



## MINING TENEMENTS

### 1. Purpose

The Position Statement has been prepared by the Town of Port Hedland (Town) to assist users in understanding the Town's policy position and rationale when responding to statutory referrals for grant of a mining tenement.

The purpose of the position statement is to:

1. Outline the Town's rationale when responding to a statutory referral for an application for grant of a mining tenement.
2. Provide underlying principles and other matters for the applicant of a mining tenement to consider in applying for, or carrying out activities under, a grant of mining tenement.

### 2. Underpinning principles

The Position Statement is founded on the following principles:

***Orderly and proper planning*** – coordinated land use and infrastructure planning and ecologically sustainable development is achieved, and sensitive and incompatible land uses are minimised.

***Investment, innovation, and industry diversification*** – are encouraged, with applications comprehensively merit assessed and potential opportunities and impacts for the community, proponents, and the State Government, effectively managed.

***Information quality*** – the Town's capacity to provide considered and evidence-based information to better inform the State Government on a local government referral for an application for a mining tenement is enhanced.

***Strategic interests*** - a balance is achieved between the social, cultural, economic, and environmental needs of the community, applicant(s) and State Government's strategic priorities.

***Genuine community engagement*** - opportunities are afforded for community feedback on mining tenements of significant community interest.

***Sound and rationalised asset management*** - Government and local government strategic investment in infrastructure is recognised, and the efficient use of existing and planned infrastructure maximised.

***Sufficient regard to Legislative objectives*** - local government referral provisions for applicants for grant of a mining tenement pertaining to sound land-use planning and development in the local planning scheme, are given due weight.

### 3. Application

The Position Statement applies to the entire municipality of the Town of Port Hedland. It does not bind the Council of the Town of Port Hedland in responding to a Department or Ministerial referral for an application for the grant of a mining tenement.

The *Planning and Development Act 2005* (PD Act) empowers the Western Australian Planning Commission (WAPC) and local governments to prepare planning instruments that establish development controls. The primary planning instruments developed pursuant to the Act that are relevant to, and should be read in conjunction with, the Position Statement are:

- *Town of Port Hedland Local Planning Strategy* (the Strategy)
- *Town of Port Hedland Local Planning Scheme* (the Scheme)
- *Town of Port Hedland Disposal and Management of Crown Land Position Statement*
- *Town of Port Hedland Workforce Accommodation Position Statement*
- *Town of Port Hedland LPP/05 Workforce Accommodation*
- *Town of Port Hedland LPP/06 Social Impact Assessment*

The *Mining Act 1978* (Mining Act) provides the legislative framework for the application and grant of mining tenements. Pursuant to Section 120(1) of the Mining Act, decision-makers are required to give consideration to planning schemes through referral of an application to a relevant local government authority. Under Section 120(2) a local government may advise the Minister for Planning that an application for a mining lease or general purpose lease, if granted would be contrary to the provisions of the planning scheme. The Minister for Mining is required to consider any recommendations made by the Minister for Planning against the broader objectives of the Mining Act.

The Town recognises that the policy positions within the Position Statement cannot be unilaterally imposed on mining tenements approved pursuant to State Agreements which are ratified by Acts of Parliament, or under the *Mining Act 1978*. It is acknowledged that such proposals are exempt to the extent that the provisions of those Acts override the *Planning and Development Act 2005* and the Scheme.

It is not intended for the Position Statement to be applied retrospectively to approved mining tenements, except where applications are made for variations to existing approvals, where a licence is converted to a lease, or where renewals or extensions of a lease or licence are sought, and these are not considered by the Town to be minor matters.

The following briefly summarises the rights acquired under mining tenements and corresponding sections of the Mining Act. Further information on mining tenements can be located at <http://www.dmp.wa.gov.au/>.

**Mining Lease (Sections 700 to 85A)** - grants the lessee the right to work and mine the land, take and remove minerals, and conduct other necessary activities pursuant to mining activities, in accordance with the conditions of title. A mining lease is fixed for a period of 21 years, although may be subject to renewal for further terms.

**General Purpose Lease (Sections 86 to 90)** - grants the lessee exclusive right to a parcel of land (under 10 hectares) for a range of purposes including, but not limited to, operating machinery, depositing or treating minerals or tailings, or for any other specified purpose directly connected with mining operations. A General Purpose lease is fixed for a period of 21 years, although may be subject to renewal for further terms.

**Miscellaneous Licence (Sections 91 to 94)** - authorises the use of land for a range of purposes connected with mining including, but not limited to, roads, a powerline, a pipeline, a bridge, a tunnel, workforce accommodation or an aerodrome.<sup>1</sup> There are no limits on the number of Miscellaneous Licences that may be granted to an individual or company and this licence may co-exist with other mining tenements. A Miscellaneous Licence is fixed for a period of 21 years, although may be subject to renewal for further terms.

**Exploration Licence (Sections 57 to 69E)** - authorises the extraction or disturbance of up to 1000 tonnes of material, including overburden. Rights under this form of licence include entering land with employees, vehicles and machinery; exploring through digging pits, trenches, holes, bores and tunnels; excavating

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<sup>1</sup> See Regulation 42B *Mining Regulations 1981* for further information.

rock, soil, etc; and taking and diverting water from a water body (in accordance with relevant regulation). New licences are subject to a five-year fixed term with possible periods of extension.

**Prospecting Licence (Sections 40 to 56)** - authorises the extraction or disturbance of up to 500 tonnes of material from the ground (higher levels subject to Ministerial approval), including overburden across a maximum 200 hectares. Prospecting licences are subject to a four-year fixed term, with provision to extend for a further four years.

**Special Gold Prospecting Licence (Sections 56A, 70, 85B)** - authorises the carrying out of activities across a maximum 10 hectares to access gold deposits on an existing mining tenement where it is considered that those activities could be conducted without detriment to the activities of the primary tenement holder. This licence can be granted for a period of three months or for any period which is a multiple of three months up to a maximum of four years. The term granted cannot be extended or renewed.

**Retention Licence (s.70B Mining Act 1978)** - a 'holding' title for an identified mineral resource that cannot be further explored or mined. Under the Retention Licence, ground disturbing equipment can be used for a program of works approved under the application. A Retention Licence may be applied over part or whole of a primary mining tenement and is subject to a five-year fixed term with options for renewal.

#### 4. Position Statement

While the Town's advice on mining tenements is informing, not binding on State Government, the quality of that advice underpins the State Government's decision-making capacity regarding those applications.

When an application for a mining tenement is referred to the Town for advice, the Town where relevant, will consider whether the proposed mining tenement and associated infrastructure and activities are:

1. Within a gazetted boundary or located on land set aside for urban growth.
2. Within relative proximity to a rural residence or station homestead.
3. Proposed to overlay a Town managed asset, land or reservation.
4. Within a visual protection area or located in relative proximity to a highway or major road.
5. Within a Public Drinking Water Source Protection Area.
6. Within a coastal foreshore reserve, waterway or area deemed by the public as having significant social, cultural, local economic or environmental value.
7. To include workforce accommodation, an aerodrome or other substantial infrastructure that will duplicate, or compete with, Town based assets and services.

While each application will be assessed on its own merits, the Town adopts the following position in relation to these considerations.

1. *Within a gazetted boundary or located on land set aside for urban growth*

The Town's strategic vision is focused in part on population growth to provide a skilled, ready workforce, for economic development and a sustainable and diverse economy, and on enhancing community amenity and liveability. This necessitates sufficient land being reserved within the Town for future residential settlement and minimising activities that could impact dedicated land uses within the Town of Port Hedland townsite boundaries.

The Town does not support, and will object to, the grant of mining tenements within the gazetted townsite.<sup>2</sup>

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<sup>2</sup> Section 25, *Mining Act 1978* (WA).

For mining developments and activities located in close proximity to the townsite boundary, proponents must give consideration to ensuring appropriate separation distances<sup>3</sup> are maintained between activities and sensitive land uses and to the impact of ground-breaking activities on the health, safety and amenity of residents or approved activities on adjacent landholdings.

Outside of the townsite gazetted boundary, significant mining developments and/or activities deemed not to have a substantial adverse impact on the Town's Strategy and Scheme objectives, community amenity and health, and public or public use infrastructure, will generally be viewed by the Town as low impact. Prospecting activities that do not use ground disturbing equipment adjacent to activity centres or sensitive land uses will also generally be considered low impact.

## *2. Within relative proximity to a rural residence or station homestead*

Under the Mining Act and *Mining Regulations 1981*, a proponent of a mining tenement application is required to notify the relevant pastoralist, who is afforded the opportunity to comment on the proposal.<sup>4</sup>

For reasons of amenity, quiet enjoyment and public health and safety, the Town does not support mining tenement developments or activities that may have an adverse impact on a rural residence.

## *3. Proposed to overlay a town managed asset, land or reservation*

With the exception of coastal reserves, the Town will consider on a case-by-case basis a proposal to overlay a Town managed asset, land or reservation, giving due regard to the impact, and extent of impact, of the mining development or activity on the purpose and use of the asset(s); any modifications required to the asset(s) (i.e. new road crossovers); the asset's community, cultural or economic significance; and biodiversity and conservation value.

## *4. Within a visual protection area or located in close or relative proximity to a highway or major road*

For activities located in close, or relative proximity, to highways or other major roads, the Town will consider the type of infrastructure and activities proposed, proximity or intersect with the road or road reserve, the degree of impact (i.e. scrapers, excavators or spot drilling, vehicle numbers), and any intrusion on the approach to the Town.

The Town does not generally support mining developments or activities that are likely to impede public access to a road or road reserve owned or managed by the Town.

The Town will not support mining developments or activities being located within the Visual Protection Areas<sup>5</sup> (200 metres either side of the road reserve) for the Great Northern Highway or North West Coastal Highway, or that impact the entry statement into Port Hedland.

## *5. Within a public drinking water source protection area*

Two Public Drinking Water Source Areas (PDWSA) have been proclaimed by the Department of Water and Environmental Regulation within the Town, namely the Yule and De Grey catchment areas to the west and east of Port Hedland, respectively.

Proposals within a PDWSA are assessed by DMIRS against Schedule 2 of a Memorandum of Understanding with the Department of Water and Environmental Regulation (DWER). Any approvals have

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<sup>3</sup> Government of Western Australia, Environmental Protection Authority, *Guidance for the Assessment of Environmental Factors (in accordance with the Environmental Protection Act 1986), Separation Distances between Industrial and Sensitive Land Uses, No.3*, June 2005.

<sup>4</sup> Department of Mines, Industry Regulation and Safety, *Prospecting, exploration, mining on pastoral leases*, Revised as at June 2016. Available at: [http://www.dmp.wa.gov.au/Documents/Minerals/Mining\\_Notice\\_Pastoral\\_Leases.pdf](http://www.dmp.wa.gov.au/Documents/Minerals/Mining_Notice_Pastoral_Leases.pdf)

<sup>5</sup> Town of Port Hedland, *Town of Port Hedland Local Planning Strategy*, Map 5.

stringent conditions and endorsements. An example of an endorsement placed on an exploration title within a PDWSA is below:

*“All activity within the proclaimed public drinking water source area shall comply with the current version of the DWER (Quality Protection Note 25 Land Use Compatibility in Public Drinking Water Source Areas). Key issues that need to be considered within the Water Quality Protection Note are:*

- *All exploration/mining/prospecting activity involving the storage, transport and use of toxic and hazardous substances (including human wastes) within public drinking water source areas being prohibited unless approved in writing by DWER.*
- *All exploration/mining/prospecting activity is prohibited within any reservoir protection zone (an area of up to 2 kilometres from the maximum storage level of a reservoir including the reservoir itself) or within a wellhead protection zone, unless approved in writing by the DWER.*
- *Seek written advice from the DWER if handling, storing and/or using hydrocarbons and potentially hazardous substances.”*

The Town is satisfied that the water quality and quantity of PDWSA will be adequately protected from mining developments and activities under the Memorandum of Understanding between DMIRS and DWER. The Town will generally not object to proposals within PDWSA.

*6. Within a coastal foreshore reserve, waterway or area deemed by the public as having significant social, cultural, local economic or environmental value*

The foreshore reserve is highly valued by the community for recreation, visual amenity, tourist value and significant environmental assets including mangrove colonies, turtle nesting sites, migratory birds, and a range of threatened flora and fauna. It is also an area subject to substantial risk from coastal erosion and inundation.

A number of significant waterways also flow through the Town of Port Hedland local government area which feed both aquifers and important wetlands.

The Town will not support mining developments and activities that are likely to adversely impact the coastal foreshore reserve and overall integrity of waterways, and other areas deemed to have significant biodiversity, conservation, or cultural or community value.

The *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* identify riparian vegetation as a non-permitted area. These areas are considered by the Department of Mines, Industry Regulation and Safety (DMIRS) through Native Vegetation Clearing Permits. The clearing of riparian vegetation is assessed through this process and the Town will generally not object to proposal on the basis of potential damage to riparian vegetation.

*7. Includes workforce accommodation, an aerodrome or other substantial infrastructure that will duplicate or compete with Town-based assets and services*

The State Government requires mining proponents undertaking significant mining activities to identify existing and proposed activities within the tenement boundary, including proposed developments.

The Town undertakes considerable strategic, capital, and operational planning and investment to support community and industry sectors. The Town does not support the development of infrastructure or services by proponents that will duplicate, or compete with, Town-based assets and services.

Proponents intending to construct an ‘airstrip’ are required to consult with the relevant local government authority. The Town does not support the construction of aerodromes in relative proximity to regional airports. Duplicate airport infrastructure has the capacity to undermine substantial investment in the publicly utilised Town of Port Hedland International Airport and / or negatively impact the viability of regional airlines, and the cost of regional airfares for Town-based residents.

The Town acknowledges that workforce accommodation is an invaluable housing resource for industry. For workforce accommodation located within proximity to the Town, proponents should refer to *Town of Port Hedland Local Planning Policy LPP/05 – Workforce Accommodation*.

In giving advice on an application for an aerodrome, workforce accommodation or other relevant infrastructure, the Town will consider (where relevant), the following:

- the distance to the Port Hedland townsite
- the number of workers supported by the facility
- whether the facility will service one or more mine sites
- the impact, and the extent of impact, on Town infrastructure and services i.e. airport, roads, recreation centres, etc
- the impact, and extent of impact, on the Town's vision to establish the Town as a sustainable urban centre
- whether remediation or offset of impacts is required

## 5. Documentation

Prior to making an application to the State Government for grant of a mining tenement, applicants are strongly encouraged to:

- review the Town's Strategy and Scheme
- seek advice from the Town's Planning and Development team on the planning framework; land, infrastructure and services managed by the Town; and information required for the Town to make a considered decision on a referral for an application for a mining tenement.

Sufficient information must be provided by the proponent to enable the Town to provide considered advice to the State Government on a referral for an application for a mining tenement giving due regard to the Town's considerations outlined under part 4 of this Position Statement. This includes, but is not limited to, detailed information on the proposed mining tenement developments and activities.

The provision of insufficient information may result in the Town objecting to an application, until such time as the information is received for consideration or the matter is dealt with by the Warden's Court.

### Development application

The PD Act provides for application under the Scheme for development approval. This process facilitates access by proponents during the planning stage of the development to Town planning and development expertise regarding alignment of the development to the provisions of the Scheme and where relevant, provides for impact and opportunity management. Early identification of issues during the formative stage of the development affords potential for remediation of matters that may contravene the provisions of the Scheme, or impact the community, or industry workforces. The baseline data from cumulative developments and impacts informs the Town's strategic planning and infrastructure investment to support economic growth and town development, as well as operational service delivery, such as the Town's emergency management capability within the local government area.

Considering the latter outcomes, the submission of a Development Application for a development on a mining tenement realises mutual benefits for the proponent and the Town.

### Social Impact Assessments and Social Impact Management Plans

Where impacts of mining tenement assets or activities are considered moderate to significant, the Town may request the submission of a Social Impact Assessment and Social Impact Management Plan. Collectively, these plans facilitate early identification and assessment of positive and negative impacts of a planning proposal, mitigating adverse impacts and maximising positive social outcomes for the community and for industry workforces.

## Maintenance / liability agreement

Where it is determined that there are significant impacts to a public road owned or managed by the Town of Port Hedland, the Town may assess whether a maintenance or liability agreement is warranted.

### 6. Background

The Town recognises that Crown Land is owned by the State Government and that the grant of mining tenements for mining activities is integral to economic growth, with mining licences for prospecting or fossicking also forming part of the Pilbara's rich social history.

Various referral requirements to local government exist under the *Mining Act* in respect to applications for mining tenements, including both leases and licences. These referrals allow the Minister, Warden or Mining Registrar, to consider the application in the context of a regional or local planning scheme.

The Town of Port Hedland local government area is nationally and globally significant for its rich mineral resources. While the Town strongly supports a commercially viable and expanding mining industry to maximise the economy, activities associated with mining tenement leases and licences can individually and cumulatively impact the town, both positively and negatively.

The Town's planning framework effectively considers and balances a range of interrelated strategic interests such as economic development, physical and social infrastructure, environment, and security, and includes evidence-based strategies to generate better planning outcomes. The Town's capacity to provide quality advice to the State Government and applicants on an application for a mining tenement is aimed at realising the following outcomes:

- consistency in the way applications for mining tenements are addressed.
- proponents are made aware from the outset of the Town's considered view on a particular proposal and associated constraints or opportunities.
- individual and cumulative impacts of proposals on infrastructure, services and planning for the district are understood and effectively managed to support town planning, including economic growth.
- investment in key heavy transport corridors and other town infrastructure and services is appropriately targeted, managed and where feasible, rationalised.
- effective community consultation processes (where relevant) underpin a proposal.
- maintenance of the character, vibrancy and natural and built form that represents Port and South Hedland is achieved.
- appropriate buffers are maintained between mining activities and sensitive land uses and community health, safety and amenity is preserved.

### 7. Definitions

For the purposes of this policy, the following definition applies:

**"Mining tenement"** is defined under Section 8(1)(a) of the *Mining Act 1978* as meaning 'a prospecting licence, exploration licence, retention licence, mining lease, general purpose lease or a miscellaneous licence granted or acquired under this Act or by virtue of the repealed Act; and includes the specified piece of land in respect of which the mining tenement is so granted or acquired.'

### 8. Further information

Proponents intending to apply for a grant of a mining tenement, or undertake a mining tenement development are encouraged to consult with Planning and Development staff on the proposal on 9158 9300 or email [planning@porthedland.wa.gov.au](mailto:planning@porthedland.wa.gov.au)