

Town of Port Hedland

Wanangkura Stadium Review



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CONSULTANTS DISTRIBUTION SCHEDULE

Version No.	Date	Distribution	Reference
Version 1	February 19 2013	Draft issued to the client for review.	111 Port Hedland - Wanangkura Stadium Review (Report) Ver 1.docx
Version 2	March 11 2013	Final Report issued to client	111 Port Hedland - Wanangkura Stadium Review (Report) Ver 2.docx
Version 3	March 26 2013	2 nd Revision of Final Report following feedback from the CEO	111 Port Hedland - Wanangkura Stadium Review (Report) Ver 3.docx
Version 4	May 10 2013	3 rd Revision of Final Report following Council workshop	111 Port Hedland - Wanangkura Stadium Review (Report) Ver 4.docx
Version 5	May 14 2013	4 th Revision of Final Report following legal review and correction of minor typos.	111 Port Hedland - Wanangkura Stadium Review (Report) Ver 5.docx

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Cover: Front entrance of Wanangkura Stadium, South Hedland, Western Australia

1.0 Executive Summary

The Town of Port Hedland (ToPH) recently completed the construction of a \$35.3m (ex GST) Multi-Purpose Recreation Centre, named the Wanangkura Stadium. The Stadium is located on Reserve No. 83865, Kevin Scott Reserve (adjoining Reserve No. 31895) facing Hamilton Road, South Hedland.

Towards the end of construction, the ToPH discovered that the local water supply to the facility was inadequate for fire fighting purposes and needed retrofitting to comply with Fire and Emergency Services Authority (FESA) requirements.

The work to retrofit was undertaken as a variation to the building contract at a cost of \$432,927 (ex GST). Despite the last minute additional cost, the project was completed within the \$35.6m (ex GST) funding allocation for the project.

However the issues associated with the fire service caused embarrassment for the ToPH and elected members as the facility needed to be closed immediately after the grand opening resulting in a loss of income from operations and adverse publicity in the media.

At this point the ToPH took the opportunity to review the processes associated with the planning and construction of the Wanangkura Stadium and engaged the services of Core Business Australia Pty Ltd to undertake the review. The review is considered timely given the ToPH has had a number of changes in personnel and also has several large scale capital works projects of a similar nature either in progress or soon to commence.

1.1 Inception & Funding

The Wanangkura Stadium concept evolved prior to 2006 where for several years it was recognised that there was need for some form of recreation centre in South Hedland. Planning got underway in earnest in 2006. At about the same time, the Town's new CEO established a partnership with BHP Billiton Iron Ore Pty Ltd (BHPBIO). This coincided with expansion of the resources sector in the Pilbara and funding opportunities from State Government through the Royalties for Regions funding program, all of which provided a viable funding stream to develop a facility of significance in South Hedland.

The Council entered into an agreement with BHPBIO to contribute significant funds toward community infrastructure. A working group comprising BHPBIO executive, community members, Councillors and the CEO was established to advise the Council on how the funds should be distributed.

1.2 Concept and Design

Council went through a series of procurement processes to engage the resources necessary to develop the facility including;

- Feasibility Study
- Professional Consultancy Services Panel Contract for Project & Contract Management
- Detailed Design Consultancy (Architect)
- Expression of Interest for Construction

- Tender for Building Construction (Builder)

1.3 Construction

Construction commenced towards the end of 2010 and was completed towards the end of 2012. The total project cost was in excess of \$35m.

Over the period of the project, there were several staff changes and while the fact that the construction of a facility of the size and value of the Wanangkura Stadium is a credit to the ToPH and its community, there were several aspects of the project where appropriate process was lacking. Nonetheless, the ToPH has taken a proactive approach and reviewed the process to identify opportunities for improvement.

This report provides a snapshot overview of the project and makes 19 Recommendations for improvement opportunities that will benefit other projects of this nature in addition to open and transparent decision making.

1.4 Recommendations

Recommendation No.	Recommendation	Page No.
Recommendation 1	Prior to consideration of the taking of any action in relation to any issue that may impact a key stakeholder, it is recommended that the ToPH apply the principles of Natural Justice and Procedural Fairness	14
Recommendation 2	Strengthen Section 3.6 – Conflicts of Interest, of Council’s Code of Conduct to ensure that where Officers declare a Financial Interest in relation to advice to Council, Council is to consider the matter and determine whether steps need to be taken to remove the Officer from potential dealings in relation to the matter.	22
Recommendation 3	That Council vary its approach to the use of Working Groups and amend Policy 1/012 to ensure that Working Groups are only to be established to provide a reference source for Officers when formulating reports and recommendations to Council.	24
Recommendation 4	If Council considers there is a higher need to establish some form of advisory group to Council, then Council to establish a formal advisory committee under the provisions of the Local Government Act 1995	24
Recommendation 5	That Council develop a strategy to transition the Community Sponsorship Agreement to a market tested sponsorship contract and ensure the processes align with the processes set out under Section 3.58 of the Local Government Act 1995 and associated regulations.	28

Recommendation No.	Recommendation	Page No.
Recommendation 6	That land tenure, Management Order, Native Title and TPS 5 matters are checked for compliance and appropriate actions taken to address any issues identified.	29
Recommendation 7	That Council reviews its Tender Assessment Processes.	32
Recommendation 8	As a matter of urgency, develop, adopt and apply a Regional Price Preference Policy in accordance with the provisions of Section 24F of the Local Government (Functions and General) Regulations 1996.	33
Recommendation 9	Develop and adopt an Asset Management Policy that, amongst other things, requires that prior to deciding to implement major capital works, the Town of Port Hedland is to prepare a "whole of life cost" of the proposed capital works and determine the long term financial implication of proceeding with the proposed capital works and whether or not it aligns with the Council's Integrated Strategic Plan and fits within Asset Management Plans and a Long Term Financial Plan.	34
Recommendation 10	Implement a review process to develop systems and processes to ensure actions are carried in accordance with Council resolutions or report back to Council to vary the resolution to a workable action where the CEO considers that the Council resolution is not practicable.	35
Recommendation 11	Ensure that third parties are only engaged as Superintendent's Representative and retain the Superintendence in-house.	36
Recommendation 12	Ensure that Absolute Majority decision requirements are accurately reported to Council.	38
Recommendation 13	Ensure that project income, expenditure and cash flow budgets are developed and maintained for major capital works projects.	39
Recommendation 14	Ensure that the Council Resolution or Delegation to the CEO is referenced in any letter to award a tender.	40
Recommendation 15	Ensure that where there is further negotiation required to finalise aspects of a tender prior to formal award, issue only a letter advising the tenderer that they are the preferred tenderer and formal award of the tender is subject to negotiation to the satisfaction of Council (or the CEO if delegated).	41

Recommendation No.	Recommendation	Page No.
Recommendation 16	Prior to considering any action to make a claim against PM1, that legal advice is sought on this matter.	44
Recommendation 17	That if not already convened, the Town of Port Hedland develop terms of reference for a Development Control Unit (DCU) and ensure all Planning Applications are considered by the DCU	49
Recommendation 18	That further investigation be undertaken in order to determine if a claim for damages is worthwhile to pursue in relation to the need to retrofit the non-compliant fire service.	58
Recommendation 19	That Records Management systems and processes be reviewed.	59

Table 1: Summary of Recommendations

2.0 Introduction

Core Business Australia (CBA) has been engaged by the Town of Port Hedland (ToPH) to review the development and project management processes associated with the construction of the \$35m Wanangkura Stadium, South Hedland, Western Australia (MPRC).



Figure 1: Wanangkura Stadium Aerial View, August 6 2012 (Source: Nearmaps accessed 21/11/2012)

The Stadium construction was one of several major capital works projects funded in part via a Community Sponsorship Agreement (CSA) entered into by the ToPH with BHPBIO; the WA State Government via the Royalties for Regions funding program and the utilisation of developer contributions from Auzcorp and Compass Group.

There were several issues encountered throughout the project that caused concern and difficulties for the ToPH. The ToPH has several other large capital works projects in progress and have therefore taken the opportunity to review this project in the hope of identifying improvements that will assist in avoiding similar issues in future.

3.0 Scope of Review

In order to review the development and project management processes used to construct the stadium, the ToPH prepared a specification which included a project scope as follows;

- a) Review of process commencing from conceptual plans through to the present status of Wanangkura Stadium.
- b) Review of all development approval processes.
- c) Review of project management processes for the stadium construction.
- d) Review of original plans/specifications (compliance).
- e) Review of plan/specification modifications.
- f) Review of decisions (Council, Officer's and Consultants) and decision making hierarchy.
- g) Review of key information milestones (when certain issues were raised and / or advice was provided).
- h) Review of actions/reactions to information awareness/decision/advice.
- i) Review of compliance processes.
- j) Review of internal communications.
- k) Identification of data gaps in the overall process.
- l) Provision of a report in accordance with section 7 - Project Output.
- m) Presentation of finding to a confidential briefing to the Council of the Town of Port Hedland.

The ToPH intended that the project would be a desktop analysis and would provide the following;

- a) Files;
- b) Plans;
- c) Emails;
- d) Aconex (project specific records management system);
- e) Permits/Approvals;
- f) Certification.

There was to be no consultation with key stakeholders. The only consultation to occur was with the ToPH's Project Manager for the review, the Director Corporate Services, Natalie Octoman (DCS2).

5. METHODOLOGY

The review is intended to be a desktop analysis.

6. CONSULTATION

Consultation is envisaged to be limited to communication with the Town's Project Manager for this study, Director of Corporate Services, Natalie Octoman.

Figure 2: Extract from the Project Brief issued by the Town of Port Hedland

The project deliverables included the following;

- Provision of a report outlining the project process addressing the issues raised section 3 - Project Scope. The project is to clearly demonstrate timelines, milestones, decisions, decision makers, advice, actions, plans, modifications to plans etc.
- The report is to identify data gaps.
- Recommendations on development and project management processes for future Council projects.
- A confidential presentation to the Council of the ToPH.

4.0 Methodology

Core Business Australia's project team (Project Team) consisting of Core Business Australia Managing Director, Bruce Lorimer and Associate Consultant to Core Business Australia, Accredited Building Surveying & Construction Services Managing Director, Tom Reilly attended the ToPH's offices over a two day period of October 2 to 3 2012.

During the site visit the Project Team combed through an extensive collection of files, documents, reports, plans and specifications in order to identify key documents in the timeline of development and construction.

It must be stressed that documentation associated with this project is extensive; therefore the project team took an audit approach. This approach comprised identification of important milestones throughout the project and identifying relevant key documentation associated with each milestone.

Whilst the review is comprehensive, it is not exhaustive and there is no guarantee that all deficiencies in process have been identified.

Some key documentation may have been missed or may have not been available. Nonetheless the Project Team has used best endeavours to knit together a high level overview of the total process.

It should be noted that the scope of work chosen by the ToPH in relation to the review excluded the Project Team from speaking directly with key stakeholders. Any request for information from third parties needed to be via the ToPH's Project Manager who then undertook the engagement with the key stakeholder, which occurred on a number of occasions.

Whilst we understand the sensitivities associated with the project, particularly as a number of key stakeholders have left either the ToPH or other project related organisations, the Project Team felt that this approach was not ideal and hampered the discovery process and the Project Team's ability to formulate a completely independent and accurate picture of the overall project.

This is not to suggest that information provided by key stakeholders was censored in any manner by ToPH. It is simply a matter of fact that one can garner a lot more information from confidential, one on one interviews with key stakeholders, who will often be more candid when speaking directly to an independent reviewer than they would when speaking to a former employer.

During the site visit, the Stadium was inspected by the Project Team. Similar to the document review, an audit approach was taken to identify any obvious non compliances in relation to the Building Code of Australia (BCA).

Upon return to Perth, the project team reviewed the documents collected during the site visit. Further documents were sought from the ToPH where there were identified gaps in information.

At this stage, Core Business Australia Associate Jon Bettink joined the Project Team to assist with researching documents, analysis and initial drafting of the report.

Following review of collected documentation, critical analysis was undertaken to identify deficiencies in process with recommendations formulated where there is opportunity for improvement identified.

The conclusions and recommendations formulated in this report represent the views of the Project Team and are based on the information available to the Project Team. There is the possibility that information the Project Team was not privy to may change the circumstances, conclusions and recommendations of the Project Team.

It must be reiterated that the Project Team did not speak with key stakeholders, therefore important contextual information may be missing from this report. Prior to consideration of the taking of any action in relation to any issue that may impact a key stakeholder, it is recommended that the ToPH apply the principles of Natural Justice and Procedural Fairness. Guidelines on Procedural Fairness are set out on the WA Ombudsman's web site at the following location <http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Procedural-fairness-guidelines.pdf> (Ombudsman, 2009)

Recommendation 1. Prior to consideration of the taking of any action in relation to any issue that may impact a key stakeholder, it is recommended that the ToPH apply the principles of Natural Justice and Procedural Fairness

ToPH Response - Town notes the recommendations and has discussed this process with Elected Members.

Recommend that the report be modified (names removed) to ensure the principles of Natural Justice and Procedural Fairness can be adhered to given it will be a public document.

If names remain then this will fetter any potential legal process the Town undertakes and may result in defamation action against the Town.

Proposed to adopt Recommendation 1.

A draft report was presented to the ToPH for review and comment, followed by a confidential briefing of Elected Members.

The report was then finalised and issued to the ToPH.

Note that the project timeframe covered 8 years. The review looked at the systems and processes that prevailed at the time a decision was made or a process was followed. The ToPH has made a number of changes over the years to improve systems and processes; some of which were implemented as issues were discovered over the period of the review.

Following CBA's briefing to Elected Members, ToPH staff provided a presentation to Elected Members on the improvements that have been made and requested that a summary of these be included in this report for completeness.

Therefore CBA has included a summary of the Officer response to each recommendation where it appears in the report.

5.0 Key Stakeholders

Stakeholders have been classified into two areas being;

- Internal Stakeholders – Staff of the ToPH.
- External Stakeholders – Contractors to the ToPH and Funding Contributors

5.1 Internal Stakeholders

The report has been amended to truncate the following tables by removing the stakeholder’s names and in the case of Officers, the tenure to and from dates. This has been done in recognition that there are sensitivities around a number of the issues raised in this report. Due to scope of the report brief, stakeholders have not yet had an opportunity to read or respond to the report findings, which is the subject of Recommendation 1.

Chief Executive Officer

Code
CEO1
CEO2
CEO3
CEO4
CEO5

Table 2: Chief Executive Officers

Director Engineering

Code
DE1
DE2

Table 3: Director Engineering

Manager Infrastructure Development

Code
MI1

Table 4: Manager Infrastructure

Director Planning & Development

Code
DPD1
DPD2

Table 5: Director Planning & Development

Manager Planning Services

Code
MPS1
MPS2

Table 6: Manager Planning Services

Manager Building Service

Code
MBS1
MBS2
MBS3
MBS4

Table 7: Manager Building Services

Manager Environmental Health

Code
MEH1

Table 8: Manager Environmental Health

Director Corporate Services

Code
DCS1
DCS2

Table 9: Director Corporate Services

Manager Finance

Code
MFS1
MFS2
MFS3

Table 10: Manager Finance

Director Community Development

Code
DCD1
DCD2
DCD3

Table 11: Director Community Development

Manager Recreation Services

Code
MRS1
MRS2

Table 12: Manager Recreation Services

5.2 External Stakeholders

Contractors

Code	Role
ARCH1	Architect (Feasibility)
ARCH1 SUB1	Feasibility Sub Consultant
ARC2	Architect Design
C1	Structural Engineer
C2	Civil Engineer
C3	Fire Engineer
C4	Hydraulics Engineer
C5	Electrical
QS1	Quantity Surveyor
BS1	Building Surveyor
BS2	Building Surveyor
B1	Construction Tender 1 & eventual Builder
B2	Construction Tenderer 2
B3	Construction Tenderer 3
PM1	Superintendent

Table 13: Contractors

Funding Sources

Code	Contributor
R4R	State Government of Western Australia (via Royalties for Regions)
BHPBIO	BHP Billiton Iron Ore Pty Ltd (from CSA Agreement)
AZCM	Auzcorp (Mia Mia)
AZCB	Auzcorp (Area B)
CGPH	Compass Group (Port Haven) / ESS Services

Table 14: Funding Contributors

6.0 Review of Process from Concept to Present

6.1 Need

Planning for the Wanangkura Stadium commenced in earnest in February 2006 with the establishment of a Recreation Facilities Working Group (RFGW), comprising Councillors, Community Members and supported by the CEO and key staff.

Following recommendations from the RFGW, the ToPH commissioned a strategic planning exercise in 2006 where the ToPH engaged CCS Strategic Management Consultants to undertake an audit of Sports Facilities (CCS, 2006). The Audit identified the need for a multi-purpose recreation centre (MRPC) in South Hedland. The estimate in 2006 to construct the facility was \$22m.

In 2007, ToPH commissioned an Architect (ARCH1) to prepare a feasibility study for the MRPC. This work was subcontracted to ARCH1SUB1 on behalf of PGA. The report was presented in September 2007 (ARCH1SUB1, 2007) detailing the feasibility of a Multi-Purpose Recreation Centre, what it should include and the management philosophy and proposed management structure.

The management recommendations from this report were;

- 1. The Town of Port Hedland appoint a Management Advisory Committee to ensure all parties' interests are accounted for in the implementation phase;*
- 2. The Town directly manage the centre as a business unit of Council;*
- 3. Utilise the expertise of local sporting associations in the conduct of sporting programs within the centre; and*
- 4. That the Finucane Club be invited to discuss management options with the Town for the Restaurant/Bar component.*

Since that time the ToPH has included the construction of a MPRC at South Hedland as a strategic objective in multiple Strategic Plans.

6.2 Funding

In 2005 the ToPH commenced negotiations with BHP Biliton Iron Ore Ltd (BHPBIO) to formalise ways in which BHP could contribute to community infrastructure. This culminated in the signing of a non-binding informal Memorandum of Understanding (MOU), where BHPBIO committed to providing \$1m/year over three years to fund a range of capital works projects. In exchange the ToPH established a Joint Projects Working Group (JPWG) comprising Councillors, BHPBIO representatives, community representatives and the CEO.

The aim of the JPWG was to make recommendations to Council on how BHPBIO's \$1m/annum contribution would be allocated. The JPWG would also work to secure other sources of income for various projects. Part of the allocation under the MOU was directed toward the Wanangkura Stadium Project.

The relationship between BHPBIO and the ToPH resulted in BHPBIO's annual contribution steadily growing over time to such an extent that in 2012/13, BHPBIO is contributing in the order of \$8.7m/annum to the ToPH (sometimes rising to \$10m/annum).

The MOU existed up until 2009 when BHPBIO started to become concerned that it needed to lock in recognition for what was now becoming a significant contribution to community infrastructure. Therefore BHPBIO negotiated a binding contract with the ToPH to replace the MOU. The contract was a Community Sponsorship Agreement (CSA).

Whereas the MOU was an informal arrangement, setting out that BHPBIO would essentially donate \$1m/year to the ToPH, the CSA was a binding contract setting out that BHPBIO would pay ToPH \$8.7m in the first year and in exchange the ToPH would commit to recognising BHPBIO at every available opportunity.

Over the same period, the WA State Government's Pilbara Cities initiative came into place and was funded through the Royalties for Regions funding program. This provided another significant source of funding for the Wanangkura Stadium.

Funding was also identified from Auzcorp and Compass Group / ESS from planned contributions to be made as part of arrangements to develop land belonging to the ToPH.

All in all the following funding sources were identified to cover the construction cost of the Wanangkura Stadium.

Code	Contributor	Amount (ex GST)
ToPH	Town of Port Hedland	\$250,000
R4R	State Government of Western Australia (via Royalties for Regions)	\$11,100,000
BHP	BHP Billiton Iron Ore Pty Ltd (from CSA Agreement)	\$11,000,000
AZCM	Auzcorp (Mia Mia)	\$1,750,000
AZCB	Auzcorp (Area B)	\$2,500,000 ¹
CGPH	Compass Group (Port Haven) / ESS Services	\$8,700,000
	Total Project Income	\$35,300,000

Table 15: Funding Contributors as reported to Council at the time of considering construction tenders, July 28 2010

6.2.1 State Agreements

State Agreements are contracts between the Government of Western Australia and proponents of major resources projects which are ratified by an Act of the State Parliament. They specify the rights, obligations, terms and conditions for development of the project and establish a framework for ongoing relations and cooperation between the State and the project proponent.

For more than fifty years, State Agreements have been used by successive Western Australian governments to foster major developments, including mineral, petroleum, wood processing and

¹ This table was taken from Item 12.1 of the July 28 2010 Ordinary Council Meeting minutes. Item 12.1 dealt with the award of the construction tender. It was reported to Council that this table represented the project budget however this was not the project budget but rather the anticipated funding sources that would off-set the proposed expenditure, some of which were not secured by binding agreements according to ToPH staff.

related downstream processing projects, together with associated infrastructure investments. Such projects require long term certainty, extensive or complex land tenure and are often located in relatively remote areas of the State requiring significant infrastructure development (DSD, 2012).

State Agreements limit the ability of local governments to raise rates in what local government generally believes is an equitable manner. For several years local governments, both individually and collectively, have lobbied the State Government for a more equitable system and the ability to rate resource projects more effectively.

This is evidenced by the Pilbara Regional Council's submission to the Productivity Commission – Assessing Local Government Revenue Raising Capacity, Draft Research Report (PRC, 2007).

Increase in lobbying activity coincided with a major expansion of the resources sector which was having a major impact on Pilbara communities, including the ToPH. The ToPH was (and still is) experiencing significant growth pressures driving the need to provide key community infrastructure.

6.2.2 Community Sponsorship Agreement (CSA)

Following the commencement of CEO1 in August 2005, the ToPH commenced development of a closer relationship with BHPBIO, something that had been lacking prior to the arrival of CEO1 according to DCS2.

The plan was to formalise the relationship through a Community Sponsorship Agreement (CSA 2008-2013) between BHPBIO and the ToPH. This approach likely made sense to BHPBIO given the backdrop of lobbying by local government to increase their ability to more effectively rate land covered by State Agreements.

The potential for funding under a CSA was advised in a report to Council dated December 15 2005 (TPH, Minutes of Council, December 14 2005, 2005). In that report, CEO1 outlined the broad principles of the proposed agreement between the ToPH and BHPBIO.

CEO1 was specific to note that the agreement would be in the form of a non-binding Memorandum of Understanding (MOU).

This would mean that funds provided by BHPBIO would not be tied to any specific requirements or obligations on Council and that Council could spend the funds however it pleased. In essence the funding was a benevolent donation.

Some of the broad principles advised in CEO1's report included such things as;

- The term of the agreement was proposed to be 3 years.
- The contribution by BHPBIO would be \$1m per year.
- The funds would be deposited into an interest bearing reserve account.
- BHPBIO's financial commitment would be on top of existing financial commitments and any potential change in the rating regime while the MOU was in place.

It should be noted that in the report to Council, CEO1 (the author of the report) declared a financial interest as follows;

“Author owns greater than \$10,000 of shares in BHPBIO”.

This declaration is appropriate and in line with the requirements of the Local Government Act 1995 (the LG Act) which states;

“An employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.”

The LG Act is silent on what Council should do with this declaration, however the LG Act does require that;

5.71 Employees to disclose interests relating to delegated functions

If, under Division 4, an employee has been delegated a power or duty relating to a matter and the employee has an interest in the matter, the employee must not exercise the power or discharge the duty.”

Council’s 2009/10 Delegations Register records Delegation 45 as a delegation from Council to the CEO for the execution of documents. The delegation notes that;

The Chief Executive Officer is delegated authority to prepare the necessary documentation taking into account any specific or policy requirements of Council and arrange for execution of the contract documents without further reference to Council.

CEO1’s report advised that CEO1 had been involved in the negotiations with BHPBIO (along with the Mayor) as follows;

“Over the past three months several discussions have been held with BHPBIO regarding the potential development of a partnership agreement between the organisations that advances the development and maintenance of Council’s community infrastructure.” (TPH, Minutes of Council, December 14 2005, 2005)

At least two Councillors had excused themselves from the same meeting as they also held shares in BHPBIO and had received advice from the Minister for Local Government’s Office that they should not participate in deliberations.

Knowing this, good practice would have been for the Council to move to protect the CEO. This could have been by way of ensuring that the CEO was not involved in further negotiations with BHPBIO on this matter and to not be involved in the execution of the final agreement for which there was a delegation in place.

A CSA (2008-2013) was executed on March 23 2009 and was signed by CEO1. CEO1 had declared a financial interest at the first advice provided to Council on the matter. As noted above, Section 5.71 of LG Act precludes an Officer from exercising a delegation if they have a financial interest.

An appropriate way to deal with this would have been for the Council to request the CEO to delegate authority to another Senior Officer (who did not have a financial interest) to undertake the negotiations with BHPBIO and execute the final agreement.

There is nothing compelling Council to this course of action, however it is considered to be good practice which would help avoid any adverse perception. Strengthening Section 3.6 Conflicts of Interest in the Council's Code of Conduct would assist in this regard.

Recommendation 2. *Strengthen Section 3.6 – Conflicts of Interest, of Council's Code of Conduct to ensure that where Officers declare a Financial Interest in relation to advice to Council, Council is to consider the matter and determine whether steps need to be taken to remove the Officer from potential dealings in relation to the matter.*

ToPH Response - *Recognise the legislative requirements and will ensure that this forms part of the Agenda Writing Training provided to internal staff by Governance each year.*

Will include wording in the Code of Conduct in the next review to cover this area.

Proposed to adopt Recommendation 2.

6.2.3 Establishment of Working Groups

CEO1's report on the MOU detailed that a working group would be established comprising the Mayor, Deputy Mayor, a Councillor, three Senior BHPBIO representatives and Council's Chief Executive Officer. The programs selected to be funded from the agreement will be based on recommendations to the Council from the Joint Projects Working Group (JPWG).

Council Policy 1/012 Administration of Council's Working Groups details that;

- From time to time Council establishes working groups on specific issues on an as needs basis (TPH, Policy Manual 2012-13, 2013).

Policy 1/012 is very detailed. The LG Act does not refer to working groups, it only refers to Committees. Part 5 of the LG Act covers the establishment of Committees whereby;

5.8. Establishment of committees

A local government may establish* committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.

* Absolute majority required.

A working group is generally considered to be an informal group that has no power or authority under the LG Act. Policy 1/012 details;

To ensure consistent administration of Council's Working Groups.

Guidelines

- When Council establishes a Working Group Council shall consider the inclusion of the following in its resolution:*

- a) *the specific details of the aim and purpose of the group, the tenure of the group, the membership of the group and delegations to the group, as a component of the establishment of each working group;*

The intent of the CSA is to ensure that an agreed amount of money is paid annually to the ToPH and deposited in a Reserve Account (BHP Reserve) established for the purpose of "holding funds contributed by BHPBIO to assist the Council in achieving the Strategic Plan".

The JPWG considers projects and makes recommendations to Council on how the funds should be allocated.

Advice provided to the Council in Agenda item 11.4.2.5 of the October 28 2009 Ordinary Meeting of Council goes some way to explaining Council's approach to Working Groups.

Working Groups

A Working Group is not a formal Committee established under section 5.8 of the Local Government Act. A working group is to meet as and when required, and membership is to vary dependent on the issues to be addressed. The Officer responsible for the working group will report any outcomes from working group meetings direct to Council via an Officer's Report.

While not specifically referred to in the Local Government Act, the operation of working groups, advisory groups and other similar structures is commonplace in Local Government authorities. These structures are used to allow input into discussions and debate regarding community issues in a less formal setting.

It is recommended that Council vary its approach to the use of working groups in the current format. Under the current approach, it appears to the outsider that Council is shortcutting the system and using working groups as an administratively efficient alternative to Committees.

While working groups may be administratively efficient, they are not as open and transparent as Committees and do not appear to be working in accordance with the way Council originally envisaged when setting Policy 1/012.

The ToPH's website contains a section dedicated to working groups, however contains no information relating to the JPWG. A search of the ToPH's website does not result in any record of JPWG minutes or agenda.

Officers initially had difficulty in providing minutes and agendas of the Recreation Facilities Working Group. The minutes and agendas are brief, lack detail and are not in line the requirements of Council Policy 1/012 which details that;

- iii) The layout of Agenda and Minutes for Working Groups shall be similar to Council's Ordinary Meeting Agenda and Minutes,*

In any event Policy 1/012 is ultra-vires as there is no power under the LG Act 1995 to delegate authority to a working group.

If Council wishes to continue to use working groups, it is recommended that they only be established as a reference group to Officers and that Officers are bound to consider their input when formulating reports and recommendations to Council. This does not mean that Officers would be obligated to heed the advice of Working Groups or to represent a Working Group's recommendation.

Recommendation 3. That Council vary its approach to the use of Working Groups and amend Policy 1/012 to ensure that Working Groups are only to be established to provide a reference source for Officers when formulating reports and recommendations to Council.

ToPH Response - *The use of Working Groups as distinct from Committees has largely been modified.*

Policy 1/012 was adopted by Council in 2008 and needs to be modified to be compliant with the legislation (no delegations) and reflect contemporary practices.

Agendas and Minutes of the Working Groups could be more open and transparent by being available on the website – Community Integration Working Group is the only one currently available online.

Proposed to adopt Recommendation 3.

Recommendation 4. If Council considers there is a higher need to establish some form of advisory group to Council, then Council to establish a formal advisory committee under the provisions of the Local Government Act 1995

ToPH Response - *Officers do not believe this is required at this point in time, however it may be an option in the future.*

Proposed to adopt Recommendation 4 when required.

6.2.4 Current Community Sponsorship Agreement

The CSA has evolved significantly over the years. The most recent CSA located on file was executed on March 23 2009. Both in the initial report to Council of December 14 2005 and subsequent emails between CEO1 and BHPBIO, there was always the understanding that the CSA was to be a non-binding MOU. The Project Team has not sighted an MOU of this nature and Officers were unable to provide a copy of the original MOU.

The CSA located on file and executed by CEO1 on March 23 2009 is not an MOU and in fact clearly states that the CSA replaces the MOU as follows;

This Agreement contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter, including, for the avoidance of doubt, the existing Memorandum of Understanding (MOU) is replaced by this Agreement and has no further effect.

The execution clause of the CSA goes on to say;

Each person signing this Agreement as an authorised officer of a Party hereby represents and warrants that he or she is duly authorised to sign this Agreement for that Party, and that this Agreement will, upon having been so executed, be binding on that Party in accordance with its terms.

The CSA is far from the original intention of an informal MOU where BHPBIO were essentially gifting funds to the ToPH to do with as ToPH pleases with some broad guidance from an advisory committee. The current CSA is a binding agreement that compels the ToPH to meet a number of obligations in exchange for payment of significant sums of money.

The original advice to Council indicated that the MOU would cover a period of 3 years with BHPBIO contributing \$1m per year. The current CSA covers a period of 5 years (July 1 2008 to June 30 2013) and involved a contribution of \$8.7m in the first year.

The CSA binds the ToPH to a number of things such as;

subject to clauses 5(e) and 5(f), ensure that BHP Billiton Entity is acknowledged and recognised as a contributor to the Sponsorship Project by:

- i. recognising BHP Billiton Entity's contribution in any reference to the Sponsorship Project in any public medium (as appropriate);*
- ii. incorporating BHP Billiton Entity's Trade identification in any visual public medium reference to the Sponsorship Project and*
- iii. giving BHP Billiton Entity the opportunity to provide a speaker to any launch or public event in connection with the Sponsorship Project;*

Schedule B of the CSA goes on to detail;

Sponsorship Recipient will provide the following benefits to BHP Billiton Entity as sponsor:

- a) Management of a special public and media launch event in the region to mark the signing of the new agreement, with acknowledgement of support in speech notes by relevant VIPs, media materials, and other relevant communication material;*
- b) BHP Billiton Entity to be the foundation or primary sponsor recognised on all promotional and communication material produced for the various projects. Materials include but are not limited to: merchandise packs, roadside signage, posters, advertising materials, flyers and promotional banners. Associated expenses will be the responsibility of the Sponsorship Recipient;*
- c) Use its best endeavours to procure advertising and publicity in both metropolitan and regional media to promote the partnership, inclusive of promotional exposure via its media partners and contacts;*
- d) Promote the BHP Billiton Entity as being committed to the TOPH Sustainability Partnership and to the overall aim of improving and enhancing the facilities and infrastructure of Port Hedland;*
- e) Will seek opportunities and prepare submissions for relevant Award nominations to showcase the partnership; and*
- f) Actively promote BHP Billiton Entity's contribution to each project.*

From the above it can be seen that the CSA affords significant rights to BHPBIO. If the CSA had remained an informal MOU, there would not be a significant issue, however at some stage in the process, the MOU has morphed into something more onerous and which may potentially be in

contravention of the disposition provisions of the LG Act 1995, which is explained in the following section of the report.

6.2.5 CSA Compliance with the Local Government Act 1995

In April 2004 the Department of Local Government and Regional Development (DLG) issued circular 03-2004 to all local governments. The circular provided advice in relation to complying with the tender regulations in certain circumstances.

The advice considered the situation where a number of local governments had given licences or approvals to various companies to install bus shelters or advertising signs. The theory was that a company would provide and maintain a high standard bus shelter at no cost to the local government.

The incentive for a company to do this was the inclusion of advertising space embedded in the bus stop and this provided a revenue stream for the company which covered the cost of the bus shelter and the ongoing cleaning and maintenance.

However the DLG was of the view that local governments should have been calling tenders for the supply of these bus shelters (or disposition of the license to occupy) as there was a value associated with the activity and which was probably in excess of the provisions of the tender regulations at the time.

An extract from the DLG's legal advice, which was included in the circular 03-2004 is as follows;

"a valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given suffered or undertaken by the other".

CBA's view is that the binding obligations imposed on the ToPH under the CSA could be considered to be significant and potentially have significant value to a private sector enterprise.

CBA's view is that Council should have been aware (or made aware) of the potential value of rights under the CSA and taken steps to ensure that the signing of the CSA was in accordance with the provisions of the LG Act 1995, however this does not appear to have occurred.

Whilst the rights under the CSA do not extend to the naming rights of the Stadium, a reasonable person could be excused for thinking it does as BHPBIO's logo is prominently displayed at a number of different locations including the main auditorium. Also, several of the rooms are named after BHPBIO resource projects. BHPBIO livery is prominent and leaves the facility user with no doubt about the connectedness between BHPBIO and the facility.

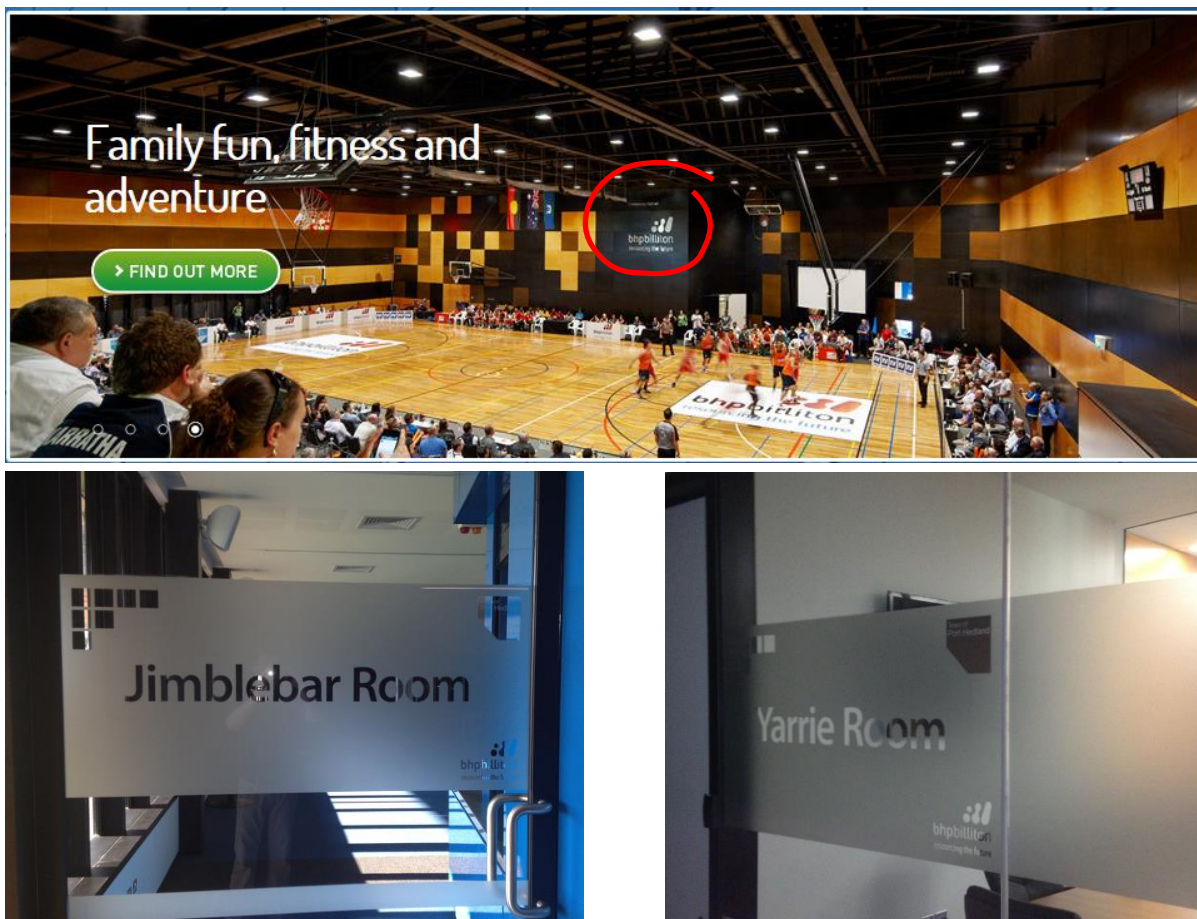


Figure 3: BHPBIO's logo in the main auditorium and logo and name of resources projects etched in glass on various rooms within the facility.

CBA's understanding of the CSA is that it is a binding sponsorship contract of significant value. In exchange for sponsorship rights, BHPBIO pays the Council in excess of \$8m/year. Based on similar concerns expressed in the DLG's Circular 03-2004, we believe there is potential that sponsorship rights of this nature could be considered a disposition under section 3.58 of the LG Act 1995.

3.58. Disposing of property

(1) In this section —

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;

property includes the whole or any part of the interest of a local government in property, but does not include money.

Dispositions (other than exempt dispositions) are required to comply with the processes covered under Section 3.58 of the LG Act 1995 and associated regulations and apply to property in excess of \$20,000. CBA believes that the value of the rights under the CSA are likely to be in excess of \$20,000.

The issue here is whether there would be more than one company willing to part with money in excess of \$20,000 to obtain exposure similar to that which BHPBIO achieves under the CSA.

There may or may not be another company willing to part with a contribution on a similar scale as BHPBIO has under the terms of the CSA, however the ToPH does not know this for certain. It does not

appear that the ToPH has market tested this or followed a transparent process to ascertain whether it has received value for money from this arrangement or not.

To address this issue, it is recommended that Council develops a strategy to transition the CSA to a market tested sponsorship contract. To be on the safe side, it is recommended that the processes align with the processes set out under Section 3.58 of the Local Government Act 1995 and associated regulations.

Recommendation 5. That Council develop a strategy to transition the Community Sponsorship Agreement to a market tested sponsorship contract and ensure the processes align with the processes set out under Section 3.58 of the Local Government Act 1995 and associated regulations.

ToPH Response - *Current agreement expires in June 2013. New agreement under negotiation. Complicated to transition.*

Each project would need to be considered separately in relation to the disposal of sponsorship rights.

BHPBIO in particular would not be open to the removal of "governance" requirements for advertising if providing contributions for example.

Would need to seek advice as to how this recommendation may be incorporated into current processes.

Alternatively Council may wish to revert to the original intent of the MOU and have it as a non-binding guiding document with BHPBIO's contribution untied to specific outcomes.

It should be noted that this issue was brought to the attention of ToPH Officers when it was discovered by the Project Team. ToPH Officers sought legal advice on the issue from the Town's legal advisors.

There are two aspects to the legal advice, firstly whether sponsorship rights are a disposal of property under section 3.58 of the Local Government Act 1995 and secondly what is the meaning of sponsorship as defined in case law.

The two conclusions reached in the ToPH's legal opinion are as follows;

"We are of the view that sponsorship rights do not constitute property for the purposes of section 3.58 of the LG Act. Sponsorship is defined in the case law to be an indication of approval or affiliation between parties; they are not a property right."

And

"Although the Town is not legally required to comply with section 3.58, we note that this is an agreement which involves a significant amount of funding and which requires the Town to visibly advertise and promote BHPB. In light of this, the Town may decide to undertake the section 3.58 process for the purposes of openness and accountability. However, this is a matter for the Town to decide as it is not legally required to do so."

CBA does not concur with the first conclusion of the ToPH's legal opinion as the opinion states;

“We have been unable to find any cases which consider whether sponsorship rights constitute property for the purposes of section 3.58 of the LG Act.”;

We believe that the legal advisor has not considered the full context of the issue in terms of property. For example it could be argued that allowing a company’s logo to reside on a wall of a building belonging to a local government is no different to allowing a company to install an advertising sign on a road reserve.

CBA does however concur with the second conclusion of the ToPH’s legal opinion and we recommend (Recommendation 5) that the ToPH follow the provision of Section 3.58 of the Local Government Act 1995 to ensure there is a high degree of transparency associated with the BHPBIO CSA or alternatively revert to the original intent of the MOU and have it as a non-binding guiding document with BHPBIO’s contribution untied to specific outcomes.

6.3 Location

The Stadium is located on Lot 5530, Reserve No. 83865 known as the Kevin Scott Reserve (adjoining Reserve No. 31895) South Hedland Sporting Reserves; Hamilton Road, South Hedland; Certificate of Title XXXXX²; Volume 1021; Folio 72.

Land ownership is the Crown, administered by the Department of Regional Development and Lands, State Land Services; set for the purpose of Recreation. Native Title appears to have been extinguished.

Tenure is a vesting with the Minister for Lands with a Management Order issued to the ToPH. The ToPH is permitted to construct buildings purposed for recreation on this reserve.

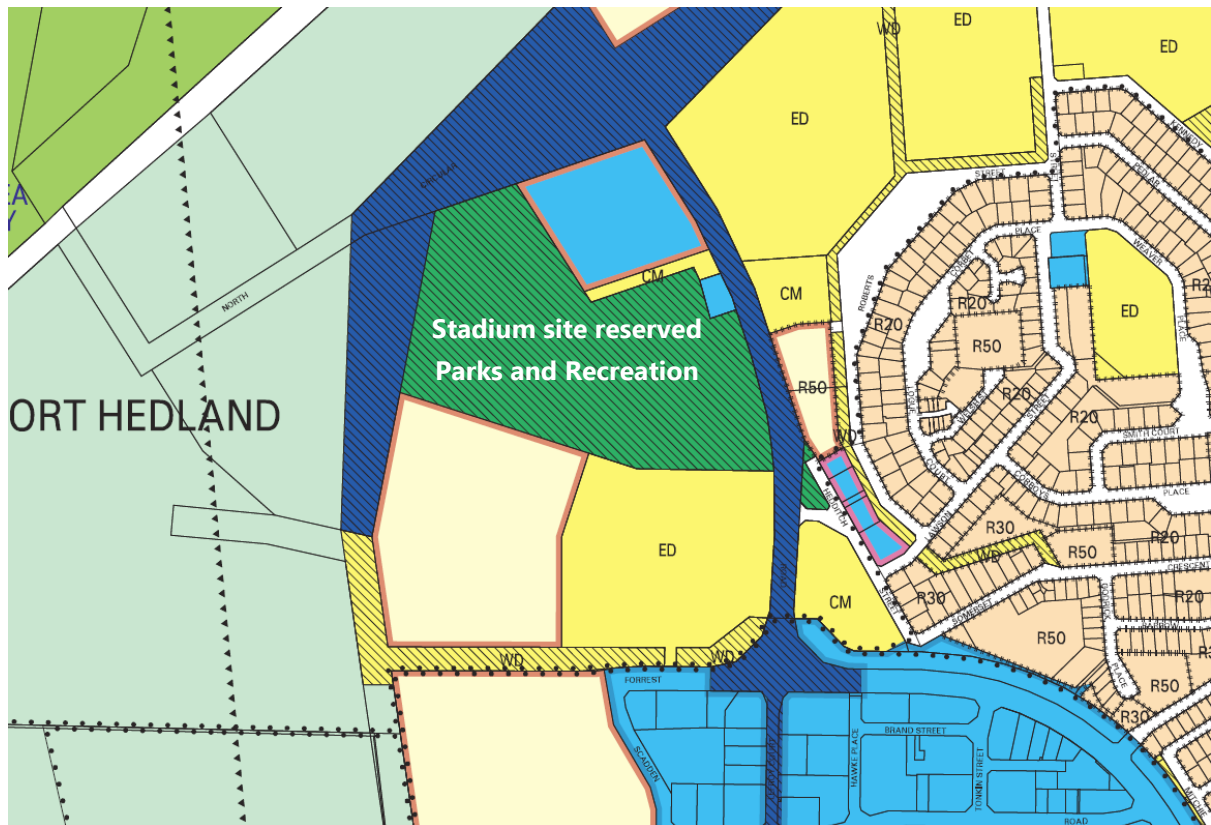
CBA has not sighted evidence that State Lands Services has been consulted regarding Native Title claims, development proposal and Management Order conditions. Similarly there is no evidence sighted that Council sought planning approval for the development of the site.

Recommendation 6. That land tenure, Management Order, Native Title and TPS 5 matters are checked for compliance and appropriate actions taken to address any issues identified.

ToPH Response - Will need to investigate further.

Proposed to adopt Recommendation 6.

² CBA has not sighted the Certificate of Title, this information was taken from the Stage 1 Building Licence



LOCAL SCHEME RESERVES

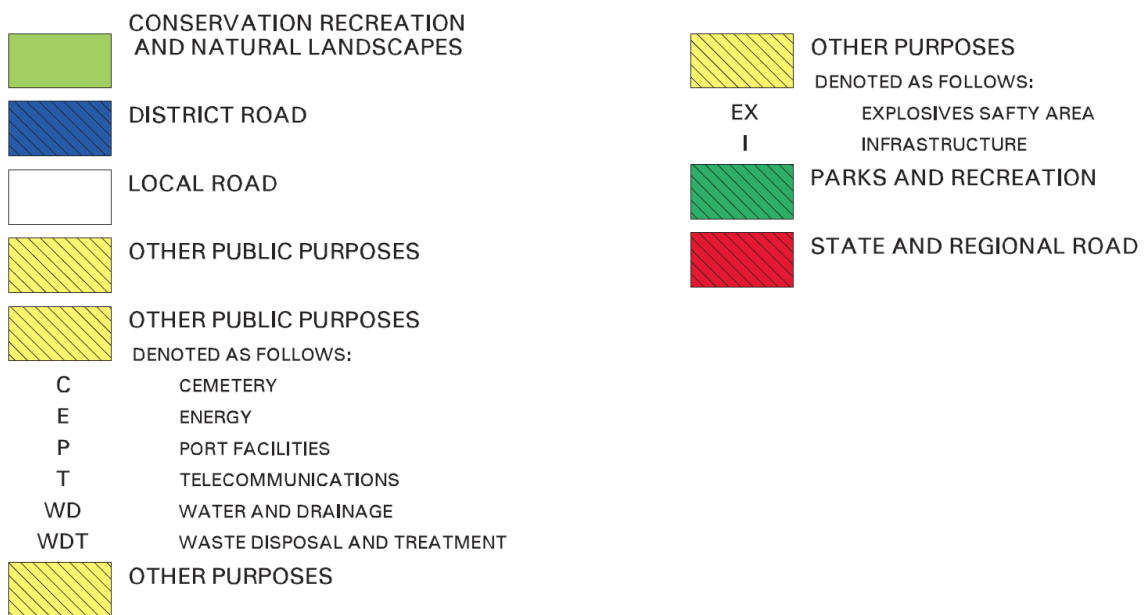


Figure 4: Wanangkura Stadium site classification under Town of Port Hedland TPS 5

6.4 Project Management

Due to the number of major Capital Works projects, it was identified that Council should seek outside assistance to assist with managing the projects. Therefore Council called Tender 09/18 for the Provision of Professional Consultancy Services. The aim of the tender was to establish a panel of prequalified consultants in a number of disciplines.

Tenders closed on August 5 2009 and following assessment, a report was put to the August 26 2009 Council meeting. Unfortunately there are several issues associated with the report to Council as follows;

- CBA believes that Officers should not have listed the individual consultant rates and should have treated these as "Commercial in Confidence". If Officers did want to publish the rates, they could have hidden the individual consultant's names and given each a number or letter so that individual consultants could not be identified by the public.
- The process to assess each consultant was in CBA's view inappropriate. The report advises Council that the consultant's average rate was used to rank each consultant and that this is a "fair process". This was not a fair process. A fair process would be to formulate a mock project and apply the respective rates to the mock project and then assess the result. For example;

Mock Project "A" may necessitate the following;

- 20 hours of Director / Partner input
 - 100 hours of Senior Consultant input
 - 200 hours of Junior Consultant input
- The calculation of the average rates appear to be incorrect in the Officer report, however may be correct if there are several levels for some consultants that are not shown in the report.

For example, Consultant A may have submitted two rates;

- Senior Consultant \$220/hr
- Junior Consultant \$160/hr
- Hence the average rate is \$190.00/hr

Whereas Consultant B may have submitted three rates;

- Senior Partner \$220/hr
- Senior Consultant \$200/hr
- Junior Consultant \$160/hr
- Hence the average rate is \$193.33/hr

Assessing an average rate makes Consultant A look less expensive than Consultant B, however if a project only uses Senior and Junior Consultants and little or no input from a Senior Partner, Consultant B represents better value for money.

- The Council's ability to appoint a panel in the first place is questionable (McLeods legal advice) as the Local Government Regulations only allow a Council to appoint a successful tenderer and not successful tenderers. Nonetheless this has not been tested and it is common practice for a number of local governments to appoint a panel.

Assuming a local government does have the ability to appoint a panel, an appropriate way to do this would be similar to a prequalification process. That is, all tenderers are assessed in terms of their qualifications, experience and ability to do the intended work.

All tenderers assessed as suitable to undertake the intended work could then be appointed to the panel regardless of price. When a project arises that needs a tenderer to be appointed from the panel, an estimate of work involved is prepared by the Council and the rates from each tenderer are applied against the estimate. The Council would then select the consultant from the panel which then provides the best value for money and which has the capacity to deliver the works in the timeframe.

The Council Could delegate authority to the CEO to make this selection at the time. Hence it is a two-step process.

Recommendation 7. That Council reviews its Tender Assessment Processes.

ToPH Response - A Tender Policy was introduced in June 2011 as a result of the three major projects and the issues encountered ie. Awarded all three in one week.

In March 2012 when the panel contracts lapsed, many were not reviewed or extended based on the perception from the community that the Town was not open and transparent in relation to its procurement processes.

Will establish a new template for assessment of prices and recommend this to WALGA also.

New process of maintaining prices as "Commercial in Confidence" was formally implemented in March 2013.

Although the ToPH had engaged the services of ARCH1 to develop the feasibility design, the ToPH decided in November 2007 to call for tenders to develop detailed architectural designs and more accurate cost estimates. The Council allocated the task of preparing the tender specification to the RFWG.

6.4.1 Architectural Design

In April 2008 the ToPH called tenders (TPH, RFT 06/66 Design of the Multi Purpose Recreation Facility, 2008) for the Architectural Design of the facility. Four tenders were received, including one from the Architect that prepared the feasibility design, PGA. Tenders closed on May 7 2008 and the tender was awarded to ARCH2 for a tendered sum of \$1,475,010 (ex GST) (OCM 200708/179, part i) despite Council only having \$200,000 (ex GST) allocated for the project in the 2008/09 Budget.

However, in the same resolution Council resolved (OCM 200708/179, part ii), by Absolute Majority, to allocate an additional \$1,275,010 in the 2008/09 budget utilising BHPBIO/ToPH Sustainability Partnership funds.

6.4.2 Tender Evaluation

ARCH2 received a score of 79 out of 100 in the tender assessment despite being the most expensive tenderer. The second place tenderer was ARCH1; the Architect that prepared the feasibility design in

2007. ARCH1 was assigned a score of 76 out of 100 and submitted a price \$474k cheaper than the winning tenderer.

The 3 point difference between ARCH2's score and ARCH1's score, the second place tenderer, was attributable to ARCH2 being awarded 3 points (out of a possible 5) for local supplier, however there was nowhere on the Form of Tender where this information was to be provided. How the local supplier information came to the attention of the tender panel is unknown to CBA.

ARCH2 is based in Melbourne and was allocated 3 points because of an intention to use a Port Hedland based sub-contractor. There is no evidence sighted by CBA that the sub-contractor advised in the evaluation panel report to Council, was ever used in the project.

The process used in the tender specification to favour local suppliers is incorrect and not in accordance with the Tender Regulations. Where a local government, which is located outside of the Metropolitan Area, wishes to provide a price advantage to local suppliers, the local government must prepare a Regional Price Preference Policy in accordance with Section 24E of the Local Government (Functions and General) Regulations 1996.

Once a Regional Price Preference Policy has been adopted it must be included within the Tender Specification in accordance with Section 24F (4) (a) of the Local Government (Functions and General) Regulations 1996.

The Town of Port Hedland did not (and still does not) have an adopted Regional Price Preference Policy that complies with the provisions of Section 24E of the Local Government (Functions and General) Regulations 1996.

It is recommended that the ToPH review its Purchasing Policy in relation to supply of goods and services from local suppliers and follow the correct process to develop, adopt and apply a Regional Price Preference Policy.

Recommendation 8. As a matter of urgency, develop, adopt and apply a Regional Price Preference Policy in accordance with the provisions of Section 24F of the Local Government (Functions and General) Regulations 1996.

ToPH Response - The Regional Price Preference is incorporated into the current Procurement Policy.

Recognise that it is currently non-conforming, particularly as it was not advertised and submissions were not sought.

Proposed to separate the Regional Price Preference criteria from the Procurement Policy and put to Council for consideration in the near future.

A contract between ToPH and ARCH2 for design of the MPRC was executed in October 2008 for the tendered sum. The design tender originally envisaged the Stadium being constructed on Reserve No. 31895, the location of the Finucane Island Club, however it was resolved at the May 2008 Council meeting to construct the facility on Reserve No. 83865, facing Hamilton Road.

At the commencement of the project it was decided to also undertake a Master Planning exercise for the new site location at a cost of \$15,000 (ex GST). The Master Plan was endorsed by Council on

December 15 2008 with a construction cost estimate of \$32,356,029 (ex GST). Council endorsement of the Master Plan allowed ARCH2 to continue with design.

Further stakeholder consultation occurred on the Master Plan at this time and in May 2009, Council endorsed (OCM 200809/344, part i) the Internal Schematics (essentially the concept design) for the facility. Also as part of this resolution, Council resolved to prepare a Business Plan for the management and operation of the facility (OCM 200809/344, part iii).

From May 2009 onwards, detailed design progressed until in December 2009, Council considered a report to sign off on the detailed design and call construction tenders. The drawings presented to Council were still marked preliminary and there was still further design work to be done prior to drawings and specifications being finalised to a suitable status for construction purposes.

At this point the cost estimate had increased from \$32.3m (ex GST) to \$37.5m (ex GST), with only \$35.6m (ex GST) in funding having been identified. ARCH2 was working with staff to identify cost savings and these were being applied at the time of the Council report. Therefore Council resolved to proceed to tender provided that the final construction cost estimate from the Quantity Surveyor did not exceed \$35.6m.

The Business Plan required by Council resolution OCM 200809/344, part iii had not been prepared, however it was reported that this would be done following completion of design as it was not possible to estimate the costs of operating and managing the centre until the “final inclusions” were known.

This would seem somewhat lazy advice to Council. It is possible to estimate management and operation costs of a facility without detailed design drawings. It is only the precision that is going to vary and this can be covered by clearly stating the basis upon which the estimates have been developed and can be refined further as the final project design crystallises. In fact a facility of this nature should ideally not have been agreed to by Council prior to a whole of life cost estimate being prepared and considered ahead of the Council allocating any resource to progress the project.

Corporate commitment to “whole of life costing” and ensuring capital work projects fit within a long term financial plan is the subject of a contemporary Asset Management Policy. The ToPH does not have an adopted Asset Management Policy, a requirement of the Integrated Planning and Reporting Framework.

Recommendation 9. Develop and adopt an Asset Management Policy that, amongst other things, requires that prior to deciding to implement major capital works, the Town of Port Hedland is to prepare a “whole of life cost” of the proposed capital works and determine the long term financial implication of proceeding with the proposed capital works and whether or not it aligns with the Council’s Integrated Strategic Plan and fits within Asset Management Plans and a Long Term Financial Plan.

ToPH Response - An Asset Management Policy has since been prepared and endorsed by Council to come into effect from 1 July 2013.

The Policy requires the Town to use “whole of life costs as the basis for making decisions regarding asset acquisition, replacement, maintenance and disposal”, and to “ensure the integration of the Asset Management Strategy with Council’s Strategic Community Plan and informing strategies, particularly the Long Term Financial Plan”.

The Council also resolved to jointly tender for both the construction of the MPRC and redevelopment of the existing JD Hardie Recreation Centre into a Youth Centre, however they were tendered separately but advertised at the same time.

Recommendation 10. *Implement a review process to develop systems and processes to ensure actions are carried in accordance with Council resolutions or report back to Council to vary the resolution to a workable action where the CEO considers that the Council resolution is not practicable.*

ToPH Response - A “Status of Council Decisions” Register was established some time ago, which requires updates to be provided by the Officer in relation to actions that are to be undertaken as a result of Council Decisions.

This document is provided in the monthly Information Bulletin Pack provided to Elected Members.

6.5 Procurement

6.5.1 Expression of Interest to Construct

On February 24 2010, the ToPH advertised an Expression of Interest (EOI 10/01) for the construction of the MPRC, closing March 10 2010. It should be noted that this is the absolute minimum advertising period of 2 weeks as required by the Tender Regulations, which is considered to be unusual considering the scale of the project and remoteness of the location.

The EOI process is essentially a two stage process to engage a contractor. The EOI stage enables the Principal (ToPH) to preselect a short list of potential contractors that in the Council’s opinion are suitably qualified and experienced to undertake the work. The second stage is to call tenders from the pre-selected short list.

The EOI advised that the contract would be a modified AS4000 (or equivalent) contract and that the following would apply;

Role	Organisation
Principal and Superintendent	Town of Port Hedland
Project Manager and Superintendent’s Representative	PM1
Architect and Lead Design Consultant	ARCH2
Quantity Surveyor	QS1

Table 16: Proposed Roles under the Construction Contract detailed in the EOI

Six submissions were received in response to the EOI. These were assessed by the ToPH’s EOI Assessment Panel with a report considered by Council on March 26 2010. Of the six respondents, three were shortlisted for the MPRC project being;

- B1
- B2
- B3

6.5.2 Tender to Construct

On April 21 2012 the Town invited tenders (RFT MRPC-10/19) from the three shortlisted companies. It should be noted that the construction tender varied the table shown at Table 16 to read as follows;

Role	Organisation
Principal	Town of Port Hedland
Project Manager and Superintendent	PM1
Architect and Lead Design Consultant	ARCH2
Quantity Surveyor	QS1

Table 17: Proposed Roles under the Construction Contract detailed in the Construction Tender

Changing PM1 from Superintendent’s Representative to Superintendent under the contract is a significant change and also carries significant risk. Under an AS4000 contract, the Superintendent has significant power with two main roles being;

- Agent of the Principal
- Independent Certifier

The roles are spelt out in detail at Appendix A on page 66, however in summary the Superintendent has the power to direct the contract in relation to the sequence of work and time frame, approve variations, require that defects are repaired and determine practical completion. All of which have financial implications for the Principal (in this case the ToPH). The Superintendent’s decision is final and binding both on the Principal and the Contractor.

In handing over the superintendence to a third party, a local government must ensure that firstly there is sufficient delegated authority to the CEO and secondly, sufficient delegated authority from the CEO to the Superintendent. This does not appear to be the case in relation to the MRPC project.

This is complicated further by the fact that it is not lawful to delegate authority to someone other than a natural person. Therefore Council could not delegate authority to PM1.

Recommendation 11. Ensure that third parties are only engaged as Superintendent’s Representative and retain the Superintendence in-house.

ToPH Response - Recommendation is acknowledged.

Contract management training is being currently investigated which will ensure all Officer’s establishing contracts are aware of this requirement.

Proposed to adopt Recommendation 11.

Tenders closed on July 14 2010 with the following tenders received;

- B1 – 1 Main Tender \$25.5m + 3 Alternate Tenders.
- B2 – 1 Main Tender \$30.9m + 1 Alternate Tender.
- B3 – 1 Main Tender \$26.9 + notes identifying \$394k in potential cost savings.

6.5.3 Construction Tender Assessment

The tender assessment panel comprised the following;

- DCD1
- DE2
- Acting Manager Recreation and Youth Services
- PM1;

The tender assessment panel rejected the Alternate Tenders and only considered the Main Tenders. There were issues around interpretation of an addendum issued during the tender period that related to the bulk earthworks. Therefore the bulk earthwork pricing was removed from the tender and tenders were evaluated excluding the bulk earthworks. This resulted in the following prices being assessed.

- B1 – \$25.4m.
- B2 – \$30.8m.
- B3 – \$26.9m

Despite B1 proposing the lowest price, assessment of qualitative criteria saw B3 score highest as, in the opinion of the assessment panel, B1's submission lacked detail in relation to Construction and Management Plans sought as part of the Tender Request. Hence the Tender Evaluation Panel recommendation was to award the Tender to B3.

The Officer report to Council to consider awarding of the tender, prepared by the DCD1, provided two recommendations to Council. The first to appoint B3 (subject to negotiation of the final price), the second to appoint B1 (subject to receiving satisfactory reports and negotiation of the final price). The task of negotiating and entering into the contract was proposed to be delegated to the CEO.

The Council resolved to accept B1's tender. The Officer's recommendation to Council lacked detail in relation to the price to accept from B1 or any boundaries in relation to the final negotiated price to be accepted.

Instead, the Council report and Officer's recommendation set out the proposed budget for the project and showed a variable budget for the project of \$34.1m (B3) \$32.7m (B1).

Under the heading of Budget implications within the Officer's report it showed total income for the project of \$35.3m (in accordance with Table 15 of this report). It also showed a project expenditure estimate based on B3 being awarded the work as follows;

ITEM	Amount (assumed to be ex GST)
B3 Construction Contract Price	\$26,964,205
Design, fees and expenditure to date	\$350,801
Civil works (New oval, parking, lighting to be undertaken by TOPH)	\$2,800,000
Upgrade of High School Oval to accommodate users relocated from Kevin Scott during construction (note a report on this is coming to next Council meeting)	\$600,000
Fees (Architects, consultants, project management, quantity surveyor, communication) for remainder of project	\$1,300,000
Contingency (5%)	\$1,400,000
"Upgrade" façade system to reduce long term maintenance	\$600,000
Bulk Earthworks	\$100,000
Total	\$34,115,006

Table 18: Project Expenditure estimate reported to Council, July 28 2010

The Officer's report further noted that if the project was to be awarded to B1, the expenditure budget would be \$32,566,395.

It should be noted that the 2010/11 adopted Budget showed the raising of a \$10.2m loan, however it also showed \$0 in expenditure on the MRPC.

The Officer's report noted that the Council resolution to delegate authority to the CEO to negotiate and enter into a contract with B3 for a contract of the order of \$26.9m should be by Simple Majority. However given there was no expenditure shown against the MRPC for 2010/11, the advice to commit the Council to a contract of the order of \$25.4m - \$26.9m and the advice to recommend a delegation to the CEO should have been that an Absolute Majority decision was required. In any event the vote was won 8/0 and hence was an Absolute Majority was achieved.

Recommendation 12. Ensure that Absolute Majority decision requirements are accurately reported to Council.

ToPH Response - Town notes the issue, and has improved in this area with Officers more aware of the requirements.

The Department has also issued a list of decisions that require Absolute Majority voting, which the Governance team are well versed in.

The report to Council on the award of the tender is somewhat confusing and appears to indicate a lack of understanding of the Local Government Act 1995 by Officers. There seems to have been some confusion between Council's adopted budget and the project budget. Project income and expenditure appears to have been referred to interchangeably. It is very difficult (if not impossible) for an outsider to work out what the project budget was both in terms of income / expenditure and cash flow.

It is appreciated that the project developed through several phases of concept, design and construction with things changing along the way depending upon a number of factors, however at all times, for a project of this scale, the ToPH should have maintained a running budget setting out income, expenditure and cash flow.

Recommendation 13. Ensure that project income, expenditure and cash flow budgets are developed and maintained for major capital works projects.

ToPH Response - Funding and expenditure allocations were just as confusing for the Officers as CEO1 managed all discussions with funding partners and finances of the project initially.

The Agenda template is undergoing a minor review to capture asset management impacts.

It will be recommended that project income and expenditure budgets are clearly identified within the Agenda templates so there is no confusion moving forward. It will apply to all projects, not just the major capital works projects, and ensure that funds are fully committed prior to the award of any tender, which was not the case in this instance and is now a potential \$2.5 million impact.

Further, this project was a major capital works project that was known would span more than one financial year. It would have been prudent for the Town to prepare and maintain a full set of books for the project detailing income, expenditure and cash flow (as would be required for a major trading undertaking under Section 3.59 of the LG Act).

The final Council Resolution 201011/041 was as follows;

201011/041 Council Decision/Alternate Recommendation

Moved: Cr A A Carter

Seconded: Cr G J Daccache

That:

- 1) Council note that the Total Project budget for the Multi-Purpose Recreation Centre is \$32,669,000;³
- 2) Subject to:
 - a) receiving Employee Relations Plan and Commissioning and Handover Plan to the satisfaction of the Chief Executive Officer; and
 - b) Successful negotiating fixed prices on the issues of alternative façade treatment and earthworks within the above listed project budget;
 - c) the Chief Executive Officer be given the delegated authority to enter into contract for Tender 10/19 Construction of Multipurpose Recreation Centre with B1; and
- 3) Council divert budget savings of \$2,630,000 to the Marquee Park Project.

CARRIED 8/0

³ This resolution does not indicate whether the \$32,669,000 is the expenditure budget, income budget or both.

REASON: Council awarded Tender 10/19 'Construction of Multipurpose Recreation Centre' to B1 as the company is already established within the Town, and trust the outstanding Employee Relations Plan and Commission and Handover Plans can be submitted/provided.

6.5.4 Award of Construction Tender

On September 13 2010, the Acting Chief Executive Officer (CEO2) wrote to B1 offering the project at a total construction cost \$26,071,867 (ex GST). The intent of this letter appears to be to tie down the final negotiated contract price prior to awarding the tender and executing the construction contract however the final paragraph of this letter notes;

"I would like to take this opportunity to congratulate B1 on winning this prestigious contract and look forward to a successful association on this project."

The September 13 2010 letter is confusing as it advises B1 that it has won the contract, however there were still outstanding design issues that would not be considered by Council until September 22 2010 and the final price still needed to be negotiated.

Ideally there should have been some form of correspondence awarding the Tender to B1 subject to satisfactory negotiation of the final price. Good practice would be to reference the Council resolution that awards the Tender (and associated conditions) or the Council delegation to the CEO to award the Tender.

Recommendation 14. Ensure that the Council Resolution or Delegation to the CEO is referenced in any letter to award a tender.

ToPH Response - This will require a change in the templates currently used, albeit not a significant change.

Proposed to adopt recommendation 14.

Adding/deleting items prior to executing the contract become a negotiated contract sum. Adding/deleting items post the execution of the contract become a variation. It is important from a contract management perspective, what are variations to the final contract sum and what are not.

Also, if the final design and cost were not satisfactory, Council would have still had the opportunity to back out and recommence negotiations with B3. This is an important negotiating point that Council, no doubt, would have wished to retain, particularly as Council was yet to consider \$652k in costs to the project and the Town may not have been able to strike a satisfactory price with B1.

The design deficiencies were not considered at the September 22 2010 meeting. Instead they were considered at a Special Council meeting of October 15 2010 where a net amount of \$402,441 in changes were approved prior to execution of the final contract.

There is little detail in the Council minutes relating to this issue as it was treated as a confidential item, however the resolution 201011/142 notes that the \$402,441 should be offset by reducing the \$1,400,000 contingency for the projects, thereby keeping the project within the \$32.6m set out in the July 28 2012 report to Council. The final Council approved construction contract was \$26,474,308 (ex GST).

On October 28 2010, the CEO2 wrote to B1 confirming the final consolidated price that the Town was willing to pay B1 for the project, being \$26,474,308 (ex GST). In the absence of any other documentation, it is assumed that this letter finalised the negotiations on price with B1. It is at this point that the Tender should have been awarded, not September 13 2010.

Recommendation 15. *Ensure that where there is further negotiation required to finalise aspects of a tender prior to formal award, issue only a letter advising the tenderer that they are the preferred tenderer and formal award of the tender is subject to negotiation to the satisfaction of Council (or the CEO if delegated).*

ToPH Response - This will follow given the Council resolution or CEO delegation that is required to be included in the letter to the tenderer.

Following award of a Tender, the usual practice is to then execute the associated contract (where one has been referred to in the Tender documentation). There is a signed Form of Agreement on file and which appears to have been executed by B1 and the ToPH, however it is not dated and it is not clear that the CEO2 actually signed it (however CEO2's signature does appear to match CEO2's signature on letter sent to B1).

The Form of Agreement details that the contract comprises the following documents;

- A. The Town is desirous that certain works should be constructed namely:
Port Hedland Multi-Purpose Recreation Centre, South Hedland
- B. By Request for Tenders MPRC-10/19⁴ (RFT), the Town invited tenders for the construction completion and maintenance of such works.
- C. The Contractor lodged a tender for the Works.
- D. The Town has selected the Contractor as the successful tenderer.
- E. The parties have engaged in consolidatory correspondence inclusive of variations, and now desire to enter into agreement as follows:
 1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Contract referred to in clause 2(e).
 2. The following documents comprise or are deemed to comprise this Agreement and must be read in order of precedence as listed:
 - a) This Form of Agreement.
 - b) The Town's letter (including Schedule) to the Contractor dated 28 October 2010, being Attachment A" to this Form of Agreement.
 - c) The Contractor's Tender Submission Document.
 - d) Preliminaries (Special Conditions of Contract) being Part 5 of the RFT.
 - e) AS 4000 - 1997 General Conditions of Contract, including Annexure Part A, B and C filled in as per Appendix A to the RFT.
 - f) Technical Specifications of the RFT.
 - g) Preambles to Schedule of Rates and Bill of Quantities.

⁴ Note that the Form of Agreement Refers to Tender MRPC-10/9 (RFT). This is the incorrect tender document reference. The correct tender document reference is MRPC-10/19.

- h) The Drawings listed in Attachment B" to this Form of Agreement and as per revised letter of Consolidated Offer dated 10 September 2010.

6.5.5 Superintendence

As noted in Section 6.5.2 there was a change of intent between the EOI and the Construction Tender that changed PM1’s role from Superintendent’s Representative to Superintendent. This change also deviates from the scope of the original panel contract used to appoint PM1 which clearly stated that the scope of the panel for Project and Contract Management was for;

“Administration and supervision of contracts as appointed Superintendent’s Representative”

Therefore the appointment of PM1 as Superintendent is questionable. Nonetheless it would appear from the various progress reports provided by PM1 to ToPH, that it fulfilled the role reasonably well. However there does appear to be a sense of frustration on PM1’s behalf in relation to some of the decision making (or lack of) by the ToPH in relation to a number of aspects of the project.

Risk Register: (urgent issues highlighted in green)

Date Raised	Issue	Effect	Recommendation	By Whom	By When
03/12/10	Water supply and fees.	Time and Cost	Purchase order to Watercorp urgently to avoid delays.	ToPH	Ongoing
18/02/11	Operational management design changes	Time and Cost	24 hour security may have impact on program Concept design only	ToPH	Urgent
29/04/11	HV transformer and switchgear relocation	Safety, Time & Cost	Await direction from HP to relocate transformer and switchgear.	ToPH	Urgent
31/05/11	Transformer room changes	Time and Cost	Significant changes being priced with potential delays.	ARM	Ongoing
13/06/11	Independent BCA compliance report	Time and Cost	Final report to be issued shortly	Thinc	Ongoing
13/06/11	Essential changes	Time and Cost	Urgent approval to avoid delays	ToPH	Urgent
07/06/11	CSA # 6	Time and Cost	Urgent approval required.	ToPH	Urgent
15/04/11	Internal court line marking	Time and Cost	Direction required	ToPH	Urgent
22/06/11	Master key system	Time and Cost	Direction required	ToPH	Urgent
22/06/11	Original copy of contract execution page.	Time	DOR require original copy of executed contract docs.	ToPH	28/06/11

Figure 5: Examples of delays in decision making by ToPH

One of the major roles of the Superintendent under an AS4000 series contract is awarding Practical Completion. The definition of Practical Completion is;

That stage in the carrying out and completion of Works Under Contract when:

- a) *The Works are complete except for minor defects:*
 - i. *Which do not prevent the Works from being reasonably capable of being used for their stated purpose;*
 - ii. *which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and*
 - iii. *the rectification of which will not prejudice the convenient use of the Works*
- b) *Those tests which are required by the Contract to be carried out and passed before the Works reach practical completion have been carried out and passed; and*
- c) *Documents and other information required under the Contract which, in the Superintendent's opinion are essential for the use, operation and maintenance of the Works have been supplied.*

Practical Completion is a significant milestone and triggers a number of things such as the release of the Builders Retention money. Once Practical Completion is granted, a Principal loses a significant amount of leverage and bargaining power in relation to a project. It essentially signals that the Principal is happy with the project save for a number of minor tidy up items that can be handled during the Defects Liability period.

One of the first questions that come to mind in relation to this project is how a Superintendent can grant Practical Completion when a building does not have an adequate Fire Service. An adequate Fire Service is essential to obtain an Occupancy Permit for a building of the classification that applies to the Wanangkura Stadium. If an Occupancy Permit cannot be granted, the building is prevented from being used for its stated purpose and therefore has not reached Practical Completion.

If a Superintendent were to grant Practical Completion prior to Practical Completion being achieved, this may provide an avenue of potential claim by a Principal against the Superintendent.

One of the key documents that CBA was keen to view (and had difficulty in obtaining) was the Certificate of Practical Completion. The Certificate of Practical Completion may be a key document in relation to any potential claim.

The Certificate of Practical Completion also confirms that PM1 acted as the project Superintendent, which was unclear as staff were initially of the view that this may not have been the case, despite this being clearly noted in the Construction Tender Specification.

If Practical Completion had not have been granted when it was, it would have likely triggered a series of events that may have assisted in ensuring that ToPH was in a stronger and more informed position to make a claim in relation to supply of an adequate Fire Service.

There may be a potential claim against PM1 in relation to granting Practical Completion ahead of the issue of an Occupancy Permit.

It is recommended that prior to considering any action to make a claim against PM1, that legal advice is sought on this matter.

Recommendation 16. Prior to considering any action to make a claim against PM1, that legal advice is sought on this matter.

ToPH Response - Based on discussions with CBA and qualifications included in report in relation to appointment of PM1 and the wording applied to the Certificate of Practical Completion, the benefits of progressing with this action appear to be limited.

Seek Council recommendation on whether to progress with this recommendation.

CERTIFICATE OF PRACTICAL COMPLETION

Project	Multi-Purpose Recreation Centre	No.	PC - 01
Principal	Town of Port Hedland	Date	Friday, 20 April 2012
Contractor	B1		

We hereby certify that in accordance with the General Conditions of Contract between Town of Port Hedland (**Principal**) and DORIC CONSTRUCTIONS (AUS) Pty Ltd (**Contractor**), notice is given that on Friday 20 April 2012 the Work under the B1 of Practical Completion.

Project Name and Address; Multi-Purpose Recreation Centre
 Lot 5530 Hamilton Road
 South Hedland
 WA 6722

Date for Practical Completion; Wednesday, 18 April 2012

Defects Liability Period

The Defects Liability Period (DLP) shall be for a period of 12 months, commencing 4:00pm WST on Wednesday 18 April 2012 until 4:00pm WST on Thursday 18 April 2013.

The DLP will be in accordance with the General Conditions of Contract of Australian Standards AS 4000-1997 (Amended) and the Contractor is to meet all contractual obligations defined within.

Release of Bank Guarantee

In accordance with the General Conditions of Contract of Australian Standards AS 4000-1997 (Amended) Clause 5.4 – Reduction and Release along with Clause 34.6 - Practical Completion of Annexure Part B of the Contract, the security retained by the Principal shall be reduced by 50% (One bank guarantee - 2.5%) and returned to the Contractor B1 within 14 days of Practical Completion being granted

Conditions of Practical Completion, as of Wednesday 18 April 2012;

1. Contractor to provide all keys as well as a detailed key schedule to the Principal by Tuesday 24 April 2012;
2. Completion of external playing courts by Monday 30 April 2012;
3. All Constructional plant and Contractor offices are removed from site by Monday 16 July 2012 or prior with 72 hours' notice provided to the Contractor;
4. Contractor to provide a statutory declaration within submission of final account;
5. Removal of all temporary façade panels and installation of permanent façade panels by Thursday 31 May 2012;
6. All training to the facility which is to be provided by the Contractor is complete by Thursday 31 May 2012;
7. Supply all warranties and guarantees required under the contract to be provided by Friday 15 June 2012;
8. Supply all operation & maintenance (O&M) manuals required under the contract by Friday 15 June 2012;
9. Supply all as constructed drawings required under the contract by Friday 15 June 2012;
10. Rectification of all defected façade panels by Monday 16 July 2012.

**** Please note it is strongly recommended that no public access to the facility is granted until the Certificate of Classification has been issued by the Principal appointed independent building surveyor.**

Note: Certificate of Classification

At the time of Practical Completion B1 (Contractor) has fulfilled their Works under the Contract (WUC). During the construction period, works were removed from the Contractors scope with these works currently incomplete but required for the Certificate of Classification.

The Contractor remains responsible to assist and provide the Principal with the Certificate of Classification once these works are complete.

Contractor Responsibility to fulfil Conditions of Practical Completion:

The conditions of Practical Completion are to be fulfilled and remain the sole responsibility of B1 (Contractor). If, for whatever reason, a condition is not adhered to and met to the stage of completion by the due date, the Principal withholds the right to revoke the Certificate of Practical Completion.

If the Certificate of Practical Completion becomes revoked due to the Contractor not fulfilling their responsibly of these conditions, penalties and/or damages may be enforced in line with the project Contract by the Principal.

Certified by;

Signed



Date

Friday 20 April 2012

Figure 6: Certificate of Practical Completion issued by PM1

6.6 Approvals

6.6.1 Native Title

The Project Team did not come across any evidence to suggest whether Native Title approval was sought for the MRPC site.

6.6.2 Planning Approval

6.6.2.1 Definition of Development

The construction of a facility such as the MRPC is considered to be development under the Town of Port Hedland Town Planning Scheme No. 5 as follows;

development	<p>the development or use of land, including any demolition, erection, construction, alteration of or addition to any building or structure on the land and the carrying out on the land of any excavation or other works and in relation to any building, object or place entered in the Municipal Inventory or identified in a development plan as having heritage value, any act or thing that:</p> <ul style="list-style-type: none"> a) is likely to change the character of the place or the external appearance of any buildings, of b) would constitute an irreversible alteration to the fabric of any building.
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Figure 7: Definition of Development in TPS 5

6.6.2.2 Definition of Public Works

The construction of the MRPC is considered a Public Work under the Public Works Act 1906 as follows;

<i>public work and work mean and include —</i>	
(a)	every work which the Crown, or the Governor, or the Government of Western Australia, or any Minister of the Crown, or any local authority is authorised to undertake under this or any other Act;
(y)	any building or structure of whatsoever kind which, in the opinion of the Governor, is necessary for any public purpose;

Figure 8: Definition of Public Work under the Public Works Act 1906

6.6.2.3 Planning Approval Flow Chart for Approval of Public Works

The following sets out the flowchart for approval of Public Works under Western Australia’s Planning System.

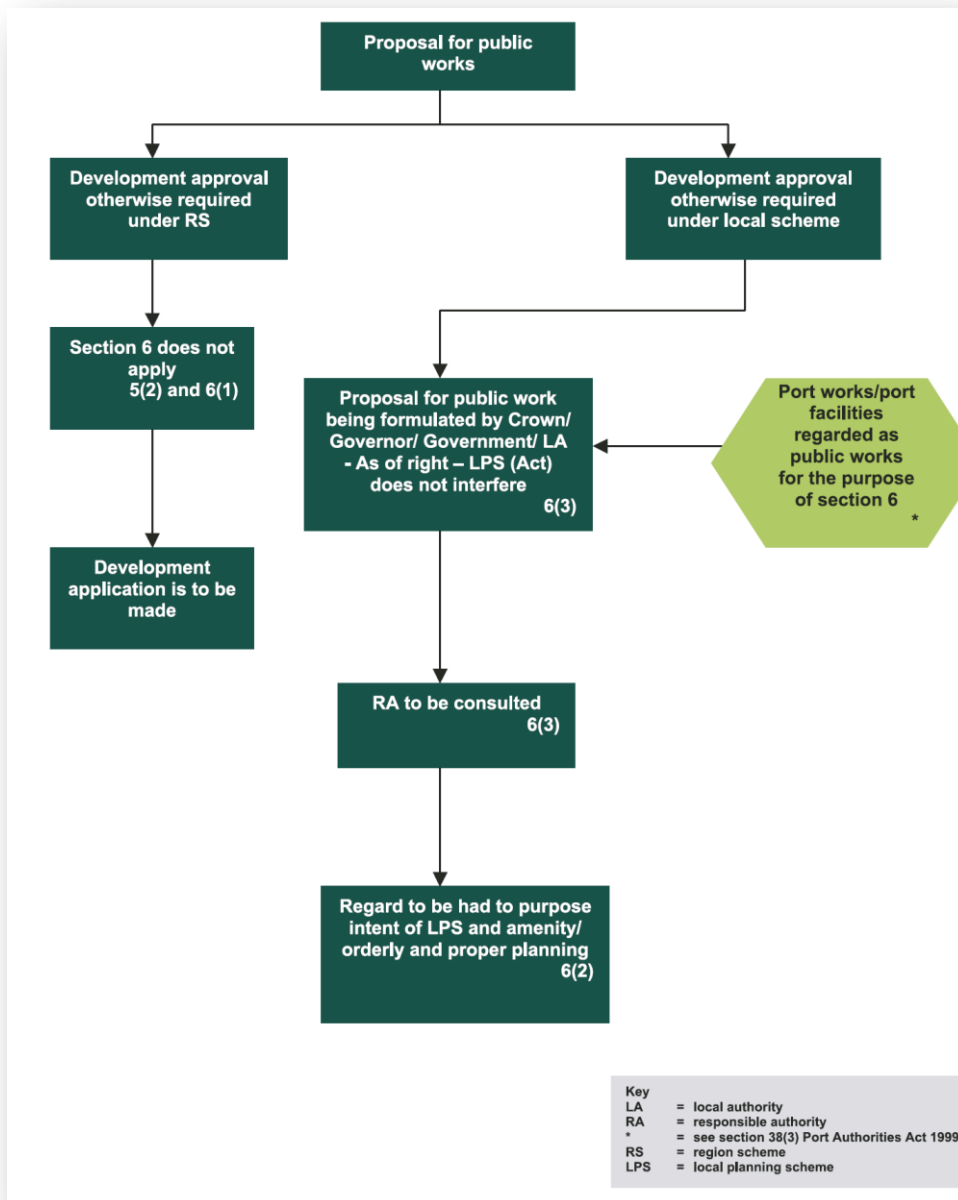


Figure 9: Planning Approval Flow Chart for Approval of Public Works (WAPC, 2007)

6.6.2.4 Section 6 of the Planning and Development Act 2005

The flowchart detailed in Figure 9 refers to Section 6 of the Planning and Development Act 2005 (P&D Act) as follows;

- 6. Act does not interfere with public works**
- (1) Subject to section 5(2) and (3) and subsections (2) and (3) of this section, nothing in this Act interferes with the right of the Crown, or the Governor, or the Government of the State, or a local government —
 - (a) to undertake, construct or provide any public work; and
 - (b) to take land for the purposes of that public work.
 - (2) Rights referred to in subsection (1) are to be exercised having regard to —
 - (a) the purpose and intent of any planning scheme that has effect in the locality where, and at the time when, the right is exercised; and
 - (b) the orderly and proper planning, and the preservation of the amenity, of that locality at that time.
 - (3) The responsible authority is to be consulted at the time when a proposal for any public work, or for the taking of land for a public work, is being formulated to ensure that the undertaking, construction, or provision of, or the taking of land for, the public work will comply with subsection (2).

Figure 10: Section 6 of the Planning and Development Act 2005

Essentially Section 6 (1) of the P&D Act exempts local government from having to comply with the P&D Act and hence having to comply with their own Town Planning Schemes. However Section 6 (3) requires that an authority proposing a Public Work, consult the relevant local authority.

Section 6 (2) then requires that consideration is given to whether the Public Work fits within the purpose and intent of the planning scheme and orderly, proper planning and amenity of the locality.

The exact processes followed to ensure Section 6 of the P&D Act is complied with is not clearly defined and can vary greatly from one local authority to another and one type of Public Work to another. However contemporary local governments will usually follow a similar process to that which they follow when considering any other development application.

It would appear from the trail of correspondence that the ToPH's Building and Planning Departments were keen that the project be subject to planning approval, however this never occurred and there appeared to be resistance for it to occur as it may have slowed the project.

6.6.2.5 Development Control Unit

Planning approvals are multi-faceted and require input from a range of disciplines, i.e. Town Planners, Engineers, Building Surveyors, Environmental Health Officers. A best practice approach to this is to convene a Development Control Unit (DCU). The DCU is a multi-disciplined group with representatives from each internal department, i.e. Planning, Building, Health, Community Services and Engineering.

The role of the DCU is to meet regularly and consider planning applications as a multi-disciplinary team.

It is understood that at the point in time that the MRPC would normally have been considered for planning approval, the ToPH did not have a DCU. If there had have been a DCU in place, it is more likely that the ToPH would have identified issues such as the lack of an adequate Fire Service or at least ensure there was a process in place to identify the issue.

Recommendation 17. That if not already convened, the Town of Port Hedland develop terms of reference for a Development Control Unit (DCU) and ensure all Planning Applications are considered by the DCU.

ToPH Response - *At the time, the Manager, Planning indicated they would not support the development until a range of issues were addressed.*

CEO1 determined project was to proceed without Planning approval.

CEO2 required building licence to be issued by Officers within 14 days regardless of issues identified.

An internal Development Assessment Group (DAG) was established about 12 months ago.

The Group meet about twice a month to consider major developments (generally developments of over 5 residential units; all mixed use developments and about 10-15% of industrial developments).

Council resolved on 25 July 2012 to "endorse the practice of Council departments submitting development applications for approval for all projects/events proposed by Council".

6.6.3 Building Approval

As part of this review, CBA utilised the services of its Associate Consultant, Accredited Building Surveying & Construction Services Pty Ltd (Accredit).

6.6.3.1 Review of original plans/specifications (compliance).

During the design phase ARCH2 engaged consulting Building Surveyors (BS1) to undertake an assessment of the drawings to identify any aspects of the design that did not comply with the Deemed-to-Satisfy provisions of the Building Code of Australia (BCA). It should be noted that in the report it was recommended that the water main be tested to confirm that complying flow and pressure rates could be provided for the fire hydrant system.

In response to the BS1 BCA assessment a number of Alternative Solutions were developed by the Fire Engineer to address some of the non-complying issues which were related to fire safety.

At approximately the same time the MBS1 was requested by the MRS1 to undertake a review of the design and provide feedback. In an email to the MRS1 the MBS1 recommended that the water main be tested to confirm that complying flow and pressure rates could be provided.

It is also noted that another Building Surveying company (BS2) was engaged by the MRPC Project Team to inspect the building to enable the issuing of the Certificate of Construction Compliance which in turn was used to obtain the Certificate of Occupancy.

Notwithstanding the above, Accredited considered it prudent to undertake an onsite inspection of the building to satisfy the requirements of the scope of this review and to identify any non-complying elements.

During the course of the inspection the following matters were identified:

Description	Identification	Comments	Action Required
Duress alarm	Incomplete building works	The fixed duress alarms were not connected.	It is not known if this element forms part of the builder's works or is the responsibility of the building owner.
Electrical fault	Defect	Deployment of net in basketball arena trips circuit breaker.	Builder's electrical contractor to investigate and address as a defect.
Air conditioning system	Defect	Airconditioning turning off and on intermittently.	Builder's airconditioning contractor to investigate and address as a defect.
Security cameras	Incomplete building works	CCTV cameras not operational.	It is not known if this element forms part of the builder's works or is the responsibility of the building owner.
Extended travel distances	BCA compliance	One of the Alternative Solutions approved relates to extended travel distances from the squash courts. The drawings used for the Alternative Solution do not detail and separation between the squash courts and the remainder of the building, however a sliding door has been installed.	The consulting Fire Engineer should review the Fire Engineering Safety Report and provide comment on whether the sliding door compromises life safety. If it is determined that life safety is not compromised the FESR should be revised to incorporate the door.
Fire extinguishers	BCA compliance	Fire extinguishers not mounted in accordance with AS 2444.	It is not known if this element forms part of the builder's works or is the responsibility of the building owner. It is assumed that this matter has been addressed. If not, the fire extinguishers should be installed immediately.
Exit doors	BCA compliance	In the Home & Away change rooms the exit doors open inwards.	Install a hold open device to the any exit door that swings in an inwards direction.

Description	Identification	Comments	Action Required
		This is permitted subject to a hold open device being installed to the opening door leaf.	
Smoke seals	BCA compliance	The smoke seals to the required smoke doors have been damaged.	Builder to investigate and address under the defects liability period.

Table 19: BCA Issues Identified in the CBA inspection

6.6.3.2 Fire Hydrant System

On July 7 & 8 2009 the Water Corporation undertook tests on a water meter located at Kevin Scott Oval. The meter was located on the north side of the MPRC site where the proposed building was to be built.

Flow rate was measured on July 7 2009 achieving a flow rate of 20.83 litres per second through a mechanical 100mm water meter no KM0700157. The results achieved were as follows;

	Before R.P.Z.D 32mh	After R.P.Z.D. 28mh
Static		
Valve Half Open	18mh	5mh
Valve Fully Open	14mh	4mh

Figure 11: Test Results achieved July 7 2009 at water meter KM0700157 located at Kevin Scott Oval

It appears that the Water Corporation Officer that commissioned the test had some concern regarding the results as he requested that the test be redone the following day, however this time with the flow rates being recorded at each step.

The test on the July 8 delivered a flow rate of between 16.67 – 20.83 litres per second at a residual pressure of 140kpa and 40kpa respectively.

It should be noted that this result is below the minimum required for a hydrant system complying with AS 2419.1 – 2005 (Fire Hydrant Installations) and the operational requirements of the fire brigade (i.e.: A compliant fire hydrant service is required to provide a combined flow rate, from the 2 most hydraulically disadvantaged hydrant outlets, of 20 litres per second with a residual pressure of 200kPa from each outlet).

The July 8 2009 test result is the minimum in relation to the Australian Standard, however the test result was only achieved at one outlet whereas the Australian Standard requires that the minimum result (in this case 10 litres per second at each outlet) is achieved at the 2 most disadvantaged outlets simultaneously. Nonetheless it would have been evident to a Fire Engineer that the test result would not likely achieve the Australian Standard in relation to the final design.

Accredit understands that it is well known in the building industry that the flow rates and pressure of the water mains in South Hedland are low and unlikely to achieve the minimum required for fire fighting purposes.

Although AS2419.1 – 2005 recommends seeking advice on water supply flow rates from the local water supply authority, the water supply pressure testing methodology does not appear to have been carried out in accordance with the recommendations of Appendix F of AS2419.1 – 2005.

The results of the July 7 & 8 2009 testing were emailed by the Water Corporation's Operations Manager East Pilbara to the ToPH's Project Development Officer – Infrastructure who forwarded the results to the MRS1 (Water Corporation, 2009).

The MRS1 then forwarded the results to ARCH2 which then forwarded the results to C3.

When the completed fire hydrant system was tested on August 3 2012 the water flow into the booster was recorded at 7.55 litres per second at 200kPa and at the hydrant outlets the flow rates were between 6 to 7 litres per second at 200 kPa. It is not known whether a minimum of two (2) hydrant outlets were tested together as required by AS 2419.1. If they were not tested simultaneously, the flow rate and pressure were likely to be lower.

From the series of July 2009 emails, it is apparent that all key stakeholders were aware of the test results of the local water supply system.

A further concern is that one of the Alternative Solutions developed to address a non-complying matter (ie: Permitting a third length of fire hose to be used) was based on complying flow rates being provided (See C3's Fire Engineering Safety Report dated 27/08/2010 – Revision 3).

6.6.3.3 Identification of Non-Complying System

During the building plan assessment phase the issue of having the water main tested for fire fighting purposes was raised. BS1 undertook a preliminary BCA Strategy Report for ARCH2 (Dated November 27 2009) which provided general commentary on the building's compliance with the BCA and identified specific areas where the building did not comply with the Deemed-to-Satisfy provisions. The report recommended that the water main be tested to confirm that complying flow rates and pressure could be provided for fire fighting purposes.

On the October 28 2009 the MBS1 sent an email to the MRS1 recommending that the water main be tested to confirm the flow rates and pressure. It is not known whether the MBS1 was aware of the July 7 and 8 2009 test results on the water meter. Furthermore it is not known whether the MRS1 passed on the recommendations of the MBS1 to the ARCH2 or C3.

The primary purpose in testing the water meter is to determine whether the water source (i.e: Town Mains) would provide complying flow rates at the required pressure or whether an alternative water source would be required (e.g. Pumps and tanks).

It appears that the water main test results were never recognised and therefore hydraulic drawings were prepared and submitted to the Council, as part of the building licence application, detailing a direct connection from the water main into the booster.

6.6.3.4 Assessment by Town of Port Hedland

The building application form indicates that the building application for Stage 2 was submitted to the ToPH on September 8 2010 and a building licence was issued on the October 27 2010, a period of 14 working days.

This is considered to be a relatively short timeframe for a building as complex as the MRPC and which contains several Alternative Solutions, although it is acknowledged that ToPH's Building Services were familiar with the building design as they were providing occasional advice over the previous 12 months and were a stakeholder in the development of the Fire Engineering Safety Report.

Even though the timeframe to assess the building application was extremely short the question arises as to why the issue of a potentially non-complying fire hydrant was not pursued by the Building Department. Particularly as it had been raised as a concern in 2009 by MBS1, however it is noted that at the time of the assessment for building licence a different person was assessing the documentation for the ToPH. It is also an anomaly that the assessment sheet used was from the Shire of Roebourne.

6.6.4 Fire and Emergency Services Authority Approval

Prior to the introduction of the Building Act 2011 in April 2012 all Class 2 to 9 buildings were required to be submitted to FESA for assessment. The Building Regulations 1989, Regulation 11(2) stated:

"Notwithstanding the provision of subregulation (1) every builder making application for a building licence, excluding Classes 1 and 10 of the Building Code, shall deposit with the Fire Brigade Board plans and specifications of sufficient detail to enable the Fire Brigades Board to assess their compliance with the Fire Requirements of the Building Code of Australia."

It was standard practice for the applicant or an associated professional (e.g.: Architect, Builder, Hydraulics Consultant, Owner) to lodge drawings directly with FESA (i.e. Department of Fire and Emergency Service [DEFES] at the time known as Fire and Emergency Services Authority [FESA] and hence referred to as FESA in this report).


Once the assessment was completed by FESA a letter would be issued to the applicant providing commentary on their findings which were specific to fire requirements of the BCA and the operational requirements of FESA.

It is usual practice for the findings to be provided in writing to the applicant and a copy forwarded to the Local Government Authority (LGA). This letter confirms to the LGA that the applicant has satisfied the requirement of Regulation 11(2) by depositing plans and specifications to FESA but not necessarily that they complied.

The letter confirms that there are no identifiable issues or that there are non-complying issues. Where FESA had insufficient information or where there was concerns relating to the flow rates and/or pressure the letter would normally contain details of what was required. FESA would also request a copy of the test results if undertaken by a third party although FESA also conduct their own testing.

In a letter dated May 10 2010, FESA wrote to the ToPH and cc'd the letter to the Project Superintendent, PM1, advising that FESA had assessed the drawings against the BCA 2009 and FESA's operational requirements and noted that the drawing submitted did not indicate the inclusion of fire

hydrants and further noting that fire hydrants need to comply with Clause E1.3 and AS2419.1. The letter went on to further detail the requirements of the external fire hydrant design.



Government of Western Australia
Fire & Emergency Services Authority

Our Ref: 344380\1 Your Ref:

Phone Enquiries: 9323 9814 Gary Nelson
Fax No: 9323 9319
Email: gnelson@fesa.wa.gov.au

10 May 2010

Chief Executive Officer
Town of Port Hedland
PO Box 41
PORT HEDLAND 6721

Dear Sir / Madam

Building Plans - Assessment by FESA

Site Name	MULTI PURPOSE RECREATION CENTRE
Project:	PROPOSED RECREATION CENTRE
Address:	Lot 3530 HAMILTON ROAD SOUTH HEDLAND 6722

Occupancy Classification: 9b
Type of Construction: B
Documents Assessed: Architectural, Electrical & Hydraulics

Plans of the above project have been submitted to the Fire and Emergency Services Authority of Western Australia (FESA), as required by Regulation 11(2) of the Building Regulations 1989.


The Built Environment Branch (BEB) of FESA has assessed the plans against the fire requirements of the Building Code of Australia (BCA 2009) as they apply to FESA operational requirements, and offers the following comments:

1. BCA E1.3 - Fire Hydrants
In this instance no fire hydrants have been indicated upon hydraulic drawings submitted.
Fire hydrants are to comply with Clause E1.3 (and AS 2419.1).


1.1) External fire hydrants shall be installed at a maximum distance of 20 m from hard standing surface accessible by a fire appliance, and readily accessible to fire brigade personnel. The distance must be measured around obstructions in accordance with AS 2419 - Figure 3.2.2.2.

1.2) Fire brigade booster connections are required in accordance with AS 2419.1 - Clause 7.2. Every fire brigade booster assembly shall be installed in a secure enclosure or cabinet in accordance with AS 2419.1 Clause 7.8 and Figure 7.4, except where permitted by the regulatory authority.

*LOT 3530
Hamilton Road*



480 Hay Street
Perth Western Australia 6000
PO Box 1174 Perth WA 6844
Telephone (08) 9323 9300
Facsimile (08) 9323 9319
Email fesa@fesa.wa.gov.au
www.fesa.wa.gov.au



Document #: ICR5428
Date: 14.05.2010
Officer: Andy Taylor
File: 130413B

*+ PLANNING
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1.3) Where a ring main is required, it shall be designed to permit isolation of each ring or pressure zone in 25% increments, whilst maintaining not less than 50% of the hydrants required to protect each fire compartment.

1.4) Fire hydrants are required to be connected to a ring main where the following conditions apply to the building(s) to be protected:

- a) Requires full perimeter vehicular access for fire authority appliances.
- b) Has an effective height of more than 25m.
- c) Has a combined sprinkler/hydrant system in accordance with AS 2118.6

1.5) A block plan shall be provided in accordance with AS 2419.1 Clause 7.11 and Figure 7.11. It shall be of engraved plastic if the booster is located in a cabinet, otherwise of engraved stainless steel or anodised aluminium and be a minimum A3 in size, but preferably A2. The block plan shall be installed prior to FESA undertaking any testing of the completed fire hydrant system.

1.6) The hydrant system shall maintain a residual pressure of not less than 200kPa at each feed hydrant while the system provides a total flow rate of 20 litres per second.

Street fire hydrants may be considered as feed hydrants, provided they meet the requirements for vehicle spacing, hose length, flow and pressure and any other provisions of AS2419.

Before committing to a system reliant on a water authority main where the supply is marginal, system designers should consider that hydrant systems need to be functional for the life of the building and that loss of performance in the future may be difficult to overcome if not allowed for at the design stage.

1.7) External fire hydrants shall be located in accordance with AS 2419.1 Clause 3.2.2.2.

1.8) Where external hydrants are constructed of copper they shall be adequately supported to prevent bending of the upstand under normal fire service operations.

1.9) Where the hydrant system includes a building fire pump or pumps, provide in the Hydrant Booster cabinet (in addition to controls at the pump location) a "Fire Pump Start" button to allow manual starting by the Fire Service in the event of failure of the automatic starting facility. In addition provide Pump Run/Fault Status indication at both the Hydrant Booster and the FIP to provide positive feedback to the Pump Operator and to the Incident Controller of the pump status.

1.10) The power supply for fire pumpsets shall be taken from an uninterrupted source or from the supply side of the main switches (refer AS2941 Clause 3.12.2).

2. BCA C2.12 – Separation of equipment

The boiler and transformer rooms have no indication on any plans submitted as complying with the above clause.

These rooms must be separated from the remainder of the building with construction complying with an FRL as required by Specification C1.1, but not less than 120/120/120 and any doorway protected with a self-closing fire door having an FRL of not less than -/120/30.

3. BCA Specification C1.1 – Type B Fire-resisting construction

In a Class 9b building, a floor separating a space for the use of storage or any other ancillary purpose must be constructed in accordance with Section I of Specification C1.1 (4); in this instance the storeroom located below the seating area for the main hall has not been indicated upon submitted drawings as complying with this requirement.

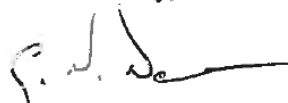
Fire alarm bell & strobe

Please ensure that the fire alarm bell & strobe are clearly visible from the street façade of the building in both directions.

Please contact me if you wish to discuss any of these matters.

A copy of this letter has been forwarded to the applicant along with a request that he/she send to FESA a written response to the items listed above within fifteen (15) working days of the date of the letter and advising that failure to promptly resolve the issues could delay the issue of a building licence.

Yours faithfully,

A handwritten signature in black ink, appearing to read "G. Nelson".

Gary Nelson
Fire Safety Officer
Built Environment Branch

cc:

File

PM1

Figure 12: Letter from FESA to ToPH & PM1 regarding the need for a compliant external fire service

Prior to the issue of the Building Licence (dated October 27 2010) both the ToPH and the Superintendent were aware of the requirement to provide FESA with detailed design drawings of the external fire service.

Whether a copy of this letter was forwarded to C3 or not, is unclear and worthy of further investigation should the ToPH wish to pursue a claim in relation to the Fire Service.

It was noted that one of the Alternative Solutions proposed in the C3's Fire Safety Engineering Report (Dated August 8 2010 – Revision 3) does reference comments received from FESA in relation to the proposed Alternative Solutions, which relates to the fire hydrant system not providing complying coverage to a part of the building first floor. The validity of the Alternative Solution is based on complying flow rates and pressures being provided to the hydrant booster.

6.7 Potential to make a Claim in relation to the Fire Service

While FESA certainly wrote to Council advising of the need for a compliant external fire service, CBA is unable to confirm whether plans were eventually prepared and assessed by FESA prior to issue of the building licence, however it appears that this may not have occurred. This will require further investigation to confirm one way or the other in the event that a claim is pursued.

Nonetheless CBA believes that there may be a potential claim for damages in relation to the need to retrofit a compliant fire service and further investigation is worthwhile.

The Design Tender Specification puts the onus for design of the Services (plumbing) and Fire Safety Provisions on the Architect.

- Contract Documentation (for construction and tendering purposes), including:
 - Architectural working drawings (site plan, floor plan, elevations, sections, construction details)
 - Structural designs (certified by suitably qualified engineer), that meet Region D Category 2 cyclone ratings
 - Service designs (electrical, plumbing, stormwater, etc)
 - Landscaping
 - Quantity surveying
 - Building specifications
 - Energy efficiency provisions (to meet Energy Efficiency Measures)
 - Fire safety provisions
 - Window and door schedule
 - Room layouts (kitchens, ablutions, etc) including cabinetwork details, tiling layout, etc
 - Civil engineering details if required (carparks or driveways, etc)
- Provision of documentation for all Council building and planning approvals

Figure 13: Extract of the Contract Specification of Tender 06/66 for Design of the MPRC

The executed architectural design contract details that the ARCH2 will engage specialist sub consultants to design the hydraulics and fire engineering.

It is apparent that all of the key stakeholders were informed of the water meter test results, however there does not appear to have been any interpretation of the results and what implications the results would have on the building design. Nonetheless it is the Architects responsibility to ensure that the building is designed for its intended purpose and this means inclusion of a compliant Fire Service.

It is apparent from the string of emails that both ARCH1 and C3 received sufficient advice early in the project to indicate that the water supply may be a problem.

SCHEDULE 4		Specialist consultancy services
Item 1 (clause B4)	Engaged by the client (*secondary consultant)	Engaged by the architect (*subconsultants)
	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	landscape architecture
<input type="checkbox"/>	<input type="checkbox"/>	town/facility planners
<input type="checkbox"/>	<input type="checkbox"/>	land and building surveyor
<input type="checkbox"/>	<input checked="" type="checkbox"/>	quantity surveyor/cost control
<input type="checkbox"/>	<input checked="" type="checkbox"/>	structural engineering
<input type="checkbox"/>	<input checked="" type="checkbox"/>	civil engineering
<input type="checkbox"/>	<input checked="" type="checkbox"/>	mechanical engineering
<input type="checkbox"/>	<input checked="" type="checkbox"/>	electrical engineering
<input type="checkbox"/>	<input checked="" type="checkbox"/>	information technology and telecommunications
<input type="checkbox"/>	<input checked="" type="checkbox"/>	hydraulics (water, sewer, stormwater, gas)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	fire engineering (sprinklers)
<input type="checkbox"/>	<input type="checkbox"/>	transportation/lifts
<input type="checkbox"/>	<input type="checkbox"/>	acoustics
<input type="checkbox"/>	<input type="checkbox"/>	building regulations
<input type="checkbox"/>	<input type="checkbox"/>	geotechnical engineering
<input type="checkbox"/>	<input type="checkbox"/>	environmental
<input type="checkbox"/>	<input type="checkbox"/>	programming
<input type="checkbox"/>	<input type="checkbox"/>	archaeologist
<input type="checkbox"/>	<input type="checkbox"/>	historian
<input type="checkbox"/>	<input type="checkbox"/>	traffic engineering
<input type="checkbox"/>	<input type="checkbox"/>	security
<input type="checkbox"/>	<input type="checkbox"/>	occupational health and safety
<input type="checkbox"/>	<input type="checkbox"/>	accessibility
<input checked="" type="checkbox"/>	<input type="checkbox"/>	other <u>contract specialist</u>
<input type="checkbox"/>	<input type="checkbox"/>	other _____
<input type="checkbox"/>	<input type="checkbox"/>	other _____
<input type="checkbox"/>	<input type="checkbox"/>	other _____
<input type="checkbox"/>	<input type="checkbox"/>	other _____
<input type="checkbox"/>	<input type="checkbox"/>	other _____
<input type="checkbox"/>	<input type="checkbox"/>	other _____

Figure 14: Extract of Architectural Design Contract for the MPRC

Recommendation 18. *That further investigation be undertaken in order to determine if a claim for damages is worthwhile to pursue in relation to the need to retrofit the non-compliant fire service.*

ToPH Response - *While there appears to be a stronger possibility of a successful claim, consideration needs to be made as to the overarching benefits to the Town versus the time and cost involved.*

The design and therefore initial budget allocation did not identify the fire service requirements, therefore it would always come at an additional cost.

Only benefit would be potential damages from negative publicity.

Seek Council recommendation on whether to progress with this recommendation”.

6.8 Record Keeping

As noted, the extent of documentation associated with this project is extensive. However accessing the information was not a simple exercise. As noted by staff, the Town's record keeping systems and processes leave a lot to be desired and could benefit from a complete review.

Simple things such as being able to confirm the approved drawings associated with the building licence proved difficult as there were no approval stamps shown on the drawings. Hence one a drawing was removed from the box containing the approved drawings, there was no way of being sure that one was dealing with an approved drawing.

The ToPH did implement a project management related record management system as part of the construction phase, which was a good initiative, however it is not connected to the Town's central records systems and requires training to use.

Whilst a plethora of information was provided to the Project Team, there were several key documents that took staff a long time to locate and provide to the Project Team. This should not be the case in a contemporary local government.

Recommendation 19. That Records Management systems and processes be reviewed.

ToPH Response - Introduction of Integrated Project Management (IPM) software to be developed by end of June 2013.

Software will integrate with SynergySoft and files can be attached to each project for completeness.

Will need to ensure that the IPM does not disregard our current Records Management System.

While records training is provided and new search functions are being developed, records management remains an ongoing issue for many reasons.

A Knowledge Management Framework was to be developed next year. Based on resourcing this will not occur until at least 2014/15.

7.0 Conclusion

This review is a high level overview of events. Because of the both the size of the Stadium project and the timeframe over which it was constructed, the amount of information and documentation is extensive. In the time allocated by the ToPH to undertake the review it has not been possible for CBA to review every aspect over the 8 years of the project, hence key aspects may have been missed or interpreted incorrectly due to gaps in information, nonetheless the project team has made best effort to provide an unbiased appraisal of the information able to be pieced together in the timeframe for the project.

8.0 Recommendations

Recommendation No.	Recommendation	Page No.
Recommendation 1	Prior to consideration of the taking of any action in relation to any issue that may impact a key stakeholder, it is recommended that the ToPH apply the principles of Natural Justice and Procedural Fairness	14
Recommendation 2	Strengthen Section 3.6 – Conflicts of Interest, of Council’s Code of Conduct to ensure that where Officers declare a Financial Interest in relation to advice to Council, Council is to consider the matter and determine whether steps need to be taken to remove the Officer from potential dealings in relation to the matter.	22
Recommendation 3	That Council vary its approach to the use of Working Groups and amend Policy 1/012 to ensure that Working Groups are only to be established to provide a reference source for Officers when formulating reports and recommendations to Council.	24
Recommendation 4	If Council considers there is a higher need to establish some form of advisory group to Council, then Council to establish a formal advisory committee under the provisions of the Local Government Act 1995	24
Recommendation 5	That Council develop a strategy to transition the Community Sponsorship Agreement to a market tested sponsorship contract and ensure the processes align with the processes set out under Section 3.58 of the Local Government Act 1995 and associated regulations.	28
Recommendation 6	That land tenure, Management Order, Native Title and TPS 5 matters are checked for compliance and appropriate actions taken to address any issues identified.	29
Recommendation 7	That Council reviews its Tender Assessment Processes.	32
Recommendation 8	As a matter of urgency, develop, adopt and apply a Regional Price Preference Policy in accordance with the provisions of Section 24F of the Local Government (Functions and General) Regulations 1996.	33
Recommendation 9	Develop and adopt and Asset Management Policy that, amongst other things, requires that prior to deciding to implement major capital works, the Town of Port Hedland is to prepare a “whole of life cost” of the proposed capital works and determine the long term financial implication of proceeding with the proposed capital works and whether or	34

Recommendation No.	Recommendation	Page No.
	not it aligns with the Council's Integrated Strategic Plan and fits within Asset Management Plans and a Long Term Financial Plan.	
Recommendation 10	Implement a review process to develop systems and processes to ensure actions are carried in accordance with Council resolutions or report back to Council to vary the resolution to a workable action where the CEO considers that the Council resolution is not practicable.	35
Recommendation 11	Ensure that third parties are only engaged as Superintendent's Representative and retain the Superintendence in-house.	36
Recommendation 12	Ensure that Absolute Majority decision requirements are accurately reported to Council.	38
Recommendation 13	Ensure that project income, expenditure and cash flow budgets are developed and maintained for major capital works projects.	39
Recommendation 14	Ensure that the Council Resolution or Delegation to the CEO is referenced in any letter to award a tender.	40
Recommendation 15	Ensure that where there is further negotiation required to finalise aspects of a tender prior to formal award, issue only a letter advising the tenderer that they are the preferred tenderer and formal award of the tender is subject to negotiation to the satisfaction of Council (or the CEO if delegated).	41
Recommendation 16	Prior to considering any action to make a claim against PM1, that legal advice is sought on this matter.	44
Recommendation 17	That if not already convened, the Town of Port Hedland develop terms of reference for a Development Control Unit (DCU) and ensure all Planning Applications are considered by the DCU	49
Recommendation 18	That further investigation be undertaken in order to determine if a claim for damages is worthwhile to pursue in relation to the need to retrofit the non-compliant fire service.	58
Recommendation 19	That Records Management systems and processes be reviewed.	59

Table 20: Summary of Recommendations

9.0 Bibliography

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04/10/2008 Letter, Town to Ashton Raggatt McDougall, Re: Amendment to Tender 06/66 for Master Planning of South Hedland Sporting Precinct

02/10/2008 ARCH2 Tender 01-100/13 Multi-Purpose Recreation Centre, South Hedland

06/05/2008 ARCH2 Tender

15/04/2010 C3 Fire Engineering Report

31/03/2010 C4 Hydraulics Services Specifications

16/08/2010 C4 Transmittal of Drawings/Documents

06/08/2010 C3 Site Inspection Report (following lack of pressure)

14/10/2010 Building Licence No. 100070, Stage 1 works (footings & ground floor slab)

27/10/2010 Building Licence No. 100074. Stage 2 works (Recreation Centre, whole building)

23/10/2012 Certificate of Design Compliance – FESA

22/09/2012 Checklist to accompany Occupancy Permit application, Town

20/09/2012 Documentation supporting application for Building Licence (Fire, Water Supply/Installation)

21/08/2009 Emails, Town staff, Re; Recurring comments with staff consulted on draft design plans for MPRC (internal)

25/02/2010 Advert for inviting EOIs for construction of 3 projects including PMRC (2 documents)

24/09/2012 Fire Hydrant Installation Flow Chart (Extract A5 2419.1.2005)

29/11/2010 Letter, McLeods Barristers to Town, Re; Legal Advice on PM1 contract for project management services

22/09/2012 Occupancy Permit with Certificate of Construction Compliance by BS2 Compliance

30/07/2010 Purchase Order No. 97710, PM1 Projects, for Project Management

26/08/2009 Ordinary Council Meeting, Tender 09/18 Provision of Professional Consultancy Services – Acceptance of EOI/Tenders for panel listing of several consultancy services including project management, including PM1

24/03/2010 Ordinary Council Meeting, Consideration of EOI 10/01 Construction of MPRC; and 10/02 Construction MJD Hardie Centre (item 11.4.2.4)

27/02/2006 Ordinary Council Meeting, Establishment of a Recreation Facility Working Group

27/09/2006 Ordinary Council Meeting, Sports Facility Audit report received

13/12/2006 Ordinary Council Meeting, Report Tender 06/30 for feasibility study for MPRC

28/03/2007 Ordinary Council Meeting, Resolution to appoint Architect for feasibility study

29/08/2007 Ordinary Council Meeting, Feasibility Study presented

26/09/2007 Ordinary Council Meeting, Second Draft of Feasibility Study

26/11/2007 Ordinary Council Meeting, Resolved to tender the design of MPRC

26/11/2008 Ordinary Council Meeting, Authority o sign BHPB10/Town

27/05/2007 Ordinary Council Meeting, Resolution to undertake a tender process and develop architectural design for the MPRC

10/12/2008 Ordinary Council Meeting, Concept & Master plans for MPRC endorsed

27/05/2009 Ordinary Council Meeting, Endorsement of internal and location schematics of MPRC & requirement to prepare a business plan

09/12/2009 Ordinary Council Meeting, Status report for resign of MPRC; Business plan to present Jan-Mar resolved to tender MPRC construction

28/10/2009 Ordinary Council Meeting, Establish MPRC Working Group

13/10/2010 Ordinary Council Meeting, amending roles of the MPRC Working Group into 2 phases

28/07/2010 Ordinary Council Meeting, 3 tenders 10/19 for construction considered (for MPRC). B1 Appointed

15/10/2010 Special Council Meeting, Considered variations to design changes to MPRC tender documents

08/08/2012 Ordinary Council Meeting, Approved of tank & pump solution for fire water services to MPRC

22/08/2012 Special Council Meeting, Approved variation and construct tank & pump system for fire water supplies

21/08/2012 Various Correspondences, C3 to PM1 Projects, Re: Fire Hydrant Tanks drawings F-010(B) and F-100(B) apply. Tanks installed to meet requirements of BCA 2009. Tanks (Fire Water Supply) installed and tested with FESA tanker pump & produce 700kPa (FESA require 2 x 20rps at 700kPa)

04/08/2009 Tender Submission, PM1 Projects, Tender 09-18 Submission Rates for panel for Project Managers with General Condition AS4122-2000 attached, including Parts A & B with ABN & CAN, signed Form of Tender.

01/09/2007 Multi-Purpose Recreation Centre Feasibility Study

07/05/2008 Recreation Centre Design Tender 06/66 General Condition of contract Part A, Part B

06/08/2012 Letter, C3 to Town, Re: Report on Site Inspection of 03 August 2012. Flow and pressure tests results and referring back to July 2009 test. Option for alternative supply presented for short & long term.

02/09/2011 Report Extract, PM1 Project Report extract Re: delays in superintendent issuing instructions & claims payment (monthly report)

Appendix A. Roles of the Superintendent under AS 4000 & AS 2124 Contracts

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To give <i>directions</i> in relation to the carrying out and completion of <i>WUC</i> where authorised by the Contract	2.1	Agent	-	3 & 4	-
To extend time for the <i>Contractor</i> to lodge a priced and extended <i>bill of quantities</i>	2.3	Agent	-	3 & 4	-
To determine appropriate corrections to errors or inconsistencies in rates or prices in a priced <i>bill of quantities</i> when the aggregate amount in the priced bill does not equal the sum accepted for the <i>work</i> , the subject of the bill.	2.3(b)	Independent Certifier	-	3 & 4	-
To value the difference, where the quantity of an item of <i>work</i> is greater or less than the quantities shown in a <i>bill of quantities</i> which forms part of the <i>Contract</i> , or a <i>schedule of rates</i> and the <i>Principal</i> has accepted a lump sum for the item.	2.5 36.4	Independent Certifier	-	3, 4 & 40.5	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of <i>Principal</i> or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To value quantities in a <i>schedule of rates</i> outside the limits of accuracy stated in Item 11.	2.5 36.4	Independent Certifier	-	3, 4 & 40.5	-
To price as deemed <i>variation</i> an item omitted from a <i>bill of quantities</i> (if the value is over \$400) or a <i>schedule of rates</i>	2.5 36.4	Independent Certifier	-	3, 4 & 40.5	-
To direct <i>work</i> to be performed or an item to be supplied to which a <i>provisional sum</i> applies.	3	Agent	-	11	-
To price <i>provisional sum work</i> carried out or items supplied by the <i>Contractor</i>	3	Independent Certifier	-	11	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To assess the percentage for the <i>Contractor's</i> profit and attendance where <i>work</i> or an item concerning a <i>provisional sum</i> is carried out or supplied by a subcontractor, and such percentage is not otherwise stated in the contract.	3	Independent Certifier	-	11	-
To extend the times for signing a formal instrument of agreement	6	Agent	-	6	-
To notify the parties of any change of address of the <i>Superintendent</i>	7	Both	-	7	-
To direct the <i>Contractor</i> as to the interpretation to be followed where there is an inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out <i>WUC</i>	8.1	Agent	-	8.1	The Superintendent under AS 2124 valued under clause 40.5 any additional cost or saving which resulted from compliance with the Superintendent's directions as a variation.

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
If required by the <i>Contractor</i> , to enter into a confidentiality agreement	8.5	Both	-	8.6	Under AS 2124, there was no express provision stipulating that the Superintendent could be required to enter into such an agreement.
To approve the <i>Contractor</i> subcontracting work stated in Item 17.	9.2(a) Item 17	Agent	-	9.2	-
To approve the <i>Contractor</i> allowing a subcontractor to assign a subcontract, payment or other right, etc.	9.2(b)	Agent	-	9.2	-
To approve if required, a <i>selected subcontractor</i> from a list submitted by the <i>Contractor</i> .	9.3	Agent	-	-	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To give reasonable written notice to the <i>Contractor</i> if the <i>Principal</i> proposes to have protection of people or property performed by others.	12	Agent	-	15	Under AS 2124, the Superintendent did not (expressly) have this role.
To certify the cost of the <i>Principal</i> having protection of people or property performed by others.	12	Independent Certifier	-	15	Under AS 2124, the Superintendent did not (expressly) have this role.
To take urgent action to protect <i>WUC</i> , etc.	13	Agent	-	39	-
To certify the cost of taking urgent protection.	13	Independent Certifier	-	39	Under AS 2124, provision was not made for this.
To direct as a deemed <i>variation</i> , rectification of loss or damage to <i>WUC</i> to the extent it is the responsibility of the <i>Principal</i> .	14.2	Independent Certifier	-	16.2	Under AS 2124, provision was not made for this.
To price a <i>variation</i> in respect to reinstatement of damage or loss to <i>WUC</i> to the extent it is an accepted risk of the <i>Principal</i> .	14.2	Independent Certifier	-	16.2	Under AS 2124, provision was not made for this.

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To certify the cost of insurance effected or maintained by a party where the other party fails to effect or maintain insurance.	19.2	Independent Certifier	-	21	Under AS 2124, provision was not made for this.
To give a <i>direction</i> in writing or give a <i>direction</i> orally and confirm it in writing.	20	Agent	Must confirm in writing as soon as possible.	23	-
To notify the <i>Contractor</i> of appointment of a <i>Superintendent's Representative</i> and to state his or her functions.	21	Agent	Forthwith	24	-
To notify the termination of the appointment of a <i>Superintendent's Representative</i> .	21	Agent	Forthwith	24	-
To make a reasonable objection to the appointment of a <i>Contractor's Representative</i> .	22	Agent	-	25	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To direct the <i>Contractor</i> to have removed from the <i>site</i> any person who is, in his opinion, incompetent, negligent or guilty of misconduct.	23	Agent	-	26	Under AS 2124, the Superintendent also had to give written approval before the person could again be employed with respect to <i>work</i> under the contract.
To approve the <i>Contractor</i> using the <i>site</i> for a purpose not connected with <i>WUC</i> .	24.1	Agent	-	-	This provision did not appear in AS 2124.
To assess the <i>Contractor's costs</i> incurred in taking precautions against loss, removal or damage in relation to minerals, fossils and relics, etc.	24.3	Independent Certifier	-	27.5	Under AS 4000, the Superintendent adds the Contractor's costs to the Contract Sum. Under AS 2124, such costs were treated as a variation.
To require the <i>Contractor</i> to provide details concerning a latent condition, additional <i>work</i> , etc.	25.2	Independent Certifier	-	12.2	-
To price as a deemed <i>variation</i> , the effect of a <i>latent condition</i> .	25.3	Independent Certifier	-	-	Under AS 2124, valuation as a variation occurred in certain circumstances only.

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To assess the cost of the <i>Contractor</i> rectifying an error in setting out not caused by the <i>Contractor</i> .	26.2	Independent Certifier	-	28.3	These costs in AS 2124 were valued as a variation.
To direct whether the <i>Contractor</i> is to reinstate a <i>survey mark</i> .	26.3	Agent	Within 3 days after Contractor gives due notice.	28.2	The 3 day time limit did not appear in AS 2124.
To assess the cost of the <i>Contractor</i> reinstating a <i>survey mark</i> .	26.3	Independent Certifier	-	28.2	These costs in AS 2124 were valued as a variation.
To direct the <i>Contractor</i> to clean up, tidy, remove rubbish from the <i>site</i> .	27	Agent	-	38	-
To certify the cost of the <i>Principal</i> having others to clean up the <i>site</i> where <i>Contractor</i> fails to comply with direction.	27	Independent Certifier	-	38	-
To extend the time for removal of <i>temporary works</i> and <i>construction plant</i> after practical completion.	27	Agent	-	38	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To direct the <i>Contractor</i> to remove <i>temporary works</i> or <i>construction plant</i> .	27	Agent	-	38	-
To notify the <i>Contractor</i> that the <i>Principal</i> intends to have others remove <i>temporary works</i> or <i>construction plant</i> if the <i>Contractor</i> fails in doing so.	27	Agent	-	38	-
To arrange inspection of manufacture, etc. of materials.	28	Agent	-	29	This function did not appear in AS 2124
To direct the <i>Contractor</i> to supply particulars concerning the manufacture and supply of materials, etc.	28	Agent	-	29.3	-
To direct the <i>Contractor</i> not to remove materials or <i>construction plant</i> from the site.	28	Agent	-	29.2	-
To have access to the <i>Contractor's</i> and subcontractor's quality systems.	29.2	Agent	-	30.2	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To direct the <i>Contractor</i> to correct, etc. defective work or material.	29.3	Agent	At any time before the expiry of the last defects liability period.	30.3	Under AS 2124, directions could be made until the issue of the Final Certificate.
To notify the <i>Contractor</i> the <i>Principal</i> intends to have defective <i>work</i> rectified by others if the <i>Contractor</i> fails to do so.	29.3	Agent	Duly	30.3	Under AS 4000, the <i>Contractor</i> now has 8, not 7, days in which to comply.
To certify the <i>Principal's</i> cost of having defective <i>work</i> rectified by others.	29.3	Independent Certifier	-	30	This function did not appear in AS 2124.
To price as a deemed <i>variation</i> , the acceptance of defective <i>work</i> by the <i>Principal</i> .	29.4	Independent Certifier	-	30.5	Rather than a deemed variation, in AS 2124 the resulting increase or decrease in value to the Principal of the works and other loss suffered was valued as a variation.
To direct that any <i>WUC</i> be tested.	30.1	Agent	At any time before the expiry of the last defects liability period	31.1	Under AS 2124, such direction could be made at any time prior to the issue of the Final Certificate.

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To direct that <i>WUC</i> not to be covered up before testing.	30.2	Agent	-	31.2	-
To direct when, where and by whom a <i>test</i> shall be carried out.	30.3	Agent	-	31.3	-
To give written notice to the <i>Contractor</i> that the <i>Superintendent</i> proposes to <i>test</i> due to delay by the <i>Contractor</i> in testing.	30.5	Agent	Reasonable	31.5	-
To value the <i>Contractor's</i> cost of testing where the cost of testing is to be borne by the <i>Principal</i> .	30.7	Independent Certifier	-	31.7	AS 4000 has left out 31.8 from AS 2124 which provided for "Access for Testing".
To approve an alteration of working hours or working days.	31	Agent	-	32	-
To provide information, materials, documents or instructions needed by the <i>Contractor</i> .	32	Agent	-	33.2	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To direct in what order or times the various stages or parts of <i>WUC</i> are to be performed.	32	Agent	-	33.2	-
To direct the <i>Contractor</i> to give the <i>Superintendent</i> a <i>construction program</i> .	32	Agent	-	33.2	-
To assess the cost to the <i>Contractor</i> if the <i>Superintendent</i> directs that a <i>construction program</i> be given by the <i>Contractor</i> , when the <i>direction</i> is not due to the <i>Contractor's</i> default.	32	Independent Certifier	-	33.2	This function was not present in AS 2124
To direct the <i>Contractor</i> to suspend <i>WUC</i> or any part thereof.	33.1	Agent	-	34.1	Unlike AS 2124, the Superintendent has discretion (not an obligation) to make such an order where the Superintendent is of the opinion that it is not necessary.
To approve the <i>Contractor</i> suspending <i>WUC</i> or any part thereof.	33.2	Agent	-	34.2	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To direct recommencement of <i>WUC</i> after suspension.	33.3	Agent	As soon as the Superintendent becomes aware that the reason for suspension no longer exists.	34.3	-
To assess the cost of <i>WUC</i> if the <i>Contractor</i> is entitled to more or less cost of the suspension.	33.4	Independent Certifier	-	34.4	In AS 2124, this is treated as a variation.
To determine when assessing an EOT whether the <i>Contractor</i> has taken all reasonable steps to prevent and mitigate delay.	34.4	Independent Certifier	-	35.5	-
To assess an EOT and to give a <i>direction</i> of the EOT so assessed.	34.5	Independent Certifier	-	35 & 36	-
To issue a <i>certificate of practical completion</i> .	34.6	Independent Certifier	Within 14 days of receiving the Contractor's request.	42.5	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To give reasons why <i>practical completion</i> has not been reached if that is the case.	34.6	Independent Certifier	Within 14 days of receiving the Contractor's request.	42.5	-
To issue a <i>certificate of practical completion</i> even if the <i>Contractor</i> has not requested one.	34.6	Independent Certifier	-	42.5	-
To certify any liquidated damages due and payable to the <i>Principal</i> .	34.7	Independent Certifier	-	35.6	Under AS 2124, liquidated damages did not need to be certified. AS 2124 requires the <i>Principal</i> to repay liquidated damages paid or deducted in respect of the period up to and including the new Date for Practical Completion.

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To certify any delay damages due and payable to the <i>Contractor</i> if neither party disputes the <i>Superintendent's</i> assessment.	34.9	Independent Certifier	-	36	AS 2124 requires automatic repayment to the Contractor of such extra costs as are necessarily incurred by the Contractor by reason of the delay; whereas in AS 4000, the Contractor must give the Superintendent a claim for delay damages in respect of a "compensable cause" which are then certified.
To direct rectification of <i>defects</i> .	35	Agent	At any time during the defect liability period.	37	-
To certify the costs of the <i>Principal</i> having defects rectified after default by the <i>Contractor</i> .	35	Independent Certifier	-	-	This function is not present in AS 2124.
To direct a <i>variation</i> .	36.1	Agent	Before the date of Practical Completion.	40.1	As 2124 permitted variations "approved in writing" (in addition to those "directed") by the Superintendent

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To give the <i>Contractor</i> written notice of a proposed <i>variation</i> .	36.2	Agent	-	40.2	-
To certify the <i>Contractor's</i> cost of complying with a <i>direction</i> concerning a proposed <i>variation</i> .	36.2	Independent Certifier	-	-	This function is not present in AS 2124.
To direct a <i>variation</i> for the convenience of the <i>Contractor</i> .	36.3	Agent	-	40.4	-
To impose conditions on a <i>variation</i> in accordance with the stated order of precedence of pricing.	36.4	Independent Certifier	-	40.5	AS 2124 provided for the Superintendent to agree, or failing agreement, for the variation to be valued instead
To reach an opinion of the value of <i>WUC</i> done by the <i>Contractor</i> and to issue a <i>progress certificate</i> .	37.2(a)	Independent Certifier	Within 14 days of receiving a progress claim.	42.1	In AS 2124, this is known as a Payment Certificate.

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To assess retention moneys and moneys due by the <i>Contractor</i> to the <i>Principal</i>	37.2(b)	Independent Certifier	Within 14 days of receiving a progress claim.	42.1	-
To issue a certificate certifying the <i>Superintendent's</i> assessment of retention moneys and moneys due to <i>Principal</i> .	37.2(b)	Independent Certifier	Within 14 days of receiving a progress claim.		-
To issue a <i>progress certificate</i> and a certificate under subclause 37.2(b) if <i>Contractor</i> does not make a progress claim.	37.2	Independent Certifier	-	42.1	-
If the <i>Contractor</i> claims payment for unfixed plant and materials, to be satisfied that they are listed in Item 29, are paid for, properly stored and labelled the <i>Principal's</i> property.	37.3	Agent	-	42.4	As 4000 does not pick up Alternatives 2 and 3.
To certify moneys finally due and payable by either party to the other.	37.4	Independent Certifier	Within 42 days after the expiry of the last defects liability period.	42.8	AS 2124 required the certificate to be issued 14 days after receipt of the final payment claim or 28 days where no claim was lodged.

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of Principal or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To issue a <i>final certificate</i>	37.4	Independent Certifier	Within 42 days after the expiry of the last defects liability period.	42.8	AS 2124 required the certificate to be issued 14 days after receipt of the final payment claim or 28 days where no claim was lodged.
To direct what documentary evidence is to be given by the <i>Contractor</i> to prove payment of the amount due and payable by the <i>Contractor</i> to workers and subcontractors.	38.1	Independent Certifier	-	43	In AS 2124, the Contractor is required, if requested, to give the Superintendent a statutory declaration that all workers employed have moneys due and payable to them.
To keep records of the <i>Principal's</i> cost of completing <i>work</i> taken out of the hands of the <i>Contractor</i> .	39.5	Independent Certifier	-	-	This function does not appear in AS 2124
To assess <i>Principal's</i> cost of completing <i>work</i> taken out of the hands of the <i>Contractor</i> .	39.6	Independent Certifier		44.6	
To certify the moneys due and payable by one party to the other in respect of <i>work</i> taken out of the hands of the <i>Contractor</i> .	39.6	Independent Certifier	When the work has been completed.	44.6	-

Function of Superintendent under AS 4000	Clause in AS 4000	Agent of <i>Principal</i> or Independent Certifier	Time Requirement	Clause in AS 2124:1992	Relevant Significant Differences between the Contracts
To issue a progress certificate for <i>WUC</i> when the <i>Contract</i> has been frustrated.	40	Independent Certifier	-	45	This function is not present in AS 2124
To assess claims or which a <i>prescribed notice</i> has been given by a party in accordance with subclause 41.1	41.3	Independent Certifier	-	46	This function is not present in AS 2124

Table 21: Role of the Superintendent Under AS 4000 & AS 2124 Contracts (Alford, 2008)