT Shipping Container

Date of Report:	13 August 2024
File Reference:	P2024-57/A5622/9000MERC
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. Application Plans and Cover Letter ↗

SUMMARY

Applicant: Kinross Creasey Investments Pty Ltd
Owner: Kinross Creasey Investments Pty Ltd
Proposal: Temporary placement of 40FT shipping container
Location: Lot 9000 Mercy Retreat, Toodyay

PURPOSE OF THE REPORT

To consider an application for development approval to place and use a 40ft sea container on No 4 (Lot 9000) Mercy Retreat in Toodyay for a period of 24 months.

The proposal is referred to Council for determination as Lot 9000 Mercy Retreat is located in the Catholic Precinct Heritage area, a State Registered Heritage Place known as P4125 Roman Catholic Church Group, Toodyay.

BACKGROUND

The Shire has received an application for development approval to place and use a 40ft sea container on Lot 9000) Mercy Retreat for a period of 24 months.

It is proposed to utilise the sea container as a builder's shed for the alterations and restoration works to Mercy House located at No. 5 (Lot 5) Mercy Retreat in Toodyay. A plan showing the location and external appearance of the temporary sea container is attached (**Attachment 1**).

Lot 9000 is zoned 'Mixed Business' by *Shire of Toodyay Local Planning Scheme No. 4*.

COMMENTS AND DETAILS

Given the proposal is supported by the Heritage and Property Office of the Department of Planning, Lands and Heritage, Officers recommend Council grants a time-limited approval (24 months) for the placement and use of a 40ft sea container at Lot 9000 Mercy Retreat in Toodyay, subject to conditions.

Important Update – 14 August 2024

The applicant has recently put Lot 5 Mercy Retreat on the market. Therefore, the application is not going to be associated with a future building permit for Lot 5 at this time.

The Shire has spoken with the applicant about this and they have requested that the Council still give positive consideration to their application and that now it is being considered as a storage option for them as they will continue to own Lot 9000.

The applicant has stated that this will help them with an interim storage solution and assist them with building activity which is planned for the site in the future.

The initial recommendation to Council prior to this latest development, was that the application should be approved and time limited. This was possible as there was a nexus with the development approval and a future DA. This is something that is permitted in the policy.

Now, the applicant is requesting that Council consider a time limited approval without a link to a development application or building permit. To be used as a storage solution.

The Council may vary the requirements the Local Planning Policy – Non habitable structures, where it is considered that full compliance with the policy is impractical, or such variation is warranted in the circumstances of the case.

In this instance it is not considered unreasonable, and the application can be supported.

IMPLICATIONS TO CONSIDER**Consultative:**

Given the property is located in close proximity of the Roman Catholic Church precinct and on the State Heritage Register, the application was referred to the Heritage Council of Western Australia (HCWA) for comment.

The HCWA advises that they have considered the proposal's impact on the identified cultural heritage significance and that the proposal will have no impact and is therefore supported.

The application was also provided to adjoining landowners. At the time of writing this report, one comment has been received and it concerns the current sale of the lot associated with the building works which this application is linked to. The submitter being concerned that if the sale goes through then the works will stall. This would result in the shipping container potentially being vandalised. This concern is noted, and in the event, this happens, the Shire can direct to have the structure removed.

Strategic:**Plan for the Future: Shire of Toodyay Council Plan 2023-2033****Outcome 5. High quality town planning complements our rural ambience and heritage.**

O5.1. Provide responsible planning and development.

Outcome 9. Responsible and effective leadership and governance.

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

Policy related:

LPP – Advertising of Planning Proposals

LPP – Non-habitable structures

LPP – Central Toodyay Heritage Area

Risk management

Financial:

The applicant has paid the applicable fee for development approval pursuant to the *Planning and Development Regulations 2009*.

Should Council reject the Officer's recommendation, and the proponent challenges the decision in the State Administrative Tribunal (SAT) the Shire could be liable for further costs.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development Regulations 2009

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Toodyay Local Planning Scheme No. 4

Risk related:

The reputation risk associated with temporarily placing a 40FT shipping container on the subject site has been mitigated through consultation with neighbouring residents and the Heritage Council of WA, addressing visual and heritage concerns.

Risk	Consequence	Likelihood	Risk Level	Mitigation
Reputation	Community dissatisfaction and negative perception	Unlikely	Low (4)	Addressed through consultation with neighbours and the Heritage Council of WA.

Workforce related:

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

1. Notes the submissions received relating to the development application P2024-57.
2. That Council Pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, grants a time-limited development approval for placement and use of a 40ft sea container at No. 4 (Lot 9000) Mercy Retreat, subject to the following conditions:
 - (a) The approval is valid for two (2) years from the date of this approval.

- (b) Following expiry of this period, the sea container must be removed from the site unless a further development approval is granted by the local government.
- (c) The development hereby permitted taking place in accordance with the approved plans.
- (d) The shipping container must be maintained in good condition.

ALTERNATE MOTION/COUNCIL RESOLUTION NO. OCM243/08/24**MOVED** Cr S McCormick**SECONDED** Cr R Madacsi

That Council refuses approval for the shipping container for the following reasons:

1. The variation to Local Planning Policy – non-habitable structures is not supported as there is no building permit or development application associated with the structure;
2. The variation to Local Planning Policy – Central Toodyay Heritage Areas is not supported as the shipping container is not in sympathy with the adjoining property.
3. Approval would set an undesirable precedent.

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

Voted Against: Nil

MOTION CARRIED 7/0

Council's reasons for deciding on the alternate motion, pursuant to regulation 11. Minutes, content of (Act s. 5.25(1)(f)) of the Local Government (Administration) Regulations 1996 regulation 11(da) and the refusal to approve the shipping container is as specified in the alternate motion.

9.1.4 Lot 102 Lovers Lane, Toodyay - Proposed Rural Home Business

The Shire President ruled that Agenda Item 9.1.4 be considered at the end of the Officer Reports section of the agenda.

Refer to the Report including the decision on pages 67-73

9.2 CORPORATE AND COMMUNITY SERVICES**9.2.1 List of Payments - July 2024**

Date of Report:	16 August 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	D Jones – Accounts Payable Officer
Responsible Officer:	N Mwale – Finance Coordinator
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. List of Payments July 2024 ↗

PURPOSE OF THE REPORT

That the accounts for 1 July 2024 to 31 July 2024, as submitted, be received.

BACKGROUND

This information is provided to Council on a monthly basis in accordance with provisions of the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996*.

A Local Government is to develop procedures for the authorisation of any payment of accounts to ensure that there is effective security for which money or other benefits may be obtained.

COMMENTS AND DETAILS

The schedule of payments has been compiled for the month of July 2024 and is attached.

These payments have already occurred, and Council are not making a decision as to whether payments are to be made.

IMPLICATIONS TO CONSIDER**Consultative:**

Nil

Strategic:

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

Outcome 9. Responsible and effective leadership and governance.

O9.1: *Govern Shire finances, assets, and operations responsibly.*

Policy related:

Authorised Signatories Policy

Purchasing Policy

Delegation CS1

Financial:

Payments are made in accordance with the adopted budget. Expenditure is in accordance with s6.8(1) (a) of the *Local Government Act 1995*.

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

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

s.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

r.13 states that if the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared for each month and presented to Council.

Risk related:

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

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council endorses the schedule of accounts as presented, and listed below, for the month of July 2024:

Municipal Cheques	65,770.48
Electronic Funds Transfer Payments	1,113,935.54
Direct Debits	-
Payroll	362,500.48
Purchasing Cards	6,076.43
TOTAL	1,548,282.93

ALTERNATE MOTION/COUNCIL RESOLUTION NO. OCM244/08/24**MOVED** Cr R Madacsi**SECONDED** Cr M McKeown

That Council notes the schedule of accounts as presented, and listed below, for the month of July 2024:

Municipal Cheques	65,770.48
Electronic Funds Transfer Payments	1,113,935.54
Direct Debits	-
Payroll	362,500.48
Purchasing Cards	6,076.43
TOTAL	1,548,282.93

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

Voted Against: Nil

MOTION CARRIED 7/0

Council's reasons for deciding on the alternate motion, pursuant to regulation 11. Minutes, content of (Act s. 5.25(1)(f)) of the Local Government (Administration) Regulations 1996 regulation 11(da) was to ensure consistency of the motion to "note" the list of payments as Council has no control over payments that have already been paid.

9.2.2 Adoption of the Draft 2024/25 Municipal Budget

Date of Report:	22 August 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	MTG7
Author:	T Bateman – Executive Manager Corporate and Community Services
Responsible Officer:	A Bowman – Chief Executive Officer
Previously Before Council:	29/05/24 – SCM168/05/24
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none">1. 2024/2025 Draft Municipal Budget; ↗2. Statement of Objects and Reasons. ↗3. Schedule of Fees and Charges ↗

PURPOSE OF THE REPORT

To consider adoption of Draft 2024/2025 Municipal Budget for the Shire of Toodyay.

The Draft 2024/2025 Municipal Budget is presented in its statutory form for Council adoption Pursuant to the *Local Government Act 1995*, the *Local Government (Financial Management) Regulations 1996* and the Australian Accounting Standards.

BACKGROUND

Section 6.2(1) of the *Local Government Act 1995* requires each local government to prepare and adopt by 'Absolute majority' a budget for the following financial year. The Act prescribes this must be done between 1 June and 31 August for the financial year ending 30 June.

The Draft 2024/2025 Municipal Budget includes:

- Statutory financial statements, incorporating:
 - Statement of comprehensive Income;
 - Statement of cash flows;
 - Statement of financial activity; and
 - Notes to and forming part of the budget.
- Schedule of Fees and charges (**Attachment 3**).
- Capital projects; and
- Operational projects.

The Draft 2024/2025 Municipal Budget is Council's financial plan that facilitates the delivery of services and infrastructure to the community. Budget deliberations are always a

challenging process as the Shire needs to balance expected service and infrastructure requirements, whilst at the same time minimising the financial burden on ratepayers.

COMMENTS AND DETAILS

The Draft 2024/2025 Municipal Budget is a balanced budget developed to consider the Shire's overall financial position, asset maintenance requirements resulting from ageing infrastructure, continued supply chain challenges and inflationary pressure pushing up cost of materials and contracts.

Capital Projects

The significant capital expenditure projects included in the Draft 2024/2025 Municipal Budget are following:

Bridge 9025 - Newcastle Pedestrian Footbridge	Pile Replacement	\$ 70,000
Bridge 9025 - Newcastle Pedestrian Footbridge	(Termite)	\$ 80,000
Access and Egress Projects		\$193,263
Bejoording BFB Community Water Supply Partnership Program	Bejoording Fire Tanks	\$158,840
Memorial Hall Upgrade		\$100,000
CCTV Capital Expenditure	Phase 1	\$100,000
Library Drainage & Brickwork Repair and Painting		\$ 25,000
Bejoording Road - Various SLK's	Surface Repairs	\$138,325

Rates

At the Special Council Meeting on 29 May 2024, Council resolved to approve the differential rates and minimum payment for 2024/25 for advertising by public notice as follows:

SHIRE OF TOODYAY NOTICE

Notice of Intention to Impose Differential Rates

s.6.33 and 6.35 Local Government Act 1995

The Shire of Toodyay hereby gives notice of its intention to impose differential rates and minimum rates on all rateable gross rental valued (GRV) and unimproved-valued (UV) properties within its boundaries during the 2024/25 financial year. The differential rates are imposed on the basis of predominant land use as detailed below:

Land Use Category	Proposed Rate in \$	Proposed Minimum UV Rate
GRV Residential	0.162427	1,460.00
GRV Commercial	0.170446	1,460.00
GRV Industrial	0.142081	1,460.00
GRV Rural	0.159772	1,460.00
GRV Rural Residential	0.151295	1,460.00
UV General	0.013602	1,460.00
UV Rural	0.007657	1,460.00

The proposed rate in the dollar is mathematically calculated from the updated Landgate Valuations to arrive at a consistent 5.0% revenue increase across each Land Use Category.

The figures stated above are indicative and are subject to change due to valuation variations and as part of Council's 2024/25 Budget deliberations. All rates in the dollar are provided on this notice as information to the community.

A document describing the objects and reasons for each proposed general and minimum rate may be inspected at, or obtained from, the Shire of Toodyay Administration Office, 15 Fiennes Street, Toodyay, between the hours of 8.30am and 4.30pm or on the Shire's website at this link: <https://www.toodyay.wa.gov.au/resident-services/your-rates/statement-of-objects-and-reasons-for-differential-rating.aspx>

Further queries can be directed to the Acting Executive Manager Corporate & Community Services, Grace French on 08 9574 9303 or by email to G.french@toodyay.wa.gov.au.

Submissions regarding the proposed differential rates and minimums must be received by **3.00pm on Friday 30 June 2024**

Tabitha Bateman
Acting Chief Executive Officer



The proposed differential rates were calculated using the following parameters.

- An increase in the rate in the dollar from 2023/24 of 5%

The advertised minimum payment was \$1,460, being an increase of \$70 from 2023/24.

The proposed differential rates were advertised by public notice on 31 May 2024, by placing a notice on the Shires website, in the Toodyay Herald newspaper, on the Shire's Facebook page and displaying on the notice board at the Shire administration centre and public library.

Written submissions were required by 30 June 2024. At the conclusion of the advertising period No submissions were received.

The proposed differential rates advertised were based on the same property valuations as were in place for the 2023/24 financial year. Landgate undertook property revaluations for

both GRV and UV properties this year, the result being significant increases in property valuations across a number of categories. If council were to impose the advertised differential rate on the new valuations, the average rate increase would have been 31%. A reduced rate in the dollar has been calculated which takes into consideration the increased property values and Council's intention of a 5% rate increase on revenue rate.

Employees

The Draft 2024/2025 Municipal Budget focuses on investing in our future by the inclusion of a new additional position being a depot trainee. In addition, the Draft 2024/2025 Municipal Budget includes the Council's decision to bring the Toodyay Recreation Centre operations in house, to enable the operations to better meet community requirements.

Fees and Charges

Whilst increases to fees and charges have been kept to a minimum, a review of the extractive industries license fees has resulted in a larger increase in these fees to better reflect the actual costs.

Council aims to encourage our community and sporting groups to make better use of the Toodyay Recreation Centre; and have undertaken detailed reviews with the previous fees and charges. The Draft 2024/2025 Municipal Budget includes a simplified, and equitable fee structure for our community and sporting groups.

IMPLICATIONS TO CONSIDER

Consultative:

Department of Local Government, Sport and Cultural industries

Moore Australia

Datacom

Toodyay community – differential rates

Salaries and allowance tribunal

Strategic:

The Draft 2024/2025 Municipal Budget

The Shire of Toodyay Council Plan adopted on 28 June 2023 and provides financial strategies for the ensuing twelve months.

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

Outcome 9 Responsible and effective leadership and governance

9.1 Provide, strong, clear and accountable leadership

9.2 Govern Shire finances, assets and operations responsibility.

Statutory implications

Section.6.2 of the *Local Government Act 1995* requires that not later than 31 August in each financial year, or such extended time as the minister allows, each local government is to prepare and adopt, (absolute majority required) in the form and manner prescribed, a budget for its municipal fund for the financial year ending on the following 30 June.

Section.5.63(1)(b) of the *Local Government Act 1995* specifically excludes the need for Elected members to 'declare a financial interest' in imposing a rate, charge or fee.

Division 5 and 6 *Local Government Act 1995* refers to the setting of budgets and raising of rates and charges. *The Local Government (Financial Management) Regulations 1996* details the form and content of the budget. The Draft 2024/2025 Municipal Budget as presented is considered to meet statutory requirements.

There are no legislative requirements to re-advertise differential rates, even if they are changed from the advertised figures.

Section.6.35 of the *Local Government Act 1995* – Council imposing on any rateable land, a minimum payment greater than the general rate otherwise payable.

Regulations 34(5) *Local Government (Financial Management) Regulations 1996* requires each financial year, a local government is to adopt a percentage or value, calculated in accordance with the Australian Accounting Standards, to be used in statements of financial activity for reporting material variances.

Sections.6.33 and 6.36 of the *Local Government Act 1995* – Council's intention to levy differential rates for 2024/2025 financial year, as per it's published Statement of Objects and Reasons for Differential Rating (**Attachment 2**).

Policy related:

Local government Payments and Gifts to Members Council Policy

Financial:

The financial implications of The Draft 2024/2025 Municipal Budget are based upon the objective of achieving a balanced budget on 30 June 2025 after carrying out normal operational requirements and an extensive capital program.

Legal and Statutory:

Section.6.2, section.6.33, section.6.35 and section.6.36 of the *Local Government Act 1995*

Risk related:

There are significant financial, compliance and reputational risks to be considered when developing the annual budget. In particular there is a risk that by not adopting the budget incorporating rates and minimum payments, cashflow implications would more than likely arise and Council operations and capital projects proposed for 2024/25 could be jeopardised. The risk would be major (4), which would be between a moderate (8) risk rating to a high rating of (16). This report mitigates the risk.

Workforce related:

Preparation of The Draft 2024/2025 Municipal Budget and supporting information continues to be impacted by the challenges associated with Datascape; and in particular the lack of any rate modelling ability.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM245/08/24**MOVED** Cr R Madacsi**SECONDED** Cr D Wrench

That Council:

1. Notes no submission were received regarding the advertised 2024/25 differential rating model.
2. Pursuant to the provision of section 6.2 of the *Local Government Act 1995* and Part 3 of the *Local Government (Financial Management) Regulations 1996*, adopt the 2024/2025 Municipal Budget as attached, which includes the following:
 - (i) Statement of comprehensive income;
 - (ii) Statements of cash flows;
 - (iii) Rates setting statement by type;
 - (iv) Notes to and forming part of the budget; and
 - (v) Capital expenditure program;
3. For the purpose of yielding the deficiency disclosed by the municipal fund budget adopted at part 2 above, Council, pursuant to section 6.32, 6.33, 6.34 and 6.35 of the *Local Government Act 1995*, impose the following differential general and minimum rates on Gross Rental and Unimproved Values

General Rates

Gross rental valuations	Rate in the Dollar	Minimum
GRV Residential	0.119901	1,460.00
GRV Commercial	0.151495	1,460.00
GRV Industrial	0.122266	1,460.00
GRV Rural	0.115210	1,460.00
GRV Rural Residential	0.110213	1,460.00

Unimproved valuations

UV General	0.012213	1,460.00
UV Rural	0.006107	1,460.00

4. Pursuant to section 6.45 of the *Local Government Act 1995* and regulation 64(2) of the *Local Government (Financial Management) Regulations 1996*, adopt the following due dates for the payment in full and by instalments.

Option 1 – payment in full

Due Date 17 October 2024

Option 2 – payment by instalments1st Instalment Due 17 October 20242nd Instalment Due 17 December 2024

3 rd Instalment	18 February 2025
4 th Instalment	24 April 2025
5. That Council resolves to impose:	
(a) In accordance with section 6.45(3) of the <i>Local Government Act 1995</i> , an additional charge of \$7.50 per instalment notice and interest rate of 3% applicable to rates and charges paid by the four instalments payment option.	
(b) In accordance with section 6.13 of the <i>Local Government Act 1995</i> , a rate of interest of 7% applicable to any amount owing to the local government (other than rates or services charges) with interest calculated from the due date, which is 35 days from the date of issue shown on the account for payment.	
(c) In accordance with section 6.51(1) of the <i>Local Government Act 1995</i> , a rate of interest of 7% applicable to overdue and unpaid rates, with interest calculated from the due date, which is 35 days from the date of issue shown on the account for payment.	
6. (a) In accordance with Local Government Payments and Gifts to Members Council Policy and Pursuant to section 5.99 (a) of the <i>Local Government Act 1995</i> and regulation 30 of the <i>Local Government (Administration) Regulations 1996</i> , adopts the following annual fees for payments of Councillors in lieu of individual meeting attendance fees	
(i) Shire President \$23,311	
(ii) Councillors \$15,054	
(b) pursuant to section 5.99(A) of the <i>Local Government Act 1995</i> and regulation 31 of the <i>Local Government (Administration) Regulations 1996</i> , adopt the information and communication technology allowance of \$1,000 for Councillors	
(c) pursuant to section 5.98(5) of the <i>Local Government Act 1995</i> adopts the annual local government allowance of \$33,990 to be paid to the Shire President in addition to the annual meeting allowance; and	
(d) pursuant to section 5.98(1) of the <i>Local Government Act 1995</i> , adopt the annual local government allowance of \$8,498 to be paid to the Deputy Shire President in addition to the annual meeting allowance; and	
7. Pursuant to section 6.16 of the <i>Local Government Act 1995</i> , adopt the Schedule of Fees and Charges included in the Draft 2024/2025 Municipal Budget as attached (Attachment 3).	
8. In accordance with regulation 34(5) of the <i>Local Government (Financial Management) Regulations 1996</i> and AASB 1031 Materiality, resolves that the level to be used in statements of financial activity in 2024/25 for reporting material variances shall be 10% or greater for variances with a dollar value greater than \$10,000.	
<u>Voted For:</u> Crs R Madacsi, C Duri, S McCormick, M McKeown, D Wrench, M Dival and J Prater	
<u>Voted Against:</u> Nil	
MOTION CARRIED 7/0 BY ABSOLUTE MAJORITY	

9.3 EXECUTIVE SERVICES

9.3.1 Department of Local Government, Sport & Cultural Industries correspondence

Date of Report:	7 August 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	MTG7/ICR94409
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Bowman – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	Nil

PURPOSE OF THE REPORT

To note that there has been no 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) since last reported.

To consider changing a previous council decision.

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

There has been no DLGSC correspondence received since 11 April 2024. A question from the Elector's General Meeting requested that an item be brought to Council for the purpose of noting that there had been no DLGSC correspondence received.

It is recommended that the 2018 decision noted in the background be changed because often there is no correspondence and the decision has only been to note such correspondence coming in. To move forward a second recommendation has been made.

IMPLICATIONS TO CONSIDER

Consultative:

Nil.

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**

s.5.41 of the *Local Government Act 1995*.

Revoking or changing decisions made at council or committee meetings — s. 5.25(e)

Risk related:

Nil.

Workforce related:

The requirement to regularly report the required correspondence can be managed within existing Shire resources.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council notes there has been no correspondence received from April 2024 up to 13 August 2024, from the Department of Local Government, Sport and Cultural Industries of a non-compliance nature.

OFFICER'S RECOMMENDATION 2

That Council requests the Chief Executive Officer provides information to Councillors, on a regular basis at councillor briefings in lieu of formal reporting to Council.

ALTERNATE MOTION/COUNCIL RESOLUTION NO. OCM246/08/24**MOVED** Cr R Madacsi**SECONDED** Cr J Prater

That:

1. Council notes there has been no correspondence received from April 2024 up to 13 August 2024, from the Department of Local Government, Sport and Cultural Industries of a non-compliance nature;
2. Council replaces resolution 122/06/18 with information provided by the Chief Executive Officer to Councillors on a regular basis at Councillor Briefings; and
3. Any significant non-compliance is reported to Council by the CEO at the next ordinary meeting following receipt of the advice.

Voted For: Crs R Madacsi, C Duri, S McCormick, D Wrench, M Dival and J PraterVoted Against: Cr M McKeown**MOTION CARRIED 6/1**

Council's reasons for deciding on the alternate motion, pursuant to regulation 11. Minutes, content of (Act s. 5.25(1)(f)) of the Local Government (Administration) Regulations 1996 regulation 11(da) was because it seemed prudent given the governance oversight since the release of the Inquiry Report and as the Department of Local Government, Sport and Cultural Industries reports have continued to be included until now.

9.3.2 Toodyay Emergency Services Centre Licence

Date of Report:	14 August 2024
Applicant or Proponent:	ACORPP (Projects) Pty Ltd representing FES
File Reference:	LEG182
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Bowman – Chief Executive Officer
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Exclusive Licence. (confidential) <i>Section 5.23(2)</i> <i>(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 (under separate cover)</i>

PURPOSE OF THE REPORT

To consider the Shire of Toodyay entering into a 20 year licence arrangement with FES Ministerial Body for the Toodyay Emergency Services Centre located at 67 Stirling Terrace, Toodyay.

BACKGROUND

In February 2024 Officers followed up with Fire and Emergency Services (FES) in regard to an extension of an agreement that had initially been signed for a period of 15 years in 2008.

ACORPP (Projects) Pty Ltd, acting as representative for FES, advised verbally that rather than extend the agreement they would draw up a new exclusive licence. Several signed copies of the exclusive licence were mailed to the Shire on 15 July 2024.

COMMENTS AND DETAILS

In the drawing up of the licence Officers had requested that the common seal be applied to the licence. Whilst the delegation allows the document to be signed under s.9.49A(4), on checking the Execution of Documents policy a licence that is executed as a deed is a Category 3 document and as the licence is proposed to be for a period of 20 years, it requires Council approval.

It is recommended that the Council approve the signing under common seal of the signed licence (**Confidential Attachment 1**).

IMPLICATIONS TO CONSIDER

Consultative:

ACORPP (Projects) Pty Ltd

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

Outcome 9. Responsible and effective leadership and governance.

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

Policy related:

Execution of Documents

Financial:

There are no implications financially related to the signing of the licence. FES will pay rent and 50% of outgoings listed within the attached licence.

Legal and Statutory:

Local Government Act 1995

Risk related:

There are low/insignificant (2) risks for approving the authorisation of this licence under common seal. If Council were not to agree with the Officer's Recommendation there might be insignificant/low reputational risks (4) that might, if left unmanaged be a moderate (6) risk however this report mitigates the risk.

Workforce related:

Registers will be updated and Officers will set up procedures related to reimbursement of outgoings related to the licence.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM247/08/24

MOVED Cr C Duri

SECONDED Cr M McKeown

That Council approves the Shire President and CEO entering into an exclusive licence, for the term of 20 years as attached (**confidential Attachment 1**) relating to the Toodyay Emergency Services Centre, located at Lot 239 on Deposited Plan 213259 being the whole of the land comprised in Certificate of Title Volume 1952 Folio 980 known as 67 Stirling Terrace Toodyay

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

Voted Against: Nil

MOTION CARRIED 7/0

9.3.3 Voting Delegates for the 2024 WALGA AGM

Date of Report:	20 August 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	WAL1
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Bowman – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	Nil

PURPOSE OF THE REPORT

To consider appointing voting delegates for the 2024 WALGA AGM before the deadline of Friday 6 September 2024.

BACKGROUND

The Western Australian Local Government Association (WALGA) holds an **Annual General Meeting** (AGM) of Members.

The 2024 WALGA AGM will be held from 2.30pm on Wednesday 9 October 2024 at Perth Convention & Exhibition Centre. It is held alongside the annual WA Local Government Convention.

Council is required to nominate voting delegates for the 2024 WALGA AGM.

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

COMMENTS AND DETAILS

It is proposed that Council nominates the Shire President and Deputy Shire President as voting delegates with proxy voting delegates to be determined. The Convention provides professional development and networking opportunities for elected members.

IMPLICATIONS TO CONSIDER**Consultative:**

Information about the WALGA Local Government Convention was distributed to Councillors electronically via email on Friday 19 July 2024.

Strategic:

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

Outcome 9 Responsible and effective leadership and governance

Policy related:

Continuing Professional Development Policy.

Financial:

Nil.

Legal and Statutory:

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

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

Risk related:

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

Workforce related:

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM248/08/24

MOVED Cr C Duri

SECONDED Cr J Prater

That Council nominates the Shire President and Deputy Shire President as voting delegates and Councillor Madacsi as a proxy voting delegate for the 2024 WALGA AGM.

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

Voted Against: Nil

MOTION CARRIED 7/0

9.3.4 Confirmation of Appointment of CEO

Date of Report:	20 August 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	STR87
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Bowman – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none">1. CEO Recruitment and Selection Process checklist; 🔗2. Extract from 31 January Special Council Meeting; 🔗3. Extract from 28 February 2024 Ordinary Council Meeting; 🔗4. 10 April 2024 CEO Selection and Recruitment Committee Minutes; 🔗5. 12 June 2024 CEO Selection and Recruitment Committee Minutes; 🔗6. 12 June 2024 CSRC Confidential Minutes; 🔗7. 17 July 2024 CEO Selection and Recruitment Committee Minutes; 🔗8. 17 July 2024 CSRC Confidential Minutes; 🔗9. 17 July 2024 Special Council Meeting; 🔗10. 22 July 2024 CEO Selection and Recruitment Committee Minutes; 🔗11. 30 July 2024 CEO Selection and Recruitment Committee Minutes; 🔗12. 7 August 2024 Special Council Meeting Minutes; 🔗13. 7 August 2024 Confidential Special Council Meeting Minutes; 🔗14. 12 August 2024 Special Council Meeting Minutes; and 🔗15. 12 August 2024 Confidential Special Council Meeting Minutes. 🔗

PURPOSE OF THE REPORT

To certify that the new CEO was employed in accordance with the Shire's Standards for CEO recruitment, selection, performance and termination.

BACKGROUND

Pursuant to the requirements of s.5.36(2)(a)&(b) of the *Local Government Act 1995*, Council is required to not employ a person in the position of CEO unless the Council —

- a) believes that the person is suitably qualified for the position; and
- b) is satisfied, by absolute majority with the provisions of the proposed employment contract.

Council endorsed the CEO Recruitment and Selection Committee's recommendation on 7 August 2024 (**Attachment 1**) and approved the making of an offer of employment to Candidate B (Applicant); and the proposed terms of the contract of employment to be entered into by the Shire and the Applicant.

Council also endorsed the CEO Recruitment and Selection Committee's recommendation on 12 August 2024 (**Attachment 2**) and approved changes to the CEO contract and approval of terms in accordance with s.5.39(3)(c) of the *Local Government Act 1995*.

COMMENTS AND DETAILS

It is a requirement that Council certify that the CEO has been employed in accordance with the Shire's adopted standards in relation to the recruitment of CEO's.

A checklist detailing the process followed by the CEO Recruitment and Selection Committee is attached (**Attachment 3**).

The confidential minutes of the CEO Recruitment and Selection Committee pertaining to 7 August 2024 and 12 August 2024 recommendations that were presented at Special Council Meetings is attached (**Attachment 4** and **Attachment 5**).

It is recommended to move the Officer's Recommendation.

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.

Policy related:

Standards for CEO recruitment, selection, performance and termination.

Financial:

Nil

Legal and Statutory:

s.5.39B(7) Local Government Act 1995

r.18FB Local Government (Admin) Regulations 1996

Risk related:

If Council accept the recommendation there are no risks.

Workforce related:

Officers will provide a copy of the resolution to the Department of Local Government.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM249/08/24

MOVED Cr D Wrench

SECONDED Cr J Prater

That Council certify that Mr Aaron Bowman was employed in the position of Chief Executive Officer, in accordance with the Shire's Standards for CEO Recruitment, selection, performance and termination policy.

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

Voted Against: Nil

MOTION CARRIED 7/0 BY ABSOLUTE MAJORITY

9.4 INFRASTRUCTURE AND ASSETS

9.4.1 Expression of Interest to lease Old Tennis Club Facilities

Date of Report:	2 August 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	LEG113
Author:	M Rebane – Governance Coordinator
Responsible Officer:	C Sullivan – Executive Manager Infrastructure, Assets & Services
Previously Before Council:	Dec 2023 Moondyne Men
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Expressions of Interest received; and ↗ 2. Moondyne Men EOI (Oct 2023). ↗

PURPOSE OF THE REPORT

To seek Council's consideration of two expressions of interest submitted by Moondyne Men Inc and the Toodyay Community Garden Group Inc regarding the possible lease of the Old Tennis Club facilities.

BACKGROUND

Council resolved, as the April 2024 Council Meeting the following:

That Council:

- (1) *Reviews the Toodyay Tennis Club's agreement for use of the Fiennes Street premises, as in the agreement signed 16 February 2021 by the Shire and the Toodyay Tennis Club;*
- (2) *Considers the future use of this portion of crown reserve No 21797 and the whole reserve, in line with the Shire's long-term planning and Plan for the future;*
- (3) *Authorises the CEO to seek Expressions of Interest for the Fiennes Street premises in accordance with the Local Government Act 1995 and regulations; and,*
- (4) *Requests the CEO to bring a report back to Council for consideration by the August 2024 OCM.*

The Old Tennis Club facilities (the Facilities) in Fiennes Street were occupied for a long time by the Toodyay Tennis Club (TTC).

Officers have liaised with the Secretary from the Toodyay Tennis Club in August 2024 to confirm that the TTC has vacated the building completely and made the move to the Toodyay Recreation Centre. They have generously left behind cutlery, plates, and gardening equipment for use of whoever Council approves to tenant / lease the building.

The Shire has been informed recently that the Inaugural General Meeting of the Toodyay Community Garden Group Inc was held on 25 July 2024. The Committee membership is below:

- Chair, Gary Nelmes;
- Deputy Chair, Catherine Ehrhardt;
- Secretary, Rosemary Madacs;
- Treasurer, Tanvier Fowler; and
- Toni Anne Chrimes, Catherine de Vos and Annette Müller.

The membership of the Moondyne Inc is below:

- Chair, Graham Hill;
- Secretary, Colin Bird; and
- Treasurer, Barry Squires.

Two expressions of interest have been received (**Attachment 1**).

COMMENTS AND DETAILS

The Toodyay Community Garden Group have the intent of pursuing gardening activities as per their correspondence.

The Moondyne Men Inc have the intent of finding a permanent home from where they can undertake their meetings and activities which includes supporting the local community. In their expression of interest from October 2023 (**Attachment 2**), this group had also expressed an interest to the site being used as a community garden for which the Moondyne Men Inc would like to be involved with, if it were to materialise.

One option could be to accept a proposal from one of the EOIs to lease the premises at 14 Fiennes Street Toodyay and enter into a lease, however it is recommended that Council defer the decision until the Facilities and Buildings review has occurred given the content of Point 2 of the resolution made in April 2024.

It is not unreasonable to defer the decision given the historical significance of the site as well as the issue of future development to the site being hampered by the existence of Archaeological remains.

IMPLICATIONS TO CONSIDER

Consultative:

Nil.

Strategic:

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

Outcome 2: An inclusive, connected community.

O2.1. Support older people to age safely, happily, with dignity and respect.

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

Outcome 9. Responsible and effective leadership and governance.

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

Policy related:

Risk Management

Financial:

There are no financial implications associated with this report. However, before a decision is made regarding the future use of the Facilities, the financial implications will need to be considered.

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

Section 2.7 – Role of Council.

Section 3.1 – General function

Risk related:

Should Council choose not to consider the expressions of interest submitted there is a reputational risk that is considered moderate (8).

Should Council choose to consider the request without considering all of the implications, the reputational risk is considered moderate (6) and the financial risk could be considered moderate (5). It is recommended that Council make a decision about the building.

Workforce related:

The workload implications of the outcomes of this report can be managed within existing resources.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council defers the decision in regard to the expressions of interest received for the use of the Toodyay Tennis Club facility at 14 Fiennes Street Toodyay until the finalisation of the Facilities and Building Review.

Cr Prater moved the above Officer's Recommendation.

Cr McKeown seconded the motion.

Cr McCormick moved an additional recommendation 2 to the motion as follows:

2. Investigate the potential to house the Moondyne Men at short notice temporarily at the Toodyay Community Junction based on the fact that they have been waiting for a home since 2022

The Presiding Member ruled that the amendment would substantially change the motion and was disallowed.

Cr McCormick foreshadowed an alternate motion as follows:

That Council:

1. Investigates the empty shed at the Toodyay Junction as a short-term measure to have them occupy autonomously a facility with power and water and is freely

accessible to them at any time they wish; and

2. Investigate the planning for a community garden.

The Presiding Member ruled the alternate motion would substantially change the intention of the report and was disallowed.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM250/08/24

MOVED Cr J Prater

SECONDED Cr M McKeown

That Council defers the decision in regard to the expressions of interest received for the use of the Toodyay Tennis Club facility at 14 Fiennes Street Toodyay until the finalisation of the Facilities and Building Review.

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

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

MOTION CARRIED 4/3

9.5 COMMITTEE REPORTS**9.5.1 Bush Fire Advisory Committee Recommendations - 07 August 2024.**

Date of Report:	16 July 2024
Applicant or Proponent:	R Koch – Community Emergency Services Manager
File Reference:	FIR25
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 Advisory Committee Minutes 07 August 2024 🔗2. Shire of Toodyay Bush Fire Control Officer (FCO) Nomination Report 2024/2025 (confidential) <i>Section 5.23(2)</i> <i>(b) the personal affairs of any person (under separate cover)</i>

PURPOSE OF THE REPORT

To receive the minutes of the Bush Fire Advisory Committee (BFAC) and consider recommendations made at the meeting held on 07 August 2024 regarding the appointment of Bush Fire Control Officers (FCOs) and the designation of Chief and Deputy Chief Bush Fire Control Officer roles.

BACKGROUND

At the BFAC meeting held on 02 August 2024, a process was held to formulate and recommend FCO candidates to Council for appointment.

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

COMMENTS AND DETAILS

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

IMPLICATIONS TO CONSIDER**Consultative:**

The recommendations in this report have been compiled in line with the recommendations made by the BFAC at the meeting held on 07 August 2024.

A confidential report, (**Attachment 2**) was provided to the BFAC membership fourteen days prior to the 07 August 2024 BFAC meeting for consideration. This included candidates, levels of training and levels of activity with respect to turnouts to bush fire incidents.

Strategic:***Plan for the Future: Shire of Toodyay Council Plan 2023-2033*****Outcome 2: An inclusive and connected community.**

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

Outcome 4: Climate resilience.

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

Policy related:

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

Financial:

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

Legal and Statutory:

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

Risk related:

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

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

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

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

Workforce related:

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

Historically this includes the individuals holding the following positions:

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

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

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. OCM251/08/24

MOVED Cr D Wrench

SECONDED Cr C Duri

That Council receives the Bush Fire Advisory Committee Meeting Minutes from the meeting held on 7 August 2024.

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

Voted Against: Nil

MOTION CARRIED 7/0

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM252/08/24

MOVED Cr C Duri

SECONDED Cr D Wrench

That Council appoints Bush Fire Control Officers as follows:

Appointment of (to Position)

1. Craig Stewart (Chief Bush Fire Control Officer)
2. Nicholas Griggs (Deputy Chief Bush Fire Control Officer 1)
3. Robert Koch - CESM (Deputy Chief Bush Fire Control Officer 2)

4. Garry Forsyth (Bush Fire Control Officer)
5. Charles Wroth (Bush Fire Control Officer)
6. Jeffrey Venn (Bush Fire Control Officer)
7. Ian MacGregor (Bush Fire Control Officer)
8. Robert Scobie (Bush Fire Control Officer)
9. Peter Brennan (Bush Fire Control Officer)

10. The following Shire Officers as Bush Fire Control Officers:

- (a) Ebony Francis - Emergency Management Officer
- (b) Wesley Sutton - Reserves Management Officer
- (c) Shayne Willcocks - Ranger
- (d) Joseph Tenardi - Ranger

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

Voted Against: Nil

MOTION CARRIED 7/0

9.5.2 Audit and Risk Committee Recommendations

Date of Report:	2 August 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	STR87
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Bowman – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Minutes from the ARC; 🔗 2. REVISED Assurance Cycles Review; 🔗 3. Updated FMR Actions Report. 🔗 4. New Electronic Attendance at Meetings (Governance) Policy; and 🔗 5. Approval for Electronic Attendance form. 🔗

PURPOSE OF THE REPORT

To receive minutes and consider recommendations made by the Audit and Risk Committee (the Committee) from their meeting held on 31 July 2024 (**Attachment 1**).

BACKGROUND

The Committee met on 31 July 2024 to consider the following reports:

- (1) Assurance Cycles Review;
- (2) Risk Management; and
- (3) Non-compliance with Regulation 14C of the *Local Government (Administration) Regulations 1996* with respect to the lack of approval for members to attend meetings by electronic means.

The minutes contain detail relating to the above reports and the two recommendations made by the Committee for Points 1 and 3 above, for consideration as per Council Policy.

COMMENTS AND DETAILS

The following documents are attached for Councillor's reference:

- the revised Assurance Cycles Plan (**Attachment 2**); and
- the amended *FMR Actions Report - Outstanding Actions* (**Attachment 3**).

As Point 3 was an item of urgent business at the Committee Meeting, further information is provided below:

The *Local Government (Administration) Regulations 1996* allow local governments to continue to hold council and committee meetings electronically, outside of emergency situations. These provisions provide that members of Council and Committees may, with the approval of the Shire President, or majority of the Council, attend up to 50% of council or committee meeting by electronic means. This cap does not apply to councillors or committee members living with a disability (as defined in the *Disability Services Act 1993*).

For the purposes of section 5.53(2)(g) and (i) of the *Local Government Act 1995*, it is a requirement that a record be kept of the number of Council and committee meetings attended by each Council member during the financial year and this information is required also to be posted onto the Shire's website (refer to: <https://www.tooday.wa.gov.au/documents/463/council-member-attendance>).

Officers have been maintaining a Councillor attendance record and will continue to do so. The attendance record includes a record of attendance for Community Members attending Council Committees however this record is not required to be published.

Officers have liaised with the Department of Local Government in regard to the apparent non-compliance, assuring the governance team that the Shire is taking all necessary steps to rectify the situation and prevent any future occurrences. A new policy is attached (**Attachment 4**) together with a new form (**Attachment 5**).

It is recommended that instead of moving the recommendations made by the ARC that the Officer's Recommendations be moved.

IMPLICATIONS TO CONSIDER

Consultative:

DLGSC

Strategic:

Shire of Toodyay Council Plan 2023-2033

Outcome 9. Responsible and effective leadership and governance.

9.1. Provide strong, clear, and accountable leadership.

Policy related:

Committee Recommendations

Live Streaming and Recording of Council Meetings

Financial:

Nil.

Legal and Statutory:

Local Government Act 1995

Local Government (Administration) Regulations 1996

Risk related:

The risk of Council not endorsing the recommendations made by the Committee are insignificant/low.

Workforce related:

Officers will continue to ensure that actions in the FMR report are followed through. Officers will also distribute any forms required by members of committees to complete and attendance records will continue to be administratively maintained.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM253/08/24

MOVED Cr D Wrench

SECONDED Cr M McKeown

That Council receives the unconfirmed minutes (**Attachment 1**) of the Audit and Risk Committee meeting held on 31 July 2024 and:

- receives the revised Assurance Cycles Plan (**Attachment 2**); and
- notes the activities listed in the Assurance Cycles Plan will be incorporated into the Administrative Service Plan currently under review by the Executive Management Group; and
- receives the amended *FMR Actions Report - Outstanding Actions* (**Attachment 3**) and notes the actions finalised to date; and
- notes the non-compliance with Regulation 14C of the *Local Government (Administration) Regulations 1996* with respect to the lack of approval for members to attend meetings by electronic means.

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

Voted Against: Nil

MOTION CARRIED 7/0

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM254/08/24

MOVED Cr M McKeown

SECONDED Cr J Prater

That Council:

1. notes that the Chief Executive Officer has advised Mr Tom Griffiths, Acting Executive Director of Local Government of the non-compliance with Regulation 14C; and
2. adopts the new Electronic Attendance at Meetings Policy as attached (**Attachment 4**).

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

Voted Against: Nil

MOTION CARRIED 7/0

9.5.3 Receipt of the Heritage Advisory Committee Minutes

Date of Report:	21 August 2024
Applicant or Proponent:	Shire of Toodyay
File Reference:	COC4
Author:	J O'Driscoll – Executive Support Officer
Responsible Officer:	A Bowman – Chief Executive Officer
Previously Before Council:	Nil.
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Minutes From 14 August 2024 ↗

PURPOSE OF THE REPORT

To receive the Heritage Advisory Committee Meeting minutes (**Attachment 1**).

BACKGROUND

The Heritage Advisory Committee met on 14 August 2024.

COMMENTS AND DETAILS

As the Committee made no recommendations from Council it is recommended that Council receive the minutes.

IMPLICATIONS TO CONSIDER**Consultative:**

Nil.

Strategic:

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

Outcome 9 Responsible and effective leadership and governance.

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

Policy related:

Nil.

Financial:

Nil.

Legal and Statutory:

Nil.

Risk related:

The risks are insignificant and low (1) in receiving the minutes of the Heritage Advisory Committee.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM255/08/24

MOVED Cr J Prater

SECONDED Cr D Wrench

That Council receives the minutes of the meeting of the Heritage Advisory Committee held on 14 August 2024. (**Attachment 1**).

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

Voted Against: Nil

MOTION CARRIED 7/0

5.1 Ordinary Meeting of Council held on 24 July 2024**OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM256/08/24**

MOVED Cr J Prater

SECONDED Cr M McKeown

That the Unconfirmed Minutes of the Ordinary Council Meeting held on 24 July 2024 be confirmed.

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

Voted Against: Nil

MOTION CARRIED 7/0

Cr McKeown left the meeting at 2.43pm and did not return.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM257/08/24**MOVED** Cr D Wrench**SECONDED** Cr J Prater

That Council considers the confidential report(s) listed below in a meeting closed to the public in accordance with Section 5.23(2) of the *Local Government Act 1995*:

14.1 Lot 102 Lovers Lane, Toodyay - Proposed Rural Home Business

This matter is considered to be confidential under Section 5.23(2) (e)(iii) of the *Local Government Act 1995*, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest; and if disclosed, could be reasonably expected to reveal information about the business, professional, commercial or financial affairs of a person.

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

Voted Against: Nil

MOTION CARRIED 6/0

In accordance with Standing Orders 5.2 (3) the Presiding Member directed everyone to leave except the Members and Executive Managers, the Executive Support Officer and the Governance Coordinator.

All members of the public, with the exception of the Applicant, departed the Council Chambers at 2.43pm.

9.1.4 Lot 102 Lovers Lane, Toodyay - Proposed Rural Home Business

Date of Report:	2 August 2024
File Reference:	P2024-61
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	Nil
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none">Map - Lot 102 Lovers Lane, Toodyay (confidential) <i>Section 5.23(2)</i> <i>(e)(iii)a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person where the trade secret or information is held by, or is</i>

	<p><i>about, a person other than the local government (under separate cover)</i></p> <p>2. Rural Home Business - Application Plans and Cover Letter (confidential) Section 5.23(2) (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 (under separate cover)</p> <p>3. Extract of Agenda Briefing Notes from 21 August 2024. (confidential) Section 5.23(2) (b) the personal affairs of any person (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 (under separate cover)</p>
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SUMMARY

Applicant: Andrew Walker
Owner: Andrew Walker
Proposal: Rural Home Business
Location: Lot 102 (No. 654) Lovers Lane, Toodyay

PURPOSE OF THE REPORT

To consider an application for development for a proposed Rural Home Business at Lot 102 Lovers Lane, Toodyay. This matter is being brought to Council for consideration as the nature of the proposed Rural Home Business is a sensitive one.

BACKGROUND

Subject site

Lot 102 (No. 654) Lovers Lane, Toodyay is a 23.74-hectare property at the intersection of Lovers Lane, Cobbler Pool Road and River Road. It is zoned Rural under the Shire of Toodyay Local Planning Scheme No. 4. For more details please refer to **Attachment 1 – Map**.

Proposal

The Shire is being requested to consider an application for development approval for a Rural Home Business which will be operating as a gunsmith including the manufacturing, repair and refurbishing and private sale of firearms.

For more details, please refer to **Attachment 2 – Letter and plan**.

COMMENTS AND DETAILS

This proposal is consistent with the Scheme's requirements and objectives, demonstrating responsible development and operation of a Rural Home Business within the designated Rural zone.

The proposal for the Rural Home Business at Lot 102 (No. 654) Lovers Lane complies with the Shire of Toodyay Local Planning Scheme No. 4 in the following ways:

- 1. Zoning Compliance:** The property is zoned as 'Rural', where a 'Rural Home Business' is a discretionary use (denoted as 'D' in the zoning table), meaning it can be approved by the local government subject to conditions.
- 2. Business Operations:** The business involves firearms manufacturing and assembly, which is allowed under the 'Rural Home Business' definition in Schedule 1 of the Scheme operations will be conducted within a shed on the property, ensuring minimal environmental and community impact through noise management and waste disposal measures.
- 3. Security and Safety:** The proposal includes secure storage and surveillance systems for firearms, adhering to relevant legal and regulatory requirements. This aligns with the Scheme's objectives of protecting public safety and maintaining community amenity.
- 4. Community and Strategic Alignment:** The proposal has received support from local stakeholders and aligns with the Shire of Toodyay Council Plan 2023-2033 objectives, which emphasise responsible planning and maintaining the rural character of the area.

IMPLICATIONS TO CONSIDER

Consultative:

The Shire has received signed submissions endorsing the proposed Rural Home Business from adjoining and nearby neighbours as part of the application documents. The Shire has contacted each and verified these with each submitter. This meets the requirements of the Shire's Local Planning Policy – Advertising of Planning Proposals.

Additional discussion was had with Toodyay WAPOL who verbally supported the proposal.

Strategic:

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

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

O5.1. Provide responsible planning and development.

Outcome 9. Responsible and effective leadership and governance.

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

Policy related:

Local Planning Policy – Advertising of Planning Proposals

Risk Management

Financial:

The applicant has paid the applicable fee for development approval pursuant to the *Planning and Development Regulations 2009*.

Should Council reject the Officer's recommendation, and the proponent challenges the decision in the State Administrative Tribunal (SAT) the Shire would be liable for further costs.

Legal and Statutory:

Planning and Development Act 2005

Planning and Development Regulations 2009

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Toodyay Local Planning Scheme No. 4

Risk related:

Risk	Consequence	Likelihood	Score
The operation of a gunsmith business may have environmental implications, such as contamination from hazardous materials used in the gunsmithing process. The Shire is responsible for ensuring that the business complies with environmental regulations to minimise any negative impact on the local environment.	Moderate (3)	Possible (3)	Moderate (6)
The presence of a gunsmith business in the area can raise public safety concerns among residents. The Shire must ensure that the business implements proper safety measures to prevent accidents or misuse of firearms, as any incidents could lead to public backlash and reputational damage to the Shire.	Catastrophic (5)	Unlikely (2)	High (10)
The Shire of Toodyay faces several environmental health risks as the regulatory authority for a gunsmith business on a rural property. These risks include potential contamination from hazardous materials such as lead and chemical solvents, improper waste management, and air quality issues from firearm testing and emissions. There is also a risk of noise pollution affecting nearby residents.	Moderate (3)	Possible (3)	Moderate (9)

The Shire of Toodyay faces several risks related to overseeing a gunsmith business. Environmental contamination from hazardous materials is a moderate risk with possible occurrence, scoring a moderate 6. Public safety concerns, such as the misuse of firearms, have a catastrophic consequence but are considered unlikely, leading to a high-risk score

of 10. Environmental health risks, including contamination, waste management, and noise pollution, also pose a moderate risk with possible occurrence, scoring a moderate 9. The Shire must ensure compliance with regulations to mitigate these risks effectively.

Workforce related:

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

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council

1. Notes the submissions received for the application for a Rural Home Business at Lot 102 (No. 654) Lovers Lane, Toodyay.
2. Pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, approves the application for development approval for a Rural Home Business at Lot 102 (No. 654) Lovers Lane, Toodyay, subject to the following conditions:
 - (a) This approval relates only to the development as indicated on the plans received by the Shire of Toodyay as attached to this report.
 - (b) The development, including the use approved by this development approval, must be implemented (and where relevant maintained in implementation) only in accordance with the approved plans.
 - (c) The development must be substantially commenced within the period of two years commencing on the date of the Shire of Toodyay Council's decision to grant development approval. The development approval lapses if the development has not substantially commenced within that period.
 - (d) The operating hours are from 08:00 to 18:00 – Monday to Saturday.
 - (e) No signage is permitted regarding this development.
 - (f) This approval is valid for a period of twelve (12) months only. The applicant may be invited to reapply for further approval subject to satisfactory operation and observance of the Rural Home Business.

Advice Note

1. The applicant must ensure that at all times that the development adhere to all written laws pertaining to the use, storage and safety of firearms as well as all environmental and health matters relating to noise and nuisance.

Cr Madacs moved the above Officer's Recommendation.

Cr Wrench seconded the motion.

AMENDMENT/COUNCIL RESOLUTION NO. OCM258/08/24**MOVED** Cr J Prater**SECONDED** Cr S McCormick

That Point 2(d) that reads: "The operating hours are from 08:00 to 18:00 – Monday to Saturday" is removed.

Voted For: Crs S McCormick and J Prater

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

AMENDMENT LOST 2/4**AMENDMENT/COUNCIL RESOLUTION NO. OCM259/08/24****MOVED** Cr M Dival**SECONDED** Cr R Madacsi

That Point 2(d) be reworded to read as follows:

(d) The operating hours are from 08:00 to 18:00

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

Voted Against: Nil

AMENDMENT CARRIED 6/0**OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM260/08/24****MOVED** Cr R Madacsi**SECONDED** Cr D Wrench

That Council

1. Notes the submissions received for the application for a Rural Home Business at Lot 102 (No. 654) Lovers Lane, Toodyay.
2. Pursuant to clause 68(2)(b) of the deemed provisions for local planning schemes, approves the application for development approval for a Rural Home Business at Lot 102 (No. 654) Lovers Lane, Toodyay, subject to the following conditions:
 - (a) This approval relates only to the development as indicated on the plans received by the Shire of Toodyay as attached to this report.
 - (b) The development, including the use approved by this development approval, must be implemented (and where relevant maintained in implementation) only in accordance with the approved plans.
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grant development approval. The development approval lapses if the development has not substantially commenced within that period.

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Advice Note

1. The applicant must ensure that at all times that the development adhere to all written laws pertaining to the use, storage and safety of firearms as well as all environmental and health matters relating to noise and nuisance.

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

Voted Against: Nil

MOTION CARRIED 6/0

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM261/08/24

MOVED Cr C Duri

SECONDED Cr D Wrench

That Council come back from behind closed doors at 3.32pm.

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

Voted Against: Nil

MOTION CARRIED 6/0

The Council Chambers were re-opened at 3.44pm.

In accordance with Standing Order 5.2(7), the Presiding Member read aloud Council Resolution No. OCM/260/08/24 for the benefit of members of the public on line.

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

Nil.

13 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING**13.1 MEMBERS**

Nil.

13.2 EMPLOYEES

Nil.

14 CONFIDENTIAL BUSINESS

Nil.

15 NEXT MEETINGS

Audit & Risk Committee Meeting	4 September 2024
Works Advisory Committee Meeting	11 September 2024
Agenda Briefing	18 September 2024
Ordinary Council Meeting	25 September 2024

16 CLOSURE OF MEETING

The Deputy Shire President declared the meeting closed at 3.37pm.