NETWORK AIRPORTS GROUP 2 LORD STREET BOTANY NSW 2019 AUSTRALIA

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	[]	s47F MANAGER OPERATIONS POLICY	[]	s47F MANAGER AIRPORT STANDARDS
	[]	PRINCIPAL SECURITY ADVISER	[]	s47F MANAGER ENVIRONMENTAL POLICY
	[]	OPERATIONS SERVICES OFFICER	[]	SA7F ENVIRONMENTAL OFFICER
	[]	s47F ADMINISTRATION OFFICER		
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s47(1)(b)

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--- HEAD OFFICE

LOCKED BAG No 28
BOTANY NSW 2019
2 LORD STREET, BOTANY

PHONE: (02) 9207 7822 FAX: (02) 9316 6204

s47F

Office of Asset Sales PO Box 300 DICKSON ACT 2602 073

Dear s47F

Attached is further information on the position of lease terms at Essendon Airport.

TABLE A represents those AVIATION related organisations, currently situated on Essendon Airport but operating on short term leases, to which we would like to offer long term leases, up to 25 years, in accordance with normal FAC leasing policy. There are some instances where the nominated term is less than 25 years because we do not want to tie up these areas for any greater period than that nominated.

TABLE B represents NON AVIATION organisations to which we would like to extend longer term leases up to 15 years. Some shorter-term leases are also proposed.

TABLE C represents existing monthly tenancies over areas which have been designated for future higher and better use. We do not wish to change these leases.

There are many more leases, which have reasonable periods to run, and we are not seeking any change to these.

Additionally we are in discussion with a number of prospective tenants regarding the possibility of new aviation and non-aviation leases, but the negotiations are compromised because we cannot offer reasonable lease periods because of the 12 months limitation.

In summary, we wish to be able to issue leases on Essendon Airport in the identical manner to other airports. Indeed, we believe most strongly that failure to do so has already reduced the value to be obtained from Essendon Airport, whilst conversely, treating Essendon Airport like all other FAC airports will greatly enhance its value.

Please contact me if you require any further information.

Regards,

s47F

s47F

General Manager Operations

28/7/97

Arahogy monthly leases - just roll forward existing o long-term/leases - lock in until end a

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Table A s47(1)(b)

Infrastructure, Transport, Regional Development, Communications, Sport and the Arts

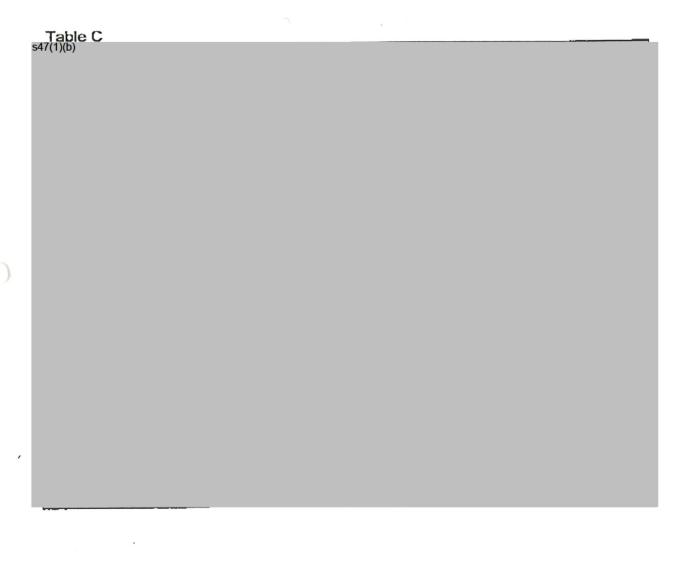
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Infrastructure, Transport, Regional Development, Communications, Sport and the Arts

Table B s47(1)(b)







DEPARTMENT OF TRANSPORT & REGIONAL DEVELOPMENT



GPO Box 594 CANBERRA ACT 2601 AUSTRALIA





FACSIMILE MESSAGE

AVIATION POLICY DIVISION (FAX NO: 06-274 6717)

TO

s47F

Airport General Manager Federal Airports Corporation Essendon Airport VIC 3041

Phone: (03) 9379 9077

FROM

s47F

A/g Director
Airports Special Projects
Airports Branch
Phono: +61.6.2747068

Phone: +61-6-2747968

FAX NUMBER: (03) 9379 7867

DATE:

12 September 1997

NUMBER OF PAGES INCLUDING THIS PAGE

3

SUBJECT: Commonwealth's consideration of lease proposals

s47

Following up on our phone call earlier today, attached is a copy of the Commonwealth's position on the lease proposals for Essendon Airport.

regards

s47F

SEP.12

F.2

206

Sport and the Arts Released under the Freedom of Information Act by the Department of Infrastructure, Transport, Regional Development, Communications,

TIME

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NAME

: SEP 12 '97 16:45

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NEW LEASES & EXISTING LEASE RENEWALS AT PHASE 2 AIRPORTS - ASSESSMENT AGAINST THE COMMONWEALTH'S GUIDELINES

COMMONWEALTH'S GENERAL POSITION

065

The Commonwealth's position is that no new leases or long-term extensions to existing leases should be entered into at the airports <u>unless</u> there are very strong business/value reasons why this should occur prior to sale. In general, the preference will be to give new owners the greatest flexibility in relation to future airport developments.

Having regard to the Commonwealth's general policy and the particular facts relating to individual proposals, the Commonwealth's response to each of the proposals for Essendon Airport put forward to date (12 September) is summarised below.

ESSENDON AIRPORT

s47(1)(b) proposal

Commonwealth's Preferred Position

The Commonwealth's strong preference is that this proposal not proceed.

Supporting Reasons

The site sought is in an area where two other hangars are currently located (one which is in year 2 of a 15 year lease; the other is on a 12 month lease). The area is on the boundary of what Essendon Airport Management presently regard to be the aviation precinct.

The proposal seeks a long term (25 year) lease on a site to construct a hangar/warehouse which in revenue terms is non-material.

The proposal is at the preliminary stage of consideration. ^{s47(1)(b)} formally registered their interest with Essendon Airport on 4 August 1997. A formalised proposal was received on 11 August 1997.

In the circumstances, the new airport owner should be given the greatest flexibility to determine the future development of the general area where the site is sought, particularly as this minimally-developed hangar area is immediately adjacent to an area which has been set aside explicitly for non-aviation commercial purposes.

s47(1)(b)

Commonwealth's Preferred Position

It is the Commonwealth's strong preference that this proposal to extend a current 12 month lease for an existing aircraft hangar site to a 25 year term not proceed.

Supporting Reasons

The approach to existing non-material leases is that they can only be renewed for either monthly periods or up to 30 December 1998.

The site leased by 54	7(1)(D)	s sm	aller than	tne s	site sougnt by	/
s47(1)(b)	for their hangar propos	al. 1	Therefore,	the 🖁	s47(1)(b)	
lease is also	non-material in revenue	term	IS.			

As with the s47(1)(b) proposal, the new airport owner should be given the greatest flexibility to determine the future development of the general area where the s47(1)(b) hangar is located.

and the Arts Released under the Freedom of Information Act by the Department of port Communications, Development, Regional Transport,

MEMORANDUM-014 - Document 3

(HEAD OFFICE)

FOLIO:	180

TO

GM ADELAIDE

GM HOBART & LAUNCESTON AIRPORT GENERAL MANAGERS

FROM:

GM NETWORK AIRPORTS

COPY:

MANAGING DIRECTOR & CEO CHIEF FINANCIAL OFFICER COMPANY SECRETARY

GM OPERATIONS

DUE DILIGENCE COORDINATOR

DATE :

OCTOBER 08 1997

Five (5) Pages

FILE: ___

SUBJECT

LEASING POLICY - PHASE 2 AIRPORTS

As you are aware, Phase 2 Airports are now being offered for sale and as a result of the recent Ministerial Direction to the FAC, the enclosed Leasing Policy for Phase 2 airports has been agreed between the Department of Transport & Regional Development and the Federal Airports Corporation.

This Leasing Policy is intended to be a clear and concise set of guidelines that should assist both airport staff and tenants in the period until new owners are actually in place.

You will note that DoTRD have undertaken to respond to matters referred to them within seven (7) days. For this to work for Papers that are submitted to the Transition Boards it will be necessary for you to give advance copies of these papers to DoTRD ten (10) days before the Transition Boards. This will allow DoTRD input to be considered at the same time as the papers at the Transition Board meetings.

In relation to sub-leases, these can be handled at an airport level as a sub-lease cannot be 'wider' than the head lease which has already been approved.

With regard to assignments, again these can be handled at an airport level even when a minor change of lease purpose is involved. Where a major change of lease purpose is envisaged, this should be referred to Corporate Office.

If you have questions on the application of this Leasing Policy please give me a call.



PGS

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Transport and Regional Development

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MESSAGE TACSIMILE TO STORES

AVIATION POLICY DIVISION

To:

s47F - FAC

> s47F Office of Asset Sales CC. AGS Sydney (62) 4581 7445 CC.

Ph: (02) 9207 7822

Fax: (02) 9316 6204

From:

s47F

Director, Airport Regulation

Airports Branch

Ph: (02) 6274 7160

(02) 6274 6717 Fax:

Date:

03 October 1997

No of pages including this page:

4

Message

Revised Leasing Policy Paper

Peter

As discussed, please find attached a revised version of the draft leasing policy paper, an earlier draft of which you commented on yesterday.

I hope that this paper adequately reflects the points you raised. If endorsed, it is requested that the paper be sent by you as soon as possible to all the Phase 2 airports for their guidance on these matters.

If you have further comments please contact me on the above number.

Renarde 847F

Trace Building (Level 4)

22 Copyong St

BRADDON ACT 2612

PO Box 594

CANBERRA ACT 2001

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RENEWAL OF CURRENT LEASES AND ENTERING INTO NEW LEASES AT PHASE 2 AIRPORTS - GUIDANCE POLICY

178

A. PURPOSE

This paper seeks to establish clear and helpful guidelines to support the consideration of proposals for the renewal of current leases and the entering into new leases at Phase 2 Airports. These guidelines have been agreed between the Department of Transport and Regional Development and the Federal Airports Corporation.

B. BACKGROUND

The recent Direction from the Minister for Transport and Regional Development to the FAC Board requires the Corporation to consult with the Commonwealth prior to taking any material decision that may affect the Phase 2 Airports Sales, and in particular consult before taking any decision to commit to any lease or like commercial arrangement.

In responding to leasing proposals the Commonwealth's starting position is that no new leases or long-term extensions to existing leases should be entered into by the FAC at the Phase 2 Airports <u>unless</u> there are very strong business/value reasons why this should occur prior to sale. In general, the preference will be to give new airport owners the maximum flexibility in relation to future airport development.

However, the Commonwealth does not want to unnecessarily limit the ability of airport management to realise business opportunities at the airports.

C. PROPOSED APPROACH - TYPES OF LEASES

Accordingly, the following approach has been agreed:

- i) non-material existing leases (<5% of gross rental income at any individual airport);
 - where these leases are being <u>renewed</u> on a monthly basis or for a period which is not beyond 30 December 1998 there is <u>no need to</u> further consult the Commonwealth on this issue;
 - where longer lease terms are proposed, the Commonwealth would like the opportunity to comment on the proposals prior to finalisation. Where there is a strong business case for any proposal, these longer leases are likely to be supported;

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- 2 -

ii) material existing leases (> 5% gross rental income);

SS FROM BUT WATERING CONTRACTOR

- where such leases expire prior to 30 June 1998 the Commonwealth would support renewal for periods of up to 5 years. Where such renewal periods are proposed, the FAC can proceed with execution of the lease renewal without further consultation with the Commonwealth;
- once again, where longer lease terms are proposed for existing leases which are material the Commonwealth would like the opportunity to comment prior to finalisation;
- iii) In cases of re-negotiation of existing leases which are not expiring before 30 June 1998, negotiations for new leases, developments, acquisitions and disposals, it is expected that the Commonwealth would not support proceeding unless a strong business case can be presented for doing so (see details required to be set out for the Commonwealth's consideration below);
 - however, any existing well-advanced negotiations can be expected to be completed following Commonwealth assessment of the proposal and the business case;

D. PROPOSED APPROACH - INFORMATION REQUIRED

To facilitate the Commonwealth's review and consideration of material long-term lease renewals and new business proposals, it has been agreed that the FAC airports provide details of the proposed lease, acquisition, etc to the Department covering:

- details of the lease such as the parties involved, the purpose of the activity, term proposed, site details ie size and design guidelines, proposed rental and how this relates to existing rental levels and relevant off-airport commercial rates, and the percentage that the proposed income is to the gross rental income of the airport;
- If It is a renegotiation of an existing lease, details of existing arrangements;
- advice on how far negotiations have progressed and any issues arising if the agreement is not entered into;
- whether the proposal is in accordance with the airport master plan and airport business plan;
- whether the proposed development requires FAC expenditure as part of the commercial arrangement is additional infrastructure etc;
- whether State/local government has been consulted on the proposal; and
- the business case for any new leases, acquisitions etc as appropriate.

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To ensure that this process does not unnecessarily impede ongoing management and development of the Phase 2 Airports, the Department will ensure that it responds to the FAC within 7 days of receipt of any proposal.

E. FURTHER ACTION REQUIRED

It would be appreciated if the airports could provide the Department with a list of all of those material leases they are aware of that they would be looking to enter into, or renew, prior to the completion of the sale process for a period of more than 5 years, along with the reasons why such leases need to be addressed prior to sale of the airport. This will give the Department a better picture of the position at each airport, and enable any individual proposals put forward to be better dealt with.



FOI 24-014 - Document 4

Our Reference:

P97/255

27 January 1998

s47F

,5471

For info

s47F

General Manager Network Airports Federal Airports Corporation Locked Bag No 28 BOTANY NSW 2019

Dear s47F

On 18 August 1997, the Minister for Transport and Regional Development wrote to the Chairman of the Federal Airports Corporation (FAC), about working with the Commonwealth in providing assistance in relation to the sale of Phase 2 airports. This resulted in your memorandum of 8 October 1997 to the Phase 2 airports on the FAC Leasing Policy.

The position has now been reached where the policy needs to be updated to reflect the progress of the sales process. With the bids for the airports to be lodged on 19 February 1998, bidders need to be aware of all the material leases and contracts affecting the airports and should be confident there are no further material leases being entered into by the FAC. Therefore, in order to provide certainty to the bidders for the Phase 2 airports, no more new material leases, extensions of leases or contracts will be considered by the Commonwealth.

These new arrangements will enable bidders to proceed with certainty on finalising development plans. They will also provide certainty to airport staff in dealing with clients considering business developments on airports and assist the Commonwealth in providing bidders with an appraisal of airport businesses. I propose to advise bidders of this decision in the next Report on Recent Developments.

I would appreciate your communicating this changed position to all Phase 2 airports with the advice that the policy becomes effective immediately.

Naturally, if exceptional circumstances do arise, proposals may be forwarded to me for consideration in accordance with the arrangements set out in the previously agreed policy paper.

Yours sincerely

Acting Assistant Secretary Airports Branch

GPO Box 594 Canberra ACT 2601 Telephone: (06) 2747111 Facsimile: (06) 2572505 www.dot.gov.au





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Our Reference: P97/0732

Your Reference:

Contact:

s47F

(Ph 02 6274 6518)

s47F

Airport General Manager
FAC House
English Street
ESSENDON AIRPORT VIC 3041

Dear s47F

I refer to your letter of 20 January 1998.

Commonwealth's General Position

The Commonwealth's position is that no new leases or long-term extensions to existing leases should be entered into at the airports <u>unless</u> there are very strong business/value reasons why this should occur prior to sale. In general, the preference will be to give new owners the greatest flexibility in relation to future airport developments.

Proposal: Office and Technology Park - Essendon Airport

Having regard to the Commonwealth's general policy and your letter of 20 January 1998 relating to the above proposal, the Commonwealth's response is summarised below.

Commonwealth's Preferred Position

The Commonwealth <u>does not support</u> a new lease on the terms proposed in your letter being entered into at this time. Given the advanced stage of the sales process, the Commonwealth encourages FAC Essendon and s47G(1)(a) to maintain the option for consideration by the new airport owner.

GPO Box 594 Canberra ACT 2601 Telephone: (06) 2747111 Facsimile: (06) 2572505 www.dot.gov.au



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At this late stage in the sale process, it would be totally inappropriate for the Commonwealth to bind the new owner for much of the initial term of the Airport Lease (ie 40 years) on a strategic area (7 hectares) of the Airport's commercial estate (located adjacent to the airport entrance and freeway) and which is likely to be commercially highly desirable. As you may be aware, bidders are required to submit a 10-year Business and Development Plan as a part of their final bid package and we would expect the new owner to have particular views on the development of this area.

We note that s47G(1)(a)

through its legal advisers, wrote to the FAC on 26 August 1997 alleging that an agreement to grant a lease over the land had been reached with the FAC. The FAC has denied the allegation. We consider that negotiations were not advanced to a stage where contract execution was imminent for the Office and Technology Park proposal.

Yours sincerely

s47F

A/g Director Airports Branch

February 1998



COMMONWEALTH OF AUSTRALIA

ESSENDON AIRPORT
SALE AGREEMENT

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AGREEMENT dated Schay of July 1998

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VICTORIA I

BETWEEN

COMMONWEALTH OF AUSTRALIA ("Commonwealth")

AND

ESSENDON AIRPORT LIMITED (ACN 082 907 980), a company duly incorporated in the State of Victoria and having its registered office situated at Airport Management Centre, Building 250, English Street, Essendon Airport in the State of Victoria ("Transferee")

RECITALS

- A. The Commonwealth has agreed to grant an airport lease in respect of Essendon Airport to the Transferee and to transfer to the Transferee certain FAC assets, contractual rights and obligations, liabilities and employees.
- **B.** The parties have agreed that the grant of the Airport Lease and the associated transfers will be effected by the steps and on the terms and conditions set out in this Agreement.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, words and expressions in column 1 of Part A of Schedule 1 have the meaning given to them in column 2 of Part A of Schedule 1.

1.2 Interpretation

The provisions in Part B of Schedule 1 apply in respect of the interpretation of this Agreement.

2. GRANT OF AIRPORT LEASE AND MAKING OF DECLARATIONS

- (a) The parties have agreed that:
 - (i) the Commonwealth and the Transferee will enter into the Airport Lease;
 - (ii) the Commonwealth will procure that the Minister makes the Section 11 Declarations and the Transfer Declarations;
 - (iii) other associated steps and transactions will occur as referred to in clause 4.
- (b) In consideration for the Commonwealth granting the Airport Lease to the Transferee and the Minister making the Transfer Declarations, the Transferee will pay the Transfer Price to the Commonwealth in accordance with clause 3.1.

3. TRANSFER PRICE

The Transfer Price will be paid on the Completion Date by the Transferee to the Commonwealth in accordance with clause 4.1(c);

1 30 June 1998

4. COMPLETION

4.1 Steps to be taken

On the Completion Date, at the Completion Place, the following will occur in the following order:

- (a) (Insurance): the Transferee will provide to the Commonwealth evidence to the satisfaction of the Commonwealth that the Transferee has in place, effective as and from the Grant Time, all of the insurances specified in Schedule 4 on the terms and conditions specified in Schedule 4;
- (b) (Superannuation): the Transferee will provide to the Commonwealth evidence to the satisfaction of the Commonwealth that the Transferee has satisfied its obligations under clause 6(a);

(c) s47(1)(b)

- (d) (Aerodrome Licence): the Transferee will provide to the Commonwealth evidence to the satisfaction of the Commonwealth of the due transfer of the Aerodrome Licence from the FAC to the Transferee with effect on and from the Grant Time, including, without limitation, evidence that the Civil Aviation Safety Authority has consented to the transfer in accordance with regulation 89G of the Civil Aviation Regulations;
- (e) (Section 11 Declarations): the Commonwealth will give and deliver to the Transferee a true copy of the Section 11 Declarations duly made and executed by the Minister or a person duly authorised by the Minister to sign on his behalf;
- (f) (**Transfer Instrument**): the Commonwealth will give and deliver to the Transferee a true copy of the Transfer Instrument duly made and executed by the Minister or a person duly authorised by the Minister to sign on his behalf;
- (g) (Airport Lease): the Commonwealth will give and deliver to the Transferee the Airport Lease duly executed in duplicate by the Commonwealth and dated with the Completion Date. The Transferee will then execute the Airport Lease in duplicate and present it to the Victorian State Revenue Office for marking or stamping;
- (h) (Sale Transition Deed): the Commonwealth will give and deliver to the Transferee the Sale Transition Deed duly executed in triplicate by the Commonwealth and the FAC and dated with the Completion Date. The Transferee will then execute the Sale Transition Deed in triplicate and give and deliver the same to the Commonwealth.

4.2 Possession

Subject to the Transferee satisfying its obligations under clause 4.1, the Commonwealth will use its best endeavours to procure that the FAC gives and delivers to the Transferee, effective from the Grant Time:

(a) the Specified Assets, delivery to be made by leaving the Specified Assets (other than goods or equipment in transit and motor vehicles in use) at the Airport Site, or such other place as the parties may agree; and

(b) possession of the Airport Site in accordance with the terms of the Airport Lease.

4.3 Interdependence

The obligations imposed upon the Commonwealth and the Transferee respectively under clause 4.1 are interdependent one on the other. No obligation under clause 4.1 will be deemed to have been performed or have any effect until all obligations under clause 4.1 have been performed.

s47(1)(b) 5.

6. SUPERANNUATION

(a) The Transferee undertakes to do all things required and to enter into all relevant documents to become a participating employer in the Federal Airports Corporation Superannuation Fund (or such other name as the fund adopts from

time to time) ("Fund") established by a trust deed dated 27 August 1990 as amended from time to time ("Trust Deed").

- (b) Subject to paragraph (c), the Transferee undertakes to make contributions to the Fund in respect of the Specified Employees at the rates required by, and otherwise under the terms of, the Trust Deed from the Grant Time until 30 June 1999 and for such further period as may be agreed between the Transferee, the Commonwealth and the trustee of the Fund.
- (c) The Transferee undertakes to be bound by and comply with the terms and conditions of the Trust Deed, to comply with requests reasonably made of the Transferee by the trustee of the Fund and to provide information to the trustee that is reasonably required by it for the purposes of the Transferee becoming a participating employer in the Fund.
- (d) The Transferee undertakes, in the event that it proposes to transfer the employment of any of the Specified Employees to a third party prior to 1 July 1999, to make it a condition precedent to the transfer that the transferee enters into a deed with the Commonwealth pursuant to which the transferee:
 - (i) provides undertakings to the Commonwealth in the terms of the undertakings in clauses 6(a), (b) and (c), with the necessary changes; and
 - (ii) undertakes not to further transfer the employment of any Specified Employee to any other person prior to 1 July 1999 unless, as a condition precedent to the transfer, the transferee enters into a deed with the Commonwealth pursuant to which the transferee provides (with the necessary changes) undertakings to the Commonwealth in the terms of clauses 6(a), (b) and (c) and this sub-paragraph (d)(ii).
- (e) In paragraph (d), the expression "transfer" is to be interpreted broadly and includes an arrangement under which the employment of a Specified Employee is terminated and the Specified Employee is then employed by a third party to perform like or similar functions and duties.

7. TRANSFEREE AND ACKNOWLEDGMENTS AND INDEMNITY

7.1 Transferee Acknowledgments

As at the date of this Agreement, the Completion Date, the Transferee makes the acknowledgments set out in Schedule 2.

7.2 s47(1)(b)

8. BUILDING CONTROLLER COSTS

8.1 Building Controller Costs

The purpose of this clause 8 is to provide for the Transferee to reimburse to the Commonwealth, on the terms of this clause 8, Building Controller Costs incurred by the Commonwealth in the period up to 30 June 2003, but only to the extent that those costs are not recovered from third parties through fees paid under the Airports (Building

30 June 1998

Control) Regulations 1996 and subject to the maximum annual cap specified in clause 8.4.

8.2 Annual payment in advance by the Transferee

- (a) Within 20 Business Days of the commencement of each Payment Period, the Commonwealth will provide to the Transferee a written notice ("Notice") which states:
 - (i) the Commonwealth's estimate of the amount of the Building Controller Costs for the Payment Period;
 - (ii) the Commonwealth's estimate of the amount of the Recovered Costs for the Payment Period; and
 - (iii) the payment amount, being the difference between the amount stated under sub-paragraph (i) and the amount stated under sub-paragraph (ii) (the "Payment Amount").
- (b) Subject to clause 8.4, the Transferee will pay to the Commonwealth an amount equal to the Payment Amount within 15 Business Days of receipt of the Notice.
- (c) The parties agree that the Payment Amount for the Initial Payment Period is \$27,500, such amount to be paid by the Transferee to the Commonwealth on Completion.

8.3 Annual reconciliation

- (a) Within 30 Business Days of the end of each Payment Period, the Commonwealth will provide to the Transferee a written statement for the Payment Period (the "Reconciliation Statement") which:
 - (i) states the actual Building Controller Costs for the Payment Period ("Actual Building Controller Costs");
 - (ii) states the actual Recovered Costs for the Payment Period ("Actual Recovered Costs");
 - (iii) states the reconciliation payment, calculated as follows:

Reconciliation Payment = (Actual Building Controller Costs less Actual Recovered Costs) less (the sum of the Payment Amounts paid by the Transferee to the Commonwealth in respect of the Payment Period Payment Period,

PROVIDED THAT if (Actual Building Controller Costs less Actual Recovered Costs) is a negative amount, that amount will be deemed to be zero; and

- (iv) contains such other information or attaches such other documentation reasonably necessary to evidence or support the Reconciliation Payment.
- (b) If the Reconciliation Payment is a positive amount, the Transferee will pay to the Commonwealth an amount equal to the Reconciliation Payment within 15 Business Days of receipt of the Reconciliation Statement.
- (c) If the Reconciliation Payment is a negative amount, the Commonwealth will pay

to the Transferee on delivery of the Reconciliation Statement an amount calculated by multiplying the Reconciliation Payment by minus one (-1).

8.4 Maximum liability of Transferee

Notwithstanding any other provision in this clause 8, the maximum amount payable by the Transferee to the Commonwealth in respect of each Payment Period will be \$35,000.

8.5 Efficiency review

- (a) Before 30 June 1999 and thereafter at such times as the Commonwealth considers necessary the Commonwealth will conduct an efficiency review to determine whether the Airports (Building Control) Regulations 1996 are functioning effectively and whether the Airport Building Controller has conducted its regulatory functions in a cost efficient manner. In carrying out such a review, the Commonwealth will consult with the Transferee and take into account any matters that the Transferee reasonably requests the Commonwealth to consider in the review. The Commonwealth will give the Transferee an opportunity to comment on the final results of the review and must consult with the Transferee in implementing any changes resulting from the review.
- (b) If the Transferee reasonably requires an efficiency review at any other time it may request the Commonwealth to carry out such a review provided the Transferee does not request such a review more often than once every 12 months. Where the Transferee requests the Commonwealth to conduct a review it will be responsible for the Commonwealth's reasonable costs of conducting the review.

8.6 Obligation of the Commonwealth to consult

The Commonwealth will consult with the Transferee in relation to methods of minimising costs incurred by the Airport Building Controller in carrying out its regulatory functions including, where appropriate, the provision of accommodation and other resources directly by the Transferee.

8.7 Transfer of Airport Lease

The Transferee undertakes, in the event that it proposes to transfer the Airport Lease in accordance with section 24 of the Airports Act at any time before 30 June 2003, to make it a condition precedent to the transfer that the transferee enters into a deed with the Commonwealth in the terms of this clause 8 with the necessary changes.

9. OBLIGATION TO HONOUR GAIT LABELS

9.1 Acknowledgment

The Transferee acknowledges that:

- (a) the FAC imposes a General Aviation Infrastructure Tariff ("GAIT") in relation to aircraft weighing 10 000 kg or less;
- (b) payment of the GAIT may be made in advance for periods of up to 12 months and is evidenced by a label issued by the FAC;

6 30 June 1998

- (c) the FAC may have issued GAIT labels covering periods after the Completion Date; and
- (d) a GAIT label allows qualifying aircraft to be parked for any length of time per day and/or conduct any number of landings, take-offs and circuits at, on or from the Airport Site for the period indicated on the relevant label.

9.2 GAIT labels to be honoured

After Completion, the Transferee will allow any aircraft displaying a validly issued GAIT label to use the Airport Site in accordance with the terms on which the GAIT label was issued.

9.3 Transfer of Airport Lease

The Transferee undertakes, in the event that it proposes to transfer the Airport Lease within 6 months of the Grant Time, to make it a condition precedent to the transfer that the transferee (the "ALC Successor") enters into a deed with the Commonwealth:

- (a) in the terms of this clause 9, with the necessary changes; and
- (b) pursuant to which the ALC Successor undertakes not to further transfer the Airport Lease to any other person within 6 months of the Grant Time unless, as a condition precedent to the transfer, the transferee enters into a deed with the Commonwealth in the terms of clause 9 (with the necessary changes) and pursuant to which the transferee provides to the Commonwealth (with the necessary changes) an undertaking in the terms of this paragraph (b).

10. CO-OPERATION OF THE TRANSFEREE

10.1 Cooperation in any future sale process

Where the Commonwealth wishes to:

- (a) sell all or any of its shares in the Transferee; or
- (b) sell the business of the Transferee including the Airport Lease and all other assets,

the Transferee must, subject to the Corporations Law give to the Commonwealth all assistance and co-operation that the Commonwealth reasonably requests in order to give effect to that sale.

10.2 Cooperation in relation to Transferred Assets of Significance

Where during a period of three years from the date of Completion, either the Commonwealth or the Transferee identifies any Transferred Asset as being a Transferred Asset which should be dealt with in a special way because of its historical or cultural significance, the Transferee will co-operate with the Commonwealth and give it all assistance to ensure that that Transferred Asset is dealt with appropriately to the satisfaction of the Commonwealth.

11. CONSENT TO LOAN ARRANGEMENTS

As long as the Commonwealth owns or controls all of the shares in the Transferee, the Transferee must not, without the written consent of the Commonwealth, enter into a loan agreement containing provisions that would:

- (a) preclude the Commonwealth from inspecting those loan agreements where it reasonably wishes to do so;
- (b) require the loan to be repaid on any change of ownership of the Transferee

12. GENERAL

12.1 Governing law

This Agreement is governed by and construed in accordance with the laws of the Australian Capital Territory.

12.2 Further assurance

The parties will each do all acts and things and execute all documents as are from time to time reasonably required for the purposes of or to give effect to this Agreement.

12.3 Merger

- (a) The rights and obligations of the parties in respect of agreements, indemnities, covenants and warranties contained in this Agreement will be continuing rights and obligations and accordingly will not be merged or extinguished by or upon the Grant Time.
- (b) The provisions of this Agreement will remain in full force and effect as to the obligations of the parties respectively remaining to be performed after the Grant Time.

12.4 Waivers, consents and approvals

- (a) No consent or waiver, whether express or implied, to any breach of this Agreement by a party to this Agreement is to be construed as a consent or waiver to any other breach.
- (b) Any waiver, consent or approval by a party to this Agreement will only be binding and effective if it is given in writing.
- (c) Where any act, matter or thing under this Agreement depends on the consent or approval of a party to this Agreement then, unless expressly otherwise provided, that consent or approval may be given, withheld, or given subject to such conditions as that party determines in the absolute and unfettered discretion of that party.

12.5 Set-off

Any undisputed amounts due and payable by either party to the other under this Agreement may be set-off against any other undisputed amount or amounts that may be due and payable by either to the other under this Agreement PROVIDED THAT when tendering payment either party will accompany the same with a statement setting out details of the gross amount owing and all individual amounts set-off against the same.

12.6 Survival of certain provisions

- (a) Clauses 1 and 12 survive the rescission or termination of this Agreement.
- (b) If this Agreement is rescinded or terminated, no party is liable to the other parties except in respect of any breach of this Agreement occurring before rescission or termination.

12.7 Assignment

- (a) The Commonwealth may not at any time assign or otherwise transfer all or any of its rights under this Agreement without the prior written consent of the Transferee.
- (b) The Transferee may not assign or otherwise transfer all or any of its rights under this Agreement without the prior written consent of the Commonwealth.
- (c) This Agreement will be binding on and enure to the benefit of each party and its respective successors in title and permitted assigns.

12.8 Initialling documents for identification purposes

Any document which this Agreement requires a party to initial for the purpose of identification may be initialled:

- (a) in the case of the Transferee, by a person appointed in writing for that purpose by the Transferee;
- (b) in the case of the Commonwealth, by a person appointed in writing for that purpose by the Minister.

12.9 Modification

This Agreement may only be modified, amended, added to or otherwise varied by a document in writing signed by each of the parties.

12.10 Stamp duties

- (a) (Payment of all duties): The Transferee will pay all stamp duties (apart from receipts duties, financial institutions duties or bank account debits taxes which will lie between the parties as they fall) which may be payable in connection with the execution, delivery, performance or enforcement of this Agreement or in connection with any of the matters, transactions, sales, payments or receipts under this Agreement or any document drawn, made or executed in consequence of this Agreement, including, without limiting the generality of the foregoing, the Airport Lease and the Transfer Instrument.
- (b) (Indemnity): The Transferee will indemnify the Commonwealth and keep the Commonwealth indemnified against any loss, liability, expense or outgoing incurred, suffered or paid by it as a result of the delay or failure by the Transferee to pay such stamp duties.

12.11 Notices

(a) All notices, requests, consents and other documents ("Notices") authorised or required to be given by or under this Agreement will be given in writing and

either personally served or sent by facsimile transmission ("fax") addressed as follows:

The Commonwealth

Secretary
Department of Transport and Regional Development
Trace Building, Level 3
22 Cooyong Street
CANBERRA ACT 2601
GPOBox 594

Fax No: (02) 6274 7804

The Transferee

The General Manager
Essendon Airport Limited
Airport Management Centre,
Building 250,
English Street,
Essendon Airport,
Victoria

Fax No:

(03) 9379 7867

- (b) Notices will be deemed served or given:
 - (i) if delivered personally, on the date of delivery;
 - (ii) if sent by fax, when successfully transmitted between the hours of 9:00 am and 5:00 pm ("Business Hours"), or if not during Business Hours, then when Business Hours next commence.
- (c) Any party may change its address for receipt of Notices at any time by giving written notice of such change to each other party. Any party may by written notice to each other party appoint from time to time a representative who is authorised to sign Notices on its behalf.

12.12 Counterparts

This Agreement may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.

SCHEDULE 1

(Definitions and Interpretation - clause 1)

PART A - DEFINITIONS

Col	umn	1

Aerodrome Licence

Airport Building Controller

Airport Lease

Airport Operations

Airport Site

Airports Act

Airports Legislation

Airports (Transitional) Act

Building Controller Costs

Column 2

the aerodrome licence granted by the Civil Aviation Safety Authority to the FAC under regulation 89C of the Civil Aviation Regulations in respect of the aerodrome at the Airport Site.

the person appointed under regulation 4.01 of the Airports (Building Control) Regulations 1996 as the airport building controller for the Airport Site from time to time.

a lease of the Airport Site in the terms of the lease marked as Exhibit "A" to this Agreement and initialled by the parties for the purpose of identification.

the operation of the Airport Site as an airport for air transport and related activities (including, without limitation, retail and other commercial operations).

the meaning given to that expression in the Airport Lease.

the Airports Act 1996.

the Airports Act and the Airports (Transitional) Act.

the Airports (Transitional) Act 1996.

- costs, expenses and outgoings all fees, reasonably incurred by the Commonwealth in retaining the Airport Building Controller in respect of the Airport Site, including, without limitation, all fees, costs, expenses and outgoings paid by or on behalf of the Commonwealth to the Airport Building Controller for:
- (i) performing any of its duties, functions or responsibilities under the Airports (Building Control) Regulations 1996 in respect of the Airport Site; and/or
- (ii) performing or doing any act or thing reasonably incidental to any of the Airport Building Controller's functions, duties or responsibilities referred to in paragraph (i),

Column 1

Business Day

Completion

Completion Date

Completion Place

Governmental Authority

Claims or Actions

Column 2

but excluding;

- (iii) any administrative or legal costs of the Commonwealth; and
- (iv) any legal costs incurred by the Airport Building Controller in defending, enforcing or implementing any decisions made by the Airport Building Controller in performing any of its functions, duties or responsibilities referred to in paragraph (i).

a day which is not a Saturday, Sunday or public holiday in Canberra.

any claims, demands, suits, proceedings, actions or causes of action (whether based in contract, tort, statute or otherwise) in respect of this Agreement or any part of it or otherwise relating to the subject matter of this Agreement.

completion of this Agreement in accordance with clause 4 of this Agreement.

30 June 1998 or such other date as the Commonwealth may notify to the Transferee in writing at least 2 Business Days in advance

such place in Australia as the Commonwealth may notify the Transferee in writing at least 24 hours before the Completion Date.

FAC

the Federal Airports Corporation established under the Federal Airports Corporation Act 1986.

the Commonwealth government or any government of any state, territory or other area of Australia, including any administrative body, governmental body, department or agency of any such government.

the meaning given to that expression in the Airport Lease.

the Minister for Finance and Administration from time to time of the Commonwealth.

- (i) the period commencing on the day immediately following the Completion Date and ending on 30 June 1999 (the "Initial Payment Period"); and
- (ii) each 12-month period thereafter, the last such period to end on 30 June 2003.

Grant Time

Minister

Payment Period

Recovered Costs

any fees paid to the Airport Building Controller

12

Column 1	Column 2
	by any party under regulations 2.02, 2.10(3) & (4), 2.16, 3.02(2) and 3.10(1A) & (1B) of the Airports (Building Control) Regulations 1996 (as amended) in respect of the Airport Site.
Sale Transition Deed	a deed to be entered into between the Commonwealth, the FAC and the Transferee in the terms of the deed marked as Exhibit "D" to this Agreement and initialled by the parties for the purpose of identification.
Section 11 Declarations	declarations to be made by the Minister under section 11 of the Airports (Transitional) Act in the form of the declarations set out in the instrument marked as Exhibit "B" to this Agreement and initialled by the parties for the purpose of identification.
Specified Asset, Specified Contract, Specified Employee and Specified Liability	the meaning given to those expressions in the Transfer Instrument.
Tax	any tax, levy, charge, impost, duty, fee, deduction or withholding which is assessed, levied, imposed or collected by any Governmental Authority and includes, but is not limited to, any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the foregoing.
Transfer Declarations	the declarations to be made by the Minister under the Airports (Transitional) Act in the terms of the declarations set out in the Transfer Instrument and initialled by the parties for the purpose of identification, save that the parties agree that Part 1 of Schedule D to the Transfer Instrument will be completed in accordance with the notes to that Schedule.
Transfer Instrument	the instrument marked as Exhibit "C" to this Agreement and initialled by the parties for the purpose of identification.
s47(1)(b)	
Transferred Asset	an asset which is transferred to the Transferee either pursuant to the Transfer Instrument or as part of the Airport Lease or otherwise by the Commonwealth.
\$	Australian dollars.

PART B - INTERPRETATION

In this Agreement unless the context indicates a contrary intention:

(a) words in the singular include the plural and vice versa;

- (b) words importing one gender include each of the other genders;
- (c) "person" includes a corporation and a body politic;
- (d) headings in this Agreement are for convenience only and are not part of, or to be used in the interpretation or construction of, this Agreement:
- (e) references to parties, recitals, clauses, paragraphs, Schedules, Exhibits or annexures are references to parties, clauses, paragraphs, Schedules, Exhibits and annexures to or of this Agreement and a reference to this Agreement includes any Schedule, Exhibit and annexure;
- (f) references to this Agreement, or any other deed, agreement, instrument or document will be deemed to include references to this Agreement, or such other deed, agreement, instrument or document as amended, novated, supplemented, varied or replaced from time to time;
- (g) if any provision of this Agreement or its application to any person or circumstance is or becomes invalid or unenforceable, the remaining provisions are not affected and each provision of this Agreement is valid and enforceable to the fullest extent permitted by law;
- references to any person or to any party to this Agreement will include that person's or party's successors in title and permitted assigns;
- (i) where any word or phrase is given a defined meaning any other part of speech or grammatical form in respect of such word or phrase has corresponding meaning;
- (j) terms used in this Agreement and defined in the *Corporations Law* at the date of this Agreement have the meaning given to them in the *Corporations Law* at that date;
- (k) all payments to be made pursuant to this Agreement will be made by unendorsed bank cheque (or such other method of payment as may be directed in writing by the Commonwealth);
- (1) reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment or any statutory provision substituted therefor and all ordinances, by-laws, regulations and other statutory documents issued thereunder; and
- (m) the reference "[Deleted]" indicates that the Parties have agreed that particular provisions (whether clauses, Schedules or Exhibits) included in earlier drafts of this Agreement should not be included in the final version of this Agreement and that the Parties have determined that such provisions should be marked "[Deleted]" in order to avoid the need to renumber the provisions of, and cross-references within, this Agreement.

FOI 24-014 - page 36 of 101

SCHEDULE 2

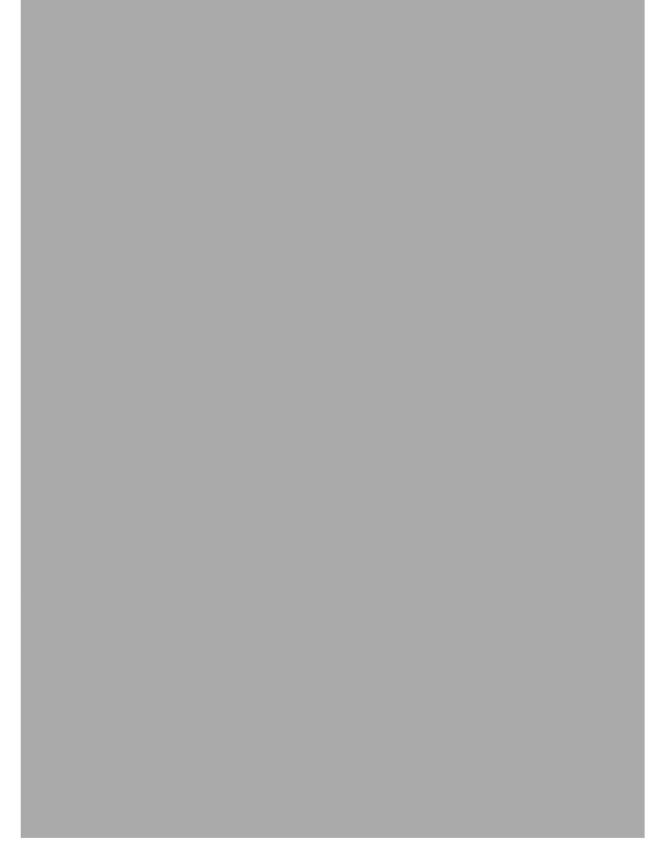
(Transferee Acknowledgments - clause 7.1)



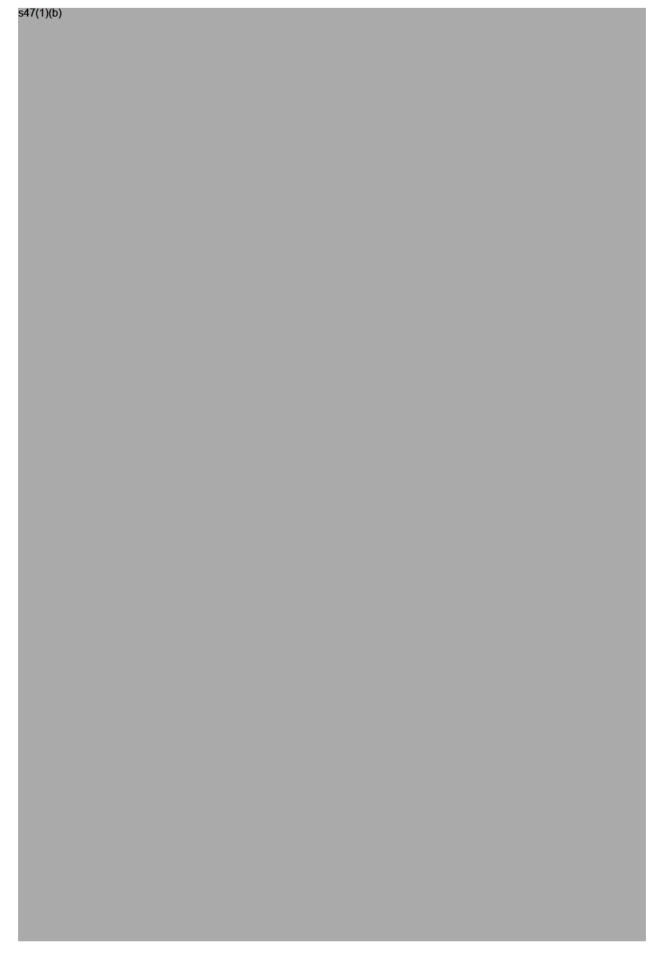
SCHEDULE 3

(Airport Pavements - Depreciation and Amortisation - clause 5)

s47(1)(b)



Infrastructure, Transport, Regional Development, Communications, Sport and the Arts Released under the Freedom of Information Act by the Department of



17 30 June 1998

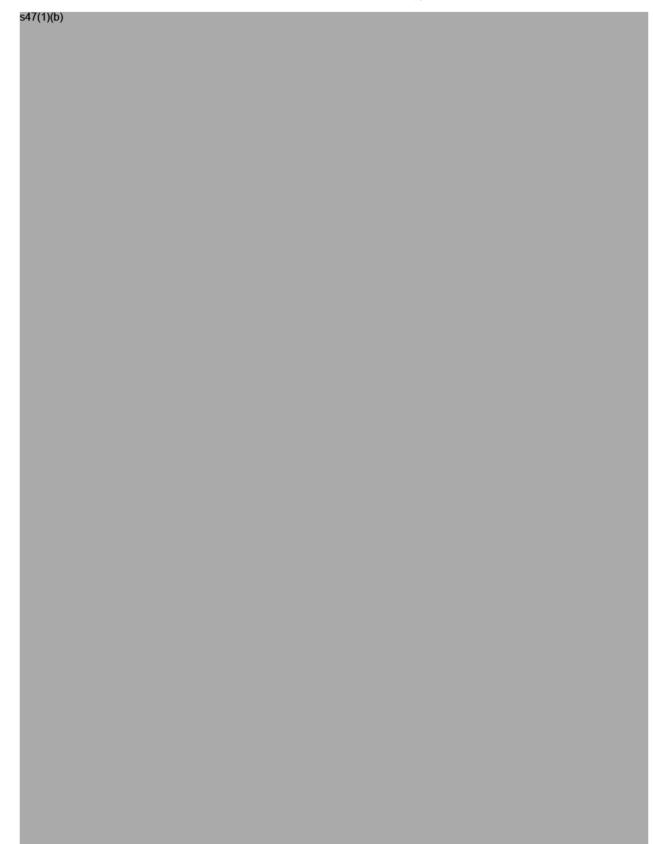
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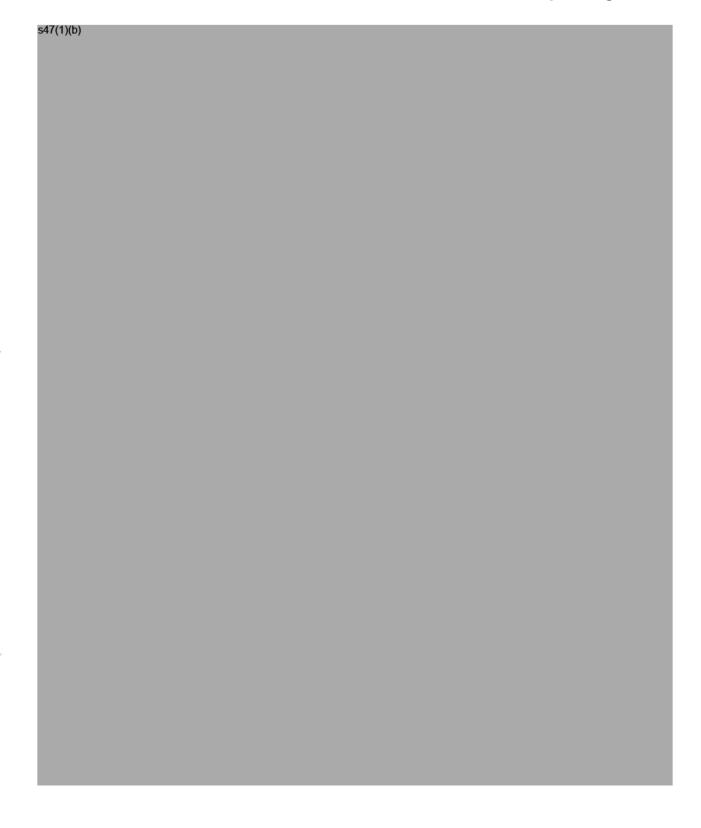
18 30 June 1998

SCHEDULE 4

(Insurance - clause 4.l(a))



19 30 June 1998



SIGNED as an agreement.

SIGNED by DR PETER JOHN BOXALL Secretary to the Department of Finance and Administration for and on behalf of the Minister for Finance and Administration of the Commonwealth of Australia in the presence of) s47F))),	(Signature)
(Signature of Witness)		
(Name of Witness in full)		
SIGNED by ESSENDON AIRPORT LIMITED (ACN 082 907 980) by HELEN BURGESS being signed under a power of attorney dated 24 June 1998, who declares that he has no notice of revocation of the power of attorney in the presence of:)))))	s47F
s47F (Signature of Witness)		(Signature)
s47F (Name of Witness in full)		



COMMONWEALTH OF AUSTRALIA

EXHIBIT "B"
TO THE
ESSENDON AIRPORT
SALE AGREEMENT

SECTION 11 DECLARATION



COMMONWEALTH OF AUSTRALIA

ESSENDON AIRPORT SALE AGREEMENT

SECTION 11 DECLARATION

DECLARATIONS MADE BY THE MINISTER FOR FINANCE AND ADMINISTRATION UNDER SECTION 11 OF THE AIRPORTS (TRANSITIONAL) ACT 1996

ESSENDON AIRPORT

1. DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires, words and phrases used in this instrument which are defined in the Airports (Transitional) Act 1996 ("Transitional Act") or the Airports Act 1996 ("Airports Act") have the same meaning when used in this instrument. In addition:

"Specified Land" means the land referred to in Part 1.8 of Schedule 1 of the Airports Regulations 1996;

"Specified Instrument" means an instrument, but does not include:

- (a) a statute, or an instrument made, granted or issued under a statute (other than a lease);
- (b) a statutory licence, permit or other authority (other than a lease);
- (c) a register kept by an official under a Commonwealth, State or Territory law.

"Specified Liability" means a liability specified in the Schedule.

2. DECLARATIONS

- I, John Joseph Fahey, Minister for Finance and Administration, hereby declare pursuant to section 11 of the Transitional Act that subject to paragraph 3:
- (a) the FAC's right, title and interest in the Specified Land vests in the Commonwealth without any conveyance, transfer or assignment;
- (b) each Specified Instrument relating to the Specified Land (including for the avoidance of doubt existing leases) continues to have effect after the FAC's right, title and interest in the Specified Land vests in the Commonwealth as if a reference in the instrument to the FAC were a reference to the Commonwealth;
- (c) the Commonwealth becomes the FAC's successor in law in relation to the FAC's right, title and interest in the Specified Land immediately after the FAC's right, title and interest in the land vests in the Commonwealth.

3. SPECIFIED LIABILITIES

This declaration is not intended to have the effect of:

- (a) transferring to the Commonwealth a Specified Liability;
- (b) making the Commonwealth liable in relation to a Specified Liability; or
- (c) making the Commonwealth the successor in law of the FAC in relation to a Specified Liability.

4. COMMENCEMENT

This declaration comes into operation on 1July 1998.

DATED:

Signedby DR PETER JOHN BOXALL Secretary to the Department of Finance and Administration for and on behalf of the Minister for Finance and Administration of the Commonwealth of Australia

Schedule - Specified Liabilities ESSENDON AIRPORT

Any liability of the FAC in respect of, in relation to or which arises from:

- (a) an asset, contract or employee of the FAC;
- (b) the ownership or occupation of the Specified Land;
- (c) the operation of Essendon Airport; or
- (d) a fixture on the Specified Land;

other than an obligation or benefit under, or connected with, an existing lease.



COMMONWEALTH OF AUSTRALIA

EXHIBIT "C" TO THE ESSENDON AIRPORT SALE AGREEMENT

TRANSFER INSTRUMENT

DECLARATIONS MADE BY THE MINISTER FOR FINANCE AND ADMINISTRATION UNDER THE AIRPORTS (TRANSITIONAL) ACT 1996 ESSENDON AIRPORT

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions**

Unless the context otherwise requires, words and phrases used in this instrument which are defined in the Airports (Transitional) Act 1996 or the Airports Act 1996 have the same meaning when used in this instrument. In addition:

- "Airport" means Essendon Airport located on the Airport Site.
- "Airport Lease" has the meaning given to that expression in the Sale Agreement.
- "Airport Site" has the meaning given to that expression in the Airport Lease.
- "FAC Act" means the Federal Airports Corporation Act 1986 and any By-laws made under that Act.
- "Grant" means the grant of an airport lease for the Airport Site to the Transferee pursuant to section 21 of the Transitional Act.
- "Grant Time" has the meaning given to that expression in the Airport Lease.
- "Sale Agreement" means the Essendon Airport Sale Agreement dated 30 June 1998 and entered into between the Commonwealth and the Transferee.
- "Sale Transition Deed" means the Essendon Airport Sale Transition Deed dated 30 June 1998 and entered into by the Commonwealth, the FAC and the Transferee.
- "Specified Asset" means an asset specified in Part 1 of Schedule A, but does not include an asset specified in Part 2 of Schedule A.
- "Specified Contract" means a contract specified in Part 1 of Schedule B, but does not include a contract specified in Part 2 of Schedule B.
- "Specified Commonwealth Asset" means a sublease of part of the Airport Site under which the FAC was a sublessee immediately before a declaration under section 11 of the Transitional Act in relation to Essendon Airport takes effect.
- "Specified Employee" means a person who immediately before the Grant Time is an employee of the FAC and whose name is specified in Schedule D.
- "Specified Instrument" means an instrument but does not include:
- (a) a statute (other than the FAC Act), or an instrument made, granted or issued under a statute (other than an instrument made, granted or issued under the FAC Act, the Airports (Business Concessions) Act 1959 or a similar Commonwealth law);

- (b) a statutory licence, permit or other authority (other than a statutory licence, permit or other authority issued under the FAC Act, the Airports (Business Concessions) Act 1959 or a similar Commonwealth law); or
- (c) a register kept by an official under a Commonwealth, State or Territory law.

"Specified Liability" means a liability specified in Part 1 of Schedule C, but does not include a liability specified in Part 2 of Schedule C.

"Structure" has the meaning given to that expression in the Airport Lease.

"Transferee" means Essendon Airport Limited (ACN 082 907 980).

"Transitional Act" means the Airports (Transitional) Act 1996.

1.2 Interpretation

Unless the context otherwise requires, references to paragraphs, Schedules and Exhibits are references to paragraphs, Schedules and Exhibits of or to this instrument.

2. DECLARATIONS

I, John Joseph Fahey, Minister for Finance and Administration, hereby declare, pursuant to the Transitional Act, that in the event that the Grant occurs:

2.1 Section 30 (Assets)

- (a) each Specified Asset vests in the Transferee immediately after the Grant Time without any conveyance, transfer or assignment;
- (b) each Specified Instrument relating to a Specified Asset continues to have effect after the Specified Asset vests in the Transferee as if a reference in the instrument to the FAC or to the Commonwealth (in its capacity as predecessor to the FAC as the operator of the Airport) were a reference to the Transferee; and
- (c) the Transferee becomes the FAC's successor in law in relation to each Specified Asset immediately after the Specified Asset vests in the Transferee.

2.2 Section 31 (Contracts)

- the FAC's rights and obligations under each Specified Contract cease to be rights and obligations of the FAC immediately after the Grant Time and become rights and obligations of the Transferee immediately after the Grant Time;
- (b) each Specified Contract continues to have effect after the Grant Time as if a reference in the Specified Contract to the FAC or to the Commonwealth (in its capacity as predecessor to the FAC as the operator of the Airport) were a reference to the Transferee;
- each Specified Instrument relating to a Specified Contract continues to have effect, after the FAC's rights and obligations under the Specified Contract become rights and obligations of the Transferee, as if a reference in the instrument to the FAC or to the Commonwealth (in its capacity as predecessor to the FAC as the operator of the Airport) were a reference to the Transferee; and

(d) the Transferee becomes the FAC's successor in law, in relation to the FAC's rights and obligations under each Specified Contract, immediately after the FAC's rights and obligations under the Specified Contract become the rights and obligations of the Transferee.

2.3 Section 33 (Liabilities)

- each Specified Liability ceases to be a liability of the FAC immediately after the Grant Time and becomes a liability of the Transferee immediately after the Grant Time;
- (b) each Specified Instrument creating a Specified Liability continues to have effect after the Specified Liability becomes a liability of the Transferee as if a reference in the instrument to the FAC or to the Commonwealth (in its capacity as predecessor to the FAC as the operator of the Airport) were a reference to the Transferee; and
- (c) the Transferee becomes the FAC's successor in law in relation to each Specified Liability immediately after the Specified Liability becomes a liability of the Transferee.

2.4 Section 58 (Employees)

each Specified Employee ceases to be employed by the FAC immediately after the Grant Time and is taken to have been engaged by the Transferee as an employee of the Transferee immediately after the Grant Time.

2.5 Section 23 (Transfers from the Commonwealth – assets)

- (a) each Specified Commonwealth Asset vests in the Transferee immediately after the Grant Time without any conveyance, transfer or assignment;
- (b) each Specified Instrument relating to a Specified Commonwealth Asset continues to have effect after the Specified Commonwealth Asset vests in the Transferee as if a reference in the instrument to the Commonwealth or the FAC were a reference to the Transferee; and
- (c) the Transferee becomes the Commonwealth's successor in law in relation to the Commonwealth's right, title and interest in each Specified Commonwealth Asset immediately after the Specified Commonwealth Asset vests in the Transferee.

DATED: 30th June 1998

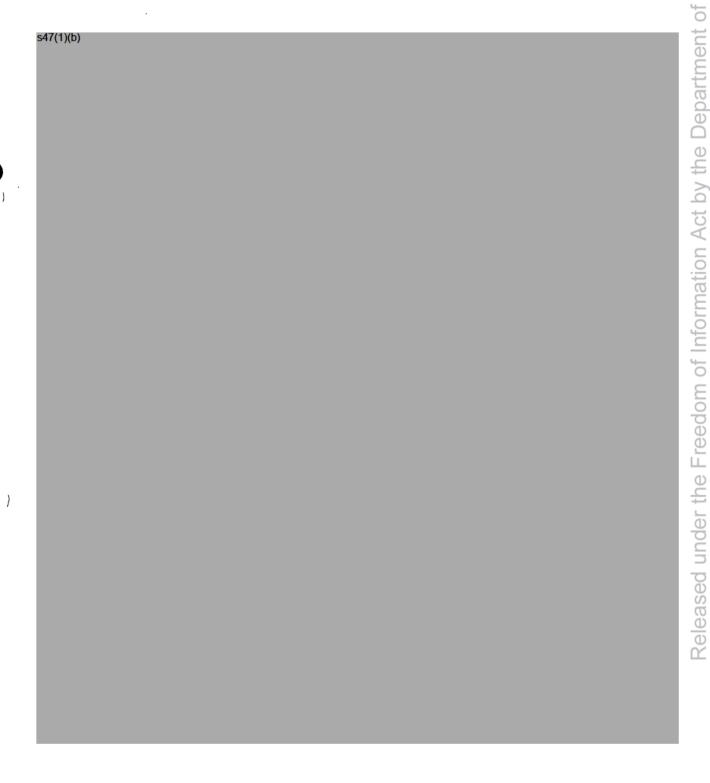
DR PETER JOHN BOXALL

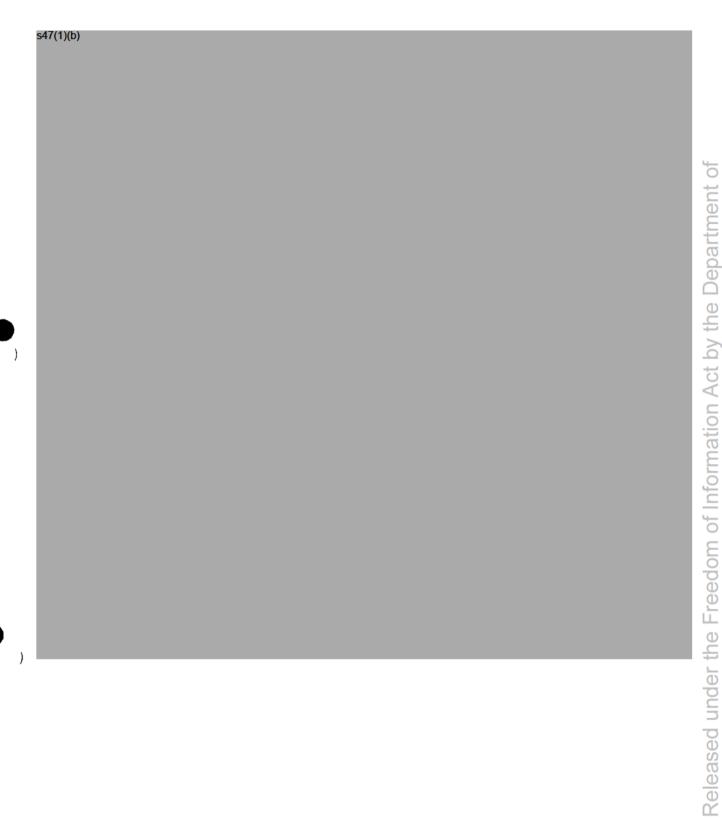
Secretary to the Department for Finance and Administration for and on behalf of the Minister for Finance and Administration of the Commonwealth of Australia

SCHEDULE A

(Specified Assets)

PART 1





SCHEDULE B

(Specified Contracts)

PART 1

Any contract (other than a contract of employment) to which the FAC is a party and which:

- (a) was entered into by the FAC or the Commonwealth (in its capacity as predecessor to the FAC as the operator of the Airport) at any time before the Grant Time; and
- (b) exclusively relates to:
 - (i) a Specified Asset;
 - (ii) a Specified Liability;
 - (iii) a Specified Employee;
 - (iv) the operation of the Airport Site; or
 - (v) any land or Structure the subject of the Airport Lease,

or any combination of the above.

PART 2

All existing leases in relation to the Airport Site (within the meaning of subsection 26(1) of the Transitional Act).

SCHEDULE C

(Specified Liabilities)

PART 1

Any liability of the FAC (other than a liability under a contract or a liability to refund all or part of an aeronautical charge which arises as a result of litigation, action or demand concerning the validity of the levying of that charge by the FAC) in respect of, in relation to, in connection with or which arises from:

- (a) a Specified Asset, a Specified Contract or a Specified Employee;
- (b) any land or Structure the subject of the Airport Lease; or
- (c) the ownership, occupation or operation of the Airport Site by the FAC at any time before the Grant Time; or
- (d) a former employee of the FAC who was last employed at the Airport Site;

or any combination of the above

PART 2

1. **Tax**

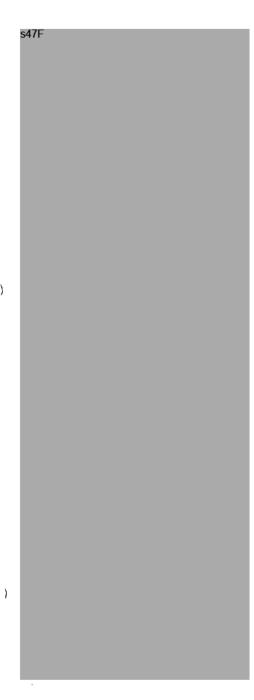
Any liability of the FAC to pay any income tax (including capital gains tax), sales tax, interest withholding tax, superannuation guarantee levy, pay-as-you-earn remittances, customs duty, payroll-tax, fringe benefits tax, and any penalties, interest, fines or other costs relating thereto.

2. **Insurance**

Any liability of the FAC insured under an insurance policy the rights of which have been or will be transferred from the FAC to Sydney Airports Corporation Limited by virtue of the Transfer Instrument dated 30 June 1998 made by the Minister for Finance and Administration under the Transitional Act in respect of Sydney (Kingsford-Smith) Airport.

SCHEDULE D

(Specified Employees)





COMMONWEALTH OF AUSTRALIA

EXHIBIT "D" TO THE ESSENDON AIRPORT SALE AGREEMENT



COMMONWEALTH OF AUSTRALIA

ESSENDON AIRPORT SALE TRANSITION DEED

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DEED dated the

day of

1998

BETWEEN:

COMMONWEALTH OF AUSTRALIA ("Commonwealth")

AND

ESSENDON AIRPORT LIMITED (ACN 082 907 980), a company duly incorporated in the State of Victoria and having its registered office situated at Airport Management Centre, Building 250, English Street, Essendon Airport in the State of Victoria ("Transferee")

AND

FEDERAL AIRPORTS CORPORATION, a corporation established under the *Federal Airports Corporation Act* 1986, of 2A Lord Street, Botany in the State of New South Wales ("FAC")

RECITALS:

- A. On the date hereof the Commonwealth and the Transferee entered into an airport lease agreement in respect of the Airport Site, such lease agreement to take effect on and from the Grant Time.
- B. To facilitate the changeover of the operation of the Airport Site from FAC operation to Transferee operation, the parties have agreed to enter into and carry out their respective obligations under this Deed.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires, words and expressions in column 1 of Part A of Schedule 1 have the meaning given to them in column 2 of Part A of Schedule 1. In addition, unless the context otherwise requires, words and phrases used in this Deed which are defined in the Sale Agreement have the same meaning when used in this Deed.

1.2 Interpretation

The provisions in Part B of Schedule 1 apply in respect of the interpretation of this Deed.

s47G(1)(a)

3. MUTUAL CO-OPERATION

(a) The FAC and the Transferee each acknowledges and agrees that to effect a smooth transition in the operation of the Airport Site from FAC operation to Transferee operation ("Transition") it will be necessary for both parties to co-operate with each other in good faith to facilitate the Transition in the

period following the date of this Deed until 24 September 1998, or such later date as the Commonwealth may notify the FAC and the Transferee in writing.

- (b) To this end, the FAC and the Transferee each agrees and undertakes to assist the other party with any aspect of the Transition, even if it is not legally bound to comply with the relevant request.
- (c) Any reasonable expenses (other than internal management expenses) incurred by the FAC or the Transferee ("first-named party") in complying with a request made by the second-named party under clause 3(b) will be met by the second-named party unless otherwise agreed between the Transferee and the FAC.
- (d) Without limiting clause 3(b), the FAC must comply with any reasonable request made by the Transferee for the FAC to execute in favour of the Transferee any instrument or other document required:
 - (i) to record on any statutory register the fact that an asset, liability or contract (as those expressions are defined in the Airports (Transitional) Act 1996) has been transferred from the FAC to the Transferee under the Airports (Transitional) Act 1996; or
 - (ii) to transfer any statutory licence held by the FAC in respect of the Airport Site and required by the Transferee to conduct its activities and operations at the Airport Site,

save and except that nothing in this Deed obliges, nor shall oblige, the FAC to register or to do anything necessary to enable registration of any lease.

- (e) Without limiting clause 3(b), the Transferee must comply with any reasonable request made by the FAC for the Transferee to provide the FAC with access to and assistance (including the provision of normal financial month- and year-end documentation) from officers and employees of the Transferee:
 - (i) for the purpose of the FAC complying with its taxation, audit or other statutory obligations or conducting litigation retained by it in which it is involved as at the Grant Time;
 - (ii) for the purpose of the FAC complying with its obligations under this Deed; or
 - (iii) for any other reasonable purpose.

For the avoidance of doubt, clause 3(e)(i) is not bound by the time limitations referred to in clause 3(a).

(f) Without limiting clause 3(b), until 24 September 1998 (or such later date as the Commonwealth may notify the FAC in writing) the FAC must, at the Transferee's expense, comply with any reasonable request made by the Transferee for the FAC to provide the Transferee with such assistance as the Transferee may require to facilitate the collection and recovery by the Transferee of amounts not paid to or invoiced by the FAC in respect of the Airport Site immediately before the Grant Time but which immediately before Grant Time were payable to or able to be invoiced by the FAC or for which the FAC was entitled to receive or recover payment under section 56 of the Federal Airports Corporation Act 1986 ("the FAC Act") or By-Laws made under the FAC Act, the right to collect and recover such amounts having been

- vested in the Transferee pursuant to section 30 of the Airports (Transitional) Act 1996.
- (g) If at any time after the Grant Time the FAC receives or is paid any money in respect of an amount referred to in clause 3(f), then the FAC undertakes to remit such amount to the Transferee without deduction as soon as practicable thereafter.

4. FAC RECORDS

- 4.1 The parties agree that, for the purposes of section 30(1) of the Archives Act, the Commonwealth is to be considered the successor of the FAC in relation to Archived Records.
- 4.2 The Commonwealth agrees to direct Archives under section 30(1) of the Archives Act to make Archived Records available to the Transferee upon the written request of the Transferee, to the Commonwealth where the request relates to an Archived Record that is relevant to the operations of the Transferee.
- 4.3 The parties agree that, in relation to Corporate Office Records:
 - (a) Those Corporate Office Records required to be retained permanently under Record Disposal Authority 1352 will be either:
 - (i) transferred to the custody of Australian Archives; or
 - (ii) otherwise dealt with under the Archives Act 1986.

Records dealt with in accordance with clause 4.3(a) will be taken to be Archived Records for the purpose of clauses 4.1 and 4.2:

- (b) All other Corporate Office Records will be transferred to the custody of the Commonwealth, represented by the Department of Transport and Regional Development ("Non Permanent Records");
- (c) If the Transferee wishes to access a Non Permanent Record, it must first obtain the written consent of the Commonwealth, such consent not to be unreasonably withheld;
- (d) The Commonwealth is entitled to withhold its consent under clause 4.3(c) if the Record:
 - (i) is not necessary for the ongoing operation of the Airport Site; or
 - (ii) does not directly relate to a Specified Asset, Specified Liability or Specified Contract; or
 - (iii) contains information that is confidential to the Commonwealth;
- (e) The Commonwealth may also impose reasonable conditions on the access permitted under clause 4.3(c), including but not limited to, granting permission to access only part of a Record.

5. TRANSFEREE to provide access

- 5.1 The Transferee agrees to provide access to Current Records to the Commonwealth where the Commonwealth requires access for the purposes of the Commonwealth and where the Commonwealth submits to the Transferee a written request for access.
- 5.2 Upon receipt of a written request referred to in clause 5.1, the Transferee will provide to the Commonwealth access to the relevant Current Records as soon as reasonably practicable after receipt of such request.
- 5.3 If the Transferee experiences difficulty in locating the requested Current Records, it will inform the Commonwealth of such difficulty and consult with the Commonwealth about any actions to overcome the difficulty.
- 5.4 The Transferee agrees to direct Archives under section 30(1) of the Archives Act to make Company Archive Records available to the Commonwealth upon the written request of the Commonwealth, without the need for the Commonwealth to obtain the Transferee's prior consent.

6. INTELLECTUAL PROPERTY

- 6.1 Nothing in this Deed is to be interpreted as transferring the copyright in an Archived Record to the Transferee.
- free, non-exclusive licence to use, reproduce and adapt for the purposes of the operations of the Transferee any material contained in an Archived Record to which the Transferee has access under this Deed, except to the extent that the Commonwealth specifically restricts such rights in writing, setting out the terms of the restriction at the time the Transferee seeks access to Archived Records.
- 6.3 The Transferee grants to the Commonwealth to the extent of its copyright a royalty-free, non-exclusive licence to use, reproduce and adapt for the purposes of the operations of the Commonwealth any material contained in a Current Record to which the Commonwealth has access under this Deed, except to the extent that the Transferee specifically restricts such rights in writing, setting out the terms of the restriction at the time the Commonwealth seeks access to the Current Records.

7. BUSINESS NAMES

After the execution of this Deed the Transferee may deliver to the FAC duly completed transfers and other documentation as are necessary to enable the Transferee to be registered as the proprietor of each of the Business Names for which the Transferee wishes to become registered as proprietor. The FAC undertakes to execute such completed transfers and other documentation as a matter of urgency and in any case within 2 Business Days of receiving them.

8. DISPUTE RESOLUTION

If any dispute arises between the FAC and the Transferee in respect of the interpretation of or any other fact, matter or circumstance concerning this Deed ("Dispute"), then senior executives of the FAC and the Transferee will meet as soon as possible at a mutually convenient location to attempt to resolve the Dispute in good faith. Both the FAC and the Transferee will use reasonable endeavours to attempt to resolve the Dispute as soon as possible.

9. GENERAL

9.1 Governing law

This Deed is governed by and construed in accordance with the laws of the Australian Capital Territory.

9.2 Further assurance

The parties will each do all acts and things and execute all documents as are from time to time reasonably required for the purposes of or to give effect to this Deed.

9.3 Waivers, consents and approvals

- (a) No consent or waiver, whether express or implied, to any breach of this Deed by a party to this Deed is to be construed as a consent or waiver to any other breach.
- (b) Any waiver, consent or approval by a party to this Deed will only be binding and effective if it is given in writing.
- (c) Where any act, matter or thing under this Deed depends on the consent or approval of a party to this Deed then, unless expressly provided otherwise, that consent or approval may be given, withheld, or given subject to such conditions as that party determines and in the absolute and unfettered discretion of that party.

9.4 Assignment

- (a) The Transferee may not assign or otherwise transfer all or any of its rights under this Deed without the prior written consent of the Commonwealth and the FAC.
- (b) This Deed will be binding on and enure to the benefit of each party and its respective successors in title and permitted assigns.

9.5 Modification

This Deed may only be modified, amended, added to or otherwise varied by a document in writing signed by each of the parties.

9.6 Stamp duties

- (a) (Payment of all duties): The Transferee will pay all stamp duties (apart from receipts duties, financial institutions duties or bank account debits taxes which will lie between the parties as they fall) which may be payable in connection with the execution, delivery, performance or enforcement of this Deed or in connection with any of the matters, transactions, sales, payments or receipts under this Deed or any document drawn, made or executed in consequence of this Deed.
- (b) (Indemnity): The Transferee will indemnify and keep indemnified the Commonwealth and the FAC against any loss or liability incurred or suffered by either or both of them as a result of the delay or failure by the Transferee to pay such stamp duties.

9.7 Notices

(a) All notices, requests, consents and other documents ("Notices") authorised or required to be given by or under this Deed will be given in writing and either personally served or sent by facsimile transmission ("fax") on a Business Day and addressed as follows:

The Commonwealth

Secretary
Department of Transport and Regional Development
Trace Building, Level 3
22 Cooyong Street
CANBERRA A C T 2601
G P O Box 594

Fax No: (02) 6274 7804

The Transferee

General Manager Essendon Airport Limited Airport Management Centre, Building 250, English Street, Essendon Airport, VICTORIA 3041

Fax No: (03) 9379 7867

The FAC

Managing Director and Chief Executive 2A Lord Street, BOTANY NSW, 2019

Fax No: (02) 9316 9153

- (b) Notices will be deemed served or given:
 - (i) if delivered personally, on the date of delivery; and
 - (ii) if sent by fax, when successfully transmitted between the hours of 9:00 am and 5:00 pm in the place of receipt ("Business Hours"), or if not during Business Hours, then when Business Hours next commence.
- (c) Any party may change its address for receipt of Notices at any time by giving written notice of such change to each other party. Any party may by written notice to each other party appoint from time to time a representative who is authorised to sign Notices on its behalf.

9.8 Counterparts

This Deed may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.

9.9 Set-off

- (a) The FAC may set off any amount due and payable by the FAC to the Transferee under this Deed against any amount due and payable by the Transferee to the FAC under this Deed.
- (b) The Transferee may set off any amount due and payable by the Transferee to the FAC under this Deed against any amount due and payable by the FAC to the Transferee under this Deed.

9.10 Limitation of FAC liability

The Transferee acknowledges and agrees that as between the Transferee and the FAC, the FAC will be entitled to the benefit of any provision in the Sale Agreement which has or may have the effect of limiting or negating any liability the FAC may have to the Transferee as if the FAC were a party to the Sale Agreement.

SCHEDULE 1

(Definitions and Interpretations)

PART A - DEFINITIONS

Column 1

Column 2

Archived Record

a Record of the FAC which the FAC transferred to the custody of Archives before Grant Time and which relate to matters which have transferred to the Transferee.

Archives

the Australian Archives established by the Archives Act 1983

Business Day

a day which is not a Saturday, Sunday or public holiday in the Australian Capital Territory

Business Names

the business names identified in Schedule 2.

Company Archived Records

a Current Record which the Transferee has transferred to the custody of Archives

Corporate Office Record

a Record which immediately before Grant Time is held by FAC Corporate Office and is not a Current Record.

Current Record

a Record which:

- (a) was held by the FAC immediately before Grant Time and transfers to the Transferee pursuant to the Transfer Declarations; and
- (b) is created by the Transferee after Grant Time

Record

)

a record as defined in the Archives Act 1983.

PART B - INTERPRETATION

In this Deed unless the context indicates a contrary intention:

- words in the singular include the plural and vice versa; (a)
- words importing one gender include each of the other genders; (b)
- (c) "person" includes a corporation and a body politic;
- headings in this Deed are for convenience only and are not part of, or to be used in the (d) interpretation or construction of, this Deed;
- (e) references to parties, recitals, clauses, paragraphs, Schedules and Annexures are references to parties, recitals, clauses, paragraphs, Schedules and Annexures to or of this Deed and a reference to this Deed includes any Schedule or Annexure;
- references to this Deed, or any other deed, agreement, instrument or document will be (f) deemed to include references to this Deed, or such other deed, agreement, instrument

- or document as amended, novated, supplemented, varied or replaced from time to time;
- (g) if any provision of this Deed or its application to any person or circumstances is or becomes invalid or unenforceable, then the remaining provisions are not affected and each provision of this Deed is valid and enforceable to the fullest extent permitted by law;
- (h) a reference to a document includes any written agreement and any certificate or note or other document of any kind;
- (i) references to any person or to any part to this Deed will include that person's or party's successors in title and permitted assigns;
- where any word or phrase is given a defined meaning any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;
- (k) where the day on or by which any sum is payable hereunder or any act, matter or thing is to be done is a day other than a Business Day such sum will be paid and such act, matter or thing will be done on the immediately preceding Business Day;
- (l) references to payments to any party to this Deed will be construed to include payments to another person upon the direction of such party;
- (m) unless otherwise expressly stated in this Deed, all payments to be made pursuant to this Deed will be made by unendorsed bank cheque; and
- (n) reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment or any statutory provision substituted therefor and all ordinances, by-laws, regulations and other statutory documents issued thereunder.

SCHEDULE 2

Business Names

Essendon Airport

EXECUTED as a Deed.

by DR PETER JOHN BOXALL Secretary to the Department of Finance and Administration for and on behalf of the Minister for Finance and Administration of the Commonwealth of Australia in the presence of	(Signature)
(Signature of witness)	
(Name of witness in full)	
SIGNED SEALED AND DELIVERED)	-
by ESSENDON AIRPORT LIMITED (ACN 082 907 980) by	
being signed under a power of attorney) dated 24 June 1998, who declares) that he has no notice of revocation of the power of attorney in the presence of:	
	(Signature)
(Signature of Witness)	
(Name of Witness in full)	

	by the FEDERAL AIRPORTS CORPORATION by its attorney, BARRY MURPHY, appointed under power of attorney dated 9 October 1997 registered No. 45 Book 4182 who states that he has at the time of execution of this document no notice of revocation of the power of attorney, in the presence of:
	(Name of witness in full)
)	(Address of witness)
	(Signature of witness)

Signature of the attorney of the Federal Airports Corporation