

MERIMBULA AIRPORT

Deed



**Transport and
Communications**

DEED BETWEEN THE COUNCIL OF THE BEGA VALLEY SHIRE COUNCIL
AND THE COMMONWEALTH OF AUSTRALIA

THIS DEED is made the nineteenth day of November 1990 between the Commonwealth of Australia (hereinafter referred to as "the Commonwealth") and the Bega Valley Shire Council (hereinafter referred to as "the Local Authority").

WHEREAS:

- A. The Local Authority owns and operates Merimbula Aerodrome.
- B. The Commonwealth previously transferred Merimbula Aerodrome to the Local Authority, and provides financial assistance for approved maintenance and development works at Merimbula Aerodrome under the Aerodrome Local Ownership Plan.
- C. The Civil Aviation Authority has the responsibility for providing and maintaining air route and airway services and facilities at the aerodrome pursuant to the provisions of the Civil Aviation Act 1988 and the regulations made thereunder.
- D. The Local Authority has agreed to accept full financial responsibility for Merimbula Aerodrome under the terms of this Deed.
- E. The Local Authority holds in trust for the Commonwealth the sum of \$219,550 plus interest accumulated on that amount from 6 June 1989 being the Commonwealth's share of proceeds from the sale of land at Merimbula Aerodrome on 6 June 1989 to Cicihart Pty Ltd, Victoria.

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Australian Government

Department of Transport and Regional Services

Sent to ALOP aerodrome owners
on 13/1/04.

X-ref L2002/1883

FOI 24-047 - Document 1

«CEO_Title» «CEO_Firstname» «CEO_Surname»
«CEO_Position_Title»
«Address_Name»
«PostalAddress»
«City» «State» «PostalCode»

Dear «CEO_Title» «CEO_Surname»

Following consideration of the Australian Government's involvement in the Aerodrome Local Ownership Plan (ALOP), the Hon John Anderson MP, Minister for Transport and Regional Services has decided upon a liberalisation of policy towards applications under the ALOP transfer deeds. This will provide aerodrome owners with a greater level of flexibility in the operation of their asset.

The current provisions in the transfer deeds require aerodrome owners to seek the consent of the Secretary of the Department of Transport and Regional Services (DOTARS) prior to selling, leasing or otherwise disposing of all or part of their aerodrome.

The Australian Government now waives its right to enforce the relevant clause of the transfer deed that requires aerodrome owners to seek consent from the Secretary of DOTARS for alternative use of their aerodrome, except in certain circumstances. These circumstances are where the alternative use will:

- result in the closure of the aerodrome, or
- result in the aerodrome no longer continuing to operate as an aerodrome.

In all other circumstances owners need not contact the Department for approval.

It would be expected that aerodrome owners will have consulted with the relevant local and state/territory governments as applicable prior to seeking consent from DOTARS.

This amendment takes effect immediately.

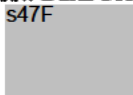
Yours sincerely

Nick Bogiatzis
A/g First Assistant Secretary
Policy and Research Group

13 January 2004

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IT IS THEREFORE AGREED as follows:

1. In consideration of the undertakings mutually given and upon the terms set out below
 - (a) The Commonwealth is on and from the nineteenth of November 1990 released from paying to the Local Authority development and maintenance grants for Merimbula Aerodrome under the terms and conditions of the Aerodrome Local Ownership Plan and shall have no further obligations under that Plan, except as provided in Clause 3.
 - (b) The Local Authority is on and from the nineteenth of November 1990 released from any obligation to reimburse the Commonwealth in respect of any grants made to the Local Authority under the Aerodrome Local Ownership Plan.
2. The Local Authority shall on the nineteenth of November 1990 pay to the Commonwealth the sum of \$267,583.
3. The Commonwealth shall, on the nineteenth of November 1990, or as soon as practicable thereafter, pay to the Local Authority by way of a grant the sum of \$267,583 (hereinafter referred to as "the grant") for expenditure by the Local Authority in carrying out the works specified in Clause 4 upon condition that the full extent of the Commonwealth contribution towards those works shall be the grant ^{s47F} 


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4. (a) The Local Authority shall, as soon as practicable after the nineteenth of November 1990, commence the works described in Clause 4(b) and complete the works within two years or such longer period as is approved by the Secretary.
- (b) The works shall comprise sealing of the runway and the installation of a T-VASIS.
5. The Local Authority shall be responsible for the maintenance of visual aids and associated equipment to Civil Aviation Authority standards and any future installation of visual aids on the aerodrome.

Local Authority Undertakings

6. The Local Authority on and from the nineteenth of November 1990
- (a) shall operate and maintain Merimbula Aerodrome ("the aerodrome") as a licensed aerodrome open to public use, subject to and in accordance with the terms and conditions of the aerodrome licence issued to it and shall permit access to the aerodrome to persons authorised under either the Air Navigation Regulations or the Civil Aviation Regulations;
- (b) shall be solely responsible from the nineteenth of November 1990 for developing, operating and maintaining the aerodrome including visual aids and associated equipment as provided for in Clause 5 except for those air navigation services and facilities provided by the Civil Aviation Authority;

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- (c) shall permit open, unrestricted and non-discriminatory access to the aerodrome by airline and aircraft operators on reasonable terms and conditions, consistent with the physical limitations of the aerodrome in accordance with the Civil Aviation Authority safety standards and conditions published in the Enroute Supplement, Australia;
- (d) shall, where applicable, allow all operations and air traffic movements at the aerodrome which are in pursuance of present and future rights granted by Australia under bilateral air services arrangements with other countries and international non-scheduled operations;
- (e) shall be responsible for the safety and security of the aerodrome in accordance with the Air Navigation Act 1920, the Civil Aviation Act 1988, the Air Navigation Regulations, the Civil Aviation Regulations and Orders made pursuant to those Regulations;
- (f) shall take such action as is within its power to prevent the restriction of aircraft operations to and from the aerodrome by objects, such as buildings, other structures, trees or other natural objects, projecting through the existing and potential obstacle limitation surfaces of the aerodrome;
- (g) shall take such action as is within its power to
 - (i) create land-use zoning around the aerodromes which will prevent residential and other incompatible development in areas which are or which may be adversely affected by aircraft noise; and

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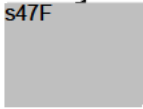
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- (ii) prevent the introduction of activities likely to create a hazard to aircraft including activities likely to attract birds; and
 - (iii) prevent developments which would be incompatible with the Civil Aviation Authority air navigation and communications facilities;
- (h) subject to the Civil Aviation Authority providing those services necessary under the Civil Aviation Regulations for the type and volume of aircraft traffic operating at the aerodrome, shall provide from time to time for lease for nominal consideration to the Civil Aviation Authority (except for service costs such as for electricity and water) such space and right of access thereto both above and below the ground within the aerodrome as the Civil Aviation Authority requires for the purpose of establishing, providing, maintaining, modifying or operating air route and airway facilities and associated equipment and for the performance of such other aviation related activities and services as may be required including the provision, installation, maintenance and operation of facilities and equipment which shall remain the property of the Civil Aviation Authority and the Civil Aviation Authority shall have right of removal of the facilities and equipment;
- (i) may lease or license the whole or any part of the aerodrome to be operated as a licensed aerodrome in compliance with the conditions of the aerodrome licence held by the Local Authority or international conventions to which Australia is a party PROVIDED that any such lease or licence shall have as one of its terms an obligation on the lessee or licensee to comply with the undertakings set out in Clause 6 of this Deed; ^{s47F} [REDACTED]

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- (j) shall provide by way of lease or licence or otherwise for the use of parts of the aerodrome by Companies or persons engaged in businesses directly related to the air transport industry without unjust discrimination and on fair and reasonable terms and conditions;
- (k) may lease or license any part of the aerodrome for any purpose, other than for the operation of a licensed aerodrome as provided for in Clause 6(i), that does not contravene the conditions of the aerodrome licence or international conventions to which Australia is a party;
- (l) if it leases the aerodrome and if a dispute arises between either the Local Authority or the lessee and a Third Party on access to the aerodrome or the reasonableness of terms and conditions of access to the aerodrome, upon the request from the Third Party the Local Authority shall submit the dispute to conciliation administered by the Australian Commercial Disputes Centre Limited ("ACDC") and conciliation shall be conducted in accordance with the conciliation rules of the ACDC;
- (m) in the event of a dispute referred to in Clause 6(1) of this Deed not being resolved within 30 days after the appointment of a Conciliator (or such longer period as the Local Authority, the lessee and the Third Party may agree) the Local Authority shall submit the dispute to arbitration administered by the ACDC provided that such arbitration shall be held in Sydney in accordance with and subject to the laws of the State of New South Wales; ^{s47F} 

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- (n) shall not, without the consent in writing of the Secretary, sell, lease or otherwise dispose of or part with the possession of the land or any part comprised in the aerodrome other than a disposal by way of lease or licence under the provisions of Clauses 6(i), 6(j) and 6(k) hereof but such consent shall not be withheld if the sale, lease, disposal or parting with possession shall not affect the proper functioning of the aerodrome or any flight paths, areas for the housing of technical equipment or areas for passengers or flight or ground personnel required for the proper functioning of the aerodrome.
- (o) shall have the right to determine and collect charges on aerodrome operations, other than those imposed under the Civil Aviation Act 1988 and Regulations made thereunder, as are necessary to cover the cost of developing, operating and maintaining the aerodrome.

Commonwealth Undertakings

7. The Commonwealth:

- (a) agrees not to collect charges under the Air Navigation (Charges) Act 1952 for the use of the aerodrome on and from the nineteenth of November 1990; and
- (b) shall meet the full cost of establishing, providing, maintaining and operating Commonwealth activities and services such as Defence, Customs, Health, Immigration, Federal Police as and when a justified need exists and to Commonwealth standards except for terminal buildings, floor space and counters for processing passenger associated with Commonwealth activities such as Customs, Immigration, Health, Federal Police for approved international services.

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Miscellaneous

8. The Local Authority shall bear any State or local government tax or charges payable in respect of this Deed. Each party shall otherwise bear its own legal or other costs in relation to the preparation and execution of this Deed.
9. The Commonwealth shall not be liable for the costs of a conciliation or arbitration, as referred to in Clause 6(1) and 6(m) of this Deed, or for any costs incurred as a result of any dispute between the Local Authority or the lessee and a Third Party in respect of access to the aerodrome or the reasonableness of terms and conditions of access to the aerodrome.
10. This Deed shall be governed by and construed in accordance with the laws of the State of New South Wales.
11. This Deed constitutes the entire agreement between the parties in relation to the future operation of the aerodrome and replaces all previous agreements, arrangements or undertakings.
12. It is the intention of the parties that the rights and obligations of the parties under this Agreement do not merge upon transfer of the aerodrome but continue and the expressions "the Commonwealth" and "the Local Authority" shall as far as possible include the statutory successors, and assignees thereof to the intent that such rights and obligations shall continue therewith. s47F

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13. In this Deed

- (a) "Civil Aviation Authority" means the Authority established by section 8 of the Civil Aviation Act 1988.
- (b) "Secretary" means the Secretary to the Department of Transport and Communications and includes any person acting as Secretary and any person authorised by the Secretary to act on his behalf.
- (c) Where a word in this Deed is also defined in the Air Navigation Regulations or the Civil Aviation Regulations the meaning of that word shall be as defined in the Air Navigation Regulations or Civil Aviation Regulations.
- (d) A reference in the Deed to any Act or Regulation shall include all present and future Acts and Regulations and all amendments thereto and re-enactments thereof and by-laws and orders made thereunder.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

SIGNED SEALED AND DELIVERED
by Ian Roland Rischbieth
for and on behalf of the
COMMONWEALTH OF AUSTRALIA in
the presence of Anne Nicole Morgan

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THE COMMON SEAL of the Bega
Valley Shire Council was
hereunto affixed in pursuance
of a resolution of the Bega Valley
Shire Council in the presence of

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President

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Shire Clerk Res. 534/90 25.9.90

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts