

**13.1 Application to Extend Development Approval End Date– Lot 51 Patstone Road Collie**

<b>Reporting Department:</b>	Development Services
<b>Reporting Officer:</b>	Robert Quinn – Shire Planner
<b>Accountable Manager:</b>	Andrew Dover – Director Development Services
<b>Legislation</b>	Planning and Development Act 2005
<b>File Number:</b>	A5646
<b>Appendices:</b>	Yes – Appendices 1 & 2 (Slip-In)
<b>Voting Requirement</b>	Simple Majority

**Report Purpose:**

To seek a Council decision on an application to extend the termination date of a temporary Development Approval.

**Officer's Recommendation:**

*That Council pursuant to the provisions of the Planning and Development Act 2005, hereby resolves to amend the temporary development approval issued by the State Administrative Tribunal on 27 February 2015 for Lot 51 Patstone Road, Collie by modifying condition No. 3 and inserting condition No. 19. as follows:*

*3. This is a temporary planning approval and the land use and development the subject of this temporary approval must cease ten (10) years from the date of this approval, at which time this approval will expire pursuant to cl 10.6 of the Shire of Collie Local Planning Scheme No 5*

*19. This temporary planning approval will expire if the approved development has not substantially commenced within two (2) years from the date of issue of this approval extension, or, within any extended period of time for which the Shire of Collie has granted prior written consent.*

*Subject to written confirmation that the following State Administrative Tribunal Applications for Review are withdrawn:*

*DR 21/2019 (Refusal of Application for Transport Depot, Lot 51 Patstone Road); and*

*DR 272/2018 (Whether the development approved in February 2015 has substantially commenced for a Transport Depot at Lot 51 Patstone Road).*

**Background:**

A planning application and subsequently correspondence has been received from Collie Steel requesting that the State Administrative Tribunal (SAT) development approval for a Transport Depot at Lot 51 Patstone Road See Appendix 1 (Slip-In)

SAT APPROVAL be extended for two (2) years to substantially commence development and for a five (5) year time limited extension. See Appendix 2 (Slip-In) Collie Steel Letter Discussions were held with Shire Staff and the Shire President and a way forward was agreed that it is considered appropriate to recommend approval of this extension to Council on the following basis:

- SAT appeals relating to the property withdrawn immediately
- Screening landscaping (as agreed with the Shire) commenced
- Conditions of the original approval 2015 will be met
- A rezoning application for 'Industrial Development' and an application for a Structure Plan including relevant studies in accordance with the Draft Local Planning Strategy to be forthcoming

These points were agreed by Collie Steel (Smargassi Nominees Pty Ltd) as per their Letter dated 15 August 2019. These commitments address staff's concerns regarding the approval of this extension.

There are currently two live SAT applications for review regarding the current development application for a Transport Depot at Lot 51 Patstone Road between the Shire of Collie and David Churches. There has been a commitment by Collie Steel to withdraw any legal proceedings in regard to the Patstone Road property. This has been made a requirement of the recommendation prior to an amended approval being issued.

#### **Statutory and Policy Implications:**

Clause 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) details process and gives the head of power for amending development approvals. There are no foreseen impediments from a legal sense in amending this approval.

Clause 77 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) states:

#### **77. Amending or cancelling development approval**

(1) *An owner of land in respect of which development approval has been granted by the local government may make an application to the local government requesting the local government to do any or all of the following —*

(a) *to amend the approval so as to extend the period within which any development approved must be substantially commenced;*

(b) *to amend or delete any condition to which the approval is subject;*

(c) *to amend an aspect of the development approved which, if amended, would not substantially change the development approved;*

(d) *to cancel the approval.*

(2) *An application under subclause (1) —*

- (a) *is to be made in accordance with the requirements in Part 8 and dealt with under this Part as if it were an application for development approval; and*
- (b) *may be made during or after the period within which the development approved must be substantially commenced.*
- (3) *Despite subclause (2), the local government may waive or vary a requirement in Part 8 or this Part in respect of an application if the local government is satisfied that the application relates to a minor amendment to the development approval.*
- (4) *The local government may determine an application made under subclause (1) by —*
  - (a) *approving the application without conditions; or*
  - (b) *approving the application with conditions; or*
  - (c) *refusing the application.*

Clause 77 relates to the owner of the land, it does need to be noted that Lot 51 Patstone Road has three owners of Smargassi Nominees Pty Ltd, David Churches and Jenny Lee (together landowners) being the registered proprietors of Lot 51 Patstone Road.

Clause 71 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) details process and gives the head of power for imposing time limits for substantial commencement of development approvals.

Clause 71 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) states:

#### **71. Commencement of development under development approval**

*If development approval is granted under clause 68 —*

- (a) *the development must be substantially commenced —*
  - (i) *if no period is specified in the approval — within the period of 2 years commencing on the date on which the determination is made; or*
  - (ii) *if a period is specified in the approval — within that period; or*
  - (iii) *in either case — within a longer period approved by the local government on an application made under clause 77(1)(a);*

*and*
- (b) *the approval lapses if the development has not substantially commenced within the period determined under paragraph (a).*

As this extension of time for the termination of development approval is being recommended as subsequent time will also need to be imposed for substantial commencement. It is considered the standard two year period from the date of the extension is warranted and reasonable. Clause 77 1(a) allows this decision to be made.

**Budget Implications:**

Nil

**Communications Requirements:** (Policy No. CS 1.7)

Nil

**Strategic Community Plan/Corporate Business Plan Implications:**

Goal 3: Our Built Environment

Outcome 3.1 Appropriate Land Use, Development and Conservation of Heritage;

*Strategy 3.1.1: Ensure appropriate Planning Controls for land use and development through the administration of the local planning scheme and strategies.*

**Relevant Precedents:**

Unknown if any extension of time for Development Approvals have been supported by Council.

**Comment**

The officer recommendation has the effect of extending the current SAT approval due to terminate in February 2020 by another five (5) years provided the two live reviews currently before SAT are withdrawn. Along with the five year extension a corresponding condition for the two year substantial commencement date from the date of extension should be imposed.

All current conditions of the 2015 SAT approval will remain as is, excepting the termination date and addition of a two year substantial commencement date. The dispute over whether the development has substantially commenced has not been determined and consequently if a development can be carried out in accordance with this approval will fall away.

This is considered a positive step forwards to work with the landowners to ultimately undertake structure planning and rezone the land in accordance with the Draft Local Planning Strategy.

In regard to development approval conditions for the Transport Depot, they will remain identical as the SAT 2015 approval except for condition No. 3 which has been modified to allow the temporary approval to terminate in February 2025. The current conditions on the SAT 2015 approval were extensively considered by all parties before they were imposed and are considered appropriate.



Shire of Collie  
Attn: David Blurton | CEO  
87 Throssell Street  
Collie WA 6225

15<sup>th</sup> August 2019**RE: Lot 51 Patstone Road, Collie WA 6225 – Transport Depot**

Dear David,

Thank you, Sarah and Andrew for meeting with Collie Steel Directors and Advisors this morning on the 15<sup>TH</sup> August 2019. The meeting and its discussions, and associated outcomes are most welcome and will help advance our collective objective being the economic advancement of Collie.

We seek approval at the earliest possible time, to commence the construction and operation of a transport depot. This depot would be constructed in accordance with the 2015 SAT approval as handed down by McNab, and together with all associated conditions. The associated conditions set out by McNab approval are open for discussion and the satisfaction of all parties. Landscaping for the transport depot will commence within 14 days of approval being granted.

No other business outside the true meaning of a transport depot (along with the utilisation of rural activities currently conducted on the site in question) will be conducted on the above-mentioned property, and as per our discussion and agreement, we seek with your approval the operation to be granted five year time frame or when rezoning for industrial development is concluded for the said property.

This approval would meet with our short-term objective, while our longer-term objective will include the progression of an application for rezoning of the property for Industrial Development. This longer-term objective will give rise to the attraction of new businesses together with the expansion of existing businesses that will enhance the economic sustainability of Collie.

With approval to proceed with the transport depot, as a result of the decision recommended and passed by a Council Meeting to be held on Tuesday the 20th August 2019, we intend withdrawing any legal proceedings in regards to matters associated with the Patstone Road property. This will include withdrawing our application currently before SAT for the very outcome we seek, that being the approval to conduct a transport depot on our property at Patstone Road.

Once again, we thank you for your consideration and advice and look forward to forming a close communications relationship into the future.

Yours sincerely,

Nick Smargiassi  
DIRECTOR | MANAGER

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3. Liberty to apply is reserved for a period of 21 days from the date of publication of these reasons.

## SCHEDULE OF CONDITIONS

1. At all times, the development the subject of this planning approval must comply with the definition of 'Transport Depot' as contained in Schedule 1 of the *Shire of Collie Local Planning Scheme No 5*.
2. All development shall be in accordance with the approved development plans which form part of this planning approval.
3. This is a temporary planning approval and the land use and development the subject of this temporary approval must cease five (5) years from the date of this approval, at which time this approval will expire pursuant to cl 10.6 of the *Shire of Collie Local Planning Scheme No 5*.
4. The building identified as Workshop 1 in Appendix 1 of the Consolidated Application is excluded from this approval.
5. Unless subject to the approval of any subsequent application made before the expiry of this approval as outlined in condition 3 above or, alternatively, subject to approval for an alternative use, upon the cessation of operations under this approval, all buildings and improvements inconsistent with rural use shall be removed from the property and the site restored to its previous rural use within six (6) months from the date of expiry of this approval.
6. With the building permit application, a landscaping plan must be submitted for the approval of the Shire of Collie. The landscape plan must address the following:
  - 6.1 A site plan of all existing and all proposed development with natural and finished ground levels;
  - 6.2 The location, species and size of existing vegetation and vegetation to be removed;
  - 6.3 Arrangements for the replacement of any existing vegetation, if any, identified as being removed for the construction of a crossover and intersection treatment;
  - 6.4 Exact species, location and number of proposed plants;
  - 6.5 A key or legend detailing proposed species type grouped under the subheadings of tree, shrub and ground cover;
  - 6.6 Mulching or similar treatments of garden beds including edges (if any);

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- 6.7 Details of proposed maintenance of landscaped areas including the source of water supply and proposed responsibility for maintenance;
  - 6.8 Treatment of paved areas (parking and pedestrian areas); and
  - 6.9 Fence material, height and treatment.
7. Within six (6) months of the date of this approval, or such longer period as agreed with the Shire of Collie, the landscaped area(s) must be planted, established and watered in accordance with the endorsed landscape plan(s). These areas must be maintained as landscaped areas at all times and to the satisfaction of the Shire of Collie.
  8. There shall not be greater than thirty (30) sea containers onsite at any given time. Any sea containers permanently on site shall not store materials other than those which are incidental to the operation of the transport depot.
  9. Materials being transferred, not incidental to the operation of the transport site, shall not be present onsite for a period longer than three (3) consecutive months.
  10. No processing of materials shall occur onsite, including the dismantling of parts for distribution.
  11. Upon entering the site, no machinery or parts stored onsite shall have traces of contaminants present.
  12. Before the development is operational, a minimum of ten (10) car parking bays must be provided on the land the subject of this planning approval and to the satisfaction of the Shire of Collie.
  13. Goods or materials must not be stored within the parking or landscaping area, or within access driveways at any time.
  14. Prior to development of the site, a Transport Statement, to the extent necessary, shall be submitted for approval to the Shire of Collie in accordance with the Western Australian Planning Commission's *Transport Assessment Guidelines for Development*.
  15. Before the development is operational, an intersection treatment design shall be submitted for approval to the Shire that is designed to Main Roads WA standards for the following:
    - Turning movements of the largest vehicle;
    - Pavement upgrade based on projected usage;

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- Intersection is to be kerbed and asphalted, for the section of Patstone Road that is affected;
- Tree clearing to allow for Safe Intersection Sight Distance (SISD); and
- Drainage to allow for an ARI 1:5 year event.

This plan shall be submitted along with any recommendations of the approved Transport Statement and the approved design shall be constructed and implemented to the satisfaction of the Shire of Collie.

16. Before the development is operational, a stormwater system must be designed and constructed in accordance with the Shire of Collie's Local Planning Policy: *Stormwater Discharge from Building Sites*. All stormwater generated by the proposed development must be retained and disposed of onsite. Detailed design plans of the proposed stormwater management must be submitted for approval prior to the development commencing.
17. Reticulated sewerage is not available to the subject site. Prior to commencing development, an application to construct or install an apparatus for the treatment of sewage and the disposal of effluent and liquid wastes must be submitted for the approval of the Shire of Collie's Environmental Health Services in accordance with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974 (WA)*.
18. No development shall occur within the Collie Basin Boundary as indicated on the *Collie Basin Structure Plan 1992*, without the prior approval of the Department of Mines and Petroleum.

I certify that this and the preceding [54] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**MR P McNAB, SENIOR MEMBER**