



Government of **Western Australia**  
 Department of **Communities**  
**Housing**

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15 January 2018

Mr David Pentz  
 Chief Executive Officer  
 Town of Port Hedland  
 Civic Centre  
 McGregor Street  
 Port Hedland WA 6415

**By Post and Email**

Dear Mr Pentz

**NOTICE OF BREACH - Joint Venture Agreement – Stevens Street Senior Centre**

We refer to previous discussions about the joint venture agreement made between the Town of Port Hedland (**Town**) and the Housing Authority on 22 December 1999 for the reconfiguration and upgrade of 22 bedsitter units to 22 one bedroom units (**Units**) on Crown Reserve 31384 (the **JVA**).

The Housing Authority is of the view that the Town has failed to perform its obligations, either implied or expressed, under the terms of the JVA and has engaged in behaviour which is inappropriate having regard to the overall objectives of the JVA, the reasonable interests of the parties and the covenant of each party to be just and faithful in its dealings with the other.

The Town is hereby given notice under clause 14 of the JVA that it is in breach (the **Breach**) of the JVA.

The nature of the breach relied on by the Housing Authority is set out as follows:

1. Entering into a lease with Port Hedland Retirement Village Incorporated:
  - a) being an organisation who is not "*a body approved by [the Housing Authority]*" (cl 7.1 and the Joint Venture Housing Program Guidelines (November 1999) (**Guidelines**)); and
  - b) failing to insert into that lease appropriate clauses to reflect and protect both the JVA and the Housing Authority's interest therein in accordance with the overall objectives of the JVA and the Guidelines;
2. Failure to establish a Tenant Allocations Panel to which the Housing Authority has adequate representation and oversight (cl 10.5 and Guidelines);
3. Failure to ensure that the Units are at all times tenanted by persons meeting the Housing Authority's prevailing eligibility criteria and target group membership (cl 10.1, cl 10.7 and Guidelines);
4. Failure to:
  - a) charge and collect the prescribed rent set for the Units and failure to undertake subsequent reviews to ensure appropriate rent levels are maintained (cl 9.3, cl 9.5 and Guidelines);
  - b) ensure any rent collected is utilised strictly for the operation, management and maintenance of the Units in the manner set out in the JVA (cl 9 and Guidelines);
  - c) retain and utilise any surplus income derived from the rent to make provision for long term maintenance of the Units (cl 11.4 and Guidelines) including failing to

- providing the Housing Authority with its proportionate entitlement to such surplus income where appropriate (cl. 9.8 and Guidelines);
5. Failure to effectively and appropriately asset manage the Units including failure to:
    - a) ensure the Units are at all times maintained in a good state of repair and condition and to an acceptable lettable standard (cl. 11 and Guidelines); and
    - b) provide certified evidence to the Housing Authority that the Units have been asset managed in accordance with the terms of the JVA (cl. 13.7);
  6. Failure to effect, maintain and, on an annual basis, provide evidence to the Housing Authority of, all policies of insurance and associated renewal certificates (cl. 12. and Guidelines);
  7. Failure to record, maintain and provide to the Housing Authority, for its inspection and audit, all records, accounts receipts registers and reports related to the Units including without limitation:
    - a) a tenancy register for the Units (cl 13.2 and Guidelines);
    - b) a property register for the Units (including maintenance history and property condition reports)(cl. 13.3 and Guidelines); and
    - c) an annual audited financial statement including:
      - (i) income and expenditure in relation to the Units;
      - (ii) profit and loss statements; and balance sheet; and
      - (iii) management, administration and operation (cl 13.6 and Guidelines).

Pursuant to clause 14.1 of the JVA, the Town is required to rectify the Breach within 28 days of the date of this Notice, [12 February 2018]. If the Breach is not rectified within 28 days of the date of this Notice, the Town will be in default of the JVA (**Default**).

#### TAKE NOTICE THAT

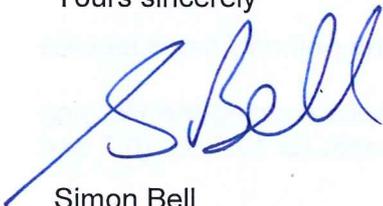
In the event of Default, the Housing Authority reserves its rights to take all action available to it under the terms of the JVA including, without limitation, seeking:

- (A) termination of the JVA;
- (B) transfer of the Town's rights and interests in the Units to the Housing Authority; and
- (C) divestment of the Town's rights and interests in the Crown Reserve 31384, on which the Units are constructed.

The Housing Authority further intends to recover from the Town the amount of all cost, loss and damage incurred by the Housing Authority as a result of the Town's act of Default.

Please contact Steve Carroll, Manager Property and Contracts at the Department of Communities, on [steve.carroll@communities.wa.gov.au](mailto:steve.carroll@communities.wa.gov.au) should you wish to discuss any of the above.

Yours sincerely



Simon Bell  
Director | Housing Programs  
Housing

Department of Communities