



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: H3/2021
File Title: Australia Pacific Airports (Launceston) Pty Ltd v. Northern Mi
Registry: Hobart
Document filed: Form 27B - Appellant's chronology
Filing party: Appellant
Date filed: 16 Apr 2021

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

BETWEEN:

AUSTRALIA PACIFIC AIRPORTS (LAUNCESTON) PTY LTD
(ACN 081 578 903)

Appellant

and

NORTHERN MIDLANDS COUNCIL

First Respondent

THE COMMONWEALTH OF AUSTRALIA

Second Respondent

10

APPELLANT'S CHRONOLOGY

Part I: Certification

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

Part II: Chronology of principal events

20

Key:

Joint Core Appeal Book (**AB**)

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

30

Date	Event	Reference
28 May 1998	The Commonwealth and APAL enter into the Lease of the Airport Site.	AFM 57
11 April 2013	The Valuer-General issues APAL with a Notice of Valuation of Airport Site as at 1 October 2006 (April Valuation). Prior to FY 2013/14, ex gratia rates were paid directly by tenants to the Council. After this time, APAL receives invoices for all sites at Launceston airport	

	Date	Event	Reference
	29 May 2013	Valuer-General issues APAL with Notice of Valuation of Airport Site as at 1 July 2012 (May Valuation).	
	11 June 2013	APAL lodges Objection to April Valuation	
	17 July 2013	APAL lodges Objection to May Valuation	
	13 May 2014	Meeting between APAL and the Council. APAL proposes a memorandum of understanding (MOU) to guide ex gratia payments to the Council	
10	28 May 2014	Lease review meeting between APAL and the Commonwealth. Both parties confirm that those areas classified as gate lounge or terminal areas (save for shops and the like) should be “non-assessable for rates”	
	3 June 2014	APAL writes to the Commonwealth, seeking confirmation as to its interpretation of the Lease “that those areas of the airport site utilised for terminals, gates, lounges etc are non-rateable and should be excluded from the ex-gratia rate equivalent calculation”, for the purpose of informing a MOU with the Council	
20	16 June 2014	Commonwealth writes to APAL confirming the Commonwealth’s view that “areas in terminal buildings which relate to aviation operations (such as passenger lounges and gates and areas which Commonwealth agencies occupy or operate)” are not subject to the obligation in cl 26.2(a)	
	17 June 2014	The Valuer-General notifies APAL that its Objections to the April and May Valuations have been disallowed	
	26 June 2014	Meeting between APAL and the Council. The “need for an MOU to give certainty” is discussed.	

30

Date	Event	Reference
8 July 2014	APAL writes to the Council enclosing a cheque for \$152,959.81 for FY 2013/14 and reiterating its “desire to work towards establishing a memorandum of understanding (MOU) with council which would provide a framework outlining the principles of the ex-gratia rate payments for Launceston Airport ...”	
15 August 2014	The Commonwealth writes to the Council “to clarify the lease obligations placed on Launceston Airport ... to make ex-gratia payments in lieu of rates”	
9 January 2015	APAL’s Objection to the Valuer-General’s May Valuation is referred to the Supreme Court of Tasmania for determination (Supreme Court Proceedings).	
3 February 2015	APAL’s Objection to the Valuer-General’s April Valuation is referred to the Land Valuation Court for determination. The proceedings are adjourned on or about 6 February 2015 pending the outcome of the Supreme Court Proceedings	
15 June 2015	The Commonwealth writes to APAL “to clarify the Department’s expectations of airport lessee companies ... relating to” cl 26.2(a) of the Lease. The Commonwealth stated that areas on airport subject to ex-gratia rates should be restricted to areas where commercial operations which do not directly support aviation operations are undertaken, including common user terminals such as the check-in, security, baggage collection and handling areas, departure gates, queuing areas (such as Immigration and Customs processing) and general circulation areas	

	Date	Event	Reference
	18 September 2015	The Commonwealth leads a “mediation meeting” between APAL and the Council regarding cl 26.2(a) of the Lease. The Commonwealth states that rates are not payable in respect of <i>inter alia</i> public areas in terminals, public amenities, lifts, departure and holding lounges, area for processing passengers, quarantine facilities, check in counters and queuing facilities.	
10	1 December 2015	The Commonwealth writes to APAL and the Council, stating that it would engage an independent expert to calculate the ex gratia payments to be made by APAL to the Council.	
	16 December 2015	The Commonwealth writes to APAL to “clarify the Department’s role will be limited to the resolution of the ex-gratia rates payments for the years currently in dispute (2013-14, 2014-15 and 2015-16)” and stating that the Department “has commenced the agreed resolution process”	
20	18 January 2016	The Commonwealth writes to APAL confirming it has engaged Herron Todd White (HTW) to prepare a valuation report	
	19 January 2016	APAL writes to the Commonwealth indicating that it would place itself “at the disposal of HTW” and was “confident that our team will be able to assist as required to complete the exercise as soon as possible”. APAL states that it met with the Council “last week and gave a commitment that we would work with the independent valuer to conclude matters at the earlier opportunity”	

30

Date	Event	Reference
19 March 2016	The Commonwealth writes to APAL to provide a copy of the independent valuation report prepared by HTW for FY 2013/14 to 2015/16, and states that the “Department’s view is this valuation accords with the terms of the lease and the rates determination accurately reflects the obligation imposed on [APAL] for payments in lieu of rates. Should APAL make payment to NMC in line with the report, the Department will consider APAL to have met its lease obligations for the years addressed in the report”. HTW was instructed by the Commonwealth to exclude <i>inter alia</i> unleased areas used solely for aeronautical services and facilities	AB 100 [27]
31 March 2016	APAL pays \$63,868.89 to the Council consistently with the HTW valuation, to account for the variance for FY 2013/14, 2014/15 and 2015/16	
29 April 2016	The Supreme Court Proceedings are discontinued by consent. The primary reason that APAL discontinues the Supreme Court Proceedings is that on 19 March 2016, APAL received a letter from the Commonwealth stating that should APAL make payment to the Council in line with the report of HTW, the Department would consider APAL to have met its lease obligations for the years addressed in the report	
17 May 2016	Meeting between APAL and the Council. APAL “discussed the creation of an MOU for future payments, as we see this as our next logical step in reaching agreement on future payments and creating a legal relationship with council, and agreeing to a valuation mechanism”	

10

20

30

Date	Event	Reference
24 August 2016	The Commonwealth advises APAL that it would be asking HTW to revisit the valuations to address the omission of subleased areas used for aeronautical activities, but that the Department “would not expect the most recent ex-gratia payments to be revisited”	AB 100 [28]
10 31 August 2016	APAL writes to the Council, enclosing a summary of ex gratia payments made to the Council on that date (\$201,455.71 for FY 2016/17) and stating that the payment “is being made in accordance with independent valuation conducted by [HTW], at the direction of the Commonwealth Government”. APAL confirms that “we remain committed to documenting a formal agreement with council, outlining the future conduct of ex-gratia rate equivalent matters for the airport site, which incorporates the independently commissioned valuation approach adopted by HTW.”	
20 7 September 2016	The Commonwealth provides HTW with instructions in a document titled “Valuation instructions for Launceston Airport”. Among other things, the Commonwealth stated in those instructions that payments under cl 26.2(a) are not required to be made in respect of “areas used for aeronautical purposes which are not subleased. The Commonwealth considers that such areas are not areas on which trading or financial operations are undertaken. For these purposes, facilities and services specified in Table 1 or Table 2 of reg 7.02A of the Airports Regulations 1997 may be taken to be areas used for aeronautical purposes”.	
30 19 September 2016	APAL writes to the Commonwealth, confirming “it has always been our position to comply with the independent valuation process initiated by the Commonwealth and we will certainly continue to do so”.	

Date	Event	Reference
4 April 2017	HTW prepares a revised valuation of the Airport Site for FY 2013/14 to 2015/16.	
5 May 2017	<p>The Commonwealth writes two letters to APAL. The Acting Deputy Secretary of the Department of Infrastructure and Regional Development states that the “Department considers this review process is finalised. Going forward, in the absence of a formal agreement between [the Council] and [APAL], the Department will regard APAL as compliant with the obligation in clause 26.2 if it makes payments in lieu of rates to [the Council] on the basis of a valuation and methodology consistent with the revised HTW report”.</p> <p>To similar effect, the Minister for Infrastructure and Transport in his correspondence states that “I understand my Department has confirmed if APAL calculates and makes payments of ex-gratia rates according to this methodology, APAL will be considered to be compliant with its lease obligation with respect to ex-gratia rates”.</p> <p>Correspondence in similar terms was sent from the Commonwealth to the Council.</p>	AFM 90, 92
16 May 2017	Lease review meeting between the Commonwealth and APAL. No issues as to compliance with cl 26.2 raised.	

10

20

30

Date	Event	Reference
31 May 2017	APAL writes to the Council, enclosing a summary of ex gratia payments made that day (\$23,465 for FY 2017, taking the total payment to \$224,921). APAL stated that the payment was being made in accordance with the HTW valuation of 4 April 2017 “consistent with the direction provided from the Department of Infrastructure, and as confirmed in writing by acting Department Deputy Secretary Pip Spence”. APAL said that “we remain committed to documenting a formal agreement with council, outlining the future conduct of ex-gratia rate equivalent matters for the airport site, which incorporates the independently commissioned valuation approach adopted by HTW and other principles as confirmed by the Department ...”	
31 May 2017	APAL writes to the Commonwealth, enclosing a copy of correspondence to the Council of the same date, and stating “we are continuing to request engagement from the [Council] regarding agreement to a Memorandum of Understanding to outline the future conduct of ex-gratia rate equivalent matters”	
18 July 2017	APAL makes an ex gratia payment of \$239,105.72 for FY 2017/18, consistently with the valuation and methodology in the HTW valuation of 4 April 2017	
16 August 2017	Commonwealth writes to APAL stating that it “considers that the 2017 Lease and Compliance Review process is now complete”. At no Lease review meeting has the Commonwealth ever indicated that the payments APAL has made to the Council under cl 26.2(a) of the Lease are not in accordance with the Lease	

10

20

30

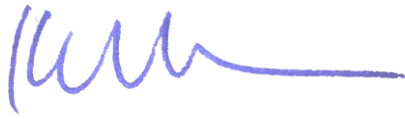
10

Date	Event	Reference
9 July 2018	The Council commences proceedings against the Commonwealth and APAL in the Federal Court of Australia (FCA).	
25 October 2018	The Council files an amended application in the FCA.	AFM 94-105
31 October 2018	APAL makes an ex gratia payment of \$246,867.86 for FY 2018/19	
14-15 March 2019	Hearing before the FCA.	
5 April 2019	APAL 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
30 October 2019	APAL 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 APAL's NOC	AB 80
12 February 2021	The High Court of Australia (HCA) granted APAL special leave to appeal from the Full Court's judgment.	AB 242
26 February 2021	APAL filed a Notice of Appeal in the HCA	AB 263
26 February 2021	APAL filed a notice under s 78B of the <i>Judiciary Act 1903</i> (Cth)	AB 267
16 March 2021	The Council filed a NOC in the HCA	AB 275

20

30

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

10

20

30