



Town of Port Hedland

MINUTES

OF THE

SPECIAL MEETING
OF THE TOWN OF PORT HEDLAND COUNCIL

HELD ON

WEDNESDAY 21 DECEMBER 2009

AT 5.30 PM

IN COUNCIL CHAMBERS
McGREGOR STREET, PORT HEDLAND

Purpose of Meeting: To consider:
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.
Port Hedland Visitors Centre Tender
Airport Café Tender
Spoilbank Land Development Plan

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Chris Adams
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 5:30 pm and acknowledged the traditional owners, the Kariyarra people.

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

Mayor K A Howlett
Cr A A Carter
Cr S R Martin
Cr G J Daccache
Cr J M Gillingham
Cr S J Coates
Cr D Hooper
Cr B Dziombak

Mr Chris Adams	Chief Executive Officer
Mr Matthew Scott	Directory Corporate Services
Mr Andy Taylor	Acting Director Regulatory Services
Ms Jenella Voitkevich	Acting Director Engineering Services/Manager Infrastructure Development

Members of the Public Nil

Members of the Media Nil

2.2 Apologies

Nil

2.3 Approved Leave of Absence

Nil

ITEM 3 PUBLIC TIME**3.1 Public Questions**

5:30 pm Mayor opened Public Question Time

Nil.

5:30 pm Mayor closed Public Question Time

3.2 Public Statements

5:30 pm Mayor opened Public Statement Time

Nil.

5:30 pm Mayor closed Public Statement 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

The following Members verbally declared to have given due consideration to all matters contained in the Business Paper presented before the meeting.

Cr S R Martin	Cr S J Coates
Cr A A Carter	Cr G J Daccache
Cr K A Howlett	Cr J M Gillingham
Cr D W Hooper	Cr M A (Bill) Dziombak

ITEM 6 REPORTS OF OFFICERS**6.1 COMMUNITY SERVICES**

6.1.1 Community Development Services

5:30 pm Mayor Kelly A Howlett declared an impartiality interest in Agenda Item '6.1.1.1 Port Hedland Visitors Centre Tender 09/27' as she was previously the Manager of the Centre. Mayor Howlett advised that as a consequence, there may be a perception that her impartiality on the matter may be affected. Mayor Howlett declared that she will consider this matter on its merits and vote accordingly. Mayor Howlett did not leave the room.

5:30 pm Councillor Arnold A Carter declared an impartiality interest in Agenda Item '6.1.1.1 Port Hedland Visitors Centre Tender 09/27' as he is the Treasurer on the Port Hedland Visitor Centre's Management Committee. Councillor Carter advised that as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Carter declared that he will consider this matter on its merits and vote accordingly. Councillor Carter did not leave the room.

5:30 pm Councillor M Dziombak declared an impartiality interest in Agenda Item '6.1.1.1 Port Hedland Visitors Centre Tender 09/27' as he is the President on the Port Hedland Visitor Centre's Management Committee. Councillor Dziombak advised that as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Dziombak declared that he will consider this matter on its merits and vote accordingly. Councillor Dziombak did not leave the room.

6.1.1.1 Port Hedland Visitors Centre Tender 09/27 (File No.: 05/09/0017)

Officer Julie Broad
Manager Community
Development

Date of Report 18 December 2009

Disclosure of Interest by Officer Nil

Summary

To consider the responses to Tender 09/27 for the management of the Port Hedland Visitors Centre in Wedge Street, Port Hedland.

Background

At its Ordinary Meeting held on 28 October 2009, Council considered a report on the tender for the future management of the Courthouse Arts Centre and Gallery and Port Hedland Visitors Centre. At that meeting the Council resolved the following:

“That Council:

- 1. Reject all tenders that have been received for Tender 09/23 Management of the Courthouse Arts Centre and Gallery and the Port Hedland Visitor Centre;*
- 2. Authorise the Chief Executive Officer (or his delegate) to enter into negotiations FORM to undertake the management of the Court House Arts Centre and Gallery; and*
- 3. Readvertise Tender 09/23 for the Management of the Port Hedland Visitor Centre.”*

Tenders were called and advertised in the West Australian newspaper on Saturday 7 and 14 November 2009, and in the Northwest Telegraph on 4 and 11 November 2009, closing on Wednesday 9 December at 2.00pm.

In addition to the advertisement, advice that the tender was advertised was sent by email and telephone calls to parties who had registered an interest in the project. Six (6) tender information packs were distributed on request to companies and individuals.

Three (3) interested parties subsequently advised that they would not be submitting a tender for the management of the Port Hedland Visitors Centre.

The following evaluation table was included as part of the tender documentation.

MANAGEMENT OF THE PORT HEDLAND VISITORS CENTRE

Item	Assessment Criteria	Loading Factor	Max Score	Max Loaded Score
1	Service Delivery Model Proposed	10	5	50
2	Previous Experience	8	5	40
3	Local Supplier/Content	2	5	10
4	Acceptance of Financial Arrangements	N/A	N/A	Pass/Fail
	Max Loaded Score			100

Consultation

- Chief Executive Officer – Town of Port Hedland
- Director Community & Regulatory Services – Town of Port Hedland

Statutory Implications

Nil.

Policy Implications

11/001 'Tourism Policy' (in part) states:

“The Town of Port Hedland will guide the development of tourism within the Town of Port Hedland District through planning, development and marketing. To do this it will:

...

Support the provision of a high quality visitor information service at the Port Hedland Visitor Information Centre.”

Strategic Planning Implications

Developing a consolidated board of management for the two facilities is a specific strategy that is listed within the Town's Plan for the Future.

Key Result Area 3 – Community Development

Goal 7 - Arts and Culture

Strategy 1- Complete the redevelopment of the Courthouse Art Gallery precinct including the development of a Board of Management to operate Council funded facilities within the precinct.

Budget Implications

Council's Adopted 2009/10 Budget has the following allocation for the operation of the facility:

PHVC	\$180,000
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Council accepted the budget request from the PHVC Management Committee for the amount of \$100,000, to manage the facility from the 1 July 2009 to the 31 December 2009 inclusive leaving a total of \$80,000 available to operate the facilities for the remainder of 2009/10 (i.e. the first half of 2010).

(NOTE: These costs exclude depreciation; insurance and building maintenance costs that are borne by Council and have been separately budgeted for.)

The remainder of the annual lump sum tender price, an amount of \$100,000 will need to be considered by Council in the 2010/11 budget process. Funding of \$150,000 for 2011/12 and amounts as negotiated for the following three years will also need to be considered by Council in the relevant budget deliberations for those years.

Officer's Comment

One conforming tender was received from GM Services of 14 Keessing Street, Port Hedland. This conforming tender was evaluated by the Chief Executive Officer (CEO) and Manager Community Development.

The tender from GM services for the management of the Port Hedland Visitors Centre was for the lump sum annual fee each year of:

- Year One \$180,000
- Year Two \$150,000
- Year Three To Be Negotiated
- Year Four Year Three fee plus CPI
- Year Five Year Four fee plus CPI

with any surplus from operation of the facility in any given calendar year divided equally between the Town of Port Hedland and GM Services

Evaluation of the tender produced scores as shown:

Item	Assessment Criteria	Loading Factor	Score	Loaded Score
1	Service Delivery Model Proposed	10	5	50
2	Previous Experience	8	4	32
3	Local Supplier/Content	2	5	10
4	Acceptance of Financial Arrangements	N/A	N/A	Pass
	Total Loaded Score			92

GM Services has a strong background in hospitality and tourism, with both Directors having extensive experience managing resorts, tour services, guest houses, hotels and restaurants. The Principal, Peter Wood has served as Chairman of the Cobram Tourist and Development League and as a board member of the Goulburn Regional Tourist Authority.

It is the intention of the tenderers for Peter Wood to manage the Port Hedland Visitors Centre, supported in the accounts and reporting requirements of the business by his partner Shelley Wood who is the General Manager of the Esplanade Hotel, a 4 ½ star, 100-room hotel in Port Hedland.

Attachments

Nil – all tender documentation is available on request

Officer's Recommendation

That Council accepts the tender for the management of the Port Hedland Visitors Centre from GM Services, for the lump sum annual fee of:

- Year One \$180,000
- Year Two \$150,000
- Year Three To Be Negotiated
- Year Four Year Three fee plus CPI
- Year Five Year Four fee plus CPI

with any surplus from operation of the facility in any given calendar year divided equally between the Town of Port Hedland and GM Services.

200910/211 Council Decision

Moved: Cr A A Carter

Seconded: Cr M Dziombak

That Council accepts the tender for the management of the Port Hedland Visitors Centre from GM Services, for the lump sum annual fee of:

- Year One \$180,000 (plus GST)
- Year Two \$150,000 (plus GST)
- Year Three To Be Negotiated
- Year Four Year Three fee plus CPI
- Year Five Year Four fee plus CPI

with any surplus from operation of the facility in any given calendar year divided equally between the Town of Port Hedland and GM Services.

CARRIED 8/0

REASON: Council clarified that the annual lump sum fees listed are excluding GST, i.e. the lump sum payments to be made to GM Services will be as follows:

Year One \$180,000 (plus GST)

Year Two \$150,000 (plus GST)

6.2 GOVERNANCE AND ADMINISTRATION**6.2.1 Corporate Services****6.2.1.1 *Airport Bar and Café Tender (File No: 30/09/0027)***

Officer Matthew Scott
Director Corporate Services

Date of Report 18 December 2009

Disclosure of Interest by Officer Nil

Summary

For Council to note a minor variation to the commencement date of the Airport Bar and Café Lease with Bloomoons Pty Ltd.

Background

At its Ordinary Meeting held on 9 December 2009, Council awarded the Airport Bar and Café Lease to Bloomoons Pty Ltd (Council Decision 200910/192) for rental of \$70,668 per annum.

A condition of the tender was that lease commence on 1 January 2010, however on subsequent review and discussion with Bloomoons Pty Ltd, this cannot be achieved. Principally, this is the result of the need to transfer the current liquor license from the Town of Port Hedland to Bloomoons Pty Ltd. In discussions with Bloomoons Pty Ltd it has been revealed that this could take several months, and if the terms of the tender were enforced, there would be no liquor sales at the Airport Bar and Café for several months.

In order to resolve this situation it was initially believed that Council would need to revoke its earlier decision (9 December 2009) and permit the Administration the ability to negotiate a transitional arrangement with Bloomoons. Subsequently, the Town received advice from its Solicitors that under the Local Government (Functions and General) regulations, there is the ability to make minor variations to a tender, without having to retender.

Based on this advice and the subsequent agreement from Bloomoons, the lease will now commence on the date of the transfer of the liquor license. In the interim, Council will contract with Bloomoons Pty Ltd to provide labour at the Café, however Council will continue to manage and operate the Café. These arrangements should not have any impact on the community using the Airport and/or the Airport Bar and Café.

Consultation

Advice was sourced from the Town's Solicitors (McLeod's) who provided verbal advice regarding minor variations to tenders; however council has been provided written advice regarding how the proposed arrangements may impact the current liquor license.

Statutory Implications

Local Government Act (Functions & General) Regulations 1996 states:

"20. Variation of requirements before entry into contract

(1) If, after it has invited tenders for the supply of goods or services and chosen a successful tenderer but before it has entered into a contract for the supply of the goods or services required, the local government wishes to make a minor variation in the goods or services required, it may, without again inviting tenders, enter into a contract with the chosen tenderer for the supply of the varied requirement subject to such variations in the tender as may be agreed with the tenderer."

Policy Implications Nil

Strategic Planning Implications Nil

Budget Implications

The Airport Bar and Café was budgeted to operate until 31 December 2009. Any modifications to the budget relating to these changes can be addressed by Council as part of its December budget review, expected to commence in January 2010.

Officer's Comment

Bloomoons have been fully involved determining the best method to resolve this situation and have agreed to work with Council to ensure there is no impact on the Airport Café operations or patrons. To ensure that these new arrangements are completely transparent, it is recommended that Council note and endorse the proposed change in commencement date.

Attachments

Lease advice from McLeods, dated 17 December 2009.

200910/212 Council Decision/Officer's Recommendation

Moved: Cr A A Carter

Seconded: Cr S R Martin

That Council notes the change in the commencement date of the Lease between the Town of Port Hedland and Bloomoons Pty Ltd from the 1 January 2010, to such date the Liquor Licence can be formally transferred between the parties.

CARRIED 8/0

ATTACHMENT TO AGENDA ITEM 6.2.1.1



Our Ref TB:PORT:26931
Your Ref

17 December 2009

Mr Matthew Scott
Director Corporate Services
Town of Port Hedland
PO Box 41
PORT HEDLAND WA 6721



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 (Counsel)
Neil Douglas
Fiona Grgich
David Nadebaum
Geoff Owen
Andrew Roberts
Craig Clarke
Peter Wittkuhn
Elisabeth Stevenson (Senior Associate)
David Nicholson (Associate)
Peter Gillett (Associate)

Dear Mr Scott,

Advice and Agreement to Lease for Airport Cafe

We are instructed that the Town seeks our advice in relation to the application of the Liquor Control Act 1988 (**Act**) to the proposed labour hire arrangement for the Port Hedland Airport Café (**Café**).

1. The Café is presently the subject of a Special Facility Licence (**Licence**), issued to the Town (as licensee) pursuant to the Act.
2. The Act regulates the sale and consumption of liquor within Western Australia.
3. Section 109(1) of the Act provides that:

"A person who, whether personally or by an employee or agent, sells any liquor commits an offence unless that person –

- (a) *is the holder of a licence or permit –*
 - (i) *the operation of which is not suspended; and*
 - (ii) *which authorises the sale; or*
- (b) *is an employee or an agent of a person so authorised, and is lawfully acting in that capacity".*

4. The terms "employee" and "agent" are not specifically defined within the Act. The term "employee" is defined in the context of the definition of "authorised persons". However, the role of an "authorised person" relates to the control aspects of the Act, as opposed to the sale aspects of the Act. Accordingly, we consider that the definition of "employee" in that subsection is not meant to apply to the term "employee" as used in section 109 of the Act. Instead, we would envisage that the terms "employee" and "agent" are meant to carry their natural meaning.

(26931-09.12.17-TB-Port Hedland)

MIDLAND OFFICE: 35 SPRING PARK ROAD, MIDLAND
ALL CORRESPONDENCE TO CLAREMONT OFFICE

17 December 2009

McLeods

Advice and Agreement to Lease for Airport Cafe

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Town of Port Hedland

5. Part 3, Division 9 of the Act outlines the provisions relating to the transfer of a liquor licence. It is permissible for a liquor licence to be transferred, but only in accordance with these provisions. We understand that, in the current circumstance, it is the delay in the proper transfer of the Licence that is giving rise to a situation whereby the Town is considering contracting out aspects of the operation of the Café to the future lessee, Bloomoons Pty Ltd.
6. Section 37(5) of the Act provides that:

“Every licence, other than a club restricted licence or an occasional licence, is subject to the condition that the licensee occupies, and retains a right to occupy, the licensed premises to the exclusion of others, and –

 - (a) *an application for the grant or removal of such a licence shall not be granted unless the licensing authority is satisfied that the applicant can, or on the grant of the application will be enabled to, comply with that condition; and*
 - (b) *if the licensee ceases to occupy the licensed premises, whether or not to the exclusion of others, the interest of the licensee in the licence terminates”.*
7. Therefore, for as long as the Town is the licensee of the Cafe, it needs to retain a right to occupy the Cafe, and it needs to, in fact, occupy the Cafe. If it ceases to do so, then the Licence shall terminate and it will become unlawful for liquor to be sold from the Café.
8. In our view, section 37(5) of the Act should be interpreted as requiring the licensee to retain control of the management and operations of the licensed premises, to the exclusion of others. However, the Act clearly does not intend to exclude employees or agents of licensees from selling liquor on behalf of the licensee, otherwise section 109(1)(b) of the Act would be rendered meaningless.
9. In our view, in the context of section 109(1)(b) of the Act, occupation of licensed premises may include the Cafe being operated by employees or agents of the Town, as licensee. However, the common understanding of the terms “employee” or “agent” do not extend to a circumstance in which the Town ceases to manage, and take profit and/or loss from, the premises.
10. Accordingly, we consider that the proposed labour hire arrangements will not cause any contravention of the Act or the licence, provided that the Cafe otherwise continues to operate in accordance with the Act and the Town continues to “occupy”, and exercise control over, the Cafe.

17 December 2009

McLeods

Advice and Agreement to Lease for Airport Cafe

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Town of Port Hedland

We trust that this advice is of some assistance to you. We confirm that the Town will receive further, separate advice in relation to the leasing arrangements for the Café.

If you have any queries, please contact Geoff Owen.

Yours faithfully



Contact: Tim Beckett
Direct line: 9424 6212
Email: tbeckett@mcleods.com.au
Partner Responsible: Geoff Owen

6.2.2 Economic and Land Development**6.2.2.1 *Proposed Preliminary Development Feasibility Study of the Spoilbank Area (File No.: 804242g)***

Officer Richard Bairstow
Manager Economic and Land
Development

Date of Report 14 December 2009

Disclosure of Interest by Officer Nil

Summary

The Spoilbank Area presents Council with an opportunity to create an iconic development for Port Hedland. To inform the Council and Community of the potential to develop the Spoilbank proper, it is proposed to commission a Spoilbank Preliminary Development Feasibility Study (SPDFS).

Council is requested to allocate funds from the Spoilbank Reserve to the SPDFS.

Background***The Site***

Generally described as the Spoilbank, and as shown in Attachment 1.

The Proposal

At the Spoilbank Project Working Group Meeting that was held on Wednesday 9 December 2009, the issue of how to fund the development of the proposed \$70M marina was discussed. Based on information and feedback from various sources, it has become clear that for the marina to become viable, an element of commercial and residential activity adjacent to the marina is required. It is clear that the area of potentially developable land adjacent to the marina needs to be more clearly defined.

The Spoilbank Project Working Group proposes to allocate \$100,000 from the Spoilbank Reserve to fund the Spoilbank Preliminary Development Feasibility Study. The study will incorporate the following:

- Site Survey
- Preliminary Feasibility Plan (PFP)
- Options available as a result of the PFP

The primary function of the SPDFC and, more specifically, the PFP, is to establish the development capacity and suitability of the Spoilbank Area.

Consultation Nil

Statutory Implications Nil

Policy Implications Nil

Strategic Planning Implications

Key Result Area 4 – Economic Development

Goal 4 – Land Development Projects

Strategy 4 - Commence the development of a marina/safe boating harbour.

Key Result Area 4 – Economic Development

Goal 5 – Town Planning & Building

Strategy 4 - Develop Structure Plans for key precinct areas with a particular focus on the Spoilbank/Hospital/Hotel Precinct.

Budget Implications

Allocate \$100,000 from the Spoilbank Reserve Acc: to fund a Spoilbank Preliminary Development Feasibility Study (SPDFS).

Officer's Comment

The undertaking of the proposed development feasibility study of the Spoilbank is considered an important step in ensuring that the Community can realise the maximum benefits from the development of one of its most iconic locations.

Attachments

Locality Plan

200910/213 Council Decision/Officer's Recommendation

Moved: Cr A A Carter

Seconded: Cr S R Martin

That Council approves funding of \$100,000 to be allocated from the Spoilbank Reserve account in order to complete the Spoilbank Preliminary Development Feasibility Study.

CARRIED BY ABSOLUTE MAJORITY 8/0

ATTACHMENT TO AGENDA ITEM 6.1.1.1



200910/214 Council Decision

Moved: Cr A A Carter

Seconded: Cr J M Gillingham

That the following Applications for Leave of Absence:

- i) Councillor S J Coates from 14 – 17 January 2010, inclusive;

be approved.

CARRIED 8/0

ITEM 7 CLOSURE

7.1 Closure

There being no further business, the Chairman declared the meeting closed at 5:36 pm.

Declaration of Confirmation of Minutes

I certify that these Minutes were confirmed by the Council at its Ordinary Meeting of 27 January 2010.

CONFIRMATION:

MAYOR

DATE