

Eric Wilson

July 2010

**Senate Standing Committee
Legal and Constitutional Affairs
Parliament House
Canberra**

**DENIAL OF ACCESS TO COMMONWEALTH
COMPENSATION SCHEMES:
RECCOMENDATIONS & CASE STUDY**

SUPPORTING DOCUMENTS 2

Department of the Interior
Victorian Property Branch

①

6469/96

~~AD~~

*By Jan 18
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RECEIVED
15 AUG 1958
DEPT. OF INTERIOR
VICTORIA

Parliament House,
CANBERRA. A.C.T.

12th August 1958.

Dear Sirs,

Reference is made to your letter of 21st July 1958, in which you make representations on behalf of your clients, Mrs. W. and Mr. R. E. F. Smith, in connection with certain land at Tullamarine, Victoria.

No firm proposals are before the Government for the acquisition in the area you specify, but should there be any future Commonwealth requirements, your clients may be assured that their interests in any form would be fully protected under the Lands Acquisition Act 1955-57.

Meantime, a copy of your letter has been referred to the Department of Civil Aviation for their information.

Faithfully yours,

(ALLEN FAIRHALL)

Messrs. Cleary, Ross, and Doherty,
Solicitors,
Royal Exchange Building,
40 Queen Street,
MELBOURNE. C.I.

CHIEF PROPERTY OFFICER

Melbourne, Vic.
FOR ^{information} NECESSARY ACTION.

W. W. Gregory
FIRST ASSISTANT SECRETARY

13 AUG 1958

*h/15
8 but again*

NOTES FOR FILE.

65/323

TULLAMARINE: GRANT OF EASEMENT FOR
CARRIAGEWAY TO MRS. WILHELMINA SMITH.

On 23rd March, 1965, I spoke to Mr. Smith to explain the position re access to the land remaining in title to Mrs. Smith at Tullamarine.

When informed that the access route was still the subject of discussion and that Mrs. Smith's interests would be protected, he was quite happy but has requested that Mrs. Smith be forwarded a copy of any correspondence to Cleary, Ross and Doherty directly concerning her land.

K. J. Whelan
.....

K.J. WHELAN

24/3/1965.



Corporate information

Corporate information

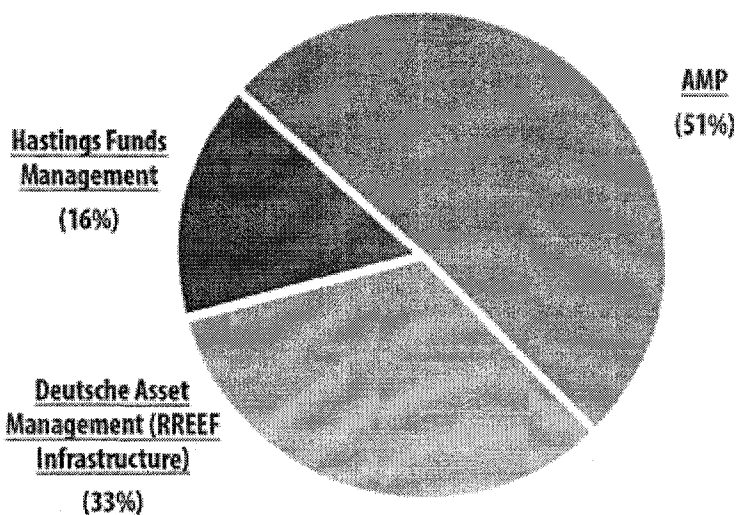
Melbourne Airport is owned and operated by Australia Pacific Airports Melbourne PTY Limited (APAM) - ACN 076 999 114.

Australia Pacific Airports Corporation Limited

Australia Pacific Airports Corporation Limited (APAC) - ACN 069 775 266 owns APAM and Australia Pacific Airports Launceston PTY Limited (APAL) - ACN 081 578 903 which owns and operates Launceston Airport.

Melbourne Airport was acquired in July 1997. Both Melbourne and Launceston airports are operated under a 50-year long-term lease from the Federal Government, with an option for a further 49 years.

APAC is a majority Australian-owned company.



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2/7/1997

#274
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COMMONWEALTH OF AUSTRALIA

**AIRPORT LEASE FOR
MELBOURNE (TULLAMARINE) AIRPORT**

LEASE

Section 66(1) of the Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: ARTHUR ROBINSON & HEDDERWICKS
Phone: (03) 9614 1011
Address: 530 Collins Street, Melbourne 3000
Ref: GDJH Customer Code: 0951R

The Lessor leases to the Lessee the Land for the term and yearly rental specified subject to the encumbrances affecting the Land including any created by dealings lodged for registration before the lodging of this Lease and subject to the covenants and conditions contained in this Lease.

LAND: Volume 8841 Folio 691, Volume 8504 Folio 716, Volume 9067 Folio 671,
Volume 8390 Folio 476, Volume 6726 Folio 179, Volume 7300 Folio 954,
Volume 7344 Folio 688, Volume 7617 Folio 046, Volume 8044 Folio 649,
Volume 8296 Folio 766, Volume 8413 Folio 481, Volume 8466 Folio 277,
Volume 8511 Folio 436, Volume 8527 Folio 519, Volume 8528 Folio 830,
Volume 8592 Folio 937, Volume 8657 Folio 662, Volume 8692 Folio 815,
Volume 8708 Folio 041, Volume 8738 Folio 114, Volume 8792 Folio 799,
Volume 8827 Folio 437, Volume 8869 Folio 263, Volume 8869 Folio 264,
Volume 8885 Folio 503, Volume 8936 Folio 136, Volume 8959 Folio 783,
Volume 8986 Folio 384, Volume 9302 Folio 900, Volume 9302 Folio 901,
Volume 9768 Folio 745, Volume 9815 Folio 130, Volume 8677 Folio 659,
Volume 8554 Folio 346, Volume 10327 Folio 685, Volume 10327 Folio 686

LESSOR: COMMONWEALTH OF AUSTRALIA

LESSEE: AUSTRALIA PACIFIC AIRPORTS (MELBOURNE) PTY LTD
(ACN 076 999 114) of Level 32, Governor Phillip Tower, 1 Farrer Place,
Sydney, 2000

TERM: Fifty Years from the Commencement Date

COMMENCEMENT
DATE: 2 July 1997

RENTAL: Nil

COVENANTS: As set out in the attached Lease.

THIS LEASE is made the 1st day of JULY 1997

BETWEEN

COMMONWEALTH OF AUSTRALIA
("Lessor")

AND

AUSTRALIA PACIFIC AIRPORTS (Melbourne) Pty Ltd, ACN 076 999 114
incorporated in the State of Victoria, of Level 37, Governor Phillip Tower, 1 Farrer Place,
Sydney NSW 2000
("Lessee")

1. DEMISE

1.1 Lease and concurrent lease

In consideration of the payment by the Lessee to the Lessor of a premium which is not refundable in any circumstances, the Lessor grants to the Lessee pursuant to the *Airports (Transitional) Act 1996* a Lease of the Airport Site (including the Structures) for the Term. This Lease operates as a concurrent lease over all that part of the Airport Site which is the subject of leases existing as at Grant Time.

1.2 Reservation of Lessor's rights

The Lessor reserves to itself:

- (a) all mining rights and interests in minerals on the Airport Site; and
- (b) provided that it is not inconsistent with the development of the Airport Site in accordance with a Master Plan, the right to grant any easements over or rights of access or rights of way on, over, under, through or across the Airport Site for:
 - (i) the purpose of the supply of electricity, gas, telecommunications cables, water, sewerage, drainage or like services; and
 - (ii) the provision of transport or other services to the public,

such rights not to be to the exclusion of the right of the Lessee to also grant such rights where it would otherwise have the power to do so.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Lease, unless a contrary intention appears:

'Airports Act' means the *Airports Act 1996*.

'Airport-Management Agreement' means an airport-management agreement as defined in the *Airports Act*.

'Master Plan' means a final master plan as defined in the Airports Act.

'Rates and Taxes' means all rates (including water rates and sewerage rates), land and other taxes, costs, charges, expenses, duties, impositions, fees and penalties of whatever nature levied by a Governmental Authority in respect of the Airport Site and whether levied against the Lessor or the Lessee.

'Specified Rate' means interest at a rate of four (4) percent per annum higher than that ordinarily charged by the principal bank of the Commonwealth on overdraft current accounts (or the nearest equivalent) not exceeding fifty thousand dollars (\$50,000). A certificate issued to the Lessor and signed by the manager or the assistant manager for the time being of the principal bank will be prima facie evidence of the Specified Rate.

'Structures' means all fixtures (including buildings and other improvements of whatever nature) affixed to the Airport Site, whether constructed before or after the grant of this Lease, and includes without limitation such items as runways, taxiways, aprons, roads and dams on the Airport Site.

'Term' means a term of fifty (50) years commencing at Grant Time.

2.2 Interpretation

In this Lease unless the context otherwise requires:

- (a) a reference to a clause is to a clause of this Lease and includes all sub-clauses;
- (b) words in the singular include the plural and vice versa;
- (c) words importing one gender include each of the other genders;
- (d) where the context permits, a reference to 'Lessor', 'Lessee', an organisation, body or person includes their employees, officers and agents as well as their respective successors in title and assigns;
- (e) references to parties, recitals, clauses, sub-clauses or attachments are references to parties, clauses, sub-clauses, attachments to or of this Lease and a reference to this Lease includes any attachment;
- (f) references to this Lease or any other deed, agreement, instrument or document will be deemed to include references to this Lease or such other deed, agreement, instrument or document as amended, novated, supplemented, varied or replaced from time to time;
- (g) headings in this Lease are for convenience only and are not part of, or to be used in the interpretation or construction of, this Lease;
- (h) "person" includes a corporation and a body politic;
- (i) a reference to legislation includes statutes, regulations, ordinances, by-laws or other legislative instruments and all amendments, consolidations or replacements thereof;
- (j) where any word or phrase is given a defined meaning any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;
- (k) a reference to anything (including without limitation any amount) is to the whole and each part of that thing;

- (ii) subject to sub-clause 5.15 and clause 12A, construct, alter, remove, add to or demolish the Structures.

3.2 Refusal to give access in certain circumstances

The Lessee shall not be in default of its obligations under sub-clauses 3.1(a)(ii) and (iii) if it:

- (a) complies with a demand management scheme under the Airports Act; or
- (b) refuses to give access to the Airport Site to all or any of the aircraft of an aircraft owner or operator:
 - (i) where the owner or operator of the aircraft has failed to pay to the Lessee within twenty-one (21) days after the due date any amount due to the Lessee by the aircraft owner or operator for the use of the Airport Site; and
 - (ii) where the Lessee has notified the Lessor of its intention to refuse access at least fourteen (14) days in advance of the first day on which it intends to refuse access.

4. RELEASE AND INDEMNITY

Notwithstanding any other provision of this Lease, as and from Grant Time, the Lessee takes and is subject to the same responsibilities with regard to person and property and otherwise to which the Lessee would be subject if during the Term the Lessee were the owner of the freehold of the Airport Site and the Lessee:

- (a) hereby releases the Lessor from and against all Claims by the Lessee in respect of any Damages, Costs or Injury which the Lessee may incur or sustain by reason of any act or omission on the part of the Lessor or the FAC or the performance of this Lease or the use or occupation of the Airport Site by the Lessee;
- (b) hereby indemnifies the Lessor from and against all Claims, Damages or Costs incurred or sustained by the Lessor, or for which the Lessor may become liable, in respect of any Claims, Damages, Costs or Injury to any person by reason of any act or omission on the part of the Lessee or by the performance of this Lease or the use or occupation of the Airport Site by the Lessee or any other person (whether before or after Grant Time), but this indemnity will not apply where the Claims, Damages, Costs or Injury are incurred or sustained by the Lessor as a result of the acts or omissions of the Commonwealth, its servants, agents, employees, contractors or licensees in carrying out any of their functions on the Airport Site after Grant Time; and
- (c) must, in any and every event in which the Lessor is made a party to any Claim to which the Lessee's obligation to indemnify and hold the Lessor harmless under any provision of this Lease extends, if so requested by the Lessor, defend such Claim in the name of the Lessor and must pay all costs of the Lessor in connection with the Claim provided that the Lessee may, in any such event, compromise, pay or satisfy any such claim with the consent of the Lessor.

The obligations of the Lessee under this clause continue after the expiration or earlier determination of this Lease in respect of any act, deed or thing happening before such expiration or determination.

5.10 Proof of payment

The Lessee must before the due date pay all premiums and other moneys payable in respect of any policy (including stamp duty) and must provide to the reasonable satisfaction of the Lessor satisfactory proof of payment thereof.

5.11 Revaluation of Structures

In respect of any insurance relating to reinstatement or replacement, the Lessee must cause each item covered by such insurance to be re-valued every three (3) years by a duly licensed and experienced valuer for the purpose of determining the current reinstatement or replacement value thereof and for such values to be assessed annually by a person with appropriate expertise and for those policies to be updated annually to reflect the current reinstatement or replacement value. The Lessee must as and when requested to do so by the Lessor promptly provide a copy of any such valuation to the Lessor.

5.12 Preservation of policies

The Lessee must not at any time during the Term do or omit to do or permit to be done or be omitted anything whereby any policy may be cancelled, vitiated, rendered void or voidable, adversely affected or limited in any respect.

5.13 Lessor's rights

If any insurance policy is cancelled or threatened to be cancelled or refused to be renewed or the coverage refused or cancelled in any way or the Lessee fails to comply with any of the requirements of this clause 5, the Lessor may take any action it considers necessary or desirable to fulfil the Lessee's obligations (including, without limitation, effecting any policy or paying the premium or other monies payable in respect of any policy) and recover from the Lessee all costs and expenses incurred in so doing. By the Lessor taking such action the Lessee will not be relieved of any of its obligations under this clause 5.

5.14 Lessee remains responsible

Delivery to and examination by the Lessor of any policy of insurance, certificate or other document relating to insurance shall in no way relieve the Lessee of any of its obligations under this clause 5.

5.15 Proceeds of insurance

Subject to clause 12A(b), all insurance proceeds paid out for the damage or destruction of any Structures must be used either for:

- (a) the re-building or re-instatement of those damaged or destroyed Structures; or
- (b) in the event that the Lessee chooses not to re-instate the damaged or destroyed Structures, the building of such other Structures as the Lessor approves.

6. ENVIRONMENT

6.1 Meaning of Environment of the Airport Site

For the purposes of sub-clause 2.1 and sub-clauses 6.2, 6.3 and 6.4, the expression "the environment of the Airport Site" includes, without limitation, the water, ground water, soil, subsoils, air, biota or habitat and sites of heritage value or of significance to Aboriginal or Torres Strait Islander people on, above or below the Airport Site and the Structures.

- (b) that has been renovated and developed from time to time according to international best practice.

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12A. BUILDING IN THE LAST TEN YEARS OF THE LEASE

If the Lessee has not exercised the option to renew pursuant to clause 18 the Lessee must:

- (a) not, nor may it permit or allow others during the last ten (10) years of the Term to, demolish or remove any Structures without the prior written consent of the Lessor; and
- (b) unless the Lessor otherwise agrees, re-build with all due expedition any Structure damaged or destroyed during the last ten (10) years of the Term to a standard agreed to by the Lessor and where agreement is not reached within twenty-eight (28) days of such Structure being destroyed or damaged to such standard as is specified by the Lessor acting reasonably.

13. EXPIRATION OR EARLIER DETERMINATION OF LEASE

13.1 Option over assets

- (a) The Lessee hereby grants the Lessor an option to purchase the following:
- (i) those items of non-fixed plant and equipment, vehicles, machinery, appliances, office equipment, computer systems, computer programmes, and technology owned by the Lessee and used exclusively at or in relation to the Airport Site ('Equipment');
- (ii) the Lessee's interest as lessee/bailee in any lease/bailment of Equipment ('Equipment Leases');
- (iii) the Lessee's interest in any Airport-Management Agreement or any other contract entered into by the Lessee in relation to the operation of the Airport Site or for the supply of goods or services at or in relation to the Airport Site ('Contracts'); and
- (iv) all other tangible personal property used by the Lessee in connection with the management, operation or maintenance of the Airport Site, together with the Lessee's interest in any computer programmes, computer systems, technology or intellectual property used in connection with the Airport Site ('Other Airport Assets'),
- (together the 'Option Assets').
- (b) In order for the Lessor to be able to operate the Airport Site immediately upon the expiration (where the option to renew is not exercised pursuant to Clause 18) or sooner determination of the Term, the Lessor (or its nominee) may, by notice in writing to the Lessee, exercise its option by requiring the Lessee to sell to the Lessor (or its nominee) one or more of the Option Assets nominated in writing by the Lessor ('Purchased Assets').
- (c) If the Lessor exercises its option, the terms of the resulting sale must be determined in accordance with sub-clause 13.3.
- (d) The Lessee must ensure that all Equipment Leases, Contracts and Other Airport Assets are capable of being assigned to the Lessor.

DATE:

1 JULY

1997

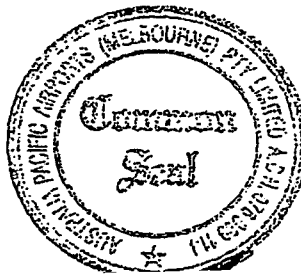
SIGNED by THE HONOURABLE JOHN)
JOSEPH FAHEY, MP in his capacity as the)
Minister for Finance for and on behalf of the)
Commonwealth of Australia in the presence of:)

Signature

Signature of Witness

Print Name

THE COMMON SEAL of AUSTRALIA)
PACIFIC AIRPORTS (MELBOURNE) PTY)
LIMITED was duly affixed in the presence of:)



Director

Director/Secretary

Print name

Print Name

0 05/323

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CLEARY, ROSS & DOHERTY
SOLICITORS
TELEPHONES: 62 5925
(5 LINES)

DEPT. OF THE INTERIOR - MELB
6469/46
SP18/12

J. R. CLEARY, LL.B.
F. P. MANNIX, LL.B.
ASSOCIATE:
J. DOHERTY, LL.B., A.F.I.A., A.C.I.S.

40 QUEEN STREET.

PLEASE REFER TO
MR. Mannix

Melbourne, 13th December, 1963.

Chief Property Officer,
Department of the Interior,
Cnr. Spring & Latrobe Streets,
MELBOURNE.

Your Ref. 6469/46 CSP/LE.

Dear Sir,

re : Tullamarine, Victoria: Grant of Easement
for Carriageway to Mrs. Wilhelmina
Smith

We refer to your letter of the 11th ultimo, and our subsequent telephone conversation of the 2nd instant with your Mr. Byrne.

Our client instructs us that the proposed easement as shown on the Plan, which is returned herewith, is unacceptable.

Our client states that she requires, and considers it the only practical solution, a direct outlet in a south easterly and north westerly direction outside the licence area from the point marked "A" in red.

Our client further instructs us that such outlet should have a construction suitable for the carriage over the same of a minimum of 3000 tons of material daily and that the maintenance of such outlet should be the responsibility of the Commonwealth.

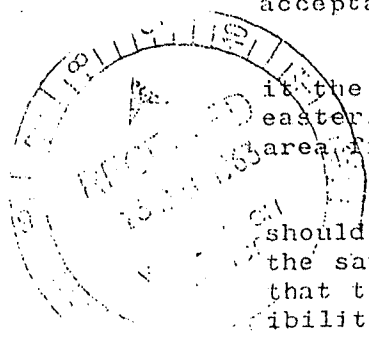
Our client further submits that this matter should be referred to the Commonwealth Department of Works which is conversant with the whole situation.

Please return the Plan to us at your earliest convenience and advise us whether you are prepared to comply with our client's requirements.

Yours faithfully,
CLEARY, ROSS & DOHERTY,

per:

[Signature box]



Mr. Mannix

C. SERVICES AND UTILITIES LICENCES GRANTED BY THE FAC²

NATURE	DESCRIPTION	COMMENT
1. Fuel Pipeline	Mobil Oil is the representative of the oil companies on the airport (Mobil, Shell and BP) in respect of the Joint User Hydrant Installation (JUHI). JUHI reticulates fuel from a site on the eastern side of the airport to the apron area. The original lease between the Corporation and Mobil for installation of the JUHI (DID01056) expired in 1989 and a renewal of the lease and a licence was negotiated in 1989 but not signed (DID01202 and DID01203).	<ul style="list-style-type: none"> A new national agreement is currently being negotiated by head office.
2. <u>Water</u>	There is a licence with Melbourne Water Corporation for a water main in the north western corner of the airport (DID01225).	<ul style="list-style-type: none"> The FAC owns the water infrastructure to the boundary of the airport, that is, all reticulation, storage and mains on the airport. The FAC's infrastructure taps into City West Water's mains located just outside the airport's boundaries.
3. Trade Waste	<p>There are no licences as such but there are trade waste agreements. These are in relation to disposal of:</p> <p>(a) hot and chilled water from the terminal services building. This agreement is with City West Water (CWW), Trade Waste Number 362306/29 (DID 12731).</p> <p>(b) waste from a wash down slab at the airport maintenance depot. The trade waste agreement has been entered into with CWW (DID05854).</p>	

² Table C sets out only licences in respect of services and utilities and not all licences entered into by the FAC in respect of Melbourne airport. Service and utilities easements are discussed under Table A.

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	<p>(e) <u>C225204</u>: Drainage easement over certificate of title v. 8390 f. 476 in favour of certificate of title v. 8541 f. 523. Registered proprietor of certificate of title v. 8390 f. 476 (FAC land) also has right to discharge into the drain through an inlet duct(s) water from the land comprised of certificate v. 8390 f. 476.</p>	
<p>4.2 Easements</p>	<p>(a) <u>H602788</u>: Easement of way over certificates of title v. 7344 f. 688 and v. 9302 f. 901 in favour of certificate of title v. 7344 f. 688.</p> <p>(b) <u>D991658</u>: Easement of way over certificates of title v. 8390 f. 476, v. 8466 f. 277, v. 8869 f. 263, and v. 8869 f. 264 in favour of certificate of title v. 7736 f. 181.</p> <p>(d) <u>H935688</u>: Easement of way over certificate of title v. 9302 f. 900 in favour of certificate of title v. 7344 f. 686.</p> <p>(e) <u>J153613</u>: Easement of way over certificate of title v. 9302 f. 901 in favour of certificate of title v. 9369 f. 268.</p> <p>(f) <u>K318372</u>: Easement of way over certificate of title v. 9302 f. 901 in favour of certificate of title v. 9500 f. 903.</p> <p>(g) <u>2568755</u>: Easement over certificate of titles v. 7617 f. 046 in favour of certificate of title v. 8390 f. 476 (FAC land).</p>	<ul style="list-style-type: none"> • Fresh title searches need to be undertaken to determine whether any further easements have been registered on airport titles. • <u>4.2(a) and 4.2(h)</u>: FAC owns the dominant and servient tenements.

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FOLIO No.	
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MELBOURNE AIRPORT

LOCKED BAG 116 ✕ TULLAMARINE VICTORIA 3043 AUSTRALIA ✕ FAX (61 3) 9297 1886 TEL (61 3) 9297 1887

AIRPORT MANAGEMENT ✕ LEVEL 2 INTERNATIONAL

HUME CITY COUNCIL
BROADMEADOWS

EG JAN 1998
Reference January 1998
... ..
Copies to
Document No. 140

13A

SBS
17/12

Strategic Planner
Hume City Council
PO Box 119
BROADMEADOWS 3047

Dear _____

Re: Hume Planning Scheme - Amendment No. L14
Western Avenue, Tullamarine

Thank you for your letter of 4 December 1997.

The proposed new Clause 162 is a considerable improvement from APAM's point of view in relation to the issues of concern to Melbourne Airport. There are a number of matters that we believe require further consideration, but most of these are a matter of detail, and fall within the spirit of the explanations that you have provided for the way in which Clause 162 responds to our original submissions.

1. Operation of Clause 162.

The zone purpose is stated as:

"To identify an area which requires the form of future use and development to be shown on a development plan before the use or development of land can commence."

However, that is not what the control does. Clause 162.1.1 merely says a permit must not be granted until the ODP has been prepared to the satisfaction of the Responsible Authority. This leaves open the question of as-of-right uses and exempt developments.

It would be more consistent with the zone purpose, and also in keeping with Clause 4.4 of the Section 173 agreement, if Clause 162.1.1 was worded as follows:

changed to cover both a permit situation and a situation where a planning permit is not required.

If it said "A permit must not be granted to use or subdivide land, construct a building or carry out works, and no use or development of land can commence, until an Overall Development Plan showing the overall use and development of all land affected by this overlay, has been prepared to the satisfaction of the responsible authority."

Attention is drawn to the use of the word "overlay" in this clause, which has simply been repeated from the present wording of Clause 162.1.1.

In fact, as we understand the proposal, the clause is not identified as an "overlay" by reference to any plan. To call it an "overlay" without some definition is only jargon, and may give rise to confusion as to how this clause relates to the provisions of the zone. It would be preferable to substitute "... affected by this Clause..."

2. Consistency with Section 173 agreement

In view of the fact that Council intends that the Section 173 agreement should have effect under the revised proposal, it is assumed that amendments will be made to the text of the agreement where necessary, for instance to clarify how the "Concept Plan" and "Plan of Development" relate to the Overall Development Plan and Site Development Plan. It would be desirable that Council clarify its position under the clauses relating to approval of the "Concept Plan" and "Plan of Development", to ensure that it cannot be challenged or criticised under the agreement when it consults the third parties listed in Clause 162-2 before making the decisions required of it under the agreement. At present, the agreement does not contemplate that the Council will take anyone else's views into account.

3. Aircraft noise exposure

In relation to the issue of aircraft noise exposure, Council's views are noted. It is correct that no approved overlay control presently affects the subject land, although part of it is within the 20 ANEF contour.

However, it is submitted that the amendment of the Planning Scheme so as to facilitate development that includes a potentially substantial residential component (the hotel) without any restriction as to where it would be placed does give rise to a new issue.

APAM submits that noise-sensitive uses should be protected from exposure to aircraft noise levels that would be considered annoying by most people. It is emphasised that what is proposed by APAM is observance of the standard for acoustic treatment as set out in AS 2021-1994, not an additional level of control over use.

While "the views of the community" may be considered under Clause 162-2, the process by which such views are ascertained, and the extent of the community to which it is proper to refer, are left uncertain. The extent to which this obligation has been fulfilled will be arguable in the case of any and all requests for approval.

While the developer who submitted a plan under Clause 162.1.1 or 162.1.2 would have a right to refer the Council's decision or failure to decide within a reasonable time to the Administrative Appeals Tribunal under Section 149A of the Planning and Environment Act 1987, APAM would not be entitled to be a party to the review proceeding.

Although APAM may be considered part of the community of Hume, it must be considered doubtful whether "the Commonwealth of Australia" can be considered part of the community, if it is the local community that is intended.

It may be that the inclusion of "the views of the community" could give rise to more problems than it solves.

4. Consultation

While it may be argued that Council is only obliged to consult the third parties listed in Clause 126-2 "where appropriate", it would be APAM's submission that it is always appropriate to consult it in relation to the matters listed under its name (plus acoustic treatment, as referred to above) before any Overall Development Plan, Site Development Plan or amendment is approved.

It is therefore submitted that the words "where appropriate" should be omitted from the first sentence of Clause 126-2, and inserted before the dot point relating to Solaris Power, where it can easily be imagined that only one Overall Development Plan need be relevant to the issue involving that company. These words would thus also refer to "community views" if this item is retained.

5. Access via the easement

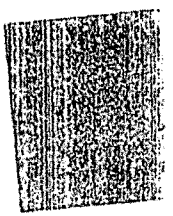
The assumption made in Council's response on this issue is that Council, acting solely under the Local Government Act, which is an Act of the State Parliament, can have an impact on ownership and control of land vested in the Commonwealth Government, without the consent of the Commonwealth. APAM believes that, as a matter of ordinary constitutional principles governing conflict of laws as between State and Commonwealth Governments, this assumption cannot be safely made.

However, if the developer is able to make the necessary arrangements with the Commonwealth Government, and obtains access to the easement so as to enable it to propose construction of an extension to Western Avenue, APAM considers it vital that it have an input not only into the final location, but also the design and construction of the road.

While your letter indicates the intention that APAM should have input into all three aspects of the road, Clause 162.2 does not deliver this with any clarity.

At the Overall Development Plan stage, it is not necessary for the developer to include anything more than "location of main road reserves and general form of roadways": Clause 162-1.1. Nor is it necessary for design and construction details to be included in the Site Development Plan approval stage: Clause 162-1.2. In relation to this clause, it is noted that the developer has to submit a proposed maintenance regime for landscaping, but not for roads.

It is becoming increasingly clear that the Victoria Street interchange is going to play a major part in planning for the future road network serving the airport.



Not only is input sought into the location, design and construction of any highway over the Western Avenue easement, but also APAM is concerned to secure the ability to reconfigure the road. Clause 162 as drafted does not have any effect as far as APAM is concerned after the approval of the Overall Development Plan and Site Development Plan.

For convenience of reference, APAM's submission on this point was that:

"The Council and the McLaughlins agree that if the future road construction requirements of the airport, including the planned Victoria Road (Street) overpass, require that the Western Avenue easement road be reconfigured, this agreement will form no bar to the necessary works being carried out, whether on or outside the easement. An alternative configuration would not diminish the traffic capacity of Western Avenue."

APAM thanks the Council for its assurance that APAM will bear no cost either for construction or maintenance of the extension of Western Avenue.

6. Future rail link

APAM acknowledges that the final route for the future road and rail links have not been determined, and that therefore preserving the options is as much as can be achieved at present. However, it is concerned that the decision that the Council may be called upon to make under Clause 4.15 of the Section 173 agreement - to require the road and rail link to be shown on a plan (that will now be called an Overall Development Plan?) will depend on the Council's ability and readiness at the date of the decision to risk undertaking a substantial liability for compensation.

Council's assurance that merely giving Council the discretion to refuse to approve a plan that does not show the link route is sufficient protection for the future development of the rail link reassures APAM that the extent of its potential liability for compensation will not be allowed to influence Council's decision.

There is, however, a drafting issue that would benefit from clarification. Variations on the same form of wording are used in Clause 162.2 and also in Clauses 162.1.1 and 162.1.2. In Clause 162.2, the widest reference is made.

This refers to "the objectives and development standards of the Greenvale/Attwood Strategy Plan".

While there is in the Strategy Plan document a plan entitled Greenvale/Attwood Strategy Plan", it is only the one plan that has that name. It appears from your letter that this one plan is not meant to be the sole reference for "the objectives and development standards" which are to govern the important issue of the future rail and road links. The name of the Strategy Plan referred to should be shown correctly.

When the developer whose attention has been drawn to the "the objectives" and the "development standards" of the Greenvale and Attwood Strategy Plan looks for them in the document, it appears that there are no "objectives of the Strategy Plan" as such. There are some "planning policies". There are also "objectives" for each element dealt with in the individual chapters after Chapter 2.

There are no "development standards" described as such.

In Clause 162.1.1, the reference is to "the objectives and development standards for flight path employment areas as set out in the Greenvale/Attwood Strategy Plan". Standing alone, this would appear to be a reference to Clause 9.2.3, although the Objectives for Chapter 9 are general employment objectives, and Clause 9.2.3 does not have any separate objectives. It does have development guidelines.

In Clause 162.1.2, the reference is merely to "the development standards of the Greenvale/Attwood Strategy Plan". This is not limited to the flight path employment areas.

It is submitted that imprecise references that may give rise to argument over such an important matter should be clarified. A developer may well consider that the only development standards that Council would be entitled to take into account in making its decision to approve a Plan would be the flight path area development guidelines, as they are the only ones that it can be fairly clearly said that an Overall Development Plan has to accord with.

It is noted that the VPPs avoid problems of this nature by simply making a reference to the whole document. In the present instance, that would be:

"The Overall Development Plan must be in accordance with the Greenvale and Attwood Strategy Plan - Towards 2011 (June 1993) and must show"

7. Conclusion

We have gone into the draft clause in considerable detail, in the hope that by setting up the framework for the decisions on the Overall Development Plan and Site Development Plan so as to deal with all our concerns, it will become unnecessary for any further input to be sought into the decisions on individual aspects of the development at the permit stage.

APAM thanks you for this opportunity. We look forward to receiving your advice in due course as to the proponent's attitude to the suggested solutions.

Yours faithfully,

Trevor Hosken

Airport Planner

DRAFT 29/5/98
FOR NEGOTIATION PURPOSES ONLY
AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 1998
BETWEEN

HUME CITY COUNCIL of 1079 Pascoe Vale Road, Broadmeadows,
Victoria
("Council")

- and -

KEITH THOMAS McLAUGHLIN and
NORMA ADA McLAUGHLIN
of _____ Victoria
("the Owners")

- and -

AUSTRALIA PACIFIC AIRPORTS (MELBOURNE) PTY LTD
of Level 2, International Terminal, Melbourne Airport, Victoria
("APAM")

INTRODUCTION

- A. Council is the Responsible Authority pursuant to the Planning and Environment Act 1987 for the Hume Planning Scheme ("the Planning Scheme"). Council is also the Planning Authority pursuant to the Act for Amendment L14 to the Planning Scheme ("Amendment L14").
- B. The Owners are the registered proprietors of the land described in Schedule 1 to this Agreement ("the subject land").
- C. APAM is the operator of Melbourne Airport, being an "airport-lessee company" under the Airports Act 1996 (Cwth) in relation to Melbourne Airport, ownership of which is vested in the Commonwealth of Australia.
- D. The Owners as registered proprietors of the subject land are entitled to the benefit of the Easement of Carriageway created by Instrument No. D991658 as described in Schedule 2 to this Agreement ("the easement") over part of the site of Melbourne Airport.



- E. Council proposes by Amendment L14 to amend the Planning Scheme at the request of the Owners to that the subject land is rezoned from "Extractive Industrial" to "Industrial 3" in conjunction with insertion into the Planning Scheme of a new Clause 162 setting out certain conditions for the use and development of the subject land.
- F. By an agreement dated 7 July 1997 made under Section 173 of the Planning and Environment Act 1987 ("the prior agreement") the Council and the Owners have agreed that in the circumstances described in that agreement, the Owners will construct certain roadworks in the easement.
- G. APAM requires an assurance from the other parties that the future road network needs of Melbourne Airport will not be prejudiced by the roadworks constructed in the easement pursuant to Amendment L14 and the prior agreement.
- H. APAM has lodged a submission objecting to Amendment L14.
- I. The parties have agreed to resolve their differences -

IN CONSIDERATION of the annual agreements set out below, and of the parties' desire to avoid the expense and delays of a contested hearing by a Panel under Part 3 of the Planning and Environment Act 1987 -

IT IS AGREED between the parties as follows:

1. The Owners agree that in the event that APAM notifies the Council that the future road network needs of Melbourne Airport, including the proposed Victoria Street interchange, require that the configuration of part of the road within the easement be changed, the Owners will not -
 - (i) object to; or
 - (ii) seek to delay or hinder
 execution of the necessary roadworks, whether within or (subject to acquisition of any necessary land by any appropriate person or road construction authority) outside the easement, on any ground related to APAM's consent to Amendment L14.
2. APAM and the Council agree that as far as it lies within their power to arrange it, any change to the configuration of the road constructed in easement for the purpose of the future road network needs of Melbourne Airport will not diminish its traffic capacity.
3. (a) APAM will bear no cost either for construction or maintenance of the road proposed to be constructed in the easement pursuant to the prior agreement.

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- (b) Changes to the configuration of the road within the easement and construction of the proposed interchange referred to in paragraph 1 shall not alter liability for its maintenance, which shall continue with respect to the road as reconfigured.

Effect of Agreement

- 4. (a) The parties intend that the burden of the covenants and obligations on the part of the Owners shall be borne by their transferees or other successors in title to any part of the subject land as far as possible. To that end, the Owners will bring this agreement to the attention of all prospective purchasers, mortgagees, transferees, lessees and assigns.
- (b) If the Owners sell or agree to sell the subject land or any part of it, they shall include in the conditions of sale a condition requiring the purchaser to enter into an agreement with APAM and the Council to the same effect as paragraphs 1 to 3 of this agreement. Upon production of an agreement entered into by a purchaser in accordance with this paragraph, APAM will release the Owners from their covenants and obligations under this agreement.

Withdrawal of Objections

- 5. Within five business days of receipt of a fully executed copy of this agreement, APAM will advise the Council in writing that it has no objection to the adoption and approval of Amendment I.14 with changes to the proposed text of the amendment so that Clause 162 appears in the form set out in Schedule 3 to this agreement.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

THE COMMON SEAL of HUME CITY COUNCIL was hereto affixed in the presence of:-

Councillor

Chief Executive Officer

SIGNED SEALED AND DELIVERED by the said KEITH THOMAS McLAUGHLIN in the presence of:

SIGNED SEALED AND DELIVERED by the said NORMA ADA McLAUGHLIN in the presence of:

SIGNED SEALED AND DELIVERED
on behalf of Australia Pacific
Airports (Melbourne) Pty Ltd
by its authorised delegate
TERENCE DAVID MORGAN
in the presence of:-