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# ORANGE CITY COUNCIL

MINUTES OF THE

## EXTRAORDINARY COUNCIL MEETING

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

ON 25 MARCH 2022

COMMENCING AT 12.30PM

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### 1 INTRODUCTION

#### ATTENDANCE

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Cr J Hamling (Mayor), Cr K Duffy, Cr J Evans, Cr G Floyd (via Zoom), Cr T Greenhalgh, Cr F Kinghorne, Cr D Mallard, Cr M McDonell, Cr T Mileto, Cr S Peterson (via Zoom), Cr G Power (Deputy Mayor)

A/Chief Executive Officer (Greenham), Director Corporate and Commercial Services, Director Development Services, Director Community, Recreation and Cultural Services, A/Director Technical Services, A/Manager Corporate Governance, Chief Financial Officer, A/Executive Support Manager, Administration Officer Governance

#### 1.1 APOLOGIES

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**RESOLVED - 22/082****Cr T Mileto/Cr J Evans**

That the apologies be accepted from Cr Jeff Whitton for the Council Meeting of Orange City Council on 25 March 2022.

For: Cr J Hamling, Cr K Duffy, Cr J Evans, Cr G Floyd, Cr T Greenhalgh, Cr F Kinghorne, Cr D Mallard, Cr M McDonell, Cr T Mileto, Cr S Peterson, Cr G Power

Against: Nil

Absent: Cr J Whitton

**RESOLVED - 22/083****Cr T Greenhalgh/Cr G Power**

That that Cr S Peterson and Cr G Floyd be permitted to attend the meeting via Zoom.

#### 1.2 LIVESTREAMING AND RECORDING

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The Mayor advised that the meeting was being livestreamed and recorded.

#### 1.3 ACKNOWLEDGEMENT OF COUNTRY

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The Mayor conducted an Acknowledgement of Country.

#### 1.4 DECLARATION OF PECUNIARY INTERESTS, SIGNIFICANT NON-PECUNIARY INTERESTS AND LESS THAN SIGNIFICANT NON-PECUNIARY INTERESTS

Cr F Kinghorne declared a significant, pecuniary interest in Item 2.3 Development Application - DA 306/2021(1) - 142-158 Lysterfield Road as her husband through his employment has conducted continuation assessments on this land and a condition of approval is that more assessments are to be conducted and will leave the Chamber and not vote on this Item.

Cr F Kinghorne declared a significant, pecuniary interest in Item 2.4 Development Application DA 23/2022(1) - 21-25 Peisley Street as her husband through his employment has conducted geotechnical assessments on this land for Akura and will leave the Chamber and not vote on this Item.

## 2 GENERAL REPORTS

### 2.1 DEVELOPMENT APPLICATION DA 346/2021(1) - 4633 MITCHELL HIGHWAY, LUCKNOW

TRIM REFERENCE: 2022/339

#### MOTION

Cr D Mallard/Cr M McDonell

That Council refuses development application DA346/2021(1) for Demolition (tree removal) at Lot 1 DP 171953, 4633 Mitchell Highway, Lucknow for the following reasons:

1. No Arboricultural evidence has been submitted to substantiate that the tree has a structural weakness or that a failure may occur.
2. Damage to the concrete footpath from the front property boundary to the front patio is negligible.
3. There is no evidence to show that tree roots have egressed beneath the patio or house foundations.
4. Tree removal will have an undesirable impact on the heritage significance of this neighbourhood in the Lucknow Heritage Conservation Area.
5. Tree removal will have adverse visual impacts on the streetscape.
6. Tree removal will have adverse impacts on the landscape setting in the locality.

#### AMENDMENT

Cr T Mileto/Cr J Hamling

That this DA be deferred to allow Council to write to the applicant seeking information that was formerly requested giving the applicant a firm deadline for response.

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

**THE MOTION ON BEING PUT TO THE MEETING WAS CARRIED.**

**RESOLVED 22/084****Cr D Mallard/Cr M McDonell**

That this DA be deferred to allow Council to write to the applicant seeking information that was formerly requested giving the applicant a firm deadline for response.

For: Cr J Hamling, Cr K Duffy, Cr J Evans, Cr G Floyd, Cr T Greenhalgh, Cr F Kinghorne, Cr D Mallard, Cr M McDonell, Cr T Mileto, Cr S Peterson, Cr G Power

Against: Nil

Absent: Cr J Whitton

Cr Kinghorne asked if Councillors should be concerned if there are major differences between the opinions of experts in this matter

*Director Development Services said that Council had asked the applicant to clarify further the opinion of their arborist that the tree was unsafe, Council staff had done an inspection of the tree and concluded the tree was not unsafe, and given no further information was given to staff by the applicant the conclusion is as per the report*

Cr Kinghorne commented that the letter from the arborist indicated that there is damage to the footpath and the buildings and that was different to the opinion of Council staff, how can there be two totally different opinions

*Director Development Services commented that Council staff have inspected the tree and make their notes on what they see, there is certainly noted cracking in the footpath and the damage was not anything significant or to warrant concern and that is what has led to our recommendation*

Cr Mileto asked the question should Councillors vote to maintain the tree if it is foreseeable that the root structure of the tree will cause damage to the surrounding area, is Council liable for any further damage caused based on these reports provided to Council

*Director Development Services responded by saying that the court case mentioned in the report does talk about liabilities that arise from trees that are dangerous, so Council has done an assessment based on the liability of that case and concluded that it would be reasonable to keep the tree there. It is a private tree, there are other options such as the root barrier system to prevent further damage to a building, then I am not seeing the link to Council. Staff have looked at it from a structural point of view, not the type of tree to drop limbs like a gum tree*

Cr Mileto asked what was the comparison between a root barrier system being installed and the cost to land owner to remove the tree

*Director Development Services said that the root barrier would only be required to be fitted to just one side of the tree between the tree and the house, and that given that the root barriers are only made of PVC the cost would be significantly less than to remove the tree*

Cr Peterson asked the question could a condition of removal be that the tree be replaced, and what makes a significant tree on private property

*Director Development Services commented that he considered replacement of the tree this morning when onsite with Cr Duffy – if it were removed on the basis that it was a concern to the house, the replacing tree in the same area brings about the same problem in a few years anyway. Lucknow is a Heritage Conservation area and when Council looks at the significance of trees, measured at chest height if they are more than 300mm in diameter or higher than 4m high – this is a tree of significance – this needs to have development consent for removal.*

Cr Peterson asked if this was just in Lucknow or anywhere

*Director Development Services commented that consent was required for particular trees to be removed in town, often handled with a tree removal permit or in the conservation area or heritage items they need a deveoopment consent*

Cr Greenhalgh commented that this tree was identified 5 years ago as having potential issues, what is the difference now compared to 5 years ago, have there been any signifcant changes in this time

*Director Development Services commented that Council staff have asked for additional information over the last few months from the applicant but received no additional information to be able to give comparisons of the details*

Cr Evans asked how far away are the powerlines and service wires from the tree and is there any expectation it will interfere with these services in the future

*Director Development Services responded by referring to page 14 of the report saying that the tree is trimmed by Essential Energy around the powerlines and that the setback depends on Essential Energy's own criteria based on voltage of the powerlines*

Cr Evans asked if there had been reports of issues prior

*Director Development Services answered by saying nothing had been received from Essential Energy previously*

Cr Mileto asked with regard to the applicant being asked to provide further information was a deadline given to the applicant

*Director Development Services answered by saying that Council's standard letters have a 14 day response period, in the last few months there have been a number of phonecalls between the assessing officer and the applicant but cannot confirm if verbally there was a deadline given to the applicant*

## **2.2 DEVELOPMENT APPLICATION DA 17/2022(1) - 13/5295 MITCHELL HIGHWAY, ORANGE**

TRIM REFERENCE: 2022/340

### **RESOLVED - 22/085**

**Cr J Hamling/Cr M McDonell**

That Council consents to development application DA17/2022(1) for Specialised Retail Premises (use and alterations and additions) and Business Identification Signage at Lot 2 DP 270204, 13/5295 Mitchell Highway, Orange pursuant to the conditions of consent in the attached Notice of Determination.

For: Cr J Hamling, Cr K Duffy, Cr J Evans, Cr G Floyd, Cr T Greenhalgh, Cr F Kinghorne, Cr D Mallard, Cr M McDonell, Cr T Mileto, Cr S Peterson, Cr G Power

Against: Nil

Absent: Cr J Whitton

Cr asked McDonell asked what sort of businesses have been approached

*Director Development Services said that there are restrictsions based on the zone and that they would not be retail but more speciality retail bulky goods style of development*

Cr McDonnell asked if they would be the same sort of businesses that are currently out there  
*Director Development Services said yes that was correct*

Cr Mileto asked if one of the businesses was going to be a children's amusement centre  
*Director Community Recreation and Cultural Services responded saying that staff had one conversation with a person interested in exploring that option, that person was aware of this DA and exploring the possibility of putting in an indoor playground for children, and this person has had a prior conversation with another staff member, predicated on the DA going through and predicated on this being a permissible activity*

Cr Mileto asked if that person was just waiting for Council to provide feedback on whether it is a permissible activity

*Director Community Recreation and Cultural Services responded saying that there had been no formal DA lodged, just a phonecall at this stage*

Cr Kinghorne left the Chamber at 12.55pm.

### **2.3 DEVELOPMENT APPLICATION - DA 306/2021(1) - 142-158 LYSTERFIELD ROAD**

TRIM REFERENCE: 2022/161

*Cr F Kinghorne declared a significant, pecuniary interest in this Item 2.3 as her husband through his employment has conducted continuation assessments on this land and a condition of approval is that more assessments are to be conducted and left the Chamber and did not vote on this Item.*

#### **RESOLVED - 22/086**

**Cr T Mileto/Cr G Power**

That Council consents to development application DA 306/2021(1) for Subdivision (Stage 1 – three (3) residential lots and two (2) development lots; Stage 2 - 84 residential lots, one (1) public reserve lot and five (5) roads; Stage 3 – nine (9) residential lots) and Demolition (outbuildings and dwellings) at Lot 184 DP 750401 and Lot 1 DP 130391 – 142 Lysterfield Road, and Lot 188 DP 750401 – 158 Lysterfield Road, Orange, pursuant to the conditions of consent in the attached Notice of Approval.

For: Cr J Hamling, Cr K Duffy, Cr J Evans, Cr G Floyd, Cr T Greenhalgh, Cr D Mallard,  
 Cr M McDonnell, Cr T Mileto, Cr S Peterson, Cr G Power

Against: Nil

Absent: Cr J Whitton, Cr F Kinghorne

Cr Peterson asked the report mentions no through roads or culdersacs, these may be attractive to some people, is there a problem with culdersacs or it just so happens that way

*Director Technical Services said that generally that road layout is in accordance with Council's DCP, some only accessing small number of houses that are quite narrow roads as well and a through road helps with access rather than taking up room with a culdersac, allows for a good flowthrough of pedestrians and traffic*

Cr Mallard asked in regard to re-alignment of Applebox Street noting the comments in the report that Stage 3 of the proposal is to demolish the existing dwellings and then original realignment of the street would be valid. If Council were were to impose a condition

requiring the originally intended straight alignment of this street, what would that change in terms of work that will be needed in the earlier stages, are the outbuildings going to have to go as part of establishing the setbacks or will it change what needs to be demolished in Stage 2

*Director Technical Services said that the continued use is permissible under this arrangement in that the owner of the residual lot will be able to retain those buildings in place and have the road constructed around them or if they chose to subdivide in the future to provide the setbacks that are required under the DCP there would be certain buildings that would have to be removed and some buildings are on boundary lines and would have to be removed to allow that subdivision to take place*

Cr Mallard asked if Council were to impose that condition would we be requiring them to knock down the outbuildings otherwise it would not need to happen, is that correct

*Director Technical Services said yes to some extent, but there is some misalignment under the DCP already, referring to page 54 it can be seen that a straight line of Applebox Street comes through and is slightly misaligned to the east continuance, doesn't align under the DCP, what is proposed here is a staggered T-type arrangement that meets the standards but also allows the continued use of the current dwellings to remain*

Cr Mileto asked looking at the different stages and understanding there are three stages, stage 2 indicated 84 residential lots includes a public reserve, stage 3 indicates a further 9 residential lots, the Directors comment refers to 94 lots is this correct, shouldn't it be 93 lots

*Director Development Services commented that this sum would include the Reserve lot*

Cr Mileto asked with regards to the 93 lots is there any requirement for any social/affordable housing to be included in this development and a timeframe of commencement

*Director Development Services said that the permissibility of affordable housing in this zone, yes it would be permissible, no proposal for any of the housing types in this its just purely the subdivision, the applicant is keen to commence as soon as possible*

Cr Mileto asked about the headworks which Council is responsible for – how far away are these

*Director Technical Services said that most lots in this subdivision under 500m<sup>2</sup> and four lots under 400m<sup>2</sup>, the headworks have already been constructed through there, its up to the applicant to take the Easements over adjoining properties to connect to those existing services*

Cr Evans commented that liveability is important as is serviceability and noted that a micro-shopping centre is planned and in what proximity will this be in regards to this development and timeframe

*Director Development Services said that the location of the neighbourhood shopping area is at the top of the hill as you go into the estate on the Eastern side of the boundary, when will depend on the market, no applications before us to build such a development yet*

Cr Evans asked has this area been designated for this purpose

*Director Development Services said yes under the DCP it has those controls placed on it - height and types of development*

**2.4 DEVELOPMENT APPLICATION DA 23/2022(1) - 21-25 PEISLEY STREET**

TRIM REFERENCE: 2022/384

*Cr F Kinghorne declared a significant, pecuniary interest in this Item as her husband through his employment has conducted geotechnical assessments on this land for Akura and left the Chamber and did not vote on this Item.*

**RESOLVED - 22/087****Cr T Mileto/Cr K Duffy**

That Council consents to development application DA 23/2022(1) for Demolition (existing buildings), General Industry (industrial unit complex containing 13 units)), and Associated Signage at Lot 100 DP 1199583 - 21-25 Peisley Street, Orange pursuant to the conditions of consent in the attached Notice of Approval.

For: Cr J Hamling, Cr K Duffy, Cr J Evans, Cr G Floyd, Cr T Greenhalgh, Cr D Mallard,  
Cr M McDonell, Cr T Mileto, Cr S Peterson, Cr G Power

Against: Nil

Absent: Cr J Whitton, Cr F Kinghorne

Cr Kinghorne returned to the Chamber at 1.14pm.

**3 CLOSED MEETING**

Nil

**THE MEETING CLOSED AT 1.15PM.**

This is Page Number 7 and the Final Page of the Minutes of the Extraordinary Meeting of Orange City Council held on 25 March 2022.