

# Shire as a Developer Policy

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## Objective

To ensure that the Shire of Toodyay when acting in the dual roles of property developer and regulatory decision making agency provides clear separation in the delivery of the two roles.

## Background and Purpose

Council will on occasion undertake property or building developments for public or community purposes. During that process the Shire may be required to:

- Make decisions in relation to design, finance, costing, procurement, appointment of professionals such as architects, engineers or project managers; and
- Make planning decisions in relation to planning approval, zoning subdivision or clearance of planning conditions.

This policy is to ensure that there is a separation of these two functions and that planning decisions are clear and transparent.

## Statutory Environment

Section 6 of the *Planning and Development Act 2005* says as follows:

### 6. Public works, Act does not interfere with

- (1) Subject to section 5(2) and (3) and subsections (2) and (3) of this section, nothing in this Act interferes with the right of the Crown, or the Governor, or the Government of the State, or a local government —
  - (a) to undertake, construct or provide any public work; and
  - (b) to take land for the purposes of that public work.
- (2) Rights referred to in subsection (1) are to be exercised having regard to —
  - (a) the purpose and intent of any planning scheme that has effect in the locality where, and at the time when, the right is exercised; and
  - (b) the orderly and proper planning, and the preservation of the amenity, of that locality at that time.
- (3) The responsible authority is to be consulted at the time when a proposal for any public work, or for the taking of land for a public work, is being formulated to ensure that the undertaking, construction, or provision of, or the taking of land for, the public work will comply with subsection (2).

The *Planning and Development Act 2005* for the definition of a **Public Work** refers to the *Public Works Act 1902* which says in part:

**public work** and **work** mean and include —

- (a) every work which the Crown, or the Governor, or the Government of Western Australia, or any Minister of the Crown, or any local authority is authorised to undertake under this or any other Act;
- (b) any railway authorised by special Act or any work whatsoever authorised by any Act;
- (c) tramways;
- (d) any works for or in connection with the supply of water to, or for or in connection with the sewerage of, any city, town, or district, including all reticulations;
- (e) buildings for the occupation of either or both of the Houses of Parliament or for public offices;
- (f) hospitals within the meaning given to that term by section 2 of the *Hospitals and Health Services Act 1927*, medical clinics, hostels and institutions including residences for staff, court-houses, gaols, watch-houses, lock-ups, police barracks, or quarters;
- (g) observatory;
- (h) public schools or any other schools authorised to be established wholly or in part at the public cost by any Act in force for the time being, universities, colleges, technical and other educational institutions, including residences or hostels for teachers or students, and play-grounds;
- (i) public libraries, mechanics' or miners' institutes, agricultural halls, or schools of art;
- (j) public housing;
- (k) wharves, ferries, piers, jetties and bridges;
- (l) parks or gardens or grounds for public recreation or places for bathing, and for the reclamation of land for or in connection therewith;
- (m) public cemeteries;
- (n) public wells or works for the conservation of water;
- (o) the protection and preservation of any cave or place of scientific or historical interest;
- (p) the protection and preservation of indigenous flora and fauna;
- (q) the establishment of public abattoirs;
- (r) harbours and ports, including the provision of storage, handling and wharfage areas and other facilities normally ancillary to the conduct of shipping operations, break-waters, leading marks, navigational aids, docks, slips, the alteration or improvement of channels, waterways and rivers, the protection of foreshores and banks, the provision of new channels and related works, including the landing and disposal of silt;
- (s) quarries or works for procuring stone, gravel, earth, or any other material required for the construction of, or any purpose connected with any public work as aforesaid;
- (t) the procuring from land (other than Crown lands and public reserves) of timber, stone, gravel, earth and any other material required by or for the State for or in connection with the carrying on of any industrial or other undertaking or activity which is being carried on by or for the State under any law authorising the same;
- (u) buildings and structures required for fire brigade purposes;
- (v) the establishment and the extension by the Governor of sites for towns;
- (w) the establishment and the extension by the Governor of agricultural research stations;

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- (x) drainage works in connection with any city, town, or district, and the improvement of rivers, watercourses, lakes, or inlets, including deepening, widening, straightening or otherwise altering, and disposal of silt;
- (y) any building or structure of whatsoever kind which, in the opinion of the Governor, is necessary for any public purpose;
- (za) any road, stock route, viaduct, or canal;
- (zb) any work incidental to any of the aforesaid works;
- (zc) any land required for or in connection with any work as aforesaid;
- (zd) any survey in connection with any proposed public work;

This means that the vast majority of works undertaken by Local Government are defined as public works and are therefore exempt from planning consent, but the responsible authority, in this case the Shire, is to have regard to the planning provisions including those in the Local Planning Strategy, Local Planning Scheme, Local Planning Policies and any other relevant planning instruments. (This could include State Policies)

## Policy

The Shire of Toodyay when acting as both a property developer and a regulator will first determine if the proposed development constitutes a public work, and this should be clearly identified in all Council decision making and documentation.

If the project is not a public work Council will determine whether the project is either a major land transaction or a major trading undertaking captured by the provisions of Section 3.59 of the *Local Government Act 1995*. If yes, the provisions of that Section will apply.

In relation to all projects where Council is both developer and regulator the following will be applied:

### 1. Planning Decisions

- (a) Decisions of a planning nature will be made and documented in the same way as if planning consent was required.
- (b) The Consultation requirements set out in the scheme or Council's consultation policy will be applied, unless Council is satisfied that the consultation objectives have already been achieved through other means (e.g. Strategic Community Plan consultations). Any decision to waive consultation will be documented.
- (c) Planning delegations will be used to deal with public works proposals where applicable.
- (d) Planning decisions requiring a Council Resolution will be dealt with separately from project management decision making.
- (e) Any decision to waive or vary any planning controls that would apply to a project were it not a public work, will be documented.

## 2. Project Management Decisions

- (a) Project management decisions will be dealt with separately from planning decisions.
- (b) If a project management decision also requires a planning decision the planning decision will be made first.

### Reference Information

**Related Documents** Local Planning Strategy  
Local Planning Scheme  
Local Planning Policies

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**Related Legislation** *Local Government Act 1995 (WA)*  
*Planning and Development Act 2005*  
*Public Works Act 1902*

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**Associated Forms and Attachments** Procedure for the approval of media releases

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