



3 MARCH 2023

Shire of Esperance

SPECIAL COUNCIL

NOTICE OF MEETING AND AGENDA

A Special Council meeting of the Shire of Esperance will be held at Council Chambers on 7 March 2023 commencing at 10:00 am to consider the matters set out in the attached agenda.

S Burge

Chief Executive Officer

DISCLAIMER

No responsibility whatsoever is implied or accepted by the Shire of Esperance for any act, omission or statement or intimation occurring during Council or Committee meetings. The Shire of Esperance disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council or Committee meetings. Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by a member or officer of the Shire of Esperance during the course of any meeting is not intended to be and is not to be taken as notice of approval from the Shire of Esperance. The Shire of Esperance warns that anyone who has any application lodged with the Shire of Esperance must obtain and should only rely on written confirmation of the outcome of the application, and any conditions attaching to the decision made by the Shire of Esperance in respect of the application.

ETHICAL DECISION MAKING AND CONFLICTS OF INTEREST

Council is committed to a code of conduct and all decisions are based on an honest assessment of the issue, ethical decision-making and personal integrity. Councillors and staff adhere to the statutory requirements to declare financial, proximity and impartiality interests and once declared follow the legislation as required.

ATTACHMENTS

Please be advised that in order to save printing and paper costs, all attachments referenced in this paper are available in the original Agenda document for this meeting.

RECORDINGS

The Meeting will be livestreamed. The recording will be made publicly available as soon as practical following the meeting.

DISCLOSURE OF INTERESTS



Agenda Briefing ☐

Ordinary Council Meeting ☐

Special Meeting ☐

Name of Person Declaring an interest

Position

Date of Meeting

This form is provided to enable members and officers to disclose an Interest in the matter in accordance with the regulations of Section 5.65, 5.70 and 5.71 of the Local Government Act 1995 and Local Government (Administration) Regulations 1996 34C.

INTEREST DISCLOSED

Item No

Item Title

Nature of Interest

Type of Interest

Financial ☐

Proximity ☐

Impartiality ☐

INTEREST DISCLOSED

Item No

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Nature of Interest

Type of Interest

Financial ☐

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Impartiality ☐

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Nature of Interest

Type of Interest

Financial ☐

Proximity ☐

Impartiality ☐

DECLARATION

I understand that the above information will be recorded in the Minutes of the meeting and recorded by the Chief Executive Officer in an appropriate Register.

Signature

Date

DISCLOSURE OF INTERESTS

Notes for Your Guidance



IMPACT OF A FINANCIAL INTEREST (s. 5.65. & s. 67. Local Government Act 1995)

A member who has a **Financial Interest** in any matter to be discussed at a Council or Committee Meeting, which will be attended by the member, must disclose the nature of the interest:

- a. In a written notice given to the Chief Executive Officer before the Meeting or;
- b. At the Meeting immediately before the matter is discussed.

A member, who makes a disclosure in respect to an interest, must not:

- a. Preside at the part of the Meeting relating to the matter or;
- b. Participate in, or be present during, any discussion or decision making procedure relative to the matter, unless and to the extent that, the disclosing member is allowed to do so under *Section 5.68* or *Section 5.69* of the *Local Government Act 1995*.

INTERESTS AFFECTING FINANCIAL INTEREST

The following notes are a basic guide for Councillors when they are considering whether they have a **Financial Interest in a matter**.

1. A Financial Interest, pursuant to s. 5.60A or 5.61 of the *Local Government Act 1995*, requiring disclosure occurs when a Council decision might advantageously or detrimentally affect the Councillor or a person closely associated with the Councillor and is capable of being measured in money terms. There are expectations in the *Local Government Act 1995* but they should not be relied on without advice, unless the situation is very clear.
2. If a Councillor is a member of an Association (which is a Body Corporate) with not less than 10 members i.e sporting, social, religious etc, and the Councillor is not a holder of office of profit or a guarantor, and has not leased land to or from the club, i.e, if the Councillor is an ordinary member of the Association, the Councillor has a common and not a financial interest in any matter to that Association.
3. If an interest is shared in common with a significant number of electors and ratepayers, then the obligation to disclose that interest does not arise. Each case needs to be considered.
4. If in doubt declare.
5. As stated if written notice disclosing the interest has not been given to the Chief Executive Officer before the meeting, then it **must** be given when the matter arises in the Agenda, and immediately before the matter is discussed. Under s. 5.65 of the *Local Government Act 1995* failure to notify carries a penalty of \$10 000 or imprisonment for 2 years.
6. Ordinarily the disclosing Councillor must leave the meeting room before discussion commences. The **only** exceptions are:
 - 6.1 Where the Councillor discloses the **extent** of the interest, and Council carries a motion under s.5.68(1)(b)(ii) of the *Local Government Act 1995*; or
 - 6.2 Where the Minister allows the Councillor to participate under s.5.69(3) of the *Local Government Act 1995*, with or without conditions.



INTERESTS AFFECTING PROXIMITY (s. 5.60b Local Government Act 1995)

1. For the purposes of this subdivision, a person has a proximity interest, pursuant to s.5.60B of the Local Government Act 1995, in a matter if the matter concerns;
 - a. a proposed change to a planning scheme affecting land that adjoins the person's land; or
 - b. a proposed change to the zoning or use of land that adjoins the person's land; or
 - c. a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.
2. In this section, land (the proposal land) adjoins a person's land if;
 - a. The proposal land, not being a thoroughfare, has a common boundary with the person's land; or
 - b. The proposal land, or any part of it, is directly across a thoroughfare from, the person's land; or
 - c. The proposal land is that part of a thoroughfare that has a common boundary with the person's land.
3. In this section a reference to a person's land is a reference to any land owned by the person or in which the person has any estate or interest.

INTERESTS AFFECTING IMPARTIALITY

Definition: An interest, pursuant to Regulation 11 of the Local Government (Rules of Conduct) Regulations 2007, that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected, but does not include an interest as referred to in Section 5.60 of the 'Act'.

A member who has an **Interest Affecting Impartiality** in any matter to be discussed at a Council or Committee Meeting, which will be attended by the member, must disclose the nature of the interest;

- a. In a written notice given to the Chief Executive Officers before the Meeting or;
- b. At the Meeting, immediately before the matter is discussed

IMPACT OF AN IMPARTIALITY DISCLOSURE

There are very different outcomes resulting from disclosing an interest affecting impartiality compared to that of a financial interest. With the declaration of a financial interest, an elected member leaves the room and does not vote.

With the declaration of this type of interest, the elected member stays in the room, participates in the debate and votes. In effect then, following disclosure of an interest affecting impartiality, the member's involvement in the Meeting continues as if no interest existed.

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SHIRE OF ESPERANCE

AGENDA

SPECIAL COUNCIL MEETING TO BE HELD IN COUNCIL CHAMBERS ON 7 MARCH 2023 COMMENCING AT 10:00 AM

1. OFFICIAL OPENING

The Shire of Esperance acknowledges the Kepa Kurl Wudjari people of the Nyungar nation and Ngadju people who are the Traditional Custodians of this land and their continuing connection to land, waters and community. We pay our respects to Elders past, present and emerging and we extend that respect to other Aboriginal Australians today.

2. ATTENDANCE

Members

Cr I Mickel, AM JP	President	Rural Ward
Cr R Chambers	Deputy President	Town Ward
Cr J O'Donnell		Town Ward
Cr S McMullen		Town Ward
Cr J Obourne		Town Ward
Cr L de Haas		Town Ward
Cr W Graham		Rural Ward
Cr R Horan		Town Ward
Cr S Flanagan		Town Ward

Shire Officers

Mr S Burge	Chief Executive Officer
Mr M Walker	Director Asset Management
Mr R Hindley	Acting Director External Services
Mrs F Baxter	Director Corporate & Community Services
Miss E Hegney	Executive Assistant
Miss S Hawke	Administration Officer – Executive Services

Members of the Public & Press

3. APOLOGIES & NOTIFICATION OF GRANTED LEAVE OF ABSENCE

4. DECLARATIONS OF INTERESTS:

- 4.1 Declarations of Financial Interests – Local Government Act Section 5.60a**
- 4.2 Declarations of Proximity Interests – Local Government Act Section 5.60b**
- 4.3 Declarations of Impartiality Interests – Admin Regulations Section 34c**

5. PUBLIC QUESTION TIME

6. PURPOSE OF MEETING

Item: 6.1

Request for Temporary Adjustment to Retail Trading Hours

Author/s	Trevor Ayers	Manager Community & Economic Development
Authorisor/s	Shane Burge	Chief Executive Officer

File Ref: D23/5729

Applicant

Woolworths Group

Location/Address

N/A

Executive Summary

A request for additional trading on public holidays during 2023.

Recommendation in Brief

That Council;

1. Endorse the following changes to retail trading hours in the Shire of Esperance with the addition of the following days (between 10am and 5pm):
 - Monday 10 April 2023
 - Monday 5 June 2023
 - Monday 25 September 2023
2. Request the CEO to make application to the Department of Commerce for the proposed changes to apply to the entirety of the Esperance Shire.

Background

An application has been received from the Woolworths Group for additional trading days for their Esperance store during 2023 (see Attachment A). Support for these additional days has been confirmed by the Esperance Chamber of Commerce and Industry (ECCI) - (see Attachment B). Previous approvals to provide additional trading during Christmas and Easter have occurred over past years, this is however the first application that includes additional trading days outside of the period that has been supported by the ECCI.

When additional Christmas hours were approved in late 2022 Council also supported investigating the desire to provide additional trading on a permanent basis in December, January and over the Easter period. This will be undertaken in the coming months.

Officer's Comment

The recommendation proposes that any trading extension is applicable to the entirety of the Shire rather than just Woolworths (as per the application received) to ensure all businesses are on a level playing field. It is important to note that an extension to retail trading hours provides an opportunity for traders to open for the additional period, not a requirement that they do so.

All requested additional trading days have been recommended as they are also supported by the Esperance Chamber of Commerce and Industry.

Last year Woolworths applied for both Easter Sunday and Monday to be added as trading days. The Esperance Chamber of Commerce and Industry only supported the addition of Easter Monday and this was the only day applied for and approved.

2020 was the only other year that Woolworths have applied for additional trading in recent years, however this application was received with insufficient time to enable it to be progressed and approved by the Department of Commerce so was not proceeded with. Woolworths subsequently requested ANZAC Day to be added as a trading day however this wasn't supported by the Esperance Chamber of Commerce and Industry and wasn't proceeded with as once again there was insufficient time to enable approval anyway. Both of these applications cited COVID restrictions on the number of people that could be within the store at any one time as the reason for the application.

We have not received an application for the June and September long weekends previously.

Woolworths have advised that the following in relation to the request:

The reason for these additional trading days is due to numerous queries from customers in relation to trading hours, especially during public holiday periods. As the current trading hours don't allow for Sunday trade, being closed on a Monday Public Holiday results in 2 consecutive days of not trading. This impact causes additional pressure for our store teams on already busy trading periods as customers alter their shopping patterns for the week. This additional pressure results in difficulties for our store team to maintain good availability and ensure a safe working environment.

Woolworths have also advised that they intend to apply for approval to trade on all public holidays that occur on a Monday in the future (excluding Christmas Day and ANZAC Day).

This application will, if successful, enable all stores in the Esperance Shire to trade on Easter Monday and the public holidays in June and September.

The majority of retailers in town do currently have the capacity to receive an exemption to open at any time, provided they meet the Department of Commerce's definition of a small retail business and have applied for an exemption certificate.

Endorsement of this recommendation by Council doesn't confirm a change, it simply provides the mechanism to apply to the State Government, with the Minister for Commerce being the decision-making body.

Please note that while Monday the 9th April 2023 has been requested, the Monday is actually the 10th April 2023, the recommendation is therefore for the 10th.

Option One

Endorse the changes to Retail Trading Hours as supported by the ECCL.

Option Two

Endorse an alternate set of changes to Retail Trading Hours.

Option Three

Refuse the request to change Retail Trading Hours.

Consultation

This application has been considered and supported by the Esperance Chamber of Commerce and Industry. The support of the local trader organisation is a requirement for a temporary change to retail trading hours.

Financial Implications

The financial implications arising from this report are nil.

Asset Management Implications

Nil

Statutory Implications

The statutory implications associated with this item are governed by the Retail Trading Hours Act 1987. Any change (both temporary and permanent) requires recommendation by the relevant local government and approval by the Minister for Commerce.

Policy Implications

Nil

Strategic Implications

Council Plan 2022 – 2032

Growth And Prosperity

Esperance is a vibrant and welcoming destination

Environmental Considerations

Nil

Attachments

- A¹. Request for Temporary Change to Retail Trading Hours - Woolworths Group
- B¹. Esperance Chamber of Commerce and Industry Support

Item: 6.1 Request for Temporary Adjustment to Retail Trading Hours

Officer's Recommendation

That Council

1. Endorse the following changes to retail trading hours in the Shire of Esperance with the addition of the following days (between 10am and 5pm):
 - Monday 10 April 2023
 - Monday 5 June 2023
 - Monday 25 September 2023
2. Request the CEO to make application to the Department of Commerce for the proposed changes to apply to the entirety of the Esperance Shire.

Voting Requirement

Simple Majority



24 January 2023

Mr Shane Burge
Chief Executive Officer
Shire of Esperance

Via Email Only: shane.burge@esperance.wa.gov.au and shire@esperance.wa.gov.au

EXTENDED TRADING HOURS FOR WOOLWORTHS ESPERANCE

Dear Mr Burge,

Woolworths Group is a leading retailer in Western Australia employing approximately 15,000 Western Australians. We operate more than 100 supermarkets throughout the state, one of which is in the Shire of Esperance. Woolworths Esperance proudly employs more than 130 local team members, contributing approximately \$3.6 million in wages annually.

Our WA stores sell some of the State's most iconic and trusted brands. 96% of our fresh fruit and vegetables, 100% of our fresh beef, milk and eggs are sourced locally from local farmers and producers.

I write to you to seek an extension of trading hour for the 2023 Public Holidays for Woolworths Esperance pursuant to the *Retail Trading Hours Act 1987*. As a matter of principle, Woolworths is supportive of moves to liberalise trading hours as we believe that it would allow our stores to provide our customers with greater choice and convenience. Given Woolworths Esperance anchors the Boulevard Shopping Centre, our store opening provides a genuine choice for small retailers in the centre to also open and benefit from increased foot traffic.

We anticipate that we will once again experience an increase in trade during these periods.

Against this background, Woolworths is requesting an extension to our trading hours on the following days:

- Monday 9 April 2023 (10.00am - 5.00pm)
- Monday 5 June 2023 (10.00am - 5.00pm)
- Monday 25 September 2023 (10.00am - 5.00pm)



We believe this is a reasonable request and would allow us to service the needs of the Esperance community.

We'd welcome the opportunity to discuss this matter further, please don't hesitate to contact me via email at kweber@woolworths.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "K Weber", written in a cursive style.

Karl Weber

General Manager – Woolworths Supermarkets WA/NT/SA

From: Executive Officer - ECCI <eo@esperancecci.com.au>
Sent: Thursday, 2 February 2023 1:33 PM
To: Shane Burge <Shane.Burge@esperance.wa.gov.au>
Subject: RE: Trading Hours Extension Request

[Caution: External Email] This email was sent from outside the organisation - be cautious, particularly with links and attachments.

Hi Shane,

Please advise council that the Chamber agrees to all of the Extended Trading Hours requested by Woolworths.

Kind Regards,

Bronwyn McLeod
Executive Officer
Esperance Chamber of Commerce and Industry

-Supporting Business in Esperance-



P: 08 9071 5142 | M: 0409 371 612
eo@esperancecci.com.au



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From: Shane Burge <Shane.Burge@esperance.wa.gov.au>
Sent: Friday, 27 January 2023 10:06 AM
To: Executive Officer - ECCI <eo@esperancecci.com.au>
Cc: Trevor Ayers <Trevor.Ayers@esperance.wa.gov.au>
Subject: FW: Trading Hours Extension Request

Hi Bronwyn,

Please see attached request from Woolworths for extended trading hours on selected public holidays.

Can you please provide the Chamber of Commerce position on this request for Council's consideration.

Thanks



Shane Burge

Chief Executive Officer
Shire of Esperance

T 08 9071 0621 | **M** 0407 018 027

E Shane.Burge@esperance.wa.gov.au

A PO Box 507, Windich Street, 6450

W www.esperance.wa.gov.au



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From: Karl Weber <kweber@woolworths.com.au>
Sent: Friday, 27 January 2023 10:02 AM
To: Shane Burge <Shane.Burge@esperance.wa.gov.au>; Shire of Esperance <shire@esperance.wa.gov.au>
Subject: Trading Hours Extension Request

[Caution: External Email] This email was sent from outside the organisation - be cautious, particularly with links and attachments.

Good morning,

Please see attached request for trading hours extension for your consideration.

Kind regards

Karl Weber
General Manager Supermarket Operations SA/NT/WA
Woolworths Food Group
M: 0418 826 758
Supported by Kerri White - kwhite4@woolworths.com.au

Got a question? Email me on askkarl@woolworths.com.au

7. CLOSURE