



Naracoorte Lucindale Council
Better by Nature

Memorandum of Lease

2018-2028

At the:

Naracoorte Aerodrome

Land Occupied by Hangar 10
– one third, part thereof



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LEASE AGREEMENT

BETWEEN: Naracoorte Lucindale Council

(“the Council”)

DeGaris Place, Naracoorte
ABN: 53 761 172 798

**AND: Barrie Joseph Angas Longbottom and
Fay Jeanette Longbottom**

(“the Lessee”)

PO Box 1381, Naracoorte SA 5271
ABN:

BACKGROUND:

- A. The Land described in **Item 2** of the Schedule is owned by or under the care, control and management of the Council.
- B. The Land described in **Item 2** of the schedule is Community Land as defined in Section 193 of the Local Government Act 1999.
- C. This Lease is issued pursuant to Section 202 of the Local Government Act 1999, the Crown Land Management Act 2009 and Council's policy and procedures in relation to leasing and licencing of Council's assets.
- D. This Lease is issued with reference to Councils' Community Land Management Plan – Naracoorte Aerodrome, pursuant to Section 196 of the Local Government Act.
- E. This Lease is issued subject to **Appendix B** – Conditions of Lease Over Dedicated Crown Land

TERMS AND CONDITIONS OF LEASE:

1 INTERPRETING THIS LEASE

- 1.1 The statements in the Background above form part of this Lease.
- 1.2 The expressions below have the following meanings:
 - “the Schedule” means the Schedule at the back of this Lease
 - “the Land” means the piece of land being leased (as described in **Item 2** of the Schedule)
 - “the Council” includes the Council’s employees, servants, agents and contractors
 - “the Lessee” and the “Lessee’s visitors” includes the Lessee’s employees, servants, agents, contractors, and anybody else that the Lessee allows onto the Land
- 1.3 A reference to a party includes that party’s successors and transferees.
- 1.4 Words in the singular include words in the plural and vice versa.
- 1.5 If two or more persons are referred to in the Schedule as “the Lessee” then this Lease binds them jointly and severally.
- 1.6 The words “person” or “group” includes a body corporate.
- 1.7 A reference to any Act or law includes any Act or law that amends or replaces it.
- 1.8 A reference to any Policy, Procedure or Management Plan includes any Policy, Procedure or Management Plan that amends or replaces it.
- 1.9 A reference to “the lease period” in this Lease includes any extension to it.

- 1.10 Clause headings are for reference only and should not be taken into account in interpreting this Lease.
- 1.11 This Lease shall be subject in all things to the consent of the Development Assessment Commission or its successors if such consent is required.
- 1.12 The provisions of the Retail and Commercial Leases Act 1995 will apply if this Lease meets the definition of “retail shop lease” set out in the Retail and Commercial Leases Act 1995.
- 1.13 All consents detailed in this Lease required by the Lessee cannot be unreasonably withheld by the Council.

2 GRANT OF LEASE

The Council grants to the Lessee a Lease of the Land: -

- for the lease period stated in **Item 3** of the Schedule; and
- starting on the date stated in **Item 4** of the Schedule; and
- on condition that the Lessee meets all of its obligations under this Lease.

3 THE LESSEE’S OBLIGATIONS

The Lessee agrees with the Council as follows:

3.1 Lease Fee

- 3.1.1 The Lessee must pay to the Council the annual lease fee set out in **Item 5** of the Schedule at the time specified in **Item 6** of the Schedule.
- 3.1.2 The lease fee will be reviewed by 30 June annually.
- 3.1.3 The lease fee will increase by the Consumer Price Index (CPI) published by the Australian Government for Adelaide (All Groups) for the previous twelve months as at the December quarter.
- 3.1.4 Where agreed major development occurs in line with Management Plans the lease fee may be revised outside the terms in 3.1.3.

3.2 Rates, Taxes, Charges and Costs

- 3.2.1 The Council is responsible for all rates, taxes and charges relating to the Land that are levied to or by the Council.
- 3.2.2 The Lessee is responsible for the payment of all electricity, gas, telephone, refuse collection & disposal, excess water and other utility costs.
- 3.2.3 The Lessee must comply with its obligations under this Lease at its own cost.

3.3 Sub-Leasing

- 3.3.1 The Lessee must not assign, transfer or sub-lease the Land or any part of it unless it first gets the consent of the Council in writing.
- 3.3.2 Where the Council gives consent to a sub-lease, the Lessee must ensure that any sub-Lease has the same terms and conditions as are detailed in this Lease.

3.4 Use of the Land

- 3.4.1 The Lessee must not use nor allow any other person to use the Land for:
- security for a loan
 - any purpose or activity except for that stated in **Item 7** of the Schedule unless it first gets the consent of the Council in writing

- anything that is illegal or immoral

3.5 Hiring of the Land

3.5.1 The Lessee must not hire the Land to other persons or bodies.

3.6 To Comply with Laws

3.6.1 The Lessee must comply with the provisions of all Acts, regulations, and by-laws that affect the Land or the Lessee's use of the Land.

3.6.2 The Lessee must comply with any requirement imposed by any local government or semi-government authority in relation to the Land or to the Lessee's use of the Land.

3.6.3 Without limiting the generality of this clause, the Lessee must specifically comply with all requirements under laws dealing with occupational health and safety, public health, public safety, fire safety and safety generally.

3.7 Liquor and Gaming Licences

The Lessee may not apply for a liquor licence under the **Liquor Licensing Act 1997**.

3.8 Maintenance and Repair

3.8.1 The Lessee must maintain the Land and all improvements thereon in good condition and free from hazards and must: -

- keep the Land and all improvements clean, tidy and free from dirt, rubbish and vermin
- keep the Land and all improvements in good repair (fair wear and tear and damage by fire, storm, tempest, act of god, war, riot, civil commotion and earthquake excepted)
- keep all toilet fittings, sinks, drains, pipes and other plumbing in good repair and free from blockages and ensure that no part of the Land becomes contaminated
- maintain any vegetation, lawns, garden and trees, including, but not limited to pruning, lopping and removal
- keep all of the Lessee's property in good condition so as to prevent any hazard to any person or any deterioration in the condition of the Land
- repair any damage to the Land caused by the Lessee or its visitors
- notify the Council as soon as it becomes aware of any defects in the Land or anything which could present a hazard or cause harm to any person or the Land

3.8.2 The Lessee does not have to undertake structural works on the Land except for:

- works on buildings, structures, fixtures, fittings and other improvements owned by the Lessee
- works needed as a result of a negligent or wrongful act or omission by the Lessee or its visitors
- works needed as a result of a breach of this Lease by the Lessee

3.8.3 The obligations imposed upon the Lessee in this Clause are to be carried out at the Lessee's expense except if the cost of doing it is covered by insurance which either the Council or the Lessee has taken out under this Lease.

3.9 Entry by the Council

- 3.9.1 The Lessee must allow the Council to enter the Land for the purpose of inspecting its condition and state of repair.
- 3.9.2 Except in an emergency, the Council must give the Lessee reasonable notice before exercising its right under this sub-Clause.

3.10 Work Required by the Council

- 3.10.1 If the Council finds on inspection that any part of the Land for which the Lessee is responsible needs maintenance or repair, then the Council may notify the Lessee in writing of the work to be done and the time within which such work must be done.
- 3.10.2 The Lessee must comply with the notice to the satisfaction of the Council within the time stated in the notice (which must not be less than fourteen (14) days except in the case of an emergency).
- 3.10.3 If the Lessee fails to carry out the work required by the notice within the time specified or fails to do the work to the satisfaction of the Council, then the Council may undertake the repairs. The cost of such repairs and any other reasonable expenses incurred by the Council will be recoverable from the Lessee.

3.11 Erection/Alteration of Infrastructure

- 3.11.1 Unless the Lessee first gets the consent of the Council in writing it must not in or on the Land: -
- erect, alter or demolish a building, structure or signage
 - fix anything to the outside of a building or structure
 - alter any existing water, drainage or sewerage supplies or facilities
 - make any other change of a semi-permanent or permanent nature
- 3.11.2 If the Council consents to any of the works under this sub-Clause, then the works must be done strictly in accordance with any plans and specifications approved by the Council and will be done at the cost of the Lessee.
- 3.11.3 Granting of Council consent under sub-Clause 3.11.1 does not imply the granting of any planning, building, development or environmental approval required under any Act, including such approvals as must be sought from Council (e.g. building approval).
- 3.11.4 The following minor works are excluded from the requirements of Clause 3.11.1: -
- Minor plumbing and drainage works
 - Minor alterations to existing structures which do not require planning or building approval
 - Installation of solar panels and antennas which do not require planning or building approval

3.12 Ownership of Improvements

- 3.12.1 It is acknowledged that all buildings, structures, fixtures, fittings and other improvements located on the Land are the property of and belong to the Lessee.
- 3.12.2 It is acknowledged that the Council has no responsibility for maintenance (structural or otherwise), renewal or capital replacement of any buildings, structures, fixtures, fittings and other improvements.

3.13 Lessee's Property

- 3.13.1 The Council may (despite anything else to the contrary in this Lease) serve the Lessee with a notice in writing (either during the term of the Lease or at the end of the lease) requiring the Lessee to remove any of the Lessee's buildings, structures, fixtures, fittings and other improvements from the Land.
- 3.13.2 The Lessee must comply with the notice within twenty-eight (28) days of receiving it and must at its own cost repair any damage caused to the Land.
- 3.13.3 If the Lessee fails to comply with the notice, the Council may do any of the actions required by the notice and the Lessee must pay to the Council any costs incurred by the Council in doing so.

3.14 Offensive Activities

The Lessee must not do, nor allow its visitors to do, within the Land or on any adjoining property: -

- anything that is noisy, offensive or dangerous;
- anything that may cause annoyance, nuisance, or damage to any occupier or owner of nearby Land
- anything that may become an offence against any Act, regulation or by-law;
- anything that may cause any insurance policy to become void or to be subject to an increased premium.

3.15 Notification of Accidents and Hazards

The Lessee must promptly notify the Council in writing of:

- any accident that occurs in, on or associated with the Land
- anything that could present a hazard or that could harm any person or the Land.

4 INDEMNITIES AND INSURANCES

4.1 Indemnity

The Lessee indemnifies the Council, the Crown, the Minister and its and his servants and agents against any actions, demands, losses, damages, costs and expenses for which the Council, the Crown, the Minister and its and his servants and agents may become liable arising wholly or partly from any of the following:

- the misuse, negligent use, waste or abuse by the Lessee or its visitors of any services at the Land including, but not limited to, water, gas, electricity or oil
- the overflow, leakage or escape of water (including rain water), fire, gas or electricity or other harmful agent in or from the Land caused or contributed to by any act or omission of the Lessee or its visitors
- loss, damage or injury to property or persons caused or contributed to by the Lessee or its visitors' use or occupation of the Land
- loss, damage or injury to property or persons in or on the Land caused or contributed to by the neglect or default of the Lessee or its visitors
- loss, damage or injury to property or persons in or on the Land caused or contributed to by Lessee's neglect or failure to observe or perform any of its obligations pursuant to this Lease

4.2 Limits on the Council's Liability

- 4.2.1 The Lessee will occupy and use the Land at the risk of the Lessee.
- 4.2.2 The Lessee releases the Council, Crown, the Minister and its and his servants and agents from any costs or loss arising from any accident, damage or injury occurring on the Land except where such accident, damage or injury results from any wilful or negligent act or omission of the Council, Crown or Minister.
- 4.2.3 The Council, the Crown, the Minister and its and his servants and agents is not responsible for any loss of or damage to any buildings, structures, fixtures, fittings and other improvements or personal property of the Lessee.
- 4.2.4 The Council, Crown, the Minister and its and his servants and agents is not responsible for any costs or loss suffered by the Lessee arising from any malfunction of or interruption to: -
- water, gas or electricity services;
 - air conditioning equipment;
 - fire equipment;
 - any other plant, machinery or services; or
 - the blockage of any gutters, pipes or drains.

4.3 Public Risk Insurance

- 4.3.1 The Lessee must take out and maintain during the lease period a public risk insurance policy for at least the amount stated in **Item 8** of the Schedule. The policy will be in respect of injury, loss or damage occurring in or on the Land and will note the Council's rights and interests as proprietor of the Land.
- 4.3.2 The Lessee must produce a copy of the policy and a certificate of currency at the request of Council.
- 4.3.3 The Lessee must notify the Council in writing, giving full details, whenever the Lessee becomes aware of a possible claim.

4.4 General Insurance

- 4.4.1 The Lessee at its own expense may insure and keep insured all buildings, structures, fixtures, fittings and other improvements.
- 4.4.2 The Minister shall be noted as a party with an interest in any insurance policy obtained in respect of the leasehold interest.
- 4.4.3 The Lessee acknowledges that no liability or responsibility rests with the Council for the insurance or under insurance of the Lessee's property.

4.5 Termination or Reduction of Fees on Damage

If the whole or any part of the Land is destroyed or damaged for any reason such as to make it substantially unfit for the Lessee's use and occupation, then this Clause will apply.

- 4.5.1 The Council may (in its absolute discretion) decide not to reinstate the Land. If the Council so decides then it may end this Lease by written notice to the Lessee.
- 4.5.2 If the Council elects not to end this Lease under sub-Clause 4.5.1, then it must ensure that the Land is made fit for use by the Lessee within a reasonable time frame.
- 4.5.3 Until the Council either ends the Lease or makes the Land fit for use, the lease fee and any other payments due under this Lease will be reduced. The amount of any reduction will be determined by the Council and will depend upon the nature and

extent of the damage sustained and will continue until the Land is made fit for the Lessee's occupation and use.

- 4.5.4 If, after six (6) months the Land has not been substantially reinstated by the Council, this Lease may be terminated by either party by giving notice to the other in writing.
- 4.5.5 Any such termination will not reduce the rights of either party in respect of any previous breaches of this Lease.

5 THE COUNCIL'S OBLIGATIONS

5.1 Quiet Possession

The Council agrees that if the Lessee pays the lease fee in accordance with this Lease and complies with its obligations under this Lease, then the Lessee may quietly enjoy the Land for the purposes set out in **Item 7** of the Schedule.

6 EXPIRY OR EARLY TERMINATION OF LEASE

6.1 Termination

- 6.1.1 This clause applies if the Lessee: -
- fails to pay the lease fee or any other money which is due to the Council for a period of twenty-eight (28) days from the due date for payment;
 - fails to meet any other of its obligations under this Lease;
 - becomes bankrupt, is wound up or in the case of an incorporated body ceases to be incorporated under the Associations Incorporation Act 1985;
 - fails to use the Land as its permitted use as stated in **Item 7** of the Schedule.
- 6.1.2 The Council may serve on the Lessee a notice in writing stating:
- the nature of the breach;
 - what the Lessee must do to remedy the breach;
 - the time frame in which the Lessee must remedy the breach;
 - whether the Lessee is to pay any compensation and, if so, how much.
- 6.1.3 If the Lessee fails to comply with the notice within the time stated in it then the Council may end this Lease and take possession of the Land.
- 6.1.4 The right to terminate the Lease and enter into possession will not reduce the Council's right to take any other action for any of the Lessee's previous breaches.

6.2 Surrender

- 6.2.1 Upon the expiration or earlier termination of the Lease, the Lessee will peacefully and quietly surrender and give up possession of the Land.
- 6.2.2 The Lessee may remove from the Land any of the Lessee's buildings, structures, fixtures, fittings and other improvements and must immediately repair any damage caused in removing them.
- 6.2.3 Any reasonable costs incurred by the Council in cleaning or repairing any damage caused by the Lessee in surrendering the Lease may be recovered by the Council from the Lessee.
- 6.2.4 If the Lessee fails to comply with sub-Clause 6.2.2, Council may choose to remove the items and recover the associated costs from the Lessee.

7 OTHER RIGHTS AND OBLIGATIONS

7.1 The Council able to Undertake Works

The Council or any persons authorised by the Council may at any time enter the Land and carry out works.

7.2 Resumption

If the Council receives notice of any proposed resumption or acquisition of the Land by any Government (Federal or State) or other authority, or if the control of the Land is otherwise taken away from the Council, then the Council may terminate this Lease by giving three (3) months' notice in writing to the Lessee.

7.3 Renewal

7.3.1 At the end of the initial lease period, the Lessee will be entitled to an extension of this Lease for the period set out in **Item 9** of the Schedule provided that: -

- the Lessee gives the Council a written notice of its desire to be granted the extension not less than three (3) and not more than six (6) months before the expiration of the term of the Lease;
- the Lessee has not committed any frequent and/or substantial breaches of the Lease during the current lease period; and
- the Lessee is not in breach of the Lease at the time the notice is given.

7.3.2 Legislative changes, external influences and major development may be taken into consideration when reviewing the terms and conditions to apply for any extension to this Lease.

7.3.3 The extended term will exclude the right of further renewal.

7.4 Holding Over

7.4.1 If, with the consent of the Council, the Lessee continues to occupy the Land after the expiry of the Lease then this Lease will continue as a monthly Lease on these same terms and conditions.

7.4.2 Either party may give the other one (1) month's written notice to terminate the monthly lease with the lease expiring one month from the date the notice is given.

7.5 Waiver

The failure or omission by either party to take any action for the breach of any term or condition of this Lease will not stop either party from taking action in relation to any other breaches of the same or any other term or condition of the Lease.

7.6 Notices

Any notice required to be given by either party to the other must be in writing and must be given by delivering it, emailing it or posting it to the address appearing in the Schedule or to such other place as previously nominated by either party to the other.

7.7 Severance

If any provision or obligation of this Lease is invalid, unlawful or not applicable, then it will be deleted from the Lease without affecting any other of the parties' obligations under this Lease.

7.8 Entire Agreement

The terms contained in this Lease comprise the whole of the Agreement between the parties, subject to the inclusion of any other documents as specified in **Item 10** of the schedule.

It is expressly agreed and declared by the parties that no further or other terms exist between them with respect to the Land or the Lease.

Appendix C does not form part of the Agreement.

7.9 No Warranty

The Lessee acknowledges that the Council has not given any warranty as to the condition of the Land or its suitability for the use referred to in the Schedule or for any other use.

AGREEMENT

SIGNED as an Agreement on the **xxx** day of xxxx **2018**

as per resolution 85/18 at a meeting of the Naracoorte Lucindale Council on 23 October 2018.

THE COMMON SEAL of)
NARACOORTE LUCINDALE COUNCIL)
was affixed in the presence of:-)

..... Mayor

..... Chief Executive Officer

SIGNED by the said **Barrie Joseph Angas Longbottom and Fay Jeanette Longbottom:**

..... (Signature)

..... (Name)

..... (Signature)


..... (Name)

THE SCHEDULE

ITEM 1	THE LESSEE:	Barrie Joseph Angas Longbottom and Fay Jeanette Longbottom PO Box 1381 Naracoorte SA 5271
ITEM 2	THE LAND	PART SECTION 1094, (Crown Record Volume 5673 Folio 614) occupied by Naracoorte Aerodrome, as delineated in appendix A, 163 Square metres of land occupied by Hangar numbered 10 and occupied by the Lessee.
ITEM 3	THE LEASE PERIOD:	Twenty One (21) years
ITEM 4	THE COMMENCEMENT DATE:	1 July 2018
ITEM 5	THE LEASE FEE AT COMMENCEMENT OF THE TERM:	Land Lease - \$2.072 per square metre (GST-inclusive) subject to the provisions of Clause 3.1 of this Lease Agreement Annual User Fee – As per Naracoorte Lucindale Council Fees and Charges Guide.
ITEM 6	DATE FOR PAYMENT OF THE LEASE FEE:	Within 30 days of date of invoice
ITEM 7	PERMITTED USE OF THE LAND:	Aircraft Storage and associated activities
ITEM 8	PUBLIC RISK INSURANCE:	TEN MILLION DOLLARS (\$10,000,000) AT THE COMMENCEMENT OF THE LEASE. Note: The Council has the right to require the Lessee to increase the Public Risk Insurance to a greater or lesser figure as nominated by the Council during the Lease Period.
ITEM 9	PERIOD OF EXTENSION OF LEASE:	Twenty One (21) Years
ITEM 10	OTHER DOCUMENTS	Nil

APPENDIX A



 Hanger 10, leased by the syndicate. Total share of area is $\frac{1}{3}$ or 163sqm

APPENDIX B

Conditions of Lease Over Dedicated Crown Land

Section 1094, Hundred of Naracoorte, has been dedicated for Aerodrome purposes and placed under the care, control and management of the Naracoorte Lucindale Council.

Pursuant to Section 22(1) of the *Crown Land Management Act 2009* the Minister for Environment and Conservation (the Minister) has consented to a lease over this land. A condition of the consent is the distribution of this information sheet to any Lessees. Furthermore, any condition of the lease which is inconsistent with this information is invalid.

- The land may only be used for the purpose for which it was dedicated, and for no other purpose. The Minister has consented to the issue of this lease on the basis that it is consistent with, or ancillary to, the dedicated purpose, and will only be used for this purpose.
- Native Title has been extinguished and does not apply.
- The Minister has the power to revoke the dedication, or withdraw the land from the care, control and management of the custodian. This would have the effect of extinguishing any lease issued by the custodian. Compensation will not be offered by the Minister in the event the dedication is revoked, or the land withdrawn from the care, control and management of the custodian.
- The doctrine of fixtures applies to dedicated land. Any buildings or improvements presently erected on the land or to be erected on the land and that are determined to be fixtures are the property of the Crown unless the Minister has expressly stated in writing that the improvements are deemed to be severed from the land, either at the time the land was dedicated or at some other point.
- The following improvements are deemed to be severed from the land:

Improvement/Fixture	Ownership (Custodian/Lessee)
Hangar 10	John Charles Finnis Herbert Garrock Barrie & Fay Longbottom

- The Custodian and the Lessee indemnify the Minister, his or her servants and/or agents and keep the Minister and his or her servants and/or agents forever indemnified in respect to the whole of the Minister's costs and expenses (including without limitation legal costs and expenses) of and incidental to the implementation of this lease including the enforcement of the lease.
 - The lease anticipates the grant of an under lease. No further consent will be required should an under lease be granted, providing that it does not exceed the rights conferred by the head lease.
-

APPENDIX C

CONTACT DETAILS

LESSEE:

NAME: _____

ABN: _____

POSTAL ADDRESS: _____

PRIMARY CONTACT: _____

TELEPHONE: _____

EMAIL: _____

SECONDARY CONTACT: _____

TELEPHONE: _____

EMAIL: _____

THE COUNCIL:

NAME: Naracoorte Lucindale Council

ABN: 53 761 172 798

POSTAL ADDRESS: PO Box 555, Naracoorte SA 5271

TELEPHONE: 08 8760 1100

EMAIL: council@nlc.sa.gov.au

PRIMARY CONTACT: Kristy Lowe

SECONDARY CONTACT: Fiona Stringer
