



Shire of
Collie

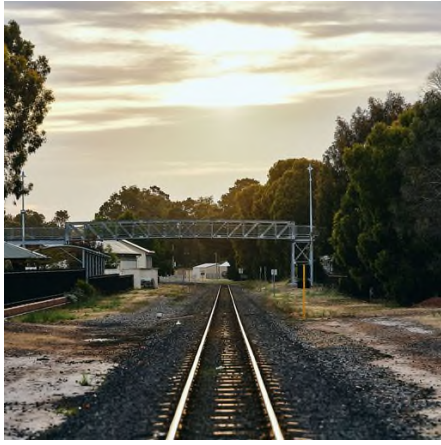
MINUTES

for the

SPECIAL MEETING OF COUNCIL

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

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Minutes for the Special Meeting of the Collie Shire Council which were held in Council Chambers, 87 Throssell Street Collie, on Wednesday 12 April 2023 and commenced at 5:00pm.

1. OPENING/ATTENDANCE/APOLOGIES & LEAVE OF ABSENCE

PRESENT:	Sarah Stanley	Councillor (Presiding Member)
	Ian Miffling OAM JP	Councillor (Deputy Member)
	John Kearney	Councillor
	Joe Italiano	Councillor
	Michelle Smith	Councillor
	Gary Faries	Councillor
	Elysia Harverson	Councillor
	Brett Hansen	Councillor
	Brent White	Councillor
	Leonie Scoffern	Councillor
	Stuart Devenish	Chief Executive Officer
	Matthew Young	Director Development Services
	Sue Mearns	Executive Assistant

APOLOGY: Rebecca Woods Councillor

PRESS: Nola Green

GALLERY: Russell Tierney
Anthony Rowe (Via Teleconference)

1.1 Councillors granted Leave of Absence at previous meeting/s

Cr Woods was granted Leave of Absence at the Ordinary Council Meeting held 14 March 2023.

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.

Nil

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.

Councillor/Staff	Agenda Item	Disclosure
Cr Sarah Stanley	Item 5.1 – Yourdamung Road	Impartial – Owns and operates a business in the same industry

4. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS

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

Nil

Council Decision:		Resolution: 9177	
<i>That Council suspend Standing Orders.</i>			
Moved:	Cr Hansen	Seconded:	Cr White
		CARRIED: 10/0	

Standing Orders were suspended to allow for discussion on Item 5.1.

Council Decision:		Resolution: 9178	
<i>That Council resume Standing Orders.</i>			
Moved:	Cr Hansen	Seconded:	Cr Kearney
		CARRIED: 10/0	

5. REPORT

Cr Stanley had declared an impartial interest at Item 5.1.

5.1 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	State Administrative Tribunal Act 2004 Planning and Development Act 2005 Planning and Development (Local Planning Schemes) Regulations 2015
File Number:	A3405

Appendices:	<p>Appendix 5.A – Unconfirmed minute extract - Item 13.5, OCM 11 April 2023</p> <p>Appendix 5.B Location Plan</p> <p>Appendix 5.C Development Application Report and Site Plan</p> <p>Appendix 5.D Amended Bushfire Management Plan and Bushfire Evacuation Plan</p> <p>Appendix 5.E DFES Advice and Applicant Response</p> <p>Appendix 5.F Shire CESM Advice</p> <p>Appendix 5.G Draft Motion of Approval</p>
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).*
 - 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.*

Alternative Motion

Resolution: 9179

Moved:

Cr Hansen

Seconded:

Cr Harverson

That Council:

A *Resolve to set aside the Officer's Recommendation for the following reasons:*

1. *Council considered the expert opinion of the applicants qualified and accredited professional Anthony Rowe BPAD L3, Principal, Envision Bushfire Protection (as opposed to the views of the Department of Fire & Emergency Services (FESA) who are qualified to make comments only and are not accredited bushfire professionals; and*
2. *In considering the qualified opinion of Mr Anthony Rowe, the Council was satisfied that an appropriate evacuation shelter could be adequately constructed as to accommodate any future bush fire risk.*

B *Reconsider the amended Development Application as directed by the section 31 State Administration Tribunal direction and resolves to approve the 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 - Lot 2826, No. 708 Yourdamung Road, Palmer, subject to the following conditions:*

1. *All development shall be in accordance with the approved development plans (attached) which form part of this planning approval.*
2. *This planning approval will expire if the approved development has not substantially commenced within two (2) years from the date of issue of the approval, or, within any extended period for which the Shire of Collie has granted prior written consent.*
3. *All works required to satisfy a condition of this approval are required to be installed/constructed and maintained in accordance with the approved plans and conditions of approval for the life of the development.*
4. *At all times, provision must be made onsite for the storage and collection of garbage and other solid waste. A waste storage and collection area must be graded, drained and screened from public view, and the garbage collected regularly, to the satisfaction of the Shire of Collie. Details to be submitted with the building permit application.*
5. *Prior to occupation, a report demonstrating 'as constructed' compliance for the bushfire refuge shelter is to be provided by suitably qualified and practicing Fire Engineer, to the satisfaction of the Shire of Collie.*
6. *Prior to the issuance of Building Permit, the Bushfire Management Plan is to be amended, to the satisfaction of the Shire of Collie.*
7. *Prior to the issuance of Building Permit, A Bushfire Emergency Evacuation Plan shall be prepared and approved to the satisfaction of the Shire of Collie that is also consistent with the amended Bushfire Management Plan. All measures shall be undertaken prior to occupation and thereafter maintained in accordance with the Bushfire Emergency Evacuation Plan to the satisfaction of the Shire of Collie.*

8. *Prior to the issuance of a Building Permit, all site plans are to be amended to be consistent with the Bushfire Management Plan (as amended) and the Development Application report, to the satisfaction of the Shire of Collie.*
9. *Prior to issuance of Building Permit, the plans for the bushfire refuge shelter are to be certified by a suitably qualified fire engineer to be compliant with the Acceptance Criteria described in the National Construction Code and the ABCB Design and Construction of Community Bushfire Refuges Handbook (2014).*
10. *Prior to occupation, a final inspection of the on-site bushfire shelter must be undertaken by a suitably qualified fire engineer with fire risk assessment expertise, accredited with Engineers Australia. The fire engineer shall provide certification, to the satisfaction of the Shire of Collie, that the works have been completed in accordance with the requirements of the National Construction Code and the ABCB Design and Construction of Community Bushfire Refuges Handbook (2014).*
11. *Prior to occupation of the development, an on-site bushfire shelter maintenance plan must be prepared by a suitably qualified fire engineer with fire risk assessment expertise, accredited with Engineers Australia, and must include:*
 - a) *details of maintenance requirements, and*
 - b) *details of annual testing requirements for operational compliance.*
12. *One month prior to the start of the bushfire season the owner will provide to the Shire of Collie a certification by a suitably qualified fire engineer or bushfire practitioner confirming the compliance of the shelter with the maintenance requirements, and annual testing requirements, and compliance with the Bushfire Management Plan including the Asset Protection Zone (all buildings and equivalent to 10kWm² for the shelter) fire fighting facilities and the Shire Hazard Separation Zone.*
13. *One month prior to the start of the bushfire season the owner will provide to the Shire of Collie, a Statutory declaration, that identifies all the of dates of operation and numbers in attendance for the previous 12 months (period between the reporting to the Shire).*
14. *Prior to issuance of Building Permit, detailed design for the proposed effluent disposal system(s) is to be submitted and implemented, to the specifications and satisfaction of the Shire of Collie.*
15. *The applicant must implement all of the recommendations contained in the Bushfire Management Plan (as amended) approved by the Local Government for the duration of the development, to the satisfaction of the Shire of Collie.*
16. *Prior to the issuance of Building Permit, a Section 70A Notification pursuant to the Transfer of Land Act 1893 must be placed on the titles of all lot, at the full cost of the applicant, alerting landowners to the existence of the approved Bushfire Fire Management Plan and advising landowners of their obligations in respect to the use and ongoing management of the land.*
17. *Prior to occupation, a schedule of modifications detailing modifications and upgrades to existing structures required to ensure compliance with the Building Code of Australia is to be approved and implemented, to the satisfaction of the Shire of Collie.*

Building works identified in the schedule of modifications shall be completed prior to occupation.

Advice

- a) *The Shire of Collie advises that it is a statutory requirement to comply with all conditions of this approval, and not doing so means that the development is not pursuant to the planning permission and is therefore unauthorised development.*
 - b) *This is a Planning Approval and is not a Building Permit. The land use and development of the subject premises is also subject to a separate building permit approval. The developer/ landowner is advised that an application for a Building Permit must be made to and approved by the Local Government before the development and / or use authorised by this Planning Approval can begin. Further information can be obtained from the Shire of Collie's Building Services Department on (08) 9734 9000.*
 - c) *Any additional development which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by the Shire of Collie.*
 - d) *A separate application for a license under the Caravan Park and Camping Grounds Act 1995 is required.*
 - e) *If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of the determination, the approval shall lapse and be of no further effect.*
 - f) *If an applicant is aggrieved by this determination, there is a right of review under Part 14 of the Planning and Development Act 2005. An application for review must be lodged with the State Administrative Tribunal within 28 days of the determination.*
 - g) *A Dial Before You Dig enquiry will assist you in determining if your proposed works are impacted by any existing or proposed underground pipes & cables in the immediate vicinity. Complete a Dial Before You Dig enquiry by visiting www.1100.com.au, calling 1100 or downloading the mobile application.*
- C *Advise the owner of Lot 2826 Yourdamung Road, Palmer of the obligation to immediately cease all activities outside of previous approvals until the terms of this approval are satisfied, and that actions will be taken to prosecute if required to achieve compliance.*

THE ALTERNATIVE MOTION BECAME THE SUBSTANTIVE MOTION WHICH WAS PUT AND CARRIED: 10/0

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).

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

The President declared the meeting closed at 5.30pm.