

10.1.3 Initiation of proposed Scheme Amendment No.2 to Local Planning Scheme No.5

Date of Report:	9 March 2026
Applicant or Proponent:	Shire of Toodyay
File Reference:	PLA1
Author:	J Ngedup – Town Planner
Responsible Officer:	P Nuttall – Executive Manager Planning and Regulatory Services
Previously Before Council:	No
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. Scheme Amendment Document; 2. Planning Bulletin 115/2024; 3. Position Statement from WAPC; 4. Scheme Amendment Report.

PURPOSE OF THE REPORT

The purpose of this report is to seek Council's endorsement to formally *prepare* Amendment No. 2 to Local Planning Scheme No. 5 (the Scheme). Preparation of the Amendment will initiate the statutory scheme amendment process. Amendment No. 2 proposes modifications to the Scheme Text to reflect recent State regulatory changes relating to short-term rental accommodation, ensuring alignment with the updated legislative framework.

BACKGROUND

The State Government has introduced changes to the Model Provisions and Deemed Provisions contained within the *Planning and Development (Local Planning Schemes) Regulations 2015*, primarily relating to short-term rental accommodation and tourist/visitor accommodation land uses. As a result, the Shire's Local Planning Scheme No. 5 must be updated to ensure consistency with the revised regulatory framework.

Amendment No. 2 proposes modifications to the Scheme Text to update various land use classes and definitions in accordance with the new State provisions. The regulatory changes introduce new land use terms within the Model and Deemed Provisions and remove several existing accommodation-related use classes that are now considered redundant. **(Attachment 1)** The following use classes are to be removed from the Model Provisions and, consequently, from the Scheme:

- Bed and Breakfast (replaced with Hosted Short-term Rental Accommodation).
- Holiday Accommodation (replaced with Tourist and Visitor Accommodation).

- Holiday House (replaced with Unhosted Short-term Rental Accommodation).
- Motel (replaced with Tourist and Visitor Accommodation).
- Service Apartment (replaced with Tourist and Visitor Accommodation); and
- Tourist Development (replaced with Tourist and Visitor Accommodation).

These use classes will be deleted from clause 38 (definitions) and clause 17 (Zoning Table), and replaced with the following updated terms and definitions:

- Hosted short-term rental accommodation (Deemed Provision definition to be inserted into the scheme);
- Unhosted short-term rental accommodation (Deemed Provision definition to be inserted into the scheme); and
- Tourist and visitor accommodation (Model Provision definition to be inserted into the Scheme).

Further changes are proposed to ensure the Scheme's definitions align with the Regulations. These include:

- Modifying the definition of cabin (clause 37).
- Modifying the definition of chalet (clause 37).
- Deleting the definition of short-term accommodation (clause 37); and
- Modifying the definition of roadhouse (clause 38).
- Adding the definition of short-term rental accommodation (Clause 37)
- Adding the definition of short-term rental arrangement (Clause 37)

Consequential updates are also required throughout the Scheme to remove outdated use classes and replace them with the new terms. These changes apply to:

- Schedule 1 – Additional Uses.
- Schedule 2 – Special Use Zones.
- Schedule 6 – Car Parking Requirements; and
- Schedule 7 – Exempt Advertisements.

Amendment 2 has been prepared in accordance with the guidance provided by the Western Australian Planning Commission (WAPC) in its Planning Bulletin 115/2024 (**Attachment 2**).

The amendment is considered as standard for the purposes of preparation and approval.

COMMENTS AND DETAILS

Council has an administrative function rather than the normal quasi-judicial decision-making role it has with development proposals. If it is comfortable with the proposed Amendment, it will formally resolve to "prepare" (initiate) the Amendment and classify it as "standard". This then triggers a number of processes that Shire staff will undertake, including:

1. Submission of the Amendment to the WAPC for review and recommendation; and
2. Approval by the Minister for Planning, then gazettal by publication in the Government Gazette.

As a standard amendment, the scheme amendment needs to be advertised for a minimum of 42 days, where WAPC has the ability to extend the advertisement period where appropriate.

Rationale of Amendment 2

Amendment 2 is required to give effect in the Scheme to changes in the Regulations. A local government is required to ensure that its local planning scheme is consistent with the *Planning and Development Act 2005* and Regulations at all times. This Amendment will ensure consistency is maintained.

Amendment 2 is a text amendment only. No amendments to zoning or reservations on the Scheme Maps are proposed

IMPLICATIONS TO CONSIDER

Consultative:

Once the Council resolves to prepare the amendment, the Shire is required to submit the proposed scheme amendment documentation to the Western Australian Planning Commission (WAPC). The WAPC then examines the amendment to determine its suitability for public advertising and provides a recommendation to the Minister for Planning. The Minister subsequently decides whether to grant consent to advertise, require modifications prior to advertising, or refuse consent for the amendment to be advertised.

Strategic:

Plan for the future: Council Plan 2023-2033

Outcome 8. Toodyay is a popular tourism destination.

8.1. Collaborate with local businesses to promote and deliver exceptional tourism experiences.

8.1.2. Advocate for new, improved and diverse tourist accommodation developments and attractions.

Shire of Toodyay Local Planning Strategy

Given its effect is limited to changes required to reflect the Regulations, Amendment 2 does not impact on the Local Planning Strategy.

Policy related:

Council currently does not have any local planning policies related to tourist and short-term accommodation uses.

Financial:

As the Shire has prepared this Amendment rather than a proponent, all costs associated with preparation, advertising and processing will be borne within Council's adopted Budget.

Legal and Statutory:

1. Planning and Development Act 2005

- Section 75 provides legislative power to the Council to prepare changes to its local planning scheme.
- Section 81 requires referral of scheme amendments to the Environmental Protection Authority prior to advertising.

2. Planning and Development (Local Planning Schemes) Regulations 2015

- Regulations 34 and 35(2) require an amendment to be classified as basic, standard or complex.
- Regulation 56 provides for a basic amendment not to be advertised.
- Regulation 76A specifies requirements for making documents available to public.

Risk related:

Scheme Amendments are ultimately determined by the Minister for Planning, who is able to approve, modify or refuse any amendment. Council's role is to prepare and process an amendment at its cost with the greatest risk being the amendment is not supported by the WAPC and/or Minister for Planning.

Workforce related:

Initiation and Amendment of Scheme amendment No.2 to the Local Planning Scheme No.5 is within the normal workload of the Town Planning department of the Shire of Toodyay.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM047/04/26

MOVED Cr S Van der Heyden

SECONDED Cr M Dival

That Council pursuant to section 75 of the Planning and Development Act 2005, amend the amend the Local Planning Scheme by:

1. In clause 37, 'Terms Used':

A. Delete the definition for *short-term accommodation*.

B. Amend the general definition for *cabin* to:

means a building that -

(a) *is an individual unit other than a chalet; and*

(b) *forms part of -*

(i) *tourist and visitor accommodation; or*

(ii) *a caravan park;*

and

(c) *if the unit forms part of a caravan park - is used to provide accommodation for persons, on a commercial basis, with no individual person accommodated for a period or periods exceeding a total of 3 months in any 12-month period*

C. Amend the general definition for chalet to:

means a building that —

(a) *is a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and*

- (b) *forms part of –*
 - (i) *tourist and visitor accommodation; or*
 - (ii) *a caravan park;*
 - (c) *and if the unit forms part of a caravan park - is used to provide accommodation for persons, on a commercial basis, with no individual person accommodated for a period or periods exceeding a total of 3 months in any 12-month period.*
 - D. Insert the definition for short-term rental accommodation as per Schedule 2 of the deemed provisions for local planning schemes:
 - (a) *means a dwelling provided, on a commercial basis, for occupation under a short-term rental arrangement; but*
 - (b) *does not include a dwelling that is, or is part of, any of the following —*
 - (i) *an aged care facility as defined in the Land Tax Assessment Act 2002 section 38A (1);*
 - (ii) *a caravan park.*
 - (iii) *a lodging-house as defined in the Health (Miscellaneous Provisions) Act 1911 section 3(1);*
 - (iv) *a park home park;*
 - (v) *a retirement village as defined in the Retirement Villages Act 1992 section 3(1);*
 - (vi) *workforce accommodation;*
 - E. Insert the definition for short-term rental arrangement as per Schedule 2 of the deemed provisions for local planning schemes:
means an arrangement under which —
 - (a) *a dwelling, or part of a dwelling, is provided for occupation by a person; and*
 - (b) *the person occupies the dwelling, or part of the dwelling, for a period or periods not exceeding a total of 3 months in any 12-month period;*
- 2. In clause 38, 'Land Use Terms Used':
 - A. Delete the definitions for:
 - B. *bed and breakfast;*
 - C. *holiday accommodation;*
 - D. *holiday house;*
 - E. *motel;*
 - F. *serviced apartment;*
 - G. *tourist development; and*
 - A. Amend the existing land use term for *road house* by deleting paragraph (d) and inserting:
 - (a) *accommodation for guests, on a commercial basis, with no individual guest accommodated for a period or periods exceeding a total of 3 months in any 12-month period.*

- B. Insert the definition for *hosted short-term rental accommodation* as per Schedule 2 of the deemed provisions for local planning schemes:

Hosted short-term rental accommodation means any of the following —

- (a) *Short-term rental accommodation where the owner or occupier, or an agent of the owner or occupier who ordinarily resides at the dwelling, resides at the same dwelling during the short-term rental arrangement.*
- (b) *short-term rental accommodation that is an ancillary dwelling where the owner or occupier, or an agent of the owner or occupier who ordinarily resides at the other dwelling on the same lot, resides at that other dwelling during the short-term rental arrangement.*
- (c) *short-term rental accommodation that is a dwelling on the same lot as an ancillary dwelling where the owner or occupier, or an agent of the owner or occupier who ordinarily resides at the dwelling, resides at the ancillary dwelling during the short-term rental arrangement.*

- C. Insert the definition for *unhosted short-term rental accommodation* as per Schedule 2 of the deemed provisions for local planning schemes:

Unhosted short-term rental accommodation means short-term rental accommodation that —

- (a) is not hosted short-term rental accommodation; and*
- (b) accommodates a maximum of 12 people per night.*

- D. Insert the definition for *tourist and visitor accommodation* as per Schedule 1 – Model Provisions:

- (a) *means a building, or a group of buildings forming a complex, that -*
 - (i) is wholly managed by a single person or body; and*
 - (ii) is used to provide accommodation for guests, on a commercial basis, with no individual guest accommodated for a period or periods exceeding a total of 3 months in any 12-month period; and*
 - (iii) may include on-site services and facilities for use by guests; and*
 - (iv) in the case of a single building — contains more than 1 separate accommodation unit or is capable of accommodating more than 12 people per night; and*
- (b) *includes a building, or complex of buildings, meeting the criteria in paragraph (a) that is used for self-contained serviced apartments that are regularly serviced or cleaned during the period of a guest's stay by the owner or manager of the apartment or an agent of the owner or manager; but*
- (c) *does not include any of the following -*
 - (i) an aged care facility as defined in the Land Tax Assessment Act 2002 section 38A(1);*
 - (ii) a caravan park;*
 - (iii) hosted short-term rental accommodation;*
 - (iv) a lodging-house as defined in the Health (Miscellaneous Provisions) Act 1911 section 3(1);*

(v) a park home park;

(vi) a retirement village as defined in the Retirement Villages Act 1992 section 3(1);

(vii) a road house;

(viii) workforce accommodation.

E. In clause 17, 'Zoning Table' insert in alphabetical order the following land uses and permissibility:

Use & Development Class	Residential	Urban Development	Rural	Rural Residential	Rural Smallholdings	Rural Enterprise	Environmental Conservation	Light Industry	Industrial Development	Commercial	Mixed Use	Special Use	Service Commercial	Private clubs, institutions and places of worship
Hosted short-term rental accommodation	P	Refer to Clause 32	P	P	P	P	X	X	Refer to Clause 32	P	P	Refer to Clause 32	X	X
Tourist and visitor accommodation	A ₁		A	A	A	X	X	X		A	A		X	I
Unhosted short-term rental accommodation	A		A	A	A	X	X	X		A	A		X	X

A₁ = Lots greater than 1500m²

F. In clause 17, 'Zoning Table', delete all references to:

- *bed and breakfast;*
- *holiday accommodation;*
- *holiday house;*
- *motel;*
- *serviced apartment;*
- *tourist development; and*

G. In Schedule 1 – Additional uses:

- deleting reference to "holiday accommodation", "motel" and "tourist development" and replacing with "tourist and visitor accommodation", as required from A7, A10, A12 and A14.
- deleting Condition 2 in A7 and renumbering accordingly.

H. In Schedule 2 – Special use zones:

- deleting reference to "holiday accommodation" and "tourist development" and replacing with "tourist and visitor accommodation", as required from SU1, SU3, SU4, SU6, SU8, SU9, SU11 and SU13.

- deleting reference to “bed and breakfast” and replacing with “hosted short-stay rental accommodation” from SU13.

I. In Schedule 6 – Car parking requirements:

- In Residential Uses, Line 1, deleting reference to “Holiday House” and replacing with “Unhosted Short-term Rental Accommodation”;
- In Residential Uses, Line 2, deleting reference to “Bed and Breakfast” and replacing with “Hosted Short-term Rental Accommodation”;
- In Tourism Uses, Line 1, deleting reference to “Holiday Accommodation”, “Motel”, “Serviced Apartments” and “Tourist Development” and replacing with “Tourist and Visitor Accommodation”.

J. In Schedule 7 – Exempt advertisements, deleting reference to “holiday houses” in Line 2 and replacing with “Unhosted short-term rental accommodation”.

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

Voted Against: Nil

MOTION CARRIED 5/0