

Our Ref: 717-195

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Port Hedland Dust Management Taskforce
Department of Jobs, Tourism, Science and Innovation
Level 6, 1 Adelaide Terrace
EAST PERTH WA 6004

Email: porthedlanddust@jtsi.wa.gov.au

Dear Sir/ Madam,

**SUBMISSION - PORT HEDLAND DUST MANAGEMENT TASKFORCE REPORT TO GOVERNMENT –
RECOMMENDATION 5**

The following submission has been prepared by TPG+Place Match (TPG) town planners on behalf of the Esplanade Port Hedland Hotel Land Pty Ltd (referred to throughout as the Esplanade Hotel) in relation to Recommendation 5 of the Port Hedland Dust Management Taskforce Report to Government (August 2016) (referred to throughout as the Dust Taskforce Report). This is one of two separate submissions prepared by TPG in relation to the proposed recommendations and supplements a separate series of submissions.

We are concerned the current recommendations of the Taskforce Report place the onus on the community of Port Hedland, and the land and business owners of the West End in particular, to bear the majority of costs associated with pollution caused by Port users. If implemented, we believe this would be procedurally inequitable and constitute a miscarriage of natural justice. At present, only one of the seven recommendations places any onus on polluters to control their emissions and there is no recommendation requiring industry ensure or even work towards ensuring 'best-practice' dust control. Instead the recommendations seek to impose town planning restrictions which will further negatively impact on the amenity of the West End and associated property and business values, and place the burden of cleaning up dust caused by Port activities on the Town and its residents and ratepayers, while Port users continue to generate enormous profits.

Recommendation 5 of the Dust Taskforce Report is as follows:

- 5.1 *The Minister for Planning asks the Town of Port Hedland to implement a Special Control Area westwards from McGregor Street as part of its Town Planning Scheme No. 5.*
- 5.2 *The Special Control Area prohibits new permanent residential development and other sensitive land uses, including aged care and child care premises, west of Taplin Street.*
- 5.3 *Low-density (R20) residential development be permitted in the predominantly residential area between Taplin and McGregor Streets, but higher-density residential development and other sensitive land uses be prohibited.*
- 5.4 *The zoning in the Special Control Area aligns with the Town of Port Hedland Local Planning Strategy's Precinct 1, taking into consideration the findings of the Health Risk Assessment.*

We reject Recommendation 5 as:

- It will have a negative impact on the amenity of the West End and would result in an outcome for the area wholly opposite to the vision established in the Town of Port Hedland's Local Planning Strategy, the Pilbara's Port City Growth Plan (2012).
- It unfairly and unreasonably places the negative externalities of the polluters, i.e. the Port users, on the property and business owners of West End, with no reference to any compensation measures.
- It is unlikely to be effective in addressing the actual problem of the health risks associated with exposure to high dust levels which are currently experienced by residents of the West End, and will not in any way address the health risks of those who work in the area.

Each of these points is further elaborated below.

Specific Adverse Effect of Special Control Area

Through the implementation of stringent planning controls in the form of a 'Special Control Area', Recommendation 5 fundamentally seeks to cap and over time reduce the number of permanent residents and other 'sensitive' land uses (such as child and aged care) within the West End.

If the proposed Special Control Area were adopted, it would mean that for some 60 hectares of land to the west of Taplin Street currently zoned 'Town Centre', 'Residential' and 'Commercial' (which all currently allow for residential uses to be developed subject to stringent measures to control dust, including filtration and the like), the only new uses that could be developed would be commercial uses and short stay accommodation. At present, there is negligible demand for new commercial or short stay development in the West End of Port Hedland, and even at periods when demand has been higher, nowhere near this level of demand would exist. This would effectively deny residential land owners and particularly the State Government what would have otherwise been substantial revenue from the sale of their properties, not to mention the ongoing impact on the Town's rate base.

Under the Special Control Area, existing residential uses in the area west of Taplin Street would effectively become 'non-conforming uses'. Under the non-conforming use provisions in the Town's Scheme (clause 7.4.1), in the event that a non-conforming use is discontinued for a period of six months or more, the building is thereafter not to be used for any non-conforming use. This means that, for example, should a rental property remain vacant for more than six months (which would be quite common in the current economic climate) it may not be able to be used for residential purposes thereafter.

It is also important to note that the existing compensation provisions of the Planning and Development Act 2005 are unlikely to be applicable in the case of this Special Control Area, as the Scheme would still allow for the continuation of 'non-conforming' uses as well as for other commercial uses to be approved within the area (notwithstanding that there is currently little demand for these uses). There currently does not appear to be any mechanism by which affected landowners could claim for compensation despite the very significant impact on property prices which would undoubtedly occur by virtue of the imposition of a Special Control Area.

Amenity of the West End of Port Hedland

'Amenity' is defined by the *Planning and Development (Local Planning Scheme) Regulations 2015* as:

"...all those factors which combine to form the character of an area and include the present and likely future amenity."

In other words, it is all the factors that go into a person's enjoyment or experience of a place, and includes the sensory experiences of sight, sound, smell, touch and how one feels about the attractiveness of an area.

The very first objective of the Town of Port Hedland Local Planning Scheme No. 5 (the Scheme) prepared and gazetted by the Minister for Planning pursuant to the *Planning and Development Act 2005* (emphasis added) is to:

*"...encourage an **appropriate balance** between economic and social development, conservation of the natural environment, and improvements in lifestyle and amenity."*

The West End was once, and indeed is still, one of Port Hedland's most desirable assets. It benefits from views over the coastline and ocean, is the commercial 'heart' of the Town and contains many of its heritage listed buildings, including three State Registered Places. The West End is one of the few attractive areas in the Town of Port Hedland and serves as a potential recreational destination for tourists as well as for residents.

The Town of Port Hedland's Local Planning Strategy, the Pilbara's Port City Growth Plan (2012) (the PPCGP) provides the following 'Precinct Statement' for the West End:

"The West End is the Port City's soul – perhaps like Fremantle to Perth, it is a unique and interesting place. It supports growing port activity, yet remains people friendly and accessible. It is busy with day time workers, many of whom leave their offices to enjoy lunch in outdoor cafes and bays. As evening arrives, the West End transforms into a place popular with tourists observing Australia's largest tonnage port and the coastline, while travellers and the wider city population enjoy the many cultural, dining and entertainment activities."

The impacts of dust associated with Port activities has already had a deleterious impact on the amenity of the West End of Port Hedland. Recommendation 5, which seeks to stop any new residential development in the area west of Taplin Street, will worsen this negative amenity impact and is therefore inconsistent with the tone and fundamental objectives of the Town's Scheme and the PPCGP. The above vision for the West End will simply not be able to be achieved without an increasing residential population to support the viability of local business, whereas the proposed Special Control Area will stop any new residential development within the area west of Taplin Street (the 'West End'). During periods of high dust emissions, residents and visitors are often already unable to spend time eating or recreating outdoors in the West End. The area will not be able to be revitalised until dust emissions are reduced.

Dust has already resulted in significant negative amenity impacts on the West End of Port Hedland including:

- The actual unsightly presence of dust build-up on and within buildings, street infrastructure and the like, which puts off residents and tourists from visiting and spending time in the West End.
- Fewer people visiting and living in the West End makes it harder for businesses to remain viable. The West End is already experiencing these impacts; several businesses have recently closed. For example, four of the major banks previously had premises in the West End, now just three remain. The Post Office in Wedge Street will soon be closing and moved to a smaller premise and it is understood the Hospitality Inn will also soon be closing.
- Lack of maintenance and investment - the reduced viability of businesses, the loss in values in the West End and the uncertainty about the area's future, all leads to residents and businesses not investing in maintaining their properties and buildings or in new businesses. The result is unattractive streetscapes, which act as a further disincentive for Hedland's residents and tourists to visit and spend time in the West End.
- Poorly maintained buildings and vacant lots reinforce negative perceptions about the West End and Port Hedland more broadly, and act as a further disincentive for people to visit the area. The falling population in the West End has led to vacant shopfronts, less activity and passive surveillance, producing a ghost town-like effect with the associated poor social outcomes.

- Deliberate decanting of the population by BHP - BHP and associated companies have for several years been acquiring land in the West End of Port Hedland and in many cases demolishing the dwellings and improvements on these properties, sterilising these lots from development¹. For example, of 62 BHP Billiton owned properties in the West End, 40 are now vacant lots. We believe this is evidence of a deliberate strategy to 'decant' the West End of residents to avoid complaints about dust. The reduction in the number of people living in the West End is having ongoing impacts on the vitality and activity of the area, as well as impacting on local businesses.

As a result of these negative amenity impacts, together with the recent downturn in mining employment, there may already be an insufficient residential population within the West End to support the ongoing viability of existing businesses, let alone to facilitate the redevelopment of the area in accordance with the vision in the PPCGP. To achieve the level of activity in the West End as envisaged under the PPCGP and particularly activities and surveillance in the evenings, a residential population is vital, as tourists and visitors alone will not generate this level of demand.

With the exception of the 'Town Centre', the West End is predominately used for residential purposes, suggesting that at present, this constitutes the 'highest and best' use of the land. By stopping the redevelopment (and potentially ongoing use) of land for its highest and best use, and only permitting development for uses for which there is little demand, through the imposition of a Special Control Area, there must be a resulting negative impact on property prices. It is not feasible to assume that the existing residential uses can be replaced with alternative commercial uses; the reality would instead be dust generating vacant properties and increasingly run-down buildings. Falling property prices will in turn sterilise this land from any redevelopment and renewal, reduce investment and further worsen the increasingly negative amenity of the West End.

The imposition of the Special Control Area would also have an adverse impact of the heritage of Port Hedland, one of the oldest port towns in the State. The town of Port Hedland is much older than the iron ore industry which developed in the mid 1960's. The port was initially used by the fledging pearling and pastoral industries and has a rich indigenous history as well¹. The West End contains many of the Town's heritage listed buildings, including three State Registered Places. To ensure heritage buildings are well maintained it is important that they remain in use as far as possible, and maintain the ability to adapt to other uses. Depopulating the West End, and significantly reducing the variety of uses that can be approved within the area, would have a detrimental impact on the heritage of the Town and its listed buildings.

It is clear that it will not be possible to achieve any improvement in amenity in the West End, or the vision established in the PPCGP, until the dust levels associated with Port activities are reduced. The imposition of a Special Control Area as proposed would have an overwhelmingly negative impact of the amenity of the West End, and further reduce the value of property and businesses in the area.

Compensation

Property and business owners have already suffered dust associated operational costs and with it, reduced capital value. To date there has been no compensation paid to local businesses and landowners in the West End to account for the loss of property value attributed to the loss of amenity, or the actual costs incurred and time spent cleaning up dust². The application of a Special Control Area as currently proposed would further reduce the pressure on Port users to reduce emissions, by giving the appearance of having 'addressed' the problem, and unreasonably placing the negative externalities of the polluters on the owners of West End properties, with no requirement for any compensation measures.

In addition to these existing costs, by creating a very large area of land which can only be developed for commercial purposes for which there is little or no demand, there will undoubtedly be a significant reduction in

property and business values within the Special Control Area. The recommendations as they currently stand do not provide any mechanism by which property and business owners are to be compensated for this loss of value. The Dust Taskforce seems to expect the business and property owners of the West End to bear the costs of a situation created by Port users.

As noted above, the existing compensation provisions of the Planning and Development Act 2005 are unlikely to be applicable in the case of this Special Control Area. No mechanism by which affected landowners could claim for compensation has been explored by the Dust Taskforce despite the very significant impact on property prices which would undoubtedly occur by virtue of the imposition of a Special Control Area. Thus, there needs to be some separate compensation mechanism for all land and business owners in the area if the government does elect to implement a Special Control Area.

Actual Benefit of Special Control Area is Questionable

The imposition of a Special Control Area will not in itself reduce the number of residents exposed to the risks associated with high levels of dust in the West End. As existing residential properties will be permitted to remain, there will still be the same number of people exposed to the risk.

The proposed Special Control Area would also do nothing to address the impacts of dust on workers in the West End, many of whom are exposed all day every day for extended periods. Indeed, through making commercial type uses the only permitted uses in the area, the Special Control Area would likely increase the number of affected workers. Various reports³ have confirmed that any increase in dust exposure above a base line level contributes to a greater risk of developing or worsening various respiratory and cardiovascular conditions, and that this risk extends to those working in the area⁴.

The Esplanade Hotel is located in the most dust affected area of the West End facing the Port, and is one of the biggest employers in the area with approximately 40 staff, 10 of whom live on site. Now that they are aware of the risks, businesses are potentially liable to compensation claims from workers.

The Dust Taskforce Report has stated that there are negative health implications associated with exposure to the current high levels of dust. It is not appropriate to say that provided only a relatively small number of people live in the area, the impacts are somehow acceptable. The focus needs to be on reducing dust levels as this is the only mechanism by which the actual health risks to those living and working in the West End will be reduced.

Proposed Alternative Recommendation

The Government faces a clear choice, either:

- Accept Recommendation 5 **but** with a variation to require with appropriate compensation for property and business owners in the West End; OR
- Reject Recommendation 5 and force Port users to mitigate dust and noise emissions to acceptable levels.

We propose the following as an alternative to Recommendation 5:

1. *The Ministers for State Development, Planning and Environment work together to develop a compensation scheme for land and business owners in the West End who have suffered losses as a result of the unacceptable dust and noise impacts caused by the operations of Port users.*
2. *The Ministers for State Development, Planning and Environment work together to develop a compensation scheme for all land and business owners in the West End who will suffer any loss of property value as a result of the proposed Special Control area; OR*

3. *Work with industry and the West End community to develop a workable solution that allows the West End to remain as a functional precinct in Port Hedland while addressing the ongoing health and amenity impacts that have blighted the West End over the past two decades (refer to the Alternate Recommendations 1-7 and New Recommendations A-D as specified in Aurora's Separate submission).*

Conclusion

To create a Special Control Area with the key purpose of prohibiting residential uses goes against the very fundamentals of sound orderly and proper planning principals. Objective 1 of the WAPC's Strategic Plan 2015-2017 is to *'create world-class liveable cities, towns and regions with diverse choices for communities to thrive and prosper'*. Allowing the Port users to continue to pollute and force the 'heart and soul' of Port Hedland to decant, despite the area having been developed well before the iron ore industry came to the Port, directly conflicts with this objective to enhance liveability, diversity and community growth.

The Special Control Area is also in conflict with the Town of Port Hedland's own vision which aims to transform Port Hedland into a vibrant, attractive regional city with a community that is proud to live, work and play in the Pilbara. Eliminating the ability for people to live in the heart of Port Hedland again directly conflicts with the vision for the town.

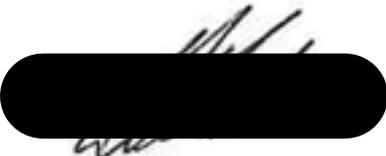
The preservation and enhancement of the amenity of Port Hedland needs to remain at the forefront of future planning in order for Port Hedland to become a regional 'City of the North' as outlined by its adopted Local Planning Strategy. The creation of a Special Control Area aimed at allowing Port users to continue to pollute, and eliminating the ability for the community to live in the area is fundamentally flawed and must be opposed.

We thank the Minister for State Development for the opportunity to comment on the Recommendations put forward by the Dust Taskforce Report, and respectfully request that Recommendation 5 be rejected and replaced by alternative appropriate recommendations to emphasise that industry either reduce the generation of dust and achieve best practice in controlling emissions and/or bear the cost of its own externalities, rather than the Town's occupants, businesses and landowners.

Should you have any queries in relation to the above, please do not hesitate to contact the undersigned on 9289 8300.

Yours sincerely

TPG+PLACE MATCH



David Read
Director

REFERENCES

1. Town of Port Hedland, History, <http://www.porthedland.wa.gov.au/our-town-history.aspx>, retrieved October 2017
2. TPG & EconSearch Pty Ltd, 2017, **Estimates of Adverse Dust-Associated Economic and Social Consequences on the West End of Port Hedland in Western Australia.**
3. Government of Western Australia Department of Health: Environmental Health Directorate, January 2016, **Port Hedland Air Quality Health Risk Assessment for Particulate Matter.** <http://ww2.health.wa.gov.au/~media/Files/Corporate/general%20documents/Environmental%20health/Port%20Hedland%20Health%20Assessment.ashx>, retrieved February 2017
4. Towsey C A, 2017, **The Dust Hazard at the Port Hedland Seafarers' Centre and the Risk to Employees' Health.**