

AGENDA

Dear Commissioner,

I respectfully advise that **SPECIAL COUNCIL MEETING** will be held in the Council Chambers of the **Civic Centre, McGregor St, Port Hedland**, on **Tuesday, 10 September 2019**, commencing at 5.30pm

MEETING AGENDA ATTACHED

Yours faithfully



David Pentz
Chief Executive Officer

6 September 2019

DISCLAIMER

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Mr David Pentz
Chief Executive Officer
Town of Port Hedland
P O Box 41
PORT HEDLAND WA 6721

Dear David,

SPECIAL MEETING OF COUNCIL

In accordance with Section 5.4 of the *Local Government Act 1995*, I hereby request that you arrange for a Special Meeting of Council to be held on **Tuesday, 10 September 2019** at 5.30pm to consider the following matters:

1. Revoking Council's previous decisions to cease all actions with regard to the relocation of the residents of the Stevens Street Site, and its support for the redevelopment of the Site; and
2. The relocation of the residents of the Stevens Street Site to safe alternative accommodation.

Yours sincerely

A handwritten signature in black ink, appearing to read "F. Riebeling", with a flourish at the end.

Hon. Frederick Riebeling
Commissioner

5 September 2019

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DISCLOSURE OF FINANCIAL/ IMPARTIALITY/ PROXIMITY INTERESTS*Local Government Act 1995 – Section 5.65, 5.70 and 5.71**Local Government (Administration) Regulation 34C*

<i>This form is provided to enable members and officers to disclose an Interest in a matter in accordance with the regulations of Section 5.65, 5.70 and 5.71 of the Local Government Act and Local Government (Administration) Regulation 34C</i>			
Name			
Position			
Date of Meeting			
Type of Meeting (Please circle one)	Council Meeting/ Committee Meeting/ Special Council Meeting Workshop/ Public Agenda Briefing/ Confidential Briefing		
Interest Disclosed			
Item Number and Title			
Nature of Interest			
Type of Interest (please circle one)	Financial	Proximity	Impartiality
Interest Disclosed			
Item Number and Title			
Nature of Interest			
Type of Interest (please circle one)	Financial	Proximity	Impartiality

Signature: _____ Date: _____

Important Note: Should you declare a **Financial or Proximity Interest**, in accordance with the Act and Regulations noted above, you are required to leave the room while the item is being considered.

For an **Impartiality** Interest, you must state the following prior to the consideration of the item:

“With regard to agenda item (read item number and title), I disclose that I have an impartiality interest because (read your reason for interest). As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly.”

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Item 1 Opening of Meeting

The Commissioner is to declare the meeting open at 5.30pm.

Item 2 Acknowledgement of Traditional Owners and Dignitaries

The Commissioner acknowledges the traditional custodians, the Kariyarra people, and recognises 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

Present: Commissioner Fredrick Riebeling

In Attendance: Anthea Bird (Director Corporate and Performance), David Pentz (Chief Executive Officer), Michael Cuvalo (Acting Director Development, Sustainability and Lifestyle), Peter Chandler (Acting Director Infrastructure and Town Services)

3.2 Attendance by Telephone / Instantaneous Communications**3.3 Apologies****3.4 Approved Leave of Absence****3.5 Disclosure of Interests**

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.

4.1 Public Question Time

4.2 Public Statement Time

Item 5 Questions from Members without Notice

Item 6 Announcements by Presiding Member without Discussion

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

Item 8 Reports of Officers

8.1 Corporate and Performance

8.1.1	STEVENS STREET SITE (ALSO KNOWN AS PORT HEDLAND RETIREMENT VILLAGE) (FILE NO 05/05/0017)
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Author: Legal Advisor

Authorising Officer: Director Corporate and Performance

Disclosure of Interest: The Author and Authorising Officer declare that they do not have any conflicts of interest in relation to this item.

REVOKE PREVIOUS DECISION

To consider revoking the decision listed in Officer's Recommendation 1 and 2 below, one third of Elected Members must support the revocation. Due to the suspension of Council, the Department of Local Government, Sport and Cultural Industries have advised that the function of the Commissioner is to act as the Council in accordance with section 2.38(2) of the *Local Government Act 1995* and therefore the Commissioner can revoke the Council Decision in accordance with regulation 10 of the *Local Government (Administration) Regulations 1996*.

The Commissioner is to show his hand in support of the revocation. The Commissioner raised his hand:

1. _____

OFFICER'S RECOMMENDATION 1

That Council revoke decision resolution 1 of the decision CM201819/089 of the Ordinary Council Meeting held 10 December 2018, which reads:

"That Council cease all actions with regard to removing the residents of the Port Hedland retirement Village"

ABSOLUTE MAJORITY VOTE REQUIRED

OFFICER'S RECOMMENDATION 2

That Council revoke decision resolutions 1, 3 and 4 of the decision CM201819/201 of the Ordinary Council Meeting held 22 May 2019, which respectively read:

"1 Confirm support for a new building on the current site, subject to approval from the Department of Communities in relation to:

a) Land tenure; and

b) Compliance with provision included in notice of breach it has issued to the Town.

-
- 3 *Make appropriate budget provisions for the next stage of the project (feasibility study and detailed design) as part of the FY 2019/20 budget adoption; and*
 - 4 *Commence appropriate tenant and community consultation of the future development of the site following approval from the Department of Communities."*

ABSOLUTE MAJORITY VOTE REQUIRED

OFFICER'S RECOMMENDATION 3

That Council:

- 1 Receive all technical advice presented to date by the Town's administration including the compliance and building audit, structural investigation and electrical report, and the advice from the building surveyor each of which highlight the compliance, structural and electrical issues associated with the buildings and structures on the Stevens Street Site ('Site').
 - 2 Receive all legal advice presented to date, including the advice dated 22 July 2019 attached to this report, concerning the Site.
 - 3 Receive the further advice from the Town's insurer, LGIS, dated 18 June 2019.
 - 4 Acknowledges and accept the Town is subject to a duty of care to the residents, contractors, visitors and any employees on the Site as both a management body of the reserve and as lessor.
 - 5 In light of its duty of care, request that the Town recommences facilitating the relocation of all residents of the Site 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 residents of the Site to be advised of point 5 above in writing and in person from 11 September 2019.
 - 7 Request the CEO to enter negotiations to terminate the joint venture agreement in respect of the Site.
 - 8 Request the CEO or his delegate issue an expression of interest or request for proposal to be sought to explore viable options to service the Town's current and forecasted seniors housing demands, once the residents have been relocated and the joint venture agreement is terminated.
 - 9 Note the McGregor Street Precinct Masterplan endorsed on 28 August 2019 designates land (Location Plan 26) for seniors' accommodation.
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- 10 Confirm its support for the development of Stevens Street Site into a community park, subject to the Minister for Land's approval for a change in purpose of the reserve.

SIMPLE MAJORITY VOTE REQUIRED

PURPOSE

The purpose of this report is for Council:

1. to consider revoking its previous decisions to cease all actions with regard to the relocation of the residents of the Stevens Street Site ('Site') and its support for the redevelopment of the Site; and
2. to consider relocating the residents of the Site to safe alternative accommodation and note that the McGregor Street Precinct Masterplan reappropriates an area for future seniors' accommodation.

DETAIL

Background

The background is set out in the 10 December SCM Minutes and the 22 May 2019 Minutes, summarised as follows:

1. On 15 January 2018 the Housing Authority at the Department of Communities ('Housing Authority') issued the Town with a notice detailing various breaches of the joint venture agreement between the parties in respect of the Site (see Attachment 4 of December SCM Minutes).
2. At its 22 February 2018 OCM, Council appointed Foundation Housing to manage the Site, which was previously managed by the Port Hedland Retirement Village Incorporation.
3. In response to the notice of breach, the Town commissioned a building audit of the Site. Those reports concluded that several of the residential buildings and other structures on the Site 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 (see Attachments (see Attachments 5, 6, 9 & 10 of December SCM Minutes).
4. Following assessment of the above technical information the Town's administration concluded that the buildings were dangerous and not fit for human habitation and the Town had a duty of care to relocate the residents to safe alternative accommodation, particularly in view of the impending cyclone season.
5. The Town's administration contacted the Department of Communities and arranged for safe alternative accommodation at Osprey Village.
6. The Town's administration briefed its elected members on 7 November 2018 regarding the above.
7. On 8 November 2018 the Town's administration met with the residents to inform them of the risks identified in the technical information. The Town also issued notices to vacate the unsafe buildings in accordance with the *Residential Tenancies Act 1987* and advised it would cover all costs associated with relocating to Osprey Village.
8. One third of the elected members called for a SCM requiring, amongst other things, the Town's administration to cease all actions relating the relocation of the residents.

9. Prior to the SCM, the Town's administration obtained legal advice stating (Attachment 12 December SCM Minutes):

"Council should only consider departing from [the administration's] 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."
10. On 7 December 2018 the Town received advice from its insurers, LGIS, advising further investigation was required with respect to the Town's liability coverage, and that there was limited capacity for its property coverage to protect buildings which have been deemed structurally unsound.
11. At the 10 December 2018 SCM, Council resolved to cease relocation of the residents, prepare an emergency evacuation plan and request quotation for remediation work to bring the Site up to an acceptable standard.
12. The Town subsequently sought a quotation for remediation works, including a second structural engineering review of the building, concept schematic design, for transportable and insitu options, which contemplates demolition and replacement of the buildings, and an initial order of probable costs.
13. Council were briefed on the second structural engineering report on 3 and 17 April 2019.
14. The second structural engineering review concludes (see Attachment 1 of May OCM Minutes):

"The whole of life cost of structural and other upgrades to meet current and future stakeholder and regulatory requirements for safety, durability, accessibility and functionality, together with required upgrades to services and equipment, fit out and finishes, and ever increasing maintenance and repair costs, is likely to equal or exceed the cost of replacing with new purpose designed buildings."
15. The Officer's report summarises the high level indicative costing for each option (detailed in Attachments 3,4 and 6 of May OCM Minutes):
 - a. remediation of the existing buildings: (\$4,436,160 plus costs to comply with current building standards and ongoing maintenance costs);
 - b. demolition and redevelopment – insitu (\$8,812,580); and
 - c. demolition and redevelopment – transportable (\$9,103,680).
16. The Officer's preferred option was transportable buildings given the tenure of the land.
17. Council resolved to, amongst other things, confirm its support for the new build subject to approval from the Department of Communities and to make budget provision for the next stage in the 19/20 budget.
18. At its 26 June 2019 OCM Council approved the Annual Budget which included \$4,000,000 for stage 1 of the redevelopment of the Site.

Further LGIS and legal advice

On 18 June 2019 the Town received formal advice from its insurer, LGIS, regarding the extent of its liability coverage. The letter foreshadows that the Town could potentially be denied coverage under its policies where it has failed to take reasonable care in maintaining the Site. The letter states (Attachment 1):

“Based upon the information provided to date, we are of the view that the Town may not be entitled to indemnity under the Policy for claims arising from breach of:

- *Professional duty or a personal injury in connection with the Village in circumstances where the Town:*
 - *Has not maintained the Village to a reasonable standard;*
 - *Is now aware that the Village is structurally unsound, and is accordingly, not in a “safe and sound condition” – as concluded by the KSCE Engineers and inferred by the report by Wood & Grieve.*
 - *Resolved not to take any steps to remove the Village’s residents from the Village (contrary to the Town’s executive recommendations).*
 - *Has therefore not taken all reasonable precautions to prevent personal injury, or comply with its statutory obligations.*
- *Contract (such as the joint venture agreement or tenancy agreements) may trigger the contractual liability exclusion of the policy.”*

Upon receipt of the further LGIS advice the Town obtained further legal advice dated 22 July 2019 (Attachment 2). The legal advice states, in part and in summary:

“Whilst the conclusions reached in my previous advice still therefore apply [as stated at point 9 of the heading ‘Background’ above], I consider the Town’s exposure to potential liability is significantly increased in light of the advice received from LGIS, which indicates that there is a material likelihood insurance cover could potentially be denied cover in the event that a claim was made associated with the Village, whether in relation to personal injury or property damage. It would appear that cover could potentially be denied on the basis that the Town had failed to take reasonable care in its maintenance of the Village and/or the Town had breached contractual provision to which it was subject, whether under its lease agreement with residents or under the joint venture agreement. This would mean that the Town itself would have to cover any liability that arose in relation to personal injury or property damage within the Village. Clearly, that is a critical risk that must be urgently addressed.”

Improvement Plan 50

The Council noted at its May OCM that the Site is included in the then draft Improvement Plan No.50 – Port Hedland West End ('IP50'). On 13 June 2019 the WAPC endorsed for recommendation by the Minister IP50. On 4 July 2019 the Minister accepted that recommendation.

IP50 now authorises the making of an improvement scheme for some or all of the land the subject of IP50, which will replace the local planning scheme. Whilst the exact form of the improvement scheme is not precisely known, it is most likely to incorporate the Dust Taskforce's findings, namely that appropriate planning controls be implemented to prohibit sensitive land uses (like aged housing) and restrict population growth in the West End. Accordingly, irrespective of the issues detailed in this report, development of the Site would be inconsistent with the proposed planning controls.

Coastal inundation

The Town's Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) has identified the likelihood of coastal inundation hazards to 2120. The mapping identifies that the Site does face a risk of inundation, however this risk is considered 'rare'. This risk is forecasted from present day to 2120. The forecast for 2120 identifies lots on the corner of Anderson St and Sutherland St as having a greater likelihood of inundation, being identified as a 'possible' risk.

Further to the findings included in the Town's CHRMAP, the Department of Fire & Emergency Services (DFES) Intelligence and Planning Branch have undertaken extensive modelling of the Port Hedland coast line with the view of providing predicted damage assessments resulting from cyclonic wind conditions. The assessments analysed construction methods, age of construction, building condition and environmental conditions to predict likely damage scenarios for a category 3 and category 5 cyclone impact (it is important to note that these are simulated cyclonic conditions and should be used as a guide only to inform planning, preparation and recovery operations. Cyclonic conditions can change rapidly which may result in varied impact conditions). Predictive modelling has indicated in category 3 direct hit conditions, the Stevens Street Retirement Village will likely experience extensive damage. For the simulated category 5 scenario, the Stevens Street Retirement Village was predicted to experience complete damage.

It is also important to note that conditions experienced during Tropical Cyclone (TC) Veronica were at times predicted to be up to category 5 with a likelihood of an extensive tidal surge. However during the course of the event, the cyclone track and intensity weakened, resulting in Port Hedland only experiencing severe storm conditions and minor tidal surge impacts. The community cannot rely on TC Veronica as an indicator for their resilience to and recovery from a cyclone impact.

Alternative accommodation

As foreshadowed in the December SCM Minutes, the alternative accommodation the Town's administration secured at Osprey Village in December 2018 is no longer available.

The Town's administration has been in contact with the Department of Communities regarding the provision of alternative accommodation. On 4 September 2019 the Department confirmed it has a number of vacant two bedroom properties available in Port and South Hedland, however it is not able to hold these vacancies for long as there is a high demand for subsidised housing in the region.

Those arrangements cannot proceed until there is a formal resolution approving the relocation of the residents, following which the residents can make an application to the Department to assess suitability and allocation of accommodation.

The Town is in discussions with other parties for other alternative accommodation if the Department's accommodation becomes unavailable or is not suitable for the residents. Similarly, those discussions cannot be progressed until there is a formal resolution.

The Town still intends to cover all costs associated with the relocation (e.g. removalists, reconnection of utilities).

McGregor Street Precinct Masterplan

At its August 2019 OCM the McGregor Street Precinct Masterplan was endorsed. That Masterplan reappropriates a portion of the north eastern land (known as 'Location Plan 26) for 'Medium Density Senior Accommodation' subject to the required rezoning and structure plan processes.

Joint Venture agreement

The joint venture agreement between the Town and the then State Housing Commission (JV) expires on 22 December 2024. If the tenants are relocated the JV will need to be terminated which *may* require the Town buying out the State's equitable interest for the value of the buildings on the Site.

LEVEL OF SIGNIFICANCE

In accordance with Policy 4/009 'Significant Decision Making', this matter is considered to be of high significance because of the safety risk to the residents and the community's interest in their welfare. Consultation with the residents commenced on 6 September 2019. The Town intends to hold meetings with the residents on or shortly after 11 September 2019 regarding their relocation to safe accommodation and the accommodation options currently available. Consultation

Internal

Commissioner Reibeling was briefed on this matter and provided all information, reports and advice previously provided to Council, together with the further LGIS advice and legal advice.

Executive Leadership Team, Acting Manager Governance, Manager Finance

External Agencies

Department of Communities, McLeods Lawyers, LGIS and Foundation Housing

Community

As noted in the 'Level of Significance' section of this report, consultation with tenants and the community commenced on 6 September 2019 and the Town intends to meet with the residents on or shortly after 11 September 2019.

LEGISLATION AND POLICY CONSIDERATIONS

Local Government Act 1995 – section 3.54

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)

Planning and Development Act 2005 – Part 8 (Improvement Plans and Schemes)

Planning and Development (Local Planning Schemes) Regulations – Deemed Provisions

FINANCIAL AND RESOURCES IMPLICATIONS

The total budgeted operating expenditure for financial year 2019-20 for the Site is \$144,000, of which \$12,283 has been spent or committed. It is expected that relocation expenses for tenants and other one-off costs will be covered by the remaining budget. Additional wrap around services (e.g. regular travel assistance) will be determined once final tenant locations are confirmed, but are not expected to be material.

The \$4M allocated in the financial year 2019-20 annual budget for the possible redevelopment of the Site will be reviewed as part of quarterly budget processes. The cost of determining the JV agreement is currently unknown

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

The following of the Town's Strategic Community Plan 2018-2028 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
- 3.b.4 Innovation and resilience of the built form are encouraged, assessed and implemented

Environmental

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

Social

There are social implications due to the safety risk associated with the residents' continued occupation of the Site and the community's concerns and interest in the welfare of those residents.

Corporate Business Plan

The following action of the Town's Corporate Business Plan 2018-2022 apply in relation to this item:

- 1.d.3 Facilities and community infrastructure are well maintained, managed and fit for purpose to provide a range of lifestyle opportunities.

RISK MANAGEMENT CONSIDERATIONS

There is a health and safety risk associated with this item because people are residing in buildings considered to be in a dangerous state and unfit for human occupation. 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 can be eliminated by revoking the Council's previous decision and adopting the officer's recommendation.

There is a financial liability risk associated with this item because the Town's insurers have advised that it may not be covered under its policies where it has failed to take reasonable care in maintaining the Site or reasonably exercising its duty of care. The Town would be required to use its income, including rates revenue, to fund the settlement of a claim for damage to persons or property arising out the Town's failure to reasonably exercise its duty of care. This would considerably compromise the long-term financial sustainability of the Town. 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 can be eliminated by revoking the Council's previous decisions and adopting the officer's recommendation.

There is a compliance risk because any subsequent development application in relation to the site might not comply with the improvement scheme to be developed under IP50, which is likely to prohibit aged care and other sensitive land uses between Taplin and McGregor Street as per recommendation 5 of the Dust Taskforce Report. The risk rating is considered to be High (16) which is determined by a likelihood of likely (4) and a consequence of major (4). This risk will be eliminated by revoking the Council's previous decisions and adopting the officer's recommendation not to support age care development on this Site.

OPTIONS

Option 1 – Adopt officer's recommendation

Option 2 – Amend officer's recommendation

Option 3 – Do not adopt officer's recommendation and reaffirm Council's decision at the 10 December 2018 SCM and 22 May 2019 OCM.

CONCLUSION

The Town's administration maintains its position as set out in the December 2018 SCM and May 2019 OCM Minutes, namely, based on the technical and legal advice received, the safety of residents of the Site is at risk and urgent action is required to address this risk. The Town's administration believes the proposed course of action detailed in this item best addresses this risk to ensure the Town reasonably exercises its duty of care to ensure the safety of all residents, employees, contractors and visitors to the Site, particularly considering the 2019-20 cyclone season is impending.

Further, since the December 2018 SCM and May 2019 OCM the Town has received advice from its insurers advising that it could be denied coverage under its policies where it has failed to reasonably exercise its duty of care. This presents a serious liability risk to the Town.

Failure to adopt the Town's administration's proposed course of action would result in the Town failing to reasonably exercise its duty of care to the residents, and would carry high risks for the safety of residents and the Town's liabilities.

ATTACHMENTS

1. Letter from LGIS to Town dated 18 June 2019 - advice on indemnity and liability
2. Letter from McLeods to Town dated 22 July 2019 - advice regarding LGIA response re indemnity and liability



18 June 2019

Attention: Mr David Pentz & Ms Josephine Bianchi

**Confidential – Subject to Legal
Professional / Common Interest
Privilege**

The Chief Executive Officer / Manager Governance
Town of Port Hedland
PO Box 41
PORT HEDLAND WA 6721

Dear David & Josephine,

TOWN OF PORT HEDLAND – STEVENS STREET RESIDENTIAL VILLAGE

Reference No.: LI0048586
Claimant: Unknown
Claim Date: 15/01/201

We refer to the above matter, previous correspondence and our telephone conference on 13 June 2019.

We confirm that:

- The Town has obtained two (2) engineers reports in relation to the Stevens Street Residential Village (**Village**) from:
 - KSCE Engineers in or about July 2018 which concluded that "several of the buildings and other structures such as fences and paths are structurally unsound"; and
 - Wood & Grieve dated 11 February 2019 which concluded that "[t]he structural tie down rods from the underside of the concrete intel beam to the front and rear of all units are displaying severe to minor corrosion.... These elements are performing on a day to day basis but are considered unsafe for performance in a cyclone event".
- On 22 May 2019, Council resolved to confirm its support for a new building on the Village site, making appropriate budget provisions for a feasibility study and detailed design and commence tenant and community consultation. However, Council did not resolve to continue to facilitate the relocation of the Village residents contrary to Town's executive recommendations.
- It remains the view of the Town's Executive that the Village is structurally deficient, and/or unsound, and is unsafe for residents to continue to reside in (based on the reports above).
- You have asked LGIS for advice in relation to the potential response of the Town's protection policies if a claim were made against the Town in connection with the Village and the potential liabilities arising from such claims.

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Indemnity

The LGIS Liability protection responds to claims for either:

- A breach of professional duty where the conduct complained of occurred in connection with the Business of the Member; or
- Personal injury caused by an occurrence in connection with the Business of the Member.

It is a condition of the above Policy (and the LGIS Property, Condition 11) that the Town must take reasonable care (Condition 5) including to:

- Take reasonable measures to maintain all premises, fittings and plant in a safe and sound condition; and
- Take all reasonable precautions to prevent personal injury and damage to property and comply and ensure its employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.

Based upon the information provided to date, we are of the view that the Town may not be entitled to indemnity under the Policy for claims arising from a breach of:

- Professional duty or a personal injury in connection with the Village in circumstances where the Town:
 - o Has not maintained the Village to a reasonable standard.
 - o Is now aware that the Village is structurally unsound, and is accordingly, not in a "safe and sound condition" – as concluded by the report by KSCE Engineers and inferred by the report by Wood & Grieve.
 - o Resolved to not take any steps to remove the Village's residents from the Village (contrary to the Town's executive recommendations).
 - o Has therefore not taken all reasonable precautions to prevent personal injury, or comply with its statutory obligations.
- Contract (such as the joint venture agreement or tenancy agreements) may trigger the contractual liability exclusion of the Policy (Exclusion 20).

There is currently no formal claim, and accordingly, this matter is only a notification only and indemnity remains reserved on both LGIS Liability and LGIS Property protection policies.

Potential Liabilities

The Town has broad responsibilities for the Village as:

- A landlord;
- The controller of a workplace (for the Town's, and other, employees);
- An occupier; and
- An entity engaged in trade or commerce.

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Each of the above roles generate obligations upon the Town. A breach of those duties may result in fines, exposure to damages to the Town and/or imprisonment (in an extreme scenario) of the Town's officers including, but not limited to:

- A claim for unconscionable conduct under the *Australian Consumer Law*, a breach of which may expose the employee to potentially facing orders as to:
 - Compensation for the affected resident for any loss or damage; and /or
 - Financial penalties (on account of their conduct).
- A prosecution of an offence under the *Occupational Health and Safety Act*:
 - Where a body corporate is guilty of an offence, and it is established that the offence occurred with the consent of, or was attributable to any neglect on the part of an employee of that body corporate, they are also liable for that offence.
 - That employee is exposed to (depending upon the seriousness of the conduct and offence):
 - Substantial penalties (payable by the individual); and / or
 - Imprisonment of up to 5 years.

An employee who makes, or participates in making, decisions that affect the business of the Town may be exposed to the above liabilities. This includes, but not limited to, the CEO, directors, managers, coordinators and supervisors (depending upon the applicable circumstances).

It would be prudent to note that the Town does hold a Management Liability policy of insurance (separate to protections offered by the Scheme) which may respond to some, or all, of the above claims against the Town and / or Employees. However, there are exclusions under that policy which may be triggered in the above circumstances, and therefore coverage would not be available for any such claim, being conduct exclusions for any:

- Counsellors & Officers claims (against Employees & Counsellors) where it is based on, arising from or attributable to any deliberately dishonest or deliberately fraudulent act or omission by the Employee or an intentional breach of the law by them (Exclusion 2.4.1); and
- Statutory Liability claims (against the Town) where it is based on, arising from or attributable to any deliberately dishonest or deliberately fraudulent act or omission by the Town or an intentional breach of the law by them (Exclusion 3.4.1).

Overall LGIS does not take a narrow or pedantic approach to cover. We always err on the side of granting indemnity and takes the widest reasonable interpretation of our covers.

I understand the concern this has generated. It is my hope (through this letter and our various conversations) we have better articulated our position.

Yours sincerely



Udam Wickremaratne
Portfolio Manager – Liability and Property



Our Ref

Your Ref

DFN:PORT:43352



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22 July 2019

Ms Josephine Bianchi
Acting Director Corporate and Performance
Town of Port Hedland
PO Box 41
Port Hedland WA 6721

Attention: Ms Rebecca Somerford, Legal Advisor
By email: rsomerford@porthedland.wa.gov.au; jbianchi@porthedland.wa.gov.au

Dear Josephine,

Stevens Street Retirement Village – Termination of Existing Tenancy Agreements

Thank you for the Town's further instructions in this matter conveyed by email correspondence from Rebecca Summerford dated 3 December 2018.

Background

I previously provided advice to the Town in this matter by letters dated 24 October 2018 and 6 December 2018. Since the date of my last advice there have been several further developments in relation to this matter as noted in your instructions.

On 10 December 2018 Council held a Special Council Meeting (SCM) in relation to this matter. At that meeting Council resolved as follows:

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.

Subsequent to the SCM, the Town obtained a second engineers report in relation to the condition of the Village. The report dated 11 February 2019 is entitled "Building Services and Structural Report" by Wood & Grieve Engineers (WGE Report) and provides a detailed assessment of the condition of the Village and repairs required to bring the Village to an acceptable standard. The assessment in the WGE Report encompasses: electrical

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services, hydraulic services, mechanical services and structural components of the buildings in the Village.

The Town additionally has obtained advice from its insurer, LGIS, in relation to the potential response of the Town's protection policies if a claim were made against the Town in connection with the Village and the potential liabilities arising from such a claim. The letter from LGIS dated 18 June 2019 notes that it is a condition of the Town's insurance policies that the Town take reasonable care including to:

- Take reasonable measures to maintain all premises, fittings and plant in a safe and sound condition; and
- Take all reasonable precautions to prevent personal injury and damage to property and comply and ensure its employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.

The LGIS letter foreshadows that the Town could potentially be denied coverage under its policies where it has failed to take reasonable care in maintaining the Village, stating:

Based upon the information provided to date, we are of the view that the Town may not be entitled to indemnity under the Policy for claims arising from a breach of:

- Professional duty or a personal injury in connection with the Village in circumstances where the Town:
 - Has not maintained the Village to a reasonable standard.
 - Is now aware that the Village is structurally unsound, and is accordingly, not in a "safe and sound condition" - as concluded by the report by KSCE Engineers and inferred by the report by Wood & Grieve.
 - Resolved to not take any steps to remove the Village's residents from the Village (contrary to the Town's executive recommendations).
 - Has therefore not taken all reasonable precautions to prevent personal injury, or comply with its statutory obligations.
- Contract (such as the joint venture agreement more tenancy agreements) may trigger the contractual liability exclusion of the Policy (Exclusion 20).

Additionally, I note that the Council of the Town was suspended on 9 July 2019 for a period of six months to enable councillors to undertake training. A commissioner has been appointed to govern the Town during the period of temporary suspension of Council.

In light of the further developments in this matter and additional information as referred to above, you have requested advice in relation to the following issues:

- Whether this affects the advice provided to question 1 of the previous brief;
- Should the Town obtain a full expert risk assessment of the Centre;
- In light of the letter from LGIS, whether the residents can lawfully occupy the Centre if the Town does not hold full insurance coverage;

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- The Commissioner's potential individual liabilities re making decisions with respect to the Centre

I have addressed each issue in turn below.

1. Whether this affects the advice provided to question 1 of the previous brief

My previous advice to the Town in relation to question 1 of the previous brief may be summarised as follows:

- (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.

In general terms, the further information I have reviewed would not cause me to alter the advice provided previously to the Town in relation to question 1, as summarised in paragraphs (a) – (f) above.

The information contained in the WGE Report is generally consistent with the KSCE Structural Report in that it identifies certain critical safety risks, which are considered unsafe for performance in a cyclone event, in addition to significant maintenance required to restore the Village to an adequate standard. Accordingly, it remains the case that 'reports and technical advice obtained by the Town identify a foreseeable safety risk for residents' and that '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'.

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In light of the liability risks that arise from the condition of the Village it also remains the case that relocation of residents from the Village, as recommended by the Town's executive, would be 'one way of addressing and mitigating the foreseeable risk that has arisen'. Similarly, I remain of the view that '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'. It also remains the case that 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 or damage occurring.

Whilst the conclusions reached in my previous advice still therefore apply, I consider that the Town's exposure to potential liability is significantly increased in light of advice received from LGIS, which indicates that there is a material likelihood insurance cover could potentially be denied cover in the event that a claim was made associated with the Village, whether in relation to personal injury or property damage. It would appear that cover could potentially either be denied on the basis that the Town had failed to take reasonable care in its maintenance of the Village and/or the Town had breached contractual provision to which it was subject, whether under its lease agreement with residents or under the joint venture agreement. This would mean that the Town itself would have to cover any liability that arose in relation to personal injury or property damage occurring within the Village. Clearly, that is a critical risk for the Town that must be urgently addressed.

Moreover, in order to remove the risk of being denied cover highlighted by the LGIS letter, it would not be sufficient for the Town to simply address the critical safety risks that have been identified in the expert reports to date. Rather, the Town would need to undertake all maintenance and repairs necessary to bring the Village to an acceptable standard having regard to its duty of care as a lessor and occupier of land, together with any contractual obligations to which the Town is subject under the joint venture agreement and as lessor. It is only when those maintenance and repairs have been undertaken that the Town could reasonably be satisfied that it had properly addressed any risk of insurance cover being denied and also satisfactorily discharged its obligations as lessor and occupier of the Land.

Whether it is financially practicable for the Town to undertake repair and maintenance works to the Village as required, or whether doing so is the preferred options given the age of the Village, is a question for the Town to consider. However, even if the Town was repaired to incur the significant cost of undertaking such repairs to bring the Village up to an acceptable standard and ensure that it had discharged its common law and contractual obligations in relation to maintenance of the Village, the Town would need to consider the additional issue of whether it is practicable and/or acceptable from a risk management perspective to allow residents to remain in the Village whilst such works were being undertaken.

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2. Should the Town obtain a full expert risk assessment of the Centre

In answering this question it is helpful to first briefly revisit the expert assessments of the condition of the Centre that the Town has already obtained to date, which comprise:

- (a) A “NCC BCA Compliance & Building Condition Audit Report” dated 27 April 2018 (**Audit Report**). The Audit Report noted “the existence of the vertical cracks to external blockwork walls and piers that is potentially compromising the structural adequacy of the buildings” and recommended this be investigated as a matter of priority for the safety of the residents and community.
- (b) A Structural Investigation Report from KSCE Engineers in July 2018 (**Structural Report**). The Structural Report concluded that “Several of the buildings and other structures such as fences and paths are structurally unsound” and that “Significant maintenance is required in the short term to address safety and/or serviceability issues”. The Structural Report otherwise noted that the facility as a whole was “at or approaching the end of its economic life” and that if “buildings are retained the ongoing cost of repair and maintenance will increase exponentially”. On that basis the Structural Report recommended replacement of the buildings, which was likely to cost less than upgrade and maintenance when considered on a whole of life basis.
- (c) The WGE Report, as referred to above, which identifies a number of structural maintenance items, which require immediate action to make the buildings cyclone safe. The Report also details estimated repair and maintenance costs encompassing electrical services (\$405,000), hydraulic services (\$340,000), mechanical services (\$40,000) and structural remediation works (\$1,873,400). The total cost of repair and maintenance works recommended by the WGE Report is \$2,658,400.

The reports undertaken by the Town to date were generally focused on the physical condition of the buildings comprising the Village and were not directly concerned with a comprehensive assessment of risk in relation to the buildings’ condition. Nonetheless, in noting various structural inadequacies in the buildings the reports obtained by the Town to date did identify significant safety risks to which residents were exposed, particularly in the event of a cyclone event occurring. Moreover, the advice obtained by the Town from LGIS indicates that there is a significant likelihood that the Town could be denied cover in the event of a claim being made in relation to the Village in circumstances where the Town had failed to take reasonable care in maintaining the Village.

Those reports and advice in conjunction are thus sufficient to identify a critical risk of liability to which the Town is presently subject by reason of the Village being in an unsafe/inadequate condition and there being a significant likelihood of being denied insurance cover by reason of its failure to undertake reasonable care in maintaining the Village. Although a full expert risk assessment may provide valuable further information to the Town, in my view it is already apparent from the information obtained to date that there is an unacceptable level of risk to which the Town (and in some cases residents) are presently subject. Whilst I would not seek to dissuade the Town from obtaining a comprehensive risk assessment, as that may be of some value, I would suggest that the

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present priority for the Town should be in considering what action should be taken to address the risk already identified in the expert reports and advice obtained to date, rather than in deferring action pending receipt of a further assessment and report.

3. In light of the letter from LGIS, whether the residents can lawfully occupy the Centre if the Town does not hold full insurance coverage

The possibility that the Town may be denied insurance cover in the event of a claim associated with the Village would not in itself render the residents' occupation of their respective residential premises unlawful. The residents remaining in the Village are entitled at law to occupy their respective residential premises pursuant to lease agreements previously entered into by the Town. The lawfulness of the residents' occupation is not affected by the Town's potential contractual position under its insurance policy with LGIS in the event of a claim being made. However, as noted above, the significant likelihood that the Town could be denied cover in the event of a claim presents as a critical risk for the Town, which should be addressed as a matter of priority.

4. The Commissioner's potential individual liabilities re making decisions with respect to the Centre

4.1 Protection from personal liability under *Local Government Act*

In my advice dated 6 December 2018 I discussed whether personal liability of individual members of Council could potentially arise in relation to the foreseeable safety risks that have been identified. In the course of discussing that issue I referred to section 9.56(2) of the *Local Government Act 1995 (LG Act)*, which provides:

- (2) An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or under any other written law.

The term "protected person" is defined to include a member of the council of a local government. In accordance with section 2.38(3), a reference in the LG Act to a member of a council includes a reference to a commissioner. Accordingly, the protection afforded by section 9.56(2) would also extend to the Commissioner and would preclude an action in tort against the Commissioner for anything that the Commissioner had done in good faith in the performance or purported performance of a function under this Act or under any other written law in the capacity of Commissioner.

However, I note that section 9.56(2) only provides protection against an action in tort. The section would not afford any statutory protection against liability arising other than through an action in tort (such as criminal liability). A 'tort' is a breach of a duty which has been imposed by law and which gives rise to a civil right of action for unliquidated damages. The duty may be imposed by common law or statute and is distinguishable from duties which have been assumed by agreement of the parties: *Philip Morris Ltd v Ainley* [1975] VR 345 at 348-9 per Menhennitt J. A right of action in tort only arises when injury has been sustained as a result of a breach of a duty recognised by law: *SCM (UK) Ltd v WJ Whittall and Son Ltd* [1971] 1 QB 337 at 347.

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In relation to the issue of personal liability, I note that the letter from LGIS referred to the possibility (in an extreme scenario) of personal liability for the Town's officers through:

- (a) a claim for unconscionable conduct under the Australian Consumer Law, a breach of which may expose the employee to potentially facing orders as to compensation for the affected resident for any loss or damage and/or financial penalties (on account of any unconscionable conduct); or
- (b) prosecution of an offence under the Occupational Health and Safety Act (which I assume is a reference to the *Occupational Safety and Health Act 1984* (WA)).

For the sake of completeness I have considered each potential ground of person liability referred to in the LGIS letter further below.

4.2 Potential personal liability arising under Australian Consumer Law

In relation to potential personal liability arising under the Australian Consumer Law, as contained in Sch. 2 of the *Competition and Consumer Act 2010* (Cth) (CC Act), it is necessary first to consider the application of the CC Act. The CC Act (being the former *Trade Practices Act 1974* (Cth)) is limited in its application, with some exceptions, to conduct by corporations (s. 131). Whilst it had previously been considered that local governments were not engaged in trade or commerce and therefore were exempt from the provisions of the CC Act, in *Fabcot Pty Ltd v Port Macquarie-Hastings Council* [2010] NSWSC 726 the Supreme Court of NSW found that the provisions of the Act did apply to a council seeking expressions of interest for the development of council land and found that the council had engaged in misleading and deceptive conduct. Accordingly, the provisions of the CC Act may apply to a local government, although this will only be the case if the local government in question is found to be engaged in trade or commerce.

Section 20(1) of the CC Act (Sch 2) provides that a person must not, in trade or commerce, engage in conduct that is unconscionable. Courts have described unconscionable conduct under section 21 as 'serious misconduct, something clearly unfair or unreasonable', '[s]howing no regard for conscience; irreconcilable with what is right and reasonable': *Qantas Airways Ltd v Cameron* (1996) 66 FCR 246 at 262. It follows that mere unreasonableness or unfairness is unlikely to be sufficient, at least in the absence of some moral fault. Mere reliance on the terms of a contract, or a mere breach thereof, cannot, without something more, therefore constitute unconscionable conduct. A contravention requires some circumstance other than the mere terms of the contract itself that renders reliance on, or breach of, those terms unconscionable.

Contravention of the 'unconscionable conduct' provisions of the CC Act is not an offence. It may, however, give rise to a claim for damages (Sch 2; s. 236(1)) and an injunction may be awarded to restrain a contravention of these provisions. In addition, relief may be sought in the form of an order to compensate for loss or damage or prevent or reduce the loss or damage suffered on application by any person who has suffered loss or damage, or is likely to do so, as a result of the contravention, or by the Australian Competition and Consumer Commission on behalf of one or more such people. As a contravention of the 'unconscionable conduct' provisions of the CC Act is not an offence, it follows that any

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claim for damages would be an action in tort (arising from a breach of a duty which has been imposed by law) to which s. 9.56(2) would apply.

On that basis, I do not consider that the Commissioner would be at risk of liability on a personal basis under the unconscionable conduct provisions of the Australian Consumer Law at least, although I note there are other provisions of the Australian Consumer Law that do create offences relating to unfair practices, such as in relation to false and misleading representations about goods or services (s. 151). Moreover, section 95 of the *Fair Trading Act 2010* provides that where a corporation is convicted of an offence under that Act (which incorporates the Australian Consumer Law as a law of Western Australia), then each person who, at the time of the commission of that offence, was a director (or equivalent position) of the corporation is also guilty of an offence unless the person proves that the offence was committed without the person's knowledge, or that the person did not authorise or permit the commission of the offence and that the person was not in a position to influence the conduct of that corporation or body or, being in such a position, could not by the exercise of reasonable diligence have prevented the commission of the offence. Accordingly, the possibility of personal liability arising under the Australian Consumer Law cannot entirely be precluded, at least in the case of any action constituting an offence, which would not include provisions in relation to unconscionable conduct.

4.3 Potential personal liability arising under *Occupational Safety and Health Act 1984*

In general terms the *Occupational Safety and Health Act 1984* (**OSH Act**) makes provision in relation to occupational safety and health in workplaces. Section 22(1) relevantly provides:

“(1) A person that has, to any extent, control of—

- (a) a workplace where persons who are not employees of that person work or are likely to be in the course of their work; or
- (b) the means of access to and egress from a workplace,

shall take such measures as are practicable to ensure that the workplace, or the means of access to or egress from the workplace, as the case may be, are such that persons who are at the workplace or use the means of access to and egress from the workplace are not exposed to hazards.”

The term “workplace” is defined in s. 3 in the following terms:

“**workplace** means a place, whether or not in an aircraft, ship, vehicle, building, or other structure, where employees or self-employed persons work or are likely to be in the course of their work.”

The Village would thus constitute a “workplace” to the extent that it is a “place... where employees or self-employed persons work”. The question that then arises is whether the Town as lessor of the Village would be for the purposes of section 22 “a person having control of any workplace or means of access to or egress from a workplace” to any extent.

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I note that s. 22 applies to a person that has “to any extent” control of a workplace. Accordingly, where control of a workplace is exercised by more than one person, the obligations under s. 22 will apply to all such persons having control of the workplace. The section does not assume that only one person can exercise control of a workplace, as noted in *Reilly v Tobiassen* (2008) 170 IR 294; [2008] WASC 6, where Heenan J stated in relation to s. 22:

“Having regard to the purpose of the Act, which is to ‘promote and improve standards for occupational safety and health’, I am satisfied that the concept of control of a workplace should be approached ... so that all persons who share in the control of building operations or work at a worksite — even though the areas of control may be overlapping, or may be at different levels in a hierarchy of control — have the obligation to exercise that control by taking practical measures to ensure that the workplace does not expose other persons on site to hazards.

...

The policy of the legislation is to establish broad and omnipresent obligations to install, enforce and carry out safe working practices for all persons involved in a workplace where hazardous activities may be involved. The degree of obligation and the nature and extent of the duty will vary according to whether the influence of the particular person who bears the designated duty is greater or less.”

Similarly, in *Morrison v De Bono* [2005] WASC 271, Le Miere J observed in relation to s. 22 of the OSH Act:

“[12] Subsection 22(1) of the Act imposes a duty on a person who has “to any extent” control of a workplace as defined. The qualification of control imported by the words “to any extent” should not be read as confined to a multiplicity of control but naturally extends to cover various degrees of control: see *Workcover Authority of NSW (Inspector Page) v Woolworths Ltd* [1994] NSWIRC 95.

...

Section 22 applies to any person who has some degree of control over the premises so that he can make the premises safe. A person may have a sufficient degree of control over premises that he is able to make the premises safe for workers working on the premises, notwithstanding that they are not his employees and he has no control over their method of work. For example, a person may be able to ensure the safety of premises on which workers are working by removing or giving adequate notice of a concealed hazard.”

I consider that the Town would be a person who has “to any extent” control of the workplace at the Village (to the extent employees or self-employed persons work there) for the purposes of section 22 as it is vested with care, control and management of the land on which the Village is located and is the lessor of the respective units comprising the Village. Whilst PHRV previously occupied and managed the land that is no longer the case today. Moreover, the Town has obligations in relation to maintenance under Joint Venture Agreement, which also confirms its extent of control.

Accordingly, the Town would be required to “take such measures as are practicable to ensure that the workplace, or the means of access to or egress from the workplace... are such that persons who are at the workplace or use the means of access to and egress from the workplace are not exposed to hazards”.

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Section 55(1) of the OSH Act provides that "...where a body corporate is guilty of an offence ... and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he or she, as well as the body corporate, is guilty of that offence". Accordingly, the possibility of personal liability under the OSH Act can also not be precluded, although that would only occur where personal responsibility or neglect contributing to an offence was made out.

I trust this advice satisfies your requirements. Please contact me should you have any further queries in respect of this matter.

Yours sincerely



David Nicholson
Partner

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Item 9 New Business of an Urgent Nature (Late items)

Item 10 Closure

10.1 Date of Next Meeting

The next Ordinary Meeting of Council will be held on Wednesday 25 September 2019 commencing at 5.30pm.

10.2 Closure

There being no further business, the Commissioner declared the meeting closed at [enter time](#) .