

## AMENDED ITEM



**Item No:** 5.2  
**Title:** Notice of Motion - WAR Act Repeal and declassification of airport contract damages  
**Department:** Councillor

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10 August 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14101462  
Author: Greg Best, Councillor  
Bruce McLachlan, Councillor  
Rebecca Gale, Councillor  
Jilly Pilon, Councillor

Councillors Best, McLachlan and Gale and Pilon have given notice that at the Ordinary Council Meeting to be held on 10 August 2020 they will move the following motion:

- 1 That Council notes the recent announcement by Minister Stokes (see attached) announcing the imminent repeal of the outdated Warnervale Airport (Restrictions) Act 1996 (WAR Act).**
- 2 That Council formally thank Minister Stokes and Parliamentary Secretary for the Central Coast Mr Adam Crouch for facilitating this important review, noting that 939 Public Submissions were received of which more than 75% were in favour of repeal (attached Public Support Article) with 15 organisations and individuals addressing the Public Hearings as follows:-**

Order of submissions			
Warnervale Airport (Restrictions) Act 1996			
Public Forum 28 February 2020			
	Name	Representing	Time allocated
1	Cr Greg Best	Individual speaker	5 minutes
2	Mr Doug Eaton	Individual speaker	5 minutes
3	Mr Michael Campbell	Community Environment Network	10 minutes
4	Mr Andrew Smith	Central Coast Aero Club	10 minutes
5	Mr Laurie Eyes	Warnervale Airport Resistance Group	10 minutes
6	Mr Matthew Teegan	Individual speaker	5 minutes
7	Ms Victoria Gallagher	Individual speaker	5 minutes
8	Mr Patrick Gallagher	Individual speaker	5 minutes
9	Ms Caroline Wickham	Individual speaker	5 minutes
10	Mr Jay Harris	Individual speaker	5 minutes
11	Mr Keith Royle	Individual speaker	5 minutes
12	Mr Warwick Calleia	Individual speaker	5 minutes
13	Mr Michael Allsop	Individual speaker	5 minutes
14	Mr Gregory Stephenson	Individual speaker	5 minutes
15	Mr Tony Brown	Individual speaker	5 minutes

- 3 Further with regard to consultation, of particular note, Council recognises that the two most vocal objector groups, Community Environment Network (CEN) and the Warnervale Airport Restriction Group were both given significant opportunity to brief the Panel and make substantial submissions.**
- 4 Also Council passes on its formal appreciation to Review Chairperson Abigail Goldberg and Panellist Mr Peter Fiegehen for their professionalism and comprehensive 140 page Report [LINK](#)**

**5.2 Notice of Motion - WAR Act Repeal and declassification of airport contract damages (contd)**

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- 5 That in the spirit of transparency and accountability, Council request the General Manager to in the first instance, Report to Council on what actions and legal mechanisms are available to Declassify the Confidential Documents revealing to the Ratepayers exactly how much the AAI Contract Extinguishment cost including the 'lost opportunity costs' around some 17 Formal Expressions of Interest Developed by Staff over many years that were also extinguished.**
- 6 That Council notes the independent review made three recommendations:-**
- a The Act should be repealed as soon as possible, but if there was a delay the Airport flight restrictions should be removed immediately.**
  - b Central Coast Council, who owns and operates the Airport, should adopt a clear framework to govern the Airport's future management, and**
  - c Address safety issues affecting the runway.**
- These Items should form part of a comprehensive and 'publicly available' Report to Council around expediting the Minister's Directions. In particular, the critical issue of Airport Safety with regard to runway access.**
- 7 That as the Minister has highlighted the urgent need to develop an Airport Operational Plan, Staff provide Council with existing airport plans as reference points from Sister Regional Airports such as Merimbula, Ballarat, Albany, Scone, Tamworth and Armidale.**
- 8 That Council notes a number of former Airport Related Resolutions refer to being "consistent with the WAR Act." Now that the WAR Act will be extinguished, these Motions / Staff Directions will need to be recrafted and form part of the Staff Report requested in 5 above.**
- 9 That Council thanks all those that made submissions in particular, the highly professional Warnervale Aero Club, its Chief Executive Office, Board and Members.**

**Chief Executive Officer Response**

The Chief Executive Officer considers that this Notice of Motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting. As a result, the Chief Executive Officer has provided a report in relation to the Notice of Motion. This report is provided as Attachment 2.

**5.2 Notice of Motion - WAR Act Repeal and declassification of airport contract damages (contd)**

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**Attachments**

- |          |   |           |
|----------|---|-----------|
| <b>1</b> | Ministerial Media Release 28 July 2020 Warnervale Airport cap to be repealed                      | D14101525 |
| <b>2</b> | CEO Response - Notice of Motion - WAR Act Repeal and declassification of airport contract damages | D14103637 |

[NSW Department of Planning, Industry and Environment](#)



## Warnervale airport flight cap to be repealed

Date

28.07.2020

Type

Ministerial Media Release

Author

Rob Stokes, Minister for Planning and Public Spaces

The NSW Government has today announced it will support all recommendations of an independent review into the *Warnervale Airport (Restrictions) Act 1996* (the Act), including providing certainty to the community by immediately repealing the flight cap limit.

Planning and Public Spaces Minister Rob Stokes said there was an overwhelming response from the community, with more than 75 per cent of submissions received during the review supporting the repeal of the Act.

<https://www.planning.nsw.gov.au/news/2020/warnervale-airport-flight-cap-to-be-repe...> 30/07/2020

“The review found a range of problems with the Act – including that it is overly complex, difficult to administer and was creating safety risks – and recommended it should be repealed as soon as possible,” Mr Stokes said.

“We will continue to work with Central Coast Council on a staged repeal of the Act, ensuring the appropriate planning controls and plans of management are in place to govern and manage the future operations of the Airport.”

Parliamentary Secretary for the Central Coast and Member for Terrigal Adam Crouch said the NSW Government will introduce legislation in September to implement the recommendations, starting with the repeal of the daily take-off and landing cap.

“Our community has sent a strong message that it wants Warnervale Airport retained and accessible for public use by community groups like the Aero Club, and our Government will act to ensure this is the case,” Mr Crouch said.

“The Airport is used for training the next generation of Australian pilots, as well as enabling medical evacuations and bushfire emergency responses to occur. It’s vital that we support the continued operation of this important asset.”

The final report from the independent review made three recommendations:

- The Act should be repealed as soon as possible, but if there was a delay the Airport flight restrictions should be removed immediately,
- Central Coast Council, who owns and operates the Airport, should adopt a clear framework to govern the Airport’s future management, and
- Address safety issues affecting the runway.

The independent review was initiated in late 2019 to determine whether the Act remained valid, following community concerns about the Airport’s operations.

[View the final report.](#)

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The Department acknowledges the Traditional Custodians of the land and pays respect to all Elders past, present and future.

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**Title:** CEO Response - Notice of Motion - WAR Act  
Repeal and declassification of airport contract  
damages

**Department:** Roads Transport Drainage and Waste



10 August 2020 Ordinary Council Meeting

Reference: F2004/06700-002 - D14103637

Author: Janine McKenzie, Unit Manager, Business Enterprise

Executive: Boris Bolgoff, Director Roads Transport Drainage and Waste

## Summary

This report provides a response to Item 5.2 - Notice of Motion – WAR Act Repeal and declassification of airport contract damages.

**Motion:** ***Notice of Motion – WAR Act Repeal and declassification of airport contract damages***

## Warnervale Airport (Restrictions) Act Review Recommendations

On 28 July 2020, the Minister for Planning and Public Spaces, Rob Stokes, released the outcomes of the recent Warnervale Airport (Restrictions) Act 1996 (WAR Act) Review (the Review) and announced that the NSW Government supported all the recommendations made by the Review.

The Review provided 3 main recommendations as follow:

### **1 The Reviewers recommend that the Act be repealed as soon as possible.**

- 1.1. If for any reason the Act cannot be immediately repealed, Section 6 of Part 2 of the Act, 'Restriction on aircraft movements', relating to the limit on daily take offs and landings should be suspended as soon as possible, as this section is administratively ineffective, and cannot feasibly be physically enforced.

### **2 Ensure community confidence: Steps should be taken to improve community and stakeholder clarity and certainty, as follows**

- 2.1. **Clarify governance:** The range of agencies who oversee aviation safety and operations as well as planning, amenity and environmental matters should be clarified for the community and other stakeholders as it is potentially confusing, and currently not explained.
- 2.2. **Clarify legislative hierarchy of statutory protections:** The range of statues that govern aviation safety and operations as well as planning, amenity and environmental matters should be clarified for the community and other

stakeholders as it is potentially confusing, and currently not publicly explained in relation to the airport.

- 2.3. **Clarify the process required for any change of use and development application:** The process for any change of use and development application should be clarified in relation to the airport and clearly communicated for the community and stakeholders.
- 2.4. **Council to clarify its position:** Council should clarify its position in relation to the airport and its future use and operations, including by means of robust environmental, social, economic and technical assessments. A business plan and operations plan for the airport should be produced. Council's position in relation to renewal of the license for the aero club should also be made public.

- 3 While unrelated to the Review Terms of Reference, the Review Team identified a real safety issue resulting from the trees at the northern end of the aerodrome, along Sparks Road, intruding into the Obstacle Limitation Surface (OLS) of the runway. **The Reviewers recommend that the tree height be reduced as a matter of urgency.**

#### **Staff Comments:**

The Notice of Motion – WAR Act Repeal and declassification of airport contract damages includes a copy of the Ministers media release on the Review outcomes and proposes nine motions in response.

The below provide staff comments and clarifications on the operation impacts to Council of the proposed motions.

**Proposed motions 1-4** have no identified implications for Council.

**Proposed motion 5** requests that staff provide advice on impacts of proactively releasing confidential information relating to the extinguishment of the Amphibious Aircraft Industries Pty Limited (AAI) contract with Council in 2018. As this does require seeking of legal advice and detailed consideration and analysis, Council staff will provide the requested report to Council on this item, once resolved.

**Proposed motion 6** requests a "comprehensive and 'publicly available' Report to Council' on the recommendations of the Review.

It should be noted that the recommendations quoted in this proposed motion are not the recommendations made in The Review report but were provided in the media release from the Minister for Planning and Public Spaces. While recommendations 1 and 3 in the media release are not materially different to The Review, the Minister's response to recommendation 2 was that "Central Coast Council, who owns and operates the Airport, should adopt a clear framework to govern the Airport's future management" does differ in the allocation of responsibility for implementation in the Review.



While the Review recommendation 2.4 identifies Council as the responsible agency to implement. Recommendations 2.1, 2.2 and 2.3 does not identify any particular agency to implement. These recommendations are to clarify to the community the governance, legislative hierarchy and development application processes around the Central Coast Airport (the Airport). As the Airport is governed by federal and state legislation, and local planning instruments, providing clarity to the community would require communication to be consistent across all levels of government. Council should consider whether it should implement these recommendations in partnership with other levels of government.

The Review recommendation 3 raises the safety risk associated with the trees at the northern end of the runway which impinged on the guidelines for the Obstacle Limitation Surface (OLS) of an Aircraft Landing Area (ALA). This safety risk was the subject of a Council Report on 12 August 2019, which outlined the risks associated with trees impinging on the recommended OLS at both the northern and southern end of the runway. The August 2019 Council Report stated that the current risk level was deemed as high both under the Council's Enterprise Risk Management Framework and the Civil Aviation Safety Authority's (CASA) Risk Matrix. This risk assessment has not materially changed since this report was written.

On 12 August 2019, Council resolved:

- 723/19 That Council engage an external specialist to undertake an up-to-date survey and analysis of the Obstacle Limitation Surfaces (OLS) at the southern and northern ends of the Central Coast Airport runway for both the 5% OLS and 3.33% OLS.
- 724/19 That Council commence the environmental studies required to seek approval to manage the tree heights at the northern and the southern ends of the Central Coast Airport runway.
- 725/19 That Council request the Chief Executive Officer to provide a further report on the outcomes of 723/29 and 724/19 as soon as possible

Since this time, Council has completed an up-to-date survey and analysis of the OLS as per resolution 723/19. The required environmental studies, as per resolution 724/19, were commenced in September 2019, the minimum period required for these studies was six months from September 2019 to at least March 2020, but the timeframe was dependent on what was observed during the study period. Councillors have been updated on the progress of these resolutions through Councillor Updates. Most recently, the study period was required to be extended to the end of May, and the environmental consultant is now preparing their final report. Once received, Council staff will be able to take this matter back to Council as per resolution 725/19.

It should be noted that while the Review recommendation confirms the risk assessed by staff in August 2019, Council is still required to act lawfully in managing the trees. The approval pathway(s) available to Council to reduce the height of the tree is a complex matter of law. Council staff have been seeking further advice on this to accompany the report back to Council once the environmental studies are completed.

**Proposed motion 7** looks to compare Central Coast Airport to several other regional airports. The Review identified four airports that, in their view, were most similar to Central Coast Airport. The criteria applied for this was that the airport was:

- An Aircraft Landing Area (ALA)
- owned by a NSW Council
- has a sealed runway

The four comparable airports identified by the Review were:

- Casino Aerodrome, owned by Richmond Valley Council
- Collarenebri Aerodrome, owned by Walgett Council
- Hillston Aerodrome, owned by Carrathool Shire Council
- Tottenham Aerodrome, owned by Lachlan Shire Council

The airports identified in proposed motion 7 of the Notice of Motion are not the same as those identified in the Review. Merimbula, Albany, Tamworth and Armidale airports are regional airports with regular passenger services. Ballarat and Scone host several general aviation businesses in addition to their local aero clubs.

The Review indicates that there 731 recorded aerodromes in Australia. In order to determine the best comparators, Council should first clarify their strategic intent for the Central Coast Airport. This will enable Council staff to identify the most relevant comparable airports.

**Proposed motion 8** looks to review the Council resolutions relating to the WAR Act in light of the Review outcomes. The resolutions of 27 November 2017 are those that have most relevance to the WAR Act, as follows:

- 756/17      *That Council fully support the Warnervale Airport Restrictions Act (WAR Act) (1996).*
- 757/17      *That Council not approve any development at the Warnervale Airport which is not consistent with the WAR Act (1996).*
- 758/17      *That Council not immediately extend or remove the current 1196 metre runway.*
- 759/17      *That Council not alter the position, length, width, thickness or strength of the current runway.*
- 760/17      *That Council immediately suspend all works, land acquisitions and expenditure on the Central Coast Airport, except where those works are required by law or the suspension of those works would put Council in breach of existing contractual obligations and/or expose Council to claims for damages or variation under any such contract.*

762/17      *That Council maintain the current site zoning, unaltered and not approve rezoning to SP2.*

Council should consider clarifying its position in relation to 756/17 and 757/17. These resolutions would likely no longer be relevant if the WAR Act is fully repealed, however, there would be some uncertainty if only a portion of the WAR Act is repealed, which is one of the possible outcomes of the Review.

Resolutions 758/17, 759/17, 760/17 and 762/17 are agnostic to the WAR Act, and would not be affected by a repeal of the Act. However, 760/17 has been particularly confusing as there is scope for interpretation. If Council resolves the proposed motion, some amended wording will be suggested in the subsequent report to Council.

**Proposed motion 9** has no identified implications for Council.

**Staff Recommendation:**

That the Chief Executive Officer prepare a Councillor briefing on the high-level strategic options for the Airport site and a subsequent Council report to resolve the strategic intent for the Central Coast Airport.

That Council note the progress to date to implement the resolutions around the Obstacle Limitation Surface (OLS) risk (723/19 and 723/19).