
From: James Stewart [flyingboatz@bigpond.com.au]
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ATTN: ABIGAIL GOLDBERG

Perhaps the first question to be addressed is how and why such a piece of legislation was passed when there is no similar legislation in Australia. The Warnervale Airport (Restrictions) Act 1996 is unique.

I shall examine those circumstances and establish that the purpose of the Act has been served; that there is no longer a need for it and it should be repealed to relieve airport users of the inconvenience it causes and unnecessary and unintended restrictions on operations. These resulted collaterally from the manner of and haste in which the Act was drafted. Essentially, it involves circumstances where during the day, the number of movements of light aircraft may be limited if the part of provisions relating to the extension of the runway are triggered. Those wishing to land or take off must give council 24 hours prior notice and be approved.

This impacts both on operators who are based at Warnervale in the sense that a pilot or student having assessed the weather cannot fly on the same day nor can a person who wishes to land at Warnervale for business, pleasure or otherwise do so without such permission.

If the Act is not repealed, steps should be taken to clarify uncertainty as to the operation of the Act discussed below.

The Act came about to address the well-founded concerns of residents that Warnervale airport, which had operated in more or less the same manner since the early 1970s was to be altered and expanded to allow 24 jour per day operations of passenger jet aircraft.

The following references, all reproduced from the debate on the second

reading, provide the kernel of the background to the legislation:

The Hon. M. J. Gallagher. "...the concerns of the people of Wyong in regard to Warnervale Airport have been allowed to fester unappealed for the last months when all three levels of government with input into this matter were controlled by the Labor Party...." "Why is the Government all of a sudden so concerned about me and my fellow neighbours? The answer is 2nd March, the day the Labor Party realised how the people of Wyong had overwhelmingly voiced their dissatisfaction with the Labor's performance and voted in droves for John Howard and the Liberal Party- the largest ever result in the Federal seat of Dobell."

"I have been told by a number of people who attended a public hearing at Wyong High School in December 1995 that Mr Dawson, the town clerk of Wyong Shire Council told them that it was no use trying to fight the development, that the matter was closed, it was simply too late and that bulldozing would start within a matter of weeks."

"If the concerns of the residents' action groups are correct, why would a Labor-held council that promotes itself as the one that looks after battlers allow 737s and Airbus aircraft over their homes around the clock?"

".....quoted from an article in Australian Aviation magazine which stated that Wyong Council has grand plans for turning Warnervale into a freight centre capable of carrying 747s"

"Can honourable members honestly imagine what it would be like to be woken at 2.00 am or 3 am as a large aircraft flies overhead?"

As to the operation of the Act, obviously S11, Mr Gallagher said, "There is nothing in the bill which indicates the powers this independent person or persons will have. What use is it to have an inquiry if the persons conducting the inquiry have no power to call witnesses, view documents and ensure that the inquiry is totally transparent and open to the public?"

"The Opposition's position on this issue encapsulates the main thrust of

the bill and is designed to negate any potential for Wyong to become an airport frequented by international flights 24 hours a day whether carrying freight or passengers."

In common with all who took part in the debate, the speaker made no mention of any complaint or dissatisfaction with existing aircraft operations. All remarks addressed to operations by all speakers sought to prevent a 24 hour per day unregulated access to the airport by large jets. A reference, albeit oblique, to the lack of consideration which had been given to the drafting of the bill was evidenced by the speaker's reference to the machinery provisions of the inquiry contemplated by the bill.

The next speaker, The Hon. B.H. Vaughan mirrored concerns of others as to the speed with which the legislation had been introduced. He said, "...that the Government has acted too quickly to avoid a great wrong." And later, "But where the stakes are high one cannot denounce the rushing of legislation. This legislation is perhaps being rushed but it is in the interests of the people who have come here today to listen in this Chamber to the House dealing with the matter."

The Hon. Elisabeth Kirby also addressed the history. She said, "Nearly twelve months ago, on 26th July, 1995 the council voted eight to two to suspend the curfew at Warnervale airport, to have 24-hour-a day operations." She also referred to a plan for an Asian university campus for 7,500 students and that "...it would require 351,000 movements per year or 1000 movements per day. This is reaching into the realms of fantasy; it does not take into account all measures necessary for planning an enormous airport development."

Reference to "737 jets operating 24 hours day" was made by The Hon R. S. L. Jones.

The frequency of movements of 351,000 movements per year was also referred to by The Hon. I. Cohen.

The extracts quoted above provide background to the concerns of

residents and the desire of Parliament to address those concerns expeditiously, something reflected in the flavour of the Act.

The only object of the Act was to address the perceived operation of heavy aircraft. However, collaterally, it caught present and future operators of light aircraft if S6(1) was to be triggered.

Following assent, the airport continued to operate as before as it does now. In 2015, council performed works on the runway which included laying of bitumen on the runway. It is moot whether this triggered the limitation of movements under s6(1) of the Act or whether the character of the works did not change the nature of the runway which remained an “existing runway” to which S6(1) did not apply. Council obviously never intended the section to be triggered. This conclusion arises from a number of matters:

1. There was no application by Council under S8 to the Minister to extend the runway.
2. The absence of any assertion by council before or after the works was performed that the intent of the works was or was too include the triggering of the section.
3. The fact that the work as performed notwithstanding the proscription in S9(1) in respect of work “for the construction of a runway”. Usually, where that word appears in legislation, it is interpreted as including an alteration. Apparently council was of the view that none of the work fell within the purview of that caught by the Act.
4. The fact that council doesn’t know whether the section has been triggered. Thus, on the 2nd January, 2019 council passed a resolution that advice be sought as to whether the works had triggered the section. The advice was to the effect that the section had probably been triggered.

Fundamental to the outcome of the enquiry is the need to bring clarity to the operation of the Act if it is not to be repealed, the most desirable option. The airport is owned and operated by council. In terms of any future development, the repeal of the Act would place council in exactly

the same position as any other privately owned airport.

Unfortunately, if the works have triggered S6(1), it is not available to the minister to approve them and increase the number of movements as S8 only applies an extension applied for by council approved by the minister.

Yours faithfully,

James G. Stewart