



Town of Port Hedland

MINUTES

OF THE

**SPECIAL MEETING
OF THE TOWN OF PORT HEDLAND COUNCIL**

HELD ON

TUESDAY, 1 MAY 2012

AT 6:00 PM

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

*Ian Hill
Acting Chief Executive Officer*

OUR COMMITMENT

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

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ITEM 1 OPENING OF MEETING**1.1 Opening**

The Mayor declared the meeting open at 6:05 pm and acknowledged the traditional owners, the Kariyarra people.

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

Mayor Kelly A Howlett
Councillor George J Daccache
Councillor Stan R Martin
Councillor Jan M Gillingham
Councillor David W Hooper
Councillor Julie E Hunt

Officers

Mr Ian Hill	Acting Chief Executive Officer
Mr Gordon Macmile	Director Community Development
Mr Russell Dyer	Director Engineering Services
Ms Natalie Octoman	Director Corporate Services
Mr Eber Butron	Director Planning and Development
Ms Josephine Bianchi	Governance Coordinator & Minute Taker

Public Gallery

Members of the Public	4
Members of the Media	1

2.2 Apologies

Councillor Arnold A Carter
Councillor Michael (Bill) Dziombak
Councillor Gloria A Jacob

2.3 Approved Leave of Absence

Nil

ITEM 3 PUBLIC TIME

6:05pm Mayor opened Public Question Time.

3.1 Public Question Time

Nil

6:05pm Mayor closed Public Question Time.

6:05pm Mayor opened Public Statement Time.

3.2 Public Statement Time

Nil

6:05pm Mayor closed Public Statement Time.

ITEM 4 QUESTIONS FROM MEMBERS WITHOUT NOTICE

Nil

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

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

Background

Proposal (Attachment 1)

Under the Town of Port Hedland Town Planning Scheme No. 5 (TPS5), the subject construction site (proposed Lot 35) is zoned 'Airport' and is within the Airport Precinct. Whilst access tracks are not a land use per se, the development of these roadways will enable the construction of a TWA which is an 'AA' use under the Scheme. The ultimate TWA development will facilitate BHPB in addressing its critical shortage of TWA in the Town for its expansion operations. The proponent has advised it is imperative that the development commences as promptly as possible.

Consultation

Internally:

The application was circulated to the following internal units, with comments received, included in the report:

- Manager Technical Services
- Manager Building Services
- Manager Environmental Health Services

Externally:

Agencies:

- Horizon Power,
- LandCorp,
- Water Corporation,
- Main Roads Western Australia;
- Telstra; and
- Optus.

Adjoining land owners along North Circular Road (*ATTACHMENT 2*)

No objections were received as a result of the above consultation.

Statutory Implications

In accordance with the Planning and Development Act 2005, the proposed development is subject to the provisions of TPS5.

Strategic Planning Implications

N/A

Budget Implications

An application fee of \$8,800.00 has been received as per the prescribed fees approved by Council.

Officer's Comment

This application seeks approval to establish construction access to be proposed TWA site. This access will be facilitated in three ways.

Firstly, BHPBIO's rail access track will be used to establish initial access to the site. This will involve construction traffic turning left off Wallwork Rd and travelling along the rail access. Construction traffic exiting the site will similarly be constrained to a left out movement. Impacts on through traffic using Wallwork Rd will be managed through the use of appropriate signage and a speed reduction (to 60km).

The use of this access will only be available for a limited time, as the Town awards construction of the Wallwork Rd bridge is likely to necessitate the cessation of vehicle movements in this location.

This access track is located within the BHPBIO rail corridor, reserved 'Other Purposes – Infrastructure' under the Scheme, which is appropriate for a construction access route.

Secondly, a new access track is proposed to be established off North Circular Road, adjacent to the northern most portion of the South Hedland area. The access track will traverse Unallocated Crown Land, 350m to the north of North Circular Road, then 650m east, parallel with the existing BHPBIO Rail Reserve and will then cross the rail reserve to the north via the existing crossing point. This access track will be removed once the development of the BHPBIO TWA is completed.

The following outlines the key aspects of the proposed works:

- The access track will be 11m wide to accommodate construction vehicles, will cross the BHPBIO Rail Reserve via an existing level crossing, which will be managed by BHPBIO; and
- The intersection of North Circular Road and the proposed access track will incorporate appropriate provisions for turning of the construction traffic, and will be managed through the use of appropriate signage and speed reduction (to 60km).

This land is also reserved for 'Other Purposes – Infrastructure' with North Circular Road being designated as a 'District Road' under the Scheme.

Thirdly, a further access track is proposed to be established off Great Northern Highway immediately north of the cemetery. The details of the associated intersection onto the Highway will be subject to the requirements and approval of Main Roads WA (MRWA). Approval in principle has been given by MRWA to operate this intersection with construction traffic permitted to carry out left in / left out / right in movements outside the morning and afternoon peak traffic periods. MRWA is yet to formally confirm these peak period times, but initial advice suggested they are between 6am and 8.30am, and then between 3.30pm and 6.00pm.

MRWA has also indicated that the existing cemetery access will need to be closed once this intersection is completed. Vehicles wishing to access the cemetery carpark will need to utilise the new intersection and a portion of the site access road before turning off to travel along a new cemetery access road. Appropriate signage will be installed to ensure the safe interaction between construction traffic and the general public.

This intersection and access road will eventually be vested with the Town as part of the new public road network that will be constructed as part of the proposed subdivision. The sections that will be used by the public in accessing the cemetery will be constructed to this standard prior to be opened to traffic.

The Town is addressing the construction of a 4-way intersection where Pinga Rd currently terminates at Wallwork Rd. The intention is that Pinga Rd extends across the Unallocated Crown Reserve and link into the completed subdivision road network. Once this access is established, the need for intersection off North Circular Rd is removed. The opening of this intersection will also remove much of the construction traffic using the access of Great Northern Hwy. BHPBIO will be working with the Town to ensure this access is completed in a timely manner.

A Construction and Environmental Management Plan (CEMP) has been submitted as part of the applications for Planning Approval for the proposed bulk earthworks and the TWA village. That document also applies to these works and the ongoing management of the intersections. The CEMP details of a range of matters including dust suppression, access, site security, stormwater management, and estimated construction timeframes and hours.

Impact on Public Road Network

Construction traffic will typically be limited to small numbers (<50) of vehicle movements during the working day except during two particular periods of the construction schedule.

The first of these more significant impacts will occur when fill material is being brought to the site. This will take place over a 10 week period and will see vehicle movements rise to between 250-300 per day.

Fill material is proposed to be brought to site from two locations, one being from south of the Town's landfill site and the other being from Boodarie.

The second of these impact periods will be when the accommodation units are relocated from the temporary laydown area in Boodarie to the site. This will involve vehicle movements in the order of 50 per day for 2 weeks.

As some of the construction traffic will occur during the winter months when the days are shorter, temporary flood lighting will be installed at key intersections to improve the safety for pedestrians and vehicles.

Impact on Services

The proposed access roads will cross over various water supply distribution mains that the Water Corporation maintains. Appropriate measures will be taken to protect these mains. A Telstra cable also currently runs through the site. Again, such infrastructure will need to be protected during site works. The access track off North Circular Rd is proposed to cross over the existing BHPBIO Rail Reserve and therefore it is proposed that traffic movement over the rail reserve will be managed by BHPBIO.

Storm water and Sediment Control

Construction of the access roads off Wallwork Rd and off North Circular Rd will be carried out without disruption to existing surface water movements. Where necessary, culverts will be installed to allow typical stormwater flows to pass under the access road. As these are both temporary construction roads though, they will be subject to occasional inundation.

As noted above, the construction of the access road off Great Northern Hwy will become part of the permanent road network. It will be constructed to suit the finished levels of the proposed subdivision development. Until such time as the subdivision area is filled to finished level, the road embankment will dam the existing surface flows that head in a north east direction towards the northern end of the Airport. Temporary culverts will be installed to allow these flows to pass under the road embankment.

Appropriate sediment controls will be installed along the length of the access roads to ensure any sediment-laden runoff is trapped and 'cleaned' prior to discharge.

Other Planning Considerations

Whilst a road is not a listed use under the Scheme per se and there are no planning controls under the Scheme relevant to the application, the end purpose of TWA is an 'AA' use and is advocated for the site under the Town's strategic planning framework.

Furthermore, the access routes proposed have been designed in consideration of existing road network. The location of the proposed roads is intended to allow trucks to get off North Circular Road as quickly as possible to reduce the impact on surrounding residential areas. Trucks carrying fill to the site will have the fill moistened prior to transportation to minimise dust emissions into surrounding residential areas. It is also proposed to construct a noise wall or bund near the intersection of where the proposed access onto North Circular Road is proposed into the site to address noise from trucks, particularly as they accelerate from the intersection. It is expected that this will form a condition of approval so that specific detail in this regard can be provided to the Town for its approval.

It should also be noted that we are seeking approval for multiple access points so that access can be moved away from South Hedland dwellings as quickly as possible.

The Business Case for the development of the Precinct 3 – Airport site has recently been approved by the Town, and access is required to implement the Business Case and the Development Applications for both the Earthworks and the TWA facility itself.

The proposed access roads will facilitate the development of a TWA development to address a critical shortage of BHPBIO accommodation. They will not impede the ability of the site to be developed for the purposes outlined in the Airport Master Plan, but will facilitate development on the site as quickly as possible to enable construction of much needed TWA to commence in a timely manner.

Attachments

1. Construction Access Plan
2. Adjoining Neighbours Advertised

201112/434 Officer's Recommendation / Council Decision

Moved: Cr S R Martin

Seconded: Cr D W Hooper

That Council:

- i. **Approves the application TPG Town Planning and Urban Design (TPG) on behalf of NS Projects and BHP Billiton Iron Ore (BHPIO) to establish construction access to the Precinct 3 Airport Development, subject to the following conditions:**
 1. **This approval relates only to the construction access arrangements, as indicated as A, B and C on the approved plan (DWG2012/152/1). It does not relate to any other development on this lot.**

2. This approval shall 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. Hours of operation to construct the access ways shall be limited to the following:
 - Monday to Saturday 7am and 7pm,
 - Sunday and Public Holidays, work is not permitted without the prior approval of the Manager Planning Services. Such approval must be sought and approved a minimum of 7 days prior to the work being undertaken.
4. Earthworks (including batters) shall be consistent with the access alignment widths to the satisfaction of the Manager Technical Services. No earthworks, plant or materials shall intrude onto adjacent land or road reserves.
5. All vehicle movement shall be limited to approved roads or access ways identified as A, B and C on the approved plan (DWG2012/152/1).
6. Access A as indicated on the approved plan (DWG2012/152/1) shall be limited to a lifespan to the satisfaction of Technical Services in accordance with an approved traffic management plan.
7. Access B as indicated on the approved plan (DWG2012/152/1) shall be removed, and revegetated once the development of the BHPBIO TWA is complete, to the satisfaction of the Manager Planning Services.
8. Access C as indicated on the approved plan (DWG2012/152/1) shall not be constructed until written approval is obtained from Main Roads WA in accordance with an approved traffic management plan.
9. Stormwater disposal shall be designed in accordance with an approved Stormwater Management Plan to be submitted and approved by the Manager Technical Services.
10. Excluding the approved development on site, any damage or removal of a Town of Port Hedland asset (including vegetation) by the developer / applicant shall be replaced or repaired at the cost of the applicant/owner, to the satisfaction of the Manager Technical Services.

11. The developer / applicant shall ensure erosion and sediment control is in accordance with an approved Erosion Prevention and Sediment Control Plan to be submitted and approved by the Manager Technical Services.
12. Prior to the construction of any access ways the developer / applicant shall provide a Traffic Management Plan to be submitted and approved by the Manager Technical Services.
13. The developer / applicant shall ensure all works on site are in accordance with an approved Construction Management Plan to be submitted and approved by the Manager Planning Services.
14. The developer / applicant shall ensure dust and sand drift is controlled in accordance with an approved Dust Management Plan to be submitted and approved by the Manager Environmental Health Services.
15. The developer / applicant shall establish a manned complaints line. This service is to be publicised to the community and the details of any complaints, including any action taken, is to be reported to the Town of Port Hedland's Environmental Health Department within 48 hours of receipt of complaints.
16. The developer / applicant shall seal the first 100m of the ingress / egress where such ingress / egress meets a public road.
17. Prior to the construction of access way C on the approved plan DWG2012/152/1 a Fencing Plan is to be submitted and approved by the Manager Airport Operations.
18. Should the proposed development impact on the operations of the Port Hedland International Airport and its assets, operation/construction shall cease immediately and shall only recommence once the relevant issues are addressed to the satisfaction of Manager Airport Operations.

ADVISE NOTE:

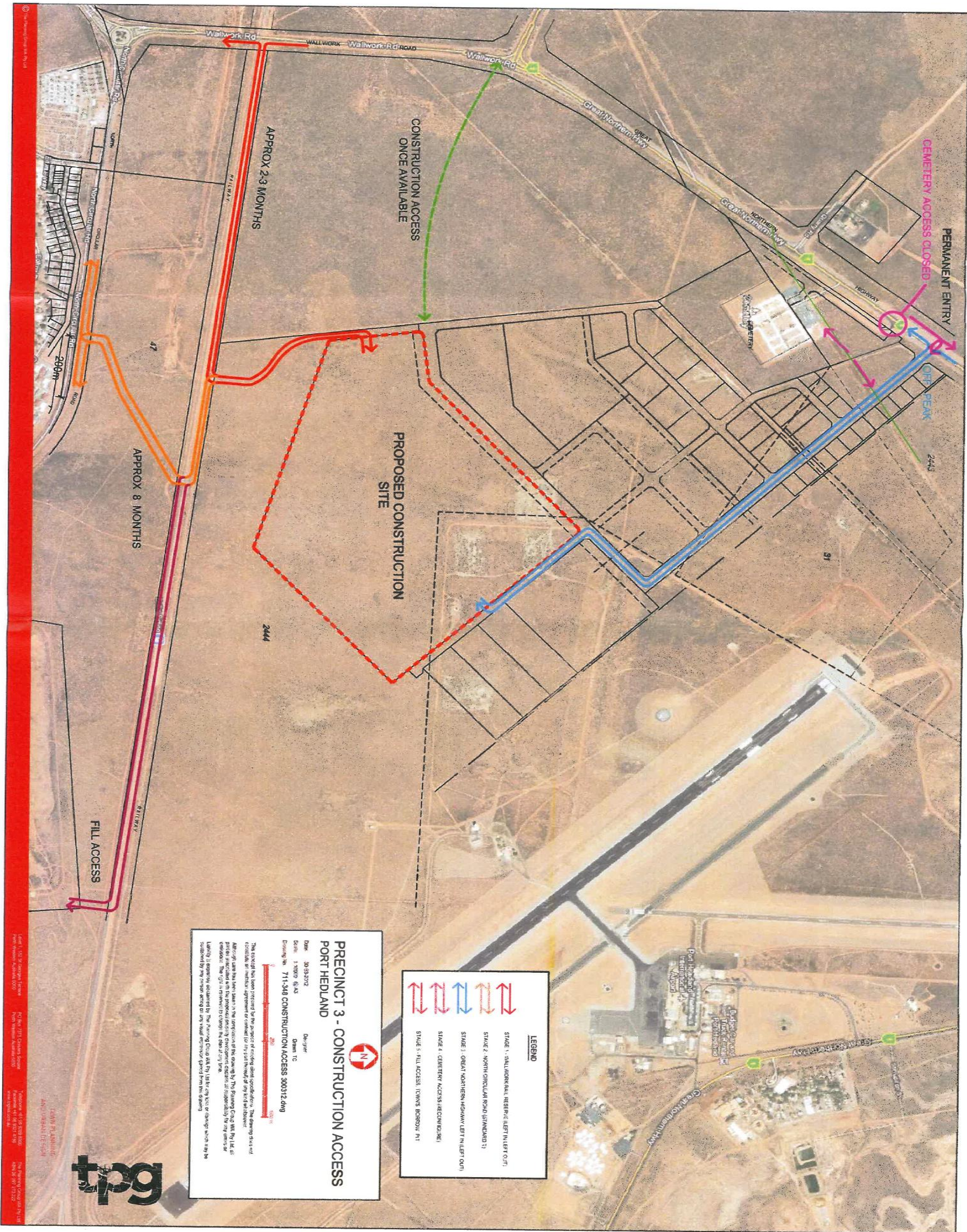
1. You are reminded that this is a Planning Approval only and does not obviate the responsibility of the developer to comply with all relevant building, health and engineering requirements.

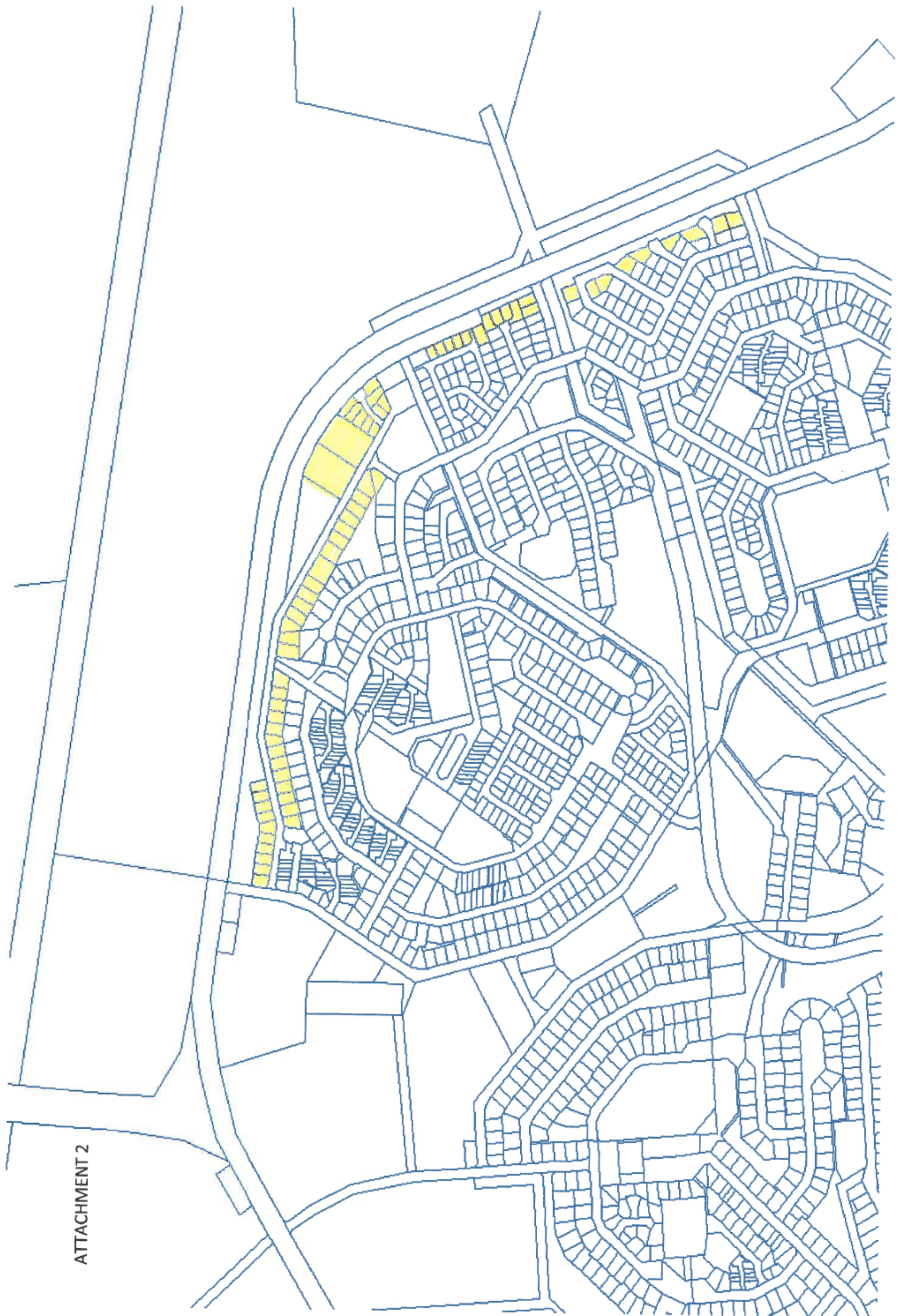
2. The development shall comply with the Environmental Protection (Noise) Regulations 1997 at all times.
3. Applicant is to comply with the requirements of Worksafe Western Australia in the carrying out of any of the development works associated with this approval.
4. The developer to take note that 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. In regards to Condition 6, Access way A as indicated on the approved plan DWG2012/152/1 shall be closed on initiation of construction works for the Wallwork Road Bridge.

CARRIED 4/0

6:08pm Councillors J E Hunt and G J Daccache re-entered the room and resumed their chairs.

Mayor advised Councillors J E Hunt and G J Daccache of Council's decision.





ATTACHMENT 2

Consultation

Significant consultation has occurred between the Pilbara Regional Council, Blue Zoo and NAB. In addition the development of the business case by NAB has seen them liaise extensively with numerous stakeholders. The following table summarises the involvement and impacts to a number of stakeholders:

Stakeholder	Description
Pilbara Regional Council	The Pilbara Regional Council has led this initiative from commencement.
Town of Port Hedland	The Town of Port Hedland will receive approximately 405 beds across a mix of new dwellings for essential and social services workers in the region. The Shire will own both the land and improvements at the conclusion of the project life.
National Australia Bank	National Australia Bank has developed the detailed investment strategy and secured sufficient debt and equity investment to cover the construction and maintenance of the over the life of the project. National Australia Bank has also secured underwriter(s) for contingent patronage liability over the life of the project.
Blue Zoo	Blue Zoo formulated the initial concept, identified and approached potential investment partners, and structured the public-private partnership model to enable this project.
Construction Company(s)	The project will contract the services of Western Australian construction companies to deliver a large quantity of housing to the region, bolstering local companies and employment opportunities.
Facilities Manager(s)	A facilities manager will be appointed by the Consortium to manage and maintain the assets to an agreed standard.
Individual Communities	Individual communities will have access to affordable housing for essential services workers, and the broader community will

Statutory Implications

The proposal is subject to Section 3.18 of the Local Government Act, major land transactions.

Should the business case requirements continue to achieve success, Planning Approval/s and Building Permit/s will be required.

Policy Implications

Nil

Strategic Planning Implications

The following section of Council's Strategic Plan 2010-2015 is considered relevant to this proposal:

Key Result Area 6 – Governance

Goal 1 – Leadership

Other Actions 1 – Ensure that the Pilbara Regional Council grows and develops into an organization that clearly delivers value for money for Pilbara residents.

Budget Implications

Nil

Officer's Comment

The business case seeks to deliver a minimum of 405 additional residential beds across the Town of Port Hedland within the next 20 months that are specifically designated for essential and social services workers.

The project is proposed as an all-encompassing infrastructure project in collaboration between the Public and Private Sectors. However, the collaboration will not need an ongoing financial commitment from the State or Town of Port Hedland.

This would be achieved by a uniquely structured public-private partnership that will deliver maximum value to the region at only nominal risk and cost. Significantly, the private partner will commit to performance clauses within the contract, and will underwrite patronage liability risk for the life of the project. The underwriting is a significant aspect in ensuring the viability of the proposal.

For this project to get underway, NAB requires that Council endorse the project despite requiring no upfront financial commitment. Once NAB have received endorsement, they will continue on to meeting further milestones such as finalizing the feasibility model and developing the bankable model. The milestones are shown in the following table:

Activity / Milestone	Milestone Date	Responsibility
Develop pre-feasibility model	Achieved	NAB / Blue Zoo
Confirm project appetite	Achieved	PRC
Develop Town of Port Hedland business case	Achieved	PRC / Blue Zoo
Develop Regional Council business case	Achieved	PRC
Approval by Regional Council	April 2012	PRC
Approval by Town of Port Hedland	April 2012	Town of Port Hedland
Finalise feasibility model	July 2012	NAB
Draft short IM for Regional Partners	August 2012	NAB
Finalise bankable model / full IM	August 2012	NAB
Project Governance Review	September 2012	Blue Zoo
Final project decision	September 2012	PRC
Securing/provision of suitable land	December 2012	Town of Port Hedland
Servicing of land if required	March 2013	NAB
Begin tendering process for construction	March 2013	NAB
Construction Completed	December 2013	NAB
Facilities Management	Ongoing	NAB

As can be seen the Town of Port Hedland has also been identified as responsible for 'Securing/provision of suitable land', officer's will liaise with relevant agencies over the coming months to identify land options and is expected to report the matter to Council in December.

Assuming the project proceeds, rents will be set periodically by the Council according to an agreed financial model and tenants will be required to meet agreed criteria. These details will be clarified later in the process and may vary depending on information/results obtained as the different key milestones are achieved.

Attachments

1. Business Case – Affordable Housing for Essential Workers in the Town of Port Hedland – under separate cover

NOTE: Mayor raised a point of clarification: the Officer's Recommendation listed in the Agenda incorrectly referred to the Shire of Roebourne. Any reference in that Officer's Recommendation to the "Shire of Roebourne" should instead read "Town of Port Hedland."

201112/435 Officer's Recommendation / Council Decision**Moved: Cr G J Daccache****Seconded: Cr J M Gillingham****That Council:**

- 1. Pursuant to Section 3.18 of the Local Government Act 1995, PROVIDE in-principle support to the National Australia Bank proceeding to the Detailed Investment Business Case stage of the *Business Case: Affordable Housing for Essential Workers in the Town of Port Hedland* subject to:**
 - a. The Business Case, including but not limited to, procurement and land disposal issues, being deemed compliant with the Local Government Act 1995 and any other relevant statutes or regulations;**
 - b. National Australia Bank undertaking the Detailed Business Case at its own expense and risk;**
 - c. Serviceable land being able to be sourced by the Town of Port Hedland at nominal financial cost to the Town; and**
 - d. The National Australia Bank providing the Town of Port Hedland with required resourcing to support engagement activities associated with the conduct of the associated detailed project feasibility analysis.**

CARRIED 6/0

6.2 Corporate Services**6.2.1 Finance and Corporate Services**

6:09pm Councillors J E Hunt and G J Daccache declared a financial interest in agenda item 6.2.1.1 'Consideration of the Legal Arrangements with BHP Billiton Iron Ore for the Development of Precinct 3 at the Port Hedland International Airport (File No.: 01/04/0001)' as they are BHP Billiton shareholders with shares over the statutory limit.

Councillors J E Hunt and G J Daccache left the room.

Mayor advised that as per the Acting Chief Executive Officer's statement earlier, the Town of Port Hedland Council has been granted approval from the Department of Local Government to consider agenda item 6.2.1.1 'Consideration of the Legal Arrangements with BHP Billiton Iron Ore for the Development of Precinct 3 at the Port Hedland International Airport (File No.: 01/04/0001)' with a reduced quorum of four Councillors.

6.2.1.1 *Consideration of the Legal Arrangements with BHP Billiton Iron Ore for the Development of Precinct 3 at the Port Hedland International Airport (File No.: 01/04/0001)*

Officer Natalie Octoman
Director Corporate
Services

Date of Report 22 April 2012

Disclosure of Interest by Officer Nil

Summary

This item presents Council with draft legal arrangements for the Subdivision of Precinct 3 and Sale of Lot 34 along with the Lease of Lot 35 at the Port Hedland International Airport with BHP Billiton Iron Ore (BHPB) that were requested as part of the Council resolution on the 12th of March 2012 for consideration prior to their execution.

Background

At the Ordinary Council Meeting on the 12th March 2012 Council resolved the following:

“Original Motion

Moved: Cr A A Carter

Seconded: Cr S R Martin

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

201112/351 Council Decision

Moved: Cr A A Carter

Seconded: Cr S R Martin

Officer’s Recommendation 1

That Council:

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

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

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

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

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

Officer’s Recommendation 2

That Council:

1. *Resolves to proceed with the current Business Plan for the Proposed Development of Precinct 3 at the Port Hedland International Airport via Private Treaty with BHPB with the following amendments:*
 - a. *An initial construction workforce of 2,000 be accommodated within the TWA facility;*

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

12. *Seeks a commitment from BHPB and the State to continue to work together to identify the impacts of FIFO workforce on Port Hedland and actively identify and implement strategies that will mitigate their impacts upon the community;*
13. *Notes the legal advice that has been received indicating that with the modifications outlined above, the transaction advertised in accordance with section 3.59 of the Local Government Act 1995 is not significantly different and therefore does not require the development and advertising of a new Business Plan;*
14. *Acknowledges the commitment of both BHPB and the State in the negotiation process and again thanks BHPB for their revised proposal that will further assist in creating the legacy outcomes for the community that Council are seeking.*

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

Officer's Recommendation 3

That Council:

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

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

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

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

The Working Group meetings provide a forum for communication between the parties and have assisted the CEO to progress the legal arrangements to a level whereby the draft agreements can now be presented before Council for consideration.

Consultation

A robust and legal process has continued during this period whereby McLeods have been regularly contacted for advice and are across the revised proposal along with the agreements that incorporate the arrangements requested by Council.

Other parties consulted during this period include:

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

The Town sought particular advice from McLeods (the Town's lawyers) as to the potential implications of modifying the legal arrangements for Lot 35 from an Agreement to Lease with a Ground Lease conditional upon the Certificate of Titles being issued (as outlined in the Business Plan), to an immediate Ground Lease.

McLeods advised that this would not be a significant change to the transaction outlined in the Business Plan providing that the Town had a significant level of security incorporated into the agreements to ensure the subdivision occurred. Five different mechanisms were suggested by McLeods and are outlined in the Officers Comment section of this report, whereby several of these have been incorporated into the draft agreements to ensure that the Town has a significant level of assurance that the subdivision will eventuate.

Statutory Implications

Local Government Act 1995

3.58. Disposing of property

(1) In this section —

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

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

(a) the highest bidder at public auction; or

(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

(a) it gives local public notice of the proposed disposition —

(i) describing the property concerned; and

(ii) giving details of the proposed disposition; and

(iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and

(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

(4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —

(a) the names of all other parties concerned; and

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

(c) the market value of the disposition —

(i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or

(ii) *as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*

(5) *This section does not apply to —*

- (a) *a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or*
- (b) *a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or*
- (c) *anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*
- (d) *any other disposition that is excluded by regulations from the application of this section.*

3.59 Commercial enterprises by local governments

(1) *In this section —*

“acquire” *has a meaning that accords with the meaning of “dispose”;*
“dispose” *includes to sell, lease, or otherwise dispose of, whether absolutely or not;*

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

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

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

- (a) *the consideration under the transaction; and*
- (b) *anything done by the local government for achieving the purpose of the transaction,*

is more, or is worth more, than the amount prescribed for the purposes of this definition;

“major trading undertaking” *means a trading undertaking that —*

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

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

(2) *Before it —*

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

a local government is to prepare a business plan.

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

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

(4) *The local government is to —*

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

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

** Absolute majority required.*

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

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

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

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

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

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

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

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

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

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

- (a) put out to the highest bidder at public auction, in accordance with section 3.58(2)(a) of the Act, but either no bid is made or any bid made does not reach a reserve price fixed by the local government;*
- (b) the subject of a public tender process called by the local government, in accordance with section 3.58(2)(b) of the Act, but either no tender is received or any tender received is unacceptable; or*
- (c) the subject of Statewide public notice under section 3.59(4) of the Act, and if the business plan referred to in that notice described the property concerned and gave details of the proposed disposition including —*
 - (i) the names of all other parties concerned;*
 - (ii) the consideration to be received by the local government for the disposition; and*
 - (iii) the market value of the disposition as ascertained by a valuation carried out not more than 12 months before the proposed disposition.*

As the Business Plan was advertised 12th November 2011 for six weeks with the closing period for submissions not being 28th of December it is deemed to be an exempt disposition under section 30(2a)(c) above.

9.49A. Execution of documents

- (1) A document is duly executed by a local government if —
- (a) the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or
 - (b) it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.
- (2) The common seal of a local government is not to be affixed to any document except as authorised by the local government.
- (3) The common seal of the local government is to be affixed to a document in the presence of —
- (a) the mayor or president; and
 - (b) the chief executive officer or a senior employee authorised by the chief executive officer, each of whom is to sign the document to attest that the common seal was so affixed.
- (4) A local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.
- (5) A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.

Officers are recommending Council consider the authorisation of the two legal agreements attached to be executed in accordance with section 9.49A of the Local Government Act 1995.

Policy Implications

Nil

Strategic Planning Implications

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

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

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

Town Vision:-

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

Key Result Area 1 Goal 2	Infrastructure Airport That the Port Hedland International Airport is recognised as a leading regional airport in the area of passenger and freight movement and customer satisfaction.
Immediate Priority 1	Complete the development of the Airport Land Development Plan and commence implementation of the key initiatives that are identified.
Key Result Area 3 Goal 2 Immediate Priority 3	Community Development Sports and Leisure Plan for the development of fishing wharfs/jetties within the Town and expand coastal recreational opportunities.
Key Result Area 3 Goal 2 Other Actions	Community Development Sports and Leisure Establish plans for the managed public access to key coastal areas.
Key Result Area 4 Goal 1 Immediate Priority 1	Economic Development Tourism Ensure that new caravan park/backpackers facilities are developed within the Town.
Key Result Area 4 Goal 1 Immediate Priority 2	Economic Development Tourism Progress the development of the Spoilbank Marina.
Key Result Area 4 Goal 2 Immediate Priority 2	Economic Development Mining/Roads Actively pursue integration of FIFO workers into the local community.

Key Result Area 4 Goal 2 Other Actions	Economic Development Mining/Roads Ensure that integrated accommodation options are available for resource related projects that do not artificially inflate the local real estate market.
Key Result Area 4 Goal 3 Immediate Priority 4	Economic Development Business Development Investigate new business/revenue streams for the Town.
Key Result Area 4 Goal 3 Immediate Priority 2	Economic Development Business Development Review alternatives for additional business opportunities at the PHIA including air freight, aircraft maintenance, tourism and industrial uses.
Key Result Area 4 Goal 3 Immediate Priority 4	Economic Development Business Development Investigate new business/revenue streams for the Town.
Key Result Area 4 Goal 4 Immediate Priority 1	Economic Development Land Development Projects Fast-track the release and development of commercial, industrial and residential land.
Key Result Area 4 Goal 5 Immediate Priority 1	Economic Development Town Planning and Building Develop a Town Plan that identifies opportunities for the following initiatives: b. Bulky goods retail area development along Port Hedland Rd
Key Result Area 6 Goal 1 Immediate Priority 2	Governance Leadership In conjunction with other stakeholders, develop and implement a coordinated, lobby campaign for additional resources from the State and Federal Governments for infrastructure and community projects that are needed to transform the Town into a City.

Budget Implications

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

Works Undertaken	Paid to Date	Anticipated Costs Outstanding	Total Anticipated Expenditure
Working Group Costs	\$16,728.20	\$7,000	\$23,728.20
Valuation	\$10,882	Nil	\$10,882
Economic Analysis	\$8,000	Nil	\$8,000
Financial Modelling	\$36,394.55	Nil	\$36,394.55
Legal Advice	\$42,073.33	\$25,000	\$67,073.33
Preparation and Printing of Business Plan	\$11,899.67	\$Nil	\$11,899.67
Consolidation and Independent Report to Council for Public Submissions	\$16,584.55	Nil	\$16,584.55
Communication Strategy and Marketing	\$29,629.13	\$8,000	\$37,629.13
Studies	\$15,606.00	\$101,860	\$117,466
TOTAL			\$329,657.43

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

Total funds held within the Airport Reserve as at the 31st March 2012 is \$9,540,094.38. The airport is established as a separate Business Unit and is self sufficient in that any expenditure from the Airport Reserve does not impact directly on municipal funds, or the burden on ratepayers.

Officer's Comment

Since Council resolved to proceed with the Business Plan for the development of Precinct 3, officers have been working closely with McLeods to draft agreements that were reflective of both the Business Plan, and the recommendations from Council at its 12 March 2012 Ordinary Council Meeting.

These discussions have resulted in two agreements being drafted in an attempt to appropriately incorporate the requirements of the Business Plan. The first being an Agreement for the Subdivision of Precinct 3 and Sale of Proposed Lot 34 at the Port Hedland International Airport (herein referred to as the Subdivision and Sale Agreement), and the second being the Ground Lease for the Transient Workers Accommodation Camp on Proposed Lot 35 at the Port Hedland International Airport (herein referred to as the Ground Lease).

As the legal agreements contain commercial information, they have been deemed as confidential agreements, as is usually the case with all other leasing arrangements. Although this is the case, in order to demonstrate that an open and transparent process has been undertaken which has addressed the concerns raised by Council and the community, this report will attempt to address each of the items required by the Business Plan and subsequent Council meeting, and highlight where these have been addressed in the agreements. This will ensure that no commercial information is disclosed inappropriately, but that the requirements of Council have been met.

Lot 35 – Agreement to Lease with a Ground Lease attached

During the process it was identified that the Business Plan outlined that there would be an Agreement to Lease with a Ground Lease attached for Lot 35, where the Ground Lease was conditional upon receipt of Certificate of Titles, therefore requiring BHPB to complete all the conditions of the subdivision approval prior to being provided with a Ground Lease.

Security of tenure for Lot 35 was raised as a concern by BHPB in that while an Agreement for Lease, and a Ground Lease would be attached, it did not provide the level of security that BHPB required for such a significant investment, and other alternatives would need to be worked through in order to provide certainty around the tenure arrangements and therefore minimize the risk to BHPB.

After many discussions involving the Town, BHPB and lawyers, the option of entering a Ground Lease immediately was considered by the Town and McLeods, whereby McLeods provided the Town with advice outlining that if this were to occur, that there would need to be a significant level of security provided to the Town to ensure that the subdivision would occur in order for this to not be a significant change to the Business Plan.

Several mechanisms were suggested to be incorporated into the arrangements, and were subsequently discussed at the Precinct 3 Working Group meeting. An outline of the arrangements follows:

A Bank Guarantee or Bond

McLeods advised that the Bank Guarantee/Bond would need to be reflective of the cost of the subdivision works and also contain an appropriate contingency. It was also recommended that a quantity surveyor be appointed who should regularly review the estimated cost to complete the subdivision works. The following clauses are contained within the Subdivision and Sale Agreement that reflects both McLeods recommendations and the discussions in the Precinct 3 Working Group Meeting.

4.1 Payment of Initial Bank Guarantee

Within 90 days after the date which BHPB Billiton receives the approval of BHP Billiton's board under clause 2.1(1)(a), BHP Billiton must provide to the Town the Initial Bank Guarantee in the amount specified in Item 3 of the Schedule.

Item 3 of the Schedule

Initial Bank Guarantee: \$60 million. (Note that this amount incorporates a 25% contingency).

4.2 Appointment of Quantity Surveyor

- (1) The Town will appoint a Quantity Surveyor to regularly review and estimate the reasonable costs of carrying out the outstanding works to complete the Subdivision.*
- (2) The parties acknowledge and agree that the Town will be the principal for any contract entered into in respect of the Quantity Surveyor.*
- (3) BHP Billiton agrees to reimburse the Town for the Quantity Surveyor's costs.*

4.3 Review of Cost of the Subdivision

- (1) The Town and BHP Billiton agree that the Quantity Surveyor will review the cost to complete the subdivision:
 - (a) immediately following the granting of approval for the Subdivision by the WAPC and approval by the Town of the design drawings for the Subdivision Works (Initial Review); and;*
 - (b) thereafter at three monthly intervals.**
- (2) If following any review referred to in paragraph (1) above, the cost to complete the Subdivision as certified by the Quantity Surveyor plus a contingency of 25%;
 - (a) exceeds the amount specified in the Initial Bank Guarantee or any subsequent Bank Guarantee provided by BHP Billiton, BHP Billiton must within 30 days of such review provide a replacement Bank Guarantee to the Town for the amount certified by the Quantity Surveyor plus a contingency of 25% capped at \$75,000,000; or**

- (b) is less than the amount specified in the Initial Bank Guarantee or any subsequent Bank Guarantee provided by BHP Billiton, BHP Billiton may at any time after such review but before the review which immediately follows that review provide a replacement Bank Guarantee to the Town for the amount certified by the Quantity Surveyor plus a contingency of 25%.*
- (3) The Town must return the Bank Guarantee it holds in exchange for any replacement Bank Guarantee provided by BHP Billiton under clause 4.3(2).*
- (4) BHP Billiton will not be obliged to provide a replacement Bank Guarantee under clause 4.3(2)(a) if the amount specified in the then-current Bank Guarantee is \$75,000,000.*

In relation to the Town accessing the Bank Guarantee, specific milestones have been incorporated in Annexure 2 of the Subdivision and Sale Agreement whereby if the Milestone Date has not been met, then the Town will issue a notice to BHP Billiton requiring them to satisfy the Project Milestone within a 60 day period, and if this doesn't occur then the Town can draw upon the Bank Guarantee to cover the cost of completing the Subdivision. The milestones are outlined later in this report.

Linked Performance to the Lease

It was suggested that the requirement for BHP Billiton to use its best endeavours to complete the subdivision be an essential term of the lease and that in the event that BHP Billiton does not use its best endeavours, that the lease could be terminated and all improvements be forfeited to the Town.

The Precinct 3 Working Group discussed this in detail, and believed that with a sufficient Bank Guarantee to undertake the subdivision, that the lease should not be forfeited as this would essentially be doubling up on the penalty.

At the Precinct 3 Working Group meeting BHP Billiton confirmed their clear intent to undertake the subdivision and indicated that it would use its best endeavours to do so. There are therefore clauses within the Subdivision and Sale Agreement that are reflective of this intent, although there is no direct link to the Ground Lease.

Reporting and Milestones

McLeods suggested that a detailed program and specific milestones for the subdivision be provided by the Town and that the program be reported on at regular intervals. This was recommended to assist in the communication channels between BHP Billiton, Council and the community in relation to the subdivision works.

Accordingly, the following milestones incorporated into Annexure 2 of the Subdivision and Sale Agreement:

Milestone Description	Completion Date
Submission of design drawings to the Town for the Subdivision Works	Within 2 months after the date of the issue of a conditional subdivision approval by the WAPC (First Milestone Date)
Awarding by BHP Billiton of construction contracts for Subdivision Works	Within 6 months after the First Milestone Date (Second Milestone Date)
Completion of Subdivision Works	Within 18 months after the Second Milestone Date (Third Milestone Date)
Lodgement of Form 1C – Request for Clearance with WAPC	Within 3 months after the Third Milestone Date

Along with the milestones above, further provisions have been included as follows:

3.6 Progress Reporting & Consultation

- (1) *BHP Billiton agrees to inform the Town on a regular basis of:*
- (a) *the progress on the completion of the Subdivision Works by submission of the Working Table on a monthly basis; and*
 - (b) *any other matters generally relevant to the Subdivision and the Subdivision Works*

noting the following definition:

- Working Table*** means the document to be submitted by BHP Billiton to the Town on a monthly basis which accurately details:
- (a) *the status of all Subdivision Works;*
 - (b) *the date of completion of Project Milestones;*
 - (c) *the progress towards meeting Project Milestones by Milestone Dates; and*
 - (d) *any anticipated delay in meeting Project Milestones by Milestone Dates.*

Liquidated Damages Clauses

McLeods suggested that liquidated damages may be incorporated in respect of delays and would essentially be payable if milestone dates are not reached. It was considered by the Precinct 3 Working Group and neither party preferred to incorporate such clauses on the basis that if the milestone dates are not achieved, then the Town can access the Bank Guarantee (with sufficient Notice period being provided to BHP Billiton).

Defect Liability Bond

A defect liability bond is a usual requirement of construction contracts whereby 5% of the total construction costs are retained for a 12 month period. This is to ensure that if a defect in the construction works occurs within that period, then while BHP Billiton would be requested to repair the defect, if the repairs were not undertaken then the Town would have funds to remediate the works.

This recommendation has been incorporated in the Subdivision and Sale Agreement to the extent that not only is 5% of the actual costs of the subdivision held by the Town by way of Bank Guarantee, but that if the Town was required to address any defects with the cost being in excess of the Bank Guarantee held, BHP Billiton would be liable for the excess amount. This is to ensure that there is no risk being passed over to the Town.

The following sections have therefore been incorporated into the Subdivision and Sale Agreement:

5.1 Defects Liability Period

(2) If BHP Billiton fails to commence the work necessary to remedy the defect or any damage to the Subdivision Works caused by the defect within the time specified in paragraph (1) above, the Town may (but only after giving BHP Billiton a notice requiring BHP Billiton to commence works to remedy the defect of any damage to the Subdivision Works caused by the defect and BHP Billiton has failed to comply with that notice) proceed to do the work, or engage another party to do the work, and in respect of such works the Town may draw upon the Defects Liability Bank Guarantee to cover the cost of completing such works, and any amount in excess of the Defects Liability Guarantee will be a debt due and payable by BHP Billiton to the Town within 60 days after demand.

5.2 Defects Liability Bank Guarantee

(1) Immediately following Completion, the Quantity Surveyor will certify the actual cost of the works carried out to achieve Subdivision...

(2) BHP Billiton must provide to the Town a bank guarantee in the amount of 5% of the Actual Cost of Subdivision (Defects Liability Guarantee) within 30 days of Actual Cost of the Subdivision being certified in accordance with paragraph (1) above.

It is the officer's opinion that the clauses incorporated into the legal agreements, based on McLeods advice, provide sufficient security to the Town that allow for the entering of a Ground Lease rather than an Agreement to Lease and Ground Lease being attached.

This being the case, there were many conditions that Council resolved outside of usual commercial terms that also needed to be reflected in the agreements. The following section outlines the requirements by Council at each of its meetings and where, within the agreements, the conditions are incorporated.

An initial construction workforce of 2,000 be accommodated within the TWA facility

This is addressed in clause 13.2 of the Ground Lease which states "...the Camp may only accommodate a maximum of 2,000 construction workers at any one time."

An additional 2,000 construction workers be accommodated within the TWA facility (maximum of 4,000 construction workers in total) upon BHPB Board approval of the first stage of the Outer Harbour Development

This is also addressed in clause 13.2 of the Ground Lease which states "If BHPB's board approves the first stage of the Outer Harbour Development, the Camp may accommodate a maximum of 4,000 construction workers at any one time, subject to the Lessee obtaining all relevant approvals and permits required under Written Law."

A reduction in the lease term to be an initial 10 years with one 5 year option

This is addressed in Items 2 and 3 of the Schedule within the Ground Lease where Item 2 states the term being: "10 years commencing on the Commencement Date and expiring on the day immediately before the 10th anniversary of the Commencement Date." Item 3 states the further term to be: "5 years commencing on the 10th anniversary of the Commencement Date" with the commencement date being the date of execution of the lease.

The 5 year option on the lease may be exercised by BHPB prior to the expiration of the initial lease term if the State approves a subsequent proposal by BHPB under its State Agreement for the subsequent stage(s) of the Outer Harbour Development

This is addressed in the Ground Lease which states:

18.1 Option to renew

If the Lessee at least three months prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and:

- (a) all consents and approvals required by the provisions of this Lease or at Law have been obtained;*
- (b) there is no material subsisting default by the Lessee at the date of service of the Notice which has not been waived by the Lessor in:*

- (i) *The payment of Amounts Payable; or*
- (ii) *The performance or observance of the Lessee's covenants;*

(c) the State has approved after the date of this Lease a proposal by the Lessee (or any Related Entity) for a Further Stage of the Outer Harbour Development;

the Lessor must grant the Lessee a lease for the Further Term. The lease for the Further Term will be on the same terms of this Lease (as may be amended from time to time) with any necessary amendments to make the terms appropriate for the Further Term.

Modify the location of proposed Lot 34 (the warehouse site) to be adjacent to the Stage 1 industrial subdivision

This is addressed in Annexure 2 being the Subdivision Plan of the Ground Lease which clearly shows the warehouse site now proposed as being adjacent to the Stage 1 industrial subdivision.

BHPB is to grant a first right of refusal (option to re-purchase) for Lot 34 to the Town if BHPB decide to sell the land at some point in the future

This is addressed in the Subdivision and Sale Agreement which states:

6.13 First Right of Refusal to Purchase Lot 34

- (1) BHP Billiton shall not at any time sell or agree to sell Lot 34 without first offering to sell Lot 34 to the Town by notice in writing (Notice) specifying the price at, and the terms and conditions on which the BHP Billiton is prepared to sell Lot 34.*
- (2) Such offer to sell, constituted by the Notice, shall remain open for acceptance by the Town in writing for a period of 28 days after receipt of Notice by the Town.*
- (3) If the Town does not accept BHP Billiton's offer pursuant to the Notice, within the time and in the manner specified in paragraph (2) above, then BHP Billiton shall be entitled, within the next following period of 6 months, to sell Lot 34 (or the relevant part of it specified in the Notice) to any person at a price specified in the Notice (or a higher price) and otherwise on the terms and conditions not materially different from those specified in the Notice, but if BHP Billiton has not entered into an unconditional agreement to sell Lot 34 within that 6 month period, the provisions of this clause apply again.*
- (4) BHP Billiton must not seek to avoid the effect of this clause by arranging its landholding structure so that the offer to sell Lot 34 can be made by another entity.*

BHPB is to transfer all infrastructure as required by the Western Australian Planning Commission (WAPC) under the subdivision approval that may include, but not be limited to, earthworks, power, water, sewerage, telecommunications, landscaping and road infrastructure to the Town upon termination of the lease at no cost to the Town

This is addressed in the Ground Lease which states:

20.1 Yield Up Infrastructure in Good Repair

Upon the expiration or sooner determination of the Term, to peaceably surrender and yield up to the Lessor the Premises and the Infrastructure clean and free of rubbish that is entirely consistent with all of the Lessee's Covenants having been fully complied with.

The Ground Lease includes the definition for Infrastructure as follows:
"Infrastructure includes any works in, or over the Premises for the provision or passage of electricity, water, sewerage, drainage or communications and includes roads, and excludes all above ground structures not related to the provision of utilities."

BHPB is to remove all temporary worker accommodation unless the Town elects to retain the kitchens and administration buildings whereby the facilities will pass over and vest in the Town at no cost upon termination of the lease

This is addressed in the Ground Lease which states:

20.4 Lessor may require improvements to remain

- (1) Subject to any other provisions of this clause, the Lessor may require by written notice that any improvements, buildings or fixtures or part thereof constructed or erected on the Premises as fixtures (including without limitation any kitchens and administration buildings) remain on the Land, in which case such property in the improvements, buildings and fixtures shall vest in the Lessor following Termination of this Lease free of cost and without payment of compensation by the Lessor to the Lessee.*
- (2) The Lessor may request in writing to the Lessee that any improvements or buildings constructed or erected on the Premises, but not as to become fixtures (including without limitation any kitchens and administration buildings) remain on the Land. If the Lessee agrees with the Lessor's request in writing then property in the improvements or buildings will vest in the Lessor following Termination of this Lease free of cost and without payment of compensation by the Lessor to the Lessee.*
- (3) This clause 20.4 does not apply to any transient worker accommodation (save except any kitchens and administration buildings) the Lessee has installed, constructed or erected on the Premises.*

(4) The Lessor acknowledges that such improvements, buildings or fixtures will be provided to the Lessor on an "as is" basis.

Acknowledges that the financial returns to the Town outlined in the Business Plan will not alter in any way

This is addressed in Item 5 of the Schedule for the Ground Lease, and is contained within the definition of Purchase Price within the Subdivision and Sale Agreement which outlines the same returns as those advertised in the Business Plan.

Subject to the satisfaction of the CEO of the final studies received for traffic, flooding and servicing, authorises the CEO to submit the subdivision application to the WAPC

Council engaged the services of GHD, Cardno and SKM to undertake the hydrology study, the servicing assessment and traffic study respectively.

These studies have been completed and the findings were workshopped with Councillors where it was determined that there are no fatal flaws in the subdivision itself, and there is now confidence that the subdivision can progress as planned.

The issues outlined by the relevant studies will form conditions of approval for the subdivision, and will be resolved through detailed engineering during the construction of the subdivision.

As the studies had been completed to the satisfaction of the CEO, the subdivision application was submitted to the WAPC for consideration. As part of the consultation process undertaken by WAPC, the Town was also required to submit comments back to the WAPC for consideration. This has been undertaken and details of the timing of each of these are outlined in the paragraphs below that discuss the planning applications.

At the time of writing this report it is understood that the WAPC intended to issue its conditional approval on the 26th of April 2012. This has not yet occurred so conditional approval is imminent.

As the conditional approval will therefore be issued subsequent to the issuing of this report, it is recommended that the conditional approval issued by WAPC is annexed to the Subdivision and Sale Agreement in order to assist in the transparency of the arrangements.

This has been agreed to by BHP Billiton with a clause inserted in the Subdivision and Sale Agreement as a condition precedent which states:

2.1 Conditions Precedent

(2) *The parties covenant and agree that a copy of the conditional approval granted by the WAPC for the Subdivision will be annexed to this Deed once granted by the WAPC, and will comprise Annexure 5 of this Deed.*

Authorises the CEO to provide owner's consent for BHPB to lodge a planning application for the development of Precinct 3 to the Town for consideration

There are several planning applications that are required to develop Precinct 3, and are submitted to the Town separately for consideration, or forwarded to the appropriate authorities for consideration.

The first is for the Bulk Earthworks where the application is required to be considered by the JDAP (Pilbara Joint Development and Approvals Panel).

The Bulk Earthworks application required council officers to provide a report to the JDAP which was sent to the panel members on the 20th of April. It is anticipated that the JDAP will meet to consider the matter on the 4th of May.

With regards to the subdivision application, Council officer's comments were forwarded to the WAPC for consideration on the 20th of April. The Town is still awaiting the WAPC decision on this.

BHP Billiton has also lodged a planning application to gain construction access. This report is being considered by Council tonight as a separate Council agenda item.

A planning application has also been submitted for a 2,000 person TWA camp. The application commenced being advertised last week, for a two week period. It is therefore anticipated that the matter will be reported and considered by JDAP at the end of May or early June.

Authorises the CEO to provide owner's consent for BHPB to lodge a building application for the development of Precinct 3 to the Town for consideration

Until the planning applications are approved, building applications cannot be considered, therefore this process has not yet commenced.

It is understood that BHP Billiton will engage a private certifier in accordance with the Building Act to process the application.

Options

Council has two options for consideration being:

1. Agree to execute the attached legal agreements, namely the Agreement for the Subdivision of Precinct 3 and Sale of Proposed Lot 34, and the Ground Lease for the Transient Workers Accommodation Camp on Proposed Lot 35; or
2. Lay the matter on the table for want of further provisions to be incorporated into the agreements.

Option 1 is recommended.

In Summary

Officers are recommending that Council agree to execute both agreements on the basis that each item raised throughout the process, by both Councillors and the community, has been incorporated and reflects the overall intent of the Business Plan. While it is recognised that the WAPC conditional approval has not yet been received by the Town, it has been agreed between the parties to be annexed to the Subdivision agreement.

Attachments

1. Agreement for Subdivision of Precinct 3 and Sale of Proposed Lot 34 at the Port Hedland International Airport (Confidential) – under separate cover.
2. Ground Lease for Transient Workers Accommodation Camp on Proposed Lot 35 at the Port Hedland International Airport (Confidential) – under separate cover.

Officer's Recommendation

That Council:

In accordance with section 9.49A of the *Local Government Act 1995*:

1. Authorises the Mayor and Acting CEO to execute the Agreement for the Subdivision of Precinct 3 and Sale of Proposed Lot 34 at the Port Hedland International Airport, subject to minor amendments; and
2. Authorises the Mayor and Acting CEO to execute the Ground Lease for Transient Workers Accommodation Camp on the Proposed Lot 35 of the Port Hedland International Airport, subject to minor amendments.

Alternative Officer's Recommendation

That Council:

In accordance with section 9.49A of the *Local Government Act 1995*:

1. Authorises the Mayor and Acting CEO to execute the Agreement for the Subdivision of Precinct 3 and Sale of Proposed Lot 34 at the Port Hedland International Airport, subject to minor amendments; and
2. Authorises the Mayor and Acting CEO to execute the Ground Lease for Transient Workers Accommodation Camp on the Proposed Lot 35 of the Port Hedland International Airport, subject to minor amendments.
3. Notes that the Community Integration Committee outlined in the Business Plan will be formed as a Working Group, with its Term of Reference currently being drafted in order to be presented to the 23 May 2012 Ordinary Meeting of Council for consideration.

201112/436 Council Decision

Moved: Cr S R Martin

Seconded: Cr D W Hooper

That Council:

In accordance with section 9.49A of the *Local Government Act 1995*:

1. **Authorises the Mayor and Acting CEO to execute the Agreement for the Subdivision of Precinct 3 and Sale of Proposed Lot 34 at the Port Hedland International Airport, subject to minor amendments; and**
2. **Authorises the Mayor and Acting CEO to execute the Ground Lease for Transient Workers Accommodation Camp on the Proposed Lot 35 of the Port Hedland International Airport, subject to minor amendments.**
3. **Notes that the Community Integration Committee outlined in the Business Plan will be formed as a Working Group, with its Terms of Reference currently being drafted in order to be presented to the 23 May 2012 Ordinary Meeting of Council for consideration.**

CARRIED 4/0

6:11pm Councillors J E Hunt and G J Daccache re-entered the room and resumed their chairs.

Mayor advised Councillors J E Hunt and G J Daccache of Council's decision.

ITEM 7 LATE ITEMS AS PERMITTED BY CHAIRPERSON/COUNCIL**201112/437 Council Decision**

Moved: Cr S R Martin Seconded: Cr D W Hooper

That the meeting be closed to members of the public as prescribed in Section 5.23 (2)(a) of the Local Government Act 1995, to enable Council to consider the following item:

7.1 'Confidential - Appointment of HR Consultancy and Endorsement of CEO Remuneration Package'.

CARRIED 6/0

6:11pm Mayor advised the meeting is closed to members of the public.

7.1 *Confidential - Appointment of HR Consultancy and Endorsement of CEO Remuneration Package.*

201112/438 Officer's Recommendation / Council Decision

Moved: Cr J E Hunt Seconded: Cr G J Daccache

That Council:

- 1. Adopt the CEO Recruitment Panel's recommendation that Beilby Consulting be appointed as the specialist HR consultancy to undertake the CEO recruitment process as per their submission for a flat fee of \$30,000 plus an advertising strategy for \$11,700 and estimated out of pocket expenses to the value of \$8,300;**
- 2. Endorse a CEO remuneration package to commence the recruitment process with a total remuneration package of up to \$423,000 that incorporates the cash salary, superannuation and other associated benefits; and**
- 3. Note that the salaries of Directors, Managers and Coordinators will be further quantified and discussed with Councillors during the course of the 2012/13 Annual Budget Process.**

CARRIED BY ABSOLUTE MAJORITY 6/0

201112/439 Council Decision

Moved: Cr J E Hunt

Seconded: Cr S R Martin

That the Meeting be opened to members of the public.

CARRIED 6/0

6:13pm Mayor advised that the meeting is now open to members of the public.

ITEM 8 CONFIDENTIAL ITEMS

See item 7.1 above.

ITEM 9 CLOSURE

9.1 Date of Next Meeting

The next Ordinary Meeting of Council will be held on Wednesday 9 May 2012, commencing at 5.30 pm.

9.2 Closure

There being no further business, the Mayor declared the meeting closed at 6:15 pm.

Declaration of Confirmation of Minutes

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

CONFIRMATION:

MAYOR

DATE