

Hon Matthew Swinbourn MLC  
Chair  
Standing Committee on Environment and Public Affairs  
Legislative Council Committee Office  
18-32 Parliament Place  
WEST PERTH WA 6005

Dear Chair,

### **PETITION No. 128 – DUST EMISSIONS IN PORT HEDLAND**

The Town of Port Hedland thanks the Committee for the opportunity to provide commentary in relation to the matters raised in the aforementioned submission tabled by the Hon Jacqui Boyde MLC in the Legislative Council on 4 September 2019. The Town respects that the correspondence is subject to Parliamentary Privilege and will maintain the records accordingly.

As the Committee is aware, the West End which is in close proximity to the Port of Port Hedland ('the port'), and includes approximately 900 residential properties, the historic town centre, and industrial and mixed business zones, has been subject to dust infiltration from bulk commodity stockpiling and handling to the south and west. The properties were largely constructed at a time when land use planning controls did not exist to address incompatible land uses.

The Port is the largest bulk export port in the world and there are major plans for expansion which will double the shipping capacity for the port and introduce further industry diversification.

Land use planning controls in response to Recommendation 5 of the Dust Taskforce Report (2016) sit within the legislative responsibility of the Western Australian Planning Commission ('WAPC') pursuant to the State Government requesting the WAPC prepare an Improvement Plan and Improvement Scheme for the West End (October 2018). Part 8 of the *Planning and Development Act 2005* gives very broad powers to the WAPC, with the endorsement of the Governor, to determine land management and controls within an area covered by an Improvement Scheme.

Under statute, the WAPC is only required to consult with the affected local government in the making of an Improvement Plan that authorises the making of an Improvement Scheme. Draft Improvement Plan 50 (IP50) was released by the WAPC in May 2019, subsequently agreed to by the WAPC, Minister for Planning and the Governor's delegate, and gazetted in June 2019, paving the way for the development of an Improvement

Scheme under the *Planning and Development Act 2005* ('PD Act').<sup>1</sup> There are community consultation requirements under the PD Act for the Scheme.

IP50 includes the following stated purposes:

- enable the WAPC to undertake all necessary steps to advance the planning and development within the plan area as provided for under Part 8 of the PD Act;
- establish the strategic planning and development intent within the subject area;
- provide for a strategic planning framework endorsed by the WAPC, Minister for Planning and the Governor;
- authorise the preparation of an Improvement Scheme;
- provide the objectives of an Improvement Scheme; and
- provide guidance to the preparation of statutory plans, statutory referral documentation and policy instruments.

The objectives of the Improvement Scheme enabled by IP50 are:

- to provide a strategic planning framework to determine future land uses considering all land use options that takes into consideration physical, economic, social and environmental factors;
- to provide a statutory planning instrument through which to implement the strategic planning framework and effectively guide the preparation of statutory plans, statutory referral documentation and policy (as may be required) to facilitate orderly and proper planning of the area; and
- to implement the Government response to the Port Hedland Dust Management Taskforce Report to Government to prohibit sensitive land use and restrict population growth in the West End of Port Hedland.

Council supported draft IP50<sup>2</sup> as the mechanism to resolve land use planning conflicts, also recommending that the WAPC allocate sufficient resources towards community and stakeholder engagement associated with the formulation of an Improvement Scheme, with engagement extending beyond the minimum requirements of the PD Act.

Once gazetted, the Improvement Scheme will replace the *Town of Port Hedland Local Planning Scheme No. 5* and the WAPC will become responsible for determining land use planning matters in the Improvement Scheme area, including Development Applications (unless delegated by the WAPC to Council). It takes approximately 18-24 months between approval of the draft Improvement Plan and the proclamation of the Improvement Scheme by the Governor. The Improvement Scheme boundaries include the entire West End of Port Hedland, depicted in the map accompanying the Improvement Plan (see Attachment A).

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<sup>1</sup> Government of Western Australia, Western Australian Planning Commission, Improvement Plan 50 Port Hedland. Available at: <https://www.dplh.wa.gov.au/information-and-services/district-and-regional-planning/improvement-plans-and-schemes/port-hedland-west-end>

<sup>2</sup> Considered 29 May 2019 and endorsed 28 August 2019.

Clauses 5.2.6 – 5.2.8 of the *Town of Port Hedland Local Planning Scheme No.05* implemented pursuant to Amendment 22, approved by the WAPC and gazetted on 27 April 2012, includes planning controls for the West End (see **Attachment B**). The Scheme Amendment was underpinned by an Environmental Review Report prepared under the direction of the Environmental Protection Authority ('EPA'). The report was required to consider suitable and permitted land uses; residential density, dwelling type and design criteria for future dwellings, within the area covered by Amendment 22, to meet dust levels recommended by Port Hedland Dust Taskforce's *Port Hedland Air Quality Noise Management Plan* (2009).

The subsequent planning controls implemented within the Local Planning Scheme include in brief, minimum and maximum density codes, maximum dwelling size, number of bedrooms, limits on lot development for a single dwelling, and building design requirements within the area bounded by Withnell, McKay and Anderson Streets, and the Esplanade. Design requirements included filtration of incoming air, specific orientation for operable doors and windows and associated deflection screens, use of eaves, building orientation to avoid wind tunnelling effects, and protective screens and porticos at building entrances to address wind effects. Following gazettal of Amendment 22, the Town increased conditions on development, requiring all Development Applications in the West End involving residential and sensitive land uses to be accompanied by a Dust Management Plan or design features that mitigate infiltration of dust into dwellings. Prior to the gazettal of the Improvement Scheme, the Town will give consideration to emerging elements of the Improvement Scheme in its consideration of Development Applications.

Under the *Environmental Protection (Unauthorised Discharges) Regulations 2004*, a person who, in the course of, or in connection with, a business or commercial activity causes or allows dust to be discharged into the environment commits an offence. The Town's *Health Local Law 2016*<sup>3</sup> requires owners to undertake all reasonable steps to stabilise dust (and contain all liquid waste on land). The *Health Local Law 2016*, strengthened an earlier Local Law for dust management, in response to the Department of Health's ('DoH') air quality risk assessment report (referenced below).<sup>4</sup> A Dust Management Plan may be required to ensure that adverse effects on health and public nuisance caused by dust are minimised as far as is reasonably practical. The Town has been vigilant in enforcing this Local Law.

For the Committee's information, as part of the Government's response to the Taskforce Report, the Department of Water and Environmental Regulation (DWER) will assume

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<sup>3</sup> Town of Port Hedland, *Health Local Law 2016*. Available at:

[https://www.porthedland.wa.gov.au/Profiles/porthedland/Assets/ClientData/Document-Centre/Public\\_Documents/Local\\_Laws/20161013GazettedHealthLocalLaw2016.pdf](https://www.porthedland.wa.gov.au/Profiles/porthedland/Assets/ClientData/Document-Centre/Public_Documents/Local_Laws/20161013GazettedHealthLocalLaw2016.pdf)

<sup>4</sup> Government of Western Australia, Department of Jobs, Tourism, Science and Innovation, *Port Hedland Dust Management Taskforce Report – Government Response*, Available at: <https://www.itsi.wa.gov.au/economic-development/economy/port-hedland-dust/port-hedland-dust-management-taskforce-report-government-response>

responsibility from the Port Hedland Industries Council for operation and maintenance of the air quality monitoring network. A DWER factsheet provides information on the roadmap for realising specific recommendations of that report ([https://www.der.wa.gov.au/images/documents/our-work/community-updates/port-hedland/DWER\\_DOH\\_Fact\\_Sheet\\_-\\_Port\\_Hedland\\_air\\_quality.pdf](https://www.der.wa.gov.au/images/documents/our-work/community-updates/port-hedland/DWER_DOH_Fact_Sheet_-_Port_Hedland_air_quality.pdf))

One of the difficulties for dust management for the Town of Port Hedland has been the ability to determine the actual origins of dust Contaminants of Concern. This was not clear in the report prepared by DoH, *Port Hedland Air Quality Risk Assessment for Particulate Report* (2016). This has restricted the Town's capacity to target individual businesses or locations for dust management (except pursuant to complaints under *Health Local Law 2016*), requiring the broader application of controls for the West End. For this reason, and on consideration of the DoH report, the Town requested government undertake further air quality assessments in the West End, increase regulatory scrutiny of activities licensed under the *Environmental Protection Act 1986* within Port Hedland, and convene a public information day with key agencies.

Activities undertaken in response to Recommendation 6 of the Port Hedland Dust Taskforce Report to government 2016 (released August 2017 for public consultation) have included:

***Identifying and implementing dust mitigation options for the Spoilbank***

As part of the State Government funded Spoilbank Marina project, the Town has been working with the Department of Transport to incorporate appropriate landscape treatment options for the area.

***Sealing unsealed roads and undertaking regular and effective street sweeping operations***

In 2018, the first 70 metres of Spoilbank Road was sealed to minimise dust impacts on nearby Sutherland Street. The remainder of the road is graded quarterly. Subject to various approvals and associated funding, the Spoilbank Road will likely be sealed as part of the Spoilbank Marina project which will have a significant impact on dust levels. As part of the demolition works on the old hospital site, located opposite the Spoilbank Marina site, the State Government contractors were required to spray the site with Polymer, as a long-term control/mitigation measure for dust.

Six Mile, which is external to the West End, has been sheeted and Shota Road in South Hedland is currently subject to a tender process for sealing. The Town currently manages 448km of unsealed roads. There are many more unsealed roads within the Town of Port Hedland municipal boundaries which are managed by mining operators under *Mining Act 1978* tenure, administered by the Department of Mines, Industry Regulation and Safety.

***Considering greening options, including coastal dune revegetation and the establishment of a green belt around the port***

The Town has been working with BHP to review options to install landscape treatment options along Anderson Street from Lions Park to Short Street (the majority of associated land is privately owned by BHP) in the West End. BHP is working collaboratively with Greening Australia to establish which plants will survive in the context of Port Hedland's

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climatic conditions and State water restrictions on potable water supply. Non-potable water access is not available in the West End.

Significant sections of the coastline were impacted by coastal inundation from Cyclone Veronica and works are ongoing.

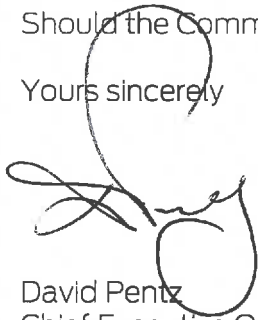
***Reviewing and improving the efficacy of municipal services associated with dust control***

The Town currently employs two full time staff to 'sanitise' public open space due to dust, including high pressure hosing of playground equipment; public/street furniture; shade structures; hardstand areas, footpaths and brick paving; fencing and signage and barbeque areas. The schedule of works is undertaken in Port Hedland (including the West End) three days one week and two days the alternate week. BHP also use a private contractor to undertake dust management works.

In September 2019, the State Government appointed Mr Ross Love to lead a consultation process, and advise on terms, for an industry-funded voluntary buy-back scheme in the West End. The Town supports this approach as well as the development of an Improvement Scheme for the area.

Should the Committee require further information, please contact me

Yours sincerely



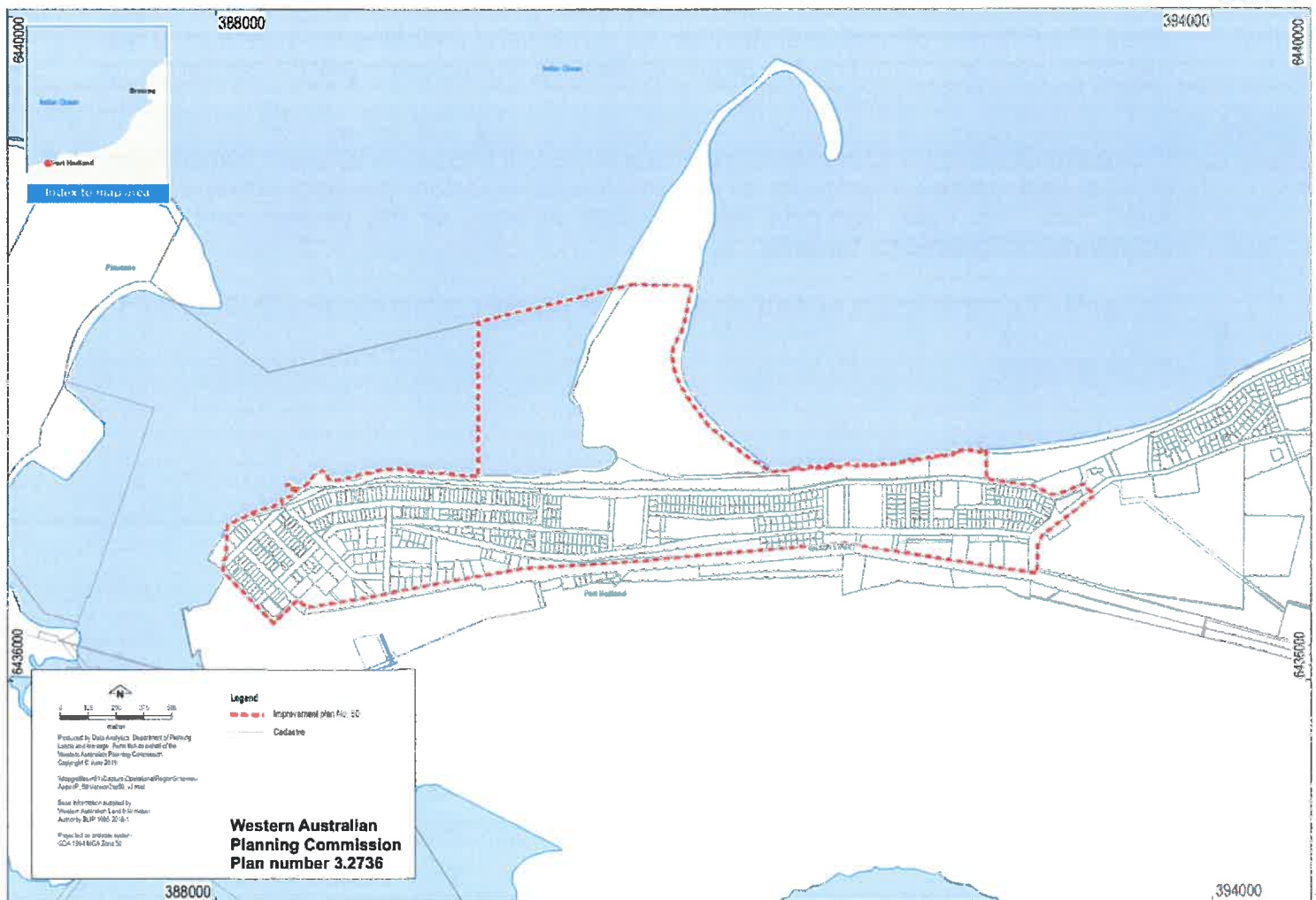
David Pentz  
Chief Executive Officer

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**Attachment A – Area to which  
the Improvement Scheme may**



**Improvement Plan No. 50 Port Hedland West End**

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## Attachment B – Scheme Text – West End

### West End Residential

AMD 22 GG 27/04/12; AMD 79 GG 18/08/17

- 5.2.6 The purpose of the West End Residential Zone is to establish a residential zone in which dwellings are designed and constructed in such a way as to discourage occupation by families with children or by elderly persons.
- 5.2.7 Residential development within the West End Residential Zone and within the area bounded by Withnell, McKay and Anderson Streets, and The Esplanade, Port Hedland shall be in accordance with a local planning policy, and/or structure plan that incorporates building design and performance standards to reduce exposure to dust, and to include but not necessarily be limited to –
- a) filtration of incoming air into the building designed to utilise coarse disposable pre-filtration (i.e. G3 or G4 rated) and then a finer filter (i.e. F4 rated);
  - b) location of operable windows and doors on the western and southern building facades only;
  - c) use of deflection screens on the northern and eastern edges of operable windows;
  - d) use of eaves;
  - e) orienting buildings to avoid wind tunnelling effects; and
  - f) protective screens and porticos at building entrances to reduce the direct impact of wind onto the opening.
- 5.2.8 Notwithstanding anything contained within the R-Codes, all residential development in the West End Residential Zone shall comply with the following –
- a) Residential development must be between a minimum yield equivalent to the R30 density and a maximum yield equivalent to the R80 density for all land and/or any individual lot included within an application for development approval.
  - b) Residential Development on Lot 452 Morgans Street shall be permissible to a yield equivalent to the R160 density. AMD 62  
GG 24/01/14
  - c) The maximum internal floor area for all dwellings is 110 m<sup>2</sup>.

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d) No dwelling shall have greater than two (2) bedrooms or rooms capable of being used as bedrooms.

5.2.9 When considering an application for development approval within the West End Residential Zone, the local government shall consider the purpose of the zone and recommendations of any formal risk study undertaken by or endorsed by the Department of Health.

5.2.10 Notwithstanding any R-Code provision, the local government shall not recommend approval for the creation of lots that are less than 600 m<sup>2</sup> unless the lots are already developed or it is demonstrated that the lots may be developed for grouped or multiple dwellings.

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