

**Inquiry into the effectiveness of Airservices Australia's management of aircraft noise
Senate Standing Committee on Rural and Regional Affairs and Transport
Representation by the Evans Head Memorial Aerodrome Committee Inc¹.**

Executive Summary

Between 1991 and 1993 the Federal Government handed over responsibility for more than 200 regional airfields to local government under a *Transfer Deed* between the two parties.

The *Deed* defined a number of matters relating to use of the airfields including disposal of land deemed surplus to requirement with permission of the Department, land-use planning rules to prevent development which would be adversely affected by aircraft noise, bird hazard and obstacle limitation surfaces, and unrestricted access to the aerodromes consistent with their physical limitations.

In 2004 the Minister for the Department of Transport and Regional Services on the advice of his Department loosened the reins over the future disposition of the aerodromes by agreeing that the Secretary's consent only was needed for the sale of an ALOP Aerodrome and that such consent was not required for further sales. The Department then advised all ALOP aerodrome owners of this relaxation of the *Transfer Deed*.

This major change to the *Transfer Deed*, involving hundreds of millions of dollars of regional aviation infrastructure, was not brought to Parliament or the public for discussion.

Furthermore, the request from the Minister to his department that the proposed change be discussed with various aviation peak bodies before it was agreed to, was not met, as far as can be determined.

The change to the *Transfer Deed* was discovered by us through an FOI to DOTARS following difficulty in obtaining a clear response from the Department about the status of the *Deed* including its enforcement. In fact, the Department and its successor department were most unhelpful taking many months to reply to correspondence and then providing answers which were less than adequate.

More recently we sought the assistance of the Commonwealth Ombudsman to obtain written answers to questions.

Many of our questions and submissions to DOTARS and its successor department related to the proposed development of a retirement home a 110 metres from the main runway of the State Heritage Listed Evans Head Memorial Aerodrome, and the application of the *Transfer Deed* regarding adverse effects of aircraft noise on the proposed development.

The local government authority changed the ANEF to suit the retirement home development, in our view a breach of the *Transfer Deed* over the aerodrome, and ignored an independent town planning assessment in 2007 which showed it was a land use planning conflict. All three levels of government ignored the independent assessment without genuine explanation.

It is very clear the Federal Government has passed responsibility for decisions about aerodromes and execution and policing of the *Transfer Deed* to State and local

¹ Referred to as EMAC

government authorities. This handover includes matters relating to planning and aircraft noise. Local and some State government authorities often have little or no knowledge regarding aviation and aviation noise, and the effects of aircraft noise. In these circumstances how can well-informed decisions be made?

The current paper sets out the background to the *Transfer Deed* and its change and presents a case history of the State Heritage Listed Evans Head Memorial Aerodrome and how the parameters which informed the ANEF were changed to suit retirement village development rather than aviation.

The paper also calls for the outdated ANEF to be reviewed and new more sensitive noise measures to be put in place that take account of the full effects of noise on human health (see enHealth, 2004 report of Federal Department of Health and Ageing). The Federal Government Department responsible for aviation seems to be ignoring the expert advice of another Federal Government Department on this important issue for reasons which are unclear.

While acknowledging that there are problems with the current ANEF, the Federal Government has not amended the antiquated ANEF and has dismissed calls for a more effective measures of the effects of noise. Instead it has raised some additional measures which do not appear to have a sound empirical basis in terms of mitigating the effects of noise.

We have formed the view that reluctance to improve the ANEF, a land use planning tool which defines whether aircraft noise is acceptable or not for development, is more likely related to the political fallout a more comprehensive measure might have on certain electorates in aviation flight paths, but more importantly may inhibit new urban development, anathema to current State plans for extensive growth and urban consolidation.

We believe it is time for an independent, comprehensive review of the outdated ANEF and for a newer more effective measure to be put into place. That measure should become the land use planning standard for current and future development across Australia.

It is time for the Federal Government to start overseeing the enforcement of the *Transfer Deed* for the more than 200 ALOP aerodromes in regional Australia rather than leaving it to local and State Authorities who often have a conflict of interest as owners and consent authorities and are not arms length from the assessment process.

The fact that local government is cash-strapped we believe has the potential to influence the decision-making process with regard to how aircraft noise is assessed and managed. As a result of this regional aviation infrastructure around Australia is being lost to inappropriate development and no-one seems to be looking after the interests of aviation infrastructure from a longer term perspective.

ALOP Aerodromes: The Transfer Deed between the Commonwealth and Local Governments

Preamble

Between 1991 and 1993 the Commonwealth Government ‘transferred’ more than 200 Aerodromes to local government² under a generic *Transfer Deed* (see Attachment A) and provided financial assistance for approved maintenance and development works at various aerodromes under the Aerodrome Local Ownership Plan as part of the transfer process.

The *Transfer Deed* states that “*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*”; and, “*The Local Authority has agreed to accept full financial responsibility for the aerodrome under the terms of [the] Deed.*”

The *Transfer Deed* set out a number of terms and conditions governing the responsibilities of both parties to the agreement including:

- Paragraph 2 “*The local authority, on and from 1 July 1992 (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** [emphasis ours] in accordance with Civil Aviation Authority safety standards and conditions published in the Enroute Supplement, Australia*”; and
- Paragraph 2 “*The local authority, on and from 1 July 1992 (h) shall take such action as is within its power to (i) **create land-use zoning around the aerodrome which will prevent residential and other incompatible development in areas which are, or which may be, adversely affected by aircraft noise** [emphasis ours]*”; and,
- Paragraph 2 “*The local authority, on and from 1 July 1992 (p) shall not, without the consent in writing of the Secretary, which shall not be unreasonably withheld, close the aerodrome or sell, lease or otherwise dispose of or part with the possession of the land or any part of the land required for aerodrome purposes other than disposal by way of lease or licence under the provisions of clause 2(j), 2(k), 2(l), and 2(m) hereof*”

On the 1st of December 2003 the House of Representatives Transport and Regional Services Committee tabled its “Making Ends Meet”¹ Report in the Federal Parliament.

The Committee found that “*the key issues affecting regional aviation services were rising costs, falling returns, declining service levels, poor interconnectivity between services, difficulty maintaining country airports, the processes for regulating aviation safety, the*

² See “Making Ends” Meet Report: *Regional Aviation and Island Transport Services* House of Representatives Standing Committee on Transport and Regional Services November 2003 Canberra Commonwealth of Australia ISBN 1741 34616 9

need for policy coordination and the challenge of providing small aircraft to service country areas.”

It also found that communities of less than about 30 000 people, where traffic volumes have fallen away, were finding it difficult to support and maintain their airports.

The Committee went on to say that it “*considers that some additional Commonwealth assistance to smaller regional communities is justified to lessen the impact of many factors that are beyond their control*”.

Some two weeks later on the 15th of December 2003 the Department of Transport and Regional Services (DOTARS) provided an ‘Action’ document to the Minister for DOTARS, The Hon John Anderson, requesting that the Australian Government “*relinquish its right to enforce the relevant clause of the ALOP Transfer Deeds that requires aerodrome owners to seek consent from the Secretary of DOTARS for alternative use of the Aerodrome*” (clause 2(p) – See Appendix A).

The request was based on earlier papers from his department (18 October 2002 and 24 April 2003) for him to do so. It also followed a request from the ‘Making Ends Meet’ Inquiry dated (2 July 2002) to the Minister for a submission to the inquiry.

The Minister in a handwritten note to his Department (31 October 2002) stated: “*I support a review of the ALOP program to determine whether it is meeting our objectives – optimal regional aviation services – but would ask that further consultation take place with stakeholders, such as RAAA, [indecipherable] & AOPA, before reco- are put to me – esp. re closing airports*”.

My Committee (EMAC) asked RAAA and AOPA whether or not they had been consulted by DOTARS. Both organisations stated they had not heard from DOTARS about the review of ALOPs.

In spite of this lack of consultation with critical stakeholders representing General Aviation in Australia, the Minister signed off on (19 December 2003) the following recommendations:

- “a) That you confirm your intention that the Secretary’s consent be sought only for the original sale of an ALOP aerodrome, and not for further sales.*
- b) That you note the Department [DOTARS] will advise ALOP aerodrome owners of this agreed relaxation of requirements under ALOP”*

On the 13th of January 2004 the ‘relaxation’ letter was sent out to all ALOP owners covered by the *Transfer Deed* informing them of its changed status with regard to clause 2(p).

Comment: It is interesting to note three things:

First, the response of DOTARS to the inquiry into regional aviation, the *Making Ends Meet* report and the interesting coincidence-in-time of Minister Anderson’s decision to loosen the reins over more than 200 ALOP Aerodromes around Australia less than three weeks after the ‘Making Ends Meet’ report had made its recommendations regarding financial support for regional aviation;

Second, the fact that not only were stakeholders not consulted but the dramatic change to control over Australia's regional aviation infrastructure worth hundreds of millions of dollars didn't come to Parliament for discussion³. The only people who seemed to know about the change were local government and DOTARS and some land developers; and,

Third, while the 'Making Ends Meet' report was made public it disappeared into oblivion in terms of any actions on its recommendations.

Basically local government was left holding the bag for regional aviation infrastructure upkeep while at the same time it was given free rein by DOTARS to do with airfields as they wished except they had to seek the consent of the Secretary of DOTARS to sell off an aerodrome. Once it was sold the *Transfer Deed* no longer applied. Fundamentally, the new owners could do as they pleased. The 'free market' model prevailed with self-interest the governing rule for future decisions about regional aviation infrastructure.

Richmond Valley Council and its two aerodromes

The local government area, Richmond Valley Council, has two ALOP airfields, one at Evans Head and one at Casino. Both have been used for RPT in the past.

Casino Airport: 120 hectares of the Casino Airport including a terminal building worth \$800,000 was sold off to a private developer for \$660,000 (incl GST) on a deposit of \$160,000 and five annual interest free payments of \$100,000. The sale didn't go to tender. The property was sold behind closed doors out of the public view and council agreed to not reveal the details of the sale until after settlement. One month after settlement the property was revalued at more than three times the sale price and the public discovered it was not sold to the organisation it had understood was purchasing the land. It was sold instead to a private development company.

Evans Head Memorial Aerodrome: The four runway aerodrome at Evans Head was the very first of the Empire Air Training Scheme (EATS) Stations to be built in Australia during World War II. It was the major regional facility for aviation immediately after the War but a political decision in the 1950's saw aviation moved to Casino where it was under the control of another council.

The Evans Head Aerodrome was left to languish and the local government, Richmond River Shire Council, sold off large tranches of land as building blocks for housing in the 1990's. Council was both developer and consent authority, a major conflict-of-interest.

In spite of the fact that Council's solicitor had been involved in negotiations regarding a softening of clause 2(p) of the *Transfer Deed* so it stated that "permission would not be unreasonably withheld" with regard to disposal of aerodrome land "surplus to requirements" Richmond River Shire Council still failed to obtain the necessary permission of the Secretary of the then Department of Transport and Communications to sell the land. Many many blocks were sold.

Council subsequently pleaded it had a 'gentlemen's agreement' with the Department to sell off the land but the department denied any such arrangement. As a result of community concern the matter was investigated by the ACCC and the Commonwealth

³ As far as we are aware

Ombudsman and it was concluded that there was a case to answer but no action was taken as it was argued essentially that it was not in the public interest to have to tear down hundreds of houses. It would have been too costly.

The Department then told Council that in future it needed to obtain their permission before it disposed of land as required by the *Transfer Deed* and that the community needed to be consulted before that happened. In spite of the Departmental admonition about public consultation the newly amalgamated Richmond Valley Council⁴ then proceeded (in 2000) to ask the Department for further land to be declared “surplus to requirements” without referring the matter to its own S355⁵ for community advice. The Department granted permission. The community was unaware of the permission. The newly amalgamated Council abandoned its community-based airfield advisory committee shortly after.

Fundamentally Council learned that it could do as it pleased with regional aviation infrastructure without consequence.

The abandonment by Council of its own airfield advisory committee led to the community establishing its own Evans Head [Memorial] Aerodrome Committee Incorporated in order to “Represent community interests to appropriate authorities (including Local, State and Federal Governments with regard to:

- (1) maintenance and responsible development of the Evans Head Memorial Aerodrome as a ‘working airfield’, and
- (2) preservation of the historical aspects of the aerodrome”

EMAC applied for State Heritage Listing of the aerodrome given its importance in our World War II RAAF history⁶. In spite of council’s refusal to be involved in the early stages of the process the Aerodrome was listed and gazetted successfully on the State Heritage Register in November 2002. The State government held a Cabinet Meeting at Evans Head in April 2002 to announce the Listing.

As part of the Listing process Council was required to develop a *Plan of Management* for the Aerodrome. A *Brief* was finalised for the plan in February 2004 in conjunction with the NSW Heritage Office/Council and the planning process commenced in August 2004.

In August 2004 Richmond Valley Council (RVC) offered land on the Aerodrome within the heritage curtilage to an aged care provider for residential development and a nursing home. The provider already had an approved Development Application for another site (September 2003) at Evans Head but according to Council could not proceed with the development on the other site because of Native Title issues over the land.

The Native Title issue is a saga in its own right but it is now very clear that only part of the land was covered by Native Title claim with the remainder being owned by Richmond Valley Council. There was sufficient room on the council-owned land to build a nursing

⁴ Made up of the former Richmond River Shire and Casino Councils in 2000 against the wishes of those in the former Richmond River Shire Council area as shown by a Boundaries Commission survey.

⁵ Under the 1993 *NSW Local Government Act*

⁶ More than 1,000 of those who trained at Evans Head were killed in action during the War. The 70th Anniversary of the RAAF at Evans Head and the Station was celebrated last year with their Excellencies the Governor General and her husband attending the celebration.

home away from the Aerodrome and the rest of the land could have been used for the development but the proponent was not prepared to pay the price of the land⁷.

The area on the aerodrome where the retirement home/aged care facility was to be built was immediately adjacent to the main runway of the Aerodrome (18/36) and the end of runway 14/32 which Council had decommissioned⁸ (see Figure 1 all three sections).

In our view the area set aside for the retirement home was unsuitable for residential development for reasons of safety and noise and better use could be made of the site for aviation development⁹.

An ANEF¹⁰ commissioned by Council in conjunction with earlier residential development on former aerodrome land at the end of runway 14/32 in 1999, and following community concern about aircraft noise, showed that the area being set aside for the retirement village would be affected by aircraft noise (see Figure 2) with the 20 and 25 contours running



Figure 1: Plan for retirement village (L) and location of site for retirement village on aerodrome (R and below)

⁷ See speech from Local Member for Clarence, Steve Cansdell MP to NSW Parliament in March 2006.

⁸ However all four strips continue to be used particularly during S44 Bushfire Emergencies, for gyrocopter training and for GA when cross wind conditions are a problem.

⁹ See *Evans Head Memorial Aerodrome Plan of Management* submission from EMAC, April 2005.

¹⁰ Never registered by Council and so therefore technically an ANEC

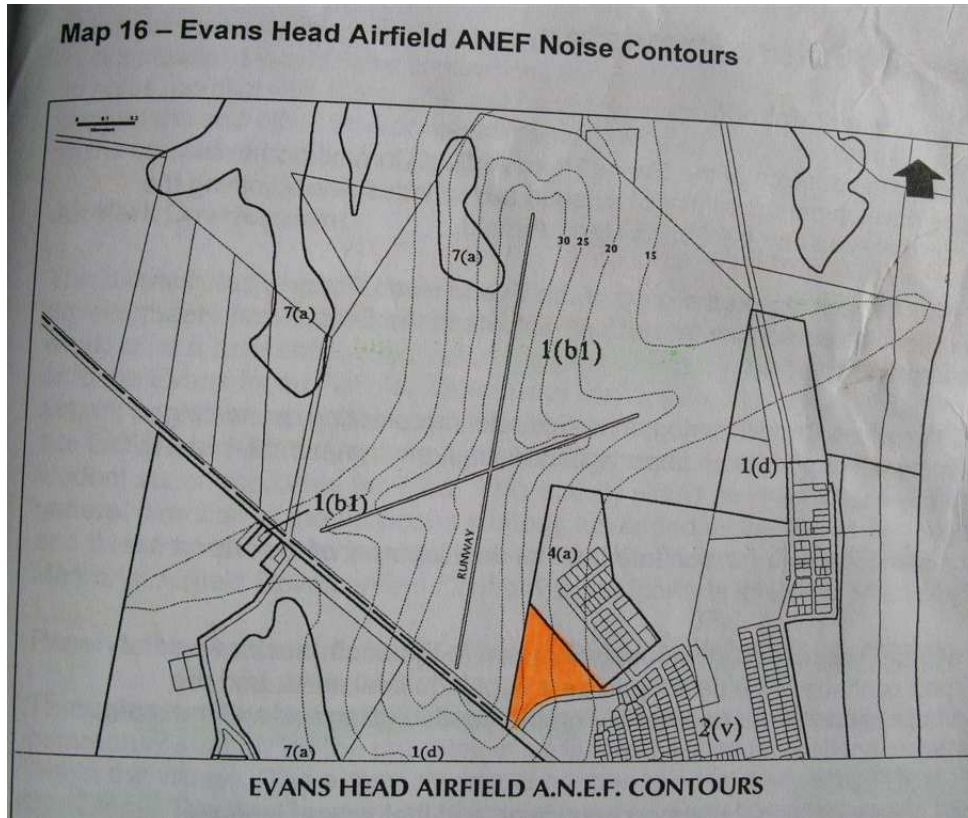


Figure 2: ANEF contours calculated in 1999 for the Evans Head Memorial Aerodrome. The area coloured orange is part of the area set aside for the retirement village. Source Draft The Evans Head Village Strategy 2000, Richmond Valley Council May 2000

through the site. In our view the ANEC was not based on potential future aviation use of the site which would have pushed ‘unacceptable’ contours further into the site. Noise would have been a major problem.

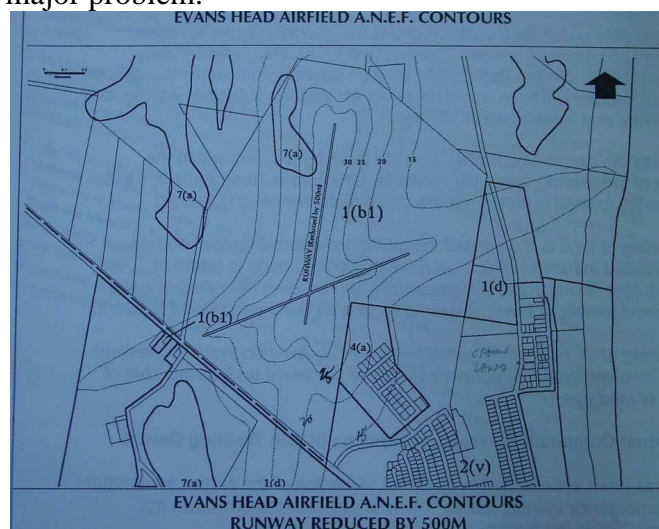


Figure 3: Aerodrome with 500 metres chopped off the southern end of runway 18/36, a scenario Council entertained in 2000 as an option for the future of the aerodrome to accommodate residential development. This shortening of the runway was introduced again in 2005 during the planning process for the Aerodrome

In spite of the unregistered ANEC showing there was a potential noise problem, Council still offered the land to the retirement village proponent. They then set about trying to reduce the noise problem during the planning process by restricting the type of aircraft

that could use the aerodrome. They also proposed to shorten the main runway adjacent to the retirement village (see Figure 1 left hand diagram showing altered threshold proposed by RVC so that there would be no aircraft activity to create a noise problem for the retirement village and Figure 3 with 500 metres chopped of the main runway). There was also a 300 metres shortening option where council said it had to shorten the runway as it couldn't pay for its maintenance¹¹.

The proposal to shorten the main runway was met with outrage by aviators who showed up in large numbers at a public meeting held to discuss the proposed Draft Plan of Management for the Aerodrome organised by the planning consultant GHD in March 2005. The plan to shorten the runway was dropped.

However RVC commissioned an ANEF separate to the planning process for the Aerodrome which took account of the RVC imposed restriction on aircraft type that could use the airfield, a breach of clause 2 c of the *Transfer Deed*. RPT was ruled out in spite of the fact that the aerodrome could accommodate aircraft up to 50 seats¹². Usage was restricted to small aircraft. There was room for strip expansion.

We took part in that ANEF process but in our view the ANEF did not take proper account of potential future aviation use of the site. It was claimed that Ballina and Lismore airports were available for RPT and no attention was given to the problems of both those airports which we will not elaborate here. It is well known that Evans Head with its four strips has enormous future aviation potential which would be lost with further residential development.

We drew attention during the planning process in 2005 to the fact that the site set aside for the retirement village might be better used for an airpark and in a submission to the planning process to GHD (April 2005) and in our presentation to the NSW Heritage Council in August 2005 said so. We raised the noise issue but it was ignored by Council and the planning consultants who pushed on with the *Plan of Management*.

What we now know is that a proposal for an airpark, where Council planned to put the retirement village, was put to Richmond Valley Council in March 2003, well before it offered the land to the retirement village proponent. It is clear now from evidence we have that Council ignored the proposal right through the planning process in spite of apparent reassurance given to the airpark proponent that his material was being taken into consideration. Once the draft plan was made available for public comment in May 2005 it was self-evident that the airpark proposal had been left out. The airpark proponent wrote to council (see Figure 4) expressing his view about his treatment.

¹¹ Council had nearly a million dollars raised from the sale of aerodrome land which was supposed to be used for maintenance and development of the aerodrome

¹² *Evans Head Aerodrome Development Plan* AOS Airport Consulting Report to Richmond Valley Council, April 2002. A number of options were put all with significant restrictions to runway use and length.

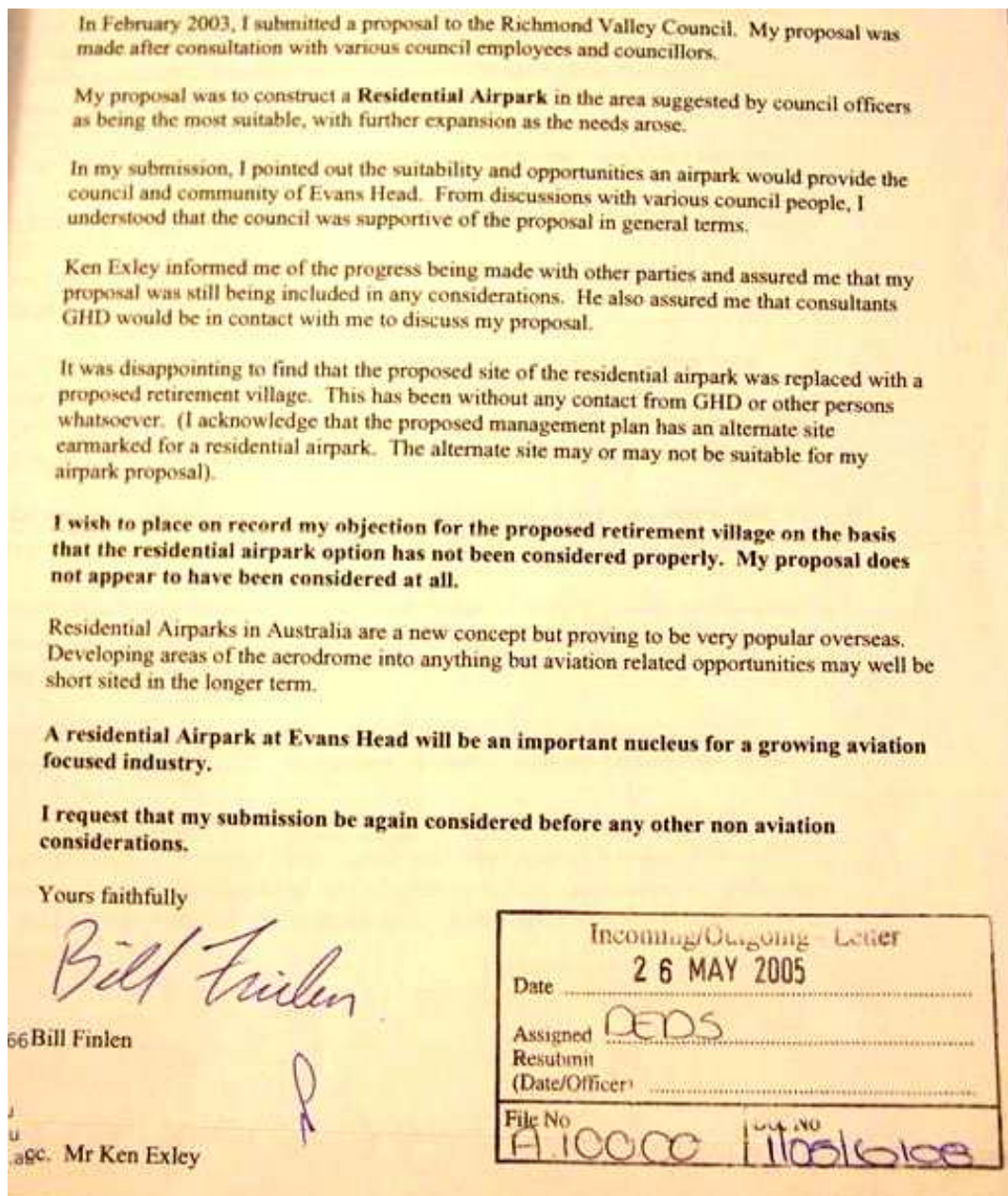


Figure 4: Letter from airpark proponent to Council about his treatment during the planning process

Subsequently the NSW Heritage Office then commissioned an independent assessment of the noise issue¹³ with regard to the *Plan of Management* and the proposed retirement village as it did not have the necessary expertise to deal with the specialist issue of aircraft noise. The consultants concluded that:

The Report prepared by GHD appears to reflect a competent examination of aircraft noise emissions. The methodology adopted based on AS2021 and the integrated Noise Model is certainly appropriate for a typical aircraft noise impact assessment. There are, however, some unusual features at this site that warrant further consideration being;

- *The gross imbalance in the temporal distribution of flight operations due to the GEF¹⁴*

¹³ Sinclair Knight Mertz Pty Ltd *Evans Head Memorial Aerodrome Plan of Management Review of Aircraft Noise Impact on Proposed Retirement Village*, July 2005.

¹⁴ Great Eastern Fly-In

- *The demographic of the residents, which uniformly comprises an aged and infirmed population.*

The POM document and the ANEF Report initially presented to SKM for review contain serious omissions in noise prediction results and fail to provide reasoned discussion on the impact of airport operations at the Retirement Village site.

On the basis of this information and related recommendations, and on the basis of an undertaking by the retirement home proponent to include a million dollars worth of noise mitigating measures including moving residents out during special aviation events, the Heritage Council gave approval for the *Plan of Management* subject to 35 conditions¹⁵. It is to be noted that 8 of these involved matters relating to aircraft noise which implies *ipso facto* that there is a noise problem. Here are the noise-related recommendations:

- a(iii) The inclusion of a Noise Disclosure Strategy*
- a(iv) A commitment by Richmond Valley Council to amend the relevant LEP's and DCP's to be compatible with continued aviation use of the site, including incorporating 'special aircraft noise provisions' with regard to development controls in accordance with noise abatement measures defined in Australian Standard AS2021, Obstacle Limitation Surface and ANEF contours*
- a(v) Preparation and approval/lodgement by Richmond Valley Council and any purchaser/lessees of land at the Aerodrome of an easement and/or covenant prior to the sale of any land parcels that identifies aircraft noise exposure and noise abatement requirements as agreed with the Heritage Office*
- a(vii) Noise Management Plan (aviation operations)*
- a(viii) Noise Complaint Procedures*
- c(i) Amend Policy 8 (involvement of stakeholders in management of the place) so that the committee membership include a representative from the retirement village and that such representative be requested to refer any noise issues from retirement village residents to that Committee in the first instance*
- c(ii) Additional Policy – Noise Management Plan should be prepared which supports the Fly Neighbourly Agreement to limit any noise related complaints. The plan will describe in detail operational procedures for aircraft flying to or around the aerodrome*
- c(iii) Additional policy – All development proposals within the Southern, South Eastern and Northern Hangar areas which include a residential use must satisfy the design requirements of Australian Standard AS 2021 (Acoustic – Aircraft noise intrusion building siting and construction)*

My Committee was still not happy with this compromise particularly the imposition of restrictions relating to what was clearly a noise issue for a green field site and particularly given that there was a better option for development which involved an airpark where aviation noise would be expected and would not be a problem. There were other concerns.

We commissioned an independent town planning assessment in June 2007¹⁶. Some of the land proposed for the retirement village was zoned for industrial use (the land is adjacent to an industrial estate including a steel fabrication plant) and agriculture.

¹⁵ 26 August 2005

¹⁶ *Town Planning Assessment Proposed Rezoning Evans Head Memorial Aerodrome* Don Fox Planning (September 2007)

The Don Fox independent town planning assessment drew 10 conclusions:

- a) Council has not satisfied its obligations with respect to strategic land use planning embedded within the 1992 Deed of transfer between the Commonwealth of Australia and Council. Furthermore, the inclusion of 2(v) Village zoning within YEVD is contrary to the terms of the Deed and no supporting documentation to support the existing 2(v) Village zone has been sighted during the course of these investigations;
- b) The proposed rezoning/development is not suitable for the site, having regard to the impact on the surrounding built and natural environment together with the likely adverse social and economic impacts;
- c) The proposed 2(v) Village zoning intensification would result in incompatible land uses/land use conflicts that could potentially restrict aircraft operations and furthermore, preclude opportunities for more appropriate, alternative uses and/or result in closure (or significantly restricted use) of the aerodrome;
- d) Alternative sites with greater amenity are available for the purposes of a retirement village, including a DA approved regional retirement village site in Currajong Street. DFP has not viewed any evidence to suggest that Evans Head actually requires a regional facility or whether RVC has undertaken a thorough review to determine if expansion of an existing facility within the LGA would be more efficient and serve a greater proportion of Richmond Valley residents. In the opinion of DFP, other alternative sites within Evans Head are more than capable of supporting local retirement village/seniors living facilities;
- e) Transitional/compatible uses that can provide a buffer between existing residential development and aviation related operations at YEVD would provide a reasonable alternative for development on the corner of Woodburn Road and Currajong Street;
- f) Approval of the proposed retirement village has been pre-empted by RVC and land use strategies prepared by RVC contain insufficient detail in which to support the proposed rezoning and subsequent retirement village use;
- g) Recommendations (for endorsement of the PoM) by the NSW Heritage Council are not well founded, having regard to the method in which SKM's independent review of the PoM was taken out of context;
- h) RVC is incorrect in asserting that the cost of land in Evans Head constitutes a valid planning constraint with respect to the use of land. Consequently, there is no obligation for RVC to specifically allocate resources towards a retirement village at YEVD as the facility will be privately owned and would represent no more of a community benefit than would otherwise be the case if a private land owner were to lodge a DA for RVC's assessment;
- i) The sale of part YEVD for a future retirement village is not considered to be within the public interest and where possible, YEVD should remain as a community owned asset; and
- j) The proposal is unlikely to be able to satisfy the Minister's S.117 Directions particularly as a result of an inappropriate reduction in industrial/employment land.

In spite of the report being made available to Richmond Valley Council and NSW State Planning and the Heritage Council, and Federal Government Departments including the Department of Health and Ageing and DOTARS, the NSW Minister for Planning at the time Hon Kristina Keneally, rezoned the contaminated land for the residential development in September 2009.

The rezoning followed representation from State Member for Clarence, Steve Cansdell MP, on behalf of Richmond Valley Council, to the Minister for Planning.

What is interesting for us is the letter the then Planning Minister wrote to Cansdell in reply. The letter, reported in Richmond Valley Council Business Papers, contained serious errors of fact. We have written to the Premier seeking redress but the Premier referred the matter on to the current planning minister for response. We have requested a response from the Premier as she was the signatory to the letter at the time but have heard nothing in spite of repeated requests for a reply. The letter was passed on to Planning and we received the following letter:

"I write in response to your further letter to the Premier concerning Evans Head Memorial Aerodrome.

The Premier appreciates your concerns and wishes to ensure that you receive the best possible response. Accordingly, your letter has again been referred to the Minister for Planning, Minister for Infrastructure, and Minister for Lands, the Hon A B Kelly, MLC, who is responsible for implementing the Government's policies in this area.

You may be sure that your comments will receive close consideration.

Yours sincerely

David Swain
for **Director General**"

Mr Swain was contacted by phone when we continued to hear nothing to find out when we could anticipate a response but he told us that his department (NSW Planning) received thousands of requests every week. He seemed to know nothing about our request in spite of his name appearing on the letter. He yelled down the phoned when pressed for an answer. We have no idea when we will receive a response. We are still expecting a response from the Premier on whose watch the decision was made to rezone the land.

Comment

There is a great deal more to the matter of the placement of a retirement village on the Evans Head Memorial Aerodrome that does not relate to the noise issue but the critical issue is that the ANEF for the aerodrome was manipulated to suit the retirement home proponent and not aviation. The independent Town Planning opinion provided by Don Fox Planning was ignored or rejected without explanation. We are still waiting for an explanation from the Director General of the NSW Department of Planning.

There is a clear breach of the *Transfer Deed* over the Aerodrome and the Federal Government has passed responsibility for its enforcement to State and local government authorities. In our view it is time for the Federal government to resume responsibility for regional aviation infrastructure and to enforce the *Transfer Deed*. As far as we can determine the Federal government has abandoned its interest in all regional aviation infrastructure to local government on the basis that local government 'knows best' about regional aviation.

In our view the Federal government has failed to take account of the fact that local government often has little or no knowledge of aviation and are unlikely to give aviation much thought because many local councils are cash strapped and will want to realise the value of cleared flat land for non-aviation purposes to fill their shrinking coffers.

In the case of Richmond Valley Council there has been a long history of exploitation of aviation land for other purposes, much of it done behind closed doors away from the

public view and without the necessary permissions of the relevant authority at the time. In our view the activity has not been benign.

The current proposal by Council to allow a retirement village on an aerodrome where it will be affected by aircraft noise is a clear land use planning conflict supported by the State government. This matter has been the subject of a many questions at Senate Estimates¹⁷ for several years now. The saga continues.

Richmond Valley Council has also recently indicated that it will be insolvent in three to five years. The sale of the aerodrome land in the same papers is being used by council to bolster its impaired financial status.

Is the ANEF an adequate measure?

The matter of the adequacy of the ANEF as a measure of the effects of aircraft noise on humans has received considerable attention for some time now.

The ANEF is based on a model from the 1960's which was "refined for Australian conditions" in 1982 (enHealth, 2004)¹⁸ and is based on perceptions of the acceptability of aircraft noise so that no more than 10 percent of the population reports that it is severely affected by aircraft noise.

A 25 ANEF contour as a residential land usage criterion was recommended in 1985 by the House of Representatives Select Committee on Aircraft Noise, and subsequently adopted as policy by the Australian Government.

According to enHealth in a comprehensive review of the effects of noise on human health "Airport planners operate on a 15-25 year horizon". The report went on to comment that:

"The use of measures of community annoyance as the criterion for land usage or noise abatement measures is likely to come under close scrutiny in the near future. The quantification of the effects of noise on other measures of amenity and health, such as sleep disturbance and cognition are likely to achieve greater prominence in the aircraft noise debate.

Australian airport operators are required to review the ANEF as a licence condition. It will be prudent that these regular reviews assess the need for a more thorough review of the validity of the ANEF system and in particular the continued use of annoyance as the criterion of infringement of amenity."

The noise annoyance reactions of individuals are partly due to acoustic factors and partly due to so-called moderating variables, that is, personal and social aspects of the individual.

¹⁷ Standing Committee on Community Affairs. The bed allocation by the Department of Health and Ageing is now in its tenth year and there are still no aged care beds on the ground at Evans Head. Beds should be on the ground within two years. The Department has been provided a copy of the Don Fox Independent Town Planning Assessment and reference has been made to the Department's own enHealth document on noise but clearly it is not interested in following the advice of its own department. At Senate Estimates an official from the Department made it clear that the Department does not check information to determine its veracity. This is a major failing of government.

¹⁸ *Health Effects of Environmental Noise - other than hearing loss*, May 2004.

Noise exposure alone accounts for only part of the variance in individuals responses to noise, whether this be annoyance and dissatisfaction, sleep disturbance, or effects on hearing and task performance. It is therefore also important to consider social and psychological effect modifiers. There is now a growing body of literature on the psychological and psychosocial modifiers of annoyance, and dissatisfaction due to noise.

The growing body of evidence also shows that noise affects human health through direct and indirect mechanisms and that actual noise level by itself accounts for only 10 to 25 percent of an individual's reaction to noise. There is little doubt the ANEF needs review and new and/or additional measure put in its place which takes account of these other variables.

In the recent Discussion Paper (June, 2009) *Safeguards for airports and the communities around them*, from the Federal government, the matters of supplementary tools for the ANEF and uniformity in planning rules across all levels of government are raised but more than that the paper addresses some of the short-comings of the ANEF (page 7):

- The system is a 'one size fits all' approach which does not take into account local circumstances - large airports are treated the same as small airports; greenfield airports are treated the same as built out airports;
- Experience has shown that ANEF contours do not provide a complete picture of the areas where residents are likely to have an adverse reaction to aircraft noise;
- The contours do not easily correlate to a publicly understandable 'decibel' noise level;
- ANEFs do not capture areas under very busy flight paths used by light aircraft, such as training circuits, which can be more annoying to some individuals than a small number of loud noise events; and
- Aircraft noise does not stop at a contour line on a map.

However this summary of shortcomings fails to address the not inconsiderable and growing body of evidence which shows that the ANEF should not just be about human annoyance but also about the effects of that noise on human health, an area considered in some detail by the enHealth report in 2004.

The Discussion Paper then asks a series of questions about the ANEF as a land use planning tool:

- 1. Does the ANEF system provide an effective basis for planning in noise affected areas?**
- 2. How effective is the ANEF system as a land use planning standard for greenfield developments around airports?**
- 3. Are the acceptable levels of aircraft noise for particular develops identified in AS2021 consistent with current community expectations?**
- 4. How can the current planning arrangement to address developments in noise-affected areas around airports and under flight paths be improved to take account of community expectations, while also providing for the reasonable growth of aviation activity at airports?**
- 5. For developments around the major capital city and freight airports, should state governments have to refer residential development within a defined buffer zone to the Commonwealth Transport Minister or Secretary for approval?**

There are still no questions raised about the health effects of noise and the discussion paper tends to gravitate to noise as an annoyance factor only, with platitudes about people being better informed about airport operations and flight paths, and economic benefits as mitigating strategies. No empirical evidence is provided to support the claim that having this additional information will make any difference to the effects of noise on humans.

In discussion with various aviation writers and editors we have been told the reason the ANEF has not been reviewed and beefed up with regard to impact of aircraft noise on human health and not just annoyance very much relates to the flow-on effects more sensitive and broad-based measures might have on certain electorates affected by aircraft noise. It has the potential to provide a mechanism for increased complaint and inhibition of further development in urban areas (high rise for example) problems which could be dealt with through a grandfather clause for existing development.

However in view of the growing body of empirical evidence which shows that noise has more profound effects on human psychological and physical health than previously understood (see enHealth, 2004) we believe it is critical for there to be an independent review of the adequacy of the ANEF as a measure of the effects of aircraft noise on humans and a study of the ramifications of changing the measure to more adequately reflect those effects for planning. It is not appropriate to bury our heads in the sand about this matter as it will not go away.

Concluding Remarks

Overall, we have the view that the effects of aircraft noise on humans are not dealt with adequately for purposes of planning with the antiquated ANEF metric developed in 1982.

The effects of noise, including aviation noise, now extend well beyond 'noise-as-annoyance' to the much broader concept of noise as a threat to human psychological and physical health. Some of these effects are not necessarily mediated by psychological variables but have direct impact on physical health through disturbance of sleep, etc.

In our opinion the whole concept of aircraft noise and its measurement needs to be reviewed comprehensively with a view to putting in place better evidence-based noise measure(s) which take account of the effects of aircraft noise on human psychological and physical health in the form of an environmental noise impact study.

Furthermore these measures need to be tied to planning decisions with regard to aviation infrastructure and not just for city airports; regional aviation facilities around Australia must be also included.

To protect Australia's aviation infrastructure these new measures need to be uniform across all states and not subject to the vagaries of state planning legislation or the vested interests of local government which may manipulate the way in which an ANEF is developed in order to accommodate their own parlous financial state or some other political agenda which is not in the public interest. This necessarily means the Federal government will need to resume some control over the noise precinct with regard to planning decisions about our aviation infrastructure and will need to start to take some responsibility for the *Transfer Deed* over the ALOP airfields which are still standing after the carve-up and sell-off of the last 18 years which has seen many of these important and potentially important sites being lost for non-aviation purposes only to fill local government and private developer coffers at the expense of aviation. It has been a matter of aviation competing with non-aviation demands and is a good example of market failure where government intervention is needed to protect the future of aviation.

Appendix A Transfer Deed

EVANS HEAD AERODROME

Deed

DEED BETWEEN THE RICHMOND RIVER SHIRE COUNCIL
AND THE COMMONWEALTH OF AUSTRALIA

THIS DEED is made the 29TH day of JULY 1992
between the Commonwealth of Australia ("the
Commonwealth") and the Richmond River Shire Council ("the
Local Authority").

WHEREAS:

- A. The Local Authority owns and operates Evans Head Aerodrome ("the aerodrome");
- B. The Commonwealth previously transferred the aerodrome to the Local Authority, and provides financial assistance for approved maintenance and development works at the 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 the aerodrome under the terms of this Deed.

CJ
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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 1 July 1992, released from paying to the Local Authority development and maintenance grants for the 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 1(c) of this deed;
 - (b) the Local Authority is, on and from 1 July 1992, released from any obligation to reimburse the Commonwealth in respect of any grants made to the Local Authority under the Aerodrome Local Ownership Plan;
 - (c) the Commonwealth shall, on or before 1 July 1992, pay to the Local Authority the sum of \$47,190 by way of grant ("the grant") for expenditure by the Local Authority in carrying out the works specified in Schedule A ("the works") upon condition that the grant shall be the full extent of the Commonwealth contribution towards those works; and
 - (d) the Local Authority shall, as soon as practicable after 1 July 1992, commence the works and shall complete the works within two years of 1 July 1992 or such longer period as is approved by the Secretary.

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Local Authority Undertakings

2. The Local Authority, on and from 1 July 1992:

- (a) shall operate and maintain the aerodrome, open to public use, in compliance with Civil Aviation Regulations and Civil Aviation Authority standards for the type and category of aircraft operations at the aerodrome 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 for developing, operating and maintaining the aerodrome including visual aids and associated equipment to Civil Aviation Authority standards, except for those air navigation services and facilities provided by the Civil Aviation Authority;
- (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 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 be responsible for the security of the aerodrome in accordance with the Air Navigation Act 1920, the Air Navigation Regulations and any direction or order made pursuant to the Regulations;
- (g) 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;
- (h) shall take such action as is within its power to:
- (i) create land-use zoning around the aerodrome which will prevent residential and other incompatible development in areas which are, or which may be, adversely affected by aircraft noise;
 - (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 Civil Aviation Authority air navigation and communications facilities;

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(j) subject, first, 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 and, second, to the Bureau of Meteorology providing meteorological services, shall provide from time to time for lease for nominal consideration (except for all outgoings in any way connected to or incidental to the aerodrome including but not limited to service costs, electricity, water) such space and right of access thereto both above and below ground within the aerodrome as:

- (i) the Civil Aviation Authority reasonably requires for the purpose of establishing, providing, maintaining, modifying or operating air route and airway services and facilities and associated equipment and for the performance of such other aviation related activities and services 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 the right of removal of the facilities and equipment;

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- (ii) the Bureau of Meteorology reasonably requires for the purpose of establishing, providing, maintaining, modifying or operating meteorological facilities and associated equipment and for the performance of such other meteorologically related Commonwealth activities and services including the provision, installation, maintenance and operation of facilities and equipment which shall remain the property of the Bureau of Meteorology and the Bureau of Meteorology shall have the right of removal of the facilities and equipment;
- (k) may lease or license the whole or any part of the aerodrome so that it will be operated as an aerodrome in compliance with Civil Aviation Regulations and Civil Aviation Authority standards and with 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 2 of this Deed to the extent that the same are reasonably applicable to such lessee or licensee;
- (l) 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;



- (m) may lease or license any part of the aerodrome for any purpose, other than for the operation of an aerodrome as provided for in Clause 2(k), that does not contravene any conditions specified by the Civil Aviation Authority for the operation of the aerodrome or international conventions to which Australia is a party;
- (n) if a dispute arises between either the Local Authority or a person to whom the aerodrome has been leased or licensed under Clause 2(k) of this Deed 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, 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 or shall submit the dispute to another conciliator as agreed between the parties to the dispute;
- (o) in the event of a dispute referred to in Clause 2(n) 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), shall submit the dispute to arbitration administered by the ACDC or other arbitrator as agreed between the parties to the dispute provided that such arbitration shall be held in Sydney in accordance with and subject to the laws of the State of New South Wales;

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- (p) shall not, without the consent in writing of the Secretary, which shall not be unreasonably withheld, close the aerodrome or sell, lease or otherwise dispose of or part with the possession of the land or any part of the land required for aerodrome purposes other than a disposal by way of lease or licence under the provisions of clause 2(j), 2(k), 2(l) and 2(m) hereof;
- (q) shall keep adequate records and accounts in respect of the grant referred to in clause 1(c) for the purposes of audit by the Commonwealth; and
- (r) shall provide to the Secretary an annual statement certifying the progress of the works and the amount of the grant expended at that time and, at the completion of the works, a statement certifying that the works have been completed and that the grant has been expended on the works.

Commonwealth Undertakings

- 3. The Commonwealth agrees not to collect charges under the Air Navigation (Charges) Act 1952 for the use of the aerodrome on and from 1 July 1992.

Miscellaneous

- 4. The Local Authority shall bear any State or local government tax or charge 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.



5. The Commonwealth shall not be liable for the costs of a conciliation or arbitration under subclause 2(n) or 2(o) of this Deed, or 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.
6. The local authority on and from 1 July 1992 shall have the right to determine and collect charges for aerodrome operations, other than those imposed under the Civil Aviation Act and Regulations made thereunder, as are necessary to cover the cost of developing, operating and maintaining the aerodrome.
7. This Deed shall be governed by and construed in accordance with the laws of the State of New South Wales.
8. 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.
9. It is the intention of the parties that the rights and obligations of the parties under this Agreement 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 herewith.



10. 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 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; and
- (d) a reference to any Act or Regulation shall include all present and future Acts and Regulations and all amendments thereto and re-enactments thereof and all by-laws and orders made thereunder.

[Handwritten signature]

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

SIGNED SEALED AND DELIVERED

by.....

ANNE NICOLE MORGAN

nicole morgan

for and on behalf of the
COMMONWEALTH OF AUSTRALIA in
the presence of.....

JULIA ELLEN STARR

J. Starr

THE COMMON SEAL of the
Richmond River Shire Council
was hereunto affixed in
pursuance of a resolution of
the Richmond River Shire
Council in the presence of

[Signature]

Chairman

[Signature]

Shire Clerk

[Handwritten mark]

SCHEDULE A

Attached to the deed between the Commonwealth of
Australia and the Richmond River Shire Council

List of specified works

- . Reconstruction of stormwater drainage
- . Boundary fence repairs and replacement

[Handwritten signature]

*file please Sent to 96
PA*

31/9/82

**RICHMOND RIVER SHIRE COUNCIL ASSUMES FULL RESPONSIBILITY
FOR EVANS HEAD AERODROME**

The Richmond River Shire Council assumed full responsibility for Evans Head Aerodrome on 1 July 1992.

Announcing the move, the Minister for Shipping and Aviation Support, Senator Peter Cook, said that the Commonwealth had provided a grant of \$47,190 towards agreed aerodrome works.

"This latest development reflects the Government's view that regional aerodromes can be more effectively managed and operated by the communities they serve", Senator Cook said.

"I congratulate the Richmond River Shire Council on making this commitment and wish it every success", he said.

Media Inquiries: Don Mackay (06) 277 7320