



# Special Council Meeting

29 March 2023

Commencing at 3.00 pm

# Agenda

## Notice of Meeting.

To: The President and Councillors.

A Special Council Meeting of the Shire of Toodyay will be held at the Shire of Toodyay Council Chambers, 15 Fiennes Street, Toodyay WA 6566 on the above-mentioned date and time.

The Special Meeting of Council is for the purpose of consideration and adoption of Local Planning Scheme No. 5 and all matters related thereto.

Suzie Haslehurst

**CHIEF EXECUTIVE OFFICER**



## Our Vision, Purpose and Values

The Shire of Toodyay works together with the community to obtain the best possible social, economic, and environmental outcomes for the people of Toodyay.

**Vision:** We are a vibrant rural community that respects our environment, celebrates our past and embraces a sustainable future.

**Purpose:** Local Government and community working together to obtain the best possible social, economic, and environmental outcomes for the people of Toodyay.

**Community Values:** We value highly:

- Our sense of community support and spirit;
- Our natural environment and healthy ecosystems;
- Our rural lifestyle;
- Our historic town; and
- Our local economy built on agriculture and emerging tourism, arts and cultural opportunities.

**Shire Values:** To progress the community's aspirations, the Shire is guided by:

*Integrity:* We behave honestly to the highest ethical standard.

*Accountability:* We are transparent in our actions and accountable to the community.

*Inclusiveness:* We are responsive to the community and we encourage involvement by all people.

*Commitment:* We translate our plans into actions and demonstrate the persistence that produces results.

## **Disclaimer**

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

## **Availability of Meeting Agenda and its Attachments**

Information about Council Meetings is located on the website

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

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

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

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



# CONTENTS

1	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS .....	1
2	RECORDS OF ATTENDANCE .....	1
2.1	APOLOGIES .....	1
2.2	APPROVED LEAVE OF ABSENCE .....	1
3	DISCLOSURE OF INTERESTS.....	1
4	PUBLIC QUESTIONS.....	1
4.1	PUBLIC QUESTION TIME .....	1
5	PUBLIC SUBMISSIONS .....	1
6	OFFICER REPORTS .....	2
6.1	DEVELOPMENT AND REGULATION .....	2
6.1.1	Update on progress of Draft Local Planning Scheme No. 5 .....	2
7	CLOSURE OF MEETING.....	11

---

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

---

**1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**

The Presiding Member is to run through the Preliminaries, and to declare the Ordinary Meeting of Council open.

Acknowledgement of Country: *“I acknowledge the Ballardong Noongar people, the traditional custodians of the land where we meet today and the Yued and Whadjuk people, who are traditional custodians of respective lands within the wider Shire of Toodyay. I pay my respect to their Elders, past, present and emerging.”*

**2 RECORDS OF ATTENDANCE****2.1 APOLOGIES****2.2 APPROVED LEAVE OF ABSENCE**

Nil

**3 DISCLOSURE OF INTERESTS****4 PUBLIC QUESTIONS****4.1 PUBLIC QUESTION TIME****5 PUBLIC SUBMISSIONS**

**6 OFFICER REPORTS****6.1 DEVELOPMENT AND REGULATION****6.1.1 Update on progress of Draft Local Planning Scheme No. 5**

Date of Report:	24 March 2023
Applicant or Proponent:	Shire of Toodyay
File Reference:	LPS 5
Author:	H de Vos – Acting Manager Planning and Development
Responsible Officer:	H de Vos – Manager Development and Regulation
Previously Before Council:	26 October 2021- Item 9.1.1
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> <li>1. Attachment 1 - Shire of Toodyay Local Planning Scheme No. 5 (as modified);</li> <li>2. Attachment 2 - Item 9.1.1 26 October 2021;</li> <li>3. Attachment 3 - Schedule of Submissions;</li> <li>4. Attachment 4 - Extract from Part 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.</li> </ol>

**SUMMARY****Applicant:** Shire of Toodyay**Owner:** Shire of Toodyay**Proposal:** Development of Draft Local Planning Scheme No. 5**Location:** Shire of Toodyay**PURPOSE OF THE REPORT**

To update the Council in the progress of the development of the draft Local Planning Scheme No. 5.

**BACKGROUND**Procedures involved in Preparation of Local Planning Scheme

The *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) prescribe the procedures to be followed in the preparation of a Local Planning Scheme. The predominant stages can be summarised as follows: -

Resolution to prepare a Local Planning Scheme:

- (i) Preparation and Adoption of Local Planning Scheme for purpose of Seeking Consent to Advertise for Public Comment;
- (ii) Grant of Consent to Advertise by the Minister for Planning and seeking the advice of the Environmental Protection Authority;
- (iii) Public Advertisement of Local Planning Scheme and Consultation with affected Government Agencies;
- (iv) Consideration by Council of Submissions;
- (v) Adoption of Local Planning Scheme with Modifications (if appropriate) arising from Consideration of Submissions;
- (vi) Final Approval of Minister to be sought to Modified Scheme;
- (vii) Publication of Scheme Text of Local Planning Scheme in Government Gazette following grant of Final Approval by Minister; and
- (viii) LPS5 becomes operative and LPS4 is automatically revoked.

#### Procedures Covered to Date

To date, stages (i) – (iv) of the procedures listed above have been completed. The purpose of this report, together with its recommendations, is to present to Council the submissions that have been received for consideration, decide upon the modifications to be made to the Scheme documents in light of the submissions, and adopt the Scheme as modified for the purpose of seeking the Minister for Planning's Final Approval – thus completing stages v) – vii) of the above schedule.

#### Process of preparing LPS5

In 2017, Council resolved to prepare the Shire of Toodyay Local Planning Scheme No. 5.

The first draft was submitted to the Department of Planning, Lands and Heritage (DPLH) for preliminary comment in mid-2018. After consideration, DPLH staff met with Shire staff and provided comment, which has been taken into consideration during refinement of LPS5.

The refined draft was presented to the Council of the Shire of Toodyay at the Council Forum held on 1 August 2018.

Draft LPS5 was formally presented to full Council on 28 August 2018 in order to progress with formal referral of the documentation to the WAPC for consent to advertise in accordance with the Regulations. During the course of 2019, both DPLH and the EPA requested Council to make minor modifications and to correct anomalies/inconsistencies in the draft LPS5 text and scheme maps.

The Commission and the EPA provided its formal consent to advertise LPS5 in April 2020. The relevant notice was published in the Toodyay Herald of Tuesday 1 September 2020. The Public Notice to landowners and State Government Agencies inviting submissions was posted the week prior. The Public Notice inviting submissions by 3 December 2020, was also published in the Toodyay Herald on October 2020 and November 2020.

Proposed LPS5 attracted 24 submissions pursuant to the statutory advertising period. Submissions have been summarised and are reflected in the Schedule of Submissions. Of the 24 submissions, 4 submissions were from Government Agencies.

The passage of the development of the Shire of Toodyay's new Draft Local Planning Scheme No. 5 ('DLPS5') has been a lengthy one spanning several years.

Most recently, in October 2021, the DLPS5 was brought to the Ordinary Council Meeting with a recommendation for the Council to adopt the Scheme. At the time there were lingering questions about the Scheme in the minds of elected members as well as from the wider community. As such, the Council did not feel it was in a position to adopt the Scheme without further consideration being given to its relevance to the existing Local Planning Strategy. There was thought from within the Council that the current Local Planning Strategy (being three years old) was not reflecting the current wishes and expectations of the community.

Accordingly, at the Ordinary Council Meeting, it was resolved:

**COUNCIL RESOLUTION NO. 209/10/21**

*That Council:*

1. *Defers the adoption of the Local Planning Scheme No 5 until a review of the local planning strategy is completed in 2022; and*
2. *Requests the CEO to bring a plan and timeline to Council regarding a review of the Shire of Toodyay Local Planning Strategy and Local Planning Scheme No 5 by December 2021.*

For further details please refer to **Attachment 1: 9.1.1 Local Planning Scheme No. 5 – Minutes 26 October 2021.**

The opinion regarding the above resolution has changed over time with the Council and Administration in agreement that the Draft Local Planning Scheme No. 5 in essence is in an appropriate form to progress with the modifications which will be discussed and are attached.

This assumption is with a caveat that the Shire commences an omnibus Scheme Amendment within 6 – 12 months of the gazettal of Local Planning Scheme No.5.

Therefore, Council will be revoking Resolution 209/10/21 in order to be able to progress the Draft Local Planning Scheme No. 5 to the Western Australian Planning Commission.

## COMMENTS AND DETAILS

The progress of the Scheme Review has been beset with delays for a number of reasons; resources, staffing changes, Council changes and general development changes within the Shire of Toodyay.

Normally, a Scheme should be reviewed every 10 years, so clearly the introduction of the new Scheme is long overdue. The WAPC and Department of Planning, Lands and Heritage (DPLH) have been keen to see this process finalised, as it is the Shire of Toodyay and only one or two other LGAs that are operating on outdated Schemes. The Shire has received advice that in instances where progress is stalling, the Minister can intervene and order that a Local Planning Scheme be adopted. For obvious reasons this is best avoided.

Further consideration has been given to issues raised by the community and elected members. As a result, additional modifications have been made to the Scheme as follows:

### Boundary Setbacks

The Shire has received some opposition to the proposal to modify the boundary setbacks. The modifications are reflected in red in the table below and will revert to the current setback requirements for Rural, Rural Residential and Rural Living (future Rural Smallholdings) under LPS4. All the rest of the proposed Draft LPS5 elements for setbacks will remain.



ZONE \ CONTROLS	Minimum Boundary Setback (metres)			Maximum Plot Ratio %	Minimum Landscaping Area %
	Street	Rear	Sides		
Residential	In accordance with the Residential Design Codes unless varied by the Scheme Provisions.				
Rural	50*	50	50	n/a	n/a
Rural Residential	30	30	30	n/a	n/a
Rural Smallholding	30*	30	30	n/a	n/a
Rural Enterprise	20	20	20	n/a	n/a
Environmental Conservation	As per building envelope			n/a	n/a
Light Industry	5	5	4m one side	60%	10%
Commercial, Service Commercial and Mixed Use	Residential development/components are in accordance with the Residential Design Codes unless varied by the Scheme provisions.				
	Otherwise, to be determined by the local government in each particular case.				
Private Clubs, Institutions & Places of Worship	To be determined by the local government in each particular case.				

### **Modifications to Schedule 1 - Additional uses**

The Schedule 1 – Additional uses is proposed to be adopted with the original modifications outlined in October 2021 but with the following changes.

- Lot 77 (111) Clarkson Street, West Toodyay – Industry Light

This is where Mechweld has been operating in breach of the existing Scheme. The Shire had received a submission to add an additional use, Industry-Light to the new Scheme. This was originally included as modification; however, Councillors have demonstrated an unwillingness to accept this modification and it will be removed.

### **Modifications to Schedule 2 – Special uses**

The Schedule 2 – Special uses is proposed to be adopted with the original modifications outlined in October 2021 but with the following changes:

- Lot 89 Church Gully Road, Coondle – Abattoir

This is a legacy special use that was applied to the lot many years ago as the landowner at the time had intended to run an abattoir. Whilst the Special Use zone was granted, no abattoir development/operation occurred at this site. Therefore, the Special Use zone is redundant and sterilises the development of the land. This was not identified during drafting of the new Scheme and it is recommended that the Special Use zone is removed and that the zoning of the land reverts back to Rural under the new Scheme.

- Lots 1,2, 3, 4 and 5 on DP415396, Toodyay (Roman Catholic Church Group of Buildings).

The Shire received a submission from a consulting firm acting on behalf of the Roman Catholic Church requesting that a Special Use zone be created to include the following:



## Roman Catholic Church Group heritage site

As 'P' uses

- Exhibition Centre
- Home Office

As Discretionary 'D' uses

- Art Gallery
- Arts and Crafts Centre
- Carpark
- Child Care Premises
- Cinema/Theatre
- Civic Use
- Club Premises
- Community Purpose
- Consulting Rooms
- Emergency Services
- Family Day Care
- Funeral Parlour
- Home Business
- Home Occupation
- Home Store
- Industry - Cottage
- Medical Centre
- Office
- Place of Worship
- Reception Centre
- Recreation - Private
- Recreation - Public
- Research Centre
- Residential Building
- Restaurant / Café
- Shop
- Single House
- Telecommunication Infrastructure

As Discretionary 'A' uses

- Aged/Dependent Persons Dwelling/s or Establishment

- Ancillary Dwelling
- Bed and Breakfast
- Caravan Park
- Caretaker's Dwelling
- Educational Establishment
- Grouped Dwelling
- Holiday Accommodation
- Holiday House
- Hospital
- Nursing Home
- Tourist Accommodation
- Tourist Development
- Veterinary Centre

These modifications were put forward in October 2021, however during the workshopping process, Councillors have indicated that there is no appetite to include these modifications and therefore they will be removed.

### **Modifications to Zoning**

Generally, the proposed Scheme zoning has been well received.

- Timberden Drive rezoning from Rural to Rural Smallholdings.

This proposed change raised some concerns in the community. The proposal was questioned during the workshopping process and the consensus was to continue the new Scheme with the changes. Any existing land uses (such as animals) could be continued to be enjoyed by the landowners under non-conforming use rights.

- Mixed use zone change.

The current Local Planning Strategy 2017 lists the following action:

Rezone Lots 2-6 and 325 Clinton St; Lots 23-24 Fiennes St; Lots 50, 500-501 Duke St; and Lots 176-177 Hammersley St, Toodyay from Residential R30 to Mixed Use to provide additional employment and commercial land as a logical expansion to the Toodyay townsite. Residential development to meet the requirements of R10/40 R-Coding.

At workshopping it was considered inappropriate to rezone these lots to Mixed Use. This can be removed from the draft Scheme Maps; however, it does make sense to retain as it will resolve the issue with the RSL land as the Mixed Use zone lists Club Premises as an 'A' use in the zoning table whereas it is an 'X' use in the Residential Zone. Given most of the common land uses in the Mixed Uses zone are either 'D' or 'A' uses, the Shire and Council will still be able to regulate development effectively. It is recommended that this zoning change remains.

- West Toodyay – proposed rezoning from Residential Development to and Special Residential to Rural Residential

It was felt at the workshop that the current zoning of land in West Toodyay as either Residential Development (future Urban Development) and Special Residential R2.5

(future Residential) is more appropriately zoned as Rural Residential. Particularly, as the former land uses will effectively sterilise the opportunity for landowners to apply for stock. Therefore, these lots in West Toodyay will be recommended for change to Rural Residential.

## IMPLICATIONS TO CONSIDER

### **Consultative:**

The DPLS5 was advertised formally to the community in accordance with the provisions outlined under [Regulation 22 of the Planning And Development \(Local Planning Schemes\) Regulations 2015 \(WA\)](#) – between August and December 2020. However, due to operational requirements and resourcing issues, the matter was not brought back to Council for final adoption for a further ten (10) months – in October 2021. This is a long period of time during which the Council has had new elections and therefore it is arguable that the delay warrants readvertising of the DPLS5.

To address this issue, the Council has indicated that there is an expectation to conduct an omnibus Scheme amendment to allow any outstanding matters to be addressed which are yet to be finalised in the draft Scheme. This will be an opportunity for further community input and feedback.

### **Strategic:**

#### Strategic Community Plan - Toodyay 2028

Our Strategic Outcome: A Council that engages with the community and provides good governance on behalf of the community. The Shire strives to ensure that the community is engaged in important decisions and supports the direction of Council. This is accompanied by a commitment to achieve the highest levels of accountability.

#### **Objective 1: Provide accountable and transparent leadership for the community**

- S1.1 *Use the Strategic Community Plan as the blueprint for Council policy development and decisions;*
- S 1.2 *Complete the development of a new Local Planning Scheme and related Local Planning Policies;*
- S 1.3 *Provide clear and engaged leadership on behalf of the community; and*
- S 1.4 *Increase communication on advocacy undertaken for services and initiatives that benefit Toodyay.*

#### **Objective 2: Consistently improve our governance practices**

- S 2.1 *Build a positive culture of engagement between the Shire and the community; and*
- S 2.2 *Improve internal and external communication to maximise transparency.*

### **Policy related:**

The Shire's local planning policies adopted under the provisions of LPS4 will continue to operate under a transitional clause in LPS5 until such time the review of Council's local planning policies has been completed. It is important that the LPPs are current and consistent with the provisions of LPS5 and represent the needs of the community.

**Financial:**

In adopting the recommendations of this report, there will be a need to prepare final documentation once the Minister for Planning's decision with respect to the grant of final approval is known.

By far the greatest cost to be incurred is publishing the Scheme Text in the Government Gazette. Staff expect that the cost of publication is likely to be of the order of \$25,000 to \$30,000. Allowance for this cost will have to be made in the 2022/2023 budget (with a budget amendment approved by Council) or the 2023/2024 budget.

**Legal and Statutory:**

*Planning and Development Act 2005;*

*Planning and Development (Local Planning Schemes) Regulations 2015 (Part 4 (r19 – r33) read with r76A);*

*Shire of Toodyay Local Planning Strategy 2017.*

**Risk related:**

Should the Scheme review continue to delay the Shire faces major reputational risks with a score level of 4. This would be if the Minister had to step in to finalise this process. The Likelihood of this is almost certain with a score level of 5. This places further delays in the Extreme Risk category.

**Workforce related:**

This process has a major impact on staff resourcing. Further delays will take our attention away from other essential work.

**VOTING REQUIREMENTS**

Simple Majority

**OFFICER'S RECOMMENDATION**

That Council:

1. Receives the Schedule of Submissions that forms the subject of Attachment 3 to this report;
2. Determines the submissions by resolving to adopt the recommendations in the Schedule of Submissions that formed the subject of Attachment 3 to this report;
3. Amends proposed Shire of Toodyay Local Planning Scheme No. 5 in light of the submissions in accordance with the attached modified document that form the subject of Attachment 2 to this report;
4. Authorises the Chief Executive Officer to undertake any necessary minor editorial, grammatical and other modifications to the Scheme documents that do not change the effect of the Scheme as adopted;
5. Adopts proposed Shire of Toodyay Local Planning Scheme No. 5 (as modified), comprising the modified Scheme Text and modified Scheme Map that formed the subject of Attachment 2 to this report;
6. Requests the CEO to submit proposed Local Planning Scheme No. 5 (as modified) to the Western Australian Planning Commission as required by the *Planning and*

*Development (local planning schemes) Regulations 2015* requesting final approval of the Scheme by the Minister for Planning.

**7 CLOSURE OF MEETING**