

many, many years John has been running his bus operation delivering children to and from school, ferrying sporting groups to competitions away from Toodyay, and providing transport for the people of Toodyay and their families and friends to many family and community functions. A job well done John!

I would personally like to thank all the volunteer fire-fighters from Toodyay and elsewhere - red and white trucks both - and farmers, and fire control officers, and other volunteers, and our CESM, and DFES personnel, and the Salvation Army, who have attended fires in the relatively large fires in the Shire since our last meeting. The fires were at Julimar, Hawthornden and Foggarthorpe.

These fires in particular tested all those present but each of the fires was contained and controlled after days and nights of hard work.

In closing, given the events at Bondi on Sunday, I suggest that we all pause for a minute to reflect on what happened as a gesture of solidarity with our fellow Australians who have been so severely impacted by this tragedy.

## 10 OFFICER REPORTS

### 10.1 PLANNING AND REGULATORY SERVICES

#### 10.1.1 Consent to advertise Revised Local Planning Policy 2 - Ancillary Dwellings

Date of Report:	27 November 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	LPP2
Author:	P Nuttal – Executive Manager Planning and Regulatory Services
Responsible Officer:	P Nuttal – Executive Manager Planning and Regulatory Services
Previously Before Council:	22 June 2022: OCM22/06/22
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	<ol style="list-style-type: none"><li>1. Current Ancillary Accommodation Policy (2008); <a href="#">↗</a></li><li>2. Revised LPP2 Draft Ancillary Dwellings policy. <a href="#">↗</a></li></ol>

#### PURPOSE OF THE REPORT

To adopt a Revised Draft Ancillary Dwellings Policy (**Attachment 2**) for the purposes of public advertisement.

It is intended that the current Ancillary Accommodation Local Planning Policy No.2 (LPP2) (**Attachment 1**) will be renamed “Ancillary Dwellings” To realign the policy to State definitions and align it also with the name in the current Local Planning Scheme No.5 gazetted on 22 August 2024.

## BACKGROUND

The current LPP2 Ancillary Accommodation policy was last reviewed 13 May 2010 and was presented to Council as an Ancillary Dwelling policy for advertisement in June 2022.

That version of policy predated the new planning Scheme No.5 which has required the policy to be reviewed again to consider the current Local Planning Scheme. The review of the current policy incorporated changes to State Government legislation that have occurred since 2008, as well as a link to Local Planning Scheme No.5 provisions. This new policy proposes substantial changes to the way the Shire has previously assessed ancillary dwellings.

## COMMENTS AND DETAILS

The review of this policy has considered the fundamental basis of the need to provide Ancillary Dwellings into the broad landscape of the Shire while catering for the Shire's unique needs and demands.

While the fundamentals of this policy stem from the need to keep elderly residents close to their families, as a planning concession, the changes made to State government legislation can now permit non-family members to occupy these dwellings. With changes to the Short-Term Rental Accommodation (STRA) State policy, ancillary dwellings are now meeting housing needs within our community as well as short term holiday rental accommodation.

Those original planning concessions were focused on the proximity to the main house, size of the dwelling, number of bedrooms, and use by family members. This is no longer the need in the community, and this will be reflected with the new policy.

Key considerations for changing this policy to reflect contemporary housing and lifestyle choices in the Shire are:

The key elements are:

1. Size of an ancillary dwelling
2. Number of bedrooms
3. Separation from the primary house
4. Proportionality
5. Building Envelopes & Setbacks
6. Large rural lot bonus
7. Land uses
  - (a) Townsite (R-codes)
  - (b) Rural zones

### Dwelling Size

The current requirement of a 70m<sup>2</sup> ancillary dwelling is deemed to be too small and will be replaced with a more efficient scaling or proportionality to the main dwelling. The Shire is proposing to increase that floorspace minimum in rural areas, however the 70m<sup>2</sup> base cap will still apply in cases where proportionality calculations are made (Example 3).

The current regulated 70m<sup>2</sup> dwelling size has more merit within an urban residential framework, and even that framework permits larger dwellings under the R-Codes for special

needs housing. If a larger than 70m<sup>2</sup> ancillary dwelling were to be proposed, then performance criteria in the R-Codes could be applied.

The draft policy recognises that on larger rural lots a larger ancillary dwelling is not out of character, if it is clearly and measurably ancillary to the main house. To ensure this proportionality a 40% requirement is introduced, in that the ancillary dwelling must not be greater than 40% (in floor area) of the main house.

Based on the size of the main house, a rural ancillary dwelling could under this policy have a larger floorspace. Lots in the Residential and commercial zones in the Shire are bound by the provisions of the R-Codes. Those codes can consider larger ancillary dwellings on residential lots in certain circumstances, such as disabled housing etc.

While the base maximum floor areas proposed will support larger houses, a 40% proportional cap to the ancillary dwelling will apply to larger rural lots.

#### Number of bedrooms

This element of the current policy no longer has a basis in modern design or is fit for community need. This is seen as a redundant criteria and restricts the use of an ancillary dwelling, especially when a new (larger) main dwelling is proposed on the same lot. It is proposed that this design element be removed from the future criteria in this policy.

#### Dwelling Separation.

This design element imposes a requirement for clustering of development to the proximity to the main dwelling. This old criteria was used to support elderly residents, or to share existing infrastructure but can cause unforeseen issues in rural areas, due to tree clearing or difficult terrain. There have been a few examples in the Shire where the placement of an ancillary dwelling in proximity of the main house would have resulted in loss of tree cover or placed the ancillary in a high bushfire risk area. Having greater flexibility with this criteria will support alternate locations that do not require Council resolution to proceed.

There are many locations within the Shire where lots have building envelopes. In these cases, the new separation criteria will bind the landowner to only construct within the established building envelope. Boundary setbacks will still apply in all cases as per Scheme provisions in Clause 32 – *General development standards and requirements*.

#### Proportionality:

This is a new design criteria to be used to measure the relationship between the main dwelling and the ancillary dwelling. This consideration relates to the relative size of a dwelling relative to the lot size and to the proportionality between the main house and the secondary house.

There are no planning controls over the size of a primary dwelling on a rural lot, apart from the boundary setbacks. In townsite areas with smaller lots the size of the dwelling land area is dictated through the R-Codes. There will still need to be a demonstrated differentiation between the size of the two dwellings. If both dwellings were approximately the same size then the *Planning and Development Act*, and R-Codes would deem that development a Grouped Dwelling which is generally not permitted in most rural zoned areas (except the rural zone, with conditions in this policy).

The same reverse concept applies when an old house becomes an ancillary dwelling under this policy. The area of the old house must then be used to dictate the minimum size of the new house. The proportionality must be maintained under this policy (example 3).

### Building Envelopes and Setbacks

As per all applications under this proposed policy, consideration will be made regarding building envelopes on lots. Ancillary dwellings will not be permitted outside of these allocated envelopes, to preserve the estates design guidelines.

Alternate locations on open rural lots will always have to conform with existing Table 6 – *site and development requirements* in the scheme or to R-Code requirements. These provisions form the basis of responsible siting of development on a lot.

### Large rural lot bonus

In response to housing needs within the community the draft Ancillary Dwelling policy will provide an additional opportunity for large rural lots. Current scheme provisions 32(11) may allow the shire to permit two main dwellings to lots greater than 40ha, however the requirement of only one ancillary dwelling has remained. This policy is proposing to support two ancillary dwellings in these circumstances.

This new provision may provide extra housing stock on working farms in the Shire of Toodyay which is at the forefront of planning in local governments.

This approach to housing development on rural land, while not explicitly forbidden in *SPP2.5 - Rural living or DC policy 3.4 - subdivision of rural land*, is worth maintaining in the Shire, as it appears in the Scheme Clause 32 (11)b.

## **GENERAL PROPOSAL**

The two tables below represent the criteria and restrictions of the current policy and the proposed policy. The key difference is the use of lot size or zoning to determine the ancillary dwelling cap for proposals.

**Table 1- Current policy requirement**

Land Use	Dwelling Size	Bedrooms	Separation	Quantity
Residential	R-codes chapter 5.5	N/A	N/A	1
All Rural	<70m <sup>2</sup>	max 2	max 20m	1

**Table 2 proposed policy requirements**

Land Use / Lot Size	Dwelling Size	Bedrooms	Separation	Quantity
Residential	R-codes chapter 5.5	N/A	N/A	1
Rural Residential / Rural Enterprise <4ha	<100m <sup>2</sup>	N/A	N/A unless there is a building envelope	1
Rural Smallholdings 4-40ha	<120m <sup>2</sup> or <40% of the primary dwelling's area	N/A	N/A unless there is a building envelope	1
Rural >40ha	<130m <sup>2</sup> or <40% of the primary dwelling's area	N/A	N/A	2
All zones default	70m <sup>2</sup>	N/A	N/A	1

## WORKED EXAMPLES

Under the current policy all applications must meet the criteria of Table 1. The proposed policy will increase the dwelling caps, which may again exceed those caps where large main dwellings exist.

In some cases, the base line cap of 70m<sup>2</sup> may be applied when dealing with the proportionality criteria.

### Example 1 – 20ha rural zoned lot, main house 320m<sup>2</sup>.

*The 20ha size of the Lot means that assessment will be made as if it were zoned Rural Smallholdings, 120m<sup>2</sup> base cap. The main house is more than 300m<sup>2</sup> so the shire can use the 40% rule to expand the base cap to 128m<sup>2</sup> (300x0.4=128m<sup>2</sup>).*

### Example 2 – 4ha rural residential zoned lot, main house 160m<sup>2</sup>.

*The 4ha sized lot and zone would use the 100m<sup>2</sup> base cap, because the main house is 160m<sup>2</sup>, the 40% provision would not enlarge the cap (160x0.4=64m<sup>2</sup>) the new cap is larger.*

### Example 3 – 32ha Rural zoned lot, 120m<sup>2</sup> main house

*The 32ha sized lot and zone would use the 130m<sup>2</sup> base cap. In this case the main house is only 120m<sup>2</sup> so we have a negative calculation.*

- a) *The current house becomes the ancillary house, and the new house becomes the main house, but the new house would then need to be a minimum of 300m<sup>2</sup> to meet this policy requirement, or*
- b) *The new proposed ancillary house must be less than 40% of the main dwelling = 48m<sup>2</sup>. In this case a default 70m<sup>2</sup> cap would apply.*

## IMPLICATIONS TO CONSIDER

This new policy will relax and enlarge the longstanding practice of:

- small maximum dwelling sizes;
- remove the imitations to the number of bedrooms;
- remove the requirements for small separations distances between dwellings.

It will now focus on:

- relative dwelling proportionality;
- finding the best location on the lot;
- retain consideration of existing building envelopes; and
- providing additional dwelling bonuses for large rural lots.

This amended policy will expand the development options of landowners, especially those where subdivision may not be a viable option.

## Consultative

Councillors were invited to comment on the Ancillary Dwelling policy at a workshop on 17<sup>th</sup> April 2025. During that meeting questions were raised regarding the proposed policy and possible outcomes. Adjustments have been made accordingly. Referral to the Department of Planning was made as there is potential to conflict with the State level R-Codes of WA. Advice received back from the department of planning in September, advised a few tweaks,

but gave general support for the updated policy. Local Planning Policies Clause 4(1)-(3) of Schedule 2, Part 2, Division 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 outlines the statutory requirement and process for the advertising of Local Planning Policies.

If the local government resolves to create or amend a local planning policy, in accordance with the Regulations, the local government must, unless the WAPC otherwise agrees, advertise the proposed policy. Advertising of Local Planning Policies must be for a period of not less than twenty-one (21) days. Where it is proposed that a deemed-to-comply provision of the R-Codes is to be amended or replaced – the WAPC will need to be consulted.

### **Strategic:**

Shire of Toodyay *Plan for the Future 2023-2033*

5.1. Provide responsible planning and development.

5.2. Enable access to affordable, sustainable, and diverse housing options.

### **Policy related:**

Pursuant to Clause 3, Division 2 of Schedule 2 ('the deemed provisions'), the local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area. However, with regards to any matters where the R-Codes are involved, there is a caveat. A local planning policy local planning policy, will only be a relevant consideration in the exercise of judgement where it is:

- (a) specifically sanctioned by a provision of the R-Codes Volume 1;
- (b) consistent with the design principles of the R-Codes Volume 1; and
- (c) consistent with the objectives of the R-Codes Volume 1.

Therefore, any changes to the Local Planning Policy which proposes to amend or replace a deemed-to-comply provision of the R-Codes must be given consent by the Western Australian Planning Commission. Local Law, which will be effectively superseded by this amended Local Planning Policy.

Consultation has been received from the department and no negative comment has been received.

### **Financial:**

It is a requirement that Local Planning Policies undergo a formal advertising process which includes publication in a locally circulating newspaper. Cost to the Shire will relate to one advertisement and this has been allocated for in the Shire's adopted budget.

### **Legal and Statutory:**

*Planning and Development Act 2005 – Part 5*

*Planning and Development (Local Planning Schemes) Regulations 2015 - Division 2 of Schedule 2*

### **Local Planning Policies**

Division 2 of Schedule 2 ('the deemed provisions') provides the statutory basis for local planning policies and outlines the procedure for making, amending, and revoking local planning policies.

Local planning policies are guidelines used to assist the local government in making decisions under the local planning scheme. Although local planning policies are not part of

the local planning scheme, they must be consistent with, and cannot vary, the intent of the scheme provisions, including the R-Codes, unless otherwise permitted by the R-Codes and/or approved by the WAPC.

A local planning policy is not part of the local planning scheme and does not bind the local government in respect of any application for development approval, however, the local government is to have due regard to the provisions of the policy and the objectives which the policy is designed to achieve before making its determination.

### **Risk related:**

Review of a policy is essential to good governance as it demonstrates the Shire's ability to adapt to changing circumstances to ensure that its policies remain contemporary and relevant. The Shire's risk is reduced to **Low** if the correct procedures are followed. However, there could be **Medium** risk to the Shire's reputation if procedures are not correctly followed.

There is a **Low** risk to the Council when new local planning policies are developed, and proper community consultation is undertaken.

### **Workforce related:**

Reviews of this nature place additional yet necessary additional demands on workforce time and resources.

However, a benefit of successful and regular reviews of policies will ensure the Shire is operating as efficiently as possible by aligning these documents with the prevailing community expectations and state government frameworks of the day. This ultimately will reduce the burden on the workforce moving forward.

## **VOTING REQUIREMENTS**

Absolute Majority

### **OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM229/12/25**

**MOVED** Cr M Dival

**SECONDED** Cr R Mills

That Council adopts the Revised Draft Ancillary Dwellings Policy (**Attachment 2**) for the purposes of public advertisement in accordance with the procedures set out in clause 4 of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Voted For: Crs M McKeown, M Dival, R Madacs, J Prater, R Mills and S Van der Heyden

Voted Against: Nil

**MOTION CARRIED 6/0 BY ABSOLUTE MAJORITY**