



Ordinary Council Meeting

27 March 2025

Commencing at 5:30 PM

AGENDA

Notice of Meeting.

To: The President and Councillors.

The next Ordinary Council Meeting of the Shire of Toodyay will be held at the Shire of Toodyay Council Chambers, 15 Fiennes Street, Toodyay WA 6566 on the above-mentioned date and time.

Councillors are requested to:

- a) *familiarise themselves with the Agenda by preparing notes to help address key issues for the debate; and*
- b) *email questions of clarification to the CEO via email at cr.request@toodyay.wa.gov.au at least 48 hours prior to the Council Meeting.*

Aaron Bowman JP

CHIEF EXECUTIVE OFFICER



Our Vision, Purpose and Values

The Shire of Toodyay's Plan for the Future (Council Plan 2023-2033) is the Community's Strategic Plan outlining the direction that the Shire is undertaking to meet the needs and aspirations of its community.

Our Vision

A caring and visionary rural community, working together to preserve and enrich Toodyay's environment, character and lifestyle.

Our Purpose

The Shire of Toodyay exists to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

Our Values

We conduct ourselves in line with values the local community cares deeply about:

- **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; and
- **Commitment** – we translate our plans into actions and demonstrate the persistence that will provide results.

Community Aspirations

There are five core performance areas in this plan: People, Planet, Place, Prosperity, and Performance. These areas are interrelated, and each must be satisfied to deliver excellent quality of life in the Shire of Toodyay.

For each area, there is an overarching aspirational statement and desired outcomes, summarised in the Council Plan which is available on the Shire's website at: <https://www.toodyay.wa.gov.au/documents/432/council-plan-plan-for-the-future-2023-2033>

Disclaimer

Any discussion regarding a planning matter 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 a 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.

Availability of Meeting Agenda and its Attachments

Information about Council Meetings is located on the website

<http://www.toodyay.wa.gov.au/Council/Council-Meetings>

Agendas & Minutes are located under the heading "Council Meetings" at

<http://www.toodyay.wa.gov.au/Council/Council-Meetings/Agendas-Minutes-and-Notes>

Public copies are available by contacting the Shire on (08) 9574 9300.



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ATTACHMENTS can be found in the Attachments Paper on the Council website alongside this agenda.

1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Presiding Member is to run through the Preliminaries on the previous page of the Agenda, and to declare the Ordinary Meeting of Council open.

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.”*

2 RECORDS OF ATTENDANCE**2.1 APOLOGIES****2.2 APPROVED LEAVE OF ABSENCE**

Nil

2.3 APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

3 DISCLOSURE OF INTERESTS

4 PUBLIC QUESTIONS**4.1 RESPONSES TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE****4.1.1 Questions taken on notice at the 27 February 2025 Ordinary Council Meeting****4.2.3 C Wroth****Questions 1 and 2**

The questions relate to the roadworks on the Bindi-Bindi Bolgart Road. The road was ready for sealing in early November. I was using the road at the time for carting grain. I believe there was a stuff up with the bitumen tender and work was halted. Even though construction stopped the road still had to be watered daily (many loads) and given at the time it was leading up to Christmas there would have been double time and overtime involved and would have added a huge cost to the project. When the work recommenced in mid-February as well as the shire crew (and at that time it was ready for sealing within matter of days), because of the damage that had been done over that period, another contractor was employed by the Shire, several water trucks and a stabilising machine had to be used which would have added to the cost of the project.

- a) How much was the original bitumen Tender that the Shire had earlier in the year?
- b) What was the budgeted cost of the road works?

Response from the Chief Executive Officer

The original budget for the Toodyay Bindi-Bindi Road was \$1,698,329 million and the other budgeted cost of the roadworks I will take on notice.

Response for March 2025 Agenda

- a) responded to above; and
- b) \$169,042 Primer to hold the road.

Questions 3 and 4

- a) How much is the bitumen tender once it has been retendered?
- b) What was the total cost of the roadworks once the final coat of bitumen has been put down?

Response from the Chief Executive Officer

I will take on notice.

Response for March 2025 Agenda

- a) There was no tender. The revised cost was \$394,606.31.
- b) Seal costs have not come in as this will be varied from the original tender as the primer was applied already.

4.2.8 A Lamas**Question 1**

Explain why questions submitted for the September, October and December 2024 meetings were not answered and included in the minutes of the meeting when in the recording of the Ordinary Council Meeting the Presiding Member advised that the questions had been received and the responses to the questions would be inserted into the minutes. These minutes are incorrect, and the questions have not been answered. This is a breach of the Standing Order 5.7(8).

Response from the Shire President

Given the detail I will take the question on notice.

Response for March 2025 Agenda

The minutes are not incorrect.

September Council Meeting

You received written advice on 24 Sept 2024 that the questions you submitted in September 2024 would be handled as normal business. You acknowledged the email the same day. (Ref D25/1049).

October Council Meeting

You submitted questions in October 2024 that were responded to at that meeting as part of the October 2024 Council Meeting Minutes except for two questions.

November Council Meeting

The two questions taken on notice in October 2024 were responded to as part of the November 2024 Council Meeting Minutes.

December Council Meeting

You did not provide questions for this meeting.

Question 2

A decision was made to engage a candidate in October per the Creditor Payment Reports from October to December 2024. There have been some payments made to a creditor named Vanessa Wendy Crispe for a total amount of \$7,507.05. Would you please confirm what was the scope of work for this consultant while you were also paying an Executive Manager of Infrastructure, Assets and Services a salary? Please confirm the relationship with the current Executive Manager of Infrastructure, Assets and Services as they appear to have the same name?

Response from the Chief Executive Officer

I will take the question on notice.

Response for March 2025 Agenda

The scope of the work was project work which included a review of the Shire Plant to address concerns and develop a useable plant replacement program due to deficiencies. The consultant is the new Executive Manager.

4.2.10 C Wroth**Question 5**

In regard to the roadworks questions, I asked, when the total costs are summed up and delivered to me there will be a huge blowout. If it is proven to be incompetence of an individual what matters will the Shire take into consideration?

Response from the Chief Executive Officer

I will take that on notice.

Response for March 2025 Agenda

The total cost of the job still to be determined. Project it is not complete. The second part of the question cannot be responded to.

Questions 6 and 7

- a) How many FTE employees in Administration does the Shire have?
- b) How many FTE employees are in the construction, maintenance and garden areas.

Response from the Chief Executive Officer

I will take that on notice.

Response for March 2025 Agenda

- a) CEO and Corporate 11.
- b) Construction 4 , Maintenance 3 and Garden areas 5.

4.2.13 A Lamas**Questions 3, 4, 5 and 6**

Have the Councillors been provided with an update on the asset infrastructure and servicing regarding the capital works program for this financial year? If yes, how many infrastructure projects have been fully completed?

- a) How many are still in progress?
- b) How many are still to be done before the end of the financial year?
- c) How many are we cancelling or carrying forward for 2025/2026?

Response from the Shire President

We report on the progress of those jobs in the monthly financial statements.

Response for March 2025 Agenda

- a) 1;
- b) 1;
- c) 6.

4.2.13 A Lamas**Questions 7, 8, 9 and 10**

The Bindi-Bindi project (there are two: one federal and the other through a black spot program), which are just combined; this project started in September 2024. The project is still not complete. Delays are significant and costly to all our ratepayers.

- a) What is the detailed forecast for overall expenditure?
- b) When did you seek Main Roads approval for the project to seek additional funds to proceed with this project?
- c) How is the Shire recovering these funds?
- d) Are you cancelling any jobs to provide this expenditure?

Response from the Chief Executive Officer

Mr Lamas you would appreciate that the project happened two years ago from planning and when planning does not happen properly there is a carryover effect and when the shire has not got clearing permits for trees and when you do a black spot funding you have to do it exactly as per the plan and you cannot actually change that without approval. We are required to and have inherited problems we are now working through. Unfortunately, when proper planning of the road and proper construction of the road has not been undertaken we are required to remedy that because I will not allow an unsafe road to be built in the Shire.

Response for March 2025 Agenda

- a) we still are not compliant with the original project Submission, and we are only about 70% complete this is being addressed.
- b) We have not claimed additional funds.
- c) This will be considered by Council in a Budget Adjustment report scheduled to be presented to Council in April 2025.
- d) No.

4.2.14 B Ruthven**Question 6**

As the monthly payments do not show any payments for rent in December and January how are the rent payments being made?

Response from the Chief Executive Officer

I will take that on notice.

Response for March 2025 Agenda

By direct debit from the bank account.

4.2.14 B Ruthven**Question 10**

Under which cost centre or ledger is the budgeted \$15,000 or \$600 a week for rent at the house in Jubilee Street being charged?

Response from the Chief Executive Officer

I will take that on notice.

Response for March 2025 Agenda

Swimming Pool Contractors.

4.2 PUBLIC QUESTION TIME**5 CONFIRMATION OF MINUTES****5.1 Ordinary Meeting of Council held on 27 February 2025****OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Ordinary Council Meeting held on 27 February 2025 be confirmed.

5.2 Special Meeting of Council held on 20 March 2025**OFFICER'S RECOMMENDATION**

That the Unconfirmed Minutes of the Special Council Meeting held on 20 March 2025 be confirmed.

6 PETITIONS / PRESENTATIONS / SUBMISSIONS**6.1 PETITIONS**

A petition is to be addressed to the Shire President and is to be presented by a Councillor.

6.2 PRESENTATIONS

A presentation can only be made with prior approval of the CEO.

6.3 SUBMISSIONS

A submission can be made ad hoc, but it is preferred that notice be given by midday on the day of the Meeting.

7 BUSINESS FROM PREVIOUS MEETING (IF ADJOURNED)**7.1 Confirmation of Minutes - Special Council Meeting held on 13 January 2025**

Date of Report:	4 March 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	MTG7
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Bowman JP – Chief Executive Officer
Previously Before Council:	February 27, 2025 – item was deferred
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Copy of Special Council Meeting Minutes. ↔

PURPOSE OF THE REPORT

To consider the confirmation of minutes of the Special Council Meeting held on 13 January 2025 with amendments.

BACKGROUND

At the 27 February 2025 Council Meeting the Officer's Recommendation was moved by Cr McCormick and seconded by Cr Prater however clarification of Point 3 of the Officer's Recommendation resulted in the item being deferred to confidential business. Unfortunately, the item was not brought back for discussion after confidential business.

COMMENTS AND DETAILS

Currently there are three resolutions in the January 2025 minutes that state *"Confidential in accordance with Council Resolution SCM006/01/25 made behind closed doors."*

Advice was sought from the Department of Local Government, Sport and Cultural Industries prior to the minutes being published in January 2025. Unfortunately, the advice was not received in time.

When the advice was received, it was conveyed to the Department's Principal Advisory Officer that the minutes would be amended by Council resolution, as is legislated, and then published on the Shire's website. The email that has been received has been requested to be treated as confidential. However, some of the content is summarised below:

"It is essential that resolutions passed by council are absolutely clear as to the expected outcome, how it is to be achieved, by when, by whom and at what cost, if applicable. Each resolution needs to be phrased in the positive and stand alone. A resolution must be clear as to its intent so that a person can understand what has been decided without recourse to information contained in a supporting report or document."

A council resolution cannot be confidential as it is required to be recorded in the Minutes which is a public record and available for public access. To be unclear about the decision made by council conflicts with the principles of openness and transparency which supports good governance. The community deserves to be aware of what decisions have been made by council in representing their best interest.

It is understood that you intend to correct this by providing those details in the minutes when corrected prior to them being confirmed by council.”

This advice necessitated the change to be made in the minutes, which Council has a right to do when confirming the minutes, and which was presented to the February 2025 Council Meeting.

It is recommended that the recommendation be accepted by Council as it is good governance to do so.

IMPLICATIONS TO CONSIDER

Consultative:

DLGSC

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

Outcome 9: Responsible and effective leadership and governance.

9.1 Provide strong, clear, and accountable leadership

Policy related:

Nil.

Financial:

Nil.

Legal and Statutory:

Section 5.21(4) of the *Local Government Act 1995* states that:

- (4) *If a matter is voted on at a meeting of a council or committee, the following information must be recorded in the minutes —*
- (a) *the total votes cast for;*
 - (b) *the total votes cast against;*
 - (c) *the individual vote of each member of the council or committee.*

Risk related:

It is a minor risk if Council choose to delay the confirmation of these minutes that may escalate into a high risk given the advice from the Department. This report mitigates the risk.

Workforce related:

The minutes will be confirmed and uploaded as confirmed minutes to the Shire's website.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That the Unconfirmed Minutes of the Special Council Meeting held on 13 January 2025 be confirmed with the following amendments:

1. At Council Resolution No. SCM004/01/25: remove the words "Confidential in accordance with Council Resolution SCM006/01/25 made behind closed doors" and replace them with the following words:

"MOVED Cr M Dival

SECONDED Cr S McCormick

That Council endorses the recommendations as contained within the confidential item report, provided to Elected Members under separate confidential cover, in relation to an employee.

Voted For: Crs M McKeown, M Dival, S McCormick, and J Prater

Voted Against: Cr R Madacsi

MOTION CARRIED 4/1 BY ABSOLUTE MAJORITY"

2. At Council Resolution No. SCM005/01/25 remove the words "Confidential in accordance with Council Resolution SCM006/01/25 made behind closed doors" and replace them with the following words:

"MOVED Cr J Prater

SECONDED Cr M Dival

That Council resolves in accordance with Standing Order 15.3(3) of the *Shire of Toodyay Standing Orders Local Law 2008* to direct the Chief Executive Officer to take immediate action to implement the decision.

Voted For: Crs M McKeown, M Dival, S McCormick, and J Prater

Voted Against: Cr R Madacsi

MOTION CARRIED 4/1"

3. At Council Resolution No. SCM006/01/25 remove the words "Confidential in accordance with Council Resolution SCM006/01/25 made behind closed doors" and replace them with the following words:

"MOVED Cr S McCormick

SECONDED Cr J Prater

That Council resolves to keep resolutions SCM004/01/25, SCM005/01/25 and SCM006/01/25 confidential and that in accordance with Standing Order 5.2(7) of the *Shire of Toodyay Standing Orders Local Law 2008*, to not read out the resolutions once the meeting is reopened to the public.

Voted For: Crs M McKeown, M Dival, R Madacsi, S McCormick, and J Prater

Voted Against: Nil

MOTION CARRIED 5/0".

8 ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

Nil.

9 OFFICER REPORTS

9.1 PLANNING AND REGULATORY SERVICES

9.1.1 Initiation of Amendment 1 to Local Planning Scheme No.5

Date of Report:	6 March 2025
File Reference:	PRO18
Author:	P Nuttall – Executive Manager Planning and Regulatory Services
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. Shire of Toodyay - Sheme Amendment 1 Report. ↗

SUMMARY

Applicant: Shire of Toodyay
Owner: Shire of Toodyay
Proposal: Amendment to Local Planning Scheme 5
Location: Lot 9508 and Lot 8006, Drummond Street and Burt Pass, Nunile

PURPOSE OF THE REPORT

For Council to consider the preparation of Scheme Amendment No.1 to the Shire’s Local Planning Scheme No.1 to rezone two portions of land as shown on the attached plan in Nunile, being:

1. A portion of lot 9508 from Public Open Space to Residential;
2. All of lot 8006 from Residential to Public Open Space;
3. Creation of a road reserve being known as Jarratt Pass.

BACKGROUND

Council purchased the 14ha Lot 9508 Burt Parkway, Nunile in 2013 to provide land for the Toodyay Sporting and Recreation Complex. Stage 1 of the Complex has since been constructed and land set aside for Stage 2 (football/cricket oval and associated buildings). Overall, approximately 10ha of Lot 9508 will be utilised for the Complex, leaving a remaining 4ha portion available for other purposes.

In recent years the Shire has participated in studies to identify the current and projected need for housing in the Shire and wider region. This work has identified a housing shortfall which the Shire is eager to address where it can. One solution is the residential development of the remaining 4ha of Lot 9508. To allow for this to occur, a Scheme Amendment is necessary to reclassify the Public Open Space reserve to the Residential zone. Reclassification of Jarratt Pass to Local Roads reserve is also proposed.

In addition to reclassifying portion of Lot 9508, the opportunity is being taken to also reclassify Lot 8006 to Public Open Space. This lot is located on the northwestern corner of Murray Walkway and Drummond Street and is developed as a drainage sump with surrounding open space. Lot 8006 is currently zoned Residential, which is not reflective of its current and ongoing use.

Further development of land on the southern portion of Lot 9508 shown in the report is a concept of the potential that can be realised from the land and is not subject to this Council report. Only after Council endorsement and WAPC approval can the Shire consider the final detailed outcomes of the site.

Full information on the proposed Scheme Amendment is included at **Attachment 1 – Amendment Document**.

COMMENTS AND DETAILS

Location Characteristics

The proposed rezoning site is sloping and contains little natural environment and would be expensive to level, retain and develop for recreational or community use. Also being close to other larger public reserves would not detrimentally reduce the required 10% open space requirements of the Foggarthorpe Structure Plan. Even with this proposal approved the required open space of this estate is much greater than the state mandate. The proposed site is in effect a prime location for houses, permitting excellent views from most sites and is near the local school.

Amendment process:

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. This then triggers a number of processes that Shire staff will undertake, including:

1. Referral of the Amendment to the Environmental Protection Authority (EPA) for assessment;
2. Submission to the WAPC of the Amendment and the EPA decision for suitability of advertising;
3. WAPC makes a recommendation to the Minister for Planning on whether the Amendment can be advertised;
4. The Amendment is approved for advertising, modified or refused by the Minister;

5. Once approved, the Amendment is advertised for public comment for a minimum of 42 days;
6. After submissions close, Council will consider all comments received and resolves to support, not support or support with modifications the Amendment; and
7. Council's recommendation is forwarded to the WAPC for assessment and a determination by the Minister for Planning. The Minister is able to approve, refuse or modify an Amendment.

Once initiated by Council, there will be a number of time limits the Shire will need to meet as it processes the Amendment. However, as this is a priority project for the Shire, staff and consultants will be working towards processing the Amendment as quickly and efficiently as possible. It is also prudent to note that there is no right of review of the Minister's decision.

Rationale of proposed zoning

It is proposed to reclassify from Public Open Space reserve a 4ha portion of Lot 9508 bounded by Murray Walkway, Jarratt Pass and Rayner Loop. Most of the amendment site will be reclassified to the Residential zone with a density code of R20. Jarratt Pass is currently within Lot 9508 and in the POS reserve and is proposed to be reclassified as Local Road reserve, which will then allow for the roadway to be dedicated as a public road through a subdivision process.

A density of R20 is proposed for the single residential portions of the site for a number of reasons, including:

1. The amendment site is fully serviced with water, sewer and electricity connections at three frontages and acts as a stand-alone site with no shared boundaries to lower-coded lots;
2. Given the availability of sewer R20 is deemed to be a reasonable density code, no dual coding is required.
3. The R20 density is used on large areas of the Toodyay townsite with the proviso of sewer being made available; and
4. The R20 density would allow for a range of dwelling and tenure types to be explored for the amendment site, consistent with the Shire's intent and commitment to the Federal Housing Support Program.

Two grouped dwelling sites are proposed to have a higher density of R35 to allow for a wider range of housing types and sizes in the development. The R35 density remains low enough to prevent apartment (multiple dwelling) development, thereby maintaining a relatively "low rise" residential outcome.

Reclassification of Lot 8006 from Residential zone to Public Open Space reserve reflects its current and ongoing use for drainage and open space.

IMPLICATIONS TO CONSIDER

The decision to prepare Amendment No. 1 rests with Council. The final decision on whether the scheme amendment is approved rests with the Minister of Planning.

Should Council choose not to prepare Amendment No. 1, the applicant has no review pathway through the State Administrative Tribunal. However, the applicant may request the Minister for Planning to order the local government to prepare and submit the scheme amendment to the Minister for approval, in accordance with Part 5, Division 2 Section 76 of the *Planning and Development Act 2005*. In this case, the applicant is the Shire of Toodyay.

Consultative:

There has been no consultation on the proposed Amendment at this stage. If Council formally prepares the Amendment, community consultation will form a major focus for the Amendment process once the Minister for Planning has provided approval to advertise.

It is proposed that the following community consultation is undertaken:

1. Notification on the site through the installation of signage informing the public of the existence of the proposed Amendment.
2. Letters to the registered owners of all private property surrounding the amendment site.
3. Public notice in a local newspaper circulating in the Shire, such as the Toodyay Herald.
4. Directly informing the Principal of the Toodyay District High School, as well as the Department of Education.
5. Placement of the Amendment Document and supporting information onto the Shire website.
6. The use of the Shire social media presence to inform the wider community.

Strategic:**Plan for the future: Council Plan 2023-2033**

Outcome 5. High quality town planning complements our rural ambience and heritage.

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

5.2.1. Advocate for more social housing in the Shire of Toodyay.

5.2.2 Advocate for developers to build more affordable housing options.

Shire of Toodyay Local Planning Strategy

The proposed Amendment outlines in detail how it addresses the various objectives and strategic directions of Council's Local Planning Strategy. In summary, the proposed Amendment is considered to complement the objectives of the strategy, including:

1. Planning for the sustainable provision of land to meet existing and future needs;
2. Ensuring development appropriately considers potential hazards such as flood and bushfire; and
3. Ensuring future development takes advantage of and makes the most efficient use of available infrastructure (i.e. roads, water, sewer, power, etc).

In addition to the strategy objectives, the proposed Amendment is also consistent with the strategic directions and strategies for growth and settlement, including:

1. Providing for a range of residential densities in the Toodyay townsite to facilitate the development of various housing types; and
2. Promoting the consolidation of the townsite to reduce development costs, improve access to services, and limit the impact on natural environmental resources associated with urban expansion.

As the proposed Amendment is consistent with the Strategy, it can be classed as a standard amendment for the purposes of processing the amendment.

Policy related:

This proposal has been considered against the Special Control Area No.5 (SCA5) contained within the Scheme. The SCA5 – Landscape Protection Special Control Area requires consideration to be made to maintain the integrity of landscapes for land within the control area. In this case those consideration would have been considered in the Foggarthorpe Structure Plan which predates this SCA5. Therefore, it is deemed that these values have been considered accordingly.

Financial:

In accordance with the *Planning and Development Regulations 2009* and *Planning and Development (Local Planning Schemes) Regulations 2015* the costs associated with the assessment, advertising and gazettal of the scheme amendment are met by the applicant.

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

General Function:

The *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015* gives local governments powers in relation to Local Planning Schemes and Local Planning Policies. The above provisions of the *Planning and Development Act 2005* require a decision to amend a Local Planning Scheme by Council resolution.

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.
- Section 83A requires referral to the Minister for approval to advertise.
- Section 84 requires a scheme amendment to be advertised and for submissions to be considered by the local government.

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 47 specifies requirements for advertising a Standard Amendment.
- 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:

The proposed amendment has been prepared by consultant town planners given the limitations of the in-house planning response at this time. Ongoing processing and

advertising of the amendment will be predominantly undertaken by shire staff, with technical assistance from the consultant.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

1. supports the proposed scheme amendment pursuant to section 75 of the Planning and Development Act 2005, to amend the Shire of Toodyay Local Planning Scheme No.5 by:
 - (a) reclassifying portion of Lot 9508 Burt Parkway, Nunile from Public Open Space reserve to:
 - (i) Residential zone and applying a density coding of R20 and R35; and
 - (ii) Local Road reserve; and
 - (b) Reclassifying Lot 8006 Murray Walkway, Nunile from Residential zone to Public Open Space reserve and removing the R10 density coding from the affected parcel.

as outlined in the scheme amendment document - Attachment 1.
2. determines that Amendment No.1 to Shire of Toodyay Local Planning Scheme No.5 is a standard amendment for the purposes of the *Planning and Development (Local Planning Schemes) Regulations 2015* as it is consistent with a local planning strategy for the scheme that has been endorsed by the Commission.
3. refers the amendment to the Environmental Protection Authority (EPA) for assessment; and
4. submits this amendment to the WAPC and the EPA for a decision for the suitability of advertising under Regulation 76A.

9.1.2 Request To Vary the Ancilliary Acomodation Policy LPP2 - 1451 Northam Toodyay Road, Dumbarton.

Date of Report:	10 March 2025
File Reference:	A2419/145NORT
Author:	P Nuttall – Executive Manager Planning and Regulatory Services
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:	Quasi-Judicial
Attachments:	Nil

SUMMARY

Applicant:	Trevor Bennett - Builder
Owner:	MJ & KA Carter
Proposal:	Second Dwelling retention
Location:	1451 Northam-Toodyay Road, Dumbarton

PURPOSE OF THE REPORT

To request Council, to vary Local Planning Policy 2 – Ancillary Accommodation at 1451 Northam-Toodyay Road.

BACKGROUND

An application for a new dwelling has been received at 1451 Northam-Toodyay Road and the owners have requested that the existing dwelling be retained as an ancillary dwelling.

Local Planning Policy 2 sets out the criteria that Council determines as being acceptable for development within that policy. In this case the retention of the existing dwelling on the lot does not meet these criteria. As such, a request has been made to vary the criteria for this application.

Council is only considering the retention of the existing dwelling, unchanged, and not the consideration of the entire development proposal. If Council were not to support this variance, then the matter resolves to demolish the existing dwelling upon completion of the proposed main dwelling.



Location Plan showing the proposed new dwelling in relation to the existing dwelling.

COMMENTS AND DETAILS

There are three of the deemed criteria that do not meet the policy;

All ancillary accommodation within the Shire of Toodyay must comply with the following:

- a) *have a maximum internal floor area of 70m²*
- b) *have a maximum of 2 bedrooms and one bathroom;*
- c) *be located within 20m of the main house;*

What is being proposed is;

- a) the floor area of the existing house is 90m²
- b) there are three bedrooms
- c) the separation distance is approximately 45m from the main House.

IMPLICATIONS TO CONSIDER

The existing dwelling

Inspection of the existing dwelling finds that it is well maintained although it is not compliant with this LPP, there is a good argument to be made for its retention.

An option presented to the applicant was to reduce the internal floorspace of the dwelling (remove a room) to meet one of the non-compliant criteria.

If this was to be undertaken then the cost of reducing the dwelling to be below 70m² of floorspace and consequently meet the updated building regulations, would be more expensive than demolition.

While not directly costed, a demolition and a new smaller dwelling would be a cheaper option.

Locational separation

The site of the new dwelling has been chosen to reduce flooding risk after its construction and will be built on higher ground. The existing dwelling would not have been permitted in its current location at its current floor level, under current rules and regulations. This has resulted in a greater separation distance than what is permitted under the current LPP2.

The policy requires that the separation distance be small to lessen the impact to the surrounding landscape by clustering development and keeping a greater sense of open space. However, all other structures on the Lot are meeting this criteria around the existing dwelling, with the new dwelling being the outlier.

Number of bedrooms

The policy requires a maximum of 2 bedrooms. In this case the cost of removing a single bedroom would not achieve the required reduction in floorspace, and modification of the dwellings insulation and wiring makes this option ineffective. In this instance, an additional bedroom would not have a noticeable effect to the land uses of the surrounding properties.

Ancillary use

Ancillary use is generally defined as being a land use or structure that is of a lesser stature than that of the main dwelling. In this case retention of the existing house at 90m² versus the new main house of 216m². This clearly makes the existing house substantially dominant to that of the existing dwelling.

Development rights

The *Planning and Development Act* and *R-Codes of Western Australia* grants landowners the right to construct a single dwelling and an ancillary dwelling on any appropriately zoned land "as of right". If the Council chooses to permit this request to vary the LPP2 – Ancillary Accommodation policy to retain the existing dwelling it would be in alignment to this right.

Consultative:

No Neighbouring property has been consulted for the retention of the existing dwelling as it is deemed to be too far away from other dwellings to have a noticeable impact to their use of their land.

Strategic:

- 5.1. Provide responsible planning and development.
- 5.2. Enable access to affordable, sustainable, and diverse housing options.

Policy related:

Local Planning policies guide and set acceptable development standards. In that regard, with Council consent these standards can be varied where circumstances achieve performance criteria or exceptional circumstance.

Financial:

There is no financial cost to the Shire, however the applicant would have the cost of demolition of a reasonably good condition home, to be able to build the proposed main dwelling.

Risk related:

There is minimal risk to Council in exercising discretion in this regard. Permitting an additional bedroom would be Low, a slightly larger floorspace would be low, and separation distance between structures would also be deemed low due to the large distances to the next structures on adjacent properties.

Workforce related:

All aspects of enacting this variance are covered within the normal operating procedures of the Planning Department.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council supports a variation to Local Planning Policy 2 – Ancillary Accommodation at 1451 Northam-Toodyay Road to permit an existing dwelling to be deemed as ancillary to the proposed new dwelling.

9.1.3 Consent to advertise - Local Planning Policy 7 - Mining and Resource Extraction. (2025)

Date of Report:	9 March 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	LPP7
Author:	P Nuttall – Executive Manager Planning and Regulatory Services
Responsible Officer:	P Nuttall – Executive Manager Planning and Regulatory Services
Previously Before Council:	OCM 22 March 2023
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	<ol style="list-style-type: none"> 1. Local Law Advice (LKA); ⇒ 2. Draft Extractive Industry LPP7 (LKA); ⇒ 3. Extractive Industry - Model Conditions (LKA); ⇒ 4. Current LPP7 - Extractive Industries Road Maintenance Contributions ⇒

PURPOSE OF THE REPORT

To seek Council Support for the Advertisement of an updated Local Planning Policy No.7 (LPP7) which is currently known as “Extractive Industries – Road Contributions” to be renamed “Mining & Resource Extraction. **Attachment 2**. The change of name realigns the policy to more closely represent the intent of the LPP7. The 2014 LPP7 **Attachment 4** no longer aligns with Council objectives in the management of mining activities in the shire and is overdue for review by council.

BACKGROUND

Local Planning Policies are required to be periodically reviewed by Council and in that review, Council can consider changes recommended by administration and consider its practices in relation to adjacent shires and changes to state policies and to amendments to relevant Acts of parliament.

In this case, State legislation has been stable, but a succession of State Administrative Tribunal decisions related to mining activity in shires, prompts a consideration to review this policy. As part of this review the Shire has undertaken professional Advice from LK Advisory (LKA) to undertake a review of other Shires Extractive Industry Local Laws (EILL) and relevant legislation in regard to these matters. Contained within this advice are recommendations for Council to consider. **Attachment 1**.

With the advised withdrawal of the Shires Extractive Industries Local Law, the Shire would be solely dependent upon the updated “Local Planning Policy No.7 – Mining & Resource Extraction” Policy for the determination of all future applications for mining activity under the Current Shire of Toodyay Local Planning Scheme No.5.

While the review of this Local Planning Policy has previously been before Council (OCM 22/3/2023) that review also considered the retirement of the Shires Extractive Industry Local Law. Unfortunately, that review did not progress. This current review has been undertaken in close liaison with current extractive industry operators, and professional consultants and is thus presented to Council in this meeting.

COMMENTS AND DETAILS

There are several fundamental proposed changes to the way the shire can approach a development approval for mining activity, through a single approval pathway (updated LPP7). Under the current system, applicants may be issued two approvals under two different legislative frameworks. An approval can be simultaneously granted under the local planning scheme, which is an instrument granted under the Planning and Development Act, and the Local Laws which is an instrument granted under the Local Government Act. There is the risk that these two-approval process may overlap/intersect or be possibly inconsistent with each other.

It is proposed to amalgamate all related conditions under a single revised Local Planning Policy, and that it be used as the sole point of assessment and approval for the Shire. Advice from (LKA) supports this single assessment tool.

IMPLICATIONS TO CONSIDER

Necessity / Efficiency

The Current process seeks to grant approvals under different legislation, which does not create an efficiency in process and has now been deemed as unnecessary (LKA). The aim of the Shire is to simplify processes and to remove unnecessary conditions. In doing so the relinquishment of the *Extractive Industries Local Law*, and its conditions, can be incorporated into an updated Local Planning Policy 7.

- *Point 6 of the LK Advisory Letter;*

Our draft Local Planning Policy does not contemplate or require the Shire to retain an extractive Industries Local Law, or to continue the practice of imposing a 'road maintenance fee' paid by operators on a per- tonne basis. Instead, we recommend the Shire adopts a differential rate for extractive and other industrial/non-agricultural activities in the rural zone. This will allow Council to more defensibly, simply and effectively recover the added costs for maintaining roads impacted by extractive industry operations.

- *Point 7 of the LK Advisory Letter;*

We do not support imposing development approval conditions to levy annual road maintenance charges on extractive industry operators (as stipulated in the Shire's current local planning policy) as this would arguably not pass the established legal test for validity of a planning condition. Furthermore, requiring a proponent to pay for the maintenance of public roads beyond their development site also raises a contradiction with the principles espoused in State Planning Policy 3.6 Infrastructure Contributions (SPP 3.6), which states (emphasis added):

"...contributions are for the initial capital requirements only and not for ongoing maintenance or operating costs of the infrastructure..."

- *Point 11 of the LK Advisory Letter;*

If the Shire accepts our draft Local Planning Policy and agrees with our advice that it should no longer charge road maintenance fees through development approval conditions and should instead use the cost recovery mechanisms available under the LG Act, then there would be no value in retaining the Extractive Industries Local Law. In that case, the local law could be repealed, taking care to not compromise the ongoing management and compliance regime for extractive industries operating under existing Extractive Industries Licences.

The Proposal

The proposed modified Local Planning Policy (**Attachment 2**) would place a greater emphasis on the need to comply with approved plans, reports and detailed information provided to the Shire. If there is a deviation from the provided reports, then the shire has the power to seek rectification back to the agreed standards. It is a simpler process to follow and offers a greater number of tools for the shire to use, with the ultimate penalty of withdrawal of permission to operate or the lesser penalty of suspension of activities – pending rectification of an identified matter.

Advice Notes

Many of the current LPP7 and EILL conditions are in fact advice notes. That is that the Shire is imposing a condition of the applicant that is a requirement of another agency. For example, the shire has imposed a 'condition' through the existing policies to require the applicant to obtain a heavy vehicle movement permit from Main Roads WA. Any mining activity cannot proceed unless approach roads have a Main Roads WA permit to operate, which is not a shire responsibility to provide. In short this and other conditions rely upon the consent of other agencies. While some items are not conditions, it is not always the Shire's responsibility to remind professional mining or extraction companies of what approvals from other agencies they are required to obtain.

Road Maintenance

The key fundamental change to both the EILL and the existing LPP7 is the issue of road maintenance. Fundamentally both policies approach this requirement as the only method to cost recovery for the maintenance of specific roads, from time to time. Both policy and local law concentrates upon the collection of funds for maintenance, which may not be the best approach to revenue collection based on LK Advisory advice (point 7).

Changing the Shire approach to road "nexus – need" for maintenance is a proposal to shift to an annual fee and/or differential rates methods to recover these maintenance costs. This change and collection of monies may set aside, from these income streams, a portion of collected funds to specific reserved accounts. Or may choose to establish a shire wide "mining roads maintenance" reserve. In the longer term, this option will replace the need for voluntary agreements for road maintenance.

Until the Shire has these methods in place, the Shire will use the WALGA *Heavy Vehicle Cost Recovery Policy Guideline for Sealed Roads* model for the calculation of the Contribution and the setting of approval conditions.

This interim method, which doesn't align with the LKA advice, will be required until the Shire creates an alternate method of revenue collection.

This interim method does have support from some of the Shires mining operators, until another method is in place.

Rehabilitation of mine sites

This matter is one that the Shire may have overreached in its responsibilities. Rehabilitation is not a core responsibility of local government, except where it is the shires own mine site that is to be rehabilitated.

Current practice is to seek a bond from the applicant to 'hold over' the applicant as a financial bond to incentivise proper rehabilitation of the site. However, the financial sum requested, may not approach ~5% of any costs of rehabilitation of any mine within the shire. It also requires the agreement of the Shire, the miner and the landowner to release the funds back to the applicant. If in a worst-case scenario, the applicant (miner) is unable or is incapable of mine rehabilitation then the shire can release funds to "assist" in the rehabilitation of private land.

There is risk to the Shire in maintaining this practice that may see the shire involved in either a dispute as to whether appropriate rehabilitation has occurred, and to who's satisfaction it has been achieved. The Shire should reduce its risk in these matters and avoid becoming involved in mine site rehabilitation which is effectively a matter between the "landowner and the miner", in rehabilitating mined land on private property. The agreement of a private landowner to permit extraction of minerals on their property should remain the domain of each party (in relation to rehabilitation) and not a matter that the Shire should be directly involved.

The Shire does have a role and responsibility in the assessment of extraction (mine) closure processes and plans to ensure that a responsible mine closure plan can be achieved. With this approved document the Shire maintains it oversight and responsibility for safe and responsible practices, and considerations in the approval of new and existing extractive industries.

However, the ongoing practice of collecting bonds is recommended to cease, as the collected funds are inadequate for rehabilitation if the miner defaults and collected funds may not offer a large enough incentive/penalty for a company trying to avoid rehabilitation. If the shire were to substantially increase these bonds (to match the cost of rehabilitation), then many of the proponents in the Shire would be unlikely (financially) to pay the upfront costs of the bonds of the projects.

Differential Rates and Annual Fees – Extractive Industry.

The collection of an annual fee, either through a differential rate or by a statutory charge will be a separate matter to be brought to council as part of the budget setting process. Other Councils in Western Australia have undertaken this approach to fee collection, and it is recommended that the Shire of Toodyay use this approach. Until this happens the current fee structure will remain for road contributions and be calculated using the *WALGA Heavy Vehicle Cost Recovery Policy Guideline for Sealed Roads* model.

There are two broad categories of mining identified either through the *Mining Act*, or through the *Planning and Development Act* (Local Planning Schemes). The Mining Act relates to exploration permits, mining leases etc. and covers most of the Shire across multiple ownerships. Occasionally this results in the development of a mine, and most commonly those mines occur on Crown Land. Other mining activity (predominantly on Freehold land) are assessed through the Local Planning Scheme, but there are exceptions to this rule.

The Shire has an opportunity in the future to impose a differential rate to both UV and GRV mining activity as a replacement source of income from the fees and charges imposed through the current regulatory process. In addition, an annual licencing fee could be imposed on approvals for extractive industry. The combined (mix) of the collection of funds should equate to a cost neutral outcome when compared to the current processes and would

provide a transparent and consistent approach to all extractive industries. This approach to fee collection can substantially reduce the administrative and regulatory cost to the applicant and the Shire.

Consultative

There has been substantial consultation with some of the extractive industry operators in the formulation of this current single policy approach, and the creation of this new draft policy. Key to these discussions has been the understanding of operations in other shires where a single policy approach has been used and the efficiency benefits this brings to operators and Councils alike.

Outcomes

Throughout these discussions, a common ground has been found where the interests of the Shire and the operators have aligned in both the need to simplify processes and approval conditions. The fundamental shift in the Shires approach through this consultation is to rely on approved plans and reports. The applicant supplies a succession of reports for the Shire to grant approval, which sets out responsible practices and procedures. If, in the opinion of the Shire, a report or plan has not been followed or complied with – then this will constitute a breach. A breach would then trigger a discussion to rectify and seek remediation back to the agreed position. If compliance does not occur, then the Shire could resolve to suspend the approval or ultimately cancel the approval if the matters become irrevocable.

With the Assistance of industry operators, and LK Advisory the Shire has produced a new Local Planning Policy No.7 **Attachment 2** and a set of Model conditions that can be applied to applications that extensively seeks enough information for the responsible issue of an approval **Attachment 3**. In this regard and review, the new LPP7 and the Model conditions attached, represent a modern, transparent and efficient approach for Council and Administration to assess applications and renewals of extractive industry in the Shire of Toodyay.

Advertisement of the new LPP7

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 determine otherwise, advertise the proposed policy. Advertising of Local Planning Policies must be for a period of not less than twenty-one (21) days.

Prior to being presented to the Council at this meeting for consideration, the draft Local Planning Policy has undergone a substantial extractive industry collaborative exercise.

Upon completion of the required advertising, Council will be approached with all comments received to then reconsider the merits of this new policy and ultimately resolve to adopt or reject this new LPP7.

Strategic:

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

3.1. Preserve our land, water, and biological systems

5.1. Provide responsible planning and development.

7.1. Collaborate with government and industry to attract investment, grow, and diversify the local economy, create secure, quality jobs, and meet their corporate social responsibilities.

Policy related:**Local Planning Policy – Advertising of Planning Proposals.**

Local Planning Policies are required to be advertised for a period of 21 days. This will involve an advertisement in the Toodyay Herald, placement of a notice on the Shire's website and Facebook page with links to the draft policy, and physical copies of the policy being available for inspection at the Shire's Administration Office and the Visitor's Centre.

Extractive Industries Local Law

If successfully adopted by Council, then Council will be requested to consider the repeal of the Extractive Industries Local Law, which will be effectively superseded by this amended Local Planning Policy.

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:

Risk is minimised through the following of correct procedures and regulations regarding the management of Local Planning Policies.

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 Shires 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.

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

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

1. adopts the draft *Local Planning Policy – Mining and Resource Extraction Attachment 2* for the purpose of public advertising 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*.
2. commences advertisement for a period of no less than 21 days.
3. requests the CEO to return this item to Council with all attached comments and recommendation for final review and/or amendments as required at a later date.

9.1.4 Lot 1 Morangup Road, Morangup - Reconsideration of decision regarding renewal of extractive industry licence - Austral Bricks.

Date of Report:	13 March 2025
Applicant or Proponent:	Austral Bricks (WA) Pty Ltd / Land Insights
File Reference:	P2023-87 / A1331 / 1MORG/EXT1
Author:	P Nuttall – Executive Manager Planning and Regulatory Services
Responsible Officer:	P Nuttall – Executive Manager Planning and Regulatory Services
Previously Before Council:	26 June 2024 – Item 9.1.1
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	1. 26-June-2024-Ordinary-Council-Confirmed-Minutes item 9.11 ➔

PURPOSE OF THE REPORT

To reconsider a decision to refuse to grant an Extractive Industry Licence (EIL) to Austral Bricks (WA) to operate a Clay Extractive Industry at Lot 1 Morangup Road in Morangup at the Ordinary Council Meeting held on 26 June 2024 (**Attachment 1**).

To consider granting a **10-year** development approval for an Industry - Extractive land use to **Austral Bricks** at Lot 1 Morangup Road, Morangup with modified conditions in alignment with the new Draft Local Planning Policy 7 – Mining and resource extraction (2025) which is being considered at this Council meeting.

BACKGROUND

At the Ordinary Council Meeting held on 26 June 2024, Council voted not to support the Officer Recommendation which was to grant an extractive industry licence to Austral Bricks for Lot 1 Morangup Road in Morangup. For more information, please refer to the **Attachment 1**. As a result of that vote the applicant did not obtain their approval.

COMMENTS AND DETAILS

This decision impacts the Applicant as without an extractive industry licence, they are unable to operate their business at this location, which is a significant supplier of materials to their business.

Since the June 2024 OCM, Officers have been negotiating with the Applicants to modify the previously proposed conditions of approval and the modified conditions proposed by Council. It is now believed that the new approval conditions formulated with the assistance of LK Advisory in this report will be satisfactory for both parties.

This decision impacts the Applicant as without an extractive industry licence, they are unable to operate their business at this location, which is a significant supplier of materials to their business.

New processes for assessment at the Shire of Toodyay

Since the 26 June 2024 OCM, Officers have been negotiating with the Applicants to modify the previously proposed conditions of approval and the modified conditions proposed by Council. It is now believed that the new approval conditions formulated with the assistance of LK Advisory in this report will be satisfactory for both parties.

Directly related to this item, the Shire is being asked at this meeting to consider the new updated Local Planning Policy No.7 (LPP7) that combines both the existing Local Planning Policy 7 – and the Shire's Extractive Industry Local Law. It is on this basis that this approval is sought.

Removal of Conditions

From the conditions presented to Council at OCM 28 August 2024, it has been identified that some of those conditions repeated requirements that are the responsibility of other agencies, or were repeated conditions, such as the need to comply with conditions in the approved Management Plan. These have been removed. Direct conditions related to water management, payment of an annual fee, noise management have also been removed as they are duplications.

The conditions related to site rehabilitation have been removed as this is seen as a burden to council, and the bond insufficient to fund the rehabilitation of a mine site if the operator were to not fulfil their rehabilitation conditions. It also includes a consent form the landowner to determine whether the site is adequately rehabilitated. These conditions are effectively within the approved mine management plan, and ultimately the responsibility of DMIRS.

The insurance condition has also been removed as it is unclear as to what the indemnity is, and to who's benefit. Public indemnity insurance is generally seen as a responsibility of the operator and would cover the operational aspects of the mining operation. Perhaps proof of currency of public indemnity would be more appropriate.

Change to conditions

The key change to assessment for this application will be using the new draft LPP7 policy and the reliance upon agreed documents, rather than conditions that are contained within those agreed documents. In some regards conditions have been stated that are elements of the agreements. Rather than focus on a specific element of a condition (contained in a document) the Shire will condition compliance with the whole document.

There will also be a reliance upon agreed conditions such as agreed days for trucks to not use shire roads, and voluntary agreements to contribute towards local road maintenance.

Modification of Conditions

A key point of contention was the interpretation of operating hours on Saturdays. The concerns of Council revolved around the movement of heavy vehicles during weekends, which is when the Shire sees most visitors on our roads. While the Shire understands and supports selected Saturdays being used for mining extraction these selected days should avoid key shire event days nominated by Council.

To resolve the selection of which Saturdays, a mutual agreement must be made with the shire in advance and be approved by the CEO of the Shire. As the planning permission is for a period of 10 Years, an annual mutual agreement is required. While the date selection

will change from year to year, the operational requirements of Austral Bricks may also change over time.

What was previously proposed

2 (b) viii – Pit operating hours

(viii) Hours of operation are limited to:

1. 06:00 – 17:00 hours from Monday to Saturday between the months of October and May;
2. 06:00 – 17:00 hours from Monday to Friday between the months of June and September;
3. 06:00 – 17:00 hours from Monday to Saturday between the months of June to September with no more than 5 days annually subject to the maximum number of truck movements on those days being no greater than 40. Should any of the days fall on a Shire event day the number will be no greater than 30;
4. During the Saturday of the Shire's Agricultural Show the number of trucks on the day will be limited to 30 (although it is unlikely that carting will occur on this day).

New Proposal

Hours of operation are limited to:

1. 06:00 - 17:00 hours from Monday to Friday
2. 06:00 - 17:00 hours on Saturdays, subject to;
 - (i) Truck movements being limited to no more than 40 loaded journeys per day; and
 - (ii) No truck movements on no more than twelve (12) agreed days per year by mutual agreement with the Shire of Toodyay. This agreement is to be provided to the operator before the end of January (annually) to provide sufficient time for scheduling.

This application had been assessed under the current policy suite of:

Shire of Toodyay - Extractive Industry Local Law (1999)

The *Shire of Toodyay Extractive Industries Local Law* was endorsed by Council on 24 June 1999. It sets out the licencing requirements for an extractive industry, including the information which is required in an application for the determination of an application.

Local Planning Policy No.7 - Extractive Industries – Road Contributions (2009)

This local Planning Policy guides Administration in determining a fair contribution to the upkeep of local roads, that are impacted by the movement of heavy vehicles. The Charge is imposed upon companies based on the calculated impact to local roads that were not engineered for heavy vehicles. The basis for this contribution relates to the Shire being able to maintain and repair damage to local roads, that will endure additional wear and tear caused by mining operations.

Draft Local Planning Policy 7 - Mining & Resource Extraction (2025)

With the introduction of this updated and modified Local Planning Policy, a new suite of conditions will be used and old conditions retired. The Draft LPP7 incorporates many of the Extractive Industries Local Law conditions into a single assessment tool for all

extractive Industries. The new draft LPP also contains associated model conditions to guide assessors of such activities.

Upon final endorsement of the Draft LPP7, The Shire's local law will be revoked.

IMPLICATIONS TO CONSIDER

Consultative:

Nil.

Strategic:

Shire of Toodyay Local Planning Strategy 2017

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

Outcome 5. High quality town planning complements our rural ambience and heritage.

O5.1. Provide responsible planning and development.

Outcome 9. Responsible and effective leadership and governance.

O9.1. Provide strong, clear, and accountable leadership.

The proposal at Lot 1 Morangup Road in Morangup complies with the Local Planning Strategy 2017 by facilitating the extraction of basic raw materials with appropriate environmental management, maintaining suitable buffers to protect adjacent properties, and preserving the visual and environmental character of the area.

Policy related:

State Planning Policy 2.4 Basic Raw Materials

The proposal complies with State Planning Policy 2.4 by recognising the importance of basic raw materials and ensuring their efficient use before land encroachment. It includes measures to mitigate environmental impacts and maintain proper separation distances from sensitive areas. Additionally, the proposal addresses requirements for site rehabilitation and sequential land use, ensuring the site is returned to a safe condition for future use, aligning with the policy's objectives of protecting community health and environmental values.

LPP Advertising of Planning Proposals

Risk Management

Financial:

If Council reject the Officer's recommendation, and the proponent challenges the decision in the State Administrative Tribunal (SAT) the Shire would likely have to commit additional funds to undergo this process.

Legal and Statutory:

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

Risk related:

The following risks have been determined in accordance with the Shire of Toodyay Risk Management Policy:

Risk Type	Risk	Likelihood	Consequence	Score
Financial Impact	The Applicant has the right of appeal through the State Administrative Tribunal of Council's decision on this matter. This would potentially expose the Shire to increased legal costs.	Possible (3)	Moderate (3)	Moderate (9)
Efficiency	The ability to determine applications within the required timeframe. The ability to carefully consider planning applications.	Possible (3)	Moderate (3)	Moderate (9)
Reputational	Extractive Industries are highly scrutinised by elements of the community – particularly landowners in close proximity. There is an expectation that the Shire will manage and regulate these processes effectively. When this does not occur, it can lead to reputational damage.	Possible (3)	Moderate (3)	Moderate (9)

Workforce related:

Should Council choose to refuse this application, the Applicant has the right of appeal through the State Administrative Tribunal. Were this to happen, Officer time would be required to address the directions from the Tribunal.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

1. reconsiders a decision to refuse to grant an Extractive Industry Licence (EIL) to Austral Bricks (WA) to operate a Clay Extractive Industry at Lot 1 Morangup Road in Morangup at the Ordinary Council Meeting held on 26 June 2024 (**Attachment 1**).
2. pursuant to Clause 68(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; and in consideration of Clause 4.4.1 of the Shire of Toodyay's draft Local Planning Policy 7 (2025) approves the development for an Industry - Extractive land use at Lot 1 Morangup Road, Morangup, to **Austral Bricks Pty Ltd** for a **period of 10 years** subject to conditions based upon the objectives and requirements of the draft Local Planning Policy No.7 – Mining and Extraction (2025) as follows:
 - A. Management Plan

- (a) Development is to be in accordance with the approved Extractive Industries Licence Application “Management Plan - Lot 1 Morangup Road - Austral Bricks Pty Ltd – August 2023”, including any amendments placed thereon by Council and except as may be modified by the following conditions:

Which will be limited to;

- i. no more than 69.7ha of area; and
 - ii. no deeper than 15 metres from the natural ground level; and
 - iii. an extraction of no more than 160,000 tonnes of material per annum; and
 - iv. a setback of a minimum of 50m from the lot boundary
- (b) Operating hours are limited to;
- i. 06:00 – 17:00 hours from Monday to Friday;
 - ii. 06:00 – 17:00 Hours Saturday, subject to:
 - a. no more than 40 loaded truck movements per day; and
 - b. no truck movements on no more than twelve (12) agreed days per year by mutual agreement with the Shire of Toodyay. This agreement is to be provided to the operator before the end of January (annually) to provide sufficient time for scheduling.

B. Transport management

- (a) All loaded trucks to be covered.
- (b) Enter into an agreement with the Shire of Toodyay to establish the obligations of both parties in the establishment of a road contributions plan, which shall include a financial contribution and payment plan payable annually whilst cartage campaigns are operational.

C. Reporting

- (a) The Applicant/Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year for each financial year outlining:
 - i. Progress of excavation including photos;
 - ii. Progress of rehabilitation including photos;
 - iii. Tonnage of material carted from the site;
 - iv. Road maintenance contributions;
 - v. Community complaints and responses/actions;
 - vi. Self-audit on the conditions of the Extractive Industry Licence;
 - vii. Currency of public liability insurance.

D. Annual Licence Fee

The applicant is required to pay an annual licence fee to the Shire as determined by the shires, Schedule of fees and charges. These annual charges are listed as being related to the Extractive Industry Local Law but will apply in this case.

Advice notes

1. *The method used for the calculation of road contributions shall be the - WALGA Heavy Vehicle Cost recovery Policy Guideline for Sealed Roads, guidelines.*
2. *Dewatering shall be in accordance with “Water Quality Protection Note 13 – Dewatering of Soils”.*
3. *Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the Environmental Protection Act 1986 and Department of Environmental Regulation Guidelines.*

9.1.5 Lot 11 Chitty Road - Renewal of Extractive Industry Licence - Midland Brick

Date of Report:	13 March 2025
Applicant or Proponent:	Land Insights / Midland Brick
File Reference:	P2024-52/A4273/11CHI
Author:	P Nuttall – Executive Manager Planning and Regulatory Services
Responsible Officer:	P Nuttall – Executive Manager Planning and Regulatory Services
Previously Before Council:	27 March 2024 (OCM125/03/24) 24 July 2024 (OCM214/07/24) 28 August 2024 (OCM241/08/24)
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Quasi-Judicial
Attachments:	Nil

PURPOSE OF THE REPORT

To consider granting a **10-year** development approval for an Industry - Extractive land use for **Midland Brick** at Lot 11 (768) Chitty Road in Hoddys Well, with modified conditions in alignment with the new Draft Local Planning Policy 7 – Mining and resource extraction (2025) which is being considered at this Council meeting.

BACKGROUND

At an Ordinary Council Meeting held on 23 October 2024 Council resolved (CRN: OCM274/10/24) the following:

That Council

1. *Notes Midland Brick has previously supplied at the relevant information and the delay is solely due to Shire of Toodyay;*
2. *Council modifies condition 1 of the current Development Approval as follows “the term of planning approval is for 12 (twelve) months from 27 March 2024;*
3. *The Shire issues a short-term extractive industry license until 27 March 2025; and*
4. *The Shire of Toodyay waive the requirements specified in clause 4.3(1)(d) of the Local Law.*

COMMENTS AND DETAILS

The sourcing of an appropriately experienced consultant has been difficult and has resulted in a need to further delay the process.

It is important to note that Midland Brick could apply to SAT for a deemed refusal and ask the SAT to make the determination due to the length of time taken already to determine this application.

In discussion with Midland Brick Groups Basic Raw Material Manager, Midland Brick is committed to staying compliant for all their clay pits and continues to seek the extension applied for at Hoddy Well. Given the significance and importance of the clay resource to the state for bricks, and in particular during a building boom, it is extremely important that security for Midland brick is achieved.

The delay is solely caused by the Shire of Toodyay and is due to a lack of critical processes currently in place at the Shire for both new extractive industry applications and renewals. There is a need to improve the shire's management of extractive industries and Midland Brick is assisting significantly with this review. It should be noted that Midland Brick has previously supplied all the information necessary for the Council to make a decision. Midland Brick has been cooperative to work with and have been assisting the Shire and staff. It is clear that Midland Brick is serious about fostering a positive, partnership driven relationship with the Toodyay community.

This decision impacts the Applicant as without an extractive industry licence, they are unable to operate their business at this location, which is a significant supplier of materials to their business.

New processes for assessment at the Shire of Toodyay

Since the 28 August 2024 OCM, Officers have been negotiating with the Applicants to modify the previously proposed conditions of approval and the modified conditions proposed by Council. It is now believed that the new approval conditions formulated with the assistance of LK Advisory in this report will be satisfactory for both parties.

Directly related to this item, the Shire is being asked at this meeting to consider the new updated Local Planning Policy No.7 (LPP7) that combines both the existing Local Planning Policy 7 – and the Shire's Extractive Industry Local Law. It is on this basis that this approval is sought.

Removal of Conditions

From the conditions presented to Council at OCM 28 August 2024, it has been identified that some of those conditions repeated requirements that are the responsibility of other agencies, or were repeated conditions, such as the need to comply with conditions in the approved Management Plan. These have been removed. Direct conditions related to water management, payment of an annual fee, noise management have also been removed as they are duplications.

The conditions related to site rehabilitation have been removed as this is seen as a burden to council, and the bond insufficient to fund the rehabilitation of a mine site if the operator were to not fulfil their rehabilitation conditions. It also includes a consent form the landowner to determine whether the site is adequately rehabilitated. These conditions are effectively within the approved mine management plan, and ultimately the responsibility of DMIRS.

The insurance condition has also been removed as it is unclear as to what the indemnity is, and to who's benefit. Public indemnity insurance is generally seen as a responsibility of the operator and would cover the operational aspects of the mining operation. Perhaps proof of currency of public indemnity would be more appropriate.

Change to conditions

The key change to assessment for this application will be using the new draft LPP7 policy and the reliance upon agreed documents, rather than conditions that are contained within

those agreed documents. In some regards conditions have been stated that are elements of the agreements. Rather than focus on a specific element of a condition (contained in a document) the Shire will condition compliance with the whole document.

There will also be a reliance upon agreed conditions such as agreed days for trucks to not use shire roads, and voluntary agreements to contribute towards local road maintenance.

Modification of Conditions

A key point of contention was the interpretation of operating hours on Saturdays. The concerns of Council revolved around the movement of heavy vehicles during weekends, which is when the Shire sees most visitors on our roads. While the Shire understands and supports selected Saturdays being used for mining extraction these selected days should avoid key shire event days nominated by Council.

To resolve the selection of which Saturdays, a mutual agreement must be made with the shire in advance and be approved by the CEO of the Shire. As the planning permission is for a period of 10 Years, an annual mutual agreement is required. While the date selection will change from year to year, the operational requirements of Midland Brick may also change over time.

What was previously proposed

2 (b) viii – Pit operating hours

(viii) Hours of operation are limited to:

1. 06:00 – 17:00 hours from Monday to Saturday between the months of October and May;
2. 06:00 – 17:00 hours from Monday to Friday between the months of June and September;
3. 06:00 – 17:00 hours from Monday to Saturday between the months of June to September with no more than 5 days annually subject to the maximum number of truck movements on those days being no greater than 40. Should any of the days fall on a Shire event day the number will be no greater than 30;
4. During the Saturday of the Shire's Agricultural Show the number of trucks on the day will be limited to 30 (although it is unlikely that carting will occur on this day).

New Proposal

Hours of operation are limited to:

1. 06:00 - 17:00 hours from Monday to Friday
2. 06:00 - 17:00 hours on Saturdays, subject to;
 - (i) Truck movements being limited to no more than 40 loaded journeys per day; and
 - (ii) No truck movements on no more than twelve (12) agreed days per year by mutual agreement with the Shire of Toodyay. This agreement is to be provided to the operator before the end of January (annually) to provide sufficient time for scheduling.

This application had been assessed under the current policy suite of:

Shire of Toodyay - Extractive Industry Local Law (1999)

The *Shire of Toodyay Extractive Industries Local Law* was endorsed by Council on 24 June 1999. It sets out the licencing requirements for an extractive industry, including the information which is required in an application for the determination of an application.

Local Planning Policy No.7 - Extractive Industries – Road Contributions (2009)

This local Planning Policy guides Administration in determining a fair contribution to the upkeep of local roads, that are impacted by the movement of heavy vehicles. The Charge is imposed upon companies based on the calculated impact to local roads that were not engineered for heavy vehicles. The basis for this contribution relates to the Shire being able to maintain and repair damage to local roads, that will endure additional wear and tear caused by mining operations.

Draft Local Planning Policy 7 - Mining & Resource Extraction (2025)

With the introduction of this updated and modified Local Planning Policy, a new suite of conditions will be used and old conditions retired. The Draft LPP7 incorporates many of the Extractive Industries Local Law conditions into a single assessment tool for all extractive Industries. The new draft LPP also contains associated model conditions to guide assessors of such activities.

Upon final endorsement of the Draft LPP7, The Shire's local law will be revoked.

IMPLICATIONS TO CONSIDER

Consultative:

Nil.

Strategic:

Shire of Toodyay Local Planning Strategy 2017

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

Outcome 5. High quality town planning complements our rural ambience and heritage.

O5.1. Provide responsible planning and development.

Outcome 9. Responsible and effective leadership and governance.

O9.1. Provide strong, clear, and accountable leadership.

The proposal at Lot 11 Chitty Road, Hoddys Well complies with the Local Planning Strategy 2017 by facilitating the extraction of basic raw materials with appropriate environmental management, maintaining suitable buffers to protect adjacent properties, and preserving the visual and environmental character of the area.

The land's zoning for Special Use supports the continuation of rural activities, aligning with strategic planning and resource management goals to minimise adverse impacts.

Policy related:

State Planning Policy 2.4 Basic Raw Materials

The proposal complies with State Planning Policy 2.4 by recognising the importance of basic raw materials and ensuring their efficient use before land encroachment. It includes measures to mitigate environmental impacts and maintain proper separation distances from sensitive areas. Additionally, the proposal addresses requirements for site rehabilitation and

sequential land use, ensuring the site is returned to a safe condition for future use, aligning with the policy's objectives of protecting community health and environmental values.

LPP Advertising of Planning Proposals

Risk Management

State Planning Policy 2.4 Basic Raw Materials

The proposal complies with State Planning Policy 2.4 by recognising the importance of basic raw materials and ensuring their efficient use before land encroachment. It includes measures to mitigate environmental impacts and maintain proper separation distances from sensitive areas. Additionally, the proposal addresses requirements for site rehabilitation and sequential land use, ensuring the site is returned to a safe condition for future use, aligning with the policy's objectives of protecting community health and environmental values.

LPP Advertising of Planning Proposals

Risk Management

Financial:

If Council reject the Officer’s recommendation, and the proponent challenges the decision in the State Administrative Tribunal (SAT) the Shire would likely have to commit additional funds to undergo this process.

Legal and Statutory:

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

Risk related:

The following risks have been determined in accordance with the Shire of Toodyay Risk Management Policy:

Risk Type	Risk	Likelihood	Consequence	Score
Financial Impact	The Applicant has the right of appeal through the State Administrative Tribunal of Council’s decision on this matter. This would potentially expose the Shire to increased legal costs.	Possible (3)	Moderate (3)	Moderate (9)
Efficiency	The ability to determine applications within the required timeframe. The ability to carefully consider planning applications.	Possible (3)	Moderate (3)	Moderate (9)

Risk Type	Risk	Likelihood	Consequence	Score
Reputational	Extractive Industries are highly scrutinised by elements of the community – particularly landowners in proximity. There is an expectation that the Shire will manage and regulate these processes effectively. When this does not occur, it can lead to reputational damage.	Possible (3)	Moderate (3)	Moderate (9)

Workforce related:

Should Council choose to refuse this application, the Applicant has the right of appeal through the State Administrative Tribunal. Were this to happen, Officer time would be required to address the directions from the Tribunal.

VOTING REQUIREMENTS

Simple Majority

OFFICER’S RECOMMENDATION 1

That Council:

1. notes the submissions received relating to the Extractive Industry application for Midland Brick at Lot 11 (768) Chitty Road in Hoddys Well.
2. pursuant to Clause 68(2)(b) of the Planning and Development (Local Planning Schemes) Regulations 2015 and in consideration of Clause 4.4.1 of the Shire of Toodyay’s draft Local Planning Policy 7 (2025) approves the development for an Industry - Extractive land use at Lot 11 Chitty Road, Hoddys Well, to Midland Brick for **a period of 10 years** subject to conditions based upon the objectives and requirements of the draft Local Planning Policy No.7 – Mining and Extraction (2025) as follows:
 - A. Management Plan
 - (a) Development is to be in accordance with the approved Extractive Industries Licence Application – “Hoddys Well – Bardya” Clay Quarry Clay Extraction Management Plan Lot 11 (768) Chitty Road, Hoddys Well Prepared for Midland Brick Pty Ltd May 2024”, including Appendices A-J and any amendments placed thereon by Council and except as may be modified by the following conditions:
 - (i) Which will be limited to:
 - i. no more than 49ha in area which includes an actual extraction area of 15.2 hectares existing and 17.9 hectares new area as referenced in Appendix B – Plans; and
 - ii. no deeper than 30 metres from the natural ground level; and
 - iii. an extraction of no more than 200,000 tonnes of material per annum; and

iv. a setback of a minimum of 50m from the lot boundary.

(b) Operating hours are limited to:

(i) 06:00 – 17:00 hours from Monday to Friday.

(ii) 06:00 – 17:00 Hours Saturday, subject to:

(a) no more than 40 loaded truck movements per day; and

(b) no truck movements on no more than twelve (12) agreed days per year by mutual agreement with the Shire of Toodyay. This agreement is to be provided to the operator before the end of January (annually) to provide sufficient time for scheduling.

B. Transport management

(a) All loaded trucks to be covered.

(b) Enter into an agreement with the Shire of Toodyay to establish the obligations of both parties in the establishment of a road contributions plan, which shall include a financial contribution and payment plan payable annually whilst cartage campaigns are operational.

C. Reporting

(a) The Applicant/Operator is to provide a written report to the Shire of Toodyay no later than 31 July each year for each financial year outlining:

(i) Progress of excavation including photos;

(ii) Progress of rehabilitation including photos;

(iii) Tonnage of material carted from the site;

(iv) Road maintenance contributions;

(v) Community complaints and responses/actions;

(vi) Self-audit on the conditions of the Extractive Industry Licence;

(vii) Currency of public liability insurance.

D. Annual Licence Fee

The applicant is required to pay an annual licence fee to the Shire as determined by the shires, Schedule of fees and charges. These annual charges are listed as being related to the Extractive Industry Local Law but will apply in this case.

Advice notes

1. *The method used for the calculation of road contributions shall be the - WALGA Heavy Vehicle Cost recovery Policy Guideline for Sealed Roads, guidelines.*
2. *Dewatering shall be in accordance with "Water Quality Protection Note 13 – Dewatering of Soils".*
3. *Measures are to be taken to minimise the amount of dust pollution associated with the extraction site and are to comply with the Environmental Protection Act 1986 and Department of Environmental Regulation Guidelines.*

9.2 FINANCE AND CORPORATE SERVICES**9.2.1 List of Payments - February 2025**

Date of Report:	11 February 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN32
Author:	F Mayhew – Finance Officer Accounts Payable
Responsible Officer:	A Hart – Executive Manager Finance and Corporate Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Legislative
Attachments:	1. List of Payments. ↗

PURPOSE OF THE REPORT

To present to Council the list of payments for the months of February 2025.

BACKGROUND

This information is provided to Council on a monthly basis in accordance with provisions of the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996*. A local government is to develop procedures for the authorisation of any payment of accounts to ensure that there is effective security for which money or other benefits may be obtained.

COMMENTS AND DETAILS

The schedule of payments has been compiled for the months of February 2025 and they are both attached.

These payments have already occurred, and Council are not making a decision as to whether payments are to be made.

IMPLICATIONS TO CONSIDER**Consultative:**

Nil

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

Outcome 9. Responsible and effective leadership and governance.

O9.1: Govern Shire finances, assets, and operations responsibly.

Policy related:

Purchasing Policy
 Delegation CS1

Financial:

Expenditure is in accordance with s6.8(1) (a) of the *Local Government Act 1995*.

Legal and Statutory:

Local Government Act 1995

s.5.42 allows the local government to delegate its powers to the Chief Executive Officer.

s.6.8(1)(a) states a local government must not incur expenditure for an additional purpose except where it is incurred before the adoption of the annual budget.

Local Government (Financial Management) Regulations 1996

r.13 states that if the local government has delegated to the CEO the exercise of its power to make payments from the municipal fund or the trust fund, a list of accounts paid by the CEO is to be prepared for each month and presented to Council.

Risk related:

There is a legislative requirement to present the list of payments to Council. Failure to do so would pose a minor compliance risk. This report and its attachments help to mitigate this risk.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER’S RECOMMENDATION

That Council receives the list of accounts as presented and listed below, for the month of February 2025:

Municipal Cheques	\$ 32,917.25
Electronic Funds Transfer Payments	\$ 965,247.83
Payroll	\$ 316,898.51
Purchasing Cards	\$ 970.69
Total	\$1,316,034.28

9.2.2 Monthly Financial Statements - January and February 2025

Date of Report:	11 February 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN30
Author:	F Mayhew – Finance Officer Accounts Payable
Responsible Officer:	A Hart – Executive Manager Finance and Corporate Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil.
Council's Role in the matter:	Legislative
Attachments:	<ol style="list-style-type: none"> 1. Monthly Financial Statements - January 2025; and ↗ 2. Monthly Financial Statements February 2025. ↗

PURPOSE OF THE REPORT

To present to Council the Monthly Financial Reports for the months ended 31 January 2025 and 28 February 2025.

BACKGROUND

Regulation 34(1) of the *Local Government (Financial Management) Regulations 1996* requires a local government to prepare each month a statement of financial activity including the sources and applications of funds, comparing actuals against annual budget and year-to-date budget.

A statement of financial activity and any accompanying documents are to be presented at an ordinary meeting of the Council within two months after the end of the month to which the statement relates.

COMMENTS AND DETAILS

Local governments are required to present to Council the Statement of Financial Activity to comply with Australian Accounting Standards (AAS) and the amended *Local Government (Financial Management) Regulations 1996*.

The Statement of Financial Activity, contained within the monthly financial statements, summarises the Shire's operating and capital activities and provides an indication of the Shire's financial performance as the year progresses. Officers have also provided additional supplementary information.

IMPLICATIONS TO CONSIDER**Consultative:**

Nil

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

Outcome 9. Responsible and effective leadership and governance.

9.2 Govern Shire finances, assets and operations responsibly.

Policy related:

Financial Governance

Financial:

Financial implications are reported in accordance with the approved material variances reporting threshold as adopted by Council; (+) or (-) \$10,000 or 10%, whichever is the greater.

Workforce related:

Nil.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 1

That Council receives the Monthly Financial Statements and Supplementary Information as attached for the month ending 31 January 2025 (**Attachment 1**).

OFFICER'S RECOMMENDATION 2

That Council receives the Monthly Financial Statements and Supplementary Information as attached for the month ending 28 February 2025 (**Attachment 2**).

9.2.3 Mid-Year Budget Review 2024/2025

Date of Report:	13 March 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIN28
Author:	A Hart – Executive Manager Finance and Corporate Services
Responsible Officer:	A Hart – Executive Manager Finance and Corporate Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 2024/25 Budget Review Report; and ⇒ Statement of Financial Activity-Budget Review 2024/25 year ⇒

PURPOSE OF THE REPORT

To consider the Mid-Year Budget Review 2024/2025 and adopt budget amendments as presented in the attached report pursuant to r.33A(3) of the *Local Government (Financial Management) Regulations 1996*.

BACKGROUND

Local Governments are required to conduct a budget review between 1st January and 28th February each financial year. The budget review is to be submitted to Council within 30 days of the review for Council to consider and determine whether or not to adopt the review and any recommendations made within the review.

The budget review is a comparison of the year-to-date actual results with the adopted or amended budget. The original budget was adopted in August 2024. The purpose of the budget review in accordance with the legislation is to;

1. Consider the financial performance of the Council for the 2024/25 financial year to-date;
2. Consider the Council's financial position at the date of review; and
3. Review the estimated financial position at the end of the financial year.

COMMENTS AND DETAILS

There is no statutory format to present the budget review to Council, the report together with the Statement of Financial Activity will be used as the basis of the Budget Review, with another column added detailing the amended budget forms the budget review. The use of

the standard monthly report is to ensure consistency in reporting to Council in a format that is familiar to the Council.

A comprehensive assessment of the 2024/25 Budget would normally be undertaken and amendments detailed in the budget review document that are considered necessary to ensure Council is able to achieve its corporate objectives and maintain a sound financial position as at 30 June 2025, however, due to the 2023/24 Audit report not being issued by the Office of Auditor General (OAG) at the time of writing this report, a comprehensive review is not possible as the final outcome for the 2023/24 is not confirmed. Once the OAG have issued the Audit Report and the final position is confirmed, a more comprehensive review of the 2024/25 Budget can be undertaken.

This Statutory mid-year review will focus on the known budget adjustments required in relation to Plant and Equipment replacement for the 2024/25 financial year.

IMPLICATIONS TO CONSIDER

Consultative:

The Executive were involved in this Statutory Review.

Strategic:

The way the Shire leads and operates:

○ 2: Consistently improve our governance practices.

○ 3: Ensure rigorous organisational systems.

Policy related:

F6 Significant Accounting Policy

F16 Financial Governance Policy

Financial:

The financial impact of the mid-year budget review is detailed within the tabled reports.

Legal and Statutory:

Local Government Act 1995

Section 6.2 Local government to prepare annual budget

Section 6.10 Financial management regulations

Local Government (Financial Management) Regulations 1996

Part 2. Reg 5(g) CEO's duties as to financial management

Part 3. Reg 33A Review of budget

Regulation 33A of the *Local Government (Financial Management) Regulations 1996* requires a Local Government to conduct a mandatory review no earlier than the 31 December each year and must be submitted to Council on or before the 31 March each year and a copy to be forwarded to the Department within 15 days of the determination by Council.

Risk related:

It is a legislative requirement to undertake a review of the budget and to lodge it with the Department of Local Government, Sport and Cultural Industries. Failure to monitor and

financially manage budgeted projects exposes the Shire to significant financial risk. This report helps to mitigate this risk.

It is critical that any projects required to be carried forward are identified and quarantined in order that expenditure is catered for in development of the 2024/25 annual budget. Additionally, grant income received to date for these projects must be recognised as a contract liability at year end and included in the upcoming budget. These funds must not be recognised as revenue for the current year.

The review does not seek to make amendments below the materiality threshold unless strictly necessary. The materiality threshold is set at \$5,000 as adopted by Council. Should a number of accounts exceed their budget within these thresholds, it poses a risk that the forecasted year end position may be understated.

Workforce related:

The budget review process has been managed within current resources.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council:

1. adopts the mid-year budget review for the 2024/25 Financial Year (**Attachment 1**) and supporting information (Attachment 2); and
2. undertakes a more comprehensive Budget Review following the Office of Auditor General issuing the 2023/24 Year Final Audit Report and Annual Financial Statements.

9.3 ECONOMIC DEVELOPMENT AND COMMUNITY SERVICES

Nil.

9.4 EXECUTIVE SERVICES

9.4.1 October 2025 Local Government Ordinary Election

Date of Report:	17 February 2025
Applicant or Proponent:	Western Australian Electoral Commission lgelections@waec.wa.gov.au
File Reference:	ELT1
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Bowman JP – Chief Executive Officer
Previously Before Council:	25/06/2019 (CRN: 139/06/19)
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Cost Estimates Letter; and ↗ 2. Elections Process; ↗ 3. Written agreement from Western Australian Electoral Commission. ↗

PURPOSE OF THE REPORT

To receive correspondence from the Electoral Commission and consider a request from the Western Australian Electoral Commission.

BACKGROUND

Mr Robert Kennedy, Electoral Commissioner, from the Western Australian Electoral Commission advised our office on 9 January 2025 that he would be responsible for the conduct of the local government ordinary election for the Shire of Toodyay.

In order to finalise the written agreement, the Shire is required under the *Local Government Act 1995* to submit motions to Council to permit the WAEC to conduct a postal election for the Shire of Toodyay.

COMMENTS AND DETAILS

On 13 December 2024, correspondence was received electronically from the Local Government Elections Team. They provided a Cost Estimate to Council (**Attachment 1**) and a flow chart on the process going forward (**Attachment 2**).

The Commissioner's written agreement to conduct the 2025 Local Government Ordinary Election is presented with this report (**Attachment 3**).

It is recommended that Council resolve in favour of the motions provided with this report.

IMPLICATIONS TO CONSIDER

Consultative:

Agenda Briefing 20 February 2025.

Strategic:

Shire of Toodyay Plan for the future - Council Plan 2023-2033

Outcome 9: Responsible and effective leadership and governance.

9.1. Provide strong, clear, and accountable leadership.

Policy related:

Nil.

Financial:

The cost of the Electoral Commissioner conducting a Postal Election for the Shire of Toodyay will be \$33,602.80 including GST.

Council may also incur some additional expenses of around \$3,300 bringing the total election costs including GST to approximately \$36,902.80.

Legal and Statutory:

With respect to Ordinary Elections, Section 4.4 from the *Local Government Act 1995* states as follows:

4.4. Ordinary elections

- (1) When the term of office of an elector mayor or president or a councillor is going to end under the Table to section 2.28 an election to fill the office is to be held.
- (2) An election under this section is called an *ordinary election*.
- (3) This section does not apply to the office of mayor or president if, under section 2.11, the next mayor or president is to be elected by the council.

4.20. CEO to be returning officer unless other arrangements made

- (1) Subject to this section the CEO is the returning officer of a local government for each election.
- (2) A local government may, having first obtained the written agreement of the person concerned and the written approval of the Electoral Commissioner, appoint* a person other than the CEO to be the returning officer of the local government for —
 - (a) an election; or
 - (b) all elections held while the appointment of the person subsists.

4.61. Choice of methods of conducting election

- (1) The election can be conducted as a —

postal election which is an election at which the method of casting votes is by posting or delivering them to an electoral officer on or before election day; or

voting in person election which is an election at which the principal method of casting votes is by voting in person on election day but at which votes can also be cast in person before election day, or posted or delivered, in accordance with regulations.

- (2) The local government may decide* to conduct the election as a postal election.

* Absolute majority required.

Risk related:

There is a low (4) risk if Council were to not appoint the Electoral Commission to conduct the ordinary local government election in 2025. This report mitigates that risk.

Workforce related:

Nil.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council:

1. declares, in accordance with section 4.20(4) of the *Local Government Act 1995*, the Electoral Commissioner to be responsible for the conduct of the 2025 ordinary election, together with any other elections or polls which may be required;
2. decides, in accordance with section 4.61(2) of the *Local Government Act 1995* that the method of conducting the election will be as a Postal Election; and
3. authorises the CEO to advise the WA Electoral Commission of Council's decision.

9.5 INFRASTRUCTURE, ASSETS AND SERVICES

9.5.1 Bush Fire Mitigation Tender

Date of Report:	4 March 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	FIR1
Author:	R Koch – Community Emergency Services Manager
Responsible Officer:	V Crispe – Executive Manager Infrastructure, Assets and Services
Previously Before Council:	Nil
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. 2025 Shire of Toodyay Mitigation Program Treatments ⇨ 2. Evaluation Report - Bush Fire Mitigation Works Program Tender (TEN96-02/2025). (confidential) Section 5.23(2) <ul style="list-style-type: none"> (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting (e)(iii) a matter that if disclosed, would reveal information about the business, professional, commercial or financial affairs of a person where the trade secret or information is held by, or is about, a person other than the local government (e)(i) a matter that if disclosed, would reveal a trade secret where the trade secret or information is held by, or is about, a person other than the local government (e)(ii) a matter that if disclosed, would reveal information that has a commercial value to a person where the trade secret or information is held by, or is about, a person other than the local government. (under separate cover)

PURPOSE OF THE REPORT

To consider awarding the tender for the Shire’s Bush Fire Mitigation Works Program encompassing:

- Mitigation Activity Fund (MAF) treatments for Shire managed Crown Land.
- Disaster Ready Fund (DRF) treatment for Shire owned land.
- Road verge spray program.

BACKGROUND

The Shire of Toodyay is an extreme bushfire risk area, as highlighted in the Shire's Bush Fire Risk Management Plan (BRMP), and associated Bush Fire Risk Management Software (BRMS) assessments.

To assist in managing these risks, the Shire seeks both external funding and allocation direct funding. Specifically, this tender relates to:

- MAF2024/25 Round 2 – \$176,325 allocation.
- DRF 3 Year 2024/25 – 2026/27 – \$152,960 (2025 allocated treatments)
- Shire Road Verge - \$50,000 (municipally funds)

The work in this tender relates to treatments in the 2025 calendar year.

A calendar year-based mitigation program is more suited to the seasonal conditions which are critical to best practice mitigation (autumn, winter, spring) with summer procurement processes (as per this tender).

The Shire recently publicly advertised tender TEN96-02/2024 for the execution of bush fire mitigation program works around the Shire. These works encompass firebreak and access track construction/upgrades, and vegetation management via several methods including mechanical, chemical, and hazard reduction burning. It includes the Shire's annual road verge spray program.

COMMENTS AND DETAILS

The tender was advertised with each of the 50 treatments assigned to one of five categories of work:

1. Fuel Reduction - Prescribed Burning
May include mechanical elements in creating and maintaining control lines.
2. Fuel Reduction - Mechanical Works
May also involve elements of chemical treatment(s).
3. Fuel Reduction - Chemical Works (Reserve)
May also involve elements of mechanical treatment techniques (i.e., slashing).
4. Fuel Reduction - Chemical Works (Verge)
Chemical herbicide and residual application to selected Shire road verges.
5. Fire Access Track Works
Includes associated manual or mechanical vegetation management.

Tenders were invited for treatments in one or more of the above categories.

Details of the program of works and category allocation is included as **Attachment 1** - Bush Fire Mitigation Program of Works (Treatments).

One tender response was received:

1. Fire Mitigation Services (Northam, WA) – tendered in all categories (49 out of 50 treatments).

The Shire has typically received 3-4 tenders to previous bush fire mitigation tenders, noting that some treatment categories may have only received one or two respondents. A reduction in the number of tenderers was not unexpected owing to:

1. The program having a higher than usual focus on Planned Burning and Fuel Reduction - Chemical Works categories. These categories have traditionally only received one or two respondents.
2. The reduced focus on Fuel Reduction - Mechanical Works (namely slashing treatments). This category usually solicited the highest number of respondents.
3. The overall tight and competitive nature of the greater fire mitigation market observed over recent years.

The reduced volume of treatments in the Fuel Reduction - Mechanical Works category is not a change of strategy/approach by the Shire. These works are expected to be approved as part future, additional, MAF funding allocations (rounds), and as such could not be included in this tender.

Evaluation Summary:

A tender evaluation process was conducted by the following Officers:

- Community Emergency Services Manager;
- Executive Manager Infrastructure, Assets and Services; and
- Reserves Management Officer.

The tender evaluation process rated the tenders on the following factors and weightings:

Item	Evaluation Criteria	Weight (%)	Scoring Methodology
1	Company Experience & Capability	40	A score out of 40 will be assigned to each Tenderer based on the evidence provided by the Tenderer of their firm's previous experience on similar projects and capability.
2	Nominated Project Team	10	A score out of 10 will be assigned to each Tenderer based on the evidence provided by the Tenderer of the experience and capabilities of their nominated project team members.
3	Program	20	A score out of 20 will be assigned to each Tenderer based on the evidence provided by the Tenderer in the form or a proposed construction program to undertake the Works.
4	Tendered price	30	A score out of 30 will be assigned to each Tenderer based on the best value for money offer by the Tenderer.
	TOTAL	100%	

IMPLICATIONS TO CONSIDER

Consultative:

Department of Fire and Emergency Services Regional Superintendent (MAF application approval).

Department of Fire and Emergency Services Goldfields-Midlands Bush Fire Risk Management Officer (MAF application approval).

Department of Fire and Emergency Services Bush Fire Risk Mitigation Branch (assessment of MAF application and awarding of grant).

Executive Manager Infrastructure, Assets and Services (inclusion of verge spray program into tender).

Strategic:

This program of works addresses actions in the Shire of Toodyay *Bush Fire Risk Management Plan*. The program also uses a range of methods best suited to various vegetation and terrain types as per the council endorsed *Bush Fire Preparedness and Strategies Report*.

Policy related:

Purchasing Policy (FIN3).

Financial:

MAF funded treatment are fully covered by the grant allocation.

DRF funded treatments are 50% funded by the grant allocation and 50% funded by municipal funds.

The verge spray program is fully municipal funded.

As this procurement relates to the 2025 calendar year expenditure, the Officer's recommendation effects both 2024/25 and 2025/26 financial years. As a result, this recommendation requires an absolute majority. Further information is provided in the confidential attachment.

Legal and Statutory:

All works will be carried out under *Bush Fires Act 1954* Section 33 Notice to the Shire of Toodyay which provides clearing of vegetation exemption under Schedule 6, Clause 1 of the *Environmental Protection Act 1986*. The *Bush Fires Act 1954* Section 36 also applies to these works which provides clearing of vegetation exemption under Schedule 6, Clause 1 of the *Environmental Protection Act 1986*.

Checks in relation to Declared Rare Flora and Fauna (DRF) are to be carried out prior to commencement of works and appropriate permits sought from the Department of Water and Environmental Regulation where the treatments cannot be modified to avoid the taking of the identified DRF.

Should there be any location where ground disturbance may require an approval under the Aboriginal Heritage Act legislation, consultation will be carried with the relevant Aboriginal representative group prior to consultation with the Department of Planning, Land and Heritage.

Risk related:

The program of mitigation works related to this tender and report is designed to minimise the severity and impacts of bush fire.

There is a risk that not awarding this Bushfire Mitigation Works Tender would severely affect the Shire's obligation to mitigate land which it manages, leading to increased bush fire impact severity and impact on property and life.

Consequence: Catastrophic (5)

Likelihood: Possible (3)

Calculated Risk: High (15)

There is a risk that not awarding this Bushfire Mitigation Works Tender would severely affect the Shire's obligation to mitigate land which it manages leading to a negative public perception (reputation) of the Shire.

Consequence: Moderate (3)

Likelihood: Almost Certain (5)

Calculated Risk: High (15)

Workforce related:

All works in this project are contracted, which minimise time overheads on Shire staff. However, a significant in-kind resourcing effort from existing staff (in this case Community Emergency Services Manager, Reserves Management Officer and Emergency Management Officer) are required to ensure effective site liaison and other tasks related to administration of external funding stream requirements.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council awards tender TEN96-02/2024 to the following contractors, for the treatment categories and contract values below:

1. Fuel Reduction - Prescribed Burning: Fire Mitigation Services Pty Ltd to the value of \$132,508 excluding GST.
2. Fuel Reduction - Mechanical Works: Fire Mitigation Services Pty Ltd to the value of \$41,027 excluding GST.
3. Fuel Reduction – Chemical (Reserve) Works: Fire Mitigation Services Pty Ltd to the value of \$61,500 excluding GST.
4. Fuel Reduction – Chemical (Verge) Works: Fire Mitigation Services Pty Ltd to the value of \$47,742 excluding GST.
5. Fire Access Tracks Works: Fire Mitigation Services Pty Ltd to the value of \$57,840 excluding GST.

9.6 COMMITTEE REPORTS

9.6.1 Compliance Audit Return 2024

Date of Report:	12 March 2025
Applicant or Proponent:	Department of Local Government, Sport and Cultural Industries
File Reference:	MAN3
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Hart – Executive Manager Finance and Corporate Services
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	1. Compliance Audit Return 2024 ⇒

PURPOSE OF THE REPORT

To consider the attached annual Compliance Audit Return for 2024.

BACKGROUND

Local governments are required by legislation to complete an annual Compliance Audit Return by 31 March each year. The Western Australian Local Government Association (WALGA) has prepared a Compliance Calendar template for use by local governments to assist with annual compliance requirements in accordance with legislation.

The Compliance Audit Return is a checklist of the Shire of Toodyay's (the Shire) statutory compliance with the *Local Government Act 1995* and its Regulations, which focuses on high-risk areas of statutory reporting as prescribed in Regulation 14 of the *Local Government (Audit) Regulations 1996*.

Once completed, the Compliance Audit Return is required to be:

- a) presented at a meeting of the Audit and Risk Committee;
- b) presented for consideration and adoption by Council; and
- c) returned to the Department of Local Government, Sport, and Cultural Industries (DLGSC) with a copy of the relevant Council minutes by 31 March each year.

COMMENTS AND DETAILS

The Compliance Audit Return 2024 was completed and provided to the Audit and Risk Committee (the Committee) to receive and review (**Attachment 1**).

Where responses have stated No, comments have been made within the Compliance Audit Return. Further comments are below:

No.	Section	Further Comment															
13	Delegation of Power / Duty	<p>Operational Management Procedures are currently being drafted in regard to the waiving of hire hall fees and also about how getting items onto a delegation record is to occur.</p> <p>It is anticipated that once the delegation register is reviewed again this financial year, that there will be more stringent controls put into place regarding record management in line with the regulations.</p>															
1	Disposal of Property	<p>Operational Management Procedures are currently being drafted regarding how the Shire will comply with <i>Local Government Act 1995</i>.</p>															
3	Finance	<p>In regard to the 2023/2024 balanced accounts and annual financial report, the Shire of Toodyay submitted an extension to the department on 30 Sept 2024 citing that the reasons were ongoing staffing issues and the absence of key finance staff during the critical reporting period of June to September creating unavoidable delays in completing the necessary work to finalise the annual financial report.</p> <p>The request also cited that the “accounts have not been reconciled for 30 June 2024. Despite our best efforts, the reduced capacity within the finance team over an extended period has added to the challenge. We are working diligently to address the gaps and finalise the outstanding financials as soon as possible.”</p> <p>Details of the last three years extensions are below:</p> <table border="1" data-bbox="488 1182 1444 1599"> <thead> <tr> <th data-bbox="488 1182 810 1272">Annual Report Year</th> <th data-bbox="810 1182 1134 1272">2020/2021</th> <th data-bbox="1134 1182 1444 1272">2021/2022</th> </tr> </thead> <tbody> <tr> <td data-bbox="488 1272 810 1361">Date Submitted to Auditor</td> <td data-bbox="810 1272 1134 1361">8 June 2022</td> <td data-bbox="1134 1272 1444 1361">31 March 2023</td> </tr> <tr> <td data-bbox="488 1361 810 1451">Date of Audit Certificate</td> <td data-bbox="810 1361 1134 1451">2 June 2023</td> <td data-bbox="1134 1361 1444 1451">27 October 2023</td> </tr> <tr> <td data-bbox="488 1451 810 1541">Year extension requested</td> <td data-bbox="810 1451 1134 1541">2020/2021</td> <td data-bbox="1134 1451 1444 1541">2021/2022</td> </tr> <tr> <td data-bbox="488 1541 810 1599">Date of extension</td> <td data-bbox="810 1541 1134 1599">31 Oct 2021</td> <td data-bbox="1134 1541 1444 1599">31 March 2023</td> </tr> </tbody> </table>	Annual Report Year	2020/2021	2021/2022	Date Submitted to Auditor	8 June 2022	31 March 2023	Date of Audit Certificate	2 June 2023	27 October 2023	Year extension requested	2020/2021	2021/2022	Date of extension	31 Oct 2021	31 March 2023
Annual Report Year	2020/2021	2021/2022															
Date Submitted to Auditor	8 June 2022	31 March 2023															
Date of Audit Certificate	2 June 2023	27 October 2023															
Year extension requested	2020/2021	2021/2022															
Date of extension	31 Oct 2021	31 March 2023															
4	Finance	<p>Officers from DLGSC and the Shire frequently met via Teams on a monthly basis. In October 2024 based on a conversation with departmental representatives it was agreed that the regular Teams meetings would cease and, moving forward, the Shire would update the FMR Improvement Plan monthly and send to those representatives for their information.</p> <p>A verbal update was provided to the Department in December 2024 following the ARC meeting and indicated that the report would be forwarded once the minutes from the December OCM were completed. This has not occurred.</p>															

No.	Section	Further Comment
5	Finance	No further information able to be provided
6	Finance	No further information able to be provided
7	Finance	No further information able to be provided
8	Optional Questions	No further information able to be provided
1	Tenders for providing Goods and Services	Operational management procedures are being drafted. Particularly contractor engagement forms. The internal procedures will include all information about EOI's and RFQ's and where Officers have used WALGA preferred suppliers so that these suppliers can be captured within new contractor engagement forms and also proper contracts for the provision of services.
2	Tenders for providing Goods and Services	Improved communication practices and the use of WALGA templates for the provision of goods and services will be utilised to ensure that purchase of goods and services is done through revised operational management procedures.

IMPLICATIONS TO CONSIDER

Consultative:

Nil

Strategic:

Shire of Toodyay Council Plan 2023-2033

Outcome 9. Responsible and effective leadership and governance.

9.1. Provide strong, clear, and accountable leadership.

Policy related:

Legislative Compliance Policy

Financial:

There are no financial implications as a result of this report.

Legal and Statutory:

Regulation 14 of the *Local Government (Audit) Regulations 1996*

s.14 Compliance audits by local government

- (1) A local government is to carry out a compliance audit for the period 1 January to 31 December in each year.

- (2) After carrying out a compliance audit the local government is to prepare a compliance audit return in a form provided by the Minister.
- (3A) The local government's audit committee is to review the compliance audit return and is to report to the council the results of that review.
- (3) After the audit committee has reported to the council under sub regulation (3A), the compliance audit return is to be –
 - (a) presented to the council at a meeting of the council; and
 - (b) adopted by the council; and
 - (c) recorded in the minutes of the meeting at which it is adopted.

Risk related:

The requirement to lodge an adopted Compliance Audit Return with the DLGSC is a legislative obligation. Failure to do so exposes the Shire to significant risk. This report mitigates this risk.

Workforce related:

Once the Committee refers the Compliance Audit Return 2024 to Council for adoption, it will be recorded in the minutes and a copy will be submitted to the DLGSC via their online portal by 31 March 2025, after the Council decision is made.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council adopts the attached Compliance Audit Return for the period 1 January 2024 to 31 December 2024, pursuant to Regulation 14(3) of the *Local Government (Audit) Regulations 1996*.

AUDIT COMMITTEE RECOMMENDATION

That Council adopts the attached Compliance Audit Return for the period 1 January 2024 to 31 December 2024, pursuant to Regulation 14(3) of the *Local Government (Audit) Regulations 1996*.

9.6.2 Local Government Reforms to the Audit and Risk Committee

Date of Report:	12 March 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	COC2
Author:	M Rebane – Governance Coordinator
Responsible Officer:	A Bowman JP – Chief Executive Officer
Previously Before Council:	No.
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Division 1A – Audit, Risk and Improvement Committee excerpt containing the amendments proposed by the Local Government Amendment Bill 2024; ⇨ 2. REVISED ARIC Charter; ⇨ 3. REVISED Committee Book changes; and ⇨ 4. ARIC Presiding Member transition memorandum. ⇨

PURPOSE OF THE REPORT

To consider:

- 1 the local government reforms to governance and committees as a result of the *Local Government Amendment Bill 2024*; and
- 2 the documents that will need to be edited to include the new requirements; and
- 3 the appointment by Council of the Chair and Deputy Chair of the Committee.

BACKGROUND

There are a number of changes in the process of being made to the *Local Government Act 1995* via the *Local Government Amendment Bill 2024*.

The latest amendments proposed by the Bill (Pt 2) impact the Audit and Risk Committee and relevant documents that govern the activities of the committee.

Unlike most other local governments, the impact to the Shire is limited as the Shire already has an independent Chair, together with 2 other independent members.

COMMENTS AND DETAILS

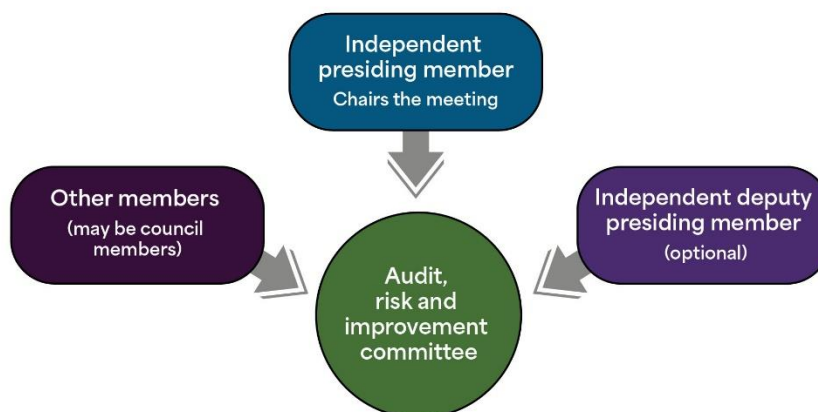
The local government reform will result in a new Audit, Risk and Improvement Committee.

This report summarises the relevant changes to *Division 1A – Audit, Risk and Improvement Committee* proposed by the *Local Government Amendment Bill 2024* (Pt 2) from

parliament.wa.gov.au provided as an excerpt (**Attachment 1**). These changes will necessitate amendments to the Shire's existing documents to ensure compliance with the reforms.

The reform includes the renaming of the Committee to be called the 'Audit, Risk and Improvement Committee'.

The new model of the Audit, Risk and Improvement Committee comprises the following roles, with a total of 3 or more members.



The REVISED Audit, Risk and Improvement Committee Charter (the Charter) is provided as **Attachment 2**.

At the date of writing this report, the amendments expected to Regulation 16 of the *Local Government (Audit) Regulations 1996* have not been published. Advice received from the DLGSC Act Review area stated that “*The new Audit, Risk and Improvement Committee regulations are yet to be drafted, so have not been uploaded onto the website. The sector will be informed as process progresses.*”

The Charter was amended to:

- (a) remove the content of what currently appears in Regulation 16 so that when the regulations are drafted, the Charter will not require further amendment as it will only refer to the specific regulation and not include the content;
- (b) include the guidelines for Appointment of Presiding and Deputy Presiding Members;
- (c) provide correct references to legislation as the amendments to the *Local Government Act 1995* affected the current references; and
- (d) Include the addition of specifying regulators such as the “Office of the Auditor General, LGIS, Corruption and Crime commission etc” to the Risk management, Fraud and Internal Control section of the charter as the charter stipulates that the committee already reviews summary reports from the Chief Executive Officer on communication from external parties including regulators.

The Shire's Committee Book has also been amended to reflect the changes to the *Local Government Act 1995* (**Attachment 3**).

As Council is required to appoint the Presiding Member (Chair) and Deputy Presiding Member (Deputy Chair) the recommendation to be presented to the next Ordinary Council meeting will include a request that the initial appointment of the Presiding Member and Deputy Presiding Member shall be from 1 April 2025 through to 30 September 2027.

IMPLICATIONS TO CONSIDER**Consultative:**

DLGSC Act Review

Strategic:**Shire of Toodyay Council Plan 2023-2033**

Outcome 9. Responsible and effective leadership and governance.

9.1. Provide strong, clear, and accountable leadership.

Policy related:

Nil.

Financial:

Nil.

Legal and Statutory:

Local Government Act 1995

Local Government Amendment Bill 2024

Risk related:

The risk of not amending the Charter now is moderate (3) as it will affect the Shire's compliance with local government reforms processes initiated by the *Local Government Amendment Bill 2024*.

The Financial Management Review (Risk Number 6.2.12) suggested that the practice of including legislation word for word in policies and other documents "may result in conflict between the policy (i.e. the charter) and legislation or guidance in the instance of a change in legislation". This is why the REVISED Charter only references the legislation and does not provide in the charter what the legislation actually says. This will mitigate any compliance risks that the Shire would be at risk of.

This report mitigates the risk.

Workforce related:

The charter will be published on the Shire's website and distributed to all Councillors and current Audit and Risk Committee Members.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council:

1. approves and adopts the revised Audit, Risk and Improvement Committee Charter (**Attachment 2**);
2. approves the amendment to the Committee Book (**Attachment 3**);

3. receives and notes the ARIC Presiding Member transition memorandum (**Attachment 4**);
4. appoints Natalie Mills as the Chair of the Audit, Risk and Improvement Committee for the period from 1 April 2025 through to 30 September 2027; and
5. appoints Simon Rutter as the Deputy Chair of the Audit, Risk and Improvement Committee for the period from 1 April 2025 through to 30 September 2027.

AUDIT COMMITTEE RECOMMENDATION

That Council:

1. approves and adopts the revised Audit, Risk and Improvement Committee Charter (**Attachment 2**);
2. approves the amendment to the Committee Book (**Attachment 3**);
3. receives and notes the ARIC Presiding Member transition memorandum (**Attachment 4**);
4. appoints Natalie Mills as the Chair of the Audit, Risk and Improvement Committee for the period from 1 April 2025 through to 30 September 2027; and
5. appoints Simon Rutter as the Deputy Chair of the Audit, Risk and Improvement Committee for the period from 1 April 2025 through to 30 September 2027.

9.6.3 Local Roads and Community Infrastructure Program 2021-22 Audit

Date of Report:	12 March 2025
Applicant or Proponent:	N/A
File Reference:	FIN7
Author:	A Hart – Executive Manager Finance and Corporate Services
Responsible Officer:	A Hart – Executive Manager Finance and Corporate Services
Previously Before Council:	Nil
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Executive
Attachments:	<ol style="list-style-type: none"> 1. Audit Opinion; ⇒ 2. Photographic Evidence Report; ⇒ 3. Final Report Declaration; ⇒ 4. CEO Financial Statement; and ⇒ 5. Annual Report Table ⇒

PURPOSE OF THE REPORT

To consider the Audit Report for the Local Roads and Community Infrastructure Program (LRCIP), Phase 2 report for the year ended 30 June 2022

BACKGROUND

In response to the COVID19 pandemic, the Federal Government implemented a funding program to support the economy by delivering local projects. The Shire of Toodyay received \$382,983 in funding to undertake infrastructure projects.

Each year, in accordance with the condition of grant, an audit must be undertaken to ensure funds have been spent in accordance with the conditions of grant and on the projects that were approved.

COMMENTS AND DETAILS

The Auditor General recently undertook the audit of the program for the 2021/22 financial year and the Shire received the audit report on the 17 February 2025.

The Auditor General has determined that the reports that have been prepared are in accordance with the conditions of grant, however the Auditor General Stated in the audit report “ *I was unable to obtain sufficient audit evidence regarding the financial report as a whole as the financial report was submitted for audit purposes without complete and accurate underlying records. I was unable to audit the financial report by alternative means.*

Consequently, I am unable to determine whether any adjustments were necessary to the financial report as a whole for the year ended 30 June 2022. My audit opinion on the annual financial report for the year ended 30 June 2021 was disclaimed for the same reasons”.

IMPLICATIONS TO CONSIDER

Consultative:

Dry Kirkness

Office of the Auditor General

Department of Infrastructure

Strategic:

Plan for the Future: Shire of Toodyay Council Plan 2023-2033

Outcome 9. Responsible and effective leadership and governance

09.1 Provide, strong, clear and accountable leadership.

09.2 Govern Shire finances, assets and operations responsibly.

Policy related:

Financial Governance

Significant Accounting Policies

Financial:

There is the potential that the audit finding places the approved project in breach of the funding agreement. In accordance with 9.2.4 of the agreement, the department may withhold the final 10% of the grant funding.

Legal and Statutory:

Local Government (Audit) Regulations 1996

r.16.(f) Functions of audit committee

Risk related:

Whilst there is no legal requirement for the Audit Report to be presented to the Audit and Risk Committee, it is prudent to bring this to the committee to raise awareness of issues that have been raised in the Audit Report.

Workforce related:

Nil

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

That Council receives the Audit Report for the Local Roads and Community Infrastructure Program for the year ended 30 June 2022.

AUDIT COMMITTEE RECOMMENDATION

That Council:

1. receives the Audit Report for the Local Roads and Community Infrastructure Program for the year ended 30 June 2022;
2. notes the Auditor was unable to audit the financial report for the year ended 30 June 2022 and that this raises concerns in regard to the potential financial implications; and
3. notes the Committee recognises the current Administration's efforts to address the underlying organisational issues that contributed to the previous audit deficiencies.

10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

11 NOTICES OF MOTION GIVEN AT THE MEETING FOR CONSIDERATION AT NEXT MEETING

12 QUESTIONS OF MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil.

13 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

13.1 MEMBERS

Nil.

13.2 EMPLOYEES

Nil.

14 CONFIDENTIAL BUSINESS**RECOMMENDATION**

That Council considers the confidential report listed below in a meeting closed to the public in accordance with Section 5.23(2) of the *Local Government Act 1995*:

14.1 Toodyay Bindi-Bindi Road Update

This matter is considered to be confidential under Section 5.23(2) - (f)(i) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with a matter that if disclosed, could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law.

15 NEXT MEETINGS

Agenda Briefing	17 April 2025
Ordinary Council Meeting	24 April 2025

16 CLOSURE OF MEETING