



Town of
Port Hedland



Special Meeting of Council Minutes

5:30pm Monday 10 December 2018

Council Chambers, McGregor St, Port Hedland

Purpose of the Meeting:

- That Council cease all actions with regard to removing the residents of the Port Hedland Retirement Village;
- That Council prepare an emergency plan for the evacuation of residents of the Port Hedland Retirement Village in the event of a weather (event);
- That Council request quotes to come back to Council for remediation work to bring the Port Hedland Retirement Village to an acceptable standard;
- That Council prepare an expression of interest for potential providers to manage the future aged housing facility.

David Pentz

Chief Executive Officer

Our Vision

*To be Australia's leading
Port Town embracing
community, culture
and environment*



3rd December 2018

I Louise Newbery Deputy Mayor of the Town of Port Hedland give notice of a Special Council Meeting to be held on Monday 10th December at 5.30pm this is to debate my Motion on Notice.

That Council


- 1.Cease all actions with regard to removing the residents of the Retirement Village.
- 2.Prepare an emergency plan for the evacuation of residents of the Port Hedland Retirement Village in the event of a weather.
- 3.Request quotes to come back to Council for remediation work to bring the Port Hedland Retirement Village to an acceptable standard.
- 4.Prepare an expression of interest for potential providers to manage the future aged housing facility.

Deputy Mayor Louise Newbery



George DACCACHE
Councillor



Julie Arif - Councillor.


DISCLAIMER

No responsibility whatsoever is implied or accepted by the Town of Port Hedland for any act, omission, statement or intimation occurring during Council Meetings. The Town of Port Hedland 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, and statement of intimation occurring during Council Meetings.

Any person or legal entity that acts or fails to act in reliance upon any statement, act or omission occurring in a Council Meeting does so at their own risk. The Town of Port Hedland advises that any person or legal entity should only rely on formal confirmation or notification of Council resolutions.

Item 1	Opening of Meeting.....	6
Item 2	Acknowledgement of Traditional Owners and Dignitaries	6
Item 3	Recording of Attendance.....	6
	3.1 Attendance.....	6
	3.2 Attendance by Telephone / Instantaneous Communications.....	6
	3.3 Apologies	6
	3.4 Approved Leave of Absence	6
	3.5 Disclosures of Interest.....	7
Item 4	Public Time	7
	4.1 Public Question Time	7
	4.1.1 Ms Lauren Shannon.....	7
	4.2 Public Statement Time	8
	4.2.1 Mr Chris Walley.....	8
	4.2.2 Mr Darryl Brown.....	8
	4.2.3 Ms Mary Attwood.....	10
	4.2.4 Mr Isaac Hottes	10
	4.2.5 Ms Lorna O'Hagan	11
	4.2.6 Ms Kailah Marshall	11
	4.2.7 Ms Joan Foley.....	12
	4.2.8 Ms Lauren Shannon.....	12
	4.2.9 Ms Grace Green.....	13
	4.2.10 Ms Trish Carson.....	13
	4.2.11 Mr Mike Green.....	14
	4.2.12 Ms Chrissie McDowell	14
	4.3 Petitions/Deputations/Presentations/Submissions.....	16
Item 5	Questions from Members without Notice	17
	5.1 Councillor Arif.....	17
	5.2 Councillor McDonogh.....	17
	5.3 Councillor Arif	17
	5.4 Councillor Daccache.....	17
	5.5 Councillor Whitwell	18
	5.6 Councillor Daccache.....	18
	5.7 Councillor Hebbard	19
	5.8 Councillor Daccache.....	19

5.9	Councillor McDonogh.....	19
5.10	Councillor Pitt.....	20
Item 6	Announcements by Presiding Member without Discussion	20
Item 7	Declarations of All Members to Have Given Due Consideration to All Matters Contained in the Business Paper before the Meeting	22
Item 8	Reports of Officers	23
8.1	Corporate and Performance.....	23
8.1.1	Port Hedland Retirement Village (<i>File No. 13/06/0005</i>).....	23
Item 9	Matters for Which Meeting May Be Closed (Confidential Matters)..	37
Item 10	Closure	37
10.1	Date of Next Meeting	37
10.2	Closure.....	37

Item 1 Opening of Meeting

The Mayor declared the meeting open at 5:30pm.

Item 2 Acknowledgement of Traditional Owners and Dignitaries

The Mayor acknowledged the traditional custodians, the Kariyarra people, and recognised the contribution of Kariyarra Elders past, present and future, in working together for the future of Port Hedland.

Item 3 Recording of Attendance

3.1 Attendance

Mayor Camilo Blanco
Deputy Mayor Louise Newbery
Councillor Julie Arif
Councillor Richard Whitwell
Councillor Peter Carter
Councillor George Daccache
Councillor Tricia Hebbard
Councillor Warren McDonogh
Councillor Telona Pitt

David Pentz	Chief Executive Officer
Anthea Bird	Director Corporate and Performance
Robert Leeds	Director Development, Sustainability and Lifestyle
Gerard Sherlock	Director Infrastructure and Town Services
Josephine Bianchi	Manager Governance
Wendy Barnard	Corporate Support Officer/Minute Taker

Public	74
Media	2
Staff	6

3.2 Attendance by Telephone / Instantaneous Communications

Nil

3.3 Apologies

Nil

3.4 Approved Leave of Absence

Nil

3.5 Disclosures of Interest

Name	Item no.	Interest	Nature
Cr Arif	8.1.1	Impartiality	Councillor Arif declared that she was on the committee of the Port Hedland Retirement Village Incorporated.

Item 4 Public Time

Important note:

'This meeting is being recorded on audio tape and streamed live online as an additional record of the meeting and to assist with minute-taking purposes which may be released upon request to third parties. If you do not give permission for recording your participation please indicate this at the meeting. The public is reminded that in accordance with Section 6.16 of the Town of Port Hedland Local Law on Standing Orders nobody shall use any visual or vocal electronic device or instrument to record the proceedings of any meeting unless that person has been given permission by the chairperson to do so. Members of the public are also reminded that in accordance with section 6.17(4) of the Town of Port Hedland Local Law on Standing Orders mobile telephones must be switched off and not used during the meeting.'

In accordance with section 6.7(3) of the Town of Port Hedland Local Law on Standing Orders, members of the public are required to complete a question form and place the completed form in the tray provided.

The Mayor opened Public Question Time at 5.33pm.

4.1 Public Question Time

4.1.1 Ms Lauren Shannon

On the Town Budget for 2016/17 there is a listing of \$30,000 under Retirement Village – Contractors, Trade. What was the budget for and were any works completed on the Village?

The Mayor advised that the question would be taken on notice.

The Retirement Village is a depreciating asset in the Town budget. In the 2009/2010 and 2010/2011 budget it depreciated at just over \$5000, in the 2011/2012 budget it jumps to over \$40,000 depreciation, in the 2013/2014 it jumps to over \$70,000 and then over \$160,000 in the 2015/16 budget. Can the Council provide some clarification on why these amounts have increased so much over the years and why there is no mention of the Retirement Village as a depreciating asset in the last two budgets, and it doesn't seem to have been written off as an asset either.

The Mayor advised that the Retirement Village will be valued at zero, and that the question would be taken on notice.

How did the Council choose the KSCE Engineers as an appropriate company to complete the investigation report, considering that the inspection took place on 8 May 2018 and the ABN listed on the report does not seem to have been active until 11 May 2018 and was not registered with the ASIC until 18 May 2018?

The Mayor advised that due to the noise, members of the public will not be able to hear the responses to questions asked.

The Mayor advised that the question would be taken on notice and that the questions taken on notice will be addressed in the February Ordinary Council Meeting agenda.

The Mayor closed Public Question Time at 5:39pm

The Mayor opened Public Statement Time at 5:39pm.

4.2 Public Statement Time

4.2.1 Mr Chris Walley

I am a resident at the Retirement Village. I signed a lease on 25 January this year for two years, ending 25 January 2020. I signed this lease in good faith. That trust has been broken. All the facilities and amenities we retirees want and need are within walking distance of the present Village. By allowing the other retirees and myself to remain in the Village that trust will be restored.

4.2.2 Mr Darryl Brown

I am amazed at you all for even considering moving our aged citizens from their home of many, many years and I ask you to reconsider, as the current facility is not in such a state of disrepair that it needs demolition.

Indeed, it will be cheaper to repair than demolish and that is a fact and not a myth as in the so-called report by KSCE Engineers, who at the time of writing the report were not even a registered business.

The Stevens Street facility is outside of the dust zone.

The Stevens Street facility is up to ten degrees cooler than Osprey, because of the sea breeze. Now, these people can't afford to run their air conditioners now, how are they going to afford to run them at Osprey? The Stevens Street facility is within walking distance of the shops, beach, medical centre and entertainment venues. Osprey is not.

How can these elderly people go fishing or enjoy that relaxing cool sea breeze if they are forced by you to live at Osprey which is not set up as a retirement facility.

The crime rate where they presently live, in Stevens Street, is practically zero. What is it like in Osprey? How would you like to live there?

The list goes on and on. I believe that others will raise many more concerns about how this so-called relocation idea for these residents has been handled thus far.

The buildings do need repairs and we could seek funding from State or Federal Governments or we could raise it locally as we did when we built them. Remember these were built by us for them.

Please find it in your hearts to do the right thing tonight and let these people remain in their homes, and remember that it could be any one of you in this situation in the future.

The Mayor asked if Mr Brown had documentation supporting his claim?

I haven't got it, but I can prove it, if we had the funding. Have you got the proof that they need to be demolished? You haven't got it.

The Mayor advised Mr Brown that he should refrain from interrupting otherwise he would be removed.

The Mayor asked if Mr Brown had factual evidence that could be provided to the town?

I have been in the building trade for 55 years and I have looked at this building report. I have looked at it closely. I have been over and over it and they are not in a position to be removed. Have a look at what they look like.

The Mayor advised Mr Brown that that was enough.

4.2.3 Ms Mary Attwood

I am a Kariyarra Elder. I have lived in this community all my life, which is over seventy years. I am really disappointed that this Council, or whoever provided the information, did not contact the community to look at options prior to making the decision to remove this building and remove the people from it. My knowledge goes back to when these people were living in tin sheds, no air conditioning, no fans, nothing, when the Town decided to look at options for them and they actually built the pensioner's houses.

Now the Council really is appointed to look after the people, the ratepayers, and all the people that live in this town. The ratepayers are the main stakeholders and at a recent meeting we decided that we would not accept that the Council should remove this pensioner's facility and move the people. It is just not what anybody in your capacity should be doing, you should be looking at ways of making sure that our elders are being catered for.

I even saw on Facebook someone wanted to remove their status as a non-profit organisation, now that's just going beyond what you guys are here for. The people that need support, the not-for-profit status gives anybody who manages and looks after these facilities the ability so that they don't have to pay tax and they should get exemption from the Council on that status as well.

Now you just can't continue to make decisions which put the vulnerable people of this community at risk. We know what's been happening for the past, I was here when our ratepayers couldn't even vote, only those people who owned houses, station people had four or five votes, Aboriginal people had no votes, the pensioners, if you didn't own anything, you had no votes. So why are you turning back the clock now and taking the control away from the most vulnerable people in this community?

Now, that residence provided the accommodation for many old people that worked and lived in this town and I say to you that we will not accept that, because you have a responsibility, a moral and a legal obligation, under the Local Government Act, to look after the elderly of this community.

4.2.4 Mr Isaac Hottes

I am representing Jack Scheltens, in unit 4. Mr Hottes then read the letter below:

"I have been in my unit for fifteen years. In that time I have established myself a comfortable home, I was going to finish my life here but apparently not.

I have worked in the community of Port Hedland, from hospitality at the Pier and the Heddy. I am also a qualified barber, which I have also done in Port Hedland. I also volunteered as a bus driver for schools and sporting events.

I have done my fair share of hard work in this community. I ask that you all please do the same and let us stay. We are just as much a part of this community as the person standing either side of you.

Osprey is not a place for us, the ocean is.

Thank you, Jack”

Mr Hottes then read the following letter:

“I have been in Port Hedland since 1963. Good old days, my name is Robert Kynaston, 22 Stevens Street, also known by many as “Snake Bite”. I have been living here four years now and I’ve never been so happy in my life since I been here. It’s only a five minute walk to the shops, pharmacy and my doctor, who I see a lot. I have a rubber catheter into my bladder and urinate from a tap on the end of that. I can’t go long away from toilet. The nurse Robin from Home Nursing comes and changes it every six weeks.

Now, over Osprey is too far for me. I walk everywhere I need to go but I am not going there. I would rather roll my swag out on the rocks where I fish at Cemetery Beach and be homeless. South Hedland is dangerous and not a place for me. You got drugs, violence and drunks. I don’t want to be near there so stick it where the sun don’t shine.

Yours, Robert Kynaston, “Snake Bite”

4.2.5 Ms Lorna O’Hagan

I live at the Masonic Village units and have been there for about eleven or twelve years now. I ended up there because of a marriage breakdown, I had nowhere to go, I was put on the streets by my husband, he left with my two kids and everybody that’s on the Council should consider that we all may eventually need Stevens Street services one day and these elderly people need a stable home to spend their remaining years. How would you like to be turfed out of your only home? Some [tenants] may have no home to go to.

I have seen for myself when I owned a nursing home in New Zealand and the elderly there that I was looking after, there were fifteen of them, and the families did not treat them with the respect that they deserve from somebody who is capable of helping them in any way possible. Every one of us can be homeless if circumstances are right. Don’t think that’s not possible.

4.2.6 Ms Kailah Marshall

Mayor, at the last meeting you made mention of seven residents who had agreed to go. Of the twenty two units at the Retirement Village, ten of which are vacant, I have twelve signing they would rather stay. There is a couple in unit thirteen who would rather go to Geraldton than Osprey Village, and they have written that in there. I will submit this for you to see.

4.2.7 Ms Joan Foley

For me the toughest thing in life would be not to have family either with you all the time or not at all. Similarly, if you have a home you love, with a surrounding Hedland family, how upsetting is it that you should be told around the Christmas season that you no longer have that either. This is just not fair.

4.2.8 Ms Lauren Shannon

I am here to ask the Councillors to assist in keeping the Port Hedland Retirement Village open and the residents in their current homes.

The residents of the Village have been contributing members of our community for a very long time and to see the way that they have been treated recently in this process of closing down their beloved village, has been disappointing to say the least. When the residents were called upon to attend a meeting where they would then be served termination notices of their leases, not once were they offered to bring a support person with them to help them understand what is happening and to be there with them while they received the devastating news. This has left many of the residents feeling scared, vulnerable and extremely stressed and upset to the point of not being able to sleep at night. I wish for the Councillors to think of this on a personal level, and to consider how you would feel if this had happened to one of your grandparents, parents or any other family member of yours.

The Town of Port Hedland has failed the residents of the Village in many ways by not upholding the requirements made of them to look after the Village, hence why the breach notices were issued. The CEO has also failed to meet two out of the four requirements made of him at the February Ordinary Council Meeting in regards to the Retirement Village, no Port Hedland Retirement Village Reserve has been established and the most important one "request the CEO to report back to Council with a strategic plan for Port Hedland Retirement Village which incorporates community and stakeholder consultation, financial and operational management within six months".

When I questioned what consultation had been undertaken with the residents, members of the community and members of the Council at the last Ordinary Council Meeting, the answer from the CEO was that no consultation had taken place, and that is unacceptable.

The CEO has also stated on more than once occasion that no decision has been made to demolish the Village, but it states in the "Stevens Street Retirement Village Relocation Fact Sheet", published on the Town of Port Hedland website, that once the final tenant has relocated, existing structures will be demolished.

The building reports that have been conducted so far seem to be lacking a lot of information and I believe are not thorough enough to warrant the urgent relocation of the residents. In the Government of WA Guidelines published as "*Inspection of Buildings – Guidelines to Building a Compliant Report*" it states that:

- Where photographs are included in a report they need to be accompanied with appropriate detail clarifying their nature, location and date taken, with areas of non-compliance highlighted.
- A report that contains only photographs, with little description of the complaint item, will likely be considered unsuitable for the assessment.

The current report fails to meet these requirements.

It has been announced that a secondary building report will be completed but will not be available until the end of January due to the holiday season. I believe that the deadline of offer to move to Osprey Village by 31 January should be extended until after this building report has been completed to give the residents some peace of mind that they will still have somewhere to live, no matter what happens.

The decisions made now about the Retirement Village are setting a precedent for the future of the elderly citizens of our town, people who have worked hard their whole lives and contributed immensely to our community. Please have some compassion when making your decisions tonight.

4.2.9 Ms Grace Green

Why, when my husband and I came up here to relocate eighteen months ago, we applied, as pensioners, to go to Osprey Village and were told that we had to work thirty plus hours per week. Are you going to send all these people [current tenants] back to work?

4.2.10 Ms Trish Carson

I do not understand the way in which you have gone about relocating the elderly residents from the Stevens Street Retirement Village.

For an action such as this to occur in any community, one would think that you, as the local Councillors, would surely have a duty of care to fully research and consult extensively and in an open manner with all stakeholders and the local community, before trying to evict these people to a commercial residence twenty kilometres away, where their daily lives would be totally different.

I understand that you have a policy for supporting local business and yet you chose to get an unregistered, out of town business to provide you with a report to use, to then rush into trying to move these people out of their homes.

I also understand that the community helped to build these Stevens Street units originally and as such should have been fully and openly consulted before any major action was attempted to be implemented.

If they did move to Osprey then they can't have their own meeting room and when I spoke with an Osprey spokesperson this week, they said that they couldn't provide accommodation for these people in one area, so they could be scattered anywhere in

the complex, away from established support of friends. Osprey is not a retirement village. I don't believe that any of you would like to be told just before Christmas that you had to leave your long term home, where you feel safe and happy, and relocate to a motel type accommodation away from your local area, for good.

At Osprey, when they reach gopher mobility stage, these people won't be able to travel the much greater distance to shops or any other amenities in the heat. I wonder if these impositions on these elderly people have even been considered and what action, if any, that you considered to alleviate the social, emotional and financial burden that this move will have for these individuals. I wonder what long or short term compensation, if any, has been considered or offered for these residents.

These are elderly people who deserve to be treated with the utmost respect and with a high standard of duty of care from everyone in this community. If their present place has been allowed to deteriorate at all then you should all be ashamed that this has even happened and take steps to rectify the maintenance in a timely and positive manner so that the residents can continue to live in their long term home that is a retirement village where they have close access to shops, amenities and their local beach and long term friends in this community.

We are not on this earth for many years and should be respected and remembered for supporting our disadvantaged and elderly. I would have liked to have presented this in question time but after watching how the Mayor shut down some people in the last Council meeting, I thought that at least by making a statement then my concerns might be heard and considered.

Thank you all for attending this meeting and I hope that as Councillors you all choose to support keeping these residents in their present homes where they can continue to live in peace, harmony and safety.

4.2.11 Mr Mike Green

One word – ashamed.

4.2.12 Ms Chrissie McDowell

As you know, I am a relative of one of the residents of Stevens Street. I am his next of kin. He doesn't have any family living in Australia. I am his family. He has been quite distressed by the treatment that he has had from the Council and I've spoken to the Mayor, the CEO and the Director of Corporate and Business [Performance] about that, and I spoke last meeting about this as well. However, I still feel quite passionate about the fact that these people have had their human rights taken from them with the way they've been treated currently, with the meeting that was called with Foundation Housing, chaired by the Town of Port Hedland and given a letter from the CEO who was on a plane to Perth with the Mayor at the same time.

The residents were not given the courtesy of a visit from the said Mayor and the CEO. When the CEO was asked if he could take the building report down, show the residents what the problem is, take them around, if it was so dangerous and so unsafe, give them

the courtesy of being told and shown and so they could understand why this sudden decision was made.

They didn't sleep and are still not sleeping. Their health and wellbeing is actually suffering and they have felt abused financially because they have been offered stuff, but they are not sure if that is going to be current when they go to Osprey. They will get a lease for six months, but will it stay the same? They don't know, probably not.

They will have physical and psychological issues related to this, because lately the gardens were not done as soon as the notice was given. It did happen after the last meeting, but they'd already done it themselves. Barriers were put around so that the sprinklers wouldn't work on the ground. The hose has been disconnected several times, so they have to go and reconnect the hose so they can water the plants that they want to water.

It is still their home. They have a right to be there, while they are still a tenant. They have a right to be treated humanely while they are still tenants. These people have given this town a huge amount of input in the days before big industry came to town. They gave it willingly and long hours. My friend worked at a job, he went and volunteered at the local church after he finished work, doing the gardening and the school. He did that voluntarily for the community and lots of other people did too. I'm just talking about him. He has lived here for forty five years plus, this is his home.

He is now nearly eighty and he was working up until six years ago. He has worked and contributed to this community, he has paid his dues and paid his taxes. He thought when he retired six years ago and moved into the Retirement Village that that was going to be his home for the rest of his life and now he is being relocated to somewhere that he's not used to.

He's always lived in Port Hedland, as have many of the other residents in that facility. They like it there, they get the sea breeze so they don't have to run their air conditioners. They like having no air conditioning on part of the day. Most of them survived all their working life without air conditioning.

So in the *Human Rights for Older People* it says "abuse, including financial, physical and psychological abuse of elderly. Older people have identified a range of barriers that prevent full participation in various aspects of life. These include public transport not being linked to key public buildings and services, requiring people who are less mobile to walk long distances and barriers in public infrastructure such as not having chairs", and at Osprey there is no seating where the bus stops are, and for them to be able to sit down, take their shoes off and have a rest when they are going about their day to day duties. Their day to day duties ensure that they have a routine. You'll change that routine forever for them and they don't know how they are going to cope with that.

They've already told me that they are very fearful about what it's going to be like for them over in Osprey, where they don't know anyone. There are families living there, the Retirement Village residents have impaired vision and hearing and the streets in Osprey are very narrow and

It's really important for us to think about human rights, as a Town of Port Hedland, what we are doing for these people. We are sending them to another part of the town, with no plan to bring them back. Nothing. No community consultation to bring them back if we are going to take them out of there. The building report was received on 8 May and the notice of termination of lease was only received on 10 November. It's a very long time to be sitting on a decision and making a plan. You strategically planned it, you didn't give us the opportunity for supporting them and you didn't give us the opportunity of being included in the decision making. That's what communities are supposed to be about.

People who serve us are supposed to communicate with us and help us be part of the decision making. All business knows that, if you've done anything about change in your life, if you run a business, if you want people to come with you, you help them come with you. You haven't done that. You've actually turned every one of us against you. We want these people to stay in the community where they are happy. They are valued members of our community, still going about their lives, visiting people, doing good works, doing good deeds, even though they are retired and living in the retirement centre. Osprey Village is definitely not the choice for them. They were not considered in that decision, ever.

The Mayor closed Public Statement Time at 6:10pm.

4.3 Petitions/Deputations/Presentations/Submissions

Kailah Marshall tried to submit a petition, but the Mayor advised that the petition was submitted at the last Ordinary Council Meeting and could not be submitted tonight.

The Mayor said the email he received stated that the petition was the same.

Item 5 Questions from Members without Notice

The Mayor advised members of the community to refrain from being disorderly and that the meeting would be adjourned for fifteen minutes. If members of the community continued to be disorderly, the meeting would be adjourned until a later date. The Mayor further advised that there are rules that need to be applied, as this is an official meeting.

5.1 Councillor Arif

Why are we not receiving the petition as I believe it may be different to the one already submitted?

The Mayor advised that the email stated that the petition covered the same subject that was presented at the last meeting [November Ordinary Council Meeting]. The petition can be submitted at the next [December] Ordinary Council Meeting.

5.2 Councillor McDonogh

A point of clarification. A member of the public has stated this is a different petition to the one that was submitted at the last meeting [November Ordinary Council Meeting], so I don't understand why this one could not be presented for inclusion in the next meeting.

The Mayor advised that the petition is regarding Stevens Street [Port Hedland Retirement Village] and that subject is being addressed at this meeting.

Yes, that's correct, but from what I understand this is a different petition than what was submitted last time and there is no reason we cannot receive that petition.

The Mayor advised that the petition can be presented to the administration.

5.3 Councillor Arif

I'm not happy with the answer.

The Mayor stated that there is an option to overrule the Mayor's decision.

I overrule the Mayor's decision.

The Mayor advised that Cr Arif follow the correct process and to check the Standing Orders.

5.4 Councillor Daccache

I would like to put a motion that we accept the petition.

The Mayor clarified that this is a Special Council Meeting and that discussions held are to be about the agenda. The petition can be presented at the next [December] Ordinary Council Meeting.

You did accept the petition last night, so what is the difference?

The Mayor advised that he had not accepted the petition. He advised Councillors to follow Standing Orders and that questions are asked at the appropriate time.

5.5 Councillor Whitwell

I'm absolutely surprised at the way you are handling this, as the petitions seem to have a number of differences compared to the other one, I don't know what they are, and you don't either, so the question is what are you basing your opinion on?

The Mayor advised that he received advice from the Administration and repeated his previous statement, that this is a Special Council Meeting and that the petition can be presented at the next [December] Ordinary Council Meeting.

5.6 Councillor Daccache

I would like to say how disappointed I am in you, Mr Mayor, because, again, the petition they've got now could be completely different to the petition you got last night. If it's the same then discard it.

The Mayor stated that he didn't receive a petition, but received, an email last night. Council also received this email.

It wasn't a petition then, is that what you are saying? So why don't you accept this petition?

The Mayor stated that he got advice from the Administration and that the petition can be presented at the next [December] Ordinary Council Meeting.

Could I move a motion now on that issue, Mr Mayor?

The Mayor advised that the motion will be overruled as this is a Special Council Meeting and matters discussed must be relating to the agenda.

Concerning page 11 where the report states "the Town is currently seeking a second structural review from Perth based specialist" – Perth based. Can you tell me why this is so? Considering that our long term planning and being a member of the Chamber of Commerce, we have to use local contractors and any money saved by using locals can be spent on village repairs.

The Director of Infrastructure and Town Services advised that the companies looked at in Perth were the best in the industry due to the nature of the subject. The Town selected the best contractor in this instance and they will be coming to Port Hedland on 17 December 2018.

So that means there is nobody in Port Hedland or the Pilbara that could have come up and had a look at it instead of going all the way to Perth, is that right?

The Mayor advised that the question has been answered. We employ the best people in the business.

It goes against what we believe in as Councillors, to use local contractors.

5.7 Councillor Hebbard

Was a tenant allocation panel ever formed, or was a tenancy register ever kept by the Town of Port Hedland, or Port Hedland Retirement Village Committee?

The question was referred to Councillor Arif in her capacity as Chair of the Committee [Port Hedland Retirement Village Incorporated].

Councillor Arif advised that when an application for tenancy was received, it was handed to the board and had referees which was checked. When the board approved the application the potential tenant was notified. Councillor Arif advised that a tenancy register was kept.

Why were those issues part of the breach that was emailed to the Town of Port Hedland by the Department of Communities?

The Mayor advised that the information handed back to the Town was limited, the financials were limited, so we were working on what we actually have.

Councillor Arif advised that the board had all the information and the information was not passed on, stored or archived with the Town at any stage. The Town, didn't have access to any of the information. If the Town had requested the material that was supposedly in breach, it could have been provided. The Department of Housing came up every two years and requested various documents and they were provided to them. Once the Department of Housing representatives returned to Perth the documentation could have been misplaced.

5.8 Councillor Daccache

There is a report sent to the CEO on 15 January 2018 about that breach, it's in the minutes if people care to read it.

5.9 Councillor McDonogh

In relation to the Ordinary Council Meeting in February 2018 where we voted on this issue, could the Chief Executive Officer expand a little bit further in relation to point 3 of the decision "Request the Chief Executive Officer report back to the Council with a strategic plan for the Port Hedland Retirement Village which incorporates community and stakeholder consultation, financial and operation management within six months;"

The Chief Executive Officer advised that this process has not commenced. Once the breach was received, the technical reports were done and the safety of the residents took priority. The Town did not continue with the strategic planning part of it.

5.10 Councillor Pitt

If you received the email from this lady last night, how come you didn't reply then, telling her she couldn't submit the petition instead of allowing her to come to Council just to be shut down? I find it to be very unfair on the community and it happens a lot in these meetings by you.

The Mayor advised that he had been working hard to ensure he understood the details of this agenda item, and had not been able to respond to her [Kailah Marshall] email as yet.

Item 6 Announcements by Presiding Member without Discussion

The Mayor clarified some misinformation in that the buildings were funded and constructed by the Department of Housing around 1978. The development comprised of 22 units designed for catering to pensioners. It is a Department of Housing complex, this information was from the Retirement Village itself.

Something that has been stated, is that people don't know what is happening with the Osprey units and they think that the tenants at Stevens Street might only have a short stay there and they might be evicted after a certain amount of time. That is incorrect. The Osprey units are available for occupation by the tenants of the Retirement Village until the end of January, start of February. They are available for vacant possession. They can't stay vacant forever, there is a strong demand in the community for those units and if you have a look at what is happening in Hedland at the moment, the economy is rising at a rapid rate. There's a lot of developments underway and our vacancy rate on our general housing is down to about two percent. Currently we don't have much vacant housing, whether it be in the private sector or whether it be in the public sector. That is why it must be clear that Osprey units cannot remain vacant past January or February. We will request that they stay vacant for a while longer but that is not our decision to make. That is a Department of Housing decision.

These issues are obviously sensitive and the subject of public housing has come to the local government decision table because previous Council's couldn't make a decision based on foresight. They clearly didn't understand how their decisions were going to affect the Town's ratepayers and people into the future when structures like this come to end of life. This is a classic example of how all levels of government are working in Australia today, they are always taking the short term political wins and forgetting about the long term disadvantages created. I always say to my apprentices when I employ them that they need to be aware of work ethic in cost creation. Whatever they do costs money and somebody else is paying for it. They need to be aware of that. Leaving the lights on, not turning the sprinklers off, bills keep rolling in because there's no personal awareness or foresight of cost creation.

It's similar in local government. Whatever we do as a Council costs the ratepayers of the district money. The difference here is the size of the outlay. The bigger created costs, the bigger rate increases will have to be. Remembering we still currently spend more than we earn, our income as a town is made up of charges to Town facilities like ovals, buildings, landfill and rates. Both of which no-one wants to pay. Asset renewal and maintenance backlog is massive. It encompasses roads, drainage, public buildings, staff housing, pools and libraries. That amount of money needed to bring everything we manage and maintain up to the required local government standard is enormous. We rely on the interest generated from the money in the bank to fund our asset renewals and maintenance program.

We are currently about at our debt ceiling, so we can't borrow any more money from the bank and, thanks to previous Councils that have no concept of what their responsibility....

Councillor Dacacche interrupted to advise the Mayor that he was not allowed to say that, he is breaching.

These are the facts on the finances of the Town. Previous Councils had no concept on what their responsibilities were and what financial capacity the Town had to achieve the appropriate public section standard for our infrastructure.

Councillor Dacacche interrupted again to say the previous Council have got \$160 million dollars.

The Mayor asked Councillor Dacacche not to interrupt again. We are in an official meeting and this is how the meeting runs.

It's going to be interesting, I hope everyone bases their argument on the professional, technical and legal advice, the facts presented. I'm hoping that Council members that are opposed speak of their opposition and give the public that are listening and watching on the live stream a realistic solution to the problems faced, if they intend to go against the officer's recommendation. So, obviously, there are always instances where people don't agree with a position taken on different subjects. A good test into whether Council should make the decision for or against can be simplified back to your own finance. Would you spend your own money on the decision you want the Council to make, based on the evidence and discussion provided?

In closing, we will now move on to the item and the members of the public can hear the arguments presented.

**Item 7 Declarations of All Members to Have Given Due Consideration to
All Matters Contained in the Business Paper before the Meeting**

The following Elected Members declared that they had given due consideration to all matters contained in the agenda:

Mayor Camilo Blanco
Deputy Mayor Louise Newbery
Councillor Julie Arif
Councillor Richard Whitwell
Councillor Peter Carter
Councillor George Daccache
Councillor Tricia Hebbard
Councillor Warren McDonogh
Councillor Telona Pitt

Disclaimer

Members of the public are cautioned against taking any action on Council decisions, on items on this evening's Agenda in which they may have an interest, until formal notification in writing by the Town has been received. Decisions made at this meeting can be revoked, pursuant to the Local Government Act 1995.

Item 8 Reports of Officers

6.36pm Cr Arif declared an impartiality interest in that she was a committee member of the Port Hedland Retirement Village Incorporated board of management.

Cr Arif advised that the correct title of the building is Port Hedland Retirement Village and requested that the document be amended accordingly.

8.1 Corporate and Performance

8.1.1 Port Hedland Retirement Village (*File No. 13/06/0005*)

Authors	Executive Leadership Team
Authorising Officer	Chief Executive Officer
Disclosure of Interest	The Author and Authorising Officer declare that they do not have any conflicts of interest in relation to this item.

CM201819/089 COUNCIL DECISION

MOVED: DEPUTY MAYOR NEWBERY

SECONDED: CR DACCACHE

1. That Council cease all actions with regard to removing the residents of the Port Hedland Retirement Village;
2. That Council prepare an emergency plan for the evacuation of residents of the Port Hedland Retirement Village in the event of a weather (event);
3. That Council request quotes to come back to Council for remediation work to bring the Port Hedland Retirement Village to an acceptable standard;
4. That Council prepare an expression of interest for potential providers to manage the future aged housing facility.

CARRIED 5/4

For: Deputy Mayor Newbery, Cr Arif, Cr Whitwell, Cr Daccache, Cr Pitt
 Against: Mayor Blanco, Cr McDonogh, Cr Carter, Cr Hebbard

OFFICER'S RECOMMENDATION

That Council:

1. Receive all the technical advice presented to date by the Town's administration including the compliance and building condition audit, structural investigation and electrical report, and advice from a building surveyor (attached to this report) which highlight the compliance, structural and electrical issues associated with Port Hedland Retirement Village buildings;

2. Receive the legal advice dated 24 October 2018 and 6 December 2018 attached to this report;
3. Acknowledges and accepts that the Town is subject to a duty of care as a management body of the Reserve and as lessor as per the 6 December 2018 legal advice;
4. Endorse the Town's current draft evacuation plan and requests the CEO or his delegate to finalise it and proceed to implement as soon as possible with Port Hedland Retirement Village units' residents;
5. In view of its duty of care, request that the Town continues to facilitate the relocation of all Port Hedland Retirement Village residents as per the notice issued to all residents on 8 November 2018 in accordance with section 61(a) of the *Residential Tenancies Act 1987*;
6. Request that the CEO arrange for all tenants at Port Hedland Retirement Village to be advised of point 5 above in writing and in person on 11 December 2018;
7. Notes that the Town is seeking a second structural review of Port Hedland Retirement Village buildings, which will then be passed on to a Quantity Surveyor to quantify the value of works required to bring the facility up to code, and request the CEO report these findings back to Council;
8. Requests the CEO or his delegate issue an expression of interest or request for proposal for a partner to be sought to explore viable options to service the Town's current and forecasted seniors housing demands; and
9. Enter discussions with the Department of Communities to secure tenure over the Stevens Street site for the purpose of seniors housing.

SIMPLE MAJORITY VOTE REQUIRED

PURPOSE

The purpose of this report is for Council to consider actions in relation to the Port Hedland Retirement Village, which a third of members of the Town Council (Deputy Mayor Newbery, Cr Daccache, and Cr Arif) have requested be the subject of this meeting.

These actions being:

1. That Council cease all actions with regard to removing the residents of the Port Hedland Retirement Village;
2. That Council prepare an emergency plan for the evacuation of residents of the Port Hedland Retirement Village in the event of a weather (event);
3. That Council request quotes to come back to Council for remediation work to bring the Port Hedland Retirement Village to an acceptable standard;

4. That Council prepare an expression of interest for potential providers to manage the future aged housing facility.

The Town's administration has reviewed the points above and is recommending that the Council does not agree to consider point 1, due to the its duty of care towards all tenants and the risks associated with ceasing the reasonable actions that have been put in place by the Town's administration to date to protect the safety of all tenants, which have been highlighted by the legal advice received on 6 December 2018, and the insurers' advice received on 7 December 2018.

With relation to point 2, the Town has developed a draft emergency evacuation plan which is recommending that the Council endorse and roll out to all tenants. It should be noted that tenants cannot be forcibly removed during an emergency event.

With relation to point 3 the Town is currently seeking a second structural review from a Perth based specialist, which will then be passed on to a Quantity Surveyor who can quantify the value of works required to bring the facility up to code.

With relation to point 4, the Town is in the process of investigating market opportunities associated with issuing an expression of interest or request for a proposal seeking a partner able to explore viable options according to the Town's current and forecasted seniors housing demands.

DETAIL

History

The Port Hedland Retirement Village units are located on Crown Reserve 31384 which is vested with the Town under section 33 of the then *Land Act 1933* for the purpose of an 'aged persons home', granted on 18 April 1979 (see Attachment 1). That vesting order is subject to the Minister's approval for any lease or assignment of the whole or any portion of the land for a term not exceeding 21 years.

On 22 December 1999 the Town and the then State Housing Commission ('Homeswest') entered into a Housing Joint Venture Agreement (JVA) for a term of 25 years (attachment 2). The JVA sets out the terms and conditions for the reconfiguration and upgrade of 22 bed sitter units to 22 one bedroom units on Crown Reserve 31384, the Village, for eligible aged persons, to be managed and maintained by the Town.

The Town entered into a lease agreement with the Port Hedland Retirement Village Incorporated ('PHRV') commencing 1 July 2000 for a term of 5 years, effectively to enable it to manage the Village on the Town's behalf. This was despite the PHRV not being an organisation approved by Homeswest, although that lease was approved by the Minister (attachment 3). Whilst that lease has expired, the Town continued to informally lease the land to PHRV.

2000-2017 Management of Port Hedland Retirement Village

Based on the Town's records, inspections by past and present Town officers, and advice received from previous members of the PHRV, there are a number of issues

associated with the management of Port Hedland Retirement Village and common facilities between 2000 and 2017. These being:

- Establishment of PHRV to manage Port Hedland Retirement Village – non compliant
- Maintenance – little to no maintenance undertaken during this time
- Resident's eligibility criteria – not complied with at all times
- Collection of rental charges – not complied with at all times
- Utilisation of rent collected and any surplus income - not complied with at all times
- Provision of records, receipts and reports - not complied with at all times

2018 Notice of Breach

Because of the aforementioned issues, on 15 January 2018 the Housing Authority at the Department of Communities wrote to the Town regarding a number of breaches of the JVA (attachment 4) to be rectified within 28 days. Following this notice, in February 2018 the PHRV advised the Town it had dissolved. The dissolution of the PHRV however is not supported by the last meeting minutes of the PHRV dated 5 March 2018 and the Town has concluded that the PHRV is still active.

The Town's administration presented an item for consideration at its 22 February 2018 Ordinary Council meeting, with the Council's decision being:

"CM201718/165 OFFICER'S RECOMMENDATION/ COUNCIL DECISION

MOVED: CR WHITWELL

SECONDED: CR ARIF

That Council;

- 1. Note the appointment of Foundation Housing Limited as facility manager of the Port Hedland Retirement Village (No. 34 Sutherland Street) for a 6-month period;*
- 2. Approve the establishment of the Port Hedland Retirement Village Reserve to manage future income and expenditure associated with the facility with the reserve purpose being:*

"To fund the development, operation, maintenance and capital expenditure for the Port Hedland Retirement Village."

- 3. Request the Chief Executive Officer report back to the Council with a strategic plan for the Port Hedland Retirement Village which incorporates community and stakeholder consultation, financial and operation management within 6-months;*
- 4. Recognize the important contribution the Port Hedland Retirement Village Inc. and its volunteers have provided to the Port Hedland community and delegate to the Chief Executive Officer authority to publicly recognize and celebrate the association's contribution to Port Hedland.*

CARRIED 8/0"

Rectification of Breaches

Following this decision, and in order to rectify the notice of breach, the Town commissioned a building audit of Port Hedland Retirement Village. On 27 April 2018 the Town received a 'NCC BCA Compliance & Building Condition Audit Report' (attachment 5). As a result of that audit report, the Town engaged an engineering company to provide a Structural Investigation Report in July 2018 (attachment 6).

The compliance and building condition audit report stated, in summary, that a site inspection had identified non-compliances with building standards, as well as issues compromising the structural adequacy of the building.

The structural report highlighted, in summary, that several Port Hedland Retirement Village buildings and other structures were structurally unsound, that structural alterations required to meet regulatory requirements were not readily accommodated by building design, and that the replacement of entire buildings would be less costly than upgrades and maintenance. In addition the report found:

- Masonry reinforcing corrosion
- Corrosion of reinforcing steel is existing and will progress at an increased rate
- Severe corrosion to structural roof tie down at rear of most units
- Corroded steel elements causing severe and ongoing cracking to the masonry of the units
- Structural steel elements widespread surface corrosion
- Roof cladding is approaching and/or has exceeded its expected serviceable life – likely that leaks will occur with increased frequency
- Plumbing, electrical and mechanical services have been altered and re-routed in an ad-hoc manner
- Termite damage

In addition, asbestos had been detected at the site, included in the Town's asbestos register, and highlighted at the site by the affixing of asbestos signage since 2013, albeit with no action taken in relation to this.

Town of Port Hedland Administration Actions on Safety Issues and Associated Risks

Following an assessment of this technical information, the Town's administration concluded that the safety of all residents was at risk, and that it had a duty of care to ensure this was rectified as a matter of urgency, particularly in view of the impending cyclone season. The Town deemed this to be an operational matter, and wrote to the Department of Communities on 14 August 2018 to advise of these reports, and requested that the Town be provided with temporary and/or permanent options available to residents.

The Department advised the Town in September 2018 that Osprey Village was the best option readily available at present to all residents. (This advice was subsequently formalised by the Department of Communities in a letter received on 7 November - attachment 7).

Osprey would provide tenants:

- Larger premises (where available, two bedroom units instead of current one bedroom arrangement)
- Mobility units
- Public community open space with BBQ's and seating
- Community house available for tenants
- Emergency after hour contact available for any housing emergencies
- Preventative maintenance is carried out on all houses through-out the year
- Daily bus service to Port and South – right outside the Village
- Close to Hedland Health Campus
- Where possible, tenants at Port Hedland Retirement Village to be located close to each other
- Friendly community feel

The Town's administration commenced working with the Department of Communities and Foundation Housing towards putting a detailed plan to assist all tenants with their relocation to safe premises in Osprey. As part of this process additional information and advice was sought. This was in the form of:

- Legal advice (confidential attachment 8)
- Electrical report (attachment 9)
- Advice from a Building Surveyor (attachment 10)

In addition to the above the Town also considered information from the Bureau of Meteorology which shows that in the event of a severe weather event, areas dominated by older buildings would be likely to suffer greater damage (attachment 11).

Elected members were briefed on the Town's administration concerns at a confidential briefing session on 7 November 2018. The following points related to Port Hedland Retirement Village were discussed:

- Operational considerations
- Update of actions
- Audit and structural report of building
- Issues, Risks and Consequences
- Legal implications
- Short term solutions
- Long term options
- Financial implications

Notices Issued To Tenants

At the 7 November 2018 briefing elected members in attendance were informed of the Town's course of action, which was that of issuing all tenants at Port Hedland Retirement Village with notices of lease termination on 8 November.

Town representatives met with tenants on 8 November and communicated the Town's message about the safety issues associated with Port Hedland Retirement Village, the risks identified in the technical reports, as well as the handing out the relevant tenancy notices. Meetings took place in a group and one-on-one setting depending on the

requirements of each tenant. The meetings were also attended by Foundation Housing and Department of Communities representatives.

All tenants on periodic leases were notified to vacate the unsafe premises by 31 January 2019. All tenants on fixed term leases were advised that their leases would not be renewed following their expiry date, and that for safety reasons they were strongly encouraged to vacate the premises before that time. All tenants were handed a notice of termination in accordance with section 61(a) of the *Residential Tenancies Act 1987*. The Town also advised all residents that the Department of Communities had made units available to all residents at Osprey, and that should tenant wish to relocate there, all matters associated with the relocation, or to any other residence of their choice in Hedland (some examples being removalists' bookings and costs, payment of bonds, redirection of mail, close down of utilities accounts), would be financed and facilitated by the Town.

Following this a number of tenants indicated they wished to view available accommodation at Osprey, and the Town organised a tour of the accommodation on 16 November 2018, assisted by Foundation Housing and Fleetwood (the company contracted to manage Osprey). Seven tenants subsequently indicated their agreeance to relocate, and the Town commenced working on this process, which is still currently underway for those residents that continue to wish being relocated.

The notices issued by the Town to all tenants are currently still in place, which means that all residents will have to relocate within the stipulated timeframes as per the *Residential Tenancies Act 1987*.

Community Interest

The above events have since generated much community interest in Port Hedland Retirement Village. The Town received a number of enquiries and requests for meetings on this matter. For this reason the Town firstly issued a fact sheet with all relevant information on the front page of its website, and soon after it also released all technical reports received, so that all interested community members could be aware of the correct reasons associated with the tenants' relocation.

Since then members of the public have lodged a petition with Council, requesting that "the Town of Port Hedland not move the current tenants and that they remain in situ or accommodated onsite while repairs are completed to buildings. We believe that the financial and personal impact caused by moving the residents to Osprey in South would be greater than allowing the residents to continue living at Port Hedland Retirement Village. We also believe that the repairs needed are not structural and are a result of little or no maintenance being done to the dwellings for many years. The petitioners request that the Town lobby State and Federal government to urgently provide funding for the repairs so that the facility can continue to provide much needed accommodation for the senior residents of Port and South." This petition will be formally addressed at a future Council meeting, however a number of points raised contained in it have been covered in this report.

The Town understands that this matter is a sensitive one and appreciates that members of the community, which might have family and/or friends residing at Port Hedland

Retirement Village, have an interest in ensuring their wellbeing is taken care of. The Town's administration has deemed the Port Hedland Retirement Village structurally unsound and posing a threat to the safety of all residents based on the technical reports received. The approach it has taken in relation to this matter so far has therefore been that of ensuring the safety of all residents at all times.

It is unfortunate and disappointing that a level of misunderstanding has spread across the community in relation to this matter. Through this report the Town's administration wishes to clarify that the actions it has taken in relation to Port Hedland Retirement Village so far are not in any way connected to dust issues. Further, it also needs to be clarified that the Town's administration and/or the Town Council have not at today's date decided to demolish the buildings which are the subject of this report.

Current Situation

A third of the Town's elected members have called for a Special council meeting to discuss several points associated with the Port Hedland Retirement Village matter. The first point being that Council considers to cease all actions with regard to removing the residents of the Port Hedland Retirement Village. This point indicates that at least those members that have called for this meeting do not support the Town's administration course of action to date.

The Town's administration has sought formal legal advice so that all points of contention can be clarified as a matter of urgency, and most importantly, give Port Hedland Retirement Village tenants a clear and definite answer as to the status of their tenancies.

Legal Advice

The legal advice the Town sought (attachment 13) centred on the following three points.

1. Advice in relation to the liabilities that the Town's Executive (CEO and Directors) and the Town Council (Mayor and other Elected Members) could face should the Council determine to cease actions associated with the relocation of Port Hedland Retirement Village tenants currently underway.

The legal advice states, in summary:

- a. *The Town is subject to a duty of care as a management body of the Reserve and as lessor;*
- b. *As it is subject to a duty of care, the Town is required to take reasonable action in response to any foreseeable risk, having regard to the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities;*
- c. *The reports and technical advice obtained by the Town identify a foreseeable safety risk for residents;*

- d. *The response recommended and partially undertaken by the Town's administration, to facilitate residents' vacation of the Village, is one way of addressing and mitigating the foreseeable risk that has arisen;*
 - e. *Council should only consider departing from this course and permitting residents to remain in the Village if it is reasonably satisfied (on the basis of expert advice) that the safety risks identified to date can be adequately addressed by urgent repair/maintenance work and the Town is able to undertake that work in sufficient time; and*
 - f. *If the Town permitted residents to remain in the Village and did not take sufficient action to address safety risks, then the safety of residents would be at risk and the Town would be potentially liable in the event of injury occurring.*
2. Advice on the implications of the Council making a decision that overrules the Town's administration technical advice.

The legal advice states, in part:

The main potential consequence in the present context of Council overruling or making a decision which opposes the administration's technical advice is that the Town could then be found not to have acted "reasonably" in response to the safety risks identified in the reports and technical advice received to date. Accordingly, if Council is considering departing from the administration's recommendation of requiring residents to vacate the Village (to the extent that is possible), it should ensure that it has first obtained advice that the relevant safety risks may be adequately addressed by any urgent repair or maintenance work proposed.

3. Advice on the potential for those elected members that recently sat on the PHRVI (Deputy Mayor as Town of Port Hedland Council representative, Cr Telona Pitt as proxy, and Cr Julie Arif in her personal capacity), which does not appear to have been dissolved, to have an interest in respect of the Port Hedland Retirement Village matter to be discussed at the Special Council Meeting.

The legal advice states, in part and in summary:

If PHRVI did have some involvement in relation to the present issues with the Village, I still do not consider that this would constitute an interest for the purposes of section 5.60 of the Local Government Act 1995 as it is not reasonable to expect that the matter would, if dealt with by the Town in a particular way, result in a financial gain, loss, benefit or detriment for a councillor sitting on the committee of PHRVI. Whilst Council's determination of the matter could potentially affect PHRVI financially (for example if it sought to compel PHRVI to provide the retained funds for maintenance of the Village), this would not result in a financial gain, loss, benefit or detriment for any councillor individually. PHRVI is an incorporated association and as such is prohibited from distributing any funds to members under the provisions of the Associations Incorporation Act 2015.

Nonetheless, if PHRVI did have some involvement with the matter (despite the surrender of its lease) then it is possible that a member of council who sat on the committee of PHRVI in his or her personal capacity would have an interest as defined in reg. 11 (1) of the Local Government (Rules of Conduct) Regulations 2007. In that case the relevant council member would be required to disclose the nature of the interest in accordance with reg. 11 (2), however would not be precluded from participating in the meeting or considering the matter.

Advice from LGIS Insurers

The Town has also sought information from its insurers, LGIS, who have advised on 7 December 2018 that there are two matters that require consideration; consideration of cover under Liability and Property.

In relation to liability LGIS was not yet in a position to determine whether the Town is entitled to indemnity under the terms of the LGIS policy, and needs to investigate the matter further. In relation to property, LGIS advised that there is limited capacity for its insurance scheme to protect buildings which have been deemed structurally unsound. LGIS will be visiting Port Hedland on 10 December and will be discussing these matters further with the Town's administration.

Points Raised In Notice of Special Meeting

The Town's administration has provided comments under each of the following four headings, which the elected members who have called for this Special Council meeting have asked to be addressed.

- 1. That Council cease all actions with regard to removing the residents of the Port Hedland Retirement Village.*

Based on legal and insurance advice received, it is not recommended that the Council agree to stop the reasonable actions the Town's administration has undertaken so far to exercise its duty of care towards all Port Hedland Retirement Village tenants, and in doing so ensure their safety. By stopping this process the Council would be taking on an unreasonable amount of risk which cannot be mitigated in short timeframes.

The Town's administration firmly believes that based on the technical reports received to date the safety of all tenants is at risk, and the best available option to ensure this risk is mitigated as a matter of urgency, as we are well into the cyclone season, is that of continuing to facilitate the relocation of all tenants to safe premises.

- 2. That Council prepare an emergency plan for the evacuation of residents of the Port Hedland Retirement Village in the event of a weather (event).*

The Town has developed and Emergency Management Plan (attachment 14) and supporting documents that will enable Town staff to assist residents of Port Hedland Retirement Village units in the event of a cyclone or similar emergency. The intention of the plan is to ensure that residents can be given the opportunity to evacuate to alternate accommodation, the Town's Welfare Centre, or a care facility if required. The plan is still in development and currently being reviewed by the Town of Port Hedland

Emergency Services Advisor. Following this it is proposed that consultation with residents will be undertaken to ensure that the plan can be rolled out when required.

It should be remembered that experience has also shown that the evacuation of residents is not always the optimum solution to managing the risk of a major weather event. It is best practice for publically owned buildings to be structurally sound allowing shelter in place rather than requiring an evacuation procedure for weather events.

3. That Council request quotes to come back to Council for remediation work to bring the Port Hedland Retirement Village to an acceptable standard.

The Town is currently seeking a second structural review from a Perth based specialist, to ensure an independent approach is continued to be maintained. As part of their scope of works the Town has requested that they provide an electrical, hydraulic and compliance review for the facility. With these reviews completed the details will then be passed on to a QS who can quantify the value of works required to bring the facility up to code. The previous reports did not have a value around the works required to upgrade/replace the facility. The reports are expected to be available towards the end of January due to the upcoming Christmas break.

4. That Council prepare an expression of interest for potential providers to manage the future aged housing facility.

The Town has undertaken preliminary market investigations to commence an expression of interest or request for proposal process to identify a suitable partner that will explore viable options according to the Town's current and forecasted seniors housing demands. Any proposed developments would be subject to approval by State Government as the holder of the land.

Department Of Communities

To date the DoC has issued official communication to the Town on the following matters:

- 15 January 2018 – notice of breach to be rectified within 28 days
- 14 February 2018 - extension notice of breach to 7 May 2018
- 3 May 2018 - extension of notice of breach to 7 November 2018
- 7 November 2018 – formal advice confirming offer of Osprey as an alternative accommodation to all Port Hedland Retirement Village tenants

As of 7 November 2018, the Town has continued to work with DoC and Foundation Housing in organising the relocation of those residents who have indicated their intent to do so. The 7 November 2018 correspondence from DoC also stated that "Once the immediate issue of the safety and comfort of the tenants has been resolved, the Department of Communities will contact the Town of Port Hedland to discuss its equity in the Village."

Should the Town Council formally decide to stop the relocation of all tenants, it has to be noted that the DoC would have the right to resume control of the facility in accordance with the JVA as stated in its original breach notice.

LEVEL OF SIGNIFICANCE

In accordance with Policy 4/009 'Significant Decision Making', this matter is considered to be of high significance. However, consultation with the community was not carried out due to an exception clause in the Policy that specifies that Council may choose not to engage on a proposal or decision. This is decided in accordance with one of the listed criteria '*The opinion of the Council, failure to make a decision urgently would result in unreasonable or significant damage to property, or risk to people's health and safety*'.

CONSULTATION

Internal

- Executive Leadership Team
- Manager Governance
- Legal advisor
- Manager Environmental Health and Community Safety

External Agencies

- Department of Communities
- Foundation Housing
- Fleetwood

Community

- Initial meeting with tenants on 8 November 2018 to serve notice
- Tour of Osprey Village on 16 November 2018
- Regular meetings between representative of Foundation Housing and tenants to ensure their wellbeing during this process
- Info on the Town's website

LEGISLATION AND POLICY CONSIDERATIONS

Section 3.54 of the *Local Government Act 1995* applies, as it relates to 'Reserves under control of local government'.

Division 6 of the *Local Government Act 1995* identifies the disclosure requirements for Elected Members in relation to financial interests, as well as Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007*.

Each resident has been issued a tenancy agreement in accordance with the *Residential Tenancies Act 1987*.

Residential Tenancies Act 1987 – Part V (Termination of residential tenancy agreements).

Occupiers Liability Act 1985 – section 5(1) (duty of care).

Land Administration Act 1997 – section 46 (care, control and management of land).

Civil Liability Act 2002 - section 5B (*breach of duty of care*)

FINANCIAL AND RESOURCES IMPLICATIONS

The Town has currently agreed to cover all costs associated with the relocation of residents to Osprey or to any other Hedland residence of the tenants' choice, and whilst this process is underway is continuing to provide basic maintenance (ie. Aircon units repairs).

Following receipt of the Quantity Surveyor report the Town will be able to clarify exact costs associated with bringing the current buildings up to compliance standards. The structural report received so far indicates that

“The whole of life cost of structural and other upgrades to meet current and future stake holder and regulatory requirements for safety, durability, accessibility and functionality, together with required upgrades to services and equipment, fitout and finishes, and ever increasing maintenance and repair costs, is likely to equal or exceed the cost of replacing with new purpose designed buildings”.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

The following sections of the Council's Strategic Community Plan 2018-2028 are applicable in the consideration of this item:

- 1.a.2* Community needs and gaps in health provision are identified and delivered
- 1.a.6* Town-wide health, safety, recreation and sporting activities and services
- 1.d.1* The present and future facilities and requirements of the Town are planned for and developed in-line with relevant facility standards and community needs
- 1.d.2* Facilities and community infrastructure are revitalised across the Town
- 1.d.3* Facilities and community infrastructure are well maintained, managed and fit for purpose to provide a range of lifestyle opportunities
- 3.b.1* The present and future needs for serviced land and infrastructure provision are identified, planned and developed
- 3.b.2* Emergencies such as cyclones are prepared for, educated about, responded to and recovered from in partnership with key agencies
- 4.b.4* Constructive forums are provided for discussion and the representation of the diversity of views and needs that impact on the Town's developments, programs and policies

Environmental

There are environmental implications associated with asbestos, termite and structural damage to the infrastructure.

Social

There are social implications due to community concerns and interest.

RISK MANAGEMENT CONSIDERATIONS

There is a health risk associated with this item because residents are exposed to asbestos, termite and structurally damaged infrastructure. The risk rating is considered to be High (15) which is determined by a likelihood of possible (3) and a consequence of catastrophic (5).

This risk will be eliminated by the adoption of the officer's recommendation.

The Town is the custodian of the Port Hedland Retirement Village which is a public building. Therefore, the Town's responsibilities and threshold of risk are different to that which an individual might apply to their home.

OPTIONS

Option 1 – Adopt officer's recommendation

Option 2 – Amend officer's recommendation

CONCLUSION

The Town's administration has been working towards rectifying the notice of breach from DoC since early 2018. Reports commissioned as part of this process have identified structural issues with the Port Hedland Retirement Village which resulted in the Town's administration determining that the safety of all tenants were at risk and that urgent action was required to rectify this situation. The DoC supported this action and made units at Osprey Village available to all residents. All tenants were issued with notices in accordance with the *Residential Tenancies Act 1987*.

The Town's administration believes that following through with the current action is the best short term measure to ensure the safety of all residents, which is currently at risk due to the buildings at Port Hedland Retirement Village being structurally unsound and the cyclone season having commenced.

Failure to continue with this course of action would result in the Town failing to exercise reasonable duty of care towards all tenants, and would carry high risks for the wellbeing of tenants, as well as for Council liabilities.

ATTACHMENTS – UNDER SEPARATE COVER

1. Vesting Order - dated 18 April 1979
2. Housing Joint Venture Agreement (JVA) - dated 22 December 1999
3. Port Hedland Retirement Village Incorporated Lease - dated 1 July 2000
4. Department of Communities Breach Notice – dated 15 January 2018
5. NCC BCA Compliance & Building Condition Audit Report – dated 22 April 2018
6. Structural Investigation Report – dated July 2018

7. Department of Communities Letter – dated 7 November 2018
8. McLeods Legal Advice – dated 24 October 2018 (under confidential cover)
9. Electrical report – dated 6 November 2018
10. Advice from a Building Surveyor – dated 17 October 2018
11. Bureau of Meteorology Slide
12. McLeods Legal Advice – dated 6 December 2018 (under confidential cover)
13. Emergency Management Plan – dated November 2018

Item 9 Matters for Which Meeting May Be Closed (Confidential Matters)

Nil

Item 10 Closure

10.1 Date of Next Meeting

The next Ordinary Meeting of Council will be held on Wednesday 12 December 2018, commencing at 5:30pm.

10.2 Closure

There being no further business, the Mayor declared the meeting closed at 7:29pm.

CONFIRMATION:



MAYOR



DATE