

CONFIDENTIAL REPORT

 Port Augusta CITY COUNCIL	REPORT FOR	Council
	MEETING DATE	25 October 2010

REPORT FROM	City Manager		
REPORT TITLE	Residential Development Adjacent Port Augusta Airport – Sealed Agreement		
FILE NAME	F10/610	RECORD NO	AR10/6597

STRATEGIC PLAN SUB GOAL/S
2.1 A positive & progressive image of our City.
3.1 Economic growth for long-term benefit.
4.2 Plans for the provision of additional infrastructure to meet the needs of our growing community.
5.1 Effective management & maintenance of the city's unique natural & built environment.
6.2 Optimise the use & management of the council's financial & physical resources.

PURPOSE

To finalise the process associated with entering into agreements with Bowhill Properties Pty Ltd to purchase and develop the land adjacent to the aerodrome.

RECOMMENDATION

Council receives and notes the report (AR10/6597) dated 25 October 2010, submitted by the City Manager concerning "Residential Development adjacent Port Augusta Airport – Sealed Agreement".

BACKGROUND

1. At its Special Meeting on 16 June 2010, Council resolved in relation to this matter as follows:
 - "1. Receives and notes the report (REPA5163) dated 11 June 2010, submitted by the City Manager concerning "Agreement for the Sale & Development of Land Adjacent to the Port Augusta Airport".
 2. Authorises the Mayor and City Manager to affix the Common Seal to the Agreement in the form of the draft tabled at the meeting by Wallmans Lawyers (note the latest draft is included as appendix 1 to this report REPA5163) subject to such amendments to the draft as Wallmans Lawyers may in writing recommend to Council.
 3. Requires a copy of the draft Agreement tabled at this meeting by Wallmans Lawyers to be included in the minutes of this meeting.

CONFIDENTIAL REPORT

-2-

4. Requires a copy of the sealed Agreement to be provided to Council together with any written advice from Wallmans Lawyers recommending any changes to the draft Agreement tabled at the meeting."

DISCUSSION

1. Following on from sealing and signing the agreement there had been a delay in Bowhill Properties Pty Ltd paying the required deposit. This matter has now been finalised.
2. In accordance with part 4 of the above mentioned resolution the sealed agreement (AR10/3149) and the letter from Wallmans Lawyers (dated 18 June 2010 – AR10/95) are attached for information.

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.

It is considered necessary to discuss this report in confidence and 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.

It is recommended that Council maintain the confidential provisions as outlined above until the lodgement of a formal development application.

RISK MANAGEMENT

1: Financial/Budget

The proceeds from the sale will be transferred to Council's Special Capital Reserve.

2: Legal

Wallmans Lawyers have been advising Council throughout this process to ensure that Council's best interests are preserved and agreements are legally enforceable.

3: Environment

The Development Plan Amendment will be required to address environmental issues surrounding this development. The Master Plan takes account of the natural water flows on the land.

4: Community

4.1 General

The Aboriginal people's interests have been considered in the planning of this development

4.2 OPAL Program

The proposed development provides for long linear reserves which will accommodate walking and bike riding.

GREG PERKIN
06/10/2010

CONFIDENTIAL REPORT

Street Address	Postal Address	Tel (08) 8235 3000	www.wallmans.com.au
Level 5	GPO BOX 1918	Fax (08) 8232 0926	A3N 99 802 494 422
400 King William St	Adelaide SA 5001	general@wallmans.com.au	
Adelaide SA 5000	DX 862 Adelaide		



WALLMANS
LAWYERS

Our Ref: MAS:axb:083111

18 June 2010

Port Augusta City Council
PO Box 1704
PORT AUGUSTA SA 5700

Attention: Mr Greg Perkin – City Manager

Dear Sir

LAND SALE

I refer to Council's 16 June 2010 resolution authorising the Mayor and you to execute the document under which Council agrees to sell the large parcel adjacent to the Port Augusta Airport for a headline price of \$13.2 million.

With this letter is a form of *Instrument of Agreement* (with its own annexures) that I recommend be executed by Council in terms contemplated by the above resolution.

While Council has over time been provided with various editions of the proposed *Instrument of Agreement* with changes from the last draft highlighted, I note that in recent times these material changes were made:

1. The land now comprised in Crown Record 5454/382 is included in the sale at \$10k per hectare.
2. Provisions dealing with the Haul Road / Aboriginal heritage / the purchaser's readiness to perform / nominees of the purchaser were adjusted.
3. The conditions precedent to settlement, while stated to conclude by 31 December 2011, can at the instigation of either party easily be made to extend out to 31 December 2012. Further, the purchaser can then extend the date out to 31 December 2013 by payment to Council of a fee of \$250k.
4. Provision now exists for the parties to agree for the key roads designated as Fundamental Design Principles in the Land Management Agreement (LMA) to be varied before the LMA is granted.
5. Provisions in the LMA now reinforce that each future development of land the subject of the LMA must comply with the Master Plan.

CONFIDENTIAL REPORT

6. The LMA provides for residential "superlots" to be excluded from the LMA, subject to Council being granted a Superlot Encumbrance (SE). The form of SE requires the landowner to within 7 years divide the relevant land into allotments of 2,000 m² or less and to construct a dwelling on such allotments, and in doing so to comply with the Master Plan so far as relevant.

Yours faithfully
WALLMANS LAWYERS



MARK SALLIS
Special Counsel
Direct Line: 08 8235 3006
Email: mark.sallis@wallmans.com.au