

# Non-habitable structures

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## Introduction

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 Non-habitable structures, an LPP.

## Objective

- To achieve a balance between providing for various legitimate storage needs of residents whilst minimising any adverse impacts non-habitable structures may have on the locality.
- To establish guidelines for the assessment of proposals to place shipping containers or other similar relocatable storage units on land within the Shire of Toodyay.

## Scope

Non-habitable structures include structures that are not attached to a dwelling and commonly known as outbuildings, sheds, gazebos, carports, and shade houses.

Garden structures (i.e., structures without a solid roof - pergolas with shade cloth and arbours) are considered exempt from the provisions of the policy.

This policy applies to non-habitable structures on all zones pursuant to the current Shire of Toodyay Local Planning Scheme in force at the time of application.

Setbacks for non-habitable structures in the following zones:

- Residential.
- Special Residential; and
- Town Centre;

are to conform to the Table 1, 2a or 2b of [State Planning Policy 7.3 – Residential Design Codes](#) (R Codes).

Setbacks for non-habitable structures in the following zones:

- Rural Residential.
- Rural Living; and
- Rural are to comply with the provisions listed in the scheme applicable to each zone.

In all other zones not listed above where the requirements are not clearly defined, compliance shall be in accordance with the objective of this policy.

A non-habitable structure with a floor area of 10m<sup>2</sup> or less and under 2.4m in height is considered exempt from the provisions of the policy (i.e., small garden shed). A second non-habitable structure with a floor area of 10m<sup>2</sup> or less and under 2.4m in height is to be assessed in accordance with the non-habitable structure Policy.

## Definitions

Term	Definition
'A' Use	In relation to a zone, a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is not permitted in the zone unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64
Act	<a href="#"><u>Planning and Development Act 2005</u></a>
Carport	A roofed structure designed to accommodate one or more motor vehicles unenclosed except to the extent that it abuts a dwelling or a property boundary on one side and being without a door unless that door is visually permeable.
'D' Use	(a) in relation to a zone — means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is not permitted in the zone unless the local government has exercised its discretion by granting development approval; but  (b) does not include a class A use;
Deemed-to-comply	A proposal, or a component of a proposal, which complies with the deemed-to-comply provisions of the R-Codes, or an adopted local planning policy.
Deemed provisions	The Regulations introduce a set of deemed provisions that form part of every local planning scheme in the State.
Development	Development means the development or use of any land, including — <ul style="list-style-type: none"> <li>a) any demolition, erection, construction, alteration of or addition to any building or structure on the land.</li> <li>b) the carrying out on the land of any excavation or other works.</li> <li>c) in the case of a place to which a protection order made under the <a href="#"><u>Heritage Act 2018</u></a> Part 4 Division 1 applies, any act or thing that — <ul style="list-style-type: none"> <li>i. is likely to change the character of that place or the external appearance of any building; or</li> <li>ii. would constitute an irreversible alteration of the fabric of any building;</li> </ul> </li> </ul>
Development application	An application under a planning scheme, or under an interim development order, for approval of development;

Term	Definition
Dwelling	A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.
Garage	Any roofed structure, other than a carport, designed to accommodate one or more motor vehicles and attached to the dwelling.
Gazebo	Are outdoor shade structures with a solid roof and partially open sides, which can be screened in.
Greenhouse	A greenhouse is a structure with a glass or plastic roof and frequently glass or plastic walls. Its roof and sides have to allow light to penetrate.
Height	Is the height of the non-habitable structure as measured vertically from the natural ground level to the highest point of the building above that point, as stipulated in the Residential Design Codes of Western Australia, and not the measurement taken above the proposed finished floor level of the non-habitable structure.
Heritage place	As defined under clause 1A of the deemed provisions – Schedule 2 of the <a href="#">Planning and Development (Local Planning Scheme) Regulations 2015</a> .
Maximum floor area	The combined total floor area of all existing and proposed non habitable structures on a lot.
Natural Ground Level (NGL)	The levels on a site which precede the proposed development, excluding any site works unless approved by the decision-maker or established as part of subdivision of the land preceding development.
Non-Habitable Structures	Outbuildings, sheds, gazebos, carports, shade houses and shipping containers.
Outbuilding	An enclosed non-habitable structure that is detached from any dwelling.
Pergola	An open-framed structure covered in water permeable material, or operable louvred roofing, which may or may not be attached to a dwelling.
'P' Use	In relation to a zone, a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is permitted in the zone if it complies with any relevant development standards and requirements of this Scheme

Term	Definition
R-Codes	<a href="#">State Planning Policy 7.3 – Residential Design Codes – Volume 1</a> . The R-Codes control the design of most residential development throughout Western Australia. The R-Codes aim to address emerging design trends, promote sustainability, improve clarity and highlight assessment pathways to facilitate better outcomes for residents.
Regulations	<a href="#">Planning and Development (Local Planning Schemes) Regulations 2015</a>
Reflective materials	Includes factory applied finishes such as zincalume, galvabond and light colorbond colours such as white, off-white and surf mist
Scheme	The local planning scheme that specifies zoning and development standards gazetted pursuant to the <i>Planning and Development Act 2005</i> , as amended.
Shade house	A shade house is a mesh (or shade-cloth) structure that protects plants from the sunlight.
Shire	The Shire of Toodyay.
Shire President	The Shire President of the Shire of Toodyay
Unenclosed	An area bounded on no more than two sides by a permanent wall and covered in a water impermeable material.
'X' Use	In relation to a zone, a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is not permitted in the zone
Zone	A portion of the Scheme area identified on the Scheme Map as a zone for the purpose of indicating the controls imposed by this Scheme on the use of, or the carrying out of works on, land, but does not include a reserve or special control area

## PART I – OUTBUILDINGS

### Exemptions

Pursuant to clause 61 of the deemed provisions development approval is not required for works if the works are of a class specified in Column 1 of an item in the Table below; and if conditions are set out in Column 2 of the Table below opposite that item – all of those conditions are satisfied in relation to the works.

	Column 1 - Works	Column 2 - Conditions
1.	The demolition or removal of any of the following — a) an outbuilding. b) a pergola. c) a garage. d) a carport. e) a gazebo.	The works are not located in a heritage-protected place.
2.	The erection or installation of, or alterations or additions to, any of the following on the same lot as a single house or a grouped dwelling — a) an outbuilding. b) a pergola. c) a garage. d) a carport. e) a gazebo	a) The R-Codes apply to the works. b) The works comply with the deemed-to-comply provisions of the R-Codes. Or c) On the 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. d) The works are not located in a heritage-protected place.

### Standard Conditions of Approval for Outbuildings

1. Use of the outbuilding shall be for domestic purposes only and not for human habitation.

#### Deemed-to-comply provisions of the R-Codes

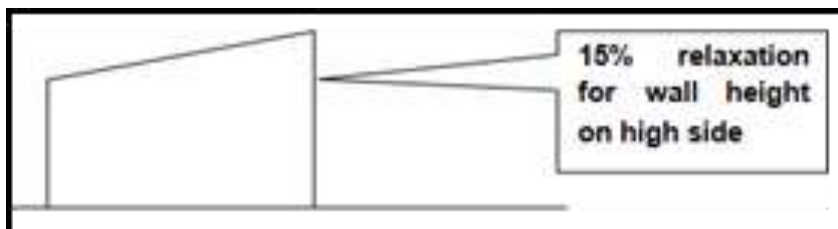
The codes set criteria specific to each R-Code, including provisions for boundary setbacks, open space, and outdoor living areas. The *design principles* outline the intent of each section, while the *deemed-to-comply* provisions set standards that are considered to satisfy the design principles. A proposal that meets the deemed-to-comply provisions is considered compliant and does not require development approval. If the deemed-to-comply provisions cannot be met, variations may be considered if compliant with the design principles and the Shire’s local planning policies.

**NOTE:** A building that does not require development approval will still require a building permit.

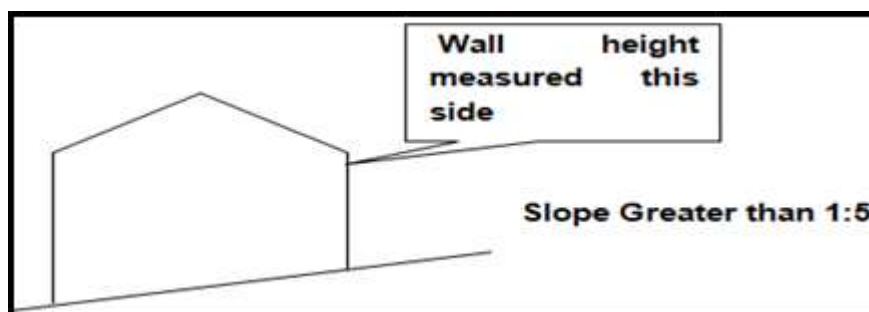
The R-codes can be accessed here: [R-Codes](#)

## Policy Statement - Outbuildings

- 1) Outbuildings do not require development approval except under the following circumstances:
  - (a) Where the Local Planning Scheme in force at the time of application requires planning scheme consent or a proposal varies from a Scheme or Residential Design Code provision.
  - (b) For the development of a non-habitable structure on a vacant lot that is zoned Residential, Special Residential, Town Centre.
- 2) Approval will be conditional upon:
  - (i) A Building Permit for a dwelling being issued by the Shire; and
  - (ii) Referral to neighbours (neighbours comments). Screening by planting trees or shrubs or by any other methods may be required to reduce the visual impact of the non-habitable structure on the vacant lot.
- (a) Where development varies from standards defined in Table 1 and the following provisions (i-iv):
  - (i) For mono-pitched (skillion) roofed non-habitable structures (not ridged roofs), a relaxation of the height of the wall (on high side - up to 15%) may be supported; or

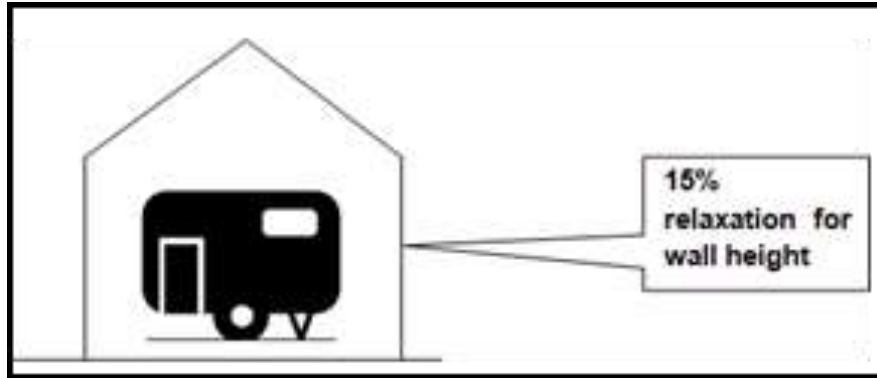


- (ii) Where the land upon which the non-habitable structure is to be erected has a slope greater than 1 in 5, the height of the wall shall be measured on the wall that is located at the higher point of the site where the land has not been subject to cut and/or fill; or





- (iii) Where in order to accommodate larger boats, caravans or motorhomes, a relaxation of the height of the wall (up to 15%) may be supported on Residential Zone lots that are less than 4,000m<sup>2</sup>; or



- (iv) A discretionary allowance of an extra 5m<sup>2</sup> over the maximum permitted floor area may be considered in cases where the stated maximum floor area allowed is unworkable due to the dimensions of a standard design.
- (b) Non-habitable structures shall be located away from the primary or secondary street areas (i.e., to the rear of the lot).
- (c) Non-habitable structures that exceed 60m<sup>2</sup> in floor area shall be constructed out of non- reflective materials.

## **PART II – SHIPPING CONTAINERS AND SIMILAR STORAGE STRUCTURES**

### **Exemptions**

1. Shipping containers and other similar structures used for temporary storage during the conduct of building works will be exempt from these requirements, provided that the following criteria are achieved:
  - (a) The structure is only being used for the secure storage of materials, plant, machinery or building equipment on a building site.
  - (b) The building site has a current planning approval and building permit.
  - (c) Construction works are actively being undertaken on the site and do not lapse for any period greater than 60 days.
  - (d) The structure does not impact on pedestrian or vehicle movements in any way or obstruct vehicle sight lines.
  - (e) The structure may not be permitted on the building site for a period longer than 6 months, unless the approval of Council is obtained; and
  - (f) The structure is removed from the building site within four weeks from the completion of building works.

### **Policy Statement - Shipping Containers and Similar Storage Structures**

1. This policy applies to the whole of the Shire of Toodyay.

2. All shipping containers and other similar structures require development approval to prior their location on a property.
3. In determining applications for the use of shipping containers, Council will require the following information to be provided by the applicant:
  - (a) The necessary development application forms.
  - (b) Site plan showing the proposed location of the structure in relation to boundary setbacks, natural features, and existing buildings.
  - (c) A written submission detailing the proposed works to be undertaken to improve the visual amenity of the structure; and
  - (d) Any elevation drawings to the satisfaction of the Shire of Toodyay.
  - (e) As shipping containers and other similar structures may have an adverse effect on the visual amenity of an area, their location in Residential or Town Centre zones will not be supported unless the structure is for temporary building site works, as described in Exemptions.
4. All shipping containers and other similar structures shall comply with the following design and location criteria:
  - (a) The structure should be located so it has low visibility from any road and/or adjoining property, observing all setback requirements of the Local Planning Scheme in force at the time of the application.
  - (b) The structure should be located behind existing buildings and/or screening vegetation and not be in front of the established or proposed building line.
  - (c) Council may consider the location of the structure in a position where it may be visible from any road or adjoining residence, or isolated from the existing buildings on a property, when the external appearance of the structure is substantially modified (which may include roofing, cladding and/or painting) to conceal its appearance as a shipping container.
  - (d) No more than one shipping container or similar storage structure will be permitted on a property, except for properties that have a lot size greater than one hundred hectares (100ha).
  - (e) Structures not exceeding a length of 6m will generally be approved on land other than on properties zoned 'Industrial' or 'Rural'. A structure length of up to 12m will be permitted on properties zoned 'Industrial' or on properties zoned 'Rural' that have a lot size greater than one hundred hectares (100ha).
  - (f) Shipping Containers or similar structures shall not be used for habitation purposes. The structure shall not compromise or obstruct vehicle access ways, vehicle truncations, access to parking areas or the parking bays provided on a site.
5. The structure shall not compromise or obstruct vehicle or pedestrian sight lines, for the avoidance of creating a public safety concern.
6. The Council reserves the right to approve the siting of a shipping container or other similar structure on a property for a fixed period. Following the expiry of this approval period, the property owner is responsible for seeking the renewal of the temporary approval or effecting its removal.



7. The Council reserves the right to revoke any approval for the siting of a shipping container or other similar structure on a property where it is compromising the amenity of an area or impacts on public safety.
8. The Council may vary the requirements of this policy, where it is considered that full compliance with the policy is impractical, or such variation is warranted in the circumstances of the case.

### **Bond**

As part of the development approval of a shipping container, the Council may impose conditions that require any work considered necessary to improve the appearance of the structure, including painting, landscaping, adding a pitched roof and screening.

The approval of a shipping container will require the lodgment of a bond to the value of \$2,000 as a condition of approval. This bond can be in the form of a Bank Guarantee. This bond will be used to remove the shipping container if the owner and/or occupier default on the conditions of this policy, or any conditions of approval.

The bond will be returned upon demonstrated compliance with all conditions of development approval, to the satisfaction of the Shire of Toodyay.

## **PART III – STORAGE SHEDS, FARM SHEDS, MACHINE SHEDS AND SHEDS FOR COMMERCIAL PURPOSES**

This section applies to all other non-habitable structures that cannot be classified as an outbuilding or a shipping container. Outbuildings must be linked to single dwellings – either already erected or if there is a valid building permit and/or development approval in place for a single dwelling.

All other uses must be associated with a permitted land use, or in the instance where development approval is required, this must for part of the application for the structure.

### **Exemptions**

Development approval is not required for this section of non-habitable structures if the following can be demonstrated to the satisfaction of the Shire of Toodyay:

1. Where the non-habitable structure is for a 'P' (Permitted) land use for a particular zone applicable to the Local Planning Scheme in force at the time of application to the Shire; and
2. The land is not in a special control area; and
3. The land is not a heritage protected place; and
4. The land is not an Aboriginal heritage site; and
5. The development meets the general development requirements of the Local Planning Scheme in force at the time of application to the Shire – for example setbacks); and
6. Complies with the objectives and provisions (including any development standards) of this Local Planning Policy.

7. A non-habitable structure with a floor area of 10m<sup>2</sup> or less and under 2.4m in height is considered exempt from the provisions of the policy (i.e. small garden shed).  
However, a second non-habitable structure with a floor area of 10m<sup>2</sup> or less and under 2.4m in height is to be assessed in accordance with the non-habitable structure Policy.
8. Garden structures (i.e. structures without a solid roof - pergolas with shade cloth and arbours) are considered exempt from the provisions of the policy.

### **Policy Statement - Storage Sheds, Farm Sheds, Machine Sheds And Sheds for commercial purposes.**

1. This policy applies to the whole of the Shire of Toodyay
2. Development approval is required for all structures not covered under the Exemptions above.
3. The structure must be associated with an approved land use or the application of the land use must be considered as part of the whole application.
4. The land use must not be for an x-use.

<b>Table 1: Non-Habitable Structure Specifications</b>			
<b>Zoning</b>	<b>Max. Wall Height</b>	<b>Max. Ridge Height</b>	<b>Max. Floor Area (combined floor area of all non-habitable structures on lot)</b>
Residential Zone (Lots < 450m <sup>2</sup> )	2.4 metres	3 metres	<60m <sup>2</sup> in area or 10% in aggregate of the site area, whichever is the lesser
Residential Zone (Lots 450m <sup>2</sup> - 600m <sup>2</sup> )	3 metres	4.2 metres	<60m <sup>2</sup> in area or 10% in aggregate of the site area, whichever is the lesser
Residential Zone (Lots 600m <sup>2</sup> - 1000m <sup>2</sup> )	3 metres	4.2 metres	100m <sup>2</sup>
Residential Zone (Lots 1000m <sup>2</sup> – 2000m <sup>2</sup> )	3 metres	4.2 metres	120m <sup>2</sup>
Residential Zone (Lots 2000m <sup>2</sup> – 4000m <sup>2</sup> )	3 metres	5.0 metres	150m <sup>2</sup>
Residential Zone (Lots > 4000m <sup>2</sup> )	3.5 metres	5.0 metres	170m <sup>2</sup>
Special Residential Zone (Lots < 4000m <sup>2</sup> )	4.2 metres	4.8 metres	150m <sup>2</sup>
Special Residential (Lots > 4000m <sup>2</sup> )	4.2 metres	4.8 metres	170m <sup>2</sup>

<b>Table 1: Non-Habitable Structure Specifications</b>			
<b>Zoning</b>	<b>Max. Wall Height</b>	<b>Max. Ridge Height</b>	<b>Max. Floor Area (combined floor area of all non-habitable structures on lot)</b>
Rural Residential Zone (Lots < 2ha)	4.2 metres	4.8 metres	200m <sup>2</sup>
Rural Residential Zone (Lots 2ha to 4ha)	4.2 metres	4.8 metres	220m <sup>2</sup>
Rural Residential Zone (Lots 4ha to 6ha)	4.2 metres	4.8 metres	240m <sup>2</sup>
Rural Residential Zone (Lots > 6ha)	4.2 metres	4.8 metres	300m <sup>2</sup>
Rural Living Zone (Lots < 1ha)	4.2 metres	4.8 metres	220m <sup>2</sup>
Rural Living Zone (Lots 1 - 4ha)	4.2 metres	4.8 metres	240m <sup>2</sup>
Rural Living Zone (Lots > 4ha)	4.2 metres	4.8 metres	300m <sup>2</sup>
Rural Zone (Lots < 2ha)	4.2 metres	4.8 metres	220m <sup>2</sup>
Rural Zone (Lots 2ha to 3.99ha)	4.2 metres	5.0 metres	300m <sup>2</sup>

## **Consultation**

In the event an application proposes a variation to the provisions of this policy and in the opinion of the Shire of Toodyay there is a potential impact on adjoining landowners, the application will be advertised in accordance with the adopted *Local Planning Policy – Advertising of Planning Proposals*.

## **Reference Information**

[Local Planning Policy Advertising of Planning Proposals.](#)

## **Legislation**

[Planning and Development Act 2005](#)

[Planning and Development Regulations 2009](#)

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

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

## **Associated documents**

[State Planning Policy 7.3 - Residential Design Codes – Volume 1](#)

[State Planning Policy 7.3 - Residential Design Codes - explanatory guidelines](#)

## Version control information

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