



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 16 Apr 2021 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: H2/2021
File Title: Hobart International Airport Pty Ltd v. Clarence City Council
Registry: Hobart
Document filed: Form 27B - Appellant's chronology
Filing party: Appellant
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

BETWEEN:

HOBART INTERNATIONAL AIRPORT PTY LTD

Appellant

and

CLARENCE CITY COUNCIL

First Respondent

THE COMMONWEALTH OF AUSTRALIA

Second Respondent

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APPELLANT'S CHRONOLOGY

Part I: Certification

The Appellant (**HIAPL**) certifies that this chronology is in a form suitable for publication on the internet.

Part II: Chronology of principal events

Key:

Joint Core Appeal Book (**AB**)

20 Appellants' Joint Book of Further Materials (**AFM**)

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Date	Event	Reference
10 June 1998	The Commonwealth and HIAPL enter into the Lease of the Airport Site.	AFM 6
13 May 2004	HIAPL and the Council execute a document titled "Clarence City Council Agreement" for a term of 5 years which sets out their "respective obligations" in relation to ex gratia payments in lieu of rates.	AB 99 [23]
15 August 2014	The Commonwealth writes to the Council "to clarify the lease obligations placed on [HIAPL] ... to make ex-gratia payments in lieu of rates".	
16 September	The Council declines HIAPL's proposal that the	

Date	Event	Reference
2014	parties negotiate an agreed sum to represent the payments required to be made, and notes that it has sought guidance from the Commonwealth on that topic.	
23 December 2014	HIAPL advises the Commonwealth that it is seeking to negotiate directly with the Council as to the amounts payable pursuant to cl 26.2(a).	
27 April 2015	HIAPL notifies the Commonwealth that it is disputing the new valuation methodology employed by the Council and has made payments to the Council in accordance with the values for FY 2012/13.	
15 June 2015	Commonwealth writes to HIAPL and the Council “to clarify the Department’s expectations of airport lessee companies ... relating to” cl 26.2(a) of the Lease.	
14 October 2015	The Commonwealth leads a “mediation meeting” between HIAPL and the Council regarding cl 26.2(a) of the Lease.	
4 November 2015	The Commonwealth writes to HIAPL and the Council, stating that it would engage an independent expert to calculate the ex gratia payments to be made by HIAPL to the Council, a process which “all parties agreed to” in the meeting of 14 October 2015, and that the valuation would “be considered final and not appealable or negotiable”.	
15 January 2016	The Commonwealth and Herron Todd White (HTW) execute a “Commonwealth Contract – Consultancy Services” in which the Commonwealth instructs HTW that “unleased areas used solely for aeronautical purposes as listed in Regulation 7.02A are not rateable” under cl 26.2(a) of the Lease	
18 January 2016	The Commonwealth advises HIAPL that it had	

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Date	Event	Reference
	engaged HTW for the “ex-gratia rates valuation process”.	
~1 May 2016	HTW prepares draft valuation report.	
10	<p data-bbox="228 427 480 981">3 June 2016</p> <p data-bbox="480 427 1217 981">The Commonwealth writes to HIAPL to advise that its view is that the HTW valuation “accords with the terms of the lease, and the ex-gratia rates determination accurately reflects the obligation imposed on HIAPL for payments in lieu of rates”. The Commonwealth confirms that “as ... HIAPL has made payments to CCC exceeding the amounts determined in the report, it considers HIAPL to have met its lease obligation for the years addressed by the valuation”.</p>	AB 18 [27]
20	<p data-bbox="228 981 480 1861">4 April 2017</p> <p data-bbox="480 981 1217 1861">HTW prepares a report titled “Valuation Report – Version 2.0 Hobart International Airport” (First HTW Valuation).</p> <p data-bbox="480 1167 1217 1861">The Commonwealth instructed HTW for the purpose of its valuation that:</p> <ul data-bbox="504 1290 1201 1827" style="list-style-type: none"> • rates equivalent payments are not required to be made in respect of “areas used for aeronautical purposes which are not subleased” as the “Commonwealth considers that such areas are not areas on which trading or financial operations are undertaken”; and • for those purposes, facilities and services specified in Table 1 or Table 2 of reg 7.02A of the <i>Airports Regulations 1997</i> (Cth) “may be taken to be areas used for aeronautical purposes”. 	
30	<p data-bbox="228 1861 480 1982">5 May 2017</p> <p data-bbox="480 1861 1217 1982">The Commonwealth sends two letters to HIAPL. The Acting Deputy Secretary of the Department of</p>	AFM 39, 42

Date	Event	Reference
10	<p>Infrastructure and Regional Development states that the “Department considers that this review process, which was agreed by both parties ... is finalised. Going forward, in the absence of a formal agreement between the parties, the Department intends to consider HIAPL compliant with its lease obligation should it make payments in lieu of rates to [the Council] on the basis of a valuation and methodology consistent with the revised HTW report.”</p> <p>The Minister for Infrastructure and Transport in his separate correspondence to HIAPL states that “I understand my Department has confirmed with you that if HIAPL calculates and makes payments of ex-gratia rates according to this methodology, HIAPL will be considered to be compliant with its lease obligation with respect to ex-gratia rates.”</p> <p>Correspondence in similar terms is sent to the Council.</p>	
20	<p>17 June 2017</p> <p>HIAPL informs the Commonwealth and the Council that it intends to make ex-gratia payments “as per the direction of the Commonwealth in [its] correspondence on this matter” and asks to meet with the Council regarding a MoU.</p>	
	<p>17 August 2017</p> <p>HIAPL informs the Council that it “will be paying in accordance with the Commonwealth’s direction” and would like to enter into a MOU to deal with this issue.</p>	
30	<p>29 September 2017</p> <p>HIAPL engages HTW to undertake an independent valuation of the amounts payable to the Council under cl 26.2(a) for FY 2016/17 to 2017/18, using a methodology consistent with that used in the First HTW Valuation.</p>	AB 19 [29]
	<p>25 January 2018</p> <p>HTW prepares a report for HIAPL titled “Valuation</p>	

Date	Event	Reference	
	Report – Hobart International Airport” (Second HTW Valuation) for FY 2016/17 and FY 2017/18.		
20 March 2018	HIAPL advises the Council of the amounts assessed in the Second HTW Valuation and proposes a MOU to set out the process and methodology for future payments, which would <i>inter alia</i> require HIAPL to pay \$133,810 within 14 days thereafter to reflect a shortfall following the HTW Valuations.		
10	20 June 2018	HIAPL pays \$133,810.00 (Adjustment Amount) to the Council. Erroneously, this figure included a payment of \$44,263 for FY 2012/13 which financial year was not addressed in the First or Second HTW Valuation.	
26 June 2018	The Council provides HIAPL with a refund of the Adjustment Amount.		
9 July 2018	The Council commences proceedings against the Commonwealth and HIAPL in the Federal Court of Australia (FCA).		
20	25 October 2018	The Council files an amended application in the FCA.	
30	21 February 2019	<p>HIAPL pays the Council a sum of \$103,394.45 pursuant to cl 26.2(a) (Net Shortfall) to reflect:</p> <ul style="list-style-type: none"> • the net shortfall between the amounts already paid by HIAPL to the Council for FY 2014/15 to 2017/18 and the amounts to be paid in accordance with the First and Second HTW Valuations; and • an adjustment of the fire service rate applied in the First HTW Valuation for FY 2014/15 to 2015/16, which did not accord with the fire rate adopted by the Council for those years. <p>That amount has not been refunded by the Council.</p>	

Date	Event	Reference
14-15 March 2019	Hearing before the FCA.	
5 April 2019	HIAPL files cross-claim against the Commonwealth.	
22-26 July 2019	Hearing before the FCA.	
24 September 2019	The FCA dismissed the Council's application.	AB 7
9 October 2019	The Council appealed to the Full Court of the FCA (Full Court) from the judgment of the FCA.	AB 51
10 30 October 2019	HIAPL filed a Notice of Contention (NOC)	
4 May 2020	Hearing before the Full Court	
6 August 2020	The Full Court allowed the Council's appeal and dismissed HIAPL's NOC	AB 80
12 February 2021	The High Court of Australia (HCA) granted HIAPL special leave to appeal from the Full Court's judgment.	AB 242
25 February 2021	HIAPL filed a Notice of Appeal in the HCA	AB 244
20 26 February 2021	HIAPL filed a notice under s 78B of the <i>Judiciary Act 1903</i> (Cth)	AB 248
16 March 2021	The Council filed a NOC in the HCA	AB 256

Dated: 16 April 2021

Kristina Stern
Sixth Floor Selborne Wentworth Chambers
Tel: (02) 9232 4012
Email: kstern@sixthfloor.com.au

Louise Coleman
Sixth Floor Selborne Wentworth Chambers
Tel: (02) 8915 2617
Email: lcoleman@sixthfloor.com.au