



Town of Port Hedland

MINUTES

OF THE

SPECIAL MEETING OF THE TOWN OF PORT HEDLAND COUNCIL

HELD ON

MONDAY 12 MARCH 2012

COMMENCING AT 5:30 PM

**IN COUNCIL CHAMBERS
McGREGOR STREET, PORT HEDLAND**

*Purpose of Meeting: To consider:
Reconsideration of the Proposed Development of Precinct 3 at the Port Hedland
International Airport via Private Treaty with BHP Billiton Iron Ore (File No.: 01/04/0001)*

*Paul Martin
Chief Executive Officer*

OUR COMMITMENT

To enhance social, environmental and economic well-being through leadership and working in partnership with the Community.

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ITEM 1 OPENING OF MEETING**1.1 Opening**

The Mayor declared the meeting open at 5:37.

NOTE: Mayor requested it be noted in the Minutes that a member of the public did not rise.

Mayor acknowledged the traditional owners, the Kariyarra people.

ITEM 2 RECORDING OF ATTENDANCE AND APOLOGIES**2.1 Attendance**

Mayor Kelly A Howlett
Councillor Arnold A Carter
Councillor Stan R Martin
Councillor Jan M Gillingham
Councillor David W Hooper
Councilor Julie E Hunt
Councilor Gloria A Jacob

Mr Paul Martin	Chief Executive Officer
Ms Natalie Octoman	Director Corporate Services
Mr Russell Dyer	Director Engineering Services
Mr Gordon MacMile	Director Community Development
Mr Eber Butron	Director Planning and Development
Miss Josephine Bianchi	Minute Taker

Members of Staff	1
Members of the Public	12
Members of the Media	1

2.2 Apologies

Councillor Michael (Bill) A Dziombak

2.3 Approved Leave of Absence

Councillor George J Daccache

ITEM 3 PUBLIC TIME

5:38 Mayor opened Public Questions Time

3.1 Public Questions**3.1.1 Mr Camilo Blanco**

On 13 January 2012 Council requested the Chief Executive Officer to undertake studies including a traffic, hydrology, stormwater, drainage and any other studies identified after discussions with State Agencies as a result of the submissions received. Tonight's vote could see construction begin so have all the studies been completed?

Chief Executive Officer advised that consultants have been engaged and Councillors received a briefing this afternoon from traffic and hydrology consultants and consultants investigating servicing. The intention of the recommendation is that those studies will be finalised prior to submitting the WAPC application which is Officer's Recommendation 2 number 6.

So the studies have not been completed?

Chief Executive Officer advised that as of tonight Council has a draft of most of the studies' results, there have been no fatal flaws found with the studies and now there is an opportunity to work on the implementation of the studies' outcomes with BHP Billiton.

If the studies have not been completed how can Council make informed decisions?

Chief Executive Officer advised that Council tonight is asked to consider whether it wants to progress with the business plan. There will be many more decisions that Council will need to progress if it wants to work through all aspects of this project, including the subdivision application and leases. Other times could see those issues or mitigation strategies that the studies identified be picked up and resolved. Officers recommendation 2 number 6 does not say 'submit the WAPC application' it just says 'submit once satisfied with the outcome of the studies'.

Officer's recommendation is that any other income 'being interest earned' generated from the proposal go to the Town's municipal fund so it can fund the anticipated services and facilities required to develop Port Hedland into a city. Developing Port Hedland into a city is a State initiative and funded by the Royalties for Regions program is that correct?

Mayor advised that the entire transformation of the town is not just the State Government's responsibility. The Town is very fortunate to have a number of valued partners assisting in the program of converting Port Hedland into a city.

Which departments is the Mayor referring to?

Mayor advised 'an array of stakeholders'.

Then why does the Town need that money?

Mayor advised that like with any business investment transaction it is very important that the Town looks at it and is financially responsible for it.

Would you agree it's a better idea to grow that money, by leaving the interest in the account, in case the development blows out in costs?

Mayor advised that this is one of the options that can be considered.

Determining what will occur to the land and build infrastructure at the end of the lease term is not set in concrete. When will we see this in writing?

Chief Executive Officer advised this is one of the issues that is outlined broadly in the item and that Council will consider in more detail as part of the final lease documentation.

In the past the town has made these types of agreements and when the document process was finalized these arrangements were left out, what guarantee can be made tonight to ensure the ownership reverts back to the town?

Chief Executive Officer advised there is no guarantee but we are recommending that these lease documents come back to Council. Officer's recommendation 2 number 9 requests that the draft lease is presented back to Council so that Council can work its way through the lease and ensure that all the conditions it wants to see in the documentation are there together with legal advice to support it, before it signs off on it. In the past the Town agreed to business plans first and then leases have been executed separately without coming back to Council but a two stage process has been put in place this time.

As stated on 13 January 2012 these amendments to the plan are an attempt to reduce any potential impacts of such a development to the town. How has the town planned to reduce the traffic impact on the Wedgefield area?

Mayor advised that this is part of the traffic studies that have been conducted.

However these studies have not been presented.

Mayor advised that they have been presented informally in part and they will continue to the satisfaction of the Chief Executive Officer.

Has the town received funding to upgrade the road systems in the town and Wedgefield?

Chief Executive Officer advised that this question is taken on notice.

The policy also requires Council to ensure that if facilities are built, they will demonstrate a whole of community benefit. How will Council ensure the town's small businesses will be used in all aspects (aspects being construction and operational) of the proposed camp?

Chief Executive Officer advised that one of the aspects of the proposal from BHP Billiton is to establish a 'FIFO Integration Committee' which will look at both the social and economic opportunities and impacts that will happen as a result of the camp and see how these can be worked through and opportunity given to local businesses.

5:46 Mayor closed Public Questions Time

5:46 Mayor opened Public Statements Time

3.2 Public Statements

3.2.1 Mr Camilo Blanco

The town recognises the value of the comments received in the public submissions but has not acted to rectify the main concerns of the people. Questions asked about police numbers, Doctors and Nurses etc, on a number of occasions have been taken on notice and then conveniently been left out of the meeting minutes.

The potential impacts of this development to my town have not been reduced by any means. The needs of BHP are far greater than the concerns of the community as a whole. This is clearly shown by the fact that anything requiring a new business development plan clearly has been avoided and an alternate solution added. The poor financial position of the town has played a big part in the decision making of this proposal and has led to the town's people being sold out, so the town can cash in on this planned camp to try and hide the incompetence in the finances. The town has listed the development of the Spoilbank Marina as a 'priority 2' when it should be the 'priority 1' in the compensation process for the town.

As stated in tonight's agenda 'this is the biggest proposal ever considered by the Council' and 'most of the impacts will be positive'. My opinion is most of the impacts will be negative but many people are not aware that if Council fails to pass a proposal tonight, the State government will supply BHP with land to build the camp and the proposed marina and airport development will be lost. The proposal should go ahead with the first \$40M going to the marina project and all interest to stay in the account not allowing the town to waste more of our money. This has come about by key members of Council and staff keeping the plans confidential and not working with the whole of Council in the development stage of this proposal. It is obvious that the town has been out negotiated in the terms of the business plan and all we can do is to salvage what is left of the debacle that has been displayed.

5:49 Mayor closed Public Statements Time

ITEM 4 QUESTIONS FROM MEMBERS WITHOUT NOTICE

Nil.

ITEM 5 DECLARATION BY MEMBERS TO HAVE GIVEN DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE BUSINESS PAPER PRESENTED BEFORE THE MEETING

Mayor K A Howlett	Cr D W Hooper
Cr A A Carter	Cr G A Jacob
Cr S R Martin	Cr J E Hunt
Cr J M Gillingham	

ITEM 6 PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS

6.1.1 Richard O'Connell, Head of Community and Indigenous Affairs.

Mr O'Connell acknowledged the efforts of the Mayor, Deputy Mayor, Councillors and Town of Port Hedland staff for the work put in the development of the business plan. Mr O'Connell pointed out that the business case for Precinct 3 is only one element of future accommodation solutions that support the Outer Harbor Project. Precinct 3 is for construction workers of a temporary and transient nature. However it is important that Council and the community of Port Hedland understands that BHP Billiton has also committed to building permanent accommodation across the town.

BHP Billiton has also a well stated program supporting the areas of police, community safety, health and recreation. This program will continue as part of BHP Billiton's growth consultation as it is important to support the town from a social aspect as well as from an accommodation perspective.

5:52pm Councilor J E Hunt declared a financial interest in Agenda Item 7.1.1 'Reconsideration of the Proposed Development of Precinct 3 at the Port Hedland International Airport via Private Treaty with BHP Billiton Iron Ore (File No.: 01/04/0001)' as she is a BHP Billiton shareholder with shares above the statutory limit.

Councilor J E Hunt left the room.

5:52pm Councilor G A Jacob declared an impartiality interest in Agenda Item 7.1.1 'Reconsideration of the Proposed Development of Precinct 3 at the Port Hedland International Airport via Private Treaty with BHP Billiton Iron Ore (File No.: 01/04/0001)' as her ex-partner used to work for BHP Billiton.

Councilor G A Jacob did not leave the room.

ITEM 7 REPORTS OF OFFICERS

7.1 Corporate Services

7.1.1 *Reconsideration of the Proposed Development of Precinct 3 at the Port Hedland International Airport via Private Treaty with BHP Billiton Iron Ore (File No.: 01/04/0001)*

Officer Paul Martin
Chief Executive Officer

Natalie Octoman
Director Corporate
Services

Date of Report 2 March 2012

Disclosure of Interest by Officer Nil

Summary

This item presents Council with the outcomes of the negotiations with BHP Billiton Iron Ore (BHPB) regarding the proposed private treaty development of Precinct 3 at the Port Hedland International Airport that were requested as part of the Council resolution on the 13th of January 2012.

Based on the legal advice received in relation to the revised proposal from BHPB in that the modifications are not significantly different from what was originally proposed, this report recommends Council revoke part of the decision in accordance with the *Local Government (Administration) Regulations 1996*, made on 13 January 2012, in relation to not progressing with the Business Plan, but endorse the Business Plan with revised conditions.

Background

At the Special Council Meeting on the 13th January 2012 Council resolved the following:

“201112/285 Council Decision

Moved:Cr S R Martin

Seconded: Cr D W Hooper

That Council:

- 1. Notes the submissions that were received from the community and stakeholders regarding the Development of Precinct 3 at the Port Hedland International Airport Business Plan;*
- 2. Resolves not to proceed with the proposal as outlined in the Business Plan in its current form based on feedback received from the public submission process;*
- 3. Notes that BHPB will now explore other TWA accommodation options;*
- 4. Requests the CEO to further negotiate with BHPB, with input from the PHIA Precinct 3 Working Group to determine if such an agreement could be reached, whereby the proposal would be similar to the previous proposal but includes the following amendments:*
 - a. A significant reduction in the number of construction workers from 6,000 to be accommodated on the TWA site;*
 - b. A reduction in the term of the lease of the TWA to a 10 year initial term with one 5 year option;*
 - c. To establish the likely conditions that BHPB will be required to demonstrate to Council prior to the exercising of the 5 year options, and in doing so, clearly define the term ‘construction worker’;*
 - d. Change the tenure of the 10 hectare warehouse site to a leasehold arrangement;*
 - e. To determine the ability to incorporate key worker housing into the revised proposal;*
 - f. To determine what will occur to the land and built infrastructure at the end of the lease term;*
 - g. Review and clarify where all proceeds from a revised proposal would be directed.*

5. *Requests the CEO to undertake studies associated with the subdivision process (including a traffic study, hydrology study, stormwater and drainage study, and a service potential study, and any other studies identified after discussions with State Agencies) in order to gaining further clarification of the likely conditions that WAPC may impose through the subdivision application process;*
6. *Notes that the studies would assist in the further negotiations with BHPB, and could be included into the revised Business Plan if a proposal can be agreed;*
7. *Includes a budget allocation of \$250,000 from the Airport Reserve for the studies outlined in part (d) above as part of the second quarter budget review;*
8. *Notes that these amendments are an attempt to:*
 - a. *recognise the value of the comments received in the public submissions;*
 - b. *reduce any potential impacts of such a development;*
 - c. *develop a more detailed Business Plan that will address many of the concerns raised by the community during the public submission process;*
9. *Recognises the legacy that such a proposal could create for the town, and thanks BHPB for the opportunity to be involved in a development of this magnitude;*
10. *Commits to considering a revised Business Plan for a private treaty arrangement, and looks forward to seeing the outcomes of the negotiations outlined in part 4 of this recommendation that Council believes will provide a win-win opportunity for the whole community;*
11. *Requests the CEO, if such a proposal can be agreed, to submit a revised Business Plan in accordance with section 3.59 of the Local Government Act 1995 to Council for consideration prior to commencing the advertising process.*
12. *Ensures that the State Government (in particular Pilbara Cities and Landcorp) are liaised with in the development of any new business plan for Precinct 3 at the Airport.*
13. *Indicates to BHPB that notwithstanding its willingness to consider this proposal it still has a strong preference for a residential operational workforce.*

CARRIED 4/1”

Following this meeting the CEO participated in discussions with senior representatives from other State Government Agencies including the Department of State Development, Pilbara Cities and Landcorp. A number of other potential locations for the TWA development were explored however these were dismissed due to issues associated with timing, constraints and access.

There have since been 2 meetings held with the Port Hedland International Airport (PHIA) – Precinct 3 Development Working Group with involvement from Pilbara Cities, Department of State Development, BHPB, Councillors and Town of Port Hedland staff.

The Working Group meetings provided a forum for communication between the parties and have assisted the CEO to progress the negotiations to the level that a revised proposal can now be presented before Council.

It is acknowledged that the revised proposal will not be subject to the development of a new Business Plan but moreover modifications to the existing Business Plan. As discussed extensively at working group meetings and in Councillor briefing sessions, the negotiated outcomes have been able to extensively address the issues raised by the community during the public submission process, whilst maintaining the financial returns associated with the original proposal.

Furthermore the need for BHPB to find a solution to their accommodation needs for the proposed Outer Harbour has become more critical since Council considered this in January. Not only has BHPB been granted environmental approval from both the EPA and from the Minister for the Environment (subject to an appeals process) the BHPB Board has also released US\$917 million (BHP Billiton share US\$779 million) in pre-commitment funding for the construction of the Outer Harbour facility. To this end BHPB have indicated that if Council wanted to renegotiate any further terms and therefore advertise a new Business Plan they would not want to be involved and would explore other accommodation options.

Consultation

A robust and legal process has continued during the negotiation period whereby the Department of Local Government and McLeods have been regularly contacted for advice and are across the revised proposal.

Other parties consulted during the negotiation process include:

- Chief Executive Officer – Town of Port Hedland
- Executive Team – Town of Port Hedland
- Managers and Officers from the Town of Port Hedland
- Port Hedland International Airport (PHIA) – Precinct 3 Development Working Group
- BHP Billiton
- NS Projects
- Department of State Development
- Department of Local Government
- Pilbara Cities
- Landcorp
- McLeods Barristers & Solicitors
- Councillors

The Town sought advice from the Department of Local Government and McLeods (the Town's lawyers) as to the public consultation process that should be followed subsequent to the negotiations.

The Department of Local Government indicated that if the proposed modifications were not significantly different from the original Business Plan that was advertised in accordance with section 3.59 (4) of the *Local Government Act 1995*, (as advised by McLeods), then no formal public consultation process was required under the legislation.

The legal advice also recommended that a public advertising process not be undertaken in order to avoid any possible misunderstanding that this is a revised Business Plan requiring re-advertising. The recommendation, which the Town adopted in consultation with the Department of Local Government, was to issue a press release explaining that the Town has progressed with negotiations to a level that the revised proposal can now be referred to Council for consideration, particularly as several key issues raised by the community would largely be addressed by the re-negotiated conditions.

Statutory Implications

Local Government Act 1995

3.58. Disposing of property

(1) In this section —

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not; property includes the whole or any part of the interest of a local government in property, but does not include money.

(2) Except as stated in this section, a local government can only dispose of property to —

- (a) *the highest bidder at public auction; or*
 - (b) *the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*
- (3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*
 - (a) *it gives local public notice of the proposed disposition —*
 - (i) *describing the property concerned; and*
 - (ii) *giving details of the proposed disposition; and*
 - (iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and*
 - (b) *it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*
- (4) *The details of a proposed disposition that are required by subsection (3)(a)(ii) include —*
 - (a) *the names of all other parties concerned; and*
 - (b) *the consideration to be received by the local government for the disposition; and*
 - (c) *the market value of the disposition —*
 - (i) *as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or*
 - (ii) *as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*
- (5) *This section does not apply to —*
 - (a) *a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or*
 - (b) *a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or*
 - (c) *anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*
 - (d) *any other disposition that is excluded by regulations from the application of this section.*

3.59 Commercial enterprises by local governments

(1) In this section —

“acquire” has a meaning that accords with the meaning of “dispose”;

“dispose” includes to sell, lease, or otherwise dispose of, whether absolutely or not;

“land transaction” means an agreement, or several agreements for a common purpose, under which a local government is to —

- (a) *acquire or dispose of an interest in land; or*
- (b) *develop land;*

“major land transaction” means a land transaction other than an exempt land transaction if the total value of—

- (a) *the consideration under the transaction; and*
 - (b) *anything done by the local government for achieving the purpose of the transaction,*
- is more, or is worth more, than the amount prescribed for the purposes of this definition;*

“major trading undertaking” means a trading undertaking that —

- (a) *in the last completed financial year, involved; or*
- (b) *in the current financial year or the financial year after the current financial year, is likely to involve, expenditure by the local government of more than the amount prescribed for the purposes of this definition, except an exempt trading undertaking;*

“trading undertaking” means an activity carried on by a local government with a view to producing profit to it, or any other activity carried on by it that is of a kind prescribed for the purposes of this definition, but does not include anything referred to in paragraph (a) or (b) of the definition of “land transaction”.

(2) Before it —

- (a) *commences a major trading undertaking;*
- (b) *enters into a major land transaction; or*
- (c) *enters into a land transaction that is preparatory to entry into a major land transaction,*

a local government is to prepare a business plan.

(3) *The business plan is to include an overall assessment of the major trading undertaking or major land transaction and is to include details of—*

- (a) *its expected effect on the provision of facilities and services by the local government;*
- (b) *its expected effect on other persons providing facilities and services in the district;*
- (c) *its expected financial effect on the local government;*
- (d) *its expected effect on matters referred to in the local government’s current plan prepared under section 5.56;*
- (e) *the ability of the local government to manage the undertaking or the performance of the transaction; and*
- (f) *any other matter prescribed for the purposes of this subsection.*

(4) *The local government is to —*

- (a) *give Statewide public notice stating that —*
 - (i) *the local government proposes to commence the major trading undertaking or enter into the major land transaction described in the notice or into a land transaction that is preparatory to that major land transaction;*

- (ii) *a copy of the business plan may be inspected or obtained at any place specified in the notice; and*
- (iii) *submissions about the proposed undertaking or transaction may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given; and*
- (b) *make a copy of the business plan available for public inspection in accordance with the notice.*

(5) After the last day for submissions, the local government is to consider any submissions made and may decide to proceed with the undertaking or transaction as proposed or so that it is not significantly different from what was proposed.*

** Absolute majority required.*

(5a) A notice under subsection (4) is also to be published and exhibited as if it were a local public notice.

(6) If the local government wishes to commence an undertaking or transaction that is significantly different from what was proposed it can only do so after it has complied with this section in respect of its new proposal.

(7) The local government can only commence the undertaking or enter into the transaction with the approval of the Minister if it is of a kind for which the regulations require the Minister's approval.

(8) A local government can only continue carrying on a trading undertaking after it has become a major trading undertaking if it has complied with the requirements of this section that apply to commencing a major trading undertaking, and for the purpose of applying this section in that case a reference in it to commencing the undertaking includes a reference to continuing the undertaking.

(9) A local government can only enter into an agreement, or do anything else, as a result of which a land transaction would become a major land transaction if it has complied with the requirements of this section that apply to entering into a major land transaction, and for the purpose of applying this section in that case a reference in it to entering into the transaction includes a reference to doing anything that would result in the transaction becoming a major land transaction.

(10) For the purposes of this section, regulations may —

- (a) prescribe any land transaction to be an exempt land transaction;*
- (b) prescribe any trading undertaking to be an exempt trading undertaking.”*

Local Government (Functions and General) Regulations 1996:-

Part 3 — Commercial enterprises by local governments (s. 3.59)

7. Term used: major regional centre

(1) In this Part —

major regional centre means a local government the district of which —

(a) is not in the metropolitan area; and

(b) has more than 20 000 inhabitants.

(2) Section 2.4(6) of the Act applies to determine the number of inhabitants of a district for the purposes of the definition of major regional centre.

8A. Major land transactions and exempt land transactions —

s. 3.59

(1) The amount prescribed for the purposes of the definition of major land transaction in section 3.59(1) of the Act is —

(a) if the land transaction is entered into by a local government the district of which is in the metropolitan area or a major regional centre, the amount that is the lesser of —

(i) \$10 000 000; or

(ii) 10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year; or

(b) if the land transaction is entered into by any other local government, the amount that is the lesser of —

(i) \$2 000 000; or

(ii) 10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year.

(2) A land transaction is an exempt land transaction for the purposes of section 3.59 of the Act if —

(a) the total value of —

(i) the consideration under the transaction; and

(ii) anything done by the local government for achieving the purpose of the transaction, is more, or is worth more, than the amount prescribed under subregulation (1); and

(b) the Minister has, in writing, declared the transaction to be an exempt transaction because the Minister is satisfied that the amount by which the total value exceeds the amount prescribed under subregulation (1) is not significant taking into account —

(i) the total value of the transaction; or

(ii) variations throughout the State in the value of land.

30. Dispositions of property to which section 3.58 of Act does not apply

(1) A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act....

(2a) A disposition of property is an exempt disposition if the property is disposed of within 6 months after it has been —

(a) put out to the highest bidder at public auction, in accordance with section 3.58(2)(a) of the Act, but either no bid is made or any bid made does not reach a reserve price fixed by the local government;

(b) the subject of a public tender process called by the local government, in accordance with section 3.58(2)(b) of the Act, but either no tender is received or any tender received is unacceptable; or

(c) the subject of Statewide public notice under section 3.59(4) of the Act, and if the business plan referred to in that notice described the property concerned and gave details of the proposed disposition including —

(i) the names of all other parties concerned;

(ii) the consideration to be received by the local government for the disposition; and

(iii) the market value of the disposition as ascertained by a valuation carried out not more than 12 months before the proposed disposition.

Local Government Act 1995:-

6.11. Reserve accounts

(1) Subject to subsection (5), where a local government wishes to set aside money for use for a purpose in a future financial year, it is to establish and maintain a reserve account for each such purpose.

(2) Subject to subsection (3), before a local government —

(a) changes* the purpose of a reserve account; or

(b) uses* the money in a reserve account for another purpose, it must give one month's local public notice of the proposed change of purpose or proposed use.

* Absolute majority required.

(3) A local government is not required to give local public notice under subsection (2) —

(a) where the change of purpose or of proposed use of money has been disclosed in the annual budget of the local government for that financial year; or

(b) in such other circumstances as are prescribed.

- (4) *A change of purpose of, or use of money in, a reserve account is to be disclosed in the annual financial report for the year in which the change occurs.*
- (5) *Regulations may prescribe the circumstances and the manner in which a local government may set aside money for use for a purpose in a future financial year without the requirement to establish and maintain a reserve account.*

Local Government (Financial Management) Regulations 1996:-

17. Reserve accounts

- (1) *A reserve account is to have a title that clearly identifies the purpose for which the money in the account is set aside.*
- (2) *In the accounts, annual budget and financial reports of the local government a reserve account is to be referred to —*
- (a) *in the information required by regulations 27(g) and 38, by its full title; and*
- (b) *otherwise, by its full title or by an abbreviation of that title.*

Should Council wish to revoke the decision made on 13 January 2012, it must be undertaken in accordance with the *Local Government (Administration) Regulations 1996*.

Local Government (Administration) Regulations 1996:-

“10. Revoking or changing decisions (Act s. 5.25(1)(e))

- (1) *If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —*
- (a) *in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or*
- (b) *in any other case, by at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (1a) *Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (2) *If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —*
- (a) *in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or*
- (b) *in any other case, by an absolute majority.*
- (3) *This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.*

Voting Requirements

1. *To consider - 1/3 of members (3)*
2. *To revoke – absolute majority*

Policy Implications

Whilst not specifically Policy, the Town of Port Hedland's "Guidance Note for Potential Developers of Transient Workforce Accommodation (TWA), published in August 2008, is relevant.

Council Policy 15/0002 should also be considered in light of this proposal.

15/0002 FLY-IN-FLY-OUT POLICY POSITION

General:

1. *The Town of Port Hedland's strong preference is for residentially based workforces as opposed to FIFO workforces. The Town's preference is due to fact that, in its opinion, FIFO:*
 - *Is damaging to the provision of community services and facilities.*
 - *Is detrimental to the establishment and continued operation of small businesses.*
 - *Is more likely to promote an unsustainable demographic framework for the Town.*
 - *Provides a drain on the Town's financial resources.*
2. *While the Town does not support FIFO, it recognizes that the practice is:*
 - *An appropriate manner of delivering large construction projects.*
 - *A valid and preferred work choice of some individuals.**Likely to become substantially more prevalent in the Town of Port Hedland unless combined efforts are made by all parties (industry and government) to provide affordable accommodation and better quality services and facilities for the community.*

What the Town Council Will Do:

To ensure that the Town of Port Hedland is able to achieve its vision of becoming a significant regional centre where people enjoy the lifestyle and natural environment and are proud to call home, the Council will:

- *Take a Pilbara-wide leadership position against FIFO in conjunction with other relevant stakeholders*
- *Actively discourage industry, government and businesses from using FIFO workforces in, particularly for operational workforces.*
- *Lobby for increased leadership by other levels of government and industry on the issue of building a stronger, more sustainable Town of Port Hedland. This includes seeking commitments to reduce the level of FIFO for operational workforces.*

- *Object to the construction of FIFO facilities that take infrastructure development/enhancement opportunities away from the Town such as plane landing strips and elaborate recreational and entertainment facilities in FIFO facilities.*
- *Actively lobby government to undertake legislative action that makes FIFO less attractive or available to industry, government and business. This includes, but is not limited to modifications to State Agreement Acts and Zone Tax Allowance provisions)*
- *Ensure that any accommodation facilities that are built for FIFO workforces clearly demonstrate:*
 - *Town centre focus*
 - *Whole of community benefit*
 - *Community integration*
 - *Quality development*
 - *Safety*
 - *Continue to closely partner with industry and government to build the community infrastructure and community services that are needed to help the Town achieve its vision.*

(Adopted by Council at its Special Meeting held 2 February 2009)

The BHPB revised proposal is generally consistent with Policy 15/0002 in that the site is being developed, largely to facilitate a construction project, being mainly the Outer Harbour. This is a significant construction project that will see Port Hedland being the largest port in the world for many years to come. The TWA site identified for BHPB's 4,000 workers is specifically to be used for their construction workforce only, and Officers would not be recommending the proposal to Council if it were to be used for an operational workforce.

The Policy also requires Council to ensure that if facilities are built, they will demonstrate a whole of community benefit. This is a clear outcome of the proposal, not only in a financial sense but also through the development of 33 industrial/commercial lots that will be available to the open market. The development will assist Council in achieving financial sustainability and has the potential to reduce the financial burden on ratepayers. The subdivision will also support the establishment of more diversified retail offering that will benefit the local residents and assist in attracting workers to Port Hedland.

The community benefits are more apparent when considering the immediate use for the income generated that Officers are recommending, primarily to assist in the funding of the Airport Redevelopment and additionally, the potential to assist in the funding of the projects wishes of Council and the Spoilbank Precinct Development.

The Airport Redevelopment the Spoilbank Precinct Development projects form part of the top 10 priority projects for Council and have a significant impact on the community.

The Airport Redevelopment will lead to the vision of it becoming the international gateway to the world, both for exports and imports and the community at large with the increased options of international flights. While the Spoilbank Precinct Development will incorporate not only the recreational facilities for the community, but also the accommodation options for visitors to the region therefore enhancing the tourism potential for Port Hedland.

Strategic Planning Implications

The development of the Airport and the Spoilbank Marina are both included in Councils top 10 priority Projects and Council has invested significant resources over the past few years to facilitate the development of the land at the airport, and to advocate the development of the Spoilbank Precinct.

In addition to this Officers have approached this proposal with the view to maximising the legacy outcomes for both the organisation and the community in relation to the industry expansion projects currently underway. The revised proposal clearly achieves this objective.

There are many strategic plan implications for this project, namely:

Town Vision:-

- a. Port and South Hedland will be integrated functionally, physically and culturally.
- b. Visual and physical access to the coast by the general public will be maintained and extended.
- c. We will have had influence, and will continue to have, influence on government and industry decisions that impact on the district.
- d. People will have access to the recreational, cultural, entertainment facilities and opportunities that they desire.
- e. Tourism will be a significant industry within the Town.

Key Result Area 1
Goal 2

Infrastructure
Airport

That the Port Hedland International Airport is recognised as a leading regional airport in the area of passenger and freight movement and customer satisfaction.

Immediate Priority 1

Complete the development of the Airport Land Development Plan and commence implementation of the key initiatives that are identified.

Key Result Area 3 Goal 2 Immediate Priority 3	Community Development Sports and Leisure Plan for the development of fishing wharfs/jetties within the Town and expand coastal recreational opportunities.
Key Result Area 3 Goal 2 Other Actions	Community Development Sports and Leisure Establish plans for the managed public access to key coastal areas.
Key Result Area 4 Goal 1 Immediate Priority 1	Economic Development Tourism Ensure that new caravan park/backpackers facilities are developed within the Town.
Key Result Area 4 Goal 1 Immediate Priority 2	Economic Development Tourism Progress the development of the Spoilbank Marina.
Key Result Area 4 Goal 2 Immediate Priority 2	Economic Development Mining/Roads Actively pursue integration of FIFO workers into the local community.
Key Result Area 4 Goal 2 Other Actions	Economic Development Mining/Roads Ensure that integrated accommodation options are available for resource related projects that do not artificially inflate the local real estate market.
Key Result Area 4 Goal 3 Immediate Priority 4	Economic Development Business Development Investigate new business/revenue streams for the Town.
Key Result Area 4 Goal 3 Immediate Priority 2	Economic Development Business Development Review alternatives for additional business opportunities at the PHIA including air freight, aircraft maintenance, tourism and industrial uses.
Key Result Area 4 Goal 3 Immediate Priority 4	Economic Development Business Development Investigate new business/revenue streams for the Town.

Key Result Area 4 Goal 4 Immediate Priority 1	Economic Development Land Development Projects Fast-track the release and development of commercial, industrial and residential land.
Key Result Area 4 Goal 5 Immediate Priority 1	Economic Development Town Planning and Building Develop a Town Plan that identifies opportunities for the following initiatives: b. Bulky goods retail area development along Port Hedland Rd
Key Result Area 6 Goal 1 Immediate Priority 2	Governance Leadership In conjunction with other stakeholders, develop and implement a coordinated, lobby campaign for additional resources from the State and Federal Governments for infrastructure and community projects that are needed to transform the Town into a City.

Budget Implications

Costs incurred to date in relation to the proposal, particularly the development of the Business Plan are outlined in the table below.

Works Undertaken	Paid to Date	Anticipated Costs Outstanding	Total Anticipated Expenditure
Working Group Costs	\$11,363.08	\$5,000	\$16,363.08
Valuation	\$10,882	Nil	\$10,882
Economic Analysis	\$8,000	Nil	\$8,000
Financial Modelling	\$36,394.55	\$5,000	\$41,394.55
Legal Advice	\$42,073.33	\$15,000	\$57,073.33
Preparation and Printing of Business Plan	\$11,899.67	\$Nil	\$11,899.67
Consolidation and Independent Report to Council for Public Submissions	\$16,584.55	Nil	\$16,584.55
Communication Strategy and Marketing	\$24,416.73	\$5,000	\$29,416.73
Studies	Nil – Not Yet Invoiced	120,000	120,000
TOTAL			\$311,613.91

These costs have been funded from account 1210253 “Land Development Costs” from within the current Airport Reserve, which has a budget allocation of \$200,000 and an anticipated revised budget allocation of \$450,000 for the 2011/12 financial year.

The anticipated revised budget is premised on the recommendation from the Audit and Finance Committee which met on the 22nd of February 2012, and will be considered by Council as part of the second quarter budget review on 14 March 2012.

Total funds held within the Airport Reserve as at the 6 March 2012 is \$11,464,452.15. The airport is established as a separate Business Unit and is self sufficient in that any expenditure from the Airport Reserve does not impact directly on municipal funds, or the burden on ratepayers.

Officer's Comment

The negotiations that have taken place since consideration of the initial Business Plan have resulted in BHPB presenting to Council a revised proposal that incorporates a number of modified conditions. These conditions have been incorporated in an attempt to address the concerns that were raised by the community as part of the public submission process.

Each of the revised conditions Council requested to be negotiated with BHPB as outlined in the Council resolution dated 13 January 2012 are discussed below including a summary of the legal advice that has been received in relation to each modification.

Significant reduction in the number of construction workers from 6,000 to be accommodated on the TWA site:-

While up to 6,000 construction workers were intended to be accommodated using a staged approach which was outlined in the initial Business Plan, Council requested that the overall numbers be reduced. The revised proposal from BHPB indicates that initially there will be 2,000 construction workers, and upon Board approval of the first stage of the proposed Outer Harbour development, an additional 2,000 construction workers may be required therefore leading to a maximum of 4,000 construction workers.

This condition requested by Council has therefore been addressed, with the legal advice indicating that as there are no changes to the size of the overall lease, or the financial returns to the Town, that this is not a significant change in relation to the initial Business Plan, and actually appears to provide a better outcome for the Town.

Notwithstanding this, Officers acknowledge that there are social impacts associated with a fly-in fly-out workforce, particularly as the Town moves towards becoming a City. To this end, the State has committed to work with the Town and other industry partners to clearly identify these impacts and develop mitigation strategies to address them.

A reduction in the term of the lease of the TWA to a 10 year initial term with one 5 year option:-

The initial Business Plan outlined an initial 10 year term, with three 5 year options that may be exercised with BHPB demonstrating to Council that the TWA was still required for its construction workforce.

The term of the lease has now been reduced to an initial 10 year term with an option to extend the lease for a further 5 years to allow completion of the Outer Harbour Development.

The legal advice received in relation to the lease term indicated that the reduction in the number of options does not significantly change the initial Business Plan as it *"...does not disadvantage the Town, and results in a shorter use of the land for transient workers accommodation which may alleviate some of the concerns expressed by the community in respect of the proposal."*

The change in lease term condition requested to be negotiated with BHPB in the Council resolution 13th January has therefore been addressed.

To establish the likely conditions that BHPB will be required to demonstrate to Council prior to the exercising of the 5 year options, and in doing so, clearly define the term 'construction worker':-

The discussions at the Working Group meetings surrounding this item is that the term 'construction worker' is not only difficult to define, but also difficult to police and therefore enforce.

Accordingly, through these discussions, an alternative approach was suggested whereby the option to extend the lease for a further 5 years may be exercised by BHPB before the end of the initial lease term if the State approves a proposal by BHPB under its State Agreement for the subsequent stage(s) of the Outer Harbour Development. If the State approves a subsequent proposal, then it would be quite clear that a construction workforce would still be required to undertake the development and therefore justified the 5 year extension to the initial lease term.

Separate to the Precinct 3 proposal between BHPB and the Town, BHPB have publicly committed to develop 1,000 permanent residences in Port Hedland which includes 600 residential dwellings and 400 operational FIFO units, within the next five years subject to the ability of BHPB to acquire the land required.

Further to this, BHPB have also committed that if the Minister for State Development approves a proposal for the subsequent stage(s) of the Outer Harbour Development, *"...BHPB will make a further public commitment at that time that is consistent with its desire to maintain a predominantly residential operational workforce at Port Hedland."*

Officers are recommending that Council consider this alternative approach positively, particularly as this outcome has been negotiated by both BHPB and the State in order to provide Council with the assurance it requested in relation to the TWA only being used for a construction workforce.

Change the tenure of the 10 hectare warehouse site to a leasehold arrangement:-

As indicated in previous reports to Council, changing the tenure of the warehouse site to be a leasehold arrangement is considered to be a significant change to the proposal and would therefore require a new Business Plan. This is irrespective of whether or not the financial returns would remain the same.

Following negotiations it is therefore proposed to retain the tenure arrangements outlined in the Business Plan but incorporate the following modifications:

- Change the location of the warehouse site to be adjacent to the Stage 1 industrial subdivision; and
- Include the requirement for BHPB to grant to the Town a first right of refusal (option to repurchase), in the event that BHPB ever decided to sell Lot 34 in the future.

The legal advice received indicates that as the change in location does not modify the land size of any lot, nor the financial arrangements for Lot 34, that this is actually perceived to be a better planning outcome and is therefore not considered to be a significant change from the initial proposal.

To determine the ability to incorporate key worker housing into the revised proposal:-

BHBP are subdividing and servicing 4 additional TWA sites for the Town to utilize for both City building projects and other purposes as the Council determines. These sites may be used for key worker housing, however it is recognised this is not an ideal outcome given the location, and should ideally be more integrated within the current town-sites as they will be more permanent members of the community than a construction workforce.

Officers also believe that the provision of key worker housing is the responsibility of the State Government (and not BHPB specifically) and therefore Council should be seeking a commitment from the State Government to continue to work towards providing key worker accommodation in the Town.

The Town has worked with the State Government subsequent to the Council resolution on the 13th of January whereby the State Government has now released a tender for a key worker housing site as part of the Osprey development for 300-400 key workers.

To determine what will occur to the land and built infrastructure at the end of the lease term;

The initial Business Plan indicated that the infrastructure (power, water, sewer, telecommunication, landscaping and road infrastructure) would essentially become the Town's asset at the end of the lease term, although there were no specific details included in the Business Plan as to how this would transpire.

Negotiations have since been held with BHPB which has resulted in BHPB agreeing to transfer all infrastructure as required by the WAPC under the subdivision approval that may include earth works, power, water, sewerage, telecommunications, landscaping and road infrastructure to the Town at no cost.

All temporary worker accommodation will be removed by BHPB unless the Town elects to retain the kitchens and administration buildings (not the accommodation itself) whereby the facilities will pass over to and vest in the Town at no cost upon termination of the lease.

These conditions will be further defined in the lease documentation so that there is a very clear understanding between both parties of what facilities may be transferred to the Town at no cost if the Town elects to take this approach. The lease documents will be submitted to Council for consideration prior to their execution.

Review and clarify where all proceeds from a revised proposal would be directed:-

The initial Business Plan included funds of up to \$40 million (\$9 million from the sale of Lot 34 and \$31 million from the prepayment of the lease of Lot 35) to be solely used to assist funding the redevelopment of the Port Hedland International Airport.

Legal advice received indicates that the use of these funds for anything other than the redevelopment of the Airport should not be modified without advertising a new Business Plan. However, as the Business Plan was silent in relation to the use of the remaining funds (obtained from the lease income for the TWA site, proceeds from the sale and/or lease of the industrial lots and rates) there is an opportunity for Council to commit remaining funds towards other projects.

Funds necessary to redevelop the Airport are not expected to be required for some time. In particular it should be noted that:-

1. The Airport Redevelopment is still undergoing detailed planning therefore funds will not be required in Year 1. If parts of the redevelopment need to occur, then the funds can be sourced from other means, such as the Airport Capital Works Reserve which currently holds over \$11 million;
2. Federal funds for the airport redevelopment are being sought with a decision not being known until at least May 2012;
3. The overall redevelopment of the airport can occur over a number of years therefore the funds are not required upfront.

Officers will be providing a subsequent report to Council on the staging and financial implications of the Airport Redevelopment, which will clearly outline the final quantum of funds required.

The Town has identified other pressing needs for funds in the short term, in particular the Spoilbank Precinct Development which is identified as one of the Town's top ten priority projects. In relation to the Spoilbank Precinct Redevelopment, funds are immediately required as:-

1. Cabinet are considering the Spoilbank Development in the coming months and a large commitment of \$40 million from the Town provides significant leverage when the development is considered by Cabinet, and also when seeking funds from other industry partners;
2. The Spoilbank Marina (part of the overall Precinct Development) is a top 10 priority project of the Town's and is one that would significantly assist in the transformation of Port Hedland into a vibrant City.

Section 6.11 of the *Local Government Act 1995* deals with Reserve Accounts, and provides as follows:

Local Government Act 1995:-

6.11. Reserve accounts

(1) Subject to subsection (5), where a local government wishes to set aside money for use for a purpose in a future financial year, it is to establish and maintain a reserve account for each such purpose.

(2) Subject to subsection (3), before a local government —

(a) changes the purpose of a reserve account; or*

(b) uses the money in a reserve account for another purpose, it must give one month's local public notice of the proposed change of purpose or proposed use.*

** Absolute majority required.*

- (3) *A local government is not required to give local public notice under subsection (2) —*
- (a) *where the change of purpose or of proposed use of money has been disclosed in the annual budget of the local government for that financial year; or*
 - (b) *in such other circumstances as are prescribed.*
- (4) *A change of purpose of, or use of money in, a reserve account is to be disclosed in the annual financial report for the year in which the change occurs.*
- (5) *Regulations may prescribe the circumstances and the manner in which a local government may set aside money for use for a purpose in a future financial year without the requirement to establish and maintain a reserve account.*

The Town has obtained legal advice that it may utilise funds within the reserve account for other purposes subject to:

- a. The Town complying with the procedural requirements set out in section 6.11 of the *Local Government Act 1995*; and
- b. Appropriate and transparent arrangements are put in place for the return of the expended monies to facilitate the redevelopment of the Airport.

In relation to paragraph (b), the Town proposes that any monies utilised from the Airport Redevelopment Reserve account in the short term be replenished in a timely manner to facilitate the redevelopment of the airport.

In light of the pressing need and substantial community benefit of the Spoilbank Precinct Development, Officers are recommending, that subject to compliance with section 6.11 of the *Local Government Act 1995* and compliance with any other provision of the *Local Government Act*, the Town redirects \$40 million from the Airport Redevelopment Reserve to the Spoilbank Reserve for the purpose of developing the Spoilbank Precinct. The amount redirected will be made good from the proceeds received in Years 2 to 5 from the sale or lease of the lots associated within the industrial subdivision, along with the leasing income associated with Lots 36, 37, 38 and 39 currently identified for TWA purposes.

It should be noted that a key outcome from the proposal to develop Precinct 3 was to assist in ensuring the Town's financial sustainability into the future. Whilst generally supportive of the transformational projects that the Town may commit funds to from the development of Precinct 3, Officers are concerned that without the long term financial plan being developed this may place the financial sustainability of the Town at a risk.

To assist in mitigating this risk, Officers therefore emphasize the importance of the Town also receiving funds from the Precinct 3 proposal. It is therefore the Officer's recommendation that any other income (including interest earned from the holding of funds in Reserve accounts until it is expended) generated from the proposal be placed into the Town's municipal funds to ensure that it can fund the anticipated service and facility provisions required to develop Port Hedland into a City.

Undertake studies associated with the subdivision process in order to further clarify the likely conditions that WAPC may impose:-

Consultants have since been engaged to undertake the following studies:-

- a. Hydrology Study – to establish flood levels and occurrence and identify appropriate risk management solutions having regard to the intended uses.
- b. Servicing Study – to identify the necessary services (such as water, sewer, telecommunications, underground power and stormwater) infrastructure requirements and routes. The study will also identify infrastructure specification and cost estimates for provision of such infrastructure.
- c. Traffic Study - to identify the requirement for internal roads and associated traffic infrastructure to facilitate the project as well as identifying works/upgrades to link the site to the existing road network.

The results of these will be known in the coming days with potential solutions being discussed with Council on the 12th of March 2012.

It is recommended that subject to the satisfaction of the CEO of the final studies, that the CEO is authorized to submit the subdivision application to the WAPC for the development of Precinct 3 at the Port Hedland International Airport.

Financial Impacts of Revised Proposal

BHPB have clearly outlined in their revised proposal to the Town that irrespective of the modified conditions outlined above, the financial returns outlined in the advertised Business Plan would remain unchanged.

This is particularly important when considering sections 3.58 and section 3.59 of the *Local Government Act 1995* in that if the consideration to be received by the Town modified in any way, a new Business Plan would need to be advertised.

Given BHPB's commitment to maintaining the financial returns, there is no need to re-advertise a new Business Plan.

Options

Aside from the utilisation of funding, Council has two options for consideration being:

1. Revoke parts of its previous decision and endorse the Business Plan with the revised modifications as negotiated; or
2. Attempt to renegotiate a new Business Plan with revised conditions that can be advertised for community feedback in line with Council's resolution of 13th January 2012.

Option 1 is recommended by Officers.

In Summary

Officers are recommending that Council revoke parts of its previous decision and adopt the Business Plan with the revised conditions that have been negotiated.

This is recommended on the basis that not only do the revised conditions largely address the concerns raised by the community during the public submission process, but they do not present a significant change to the original transaction that was advertised.

In line with the re-negotiated conditions, Council should note the following:-

1. Officers, with the assistance of the Precinct 3 Working Group have been able to negotiate most of the outcomes Council was seeking within the framework of the current Business Plan. For those items which are deemed to be significant and cannot be modified without a new Business Plan, ie the sale of the warehouse site, alternatives have been negotiated to accommodate these issues as much as possible, while still returning a modified and more beneficial outcome to the community.
2. BHPB have indicated that timing has become more critical since the announcement of the pre-commitment funding for the Outer Harbour Development and they would not guarantee their commitment to being involved in a new negotiation and business planning process.

3. The development of the airport will occur over time using funds from the current Airport Reserve, Federal funding and proceeds from this development. The State Government will consider the development of the Spoilbank Precinct in the coming months and a commitment by Council of \$40 million of local government funds towards this project will signify the importance of this project and assist in securing State Government, and other funding from industry partners.

While it is acknowledged that there are aspects of this proposal that may have been modified in hindsight, it is worth reflecting upon the positives achieved from this proposal:

1. The proposal does assist Council becoming more financially sustainable. The recommended allocation of funds results in Council receiving a potential \$3.6 million per annum in year 2 of the agreement that increases over the term of the agreement.
2. With the funding allocations recommended, a number of Council's top ten priorities projects can be developed providing significant community benefits.
3. Furthermore Council has wanted to develop land for big box industrial purposes in this location for a number of years. Council now has the opportunity to undertake this development at no cost. If Council wants to attract more businesses to town, therefore providing alternative retail outlets that the community has been wanting for many years, this proposal presents an ideal opportunity to facilitate this occurring.

This is the biggest proposal ever considered by the Council that will have long lasting impacts. Most of the impacts will be positive and it is recommended that the Council continue to work with the State and industry to identify and manage the negative impacts.

BHPB does have other options for its construction accommodation workforce. These options include State Government land including the Hedland Junction location being developed by Landcorp and land at Osprey development. Alternatively BHPB could accommodate these construction workers at other camp locations.

As indicated in previous reports, this is not a question of whether or not Council wants BHPB to have a construction workforce camp. It is a question of if Council wants it on Councils land and therefore obtaining the benefits that Council can ensure will flow through to the community.

The revised proposal negotiated following the Council decision of the 13th January represents a proposal which provides significant benefits to the Council and tangible outcomes for the community, which Officers believe will somewhat offset the impacts of FIFO. It also provides certainty for BHPB for their accommodation needs for the construction of the Outer Harbour Development, the biggest Marine Project in the Southern Hemisphere.

On this basis Officers are recommending the proposal be accepted with modifications to the existing Business Plan.

Attachments

1. Correspondence from BHPB
2. Correspondence from Department of Local Government
3. Legal Advice from McLeods
4. Detailed Legal Advice from McLeods (Confidential) – under separate cover
5. Amended concept of Precinct 3 subdivision plan

NOTE: Mayor called for a show of hands in favour (1/3 of members) to consider the partial revoking of Council Resolution 201112/285 of Agenda Item 7.1.1 'Proposed Development of Precinct 3 at the Port Hedland International Airport via Private Treaty with BHPB Billiton: Consideration of Submissions on Business Plan' presented to the Special Council Meeting held on 13 January, and recorded on pages 38 and 39 of those Minutes:

The following Councillors indicated their intent to do so:

Councilor A A Carter
Councilor S R Martin
Councilor D W Hooper

NOTE: Mayor asked whether all Councillors were in agreement with considering the 3 Officer's Recommendations together. This was responded to in the affirmative by all Councillors.

Officer's Recommendation 1

That Council:

1. Revokes point 3 of the Council Decision 201112/285 from 13 January 2012 recorded on page 38 of those minutes:

"Resolves not to proceed with the proposal as outlined in the Business Plan in its current form based on feedback received from the public submission process."

2. Revokes point 11 of the Council Decision 201112/285 from 13 January 2012 recorded on page 39 of those minutes:

“Requests the CEO, if such a proposal can be agreed, to submit a revised Business Plan in accordance with section 3.59 of the Local Government Act 1995 to Council for consideration prior to commencing the advertising process.”

Officer’s Recommendation 2

That Council:

1. Resolves to proceed with the current Business Plan for the Proposed Development of Precinct 3 at the Port Hedland International Airport via Private Treaty with BHPB with the following amendments:
 - a. An initial construction workforce of 2,000 be accommodated within the TWA facility;
 - b. An additional 2,000 construction workers be accommodated within the TWA facility (maximum of 4,000 construction workers in total) upon BHPB Board approval of the first stage of the Outer Harbour Development;
 - c. A reduction in the lease term to be an initial 10 years with one 5 year option;
 - d. The 5 year option on the lease may be exercised by BHPB prior to the expiration of the initial lease term if the State approves a subsequent proposal by BHPB under its State Agreement for the subsequent stage(s) of the Outer Harbour Development;
 - e. Modify the location of proposed Lot 34 (the warehouse site) to be adjacent to the Stage 1 industrial subdivision;
 - f. BHPB is to grant a first right of refusal (option to re-purchase) for Lot 34 to the Town if BHPB decide to sell the land at some point in the future;
 - g. BHPB is to transfer all infrastructure as required by the Western Australian Planning Commission (WAPC) under the subdivision approval that may include, but not be limited to, earthworks, power, water, sewerage, telecommunications, landscaping and road infrastructure to the Town upon termination of the lease at no cost to the Town;

- h. BHPB is to remove all temporary worker accommodation unless the Town elects to retain the kitchens and administration buildings whereby the facilities will pass over and vest in the Town at no cost upon termination of the lease;
2. Acknowledges that the financial returns to the Town outlined in the Business Plan will not alter in any way as a result of the amendments outlined in parts (1a) to (1h) above;
3. Resolves to establish an "Airport Redevelopment Reserve" in accordance with section 6.11 of the *Local Government Act 1995*;
4. Identify the purpose of the "Airport Redevelopment Reserve" to be for the "redevelopment of the Port Hedland International Airport";
5. Commits to the funding gained from the development of Precinct 3 at the Port Hedland International Airport to be directed as follows:
 - a. A total of \$40 million committed to the Airport Redevelopment and transferred into the Airport Redevelopment Reserve;
 - b. All funds received from the lease of Lot 34 (excluding the prepayment) be directed to the Town of Port Hedland;
 - c. All rates received from any property within the Precinct 3 development be directed to the Town of Port Hedland;
 - d. Any interest earned from any of the funds, including those held within the Airport Redevelopment Reserve or the Spoilbank Reserve are to be transferred and directed to the Town of Port Hedland;
 - e. Any further proceeds (in excess of the \$40 million for the Airport Redevelopment) are to be directed to the Town of Port Hedland whereby Council will determine the appropriate allocation through the 10 year financial planning process;
6. Subject to the satisfaction of the CEO of the final studies received for traffic, flooding and servicing, authorises the CEO to submit the subdivision application to the WAPC;
7. Authorises the CEO to provide owner's consent for BHPB to lodge a planning application for the development of Precinct 3 to the Town for consideration;

8. Authorises the CEO to provide owner's consent for BHPB to lodge a building application for the development of Precinct 3 to the Town for consideration;
9. Requests the CEO to present the draft agreements for the sale of Lot 34 and the lease of Lot 35 to a future Council meeting for consideration prior to their execution;
10. Requests the CEO to present a report to a future council meeting that outlines the staging program and financial impacts of the Port Hedland International Airport redevelopment;
11. Continue to seek a commitment from the State in relation to developing key worker housing as required for the Town to transform and develop into Pilbara's Port City;
12. Seeks a commitment from BHPB and the State to continue to work together to identify the impacts of FIFO workforce on Port Hedland and actively identify and implement strategies that will mitigate their impacts upon the community;
13. Notes the legal advice that has been received indicating that with the modifications outlined above, the transaction advertised in accordance with section 3.59 of the *Local Government Act 1995* is not significantly different and therefore does not require the development and advertising of a new Business Plan;
14. Acknowledges the commitment of both BHPB and the State in the negotiation process and again thanks BHPB for their revised proposal that will further assist in creating the legacy outcomes for the community that Council are seeking.

Officer's Recommendation 3

That Council:

1. Modifies the existing purpose of the "Spoilbank Reserve" being 'for development projects on the Port Hedland Spoilbank Reserve' to become 'to fund the development of the Port Hedland Spoilbank Precinct';
2. Subject to compliance with section 6.11 of the *Local Government Act 1995* and compliance with any other provision of the *Local Government Act*, the Town redirects \$40 million from the Airport Redevelopment Reserve to the Spoilbank Reserve for the purpose of developing the Spoilbank Precinct. The amount redirected will be made good from the proceeds received in Years 2 to 5 from the sale or lease of the lots associated within the industrial subdivision, along with the leasing income associated with Lots 36, 37, 38 and 39 currently identified for TWA purposes;

3. Requests the CEO in accordance with section 6.11 of the *Local Government Act 1995*, to commence the public notice process required in order for the Town to redirect \$40 million from the Airport Redevelopment Reserve to the Spoilbank Reserve for the purpose of developing the Spoilbank Precinct;
4. Requests the CEO to present a report to a future Council meeting that outlines the financial arrangements of the Spoilbank Precinct Development and to gain Council direction for the aspects of the development that Council wishes to invest in;
5. Requests the CEO to write to the Premier of WA and Minister for Regional Development indicating its commitment of \$40 million towards the Spoilbank Precinct Development and requests the government consider funding the project.

Original Motion

Moved: Cr A A Carter

Seconded: Cr S R Martin

That Council agrees to consider Officer's Recommendations 1 to 3 of Agenda Item 7.1.1 'Reconsideration of the Proposed Development of Precinct 3 at the Port Hedland International Airport via Private Treaty with BHP Billiton Iron Ore (File No.: 01/04/0001)' together.

Amendment to the Original Motion

Moved: Cr A A Carter

Seconded: Cr S R Martin

That point d) of Officer' Recommendation 2 listed on page 35 of the Agenda of 12 March 2012 be amended to read as follows:

- d) **Request the Chief Executive Officer or his delegate to bring a report back to Council that provides options as to how any interest earned from the funds held within the Airport Redevelopment Reserve or the Spoilbank Reserve are to be utilized.**

201112/351 Council Decision

Moved: Cr A A Carter

Seconded: Cr S R Martin

Officer's Recommendation 1

That Council:

- 1. Revokes point 3 of the Council Decision 201112/285 from 13 January 2012 recorded on page 38 of those minutes:**

“Resolves not to proceed with the proposal as outlined in the Business Plan in its current form based on feedback received from the public submission process.”

- 2. Revokes point 11 of the Council Decision 201112/285 from 13 January 2012 recorded on page 39 of those minutes:**

“Requests the CEO, if such a proposal can be agreed, to submit a revised Business Plan in accordance with section 3.59 of the Local Government Act 1995 to Council for consideration prior to commencing the advertising process.”

***RECOMMENDATIONS 1-3 CARRIED TOGETHER BY
ABSOLUTE MAJORITY 6/0***

Officer's Recommendation 2

That Council:

- 1. Resolves to proceed with the current Business Plan for the Proposed Development of Precinct 3 at the Port Hedland International Airport via Private Treaty with BHPB with the following amendments:**
 - a. An initial construction workforce of 2,000 be accommodated within the TWA facility;**
 - b. An additional 2,000 construction workers be accommodated within the TWA facility (maximum of 4,000 construction workers in total) upon BHPB Board approval of the first stage of the Outer Harbour Development;**
 - c. A reduction in the lease term to be an initial 10 years with one 5 year option;**

- d. The 5 year option on the lease may be exercised by BHPB prior to the expiration of the initial lease term if the State approves a subsequent proposal by BHPB under its State Agreement for the subsequent stage(s) of the Outer Harbour Development;
 - e. Modify the location of proposed Lot 34 (the warehouse site) to be adjacent to the Stage 1 industrial subdivision;
 - f. BHPB is to grant a first right of refusal (option to re-purchase) for Lot 34 to the Town if BHPB decide to sell the land at some point in the future;
 - g. BHPB is to transfer all infrastructure as required by the Western Australian Planning Commission (WAPC) under the subdivision approval that may include, but not be limited to, earthworks, power, water, sewerage, telecommunications, landscaping and road infrastructure to the Town upon termination of the lease at no cost to the Town;
 - h. BHPB is to remove all temporary worker accommodation unless the Town elects to retain the kitchens and administration buildings whereby the facilities will pass over and vest in the Town at no cost upon termination of the lease;
2. Acknowledges that the financial returns to the Town outlined in the Business Plan will not alter in any way as a result of the amendments outlined in parts (1a) to (1h) above;
 3. Resolves to establish an "Airport Redevelopment Reserve" in accordance with section 6.11 of the *Local Government Act 1995*;
 4. Identify the purpose of the "Airport Redevelopment Reserve" to be for the "redevelopment of the Port Hedland International Airport";
 5. Commits to the funding gained from the development of Precinct 3 at the Port Hedland International Airport to be directed as follows:
 - a. A total of \$40 million committed to the Airport Redevelopment and transferred into the Airport Redevelopment Reserve;
 - b. All funds received from the lease of Lot 34 (excluding the prepayment) be directed to the Town of Port Hedland;

- c. All rates received from any property within the Precinct 3 development be directed to the Town of Port Hedland;
 - d. Request the Chief Executive Officer or his delegate to bring a report back to Council that provides options as to how any interest earned from the funds held within the Airport Redevelopment Reserve or the Spoilbank Reserve are to be utilised.;
 - e. Any further proceeds (in excess of the \$40 million for the Airport Redevelopment) are to be directed to the Town of Port Hedland whereby Council will determine the appropriate allocation through the 10 year financial planning process;
- 6. Subject to the satisfaction of the CEO of the final studies received for traffic, flooding and servicing, authorises the CEO to submit the subdivision application to the WAPC;
- 7. Authorises the CEO to provide owner's consent for BHPB to lodge a planning application for the development of Precinct 3 to the Town for consideration;
- 8. Authorises the CEO to provide owner's consent for BHPB to lodge a building application for the development of Precinct 3 to the Town for consideration;
- 9. Requests the CEO to present the draft agreements for the sale of Lot 34 and the lease of Lot 35 to a future Council meeting for consideration prior to their execution;
- 10. Requests the CEO to present a report to a future council meeting that outlines the staging program and financial impacts of the Port Hedland International Airport redevelopment;
- 11. Continue to seek a commitment from the State in relation to developing key worker housing as required for the Town to transform and develop into Pilbara's Port City;
- 12. Seeks a commitment from BHPB and the State to continue to work together to identify the impacts of FIFO workforce on Port Hedland and actively identify and implement strategies that will mitigate their impacts upon the community;

13. Notes the legal advice that has been received indicating that with the modifications outlined above, the transaction advertised in accordance with section 3.59 of the *Local Government Act 1995* is not significantly different and therefore does not require the development and advertising of a new Business Plan;
14. Acknowledges the commitment of both BHPB and the State in the negotiation process and again thanks BHPB for their revised proposal that will further assist in creating the legacy outcomes for the community that Council are seeking.

***RECOMMENDATIONS 1-3 CARRIED TOGETHER BY
ABSOLUTE MAJORITY 6/0***

Officer's Recommendation 3

That Council:

1. Modifies the existing purpose of the "Spoilbank Reserve" being 'for development projects on the Port Hedland Spoilbank Reserve' to become 'to fund the development of the Port Hedland Spoilbank Precinct';
2. Subject to compliance with section 6.11 of the *Local Government Act 1995* and compliance with any other provision of the *Local Government Act*, the Town redirects \$40 million from the Airport Redevelopment Reserve to the Spoilbank Reserve for the purpose of developing the Spoilbank Precinct. The amount redirected will be made good from the proceeds received in Years 2 to 5 from the sale or lease of the lots associated within the industrial subdivision, along with the leasing income associated with Lots 36, 37, 38 and 39 currently identified for TWA purposes;
3. Requests the CEO in accordance with section 6.11 of the *Local Government Act 1995*, to commence the public notice process required in order for the Town to redirect \$40 million from the Airport Redevelopment Reserve to the Spoilbank Reserve for the purpose of developing the Spoilbank Precinct;
4. Requests the CEO to present a report to a future Council meeting that outlines the financial arrangements of the Spoilbank Precinct Development and to gain Council direction for the aspects of the development that Council wishes to invest in;

- 5. Requests the CEO to write to the Premier of WA and Minister for Regional Development indicating its commitment of \$40 million towards the Spoilbank Precinct Development and requests the government consider funding the project.**

***RECOMMENDATIONS 1-3 CARRIED TOGETHER BY
ABSOLUTE MAJORITY 6/0***

ATTACHMENT 1 TO ITEM 7.1.1

Iron Ore



21 February 2012

Paul Martin
Chief Executive Officer
Town of Port Hedland
PO Box 41
Port Hedland WA 6721

BHP Billiton Limited
225 St Georges Terrace
Perth Western Australia 6000
PO Box 7122 Cloisters Square 6850
Perth Western Australia
Tel +61 8 62244444 Fax +61 8 62244423
bhpbilliton.com

Dear Paul

Business Plan Port Hedland International Airport.

As you know BHP Billiton Iron Ore (BHPBIO), with the ongoing support of the State, is seeking to rapidly expand its Pilbara Iron Ore Operations. On 2 February 2012 BHP Billiton announced approval of US\$917M (BHP Billiton share US\$779M) in pre-commitment funding for the construction of a 100 million tonne per year outer harbour facility. The project, which is expected to be reviewed by the Board for full approval in the fourth quarter of calendar year 2012, has an embedded option to expand by a further 100 million tonnes per year. BHPBIO is seeking an appropriate site to accommodate the construction workforce essential for the delivery of its growth plans. As such BHPBIO and Town of Port Hedland (ToPH) have been in discussions since early 2011 regarding an area known as Lot 35 within the Precinct 3 site adjacent to the Airport. This site has been identified as being suitable, based upon criteria such as location, scale and critically, the timeframe to develop. The site's development is also consistent with the ToPH desire for the development of this land.

In accordance with the Local Government Act relating to major land transactions, the ToPH prepared a business plan for the proposed development of Precinct 3 by BHPBIO which included but was not limited to Lot 35 (Business Plan). This Business Plan was advertised on 12 November 2011 and submissions were received from the community and other stakeholders regarding the proposed development of the site.

On 13 January 2012 the Council of the ToPH resolved at a Special Council meeting not to progress with the initial proposal as articulated in the Business Plan. Since then, representatives of BHPBIO, the Department of State Development, Pilbara Cities and the ToPH have been working together to address the issues so as to permit development of Precinct 3 including BHPBIO's required temporary worker accommodation at the Airport Village (Lot 35) in a timely manner.

Following these discussions BHPBIO asks that the Council of the ToPH reconsiders the Business Plan.

To assist the Council in its deliberations and to directly address a number of issues raised through the public consultation period BHPBIO proposes the following:

- a) Up to 2,000 construction workers permitted to be accommodated initially in the Airport Village.
- b) Up to a further 2,000 construction workers permitted to be accommodated in the Airport Village subject to the BHP Billiton Board giving final Board approval to the first stage of the Outer Harbour Development and the Minister for State Development approving a proposal under the relevant State Agreement.
- c) In accordance with the above a maximum of 4000 construction workers may be permitted to be accommodated in the Airport Village.
- d) The ToPH will grant BHPBIO a lease of the Airport Village for an initial term of 10 years with an option to extend the term of the lease for a further term of 5 years to allow completion of the Outer Harbour Development (Airport Village Lease). The option to extend may be exercised by BHPBIO before the end of the initial lease term if the State approves a proposal by BHPBIO under its State Agreement for the subsequent stage(s) of the Outer Harbour Development.

In addition to paragraphs a) to d) above, I would like to take this opportunity to clarify the following matters:

Sale of Lot 34 to BHP Billiton

As specified in the Business Plan, BHPBIO will purchase the newly created Lot 34 for the construction and operation of warehouse facilities. The size of this lot and the sale price will remain as detailed in the Business Plan. Following consultation with the ToPH, BHPBIO would like to confirm its willingness to:

- Work to revise the subdivision plan to locate Lot 34 close to the area covered by Lots 1 to 33 to reduce the visual impact of the warehouse facilities; and
- Under the terms of the sale of Lot 34 to BHPBIO, include a provision to grant the ToPH a right of first refusal to repurchase Lot 34 and associated improvements in the event that BHPBIO decides to sell this site in the future.

Commercial terms of the Business Plan

The commercial terms of the Business Plan will remain the same as that published previously except as identified in paragraphs a) to d) above. For the avoidance of doubt this means the financial benefits identified in the Business Plan and the scope of the subdivision, including the area of the Airport Village Lease, will remain unchanged.

Retention of Civil Infrastructure by ToPH at Precinct 3

Upon termination of the Airport Village Lease the infrastructure introduced by BHPBIO as required by the Western Australian Planning Commission under the subdivision approval for the Precinct 3 site that may include, but is not limited to, earth works, power, water, sewerage, telecommunications, landscaping and road infrastructure will pass over to and vest in the ToPH.

Upon termination of the Airport Village Lease all temporary worker accommodation will be removed by BHPBIO except as otherwise specified in this paragraph. If any of the facilities installed to service the temporary workers accommodation at the Airport Village (not the accommodation itself), such as kitchens and administration buildings, are constructed as fixtures then the ToPH may before the end of the Village Lease elect to keep the facilities and the identified facilities will pass over to and vest in the ToPH upon termination of the Airport Village Lease. Also, if any of the facilities installed to service the temporary workers accommodation at the Airport Village (not the accommodation itself), such as kitchens and administration buildings, are not constructed as fixtures, then the ToPH may request and if BHPBIO agrees, the identified facilities will pass over to and vest in the ToPH upon termination of the Airport Village Lease.

Visual Amenity of Airport Village

BHPBIO will continue to work with the ToPH through the development application and building licence processes to ensure the appropriate level of visual amenity at the Airport Village. BHPBIO has committed to the ToPH to spend a total of \$4M in landscaping and otherwise enhancing the visual amenity of the Airport Village, approximately \$2M for each of the first and second stages.

Service Worker Accommodation (SWA)

BHPBIO, the ToPH, the Department of State Development and Pilbara Cities all acknowledge that provision of SWA in Port Hedland is a critical and immediate issue. Separately, and independent of the development of Precinct 3, the parties agree to work together in respect of this issue. There is no expectation that BHPBIO will, either directly or via a financial contribution, provide SWA for third parties.

As such, within the scope of the subdivision of the Precinct 3 site, a number of lots have been identified as being reserved for Service Worker Accommodation (Lots 37, 38 & 39 – 10 hectares in total) and third party Temporary Worker Accommodation (Lot 36 – 10 hectares). As outlined in the Business Plan, BHPBIO will incur all costs associated with the subdivision and the provision of services/infrastructure as required by the Western Australian Planning Commission under the subdivision approval for the Precinct 3 site that may include, but is not limited to, earth works, power, water, sewerage, telecommunications, landscaping and road infrastructure for the proposed SWA and TWA sites.

Integration of Airport Village with the Port Hedland Community

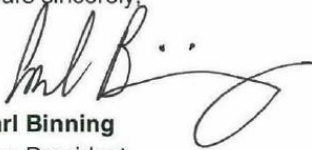
BHPBIO is committed to ensuring residents of the Airport Village are made aware of opportunities to join in with broader community events as well as opportunities to take advantage of amenities located within South and/or Port Hedland. BHPBIO will provide free transport to these events and amenities as required.

My understanding is the ToPH and BHPBIO, supported by the State and various agencies required to grant approvals, are using their best endeavours to do all things necessary to ensure the Airport Village Lease is granted and all required approvals are obtained to permit BHPBIO to commence ground disturbing works at Precinct 3 by 1 May 2012.

BHPBIO's revised proposal and the commitments as outlined in this letter have been agreed to on the basis of this understanding.

BHPBIO is of the view that the Business Plan, provides a unique opportunity for the Council to capture significant and enduring financial and community benefits for the ToPH and as such BHPBIO now asks that the Council reconsiders the Business Plan taking into consideration paragraphs (a) to (d) and the clarifications above. We look forward to your support with respect to your consideration of the Business Plan.

Yours sincerely,



Carl Binning
Vice President
Health, Safety, Environment and Community

cc: The Hon Colin Barnett, MLA
cc: The Hon Brendon Grylls, MLA



Government of **Western Australia**
Department of **Local Government**

Our Ref: PH3-14

|||
Mr Paul Martin
Chief Executive Officer
Town of Port Hedland
PO Box 41
PORT HEDLAND WA 6721

Dear Mr Martin

The Department has received a request to provide advice on the compliance of a proposal that involves revoking a decision made at the Special Council Meeting held on 13 January 2012, and adopting the Business Plan as originally presented to that meeting, with modifications.

I am aware that you have obtained independent legal advice to the effect that the modified transaction is not 'significantly different' to that proposed under the Business Plan and that, as a consequence, the Town will not need to advertise the modified transaction pursuant to the provisions of section 3.59 of the *Local Government Act 1995*.

The Department does not provide legal advice, however I advise that the Town is entitled to act on the basis of the legal advice obtained.

While the advice you have obtained indicates that advertising is not required, it is expected that the Port Hedland community would be kept adequately informed of any decisions made by the Council regarding this matter.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'J Mathews'.

Jennifer Mathews
DIRECTOR GENERAL

7 March 2012

ATTACHMENT 3 TO ITEM 7.1.1



Your Ref
Our Ref

TF:PORT-29776

8 March 2012

Ms Natalie Octoman
Director, Corporate Services
Town of Port Hedland
PO Box 41
PORT HEDLAND WA 6721

Dear Ms Octoman

Proposed Arrangements with BHPB – Precinct 3

We have reviewed the report prepared by the Town to be considered at a special meeting of Council on 12 March 2012 (**Report**).

The Report contemplates the following modifications to the transaction set out in the published Business Plan:

- (a) reducing the maximum number of beds for BHPB's transient workers accommodation from 6,000 to 4,000 beds. In respect of the number of beds, BHPB's initial construction workforce of 2,000 would be accommodated within the TWA facility and an additional 2,000 construction workers would be accommodated within the TWA facility upon BHPB Board approval of the first stage of the Outer Harbour Development;
- (b) reducing the options to renew the Lease from three five year options, to one five year option. In addition, the five year option term may only be exercised by BHPB if the State approves a subsequent proposal by BHPB under its State Agreement for the subsequent stages of the Outer Harbour Development;
- (c) relocating proposed Lot 34 to a position adjacent to the industrial land;
- (d) inserting within the agreements, the obligation for BHPB to offer the Town a right of first refusal in the event BHPB was to sell Lot 34;
- (e) requiring BHPB to transfer all infrastructure as required by the Western Australian Planning Commission (WAPC) under the subdivision approval that may include, but not be limited to, earthworks, power, water, sewerage, telecommunications, landscaping and road infrastructure to the Town upon termination of the lease at no cost to the Town; and
- (f) requiring BHPB is to remove all temporary worker accommodation unless the Town elects to retain the kitchens and administration buildings whereby the facilities will pass over and vest in the Town at no cost upon termination of the lease.



Stirling Law Chambers
220-222 Stirling Highway
Claremont WA 6010
Tel (08) 9383 3133
Fax (08) 9383 4935
Email: mcleods@mcleods.com.au

Denis McLeod
Neil Douglas
Fiona Grgich
David Nadebaum
Geoff Owen
Andrew Roberts
Craig Clarke
Peter Witkuhn
Elsabeth Stevenson (Special Counsel)
David Nicholson (Senior Associate)
Peter Gillett (Senior Associate)
Trudi Firth (Associate)
Tim Beckett (Associate)

8 March 2012
Town of Port Hedland
Proposed Arrangements with BHP - Airport Site

McLeods
Page 2

The Town has sought our advice on whether the modified transaction taken as a whole constitutes a significantly different transaction to that set out in the Business Plan for the purposes of section 3.59 of the *Local Government Act 1995 (WA) (LG Act)*.

In our view, the modified transaction is not 'significantly different' to that proposed under the Business Plan and consequently the Town will not need to advertise the modified transaction pursuant to the provisions of section 3.59 of the LG Act.

Furthermore, we consider it relevant that:

- 1 the modifications are responsive to submissions resulting from the public notice of the Business Plan;
- 2 the modifications all could be seen as beneficial to the Town's interest, and the public interest generally.

In addition, we have reviewed the processes followed by the Town in relation to the Report and the Business Plan and in our view the Town has complied with its statutory obligations;

Further, as section 6.11 of the LG Act recognises that a local government might use the money in a reserve account for another purpose; subject to public notification. In our opinion, the Town may utilise monies within the Airport Redevelopment Reserve Fund for other purposes subject to the Town complying with the procedural requirements set out in section 6.11 of the LG Act and appropriate and transparent arrangements put in place for the return of the expended monies in a timely manner to facilitate the redevelopment of the Airport.

If you have any questions or queries in respect of the above, please do not hesitate to contact Denis McLeod or Trudi Firth of this office

Yours faithfully



Contact:	Trudi Firth
Direct line:	9424 6206
Email:	tfirth@mcleods.com.au
Partner Responsible:	Denis McLeod

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DRAFT



ITEM 8 CLOSURE

8.1 Closure

There being no further business, the Mayor declared the meeting closed at ____ pm.