

The provisions of the Litter Act can be enforced by Council officers, where junk mail is abandoned on any land i.e. left anywhere other than in a mailbox, or where it is permitted to create a litter problem, without the need to adopt more specific statutory controls.

#### Consultation

To date the matter has only been raised with representatives of other local governments and Council's legal advisers, however it will be recommended that prior to embarking on any further course of action the matter should be widely canvassed to gain the views of residents and other key stakeholders such as the Port Hedland Chamber of Commerce, major retailers and community groups who use this form of promotion.

#### Statutory Implications

One of the options under consideration involves the adoption and enforcement of local laws (subject to the advice provided - attachment 1.)

#### Policy Implications

Nil

#### Strategic Planning Implications

##### KRA 3 Community Development

##### Goal 1 – Litter

Strategy 1 – Work with community groups to develop community programs and initiatives that reduce litter and improving the appearance of Port and South Hedland.

#### Budget Implications

Drafting and adoption of even a relatively simple Local Law, when there is no precedent, could cost in the order of \$10,000. Council has approved the appointment of a compliance officer and the Ranger Service is fully staffed at present. However there is no capacity to take on additional law enforcement initiatives without downgrading some of the current priorities unless additional resources are applied.

#### Officer's Comment

It is fair to say, that as much as the problem of litter arising from improper delivery of junk mail is a serious issue, and should be addressed as Council seek to develop an integrated solution to the town's litter problems, staff are not aware of any groundswell of community opinion calling for tougher laws to control how this material is distributed, or who should be permitted to deliver it.

A number of initiatives directly and indirectly supported by Council have succeeded in greatly reducing the amount of litter around Port and South Hedland over the past couple of years and while some infringement notices have been issued in that time the changes are more related to application of the “carrot” rather than the “stick”.

While there is no doubt that providing incentives to motivate a change in community values is sometimes a slower and more complex approach than passing a local law, experience locally and elsewhere shows that it is far more effective and is more closely aligned with the objectives of Councils “Plan for the Future” which emphasizes the need to develop community pride.

By contrast, adoption of a local law (if accepted by the Parliamentary Joint Standing Committee on Delegated Legislation) will be an expensive exercise in drafting and enforcement will, in the experience of Council’s regulatory staff be the less effective option.

A legislative approach will also place Council in the position of potentially prosecuting children, disabled people and pensioners (who deliver most of the junk mail locally) instead of initiating programs that will have a wider community impact. Adopting local laws which severely limit the distribution of advertising material is likely to be perceived (rightly or wrongly) as being an impediment to business which runs contrary to Councils stated aims of fostering economic development and promoting local business opportunities.

Initiatives that could be adopted to promote responsible distribution and disposal of junk mail could include, but are not limited to:

- Distribution of free “No Junk Mail” stickers for letterboxes
- Funding the inclusion of a junk mail category within the “Cash for Trash” scheme
- Establishment and promotion of a litter hotline where people could report (by email and telephone) instances where junk mail has not been disposed of properly.
- Increased advertising/promotion media exposure to encourage litter preventative behaviours
- Rewards for positive behaviours that reduce junk mail litter or initiate new approaches to solving the problem.
- “Naming and Shaming” irresponsible behaviour
- Seeking the support of major advertisers and the business sector to implement the above.

It is strongly recommended that the community pride building approach is applied to this problem rather than simply applying greater regulatory control.

Accordingly, it will be recommended that a modest provision be made within Council's 2009/10 budget for Litter Reduction initiatives as an alternative to expenditure on drafting and enforcing an additional layer of legislation.

#### Attachments

Legal Advice obtained for the inappropriate distribution of advertising material.

#### Officer's Recommendation

That Council:

- i) continues to apply the provisions of the Litter Act to minimize the impact of improperly handled junk mail;
- ii) consults widely with the community to determine preferred initiatives for addressing the problem of litter arising from improper disposal of junk mail; and
- iii) commits to providing an amount of \$20,000 in the 2009/10 budget for litter control initiatives to promote the responsible delivery and disposal of junk mail.

#### 200809/328 Council Decision/Alternate Recommendation

**Moved:** Cr K A Howlett

**Seconded:** Cr A A Gear

That Council:

- i) continues to apply the provisions of the Litter Act to minimise the impact of improperly handled junk mail;
- ii) consults widely with the community (including local schools) to determine preferred initiatives for addressing the problem of litter arising from improper disposal of junk mail and new approaches to addressing litter problems within the Town;
- iii) investigates the option of the establishment of a local Hedland Litterer Reporting Scheme (in conjunction with Keep Australia Beautiful Council) including the establishment and promotion of a litter hotline where people could report (by email and telephone) - witnessed littering, reporting of illegal dumping, litter/rubbish hotspots and junk mail littering issues; and

- iv) write to and seek support from major advertisers and the business community for an increased advertising/promotional campaign in the local media (print and radio) encouraging litter preventative behaviours (July - December 2009).

*CARRIED 5/1*

## ATTACHMENT TO AGENDA ITEM 11.2.1.4



Our Ref  
Your Ref

TB:P/HED-25560

28 April 2009

Mr Terry Sargent  
Town of Port Hedland  
P.O. Box 41  
PORT HEDLAND WA 6721

Dear Mr Sargent

**ADVICE: INAPPROPRIATE DISTRIBUTION OF ADVERTISING MATERIAL**

We refer to your recent instructions in respect of the above.

We are instructed that the Town is concerned about the inappropriate distribution of advertising material, or 'junk mail', within its district and seeks our advice in relation to:

- (a) the types of actions the Town could take, either under existing legislation or under legislation that could be implemented in the future, to:
  - (i) minimise litter arising from 'junk mail'; and
  - (ii) minimise occurrences of 'junk mail' being delivered contrary to signage on letter boxes; and
- (b) the legislative powers that the Town has, in general, in circumstances of this kind.

**1. Making Local Laws Under The Local Government Act 1995**

- 1.1 Section 3.1 of the Local Government Act 1995 (**Act**) provides that *'the general function of a local government is to provide for the good government of persons in its district'*.
- 1.2 Furthermore, according to s3.5(1) of the Act:

*'A local government may make local laws under this Act prescribing all matters that are required or that are permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act'*.

- 1.3 Accordingly, it is likely that the intent of a local law to minimise litter caused by excessive 'junk mail' being delivered would fall within the general scope of providing for 'good government'. However, as identified in your recent



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Peter Gillett (Associate)

email, giving effect to this intent in a reasonable and practical way will be difficult.

- 1.4 Local Laws are reviewed by the Parliamentary Joint Standing Committee on Delegated Legislation, which may recommend disallowance of any proposed Local laws. The Committee has, on numerous occasions, expressed concern that Local laws adopted by local governments should, wherever possible, not impinge on private rights. The proposed limitation on the delivery of “junk mail” will, in part, impinge on the rights of private business proprietors and mail recipients, irrespective of the fact that many of those recipients might welcome such a measure.
- 1.5 In the more general context, it is evident that the Committee may allow local laws to restrict private rights, where there is a demonstrable benefit from doing so and where there is a practical means to give effect to the intent of the restriction. The ambit of “good government” is broad enough to enable a local government to legislate on a wide variety of issues within its district.
- 1.6 We have been unable to locate comparable subordinate legislation in other Australian jurisdictions.
2. **Means of Restricting “Junk Mail”**
  - 2.1 Firstly, before we more closely consider the preferred means of restricting or prohibiting inappropriate distribution of “junk mail”, we need to form a more specific understanding of what comprises “junk mail”.
  - 2.2 We are not aware of any comparable local laws or other subsidiary legislation that considers this exact issue, but we would define “junk mail” by way of distinguishing between mail that is specifically addressed to a given recipient, and mail that is not typically individually addressed or explicitly intended for individual recipients.
  - 2.3 We are aware that many companies will send unsolicited advertising material by post to individual recipients, en masse, where such material is unsolicited. However, it would be outside the Town’s jurisdiction and beyond the Town’s resources to enforce any ban, prohibition or restriction upon the capacity of a person within its district to receive mail that is addressed to that person and lawfully delivered by post to that person. For the purpose of this advice we will not regard mass mail-outs delivered by Australia Post as junk mail.
  - 2.4 The Town has suggested imposing a restriction on “junk mail” restricting the delivery of “junk mail” to “pre-specified” days and/or ways. We are unaware of any reason as to why this restriction could not be imposed. However, if “junk mail” is to be delivered on one “pre-specified” day, then this will not necessarily abate the issue of excessive volumes of “junk mail”. In fact, if all “junk mail” is to be delivered on the same day, then there is an even greater likelihood of litter arising from overfilled letter boxes. Similarly, the Town would need to have a very strong and certain idea of any restriction to be placed on the persons who should or should not receive “junk mail”.

- 2.5 Instead of attempting to enforce measures against an advertiser, which in our view creates an unmanageable enforcement regime, we would seek to enforce the provisions of a local law against the deliverer of “junk mail”.
- 2.6 One such approach would be to place a blanket ban on all “junk mail” being delivered, otherwise than in accordance with local laws. This may or may not include restricting “junk mail” from being delivered by any person or company that has not been specifically and expressly permitted, in writing, by the Town to distribute “junk mail”. However, this may create a significant administrative burden for the Town.
- 2.7 The types of restrictions that could be imposed on a licenced “junk mail” delivery, could include:-
1. Ensuring that material is not delivered contrary to signage placed on letter boxes.
  2. Ensuring that material is not left or abandoned on road verges or front yards.
  3. Ensuring that an excessive amount of material is not delivered.
  4. Ensuring that material of offensive content is not delivered.
  5. Ensuring that material of an excessive size is not delivered.
  6. Ensuring that “junk mail” is only delivered by permitted deliverers.
- 2.8 In any case, we consider that any actual prosecutions pursuant to such a local law would be difficult to establish. However, if certain persons or companies within the Town are in the business of delivering “junk mail” and hence their business depended on their ability to lawfully do so, then these persons or companies are likely to be more inclined to comply with the requirements imposed by the Town to ensure that they continue to be permitted and/or licensed to deliver “junk mail”.
- 2.9 The advantage, in our view, of enforcing this regime against the deliverer, rather than the advertiser, is that it gives the Town a means of enforcing its Local Law by way of the regulation of permission and licensing of “Junk mail” delivery.
- 3. Existing Local Laws**
- 3.1 We have reviewed the Town’s local law relating to signs, hoardings and bill posting, and we note that there are certain similarities in the intent of this local law and the Town’s desire to minimise the distribution of “junk mail”.

3.2 The signage Local Law provides:

*“A person shall not erect, attach, affix or maintain any sign or advertising device and the owner or the occupier of premises shall not suffer or permit a sign or advertising device to be erected, attached, affixed or maintained in or above any land or building (or any part thereof) except pursuant to a licence issued under this Local Law”.*

3.3 The Local Law does not define ‘sign’ or ‘advertising device’ in such a way as to include “junk mail”. However, it is our opinion that the Town could consider amending this local law to contain a separate prohibition and regulation regime in relation to “junk mail” within the local law rather than being required to develop a new specific local law to apply to “junk mail”. Naturally, various terms would need to be defined, and in some circumstances redefined, and additional provisions would need to be inserted into this local law in order to give effect to this change.

3.4 Alternatively, the Town could consider creating a new local law for this purpose. The advantage of the latter course of action is that the signage Local Law, whilst similar in its intent to the restriction of “junk mail”, is preferable and comparable to local laws within other local government jurisdictions. It may be simpler to create a new instrument, rather than edit and amend an otherwise completed and operable local law.

**4. Other Laws**

4.1 The *Australian Postal Corporation Act 1989* (APC Act) outlines the various powers and restrictions relating to the services provided by Australia Post.

4.2 Section 29 of the APC Act provides that *“subject to section 30, Australia Post has the exclusive right to carry letters within Australia, whether the letters originated within or outside Australia”.*

4.3 The exceptions prescribed by section 30 of the APC Act include *“the carriage of a newspaper, magazine, book, catalogue or leaflet, whether or not directed to a particular person or address and whether or not enclosed in any sort of cover”.*

4.4 We would interpret this particular exception to target the types of material that we have identified as “junk mail” for the purposes of this advice. In fact, this particular exception goes beyond that which we would have considered “junk mail”, as it even provides an exception for materials that are directed to particular persons and/or enclosed in a cover. For the purposes of identifying “junk mail”, we would not consider, for example, a catalogue or leaflet, enclosed in a cover and addressed to a specific person, to constitute “junk mail”. However, the APC Act would exempt this type of material from being considered a “reserved service”.

4.5 In effect, any infringement upon the reserved services of Australia Post will give rise to a contravention of the APC Act. We are not aware of any aspect



of the type of local law proposed in this advice that would infringe on these services, or would otherwise contravene the other offence provisions of the Act (which largely relate to interference with mail, obstruction of mail and other fraudulent practices relating to mail).

4.6 The other distinction that needs to be made is that we would not envisage the local law as authorising the Town to search, inspect or otherwise access the private letter boxes of any persons within its district. To this extent, the Town would, in enforcing such a local law, rely on:

1. Being given consent to peruse the contents of an individual mail box; or
2. Receiving complaints from mail recipients as to the content and/or volume of "junk mail" received; or
3. Discovering disused, abandoned or overflowing "junk mail" elsewhere within the district.

4.7 If such a local law was to proceed, the Town would need to be certain that the provisions of the local law did not interfere, obstruct or infringe upon the services provided by Australia Post or that any aspect of the local law will infringe upon the privacy of any person within its district. However, we distinguish such a requirement to observe the privacy of these persons from a requirement to protect the commercial interests associated with persons delivering "junk mail".

## **5. Conclusion**

5.1 In effect, the Town has wide powers in relation to the creation of local laws under the Act, subject to a local law not exceeding its jurisdiction or scope in the manner described earlier.

5.2 In relation to the more specific example of "junk mail", it is our opinion that, subject to the approval of the Committee, the distribution of "junk mail" could be regulated by way of a new local law being created or by an amendment being made to the Local Law relating to signs, hoardings and bill postings.

5.3 We could go into far greater detail in relation to the drafting and preparation of such a local law or amendment and the various considerations that might take effect in relation to the same. However, we are conscious that to do so may, at this stage, exceed the scope of our instructions. Accordingly, we will await the Town's further response and instructions in relation to the content of this advice.

5.4 If the Town wishes to pursue the creation or amendment of a local law in order to give effects a restriction on "junk mail", it should consider the types of material it wishes to restrict and the manner in which it seeks to restrict this material. In our view, any enforcement regime must target the deliverer of "junk mail". We note the Town's comment that the advertiser is more easily

discernible. However, the identification of the deliverer should be capable of being determined by consulting the advertiser. Depending on the level of control of the Town wished to exert, a local law could prohibit an advertiser from distributing its own materials and could require an advertiser to notify the Town of which licensed deliverer it has employed. However, it might ultimately still be difficult to prosecute an advertiser in the event that its materials are found to be, in some way, contravening the types of restrictions referred to above.

- 5.5 Notwithstanding this difficulty, a large number of legislative instruments are very difficult to enforce and this is not necessarily reflective of those instruments being ineffectual. It is possible (evidence permitting) that, subject to the correct restriction being imposed by the local law and being approved by the Committee, the Town could successfully prosecute for junk mail being distributed otherwise than in accordance with such a local law.

On a purely practical note if the offenders were minors, proceedings would be in the Juvenile Justice system. Hopefully the deterrent effect of the local law would remove the need for the Town to initiate XXXXX (Shire) prosecution in that jurisdiction.

- 5.6 However, we cannot be certain that, at this early stage, the proposed local law or amendment would be approved by the Committee. If the Town is serious about proceeding with this proposal, we will liaise more closely with the Committee to determine whether, and the extent to which, this proposal may be approved.

We look forward to hearing from the Town further in relation to the above. The Town may also wish to consult with WALGA or the Department of Local Government and Regional Development to determine whether any other local governments have considered or attempted implementing local laws of this kind.

If you have any queries in respect of this letter, please contact Tim Beckett of this office.

Yours faithfully



Contact: Tim Beckett  
Direct line: 9424 6212  
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**11.2.2 Planning Services****11.2.2.1 Proposed Amendment to the Town of Port Hedland Town Planning Scheme No. 5 to Rezone Residential Land in the West End (File No.: 18/09/0029)**

<b>Officer</b>	Richard Bairstow Manager Planning
	Chris Adams Chief Executive Officer
<b>Date of Report</b>	16 May 2009
<b>Application Number</b>	2009/251
<b>Disclosure of Interest by Officer</b>	Nil

**Summary**

Documentation has been prepared by consultants working for the Town Council that seeks to initiate an amendment to the *Town of Port Hedland Town Planning Scheme No. 5* by creating a new residential zone in the West End. The documents have been prepared in accordance with the Council endorsed recommendations contained within the *Land Use Master Plan*.

**Background**

At its Ordinary Meeting on the 12<sup>th</sup> December 2007, Council adopted the *Town of Port Hedland Land Use Master Plan (LUMP)* as the town's Local Planning Strategy. The Western Australian Planning Commission (WAPC) subsequently endorsed this strategy on 23<sup>rd</sup> September 2008.

In considering the future direction for the West End, and the existing town centre, the LUMP makes the following recommendations for land currently zoned "Residential" between Taplin and Withnell Streets:

*Land use controls should be implemented that:*

- *Discourage permanent occupation of the West End area by very young and very old people.*
- *Add vibrancy to the area by encouraging tourism, entertainment and retail experiences.*
- *Maximise opportunity for the area to be occupied by working-aged people.*
- *Ensure that all land owners and land occupiers that use the area are aware of the noise, dust and air quality issues and associated risks.*

The LUMP further recommends that these policy statements be implemented through the following actions:

- a) *The development of a new West End Residential Development Zone*
- b) *Changing the density coding for the new zone to "minimum R30"*
- c) *Imposing a maximum floor area of 110 m<sup>2</sup> for all new dwellings*
- d) *Imposing a limit of two bedrooms per dwelling*
- e) *Granting "additional use" rights to those landowners intending to retain existing single dwellings*
- f) *Preparing and adopting design guidelines to address dust and noise mitigation and other amenity issues*
- g) *Alert landowners and residents of the dust issues through notifications placed on land titles.*

To achieve the above listed actions it is proposed to amend TPS 5 through changes to the Scheme Map and text by making the following general modifications and additions:

- a) Rezoning the land bounded by Anderson, Withnell, Sutherland, Taplin Streets and the Esplanade Port Hedland currently zoned "Residential" to "West End Residential", with an applied density code of "Minimum R30";
- b) Rezoning the land bounded by The Esplanade, Withnell, McKay and Anderson Streets from "Residential" to "Town Centre", and;
- c) Inserting appropriate provisions in the Scheme text relating to the new zone.

The amendments to the Scheme Map are self-evident and clearly illustrated in Attachment 1 to this report. Tabled below is a brief summary of the proposed scheme changes along with a brief rationale of the changes proposed. The specific details of the proposal are presented in greater detail in the Scheme Amendment Report that has been appended to this report.

Change	Rationale
Addition of West End Residential Zone into section 3.1(a) if the scheme.	All zones within the scheme are listed in 3.1(a)
Insert general provisions form West End Residential Zone into Section 6.6.	Existing residential zones are described in this area. The wording proposed describes the proposed intent of the zone and couches the intent of the LUMP (as described above) within a robust statutory framework.

Inclusion of a new column within the zoning table titled 'West End Residential' with appropriate notations establishing the permissibility (or otherwise) of uses/developments within this zone.	Each zone within the Scheme is included within the zoning table. Change is required to illustrate uses that will be permitted and not permitted in the new zone.
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#### Consultation

Should Council resolve to initiate this amendment to TPS 5, the documentation is to be submitted to the Environmental Protection Authority (EPA) for consideration pursuant to section 81 of The Act.

Following approval from the EPA to advertise the amendment, Council is then required pursuant to section 83 of The Act to consult persons likely to be affected by the amendment, and also advertise the amendment for a minimum of 42 days pursuant to section 84.

At the completion of this consultation, Council is to consider all submissions and determine whether to adopt the amendment, adopt the amendment with modifications, or not adopt the amendment.

If Council subsequently adopts the amendment, the item is referred to the WAPC for their consideration and approval.

#### Statutory Implications

The *Planning and Development Act 2005* and the *Town Planning Regulations 1967* provide Council the authority to amend its Local Planning Scheme and establish the procedure required to make this amendment.

#### Policy Implications

Nil

#### Strategic Planning Implications

Key Result Area 4 – Economic Development  
 Goal 5 – Town Planning & Building  
 Strategy 2 -Work closely with the State Government and Resource Companies to ensure that key projects/action identified with the Land use Master Plan are acted upon in a timely manner

### Budget Implications

As this amendment is being initiated by the Town, no application fees have been received for this application. All assessment and advertising fees will be accommodated within existing budgets.

### Officer's Comment

The issue of residential development in the West End of Port Hedland was hotly debated during the development of the LUMP. Numerous alternatives were considered before the final recommendations were approved by Council and the State Government. This amendment simply seeks to reinforce this agreed position by placing the agreed position into a solid, statutory planning framework.

While this proposed amendment addresses all Residential zoned land in the West End, it does not address other zones in the West End that also permit residential development. The Town Centre, Mixed Use and Tourism zones each permit different types of residential development that are not controlled through provisions proposed in this amendment, and therefore have limited statutory restrictions for proposed residential development. A future amendment will need to be considered to address this issue.

### Attachments

1. Town of Port Hedland Town Planning Scheme No. 5 Amendment No. 22 Map
2. Scheme Amendment documentation.

200809/329 Council Decision/Officer's Recommendation

**Moved:** Cr G D Bussell

**Seconded:** Cr S J Coates

That Council:

- i) Initiate a Town Planning Scheme Amendment to the Town of Port Hedland Town Planning Scheme No. 5 by:
  - a) **Rezoning the land bounded by Anderson, Withnell, Sutherland and Taplin Streets and The Esplanade, Port Hedland currently zoned "Residential" to "West End Residential", with an applied density code of "Minimum R30" as depicted on the amendment map;**
  - b) **Rezoning the land bounded by Withnell, McKay and Anderson Streets and The Esplanade, Port Hedland from "Residential" to "Town Centre" as depicted on the amendment map;**

**c) Amending the Scheme text by:**

1. Inserting section “3.1 (a) iv. West End Residential”
2. Inserting as section 6.6:
  - 6.6.1 The purpose of the West End Residential Zone is to establish a residential zone in which dwellings are designed and constructed in such a way as to be unsuitable for occupation by families with children or by elderly persons.
  - 6.6.2 Development within the West End Residential Zone shall be in accordance with any local planning policy, development plan or design guideline adopted by Council for this zone.
  - 6.6.3 Notwithstanding anything contained within the Residential Design Codes, all residential development in the West End Residential Zone, other than the development identified in section 6.6.8, shall comply with the following:
    - 6.6.3.1 The maximum plot ratio area for all dwellings is 110 m<sup>2</sup>.
    - 6.6.3.2 No dwelling shall have greater than two (2) bedrooms or rooms capable of being used as bedrooms
  - 6.6.4 Council shall only support the subdivision of land in the West End Residential Zone where new lots are designed to accommodate the construction of grouped and/or multiple dwellings.
  - 6.6.5 The West End Residential Zone has no prescribed maximum residential density. The R30 minimum density coding is prescribed to ensure efficient use of available land and prevent the development of additional single dwellings within this zone.
  - 6.6.6 When considering an application for planning approval within the West End Residential Zone, Council shall consider impact on streetscape, building setbacks from the boundary, open space and outdoor living provision, car parking provision and any other matter it deems appropriate prior to determining the application.

6.6.7 Council shall require as a condition of any planning approval granted for land in the West End Residential Zone, and prior to the commencement of any associated works, that the landowner prepare a notification, in a form acceptable to the Town, to be lodged with the Registrar of Titles for endorsement on the Certificate of Title for the subject lot. This notification is to be sufficient to alert prospective landowners or occupiers that:

- a) The Western Australian Department of Health has advised in a preliminary investigation that it does not support medium density residential development in this area due to a potential causal link between the dust generated by nearby ore mining processes and port facilities, and increased likelihood of respiratory health impacts;
- b) Seniors, children, and persons with existing heart or lung disease appear to be at an elevated risk of dust-related health impacts;

Should additional information be required in regard part ‘a’ or ‘b’, the prospective landowners should contact the Western Australian Department of Health.”

6.6.8 Where any lot is listed in Appendix 2 – Additional Development and Uses with the additional use of “Single Dwelling,” clause 6.6.3 shall not apply.

- d) **Renumbering the succeeding sections accordingly;**
- e) **Inserting the following column in the Zoning Table:**

**Town of Port Hedland TPS 5  
Zoning Table**

ZONING TABLE		West End Residential
Residential		
1	Aged or Dependent Persons Dwelling	~
2	Ancillary Accommodation	~
3	Caretaker’s Dwelling	AA



ZONING TABLE		West End Residential
4	Grouped Dwelling	AA
5	Holiday Accommodation	SA
6	Home Occupation	AA
7	Hotel	SA
8	Motel	SA
9	Movable Dwelling	~
10	Multiple Dwelling	AA
11	Residential Building	AA
12	Rural Settlement	~
13	Single House	~
14	Transient Workforce Accommodation	SA
Industry		
15	Abattoir	~
16	Agriculture	~
17	Arts and Crafts Centre	SA
18	Intensive Agriculture	~
19	Harbour Installation	~
20	Hire Service (Industrial)	~
21	Industry – Cottage	SA
22	Industry – Extractive	~
23	Industry – General	~
24	Industry – Light	~
25	Industry – Noxious	~
26	Industry – Rural	~
27	Industry – Service	~
28	Industry – Resource Processing	~
29	Infrastructure	AA
30	Stockyard	~
31	Storage Facility/Depot/Laydown Area	~
Commerce		
32	Aerodrome	~
33	Display Home Centre	SA
34	Dry Cleaning	~
35	Market	SA
36	Motor Vehicle and/or Marine Repair	~
37	Motor Vehicle and/or Marine Sales or Hire	~
38	Motor Vehicle and/or Marine Service Station	~
39	Motor Vehicle and/or Marine Wrecking	~
40	Motor Vehicle Wash	~
41	Office	SA
42	On-site Canteen	~
43	Outdoor Display	~
44	Reception Centre	~
45	Restaurant (includes café)	SA

ZONING TABLE		West End Residential
46	Restricted Premises	~
47	Shop	~
48	Showroom	~
49	Take-away Food Outlet	~
50	Warehouse	~
Health, Welfare & Community Services		
51	Carpark	SA
52	Child Care Service	~
53	Community Use	SA <sup>1</sup>
54	Consulting Rooms	SA
55	Education Establishment	SA <sup>1</sup>
56	Emergency Services	~
57	Funeral Parlour	~
58	Hospital	~
59	Juvenile Detention Centre	~
60	Medical Centre	~
61	Nursing Home	~
62	Place of Animal Care	~
63	Place of Public Meeting, Assembly or Worship	~
64	Prison	~
65	Public Mall	~
66	Public Utility	AA
Entertainment, Recreation & Culture		
67	Equestrian Centre	~
68	Entertainment Venue	~
69	Private Recreation	SA <sup>1</sup>
70	Public Recreation	AA <sup>1</sup>

**The symbols used in the zoning table have the following meanings:**

- P The development is permitted by the Scheme
- AA The development is not permitted unless the Council has granted planning approval
- SA The development is not permitted unless the Council has granted planning approval after giving notice in accordance with clause 4.3
- IP The development is not permitted unless the use to which it is put is incidental to the predominant use as decided by Council
- ~ A development that is not permitted by the Scheme

- 1 Notwithstanding anything contained in Appendix 1 – Definitions, no land use shall be approved within the West End Residential Zone that is intended for use either exclusively or primarily by children or elderly persons.

**f) Amending the Scheme Map accordingly.**

- ii) prepare the formal amendment documentation to enable referral to the Environmental Protection Authority.

*CARRIED 4/2*

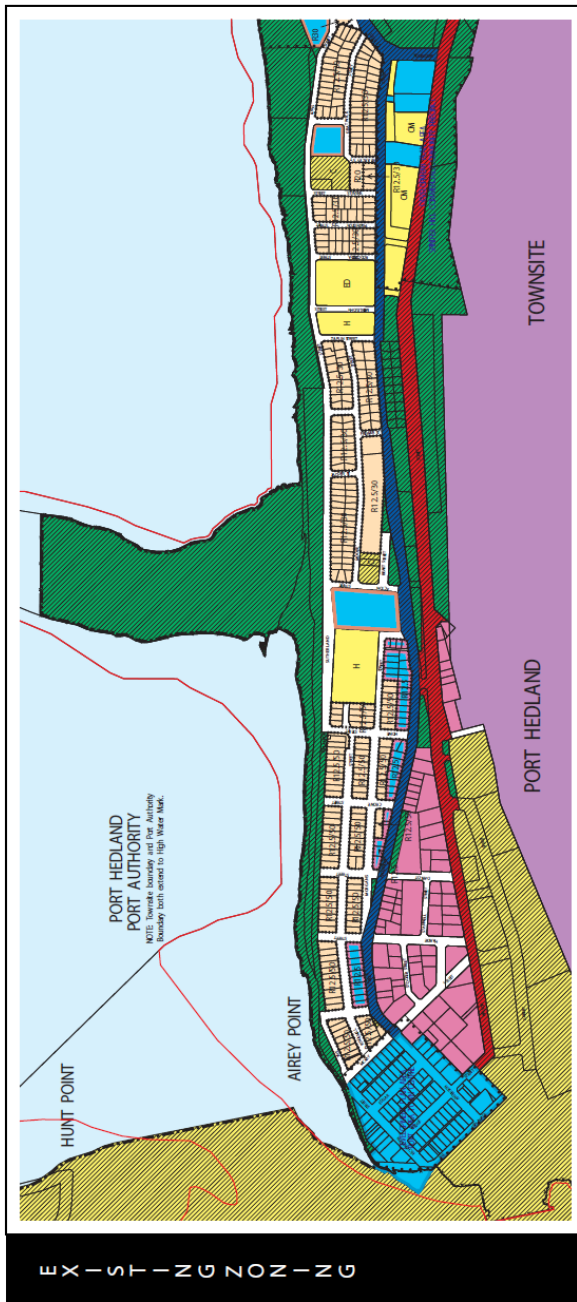
*NOTE: Cr A A Gear requested the votes be recorded.*

Record of Vote:

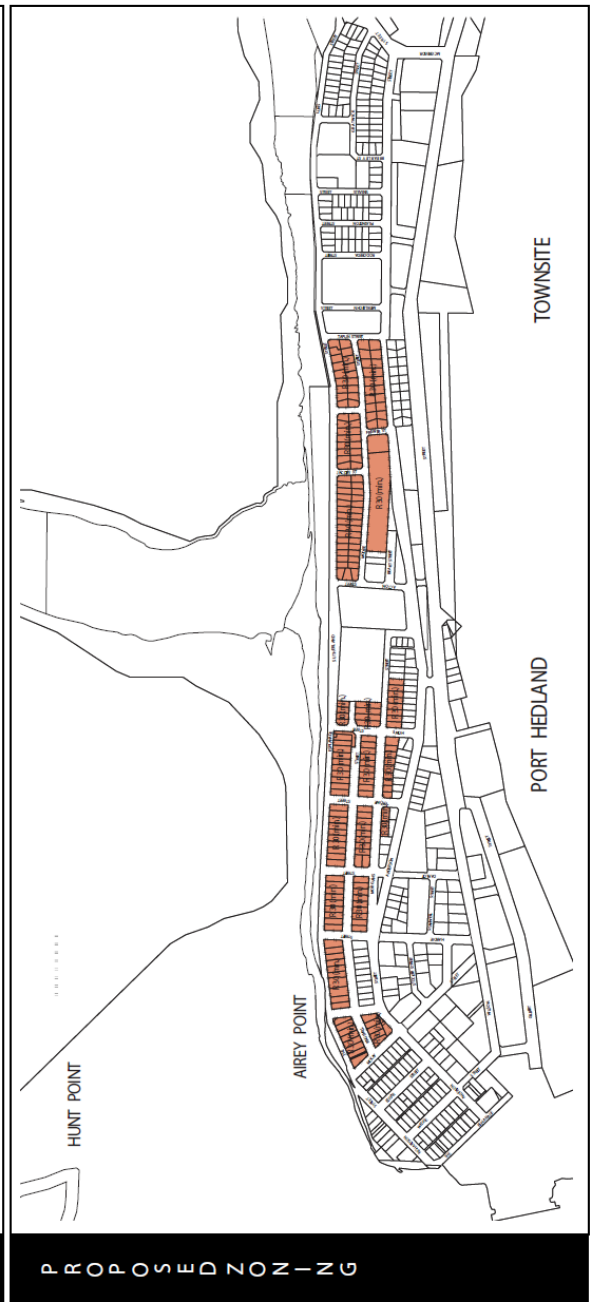
FOR	AGAINST
Cr S R Martin	Cr A A Gear
Cr G D Bussell	Cr K A Howlett
Cr S J Coates	
Cr J M Gillingham	

ATTACHMENT 1 TO AGENDA ITEM 11.2.2.1

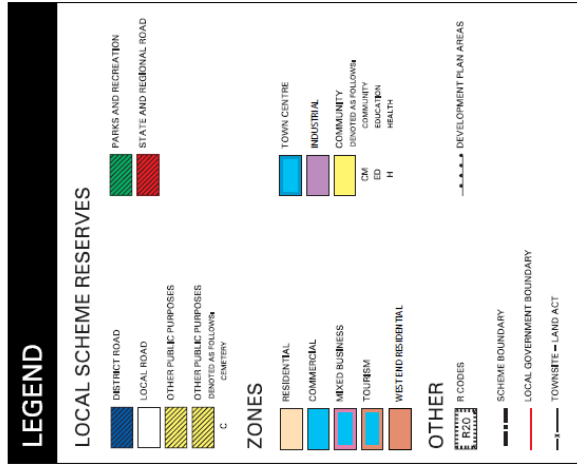
TOWN OF PORT HEDLAND



EXISTING ZONING



PROPOSED ZONING



*ATTACHMENT 2 TO AGENDA ITEM 11.2.2.1*

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***TOWN OF PORT HEDLAND  
TOWN PLANNING SCHEME No. 5  
AMENDMENT No. 22***

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File No: .....

Part of Agenda: .....

**MINISTER FOR PLANNING**

**Proposal to amend a Local Planning Scheme**

- |  |   |
|--|---|
| 1. Local Authority:                      | Town of Port Hedland  |
| 2. Description of Local Planning Scheme: | Town Planning Scheme No. 5  |
| 3. Type of Scheme:                       | Local Planning Scheme   |
| 4. Serial No. of Amendment:              | 22  |
| 5. Proposal:                             | <ol style="list-style-type: none"><li>1. Rezoning the land bounded by Anderson Withnell, Sutherland and Taplin Streets Port Hedland currently zoned "Residential" to "West End Development" with an applied density code of "Minimum R30";</li><li>2. Rezoning the land bounded by Sutherland, Withnell, McKay and Anderson Streets from "Residential" to "Town Centre",</li><li>3. Inserting appropriate provisions in the Scheme text relating to the new zone;</li><li>4. Inserting a new column in the Scheme zoning table for the West End Development Zone.</li></ol> |

**PLANNING AND DEVELOPMENT ACT 2005****RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME****Town of Port Hedland  
Local Planning Scheme No. 5  
Amendment No. 22**

**RESOLVED** that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amend the above Town Planning Scheme by:

1. Rezoning the land bounded by Anderson, Withnell, Sutherland and Taplin Streets Port Hedland currently zoned "Residential" to "West End Development" with an applied density code of "Minimum R30" as depicted on the amendment map;
2. Rezoning the land bounded by Sutherland, Withnell, McKay and Anderson Streets from "Residential" to "Town Centre" as depicted on the amendment map;
3. Amending the Scheme text by:
  - i) Inserting section "3.1 (a) iv. West End Development"
  - ii) Inserting as section 6.6:
    - 6.6.1 The purpose of the West End Development Zone is to establish a predominantly residential zone in which dwellings are designed and constructed in such a way as to be unsuitable for occupation by families with children or by elderly persons.
    - 6.6.2 Development within the West End Development Zone shall be in accordance with any local planning policy, development plan or design guideline adopted by Council for this zone.
    - 6.6.3 Notwithstanding anything contained within the Residential Design Codes, all residential development in the West End Development Zone shall comply with the following:
      - 6.6.3.1 The maximum plot ratio for all dwellings is 110 m<sup>2</sup>
      - 6.6.3.2 No dwelling shall have greater than two (2) bedrooms or rooms capable of being used as bedrooms
    - 6.6.4 Council shall only support the subdivision of land in the West End Development Zone where new lots are designed to accommodate the construction of grouped dwellings.
    - 6.6.5 The West End Development Zone has no prescribed maximum residential density. The R30 minimum density coding is prescribed to ensure efficient use of available land and prevent the development of additional single dwellings within this zone.
    - 6.6.6 When considering an application for planning approval for any development containing residential development, Council shall consider impact on streetscape, building setbacks from the boundary, open space and outdoor living provision, car parking provision and any other matter it deems appropriate prior to determining the application.
    - 6.6.7 Council shall require as a condition of any planning approval granted for land in the West End Development Zone that the following notice be attached to all relevant Certificates of Title





ZONING TABLE		West End Development																	
23	Industry – General	~																	
24	Industry – Light	~																	
25	Industry – Noxious	~																	
26	Industry – Rural	~																	
27	Industry – Service	~																	
28	Industry – Resource Processing	~																	
29	Infrastructure	AA																	
30	Stockyard	~																	
31	Storage Facility/Depot/Laydown Area	~																	
<b>Commerce</b>																			
32	Aerodrome	~																	
33	Display Home Centre	SA																	
34	Dry Cleaning	~																	
35	Market	SA																	
36	Motor Vehicle and/or Marine Repair	~																	
37	Motor Vehicle and/or Marine Sales or Hire	~																	
38	Motor Vehicle and/or Marine Service Station	~																	
39	Motor Vehicle and/or Marine Wrecking	~																	
40	Motor Vehicle Wash	~																	
41	Office	SA																	
42	On-site Canteen	~																	
43	Outdoor Display	~																	
44	Reception Centre	~																	
45	Restaurant (includes café)	SA																	
46	Restricted Premises	~																	
47	Shop	SA																	
48	Showroom	~																	
49	Take-away Food Outlet	~																	

ZONING TABLE		West End Development																	
50	Warehouse	~																	
<b>Health, Welfare &amp; Community Services</b>																			
51	Carpark	SA																	
52	Child Care Service	~																	
53	Community Use	SA																	
54	Consulting Rooms	SA																	
55	Education Establishment	SA <sup>1</sup>																	
56	Emergency Services	SA																	
57	Funeral Parlour	~																	
58	Hospital	~																	
59	Juvenile Detention Centre	~																	
60	Medical Centre	~																	
61	Nursing Home	~																	
62	Place of Animal Care	~																	
63	Place of Public Meeting, Assembly or Worship	~																	
64	Prison	~																	
65	Public Mall	SA																	
66	Public Utility	AA																	
<b>Entertainment, Recreation &amp; Culture</b>																			
67	Equestrian Centre	~																	
68	Entertainment Venue	SA																	
69	Private Recreation	SA																	
70	Public Recreation	AA																	

The symbols used in the zoning table have the following meanings:

- P The development is permitted by the Scheme
- AA The development is not permitted unless the Council has granted planning approval
- SA The development is not permitted unless the Council has granted planning approval after giving notice in accordance with clause 4.3

IP The development is not permitted unless the use to which it is put is incidental to the predominant use as decided by Council

~ A development that is not permitted by the Scheme

<sup>1</sup> Within the West End Development Zone, the definition of "Education Establishment" is read to include only those establishments providing adult education.

4. Amending the Scheme Map accordingly.

.

Dated this ..... day of ..... 2009..

.....  
Chief Executive Officer

## AMENDMENT REPORT

### 1.0 INTRODUCTION

This report is prepared on behalf of Landcorp and the Town of Port Hedland to support an amendment to the *Town of Port Hedland Town Planning No. 5 (TPS 5)* in accordance with the recommendations of the *Town of Port Hedland Land Use Master Plan (LUMP)* that is adopted as the Town's Local Planning Strategy and endorsed by the Western Australian Planning Commission (WAPC).

The purpose of the amendment is to create the West End Development Zone that:

- Discourages the long-term residency by families with children or elderly persons;
- Adds vibrancy to both the Subject Land and the nearby commercial area; and
- Maximises opportunities for workers in nearby employment nodes to reside close to work and entertainment opportunities.

Anticipated land uses will be predominantly residential and mixed with appropriate commercial, health and community uses. All future residential development in this zone will meet a strict criterion that creates a built form designed to meet the objectives stated above.

The land subject to this proposal comprises all land currently zoned "Residential" in TPS 5 south of Sutherland Street, north of Anderson Street, west of Taplin Street and east of Withnell Street (refer Figure 1).

In accordance with recommendations from the LUMP, it is also proposed as part of this amendment to rezone the land bounded by Withnell, McKay, Anderson and Sutherland Streets from "Residential" to "Town Centre."

### 2.0 LOCATION AND SITE DESCRIPTION

As indicated in Figure 1, the Subject Area comprises all land currently zoned "Residential" in TPS 5 west of Taplin Street. This land is split-coded with a base density of R12.5, and a maximum potential coding of either R30 or R50. TPS 5 section 6.2.5 regulates the application of the higher density of these split codes with the following clause:

*6.2.5 Within the areas coded R12.5/30, 12/5/50 and R30/60, Council shall only approve development at the higher code if it is satisfied that:*

- i) The particular site is suitable to accommodate on-site effluent disposal or a sewer line connected to a wastewater treatment plan which has approval of the Water Corporation; and*
- ii) The development is in accordance with any design guidelines adopted by Council; or*
- iii) In the absence of adopted guidelines, addresses the impact on adjoining development and the streetscape and amenity of the surrounding locality.*

The Subject Land is predominantly developed with single residential dwellings, with new development increasingly tending towards grouped dwellings. The higher density development is generally concentrated in the area west of the Port Hedland Hospital as this land is serviced by the Water Corporation reticulated sewer.

Housing stock in the Subject Area comprises a wide variety of age and quality with a small number of undeveloped lots. The age, condition and location of many of the extant dwellings makes this area highly suitable for urban renewal and it is anticipated that the additional certainty this amendment will make to the ongoing support for residential uses in the Subject Area will stimulate this activity.

The land generally comprises a ridgeline running parallel to the coast with a height of approximately 10 metres AHD and falling to the south. All land within the amendment area is identified as being above the 100 year flood level.

### **3.0 LAND OWNERSHIP**

The majority of the land affected by this proposed amendment is in private, freehold tenure. Precise details have not been determined, however it is understood that many residential lots are currently under the ownership of a number of corporate owners for the provision of workers' accommodation.

### **4.0 STRATEGIC PLANNING CONTEXT**

The primary stimulus for this proposed amendment is the recommendations of the *Town of Port Hedland Land Use Master Plan* that discusses and addresses the issues to be resolved by this amendment under section 3.6 *West End/Cemetery Beach*.

The Town of Port Hedland adopted the LUMP as its local planning strategy on XX, with the document endorsed by the WAPC on XX. This proposal is consistent with recommendations of the LUMP that are the result of extensive consultation with a wide stakeholder group.

Port Hedland is not subject to any region planning scheme or other wider strategy impacting the the land uses considered under this proposal.

It is therefore proposed to adopt the following policy principles outlined in the *Land Use Master Plan*:

- The development of the *West End Residential Development Zone* that restricts the development of land uses specifically catering to young children and elderly persons( e.g. child care and aged care facilities);
- Residential density in the new zone to be set at a minimum of R30;
- The internal floor area of each dwelling to be a maximum of 110 m<sup>2</sup>.
- A maximum of two (2) bedrooms or habitable rooms permitted per dwelling;
- Existing single dwellings to be permitted as an additional use where already existing and upon application by the landowner, but otherwise to be a prohibited use;
- Design Guidelines to be adopted for the new zone as policy that address noise and dust mitigation and amenity issues;

Prospective landowners being advised of potential health related issues via notification on each land title.

### **5.0 EXISTING DEVELOPMENT**

#### **5.1 Subject Area**

As noted earlier, the Subject Area is developed predominantly with low density residential dwellings on green title lots. Where reticulated sewerage is available, some lots are being redeveloped with grouped dwellings at higher densities.

The street grid provides a significant number of lots with dual frontages that will facilitate higher density development.

As a significant number of lots within the Subject Area are development with single dwelling that landowners may intend to maintain and not redevelop in the foreseeable future, it is proposed that all affected landowners be invited to include lots with single dwellings in TPS 5 Appendix 2 – Additional Development and Uses. Being listed in this appendix will ensure these dwellings do not become non-conforming uses under the Scheme, thereby avoiding financial and other implications, particularly prevalent in a cyclone-risk area.

## 5.2 Surrounding Development

Adjoining the Subject Area to the west is the existing Port Hedland Town Centre, comprising a mix of commercial, entertainment, recreation, health and residential development. One of the stated aims of this rezoning is to add vibrancy to this hub by increasing the residential catchment for existing businesses, and promoting new development in the town centre.

South of the Subject Area land is used for a variety of industrial uses. West of the hospital, the predominant use is for light and general industry, with land south of Wilson Street comprising the major facilities of the Port Hedland Port Authority and BHP Billiton.

The Spoilbank dominates the land north of the Subject Area, with this feature combining with the foreshore reserve to provide a major recreational area. The LUMP has identified this area as requiring additional detailed planning to further develop this recreational potential in synergy with the residential and other land uses through the West End and Cemetery Beach area.

Central to the proposed West End Development Zone is the Port Hedland Hospital and adjacent vacant tourist site. It is anticipated both in the LUMP and TPS 5 that these land parcels will be developed with a mix of tourist and residential uses that will provide facilities for future residents in the West End Development Zone and drawing additional commercial catchment from these additional residents.

Directly east of the Subject Area the land is zoned for and developed with a mix of residential, tourist, community and commercial uses.

In addition to the development and adoption of a local planning policy the LUMP recommends the development and implementation of design guidelines to further detail developer requirements. Notwithstanding this recommendation, as the *Town of Port Hedland Town Planning Scheme No. 5* currently makes no provision for the adoption of Design Guidelines these would have no statutory authority. An alternative that meets the intent of the LUMP recommendation is to either include the provisions anticipated in the Design Guidelines into the Local Planning Policy, or adopt these as a separate policy. Of these two options, it is recommended the additional detail envisioned for the Guidelines be incorporated into a single policy document for ease of administration and clarity for developers.

## 6.0 PROPOSED SCHEME AMENDMENT

It is proposed that the principles presented in the LUMP and summarised in section 4.0 of this report be translated into a statutory framework through the following amendments to the *Town of Port Hedland Town Planning Scheme No. 5*:

4. All land within the Study Area currently zoned "Residential" to be rezoned "West End Development Zone"

In accordance with LUMP recommendations, it is also proposed to extend the Town Centre zone through to Withnell Street, thereby marginally reducing the residential zone.

5. The new zone to be listed and referenced as a residential category under Part III of TPS 5

In drafting the provisions to be included in this section, it is recommended that a clause be included placing restrictions on the size of freehold subdivision in the West End Residential Zone. This clause shall prevent the creation of lots of an insufficient size to develop either grouped dwellings or mixed use commercial/residential. This clause would ensure that no lots are inadvertently created that would then only be suitable for development of single dwellings as these are to be prohibited in this zone.

The new zone is to be listed at section 6.4 of TPS 5 with appropriate text establishing the intended uses and restrictions of this zone. All subsequent sections will be renumbered accordingly.

6. The new zone is to be included in the zoning table with land use permissibility similar to that in the Residential Zone with the following variations:

#### **Residential Uses**

- a) "Aged or Dependent Persons," "Ancillary Accommodation" and "Single House" all listed as prohibited uses.

Establishing single dwellings as a prohibited use is the most likely of these amendment provisions to prove controversial, particularly with regard to the insurance and other financial implications for existing landowners who intend to retain existing single dwellings. To protect these interests while maintaining the integrity of this amendment, it is recommended that those landowners with existing single dwellings in the West End Residential Zone be invited to register the additional use of "Single House" in TPS 5 Appendix 2. When these lots are redeveloped for other uses, the listing could then be deleted through omnibus scheme amendments when available.

- b) "Hotel" and "Motel" both permitted as an "SA" use;

While not appropriate in most residential areas, it is considered appropriate that a variety of short-term accommodation options be promoted in this area.

- c) "Grouped Dwelling" and "Multiple Dwelling" listed as "AA" uses;

Grouped and multiple dwellings are both considered desirable accommodations styles, particularly when configured as mixed use developments. Grouped dwellings are listed as an "AA" instead of a "P" use due to the additional size and bedroom number constraints imposed on these dwellings in the West End Residential Zone.

Multiple dwellings are listed as "AA" uses instead of "SA" as in a Residential Zone as it is considered unnecessary for Council to advertise such a proposed development given the particular character proposed for the West End Residential Zone.

#### **Industry and Commerce Uses**

Industrial and commercial uses considered likely to have off-site impacts, i.e. noise and other emissions, to be prohibited in a similar manner to that adopted in the Residential Zone.

The West End Residential Zone is to retain a predominantly residential character and it is recommended that land uses with the potential for off-site emissions be restricted in the same manner as in the Residential Zone. The proposed zoning table is therefore identical to the existing Residential zone apart from the inclusion of "Market" and "Shop" uses being listed as "SA" rather than being prohibited.

The ability for Council to consider and approve shops and markets in this area is considered appropriate as these uses, while generally inappropriate in a normal Residential Zone, are compatible with the LUMP goals for the area of supporting the adjacent Town Centre and Tourist Zones, while creating an environment more attractive to short-term than permanent residential uses due to the development of additional activity generators.

#### **Health, Welfare & Community Services**

The land uses in this category are to be permitted in a similar manner as in the Residential Zone, with the following modifications:

- a) "Carpark," "Emergency Services," and "Public Mall" listed as an "SA" use;

While not appropriate in a Residential Zone, these uses are considered appropriate in the West End Residential Zone for the following reasons:

- The development of additional car parking facilities may be necessary due to additional demand resulting from the increased activity generated in this and adjacent zones;
- As this land is in close proximity to the foreshore reserve and district public open space, it may be appropriate to develop public malls to encourage non-vehicular access to these areas, particularly at the eastern section of the Study Area that is in close proximity to turtle nesting beaches;
- The relocation of the Port Hedland Regional Hospital to South Hedland, and the potential for an increased residential and visitor population in this zone makes the development of new emergency services facilities in this area a matter that should remain within the ability of Council to consider.

- d) "Child Care Service," "Nursing Home" and "Place of Public Meeting, Assembly or Worship" listed as prohibited uses;

Children and elderly persons are both identified as at-risk populations by the DoH and EPA and it is therefore recommended that each be prohibited in the Subject Area.

In their primary role, places of public meeting, assembly or worship do not specifically attract identified at-risk groups and it is their ancillary functions that result in their recommended exclusion from the Subject Area. Buildings used for public meetings generally also provide such services as child-minding or crèche and it is this use that conflicts with the LUMP recommendations. It is acknowledged that Council could attempt to control such uses through conditional planning approvals, however such conditions would be difficult to enforce, leading to the undermining of the general principles established for the Study Area and therefore these uses are recommended to be excluded from the Study Area.

#### **Entertainment, Recreation & Culture**

It is recommended that these uses be regulated in a similar manner as in the Residential Zone, with the exception that "Entertainment Venue" be listed as an "SA" use instead of being prohibited. Council could then consider any application for such a development and only approve where it is satisfied that the design is not likely to attract use by children or elderly persons.

7. That the internal floor space restriction of 110 m<sup>2</sup> recommended in the LUMP be defined in TPS 5 as Plot Ratio as defined in the *Residential Design Codes of Western Australian 2008*.



It is acknowledged that the *LUMP* refers to "internal floor area," however, in converting this policy recommendation into a statutory framework, it is recommended that the clearly defined and accepted definition established in the *R Codes* be included rather than creating a new technical definition for "internal floor space." Adopting this definition meets the intent of the *LUMP* recommendation, while providing a clear definition for developers and Council.

## 6.1 Local Planning Policy

As noted in the introduction to this Strategy, the *Land Use Master Plan* recommends the use of both a Local Planning Policy and Design Guidelines to provide the detailed planning assessment tools required for any new development in the Study Area. The *LUMP* anticipates that the Policy will address dust, noise and amenity issues, and that the Guidelines will add further detailed consideration of dust and noise mitigation and amenity issues.

Part V of the *Town of Port Hedland Town Planning Scheme No. 5* establishes the method for adopting Local Planning Policies and describes its relationship to the Scheme. It is not proposed to amend these provisions through this process.

A local planning policy is a document that provides guidance to both developers in preparing, and Council in assessing applications for planning approval. Notwithstanding its lack of statutory authority, an appropriately drafted and consistently applied local planning policy will provide a robust planning instrument that resists challenge to core principles.

In accordance with the *LUMP* recommendation, it is proposed that the *West End Residential Local Planning Policy* adopt an acceptable development/performance criteria format similar to the *R Codes*. This approach is recommended as it will encourage developers to develop innovative projects and giving Council the ability to consider these proposals in a manner consistent with the overall policy principles. It is recommended that this local planning policy address the following matters:

1. Guidance on the development of the following land uses to ensure adequate protection of residential amenity:
  - Market
  - Shop
  - Carpark
  - Emergency Service
  - Public Mall
  - Entertainment Venue
2. Provide guidance on subdivision, e.g. minimum lot sizes and potential development bonuses for amalgamating lots.
3. Establish acceptable built form standards, including colour palates, roof pitch, external building materials and cladding.
4. Acceptable landscaping and fencing standards.
5. Mitigating dust impacts through the hermetically sealing of building openings and appropriate air filtering for air conditioners.
6. The location of clothes-drying areas.
7. Reducing the minimum private open space requirement.

It is recommend that the design guideline component of the *West End Residential Local Planning Policy* be incorporated as a discrete section to the Policy and be structured in such a manner that it provides further design guidance on matters addressed in the Policy body.

It is anticipated that additional work currently in progress by the Urban Design Centre, RPS Koltasz Smith and Whelans Town Planners specifically relating to development in the Subject Area will inform the detail of these guidelines with respect to matters such as detailed amenity issues (e.g. colour palettes, roof pitches, wall cladding) and dust and noise mitigation measures.

*The West End Residential Local Planning Policy* should be progressed as a matter of priority to coincide with final gazettal of this amendment in order to guide Council in its decision making and provide developers with greater certainty of Council's desired form of development for the Subject Area.

## **7.0 CONCLUSION**

It is anticipated that, at the completion of this process, the long-term planning goals for this area already agreed by relevant stakeholders will be translated into a statutory and policy framework that provides clear and unambiguous guidance to all decision-makers responsible for this land in a variety of roles. The certainty provided by this process by local and state government will then provide developers, landowners and occupiers (both residential and non-residential) with the confidence to commit to the redevelopment of this precinct.

This strategy provides the first stage in addressing the comprehensive planning required for the Study Area. In addressing the affected residential-zoned land, this amendment and subordinate planning documents aim to set a sustainable development standard that achieves the multiple goals for the West End as stated in the *Land Use Master Plan*, namely to produce a vibrant community that is sensitive to the adjacent industry and port activities.

It is anticipated that at the completion of this strategy, the final form of the Scheme Amendment and Local Planning Policy will provide a framework for further amendments to address residential development in other zones in the West End, thereby guiding new development in the existing town centre and tourist zones.

**PLANNING AND DEVELOPMENT ACT 2005****Town of Port Hedland  
Local Planning Scheme No. 5  
Amendment No. 22**

The Town of Port Hedland under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005, hereby amends the above Town Planning Scheme by:

8. Rezoning the land bounded by Anderson, Withnell, Sutherland and Taplin Streets Port Hedland currently zoned "Residential" to "West End Development" with an applied density code of "Minimum R30" as depicted on the amendment map;
9. Rezoning the land bounded by Sutherland, Withnell, McKay and Anderson Streets from "Residential" to "Town Centre" as depicted on the amendment map;
10. Amending the Scheme text by:
  - i) Inserting section "3.1 (a) iv. West End Development"
  - ii) Inserting as section 6.6:
    - 6.6.1 The purpose of the West End Development Zone is to establish a predominantly residential zone in which dwellings are designed and constructed in such a way as to be unsuitable for occupation by families with children or by elderly persons.
    - 6.6.2 Development within the West End Development Zone shall be in accordance with any local planning policy, development plan or design guideline adopted by Council for this zone.
    - 6.6.3 Notwithstanding anything contained within the Residential Design Codes, all residential development in the West End Development Zone shall comply with the following:
      - 6.6.3.1 The maximum plot ratio for all dwellings is 110 m<sup>2</sup>
      - 6.6.3.2 No dwelling shall have greater than two (2) bedrooms or rooms capable of being used as bedrooms
    - 6.6.4 Council shall only support the subdivision of land in the West End Development Zone where new lots are designed to accommodate the construction of grouped dwellings.
    - 6.6.5 The West End Development Zone has no prescribed maximum residential density. The R30 minimum density coding is prescribed to ensure efficient use of available land and prevent the development of additional single dwellings within this zone.
    - 6.6.6 When considering an application for planning approval for any development containing residential development, Council shall consider impact on streetscape, building setbacks from the boundary, open space and outdoor living provision, car parking provision and any other matter it deems appropriate prior to determining the application.
    - 6.6.7 Council shall require as a condition of any planning approval granted for land in the West End Development Zone that the following notice be attached to all relevant Certificates of Title
    - 6.6.8 Where any lot is listed in Appendix 2 – Additional Development and uses with the additional use of "Single Dwelling," clause 6.6.3 shall not apply.
  - iii) Renumbering the succeeding sections accordingly;
  - iv) Inserting the following column in the Zoning Table:



ZONING TABLE		West End Development																
26	Industry – Rural	~																
27	Industry – Service	~																
28	Industry – Resource Processing	~																
29	Infrastructure	AA																
30	Stockyard	~																
31	Storage Facility/Depot/Laydown Area	~																
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<b>Health, Welfare &amp; Community Services</b>																		
51	Carpark	SA																

ZONING TABLE		West End Development																
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53	Community Use	SA																
54	Consulting Rooms	SA																
55	Education Establishment	SA <sup>1</sup>																
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57	Funeral Parlour	~																
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60	Medical Centre	~																
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66	Public Utility	AA																
<b>Entertainment, Recreation &amp; Culture</b>																		
67	Equestrian Centre	~																
68	Entertainment Venue	SA																
69	Private Recreation	SA																
70	Public Recreation	AA																

The symbols used in the zoning table have the following meanings:

- P The development is permitted by the Scheme
- AA The development is not permitted unless the Council has granted planning approval
- SA The development is not permitted unless the Council has granted planning approval after giving notice in accordance with clause 4.3
- IP The development is not permitted unless the use to which it is put is incidental to the predominant use as decided by Council

~ A development that is not permitted by the Scheme

<sup>1</sup> Within the West End Development Zone, the definition of "Education Establishment" is read to include only those establishments providing adult education.

4. Amending the Scheme Map accordingly.

Dated this ..... day of ..... 20.....

.....  
Chief Executive Officer

**ADOPTION**

Adopted by resolution of the Council of the Town of Port Hedland at the ..... Meeting of the Council held on the ..... day of ..... 2009.

.....  
Mayor

.....  
Chief Executive Officer



**FINAL APPROVAL**

Adopted for final approval by resolution of the Council of the Town of Port Hedland at the ..... Meeting of the Council held on the ..... day of ..... 2009 and the Common Seal of the Town was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....  
Mayor

.....  
Chief Executive Officer

**Recommended/Submitted for Final Approval**

.....  
Delegated under S.16 of PD Act 2005

.....  
Date

**Final Approval Granted**

.....  
Minister for Planning

.....  
Date

*11.2.2.2 Proposed Road Closures and Relinquishment of Reserves 43115 & 34591 to Facilitate Wedgefield Expansion (File No.: 05/12/0119, 119512G, 130264G)*

<b>Officer</b>	Luke Cervi Planning Officer
<b>Date of Report</b>	8 April 2009
<b>Application Number</b>	2009/145
<b>Disclosure of Interest by Officer</b>	Nil

Summary

Council has received a request from LandCorp to close two road reserves and relinquish two other reserves to facilitate the expansion of Wedgefield. The land would be included in the LandCorp industrial land release program.

Background

LandCorp is involved in the development and release of Crown land to the private market. Council has previously (meeting of the 13 August 2008) relinquished Reserve 43881 (Lot 5873 Schillaman Street, Wedgefield) to facilitate the proposal and it is now requested that the following land be made available to LandCorp:

1. Moorambine Street Road Reserve – Being 1.0046ha of the unconstructed portion of Moorambine Street east of Lot 2510 (represented by the number 1 on Attachment 1).
2. Schillaman Street Road Reserve – Being 3354m<sup>2</sup> of the portion of Schillaman Street east of Lots 5857 & 5874 (represented by the number 6 on Attachment 1).
3. Reserve 43115 – Being Lot 5858 on Plan 191016 and consisting of 2.8898ha reserved for the purpose of drainage (represented by the number 4 on Attachment 1).
4. Reserve 34591 – Being Lot 5859 on Plan 191016 and consisting of 6.35ha reserved for the purpose of Tree and Plant Nursery. (represented by the number 5 on Attachment 1).

1, 2 & 3 above are identified as Local Scheme Reserves. 1 & 2 are “Local Road” and 3 is “Parks & Recreation”. 4 above is “industry” zoned land.

Consultation

Nil

### Statutory Implications

The closure of Roads is dealt with under Section 58 of the *Land Administration Act 1997* which is administered by State Land Services.

The sale of Crown land is dealt with by Part 6 of the *Land Administration Act 1997* which is administered by State Land Services.

Policy Implications Nil

### Strategic Planning Implications

Key Result Area 4 – Economic Development  
Goal Number 4 – Land Development Projects  
Strategy 1 – Fast-track the release and development of commercial, industrial and residential land in a sustainable manner including:

- South Hedland New Living Developments
- South Hedland CBD developments

Key Result Area 4 – Economic Development  
Goal Number 4 – Land Development Projects  
Strategy 2 – Work with the DPI to identify additional crown land that can be released for development in a timely manner.

Budget Implications Nil

### Officer's Comment

The land is not being used to its full development potential. Given the shortage of industrial land and the Key Result Areas identified in Council's Plan for the future, it would seem appropriate to relinquish the reserves making them available to LandCorp for development.

Of the land sought by LandCorp, the following comments are provided:

1. Moorambine Street Road Reserve – This road reserve has not been constructed and there appears to be no short term need for it to be constructed. The road does provide the only means of access to two lots but these lots will also be included in the LandCorp development and appropriate access provided.
2. Schillaman Street Road Reserve – This land contains a gravel road that joins the Great Northern Highway south of the Shell Service Station. The road is not constructed within a road reserve but is constructed over Crown Land. Council may wish to retain some of the land as road reserve to ensure the road remains a "through road".

3. Reserve 43115 – This land provides some drainage function and will require significant earthworks to enable development. It is recommended that appropriate drainage works and easements are provided to the satisfaction of the Manager Engineering Services.
4. Reserve 34591 – There are no visible signs of this land being used for the reserved purpose of Tree and Plant Nursery or other purpose.

Attachments

Site Plan

Inventory list of land sought for development for Industrial Purposes by LandCorp

200809/330 Council Decision/Officer's Recommendation

**Moved:** Cr A A Gear

**Seconded:** Cr K A Howlett

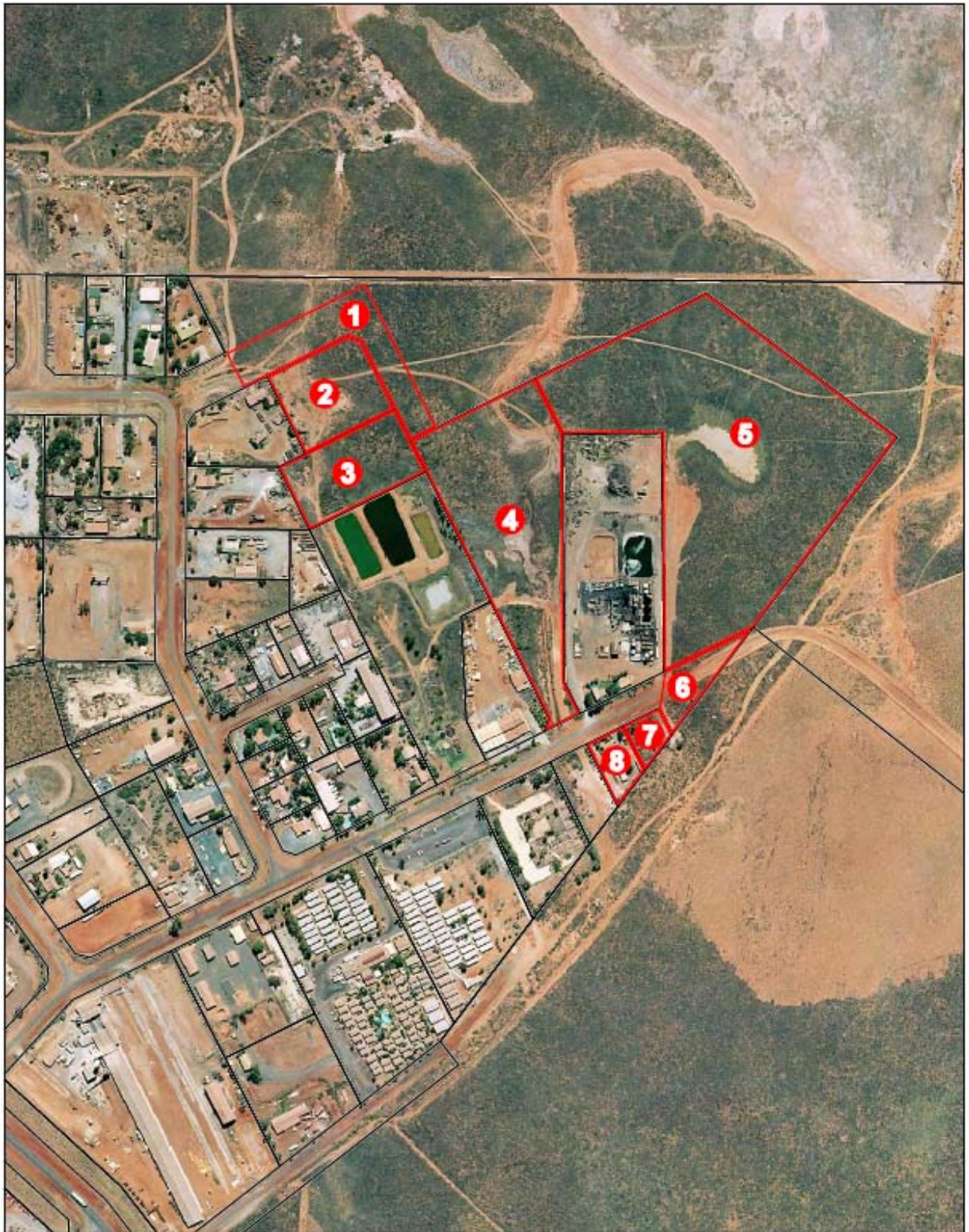
That Council:

- i) In accordance with the *Land Administration Act 1997* and *Land Administration Regulations 1998*, request the Department for Planning and Infrastructure – State Land Services:
  - a. **Close the unconstructed portion of Moorambine Street east of Lot 2510.**
  - b. **Close the portion of Schillaman Street east of Lots 5857 and 5874.**
- ii) Advise the Department for Planning and Infrastructure – State Land Services and LandCorp that Council will not object to an application to Department of Planning and Infrastructure – State Land Services to secure tenure over the closed road reserves for industrial purposes subject to the land being appropriately zoned.
- iii) Advises the Department for Planning and Infrastructure – State Land Services and LandCorp that:
  - a. **Reserve 43115, being Lot 5858 on Plan 191016 is used for drainage purposes. Council is only willing to relinquish the vesting subject to drainage works and/or creation of easements being undertaken to the satisfaction of the Manager Engineering Services.**

- b. Council has no requirement for Reserve 34591, Lot 5859 on Plan 191016. Council support the relinquishment of the reserve so that it can be developed for Industrial purposes.**
- c. Council will not object to an application to Department of Planning and Infrastructure – State Land Services to secure tenure over Lots 5858 and/or 5859 on Plan 191016 for industrial purposes.**

*CARRIED 6/0*

ATTACHMENT 1 TO AGENDA ITEM 11.2.2.2



Base Data Supplied by Landsat/Aerial Photography Dated 2004



0 100 200m  
1:50,000@A4 3414\_7-4-001 November 2008

### IDENTIFIED SITES

Wedgefield Industrial Estate

**RPS** **koltas** **smith**  
TOWN PLANNING PROJECT MANAGEMENT URBAN DESIGN DEVELOPMENT CONSULTING  
141 Birchwood Road BUREWOOD WA 6100 Tel: (08) 9486 2322 Fax: (08) 9486 2323  
PO Box 127 BUREWOOD WA 6100 Email: [enquiries@rps.com.au](mailto:enquiries@rps.com.au)

## ATTACHMENT 1 TO AGENDA ITEM 11.2.2.2

Map Reference	Area	Lot Number	Plan No	Owner	Status
Site 1	1.0046 ha	-	-	Under the control of the Town of Port Hedland	Road Reserve
Site 2	8686 m <sup>2</sup>	1639	-	State of WA	UCL
Site 3	9185 m <sup>2</sup>	1640	-	State of WA	UCL
Site 4	2.8898 ha	5858	Plan 191016	Department for Planning and Infrastructure	Currently vested with the Town of Port Hedland for the purpose of Drainage (LR3099-742, Reserve No. 43115)
Site 5	6.35 ha	5859 - Schillaman Street	Plan 191016	State of WA	Reserve for the purpose of Tree and Plant Nursery (Reserve No. 34591)
Site 6	3354 m <sup>2</sup>	-	-	Under the control of the Town of Port Hedland	Road Reserve
Site 7	1629 m <sup>2</sup>	5874 - Schillaman Street	-	State of WA	Crown Land. Compass Group are also looking at this lot in conjunction with Lot 17. LandCorp would have priority over this land.
Site 8	2543 m <sup>2</sup>	5873 - Schillaman Street	-	Department for Planning and Infrastructure	Currently vested with the Town of Port Hedland for the purpose of 'Clubs'. Council resolution dated 13 August 2008 resolving to relinquish reserve back to DPI. (LR3053-595, Reserve No. 43881)

3414-7 Updated Land Schedule 311008

*11.2.2.3 Proposed Partial Road Closure – Abydos Place, Wedgefield (File No.: 2008/107)*

<b>Officer</b>	Luke Cervi Planning Officer
<b>Date of Report</b>	11 May 2009
<b>Disclosure of Interest by Officer</b>	Nil

Summary

Council has received a request from Mr Bill Dziombak to close approximately 20 metres of road at the eastern end of Abydos Place. The road reserve is 20.12 metres in width which equates to approximately 400m<sup>2</sup> of land in total. This land would be incorporated into lot 103 P57298 (shown as lots 2062 & 2063 on attachment 1).

Background

The applicant has advised that the closing of this portion of Abydos Place would greatly increase accessibility and parking which in turn would increase safety. The road currently comes to a dead end with no formal turning circle.

Consultation

Consultation with Council's Engineering Department has been undertaken.

Statutory Implications

Section 58 of the *Land Administration Act 1997* and regulation 9 of the *Land Administration Regulations 1998* establish the procedure for closing a road.

The subsequent sale of the Crown land is undertaken by State Land Services on behalf of the Minister in accordance with Part 6 of the *Land Administration Act 1997*.

The Town of Port Hedland Delegation 40 (12) states:

*“The Director Regulatory and Community Services may forward Road Closure Applications direct to the Department of Land Administration in the event of:*

- (i) there being no comment received during the statutory advertising period; and*
- (ii) the proposal being of an uncontentious nature.”*



The date of Council's consideration of the Road Closure Action following conclusion of the advertising period shall be the date of the next Council Ordinary Meeting

Policy Implications Nil

Strategic Planning Implications

The following sections of the Strategic Plan 2008-2013 are relevant to the proposal:

Key Result Area 1 – Infrastructure

Goal Number 1 – Roads, Footpaths and Drainage

Strategy 1 – Ensure that Council's core community infrastructure assets are being managed appropriately through the implementation of the following Council Five-Year programs:

- Footpath development program
- Resealing Program
- Kerb development/replacement program
- Drainage upgrade program
- Playground upgrade program

Strategy 4 – Progressively implement the recommendations from road safety audits that have been completed.

Budget Implications

Nil. However, Council's Engineering Department have identified that upgrade works should be considered in the next budget.

Officer's Comment

The section of Abydos Place proposed to be closed is not required for public purposes and does not provide frontage or access to any lot other than the land it is proposed to be incorporated with. The road currently does not have a constructed turning area and this will remain the case for the short term.

The applicant has advised that the land would greatly increase accessibility and parking which in turn would increase safety. It would also increase the size of the land and create a regular rectangular lot which would likely increase the opportunities for further development of the land.

Options

Council has the following options for responding to the request:

1. Support the request for closure of part of the Abydos Place Road Reserve.
2. Reject the request for closure of part of the Abydos Place Road Reserve.

It is recommended that Council support the closure of part of the Abydos Place Road Reserve.

Attachments

1. Aerial Photograph
2. Site Plan

200809/... Officer's Recommendation/Council Decision

**Moved:** Cr A A Gear

**Seconded:**

That Council:

- i) Advise the applicant it supports the closure of that part of Abydos Place Road Reserve bounded by Lot 103.
- ii) In accordance with the *Land Administration Act 1997* and *Land Administration Regulations 1998*, request the Department for Planning and Infrastructure – State Land Services close that part of Abydos Place Road Reserve bounded by Lot 103.

*MOTION WITHDRAWN*

200809/... Council Decision

**Moved:** Cr G D Bussell

**Seconded:** Cr ...

That Council:

- i) advise the applicant it supports the closure of that part of Abydos Place Road Reserve bounded by Lot 103;
- ii) in accordance with the *Land Administration Act 1997* and *Land Administration Regulations 1998*, request the Department for Planning and Infrastructure – State Land Services close that part of Abydos Place Road Reserve bounded by Lot 103; and
- iii) investigate Council's ability to seek compensation from the State Government for improvements to Lot 103 Abydos Place Road Reserve being relinquished by Council.

*MOTION LAPSED FOR WANT OF SECONDER*

200809/331 Officer's Recommendation/Council Decision

**Moved:** Cr K A Howlett

**Seconded:** Cr J M Gillingham

That Council:

- i) Advise the applicant it supports the closure of that part of Abydos Place Road Reserve bounded by Lot 103; and
- ii) In accordance with the *Land Administration Act 1997* and *Land Administration Regulations 1998*, request the Department for Planning and Infrastructure – State Land Services close that part of Abydos Place Road Reserve bounded by Lot 103.

*CARRIED 6/0*

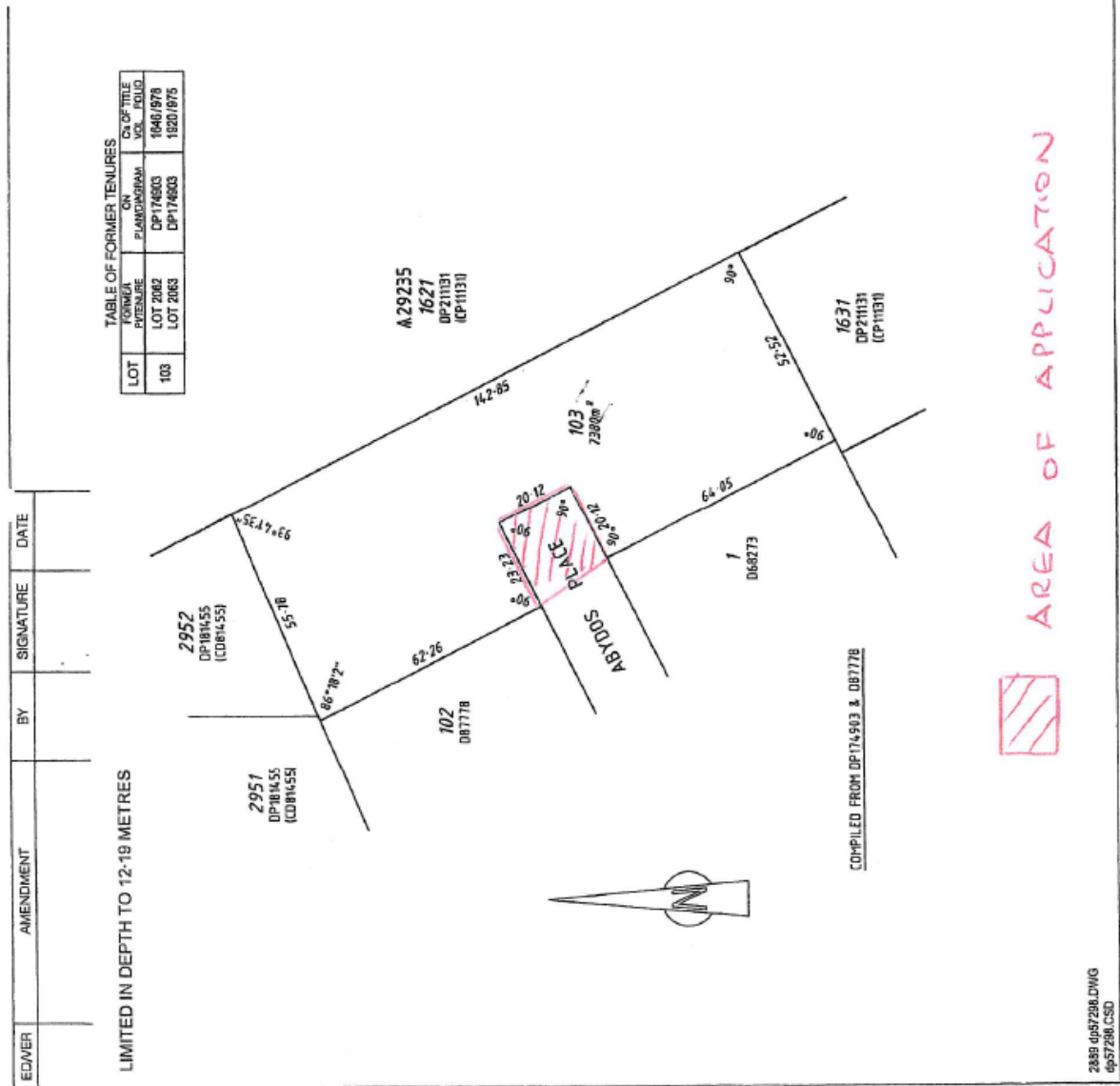
ATTACHMENT 1 TO AGENDA ITEM 11.2.2.3



ATTACHMENT 2 TO AGENDA ITEM 11.2.2.3

DP 57298

TYPE <b>FREEMHOLD</b>	FILE NO
PURPOSE <b>SUBDIVISION</b>	
PLAN OF <b>LOT 103</b>	
DISTRICT <b>FORREST</b>	TOWNSITE <b>PORT HEDLAND</b>
LOCAL AUTHORITY <b>TOWN OF PORT HEDLAND</b>	LOCALITY <b>WEDGEFIELD</b>
FORMER TENURE <b>SEE TABLE</b>	ON <b>BL66(2) 24-27 BL66(2) 25-27</b>
SCALE @ AS: 1:1000	FIELD BOOK <b>COMPILED</b>
<p>ALL DISTANCES ARE IN METRES</p>	
<p><b>SURVEYORS CERTIFICATE - Compiled</b></p> <p><b>I. D. BROGAN</b>                  I hereby certify that this compiled plan is:                  (a) a correct and accurate representation of the survey(s) of the subject land; and                  (b) in accordance with the relevant law in relation to which it is subject.</p> <p><i>I. D. Brogan</i>                  Licensed Surveyor Date <b>28 JUNE 07</b></p>	
DATE <b>28-JUN-07</b>	TYPE OF VALIDATION <b>THIS</b>
LOGGED	FULL ASSESSMENT <b>YES</b>
DATE <b>28-JUN-07</b>	LEGAL COMPONENT <b>THG</b>
FEE PAID <b>\$234.00</b>	DOCKET <b>01732-05/06</b>
ABLES IN <b>2545412</b>	CERTIFIED <b>YES</b>
	LEG <b>LEG</b>
	F.S.C. <b>NO</b>
<p><b>IN ORDER FOR DEALINGS</b></p> <p>SUBJECT TO</p>	
<p>APPROVED BY <b>WESTERN AUSTRALIAN PLANNING COMMISSION</b></p> <p>FILE <b>134391</b></p>	
<p>MAKJAP PTY LTD                  Consulting Engineers &amp; Surveyors                  111 Stirling Street, Perth                  PO Box 384 Port Hedland WA 6721                  Telephone: (08) 9173 1284                  Facsimile: (08) 9172 2884                  Email: pcomhd@makjap.com.au</p>	
<p>APPROVED BY <b>WESTERN AUSTRALIAN PLANNING COMMISSION</b></p> <p>FILE <b>134391</b></p>	
<p>Date of Issue: 30/07/2005</p> <p><i>[Signature]</i>                  08/07</p>	
<p><b>Landgate</b>                  Western Australian Land Information Authority</p>	
<p>DEPOSITED PLAN  <b>57298</b>                  ORIGINAL 1</p>	
<p>SHEET                  EDITION 1 VERSION 1</p>	



6:34 pm Mayor Stan R Martin declared a financial interest in Agenda Item 11.2.2.4 'Single House – R Code Variation – Shed and Carport Addition at Lot 4135, 33 Spoonbill Crescent, South Hedland' as he owns the house/property next door. Mayor Stan Martin left the room.

6:34 pm In the absence of the Mayor and Deputy Mayor, Chief Executive Officer called for nominations from elected members remaining in the room for a Chair for the duration of Council's consideration of Agenda Item 11.2.2.4 'Single House – R Code Variation – Shed and Carport Addition at Lot 4135, 33 Spoonbill Crescent, South Hedland'.

200809/332 Council Decision

**Moved:** Cr G D Bussell

**Seconded:** Cr J M Gillingham

That Councillor Arthur Gear be appointed the presiding officer for the duration of Council's consideration of Agenda Item 11.2.2.4 'Single House – R Code Variation – Shed and Carport Addition at Lot 4135, 33 Spoonbill Crescent, South Hedland' in accordance with Section 5.14 of the Local Government Act.

*CARRIED 5/0*

6:35 pm Councillor Jan M Gillingham declared an impartiality interest in Agenda Item 11.2.2.4 Single House – R Code Variation – Shed and Carport Addition at Lot 4135, 33 Spoonbill Crescent, South Hedland. Councillor Gillingham disclosed that she has an association with the applicant and family. As a consequence, there may be a perception that her impartiality on the matter may be affected. Councillor Gillingham declared that she will consider this matter on its merits and vote accordingly.

*11.2.2.4 Single House – R Code Variation – Shed and Carport Addition at Lot 4135, 33 Spoonbill Crescent, South Hedland (File No.: 153540G)*

<b>Officer</b>	Luke Cervi Planning Officer
<b>Date of Report</b>	19 May 2009
<b>Application Number</b>	2009/85
<b>Disclosure of Interest by Officer</b>	Nil

#### Summary

The application is for additions to a Single House. The additions do not comply with the R Codes and has been recommended for refusal. The application has been reported to Council for determination.

#### Background

Council received an application for additions to a single house on the 25 February 2009. The additions are for a 6m x 4m x 2.7m shed and a 6m x 6m x 2.588m carport. The application did not meet with R Code requirements and further information was requested. The additional information provided still does not meet with the R Code requirements.

A site inspection revealed that construction works have commenced.

#### Consultation

Council officers have previously met and discussed the proposal with the owner and builder.

#### Statutory Implications

In accordance with the Planning and Development Act 2005, the proposed development is subject to the provisions of the Town Planning Scheme TPS 5.

#### Policy Implications

Nil

#### Strategic Planning Implications

The are no specific sections of the Plan for the Future relevant to this proposal.

## Budget Implications

Nil

## Officer's Comment

The application has not met with the following requirements of the R Codes:

### 6.2.3 Setback of garages and carports

Acceptable development standard A3.4 states:

*Carports within the street setback area, provided that the width of carport does not exceed 50 per cent of the frontage at the building line and the construction allows an unobstructed view between the dwelling and the street, right-of-way or equivalent.*

Furthermore, the explanatory notes of the R Codes quantify the acceptable development standard with:

*Because so many houses in established suburbs were built without provision for private motor vehicles.....consequently it is accepted that, where no feasible alternative exists, the street setback area may be used for carports and unroofed parking spaces.*

In this case the existing house does have an attached car port and there are other alternative locations for additional parking. Therefore the performance criteria should be considered. The performance criteria for Section 6.2.3 states:

*The setting back of carports and garages so as not to detract from the streetscape or appearance of dwellings, or obstruct views of dwellings from the street and vice versa.*

In this regard, it has been practice not to permit any buildings within 1.5m of a primary street setback due to amenity issues and traffic safety. The applicant was advised of this and amended plans requested. The amended plans show a primary street setback of 1.015m. This setback is considered unacceptable due to the adverse amenity and traffic safety impacts.

## Options

Council has the following options for dealing with the application:

- 1) Approve the application with or without conditions
- 2) Refuse the application



If Council decides to approve the application it is recommended the following conditions be imposed:

1. *This approval relates only to the proposed Single House – R Code Variation (Shed and Carport addition) and other incidental development, as indicated on the approved plans. It does not relate to any other development on this lot.*
2. *This approval to remain valid for a period of twenty-four (24) months if development is commenced within twelve (12) months, otherwise this approval to remain valid for twelve (12) months only.*
3. *The colours and materials of the proposed carport shall match the existing dwelling where possible, to the satisfaction of the Manager Planning.*
4. *The carport shall remain open (no doors or walls) at all times.*
5. *The design levels of the proposed carport shall be submitted with the building license application, and shall be to the satisfaction of the Manager Planning.*
6. *Stormwater disposal to be designed in accordance with Council's Engineering Department Guidelines, and all to the satisfaction of the Manager Planning.*

**FOOTNOTE:**

1. *You are reminded that this is a Planning Approval only and does not obviate the responsibility of the developer to comply with all relevant building, health and engineering requirements.*
2. *The applicant/owner is required to lodge an application for a Building Licence under the provisions of the Building Regulations and approval from the City before commencing any works whatsoever.*
3. *You are advised that drawings submitted for Building Licence are to be properly drawn and signed by a practising structural engineer. It should be noted that two storey dwellings must be accompanied by a completed Certificate of Structural Sufficiency.*
4. *The developer to take note that the area of this application may be subject to rising sea levels, tidal storm surges and flooding. Council has been informed by the State Emergency Services that the one hundred (100) year Annual Recurrence Interval cycle of flooding*

*could affect any property below the ten (10)-metre level AHD. Developers shall obtain their own competent advice to ensure that measures adopted to avoid that risk will be adequate. The issuing of a Planning Consent and/or Building Licence is not intended as, and must not be understood as, confirmation that the development or buildings as proposed will not be subject to damage from tidal storm surges and flooding.*

5. *Applicant is to comply with the requirements of Worksafe Western Australia in the carrying out of any works associated with this approval.*

If Council decides to refuse the application, action should be commenced against the owners to have the land brought back into compliance.

#### Attachments

1. Aerial Photograph
2. Site and Elevation Plans

200809/... Council Decision/Officer's Recommendation

**Moved:** Cr G D Bussell

**Seconded:**

That Council:

- i) refuse application 2009/85 for a Single House – R Codes Variations (Shed and Carport addition) at Lot 4135, 33 Spoonbill Crescent, South Hedland on the following grounds:
  - a) the proposed carport will adversely impact the Spoonbill Crescent streetscape;
  - b) the proposed carport will adversely impact on traffic safety in the locality by reducing visibility; and
- ii) initiate proceedings to have the property brought back to compliance.

*MOTION WITHDRAWN*

200809/... Council Decision/Alternate Recommendation

**Moved:** Cr K A Howlett

**Seconded:**

That Council approves application 2009/85 for a Single House – R Codes Variations (Shed and Carport addition) at Lot 4135, 33 Spoonbill Crescent, South Hedland subject to the following conditions:

1. This approval relates only to the proposed Single House – R Code Variation (Shed and Carport addition) and other incidental development, as indicated on the approved plans. It does not relate to any other development on this lot.
2. This approval to remain valid for a period of twenty-four (24) months if development is commenced within twelve (12) months, otherwise this approval to remain valid for twelve (12) months only.
3. The colours and materials of the proposed carport shall match the existing dwelling where possible, to the satisfaction of the Manager Planning.
4. The carport shall remain open (no doors or walls) at all times.
5. The design levels of the proposed carport shall be submitted with the building license application, and shall be to the satisfaction of the Manager Planning.
6. Stormwater disposal to be designed in accordance with Council's Engineering Department Guidelines, and all to the satisfaction of the Manager Planning.

**FOOTNOTE:**

7. You are reminded that this is a Planning Approval only and does not obviate the responsibility of the developer to comply with all relevant building, health and engineering requirements.
8. The applicant/owner is required to lodge an application for a Building Licence under the provisions of the Building Regulations and approval from the City before commencing any works whatsoever.
9. You are advised that drawings submitted for Building Licence are to be properly drawn and signed by a practising structural engineer. It should be noted that two storey dwellings must be accompanied by a completed Certificate of Structural Sufficiency.

10. The developer to take note that the area of this application may be subject to rising sea levels, tidal storm surges and flooding. Council has been informed by the State Emergency Services that the one hundred (100) year Annual Recurrence Interval cycle of flooding could affect any property below the ten (10)-metre level AHD. Developers shall obtain their own competent advice to ensure that measures adopted to avoid that risk will be adequate. The issuing of a Planning Consent and/or Building Licence is not intended as, and must not be understood as, confirmation that the development or buildings as proposed will not be subject to damage from tidal storm surges and flooding.
11. Applicant is to comply with the requirements of Worksafe Western Australia in the carrying out of any works associated with this approval.

*MOTION LAPSED FOR WANT OF SECONDER*

200809/333 Council Decision/Officer's Recommendation

**Moved:** Cr S J Coates

**Seconded:** Cr G D Bussell

That Council:

- i) refuse application 2009/85 for a Single House – R Codes Variations (Shed and Carport addition) at Lot 4135, 33 Spoonbill Crescent, South Hedland on the following grounds:
  - a) **the proposed carport will adversely impact the Spoonbill Crescent streetscape;**
  - b) **the proposed carport will adversely impact on traffic safety in the locality by reducing visibility; and**
- ii) initiate proceedings to have the property brought back to compliance.

*CARRIED 3/2*

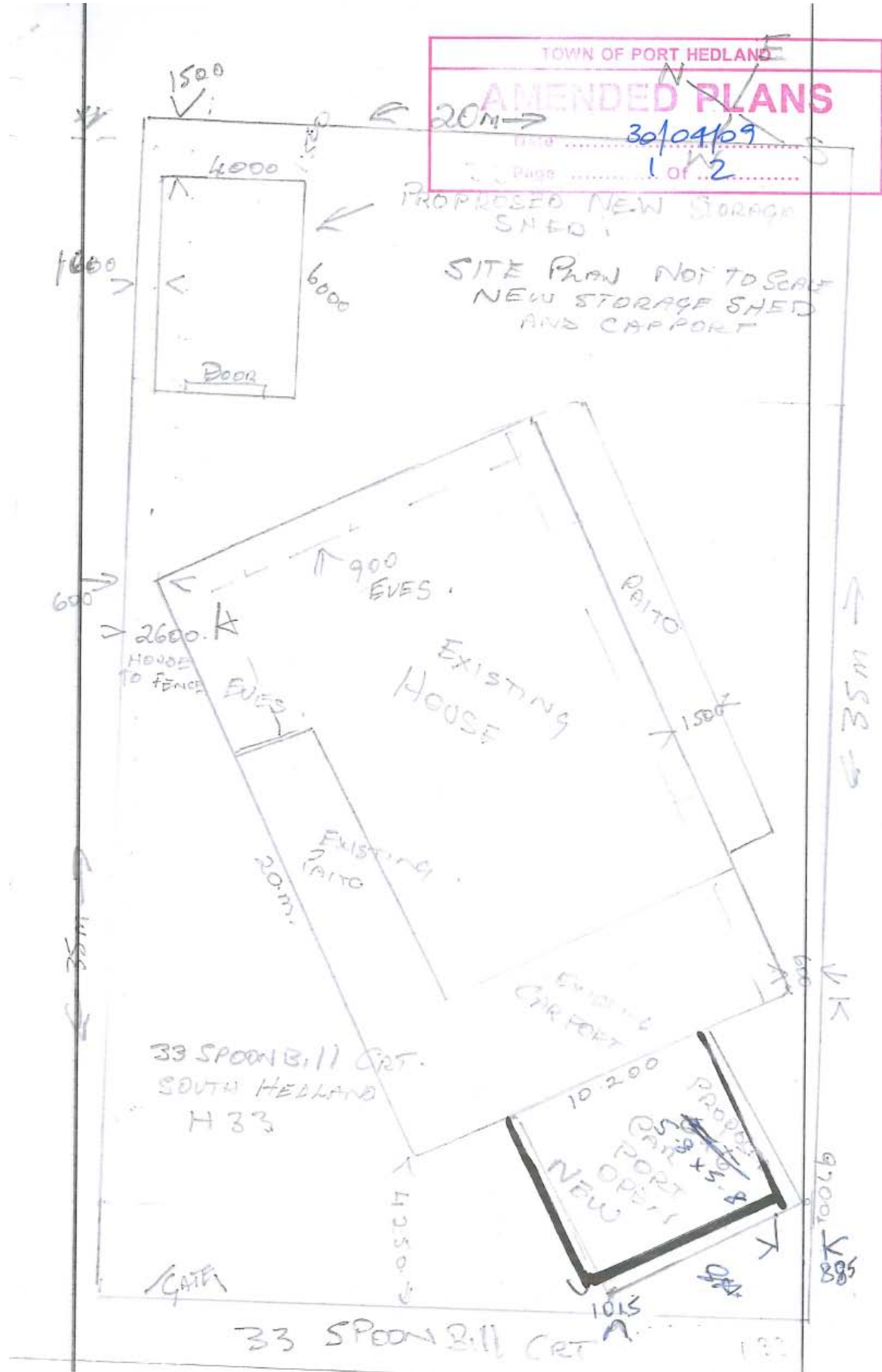
6:41 pm Mayor Stan R Martin re-entered the room and assumed his chair. Councillor Arthur A Gear, appointed as Presiding Officer for Council's consideration of Item 11.2.2.4.

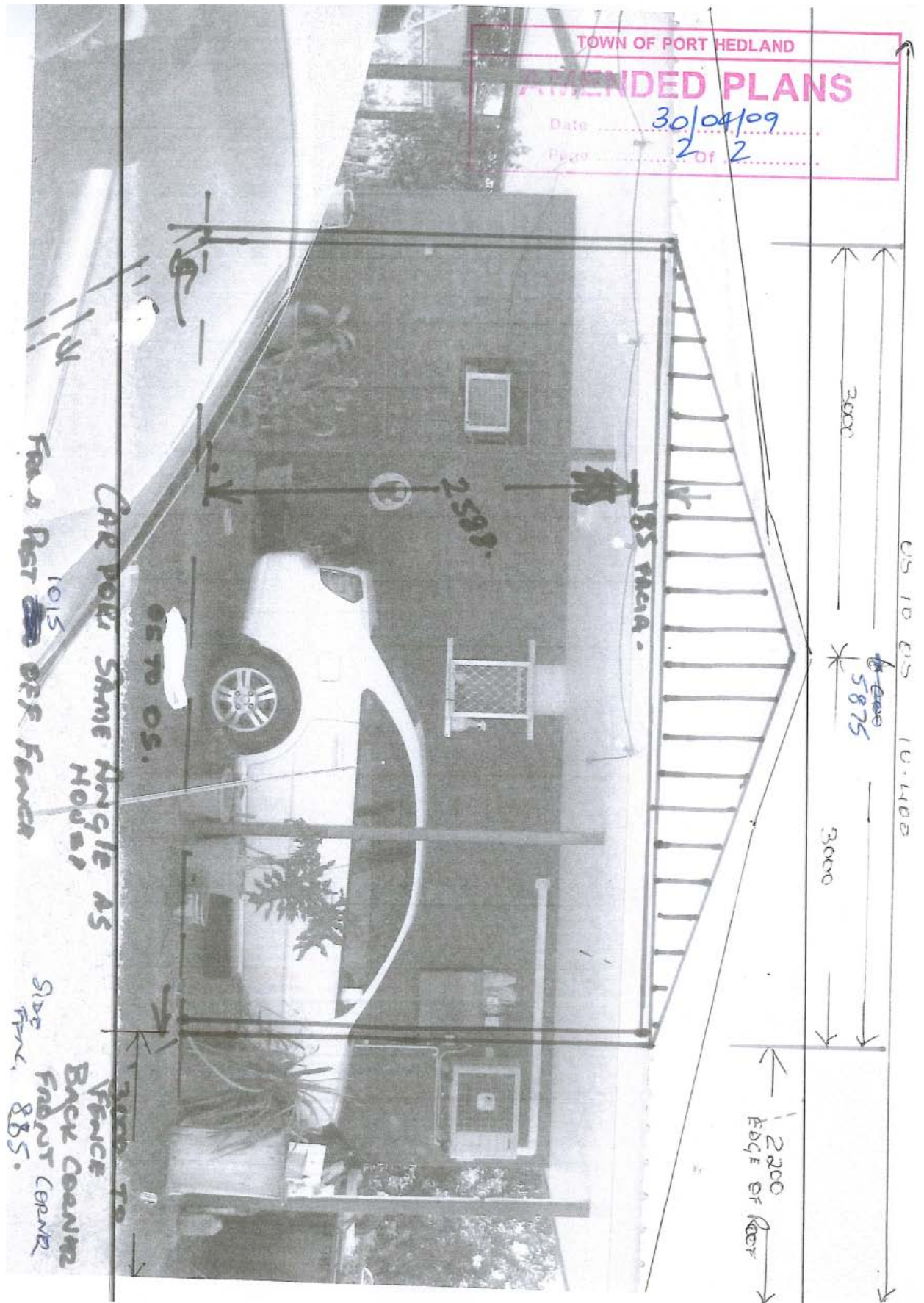
6:41 pm Councillor Arthur A Gear advised Mayor Stan R Martin of Council's decision and resumed his chair.

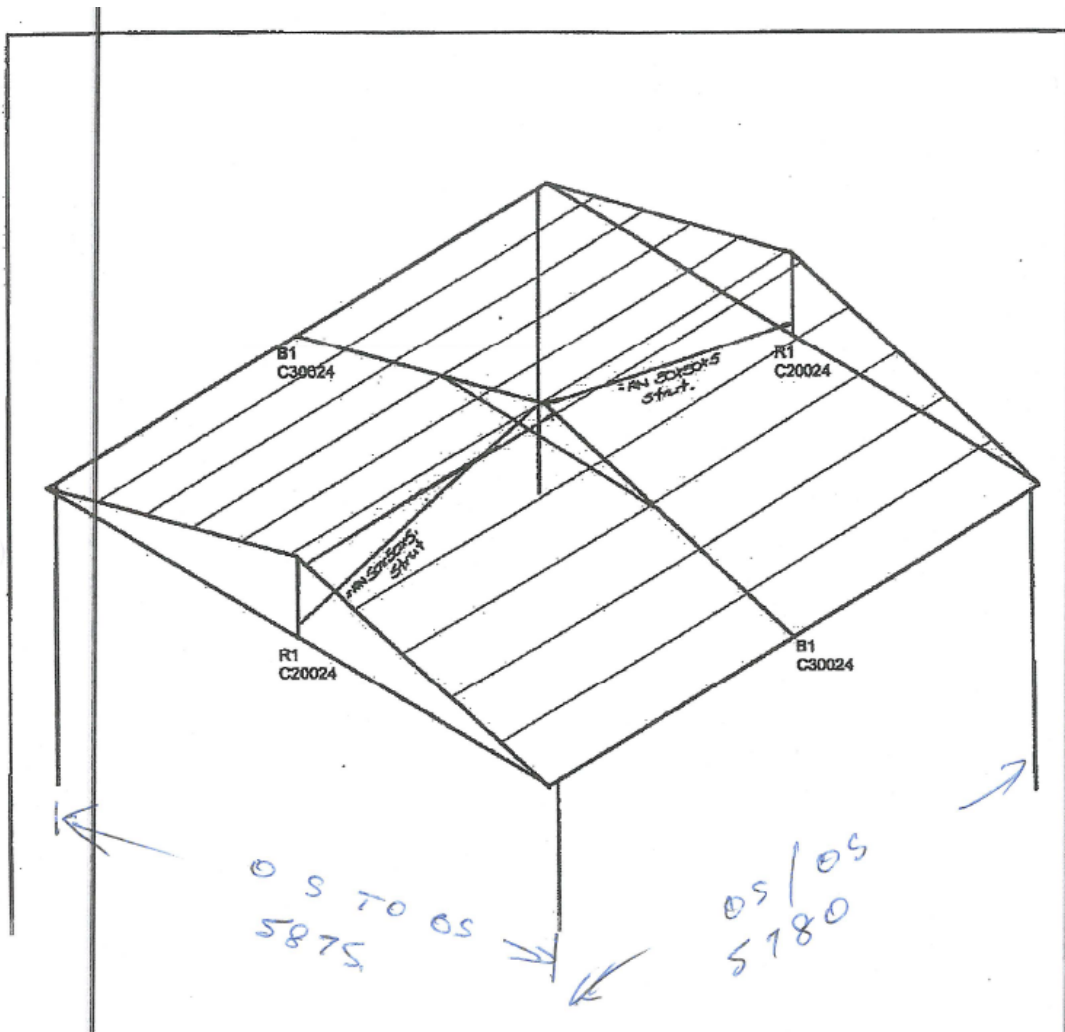
ATTACHMENT 1 TO AGENDA ITEM 11.2.2.4



ATTACHMENT 2 TO AGENDA ITEM 11.2.2.4









*11.2.2.5 Single House – R Code Variation – shed exceeding the R- Code requirement for the height at 3.5m [(6m X 12m(72m<sup>2</sup>)] and a consideration of a carport 24m x 13m x 3.5m as well as a retrospective approval for a shed 8m x 7.8m x 4m at Lot 17 (6 – 8) Manilha Drive Turner River (File No.: 800118G , 2009/172)*

**Officer** Leonard Long  
Planning Officer

**Date of Report** 20 May 2009

**Disclosure of Interest by Officer** Nil

#### Summary

Council has received an application from Ken Whiteman of Lot 17 (6 – 8) Manilha Drive Turner River, seeking planning approval for the construction of a outbuilding (shed) 6m x 12m x 3.5m (72m<sup>2</sup>) with an attached carport 24m x 12m x 3.5m (288m<sup>2</sup>). Attachment 1. As well as the retrospective approval of the existing 8m x 7.8m x 4m (62m<sup>2</sup>) shed.

In terms of the delegations as approved by Council on 13 December 2006, the Director Regulatory and Community Services may not approve any shed that exceeds 100m<sup>2</sup> in extent. The combined size of the proposed shed as well as the existing shed measures 134m<sup>2</sup>. The entire under roof area consisting of the proposed shed (72m<sup>2</sup>), existing shed (62m<sup>2</sup>) and proposed carport (288m<sup>2</sup>) measures 422m<sup>2</sup> in extent.

#### Background

##### *The site*

The site is included in the Rural Residential zone under the Town of Port Hedland Planning Scheme No.5 (TPS5), and has an area of 10 100m<sup>2</sup> (1,0100ha). The other lots within the Turner River Estate also fall within the same zone, with the property south of the estate being in a “Rural” zone.

The lot is currently developed with a single house and an existing outbuilding of approximately 62m<sup>2</sup>. Council’s records have indicated that no approvals have been granted for the existing outbuilding on the lot.

*The Proposal*

The applicant has proposed to construct a “shed” which consists of a 6m x 12m x 3.5m (72m<sup>2</sup>) with an attached carport 24m x 12m x 3.5m (288m<sup>2</sup>), giving the proposed structure a bulk of 360m<sup>2</sup>, as the existing shed has not been considered by Council it is recommended that the existing shed 8m x 7.8m x 4m also be considered as part of this application. The applicant has provided the following justification for the proposed shed:

*“The shed is solely for storage of my own personal equipment being my 1971 Falcon Drag Car, 2005 F250, 2005 Ford Focus, 1988 Toyota Hilux Tray Top, 1989 Nissan Navara, 1 x 5m Poly Boat, 1x 3.7m Ally Boat, 1x 400cc Quad Bike, 4 x trailers and my intention is to buy a 25hp tractor with attachments to keep the fire break in good condition and weeds slashed and rotary hoe for the vegy patch, also have a caravan.”*

At a meeting on site with the applicant, concerns were discussed regarding the location of the “shed” being proposed closer to the road than the existing house, and the possible impact this would have on the streetscape. As a result of this meeting the applicant has provided the following further justification.

*“Planning Application - 6-8 Manilinha Drive, Turner River*

*Further to our recent request for planning and building consent to construct a shed on our property at Turner River it would be appreciated if the following could be taken into account.*

*When we purchased the block and began planning for house, sheds, and landscaping we approached Council for information on regulations and requirements. Our understanding from them was that Turner River was zoned Rural Residential and there were no planning regulations other than building 20m from front boundary and 10m from side boundary. We were given documentation relating to South Hedland Rural Estate (Bosna) and were told it was likely that Turner River would be the same. This information, combined with existing sheds built at Turner River – ie situated less than 20m from houses and often in front of houses – we went ahead and planned our block.*

*When we submitted our building application for our house it clearly showed the proposed shed (drawing dated 19/3/07) and there was no feedback from Council that the proposed location or size of shed would be unacceptable. As such we progressed with the location of the house to work in with the proposed shed. We commenced our planting programme in*

*line with our proposed plan, ensuring firebreaks were maintained.*

*As you will appreciate, we are now extremely disappointed that all our planning on the limited information that was provided by Council is being thrown into disarray. If we had been aware of Council's requirements back in 2007 when we originally applied for building consent for our house we would have certainly reviewed the house site and the shed site at that time and made any necessary location changes then.*

*Ideally we would like to build a 30m x 12m shed as shown on our plans but if absolutely necessary will reduce to 25m x 12m as indicated below.*

*Please find detailed below our justification for the proposed site of the shed:*

1. *Shed site chosen:*
  - to keep the existing buildings uniform*
  - to utilise existing services (power and water)*
  - close proximity to the house for garaging of vehicles*
  - allow residual land for planting of vegetable gardens etc. to create self-sufficient lifestyle*
  
2. *Planning in place:*
  - . row of trees already planted and well established along front of block to screen road (these include large neames and jacarandas) two rows of citrus, mango and pawpaw trees already planted for additional screening from road.*
  - . driveway realigned to allow further planting of poincianas and African mahogany trees to provide further screening from road (trees purchased but not yet planted) once shed is constructed and driveways finished, additional planting around house will further screen shed*
  
3. *Alternate sites for shed:*

*block has a fall of over 750mm from front to back therefore all water runs and pools in the rear half any flood waters encroach from the rear of the block via Boodarie flats a building site would have to be raised (at significant cost) to ensure shed doesn't flood cost to run services to rear of the block are excessive extensive planting of trees at the rear precludes ease of access and many trees would have to be removed excessive distance from house for garaging of vehicles the only view from our house is to the rear of the block (bush, sunsets, etc.) and this would be severely impeded by a shed at the rear*

4. *Size/aesthetics of shed:*  
*designed to accommodate all our existing vehicles and equipment (as per detailed plan) if absolutely necessary, prepared to reduce from 5 x 6m bays (1 enclosed, 4 open) to 5 x 5m bays (1 enclosed, 4 open) reduction in length of 5m will mean that shed extends the house by approx 1-2m only shed walls to be constructed in colorbond to match house colour enclosed bay to be at the end of the shed furthest from road and screened by house open bays will be nearest the road and as such no visible cladding except for end wall*

*It would be appreciated if this letter could be submitted to the Council Meeting along with our planning application.*

*Should you require any further information, please do not hesitate to contact us."*

The inclusion of the existing 8m x 7.8m x 4m shed has been discussed with the applicant, who has provided the following justification for the existing shed:

*".....you requested the size of the existing shed and I would confirm that it is 8m x 7.8m x 4m wall height.....*

*.... as you will see from our original plan we still require storage space for the tractor with front end loader, plus slasher, grader blade and rotary hoe attachments, 400cc quad bike, gardening equipment / reticulation spares and fishing equipment including freezer for block ice / bait.*

*If we are required to reduce the new shed from 30m to 25m this will reduce the individual bay size from 6m to 5m. This means that the space around our vehicles will be compromised and as such there will be no space for storing incidentals such as building / maintenance materials, concrete mixer, ad-hoc furniture, garden furniture during cyclone season, etc.."*

#### Consultation

The application has been forwarded to Building Services, who have indicated no objection to the proposal subject to a building licence being approved.

#### Statutory Implications

In accordance with the Planning and Development Act 2005, the proposed development is subject to the provisions of the Town Planning Scheme TPS 5.

### Policy Implications

The proposed development has no implications for Council Policy.

### Strategic Planning Implications

The proposed development has no implications for Strategic Planning.

### Budget Implications

An application fee of \$127.00 was paid on lodgment and deposited into account 1006326 – Town Planning Fees.

### Officer's Comment

#### *Use*

The applicant has demonstrated that both the proposed enclosed area (shed) and unenclosed area (carport) and the existing shed will be used for personal domestic storage of various vehicles and implements. This can be controlled by the inclusion of a Section 70A notification on Title, to ensure that any prospective buyers of the lot would be aware that the outbuilding may only be used for domestic storage.

#### *Size*

Although the applicant has demonstrated that the outbuilding will be used for personal storage the overall size of the outbuilding is of a concern. The Town of Port Hedland Town Planning Scheme No.5 does not provide direction in the allowable size of outbuildings. Currently there is no policy around the development of sheds / outbuildings, Council's Planning Services is in the process of developing a policy on sheds / outbuildings which would provide both the Council and the public with a guide on how sheds / outbuilding may be developed.

However, in the absence of a policy on outbuildings / sheds, each application will have to be considered on individual merit.

In this regard it is necessary to differentiate between the enclosed area and unenclosed area. The combined under roof area equates to 422m<sup>2</sup> of which 134m<sup>2</sup> (proposed 72m<sup>2</sup>, existing 62m<sup>2</sup>) is completely enclosed and 288m<sup>2</sup> unenclosed.

As the "under roof" area is a considerable area, due consideration must be given to the amenity of the area and the streetscape such bulk would present.

This aspect has been discussed with the applicant who has indicated that they would be willing to reduce the length of the proposed outbuilding from 30m to 25m equating to a reduction of 60m<sup>2</sup> which would result in the overall size being 362m<sup>2</sup>. Although this is not a significant reduction it would assist in amenity and streetscape aspects, in so far that the proposed outbuilding can be located 5m further away from the street.

In addition to this it must be taken into consideration that over 50% of the "outbuilding" will be unenclosed and visually permeable. This would assist in maintaining an acceptable streetscape and amenity.

### *Amenity*

The effect the proposed outbuilding would have on the amenity of the surrounding area, would in all aspects be a better outcome than not having the outbuilding.

As mentioned the applicant has demonstrated that the outbuilding would be used to store vehicles and implements generally associated with Rural Residential lots. By permitting the proposed outbuilding to be developed it would provide a designated area on the lot for vehicles and implements to be stored instead of being parked and stored openly on the lot, as is the case with many of the existing lots in the area.

The application for the proposed outbuilding also provides Council with the opportunity to place certain conditions on the proposed development of the outbuilding. Conditions such as landscaping would ensure that the amenity of the area is not negatively compromised by the bulk of the outbuilding which is only limited to the roof bulk.

### *Streetscape*

The proposed placement of the outbuilding has a number of advantages from a streetscape point of view. The placement of the outbuilding to run parallel to the side boundary would ensure that the roof bulk will not all be fronted to the road. In addition to this a large portion of the proposed outbuilding will be screened from the street, when entering the estate, by the existing house.

Furthermore, the applicant has indicated their willingness to reduce the length of the outbuilding from 30m to 25m, which would result in the proposed outbuilding being placed 25m from the primary street boundary and 10m from a side boundary. This will provide ample space to ensure that landscaping can be done which would assist in screening the proposed outbuilding from the view of the street and from the neighboring property.

## Attachments

Attachment – Applicant's application

200809/334 Council Decision/Officer's Recommendation

**Moved:** Cr K A Howlett

**Seconded:** Cr G D Bussell

That Council:

- a) APPROVES the Planning Application for the construction of an outbuilding [(enclosed area of 5m x 12m x 3.5m)(unenclosed area 20m x 12m x 3.5m)], from Ken Whiteman of Lot 17 (6-8) Manilinha Drive Turner River Estate; and
- b) retrospectively APPROVES, the existing shed 8m x 7.8m x 4m at Lot 17 (6-8) Manilinha Drive Turner River Estate, subject to the following conditions:
  1. **This approval relates only to the outbuilding [(enclosed area of 5m x 12m x 3.5m)(unenclosed area 20m x 12m x 3.5m), and the existing 8m x 7.8m x 4m shed, as indicated on the approved plans. It does not relate to any other development on this lot.**
  2. **Prior to commencing works, the landowner is to prepare a notification under section 70A of the Transfer of Land Act 1893, in a form acceptable to the Town, to be lodged with the Registrar of Titles for endorsement on the Certificate of Title for the subject lot. This notification is to be sufficient to alert prospective landowners or occupiers that:**
    - a. the outbuildings/sheds shall only be used for domestic storage and/or activities and not be used for commercial or industrial purposes or human habitation.
  3. **This approval to remain valid for a period of twenty-four (24) months if development is commenced within twelve (12) months, otherwise this approval to remain valid for twelve (12) months only.**
  4. **The outbuilding/sheds shall only be used for domestic storage and/or activities and not be used for commercial or industrial purposes or human habitation.**

- 5. Prior to the submission of a Building Licence, amended plans being submitted to and approved by the Manager Planning incorporating the following amendments and/or additional information:**
- a. The outbuildings setback to the primary street (Manilinha Drive) shall be increased to 25m;
  - b. The overall size of the outbuilding shall be reduced from 30m x 12m x 3.5m to 25m x 12m x 3.5m, and
  - c. A landscaping plan is to be provided incorporating planting elements (creepers or trees), which are strategically located within the front setback area and along the southern boundary abutting Lot 16 to provide vertical elements to break the bulk of the outbuilding.

**all to the satisfaction of the Manager Planning**

- 6. The colours and the materials of the proposed outbuilding are to match with those of the existing dwelling or environment to the satisfaction of the Manager Planning.**
- 7. The driveway and crossover shall be designed and constructed in accordance with Council's Crossover Policy 9/005.**
- 8. Stormwater disposal to be designed in accordance with Council's Engineering Department Guidelines, and all to the satisfaction of the Manager Planning.**

**FOOTNOTES:**

- 1. You are reminded that this is a Planning Approval only and does not obviate the responsibility of the developer to comply with all relevant building, health and engineering requirements.**
- 2. The applicant/owner is required to lodge an application for a Building Licence (including the existing retrospectively approved shed) under the provisions of the Building Regulations and approval from the Town before commencing any works whatsoever.**
- 3. You are advised that drawings submitted for Building License are to be properly drawn and signed by a practising structural engineer.**



4. The design levels of the proposed outbuilding shall be submitted with the building license application, and shall be to the satisfaction of the Manager Planning.
5. In relation to Conditions 7 & 8, please contact the Manger Infrastructure and Development – 9158 9350 for further details.
6. The developer to take note that the area of this application may be subject to rising sea levels, tidal storm surges and flooding. Council has been informed by the State Emergency Services that the one hundred (100) year average recurrence interval cycle of flooding could affect any property below the ten (10) metre level AHD. Developers shall obtain their own competent advice to ensure that measures adopted to avoid that risk will be adequate. The issuing of a Planning Consent and/or Building Licence is not intended as, and must not be understood as, confirmation that the development or buildings as proposed will not be subject to damage from tidal storm surges and flooding.
7. Applicant is to comply with the requirements of Worksafe Western Australia in the carrying out of any works associated with this approval.

*CARRIED 6/0*