

**IN THE SUPREME COURT
OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

B E T W E E N:

KEITH McLAUGHLIN and NORMA ADA
McLAUGHLIN
Plaintiffs
and

THE COMMONWEALTH OF AUSTRALIA,
AUSTRALIA PACIFIC AIRPORTS
(MELBOURNE) PTY LTD and
THE REGISTRAR OF TITLES
Defendants

**DRAFT WITNESS STATEMENT OF ERIC
WILSON**

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Filed on behalf of: The Plaintiffs
Prepared by:
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I, **ERIC WILSON** of 5 Eagle Terrace, Taylors Lakes in the State of Victoria, Journalist & Inventor, say as follows:

1. I am a friend of the Plaintiffs. I have provided assistance to the Plaintiffs with their various legal proceedings being conducted at the Victorian Civil and Administrative Tribunal (VCAT) and the Administrative Appeals Tribunal (AAT). I have attended hearings at each of those Tribunals. That litigation has been conducted against the Second Defendant (APAM) as well as other parties. The AAT proceedings involve respondents including a Minister of the Crown and the VCAT proceedings also involve City of Hume and Melbourne Water.
2. The Plaintiffs have had a number of proceedings in each of those Tribunals

predominantly relating to the approval of an Airport Master Plan at the AAT and the recognition of the Plaintiffs' rights in relation to the Master Plan as well as the approval of a Development Plan at VCAT along with the rights and obligations of parties in relation to the maintenance and rehabilitation of Western Avenue.

3. In the Plaintiffs' application for the approval of the development plan at VCAT, Hume City Council opposed the application on the basis that the application should not be granted as a result of the poor condition of Western Avenue to the south of the Plaintiffs' land. The access that Western Avenue provides to the Plaintiffs' land is substandard and presently has no direct link to the airport terminal precinct. The Plaintiffs' land is approximately 400 metres from the airport terminal buildings.
4. The First Defendant is aware that the Plaintiffs are a commercial competitor to the Second Defendant and has refused to concede that an easement exists over Quarry Road and has refused to reinstate Quarry Road after it was excavated in 1999 and subsequently fenced off by authority of the First Defendant.
5. If Western Avenue access is to be the only access to the Plaintiffs' land, its rehabilitation and maintenance becomes a critical issue. The VCAT proceeding deals directly with this point. The Respondents in VCAT have opposed the application at every stage of those proceedings.
6. The Second Defendant has greatly endeavoured to frustrate the Plaintiffs at VCAT and AAT proceedings. Without a Development Plan, the Plaintiffs will not pose a threat to APAM as a commercial competitor. I set out details of this below.
7. In January 2009, the Plaintiffs applied to the AAT to have their access rights acknowledged in the Defendant's Melbourne Airport Master Plan. The Minister for Infrastructure, Transport, Regional Development and Local Government (the **Minister**) is a respondent to that application and APAM is a party that has been joined to that proceeding at its own request. The Master Plan approved by the Minister did not recognise the Plaintiff's interest in the Airport land as required by law. This is notwithstanding that Western Avenue is within a registered easement

over the Airport Land. The Plaintiffs made application to have the Minister recognise their interest in the Master Plan since it looked to be partly obstructed in that plan. The Minister delayed the AAT adjudication of the Plaintiffs' rights by challenging their standing in that proceeding. The decision of the tribunal as to standing is a decision of the 31 July 2009. The AAT found the Minister erred in the 2008 Master Plan in not recognising the Plaintiffs' access rights and confirmed that the Plaintiffs have standing to challenge the Minister's decision.

8. The Defendants in this proceeding and the Respondents in the VCAT and the AAT proceedings have used the same lawyers to represent them in each of the proceedings. Even Counsel appearing has, to a large extent, been common to all the proceedings. Mr Finanzio who has appeared extensively in these proceedings, sometimes with Senior Counsel, has appeared on behalf of the Respondent the Second Defendant at the VCAT and AAT proceedings.
9. The Defendants, as Respondents in VCAT, in a written submission to VCAT dated 24 July 2008 stated that the Plaintiffs were not allowed to maintain the road and that as a result, their Development Plan should not be approved unless they first negotiated an agreement concerning maintenance and other issues with APAM. In August 2008, VCAT did not approve the Plaintiffs' Development Plan because of the poor state of the road and because the Respondents in those proceedings claimed the Plaintiffs did not have the right to undertake repairs of Western Avenue.
10. The Plaintiffs' wrote to APAM requesting that repairs to the road be undertaken in accordance with its obligations to the First Defendant.
11. APAM refused, in a letter dated 16 September 2008, to undertake repairs to the road on the grounds that any road maintenance responsibility it had was owed to the First Defendant and not to the Plaintiffs. The Plaintiffs requested that either APAM or the First Defendant undertake repairs to the road. On the 3 February 2009, in an application before His Honour Justice Smith for an adjournment of a trial of these proceedings, the Defendants argued that the Plaintiffs would not be able to obtain a Development Plan unless they negotiated an agreement with the

Second Defendant concerning risk and maintenance of the road. It was also said in those proceedings that APAM would refuse consent for them to undertake repairs until such agreement was entered into.

12. Notwithstanding the Defendants' written submissions to VCAT, when questioned at the AAT as to whether the Plaintiffs had rights to undertake repairs, Mr Finanzio for the Defendants indicated that the Second Defendant ~~believed~~ knew ~~always~~ that the Plaintiffs had those rights and that the VCAT decision indicating that he had stated otherwise amounted to a misunderstanding of his submissions
13. In delaying the adjudication of the Plaintiffs' application on the 2008 Master Plan, the Minister submitted a bundle of material to the Plaintiffs the night before the hearing was to be determined as to standing and submitted the material to the Tribunal on the morning of that hearing. The Tribunal was forced to adjourn the hearing.
14. At the AAT proceedings, the Respondents have requested adjournments so that the application made in January 2009 was not heard until March 2010 and presently stands adjourned.
15. The standing hearing on 12 May 2009 the Minister by written submission argued that the Plaintiffs' had no standing at the AAT based upon the Plaintiff's land's lack of development prospects due to the VCAT decision of 25 August 2008, despite a subsequent letter from the Commonwealth to the Plaintiffs dated 12 March 2009, stating the Plaintiffs did have common law rights to repair the road, contrary to the primary reason why VCAT would not approve the Plaintiffs Development Plan. The Second Defendant did not intervene and allowed the Tribunal hear the Minister's submission that the Plaintiffs had no standing to have their grievances heard.
16. The Plaintiffs also applied to the Airport Building Controller for a permit to undertake repairs to the road on the basis of their carriageway easement rights. The Airport Building Controller accepted their application. The Second Defendant wrote to the Plaintiffs by letter dated 10 September 2009 stating that those rights

did not include the right for trucks to cross their land onto other land and they had no right to do so unless they first reached agreement with APAM. The Plaintiffs responded to APAM that their land was given access to replace a fully maintained state ~~main~~ ~~made~~ road and this issue was before the AAT.

17. The Airport Building Controller then advised me that he had received an indication from Canberra that the Plaintiffs could not apply to undertake repairs to the road because the regulations did not give them the right to do so. This is reflected in his letter to the McLaughlins' consulting engineer dated 4 November 2009. The Plaintiffs asked me if this matter also had to be heard by the AAT, so I wrote to the Manager of the Airports in Canberra and stated that the Plaintiffs had common law rights to apply for a permit to repair the road. They received a response from the Airport Building Controller via their consulting engineer dated 11 November 2009 that they could resubmit their application to reconstruct the road which the Plaintiffs did. They then received a further response from the Airport Building Controller saying that he had received plans submitted by the Plaintiffs and had created a file to consider their application.
18. However APAM refuses to provide the Airport Building Controller with its consent to the rehabilitation of the road pursuant to the Commonwealth's grant of "full and free right and liberty" in the easement instrument D991658 dated 4 March 1971, and by letter dated 24 November 2009 asserted arbitrary power to impose and waive fees in order to obtain its consent under Commonwealth regulations.
19. The Plaintiffs have continued with their application for the approval of the development plan at VCAT and are now at Version 17 of the Development Plan. The City of Hume have continued to refuse the approval of the development plan because of the road condition at Western Avenue. APAM has continued to argue that the Plaintiffs (the Applicants in that proceeding) have not yet complied with enforcement orders previously made at VCAT dealing with contamination issues. This is notwithstanding that an arrangement had been entered into between the Plaintiffs and the City of Hume to test fill material on the land to confirm that contamination did not exist. Where the Plaintiffs say the agreement required the testing of a stockpile, the other parties to that proceeding now argue that the

whole of the filling of the land has to be tested again.

20. Despite the submissions of the Respondents to the AAT that the Plaintiffs enjoy the dominant tenement over the service road to Western Avenue, and this includes common law rights to construct a road, the Second Defendant continues to assert in VCAT that it controls the Plaintiffs land's only access over the First Defendant's land (as per the Second Defendant's letter of 15 June 2010 adopting Hume's list of 10 June 2010), and by further letter dated 20 July 2010 that the Plaintiffs must submit to unspecified conditions to gain the Defendants' consent and approval to repair that easement road.

21. Despite the contents of the Second Defendants' Melbourne Airport Master Plan, their submissions to the AAT and the provisions of the Melbourne Airport lease, the Second Defendant further submitted in VCAT that the Plaintiffs development plan should not be approved because if the Supreme Court proceedings are successful, Quarry Road could be used from the Plaintiff's land without consulting the Defendants as to traffic management.

22. The above is typical of the frustrations and delays experienced by the Plaintiffs from the second Defendants and the Respondents in the VCAT and the AAT proceedings. It is certainly not all of them.

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Eric Wilson