

Special Council Meeting

29 March 2023

Minutes

To: The President and Councillors.

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



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.

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Preface

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following a Special 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 5 April 2023.


Suzie Haslehurst
CHIEF EXECUTIVE OFFICER

Confirmed Minutes

These minutes were confirmed at a meeting held on 26 April 2023.

Signed: 

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



1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Cr R Madacsi, Shire President, declared the meeting open at 3.00pm and read aloud an Acknowledgement of Country:

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

The Shire President read through other preliminaries.

2 RECORDS OF ATTENDANCE

Members

Cr R Madacsi	Shire President
Cr B Ruthven	Deputy Shire President (online)
Cr C Duri	Councillor
Cr P Hart	Councillor
Cr S McCormick	Councillor
Cr M McKeown	Councillor
Cr S Pearce	Councillor
Cr D Wrench	Councillor

Staff

Ms S Haslehurst	Chief Executive Officer
Mr J Augustin	Manager Infrastructure and Assets
Ms T Bateman	Manager Corporate and Community Services
Mr H de Vos	Manager Development and Regulation
Mr M Werder	Project Manager
Ms Sue Schafers	Governance Officer
Ms Lorraine Hort	Administration Assistant

Visitors

S.Dival

2.1 APOLOGIES

Nil

2.2 APPROVED LEAVE OF ABSENCE

Nil

3 DISCLOSURE OF INTEREST

The Chief Executive Officer advised that no disclosures of interest in the form of a written notice had been received prior to the commencement of the meeting.

4 PUBLIC QUESTIONS**4.1 PUBLIC QUESTION TIME**

Nil

5 PUBLIC SUBMISSIONS

Nil

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"> 1. Attachment 1 - Shire of Toodyay Local Planning Scheme No. 5 (as modified); ↓ 2. Attachment 2 - Item 9.1.1 26 October 2021 ↓ 3. Attachment 3 - Schedule of Submissions ↓ 4. Attachment 4 - Extract from Part 4 of the Planning and Development (Local Planning Schemes) Regulations 2015. ↓

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.

BACKGROUNDProcedures 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 RECOMMENDATION 1

That Council revokes the Council Resolution No. 209/10/21 of 26 October 2021.

This resolved 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.

The Presiding Member moved the Officer's Recommendation.

The Presiding Member stated that in accordance with Part 15 of the *Shire of Toodyay Standing Orders 2008* and Regulation 10(1) of the *Local Government (Administration) Regulations 1996* the recommendation was supported in writing by a third of the Councillors for the revocation to be considered at the meeting.

The three (3) Councillors who supported in writing, the motion to revoke resolution 209/10/21 were:

1. Cr Madacsi (Mover);

2. Cr Pearce (1st seconder); and
3. Cr Hart (2nd seconder).

Clarification was sought.

Cr McKeown objected, by way of Point of Order in accordance with Standing Order 8.2 pertaining to Standing Order 15.2. "Council may consider a motion to revoke or to 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." Do we have a written statement of legal and financial consequences?

The Presiding Member's response:

It is laid out quite clearly in the Officers Report the process that led to the Council Resolution and the fact that it must be revoked in order to progress with the Local Planning Scheme No 5 legally. We cannot proceed without revoking the Resolution 209/10/21, to do so would be illegal. There is no direct financial implication whether we revoke or not. The indirect cost is publishing the Scheme text in the government gazette, the expected cost of publication will be \$25,000 - \$30,000. Under legal and statutory implications, you have the Local Planning Strategy, Planning and Development (Local Planning Schemes) Regulations 2015, and the Planning and Development Act 2005. There is very little that I can see that is omitted that would require this particular motion not to meet the requirements of 15.2 (2) of the Standing Orders. There is no direct financial implication and legal reasoning has been supplied.

Further clarification was sought.

The Presiding Member rejected the Point of Order with the following comment:

"The process and why that process had to occur is quite clear. We cannot adopt Officer Recommendation 2 without revoking the adoption of Resolution (209/10/21) because the review of the Local Planning Strategy needs to be completed prior. We know that that if we adopt Recommendation 2 without revoking Resolution (209/10/21) it would be an illegal action. We know there is no financial implication. We are getting to splitting hairs here Councillor, and it is time to move on.

Cr McKeown requested that the reasons for rejecting the Point of Order be recorded in the minutes. The Presiding Member agreed.

Clarification was sought.

Debate commenced.

Further clarification was sought.

Debate recommenced.

The substantive motion was put.

MOTION/COUNCIL RESOLUTION NO. SCM063/03/23

MOVED Cr R Madacsi

SECONDED Cr P Hart and Cr S Pearce

That Council revokes Part 1 of the Council Resolution No. 209/10/21 of 26 October 2021.

This resolved 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.

This was supported in writing by Councillors Madacsi, Pearce and Hart, in accordance with part 15 of the *Shire of Toodyay Standing Orders Local Law 2008* and Regulation 10 (1) of the *Local Government (Administration) Regulations 1996*.

Voted For: Crs R Madacsi, B Ruthven, C Duri, P Hart, S McCormick, S Pearce and D Wrench

Voted Against: Cr M McKeown

MOTION CARRIED 7/1

Attachments

- 1 Copy of Revocation Motion.

OFFICER RECOMMENDATION 2

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 formed the subject of Attachment 1 to this report and subject to the following additional amendments:
 - (a) The Zoning Table be amended to make the 'Commercial Vehicle Parking' land use an 'A' use in lieu of an 'X' use for the Rural Residential zone.
 - (b) The Special Use 15 zone for the Roman Catholic Church precinct be adopted as advertised.
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 1 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. Requests that the CEO commence the preparation of an omnibus scheme amendment within six (6) months of the date of this resolution.
8. Requests that the CEO commence work on the preparation of a review of the Local Planning Strategy within six (6) months of the date of this resolution.
9. Requests that a report is brought back to the Council at the November 2023 Ordinary Council Meeting providing an update on the omnibus scheme amendment and local planning strategy review.

The Presiding Member read out Officer's Recommendation 2.

Cr Pearce moved Officer's Recommendation 2.

Clarification was sought.

Cr Hart seconded the motion.

Cr McKeown moved an amendment to the Officer's Recommendation.

Cr Hart seconded the amendment.

The amendment was put.

AMENDMENT MOTION/COUNCIL RESOLUTION NO. SCM064/03/23

MOVED Cr M McKeown

SECONDED Cr P Hart

That Council adds a tenth point to the Officer's Recommendations to read as follows:

10. Requests the CEO to modify the schedule of submissions; and to change the columns referring to Council Comments and Recommendations to read: Officer Comments and Recommendations.


AMENDMENT CARRIED 8/0

Debate continued on the substantive motion.

Clarification was sought.

Debate continued.

The motion was put.

Signed: 
Presiding Member
Date: 25/5/2023

MOTION/COUNCIL RESOLUTION NO. SCM065/03/23

MOVED Cr S Pearce

SECONDED Cr P Hart

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 formed the subject of Attachment 1 to this report and subject to the following additional amendments:
 - (a) The Zoning Table be amended to make the 'Commercial Vehicle Parking' land use an 'A' use in lieu of an 'X' use for the Rural Residential zone.
 - (b) The Special Use 15 zone for the Roman Catholic Church precinct be adopted as advertised.

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 1 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. Requests that the CEO commence the preparation of an omnibus scheme amendment within six (6) months of the date of this resolution.
8. Requests that the CEO commence work on the preparation of a review of the Local Planning Strategy within six (6) months of the date of this resolution.
9. Requests that a report is brought back to the Council at the November 2023 Ordinary Council Meeting providing an update on the omnibus scheme amendment and local planning strategy review.
10. Requests the CEO to modify the schedule of submissions; and to change the columns referring to Council Comments and Recommendations to read: Officer Comments and Recommendations.

Voted For: Crs R Madacsi, B Ruthven, C Duri, P Hart, S McCormick, S Pearce and D Wrench

Voted Against: Cr M McKeown

MOTION CARRIED 7/1

Updated to Include AMD

SHIRE OF TOODYAY

LOCAL PLANNING SCHEME NO. 5

DISCLAIMER

This is a copy of the Local Planning Scheme produced from an electronic version of the Scheme held and maintained by the Department of Planning. Whilst all care has been taken to accurately portray the current Scheme provisions, no responsibility shall be taken for any omissions or errors in this documentation.

Consultation with the respective Local Government Authority should be made to view a legal version of the Scheme.

Please advise the Department of Planning of any errors or omissions in this document.

LOCAL PLANNING SCHEME GAZETTAL DATE: [INSERT DATE]

SHIRE OF TOODYAY LOCAL PLANNING SCHEME NO. 5

[INSERT NUMBER] - AMENDMENTS

AMD NO.	GAZETTAL DATE	UPDATED			DETAILS
		DETAILS	WHEN	BY	

DRAFT

SHIRE OF TOODYAY LOCAL PLANNING SCHEME NO. 5

The Shire of Toodyay under the powers conferred by the *Planning and Development Act 2005* makes the following Local Planning Scheme.

DRAFT

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PART 1 - PRELIMINARY

1. Citation

This local planning scheme is the Shire of Toodyay Local Planning Scheme No 5.

2. Commencement

Under section 87(4) of the Act, this local planning scheme comes into operation on the day on which it is published in the Gazette.

3. Scheme revoked

The following local planning scheme is revoked –

Shire of Toodyay Local Planning Scheme No. 4 gazetted on the 13th day of February 2008.

4. Notes do not form part of Scheme

Notes, and instructions printed in italics, do not form part of this Scheme.

Note: The Interpretation Act 1984 section 32 makes provision in relation to whether headings form part of the written law.

5. Responsibility for Scheme

The Shire of Toodyay is the local government responsible for the enforcement and implementation of this Scheme and the execution of any works required to be executed under this Scheme.

6. Scheme area

This Scheme applies to the area shown on the Scheme Map.

7. Contents of Scheme

(1) In addition to the provisions set out in this document (the scheme text), this Scheme includes the following –

- (a) the deemed provisions (set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2) including any supplemental deemed provisions outlined in Schedule A of the scheme text;
- (b) the Scheme Map; and.
- (c) The following plans, maps, diagrams, illustrations or materials -

There are no additional plans, maps, diagrams, illustrations or materials which form part of this Scheme.

- (2) This Scheme is to be read in conjunction with any local planning strategy for the Scheme area.

8. Purposes of Scheme

The purposes of this Scheme are to –

- (a) set out the local government’s planning aims and intentions for the Scheme area; and
- (b) set aside land as local reserves for public purposes; and
- (c) zone land within the Scheme area for the purposes defined in this Scheme; and
- (d) control and guide development including processes for the preparation of structure plans, activity centre plans and local development plans; and
- (e) set out procedures for the assessment and determination of development applications; and
- (f) set out procedures for contributions to be made for the costs of providing infrastructure in connection with development through development contribution plans; and
- (g) make provision for the administration and enforcement of this Scheme; and
- (h) address other matters referred to in Schedule 7 of the Act.

9. Aims of Scheme

The aims of this Scheme are –

- (a) to provide for the orderly and economic development and optimum use of its land and other resources in the Scheme Area, consistent with the conservation of important natural and man-made features;
- (b) to provide guidance to:
 - (i) the local government in the execution of its planning responsibilities;
 - (ii) public authorities in establishing the likely future needs of the Shire;
 - (iii) the private sector to indicate future development opportunities and planning requirements; and
 - (iv) the community in respect of the manner in which the effects of growth and change are proposed to be managed;
- (c) to provide a rational framework for decisions with regard to land use and that the assessment and classification of land resources on the basis of capability and suitability are an essential facet of the planning process;
- (d) to facilitate the provision of public amenities and community support services consistent with the development and growth of the Shire;
- (e) to ensure that development occurs in a way which preserves existing environmental qualities and minimizes adverse environmental impacts;

- (f) to ensure that existing and future residents enjoy a range of attractive living environments and have access to the widest possible range of services and amenities; and
- (g) to protect and enhance areas within the Shire identified as being of significant environmental value.

10. Relationship with local laws

Where a provision of this Scheme is inconsistent with a local law, the provision of this Scheme prevails to the extent of the inconsistency.

11. Relationship with other local planning schemes

There are no other local planning schemes of the Shire of Toodyay which apply to the Scheme area.

12. Relationship with region planning scheme

There are no region planning schemes which apply to the Scheme area.

PART 2 – RESERVES

13. Regional Reserves

There are no regional reserves in the Scheme area.

Note: The process of reserving land under a regional planning scheme is separate from the process of reserving land under the Land Administration Act 1997 section 41.

14. Local reserves

(1) In this clause –

Main Roads WA means the department principally assisting in the administration of the *Main Roads Act 1930*;

Western Australian Road Hierarchy means the document of that name available on the website maintained by the Main Roads WA.

(2) Local reserves are shown on the Scheme Map according to the legend on the Scheme Map.

(3) The objectives of each local reserve are as follows –

Table 1 - Reserve objectives

Reserve name	Objectives
Public Open Space	<ul style="list-style-type: none"> To set aside areas for public open space, particularly those established under the <i>Planning and Development Act 2005</i> s. 152. To provide for a range of active and passive recreation uses such as recreation buildings and courts and associated car parking and drainage.
Environmental conservation	<ul style="list-style-type: none"> To identify areas with biodiversity and conservation value, and to protect those areas from development and subdivision. To identify and protect areas of biodiversity conservation significance within National Parks and State and other conservation reserves.
State Forest	<ul style="list-style-type: none"> To identify areas of State Forest.
Civic and Community	<ul style="list-style-type: none"> To provide for a range of community facilities which are compatible with surrounding development. To provide for public facilities such as halls, theatres, art galleries, educational, health and social care facilities, accommodation for the aged, and other services by organisations involved in activities for community benefit.
Public Purposes	<ul style="list-style-type: none"> To provide for a range of essential physical and community infrastructure.
Public Purposes – Infrastructure Services	<ul style="list-style-type: none"> Public Purposes which specifically provide for a range of essential infrastructure services.

Reserve name	Objectives
Public Purposes – Education	<ul style="list-style-type: none"> Public Purposes which specifically provide for a range of essential education facilities.
Public Purposes – Government Services	<ul style="list-style-type: none"> Public Purposes which specifically provide for a range of government services.
Public Purposes - Cemetery	<ul style="list-style-type: none"> To set aside land required for a cemetery.
Public Purposes - Recreational	<ul style="list-style-type: none"> To set aside land required for recreational purposes.
Public Purposes - Emergency Services	<ul style="list-style-type: none"> Public Purposes which specifically provide for a range of essential emergency services.
Drainage / Waterway	<ul style="list-style-type: none"> To set aside land required for significant waterways and drainage.
Railways	<ul style="list-style-type: none"> To set aside land required for passenger rail and rail freight services.
Primary Distributor Road	<ul style="list-style-type: none"> To set aside land required for a primary distributor road being a road classified as a Regional Distributor or Primary Distributor under the Western Australian Road Hierarchy.
Local Distributor Road	<ul style="list-style-type: none"> To set aside land required for a local distributor road being a road classified as a Local Distributor under the Western Australian Road Hierarchy.
Local Road	<ul style="list-style-type: none"> To set aside land required for a local road being a road classified as an Access Road under the Western Australian Road Hierarchy.

Recreational Emergency Services

15. Additional uses for local reserves

- (1) Table 2 sets out –
- classes of use for specified land located in local reserves that are additional to classes of use determined in accordance with the objectives of the reserve; and
 - the conditions that apply to that additional use.

Table 2 – Specified additional uses for land in local reserves in Scheme area

No.	Description of land	Additional use	Conditions
A1	Lot 9508 Murray Walkway, Toodyay	<ol style="list-style-type: none"> Club Premises Restaurant/Café Tourist Development 	<ol style="list-style-type: none"> Additional uses are permitted ancillary to the predominant use of the site as the Toodyay Recreation Precinct. Due regard shall be given to the provisions of the Foggarthorpe Residential Structure Plan.

- (2) Despite anything contained in clause 14, land that is specified in the Table to subclause (1) may be used for the additional class of use set out in respect of that land subject to the conditions that apply to that use.

PART 3 – ZONES AND USE OF LAND

16. Zones

- (1) Zones are shown on the Scheme Map according to the legend on the Scheme Map.
- (2) The objectives of each zone are as follows –

Table 3 - Zone Objectives

Zone name	Objectives
Residential	<ul style="list-style-type: none"> • To provide for a range of housing and a choice of residential densities to meet the needs of the community. • To facilitate and encourage high quality design, built form and streetscapes throughout residential areas. • To provide for a range of non-residential uses, which are compatible with and complementary to residential development.
Urban Development	<ul style="list-style-type: none"> • To provide an intention of future land use and a basis for more detailed structure planning in accordance with the provisions of this Scheme. • To provide for a range of residential densities to encourage a variety of residential accommodation. • To provide for the progressive and planned development of future urban areas for residential purposes and for commercial and other uses normally associated with residential development.
Rural	<ul style="list-style-type: none"> • To provide for the maintenance or enhancement of specific local rural character. • To protect broad acre agricultural activities such as cropping and grazing and intensive uses such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use. • To maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage. • To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the Rural zone. • To provide for a range of non-rural land uses, such as tourism, where they have demonstrated benefit and are compatible with surrounding rural uses.
Rural Residential	<ul style="list-style-type: none"> • To provide for lot sizes in the range of 1 ha to 4 ha. • To provide opportunities for a range of limited rural and related ancillary pursuits, such as tourism, on rural residential lots where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land.

Zone name	Objectives
	<ul style="list-style-type: none"> To set aside areas for the retention of vegetation and landform or other features which distinguish the land.
Rural Smallholdings	<ul style="list-style-type: none"> To provide for lot sizes in the range of 4 ha to 40 ha. To provide for a limited range of rural land uses and incidental uses, such as tourism, where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land. To set aside areas for the retention of vegetation and landform or other features which distinguish the land.
Rural Enterprise	<ul style="list-style-type: none"> To provide for light industrial and ancillary residential development on one lot. To provide for lot sizes in the range of 1 ha to 4 ha. To carefully design rural enterprise estates to provide a reasonable standard of amenity without limiting light industrial land uses. To notify prospective purchasers of potential amenity impacts from light industrial land uses.
Environmental conservation	<ul style="list-style-type: none"> To identify land set aside for environmental conservation purposes. To provide for the preservation, maintenance, restoration or sustainable use of the natural environment.
Light Industry	<ul style="list-style-type: none"> To provide for a range of industrial uses and service industries generally compatible with urban areas, that cannot be located in commercial zones. To ensure that where any development adjoins zoned or developed residential properties, the development is suitably set back, screened or otherwise treated so as not to detract from the residential amenity.
Industrial Development	<ul style="list-style-type: none"> To designate land for future industrial development. To provide a basis for future detailed planning in accordance with the structure planning provisions of this Scheme.
Commercial	<ul style="list-style-type: none"> To provide for a range of shops, offices, restaurants and other commercial outlets in defined townsites or activity centres. To maintain the compatibility with the general streetscape, for all new buildings in terms of scale, height, style, materials, street alignment and design of facades. To ensure that development is not detrimental to the amenity of adjoining owners or residential properties in the locality. Provide for a suitable variety of housing opportunities compatible with the locality.
Mixed Use	<ul style="list-style-type: none"> To provide a diversity of land use and housing types. To allow appropriate businesses to locate and develop in close proximity to residential areas. To allow for services to be provided locally. To provide high level of amenity.

Zone name	Objectives
	<ul style="list-style-type: none"> • To accommodate a mixture of residential development with small scale businesses in a primarily residential scale environment with the predominant uses being residential, office, consulting, dining and limited retail uses occupying the street frontage of lots. • To provide an intermediate stage between Residential and Commercial zones.
Service Commercial	<ul style="list-style-type: none"> • To accommodate commercial activities which, because of the nature of the business, require good vehicular access and/or large sites. • To provide for a range of wholesale sales, showrooms, trade and services which, by reason of their scale, character, operational or land requirements, are not generally appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones.
Private Community Purposes	<ul style="list-style-type: none"> • To provide sites for privately owned and operated recreation, institutions and places of worship. • To integrate private recreation areas with public recreation areas wherever possible. • To separate potentially noisy engine sports from incompatible uses. • To provide for a range of privately owned community facilities, and uses that are incidental and ancillary to the provision of those facilities, which are compatible with surrounding development. • To ensure that the standard of development is in keeping with surrounding development and protects the amenity of the area.
Special Use	<ul style="list-style-type: none"> • To facilitate special categories of land uses which do not sit comfortably within any other zone. • To enable the Council to impose specific conditions associated with the special use.

17. Zoning table

The zoning table for this Scheme is as follows –

Table 4 – Zoning Table

USE & DEVELOPMENT CLASS	Residential	Urban Development	Rural	Rural Residential	Rural Smallholdings	Rural Enterprise	Environmental Conservation	Light Industry	Industrial Development	Commercial	Mixed Use	Service Commercial	Private Community Purposes
		Development in accordance with an approved Structure Plan.							Development in accordance with an approved Structure Plan.				
Abattoir	X		A	X	X	X	X	X		X	X	X	X
Aged/Dependent Persons Dwelling(s)	P		X	X	X	X	X	X		D	A	X	D
Agriculture – Extensive	X		P	X	A	X	X	X		X	X	X	X
Agriculture – Intensive	X		D	X	A	X	X	X		X	X	X	X
Amusement Parlour	X		X	X	X	X	X	X		A	X	A	X
Ancillary Dwelling	I		D	D	D	D	X	X		A	X	X	X
Animal Establishment	X		D	A	A	D	X	A		X	X	X	X
Animal Husbandry – Intensive	X		A	X	X	X	X	X		X	X	X	X
Art Gallery	X		D	A	A	X	A	D		P	D	A	I
Bed & Breakfast	A		D	D	D	X	A	X		D	D	X	X
Betting Agency	X		X	X	X	X	X	X		D	D	A	X
Brewery	X		A	X	A	D	X	D		D	X	D	X
Bulky Goods Showroom	X		X	X	X	X	X	X		X	X	D	X
Caravan Park	X		A	X	X	X	X	X		A	X	X	I
Caretaker's Dwelling	X		X	X	X	X	X	I		X	X	X	I
Car Park	X		X	X	X	X	X	D		D	D	D	I
Child Care Premises	A		X	X	X	X	X	X		D	A	X	I
Cinema/Theatre	X		X	A	X	X	X	X		A	A	X	X
Civic Use	A		X	A	A	X	A	A		P	A	A	X
Club Premises	X		X	X	X	X	X	A		P	A	A	D
Commercial Vehicle Parking	A		A	X	A	X	X	D		D	X	D	X
Community Purpose	A		A	A	A	X	A	X		P	D	X	D

USE & DEVELOPMENT CLASS	Residential	Urban Development	Development in accordance with an approved Structure Plan.					Industrial Development	Development in accordance with an approved Structure Plan.			
			Rural	Rural Residential	Rural Smallholdings	Rural Enterprise	Environmental Conservation		Light Industry	Commercial	Mixed Use	Service Commercial
Consulting Rooms	X		X	X	X	X	X	X	P	D	A	X
Convenience Store	X		X	X	X	X	X	D	P	D	D	X
Corrective Institution	X		A	X	X	X	X	X	X	X	X	X
Education Establishment	A		X	X	X	X	X	X	D	A	X	D
Exhibition Centre	X		A	X	X	X	X	A	P	D	A	X
Family Day Care	A		X	A	A	X	X	X	D	A	X	D
Fast Food Outlet	X		X	X	X	X	X	D	D	D	D	X
Fuel Depot	X		A	X	X	X	X	A	X	X	D	X
Funeral Parlour	X		X	X	X	X	X	D	D	A	D	X
Garden Centre	X		A	X	X	D	X	D	D	A	D	X
Grouped Dwelling	D		A	X	X	X	X	X	D	D	X	X
Holiday Accommodation	X		A	X	X	X	X	X	D	A	X	I
Holiday House	A		A	A	A	X	X	X	D	A	X	X
Home Business	A		A	A	A	A	A	X	D	D	X	X
Home Occupation	D		D	D	D	D	A	X	D	D	X	X
Home Office	P		P	P	P	P	D	X	P	P	X	X
Home Store	A		X	X	X	I	X	X	A	D	X	X
Hospital	X		X	X	X	X	X	A	D	A	A	D
Hotel	X		X	X	X	X	X	X	D	X	X	X
Industry	X		X	X	X	X	X	X	X	X	X	X
Industry – Cottage	A		P	D	D	P	X	P	X	D	D	X
Industry – Extractive	X		A	X	A	X	X	X	X	X	X	X
Industry – Light	X		X	X	X	A	X	P	X	X	A	X
Industry – Primary Production	X		P	X	A	X	X	X	X	X	X	X
Liquor Store – Large	X		X	X	X	X	X	X	A	X	A	X
Liquor Store – Small	X		X	X	X	X	X	X	A	A	X	X
Lunch Bar	X		X	X	X	X	X	D	D	D	D	X

USE & DEVELOPMENT CLASS	Residential	Urban Development	Rural	Rural Residential	Rural Smallholdings	Rural Enterprise	Environmental Conservation	Light Industry	Industrial Development	Commercial	Mixed Use	Service Commercial	Private Community Purposes
Market	X		X	X	X	X	X	X		A	A	A	X
Medical Centre	X		X	X	X	X	X	X		D	D	A	X
Mining Operations	X		A	X	X	X	X	X		X	X	X	X
Mining Operations on Minerals to Owner land	X		X	X	X	X	X	X		X	X	X	X
Motel	X		X	X	X	X	X	X		A	A	X	X
Motor Vehicle, Boat & Caravan Sales	X		X	X	X	X	X	D		A	X	D	X
Motor Vehicle Repair	X		X	X	X	D	X	D		X	X	D	X
Motor Vehicle Wash	X		X	X	X	X	X	D		D	X	A	X
Multiple Dwelling	A		X	X	X	X	X	X		D	D	X	X
Nature Based Parks	X		A	X	X	X	A	X		X	X	X	X
Nightclub	X		X	X	X	X	X	X		D	A	X	X
Office	X		X	X	X	I	X	I		P	P	I	I
Park Home Park	X		X	X	X	X	X	X		A	X	X	X
Place of Worship	A		X	X	X	X	X	X		A	D	A	D
Reception Centre	X		X	X	A	X	X	X		D	A	X	X
Recreation – Private	X		A	X	X	A	X	A		D	A	A	X
Renewable Energy Facility	X		A	X	X	X	X	X		X	X	X	X
Re-Purposed Dwelling	D		D	D	D	D	D	X		X	X	X	X
Residential Building	D		X	X	X	X	X	X		D	D	X	X
Resource Recovery Centre	X		A	X	X	X	X	A		X	X	A	X
Restaurant/Café	X		A	X	A	I	X	X		P	D	X	I
Restricted Premises	X		X	X	X	X	X	A		A	A	A	X
Roadhouse	X		X	X	X	X	X	A		A	X	A	X
Rural Home Business	X		A	A	A	A	X	X		X	X	X	X
Rural Pursuit/Hobby Farm	X		P	D	D	X	X	X		X	X	X	X

USE & DEVELOPMENT CLASS	Residential	Urban Development							Industrial Development	Commercial	Mixed Use	Service Commercial	Private Community Purposes
		Rural	Rural Residential	Rural Smallholdings	Rural Enterprise	Environmental Conservation	Light Industry						
Second-Hand Dwelling	D	D	D	D	D	D	X		X	X	X	X	
Serviced Apartment	X	X	X	X	X	X	X		A	D	X	X	
Service Station	X	X	X	X	X	X	X		A	D	A	X	
Shop	X	X	X	X	I	X	X		P	D	I	X	
Single House	P	P	P	P	A	D	X		D	D	X	X	
Small Bar	X	X	X	X	X	X	X		D	A	X	X	
Tavern	X	X	X	X	X	X	X		A	A	X	X	
Tearooms	X	I	X	I	X	X	X		X	X	X	X	
Telecommunications Infrastructure	A	D	A	D	D	X	D		D	D	D	A	
Tourist Development	X	A	X	A	D	X	X		X	D	X	X	
Trade Display	X	A	X	X	I	X	D		D	X	D	X	
Trade Supplies	X	A	X	X	I	X	D		D	X	D	X	
Transport Depot	X	A	X	X	A	X	A		X	X	A	X	
Tree Farm	X	D	X	D	X	X	X		X	X	X	X	
Veterinary Centre	X	A	X	X	D	X	D		A	A	D	X	
Warehouse/Storage	X	X	X	X	D	X	P		X	X	D	X	
Waste Disposal Facility	X	X	X	X	X	X	X		X	X	X	X	
Waste Storage Facility	X	X	X	X	X	X	A		X	X	X	X	
Winery	X	D	X	A	X	X	X		X	X	X	X	
Workforce Accommodation	X	I	X	X	X	X	X		D	D	X	X	

18. Interpreting zoning table

- (1) The permissibility of uses of land in the various zones in the Scheme area is determined by cross-reference between the list of use classes on the left hand side of the zoning table and the list of zones at the top of the zoning table.

- (2) The symbols used in the zoning table have the following meanings –
- P** means that the use is permitted if it complies with all relevant development standards and requirements of this Scheme;
 - I** means that the use is permitted if it is consequent on, or naturally attaching, appertaining or relating to the predominant use of the land and it complies with all relevant development standards and requirements of this Scheme;
 - D** means that the use is not permitted unless the local government has exercised its discretion by granting development approval;
 - A** means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions;
 - X** means that the use is not permitted by this Scheme.

Note:

1. *The development approval of the local government may be required to carry out works on land in addition to any approval granted for the use of land. In normal circumstances one application is made for both the carrying out of works on, and the use of, land. For development on land that does not require development approval see clause 61 of the deemed provisions.*
 2. *In considering an application for development approval, the local government will have regard to clause 67 of the deemed provisions.*
 3. *If a proposed development is identified as a 'P' use in the zoning table, but the proposed development does not comply with all of the development standards and requirements of the scheme, then it is to be treated as a 'D' use.*
- (3) A specific use class referred to in the zoning table is excluded from any other use class described in more general terms.
- (4) The local government may, in respect of a use that is not specifically referred to in the zoning table and that cannot reasonably be determined as falling within a use class referred to in the zoning table –
- (a) determine that the use is consistent with the objectives of a particular zone and is therefore a use that may be permitted in the zone subject to conditions imposed by the local government; or
 - (b) determine that the use may be consistent with the objectives of a particular zone and give notice under clause 64 of the deemed provisions before considering an application for development approval for the use of the land; or
 - (c) determine that the use is not consistent with the objectives of a particular zone and is therefore not permitted in the zone.
- (5) If a use of land is identified in a zone as being a class P or class I use, the local government may not refuse an application for development approval for that use in that zone but may require works that are to be undertaken in connection with that use to have development approval.
- (6) If a use of land is identified in a zone as being a class X use, the local government must refuse an application for development approval for that use in that zone unless –
- (a) the development approval application relates to land that is being used for a non-conforming use; and

- (b) the local government considers that the proposed use of the land would be less detrimental than the non-conforming use.
- (7) If the zoning table does not identify any permissible uses for land in a zone the local government may, in considering an application for development approval for land within the zone, have due regard to any of the following plans that apply to the land –
- (a) a structure plan;
 - (b) an activity centre plan; or
 - (c) a local development plan.

19. Additional uses

- (1) Schedule 1 – Additional uses sets out –
- (a) classes of use for specified land that are additional to the classes of use that are permissible in the zone in which the land is located; and
 - (b) the conditions that apply to that additional use.

20. Restricted uses

- (1) There are no restricted uses which apply to this Scheme.

NOTE: a restricted use is the only use or uses that is permitted on a specific portion of land and other uses that would otherwise be permissible in the zone are not permitted.'

21. Special use zones

- (1) Schedule 2 – Special use zones sets out –
- (a) special use zones for specified land that are in addition to the zones in the zoning table; and
 - (b) the classes of special use that are permissible in that zone; and
 - (c) the conditions that apply in respect of the special uses.
- (2) A person must not use any land, or any structure or buildings on land, in a special use zone except for a class of use that is permissible in that zone and subject to the conditions that apply to that use.

Note: Special use zones apply to special categories of land use which do not comfortably sit within any other zone in the Scheme.

22. Non-conforming uses

- (1) Unless specifically provided, this Scheme does not prevent –
- (a) the continued use of any land, or any structure or building on land, for the purpose for which it was being lawfully used immediately before the commencement of this Scheme; or
 - (b) the carrying out of development on land if –
 - (i) before the commencement of this Scheme, the development was lawfully approved; and
 - (ii) the approval has not expired or been cancelled.
- (2) Subclause (1) does not apply if –

- (a) the non-conforming use of the land is discontinued; and
 - (b) a period of 6 months, or a longer period approved by the local government, has elapsed since the discontinuance of the non-conforming use.
- (3) Subclause (1) does not apply in respect of a non-conforming use of land if, under Part 11 of the Act, the local government –
- (a) purchases the land; or
 - (b) pays compensation to the owner of the land in relation to the non-conforming use.

23. Changes to non-conforming use

- (1) A person must not, without development approval –
- (a) alter or extend a non-conforming use of land; or
 - (b) erect, alter or extend a building used for, or in conjunction with, a non-conforming use; or
 - (c) repair, rebuild, alter or extend a building used for a non-conforming use that is destroyed to the extent of 75% or more of its value; or
 - (d) change the use of land from a non-conforming use to another use that is not permitted by the Scheme.
- (2) An application for development approval for the purposes of this clause must be advertised in accordance with clause 64 of the deemed provisions.
- (3) A local government may only grant development approval for a change of use of land referred to in subclause (1)(d) if, in the opinion of the local government, the proposed use –
- (a) is less detrimental to the amenity of the locality than the existing non-conforming use; and
 - (b) is closer to the intended purpose of the zone in which the land is situated.

24. Register of non-conforming uses

- (1) The local government may prepare a register of land within the Scheme area that is being used for a non-conforming use.
- (2) A register prepared by the local government must set out the following –
- (a) a description of each area of land that is being used for a non-conforming use;
 - (b) a description of any building on the land;
 - (c) a description of the non-conforming use;
 - (d) the date on which any discontinuance of the non-conforming use is noted.
- (3) If the local government prepares a register under subclause (1) the local government –
- (a) must ensure that the register is kept up-to-date; and
 - (b) must make a copy of the register available for public inspection during business hours at the offices of the local government; and
 - (c) may publish a copy of the register on the website of the local government.
- (4) An entry in the register in relation to land that is being used for a non-conforming use is evidence of the matters set out in the entry, unless the contrary is proved.

PART 4 – GENERAL DEVELOPMENT REQUIREMENTS

25. R-Codes

- (1) The R-Codes, modified as set out in clause 26, are to be read as part of this Scheme.
- (2) The local government –
 - (a) must make a copy of the R-Codes available for public inspection during business hours at the offices of the local government; and
 - (b) may publish a copy of the R-Codes on the website of the local government.
- (3) The coding of land for the purposes of the R-Codes is shown by the coding number superimposed on a particular area contained within the boundaries of the area shown on the Scheme Map.
- (4) The R-Codes apply to an area if the area has a coding number superimposed on it in accordance with subclause (3).

26. Modification of R-Codes

- (1) Where a lot has multiple coding numbers for the purpose of clause 25, the lower coding number shall apply, except that the local government may approve development to the higher density coding providing –
 - (a) the development is determined to be consistent with all relevant R-Codes provisions, parts of the Scheme, local planning policies, structure plans, and local development plans to the satisfaction of the local government; and
 - (b) the development is consistent with any provisions of a Special Control Area to the satisfaction of the local government and any other relevant public authority; and
 - (c) the development retains the heritage values of the premises where included on the heritage list in accordance with this Scheme and any relevant local planning policy to the satisfaction of the local government; and
 - (d) the premises can be connected to reticulated sewerage.
- (2) Where a lot has multiple coding numbers, the local government may approve residential development at the higher coding if –
 - (a) the use of the higher coding will enable dedication of a foreshore reserve for lots adjoining the Avon River; or
 - (b) the use of the higher coding facilitates adaptive reuse of a heritage listed building; and
 - (c) the property can be connected to and serviced by reticulated sewerage; and
 - (d) the difference in natural ground levels within the site and adjacent land will not result in impacts on the amenity, such as inappropriate bulk and scale, impacts on visual privacy or require retaining walls higher than 1m; and
 - (e) is consistent with the design criteria contained in any Local Planning Policy relating to the design of higher density residential uses in established residential areas.
- (3) The provisions of clauses 26 (1) and (2) do not apply to any residential development within Special Control Areas, with the exception of the Town Centre Special Control Area.

Outbuildings

- (4) On land coded R12.5 or higher (or are able to utilise the higher coding in accordance with the Scheme provisions) –
- (a) the total area of all outbuildings on the lot shall not exceed 75m² or 10% of the area of the lot, whichever is the lesser;
 - (b) the maximum wall height is 3.5 metres and the maximum roof height is 4.5 metres;
 - (c) the minimum setbacks to side, rear and secondary street boundaries for outbuildings is –
 - (i) Side – 1 metre;
 - (ii) Rear – 1 metre; and
 - (iii) Secondary Street – 2 metres.
 - (d) outbuildings shall be located entirely behind the rear of the dwelling on the lot unless constructed in the same materials as and having colours matching those of the dwelling; and
 - (e) the external surface of outbuildings, other than roof cladding, shall not include metallic silver, except where the total area of all outbuildings on the lot does not exceed 20m².
- (5) On land coded R10 (or are able to utilise the higher coding in accordance with the Scheme provisions) –
- (a) the total area of all outbuildings on the lot shall not exceed 90m²;
 - (b) the maximum wall height is 3.5 metres and the maximum roof height is 4.5 metres;
 - (c) the minimum setbacks to side, rear and secondary street boundaries for outbuildings is –
 - (i) Side – 1 metre;
 - (ii) Rear – 1 metre; and
 - (iii) Secondary Street – 3 metres.
 - (d) outbuildings shall be located entirely behind the rear of the dwelling on the lot unless constructed in the same materials as and having colours matching those of the dwelling; and
 - (e) the external surface of outbuildings, other than roof cladding, shall not include metallic silver, except where the total area of all outbuildings on the lot does not exceed 20m².
- (6) On land coded R2.5 and R5 –
- (a) the total area of all outbuildings on the lot shall not exceed 100m²;
 - (b) the maximum wall height is 3.5 metres and the maximum roof height is 4.5 metres;
 - (c) the minimum setbacks to side, rear and secondary street boundaries for outbuildings is –
 - (i) Side – 1.5 metres;
 - (ii) Rear – 1.5 metres; and
 - (iii) Secondary street – 5 metres.
 - (d) outbuildings shall be located entirely behind the rear of the dwelling on the lot unless constructed in the same materials as and having colours matching those of the dwelling; and
 - (e) the external surface of outbuildings, other than roof cladding, shall not include metallic silver, except where the total area of all outbuildings on the lot does not exceed 20m².

27. State Planning Policy 3.6 to be read as part of Scheme

- (1) State Planning Policy 3.6 – Development Contributions for Infrastructure, modified as set out in clause 28, is to be read as part of this Scheme.
- (2) The local government –

- (a) must make a copy of State Planning Policy 3.6 available for public inspection during business hours at the offices of the local government; and
- (b) may publish a copy of State Planning Policy 3.6 on the website of the local government.

28. Modification of State Planning Policy 3.6

There are no modifications to State Planning Policy 3.6.

29. Other State planning policies to be read as part of Scheme

- (1) The State planning policies set out in Table 5, modified as set out in clause 30, are to be read as part of this Scheme.

Table 5 – State Planning Policies

State planning policies to be read as part of Scheme	
1.	State Planning Policy 3.7 – Planning in Bushfire Prone Areas

- (2) The local government –
 - (a) must make a copy of each State planning policy referred to in subclause (1) available for public inspection during business hours at the offices of the local government; and
 - (b) may publish a copy of each of those State planning policies on the website of the local government.

30. Modification of State planning policies

There are no modifications to a State planning policy that, under clause 29 is to be read as part of the Scheme.

31. Environmental conditions

There are no environmental conditions imposed under the *Environmental Protection Act 1986* that apply to this Scheme.

32. General development standards and requirements

Setbacks

- (1) Table 6 sets out the site and development requirements for each of the zones which may be varied and/or supplemented by the local government at its discretion to suit any specific requirements.
- (2) The local government in determining applications for any development may require such development to comply generally with the standards required for the relevant zone as stipulated in Table 6 to ensure that the scale, nature, design, general appearance and impact of any proposed use/s is compatible with the objectives of the zone in which the development is proposed and the general purposes and aims of the Scheme.

- (3) Development shall be setback in accordance with Table 6, except where the building is located within a building envelope identified on an approved structure plan.

Table 6 – Site and Development Requirements

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.				

NOTES: *50 metres from State or major road.

- (4) The Shire shall establish and maintain a Register of Building Envelopes, which shall comprise –
- building envelopes identified by the Shire and operative under Local Planning Scheme No. 4 immediately prior to the gazettal of this Scheme;
 - building envelopes shown on a Structure Plan approved by the Western Australian Planning Commission;
 - building envelopes required by the Shire as a condition of development approval issued under this Scheme; and
 - building envelopes required by the Western Australian Planning Commission as a condition of subdivision or strata subdivision approval.
- (5) The Shire shall keep a copy of the Register of Building Envelopes with the Scheme documents for public inspection.
- (6) Where lots have more than one street frontage the following setbacks shall apply –
- In all zones, other than the Residential zone, where a lot has a frontage to more than one street, the local government may determine which street frontage shall be regarded as the front for the purpose of the setback prescribed in the Scheme.

- (b) With the exception of State/Regional and District roads, the local government may, at its discretion, permit the setback to the secondary street to be reduced to half the specified setback.
- (7) The minimum front setback to any new development on a road proposed to be widened under this Scheme shall be the minimum setback as if the proposed widening had taken place.

Parking of commercial vehicles in residential zones

- (8) No person shall, within residential zones, park –
 - (a) more than one commercial or industrial vehicle on a Residential zoned lot;
 - (b) a commercial or industrial vehicle, boat trailer, boat, caravan, or recreational vehicle unless it is parked in a domestic garage or outbuilding, or such vehicle is parked entirely on the lot in a position which is not unduly obtrusive;
 - (c) any vehicle which, due to size or load, is not capable of being completely parked within a domestic garage or outbuilding having a maximum floor area of 60m² in which no horizontal dimension is more than 15 metres;
 - (d) a vehicle which, together with its load, exceeds three metres in height or longer or wider than permitted on roads without requiring special warning signs, unless the vehicle is being used in connection with building or construction works.

Development in the Urban Development zone

- (9) Comprehensive planning for the area shall be undertaken by preparation of a Structure Plan to guide subdivision and development.
- (10) No land owner shall carry out subdivision or development (other than the development of a single house and/or associated facilities involved in the use and enjoyment of the property by the occupants of the single house) other than in accordance with the Structure Plan.
- (11) If a provision in any applicable Schedule conflicts with any other provision of the Scheme, the provision in the Schedule shall prevail.

Development in the Rural zone

- (12) In the Rural zone, the local government may, at its discretion, approve the erection of one (1) additional dwelling on a rural lot provided that –
 - (a) the total number of dwellings on the lot will not exceed two (2) dwellings;
 - (b) the lot has an area of not less than 40 hectares;
 - (c) it can be demonstrated that the additional dwelling is for workers or family members employed for agricultural activities on that lot;
 - (d) adequate provision of a sustainable water supply and disposal of sewage from the additional dwelling can be demonstrated;
 - (e) the additional dwelling will not adversely detract from the rural character and amenity of the area or conflict with agricultural production on the subject lot or adjoining land;
 - (f) access to the existing road network is to be provided for any additional dwelling and shared with any existing dwelling where practicable;

- (g) the existence of more than one dwelling on a lot in the Rural zone shall not be considered by itself to be sufficient grounds for subdivision.
- (13) No person shall use the land between the building setback line and the road for any purpose other than a means of access, landscaping or a rural activity permitted in the zone.
- (14) Notwithstanding anything contained in the subclauses above, the local government may permit a building to be located within the setback area when –
 - (a) in the opinion of the local government, a physical obstruction precludes compliance with this clause;
 - (b) the location of the building within the setback area will not adversely affect the amenity of an adjoining owner or the area generally;
 - (c) as a result of topography or lot configuration, the prescribed setback cannot be adhered to or would be unnecessarily disadvantageous.

Development in the Rural Residential and Rural Smallholdings zones

- (15) The provisions applicable to a specific area of Rural Residential or Rural Smallholdings zoned land in Schedule 4 – Rural Residential areas and Schedule 5 – Rural Smallholdings shall specify any additional provisions considered appropriate to the particular site to achieve the objectives of the Scheme and the relevant zone. If a provision in the Schedules conflicts with any other provision of the Scheme, the provision in the Schedules shall prevail.
- (16) No person shall use the land between the building setback line and the road for any purpose other than a means of access, landscaping or a rural activity permitted in the zone.
- (17) Notwithstanding anything contained in the subclauses above, the local government may permit a building to be located within the setback area when –
 - (a) in the opinion of the local government, a physical obstruction precludes compliance with this clause;
 - (b) the location of the building within the setback area will not adversely affect the amenity of an adjoining owner or the area generally;
 - (c) as a result of topography or lot configuration, the prescribed setback cannot be adhered to or would be unnecessarily disadvantageous.
- (18) In the Rural Residential and Rural Smallholdings zones, a demonstrated and sustainable water supply is to be provided in accordance with Western Australian Planning Commission Policy.
- (19) Where connection to reticulated sewer is not available, domestic sewerage shall be disposed of by means of an alternative effluent disposal system to the satisfaction of the local government and the Department of Health.
- (20) The local government or the Western Australian Planning Commission may require the provision of building envelopes or building exclusion areas for any land proposed to be subdivided in the Rural Residential or Rural Smallholdings zone. These shall be –
 - (a) shown on the approved structure plan, or separate detailed plan required as a condition of subdivision approval;
 - (b) at a size to be determined by the local government;

- (c) located to avoid any native vegetation or any area recognised for protection or rehabilitation as shown on the approved structure plan and/or environmental management plan;
 - (d) located to ensure on site effluent disposal meets the minimum setback requirements from drainage lines, watercourses, wetlands and other areas as determined by the local government;
 - (e) located outside of any identified and/or designated buffer areas; and
 - (f) located in accordance with any fire management plan approved for the land.
- (21) The local government may permit a variation to a previously approved building envelope, prior to the construction of any building, if it can be demonstrated to the satisfaction of the local government that the location of the proposed new building envelope will not be detrimental to the residential amenity and landscape and/or environmental qualities of the land and other adjoining properties.
- (22) Unless otherwise approved by the local government, all buildings and on-site effluent disposal systems shall be confined to the approved building envelope.
- (23) The local government may require tree preservation areas to be identified on the plan of subdivision so as to –
- (a) protect and preserve areas of landscape significance, ridge lines, and stream lines;
 - (b) protect areas of land management importance including areas of actual or potential erosion or land degradation;
 - (c) generally provide for visual screening of buildings and development; and
 - (d) protect recognised vegetation corridors.
- (24) Within areas designated as a natural vegetation preservation and/or remnant vegetation areas, no indigenous trees or vegetation may be felled or removed except for –
- (a) trees which are dead, diseased or dangerous;
 - (b) establishment of a firebreak required under a regulation or bylaw;
 - (c) access to a building site;
 - (d) an area up to two metres in width for the purpose of a fence line;
 - (e) vegetation being removed or disturbed as part of a verge/native tree replanting programme carried out with local government's knowledge and approval.
- (25) Nothing in this subclause shall be construed to mean that any person can clear a portion of a road reserve.
- (26) In considering granting development approval for a building, local government may where it considers an area to be deficient in tree cover, or additional tree cover to be desirable in the interests of landscape protection or enhancement, require tree planting located so as to provide adequate visual screening of the building.
- (27) Any application for a rural pursuit or equestrian activity that involves the stabling and keeping of livestock (including horses) will be conditional upon compliance with the terms and conditions of an approved Environmental Management Plan.
- (28) The siting and design of dwellings in the Rural Residential and Rural Smallholdings zones shall be in accordance with any local planning policy adopted by the local government.

Development in the Rural Enterprise zone

- (29) prior to subdivision and development in the Rural Enterprise zone a structure plan shall be prepared and approved, demonstrating the ability to:
- (a) separate light industrial and residential uses via the use of building envelopes and/or dual frontages; and
 - (b) achieve a clear delineation between light industrial and residential vehicles in access arrangements to the lots.
- (30) In the Rural Enterprise zone -
- (a) dwellings must be incidental to the predominant use of the site for light industry;
 - (b) unless otherwise provided in the Scheme, the development of dwellings shall be in accordance with the R2 density code provisions of the R-Codes, with the exception of the minimum lot size area, which is not applicable;
 - (c) no more than one dwelling will be permitted on each lot;
 - (d) the local government shall not grant development approval for a dwelling prior to the predominant use being either approved or constructed;
 - (e) where a dwelling has been granted development approval, it shall not be occupied until the predominant use has been established and is operational on site;
 - (f) lots shall be connected to a network electricity supply and reticulated potable water supply provided by a licensed service provider; and
 - (g) notifications on title may be used to advise prospective purchasers of potential noise, dust, odour or other amenity impacts that may arise from light industrial uses.

Development in the Environmental Conservation zone

- (31) Comprehensive planning for the area shall be undertaken by preparation of a Structure Plan to guide subdivision and development.
- (32) No land owner shall carry out subdivision or development (other than the development of a single house and/or associated facilities involved in the use and enjoyment of the property by the occupants of the single house) other than in accordance with the Structure Plan.
- (33) Any additional provisions applicable to a specific area of Environmental Conservation zoned land in a Schedule shall prevail in the event of any inconsistencies with other relevant Scheme provisions.
- (34) The local government will not support further subdivision of lots in the Environmental Conservation zone.
- (35) In the Environmental Conservation zone, a demonstrated and sustainable water supply is to be provided in accordance with Western Australian Planning Commission Policy.
- (36) Where connection to reticulated sewer is not available, domestic sewerage shall be disposed of by means of alternative effluent disposal system to the satisfaction of the local government and the Department of Health.

- (37) The local government or the Western Australian Planning Commission will require the provision of building envelopes or building exclusion areas for all land in the Environmental Conservation zone, which shall be –
- (a) shown on the approved structure plan, or separate detailed plan required as a condition of subdivision approval;
 - (b) at a size to be determined by the local government;
 - (c) located to avoid any native vegetation or any area recognised for protection or rehabilitation as shown on the approved structure plan and/or environmental management plan;
 - (d) located to ensure on site effluent disposal meets the minimum setback requirements from drainage lines, watercourses, wetlands and other areas as determined by the local government;
 - (e) located outside of any identified and/or designated buffer areas; and
 - (f) located in accordance with any fire management plan approved for the land.
- (38) The local government may permit a variation to a previously approved building envelope, prior to the construction of any building, if it can be demonstrated to the satisfaction of the local government that the location of the proposed new building envelope will not be detrimental to the environmental qualities of the land and other adjoining properties.
- (39) All buildings and on-site effluent disposal systems shall be confined to the building envelope indicated on the approved structure plan.
- (40) Within areas designated as a natural vegetation preservation and/or remnant vegetation areas, no indigenous trees or vegetation may be felled or removed except for –
- (a) trees which are dead, diseased or dangerous;
 - (b) establishment of a firebreak required under a regulation or bylaw;
 - (c) access to a building site;
 - (d) an area up to two metres in width for the purpose of a fence line;
 - (e) vegetation being removed or disturbed as part of a verge/native tree replanting programme carried out with local government's knowledge and approval.
- (41) Nothing in the above subclause shall be construed to mean that any person can clear a portion of a road reserve.
- (42) In considering granting development approval for a building, local government may where it considers an area to be deficient in tree cover, or additional tree cover to be desirable in the interests of landscape protection or enhancement, require tree planting located so as to provide adequate visual screening of the building.

Development in the Light Industry zone

- (43) No person shall use the setback area between the building line and the street alignment for any purpose other than one or more of the following –
- (a) a means of access;
 - (b) the daily parking of vehicles;
 - (c) loading and unloading of vehicles;
 - (d) trade display only with the approval of the local government; and,

- (e) landscaping.
- (44) Setback areas shall not be used for the storing of vehicles which are being repaired or wrecked, the storage of materials, products, by-products or wastes, or the storage of fuel, except in underground tanks.
- (45) Outdoor displays, industrial hire services, storage facilities, depots, laydown areas and any other open area shall be sealed, paved or landscaped to the satisfaction of local government and maintained in good condition.
- (46) In considering development applications, the local government shall have regard for the –
 - (a) compatibility of the proposed uses with other surrounding uses;
 - (b) potential impact of the proposal on the efficient and effective operations of existing and planned industry, infrastructure or public purposes; and,
 - (c) risks, hazards, health and amenity associated with the proposed use being located in proximity to existing and planned industry, infrastructure or public purpose or any other use.
- (47) Factory unit developments may be permitted provided that –
 - (a) there is no more than one occupancy for each factory unit; and
 - (b) no unit is used for machinery or automotive wrecking or for the sale of motor vehicles or caravans.

Development in the Industrial Development zone

- (48) Comprehensive planning for the area shall be undertaken by preparation of a Structure Plan to guide subdivision and development.
- (49) No land owner shall carry out subdivision or development (other than the development of a single house and/or associated facilities involved in the use and enjoyment of the property by the occupants of the single house) other than in accordance with the Structure Plan.
- (50) Detailed land capability analysis will be required for land prior to subdivision which must consider –
 - (a) The siting of building and effluent disposal envelopes to avoid remnant bushland, minor rock outcropping and seasonally wet areas;
 - (b) Drainage management and provision of nutrient stripping basins to avoid adverse impacts on water courses;
 - (c) Retention of remnant vegetation to reduce erosion, provide fauna habitat, retain visual amenity and conserve vegetation;
 - (d) Additional tree planting to improve environmental functions and provide screening for privacy and landscape amenity;
 - (e) The use of alternative on-site effluent disposal systems where desirable; and
 - (f) The placement of fence lines and fire breaks, and the use of control measures to minimise erosion potential.
- (51) If a provision in any applicable Schedule conflicts with any other provision of the Scheme, the provision in the Schedule shall prevail.

Development in the Commercial and Service Commercial zones

- (52) Unless otherwise specified on the Scheme map, residential development in the Commercial zone shall be in accordance with the R40 Code and shall satisfy the mixed use requirements of the Residential Design Codes.
- (53) The local government will only permit development to occur at the R40 density coding if the land can be connected to reticulated sewer services.
- (54) In the Service Commercial zone, outdoor displays, industrial hire services, storage facilities, depots, laydown areas and any other open area shall be sealed, paved or landscaped to the satisfaction of local government and maintained in good condition.

Development in the Mixed Use zone

- (55) Comprehensive planning for the area shall be undertaken by preparation of a Structure Plan to guide subdivision and development.
- (56) The preparation, submission and approval of a Local Development Plan for development in the mixed use zone may be required for –
 - (a) development or redevelopment of a lot greater than 3,000m² in area; or
 - (b) extension or expansion of an existing development (other than the refurbishment of an existing building) on a lot, where the proposed development is greater than 2,000 nla.
- (57) All subdivision and development shall be generally in accordance with the approved Structure or Local Development Plan.
- (58) Unless otherwise specified on the Scheme map, residential development in the Mixed Use zone shall be in accordance with the approved Structure or Local Development Plan and shall satisfy the mixed use requirements of the Residential Design Codes.

Car parking requirements

- (59) A person shall not develop or use any land or erect, use or adapt any building unless a suitable number of car parking spaces are provided on site and in accordance with the car parking requirements for particular developments and land uses as listed in Schedule 6 – Car parking requirements.
- (60) The dimensions of parking spaces required under the provisions of the Scheme, shall be as per Australian Standard 2890 Parking Facilities.
- (61) For open car parking facilities with 20 or more parking spaces, a minimum area equivalent to one parking space shall be provided in suitable locations for every 20 parking spaces for garden and planting of native plants and trees to provide visual relief and, so long as these garden and planting areas are maintained in good order, those areas provided for this purpose shall be included in calculations as landscaping and not as car parking.
- (62) The car parking layouts on any lot within the Commercial, Service Commercial or Mixed Use zones shall be designed in conjunction with layouts on adjoining lots so that the total area may ultimately function as an integrated car parking area.

- (63) Where an applicant for development approval can demonstrate that other off-street parking facilities are available to be shared with other land uses operating at different times, the local government may approve a development with less than the required number of on-site car bays provided –
- (a) the local government is satisfied that no conflict will occur in the operation of land uses for which the joint use of parking facilities is proposed; and
 - (b) landowners' who request sharing of parking facilities enter into a legal agreement to the local government's satisfaction for reciprocal access to parking facilities.
- (64) In the Commercial and Mixed Use zones, where a developer can satisfy the local government that the minimum car parking requirements cannot be provided on the site, the local government may accept a cash payment in lieu of the provision of car parking spaces, subject to the requirements of this clause –
- (a) a "cash-in lieu" payment shall be not less than the estimated cost to the owner of providing and constructing the parking spaces required by the scheme, plus the value as estimated by the Valuer General, or by a licensed valuer appointed by local government of that area of the applicant's land which would have been occupied by the parking spaces.
 - (b) before the local government agrees to accept a cash payment "in lieu" of the provision of parking spaces, the local government must either have already provided public car parking nearby, or must have firm proposals to provide public car parking nearby within a period of not more than 18 months from the time of agreeing to accept the cash payment.
 - (c) payments made under this clause shall be paid into a special fund to be used to provide public car parks and the local government may use this fund to provide public car parking anywhere in the immediate vicinity.

Height and appearance of buildings

- (65) Within the Scheme Area, no building shall exceed 9 metres in overall height above natural ground level unless otherwise specified in an approved Structure Plan.
- (66) Notwithstanding the provisions of the above clause, after following the procedures set out in clause 64 of the deemed provisions, the local government may grant approval for the construction of a building higher than the maximum specified. Before granting its approval the local government shall satisfy itself that the proposed building –
- (a) will be in harmony with buildings within the locality;
 - (b) will not be detrimental to the amenity or character of the locality or to the town or district in general; and,
 - (c) will not affect the development potential of adjoining lots by affecting design, aspect, outlook, views and privacy.

Re-purposed and second-hand buildings

- (67) Re-purposed and second-hand buildings shall not be permitted on any lot within the Scheme area unless –
- (a) In the opinion of the local government such a dwelling is in a satisfactory condition and will not detrimentally affect the amenity of the area; and

- (b) An Applicant enters into an agreement, including payment of a bond, to the satisfaction of the local government to reinstate the dwelling to an acceptable standard of presentation as determined by the local government within 24 months of commencement of works.

Lots without frontage to a constructed gazetted road or permanent legal access to a constructed gazetted road

- (68) Notwithstanding any other Scheme provisions, development approval is required for the development of land abutting an unconstructed road or a lot which does not have permanent legal vehicular access to a gazetted and constructed road. In considering an application for development approval in these circumstances the local government shall either –
 - (a) refuse the application until a road has been gazetted and constructed;
 - (b) grant the application subject to a condition requiring the application to contribute to or construct a gazetted road; or
 - (c) require that such other arrangements are made for the permanent access to the satisfaction of the local government.

Landscaping

- (69) In all zones except the Rural zones there will be a landscaping requirement for all developments.
- (70) The landscaping requirement referred to in Table 6 means an open area designed, developed and maintained as a landscaped garden and pedestrian area. At the discretion of the local government it may include natural bushland, swimming pools, areas under covered ways or a children's playground.
- (71) All applications for development approval, except those for residential development involving two dwellings or less shall indicate the landscaping elements of the proposal and in particular a plan showing –
 - (a) the percentage of the site devoted to landscaping;
 - (b) the areas subject to landscaping works;
 - (c) the percentage and condition of remnant vegetation to be retained;
 - (d) location and species of plants, including shade trees planted within and adjacent to car parking areas at the rate of one tree per two car bays;
 - (e) other materials imported, arranged and/or constructed on the site;
 - (f) areas to be irrigated and the systems to be used; and
 - (g) the proposed staging, if any, and timing of the works.

Landscape protection

- (72) The following provisions shall apply to all land included within the landscape protection area, depicted on Map 8 in the Local Planning Strategy.
- (73) The objectives for the landscape protection area are –
 - (a) to maintain the integrity of landscapes, particularly:
 - (i) along the Avon River waterway and adjoining recreation sites;
 - (ii) along the railway line; and

- (iii) along identified tourist routes, including, but not limited to, Beach Road, Plunkett Road, Cobbler Pool Road, Morangup Road, Lovers Lane, River Road, Toodyay Road, Salt Valley Road, Fernie Road, Hoddy Well Road, Sandplain Road, Folewood Road, Clackline-Toodyay Road, Northam-Toodyay Road, Goomalling-Toodyay Road, Bindi Bindi-Toodyay Road south of Culham, Bindoon Dewar's Pool Road, Julimar Road and Pelham Reserve;
 - (b) to protect and enhance the landscape and scenic values through control over location, design, and siting of development.
- (74) In considering any rezoning request, subdivision or development proposal within the landscape protection area, the local government will have due regard to the following –
 - (a) there is a general presumption against development being located within sensitive sites/visually prominent locations in the landscape. Sensitive sites include horizon lines, focal points, elevated landforms and areas within important views, such as from key riverside vantage points along the Avon River, or anywhere in the landscape within the viewshed of the Avon River waterway, railway line or Cobbler Pool Road.
 - (b) proposals will only be supported by the local government when the location, siting and design of buildings and other structures, including power lines and telecommunications towers, or works will not have an adverse impact on the scenic value of the Avon River, or the landscape quality and scenic values of the locality.
- (75) A visual impact assessment (undertaken in accordance with section 2.3 of the WAPC's Visual Landscape Planning in WA manual) is to accompany all rezoning requests, structure plans and subdivision proposals within the landscape protection area, to assess any potential impacts of the proposal. The statement should address –
 - (a) visibility of the proposed development, using viewshed mapping and estimating the height of proposed structures, where the proposal may be visible from the Avon River waterway and adjoining recreation sites, the railway, and tourist routes identified in clause 74 2(a) (iii);
 - (b) capacity of the proposed development to avoid visually prominent locations comprising horizon lines, focal points, elevated landform and areas within important views, such as from key riverside vantage points along the Avon River;
 - (c) effects of clearing for development requirements, including for roads, services, driveways and bushfire mitigation;
 - (d) whether the proposal is compatible with the existing rural and natural character of its immediate setting and broader locality within the Shire of Toodyay;
 - (e) the cumulative impacts of the proposed development and other development in the locality; and
 - (f) where required, the capacity of the proposed development to be screened from view by existing or planted vegetation.
- (76) The local government may require vegetation screening as a condition of subdivision or development approval to minimise visual impacts or obscure development from view from key tourist routes and other locations.

Extractive Industries

- (77) The development of extractive industries in the Scheme area will only be supported by the local government under the following circumstances –
- (a) where the extraction of minerals or basic raw materials does not adversely affect the environment or amenity in the locality of the operation during or after excavation;
 - (b) where due consideration is given to the rehabilitation and sequential use of extraction areas early in the planning process; and
 - (c) where proposals comply with all relevant legislation, policies, guidelines and codes of practice applicable at the time, including the Shire of Toodyay Extractive Industries Local Law.
- (78) All applications for development approval for the establishment of extractive industry operations in the Scheme area are to be accompanied by a management plan and report which –
- (a) describes the physical characteristics of the excavation site including significant environmental features;
 - (b) demonstrates that sensitive land uses within 1,000 metres of the proposal will not be adversely affected by the extractive industry operations;
 - (c) identifies appropriate buffer distances required for extraction that are needed to buffer the impact of operations to adjacent land uses;
 - (d) provides details of the proposed use, development and management of the site including the nature and estimated duration of excavation works, environmental and water resource management standards, excavation areas, stock piles, machinery maintenance areas, processing plants, fuel storage and on-site access roads, parking for cars and other vehicles used on the site, and proposals for landscaping to screen activities on the site from public view;
 - (e) describes arrangements for access to the site, including the roads which are proposed to be used to provide the main vehicular access and likely traffic volumes;
 - (f) provides details of proposed decommissioning and rehabilitation works;
 - (g) describes future land use and development proposals following completion of decommissioning and rehabilitation works; and
 - (h) any other information the local government considers relevant
- (79) In determining applications for development approval for the establishment of extractive industry operations in the Scheme area the local government may impose conditions relating but not limited to the following matters –
- (a) hours and methods of operation;
 - (b) siting of internal access thoroughfares, buildings and plant;
 - (c) vehicle access arrangements including road upgrade and maintenance contributions;
 - (d) measures to minimise air, water, noise and visual pollution;
 - (e) location and depth of extraction areas;
 - (f) stabilisation of extraction areas, stock piles and overburden dumps;
 - (g) drainage;
 - (h) protection of the amenity of adjoining land uses including visual screening and buffer requirements;
 - (i) restoration and rehabilitation of excavation areas; and
 - (j) rehabilitation to ensure consistency with long term planning objectives including sequential land use proposals.

Mining Operations

- (80) Whilst Mining Operations are exempt from the need for development approval under the *Mining Act 1978*, the Shire may exercise its discretion to inform the Minister for Mines and the Minister for Planning in writing that the granting of a mining lease or general purpose lease is contrary to the provisions of the Scheme and the Local Planning Strategy. In providing advice to the Minister for Mines on the suitability of Mining Operations, the Shire will be guided by the permissibility of this use in the zoning table.

'Mineral to Owner' Mining Operations

- (81) In considering proposals to commercial extract minerals, the local government may exercise its discretion to inform the Minister for Mines and the Minister for Planning in writing that the granting of a mining lease or general purpose lease is contrary to the provisions of the Scheme and the Local Planning Strategy.

Nature Based Parks

- (82) Nature based park proposals shall be accompanied by information that –
- (a) outlines the scale of the proposal, including but not limited to, the number of camps, maximum number of campers, access arrangements to the site and any proposed structures;
 - (b) identifies environmental values and sets out measures for protection and rehabilitation;
 - (c) demonstrates waste disposal is in accordance with Government policy, or is otherwise removed from and disposed offsite;
 - (d) demonstrates adequate separation distances and/or buffers from incompatible land uses on adjacent or nearby locations; and
 - (e) any other information the decision maker considers relevant.
- (83) In considering a proposal for the development of a Nature based park the decision maker shall refer any application which propose:
- (a) clearing of native vegetation to the government department/s responsible for the environment; and
 - (b) the installation of an on-site effluent disposal system to the government department/s responsible for human and environmental health.
- (84) Nature based park proposals will not be supported where in the opinion of the decision maker, the proposal detrimentally impact or undermines surrounding land uses, and in particular, where the proposal undermines the ability for continued agricultural use of Rural land.
- (85) No clearing of native vegetation is permitted to occur.

Note: Nature Based Park applications are required to be in accordance with the Caravan Parks and Camping Grounds Act 1995 and the Caravan Parks and Camping Grounds Regulations 1997.

33. Specific development standards and requirements

There are no additional requirements that apply to this Scheme.

34. Variations to site and development requirements

- (1) In this clause, additional site and development requirements means requirements set out in clauses 32 and 33.
- (2) The local government may approve an application for a development approval that does not comply with an additional site and development requirements.
- (3) An approval under subclause (2) may be unconditional or subject to any conditions the local government considers appropriate.
- (4) If the local government is of the opinion that the non-compliance with an additional site and development requirement will mean that the development is likely to adversely affect any owners or occupiers in the general locality or in an area adjoining the site of the development the local government must –
 - (a) consult the affected owners or occupiers by following one or more of the provisions for advertising applications for development approval under clause 64 of the deemed provisions; and
 - (b) have regard to any expressed views prior to making its determination to grant development approval under this clause.
- (5) The local government may only approve an application for development approval under this clause if the local government is satisfied that –
 - (a) approval of the proposed development would be appropriate having regard to the matters that the local government is to have regard to in considering an application for development approval as set out in clause 67 of the deemed provisions; and
 - (b) the non-compliance with the additional site and development requirement will not have a significant adverse effect on the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.

35. Restrictive covenants

- (1) A restrictive covenant affecting land in the Scheme area that would have the effect of limiting the number of residential dwellings which may be constructed on the land is extinguished or varied to the extent that the number of residential dwellings that may be constructed is less than the number that could be constructed on the land under this Scheme.
- (2) If subclause (1) operates to extinguish or vary a restrictive covenant –
 - (a) development approval is required to construct a residential dwelling that would result in the number of residential dwellings on the land exceeding the number that would have been allowed under the restrictive covenant; and
 - (b) the local government must not grant development approval for the construction of the residential dwelling unless it gives notice of the application for development approval in accordance with clause 64 of the deemed provisions.

PART 5 – SPECIAL CONTROL AREAS

36. Special control areas

- (1) Special control areas are marked on the Scheme Map according to the legend on the Scheme Map.
- (2) The purpose, objectives, application requirements and additional provisions that apply to each special control area are set out in Schedule 3 – Special control areas.

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PART 6 – TERMS REFERRED TO IN SCHEME

Division 1 – General definitions used in Scheme

37. Terms used

(1) If a word or expression used in this Scheme is listed in this clause, its meaning is as follows –

Land Use	Definition
building envelope	means the area of land within which all buildings and effluent disposal facilities on a lot must be contained.
building height	in relation to a building – (a) if the building is used for residential purposes, has the meaning given in the R-Codes; or (b) if the building is used for purposes other than residential purposes, means the maximum vertical distance between the natural ground level and the finished roof height directly above, excluding minor projections as that term is defined in the R-Codes.
cabin	means a dwelling forming part of a tourist development or caravan park that is – (a) an individual unit other than a chalet; and (b) designed to provide short-term accommodation for guests;
chalet	means a dwelling forming part of a tourist development or caravan park that is – (a) a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and (b) designed to provide short-term accommodation for guests.
commencement day	means the day this Scheme comes into effect under section 87(4) of the Act.
commercial vehicle	means a vehicle, whether licenced or not, that has a gross vehicle mass of greater than 4.5 tonnes including – (d) a utility, van, truck, tractor, bus or earthmoving equipment; and (e) a vehicle that is, or is designed to be an attachment to a vehicle referred to in paragraph (a).
floor area	has meaning given in the Building Code.
frontage	in relation to a building – (a) if the building is used for residential purposes, has the meaning given in the R-Codes; or (b) if the building is used for purposes other than residential purposes, means the road alignment at the front of a lot and, if a lot abuts 2 or more roads, the one to which the building or proposed building faces.

Land Use	Definition
incidental use	means a use of premises which is consequent on, or naturally attaching, appertaining or relating to, the predominant use.
minerals	has the meaning given in the <i>Mining Act 1978</i> section 8(1).
net lettable area or nla	means the area of all floors within the internal finished surfaces of permanent walls but does not include the following areas – (a) stairs, toilets, cleaner’s cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas; (b) lobbies between lifts facing other lifts serving the same floor; (c) areas set aside as public space or thoroughfares and not for the exclusive use of occupiers of the floor or building; (d) areas set aside for the provision of facilities or services to the floor or building where those facilities are not for the exclusive use of occupiers of the floor or building.
non-conforming use	has the meaning given in the <i>Planning and Development Act 2005</i> section 172.
plot ratio	means the ratio of the floor area of a building to an area of land within the boundaries of the lot or lots on which the building is located.
precinct	means a definable area where particular planning policies, guidelines or standards apply.
predominant use	means the primary use of premises to which all other uses carried out on the premises are incidental.
retail	means the sale or hire of goods or services to the public.
short-term accommodation	means temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than 3 months in any 12 month period.
wall height	in relation to a wall of a building – (a) if the building is used for residential purposes, has the meaning given in the R-Codes; or (b) if the building is used for purposes other than residential purposes, means the vertical distance from the natural ground level of the boundary of the property that is closest to the wall to the point where the wall meets the roof or parapet.
wholesale	means the sale of goods or materials to be sold by others.

- (2) A word or expression that is not defined in this Scheme –
- (a) has the meaning it has in the *Planning and Development Act 2005*; or
 - (b) if it is not defined in that Act – has the same meaning as it has in the R-Codes.

Division 2 – Land use terms used in Scheme

38. Land use terms used

If this Scheme refers to a category of land use that is listed in this provision, the meaning of that land use is as follows –

Land Use	Definition
abattoir	means premises used commercially for the slaughtering of animals for the purposes of consumption as food products.
agriculture – extensive	means premises used for the raising of stock or crops including outbuildings and earthworks, but does not include agriculture – intensive or animal husbandry – intensive.
agriculture – intensive	means premises used for commercial production purposes, including outbuildings and earthworks, associated with any of the following – <ul style="list-style-type: none"> (a) the production of grapes, vegetables, flowers, exotic or native plants, or fruit or nuts; (b) the establishment and operation of plant or fruit nurseries; (c) the development of land for irrigated fodder production or irrigated pasture (including turf farms); (d) aquaculture.
amusement parlour	means premises – <ul style="list-style-type: none"> (a) that are open to the public; and (b) that are used predominantly for amusement by means of amusement machines including computers; and (c) where there are 2 or more amusement machines.
animal establishment	means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry – intensive or veterinary centre.
animal husbandry – intensive	Premises used for keeping, rearing or fattening of alpacas, beef and dairy cattle, goats, pigs, poultry (for either egg or meat production), rabbits (for either meat or fur production), sheep or other livestock in feedlots, sheds or rotational pens. This use excludes 'agriculture – extensive'.
art gallery	means premises – <ul style="list-style-type: none"> (a) that are open to the public; and (b) where artworks are displayed for viewing or sale.
bed and breakfast	means a dwelling – <ul style="list-style-type: none"> (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and (b) containing not more than 2 guest bedrooms.
betting agency	means an office or totalisator agency established under the <i>Racing and Wagering Western Australia Act 2003</i> .

Land Use	Definition
brewery	means premises the subject of a producer's licence authorising the production of beer, cider or spirits granted under the <i>Liquor Control Act 1988</i> .
bulky goods showroom	means premises – <ul style="list-style-type: none"> (a) used to sell by retail any of the goods and accessories of the following types that are principally used for domestic purposes – <ul style="list-style-type: none"> (i) automotive parts and accessories; (ii) camping, outdoor and recreation goods; (iii) electric light fittings; (iv) animal supplies including equestrian and pet goods; (v) floor and window coverings; (vi) furniture, bedding, furnishings, fabrics, manchester and homewares; (vii) household appliances, electrical goods and home entertainment goods; (viii) party supplies; (ix) office equipment and supplies; (x) babies' and children's goods, including play equipment and accessories; (xi) sporting, cycling, leisure, fitness goods and accessories; (xii) swimming pools; and (b) used to sell goods and accessories by retail if – <ul style="list-style-type: none"> (i) a large area is required for the handling, display or storage of the goods; or (ii) vehicular access is required to the premises for the purpose of collection of purchased goods.
caravan park	means premises that are a caravan park as defined in the <i>Caravan Parks and Camping Grounds Act 1995</i> section 5(1).
caretaker's dwelling	means a dwelling on the same site as a building, operation or plant, and occupied by a supervisor of that building, operation or plant.
car park	means premises used primarily for parking vehicles whether open to the public or not but does not include – <ul style="list-style-type: none"> (a) any part of a public road used for parking or for a taxi rank; or (b) any premises in which cars are displayed for sale.
child care premises	means premises where – <ul style="list-style-type: none"> (a) an education and care service as defined in the <i>Education and Care Services National Law (Western Australia)</i> Section 5(1), other than a family day care service as defined in that section, is provided; or (b) a child care service as defined in the <i>Child Care Services Act 2007</i> section 4 is provided.
cinema/theatre	means premises where the public may view a motion picture or theatrical production.

Land Use	Definition
civic use	means premises used by a government department, an instrumentality of the State or the local government for administrative, recreational or other purposes.
club premises	means premises used by a legally constituted club or association or other body of persons united by a common interest.
commercial vehicle parking	means premises used for parking of one or 2 commercial vehicles but does not include – (a) any part of a public road used for parking or for a taxi rank; or (b) parking of commercial vehicles incidental to the predominant use of the land.
community purpose	means premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organisations involved in activities for community benefit.
consulting rooms	means premises used by no more than 2 health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care.
convenience store	means premises – (a) used for the retail sale of convenience goods commonly sold in supermarkets, delicatessens or newsagents; and (b) operated during hours which include, but may extend beyond, normal trading hours; and (c) the floor area of which does not exceed 300m ² nla.
corrective institution	means premises used to hold and reform persons committed to it by a court, such as a prison or other type of detention facility.
educational establishment	means premises used for the purposes of providing education including premises used for a school, higher education institution, business college, academy or other educational institution.
exhibition centre	means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature including a museum.
family day care	means premises where a family day care service as defined in the <i>Education and Care Services National Law (Western Australia)</i> is provided.
fast food outlet	means premises, including premises with a facility for drive-through service, used for the preparation, sale and serving of food to customers in a form ready to be eaten – (a) without further preparation; and (b) primarily off the premises.
fuel depot	means premises used for the storage and sale in bulk of solid or liquid or gaseous fuel but does not include premises used – (a) as a service station; or (b) for the sale of fuel by retail into a vehicle for use by the vehicle.
funeral parlour	means premises used – (a) to prepare and store bodies for burial or cremation;

Land Use	Definition
	(b) to conduct funeral services.
garden centre	means premises used for the propagation, rearing and sale of plants, and the storage and sale of products associated with horticulture and gardens.
holiday accommodation	means 2 or more dwellings on one lot used to provide short term accommodation for persons other than the owner of the lot.
holiday house	means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.
home business	means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or profession if the carrying out of the business, service or profession – <ul style="list-style-type: none"> (a) does not involve employing more than 2 people who are not members of the occupier’s household; and (b) will not cause injury to or adversely affect the amenity of the neighbourhood; and (c) does not occupy an area greater than 50m²; and (d) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and (e) does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; and (f) does not involve the presence, use or calling of a vehicle more than 4.5 tonnes tare weight; and (g) does not involve the use of an essential service that is greater than the use normally required in the zone in which the dwelling is located.
home occupation	means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out an occupation if the carrying out of the occupation that – <ul style="list-style-type: none"> (a) does not involve employing a person who is not a member of the occupier’s household; and (b) will not cause injury to or adversely affect the amenity of the neighbourhood; and (c) does not occupy an area greater than 20m²; and (d) does not involve the display on the premises of a sign with an area exceeding 0.2m²; and (e) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and (f) does not – <ul style="list-style-type: none"> (i) require a greater number of parking spaces than normally required for a single dwelling; or (ii) result in an increase in traffic volume in the neighbourhood; and

Land Use	Definition
	<p>(g) does not involve the presence, use or calling of a vehicle more than 4.5 tonnes tare weight; and</p> <p>(h) does not include provision for the fuelling, repair or maintenance of motor vehicles; and</p> <p>(i) does not involve the use of an essential service that is greater than the use normally required in the zone in which the dwelling is located.</p>
home office	<p>means a dwelling used by an occupier of the dwelling to carry out a home occupation if the carrying out of the occupation –</p> <p>(a) is solely within the dwelling; and</p> <p>(b) does not entail clients or customers travelling to and from the dwelling; and</p> <p>(c) does not involve the display of a sign on the premises; and</p> <p>(d) does not require any change to the external appearance of the dwelling.</p>
home store	<p>means a shop attached to a dwelling that –</p> <p>(a) has a net lettable area not exceeding 100m²; and</p> <p>(b) is operated by a person residing in the dwelling.</p>
hospital	<p>means premises used as a hospital as defined in the <i>Hospitals and Health Services Act 1927</i> section 2(1).</p>
hotel	<p>means premises the subject of a hotel licence other than a small bar or tavern licence granted under the <i>Liquor Control Act 1988</i> including any betting agency on the premises.</p>
industry	<p>means premises used for the manufacture, dismantling, processing, assembly, treating, testing, servicing, maintenance or repairing of goods, products, articles, materials or substances and includes facilities on the premises for any of the following purposes –</p> <p>(a) the storage of goods;</p> <p>(b) the work of administration or accounting;</p> <p>(c) the selling of goods by wholesale or retail;</p> <p>(d) the provision of amenities for employees;</p> <p>(e) incidental purposes.</p>
Industry – cottage	<p>means a trade or light industry producing arts and crafts goods which does not fall within the definition of a home occupation and which –</p> <p>(a) does not cause injury to or adversely affect the amenity of the neighbourhood;</p> <p>(b) where operated in a residential zone, does not employ any person other than a member of the occupier's household;</p> <p>(c) is conducted in an out-building which is compatible with the principal uses to which land in the zone in which it is located may be put;</p> <p>(d) does not occupy an area in excess of 50m², or if located in the Rural Small Holding zone or the General Agriculture zone, an area in excess of 100m²; and</p> <p>(e) does not display a sign exceeding 0.2m² in area.</p>

Land Use	Definition
industry – extractive	means premises, other than premises used for mining operations, that are used for the extraction of basic raw materials including by means of ripping, blasting or dredging and may include facilities for any of the following purposes – (a) the processing of raw materials including crushing, screening, washing, blending or grading; (b) activities associated with the extraction of basic raw materials including wastewater treatment, storage, rehabilitation, loading, transportation, maintenance and administration.
industry – light	means premises used for an industry where impacts on the amenity of the area in which the premises is located can be mitigated, avoided or managed.
industry – primary production	means premises used – (a) to carry out a primary production business as that term is defined in the <i>Income Tax Assessment Act 1997 (Commonwealth)</i> section 995-1; or (b) for a workshop servicing plant or equipment used in primary production businesses.
liquor store – large	means premises the subject of a liquor store licence granted under the <i>Liquor Control Act 1988</i> with a net lettable area of more than 300m ² .
liquor store – small	means premises the subject of a liquor store licence granted under the <i>Liquor Control Act 1988</i> with a net lettable area of not more than 300m ² .
Lunch bar	means premises or part of premises used for the sale of takeaway food (in a form ready to be consumed without further preparation) within industrial or commercial areas.
market	means premises used for the display and sale of goods from stalls by independent vendors.
medical centre	means premises other than a hospital used by 3 or more health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care.
mining operations	means premises where mining operations, as that term is defined in the <i>Mining Act 1978</i> section 8(1), is carried out.
motel	means premises, which may be licensed under the <i>Liquor Control Act 1988</i> – (a) used to accommodate guests in a manner similar to a hotel; and (b) with specific provision for the accommodation of guests with motor vehicles.
motor vehicle, boat or caravan sales	means premises used to sell or hire motor vehicles, boats or caravans.
motor vehicle repair	means premises used for or in connection with –

Land Use	Definition
	(a) electrical and mechanical repairs, or overhauls, to vehicles other than panel beating, spray painting or chassis reshaping of vehicles; or (b) repairs to tyres other than recapping or retreading of tyres.
motor vehicle wash	means premises primarily used to wash motor vehicles.
nature based parks	means a facility in an area that: <ol style="list-style-type: none"> 1. is not in close proximity to an area that is built up with structures used for business, industry or dwelling-houses at intervals of less than 100 metres for a distance of 500 metres or more; and 2. has been predominately formed by nature; and 3. has limited or controlled artificial light and noise intrusion.
nightclub	means premises the subject of a nightclub licence granted under the <i>Liquor Control Act 1988</i> .
office	means premises used for administration, clerical, technical, professional or similar business activities.
park home park	means premises used as a park home park as defined in the <i>Caravan Parks and Camping Grounds Regulations 1997</i> Schedule 8.
place of worship	means premises used for religious activities such as a chapel, church, mosque, synagogue or temple.
reception centre	means premises used for hosted functions on formal or ceremonial occasions.
recreation – private	means premises that are – <ol style="list-style-type: none"> (a) used for indoor or outdoor leisure, recreation or sport; and (b) not usually open to the public without charge.
renewable energy facility	means premises used to generate energy from a renewable energy source and includes any building or other structure used in, or in connection with, the generation of energy by a renewable resource, where energy is being produced for commercial gain (i.e. solar farms as opposed to solar panels).
repurposed dwelling	means a building or structure not previously used as a single house, which has been repurposed for use as a dwelling.
resource recovery centre	means premises other than a waste disposal facility used for the recovery of resources from waste.
restaurant/cafe	means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the <i>Liquor Control Act 1988</i> .
restricted premises	means premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of –

Land Use	Definition
	(a) publications that are classified as restricted under the <i>Classification (Publications, Films and Computer Games) Act 1995 (Commonwealth)</i> ; and (b) materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity; or (c) smoking-related implements.
roadhouse	means premises that has direct access to a State road other than a freeway and which provides the services or facilities provided by a freeway service centre and may provide any of the following facilities or services – (a) a full range of automotive repair services; (b) wrecking, panel beating and spray painting services; (c) transport depot facilities; (d) short-term accommodation for guests; (e) facilities for being a muster point in response to accidents, natural disasters and other emergencies; and (f) dump points for the disposal of black and/or grey water from recreational vehicles.'
rural home business	means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or profession if the carrying out of the business, service or occupation – (a) does not involve employing more than 2 people who are not members of the occupier's household; and (b) will not cause injury to or adversely affect the amenity of the neighbourhood; and (c) does not occupy an area greater than 200m ² ; and (d) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and (e) does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; and (f) does not involve the presence, use or calling of more than 3 vehicles at any one time or of a vehicle more than 30 tonnes gross weight.
rural pursuit/ hobby farm	means any premises, other than premises used for agriculture – extensive or agriculture – intensive, that are used by an occupier of the premises to carry out any of the following activities if carrying out of the activity does not involve permanently employing a person who is not a member of the occupier's household – (a) the rearing, agistment, stabling or training of animals; (b) the keeping of bees; (c) the sale of produce grown solely on the premises.

Land Use	Definition
second-hand dwelling	means a dwelling that has been in a different location, and has been dismantled and transported to another location, but does not include a new modular or transportable dwelling.
serviced apartment	means a group of units or apartments providing – (a) self-contained short-stay accommodation for guests; and (b) any associated reception or recreational facilities.
service station	means premises other than premises used for a transport depot, panel beating, spray painting, major repairs or wrecking, that are used for – (a) the retail sale of petroleum products, motor vehicle accessories and goods of an incidental or convenience nature; and/or (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles.
shop	means premises other than a bulky goods showroom, a liquor store – large or a liquor store – small used to sell goods by retail, to hire goods, or to provide services of a personal nature, including hairdressing or beauty therapy services.
small bar	means premises the subject of a small bar licence granted under the <i>Liquor Control Act 1988</i> .
tavern	means premises the subject of a tavern licence granted under the <i>Liquor Control Act 1988</i> .
tearooms	means a food business that may operate from residential premises, where the local government is satisfied that the premises are suitable for the use, and the proprietors are generally engaged in low risk food production.
telecommunications infrastructure	means premises used to accommodate the infrastructure used by or in connection with a telecommunications network including any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure related to the network.
tourist development	means a building, or a group of buildings forming a complex, other than a bed and breakfast, a caravan park or holiday accommodation, used to provide – (a) short-term accommodation for guests; and (b) onsite facilities for the use of guests; and (c) facilities for the management of the development.
trade display	means premises used for the display of trade goods and equipment for the purpose of advertisement.
trade supplies	means premises used to sell by wholesale or retail, or to hire, assemble or manufacture any materials, tools, equipment, machinery or other goods used for any of the following purposes including goods which may be assembled or manufactured off the premises – (a) automotive repairs and servicing; (b) building including repair and maintenance; (c) industry; (d) landscape gardening;

Land Use	Definition
	(e) provision of medical services; (f) primary production; (g) use by government departments or agencies, including local government.
transport depot	means premises used primarily for the parking or garaging of 3 or more commercial vehicles including – (a) any ancillary maintenance or refuelling of those vehicles; and (b) any ancillary storage of goods brought to the premises by those vehicles; and (c) the transfer of goods or persons from one vehicle to another.
tree farm	means land used commercially for tree production where trees are planted in blocks of more than one hectare, including land in respect of which a carbon right is registered under the <i>Carbon Rights Act 2003</i> section 5.
veterinary centre	means premises used to diagnose animal diseases or disorders, to surgically or medically treat animals, or for the prevention of animal diseases or disorders.
warehouse/ storage	means premises including indoor or outdoor facilities used for – (a) the storage of goods, equipment, plant or materials; or (b) the display or the sale by wholesale of goods.
waste disposal facility	means premises used – (a) for the disposal of waste by landfill; or (b) the incineration of hazardous, clinical or biomedical waste.
waste storage facility	means premises used to collect, consolidate, temporarily store or sort waste before transfer to a waste disposal facility or a resource recovery facility on a commercial scale.
winery	means premises used for the production of viticultural produce and associated sale of the produce.
workforce accommodation	means premises, which may include modular or relocatable buildings, used – (a) primarily for the accommodation of workers engaged in construction, resource, agricultural or other industries on a temporary basis; and (b) for any associated catering, sporting and recreation facilities for the occupants and authorised visitors.

SCHEDULES

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Schedule A – Supplemental provisions to the deemed provisions

These provisions are to be read in conjunction with the deemed provisions (Schedule 2) contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Clause 61(1)

- (a) the erection or installation of a sign or advertisement of a class specified in Schedule 7 of this Scheme that applies in respect of the sign unless the sign is to be erected or installed –
- (i) on a place included on a heritage list prepared in accordance with this Scheme; or
 - (ii) on land located within an area designated under this Scheme as a heritage area.
- (l) the erection or extension of a single house on a lot if a single house is a permitted (“P”) use in the zone (where the R Codes do not apply) in which that lot is located, where the development standards set out in the scheme for that particular zone (including boundary setbacks) are satisfied, unless the development is located in a place that is:
- (i) entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*; or
 - (ii) the subject of an order under Part 6 of the *Heritage of Western Australia Act 1990*; or
 - (iii) included on a heritage list prepared in accordance with this Scheme; or
 - (iv) within an area designated under the Scheme as a heritage area; or
 - (v) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* section 29; or
 - (vi) in the Rural Enterprise, Rural Residential and Rural Smallholdings Zones, where the proposed development is not in accordance with the designated building envelope contained in an endorsed structure plan; or
 - (vii) on a lot which does not have permanent legal vehicular access to a constructed and gazetted road.
- (m) the erection or extension of an ancillary dwelling, outbuilding, external fixture, boundary wall or fence, patio, pergola, veranda, garage, carport or swimming pool on the same lot as a single house if a single house is a permitted (“P”) in the zone (where the R Codes do not apply) where the development standards set out in the scheme for that particular zone (including boundary setbacks) are satisfied, unless the development is located in a place that is:
- (i) entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*; or
 - (ii) the subject of an order under the *Heritage of Western Australia Act 1990* Part 6; or
 - (iii) included on a heritage list prepared in accordance with this Scheme; or
 - (iv) within an area designated under the Scheme as a heritage area; or
 - (v) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* section 29; or
 - (vi) in the Rural Residential and Rural Smallholdings Zone, where the proposed development is not in accordance with the designated building envelope contained in an endorsed structure plan; or
 - (vii) in the Rural Residential zone where a reticulated water supply is not available (for habitable buildings only); or
 - (viii) on a lot which does not have permanent legal vehicular access to a constructed and gazetted road.
- (n) the painting or application of render on external surfaces on any building or structure, except where the building or structure is:

- (i) located in a place that has been entered in the Register of Heritage Places under the *Heritage Act of Western Australia 1990*; or
 - (ii) the subject of an order under Part 6 of the *Heritage of Western Australia Act 1990*; or
 - (iii) included on the heritage list prepared in accordance with this Scheme; or
 - (iv) located within an area designated under the Scheme as a heritage area.
- (o) the following works on a place that is included on the heritage list prepared in accordance with this Scheme or located within an area designated under the Scheme as a heritage area:
- (i) building maintenance that does not involve the removal of, or damage to, the existing fabric of the building or the use of new materials.
 - (ii) repairs, including replacing missing or deteriorated fabric with like-for-like fabric, that does not involve the removal of, or damage to, the significant fabric of the building.
 - (iii) repainting of the surface of a building in the same colour scheme and paint type if they are appropriate to the substrate and do not endanger the survival of earlier paint layers and without disturbing or removing an earlier paint layer unless it is chalking, flaking or peeling.
- (p) the demolition of any building or structure except where the building or structure is:
- (i) located in a place that has been entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*; or
 - (ii) the subject of an order under Part 6 the *Heritage of Western Australia Act 1990*; or
 - (iii) included on the heritage list prepared in accordance with this Scheme; or
 - (iv) located within an area designated under the Scheme as a heritage area.

Clause 61(2)

- (g) the carrying out of a Rural Pursuit in the Rural Residential and Rural Smallholdings zones is exempt from development approval where the Rural Pursuit:
- (i) is not used for trade or commercial purposes;
 - (ii) complies with the recommended stocking rates and environmental protection requirements of the relevant State Government departments; and
 - (iii) can demonstrate a sustainable water supply.

Clause 85ATransitional arrangements for local planning policies

Where a local planning policy has been prepared in accordance with the requirements of Local Planning Scheme No. 4, it shall continue to have effect, and may be amended or revoked as if it were a local planning policy adopted under Local Planning Scheme No. 5.

Schedule 1 – Additional uses

No.	Description of land	Additional use	Conditions
1.	14 Morangup Road, Toodyay	Garden Centre; Plant Nursery; Shop	<ol style="list-style-type: none"> 1. Development shall be in accordance with site plans approved by local government and will require the issue of development approval. 2. Car parking requirements will be determined by local government as a condition of development approval, taking into account the number of spaces estimated to be necessary. 3. The additional use of shop shall not exceed a maximum gross leasable area of 100m².
2.	Lot 36 Toodyay Bindi-Bindi Road, Bejoording	Dog kennels	Nil.
3.	Lot 7 Avon Loc. 1953 Morangup Road, Toodyay	Dumping of tyres	<ol style="list-style-type: none"> 1. Tyre dumping only permitted in an area approved and defined on a plan adopted by local government. 2. Subject to environmental clearance and monitoring. 3. A memorial shall be placed on the Certificate of Title advising successors in title to the land that part of the land has been used for tyre disposal.
4.	Lot 47 Clarkson St, West Toodyay	Theme Park (Private Recreation Shop)	<ol style="list-style-type: none"> 1. Development to be in accordance with plans approved by local government. 2. Use of a shop will be restricted to the sale of craft goods and souvenirs. 3. The size of the shop to be no larger than 100m²; and 4. Landscaping and a vegetation buffer to be established in accordance with plans approved by local government.
5.	Lot 18 Racecourse Road, Toodyay	Caravan park, including Backpacker's Accommodation, Men's shed, shop, office and manager's residence	<ol style="list-style-type: none"> 1. Permanent accommodation within the caravan park shall be limited to a maximum of 9 caravans or park homes. 2. Development of the land shall be subject to a development application, and shall generally comply with a Structure Plan for the site that has been approved by the local government. 3. A Structure Plan shall be prepared and implemented for the site and shall include—

No.	Description of land	Additional use	Conditions
			<ul style="list-style-type: none"> (a) Bushfire Management Plan; (b) Landscaping plan, including details of any vegetation to be protected in accordance with the requirements of the Department Biodiversity Conservation and Attractions and the provision of a landscape screen adjacent to the development in the vicinity of Hatfield Place (excluding firebreaks); (c) Site plan, including any upgraded facilities, site access and staging details; (d) Effluent treatment and water supply details. <ol style="list-style-type: none"> 4. Any access to Hatfield Place and Broadgrounds Place is to be for emergency access only and shall be appropriately restricted to the satisfaction of the local government. 5. Vegetation is only to be removed from the site in accordance with the Bushfire Management and Landscaping plans. 6. Development shall comply in all respects with the provisions of the <i>Caravan Parks and Camping Grounds Act 1995</i> and associated regulations. 7. The development is to be serviced by an appropriate water supply and effluent disposal systems, as determined by the local government. 8. Use of on-site communal facilities shall be restricted to occupiers of the caravan park and their guests. 9. The use of reflective roofing and external materials on new buildings is not permitted. 10. The additional use shall apply to the entirety of Lot 18 Racecourse Road. Should the lot be subdivided, appropriate consideration should be given to whether it is appropriate to apply additional uses to the proposed lots.
6.	Lot 59 Beaufort Street, West Toodyay	Restaurant Reception Centre	<ol style="list-style-type: none"> 1. Notwithstanding anything else in the Scheme, development on the site shall be subject to application to the local government for approval to commence development. 2. The local government may require development applications to be advertised in accordance with Clause 64 of the deemed provisions.

No.	Description of land	Additional use	Conditions
			3. In considering a development application, the local government may require the preparation of a site management plan to ensure the design, character and scale of the development is in keeping with the objectives of the Special Residential Zone.
7.	Lot 45 (381) Julimar Road, Toodyay	Motel Reception Centre Restaurant/Café	1. Development approval is required for the additional uses. 2. Accommodation is to be short-term accommodation. 3. Reception centre, restaurant/café are incidental uses to the Motel use.
8.	Lot 228 (439) Parkland Drive, Toodyay	Restaurant/Cafe	1. Development approval is required for the additional use. 2. Restaurant is to be an incidental use to the rural pursuit undertaken on the site. 3. When considering an application for development approval the local government may impose conditions in regard to: <ul style="list-style-type: none"> • Hours of operation • Number of seats
9.	Lot 66 (163) Howard Road, Toodyay	Private Recreation Restaurant/Café	1. The private recreation shall only consist of gardens. 2. Development approval is required for the additional uses. 3. Restaurant is to be an incidental use to the private recreation use undertaken on the site. 4. When considering an application for development approval the local government may impose conditions in regard to: <ul style="list-style-type: none"> • Hours of operation • Number of seats
10.	Lots 57 (81) and 97 (65) Beaufort St West, Toodyay	Tourist Development Shop	1. Development approval is required for the additional uses. 2. Shop is to be an incidental use to the rural pursuit undertaken on the site, and only produce grown and produced on the site maybe sold from the shop.
11.	Pt Lots 54 & 55 and Lot 56 Railway Road, Toodyay	Industry – Light	1. The approval additional use is for the sales and servicing of pumps. 2. The use may not be altered, extended or expanded without the approval of the local government.

No.	Description of land	Additional use	Conditions
			<p>3. The hours of operation are restricted to 7am to 5pm, Monday to Friday, except in emergency situations.</p> <p>4. The business shall not involve the presence, use or calling of a vehicle of more than 4.5 tonnes tare weight.</p>
12.	Lot 1 (480) Julimar Road, West Toodyay	Holiday Accommodation	The additional use, including any alteration, expansion or extension, is not permitted unless the local government has exercised its discretion by granting development approval.
13.	Lots 20, 23 & 24 (122) Railway Road, Toodyay	Caravan Park	The additional use, including any alteration, expansion or extension, is not permitted unless the local government has exercised its discretion by granting development approval.
14.			

Schedule 2 – Special use zones

No.	Description of land	Special use	Conditions
1.	Lot 104 Sandplain Road, Toodyay	Health care resort, including residential buildings, conference facilities, dwelling and other buildings and uses approved by local government as being consistent with the primary intent of the zone.	Site development subject to local government development approval in accordance with approved site plans and any conditions imposed under development approval, including controls on building design and construction and landscaping.
2.	Pt. Avon Loc 27620	Private Recreation and Caravan Park	Development for a Caravan Park shall comply in all respects with the provisions of the <i>Caravan Parks and Camping Grounds Act 1995</i> .
3.			
3.	Avon Location 27443 Toodyay Road	Trout farm/fish out and associated facilities, restaurant, picnic area and holiday resort.	In accordance with a concept plan approved by local government with all required septic tanks, leach drains or other such installations for on-site disposal of sewerage effluent or wastes not being constructed closer than thirty (30) metres from a watercourse or stream and not within land subject to flooding.
4.	Lots 111, 115, 117 & 118 Clackline Toodyay Road DELETED _____ 2018	Emu farm, tannery and workshop showroom. Rural Use.	1. Art & Craft Gallery, eating facility, and accommodation units. 2. Tannery use subject to approval of the EPA.
5.	Lots 340, 641, Avon Loc 1677 Julimar Road Tannahil Tourism and Holiday Complex.	Uses permitted subject to local government approval: <ul style="list-style-type: none"> • Rural Pursuit • Equestrian Centre • Holiday Accommodation • Restaurant • Private recreation • Seminary facilities • Wildlife Park 	Uses subject to conformity with an approved site structure plan, and prior to determination of development applications for the abovementioned uses, local government shall consider the following issues – <ol style="list-style-type: none"> 1. Provision of a suitable water supply for firefighting purposes; 2. Provision of a low fuel area in the vicinity of buildings or areas requiring protection from fire; 3. Provision of a strategic firebreak on the subject land; 4. Provision of a Foreshore Management Deed of Agreement covering an area of approximately 15 metres in width from the top of the bank either side of the Phillips Brook;

No.	Description of land	Special use	Conditions
			5. The disposal of domestic sewerage and any related requirements of the Department of Health of WA.
6.	Pt Avon Loc V, Northam Toodyay Road	Toodyay Baptist Church for Religious Purposes, Church Dwelling and ancillary uses.	In accordance with the Concept Plan approved by local government.
7.	Lots 16, 802 and 803, Wattening Spring Road, Wattening	<p>As a discretionary ('D') use:</p> <ul style="list-style-type: none"> • Tourist Development • Cabin • Caretaker's dwelling • Chalet • Holiday accommodation • Holiday house <p>and any other land uses that the local government considers consistent with the intent of this zone.</p>	<p>The purpose and intent of this zone is to provide for tourist accommodation and incidental shared facilities and services.</p> <ol style="list-style-type: none"> 1. Development and use is not permitted unless the local government has exercised its discretion by granting development approval. 2. Development is address, but not limited to, the following matters: <ol style="list-style-type: none"> (a) Setbacks, as determined by local government; and (b) The location of on-site tourism and management facilities across the site; and (c) Access and traffic management for the site, including: <ul style="list-style-type: none"> • providing safe legal ingress and egress to the development site from a constructed public road; • provision of any required road upgrades and/or construction to the satisfaction of the local government; • provision of car parking; • internal vehicle access and circulation; and • pedestrian access across the site. (d) A Bushfire Management Plan (BMP) and emergency evacuation plan shall be prepared; and (e) Any other relevant matter, which the State or local government considers to be warranted to ensure orderly and proper planning of the site. 3. Development is to be provided with the following servicing arrangements: <ol style="list-style-type: none"> (a) A sustainable water supply that is sufficient for the intended use; and (b) A reticulated electricity supply and/or a renewable energy system commensurate with the intended use;

No.	Description of land	Special use	Conditions
			(c) On-site effluent disposal in accordance with relevant State policy and health requirements; (d) Provision for waste management. 4. No permanent residential accommodation is permitted in the Special Use zone, except for a caretaker's dwelling. 5. The above development conditions (2-4) may be varied at the discretion of the local government and on the advice of any relevant referral agency.
8.	Reserve 46058, Lot 298 Folwood Road, Toodyay.	Religious Purposes and Ancillary Purposes (Toodyay Congregation of Jehovah's Witnesses)	Development shall be generally compatible with the objectives of the adjoining zones.
9.	Avon Loc 463 Julimar Road	Boutique microbrewery and chalets	Site development subject to local government's development approval in accordance with approved site plans and any conditions imposed under the development approval, including controls on building design and construction, and landscaping.
10.	Lot 525 Nerramine Drive, Julimar	Restaurant, winery, chalets, single dwelling and rural use	Uses may be approved at discretion of Council, following, if deemed necessary by Council, an advertising period of not less than 21 days. Consideration will be given to the following when determining a development application for the site, to ensure the proposal is in keeping with the rural nature of the area – <ol style="list-style-type: none"> 1. Building design and location 2. Construction materials 3. Landscaping 4. Floor area, opening hours and capacity of the restaurant 5. Number of chalets 6. Traffic movements 7. Offsite impacts.
11.	Lot 1 Salt Valley Road, Hoddys Well	Landfill – Class 1 Waste Only	1. Operation of landfill on Lot 1 is to be in accordance with the management plans contained in <i>Rehabilitation of Clay Pit Lot 1 Salt Valley Road, Toodyay</i> prepared by Landform Research, July 2004.

No.	Description of land	Special use	Conditions
			<ol style="list-style-type: none"> 2. The landfill is to be confined to that part of Lot 1 that has been used for an extractive industry and such adjacent land as is required for operation of landfill as identified in the management plans referred to in paragraph (1). 3. Unless otherwise in accordance with the management plan referred to in paragraph (1), existing vegetation is not to be removed from the operation of landfill. 4. Tyres, asbestos and putrescible waste may not be disposed of at the landfill facility.
12.	Lot 5 Dumbarton Road, Toodyay	Chalet Development, shop, restaurant and seminar facilities.	<p>Uses are permitted subject to the following conditions –</p> <ol style="list-style-type: none"> 1. Subject to a structure plan being adopted by the Western Australian Planning Commission prior to consideration of development approval. The design, character and scale of development shall be in keeping with the objectives of the Rural zone. In considering an application for development approval, the local government will have particular regard to landscaping, servicing and amenity. 2. Each additional use requires development approval of the local government. 3. No more than six (6) chalets being developed on site. 4. The additional use of 'shop' shall not exceed a maximum gross leasable area of 100m², and will be restricted to the sale of craft goods, souvenirs and other tourism related products. 5. The seminar facility is to be developed for no more than 50 persons. Licensing of this development would ensure this could be regulated.
13.	Lot 11 Chitty Road, Toodyay	To provide for – <ol style="list-style-type: none"> 1. Waste Disposal and treatment 2. Rural Uses 	<ol style="list-style-type: none"> 1. Development of the site is to be in accordance with SAT Decision [2013] WASAT88 in regard to Matter Number DR292 2012, approval date 13 June 2013. The approval is personal to Opal Vale Pty Ltd and includes 28 conditions that apply to the 20ha Class II landfill, with the balance 599ha to be used for rural purposes; and 2. As per the requirements for the "Rural" zone.
14.			<ol style="list-style-type: none"> 1.

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Schedule 3 – Special control areas

Name of area	Purpose/ Objectives	Application Requirements	Relevant Considerations
SCA ₁ – Infrastructure Toodyay Bypass Special Control Area	To protect future residential development from traffic noise impacts associated with the Bypass.	<ol style="list-style-type: none"> 1. Development approval is required to construct or extend a single house and ancillary outbuilding. 2. The local government will require an assessment of traffic noise levels from the Toodyay Bypass to be undertaken and suitable noise mitigation measures to be investigated and proposed as part of rezoning, development and subdivision applications. 	In considering rezoning, development or subdivision applications, the local government will have regard to the potential impact of the Bypass on future residential amenity.
SCA ₂ – Flood & Landscape Avon River Special Control Area	<ol style="list-style-type: none"> 1. To preserve the ecological values of the Avon River as a significant drought refuge for freshwater fishes and water birds. 2. To avoid development that would negatively impact upon the ecological values of the area. 3. To protect the natural and rural landscape character of the area, as integral to the river’s value for recreation and tourism. 	Development approval is required to construct or extend a single house and ancillary outbuilding.	<ol style="list-style-type: none"> 1. In considering any rezoning request, subdivision or development application, the local government will have due regard for the following – <ol style="list-style-type: none"> (a) There is a general presumption against rezoning of land within the area for more intensive land uses. (b) The local government may consider supporting subdivision applications within the area if – <ol style="list-style-type: none"> (i) the subdivision is consistent with an approved Structure Plan and/or policies of the Western Australian Planning Commission; (ii) subdivision is for boundary realignment, amalgamation or creation of a reserve for conservation purposes that will not create the potential for additional development within the floodplain area;

Name of area	Purpose/ Objectives	Application Requirements	Relevant Considerations
	<p>4. To ensure that land use in the area, including grazing, cultivation and recreational activities does not degrade the area.</p> <p>5. To ensure that any development takes place in a manner that safeguards the welfare of people in the area. To ensure that future infrastructure development does not impact the environment.</p>		<p>(iii) a visual landscape impact assessment indicates that natural and rural landscape character can be maintained and there will be no impact on the recreation experience for valley users;</p> <p>(c) There is general presumption against new development that would be visible to the public west of the intersection of River Road and Cobbler Pool Road, as seen from Cobbler Pool Road, passenger trains, watercraft and riverside recreation areas.</p> <p>2. Development applications for land within the area will not be supported where the development may result in an obstruction to major river flows and increase flood levels upstream.</p> <p>3. Development applications for intensive agricultural activities will be referred to relevant authorities to assess the potential impacts on the environment and/or river flows.</p> <p>4. Development applications within the floodplain will be subject to a minimum habitable floor level of 0.50 metres above the predicted 1 in 100 year flood level as determined by the Department of Water and Environmental Regulation to provide adequate protection from major flooding events.</p> <p>5. Community facilities may be permitted within the floodplain subject to advice from any relevant authority that such public works or development can be designed and located in a manner so as to minimise flood risks, property damage and obstruction to the river flow.</p>

Name of area	Purpose/ Objectives	Application Requirements	Relevant Considerations
SCA3 – General Toodyay Town Centre Precinct Special Control Area	To promote the Toodyay Town Centre as the District Service Centre of the Shire by managing development and the heritage significance of the area.	Development approval is required for all development within this special control area.	<ol style="list-style-type: none"> 1. Residential development shall comply with the provisions of the Residential Design Codes, R10/40 density code. Higher density code may be used in accordance with the general provisions of the Scheme. 2. A Heritage Impact Assessment shall accompany all development applications for new buildings, subdivision and substantial additions and alterations. 3. Any application for development, including advertising signage, shall have due regard for the provisions of the Local Planning Policy, which contains design and heritage guidelines for the area. 4. Development incentives may apply to the sustainable reuse of a heritage listed building in regards to lot size, floor space ratio and/or car parking. 5. In considering rezoning, development or subdivision applications, the local government will have regard to the potential impact of the proposal on the amenity of the locality.
SCA4 – Toodyay Wastewater Treatment Plant odour buffer Special Control Area	To minimise the impact of odour on surrounding areas and to protect the operations of the Toodyay WWTP by ensuring that odour sensitive land uses are not established within the odour buffer.	Development approval is required for all development and land use within the Special Control Area.	In considering any application for land use or development within the WWTP odour buffer SCA, the local government will have due regard to the following: - <ol style="list-style-type: none"> (a) The local government will generally not approve development which is sensitive to odour emanating from the WWTP; (b) The local government will consult the Water Corporation and the Department of Water and Environmental Regulation regarding the proposed development or land use for advice on the proposal

Name of area	Purpose/ Objectives	Application Requirements	Relevant Considerations
			and any conditions that should be imposed on approval. (c) The local government will have regard to relevant policies including State Planning Policy 4.1

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Schedule 4 – Rural Residential areas

No.	Description of Land	Development Requirements
1.	"Rugged Hills" Estate – Lots 23-25 and 67-71 Davies Rd; 21-22, 26, 36-38, 62-66 Dreyer Rd; 205-206 and 233 Flexuosa Place; 19-20, 27-31 and 55 Julimar Road; 32-35 Kane Road; 207-216 and 224-232 Ridley Circle; 46-48 and 99 Weir Road and 52-61, 99, 158, 201-204, 217-219, 220-223 Wilkerson Road, West Toodyay.	<ol style="list-style-type: none"> 1. Notwithstanding Table 4, rural pursuits and the keeping of livestock are not permitted. 2. No further subdivision is permitted.
2.	"Sanctuary Park" Estate – Lots 21-28, 39, 47 and 48 Scaevola Road; 37, 38, 9002, 405 and 58-62 White Gum Ridge; 36, 44-46 and 49-57 Darwinia Crescents; and 29-35 and 40-43 Laterite Way, West Toodyay	<ol style="list-style-type: none"> 1. Notwithstanding Table 4, rural pursuits are not permitted. 2. Livestock may be held on lots west of White Gum Ridge in areas already cleared of natural vegetation at the time of subdivision and wherein slopes are 10% or less. The holding of livestock is permitted for domestic purposes only. That is, stock may be held for the use and enjoyment of landowners, or for the purposes of keeping of growth of grassland (and therefore fire hazard) in check. Commercial stockholding based activities constitute a rural pursuit and therefore not permitted.
3.	"Majestic Heights and Majestic Waters" Estates – Lots 1, 2, 11, 43, 46, 55, 56, 59-68, 70 200 and 201 Stirlingia Drive; Lots 3 Drummond Drive; Lots 9-22 Adenanthus Road; Lots 26 and 28-38 Hibbertia; Lots 14 and 48-54 Hemiandra Place; Lots 1-10 and 71-73 Sesselis Road; Lots 11-13 Hatfield Road, Lots 14-17 Broadgrounds Place and Lot 18 Racecourse Road, Toodyay.	<ol style="list-style-type: none"> 1. Notwithstanding Table 4, the keeping of any animal stock within the subdivisions of Majestic Heights and Majestic Waters is subject to approval of local government on the merits of the proposal. 2. Notwithstanding the provisions of the Scheme, the Western Australia Planning Commission may, after consultation with local government, approve a plan of subdivision where the minimum lot size is less than 2 hectares provided that: <ol style="list-style-type: none"> (a) In any event no less than 1 ha in area. (b) The number of lots permitted does not exceed the number which, in the opinion of the Western Australia Planning Commission and the local government, could otherwise be achieved under the provisions of the Scheme. (c) The surplus area is allocated to public ownership as open space or reserves for the protection of some features of natural, historic and scientific value. (d) The variation in standards is, in the opinion of the Western Australia Planning Commission and the local government, desirable in the interests of enhancing or protecting the natural environment.

No.	Description of Land	Development Requirements
4.	Lots 63 & 64 and Pt Avon Loc o Balgaling Road, Coondle.	Residential use on a lot is not permitted within the 100 metres stream setback area.
5.	Lots 397 and 280 Horseshoe Road and Lot 396 on P225043, West Toodyay.	<ol style="list-style-type: none"> 1. Subdivision shall generally be in accordance with the endorsed Structure Plan adopted by the local government and endorsed by the Western Australian Planning Commission and any approved modification thereto. The structure plan shall be based on the Plan dated November 2013 13/041/006A and respond to the fire management plan, local water management strategy and the environmental management plans required to be prepared. 2. Building envelopes are to be shown on the structure plan and be – <ul style="list-style-type: none"> • Located to avoid, as far as practicable, the removal of any native vegetation; • Located in areas of moderate bushfire risk only. No building envelopes are to be located in areas identified as extreme bushfire risk; • Located to allow for on-site effluent disposal and grey water recycling systems, taking into account soil conditions, slope, drainage and vegetation; and • no larger than 2000m². 3. All buildings, including water tanks, on-site effluent disposal and grey water reuse systems, are to be confined to within the identified building envelopes for each lot unless a more appropriate location can be found and development approval is obtained from the local government. 4. The subdivider shall prepare a Bushfire Management Plan in accordance with <i>the Guidelines for Planning in Bushfire Prone Areas</i> that identifies the need for any construction requirements relative to strategic firebreaks, water supplies and equipment and any other fire management requirements that may be deemed necessary, to the satisfaction of the local government and the Department of Fire and Emergency Services. 5. Roads and emergency access ways are to be constructed at the first stage of subdivision to provide two access options to the external road system, in accordance with <i>the Guidelines for Planning in Bushfire Prone Areas</i>. 6. Upgrading of the existing fire tank/ firefighting equipment on Horseshoe Road to allow it to service additional lots created through subdivision is to be undertaken at the first stage of subdivision.

No.	Description of Land	Development Requirements
		<p>7. The lots are bushfire prone and all dwellings must be constructed to Australian Standard 3959-2009 (as updated). A bushfire attack level assessment satisfactorily addressing the level of bushfire hazard applying to the land is required to be submitted.</p> <p>8. Clearing of vegetation is only to be undertaken in accordance with the approved structure plan. Clearing of areas not identified in the structure plan for this purpose is not permitted without the development approval of the local government.</p> <p>9. The subdivider shall prepare a local water management plan to the satisfaction of the local government and the Department of Water and Environmental Regulation.</p> <p>10. At development stage, a minimum combined roof area of 405m² is required in order to harvest rainwater for potable use. Each dwelling shall have a water tank with a minimum size of 120,000 litres, with 10,000 litres in the tank to be kept in reserve for firefighting purposes and fitted with standard firefighting fitting and valves.</p> <p>11. Each dwelling is to be fitted with a Department of Health approved grey water recycling system, installed to the satisfaction of the local government. Bore water, dams or additional roof catchment may be used as supplementary non-potable water sources, to the satisfaction of the local government.</p> <p>12. Prior to subdivision, the subdivider shall prepare an Environmental Management Plan, to the satisfaction of the local government, in consultation with the Department of Biodiversity Conservation and Attractions, which shall include –</p> <ul style="list-style-type: none"> • A cockatoo and chuditch management plan; • Identification of key cockatoo habitat locations; • Identify fencing types and locations, to allow for the movement of fauna between vegetated areas; • Areas of native vegetation to be retained and preserved; • The location and means of protection of declared rare flora (if any). <p>13. The approved Bushfire Management Plan, Environmental Management Plan and Local Water Management Plan shall be implemented prior to the subdivision of the land.</p> <p>14. At subdivision stage, notification pursuant to Section 70A of the <i>Transfer of Land Act</i> to be included on titles to ensure that the purchasers are aware that –</p>

No.	Description of Land	Development Requirements
		<ul style="list-style-type: none"> • No reticulated water supply is available and the landowner will be responsible for the provision of a potable water supply in accordance with the Scheme requirements; • 405m² of roof catchment is to be constructed at development stage; • each dwelling is required to be fitted with a Department of Health approved grey water recycling system, installed to the satisfaction of the local government; • The lot is surrounded by an area of extreme bushfire risk; • A Bushfire Management Plan has been prepared for the site and the ongoing implementation of the plan will be the responsibility of the landowner; and • An Environmental Management Plan has been prepared for the site and the ongoing implementation of the plan will be the responsibility of the landowner. <p>15. The keeping of livestock is not permitted.</p>
6.	Lots 2, 5-7 and 108 Fitzgerald Terrace, West Toodyay.	<ol style="list-style-type: none"> 1. No further subdivision is permitted. 2. The keeping of livestock is not permitted.

Schedule 5 – Rural Smallholdings areas

No.	Description of Land	Development Requirements
1.	Lot 5628 Julimar Road, West Toodyay	<ol style="list-style-type: none"> 1. Subdivision shall generally be in accordance with a Structure Plan adopted by the local government and endorsed by the Western Australian Planning Commission and any approved modifications thereto. 2. All buildings including water tanks and on-site effluent disposal systems, are to be confined to within the identified building envelopes for each lot unless detailed site specific investigations identify a more appropriate location within the respective lot and outside any tree preservation areas, and development approval is obtained from the local government. All building envelopes shall be – <ul style="list-style-type: none"> • Shown on the Structure Plan; • Located to avoid, as far as practicable, the removal of any native vegetation or any area recognised for tree or landscape preservation on the Structure Plan; • Located to exclude areas identified as low capability for residential purposes; • A maximum of 2,000m² in size unless otherwise approved by local government. 3. Each dwelling shall have a minimum water supply of 120,000 litres of which 10,000 litres is to be kept in reserve for firefighting purposes and fitted with standard firefighting fittings and valves. 4. The subdivider shall prepare and implement a Bushfire Management Plan prepared in accordance with <i>the Guidelines for Planning in Bushfire Prone Areas</i> that identifies the need for any construction requirements relative to strategy firebreaks, water supplies and equipment and any other fire management requirements that may be deemed necessary, to the specifications and satisfaction of the government and the Department of Fire and Emergency Service. 5. The keeping of livestock on any lot is to be restricted to outside of fenced tree preservation areas, or inside of fenced building envelopes.
2.	Lots 1, 2, 7, 8, 10 to 20, 51, 530 to 531, Julimar Road; Lot 7 Plunkett Road; Lots 500, 520 to 524, 526 to 529, 532 to 534 Nerramine Drive; and Lots 503 to 508, 511 to 519, 535 Timberden Drive, Julimar from Rural to Rural Smallholdings.	<ol style="list-style-type: none"> 1. No further subdivision is permitted. 2. The keeping of livestock on any lot is to be restricted to outside of fenced tree preservation areas, or inside of fenced building envelopes.

Schedule 6 – Car parking requirements

Land Use	Minimum Number of Car Parking Spaces Required	Minimum Number of Visitor / Patron Bicycle Parking Spaces	Minimum Number of Motorcycle / Scooter Parking Spaces
Residential Uses			
Permanent Residential Accommodation (Aged or Dependent Persons Dwelling; Caretaker's Dwelling; Family Day Care; Grouped Dwelling; Holiday House; Home Occupation; Multiple Dwelling; Residential Building)	As per R-Codes	As per R-Codes	2 for every 15 car parking spaces
Home Based (Bed and Breakfast; Home Business / Occupation; Rural Home Business)	As per R-Codes plus 1 bay	Nil	Nil
Commercial Uses			
Entertainment (Night Club; Small Bar; Tavern; Amusement Parlour)	1 space per 3m ² counter/queuing area and 1 space per 5m ² of seating area.	1 per 100m ² Minimum of 2 spaces	2 for every 15 car parking spaces
Health Care and Medical (Consulting Rooms; Medical Centre; Veterinary Centre)	4 per practitioner for the first 2 practitioners and 2 spaces per practitioner thereafter.	1 space per 4 practitioners	2 for every 15 car parking spaces
Child Care Premises	1 per staff member plus 1 per 5 children accommodated.	1 space	2 for every 15 car parking spaces
Office	1 per 50m ² NLA	1 per 500m ² NLA Minimum 2 spaces	2 for every 15 car parking spaces
Commercial (Bulky Goods Showroom; Dry Cleaning Premises / Laundromat; Garden Centre; Machinery Sales;	1 per 50m ² NLA	1 space per 1,000m ² NLA Minimum 2 spaces	2 for every 15 car parking spaces

Land Use	Minimum Number of Car Parking Spaces Required	Minimum Number of Visitor / Patron Bicycle Parking Spaces	Minimum Number of Motorcycle / Scooter Parking Spaces
Motor Vehicle Wash; Motor Vehicle, Boat or Caravan Sales)			
Retail Uses			
Shopping (Convenience Store; Liquor Store; Market; Shop)	1 per 20m ² NLA	1 per 150m ² NLA Minimum 2 spaces	2 for every 15 car parking spaces
Food & Beverage (Reception Centre; Tearooms; Restaurant / Café; Brewery; Winery)	1 per 5m ² of seating area plus tavern requirement if drinking area provided.	1 per 100m ² NLA Minimum 2 spaces	2 for every 15 car parking spaces
Fast Food Outlet / Lunch Bar	1 per 4 patrons plus (if applicable) 10 drive-through stack bays	1 per 50m ² NLA Minimum 2 spaces	2 for every 15 car parking spaces
Tourism Uses			
Accommodation (Holiday Accommodation; Hotel; Motel; Serviced Apartments; Tourist Development)	1 per room plus tavern requirement if drinking or public dining provided.	In accordance with tavern requirement if drinking or public dining provided.	2 for every 15 car parking spaces
Civic, Cultural and Community Uses			
Exhibition and Entertainment (Cinema / Theatre; Club Premises; Exhibition Centre; Place of Worship; Recreation – Private)	1 per 4 patrons or 1 per 50m ² NLA, whichever is greater	1 per 100m ² of seating area Minimum of 2 spaces	2 for every 15 car parking spaces
Industrial Uses			
General Industry (Fuel Depot; Industry; Salvage Yard; Transport Depot)	1 per 100m ² NLA	Nil	Nil
Light & Service Industry	1 per 75m ² NLA	Nil	Nil

Land Use	Minimum Number of Car Parking Spaces Required	Minimum Number of Visitor / Patron Bicycle Parking Spaces	Minimum Number of Motorcycle / Scooter Parking Spaces
(Funeral Parlour; Industry – Light; Motor Vehicle Repair / Wreckers; Service Station; Trade Display / Supplies; Warehouse / Storage)			
Resources Industry (Industry – Extractive, Mining Operations)	1 per staff member	Nil	Nil
Rural Uses			
Agricultural (Abattoir, Agriculture – Extension / Intensive; Animal Establishment, Animal Husbandry – Intensive; Rural Pursuit / Hobby Farm; Tree Farm; Renewable Energy Facility)	1 per staff member	Nil	Nil
Workforce Accommodation	1 per 2 bedrooms	Nil	Nil
Other Uses			
Uses not listed in this Schedule	As determined by the local government		

Note: Parking ratios shall be calculated based on the floor area of the development. Where parking ratios require a fraction of a space, it must be rounded up to the nearest higher whole number (with the exception of motorcycle / scooter parking spaces).

Schedule 7 – Exempt advertisements

Land Use and/or Development	Exempted Sign	Maximum Size
Dwellings	One professional name-plate as appropriate.	0.2m ²
All classes of buildings other than single dwellings, including holiday houses.	One advertisement sign containing the name, number and address of the building, the purpose for which the building is used or the name and address of the managing agent thereof.	0.2m ²
Home Business, Home Occupation & Rural Home Business	One advertisement describing the nature of the home occupation.	0.4m ²
Advertisements within buildings	All advertisements placed or displayed within buildings which cannot ordinarily be seen by a person outside of those buildings.	Not applicable.
Shops, Showrooms and other commercial uses in the Commercial, Service Commercial & Mixed Use zones.	<p>A sign face area per building on a lot, strata lot, survey strata lot or tenancy that is a –</p> <ul style="list-style-type: none"> • awning fascia sign, • canopy sign, • created awning line sign, • footway sign, • plate sign, • stallboard sign, • under awning sign, or • wall sign; <p>applied to or affixed to a building, boundary fence or wall within the primary street setback area up to a maximum of 1.2 metres in height above natural ground level; and</p> <p>displaying the name, logo, slogan, function and/or the activities of the premises/ land use upon which the signage/ advertisement is displayed.</p>	<p><i>Primary street frontage:</i></p> <p>The sign face area of all signage/ advertisements in the primary street frontage is equal to the length of the lot, strata lot, survey strata lot or tenancy frontage plus 10 metres, divided by two (2), expressed in square metres accordingly – $(\text{Primary street frontage length} + 10 \text{ m}) / 2 = \text{Maximum area in m}^2$</p> <p><i>Secondary street frontage:</i></p> <p>The sign face area of all signage/ advertisements in the secondary street frontage is equal to the length of the lot, strata lot, survey strata lot or tenancy frontage divided by four (4), expressed in square metres accordingly – $\text{Secondary street frontage length} / 4 = \text{Maximum area in m}^2$</p>

Land Use and/or Development	Exempted Sign	Maximum Size
	<p>A-Frame signs where they do not obstruct the footpath and are only displayed during operating hours directly adjacent to the premises; and displaying the name, logo, slogan, function and/or the activities of the premises/ land use upon which the signage/ advertisement is displayed.</p>	<p>Not exceeding 300mm in height and width.</p>
<p>Industrial and Warehouse Premises in the Light Industrial, Service Industrial and Mixed Use zones.</p>	<p>A sign face area per building on a lot, strata lot, survey strata lot or tenancy that is a –</p> <ul style="list-style-type: none"> • awning fascia sign, • canopy sign, • plate sign, • stallboard sign, • under awning sign, or • wall sign; <p>applied to or affixed to a building, or boundary fence or wall within the primary street setback area up to a maximum of 1.2 metres in height above natural ground level; and displaying the name, logo, slogan, function and/or the activities of the premises / land use upon which the signage / advertisement is displayed.</p>	<p>The total sign face area of all signage / advertisements do not exceed a maximum of 15m² per street frontage of a lot, strata lot, survey strata lot or tenancy.</p>
	<p>A maximum of one (1) free standing sign / advertisement (pylon sign) per lot, for shared use by all tenancies, displaying the name, logo, slogan, function and/or the activities of the premises / land use upon which the signage / advertisement is displayed.</p>	<p>Any free standing advertisement/ signage (pylon sign) on a lot –</p> <ul style="list-style-type: none"> • not exceeding a maximum sign face area of 5m²; and • not exceeding a maximum of 6 metres in height above natural ground level.
	<p>A sign face area per building on a lot, strata lot, survey strata lot or tenancy that is a –</p>	<p>The total sign face area of all signage / advertisements do not exceed a maximum of</p>

Land Use and/or Development	Exempted Sign	Maximum Size
Fuel depot, service station and/ or transport depot in the Commercial, Service Commercial or Light Industry zones.	<ul style="list-style-type: none"> • awning fascia sign, • canopy sign, • plate sign, • under awning sign, or • wall sign; applied to or affixed to a building, or boundary fence or wall within the primary street setback area up to a maximum of 1.2 metres in height above natural ground level; and displaying the name, logo, slogan, function and/or the activities of the premises / land use upon which the signage / advertisement is displayed.	15m ² per street frontage of a lot, strata lot, survey strata lot or tenancy.
	A maximum of one (1) free standing sign / advertisement (pylon sign) per lot, for shared use by all tenancies thereon, displaying the name, logo, slogan, function and/or the activities of the premises / land use upon which the signage / advertisement is displayed.	Any free standing advertisement / signage (pylon sign) on a lot – <ul style="list-style-type: none"> • does not exceed a maximum sign face area of 5m²; • does not exceed a maximum of 6 metres in height above natural ground level.
Places of Public Meeting, Assembly or Worship.	One advertisement detailing the function and/or the activities of the institution concerned.	0.2m ²
Racecourses, sports grounds and recreational complexes.	All signage / advertisements provided that, in each case, the sign / advertisement is not visible from outside of the premises, either from other private property, land reserved for public purposes or a public street.	Not applicable.
Temporary signage / advertisements for – <ul style="list-style-type: none"> • building construction (displayed on a development site only for the duration of the construction period), or 	A maximum of one sign/advertisement per street frontage of a lot, strata or survey strata lot that is a – <ul style="list-style-type: none"> • awning fascia sign, • canopy sign, 	Single and grouped dwellings: Any signage / advertisement do not exceed a maximum sign face area of 2.2m ² per street frontage of a lot, strata lot or survey strata lot.

Land Use and/or Development	Exempted Sign	Maximum Size
<ul style="list-style-type: none"> • real estate and property transaction (displayed on a property for sale or lease for the duration of the period over which property transactions are offered and negotiated); • local events, garage sales and the like for the duration of the event and removed within 1 week of the event; • the incidental sale of goods or livestock by auction on the property displayed for a period not exceeding 30 days within one calendar year. 	<ul style="list-style-type: none"> • plate sign, • under awning sign, or • wall sign; <p>applied to or affixed to a –</p> <ul style="list-style-type: none"> • building, or • boundary fence or wall within the primary street setback area up to a maximum of 1.2 metres in height above natural ground level; <p>displaying the –</p> <ul style="list-style-type: none"> • name and details of the project and the name and logo of the developer and/or builder, or • name, slogan and/or logo of the estate agent and the details relating to the sale, leasing or auctioning of the property upon which the signage / advertisement is displayed. 	<p>Multiple dwellings, commercial and industrial buildings up to 12 metres in height above natural ground level:</p> <p>Any signage / advertisement do not exceed a maximum sign face area of 5m² per street frontage of a lot, strata lot or survey strata lot.</p> <p>Multiple dwellings, commercial or industrial buildings greater than 12 metres in height above natural ground level and rural properties in excess of five (5) hectares:</p> <p>Any signage / advertisement do not exceed a maximum sign face area of 10m² per street frontage of a lot, strata lot or survey strata lot.</p> <p>Rural land:</p> <p>Any signage / advertisement do not exceed a maximum sign face area of 2m² per street frontage of a lot, strata lot or survey strata lot.</p>

Schedule 8 – Development Contribution Areas

There are no Development Contribution Areas that apply to the Scheme.

DRAFT

COUNCIL RESOLUTION TO ADVERTISE LOCAL PLANNING SCHEME

Adopted by resolution of the Council of the Shire of Toodyay at the Ordinary Meeting of Council held on the 28th day of August 2018.

CHIEF EXECUTIVE OFFICER

SHIRE PRESIDENT

DRAFT

COUNCIL RESOLUTION TO SUPPORT / NOT SUPPORT* SCHEME FOR APPROVAL

Council resolved to support / not support* approval of the draft Scheme of the Shire of Toodyay at the [INSERT MEETING TYPE] Meeting of Council held on the [DATE]

The Common Seal of the Shire of Toodyay was hereunto affixed by authority of a resolution of the Council in the presence of:

CHIEF EXECUTIVE OFFICER

SHIRE PRESIDENT

WAPC Recommended for Approval

Delegated under S.16 of the *Planning and Development Act, 2005*

Date: _____

Approval Granted

MINISTER FOR PLANNING

Date: _____

Draft Local Planning Scheme No. 5 - Additional modifications to zone mapping.

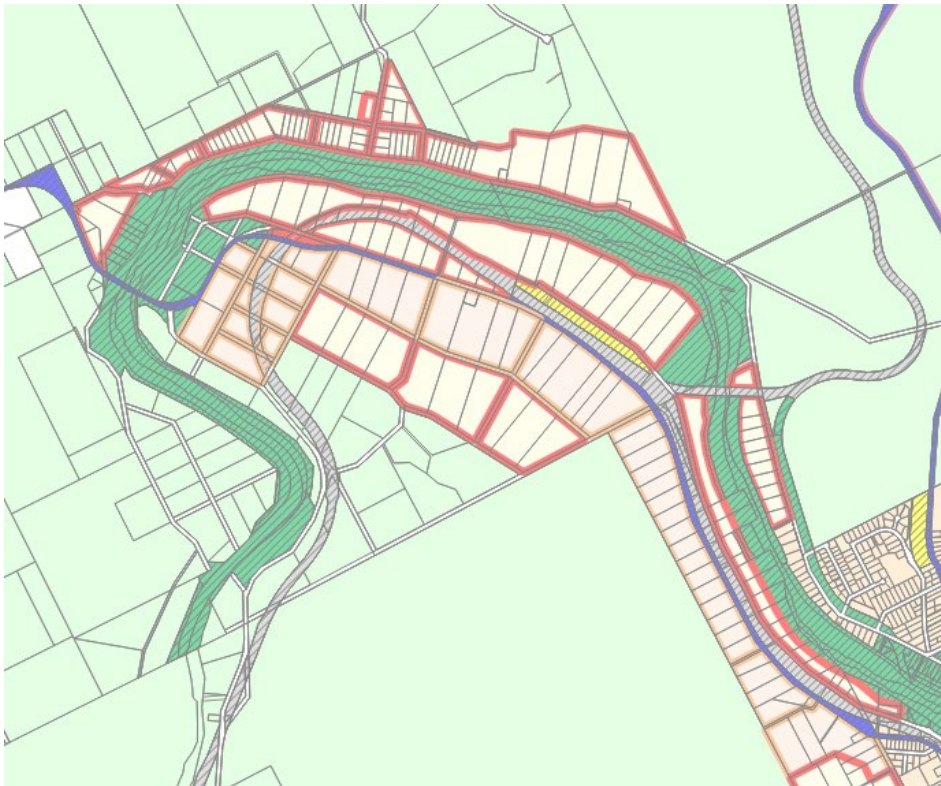


Figure 1 Current Draft Local Planning Scheme 5 Mapping

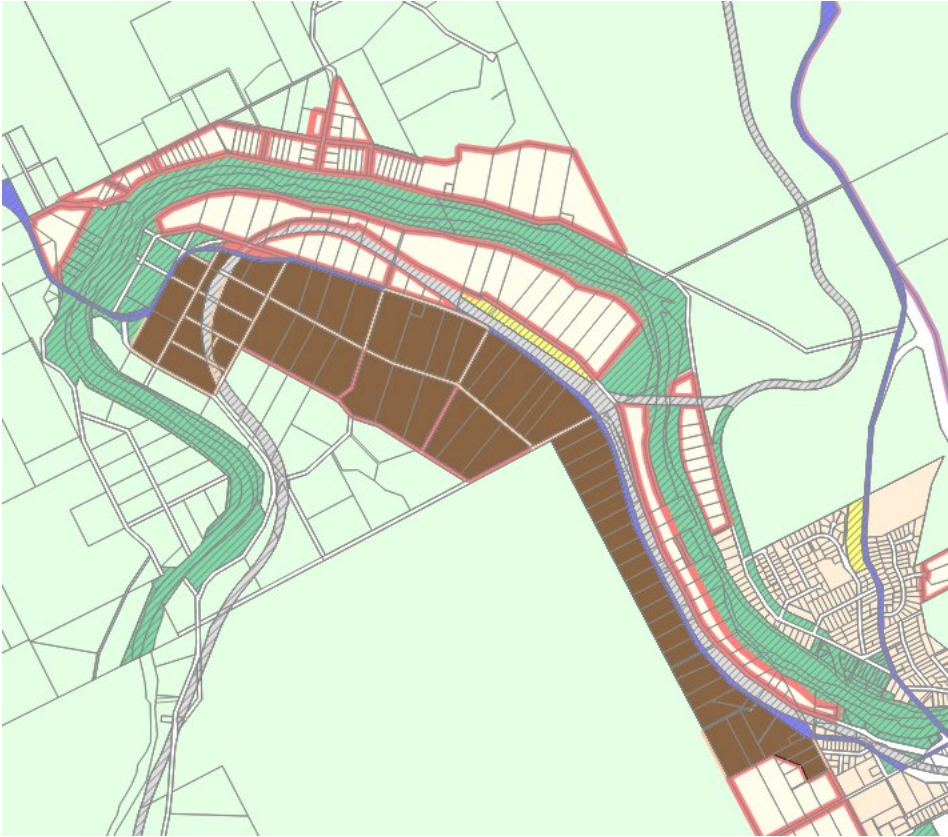


Figure 2 Proposed Modified Draft Local Planning Scheme No. 5 Mapping

1. Special Residential R2.5 to Rural Residential (WEST TOODYAY)

Lot No.	Plan	Local Planning Scheme 4 zoning.	LPS4 Zone Colour	Current Draft Local Planning Scheme 5 zoning	Current Draft Local Planning Scheme 5 zoning colour	Proposed modified Draft Local Planning Scheme 5 zoning	Proposed modified Draft Local Planning Scheme 5 zoning colour
57	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
98	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
99	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
100	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
101	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
61	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
60	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
59	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
58	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	
97	P223155	Special Residential R2.5		Residential R2.5		Rural Residential	

2. Residential Development to Rural Residential (WEST TOODYAY)

Lot No.	Plan	Local Planning Scheme 4 zoning.	LPS4 Zone Colour	Current Draft Local Planning Scheme 5 zoning	Current Draft Local Planning Scheme 5 zoning colour	Proposed modified Draft Local Planning Scheme 5 zoning	Proposed modified Draft Local Planning Scheme 5 zoning colour
34	P000271	Residential Development		Urban Development		Rural Residential	
48	P223155	Residential Development		Urban Development		Rural Residential	
49	P223155	Residential Development		Urban Development		Rural Residential	
50	P223155	Residential Development		Urban Development		Rural Residential	
51	P223155	Residential Development		Urban Development		Rural Residential	
52	P223155	Residential Development		Urban Development		Rural Residential	
53	P223155	Residential Development		Urban Development		Rural Residential	
54	P223155	Residential Development		Urban Development		Rural Residential	
56	P223155	Residential Development		Urban Development		Rural Residential	
3	D050873	Residential Development		Urban Development		Rural Residential	
4	D050873	Residential Development		Urban Development		Rural Residential	
43	P223155	Residential Development		Urban Development		Rural Residential	
33	P000271	Residential Development		Urban Development		Rural Residential	

Lot No.	Plan	Local Planning Scheme 4 zoning.	LPS4 Zone Colour	Current Draft Local Planning Scheme 5 zoning	Current Draft Local Planning Scheme 5 zoning colour	Proposed modified Draft Local Planning Scheme 5 zoning	Proposed modified Draft Local Planning Scheme 5 zoning colour
44	P223155	Residential Development		Urban Development		Rural Residential	
45	P223155	Residential Development		Urban Development		Rural Residential	
46	P223155	Residential Development		Urban Development		Rural Residential	
47	P223155	Residential Development		Urban Development		Rural Residential	
33	P223155	Residential Development		Urban Development		Rural Residential	
34	P223155	Residential Development		Urban Development		Rural Residential	
37	P223155	Residential Development		Urban Development		Rural Residential	
54	P223155	Residential Development		Urban Development		Rural Residential	
38	P223155	Residential Development		Urban Development		Rural Residential	
3	D051443	Residential Development		Urban Development		Rural Residential	
3	D051443	Residential Development		Urban Development		Rural Residential	
38	P223155	Residential Development		Urban Development		Rural Residential	
39	P223155	Residential Development		Urban Development		Rural Residential	
1	D051443	Residential Development		Urban Development		Rural Residential	

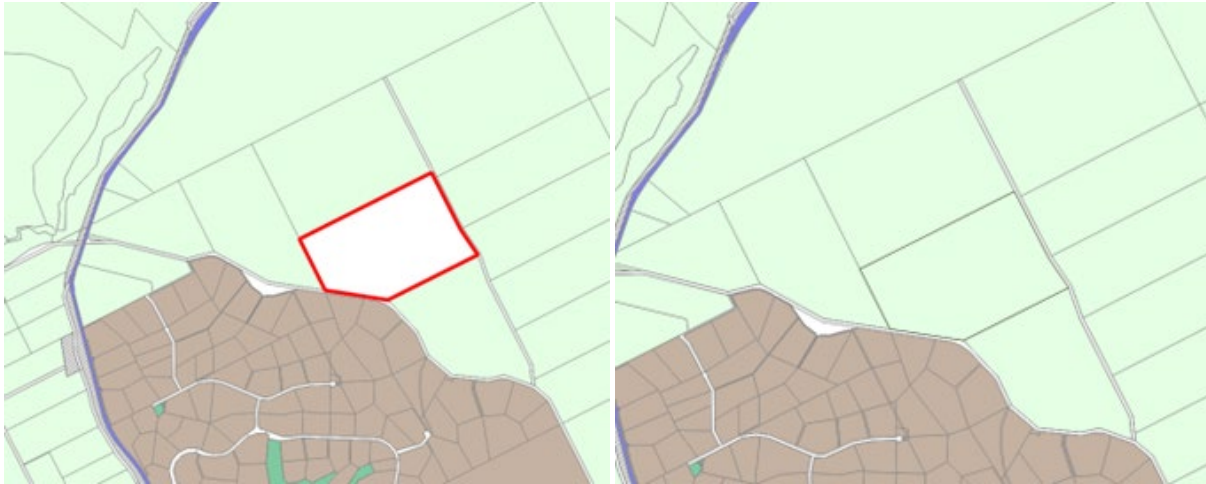
Lot No.	Plan	Local Planning Scheme 4 zoning.	LPS4 Zone Colour	Current Draft Local Planning Scheme 5 zoning	Current Draft Local Planning Scheme 5 zoning colour	Proposed modified Draft Local Planning Scheme 5 zoning	Proposed modified Draft Local Planning Scheme 5 zoning colour
2	D051443	Residential Development		Urban Development		Rural Residential	
54	P000271	Residential Development		Urban Development		Rural Residential	
53	P000271	Residential Development		Urban Development		Rural Residential	
50	P000271	Residential Development		Urban Development		Rural Residential	
49	P000271	Residential Development		Urban Development		Rural Residential	
46	P000271	Residential Development		Urban Development		Rural Residential	
45	P000271	Residential Development		Urban Development		Rural Residential	
42	P000271	Residential Development		Urban Development		Rural Residential	
41	P000271	Residential Development		Urban Development		Rural Residential	
38	P000271	Residential Development		Urban Development		Rural Residential	
37	P000271	Residential Development		Urban Development		Rural Residential	
30	P000271	Residential Development		Urban Development		Rural Residential	
29	P000271	Residential Development		Urban Development		Rural Residential	
26	P000271	Residential Development		Urban Development		Rural Residential	

Lot No.	Plan	Local Planning Scheme 4 zoning.	LPS4 Zone Colour	Current Draft Local Planning Scheme 5 zoning	Current Draft Local Planning Scheme 5 zoning colour	Proposed modified Draft Local Planning Scheme 5 zoning	Proposed modified Draft Local Planning Scheme 5 zoning colour
25	P000271	Residential Development		Urban Development		Rural Residential	
18	P000271	Residential Development		Urban Development		Rural Residential	
1	P001495	Residential Development		Urban Development		Rural Residential	
2	P001495	Residential Development		Urban Development		Rural Residential	
17	P000271	Residential Development		Urban Development		Rural Residential	
3	P001495	Residential Development		Urban Development		Rural Residential	
16	P000271	Residential Development		Urban Development		Rural Residential	
5*	P000271	Residential Development		Urban Development		Rural Residential	
4*	P000271	Residential Development		Urban Development		Rural Residential	
3*	P000271	Residential Development		Urban Development		Rural Residential	
502	D075271	Residential Development		Urban Development		Rural Residential	
101	D084956	Residential Development		Urban Development		Rural Residential	
100	D084956	Residential Development		Urban Development		Rural Residential	
200	D085493	Residential Development		Urban Development		Rural Residential	

Lot No.	Plan	Local Planning Scheme 4 zoning.	LPS4 Zone Colour	Current Draft Local Planning Scheme 5 zoning	Current Draft Local Planning Scheme 5 zoning colour	Proposed modified Draft Local Planning Scheme 5 zoning	Proposed modified Draft Local Planning Scheme 5 zoning colour
201	D085494	Residential Development		Urban Development		Rural Residential	
88	P042445	Residential Development		Urban Development		Rural Residential	
89	P042445	Residential Development		Urban Development		Rural Residential	
37	P223155	Residential Development		Urban Development		Rural Residential	
75	P223155	Residential Development		Urban Development		Rural Residential	

**** Please note that Lots 3, 4 & 5 on P000271 have dual coding of Special Residential and Residential/Urban Development under the current Scheme and current Draft LPS5. The intent of this modification will see each of these lots as wholly zoned as Rural Residential ****

3. Lot 89 on P224582 Church Gully Road in Coondle



Current Draft LPS5

Proposed Modified Draft LPS5

Lot No.	Plan	Local Planning Scheme 4 zoning.	LPS4 Zone Colour	Current Draft Local Planning Scheme 5 zoning	Current Draft Local Planning Scheme 5 zoning colour	Proposed modified Draft Local Planning Scheme 5 zoning	Proposed modified Draft Local Planning Scheme 5 zoning colour
89	P224582	Special Use Zone (Abattoir)		Special Use Zone (Abattoir)		Rural	



9. REPORTS OF COMMITTEES AND EMPLOYEE REPORTS

9.1 PLANNING AND DEVELOPMENT

9.1.1 Shire of Toodyay Local Planning Scheme No. 5 – Consideration of submissions and final adoption

Date of Report:	9 September 2021
Applicant or Proponent:	Shire of Toodyay
File Reference:	LPS5
Author:	H de Vos – Acting Manager Planning & Development
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	28 August 2018
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. Shire of Toodyay Local Planning Scheme No. 5 (as modified); 2. Schedule of Submissions; and 3. Extract from Part 4 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.

PURPOSE OF THE REPORT

Council is asked to assess and determine the submissions made in respect of the proposed Shire of Toodyay Local Planning Scheme No. 5 (LPS5) and to consider adopting it, with or without modification, for the purpose of seeking final approval of the Minister for Planning.

This report provides a brief overview of the procedures involved in preparation of LPS5, milestones reached, and addresses in detail the submissions received pursuant to statutory advertising.

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;
- iii) Grant of Consent to Advertise by the Hon Minister for Planning and seeking the advice of the Environmental Protection Authority;
- iv) Public Advertisement of Local Planning Scheme and Consultation with affected Government Agencies;
- v) Consideration by Council of Submissions;
- vi) Adoption of Local Planning Scheme with Modifications (if appropriate) arising from Consideration of Submissions;
- vii) Final Approval of Hon Minister to be sought to Modified Scheme;
- viii) Publication of Scheme Text of Local Planning Scheme in Government Gazette following grant of Final Approval by Minister; and
- ix) 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 Hon 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 officers and provided comment, which has been taken into consideration during refinement of LPS5.

The refined draft was presented to the Council 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 WA Planning Commission (WAPC) for consent to advertise in accordance with the Regulations. During the course of 2019, both DPLH and the Environmental Protection Authority (EPA) requested Council to make minor modifications and to correct anomalies/inconsistencies in the draft LPS5 text and scheme maps.

The WAPC and the EPA provided 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 7 October 2020 and 4 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 at Attachment 2. Of the 24 submissions, 4 submissions were from Government agencies.

COMMENTS AND DETAILS

Because the subject matter of the submissions ranges over many issues, all of which are covered by the assessments in the Schedule of Submissions, it is not considered appropriate to replicate all of the issues in this report.

To ensure that the topics of greatest concern are drawn to attention, the principal issues are discussed below using, among other comment, some extracts from the respective topics in the Schedule of Submissions.

Note: Refer to Attachment 2 – Schedule of Submissions.

All submissions in the Schedule of Submissions are noted, however the terminology of “Dismiss”, “Upheld”, or “Partially Upheld” is typically used for recommendations to the WAPC. In the Council’s Recommendation column, if a submission is only “Noted”, it is to mean that the Council has considered the submission, however, it does not recommend any modification to LPS5 documents as a result of the submission. If a submission is “Upheld”, it means that Council agrees that the amendment should be modified as a result of the submission. If a submission is “Dismissed”, it means that no modifications are recommended.

Additional Uses (refer submission #'s 1, 2 and 4)

Council has received three (3) submissions from, or on behalf of, landowners in the district as follows:

Submission 1 additional use: Holiday Accommodation

Lot 1 (480) Julimar Road in West Toodyay is currently classified ‘Parks and Recreation’, but proposed LPS5 Scheme Map proposes the site is zoned ‘Residential’. In the Zoning Table (Table 4) of proposed LPS5, the use class *holiday accommodation* is a use that is not permitted.

The submitter’s justification for requesting *holiday accommodation* as an additional use for this site rests on the environmental values of the land, its configuration and extensive frontage to the Avon River.

Officers support the submission on the basis that the additional use will facilitate the orderly planning and development of the area in a manner that respects the character and environmental values of the area and will be responsive to the current and future community needs and aspirations.



Submission 2 additional use: Caravan Park

Lots 20, 23 and 24, (122) Railway Road in Toodyay is the existing Toodyay Caravan Park. The site is zoned 'Special Residential' in LPS4 but will be zoned 'Residential' in proposed LPS5. The site was approved and developed as a caravan park many years ago, and is a non-conforming use in LPS4, and will continue to be a non-conforming use in proposed LPS5.

Officers support the request to add *caravan park* as an additional use in Schedule 1 of proposed LPS5 on the basis that the existing caravan park in this location is compatible with adjoining land uses and will not compromise the likely future amenity of the locality.

Submission 4: Industry – Light

The owner of Lot 77 (111) Clarkson Street in West Toodyay has operated the business known as Reid's Mechweld from the site for more than 18 years. The business specialises in the manufacture of agricultural equipment such as harvesting and planting equipment.

Council has previously granted the owner development approval for a home business.

The request to add an additional use (light-industry) in Schedule 1 of proposed LPS5 is supported at officer-level on the basis that the impacts on the amenity of the locality caused by the business, can be mitigated and controlled appropriately by way of an Additional Use instrument and appropriate conditions of approval.

Objections to mining in the district (refer submission #'s 3, 10 and 21)

Council has received three (3) submissions citing concerns about the addition of the use classes *mining operations* and *mining operations on minerals to owner land* in the Zoning Table of proposed LPS5. Two (2) of the three (3) submitters are concerned that mining is incompatible with environmental values in the Shire, and regarding the potential for and off-site impacts caused by mining exploration, mine development and mining operations.

To this end, it is worth noting that the current Scheme (LPS4) does not distinguish between mining operations determined by the Department of Mines, Industry Regulation and Safety under the *Mining Act 1978*, or by the local government or a development assessment panel under the *Planning and Development Act 2005*.

The inclusion of mining operations in the zoning table of proposed LPS5, however, is intended to be used to 'trigger' the consultation process outlined in section 120(2) of the *Mining Act 1978*. Accordingly, 'Mining Operations' was expressly included in the zoning table of Draft LPS5 as a discretionary use. This will allow the local government to advise the Minister for Planning and the Minister for Mines and Petroleum that proposed mining operations may conflict with the local planning scheme.

'Mining Operations on Minerals to Owner' land is an 'A' use for 'Rural' zone, and an 'X' use for all other zones. It is a key aim of LPS5 to provide a rational framework for decisions with regard to land use and that the assessment and classification of land resources on the basis of capability and suitability are an essential facet of the planning process.



Permissibility of some land uses in the Zoning Table (refer submission #'s 5 and 20)

A small number of submissions suggest Council considers making modifications to the level of permissibility of a handful of use classes in the Zoning Table of proposed LPS5 such as –

- *commercial vehicle parking* in the 'Rural Residential' zone, and the new 'Rural Enterprise' zone; and
- *restaurant/café, brewery and industry-extractive* in the 'Rural Smallholdings' zone.

With respect to whether *commercial vehicle parking* is a use that may be appropriate with the development approval of Council in the 'Rural Residential' and 'Rural Enterprise' zones, officers, having considered the merits of the matter in detail, disagree that it should be made a discretionary use in the 'Rural Residential' zone due to the potential for adverse impacts on the amenity of localities (i.e., undue generation of noise, fumes, odours and the like). Visual amenity of 'Rural Residential' zoned properties may also be compromised as viewed from the street or adjacent properties.

With respect to *restaurant/café, brewery and industry-extractive*, officers agree that these uses should be made discretionary uses in the Zoning Table of proposed LPS5.

'Tiny houses' (refer submission #'s 10, 22 and 24)

The concept of so-called 'tiny houses' is a matter that has been raised, both formally and informally, by Councillors many times in the past.

Council has received three (3) submissions requesting recognition for the concept in proposed LPS5 as, currently, LPS4 is silent on the permissibility of *tiny houses* as a form of short-term accommodation in the district.

Officers consider the concept is appropriate to bolster tourism options in the Shire of Toodyay through the addition of nature-based parks as a new use class in the Zoning Table of proposed LPS5 ('A' use in the 'Rural' and 'Nature Conservation' zones), and that this modification will eliminate inconsistencies between the development approval requirements and those provided for under the *Caravan Parks and Camping Grounds* legislation.

Roman Catholic Church Group of Buildings Precinct (refer submission # 16)

The Roman Catholic Church Group of Buildings (Lots 1 – 5 on Deposited Plan 415396) in Toodyay has recently been the subject of subdivision approval. The subdivision created five (5) lots, a foreshore reserve, and a new road (Mercy Retreat) providing access to the foreshore reserve, and Lots 4 and 5.

The landowner's representative has appointed Roberts Day Town Planners to review the provisions of Special Use # 15 in Schedule 2 of proposed LPS5.

Currently, in proposed LPS5, Special Use 15 makes it a requirement to submit a Local Development Plan* (LDP), a Heritage Impact Assessment (HIA) to accompany a development application, and to consider the environmental impacts of flooding, foreshore management and access.



* A local development plan is a mechanism used to coordinate and assist in achieving better built form outcomes by linking lot design to future development.

Roberts Day believe the requirement to submit an LDP, individual HIA's and the requirement to consider the impact of flooding is superfluous because –

- the recent subdivision was approved by the WAPC, the new lots in the subdivision created and new certificates of title issued;
- the submission of a full HIA would be onerous and unnecessary for change of use proposals and minor works proposals such as painting and no external works; and
- the approved subdivision has ceded the foreshore area adjacent to the Avon River.

In light of the above, Officers recommend Council accedes to Roberts Day's request to revisit the conditions for Special Use 15 as outlined and described in Submission # 16 in the Schedule of Submissions.

Other Submissions

In the main, the other points raised in submissions not covered by the above are single issue in nature and are addressed in the Schedule of Submissions, each with its own recommendation. This report recommends that the recommendations of the Schedule be adopted, and the submissions determined accordingly.

Actions by Others

It should be noted that not only is Council required to evaluate, consider the implications of, and determine the submissions, but full copies of the submissions are required to be submitted to the WAPC for consideration by the Commission and the Minister for Planning in the context of granting final approval.

Modifications to the Scheme Documents arising from Consideration of Submissions

The consequences of recommending that submissions be upheld are that the Scheme Documents comprising the Scheme Text and Scheme Map will need to be modified. These modifications are included in the documents described as Attachment 1 and Attachment 2.

IMPLICATIONS TO CONSIDER

Consultative:

The availability of the Scheme documents for public inspection and comment was published in the Toodyay Herald on 2 September 2020 commencing the advertising period of a minimum of 3 months (90 days) which closed on 3 December 2020.

The requirements of the Regulations are that formal notice of the availability of Scheme for public comment be advertised once in a newspaper circulating in the area for 90 days. The notice is to include reference to the purpose for the Scheme, the places where the Scheme documentation can be inspected and state the date by



which submissions should be made. The notice is also required to state the person and the address to which submissions should be directed.

A copy of the formal notice was also given to each public authority that the Shire considered is likely to be affected by proposed LPS5.

The actions undertaken by Shire officers have far exceeded those basic requirements with the following actions having been taken: -

- Writing to each landowner, advising that proposed LPS5 is available for inspection at the Administrative Offices of Council and on the Shire's website – and that submissions are welcomed;
- Formal Notice in The West Australian; and
- Notices in the Toodyay Herald on multiple occasions.

Scheme Documents were made available at the Office of the Department of Planning, Lands and Heritage, the Administrative Offices of Council, in the Shire Library, and were available on the Council's website for the duration of the public comment period and beyond.

Strategic:

The preparation and finalisation of LPS5 is a key objective of the Shire's Local Planning Strategy.

Policy related:

The Shire's local planning policies (LPPs) 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:

If recommendations of this report are adopted, 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.

The greatest cost to be incurred is publishing the Scheme Text in the Government Gazette as required by legislation. Officers anticipate that the cost of publication is likely to be of the order of \$25,000 to \$30,000. This amount has been included in the recently adopted 2021/2022 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 2018.*



Risk related:

There are no direct risks for Council of the recommendations of this report. However, should Council choose not to adopt the recommendations of this report, there are reputational and compliance risks to be contemplated. These are considered high.

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 formed 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. Submits 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* seeking final approval of the Scheme by the Minister for Planning.

Cr Pearce foreshadowed an alternate motion as follows:

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 timetable to Council regarding a review of the Shire of Toodyay Local Planning Strategy and the Local Planning Scheme No 5 by December 2021.**

Clarification was sought.

The Presiding Member asked if anyone wanted to move the Officer's Recommendation.

Further clarification was sought.

Discussion ensued.



The CEO, through the Chair, responded as follows:

I believe the first motion must be dealt with first. If there is no mover then it would be automatically lost and I do not believe we can move on to the alternate motion. However, if the first motion is dealt with and it is lost through lack of votes, then the alternate motion that has been foreshadowed can be dealt with.

The CEO departed Council Chambers, with the leave of the Chair, at 4.45pm.

The CEO returned to Council Chambers at 4.55pm.

Further clarification was sought.

Discussion ensued.

Cr Hart objected, by way of raising a Point of Order, in accordance with Standing Order 8.4 pertaining to Part 9 Debate on Substantive Motions because he did not recall there actually being a modified motion. I recall that that motion was redefined as an alternate motion.

The Point of Order was dismissed.

Further clarification was sought.

Discussion ensued.

The CEO, through the Chair, responded as follows:

We have sought advice from WALGA, and the advice is that the Officer's Recommendation is only a recommendation at this point and if there is no mover for the Officer Recommendation then Council may move a motion, which Cr Pearce has foreshadowed according to what is currently shown on the screen. So the process would be that Cr Ruthven would need to ask for a mover for the Officer's Recommendation and if there is a mover you run through the process but if there is no mover then Cr Pearce can move her alternate motion.

Cr Ruthven called for a mover of the Officer's Recommendation.

Clarification was sought.

Cr Pearce moved an alternate motion as follows:

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.**

Further clarification was sought.

Cr McKeown foreshadowed an amendment to the motion.

Discussion ensued.

Cr Hart seconded the motion.



Debate commenced.

The motion was put.

ALTERNATE MOTION/COUNCIL RESOLUTION NO. 209/10/21

MOVED Cr Pearce

SECONDED Cr Hart

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.

MOTION CARRIED 8/0

**Schedule of Submissions
Draft Shire of Toodyay Local Planning Scheme No. 5**

Note: All submissions are noted, however the terminology of “Dismiss”, “Upheld”, or “Partially Upheld” is typically used for recommendations to the Western Australian Planning Commission (WAPC). In the Council’s Recommendation column, if a submission is only “Noted”, it does not make it clear to the WAPC whether the Council agrees or does not agree with the submission. If a submission is “Upheld”, it means that Council agrees that the amendment should be modified as a result of the submission. If a submission is “Dismissed”, it means that no modifications are recommended.

No.	Name/Address	Summary of Submission	Council’s Comments	Council’s Recommendation								
1	Statewest Planning on behalf of the owner of 480 Julimar Road, West Toodyay (postal address supplied)	<ul style="list-style-type: none"> Seeks Council’s support for an Additional Use to be applied to the site of Lot 1 (480) Julimar Road, West Toodyay: ‘Holiday Accommodation’ (allocating it as a ‘D’ use) in the proposed Local Planning Scheme No 5 for the following reasons: <ul style="list-style-type: none"> It is currently reserved for parks and recreation but is privately owned. It is proposed to be zoned Residential R2.5 (which the owner has no objection to), but its subdivision potential is limited by: <ul style="list-style-type: none"> Its configuration; Its environmental values; Its extensive frontage to the Avon River (in the context of its total lot size); and The Special Control Area affecting its western (riverfront) portion. 	<ul style="list-style-type: none"> Agree Lot 1 (480) Julimar Road, West Toodyay is currently classified as a local scheme reserve (PR Recreation and Conservation: Parks and Recreation), possibly an anomaly in LPS4; Existing development on Lot 1 includes a single dwelling and associated structures; Lot 1 is proposed to be zoned Residential R2.5 in LPS5; Lot 1 is located on the banks of the Avon River with scenic views; Lot 1 is impacted by Special Control Area 2 in LPS5 (Flood Prone Area); and The submission is supported on the basis that the additional use will facilitate the orderly planning and development of the area in a manner that respects the character and environmental values of the area, and will be responsive to the current and future community needs and aspirations. 	<ul style="list-style-type: none"> That the submission be upheld through modification of LPS5 (as advertised) as follows: <ul style="list-style-type: none"> <u>Text Modifications</u> Under Schedule 1 – Additional Uses, add the following: <table border="1"> <thead> <tr> <th>No.</th> <th>Description of land</th> <th>Additional use</th> <th>Conditions</th> </tr> </thead> <tbody> <tr> <td>12</td> <td>Lot 1 (480) Julimar Road, West Toodyay</td> <td>Holiday Accommodation</td> <td>The additional use, including any alteration, expansion or extension, is not permitted unless the local government has exercised its discretion by granting development approval.</td> </tr> </tbody> </table> <u>Map Modifications</u> Modify the Scheme Map (Map 3) by adding annotation “A12” to Lot 1 (480) Julimar Road, West Toodyay 	No.	Description of land	Additional use	Conditions	12	Lot 1 (480) Julimar Road, West Toodyay	Holiday Accommodation	The additional use, including any alteration, expansion or extension, is not permitted unless the local government has exercised its discretion by granting development approval.
No.	Description of land	Additional use	Conditions									
12	Lot 1 (480) Julimar Road, West Toodyay	Holiday Accommodation	The additional use, including any alteration, expansion or extension, is not permitted unless the local government has exercised its discretion by granting development approval.									
2	Leslie and Kevin Hug – owners of Toodyay Caravan Park located at 122 Railway Road, Toodyay (postal address supplied)	<ul style="list-style-type: none"> Seeks Council’s support for an Additional Use: Caravan Park be applied to Lots 20, 23 and 24, (122) Railway Road, Toodyay The Caravan Park is being referenced as “Residential” and not acknowledged as a ‘Caravan Park’ 	<ul style="list-style-type: none"> Agree Including ‘Caravan Park’ as an Additional Use on the lots will alleviate any non-conforming uses; and The submission is supported on the basis that the existing caravan park in this location is compatible with adjoining land uses and will not compromise the likely future amenity of the locality. 	<ul style="list-style-type: none"> That the submission be upheld through modification of LPS5 (as advertised) as follows: <ul style="list-style-type: none"> <u>Text Modifications</u> Under Schedule 1 – Additional Uses, add the following: <table border="1"> <thead> <tr> <th>No.</th> <th>Description of land</th> <th>Additional use</th> <th>Conditions</th> </tr> </thead> <tbody> <tr> <td>13</td> <td>Lots 20, 23 & 24 (122) Railway Road, Toodyay</td> <td>Caravan Park</td> <td>The additional use, including any alteration, expansion or extension, is not permitted unless the local government has exercised its discretion by granting development approval.</td> </tr> </tbody> </table> 	No.	Description of land	Additional use	Conditions	13	Lots 20, 23 & 24 (122) Railway Road, Toodyay	Caravan Park	The additional use, including any alteration, expansion or extension, is not permitted unless the local government has exercised its discretion by granting development approval.
No.	Description of land	Additional use	Conditions									
13	Lots 20, 23 & 24 (122) Railway Road, Toodyay	Caravan Park	The additional use, including any alteration, expansion or extension, is not permitted unless the local government has exercised its discretion by granting development approval.									

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation
				<ul style="list-style-type: none"> ➤ <u>Map Modifications</u> Modify the Scheme Map (Map 4) by adding annotation "A13" to Lots 20, 23 & 24 (122) Railway Road, Toodyay
3	Roderick and Marie-Anne Cant, owners of Lot XXX (postal address supplied)	<ul style="list-style-type: none"> • Questions how the Shire intends to protect residents of Julimar from disturbances and off-site impacts caused by mining exploration, mine development and mining operations 	<ul style="list-style-type: none"> • Noted • The current Scheme does not distinguish between mining operations determined by the Department of Mines, Industry Regulation and Safety under the <i>Mining Act 1978</i>, or by the local government or a development assessment panel under the <i>Planning and Development Act 2005</i>. <p>The inclusion of mining operations in the zoning table of Draft LPS5 is intended to be used to 'trigger' the consultation process outlined in section 120(2) of the <i>Mining Act 1978</i>. Accordingly, 'Mining Operations' was expressly included in the zoning table of Draft LPS5 as a discretionary use. This will allow the local government to advise the Minister for Planning and the Minister for Mines and Petroleum that proposed mining operations may conflict with the local planning scheme.</p> <p>'Mining Operations on Minerals to Owner' land is an 'A' use for 'Rural' zone, and an 'X' use for all other zones. It is a key aim of LPS5 to provide a rational framework for decisions with regard to land use and that the assessment and classification of land resources on the basis of capability and suitability are an essential facet of the planning process.</p>	<ul style="list-style-type: none"> • That the submission be dismissed.
4	Urbanista Town Planning on behalf of the owner of 111 Clarkson Street, West Toodyay (postal address supplied)	<ul style="list-style-type: none"> • Advises that Reid's Mechweld has operated from the property for more than 18 years; • Reid's Mechweld is a business that is registered for the manufacture of agricultural equipment. The primary activities on the site relate to <ul style="list-style-type: none"> ➤ Agricultural harvesting equipment manufacturing ➤ Agricultural implement manufacturing; ➤ Agricultural planting equipment manufacturing; and ➤ Tractor attachment, agricultural, manufacturing. • Suggests an Additional Use: Industry – Light to be applied to the site of Lot 77 (111) Clarkson Street, West Toodyay in LPS5; • Conditions to proposed Additional Use: <ol style="list-style-type: none"> 1. Planning approval is required for the additional land uses—subject to the discretion of local government by granting planning approval, having regard to the matters set out in cl. 67 of Schedule 2 of the regulations (deemed provisions). 2. Development shall be in accordance with plans approved by local government and will require the issue of planning approval. 3. The local government may require planning approval applications to be advertised in accordance with cl. 64 of Schedule 2 of the regulations (deemed provisions). • Submits the additional use validates the existing land use which commenced prior to both the current LPS4 and draft LPS5. • Contends the suggested amendment will offer confidence to the landowner to continue their operations without confusion, and will provide a clearer framework for the local government to govern the site, as necessary. 	<ul style="list-style-type: none"> • Disagree • Accepting this proposed change is counter to the objectives of the zone and would be detrimental to the amenity of the area. 	<ul style="list-style-type: none"> • That the submission be dismissed.
5	Robert Pearce, owner of Lot XXX (postal address supplied)	<ul style="list-style-type: none"> • There appear to be inconsistencies with the colour coding and numeral marking of the Rural Residential zoned areas on the Scheme Maps. 	<ul style="list-style-type: none"> • Noted. Disagree. Planning staff inspected the Scheme Map and found no inconsistencies with the colour coding and numeral markings. 	<ul style="list-style-type: none"> • That the submission be partially upheld by amending the Zoning Table (Table 4) in Draft LPS5 (as advertised) by designating the symbol 'A' to the Rural

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation
		<ul style="list-style-type: none"> • Considers that 'Caretaker's Dwelling' should be a use that may be considered for approval in the 'Rural' and 'Rural Smallholdings' zones. • Considers that 'Commercial Vehicle Parking' should be a use that may be considered for approval in the 'Rural Residential' and 'Rural Enterprise' zones. • Considers that 'Family Day Care' should be a use that may be considered for approval in the 'Rural Residential' and 'Rural Smallholdings' zones. • Questions why the construction of a 'Single House', an 'A' use in the 'Rural Enterprise' zone, requires advertising first. • Considers that 'Tourist Development' should be a use that may be considered for approval in the 'Residential' and Rural Residential' zones. • Considers that the development requirements for outbuildings (where the R-Codes apply) in Part 4 – General Development Requirements – are too onerous. Suggests more flexibility is required. • Disagrees with the provisions of clause 32(6)(a). Considers that it should be the landowner – not the local government – who determines the frontage of a lot with more than one street frontage. • Considers that the provisions of clause 32(8) (parking of commercial vehicles in residential zones) may not be practicable/achievable in Toodyay. • Considers that the minimum lot size (i.e., 40ha) for the erection of one (1) additional dwelling on a rural lot in clause 32(12)(b) requires further consideration "due to the demand and need for alternative living conditions". • Not sure if Toodyay currently has a 'Rural Enterprise' zone, and unsure how this zone would function in the context of Toodyay's rural lifestyle. 	<ul style="list-style-type: none"> • Noted. Disagree. The use class 'Caretaker's Dwelling' is a habitable building associated primarily with an industrial business (or private community purpose) that is conducted on the same site by a person having the care of buildings, plant, equipment and grounds of that site. It is considered the use class is inappropriate for the Rural and Rural Smallholdings zones. • Noted. Disagree that Commercial Vehicle Parking would be an appropriate use in the Rural Residential zone due to the potential for adverse impacts on the amenity of localities (i.e., undue generation of noise, fumes, odours and the like). Visual amenity of Rural Residential zoned properties may also be compromised as viewed from the street or adjacent properties. Commercial vehicle parking in the newly assigned Rural Enterprise zone is associated with light industrial development, therefore the parking of commercial vehicles in the zone is implicit. • Noted. Agree. • Noted. Single house has been assigned an 'A' use in the Rural Enterprise zone because of the potential for land use conflict between sensitive receptors (i.e., dwellings) and light industrial land uses. • Noted. Disagree. Tourist development, as defined by LPS5, is inappropriate (due to amenity concerns) as there is the risk of land use conflict through appropriate separation and/or increased vehicle volumes in established neighbourhoods. • Noted. There is sufficient flexibility/scope for Council to consider variations to the general development requirements in Part 4 of LPS5. Refer to clause 34 – Variations to Site and Development Requirements. • Noted. Disagree. Clause 32(6)(a) clearly states the local government "may" (not must) determine the street frontage. • Noted. Disagree. The provisions of clause 32(8) are based on sound planning theory and rationale. Again, there is sufficient flexibility/scope for Council to consider variations to the provisions under clause 34 – Variations to Site and Development Requirements. • Noted. Disagree. It is considered 40ha is an appropriate minimum size for the erection of an additional dwelling on a lot zoned Rural. Notwithstanding the 40ha standard, there is sufficient flexibility/scope for Council to consider variations to the minimum 40ha standard under clause 34 – Variations to Site and Development Requirements. • Noted. No, whilst provision has been made for the zone in LPS5, it is yet to be created through the rezoning process. Additional employment land has also been identified east of Toodyay townsite as a new Rural Enterprise zone to provide suitably zoned land for larger home businesses and occupations, such as plumbers and concreters, to reside and work. 	<p>Residential and Rural Smallholding zones for the Family Day Care use class.</p>
6	Kevin Banks-Smith on behalf of the owner of 116 Timberden Drive, Julimar (postal address supplied)	<ul style="list-style-type: none"> • Fully supportive of proposed changes • Property currently too small for viable farm use; 	<ul style="list-style-type: none"> • Noted. • Noted. Rezoning change is consistent with the action 7.10(d) of Council's adopted Local Planning Strategy 2018. 	<ul style="list-style-type: none"> • Dismissed • That the submission be dismissed.

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation
		<ul style="list-style-type: none"> Will seek approval for a potential 5 lot subdivision of the property. 	<ul style="list-style-type: none"> Noted. Schedule 5 of the Draft LPS5 under (2): <ol style="list-style-type: none"> No further subdivision is permitted. The keeping of livestock on any lot is to be restricted to outside of fenced tree preservation areas, or inside of fenced building envelopes. 	
7	Stephen Hanson (postal address supplied)	<ul style="list-style-type: none"> Objects to the 20m boundary setback on the basis that it will increase bushfire risk. 	<ul style="list-style-type: none"> Noted. Disagree. There is no evidence to support the notion that reduced setbacks will increase bushfire risk of property in the Rural Residential zone. 	<ul style="list-style-type: none"> That the submission be dismissed.
8	Lori Reeve (address supplied)	<ul style="list-style-type: none"> Objects to the rezoning of 'Rural' zoned land to the 'Rural Smallholdings' zone in the Timberden Drive estate; Claims Zoning is for revenue raising. 	<ul style="list-style-type: none"> Noted. Zoning change is consistent with the action 7.10(d) of the adopted Local Planning Strategy 2018. Noted. Disagree that zoning change is for revenue-raising, or that the change in zoning will devalue properties in the estate (normally not a relevant planning consideration). 	<ul style="list-style-type: none"> That the submission be dismissed.
9	Jacquie & Peter Lacy (address supplied)	<ul style="list-style-type: none"> Do not wish to see existing use rights (parking of school buses) taken away by the change in zoning of Lot 502 Julimar Road from Special Residential to Residential. 	<ul style="list-style-type: none"> Noted. LPS5 will not remove the ability to apply for development approval for parking of commercial vehicles in the Residential zone. 	<ul style="list-style-type: none"> That the submission be dismissed.
10	Jo Hart (address supplied)	<ul style="list-style-type: none"> Generally poor internal and external references in the Scheme-Text; Submits that zoning provisions seem to be more in keeping with peri-urban, semi-urban and urban lifestyle areas; Document heading hierarchy at 'car parking requirements' on page 33 is ambiguous; Scheme Maps are difficult to interpret; Submits that Morangup properties should be zoned 'Rural Smallholding' rather than 'Rural Residential' due to current 4 to 40 ha size range; Submits that the Zoning Table (Table 4) requires modification to allow more local relevant small businesses to be operated; The 'commercial vehicle parking' land use class in the Zoning Table should be designated an 'A' use rather than an 'X' (not permitted) use; The 'mining operations' land use class in the Zoning Table should be an 'X' use rather than an 'A' use in the 'Rural' zone due to incompatibility with environmental values in the Shire; 	<ul style="list-style-type: none"> Noted. Opinions regarding document formatting is not a valid planning consideration. Noted. Disagree. Personal opinion. Noted. Opinions regarding document formatting is not a valid planning consideration. Noted. Disagree. The Rural Smallholding zone seeks to replace the Rural Living zone to align zone names with those in the Model Scheme Text (part of the 2015 Regulations). Noted. Disagree. It is considered the range and permissibility of commercial land use classes in the Zoning Table of LPS5 sufficiently aligns with the objectives of the Commercial zone. Noted. Disagree. Commercial vehicle parking is a non-permitted land use in the Rural Residential, Rural Enterprise, Environmental Conservation, Mixed Use and Private Community Purposes due to the potential for adverse impacts on the amenity of localities (i.e., undue generation of noise, fumes, odours and the like). Visual amenity of Rural Residential zoned properties may also be compromised as viewed from the street or adjacent properties. Noted. Disagree. The current Scheme does not distinguish between mining operations determined by the Department of Mines, Industry Regulation and Safety under the <i>Mining Act 1978</i>, or by the local government or a development assessment panel under the <i>Planning and Development Act 2005</i>. <p>The inclusion of mining operations in the zoning table of Draft LPS5 is intended to be used to 'trigger' the consultation process outlined in section 120(2) of the <i>Mining Act 1978</i>. Accordingly, 'Mining Operations' was expressly included in the zoning table of Draft LPS5 as a discretionary use. This will allow the local government to advise the Minister for Planning and the Minister for Mines and Petroleum that proposed mining operations may conflict with the local planning scheme.</p>	<ul style="list-style-type: none"> That the submission be partially upheld through the inclusion of the following heading and subclauses under clause 32 of Draft LPS5 (as advertised): <p>Nature Based Parks</p> <p>82. Nature based park proposals shall be accompanied by information that –</p> <ol style="list-style-type: none"> outlines the scale of the proposal, including but not limited to, the number of camps, maximum number of campers, access arrangements to the site and any proposed structures; identifies environmental values and sets out measures for protection and rehabilitation; demonstrates waste disposal is in accordance with Government policy, or is otherwise removed from and disposed offsite; demonstrates adequate separation distances and/or buffers from incompatible land uses on adjacent or nearby locations; and any other information the decision maker considers relevant. <p>83. In considering a proposal for the development of a Nature based park the decision maker shall refer any application which propose:</p> <ol style="list-style-type: none"> clearing of native vegetation to the government department/s responsible for the environment; and the installation of an on-site effluent disposal system to the government department/s responsible for human and environmental health. <p>84. Nature based park proposals will not be supported where in the opinion of the decision maker, the proposal detrimentally impact or undermines surrounding land uses, and in particular, where</p>

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		<ul style="list-style-type: none"> • Contends that the general development requirements for outbuildings listed under clause 26(4) are highly restrictive and prescriptive, and not suited to the largely rural character of the Shire of Toodyay; • Considers that the clauses (clauses 32(15) – 32(28) under 'Development (Rural, Rural Residential, Rural Smallholding) take no account of emerging trends in living and alternative lifestyle options such as the "tiny house movement" and multi-generational occupancy of properties; • Submits that clause 32(77) in the Scheme "can never be met" on the basis that extractive industries will always have an adverse effect on the environment or amenity in the locality; • With respect to clause 32(77), considers that there is insufficient and in some instances no reference to environmental considerations and/or Shire of Toodyay adopted environmental strategies; • Suggests that more conditions should be included under clause 32(79) to deal with groundwater as an amenity, the impacts of airborne dust on rainwater supply, size of vehicles permitted, and conditions managing blasting; and • Considers that the size of exempt advertising signs in Schedule 7 is insufficient (i.e. too small to be easily read from a vehicle). 	<p>It is a key aim of LPS5 to provide a rational framework for decisions with regard to land use and that the assessment and classification of land resources on the basis of capability and suitability, are an essential facet of the planning process.</p> <ul style="list-style-type: none"> • Noted. There is sufficient flexibility/scope for Council to consider variations to the general development requirements in Part 4 of LPS5. Refer to clause 34 – Variations to Site and Development Requirements. • Noted. Agree that emerging trends and alternative lifestyle options (i.e., eco-tourism/short-term accommodation) be given special consideration in LPS5 for the Rural zone only. • Noted. Disagree. Extractive industries provide vital resources to the community for building, construction and infrastructure. However, extractive industry activities <u>have the potential</u> to have negative impacts on people and the environment. Rather than singling out the words "adversely affect" in subclause 77(a), it should be read in full context – that is: the local government will only support extractive industries where it can be demonstrated that the extraction of minerals or basic raw materials will not adversely affect the environment or amenity in the locality <u>of the operation during or after excavation</u>, including the provisions of subclauses 77(b) and 77(c). • Noted. Disagree. The provisions of clause 32(77) should be read with the relevant provisions of clause 67(2) in the <i>deemed provisions for local planning schemes</i>.* * <i>The deemed provisions for local planning schemes</i> form part of every local planning scheme in the State. • Noted. Disagree. Clause 32(79) clearly states it is not intended to be an exhaustive list of matters to consider. • Noted. Disagree. The maximum size for an exempt sign primarily serves to avoid proliferation of signs on individual sites and buildings, and to ensure that the display of advertisements does not adversely impact on the amenity of surrounding land. Where signs exceed the maximum permitted size, development approval will be required. 	<p>the proposal undermines the ability for continued agricultural use of Rural land.</p> <p>85. No clearing of native vegetation is permitted to occur. <i>Note: Nature Based Park applications are required to be in accordance with the Caravan Parks and Camping Grounds Act 1995 and the Caravan Parks and Camping Grounds Regulations 1997.</i></p> <ul style="list-style-type: none"> • That the submission be partially upheld through the inclusion of the following definition in clause 38 (division 2) of LPS5: <table border="1" data-bbox="2086 680 2623 1220"> <thead> <tr> <th data-bbox="2086 680 2356 730">Land use</th> <th data-bbox="2365 680 2623 730">Definition</th> </tr> </thead> <tbody> <tr> <td data-bbox="2086 730 2356 1220">nature based park</td> <td data-bbox="2365 730 2623 1220"> <p>means a facility in an area that:</p> <ol style="list-style-type: none"> 1. is not in close proximity to an area that is built up with structures used for business, industry or dwelling-houses at intervals of less than 100 metres for a distance of 500 metres or more; and 2. has been predominately formed by nature; and 3. has limited or controlled artificial light and noise intrusion. </td> </tr> </tbody> </table>	Land use	Definition	nature based park	<p>means a facility in an area that:</p> <ol style="list-style-type: none"> 1. is not in close proximity to an area that is built up with structures used for business, industry or dwelling-houses at intervals of less than 100 metres for a distance of 500 metres or more; and 2. has been predominately formed by nature; and 3. has limited or controlled artificial light and noise intrusion.
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11	Christine Lavery (address supplied)	<ul style="list-style-type: none"> • Submits that the consultation was neither appropriate or valid as people should be told what the changes to the Scheme are; and • Opposes reduced setbacks from 30m to 20m in the Rural Residential zone on the basis that it will increase bushfire risk. 	<ul style="list-style-type: none"> • Noted. LPS5 was advertised strictly in accordance with Part 4 (preparation or adoption of local planning scheme) of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>. • Noted. Disagree. There is no evidence to support the notion that reduced setbacks will increase bushfire risk of property in the Rural Residential zone. 	<ul style="list-style-type: none"> • That the submission be dismissed. 				
12	John Lucas (address supplied)	<ul style="list-style-type: none"> • Suggests that the development requirements for the Residential zone is changed to permit the parking of school buses (by definition, school buses are commercial vehicles). 	<ul style="list-style-type: none"> • Noted. LPS5 will not remove the ability to apply for development approval for parking of commercial vehicles in the Residential zone. 	<ul style="list-style-type: none"> • That the submission be dismissed. 				
13	Barbara and Francis Moran (address supplied)	<ul style="list-style-type: none"> • Considers the wording in the Scheme is too complicated to interpret. 	<ul style="list-style-type: none"> • Noted. The format and Scheme Text of LPS5 was prepared in accordance with the Model Scheme Text in the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>, and with the guidance of the Department of Planning, Lands and Heritage. A Local Planning Scheme <u>is a legal document</u> that sets out policies and controls for how land in a particular local government area can be used and developed. It contains information about long term planning and strategies and about how infrastructure and development will occur in the area. 	<ul style="list-style-type: none"> • That the submission be dismissed. 				

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation
14	Paul Clarke (address supplied)	<ul style="list-style-type: none"> Submits that Rural Living zoned properties should be able to have a retail outlet on their property to sell produce on their property. 	<ul style="list-style-type: none"> Noted. Disagree. The Rural Smallholding zone seeks to replace the Rural Living zone to align zone names with those in the Model Scheme Text (part of the 2015 Regulations). 	<ul style="list-style-type: none"> That the submission be dismissed.
15	Sydney and Ann Sinclair (address supplied)	<ul style="list-style-type: none"> Expresses support for the continued parking of commercial vehicles (Mr John Lucas' school buses at Lot 502 Julimar Road in Toodyay) in the Residential zone. 	<ul style="list-style-type: none"> Noted. LPS5 will not remove the ability to apply for development approval for parking of commercial vehicles in the Residential zone. 	<ul style="list-style-type: none"> That the submission be dismissed.
16	Dan Pearce (RobertsDay Town Planners) on behalf of the owner of Lots 44 – 46 Stirling Terrace and Lot 300 Goomalling-Toodyay Road, Toodyay	<ul style="list-style-type: none"> Suggests alternative construction to the draft provisions for the proposed Special Use No. 15 area (Catholic Church Heritage Precinct) as follows: <ol style="list-style-type: none"> Table 2 details the current land use permissibility within the current 'Mixed Business' zone: <ul style="list-style-type: none"> Highlighted items in yellow are uses proposed by the Shire as part of the proposed rezoning to 'Special Use No. 15' in Draft LPS5. These uses are supported. Highlighted items in green are uses proposed by the Shire as part of the proposed rezoning for which land use definitions do not currently exist in LPS4. The uses are supported but the relevant land definitions should be included in the new LPS5. Highlighted items in magenta are uses not currently identified in the Special Use zone, which the owners consider appropriate for inclusion in the final provisions. Highlighted items in blue are uses which are not currently permissible in the Mixed Business zone but which the owners consider appropriate for inclusion in the final provisions given the purpose of the new zone. <p>The recommended uses omit most retail, large format and industrial uses, as well as uses such as tavern, that we understand were of concern to surrounding residents. It is proposed that the uses highlighted in Table 2 would be incorporated into column 2 of the Amendment grouped by land use permissibility.</p> <ol style="list-style-type: none"> We believe the requirement for an LDP to guide development approval is unnecessary. Given the current subdivision approval (which once implemented may facilitate creation and therefore independent development of individual lots), we suggest removing the requirement for an LDP and require consideration of the same matters as part of a development application. In the event that new titles are not created then the same provisions apply to development on any part of the land, thereby protecting the strategic heritage and environmental values identified in the draft provisions. Making the preparation of a Heritage Impact Assessment to accompany a DA to be at the discretion of Council having regard to whether the scope of works proposed merits the preparation of such a report i.e., in the case of an applicant proposing a change of use to office, with only minor work such as painting and no external works, the submission of a full Heritage Impact Assessment would appear to be onerous and unnecessary. Considering the approved subdivision cedes the foreshore area adjacent the Avon River we suggest provisions relating to flooding and foreshore management / access be removed. Inclusion of a residential density code consistent with the construction and density of the current Clause 4.7.3 of the Town Centre zone providing a context for future residential development. 	<ul style="list-style-type: none"> Noted. This change is no longer appropriate as the ownership of these parcels of land has gone to others and is no longer under one entity. 	<ul style="list-style-type: none"> That the submission be dismissed.
17	Department of Biodiversity, Conservation and Attractions (DBCA)	<ul style="list-style-type: none"> Notes that the proposed Rural Smallholding zone will provide for the subdivision of land for lot sizes ranging from 4 to 40 ha; Submits that several of the lots to be zoned Rural Smallholding contain large areas of native vegetation that have not been surveyed for threatened species and ecological communities. Then submits that, prior to rezoning lots 	<ul style="list-style-type: none"> Noted. Noted. The Council recently engaged an environmental consultant to prepare a Local Biodiversity Strategy (LBS) for Shire of Toodyay. The LBS will provide a process for 	<ul style="list-style-type: none"> That the submission be partially upheld through modification of Draft LPS5 (as advertised) Scheme Map as follows: <ul style="list-style-type: none"> ➤ Amend Scheme Map 1 by designating R42808, R42370, R19900, R19904 and

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		<p>which contain vegetation, targeted surveys for threatened species and communities should be undertaken to determine if intensification of land use is appropriate and potential impacts to biodiversity values can be avoided or managed;</p> <ul style="list-style-type: none"> Notes that designation of "tree preservation areas" and "natural vegetation preservation and/or remnant vegetation areas" could provide a suitable mechanism for the Shire to protect vegetation, ecological corridors, habitat for conservation-significant flora and fauna and riparian vegetation; Notes that there is an area adjacent to Wilkerson Road and Ridley Circle, West Toodyay, (Maps 2 and 3) that is proposed to be rezoned from Rural to Rural Residential, which will allow subdivision to create one to four hectare lots. This area adjoins Rugged Hill Nature Reserve and contains populations of threatened flora listed for protection under the <i>Biodiversity Conservation Act 2019</i>. Further notes that the proposed amendment to Rural Residential may increase lot densities and development in this area leading to vegetation clearing and indirect impacts to the adjacent conservation estate; Recommends that the Scheme Text should include a requirement that environmental assessments are undertaken to identify threatened flora, fauna and ecological communities with a view to inform any strategic or statutory planning proposal which facilitates the subdivision of lots containing remnant vegetation in the proposed and existing Rural Residential zone; Specific comments regarding LPS5 Scheme Maps: <table border="1" data-bbox="664 947 1457 1770"> <thead> <tr> <th>Map #</th> <th>Issue</th> <th>Comment</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Drummond Nature Reserve (R 42808) and Camerer Nature Reserve (R 42370) are proposed to be zoned Rural</td> <td>These nature reserves should be shown as Environmental Conservation reserves consistent with other DBCA managed conservation estate.</td> </tr> <tr> <td>1</td> <td>Poison Gully Nature Reserve (R 19900) and A-Class nature reserve (R 19904) are proposed to be reserved as Public Open Space</td> <td>These nature reserves should be shown as Environmental Conservation reserve consistent with other DBCA managed conservation estate.</td> </tr> <tr> <td>1</td> <td>'Dewars Pool' Section 5(1)(g) reserve (R 13971) surrounded by Julimar State Forest is proposed to be reserved as State Forest</td> <td>This reserve should be reserved as Environmental Conservation to better reflect the reserve purpose.</td> </tr> <tr> <td>2</td> <td>Rugged Hill Nature Reserve (R 21429) is proposed to be reserved as Public Open Space</td> <td>This nature reserve should be shown as Environmental Conservation reserve consistent with other DBCA managed conservation estate.</td> </tr> <tr> <td>2</td> <td>Lot 889 Chitty Road, Hoddy's Well (DP 415818)</td> <td>This lot is owned and managed by DBCA and is a proposed addition to the existing Clackline Nature Reserve. The lot should be reserved as Environmental Conservation.</td> </tr> </tbody> </table>	Map #	Issue	Comment	1	Drummond Nature Reserve (R 42808) and Camerer Nature Reserve (R 42370) are proposed to be zoned Rural	These nature reserves should be shown as Environmental Conservation reserves consistent with other DBCA managed conservation estate.	1	Poison Gully Nature Reserve (R 19900) and A-Class nature reserve (R 19904) are proposed to be reserved as Public Open Space	These nature reserves should be shown as Environmental Conservation reserve consistent with other DBCA managed conservation estate.	1	'Dewars Pool' Section 5(1)(g) reserve (R 13971) surrounded by Julimar State Forest is proposed to be reserved as State Forest	This reserve should be reserved as Environmental Conservation to better reflect the reserve purpose.	2	Rugged Hill Nature Reserve (R 21429) is proposed to be reserved as Public Open Space	This nature reserve should be shown as Environmental Conservation reserve consistent with other DBCA managed conservation estate.	2	Lot 889 Chitty Road, Hoddy's Well (DP 415818)	This lot is owned and managed by DBCA and is a proposed addition to the existing Clackline Nature Reserve. The lot should be reserved as Environmental Conservation.	<p>assessing the ecological significance of Local Natural Areas in the Shire, and for determining their protection status by assessing constraints and opportunities for protection.</p> <ul style="list-style-type: none"> Noted. Once the Shire's Local Biodiversity Strategy has been adopted, the local government will consider whether to amend LPS5 at a later stage (i.e., post gazettal) to include tree preservation and natural vegetation areas. Noted. Noted. Once the Shire's Local Biodiversity Strategy has been adopted, the local government will consider whether to amend LPS5 at a later stage (i.e., post gazettal) to make it a requirement that environmental assessments are undertaken to identify threatened flora, fauna and ecological communities. Noted. Agree that the Scheme Map (Map 1) is amended to show R42808 and R42370 as Environmental Conservation Reserves. Noted. Agree that the Scheme Map (Map 1) is amended to show R19900 and R19904 as Environmental Conservation Reserves. Noted. Agree that the Scheme Map (Map 1) is amended to show R13971 as Environmental Conservation Reserve. Noted. Agree that the Scheme Map (Map 2) is amended to show R21429 as Environmental Conservation Reserve. Noted. Agree that the Scheme Map (Map 2) is amended to show Lot 889 on DP 415818 as Environmental Conservation Reserve. 	<p>R13971 as 'Environmental Conservation' Local Scheme Reserves;</p> <ul style="list-style-type: none"> Amend Scheme Map 2 by designating R21429, Lot 889 on DP 415818 and Lot 70 on Plan 407481 as 'Environmental Conservation' Local Scheme Reserves; and Amend Scheme Map 4 by Designating Lot 110 Racecourse Road, Toodyay as 'Public Open Space' Local Scheme Reserve.
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		2	Lot 70 on Plan 407481 should be placed in the Environmental Conservation zone.	This lot has a conservation covenant, administered by DBCA, under the Transfer of Land Act 1893. It is stated in Development Control Policy, 3.4 Subdivision of rural land (WAPC 2016) that, "Following the creation of a lot under this clause, the resultant conservation lot should be appropriately zoned by the local government in the local planning scheme in a future omnibus amendment or when the scheme is reviewed."	<ul style="list-style-type: none"> Noted. Agree that the Scheme Map (Map 2) is amended to show Lot 70 on Plan 407481 as Environmental Conservation Reserve. 								
		4	Lot 110 Racecourse Road, Toodyay, which currently contains the golf course is proposed to be reserved as Environmental Conservation	Given the land is Shire of Toodyay freehold for public recreational purposes it may be more appropriate for this reserve to be reserved as Public Open Space.	<ul style="list-style-type: none"> Noted. Agree that the Scheme Map (Map 4) is amended to show Lot 110 Racecourse Road, Toodyay as Public Open Space. 								
18	Water Corporation	<ul style="list-style-type: none"> Requests the Shire to include the odour buffer around the Toodyay Waste Water Treatment Plant (WWTP) at Lot 501 Goomalling-Toodyay Road in Toodyay in the Scheme Map and Scheme Text as a new Special Control Area (SCA), and to insert appropriate development control provisions in Schedule 3 of Draft LPS5. 		<ul style="list-style-type: none"> Noted. Agree. Lot 501 Goomalling-Toodyay Road, Toodyay is depicted on the Scheme Map (Map 2) as Rural Smallholdings. This appears to be an oversight as the property is owned by Water Corporation and is used for treated wastewater disposal and reuse. <p>It is not appropriate to assign the Rural Smallholdings zone to the site. To better reflect the intent and use of the site, it is considered appropriate to include Lot 501 in the "Public Purposes" reserve on the Scheme Map.</p>	<ul style="list-style-type: none"> That the submission be upheld through modification of the Draft LPS5 (as advertised) Scheme Map (Map 2) by designating Lot 501 Goomalling-Toodyay Road, Toodyay as 'Public Purpose' Local Scheme Reserve; and That the submission be upheld by amending Schedule 3 in Draft LPS5 (as advertised) by adding the following to the existing list of Special Control Areas: <table border="1" data-bbox="2068 1087 2638 1772"> <thead> <tr> <th data-bbox="2080 1096 2181 1188">Name of Area</th> <th data-bbox="2190 1096 2291 1188">Purpose/ Objectives</th> <th data-bbox="2300 1096 2401 1188">Application Requirements</th> <th data-bbox="2410 1096 2626 1188">Relevant Considerations</th> </tr> </thead> <tbody> <tr> <td data-bbox="2080 1194 2181 1764">SCA4 – Toodyay Wastewater Treatment Plant odour buffer Special Control Area</td> <td data-bbox="2190 1194 2291 1764">To minimise the impact of odour on surrounding areas and to protect the operations of the Toodyay WWTP by ensuring that odour sensitive land uses are not</td> <td data-bbox="2300 1194 2401 1764">Development approval is required for all development and land use within the Special Control Area.</td> <td data-bbox="2410 1194 2626 1764">In considering any application for land use or development within the WWTP odour buffer SCA, the local government will have due regard to the following: - The local government will generally not approve development which is sensitive to odour emanating from the WWTP; - The local government will consult the Water Corporation and the Department of Water and Environmental Regulation regarding the proposed development or land use for advice on the proposal and any</td> </tr> </tbody> </table>	Name of Area	Purpose/ Objectives	Application Requirements	Relevant Considerations	SCA4 – Toodyay Wastewater Treatment Plant odour buffer Special Control Area	To minimise the impact of odour on surrounding areas and to protect the operations of the Toodyay WWTP by ensuring that odour sensitive land uses are not	Development approval is required for all development and land use within the Special Control Area.	In considering any application for land use or development within the WWTP odour buffer SCA, the local government will have due regard to the following: - The local government will generally not approve development which is sensitive to odour emanating from the WWTP; - The local government will consult the Water Corporation and the Department of Water and Environmental Regulation regarding the proposed development or land use for advice on the proposal and any
Name of Area	Purpose/ Objectives	Application Requirements	Relevant Considerations										
SCA4 – Toodyay Wastewater Treatment Plant odour buffer Special Control Area	To minimise the impact of odour on surrounding areas and to protect the operations of the Toodyay WWTP by ensuring that odour sensitive land uses are not	Development approval is required for all development and land use within the Special Control Area.	In considering any application for land use or development within the WWTP odour buffer SCA, the local government will have due regard to the following: - The local government will generally not approve development which is sensitive to odour emanating from the WWTP; - The local government will consult the Water Corporation and the Department of Water and Environmental Regulation regarding the proposed development or land use for advice on the proposal and any										

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation	
				establis hed within the odour buffer.	conditions that should be imposed on approval. - The local government will have regard to relevant policies including State Planning Policy 4.1 (State Industrial Buffers) and EPA Guidance Statement No.3 (Guidance for the Assessment of Environmental Factors).
19	LandInsights Planning, Design and Environment on behalf of the owner of Lot 151 Wilkerson Road, Toodyay	<ul style="list-style-type: none"> Notes that Lot 151 Wilkerson Road (the site) was identified in the Shire's adopted Local Planning Strategy for <i>Environmental Conservation</i> and <i>Rural Smallholdings</i> purposes; Notes that a subdivision of the Conservation Lot has been approved by the WAPC in early 2020; Notes that, as part of an earlier rezoning process, a detailed fauna and flora study was undertaken, which confirmed the presence of some significant flora species on the property as well as some black cockatoo habitat; Notes that the preparation of Council's Draft LPS5 provides a unique opportunity to ensure that the site is appropriately zoned in accordance with the Local Planning Strategy. This will have the benefit of ensuring the Conservation Lot is protected by the Scheme, and thereby shielded from incompatible rural development. 	<ul style="list-style-type: none"> Noted. Agree. Given that the Shire's adopted Local Planning Strategy identified Lot 151 Wilkerson Road in West Toodyay (known also as 44 Francis Street, West Toodyay) for Environmental Conservation and Rural Smallholdings respectively, it is only appropriate that the zoning of the land assigned accordingly. Further agree with the submitter that the rezoning of the land is undertaken through the preparation of LPS5, and that the Conservation Lot is protected by the Scheme and shielded from incompatible rural development. 		<ul style="list-style-type: none"> That the submission be upheld through modification of Draft LPS5 (as advertised) Scheme Map (Map 3) by designating Lot 151 Wilkerson Road, West Toodyay 'Rural Smallholdings' zone, and by designating the newly created Conservation Lot as 'Environmental Conservation' Local Scheme Reserve'.
20	Michael Wood, owner of Coorinja Winery (address supplied)	<ul style="list-style-type: none"> Notes that his property at Lot 345 (5914) Toodyay Road, Hoddy's Well is zoned 'Rural Living' under LPS4 where the land use class 'Restaurant/Café' is an 'A' use and therefore Council has the discretion to approve the land use following public consultation. Notes that under Draft LPS5, the property zoning will change to 'Rural Smallholdings', however, 'Restaurant/Café' will now be an 'X' land use, which means it is prohibited. Submits that 'Restaurant/Café' land should be listed as an 'A' not an 'X' land use, in the 'Rural Smallholding' zone for the following reasons: <ul style="list-style-type: none"> The land use is currently a discretionary land use in the 'Rural Living' zone under LPS4. Draft LPS5 proposes that the 'Rural Living' zone be changed to the 'Rural Smallholdings' zone, which is predominately a change to the title of the zone to be consistent with the Model Provisions contained in the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>. The zone is largely the same zone with similar lot size ranges and zoning objectives, it is therefore submitted that the 'Restaurant/café' land use should remain as a discretionary land use. The objectives of the 'Rural Smallholdings' zone include 'to provide for a limited range of rural land uses and incidental uses, such as tourism [emphasis added], where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land'. A restaurant is a tourist land use and therefore I submit that it should remain as a discretionary land use within the zone. The 'Rural Smallholdings' zone provides for a large range in lots sizes, from 4ha to 40ha, therefore a land use, like a restaurant, is capable of being designed and sited to ensure that the activity is consistent with the amenity of the locality. It is submitted that draft LPS5 should be adjusted for a restaurant to be an 'A' use so that a merit-based assessment can be performed, and the views of adjoining landowners can be considered through a development assessment, as opposed to it being a prohibited land use and 	<ul style="list-style-type: none"> Noted. Noted. Noted. Agree. Consistent with adjoining local government areas (Shires of Northam and Mundaring), the use class 'restaurant/café' is a use that can be designated a discretionary use (i.e., 'A') in the Zoning Table of LPS5 for the Rural Smallholdings zone. 		<ul style="list-style-type: none"> That the submission be upheld through modification of the Zoning Table (Table 4) in Draft LPS5 (as advertised) by assigning the symbol 'A' to the 'restaurant/café', 'brewery' and 'industry-extractive' use classes in the Rural Smallholdings zone.

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation
		<p>the opportunity (including the potential economic benefits and investment) being removed altogether.</p> <ul style="list-style-type: none"> ➤ It is submitted that keeping restaurant as an 'A' land use aligns with the vision and objectives of the Strategy Community Plan (the Plan). Specifically, if the land use remains as a discretionary land use it will assist to attract, develop, and maintain business in Toodyay, which is the strategic outcome under the economic pillar of the Plan. It will also align with the three objectives under the economic pillar of the Plan as it would: <ul style="list-style-type: none"> ▪ Encourage and support investment into an existing business in Toodyay; ▪ Will add another attraction to the region, thus promoting Toodyay as a tourism destination; and ▪ Will enable economic diversification. • Submits that 'Brewery' which is currently listed as an 'X'/prohibited land use in the 'Rural Smallholding' zone be amended to be an 'A' land use based on similar grounds as mentioned above. • Submits that the use class 'Industry – Extractive', which is currently an 'A' use in the 'Rural Living' zone, but depicted as an 'X' (not permitted) use in Draft LPS5, should be designated an 'A' use in Draft LPS5 on the basis that large tracts of what will be the 'Rural Smallholding' zone remain as operational farms that have not yet been subdivided, which generally enables adequate separation distances for such a land use to exist without impacting upon the amenity of the locality. 	<ul style="list-style-type: none"> • Noted. Agree. The use class 'brewery' is a use that can be designated as a discretionary use (i.e., 'A') in the Zoning Table of LPS5. • Noted. Agree. The use class 'industry - extractive' is a use that can be designated as a discretionary use (i.e., 'A') in the Zoning Table of LPS5. 	
21	Main Roads Western Australia	<ul style="list-style-type: none"> • Part 02 – Reserves, at 'Local Reserves', at (1) Amend "Department of Main Roads" to "Main Roads Western Australia" or "Main Roads WA" in two locations. • Part 03 – Zones and Use of Land, questions whether use classes "Industry", "Mining Operations on Minerals to Owner Land", and "Waste Disposal Facility" are not permitted uses in all zones. • Notes that some proposed development (i.e. access, stormwater drainage, signage, etc.) has an impact on the Main Roads WA network. Advises that development applications must be referred to Main Roads WA for comment. • Part 04 – General Development Requirements (clause 32), with respect to 'setbacks', questions why a 50m setback is required from a state road for Rural and Rural Smallholding zones. Advises that Main Roads WA was not aware of requesting this requirement. Questions why the requirement is inconsistent across similar zones, i.e. Rural Residential and Rural Enterprise. • Under 'Development in the Rural Residential and Rural Smallholdings zones' section of clause 32, with particular reference to (16) "...and the road .." should be "... and the property boundary ..", advises that town planning stops at the property boundary and Main Roads WA is unlikely to support landscaping or permitted rural activities (under the LPS) to be undertaken within road reserves under Main Roads WA control. • 'Development in the Light Industry zone' section under clause 32 needs to be consistent with (16) above and for accuracy. Advises that Main Roads WA is unlikely to support the daily parking of vehicles, loading and unloading of vehicles and trade displays within the Main Roads WA road reserve. Recommends it is made clear that the clause relates to local roads only. • Suggests clause 78(e) is reworded 	<ul style="list-style-type: none"> • Noted. Agree. • Noted. Council submits it is appropriate that the use classes "Industry", "Mining Operations on Minerals to Owner Land", and "Waste Disposal Facility" are not permitted uses in all zones. • Noted. Clause 66(1) of the <i>deemed provisions for local planning schemes</i> provides that when (in the opinion of the local government) an application for development approval may affect any other statutory, public or planning authority, the local government is to provide a copy of the application to the authority for objections and recommendations. • Noted. Currently, in LPS4, buildings that front a designated state, regional or district road should be set back a minimum of 100m from the boundary. A 50m setback is considered sufficient from a state or major road. • Noted. Disagree. Council submits that clause 32(16) is correctly worded. • Noted. Disagree. Council submits that clause 32(43) is correctly worded, and that further modification to distinguish between local and state roads is not required. • Noted. Disagree. Council submits that clause 32(78)(e) is correctly worded. Where warranted, extractive industry proposals that may affect MRWA's interests will be referred to MRWA for comments under the requirements of clause 66 of the <i>deemed provisions for local planning schemes</i>. 	<ul style="list-style-type: none"> • That the submission be partially upheld by amending Part 02 – Reserves of Draft LPS5 (as advertised) by substituting any and all reference to 'Department of Main Roads' to 'Main Roads WA'.
22	Chris & Olivia Wood (address supplied)	<ul style="list-style-type: none"> • Requests Council consider inclusion of Nature Based Park as a land use definition and appropriate permissibility within Scheme No. 5. 	<ul style="list-style-type: none"> • Noted. Agree. • Noted. Agree. 	<ul style="list-style-type: none"> • That the submission be upheld through the inclusion of the following heading and subclauses under clause 32 of Draft LPS5 (as advertised):

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation				
		<ul style="list-style-type: none"> Considers Nature Based Park is an appropriate land use to bolster tourism options in the Shire, and further considers this modification will be required to eliminate inconsistencies between the planning approval requirements and those under the Caravan Parks and Camping Grounds legislation. 		<p>Nature Based Parks</p> <p>82. Nature based park proposals shall be accompanied by information that –</p> <ul style="list-style-type: none"> (a) outlines the scale of the proposal, including but not limited to, the number of camps, maximum number of campers, access arrangements to the site and any proposed structures; (b) identifies environmental values and sets out measures for protection and rehabilitation; (c) demonstrates waste disposal is in accordance with Government policy, or is otherwise removed from and disposed offsite; (d) demonstrates adequate separation distances and/or buffers from incompatible land uses on adjacent or nearby locations; and (e) any other information the decision maker considers relevant. <p>83. In considering a proposal for the development of a Nature based park the decision maker shall refer any application which propose:</p> <ul style="list-style-type: none"> (a) clearing of native vegetation to the government department/s responsible for the environment; and (b) the installation of an on-site effluent disposal system to the government department/s responsible for human and environmental health. <p>84. Nature based park proposals will not be supported where in the opinion of the decision maker, the proposal detrimentally impact or undermines surrounding land uses, and in particular, where the proposal undermines the ability for continued agricultural use of Rural land.</p> <p>85. No clearing of native vegetation is permitted to occur.</p> <p><i>Note: Nature Based Park applications are required to be in accordance with the Caravan Parks and Camping Grounds Act 1995 and the Caravan Parks and Camping Grounds Regulations 1997.</i></p> <ul style="list-style-type: none"> That the submission be upheld through the inclusion of the following definition in clause 38 (division 2) of LPS5: <table border="1" data-bbox="2080 1566 2635 1774"> <thead> <tr> <th data-bbox="2080 1566 2353 1612">Land use</th> <th data-bbox="2353 1566 2635 1612">Definition</th> </tr> </thead> <tbody> <tr> <td data-bbox="2080 1612 2353 1774">nature based park</td> <td data-bbox="2353 1612 2635 1774"> means a facility in an area that: <ul style="list-style-type: none"> 1. is not in close proximity to an area that is built up with structures used for </td> </tr> </tbody> </table>	Land use	Definition	nature based park	means a facility in an area that: <ul style="list-style-type: none"> 1. is not in close proximity to an area that is built up with structures used for
Land use	Definition							
nature based park	means a facility in an area that: <ul style="list-style-type: none"> 1. is not in close proximity to an area that is built up with structures used for 							

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation								
23	Department of Planning, Lands and Heritage	<ul style="list-style-type: none"> Requests Council consider recommended modifications to Special Use zone No.8 (SU8) and reclassification of land in response to a submission from the landowner of Lots 16, 802 and 803 Wattening Spring Road, Wattening. Advises that the proposed changes seek to update the special uses and conditions in SU8 to facilitate a future tourism proposal within the zone, and to ensure consistency with the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>. In addition to updating SU8, it also seeks to bring the remaining portions of rural zoned land within Lots 802 and 803 into the Special Use zone. Requests Council consider modification of the Scheme Map to reclassify Lot 28826 on DP 187541 (forming part of Reserve 2393) from part 'Special use', part 'rural' zone to 'Environmental Conservation' reserve. This is to better reflect its purpose for flora and fauna conservation. 	<ul style="list-style-type: none"> Noted. Agree. Noted. Agree. Noted. Agree. 	<p>business, industry or dwelling-houses at intervals of less than 100 metres for a distance of 500 metres or more; and</p> <ol style="list-style-type: none"> has been predominately formed by nature; and has limited or controlled artificial light and noise intrusion. <ul style="list-style-type: none"> That the submission be upheld through the rezoning of Lots 16, 802 and 803 Wattening Spring Road, Wattening and modification of Special Use No. 8 in Draft LPS5 (as advertised) as follows: <ol style="list-style-type: none"> Reclassify portions of Lots 802 and 803 Wattening Spring Road, Wattening from 'Rural' zone to 'Special Use' zone and amend the Scheme Map accordingly. Reclassify a portion of Reserve 2393 (Lot 28826 on DP 187541) from 'Special Use' and 'Rural' zone to 'Environmental Conservation' reserve and amend the Scheme Map accordingly. Modify Part 6 by inserting the model term and definition for 'Cabin' under clause 37(1). Amending the provisions of Schedule 4 of the Scheme Text as they apply to Special Use Zone 8 to the following: 								
		<table border="1"> <thead> <tr> <th data-bbox="706 1089 804 1113">No.</th> <th data-bbox="813 1089 1181 1113">Description of Land</th> <th data-bbox="1190 1089 1703 1113">Special Use</th> <th data-bbox="1712 1089 2629 1113">Conditions</th> </tr> </thead> <tbody> <tr> <td data-bbox="706 1119 804 1142">8</td> <td data-bbox="813 1119 1181 1184">Lots 16, 802 and 803, Wattening Spring Road, Wattening</td> <td data-bbox="1190 1119 1703 1352"> As a discretionary ('D') use: <ul style="list-style-type: none"> Tourist Development Cabin Caretaker's dwelling Chalet Holiday accommodation Holiday house and any other land uses that the local government considers consistent with the intent of this zone. </td> <td data-bbox="1712 1119 2629 1776"> The purpose and intent of this zone is to provide for tourist accommodation and incidental shared facilities and services. <ol style="list-style-type: none"> Development and use is not permitted unless the local government has exercised its discretion by granting development approval. Development is address, but not limited to, the following matters: <ol style="list-style-type: none"> Setbacks, as determined by local government; and The location of on-site tourism and management facilities across the site; and Access and traffic management for the site, including: <ul style="list-style-type: none"> providing safe legal ingress and egress to the development site from a constructed public road; provision of any required road upgrades and/or construction to the satisfaction of the local government; provision of car parking; internal vehicle access and circulation; and pedestrian access across the site. A Bushfire Management Plan (BMP) and emergency evacuation plan shall be prepared; and Any other relevant matter, which the State or local government considers to be warranted to ensure orderly and proper planning of the site. Development is to be provided with the following servicing arrangements: <ol style="list-style-type: none"> A sustainable water supply that is sufficient for the intended use; and A reticulated electricity supply and/or a renewable energy system commensurate with the intended use; On-site effluent disposal in accordance with relevant State policy and health requirements; </td> </tr> </tbody> </table>	No.	Description of Land	Special Use	Conditions	8	Lots 16, 802 and 803, Wattening Spring Road, Wattening	As a discretionary ('D') use: <ul style="list-style-type: none"> Tourist Development Cabin Caretaker's dwelling Chalet Holiday accommodation Holiday house and any other land uses that the local government considers consistent with the intent of this zone.	The purpose and intent of this zone is to provide for tourist accommodation and incidental shared facilities and services. <ol style="list-style-type: none"> Development and use is not permitted unless the local government has exercised its discretion by granting development approval. Development is address, but not limited to, the following matters: <ol style="list-style-type: none"> Setbacks, as determined by local government; and The location of on-site tourism and management facilities across the site; and Access and traffic management for the site, including: <ul style="list-style-type: none"> providing safe legal ingress and egress to the development site from a constructed public road; provision of any required road upgrades and/or construction to the satisfaction of the local government; provision of car parking; internal vehicle access and circulation; and pedestrian access across the site. A Bushfire Management Plan (BMP) and emergency evacuation plan shall be prepared; and Any other relevant matter, which the State or local government considers to be warranted to ensure orderly and proper planning of the site. Development is to be provided with the following servicing arrangements: <ol style="list-style-type: none"> A sustainable water supply that is sufficient for the intended use; and A reticulated electricity supply and/or a renewable energy system commensurate with the intended use; On-site effluent disposal in accordance with relevant State policy and health requirements; 		
No.	Description of Land	Special Use	Conditions									
8	Lots 16, 802 and 803, Wattening Spring Road, Wattening	As a discretionary ('D') use: <ul style="list-style-type: none"> Tourist Development Cabin Caretaker's dwelling Chalet Holiday accommodation Holiday house and any other land uses that the local government considers consistent with the intent of this zone.	The purpose and intent of this zone is to provide for tourist accommodation and incidental shared facilities and services. <ol style="list-style-type: none"> Development and use is not permitted unless the local government has exercised its discretion by granting development approval. Development is address, but not limited to, the following matters: <ol style="list-style-type: none"> Setbacks, as determined by local government; and The location of on-site tourism and management facilities across the site; and Access and traffic management for the site, including: <ul style="list-style-type: none"> providing safe legal ingress and egress to the development site from a constructed public road; provision of any required road upgrades and/or construction to the satisfaction of the local government; provision of car parking; internal vehicle access and circulation; and pedestrian access across the site. A Bushfire Management Plan (BMP) and emergency evacuation plan shall be prepared; and Any other relevant matter, which the State or local government considers to be warranted to ensure orderly and proper planning of the site. Development is to be provided with the following servicing arrangements: <ol style="list-style-type: none"> A sustainable water supply that is sufficient for the intended use; and A reticulated electricity supply and/or a renewable energy system commensurate with the intended use; On-site effluent disposal in accordance with relevant State policy and health requirements; 									

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation
			(d) Provision for waste management. 4. No permanent residential accommodation is permitted in the Special Use zone, except for a caretaker's dwelling. 5. The above development conditions (2-4) may be varied at the discretion of the local government and on the advice of any relevant referral agency.	
24	Tash Weir on behalf of Mahonia Operations (operating as In2thewild Tiny Holidays) (address supplied)	<ul style="list-style-type: none"> Requests Council consider inclusion of a land use definition and appropriate permissibility within LPS5 for "nature based park" to better reflect accommodation services in "tiny-houses-on-wheels." Considers nature based park is an appropriate land use to bolster tourism options in the Shire of Toodyay, and that this modification will be required to eliminate inconsistencies between the planning approval requirements and those under the Caravan Parks and Camping Grounds legislation. 	<ul style="list-style-type: none"> Noted. Agree. Council submits there is a need to better reflect short-term accommodation options in LPS5. Noted. Agree. 	<ul style="list-style-type: none"> That the submission be upheld through the inclusion of the following heading and subclauses under clause 32 of LPS5 (General Development Standards and Requirements): Nature Based Parks 82. Nature based park proposals shall be accompanied by information that – <ul style="list-style-type: none"> (a) outlines the scale of the proposal, including but not limited to, the number of camps, maximum number of campers, access arrangements to the site and any proposed structures; (b) identifies environmental values and sets out measures for protection and rehabilitation; (c) demonstrates waste disposal is in accordance with Government policy, or is otherwise removed from and disposed offsite; (d) demonstrates adequate separation distances and/or buffers from incompatible land uses on adjacent or nearby locations; and (e) any other information the decision maker considers relevant. 83. In considering a proposal for the development of a Nature based park the decision maker shall refer any application which propose: <ul style="list-style-type: none"> (a) clearing of native vegetation to the government department/s responsible for the environment; and (b) the installation of an on-site effluent disposal system to the government department/s responsible for human and environmental health. 84. Nature based park proposals will not be supported where in the opinion of the decision maker, the proposal detrimentally impact or undermines surrounding land uses, and in particular, where the proposal undermines the ability for continued agricultural use of Rural land. 85. No clearing of native vegetation is permitted to occur. <i>Note: Nature Based Park applications are required to be in accordance with the Caravan Parks and Camping Grounds Act 1995 and the Caravan Parks and Camping Grounds Regulations 1997.</i>

No.	Name/Address	Summary of Submission	Council's Comments	Council's Recommendation	
				<ul style="list-style-type: none"> That the submission be upheld through the inclusion of the following definition in clause 38 (division 2) of LPS5: 	
				Land use	Definition
				nature based park	means a facility in an area that: <ol style="list-style-type: none"> is not in close proximity to an area that is built up with structures used for business, industry or dwelling-houses at intervals of less than 100 metres for a distance of 500 metres or more; and has been predominately formed by nature; and has limited or controlled artificial light and noise intrusion.

<i>Planning and Development (Local Planning Schemes) Regulations 2015</i>	
Part 4	Preparation or adoption of local planning scheme
Division 1	Proposal to prepare or adopt local planning scheme
r. 19	

Part 4 — Preparation or adoption of local planning scheme

Division 1 — Proposal to prepare or adopt local planning scheme

19. Resolution to prepare or adopt scheme

- (1) A resolution of a local government to prepare or adopt a local planning scheme must be in a form approved by the Commission.

Note for this subregulation:

Section 72(1) of the Act provides for a local government to prepare a local planning scheme or to adopt a local planning scheme proposed by the owners of land in respect of which the local government might have prepared a scheme.

- (2) The local government may resolve not to adopt a local planning scheme proposed by a landowner if the local government is not satisfied that there is in place an agreement for the local government to use any copyrighted material provided in support of the proposed scheme —
 - (a) for the purpose of preparing and implementing the scheme; and
 - (b) for zero remuneration.

20. Notification of resolution

- (1) A local government must, as soon as is reasonably practicable after passing a resolution to prepare or adopt a local planning scheme, advertise the resolution as follows —
 - (a) publish a notice in a form approved by the Commission in accordance with regulation 76A;
 - (b) provide a copy of the published notice to the following persons or bodies for recommendations —
 - (i) the local government of each district that adjoins the local government district;

Planning and Development (Local Planning Schemes) Regulations 2015

Preparation or adoption of local planning scheme

Part 4

Advertising local planning scheme

Division 2**r. 21**

- (ii) each licensee under the *Water Services Act 2012* likely to be affected by the scheme;
- (iii) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Conservation and Land Management Act 1984*;
- (iv) each other public authority likely to be affected by the scheme.

Note for this subregulation:

Under section 81 of the Act written notice of the resolution and written information about the local planning scheme must be given to the EPA.

- (2) A local government must, on the provision of the published notice to a person or body referred to in subregulation (1)(b), request the person or body to provide to the local government within 21 days or such longer period as the local government allows, a memorandum in writing setting out any recommendations in respect of the resolution.
- (3) If a person or body does not provide a memorandum within the time allowed under subregulation (2), the local government may determine that the person or body is to be taken to have no recommendations to make in respect of the resolution.

[Regulation 20 amended: SL 2020/252 r. 10.]

Division 2 — Advertising local planning scheme**21. Resolution to proceed to advertise draft local planning scheme**

- (1) On completion of the preparation of local planning scheme documents or the consideration of local planning scheme documents proposed by an owner of land in the scheme area, a local government must resolve —
 - (a) to proceed to advertise the draft local planning scheme without modification; or

Planning and Development (Local Planning Schemes) Regulations 2015**Part 4** Preparation or adoption of local planning scheme**Division 2** Advertising local planning scheme**r. 22**

- (b) to proceed to advertise the draft local planning scheme with modifications; or
 - (c) not to proceed to advertise the draft local planning scheme.
- (2) If the local government resolves to proceed to advertise a draft local planning scheme the local government must, before advertising the scheme, submit 2 copies of the draft local planning scheme documents to the Commission.
- (3) The documents referred to in subregulation (2) must be submitted within 21 days of the local government resolution or such longer period as the Commission allows.
- (4) The Commission must, within 90 days or such longer period as the Minister or an authorised person allows, of receiving the documents submitted under subregulation (2), examine the documents and advise the local government if the Commission considers that any modification to the documents is required before the draft local planning scheme is advertised.
- (5) If the local government resolves not to proceed to advertise a draft local planning scheme the local government must, within 21 days or such longer period as the Commission allows, provide a copy of the resolution to the Commission.

22. Advertisement of local planning scheme

- (1) Subject to sections 81 and 82 of the Act, if the Commission advises a local government that it is satisfied that a draft local planning scheme submitted by the local government is suitable to be advertised, the local government must, as soon as is reasonably practicable, prepare a notice in a form approved by the Commission giving details of —
 - (a) the purpose of the draft scheme; and
 - (b) how the draft scheme is to be made available to the public in accordance with regulation 76A; and

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- (c) the manner and form in which submissions may be made; and
 - (d) the period under subregulation (3) for making submissions and the last day of that period.
- (2) On completion of the preparation of the notice, the local government must advertise the draft local planning scheme for public inspection as follows —
- (a) publish in accordance with regulation 76A —
 - (i) the notice; and
 - (ii) the draft local planning scheme;
 - (b) give a copy of the notice to each public authority that the local government considers is likely to be affected by the draft local planning scheme;
 - (c) advertise the draft local planning scheme as directed by the Commission and in any other way the local government considers appropriate.

[(d), (e) deleted]

- (3) The period for making submissions on a draft local planning scheme is —
- (a) the period of 90 days after the day on which the notice is first published under subregulation (2)(a)(i); or
 - (b) a longer period approved by the Commission.

[(4) deleted]

[Regulation 22 amended: SL 2020/252 r. 11.]

23. Land owner may be required to pay costs of publication

The local government may require a person to pay the cost of the publication of a notice under regulation 22(2) if —

- (a) the notice relates to a draft local planning scheme in respect of land owned by the person; and
- (b) the person proposed the draft scheme.

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24. Submissions on local planning scheme

- (1) A submission on a draft local planning scheme must —
 - (a) be made to the local government in a form approved by the Commission; and
 - (b) state the name and address of the person making the submission; and
 - (c) include a statement about the capacity in which the person makes the submission.
- (2) A local government must acknowledge in writing the receipt of each submission received by it.

25. Consideration of submissions

- (1) In this regulation —

consideration period, in relation to a draft local planning scheme, means the period ending on the latest of the following days —

 - (a) the day that is 120 days after the end of the submission period for the draft scheme;
 - (b) the day that is 21 days after the receipt of a statement in respect of the draft scheme delivered under section 48F(2)(a) of the EP Act;
 - (c) the day that is 21 days after the receipt of a statement in respect of the draft scheme delivered under section 48G(3) of the EP Act if that statement is in response to a request by the local government made under section 48G(1) of the EP Act before the later of the days set out in paragraphs (a) and (b);
 - (d) a day approved by the Commission;

submission period, in relation to a draft local planning scheme, means the period for making submissions that applies under regulation 22(3).

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- (2) The local government —
- (a) must consider all submissions on a draft local planning scheme lodged with the local government within the submission period; and
 - (b) may, at the discretion of the local government, consider submissions on a draft scheme lodged after the end of the submission period but before the end of the consideration period.
- (3) Before the end of the consideration period for a draft local planning scheme, or a later date approved by the Commission, the local government must pass a resolution —
- (a) to support the draft scheme without modification; or
 - (b) to support the draft scheme with proposed modifications to address issues raised in the submissions; or
 - (c) not to support the draft scheme.
- (4) If no submissions have been received within the submission period, the resolution referred to in subregulation (3) must be passed as soon as is reasonably practicable after the end of the submission period.

[Regulation 25 amended: SL 2020/252 r. 12.]

26. Local government may advertise proposed modifications to draft local planning scheme

- (1) The local government may decide to advertise a proposed modification to the draft local planning scheme if —
- (a) the local government proposes the modification to address issues raised in submissions made on the draft scheme; and
 - (b) the local government is of the opinion that the proposed modification is significant.

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- (2) If a local government makes a decision under subregulation (1) the local government must take any steps the local government considers appropriate to advertise the proposed modification to the draft local planning scheme.
- (3) A proposed modification to a draft local planning scheme may not be advertised on more than one occasion without the approval of the Commission.
- (4) Any advertisement of a proposed modification to the draft local planning scheme must include a notice specifying —
 - (a) the proposed modification to be made to the advertised local planning scheme; and
 - (b) details of how the proposed modification is made available to the public; and
 - (c) the manner and form in which submissions may be made; and
 - (d) the period under subregulation (5) for making submissions and the last day of that period.
- (5) The period for making submissions on the proposed modification is —
 - (a) the period of 60 days after the day on which the notice under subregulation (4) is first advertised; or
 - (b) a longer period approved by the Commission.
- (6) A person may make a submission on a proposed modification to a draft local planning scheme that has been advertised in accordance with subregulation (2) —
 - (a) in the manner and form specified in the notice; and
 - (b) within the period specified in the notice.

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- (7) If a proposed modification to a draft local planning scheme is advertised in accordance with this regulation, a local government —
- (a) must consider all submissions on the proposed modification made to the local government within the period specified in the notice; and
 - (b) may, at the discretion of the local government, consider submissions on the proposed modification made to the local government after the end of the period specified in the notice; and
 - (c) must make a recommendation in respect of each submission considered.

[Regulation 26 amended: SL 2020/252 r. 13.]

27. Incorporation of environmental conditions

If a local government receives a statement in respect of a draft local planning scheme delivered under section 48F(2) of the EP Act after passing a resolution to support the draft scheme but before complying with regulation 28, the local government must amend the local planning scheme documents —

- (a) to incorporate the conditions set out in the statement; or
- (b) if as the result of a request by the local government under section 48G(1) of the EP Act a statement is delivered to the local government under section 48G(3) of the EP Act, to incorporate the conditions set out in that later statement.

28. Information on draft local planning scheme to be provided to the Commission

- (1) After passing a resolution under regulation 25(3) the local government must provide the advertised local planning scheme documents to the Commission together with the following —
 - (a) a schedule of submissions made on the draft scheme;

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- (b) the response of the local government to each submission;
 - (c) particulars of each modification to the draft scheme proposed by the local government in response to the submissions;
 - (d) if any proposed modification to the scheme was advertised —
 - (i) an explanation of the reasons for advertising the modification; and
 - (ii) particulars of how the modification was advertised; and
 - (iii) a schedule of submissions made on the proposed modifications; and
 - (iv) the recommendation of the local government in accordance with regulation 26(7)(c) in respect of each submission;
 - (e) a copy of the resolution passed under regulation 25(3);
 - (f) if that resolution was a resolution under regulation 25(3)(c) — a summary of the reasons why the local government does not support the draft scheme;
 - (g) details of any provision in the draft scheme that varies or excludes a provision set out in Schedule 1;
 - (h) details of any provision in the draft scheme that supplements a provision set out in Schedule 2;
 - (i) any relevant maps, plans, specifications and particulars required by the Commission.
- (2) A schedule of submissions referred to in subregulation (1)(a) and (d)(iii) must include —
- (a) the name and address of the person making the submission; and
 - (b) where it is relevant, a description of the property that is the subject of the submission; and

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- (c) the submission or a summary of the submission.
- (3) The documents referred to in subregulation (1) must be provided to the Commission —
- (a) in the case of a resolution to support a draft local planning scheme without modification or not to support a draft local planning scheme — within 21 days of passing the resolution; or
- (b) in the case of a resolution to support a draft local planning scheme with proposed modifications —
- (i) if the local government decides not to advertise the proposed modification — within 21 days of passing the resolution; or
- (ii) otherwise — within 21 days of complying with regulation 26(7);
- or
- (c) if the Commission in any case approves a longer period — within that longer period.

29. Commission to submit draft local planning scheme and recommendations to Minister

The Commission must, within 120 days of receiving the documents provided to it under regulation 28(1), or within such longer period as the Minister or an authorised person allows —

- (a) consider the documents; and
- (b) make any recommendations to the Minister in respect of the draft local planning scheme that the Commission considers appropriate; and
- (c) submit the documents and the recommendations to the Minister in accordance with section 87(1) of the Act.

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30. Minister or authorised person may direct modifications to draft local planning scheme be advertised

- (1) Before a decision is made under section 87 of the Act, the Minister or an authorised person may direct the local government to advertise modifications to a draft local planning scheme if —
 - (a) the local government proposes, or the Commission recommends, that the scheme that was advertised under regulation 22 be modified; and
 - (b) the Minister or authorised person is of the opinion that the modification is significant.
- (2) The direction must include details of the process to be followed in respect of the advertisement including timeframes for —
 - (a) the making and consideration of submissions on the modifications; and
 - (b) providing recommendations to the Minister or authorised person following the advertisement.
- (3) If a local government is given a direction under subregulation (1), the local government must advertise the modification to a local planning scheme as directed by the Minister or authorised person.

Division 3 — Giving effect to decision on local planning scheme**31. Giving effect to Minister's decision**

- (1) If a local government is notified that the Minister has, under section 87(2)(c) of the Act, refused to approve a local planning scheme, the local government must, as soon as is reasonably practicable, notify each person who made a submission in relation to the local planning scheme of that refusal.
- (2) Within 42 days of being notified that, under section 87(2)(b) of the Act, the Minister requires the local government to modify

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the draft local planning scheme, or a longer period approved by the Minister or authorised person, the local government must —

- (a) modify the draft scheme as required; and
 - (b) execute the modified local planning scheme documents; and
 - (c) submit to the Minister a copy of the executed documents.
- (3) If the local government is notified that the Minister has, under section 87(2)(a) of the Act, approved the local planning scheme, the local government must provide to the Commission for endorsement such copies of the local planning scheme as the Commission requires, including not less than 2 copies of the local planning scheme documents that have been executed by the local government.
- (4) The documents referred to in subregulation (3) must be provided within 14 days of the local government being notified of the Minister's approval, or a longer period approved by the Commission.

32. Endorsement of local planning scheme

- (1) The Commission must endorse each of the copies of the local planning scheme that has been executed by the local government and submit one of those copies to the Minister.
- (2) The Minister must endorse the copy of the local planning scheme with the Minister's approval and return it to the Commission.
- (3) A person authorised in writing by the Commission may certify that a copy of a local planning scheme is a true copy of a local planning scheme as approved by the Minister.

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33. Advertisement of approved local planning scheme

- (1) The Commission must provide to the relevant local government a copy of the notice of a local planning scheme published in the *Gazette* under section 87(3) of the Act.
- (2) For the purposes of section 87(4B)(a) of the Act, the local government must advertise the local planning scheme as follows —
 - (a) publish a copy of the notice referred to in subregulation (1) in accordance with regulation 76A;
 - (b) publish the local planning scheme in accordance with regulation 76A;
 - (c) notify each person who made a submission in relation to the local planning scheme —
 - (i) that the local planning scheme has been approved; and
 - (ii) of the details of how the local planning scheme is made available to the public in accordance with regulation 76A.
- (3) Subregulation (2)(b) is an ongoing publication requirement for the purposes of regulation 76A(5)(a).

[Regulation 33 amended: SL 2020/252 r. 14.]

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76A.

- (1) This regulation applies if under a provision of these regulations (other than Schedule 1 or 2) a local government is required to publish in accordance with this regulation a notice, scheme, amendment or other document (the *document*).

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- (2) The local government must make the document available in accordance with the applicable requirements of subregulations (3) to (5).

Note for this subregulation:

Under regulation 76B, the Commission may approve varied requirements that apply if it is not practicable for a local government to publish documents in accordance with subregulations (3) to (5).

- (3) For all documents, the local government must —
- (a) publish on the website of the local government —
 - (i) the document; or
 - (ii) a hyperlink to a webpage on which the document is published;
 - and
 - (b) if it is reasonably practicable to do so — make a copy of the document available for public inspection at a place in the district of the local government during normal business hours.
- (4) If the document is a notice and the local government considers that it is appropriate in the circumstances for the notice to be published in a newspaper, the local government must also ensure that the notice is published in a newspaper circulating in the relevant locality in the local government's district.
- (5) The local government must ensure that the document remains published under subregulation (3)(a) and (if applicable) available for public inspection under subregulation (3)(b) —
- (a) if the document is published in compliance with a requirement that is expressed to be an ongoing publication requirement — at all times that the document is in effect; or
 - (b) if the document is published in compliance with a requirement to advertise for submissions or recommendations under these regulations — during the

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whole of the period within which submissions or recommendations may be made; or

- (c) if paragraphs (a) and (b) do not apply — during a period that the local government considers is reasonable.

[Regulation 76A inserted: SL 2020/252 r. 26.]

7 CLOSURE OF MEETING

The Shire President declared the meeting closed at 3.48pm.