

AMENDED ITEM



Item No: 6.2
Title: Notice of Motion - Extreme Risks and Lease Liabilities
Department: Councillor

28 September 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14199998
Author: Greg Best, Councillor
Rebecca Gale, Councillor
Bruce McLachlan, Councillor
Troy Marquart, Councillor

Councillors Best, Gale, McLachlan and Marquart have given notice that at the Ordinary Council Meeting to be held on 28 September 2020 they will move the following motion:

- 1 That Council recognises and thanks Staff for their Risk Minimisation Initiative to introduce a revised 'Displacement Threshold' at Warnervale Airport / ALA requiring \$13,000.00 of new line markings as opposed to trimming the trees, due to Council Resolutions on foot.**
- 2 Further Council notes that all relevant parties other than Council, i.e. Central Coast Aero Club and HTH Holdings / Hudsons, are more than happy to deal with the vegetation issue as a matter of urgency.**
- 3 That Council notes with great concern that the new reduced thresholds have now resulted in disqualifying Emergency Medical Evacuation Aircraft / AirMed from accessing the Airport along with other Emergency Service Providers such as RFS on the eve of our 20/21 Bushfire Season.**
- 4 That Council notes repeated Staff Reports highlighting the need for urgent safety action around vegetation issues, concerns by CASA, benchmarked against their Safety Matrix and the recently released Warnervale Airport (Restrictions) Act Review recommending urgent action to mitigate vegetation safety issues, i.e. trees at the end of the runway. It is with this understanding and in light of the Staff Response (see 1 above) that Council now formally seek advice from our Insurers Statewide, as to whether these actions are sufficient for them to continue insuring this Council, its Ratepayers and indeed Councillors in the event of the loss of an aircraft, serious injury or death if found negligent that may lend itself to Manslaughter Charges.**
- 5 That further to Council's recent far reaching initiative to change the name of the Airport from an Airport to an ALA, Aircraft Landing Area, Staff investigate and report on what governance and due diligence was carried out prior to this decision being made and as to whether Council now as the owner and Lessor of the Airport has breached its obligations under the Lease Agreement due to possible**

implications that will now arise from the re-identification of the Airport to an ALA, reportably through no consultation.

Councillors Note

Councillors, clearly there are going to be policy, legal and governance issues around this Resolution.

However, the time for talk is over. No business I have ever been involved in would allow such risks to persist, particularly when they can so simply be removed.

So concerned am I on this issue, that I have taken some preliminary legal advice around the level of risk / 'extreme' risk that exists here. Make no mistake & rest assured that the full weight of the law will descend upon this Council & very possibly individuals.

If an aircraft clips trees and we have fatalities on the runway, this Council will in my view be extinct, careers and lives will be lost, and finger pointing will commence. What I am about is avoiding this, it is called 'Risk Minimisation' and we owe it to our Ratepayers not to expose them to millions of dollars of liability if an aircraft is lost. Not to mention the tragedy that will be around the loss of life.

We have three extremely eminently qualified organisations/agencies highlighting a clear and present danger and yet we do little. While I am not a Lawyer, I can only imagine how harshly the Courts and for that matter the State Government will be forced to act against such a dereliction of duty.

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 will provide a report in relation to the notice of motion. This report will be provided as a late item and will be made available by close of business on the Friday prior to the council meeting.

Attachments

- 1 CEO Response - Notice of Motion - Extreme Risk and Lease Liabilities D14207471

Title: CEO Response - Notice of Motion - Extreme Risk and Lease Liabilities

Department: Roads Transport Drainage and Waste

28 September 2020 Ordinary Council Meeting

Reference: F2004/06700-002 - D14207471

Author: Janine McKenzie, Unit Manager, Business Enterprise

Executive: Boris Bolgoff, Director Roads Transport Drainage and Waste



Summary

This report provides a response to Item 6.2 - Notice of Motion – Extreme Risks and Lease Liabilities.

Motion: *Extreme Risk and Lease Liabilities*

- 1** *That Council recognises and thanks Staff for their Risk Minimisation Initiative to introduce a revised 'Displacement Threshold' at Warnervale Airport / ALA requiring \$13,000.00 of new line markings as opposed to trimming the trees, due to Council Resolutions on foot.*
- 2** *Further Council notes that all relevant parties other than Council, i.e. Central Coast Aero Club and HTH Holdings / Hudsons, are more than happy to deal with the vegetation issue as a matter of urgency.*
- 3** *That Council notes with great concern that the new reduced thresholds have now resulted in disqualifying Emergency Medical Evacuation Aircraft / AirMed from accessing the Airport along with other Emergency Service Providers such as RFS on the eve of our 20/21 Bushfire Season.*
- 4** *That Council notes repeated Staff Reports highlighting the need for urgent safety action around vegetation issues, concerns by CASA, benchmarked against their Safety Matrix and the recently released Warnervale Airport (Restrictions) Act Review recommending urgent action to mitigate vegetation safety issues, i.e. trees at the end of the runway. It is with this understanding and in light of the Staff Response (see 1 above) that Council now formally seek advice from our Insurers Statewide, as to whether these actions are sufficient for them to continue insuring this Council, its Ratepayers and indeed Councillors in the event of the loss of an aircraft, serious injury or death if found negligent that may lend itself to Manslaughter Charges.*
- 5** *That further to Council's recent far reaching initiative to change the name of the Airport from an Airport to an ALA, Aircraft Landing Area, Staff investigate and report on what governance and due diligence was carried out prior to this decision being made and as to whether Council now as the owner and Lessor of the Airport*

has breached its obligations under the Lease Agreement due to possible implications that will now arise from the re-identification of the Airport to an ALA, reportably through no consultation.

Staff Comments:

Staff make the following comments with respect to the items in the motion.

- 1 That Council recognises and thanks Staff for their Risk Minimisation Initiative to introduce a revised 'Displacement Threshold' at Warnervale Airport / ALA requiring \$13,000.00 of new line markings as opposed to trimming the trees, due to Council Resolutions on foot.**

Noted

- 2 Further Council notes that all relevant parties other than Council, i.e. Central Coast Aero Club and HTH Holdings / Hudsons, are more than happy to deal with the vegetation issue as a matter of urgency.**

Council is dealing with the issue as a matter of urgency. Council must act lawfully in reducing the height of the trees. It has been a complex matter to ascertain the appropriate approval pathway and there are required study periods for the environmental studies of several months at certain times of year dependent on the species found on the site. The required study period for the environmental reports has now concluded, the draft reports are being finalised and these will also enable the finalisation of legal advice. A report to Council to determine whether to proceed is expected in November.

- 3 That Council notes with great concern that the new reduced thresholds have now resulted in disqualifying Emergency Medical Evacuation Aircraft / AirMed from accessing the Airport along with other Emergency Service Providers such as RFS on the eve of our 20/21 Bushfire Season.**

AirMed is not an emergency medical evacuation service, it undertakes planned patient transfers to and from hospitals. They have decided not to use the airfield as the tree hazards and temporary displaced thresholds mean that the airfield is now unsuitable for the type of aircraft they utilise. Prior to this decision, Council records show that AirMed used the ALA three (3) times in the past 18 months. They will continue to provide their patient transfer services to the Central Coast by utilising Newcastle airport.

Emergency patient transport to and from Wyong Hospital is done via helicopter directly to and from the helipad at the hospital. Warnervale ALA is not used for this. The ALA remains accessible for emergency providers like the Westpac helicopter.

The Rural Fire Service (RFS) continue to use the airfield as they have in the past. The RFS does not use the airfield in bushfire emergencies, as the airfield has never been suitable for their larger fire-fighting aircraft that they use and their bases in Newcastle and Sydney are close

by. The RFS did not use the Warnervale ALA in the 2019/20 bushfire emergency. The RFS have used and continue to use the Warnervale ALA for occasional training exercises.

4 That Council notes repeated Staff Reports highlighting the need for urgent safety action around vegetation issues, concerns by CASA, benchmarked against their Safety Matrix and the recently released Warnervale Airport (Restrictions) Act Review recommending urgent action to mitigate vegetation safety issues, i.e. trees at the end of the runway. It is with this understanding and in light of the Staff Response (see 1 above) that Council now formally seek advice from our Insurers Statewide, as to whether these actions are sufficient for them to continue insuring this Council, its Ratepayers and indeed Councillors in the event of the loss of an aircraft, serious injury or death if found negligent that may lend itself to Manslaughter Charges.

There has been one staff-initiated Council report on the issues of the trees impinging on the Obstacle Limitation Surface, which was on 12 August 2019. From this, staff immediately commenced the actions in the resolution which included the required environmental studies to seek approval for the tree heights to be reduced.

Since that time, Council has received four updates on progress of these actions in response to Notices of Motion and in Councillor Updates, as follows:

Ordinary Meetings:

- 9 March 2020: CEO Response to Notice of Motion - Trees in Flight Plan – Council Liabilities
- 10 August 2020: CEO Response to Notice of Motion WAR Act Repeal and declassification of airport contract damages

Councillor Updates:

- 10 July 2020: Management of Obstacle Limitation Surfaces (OLS)
- 11 September 2020: Warnervale ALA Temporary Displaced Thresholds

Council formally notified its insurer, Statewide Mutual of this matter on 12 August 2020 which included providing the document 'Review of the Warnervale Airport (Restrictions) Act 1996' from Abigail Goldberg and Peter Fiegehen in April 2020. They are aware that the subject trees are on private land and have been identified as an ecologically endangered community under the NSW Biodiversity Conservation Act 2016, both issues that Council's has little control over. Our insurance adviser has confirmed that our public liability insurance policy provides cover in the event that a third party loss results from the negligence of Council.

It is the pilot's responsibility to determine whether it is safe for their plane to take off and land at any aerodrome. Our insurance adviser is aware that information on the physical characteristics of the runway are available on Council's website as well as with CASA and have advised that this is appropriate. It is expected that Council acts reasonably with regards to

management of the facility and, if necessary, restrict activities if it is not safe to proceed. Our insurance adviser has raised no concerns with Council having acted to date in a manner that would result in Statewide Mutual denying insurance cover for any claims related to the loss of an aircraft.

- 5 That further to Council's recent far reaching initiative to change the name of the Airport from an Airport to an ALA, Aircraft Landing Area, Staff investigate and report on what governance and due diligence was carried out prior to this decision being made and as to whether Council now as the owner and Lessor of the Airport has breached its obligations under the Lease Agreement due to possible implications that will now arise from the re-identification of the Airport to an ALA, reportably through no consultation.**

Council does not have any lease agreements with anyone in association with the ALA. Council does have a License Deed with the Central Coast Aero Club to grant them non-exclusive access to the Council-owned Airport Land. There is a clear definition of Airport Land, which is not dependent on the name of the airfield.

It should be noted that the airfield has always been classified as an Aircraft Landing Area (ALA), even before the name was changed.

Staff Recommendation:

That Council consider the information provided in the CEO Response to the Notice of Motion – Extreme Risk and Lease Liabilities in their consideration of the Notice of Motion.

Link to Community Strategic Plan

Theme 2: Smart

Goal C: A growing and competitive region

C3: Facilitate economic development to increase local employment opportunities and provide a range of jobs for all residents.