



Ordinary Council Meeting

Minutes

29 October 2019

Preface

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following 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 October 2019.



Stan Scott
CHIEF EXECUTIVE OFFICER

Confirmed Minutes

These minutes were confirmed at a meeting held on 26 November 2019.

Signed:

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

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Shire of Toodyay

ORDINARY COUNCIL MEETING – 29 OCTOBER 2019

MINUTES

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Cr Manning, Shire President, declared the meeting open at 4.03pm.

The Shire President advised those present that all mobile phones and recording devices be switched off and advised that the recording of any part of the meeting was not allowed.

The Shire President advised those present the location of the exit doors in case of an emergency.

2. RECORDS OF ATTENDANCE

Members

Cr B Manning	Shire President
Cr R Madacsi	Deputy Shire President
Cr B Bell	
Cr T Chitty	
Cr P Hart	
Cr S Pearce	
Cr B Rayner	
Cr B Ruthven	

Staff

Mr S Scott	Chief Executive Officer
Ms A Bell	Manager Community Development
Mr K Nieuwoudt	Manager Planning & Development
Mr S Patterson	Manager Works and Services
Mrs N Rodger	Finance / HR Coordinator
Mrs M Rebane	Executive Assistant

Visitors

P Ruthven	M Sinclair-Jones	B Keens
F Moran	B Moran	S Cousins
J Hart	G Appleby	H Appleby
M Holland	M Leggett	T Boyd
A Boyd	B Foley	T Ochman

2.1 APOLOGIES

Nil

2.1 APPROVED LEAVE OF ABSENCE

Cr Greenway – leave of absence (19 Sept 2019 to 31 Oct 2019)

2.2 APPLICATIONS FOR LEAVE OF ABSENCE

Cr Manning requested that he be granted Approved Leave of Absence from 3 November 2019 to 15 November 2019 inclusive.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 244/10/19

MOVED Cr Manning

That the Application for Leave of Absence by Cr Manning from 3 November 2019 to 15 November 2019 inclusive be granted.

MOTION CARRIED 8/0

3. DISCLOSURE OF INTERESTS

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

Cr Chitty had declared an Impartiality Interest at the Agenda Briefing pursuant to Regulation 11 of the Local Government (Rules of Conduct) Regulations 2007 in relation to Agenda Item 9.2.3 (which has since been withdrawn from the Agenda) as her son Jack Wood is the Applicant/Proponent.

Cr Hart declared a Proximity Interest pursuant to section 5.60B of the Local Government Act 1995 in regard to Agenda Item 9.2.4 Lot 104 #80 McGellin Way – 3 to 6 Dog Application as he lives on the corner of an adjacent property.

4. PUBLIC QUESTIONS

4.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

At the Ordinary Meeting of Council (OCM) held on 24 September 2019, the following questions were taken on notice.

P Hart

Summary of Question One

Why has Shire Policy number M.8 not been adhered to?

(a) The Privacy statement and Disclaimer and Copyright links

When you click on to the links on the bottom of the Shire of Toodyay website run by Open Cities, both links will only go to the home page and do not take you to a separate Privacy Statement nor a Disclaimer & Copyright section.

This is a minor oversight that can be corrected by liaising with Open Cities now that this has been brought to our attention.

(b) The use of the words “© 2019 Shire of Toodyay” at the bottom of the Shire of Toodyay website run by Open Cities. Shouldn't it say creative commons 2019 Shire of Toodyay?

The Policy states that “publications should be attributed in the following way: © Shire of Toodyay” (Year of Publication) (Name of Publication).

Therefore, the fact that the © has been used (and not the words “(CC)”) prior to the words 2019 (noting the year of publication) and the words “Shire of Toodyay” noting the name of publication – this is in accordance with Policy M.8 which is the Member’s Policy relating to Copyright that was adopted by Council on 23 June 2015 (Resolution No 122/06/15).

Summary of Question Two

The Shire’s web site is an important means of communicating with the community. Why is it not being properly maintained?

- (a) On the Shire of Toodyay website page found at link: <http://www.toodyay.wa.gov.au/Community-Visitors/Libraries/Morangup-Community-Library> the opening times of the Library at the Morangup Community Hall last month showed dates for last year. The opening times for the Library are absent, but the page still states “you can head over to the Morangup Community Centre, on the dates below”.

When liaising with Mr Hart on 15 October 2019 it was discovered that the link had been updated to reflect current information.

- (b) On the Shire of Toodyay website page found at link: <http://www.toodyay.wa.gov.au/Council/Council-Wards> the ward map for the Shire of Toodyay is still available which is misleading, given that there is currently an election.

This page will be updated to reflect, for the purposes of retaining historical information, that at the January 2019 Council meeting Council resolved as follows:

“Council resolve by absolute majority to propose to the Local Government Advisory Board (the Board) that:

- 1. In accordance with clause 10(2) of Schedule 2.2 and section 2.2 (1)(d) of the Local Government Act 1995 the Local Government Advisory Board recommends to the Minister for Local Government that an order be made to abolish wards in the Shire of Toodyay to take effect from the next Local Government elections in October 2019.*
- 2. It is Council further recommends that Councillors Rayner, Chitty, Greenway and Manning be permitted to serve the balance of their terms until 2021 as members representing the entire district; and*
- 3. Council makes no recommendation to the Board for any change to the number of Councillors.”*

- (c) On the Shire of Toodyay website page found at link: <http://www.toodyay.wa.gov.au/Council/2019-Local-Government-Elections/Nominating-for-Council-Information-Night> the electoral roll and call for candidates still exists, even though it is out of date. The nominating for Council Information Night has already occurred. Why is this information still available on the website?

It is not uncommon to have this information still being made available on the website. This will be addressed by a disclaimer providing advice about the page, once the link on the website has been restored.

- (d) On the Shire of Toodyay website page found at link: <http://www.toodyay.wa.gov.au/Council/Council-Meetings/Council-Meetings> the date shown for the October 2019 Ordinary Council Meeting is incorrect. It has not been updated to reflect what was resolved by Council at their August 2019 Council Meeting.

It is not uncommon to have this information remain as is at this stage of the calendar year because the information on this page is put there each calendar year when Council ratifies what the dates for the Council Meetings will be. This information is also listed on the Council Meeting Information Sheet that is contained at the front of each Agenda for a Council Meeting.

What we can do is place a notation that these dates may be subject to change on the relevant page and at this stage in the calendar year, amend the dates.

R Madacsi

Summary of Question One

These two questions are not intended to detract from the charitable works of the Freemasons but to ensure equity within the Shire dealings with like organisations that contribute to the fabric of our community.

- (a) Does Council have a policy or guideline that governs the waiving or subsidisation of fees, charges, rates and rents owed to the Shire of Toodyay?
- (b) If so, is this request within the framework described? If not, what is the precedent to support his request and does this request apply equally to other community service groups?
- (c) It is noted that like groups occupying Shire property vary in monies due to the Shire for example the Men's Shed pay a peppercorn lease whereas the RSL do not so will these costs be waived in the interest of equity and community support?

The Shire Delegation CS7 Power to Defer, Grant Discounts, Waive or Write-off Debts, provides for the CEO to write off amounts of up to \$2,000.

B Ruthven

Summary of Question Three

In the July payments list are EFT 26387 (\$18,474.42) for LGIS insurance for Management Liability, Cyber, Personal Accident and Marine Cargo, and EFT 26388 (\$34,736.15) LGISWA, insurance for Liability, Crime and Bushfire. Did the administration obtain at least two written quotations as required by the shire's Purchasing Policy for amounts over \$10,000, before taking out these policies?

There is a reasonable basis for the Shire of Toodyay to believe that it is unlikely that there is more than one potential supplier of a pooled fund risk management arrangement with ancillary risk mitigation and insurance related services, being LGIS. As such the Shire of Toodyay would be exempt from the requirements of Local Government (Functions and General) Regulations 1996 (R11 in respect to LGIS). This is in line with the Shire's Purchasing Policy.

Summary of Question Four

In the July payments list are EFT 26493 (\$116,579.97) for LGIS (Jardine Lloyd Thompson), Motor Vehicle Insurance and Personal Accident Insurance, and EFT 36494 (\$110,866.96) for LGISWA, Property Insurance and Workcare Insurance. Did the Administration comply with the Shire's Purchasing Policy in relation to purchases over \$50,000, before taking out these policies?

For the information of those who are not familiar with the Purchasing Policy, for purchases in the range \$50,000 and \$149,999 it states that the shire is to:

Obtain at least three written quotations containing price and specification of goods and services (with procurement decision based on all value for money considerations). Formal Request for Quotation (RFQ) documents are to be issued by Business Units and a record of the details of written quotations received is to be made in accordance with the Purchasing Policy.

The CEO noted that there is a specific exemption in the Act for self-insurance through LGIS. (NOTE this exemption was confirmed later as part of the WALGA presentation). The relevant exemptions are at Section 9.58.

Under section 9.58 (6) (b) of the Local Government Act 1995, overrides the Shire of Toodyay purchasing policy. As such the Shire is not required to comply with the purchasing policy.

Section 9.58 (6) (b) – with the approval of the affected members, arrange contracts of insurance on behalf of all or any of its members for any purpose.

4.2 PUBLIC QUESTION TIME

Cr Madacsi

Summary of Question One

In respect to Question One from the September 2019 Council Meeting the (a), (b) and (c) or the questions appear not to have been completely responded to. Could they be?

The Shire President took this question on notice, indicating that the response will be provided at the November 2019 OCM.

Cr Ruthven

Summary of Question One

In respect to Question Four from the September 2019 Council Meeting where it says “with the approval of the affected members” what does that mean and who gave the approval?

When they are talking about members they are talking about member local governments. The CEO advised that he would track down the correspondence related to that and provide it to Council.

5. CONFIRMATION OF MINUTES

5.1 Ordinary Meeting of Council held on 24 September 2019

Cr Madacsi moved the Officer’s Recommendation as follows:

That the Unconfirmed Minutes of the Ordinary Meeting of Council held on 24 September 2019 be confirmed subject to amendments being made to the Record of Attendance so that the words “Cr B Manning” in the Members area is deleted and the words “NAME Title” in the Staff area is deleted.

Cr Rayner seconded the motion.

Clarification was sought.

Cr Ruthven moved an amendment to the motion as follows:

That Cr Greenway’s name be removed from the Members Record of Attendance as she is recorded as an apology and was provided with an approved Leave of Absence at that meeting.

Cr Chitty seconded the amendment.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. 245/10/19

MOVED Cr Ruthven

SECONDED Cr Chitty

That Cr Greenway’s name be removed from the Members Record of Attendance as she is recorded as an apology and was provided with an approved Leave of Absence at that meeting.

AMENDMENT CARRIED 8/0

The substantive motion was put.

**OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO.
246/10/19**

MOVED Cr Madacsi

SECONDED Cr Rayner

That the Unconfirmed Minutes of the Ordinary Meeting of Council held on 24 September 2019 be confirmed subject to amendments being made to the Record of Attendance so that the words "Cr B Manning" in the Members area is deleted and the words "NAME Title" in the Staff area is deleted and that Cr Greenway's name be removed from the Members Record of Attendance as she is recorded as an apology and was provided with an approved Leave of Absence at that meeting.

MOTION CARRIED 8/0

5.2 Special Meeting of Council held on 22 & 28 October 2019

**OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO.
247/10/19**

MOVED Cr Pearce

SECONDED Cr Hart

That the Unconfirmed Minutes of the Special Meeting of Council held on 22 October 2019 (Adjourned) and 28 October 2019 (Resumed) be confirmed.

MOTION CARRIED 8/0

5.3 Agenda Briefing held on 22 October 2019

Cr Rayner moved the Officer's Recommendation as follows:

**That the Notes of the Agenda Briefing held on
22 October 2019 be received**

Cr Ruthven seconded the motion.

Clarification was sought.

Cr Pearce moved an amendment to the motion as follows:

**That after the words "Why has the Induction Manual been
marked confidential" the words "when it should not have
been" be included in the question within the Agenda
Briefing notes.**

Cr Madacsi moved an inclusion to the amendment as follows:

**That the words "in the interests of transparency and
clarity" be inserted after the words "should not have been"**

Cr Pearce accepted the amendment to the motion.

Cr Bell seconded the amendment.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. 248/10/19

MOVED Cr Pearce

SECONDED Cr Bell

That after the words "Why has the Induction Manual been marked confidential" the words "when it should not have been in the interests of transparency and clarity" be included in the question within the Agenda Briefing notes.

AMENDMENT CARRIED 8/0

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 249/10/19

MOVED Cr Rayner

SECONDED Cr Ruthven

That the Notes of the Agenda Briefing held on 22 October 2019 be received subject to an amendment being made as follows:

That after the words "Why has the Induction Manual been marked confidential" the words "when it should not have been in the interests of transparency and clarity" be included in the question within the Agenda Briefing notes.

MOTION CARRIED 7/1

5.4 Confidential Items

5.4.1 Ordinary Meeting of Council held on 24 September 2019

Cr Rayner moved the Officer's Recommendation.

Cr Chitty seconded the motion.

Clarification was sought.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 250/10/19

MOVED Cr Rayner

SECONDED Cr Chitty

That the Unconfirmed Confidential Minuted Item containing Questions 12.2 and 12.3 as well as Agenda Item 14.1 CEO KRA's for 2019/2020 from the Ordinary Meeting of Council held on 24 September 2019 be confirmed.

VOTES EQUALLY DIVIDED 4/4

In accordance with 5.21(3) of the Local Government Act 1995, the Presiding Member cast a second vote 'for' the motion.

MOTION CARRIED 5/4

In accordance with Section 5.21(4)(b) of the Local Government Act 1995, Cr Hart requested that the vote of all members present be recorded. Councillors Bell, Chitty, Rayner, and Manning voted for the motion. Councillors Pearce, Hart, Ruthven and Madacsi voted against the motion.

6. PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

6.1 PETITIONS

Nil

6.2 DEPUTATIONS

Nil

6.3 PRESENTATIONS

Nil

6.4 SUBMISSIONS

G Appleby addressed Council in regard to a submission he had made years ago in respect to turning the table that the Councillors sit at to face the public gallery.

F Moran addressed Council in regard to Agenda Item No. Lot 603 Telegraph Road, Toodyay – Outbuilding.

7. BUSINESS FROM PREVIOUS MEETING (IF ADJOURNED)

Nil.

8. ANNOUNCEMENTS BY THE PRESIDING MEMBER (without discussion)

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

8.1 PRESIDENT'S REPORT

I would like to say how pleased I am to have the opportunity to work with all of you as representatives of the community.

You all bring to the Council table your intelligence, your experience, your skills and, most of all, your enthusiasm to make Toodyay a better place in which to live.

The broad range of skills and experience includes areas such as agriculture, fire control, tourism, environmental science, education, accounting, business, IT and law.

The community expects us to work together as a united team and I am confident we can do that.

There will be differences of opinion, of course, but these need to be handled in a polite and respectful manner and the majority decision needs to be accepted.

At the end of the day, our collective responsibility is to represent the interests of the community as a whole.

When we are considering matters before us, the question we always need to ask ourselves is "What is in the best interests of the community?"

9. REPORTS OF COMMITTEES AND EMPLOYEE REPORTS

9.1 COMMUNITY DEVELOPMENT

No reports.

9.2 PLANNING AND DEVELOPMENT

9.2.1 Lot 104 #80 McGellin Way – 3 to 6 Dog Application

Cr Hart declared a Proximity Interest pursuant to section 5.60B of the Local Government Act 1995 in regard to Agenda Item 9.2.4 Lot 104 #80 McGellin Way – 3 to 6 Dog Application as he lives on the corner of an adjacent property.

Cr Hart departed Council Chambers at 4.45pm.

Date of Report:	15 October 2019
Applicant / Proponent/s:	Maria Holland
File Reference:	A3103/104MCG
Author:	T. Prater – Development Support Officer
Responsible Officer:	K Nieuwoudt – Manager Planning & Development
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Schedule of Submissions.
Voting Requirements:	Simple Majority

PURPOSE OF THE REPORT

To consider an application for the keeping of 6 Dogs at Lot 104 McGellin Way, Morangup.

BACKGROUND

Council has received an application seeking approval to keep six (6) Keeshond dogs at Lot 104 McGellin Way, Morangup (the property). The owners are wishing to extend their show team after the death of their older female dog.

The property has an area of 9.1ha and is zoned 'Rural Residential' under the Shire's Local Planning Scheme No 4.

CONSULTATION IMPLICATIONS

External Consultation

Consultation was undertaken in accordance with Council's Policy No. A15 – Keeping of 3 to 6 Dogs. Adjoining landowners within a 50m radius of the property were given 21 days to lodge a written submission on the application (advertised from 12th September 2019 until 3rd October 2019).

Four landowners were contacted with one submission being received. The submission raises concerns regarding the potential for more pervasive barking from an increased number of dogs on the property, the risk to local wildlife if the

dogs are not properly contained, and questions the applicants' bona fides for keeping such a large number of pets.

A summary of the submitters' submission, with the Shire Rangers' response to each point, is attached. Refer Attachment 1.

Internal Consultation

The application was referred internally to the Shire's Ranger Services. The Rangers' recommendation is reflected under 'Officer Comment / Details' section of this report.

STRATEGIC IMPLICATIONS

There are no adverse strategic implications envisaged from this report.

POLICY IMPLICATIONS

Council's Administration Policy A.15 – Keeping of 3 to 6 Dogs applies to this proposal. The Application seeks to vary the Policy as it details that a maximum of 3 dogs can be considered in the 'Rural Residential' zone. As staff do not have delegation from Council to determine dog applications at variance with Council's 'Keeping of 3 to 6 Dogs' Policy, the application is referred to Council for determination.

FINANCIAL IMPLICATIONS

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

LEGAL AND STATUTORY IMPLICATIONS

Section 26 of the *Dog Act 1976* outlines the limitations on dog numbers. The Act allows for local government to create Local Laws to control the number of dogs on a property.

Clause 3.2(3) of the Shire of Toodyay Dogs Local Law, which is made pursuant to the *Dog Act 1976*, outlines that Council may approve more than two dogs on a property. Administration Policy A.15 – Keeping of 3 to 6 Dogs, provides clarification on how this clause from the Local Law is applied.

The application complies with the Act and the Shire's Dogs Local Law.

RISK IMPLICATIONS

There are no adverse risk implications for the Shire of the recommendations of this report.

SOCIAL IMPLICATIONS

The keeping of animals which can be difficult to contain on an owner's property, or animals that may create excessive noise levels, may have potential to negatively impact upon the adjoining landowners.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

ECONOMIC IMPLICATIONS

There are no adverse economic implications envisaged from this report.

OFFICER COMMENT / DETAILS

The Rangers have assessed this property, support this application and were impressed with the high standard to which the dogs were cared for. The dogs spend the majority of their time within the house yard which is secured with 1.2m high pool-style fence. Additionally there is a barn setup with kennel facilities. Prior to this application the property has had 4 dogs approved with no issues recorded with Ranger Services.

It is recommended that a variation allowing the additional (3) dogs be supported.

OFFICER'S RECOMMENDATION

That Council permit the keeping of (6) six dogs on Lot 104 McGellin Way, subject to the following conditions:

1. All dogs must be confined to the property and kept under control by the following means:
 - (a) Fencing and gates on the premises or a portion of the premises where the dogs are to be contained, must be of a suitable type, height and construction to prevent the dogs at all times from passing over, under or through it, or
 - (b) an approved electronic confinement.
2. Any proven complaints regarding the dogs offending against the *Dog Act 1976* may result in the permit being revoked and the number of dogs having to be reduced to a maximum of two (2) within fourteen (14) days.
3. All dogs must be registered and registration must be maintained.
4. The approval only applies to the following dogs:

Name	Breed	Sex	Reg No	Age	Colour
Axol	Keeshond	M	1900151	9yrs	Grey/Black
Socrates	Keeshond	M	L0391	5yrs	Grey/Black
FYL	Keeshond	F	L0393	3yrs	Grey/Black
Maverick	Keeshond	M	TBA	4 mths	Grey/Black
Cloud	Keeshond	F	TBA	4 mths	Grey/Black
Scout	Keeshond	M	TBA	4 mths	Grey/Black

5. Upon the death or disposal of one or more of the above dogs, the permit will cease and the number of dogs permitted will revert to the lesser number.
6. The local government needs to be notified in writing of the dogs' details and any change to details, this includes change of address and/or change of ownership.

Cr Chitty moved the Officer's Recommendation.

Cr Pearce seconded the motion.

Clarification was sought.

Debate commenced.

Further clarification was sought.

Cr Bell raised a Point of Order in respect to Standing Order 6.2 in that all member questions have to go through the Shire President.

MOTION/COUNCIL RESOLUTION NO. 251/10/19

MOVED Cr Rayner

SECONDED Cr Madacsi

That Council suspend the operation of Standing Order 7.9 at 4.41pm in order to permit free-flowing discussion and clarification in accordance with Clause 16.1 of the *Standing Orders Local Law 2008*.

MOTION CARRIED 7/0

Clarification was sought.

The Shire President ruled that Mrs Holland be permitted to address Council in regard to this Agenda Item.

Mrs Holland addressed Council in regard to Agenda Item 9.2.1 Lot 104 #80 McGellin Way – 3 to 6 Dog Application.

Debate continued.

Further clarification was sought.

Discussion ensued.

MOTION/COUNCIL RESOLUTION NO. 252/10/19

MOVED Cr Rayner

SECONDED Cr Bell

That Standing Order 7.9 be resumed at 5.01pm in accordance with Clause 16.1 of the *Standing Orders Local Law 2008*.

MOTION CARRIED 7/0

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 253/10/19

MOVED Cr Chitty

SECONDED Cr Pearce

That Council permit the keeping of (6) six dogs on Lot 104 McGellin Way, subject to the following conditions:

1. All dogs must be confined to the property and kept under control by the following means:
 - (a) Fencing and gates on the premises or a portion of the premises where the dogs are to be contained, must be of a suitable type, height and construction to prevent the dogs at all times from passing over, under or through it, or
 - (b) an approved electronic confinement.
2. Any proven complaints regarding the dogs offending against the *Dog Act 1976* may result in the permit being revoked and the number of

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HELD IN SHIRE OF TOODYAY COUNCIL CHAMBERS ON 29 OCTOBER 2019

dogs having to be reduced to a maximum of two (2) within fourteen (14) days.

3. All dogs must be registered and registration must be maintained.
4. The approval only applies to the following dogs:

Name	Breed	Sex	Reg No	Age	Colour
Axol	Keeshond	M	1900151	9yrs	Grey/Black
Socrates	Keeshond	M	L0391	5yrs	Grey/Black
FYL	Keeshond	F	L0393	3yrs	Grey/Black
Maverick	Keeshond	M	TBA	4 mths	Grey/Black
Cloud	Keeshond	F	TBA	4 mths	Grey/Black
Scout	Keeshond	M	TBA	4 mths	Grey/Black

5. Upon the death or disposal of one or more of the above dogs, the permit will cease and the number of dogs permitted will revert to the lesser number.
6. The local government needs to be notified in writing of the dogs' details and any change to details, this includes change of address and/or change of ownership.

MOTION CARRIED 7/0

Cr Hart returned to Council Chambers at 5.06pm.

The result of Resolution No. 253/10/19 was taken as read for Cr Hart's benefit.

9.2.2 Lot 603 Telegraph Road, Toodyay - Outbuilding

Date of Report:	15 October 2019
Applicant / Proponent/s:	T. Ochman
File Reference:	A4086/603TELS/IPA62619
Author:	H. de Vos – Planning Officer
Responsible Officer:	K. Nieuwoudt – Manager of Planning and Development
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. Map – Lot 603 Telegraph Road; 2. Application Plans; 3. Schedule of Submissions; and 4. Demonstration of proposed outbuilding.
Voting Requirements:	Simple Majority

PURPOSE OF THE REPORT

Approval is sought for an outbuilding at Lot 603 (No. 43) Telegraph Road in Toodyay because the outbuilding does not meet the height requirements for wall height in the R-Codes and an objection has been received during the public consultation phase.

BACKGROUND

Lot 603 (No. 43) Telegraph Road is an 1136.821 m² property in the Toodyay town site. It is zoned Residential in the Shire of Toodyay Local Planning Scheme No. 4 (“LPS4” or “the Scheme”) with a density coding of R10. Please refer to the map supplied as **Attachment 1**.

As well as the requirements of the Local Planning Scheme, due regard must be given to the Residential Design Codes and the Shire of Toodyay Local Planning Policy No. 13 – Outbuildings in Residential Areas (“LPP13”)

The applicant intends to construct a 12m x 5m (60m²) outbuilding. The proposed structure will have a wall height of 3.0m and a ridge height of 4.0m. Please refer to the application plans supplied as **Attachment 2**.

The applicant initially approached the Shire of Toodyay to see if development approval was required. The proposal was assessed and found to meet the provisions of LPS13 policy. The plans at the time did not indicate any cut and/or fill.

Accordingly the Shire of Toodyay issued a building permit for the outbuilding on 12 September 2019.

On 27 September 2019, the Shire received a complaint from the adjoining landowners at the rear of the property stating concerns about the bulk and scale

of the development. They also raised the issue of the large amount of fill creating a sand pad approximately 1m for the structure.

The property was inspected by the Shire of Toodyay and it was confirmed that there was a large amount of fill and an elevated sand pad.

The applicant was requested to halt all work and to submit an application for retrospective development approval.

This was done on 1 October 2019.

This application must be determined within 90 days in accordance with Clause 75(1)(a) of the *Planning and Development (Local Planning Schemes Regulations) 2015* – which is by **30 December 2019**.

MATTERS TO BE CONSIDERED BY LOCAL GOVERNMENT

Section 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* outlines the range of matters to be considered by local governments in determining applications for development approval.

Clause	Comment
(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;	None
(b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting or approving;	None
(c) any approved State planning policy;	Assessed against State Planning Policy 7.3 Residential Design Codes Volume 1.
(d) any environmental protection policy approved under the <i>Environmental Protection Act 1986</i> section 31(d);	None
(e) any policy of the Commission;	None
(f) any policy of the State;	None
(g) any local planning policy for the Scheme area;	Assessed against Local Planning Policy No. 13 – Outbuildings in Residential Areas

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Clause	Comment
(h) any structure plan, activity centre plan or local development plan that relates to the development;	None
(i) any report of the review of the local planning scheme that has been published under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> ;	There is no anticipated change in zoning or density on this property.
(j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;	None
(k) the built heritage conservation of any place that is of cultural significance;	None
(l) the effect of the proposal on the cultural heritage significance of the area in which the development is located;	This land is not within the Central Toodyay Heritage Area
(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;	The development does not comply with the wall and ridge heights under Local Planning Policy No. 13. Thus with the 0.98m fill for the sand pad, the structure, whilst complying with the setbacks and building heights under the R-codes – does present an imposing frontage which is very visible from the adjoining landowner's property.
(n) the amenity of the locality including the following — <ul style="list-style-type: none"> (i) environmental impacts of the development; (ii) the character of the locality; (iii) social impacts of the development; 	The outbuilding is large in size and at 210m ³ the bulk is noticeable. However it is only two thirds the volume of the maximum permitted under the Local Planning Policy which is 303m ³ . It will stand out compared to other outbuildings in the locality.
(o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;	No impact
(p) whether adequate provision has	No notable trees.

MINUTES OF ORDINARY MEETING OF COUNCIL
HELD IN SHIRE OF TOODYAY COUNCIL CHAMBERS ON 29 OCTOBER 2019

Clause	Comment
been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;	
(q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;	The land is sloping and thus requires moderate earthworks to provide level construction areas. This involves cut and fill. In this instance the 0.98m fill is increasing the wall height by nearly a metre compared to what is allowed under the policy.
(r) the suitability of the land for the development taking into account the possible risk to human health or safety;	No impact
(s) the adequacy of — (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;	No impact
(t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;	No additional traffic
(u) the availability and adequacy for the development of the following — (i) public transport services; (ii) public utility services; (iii) storage, management and collection of waste; (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities); (v) access by older people and people with disability;	No impact
(v) the potential loss of any community service or benefit resulting from the	No impact

Clause	Comment
development other than potential loss that may result from economic competition between new and existing businesses;	
(w) the history of the site where the development is to be located;	There is no cultural history identified. The land is cleared.
(x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;	The bulk of the development is noticeable. However it is permitted at this scale under the Local Planning Policy.
(y) any submissions received on the application;	Submissions have been received objecting to the proposal.
(z) the comments or submissions received from any authority consulted under clause 66;	None received.
(aa) any other planning consideration the local government considers appropriate.	None of note.

CONSULTATION IMPLICATIONS

The proposal underwent a period of public consultation in accordance with the Shire's M.2. Public Consultation Formal Matters policy. The application was mailed to adjoining landowners for a period of 14 days. This period expires on 16 October 2019 and at the time of writing this report, the Shire has received three (3) submissions from the one adjoining landowner. The landowner opposes the development. Further details will be provided in the Schedule of Submissions provided as **Attachment 3**.

STRATEGIC IMPLICATIONS

There are no adverse strategic implications envisaged from this report.

POLICY IMPLICATIONS

State Planning Policy 7.3 – Residential Design Codes Volume 1

Part 5.4.3 of the R-Codes concerns outbuildings. The C3 deemed-to-comply provisions are as follows:

C3 Outbuildings that:

- i. are not attached to a dwelling;*
- ii. are non-habitable;*
- iii. collectively do not exceed 60m²*
- iv. in area or 10 per cent in aggregate of the site area, whichever is the lesser;*
- v. do not exceed a wall height of 2.4m;*

- vi. do not exceed ridge height of 4.2m;
- vii. are not within the primary or secondary street setback area;
- viii. do not reduce the amount of open space required in Table 1; and
- ix. are set back in accordance with Tables 2a and 2b.

The outbuilding complies with (i, ii & iv and vi-xi), with regards to (iii, v & vi), part 2.5.2 of the R-Codes states that in making a determination on the suitability of a proposal, the decision-maker shall exercise its judgement, having regard to the following:

- (c) a provision of a local planning policy adopted by the decision-maker consistent with and pursuant to the R-Codes Volume 1;

In this instance due regard must be given to LPP13 which is an adopted policy.

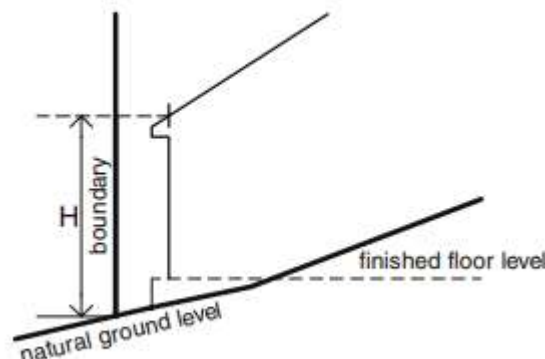
Section 5 of this policy states that outbuildings within a Residential area shall be deemed as meeting the performance criteria of the Residential Design Codes where the following area and height requirements can be achieved:

Residential Design Code of Property	Permitted Area of Outbuilding	Permitted Wall Height	Permitted Ridge Height
R10	81m ²	3.0m	4.5m
Assessment (without earthworks)	Complies	Complies	Complies

However there are other provisions of the R-Codes that are relevant in this case.

The measurement of wall height on a sloping site in the R-Codes is by measuring the height of natural ground level (NGL) at the boundary to the top of the wall. As shown from Figure 3b of the R-Codes below:

Figure 3b – Cross section, sloping site



In this instance, the level of fill compared to the boundary is 0.98m. Therefore in accordance with the R-Codes the true wall height is 3.98m and the ridge height is 4.98m, and therefore does not comply based on this method of measurement.

Setbacks

The boundary setback for the structure is in accordance with Table 2a - Boundary setbacks - Walls with no major openings of the R-Codes. The length of the wall closest to this boundary is 5m. The wall height per the R-codes is 3.98m. The required setback for a wall height of 4m with this wall length is 1.1m. The applicant has set the outbuilding back from the wall 2.5m and therefore the proposal complies with the setbacks (even taking into consideration the fill). The side setback also complies in this instance.

Lastly, part 5.3.7 of the R-Codes addresses site works. The relevant deemed to comply provisions in this instance are:

C7.2

Excavation or filling within a site and behind a street setback line limited by compliance with building height limits and building setback requirements.

C7.3

Subject to subclause C7.2 above, all excavation or filling behind a street setback line and within 1m of a lot boundary, not more than 0.5m above the natural ground level at the lot boundary except where otherwise stated in the scheme, local planning policy, structure plan or local development plan.

With regards to C7.2, Table 3 of the R-Codes lists the following building height information:

Table 3: Maximum building heights

Maximum building heights (i)			
	Category		
	A	B	C
Tops of external wall (roof above) (ii)	3m	6m	9m
Top of external wall (concealed roof)	4m	7m	10m
Top of pitched roof (iii) (iv)	6m	9m	12m

- i. Category B will apply unless a **scheme**, the relevant **local planning policy, structure plan or local development plan** requires the application of category A (generally single level **development**) or category C (development on three levels) or an alternative standard.

The LPS4 gives a maximum building height of 8.0m. As can be seen the proposed development complies with the building heights of the R-Codes. It also meets the deemed-to-comply provisions of C7.2.

With regards to C7.3 the proposal complies as there are not earthworks of more than 500mm within 1.0m of the boundary.

For more details please refer to the following link:

<https://www.dph.wa.gov.au/rcodes>

Local Planning Policy 13- Outbuildings in Residential Areas

It is considered that the proposed development is consistent with the provisions of this policy with regards to its size and placement. However, it should be noted that the policy is not explicit with regards to how it measures wall height. Section 7.2 of the R-Codes states:

7.2 Pre-existing local planning policies

If a properly adopted local planning policy which came into effect prior to the gazettal of the R-Codes Volume 1 is inconsistent with the R-Codes Volume 1, the R-Codes Volume 1 prevail over the policy to the extent of the inconsistency.

In this instance, the wall height measurement must be taken in line with the R-Codes method and therefore the heights do not comply.

Finally, in each the R-Codes and the LPP13, Council can choose to vary the requirements and permit development subject to an application.

The key to determine this would be to look at the following design principle.

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

FINANCIAL IMPLICATIONS

Should Council resolve to refuse or conditionally approve the proposal, the applicant has a right of review through the State Administrative Tribunal (SAT) which will incur legal costs.

LEGAL AND STATUTORY IMPLICATIONS

The proposal constitutes development under the *Planning and Development Act 2005* and requires planning approval under the Shire's *Local Planning Scheme No. 4 (LPS4)*.

RISK IMPLICATIONS (including DAIP)

As noted above, should Council resolve to refuse or conditionally approve the proposal, the applicant has a right of review through the State Administrative Tribunal (SAT) which will incur legal costs.

SOCIAL IMPLICATIONS

Should Council choose to approve this development, there is likely to be ongoing dissatisfaction from the adjoining landowner. However, the overall impact can possibly be ameliorated with screening of some sort.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

ECONOMIC IMPLICATIONS

There are no adverse economic implications envisaged from this report.

OFFICER COMMENT / DETAILS

The proposal has been assessed against relevant objectives and development provisions of LPS4, LPP13 and the R-Codes.

Currently the Shire's Local Planning Policy No. 13 allows for a maximum area of 81m² with a wall height of 3.0m and a ridge height of 4.5m. This gives a volume of 303m³. The proposal seeks a reduced area of 60m², a reduced ridge height of 4.0m and keeps the same ridge height of 3.0m giving a volume of 210m³. A comparison of these two structures is viewable as **Attachment 4**.

As discussed the proposed structure was brought to the Shire's attention as a result of a complaint from the adjoining landowner. Their primary concern has been visual impact due to the bulk of the structure.

The assessment of the proposal has only revealed that the structure is over height rather than over bulk. The reality is that the bulk of the structure is significantly less than the policy currently allows.

However, the comments and concerns from the submission are noted and should not be discounted. It is over height and the landowners are impacted.

Solutions

The submitter's suggestion to adjust the height of the shed by taking off the roof and cutting the polls was discussed with the applicant. Unfortunately this is not feasible as the intent is to store a caravan inside and clearance is needed.

The second suggestion and one supported throughout this application process – is the installation of a solid fence for screening. Here the applicant has agreed and supplied indicating that he intends to erect a 1.8m colour bond fence around three sides of the property. This will improve the visual impact of the structure.

The submission also called for a retaining wall to be erected to boost the overall height, however this would seem to be excessive when additional lattice screening can be added to the top of the 1.8m fencing to provide additional screening and not be such a cost burden. Council can choose to add this as a condition of approval.

The proposed structure meets all the deemed-to-comply requirements of the R-Codes and also of Local Planning Policy No.13 except in regards to wall height. This has only been an issue due to the sloping site and requirement for earthworks.

The submission opposing the development is noted, however the applicant has agreed to undertake reasonable steps to provide an improved outcome for them.

It is recommended that the structure be approved with conditions.

OFFICER'S RECOMMENDATION

That Council grants planning approval for the proposed outbuilding at Lot 603 Telegraph Road in Toodyay, subject to the following conditions:

1. Development shall be carried out only in accordance with the terms of the application as approved herein and any approved plan.
2. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
3. If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.
4. The outbuilding shall not be used for habitable, commercial or industrial purposes.
5. Prior to occupation of the development, a 1.8m high solid fence augmented by a permanently fixed fence extension / screening device at least 300mm in height and at least 75% obscure, must be erected on the western boundary.

Cr Madacsi moved the Officer's recommendation as follows:

That Council grants planning approval for the proposed outbuilding at Lot 603 Telegraph Road in Toodyay, subject to the following conditions:

1. **Development shall be carried out only in accordance with the terms of the application as approved herein and any approved plan.**
2. **Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.**
3. **If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.**
4. **The outbuilding shall not be used for habitable, commercial or industrial purposes.**
5. **Prior to occupation of the development, a 1.8m high solid fence augmented by a permanently fixed fence extension / screening device at least 300mm in height and at least 75% obscure, must be erected on the western boundary.**

Cr Chitty seconded the motion.

Clarification was sought.

Cr Rayner moved an amendment to the motion as follows:

That at Point No. 5 the height of 300mm be amended to be 1m so that the extension comes into line with the height of the roof of the existing building at present.

Cr Madacsi seconded the amendment.

Further clarification was sought.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. 254/10/19

MOVED Cr Rayner

SECONDED Cr Madacsi

That at Point No. 5 the height of 300mm be amended to be 1m so that the extension comes into line with the height of the roof of the existing building at present.

AMENDMENT LOST 3/5

The motion was considered.

Debate commenced.

Cr Pearce moved an amendment to the motion as follows:

That Point No. 5 be amended to read as follows:

- 5. Prior to the completion of the development, the applicant is to erect a retaining wall at his expense to the height of the highest level of the fill on the rear western boundary and then erect a 1.8m high solid fence on this retaining wall augmented by a permanently fixed extension / screening device at least 300mm in height and at least 75% obscure.**

Cr Hart seconded the amendment.

Clarification was sought.

The amendment was put.

AMENDMENT/COUNCIL RESOLUTION NO. 255/10/19

MOVED Cr Pearce

SECONDED Cr Hart

That Point No. 5 be amended to read as follows:

- 5. Prior to the completion of the development, the applicant is to erect a retaining wall at his expense to the height of the highest level of the fill on the rear western boundary and then erect a 1.8m high solid fence on this retaining wall augmented by a permanently fixed extension / screening device at least 300mm in height and at least 75% obscure.**

AMENDMENT CARRIED 6/2

The substantive motion was considered.

Debate continued.

The substantive motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO.256/10/19

MOVED Cr Madacsi

SECONDED Cr Chitty

OFFICER'S RECOMMENDATION

That Council grants planning approval for the proposed outbuilding at Lot 603 Telegraph Road in Toodyay, subject to the following conditions:

1. Development shall be carried out only in accordance with the terms of the application as approved herein and any approved plan.
2. Nothing in the approval or these conditions shall excuse compliance with all relevant written laws in the commencement and carrying out of the development.
3. If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.
4. The outbuilding shall not be used for habitable, commercial or industrial purposes.
5. Prior to the completion of the development, the applicant is to erect a retaining wall at his expense to the height of the highest level of the fill on the rear western boundary and then erect a 1.8m high solid fence on this retaining wall augmented by a permanently fixed extension / screening device at least 300mm in height and at least 75% obscure.

MOTION CARRIED 6/2

9.2.3 Application for Development Approval – Borrow Pit for on-Farm Use – Lot 124 (#5799) Toodyay Road,

The CEO made an announcement that this item has been withdrawn from the Agenda and will be represented at a future Ordinary Meeting of Council.

Date of Report:	16 October 2019
Name of Applicant / Proponent/s:	Jack Wood
File Reference:	A3644
Author:	K Nieuwoudt – Manager Planning and Development
Responsible Officer:	K Nieuwoudt – Manager Planning and Development
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Nature of Council's Role in the matter:	Quasi-Judicial
Attachments:	1. Location Plan; and 2. Pit Excavation Plan.
Voting Requirements:	Simple Majority

PURPOSE OF THE REPORT

The purpose of this report is for Council to consider granting development approval for a borrow pit on Lot 124 (#5799) Toodyay Road, Toodyay for on-farm use.

BACKGROUND

Council has received an application for retrospective development approval for a borrow pit for on-farm use at Lot 124 (#5799) Toodyay Road, Toodyay.

The excavation area is situated approximately 625m south-southeast of Lot 124's north-western boundary and approximately 50m east of the western boundary as is more clearly shown on the location plan that forms the subject of Attachment 1 to this report.

Borrow pits for private use on rural land would not normally require development approval under the Shire's Local Planning Scheme No. 4 (the Scheme), unless the excavation or re-contouring of land changes the natural ground level by more than 0.5m. In this particular instance, the pit has already been excavated to a depth of approximately 3m, and is located approximately 200m from the nearest private dwelling.

Given the scale/extent of the works, including the potential for offsite emissions such as noise, vibrations and dust, including amenity impacts on nearby residents in the locality, staff have considered it prudent to call the works in for

development approval under the Scheme. This is also because the definition of the term “development” encompasses excavation works.

The *Planning and Development Act 2005* defines the term “development” as follows:

- * **“development** means the development or use of any land, including —
- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;
 - (b) the carrying out on the land of any excavation or other works;
 - (c) in the case of a place to which a protection order made under the *Heritage Act 2018 Part 4 Division 1* applies, any act or thing that —
 - (i) is likely to change the character of that place or the external appearance of any building; or
 - (ii) would constitute an irreversible alteration of the fabric of any building;”

[Emphasis added]

Lot 124 is zoned “Rural Living” under the Shire’s Local Planning Scheme No. 4 (the Scheme).

The excavation works is subservient to the primary use of the land (extensive agriculture) and would include works to establish internal roads/tracks, or works to maintain the farm’s internal road infrastructure. This is a common practice on farms across Australia.

In Schedule 1 (Dictionary of Defined Words and Expressions) of the Shire’s Local Planning Scheme No. 4, the use class “agriculture – extensive” is defined as “...premises used for the raising of stock or crops but does not include agriculture – intensive or animal husbandry – intensive”.

In Table 1 (Zoning Table) of the Scheme, the use class ‘agriculture – extensive’ is depicted with the symbol “D”. ‘D’ means that the use is not permitted unless the local government has exercised its discretion by granting development approval.

NOTE - the excavation works should not be confused with the use class “industry – extractive” in the Scheme, as gravel will not be exported offsite for use in commercial construction projects elsewhere in the State.

The applicant had prepared and submitted a plan showing an area approximately 7.5ha. (500m X 150m) in size, being the area of current and future excavation. Refer Attachment 2. This area includes both gravel and sand. An area 2.25ha (150m X 150m) to the north is rich in gravel, and an area 5.25ha (350m X 150m) to the south is rich in sand. The plan also shows the alignment of a proposed road to the excavation pit. The alignment of this road will negate the need to utilise the firebreak access on the western boundary.

CONSULTATION IMPLICATIONS

Consultation was undertaken with the owners of 66, 76, 90, 102, 110, 120 and 126 Harvester Drive from 12 September 2019 until 25 September 2019 (2 weeks).

One submission raising concerns regarding dust, the use of firebreaks for access, and noise emanating from equipment in the pit and truck air brakes.

A copy of the submitter's submission can be made available to Councillors under separate cover.

STRATEGIC IMPLICATIONS

There are no adverse strategic implications for the Shire of the recommendations of this report.

POLICY IMPLICATIONS

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

FINANCIAL IMPLICATIONS

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

LEGAL AND STATUTORY IMPLICATIONS

The following legislation and subsidiary legislation apply:

- *Planning and Development Act 2005;*
- *Shire of Toodyay Local Planning Scheme No. 4;*
- *State Planning Policy 2.5 – Rural Planning;*
- *Environmental Protection (Noise) Regulations 1997; and*
- *Planning and Development (local planning schemes) Regulations 2015.*

RISK IMPLICATIONS

- Reputational – Low
 - *The application was considered on its merits and in accordance with the relevant provisions of the Scheme and town planning framework.*
- Compliance - Low
 - *There are no compliance risks in relation to the recommendation. Should Council approve the application, the applicant would be subject to conditions of development approval.*
- Legal – Low
 - *Council would be issuing a valid development approval, assessed on its merits and in accordance with the relevant provisions of the Scheme and town planning framework.*

SOCIAL IMPLICATIONS

Earthmoving equipment and trucks may create unacceptable noise levels, which may impact negatively upon adjoining landowners.

ENVIRONMENTAL IMPLICATIONS

Notable environmental implications associated with borrow pits may include: soil erosion, loss of ecosystem services, groundwater contamination, and loss of arable land.

Environmental nuisance, such as loud noise, vibration and dust in close proximity of sensitive land uses can be disruptive and may interfere with nearby residents' daily activities.

ECONOMIC IMPLICATIONS

There are no adverse economic implications envisaged from this report.

OFFICER COMMENT / DETAILS

Borrow pits on rural land for private on-farm use, is a common practice throughout the Wheatbelt. The borrow pit on Lot 124, however, is located approximately 200m from the nearest residence where noise, vibration and dust may impact negatively on the general amenity of the locality. The Shire's Administration has already received a complaint from an adjoining neighbour, raising concerns regarding excessive noise and dust originating from plant, equipment and trucks. While the impacts of the above cannot be eliminated entirely, they can be controlled by implementing measures to minimise the adverse impacts on sensitive uses.

If Council is of a mind to approve the application, staff are of the view that impact control measures to minimise adverse noise, vibration and dust impacts, including the requirement to comply with the *Environmental (Noise) Protection Regulations 1997*, be included as conditions of approval.

OFFICER'S RECOMMENDATION

That Council grants development approval to Jack Wood to operate a borrow pit for on-farm use on Lot 124 (#5799) Toodyay Road, Toodyay, subject to the following conditions:

1. This approval allows the borrow pit for on-farm use to be conducted by Jack Wood. If Jack Wood ceases to operate the borrow pit hereby permitted, this approval will expire.
2. The development hereby permitted shall have hours of operation that do not exceed the following hours:
7:00 am to 5:00 pm – Monday to Friday
7:00 am to 12:00 noon – Saturday
No work on Sunday and public holidays
3. Within 30 days of the approval hereby granted, the applicant shall prepare and submit a noise, vibration and dust impact management plan to the local government for approval. The plan must include a description of emission sources, impact control measures and complaint management processes to be implemented. Once approved, the plan must be implemented and adhered to at all times.
4. Access to the borrow pit shall be via the route depicted on the plans hereby approved.
5. Broadband reverse alarms are to be utilised for on-site equipment and transport vehicles.
6. Upon decommissioning of the pit, the site is to be rehabilitated to the

satisfaction of the local government.

7. No polluted and/or sediment laden run-off is to be discharged directly or indirectly into drains or watercourses.
8. All works must be undertaken in a manner that minimises soil erosion, and any exposed areas of soil must be stabilised to prevent soil erosion to the satisfaction of the local government.
9. Measures to minimise and monitor dust emanating from plant, equipment and trucks in the borrow pit, including along the internal haulage route, must be in place at all times.
10. The *Environmental Protection (Noise) Regulations 1997* must be adhered to at all times.

9.3 WORKS AND TECHNICAL SERVICES

No reports

9.4 CORPORATE SERVICES

9.4.1 List of Payments – September 2019

Date of Report:	9 October 2019
Name of Applicant / Proponent/s:	Shire of Toodyay
File Reference:	FIN6
Author:	C Murcott – Accounts/Payroll Officer
Responsible Officer:	N Rodger – Acting Manager Corporate Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Nature of Council's Role in the matter:	Review
Separate attachment:	1. List of Payments.
Voting Requirements:	Simple majority

PURPOSE OF THE REPORT

To present the cheques and electronic payments raised during the month of September 2019.

BACKGROUND

Creditor invoices are processed as they are received and on the 15th and final day of every month, cheques and electronic fund transfers are raised for payments.

CONSULTATION IMPLICATIONS

There are no adverse consultation implications envisaged from this report.

STRATEGIC IMPLICATIONS

There are no adverse strategic implications envisaged from this report.

POLICY IMPLICATIONS

Council has delegated authority to the Chief Executive Officer to make payments from the Municipal and Trust Accounts.

FINANCIAL IMPLICATIONS

There are no adverse financial implications envisaged from this report.

LEGAL AND STATUTORY IMPLICATIONS

Section 5.42 of the *Local Government Act 1995* allows the local government to delegate its powers to the Chief Executive Officer.

Regulation 13 of the *Local Government (Financial Management) Regulations 1996* states that where the Chief Executive Officer has delegated authority to make payments from the municipal and trust accounts, a list of such payments is to be presented to Council at the next meeting.

RISK IMPLICATIONS (including DAIP)

There are no adverse risk implications envisaged from this report.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

SOCIAL IMPLICATIONS

There are no adverse social implications envisaged from this report.

OFFICER COMMENT / DETAILS

Electronic Funds Transfers (EFT) are for payments transferred directly to creditor bank accounts.

Bank Payment Vouchers (BPV) are for direct debits against the bank account such as bank fees and charges etc.

Internal Payment Vouchers (IPV) are vouchers raised internally for payroll related expenditures which are paid through Council's on-line (internet) banking system.

OFFICER'S RECOMMENDATION

That Council note as being paid payments listed and presented for the month of September as follows:

1. Trust Fund Cheques \$500.00;
2. Electronic Fund Transfers (EFT) payments numbered EFT 26718 to EFT 26908 and Municipal Fund Cheques numbered 12670 to 12681 amounting to \$949,621.15;
3. Direct Debits numbered IPV649 to IPV651 and BPV4107 to BPV4146 amounting to \$245,680.14; and
4. Super Direct Debits totalling \$39,234.01 and Loan Direct Debits totalling \$24,945.47 as being paid

Cr Chitty moved the Officer's Recommendation.

Cr Rayner seconded the motion.

Clarification was sought.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 257/10/19

MOVED Cr Chitty

SECONDED Cr Rayner

That Council note as being paid payments listed and presented for the month of September as follows:

1. Trust Fund Cheques \$500.00;
2. Electronic Fund Transfers (EFT) payments numbered EFT 26718 to EFT 26908 and Municipal Fund Cheques numbered 12670 to 12681 amounting to \$949,621.15;
3. Direct Debits numbered IPV649 to IPV651 and BPV4107 to BPV4146 amounting to \$245,680.14; and
4. Super Direct Debits totalling \$39,234.01 and Loan Direct Debits totalling \$24,945.47 as being paid

MOTION CARRIED 8/0

9.4.2 Monthly Financial Reports – September 2019

Date of Report:	24 October 2019
Name of Applicant / Proponent/s:	Shire of Toodyay
File Reference:	FIN24
Author:	N Rodger – Acting Manager Corporate Services
Responsible Officer:	N Rodger – Acting Manager Corporate Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Nature of Council's Role in the matter:	Review
Separate Attachments:	<ol style="list-style-type: none"> 1. Monthly Financial Statements including Outstanding Rates Debtors and Outstanding Sundry Debtors for month ending 30 September 2019; 2. Bank Reconciliations for month ending 30 September 2019.
Voting Requirements:	Simple majority

PURPOSE OF THE REPORT

To accept the Monthly Financial Statements, Outstanding Rates and Outstanding Sundry Debtors Information and the Bank Reconciliations for the period ending 30 September 2019.

BACKGROUND

Regulation 34(4) of the *Local Government (Financial Management) Regulations 1996* states:

A statement of financial activity and the accompanying documents referred to in sub regulation (2) is to be –

- a) *Presented at an ordinary meeting of the council within two months after the end of the month to which the statement relates; and*
- b) *Recorded in the minutes of the meeting at which it is presented.*

These reports are prepared after all the end of month payments and receipts have been processed.

CONSULTATION IMPLICATIONS

There are no adverse consultation implications envisaged from this report.

STRATEGIC IMPLICATIONS

There are no adverse strategic implications envisaged from this report.

POLICY IMPLICATIONS

There are no adverse policy implications envisaged from this report.

FINANCIAL IMPLICATIONS

There are no adverse financial implications envisaged from this report.

LEGAL AND STATUTORY IMPLICATIONS

Regulation 34 of the *Local Government (Financial Management) Regulations 1996* requires a statement of Financial Activity to be prepared each month which is to contain the following details:

- a) Annual budget estimates;
- b) Budget estimates to the end of the month;
- c) Actual amount of expenditure and revenue;
- d) Material variances between comparable amounts in b) and c) and above; and
- e) The net current assets at the end of the month to which the statements relates i.e.: surplus/deficit position.

The Statement is to be accompanied by:

- a) Explanation of the composition of net current assets, less committed assets and restricted assets;
- b) Explanation of the material variances; and
- c) Such other information considered relevant by the local government.

Section 6.4 of the *Local Government Act 1995* requires a local government to prepare financial reports.

Regulation 34 and 35 of the *Local Government (Financial Management) Regulations 1996* sets out the form and content of the financial reports.

RISK IMPLICATIONS (including DAIP)

There are no adverse risk implications envisaged from this report.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

SOCIAL IMPLICATIONS

There are no adverse social implications envisaged from this report.

OFFICER COMMENT / DETAILS

Attached are the monthly Financial Statements, outstanding Rates and outstanding Sundry Debtors Information and Bank Reconciliations for the period ending 30 September 2019.

OFFICER'S RECOMMENDATION

That Council accept the monthly Financial Statements, Outstanding Rates and Outstanding Sundry Debtors Information and Bank Reconciliations for the period ending 30 September 2019.

MINUTES OF ORDINARY MEETING OF COUNCIL
HELD IN SHIRE OF TOODYAY COUNCIL CHAMBERS ON 29 OCTOBER 2019

Cr Madacsi moved the Officer's Recommendation.

Cr Chitty seconded the motion.

Clarification was sought.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 258/10/19

MOVED Cr Madacsi

SECONDED Cr Chitty

That Council accept the monthly Financial Statements, Outstanding Rates and Outstanding Sundry Debtors Information and Bank Reconciliations for the period ending 30 September 2019.

MOTION CARRIED 8/0

9.5 EXECUTIVE SERVICES

9.5.1 LGSC Consultation on proposed Code of Conduct Draft WALGA Submissions and Consultation Deadline Extension

Date of Report:	11 October 2019
Applicant / Proponent/s:	Shire of Toodyay
File Reference:	ICR62827
Author:	S Scott – CEO
Responsible Officer:	S Scott – CEO
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. The Draft Code of Conduct with guidelines; and 2. The Draft CEO Standards and Guidelines; and 3. The Draft Submission on the Code of Conduct – October 2019; and 4. The Draft Submission on the CEO Standards and Guidelines – October 2019
Voting Requirements:	Simple majority

PURPOSE OF THE REPORT

To receive information that WALGA has provided to our local government.

EXECUTIVE SUMMARY

On 27 June 2019, the Local Government Legislation Amendment Act 2019 was passed in Parliament. The Department of Local Government, Sport and Cultural Industries has extended the consultation timeframe on the two consultation papers until Friday, 6 December 2019.

WALGA prepared a draft submission in relation to the guidelines, which are attached. The Draft Submission on Code of Conduct raises a number of questions and issues where feedback from the Local Government is sought. These issues and questions are identified in the body of the draft submission.

WALGA is seeking feedback on the draft submissions by Friday, 25 October, 2019 which can be provided to Manager Governance, James McGovern at jmcgovern@walga.asn.au or (08) 9213 2093.

Following sector feedback, the draft submissions will be included in the December State Council Agenda for consideration at November Zone meetings, before being considered at the 4 December 2019 meeting of State Council.

This report seeks to give Council the opportunity for feedback to WALGA as the email received from WALGA stated that “Local Governments are also encouraged to make submissions on the guidelines to the DLGSC at actreview@dlgsc.wa.gov.au by the amended consultation deadline of Friday, 6 December.”

BACKGROUND

The Act includes a requirement for the introduction of:

- a mandatory code of conduct for council members, committee members and candidates (Code of Conduct); and
- Mandatory minimum standards covering the recruitment, selection, performance review and early termination of local government Chief Executive Officers (CEO Standards).

The Department of Local Government, Sport and Cultural Industries (department) sought feedback on the draft Code of Conduct and draft CEO Standards (and accompanying guidelines). These documents and the online survey for each topic are available at the following link: <https://www.dlgsc.wa.gov.au/department/news/news-article//2019/09/24/consultation-of-proposed-code-of-conduct-and-ceo-standards>

Written submissions can be made by emailing actreview@dlgsc.wa.gov.au

Submissions close on 6 December 2019.

The feedback received will inform the drafting of regulations.

CONSULTATION

Nil

STRATEGIC IMPLICATIONS

There are no adverse strategic implications envisaged from this report.

POLICY IMPLICATIONS

There are no adverse policy implications envisaged from this report.

FINANCIAL IMPLICATIONS

There are no adverse financial implications envisaged from this report.

LEGAL AND STATUTORY IMPLICATIONS

Section 5.103 of the Local Government Act 1995 currently states that:

- (1) Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.

[(2) *deleted*]

- (3) Regulations may prescribe codes of conduct or the content of, and matters in relation to, codes of conduct and any code of conduct or provision of a code of conduct applying to a local government under subsection (1) is of effect only to the extent to which it is not inconsistent with regulations.

[Section 5.103 amended: No. 49 of 2004 s. 55; No. 1 of 2007 s. 10.]

Section 34E. Code of conduct prescribed from the Local Government (Administration) Regulations 1996 states that “*Regulations 34F (Disclosure of Gifts) and 34G (Disclosure of Contributions to Travel) are prescribed as a code of conduct for the purposes of section 5.103(3).*”

[Regulation 34E inserted: Gazette 4 Mar 2016 p. 653.]

RISK IMPLICATIONS (including DAIP)

There are no adverse risk implications except Councillors should be aware that WALGA, LG Professionals and the Department of Local Government, Sport and Cultural Industries are on a Working Group preparing for the new Codes of Conduct.

SOCIAL IMPLICATIONS

There are no adverse social implications envisaged from this report.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

ECONOMIC IMPLICATIONS

There are no adverse economic implications envisaged from this report.

OFFICER COMMENT / DETAILS

The purpose of bringing this matter to the attention of Council is firstly to receive the documentation that has been sent to our local government from WALGA.

Secondly, it is to consider the documents and provide information to the CEO at the Agenda Briefing and Council Meeting that may be resolved by Council to be included in the local government submission to WALGA in relation to their two draft submissions.

OFFICER'S RECOMMENDATION

That Council:

1. Receive the Draft Code of Conduct with guidelines; and
2. Receive the Draft CEO Standards and Guidelines; and
3. Receive the Draft Submission on the Code of Conduct – October 2019; Receive the Draft Submission on the CEO Standards and Guidelines – October 2019; and
4. Workshop a possible submission from the Shire of Toodyay Council at the Quarterly Strategic Council Forum to be held on 12 November 2019.

Cr Pearce moved the Officer's Recommendation.

Cr Ruthven seconded the motion.

Clarification was sought.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 259/10/19

MOVED Cr Pearce

SECONDED Cr Ruthven

That Council:

1. Receive the Draft Code of Conduct with guidelines; and
2. Receive the Draft CEO Standards and Guidelines; and
3. Receive the Draft Submission on the Code of Conduct – October 2019;
Receive the Draft Submission on the CEO Standards and Guidelines –
October 2019; and
4. Workshop a possible submission from the Shire of Toodyay Council at
the Quarterly Strategic Council Forum to be held on 12 November 2019.

MOTION CARRIED 8/0

9.5.2 Correspondence from the Department of Local Government

Date of Report:	24 October 2019
Name of Applicant / Proponent/s:	Shire of Toodyay
File Reference:	MTG7
Author:	S Scott – Chief Executive Officer
Responsible Officer:	S Scott – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Nature of Council's Role in the matter:	Executive
Public Attachment:	<ol style="list-style-type: none"> 1. Correspondence dated 17 October 2019. 2. Correspondence dated 17 October 2019; and 3. Correspondence dated 17 October 2019.
Voting Requirements:	Simple Majority

PURPOSE OF THE REPORT

To receive correspondence that has come in from the Department of Local Government, Sport and Cultural Industries.

BACKGROUND

Council resolved at the June 2018 OCM (Resolution No. 122/06/18) as follows:

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

CONSULTATION IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

There are no adverse strategic implications envisaged from this report.

POLICY IMPLICATIONS

There are no adverse policy implications envisaged from this report.

FINANCIAL IMPLICATIONS

There are no adverse financial implications envisaged from this report.

LEGAL AND STATUTORY IMPLICATION

There are no adverse legal nor statutory implications envisaged from this report.

RISK IMPLICATIONS (including DAIP)

There are no adverse risk implications envisaged from this report.

SOCIAL IMPLICATIONS

There are no adverse social implications envisaged from this report.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

ECONOMIC IMPLICATIONS

There are no adverse economic implications envisaged from this report.

OFFICER COMMENT / DETAILS

Three separate pieces of correspondence have been received, dated 17 October 2019 from the Acting Manager of Legislation and Regulatory Support (Department of Local Government, Sport and Cultural Industries) in relation to Complaints of Minor Breach.

OFFICER'S RECOMMENDATION

That Council receive the following pieces of correspondence, all dated 17 October 2019:

1. **(Attachment 1)** from the Acting Manager of Legislation and Regulatory Support (Department of Local Government, Sport and Cultural Industries) in relation to Complaints of Minor Breach No. 2019-052, SP 2019-053, SP 2019-054, SP 2019-055, SP 2019-056, and SP 2019-057.
2. **(Attachment 2)** from the Acting Manager of Legislation and Regulatory Support (Department of Local Government, Sport and Cultural Industries) in relation to Complaints of Minor Breach No. SP 2019-058, SP 2019-059, and SP 2019-060.
3. **(Attachment 3)** from the Acting Manager of Legislation and Regulatory Support (Department of Local Government, Sport and Cultural Industries) in relation to Complaints of Minor Breach No. SP 2019-075.

Cr Rayner moved the Officer's Recommendation.

Cr Bell seconded the motion.

Clarification was sought.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 260/10/19

MOVED Cr Rayner

SECONDED Cr Bell

That Council receive the following pieces of correspondence, all dated 17 October 2019:

1. **(Attachment 1)** from the Acting Manager of Legislation and Regulatory Support (Department of Local Government, Sport and Cultural

MINUTES OF ORDINARY MEETING OF COUNCIL
HELD IN SHIRE OF TOODYAY COUNCIL CHAMBERS ON 29 OCTOBER 2019

Industries) in relation to Complaints of Minor Breach No. 2019-052, SP 2019-053, SP 2019-054, SP 2019-055, SP 2019-056, and SP 2019-057.

2. **(Attachment 2)** from the Acting Manager of Legislation and Regulatory Support (Department of Local Government, Sport and Cultural Industries) in relation to Complaints of Minor Breach No. SP 2019-058, SP 2019-059, and SP 2019-060.
3. **(Attachment 3)** from the Acting Manager of Legislation and Regulatory Support (Department of Local Government, Sport and Cultural Industries) in relation to Complaints of Minor Breach No. SP 2019-075.

MOTION CARRIED 7/1

9.6 COMMITTEE REPORTS

No reports.

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

13.1.1 Cr Bell – Agenda Item 9.2.3 Application For Development Approval – Borrow Pit For On-Farm Use – Lot 124 (#5799) Toodyay Road

Cr Bell advised of new business of an urgent nature, that he wished to introduce by decision of the meeting.

Cr Bell foreshadowed a motion as follows:

That Council advises the applicant to cease all works until the applicant is granted a development approval by Council.

The CEO advised that the Applicant had already agreed there would be no further work on the pit until the matter is determined.

Cr Bell withdrew the foreshadowed motion.

13.1.2 Cr Pearce – Sport and Recreation Precinct Updates

Cr Pearce advised of new business of an urgent nature, that she wished to introduce by decision of the meeting.

Cr Pearce foreshadowed a motion as follows:

That Council invite the Project Manager for the Sport and Recreation Precinct to come to all future Council Meetings to speak with Council in regard to the budget progress on the Sport and Recreation Precinct.

The CEO advised that the matter of an update at Council Meetings in relation to the Sport and Recreation Precinct was discussed at the Agenda Briefing held on 22 October 2019 where it was agreed through a

consensus that monthly updates be brought to Council, commencing from the November 2019 Strategic Quarterly Council Forum.

Cr Pearce took note of the above and withdrew the foreshadowed motion.

13.1.3 Cr Pearce – Information about Travel Compensation within the Induction Manual for Councillors

Cr Pearce advised of new business of an urgent nature, that she wished to introduce by decision of the meeting.

Cr Pearce indicated that she wished to speak about whether the Councillors attending training sessions could car pool; and wished to discuss what other processes are available.

The Shire President ruled that this matter was not new business of an urgent nature and advised Cr Pearce that she should defer any further queries related to the contents of the Induction Manual to the Councillor Induction Briefing scheduled for 1 November 2019.

13.1.4 Cr Ruthven – Advertisement for Community Representatives on the Audit Committee

Cr Ruthven advised of new business of an urgent nature, that she wished to introduce by decision of the meeting.

Cr Ruthven wished to discuss community membership in relation to the Audit Committee.

The Shire President ruled that this matter was not new business of an urgent nature and advised Cr Ruthven should bring up this again during the Special Meeting that was set to resume at the conclusion of the October 2019 Ordinary Council Meeting.

13.2 EMPLOYEES

Nil

14. CONFIDENTIAL BUSINESS

14.1 Preferred Supplier Tender - Supply, Delivery and Placement of Bituminous Surfacing Products TEN 05 2019

The Presiding Member requested a motion be moved in accordance with Standing Orders 5.2 (2) that the meeting be closed to the public.

MOTION/COUNCIL RESOLUTION NO. 261/10/19

MOVED Cr Bell

SECONDED Cr Rayner

1. That, in accordance with Standing Orders Clause 5.2 (2), Council close the meeting to members of the public at 6.00pm to allow the part of the meeting that deals with confidential business to continue behind closed doors in accordance with Section 5.23 (2) of the *Local Government Act 1995* as matters being considered deal with the following —
 - (b) the personal affairs of any person; and
 - (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and
 - (e) a matter that if disclosed, would reveal —
 - (i) a trade secret; or
 - (ii) information that has a commercial value to a person; or
 - (iii) 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.
2. That in accordance with Standing Orders Clause 5.2 (5) while the resolution under sub-clause 5.2 (2) remains in force, the operation of Standing Orders Clause 7.9 is to be suspended until the Council or the committee, by resolution, decides otherwise.

MOTION CARRIED 8/0

In accordance with Standing Orders 5.2 (3) the Presiding Member directed everyone to leave except the Members; the CEO, the Acting Manager Corporate Services, the Manager of Community Development, the Manager Planning and Development, the Manager Works and Services and the Minute Taker.

All members of the public departed the Council Chambers at 6.00pm.

The meeting recommenced at 6.08pm.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 262/10/19

MOVED Cr Bell

SECONDED Cr Hart

That Council authorise the CEO to negotiate and accept the tender submitted by Bitumen Surfacing for the Supply, Delivery and Placement of Bituminous Surfacing Products within the Shire of Toodyay for a period of 3 years commencing 30 October 2019.

MOTION CARRIED 8/0

MOTION/COUNCIL RESOLUTION NO. 263/10/19

MOVED Cr Bell

SECONDED Cr Rayner

That Council move from behind closed doors.

MOTION CARRIED 8/0

The Council Chambers were re-opened at 6.10pm. The Shire President read aloud the result of Resolution No. 262/10/19 for the benefit of the public gallery.

15. NEXT MEETINGS

Bush Fire Advisory Committee	5 November 2019
Quarterly Strategic Council Forum	12 November 2019
Local Emergency Management Committee	13 November 2019
Agenda Briefing	19 November 2019
Ordinary Council Meeting	26 November 2019
Community Meeting Morangup Community Centre	30 November 2019

16. CLOSURE OF MEETING

The Shire President declared the meeting closed at 6.11pm.

Attachments to Minutes

Ordinary Council Meeting

29 October 2019

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Nil

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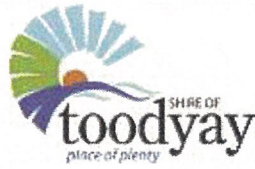


EXECUTIVE SERVICES - continued

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COMMITTEE REPORTS

Nil



Agenda Briefing Notes

22 October 2019

Unconfirmed Notes

These notes were approved for distribution on 24 October 2019.

Stan Scott
CHIEF EXECUTIVE OFFICER

When the Chief Executive Officer approves these Notes for distribution they are in essence "informal notes."

At the next Ordinary Meeting of Council the Notes will be received, subject to any amendments made by the Council.

The "Received" Notes are then signed off by the Presiding Person.

Attachments that formed part of the Agenda, in addition to those tabled at the Agenda Briefing are put together as attachments to these Notes with the exception of Confidential Items.

Confidential Items or attachments that are confidential are compiled as part of the Ordinary Council Meeting, in a separate Confidential Minuted Item (CMI).

Received Notes

These notes were received at an Ordinary Council Meeting held on 29 October 2019.

Signed:

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

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SHIRE OF TOODYAY
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SHIRE OF TOODYAY
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The **ATTACHMENTS** to these notes were the attachments to the Ordinary Council Meeting dated 29 October 2019

DISCLAIMER

No responsibility whatsoever is implied or accepted by the Shire of Toodyay for any act, omission or statement or intimation occurring during the Agenda Briefing meeting or during formal/informal conversations with staff.

The Shire of Toodyay disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Agenda Briefing meetings or discussions. Any person or legal entity who acts or fails to act in reliance upon any statement does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or limitation of approval made by a member or officer of the Shire of Toodyay during the course of any meeting is not intended to be and is not taken as notice or approval from the Shire of Toodyay.

The Shire of Toodyay warns that anyone who has an application lodged with the Shire of Toodyay must obtain and only should rely on **WRITTEN CONFIRMATION** of the COMMENT: of the application, and any conditions attaching to the decision made by the Shire of Toodyay in respect of the application.

Shire of Toodyay

AGENDA BRIEFING – 22 OCTOBER 2019

NOTES

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Cr B Rayner, Presiding Member, declared the meeting open at 4.00pm.

2. RECORDS OF ATTENDANCE/APOLOGIES

Cr T Chitty
Cr P Hart
Cr R Madacsi
Cr B Manning
Cr S Pearce
Cr B Rayner
Cr B Ruthven

Staff

Mr S Scott	Chief Executive Officer
Mrs N Rodger	Acting Manager Corporate Services
Ms A Bell	Manager Community Development
Mr S Patterson	Manager Works and Services
Mrs M Rebane	Executive Assistant

Visitors

P Ruthven
M J Wood
J Wood
J Hansen

2.1 APOLOGIES

Nil

2.2 LEAVE OF ABSENCE PREVIOUSLY APPROVED

Cr Greenway - 19 September 2019 to 31 October 2019

2.3 APPLICATIONS FOR LEAVE OF ABSENCE

Name	Date from	Date To
Cr Manning	3/11/2019	15/11/2019
Cr Madacsi	30/10/2019	7/11/2019

3. DISCLOSURE OF INTERESTS

Item Name	Item No.	Name	Type of Interest	Nature of Interest
Application for Development Approval – Borrow Pit for on-Farm Use – Lot 124 (#5799) Toodyay Road	9.2.3	Cr Chitty	Impartiality	“My son Jack Wood is the Applicant/Proponent.”

4. PUBLIC QUESTIONS

4.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

At the Ordinary Meeting of Council (OCM) held on 24 September 2019, the following questions were taken on notice.

P Hart

Summary of Question One

Why has Shire Policy number M.8 not been adhered to?

(a) The Privacy statement and Disclaimer and Copyright links

When you click on to the links on the bottom of the Shire of Toodyay website run by Open Cities, both links will only go to the home page and do not take you to a separate Privacy Statement nor a Disclaimer & Copyright section.

This is a minor oversight that can be corrected by liaising with Open Cities now that this has been brought to our attention.

(b) The use of the words “© 2019 Shire of Toodyay” at the bottom of the Shire of Toodyay website run by Open Cities. Shouldn't it say creative commons 2019 Shire of Toodyay?

The Policy states that “publications should be attributed in the following way: © Shire of Toodyay” (Year of Publication) (Name of Publication).

Therefore, the fact that the © has been used (and not the words “(CC)”) prior to the words 2019 (noting the year of publication) and the words “Shire of Toodyay” noting the name of publication – this is in accordance with Policy M.8 which is the Member’s Policy relating to Copyright that was adopted by Council on 23 June 2015 (Resolution No 122/06/15).

Summary of Question Two

The Shire’s web site is an important means of communicating with the community. Why is it not being properly maintained?

(a) On the Shire of Toodyay website page found at link: <http://www.toodyay.wa.gov.au/Community-Visitors/Libraries/Morangup-Community-Library> the opening times of the Library at the Morangup Community Hall last month showed dates for last year. The opening times for the Library are absent, but the page still states “you can head over to the Morangup Community Centre, on the dates below”.

When liaising with Mr Hart on 15 October 2019 it was discovered that the link had been updated to reflect current information.

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- (b) On the Shire of Toodyay website page found at link: <http://www.toodyay.wa.gov.au/Council/Council-Wards> the ward map for the Shire of Toodyay is still available which is misleading, given that there is currently an election.

This page will be updated to reflect, for the purposes of retaining historical information, that at the January 2019 Council meeting Council resolved as follows:

“Council resolve by absolute majority to propose to the Local Government Advisory Board (the Board) that:

- 1. In accordance with clause 10(2) of Schedule 2.2 and section 2.2 (1)(d) of the Local Government Act 1995 the Local Government Advisory Board recommends to the Minister for Local Government that an order be made to abolish wards in the Shire of Toodyay to take effect from the next Local Government elections in October 2019.*
 - 2. It is Council further recommends that Councillors Rayner, Chitty, Greenway and Manning be permitted to serve the balance of their terms until 2021 as members representing the entire district; and*
 - 3. Council makes no recommendation to the Board for any change to the number of Councillors.”*
- (c) On the Shire of Toodyay website page found at link: <http://www.toodyay.wa.gov.au/Council/2019-Local-Government-Elections/Nominating-for-Council-Information-Night> the electoral roll and call for candidates still exists, even though it is out of date. The nominating for Council Information Night has already occurred. Why is this information still available on the website?

It is not uncommon to have this information still being made available on the website. This will be addressed by a disclaimer providing advice about the page, once the link on the website has been restored.

- (d) On the Shire of Toodyay website page found at link: <http://www.toodyay.wa.gov.au/Council/Council-Meetings/Council-Meetings> the date shown for the October 2019 Ordinary Council Meeting is incorrect. It has not been updated to reflect what was resolved by Council at their August 2019 Council Meeting.

It is not uncommon to have this information remain as is at this stage of the calendar year because the information on this page is put there each calendar year when Council ratifies what the dates for the Council Meetings will be. This information is also

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listed on the Council Meeting Information Sheet that is contained at the front of each Agenda for a Council Meeting.

What we can do is place a notation that these dates may be subject to change on the relevant page and at this stage in the calendar year, amend the dates.

R Madacsi

Summary of Question One

These two questions are not intended to detract from the charitable works of the Freemasons but to ensure equity within the Shire dealings with like organisations that contribute to the fabric of our community.

- (a) Does Council have a policy or guideline that governs the waiving or subsidisation of fees, charges, rates and rents owed to the Shire of Toodyay?
- (b) If so, is this request within the framework described? If not, what is the precedent to support his request and does this request apply equally to other community service groups?
- (c) It is noted that like groups occupying Shire property vary in monies due to the Shire for example the Men's Shed pay a peppercorn lease whereas the RSL do not so will these costs be waived on the interest of equity and community support?

The Shire Delegation CS7 Power to Defer, Grant Discounts, Waive or Write-off Debts, provides for the CEO to write off amounts of up to \$2,000.

Clarification was sought in respect to the inclusion of Question Two

Response: This question was answered at the September OCM and as it is not a question taken on notice it does not need to be included in the Agenda for the October 2019 Council Meeting.

B Ruthven

Summary of Question Three

In the July payments list are EFT 26387 (\$18,474.42) for LGIS insurance for Management Liability, Cyber, Personal Accident and Marine Cargo, and EFT 26388 (\$34,736.15) LGISWA, insurance for Liability, Crime and Bushfire. Did the administration obtain at least two written quotations as required by the shire's Purchasing Policy for amounts over \$10,000, before taking out these policies?

There is a reasonable basis for the Shire of Toodyay to believe that it is unlikely that there is more than one potential supplier of a pooled fund risk management arrangement with ancillary risk mitigation and insurance related services, being LGIS. As such the Shire of Toodyay would be exempt from the requirements of Local Government

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(Functions and General) Regulations 1996 (R11 in respect to LGIS). This is in line with the Shire's Purchasing Policy.

Summary of Question Four

In the July payments list are EFT 26493 (\$116,579.97) for LGIS (Jardine Lloyd Thompson), Motor Vehicle Insurance and Personal Accident Insurance, and EFT 36494 (\$110,866.96) for LGISWA, Property Insurance and Workcare Insurance. Did the Administration comply with the Shire's Purchasing Policy in relation to purchases over \$50,000, before taking out these policies?

For the information of those who are not familiar with the Purchasing Policy, for purchases in the range \$50,000 and \$149,999 it states that the shire is to:

Obtain at least three written quotations containing price and specification of goods and services (with procurement decision based on all value for money considerations). Formal Request for Quotation (RFQ) documents are to be issued by Business Units and a record of the details of written quotations received is to be made in accordance with the Purchasing Policy.

The CEO noted that there is a specific exemption in the Act for self-insurance through LGIS. (NOTE this exemption was confirmed later as part of the WALGA presentation). The relevant exemptions are at Section 9.58.

Under section 9.58 (6) (b) of the Local Government Act 1995, overrides the Shire of Toodyay purchasing policy. As such the Shire is not required to comply with the purchasing policy.

Section 9.58 (6)(b) – with the approval of the affected members, arrange contracts of insurance on behalf of all or any of its members for any purpose

4.2 PUBLIC QUESTION TIME

Nil

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5. CONFIRMATION OF MINUTES

Cr B Ruthven requested hardcopies of all the minutes.

5.1 Ordinary Meeting of Council held on 24 September 2019

OFFICER'S RECOMMENDATION

That the Unconfirmed Minutes of the Ordinary Meeting of Council held on 24 September 2019 be confirmed, subject to amendments being made to the Record of Attendance so that the words "Cr B Manning" in the Members area is deleted and the words "NAME Title" in the Staff area is deleted.

5.2 Special Meeting of Council held on 22 October 2019

OFFICER'S RECOMMENDATION

That the Unconfirmed Minutes of the Special Meeting of Council held on 22 October 2019 be confirmed.

5.3 Agenda Briefing held on 22 October 2019

OFFICER'S RECOMMENDATION

That the Notes of the Agenda Briefing held on 22 October 2019 be received.

5.4 Confidential Items

5.4.1 Ordinary Meeting of Council held on 24 September 2019

OFFICER'S RECOMMENDATION

That the Unconfirmed Confidential Minuted Item containing Questions 12.2 and 12.3 as well as Agenda Item 14.1 CEO KRA's for 2019/2020 from the Ordinary Meeting of Council held on 24 September 2019 be confirmed.

6. PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

6.1 PETITIONS

A petition is to be addressed to the Shire President and is to be presented by a Councillor.

6.2 DEPUTATIONS

A deputation must be applied for, to the CEO in writing at least 5 working days prior to the Meeting.

6.3 PRESENTATIONS

Nil

6.4 SUBMISSIONS

Written submissions tabled – submitters not present at the Agenda Briefing but may be present at the meeting proper.

7. BUSINESS FROM PREVIOUS MEETING (IF ADJOURNED)

Nil

8. ANNOUNCEMENTS BY THE PRESIDING MEMBER (without discussion)

The Presiding Member advised he had been to a Rural Water Council Meeting last Friday. Hon Darren West MLC and Hon Laurie Graham MLC were both at the Rural Water Council Meeting and advised the Shire President that written addresses can be made through either of their offices in respect to any water issues.

The CEO provided clarification in relation to the standpipe.

9. REPORTS OF COMMITTEES AND EMPLOYEE REPORTS

9.1 COMMUNITY DEVELOPMENT

No reports.

9.2 PLANNING AND DEVELOPMENT

9.2.1 Lot 104 #80 McGellin Way – 3 to 6 Dog Application

Cr Hart sought clarification in relation to disclosures of interest.

Typographical errors that will be rectified and highlighted in yellow in the Officer's Report for the Agenda Proper were identified as follows:

- In the Officer's Recommendation the first two dogs are male dogs and not female;
- In the first line of the Officer's Recommendation it should state (6) six dogs and not four dogs.

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Questions and Points raised as follows:

- In respect to the words “electronic confinement”; was this a condition when the Applicant gained approval for four dogs?

The question was taken on notice.

Response to question taken on notice as follows:

Yes

- What is the nature of the electronic measure to control the dogs?

It is an electronic collar that creates a charge if the dog crosses a line/barrier.

- Do we know the cost of this system?

No.

- Is this condition necessary as the Rangers indicated that the house is secured with a high fence and that no issues had been previously reported?

If it doesn't unduly restrict them it gives the Applicant the option of containing them within the fence or using the electronic confinement. The condition has been included so that the Applicant has that option. Without approval they would not be able to use the option.

- Where it says that all dogs must be confined to the property, does anyone check the fencing to make sure it complies with the condition?

The Rangers do check and if there are problems that will come through a complaints process. If the Applicant does not comply with one of the conditions their approval will be withdrawn.

- Can a condition say that the Council would be happy with what is being done?

The fence is already in place. The Rangers are satisfied that the confinement is fit for purpose.

- Do the dogs get out of the house yard?

I am not sure but they are to be kept in control on a leash or according to the condition under electronic confinement. The condition is saying that all dogs are confined to the property which would include the house yard.

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- Could the condition be amended to say the house yard instead of the property?

The condition will be checked with the Officer who wrote the report. The question was taken on notice.

Response to question taken on notice as follows:

Yes.

- Is there a special permit required for breeders or is that covered under this approval?

The question was taken on notice.

Response to question taken on notice as follows:

Our understanding is that the applicant is not a dog breeder for commercial purposes.

If a person is considering breeding dogs as a business, then they are required to obtain planning approval and obtain a kennel licence from the Shire.

- What provision is there at a later date if it becomes an issue to introduce a bark collar as a further restriction with six dogs on the property?

Refer to Item 2 of the Officer's Recommendation that states what the provision is.

- Point No. 5 says that the permit will cease and the ambiguity of the lesser number if one dies.

The intent can be made better. It can say that the "number of dogs permitted will revert to the lesser number of dogs" if one of the dogs dies.

9.2.2 Lot 603 Telegraph Road, Toodyay - Outbuilding

Questions and Points raised as follows:

- In LPP13 the requirement of wall height is from the natural ground level. Technically it has been built 0.98 metres above the natural ground which is on a slope. The side of the shed and fence is on the lower end towards the natural drainage line. Is it possible to remove the fill and leave just enough natural line by using a retaining wall? Would that solve the height problem?

After a further site inspection with Manager Planning and Development, Planning Officer and applicant on 24 October 2019, it was determined that the level of fill was appropriate to counter the excessive sloping topography of the site. It is considered that this is the most

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reasonable solution over a retaining wall as the batter slope is more in keeping and gradual which is consistent with the natural sloping.

- Retaining walls already in situ;

The property was inspected by the Planning Officer on 14 October 2019. No retaining walls present on rear boundary which is the elevation of concern producing the overweight issues. Please refer to Lot 603 Telegraph Road - Pic 1 - Batter slope.



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- Did an Officer do a site inspection before approval was given?

Planning site inspection

No. A brief assessment of the proposal was done when the question was asked internally if development approval was required. The size, wall and ridge heights all complied with the requirements for R10 under the Local Planning Policy 13 as did the placement (behind the dwelling). It also met the requirements of the R-codes for setbacks. It wasn't in a special control area and there was no indication on the plans that there were significant earthworks involved.

Once the Shire became aware of the issue – the property was inspected.

- Were the adjoining landowners provided with opportunity to comment before the building application was permitted?

No. In accordance with the Shire's M.2. Public Consultation – Formal Matters Schedule 1, Building Applications are given a Level A classification.

a) Level A – No Consultation

No specific advertising or notification action is required.

- Is it possible to ask the Applicant to erect a retaining wall to stop the future soil impeding and then erect on top of the retaining wall the 1.8 m fence?

Officers have liaised with the applicant who turned down the concept of a retaining wall and a 1.8m high fence on top of it.

- Condition No. 5 says should it be assessed by the Shire of Toodyay to be insufficient. Would it not be prudent to ask neighbours what their view is?

The Manager Planning and Development is unavailable to respond to the question.

We have what is called Quasi-Judicial decision-making which means we are applying a series of rules and we are also interpreting the collective meaning of various documents and applying them to a set of circumstances.

When the Building licence was received it did not require planning approval. This matter came to our attention through the complaints process after the building licence had been issued.

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The Local Planning Strategy and Local Planning Scheme and the R-Codes are being applied to the building application approval. The R codes, when they defined wall height, referred to the height of the building. The Local Planning Policies refer to the wall height and the fill. In this matter the R codes take precedence.

There have to be reasonable conditions, otherwise on appeal we cannot impose them.

Council is applying the rule of law. What you have in front of you is a very comprehensive report that has looked into everything in some detail.

When it comes to Planning decisions, not everyone will be happy with the outcome. We have to apply the rules that are available to us.

The Shire has undergone a public consultation process in accordance with the M.2. Public Consultation – Formal Matters policy.

Under Section 67(y) of the *Planning and Development (Local Planning Schemes) Regulations 2015* - 'Matters to be considered by Local Government', we are required to consider any submissions received on the application.

In this instance, the Shire has received a number of submissions from the adjoining landowner expressing concerns about the development. This includes a late submission on the 22 October 2019 which has suggested some more solutions to consider.

At the end of the day, the Shire must determine what is appropriate rather than the adjoining landowners as we are the regulators and must assess that the conditions imposed are fair and are being complied with.

- Did the Shire Officer inspect the block before approving the building licence?

Already responded to earlier.

- In the Officer Report on Page 17, can Council choose to add as a condition of approval that "lattice screening be erected on top of the retaining wall to boost the overall height" reduce the impact on the neighbours?
- What do they regard as a reasonable additional height of lattice work that might reduce the situation somewhat?

Yes that can be included. I will have the Manager Planning and Development research and provide further clarification.

The panels come in standard sizes.

The Planning Department can have a look at the Officer's Recommendation and amend where appropriate.

9.2.3 Application for Development Approval – Borrow Pit for on-Farm Use – Lot 124 (#5799) Toodyay Road

Cr Chitty declared an Impartiality interest in this item.

The CEO provided advice in respect to the different types of disclosures of interest (in particular, Closely Associated Persons Interest) for the benefit of the members present.

Questions and Points raised as follows:

- Who owns the property?
Michael Wood owns the property.
- What is the arrangement between the owner and the applicant?

I do not know.

Response to question taken on notice as follows:

The applicant is the owner's son.

- Is it to do with Ringa Civil? Are they involved in this operation?

Ringa Civil is operated by J Wood.

- Is it carrying out the extraction?

The equipment that belongs to Ringa Civil is doing the work but not the people owning the land.

- Can we see a copy of the application?

I will check with the MPD to see if that's possible.

Response to question taken on notice as follows:

A redacted copy of the filled-out Development Application can be made available to Councillors upon request.

- In respect to the note about Excavation Works on page 20, LPS No. 4 definition of extractive Industry means industry involving extraction of sand gravel clay hard rock and includes treatment and storage on the land. It does not include taking material off site. If the

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note is correct doesn't it mean that it is an extractive industry and as such it requires developmental approval, planning approval and an Extractive Industry Licence?

The material is being used on-site. There is no evidence to the contrary. The Applicant has planning approval for building on that site and for other works on the land the material is being used.

The Extractive Industry Local Law is a device written by Council but it cannot supersede the Act. As the material being extracted is being used on the land, it is not an extractive industry.

- If it can be established that the material is not being used on the land then does that mean that Planning and Development Approval is required?

No not necessarily – sand is also on the property being extracted.

- What is that other piece of legislation?

The Authority is in the Public Works Act.

Public works do not require planning approval and they do not require an extractive industry licence. There is in place an approval with conditions on it, but it is not planning approval.

- On Page 19 of the Officer's Report could the words "doesn't change" be amended to be just one word "changes?"

Yes that can be amended.

- Has the Applicant submitted a plan for road construction on the property other than roads going from the road to the pit?

The question was taken on notice.

Response to question taken on notice as follows:

No.

- Has the Applicant submitted a plan of roads constructed with the material from the pit given the depth of 3m (500 metres) already been excavated?

The question was taken on notice.

Response to question taken on notice as follows:

No.

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- The applicant doesn't need approval for Public Works? That is under contract? How does that work?

The material has been donated to the Shire for use by the sub-contractor and contractor working for our local government. The definition in the Public Works Act 1902 covers the local government. The obligation to source donated material was on the sub-contractor and contractor.

- There is no mention of sub-contracting. Where does the use of sub-contractors for public works make that applicable?

The definition of a public work describes what a public work is. The work the material is being undertaken for is still a public work.

- If this is a donation what overheads are incorporated into that? How are those costs offset?

That is a commercial arrangement between the principal contractor and the donator of the material.

- If there is a monetary exchange for the donated material is it technically donated material or is it a commercial transaction? Where in the act does it support that?

The matter that is before Council is the borrow pit for using gravel on the property. I only mentioned the other activity on the property.

Note: The question was withdrawn

- In relation to Points 6 to 10 in the Officer's Recommendation, how can we be confident these conditions will be enforced?

As with all planning conditions, if the applicant does not abide by them we follow our enforcement procedures.

- In matters that have conditions of hours to be met as a regulatory condition but the applicant doesn't abide by them how are they dealt with?

We are reliant on reports of those matters occurring. In regard to the matter you are concerned about, we set up remove cameras however we were unable to find evidence of non-compliance. Evidence is required before enforcement procedures can commence.

9.3 WORKS AND TECHNICAL SERVICES

No reports

9.4 CORPORATE SERVICES

9.4.1 List of Payments – September 2019

Questions and Points raised as follows:

- The project management fees identified at EFT26748 and EFT26777 on page 20. Are there two project Managers?

Limnios St Johns are Project Managers and Cameron Chisholm Nicol are the Architects. You will be getting ongoing fees from both those companies. Their services were approved through a public tender process by Council.

- Has Council set up a flow chart or spreadsheet indicating how much money to date spent on pool precinct.

Yes we can organise this for circulation.

- Can we have it at every Council meeting?

Yes.

- Why is there so much fuel being purchased away from the shire where there are pumps at the depot?

The preference is to use the Depot but there are occasions where people are out and about elsewhere.

- In the credit card payment area what do the acronyms CDAO and CDPA mean?

The first means Community Development Admin Officer and the second is Community Development Personal Assistant.

- In relation to BPV4130 (on page 18) with the Toyota finance leased vehicle is that a monthly charge?

The amount on the list of payments is for two payments. It is a monthly payment for the vehicle that our Bush Fire Risk Management Coordinator uses. DFES fully fund the vehicle.

- In relation to EFT26761 (on Page 20) with the Fire Mitigation Service it says the amount of \$6.765 is for reserves maintenance. What was involved in that?

This was contract work for firebreaks and fuel reductions in multiple reserves which offers a very good alternative to prescribed burning.

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- In relation to EFT26721 (on page 19) what is the construction training fund?
That is a charge we collect on the behalf of the State Government Building Construction Training Fund. It relates to the Sport and Recreation Precinct. We get the money in and then it is paid out.
- In relation to EFT26800 and the reimbursement for a pre-employment medical check. What is that?
When we employ people we have them go for a medical and reimburse the cost.
- Why?
It is a part of good employment practice. We want to know whether they have any medical conditions that may effect potential liability for workers compensation.
- What is the turnover of staff like? Are the two employees new or additional?
They are replacement staff. It is not significant. Turnover is not high.
- In relation to EFT26775 (on page 20) for Kott Gunning Lawyers what is the Audit Letter Fee?
Our Auditors require us to obtain a letter at the end of the year from lawyers that we have done business with our local government. It is an audit requirement.
- In relation to EFT26872 (on page 23) for Kott Gunning Professional Fees and Disbursements. What has been terminated?
That cost related to an employee. It is a confidential operational employment matter.
- On page 22 what does the acronym LC (under Course Fees) mean?
Library Coordinator.
- On page 22 does that cost relate to refreshments?
Yes. We are constantly testing the market but there isn't a lot of interest in shire work because of some of the times we look for catering is half the time when catering is not available.

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- In relation to EFT26896 (on page 24) for Council Amenities of \$712. What does this include?

The cost relates to tea, coffee, milk, sugar, water, and cool drink supplied to Council.

The cost also relates to the supply of biscuits for minor meetings conducted at the Admin Centre as well as refreshments where a meeting requires a light lunch.

The cost code is used when we need minor things like a thumb drive or stationery immediately.

The amount is a bit high this month because we had held a number of workshops in relation to the new computer system.

- Do the staff have a social club?

No.

The Presiding Member stated that any further questions can be sent in via email directly to the CEO (and copied to all other Councillors) so that a response can be provided to all.

9.4.2 Monthly Financial Reports – September 2019

Please note that the monthly Financial Report was not ready at the time of the agenda preparation however will be presented for Council in the Agenda Proper for the Ordinary Council Meeting to be held on Tuesday 29 October 2019.

9.5 EXECUTIVE SERVICES (special meeting items)

6.1 Committees of Council and Advisory Groups

Questions and Points raised as follows:

- Page 31 typographical error indicated with the duplication of the second dot point.
- If we remain with Committees and use the Standing Orders properly by suspending them at the start of the meeting and resuming Standing Orders to do the recommendation to Council can we do that?

Yes. There are no hidden agendas with the Terms of Reference and the Advisory Groups Policy.

- Did the Terms of Reference get changed to include legislative instruments? Did it change as a part of the Act?

At the September 2019 Council Meeting people raised concerns about information that already existed within the terms of reference.

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- Why don't the words "Independent and Autonomous" appear in the TOR when they do appear in the Department of Local Government, Sport and Cultural Industries guideline?

The question was taken on notice.

Response to question taken on notice as follows:

Those words appear as part of the Department's guideline where it speaks about the fact that an audit committee cannot be given a management task where the Act and regulations make the CEO specifically responsible. The guideline states that where the local government is assigned the function through legislation the audit committee may have a role unless the function has been delegated to the CEO by Council. Though the paragraph states that "the deliberations and recommendations of the committee must be independent and autonomous" (thereby prohibiting the CEO from being a member of the Audit Committee) the paragraph states the following:

"It is essential that the CEO be given every opportunity to provide his/her expert advice to the committee as he/she does with full Council and other committees."

If Council chooses to amend *page 12 of 23* under the heading "Committee Membership Composition" within the Terms of Reference document to include the words "the deliberations and recommendations of the committee must be independent and autonomous" it may be appropriate for Council to also consider including the words *"It is essential that the CEO be given every opportunity to provide his/her expert advice to the committee as he/she does with full Council and other committees."*

- Who determines the Agenda of the Audit Committee?

The functions of the Audit Committee are set out under regulation 16 of the Local Government (Audit) Regulations 1996.

The Audit Committee signs off on financial plans, the compliance audit return, and a number of other things that are set out to occur several times a year.

The Manager Corporate Services prepares the Agenda and the CEO signs the Agenda.

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In respect to determining what goes into the Agenda, the member of the Audit Committee can ask for reports to go into the Agenda under the Standing Orders so that when they meet they can put on notice that at the next meeting they'd like a particular item to come to the next meeting. This is how members can get additional business on the agenda.

- If the Audit Committee is being autonomous and self-governing the Audit Committee Members should be allowed to discuss matters ad-hoc without having to wait for an Officer report.

You can raise a matter. If information is to hand questions can be answered at the meeting. The Council is autonomous but Council cannot make a decision in the absence of an Officer Report and the Audit Committee cannot make a decision either in the absence of an Officer Report.

6.2 2020 Council Meetings Schedule

Cr Rayner provided an overview in relation to the differences between the Agenda Briefing, Ordinary Council Meetings and the Strategic Council Forums.

Cr Chitty departed at 5.38pm.

Cr Chitty returned at 5.40pm.

Questions and Points raised as follows:

- Have the Council met at times other than 4pm? Could it be made at 6pm?

Historically, Council Meetings that started at either 6pm or 7pm either finished just before midnight or were adjourned to meet up again the following day.

Administrative staff then have to drive home or stay the night. The timing of the meetings is a duty of care and Occupational Safety and Health matter.

Admin Staff start at 8am and work until the meetings commence. The process of having an Agenda Briefing has meant that meetings have finished earlier than what time that they had finished in the past.

- If the time was changed to 6pm is it possible for Admin staff to start work at 10am or perhaps on the day after the meeting to start at 10am.

Those kinds of arrangements will be challenging because of the work that has to happen either side of the Council Meeting. Admin staff will still turn up at 8am

SHIRE OF TOODYAY
AGENDA BRIEFING NOTES
FROM MEETING HELD ON 22 OCTOBER 2019

to get that work done because they are dedicated to do so.

The CEO provided an overview of what occurred historically with meetings system.

Further Questions and Points raised as follows:

- What is the purpose of Strategic Council Forums?

They are intended to allow Council to discuss long-term plans and strategies. It is an opportunity for Council to have discussions about what to do in respect to matters being dealt with by the community (e.g. Youth). There are lots of other examples. For instance, Council has just decided that it would be small business friendly. Therefore Council might now have a discussion about what other things that can be done to create a positive environment for small business.

- What time would be best for holding meetings?

Arranging meetings for the benefit of the public shouldn't be Council's priority. Ultimately, it is the job of Council to make good decisions on behalf of the community so the real question is in fact "when is the best time to make decisions?"

It is not a good strategy to hold meetings late in the evening if individual councillors think they may not make their best decisions in the evening. Council and individual Councillors need to consider their own make-up and when they make their best decisions. This will indicate what the best time is to hold meetings.

- If Council decides to change the time for Council Meetings is it possible for Admin Staff to use flexi-time or have time off in lieu?

That is a discussion that each staff member will have with the CEO. We do have arrangements in place. We don't have anything sophisticated to have people self-manage their flexi-time. Delivery of service is our highest priority.

CEO provided an overview in relation to the Farmer's markets and the Shire's participation in it. Different aspects of what the organisation does is presented at the Farmers markets. Quality of engagement different at the markets. Positive feedback and can recommend Council continues that and where they can make themselves available to attend.

6.3 Allocation of Membership to Committees and Advisory Groups

Questions and Points raised as follows:

- Good opportunity to ask what is involved in being on the Committees.
- If you attend a Committee do you report back to Council?
Yes. You report to Council through email or at strategic council forums.
- When Committees make a recommendation to Council do they come to the next Council Meeting?
Yes.
- Are minutes from each of the committees available to all Councillors?
Yes they are. Councillors have access via their BIGTINCAN Hub. Some Committee Minutes are on the website, and Advisory Group Minutes would, as per policy, be posted to the Shire of Toodyay Website.

6.4 Appointments to represent Council

Questions and Points raised as follows:

- In relation to the Chamber of Commerce can we appoint a representative onto that Committee? Have we been doing that?
Yes you can and yes we did.
- When will advertising be done for community representatives on the Audit Committee?
After the October 2019 Council Meeting after the adoption of the Terms of Reference.
- Will the respondents to the expressions of interest be received in time for presentation to the November 2019 Council Meeting?
Yes. That information is contained in the Officer Report.

Cr Manning departed at 5.58pm.

Cr Manning returned at 6.00pm.

SHIRE OF TOODYAY
AGENDA BRIEFING NOTES
 FROM MEETING HELD ON 22 OCTOBER 2019

The CEO wrote the names of Councillors onto the Boards, in consultation with Councillors present at the Agenda Briefing as follows:

		ESSENTIAL COMMITTEES			ADVISORY GROUPS	
		AUDIT	BFAC.	LEMIC.	E.A.G.	M.A.G.
PRIMARY	1	CR. RUTHVEN	1 CR. RAYNER	1 CR. CHITTY	1 CR. MANNING	1 CR. _____
	2	CR. HART	2 CR. _____	2 CR. PEARCE	2 CR. HART	2 CR. _____
	3	CR. MADACSI	_____	_____	CR. MADACSI	_____
	4	CR. _____	_____	_____	_____	_____
DEPUTY	1	CR. _____	1 CR. _____	1 CR. _____	1 CR. _____	1 CR. _____
	2	CR. _____	2 CR. _____	2 CR. _____	2 CR. _____	2 CR. _____

Representation - cont'd		WIBELT R.R.G (North)	D.A.P	NOTE:
TOODYAY ROAD LIAISON (6)	TIDY TOWNS (7)	(8)	(9)	(10) TOODYAY ROAD CRG is as per Agenda ✓
1 CR. MADACSI	As per Agenda CR PEARCE	1 CR. MADACSI	1 CR. RAYNER 2 CR. CHITTY	(11) AVON MIDLAND COUNTRY 2 me is as per Agenda
1 CR. PEARCE	As per Agenda ✓	1 CR. _____	1 CR. MANNING 2 CR. MADACSI	(12) DEMC is as per the Agenda
				(13) RURAL WATER COUNCIL is as per Agenda

		AVON TOURISM (1)	BUTTERLY COTTAGES (2)	TOODYAY Chamber of Commerce (3)	TOODYAY C.R.C. (4)	SAFER 2J. (incl. Roadwise) (5)
PRIMARY	1 CR. _____	1 CR. GREENWAY	1 CR. MANNING	1 CR. PEARCE	1 CR. RUTHVEN	
DEPUTY		1 CR. _____	1 CR. _____	1 CR. RUTHVEN	1 CR. _____	

EXECUTIVE SERVICES (Ordinary meeting items)

9.5.1 LGSC Consultation on proposed Code of Conduct Draft WALGA Submissions and Consultation Deadline Extension

Questions and Points raised as follows:

- What is the process whereby Council wishes to put in a submission for this item?

It is the CEO's view that the submission he would make may not be the views of Council. If Council has an interest in doing something we'd have to workshop the input from Council in some way. If Council are interested in doing that we can workshop it. We'll need an agreement to hold a workshop.

The CEO provided an overview of the difference between WALGA and the Department of Local Government, Sport and Cultural Industries.

- LG Professionals represents CEO's and Managers.
- Agreed template for CEO Recruitment agreed between WALGA and the LG Professionals.
- WALGA represents Council and Councillors.
- At the time of preparing the Induction Manual no information was available through TAFE regarding the course materials for the Elected Members Course.
- Any training professional development – as per Council Policy. If you wish to attend training and accreditation for training the Shire will pay for it. There is a policy set up for this purpose. The policy was provided as part of the Induction Package.

9.6 COMMITTEE REPORTS

No reports.

10. ELECTED MEMBERS 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

Note: This section refers to Standing Orders 6.1 Questions on notice by Members.

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

13.1 MEMBERS

Nil

Questions and Points raised as follows:

Why has the Induction Manual been marked confidential **when it should not have been in the interests of transparency and clarity?**

There is nothing confidential other than the hub information in the Induction Manual. The only reason it was marked confidential was to identify the fact that the manual wasn't being put out as a publication in the public arena and the only reason Councillors have been given it is because it is information for them and not for the public.

In the Members Induction Manual there were four policies given. Why cannot we have access to all Council Policies?

You do have access to Council Policies, through the BIGTINCAN Hub and also on the Council website.

The HR policies are missing. Why aren't the policies that have gone through Council on the website for the public?

If a policy is to do with an employee that is not determined by Council it will not be on the website. A lot of the policies don't belong to Council.

Will those that have come to Council be added to the website?

Yes.

Reading through the Induction Manual it says that the State Records Act applies to Councillors. It says that we have to inform the Shire in respect to correspondence, diaries, etc. Is that part of the Toodyay input or the State Records Act?

The attachment in the induction manual is taken directly from the State Records Office. In respect to getting stuff done it is not part of the State Records Office, but having councillors intervene in administrative matters is not the way to get stuff done. There will be circumstances where the Councillor can shoot us an email and that can be the response from the constituent. It's just that we don't wish Councillors to be intermediaries for the routine business of Council. When it comes to works orders, they are registered, fed into a system and there is a sign off process that is followed.

The AMCS advised of the process undertaken by the Admin in respect to a person not being able to put something in writing.

13.2 EMPLOYEES

Nil

SHIRE OF TOODYAY
AGENDA BRIEFING NOTES
FROM MEETING HELD ON 22 OCTOBER 2019

14. CONFIDENTIAL BUSINESS

The Shire President ruled that the meeting go behind closed doors at 6.30pm.

14.1 Preferred Supplier Tender - Supply, Delivery and Placement of Bituminous Surfacing Products TEN 05 2019

Manager Works and Services provided an overview in relation to this report, tabled at 6.33pm.

The Shire President ruled that the meeting come from behind closed doors at 6.45pm.

15. NEXT MEETINGS

Special Council Meeting	28 October 2019
Ordinary Council Meeting	29 October 2019
Bush Fire Advisory Committee	5 November 2019
Quarterly Strategic Council Forum	12 November 2019
Local Emergency Management Committee	13 November 2019
Agenda Briefing	19 November 2019
Ordinary Council Meeting	26 November 2019
Community Meeting Morangup Community Centre	30 November 2019

16. CLOSURE OF MEETING

There being no further business, the Presiding Member, declared the meeting closed at 6.48pm.

SCHEDULE OF SUBMISSIONS

6 Dog Application

Lot 104 # 80 McGellin Way, Morangup

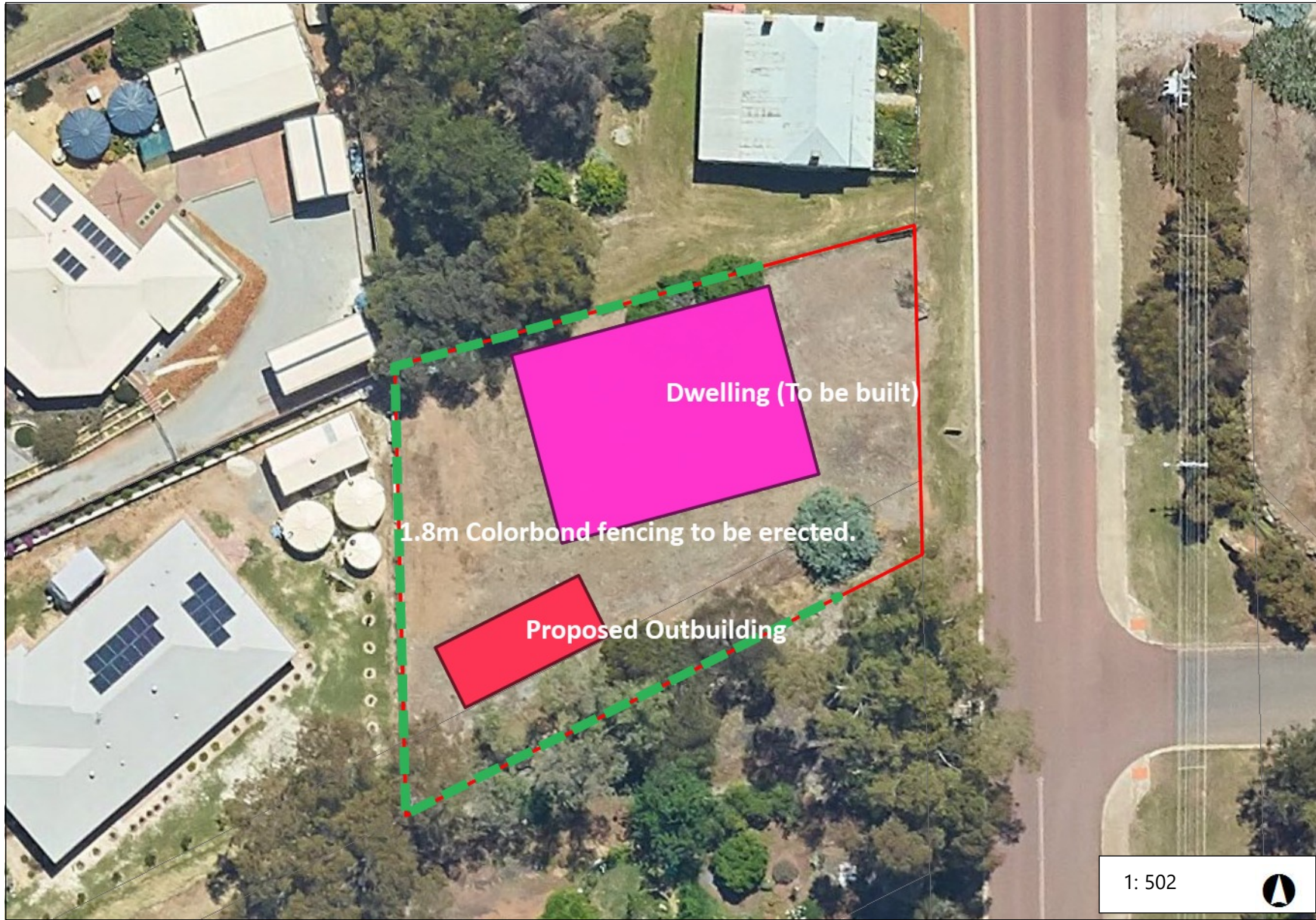
No.	Name & Address	Description of affected property	Summary of submission	Rangers' Response
1	Nearby landowners (names and address provided)	Property address provided to staff	<p>1. Frequently hear barking which appears to originate from the applicant's property. With an increased number of dogs on the property, the submitters submit there is a significant risk that with six dogs it may become more pervasive and thus constitute a nuisance.</p> <p>2. The property backs on to Morangup Nature Reserve and unless the dogs are properly contained there is a considerable risk to resident wildlife e.g. kangaroos, emus and smaller animals.</p> <p>The Morangup area has a range of livestock from poultry, through sheep, goats, alpacas and cattle, if the dogs were to leave the property there would be significant risk to local livestock.</p> <p>Containment system needs to be very effective, electronic ones are not necessarily effective if dogs become excited as may be the case when they are exhibiting "pack" behaviour e.g. scenario of dogs chasing kangaroo as a "pack".</p> <p>3. Seems to be an unusually large number of dogs to be family pets. Submitters have some concern that there may be an intention to breed from them. This would potentially mean even more dogs on the property. Thus their sterilisation status is of importance and if they were entire we would be more inclined to object.</p> <p>4. Ages of the dogs may also be relevant are they young, old, a range of ages, entire/sterilised? Submitters presume that the usual conditions for keeping more than two dogs will apply, i.e. as the dogs die the licence conditions will revert to ever lower numbers until reaching the usual two. Submits that if the dogs are all young, this reversion is likely to take some considerable time.</p>	<p>1. The owners of the dogs spoke to the Shire of Toodyay Rangers and informed them that the currently permitted dogs do bark but only when someone is driving up their driveway.</p> <p>Once we had arrived at the dwelling and were speaking to the owners, the dogs were quiet and did not seem highly agitated.</p> <p>2. The dogs appeared to be well contained and the responsibility of keeping of them contained on the property was a point that the owners wanted to make clear that they understood.</p> <p>The owners of the dogs have Alpacas on the property themselves and appear to be aware of the risk of not containing their dogs for their own livestock's health as well as others.</p> <p>Substantially improved fencing methods have also been implemented with the aid of heightened vertical pool fencing not allowing the dog any ability to use the fence as leverage to escape.</p> <p>3. The maximum number of dogs allowed on a property within the Shire of Toodyay if approved is 6. If breeding were to occur, the puppies of the registered dog/s would be subject to the provisions of the Dog Act. Under Section 7 of the Dog Act, dogs are to be registered over the age of 3 months and therefore any dogs over the age of 3 months beyond the already 6 approved, would need to be rehomed and registered at their new home.</p> <p>4. The 3-6 dog applications are not based on the ages of the dogs, but factors such as:</p> <ul style="list-style-type: none"> • appropriate containment; • the dogs' health; • living conditions; • assessing the owners' knowledge of their responsibilities; and • any previous history with the Shire Ranger Services.

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Legend

Cadastre



Notes

Proposed Outbuilding

0.0 0 0.01 0.0 Kilometers

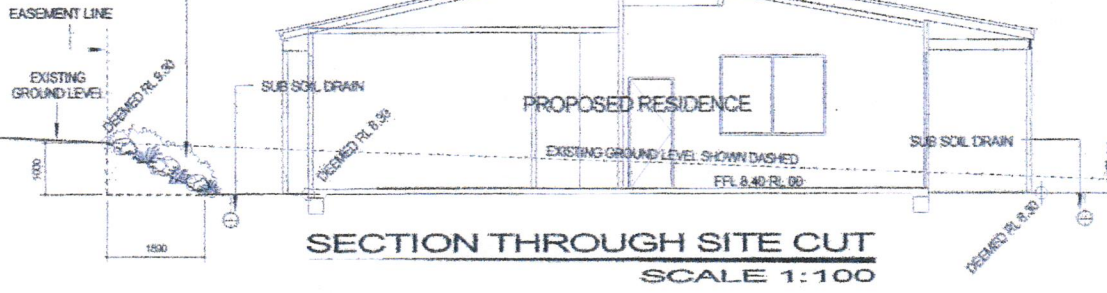
Date produced: 16-Oct-2019

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

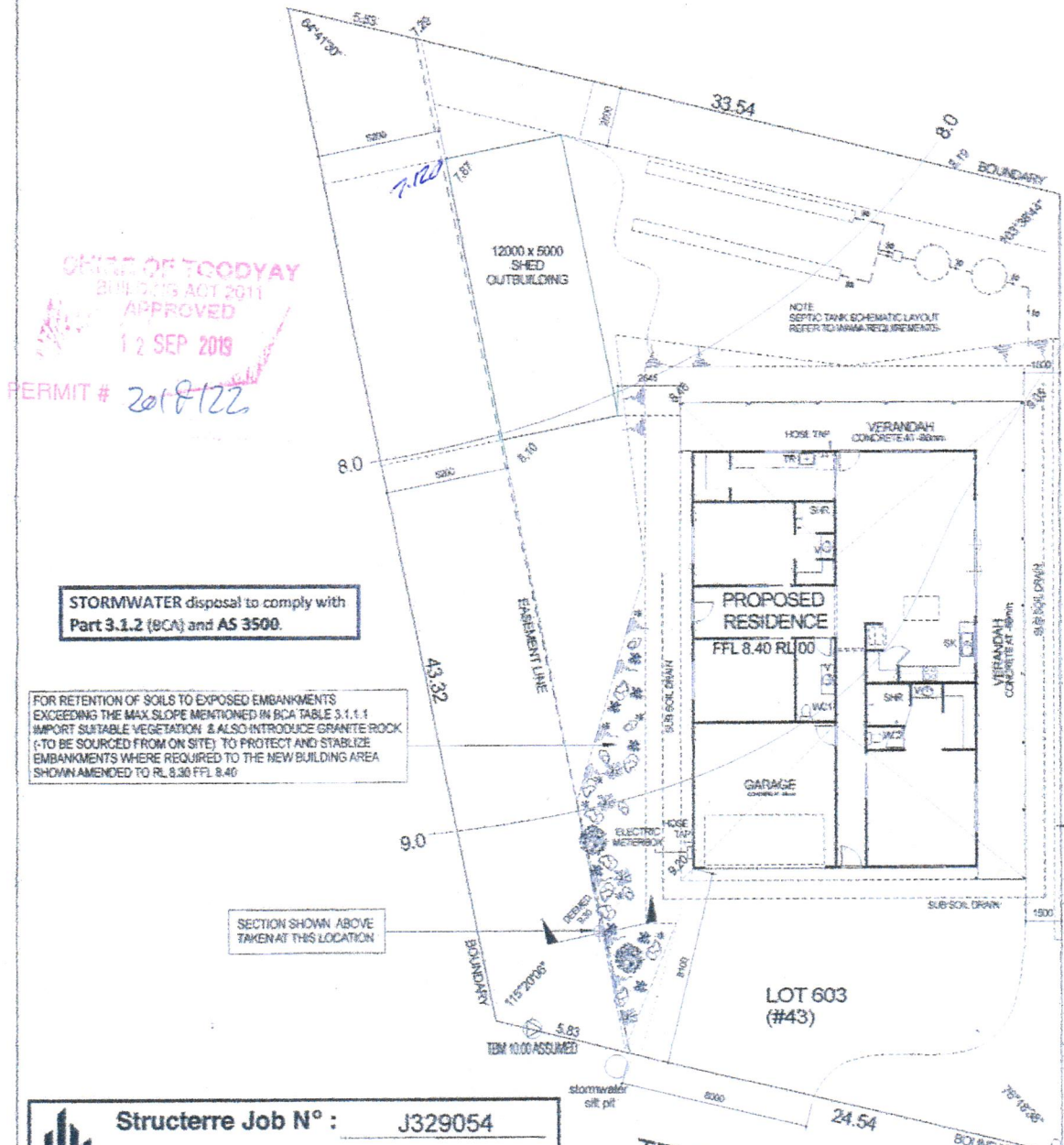
FOR RETENTION OF SOILS TO EXPOSED EMBANKMENTS EXCEEDING THE MAX SLOPE MENTIONED IN BCA TABLE 3.1.1.1 IMPORT SUITABLE VEGETATION & ALSO INTRODUCE GRANITE ROCK (TO BE SOURCED FROM ON SITE) TO PROTECT AND STABILISE EMBANKMENTS WHERE REQUIRED TO THE NEW BUILDING AREA SHOWN AMENDED TO RL 8.30 FFL 8.40

LOT N.
AREA: 1137 m²

LOCATION REF (UBD): BOGRASOOK



ANY CUT OR FILL OF FINISHED SOIL LEVELS TO BE RESTRAINED BY CONC. PANEL & RAIL RETAINING WALL NOT EXCEEDING 500mm IN HEIGHT TO BOUNDARY FENCING SHOWN LOCALLY WHERE REQUIRED RETAINING WALL TO ENGINEERS DETAILS



OFFICE OF TOODYAY BUILDING ACT 2011 APPROVED 12 SEP 2019

PERMIT # 2018/122

STORMWATER disposal to comply with Part 3.1.2 (BCA) and AS 3500.

FOR RETENTION OF SOILS TO EXPOSED EMBANKMENTS EXCEEDING THE MAX SLOPE MENTIONED IN BCA TABLE 3.1.1.1 IMPORT SUITABLE VEGETATION & ALSO INTRODUCE GRANITE ROCK (TO BE SOURCED FROM ON SITE) TO PROTECT AND STABILISE EMBANKMENTS WHERE REQUIRED TO THE NEW BUILDING AREA SHOWN AMENDED TO RL 8.30 FFL 8.40

ANY CUT OR FILL OF FINISHED SOIL LEVELS TO BE RESTRAINED BY CONC. PANEL & RAIL RETAINING WALL NOT EXCEEDING 500mm IN HEIGHT TO BOUNDARY FENCING SHOWN LOCALLY WHERE REQUIRED RETAINING WALL TO ENGINEERS DETAILS

SECTION SHOWN ABOVE TAKEN AT THIS LOCATION

Structerre Job N° : J329054
Sheet: 1 of 5 Date: 20/08/2019
Building Surveying Certification

SITE PLAN 1:200 at A3

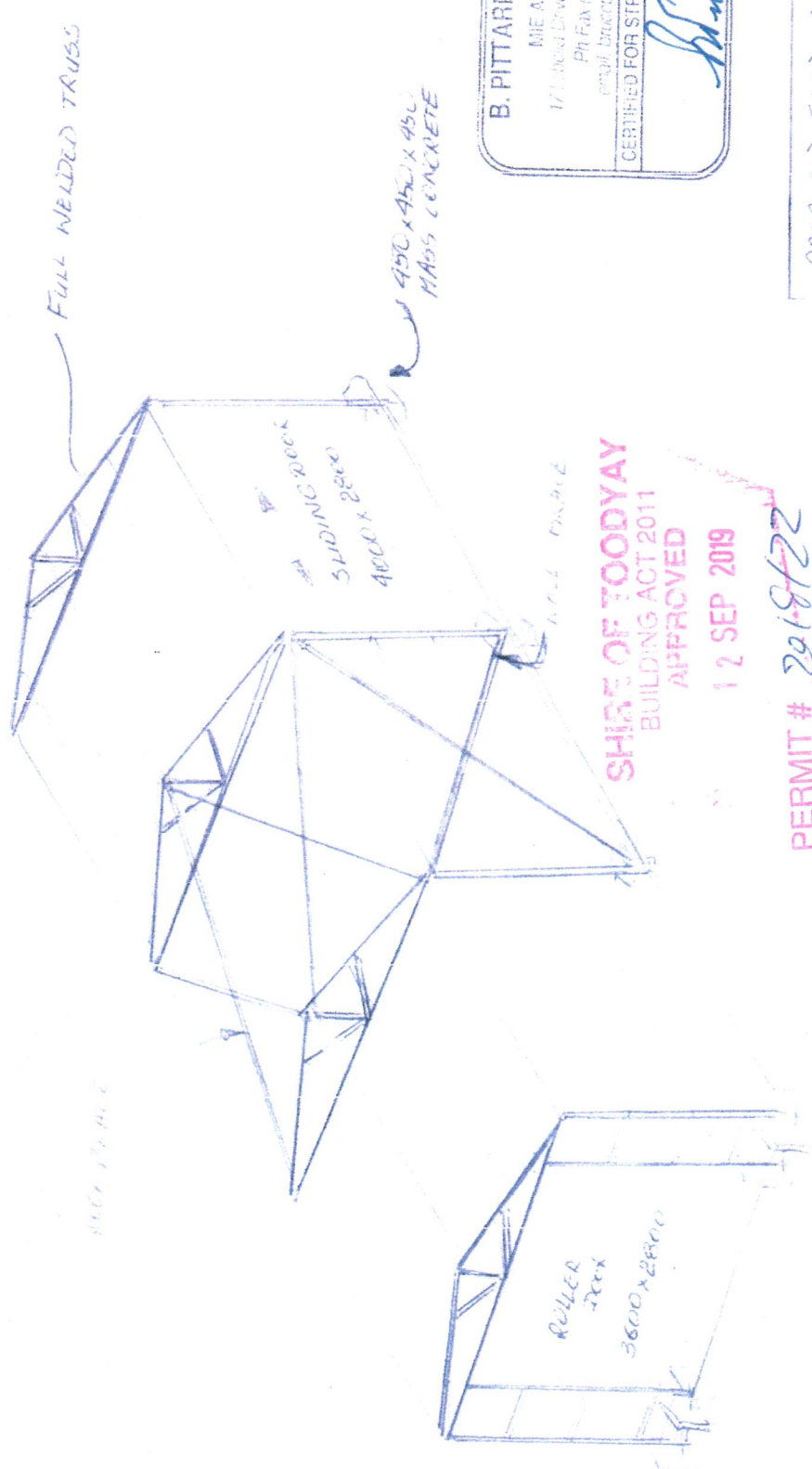


Amended 20-08-2019 DA: ROCK/VEGETATION BUND ADDED
Amended 16-08-2019 DA: FFL NOW @ 8.40 RL 0.00

SITE PLAN SCALE 1:200

The proposed shed does NOT form part of this certification and may be subject to separate approval(s) by a third party.

OWNER IS :	OCHMAN
BUILDING ADDRESS :	LOT 603 #43 Telegraph Road, Toodyay
BAL-LOW	SHT No: 1 of 5
	JOB No: 1512

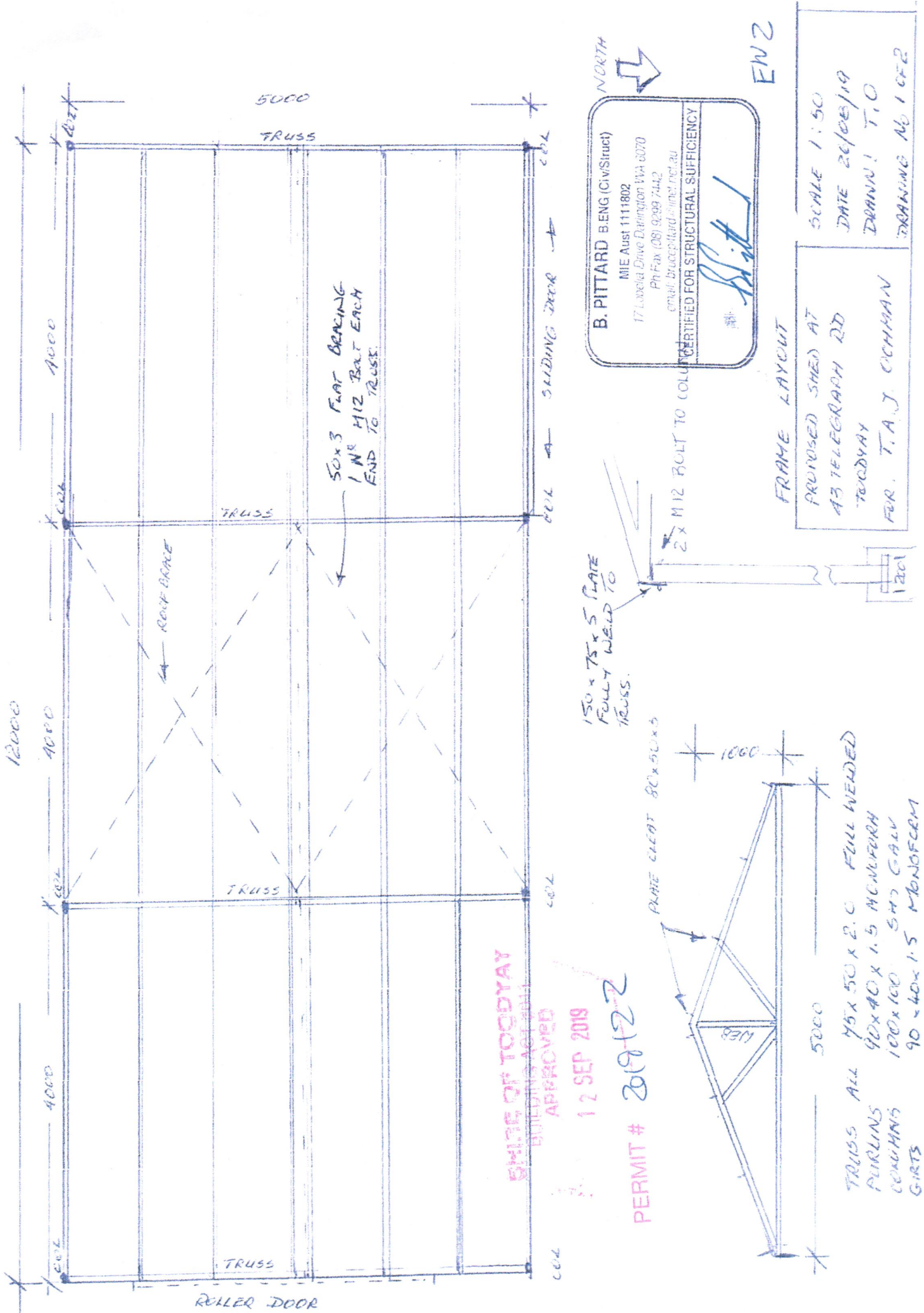


B. PITTARD B.ENG (CIVStruct)
 MIE Aust 1111802
 17 Lancel Drive, Eboracra WA 6070
 Ph Fax (08) 9239 7412
 email: bpittard@iinet.net.au
 CERTIFIED FOR STRUCTURAL SUFFICIENCY
B. Pittard

PROPOSED SHED AT 13 TELEGRAPH RD TOODYAY	SCALE 1:100 DATE 28/8/19 DRAWN TO ENY
--	--

SHIRE OF TOODYAY
 BUILDING ACT 2011
 APPROVED
 12 SEP 2019

PERMIT # 2918722



NORTH

B. PITTARD B.ENG (Civ/Struct)
 MIE Aust 1111802
 17 Lobelia Drive Durrington WA 6070
 Ph/Fax (08) 9299 7442
 email: bruce.pittard@pittard.net.au

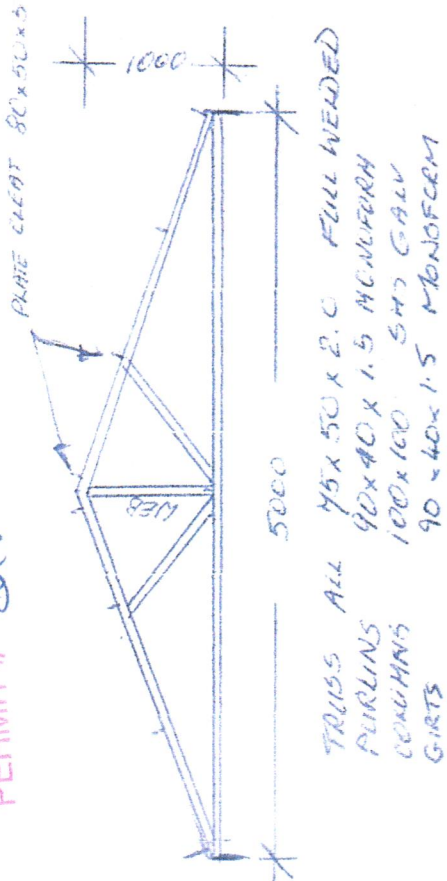
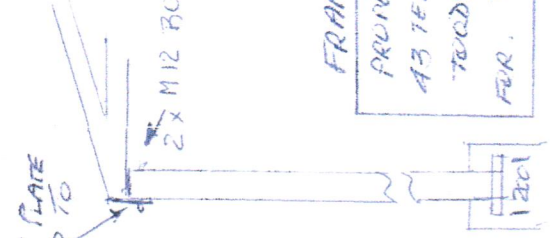
B. Pittard

EN2

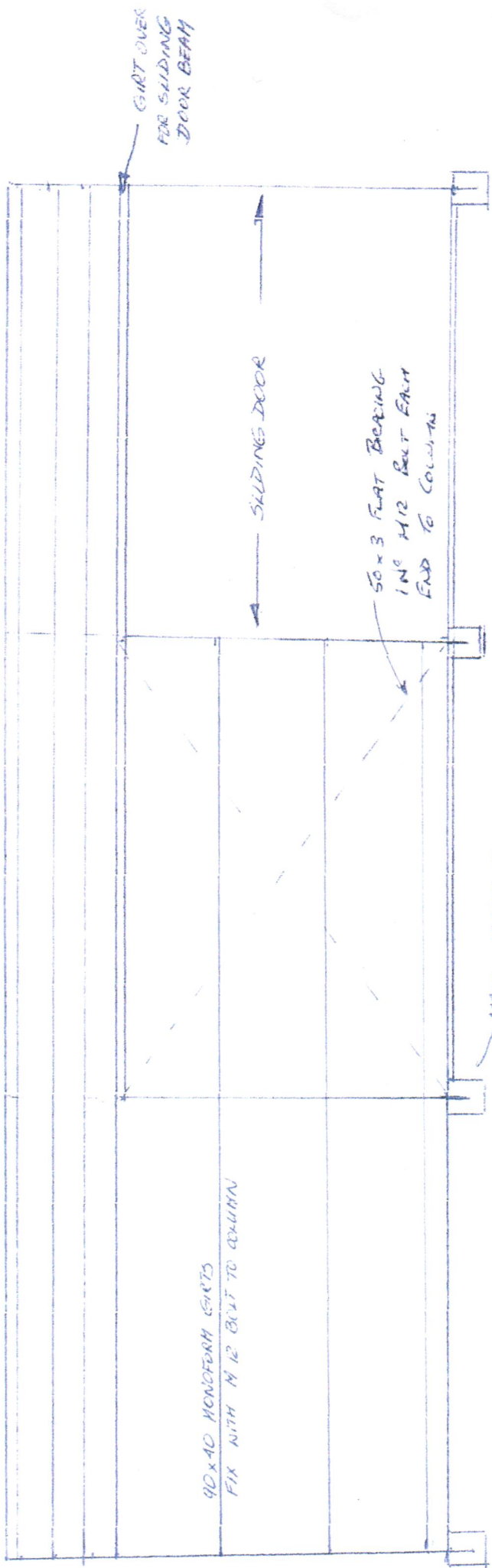
FRAME LAYOUT

PROPOSED SHED AT
 43 TELEGRAPH RD
 TOODYAY
 FOR: T.A.J. OCHMAN

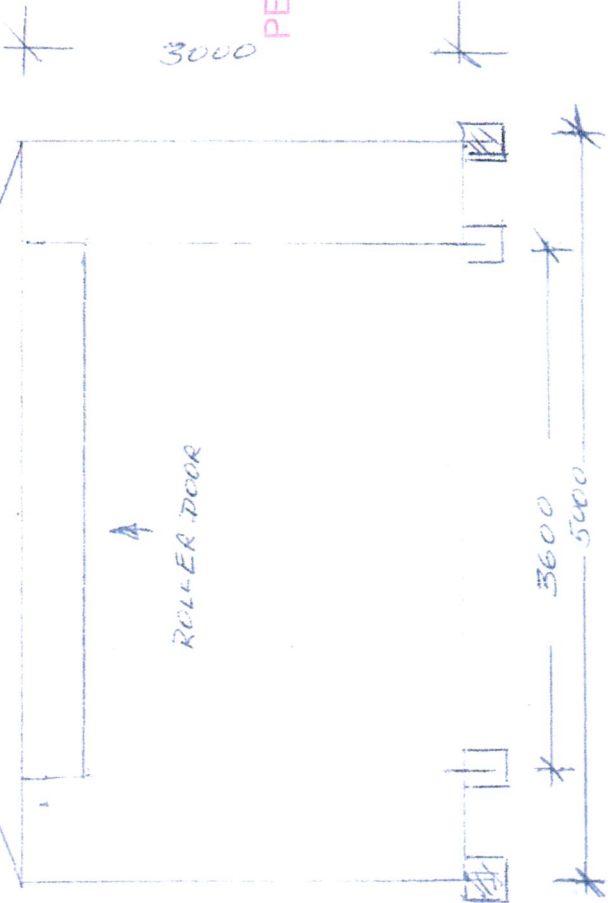
SCALE 1:50
 DATE 26/08/19
 DRAWN! T.O
 DRAWING NO 1 CF2



STATE OF TOODYAY
 BUILDING ACT 2011
 APPROVED
 12 SEP 2019
 PERMIT # 2019/22



MASS CONCRETE FOOTINGS
N 20/20/80



SHIRE OF TOODYAY
BUILDING ACT 2011
APPROVED
12 SEP 2019
PERMIT # 2019/22

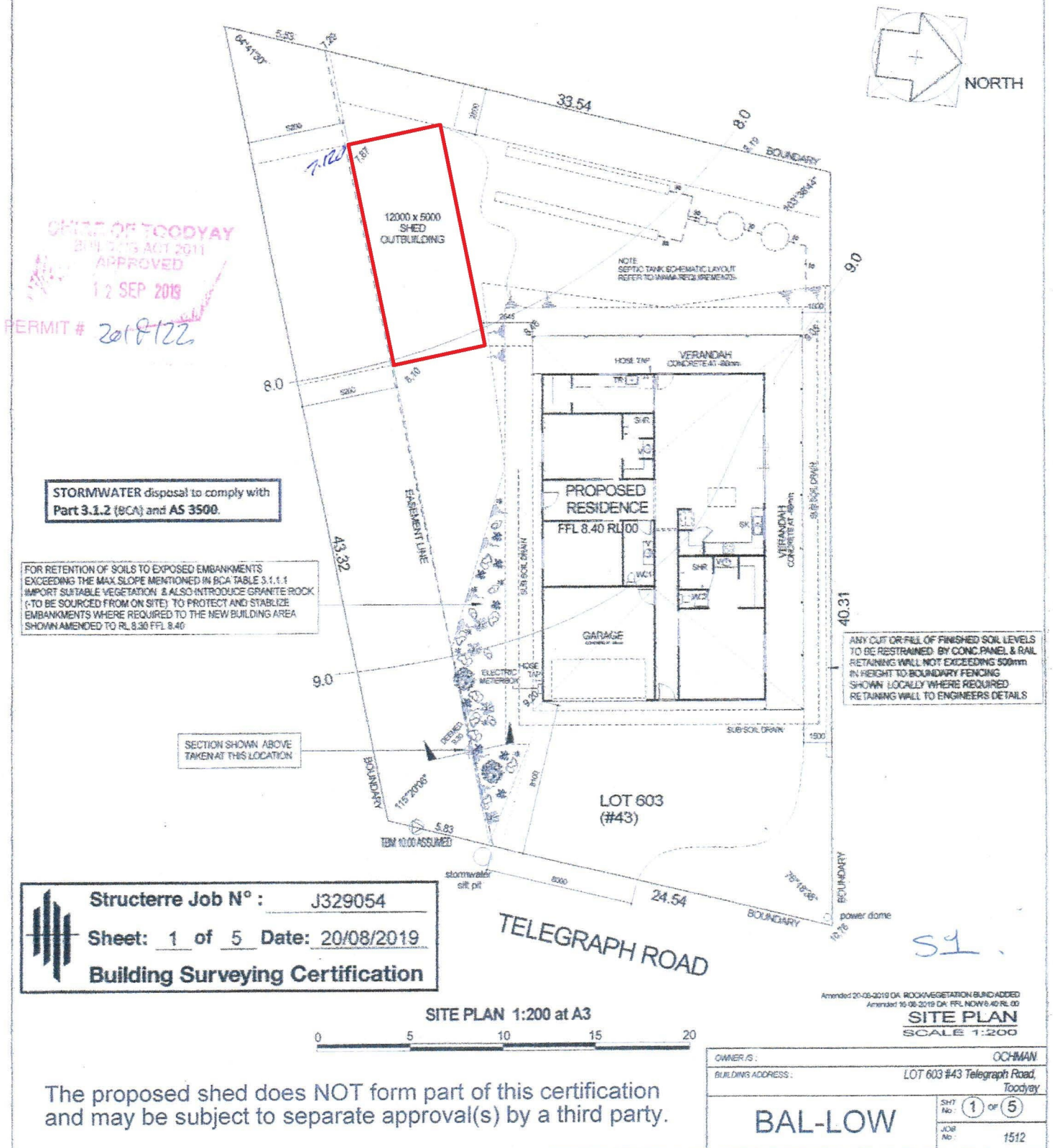
B. PITTARD B.ENG (Civ/Struct)
MIE Aust 1111802
17 Labeld Drive Durinton WA 6070
Ph/Fax (08) 9259 7442
email bruce@bptard.com.au
CERTIFIED FOR STRUCTURAL SUFFICIENCY
B. Pittard

EN3

ELEVATION

PROPOSED SHEET AT A3 TELEGRAPH RD TOODYAY FOR T.A.J. OCHMAN	SCALE 1:50 DATE 22/08/19 DRAWN: TO DRAWING: NO2019/2
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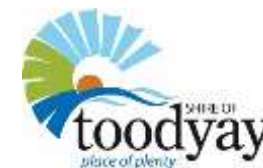
LOT 603 (NO. 43) TELEGRAPH ROAD, TOODYAY PROPOSED OUTBUILDING AND EARTHWORKS



SCHEDULE OF SUBMISSIONS

PROPOSED OUTBUILDING

LOT 603 TELEGRAPH ROAD, TOODYAY

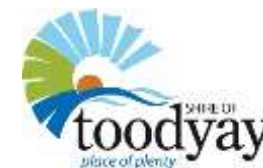


#	NAME	ADDRESS	SUMMARY OF SUBMISSION	APPLICANT COMMENTS ON SUBMISSION	DEVELOPMENT SERVICES COMMENTS ON SUBMISSION
PRIVATE					
1	FJ & BJ Moran	18 Jubilee Street, TOODYAY	<ul style="list-style-type: none"> Concerned about the height and bulk of the shed being erected. Concerned about lack of opportunity to comment earlier. 	<ul style="list-style-type: none"> Application submitted; and Works suspended Earthworks are required due to the sloping nature of the site. 	<ul style="list-style-type: none"> Note the submission; Original plans assessed did not have any indication of earthworks and therefore was assessed to comply with the R-Codes and Local Planning Policy No. 13 – Outbuildings in Residential Areas. No trigger for development approval at the time. After the complaint was made, the resulting inspection determined that development approval would be required as a result of the earthworks that had commenced.
2	FJ & BJ Moran	18 Jubilee Street, TOODYAY	<ul style="list-style-type: none"> Submitter requested the following solutions to be considered: <ul style="list-style-type: none"> Removal of the roof trusses and shortening the legs to bring the shed down to the approved height. Creation of a sizeable screen (including a retaining wall along the fence line) to screen and reduce visual impact of the structure. 	<ul style="list-style-type: none"> Cannot reduce the physical height of the shed by shortening poles as the shed will be used for the storage of a caravan and needs adequate clearance; and Applicant agrees to erect a 1.8m Colorbond fence around three sides of the property to lessen the impact of the structure. Amended plan supplied. 	<ul style="list-style-type: none"> Note the submission; Requested more information on impact from submitters. Retaining wall not considered necessary. Additional lattice on top of the fence could be added at a later time.

SCHEDULE OF SUBMISSIONS

PROPOSED OUTBUILDING

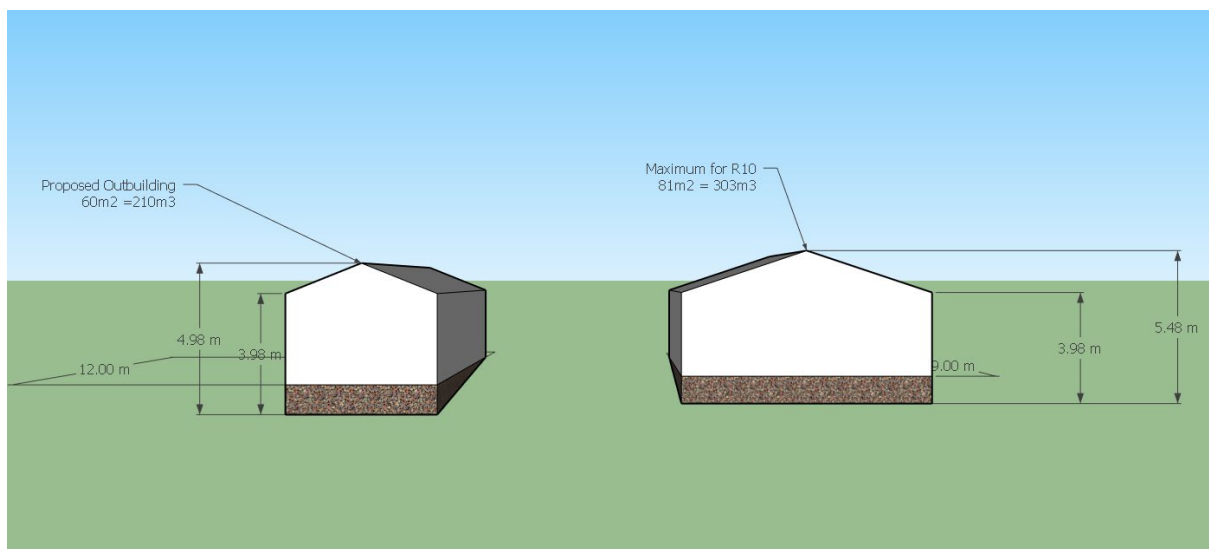
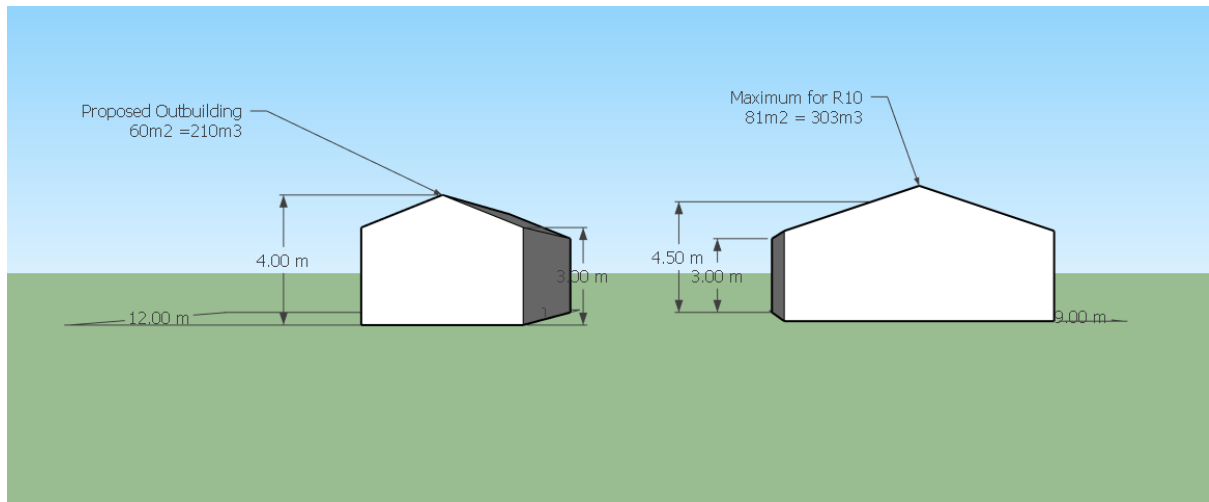
LOT 603 TELEGRAPH ROAD, TOODYAY

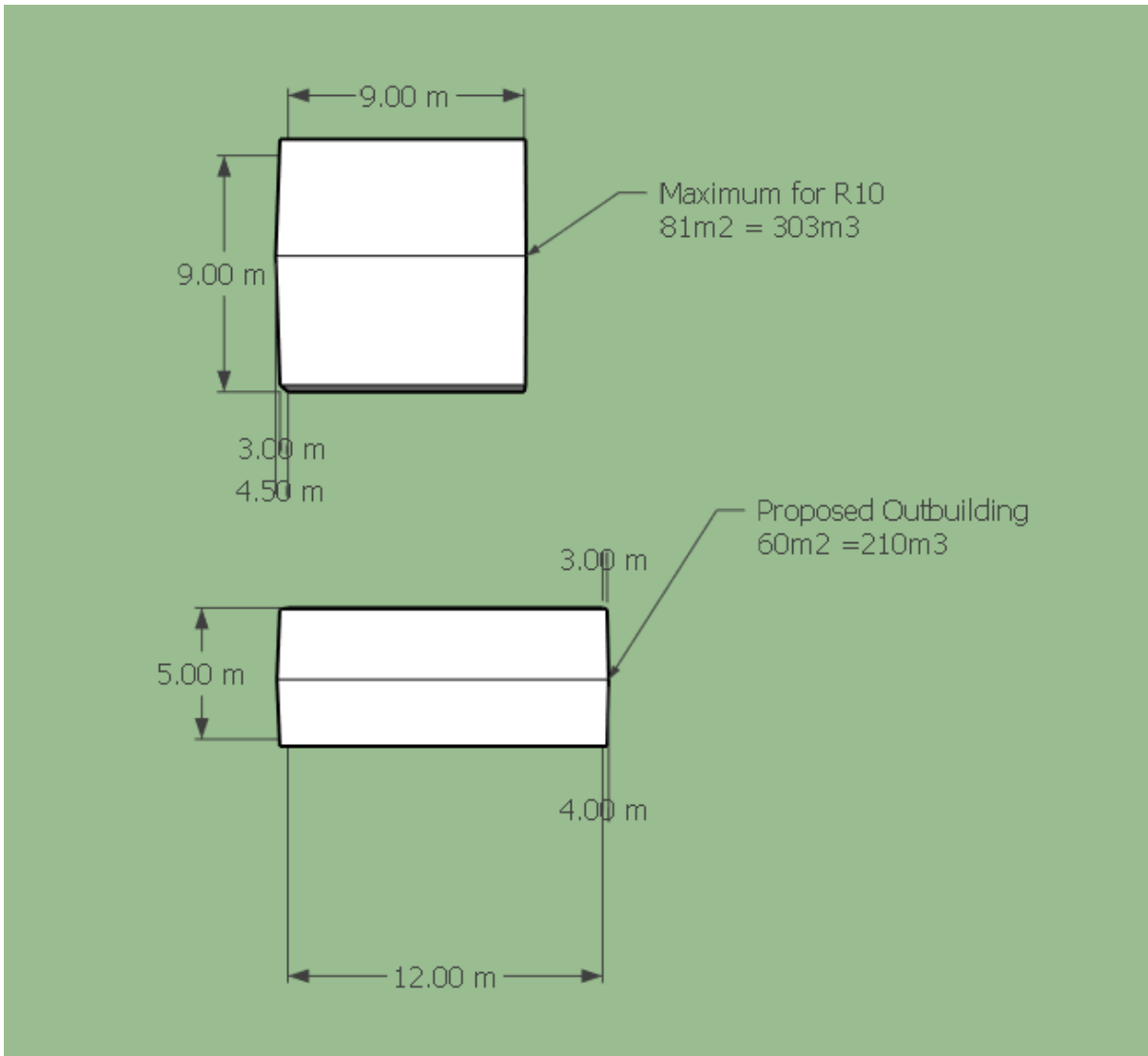
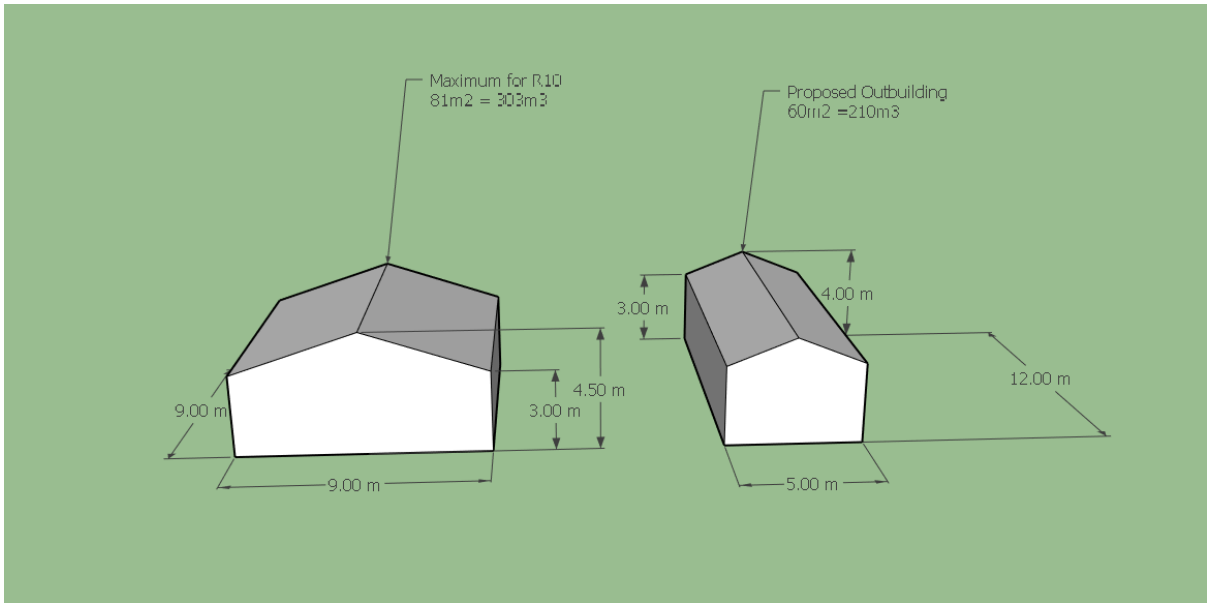


#	NAME	ADDRESS	SUMMARY OF SUBMISSION	APPLICANT COMMENTS ON SUBMISSION	DEVELOPMENT SERVICES COMMENTS ON SUBMISSION
3	FJ & BJ Moran	18 Jubilee Street, TOODYAY	<ul style="list-style-type: none"> Structure not appropriate for the zone; Impacts on privacy; and The size of the pad accentuates the scale of the structure. 	<ul style="list-style-type: none"> Cannot reduce the physical height of the shed by shortening poles as the shed will be used for the storage of a caravan and needs adequate clearance; and Applicant agrees to erect a 1.8m Colorbond fence around three sides of the property to lessen the impact of the structure. Amended plan supplied. 	<ul style="list-style-type: none"> Note the submission; With regards to zoning, there is an approved Local Planning Policy for the Shire in place that specifically deals with Outbuildings in Residential Areas. Therefore it is considered appropriately zoned. Impacts due to size and scale can be ameliorated with an appropriate planning approval condition; and Condition of approval <i>The applicant is to erect a 1.8m solid fence to provide screening of the structure and in accordance with the stamped plans within 6 months of the date of this approval to the satisfaction of the Shire of Toodyay. Should it be assessed by the Shire to be insufficient, the applicant will then be instructed to install additional lattice screening above the fence.</i>

Lot 603 Telegraph Road, Toodyay

Demonstration of proposed outbuilding bulk and scale compared to maximum permitted under Local Planning Policy No. 13 – Outbuildings in Residential Areas





LOCATION PLAN

LOT 124 (#5799) TOODYAY ROAD, TOODYAY



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100m clearance of quarry

1.5m deep
Excavation site

3m

5m

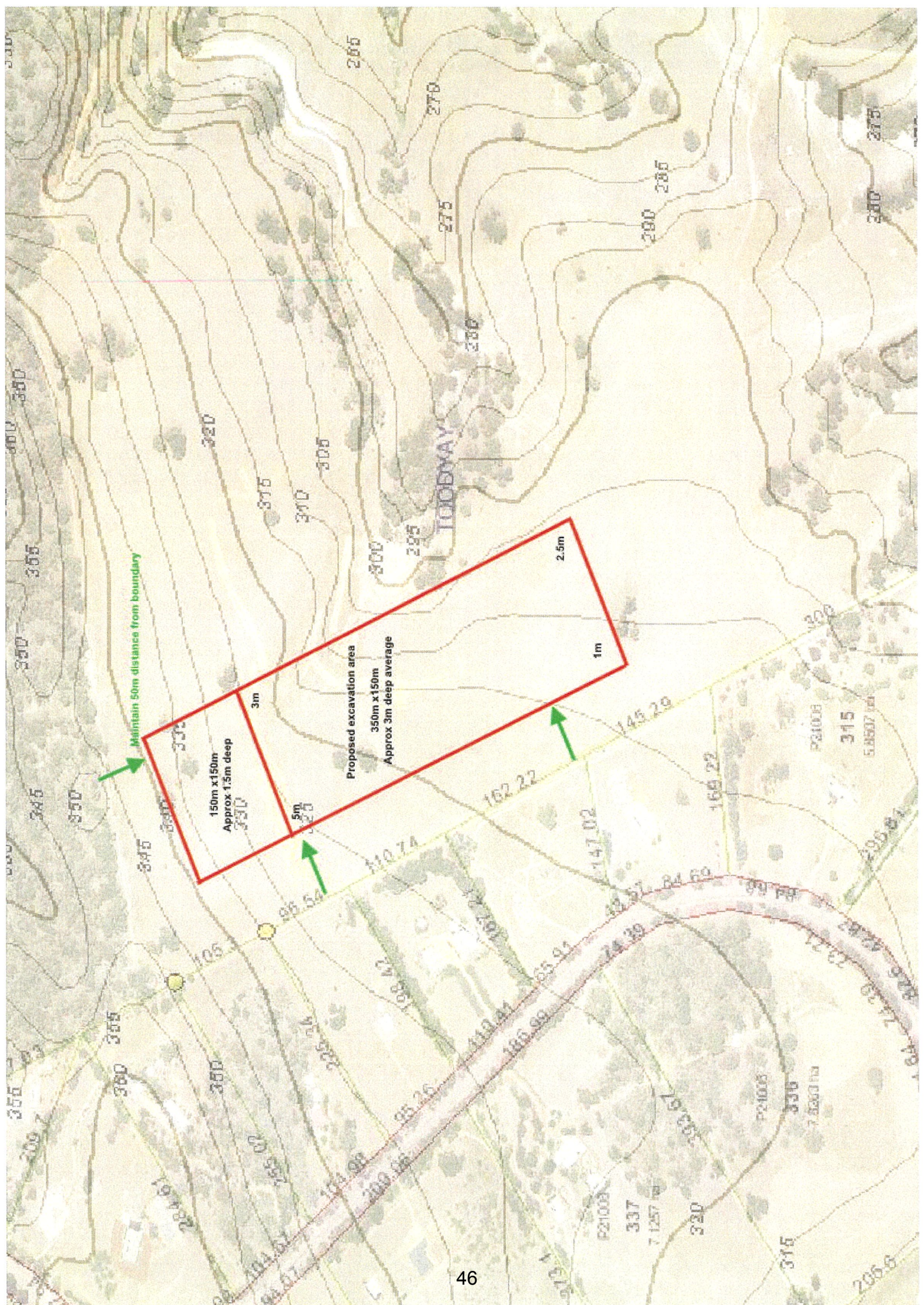
Excavation site

Maintains 50m clearance of boundary

2.5m

1m

Proposed road to excavation site



Shire of Toodyay

List of Payments Presented to Council for Period 1 September 2019 to 30 September 2019

Pay/Type	Date	Name	Description	Amount
IPV649	04/09/2019	Bendigo Bank	Payroll PPE 03092019	106,989.30
IPV650	18/09/2019	Bendigo Bank	Payroll PPE 17/09/2019	106,321.29
IPV651	18/09/2019	Bendigo Bank	Payroll PPE 17/09/2019 - Final Payment	6,077.48
1723	27/09/2019	Toodyay Football Club	Refund Of Bond - Memorial Hall - Toodyay Footbal Club 21/09/2019	500.00
BPV4107	01/09/2019	Bendigo Bank	Transfer Fees	10.00
BPV4108	01/09/2019	Bendigo Bank	Monthly Bank Fees	10.00
BPV4109	01/09/2019	Bendigo Bank	Bank Fees	73.05
BPV4110	01/09/2019	Bendigo Bank	Bpay Monthly Fee	533.88
BPV4111	02/09/2019	Commonwealth Bank	Merchant Fee	42.90
BVP4112	02/09/2019	Bendigo Bank	Bank Fee	4.38
BPV4113	02/09/2019	Bendigo Bank	Bank Fees	0.11
BPV4114	02/09/2019	Westnet	Morangup Library Internet Charges	69.95
BPV4115	18/09/2019	Bendigo Bank	Bank Fee	6.93
BPV4117	03/09/2019	Commonwealth Bank	Merchant Fee	66.93
BVP4118	03/09/2019	Commonwealth Bank	Merchant Fee	1,286.57
BPV4119	04/09/2019	Bendigo Bank	Bank Fees	7.37
BPV4120	05/09/2019	Commonwealth Bank - Equigroup	IT Hardware & Software Lease	87.67
BPV4121	09/09/2019	Fuji Xerox	Photocopier Lease - Depot, Library & Visitor Centre	470.34
BPV4122	12/09/2019	CNHI Capital	Iveco Truck Lease	3,207.70
BPV4123	14/09/2019	Bendigo Bank	Credit Card - CESM	4.00
			Card Fee	4.00
BPV4124	14/09/2019	Bendigo Bank	Credit Card - MPD	518.85
			EGO Fuel - Greenwood - T0000	74.85
			Building Point - Subscription - Sketch up Pro for Planning Department	440.00
			Card Fee	4.00
BPV4125	14/09/2019	Bendigo Bank	Credit Card - CEO	1,917.63
			City Radio Taxis Darwin - LG Professionals National Conference	9.66
			Main Roads WA Heavy - Welshpool	100.00
			Outback Jacks Darwin - Refreshments - LG Prof National Conference	46.95
			Lime Café Darwin - Refreshments - LG Prof National Conference	17.20
			City Radio Taxis Darwin - LG Prof National Conference	34.97
			Perth Airport - Parking - LG Prof National Conference	141.90
			Local Government Convention - Parking	23.22
			Shell Gidjegannup- Fuel T0	73.00
			Crown Plaza Perth - Parking & Accommdation - Targa West Presentation	192.67
			FOI in WA Conference - Training - Governance	218.00
			Adobe Systems Subscription	387.94
			Card Fee	4.00
			PLE Computers - Server Rack for Library	581.12

Shire of Toodyay

List of Payments Presented to Council for Period 1 September 2019 to 30 September 2019

Pay/Type	Date	Name	Description	Amount	
BPV4126	14/09/2019	Bendigo Bank	<i>Caltex Star Shop Stratton - Fuel T0</i>	87.00	4,363.54
			Credit Card - MWS		
			<i>St Johns Ambulance Training - MWS</i>	128.00	
			<i>Digitalriver Ireland - Engineering & Construction Subscription</i>	3970.00	
			<i>Flocontrol - Pneumatic Actuator</i>	228.88	
			<i>Paypal - Ebay - Screen protector - CESM</i>	29.70	
			<i>Paypal - Ebay - GST international fee - CESM</i>	2.96	
BPV4127	14/09/2019	Bendigo Bank	<i>Card fee</i>	4.00	2,993.36
			Credit Card - MCD		
			<i>Dunnings Toodyay - FuelT00</i>	21.00	
			<i>BP Sawyers Valley - Fuel T00</i>	20.00	
			<i>Wilson Parking - Building Positive Partnerships with Aboriginal Communities</i>	15.19	
			<i>Kowloon - Hi Resolution Images for Stirling Terrace Banners</i>	42.00	
			<i>Kowloon - Hi Resolution Images for Stirling Terrace Banners</i>	42.00	
			<i>FACET Trigg - ASTRO Tourism - CDAO</i>	120.00	
			<i>Local Governement - Career Development - CDAO</i>	55.00	
			<i>Local Governement - Career Development - CDPA</i>	55.00	
			<i>Angus & Robertson - Artistic Approaches to Cultural Mapping</i>	164.35	
			<i>Aldi Mundaring - Storage Units for VC</i>	560.79	
			<i>MB Traders - Moving blankets - Museum</i>	175.00	
			<i>MB Traders - Moving blankets - Freight - Museum</i>	50.00	
			<i>WOTIF - Accommodation - LC- Library Training</i>	110.00	
			<i>Royal Wolf Trading - Seacontainer & Ramp - Museum Gaol Storage</i>	1378.84	
			<i>Card Fee</i>	4.00	
<i>Wilson Parking - Remix Community Summit - MCD</i>	15.19				
<i>Child Wise - Community of Practice membership</i>	165.00				
BPV4128	16/09/2019	Bendigo Bank	Bank Fees		11.22
BPV4129	16/09/2019	Bendigo Bank	Bank Fee		0.75
BPV4130	16/09/2019	Toyota Finance	BFRMC Vehicle Lease		3,782.07
BPV4131	16/09/2019	Commonwealth Bank	BPOINT Fees		50.01
BPV4132	16/09/2019	Fuji Xerox	Photocopier - Building And Planning		155.10
BPV4133	16/09/2019	Commonwealth Bank - Equigroup	IT Hardware & Software Lease		353.91
BPV4134	16/09/2019	Fuji Xerox	Photocopier Lease - Administration		370.70
BPV4135	16/09/2019	Komatsu	Grader Lease		4,901.37
BPV4137	19/09/2019	Bendigo Bank	Bank Fee		0.11
BPV4138	23/09/2019	Commonwelth Bank - Equigroup	IT Hardware & Software Lease		96.97
BPV4139	27/09/2019	Bendigo Bank	Bank Fee		0.11
BPV4140	27/09/2019	Bendigo Bank	Bank Fee		0.60
BPV4141	27/09/2019	Bendigo Bank	Bank Fee		8.36

Shire of Toodyay

List of Payments Presented to Council for Period 1 September 2019 to 30 September 2019

Pay/Type	Date	Name	Description	Amount
BPV4145	09/09/2019	Commonwealth Bank - Equigroup	IT Hardware & Software Lease	151.15
BPV4146	03/09/2019	Commonwealth Bank	Merchant Fee	734.48
12670	16/09/2019	Aust Communications & Media Authority	Annual License Renewal - Council Radio Network	113.00
12671	16/09/2019	Commissioner Of Police	Annual Firearm Licence Renewal	128.00
12672	16/09/2019	Department Of Transport	Registration Renewal - 1TQV289	24.00
12673	16/09/2019	Old Gaol Museum	Old Gaol Volunteer Reimbursements	400.00
12674	16/09/2019	Optus	Cr Wellburn Wireless Broadband	28.95
12675	16/09/2019	Telstra Corporation Limited	Telephone Charges - August 2019	14,721.54
12676	16/09/2019	Water Corporation	Headwork Charges For Community Standpipe Installation - Lot 241 Stirling Tce	11,569.19
12677	16/09/2019	Synergy	Electricity Charges - Street Lighting and Fire Brigade Buildings	4,471.13
12678	27/09/2019	William Harold Byron	2019/2020 Rates Incentive Prize Winner- 1st Prize	1,000.00
12679	27/09/2019	Department Of Transport	Registration - T000	828.40
12680	27/09/2019	Toodyay Football Club	19/20 Community Sponsorship	2,000.00
12681	27/09/2019	Synergy	Electricity Charges - Shire Depot	418.31
EFT26718	04/09/2019	Shire Of Toodyay Salaries & Wages	Payroll Deductions	1,463.00
EFT26719	04/09/2019	Autopro Northam	Vehicle & Machinery Parts - P481	78.10
EFT26720	04/09/2019	Alans Auto Electrics	Alternator Replacement - P425	824.75
EFT26721	16/09/2019	Construction Training Fund	CTF Levies - August 2019	22,331.91
EFT26722	16/09/2019	Department Mines, Industry Regulation & Safety	BS Levies - August 2019	15,317.38
EFT26723	16/09/2019	Edmund Rice College	Refund Bond For Oval - Bindoon College - 4 August 2019	100.00
EFT26724	16/09/2019	Collette Healy	Refund Of Bond - Memorial Hall Cancelled Event - 21 March 2020	500.00
EFT26725	16/09/2019	Serendipity WA Pty Ltd	Refund Of Bond - Community Centre NDIS Info Session - 28 August 2019	500.00
EFT26726	16/09/2019	Australia Post	Postage - Rates, Fire Information, Events Information and General Postage	3,599.19
EFT26727	16/09/2019	Avon Skip Bins	Empty Front Lift Bins - Works Depot, Memorial Hall and Oval	300.00
EFT26728	16/09/2019	Autopro Northam	Tool Boxes - Mechanic Truck, Vehicle Oils, Ad Blue, Globes and Lubricant	6,055.87
EFT26729	16/09/2019	Avon Concrete	Pavement / Drainage Maintenance - Toodyay Bindi-Bindi Road	22,693.00
EFT26730	16/09/2019	Avon Waste	Domestic Waste Collection	13,571.68
EFT26731	16/09/2019	ADCO Constructions Pty Ltd	Progress Claim 1 - Recreation Precinct Project	319,132.00
EFT26732	16/09/2019	Alans Auto Electrics	Repairs To Water Level System - Bejoording 1.4	2,269.50
EFT26733	16/09/2019	Ampac Debt Recovery	Debt Recovery Costs - Rates	159.50
EFT26734	16/09/2019	Bolgart Rural Merchandise	Herbicide - For Spraying of Shire Verges	858.00
EFT26735	16/09/2019	Broderick Waste Solutions Pty Ltd	Management Of Waste Transfer Station, Cartage of E Waste and Waste Transfer to Northam	9,899.56
EFT26736	16/09/2019	John Butler	V/C Consignment Stock	38.65
EFT26737	16/09/2019	Bindi Bindi Publishing	V/C Stock - Australian Books	180.00
EFT26738	16/09/2019	Bunnings Midland	Building Supplies - Various Shire Buildings	1,445.85
EFT26739	16/09/2019	Lindsay Burke	V/C Consignment Stock	10.50
EFT26740	16/09/2019	Bev Royal	V/C Consignment Stock	36.20
EFT26741	16/09/2019	Betta Roads Pty Ltd	Polycom Road Grading Product - Stabilising Aid	6,270.00

Shire of Toodyay

List of Payments Presented to Council for Period 1 September 2019 to 30 September 2019

Pay/Type	Date	Name	Description	Amount
EFT26742	16/09/2019	Borrell Rafferty Associates Pty Ltd	Surveyors - Rec Precinct - Part Payment	4,895.00
EFT26743	16/09/2019	Bejoording Volunteer Bush Fire Brigade	BFB Kit Bags Reimbursement	1,199.00
EFT26744	16/09/2019	Country Copiers Northam	Printer Ink Cartridges - Bushfire Brigades	253.40
EFT26745	16/09/2019	Child Support Agency	Payroll Deductions	452.03
EFT26746	16/09/2019	Alison Cromb	V/C Consignment Stock	52.23
EFT26747	16/09/2019	Govt Of Western Australia - Central Regional Tafe	ROCS 1 & 2 Conversion Training - Ranger Services	332.90
EFT26748	16/09/2019	Cameron Chisholm Nicol (WA) Pty Ltd	Project Management - Rec Precinct	3,300.00
EFT26749	16/09/2019	Landgate	Certificate Of Title Searches - Planning Department	131.00
EFT26750	16/09/2019	A1 Diesel Injection	Rebuild Of Injector Pump - Loader	1,365.00
EFT26751	16/09/2019	Datacom Solutions (Au) Pty Ltd	Datascape Monthly SAAS Fee	3,300.00
EFT26752	16/09/2019	Dowsing Group Pty Ltd	Footpath Construction - Newcastle Park & Herbert Street	20,263.10
EFT26753	16/09/2019	Esselmont Olives	V/C Floor Stock	10.15
EFT26754	16/09/2019	Margaret Eberle	Reimburse Cost Of Purchasing Particle Board For Museum Displays	57.80
EFT26755	16/09/2019	Easifleet	Payroll Deductions	852.19
EFT26756	16/09/2019	Flick Anticimex Pty Ltd	Supply Of Sanitary Bin - Bush Fire Brigades	97.55
EFT26757	16/09/2019	June Foote	V/C Consignment Stock	27.15
EFT26758	16/09/2019	Frontline Fire & Rescue Equipment	BFB PPE, BF Hose Fittings & Vehicle Battery Chargers	5,280.56
EFT26759	16/09/2019	Flat Out Freight	Delivery Of Brochures To International Airport	24.85
EFT26760	16/09/2019	Fuji Xerox Australia Pty Ltd	Photocopier Readings - Administration and Building/Planning	1,547.47
EFT26761	16/09/2019	Fire Mitigation Services Pty Ltd	Reserves Maintenance - Reserve Street, Golf Club, Pelham Reserve	6,765.60
EFT26762	16/09/2019	SF Fitzgerald Plumbing & Gas	Repair Leak In Visitor Centre Water Line	231.00
EFT26763	16/09/2019	Shire Of Goomalling	Annual Contribution To Pioneer Pathway 19/20	3,850.00
EFT26764	16/09/2019	Govt Of Western Australia - Department Of Transport	Disclosure Of Information Fees - August 2019	6.80
EFT26765	16/09/2019	Patricia May George	Rates Refund - Due to Sale of Property	792.00
EFT26766	16/09/2019	Grove Wesley Design Art	Signage Supports/Frames - Convict Depot Walk	2,392.50
EFT26767	16/09/2019	Vodafone Hutchinson Australia P/L	Emergency Services Pager Charges	405.90
EFT26768	16/09/2019	John Hansen	Reimbursement Of Expenses	285.35
EFT26769	16/09/2019	JR & A Hersey	PPE, Tool Replacement and Consumables	1,211.32
EFT26770	16/09/2019	Toodyay Hardware & Farm	Pallet of Cement, Poly Clamps, Key Cutting, Shackles, Mig Wire, Plaster Board and Various Materials	1,313.25
EFT26771	16/09/2019	G Horsfield	Window Cleaning - Medical Centre, Memorial Hall & Pavilion	450.00
EFT26772	16/09/2019	ID Consulting P/L	Profile.Id Yearly Subscription Fee - 19/20	4,400.00
EFT26773	16/09/2019	I & R Repairs & Maintenance	Doors & Fittings - Break & Entry Damage To Parkers Cottage - Insurance Claim	3,769.70
EFT26774	16/09/2019	Chantelle Jones	V/C Consignment Stock	13.93
EFT26775	16/09/2019	Kott Gunning Lawyers	Legal Fees - SAT Attendance - Cr Bell Matter and Audit Letter Fee	2,799.28
EFT26776	16/09/2019	Robert John Knox	Reimbursement Of Planning Fees - Planning Not Required	320.00
EFT26777	16/09/2019	Limnios & Johns Pty Ltd	Project Management - Rec Precinct	11,874.50
EFT26778	16/09/2019	Sandys Outback Pottery	V/C Consignment Stock	60.00
EFT26779	16/09/2019	Linian Fencing & Contracting	Fence Repairs At Waste Transfer Station	352.00

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List of Payments Presented to Council for Period 1 September 2019 to 30 September 2019

Pay/Type	Date	Name	Description	Amount
EFT26780	16/09/2019	Main Roads WA	Minor SDR Works - Upgrade To Toodyay Heavy Vehicle Intersection- Harper Road - Shire Contribution	9,633.34
EFT26781	16/09/2019	Mark Middleton	Painting - Memorial Hall, Visitor Centre, Parkers Cottage, Police Stables	750.00
EFT26782	16/09/2019	MM Mechanical P/L	Repair To Bullbar - Toodyay 12.2	150.00
EFT26783	16/09/2019	Marketforce	Area Promotion - Advertising	562.54
EFT26784	16/09/2019	Mayday Earthmoving	Plant Hire - Construction Works on Julimar Road	9,046.40
EFT26785	16/09/2019	Mountain Park On Avon	V/C Consignment Stock	102.00
EFT26786	16/09/2019	Multicon Commercial Constructions	August Progress Claim - New Coondle Fire Station	64,401.15
EFT26787	16/09/2019	Minuteman Press - Midland	Newsletter Printing	1,153.90
EFT26788	16/09/2019	North Star Security Nominees P/L	Alarm Monitoring - Administration	145.20
EFT26789	16/09/2019	PK Technology Pty Ltd	Cel-Fi Go (Mobile Phone Boosters) For SES Ute and SES Truck - Morangup	3,487.46
EFT26790	16/09/2019	Perth Region Tourism Organisation Inc	Destination Perth - Gold Membership 19/20	395.00
EFT26791	16/09/2019	Pacific Safety Wear	Safety Boots - Depot	152.74
EFT26792	16/09/2019	Quilts By Robyn	V/C Consignment Stock	35.00
EFT26793	16/09/2019	Southern Cross Austereo Pty Ltd	Outside Broadcast - TIFF 2019 and Around the Towns Radio Spot	1,544.40
EFT26794	16/09/2019	Misty Rogers	V/C Consignment Stock	62.50
EFT26795	16/09/2019	Reinforced Concrete Pipes Aust (WA) Pty Ltd	Drainage Pipes for Julimar Road, Lovers Lane and Road Maintenance	5,092.01
EFT26796	16/09/2019	WA Rangers Association	2019 WA Rangers Assoc Conference - Ranger Services	679.00
EFT26797	16/09/2019	Stephanie Slater	V/C Consignment Stock	10.00
EFT26798	16/09/2019	Sunny Industrial Brushware	Replacement Brushes - Green Machine Sweeper	704.00
EFT26799	16/09/2019	G & C Steytler	V/C Consignment Stock	50.96
EFT26800	16/09/2019	Peta Shales	Reimburse Cost Of Pre-Employment Medical Check	236.50
EFT26801	16/09/2019	Stewart & Heaton Clothing Co P/L	BFB Personal Protective Equipment	1,616.34
EFT26802	16/09/2019	Sharons Outback Pottery	V/C Consignment Stock	28.80
EFT26803	16/09/2019	Specialised Tree Service	Tree Pruning - Settlers Ridge, Cobbler Pool Road and River Road	4,495.00
EFT26804	16/09/2019	Sunny Sign Company P/L	PVC Guide Posts - Depot Stock	6,325.00
EFT26805	16/09/2019	Stewarts Pest Control	Rodent Control - Works Depot, Pavilion, Youth Hall, Lee-Steere Pavilion	968.00
EFT26806	16/09/2019	EAG Electrical Airconditioning & Gas	Installation Of Lighting - Waste Transfer Station (50% reimbursed), Electrical Works - Memorial Hall, Air Con Repairs - Medical Centre, Lighting Repairs - Community Centre, Repairs - Old Gaol, Electrical Repairs - Dog Pound, Repairs to Oven - Connors Cottage and Security Lights - Parkers Cottage	7,704.40
EFT26807	16/09/2019	Tanya Stuart	V/C Consignment Stock	107.77
EFT26808	16/09/2019	Toodyay Express	Delivery Of Parts To Depot	88.00
EFT26809	16/09/2019	Toodyay Chamber Of Commerce & Industry Inc	Community Sponsorship 19/20 - Christmas Street Party	5,000.00
EFT26810	16/09/2019	Truckline	Rocker Box & Hubcap - Tipping Trailer	234.91
EFT26811	16/09/2019	The Goods	4 x 4Lt Powerwash	192.50
EFT26812	16/09/2019	Tourism Council Western Australia Ltd	Registration - Finals Fever	49.00
EFT26813	16/09/2019	Toodyay Car & Motorcycle Show	Community Sponsorship - Toodyay Car & Motorcycle Show 2019	1,500.00

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Pay/Type	Date	Name	Description	Amount
EFT26814	16/09/2019	Deborah Termann	V/C Consignment Stock	82.70
EFT26815	16/09/2019	Toodyay Tyre & Exhaust	Battery - Fire Support Vehicle, Exhust Extension - Memorial Hall Generator, Battery - Morangup Fire Shed Generator and Tyres and Wheel Alignment for P476	1,497.50
EFT26816	16/09/2019	Toodyay Bowling Club	Community Sponsorship 19/20	2,000.00
EFT26817	16/09/2019	Toodyay Curtain & Blinds	Materials - Acoustic Panels at Memorial Hall	10,026.00
EFT26818	16/09/2019	Toll	Freight - Various Items	191.19
EFT26819	16/09/2019	Vernice P/L	Hire Of Road Sweeper - Targa West Preparation	594.00
EFT26820	16/09/2019	Valley Ford - Northam Hyundai	Gear Box Selector Cable	94.47
EFT26821	16/09/2019	Western Australian Local Government Association	LG Week Registration - 3 Councillors & CEO	6,252.00
EFT26822	16/09/2019	Wheatbelt GP Network - Toodyay	Medical Consultation - Insurance Claim	77.50
EFT26823	16/09/2019	WA Hino Sales & Service	Speed Sensor Parts, Oil Seal & Hub, Mirror and Freight - P415	2,132.09
EFT26824	16/09/2019	Wright Express Aust Pty Ltd	SES Fuel Card Admin Fee	84.83
EFT26825	16/09/2019	Wajon Publishing Company	V/C Floor Stock	197.80
EFT26826	16/09/2019	Wheatbelt Office & Business Machines	Photocopier Print Readings - Visitor Centre, Library and Depot	1,079.93
EFT26827	16/09/2019	Wheatbelt Safetywear	Various Small Tool Supplies	110.00
EFT26828	18/09/2019	Shire Of Toodyay Salaries & Wages	Payroll Deductions	1,463.00
EFT26829	27/09/2019	Natasha Hof	Refund Of Bond - Memorial Hall - Natasha Hof 20/09/2019	1,000.00
EFT26830	27/09/2019	Melinda Lucas	Refund Of Bond - Pavilion - Toodyay Cricket Club 21/09/2019	100.00
EFT26831	27/09/2019	Toodyay Community Resource Centre	Refund Of Bond Due To Cancellation - Toodyay Youth Reference Group 22/09/2019	100.00
EFT26832	27/09/2019	Toodyay Progress Association Inc	Refund Of Bond - Community Centre 18/09/2019	100.00
EFT26833	27/09/2019	Autopro Northam	Fuel Injectors, Engine Parts, Engine Mounts and Engine Rebuild Kit - P425, Plugs - P415 & P466, Blades - P459	4,624.35
EFT26834	27/09/2019	Ag Implements Merredin P/L	Hoses - Grader	120.84
EFT26835	27/09/2019	Avon Waste	Domestic Rubbish Collection	13,581.54
EFT26836	27/09/2019	Agparts Warehouse Pty Ltd	New Belts For "George" - Connors Mill	411.40
EFT26837	27/09/2019	ASV Sales & Service	Service Kit For Posi Track Loader	561.74
EFT26838	27/09/2019	Andrew Carr Welding & Carpentry	Repair Of Water Tank Pad Erosion Points	250.00
EFT26839	27/09/2019	Avon Valley Glass	Hinges - Door - Community Centre	112.00
EFT26840	27/09/2019	Ampac Debt Recovery	Debt Recovery Costs - Rates	1,850.21
EFT26841	27/09/2019	Broderick Waste Solutions Pty Ltd	Management Of Waste Transfer Station	11,000.00
EFT26842	27/09/2019	Butterley Cottages Association Inc	19/20 Community Sponsorship - Residents Outdoor Area	5,000.00
EFT26843	27/09/2019	Benjamin Bell	Monthly Members Attendance Allowance	1,180.33
EFT26844	27/09/2019	Brick & Mortar Restoration Pty Ltd	Repair Brick Work In Foyer - Memorial Hall	2,323.20
EFT26845	27/09/2019	North Metropolitan Tafe	Course Fees - LC	926.40
EFT26846	27/09/2019	Child Support Agency	Payroll Deductions	443.51
EFT26847	27/09/2019	CARDNO (Wa) P/L	Investigation - Groundwater Supply - Rec Precinct	21,730.50
EFT26848	27/09/2019	Therese Chitty	Monthly Members Attendance Allowance	1,603.75
EFT26849	27/09/2019	The Cola Cafe	Community Meeting - Bejoording and Agenda Briefing	431.00

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Pay/Type	Date	Name	Description	Amount
EFT26850	27/09/2019	Winc Australia P/L	Stationery - Library, Depot, VC, Museum and Administration	615.38
EFT26851	27/09/2019	Churches Commission On Education - Youthcare	19/20 Community Sponsorship - Chaplaincy Programme TDHS	10,000.00
EFT26852	27/09/2019	Cleanflow Environmental Solutions	Camera Inspection Underground Pipes - Various Locations - Road Maintenance	6,517.50
EFT26853	27/09/2019	Judy Dow	Monthly Members Attendance Allowance	1,180.33
EFT26854	27/09/2019	Ezi-Fix Welding & Handyman Services	Remove & Replace Rusted Fence At Police Lockup	295.00
EFT26855	27/09/2019	Engine Machining Services	Re-Bore Engine -CESM Vehicle	363.00
EFT26856	27/09/2019	Expo Signage & Digital Pty Ltd - Welshpool	4 Flagtrax Banners & Housing for Stirling Terrace	9,592.00
EFT26857	27/09/2019	Margaret Eberle	Reimburse Cost Of Bubble Wrap For Museum Artefacts During Roof Restoration	107.80
EFT26858	27/09/2019	Easifleet	Payroll Deductions	1,646.28
EFT26859	27/09/2019	Frontline Fire & Rescue Equipment	Bushfire Brigade PPE	3,866.45
EFT26860	27/09/2019	Frames West	Manufacture Of Transfer Box and New Tailgate	918.50
EFT26861	27/09/2019	Fire Protection Association Australia	Bushfire Attack Level Assessor Training - DSO	2,600.00
EFT26862	27/09/2019	Fuji Xerox Australia Pty Ltd	Photocopier Readings - Administration	1,000.56
EFT26863	27/09/2019	Michael & Tanya Franz	Crossover Contribution - Laterite Way, Coondle	700.00
EFT26864	27/09/2019	Paula Greenway	Monthly Members Attendance Allowance	1,180.33
EFT26865	27/09/2019	Great Southern Fuel Supplies	Fuel - Distillate and Unleaded	32,692.95
EFT26866	27/09/2019	Hills Fire Equipment Service	Fire Extinguisher & Blanket Service - Various sites	1,431.10
EFT26867	27/09/2019	Hesperian Press P/L	V/C Floor Stock	432.60
EFT26868	27/09/2019	G Horsfield	Window Cleaning - Administration Building	550.00
EFT26869	27/09/2019	GR Hasenfuss	Move Server & Telecommunications To New Rack - Library	280.00
EFT26870	27/09/2019	JCB Construction	Heater Valve For Loader	137.30
EFT26871	27/09/2019	Kleen West Distributers	Admin Cleaning Products	186.73
EFT26872	27/09/2019	Kott Gunning Lawyers	Professional Fees & Disbursements - Termination	2,180.64
EFT26873	27/09/2019	Ladelle Pty Ltd	V/C Stock	898.43
EFT26874	27/09/2019	Land Insights	Consultation - Review Of Works Approval - Opal Vale	1,375.00
EFT26875	27/09/2019	Mark Middleton	Paint of Exterior V/C, Memorial Hall Toilet Windows and Police Stables	1,975.00
EFT26876	27/09/2019	Bill Manning	Monthly Members Attendance Allowance	475.46
EFT26877	27/09/2019	Marketforce	Advertising - October Council Meetings Date Change, Proposed Eco Tent and Xmas Road Closure for Street Party	1,257.75
EFT26878	27/09/2019	Major Motors P/L	Turbo Pipe - Julimar 1.4	123.63
EFT26879	27/09/2019	Mayday Earthmoving	Dry Hire Of Loader For Construction of Julimar Road	2,547.60
EFT26880	27/09/2019	Minuteman Press - Midland	600 Newsletter Print - August 2019	1,153.90
EFT26881	27/09/2019	June Rosamond Newton	Rates Refund - overpayment	42.52
EFT26882	27/09/2019	Oxter Services (Northam Paper Products)	Gift Bags - V/C	131.14
EFT26883	27/09/2019	Office Of The Information Commissioner	Freedom Of Information Conference - Executive Services	218.00
EFT26884	27/09/2019	Quantified Tree Risk Assessment	User Registration Renewal - RMO	272.25
EFT26885	27/09/2019	E & MJ Rosher P/L	Parts For Kubota Tractor	954.48
EFT26886	27/09/2019	Rothwell Publishing	Australia Adventure Passports	149.80

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Pay/Type	Date	Name	Description	Amount
EFT26887	27/09/2019	Brian Rayner	Monthly Members Attendance Allowance	3,466.58
EFT26888	27/09/2019	Michael Rogers	Reimburse Cost Of Pre-Employment Medical Check	187.00
EFT26889	27/09/2019	Shelving King	Free Standing Shelving Units - Museum Displays	1,915.94
EFT26890	27/09/2019	Stewart & Heaton Clothing Co P/L	Bushfire Brigade PPE	1,351.88
EFT26891	27/09/2019	Sakal Q Maintenance Pty Ltd	Assess & Find Fault - Malfunction To Council Chambers Matrix Microphone System	150.00
EFT26892	27/09/2019	Structerre Consulting Engineers	Groundwater Analysis - New Coondle Fire Shed	1,650.00
EFT26893	27/09/2019	EAG Electrical Airconditioning & Gas	Labour - New Meter Box At Anzac Park	564.85
EFT26894	27/09/2019	Toodyay Herald	Advertsing - Firebreak Notice & Citizen of the Year Nominations	435.00
EFT26895	27/09/2019	Shire Of Northam	Disposal Of Domestic Waste	10,968.30
EFT26896	27/09/2019	Toodyay IGA	Staff Amenities	712.89
EFT26897	27/09/2019	Toodyay Pumps	Rewire Pump On Standpipe Back Into Control Module - Northam Toodyay Road	858.00
EFT26898	27/09/2019	Total Eden - Midland	Bulk Purchase of Reticulation Parts	3,199.28
EFT26899	27/09/2019	Eric Twine	Monthly Members Attendance Allowance	1,180.33
EFT26900	27/09/2019	Toodyay Community Resource Centre	Reimburse Community Centre Hire Fee - Cancelled Booking 22/09/2019	35.00
EFT26901	27/09/2019	Toodyay Pizza Bar & Italian Restaurant	Catering For FCO Preseason Briefing & IRS Meeting	288.00
EFT26902	27/09/2019	Toll	Freight	175.13
EFT26903	27/09/2019	Vernice P/L	Gravel - Julimar Road, Lovers Lane, Chitty Road, Transfer Station, River Road, Bejoording Road, Nunile Road and Church Gully Road	61,820.98
EFT26904	27/09/2019	Wurth Australia P/L	Expendable Stores	992.23
EFT26905	27/09/2019	Rob Welburn	Monthly Members Attendance Allowance	1,180.33
EFT26906	27/09/2019	Westate Hose Supplies	Tube for Kubota Tractor	184.25
EFT26907	27/09/2019	Wheatbelt Safetywear	Safety Boots - Depot	130.00
EFT26908	27/09/2019	Wren Oil	Oil Waste Disposal - Admin & Compliance Fees	16.50
DD23612.1	03/09/2019	JAC Retirement Fund	Payroll Deductions	975.28
DD23612.2	03/09/2019	Kaszanski Superfund	Superannuation Contributions	59.60
DD23612.3	03/09/2019	BT Super For Life	Superannuation Contributions	225.63
DD23612.4	03/09/2019	Rest Superannuation	Superannuation Contributions	225.63
DD23612.5	03/09/2019	WA Super	Superannuation Contributions	13,140.39
DD23612.6	03/09/2019	Hostplus Super	Superannuation Contributions	1,729.79
DD23612.7	03/09/2019	Australian Super	Superannuation Contributions	1,982.80
DD23612.8	03/09/2019	Bendigo Superannuation Plan	Superannuation Contributions	159.34
DD23612.9	03/09/2019	National Mutual Retirement Fund	Superannuation Contributions	335.48
DD23628.1	17/09/2019	JAC Retirement Fund	Payroll Deductions	975.28
DD23628.2	17/09/2019	Kaszanski Superfund	Superannuation Contributions	46.85
DD23628.3	17/09/2019	BT Super For Life	Superannuation Contributions	225.63
DD23628.4	17/09/2019	Rest Superannuation	Superannuation Contributions	225.63
DD23628.5	17/09/2019	WA Super	Superannuation Contributions	13,132.07

Shire of Toodyay

List of Payments Presented to Council for Period 1 September 2019 to 30 September 2019

Pay/Type	Date	Name	Description	Amount
DD23628.6	17/09/2019	Hostplus Super	Superannuation Contributions	1,747.55
DD23628.7	17/09/2019	Australian Super	Superannuation Contributions	1,933.36
DD23628.8	17/09/2019	Bendigo Superannuation Plan	Superannuation Contributions	148.72
DD23628.9	17/09/2019	National Mutual Retirement Fund	Superannuation Contributions	335.48
DD23646.1	02/09/2019	Western Australian Treasury Corporation	Loan No. 74 Fixed Component - Refurbish Bendigo Bank Building Stirling	20,831.63
DD23648.1	27/09/2019	Western Australian Treasury Corporation	Loan No. 70 Fixed Component - Footbridge Refurbishment	4,113.84
DD23612.10	03/09/2019	AMP Financial	Superannuation Contributions	189.62
DD23612.11	03/09/2019	MLC Superfund	Superannuation Contributions	394.40
DD23612.12	03/09/2019	Hesta	Superannuation Contributions	234.65
DD23628.10	17/09/2019	AMP Financial	Superannuation Contributions	189.62
DD23628.11	17/09/2019	MLC Superfund	Superannuation Contributions	386.56
DD23628.12	17/09/2019	Hesta	Superannuation Contributions	234.65
			Total Payments	1,259,980.77

IPV/BPV	245,680.14
Trust Chqs	500.00
EFT	913,918.63
DD Super	39,234.01
DD Loans	24,945.47
Muni Chqs	35,702.52
TOTAL	1,259,980.77

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SHIRE OF TOODYAY

MONTHLY FINANCIAL REPORT

For the Period Ended 30 September 2019

LOCAL GOVERNMENT ACT 1995

LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996

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SHIRE OF TOODYAY
STATEMENT OF FINANCIAL ACTIVITY
(Statutory Reporting Program)
For the Period Ended 30 September 2019

Note	2018/2019 Annual Budget	YTD Budget (a)	YTD Actual (b)	Var. \$ (b)-(a)	Var. % (b)-(a)/(a)	Var.
	\$	\$	\$	\$	%	
Operating Revenues						
	49,500	12,372	9,930	(2,442)	(19.74%)	
9	6,542,879	6,541,979	6,402,508	(139,471)	(2.13%)	
	966,657	241,651	221,690	(19,961)	(8.26%)	
	768,066	59,178	287,052	227,874	385.06%	▲
	67,500	16,869	13,997	(2,872)	(17.03%)	
	10,500	2,622	2,357	(265)	(10.09%)	
	731,860	683,476	684,098	622	0.09%	
	127,250	37,799	25,624	(12,175)	(32.21%)	▼
	214,214	156,839	150,846	(5,993)	(3.82%)	
	294,164	84,777	58,225	(26,552)	(31.32%)	▼
	122,322	30,573	32,203	1,630	5.33%	
Total Operating Revenue	9,894,912	7,868,135	7,888,529	20,394		
Operating Expense						
	(837,896)	(281,695)	(219,588)	62,107	22.05%	▲
	(380,331)	(90,063)	(81,738)	8,325	9.24%	
	(1,371,427)	(367,102)	(357,462)	9,640	2.63%	
	(314,097)	(74,683)	(58,072)	16,611	22.24%	▲
	(67,858)	(16,953)	(15,397)	1,556	9.18%	
	(36,562)	(9,141)	(8,223)	918	10.04%	▲
	(1,259,157)	(314,772)	(309,290)	5,482	1.74%	
	(1,767,600)	(504,776)	(399,791)	104,985	20.80%	▲
	(5,376,071)	(1,367,571)	(1,214,258)	153,313	11.21%	▲
	(1,270,833)	(339,289)	(292,301)	46,988	13.85%	▲
	(242,323)	(148,671)	(158,249)	(9,578)	(6.44%)	
Total Operating Expenditure	(12,924,155)	(3,514,716)	(3,114,369)	400,347		
Funding Balance Adjustments						
	4,428,700	1,107,156	1,068,953	(38,203)	(3.45%)	
8	(28,616)	(15,963)	0	15,963	(100.00%)	
	0	0	0	0		
Net Cash from Operations	1,370,841	5,444,612	5,843,113	398,501		
Capital Revenues						
11	8,017,397	2,738,351	901,502	(1,836,849)	(67.08%)	▼
8	573,000	27,000	0	(27,000)	(100.00%)	▼
Total Capital Revenues	8,590,397	2,765,351	901,502	(1,863,849)		
Capital Expenses						
13	(6,439,706)	(1,609,926)	(218,218)	1,391,708	86.45%	▲
13	(2,383,285)	(595,839)	(260,824)	335,015	56.23%	▲
13	(9,066,049)	(2,266,512)	(381,896)	1,884,616	83.15%	▲

SHIRE OF TOODYAY
STATEMENT OF FINANCIAL ACTIVITY
(Statutory Reporting Program)
For the Period Ended 30 September 2019

	Note	2018/2019 Annual Budget	YTD Budget (a)	YTD Actual (b)	Var. \$ (b)-(a)	Var. % (b)-(a)/(a)	Var.
Infrastructure - Bridges	13	(374,733)	(93,681)	0	93,681	100.00%	▲
Infrastructure - Other	13	(190,000)	(19,999)	(16,662)	3,337	16.69%	▲
Plant and Equipment	13	(299,062)	(74,763)	(468,233)	(393,470)	(526.29%)	▼
Total Capital Expenditure		(18,752,835)	(4,660,720)	(1,345,834)	3,314,886		
Net Cash from Capital Activities		(10,162,438)	(1,895,369)	(444,332)	1,451,037		
Financing							
Proceeds from New Debentures		4,500,000	1,125,000	0	(1,125,000)	100.00%	
Transfer from Reserves	7	3,179,640	794,901	0	(794,901)	100.00%	
Repayment of Debentures	10	(383,563)	(103,094)	(38,170)	64,924	62.98%	▲
Transfer to Reserves	7	(683,350)	(170,817)	0	170,817	100.00%	▲
Net Cash from Financing Activities		6,612,727	1,645,990	(38,170)	(1,684,160)		
Net Operations, Capital and Financing		(2,178,870)	5,195,233	5,360,611	165,378		
Opening Funding Surplus/(Deficit)	3	2,319,310	2,319,310	2,158,254		(6.94%)	
	3	140,440	7,514,543	7,518,865	165,378	0.06%	

Indicates a variance between Year to Date (YTD) Budget and YTD Actual data as per the adopted materiality threshold.
Refer to Note 2 for an explanation of the reasons for the variance.

This statement is to be read in conjunction with the accompanying Financial Statements and notes.

SHIRE OF TOODYAY
STATEMENT OF FINANCIAL ACTIVITY
(By Nature or Type)
For the Period Ended 30 September 2019

	Note	2018/2019 Annual Budget	YTD Budget (a)	YTD Actual (b)	Var. \$ (b)-(a)	Var. % (b)-(a)/(a)	Var.
Operating Revenues							
Rates	9	\$ 6,542,879	\$ 6,541,979	\$ 6,402,508	(139,471)	(2.13%)	
Operating Grants, Subsidies and Contributions	11	1,810,387	428,157	636,634	208,477	48.69%	
Fees and Charges		1,312,780	840,792	814,088	(26,704)	(3.18%)	
Interest Earnings		145,000	36,246	19,091	(17,155)	(47.33%)	▼
Other Revenue		20,000	4,998	16,208	11,210	224.28%	▲
Profit on Disposal of Assets	8	63,866	15,963	0	(15,963)		
Total Operating Revenue		9,894,912	7,868,135	7,888,529	20,394		
Operating Expense							
Employee Costs		(4,590,707)	(1,192,658)	(1,051,397)	141,261	11.84%	▲
Materials and Contracts		(2,950,872)	(846,209)	(692,499)	153,710	18.16%	▲
Utility Charges		(259,801)	(71,313)	(47,455)	23,858	33.46%	▲
Depreciation on Non-Current Assets		(4,428,700)	(1,107,156)	(1,068,953)	38,203	3.45%	
Interest Expenses		(271,262)	(67,339)	(9,444)	57,895	85.98%	▲
Insurance Expenses		(257,063)	(188,988)	(190,167)	(1,179)	(0.62%)	
Other Expenditure		(130,500)	(32,243)	(54,455)	(22,212)	(68.89%)	▼
Loss on Disposal of Assets	8	(35,250)	(8,810)	0	8,810		
Total Operating Expenditure		(12,924,155)	(3,514,716)	(3,114,369)	400,347		
		(3,029,243)	4,353,419	4,774,159			
Funding Balance Adjustments							
Add back Depreciation		4,428,700	1,107,156	1,068,953	(38,203)	(3.45%)	
Adjust (Profit)/Loss on Asset Disposal		(28,616)	(15,963)	0	15,963	(100.00%)	
Adjust Provisions and Accruals		0	0	0	0		
Net Cash from Operations		1,370,841	5,444,612	5,843,113	398,501		
Capital Revenues							
Grants, Subsidies and Contributions	11	8,017,397	2,738,351	901,502	(1,836,849)	(67.08%)	▼
Proceeds from Disposal of Assets		573,000	27,000	0	(27,000)	(100.00%)	▼
Total Capital Revenues		8,590,397	2,765,351	901,502	(1,863,849)		
Capital Expenses							
Land and Buildings	13	(6,439,706)	(1,609,926)	(218,218)	1,391,708	86.45%	▲
Infrastructure - Roads	13	(2,383,285)	(595,839)	(260,824)	335,015	56.23%	▲
Infrastructure - Parks & Recreation	13	(9,066,049)	(2,266,512)	(381,896)	1,884,616	83.15%	▲
Infrastructure - Other	13	(190,000)	(19,999)	(16,662)	3,337	16.69%	▲
Plant and Equipment	13	(299,062)	(74,763)	(468,233)	(393,470)	(526.29%)	▼
Total Capital Expenditure		(18,752,835)	(4,660,720)	(1,345,834)	3,314,886		
		(10,162,438)	(1,895,369)	(444,332)	1,451,037		
Net Cash from Capital Activities		(10,162,438)	(1,895,369)	(444,332)	1,451,037		
Financing							
Proceeds from New Debentures		4,500,000	1,125,000	0	(1,125,000)	(100.00%)	
Transfer from Reserves	7	3,179,640	794,901	0	(794,901)	(100.00%)	
Repayment of Debentures	10	(383,563)	(103,094)	(38,170)	64,924	62.98%	▲
Transfer to Reserves	7	(683,350)	(170,817)	0	170,817	100.00%	▲
Net Cash from Financing Activities		6,612,727	1,645,990	(38,170)	(1,684,160)		
Net Operations, Capital and Financing		(2,178,870)	5,195,233	5,360,611	165,378		
Opening Funding Surplus(Deficit)	3	2,319,310	2,319,310	2,158,254		(6.94%)	
Closing Funding Surplus(Deficit)	3	140,440	7,514,543	7,518,865	165,378		▲

Indicates a variance between Year to Date (YTD) Budget and YTD Actual data as per the adopted materiality threshold.
Refer to Note 2 for an explanation of the reasons for the variance.

This statement is to be read in conjunction with the accompanying Financial Statements

Shire of Toodyay
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 2: EXPLANATION OF MATERIAL VARIANCES

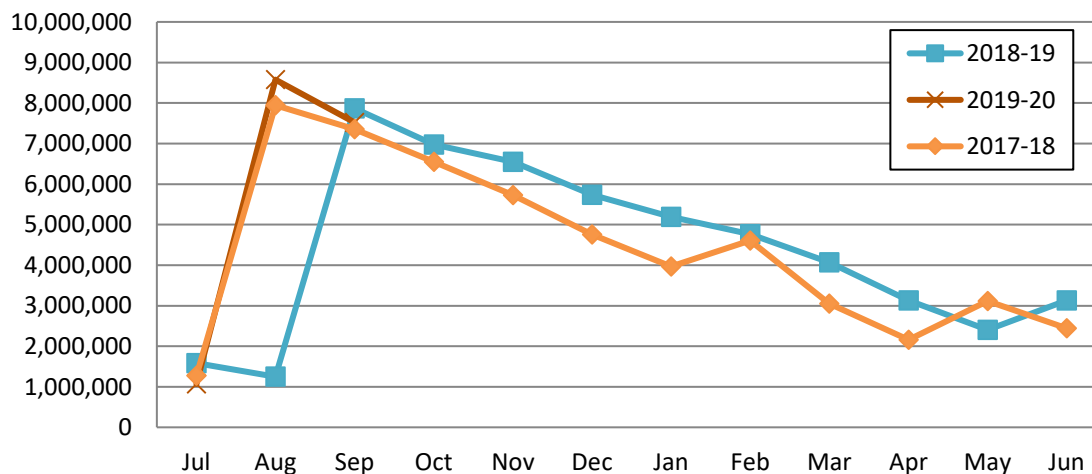
Reporting Program	Var. \$	Var. %	Var.	Timing/ Permanent	Explanation of Variance
	\$	%			
Operating Revenues					
Governance	(2,442)	(19.74%)			
General Purpose Funding - Rates	(139,471)	(2.13%)			
General Purpose Funding - Other	(19,961)	(8.26%)			
Law, Order and Public Safety	227,874	385.06%	▲	Timing	Grant received for Coondle Fire Truck - offset by 051250
Health	(2,872)	(17.03%)			
Education & Welfare	0	0.00%			
Housing	(265)	0.00%			
Community Amenities	622	0.09%			
Recreation and Culture	(12,175)	(32.21%)	▼	Timing	Rental Income less than budgeted to date
Transport	(5,993)	(3.82%)			
Economic Services	(26,552)	(31.32%)	▼	Timing	Standpipe income and profit on sale of Assets less than budgeted to date
Other Property and Services	1,630	5.33%			
Operating Expense					
Governance	62,107	22.05%	▲	Timing	Employee Costs less than budgeted to date
General Purpose Funding	8,325	9.24%			
Law, Order and Public Safety	9,640	2.63%			
Health	16,611	22.24%	▲	Timing	Employee Costs and Rental Expense less than budgeted to date
Education & Welfare	1,556	9.18%			
Housing	918	10.04%	▲	Timing	Maintenance Expense less than budgeted to date
Community Amenities	5,482	1.74%			
Recreation and Culture	104,985	20.80%	▲	Timing	Loan repayment yet to be made
Transport	153,313	11.21%	▲	Timing	Bridge and Road Maintenance, Survey and Design, Plant lease less than budgeted to date
Economic Services	46,988	13.85%	▲	Timing	Employee Costs and Standpipe Water Charges less than budgeted to date
Other Property and Services	(9,578)	(6.44%)			
Capital Revenues					
Grants, Subsidies and Contributions	(1,836,849)	(67.08%)	▼	Timing	Grant Income
Proceeds from Disposal of Assets	(27,000)	(100.00%)	▼	Timing	Sale of assets yet to occur
Capital Expenses					
Land and Buildings	1,391,708	86.45%	▲	Timing	Projects not yet commenced or not completed
Infrastructure - Roads	335,015	56.23%	▲	Timing	Projects not yet commenced or not completed
Infrastructure - Parks & Recreation	1,884,616	83.15%	▲	Timing	Projects not yet commenced or not completed
Infrastructure - Other	3,337	16.69%	▲	Timing	Projects not yet commenced or not completed
Plant and Equipment	(393,470)	(526.29%)	▼	Timing	Coondle Fire Truck - Offset by Income GL. 051331
Financing					
Loan Principal	64,924	62.98%	▲	Timing	Loan repayments yet to be made

Shire of Toodyay
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 3: NET CURRENT FUNDING POSITION

				Positive=Surplus (Negative=Deficit)		
				YTD 30 Sep 2019		
Note	YTD 30 Sep 2019	30th June 2019	YTD 30 Sep 2018			
				\$	\$	\$
Current Assets						
Cash Unrestricted	4	4,627,107	2,248,292	1,658,600		
Cash Restricted	4	3,759,393	3,759,393	3,341,745		
Receivables - Rates	6	3,396,221	940,360	6,778,913		
Receivables -Other	6	137,062	65,669	46,288		
Interest / ATO Receivable/Trust						
Inventories		88,828	73,576	65,104		
		12,008,611	7,087,291	11,890,650		
Less: Current Liabilities						
Payables		(481,181)	(958,642)	(457,548)		
Provisions		(696,799)	(696,799)	(678,198)		
		(1,177,981)	(1,655,442)	(1,135,746)		
Less: Cash Reserves	7	(3,759,393)	(3,759,393)	(3,341,745)		
Adjustment for Current Borrowings		200,679	238,849	209,914		
Adjustment for Cash Backed Liabilities		246,949	246,949	245,303		
Net Current Funding Position		7,518,865	2,158,254	7,868,376		

Note 3 - Liquidity Over the Year



Comments - Net Current Funding Position

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 4: CASH AND INVESTMENTS

	Interest Rate	Unrestricted \$	Restricted \$	Trust \$	Investments \$	Total Amount \$	Institution	Maturity Date
(a) Cash Deposits								
Municipal		1,309,567				1,309,567	Bendigo Bank	At Call
Trust				169,633		169,633	Bendigo Bank	At Call
(b) Term Deposits								
Municipal NCD: 3090680	1.34%	813,099				813,099	Bendigo Bank	21.11.19
Municipal NCD: 3122959	1.25%	500,000				500,000	Bendigo Bank	21.10.19
Municipal NCD: 3122955	1.45%	1,000,000				1,000,000	Bendigo Bank	20.11.19
Municipal NCD: 3122957	1.25%	1,000,000				1,000,000	Bendigo Bank	21.10.19
Reserve NCD: 3007385	2.10%		3,759,393			3,759,393	Bendigo Bank	09.10.19
Trust - T83	2.25%			137,395		137,395	Bendigo Bank	19.12.19
Trust - T84	2.25%			214,337		214,337	Bendigo Bank	19.12.19
Trust - T794	1.60%			107,689		107,689	Bendigo Bank	27.12.19
Trust - T100	1.85%			138,655		138,655	Bendigo Bank	27.10.19
Trust - T4	1.85%			122,462		122,462	Bendigo Bank	27.10.19
Trust - T114	1.85%			204,035		204,035	Bendigo Bank	27.10.19
Trust - T214	1.85%			48,435		47,981	Bendigo Bank	27.10.19
Trust - T458	1.85%			442,367		442,367	Bendigo Bank	27.10.19
Trust - T793	1.85%			23,459		23,459	Bendigo Bank	27.10.19
Trust - T797	1.85%			32,195		32,195	Bendigo Bank	27.10.19
Trust - T807	2.05%			121,405		121,405	Bendigo Bank	19.10.19
Trust - T805	1.60%			24,004		24,004	Bendigo Bank	14.12.19
Trust - T809	1.85%			121,127		121,127	Bendigo Bank	18.10.19
Total		4,622,666	3,759,393	1,907,197		10,288,802		

Comments/Notes - Investments

The above totals reflect the actual balance of the bank statements held at the Bank at month end. These balances will not include items such as unrepresented cheques and payments, and monies received by the Shire on the last day of the month.

Trust monies held by the Shire of Toodyay are not reflected in Note 3: Net Current Funding Position.

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

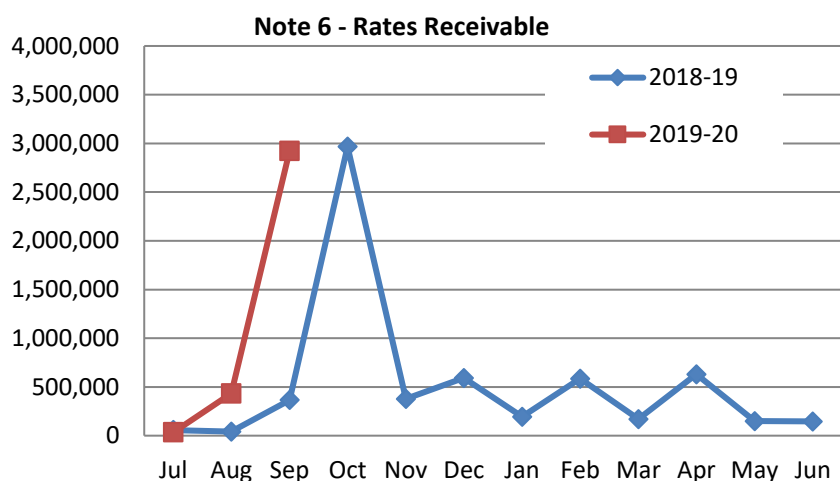
Note 6: RECEIVABLES

Receivables - Rates Receivable

Opening Arrears Previous Years
Levied this year
Less Collections to date
Equals Current Outstanding

Net Rates Collectable
% Collected

	YTD 30 Sep 2019	30 June 2018
	\$	\$
	681,435	567,647
	6,529,557	6,231,002
	(3,388,409)	(6,117,214)
	3,822,583	681,435
	3,822,583	681,435
	46.99%	89.98%



Comments/Notes - Receivables Rates

Comments/Notes - Receivables Rates and Rubbish

Current

Legal Action	116,957
Pensioners	374,205
No Action Required	150
Payment Arrangement	513,304
Employee Direct Debit	3,994
Instalment Option	1,991,383
Properties in Recivership	10,038
Final Notice	519,845
Sale of Land LG Act S6.64	88,418
Properties in Credit	(39,106)

Total Current **3,579,188**

Non- Current

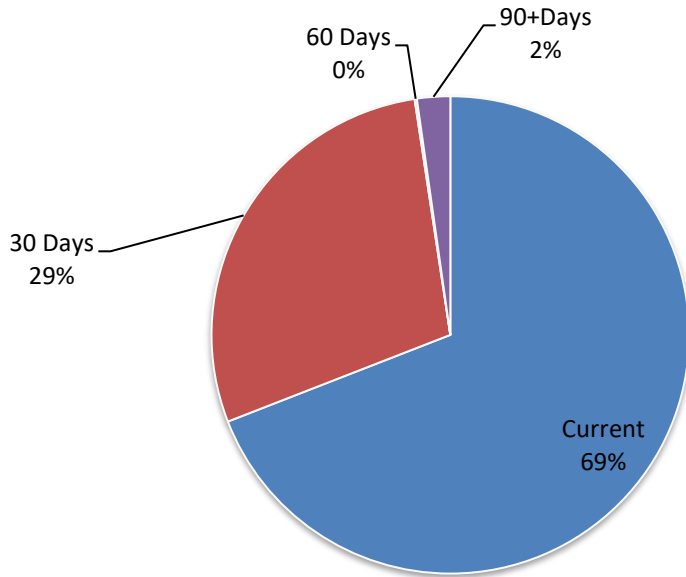
Deferred Pensioners	243,395
(not collectable till Pensioner property is sold)	
Total	3,822,583

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Receivables - General	Current	30 Days	60 Days	90+Days
	\$	\$	\$	\$
Receivables - General	15,557	6,422	34	505
Total Receivables General Outstanding				<u>22,519</u>

Amounts shown above include GST (where applicable)

Note 6 - Accounts Receivable (non-rates)



Comments/Notes - Receivables General

This note reflects Sundry Debtors only. It does not include other debtors such as GST due from the ATO & Pensioner Rebates due from the State.

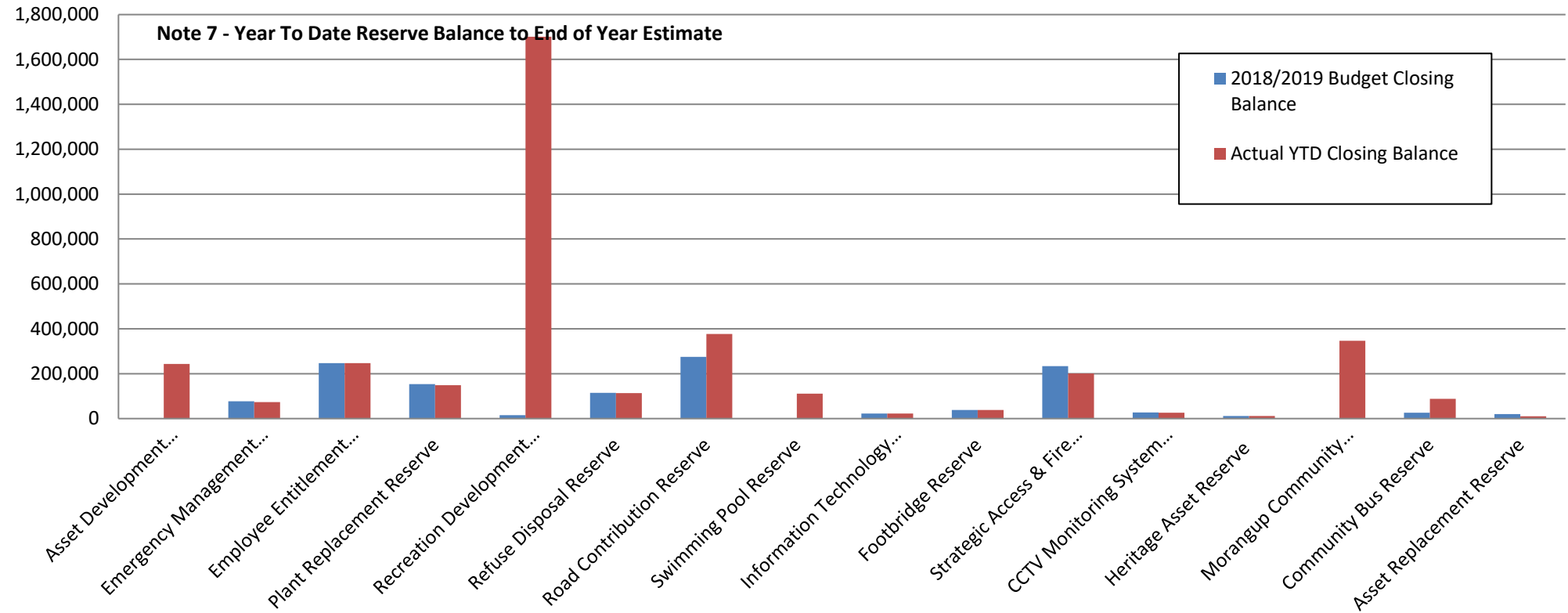
Final Letters	210
Seven Day Letters	6,422
Debt Collection	0
No Action Required	15,887
Payment Arrangement	0
Payroll Deductions	0
To be Written Off	0
Total Outstanding	22,519

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 7: Cash Backed Reserve

2019-20										
Name	Opening Balance	2018/2019 Budget Interest Earned	Actual Interest Earned	2018/2019 Budget Transfers In (+)	Actual Transfers In (+)	2018/2019 Budget Transfers Out (-)	Actual Transfers Out (-)	2018/2019 Budget Closing Balance	Actual YTD Closing Balance	
	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Asset Development Reserve	242,991	5,000		465,000		(712,991)		0	242,991	
Emergency Management & Recovery Reserve	74,001	2,500		0				76,501	74,001	
Employee Entitlement Reserve	246,949	5,000		60,000		(65,000)		246,949	246,949	
Plant Replacement Reserve	149,282	4,000		0				153,282	149,282	
Recreation Development Reserve	1,701,552	15,000		0		(1,701,552)		15,000	1,701,552	
Refuse Disposal Reserve	113,312	2,000		0				115,312	113,312	
Road Contribution Reserve	377,283	5,000		70,000		(177,000)		275,283	377,283	
Swimming Pool Reserve	110,691	2,000		0		(110,691)		2,000	110,691	
Information Technology Reserve	22,173	500		0				22,673	22,173	
Footbridge Reserve	37,805	500		0				38,305	37,805	
Strategic Access & Fire Egress Reserve	200,567	3,000		30,000				233,567	200,567	
CCTV Monitoring System Reserve	26,630	350		0				26,980	26,630	
Heritage Asset Reserve	10,965	500		0				11,465	10,965	
Morangup Community Centre Reserve	346,981	2,000		0		(348,981)		0	346,981	
Community Bus Reserve	88,173	1,000		0		(63,425)		25,748	88,173	
Asset Replacement Reserve	10,038	0		10,000				20,038	10,038	
	3,759,394	48,350	0	635,000	0	(3,179,640)	0	1,263,104	3,759,394	

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
 For the Period Ended 30 September 2019



SHIRE OF TOODYAY
 NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
 For the Period Ended 30 September 2019

Note 8 CAPITAL DISPOSALS

Actual YTD Profit/(Loss) of Asset Disposal				Disposals	Amended Current Budget			Comments
					YTD 30 09 2019			
Cost	Accum Depr	Proceeds	Profit (Loss)		2019/2020 Annual Budget Profit/(Loss)	Actual Profit/(Loss)	Variance	
\$	\$	\$	\$	\$	\$	\$		
				Plant and Equipment				
				PL046 JCB 436ZX FE Loader	2,713	0	(2,713)	
				PL024 Dynapac Vibrating Roller	(250)	0	250	
				MV154 Mitsubishi Triton Ute	489	0	(489)	
				Land and Buildings				
				BLG030 Telegraph Road - House	53,664	0	(53,664)	
				Telegraph Road - Land	(35,000)	0	35,000	
				808 Duke Street - Land	7,000	0	(7,000)	
0	0	0	0		28,616	0	(28,616)	

Comments - Capital Disposal/Replacements

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 9: RATING INFORMATION

RATE TYPE	Rate in \$	Number of Properties	Rateable Value \$	Rate Revenue \$	Interim Rates \$	Back Rates \$	Total Revenue \$	2019/2020 Budget Rate Revenue \$	2019/2020 Budget Interim Rate \$	2019/2020 Budget Back Rate \$	2019/2020 Budget Total Revenue \$
Differential General Rate											
GRV Residential	12.9430	508	7,170,388	928,063	(12,757)		915,306	902,549			902,549
GRV - Commercial	14.0200	28	1,338,282	187,627	(3,827)		183,800	179,973			179,973
GRV - Industrial	12.3483	20	419,892	52,415	(136)		52,279	52,142			52,142
GRV - Rural	11.8690	100	1,427,920	169,480	0		169,480	169,480			169,480
GR V - Rural Residential	11.2600	878	12,824,500	1,444,039	610	336	1,444,985	1,445,932			1,445,932
UV - General	1.1680	450	96,148,000	1,123,009	4,525		1,127,534	1,132,058			1,132,058
UV Rural	0.8969	178	155,137,000	1,391,424	(448)	(425)	1,390,551	1,389,678			1,389,678
Sub-Totals		2,162	274,465,982	5,296,057	(12,033)	(89)	5,283,935	5,271,813	0	0	5,271,813
Minimum Payment	Minimum \$										
GRV Residential	1,351.00	225	1,239,049	303,975	0	0	303,975	303,975	0	0	303,975
GRV - Commercial	1,351.00	6	35,200	8,106	0	0	8,106	8,106	0	0	8,106
GRV - Industrial	1,351.00	10	38,040	13,510	0	0	13,510	13,510	0	0	13,510
GRV - Rural	1,351.00	43	354,688	58,093	0	0	58,093	58,093	0	0	58,093
GRV - Rural Residential	1,351.00	533	3,509,842	720,083	0	0	720,083	720,083			720,083
UV - General	1,351.00	105	6,500,800	141,855	0	0	141,855	141,855	0	0	141,855
UV Rural	1,351.00	0	0	0	0	0	0	0	0	0	0
Sub-Totals		922	11,677,619	1,245,622	0	0	1,245,622	1,245,622	0	0	1,245,622
				<u>6,541,679</u>			6,529,557				6,517,435
UV Pastoral Concession											0
Concession											0
Amount from General Rates							6,529,557				6,517,435
Ex-Gratia Rates							1,200				1,200
Less movement in rates in advance											
Totals							6,530,757				6,518,635

Comments - Rating Information

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

10. INFORMATION ON BORROWINGS

(a) Debenture Repayments

Particulars	Principal 1-Jul-18	New Loans	Principal Repayments		Principal Outstanding		Interest Repayments	
			Actual \$	2019/2020 Budget \$	Actual \$	2019/2020 Budget \$	Actual \$	2019/2020 Budget \$
Recreation & Culture								
Loan 65 - Community Centre	30,954		5,777	12,161	25,177	18,793	1,163	1,658
Loan 67 - Library Upgrade	222,702		0	38,951	222,702	183,751	862	15,033
Loan 69 - Library Upgrade	35,079		0	35,079	35,079	0	220	1,972
Loan 72 - Land - Rec Precinct	785,883		0	41,512	785,883	744,371	2,675	37,307
Loan 73 - Refurbish Courts	10,188		10,188	10,189	(0)	(1)	229	288
Loan 75 - Recreation Precinct	0	4,500,000	0	150,492	4,500,000	150,492	0	178,510
			0					
Transport								
Loan 70 - Footbridge	30,910		3,676	15,021	27,234	15,889	580	1,618
Loan 71 - Depot Stage 2	624,816		0	34,480	624,816	590,336	2,141	30,093
Economic Services								
Loan 64 - Visitor Centre	38,628		0	18,683	38,628	19,945	155	2,440
Other Property & Services								
Loan 63 - Bank Building	34,424		8,211	16,680	26,213	17,744	1,188	2,052
Loan 74 - Refurbish Bank Building	10,317		10,317	10,317	(0)	0	232	291
	1,823,901	4,500,000	38,170	383,565	6,285,731	1,741,320	9,444	271,262

No new debentures were raised during the reporting period.

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 11: GRANTS AND CONTRIBUTIONS

Program/Details GL	Grant Provider	Approval	2019-20 Budget	Variations Additions (Deletions)	Operating	Capital	Recoup Status	
							Received	Not Received
		(Y/N)	\$	\$	\$	\$	\$	\$
GENERAL PURPOSE FUNDING								
GENERAL PURPOSE GRANT	Federal Government	Yes	468,704				112,551	356,154
ROAD IMPROVEMENT GRANT	Federal Government	Yes	270,453				63,799	206,654
Rates - Legal Expenses Recovered	Local Government	Yes	35,000				3,732	31,268
GOVERNANCE								
Recoups - Contributions, Donations & Reimburs	Local Government		7,500				0	7,500
LEGAL EXPENSES RECOVERED	Local Government		1,000				0	1,000
Grants - Governance	Local Government		1,000				0	1,000
Administration - Income	Local Government		30,000				1,571	28,429
Administration - Income - GST Free	Local Government		10,000				7,904	2,096
LAW, ORDER, PUBLIC SAFETY								
Fire Prevention - Grants	DFES	Yes	790,932				706,705	84,227
ESL Levy Recoup	DFES	Yes	176,358				3,569	172,789
CCTV	DFES	Yes	159,956				0	159,956
CESM Recoups	DFES & Shire of Goomalling	Yes	112,826				32,641	80,185
Bushfire Risk Management Coordinator	DFES		174,505				0	174,505
Toodyay Districts SES	DFES	Yes	57,621				2,500	55,121
HEALTH								
Health Inspections Recoup	Local Government		500				0	500
HOUSING								
Recoups - Staff Housing	Local Government		500				197	303
COMMUNITY AMENITIES								
Community Sponsorship	Local Government		5,000				0	5,000

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 11: GRANTS AND CONTRIBUTIONS

Program/Details GL	Grant Provider	Approval	2019-20 Budget	Variations Additions (Deletions)	Operating	Capital	Recoup Status	
							Received	Not Received
RECREATION AND CULTURE								
Community Centre Recoups		No	1,500				247	1,253
Club Insurance		Yes	3,750				1,888	1,862
Toodyay Race Club Reimbursements		Yes	3,500				2,189	1,311
Sport & Rec Grants	Lotterywest	Yes	1,000				909	91
Grant Income - Writers Festival		Yes	1,500				0	1,500
EMRC - AVON/IFF Festival	East Metropolitan Reg Council	Yes	30,000				0	30,000
Grants Income	East Metropolitan Reg Council	Yes	3,000				0	3,000
Sport & Rec Grants	Dept Sport & Rec		2,500				0	2,500
Events Misc			1,500				0	1,500
Recreation Precinct	CSRFF & BBRF		5,575,425				0	5,575,425
Grant - Heritage	Lotterywest		197,000				0	197,000
TRANSPORT								
Operating Grants - Roads	MRWA	Yes	137,714				137,714	0
MRWA Street Light Subsidy	MRWA	Yes	1,500				0	1,500
Road Maintenance Contributions	Private	Yes	75,000				13,132	61,868
Road Program Grant	Main Roads	Yes	923,220				434,437	488,783
Roads to Recovery Grant	Dept of Infrastructure	Yes	530,820				0	530,820
ECONOMIC SERVICES								
Community Directory	Avon Valley Advocate		3,000				0	3,000
Tourism & Area Promotion			3,000				0	3,000
OTHER PROPERTY & SERVICES								
Public Works Overheads			1,000				930	70
Workers Compensation	LGIS		0				6,962	(6,962)
Fuel Tax Credits	ATO		28,000				2,150	25,850
Bank Building Recoups	Bendigo Bank		2,000				835	1,165
Reimbursement - Parenting Payment Scheme	Centrelink		0				1,481	(1,481)
Insurance Reimbursement	LGIS		0				0	0
TOTALS			9,827,784	0	0	0	1,538,136	8,289,648
	Operating		1,810,387				636,634	
	Non-operating		8,017,397				901,502	
			<u>9,827,784</u>				<u>1,538,136</u>	

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 12: TRUST FUND

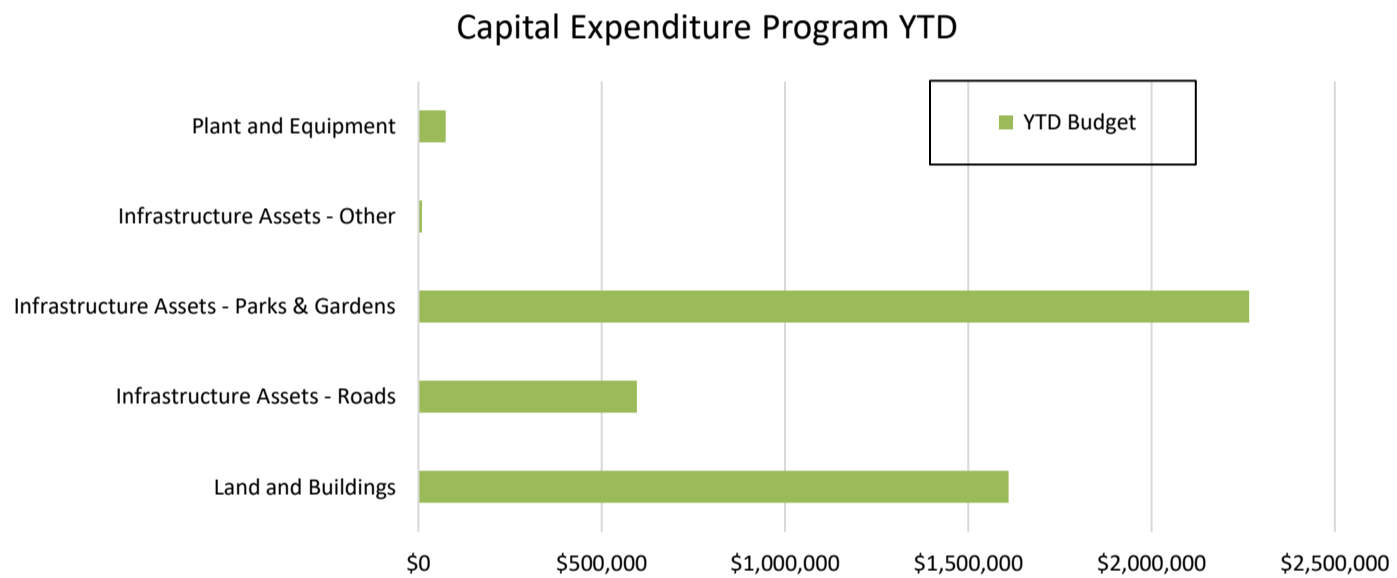
Funds held at balance date over which the Shire has no control and which are not included in this statement are as follows:

Description	Opening Balance 1 Jul 19	Amount Received	Amount Paid	Closing Balance 30-Sep-19
	\$	\$	\$	\$
Qarry rehabilitation Bonds	1,615,532	11,335		1,626,867
Housing bonds	14,525			14,525
Kerb Bonds	9,200			9,200
Key bonds	6,661	450		7,111
Venue Hire Bonds	7,900	2,800	(3,700)	7,000
Crossover Bonds	53,540			53,540
BCITF	2,706	26,165	(25,164)	3,707
Building Services	10,949	19,779	(19,826)	10,902
Library Bonds	175			175
Standpipe bonds	17,110	1,050		18,160
Road Construction Bonds	27,998			27,998
Other Bonds	5,394	800		6,194
Planning Bonds	537			537
Aged Housing Grant Funds	0			0
Swimming Pool Funds	121,404			121,404
	1,893,631	62,379	(48,690)	1,907,320

SHIRE OF TOODYAY
STATEMENT OF CAPITAL ACQUISITIONS AND CAPITAL FUNDING
For the Period Ended 30 September 2019

YTD 30 09 2019					
Capital Acquisitions	Note	YTD Actual New /Upgrade (a)	YTD Budget (d)	2019/2020 Annual Budget	Variance (d) - (c)
		\$	\$	\$	\$
Land and Buildings	13	218,218	1,609,926	6,439,706	(1,391,708)
Infrastructure Assets - Roads	13	260,824	595,838	2,383,285	(335,014)
Infrastructure Assets - Parks & Gardens	13	381,896	2,266,512	9,066,049	(1,884,616)
Infrastructure Assets - Other	13	6,706	9,999	40,000	(3,293)
Plant and Equipment	13	468,233	74,763	299,062	393,470
Capital Expenditure Totals		1,345,833	4,567,038	18,378,102	(3,221,205)

Comments and graphs



SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 13: CAPITAL ACQUISITIONS

% of Completion	Infrastructure Assets		Annual Budget 2019/20	YTD Budget	YTD Actual	Variance (Under)/Over	YTD Actual (Renewal Exp)	Strategic Reference / Comment
	LAND		0	0	0	0	0	
	Land Total		0	0	0	0	0	
	Total Land		0	0	0	0	0	
	BUILDINGS							
	Governance							
0.0%	Admin Brickwork Remediation	Q191	5,000	1,251	0	(5,000)		
0.0%	Repaint of Chambers Ceiling	Q190	5,000	1,251	0	(5,000)		
0.0%	Planning for Replacement Donga	Q147	20,000	5,001	0	(20,000)		
	Governance Total		30,000	7,503	0	(30,000)	0	
	Law, Order, Public Safety							
40.8%	Coondle Nunile Fire Station	Q181A	400,366	100,092	163,211	(237,155)		
0.0%	Morangup Co Location Centre	Q187	432,340	108,084	0	(432,340)		
	Law, Order, Public Safety Total		832,706	208,176	163,211	(669,495)		
	Health							
0.0%	Alma Beard Medical Centre	Q137	15,000	3,747	0	(15,000)		
	Health Total		15,000	3,747	0	(15,000)	0	
	Education & Welfare							
1.8%	Butterly House - Substructure & Drainage Repairs	083300	12,000	2,000	220	(11,780)		
	Education & Welfare Total		12,000	2,000	220	(11,780)	0	
	Recreation And Culture							
0.0%	Community Centre Renewal	Q129	34,500	8,625	0	(34,500)		
0.0%	Memorial Hall Sound System, Curtains & Flooring	Q141	28,800	0	0	(28,800)		
0.0%	Morangup Community Centre	Q165	380,000	95,001	0	(380,000)		
43.7%	Memorial Hall Internal & External Paint of Bathrooms	Q141	10,000	9,702	4,372	(5,628)		

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 13: CAPITAL ACQUISITIONS

% of Completion	Infrastructure Assets		Annual Budget 2019/20	YTD Budget	YTD Actual	Variance (Under)/Over	YTD Actual (Renewal Exp)	Strategic Reference / Comment
0.0%	Parks & Gardens - Depot Upgrade	Q192	20,000	5,001	0	(20,000)		
0.0%	Recreation Precinct Buildings	Q199	4,635,009	1,158,753	39,037	(4,595,972)		
0.0%	Toodyay Club Kitchen Upgrade	Q203	21,400	5,349	0	(21,400)		
0.0%	Library Brickworks	J038	5,500	1,374	0	(5,500)		
0.0%	Library Carpet Replacement	J067	6,000	1,500	0	(6,000)		
0.0%	Parkers Cottage	Q134	10,000	2,499	0	(10,000)		
0.0%	Grandstand Change Rooms	Q200	10,000	2,499	0	(10,000)		
18.2%	Donegans Cottage	Q135	5,000	1,251	909	(4,091)		
2.8%	Old Goal Roof Restoration	Q156	375,291	94,822	10,359	(364,932)		
	Recreation And Culture Total		5,541,500	1,386,376	54,677	(5,486,823)	0	
	Other Property & Services							
1.3%	Bendigo Bank	Q145	8,500	2,124	110	(8,390)		
	Other Property & Services Total		8,500	2,124	110	(8,390)		
	Buildings Total		6,439,706	1,609,926	218,218	(6,221,488)	0	
	Computer Equipment							
	Law, Order, Public Safety							
7%	CCTV - Closed Circuit Televisions Cameras - Security	053401	150,000	10,000	9,956			
	Law, Order, Public Safety Total		150,000	10,000	9,956	0		
	Computer Equipment - Total		150,000	10,000	9,956	0	0	
	Plant , Equip. & Vehicles							
	Transport							
		122202		74,763				
		051250		0				
0.0%	1TJR183 - Side Tip Trailer - Canopu		35,000			(35,000)		
0.0%	T0002 - Ranger Ute - Canopy		20,000			(20,000)		
0.0%	T0013 - Mitsubishi Triton		45,000			(45,000)		
0.0%	1EPF060 - Ford Ranger		60,000			(60,000)		
11.7%	Mechanic Truck Fit Out		10,000		1,168	(8,832)		

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 13: CAPITAL ACQUISITIONS

% of Completion	Infrastructure Assets		Annual Budget 2019/20	YTD Budget	YTD Actual	Variance (Under)/Over	YTD Actual (Renewal Exp)	Strategic Reference / Comment
0.0%	Single Axel Dolly		3,500			(3,500)		
0.0%	Track Loader - Auger Drive		4,000			(4,000)		
0.0%	Air Operated Oil Pumps		28,346			(28,346)		
0.0%	Community Bus		63,425			(63,425)		
0.0%	SES Vehicle		29,791			(29,791)		
100.0%	Isuzu FTS 150/260 Coondle 3.4 Urban		0		467,065	467,065		New Coondle Truck - Funded by DFES
	Transport Total		299,062	74,763	468,233	169,171	0	
	Plant , Equip. & Vehicles Total		299,062	74,763	468,233	169,171	0	
	Roads							
	Transport							
0.3%	Lovers Lane	A0012	396,752	99,189	1,173	(395,580)		
87.2%	Julimar Road	A0004	249,127	62,283	217,193	(31,934)		
0.0%	Bejoording Road	A0001	329,939	82,479	0	(329,939)		
0.0%	Toodyay Bindi Bindi Road	A0197	252,009	63,000	0	(252,009)		
0.0%	Toodyay Street inc Footpath	B0011	286,720	71,679	0	(286,720)		
0.0%	Nunile Road/Bejoording Road	B0002	155,000	38,751	0	(155,000)		
0.0%	Dreyer Road	B0121	89,100	22,275	0	(89,100)		
0.0%	Sinclair Place	D0150	103,950	25,989	0	(103,950)		
19.8%	River Road	D0010	161,788	40,449	32,107	(129,681)		
0.0%	Rosedale/Fiennes Street	D0062	10,000	2,502	0	(10,000)		
0.0%	Recreation Precinct Firebreaks	J073	80,000	20,001	0	(80,000)		
0.0%	Hamersley Street	D0126	120,000	30,000	0	(120,000)		
0.0%	Fifth Road	D0244	46,200	11,556	0	(46,200)		
0.0%	Folewood Road	D0020	32,500	8,130	0	(32,500)		
0.0%	Bejoording Road	D0001	0	0	10,352	10,352		
0.0%	Harvester Drive	D0198	70,200	17,555	0	(70,200)		
	Transport Total		2,383,285	595,838	260,824	(2,122,461)	0	
	Roads Total		2,383,285	595,838	260,824	(2,122,461)	0	
	Infrastructure - Bridges							
	Transport							

SHIRE OF TOODYAY
NOTES TO THE STATEMENT OF FINANCIAL ACTIVITY
For the Period Ended 30 September 2019

Note 13: CAPITAL ACQUISITIONS

% of Completion	Infrastructure Assets		Annual Budget 2019/20	YTD Budget	YTD Actual	Variance (Under)/Over	YTD Actual (Renewal Exp)	Strategic Reference / Comment
0.0%	Bridge Works - Telegraph Bridge		374,733	93,681	0	(374,733)		
	Transport Total		374,733	93,681	0	(374,733)		
	Infrastructure Bridges - Total		374,733	93,681	0	(374,733)	0	
	Infrastructure - Other							
	Law, Order & Public Safety							
0.3%	Emergency Fire Water Tanks	Q205	25,000	6,249	73	(24,927)	0	
	Law, Order & Public Safety Total		25,000	6,249	73	(24,927)	0	
	Economic Services							
44.2%	Community Standpipe	Q206	15,000	3,750	6,633	2,883		
	Community Amenities Total		15,000	3,750	6,633	2,883	0	
	Infrastructure Other - Total		40,000	9,999	6,706	(22,044)	0	
	Footpaths							
	Infrastructure Footpaths - Total		0	0	0	0	0	
	Infrastructure - Parks & Recreation							
	Recreation & Culture							
0.0%	Dudgee Park Toilet Upgrade	Q177	90,000	22,500	0	(90,000)		
4.3%	Recreation Precinct - Infrastructure Works	Q159	8,942,019	2,235,504	381,823	(8,560,196)		
0.2%	Toodyay Club Lighting & Paving	Q204	34,030	8,508	73	(33,957)		
	Recreation & Culture Total		9,066,049	2,266,512	381,896	(8,684,153)	0	
	Infrastructure Parks & Recreation - Total		9,066,049	2,266,512	381,896	(8,684,153)	0	
	Capital Expenditure Total		18,752,835	4,660,719	1,345,833	(16,880,975)	0	

Shire of Toodyay - Bank Reconciliation As At 30 September 2019

Municipal

Balance as per

- Financial Statement - Muni - Unrestricted - 10060010	3,676,945.78
- Financial Statement - Muni - Unrestricted - 10060050	947,711.65

Total	4,624,657.43
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Balance as per

- Bendigo - 110482809	1,309,566.52
NCD - 2988119	813,099.32
Bendigo - TD 3122955	1,000,000.00
Bendigo - TD 3122957	1,000,000.00
Bendigo - TD 3122959	500,000.00

Roundings

Difference 0.00

Subtotal	4,622,665.84
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Adjustments (See Below)	(77.93)
Plus Outstanding Deposits - Current Month	6,531.23
Plus Outstanding Cheques - Current Month	(4,246.71)
Plus Outstanding Deposits - Previous Periods	0.00
Plus Outstanding Cheques - Previous Periods	(215.00)

Total	4,624,657.43
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Adjustment Breakdown

Roundings (31 May 2018)	(0.03)
Transfer from Trust	50.00
Transfer to Trust	(100.00)
Bank discrepancy	5.00
VC yet to be receipted	(32.90)
	<u>(77.93)</u>

C Murratt

Signed: Accounts/Payroll Officer

9.10.19

Date

[Signature]

Signed: Acting Manager Corporate Services

24/10/19

Date

Shire of Toodyay - Bank Reconciliation As At 30 September 2019

Trust

Balance as per

- Financial Statement - Trust - Unrestricted - 100617100 1,907,319.37

Total	1,907,319.37
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Balance as per

- Bendigo - 110482783	169,633.36
- Bendigo - Term Deposit No: 140619784 - T84	214,336.71
- Bendigo - Term Deposit No: 145326583 - T794	107,688.50
- Bendigo - Term Deposit No: 137945127 - T100	138,654.76
- Bendigo - Term Deposit No: 140619834 - T83	137,395.32
- Bendigo - Term Deposit No: 152237145 - T214	48,434.78
- Bendigo - Term Deposit No: 152238135 - T4	122,462.27
- Bendigo - Term Deposit No: 152238176 - T114	204,035.44
- Bendigo - Term Deposit No: 152238218 - T458	442,366.56
- Bendigo - Term Deposit No: 152240818 - T793	23,459.00
- Bendigo - Term Deposit No: 152240834 - T797	32,194.57
- Bendigo - Term Deposit No: 158622798 - T805	24,003.86
- Bendigo - Term Deposit No: - 161776315 - T807	121,404.69
- Bendigo - Term Deposit No: 165467309 - T809	121,126.68
Roundings	(0.03)

Difference 0.00

Subtotal	1,907,196.47
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Adjustments (See Below)	(50.00)
Plus Outstanding Deposits - Current Month	672.90
Plus Outstanding Cheques - Current Month	(500.00)
Plus Outstanding Deposits - Previous Periods	0.00
Plus Outstanding Cheques - Previous Periods	0.00

Total	1,907,319.37
--------------	---------------------

Adjustment Breakdown

Transfer to Muni	(50.00)
	<u>(50.00)</u>

C Murrant

Signed: Accounts/Payroll Officer

4.10.19

Date

[Signature]

Signed: Acting Manager Corporate Services

24/10/19

Date

Shire of Toodyay - Bank Reconciliation As At 30 September 2019

Reserve

Balance as per

- Financial Statement - Reserve - 10075510 3,759,393.27

Total	3,759,393.27
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Balance as per

- Bendigo - NCD: 2384517 3,759,393.27

Roundings 0.00

Difference 0.00

Subtotal	3,759,393.27
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Adjustments (See Below) 0.00

Plus Outstanding Deposits - Current Month 0.00

Plus Outstanding Cheques - Current Month 0.00

Plus Outstanding Deposits - Previous Periods 0.00

Plus Outstanding Cheques - Previous Periods 0.00

Total	3,759,393.27
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Adjustment Breakdown

	<u>0.00</u>
--	-------------

C Munn

Signed: Accounts/Payroll Officer

4.10.19.

Date

[Signature]

Signed: Acting Manager Corporate Services

24/10/19

Date

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LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

Mandatory Code of Conduct for Council Members, Committee Members and Candidates

Draft for Consultation

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Preface

As part of the McGowan Government's commitment to transforming local government in WA, the *Local Government Legislation Amendment Act 2019* introduces a mandatory code of conduct for council members, committee members and candidates. These reforms are intended to ensure that standards of behaviour are consistent between local governments and address community expectations.

This document outlines the proposed Code which will inform the drafting of regulations. This is contained in the grey boxes. The accompanying guidelines provide clarification and guidance in relation to compliance and enforcement of the Code and would be available on the Department's website.

The proposed Code and guidelines have been developed by the Department of Local Government, Sport and Cultural Industries in consultation with representatives from the Public Sector Commission, the Ombudsman, the Western Australian Local Government Association (WALGA) and Local Government Professionals WA (LG Pro). The Department gratefully acknowledges the participation of these representatives.

The Department notes that the content of the Code does not necessarily reflect the views or policies of the organisations or individuals that have been consulted.

Feedback is sought on the proposed Code and guidelines and associated matters.

A survey is available at www.dlgsc.wa.gov.au/lgareview or you can provide your feedback to actreview@dlgsc.wa.gov.au by **22 November 2019**.

Mandatory Code of Conduct

Preamble

The purpose of this Code of Conduct (Code) is to guide the decisions, actions and behaviours of council members, committee members and candidates running for election.

As an elected representative, council members govern the affairs and are responsible for the performance of their local government. To do this, council members must demonstrate professional and ethical behaviour to build and strengthen trust in their communities.

A person who has nominated to be a council member is also required to demonstrate professional and ethical behaviour during the election campaign.

In addition to carrying out the duties outlined in the *Local Government Act 1995*, council members and committee members must comply with the provisions in this Code of Conduct in carrying out their functions as public officials. It is the responsibility of council members, committee members and candidates to ensure that they are familiar with, and comply with, this Code at all times.

Guidelines

The Local Government Act requires that local governments adopt the Code within three months of the amendments taking effect. Until the Code is adopted, the model Code applies.

While local governments are not able to amend Part A or Part C, additional behaviours can be included in Part B that are not inconsistent with the Code.

In considering additional behaviours, the council may give consideration to behaviours that are not currently represented in the Code that it considers are important. This may include introducing a dress standard for members or use of technology, for example.

To adopt the Code, a resolution passed by an absolute majority is required. Once the Code is adopted, it must be published on the local government's official website.

Part A – Principles

Council members and candidates are expected to adhere to and promote and support the following principles by example. Adhering to these principles will ensure that council members and candidates can comply with the behaviours outlined in Part B or conduct as outlined in Part C. All behaviour should be considered against these principles, whether or not it is covered specifically in Part B or Part C.

Personal integrity

- 1.1 Act with care and diligence and participate in decision making in an honest, fair, impartial and timely manner, considering all relevant information.
- 1.2 Act with honesty, integrity and uphold the concept of natural justice.

- 1.3 Identify, declare and appropriately manage any conflicts of interest in the public interest and the interests of the Council including not accepting gifts that may give the appearance of a conflict of interest or an attempt to corruptly influence behaviour.
- 1.4 Uphold the law, and, on all occasions, act in accordance with the trust placed in council members.
- 1.5 Avoid damage to the reputation of the local government.
- 1.6 Not be impaired by mind affecting substances while performing official duties.

Relationships with others

- 1.7 Treat others with respect, courtesy and fairness.
- 1.8 Maintain and contribute to a harmonious, safe and productive work environment for all.
- 1.9 Respect and value diversity in the workplace and in the community.

Accountability

- 1.10 Base decisions on relevant and factually correct information and make decisions on merit and in accordance with statutory obligations and good governance.
- 1.11 Be open and accountable to the public, represent all constituents and make decisions in the public interest.

Guidelines

The principles outlined in Part A are overarching behaviours that council members, committee members and candidates must take into consideration in their role as public representatives, or potential public representatives.

All council members, committee members and candidates must familiarise themselves with the Code and Guidelines and any relevant policies the local governments have in place.

Council members are generally very active in their communities which may lead to conflicts of interests. To comply with this Code, those conflicts, or perceived conflicts, need to be managed appropriately. While a member may be confident of the integrity of their actions, how the relationship and actions may appear to others must be thought through.

There are many situations that council members, committee members and candidates might find themselves in that could lead to a breach of the Code. Members should seek further guidance and advice on specific situations whenever necessary.

Part B – Behaviour

Part B sets out the standards of behaviour which enable and empower council members to meet the principles outlined in Part A. Behaviour is expected to be managed at the local level by the local government, so Part B also deals with how complaints are to be managed.

Failure to comply with this Part may give rise to a complaint against a council member's conduct, followed by a subsequent investigation and possible corrective action by the local government. The emphasis should be on an educative role to establish sound working relationships and avoid repeated breaches, rather than punishment.

Personal integrity

- 2.1 Act in line with the principles outlined in this Code when performing official duties.
- 2.2 Attend and participate constructively in council meetings, briefings, relevant workshops and training opportunities.
- 2.3 Respect and comply with all council policies, procedures and resolutions.
- 2.4 Ensure professional behaviour is not compromised by the use of alcohol or drugs.
- 2.5 Use all forms of media, including social media, in a way that complies with this Code.

Relationships with others

- 2.6 Treat other council members, council employees and members of the public with courtesy, respect, honesty and fairness.
- 2.7 Do not bully or harass council staff, other council members or members of the public in any form, including social media.
- 2.8 Deal with the media in a positive, informative and appropriate manner in accordance with the Local Government Act 1995 and relevant local government policies.
- 2.9 While acting as a council member, do not:
 - i. use offensive or pejorative language in reference to another council member, council employee or member of the public; or
 - ii. disparage the character of any council member or employee, or impute dishonest or unethical motives to them in the performance of their duties.
- 2.10 When attending a council or committee meeting, do not:
 - i. behave in an abusive or threatening manner towards another council member or other person attending the meeting;
 - ii. make statements that the person knows, or could be reasonably expected to know, that are false or misleading; or
 - iii. repeatedly disrupt the meeting.
- 2.11 When attending a council or committee meeting:
 - i. comply with the local law that relates to conduct of people at council or committee meetings;

- ii. promptly comply with any direction given by the presiding member at that meeting; and
- iii. immediately cease any conduct that has been ruled out of order by the presiding member in accordance with the local government's local law.

2.12 Direct all requests for work or actions by council staff to the CEO or the CEO's nominated delegate.

Accountability

2.13 Make decisions honestly and impartially, considering all available information, legislation, policies and procedures.

2.14 Take responsibility for decisions and actions.

2.15 Abide by the decisions of council and publicly support the decisions even if of an alternative view.

2.16 Adhere to the principles in the:

- i. Occupational Safety and Health Act 1984 (WA);
- ii. Equal Opportunity Act 1984 (WA);
- iii. Racial Discrimination Act 1975 (Cth); and
- iv. Sex Discrimination Act 1984 (Cth).

Complaint management

2.17 Any person may make a complaint about a council member under this Part within three months of the alleged breach occurring.

2.18 A breach of this part does not include a matter:

- i. that is resolved by the Presiding Member during a meeting, or
- ii. where a council member complies with a request for remedial action in accordance with the relevant local law.

2.19 Complaints about an alleged breach should be made to the Mayor or President or the CEO of the local government or nominated delegate.

2.20 Complaints about an alleged breach by the Mayor or President should be made to the Deputy Mayor or President or a nominated delegate.

2.21 A complaint may be handled or managed in any manner that council deems appropriate for handling an alleged breach of this section. This includes investigation or dismissal of the complaint. This must be laid out in a council endorsed policy.

2.22 A complaint may be dismissed as trivial, vexatious or frivolous and accordingly not investigated.

Findings

2.23 Following an investigation in accordance with rule 2.21, the Council may, by resolution, make a finding of breach or no breach.

2.24 In accordance with rule 2.23, if a breach is found, the Council may, by resolution:

- i. take no action, or
- ii. prepare an action plan, developed in conjunction with the council member, to address future behaviour.

2.25	An action plan may include the requirement for the council member to undertake training, mediation or counselling or any other actions deemed appropriate by the Council.
2.26	The Council to which the member is elected, may decide, via resolution, to make an allegation of a rule of conduct breach under Part C: <ul style="list-style-type: none"> i. after the third finding of a breach of this Part by the same council member, or ii. where the council member fails to comply with the action plan in accordance with sub-rule 2.24(ii).
2.27	A matter under sub-rule 2.26(i) cannot be alleged as a Part C breach unless an action plan has been developed in accordance with sub-rule 2.24(ii) for the previous two breaches.
2.28	Written notification of the outcome of an alleged breach under this section must be given to the council member and complainant.
2.29	A written record must be kept of all complaints made under this Part and how they were dealt with.

Guidelines

Local governments are responsible for taking action against alleged breaches under Part B.

Local governments are to have a policy on how complaints are going to be handled or managed.

Australian/New Zealand Standards for complaints resolution AS/NZs 10002:2018 provides a tool and framework to assist local governments with developing a policy.

Whether or not local governments choose to adopt the Standard is optional, however, the policy must provide a clear outline of the steps that will be taken once a complaint is submitted. The complaint process must also uphold the principles of natural justice.

There are a number of resources for effective complaints handling available on the Ombudsman WA's website www.ombudsman.wa.gov.au

In developing a policy, the following key matters should be considered.

The complaints process

- The role of the council in the process.
- The extent to which independent persons are involved and their role in the process (complaint lodgement, investigation, findings). Local governments may decide to establish a regional or shared committee to deal with these complaints, for example.
- What types of remedial action are appropriate.
- The form of the action plan.

Process for making a complaint

- The process for a person to make a complaint needs to be clearly outlined in the policy, including whether complaints are required to be in a specific form.
- Complaints should be submitted in writing, with consideration given to a variety of methods, including email, letter or fax.
- The policy should also outline how the complaint is lodged, whether this is via a specific code of conduct complaint email address or a letter addressed to the Mayor or President (or alternative).
- The process should be simple and not act as a barrier to the raising of concerns about elected member behaviour.

Acknowledgement of the complaint

- The policy should include that complaints will be acknowledged and the timeframe for this.
- Complaints should be acknowledged in a timely manner. As part of the acknowledgement process, consideration may be given to providing information on how the complaint will be progressed. This may include providing the complainant with a copy of the complaint handling policy.

Responsiveness

- The policy should outline whether complaints are going to be addressed based on seriousness or impact of the allegation or on order of submission.
- Inclusion of an expected timeframe for the matter to be reviewed is also encouraged.

Action

- Complaints must be dealt with in an equitable, objective, timely and unbiased manner. The principle of natural justice should be applied.
- The policy needs to outline who will make the initial assessment of the complaint. This includes who will make the determination that the complaint is trivial, vexatious or frivolous or worthy of further investigation.
- The policy also needs to address the process for the investigation including:
 - giving adequate opportunity for a right of reply from both parties
 - if a breach is found, what are the actions that could be imposed by council.
- Attachment 1 provides further guidance on possible actions for breaches found against Part B.

Action plans

- Action plans are designed to provide council members with the opportunity to remedy their behaviour.
- The measures to stop the behaviour from continuing are not intended to be a punishment, rather a mechanism to prevent the behaviour from reoccurring.
- The Code requires that the action plan is prepared in conjunction with the relevant council member. This is designed to provide the council member with

the opportunity to be involved in matters such as the timing of meetings or training.

- While Council is required to give the council members the opportunity, not all council members will actively participate in the process.

What happens if agreement cannot be reached

- Circumstances may arise when a Council cannot agree on the outcome of an investigation, or whether an investigation is required to an alleged breach.
- In these situations, Council may decide to engage an independent person to:
 - review the complaint
 - investigate the complaint, or
 - make recommendations on appropriate actions
- The policy should address who will be engaged as an independent person. Local governments may consider sharing the services of an independent person.

Attachment 1 – possible actions for Part B breaches

Personal integrity		Possible actions
2.1	Act in line with the principles outlined in this Code when performing official duties.	Training
2.2	Attend and participate constructively in council meetings, briefings, relevant workshops and training opportunities.	Training Mediation
2.3	Respect and comply with all council policies, procedures and resolutions.	Training
2.4	Ensure professional behaviour is not compromised by the use of alcohol or drugs.	Counselling
2.5	Use all forms of media, including social media, in a way that complies with this Code.	Training
Relationships with others		
2.6	Treat other council members, council employees and members of the public with courtesy, respect, honesty and fairness.	Training Mediation Apology
2.7	Do not bully or harass council staff, other council members or members of the public in any form, including social media	Training Mediation Apology
2.8	Deal with the media in a positive, informative and appropriate manner in accordance with the <i>Local Government Act 1995</i> and relevant local government policies.	Training
2.9	While acting as a council member, do not: <ul style="list-style-type: none"> i. use offensive or pejorative language in reference to another council member, council employee or member of the public; or ii. disparage the character of any council member or impute dishonest or unethical motives to them in the performance of their duties. 	Training Mediation Counselling Apology
2.10	When attending a council or committee meeting, do not: <ul style="list-style-type: none"> i. behave in an abusive or threatening manner towards another council member or other person attending the meeting; ii. make statements that the person knows, or could be reasonably expected to know, that are false or misleading; or 	Training Mediation Counselling Apology

	iii. repeatedly disrupt the meeting.	
2.11	When attending a council or committee meeting: i. comply with the local law that relates to conduct of people at council or committee meetings; ii. promptly comply with any direction given by the presiding member at that meeting; and iii. immediately cease any conduct that has been ruled out of order by the presiding member in accordance with the local government's local law.	Training Mediation Counselling
2.12	Direct all requests for work or actions by council staff to the CEO or the CEO's nominated delegate.	Training
Accountability		
2.13	Make decisions honestly and impartially, considering all available information, legislation, policies and procedures.	Training
2.14	Take responsibility for decisions and actions.	Training Counselling
2.15	Abide by the decisions of council and publicly support the decisions even if of an alternative view.	Training
2.16	Adhere to the principles in the: i. <i>Occupational Safety and Health Act 1984 (WA)</i> ; ii. <i>Equal Opportunity Act 1984 (WA)</i> ; iii. <i>Racial Discrimination Act 1975 (Cth)</i> ; and iv. <i>Sex Discrimination Act 1984 (Cth)</i> .	Training Mediation

Part C – Rules of Conduct

Rules of conduct breaches are matters that:

- negatively affect the honest or impartial performance of a council member;
- involve a breach of trust placed in the council member; or
- involve the misuse of information or material.

Alleged breaches of this part can be referred to the Local Government Standards Panel (Standards Panel) in accordance with the *Local Government Act 1995* (the Act). A breach of this Part is a “minor breach”. In the event the Standards Panel makes a finding of breach against a council member, sanctions will be imposed in accordance with the Part 5 Division 9 of the Act.

Nothing in this part removes the obligations placed upon council members and employees (including the CEO) of the local government under the *Corruption, Crime and Misconduct Act 2003*.

Guidelines

A breach of Part C is considered by the Standards Panel in accordance with the Act. The Standards Panel, which was established in 2007, has the authority to make binding decisions to resolve allegations of minor misconduct. The Standards Panel is independent of the Minister for Local Government and the department.

The process for complaints under Part C is outlined in the Act. Complaints in the first instance are directed to the complaints officer at the local government. The Act provides that the complaints officer is the CEO or another officer with delegated responsibility.

As the Panel does not have investigative powers, findings and decisions are made on the basis of the information it receives. To assist with understanding each Part C rule of conduct, the elements are outlined alongside each. For a finding of breach, the Standards Panel needs to be satisfied that it is more likely than not, (on the balance of probabilities) that a breach of each element has occurred.

Personal Integrity

<i>Misuse of local government resources</i>	Elements of Rule of Conduct
<p>a. resource is defined to mean tangible and intangible assets, services or other means of supporting the functions of local government, which are owned or paid for by the local government from public money.</p> <p>b. A person who is a council member must not either directly or indirectly use the resources of a local government —</p> <p>i. for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the <i>Electoral Act 1907</i> or the <i>Commonwealth Electoral Act 1918</i>; or</p> <p>ii. for any purpose other than fulfilling the legal obligations and duties of the council member’s office,</p> <p>unless authorised under the Act, by the council or the CEO to use the resources for that purpose.</p>	<p>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</p> <p>(b) the council member directly or indirectly used;</p> <p>(c) resources that belonged to the local government;</p> <p>(d) for the identified electoral purpose or any other purpose other than in their legal role as a council member;</p> <p>(e) without such purpose being authorised under the Act, by the council or the local government’s CEO.</p>

<i>Securing personal advantage or disadvantaging others</i>	Elements of Rule of Conduct
<p>c. A person who is a council member must not make improper use of the person’s office as a council member —</p> <p>i. to gain directly or indirectly an advantage for the person or any other person; or</p>	<p>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</p> <p>(b) by engaging in the conduct, the person the subject of the complaint made use of the office of a council member (in</p>

<p>ii. to cause detriment to the local government or any other person.</p> <p>d. Rule 3.3 does not apply to conduct that contravenes section 5.93 of the Act or <i>The Criminal Code</i> section 83.</p>	<p>the sense that he or she acted in their capacity as a council member, rather than in some other capacity);</p> <p>(c) when viewed objectively, such use was an improper use of the person's office as council member in that it:</p> <ul style="list-style-type: none"> i. involved a breach of the standards of conduct that would be expected of a person in the position of a council member by reasonable persons with knowledge of the duties, powers and authority of the councillor and the circumstances of the case (by for example, an abuse of power or the doing of an act which the councillor knows or ought to have known that he or she had no authority to do); and ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and <p>(d) the person engaged in the conduct in the belief that:</p> <ul style="list-style-type: none"> i. <i>[in the case of rule 3.3(i)]</i> an advantage (pecuniary or otherwise) would be gained directly or indirectly for the person or any other person; <u>or</u> ii. <i>[in the case of rule 3.3(ii)]</i> detriment (pecuniary or otherwise) would be suffered by the local government or another person; <p>(e) It is irrelevant whether advantage was actually gained or detriment suffered;</p> <p>(f) The conduct does not fall under section 5.93 of the Act: improper use of information (which would be a serious breach), or section 83 of the Criminal Code (which would be a crime).</p>
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<i>Repeated breaches of Part B</i>	Elements of Rule of Conduct
<p>e. A breach of Part B of the Code of Conduct is a minor breach if:</p> <ul style="list-style-type: none"> i. it occurs after the council member has been found to have committed 3 or more other breaches of Part B; or ii. the council member fails to comply with the action plan developed after a finding of inappropriate behaviour under Part B; <p>and</p> <ul style="list-style-type: none"> iii. the Council to which the member is elected, decides, via resolution, to make an allegation of a rule of conduct breach under this Part. 	<ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member or candidate both at the time of the conduct and the time when the Standards Panel makes its determination; (b) the council has passed a resolution referring the matter to the Standards Panel; (c) in the case of (i) – <ul style="list-style-type: none"> i. the person has been found to have breached Part B of the code of conduct on at least three occasions; ii. the behaviour the subject of this complaint occurred after a finding of inappropriate behaviour; iii. the person has engaged in behaviour that is a breach of Part B of the code of conduct; iv. an action plan is in place; or (d) In the case of (ii) – <ul style="list-style-type: none"> i. there was an action plan in place; ii. the action plan resulted from a previous finding of a breach of Part B; iii. the person has not complied with the action plan.

Relationships with employees

<i>Prohibition against involvement in administration</i>	Elements of Rule of Conduct
<p>3.7 A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the CEO to undertake that task.</p>	<ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination; (b) the council member took on or was involved or participated in the performance, attempted performance, or part-performance, of a function or responsibility which under the

<p>3.8 Rule 3.7 does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.</p>	<p>Act or by delegation it is for the local government’s CEO to perform or direct; and</p> <p>(c) such taking on, involvement or participation:</p> <ul style="list-style-type: none"> i. contributed (for example, played a part in achieving something); and ii. did not occur as anything the council member did as part of the deliberations at a council or committee meeting (which may include something the member did as part of their preparation for any such deliberation); and <p>(d) the local government’s CEO did not authorise such taking on, involvement or participation.</p>
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<i>Relations with local government employees</i>	Elements of Rule of Conduct
<p>3.9 In this rule —</p> <p>employee means a person as defined in section 5.36 of the Act and any person contracted to provide a service to the local government.</p> <p>3.10 A person who is a council member or candidate must not —</p> <ul style="list-style-type: none"> i. direct or attempt to direct a person who is a local government employee to do or not to do anything in the person’s capacity as a local government employee; or ii. attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person’s capacity as a local government employee; or 	<p>Rule 3.10(i)</p> <ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member or candidate both at the time of the conduct and the time when the Panel makes its determination; (b) the council member or candidate gave or tried or made an effort to give a direction or an order or command; (c) to another person, who is an employee of the relevant local government; (d) to do or not to do something in the other person’s capacity as a local government employee; and (e) the direction or attempted direction was not part of anything that the person did as part of the deliberations at a council or committee meeting (which may include something he or she did as part of their preparation for any such deliberation).

<p>iii. behave in an abusive or threatening manner towards any local government employee.</p> <p>3.11 Rule 3.10(i) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.</p> <p>3.12 If a person, in their capacity as a council member, is attending a council meeting, committee meeting or other organised event, other than at a meeting or part of a meeting that is closed to the public, the person must not, either orally, in writing or by any other means —</p> <ul style="list-style-type: none"> i. make a statement that a local government employee is incompetent or dishonest; or ii. use offensive or objectionable expressions in reference to a local government employee. <p>3.13 Rule 3.12(i) does not apply to conduct that is unlawful under <i>The Criminal Code</i> Chapter XXXV.</p>	<p>Rule 3.10(ii)</p> <ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member or candidate both at the time of the conduct and the time when the Panel makes its determination; (b) a council member or candidate tried or made an effort to affect, sway or produce an effect on; (c) the conduct of another person, who is an employee of the relevant local government, in that person's capacity as a local government employee; and (d) the council member or candidate's effort to affect, sway or produce an effect was carried out by means of — <ul style="list-style-type: none"> (i) a threat by the person (for example, the council member's declaration of an intention to inflict punishment, pain or loss on, or to take any action detrimental or unpleasant to, the employee — or on someone, or to something, that the employee cares about — in retaliation for, or conditionally upon, some action or course), or (ii) a promise or undertaking by the person to give the employee something having a value, or to do or not do something where the act or omission concerned has some value or advantage for or to the employee. <p>Rule 3.10(iii)</p> <ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member or candidate both at the time of the conduct and the time when the Panel makes its determination; (b) the person behaved in a manner which was: <ul style="list-style-type: none"> (i) abusive (for example, the council member uses insulting, disparaging belittling or derogatory language about or to the employee); or
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	<p>(ii) threatening (for example, the council member’s declaration of an intention to inflict punishment, pain or loss on, or to take any action detrimental or unpleasant to, the employee — or on someone, or to something, that the employee cares about — in retaliation for, or conditionally upon, some action or course);</p> <p>(c) the behaviour is directed towards a local government employee.</p> <p>Rule 3.12(i)</p> <p>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</p> <p>(b) the council member attended a council meeting, committee meeting or other organised event in their capacity as a council member;</p> <p>(c) the council member either verbally, in writing or by some other means, made a statement (for example, a communication or declaration in speech or writing setting forth facts, particulars; etc.); and</p> <p>(d) viewed objectively, the council member’s statement (or a sufficiently clear inference from the words used) was that an employee of the council member’s local government was incompetent or dishonest.</p> <p>(e) Chapter XXXV of <i>The Criminal Code</i> does not apply.</p> <p>Rule 3.12(ii)</p> <p>(a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;</p>
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	<ul style="list-style-type: none"> (b) the council member attended a council meeting, committee meeting or other organised event in their capacity as a council member; (b) the council member either verbally, in writing or by some other means, used an expression (for example, any word, phrase or form of speech) which it is more likely than not that a member or members of the public present heard or otherwise became aware of; (c) the expression was an offensive or objectionable expression (for example, an expression that is likely to cause offence or displeasure and is insulting); and (d) the expression was an offensive or objectionable expression in reference to an identified employee of the council member's local government.
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Accountability

<i>Unauthorised disclosure of information</i>	Elements of Rule of Conduct
<p>3.14 In this rule —</p> <p>closed meeting means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;</p> <p>confidential document means a document, or that part of a document, marked by the CEO or a nominated delegate to clearly show that the information is not to be disclosed;</p>	<p>Rule 3.15(i)</p> <ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination; (b) the council member disclosed information to someone who at the time was not also a council member of the same local government; and (c) the disclosed information was information the disclosing council member derived from a document that was marked by the relevant local government's CEO, or at the CEO's direction, to clearly show that the information in the document was not to be disclosed; and

<p><i>non-confidential document</i> means a document that is not a confidential document or is not marked confidential.</p> <p>3.15 A person who is a council member must not disclose —</p> <ul style="list-style-type: none"> i. information that the council member derived from a confidential document; or ii. information that the council member acquired at a closed meeting other than information derived from a non-confidential document; or iii. personal information as defined in the <i>Freedom of Information Act 1992</i>. <p>3.16 Sub-rule (3.15) does not prevent a person who is a council member from disclosing information —</p> <ul style="list-style-type: none"> i. at a closed meeting; or ii. to the extent specified by the council and subject to such other conditions as the council determines; or iii. that is already in the public domain; or iv. to an officer of the Department; or v. to the Minister; or vi. to a legal practitioner for the purpose of obtaining legal advice; or vii. if the disclosure is required or permitted by law. 	<ul style="list-style-type: none"> (d) the disclosed information was not information already in the public domain (for example, it was not generally available to all persons) at the time of the disclosure by the disclosing council member, and the disclosure did not occur in any of the ways identified in rule 3.16. <p>Rule 3.15(ii)</p> <ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination; (b) a council member disclosed information to someone who at the time was not also a council member of the same local government; and (c) the disclosed information was information the disclosing council member acquired at a council or committee meeting, or a part of a council or committee meeting, that was closed to members of the public under section 5.23(2) of the Act; and (d) the disclosing council member did not derive the disclosed information from a non-confidential document (that is, a document that was <i>not</i> marked by the local government’s CEO, or at the CEO’s direction, to clearly show that the information in it was not to be disclosed); and (e) the disclosed information was not information already in the public domain (for example, it was not generally available to all persons) at the time of the disclosure by the disclosing council member, and the disclosure did not occur in any of the ways identified in rule 3.16.
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	<p>Rule 3.15(iii)</p> <ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination; (b) the council member disclosed information to someone who at the time was not also a council member of the same local government; and (c) the disclosed information was personal information as defined in the <i>Freedom of Information Act 1992</i> (for example, name, date of birth, address, or a reference to an identification number or other identifying particular such as a fingerprint or body sample). (d) the disclosed information was not information already in the public domain (for example, it was not generally available to all persons) at the time of the disclosure by the disclosing council member, and the disclosure did not occur in any of the ways identified in rule 3.16. <p><i>Freedom of Information Act 1992</i> defines personal information as: information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead —</p> <ul style="list-style-type: none"> (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.
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Disclosure of interest	Elements of Rule of Conduct
<p>3.17 In this rule —</p> <p>interest means a material interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest.</p> <p>3.18 A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —</p> <ul style="list-style-type: none"> i. in a written notice given to the CEO before the meeting; or ii. at the meeting immediately before the matter is discussed. <p>3.19 Rule 3.18 does not apply to an interest referred to in section 5.60 of the Act.</p> <p>3.20 Rule 3.18 does not apply if —</p> <ul style="list-style-type: none"> i. a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or ii. a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began. <p>3.21 If, under sub-rule (3.18)(i), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —</p>	<ul style="list-style-type: none"> (a) the person the subject of the complaint was a council member both at the time of the conduct and the time when the Panel makes its determination; (b) subject to rule 3.19, the person had a private or personal interest in a matter that is more likely than not a conflict of interest or a bias (apparent or real) that does adversely affect, or might adversely affect the council member’s impartiality in considering the matter, and includes an interest arising from kinship, friendship, membership of an association, or another circumstance; (c) the member attended the council or committee meeting concerned and was present when the matter under consideration came before the meeting and was discussed; (d) the member did not disclose the nature of the relevant interest in the matter in either of the two ways required by Rule 3.18(i) or 3.18(ii); (e) Rule 3.20 does not apply.

<ul style="list-style-type: none"> i. before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and ii. at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed. <p>3.22 If —</p> <ul style="list-style-type: none"> i. under sub-rule (3.18)(ii) or (3.20)(ii) a person's interest in a matter is disclosed at a meeting; or ii. under sub-rule (3.21)(ii) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting, <p>the nature of the interest is to be recorded in the minutes of the meeting.</p>	
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Code of Conduct survey

As part of the McGowan Government's commitment to transforming local government in WA, the *Local Government Legislation Amendment Act 2019* introduces a mandatory code of conduct (Code) for all council members, committee members and candidates in local government elections.

These reforms are intended to ensure that standards of behaviour are consistent between local governments and address community expectations.

The proposed Code will inform the drafting of regulations. This will be accompanied by guidelines that provides clarification and guidance in relation to compliance and enforcement with the Code.

This survey is intended to provide the Government with feedback regarding the proposed the content of the Code.

Thank you for taking the time to complete this survey.

1. Who are you completing this survey on behalf of?
 - a. Yourself
 - b. An organisation, including a local government, peak body, community organisation or a business
2. What is the name of that organisation?
3. What is your name?
4. What best describes your relationship to local government?
 - a. Resident or ratepayer
 - b. Staff member
 - c. Council member (includes Mayor or President)
 - d. Survey responses are provided on behalf of a local government (council endorsed)
 - e. Peak body
 - f. State Government agency
 - g. Community body
 - h. Other (please specify)
5. What best describes your gender?
 - a. Male
 - b. Female
 - c. Other
 - d. Not applicable/the survey responses are provided on behalf of an organisation
6. What is your age?
 - a. Under 18
 - b. 18-24
 - c. 25-34
 - d. 35-44
 - e. 45-54
 - f. 55-64
 - g. 65+
 - h. Not applicable/the survey responses are provided on behalf of an organisation
7. Which local government do you interact with most?

8. Do you wish for your response to this survey to be confidential?
 - a. Yes
 - b. No
9. What is your email address?
10. Have you previously completed a survey or provided a submission regarding the review of the *Local Government Act 1995*?
 - a. Yes
 - b. No
 - c. Unsure
11. If no, what were your reasons for not previously providing your views to inform the Local Government Act review?
 - a. I was not aware of the Local Government Act review
 - b. I was not interested in providing my views
 - c. I did not have time to provide my views
 - d. Other (please specify)

Part A - Principles

Council members, committee members and candidates are expected to adhere to and promote and support the following principles by example.

Adhering to these principles will ensure that council members and candidates can comply with the behaviours outlined in Part B or conduct as outlined in Part C. all behaviour should be considered against these principles, whether or not it is covered specifically in Part B or Part C.

12. Please indicate your support of the following ***Personal Integrity Principles***

- 1.1 Act with care and diligence and participate in decision making in an honest, fair, impartial and timely manner, considering all relevant information.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

- 1.2 Act with honesty, integrity and uphold the concept of natural justice.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.3 Identify, declare and appropriately manage any conflicts of interest in the public interest and interests of the Council including not accepting gifts that may give the appearance of a conflict of interest or an attempt to corruptly influence behaviour.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.4 Uphold the law, and, on all occasions, act in accordance with the trust placed in council members.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.5 Avoid damage to the reputation of the local government.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.6 Not be impaired by mind effecting substances while performing official duties.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these principles?

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13. Please indicate your support of the following **Relationships With Others Principles**

1.7 Treat others with respect, courtesy and fairness.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.8 Maintain and contribute to a harmonious, safe and productive work environment for all.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.9 Respect and value diversity in the workplace and in the community.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these principles?

14. Please indicate your support of the following **Accountability Principles**

1.10 Base decisions on relevant and factually correct information and make decisions on merit and in accordance with statutory obligations and good governance.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

1.11 Be open and accountable to the public, represent all constituents and make decisions in the public.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these principles?

15. Should any additional principles be incorporated in Part A?

Part B – Behaviour

Part B sets out the standards of behaviour which enable and empower council members to meet the principles outlined in Part A. Behaviour is expected to be managed at the local level by the local government, so Part B also deals with how complaints are to be managed.

Failure to comply with this Part may give rise to a complaint against a council member’s conduct, followed by a subsequent investigation and possible corrective action by the local government. The emphasis should be on an educative role to establish sound working relationships and avoid repeated breaches, rather than punishment.

16. Please indicate your support for the following *Personal Integrity Behaviours*.

2.1 Act in line with the principles outlined in this Code when performing official duties.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.2 Attend and participate constructively in council meetings, briefings, relevant workshops and training opportunities.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.3 Respect and comply with all council policies, procedures and resolutions.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.4 Ensure professional behaviour is not compromised by the use of alcohol or drugs.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.5 Use all forms of media, including social media, in a way that complies with this Code.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these behaviours?

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17. Please indicate your support for the following ***Relationships with Others Behaviours***.

2.6 Treat other council members, council employees and members of the public with courtesy, respect, honesty and fairness.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.7 Do not bully or harass council staff, other council members or members of the public in any form, including social media.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.8 Deal with the media in a positive, informative and appropriate manner in accordance with the Local Government Act 1995 and relevant local government policies.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.9 While acting as a council member, do not:

- (i) Use offensive or pejorative language in reference to another council member, council employee or member of the public;
or
- (ii) Disparage the character of any council member or council employee or impute dishonest or unethical motives to them in the performance of their duties.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.10 When attending a council or committee meeting, do not:

- (i) Behave in an abusive or threatening manner towards another council member or other person attending the meeting;

- (ii) Make statements that the person knows, or could be reasonably expected to know, that are false or misleading;
Or
- (iii) Repeatedly disrupt the meeting

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.11 When attending a council or committee meeting:

- (i) Comply with the local law that relates to conduct of people at council or committee meetings;
- (ii) Promptly comply with any direction given by the presiding member at that meeting; and
- (iii) Immediately cease any conduct that has been ruled out of order by the presiding member in accordance with the local government's local law.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.12 Direct all requests for work or actions by council staff to the CEO or the CEO's nominated delegate.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these behaviours?

18. Please indicate your support for the following **Accountability Behaviours**.

2.13 Make decisions honestly and impartially, considering all available information, legislation, policies and procedures.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.14 Take responsibility for decisions and actions.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.15 Abide by the decisions of council and publicly support the decisions even if of an alternative view.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

2.16 Adhere to the principles in the:

- (i) *Occupational Safety and Health Act 1984(WA)*;
- (ii) *Equal Opportunity Act 1984(WA)*;
- (iii) *Racial Discrimination Act 1975(Cth)*; and
- (iv) *Sex Discrimination Act 1984 (Cth)*.

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

Do you have any comments on these behaviours?

19. Should any additional behaviours be incorporated in Part B?

20. Part B of the Code includes a complaint management process. Should this part include a time period in which complaints must be lodged after the alleged breach occurred?

- No time period
- 1 month
- 3 months
- 6 months
- Other (please specify)

21. Who is the best person for Part B complaints to be directed to?

- Mayor or President
- Deputy Mayor or President
- Presiding member
- Chief Executive Officer
- Nominated local government employee

- Other (please specify)

22. What actions are appropriate for councils to impose if a Part B breach is found?

- Apology
- Training
- Mediation
- Counselling
- Other (please specify)

23. Do you have any suggestions for specific actions that could be incorporated into the guidelines?

24. Should recurrent breaches of behaviour be referred to the Local Government Standards Panel?

- Yes
- No

Please provide a reason(s) for your answer

25. Should Council be required to develop an action plan and give the council member an opportunity to resolve their behaviour before a third complaint is referred to the Standards Panel under Part C?

- Yes
- No
- Other (please specify)

26. How beneficial would it be for local governments to engage an independent person to assist with the review of complaints?

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful
- Other (please specify)

27. What should happen if a council cannot agree on an investigation or course of action following an alleged breach of Part B?

- An independent person should be engaged to conduct a review
- The complaint should be dismissed
- The Mayor or President makes the decision
- The CEO makes the decision
- Other (please specify)

Part C – Rules of Conduct

Rules of conduct breaches are matters that:

- **Negatively affect the honest or impartial performance of a council member;**
- **Involve a breach of trust placed in the council member; or**
- **Involve the misuse of information or material.**

Alleged breaches of this part can be referred to the Local Government Standards Panel (Standards Panel) in accordance with the *Local Government Act 1995* (the Act). A breach of this Part is a “minor breach”.

36. Do you have any comments or feedback on Part C?

Guidelines

Guidelines have been prepared to accompany the Code the Conduct. The guidelines are intended to provide clarification and guidance in relation to complain and enforcement.

37.Are the guidelines a useful tool to accompany the Code?

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful

Please specify why

38.Do you have any suggestions for additional inclusions in the guidelines?

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LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

Standards and Guidelines For Local Government CEO Recruitment and Selection, Performance Review and Termination

Draft for Consultation

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Preface

As part of the McGowan Government's commitment to transforming local government in WA, the *Local Government Legislation Amendment Act 2019* includes a requirement for model standards covering the recruitment and selection, performance review and early termination of local government Chief Executive Officers (CEOs). These reforms are intended to ensure best practice and greater consistency in these processes among local governments.

This document outlines proposed mandatory minimum standards, shown in boxes. These standards will inform the drafting of regulations.

The accompanying guidelines outline the recommended practice for local governments in undertaking these processes. The guidelines will assist local governments in meeting the proposed standards and will not form part of the legislative framework.

The standards and guidelines have been developed by the Department of Local Government, Sport and Cultural Industries (Department) in consultation with representatives from the Public Sector Commission, the Ombudsman, the Western Australian Local Government Association (WALGA) and Local Government Professionals WA (LGPro). The Department gratefully acknowledges the participation and contribution of these representatives.

The Department notes that the content of these does not necessarily reflect the views or policies of the organisations or individuals that have been consulted.

Feedback is sought on the proposed standards and guidelines. A survey is available at www.dlgsc.wa.gov.au/lgareview or you can provide your feedback to actreview@dlgsc.wa.gov.au by 8 November 2019.

Part 1 – Recruitment and Selection

One of the fundamental roles of the council is the employment of the local government's CEO. The CEO is responsible for implementing the council's strategic vision and leading the local government administration.

Principles

A local government must select a CEO in accordance with the principles of merit, equity and transparency. A local government must not exercise nepotism, bias or patronage in exercising its powers. Additionally, a local government must not unlawfully discriminate against applicants. Section 5.40 of the *Local Government Act 1995* (Act) lists a number of general principles of employment that apply to local governments.

Recruitment and Selection Standard

The minimum standard for recruitment and selection will be met if:

- S1.1** The council has identified and agreed to the qualifications and selection criteria necessary to effectively undertake the role and duties of the CEO within that particular local government context.
- S1.2** The council has approved, by absolute majority, the Job Description Form which clearly outlines the qualifications, selection criteria and responsibilities of the position, and which is made available to all applicants.
- S1.3** The local government has established a selection panel to conduct the recruitment and selection process. The panel must include at least one independent person who is not a current elected member or staff member of the local government.
- S1.4** The local government attracts applicants through a transparent, open and competitive process (this is not necessary for vacancies of less than one year).
- S1.5** The local government has assessed the knowledge, experience, qualifications and skills of all applicants against the selection criteria.
- S1.6** The local government has thoroughly verified the recommended applicant's work history, qualifications, referees and claims made in his or her job application.
- S1.7** The appointment is merit-based, with the successful applicant assessed as clearly demonstrating how his or her knowledge, skills and experience meet the selection criteria.

Recruitment and Selection Standard cont.

- S1.8** The appointment is made impartially and free from nepotism, bias or unlawful discrimination.
- S1.9** The council has endorsed by absolute majority the final appointment.
- S1.10** The council has approved the employment contract by absolute majority.
- S1.11** The local government must re-advertise the CEO position after each instance where a person has occupied the CEO position for ten (10) consecutive years.

Guidelines

Recruitment and selection process

Regulation 18C of the *Local Government (Administration) Regulations 1996* (Administration Regulations) requires a local government to approve a process to be used for the selection and appointment of a CEO for the local government before the position of CEO of the local government is advertised.

The council of the local government should act collectively throughout the recruitment and selection process. To uphold the integrity of the process, the council must resist any attempt to influence the outcome through canvassing or lobbying.

The local government should carefully consider the role of the CEO. This includes the CEO's legislated powers and functions and their role as the head of the administrative arm of the local government. In determining the selection criteria for the position of CEO, it will be important for a local government to consider the needs of the district and the specific skills and experience that will be required of the CEO in that particular local government. The competencies the council looks for in its CEO should reflect the council's strategic community plan.

Once the essential skills and experience which form the selection criteria for the position have been identified, the local government must set out the selection criteria (essential and desirable) and the responsibilities of the position in a Job Description Form (JDF). If emphasis is placed on certain selection criteria, this should be highlighted in the JDF so that applicants are aware of this. For example, some level of project management experience will usually be an important criterion, but if the local government is undertaking a major development such as a new recreation centre, added emphasis may need to be given to this criterion.

The JDF must be approved by an absolute majority of the council.

Advertising

The local government should ensure that applicants are clearly informed about the application process, such as the application requirements, the closing date for applications and how applications are to be submitted. It is essential that this process is transparent and that each step in the process is documented and the records kept in a manner consistent with the *State Records Act 2000 (WA)*.

In order to attract the best possible pool of applicants for the CEO position, it is recommended that local governments use a diverse range of advertising methods, mediums and platforms (in addition to the advertising requirement under section 5.36(4) of the Act). For example:

- advertising on the local government's website;
- posting on online jobs boards (e.g. SEEK);
- sharing the advertisement via professional networks; and
- undertaking an executive search (also known as headhunting).

A local government must publicly advertise the CEO position if one person has remained in the job for 10 consecutive years. This does not prevent the incumbent individual from being employed as CEO for another term, provided they are selected following a transparent selection and recruitment process.

Selection panel and independent person

Local governments are to appoint a selection panel to conduct and facilitate the recruitment and selection process. The selection panel should be made up of elected members (the number to be determined by the council) and must include at least one independent person. The independent person cannot be a current elected member or staff member of the local government. Examples of who the independent person could be include:

- former elected members or staff members of the local government;
- former or current elected members (such as a Mayor or Shire President) or staff members of *another* local government;
- a prominent or highly regarded member of the community; or
- a person with experience in the recruitment and selection of CEOs and senior executives.

The independent person would be on the committee on an unpaid basis (except for reasonable travel and accommodation costs which should be covered by the local government) to provide objectivity to the selection and recruitment process.

The independent person and elected members on the panel are responsible for assessing applicants and making a recommendation to council regarding the most suitable applicant.

Independent human resources consultant

A local government should seek independent advice from a human resources consultant where the council lacks the capacity or expertise to facilitate the recruitment

and selection process (or any aspect of it). A member of the human resources team within a local government should not be involved in the recruitment of a new CEO because if the CEO is employed, he or she would be their employer.

The consultant should not be associated with the local government or any of its council members and can be an independent human resources professional, recruitment consultant, or recruitment agency.

An independent human resources consultant can provide advice to the selection panel on how to conduct the recruitment process or a local government may engage a consultant to support it in undertaking certain aspects of the recruitment process, such as one or more of the following:

- development or review of the JDF;
- development of selection criteria;
- sourcing and development of assessment methods in relation to the selection criteria;
- drafting of the advertisement;
- executive search;
- preliminary assessment of the applications;
- final shortlisting;
- drafting of the questions for interview;
- coordinating interviews;
- writing the selection report;
- arranging for an integrity check and/or police clearance; and
- assisting the council in preparing the employment contract.

The consultant is not to be directly involved in determining which applicant should be recommended for the position.

It is recommended that rigorous checks be conducted on any independent consultants before they are engaged to ensure they have the necessary skills and experience to effectively assist the council. Local government recruitment experience may be beneficial but is not necessary.

The independent human resources consultant must be able to validate their experience in senior executive recruitment and appointments. It is important to note that if the local government uses a consultant or agency to assist in finding applicants, that consultant or agency will require an employment agent licence under the *Employment Agents Act 1976 (WA)*.

A good independent human resources consultant will bring expertise, an objective perspective and additional human resources to what is a complex and time-consuming process. Given the time and effort involved in finding a competent CEO, and the cost of recruiting an unsuitable CEO, there can be a good business case for spending money on an independent consultant.

There is no requirement for local governments to engage an independent human resources consultant to assist with the recruitment of a CEO. If a decision is made to outsource the recruitment process, it is imperative that the council maintains a high

level of involvement in the process and enters into a formal agreement (contract) with the consultant. In order to manage the contract efficiently, and ensure an effective outcome, regular contact with the consultant is required during the recruitment process. As with any contractor engagement, the local government must ensure their procurement and tender processes comply with the Act and the procurement policy of the local government.

Council's responsibilities

A human resources consultant cannot undertake the tasks for which the council is solely responsible. An independent consultant cannot and should not be asked to:

- Conduct interviews with short-listed applicants: This should be done by the council (this may involve the establishment of a committee consisting of only council members under section 5.8 of the Act). A council may decide that a human resources consultant undertakes the initial shortlisting of candidates, for example, conducting initial interviews and compiling a short-list of applicants for the council to review. Following shortlisting, a consultant can participate by sitting in on the interviews, providing advice on the recruitment and selection process and writing up the recommendations. The consultant may also arrange the written referee reports of applicants.
- Make the decision about who to recruit: Only the council can make this decision, drawing upon advice from the selection panel.
- Negotiate the terms and conditions of employment: The council should conduct the final negotiations (noting that the consultant should be able to provide advice on remuneration constraints and other terms and conditions).

Creating Diversity

In order to ensure all applicants are given an equal opportunity for success, selection methods need to be consistent and objective. In a structured interview, each applicant should have the opportunity to answer the same primary questions with follow-up questions used to illicit further detail or clarification. Behavioural-based interview questions are objective and gauge the applicants' hard and soft skills, reducing biases in assessment (see examples below).

Basing a selection decision on the results of a number of selection methods can help to reduce procedural shortcomings and ensure the best applicant is chosen. Psychometric, ability and aptitude testing are considered to be valid, reliable and objective. While applicants with extensive experience and reputable education may appear to be more qualified, an objective assessment of each person's ability and personal traits can provide a clearer picture of the applicant.

Where possible, it is recommended that local governments ensure diversity on the selection panel. This may be achieved by ensuring gender, ethnic, age and experiential diversity on the panel. Diversity is also a consideration when selecting an independent person for the selection panel, particularly where there is a lack of diversity on the council. A diverse selection panel will aid in making quality decisions regarding suitable applicants.

Individuals are often unaware of biases they may have. For this reason, it is helpful for the selection panel to undertake training about unconscious biases. Awareness of unconscious biases assists individuals in preventing those biases from interfering in their decision making. For example, if there are considerable discrepancies in the assessment scores between two panel members, discussion will be required to ensure bias has not influenced these scores. Allowing team members to acknowledge and recognise prejudices is essential to managing those biases. The following biases should be addressed:

- “Similar-to-me” effect - if interviewers share the same characteristics with the applicants or view those characteristics positively, they are more likely to score them highly;
- “Halo” effect – interviewers may let one quality (such as race, gender, looks, accent, experience, etc.) positively or negatively affect the assessment of the applicant’s other characteristics.

Due Diligence

It is essential that the local government ensures that the necessary due diligence is undertaken to verify an applicant’s qualifications, experience and demonstrated performance. This includes:

- verifying an applicant’s qualifications such as university degrees and training courses;
- verifying the applicant’s claims (in relation to the applicant’s character, details of work experience, skills and performance) by contacting the applicant’s referees. Referee reports should be in writing in the form of a written report or recorded and verified by the referee;
- requesting that an applicant obtains a national police clearance as part of the application process; and
- ensuring no conflicts of interests arise by looking to outside interests such as board membership and secondary employment.

A council may wish to contact a person who is not listed as an applicant’s referee, such as a previous employer. This may be useful in obtaining further information regarding an applicant’s character and work experience, and verifying related claims. The applicant should be advised of this and be able to provide written comments to the council.

A search of a media material and whether an applicant has an online presence may also assist in identifying potential issues. For example, an applicant may have expressed views which are in conflict with the local government’s values. This should be made clear in the application information.

To ensure the integrity of the recruitment process, a council must act collectively when performing due diligence.

Selection

Once the application period closes, the council, selection panel or consultant assesses each application and identifies a shortlist of applicants to be interviewed.

In shortlisting applicants for the interview phase, the selection panel should consider the transferable skills of applicants and how these would be of value in the role of CEO. The selection panel should not overlook applicants who do not have experience working in the local government sector.

It is important that the assessment process is consistent for all applicants. For example, each applicant being asked the same interview questions which are related to the selection criteria and being provided with the same information and completing the same assessments.

Elected members should declare any previous association with an applicant or any potential conflict of interest at the time of shortlisting if they are part of the selection panel. Similarly, if the interviews involve the full council, the elected member should make an appropriate declaration before the interviews commence. If the potential conflict of interest is significant or a member's relationship with an applicant may result in claims of nepotism, patronage or bias, the council may need to consider whether to exclude the elected member from the process. The decision should be documented and recorded for future reference.

Selecting an applicant should be based on merit; that is, choosing an applicant that is best suited to the requirements of the position and the needs of the local government. This involves the consideration and assessment of applicants' skills, knowledge, qualifications and experience against the selection criteria required for the role. As part of the selection process, a council may consider it appropriate for each of the preferred candidates to do a presentation to council.

The appointment decision by the council should be based on the assessment of all measures used, including:

- assessment technique(s) used (e.g. interview performance);
- quality of application;
- referee reports;
- verification and sighting of formal qualifications and other claims provided by the applicant; and
- other vetting assessments used (e.g. police checks, integrity checks, etc.).

Employment contract

In preparing the CEO's employment contract, the council must ensure the contract includes the necessary provisions required under section 5.39 of the Act and associated regulations, that it meets the requirements set out in relevant employment law and that it is legally binding and valid.

Section 5.39 of the Act provides that a CEO's employment contract must not be for a term exceeding five years. The term of a contract for an acting or temporary position cannot exceed one year.

Further, the employment contract is of no effect unless it contains:

- the expiry date of the contract;
- the performance review criteria; and
- as prescribed under regulation 18B of the Administration Regulations, the maximum amount of money (or a method of calculating such an amount) to which the CEO is to be entitled if the contract is terminated before the expiry date, which amount is not to exceed whichever is the lesser of:
 - the value of one year's remuneration under the contract; or
 - the value of the remuneration that the CEO would have been entitled to had the contract not been terminated.

It is recommended that the council seeks independent legal advice to ensure that the contract is lawful and able to be enforced. In particular, advice should be sought if there is any (even slight) doubt as to the meaning of the provisions of the contract.

Councils should be aware that CEO remuneration is determined by the Salaries and Allowances Tribunal and the remuneration package may not fall outside the band applicable to the particular local government.

The CEO's employment contract should clearly outline grounds for termination and the termination process (refer to the termination guidelines in this document for information on the process of termination). The notice periods outlined in the employment contract should be consistent with Australian employment law.

The council of the local government must approve, by absolute majority, the employment contract and the person they appoint as CEO.

Appointment

Following the decision of council to approve an offer to appoint, with the contract negotiations finalised and the preferred applicant accepting the offer of appointment, council is required to make the formal and final appointment of the CEO. The council is required to endorse the appointment and approve the CEO's employment contract by absolute majority. The employment contract must be signed by both parties.

The council should notify both the successful individual and the remaining unsuccessful applicants as soon as possible before publicly announcing the CEO appointment.

The successful applicant should not commence duties with the local government as CEO until the employment contract has been signed.

The unsuccessful applicants (including those not interviewed) should be notified of the outcome of their application. It is recommended that the local government creates a template letter for unsuccessful applicants that can be easily personalised with the applicants' details and sent out quickly.

The council should keep a record of their assessment of the unsuccessful applicant(s) and provide the unsuccessful applicant(s) with the opportunity to receive feedback on their application, or interview performance if they were granted an interview. Should

an unsuccessful applicant request feedback, it is recommended that a member of the selection panel provides this. If a recruitment consultant is used, they may undertake this task.

Confidentiality

The local government should ensure that all information produced or obtained during the recruitment and selection process is kept confidential. This includes applicants and their personal details, assessment, the selection report and outcome of the process. This ensures privacy requirements are met and maintains the integrity of the process.

CEO induction

Local governments should ensure that they provide the CEO with all of the necessary information on the local government's processes, policies, procedures and systems at the commencement of the CEO's employment.

New CEOs are eligible to participate in the Local Government CEO Support Program which is a joint initiative of the Department and LGPro to provide mentoring and general support to those appointed to the position of CEO in a local government for the first time. The program runs for six to nine months from the time a CEO is appointed and involves the CEO being matched with a mentor that best meets the needs of the CEO.

The program provides the CEO with an opportunity (through meetings and on-going regular communications) to discuss a wide range of issues with their appointed mentor in the strictest confidence. The program is aimed at addressing the individual needs of the CEO. Examples of issues that may be covered include the following:

- Role of the CEO
- Governance
- Strategic and long-term planning
- Legislative framework
- Relationships and dealing with council members
- Risk management
- Resource management
- Managing the business of Council
- Family considerations

Part 2 – Performance Review

Principles

The standards regarding CEO performance review are based on the principles of fairness, integrity and impartiality.

Performance Review Standard

The minimum standard for performance review will be met if:

- S2.1** Key result areas are specific, relevant, measurable, achievable and time-based.
- S2.2** The key result areas and the performance process are recorded in a written document, negotiated with and agreed upon by the CEO and council.
- S2.3** The CEO is informed about how their performance will be managed and the results of their performance assessment.
- S2.4** The collection of evidence regarding key result areas is thorough and comprehensive.
- S2.5** Assessment is made free from bias and based on the CEO's achievement against key result areas and decisions and actions are impartial, transparent and capable of review.
- S2.6** The council has endorsed the performance review assessment by absolute majority.

Guidelines

Section 5.38 of the Act provides that, for a CEO who is employed for a term of more than one year, the performance of a CEO is to be reviewed formally at least once in every year of their employment.

In addition to this minimum requirement, it is recommended that the council engages in regular discussions with the CEO regarding their performance about key result areas, progress and ways that the CEO can be supported. Any changes to the CEO's performance agreement such as changes to key result areas should also be discussed, and agreed to, between the council and the CEO, as the matter arises.

Employment contract and performance agreement

Section 5.39, of the Act requires the employment contract to specify the performance criteria for the purpose of reviewing the CEO's performance. This will include ongoing permanent performance criteria. A local government may wish to have a separate additional document called a "performance agreement" which includes the

performance review criteria in the employment contract, additional criteria (e.g. the performance indicators in relation to specific projects) and how the criteria will be assessed. The performance agreement should be negotiated and agreed upon by the CEO and the council. The performance agreement may also set out the CEO's professional development goals and outline a plan to achieve these goals.

Key result areas, performance indicators and goals

Setting the performance criteria is an important step. As one of the CEO's key responsibilities is to oversee the implementation of council's strategic direction, it is important to align the CEO's performance criteria to the goals contained in the council's Strategic Community Plan and Corporate Business Plan. Accordingly, as these plans are updated, the CEO's performance criteria should be updated to reflect the changes.

In leading the administrative arm of a local government, the CEO is responsible for undertaking core tasks, the achievement of which will contribute to the effectiveness of the council. These tasks are called key result areas. Key result areas should be set for each critical aspect of the CEO's role. It is important that each key result area is measurable and clearly defined. These could be in relation to:

- service delivery targets from the council's Strategic Community Plan;
- budget compliance;
- organisational capability;
- operational and project management;
- financial performance and asset management;
- timeliness and accuracy of information and advice to councillors;
- implementation of council resolutions;
- management of organisational risks;
- leadership (including conduct and behaviour) and human resource management; and
- stakeholder management and satisfaction.

Key result areas should focus on the priorities of the council and, if appropriate, could be assigned priority weighting in percentages. The council and CEO should set goals as to the target outcome for future achievement in the key result areas. Goals should be specific, measurable, achievable, relevant and time-based.

Following the determination of the key result areas and goals, the council will need to determine how to measure the outcomes in each key result area. Key performance indicators measure the achievement of the key result areas. It is important to relate performance indicators to the selection criteria used in selecting the CEO. For example, if the CEO has been selected due to their financial experience and ability to improve the local government's finances, indicators regarding improved revenue and reduced expenses are obvious starting points.

Considering the context within which the local government is operating is important. For example, if a significant financial event occurs, such a downturn in the economy, financial performance indicators will likely need to be adjusted. It is important that

such contextual factors are given weight and that goals are flexible to allow regular adjustment. Adjustments may be initiated by either the CEO or the council.

Councils need to be realistic in terms of their expectations of a CEO's performance and provide appropriate resources and support to facilitate the achievement of performance criteria.

Performance review panel

It is recommended that the council delegates the CEO performance review to a panel (e.g. comprising certain council members and an independent observer). The panel has a duty to gather as much evidence as possible upon which to base their assessments. The role of the review panel includes developing the performance agreement in the first instance, conducting the performance review and reporting on the findings and recommendations of the review to council.

Independent consultant

If a council lacks the resources and expertise to meet the expected standard of performance review, the council should engage an external facilitator to assist with the process of performance appraisal and the development of the performance agreement. The local government should ensure that the consultant has experience in performance management and, if possible, experience in local government or dealing with the performance management of senior executives. The consultant should not have any interest in, or relationship with, the council or the CEO.

With guidance from the performance review panel, a consultant can facilitate the following tasks:

- setting performance goals;
- setting key result areas;
- preparing the performance agreement;
- collecting performance evidence;
- writing the performance appraisal report;
- facilitating meetings between the performance review panel;
- assisting with the provision of feedback to the CEO;
- formulating plans to support improvement (if necessary); and
- providing an objective view regarding any performance management-related matters between the concerned parties.

Assessing performance

The process of assessing performance should be agreed to by both parties and documented in the employment contract or performance agreement.

It is essential that CEO performance is measured in an objective manner against the performance criteria alone. It is important that reviews are impartial and not skewed by personal relationships between the review panel and the CEO. Close personal relationships between the panel members and the CEO can be just as problematic as extremely poor relationships.

The council should consider any evidence of CEO performance from two perspectives, namely, current CEO performance and future performance if the CEO's current behaviours continue. Evidence of CEO performance may come from an array of sources, many of which the CEO themselves can and should provide to the council as part of regular reporting. These sources include:

- achievement of key business outcomes;
- interactions with the council and progress that has been made towards implementing the council's strategic vision;
- audit and risk committee reports;
- workforce metrics (e.g. the average time to fill vacancies, retention rate, information about why people leave the organisation and staff absence rate);
- incident reports (e.g. results of occupational health and safety assessments, the number and nature of occupational health and safety incident reports, and the number and nature of staff grievances);
- organisational survey results;
- relationships (e.g. with relevant organisations, stakeholder groups, professional networks and the relevant unions); and
- insights from key stakeholders (this could be done by way of a survey to obtain stakeholder input).

It is important that, in addition to looking at the achievement of KPIs, the council considers the following:

- How the CEO has achieved the outcomes. In particular, whether or not their methods are acceptable and sustainable.
- The extent to which current performance is contingent upon current circumstances. Has the CEO demonstrated skills and behaviours to address and manage changes in circumstances which have affected his or her performance?
- What the CEO has done to ensure the wellbeing of staff and to maintain trust in the local government.

The council should consider the attention the CEO has given to ensuring equal employment opportunity, occupational health and safety, privacy, managing potential conflicts of interest, and complying with procurement process requirements.

Addressing performance issues

Once the CEO's performance has been assessed, it is essential that any areas requiring attention or improvement are identified, discussed with the CEO and a plan is agreed and put in place to address these. The plan should outline the actions to be taken, who is responsible for the actions and an agreed timeframe.

The performance review panel must decide on an appropriate course of action that will address the performance issue. This may include professional development courses, training, counselling, mediation, mentoring or developing new work routines to ensure specific areas are not neglected. The performance review panel should then arrange for regular discussion and ongoing feedback on the identified performance issues, ensuring improvements are being made.

It is important to keep in mind that a local government falling short of its goals is not always attributable to the CEO. External factors may have resulted in initial performance expectations becoming unrealistic. Failure to meet key result areas does not necessarily mean the CEO has performed poorly and, for this reason, performance and outcome should be considered separately. Where ongoing issues have been identified, the council will need to take a constructive approach and seek to develop the CEO's competency in that area (for example, through an agreed improvement plan).

Confidentiality

The council should ensure that accurate and comprehensive records of the performance management process are created. Any information produced should be kept confidential.

Part 3 – Termination

Principles

The standards for the termination of a local government CEO (other than for reasons such as voluntary resignation or retirement) are based on the principles of fairness and clarity. Procedural fairness is a principle of common law regarding the proper and fair procedure that should apply when a decision is made that may adversely impact upon a person's rights or interests.

Termination Standard

The minimum standard for the early termination of a CEO's contract will be met if:

- S3.1** Decisions are based on the assessment of the local government's requirements (such as the documented key result areas) and the CEO's performance is measured against these.
- S3.2** Performance issues have been identified and the CEO informed. The council has given the CEO a reasonable opportunity to improve and implement a plan to remedy the performance issues, but the CEO has not subsequently remedied these issues.
- S3.3** Procedural fairness and the principles of natural justice are applied. The CEO is informed of their rights, entitlements and responsibilities in the termination process. This includes the CEO being provided with notice of any allegations against them, given a reasonable opportunity to respond to those allegations or decision affecting them, and their response is genuinely considered.
- S3.4** Decisions are impartial, transparent and capable of review.
- S3.5** The council of the local government has endorsed the termination by absolute majority.
- S3.6** The required notice of termination (which outlines the reason for termination) is provided in writing.

Guidelines

Reason for termination

The early termination of a CEO's employment may end due to:

- poor performance;
- misconduct; or
- non-performance or repudiation of contract terms.

There is a difference between poor performance and serious misconduct. Poor performance is defined as an employee not meeting the required performance criteria or demonstrating unacceptable conduct and behaviour at work. It includes:

- not carrying out their work to the required standard or not doing their job at all;
- not following workplace policies, rules or procedures;
- unacceptable conduct and behaviour at work, e.g. speaking to people in a disrespectful manner, not attending required work meetings and telling inappropriate jokes;
- disruptive or negative behaviour at work, e.g. constantly speaking negatively about the organisation;
- not meeting the performance criteria set in the employment contract and/or performance agreement unless these are outside the CEO's control;
- not complying with an agreed plan to address performance issues (a plan for improvement);
- failing to comply with the provisions of the *Local Government Act 1995* and other relevant legislation;
- failing to follow council endorsed policies.

Serious misconduct can include when an employee:

- causes serious and imminent risk to the health and safety of another person or to the reputation or revenue of the local government; or
- behaving unlawfully or corruptly; or
- deliberately behaves in a way that's inconsistent with continuing their employment.

Examples of serious misconduct can include:

- matters arising under section 4(a), (b) and (c) of the *Corruption, Crime and Misconduct Act 2003*;
- theft;
- fraud;
- assault;
- falsification of records;
- being under the influence of drugs or alcohol at work; or
- refusing to carry out appropriate and lawful resolutions of council.

Misconduct is also defined in section 4 of the *Corruption, Crime and Misconduct Act 2003* (WA). Under this Act, misconduct can be either serious or minor and the obligation to notify the Public Sector Commission or the Corruption and Crime Commission is paramount.

Termination on the basis of misconduct is covered by employment law. A local government should take all reasonable steps to consider misconduct allegations including ensuring procedural fairness is applied. It should also seek independent legal, employment or industrial relations advice prior to a termination. A council should seek independent advice generally during the termination process including the relevant employment legislation affecting CEO employment and the application of that legislation in the circumstances. This will ensure that a council complies with employment law during the entire termination process.

To meet the termination standard, the local government is required to endorse the decision to terminate the CEO's employment by way of an absolute majority resolution.

Opportunity to improve and mediation

If a CEO is deemed to have been performing poorly, the council must be transparent and inform the CEO of this. It is important that the CEO is given an opportunity to remedy the issues within a reasonable timeframe as agreed between the CEO and the council. The council should clearly outline the areas in need of improvement, and with the CEO's input, determine a plan to help the CEO improve. If a plan for improvement is put in place and the CEO's performance remains poor, then termination may be necessary.

Where the concerns or issues relate to problematic working relationships or dysfunctional behaviour, it is recommended that a council engages an independent accredited mediator to conduct a mediation between the parties. A mediation session may be useful in assisting parties to understand and address issues before the situation escalates to a breakdown in the working relationship (which affects the ability of the CEO to effectively perform his or her duties) and the subsequent termination of the CEO's employment.

Independent review of termination report

The council should prepare a termination report which outlines the reasons for termination, the opportunities and assistance provided to the CEO to remedy the issues, and an explanation of the CEO's failure to remedy the issues. It is recommended that the council arranges for the termination report to be reviewed by an independent person (e.g. a person with legal expertise, local government experience or a human resources consultant) to ensure the council has complied with procedural fairness, and provided adequate opportunities and support to the CEO to assist him or her in remedying the issues which form the basis of the termination. In the interests of fairness, the review should take place promptly and before the termination of the CEO's employment.

Confidentiality

Local governments should ensure that the termination process is kept confidential. The CEO is to be informed of the grounds for termination and avenues for review of the decision. Notice of termination of employment is required to be given in writing. In addition, where possible, the news of termination of employment should be delivered in person. The CEO should be provided with a letter outlining the reasons for, and date of, the termination of the employment.

Before making any public announcements on the termination of the CEO, a council should ensure that the entire termination process is complete, including that the CEO has been informed in person of the termination.

Disclaimer

It is outside the scope of these guidelines to provide legal advice, and local governments should seek their own legal advice where necessary. Guidance as to legal requirements and compliance in relation to the termination of employment is provided by the Fair Work Commission at www.fwc.gov.au, the Fair Work

Ombudsman at www.fairwork.gov.au and the Western Australian Industrial Relations Commission at www.wairc.wa.gov.au.

Part 4 – Monitoring and enforcement

To ensure that councils are complying with the standards and to address any alleged non-compliance, a process will need to be established to monitor and enforce the standards.

Feedback is sought on potential models and processes for monitoring and enforcement.

One potential model is for the establishment of an independent Local Government Commissioner. This position would provide a quality assurance role over CEO recruitment and selection, performance review and terminations by ensuring that the minimum standards were met.

In relation to performance review, either the CEO or council could approach the Local Government Commissioner who would have the power to order that a third party be involved in the performance management process if the Commissioner deemed it necessary.

CEO standards consultation survey

As part of the McGowan Government's commitment to transforming local government in WA, the *Local Government Legislation Amendment Act 2019* introduces model standards covering the recruitment and selection, performance review and early termination of local government Chief Executive Officers (CEOs). These reforms are intended to ensure best practice and greater consistency in these processes among local governments.

It is intended that the standards will be mandatory and inform the drafting of regulations. These will be accompanied by guidelines outlining the recommended practice for local governments undertaking these processes.

This survey is intended to provide the Government with feedback regarding the proposed content of the standards and the guidelines.

Thank you for taking the time to complete this survey.

1. Who are you completing this survey on behalf of?
 - a. Yourself
 - b. An organisation, including a local government, peak body, community organisation or a business
2. What is the name of that organisation?
3. What is your name?
4. What best describes your relationship to local government?
 - a. Resident or ratepayer
 - b. Staff member
 - c. Council member (includes Mayor or President)
 - d. Survey responses are provided on behalf of a local government (council endorsed)
 - e. Peak body
 - f. State Government agency
 - g. Community body
 - h. Other (please specify)
5. What best describes your gender?
 - a. Male
 - b. Female
 - c. Other
 - d. Not applicable/the survey responses are provided on behalf of an organisation
6. What is your age?
 - a. Under 18
 - b. 18-24
 - c. 25-34
 - d. 35-44
 - e. 45-54

- f. 55-64
 - g. 65+
 - h. Not applicable/the survey responses are provided on behalf of an organisation
7. Which local government do you interact with most?
 8. Do you wish for your response to this survey to be confidential?
 - a. Yes
 - b. No
 9. What is your email address?
 10. Have you previously completed a survey or provided a submission regarding the review of the *Local Government Act 1995*?
 - a. Yes
 - b. No
 - c. Unsure
 11. If no, what were your reasons for not previously providing your views to inform the Local Government Act review?
 - a. I was not aware of the Local Government Act review
 - b. I was not interested in providing my views
 - c. I did not have time to provide my views
 - d. Other (please specify)

Recruitment and selection

12. How frequently should a council be required to re-advertise the CEO position?
 - a. At the conclusion of the term of the CEO’s contract
 - b. Where a person has occupied the CEO position for two (2) consecutive terms
 - c. Where a person has occupied the CEO position for ten (10) consecutive years
 - d. When council determines
 - e. Unsure
 - f. Other (please specify)

13. To what extent do you support the following statement?

“A local government should be required to undertake ‘blind CV recruitment’ (i.e. redacting personal details and any diversity specific information from curriculum vitae) to avoid bias in the early stages of the recruitment process.”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

It is proposed that a council will be required to appoint a selection panel made up of council members to conduct and facilitate the CEO recruitment and selection process.

The selection panel would be responsible for assessing applicants and making a recommendation to council regarding the most suitable applicant.

14. To what extent do you support the following statement?

“The selection panel must include at least one person who is independent of the council to assist the council in selecting the CEO”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

15. If a council is required to have an independent person on the selection panel to assist them in selecting a CEO, who should the independent person be? (please choose one or more of the following options)

<input type="checkbox"/>	A recruitment/human resources consultant
<input type="checkbox"/>	A community member
<input type="checkbox"/>	A person with experience in local government
<input type="checkbox"/>	A person with experience in appointing senior executives
<input type="checkbox"/>	Unsure
<input type="checkbox"/>	Other (please specify)

16. To what extent do you support the following statement?

“If a council is required to have an independent person on the selection panel to assist them in selecting a CEO, the independent person must not be a current council member or staff member of any local government”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

17. Should there be any other restrictions on who the independent person on a selection panel should be?

- a. Yes
- b. No
- c. If yes, please specify

Performance review

The *Local Government Act 1995* currently requires a council to review the performance of the CEO annually.

18. How frequently should a council review the performance of the CEO?

- a. Annually
- b. Twice annually

- c. Quarterly
- d. Every two years
- e. When council determines a performance review is required

19. To what extent do you support the following statement?

“A local government should be required to establish a performance review panel, which must include at least one person who is independent of the council, to assist the council in assessing the performance of a CEO”

Very unresponsive	Unresponsive	Neutral	Responsive	Very responsive

20. If a council is required to have an independent person assist them in assessing the performance of a CEO as part of a performance review panel, who should the independent person be? (please choose one or more of the following options)

<input type="checkbox"/>	A recruitment/human resources consultant
<input type="checkbox"/>	A community member
<input type="checkbox"/>	A person with experience in local government
<input type="checkbox"/>	A person with experience in appointing senior executives
<input type="checkbox"/>	Unsure
<input type="checkbox"/>	Other (please specify)

21. Should there be any restrictions on who the independent person should be?

- a. Yes
- b. No
- c. If yes, please specify

Termination

22. To what extent do you support the following statement:

“The legislation should provide a minimum notice period that the council provides to the CEO if the council terminates the CEO’s employment before the expiry date of the employment contract”

Very unresponsive	Unresponsive	Neutral	Responsive	Very responsive

23. If the legislation required council to provide the CEO with a minimum notice period of the early termination of the CEO’s employment, what should the minimum notice period be?

- a. Two (2) weeks
- b. Four (4) weeks
- c. Other (please specify)

Monitoring and enforcement

To ensure that councils are complying with the standards and to address any alleged non-compliance, a process will need to be established to monitor and enforce the standards.

Feedback is sought on potential models and processes for monitoring and enforcement.

24. Who should be responsible for monitoring and enforcing the CEO standards?

- a. Public Sector Commission or other integrity agency
- b. Department of Local Government, Sport and Cultural Industries
- c. Independent office of Local Government Commissioner
- d. Joint Panel consisting of nominees from the WA Local Government Association (WALGA) and the Local Government Professionals WA (LGPro WA)
- e. Local Government Standards Panel (expanded role)
- f. Other (please specify)

25. To what extent do you support the following statement?

“If a Local Government Commissioner were to be established, local governments should be required to pay a levy to fund its establishment and operation”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

26. What powers should the body responsible for monitoring and enforcing the standards have? (please choose one or more of the following options)

<input type="checkbox"/>	To order a local government to restart a process (recruitment, selection, performance review or termination) or remedy a defect
<input type="checkbox"/>	To order that a third party be involved in the performance review process
<input type="checkbox"/>	To order that a local government engages in mediation or arbitration to resolve a dispute (this could be disputes between council members or between council members and the CEO)
<input type="checkbox"/>	To arbitrate or make a ruling on a matter
<input type="checkbox"/>	To prepare a report on contract termination (for potential referral for industrial relations action)
<input type="checkbox"/>	To provide a report to the Minister for Local Government or the Director General of the Department of Local Government, Sport and Cultural Industries for consideration in relation to powers to suspend, dismiss or order remedial action whether in regards to the entire council or individual council members

<input type="checkbox"/>	To order that a local government seeks professional advice or assistance from an independent person
<input type="checkbox"/>	Unsure
<input type="checkbox"/>	Other (please specify)

27. To what extent do you support the following statement?

“If the body responsible for monitoring and enforcing the CEO standards directed a local government to undertake mediation or arbitration to resolve a dispute, the costs of the dispute resolution should be borne by the local government.”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

28. To what extent do you support the following statement?

“If a council has not complied with the standard for a particular process, they should be required to recommence the process”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

29. To what extent do you support the following statement?

“Local governments should be subject to penalties if they do not comply with the CEO standards”

Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive

30. Do you have any additional comments in relation to the CEO standards?

Guidelines accompanying the CEO standards

The mandatory CEO standards will be accompanied by guidelines outlining the recommended practice for local governments undertaking the processes of recruitment and selection, performance review and early termination of CEOs.

31. How useful are the proposed guidelines?

Extremely useful	Very useful	Moderately useful	Slightly useful	Not at all useful

Please specify why:

32. Do you have any suggestions regarding any changes that need to be made to the proposed guidelines or is there anything else you think should be included in the guidelines? (please specify)
33. Do you have any additional comments in relation to the guidelines?



Draft Submission

Mandatory Code of Conduct for Council Members, Committee Members and Candidates

October 2019

About WALGA

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 138 Western Australian Local Governments. As the united voice of Local Government in Western Australia, WALGA is an independent, membership-based organisation representing and supporting the work and interests of Local Governments in Western Australia. WALGA provides an essential voice for 1,222 Elected Members, approximately 22,000 Local Government employees (16,500 Full Time Equivalent's) as well as over 2.5 million constituents of Local Governments in Western Australia.

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Background

The *Local Government Legislation Amendment Act 2019* will introduce new requirements in relation to Mandatory Codes of Conduct for Council Members, Committee Members and Candidates for Local Government Elections (Part 5, Division 9 as amended by the *Local Government Legislation Amendment Act 2019*).

The Department of Local Government, Sport and Cultural Industries have released a draft document – *Mandatory Code of Conduct for Council Members, Committee Members and Candidates* – for consultation.

While WALGA and other invited parties participated in a working group to develop the document, the draft was released without WALGA's endorsement and there are a number of concerns with the draft that will be expanded upon in this submission. WALGA appreciates the opportunity afforded to participate in the working group process and to make a submission on the draft document.

The Department of Local Government, Sport and Cultural Industries is seeking feedback on the draft document by 6 December 2019. It is important that Local Governments also make submissions to the Department on this draft document to ensure the sector's views are received.

WALGA is seeking feedback on this draft submission by 25 October 2019. WALGA's submission, which will be updated following sector feedback, will then be included in the December State Council Agenda for consideration at November Zone meetings, before being considered at the 4 December meeting of State Council.

General Comments - Councillor Conduct

WALGA has long led its Member Local Government's advocacy for high standards of behaviour by those who are democratically elected to represent the people within their district, and personal responsibility for the consequences when there is a lack of it.

WALGA commenced lobbying for official conduct legislation in 2002, to enable action to be taken against individuals rather than an entire Council. The Sector held the view that Council dismissals, such as occurred at the City of Cockburn (2000), City of South Perth (2002) and City of Joondalup (2005) could possibly have been averted if powers were available to deal with individual Elected Member's behaviour.

The Sector's advocacy for official conduct legislation correlated with a shared frustration that Codes of Conduct, a compulsory requirement of Section 5.103(3) of the *Local Government Act 1995* ('the Act') were unenforceable when behaviours departed from expressed standards. This was due to the absence at that time of a disciplinary framework in the Act to deal with misbehaviour and misconduct by individual council members.

WALGA conducted extensive consultation with the Sector over a number of years, leading to promulgation of the *Local Government (Official Conduct) Amendment Act 2007*, amending the Act to introduce minor, serious and recurrent breach allegation complaint processes, and the commencement in October 2007 of the *Local Government (Rules of Conduct) Regulations* ('the Regulations').

More recently, the Act was amended to introduce powers enabling the Minister for Local Government to suspend or dismiss individual council members failing in their duties or behaving in an egregious manner if '...seriousness or duration of that failure or conduct make it inappropriate for the council member to remain a member of the council.'¹ The amendments contained in the *Local Government (Suspension and Dismissal) Act 2018* commenced in November 2018.

The Rules of Conduct Regulations were reviewed in 2010 and 2016. WALGA acknowledges past amendments improving operational efficiency e.g. Standards Panel may refuse to deal with frivolous, trivial, vexatious etc. allegations,² and recent amendments that extend confidentiality provisions³ and providing the Standards Panel with discretion to refer parties to participate in mediation.⁴

¹ *Local Government Amendment (Suspension and Dismissal) Bill 2018* Explanatory Memorandum at Page 1.

² Section 5.110(3A) of 2016

³ Section 5.123 of 2019

⁴ Section 5.110(3B) of 2019

Bringing Codes and Rules Together; Uncoupling Codes of Conduct for Council Members and Employees

The Mandatory Code of Conduct will be a departure from the present legislative form that separates Codes of Conduct and the Rules of Conduct Regulations.

It will also depart from the present requirement to adopt one Code of Conduct that is to be observed by council members, committee members and employees.

The new section 5.51A, to commence at another time, will require the CEO to prepare and implement a Code of Conduct to be observed only by employees, aligning with the Sector's view that all matters relating to employees be separated from Council involvement and be contemplated within the CEO's functions under Section 5.41(g) of the Act.⁵

An additional significance is that the Mandatory Code of Conduct will apply to Local Government election candidates in the same way it applies to council members, and an alleged breach of the Code of Conduct by a candidate can only be referred to the Local Government Standards Panel if elected.⁶

This aligns with the Sector's advocacy that a Code of Conduct should apply to candidates⁷ and the proposal that any inappropriate behaviour during the election cycle should result in the successful candidate being held accountable under the Rules of Conduct Regulations.⁸

The Department's Draft for Consultation provides further guidance⁹ on the new Code:

- *The Act requires that local governments adopt the Code within three months of the amendments taking effect. Until the Code is adopted, the model Code applies.*
- *While local governments are not able to amend Part A or Part C, additional behaviours can be included in Part B that are not inconsistent with the Code.*
- *In considering additional behaviours, the council may give consideration to behaviours that are not currently represented in the Code that it considers are important. This may include introducing a dress standard for members or use of technology, for example.*
- *To adopt the Code, a resolution passed by an absolute majority is required. Once the Code is adopted, it must be published on the local government's official website.*

⁵ 'be responsible for the employment, management supervision, direction and dismissal of other employees'

⁶ Local Government Legislation Amendment Bill 2019 Explanatory Memorandum at Page 2.

⁷ WALGA State Council Minutes Review of 2011 Local Government Elections' Ref. Resolution 24.2/2012

⁸ WALGA State Council Minutes 'Review of 2013 Local Government Elections' Ref. Resolution 44.2/2014

⁹ See 'Guidelines' at Page 3

Specific Feedback

The following pages provide a commentary on the Draft for Consultation document ('the Draft') released by the Department of Local Government, Sport and Cultural Industries. The Draft refers to a 'Mandatory' Code of Conduct whereas amendments to the Local Government Act refer to a 'Model' Code of Conduct. This paper will use the term 'Model' throughout the following commentary.

Construction of the Model Code

Codes and Rules will be brought together under Section 5.103(2) as amended by the Local Government Legislation Amendment Act 2019:

- (2) *The model code of conduct must include -*
- (a) general principles to guide behaviour;*
 - (b) requirements relating to behaviour; and*
 - (c) the rules of conduct.*

The Draft informs that the Model Code of Conduct is to be constructed in three Parts:

- **Part A** – Principles [Section 5.103(2)(a)]
- **Part B** – Behaviours [Section 5.103(2)(b)]
- **Part C** – Rules of Conduct [Section 5.103(2)(c)]

Local Governments will not be able to amend Parts A and C, but additional behavioural content may be included in Part B that is not inconsistent with the Model Code.

Part A - Principles

The Preamble to the Model states that 'the purpose of this Code is to guide the decisions, actions and behaviours of council members, committee members and candidates.'

Part A sets out the Principles to be contained in the new Model Code under the headings 'Personal Integrity', 'Relationships with others' and 'Accountability'. This expands upon the 'General principles that guide the behaviour of council members' currently found under Regulation 3 of the *Local Government (Rules of Conduct) Regulations* and are intended to support Part B – Behaviours, and Part C – Rules of Conduct.

Part B - Behaviours

I. Application

It is noted that neither Part B nor Part C of the Model apply to the behaviours of committee members or candidates. No information is provided to clarify why only council members are subject to Parts B and C nor any rationale for the exclusion of committee members and candidates from behavioural standards and Rules of Conduct, particularly noting Section 5.103(3)(b), as amended, states:

- (3) *The model code of conduct may include provisions about how the following are to be dealt with –*
- (b) *alleged breaches of the rules of conduct by committee members*

The Minister for Local Government, Hon. David Templeman, when introducing the *Local Government Legislation Amendment Bill 2019* to Parliament in the Second Reading Speech, specified the application of the Code to candidates, in an effort to improve behaviour during an election period, stating:

“Alleged breaches of the rules of conduct during the election campaign will be progressed when the candidate is elected.”¹⁰

WALGA recommends seeking comment from the Department of Local Government, Sport and Cultural Industries on the intended application of Part B – behavioural standards, and Part C – Rules of Conduct to committee members and candidates.

II. New Complaints Provision

Section 5.103(3)(a) will introduce the discretion for the Model Code of Conduct to deal with alleged breaches of requirements relating to behaviour. This is a significant amendment as the *Local Government Act 1995* has not previously mandated a complaints process relating to behavioural content of a Code of Conduct, but nor has it imposed any restriction.

Under the Model Code, an alleged breach of a Rule of Conduct will continue to be referred to the Local Government Standards Panel. Part B, Rule 2.17 of the Model sets out that Local Governments will be required to deal with allegations made by ‘any person’ of a behavioural breach.

¹⁰ Extract from Hansard, Legislative Assembly, March 2019 at p1310d to 1312a

Some Local Governments have incorporated in their current Code of Conduct a process for dealing with a behavioural breach that permits ‘any person’ to make a complaint; the majority of Local Governments have not.

The City of Joondalup¹¹ and City of South Perth¹² are examples of Local Governments that exercised discretion under general competence powers to incorporate a complaints process in their adopted Code of Conduct. No information is currently available on the frequency or management of complaints of a behavioural breach under current Codes of Conduct.

WALGA seeks comment from Members experienced in dealing with breach allegations relating to their current Code of Conduct to assist with building perspective on processes and consequences associated with managing behavioural breach allegations.

III. Complaint Management

Rules 2.17 to 2.22 set out the Complaint Management standards, with Rule 2.21 requiring development of a Council-endorsed policy to guide the process. The associated Guidelines provide additional information on tools and resources to assist with policy development, complaints management and resolution. Attachment 1 provides a matrix of possible actions where there is finding of a behavioural breach.

WALGA seeks comment on the proposed Complaint Management process.

IV. ‘Rules’

Throughout Part B, the numbered provisions are referred to as ‘Rules’. This has the potential to create confusion with the already-established terminology familiar to the Sector of ‘Rules of Conduct’, which form Part C.

WALGA recommends a separate nomenclature for numbered provisions in Part B (i.e. ‘Item’ or ‘Clause’) to avoid any potential for confusion between Part B and Part C, particularly when breach allegations arise.

¹¹ ‘City of Joondalup Code of Conduct for Employees, Elected Members and Committee Members’ at Page 21

¹² ‘City of South Perth Code of Conduct’ at Page 9

Part C – Rules of Conduct

As previously discussed, Part C of the Model Code only references council members.

It is noted there are numerous, self-evident typographical errors throughout Part C (i.e. inconsistent referencing and numbering) and it is presumed the Department is aware and will remedy where necessary.

The Rules of Conduct replicate for the most part, the existing provisions from the current Rules of Conduct Regulations. The Model Code adds commentary by including 'Elements of Rule of Conduct'. It is not known whether these Elements will have any influence on the deliberations of the Local Government Standards Panel in the event of a breach allegation under Part C.

WALGA seeks comment on whether the 'Elements of Rule of Conduct' content adds value or assists council members to understand their responsibility to observe Rules of Conduct.

Misuse of Local Government Resources - Regulation 8 of the current Local Government (Rules of Conduct) Regulations

The Model Code creates a definition of the term 'resource' which does not appear in the current Rules of Conduct:

'resource is defined to mean tangible and intangible assets, services or other means of supporting the functions of local government, which are owned or paid for by the local government from public money'

It is not stated why there is a need to define 'resource' specifically, the potential impact this definition may have upon determining a breach allegation¹³ or whether the common dictionary definition is known to be ineffective - *'a stock or supply of money, materials, staff, and other assets that can be drawn on by a person or organization in order to function effectively.'*¹⁴

Securing Personal Advantage of Disadvantaging Others – Regulation 7 of the current Local Government (Rules of Conduct) Regulations

The Model Code is consistent with the current Regulations.

¹³ Section 6 of the *Interpretation Act 1984* (WA) applies – 'Definitions in a written law, application of'

¹⁴ Oxford English Dictionary

Repeated Breaches of Part B – Not currently Regulated

This new provision will provide an accountability measure where a council member continually breaches the behavioural requirements of Part B of the Model Code and appears to face value to have merit.

Item (iii) of this Rule will require thoughtful consideration, as it requires the Council to make a determination by resolution before a council member, who is found to have committed three or more breaches under Part B, can be referred to the Local Government Standards Panel:

‘(and) iii. the Council to which the member is elected, decides, via resolution, to make an allegation of a rule of conduct breach under this Part.’

WALGA notes that this new provision did not appear in early drafts of the Model Code and therefore was not considered at the Working Group convened by the Department of Local Government, Sport and Cultural Industries.

Prohibition against Involvement in Administration – Regulation 9 of the current Local Government (Rules of Conduct) Regulations

The Model Code is consistent with the current Regulations.

Relations with Local Government Employees - Regulation 10 of the current Local Government (Rules of Conduct) Regulations

The Model Code creates a definition of the term ‘employee’ which does not appear in the current Rules of Conduct. This definition references Section 5.36 of the Act, whereas the Act defines ‘employee’ under Section 1.4.

The Model Code proposes to add a further prohibition under Item (iii) that does not currently appear in the Rules of Conduct:

‘behave in an abusive or threatening manner towards any local government employee’

Unauthorised Disclosure of Information - Regulation 6 of the current Local Government (Rules of Conduct) Regulations

The Model Code proposes to add a further prohibition under Item (iii) that does not currently appear in the Rules of Conduct:

‘personal information as defined in the Freedom of Information Act 1992’

The remainder of the Model Code is consistent with the current Regulations.

Disclosure of Interest - Regulation 11 of the current Local Government (Rules of Conduct) Regulations

The Model Code amends the definition of the term 'interest'. It currently reads:

'interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association'

It is amended to read:

'interest means a material interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest'

It is unclear why it is proposed to amend this definition, given that the terms '*kinship, friendship or membership of an association*' provide useful reference points that presently help council members to understand their responsibility to declare this type of interest.

Contravention of certain Local Laws - Regulation 4 of the current Local Government (Rules of Conduct) Regulations

This provision is now included in Part B of the Model Code at 2.10 and 2.11.

WALGA seeks comment on the proposed Part C Model Code provisions.



Draft Submission

Standards and Guidelines for CEO Recruitment and Selection, Performance Review and Termination

October 2019

About WALGA

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 138 Western Australian Local Governments. As the united voice of Local Government in Western Australia, WALGA is an independent, membership-based organisation representing and supporting the work and interests of Local Governments in Western Australia. WALGA provides an essential voice for 1,222 Elected Members, approximately 22,000 Local Government employees (16,500 Full Time Equivalent's) as well as over 2.5 million constituents of Local Governments in Western Australia.

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Background

The *Local Government Legislation Amendment Act 2019* will introduce new requirements in relation to CEO recruitment, performance and termination (Sections 5.39A and 5.39B).

The Department of Local Government, Sport and Cultural Industries have released a draft document – *Standards and Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination* – for consultation.

While WALGA and other invited parties participated in a working group to develop the document, the draft was released without WALGA's endorsement and there are a number of concerns with the draft that will be expanded upon in this submission. WALGA appreciates the opportunity afforded to participate in the working group process and to make a submission on the draft document.

The Department of Local Government, Sport and Cultural Industries is seeking feedback on the draft document by 6 December 2019. It is important that Local Governments also make submissions to the Department on this draft document to ensure the sector's views are received.

WALGA is seeking feedback on this draft submission by 25 October 2019. WALGA's submission, which will be updated following sector feedback, will then be included in the December State Council Agenda for consideration at November Zone meetings, before being considered at the 4 December meeting of State Council.

General Comments – Philosophical Approach

WALGA's fundamental guiding principle is that democratically elected Councils are competent, and should be empowered to undertake their role of governing the Local Government's affairs. This is articulated in WALGA's Strategic Plan, which outlines the vision for Local Government as follows:

Local Governments will be built on good governance, autonomy, local leadership, democracy, community engagement and diversity.

WALGA's perspective is that Councils should be empowered to do the job they've been entrusted by the community in democratic elections to do. This includes responsibility for employment of a Chief Executive Officer. Further, WALGA believes that the correct approach is to build the capacity of Councils to undertake this function through the provision of professional services, advice and support, and training.

This is not to downplay the challenges associated with employing and managing a Chief Executive Officer. It is fully acknowledged that this one of Council's most challenging tasks.

Given Council has only one employee – the Chief Executive Officer – it is crucial that the Council makes an informed decision when employing a CEO, and has the processes in place to effectively manage the performance of the CEO. As Councillors are often community representatives, who may not be experienced or qualified in contemporary human resource management practices, employment, management and performance appraisal of the CEO may be one of the Council's most significant challenges.

The *Local Government Act 1995* requires that performance criteria for the purpose of reviewing the CEO's performance are established. Similarly, development of these performance criteria are crucial for the Council to get right.

For these reasons, WALGA offers an Elected Member training course on CEO Performance Appraisals, and provides Elected Members with significant advice and assistance through the CEO recruitment and performance appraisal cycle.

WALGA also recommends that Councils engage a specialised recruitment consultant to assist Councils manage the recruitment process.

The development of guidelines to assist Councils through the Chief Executive Officer employment cycle is supported in principle. However, WALGA believes the approach should be based on capacity building, guidance and support, and help where necessary; not based on the development of rules that create a compliance regime which may create uncertainty, unnecessary administration and risk for Local Governments and Chief Executive Officers.

Specific Feedback

WALGA has concerns relating to some specific aspects of the draft document. These concerns are outlined below.

Re-advertising the Position after 10 Years

It is unclear why there is a need for the position of Chief Executive Officer to be advertised after 10 years as a matter of course.

If the Council and the Chief Executive Officer are satisfied with the employment relationship, then forcing the position to be advertised will be disruptive, time-consuming, expensive, and counter-productive for the Local Government. Further, it will create uncertainty for the CEO who may be forced to look for alternative employment 'just in case'.

In addition, if the performance management process is undertaken correctly and thoroughly, there should not be any need for the position to be advertised after a timeframe specified in regulations.

Lastly, as Chief Executive Officers are on fixed term contracts, Councils already have the opportunity to consider whether to renew the incumbent's contract.

WALGA's view is that this requirement should be removed from the guidelines, and not included in regulations.

Selection Panel – Independent Person

It is unclear why an independent person should be included on the selection panel that makes recommendations to Council about the employment of a Chief Executive Officer.

Employment of the Chief Executive Officer is a fundamental role of Council. Including others on the selection panel risks creating uncertainty and ambiguity about the employment relationship.

The requirement to have an independent person on the selection panel is also impractical and may cause processes and decisions to become protracted. There is no guarantee that the independent person will have knowledge or experience in recruitment, Local Government processes, or Local Government Act requirements. This requirement could also add an unnecessary and unreasonable cost to the recruitment process, particularly for Councils in remote locations.

WALGA fully supports and encourages Councils to utilise a qualified recruitment consultant to guide Councils through the process of recruiting a CEO, but this person would not be a decision-making member of the selection panel.

Creating Diversity Section

WALGA contends that this section should be renamed “Sound Decision Making”, as this is what this section is primarily about.

It is acknowledged that unconscious biases can be a factor in decision making and building awareness of these biases in the guidelines is supported.

Independent Review of Termination Report

WALGA acknowledges that decisions and rationale relating to termination need to be documented. The principle that Councils should seek advice from an employee relations or legal advisor when terminating the CEO is acknowledged and supported.

It is not clear that requiring independent review of a termination report adds value. Rather, it will add unnecessary administrative time and risk into the decision making process.

Feedback on Consultation Questions

WALGA provides the following feedback in response to the consultation survey questions.

Recruitment and Selection

Question 12 – How frequently should a council be required to re-advertise the CEO position?

Council, as the employer, should determine when the position of CEO is advertised.

Question 13 – To what extent do you support that Local Governments should be required to undertake ‘blind CV recruitment’?

It is acknowledged that ‘blind CV recruitment’ could be a useful tool in some circumstances, but it should not be a requirement. In addition, in the Western Australian Local Government sector, blind CV recruitment would be almost practically impossible because the applicant’s previous employment experience would mean that they would be identifiable. That is, if an applicant listed “CEO at the Shire of _____”, their identity could be determined with a very quick internet search.

Questions 14-17 – Independent Selection Panel Members

The requirement to have an independent member on the selection panel is not supported.

Performance Review

Question 18 – How frequently should a Council review the performance of the CEO?

There is no rationale for why the current annual requirement is unsatisfactory. Clearly, a Council may have reasons to formally review the CEO's performance more frequently than the minimum annual requirement, and as such, the Council should have the discretion to do so.

Questions 19-21 – Independent Person on Performance Review Panel

It is unclear how an independent person on a performance review panel would add any value to the process, given an independent person may have limited knowledge about the CEO's recent performance.

In fact, having a person not involved in the employment relationship involved in the performance review process seems to be contrary to a fair and proper performance review process.

WALGA fully supports Councils utilising an experienced and qualified consultant to facilitate the performance review process, but not to contribute to the substance of the performance review.

Termination

Questions 22 and 23 – Termination Notice Periods

It is noted that notice periods must comply with the National Employment Standards. There needs to be compliance with employment law at a minimum and, as the role of CEO is a senior position, a greater notice period (in the order of three months) is appropriate.

Monitoring and Enforcement

Questions 24-30 – Monitoring and Enforcement

As outlined in the general comments section above, WALGA's preferred approach is one based on capacity building, advice and support, and training.

A compliance based approach undermines the intent of having guidelines to assist Local Governments in their decision making processes, and may lead to risks and unintended consequences.

The consultation questions seem to imply that costs that result from consequences stemming from breaching the standards would be borne by the Local Government: for example, if the

process needed to be redone or there was a dispute. Establishment of a compliance and enforcement framework of this nature seems to be unnecessarily putting public money at risk.

WALGA acknowledges that the CEO recruitment process needs to be undertaken properly, and legally, and it is for these reasons that WALGA is advocating for a capacity building approach, with Councils encouraged to engage professional services and advice to ensure the process is undertaken properly.

Question 25 – To what extent do you support the statement: If a Local Government Commissioner were to be established, local governments should be required to pay a levy to fund its establishment and operation?

This appears to be a new idea without any supporting information as to the powers, duties and role of a Local Government Commissioner, and is therefore not something that WALGA can support at this stage.

The idea that Local Governments should be levied to fund an apparatus of the State Government is not supported. This would represent a significant cost shift from the State Government to the Local Government sector, for what appears to be a core regulatory role of the Department of Local Government, Sport and Cultural Industries.

Guidelines

Questions 31-33 – Utility of the guidelines

In general, there is useful information in the guidelines that will be of assistance to Councils embarking on a CEO recruitment process. As argued in this submission, WALGA's perspective is that the approach should be based on capacity building, support, advice, and training, and not based on a compliance driven approach.

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Department of
**Local Government, Sport
and Cultural Industries**

Our ref T10-18#002
Enquiries Standards Panel Executive Officer
Phone (08) 6551 4820
Email minorbreachcomplaints@dlgsc.wa.gov.au

Cr Benjamin Bell
PO Box 1195
TOODYAY WA 6566

cr.bell@toodyay.wa.gov.au

Dear Cr Bell

**NOTICE OF FINDING AND REASONS FOR FINDING
COMPLAINT OF MINOR BREACH No. SP 2019-052, SP 2019-053, SP 2019-054, SP
2019-055, SP 2019-056, SP 2019-057**

I refer to the above six complaints of a Minor Breach received on 11 June 2019 alleging Cr Brian Rayner, as an elected member of the Shire of Toodyay breached the *Local Government (Rules of Conduct) Regulations 2007*.

At its meeting of 10 September 2019, the Local Government Standards Panel (the Panel) considered these matters and found no breach was committed.

Attached is a copy of the Panel's *Finding and Reasons for Finding*.

Please note, section 5.123 of the *Local Government Act 1995* includes confidentiality provisions regarding the disclosure of information relating to a complaint of minor breach.

Should you require further information in relation to this matter please contact the Executive Officer to the Panel, Department of Local Government, Sport and Cultural Industries via the details listed above.

Yours sincerely

Donna Kennedy
A/MANAGER LEGISLATION AND REGULATORY SUPPORT

17 October 2019

enc

cc: Mr Stan Scott – CEO/Complaints Officer, Shire of Toodyay



Local Government Standards Panel

Complaint Number	SP 2019-052; SP 2019-053; SP 2019-054; SP 2019-055; SP 2019-056; SP 2019-057
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Benjamin Bell
Respondent	Councillor Brian Rayner
Local Government	Shire of Toodyay
Regulation	Regulation 6 Regulation 7 Regulation 8 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Ms Rebecca Aubrey (Deputy Member) Mrs Emma Power (Member)
Heard	10 September 2019 Determined on the documents
Finding	No Breach of Regulation 6 Regulation 7 or Regulation 8

FINDING AND REASONS FOR FINDING

Delivered 15 October 2019

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.

Summary of the Panel's decision

1. On 10 September 2019, the Panel found that Councillor Brian Rayner a councillor of the Shire of Toodyay ("**the Shire**") did not commit any minor breach pursuant to the Local Government Act 1995 (WA) ("**the Act**"), regulation 6 of the Local Government (Rules of Conduct) Regulations 2007 ("**the Regulations**"), regulation 7 or regulation 8 of the Regulations when the February edition of the Toodyay Community Newsletter published details of prior minor breach complaints SP 52 of 2018, SP 53 of 2018 and SP 54 of 2018 as specified in paragraph 13 and paragraph 17 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

⁴ Briginshaw v Briginshaw (1938) 60 CLR 336

⁵ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁶ Section 8(6) of Schedule 5.1 of the Act



Jurisdiction and Procedural Fairness

11. On 11 June 2019 the Panel received six emails from Mr Stan Scott acting as complaints officer of the Shire (**“the Complaints Officer”**). The same enclosed six Complaint of Minor Breach Forms each dated 3 June 2018.
12. As each of the six complaints:
 - a. relate to the publication of the same article in the February edition of the Toodyay Community Newsletter;
 - b. deal with substantially the same conduct in each case; and
 - c. each involve the same dates and timing,the Panel considered it proper to combine the decisions into these findings.
13. In his complaints Cr Bell alleges that due to the inclusion in the February 2019 edition of the Toodyay Community Newsletter of an article entitled *“Standards Panel says Cr Bell Breached the Rules”*, Cr Rayner has allegedly breached:
 - a. regulation 6 by revealing confidential information in respect to:
 - i. Standard Panel complaint SP 52 of 2018 (**“Allegation 1”**);
 - ii. Standard Panel complaint SP 53 of 2018 (**“Allegation 2”**); and
 - iii. Standard Panel complaint SP 54 of 2018 (**“Allegation 3”**);
 - b. regulation 7(1)(b) of the Regulations by improperly publishing information related to the following ongoing Standards Panel matters for purpose of causing detriment Cr Bell:
 - i. Standard Panel complaint SP 52 of 2018 (**“Allegation 4”**);
 - ii. Standard Panel complaint SP 53 of 2018 (**“Allegation 5”**); and
 - iii. Standard Panel complaint SP 54 of 2018 (**“Allegation 6”**);
 - c. regulation 8 of the Regulations by his misuse of an official Shire of Toodyay publication to disseminate privileged information related to the following ongoing matters that were currently before the Standards Panel:
 - i. Standard Panel complaint SP 52 of 2018 (**“Allegation 7”**);
 - ii. Standard Panel complaint SP 53 of 2018 (**“Allegation 8”**); and
 - iii. Standard Panel complaint SP 54 of 2018 (**“Allegation 9”**),(together **“the Complaints”**).
14. The Panel convened 10 September 2019 to consider the Complaint.
15. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that, based on information published on the Western Australian Electoral Commission’s website, Cr Rayner was:
 - i. last elected to the Council of the Shire in October 2017 for a term expiring in October 2021;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 10 September 2019;



- b. was satisfied the Complaint was made within two years after the alleged breach occurred⁷;
- c. was satisfied that the Shire’s Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
- d. was satisfied the Department had provided procedural fairness to Cr Rayner; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

- 16. The relevant Article the subject of the Complaints is contained in the February edition of the Toodyay Community Newsletter published on 16 February 2019 as follows:

STANDARDS PANEL SAYS CR BELL BREACHED THE RULES

Cr Benjamin Bell has not obeyed the rules of behaviour expected of Shire Councillors, and has been found by the Local Government Standards Panel to have committed 6 breaches of the *Local Government (Rules of Conduct) Regulations 2007*. The Panel is set up under the provisions of the *Local Government Act 1995* to consider complaints about the conduct of councillors. The panel has not yet determined what penalty may be applied.

The breaches relate to posts by Cr Bell on his Facebook page between 18 May and 30 September 2018. The complaints were initiated by the CEO in his statutory role as Complaints Officer. The Standards Panel found that on each of the 6 occasions Cr Bell breached regulation 7(1)(b).

Regulation 7(1)(b) requires that a person who is a council member must not make improper use of the person’s office as a council member to cause detriment to the local government or any other person.

To make a finding under this regulation the Panel must be satisfied that Cr Bell:

1. Was a Councillor at the time;
2. Made use of his office as a Council Member of the Shire;
3. The use of office was improper; and
4. Intended detriment to be suffered by another.

The Panel found that each of these elements was present on each of the 6 occasions. On every occasion he intended to cause detriment to the CEO and on two occasions to another officer and another Councillor.

The Standards Panel reasoned that his Facebook posts were improper in that they “were of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor”.

The panel considered that the behaviour is deserving of a penalty and has invited Cr Bell to make a submission on what he considers would be an appropriate penalty.

Below are a selection of observations from the Panel. There is one comment from each of the 6 findings.

The overall tone of the Posts is combative, critical and aggressive and do not reflect the standards of behaviour expected of an Elected Member in a public forum.

The argument that Cr Bell had regard to the interests of Shire ratepayers at all times is not persuasive. The Post clearly asserts Cr Bell’s personal feelings as to the CEO and Acting CEO. There is nothing that can be properly described as providing relevant information to the community.

Further, Cr Bell’s comment of “yes, yes, yes – I can hear the threats of adverse reflection” clearly indicate that he is aware that such language and comments were not appropriate and demonstrate his unwillingness to comply with the Code and the Regulations.

The Panel considers that the Post is inappropriate, derogatory and does not reflect the standards of behaviour expected of an Elected Member.

In addition, the accusations contained in Post 2 are very serious and appear to have been raised with reckless disregard as to any accuracy and without a proper basis.

The complaints were made by the CEO in his role as complaints officer. The Act requires that breaches are reported to the Standards Panel and these rules apply to all Councillors. If any Councillor breaks the rules the CEO has an obligation to report it.

(“the Article”).

- 17. The Complainant makes the following particular arguments and allegations which are taken from each of the Complaints:
 - a. In respect to each of the Allegations:
 - i. on 29 January 2019, the Standards Panel sent Cr Bell a letter of Notice of Finding and Reasons for Finding for Complaint of Minor Breach in respect to the following Standard Panel matters:
 - A. SP 52 of 2018;

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



- B. SP 53 of 2018; and
 - C. SP 54 of 2018,
(together “the Minor Breach Matters”).
 - ii. this letter:
 - A. enclosed a copy of each of the Findings by the Standards Panel in respect to the Minor Breach Matters; and
 - B. was provided for the purpose of informing Cr Bell that he had 14 days of receipt of the letter to make a submission to the Standards Panel in respect to imposition of a sanction in respect to each of the Minor Breach Matters;
 - iii. based on the 14 day period being calendar days, Cr Bell had until 12 February 2019 to make a written submission to the Standards Panel in respect to the Minor Breach Matters;
 - iv. the 29 January 2019 letters from the Standards Panel also stated that *“Once finalised, a notice of the Panel’s decisions will be provided to you, the complainant and the Shire’s Complaints Officer”*. This clearly indicates that:
 - A. the Minor Breach Matters had not been finalised as at the 29 January 2019; and
 - B. the Minor Breach Matters would not be finalised until after the Standard Panel had received and considered Cr Bell’s written submission to the Standards Panel;
 - v. Cr Bell submitted the written submissions within the time period required and the Standards Panel accepted such submissions;
 - vi. on 4 April 2019 the Standards Panel provided a Notice of Decision and Reasons letter enclosing various Sanction Decision and Reasons for Decision which outlined the sanction that the Standards Panel had imposed in respect to each of the Minor Breach Matters. These decisions show the Panel convened on 22 March 2019 to consider how it should deal with Minor Breach Matters;
 - vii. therefore prior to the 22 March meeting, the Minor Breach Matters had not been finalised and were ongoing and active matters;
 - viii. the 4 April 2019 letter from the Standards Panel advised that under Section 5.125 of the Act that Cr Bell had a right to apply to the State Administrative Tribunal (SAT) for a review of the Panel’s decisions with respect to each of the Minor Breach Matters within 28 days;
 - ix. the Standard Panels ordered in each case that Cr Bell make an apology or a censure be published, following 28 days after service, such period being presumably, to accommodate the 28 day appeal period to SAT; and
 - x. as such, the earliest date that the Minor Breach Matters could reasonably be considered to have been finalised and concluded is 2 May 2019.
- b. In respect to the alleged breach of Section 6 of the Regulations:
- i. the information pertaining to each of the Minor Breach Matters was privileged information until the matters were finalised and concluded on 2 May 2019;



- ii. public disclosure of any information pertaining to these Minor Breach Matters, or reference to the same by a council member before 2 May 2019 represents improper disclosure of information, and would be a clear breach of Regulation 6; and
 - iii. there is no requirement under either the Act or the Shire of Toodyay's Code of Conduct (or any other Local Law) that requires details or information pertaining to an ongoing matter before the Standards Panel be published or commented on by the Shire of Toodyay;
 - c. In respect to Regulation 7:
 - i. the publication of the information related to an ongoing matter that is currently before the Standards Panel represents improper use of the person's office as a council member for the purpose of causing detriment to the councillor that is the subject of the minor breach matter;
 - ii. this represent a clear breach of Regulation 7; and
 - iii. the purpose of publishing and distributing privileged information about an ongoing matter before the Standards Panel via an official Shire of Toodyay publication was done for the sole purpose of denigrating Cr Bell in the eyes of the Toodyay community and fellow council members;
 - d. In respect to Regulation 8:
 - i. should an elected member use an official Shire of Toodyay publication to disseminate privileged information related to an ongoing matter that was currently before the Standards Panel in order to causing detriment to the councillor that is the subject of the minor breach matter, this would obviously represent a breach of Regulation 8;
 - e. the Article contained a selection of observations from the Panel as contained in the various findings and noted "*There is one comment from each of the 6 findings*";
 - f. under the Act, it is the president that speaks on behalf of the local government and the Act also allows for the CEO to speak on behalf of Council with the permission of the president;
 - g. it is demonstrated that the president is responsible for the content of the Toodyay Community newsletter by the passed censure motion against the president for publishing, or allowing the publishing, of false and misleading information in the January 2019 edition of the Toodyay Community Newsletter (which the president voted in favour of);
 - h. Cr Rayner is the president of the Shire of Toodyay and Cr Rayner has acknowledged that he is responsible for the contents of the Toodyay Community Newsletter; and
 - i. the Toodyay Community Newsletter is an official Shire of Toodyay publication.
18. In the Complaints, the Complainant also provided:
- a. a copy of the 29 January 2019 letter of Notice of Finding and Reasons for Finding for Complaint of Minor Breach;
 - b. a copy of the 4 April 2019 letter of Notice of Decision and Reasons;
 - c. a copy of Sanction Decision and Reasons for Decision delivered 4 April 2019 in respect to each of the Minor Breach Matters;



- d. a copy of the Minutes of the Ordinary Council Meeting of 22 January 2019; and
- e. a copy of the Article.

Respondent's Response

- 19. By an email dated 25 August 2019 Cr Rayner provided a response to the Complaint.
- 20. Cr Rayner denies that he has committed any minor breach.
- 21. Cr Rayner makes the following comments and arguments in respect to the allegations of Minor Breach:
 - a. the Article briefly highlighted that the findings had been made. The Article was published on the authority of the CEO;
 - b. the Article was published because Cr Bell continued to publish further information which was untrue or misleading both in the Toodyay Herald and on his Facebook account. The intent of the Article was to make to community aware that all information that was published may not be reliable or correct;
 - c. the findings of the Standards Panel were provided with the following advice:

“ Please note that while there is no impediment of the outcome of this matter, the ordinary principles of defamation as modified by the Defamation Act 2005, May apply to the further release or publication of all or a part of the attached Finding and Reasons for finding.”

and

“ The general law of defamation, as modified by the Defamation Act 2005, applies to the further release or publication of all or part of this document or its contents. Accordingly appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.”
 - d. in light of these findings, the CEO was cautioned to include only small extracts of the findings rather than details in their entirety. The CEO has Cr Rayner's general permission to speak on behalf of Council and he has exercised this delegation in the publishing the Shire of Toodyay newsletter;
 - e. Cr Bell refers to a censure of Cr Rayner in relation to a different article in a different copy of the newsletter. There was some inaccurate information published in an earlier edition of the Shire newsletter. It was corrected on the Shire's website and Facebook immediately that the error was identified, but Cr Rayner took responsibility for the publication;
 - f. it is notable that there was no motion in Council to censure Cr Rayner for the publication of extracts from the Minor Breach Matters;
 - g. Cr Rayner believes:
 - i. there is no breach of Regulation 6 as the document was not a confidential document and it was not, in any event, published by the Cr Rayner;
 - ii. there is no breach of Regulation 7 as, firstly, Cr Rayner was not responsible for the Article and, secondly, it did not advantage or disadvantage anyone. It was simply to protect the reputation of the Local Government;
 - iii. there is no breach of Regulation 8 as the Shire newsletter is an appropriate vehicle for circulating correct information of interest to the public and the



use of the resources was in any event authorised and undertaken by the CEO; and

- h. there is no suggestion in this response that the CEO has done anything wrong in the publication of the findings.

Regulation 6

22. Regulation 6 prevents the disclosure of confidential or restricted information obtained by a councillor and reads as follows:

“(1) In this regulation —

*“**closed meeting**” means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;*

*“**confidential document**” means a document marked by the CEO to clearly show that the information in the document is not to be disclosed;*

*“**non-confidential document**” means a document that is not a confidential document.*

(2) A person who is a council member must not disclose —

(a) information that the council member derived from a confidential document; or

(b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.

(3) Subregulation (2) does not prevent a person who is a council member from disclosing information —

(a) at a closed meeting; or

(b) to the extent specified by the council and subject to such other conditions as the council determines; or

(c) that is already in the public domain; or

(d) to an officer of the Department; or

(e) to the Minister; or

(f) to a legal practitioner for the purpose of obtaining legal advice; or

(g) if the disclosure is required or permitted by law.”

Regulation 7

23. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

“7. Securing personal advantage or disadvantaging others

(1) A person who is a council member must not make improper use of the person’s office as a council member —

(a) to gain directly or indirectly an advantage for the person or any other person; or



- (b) to cause detriment to the local government or any other person.
- (2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.
24. It is not alleged that Cr Rayner or any other person received any advantage, so the Panel has only considered regulation 7(1)(b) in this Complaint.

Regulation 8

25. Regulation 8 prohibits the use of government resources in certain circumstances and provides as follows:

“8. Misuse of local government resources

A person who is a council member must not either directly or indirectly use the resources of a local government —

- (a) for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918; or
- (b) for any other purpose,
- unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.”*

Panel’s Consideration

Regulation 6 – Allegation 1, Allegation 2 and Allegation 3

26. To make a finding of a minor breach in respect to regulation 6 the Panel must be satisfied that:
- a. Cr Rayner was an elected member at the time of the breach and at the time the matter was determined; and
 - b. that it is more likely than not that:
 - i. Cr Rayner disclosed information to someone who at the time was not also a Councillor of the same local government; and
 - ii. the disclosed information was acquired by Cr Rayner either:
 - A. from a confidential document; or
 - B. at a council or committee meeting, or a part of a council or committee meeting, that was closed to members of the public under section 5.23(2) of the Act; and
 - iii. if the information was acquired at a closed council or committee meeting, Cr Rayner did not derive the disclosed information from a non-confidential document; and
 - iv. the disclosed information was not information already in the public domain or the disclosure did not occur in any of the ways identified in regulation 6(3).

Cr Rayner was an elected member at the relevant times

27. Cr Rayner was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

28. This element is met.

Cr Rayner disclosed information to someone who at the time was not also a Councillor

29. The information the subject of the Complaint was published in the Article.

30. The Article was available publicly and therefore disclosed to persons not being Councillors.

31. The Complaint argues that Cr Rayner has acknowledged that he is responsible for the contents of the Toodyay Community Newsletter by his previous actions and that under the Act, it is the President that speaks on behalf of the local government.

32. Cr Rayner asserts he did not publish the relevant Article.

33. The Panel notes that the Shire of Toodyay Community Newsletter is published on behalf of the Toodyay Shire Council with the authority of the CEO.

34. The Shire of Toodyay Community Newsletter contains a number of items, including an article entitled "*President's Pen*", public notices, general interest news, community announcements and advertising. No article, except for "*President's Pen*" is specifically attributed to Cr Rayner.

35. Although the Cr Rayner may have previously accepted a censure by the Council in respect to the publication of certain information in the Toodyay Community Newsletter, the Panel does not find the arguments made by the Complainant that this constitutes proof of Cr Rayner's acceptance of responsibly particularly compelling. Firstly, such matter related to incorrect information being published, not the provision of accurate information and secondly, the Panel has not been provided of the particular context of such occurrence and Cr Rayner's particular role in the same.

36. The Panel is of the opinion that given the diverse range of items set out in the Shire of Toodyay Community Newsletter, it would not be in the public interest to make a finding that the President of the Shire was personally responsible for each and every item in such newsletter. This position could, however, be rebutted with the provision of appropriate evidence.

37. It appears that Cr Rayner was aware of the CEO's intention to publish the Article due to his comment in his response that "*the CEO was cautioned to include only small extracts of the findings rather than details in their entirety*". However, this by itself does not amount to a direction or express authorisation to publish.

38. The Panel does not have enough evidence to conclude, to the required standard, that:

- a. the Article was produced by Cr Rayner;
- b. the relevant information regarding the Minor Breach Matters was actually disclosed by Cr Rayner; or
- c. that Cr Rayner is vicariously liable for the publication of the information.

39. This element is not met.

The disclosed information was information Cr Rayner acquired:

- from a confidential document; or
- at a council or committee meeting (or part thereof) that was closed to members of the public under section 5.23(2) of the Act

40. In order for this element to be met the relevant information must be sourced or derived from either:



- a. a council or committee meeting (or part of one) that was closed to the public; or
 - b. a “*confidential document*” – which is specifically defined in the Regulations as a document marked by the CEO to clearly show that the information in the document is not to be disclosed.
41. The Complainant alleges that the information pertaining to each of the Minor Breach Matters was “privileged information” until the matters were finalised and concluded.
42. Although the contents of the relevant Standard Panel findings may be sensitive or contain reference to confidential information, a decision by the Standard’s Panel simply does not meet the strict requirements under the Act to be considered “confidential” pursuant to regulation 6.
43. This element is not met.
- Cr Rayner did not derive the disclosed information from a non-confidential document, or the disclosure did not occur in any of the ways identified in regulation 6(3)
44. As the above element cannot be met, this element does not need to be discussed.
- Conclusion
45. Given the above, the elements required to find a breach of regulation 6 of the Regulations have not been met.

Regulation 7 – Allegation 4, Allegation 5 and Allegation 6

46. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Rayner was an elected member at the time of the alleged breach and the time of the determination; and
 - b. Cr Rayner made use of his office as Council member of the Shire;
 - c. when viewed objectively, such use was an improper use of Cr Rayner’s office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Cr Rayner engaged in the conduct in the belief that detriment would be suffered by another person.

Cr Rayner was an Elected Member at the relevant times

47. Cr Rayner was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

Cr Rayner made use of his office as Council Member of the Shire

48. As noted above in paragraphs 31 to 38 inclusive, the Panel considers that it does not have sufficient evidence that Cr Rayner was personally responsible for the publication of the Article.
49. As such, the Panel cannot find, to the required standard, the Article was published by Cr Rayner in his capacity as a council member.



50. This element is not met.

Cr Rayner's use was improper

51. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom⁹. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
52. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent¹⁰.
53. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
54. The Complainant alleges that the Article was improper as the same disclosed elements of the Minor Breach Matter before the same could properly said to be concluded.
55. The relevant sections of the Act that were current at the time of the breach as to confidentiality of minor breach proceedings are as follows:

" 5.123. Confidentiality

(1) *A person who —*

- (a) *makes a complaint during a campaign period; or*
- (b) *performs a function under this Act in respect of a complaint made during a campaign period; or*
- (c) *as a result of anything done under this Division, becomes aware of any detail of a complaint made during a campaign period knowing it to be relevant to the complaint,*

and during the campaign period discloses information that the complaint has been made, or discloses information of any detail of the complaint, commits an offence.

(2) *It is not an offence against subsection (1) to disclose information if —*

- (a) *the disclosure is made for the purposes of investigating or dealing with the complaint; or*
- (b) *the disclosure is required under a written law; or*
- (c) *the complaint to which the information relates is a complaint of a minor breach and a standards panel has dealt with the breach under section 5.110(6)(b) or (c); or*
- (d) *the complaint to which the information relates is a complaint of a serious breach and the State Administrative Tribunal has made an order under section 5.117(1).*

(3) *In this section —*

⁹ Complaint of Minor Breach No. SP 3 of 2013

¹⁰ *Chew v R* [1992] HCA 18



campaign period means the period beginning on the first day of the period referred to in section 4.49(a) and ending on election day as that term is defined in section 4.1.

4.49. How to make an effective nomination

The nomination of a candidate is only effective if —

(a) a completed nomination paper, in the prescribed form, is received by the returning officer at the nomination place (by delivery, post, facsimile or other prescribed means) within the period beginning on the 44th day before election day and ending at 4 p.m. on the 37th day before election day (**the close of nominations**); and.....”

56. There was no other provision in the Act or Regulations dealing the confidentiality of complaints outside of a campaign period at the time of the breach.
57. This year the “campaign period” is from 5 September 2019 through to 19 October 2019.
58. As such, no breach of the Act has occurred in respect to the disclosure of the Minor Breach Matters.
59. The Panel further notes that the Complainant’s assertions in respect to the timing of when matter is considered finalised (for the purposes of disclosure) are flawed. Pursuant to section 5.110(6)(b) or (c) (as current at the time of the relevant breach) a matter is considered “dealt with” when one or more of the available sanctions are imposed by the Panel.
60. In respect to the letter dated 24 February 2019 the same includes the following comments:

“ Please note that while there is no impediment of the outcome of this matter, the ordinary principles of defamation as modified by the Defamation Act 2005, May apply to the further release or publication of all or a part of the attached Finding and Reasons for finding.”
61. The Complainant does not allege there was any defamation, just that the existence and contents of the Minor breach Matters should have been kept confidential until Cr Bell’s opportunity to appeal the same had expired.
62. The Panel does not find this argument compelling. Although, it may have been more courteous to permit Cr Bell time to lodge an appeal the Panel does not consider early the disclosure amounts to being improper conduct.
63. Cr Bell did not, in fact, lodge any appeal.
64. The Panel finds that it is more likely than not that the Article was not improper in that it was:
 - a. not a breach of the Act or Regulations;
 - b. not of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
 - c. not deserving of a penalty.
65. This element is not met.

Cr Rayner intended detriment to be suffered by another person



66. “Detriment” means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
67. It is not necessary to find whether any detriment was actually suffered¹¹, but an intent to cause such detriment must be established.
68. It is alleged by the Complainant that the purpose of publishing Article was to denigrate Cr Bell in the eyes of the Toodyay community and fellow council members.
69. Cr Rayner asserts that the Article was published because Cr Bell continued to publicly publish further information which was untrue or misleading. The intent of the Article was to make to community aware that all information that was published may not be reliable or correct.
70. The Panel considers that this asserted motivation is accurate, and the intent of the Article was to inform the community of the accurate facts.
71. As such, the Panel finds that it is more likely than not that the Article was not intended to cause damage or detriment to Cr Bell or any other party.
72. This element is not met.

Conclusion

73. Given the above, the elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met.

Regulation 8 – Allegation 3

74. To find a breach of Regulation 8 the Panel must be satisfied that it is more likely than it is not that:
 - a. Cr Rayner directly or indirectly used his or her local government’s resources;
 - b. Cr Rayner used such resources for an identified electoral purpose or any other purpose; and
 - c. such purpose was not authorised under the Act or by the council or the Shire’s CEO.

Cr Rayner directly or indirectly used his local government’s resources

75. The term ‘resource’ is not defined in the Regulations or in the Act. However, the term ‘local government property’ is defined in section 1.4 of the Act to mean ‘anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government’.....The noun ‘resource’ is relevantly defined in The Macquarie Dictionary (5th ed, 2009) at page 1408 as ‘(Often plural) Money or any property which can be converted into money; assets’. The noun ‘asset’ is defined in The Macquarie Dictionary as ‘a useful thing or quality’ and ‘an item of property; an economic resource’. ¹²
76. Although it would be possible for the Shire of Toodyay Community Newsletter to be considered a “resource” of the Shire as it is under the care and control of the Shire, due to the Panel’s finding above that Cr Rayner was not personally responsible for

¹¹ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]

¹² *Yates and Local Government Standards Panel* [2012] WASAT 23 at [30] – [37]



the inclusion of the Article in the Shire of Toodyay Community Newsletter, it cannot properly be said he was “using” such resource.

77. As such, the Panel finds to the required standard that Cr Rayner was not “using” any resource of the Shire.
78. The Panel considers that this element cannot be met.

The resources were used for an identified electoral purpose or any other purpose AND such purpose was not authorised under the Act or by the council or the Shire’s CEO

79. The Panel considers that, even if the Article constituted “use” of a local government resource, such use was clearly expressly authorised but the CEO.
80. This element cannot be met.

Conclusion

81. The elements required to find a breach of regulation 8 of the Regulations have not been met.

Panel’s Findings

82. In respect to Allegation 1 Cr Rayner did not breach Regulation 6 of the Regulations and therefore did not commit a minor breach.
83. In respect to Allegation 2 Cr Rayner did not breach Regulation 6 of the Regulations and therefore did not commit a minor breach.
84. In respect to Allegation 3 Cr Rayner did not breach Regulation 6 of the Regulations and therefore did not commit a minor breach.
85. In respect to Allegation 4 Cr Rayner did not breach Regulation 7 of the Regulations and therefore did not commit a minor breach.
86. In respect to Allegation 5 Cr Rayner did not breach Regulation 7 of the Regulations and therefore did not commit a minor breach.
87. In respect to Allegation 6 Cr Rayner did not breach Regulation 7 of the Regulations and therefore did not commit a minor breach.
88. In respect to Allegation 7 Cr Rayner did not breach Regulation 8 of the Regulations and therefore did not commit a minor breach.
89. In respect to Allegation 8 Cr Rayner did not breach Regulation 8 of the Regulations and therefore did not commit a minor breach.
90. In respect to Allegation 9 Cr Rayner did not breach Regulation 8 of the Regulations and therefore did not commit a minor breach.



A handwritten signature in blue ink, appearing to read 'Mick Connolly', written above a horizontal line.

Mick Connolly (Presiding Member)

A handwritten signature in black ink, appearing to read 'Emma Power', written above a horizontal line.

Emma Power (Member)

A handwritten signature in black ink, appearing to read 'Rebecca Aubrey', written above a horizontal line.

Rebecca Aubrey (Deputy Member)

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Department of
**Local Government, Sport
and Cultural Industries**

Our ref T10-18#002
Enquiries Standards Panel Executive Officer
Phone (08) 6551 4820
Email minorbreachcomplaints@dlgsc.wa.gov.au

Cr Benjamin Bell
PO Box 1195
TOODYAY WA 6566

cr.bell@toodyay.wa.gov.au

Dear Cr Bell

**NOTICE OF FINDING AND REASONS FOR FINDING
COMPLAINT OF MINOR BREACH No. SP 2019-058, SP 2019-059, SP 2019-060**

I refer to the above three complaints of a Minor Breach received on 11 June 2019 alleging Cr Brian Rayner, as an elected member of the Shire of Toodyay breached the *Local Government (Rules of Conduct) Regulations 2007*.

At its meeting of 10 September 2019, the Local Government Standards Panel (the Panel) considered these matters and found no breach was committed.

Attached is a copy of the Panel's *Finding and Reasons for Finding*.

Please note, section 5.123 of the *Local Government Act 1995* includes confidentiality provisions regarding the disclosure of information relating to a complaint of minor breach.

Should you require further information in relation to this matter please contact the Executive Officer to the Panel, Department of Local Government, Sport and Cultural Industries via the details listed above.

Yours sincerely

Donna Kennedy
A/MANAGER LEGISLATION AND REGULATORY SUPPORT

17 October 2019

enc

cc: Mr Stan Scott – CEO/Complaints Officer, Shire of Toodyay



Local Government Standards Panel

Complaint Number	SP 2019-058; SP 2019-059; SP 2019-060
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Benjamin Bell
Respondent	Councillor Brian Rayner
Local Government	Shire of Toodyay
Regulation	Regulation 7 Regulation 8 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Ms Rebecca Aubrey (Deputy Member) Mrs Emma Power (Member)
Heard	10 September 2019 Determined on the documents
Finding	No Breach of Regulation 7 or Regulation 8

FINDING AND REASONS FOR FINDING

Delivered 15 October 2019

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.

Summary of the Panel's decision

1. On 10 September 2019, the Panel found that Councillor Brian Rayner a councillor of the Shire of Toodyay ("**the Shire**") did not commit any minor breach pursuant to the Local Government Act 1995 (WA) ("**the Act**"), regulation 7 of the Local Government (Rules of Conduct) Regulations 2007 ("**the Regulations**") or regulation 8 of the Regulations when in the May 2019 Toodyay Community Newsletter, certain sanction decisions imposed by the Standards Panel against Cr Bell were published as specified in paragraph 13 and paragraph 17 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

⁴ Briginshaw v Briginshaw (1938) 60 CLR 336

⁵ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁶ Section 8(6) of Schedule 5.1 of the Act

Jurisdiction and Procedural Fairness

11. On 11 June 2019 the Panel received three emails from Mr Stan Scott acting as complaints officer of the Shire (**“the Complaints Officer”**). The same enclosed three Complaint of Minor Breach Forms each dated 3 June 2018.
12. As each of the three complaints:
 - a. relate to the publication of the same article in the May edition of the Toodyay Community Newsletter; and
 - b. deal with substantially the same conduct in each case,the Panel considered it proper to combine the decisions into these findings.
13. In his complaints, Cr Bell alleges that due to the inclusion in the May 2019 edition of the Toodyay Community Newsletter of reference to or reproduction of certain sanction decisions imposed by the Standards Panel against Cr Bell (as reproduced in paragraph 16 below) in respect to SP 2019-052, SP 2019-053 and SP 2019-054 Cr Rayner has allegedly breached:
 - a. regulation 7(1)(b) of the Regulations by improperly publishing such information for the purpose of denigrating and humiliating Cr Rayner in the eyes of the Toodyay community; and
 - b. regulation 8 of the Regulations by using an official Shire of Toodyay publication to seek to cause, what any reasonable person would consider, unwarranted offence or embarrassment to Cr Rayner,

(together **“the Complaints”**).
14. The Panel convened 10 September 2019 to consider the Complaint.
15. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that, based on information published on the Western Australian Electoral Commission’s website, Cr Rayner was:
 - i. last elected to the Council of the Shire in October 2017 for a term expiring in October 2021;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 10 September 2019;
 - b. was satisfied the Complaint was made within two years after the alleged breach occurred⁷;
 - c. was satisfied that the Shire’s Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
 - d. was satisfied the Department had provided procedural fairness to Cr Rayner; and
 - e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



16. The relevant articles the subject of the Complaints is contained in the February edition of the Toodyay Community Newsletter published on 9 May 2019 as follows:

**LOCAL GOVERNMENT STANDARDS PANEL
SANCTION ORDERS**


As previously reported in the February edition of the Toodyay Community Newsletter, Cr Benjamin Bell has been found by the Local Government Standards Panel to have committed 6 breaches of the *Local Government (Rules of Conduct) Regulations 2007*.

Recently, the Shire received notification of the penalties handed down to Cr Bell for those breaches, and those penalties are:

1. SP 52 of 2018 - Cr Bell to publicly apologise;
2. SP 53 of 2018 - Cr Bell to publicly apologise;
3. SP 54 of 2018 - Cr Bell be publicly censured;
4. SP 65 of 2018 - Cr Bell be publicly censured and publicly apologise;
5. SP 2018-083 - Cr Bell be publicly censured, publicly apologise and undertake training; and
6. SP 2018-092 - Cr Bell be publicly censured and publicly apologise.

Cr Bell's Public Apology for SP 52 of 2018 will form part of the Agenda for the next Ordinary Council Meeting to be held on 28 May 2019. Public Censures will also be published in the Toodyay Herald and West Australian Newspaper as outlined in each Order. All documents associated with the findings of the Standards Panel may be found on the following link: <https://www.dlgsc.wa.gov.au/localgovernment/Pages/LG-MinorBreaches.aspx>

("the Orders").

 Government of Western Australia
Local Government Standards Panel

NOTICE OF PUBLIC CENSURE

The Local Government Standards Panel has found that Councillor Benjamin Bell, a Councillor of the Shire of Toodyay, breached :

(a) regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* by publishing a Facebook post on 18 May 2018 relating to the inclusion of questions in an Ordinary Council Meeting and Mr Stan Scott the Chief Executive Officer of the Shire and one of Cr Bell's fellow Councillors.

In engaging in this conduct, Councillor Bell made improper use of his office as a council member.

The Panel censures Councillor Bell for breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)*.

**LOCAL GOVERNMENT
STANDARDS PANEL**

("the Censure")

17. The Complainant makes the following particular arguments and allegations which are taken from each of the Complaints:



- a. Cr Brian Rayner is the President of the Shire of Toodyay. Under the Local Government Act 1995, it is the President that speaks on behalf of the local government;
- b. the Act allows for the CEO to speak on behalf of Council with the permission of the President;
- c. on 22 January 2019, the Toodyay Council passed a censure motion against the President for publishing, or allowing the publishing, of false and misleading information in the January 2019 edition of the Toodyay Community Newsletter and this censure motion passed 5/4. The President voted in favour of the censure motion;
- d. this is the clearest indication possible that the President's own position is that he, as President, is responsible for the content of the Toodyay Community Newsletter;
- e. the passing of the censure motion confirms that the Council body holds the same position as the President;
- f. the May 2019 edition of the Toodyay Community Newsletter contained a section titled "Notice of Public Censure" (the Censure) and "Local Government Standards Panel Sanction Orders" (the Orders);
- g. the Notice detailed the outcome of various Minor Breaches however, the Complaint relates to SP 52 of 2018, SP 53 of 2018 and SP 54 of 2018.
- h. in relation to SP 52 of 2018:
 - i. the sanction imposed by the Standards Panel was that Cr Bell was required to apologise to the CEO at the Shire's first ordinary council meeting after the expiration of 28 days from the date of service of the order;
 - ii. the first ordinary council meeting that occurred after this was the Ordinary Council Meeting of 28 May 2019 which took place 19 days after the publication of the Notice;
 - iii. only if Cr Bell did not (or was unable to) comply with the Panel's requirement in the relevant timeframe was the President permitted under the Order to publish my apology in the Toodyay Herald Newspaper; and
 - iv. the text of this apology was provided by the Standards Panel as part of the Orders;
- i. in relation to SP 53 of 2019:
 - i. the sanction imposed by the Standards Panel was that Cr Bell was required to apologise to the CEO at the Shire's first ordinary council meeting after the expiration of 28 days from the date of service of the order;
 - ii. the first ordinary council meeting that occurred after this was the Ordinary Council Meeting of 28 May 2019 which took place 19 days after the publication of the Notice;
 - iii. only if Cr Bell did not (or was unable to) comply with the Panel's requirement in the relevant timeframe was the President permitted under the Order to publish my apology in the Toodyay Herald Newspaper;
 - iv. the sanction imposed by the Standards Panel relating to Minor Breach SP 53 of 2018 does not include any requirement for the matter to be published in any official Shire of Toodyay publication, brochure or similar; and



- v. the text of this apology was provided by the Standards Panel as part of the Orders;
 - j. in relation to SP 54 of 2018:
 - i. the sanction imposed by the Standards Panel relating to Minor Breach was that the CEO of the Shire of Toodyay arrange for a Notice of Public Censure to be published in The West Australian Newspaper and the Toodyay Herald newspaper;
 - ii. the sanction imposed by the Standards Panel relating to Minor Breach SP 54 of 2018 does not include any requirement for the matter or censure to be published in any official Shire of Toodyay publication, brochure or similar;
 - iii. the publication of the Censure was done solely for the purpose of denigrating and humiliating Cr Bell in the eyes of the Toodyay community and Cr Rayner has clearly breached Regulation 7; and
 - iv. the fact that Cr Rayner used an official Shire of Toodyay publication to seek to cause, what any reasonable person would consider, unwarranted offence or embarrassment to Cr Bell means that Cr Rayner has also clearly breached Regulation 8;
 - k. the Toodyay Community Newsletter is an official Shire of Toodyay publication;
 - l. there is no Toodyay Local Law, Shire of Toodyay policy or similar that requires the President to:
 - i. publish, or make reference to any of the orders or sanctions imposed by the Standards Panel, in the Toodyay Community Newsletter; or
 - ii. publish the Notice of Public Censure in the Toodyay Community Newsletter.
 - m. the publishing of the Notice of Public Censure in the Toodyay Community Newsletter is, therefore, inconsistent with the Orders set down by the Standards Panel;
 - n. Cr Rayner failed to publish any information regarding his own censure or breach of the Code of Conduct in the Toodyay Community Newsletter. Therefore, the publication was clearly arbitrary;
 - o. the arbitrary nature of the decisions made by the President in the way that he publishes various breaches / Orders / censures depending on the person that has committed the breach is obviously, in itself, in direct breach of the Regulations and the Shire of Toodyay's Code of Conduct; and
 - p. the failure of Cr Rayner to follow due process with regards to the Standards Panel's various Orders is a breach of the Regulations and the Shire of Toodyay's Code of Conduct, as it appears solely motivated with the intention of seeking to cause detriment to Cr Bell.
18. With the Complaints, the Complainant also provided:
- a. a copy of the Minutes of the Ordinary Council Meeting of 22 January 2019;
 - b. a copy of the February edition of the Toodyay Community Newsletter;
 - c. copy of Sanction Decision and reasons for Decision for SP 52 of 2019;
 - d. copy of Sanction Decision and reasons for Decision for SP 53 of 2019;
 - e. copy of Sanction Decision and reasons for Decision for SP 54 of 2019;
 - f. extract from the Minutes of the Ordinary Council Meeting of 26 February 2019.



Respondent's Response

19. By an email dated 26 August 2019 Cr Rayner provided a response to the Complaint.
20. Cr Rayner denies that he has committed any minor breach.
21. Cr Rayner makes the following comments and arguments in respect to the allegations of Minor Breach:
 - a. the censure was applied by the Standards Panel and ordered by the Standards Panel to be published in the Toodyay Herald and the Western Australian Newspapers;
 - b. there was nothing in the orders of the Standards Panel that would prevent the censure from being published in the official newsletter of the Shire of Toodyay;
 - c. the decision to publish the Censure in the newsletter was made by the CEO;
 - d. there is no breach of Regulation 7 as firstly Cr Rayner was not responsible for publishing the newsletter and secondly it did not advantage or disadvantage anyone. It was simply intended to circulate the findings of the Standards Panel and protect the reputation of the Local Government;
 - e. there is no breach of Regulation 8 as the Shire newsletter is an appropriate vehicle for circulating correct information of interest to the public, and the use of resources was, in any event, undertaken and authorised by the CEO; and
 - f. please note there is no suggestion in this response that the CEO has done anything wrong.

Regulation 7

22. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

"7. Securing personal advantage or disadvantaging others

- (1) *A person who is a council member must not make improper use of the person's office as a council member —*
 - (a) *to gain directly or indirectly an advantage for the person or any other person; or*
 - (b) *to cause detriment to the local government or any other person.*
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

23. It is not alleged that Cr Rayner or any other person received any advantage, so the Panel has only considered regulation 7(1)(b) in this Complaint.

Regulation 8

24. Regulation 8 prohibits the use of government resources in certain circumstances and provides as follows:

"8. Misuse of local government resources



A person who is a council member must not either directly or indirectly use the resources of a local government —

- (a) for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918; or*
 - (b) for any other purpose,*
- unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.”*

Panel’s Consideration

Regulation 7

25. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Rayner was an elected member at the time of the alleged breach and the time of the determination; and
 - b. Cr Rayner made use of his office as Council member of the Shire;
 - c. when viewed objectively, such use was an improper use of Cr Rayner’s office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Cr Rayner engaged in the conduct in the belief that detriment would be suffered by another person.

Cr Rayner was an Elected Member at the relevant times

26. Cr Rayner was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

Cr Rayner made use of his office as Council Member of the Shire

27. The Complainant argues that Cr Rayner has acknowledged that he is responsible for the contents of the Toodyay Community Newsletter by his previous actions and that under the Act, it is the President that speaks on behalf of the local government.
28. Cr Rayner asserts that the CEO was responsible for publishing the Notice and Censure.
29. The Panel notes that the Shire of Toodyay Community Newsletter is published on behalf of the Toodyay Shire Council with the authority of the CEO.
30. The Shire of Toodyay Community Newsletter contains a number of items, including an article entitled “President’s Pen”, public notices, general interest news, community announcements and advertising. No article or item except for “President’s Pen” is specifically attributed to Cr Rayner.
31. Although the Cr Rayner may have previously accepted a censure by the Council in respect to the publication of certain information in the Toodyay Community



- Newsletter, the Panel does not find the arguments made by the Complainant, that this constitutes proof of Cr Rayner's acceptance of responsibility, particularly compelling. Firstly, such matter related to incorrect information being published, not the provision of accurate information and, secondly, the Panel has not been provided with the particular context of such occurrence and Cr Rayner's particular role in such publication.
32. Further, the Panel is of the opinion that given the diverse range of items set out in the Shire of Toodyay Community Newsletter, it would not be in the public interest to make a finding that the President of the Shire was personally responsible for each and every item in such newsletter.
33. As such, the Panel cannot find, to the required standard, the Notice or the Censure was published by Cr Rayner in his capacity as a council member.
34. This element is not met.
- Cr Rayner's use was improper
35. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom⁹. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
36. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent¹⁰.
37. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
38. The Complainant argues that the publication of the Notice and the Censure is a breach of the Regulations and the Shire of Toodyay's Code of Conduct, and implies that the conduct was improper as:
- Cr Rayner chose to arbitrarily publish Cr Bell's sanctions, but not Cr Rayner's own breaches and censures; and
 - the same were published with the intention of seeking to cause detriment to Cr Bell.
39. The Panel notes that at the time the Censure and Notice was published the relevant sanctions had been formally passed down by the Panel. The Panel notes that such sanctions were accepted, and not appealed, by Cr Bell.
40. Certain of the Complainant's arguments in respect to the nature of the censure against Cr Rayner are misguided as dealt with below.
41. The nature of a censure given by the Council and a formal censure given by the Panel are very different. A Censure given by the Panel is a statutory sanction that requires consideration by a formal panel appointed by the Act and set elements to be met to a required legal standard.
42. In addition, a finding by a compliance officer of a breach of the Shire of Toodyay's Code of Conduct, is very different from the Panel finding a breach and imposing a sanction pursuant to the Act and Regulations. This is simply not of the same gravity.

⁹ Complaint of Minor Breach No. SP 3 of 2013

¹⁰ *Chew v R* [1992] HCA 18



43. The argument that the Panel's orders do not include any requirement for the matter to be published in any official Shire of Toodyay publication, brochure or similar is illogical. Neither did the orders contain any prohibition on doing so.
44. The Complainant also asserts the apology was published before the timeframe in which Cr Bell was required to make such apology. However, the Notice shows that the apology itself was not reproduced, only referred to.
45. In addition, the Panel cannot properly find that the mere fact the sanctions were made public, or the Censure additionally reproduced, improper. The sanction of Elected Members for a minor breach is intended to be public in nature and it is in the public interest for the same to be widely available to the public.
46. The Panel finds that it is more likely than not that the Notice and Censure was not improper in that the same:
 - a. was simply a confirmation of already public sanctions;
 - b. was not of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
 - c. is not deserving of a penalty.
47. This element is not met.

Cr Rayner intended detriment to be suffered by another person

48. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
49. It is not necessary to find whether any detriment was actually suffered¹¹, but an intent to cause such detriment must be established.
50. It is alleged by the Complainant that the purpose of publishing Notice and Censure was to denigrate Cr Bell in the eyes of the Toodyay community and fellow council members.
51. Cr Rayner asserts that the Notice and Censure were intended to circulate the findings of the Standards Panel and protect the reputation of the Local Government.
52. The Panel considers that this asserted motivation is accurate, and the intent of the Notice was to inform the community of the sanctions imposed by the Panel.
53. The Panel finds that any embarrassment Cr Bell have felt was justified in the circumstance. The Panel finds this this does not flow directly from the publication of the Notice and Censure, but from the conduct that was engaged in by Cr Bell and the fact a minor breach finding was made and a sanction imposed.
54. As such, the Panel finds that it is more likely than not that the Notice was not intended to cause damage or detriment to Cr Bell or any other party.
55. This element is not met.

Conclusion

56. Given the above, the elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met.

¹¹ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



Regulation 8

57. To find a breach of Regulation 8 the Panel must be satisfied that it is more likely than it is not that:
- Cr Rayner directly or indirectly used his or her local government's resources;
 - Cr Rayner used such resources for an identified electoral purpose or any other purpose; and
 - such purpose was not authorised under the Act or by the council or the Shire's CEO.

Cr Rayner directly or indirectly used his local government's resources

58. The term 'resource' is not defined in the Regulations or in the Act. However, the term 'local government property' is defined in section 1.4 of the Act to mean 'anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government'.....The noun 'resource' is relevantly defined in The Macquarie Dictionary (5th ed, 2009) at page 1408 as '(Often plural) Money or any property which can be converted into money; assets'. The noun 'asset' is defined in The Macquarie Dictionary as 'a useful thing or quality' and 'an item of property; an economic resource'.¹²
59. Although it would be possible for the Shire of Toodyay Community Newsletter to be considered a "resource" of the Shire as it is under the care and control of the Shire, due to the Panel's finding above in paragraphs 27 to 33 inclusive, that Cr Rayner was not personally responsible for the inclusion of the Notice and Censure in the Shire of Toodyay Community Newsletter, it cannot properly be said he was "using" such resource.
60. As such, the Panel finds to the required standard that Cr Rayner was not "using" any resource of the Shire.
61. The Panel considers that this element cannot be met.

The resources were used for an identified electoral purpose or any other purpose AND such purpose was not authorised under the Act or by the council or the Shire's CEO

62. The Panel considers that, even if the publication of the Notice and Censure constituted "use" of a local government resource, such use was clearly expressly authorised but the CEO.
63. This element is not met.

Conclusion

64. The elements required to find a breach of regulation 8 of the Regulations have not been met.

Panel's Findings

65. Cr Rayner did not breach Regulation 7 of the Regulations and therefore did not commit a minor breach.

¹² *Yates and Local Government Standards Panel [2012] WASAT 23 at [30] – [37]*



66. Cr Rayner did not breach Regulation 8 of the Regulations and therefore did not commit a minor breach.

A handwritten signature in blue ink, appearing to read 'Mick Connolly'.

Mick Connolly (Presiding Member)

A handwritten signature in black ink, appearing to read 'Emma Power'.

Emma Power (Member)

A handwritten signature in black ink, appearing to read 'Rebecca Aubrey'.

Rebecca Aubrey (Deputy Member)

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Department of
**Local Government, Sport
and Cultural Industries**

Our ref T10-18#002
Enquiries Standards Panel Executive Officer
Phone (08) 6551 4820
Email minorbreachcomplaints@dlgsc.wa.gov.au

Cr Benjamin Bell
PO Box 1195
TOODYAY WA 6566

cr.bell@toodyay.wa.gov.au

Dear Cr Bell

**NOTICE OF FINDING AND REASONS FOR FINDING
COMPLAINT OF MINOR BREACH No. SP 2019-075**

I refer to the complaint of a Minor Breach received on 6 August 2019 alleging Cr Brian Rayner, as an elected member of the Shire of Toodyay breached the *Local Government (Rules of Conduct) Regulations 2007*.

At its meeting of 10 September 2019, the Local Government Standards Panel (the Panel) considered this matter and found no breach was committed.

Attached is a copy of the Panel's *Finding and Reasons for Finding*.

Please note, section 5.123 of the *Local Government Act 1995* includes confidentiality provisions regarding the disclosure of information relating to a complaint of minor breach.

Should you require further information in relation to this matter please contact the Executive Officer to the Panel, Department of Local Government, Sport and Cultural Industries via the details listed above.

Yours sincerely

Donna Kennedy
A/MANAGER LEGISLATION AND REGULATORY SUPPORT

17 October 2019

enc

cc: Mr Stan Scott – CEO/Complaints Officer, Shire of Toodyay



Local Government Standards Panel

Complaint Number	SP 2019-075
Legislation	<i>Local Government Act 1995</i>
Complainant	Cr Benjamin Bell
Respondent	Councillor Brian Rayner
Local Government	Shire of Toodyay
Regulation	Regulation 4 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Ms Rebecca Aubrey (Deputy Member) Mrs Emma Power (Member)
Heard	10 September 2019 Determined on the documents
Finding	No Breach

FINDING AND REASONS FOR FINDING

Delivered 15 October 2019

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.

Summary of the Panel's decision

1. On 10 September 2019, the Panel found that Cr Rayner a councillor of the Shire of Toodyay ("**the Shire**"), did not commit a minor breach pursuant to the Local Government Act 1995 (WA) ("**the Act**") regulation 4 of the Local Government (Rules of Conduct) Regulations 2007 ("**the Regulations**") when he allegedly reopened discussions into two separate Council decisions in breach of Part 7.14 of the Shire of Toodyay's Standing Orders Local Law 2008 ("**the Local Law**") as set out in paragraph 14 and paragraph 18 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Regulation 4

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

⁴ Briginshaw v Briginshaw (1938) 60 CLR 336

⁵ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁶ Section 8(6) of Schedule 5.1 of the Act



11. Regulation 4 reads:

“(1) *In this regulation —*

“**local law as to conduct**” means a local law relating to conduct of people at council or committee meetings.

(2) *The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.”*

12. Section 5.105(1)(b) of the Act states as follows:

“A council member commits a minor breach if he or she contravenes

...
(b) a local law under this Act, contravention of which the regulations specify to be a minor breach.”

Jurisdiction and Procedural Fairness

13. On 6 August 2019 the Panel received an email on behalf of Mr Stan Scott, acting as complaints officer of the Shire (“**the Complaints Officer**”). The same enclosed a Complaint of Minor Breach Form (with attachments) dated 28th July 2019.

14. In his complaint Cr Bell alleges that Cr Rayner has breached regulation 4 when, at the Ordinary Council Meeting of the Shire of 28 May 2019 (“**the OCM**”), Cr Rayner (in his capacity as Presiding Member):

a. reopened discussion on Council Resolution number 107/05/19; and

b. reopened discussion of Council Resolution number 63/03/19,

as set out in paragraph 18 below.

15. The Panel convened on 10 September 2019 to consider the Complaint.

16. The Panel:

a. accepted the advice of the Department of Local Government, Sport and Cultural Industries (“**the Department**”) that, based on information published on the Western Australian Electoral Commission’s website, Cr Rayner was:

i. last elected to the Council of the Shire in October 2017 for a term expiring in October 2021;

ii. a Councillor at the time of the alleged breach; and

iii. a Councillor when the Panel met on 10 September 2019;

b. was satisfied the Complaint was made within two years after the alleged breach occurred⁷;

c. was satisfied that the Shire’s Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;

d. was satisfied the Department had provided procedural fairness to Cr Rayner; and

e. found it had jurisdiction to consider the Complaint.

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



The Specifics of the Complaint

17. The Shire operates meetings in accordance with Toodyay's Standing Orders Local Law 2008 ("**the Local Law**"). The relevant sections for the purpose of the Complaint are as follows:

7.14 No reopening of discussion

A Member is not to reopen discussion on any Council decision, except to move that the decision be revoked or changed (see Part 15).

15.2 Limitations on powers to revoke or change decisions

- (1) *Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision:*

(a) *where, at the time the motion is moved or notice is given, any action has been taken under clause 15.3 to implement the decision; or*

(b) *where the decision is procedural in its form or effect.*

- (2) *The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.*

18. The Complainant makes the following arguments and assertions in relation to the Complaint:
- a. during the 28 May 2019 OCM, Cr Rayner reopened discussions into two separate Council decisions being Council Resolution number 107/05/19 and Council Resolution number 69/03/19;
 - b. this was a breach of Part 7.14 and Part 15.2 of the Local Law pertaining to the Conduct of Members;
 - c. at the OCM, Cr Rayner, as the Presiding Member, reopened discussion on Council Resolution number 107/05/19 by approving Cr Dow, Cr Greenway and Cr Welburn to move a motion that Council revoke Council Resolution number 107/05/19;
 - d. Council Resolution number 107/05/19 was a decision previously carried by Council in respect to the appointment of the Interim Chief Executive Officer ("**CEO**"). This resolution had clearly and undisputedly also been implemented as Cr Rayner, himself, states in a report to Council that he and the Deputy Shire President had implemented the decision of Council and taken action to give effect to the same;
 - e. no "valid notice of revocation motion" during the time Council Resolution number 107/05/19 was authorised and the decision implemented;
 - f. in accordance with Part 15.2 of the Local Law, Council was not permitted to consider any motion to revoke or change Council's decision unless that new motion is accompanied by a written statement of the legal and financial consequences of carrying that motion;
 - g. the relevant motion by Cr Dow was not so accompanied and therefore failed to comply with Local Law and should not have been accepted by the Presiding Member;



- h. Cr Rayner, as Presiding Member, therefore was not permitted to reopen discussion of Council decision Resolution number 107/05/19 in the manner in which he did at the OCM;
 - i. this was a breach of Regulation 4 of the Local Government (Rules of Conduct Regulations);
 - j. at the same OCM, Cr Rayner, as the Presiding Member, reopened discussion on Council Resolution number 63/03/19 by approving Cr Dow to move a motion and debate the matter that Council change Council Resolution number 63/03/19;
 - k. this was a breach of Part 7.14 and Part 15.2 of the Local Law pertaining to the Conduct of Members;
 - l. Council Resolution number 69/03/19 was a decision carried at a Special Meeting of Council held on 26 March 2019 in respect to the employment of the current Chief Executive Officer and recruitment of a new Chief Executive Officer of the Shire;
 - m. Cr Rayner had communicated notice of the decision of Council Resolution number 69/03/19 to the person affected and the Deputy Shire President also confirmed that Council had communicated notice of the decision to the person affected;
 - n. Council Resolution number 69/03/19 quite clearly and, without any doubt, had been documented as being implemented;
 - o. no “valid notice of revocation motion” existed during the time Council Resolution number 69/03/19 was authorised and the decision implemented;
 - p. in accordance with Part 15.2 of the Local Law, Council was not permitted to consider any motion to revoke or change Council’s decision unless that new motion is accompanied by a written statement of the legal and financial consequences of carrying that motion,
 - q. the relevant motion by Cr Dow had the effect of changing Council Resolution number 69/03/19 was not so accompanied and therefore failed to comply with Local Law and should not have been accepted by the Presiding Member;
 - r. Cr Dow’s motion, therefore, failed to comply with Shire of Toodyay’s Standing Orders Local Law 2008 and should not have been accepted by the Presiding Member;
 - s. by reopening discussion of Council Resolution number 69/03/19 at the 28 May 2019 Ordinary Council Meeting, Cr Rayner allowed Council to discuss changing a decision of Council in direct breach of Part 15.2 of the Local Law which is not; and
 - t. Cr Rayner has therefore breached Part 7.14 of Local Law relating to conduct at a meeting.
19. The Complainant also provided:
- a. a more detailed explanation of the Council Resolution number 107/05/19 and number 69/03/19;
 - b. a copy of the Local Law;
 - c. extracts from the Minutes of the OCM – 28 May 2019;



- d. extracts from the Minutes from the Special Council Meeting of the 14 May 2019;
- e. extracts from the Minutes from the Ordinary Council Meeting of the 26 March 2019;
- f. email dated 27 March 2019 from Cr Chitty to various parties regarding agenda briefings;
- g. copy Toodyay Community Newsletter - Vol. 3 Issue 4 – April 2019; and
- h. extracts of the unconfirmed Minutes from the Ordinary Council Meeting of the 23 April 2019.

Respondent's Response

- 20. By an email dated 26 August 2019, Cr Rayner provided a response to the Complaint.
- 21. Cr Rayner denies that he has committed any minor breach.
- 22. Cr Rayner makes the following particular comments and arguments in respect to the allegations of minor breach:
 - a. the intent of Regulation 4 is to ensure that when Councillors misbehave at a meeting and fail to apologise or otherwise rectify that behaviour that there is some consequence. It is not intended to review rulings of the presiding member after the meeting has concluded;
 - b. the meeting Cr Bell is referring to was for Council to consider whether to engage the WA Local Government Association ("**WALGA**") to source a temporary CEO after Council voted not to renew the current CEO with a new contract;
 - c. the recommendation was that Council approve the expenditure of the \$2,000, so that WALGA could provide the detailed information and proceed with the process to appoint a temporary CEO;
 - d. this recommendation was the next step after the Deputy President and Cr Rayner had sought advice from the Department and WALGA in relation to the availability of temporary CEOs;
 - e. the recommendation followed from resolution 107/05/19 which stated as follows:
 - i. Council authorise the Shire President and Deputy Shire President to liaise with the Department of Local Government, Sport and Cultural Industries and WALGA with the intention of providing a list of potential candidates who are available to fill the role of an interim CEO; and
 - ii. a report to come to Council in respect to the appointment of the interim CEO at the May 2019 Ordinary Council Meeting.
 - f. when this item was called Cr Dow sought to foreshadow an alternative motion if this tabled motion did not get passed;
 - g. Cr Dow's foreshadowed Motion was that the CEO, Mr Stan Scott, be offered a twelve month appointment as temporary CEO for the period 23 July 2019 until 22 July 2020. When the Motion was foreshadowed the CEO left the chamber and did not return until debate was concluded. The Officers recommendation was moved and seconded, debated proceeded and the motion was put and defeated 2/6;



- h. in order to determine whether the foreshadowed motion could be considered Cr Rayner adjourned the meeting to seek advice from WALGA on the process;
- i. a telephone conversation was conducted with Mr Tony Brown the Governances Officer at WALGA. It was his advice that it should not considered without first rescinding the previous motions;
- j. on Mr Brown's advice, Cr Rayner resumed the meeting and informed Council. The process for rescinding the previous resolution was followed and the foreshadowed motion was put and carried 6/2;
- k. Cr Bell had the option of moving that the ruling be disagreed with (a similar motion had been considered earlier in the meeting in relation to another ruling) so the process is very clear; and
- l. there is no misconduct, Cr Rayner as the presiding member, conducted the meeting as set out in the Standing Orders and is entitled to seek advice if and when it is required.

Regulation 4

23. To make a finding of a minor breach of regulation 4 of the Regulations the Panel must be satisfied, to the required standard, that:
- a. Cr Rayner was a councillor at the time of the alleged breach and the time of the determination;
 - b. the conduct occurred during a council or committee meeting; and
 - c. Cr Rayner breached a valid provision of the Toodyay's Standing Orders Local Law 2008 with respect to conduct.

Panel's Consideration

Cr Rayner was a Councillor at the relevant times

24. Cr Rayner was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.
25. This element is met.

The conduct occurred at a council or committee meeting

26. This element is met as the conduct occurred during an Ordinary Council Meeting of the Shire.

Cr Rayner breached a valid provision of the Toodyay's Standing Orders Local Law 2008 relating to conduct

27. It is alleged that Cr Rayner breached regulation 4 by permitting reopening of discussion in beach of Part 7.14 and Part 15.2 of the Local Law.
28. Broadly, the mischief that regulation 4 is aimed at is to prevent improper conduct (or behaviour) by a council member during a council or committee meeting.
29. A meeting procedure or standing orders local law that would fall under Regulation 4 is a local law relating to conduct of people at council or committee meetings⁹.

⁹ *Ryan and Local Government Standards Panel* [2009] WASAT 154 and *Steck and Local Government Standards Panel* [2011] WASAT 117.



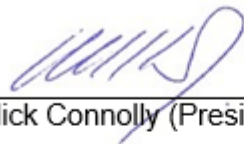
30. The noun 'conduct' is relevantly defined by The Macquarie Dictionary Online to mean "personal behaviour; way of acting; deportment: good conduct".¹⁰
31. A breach of a provision of a local government's standing orders as to *policy* or *procedure* (rather than to the *conduct* of parties) does not amount to a minor breach.
32. The Panel considers that Local Law Part 7.14 and Part 15.2 are not local laws as to conduct within the meaning of regulation 4(1). Rather, these provisions are purely procedural in nature and govern the manner that a past resolution of Council can be properly revisited.
33. The Panel further comments that Cr Rayner was not the party that "reopened discussion", but was merely acting in his role as Presiding Member. Cr Rayner also sought clarification as to the appropriate course of action from WALGA and then followed such advice.
34. The intended purpose of making a complaint under the Act and Regulations is to address inappropriate conduct by Members not to attempt to revisit a validly made decision of Council.
35. Given the above, the Panel finds to the required standard that Cr Rayner did not breach a provision of the Local Law that relates to conduct.
36. This element is not met.

Conclusion

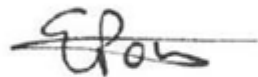
37. Given the above, the elements required to find a breach of regulation 4 of the Regulations have not been met.

Panel's Findings

38. Cr Rayner did not commit a breach of Regulation 4 of the Regulations and therefore did not commit a minor breach.



Mick Connolly (Presiding Member)



Emma Power (Member)



Rebecca Aubrey (Deputy Member)

¹⁰ *Treby and Local Government Standards Panel [2009] WASAT 224 (Treby No. 1)*