
ORANGE CITY COUNCIL

MINUTES OF THE

PLANNING AND DEVELOPMENT COMMITTEE

HELD IN COUNCIL CHAMBER, CIVIC CENTRE, BYNG STREET, ORANGE

ON 5 MARCH 2019

COMMENCING AT 7.13PM

1 INTRODUCTION

ATTENDANCE

Cr R Kidd (Mayor), Cr S Romano (Deputy Mayor), Cr K Duffy, Cr J Hamling, Cr J McRae, Cr T Mileto, Cr S Munro, Cr S Nugent, Cr M Previtera, Cr G Taylor
General Manager, Director Corporate and Commercial Services, Director Development Services, Director Community, Recreation and Cultural Services, Director Technical Services, Manager Corporate Governance, Governance Coordinator, Manager Corporate and Community Relations

*** In the absence of the Chairperson, Cr Kidd chaired the meeting. ***

APOLOGIES AND LEAVE OF ABSENCE

RESOLVED - 19/052

Cr S Munro/Cr J Hamling

That the apologies be accepted from Cr R Turner (Chairperson) and Cr J Whitton for the Planning and Development Committee of Orange City Council on 5 March 2019.

1.1 DECLARATION OF PECUNIARY INTERESTS, SIGNIFICANT NON-PECUNIARY INTERESTS AND LESS THAN SIGNIFICANT NON-PECUNIARY INTERESTS

Cr S Romano declared a less than significant non-pecuniary interest in item 2.2 (DA 305/2016(1) – 168 Shiralee Road), as he previously owned property in the middle of the Shiralee development.

Cr M Previtera declared a less than significant non-pecuniary interest in item 2.2 (DA 305/2016(1) – 168 Shiralee Road), as his sister owns land in the Shiralee development.

Cr S Munro declared a pecuniary interest in items 2.3 and 2.4 as he is the applicant of the development applications.

2 GENERAL REPORTS**2.1 ITEMS APPROVED UNDER THE DELEGATED AUTHORITY OF COUNCIL**

TRIM REFERENCE: 2019/122

RESOLVED - 19/053**Cr K Duffy/Cr M Previtera**

That Council resolves to acknowledge the information provided in the report by the Manager Development Assessments on Items Approved Under the Delegated Authority of Council.

2.2 DEVELOPMENT APPLICATION DA 305/2016(1) - SUBDIVISION - 168 SHIRALEE ROAD

TRIM REFERENCE: 2019/80

Cr S Romano declared a less than significant non-pecuniary interest in this item as he previously owned property in the middle of the Shiralee development, left the Chamber, and did not participate in the voting or debate on this item.

Cr M Previtera declared a less than significant non-pecuniary interest in this, as his sister owns land in the Shiralee development, left the Chamber, and did not participate in the voting or debate on this item.

MOTION

That Council resolves to consent to development application DA 305/2016(1) for *Subdivision (17 lot residential)* at Lots 90 and 100 DP 750401 - 168 Shiralee Road, Orange pursuant to the conditions of consent in the attached Notice of Approval.

AMENDMENT**Cr G Taylor/Cr S Munro**

That Council resolves to refuse the development application DA 305/2016(1) for Subdivision (17 lot residential) at Lots 90 and 100 DP 750401 - 168 Shiralee Road, Orange.

NOTICE WAS GIVEN OF A FORESHADOWED AMENDMENT**THE AMENDMENT ON BEING PUT TO THE MEETING WAS CARRIED AND BECAME THE MOTION****FORESHADOWED AMENDMENT****Cr S Munro/Cr R Kidd**

That Council defer consideration of development application DA 305/2016(1) for Subdivision (17 lot residential) at Lots 90 and 100 DP 750401 - 168 Shiralee Road, Orange, for 2 weeks.

THE MOTION ON BEING PUT TO THE MEETING WAS LOST

(Cr Taylor and Cr Duffy voted in favour of the motion and Cr R Kidd (Mayor), Cr J Hamling, Cr J McRae, Cr T Mileto, CR S Munro, Cr S Nugent voted against the Motion)

THE FORESHADOWED AMENDMENT ON BEING PUT TO THE MEETING WAS CARRIED AND BECAME THE MOTION**THE MOTION ON BEING PUT TO THE MEETING WAS CARRIED**

RESOLVED - 19/054	Cr S Munro/Cr R Kidd
That Council defer consideration of development application DA 305/2016(1) for Subdivision (17 lot residential) at Lots 90 and 100 DP 750401 - 168 Shiralee Road, Orange, for 2 weeks.	

Division of Voting	
Voted For	Cr R Kidd (Mayor), Cr K Duffy, Cr J Hamling, Cr J McRae, Cr T Mileto, CR S Munro, Cr S Nugent, Cr G Taylor
Voted Against	
Absent	Cr R Turner, Cr J Whitton, Cr S Romano, Cr M Previtera

*** Cr Romano & Cr Previtera returned to the chamber with the time being 7.26pm ***

2.3 DEVELOPMENT APPLICATION DA 307/2013(7) - (FENCING) - 51 MOULDER STREET

TRIM REFERENCE: 2019/330

Cr S Munro declared a pecuniary interest in this item as he is the applicant of the development applications, left the Chamber with the time being 7.26pm, and did not participate in the voting or debate on this item.

RESOLVED - 19/055	Cr K Duffy/Cr M Previtera
That Council resolves to modify development consent DA 307/2013(6) for Dwelling House, Community Title Subdivision (three lot residential), Community Title Subdivision (four lot residential) and Dwelling Houses (four) at Lot 1 DP 286647 – 51 Moulder Street, Orange (formerly known as Lot 1 DP 797835 and Lot 201 DP 1175177 – 49 and 41 Moulder Street), pursuant to the conditions of consent in the attached modified Notice of Approval.	

Division of Voting	
Voted For	Cr R Kidd (Mayor), Cr S Romano (Deputy Mayor), Cr K Duffy, Cr J Hamling, Cr J McRae, Cr T Mileto, Cr S Nugent, Cr M Previtera, Cr G Taylor
Voted Against	Nil
Absent	Cr S Munro, Cr R Turner, Cr J Whitton

2.4 DEVELOPMENT APPLICATION DA 307/2013(8) - (BUILDING DESIGN) - 51 MOULDER STREET

TRIM REFERENCE: 2019/331

Cr S Munro declared a pecuniary interest in this item as he is the applicant of the development applications, left the Chamber with the time being 7.26pm, and did not participate in the voting or debate on this item.

RESOLVED - 19/056

Cr J Hamling/Cr K Duffy

That Council resolve to consent to development application DA 307/2013(8) for Dwelling House, Community Title Subdivision (three lot residential), Community Title Subdivision (four lot residential) and Dwelling Houses (four) at Lot 8 DP 286647 – 3/51 Moulder Street, Orange (formerly known as Lot 1 DP 797835 and Lot 201 DP 1175177 - 49 and 51 Moulder Street, Orange) pursuant to the conditions of consent in the attached Notice of Approval.

Division of Voting	
Voted For	Cr R Kidd (Mayor), Cr S Romano (Deputy Mayor), Cr K Duffy, Cr J Hamling, Cr J McRae, Cr T Mileto, Cr S Nugent, Cr M Previtera, Cr G Taylor
Voted Against	Nil
Absent	Cr S Munro, Cr R Turner, Cr J Whitton

**** Cr Munro returned to the chamber with the time being 7.29pm. ****

2.5 DEVELOPMENT APPLICATION DA 456/2018(1) - LOT 25 WILLIAM MAKER DRIVE

TRIM REFERENCE: 2019/351

RESOLVED - 19/057

Cr J McRae/Cr K Duffy

That Council resolves to consent to development application DA 456/2018(1) for Subdivision (23 lot residential) at Lot 25 DP 1221604 - William Maker Drive, Orange pursuant to the conditions of consent in the attached Notice of Approval.

Division of Voting	
Voted For	Cr R Kidd (Mayor), Cr S Romano (Deputy Mayor), Cr K Duffy, Cr J Hamling, Cr J McRae, Cr T Mileto, Cr S Munro, Cr S Nugent, Cr M Previtera, Cr G Taylor
Voted Against	Nil
Absent	Cr R Turner, Cr J Whitton

2.6 SHIRALEE DEVELOPMENT PROGRESS REPORT

TRIM REFERENCE:	2019/3
RESOLVED - 19/058	Cr S Nugent/Cr K Duffy
That the report on progress of the Shiralee Development by the Director Development Services be noted.	

2.7 ORANGE LEP AMENDMENT - ARTISAN USES

TRIM REFERENCE:	2019/174
RESOLVED - 19/059	Cr S Nugent/Cr R Kidd
That Council resolves to:	
1 Adopt the planning proposal as exhibited and direct staff to proceed with seeking formal Parliamentary Counsel opinion.	
2 Upon a satisfactory opinion being received from Parliamentary Counsel, that the General Manager be authorised to formally make the plan amending Orange Local Environmental Plan 2011 and then to advise the Department of Planning and Environment accordingly.	

2.8 ORANGE CITY COUNCIL SUBDIVISION AND DEVELOPMENT CODE

TRIM REFERENCE:	2019/326
RESOLVED - 19/060	Cr S Nugent/Cr S Romano
That Council resolves to publicly exhibit the Draft 2018 Orange City Council Subdivision and Development Code for a period of 28 days.	

THE MEETING CLOSED AT 7.35PM

2.7 ORANGE LEP AMENDMENT - ARTISAN USES

RECORD NUMBER: 2019/174

AUTHOR: David Waddell, Director Development Services

EXECUTIVE SUMMARY

On 27 July 2018 the Department of Planning and Environment made the following amendments to the Standard Instrument LEP:

- a new definition of ‘artisan food and drink industry’ (exhibited as ‘artisan premises’) has been introduced to provide clarity for the growing artisan and craft food and drink industry;
- an amended definition of ‘garden centre’ to clarify the mix of uses that better reflect the contemporary garden centre format.

This report focuses on the ‘**artisan food and drink industry**’.

Boutique, craft or artisan food and drink products are increasingly popular among consumers who want an alternative to mass-manufactured offerings. Craft and locally produced goods support industries such as tourism and hospitality, as well as providing local employment (Department of Planning & Environment) The new land use term will provide clarity for the growing artisan and craft food and drink industry such as microbreweries or cheese makers by establishing a new definition that reflects the nature of these uses. Feedback from Local Government and industry has raised concern that the current land use definitions do not adequately encompass the growing artisan manufacturing industry. This was creating an environment where the inconsistent application of multiple landuses was occurring across Local Governments.

Demand for the new land use definition is linked to the emergence of changes in community expectations where customers are knowledgeable and passionate about products and seek a unique experience linked to the producer. In the same way that customers travel to wine regions to taste wine, artisan producers require areas where they can make and sell their products and offer customers an experience while tasting or testing the product.

Orange City Council staff have had several approaches, particularly around microbreweries wanting to enter the CBD or surrounds rather than industrial zones, which have been lost.

‘Artisan food and drink industry’ has been defined under the ‘light industry’ term and is therefore permitted wherever light industry is permitted. Within Orange this currently includes the following zones:

- RU5 Village (Lucknow/Spring Hill)
- B6 Enterprise Corridor (Endsleigh Avenue/William Street)
- B7 Business Park (Leeds Parade)
- IN1 General Industry and
- IN2 Light Industry.

Councils can also amend local planning controls to permit ‘artisan food and drink industry’ in additional zones if considered appropriate.

2.7 Orange LEP Amendment - Artisan Uses

It is the opinion of staff, informed by the criterion of previous enquiries, that these uses are potentially suited to the following zones, with appropriate planning controls:

- B3 Commercial Core (CBD)
- B2 Local Centre (North Orange)
- B4 Mixed Use (Peisley Street for example).
- B1 Neighbourhood Centre

The changes to the Standard Instrument LEP will allow artisan producers to also offer complementary services such as a restaurant, tours, workshops or tastings. When located in rural or industrial zones any associated retail floor area is limited by a new provision in clause 5.4 of the Standard Instrument LEP. This limit was established as 20% of the floor area of the industry or 400m² whichever is the lesser.

The Proposed Amendment was advertised from 14 December 2018 to 4 February 2019 and a single submission was received. The submission notes that the use is mandatory in the industrial zones under the standard instrument for LEPs, but argues that restaurants or cafes, which form a component of the new use, may conflict with other industrial uses. The submission also opposes the inclusion of the artisan use into the B4 zone arguing that this was a residential buffer zone and therefore the potential of conflict of uses was too high.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy “5.1 Live - Engage with the community to ensure facilities and programs meet changing lifestyle and social needs”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

The Orange LEP 2011 will be amended accordingly.

RECOMMENDATION

That Council resolves to:

- 1 Adopt the planning proposal as exhibited and direct staff to proceed with seeking formal Parliamentary Counsel opinion.
- 2 Upon a satisfactory opinion being received from Parliamentary Counsel, that the General Manager be authorised to formally make the plan amending Orange Local Environmental Plan 2011 and then to advise the Department of Planning and Environment accordingly.

FURTHER CONSIDERATIONS

Consideration has been given to the recommendation’s impact on Council’s service delivery; image and reputation; political; environmental; health and safety; employees; stakeholders and project management; and no further implications or risks have been identified.

SUPPORTING INFORMATION

The Proposed Amendment was advertised from 14 December 2018 to 4 February 2019.

A single submission was received that argue that the addition of the use in the B4 Mixed Use zone would be inappropriate but supported all other zones. The argument centred on the inappropriateness of the B4 zone for this type of use.

Submission: “Considering the present number of vacant premises in the CBD, it would be more appropriate to encourage and focus development within the commercial core of Orange...”

STAFF COMMENT:

- Staff do not necessarily disagree with this. This outcome would feed into the sentiments surrounding the need to revitalise and activate the main streets of Orange.
- The B4 zone could be construed to be a buffer/transitional zone between Orange’s commercial core and residential neighbourhoods. Should we be encouraging industry in this transitional area?
- On the other hand, the employment opportunities afforded by including artisan uses in the B4 align with that zone’s objectives of a dynamic mix of uses that encourage walking/cycling work commutes. More and more literature and case studies point to need for genuinely mixed used zones and mixed used buildings to foster walkable, workable, and well-serviced neighbourhoods. This position is also supported by s9.1 Ministerial Directions (Direction 3.4 Integrating Land Use and Transport).

Submission: “It is recommended that should the Planning Proposal proceed with the inclusion of the B4 Mixed Use zone, that development controls, specifically noise, traffic, and odour, are located in the relevant section of the Orange Development Control Plan and are specific to the zoning of the land and not the land use”.

STAFF COMMENTS:

- DCP controls could be introduced that specifically target planning outcomes for artisan food and drink industries in certain zones or near certain land uses. This might include varying the threshold for setbacks, GFAs, heights, hours of operation, external appearance/materials, noise emissions and other matters depending on the proximity of the proposed artisan use to residential accommodation land uses. Ultimately, the DCP would need to be strong on the need for a thorough site and locality analysis to be undertaken as part of a development application.
- Staff think it is unlikely that DPE would agree to varying the Standard Instrument, clause no. 5.4 to further distinguish the floor area split between “production/manufacturing” of food and drink, and other retail/hospitality components for certain zones.

- Staff are wary to propose any controls in the LEP or DCP that seek to limit the floor area proportions of “production/manufacturing” of food and drink, relative to the retail/ hospitality components in certain zones or in areas nearby to residences. Such an outcome may be antithetical to the purpose of the artisan uses definition:

artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following:

- (a) a retail area for the sale of the products,
- (b) a restaurant or cafe,
- (c) facilities for holding tastings, tours or workshops.

Note. See clause 5.4 for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry.

- Turning to the Planning Proposal as exhibited, which notes that artisan food and drink industry is a land use subset of “light industry”:

light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry.

Note.

Light industries are a type of industry—see the definition of that term in this Dictionary.

The light industry definition appears to indicate that artisan uses by their very nature should be uses which are of low/minimal/acceptable impact in their neighbourhood. So, Council would not be able to process a DA for an artisan use if it were submitted as such but it became apparent that it does interfere with the amenity of the neighbourhood in which it is proposed to be located.

Submission: “...Council should not encourage the artisan food and drink industry into industrial zone land based on the ancillary aspects of the industry. Uses such as restaurants or cafes in industrial zones can create land use conflict with adjoining industries or activities that often emit large amounts of dust, noise, waste, and odour, which make it difficult for those emerging and existing businesses in the industrial zones to operate.”

COMMENTS:

- The Planning Proposal as exhibited highlights that where proposals are borderline in their perceived neighbourhood amenity impacts, the proponent would be encouraged to seek land in the industrial zones or non-business zones. The Standard Instrument mandates permissible land uses for certain zones, and due to this, artisan food and drink industries are permissible in the IN1, IN2, RU5, B6, and B7 zones and this has been the case since the artisan food and drink industry definition was introduced in 2018.

- Attention is drawn back to the definition of artisan food and drink industry, where the principal purpose of a development must be the making or manufacture of boutique, artisan or craft food or drink products. Given that the retail/ hospitality components are somewhat subservient to the principal purpose, it is not likely that significant land use conflict between this subservient aspect and broader industrial areas would occur.
- In any case, a development application would need to be lodged and the merits of the proposal – taking into account the likely impacts of the development – would need to be demonstrated before consent is granted.
- DCP controls could be introduced that specifically target planning outcomes for artisan food and drink industries in certain industrial zones or near certain land uses. This might include varying the threshold for setbacks, recommending proposed layouts (with the subservient retail/hospitality aspects of the development being separated from neighbouring industrial activities by site layout and building design), GFAs, hours of operation, and other matters depending on the proximity of the proposed artisan use to industrial land uses. Ultimately, the DCP would need to be strong on the need for a thorough site and locality analysis to be undertaken as part of a development application.

ATTACHMENTS

- 1
- Submission - OLEP 2011 Amendment 23 (Artisan Food and Drink Industry) - Sam Basha, IC19/298
- 2
- Gateway Determination, IC18/23196
- 3
- Planning Proposal (as exhibited) to amend OLEP 2011 in relation to Artisan Food and Drink Industries, D18/60978

4 January 2019

Gary Styles
General Manager
Orange City Council

PO Box 35
ORANGE NSW 2800

Sam BASHA
Town Planning

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Scanned

- 7 JAN 2019

CONTAINER NO.

12978

Dear Mr Styles,

Re: Submission regarding the addition of 'artisan food and drink industry' as a permissible land use in certain business zones

Thank you for the opportunity to provide a submission regarding the proposed amendment to the Orange Local Environmental Plan 2011 to include *artisan food and drink industry* as a permissible land use in the B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core and B4 Mixed Use zone.

The growing *artisan food and drink industry* is important to the economy and promotion of Orange as the food and wine hub of the Central West. It is noted that the inclusion of the definition for the *artisan food and drink industry* is also permissible wherever *light industry* is permissible. Currently, *light industry* is permissible in the RUS Village, B6 Enterprise Corridor, B7 Business Park, IN1 General Industrial and IN2 Light Industrial zones. Concern is raised that the operational viability of an industrial zone can be significantly impacted by inappropriate land uses. The definition for *artisan food and drink industry* is:

A building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following:

- (a) a retail area for the sale of the products,
- (b) a restaurant or cafe,
- (c) facilities for holding tastings, tours or workshops.

The Planning Proposal advocates for introducing activity within land use zones where it may not be currently permitted, largely disregarding the impact and the appropriateness in certain zones in the local context. We strongly disagree with the reasoning/justification of noise and odour outlined in the Planning Proposal.

"In those instances where proposed artisan uses are somewhat borderline in their perceived odour impacts, proponents will be encouraged to locate their establishments in industrial zoned land where artisan uses are presently permitted. This flexibility in choosing appropriate sites is an inherent benefit of allowing artisan uses in a variety of commercial and industrial zones." (Source: Planning Proposal No. 23)

Sam Basha

TOWN PLANNING

Though the *artisan food and drink industry* is mandated as a permissible use in certain industrial zones under the Standard Instrument, Council should not encourage the *artisan food and drink industry* into industrial zone land based on the ancillary aspects of the industry. Uses such as restaurants or cafés in industrial zones can create land use conflict with adjoining industries or activities that often emit large amounts of dust, noise, waste and odour, which make it difficult for those emerging and existing businesses in the industrial zones to operate.

Additionally, concern is raised surrounding the permissibility of the *artisan food and drink industry* within the B4 Mixed Use zone. The B4 Mixed Use zone is predominantly located along the western and northern periphery of the Orange CBD and sporadically surrounded by residential areas outside of the CBD.

The objectives of the B4 Mixed Use zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To promote, where possible, the retention and reuse of heritage items as well as the retention of established buildings that contribute positively to the heritage or cultural values of the land in the zone.
- To promote development that supports the role of Orange CBD as the primary retail and business centre in the region.

There are a number of residential properties that abut or are immediately adjacent to the B4 Mixed Use zone. Allowing the *artisan food and drink industry* as a permissible land use in the B4 Mixed Use zone has significant potential to create land use conflict with nearby residences. The definition for *artisan food and drink industry* requires at least a restaurant or café; retail area; or facilities to hold tastings, tours or workshops, therefore, the land use conflict potential is considered to be relatively high.

Artisan food and drink premises have the potential to become popular destination venues, attracting a high volume of visitors, which can significantly and negatively impact on an adjoining residential use, particularly those located in or adjacent to the B4 Mixed Use zone.

Although the B4 Mixed Use zone is an open zone which permits *food and drink premises* including bars, pubs and restaurants, there is a significant difference between *food and drink premises* and *artisan food and drink industry*. The principal purpose of an *artisan food and drink industry* is the production and manufacturing of food or drink products, the retail/restaurant/café aspect of the *artisan food and drink industry* is ancillary to the production and manufacturing. In contrast to the *food and drink premises* where the primary use is the retail sale and preparation of food and drink. Note the significant difference between production/manufacturing and preparation.

SAM BASHA

TOWN PLANNING

Therefore, the potential for noise and odour is a considerable concern for adjoining uses and therefore the *artisan food and drink industry* is deemed not compatible with land uses that are permissible in the B4 Mixed Use zone.

Whilst acknowledging that the *artisan food and drink industry* should not be considered appropriate in the B4 Mixed Use zone, the attraction to such premises would be of far greater value and benefit to the Orange CBD.

Considering the present number of vacant premises in the CBD, it would be more appropriate to encourage and focus development within the commercial core of Orange where the potential for land use conflict is minimised as opposed to the potential conflicts that can occur in an open zone.

It is acknowledged that the food and wine industry is ever growing and of vital importance to the economy of Orange, ensuring that the *artisan food and drink industry* be better served if centrally located within the CBD. Overall, support is largely given for the inclusion of *artisan food and drink industry* as a permissible land use in the B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core. However, the inclusion of the *artisan food and drink premises* as a permissible land use in the B4 Mixed Use zone is not supported.

It is recommended that should the Planning Proposal proceed with the inclusion of the B4 Mixed Use zone, that development controls, specifically noise, traffic and odour, are located in the relevant section of the Orange Development Control Plan and are specific to the zoning of the land and not the land use.

If you have any further queries, please do not hesitate to contact me on sam@sambashatowntownplanning.com or alternatively via email

Sincerely,


Owner Principal