



Shire of
Collie

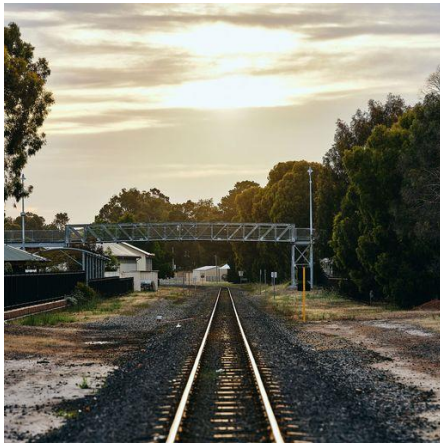
AGENDA

for the

SPECIAL MEETING OF COUNCIL

to be held on

Wednesday, 12 April 2023



Our Vision

Collie - *A progressive community, rich in opportunities and as diverse as its heritage and landscape.*

Our Values

The core values at the heart of the Council's commitment to the community are:

Integrity

Transparency

Accountability

Collaboration

Respect

Our Commitment to Community

We will *lead the delivery of our vision*

We will *support local business wherever possible*

We will *consult and engage with our community on issues that affect them*

We will *encourage, welcome and value feedback*

We will *encourage, support and advocate for our community*

NOTICE OF MEETING

Special Meeting of Council to consider:

Section 31 Reconsideration – Review of refusal decision and revised application for Tourist Development and retrospective approval for various buildings – Lot 2826, No. 708 Yourdamung Road, Palmer

Members of Council are advised that a meeting will be held in the Council Chambers, 87 Throssell Street, Collie on:

Wednesday, 12 April 2023 at 5.00pm



Stuart Devenish
Chief Executive Officer

12 April 2023

DISCLAIMER

The advice and information contained herein is given by and to the Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Please note this agenda contains recommendations, which have not yet been adopted by Council.

SHIRE OF COLLIE
DISCLOSURE OF FINANCIAL INTEREST AND INTERESTS AFFECTING IMPARTIALITY

To: Chief Executive Officer

As required by section 5.65(1)(a) or 5.70 of the Local Government Act 1995 and Council's Code of Conduct, I hereby declare my interest in the following matter/s included on the Agenda paper for the Council meeting to be held on

_____ (Date)

Item No.	Subject	Details of Interest	Type of Interest Impartial/Financial	*Extent of Interest (see below)

* Extent of Interest only has to be declared if the Councillor also requests to remain present at a meeting, preside, or participate in discussions of the decision making process (see item 6 below). Employees must disclose extent of interest if the Council requires them to.

Name (Please Print)

Signature

Date

NB

1. This notice must be given to the Chief Executive Officer prior to the meeting or at the meeting immediately before the matter in which you have declared an interest is discussed, Section 5.65(1) (a) & (b).
2. It remains Councillors'/Employees' responsibility to make further declarations to the Council if a matter arises during the course of a meeting and no previous declarations have been made.
3. It is a Councillor's/Employee's responsibility to ensure the interest is brought to the attention of the Council when the Agenda item arises and to ensure that it is recorded in the minutes.
4. It remains the Councillor's responsibility to ensure that he/she does not vote on a matter in which a declaration has been made. The responsibility also includes the recording of particulars in the minutes to ensure they are correct when such minutes are confirmed.
5. It is recommended that when previewing Agenda, Councillors mark Agendas with items on which an interest is to be declared and complete the declaration form at the same time.
6. Councillors may be allowed to remain at meetings at which they have declared an interest and may also be allowed to preside (if applicable) and participate in discussions and the decision making process upon the declared matter subject to strict compliance with the enabling provisions of the Act and appropriately recorded resolutions of the Council. Where Councillors request consideration of such Council approval the affected Councillor must vacate the Council Chambers in the first instance whilst the Council discusses and decides upon the Councillor's application.

Remember: The responsibility to declare an interest rests with individual Councillors/Employees. If in any doubt seek legal opinion or, to be absolutely sure, make a declaration.

Office Use Only:

Date/Initials

1. Particulars of declaration given to meeting

2. Particulars recorded in the minutes

3. Signed by Chief Executive Officer

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SHIRE OF COLLIE
AGENDA - SPECIAL MEETING OF COUNCIL
Wednesday, 12 April 2023

Agenda for the Special Meeting of the Collie Shire Council to be held in Council Chambers, 87 Throssell Street Collie, on Wednesday 12 April 2023 commencing at 5:00pm.

1. OPENING/ATTENDANCE/APOLOGIES & LEAVE OF ABSENCE

- 1.1 Councillors granted Leave of Absence at previous meeting/s.
- 1.2 Councillors requesting Leave of Absence for future Ordinary Meetings of Council.
- 1.3 Councillors who are applying for Leave of the Absence for this Ordinary Meeting of Council.

2. PUBLIC QUESTION TIME

A 15 minute public question time is made available to allow members of the public the opportunity of questioning Council on matters concerning them.

3. DISCLOSURE OF FINANCIAL INTEREST

Councillors in attendance at meetings must disclose to the meeting any Agenda items upon which they have a Financial Interest. Section 5.65 of the Local Government Act 1995 requires Councillors to: a) give written notification of a financial Interest before the meeting; or b) at the meeting immediately before the particular matter is discussed (notification can be given verbally).

A Disclosure of Financial Interest Form is attached to this Agenda (immediately behind the Index) and can be used by Councillors for disclosure purposes - simply tear out and hand to the Chief Executive Officer. Additional forms will always be available at Council/Committee meetings.

Should Councillors be unsure on Disclosure of Financial Interest matters, further clarification can be obtained by reading Sections 5.53 to 5.59 inclusive of the Act.

4. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS

Members of the public invited by the Chairperson may address the meeting after Standing Orders have been suspended.

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5. Section 31 Reconsideration- Review of refusal decision and revised application for Tourist Development and retrospective approval for various buildings - Lot 2826, No. 708 Yourdamung Road, Palmer	
Reporting Department:	Development Services
Legislation	<i>State Administrative Tribunal Act 2004</i> <i>Planning and Development Act 2005</i> <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>
File Number:	A3405
Appendices:	Appendix 5.A – Unconfirmed minute extract - Item 13.5, OCM 11 April 2023 Appendix 5.B Location Plan Appendix 5.C Development Application Report and Site Plan Appendix 5.D Amended Bushfire Management Plan and Bushfire Evacuation Plan Appendix 5.E DFES Advice and Applicant Response Appendix 5.F Shire CESM Advice Appendix 5.G Draft Motion of Approval
Voting Requirement:	Simple Majority

Report Purpose

For Council to reconsider its refusal decision and an amended Application for Development Approval comprising retrospective approval for Tourist Development, including proposed expansion of facilities for the management of the development and on-site facilities for guests, retrospective approval for 7 free-standing pagodas, proposed Camping Ground and proposed Assembly Building / shelter / multi-use space at Lot 2826, No. 708 Yourdamung Road, Palmer, as directed by the State Administrative Tribunal.

Officer's Recommendation

That Council reconsiders the amended Development Application as directed by the section 31 State Administration Tribunal direction and resolves to:

1. *Refuse the Application for Development Approval for retrospective approval for Tourist Development, including proposed expansion of facilities for the management of the development and on-site facilities for guests, retrospective approval for 7 free-standing pagodas, proposed Camping Ground and proposed Assembly Building/ Shelter/Multi-Use Space at Lot 2826, No. 708 Yourdamung Road, Palmer for the following reasons:*
 - a) *The performance principles contained within State Planning Policy 3.7- Planning in Bushfire Prone Areas and Element 5 of Guidelines for Planning in Bushfire Prone Areas have not been achieved/demonstrated for the proposed development as the bushfire hazard cannot be reduced to an acceptable level through the implementation of the Bushfire Management Plan.*
 - b) *The proposed on-site shelter does not demonstrate compliance with the ABCB Design and Construction of Community Bushfire Refuges Handbook (2014).*

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- c) *The Bushfire Risk Management Plan and Bushfire Emergency Evacuation Plan do not establish a suitable basis on which a decision maker can confidently approve the development.*
- d) *Pursuant to clause 67(q) and (r) of the Planning and Development (Local Planning Schemes) Regulations 2015, the land is unsuitable for the proposed development as it creates a possible risk to human life and safety due to the risk of bushfire.*
- 2. *Advise the State Administrative Tribunal and the Applicant of the Council's decision accordingly.*
- 3. *Advise the owner of Lot 2826 Yourdamung Road, Palmer of the obligation to immediately bring all activities on site in-line with the existing approval, and that actions will be taken to prosecute if required to achieve compliance.*

Background:

At its meeting on 11 April 2023, Council considered a revised application for a tourist development and retrospective application for various buildings at Yourdamung Road, Palmer. A copy of the report along with associated appendices as presented to this meeting are included as appendices to this report.

At its meeting on 11 April 2023, Council resolved as follows:

Defer consideration of the matter to a Special Council Meeting on 12 April 2023, commencing at 5.00pm.

The resolution to refer the matter to a Special Meeting of Council was to allow Elected Members to consider a proposed suggestion to the meeting that the application could be conditionally approved.

Comment:

Council, at its last decision on this matter resolved on 14 December 2021 (Motion 8795) to '*defer a decision on the matter, work with the proponent, relevant agencies to try to come to favourable outcome and report back to Council*'. Officers have worked with the Applicant and agencies as required by Council. In the officer's opinion, the critical elements of mitigating bushfire risk are not sufficiently demonstrated. On this basis, the Officer recommendation is to refuse the application.

Should Council adopt the Officer recommendation of refusal, the matter will be addressed by the State Administrative Tribunal via the current application for review (RD 6/2022 – Tierney v Shire of Collie). It is expected the Applicant would wish the matter to be determined through a formal hearing of the Tribunal.

Should an Elected Member wish to move a motion of approval, draft wording is included at Appendix 5.G. The conditions and advice notes have been referred to Envision Bushfire Protection Anthony Rowe for review and are agreed by Mr Rowe.

As the alternative motion at Appendix 5.G is a significant departure from the Officer recommendation, written reason for the departure is required by *Local Government (Administration) Regulations 1996* (r11 refers).

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In the event the application is refused, the owner will be instructed to cease all unlawful activity and bring matters into compliance with the Building Code of Australia and development approvals. Failing this, prosecution actions would need to be pursued to bring about compliance. An additional part has been added to the Officer recommendation to this effect.

Should the application be approved, the owner will similarly be instructed to cease all unlawful activity until the terms of an approval are satisfied and all matters brought into compliance. Failing this also, prosecution actions will need to be considered to ensure a safe and satisfactory situation exists at the property.

6. CLOSE