



Town of Port Hedland

MINUTES

OF THE

ORDINARY MEETING

OF THE TOWN OF PORT HEDLAND COUNCIL

HELD ON

WEDNESDAY 27 OCTOBER 2010

AT 5.30 PM

IN COUNCIL CHAMBERS

McGREGOR STREET, PORT HEDLAND

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*Paul Martin
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 5:35 pm and acknowledged the traditional owners, the Kariyarra people.

ITEM 2 RECORDING OF ATTENDANCE AND APOLOGIES

2.1 Attendance

Mayor Kelly A Howlett
 Councillor Arnold A Carter
 Councillor Stan R Martin
 Councillor Michael (Bill) Dziombak
 Councillor David W Hooper
 Councillor Jan M Gillingham
 Councillor George J Daccache
 Councillor Steve J Coates

Mr Paul Martin	Acting Chief Executive Officer
Ms Natalie Octoman	Acting Director Corporate Services
Mr Russell Dyer	Director Engineering Services
Ms Debra Summers	Acting Director Community Development
Mr Terry Sargent	Director Regulatory Services
Miss Josephine Bianchi	Administration Officer Governance

Members of the Public	12
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Members of the Media	3
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2.2 Apologies

Nil.

2.3 Approved Leave of Absence

Nil.

ITEM 3 RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE

3.1 Questions from Public at Ordinary Council Meeting held on Wednesday 13 October 2010

3.1.1 Mr Chris Whalley

Could Council contact the management of ABC television Perth and ask them why Port Hedland has been obliterated from the nightly 7pm weather report map? Could Council ask ABC management Perth to reinstate Port Hedland onto the ABC nightly weather report map?

The Town of Port Hedland is currently in the process of drafting a letter to the ABC management outlining Mr Whalley's request.

3.2 Questions from Elected Members at Ordinary Council Meeting held on Wednesday 13 October 2010

3.2.1 Councillor S J Coates

With regard to the South Hedland Aquatic Centre, can it have more early morning openings (i.e. 5:30am); as the Port Hedland pool opens at 5:30am three times a week, whilst the pool in South Hedland (where the majority of residents live) only opens at 5:30am twice a week?

Recreation Co-ordinator advised that the South Hedland Aquatic Centre will look into the possibility of altering hours so that the pool can open early three mornings per week.

Can the South Hedland Aquatic Centre continue its 5:30am openings over the Christmas holidays?

Recreation Co-ordinator advised that the pool is looking to continue with standard term hours over the Christmas School Holidays, which would see the pool opening earlier during this period.

Can the South Hedland Aquatic Centre open earlier on a Saturday morning, for example at 7am, as opposed to its current Saturday opening time of 10am?

Recreation Co-ordinator advised that the YMCA is contracted by the ToPH to open the pool for a standard number of hours per week. This limits the hours of operations of the centre. It is not predicted that opening these hours on a Saturday morning would be viable (i.e. limited entries).

ITEM 4 PUBLIC TIME

4.1 Public Question Time

5:37 pm Mayor opened Public Question Time

4.1.1 Mr Chris Whalley

Given that someone somewhere has sanctioned the delivery of Pilbara Echo Newspaper to Town residents we now have, potentially, twice the volume of paper rubbish littering our streets. Will Council consider the banning of all newspapers delivered to Hedland houses?

Mayor advised that we need to work together with all newspaper stakeholders involved to make sure that newspapers are delivered to places where there are people and see how delivery can be improved. To improve on littering, the Town will work on a staged approach with all stakeholders involved.

5:40 pm Mayor closed Public Question Time

4.2 Public Statement Time

5:40 pm Mayor opened Public Statement Time

Nil

5:41 pm Mayor closed Public Statement Time

ITEM 5 QUESTIONS FROM MEMBERS WITHOUT NOTICE*5.1 Councillor G J Daccache*

Does the Town have an update on the status of the Colin Matheson Oval? Has a meeting been set up with all the parties involved to solve the issues?

Mayor advised that a meeting has been set up for early next week and from there everyone will be informed on the way forward.

5.2 Councillor J M Gillingham

Does the Town have an update on the lights in both parks at Pretty Pool?

Mayor advised that this question will be taken on notice.

Does the Town have an update from ABC television about getting Port Hedland back on the weather map?

Mayor advised the Deputy Mayor has been in touch with the ABC and she is very confident that Port Hedland will be back on the map.

ITEM 6 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 J M Gillingham
Cr A A Carter	Cr S J Coates
Cr S R Martin	Cr D W Hooper
Cr G J Daccache	Cr M (Bill) Dziombak

ITEM 7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

7.1 Confirmation of Minutes of Ordinary Meeting of Council held on Wednesday 13 October 2010

201011/143 Council Decision/Officer's Recommendation

Moved: Cr A A Carter

Seconded: Cr J M Gillingham

That the Minutes of the Ordinary Meeting of Council held on Wednesday 13 October 2010 be confirmed as a true and correct record of proceedings.

CARRIED 8/0

ITEM 8 ANNOUNCEMENTS BY CHAIRMAN WITHOUT DISCUSSION

Mayor Howlett's Activity Report for the October 2010 period to date as follows:

Tuesday, 12th October

- Attended Interview Australian Rural Leadership Scholarship Intake Course 18 2011/2012

Wednesday, 13th October

- Chair Port Hedland Development Plan Meeting + Deputy Mayor + Cr Martin + Cr Dziombak + A/CEO + DREG + MPL
- Attended Stakeholder Interview BHPBIO Event Planning + A/DCD
- Weekly Catchup Meeting Deputy Mayor & Mayor
- Weekly Media Meeting + Deputy Mayor
- Chair OCM 13th October 2010

Thursday, 14th October

- Attended PDC Board Meeting
- Attended JD Hardie Centre Working Group "Think Tank" + Deputy Mayor + Cr Hooper

- Attended First Hedland Community Theatre Group Meeting + Cr Gillingham

Friday, 15th October

- Teleconference CLFG Steering Committee Meeting + A/CEO
- Meeting With BHPBIO Ian Fletcher + Deputy Mayor + A/CEO
- Attended WA Country Health Service "Pilbara Indigenous Employment Program" Launch + Deputy Mayor + Cr Dziombak + Cr Hooper + A/CEO
- Attended 2010 Pilbara Region Tidy Towns/Sustainable Communities Awards Ceremony + M Parks + MCD

Saturday, 16th October

- PAWS Walk It Event

Monday, 18th October

- ABC NW Radio Interview Re: BHPBIO + Rio Tinto Announcement
- Spirit Radio Weekly Mayor Interview
- Attended Consultation For Airport Terminal Expansion Project + Deputy Mayor + DENG
- Meeting Re Proposed Sth Hedland CBD Roadworks + DREG
- Attended FESA/Make Hedland Home Cyclone Awareness Event + Cr Gillingham
- Attended JD Hardie/Youth Precinct Working Group Meeting + Deputy Mayor + MCD + MREC + YO

Tuesday, 19th October

- Opened "Operation Isolation" Cyclone Event Simulation Exercise
- Meeting With Ian Taylor Re: Meeting With LandCorp & Process Moving Major LandCorp Projects Forward +A/CEO
- Meeting Department Local Government Re: PRC Regional Collaborative Group & Scope Of Works (KPMG) +A/CEO

Wednesday, 20th October

- Attended Forum On Local Government Reform + A/CEO
- Meeting Clarity Communications Re: Hedland's Future Today Document + A/CEO
- Meeting Thinc Projects Re: Project Management Three Major Projects + A/CEO

Thursday, 21st October

- Chair TWA Working Group Meeting + Deputy Mayor + Cr Dziombak + Cr Daccache + A/DCD
- Weekly Catchup Meeting Deputy Mayor & Mayor
- Weekly Media Meeting + Deputy Mayor
- Attended Airport Committee Meeting + Deputy Mayor + Cr Martin + Cr Dziombak + Cr Gillingham + A/CEO + DREG + DENG
- Attended Skate Park Consultation Event

Mayor also advised that the Town of Port Hedland yesterday had a private audience with WA Premier Colin Barnett before he attended to his other engagements around the Town. He said straight from the start that there are two cities, Hedland and Karratha and in terms of assistance what will be done for one will also be done for the other. The Town's staff took him on a tour of Port and South Hedland which he was very impressed with, especially with what is happening in South Hedland. He was supportive of the South Hedland CBD Stage 2 and of the Spoilbank Marina proposal, although he needs more convincing with regard to the outer harbour proposal. He would like to see a modern chemicals industry at the Boodarie Industrial Estate and hoping to assist Council with mechanism to ensure our long term financial sustainability. He provided confidence with assistance with water supply and pressure issues in the West End.

The Heritage Festival was fantastic on Saturday. Although we did not win the Region we won two categories at Tidy Towns, enhancing culture identity and water conservation. Mayor attended the Smith Family event at Lotteries House, 120 plus parents and children were in attendance, it was a great event which we need to continue supporting. This Thursday 4th November the next quarterly 'Gearing Up' session will take place where questions regarding land and housing will be answered.

ITEM 9 REPORTS BY ELECTED MEMBERS WITHOUT DISCUSSION

9.1 Councillor A A Carter

With regard to the Heritage Festival last Saturday, it was a wonderful event, a family event, and Councillor A A Carter thanked Jan Gillingham's band that entertained the kids and also Julie Hunt from the Historical Society. There were many people in attendance, it was a learning curve and hopefully the event will be bigger and better next year.

9.2 Councillor G J Daccache

Councillor G J Daccache attended the opening of Utah Point yesterday; it is a massive project and well done to all involved in it.

9.3 Councillor J M Gillingham

Councillor J M Gillingham attended the opening of the Silver Star. Councillor Gillingham also congratulated Julie Hunt for a great afternoon at the Heritage Festival - Happy Birthday Port Hedland.

9.4 Councillor D W Hooper

Councillor D W Hooper attended the opening of the Silver Star and the art exhibition 'Before the Town Got Big'.

He also attended the Tourism Strategy meeting which was very interesting and will hopefully help the Town to develop its own tourism strategy.

9.5 Councillor M Dziombak

Councillor Dziombak advised that the Port Hedland Chamber of Commerce held its Annual General Meeting last night and re-elected him as President for next two years. He would like to continue the partnerships built in the past two years, namely with the Town of Port Hedland and is looking at holding an Economic Development Summit next year.

ITEM 10 PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS

10.1 Water Corporation – Port Hedland’s Water and Waste Water Update

Ms Kerrie Chapman, North West Business Manager for the Water Corporation provided Council with an update on Port Hedland’s Water and Waste Water.

10.2 Port Hedland Small Wins Overview

On behalf of the Port Hedland Small Wins, Ms Kerri McGregor presented an overview of the community owned initiative to revitalise Port Hedland.

10.3 BHP Billiton Iron Ore – Amenities Projects Update

Mr Andre Veder, Community Relations Advisor for BHP Billiton provided Council with an update on BHP Billiton Iron Ore Amenities Projects.

ITEM 11 REPORTS OF OFFICERS**11.1 Regulatory Services***11.1.1 Delegated Planning, Building & Environmental Health Approvals and Orders for September 2010 (File No.: 18/07/0002 & 07/02/0003)*

Officer	Cassandra Woodruff Executive Assistant Regulatory Services
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Date of Report	13 October 2010
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Disclosure of Interest by Officer	Nil
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Summary

This item relates to the Planning and Building approvals and Environmental Health Orders considered under Delegated Authority for the month of September 2010. A list of current legal actions is also incorporated.

Background

A listing of Planning, Building and Environmental Health approvals and Orders issued by Council's Planning, Building and Environmental Health Services under Delegated Authority for the month of September 2010 are attached to this report. Further to Council's request a listing of current legal actions is also attached to this report.

Consultation	Nil
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Statutory Implications

Town of Port Hedland Delegation Register 2005 outlines the limitations of delegated authority and requires a list of approvals made under it to be provided to Council. This report is prepared to ensure Council is advised of the details of applications which have been dealt with under delegated authority.

Policy Implications	Nil
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Strategic Planning Implications	Nil
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Budget Implications	Nil
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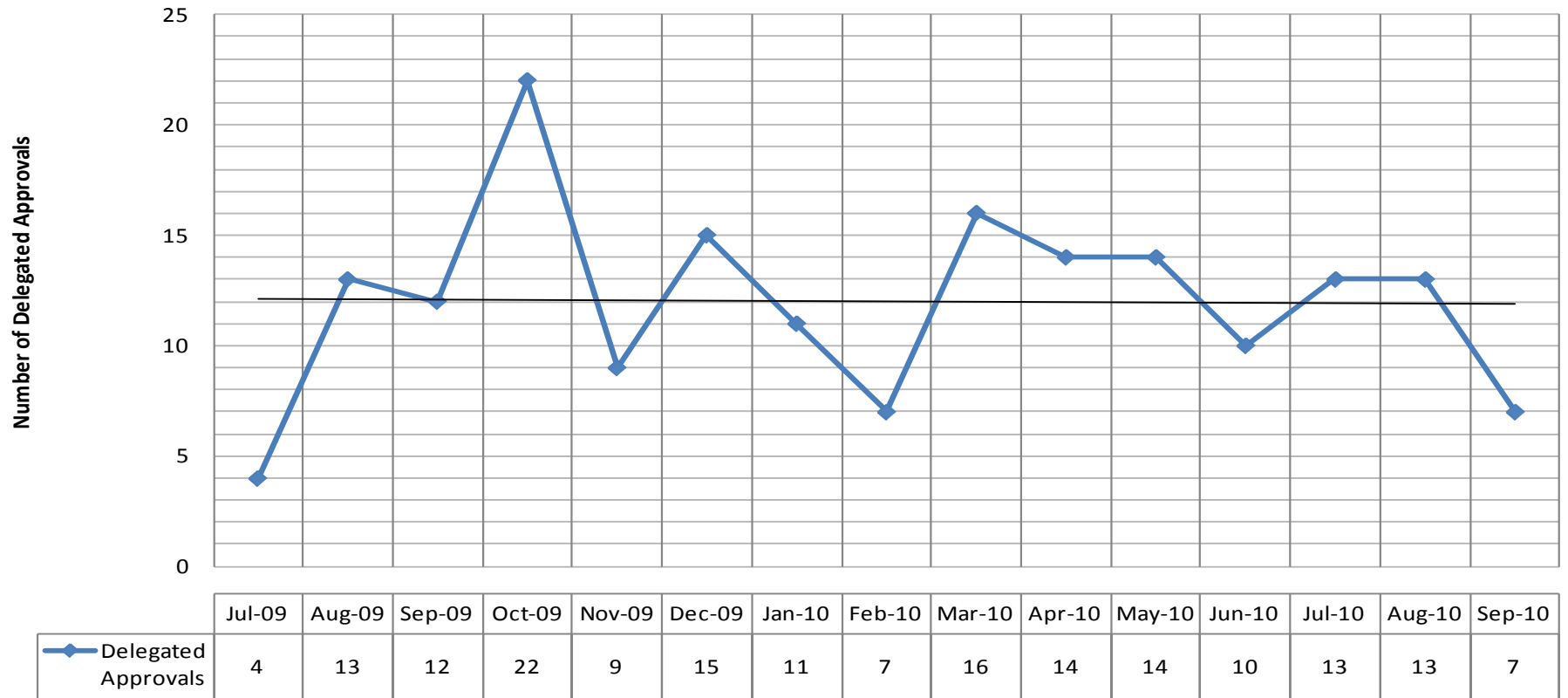
Officer's Comment	Nil
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DELEGATED PLANNING APPROVALS FOR SEPTEMBER 2010

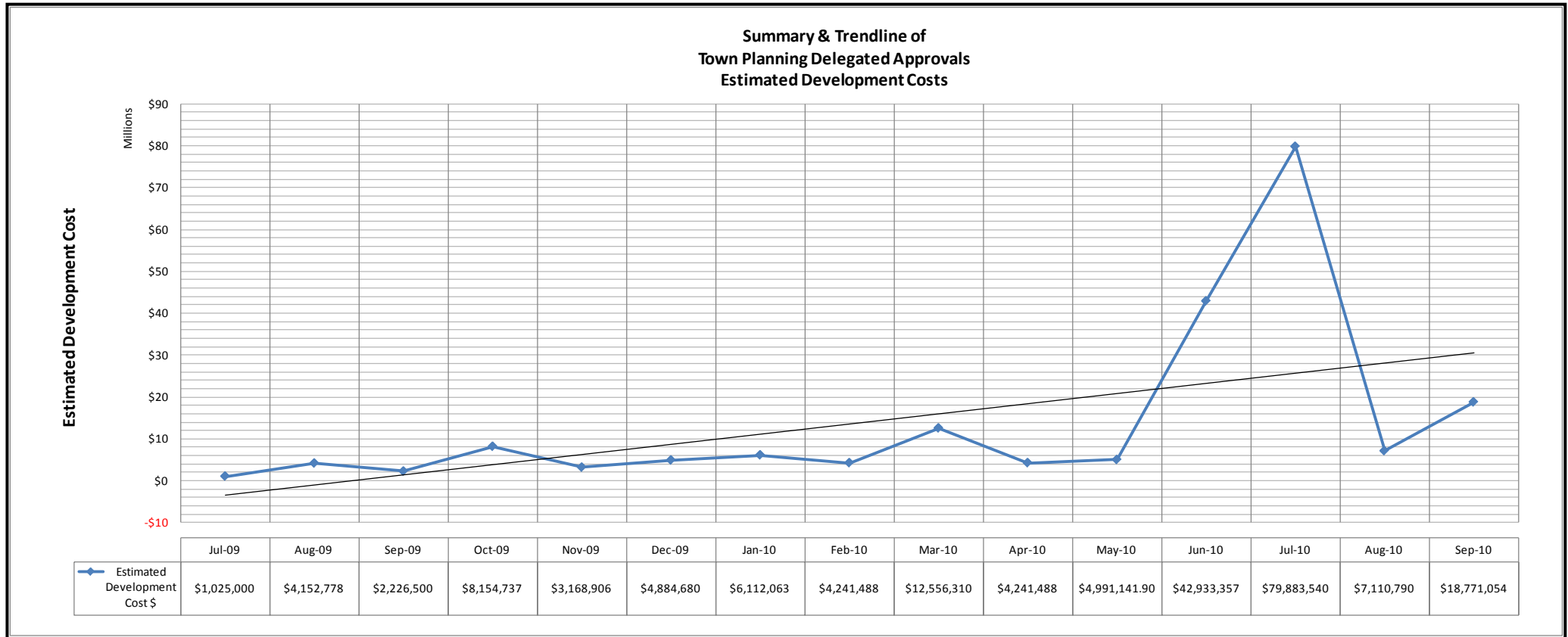
PLANNING APPROVALS - DELEGATED AUTHORITY - SEPTEMBER 2010								
Applic No	Applic date	Date Determined	Description	Lot	Address	Owners Name	Applicants name	Development Value
2010/134	17/06/2010	07/09/2010	INDUSTRY LIGHT - 13x Warehouse & Showroom Units	5879	25 MANGANESE STREET WEDGEFIELD 6724	Wa Land Authority	Karen Ellis	\$ 200,000
2010/154	02/07/2010	14/09/2010	GROUPED DWELLING - 2x DWELLINGS	5533	15 CATAMORE COURT SOUTH HEDLAND WA 6722	ALLINAM PTY LTD	Jenna Morton	\$ 80,000
2010/155	05/07/2010	08/09/2010	INDUSTRY - NOXIOUS - UPGRADE CONCRETE BATCHING PLANT	987	7 PEAWAH STREET WEDGEFIELD 6724	HANSON CONSTRUCTION MATERIALS PTY LTD	ROBIN SALTER	\$ 2,000,000
2010/159	04/07/2010	10/09/2010	CHANGE OF USE - STORAGE FACILITY	5884	5 MANGANESE STREET WEDGEFIELD 6721	SABRECHIEF PTY LTD	Dominic Canci	\$ -
2010/171	29/07/2010	06/09/2010	GROUPED DWELLING X 2	2	49 MORGANS STREET PORT HEDLAND 6721	TIMOTHY JOHN FORBES	KAREN ELLIS	\$ 600,000
2010/190	30/08/2010	01/09/2010	INDUSTRY - RESOURCE PROCESSING - Proposed Workshop	6254	L6254 WILSON STREET (BHP PT HEDLAND SITE) PORT HEDLAND 6721	BHP BILLITON MINERALS PTY LTD	JASON HYDE	\$ 15,802,054
2010/193	31/08/2010	06/09/2010	PROPOSED SHED ADDITION - WAREHOUSE	2501	23 LEEHEY STREET WEDGEFIELD 6724	Sayonara Nominees Pty Ltd	Owen Hightower	\$ 89,000

DELEGATED PLANNING APPROVALS FOR SEPTEMBER 2010

**Summary & Trendline of
Town Planning Delegated Approvals**



DELEGATED PLANNING APPROVALS FOR SEPTEMBER 2010



DELEGATED BUILDING APPROVALS FOR SEPTEMBER 2010

BUILDING LICENCES SEPTEMBER 2010						
Licence Number	Decision Date	Locality	Description of Work	Estimated Construction Value (\$)	Floor area square metres	Building Classification
100012	02.09.2010	SOUTH HEDLAND	1 x New Carport	\$ 15,500.00	63	Class 10a
100016	08.09.2010	SOUTH HEDLAND	1 x New Outbuilding	\$ 18,500.00	72	Class 10a
100023	13.09.2010	SOUTH HEDLAND	1 x New Outbuilding	\$ 19,950.00	30	Class 10a
100012A	20.09.2010	SOUTH HEDLAND	1 x New Outbuilding	\$ 18,236.00	25	Class 10a
100036	20.09.2010	SOUTH HEDLAND	1 x New Outbuilding	\$ 20,000.00	36	Class 10a
100038	21.09.2010	SOUTH HEDLAND	1 x New Outbuilding	\$ 23,615.00	60	Class 10a
100037	21.09.2010	SOUTH HEDLAND	1 x New Outbuilding	\$ 42,000.00	100	Class 10a
105005	08.09.2010	PORT HEDLAND	1 x Below Ground Swimming Pool	\$ 35,000.00		Class 10b
105006	08.09.2010	PORT HEDLAND	1 x New B.G. Public Swimming Pool	\$ 368,000.00		Class 10b
105007	09.09.2010	PORT HEDLAND	1 x Below Ground Swimming Pool	\$ 29,000.00		Class 10b
100026	13.09.2010	PORT HEDLAND	1 x Entry Statement to Transient Workfor	\$ 140,000.00		Class 10b
105008	21.09.2010	WEDGEFIELD	1 x New B.G. Swimming Pool	\$ 28,000.00		Class 10b
105009	21.09.2010	SOUTH HEDLAND	1 x New B.G. Swimming Pool	\$ 28,000.00		Class 10b
80989	07.09.2010	SOUTH HEDLAND	1 x New Grouped Dwelling	\$ 239,912.00	121	Class 1a
100029	08.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 316,000.00	275	Class 1a
100017	08.09.2010	PORT HEDLAND	1 x New Extension to Dwelling	\$ 249,966.00	79	Class 1a
100018	08.09.2010	SOUTH HEDLAND	1 X New Extension to Dwelling	\$ 249,966.00	79	Class 1a
100028	08.09.2010	PORT HEDLAND	1 x New Single Dwelling	\$ 527,412.00	166	Class 1a
100027	09.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 300,000.00	240	Class 1a
100019	09.09.2010	PORT HEDLAND	1 x New Single Dwelling	\$ 1,353,000.00	360	Class 1a
100020	09.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 450,000.00	194	Class 1a
80990	09.09.2010	PORT HEDLAND	1 x New Single Dwelling	\$ 550,000.00	260	Class 1a
100021	13.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 482,713.00	210	Class 1a
100024	13.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 499,279.00	249	Class 1a
100022	13.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 482,713.00	210	Class 1a
100030	15.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 464,105.00	211	Class 1a
100034	17.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 482,713.00	210	Class 1a
100032	17.09.2010	SOUTH HEDLAND	1 x New Single Storey Single Dwelling	\$ 466,668.00	183	Class 1a
100035	17.09.2010	SOUTH HEDLAND	1 x New Single Dwelling	\$ 482,713.00	210	Class 1a
100048	24.09.2010	SOUTH HEDLAND	2 x New Grouped Dwelling	\$ 655,722.00	351	Class 1a
100049	28.09.2010	PORT HEDLAND	1 x New Single Dwelling	\$ 700,000.00	266	Class 1a
100046	23.09.2010	WEDGEFIELD	3 x Shade Sails 1 x Patio 1 x Fence 1	\$ 2,600,000.00	10000	Class 5
100031	16.09.2010	PORT HEDLAND	Workshop	\$ 50,000.00	450	Class 8

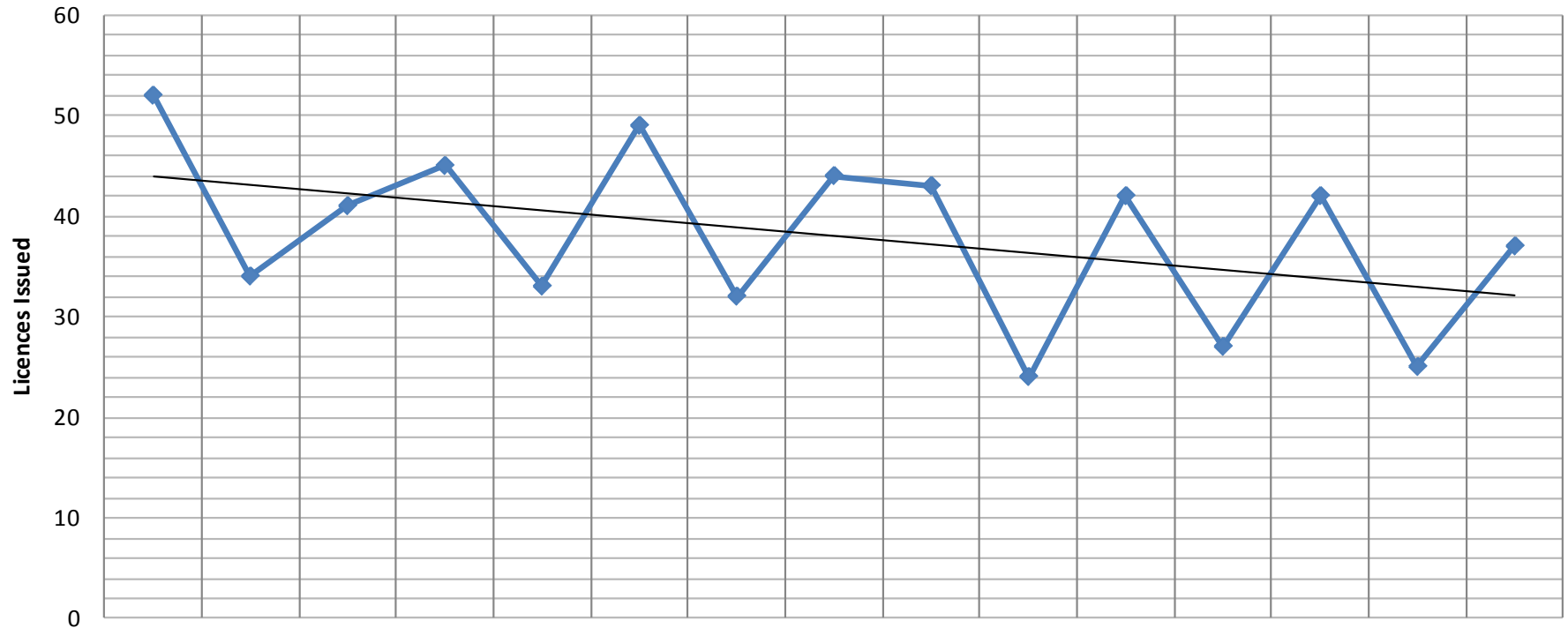
DELEGATED BUILDING APPROVALS FOR SEPTEMBER 2010 Cont'd...

SUMMARY				
No of Licences	Licence Type	Estimated Construction Value	Floor Area in square metres	Average cost per square
4	Demolitions	\$203,801		
18	Dwellings	\$8,952,882	3,874	\$2,311
7	Class 10a	\$157,801	386	\$409
6	Class 10b	\$628,000		
2	Commercial	\$2,650,000	10,450	\$254
	Other	\$0		
37		\$12,592,484	14,710	\$2,973

DEMOLITION LICENCES				
Licence Number	Approval Date	Locality	Description of Work	Estimated Construction Value (\$)
103006	16.09.2010	SOUTH HEDLAND WA	1 x Demolition of Single	22000
103005	15.09.2010	SOUTH HEDLAND	Demolition	95557
103004	09.09.2010	PORT HEDLAND	Demolition of Commerc	36810
103007	16.09.2010	PORT HEDLAND	Demolition of Dwelling	49434
4 Demolition Licences				\$ 203,801

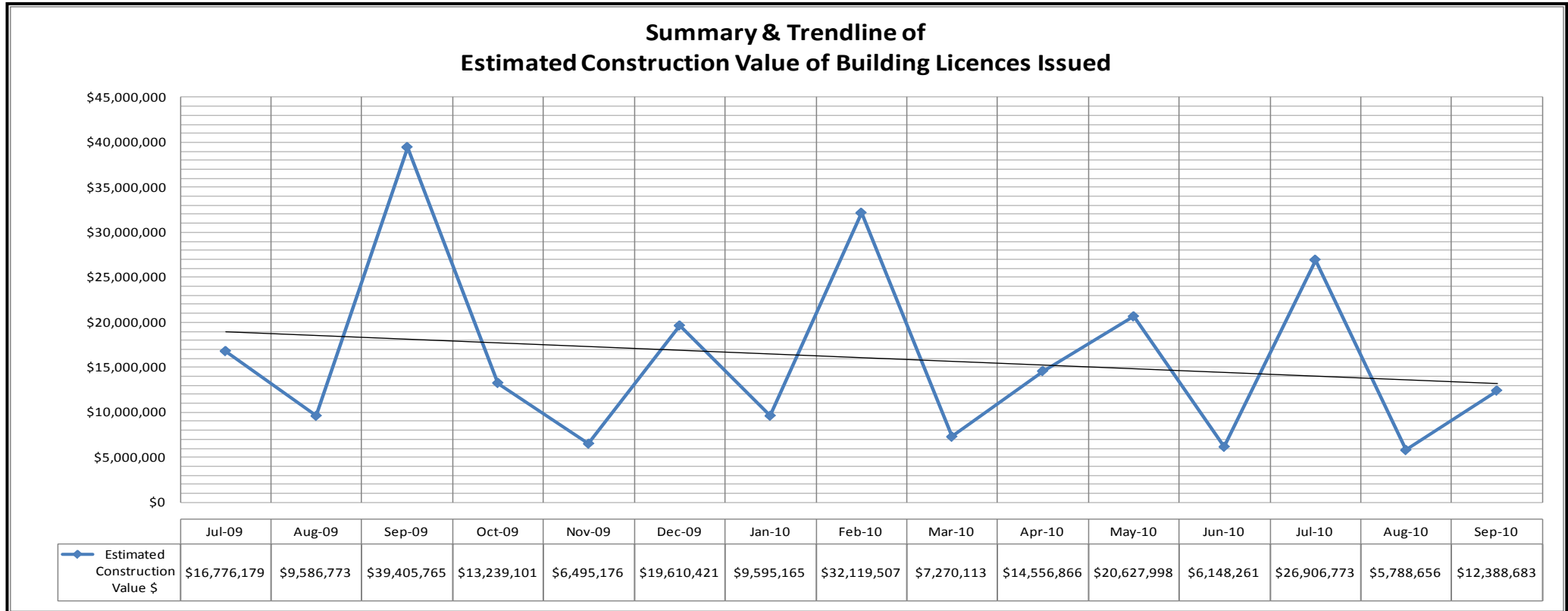
DELEGATED BUILDING APPROVALS FOR SEPTEMBER 2010 Cont'd...

Summary & Trendline for Building Licence Approvals



	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10
◆ No of Licences Issued	52	34	41	45	33	49	32	44	43	24	42	27	42	25	37

DELEGATED BUILDING APPROVALS FOR SEPTEMBER 2010 Cont'd...



DELEGATED ENVIRONMENTAL HEALTH ORDERS FOR SEPTEMBER 2010

Current Health Orders under Delegated Authority by Environmental Health Services	
30 Weaver Place, South Hedland (Faulteroy/Mills)	Building Unfit for Human Habitation

CURRENT LEGAL MATTERS BEING UNDERTAKEN AS AT SEPTEMBER 2010

CURRENT LEGAL MATTERS					
File No.	Address	Issue	First Return Date	Current Status	Officer
WEDGEFIELD					
121670G	Lot 3 Trig Street (J Yujnovich)	Non-compliance with planning conditions	~ First return date 21/1/09	~ Trial set down for 13 & 14 September 2010 in Perth. ToPH witnesses to attend. ~ Magistrate has found J Yujnovich guilty sentencing will be in +/- 3 weeks	MP
803175G	Lot 1402 (34) Pinnacles Street (National Tyres)	Illegal Residential dongas and office		~ Instruction & Docs sent to Solicitors 15 April 09 ~ Further information required prior to prosecution notice to be filed/served. ~ Inspection to be done to ascertain if issue is to commence. ~ Matter has been listed and will be dealt with in due course ~ Matter Resolved through negotiation	MP
124590G	Lot 1029 (4) Ridley Street (Carey Gardner Engineering)	Illegal Residential dongas		~ Instruction & Docs sent to Solicitors 4 September 09 ~ With the appointment of of Compliance Officer, the matter will now progress ~ Matter has been listed and will be dealt with in due course	MP
REDBANK					
116770G	Lot 134 Roche Road (Western Desert)	Illegal laydown area - Second Offence		~ Referred to Council Solicitors ~ Notices have been issued	MP
SOUTH HEDLAND RURAL ESTATE					
154412G	Lot 2 (5-7) Quartz Quarry Road (Macpherson - Sunsatin P/L t/as Pilbara Earthmoving)	Earth Moving business & repairs being operated from the property - Second Offence		~ Referred to Council Solicitors ~ Notices have been issued	MP

CURRENT LEGAL MATTERS BEING UNDERTAKEN AS AT SEPTEMBER 2010

CURRENT LEGAL MATTERS Cont'd...					
File No.	Address		First Return Date	Current Status	Officer
SOUTH HEDLAND					
PORT HEDLAND					
400330G	83 Athol Street (P Oldenhuis)	Health - Asbestos removal	~ First Return date 25/2/09	<ul style="list-style-type: none"> ~ No appearance by Mr Oldenhuis ~ Court hearing date 28/4/09 adjourned until 29/5/09. ~ Plea hearing date 13/7/09 ~ Trial 16/11/09 heard to 7pm. ~ Decision handed down 23/11 - guilty and issued \$250 in fines and \$4250 in costs. ~ Fine registered with FER by Solicitors as not paid by due date. ~ Fine unpaid to date. Warrant of execution issued 19th June 2010, issued under S45 (2) & Part 7 of the Fines, Penalties and Infringement Notices Act 1994 	MEH

Attachments

Nil.

201011/144 Council Decision/Officer's Recommendation

Moved: Cr A A Carter

Seconded: Cr M Dziombak

That the Schedule of Planning and Building approvals, Environmental Health Orders issued by Delegated Authority and the listing of current legal actions for the month of September 2010 be received.

CARRIED 8/0

11.1.2 Planning Services

11.1.2.1 Proposed Pylon Sign – Yarrie Road, South Hedland – Lot (File No.: 154410G)

Officer	Caris Vuckovic Lands Officer
Date of Report	15 October 2010
Application No's	2010/152
Disclosure of Interest by Officer	Nil

Summary

Council has received a request from James Atkinson on behalf of Masterplan to erect a pylon sign at the Yarrie Road/Collier Drive intersection, South Hedland. The sign will provide information and marketing relating to the development of Quartz Quarry Estate located at Lot 227 Greenfield Street, Boodarie.

This item is referred to Council for determination as it is a 'Use not listed' within the TPS 5 and the signs exceeds the provisions of Council's "Signs, Hoardings and Bill Posting" Local Law.

Background

The Quartz Quarry Estate project is an initiative from Masterplan that involves numerous residential developments located within the South Hedland Rural Estate (Boodarie).

Consultation Nil

Statutory Implications

'Advertising' is a Use not Listed within the TPS 5 Zoning table. As such Section 3.2.6 of the Scheme is relevant:

"If the development of land for a particular purpose is not specifically mentioned in the zoning table and cannot reasonably be included in the definition of one of the development categories the Council may determine:

- a) That the development or use is not consistent with the objectives and purposes of the particular zone or precinct and is, therefore, not permitted, or*
- b) By absolute majority that the proposed development may be consistent with the objectives and purposes of the zone and an application for planning approval should be determined in accordance with Part IV, including the advertising procedures of clause 4.3."*

In addition, Council's "*Signs, Hoardings and Bill Postings*" Local Law applies to the proposal and a number of areas of potential conflict with the Local Law are proposed.

Policy Implications Nil

Strategic Planning Implications Nil

Budget Implications Nil

Officer's Comment

Signs, Hoardings and Bill Postings Local Law

The proposed sign best fits in the definition of '*Pylon Sign*' under the Local Law. The applicant has sought a variation from the Local Law which is as follows:

"5.16.1(e) A sign supported on two or more piers or columns can be monolithic or shall remain open below the sign panel to a height of 2.75m above the ground immediately below it."

The proposed sign is only 1.2m above ground level.

Other parts of the Local Law that are considered relevant to the proposal are:

"5.16.1(b)The Council may in the case of a shopping centre permit a sign up to 25m² on any face."

The application is not for a shopping centre but will promote the development in general. The Local Law otherwise restricts signs in general to 3m in width and 6m² in area. The proposed sign is 6m x 3m being 18m² in area.

TPS 5

Although defined within the TPS 5 'Advertisement' is not a listed use within the Zoning Table. As such Council must, by absolute majority, determine that the proposal is consistent with the objectives and purpose of the 'Town Centre' zone.

Options

Council has the following options for determining the applications:

1. Approve the application with or without conditions.
2. Refuse the application.

The Town's Local Laws are very prescriptive and while the proposal does not fit within the tight definitions within the local laws it is consistent with current industry standards and is not seen to be problematic.

It is recommended that Council approve the application subject to conditions.

Attachments

1. The proposed signs graphics
2. Location & Signage Detail Plans

201011/145 Council Decision/Officer's Recommendation

Moved: Cr A A Carter

Seconded: Cr S R Martin

That Council approves Planning Application 2010/152 being for USE NOT LISTED – Pylon Sign at Yarrie Road, South Hedland, subject to the following conditions:

1. This approval relates only to the proposed USE NOT LISTED – Pylon Sign and other incidental development, as indicated on the approved plans. It does not relate to any other development on this lot.
2. Sign is to be modified to comply with Council's Signs Hoardings and Billposting Local Laws.
3. This approval to remain valid until such time as the redevelopment of the South Hedland Town Centre has been completed.
4. Upon the expiry of the permit the sign must be removed and land returned to its original condition to the satisfaction of the Manager Planning.

FOOTNOTES:


1. You are advised that drawings submitted for a Sign Licence are to be properly drawn and signed by a practicing structural engineer.
2. Applicant is to comply with the requirements of Worksafe Western Australia in the carrying out of any works associated with this approval.

CARRIED 8/0

LIMITED NUMBERS

QUARTZ PRIVATE ESTATE

Stage 1, limited release house and land packages



Investing? Leasing? Living?

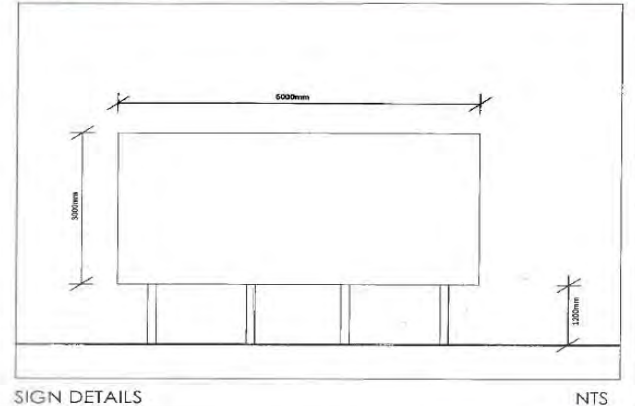
Register your interest for Quartz Estate now!
Average floor areas 319 sqm including verandah's on large 1 hectare lots.

Visit www.quartzestate.com.au or phone 0418 937 024

QUARTZ ESTATE



LOCAL CONTEXT NTS



SIGN DETAILS NTS

Proposed Signage-Quartz Quarry Estate

Corner Yarrie Road and Collier Road
South Hedland

LAIMER: AREA SUBJECT TO APPLICATION . CARRIAGEWAYS DIAGRAMMATIC ONLY. ALL AREAS AND DIMENSIONS ARE APPROXIMATE ONLY AND ARE SUBJECT TO FUTHER SURVEY ENGINEERING AND DETAIL DESIGN.

date 24.05.10 | scale at a3 1:250 | ref V15A Cbn 01A | revised



www.masterplanwa.com

5:50pm Councillor G J Daccache declared a Financial Interest in Agenda Item 11.1.2.1 "Reconsideration of request for lease of land parcel for Transient Workforce Accommodation" as he holds shares exceeding \$10,000 with Mineral Resources and left the room.

11.1.2.2 Reconsideration of Request for Lease of Land Parcel for Transient Workforce Accommodation (File No.: 05/05/0056)

Officer Terry Sargent
Director Regulatory Services

Date of Report 14 October 2010

Disclosure of Interest by Officer Nil

Summary

To reconsider making additional airport land available for lease for Transient Workforce Accommodation. The matter was first considered in July but deferred pending survey and valuation of the land, which has now been completed.

Background

Council has been approached by Mineral Resources Limited, also acting on behalf of Hancock Prospecting seeking access land for Transient Workforce Accommodation.

The land has been surveyed and valued so can be leased, although if the lots defined by the surveyor are not best suited to the needs of the proponent it would be possible for an alternative parcel of land to be surveyed within the site to suit the needs of the proponent.

As previously reported, the land can be made available for lease, subject to statutory obligations being met, and as the available land exceeds the likely requirements of the applicant, there will also be an opportunity for other parcels of land to be made available.

Consultation

There has not been any specific public consultation on this matter but

Statutory Implications

Council can dispose of the property as requested provided it meets the requirements of Clause 3.58(3) of the Local Government Act (below)

“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.*

[Section 3.58 amended by No. 49 of 2004 s. 27.] “

Policy Implications

Nil

Strategic Planning Implications

Council's Strategic Plan clearly identifies the need to obtain maximum benefit from the airport land.

Budget Implications

At the valuation of \$15.00 per square meter, the lease of land will generate an income of \$150,000 per hectare per annum.

Officer's Comment

As previously reported, the companies behind this most recent approach to Council need to access land as soon as possible and have indicated that their access to fill, earthmoving equipment and transportation enable them to deal with the fill requirements of the site.

The site has been valued and surveyed and notional lots identified. There are however, no final designs for the proposed TWA development so it is likely the developers will prefer to survey a site at their own expense once their requirements for buildings, parking, effluent disposal etc have been identified.

It is recommended that the Acting CEO and Chairman of the Committee be authorised to negotiate with Mineral Resources PL, the terms of a draft lease over a parcel of land within the site identified (see attachment 2) within the following parameters:

- The lease will be for a period not exceeding 10 years
- The rental shall be in accordance with Council's most recent valuation.
- There will be a clearly measurable community benefit equal to, or greater in value than the community benefits proportionally provided by other TWA's developments on nearby land.
- Any costs associated with re-survey to modify the design or size of the lease area must be at the lessee's expense, and any such variation must not restrict access to other potential sites in the future.

In order for Council to meet its obligations under the Local Government Act, it will be necessary for the terms of the proposed lease to be agreed by the committee (on behalf of Council) and then for the public comments to be invited and considered prior to a final decision being made.

Council has in the past called for expressions of interest for the lease of land for small scale TWA developments for locally based contractors without receiving any significant response. It would be appropriate to again test the market to see if any smaller or locally based contracting companies are interested in obtaining adjacent land for such a development.

Attachments

1. Valuation Report
2. Site Description

201011/146 Council Decision/ Airport Committee Recommendation**Moved:** Cr A A Carter**Seconded:** Cr J M Gillingham

That Council:

1. authorise the Acting CEO and the Chairman of the Airport Committee to negotiate with Mineral Resources Pty Ltd, the terms of a draft lease of a suitable parcel of land adjacent, to existing Transient Workforce developments on Lot 2444, Great Northern Highway, and any related agreements within the following parameters:
 - a. **The lease will be for a period not exceeding 10 years**
 - b. **The rental shall be in accordance with Council's most recent valuation.**
 - c. **There will be a clearly measurable community benefit equal to, or greater in value than the community benefits proportionally provided by other TWA's developments on nearby land.**
 - d. **Any costs associated with re-survey to modify the design or size of the lease area must be at the lessee's expense, and any such variation must not restrict access to other potential sites in the future; and**
2. report the proposed terms of an agreed draft lease and any associated agreement back to the Committee as soon as possible, and;
3. calls for expressions of interest from small business or locally based contractors seeking to establish Transient Workforce Accommodation developments for not more than 50 persons.
4. notes the marked area of the attached site description.

CARRIED 7/0

5:51pm Councillor G J Daccache re-entered the room and resumed his chair. Mayor Howlett advised him of Council's decision.

Your Ref: P/Order 98179
Our Ref: 201008047 PM/na

28 September 2010

Town of Port Hedland
PO Box 41
PORT HEDLAND WA 6721



ATTENTION: Mr Nick Summers
Asset Manager

**TRANSIENT WORKERS ACCOMMODATION (TWA)
PORTION LOT 2444 GREAT NORTHERN HIGHWAY
PORT HEDLAND WA 6721**

We refer to our valuation report pertaining to notional 1 to 1.5 hectare sites on the above property and recent discussions regarding 2 hectare sites.

We have reviewed our report and note the sites of the transient worker accommodation range from 4027m² to 2.6 hectares and consider it is appropriate to apply the reported rental of \$15 per m² to sites of up to 2 to 2.5 hectares. The rental is net of GST and outgoings and the Lessee will be responsible for providing services and constructing access.

GROUND RENT FOR A 2 HECTARE SITE **\$300,000 pa exclusive of GST and outgoings**

The above forms an extension is to be read in conjunction with the original report.

INDEPENDENT VALUERS OF WESTERN AUSTRALIA

Peter Murphy, AAPI
Certified Practising Valuer
Licensed Valuer 487 (WA)

INDEPENDENT VALUERS OF WESTERN AUSTRALIA
47 RAILWAY PARADE, MOUNT LAWLEY
PO BOX 277 MOUNT LAWLEY WA 6929
TEL (08) 9271 9500 FAX (08) 9271 9555
EMAIL ADMIN@IVWA.COM.AU
INDEPENDENT VALUERS OF WESTERN AUSTRALIA PTY LTD (ACN 104 498 151)



11.2 Engineering Services

Nil

11.3 Community Development**11.3.1 Report on Quarterly Aboriginal Forum - Housing (File No.: 03/01/0021)**

Officer **Debra Summers**
Acting Director Community
Development

Date of Report 18 October 2010

Disclosure of Interest by Officer Nil

Summary

The first Aboriginal Quarterly Forum was held on Monday 27 September 2010. The topic for discussion was Housing. This report gives the Council an overview of the forum and outlines resulting recommendations.

Background

At the Council meeting of 23 June 2010 it was resolved:

"200910/462 Council Decision/Officer's Recommendation

That Council:

- 1. disband the Aboriginal Affairs Working Group; and*
- 2. undertake quarterly consultation forums with Aboriginal people commencing in July 2010; and*
- 3. receive a report in June 2011 on the effectiveness of these forums to determine future engagement methods; and*
- 4. thank the members of the AAWG for their time on the working group and invite them to remain involved in consultation forums."*

The first of these quarterly Forums was held on Monday 27th September at Wanka Maya and the topic for discussion was Housing. Sixteen people attended from relevant agencies, not for profit agencies and aboriginal members of the community. The group listed the following problems/issues for discussion:

- Shortage of available housing/long waiting lists;
- Lack of affordable housing for local people to buy or rent;
- Houses available were too small for large families;
- Aboriginal people can experience problem sustain tenancies; and
- Housing for community visitors.

The meeting facilitated by Maureen Kelly then workshopped each problem/issue for discussion.

The main outcomes about each problem/issue from the forum were as follows:

Shortage of available housing/long waiting lists

Background: If the same criteria for public housing elsewhere in the state were applied to waiting lists in the Pilbara there would be no shortage of housing for aboriginal people. However given our unique housing situation, people on incomes not usually housed in public housing are required to be supported.

Recommendation one: Solutions are required to move these people out of public housing such as programs to provide key worker housing.

Lack of affordable housing for local people to buy or rent

Background: Department of Housing cannot discriminate housing applicants based on where they come from. Priority is given not based on the applicant's origin but on whether they can demonstrate that their needs are greater than anyone else's. Applicants need to provide evidence of this in order to obtain priority.

Department of Housing cannot do anything about what rates private landlords set for their properties.

Recommendation two: ToPH needs to lobby state government for more shared equity loans with higher ceilings for cost of house and income eligibility.

Houses available were too small for large families

Background: DoH builds properties according to the waiting list and applicants need to reflect who will actually be living in the house. If the housing application is for two people and ten people then attempt to live there, of course this will not work.

Aboriginal people can experience problem sustain tenancies

Background: If some aboriginal people are not assisted in coming to understand how to achieve a standard of living in a DoH property then their behaviors and those of visitors to the property will cause the tenancy to be terminated. DoH sees this action as a last resort as it is understood that the evicted persons become homeless.

Recommendation three: That the 'Home-Maker Program' on trial in Roebourne is instituted in Port Hedland. This program comprises intensive one-on-one training in the home to educate participants on why a house should be clean, why it must be maintained and kept in

good condition, etc. The outcome of the introduction of this program should sustain tenancies and therefore reduce homelessness.

Housing for community visitors

Background: There needs to be research into how this situation has been dealt with successfully elsewhere. Giving people what they say they want might be done with the best of intentions, but sometimes that doesn't actually help without an examination of the consequences of any decision made.

Recommendation four: Housing for community visitors is not a priority from the forum, and no further action is to be taken on this issue until a viable option is presented.

In the preparation of this Aboriginal Forum, two reference group meetings were hosted by the ToPH which involved key community and agency stakeholders. At the first of these meetings it was decided that the ToPH would prepare a Resource Handbook which would be available for aboriginal people and any person involved in providing information, support or resources to aboriginal people within the ToPH. This handbook would list who was undertaking what services and support on behalf of aboriginal people. This resource is nearing completion and will be launched by the Mayor at a relevant event in the near future.

Consultation

In the presentation of this Aboriginal Forum, two reference group meetings were hosted by the ToPH which involved consultation with key community and agency stakeholders.

Statutory Implications Nil

Policy Implications Nil

Strategic Planning Implications

Key Result Area 3 – Community Development
Goal 5 Traditional Owners and Aboriginal People
Other Actions

1. Engage in forums that seek to develop tangible strategies relating to reducing the gap between indigenous and non-indigenous Australians.

Budget Implications

Costs associated with the running of the Quarterly Aboriginal Forums are within the normal operating budget of the Community Development Directorate.

Officer's Comment

All participants at the first of these quarterly forums considered it informative and effective. The ToPH has been asked by forum participants to lobby for the recommendations to be enacted upon although it is recognized that many of the policies and practices requiring changing and updating are outside the normal sphere of operation for local government. The role required by the ToPH on behalf of aboriginal members of its community is that of a funnel for two way communication about issues that impact on aboriginal people's lives and to play a role of advocacy for necessary change.

The next forum will be held in mid December and will deal with the topic of Youth.

201011/147 Council Decision/Officer's Recommendation**Moved:** Cr A A Carter**Seconded:** Cr D W Hooper

That Council:

1. receive the update on the first Quarterly Aboriginal Forum on Housing as presented in this report; and
2. request the CEO to meet with the Department of Housing and discuss the recommendations from this forum; and
3. note the next Quarterly Aboriginal Forum will be in mid December 2010 on the topic of Youth.

CARRIED 8/0

11.3.3 Department of Sport and Recreation – Community Sport and Recreation Facilities Fund Application (File No.: 26/04/0018)

Officer	Nicole Roukens Recreation Coordinator
Date of Report	15 October 2010
Disclosure of Interest by Officer	Nil

Summary

As part of the Department of Sport and Recreation's Community Sport and Recreation Facilities Funding round, the relevant local government authority must approve and endorse funding application/s to the state government department for contributions towards applicable projects.

Background

The Community Sporting and Recreation Facilities Fund (CSRFF) program is administered by the Department of Sport and Recreation (DSR). This program invites sporting associations and local governments to submit proposals for funding assistance, providing all relevant guidelines are met. It is a requirement of the DSR that all applications be approved by the local government before being submitted to the Department of Sport and Recreation regional office.

CSRFF assistance is available for local sporting groups, associations and local governments to develop infrastructure that will encourage physical activity and healthy communities, through the development of recreation related facilities.

The role of the Town of Port Hedland within this process is to rank the order of priority of the projects that have been received (two projects may not be equally ranked and all projects must be given a ranking). The local government is also required to rate all applications as high, high/medium, medium, medium/low, low or not recommended. This rating reflects how worthwhile the project is considered to be, and indicate its importance, actual need and benefit to the community.

The recreation department have developed funding applications for the resurfacing and installation of new overhead lighting for the Faye Gladstone Netball Courts and for the design and construction of a shade structure to cover the external courts at the Multipurpose Recreation Centre. This item has therefore been prepared to request Council approval for the two submissions to the DSR.

Consultation

The Department of Sport and Recreation advertised the CSRFF round via all standard media avenues, including newspaper, email, written letters and website promotion.

Statutory Implications Nil

Policy Implications Nil

Strategic Planning Implications

Key Result Area 3 – Community Development

Goal 2 – Sports and Leisure

That the community has access to sport and leisure facilities at or above the quality that they would be able to access in the metropolitan area.

Budget Implications

The DSR will fund up to 33% of a project, with other funding to be sourced from additional avenues.

Funding to upgrade the Faye Gladstone Netball Courts was allocated by Council as part of the 2010/2011 budget process. It will be requested that these funds are carried forward to the 2011/2012 financial year. It is anticipated that the upgrade to the netball courts will cost \$370,000, which includes resurfacing of the courts and upgrading the overhead lighting. The Port Hedland Netball Association has also indicated that they would be likely to contribute \$25,000 towards the upgrade.

The design and construction of a shade for the external courts at the Multi Purpose Recreation Centre was estimated to be \$8.5 million in 2008/2009. Funding has yet to be committed by Council for the project. A budget submission for the shade will be submitted to Council as part of the 2011/2012 budget process. Funding will also be sourced from external stakeholders and depending on the budget will look to be completed as a staged project.

Officer's Comment

The Department of Sport and Recreation's CSRFF round is an annual program aimed at improving the sporting and recreational infrastructure within the state. The DSR will give consideration to projects that do not request more than 1/3 of the total project amount, will not commence prior to the funding being announced, and encourage/promote physical activity through the development/upgrade of recreational infrastructure.

The DSR Pilbara Manager has been consulted and has indicated their support for both of the projects.

The resurfacing and installation of new lighting at Faye Gladstone Netball Courts and design and construction of a shade for the external courts at the Multipurpose Recreation Centre have been identified as feasible projects for CSRFF for the 2011/2012 and 2012/2013 financial year.

It is anticipated that the shade to the external courts at the Multi Purpose Recreation Centre is more likely to be funded by DSR as this is a multipurpose facility and falls classically into the requirements for CSRFF funding. It is therefore recommended that the shade for the Multi Purpose Recreation Centre is ranked number 1, with the Faye Gladstone Netball Courts upgrade ranked as number 2.

Please note that the endorsement of this agenda item by Council does not require a commitment of funding as part of the 2010/2011 budget process.

Grant applications for CSRFF funding are due to DSR on the 29th October 2010.

Attachments

Nil

Officer's Recommendation

That Council endorses two applications to the Department of Sport and Recreation for the Community Sport and Recreation Facilities Fund, with the shade for the external courts at the Multipurpose Recreation Centre ranked as the highest priority, and resurfacing and installation of new overhead lighting for the Faye Gladstone Netball Courts ranked as the second highest priority.

201011/148 Council Decision

Moved: Cr A A Carter

Seconded: Cr J M Gillingham

That Council endorses two applications to the Department of Sport and Recreation for the Community Sport and Recreation Facilities Fund, with the resurfacing and installation of new overhead lighting for the Faye Gladstone Netball Courts ranked as the highest priority and the shade for the external courts at the Multipurpose Recreation Centre ranked as the second highest priority.

CARRIED 8/0

REASON: Council believes that an appropriate amount of funds has already been allocated to the Multi Purpose Recreation Centre.

6:53pm Councillor J M Gillingham declared a Impartiality Interest in Agenda Item 11.3.4 "Request for Use of the JD Hardie Centre - Zumba Classes" as she personally knows Tegan Neylone. Councillor J M Gillingham did not leave the room.

11.3.4 Request for Use of the JD Hardie Centre - Zumba Classes (File No. 26/05/0005)

Officer	Alina Artie JD Hardie Centre Supervisor
Date of Report	15 October 2010
Disclosure of Interest by Officer	Nil

Summary

Approval is sought to hire facilities at the JD Hardie Centre for Zumba classes – on the basis that no other suitable space is available on weekday mornings and this would provide a valuable community service.

Background

Zumba is a new dance style fitness class, which has recently become very popular throughout Australia. Due to its popularity a number of local community members have trained to become instructors and have requested to run classes at the JD Hardie Centre.

The JD Hardie Centre has been approached by two different community members wanting to run classes at the centre. The centre will soon be employing Michelle Cooke, as a fitness instructor to run Zumba sessions at the centre on Monday and Wednesday evenings.

Tegan Neylon from Hedland Zumba has also approached the centre and requested to hire the fitness hall on weekday mornings to run classes, as no other suitable venues are available at this time. Hedland Zumba will be running classes at a number of other locations in Port and South Hedland at other times.

The attachment letter from Tegan Neylon provides information to support her request that she, alongside two other instructors, are providing a valuable service to the community and allowing it to be accessible to all community members by offering numerous classes in both Port and South Hedland in the mornings and afternoons.

Council has previously considered applications from private businesses to hire the centre facilities. A decision is made on balance, weighing the value to the community against providing an unfair and inappropriate advantage to a commercial operator.

As an example, Council has previously approved Alliance's hire of centre facilities. This is a small business offering dance programs.

Consultation

- Recreation Coordinator
- JD Hardie Centre Supervisor

Statutory Implications Nil

Policy Implications Nil

Strategic Planning Implications

Key Result Area 3 – Community Development
Goal 2 – Sports and Leisure

That the community has access to sports and leisure facilities at or above the quality that would be able to access in the metropolitan area.

Budget Implications

Payment of standard fees and charges by the Hedland Zumba for use of the JD Hardie Centre generates additional income to the Centre.

Officer's Comment

Hedland Zumba provides excellent opportunities to increase physical activity through a fun and enjoyable program. Limited other suitable venues are available on weekday mornings for hire. Therefore it is recommended that this hire request granted.

Attachments

Letter from Tegan Neylon, Program Instructor, Hedland Zumba

201011/149 Council Decision/Officer's Recommendation

Moved: Cr S R Martin

Seconded: Cr D W Hooper

That Council approve the hiring of facilities at the JD Hardie Centre to the Hedland Zumba as per standard booking conditions and Schedule of Fees and Charges.

CARRIED 8/0

7th October 2010

To Whom It May Concern,

As a result of the great demand for Zumba in our community, Tegan Neylon, Lenny Jalil and Jessica England are taking it upon themselves to complete the Zumba® Basic Steps Level 1 course. This will then enable them to teach members of the public.

In order for this to happen, they have approached the JD Hardie Centre and feel that the small Fitness Room would be appropriate for these classes. At this stage they are looking to begin classes as soon as Monday 11th October 2010.

Tegan, Lenny and Jessica all have a background in either dance or fitness and feel that their previous knowledge and experiences will benefit the community immensely in delivering the Zumba® program.

As you may or may not be aware, Zumba® is the latest global sensation in regards to group fitness. "The Zumba® program fuses hypnotic Latin rhythms and easy-to-follow moves to create a one-of-a-kind fitness program that will blow you away. Zumba® Fanatics achieve long-term benefits while experiencing an absolute blast in one exciting hour of calorie-burning, body-energizing, awe-inspiring movements meant to engage and captivate for life"

Tegan, Lenny and Jess feel that the JD Hardie Centre provides the perfect venue to host their Zumba® classes as it would benefit the community greatly. By having these classes easily accessible to members of the community they feel that they would be able to help spread the community spirit in a fun, friendly, supervised setting whilst also promoting the facilities of the JD Hardie Centre. The girls also feel that due to limited venues in both Port Hedland and South Hedland, the JD Hardie Centre provides an idea venue for the morning Zumba® Classes. It would be ideal if the classes were able to start as soon as possible.

They look forward to sharing the Zumba® experience with the community.

Yours Thankfully,

Tegan Neylon

Lenny Jalil

11.4 Governance and Administration

11.4.1 Finance and Corporate Services

11.4.1.1 Review of the Rates Incentive Program

Officer **Tara Ritchie**
Senior Rates Officer

Date of Report 6 October 2010

Disclosure of Interest by Officer Nil

Summary

For Council to note some of the issues identified during the course of the Rates Incentive Program, and to consider adopting a Policy and an accompanying internal checklist to be used for all future Rates Incentive Program draws. The intention is to demonstrate a robust, equitable and transparent process to the community.

Background

For the past two years Council have run a Rates Incentive Program which is designed to encourage ratepayers to pay their rates in full by the due date. This in turn provides additional interest returns to the Town that can then be used to fund future programs.

At the commencement of the Rates Incentive Program, businesses are invited to sponsor the program with four levels of sponsorship offered. The significant dollar value and number of prizes has been made possible through sponsorships provided by mostly local businesses and have included cash prizes, flights, vouchers and accommodation to name a few. In return for their sponsorship Council ensure business's have their logo advertised on entry forms which are mailed to all ratepayers, their logo is advertised on displays around the Town for example Libraries, Civic Centre and the Shopping Centres, and they are invited to attend the Rates Incentive Program event as a further promotional opportunity. These are just a few of the ways the Town promoted the sponsors with the level of promotion being dependant on the amount of sponsorship a business selected.

During the 2010 Rates Incentive Program there was a complaint against the Town lodged with the Office of Gaming, Liquor and Licensing outlining potential breaches of *the Gaming and Wagering Commission Act 1987*.

During the investigation, there were some areas of the Program identified that require improvement if future Programs are to be conducted. These included:

- Using WST rather than AEST given the majority of ratepayers entering are from Western Australia;
- Including a clause on the Entry Form outlining that the full Terms and Conditions can be found on the Town's website;
- Ensuring that the initial draw is open to the public;
- Implementing appropriate checking mechanisms to ensure that Councillors, employees of the Town and their families do not enter the draw if this is one of the conditions incorporated;
- Providing a full copy of the Terms and Conditions to the Gaming and Wagering Commission prior to the promotion commencing; and
- The order in which the prizes are to be drawn must be outlined in the full Terms and Conditions, and if a reverse draw (largest valued prize drawn last) is conducted, then it must be specified that this is how the draw will take place.

All of these items can be easily incorporated into an internal checklist with an overarching Policy to ensure that the Program is conducted in a manner recognized as being robust, open and transparent to all ratepayers and the community as a whole. It will also allow officers of the Town who are conducting the Program to identify any breaches of the Terms and Conditions early in the process, and take appropriate measures to ensure full compliance.

To ensure that the Town conducts future Rates Incentive Programs in the correct manner, each of the requirements associated with s104 of the *Gaming and Wagering Commission Act* would be addressed to ensure that future draws do not have the same issues.

Statutory Implications

Gaming and Wagering Commission Act 1987

104. Other permitted lotteries

(1) A permit authorising the conduct of a lottery may be issued—

(a) where the Commission is satisfied that it is not to be conducted for the purposes of private gain or any commercial undertaking; or

(b) for a trade promotion lottery that does not comply with the conditions referred to in section 102.

HOW TO CONDUCT A TRADE PROMOTION LOTTERY – GENERAL CONDITIONS

GAMING AND WAGERING COMMISSION ACT 1987

(Section 104)

A Trade Promotion Lottery is a lottery conducted to promote the sale of goods or the use of services, in which every participant takes part -

(a) without cost to him; or

(b) by reason of the purchase of goods or the use of services, the cost of which is no more than the cost would be without the opportunity to take part in the lottery.

Provided you meet the prescribed conditions associated with a trade promotion lottery, then you are not required to apply for a permit to operate your competition, but you must conduct your competition in accordance with these conditions.

The permit below is your approval to conduct the competition, but you must conduct your competition in accordance with the conditions expressed on this permit.

GAMING AND WAGERING COMMISSION ACT 1987

SECTION 104

PERMIT FOR THE CONDUCT OF A TRADE PROMOTION LOTTERY

The Gaming and Wagering Commission hereby authorises the conduct of Trade Promotion Lotteries, which are deemed to be permitted lotteries, provided that the following conditions are complied with in respect of the conduct of Trade Promotion Lotteries.

- 1. There shall be no cost to enter the lottery.*
- 2. If the entry is via a telephone call or other electronic medium, the cost of the call shall not exceed 55 cents.*
- 3. If entry is via the Internet, there shall be no additional cost to the participant to register his/her name other than the cost paid by the participant to access the web site via the internet service provider.*
- 4. The lottery may be conducted for a maximum of twelve months.*
- 5. The draw must be conducted within one month of the closure of the lottery.*
- 6. Where entry to the trade promotion lottery is by an entry form or coupon -*
 - (a) a description of the prize/s must be printed on the entry form/coupon;*
 - (b) the terms or conditions of entry to the lottery must be printed –*
 - (i) on the entry form/coupon or;*
 - (ii) in a newspaper that is published nationally (for trade promotion lotteries originating outside of Western Australia) and/or Statewide (for trade promotion lotteries conducted within Western Australia); and*
 - (c) where the rules and/or conditions of the trade promotion lottery are published in a newspaper, reference to such publication is to be included on the entry form or coupon.*
- 7. Where the trade promotion lottery is conducted by audio or visual media -*
 - (a) a description of the prize/s is to be included in the broadcast; and*
 - (b) the terms and conditions of entry to the trade promotion lottery are to be included in the broadcast, or the broadcast must direct contestants to where the terms and conditions are to be found.*
- 8. Where the trade promotion lottery is conducted by electronic media (other than audio or visual) all advertising of the promotion shall provide a description of the prizes and shall direct contestants to where the terms or conditions of entry are to be found.*
- 9. Where the trade promotion lottery is conducted in any other way all*

advertising of the lottery shall provide a description of the prizes and shall contain the terms and conditions of the lottery.

10. The method for determining the winner shall be clearly stated in the terms or conditions of entry to the trade promotion lottery.

11. Where a trade promotion lottery is conducted by audio, visual or other electronic media a copy of the terms or conditions of entry shall be lodged with the Gaming and Wagering Commission prior to the commencement of the promotion.

12. Once the trade promotion lottery has commenced the published rules and conditions of the lottery cannot be amended without written approval of the Gaming and Wagering Commission.

13. Once the trade promotion lottery has commenced it cannot be cancelled or withdrawn without prior written approval of the Gaming and Wagering Commission.

14. Records relating to the lottery shall be maintained for a period of twelve months and shall be made available to an authorised officer of the Gaming and Wagering Commission or a Police Officer upon request.

15. Where practicable, members of the public must be afforded the opportunity to witness the draw.

Where not practicable, audit records confirming the prize draw must be made available to an authorised officer of the Gaming and Wagering Commission or a Police Officer upon request.

Policy Implications

This item proposes to develop a new Council Policy for the Rates Incentive Program that if endorsed, will be advertised for public consultation along with requesting feedback from the Gaming and Wagering Commission.

Strategic Planning Implications Nil

Budget Implications

The budget for the Rates Incentive Program is dependent upon sponsorship arrangements with community businesses, and will also change each year depending upon Council's funding priorities.

Officer's Comment

The Rates Incentive Program is run at no additional cost to ratepayers and is designed to give the majority of ratepayers an equal chance to enter. The aim of the program is to recognize and reward the investment that ratepayers make to the development of the Town. It also provides sponsorship opportunities for local businesses giving them the opportunity to reach a target audience of over 5,500 ratepayers.

In order to ensure that all ratepayers, sponsors and the community are comfortable with the program and with how it is undertaken, it is recommended that Council advertise a policy and gain feedback from the community. By seeking feedback from the public and the Department of Racing, Gaming and Liquor, Council can ensure future programs are run smoothly, and are perceived to be equitable and transparent.

It should be noted that after the final draw, it was discovered that an employee of the Town won a \$2,000 prize. Upon discovery, the ratepayer was notified that their entry was deemed to be invalid, and the prize would not be awarded. Within the Terms and Conditions, there is a clause that allows Council at any time, to verify the validity of the entries, and as the prize hadn't yet been paid out, advice from the Department of Racing, Gaming and Liquor was that the Council had not breached the terms and conditions and they did not intend to investigate further.

The only remaining issue is what to do with the funds. The sponsor has received all appropriate promotion as agreed, for the funds received therefore the Town is not obligated to repay the funds to the sponsor. A few options have been considered:

1. Provide the funds to charity;
2. Conduct another draw, although this was deemed to be inequitable given entrants should have been entitled to all prizes and not restricted to the \$2,000;
3. Recall all prizes and conduct the draw in its entirety. This was also deemed to be unfair to those entrants who had already received prizes;
4. Transfer the funds to the Town's Trust account and utilize the funds for the 2011 Rates Incentive Program; or
5. Transfer the funds to the Town's Trust account and request advice from the Department of Racing, Gaming and Liquor to ensure the funds are dealt with in both a compliant and equitable manner.

It is recommended that the final option (5) be approved by Council.

Attachments

1. Rates Incentive Program Policy
2. Rates Incentive Program Internal Checklist

Officer's Recommendation

That Council:

1. Advertise the attached Rates Incentive Program Policy for a minimum of 35 days inviting members of the community to submit feedback;
2. Provide a copy of the Rates Incentive Program Policy and internal checklist to the Department of Racing, Gaming and Liquor requesting feedback and recommendations where appropriate;
3. Notes that upon receiving feedback from the community and the Department of Racing, Gaming and Liquor a revised Rates Incentive Program Policy will be put to Council for formal adoption;
4. Requests advice from the Department of Racing, Gaming and Liquor in relation to the \$2,000 unpaid prize monies.

201011/150 Council Decision

Moved: Cr A A Carter

Seconded: Cr S Coates

That Council:

1. Advertise the attached Rates Incentive Program Policy for a minimum of 35 days inviting members of the community to submit feedback;
2. Provide a copy of the Rates Incentive Program Policy and internal checklist to the Department of Racing, Gaming and Liquor requesting feedback and recommendations where appropriate;
3. Notes that upon receiving feedback from the community and the Department of Racing, Gaming and Liquor a revised Rates Incentive Program Policy will be put to Council for formal adoption;
4. Requests advice from the Department of Racing, Gaming and Liquor in relation to the \$2,000 unpaid prize monies; and those monies be prioritised for distribution by the Town's Donations Working Group.

CARRIED 7/1

REASON: Council believes it is appropriate to have a committee that meets on regular basis to take care of this duty.

NOTE: Mayor requested the votes be recorded.

Record of Vote:

FOR	AGAINST
Cr S R Martin	Cr G J Daccache
Cr A A Carter	
Cr S J Coates	
Cr J Gillingham	
Cr M Dziombak	
Mayor Kelly Howlett	
Cr D W Hooper	



RATES INCENTIVE PROGRAM POLICY

1. Introduction

This policy will provide an administrative framework for conducting the annual Rates Incentive Program.

2. Purpose and Application of the Policy

2.1 Purpose

The purpose of the Policy is to ensure a robust Rates Incentive Program that clearly demonstrates openness and accountability, and is equitable for all ratepayers who meet the entry requirements as outlined in the Provisions, Policy and the Terms and Conditions of the Program.

3. Provisions

- Only ratepayers who have paid their rates in full, before the due date, and on the prescribed form are eligible to enter.
- Councillors, employees of the Town of Port Hedland and their immediate families are ineligible to enter.
- Incomplete, ineligible or incomprehensible entries will be deemed invalid and will not be included in the judging.
- Prizes must be collected at the Rates Incentive Program event by the winner whose name and address is stipulated on the entry form. If the winner is unable to attend the event, they must nominate a representative who will be given the VIP pass to the event. The winner who is sending a representative must notify the Town of Port Hedland prior to the date of the function. If the winner is unable to attend, or nominate a representative then their entry will be deemed to be invalid.

4. Policy

It is the policy of the Town of Port Hedland that an entrant is only considered to be valid when they satisfy the requirements, where applicable, under the *Gaming and Wagering Commission Act 1987*, the Terms and Conditions of the Program, and where appropriate, the requirements of this Policy.

There shall be no cost for the ratepayer to enter the Rates Incentive Program.

The Town of Port Hedland will seek sponsorship from local businesses that will in turn, be provided promotional opportunities in accordance with the pre-determined sponsorship levels.

The method for determining the winners will be clearly stated in the Terms and Conditions of entry to the Rates Incentive Program.

The full Terms and Conditions shall be published on the Town's internet site and in a Statewide newspaper, with a reference to where they can be sourced on the entry form.

The initial draw will be conducted in a forum that is open to the public, with the final draw being open only to those specifically invited to the event.

The number of initial entries drawn will be dependent upon the number of sponsorships gained from community businesses.

There will be an additional 5 entries drawn that may be used as substitutes (in the order in which they are drawn from the barrel), if an entry is deemed to be invalid.

TOWN OF PORT HEDLAND Civic Centre, McGregor Street, Port Hedland
Telephone: (08) 9158 9300 Fax: (08) 9158 9399
PO Box 41, PORT HEDLAND WA 6721 Email: council@porthedland.wa.gov.au



RATES INCENTIVE PROGRAM POLICY

The draw will be conducted within one month of the closure of entries.

The Town of Port Hedland reserves the right, at any time, to verify the validity of entries and entrants.

The Town of Port Hedland may conduct such further draws at any time to ensure the appropriate number of valid entrants.

Upon commencement of the Rates Incentive Program, the Terms and Conditions will not be amended without written approval of the Gaming and Wagering Commission.

Upon commencement of the Rates Incentive Program, the Program will not be cancelled or withdrawn without prior written approval of the Gaming and Wagering Commission.

Records relating to the Rates Incentive Program shall be maintained for a period of twelve months and shall be made available to an authorised officer of the Gaming and Wagering Commission or a Police Officer upon request.

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RATES INCENTIVE PROGRAM CHECKLIST



INFORMATION DELIVERABLES

1. TERMS AND CONDITIONS & ENTRY FORM

- a. Terms and Conditions must be forwarded to the Gaming and Wagering Commission prior to the commencement of the Rates Incentive Program.
- b. The entry form must indicate that the Terms and Conditions have been published in a Statewide newspaper, including the specific newspaper and its edition, and are available on the Town of Port Hedland's website www.porthedland.wa.gov.au.
- c. The entry form must state the date and time that full payment of rates and the associated entry forms need to be submitted to Council by. The time must be reflective of that in Western Australia.
- d. The entry form must state that the Mayor, Councillors, Town of Port Hedland staff and their immediate families are ineligible to enter.
- e. The entry form must include a brief description of the prizes available. Detailed descriptions, including the dollar value of the specific prizes must be outlined in the Terms and Conditions.
- f. The entry form must state that the winner (or elected representative) must be able to attend the function in order to win a prize.
- g. The method for determining the winners must be clearly outlined in the Terms and Conditions.
- h. The entry form must include the date the initial draw is to take place.

2. ADVERTISING AND PROMOTIONAL MATERIAL

- a. All advertising and promotional material must indicate that the full Terms and Conditions have been published a Statewide newspaper, including the specific newspaper and its edition, and are available on the Town of Port Hedland's website www.porthedland.wa.gov.au.
- b. Initial advertising for sponsors should be included in the following media 4 weeks prior to the 1st of June to enable final sponsorship amounts to be incorporated into the Annual Budget:
 - North West Telegraph
 - Public Website
 - Town of Port Hedland's e-news
 - Media Release
 - Letters to local businesses
- c. The day that Rates Notices are posted, advertising is to commence in the next available publication for ratepayers to pay their rates and be in the draw to win if they pay their rates in full and on time (or within 5 working days at the different site locations):
 - North West Telegraph
 - Public Website
 - Town of Port Hedland's e-news
 - Media Release
 - Shopping Centres
 - Port and South Hedland Libraries
 - Civic Centre

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RATES INCENTIVE PROGRAM CHECKLIST



INFORMATION DELIVERABLES CONTINUED...

- d. Advertising appropriate for the level of sponsorship is to be arranged on the Town's website, and the incorporation of logos into promotional material.
- e. The list of winners will be advertised in the North West Telegraph after the final event has been held.

VALIDITY OF ENTRANTS

3. VALIDITY OF ENTRANTS

- a. All entry forms are to be checked against the Rates Module in SynergySoft to ensure the ratepayer has paid their rates in full and on time. Any entry forms that do not comply with this shall be deemed invalid.
- b. All entry forms are to be cross-checked against the Payroll Module and the Rates Module (using both the Property and Ownership Tabs) to verify that the ratepayer is not an employee of the Town of Port Hedland, or an immediate family member of an employee. Any entry forms that indicate the ratepayer is an employee of the Town of Port Hedland or an immediate family member of an employee shall be deemed to be invalid.
- c. All entry forms are to be checked to ensure that the ratepayer is not an immediate family member of the Mayor or Councillors. Any entry forms that indicate the ratepayer is the Mayor or a Councillor, or an immediate family member shall be deemed invalid.
- d. Any entry forms that are incomplete, ineligible or incomprehensible will be deemed invalid and will not be included in the judging.
- e. Prior to the event being held, all winners must return a signed declaration stating that they comply with Section 1 (d) outlined above in order to be included in the final draw.
- f. Any winner who cannot attend the event or nominate a representative will be considered to be invalid as prizes need to be redeemed at the event.

DRAWING OF WINNERS & COMMUNICATION

4. INITIAL DRAW

- a. The date and time for the initial draw is to be held at a formal meeting of Council after the closing date for entries in order for members of the public to attend if they wish.
- b. All winners are to be verified by officers again in accordance with section 3 above to confirm their validity.
- c. All winners are to be contacted by telephone or email, using the phone number or email address provided on the entry form.
- d. All winners are to be notified by mail and sent an invitation to the Rates Incentive Program event.

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RATES INCENTIVE PROGRAM CHECKLIST



DRAWING OF WINNERS & COMMUNICATION CONTINUED...

- e. An additional 5 entries will be drawn as reserve entries. In the event that one of the winners does not comply with the Terms and Conditions, the first reserve entry will take their place in the official list of winners.

5. FINAL DRAW

- a. All winners and/or representatives are to present their invitations to gain entry to the event.
- b. The draw must be conducted in the manner stipulated in the Terms and Conditions. If there is no mention of a reverse draw then the prizes must be drawn with the highest valued prize first.
- c. The final draw will be held no longer than one month after the close of the program which is interpreted as the due date for the receipt of rates.
- d. Any ratepayer or elected representative that does not attend the event after accepting the invitation to attend will automatically receive the prize of the lowest monetary value.

6:59pm Councillor J M Gillingham declared a Impartiality Interest in Agenda Item 11.4.1.2 "Waiver of Hall Hire Fees – JJ's Hedland Taekwondo Club" as she personally knows the Gonzalez family. Councillor J M Gillingham did not leave the room.

11.4.1.2 Waiver of Hall Hire Fees – JJ's Hedland Taekwondo Club

Officer	Natalie Octoman A/Director, Corporate Services
Date of Report	20 October 2010
Disclosure of Interest by Officer	Nil

Summary

For Council to consider waiving hall hire fees (Gratwick Hall) for the end of year event to be held by JJ's Hedland Taekwondo Club on Saturday 11th of December 2010.

Background

On 28 July 2010, the Town received an email from JJ's Hedland Taekwondo Club requesting that the hall hire fees for their end of year event be waived.

The email outlined that the club would not serve or sell alcohol; is a not-for-profit organisation and anyone within the broader community with an interest in Taekwondo and Martial Arts would be welcome to attend the event.

On the 30th of August, a response was sent to JJ's Hedland Taekwondo Club indicating that their request had been denied, and a booking form had been attached in the event that they still wished to hire the hall.

Mr Gonzalez then attended the Ordinary Meeting of Council on the 22nd of September to understand the reasons as to why the decision to decline their application was made.

The question was taken on notice, with an initial response provided in the Ordinary Meeting of Council minutes on the 13th of October.

At the 22nd September Council meeting, several Councillors requested that the item be put to Council for their consideration.

Consultation

- Administration Coordinator, Corporate Services
- Australian Taxation Office

Statutory Implications

Local Government Act 1995
6.47. Concessions

“Subject to the Rates and Charges (Rebates and Deferments) Act 1992, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.”*

**ABSOLUTE MAJORITY REQUIRED.*

DELEGATION NUMBER 6	(Donations)
LEGISLATIVE POWER (Section 5.42)	: Local Government Act 1995
DELEGATION SUBJECT:	Donations
DELEGATE:	Chief Executive Officer

The Chief Executive Officer is delegated authority to determine requests for donation of monies up to the value of \$1,000 when a group or individual can demonstrate:

1. Significant direct benefit to the local community.
2. The group is a community group or non profit making organisation or running a non profit activity.
3. The group's financial status is such as to justify a donation from Council.
4. Special circumstances or needs exist in the opinion of the Chief Executive Officer to warrant a donation, eg support of needy groups and individuals who bring credit to the municipality by achieving state or national representation or awards, which sees them requiring financial assistance for travelling, accommodation or other incidental expenses.

The aggregate of any donations made by the Chief Executive Officer under this delegated authority shall not exceed the amount provided for the purpose on the Council's Budget each year without formal approval from Council.

(Amended by Council at its Ordinary Council Meeting held 9 December 2009)

Policy Implications Nil

Strategic Planning Implications Nil

Budget Implications

The waiver of fees directly impacts the amount of revenue that Council generate to fund its services, activities and projects. Based on the application to waive hall hire fees received, the loss of revenue would be \$407.50.

Officer's Comment

In relation to the request from JJ's Hedland Taekwondo Club, any applicant requesting to have fees waived that are \$1,000 or under, make their application to the CEO. This request is not presented to Council for consideration as it's within the CEO's delegation (Delegation 6) to make the decision to approve or otherwise, the request.

As part of the decision making process, the applicant is required to demonstrate:

1. Significant direct benefit to the local community;
2. The group is a community group or non-profit making organization or running a non-profit activity;
3. The groups financial status is such as to justify a donation from Council;
4. Special circumstances or needs exist in the opinion of the Chief Executive Officer to warrant a donation, eg support of needy groups and individuals who bring credit to the municipality by achieving state or national representation or awards, which sees them requiring financial assistance for travelling, accommodation or other incidental expenses.

At the time of JJ's Hedland Taekwondo Club's application, the Acting CEO made the decision to decline their request on the basis that they could not demonstrate that they were a not-for-profit organization by being registered with the Australian Taxation Office as an incorporated entity, which would have outlined their not for profit status, and no other records could be provided as evidence of their financial status.

Since that decision was made, JJ's Hedland Taekwondo Club has indicated that they are a hobby group, which is quite different to a not-for-profit organisation, and this information was not provided as part of their original application.

In determining whether a group is a business or a hobby there are a number of factors that the Australian Taxation Office recommends you to consider:

1. Does your activity have a significant commercial character?
2. Is there more than just an intention to engage in business?
3. Do you expect to profit from it?
4. Is there repetition and regularity to your activity?
5. Is your business similar to other businesses in your industry?
6. Is the way you operate consistent with other businesses in your industry?
7. Is it sufficient to allow you to make a sustainable profit?
8. Is your activity planned, organised and carried on in a business-like manner?

The email response from the applicant indicates that they have no intention to undertake Taekwondo as a business on the basis that one of the applicants has a full time job, and the other applicant has a casual job as well as home schooling their 3 children and teaching hip hop classes for the local children.

Each student pays either \$3.00 or \$6.00 per class. Each term, of which there are four (4) last for eight (8) weeks each. If the Club has 80 students at each class, and assuming that each student paid the maximum amount of \$6.00 per class, for the above mentioned period, this would generate a maximum of \$15,360 per annum, with a minimum amount of \$7,680 per annum.

Number of Students	Cost per Class	Total Earnings per Class	Weeks in Term	Number of Terms	Total Earnings
80	\$3.00	\$240	8	4	\$7,680
80	\$6.00	\$480	8	4	\$15,360

While it is clear that there is revenue generated by operating the club, it has been indicated that these funds are used for the hall hire at the South Hedland Senior High School, end of year and tournament trophies and medallions, examiner's fees for the examiner to travel to Port Hedland and grade the students at least three times per year, general equipment and safety training aids.

There is no financial indicator provided by the Taxation Office that allows you to determine when a hobby group is actually carrying on a business. Their process is to address each of the indicators outlined above and assess each group on a case by case basis.

Given the response by Mr Gonzalez in relation to the questions asked, the indicators may be assessed as follows:

1. While a club with 80 students may appear quite large, it does not appear to have a significant commercial character given the classes are not carried on for commercial reasons.
2. There appears to be no intention to engage in a business as outlined in Mr Gonzalez's email.
3. There is no expectation to profit from the activity.
4. There is repetition and regularity to the activities as they're conducted for 8 weeks over each term of the school year.
5. The activity would appear to be similar to other Taekwondo Clubs in the industry.
6. The operations of the club would appear to be similar to how other clubs would be run.
7. It does not appear that the activities are sufficient to make a sustainable profit given the expenses that are also involved.

8. It does not appear that the Taekwondo Club is carried on in a business-like manner as there is no business plan, no records are maintained, and the fees haven't and it has been indicated that they won't be increased.

Given the above informal assessments made by the Town's officer, it may be determined that while JJ's Taekwondo Club is not formally a not-for-profit organization, it does not appear to be a business either, and indeed a hobby group.

Council will be therefore presented with two options for consideration. The first will be to uphold the Acting CEO's decision to decline the request to waive hall hire fees on the basis that while there are no financial records maintained, it is clear that the club generates income and incurs expenditure, and may therefore make a minor profit during the course of the year.

The second option will be that the prior decision to decline their request be revoked, and that JJ's Hedland Taekwondo Club be granted the waiver of hall hire fees for their end of year event on the basis that they are a community group that provides direct benefits to the community by undertaking the activities they do, and that any profit that may be generated is reasonably minor.

In the future, the Donations Policy that is currently being re-drafted to incorporate guidelines and a formal application process will ensure that each application is appropriately assessed and further information will be sought where required. This will ensure that future applications of this nature are not immediately denied but are assessed consistently and with all the information at hand.

Attachments

1. Email correspondence from Mr Gonzalez
2. Taxation Ruling TR 97/11 – recommended as a reference tool by the Australian Taxation Office irrespective of its primary production nature.

Officer's Recommendation

That Council:

1. Uphold the previous Acting CEO's decision to decline the request from JJ's Hedland Taekwondo Club to waive the hall hire fees for their end of year event.

OR

2. Approve the application from JJ's Hedland Taekwondo Club for the waiver of hall hire fees for their end of year event to be held on the 11th of December; and
3. Note that there will be a hall hire and key bond applicable. This will be refunded after the event providing the facilities are returned appropriately.

201011/151 Council Decision/Officer's Recommendation

Moved: Cr S Coates

Seconded: Cr S R Martin

That Council:

1. Approve the application from JJ's Hedland Taekwondo Club for the waiver of hall hire fees for their end of year event to be held on the 11th of December; and
2. Note that there will be a hall hire and key bond applicable. This will be refunded after the event providing the facilities are returned appropriately.

CARRIED 8/0

Natalie Octoman

From: Gonzalez, Joseph [Joseph.Gonzalez@bhpbilliton.com]
Sent: Friday, 8 October 2010 3:39 PM
To: Natalie Octoman
Cc: Joseph John GONZALEZ
Subject: FW: JJ's Taekwondo Club's Civic Centre Hall Hire request

Importance: High

Hi Natalie,

With regards to your e-mail, please find attached responses to your questions (in red).

I have provided you with the responses as best as I can and hope you can trust and understand my situation and where I am coming from.

Hoping for your kind understanding and consideration on this matter.

With kind regards,

JJ Gonzalez
 Instructor
 JJ's Hedland Taekwondo Club

From: Natalie Octoman
Sent: Monday, 27 September 2010 11:03 AM
To: 'jggonzalez@iprimus.com.au'
Subject: FW: JJ's Taekwondo Club's Civic Centre Hall Hire request

Hi,

I am following up on the question that you asked at the last Council Meeting in relation to the waiving of hall hire fees for your event, and would like to ask a few questions if possible in order for me to provide appropriate advice.

- One of the key requirements for Council to consider the waiving of fees, is that the applicant must demonstrate their not-for-profit status. In the outline below, you mention that you are a hobby group. Do you have any paperwork that may demonstrate this – possibly something from the Australian Taxation Office?
 -I have no ABN Number as we are a Hobby Goup, as described by the ATO (i.e. groups making under \$6,000/year - classed as Hobby Groups) therefore I receive no paperwork from the Australian Taxation Office. I chose to run JJ's Taekwondo Club as a Hobby Group because for me, this is exactly what it is - a Hobby, a very passionate hobby. I have a full time job, my wife has a casual job as well as home schooling our 3 children and teaching hip hop classes for local kids in the community (as a Hobby Group for her). The last thing I want is a business and Taekwondo for me is not a business. Because we are a hobby group, we do not accept donations from any one. We operate within our means.
- You mentioned that you have about 80 students, and charge fees. Can you advise as to how much you charge each student each term and whether there are 3 or 4 terms per year?
 - Students pay \$3 or \$6 per class - each Taekwondo term is about 8 weeks. There are 4 terms.
- Do you keep financial records for your hobby group in order to determine when you need to increase fees as costs have increased? If so, is it possible to obtain a copy in relation to the financial year just ended? If not, do you have some kind of summary that outlines the fees you charge and the expenses that you incur each year?
 - I don't keep financial records as we are not a business and the fees haven't and won't increase. They stay the same and the students are aware of this. As per expenses incurred, if the club requires equipment (i.e. safety gear/equipment, training aids, trophies, certificates) we fundraise for it and this is on a needs basis . I

pay hall hire fees through Hedland Senior High School and at the end of every term, certificates are handed out to the students - there's the cost of stationery and printing. All expenses incurred by the club comes from the fees received from the students and sometimes out of pocket expenses. I pay for my own training and provide my own training materials (i.e. DVDs, books, magazines, uniforms). If you require a statement of payment for hall hire, please contact South Hedland Senior High School.

If you'd like to discuss any of these questions or if you need further clarification, please don't hesitate to contact me on the number below.



Regards

Natalie Octoman

Acting Director, Corporate Services | Town of Port Hedland | PO Box 41 Port Hedland WA 6721

Ph: (08) 9158 9312 Fax: (08) 9158 9399 Mobile: 0458 240 893

Email: norfin@porthedland.wa.gov.au

Web: www.porthedland.wa.gov.au

History of JJ's Taekwondo within Hedland.

I have been studying Taekwondo and teaching the art for over 28 years.

TKD is my passion and I teach it so I can make a difference with today's youth. I have been teaching Taekwondo in Hedland since 2004.

The first 3 years I was connected with the YMCA and teaching TKD for 'fun', meaning there was no grading or exams with the classes as per YMCA rules.

Sadly YMCA left town in 2007 and the parents of the students decided to form a committee and asked me to teach.

Due to severe committee problems and issues, by Sept. 2009 the committee disbanded. My passion, reasons and goals for teaching my students hadn't changed so I became a hobby group so I can continue what I love to do,.....

My reasons for teaching TKD has never been about money, I make no profit from what I do, yes there is a minimal fee charged per term but this covers the hall hire, grading exams, end of term certificates, end of year and tournament trophies and medallions, an examiners fee for an examiner to come up and grade the students at least 3 times a year, administrative costs and let's not forget equipment and safety training aids which are quite costly.

I have about 80 students in my club and the majority of them are under 18.

My wife and I sponsor an indigenous child; Red Cross and Gumala have sponsorship of other indigenous children in the club.

My goal with the students is to teach them the spiritual side of Martial Arts.....respect, discipline, confidence, integrity, indomitable spirit, courtesy, modesty and self control these are the foundations of my teachings and why I teach.....from what I see in today's youth in this town, what I teach can make a difference to these children's lives and their attitude towards society and to themselves.

Over the last 6 years I have been actively involved within the community promoting what I teach via numerous demos and displays....Welcome to Hedland, Spinifex Spree, Nindji Nindji Festival. Annual Say No to Violence Week and Well Women's Centre ladies self defence classes, I was nominated for Sports person of the Year in 2008.

I will continue to teach Taekwondo as long as I am in this town. Taekwondo is not a seasonal sport, I teach all year round in conjunction with the school terms – my club promotes a healthy active lifestyle for the children and I have had a huge response from parents within the community taking up Taekwondo and training alongside their children. I believe I am the only sporting club in town that offers a family friendly sporting option for families to do something together.

From: jjgonzalez@iprimus.com.au
To: coates.s@hotmail.com
Subject: RE: Civic Centre Hall Hire request
Date: Wed, 22 Sep 2010 21:39:47 +0800

Thank you Steve, please do share the information I have provided to your fellow Councillors.
I appreciate your time and efforts into looking into this matter.
Kind Regards:
Jay Jay Gonzalez

From: Steve Coates [<mailto:coates.s@hotmail.com>]
Sent: Wednesday, 22 September 2010 9:17 PM
To: Joseph John GONZALEZ
Subject: RE: Civic Centre Hall Hire request

Dear Mr Gonzalez,
Call me Steve. Thank you for the information. Thank you for attending Council tonight bringing the matter to our attention.
I will be supporting a 100% Gratwick Hall fees exemption for your December event.

To that end, may I share the information you have provided to me with other Councillors?
My intention is to have the matter considered by Council at our next Ordinary Council Meeting on Wednesday 13 October, 5:30pm start.
Sincerely
Steve

From: jjgonzalez@iprimus.com.au
To: coates.s@hotmail.com
Subject: FW: Civic Centre Hall Hire request
Date: Wed, 22 Sep 2010 19:11:04 +0800

Good Evening Mr. Coates,

Thank you so much for your support shown towards my question at this evening's council meeting.
Please see below the original email I sent with my request, the follow up email I sent 4 weeks after the original, and the third email finally being TOPH's reply.
As you can see, I was never given a reason as to why my request was declined. I didn't bother contacting Ms Long to find out why as I could only assume I'd be waiting another 4 weeks.
I have also attached a bit of history about myself and my Taekwondo Club and the part I play as a Martial Arts Instructor within and for the community.
Thank you again Mr. Coates for your support and concern towards my request, it is very much appreciated.
Await council's reply,
Kind Regards:

Jay Jay Gonzalez

JJ's Taekwondo Club
0435 021 104 / 0435 021 055

From: Riekie Long [mailto:admincoord@porthedland.wa.gov.au]
Sent: Monday, 30 August 2010 7:21 AM
To: The Gonzalez Family
Subject: RE: Civic Centre Hall Hire request

Good morning

Can you please complete the attached booking forms and return to me, my apology for only getting back to you now I was waiting on the outcome of your request for the waiver of the hiring fees, unfortunately it's been declined. If you have any questions please contact me

Regards

Error! Riekie Long
Filename not specified. Admin coordinator | Town of Port Hedland | PO Box 41 Port Hedland WA 6721
Ph: (08) 9158 9310 Fax: (08) 9158 9399
Email: admincoord@porthedland.wa.gov.au
Web: www.porthedland.wa.gov.au

From: The Gonzalez Family [mailto:jjgonzalez@iprimus.com.au]
Sent: Saturday, 28 August 2010 7:43 AM
To: Riekie Long
Subject: FW: Civic Centre Hall Hire request
Importance: High

Hello There:
Its now been a month since I sent the below email,
Just wondering if there might be a reply coming anytime soon?
Please respond...
Kind Regards:

JJ Gonzalez

From: The Gonzalez Family [mailto:jjgonzalez@iprimus.com.au]
Sent: Wednesday, 28 July 2010 7:36 PM
To: 'admincoord@porthedland.wa.gov.au'
Subject: Civic Centre Hall Hire request

Good Evening,
JJ's Taekwondo Club members would like to hold their end of year event at the Civic Centre's Gratwick Hall on Saturday 11th of December – from 6pm to 11pm.
We do not plan to serve or sell alcohol during the event and there will be no fee charged to attend the occasion. The broader community with an interest in Taekwondo and Martial Arts is also welcome to attend.
The Club provides sporting and healthy, active lifestyle choices for more than 80 junior and senior members of the community throughout the year and is a not-for-profit organisation.
JJ's Taekwondo Club therefore wishes to access the Town of Port Hedland's Gatwick Hall Facilities **free of charge** on the date as mentioned above.
Could you please advise whether the Town would be able to accommodate our request?
Thanks in advance
Jay Jay Gonzalez
Instructor
JJ's Taekwondo Club
0435 021 104

This email has been scanned by the MessageLabs Email Security System.

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TR 97/11

Income tax: am I carrying on a business of primary production?

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Preamble

This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the Taxation Administration Act 1953, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Ruling is about

<http://law.ato.gov.au/atolaw/view.htm?rank=find&act=TR%2097%2F11~Public%20...> 21/10/2010

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1. This Ruling considers the meaning of 'business' of 'primary production' in the *Income Tax Assessment Act 1936* ('the Act'). It provides a guide to the indicators that are relevant to whether or not a person is carrying on a business of primary production. It also indicates the extent to which the Australian Taxation Office ('ATO') is able to provide further guidance to taxpayers on this question with private rulings.

2. The phrase 'carrying on a business of primary production' appears in a number of provisions in the Act, including sections 36AAA, 70, 75AA, 75B, 75D and the 'averaging provisions' (Division 16 of Part III of the Act). However, this Ruling does not consider the detailed operation of any of these provisions.

Class of person/arrangement

3. This Ruling applies to persons who carry on activities which might be described as 'primary production' in the Act (see the definition in paragraph 8 below).

4. The Ruling does not deal with the situation of a taxpayer who receives a payment from a one-off transaction, where there is no question as to whether he/she is carrying on a business.

Other relevant Rulings and Determinations

5. The following Taxation Rulings and Taxation Determinations consider whether specific activities come within the meaning of primary production:

- * Income Tax Ruling IT 219 - artificial breeding services;
- * Income Tax Ruling IT 289 - orchid growing; mushroom growing;
- * Income Tax Ruling IT 2006 - kelp harvesting;
- * Income Tax Ruling IT 2301 - prawn farming;
- * Taxation Ruling TR 95/6 - forest operations;
- * Taxation Determination TD 93/39 - beach worming;
- * Taxation Determination TD 93/95 - live sheep export.

6. Taxation Ruling TR 93/26 expresses our views on a number of issues to do with the horse industry and when a taxpayer might be considered to be carrying on a business of primary production with respect to horses.

Date of effect

7. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 22 and 23 of Taxation Ruling TR 92/20).

Ruling

What is primary production

8. Subsection 6(1) of the Act defines 'primary production' as production resulting directly from:

- a. the cultivation of land;
- b. the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase;
- c. fishing operations, which means
 - * operations relating directly to the taking or catching of fish, turtles, dugong,

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- crustacea or oysters or other shellfish; or
- * pearling operations; and includes
- * oyster farming, but does not include whaling;

d. forest operations, which include:

- * the planting or tending in a plantation or forest of trees intended for felling; and
- * the felling of trees in a plantation or forest; or

e. horticulture;

and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

9. A person is carrying on a business of primary production for the purposes of the Act if:

- a. he/she produces 'primary production', as defined in subsection 6(1); and
- b. that activity amounts to the carrying on of a business.

10. Subsection 6(1) defines 'business' to include 'any profession, trade, employment, vocation or calling, but does not include occupation as an employee'. However, this definition simply states what activities may be included in a business. It does not provide any guidance for determining whether the nature, extent, and manner of undertaking those activities amount to the carrying on of a business. For this purpose it is necessary to turn to case law.

11. The cases provide a number of indicators that are relevant to determining whether primary production activities constitute the carrying on of a business. These indicators are set out below. The indicators are no different, in principle, from the indicators as to whether activities in any other area constitute the carrying on of a business.

Some indicators of carrying on a business of primary production

12. Whilst each case might turn on its own particular facts, the determination of the question is generally the result of a process of weighing all the relevant indicators. Therefore, although it is not possible to lay down any conclusive test of whether a business of primary production is or is not being carried on, the indicators outlined below provide general guidance. This is explained further at paragraph 25 of this Ruling.

13. The courts have held that the following indicators are relevant:

- * whether the activity has a significant commercial purpose or character; this indicator comprises many aspects of the other indicators (see paragraphs 28 to 38);
- * whether the taxpayer has more than just an intention to engage in business (see paragraphs 39 to 46);
- * whether the taxpayer has a purpose of profit as well as a prospect of profit from the activity (see paragraphs 47 to 54);
- * whether there is repetition and regularity of the activity (see paragraphs 55 to 62);
- * whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business (see paragraphs 63 to 67);
- * whether the activity is planned, organised and carried on in a businesslike manner such that it is directed at making a profit (see paragraphs 68 to

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76);

- * the size, scale and permanency of the activity (see paragraphs 77 to 85); and
- * whether the activity is better described as a hobby, a form of recreation or a sporting activity (see paragraphs 86 to 93).

14. A taxpayer does not need to derive all his/her income from the primary production activity. The taxpayer may also be employed in some other occupation or profession. What is important is that the taxpayer's primary production activity amounts to the carrying on of a business. This activity is considered separately from any other employment or business carried on by the taxpayer. The fact that another business is carried on does not necessarily mean that the primary production activity is also a business.

15. We stress that no one indicator is decisive (*Evans v. FC of T* 89 ATC 4540; (1989) 20 ATR 922), and there is often a significant overlap of these indicators. For example, an intention to make a profit will often motivate a person to carry out the activity in a systematic and organised way, so that the costs are kept down and the production and the price obtained for the produce are increased.

16. The indicators must be considered in combination and as a whole. Whether a business is being carried on depends on the 'large or general impression gained' (*Martin v. FC of T* (1953) 90 CLR 470 at 474; 5 ATR 548 at 551) from looking at all the indicators, and whether these factors provide the operations with a 'commercial flavour' (*Ferguson v. FC of T* (1979) 37 FLR 310 at 325; 79 ATC 4261 at 4271; (1979) 9 ATR 873 at 884). However, the weighting to be given to each indicator may vary from case to case.

17. Subject to all the circumstances of a case, where an overall profit motive appears absent and the activity does not look like it will ever produce a profit, it is unlikely that the activity will amount to a business .

18. The following table provides a summary of the main indicators of carrying on a business. The last three items shown are factors which support the main indicators.

Indicators which suggest a business is being carried on	Indicators which suggest a business is not being carried on
a significant commercial activity	not a significant commercial activity
purpose and intention of the taxpayer in engaging in the activity	no purpose or intention of the taxpayer to carry on a business activity
an intention to make a profit from the activity	no intention to make a profit from the activity
the activity is or will be profitable	the activity is inherently unprofitable
repetition and regularity of activity	little repetition or regularity of activity
activity is carried on in a similar manner to that of the ordinary trade	activity carried on in an ad hoc manner
activity organised and carried on in a businesslike manner and systematically - records are kept	activity not organised or carried on in the same manner as the normal ordinary business activity - records are not kept
size and scale of the activity	small size and scale
not a hobby, recreation or sporting activity	a hobby, recreation or sporting activity
a business plan exists	there is no business plan
commercial sales of product	sale of products to relatives and friends
taxpayer has knowledge or skill	taxpayer lacks knowledge or skill

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Private rulings

19. A person cannot obtain a private ruling under Part IVAA of the *Taxation Administration Act 1953* (TAA) on whether he/she is carrying on a business: see Taxation Determination TD 96/16. Likewise, a person cannot obtain a private ruling on whether he/she is carrying on a business of primary production. These are questions of fact, rather than questions of law.

20. However, it is possible for a person to identify a tax law that depends for its operation on whether the taxpayer is carrying on a business of primary production. A person may seek a private ruling on the application of a tax law to a particular primary production activity.

21. A taxpayer's application for a private ruling needs to show, if the arrangement has not already begun, that it is being 'seriously contemplated': paragraph 14ZAN(h) of the TAA. The application should point out:

- * how the rulee intends to carry out the arrangement; and
- * that the rulee has the means to carry out the arrangement; or
- * that the rulee has taken or will soon take steps to obtain the means to carry out the arrangement.

22. An application should contain 'sufficient information' to enable the Commissioner to give the ruling. 'Sufficient information' in relation to a private ruling, where the matter(s) in issue include the carrying on of a business of primary production, includes information which covers the indicators set out at paragraph 13 (see also paragraphs 104 to 109).

Explanations and examples

Indicators of a business of primary production

23. There are no hard and fast rules for determining whether a taxpayer's activities amount to the carrying on of a business of primary production. The facts of each case must be examined. In *Martin* at CLR 474; AITR 551 Webb J said:

'The test is both subjective and objective: it is made by regarding the nature and extent of the activities under review, as well as the purpose of the individual engaging in them, and, as counsel for the taxpayer put it, the determination is eventually based on the large or general impression gained.'

24. The nature of the activity, the taxpayer's intention and the method of operation help determine whether a business of primary production is being carried on. Many of the relevant indicators are stated in the decision of the Full Federal Court in *Ferguson*. Bowen CJ and Franki J said in their joint judgment at FLR 314; ATC 4264-4265; ATR 876-877:

'Section 6 of the *Income Tax Assessment Act* defines 'business', stating that it includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee. This does not afford much assistance in the present case. It is necessary to turn to the cases. There are many elements to be considered. **The nature of the activities**, particularly whether they have the **purpose of profit-making**, may be important. However, an immediate purpose of profit-making in a particular income year does not appear to be essential. Certainly it may be held a person is carrying on business notwithstanding his profit is small or even where he is making a loss. **Repetition and regularity** of the activities is also important. However, every business has to begin, and even isolated activities may in the circumstances be held to be the commencement of carrying on business. Again, **organization of activities in a businesslike manner, the keeping of books, records and the use of system** may all serve to indicate that a business is being carried on. The fact that, concurrently with the activities in question, the taxpayer carries on the practice of a profession or another business, does not preclude a

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finding that his additional activities constitute the carrying on of a business. The volume of his operations and the amount of capital employed by him may be significant. However, if what he is doing is more properly described as the pursuit of a hobby or recreation or an addiction to a sport, he will not be held to be carrying on a business, even though his operations are fairly substantial.' (emphasis added)

25. In *Evans*, Hill J agreed that no one indicator could determine whether a business is being carried on. He said at ATC 4555; ATR 939:

"The question of whether a particular activity constitutes a business is often a difficult one involving as it does questions of fact and degree. Although both parties referred me to comments made in decided cases, each of the cases depends upon its own facts and in the ultimate is unhelpful in the resolution of some other and different fact situation.

There is no one factor that is decisive of whether a particular activity constitutes a business. As Jessel M.R. said in the famous dictum in *Ericksen v. Last* (1881) 8 Q.B. 414 at p.416:

"There is not, I think, any principle of law which lays down what carrying on trade is. There are a multitude of things which together make up the carrying on of trade."

Profit motive (but see cf. *I.R. Commrs v. Incorporated Council of Law Reporting* (1888) 22 Q.B. 279), scale of activity, whether ordinary commercial principles are applied characteristic of the line of business in which the venture is carried on (*I.R. Commrs v. Livingston* (1927) 11 T.C. 538), repetition and a permanent character, continuity (*Hope v. Bathurst City Council* 80 ATC 4386 at p. 4390; (1980) 144 C.L.R. 1 at p. 9; *Ferguson v. FC of T* 79 ATC 4261 at p. 4264), and system (*Newton v. Pyke* (1908) 25 T.L.R. 127) are all indicia to be considered as a whole, although the absence of any one will not necessarily result in the conclusion that no business is carried on.'

26. From the judgments it is clear that the relevant indicators of whether a business of primary production is being carried on by a taxpayer are:

- * does the activity have a significant commercial purpose or character?
- * does the taxpayer have more than a mere intention to engage in business?
- * is there an intention to make a profit or a genuine belief that a profit will be made? Will the activity be profitable?
- * Is there repetition and regularity in the activity? i.e., how often is the activity engaged in? How much time does the taxpayer spend on the activity?
- * is the activity of the same kind and carried on in a similar way to that of the ordinary trade?
- * is the activity organised in a businesslike manner?
- * what is the size or scale of the activity?
- * is the activity better described as a hobby, a form of recreation or a sporting activity?

27. Note:

- * The following Explanations and Examples have generally been designed to highlight the importance or significance of one indicator or several indicators in certain situations, before considering the next indicator.

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- * The Examples are not meant to detract from our view that all the relevant indicators need to be considered when deciding whether a primary production activity amounts to a business.
- * Similarly, the amount of detail contained in the Examples is well short of the amount of information needed to properly determine the question of whether the taxpayer is carrying on a business of primary production. Refer to *CTC Resources NL v. FC of T* 94 ATC 4072; (1994) 27 ATR 403 about the need for sufficient information, and note, for example, that the High Court in *Hope* could not determine the question of whether the activities amounted to a grazing business on the case stated before the court.
- * The Examples are not intended to set a minimum number of plants or animals, required by a taxpayer before he/she can show that he/she is carrying on a business of primary production.

Significant commercial purpose or character

28. It is frequently those taxpayers, who earn income from employment or other sources and/or enter into some sort of primary production activity in a small way, who want to show that they are in a business of primary production. These taxpayers usually claim deductions for losses for taxation purposes in the first years of being involved in this activity. In showing that a business is being carried on, it is important that the taxpayer is able to provide evidence that shows there is a significant commercial purpose or character to the primary production activity, i.e., that the activity is carried on for commercial reasons and in a commercially viable manner.

29. The phrase 'significant commercial purpose' is referred to by Walsh J in *Thomas v. FC of T* 72 ATC 4094; (1972) 3 ATR 165, (refer to paragraph 81) and discussed further by Gibbs CJ and Stephen J in *Hope*. The 'significant commercial purpose or character' indicator is closely linked to the other indicators and is a generalisation drawn from the interaction of the other indicators. It is particularly linked to the size and scale of activity (refer to paragraphs 77 to 85), the repetition and regularity of activity (refer to paragraphs 55 to 62) and the profit indicators (refer to paragraphs 47 to 54). A way of establishing that there is a significant commercial purpose or character is to compare the activities with those of a taxpayer who is carrying on a similar activity that is a business. Any knowledge, previous experience or skill of the taxpayer in the activity, and any advice taken by the taxpayer in the conduct of the business should also be considered but are not necessarily determinative: see *Thomas*. In that case, Walsh J found that the taxpayer's activities in growing macadamia nut trees and avocado pear trees amounted to the carrying on of a business. The court was influenced by the scale of the activity, and the taxpayer's expectation of an ongoing financial return. Consideration should also be given to whether the taxpayer is a pioneer in the activity or has developed a new method of undertaking the activity, whether successful or not.

30. In order to show that there is a significant commercial purpose or character we suggest that it may help to know whether the taxpayer has:

- * drawn up a business plan (refer to paragraphs 110 to 115);
- * where the taxpayer is not an expert, sought expert advice from the relevant authorities, experienced farmers or agents that work in the area of primary production that the taxpayer intends to carry on;
- * where the taxpayer is not an expert, obtained technical literature on the activity which the taxpayer intends to carry on;
- * obtained soil and water analyses of the land that will be used for the activity;
- * established that his/her land is suitable for the activity which the taxpayer intends to carry on;
- * considered whether there is a market for his/her product and looked into potential markets for the

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product (the taxpayer is more likely to be regarded as carrying on a business if he/she sells in a commercial market instead of casual sales to relatives, friends or the public);

- * investigated properly the capital requirement of the venture and has a plan that shows how that capital will be obtained and used;
- * conducted research into the activity. This should confirm that profits can be expected based on the market prospects, the expected level of production and the running costs of the business (support for this research by reference to authenticated source material assists the taxpayer);
- * ensured that the size and scale of the activity is sufficient for a commercial enterprise;
- * complied with any legal requirements, i.e., that he/she has obtained any necessary licences, permits and registrations required to operate on a commercial level or can show that these requirements can and will be complied with at the appropriate time, e.g., at the time that produce becomes available for sale; and
- * an intention to make a profit. (This could be shown, for example, by a business plan. Further, the taxpayer should have a reasonable belief that the activity is likely to generate a profit.)

These suggestions will assist the taxpayer to show that he/she is carrying on a business of primary production. It will assist the taxpayer if he/she is able to provide evidence in writing to support these activities and plans.

Example 1 - significant commercial purpose or character

31. Mark, a barrister, and his wife Tina, a medical researcher, bought 8 hectares of land on which they built a home. They realised that the land was fertile and capable of producing fruit. Mark spent a year seeking advice from the Department of Primary Industries and local farmers. He collected technical literature on citrus farming and obtained soil and water analyses of the land which showed the land was fertile and suitable for the intended activity. He drew up a business plan and a budget of capital and recurrent costs. After clearing the land he and Tina planted 700 mandarin trees, 700 orange trees and 700 lemon trees. They did not expect to make a profit for eight years. Mark also installed an irrigation system. Mark and Tina spent many months investigating the market for citrus fruit and established that there would be no problems in selling their product to wholesalers if it was of good quality. They complied with all registration and licensing requirements. The trees grew well. Mark and Tina devoted a substantial part of their weekends to looking after the trees. They employed casual labour to spray for weeds and pests and to prune the trees. But, before they received any income from the sale of fruit, the trees were destroyed by fire. Were Mark and Tina carrying on a business of citrus fruit farming?

32. **Yes** - despite no income being gained - because:

- * the scale of their activity was far in excess of their personal needs, and large enough to ensure the venture would be profitable;
- * there was a clear intention to make a profit, even though this would take some time to occur;
- * the intention to make a profit was based on reasonable grounds and backed up by appropriate research;
- * there were likely to be buyers for their produce for some time ahead;
- * the trees were looked after in a manner consistent with business operations;
- * they established and conducted the activity in a

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businesslike manner;

- * they asked for and followed advice from professionals; and
- * there was an overall permanence about their activity, and the trees would have yielded fruit for a number of years.

33. What if Mark and Tina had not done the above research and analysis, had only planted a small number of different types of trees to test which would grow best, and were still investigating the likelihood of potential buyers? This would suggest that their activity was only of a 'preliminary or preparatory' nature and did not amount to the carrying on of a business (refer to paragraph 41).

(Note: refer to paragraph 27.)

Example 2 - significant commercial purpose or character

34. Nick, a tax lawyer and avid fisherman, owned a 60-foot yacht which he used to go fishing. Several years ago he took advantage of an opportunity to purchase a commercial fishing licence. He rescheduled other commitments so he could spend every second weekend fishing. His crew comprised his sons, David and Michael, and a couple of their acquaintances. Usually Nick and his crew were successful and caught a lot of fish. The crew were paid with fish and the remaining fish were sold to a fish wholesaler. Nick had not conducted any research into the market or methods of fishing. He fished for the best sport fish, and was not concerned with finding fish with the best market returns. Nick had no business plan and was not particularly worried whether his costs were covered by the sale of the fish or not. Further, trips were only made in sunny conditions. Was Nick carrying on a business of fishing?

35. No, this does not appear to be a business. Where the activity is one in which many other people take part for sport or recreational purposes we believe there is a need to show a strong 'commercial flavour' about the activity before it would ordinarily be regarded as a business (refer to paragraph 86). In this case:

- * there was no apparent intention to make a profit;
- * the activity lacked the degree of organisation and system that would be found in the activities of people who normally would be regarded as carrying on a business of fishing;
- * the scale of the activity was not small and exceeded the personal needs, but this did not outweigh the sporting or recreational motive behind the fishing trips; and
- * similarly, the trips were conducted regularly, as were sales of the fish, but this also could be explained by the fact that Nick just likes to go fishing often.

(Note: refer to paragraph 27.)

Example 3 - significant commercial purpose or character

36. Naida and her family kept twelve chickens. Twelve was the minimum that she liked to have around. She knew that her relatives and friends liked her home grown eggs, especially the double yolks that were often produced. The chickens produced about six dozen eggs per week. Of these Naida and her family consumed one dozen. She sold the remaining five dozen eggs to relatives and friends. She found that after taking into account her direct feed costs she usually managed, in her estimation, to make a modest profit of \$5.00 per week. Was Naida carrying on the business of egg production?

37. No. Even though she had repetition and regularity in her operations and was making a modest gross profit:

- * she was not conducting the activity in the same

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way as that of a commercial poultry farmer;

- * she did not try to sell in a commercial market;
- * she did not seek the best price for her eggs;
- * she did not sell chickens that were culled because of falling productivity;
- * the scale of her operations were such that she could never produce a net profit;
- * she had not conducted any research into the egg industry; and
- * she had not looked at the full costs of production and distribution in determining the commercial viability of her enterprise.

38. If Naida's activities changed significantly and she had considerably more chickens; sold the eggs to the public at large at market prices or to retail egg sellers; and established by research that this level of activity was profitable after taking all her costs into account; this would point to a significant commercial character and a profit motive. She may then be carrying on a business of egg production.

(Note: refer to paragraph 27.)

The intention of the taxpayer

39. The intention of the taxpayer in engaging in the activity is a relevant indicator: see *Thomas*. However, a mere intention to carry on a business is not enough. There must be activity. Brennan J in *Inglis v. FC of T* 80 ATC 4001 at 4004-4005; (1979) 10 ATR 493 at 496-497 said that:

'The carrying on of a business is not a matter merely of intention. It is a matter of activity. ... At the end of the day, the extent of activity determines whether the business is being carried on. That is a question of fact and degree.'

See also *J&R O'Kane & Co v. IR Commissioners* (1920) 12 TC 303 at 347 and *Case K9 78 ATC 98* at 103; 22 CTBR (NS) *Case 29* at 302.

40. This indicator is particularly related to:

- * whether the activity is preparatory or preliminary to the ultimate activity;
- * whether there is an intention to make a profit; and
- * whether the activity is better described as a hobby or the pursuit of a recreational or sporting activity.

Preparatory activities

41. Sometimes a taxpayer may have incurred expenses before commencing a particular business of primary production. For example, expenses associated with experimental or pilot activities which do not amount to a business and do not result in any assessable income being produced are not deductible: see *Softwood Pulp and Paper Ltd v. FC of T* 76 ATC 4439; (1976) 7 ATR 101 and *Goodman Fielder Wattie Ltd v. FC of T* 91 ATC 4438; (1991) 22 ATR 26. Experimental or pilot activities of this nature should be distinguished from the activities in *Ferguson*, which were found to have a sufficient commercial character to be regarded as a business in their own right. However, where a business has commenced, expenses may be deductible even if no income is derived in the relevant year: see *Thomas*.

Example 4 - the intention of the taxpayer

42. Pat and Laurie purchased 1,500 acres of rural land in 1980. They heard of an experimental variety of cattle which was bred on the other side of the country. Their friends told them that if this breed became successful they might make a lot of money from establishing a herd. Through friends, they arranged for the transport of one steer to their property. This steer remained on the property from 1980 to 1985 when it died due to lack of

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veterinary care. They took no further action with respect to the land, preferring to save for the purchase of either cows or sheep in the future. Were Pat and Laurie carrying on a business of primary production?

43. Pat and Laurie were not carrying on a business of primary production as:

- * they had no clear purpose of how they would use the land to earn money;
- * the one steer was purely experimental;
- * the steer was incapable of breeding; and
- * the scale of this activity was insufficient to constitute a business.

44. Pat and Laurie's experimental activities did not have a sufficient commercial character to be regarded as a business. These activities pointed to a decision not yet having been made to carry on business and a lack of commitment at that time to do so (see also the contrasting situations described in *Example 1* at paragraph 31).

 [Top](#) (Note: refer to paragraph 27.)

Example 5 - the intention of the taxpayer

45. Lindsay and Loretta bought 700 hectares of run down rural land in 1980. They intended to start a cattle farming business. Over the next five years they spent several thousand dollars on farm machinery. They used this to clear the land, build roads and mend fences. They also bought and erected some farm buildings. No income was derived from the property until 1986 when they stocked the property with 100 cattle. Were Lindsay and Loretta carrying on a business from 1980 to 1985?

46. No, because:

- * the activities of Lindsay and Loretta from 1980 to 1985 would be regarded as preparatory to the commencement of business;
- * whilst they had a clear purpose to engage in cattle farming, they recognised that certain things needed to be done to the land before they were able to buy the cattle and put them on the land;
- * until 1986 there was no size or scale of the relevant activity in the sense that there was no stock; and
- * there was no repetition or regularity of activity with respect to cattle farming until the land was stocked.

(Note: refer to paragraph 27.)

Prospect of profit

47. We consider this to be a very important indicator. In *Hope* at CLR 8-9; ATC 4390; ATR 236, Mason J indicated that the carrying on of a business is usually such that the activities are:

'... engaged in for the purpose of profit on a continuous and repetitive basis.'

In *Smith v. Anderson* (1880) 15 Ch D 247 at 258, Jessel MR said that:

'... anything which occupies the time and attention and labour of a man for the purpose of profit is business.'

In *Case H11 76* ATC 59 at 61; 20 CTBR (NS) *Case 65* at 603, the Chairman of Board of Review No 1 said:

'In determining whether a business is being carried on it is, in my view, proper to consider, as one of the elements,

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whether the activities under consideration could ever result in a profit ...'

48. We believe it is important that the taxpayer is able to show how the activity can make a profit. Stronger evidence of an intention to make a profit occurs when the taxpayer has conducted research into his/her proposed activity, consulted experts or received advice on the running of the activity and the profitability of it before setting up the business. This was the situation in *FC of T v. JR Walker* 85 ATC 4179; (1985) 16 ATR 331. However, it is not necessary for the primary production activities to make a profit in every year of income in order to classify the activities as a business of primary production. Thus, a taxpayer may be carrying on a business of primary production even though he/she is making a small profit or a loss in any given year of income.

49. The situation may arise where a taxpayer is carrying on a business and has an intention to make a profit but the objective evidence is such that a profit is unlikely to be made in the short term. Bowen CJ and Franki J in *Ferguson* at ATC 4264; ATR 876 stated that '... an immediate purpose of profit-making in a particular income year does not appear to be essential ...'. Thus, where short term losses are expected it may be that a business is nevertheless being carried on: see *Tweddle v. FC of T* (1942) 7 ATD 186; (1942) 2 AITR 360.

50. Where an activity is carried on and the objective evidence is that it is unlikely a profit will ever be made, this fact in itself does not necessarily mean that a business is not being carried on, if the taxpayer believes that the activity will become profitable. As Walsh J said in *Thomas* at ATC 4100; ATR 171:

'It is not in doubt that he made mistakes. But many persons carry on a business for the competent conduct of which they have not previously acquired much knowledge or experience.'

See also *Tweddle's* case at ATD 190; AITR 364. Taxpayers need to show that the other indicators of business are present in sufficient strength to outweigh any objective view that the activity may be inherently unprofitable. A number of Board of Review and Administrative Appeals Tribunal decisions show that a taxpayer in this situation bears a heavy onus: see *Case M50 80* ATC 349; 24 CTBR (NS) *Case 24*; *Case K9 78* ATC 98; 22 CTBR (NS) *Case 29*; *Case L16 79* ATC 84; 23 CTBR (NS) *Case 20* and *Case L22 79* ATC 106; 23 CTBR (NS) *Case 25*.

Example 6 - prospect of profit

51. For a number of years Peter used his four hectare property to cultivate 100 pawpaw trees on the outskirts of Fremantle. He had planted the trees on his return from a trip to the tropics. He had thought that there must be a good market for locally grown tropical fruit in Fremantle. However, he had not conducted any research into the growing conditions they would need, including climate, their care or potential markets. He had not undertaken any soil analysis. He was always unable to market the limited amount of produce that he did obtain, because of its poor quality. His only disposals of fruit were to friends and relatives for which no money was received. Expert advice was that commercially saleable fruit would never grow in the location, and that there was little likelihood of a profit ever being made. Was Peter carrying on a business of primary production?

52. No. Not only was there no reasonable expectation that the activity would be profitable, there was also:

- * a lack of system and organisation about the activity, including inadequate preparation;
- * a lack of use of the type of methods commercial pawpaw growers use, including suitability of location for growing the fruit; and
- * a general lack of 'significant commercial purpose or character' about the activity.

(Note: refer to paragraph 27.)

Example 7 - prospect of profit

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53. Fay's friends were avid growers of olive trees and were making a small profit on the sale of olive oil they produced from their olives. Fay decided to grow olive trees on her modest property. She researched the varieties and selected those best for olive oil production. Fay planted 50 olive trees on her property. She knew they were hardy trees which required minimum maintenance. She spent the minimum amount of time necessary to care for the trees. She had spoken to her friends and had calculated that after four years she would be able to make a profit on the production of olive oil from the olives she picked. The trees thrived. In the fifth year after planting, a sizeable crop was produced. Fay employed casual labour to pick the olives, borrowed a friend's trailer and took the olives to be pressed. She sold the barrels of olive oil to friends, work colleagues and members of the public who responded to her newspaper advertisements. She derived a substantial profit in that year, which she was told by her friends in the industry was typical. Was Fay carrying on a business of olive production?

54. Yes. The activities were carried out with a purpose to make a profit, even if no income was made in the first four years of operation. In addition:

- * Fay clearly had a plan to make the activity succeed. She had conducted research by consulting friends in the industry and the local growers association;
- * though the activity was small it was organised. By its nature the activity required minimum maintenance. It was not carried on in an ad hoc manner. Rather, it was carried on in a manner similar to that of other olive producers; and
- * there was repetition and regularity of the activity.

(Note: refer to paragraph 27.)

Repetition and regularity

55. It is often a feature of a business that similar sorts of activities are repeated on a regular basis. The repetition of activities by the same person over a period of time on a regular basis helps to determine whether there is the 'carrying on' of a business. For example, in *Hope* the 'transactions were entered into on a continuous and repetitive basis', such that the taxpayer's activities 'manifested the essential characteristics required of a business'. Similarly, in *JR Walker* the court held that there was repetition and regularity in the taxpayer's activities directed to the breeding of high quality Angora goats and to keeping up with the latest information on Angora goats.

56. The taxpayer should undertake at least the minimum activities necessary to maintain a commercial quantity and quality of product for sale. It may be that there are no minimum levels for this activity. Where there are minimum levels necessary for this activity which the taxpayer fails to maintain, it may be that for a period the taxpayer has ceased to carry on a business of primary production.

Example 8 - repetition and regularity

57. George owned a pastoral property, 'Wytelaidee', which consisted of 600 hectares. He had acquired the property in 1970. Two hundred hectares were suitable for cultivation and the rest was open grazing country. Cattle and sheep were grazed for a number of years. George grew his own feed for the animals and also grew 200 olive trees. The cattle and sheep were the main primary production activities. The olive trees were a secondary activity because they required limited care. George did ensure that they were adequately sprayed and watered. The olives were bottled and pickled or olive oil was extracted from them, and the produce was sold on a regular basis. He usually made a profit from his primary production activities.

58. However, George was drawn into a legal battle over 'Wytelaidee' in 1990. He was unable to spend any time on the property and sold all stock, plant and equipment to finance the legal battle. The olive trees were left untended and grew wild. The olives were left to rot. No income was derived from the property from 1991 until the legal battle ended in 1995. George always intended to recommence operations on 'Wytelaidee' after the legal battle. Was George carrying on a business of primary production for the years 1991 to 1995?

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59. No. As the property was left untended for the period and stock and equipment was sold there was no activity being carried on; thus there was a lack of:

- * any size or scale of activity;
- * an intention to make a profit;
- * repetition or regularity of activity;
- * a significant commercial purpose.

60. If George had made arrangements for the olives to be picked, processed and sold, he may have been able to claim that he continued to carry on a business of olive production and sale.

(Note: refer to paragraph 27.)

Example 9 - repetition and regularity

61. John, a commercial lawyer, owned 500 apricot trees on a weekend retreat property located 250 km from his home in Brisbane. The trees had been in commercial production when he bought the property. John knew at the outset that he could, with proper management, run the enterprise at a profit. However, due to his employment, he was busy in the city and was unable to attend to the trees on a regular basis. Thus, he did not spray the trees for pests, irrigate or prune them. He decided that he could not be bothered hiring someone to look after the trees. He picked what he could in the hope of making some return but owing to the lack of care the apricots were not of a suitable quality for the commercial market. They were rejected by a wholesaler he approached after he had picked a small quantity of the fruit. He left what fruit he had picked with an honesty box on the side of the road and estimated that he got \$50. Was John carrying on a business of apricot growing?

62. No, despite the impression given by the size and scale of his activity. Further:

- * there was no repetition and regularity of activities that would produce a commercial quantity and quality of fruit for sale;
- * there was no clear evidence that he intended to make a profit from this activity;
- * the way he conducted it meant it was extremely unlikely that he would ever cover his costs;
- * he did not adopt methods used by commercial orchardists; and
- * there was a general lack of system and organisation about his apricot growing activity.

(Note: refer to paragraph 27.)

Is the activity of the same kind and carried on in a manner that is characteristic of the industry?

63. An activity is more likely to be a business when it is carried on in a manner similar to that in which other participants in the same industry carry on their activities. Lord Clyde in *IR Commissioners v. Livingston* at TC 542 said that:

'... the test, which must be used to determine whether a venture ... is, or is not, "in the nature of trade", is whether the operations involved in it are of the same kind, and carried on in the same way, as those which are characteristic of ordinary trading in the line of business in which the venture was made.'

64. In considering this indicator the following factors might be compared with the characteristics of others engaged in the same type of business:

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- * the volume of sales. If there is a small number of sales it is less likely that a business is being carried on. The volume of sales should be capable of producing a profit at some time. However, allowance is made for droughts, fires and other uncontrollable events which may effect the volume of sales. We also accept that in the early stages of an activity, sales may be low;
- * the types of customers the taxpayer sells his/her product to - wholesalers, retailers, the public at large, or friends or relatives - and the manner in which this marketing takes place;
- * the sort of expenses incurred by the taxpayer;
- * the amount invested in capital items;
- * previous experience of the taxpayer. A taxpayer who does not have any knowledge or experience may be expected to have sought advice from experts. However, it is recognised that a taxpayer may be a pioneer in the industry. The taxpayer may have conducted research into the activity, decided that the traditional approach is wrong. He/she may be trying to conduct the activity with a view to profit in a new but businesslike way; and
- * the activity should also be compared with that of a keen amateur. The sales of a keen amateur may only be a way of obtaining 'new' funds to continue with the personal interest.

65. The aspects mentioned in the above paragraph would be compared to the same aspects of how others in the industry conduct their business of primary production. The activity should also be compared to that of the activity of a keen amateur. A taxpayer who:

- * has no knowledge or experience of the primary production activity that he/she intends to enter into; and
- * does not seek advice or conduct research; and
- * starts the activity;
- * may have difficulty in proving that he/she is carrying on a business of primary production. This will be especially so when the above points add to a general impression that there is no profit motive behind the activity and that there is very little likelihood that the activity will ever be profitable.

Example 10 - activity of same kind and carried on in a manner characteristic of industry

66. Geoff and Heather purchased a small property in the Adelaide Hills after returning from a holiday in Japan where they had noticed not only the sale price but also the remarkable size and flavour of the apples. They had determined that the land was suitable for apple trees. Both spent a considerable amount of time researching, talking to experts and collecting technical literature on apples for the Japanese market. They determined from discussion with wholesalers that if their apples were of superior quality they would have a ready market and would be able to make a substantial profit from selling them. They both changed their employment from full-time to part-time so that at all times one of them was on the property. They selected varieties for the Japanese market based on their research and planted one hundred trees. Heather devised a unique irrigation system which they installed. They carefully sprayed and pruned the trees and protected the growing fruit from the elements. From their research they ensured they would meet stringent overseas market rules regarding spraying and quality, etc. They distinguished their product by individually wrapping their fruit and putting 'quality one' labels on them. They made losses for four years in a row. In the fifth year, although making significant sales, their production was still insufficient to generate a profit. However, based on current market conditions and anticipated production levels, they were confident that in future years they would make a profit. Were Geoff and Heather carrying on a business of apple production?

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67. Yes, because despite the size and scale of operation and the fact that the activity was not carried on in a similar manner to that of the ordinary trade of apple growing:

- * there was an apparent significant commercial purpose or character to their activity;
- * there was a clear intention to make a profit and their research had shown that the activity would be profitable;
- * despite lacking previous experience of apple production they conducted specific research into the methods required to succeed in servicing a specialty market;
- * there was repetition and regularity of the activity given the amount of time they spent attending to the trees;
- * there was an intention to engage in business and a plan for its successful and profitable operation; and
- * unlike Peter in *Example 6* (paragraph 51), Geoff and Heather are able to show that they are pioneering new methods or servicing specialty markets.

(Note: refer to paragraph 27.)

Organisation in a businesslike manner and the use of system

68. In *Newton v. Pyke* the court suggested that business should be conducted systematically. A business is characteristically carried on in a systematic and organised manner rather than on an *ad hoc* basis. An activity should generally conform with ordinary commercial principles to amount to the carrying on of a business.

69. In *Ferguson* the Full Federal Court was influenced by the systematic and organised nature of the taxpayer's activities. Fisher J said at FLR 324-325; ATC 4271; ATR 884:

'... the venture as a whole had a commercial flavour, was conducted systematically and, ... in a business like manner. It could not be said that there was anything haphazard or disorganised in the way in which he carried out the activity.'

In *JR Walker* Ryan J was satisfied, at ATC 4182; ATR 335, that the taxpayer was in the business of goat breeding as he had 'organised his activities in a business-like way through the keeping of books of account'.

70. The weight that is attached to this indicator will depend on the facts of the situation and a taxpayer may still carry on a business of primary production despite having poor organisational skills.

Example 11 - organisation in a businesslike manner and the use of system

71. Rob had a passion for Topiary plants. He had 500 plants which he had potted and tended on his modest property. There was no local market for the plants. The nearest major city was Melbourne but it was too expensive for him to transport the plants to the city on a regular basis to sell them. He tried unsuccessfully to sell the plants, on irregular occasions, at the Melbourne markets. Rob had no credit facilities and only accepted cash. Was Rob carrying on a business of primary production?

72. No, because:

- * his activity did not appear to have an element of commerciality;
- * he had not conducted research into the activity, potential markets, or the profitability of the activity;

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- * his markets were restricted;
- * he placed restrictions on his ability to sell the plants by his inability to cater for anything other than cash;
- * he had no plan or system in place to make the activity succeed; and
- * he engaged in the activity because of his passion for the plants.

(Note: Refer to paragraph 27.)

73. In some cases it is essential that specific records are kept, e.g., breeding records for a stud farm. Other matters that may demonstrate that a systematic approach is taken to record keeping are the keeping of records of:

- * inputs and costs of production;
- * seasonal and other conditions affecting production; and
- * how growing and market conditions have varied.

74. For taxation purposes, certain records are required to be kept where a business is being carried on. The keeping of records which monitor the flow of cash, stock and production assists in showing that a business is being carried on (see also Taxation Ruling TR 96/7 and the record keeping provisions of section 262A of the Act).

Example 12 - organisation in a businesslike manner and the use of system

75. Leon owned a property of twenty hectares in Queensland, an hour's drive from his home. He bred race horses and had begun with six brood mares, a stallion and a colt which he had built into a modest-sized stable. Over the years he had conducted extensive research into horse breeding activities and had collected a great deal of literature. Through his contacts with local and overseas breeders he developed a number of ideas for a successful and profitable breeding program. He had established that he could make a reasonable profit, had identified relevant markets and had a business plan. He had set up a computer system to monitor the breeding program, costs and the record keeping requirements of the Act. His activity was well organised and conducted in a systematic manner. Was Leon carrying on a business of primary production?

76. Yes. Given the presence of the other indicators, the fact that he carried on his activity in an organised and systematic manner added weight to the conclusion that he was carrying on a business of horse breeding. See also the discussion in paragraph 9 of Taxation Ruling TR 93/26 dealing with issues relating to the horse industry.

(Note: refer to paragraph 27.)

Size or scale of the activity

77. The larger the scale of the activity the more likely it will be that the taxpayer is carrying on a business of primary production. However, this is not always the case. The size or scale of the activity is not a determinative test, and a person may carry on a business though in a small way (Thomas at ATC 4099; ATR 171).

78. For example, the case of *JR Walker* involved five Angora goats, two of which died. Whilst the scale was small, the court held that a goat breeding business was being carried on because there was a profit making purpose and repetition and regularity in the taxpayer's activities. Research, based on authenticated sources, showed that a profit could be made from the significant capital allocated to breeding stock.

79. In *JR Walker*, Ryan J said at ATC 4182; ATR 334:

'... the respondent's activities had the purpose of profit making. ... There was also repetition and regularity in his

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activities. ... The activities of the taxpayer were limited but ... he maintained communications with the expert and he tried to make himself informed about market conditions through membership of the Angora Breed Society and reading publications ... He organised his activities in a business-like way through the keeping of books of account ...'

80. The scale of the activities may be small but still result in more produce than is required for the taxpayer's own domestic needs. Where this is so, and there is also an intent to profit from the activities and a reasonable expectation of doing so, a business may be carried on despite the scale.

81. Similarly, in *Thomas* at ATC 4099; ATR 171 Walsh J in the High Court said:

'But a man may carry on a business although he does so in a small way. In my opinion the appellant's activities in growing the trees ought not to be found to have been carried on merely for recreation or as a hobby. I leave out of account the pine trees, the growing of which did not have, I think, a significant commercial purpose or character. But the appellant in planting the avocado pear trees and the macadamia nut trees set out to grow them on a scale that was much greater than was required to satisfy his own domestic needs and he expected upon reasonable grounds that their produce would have a ready market and would yield, if the trees became established, a financial return which would be of a significant amount, with relatively small outlay of time and money, and that this return would continue for a very long time.'

82. The smaller the scale of the activity the more important the other indicators become when deciding whether a taxpayer is carrying on a business of primary production.

Example 13 - size or scale of the activity

83. See *Example 9* (John and his 500 apricot trees) at paragraph 61. In this example, despite the size/scale of activity by John, he was not carrying on a business of primary production.

(Note: refer to paragraph 27.)

Example 14 - size or scale of the activity

84. See *Example 10* (Geoff and Heather and the Japanese apple market) at paragraph 66. In this example, Geoff and Heather carried on a business of very small scale apple production for the Japanese market. Their research has shown that their activities will result in a profit.

(Note: refer to paragraph 27.)

Example 15 - size or scale of the activity

85. See *Example 3* (Nalda and her chickens) at paragraph 36. The small scale of her operations counted against there being a commercial purpose or character to the activities.

(Note: Refer to paragraph 27.)

Hobby or recreation

86. The pursuit of a hobby is not the carrying on of a business for taxation purposes. Money derived from the pursuit of a hobby is not regarded as income and therefore is not assessable. As was said in *Ferguson* at ATC 4265; ATR 877:

'... if what he is doing is more properly described as the pursuit of a hobby or recreation or an addiction to a sport, he will not be held to be carrying on a business, even though his operations are fairly substantial.' (emphasis added)

Expenses incurred in relation to the hobby activity are not allowable deductions. However, we recognise that a hobby can sometimes turn into a business.

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87. Often it will be the case that there is a hobby when:

- * it is evident that the taxpayer does not intend to make a profit from the activity;
- * losses are incurred because the activity is motivated by personal pleasure and not to make a profit and there is no plan in place to show how a profit can be made;
- * the transaction is isolated and there is no repetition or regularity of sales;
- * any activity is not carried on in the same manner as a normal, ordinary business activity;
- * there is no system to allow a profit to be produced in the conduct of the activity;
- * the activity is carried on a small scale;
- * there is an intention by the taxpayer to carry on a hobby, a recreation or a sport rather than a business;
- * any produce is sold to friends and relatives and not to the public at large.

Example 16 - hobby or recreation

88. Norm was a keen gardener. His two favourite vegetables were broccoli and pumpkin. He enjoyed growing these in his garden and exhibiting the larger specimens at vegetable shows for which he often won prizes. He had been doing this for the last twenty years. Norm always kept up with the latest advances in growing techniques of broccoli and pumpkin. He had always been keen to talk to other growers of the vegetables and had subscribed to the relevant magazines. He also stayed in regular contact with the Department of Primary Industries to keep up with the latest information about vegetable growing. Norm had no business plan. He kept no records of his expenses. His only intention was to grow the biggest and best broccoli and pumpkin. To this end he often experimented with different growing techniques. Usually he gave away his broccoli and pumpkin to relatives and friends. However, he found that in the last 12 months people approached him at the shows to purchase his prize winning specimens. He has been happy to sell these. Was Norm carrying on a business of primary production?

89. No. Rather his activities amounted to a hobby for the following reasons:

- * the size and scale of his activity was small, as it was in his backyard;
- * he had no plan or intention to make a profit and his activities were motivated by his passion for growing broccoli and pumpkins;
- * his produce was usually given away to friends and family rather than sold to the general public; and
- * records were not kept and the activity was not carried on in the same manner as that of the ordinary business activity of commercial pumpkin and broccoli growers.

90. As a result of being approached at shows, Norm realised that there was a potential market for his produce and that he could turn his hobby into a business. He developed a profit making intention. He worked out the economics of his activities and calculated that by using extra land he would make a profit. He rented a block of land on which he grew broccoli and pumpkins on a larger scale. He kept detailed records of his activities and established his markets mostly as a result of approaches by people to him. Was Norm carrying on a business of primary production?

91. Yes, Norm would be regarded as carrying on a business of primary production when the nature of the activity changed being a hobby to a business. At this time, in addition to his experience and skill in the activity:

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- * the activity had a profit making purpose;
- * he expanded the size of the activity;
- * he kept detailed records; and
- * he established markets.

(Note: refer to paragraph 27.)

Example 17 - hobby or recreation

92. Richard was a musician and singer in a rock band. He was also interested in dressage. Richard owned a substantial land holding on which he bred horses to obtain better mounts for his dressage competitions. He trained his own horses. He belonged to the local dressage club and usually sold any unwanted and untrained offspring through his club and the local newspaper. The sale prices were well below the expenses associated with maintaining the horses. He conducted research into breeding and training techniques and tried to keep up to date with the latest information. He kept detailed records of breeding and all expenses associated with the horses. When the horses became too old to compete he put them out to pasture, as he could not bear to part with his old companions. Was Richard carrying on a business of horse breeding?

93. No, despite the keeping of records, the organisation, the repetition and regularity of activity and the research conducted, because:

- * the activity was primarily motivated by his desire to compete and any returns were merely incidental to this purpose;
- * no profit was made from the activity;
- * there was no intention to carry on a business or to make a profit; the keeping of records, the research and the sales were all associated with Richard's dressage activities; and
- * there was no significant commercial purpose or character to the activity.

(Note: refer to paragraph 27.)

Application of all the indicators

Example 18 - Application of all the indicators

94. George and Desi grew tired of living in the suburbs. They moved, with their two young children, to a 20 hectare property about 50 kilometres away from the capital city where they had lived. As part of their rural lifestyle they wanted to use their new property for primary production activities.

95. In July 1993 they planted oats, Japanese Millet, phalaris and clover. The land was fertilised in expectation that they would be able to graze some beef cattle on it, fatten and sell them. They noted that a number of the larger properties in the area were used for this purpose.

96. Due to a shortage of funds, it was not until May 1994 that they purchased 10 cattle. They did no analysis of whether the grazing of beef cattle on their land would be profitable. George and Desi had no clear idea of what all their costs would be for such an activity. They spoke to a number of their neighbours about the maximum number of cattle that their land could carry, but they received conflicting advice. Most of the advice suggested however that they did not have enough land to make the venture profitable.

97. The first sale, of 5 head, was in March 1995. At that time Desi accepted a redundancy offer and applied herself full time to their cattle grazing activity. With the money from the pay-out she purchased 20 additional cattle on the advice of her neighbour (a cattle farmer for a number of years). At the same time she developed a plan based on expert advice from the Department of Primary Industries for maximising the carrying

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capacity of their land and achieving profitability. She travelled with neighbours and purchased 20 weaners, and she arranged to share costs with these neighbours in transporting their cattle to various markets for sale.

98. By June 1996, 35 more cattle had been sold and 10 were on hand. Market conditions were poor and the sale prices they received had not been much greater than the price they had paid. However, Desi calculated that they could cut their costs further and noted from the rural press that long term forecasts of beef prices were good. On the basis of improved prices and a doubling of the herd size, she calculated that their activities could produce a reasonable profit. With her redundancy money she calculated that they could buy an adjoining 20 hectares for this purpose.

99. Were George and Desi carrying on a business of cattle grazing? If so, when did this business commence?

100. This example is meant to illustrate the importance of considering all the indicators of whether a business is being carried on and how the facts related to some of those indicators can materially change over time. In this particular case there was a marked change in the character of the cattle grazing activity after March 1995.

101. Before March 1995 George and Desi were not carrying on a business of primary production because there was:

- * little evidence of any system or organisation about the activity;
- * doubt as to whether there was an overall profit-making purpose;
- * a strong suggestion that the activity, as it was being conducted at that time, was inherently unprofitable; and
- * little repetition or regularity about the activity, and the small scale of the activity.

102. After March 1995 there was a considerable change in the way that the cattle grazing activity was carried on. In particular, there was then:

- * a clear focus on how to make a profit from the activity. This was demonstrated by the drawing up of a plan to make a profit based on expert advice, the search for the most profitable markets for the sale of the cattle and efforts to reduce the costs of obtaining and maintaining the cattle;
- * an increase in repetition and regularity, particularly an increase in purchases and sales of cattle;
- * more similarity between the activities of George and Desi and those of a person who would clearly be considered to be carrying on a business of cattle grazing; and
- * a greater sense of permanency, and scale of the activity as evidenced by the purchase of the neighbouring property, together with a greater capacity to make the operations profitable.

103. We consider that from March 1995 George and Desi were carrying on a business of cattle grazing.

(Note: refer to paragraph 27.)

Private rulings

104. A person cannot obtain a private ruling under Part IVA of the *Taxation Administration Act 1953* (TAA) on whether he/she is carrying on a business (refer Taxation Determination TD 96/16). Likewise, a person cannot obtain a private ruling on whether he/she is carrying on a business of primary production. The reason for this is that the question does not identify a specific 'tax law'. Under section 14ZAF of the TAA a person can only apply for a ruling on how, in the Commissioner's opinion, a tax law will apply with respect to an 'arrangement' in regard to a 'year of income'.

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105. A taxpayer cannot ask for a ruling on a finding of fact. A taxpayer can ask for a ruling on a tax law that depends for its operation on either:

- * the carrying on of a business of primary production, for example, section 156 of the Act; or
- * the carrying on of a business, for example, the second limb of subsection 51(1) of the Act.

106. The notice of private ruling we give contains our answer only on how the tax law applies to the arrangement, for example, that a deduction of \$x is allowable under section 70 of the Act. Normally, however, this notice will be accompanied by an 'Explanation'. In the Explanation we describe our reasons for the answer in the notice of ruling. For example, an Explanation accompanying a notice of ruling about the application of section 70 to an arrangement usually contains our reasons about whether the activities described in the application for private ruling amounted to the carrying on of a business of primary production. The person who applied for the ruling would then know the Commissioner's views on this point.

107. Under paragraph 14ZAN(h) of the TAA, if it has not already begun, the taxpayer's 'arrangement' must be seriously contemplated. In such cases, a taxpayer's application therefore needs to show:

- * how he/she intends to carry out the arrangement;
- * that he/she has the means to carry out the arrangement; or
- * that he/she has or will soon take steps to obtain the means to carry out the arrangement.

108. An application should contain 'sufficient information' to enable the Commissioner to give the ruling. Where insufficient information is provided the Commissioner may request the relevant information under section 14ZAM of the TAA. Where information has been requested and remains insufficient the Commissioner does not need to comply with the application: refer to paragraph 14ZAN(i) of the TAA.

109. 'Sufficient information' includes information which covers the eight indicators, and any other matter which the taxpayer considers relevant. We expect to see information about:

- * purpose and intention - the reason the taxpayer has entered into the activity; whether the taxpayer is employed in some other area;
- * profit motive and profitability of the activity - e.g., the existence of a business plan; the results of research on viability; realistic sales forecasts; cost projections until the activity is expected to become profitable; details of how capital is to be employed; the source and cost of funds; taxpayer's expertise in the activity;
- * repetition and regularity of the activity - how much time is spent on the activity; a breakdown of the tasks that are performed on a regular basis; regularity of purchases and sales;
- * activity of the same kind - such as descriptions of methods used in the activity with regard to cultivation, livestock raising, obtaining the relevant licences and complying with the relevant laws;
- * organisation - how the activity is conducted; how and what records are kept; what advice is sought;
- * the size and scale of the activity - e.g., the area of the land; details of any private residence on the land; details of improvements to the land such as fences and sheds, clearing and fertilising; details of equipment/plant purchase including depreciation schedules; the numbers of livestock involved; level of capital investment;
- * whether the activity could be viewed as a hobby or

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recreation;

- * **significant commercial purpose - this will generally follow from all of the above .**

Business plan

110. We emphasise that, whilst a business plan will help a taxpayer to establish that he/she is carrying on a business of primary production, it is not compulsory. Nor will the existence of a business plan be conclusive evidence that the taxpayer's activity amounts to the carrying on of a business.

111. A business plan is particularly relevant to establishing that there is an intention to make a profit, that the activity will be profitable and that the activity has a significant commercial purpose. This is especially so where it is capable of authentication by reference to texts, publications by relevant authorities or organisations and local experience in the industry. A business plan may include many things. However, we recommend that the basic elements of the business plan should include information about:

- * a description of the business;
- * the markets to which the taxpayer proposes to sell and realistic estimates of quantity and volume of sales;
- * income expected from the activity;
- * the research that has been conducted by the taxpayer - e.g., who the taxpayer has spoken to, what literature he/she has collected; what previous knowledge he/she has;
- * information about the property on which the taxpayer proposes to conduct the business - e.g., its area, distance from the taxpayer's home, whether irrigated, whether soil and water tested, whether rainfall sufficient for the activity;
- * information about expected expenses and capital outlays - e.g., cost of travel, electricity, gas and water, cost of plant and equipment and stock; and
- * information about how the taxpayer proposes to pay for the expenses and capital outlays - e.g., if the taxpayer takes out a loan what is the interest rate and how long will the loan take to repay.

Business plan example

112. Business - Jeff's passionfruit

2000 Passion fruit vines. To be planted beginning financial year 1996.

Markets

Sell primary / A-grade fruit to Brisbane markets - up to 10 trays in good weeks, seconds, etc., for pulping and fruit juice markets.

Research

Spoke with local fruit growers about pests, etc., collected DPI information on types and spraying cycles. Passion Fruit Growers Association in Brisbane provided literature on the latest practices re growing passion fruit and which passion fruit varieties to grow given future markets. Obtained DPI copy of 'Passionfruit in Queensland'. Combined with my knowledge of farming from several years on a fruit tree farm I feel that I have the knowledge and time available to undertake the activity successfully.

Property

4 hectare block, 20 km from my home in Mackay, will require additional watering given varying rainfall. Existing bore water quality and quantity tested and found sufficient for my crop size. Irrigation to be installed. Soil tested and found to be suitable.

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Expected expenses / outlays

Travel to block 3 times a week after work and weekends as needed. Estimate travel expenses using my existing utility will be \$3,500 a year - including delivery of produce. Estimate that about half of this will be deductible, when carrying bulky farm materials. Electricity will need to be connected for pump and shed lights with an estimated running cost of \$500 per year. These and other one-off expenses include:

Connection of electricity	\$1,000
Purchase of vines @ \$3.00 per vine	\$6,000
Installation of irrigation	\$1,000
Rent of tractor / post digger for trellises (from neighbour)	\$500
Posts / wire / for trellises and to fix up property fencing	\$1,500
Labour (brother will help on posts)	Free
Ride-on mower / spray unit (2nd hand)	\$3,500.

I will take out a loan of \$10,000 to cover the above expenses plus use my existing savings. Given my other income I should have the loan paid out in 5 years. The vines will last 5 years from the time of planting and then I will replace them.

113. Table of anticipated receipts and costs (in 1996 dollars)

Year	1995/ 1996	1996/ 1997	1997/ 1998	1998/ 1999	1999/ 2000
Expected Sales					
A Grade (avg price)	0	2500	4000	4000	3000
Seconds (pulping)	2000	3000	5000	5500	6000
Gross Receipts	2000	5500	9000	9500	9000
Running Costs					
Accounting Fees	200	250	300	350	400
Bank Charges	50	50	50	50	50
Interest	1200	1000	800	600	300
Protective Clothing	50	50	50	50	50
Repairs and Maintenance / fuel	300	500	500	500	500
Motor Vehicle	1750	1750	1750	1750	1750
Telephone	100	100	100	100	100
Sprays and Chemicals	250	250	250	250	250
Rates and Taxes	300	325	350	375	400
General Expenses	200	200	200	200	200
Total Costs	4400	4475	4350	4225	4000
Net Profit / Loss on trading before write-off and depreciation	(2400) Loss	1025 Profit	4650 Profit	5275 Profit	5000 Profit

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114. *Depreciation and capital write-offs*

Depreciation on sprayer / mower, fences / improvements and trellises	960	960	960	960	960
Write-off of vines - Div 10F, starting 1 May 96	408 ^{F1}	2400 ^{F2}	2400 ^{F3}	792 ^{F4}	
Write-off electricity connection costs (10 years - section 70A)	100	100	100	100	100
Write-off irrigation expense (3 years - section 75B)	333	333	334	Nil	Nil
Total Write-off and Depreciation	1801	3793	3794	1852	1060
Net Profit / Loss on trading after write-off and depreciation	(4201) Loss	(2768) Loss	856 Profit	3423 Profit	3940 Profit

Jeff approached his accountant who gave him some additional information on capital and equipment write-offs and depreciation. He suggested using sections 70A and 75B to write off the electricity connection and irrigation expenses and Division 10F to write-off the capital value of the vines, although he noted that this would produce timing differences compared with an accounting write-off. However, using these rates of write-off would mean that the outcome would produce a correct tax result. Jeff noted as part of his business plan that:

'I have not yet seen published any Division 10F "safe harbour" write-off rates issued by the Commissioner, so in my business plan calculation I will use a four year write-off of the cost of the vines, commencing from when they become income producing, which I estimate to be 1 May 1996.'

115. **Note:** This business plan example is an illustration only. It is not definitive of the deductions a taxpayer may claim or the calculation of profit.

Detailed contents list

116. Below is a detailed contents list for this Ruling:

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Commissioner of Taxation

4 June 1997

Footnotes

[F1]
1 Calculated from 1 May 1996: 62/365 days x \$6,000 capital cost x 40% rate for plants with 4 year life from date first become income producing - see section 124ZZI of the Act.

[F2]
2 Full year write-off of \$6,000 capital cost @ 40% rate.

[F3]
3 Full year write-off of \$6,000 capital cost @ 40% rate.

[F4]
4 Write-off of balance of the \$6,000 over the 2 years and 183 days allowed for by section 124ZZI.

Previously released in draft form as TR 97/D1

References

ATO references:
NO 96/5590-5 97/545-1 973882-7
BO PUL A.1270

ISSN 1039 - 0731

Related Rulings/Determinations:
IT 219

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IT 289
IT 2006
IT 2301
TR 93/26
TR 95/6
TR 96/7
TD 93/39
TD 93/96
TD 96/16

Subject References:

- primary production
- whether carrying on a business of primary production

Legislative References:

- ITAA 6
- ITAA 6(1)
- ITAA 36AAA
- ITAA 51(1)
- ITAA 70
- ITAA 75AA
- ITAA 75B
- ITAA 75D
- ITAA 124ZZI
- ITAA 156
- ITAA 262A
- ITAA Pt III Div 10F
- ITAA Pt III Div 16
- TAA Pt IVAA
- TAA 14ZAF
- TAA 14ZAM
- TAA 14ZAN(h)
- TAA 14ZAN(i)

Case References:

- *CTC Resources NL v. FC of T*
94 ATC 4072
(1994) 27 ATR 403

- *Erichsen v. Last*
(1881) 8 QB 414

- *Evans v. FC of T*
89 ATC 4540
(1989) 20 ATR 922

- *FC of T v. JR Walker*
85 ATC 4179
(1985) 16 ATR 331

- *Ferguson v. FC of T*
(1979) 37 FLR 310
79 ATC 4261
(1979) 9 ATR 873

- *Goodman Fielder Wattie Ltd v. FC of T*
91 ATC 4438
(1991) 22 ATR 26

- *Hope v. The Council of the City of Bathurst*
(1980) 144 CLR 1
80 ATC 4386
(1980) 12 ATR 231

- *Inglis v. FC of T*
80 ATC 4001
(1979) 10 ATR 493

- *IRC v. Incorporated Council of Law Reporting*
(1886) 22 QB 279

- *J&R O'Kane & Co v. IR Commissioners*
(1920) 12 TC 303

- *Martin v. FC of T*
(1953) 90 CLR 470
5 ATR 548

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- *Newton v. Pyke*
(1908) 25 TLR 127
- *Smith v. Anderson*
(1880) 15 Ch D 247
- *Softwood Pulp and Paper Ltd v. FC of T*
76 ATC 4439
(1976) 7 ATR 101
- *The Commissioners of Inland Revenue v. Livingston and Others*
(1927) 11 TC 538
- *Thomas v. FC of T*
72 ATC 4094
(1972) 3 ATR 165
- *Tweddle v. FC of T*
(1942) 7 ATD 186
(1942) 2 AITR 360
- *Case H11 / Case 65*
76 ATC 59
20 CTBR (NS) 534
- *Case K9 / Case 29*
78 ATC 98
22 CTBR (NS) 296
- *Case L16 / Case 20*
79 ATC 84
23 CTBR (NS) 154
- *Case L22 / Case 25*
79 ATC 106
23 CTBR (NS) 183
- *Case M50 / Case 24*
80 ATC 349
24 CTBR (NS) 200

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	4 June 1997	Original ruling	
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11.4.1.3 Interim Financial Reports to Council for Period Ended 30 September 2010 (File Nos: FIN-008, FIN-014 and RAT-009)

Officer	Lee Crombie Finance Officer
Date of Report	22 October 2010
Disclosure of Interest by Officer	Nil

Summary

The objective of this item is to present a summary of the interim financial activities of the Town to 30 September 2010, and to compare this with that budgeted for the period. With regard to the Town's Utility and Fuel Costs, a comparison is made with 2009/10. The reports are considered to be interim as the Finance Department is still in the process of raising accruals for the 2009-10 Financial year that will affect the actual for July 2010.

Background

1. Interim Financial Statements

Presented (see attachments) in this report for the financial period ended 30 September 2010, are the:

- Statements of Interim Financial Activity – see Schedules 2 to 14;
- Notes (1 to 10) to and forming part of the Statements of Interim Financial Activity for the period ending 30 September 2010;
- Review of Transaction Activity.

Note: Interest Rates for investments are selected from those provided from the following financial institutions: National Australia Bank, BankWest, Commonwealth Bank, AMP, Westpac Bank, Big Sky, Citigroup and the Australian and New Zealand Bank.

2. Utility and Fuel Costs

Presented in graph form (see attached), is the 2010/11 monthly water, power and fuel costs compared with 2009/10.

3. Schedule of Accounts Paid

The Schedule of Accounts paid (see attachment) under delegated authority as summarised below, and which is submitted to Council on 27 October 2010 for receipt, has been checked and is fully supported by vouchers and invoices which have been duly certified as to the receipt of goods and rendition of services, and verification of prices, computations and costs.

Voucher No's		Value \$	Pages		Fund No.	Fund Name	Description
From	To		From	To			
CHQ19908	CHQ19939		1	6	1	Municipal Fund	
CHQ19940	CHQ19943				1	Municipal Fund	Cheque cancelled
CHQ19944	CHQ19960		6	8	1	Municipal Fund	
CHQ19961	CHQ19966				1	Municipal Fund	Cheque cancelled
CHQ19967	CHQ19989	\$246,002.59	8	10	1	Municipal Fund	
EFT31191	EFT31579	\$4,467,938.41	10	74	1	Municipal Fund	
CMS070910	CMS070910	\$192.39	74	74	1	Municipal Fund	Photocopier lease - Engineering
PAY070910	PAY070910	\$306,154.17	74	74	1	Municipal Fund	
PAY210910	PAY210910	\$327,505.90	75	75	1	Municipal Fund	
BOQ270910	BOQ270910	\$891.10	75	75	1	Municipal Fund	Finance Equipment
NMF010910	NMF010910	\$1,244.32	1	1	1	Municipal Fund	Photocopier lease x2 - Reg services
NMF010910	NMF010910	\$569.14	1	1	1	Municipal Fund	Photocopier lease x2 South Hed library & JD Hardie
NMF060910	NMF060910	\$284.57	74	74	1	Municipal Fund	Photocopier lease x1 - Comm Dev (airport)
NMF100810	NMF100810	\$436.34	75	75	1	Municipal Fund	Photocopier lease x2 South Hed library & JD Hardie
NMF231109	NMF231109	\$456.25	75	75	1	Municipal Fund	Photocopier lease x2 - Civic centre
	Municipal Total	\$5,351,675.18					
3001979	3001984	\$5,403.00	75	76	3	Trust Fund	
	Trust Total	\$5,403.00					
	Sub-Total	\$5,357,078.18					
LESS: one-off pay		-					
	Total	\$2,569,512.26					

Consultation

Nil

Statutory Implications

Financial Statements

Regulation 34 of the Local Government (Financial Management Regulations), states as follows:

“34. Financial activity statement report - s. 6.4

- (1) A local government is to prepare each month a statement of financial activity reporting on the sources and applications of funds, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail:*
 - (a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);*
 - (b) budget estimates to the end of the month to which the statement relates;*
 - (c) actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;*
 - (d) material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
 - (e) the net current assets at the end of the month to which the statement relates.*
- (2) Each statement of financial activity is to be accompanied by documents containing:*
 - (a) an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;*
 - (b) an explanation of each of the material variances referred to in subregulation (1)(d); and*
 - (c) such other supporting information as is considered relevant by the local government.*
- (3) The information in a statement of financial activity may be shown:*
 - (a) according to nature and type classification;*
 - (b) by program; or*
 - (c) by business unit.*
- (4) A statement of financial activity, and the accompanying documents referred to in subregulation (2), are to be:*
 - (a) presented to the council:*
 - (i) at the next ordinary meeting of the council following the end of the month to which the statement relates; or*
 - (ii) if the statement is not prepared in time to present it to the meeting referred to in subparagraph (i), to the next ordinary meeting of the council after that meeting;**and*
 - (b) recorded in the minutes of the meeting at which it is presented.*
- (5) Each financial year, a local government is to adopt a percentage or value, calculated in accordance with AAS 5, to be used in statements of financial activity for reporting material variances.*

In this regulation:

“committed assets” means revenue unspent but set aside under the annual budget for a specific purpose;

“restricted assets” has the same meaning as in AAS 27.

Section 6.12 of the Local Government Act 1995 (Power to defer, grant discounts, waive or write off debts) states:

“(1) Subject to subsection (2) and any other written law, a local government may –

(a) when adopting the annual budget, grant a discount or other incentive for the early payment of any amount of money;*

(b) waive or grant concessions in relation to any amount of money; or

(c) write off any amount of money, which is owed to the local government.

(2) Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.”

Policy Implications

2/003 Financial Statements – Copies for Councilors

Apart from the financial reports presented to Council as required by way of legislation, the following reports will be presented to Council:

- Monthly
 - Bank Reconciliation of the Municipal, Reserve and Trust Fund
 - +90 day outstanding Sundry Debtors Report
 - List of Accounts paid under Delegated Authority
 - Register of Investments
 - Rate Summary Trial Balance
 - Reserve Account Balances

- Quarterly
 - Quarterly Budget Review
 - Report on all Budgeted Grants of \$50,000 or more.

Irregular Financial reports will be presented to Council on request.

Strategic Planning Implications

Key Results Area 5 Environment

Goal 2 Natural Resources

Strategy 1. Continue to monitor and report on the level of Council's energy, fuel and water use.

Budget Implications

At the Special Meeting held on 7 July 2010, Council resolved to adopt item 6.1.1.1 '2010/2011 Budget Adoption' en block, which included Recommendation 13 as follows:

“Recommendation 13

That Council adopts the following percentage or dollar value for determining and reporting material variances as follows:

- 1. 10% of the Function amended budget; or*
- 2. \$100,000 of the Function amended budget*
whichever is the lesser, for the following categories of revenue and expenditure:
 - a. Operating Revenue*
 - b. Operating Expenditure*
 - c. Non-Operating Revenue*
 - d. Non-Operating Expenditure”*

Officer’s Comment

For the purpose of explaining Material Variance (Expense/Revenue Up or Down, and see attachment Schedule 2) a three-part approach was taken:

Period Variation

Relates specifically to the value of Variance between the Budget and Actual figures for the period of the report.

Primary Reason

Identifies the primary reasons for the period Variance. As the report is aimed at the higher level analysis, minor contributing factors are not reported.

Budget Impact

Forecasts the likely \$ impact on the Amended Annual Budget position. It is important to note that figures in this part are ‘indicative only’ at the time of reporting, and that circumstances may subsequently change.

Attachments

- Page 1–2 of 16. Schedule 2 being a Statement of Interim Financial Activity
- Pages 3 to 16. Notes 3 to 11 which form part of the Statements of Interim Financial Activity. Also Note 10 – September 2010 Bank Reconciliations.
- Pages 17 to 70. Detailed Interim Financial Activity by Program.
- Pages 71 to 73. Comparison Between 2010/11:2009/10 Utility & Fuel Costs
- September 2010 Accounts for Payment

201011/152 Council Decision/Officer's Recommendation**Moved:** Cr A A Carter**Seconded:** Cr M Dziombak

That Council:

- i) note the
 - a) **Statements of Interim Financial Activity (represented by Schedules 3 to 14);**
 - b) **Notes (1 to 11) to and forming part of the Statements of Interim Financial Activity for the period ending 30 September 2010; and**
 - c) **Review of Transaction Activity, as attached and/or presented be received;**
- ii) note the graphic representation of the Town's energy, water and fuel use as attached be received; and
- iii) note the list of Accounts paid during September 2010 under Delegated Authority, as presented and/or attached be received.

CARRIED 8/0

11.4.2 Governance

Nil

ITEM 12 LATE ITEMS AS PERMITTED BY CHAIRPERSON/COUNCIL

Nil.

ITEM 13 MOTIONS OF WHICH PREVIOUS NOTICE HAVE BEEN GIVEN

Nil.

ITEM 14 CONFIDENTIAL ITEMS

Nil.

ITEM 15 APPLICATIONS FOR LEAVE OF ABSENCE**201011/153 Council Decision/Officer's Recommendation**

Moved: Cr A A Carter

Seconded: Cr S R Martin

That the following Applications for Leave of Absence:

. Councillor G J Daccache from 29 October to 01 November 2010

. Councillor S Coates from 29 October to 31 October 2010

be approved

CARRIED 8/0

ITEM 16 CLOSURE

16.1 Date of Next Meeting

The next Ordinary Meeting of Council will be held on Wednesday 10 November 2010, commencing at 5.30 pm.

16.2 Closure

There being no further business, the Chairman declared the meeting closed at 7:03 pm.

Declaration of Confirmation of Minutes

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

CONFIRMATION:

MAYOR

DATE