

N G NEAL ESQ
DEPUTY CHIEF EXECUTIVE AND
LEGAL ADVISER
LAND AUTHORITY FOR WALES
CUSTOM HOUSE
CUSTOMHOUSE STREET
CARDIFF
CF1 5AP

the acquisition of land interests at
Castle Ponds Pembroke
DYFED

- relating to -

A G R E E M E N T

LAND AUTHORITY FOR WALES

- and -

SOUTH PEMBROKESHIRE DISTRICT COUNCIL

BETWEEN

1995

31st March

DATED

AN AGREEMENT made the 31st day of March 1995
BETWEEN (1) SOUTH PEMBROKESHIRE DISTRICT COUNCIL of District
Offices Llanion Park Pembroke Dock Dyfed SA72 6DZ (2) LAND
AUTHORITY FOR WALES of Custom House Customhouse Street Cardiff
CF1 5AP

1. Definitions, Interpretation and Recitals

1.1 Definitions

In this Agreement the following words and expressions shall where the context so requires or admits have the following meanings:-

'business day'

means a day on which LAW is open for public business

'the Council'

means south Pembrookeshire District Council

'the Council's Payment'

means the payments made from time to time by the Council to LAW in accordance with clause 9.1 and clause 9.2

means all and/or any of the costs disbursements and fees

'LAW's Costs'

means the Land Authority for Wales

'LAW'

means 3 years from the date of this Agreement

'End Date'

means all those pieces or parcels of land situate near Pembroke Castle Pembroke Dyfed shown for the purposes of identification only edged red on the Plan

'the Development Land'

means the development of the Development Land for leisure retail and environmental purposes and/or in accordance with the Planning Permission

'the Development'

means the Compulsory Purchase Order referred to in clause 2.3.1

'the CPO'

reasonably and properly expended or incurred by LAW or any person acting on behalf of LAW or which LAW anticipates will be reasonably and properly incurred in respect of any unpaid compulsory purchase compensation including external surveyors appointed by LAW in connection with:-

(1) acquiring the Relevant Interests (whether by private treaty or compulsory purchase including the costs of any public inquiry into a compulsory purchase order) and any compensation for severance and/or injurious affection under the Land Compensation Act 1961

(iii) all necessary consultants fees including those for planning highway mining engineering and legal in connection with the acquisition of the Relevant Interests

(ii) all costs and disbursements and fees (including stamp duty and H M Land Registry fees) relating to the acquisition of the Relevant Interests

compensation for home loss and any proceedings before the Lands Tribunal to ascertain the cost of acquiring the Relevant Interests

means the permission which may be granted by the District Council of South Pembrokeshire as the Local

'the Planning Permission'

means the plan annexed to this Agreement

'the Plan'

means the Council and LAW and "Party" either the Council or LAW

'the Parties'

means forty thousand pounds (£40,000) plus Value Added Tax

'LAW's fees'

(v) any Value Added Tax only insofar as the same is not recoverable by LAW

(iv) the stopping up of any public highway or footpath insofar as such exist on the Red Land

Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction

1.2.3

Words importing one gender shall include the other gender and also includes the neuter and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner

1.2.2

Words importing the singular include the plural and vice versa

1.2.1

Where the context so requires:

1.2 Interpretation

Planning Authority in respect of the Development means all freehold or leasehold or any other interest in the Development and "Relevant Interest" shall be construed accordingly

'the Relevant Interests'

Nothing in this Agreement creates any partnership or agency between the Parties nor shall either Party represent or act in such manner as to convey that it is the partner or agent of the other

1.2.6

Reference herein to any statute or section of any statute shall include a reference to any statutory amendment modification replacement or re-enactment thereof the time being in force and to every instruction order directive or regulation by-law permission licence consent condition scheme and matter made or issued in pursuance thereof

1.2.5

The clause and paragraph headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of the clause or paragraph to which they refer

1.2.4

include an obligation not to permit infringement of the restrictions

1.3.3 The Council WILL seek the Planning Permission

1.3.2 LAW pursuant to its statutory powers contained in Section 103 and Section 104 of the Local Government Planning and Land Act 1980 will assist in securing the Development by the acquisition of the Relevant Interests on such terms and conditions as appear in this Agreement

1.3.1 LAW and the Council wish to secure the Development subject to the Planning Permission being obtained

1.3 Recitals

1.2.8 References to Clauses are unless otherwise stated references to Clauses in this Agreement

1.2.7 Except as permitted by law nothing in this Agreement restricts or interferes with the exercise or performance of any function by LAW whether discretionary or not in the means whereby LAW shall fulfill or discharge any of its functions or obligations

2. Specific Obligations of LAW

2.1 Acquisitions of the Relevant Interests

Subject to the compliance by the Council with its obligations contained in this Agreement LAW shall use all reasonable endeavours to acquire the Relevant Interests as soon as possible after the date of this Agreement and to transfer the Relevant Interest to the Council in accordance with this Agreement

2.2 Acquisition by Agreement

2.2.1 LAW shall initially attempt to acquire the Relevant interests (including those belonging to the Crown) by agreement with their owners other than any Relevant interest owned by the Council

2.2.2 Any agreement with an owner of a Relevant Interest shall:-

2.2.2.1 be at a price for the Relevant Interest which is the most advantageous to LAW and the Council and in any event not more than open market value for which the Relevant Interest could be obtained and which price shall be

approved in writing by the Council before LAW contract to purchase the same

2.2.2.2 reserve no rights or covenants which are not approved by the Council

2.2.2.3 grant all rights and covenants which are approved by the Council

2.2.2.4 be in a form approved by the Council

2.2.3 all consents and approvals required to be given by the Council under this Clause 2.2 shall not be delayed and a written response shall be given by the Council to LAW within 5 business days of receipt of the relevant information from LAW

2.3 Compulsory Acquisition

2.3.1 In the event of LAW failing within a

reasonable time from the date of this Agreement to acquire by agreement all Relevant Interests LAW shall subject to a

As soon as practicable after confirmation of the CPO LAW shall in the absolute discretion of the Council either vest the Relevant Interest in LAW by means of a General Vesting Declaration under the Compulsory Purchase (Vesting Declarations) Act 1981 ("the GVD") or serve notice to treat under the Compulsory Purchase Act 1965

2.3.3

In the event of LAW making the CPO it shall use its reasonable endeavours to obtain the confirmation of the CPO by the Secretary of State for Wales

2.3.2

satisfactory Planning Permission and subject to a resolution of LAW's Board so to do make a compulsory purchase order under the provisions of Section 104 of the Local Government, Planning and Land Act 1980 in respect of any outstanding Relevant Interests except those belonging to the Crown and the CPO shall include any Relevant interest belonging to the Council for the purpose of over-riding any easement or rights therein

2.3.4 Subject to the Council having made the Council's Payment and having paid LAW's fee LAW shall transfer that Relevant Interest to the Council at nil consideration within twenty eight days of the date of vesting under the GVD

2.3.5 Where the Relevant Interest would vest in LAW following the Notice to Treat procedure LAW shall at the election of the Council and subject to the Council having made the Council's Payment either vest the Relevant Interest in LAW and within twenty eight days thereafter transfer the same to the Council at nil consideration or transfer the Relevant Interest to the Council or by way of sub sale

2.3.6 Without prejudice to LAW's obligation contained in Clause 2.3.1 LAW shall:-
2.3.6.1 prior to the making of the CPO give at least 14 days prior written notice of its intention to do so to the Council and

2.3.6.2 give written notice to the Council of any statutory or other objection to the CPO and

2.3.6.3 immediately on being informed of the date of a public inquiry (if any) to be held into the CPO give written notice thereof to the Council and

2.3.6.4 immediately upon receipt supply to the Council a copy of the letter of confirmation (or non-confirmation) of the CPO together with a copy of the Inspector's report (if any)

2.3.6.5 give written notice to the Council of the making of the GVD and the date of vesting thereunder or the date of service of a Notice to Treat and Notice of Entry

2.3.7 LAW's obligation contained in this Agreement shall not interfere or affect LAW's duty to

2.4.3 LAW shall comply with its obligations contained in Clause 9 relating to payments on termination

2.4.2 LAW shall at all times prepare and maintain up to date accounts of the items under Clause 2.4.1 and otherwise and shall provide the Council with a financial statement twice per year

2.4.1 the Council's Payment shall only be used by LAW to meet LAW's Costs when incurred

2.4 The Council's Payments

settle compensation pursuant to statute for compulsory purchase but LAW shall obtain the Council's written approval (such approval not to be unreasonably withheld or delayed) as to the level of compensation to be paid where such is agreed between LAW and the owner of the Relevant Interest but this sub-clause shall not apply to the award of compensation by the Lands Tribunal or the Court

2.5 Consultation with the Council

In carrying out its obligations LAW will:-

2.5.1 Keep the Council informed of the progress of the acquisition of the Relevant interests

2.5.2 As often as necessary and in any event not less than once in every quarter meet with the Council to inform the Council of all progress made by LAW in fulfilling its obligations contained in this Agreement such meetings to be called by the Council on giving at least fourteen business days notice to LAW

3.

Specific Obligations of the Council

3.1 Assignment/Transfer

The Council shall accept an assignment or transfer from LAW (including by way of sub-sale) of any Relevant Interest in accordance with LAW's obligations contained in Clauses 2.1; 2.2.2.4; 2.3.4; and 2.3.5

3.2 The Council's Payments

The Council shall comply with its obligations contained in Clause 9

3.3 LAW'S FEE

The Council shall pay LAW'S fee by instalments to reflect the work carried out by LAW as evidenced from time to time by invoices submitted to the Council and all such payments shall be made within ten business days of receipt of the invoice and LAW hereby acknowledges receipt for the sum of £10,000 as part payment of LAW'S fee in respect of work carried out prior to this Agreement

3.4 Evidence at Public Inquiry

The Council shall at its own expense provide or adduce such evidence in connection with the Development as LAW shall require at any Public Inquiry

4. Parties to co-operate

4.1 The Parties hereby agree to co-operate with one another and act in fairness and good faith and to provide all reasonable assistance to one another to ensure each discharges its obligations contained in this Agreement and accordingly will respond promptly to requests properly made by the other for information or assistance and the Council shall respond to all requests properly made by LAW within 10 business days at such requests being made

5.3 The expert so appointed shall in reaching his decision or determination have regard to the terms of this Agreement and in particular any obligations of either of the parties and shall (having regard to the time

5.2 The fees and expenses of the expert so appointed including the cost of his appointment (where relevant) shall be the joint liability of the parties and shall (unless the Parties otherwise agree) be shared equally between them

5.1 Any disputes or differences which may arise between the parties relating to this Agreement or its subject matter or construction shall be referred to the determination of an expert (acting as an expert and not as an arbitrator) to be agreed upon by the Parties and failing agreement either party shall be at liberty to make application to the President of the Law Society to appoint an expert of suitable standing and experience to determine any such matters

5. Disputes

4.2 the Parties shall exercise the utmost good faith in their dealings with each other pursuant to the provisions of this Agreement

available to him to give a decision) afford the Parties the opportunity to make representations to him

5.4 The expert so appointed shall be required to give written reasons for his decision and to give a written decision within 28 days of his appointment

6. Non-Merger

The provisions of this Agreement shall remain in full force and effect and not merge on completion of the assignment or transfer of the Relevant Interests so far as they then remain to be performed or observed

7. Notices

7.1 Any notice or notification required to be given under the provisions of this Agreement shall be in writing

7.2 Section 196 of the Law of Property Act 1925 as amended shall apply to this Agreement and any notice required to be served hereunder shall be properly served on a Party if sent by registered or recorded delivery or delivered to:

(a) the Council at District Offices Llanion Park Pembroke Dock Dyfed SA72 6DZ

(b) LAW at Custom House Customhouse Street Cardiff

CF1 5AP

8. Termination
In the event of all the Relevant Interests not being acquired by agreement or compulsorily by LAW and transferred or assigned to the Council on or before the End Date then either the Council or LAW may by notices in writing ("Termination Notice") to the other Party determine this Agreement

9. Receipts and Payments
9.1 The Council shall (subject to compliance with clause 2.2.2) on or immediately prior to the day on which LAW intends to exchange contracts for the purchase of a Relevant Interest (or in all other cases) on or immediately prior to the day on which LAW is legally obliged to make a payment for the acquisition of a Relevant Interest pay to LAW on LAW's prior written request given ten business days before a sum equal to LAW's Costs for the acquisition of that Relevant Interest

9.2 The payment by LAW of any of LAW's Costs which fall to be paid on a day other than the date of the acquisition of a Relevant Interest (such as but not

Limited to consultant's costs at an Inquiry into the CP0) shall be paid by the Council to LAW within ten business days of LAW's written requests to the Council for the same

9.3 Any sum paid to LAW by the Council under clauses 9.1 and 9.2 above and not used by LAW within two business days of receipt shall then (provided such sum exceeds the sum of one thousand pounds (£1,000)) be placed each night on the money market at the best rates reasonably on offer until the Council's Payment is used for the payment of LAW's Costs and the interest shall belong to the Council

9.4 On service of a Termination Notice or the date on which the last of LAW's Costs can be finally ascertained ("the Relevant Date") LAW shall provide the Council with full accounts certified by LAW's Financial Controller as to the dealings between the Parties under this Agreement and without prejudice to the generality of the foregoing:-

9.4.1 the amount of LAW's Costs for the acquisition of each Relevant Interest

9.4.2 monies met out of the Council's Payment

LAW shall transfer or assign to the Council any Relevant Interests in LAW's ownership and/or the benefit of any binding agreements for sale of any Relevant Interests

9.5.3

If the Council's Payment (including interest earned thereon) exceeds the aggregate of LAW's Costs LAW shall within ten business days pay to the Council that proportion of the Council's Payment (including interest earned thereon) which exceeds the aggregate of LAW's Costs

9.5.2

If the aggregate of LAW's Costs exceed the Council's Payment (together with all interest earned thereon), the Council shall within ten business days pay to LAW that proportion of the aggregate of LAW's Costs which exceeds the Council's Payment (including any interest earned thereon)

9.5.1

9.5 On the Relevant Date:-

the amount of interest earned on the Council's Payment

9.4.3

9.5.4 This Agreement shall immediately cease and determine without prejudice to any accrued rights or liabilities of the Parties and to the provisions of this sub-clause 9.5.1 to 9.5.3 (inclusive) and Clause 12 which shall remain in full force and effect

9.6 If the Council shall be late in making the Council's Payment and/or paying LAW's Fee the Council shall pay LAW interest on such late Payment at 3% above the Base Rate of National Westminster Bank Plc from the time such payment was due until actual payment is received by LAW

10. LAW not obliged to Insure

LAW shall not be obliged to insure the Relevant Interests which it has contracted to purchase or which are in its ownership against fire and the usual comprehensive risk and the Council hereby indemnifies LAW against all costs claims and damages arising from LAW's contractual commitment to acquire or acquisition of any of the Relevant Interests save in respect of any actual breach of Contract or statutory obligation by LAW

11. No Assignment
 The Council shall not assign dispose of or otherwise deal with the benefit or the burden of this Agreement

12. Indemnity
 The Council covenants with LAW to fully indemnify LAW from and against any compensation properly and reasonably incurred and payable under the provisions of paragraph 7 of Schedule 20 of the Local Government Planning and Land Act 1980

13. Development
 The Council covenant with LAW to use their best endeavours to ensure that the Development is completed within 3 years of the transfer to the Council of the Relevant Interests

14. Authorised Officer
 The Council hereby confirms that for the purposes of this Agreement the District Secretary of the Council has full authority to give all consents and approvals and make all payments required to be given or made under this Agreement and LAW shall have obtained a sufficient approval or consent if it is given in writing by the District Secretary and may rely on that approval or consent for the purposes of this Agreement

15. Execution

This Agreement is executed as a deed and is delivered on the day and date first above written

5/2/95

THE COMMON SEAL OF SOUTH

PEMBROKESHIRE DISTRICT COUNCIL

was hereunto affixed in the

presence of:-

[Signature]
VICE CHAIRMAN
[Signature]
DISTRICT SECRETARY

DISTRICT SECRETARY

THE COMMON SEAL OF THE

LAND AUTHORITY FOR WALES

was hereunto affixed in

the presence of:-

DEPUTY CHIEF EXECUTIVE AND LEGAL ADVISER

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