

Advertising of Planning Proposals

Introduction

This policy provides guidance on the exercise of discretion under the Shire of Toodyay Local Planning Scheme No. 4 in terms of when public notice is given, and the means and duration of public notice periods, where these periods are not prescribed by the Local Planning Scheme. The opinions of affected owners, occupiers and the general public can inform but cannot substitute for the exercise of professional advice by Shire officers. This policy does not replace or alter the Council's obligations under the *Freedom of Information Act 1992*.

It is not intended that this policy be applied rigidly, but each application be examined on its merits, with the objectives and intent of the policy the key for assessment. It should not be assumed that the Shire, in exercising its planning discretion, be limited to the policy provisions and that mere compliance will result in an approval.

Applicants are strongly encouraged to discuss proposals with adjoining owners and occupiers prior to the submission of any development application.

It is important to note that this Local Planning Policy does not constitute part of the Local Planning Scheme and therefore does not bind the Shire in respect of any application for planning approval but requires the Shire to have due regard to the provisions of the Policy, including its objectives. Should there be any conflict between this Policy and the Local Planning Scheme, then the provisions of the Scheme prevail.

Citation:

This is a Local Planning Policy prepared under Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This Policy may be cited as Local Planning Policy - Advertising of Planning Proposals an LPP.

Statutory Background

Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* ('the deemed provisions') which form part of the Shire of Toodyay Local Planning Scheme No. 4, includes a number of clauses relating to public notice for development applications, Structure Plans and Local Planning Policies. Many requirements relating to public notification of development applications are mandatory, while others provide the Shire with discretion as to whether a proposal is to be advertised and the method of advertising. Specific planning strategies and projects will be the subject of their own, targeted consultation strategies.

Part 4 of the *State Planning Policy 7.3 - Residential Design Codes (R-Codes)* requires that the Shire notify potentially affected neighbours in certain circumstances.

The *Planning and Development (Local Planning Schemes) Regulations 2015* prescribe the means of public notice of a Local Planning Scheme amendment, Local Planning Strategy, Local Planning Policy, Structure Plan, Activity Centre Plan and Local Development Plan and provides the Minister with Discretion to determine additional means of notice. In certain cases, the Council may initiate advertising of a Scheme Amendment, or provide advice to the Minister and Western Australia Planning Commission on the appropriate means of giving public notice and the duration of the notice.

Under the *Planning and Development (Development Assessment Panels) Regulations 2011*, development applications which are to be determined by a Development Assessment Panel (DAP) are subject to local government requirements for notification, advertising, and consultation.

Objective

- To provide for a consistent approach to the circumstances when public notice is undertaken, and the means and duration of public notice periods, of planning proposals.
- To recognise the balance between the need for the community to be informed of, and have reasonable opportunity for input into, planning proposals, and the administrative need to process planning proposals in an efficient manner, and within prescribed statutory timeframes.
- To outline the process the Council will use when undertaking advertising and considering submissions.
- To ensure that, before making final decisions on planning proposals of any kind, persons likely to be affected are given an opportunity to comment.
- Within the operative statutory framework, to achieve an appropriate balance between the community's reasonable expectations and applicants' development entitlements.

Scope

This policy applies to the entire municipal area of the Shire of Toodyay and will be applied by the Shire when making discretionary decisions relating to advertising of planning proposals. In the context of this policy, planning proposals include development applications; Local Planning Scheme amendments, Local Planning Strategies, Local Planning Policies, Structure Plans, Activity Centre Plans and Local Development Plans. In circumstances where advertising is undertaken, it will include both owners and occupiers of properties that, in the opinion of the Shire, may be affected by the proposal and/or other stakeholders where these are identified. This policy also applies to Planning Applications for which the Shire is not the final decision-making authority.

Definitions

Apart from the terms noted below, words and expressions used in this policy have the same meaning as they have in the Scheme, R-Codes or other relevant legislation.

Term	Definition
Adjoining Properties	Adjoining means any land (or owner of land) which abuts an application site or is separated from the site only by a pathway, driveway, right-of-way or similar thoroughfare.

Term	Definition
	<p><i>Examples</i></p>  <p><u>Note:</u> Some Local Governments include example maps illustrating the how adjoining properties are identified for the purposes of the notification.</p>
Affected Person	<p>Affected person means a person who owns (or occupies) land:</p> <ol style="list-style-type: none"> i. that adjoins an application site; or ii. the enjoyment of which may be detrimentally affected by the use of, or development on an application site.
Council	<p>The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i>.</p>
Notify	<p>Notify means written communication by the Shire or the proponent of a development proposal containing relevant information about the development proposal for the purpose of advice or seeking comment.</p>
Shire	<p>Shire of Toodyay</p>

Term	Definition
Submitters	Submitters means those affected persons who have provided written comment on the proposal within the formal comment period, or shortly thereafter at the discretion of the Shire.

Policy Statement

Council's Planning and Policy Framework

Council acknowledges that the key to an effective system of consultation is that it is based on a clear set of Council policies operating within a strategic land use planning framework. Policies developed by Council reflect its intention to guide the future growth of the Shire in the context of the objectives contained in the Local Planning Strategy and the Local Planning Scheme.

1. Requirement to give notice of certain planning applications under Clause 64 under Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 ('the deemed provisions') which form part of the Shire of Toodyay Local Planning Scheme No. 4

In addition to where notice is prescribed by the Scheme, public notice will also be given of the following planning applications prior to consideration for approval where the application:

- Involves the complete demolition of a building; or
- Involves development on a site listed on the Register of Heritage Places under the *Heritage of Western Australia Act 1990*, listed on the Scheme Register of Heritage Places, or included in a Heritage/Conservation Area declared under the Scheme, where that application involves the permanent or semi-permanent alteration to the built fabric of any structure on the land; or
- Involves a subdivision or survey strata creating more than two (amend number as required) lots and the proposal has not previously been advertised as part of a Scheme Amendment or Structure Plan; or
- Involves a significant exercise of discretion in terms of the Scheme, Residential Design Codes or Policy provisions; or
- Involves potentially significant urban design or streetscape impacts; or
- Represents a significant variation to the bulk, scale, or design of the existing surrounding buildings, or
- Has potentially significant amenity impacts on nearby residential areas or neighbours in terms of visual impact, streetscape, privacy, noise, intensity of use, traffic generation and adequacy of parking; or
- Has significant strategic planning impacts in terms of the implementation of a strategic planning objective, the scale of the development, or are significantly different from the predominant and expected pattern of land use with the locality.

Notwithstanding the above, planning proposals that do not meet the above criteria are able to be advertised, at the discretion of the Shire of Toodyay if it is considered in the public interest to do so.

2. Significant planning applications

Where a planning application that meets any two of the criteria in Section 6.1 of this policy, that application shall be considered to be a significant application under this policy.

3. Availability of documents (refer to Council policy)

All plans and documents forming part of the proposal shall be made available for public viewing and access during the public consultation period of that proposal. The documentation may be viewed at the Shire's Visitor Centre without an appointment and on the Shire's website.

The completion of the development approval application form will be taken as agreement for plans and/or documents to be included on the Shire's website during the public consultation phase, unless advised otherwise by the applicant.

4. Duration of public advertising

The duration of public advertising will be in accordance with Table 1 of this policy and shall expire in accordance with Clause 64 of the *Planning and Development (Local Planning Schemes) Regulations 2015* deemed provisions.

The commencement date for the serving of notice of the proposed development is deemed to be one day after the date shown on the letters that are sent to owners and occupiers by the Shire. Submissions will close at 5pm on the date shown on the advertising material relating to the application. Any submissions received after this date may not be included in the assessment or any report prepared for Council, however staff will make every reasonable effort to make Council aware of submissions received after closure of notice periods.

In the event no response to an invitation to make a submission is received, the Shire will assume that the recipient of the invitation does not wish to comment on the proposal. A lack of response will not be construed to be either an agreement with or an objection to the proposal.

5. Table 1: Means and extent of notice of applications per Planning and Development (Local Planning Schemes) Regulations 2015 (amend if required by Scheme)

	Time period (no less than)	Local newspaper notice (i)	Sign on site	Letter to owners and occupiers	LGA Website notice	NoticeBoard	Government Gazette
Development Applications (ii)	14 days	Yes	Yes	Yes – those likely to be affected.	Yes	No	No

	Time period (no less than)	Local newspaper notice (i)	Sign on site	Letter to owners and occupiers	LGA Website notice	NoticeBoard	Government Gazette
Significant Development Application (ii)(if applicable, amend as required)	21 days	Yes	Yes	Yes – those likely to be affected.	Yes	No	No
New/Amended Local Planning Strategy:	21 days(iii)	Yes	No	NA	Yes	Yes	No
Local Planning Scheme	90 days (iv)/ (iii)	Yes	NA	NA	Yes	Yes	Yes
Basic Scheme Amendment (v)	(v)	(v)	(v)	(v)	(v)	(v)	Yes
Complex Scheme Amendment	60 days(iii)	Yes	NA	NA	Yes	Yes	Yes
Standard Scheme Amendment	42 days(iii)	Yes	NA	NA	Yes	Yes	Yes
New/Amended Local Planning Policy (vi) (vii)	21 days(iii)	Yes	NA	NA	No	No	No
New/Amended Structure Plan	Not less than 14 days, not more than 28days	Yes	Yes	Yes – those likely to be affected.	Yes	No	No
New/Amended Activity Centre Plan	Not less than 14, not more than 28	Yes	Yes	Yes – those likely to be affected.	Yes	No	No
New/ Amended Local Development Plan (viii)	14 days	Yes	Yes	Yes – those likely to be affected.	Optional	No	No

- (i) The notice in a local newspaper circulating within the Scheme area.
- (ii) The local government may advertise, or require the applicant to advertise, an application for development approval in one or more of the following.
- (iii) Commencing on the day on which the notice is published in a newspaper circulating in the scheme area.
- (iv) If the draft local planning scheme does not involve the zoning or classification of land – a shorter period approved by the Commission.

- (v) Minister may direct local government to advertise including details of the process to be followed in respect to advertising including timeframes.
- (vi) Local government may amend LPP without advertising if, in the opinion of local government, the amendment is minor.
- (vii) Revocation of LPP may be revoked by notice of revocation published in a newspaper circulating in the Scheme area.
- (viii) Local government may decide not to advertise a local development plan if the local government is satisfied that the plan is not likely to adversely affect any owners or occupiers within the area covered by the plan or adjoining area.

6. Applications where the council is not the decision maker

Public notice will be given of planning proposals where the Council is not the decision maker in the same way as those where the final decision is made by the Council. A full copy of any submission received will be forwarded to the decision maker. Council is not responsible for informing any submitter of the decision maker's final decision.

7. Additional public notice of proposal previously advertised

- a) Where a planning proposal is subsequently significantly modified prior to its final determination and additional variations arise from the modifications; or
- b) Where the application to amend an existing planning approval is received under Clause 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015* deemed provisions.

Additional public notice shall be given in the same manner under the provisions of this policy as if the modified/amended proposal was received as a new development application.

8. Evidence of non-objection

Notwithstanding the above, the Shire will waive the notification requirements in respect of residential planning applications involving the exercise of discretion under the Residential Design Codes or Shire Policy in cases where:

- a) (insert Council specific criteria)
And/or
- b) The applicant provides a copy of the application plan/s including a certification by the owners and occupiers of the adjoining property stating that they have no objections to the proposal. Signatures should include all persons shown as the owners on the Certificate of Title and ownership details will be confirmed. The certification must include:
 - The full name of the owner/s and occupier/s certifying non objection clearly printed in capital letters and a signature;
 - A statement printed in block letters indicating no objection to the proposal; and
 - A current contact address and contact phone number printed in block letters.

9. Refusal of applications without giving public notice

Any planning proposals may be refused by the Council without the giving of public notice.

10. Community information sessions

A community information session on a significant development application or a scheme amendment may be held where, in the opinion of the Shire of Toodyay, such a session will assist the community's understanding of the proposal to be considered and/or provide the opportunity to view additional information including visual presentations, computer modelling and the like.

The information session will be held during the public consultation period, normally at least one week prior to completion to enable participants to make a formal written submission to the Shire after the session. Invitations would be extended to elected members, interested community members and the applicant/s.

11. Holiday periods

- a) Public notification relating to planning policies, scheme amendments and planning proposals (where initiated by the Shire) will not commence between 1 December and 15 January;
- b) Public notification will not commence for any applications received between 1 December and 15 January; or
- c) An additional 14 days will be added to any notice period prescribed under this policy where part of the notification period falls between:
 - i. 1 December and 15 January; and
 - ii. One week before or one week after Easter Sunday.

12. Requests for changes to public notice periods

Requests for extensions or reductions of public notice periods prescribed by this policy will not be approved by staff. While any submissions received after this date may not be included in the assessment or any report prepared for Council, staff will make every reasonable effort to make Council aware of submissions received after closure of notice periods.

13. Notification of interested parties of consideration of a matter by Council or Committee

Council meetings are generally open to the public unless otherwise notified. Open meetings will make allowance for public statements, questions, submission of petitions and deputations. The applicant, the landowner, and all parties who have made a submission on a planning proposal will be notified in writing of the date at which an item will be listed on a meeting agenda. Should the item subsequently be referred to an ordinary or special meeting of Council for determination, the same parties will also be notified of the date of the council meeting.

In all cases, the Shire will endeavour to ensure that the written notification is mailed at least one week prior to the scheduled meeting date.

14. Opportunity for applicant to respond to submissions

Copies of written submissions will be given to the applicant to provide the applicant the opportunity to respond to issues raised in all submissions. Personal details such as names, telephone numbers and addresses will not be given to the applicant.

15. Submissions reported to Council

Officer reports to Council will include a summary of the issues raised in any of the submissions received as part of the consultation process. If the text of a submission is to be included in the report, the author's personal details will not be identified. Full copies of submissions will be made available to Elected Members upon request but will not be available to members of the public unless required by law.

16. Notification of the Council's decision

The applicant, the owner and all authors of submissions will be advised of the decision of the Council in the form of a written notification of the decision (and any associated conditions advisory notes, or refusal reasons, if deemed relevant by the Council).

17. Variations to policy

The Council may, in an exceptional case where it is of the opinion that reasonable opportunity has not been provided to the community to comment on a proposal, determine that the provisions of this policy be varied and may substitute such other provisions as it considers necessary for that proposal.

18. Submission categorisation

Any response received will be categorised into one of the following types:

A. *Original unique submissions signed by the author*

Includes any uniquely worded and original letters and emails, even if only marginally different from each other which:

- Are addressed to the Shire (Council, Shire President, Officers);
- Are signed by the author (unless email); and
- Include the name and address of the author(s).

B. *Signed Pro-forma submissions*

Includes copied pre-printed pro-forma letters or cards. Those which include individual and unique comment which;

- Are addressed to the Shire (Council, President, Officers);
- Are signed by the author (unless email); and
- Include the name and address of the author(s).

C. *Petitions*

Any response signed by occupants of more than one household.

D. *All other written or printed material*

Includes any other form of material, including that which has not got the author's signature or property address or does not fit into the categories above.

Submissions that are not accompanied by a name and/or address will not be subject to any analysis by the Shire.

All category A and B responses, and the author or first signatory of category C responses will be:

- Acknowledged in writing by the Shire and the author advised of the decision-making process (e.g. which committee and Council meeting that the matter will be reported to).
- Advised of the outcome of the matter (i.e. Council's, and if relevant, the Minister's decision).

No individual responses will be made to category D submissions, even where names and addresses are included.

Reference Information

Nil

Legislation

[Planning and Development Act 2005](#)

[Planning and Development \(Local Planning Schemes\) Regulations 2015](#)

[Shire of Toodyay Local Planning Scheme No. 4](#)

Associated documents

Nil

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