

AGENDA ITEM No. 5 (a)(B)
REPORT

TO:	HOUSING AND PROPERTY SERVICES COMMITTEE	SUBJECT:	
FROM:	DIRECTOR OF HOUSING & PROPERTY SERVICES	LAND AT CUMBERNAULD AIRPORT	
DATE:	16 JUNE 1999	REF:	AY/HM

1. PURPOSE OF REPORT

To report on further information obtained on the valuation of the "clawback" agreement included in the original sale of Cumbernauld Airport.

2. BACKGROUND

When Cumbernauld Development Corporation sold Cumbernauld Airport to Cormack Aircraft Services (CASL) in 1993, there was a "clawback agreement" included by which CDC or its successors would obtain a share of any finance released by the sale of the Airport. The principal thinking appeared to be to ensure that CASL did not sell the Airport for development rather than retain the asset for the town.

CASL now propose to sell 20 acres which is currently outside the Airport fence. The proposed purchaser is Keddy Specialist Services who prepare, deliver and service car fleets for major manufacturers. They indicate that they will employ 150 people on site. Such a sale will trigger the clawback agreement.

A copy of a previous Report which was submitted to the Buildings and Property Subcommittee in February is attached and gives details of the consideration given to the implementation of the clawback agreement.

The Committee continued consideration of the Report to allow further information to be obtained.

3. UPDATE

The two elements of the calculation which were to be scrutinised were:-

- (a) The definition of the Y value.
- (b) The calculation of the value of Y based on the agreed definition.

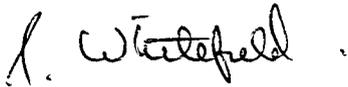
The Head of Legal Services has reviewed the definition of the wording in the Y value. He is firmly of the view that the wording means that Y is to be calculated using the increase in value of the Airport resulting in the construction of the new hangar and not the cost of building the hangar. He appreciates the point claimed by CASL that the agreement was meant to mean that there would be no clawback as all receipts raised by disposal of land was to be ploughed back into the Airport. However the agreement makes no mention of this approach and consequently the current interpretation is in his view the correct one.

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The proposed valuation outlined in para 6 of the previous Report is based on this interpretation. However to confirm its accuracy the District Valuer has been asked to verify that the figure is properly calculated and can be recommended for acceptance. At the time of writing of the Report he has not reported back. However his report has been promised in time for the Committee Meeting where a verbal update will be given.

4. RECOMMENDATION

That, provided the District Valuer confirms the figure of £30,000, the Committee approve the Minute of Waiver and other consents required as Feu Superiors over the land at Cumbernauld Airport to CASL on the terms and conditions previously laid out in the Report to Buildings and Property Subcommittee dated 16 February 1999.



GAVIN WHITEFIELD
Director of Housing and Property Services



REPORT

TO:	PLANNING & DEVELOPMENT (BUILDINGS AND PROPERTY) SUBCOMMITTEE	SUBJECT:	
FROM:	DIRECTOR OF PLANNING & DEVELOPMENT	LAND AT CUMBERNAULD AIRPORT	
DATE:	16 FEBRUARY 1999	REF:	AY/FF

1. PURPOSE OF REPORT

To provide information to allow the Council to decide on a course of action relating to a "clawback" agreement included in the original sale of Cumbernauld Airport.

2. BACKGROUND

Cumbernauld Development Corporation sold Cumbernauld Airport to Cormack Aircraft Services (CASL) for £71,000 (excluding VAT) in 1993. The sale of 98.5 acres not only included the runway terminal building, hangars, other associated buildings and the security fencing but also 20 acres outside the fence including a 1 1/2 acre prepared industrial development site. All the land had a restriction on use to airport and ancillary purposes. The sale also included a "clawback" agreement which allowed CDC or its successors to obtain any enhancement if the airport, or any part of the site sold, was subsequently sold on by CASL. More detail of this agreement is outlined below.

3. CURRENT PROPOSAL

CASL have now provisionally agreed to sell the 20 acres outwith the airport fence to Keddy Specialist Services. Their core business is to manage, prepare, deliver and service demonstrator and Company car fleets for a number of major manufacturers. The proposal is to build offices, a servicing building and car parking. There will be a substantial area of the land used for car storage.

Their business plan suggests a final workforce of around 150.

They are being supported by the LDA and have received Regional Selective Assistance for the project.

4. CLAWBACK

In these circumstances, the "clawback" agreement is triggered. The basic conditions of this agreement are:-

a A sale or part sale of the land sold to CASL constitutes a payment event which entitles NLC to an enhanced value.

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- b This enhanced value is calculated on the basis of a formula X-Y where
- X = The current open market value of the subjects allowing for the current limitations on use.
- Y = The purchase price as enhanced by any improvement works.
- c The clawback exists for a period of 10 years from 1 December 1993.

It is clear that the clawback agreement was meant to allow CDC to obtain any profits made from any subsequent sale given the low selling price. At the time, it appeared that the major concern was that the airport might cease trading and the entire site would be sold off for development. It is likely that the current scenario was not envisaged.

5. DISCUSSIONS AND CONSULTATIONS

Discussions have taken place with CASL's Agents and opinions sought from the District Valuer and Legal Services over the interpretation of the clawback agreement. Both are of the opinion that it is badly worded and open to a wide range of interpretations.

Most discussions surround the calculation of the Y value. CASL's Agents state that the Y should be the original value £71,000 plus the costs of a new hangar £480,000, giving a Y total of £551,000. This will result in Y exceeding the X figure of £350,000 agreed by the District Valuer. Their argument is that it was always the intention that the original transaction was aimed at retaining and enhancing the Airport as a facility for Cumbernauld. The clawback agreement was to encourage investment in the facility by offsetting the costs of any investment against any windfall gain from selling the land or any part of it.

An alternative interpretation of the Y value is that it is the increase in value of the whole site attributable to building of the hangar rather than the costs. In normal circumstances the value and cost of a property would equate as a lender would take the building as security for the loan. In a building as specialised as a hangar it is doubtful if this would be the case. If money is being borrowed it is likely to be against the whole airport facilities. Consequently only a share of the costs, representing the value of the hangar would be included in this interpretation.

6. CONSIDERATION

The creation of 150 jobs in Cumbernauld is a major consideration in coming to a course of action in this matter. This has to be balanced against what the original clawback agreement was meant to mean for C.D.C. and N.L.C. as its successors. As the wording of the agreement is poor it is difficult to clearly state that either of the interpretations outlined above is the correct one.

However CASL are prepared to concede an interpretation based on value rather than cost but using the costs of the hangar to arrive at the enhanced value.

It has been provisionally agreed that the enhanced value will be £250,000 giving a y value of £321,000 (i.e. £250,000 + £71,000). This in turn will give a clawback amount of £350,000 - £321,000 = £29,000. This has been rounded to £30,000.

7. ADDITIONAL

The payment from the clawback agreement automatically results in the requirement to waive the title restriction on Airport use only over the land to be sold to allow to proceed the Keddy development

The waiving of the restriction and the payment of the £30,000 is conditional on the following:-

- (a) CASL submitting in advance
 - (i) Detailed plans and specifications for the new hangar and associated works.
 - (ii) The construction programme and contract sum agreed with the builder for the hangar.
 - (iii) Details of the land to be sold to Keddy Services Ltd., the consideration payable and an outline of the Company's development proposals.
- (b) The new hangar is built within the contract period as previously stated. Completion of the sale of the land to Keddy will not take place until the Council are satisfied that the new hangar has been completed .
- (c) Payment will be made to the Council by CASL simultaneously with the completion of the disposal to Keddy Services Ltd.
- (d) The 30,000 will be in full and final settlement of the clawback provision relating to this part of the site.

8. RECOMMENDATION

That the Committee approve the Minute of Waiver and any other consents required as feu superiors over the land at Cumbernauld Airport to CASL on the terms and conditions outlined above.

STANLEY COOK
Director of Planning & Development

LOCATION PLAN - For Information Only

Title: CUMBERNAULD AIRPORT

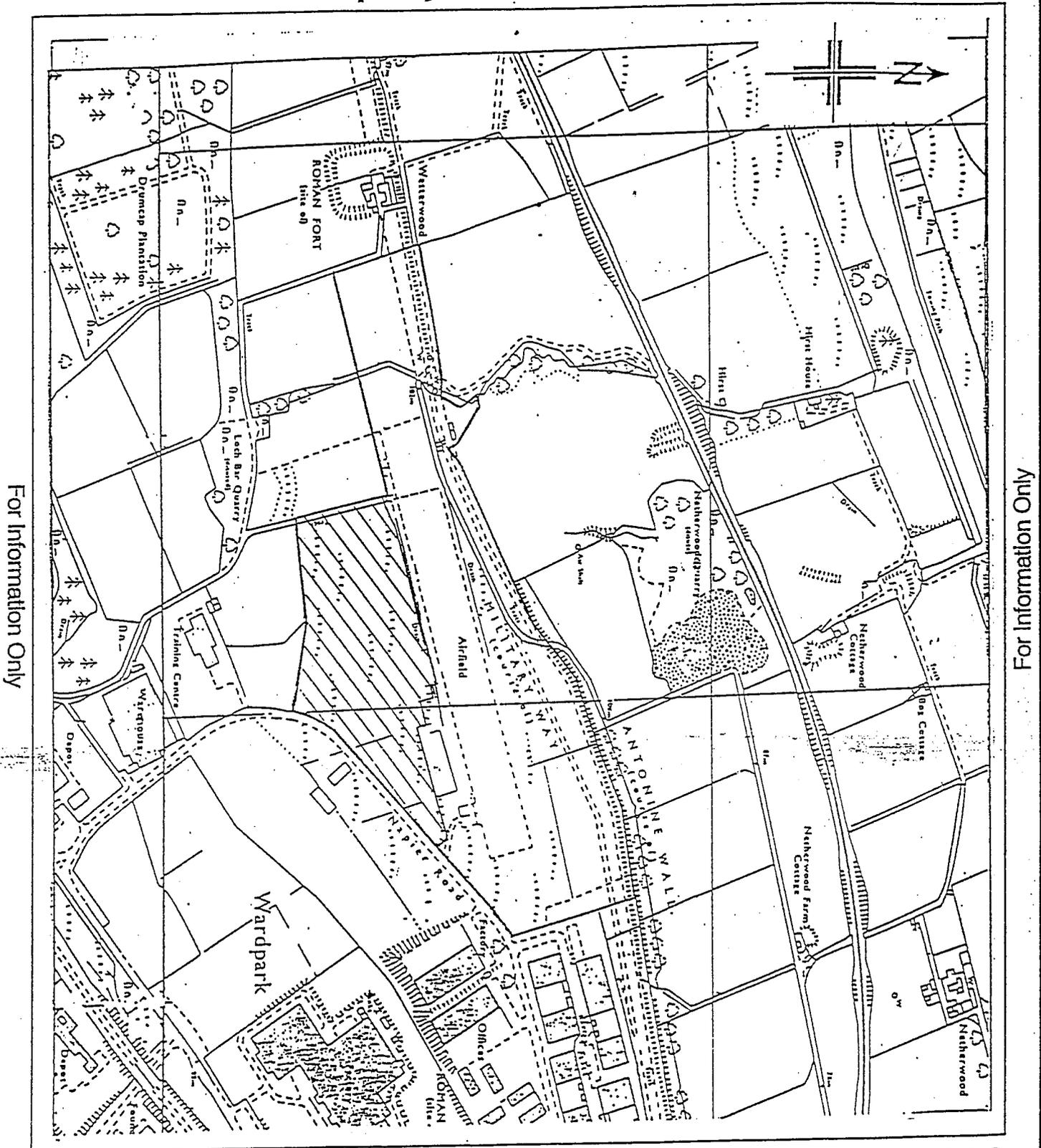
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Town: CUMBERNAULD

Date: 21/05/99



Property Services Division



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DEPARTMENT OF HOUSING AND PROPERTY SERVICES

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Director of Housing & Property Services
North Lanarkshire Council
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2 Tryst Road, Cumbernauld, G67 1JW

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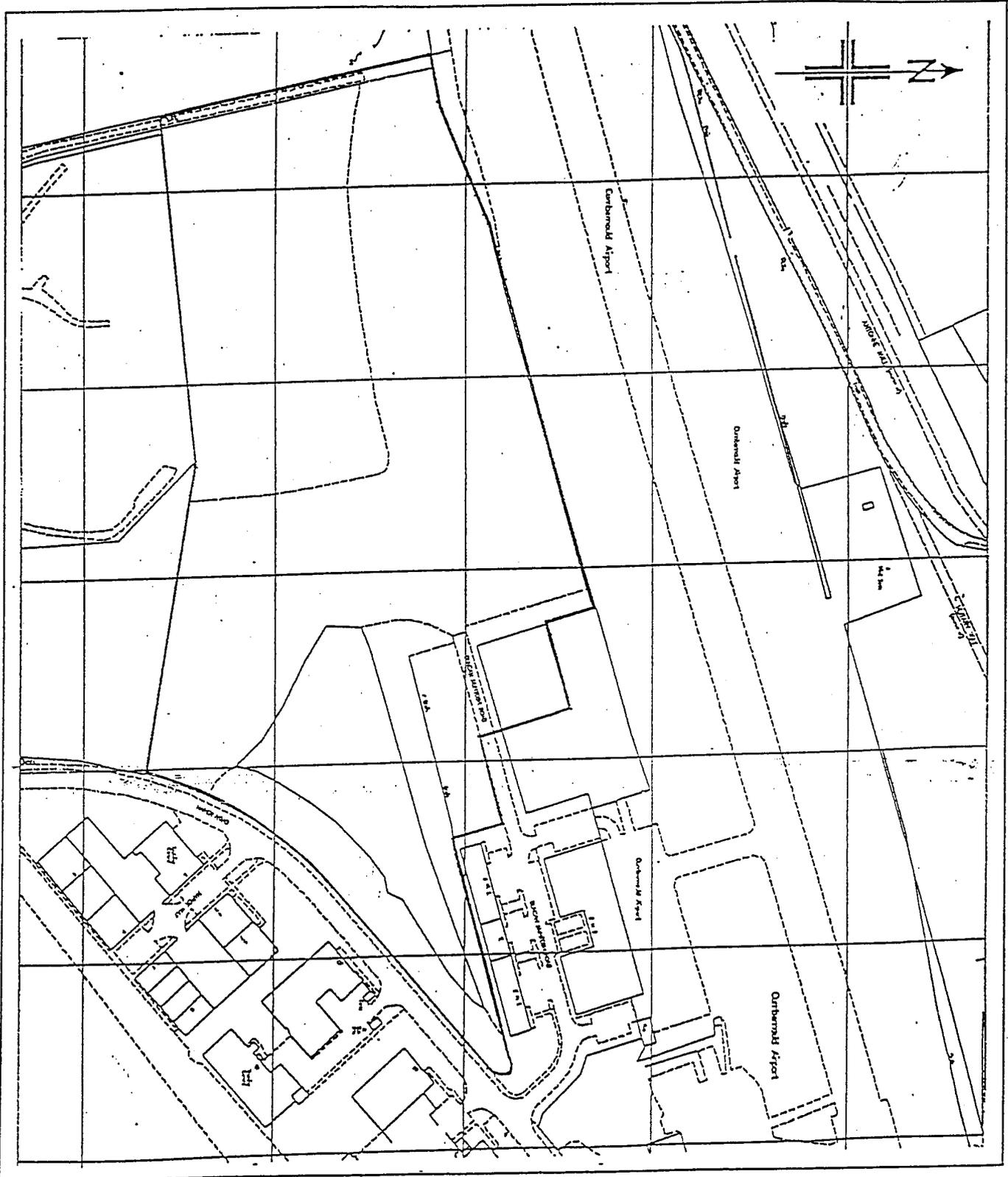
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