

# CONFIDENTIAL REPORT



REPORT FOR:	<b>Council</b>		
MEETING DATE:	22 October 2012		
REPORT FROM:	City Manager		
REPORT TITLE:	<b>Request to Vary Agreement for Port Augusta Airport Land - Contract for Sale and Purchase</b>		
FILE NAME:	F10/610	RECORD NO:	AR12/23783

## 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.
- 6.2 Optimise the use & management of the council's financial & physical resources.

## PURPOSE

To seek Council's decision in response to a request to vary the Agreement for the Port Augusta Airport Land - Contract for Sale and Purchase.

## RECOMMENDATION

### Council:

1. Receives and notes the report (AR12/23783) dated 15 October 2012, submitted by the City Manager concerning "Request to Vary Agreement for Port Augusta Airport Land - Contract for Sale and Purchase."
2. Advise Mr Cheetham that the settlement price for stage 1 would be \$11,300,000 calculated in accordance with the in-globo valuation on which the original total valuation was based.
3. Should Mr Cheetham wish to proceed in light of the above information, authorises the City Manager to negotiate a varied Agreement with Bowhill Properties Pty Ltd for consideration by Council with a focus on achieving the following outcomes:
  - 3.1 Bowhill Properties Pty being able to settle stage 1 of the land as identified in the plan of Attachment 1 (AR12/23786) notated as Parcel 1.
  - 3.2 Settlement of stage 1 occurs in line with the requirements embodied in the existing Contract for Sale and Purchase dated 18 June 2010.

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- 3.3 The development of any retail facilities in stage 1 to be scaled proportionately to the then existing catchment population.
- 3.4 The purchase price for settlement of stages 2 and 3 be subject to valuation and negotiation at the time of settlement.
- 3.5 Bowhill Properties Pty Ltd be required to transfer to Council the intellectual property contained within the Master Plan required by Clause 21 of the existing Sale and Purchase Agreement in the event that Bowhill Properties Pty Ltd does not proceed with the purchase of stages 2 and 3 of the land.
- 3.6 Out of date timelines in the current Contract for Sale and Purchase and other amendments to reflect the current situation with the project also be addressed.
- 3.7 Require Mr Cheetham to contribute 50% of Council's legal fees in having the agreement amended.

## **BACKGROUND**

In 2010 Council finalised an Agreement with Bowhill Properties Pty Ltd for the Sale and Purchase of the Port Augusta Airport land. That Agreement required the purchase of the land in one transaction once the rezoning was achieved and for the land to be developed in a comprehensive manner relative to market forces and in accordance with a Master Plan.

The path to rezone the land has been tortuous and frustrating but it is understood that approval of the Development Plan Amendment by the Minister for Planning is imminent. In view of the changed circumstances since the negotiation of the Agreement, Mr Pat Cheetham Director of Bowhill Properties Pty Ltd is seeking Council's approval to vary the Agreement.

## **DISCUSSION**

At attachment 2 is Mr Cheetham's emailed request (AR12/23633) seeking Council's consideration to vary the Agreement.

The current Agreement requires that settlement of the land occur once a plan of division is lodged in the Land Title's office; however that plan cannot be lodged until the Development Plan Amendment is authorised and a land division process finalised. The settlement requires payment of around \$13m. This valuation was based on a broad acre (in globo) valuation and in regard to the settlement occurring at one time. The original valuation separated the land into three different sale price areas as follows:

- |    |   |             |
|----|---|-------------|
| 1) | First 50ha @ \$150,000 per ha (\$15 per sqm)          | \$7,500,000 |
| 2) | Second 50ha @ \$70,000 per ha (\$7 per sqm)           | \$3,500,000 |
| 3) | Balance of land 218ha @ \$10,000 per ha (\$1 per sqm) | \$2,180,000 |

The basis for reducing the balance of the land (being 218ha) to \$1 per square metre, was that the developer, in purchasing the land in-globo (e.g. in its entirety), would be required to pay substantial holding costs over a period of time for the component of the land that was not developed in the short term. Based on the above valuation, the sale price of the land for stage 1, being a total of 130.64ha, would equate to \$11,300,000.

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Mr Cheetham is now wishing to purchase the land in three stages with settlement of the second and third stages being unknown and potentially uncertain. The request is also to enable all of the commercial land to be included in the first stage of purchase. This arrangement could lead to the development of the retail centre without stages 2 and 3 occurring and thus before there is demand within its natural catchment, thus leading to retail customers being drawn from other areas of the City leading to stress on profitability of businesses across the City. If there is to be any variation agreed to as sought this aspect will need to be addressed.

In a pragmatic sense it can be understood why Mr Cheetham is wishing to mitigate his risk in a changed market, by the same token Council will wish to ensure that the Airport Land is developed in a comprehensive manner, that retail development is staged relative to the population of its immediate catchment and that the price at which stages 2 and 3 are agreed to be sold at reflect the value of the land at the time that settlement occurs; thus ensuring that the community is compensated for holding the risk during this time rather than it resting with Bowhill Properties Pty Ltd as is the current arrangement.

In view of the substantial commitment by Council and Mr Cheetham during the last five years, it would be just reward to achieve development on this land and to achieve some capital inflow of funds to the community via Council. The one outcome that should not be allowed to occur is for development to fall over. Such an outcome would reflect on Council and the City even though the delays have been as a result of State Government bureaucratic processes and such an outcome would cause developers and financiers to shy away from Port Augusta in the future.

Council's aim should be to achieve development that is affordable for the developer, provides a fair return to the community and enables the community to achieve improved benefits as the value of stage 2 and 3 appreciate over time. Recent media in [Attachment 3 \(AR12/23798\)](#) highlights that with the opening up of the Woomera Protected Area for mining ventures together with the eventual Olympic Dam expansion that Port Augusta is the premier place for fly in fly out workers to be located. In this light the value of the land in stages 2 and 3 is likely to appreciate over time and with Council retaining ownership it is likely that better returns will be achieved for the community. There is no doubt that Mr Cheetham will want to retain the current \$13m in global valuation as the basis for staged settlements; however the true value of that amount has already reduced over the time that it has taken to get to this stage let alone the slippage in true value that would occur with delayed settlements.

## **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 lodgement of a formal development application.**

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## RISK MANAGEMENT

### 1: Financial/Budget

Council currently has an Agreement whereby Bowhill Properties Pty Ltd is required to pay Council in the order of \$13m for the Airport Land. The Developer is seeking an amendment to that obligation that Council should consider. Should the developer not be able to proceed with the current agreement Council will retain the \$250,000 deposit that is held in trust by Council's lawyers. In this situation Council would retain the land the value of which will be improved by the imminent rezoning to residential.

### 2: Legal

Council's lawyer Mark Sallis will be involved in drafting the necessary legal documents for Council consideration.

### 3: Environment

n/a

### 4: Community

#### 4.1 General

The community has had the ability to have input into the rezoning process that will accommodate this development. The Airport land is a large capital asset owned by the community through Council and the sale and development of this land will bring added benefits to the City through capital inflow to Council, increased population and move-ahead image as development proceeds.

#### 4.2 OPAL Program

N/A

**GREG PERKIN**

**17/10/2012**

# CONFIDENTIAL REPORT

ATTACHMENT 1



# CONFIDENTIAL REPORT

**From:** Pat Cheetham [mailto:pat@jkt.com.au]  
**Sent:** Tuesday, 16 October 2012 8:03 AM  
**To:** Greg Perkin  
**Cc:** augustadevelopment@bigpond.com.au  
**Subject:** Re: Port Augusta West

ATTACHMENT 2

Hi Greg

Further to your email below ,

Bowhill Properties believe it is imperative to the development that amendments are required to be made regarding the contract between itself and council for the purchase of the airport land .  
As we are both aware the DPA has taken a lot longer than ever anticipated to finalize ( in fact still yet to be finalized )  
The world economy has gone through many changes over the past 5 year period ( Since 2007 the beginning of this proposed project )  
We have had a Global Financial crisis and world economies crash.  
Olympic Dam has placed on hold their proposed multi Billion dollar expansion .  
Registrations of interest Bowhill Properties have on file for the purchase of over 300 allotments were placed on hold upon the announcement of BHP Billiton not to proceed  
Investor confidence plummeted over night .  
Financial institutions with their no confidence attitude towards world markets , have made it extremely difficult to fund broad acre development sites , especially in regional areas .

This being said and done both Bowhill properties and Augusta developments have always remained 100 percent committed to the development investing millions of dollars to date .  
We believe Timing is the key to the success of this project .  
Ensuring we work with the current economic and financial conditions is crucial to the survival of this project .

It is imperative to the development that both Council and Bowhill Properties recognize the difficulties and impacts the world problems have on a project of this nature and apply the flexibility required to make this project a reality.  
I recently forwarded you a revised plan effectively breaking the large 1000 acre parcel into 3 stages .  
Bowhill Properties ask that council recognize that to make this project work in todays challenging economic climate , staging the settlement for the purchase of the land into 3 broad acre sections along with the original individual titles is imperative to the success of this development .

Bowhill Properties propose the following amendments to the agreement.  
In accordance with the amended plan supplied ( effectively showing stages 1,2,3 over the airport land )  
Initial Settlement of stage 1 along with the other individual titles ( retirement ,commercial , school , Buisness park etc ) upon a plan of deposit being approved as Stage 1

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This effectively will allow us to share the infrastructure costs in stage 1 between residential / commercial

This will give investor confidence that it is not just land that has been divided in a paddock but a Master planned community

This will give the ability to provide commercial areas for builders to base themselves in the estate from the beginning ( ie plumbers electricians timber yards etc )

Bowhill properties then propose ,

Stages 2 and 3 to be renegotiated between us from a timing perspective for the settlement of these areas .

As discussed staging the development , will also assist and have benefits regarding land tax implications .

I would ask you give the above serious consideration so that we can achieve the desired outcome ( the actual development on the ground ) that both Council and Bowhill Properties have worked so hard and planned for .

I look forward to your response

Kind Regards

Pat Cheetham

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ATTACHMENT 3



Salt Village luxury market yet to turn



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The Future of Work Toolkit



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## SUBURB DATA

[Port Augusta, SA](#)  
[Roxby Downs, SA](#)  
[Adelaide, SA](#)  
[Woomera, SA](#)  
[Augusta, WA](#)  
[Whyalla, SA](#)  
[Olympic Dam, SA](#)

## PEOPLE

[Jay Weatherill, Stephen Smith](#)

## COMPANIES

[WPA, BHP Billiton](#)

## South Australia's property investment opportunities far from finished: Terry Ryder

By Terry Ryder  
Thursday, 11 October 2012  
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This is topical because there was a further federal-state announcement about this last week. The October 4 announcement by Defence Minister Stephen Smith and SA Premier Jay Weatherill gave mining companies formal approval to explore the giant WPA. They say it will become "one of Australia's most significant resource provinces", with minerals worth over \$1 trillion, according to one guesstimate.

This vast area (it comprises 13% of the state) is believed to contain Australia's largest copper and uranium resources, considerably more than those at Olympic Dam. The WPA also has big gold and iron ore reserves.

The move to grant exploration licences comes after negotiations between the federal government and the state to reconcile weapons testing and defence training (the reasons this is a prohibited area) with full-scale mining operations.

Weatherill said the approval was "one of the most significant milestones for the advancement of South Australia's resources sector". This area already has 150 exploration licences, with 80 more applications in the pipeline.

Yet media coverage of the announcement was somewhat muted and underplayed the importance of the event. I imagine if Smith and Weatherill had announced they were scrapping the plan it would have been on the front page of *The Australian*, the nation's most relentlessly negative newspaper, and many others as well.

The location best-positioned to benefit from mining in the WPA and elsewhere in the state is Port Augusta, a crossroads town which is a logical place to fly-in-fly-out workers to base themselves. Port Augusta is well-situated for the growing number of iron ore mines emerging on the Eyre Peninsula, as well as what's happening in the WPA and will happen, eventually, at Roxby Downs with some form of expansion of Olympic Dam.

Whyalla also has a big future, for similar reasons.

*Terry Ryder is the founder of [hotspottina.com.au](#) and can be followed on [Twitter](#).*

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Everything in Australia's economic favour, but our property markets still hurt by lack of confidence: Terry Ryder

Terry Ryder  
Australians have lost their mojo and property markets are still down because we have forgotten our confidence.



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