



Shire of
Collie

AGENDA

for the

SPECIAL MEETING OF COUNCIL

to be held on

Wednesday, 26 July 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:

1. Reconsider decisions (No. 8623) and (No. 8734), pursuant to the State Administrative Tribunal Section 31 Direction, and make a determination on an Application for Development Approval for a Resource Recovery Centre at Lot 1, No. 650 Collie River Scenic Drive, Collie.

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

Wednesday 26 July 2023 at 7.00pm



Stuart Devenish
Chief Executive Officer

26 July 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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Agenda for the Special Meeting of the Collie Shire Council to be held in Council Chambers, 87 Throssell Street Collie, on Tuesday 25 July 2023 commencing at 6:00pm.

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 Absence for this Special 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 relating to the purpose of the meeting.

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.

5. NOTIFICATION OF MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC

Councillors may disclose at this point any matters which they wish to have discussed 'behind closed doors' ie the meeting is closed to members of the public. Section 5.23 of the Local Government Act 1995 applies and the meeting may only go behind closed doors for matters expressly prescribed in the Act - see section of the Act appended immediately after the Disclosure of Financial Interest form.

Any decision (of the meeting) to close the meeting or part of the meeting and the reasons for the decision are to be recorded in the Minutes of the meeting.

6. DEVELOPMENT SERVICES REPORT

Reconsideration of item deferred from the Special Meeting of Council held 25 July 2023.

6.1 Section 31 Reconsideration – Review of a refusal decision and revised application for a Resource Recovery Centre at Lot 1, No. 650 Collie River Scenic Drive, Collie	
Reporting Department:	Development Services
Reporting Officer:	Isabel Fry – Town Planner
Accountable Manager:	Matt Young– Director of Development Services
Legislation:	<i>Planning and Development Act 2005</i> <i>State Administrative Tribunal Act 2004</i>
File Number:	A5130
Appendices:	Appendix 6.1.A – Amended Application Package Appendix 6.1.B – Location Map Appendix 6.1.C – Summary of Submissions Appendix 6.1.D – Alternative Motion of Refusal
Voting Requirement:	Simple Majority

Report Purpose

For Council to reconsider its decisions (No. 8623) and (No. 8734) pursuant to the State Administrative Tribunal section 31 Direction, and make a determination on an Application for Development Approval for a Resource Recovery Centre at Lot 1, No. 650 Collie River Scenic Drive, Collie

Officer's Recommendation

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

1. *Approve the amended Application for Development Approval for a Resource Recovery Centre at Lot 1, No. 650 Collie River Scenic Drive, Collie, subject to the following conditions:*
 - a) *All development shall be in accordance with the approved development plans (as amended) which form part of this planning approval.*
 - b) *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.*
 - c) *Prior to the issuance of a Building Permit, the development plans are to be amended, to the satisfaction of the Shire, to show:*
 - d) *remove reference to 'Large Item Laydown' and 'Timber Storage and Processing' from the north of the site on the site plan;*

- e) *Demarcate an exclusion zone on the northern tier of the site, restricting storage of materials and business activities occurring in this zone, with the exception of within the existing workshop and office and vehicle servicing area.*
- f) *Landscaping within the 5m setback along Scenic Drive (except for the western accessway), within the site, for the purpose of screening, as consistent with the Landscaping Plan to be provided to the Shire for approval.*
- g) *All storm water and water run-off from the hereby approved development shall be disposed of on-site or managed to the satisfaction of the Shire of Collie to prevent site erosion.*
- h) *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.*
- i) *The approved Resource Recovery Centre use is limited to the following activities:*
 - *Receival and sorting of used timber pallets;*
 - *Ancillary repairs to used timber pallets;*
 - *Receival of used timber house frames and used timber salvaged from demolition sites;*
 - *Repairing the used timber house frames and salvaged timber for sale;*
 - *Dismantling of used timber pallets which are unable to be repaired, for sale or disposal; and*
 - *Ancillary storage of the used and repaired pallets, house frames and timber, pending sale and distribution.*
- j) *The approved use expressly excludes:*
 - *Manufacturing trusses;*
 - *creating any other new product from the timber house frames, timber products and timber pallets that are delivered to the site; and*
 - *Refurbishment of transportable buildings.*
- k) *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:*
 - *A site plan of existing and proposed development with natural and finished ground levels.*
 - *The location, species and size of existing vegetation and vegetation to be removed.*
 - *Demonstrate effective vegetation screening of the site from Scenic Drive and surrounding properties.*
 - *Exact species, location and number of proposed plants.*
 - *A key or legend detailing proposed species type grouped under the subheadings of tree, shrub and ground cover.*
 - *Mulching or similar treatments of garden beds including edges.*
 - *Details of reticulation of landscaped areas including the source of the water supply and proposed responsibility for maintenance.*
 - *Treatment of parking and pedestrian areas.*
 - *Fence material, height and treatment.*

- l) Before the development is occupied, the landscaped area(s) must be planted, established and reticulated 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.*
 - m) Before the development is occupied, all stored materials and goods not associated with the approved Resource Recovery Centre are to be removed from the site.*
 - n) Goods or materials must not be permanently stored within the parking or landscaping area, or within access driveways.*
 - o) All verge areas abutting the boundaries of the subject site must remain clear at all times and must not be used for any other purpose including car parking, trade display, storage and signage to the satisfaction of the Shire of Collie.*
 - p) At all times, all loading and unloading must take place within the boundaries of the site.*
 - q) External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Shire of Collie.*
 - r) 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/disposed of regularly, to the satisfaction of the Shire of Collie. Details to be submitted with the building permit application.*
 - s) The use/development is not to interfere with the amenity of the locality or cause nuisance by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, water products or grit, oil or otherwise.*
 - t) Except with the prior written consent of the Shire of Collie, the approved use must only operate between the following hours:*
 - Monday to Friday: 7:00am to 5:00pm*
 - Saturday and Sunday: Closed*
- 2) Instruct the owner to remove all fencing and materials that extend outside the property boundary along Scenic Drive within 90 days of the issue of the development approval.*
- 3) Advise the State Administrative Tribunal and the Applicant of the Council's decision accordingly.*

Motion Deferred from Special Meeting of Council held 25 July 2023

That Council:

1. Reject amended Application for Development Approval for a Resource Recovery Centre at Lot 1, No. 650 Collie River Scenic Drive, Collie.

2. Instruct the owner to remove all fencing and materials that extend outside the property boundary along Scenic Drive within 90 days.

3. Advise the State Administrative Tribunal and the Applicant of the Council's decision accordingly and advise both State Administrative Tribunal and the proponent that the Shire of Collie will continue to work with the applicant to come to a mutually acceptable outcome.

Moved: Cr Faries

Seconded: Cr Italiano

Background:

Following the deferral of the reconsideration, as requested by the Applicant at the last Ordinary Meeting of Council held 13 June 2023, Planning Solutions, on behalf Smargiassi Super Pty Ltd on 29 June, submitted a further amended Application for Development Approval for a Resource Recovery Centre at Lot 1, 650 Collie River Scenic Drive, Collie (refer Appendix 6.1.A). The application is submitted in order for Council to reconsider its decisions to refuse a proposed Industry-General (Wood and Timber Product Processing, Manufacturing, Storage and Sales) (Decisions No. 8623, 15 December 2020) and a proposed Woodyard (Decision No.8734, 8 June 2021), as directed pursuant to section 31 of the State Administrative Tribunal Act.

Site Details and History

The subject site is a 3.5427 hectare property in the Rural zone, located approximately 4km south west of the Collie town centre (refer Appendix 6.1.B). The site is bound by adjacent Rural zoned land to the west which is used for agricultural and residential purposes, Collie River Scenic Drive to the north and east, as well as the Westralia Conservation Park to the north, Public Open Space reserve to the east and the Collie River foreshore to the south. The adjoining Rural zoned property to the west of the site has a dwelling that is located on a high point of the land and has views over the subject site.

The subject site slopes up from the Collie River which is located directly south of the subject site, with a high point in the north western corner of the site. The fall across the subject site is approximately 20m and the site is presented in a series of level tiers separated by retaining walls and embankments. The upper tier is directly adjacent to Collie River Scenic Drive, which includes a number of outbuildings. There are existing access roads at the ends of each of the tiers which allow access between the tiers and the entry and exit gates to the site.

Previously, approval for the use of the property for Industry-Light (engineering, fabrication and earthmoving services) was granted in August of 2006. It is the Shire's opinion that this approval and any non-conforming use rights associated with the property to be used for Industry-Light activity has since expired. At present, there is an occupied dwelling on the site, as well as several structures and improvements used for the purpose of storage and ongoing, unauthorised industrial uses.

Amended Proposal

The previous applications were considered under LPS No.5, however the amended application seeks to obtain approval for a use introduced in LPS No.6 when it was gazetted in December 2021. The amended application seeks approval for a Resource Recovery Centre for preparing timber products, pallets and firewood from salvaged timber and pallets. Specifically, the proposal is to undertake the following activities:

1. Repairing broken and used pallets.
2. Recovery and ultimate resale of house frames and timber salvaged from demolition.
3. Incidental storage of machinery/vehicle maintenance required for the above uses.

The application also includes a new 24m x 12m (288m²), 10m high steel shelter on the middle tier, open on its eastern side. The site plan and details for the shelter are included in Appendix 6.1.A.

This proposal has been amended by the applicant from that considered by Council in the 11 June 2023 agenda, through removing the repurposing of used timber into polished timber crosses and other timber products and the repurposing of transportable buildings into office and small residences.

Table 1 of Appendix 6.1.A provides the details of the activities to occur on site.

State and Local Planning Considerations

- State Planning Policy 2.5 Rural Planning (SPP 2.5)

The purpose of SPP2.5 is to protect and preserve rural land assets due to the importance of their economic, natural resource, food production, environmental and landscape values. Section 6 of LPP2.5 specifies how SPP2.5 is applied to various types of planning proposals. With respect to development applications, SPP2.5 states:

Section 67 of the Planning and Development (Local Planning Schemes) Regulations 2015 outlines the range of matters to be considered by local governments in determining applications for development approval.

- State Planning Policy 3.7 Planning in Bushfire Prone Areas

The Applicant initially outlined in the application report that an exemption from undertaking bushfire reporting could be exercised. This was not supported by the Shire and this position was confirmed by the Department of Fire and Emergency Services (DFES) and agreed that a BMP and BAL Contour assessment should be undertaken to support the application. DFES also confirmed that it is unlikely that the proposal would trigger the requirements of a high-risk use under SPP3.7. These reports were subsequently provided to the Shire to support the application. The reports were also amended following advice from DFES through the submission process.

- Shire of Collie Local Planning Strategy 2020

The subject site is designated Rural under the Local Planning Strategy. The Strategy details that Rural land should be conserved for agriculture and for incidental uses such as events, tourist accommodation or café. Smaller parcels are also occupied for lifestyle purposes.

The Applicant expresses in the application report that the Strategy does not address the applicable circumstances to this site, as a small rural property which has been used for industrial purposes since the 1970's and industrial infrastructure limits the ability for agricultural activity. It is also not suitable for lifestyle or rural living for the same reasons.

Map 11 of the Strategy identified Collie River Scenic Drive as a tourist route, however this does not extend to the strategy text.

- Shire of Collie Local Planning Scheme No.6 (LPS6)

1. The Objectives for the Rural zone under LPS6 are as follows:

- *To provide for the maintenance or enhancement of specific local rural character.*
- *To protect broad acre agricultural activities such as cropping and grazing and intensive uses such as horticulture as primary uses, with other rural pursuits and rural industries as secondary uses in circumstances where they demonstrate compatibility with the primary use.*
- *To maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas especially the natural valley and watercourse systems from damage.*
- *To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses in the Rural zone.*
- *To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.*

The Applicant has provided the following comments against the Scheme Objectives:

- The proposal seeks to repurpose existing industrial buildings and improvements on the land and incorporates landscaping along the Collie River Scenic Drive frontage to protect the rural amenity of the area.
- Proposes a non-rural land use which has sustainability benefits (namely recycling of salvaged materials and pallets) and which is compatible with surrounding bushland and pasture land.

2. Use Class and Permissibility:

The Applicant has classified the proposed development as a Resource Recovery Centre, which under LPS6 is defined as follows:

Resource Recovery Centre means a premises other than a waste disposal facility used for the recovery of resources from waste.

The Applicant has detailed that the proposed development involved the receipt of salvage timber materials for recovery and ultimate resale, and the receipt of used pallets which will be made good for reuse. Based on this, the Applicant considers the development meets the definition.

Resource Recovery Centre is an 'A' use in the Rural zone under LPS6, meaning the local government can exercise its discretion to approve the use, once the application is advertised.

3. Development Standards:

Table 3 of Appendix 6.1.A details the Applicant's response to the relevant development standards as contained in LPS6.

- *Planning and Development (Local Planning Schemes) Regulation 2015 (Deemed Provisions)*

Clause 67 (2) of the *Deemed Provisions* sets out matters for which the local government is to give due regard when considering a development application. The Applicant has set out and addressed the matters to be considered that they have deemed to apply in Table 4 of Appendix 6.1.A.

Statutory and Policy Implications:

State Administrative Tribunal Act 2004

Tribunal may invite decision-maker to reconsider decision

- (1) At any stage of a proceeding for the review of a reviewable decision, the Tribunal may invite the decision-maker to reconsider the decision.
- (2) Upon being invited by the Tribunal to reconsider the reviewable decision, the decision-maker may —
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) aside the decision and substitute its new decision.
- (3) If the decision-maker varies the decision or sets it aside and substitutes a new decision, unless the proceeding for a review is withdrawn it is taken to be for the review of the decision as varied or the substituted decision.

Shire of Collie Local Planning Scheme No.6

16. Zones and Use of Land - Rural Zone Objectives

17. Zoning Table

- Resource Recovery Centre 'A'

Division 2, 40. Land Use Terms Uses

- **Resource Recovery Centre:** means premises other than a waste disposal facility used for the recovery of resources from waste;

Budget Implications:

Nil.

Communications Requirements:

On the Direction of the State Administrative Tribunal, following numerous mediation proceedings, the Shire advertised the initial amended application to the adjoining property owners to the west and south, DFES and DBCA. The advertising period ran from the 5 April 2023 to the 10 May 2023, to allow time for agencies to respond.

As a result of the advertising, 2 submissions were received from adjoining property owners and 2 were received from agencies (DBCA and DFES). The submissions have been

summarised in Appendix 6.1.C. Applicant and Shire Officer responses to submissions are also included in this summary.

The amended application has not been advertised. The proposal is lesser in terms of activities than the previous and further advertising is not required by the Scheme.

Strategic Community Plan/Corporate Business Plan Implications:

STRATEGIC COMMUNITY PLAN – ADOPTED DECEMBER 2022		
GOAL:	3	Our Built Environment
Objective:	3.2	Sound land planning and building strategies and schemes

Comment:

Background

Following the previous two decisions of Council on this application, in various forms, Shire Officers have been involved in ongoing mediation through the State Administrative Tribunal. In the time between considerations, the Shire's LPS6 has come into effect, which removed the Woodyard use class and also introduced Resource Recovery Centre as a new Use Class. The Industry and Industry - Light definitions have been altered slightly, however have remained largely consistent with that of previous LPS5, also remaining as 'X' uses in the Rural zone.

Shire Officers had the opportunity to review the application package prior to formal direction to reconsider the application and provided comments back to the Applicant advising that there were inadequacies in the documentation relating to:

- Incorrect reference to a Woodyard in the header of the document.
- Inadequacies in existing and proposed landscaping and its ability to effectively screen the site,
- Lack of clarity in the site plan, designating where activities are to occur on the site,
- Possibility of exclusion areas to allow for landscaping and separation of activities from the road
- Bushfire reporting

Additionally, the question of land use classification was also raised with the Applicant, as the activities reflected in the application mimic what was proposed in the original proposal, which the Shire determined to fall into the Industry definition. This is due to the Resource Recovery Centre definition not referencing processing on the site. Further commentary surrounding land use will be provided below. In response to these issues raised, the Applicant did not amend the report, the only item that was further addressed was bushfire reporting, with a now compliant BMP being provided. On 29 June 2023 following a meeting between the Applicant's consultant and 2 representatives of the property owner, the application has been amended so as to be compliant with the definition of Resource Recovery Centre.

To date, there has been no further decision from a separate Supreme Court matter relating to non-conforming use rights and whether industrial activities are permitted to occur on the subject site. The Shire does not consider there to be any existing, valid approvals in place for this land to allow ongoing light industrial use.

Advertising

Submissions made by adjoining landowners (during advertising period referred to above) were not dissimilar to those made by the same landowners on previous versions of the application. The key issues raised in submissions related to:

- unsuitability of the proposal to the area,
- noise,
- contamination/ environmental impacts,
- amenity impacts,
- dust,
- inadequacy of landscaping,
- untidiness of the site,
- damaged fencing.

Officer comments have been provided in Appendix 6.1.C.

Land Use Classification

The amended application has been presented to entail two components;

The recycling of timber pallets, which includes:

1. Repairing broken and used pallets.
2. Recovery and ultimate resale of house frames and timber salvaged from demolition.

Also included is the Incidental storage and machinery/vehicle maintenance required for the above activities.

In order to fit within the resource recovery centre definition, the use:

- Must fundamentally/primarily be concerned with the recovery of resources; and
- The resources recovered must be from waste.

Waste

Neither the P&D Act nor LPS6 defines 'waste'. The Macquarie Dictionary definition of 'waste' as a noun includes:

- *anything unused, unproductive, or not properly utilised.*
- *anything left over or superfluous, as excess material, by-products, etc., not of use for the work in hand.*
- *left over or superfluous: to utilise waste products of manufacture.*
- *having served a purpose and no longer of use.*
- *rejected as useless or worthless, or refuse: waste products.*

"Waste" is also defined in the Waste Avoidance and Resource Recovery Act 2007, in the following broad way:

waste includes matter —

- (a) *whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or*
- (b) *prescribed by the regulations to be waste;*

The Supreme Court has found that the meaning of 'waste' in this legislation has its ordinary meaning of something left over or superfluous – see ECLIPSE RESOURCES PTY LTD -v- THE MINISTER FOR ENVIRONMENT [No 2] [2017] WASCA 90.

In the absence of any legislative definition of waste, for the purpose of the Resource Recovery Centre use class definition the word will include its ordinary meaning of *anything left over or superfluous*.

Therefore, it is reasonable to accept that:

- used timber pallets; and
- used timber house frames/products received from demolition sites,

both fall within the meaning of 'waste'.

Recovery

The Macquarie Dictionary definition of 'recovery' includes:

1. *the act of recovering.*
2. *the regaining of something lost or taken away, or the possibility of this.*
4. *restoration or return to a former (and better) state or condition.*

The recycling of timber pallets (i.e. repairing pallets to allow them to be re-used) is consistent with the definition of *restoration or return to a former (and better) state or condition*. The works involved in recycling the timber pallets can be described as an aspect of the 'recovery' process, as they are necessary to restore the pallets to their former condition. Those works do not involve the creation of a new product. Therefore, the land use activity described as 'repairing of broken and used pallets' for reuse would reasonably fall within the use class Resource Recovery Centre.

The pallet recycling use also includes breaking up reject pallets for sale as firewood. It is less clear whether the breaking up of pallets for firewood can be described as the *recovery of a resource*, because:

- the activity is not limited to regaining the timber, as it includes a degree of processing; and
- the processing undertaken is not for the purpose of restoring the timber pallets but, rather, is for the purpose of creating a new product (firewood).

The production of firewood is unlikely to meet the definition of Resource Recovery Centre. However, it could be accepted as an aspect of the pallet recycling activity if it can reasonably be described as an incidental or ancillary aspect of that use. It is not clear from the application how significant the production of firewood is expected to be. There are no hard and fast tests to measure what can be regarded as an incidental or ancillary activity, and questions of fact and degree arise from case to case.

Similarly, the recycling of timber house frames and other used timber products recovered from demolition sites which does not create a new product could reasonably be classified as a Resource Recovery Centre use.

Recycling as an Industry use

Pallet recycling squarely fits the description of '*repairing of goods, products, articles, materials or substances*' and therefore it falls within the Industry use class definition. Recycling of used timber house frames and other used timber products also involves 'repairing' of goods etc. This complicates the use classification exercise because the recycling activity also falls within Resource Recovery Centre.

A general principle of statutory interpretation is that a more specific provision excludes the general provision. This principle is consistent with clause 18(3) of LPS6 which provides that '*A specific use class referred to in the zoning table is excluded from any other use class described in more general terms.*'

The Industry use class is defined in very broad terms, whereas Resource Recovery Centre is more specific. Therefore, the effect of cl.18(3) is that the pallet recycling activity will fall within Resource Recovery Centre and will be excluded from the Industry use class.

Local Planning Strategy and Local Planning Scheme (Rural zone)

The Strategy identifies the land for rural purposes and expresses that rural land should be conserved for agriculture and for incidental land uses such as event and tourist accommodation/developments, or for lifestyle purposes. The reduction on activities on the site would allow for the site to be better managed to not impact on the surrounding area and nearby tourism uses. The Shire does not recognise the subject site as operating under a valid approval for light industrial uses and therefore the intent of the Strategy in guiding future development of the rural zone generally and the site specifically is to be considered.

Consideration must also be made for the intent of the Collie River Scenic Drive and the Bibbulmun Track as tourist routes within the Shire. Visual impacts from all developments within this area should be considered, with the objective of avoiding obvious incongruent visual impacts to users of the Bibbulmun Track and Collie River Scenic Drive as per the advice provided by Department of Biodiversity, Conservation and Attractions (DBCA). DBCA also recently completed a number of projects along Scenic Drive including:

- build the Kaniyung Wiilman suspension bridge over the Collie River, which is in close proximity to this site, connecting with the surrounding trails network.
- Develop the Westralia Conservation Park Trails, including the Westralia mountain bike loop/Kylie Trail.
- Finalising the Wiilman Bilya Walk Trail (5day, 4 night circuit), which connects to the Wellington Dam National Park via the Kaniyung Wiilman suspension bridge.
- Build the Djinang Koorliny Collie River valley lookout.

The proposal could be made to be consistent with objectives of the Rural zone, although it does not provide for the maintenance or enhancement of specific local rural character, management of the site through conditions can include strategies to maintain and enhance the environmental qualities of the landscape, vegetation, soils and water bodies, to protect sensitive areas. It is noted that the proposal does provide a sustainability element through recycling and reuse, however this objective of LPS6 also stipulates that non-rural land uses are to be compatible with surrounding rural uses.

The amended proposal does not prejudice the use of adjoining rural land and the reduction in activities proposed will allow for better management of the site and reduction in impacts to the amenity of the surrounding area.

As detailed above, recycling of timber pallets, house frames and other timber products can reasonably be considered under the Resource Recovery Centre definition and is a discretionary use.

As it stands, the proposal has not sufficiently addressed amenity impacts, particularly relating to screening of the site from Collie River Scenic Drive. The landscaping that has been planted on the road frontage is not sufficient in addressing visual impacts. The proposed new structure complies with the setbacks as required under LPS6,

being 30m from the front, 15m from the side and 30m from the rear. The site plan is also insufficient in setting boundaries and exclusion zones for development on the site, which would assist in controlling ongoing use of the site and offsite impacts. These elements can be addressed through conditions of approval.

Matters to be Considered.

Matter to be Considered	Officer Comment
a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;	The proposed development as amended is consistent with the definition of Resource Recovery Centre.
c) any approved State planning policy;	<p>State Planning Policy 2.5 for Rural Planning stipulates that the Matters to be Considered should be used for decision making for development applications in the Rural zone. When considering the matters to be considered, the proposal could be supported where impacts on amenity of the surrounding area are mitigated and managed.</p> <p>State Planning Policy 3.7 Planning in Bushfire Prone Areas has been adequately satisfied in this instance, to the satisfaction of the Shire and DFES.</p>
(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;	<p>LPS6 identifies that a Resource Recovery Centre is a use that may be suitable in the Rural zone.</p> <p>Resource Recovery Centre is a discretionary use, so there is an expectation that this use would only be considered in the Rural zone where it can be demonstrated that the development is compatible with locality and impacts can be managed appropriately.</p> <p>In the case of this proposal, the appearance of the development has the most significant impact on the relationship to the adjoining land and land in the area. The site is visible from the dwelling on the adjoining property to the west, as well as from Collie River Scenic Drive and users of the trails network in the immediate area.</p> <p>It is acknowledged that entirely screening the site from the adjoining dwelling would be difficult to achieve, however there is little attempt to improve the appearance of the site in its existing state, or through this proposal. It is acknowledged that the introduction of the new shelter will allow for processing to occur in a building and will therefore be screened from view, however the storage of goods, material receipt and dispatch is all proposed to occur in the open.</p>

Matter to be Considered	Officer Comment
	<p>The shelter has been positioned to have the opening east, facing away from the neighbouring property, which will assist in relation to noise from processing of the pallets.</p> <p>A large item lay down and a timber storage and processing area is located on the northern portion of the site, which will also be visible from Collie River Scenic Drive.</p> <p>An attempt to screen this portion of the lot from Collie River Scenic Drive has been made, at the time of writing this report, the screening devices that have been installed on the fences are damaged and have fallen off the fences. The landscaping on the plan also does not span the full length of the boundary and there is no landscaping proposed on the western boundary, which would assist in screening from the road when travelling towards the site and from the neighbouring property.</p> <p>The untidiness of this site and the impact on the amenity and character of the surrounding areas has been an ongoing issue for many years.</p>
<p>(n) the amenity of the locality including the following —</p> <ol style="list-style-type: none"> 1. environmental impacts of the development; 2. the character of the locality; 3. social impacts of the development; 	<p>Possible environmental impacts, namely from run-off and pollution, have been raised by DBCA and in the submissions from adjoining property owners. DWER reviewed the previous Woodyard proposal prior to when it was considered in June 2021. Advice from DWER was that if the wood was not proposed to be treated with chemicals, then it was unlikely to be a prescribed premise. No additional information to indicate that the treatment of wood to trigger this is to occur in the amended proposal.</p> <p>The Applicant has compared the proposed development to 'use of joinery and wood working premises', for the purpose of relating it to the EPA's guidelines for sensitive land uses. This is described as "the production of wooden furniture and household items such as doors, kitchen fitting, floorings and mouldings" and the Applicant has advised that this proposal would use similar tools and processes.</p> <p>The EPA guidelines stipulate a 100-300m separation distance, depending on scale. The dwelling to the west is approximately 250m from the proposed shelter where pallet processing is to occur. The Applicant has determined that this is an adequate separation distance and that no</p>

Matter to be Considered	Officer Comment
	<p>further investigation into noise, dust or odour is warranted or necessary.</p> <p>The proposal intends to process up to 150 pallets per week, the EPA guidelines do not provide guidance on what volume of production/processing triggers a certain separation distance. However, it can be assumed that there would likely be some impact on sensitive land uses nearby in terms of noise, dust and odour. However without further detail on these aspects and processes used it is difficult to determine the extent of the impact.</p> <p>The proposal is likely to have an impact on the character of the locality due to the visual presentation and impacts of further development of the site, as outlined in the Officer response to matter (m) above. With the reduction in activities contained in the amended proposal, these impacts have the potential to be more effectively managed.</p>
<p>o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or mitigate impacts on the natural environment or the water source.</p>	<p>It is acknowledged that the intent of the proposal is to reuse and recycle, to reduce waste and extend the useful life of products. This contributes to sustainable outcomes in building and industrial industries.</p> <p>No clearing is proposed as part of this application and there is no proposal to take additional water resources for the operation. There is insufficient information relating the drainage and run-off to determine the possible impacts on the Collie River at the south of the site.</p>
<p>(p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;</p>	<p>LPS6 does not set landscaping requirements for the Rural zone in the development standards. However, the expectation for the level of screening and landscaping was communicated to the Applicant and this was not addressed or provided with the application. The existing/ proposed landscaping and screening devices on the site are not sufficient.</p>
<p>(q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;</p>	<p>The property is located within a bushfire prone area, however the BMP has confirmed that bushfire risk does not impede this land from being developed for this purpose.</p> <p>Only the north western corner of the site is contained within SCA3 (Coal Basin) and has not been identified at risk of subsidence historically.</p>

Matter to be Considered	Officer Comment
	In relation to land degradation, the land has historically been subject to storage of industrial goods and waste. The land may be subject to continued erosion if drainage is not managed.
(s) the adequacy of — (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;	The Applicant has advised that there will be 1-2 rigid truck loads to the site per week and 1-2 rigid trucks per week being dispatched for pallettes. There is a commercial vehicle with flatbed trailer stored on the site for the delivery of timber from demolition sites. There is adequate space on the site for this to occur within the property and for the vehicle to be manoeuvred. There will also be light vehicle movements of workers with approx. 10 trips per day. The vehicles will access the site from the east via Collie River Scenic Drive and utilise Mungilup Road. All proposed access and egress points are existing and the Applicant has determined them adequate for their purposes.
(t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;	The amount of traffic to be generated is minimal and road capacity in the area is sufficient.
(w) the history of the site where the development is to be located;	The Shire does not consider there to be any non-conforming use rights that apply to this land which would allow for ongoing industrial use. The subject site is zoned Rural and has been in the last two iterations of the Shire's Local Planning Scheme and is identified for rural purposes in the Strategy.
(y) any submissions received on the application;	See Officer Comments in Schedule of Submissions.
(za) the comments or submissions received from any authority consulted under clause 66;	Submissions were received from both DBCA and DFES on this proposal. DBCA reiterated comments made on the original proposal, relating to on-site bushfire risks, potential run-off impacts and the adjoining Westralia Conservation Park and visual amenity impacts for users of the Bibbulman track. DFES made comment on the BMP and advised on changes required to achieve compliance. These changes were made, so this would address the impact of bushfire. The Applicant has advised in the report

Matter to be Considered	Officer Comment
	that there will be no run-off impacts from the site, however this is all that has been provided. In regard to visual amenity impacts, the proposal is inadequate in attempting to mitigate the issue.

Conclusion

The repair and recycling of used timber pallets, and of timber house frames and other timber products recovered from demolition sites can reasonably fall into the definition of Resource Recovery Centre. The firewood component of this proposal is generally referred to in relation to the palette recycling activity. Repurposing of other types of timber into firewood on this site is not supported by the Shire, however the extent of activities that are allowed to occur on the site, as reflected in the recommended conditions, will ensure that only activities relating to the recycling of pallets occur on the site. . Resource Recovery Centre is a use that can be considered in the Rural zone, upon the local government advertising the proposal and applying discretion.

The proposal has been amended to only include the elements of the proposed activities that relate to a Resource Recovery Centre. For a determination to be made, the matters to be considered as detailed above are to be used to assess the application. As detailed in the assessment, the proposal is required to be managed through conditions to address impacts on the amenity and character of the locality. The proposal could be consistent with the objectives of the Shire's Local Planning Strategy and Local Planning Scheme, with relation to Rural zoned land and also the Collie-River Scenic Drive as a tourist drive, subject to these impacts being managed. The most significant impact relates to visual amenity for users of Collie River Scenic Drive, the nearby trails network and the adjoining property to the west of the site, which directly overlooks the development site. The proposed mitigation measures, in the forms of screening through landscaping and screening devices are not adequate in reducing these impacts to an acceptable level and further work as per the recommended conditions, to the satisfaction of the Shire would be required for an approval to be contemplated.

It is recommended that the amended application be approved, subject to the conditions outlined in the recommendation section of this report.

The outcomes of Councils deliberations will be reported to the State Administrative Tribunal on 28 July 2023. Should Council adopt the recommendation, the Applicant will have the option to appeal any conditions through the State Administrative Tribunal, or to accept the determination and work to address the conditions if the approval is acted on.

Additional Officer Comment

In response to feedback received at the Special Meeting of Council held 25 July 2023, staff have liaised with the Shire's solicitors and an alternative motion of refusal, incorporating suitable grounds, has been provided in Appendix 6.1.D.

7. CLOSE