

Submission
No 4

INQUIRY INTO WARNERVALE AIRPORT (RESTRICTIONS) REPEAL BILL 2020

Organisation: Central Coast Aero Club Limited

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THE CENTRAL COAST'S WINGS

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Inquiry into the Warnervale Airport (Restrictions) Repeal Bill 2020

Central Coast Aero Club Ltd Submission

Threshold issue: Is the Act relevant and necessary?

The *Warnervale Airport (Restrictions) Act, 1996 (Act)* is unique - it is the only piece of legislation like it, imposed on any airport, anywhere in Australia. In that circumstance, the tests of relevance and necessity must be met clearly and unequivocally to justify its retention.

Relevance?

The Act is no longer relevant.

The Act was introduced to Parliament in circumstances which simply do not exist today.

At the time, Wyong Council had determined to expand the airport into a freight hub serviced by jet aircraft. A representative of one of the proposed commercial participants said: "We had hopes of being the freight capital Australia...with a runway able to take 737-size aircraft"¹. There were fears that "Council (has) grandiose plans for the aerodrome itself including developing it as a freight hub with Boeing 747 capability"².

The plan and these comments lead to a genuine community concern, entirely justified at the time, that these things would come to pass resulting in significant and widespread impacts on parts of the community. However, the remedy to address these concerns was poorly conceived and hastily drafted and enacted. There was no consultation with the community, airport users such as the Central Coast Aero Club (CCAC), the broader light aircraft aviation community or aviation experts. The fact is that Warnervale airport, which had operated up to that time in more or less the same manner since early 1973, was ignored in the drafting of the Bill. Worse, CCAC's normal operations, evoking no community concerns or material complaint, would instantly be a casualty if Part 2 of the Act was triggered.

1: Second reading speech Mr Crittenden, member for Wyong 20 June 1996, quoting Mr Les Graham, Traders Finance Australia from Central Coast Express 2 February 1996.

2: Ibid.

The unintentional triggering of Part 2 of the Act by Council has now brought down the ill-conceived and unwarranted consequences mandated by the Act. The fact that typical daily movements of a flight training organisation often exceed the careless figures in the legislation, and in the case of CCAC have always exceeded them, was never considered. There is no evidence of how these figures were calculated or, indeed, that there were any grounds justifying these figures or any process adopted to arrive at them - other than being seemingly “plucked out of the air”. There was no automated monitoring system to count movements in the day (such as AvData) and CCAC as the airport operator would have been the only body able to put a number on daily movements.

There were no quoted community concerns at the time with the existing (and historical level) of these operations. Nor were any such concerns quoted as contributing in any way to the Act e.g., in the second reading speech. Yet the Act was drafted so poorly that the key consequences of Part 2 being triggered impact devastatingly on organisations, individuals and aviation operators the Act were never apparently intended to regulate or affect.

The circumstances which lead to the Act now no longer exist. The proposal feared by the community did not proceed. A recent airport expansion plan (by the previous Council) was also put on hold after an election at which the community rejected the Council which proposed it – democracy in action. The current Council has abandoned the plan, terminated preliminary commercial arrangements designed to progress it and resolved not to spend any of the funds allocated to the proposal in furtherance of it.³

The circumstances which now apply to this aerodrome are no different to hundreds of others throughout NSW and other States and territories. That being the case, there is no case whatsoever for retaining it on this ground.

Necessity?

The Act is no longer necessary.

The critical issue for the jet operations (so prominent in the lead up to the Act) is runway dimension, particularly runway length. A medium range jet, such as a 737, requires a runway of 2,256 metres⁴. A long-range jet, such as 747, requires 3292 metres⁵. Thus, the runway would need to almost double, or almost triple, its current length for these respective aircraft.

3: Refer: Minutes of Central Coast Council Ordinary Council Meeting - 27 November 2017 Resolutions 756/17 – 762/17 inclusive <https://cdn.centralcoast.nsw.gov.au/sites/default/files/documents/meetings/edit-meeting/em-27-november-2017/minutes-om-27-november-20171.pdf>

4: Refer: CASA manual of standards Part 139 Table 2.1-2

5: Refer: Ibid

1. Land availability. Land is not available to the north. Sparks Road is immediately to the north and privately owned land is beyond that. Significant road deviation would be required and resumption of private land. Some land is available to the south. But again, depending on the length of the extension proposed, land is limited by private ownership to the east of the M1 and by the M1 itself.
2. Planning restrictions. Land to the south is mostly comprised of wetlands – Porters Creek Wetland. Putting aside the technical difficulties of building an airstrip in a swamp, planning restrictions under the Environmental Planning and Assessment Act 1979, would apply to any such development. The current local environmental plan (Wyang Local Environmental Plan 2013) applies.⁶

Central Coast Council possesses the power, on behalf of any concerned community, to regulate any expansion of the airfield under its own planning instruments. For example:

- Land to the south (most of Porters Creek Wetland) is zoned SEPP 14 wetland. Extension of any runway into this zone is prohibited as there are no aviation related activities whatsoever permitted (including those permitted with consent) under the instrument. Consequently, expansion to the south simply cannot occur under existing environmental instruments.⁷
- Land to the north (being land bordering on the north boundary of Sparks Road and extending north to the boundary of private holdings) is zoned E2 – Environmental Management. None of the permitted uses under this zone permit any aviation activities.⁸

For any expansion of the airport, the Wyong LEP would require amendment in several significant respects. This can occur only if Council so resolves and the Minister consents (the same Minister who must consent to any expansion of the airport under the Act).

In essence, a valid development consent for airport expansion cannot be given under the Wyong LEP – by Council or the Court.

Even supposing such amendments were consented to by the Minister, expansion is likely to require some compulsory acquisition of private land. Such acquisitions are regulated by both the Local Government Act, 1993 and other legislation.

There are numerous other regulatory challenges that would need to be met to expand the airport. Given the above, it is not necessary to examine them as airport expansion cannot occur under the Wyong LEP regardless of whether the Act is repealed.

Accordingly, even if circumstances existed making the Act relevant, it is entirely unnecessary as other strong regulatory framework does the work it does.

6: Wyong Local Environmental Plan 2013

7: Ibid – Land Use Table Part 2 of the LEP

8: Ibid - Land Use Table Part 2 of the LEP

The Act fails the necessity test.

A note on movement restrictions.

As mentioned above, Clause 2 of the Act requires the operator cap movements at 88 per day. The operations conducted by the CCAC have been conducted in harmony with the community for decades and there is no evidence to the contrary. Yet it is those operations, and the CCAC and its employees, members and students who bear the brunt of movement restrictions so clumsy in their formulation. The administration of a movement restriction regime is highly problematic. How are movements planned, monitored (in real time) and enforced? These difficulties were demonstrated by Council method of restricting movements after Council took the view Part 2 of the Act had been triggered.

It imposed a requirement that pilots must seek permission from the airport operator to land or take off not less than 24-hours before by application in writing. In practice, this did not work but resulted in an impossible administrative and financial burden on CCAC, severe restrictions on training flights (and scheduling training flights) and a general aviation community view that Warnervale airport is unfriendly to aviators. They consequently stayed away. This regime prevented flying in these circumstances:

- when pilots or student pilots found themselves able to fly on a particular day when the day before that was not the case;
- “drop in” members of the public wanting to do a joy flight or potential students wanting to undertake a “trial instructional flight”;
- changes in weather preventing scheduled flights for which permission had been granted or making possible unscheduled flights when weather turned out better than anticipated;
- itinerant aircraft wanting to land to refuel (perhaps because planned fuel may fall below minima required for planned destinations due to head winds or ATC diversions).

The system also imposes a 365-day requirement on the airport operator to dedicate staff to assess requests, respond to requests and monitor numbers. This is a significant financial burden. It led to a significant drop in the amount of CCAC flying activity. This drop would have been fatal to the Club’s operation if it continued and the resulting closure of the Club and loss of employment for all its staff. It marked Warnervale as an airport that was difficult for pilots, students, instructors and staff.

Conclusion

The CCAC believes there are no legislative frameworks of this type for similar airports. This legislation is unique. That fact, in itself, sets the onus against its continued existence.

Repeal or amendment of the Act is vital to preservation of the Airport which is a vital community asset for the 340,000 residents of the Central Coast. While ownership and operation of the Airport rests with Central Coast Council, continued operation of the Act in the current form (or

any like it) will strangle the Airport. This airport is a vital asset for the 340,000 residents of the Central Coast:

- Supports emergency service operations such as police, air ambulance, RFS water bombing and fire reconnaissance,
- Provides aviation related education and skills training (including qualification of recreational and commercial pilots as well as flight instructors)
- Provide youth opportunities hosting the Australian Air League and Scouts
- Provide skilled employment opportunities and Apprenticeship training (such as the current thriving maintenance operation conducted at the airport)
- Facilitates tourism, benefitting local small businesses through fly ins, open days etc
- Provide recreational flying opportunities for local residents.
- Support charitable works such as the Club's annual community open days providing free flights for disabled and disadvantaged children and their families,
- If allowed to develop a future aviation school of excellence
- Provides the only fuel stop & emergency landing area between Bankstown & Newcastle.
- Facilitate the operations of local businesses, and status of the local government area as a desirable place to establish business by the continued operation of a local airport, and
- Retain the existing club social environment for its members.

Support for the airport in the community and wider aviation sector is substantial. A Change.Org petition last year generated 8,239 signatures within a very short time span. Council's own polls show strong majority community support for this vital, irreplaceable and strategic community asset.

The Central Coast Community have had repeated opportunities to voice their opinions on the retention or removal of the Act, and the future of Warnervale Airport more generally. The recent independent review of the Act showed 75% in favour of protecting the Airport through repealing of the Act.⁹ In response to the threshold question of whether the Act remains relevant and necessary, the Review Team notes that the community is afforded greater protection by statute other than the Act, and the Act provides no unique protection that is not provided more effectively by other legislation. The Reviewers accordingly consider that the Act is not necessary.⁹

9. Warnervale Airport (Restrictions) Act 1996 Review <https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/Plans-for-your-area/Regional-plans/Central-coast/Report-of-the-2020-Review-of-the-Warnervale-Airport-Restrictions-Act-1996.pdf?la=en>

Additionally, Stage 1 of the Central Coast Local Strategic Planning Statement (the Draft Urban Spatial Plan) was placed on exhibition from 29 August to 24 October 2019. The community was invited to make comments on the LSPS.¹⁰ Of all of the priorities and concerns that community members might foreseeably raise, “plan for and support Warnervale Airport” was identified by the survey process as one of the 8 most important or key areas which should be planned for. Additionally, in councils Draft Central Coast Economic Development Strategy from March 2020, survey results show the terms “Aviation” and “Airport” were referenced positively and unprompted in 59.7% of responses. Further:

- Airport/Aviation was mentioned by 29% of all participants.
- Aviation & Airport ranked number 1 in the best suited sector for the future of the Central Coast region at 62% with number 2 Manufacturing at only 30%.
- Economic development activities and the main vision for the future – Airport /Aviation ranked number 2.

It is crystal clear that the Central Coast community want their Airport protected – the WAR Act will stifle this Airport and destroy any ability for it to sensibly grow and contribute to the Central Coast economy and future growth as a region.

It is important this inquiry re-sets the benchmark so that operations which have continued without controversy for 40 years are not imperilled by any regime to govern airport expansion and that the current operation of the airport is allowed to continue without unnecessary regulation for the benefit of its community.

Yours faithfully

Andrew Smith
President
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10. Draft Economic Development Strategy Consultation Summary https://www.yourvoiceourcoast.com/sites/default/files/202006/a5_economic_development_strategy_consultation_summary_report_0.pdf