



Rescinding or altering Council decisions

Rescission motions are a normal part of Council decision making and are explained in Council Codes of Meeting Practice. They are proposed by 3 or more Councillors to rescind or alter a Council decision. I have often heard people say that Orange City Councillors move an excessive number of rescission motions that aim to rescind or alter Council decisions and that this results in a lack of certainty for potential developers.

For comparison, I have looked through all of the Council agendas for Bathurst Regional Council during this term – since the local government election of September 2017 – and I have found no rescission motions.

During the same period Orange City Council had the following eleven rescission motions:

1. 17.10.17 Amendment 9 Orange Airport Industrial Park – Moved by: Duffy, Kidd, Munro, Mileto, and McRae
2. 7.12.17 Renewal of membership of Association of Mining Related Councils – Moved by: Taylor, Hamling and Whitton
3. 18.12.18 DA Robertson Park Toilets – Moved by: Duffy, Munro, and Nugent
4. 16.10.18 DA Recreation Facility Wade Park – Moved by: Turner, Kidd, and McRae
5. 19.2.19 Compulsory acquisition roundabout – Moved by: Duffy, Taylor and Romano
6. 19.2.19 DA for Group Home 20 George Wesley Place – Housing Plus – Moved by: Duffy, Taylor and Munro
7. 7.5.19 Donation of \$5,000 to the Orange Show Society – Moved by: Turner, Mileto and Kidd
8. 4.6.19 OESC Swimming Pool – Moved by: Taylor, Duffy and Whitton
9. 25.6.19 Recreational Use of Spring Creek and Suma Park Dam – Moved by: Taylor, Whitton and Nugent
10. 17.9.19 DA for Lantana Place – Housing

Plus – Moved by: Duffy, Taylor and Whitton

11. 1.10.19 DA for Turner Crescent Child Care Centre – Moved by: Duffy, Taylor and Whitton

Five of those 11 rescission motions were to rescind or alter Development Application (DA) decisions.

I initially worked in local government in England and was a Director of a Unitary Council (equivalent to State and local government combined in Australia) with responsibility for land use planning. I later worked as an Executive Director in Planning NSW and in Executive Management in several NSW councils and have always been concerned about the lack of integration between the Local Government Act in NSW and the Environmental Planning and Assessment Act in providing clear guidance about the role of Councillors in land use planning. When I raised my concerns in the past, I was told that the two issues come under two different Acts and are administered by two different departments. At various times planning and local government have both been part of the same super department, but I am not convinced that this has improved the integration and I have seen some very 'patchy' understanding of their role in land use planning by Councillors and the community.

In the 2017 Office of Local Government's Councillor Handbook there are three pages on 'Land Use Planning' that start:

The NSW Department of Planning and Environment is responsible for the administration of the Environmental Planning and Assessment Act 1979 (EPAA, EP&A Act), which provides the framework

for development decisions made by local government in NSW.

The remaining 97 pages of the Handbook are mainly concerned with responsibilities under the Local Government Act.

It is recognised that it is pretty poor practice for rescission motions to be used on DAs unless there are firm, technical, legal, administrative or procedural grounds for

strategic planning and plan-making phases when trying to gauge community views on how land and natural resources will be used and protected into the future.

A very useful part of the draft Community Participation Plan is a reminder of matters that can and cannot be taken into consideration in assessing development applications.

Planning Matters

- Air/odour impacts
- Biodiversity/ecological impacts
- Land/soil suitability and capability
- Noise/vibration impacts
- Privacy impacts
- Solar access impacts
- Traffic impacts
- Visual/streetscape impacts
- Waste impacts
- Water (surface and ground) impacts

Not Planning Matters

The following are not planning matters, and cannot be given weight by assessing officers in their decision-making role:

- Speculation on devaluation of property or private market fluctuations
- Character assessments of the developer, future neighbours, or anyone else
- Hearsay as to what other neighbours would or would not be concerned about
- Assumed bad faith or non-compliance with road rules or other laws.

council to rescind a DA approval. Otherwise, rescission of an approval tends to indicate a failure in the decision making process of the consideration of a DA on the part of elected councillors.

One of the 2017 reforms to the Environmental Planning and Assessment Act 1979 now being implemented by Orange City Council is the Community Participation Plan that has been open for public comment until recently.

It explains that the planning system of NSW is shifting focus to enable more meaningful community participation earlier in the planning process. Because of this, the Plan places greater emphasis and weight on

This is for guidance to community members making a submission to object to a development application, staff making the assessment and Councillors making the decision.

When making decisions, Councillors must consider matters on their individual merits and not pre-determine decisions. This means that Councillors must not even give the impression that they have already decided how they will vote at a meeting. This impression can be given by what they have said at meetings, or in the media, or in correspondence prior to the meeting where a decision will be made.

I am happy to receive comments from readers about this column and other issues you would like me to cover so please either contact me at Orange City Life or aes@amandaspaldingconsulting.com