

CONFIDENTIAL



REPORT FOR:	Special Council		
MEETING DATE:	8 August 2011		
REPORT FROM:	City Manager		
REPORT TITLE:	Winninowie Project		
FILE NAME:	F11/3902	RECORD NO:	AR11/15650

STRATEGIC PLAN SUB GOAL/S
3.1 Economic growth for long-term benefit.
4.1 Sustainable and effective maintenance, management and enhancement of the City's existing infrastructure assets.
4.2 Plans for the provision of additional infrastructure to meet the needs of our growing community.
6.2 Optimise the use & management of the council's financial & physical resources.

PURPOSE

To seek Council's decision on a proposal to rezone land to provide for the development of an intermodal facility at Winninowie and to have the required Development Plan Amendment funded by the proponent of the development.

RECOMMENDATION

Council:

1. Receives and notes the report (AR11/15650) dated 28 July 2011, submitted by the City Manager concerning "Winninowie Project".
2. Approves the Statement of Intent as in Appendix 1 to this report and seeks the concurrence of the Minister for Urban Development.
3. Agrees to enter into the Memorandum of Understanding as included in Appendix 2 to this report which authorises the proponent of the rezoning to fund the preparation of the Development Plan Amendment to rezone land at Winninowie in accordance with the Statement of Intent in Appendix 1 to this report.

BACKGROUND

Mr Nathan Mahoney and his consultant Michael Osborn of Connor Holmes presented information to Council on 25 May 2011 in regard to the development of an intermodal facility at Winninowie. He has now formally submitted that proposal for Council's consideration.

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The Council resolution on that item is as follows:

**“CONFIDENTIAL
ORDER –
PRESENTATION ON
PROPOSED
INTERMODAL
FACILITY -
WINNINOWIE
(F11/3902)**

Cr Benbow advised that he is an employee of the Rail Industry (EDI Rail) and sought clarification on the nature of the presentation to assess whether he had a conflict of interest. The City Manager advised that the matter being discussed related primarily to the location of an intermodal facility that would benefit the freight industry involving a range of trucking and rail companies and re-zoning of the proposed site.

*Crs McLean/Johnson that **Council:***

- 1. Orders (pursuant to the provisions of Section 90(2) of the Local Government Act 1999), that the public, with the exception of the following Council Staff – City Manager Mr G Perkin & Executive Assistant Ms M Jenkins, be excluded from attendance at the meeting to hear a presentation by a Connor Holmes representative and others concerning a Winninowie Proposal.*
- 2. Is satisfied that, pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or consideration in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.*
- 3. Is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information may result in a competitor receiving the information to the detriment of the developer.*
- 4. That having received the presentation in confidence under Section 90(2) & 3(d) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the presentation, discussions and minutes concerning “Presentation on Winninowie Proposal” be retained in confidence **until the lodgement of a formal development application**, and that this order be reviewed every 12 months (if the confidentiality period is longer than 12 months in duration).*

CARRIED

An introduction to Members was provided by Michael Osborn (Director - Connor Holmes), Nathan Mahoney (Proponent) and Rocco Emanuelle (Jones Lang Lasalle Real Estate).

Michael Osborn advised that Connor Holmes (as town planning and development advisors) has been engaged by Nathan Mahoney to develop an Intermodal Facility Concept at Winninowie.

A PowerPoint presentation was provided by Michael and is attached to the Minutes.

In closing Michael Osborn spoke in support of Nathan Mahoney’s persistence and determination over the past 6 years in regard to this project and encouraged the support of Council in liaison and progressing the project to fruition. He also asked whether they could be kept abreast of any other possible intermodal related investigations and developments which could have ramifications on their concept.

Members congratulated Nathan Mahoney on his foresight and advised of their support for the development.

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The presenters left the meeting at 8:02pm.

The City Manager advised that a report on the project would be submitted to Council for consideration."

DISCUSSION

The Council's Strategic Plan identifies as a key strategy the following:

4.2.6 Investigate the provision of an intermodal transport facility that supports access to rail, road and air.

Council has also recently supported a study to identify the future urban uses for the Spencer Junction should the junction be able to be relocated.

In light of these two directions it is appropriate to support the proposal by Mr Mahoney and enable investigations to be undertaken into the development of an intermodal facility at Winnowic which could be the catalyst needed to relocate Spencer Junction functions outside of the township area.

Council is unable to fund the preparation of the Development Plan Amendment and the proposal that Mr Mahoney fund this work is therefore worth considering. It is considered that the particular location for the proposed rezoning makes sense from a planning viewpoint because it is adjacent the main north/south, east/west railway and national highway system.

CONFIDENTIALITY PROVISIONS

Pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.

Is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information may result in a competitor receiving the information to the detriment of the developer.

In this regard **it is recommended** the matter be retained in confidence until public notification of the Development Plan Amendment.

RISK MANAGEMENT

1: Financial/Budget

There should be no impact on Council's budget in light of the MOU requiring Mr Mahoney to pay Council's outgoings for its role in this process.

2: Legal

Council is the body presenting the DPA to the Minister as required by the Development Act but is allowing the proponent to fund the preparation of the DPA. The MOU ensures that Council, in addition to oversight of the DPA by the City Manager who holds prescribed qualifications as required by the Development Act, will be funded to engage a suitably qualified person independent of Council and the applicant to verify the appropriateness of the DPA.

3: Environment

Environmental issues will be addressed by the DPA.

4: Community

4.1 General

The community will be consulted during the DPA process.

4.2 OPAL Program

N/A

GREG PERKIN

28/07/2011

APPENDIX 1

Port Augusta (City) Development Plan

**Winninowie Industrial Development
Plan Amendment**

July 2011

By the City of Port Augusta

Pursuant to section 25 (1) of the *Development Act 1993* this Statement of Intent forms the agreed basis for the preparation of the proposed Development Plan Amendment.

Greg Perkin
CITY MANAGER

Date:

John Rau
MINISTER FOR URBAN DEVELOPMENT, PLANNING
AND THE CITY OF ADELAIDE

Date:

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1 Introduction

1.1 STATEMENT OF INTENT

This Statement of Intent (SOI) has been prepared as an agreement between the City of Port Augusta and the Minister for Urban Development and Planning. The SOI:

- describes why the Development Plan Amendment (DPA) is needed and what is being proposed;
- confirms the relevant strategic and policy considerations that will be addressed through the DPA;
- identifies the council-wide policies in the Development Plan and related policies that will be considered through the DPA;
- outlines the nature of the intended investigations and who will be consulted on the DPA;
- outlines the DPA's proposed consultation process and timetable;
- gives assurance that the documentation standards in the DPA will be produced in accordance with the relevant guides produced by the Department of Planning and Local Government.

1.2 CHIEF EXECUTIVE STATEMENT

The Chief Executive Officer of the Council confirms the following:

- The proposed DPA will assist in implementing the Planning Strategy.
- The proposed DPA has been endorsed by Council.
- All procedures, documentation and mapping will accord with relevant statutory requirements of the Act and Regulations.
- Sufficient Council resources will be devoted to completing the DPA within the agreed timeframe. Council acknowledges that the Minister can lapse the DPA if key timeframes are not met by Council pursuant to section 25(19) of the Act.
- Council may use the outcome of investigations and other information produced by external sources which will be reviewed by a qualified, independent professional advisor (pursuant to section 25(4) of the Act).

1.2.1 Council Contact Person

The key council contact person who will be responsible for managing the DPA process and who will receive all official documents relating to the DPA is Mr Greg Perkin, City Manager, City of Port Augusta.

1.2.2 Developer Funded DPA

Pursuant to a Memorandum of Understanding entered into between the City of Port Augusta (“ Council”), and Mr Nathan Mahoney, Mr Mahoney has agreed to prepare material in a form and containing content for presentation to Council that enables that material to be considered by Council and, if considered appropriate by Council, to be adopted by Council as a draft DPA . The material to be prepared on behalf of Mr Mahoney for the consideration of Council will have regard to the Far North Region Plan and the Port Augusta Structure Plan.

2 Scope of the Proposed DPA

2.1 NEED FOR THE AMENDMENT

2.1.1 Rationale

The Port Augusta Structure Plan and the Far North Region Plan identify the need for an intermodal facility in the Port Augusta region. Intermodal facilities have been identified as key to increasing transport efficiency.

Port Augusta is a strategically significant location in respect to the national transport network. It has always been recognised as the 'Crossroads of Australia', being the key crossing point for the north-south and east-west transport network, particularly in respect to road and rail.

As the Australian population and economy grows, there will be an increasing demand for freight infrastructure. Freight movements to and from the key growth areas of Western Australia and the Northern Territory will mean that Port Augusta will continue to play a central role in the national transport network.

In addition to interstate development and growth, the planned expansion of Olympic Dam is a development of national and indeed international significance. The increased movement of goods by road and rail is just one consequence.

An increasing Defence presence in the region has further potential to drive demand in respect to infrastructure, with the Defence corridor between Adelaide, Cultana and Darwin a strategically significant location.

In addition to Olympic Dam and Defence, there are several other developments established or planned on Eyre Peninsula or in the Far North which are likely to further fuel demand for intermodal facilities.

The Far North Region Plan, released in July 2010 outlined the following infrastructure and service implications:

'Consider a private sector intermodal facility at Port Augusta as part of a statewide intermodal strategy to improve efficiency of freight movement'.

This need is emphasised by the fact that the Far North Region:

'generates the largest interstate freight movement outside of Adelaide, with an estimated 40 percent of interstate freight moving through the region. Increased mining and defence activities will see both volumes of freight and the size of vehicles grow substantially'.

Whilst historically Port Augusta has served the transport industry well, much of the infrastructure is dated and not designed to accommodate modern transport logistics.

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2 Scope of the Proposed DPA

Potential exists to establish new infrastructure which significantly increases the efficiency of transport logistics. In addition, much of the key infrastructure (ie Spencer Junction) is located in the central portion of Port Augusta, impacting upon the amenity and function of the town.

Winninowie has been identified as a prospective site for an integrated transport hub which would include amongst other things an intermodal facility, warehousing, transport network servicing and supporting facilities and services for a range of industries. The site is located approximately 17 kilometres south of Port Augusta township. The sites unique advantages include:

- **transit** - Winninowie sits astride Highway 1, Main North Road (route to Sydney) and the Adelaide to Darwin rail, conferring unmatched opportunities for intermodal terminal within a greenfield site;
- **low environmental constraints** – Winninowie is unconstrained environmentally;
- **no interface issues** – Winninowie is essentially an isolated site with no interface with any existing or likely sensitive uses;
- **consolidated control** – the proponents of the DPA have ownership over the significant majority of the site, and is in the process of negotiating to secure the balance of the land, presenting Council and government with a singular “investment-ready” focus for planning and coordinating a new integrated transport hub and intermodal facility;
- **critical mass** – the scope of growth potential at Winninowie is such that the proposed intermodal can be sized to achieve critical mass in terms of service economies and key infrastructure thresholds; and
- **flexibility** –the intermodal at Winninowie can be “scaled up” if required.

2.1.2 Affected Area

The Area Affected is identified in the Area Affected Plan which follows.

The zoning of the Area Affected is Primary Industry, which does not facilitate the development of intermodal facilities and as such the DPA process is required.



2.1.3 Potential Issues

Potential issues associated with the subject land which will require further investigation include:

- road access;
- rail access;
- intersection capacity;
- vegetation/biodiversity.

3 Strategic and Policy Considerations

3.1 THE PLANNING STRATEGY

3.1.1 Principles

The DPA will support Far North Region Plan by responding to the following Principles.

Principle	How the principle will be implemented:
Far North Region Plan	
Principle 7 Protect and build upon the regions strategic infrastructure	The proposed industrial facility is predicated on its proximity to national road and rail networks. The proposal will utilise and build upon this existing infrastructure and introduce new investment to increase the efficiency of freight movement
Principle 8 Provide and protect serviced and well sited industrial land to meet the projected demand	The proposal is consistent with the intent of this principle, with the DPA the required mechanism to rezone land required to support the strategically significant transport sector.

3.1.2 Policies

The DPA will support Far North Region Plan by responding to the following policies.

Policy	How the policy will be implemented:
Far North Region Plan	
Policy 7.1 Cluster and provide for the future expansion of, production, processing and storage activities in strategic locations such as key freight transport nodes to maximise efficiencies	The Area Affected is a large and relatively unconstrained land parcel which could ultimately accommodate a full size intermodal terminal together with ancillary maintenance, storage and service facilities.
Policy 7.8 Protect the transport functionality of road and rail corridors through planning policy in Development Plans	The DPA is a process which can reinforce such policy outcomes.

Policy	How the policy will be implemented:
<p>Policy 8.1</p> <p>Provide a supply of well sited and serviced industrial land in Port Augusta, Coober Pedy, Roxby Downs, Andamooka and Quorn, and encourage the clustering of related industries</p>	<p>The Area Affected is within the Port Augusta City boundaries but is removed from the Port Augusta township and as such does not have any existing or future interface issues or constraints. At the same time the Area Affected is easily accessed from Port Augusta.</p> <p>The Area Affected is of a sufficient size to allow the incremental growth of development and ancillary activities as demand requires.</p>
<p>Policy 8.3</p> <p>Site and locate industrial land to ensure:</p> <ul style="list-style-type: none"> - management of interfaces with residential areas and protection from encroachment - provision for future expansion - accordance with the EPA policies, codes of practice and guidelines - an efficient road freight network that minimises the impacts of freight movements on neighbouring areas access to energy and water 	<p>The Area Affected is well removed from any existing or likely future residential area. It is of a size which would enable future expansion and growth if required. Critically, it will potentially enable the redirection of much of the freight movements within the existing township of Port Augusta, and ultimately could lead to reduced reliance upon Spencer Junction, and potentially reduce freight over the Port Augusta Bridge.</p>

3.2 COUNCIL POLICIES

3.2.1 Council's Strategic Directions (Section 30) Report

The DPA will consider, review and have regard to Council's *Strategic Plan 2008/2011*. It is however important to note that some of the policies contained within the Strategic Plan have been superseded, primarily due to the release of the Port Augusta Structure Plan and the Far North Region Plan. The following general policies will be considered as part of the DPA process:

Goal Area 3: Economic Development

Sub Goal 3.1: Economic Growth for Long Term Benefit

Performance Objectives

a. Increased building activity

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- b. *Measurable economic growth*
- c. *Numbers of successful development proposals*
- d. *Improved employment growth*

Key Strategies

- 3.1.1 *Undertake a review of Council's Development Plan to facilitate the planned future growth of the City*
- 3.1.2 *Facilitate appropriate developments by negotiating sustainable investment for the benefit of the City*

Goal Area 4: Infrastructure and Asset Management

Sub Goal 4.2: Plan for the provision of additional infrastructure to meet the growing needs of our growing city.

Performance Objectives

- c. *Development Plan updated*
- f. *Business case developed for various projects*

Key Strategies

- 4.2.6 *Investigate the provision of an intermodal facility that supports access by rail, road and air.*

3.2.2 Infrastructure Planning

The proposed amendment will be consistent with current infrastructure planning (both social and physical) identified in council's strategic directions report, by the Minister or by a relevant government agency.

In particular, this DPA will have regard to the following infrastructure policy frameworks:

- State Infrastructure Plan for SA

3.2.3 Other Policies or Local Issues

The policies of this DPA will be consistent with the policies in:

- The Council-wide section of the Development Plan
- Council current DPAs
 - Regional Town Centre DPA
 - Port Augusta West DPA

- The Development Plans of adjoining areas
 - District Council of Mount Remarkable;
 - City of Whyalla;
 - Flinders Ranges Council
- Schedule 4 of the Regulations

It is anticipated that appropriate forms of complying development will be considered at the new zone level.

3.3 MINISTER'S POLICIES

3.3.1 Planning Policy Library

The BDP State Planning Policy Library (State Planning Policy Library) promotes greater certainty for the community and proponents by incorporating standardised policies, terminology and expression.

The DPA will include the use of:

- definitions as provided in the Development Act and Regulations.
- dictionary definitions and/or clear policy expression (where no legal definition exists).

Any proposed changes to the Council Wide (General) or Zone policies will be in accordance with the BDP Planning Policy Library (State Planning Policy Library) – any variations will be subject to the requirements of the Statement of Investigations.

The DPA will include consideration of the following Zone/Policy Area BDP State Policy Library module(s):

- the Industry Zone policy module
- the Commercial Zone policy module
- other policy Modules as may be provided by DPLG following its review.

Variations to the modules may be sought in the interests of achieving a concise and flexible planning outcome.

3.3.2 Existing Ministerial Policies (Section 25(5), 26 and Section 29)

Any amendment to current policies will be justified in the DPA and Council confirms that the policies will only be changed in a way that ensures consistency with the Planning Strategy.

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Council will source the current (and potentially soon to be updated) version of the Planning Policy Library to review and update the Development Plan. Any additional policy will be identified as a local addition and will be shown in green text.

3.3.3 Ministerial DPAs

The DPA will ensure that consistency is achieved, and that repetition, ambiguity and conflict are avoided in regard to the policies contained in current Ministerial DPAs:

- There are no current Ministerial DPA's applicable to the Area Affected.

4 Investigations and Consultation

4.1 INVESTIGATIONS

4.1.1 Investigations Previously Undertaken

Investigations previously undertaken (prior to the preparation of this SOI) that will inform this DPA include:

- Port Augusta Structure Plan;
- Far North Region Plan;
- City of Port Augusta – Strategic Plan 2008-2011;
- City of Port Augusta Section 30 review;
- National Intermodal Terminal Study, Meyrick & Associates, February 2006;
- The Future of Freight 2005, Australasian Railway Association;
- The Freight Industry in South Australia, DTEI;
- Road and Rail Freight: Competitors or complements, Department of Infrastructure, Transport, Regional Development and Local Government;
- Mayors Task Force – Strategic Overview of key freight issues facing Port Augusta, Scott Mckay, SCM Advisory, August 2008;
- Australian Rail Freight Performance Indicators 2007-08, Department of Infrastructure, Transport, Regional Development and Local Government
- Contribution of Transport and Logistics to the Economy, Australian Logistics Council, 2007.

4.1.2 Investigations Initiated to Inform this DPA

Additional investigations (including those arising from issues not addressed in the Planning Policy Modules) to inform the DPA will include the following:

- A review of the extent to which current zone complements the Far North Region Plan;
- A review of the extent to which current zone complements the Port Augusta Structure Plan;
- identify the capability of the Area Affected to support an intermodal facility together with allied activities including but not limited to refuelling and servicing facilities, warehousing, storage;
- determine at a high level the technical and operational issues associated with the development of an intermodal facility within the Area Affected, including necessary technical capability and capacity;
- identify support infrastructure recommended to complement an intermodal facility;

- review the opportunities and constraints of the Area Affected such as:
 - Aboriginal heritage;
 - site constraints;
 - existing character assessment;
 - desired future character analysis;
 - freight trends and projections;
 - business development opportunities;
 - servicing capacity and implications;
 - road and traffic network and implications;
 - rail network;
 - heritage considerations;
 - environmental considerations;
 - interface issues

4.2 CONSULTATION

Consultation with the following agencies is intended to be undertaken:

- Auditor General's Department
- Department for Environment and Natural Resources
 - Natural & Cultural Heritage Environmental Information
 - Urban Forest – Million Trees Program
 - Zero Waste SA
- Department of Health
- Department of Justice
 - Attorney General's Department
 - South Australia Police
 - State Emergency Service
 - SAFECOM
 - SA Metropolitan Fire Service
 - SA County Fire Service
- Department of Trade and Economic Development
 - Industry Strategy and Liaison
 - Economic Analysis and Policy
 - Strategic Projects
 - Business Development Services

- Corporate Services
- Population and Migration
- Department of Treasury and Finance
- Department of Water, Land and Biodiversity Conservation
 - Natural Resources Management
- Department for Transport, Energy and Infrastructure
 - Public Transport Division
 - Transport Services Division
 - Transport Planning Division
 - Office of Major Projects and Infrastructure
- Department of Planning and Local Government
- Primary Industries and Resources SA
 - Agriculture, Food and Fisheries Division
 - Minerals and Energy Resources
- Department of the Premier and Cabinet
 - Agent – General for SA
 - Cabinet Office
 - Office for Recreation and Sport
 - Safework SA
 - Sustainability and Climate change
 - Arts SA
 - Aboriginal Affairs and Reconciliation Division
- South Australian Tourism Commission
- SA Water
- ETSA Utilities
- Environment Protection Authority

Council will provide those agencies that make comments with a summary of their comments and council's response to them.

Consultation will also be undertaken with the following State Members of Parliament:

- Ms Lynette Breuer, Member for Giles;
- Mr Dan van Holst Pelikaan, Member for Stuart
- Mr Geoff Brock, Member for Frome

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Consultation will also be undertaken with the following Federal Member of Parliament:

- Mr Rowan Ramsey, Member for Grey

In addition to these statutory requirements, the Council will invite the following organisations to make comment on the DPA:

- Australian Rail Track Corporation;
- South Australian Freight Council
- City of Whyalla;
- District Council of Mt Remarkable
- Flinders Ranges Council
- Outback Community Authority
- Municipal Council of Roxby Downs
- Conservation Council of South Australia
- Local Government Association
- Telstra
- Electranet
- Origin Energy
- EPIC Energy
- Property Council of Australia
- Urban Development Institute of Australia
- Retail Traders Association of SA
- State Retailers Association of SA
- Housing Industry Association
- Master Builders Association
- (Regional Development Australia) – Far North

Council considers that the community of interest is likely to be:

- Existing landowners within the vicinity of the Area Affected
- Local retailers/traders

Council will ensure that the community can access the DPA document during the consultation period in the following manner and locations:

- an electronic copy of the DPA will be available on Council's website at all times during the consultation period
- hard copies of the DPA will be available at:

Principal Office

4 Mackay Street
Port Augusta SA 5700
9am to 5pm, Monday to Friday

Council will respond to public submissions by sending acknowledgement letters to individuals who lodge submissions, informing of the public hearing.

Council will ensure that copies of submissions will be able to be accessed between the end of the public consultation period and the public meeting at the Council Principal office.

Council will schedule a Public Meeting at which any interested person may appear to make representations on the proposed amendment.

5 Proposed DPA Process

5.1 DPA PROCESS

Council intends to undertake the following DPA process:

Process A

Agencies will be consulted on a draft version of the DPA for a period of 6 weeks. A copy of the DPA, and copies and a summary of agency submissions, will then be sent to the Minister for approval to release the DPA for public consultation.

Process B1 (with consultation approval)

A copy of the DPA will be sent to the Minister for approval to release it for concurrent agency and public consultation (6 weeks for agency comment and not less than 8 weeks for public comment).

Process B2 (consultation approval not required)

A copy of the DPA will be released for concurrent agency and public consultation (6 weeks for agency comment and not less than 8 weeks for public comment).

Process C

A copy of the DPA will be released for concurrent agency and public consultation for not less than 4 weeks and landowners and occupiers identified in the SOI will receive direct notification of the DPA.

5.1.1 Rationale

Process B2 has been selected because agencies will be consulted as part of the investigations as appropriate. On this basis, agency input will already be included. Process B2 is considered most relevant to the scope and size of this DPA.

6 Professional Advice and Document Production

6.1 PROFESSIONAL ADVICE

The professional advice required will be provided by Mr Greg Perkin, City Manager of the Council.

This person will satisfy the professional advice requirements of the Development Act and will provide advice to Council prior to the preparation of the DPA. This person is not considered to have a conflict of interest or perceived conflict of interest in the DPA.

The above person will also have regard to the investigations and materials provided to Council for its consideration by Mr Mahoney in accordance with the Memorandum of Understanding, which investigations and materials (including a draft of the DPA) will be prepared by, amongst other, Michael Osborn of Connor Holmes. This person satisfies the professional advice requirements of the Development Act.

6.2 DOCUMENT PRODUCTION

The DPA (including the structure and mapping) will be prepared in accordance with the Technical Guide to Development Plan Amendments issued by The Department of Planning and Local Government and any templates, except as mutually agreed.

To ensure certainty as to the correct version of the DPA, the DPA will contain a date in the footer (eg version 5 July 2007). The footer will be located on every page of the DPA, including the proposed amendments (including mapping).

The City Manager of Council will ensure that the policies implement the Planning Strategy, all procedures have been completed within the statutory requirements, and that mapping is correct prior to issuing a certificate in accordance with the Development Act. If this is not the case, Council will take responsibility for the DPA until the matter has been resolved.

6.3 MAPPING

Council will obtain electronic copies of all the affected maps and/or figures from the Department of Planning and Local Government prior to the commencement of mapping amendments to ensure all mapping is amended based on current map bases.

Amendments to maps will be provided in the required format to the Planning Division of the Department of Planning and Local Government.

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7 Proposed DPA Timetable*

7 Proposed DPA Timetable

Council intends to undertake the following DPA process:

Proposed Process B2 (consultation approval not required) Timetable

Steps	Responsibility	Agreed Timeframe from Minister's Approval
Development Plan Amendment (DPA)		
Investigations conducted; DPA prepared	Council	20 SOI agreement – DPA commences consultation
Agency and public consultation concludes	Council	8 weeks
Summary of Consultation and Proposed Amendment (SCPA)		
Public Meeting held; submissions summarised; DPA amended in accordance with Council's assessment of submissions; SCPA prepared and lodged with DPLG	Council	12 Public consultation closes – SCPA lodged with DPLG
SCPA assessed and report on DPA prepared for Minister	DPLG	7 weeks
Minister considers report on DPA and makes decision	Minister	4 weeks
Approved amendment gazetted	DPLG	2 weeks

Following Ministerial approval of the proposed amendment, it is forwarded to the Environment, Resources and Development Committee of Parliament for review.

APPENDIX 2

**MEMORANDUM OF
UNDERSTANDING**

THE CITY OF PORT AUGUSTA
(The Council)

AND

NATHAN MAHONEY
(Mr Mahoney)

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MEMORANDUM OF UNDERSTANDING

PARTIES: THE CITY OF PORT AUGUSTA of 4 Mackay Street, Port Augusta SA 5700 (The Council)

AND NATHAN MAHONEY of PO Box 2398, Port Augusta SA 5700, (Mr Mahoney)

1. BACKGROUND

- 1.1. Mr Mahoney has an interest in land at Winninowie currently zoned Primary Industry.
- 1.2. The land has potential to accommodate development in the form of an intermodal terminal. Whilst the specific elements of the intermodal are yet to be bedded down, the facility at a minimum is likely to comprise:
- approach road
 - approach tracks
 - administration accommodation
 - hard stand areas
 - container handling pavement
 - container stacking area
 - workshops
 - entry/exit gates
 - fencing and lighting
- Additional facilities may include:
- locomotive refuelling
 - container repair facility
 - container washing facility
 - warehousing
 - servicing
 - truck stop
 - rail car storage
- 1.3. The proposal has potential to deliver a range of key benefits desired by Council's strategic plan and the Far North volume of the Planning Strategy for South Australia including:
- 1.3.1. Council Strategic Plan
- Key Strategies*
- 3.1.1 *Undertake a review of Council's Development Plan to facilitate the planned future growth of the City*
- 3.1.2 *Facilitate appropriate developments by negotiating sustainable investment for the benefit of the City*
- 4.2.6 *Investigate the provision of an intermodal facility that supports access by rail, road and air.*
- 1.3.2. Far North Region Plan

Principle 7 Protect and build upon the regions strategic infrastructure

Principle 8 Provide and protect serviced and well sited industrial land to meet the projected demand.

- 1.4. At its meeting of 23 May 2011 Council received a presentation in relation to the proposal. Arising from this meeting Council staff will prepare a further report to Council in respect to the proposal and the specific nature of the offer by Mr Mahoney.
- 1.5. A change to the zoning of the land will be required to facilitate development of the land for an intermodal facility.
- 1.6. At the request of Mr Mahoney, Council is prepared to initiate a Development Plan Amendment (DPA) to investigate rezoning of the land.
- 1.7. Council proposes that the Draft DPA will, among other things:
 - 1.7.1. Identify the capability of the Area Affected to support an intermodal facility together with allied activities including but not limited to refuelling and servicing facilities, warehousing, storage;
 - 1.7.2. Determine at a high level the technical and operational issues associated with the development of an intermodal facility within the Area Affected, including necessary technical capability and capacity;
 - 1.7.3. Identify support infrastructure recommended to complement an intermodal facility;

Review the opportunities and constraints of the Area Affected such as:

 - 1.7.4. site constraints;
 - 1.7.5. existing character assessment;
 - 1.7.6. desired future character analysis;
 - 1.7.7. freight trends and projections;
 - 1.7.8. business development opportunities;
 - 1.7.9. servicing capacity and implications;
 - 1.7.10. road and traffic network and implications;
 - 1.7.11. rail network;
 - 1.7.12. heritage considerations;
 - 1.7.13. environmental considerations;
 - 1.7.14. interface issues.
- 1.8. The Study Area of the Draft DPA is designated in Annexure A.
- 1.9. In this Memorandum of Understanding the parties outline a process aimed at achieving amendment to the Development Plan.

- 1.10. The parties acknowledge that the process to amend the Development Plan is a statutory process to be undertaken by Council and submitted to the Minister for approval.
- 1.11. The parties acknowledge that the State of South Australia is currently planning to undertake the preparation of a feasibility study into the setting up of a Heavy Industry Hub in the Upper Spencer Gulf which may affect the timetable and the outcome of the DPA.

2. DEFINITIONS AND INTERPRETATION

2.1. General Interpretation

Unless contrary intention appears:

- 2.1.1. the singular includes the plural and the plural includes the singular;
- 2.1.2. a reference to a gender includes a reference to each other gender;
- 2.1.3. a reference to a person includes a reference to a firm, corporation or other corporate body or any other legal entity;
- 2.1.4. a reference to a person includes its successors and permitted assigns;
- 2.1.5. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 2.1.6. headings are for ease of reference and do not affect the construction;
- 2.1.7. a reference to a statute shall include all amendments for the time being in force and any other statute enacted in substitution thereof and all regulations proclamations ordinances and by-laws for the time being under that statute and any notice demand order direction requirement or obligation pursuant to or under that statute or those regulations ordinances and by-laws.

3. TERMS

- 3.1. This Memorandum of Understanding is intended to be legally binding between the parties.
- 3.2. This Memorandum of Understanding does not fetter the discretion of Council under the Development Act 1993 or any other statute.
- 3.3. Council does not give any warranty as to the outcome, which is at the discretion of the Minister.
- 3.4. The Draft DPA will:
 - 3.4.1. be prepared by Council in accordance with the procedures of Section 25 of the Act.
 - 3.4.2. be initiated by means of a Statement of Intent (SoI) that Council will submit to the Minister pursuant to Section 25(1) of the Act; and

3.4.3. address at least the matters outlined in 1.7 above.

3.5. The process for preparing the Sol and the Draft DPA will be:

- 3.5.1. Subject to the timetable for the feasibility study for the Heavy Industry Hub, Mr Mahoney will engage Connor Holmes and/or such other parties as he may choose that are suitably qualified and experienced in urban planning to assist the Council by preparing a Draft Sol for consideration by Council;
- 3.5.2. Council will consider the Draft Sol and, subject to being satisfied on the content, will submit the Sol to the Minister for agreement;
- 3.5.3. Mr Mahoney will engage Connor Holmes and/or such other parties as he may choose that are suitably qualified and experienced, to assist the Council by undertaking investigations required by the Sol and preparing draft policies suitable for inclusion in the Development Plan (together known as "the Draft DPA material");
- 3.5.4. Mr Mahoney will submit the Draft DPA material for consideration by Council;
- 3.5.5. Council will commission an independent and suitably qualified person to undertake a review of the Draft DPA material provided by Connor Holmes;
- 3.5.6. Council will consult Mr Mahoney on the findings of that independent review;
- 3.5.7. Council will, after considering any further submissions that Mr Mahoney may wish to make, determine its position on whether and how to progress the Draft DPA; and should Council decide to proceed with a DPA based on the DPA material, Mr Mahoney will cause the Draft DPA to be so produced.
- 3.5.8. Mr Mahoney acknowledges that Council has absolute discretion to reject or amend the Sol and/or the Draft DPA and to determine not to proceed with the Draft DPA.
- 3.5.9. Nothing in this Memorandum of Understanding shall oblige Mr Mahoney to require Council proceed with the DPA if he chooses not to.

3.6. Further obligations of Mr Mahoney will be to:

- 3.6.1. Bear all costs incurred by Connor Holmes in relation to the preparation or amendment of the Draft Sol and/or the Draft DPA material; and Draft DPA
- 3.6.2. Reimburse Council for the cost involved in commissioning the independent review of the Draft DPA material; and
- 3.6.3. Council for any other reasonable direct costs associated with the Draft Sol and/or the Draft DPA (such as advertising or venue hire costs);

On the condition that the total amount reimbursed to Council shall not exceed a maximum of \$10,000 (excluding GST);

3.7. Further obligations of Council will be:

- 3.7.1. Subject to the provisions of the Freedom of Information Act 1991, to make available to Mr Mahoney and/or Connor Holmes any reports relating to intermodal facilities and Spencer Junction held by Council that are not subject to confidentiality orders;

- 3.7.2. The Council will not proceed to incur any costs until authorised to by Mr Mahoney,
- 3.7.3. To ensure that Council decisions in relation to the Sol, Draft DPA material and the Draft DPA are made in a timely manner; and
- 3.7.4. To use best endeavours to achieve the speedy processing of the Draft DPA.

4. TERMINATION

This agreement may be terminated at any time by Mr Mahoney on given written notice to The Council. Following the receipt of written notice, The Council shall immediately cease any work on the draft Sol and/or DPA and render any account it may have to Mr Mahoney for work undertaken until that time.

5. CONFIDENTIALITY

Subject to any exceptions required by applicable law, Council will keep documentation pertaining to this Memorandum of Understanding, the Sol and the Draft DPA confidential for a period of at least 24 months. NOTE The Draft DPA will need to be made public as part of the planning process

6. PAYMENT OF INVOICES

Mr Mahoney agrees to pay any invoices for reimbursement to Council submitted pursuant to clause 3.6 within 30 calendar days of receipt.

7. GENERAL

7.1. Amendment

This Memorandum of Understanding can only be varied by a further written document executed by all parties.

7.2. Dispute Resolution

7.2.1. Guiding Principle

The parties agree that every effort should be made to ensure that disputes do not arise and that if a dispute does occur the parties should make every reasonable effort to resolve the dispute without recourse to this clause.

7.2.2. Priority of Procedures

Unless otherwise provided in this clause, if a dispute arises between the parties concerning this Memorandum of Understanding no party may commence any court proceedings relating to the dispute unless it has complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief.

7.2.3. Notice of Dispute

Any party claiming that a dispute has arisen under this clause, between the Council and Mr Mahoney ("**Complainant**") must give written notice ("**Notice**

of Dispute”) to the other party (“Respondent”). The notice must adequately identify and provide details of the dispute and refer to any documentary evidence of the matters claimed in the dispute and designate a representative of the Complainant who has the authority to negotiate and settle the dispute.

7.2.4. Response to Dispute

Within fourteen (14) days after Respondent receives the Notice of Dispute, the Respondent must give written response to the Complainant. That response must adequately define the Respondent’s response to the dispute and provide details and refer to any documentary evidence in support of its response to the dispute and designate a representative who has the authority to negotiate and settle the dispute.

7.2.5. Negotiations

Representatives designated pursuant to the preceding paragraphs of this clause must, within ten (10) days (or within such further period as the representatives may agree is appropriate) after the receipt of the notice referred to in item 8.2, investigate, negotiate and endeavour to settle the dispute.

7.2.6. Mediation

If, within one (1) month of the date of the Notice of Dispute, the parties are either unable to resolve the dispute or no meeting has been held the parties shall seek to agree upon the appointment of an independent mediator with relevant experience of the matter in dispute or, failing agreement within fourteen (14) days, either party may request that a mediator be appointed by the President of the Law Society of South Australia to mediate the dispute.

The mediator, in conducting the mediation shall have regard to:

The statutory obligations and the commercial imperatives of the parties.

If within one (1) month after the date of the mediator’s appointment, mediation has not taken place, or has failed to resolve the dispute, or in the event no mediator has been appointed within two (2) months of the Notice of Dispute, then any of the parties may by notice terminate the mediation process and may seek such remedies as they decide.

Any date or period of time referred to in this clause may be varied or amended by agreement between the parties.

None of the parties may commence court proceedings or arbitration concerning this Schedule unless it has first complied with the dispute resolution provisions contained in this clause. The parties agree that this Schedule may be pleaded as a bar to any court action commenced prior to termination of the mediation process other than an application for urgent interlocutory itself.

In any case, each party shall bear its own costs for the mediation.

7.2.7. Without Prejudice

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is an attempt to settle the dispute between the parties. No party may use any

information or documents obtained through the dispute resolution process established by this clause for any other purpose.

7.3. **Counterparts**

This Memorandum of Understanding may be executed in counterparts and those counterparts taken together constitute one and the same instrument. The commencement date of this Memorandum of Understanding is the date the Memorandum of Understanding or counterpart is signed by the last party to sign.

7.4. **Severance**

If any provision of this Memorandum of Understanding offends any law applicable to it in a jurisdiction and is as a consequence illegal, invalid or unenforceable in that jurisdiction, then:

- 7.4.1. Where the offending provision can be read down so as to give it a valid enforceable operation of a partial nature, it can be read down to the extent necessary to achieve that result:
- 7.4.2. In any case, the offending provision must be severed from this Memorandum of Understanding for that jurisdiction in which event the remaining provisions of the deed operates as if the severed portion had not been included.

7.5. **Governing Law**

This Memorandum of Understanding shall be governed by the laws of South Australia and the Parties hereby submit to the jurisdiction of the Courts thereof.

7.6. **Waiver and Variation**

- 7.6.1. A party's failure or delay to exercise a power, right or remedy pursuant to this Memorandum of Understanding does not operate as a waiver of that power, right or remedy.
- 7.6.2. The exercise of a power or right does not preclude:
 - i. Its future exercise; or
 - ii. The exercise of any other power or right.
- 7.6.3. A right created under this Memorandum of Understanding may not be:
 - i. Waived except in writing signed by the party granting the waiver; or
 - ii. Varied except in writing signed by the parties.
- 7.6.4. The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

7.7. **Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Memorandum of Understanding or any part of it.

7.8. **Costs**

Each party shall bear their own costs and disbursements of and incidental to the preparation and signing of this Memorandum of Understanding and any other document to be executed under the Memorandum of Understanding, except for the costs referred to in clause 3.6.

7.9. **Entire Agreement**

This Memorandum of Understanding constitutes the entire agreement between the parties relating in any way to its subject matter and supersedes and merges all prior discussions and any prior agreement. Each party acknowledges that in entering into this Memorandum of Understanding, it has not relied on any warranty, representation or other promise of any nature not contained in this Memorandum of Understanding.

7.10. **Notices**

7.10.1. All notices or other communications provided for permitted under the Memorandum of Understanding or otherwise shall be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile transmission as follows:

- i. If to Nathan Mahoney to him at:

Nathan Mahoney
PO Box 2398
PORT AUGUSTA SA 5700

- ii. If to The City of Port Augusta to them at:

City of Port Augusta
4 Mackay Street
PORT AUGUSTA SA 5700
Attention: City Manager
Fax Number: (08) 8641 0357

- iii. Or to such other address or persons as either party may specify by notice in writing to the other.

7.10.2. All such notices or communications shall be deemed to have been duly given or made:

- i. five business days after being deposited in the mail with postage prepaid;
- ii. when delivered by hand;
- iii. If sent by facsimile transmission, on production of a report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

EXECUTED this day of **2011.**

SIGNED by THE CITY OF PORT AUGUSTA)
By its authorised officer in the presence of:)

Mayor Date
Date

City Manager Date

Name (print)

Name (print)

SIGNED by NATHAN MAHONEY)
in the presence of:)

Witness and Date Date

Nathan Mahoney Date

Name (print)

Name (print)

8. ANNEXURE A – AREA AFFECTED MAP

