From: ycyc1159@awcp073.server-cpanel.com on behalf of Michael Allen [mallen106624@yahoo.com.au]
Sent: Wednesday, 26 February 2020 7:49 AM
To: DPE PSVC Central Coast Mailbox
Subject: 2020 03 10 Allen, Michael Individual Warnervale Airport (Restrictions) Act 1996 Review

Categories: Reply Sent

The Director

Central Coast and Hunter Region
Department of Planning, Industry and Environment
PO Box 1148
GOSFORD NSW 2250

Email: centralcoast@planning.nsw.gov.au

NOTE: I understand and agree that my submission will be made public.

Dear Director,

RE: Submission in relation to the Warnervale Airport (Restrictions) Act 1996 review.

Submission Type: I am making a personal submission

The statement below represents my personal opinion pertaining to the act review: More jobs, greater economy, transport opertunities. Why have an airport that is not utilising it's full potential it's a waste of money which is not what local or federal governments need to be doing in this day and age. Repel this archaic act and move this airport into the modern era.

Is the Warnervale Airport (Restrictions) Act 1996 (the Act) relevant or necessary?

The Act is neither relevant nor necessary.

- The Act was enacted to protect the community from alleged large jet transport operations. The runway has never been sufficiently long enough for any jet transport aircraft operating in Australia. The current Council Airport Draft Business Plan supports a maximum Category 3 Runway. NO RPT Jet Airliner Aircraft!
- The airport is surrounded by terrain which makes it very difficult to physically lengthen the runway (wetlands immediately South, a major road and rising terrain to the North).
- Environmental zoning surrounding the Airport requires that State Government must consent to any lengthening of the runway.
- There is no economic case for jet airline or freight operations at Warnervale, as Warnervale is within a 2 hour radius of Sydney, Newcastle and soon, Western Sydney (Nancy Bird-Walton) Airport, all of which cater to these operations.

I therefore say and ask that the legislation be repealed and discarded

Or, if the Review concludes the Act is to remain.

Clause 2 of the Act limits aircraft movements to 88 per day in the event the runway is lengthened. The Council has made a determination that the former Wyong council allegedly lengthened the runway, triggering this clause.
- The current flight training provider has operated for over 4 decades without being constrained by the movement cap and at the time the Act was put in place was regularly performing over 300 movements a day.
- Training aircraft regularly perform up to 20 movements per hour. Multiple training aircraft may be operating at once; therefore, the movement cap may be reached within 2 hours or less of commencing operations for the day.
- Once the cap is reached, no other users of the airfield will be permitted to operate, save in an emergency.

As the movements will almost exclusively be absorbed by the flying school, the Aero Club members based on the field and itinerant operators wishing to fly into Warnervale, including patient transfer and Rural Fire Service refuelling and positioning flights, will regularly be excluded from operating.
- Clause 2 of the Act should be removed or amended to apply only to aircraft above 5,700 kgs – a figure used by the Civil Aviation Safety Authority to designate large aircraft.

Warnervale Airport is the only aviation infrastructure servicing the 340,000 residents of the Central Coast. The Act is unique, no other airport of this type in Australia is constrained by such a limiting piece of legislation. The Act, and Clause 2 specifically,

serve to heavily cripple the ability of the Airport to serve its purpose, and threaten to heavily restrict, or destroy, the ability of operators to continue a viable business on the site.

I respectfully ask that the Reviewers take appropriate action to repeal the Act.

I thank you for taking the time to consider this submission.

Yours Faithfully,

Michael Allen
mallen106624@yahoo.com.au
Watanobbi, 2259

Warnervale Airport (Restrictions) Act, 1996 Review

Submission by Michael Allen

I am a Central Coast resident and private pilot with 20 years of experience. I am a member of the Central Coast Aero Club based at Warnervale.

This submission is in 2 parts:

- Part 1: submissions responding to the terms of refence
- Part 2: comment on the impact of a false and misleading campaign by airport opponents.

Part 1: Terms of reference submissions

The *Warnervale Airport (Restrictions) Act, 1996* (**Act**) is an orphan in Australia - it is the only piece of legislation like it, imposed on any airport, anywhere in Australia. Because that is the case (and neither NSW nor any other State government has seen the need for such legislation for any of the hundreds of aircraft landing areas in Australia) the tests of relevance and necessity must be met clearly and unequivocally to justify its retention. In essence, because of this, the presumption should be against its retention.

Is the Act relevant?

The Act is not relevant.

The Act was introduced to Parliament in circumstances which do not exist today (and which could not be replicated today for reasons set out below). At the time, Wyong Council had decided to expand the airport into a freight hub. One of the proponents of the idea 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

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

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 airport users such as the Central Coast Aero Club (**CCAC**). This organisation had been operating at the site for over 20 years. The fact that Warnervale airport, which had operated up to that time in more or less the same manner since early 1973, was ignored in drafting of the Bill. CCAC's normal operations, including flight training for local residents would instantly be a casualty if Part 2 of the Act was triggered because of the movement cap imposed without any empirical basis.

The unintentional triggering of Part 2 of the Act by Council (if indeed, it has been triggered) 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.

The Act was drafted so poorly that the key consequence of Part 2 being triggered was a devastating impact on organisations, individuals and aviation operations the Act was 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. Planning laws prevent the expansion of the airport outright – while the Act purports to allow expansion after a defined process and Ministerial consent.

The circumstances which currently 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.

Is the Act necessary?

The Act is no longer necessary.

Submission by Michael Allen

The airport cannot be expanded without overcoming hurdles far more stringent than those imposed under the Act. These include:

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. Building an airstrip of commercial grade on this land would be virtually impossible. It is a natural wetland subject to extensive flooding. In addition to this obstacle, land on the axis or runway 20 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 (*Wyong Local Environmental Plan 2013*) apples. [3]

   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 *E2 – Environmental Conservation*. 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. [4]
   - 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. [5]

[3] *Wyong Local Environmental Plan 2013*.
[4] Ibid – Land Use Table Part 2 of the LEP.
[5] Ibid. Land Use Table Part 2 of the LEP

Submission by Michael Allen

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 current 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.

The planning law applying to land adjoining the airfield gives a stronger regulatory framework than the Act. In current circumstances where any expansion is prohibited, the Act is entirely redundant and unnecessary.

The Act completely fails the necessity test.

If the review recommends the Act should remain?

Runway length and movement restrictions

If the Act is to remain, the single issue it needs to regulate to prevent airport expansion is runway length. As that is the case, movement restrictions are otiose. A properly conceived regime to determine runway expansion (which for the reasons set out above is impossible) makes movement restrictions unnecessary.

1. Runway length. The key factor quoted in the run-up to the Act was a fear of large jet operations running 24 hours per day. As noted above, any medium range jet aircraft (or short-range freight carrying aircraft) would require a sizeable increase in the runway length. If this is controlled under the Act (through Ministerial consent and an

obligatory independent review and noise impact assessment set out under Part 4 of the Act) the perceived concerns giving rise to the Act are fully met.

2. Movement restrictions. Despite this, if the review concludes movement restrictions are necessary, they should capture aircraft which do not constitute those requiring runway extension to operate i.e., those under 5700kg. This recognises current operations (and those existing historically for over 40 years) which have never given rise to the circumstances leading to the current Act. These operations have been conducted in harmony with the community and there is no evidence to the contrary relating to this review or the operation of the airfield generally. 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. Council imposed a requirement that pilots must seek permission from the airport operator to land or take off on 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 the following example 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 currently imposed on Council and its ratepayers for no apparent reason.

The cap and Council's method of dealing with 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. In the general aviation community, it was branded - "stay away".

If movement restrictions are retained, they should apply only to aircraft above 5700kg. In addition:

- care needs to be taken in their drafting to avoid unintended consequences. For example, while some emergency aircraft air exempted (search and rescue, medical emergency or natural disaster) other important movements are not: patient air transfers, police aviation, aerial survey, emergency services training (such as that conducted by RFS every 2 years at the airport), diversion for operational reasons short of "declared in flight emergency" or "urgent need", community events (such as the annual community charity event or approved air shows); and
- the impracticalities of monitoring movement restrictions must be recognised and a practical monitoring process which avoids the above limitations be outlined.

Expansion proposal triggers?

Expansion proposal triggers must be limited to the key issue being regulated by the Act e.g., runway length or number of movements. There is no justifiable case to lump installation of runway lighting, ground or navigational aids, taxiway construction or improvement to regulation under the Act. None of these have the capacity to influence the key matters controlled by the Act i.e., runway length or movement numbers. However, they do directly affect operational safety, precision and ease of use. They

should be encouraged - not restricted by review requirements that have nothing to do with any rationale to retain the Act.

Expansion proposal framework?

Any amendments to the framework should mirror considerations normally addressed for expansion of like airports (which of course have no such legislation). They should not go beyond the considerations applying under the normal legislative processes for other airports.

Updating and alignment of administrative matters, definitions and investigative powers?

This should address the significant shortcomings in the current Act. For example, there are no definitions of "*runway", "landing", "take off*". Are runway displaced thresholds part of the runway? Is a "touch and go" a landing, a take-off or both? Is a landing approach, flight a metre above the runway, followed by a climb-out, a landing, a take-off or neither?

If the Act is to be retained, it should include a sunset date such that it expires in 5 years unless Parliament determines to extend its operation. It existed for nearly 20 years serving no purpose and when Part 2 was triggered (if that is the case) it wasn't for any of the reasons the Act was put in place. It was inadvertent and arose from an inconsequential increase in runway length (if that even happened). Modern legislation has adopted the practice or sunset clauses and there is good reason to adopt it in any variation of the Act particularly given it is the only piece of legislation of its kind in Australia's six states and two territories.

Flexibility?

Any restriction imposed, if an amended Act is triggered, should be capable of being varied by the Minister. After all, if the Minister can give the relevant consent under the Act to do that which is otherwise prohibited, the Minister should have the authority to change the restriction e.g., extend the runway limitation or change the number of movements. This is the case in the current Act.

Review the interaction and consistency of the Act with other legislation

For reasons stated above the Act duplicates controls in the NSW planning and subordinate legislation. It is therefore entirely unnecessary. There may be other legislative regimes it duplicates. For the reasons stated earlier, these have not been examined.

Statutory frameworks for similar airports?

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.

Impact of Act

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 commercial pilots and instructors)
- Provide youth opportunities hosting the Australian Air League the Scouts
- Provide skilled employment opportunities (such as the current thriving maintenance operation conducted at the airport)
- Facilitates tourism, benefitting local small businesses through fly ins, open days etc
- Support charitable works such as the Club's annual community open days providing free flights for disabled and disadvantaged children and their families,
- Provide recreational flying opportunities for local residents.
- If allowed to develop a future aviation school of excellence

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- 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 generating 5,500 signatures within a very short time span. Council's own polls show strong majority community support for this vital, irreplaceable and strategic community asset.

It is important the review 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.

Part 2: comment on the impact of a false and misleading campaign by airport opponents

False and misleading campaign by airport opponents?

There has been a vocal campaign against the airport by those who see retention of the existing Act (with its movement cap retained) as the best way to strangle it. They are aware (and it is the case) that the aero club will not survive with that cap retained. They are also aware that monitoring and enforcing the cap is a significant drain on Council's resources and Council will tire of the expense and trouble this causes. Their intention is to convince Council not to enter into a new access agreement with the aeroclub when the current agreement expires in 18 months.

If that occurs, they will achieve their long-standing goal of seeing the airport closed and the central coast will lose this vital asset. To encourage locals to oppose the repeal or amendment of the Act, they have resorted to a misinformation campaign designed to scare them into thinking that they are in danger of jet aircraft operating from the airfield 24 hours a

day. An example of an anonymous flyer widely distributed to the local population is attached to this submission.

Why is this important?

Submissions made by frightened and misinformed locals should bear less weight than those not containing false and misleading information pre-loaded into a template. They should have no bearing on the outcome of the review to the extent they are based on false and misleading information designed and propagated by others for the very purpose of frightening them into making a submission.

The Central Coast Airport Resistance Group website has numerous examples of misleading, false and exaggerated claims and articles and other materials either incorrectly cited or cited out of context in such a way as to mislead readers into believing the authors of those articles support the group's claims and objectives.

In the circumstances, residents who have been misled and scared have every right to have those fears addressed and appropriate information given to them to correct misleading information. The recommendation and findings of the review are the appropriate venues for this.

Examples of the many misleading and deceptive claims

Misleading information	Fact	Reference
"*The only way you can protect yourself from aircraft noise and unwanted jet pollution is to make a submission…."*	Jets cannot operate from Warnervale airfield. The runway cannot be extended to accommodate even the smallest commercial jet. Physical constraints, private land ownership and planning law all prevent this.	Central Coast Airport Resistance Group webpage
"Consider that Warnervale is not an airport but is an Aeroplane Landing Area (ALA) on which ***current pilot training is not***	CASA has approved training at Warnervale for recreational, private, commercial and IFR categories. Training has been	One of the Central Coast Airport Resistance Group webpage 4 proforma submission forms.

***allowed prior to the completion of the General Flying Progress Test under the ALA Guidelines**."*	conducted at Warnervale for decades in accordance with CASA requirements	
"The Warnervale Airport (Restrictions) Act 1996 is all that stops airport proponents from proceeding with development of a Warnervale Regional Jet airport."	The planning law contains an absolute ban on runway extension into the E1 and E2 zones surrounding the airfield. It is a more effective control than the limited restrictions in the Act	One of the Central Coast Airport Resistance Group webpage 4 proforma submission forms.
"Protect the SEPP14 Porters Creek Wetland to the south of the airport and Sparks Road riparian fauna corridor and EEC to the north, by retaining the Act and thereby not allowing any physical or operational expansion of the airport."	The Act does not afford this protection. The planning law does.	One of the Central Coast Airport Resistance Group webpage 4 proforma submission forms.

Why are the better protections of the planning law not cited?

There is a deliberate and wilful failure to disclose the planning law prohibition on airport expansion and airport activities in the E1 and E2 land. The group is well aware of this land and its zoning referring to "*unauthorised removal of trees and clearing of E2 conservation land".* Amendment or removal of the Act is not opposed for the reasons suggested by opponents. It is because only the Act has the capacity to close down the airport by allowing the existing strangling provisions of the movement cap to do just that. Clear references to their real objectives (to close the airfield) can be found on the website. These examples include:

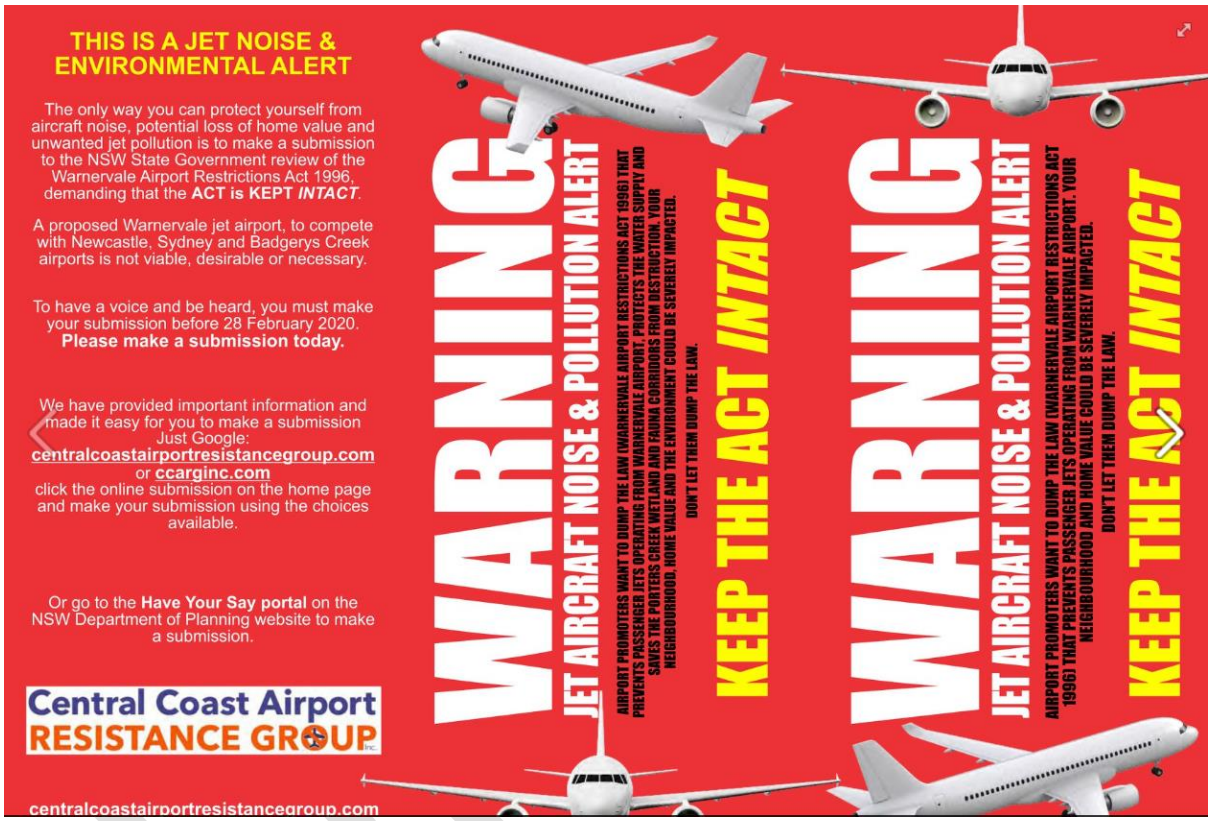
1. "*Consider that Warnervale should not be there at all……."*
2. *"The Central Coast Airport Resistance Group Inc. has been recently formed to …encourage future industrial subdivision and use of the airport site as per the Wyong Employment Zone (WEZ) designation of the site."*

As noted above submissions made by frightened and misinformed locals should bear less weight than those not containing false and misleading information pre-loaded into a

template. They should have no bearing on the outcome of the review to the extent they are based on false and misleading information designed and propagated by others for the very purpose of frightening them into making a submission.

……

Alarming and misleading flyer widely distributed to Central Coast residents



Michael Allen

27 February 2010