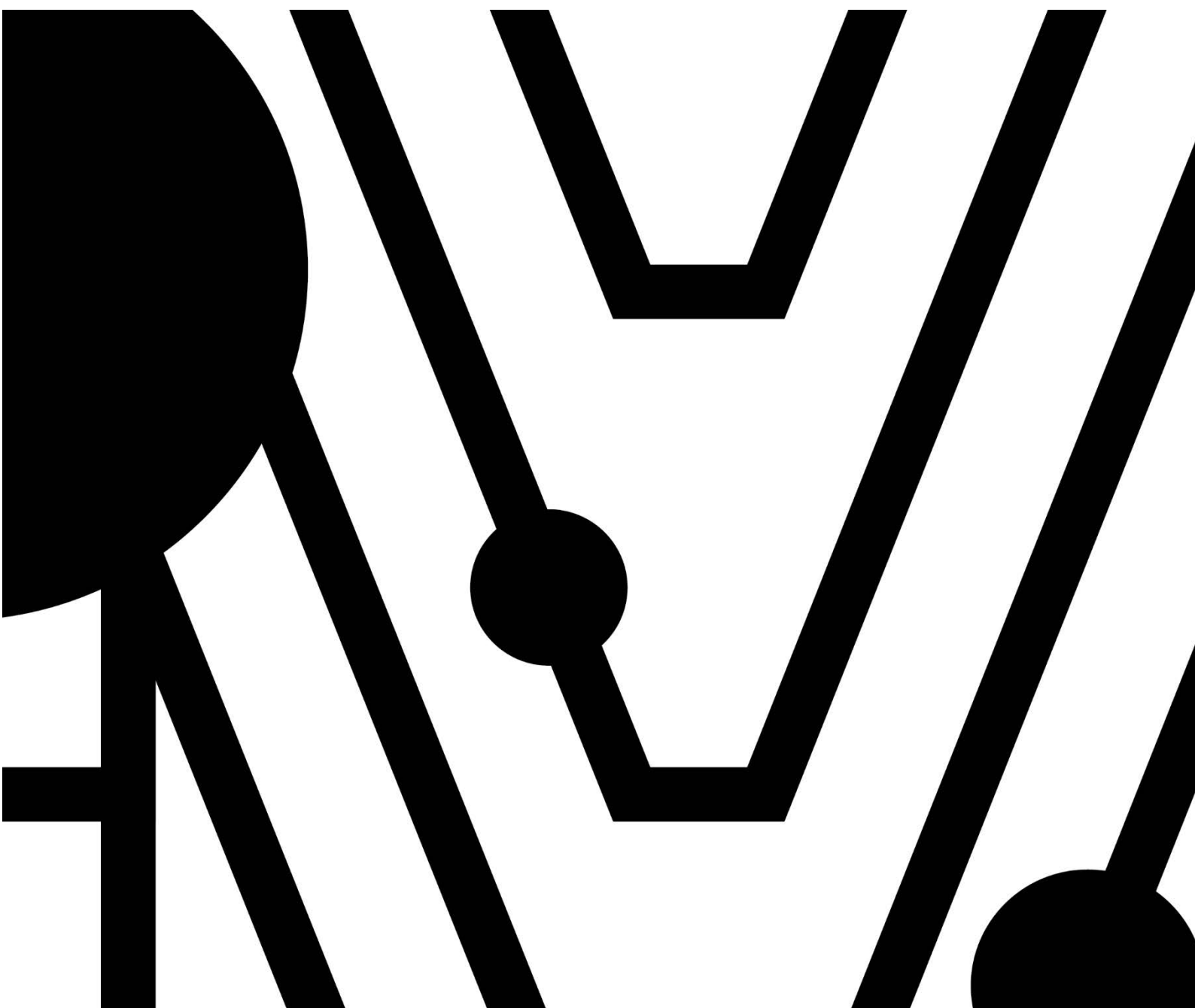


FINAL

Review of the Warnervale Airport (Restrictions) Act 1996

Abigail Goldberg and Peter Fiegehen
April 2020



FINAL

Review of the Warnervale Airport (Restrictions) Act 1996

Abigail Goldberg and Peter Fiegehen
April 2020

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the authors disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

27 April 2020

Table of Contents

Executive Summary	5
Background	5
Scope of the Review	5
Approach to the Review	5
Outcomes of stakeholder consultation	6
Triggers of uncertainty	7
Themes emerging from the Review investigations	8
Overall Review findings	10
Review recommendations	10
1.0 Introduction	13
1.1 Objective of this Review	13
1.2 About the Reviewers	14
1.3 Approach to the Review	15
1.4 Previous Review 2017	16
1.5 Consultation	16
1.6 Structure of the report	17
2.0 Uncertainty re the WAR Act 1996	18
2.1 The context	18
2.2 Background to the Warnervale Airport (Restrictions) Act 1996	18
2.3 The site	19
2.4 Warnervale Airport	20
2.5 Maintaining confidence in the integrity of the legislative system	24
2.6 Understanding the triggers of uncertainty	25
2.7 Stakeholder views on the WAR Act 1996	26
2.8 Related statutory considerations	29
2.9 Comparison to similar airports in NSW and other jurisdictions	32
2.10 Emerging themes	33
3.0 Achieving clarity and certainty	35
3.1 Threshold question: does the Act remain relevant and necessary?	35
3.2 Recommendations	36
Recommendation 1.0: Repeal the Act	36
Recommendation 2.0: Ensure community confidence	37
Recommendation 3.0: Urgent safety recommendation	38

4.0 Conclusion	40
4.1 Review Team findings	40
4.2 Response to Terms of Reference	40
4.3 Urgent safety consideration	43
4.4 Review exclusions	43
Appendix A: History of the WAR Act 1996, previous review and compliance matters	44
Appendix B: Review of aviation, environment and planning legislation	46
Aviation legislation	46
Environment and Planning Legislation	50
Appendix C: Statutory frameworks for similar airports in other locations in NSW	55
Comparative Planning Controls* for similar size NSW Aerodromes/ Airports	55
Appendix D: Detailed review of the Act	58
Appendix E: Analysis of submissions	63
Appendix F: Historical media articles regarding Warnervale airport	65
Appendix G: Australian Airspace Structure	68
Appendix H: Review 2017	69

Executive Summary

Background

Warnervale Airport is owned by Central Coast Council. The *Warnervale Airport (Restrictions) Act 1996* (the Act) imposes restrictions on the future development and operation of the airport.

The origin of the Act is unusual in that it was a ‘private member’s bill’; a legislative bill introduced by a private Member of Parliament rather than part of a government’s planned legislation. Such bills are uncommon, and very rarely become law, however the Act was assented to in July 1996.

The overall objective of the current *Warnervale Airport (Restrictions) Act 1996 Review of 2020* (this Review) is to extrapolate from a preceding Review (2017), which found that the broad objectives of the Act remained valid. While not explicitly stated these objectives were interpreted as being to limit future operations, protect the amenity of the surrounding area and ensure transparent decision-making. Nevertheless, the Review identified the need for some amendment particularly in specialised areas of aviation, planning and administration.

Accordingly, the Terms of Reference for this Review 2020 are structured to address the preceding Review 2017 recommendations, and the current independent reviewers were selected for their specialised experience across infrastructure, planning, governance and executive management.

Scope of the Review

The current Review Team was tasked with considering legislative amendments required to facilitate the operations of the Airport in a manner consistent with that prior to when the flight movement restrictions were triggered. The threshold issue required to be investigated, with appropriate recommendations made, was set out as:

“whether the Act remains relevant and necessary.”

If the Review was to conclude that the Act remains relevant and necessary, then a number of areas of the Act were to be examined by the Review Team in detail including flight movement restriction provisions, runway length restriction provisions, expansion proposal triggers, updating and alignment of administrative matters, definitions and investigative powers as well as flexibility within the Act.

Approach to the Review

The Review Team adopted an approach which combined a standard NSW government review methodology, as applied by agencies ranging from NSW Treasury to Infrastructure NSW and EPA, with elements of an aviation and air safety review. Emphasis was placed on providing opportunities for community and stakeholder engagement in a transparent, secure and supportive manner.

The following steps were included:

- a. Background research, verification and validation
- b. Public submissions invited with written submissions received, reviewed and analysed

- c. Public meeting undertaken with verbal submissions received, reviewed and analysed
- d. Written response to the Terms of Reference, including recommendations.

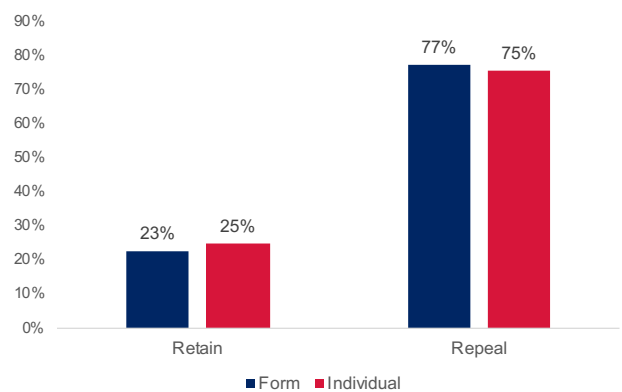
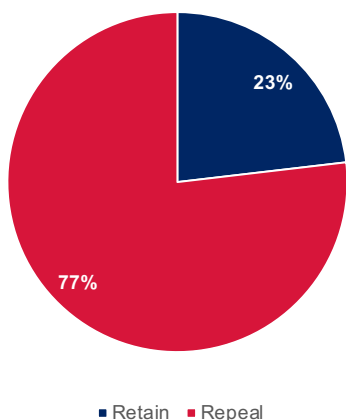
Outcomes of stakeholder consultation

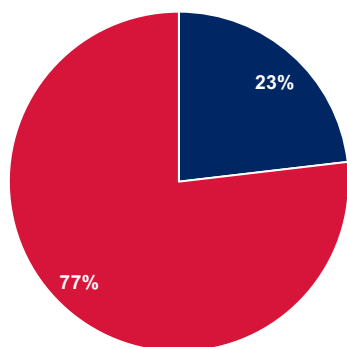
The Review, via the Hunter and Central Coast office of the Department of Planning, Industry and the Environment (DPIE), received **939** unique stakeholder and community inputs via both written submissions (927), and face-to-face presentations (15 – three of whom also provided written submissions) at the public meeting. Of the submissions:

- **908** were from the general community. Of these, **79%** were ‘form’ letters (non-unique), being standardised letters dealing with frequently occurring matters.
- **7** were from elected officials.
- **1** was from an ex-politician.
- **6** were from aviation groups.
- **1** was from a community group.
- **2** were from environment groups.
- **1** was from local government officers.
- **1** was from a business group.
- **1** was from a property/development industry group.

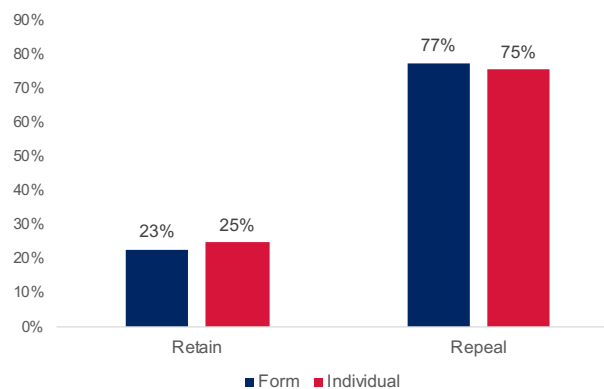
The overall outcome, as analysed by the Hunter and Central Coast office of the Department of Planning, Industry and the Environment (DPIE) indicated that approximately 25% of submissions were in favour of retention of the Act, while 75% supported the Act being repealed.

Overall outcome of written submissions in relation to repealing or retaining the Act





■ Retain ■ Repeal



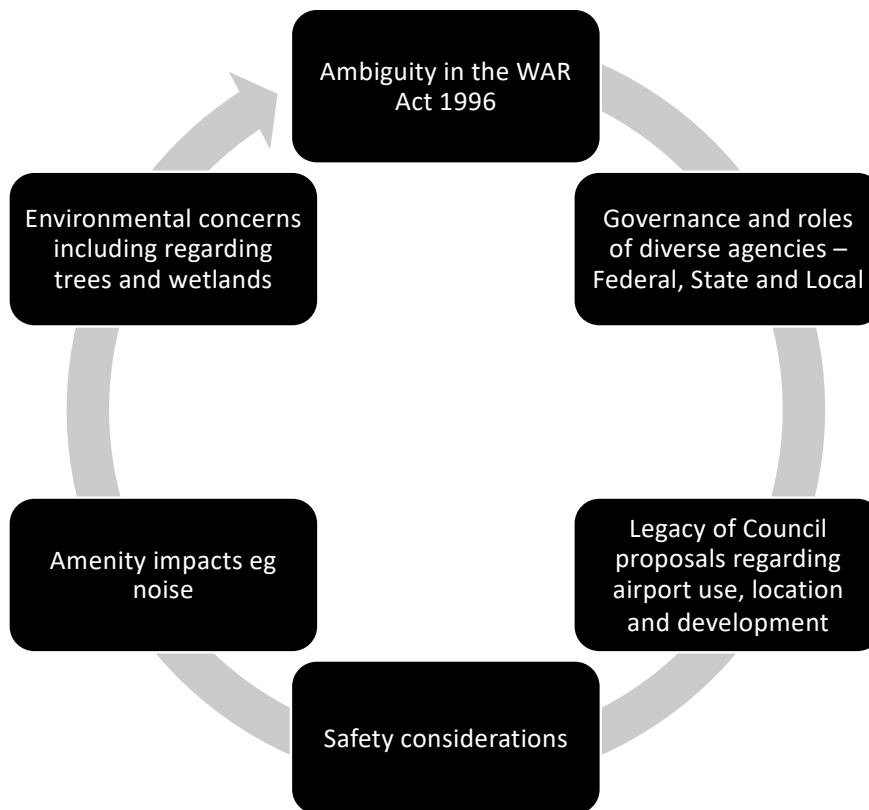
■ Form ■ Individual

Triggers of uncertainty

The Terms of Reference for this review point out that uncertainty was created when the airport runway was extended in 2015, thereby triggering State compliance action and the flight movement restriction provision of the Act.

Background information, as well as submissions, indicated to the Review Team that there are in actuality a number of causal factors of uncertainty regarding the Act in addition to that of the runway extension and subsequent flight movement restriction. These triggers were identified by the Reviewers as ambiguity of the Act itself, the role of diverse agencies in governance of the Airport and aviation activities, amenity impacts and environmental concerns are causes of community and stakeholder suspicion and wariness.

Triggers of uncertainty



Themes emerging from the Review investigations

The Reviewers find that there are multiple causes of uncertainty in relation to the Act related to the triggers of uncertainty outlined above. These can be summarised in a number of themes, including:

There is a legacy of Council ideas relating to the Airport, with related distrust

Historically Council and individual Councilors have mooted a variety of ideas related to the airport and aviation opportunities. Several of these are idealistic and unfeasible because of existing airport constraints including procedural approvals, the length of the runway, and surrounding topography and environmental conditions. These ideas were also not translated in to planning proposals, and appear to have been made public prior to business case and environmental assessments.

This legacy is the root cause of much distrust, which Review consultation indicates continues to persist. It is aggravated by Council not having a current, clearly stated position, public business or operations plan for the Airport.

Diverse and divergent views exist

While the Review Team understands that the rationale for the Act was to assist in reducing community uncertainty regarding the Airport, while ensuring ongoing Airport operations, the Review has highlighted persistent diverse and frequently opposing views regarding the Airport, its operations, and the benefits of the Act in controlling these. Community and stakeholder tensions remain apparent.

Legislative duplication exists

An investigation into the interaction of the Act with other legislation, has highlighted that the Act duplicates several other legislative instruments, without any unique contributions other than being site specific.

The Act is relatively aged and not consistent with more current instruments, or modern legal drafting approaches. It is ambiguous in its wording, and lacks a clear Objective and Explanatory Notes.

Statutory frameworks for other airports are less complex

Only Sydney Airport, an airport of substantially different scale and operations, was found to have specific legislation. A comparative analysis of the statutory frameworks that apply to airports of comparable scale in NSW and other jurisdictions indicates that the Act is unique and unprecedented. All other similar airports rely on the layering of Federal aviation instruments, State planning instruments and Local Environmental Plans (LEPs), which are Council driven but State-approved statutory planning instruments.

The Act is also difficult to administer. For example, the limit of daily take offs and landings is unclear in how it relates to some activities e.g. pilot training, which may require multiple take offs and landings.

Safety considerations exist

While the community and local residents are concerned about the safety implications of living close to an airport, aviation safety is strictly governed by several aviation and air safety laws and guidelines, and the safety record of Warnervale Airport is very good.

Potential operational, compliance and safety considerations exist as a result of the Act not being easily known or apparent to pilots, who rely on CASA law and the ERSA, and who are primarily responsible for aviation safety at an ALA, or minor airport, such as Warnervale. In the case of an emergency, a pilot would be unlikely to have the time or awareness of an Act that manages operational information at any particular aerodrome, especially where there is a unique and unprecedented item of legislation

The existing trees along the northern edge of Sparks Road, which intrude into the OLS, however pose a real hazard and safety concern for pilots and the ALA.

Social and economic benefits of a local Airport are valued

Many stakeholders value the Airport as a community facility, with social and economic benefits. The aviation training opportunities provided by the Aero Club are strongly supported by many. Others however see little benefit in the airport and consider it a threat, or exclusive facility for the wealthy.

Environmental concerns exist

Proximity to the wetlands is both beneficial for the airport as it creates a natural buffer for operations, and challenging, as the wetlands restrict development and require special care. A number of

Commonwealth, State and local statutes are in place to protect these environmental assets, which consultation confirms are of significant importance to the community.

Overall Review findings

The Review Team finds that the Act has symbolic relevance for the community, but that it has not resolved or even eased community and stakeholder concerns. The Act has also proven to be administratively challenging to oversee.

The Review Team observes that the Act is without precedent in that it is the only item of legislation of its kind in place for a local airport. The Act is atypical also in its drafting. For example, the Act lacks a clear, stated Objective, and Explanatory Notes are not included. At 24 years old, the Act is in addition relatively aged, which is reflected in matters such as the land definition, or lot references, which are either superseded or no longer exist.

As the Act was found to duplicate parts of other legislation, including Civil Aviation Safety Authority (CASA) and environmental planning legislation, it is counter to the contemporary practice of streamlining and modernising legislation. Where duplication exists, analysis of the Act found it to be outdated as other legislation has been updated more frequently than this unusual item.

The Review Team accordingly determines 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.

Review recommendations

1.0 The Reviewers recommend that the Act be repealed as soon as possible.

1.1 Interim action if the Act cannot immediately be repealed

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.

2.0 Ensure community confidence

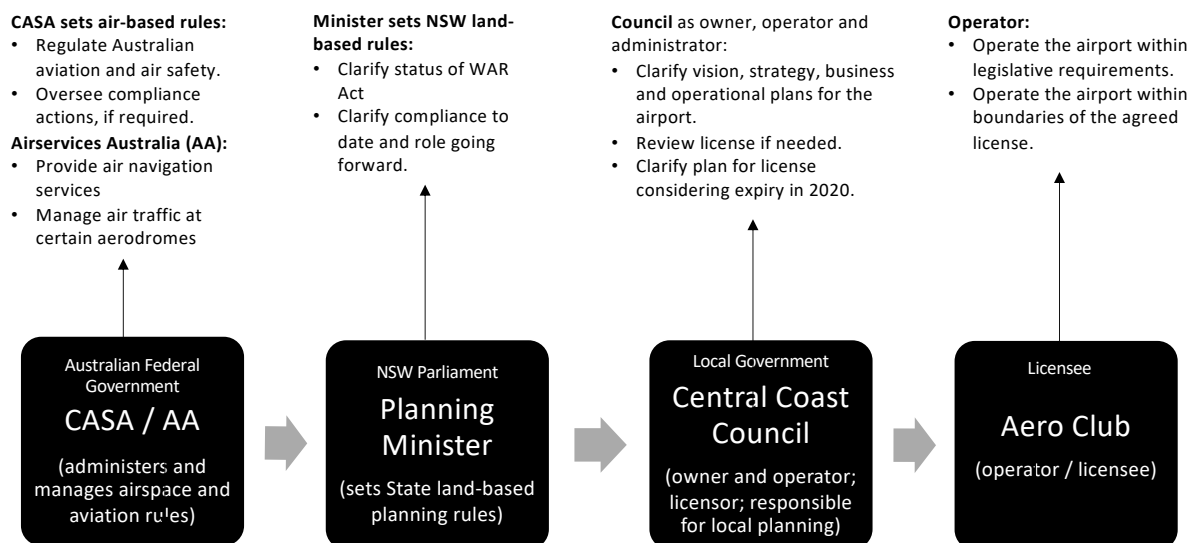
Steps should be taken to improve community and stakeholder clarity and certainty. Recommendations in this regard are outlined below.

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.

The Reviewers have identified this hierarchy of governance, and responsibilities of each organisation, to be as illustrated below.

Hierarchy of governance



2.2 Clarify legislative hierarchy of statutory protections

The range of statutes 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. As Council has not followed this process in the past, they should also be reminded of procedural requirements, noting that these are set out in the EP&A Act 1979, and that thorough assessment of environmental and social factors is an essential prerequisite of any except the most minor of applications.

Additionally, there are Aviation Procedural Requirements, informed by the Civil Aviation Safety Authority, in relation to any changes that affect airport governance and flying in the Australian National Airspace System, which would need to be addressed.

In this regard, the inherent limitations of the site should be highlighted for all stakeholders, noting that many stakeholders are still of the impression that expansion of the airport is feasible when it is in actuality highly constrained by both its physical characteristics and legislative requirements.

The community, stakeholders and Council should also be updated regarding changes to the EP&A Act requiring applications to be determined by independent State, Regional or Local Planning Panels (depending on the scale and value of the application).

2.4 Council to clarify its position

The Review Team considers that the root cause of much community uncertainty is historic ideas put forward by Council and individual Councillors. Moreover, the Review Team observes that Council does not have a current, endorsed, publicly stated position with regard to the airport.

As such, the Review Team suggests that 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.

3.0 Urgent safety recommendation

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.

1.0 Introduction

Warnervale Airport is owned by Central Coast Council (the Council). The *Warnervale Airport (Restrictions) Act 1996* (the Act) imposes restrictions on the future development and operation of the airport.

1.1 Objective of this Review

The overall objective of the *Warnervale Airport (Restrictions) Act 1996* Review 2020 (the Review) is to make recommendations regarding how to remove the current uncertainty regarding the legislation, which was created when the airport runway was extended by Council in 2015. This extension triggered the flight movement restriction provisions of the Act (Part 2 of the Act).

The Review has been undertaken for the NSW Minister for Planning and Public Spaces (the Minister) and focuses on potential legislative amendments.

1.1.1 Terms of Reference

Terms of Reference for the review are published on the Planning Portal of the NSW Department of Planning, Infrastructure and Environment (DPIE). In brief, the Review Team was tasked with considering legislative amendments required to facilitate the operations of the Airport in a manner consistent with that prior to when the flight movement restrictions were triggered.

The threshold issue required to be investigated, with appropriate recommendations made, was set out as:

“whether the Act remains relevant and necessary.”

If the review concludes that the Act remains relevant and necessary, then the following matters were to be examined:

- **Flight movement restriction provisions** (Part 2 of the Act) – to assess whether restrictions are required, and if retention is preferred, to give consideration to flights counted (and how), curfews, monitoring and related matters.
- **Runway length restriction provisions** (Part 3 of the Act) – to set current length and require any extension to be subject to an expansion proposal review (under Part 4), noting that historically the existing runway length has been a matter of dispute.
- **Expansion proposal triggers** – Consideration and documentation of the range of developments that would trigger the Act's procedures for reviewing expansion proposals (Part 4 of the Act). This recognises that expansion of Airport operations may require modifications to the runway length (current provision) as well as other aviation safety requirements such as lighting, ground and navigational aids.
- **Updating and alignment of administrative matters, definitions and investigative powers** – recommendations on administrative amendments to address anomalies, alignment of definitions with relevant state and federal legislation and introduce investigative powers (Part 5 of the Act).
- **Flexibility** – recommendation on any key parameters of the Act that should be capable of variation (e.g. by prescription in regulations).

The Review Team was also required to:

- **Review the interaction and consistency of the Act with other legislation** – undertake comparison with other relevant legislation with particular emphasis on identifying areas of duplication.
- **Examine statutory frameworks for similar airports** – undertake a comparative analysis of the statutory frameworks that apply to airports of similar scale in NSW and other Australian jurisdictions.
- **Seek and consider submissions** – invite and review **submissions** by any interested individual or entity.

Reviewers were instructed that the future use of the airport land, and the comparative economic benefits of any alternate uses, was out of scope of the Review as the future use of the airport is a matter for Council, as the airport owner. The economic benefits of the airport in its current form were also not to be investigated or considered by the Review Team, again as these are matters for the airport owner.

Reviewers were asked to meet with the Minister and the Central Coast Mayor. Fortnightly progress meetings and reports were required for senior executives of DPIE and Council.

The Hunter and Central Coast office of DPIE provided secretariat support to the Review Team.

1.2 About the Reviewers

The Review has been undertaken by experienced, independent Reviewers:

Abigail Goldberg is expert in infrastructure, urban planning, governance and executive management. She has qualifications in urban and regional planning, urban design and business administration, and is a Fellow of both the Planning Institute of Australia and the Australian Institute of Company Directors. Abigail has extensive review experience, having undertaken more than thirty reviews for various Government agencies including Infrastructure NSW, NSW Treasury, NSW EPA and Schools Infrastructure NSW.

Abigail is currently Chair of the Sydney Central City Planning Panel and Chair of Local Planning Panels for the City of Ryde and Willoughby City Council, as well as alternate Chair for the City of Sydney. In this capacity Abigail regularly oversees public meetings and decision making relating to a wide range of city-shaping and regionally significant development matters.

Abigail completed the maximum term as a Member of the NSW Independent Planning Commission (previously the Planning Assessment Commission) in May 2018. In that capacity she had been active for six years in Charing Commissions, and as a Commissioner participating on panels across a range of difficult and complex State significant matters, ranging from resource extraction to urban renewal.

Abigail has been a Non-Executive Director for several Boards whose work relates to infrastructure, and was previously Chief Executive Officer of Metro Transport (the private company which owned Sydney's Light Rail and Monorail), and General Manager of the South Sydney Development Corporation.

Peter Fiegehen has a 47-year career in aviation and executive management. In aviation he has qualifications and experience as a pilot, accident investigator, air traffic controller, aircraft engineer, aviation search and rescue mission coordinator, risk and safety manager. He has held these positions in Government and the Royal Australian Air Force. Peter has held the position of Group General Manager for Operations, Regulatory Compliance and Safety for 21 airports with the National Airports Corporation.

Peter has held senior positions with major global aviation technology corporations as CEO, Head of Business Strategy and Capture and Bid Manager for aviation systems and equipment.

Peter is a Lecturer and Instructor of aviation subjects for Aerodynamics, Aircraft Operation and Performance, Air Traffic Control, Human Factors, Risk Management, Accident Investigation and Emergency Response and Recovery Management.

Peter has been a Board member and Regional Director for APAC for the Air Traffic Control Association as well as a Board member and APAC Regional Director for the global Air Traffic Control Association for the past 6 years. He also has private enterprise experience as the founder and director of three Australian companies and three sole trader businesses.

1.3 Approach to the Review

The Review Team adopted an approach which combined a standard review methodology as applied in the NSW government, with elements of an aviation and air safety review. Emphasis was placed on providing opportunities for community and stakeholder engagement in a transparent, secure and supportive manner.

The approach to the Review included the following steps:

- a. Background research, verification and validation
 - Review of background material including preceding Review (2017).
 - Comprehensive review of the history of the Act and airport, as well as current use and emerging issues.
 - Detailed review of the Act and related legislation.
 - Deep and broad discovery of evidence and opinion.
 - Site visits to the airport and surrounds.
 - Briefings from DPIE and Council.
 - Verification and validation of matters for consideration through liaison with relevant agencies e.g. CASA.
- b. Public submissions
 - Publicly advertised invitation for written submissions.
 - Receipt, review and analysis of written submissions.
- c. Public meeting
 - Publicly advertised invitation for interested groups and individuals to present to Reviewers.
 - Public meeting for registered speakers chaired by the lead reviewer, structured to provide a safe and supportive environment for people unused to public speaking as much as those comfortable and familiar with it. Transparency was emphasised, with the public meeting enabling the Review Team as well as stakeholders to hear diverse views on the matter.
 - Review and analysis of verbal submissions.
- d. Report writing including recommendations
 - Written response to the Terms of Reference including recommendations.

To avoid confusion, the Review Team notes that a separate review is being undertaken by Council simultaneous with this review. Council's review is in relation to key decisions made regarding Warnervale

Airport in its capacity as owner of the Airport. It is unrelated to the *Warnervale Airport (Restrictions) Act 1996* Review 2020 of legislation (focusing on the Act itself), which is the subject of this report.

1.4 Previous Review 2017

A Review of the Act was undertaken in 2016 and 2017 (**Appendix H: Warnervale Airport (Restrictions) Act 1996 Review, City Plan Services, 2017**) (the Review 2017). The Review 2017 addressed section 17(1) of the Act:

"The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives."

The Review 2017 found that the broad objectives of the Act, interpreted as being to limit future operations, protect the amenity of the surrounding area and ensure open decision-making, remained valid. The Review recommended that the Act be retained, but also identified the need for some amendment particularly in the areas of aircraft movement restrictions, triggers for review procedures, definition of terms and a more transparent planning and review framework.

This Review 2020 extrapolates from that preceding, with Terms of Reference structured to address the Review 2017 recommendations, and by the engagement of independent reviewers selected for their specialised experience across infrastructure, planning and aviation.

1.5 Consultation

The Review, via the Hunter and Central Coast office of the Department of Planning, Industry and the Environment (DPIE), received **939** unique stakeholder and community inputs via both written submissions (927), and face-to-face presentations (15 – three of whom also provided written submissions) at the public meeting.

The Review Team also consulted the Civil Aviation Safety Authority (CASA) to verify and validate some matters concerning aviation regulations involving aerodromes and airspace.

Of the submissions:

- **908** were from the general community. Of these, **79%** were 'form' letters (non-unique), being standardised letters dealing with frequently occurring matters.
- **7** were from elected officials.
- **1** was from an ex-politician.
- **6** were from aviation groups.
- **1** was from a community group.
- **2** were from environment groups.
- **1** was from local government officers.
- **1** was from a business group.
- **1** was from a property/development industry group.

While every effort was made by the Departmental team analysing the submissions to exclude multiple submissions from the same person or group, as well as submissions from fictitious email addresses, there is a small likelihood that some of these remain. Nevertheless, the overall outcome indicated that approximately 25% of submissions were in favour of retention of the Act, while 75% supported the Act being repealed.

The most frequently raised issues during the consultation process include:

- Potential for airport expansion, both as a negative and positive concern
- Potential impact on viability of the Aero Club, as a negative concern, with anxiety at the prospect of closure
- Benefits of the airport as a public facility
- Environmental concerns regarding the wetlands adjoining the airport, which are highly valued by the local community and also mapped in a State Environmental Planning Policy
- Benefits of the use of airport for emergency services, particularly considering recent bushfire and flood events
- Potential for development around the airport, both as a negative and positive concern.

A more detailed breakdown of consultation outcomes is included in Section 2.7 and Appendix E.

The Review Team has carefully considered all feedback provided by the community and stakeholders. The findings from the public consultation have informed the recommendations in the report.

1.6 Structure of the report

The review report is structured as follows:

An **Executive Summary** is provided upfront, including all recommendations.

Section 1, this **introduction**, outlines the objective of the review, introduces the review team and their approach, and summarises consultation outcomes.

Section 2 outlines the background to the Act and addresses the **uncertainty** regarding it, and the triggers for this. It also considers related statutory matters and comparisons to similar airports in NSW and other jurisdictions.

Section 3 outlines the review **recommendations** for achieving clarity and certainty in the Act.

A summary of findings, or **conclusion** is provided in Section 4.

A number of **appendices** provide supporting information.

2.0 Uncertainty re the WAR Act 1996

2.1 The context

Warnervale Airport is owned by Central Coast Council. The *Warnervale Airport (Restrictions) Act 1996* (the Act or 'WAR' Act) imposes restrictions on the future development and operation of the airport.

The overall objective of the current *Warnervale Airport (Restrictions) Act 1996* Review of 2020 (this Review) is to make recommendations regarding ways to remove the uncertainty created when the airport runway was extended, thereby triggering the flight movement restriction provisions of the Act.

2.2 Background to the Warnervale Airport (Restrictions) Act 1996

The origin of the Warnervale Airport (Restrictions) Act 1996 (the Act) is unusual in that it was a private member's bill. Private member's bills are legislative bills that are introduced by a private Member of Parliament rather than being part of a government's planned legislation. Such bills are uncommon, and very rarely become law, however the Act was assented to in July 1996, and commenced in June 1997.

It is understood that the Act was put forward at a time when there was uncertainty regarding the Airport's future, as further explained within the body of the report. It is inferred that the intention was for the Act to assist with community and stakeholder confidence regarding the airport operations, while ensuring the ongoing operation of the airport.

The Act is without precedent in that it is the only item of legislation of its kind in place for a local airport. While there are many general airport and aviation Acts (**Appendix B**), airport specific legislation is unusual. The key example uncovered by the Reviewers is the Sydney Airport Curfew Act 1995. This curfew Act is specific to Sydney Airport, a major aviation gateway and the busiest airport in Australia.

The Act is atypical also in its drafting. For example, the Review 2017 points out that the Act lacks a clear, stated Objective, or Objectives. Explanatory notes are also not included, making it challenging for the reader to understand specific factors, such as the limitations (88) on aircraft movements (Part 6.1), and the various penalties (Parts 2 and 3), among other matters. At 24 years old, the Act is in addition relatively aged, which is reflected in matters such as the land definition, or lot references (Part 1.3), which have either been superseded or no longer exist.

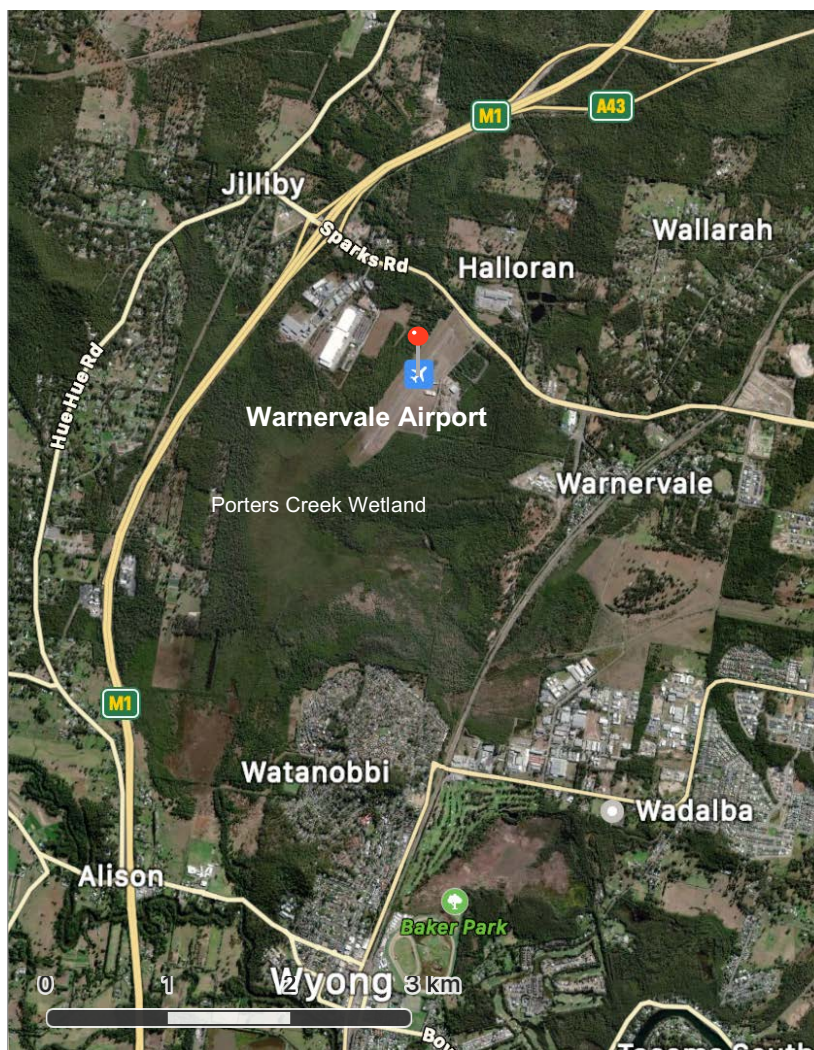
As the Act duplicates parts of other legislation, including CASA legislation, it is counter to the contemporary practice of streamlining and modernising legislation to ensure it is efficient, easy to access and comprehend, responsive and flexible. Duplication makes legislation confusing for users, e.g. pilots, who are trained to refer to CASA statutes and guidelines, and may not even be aware that this atypical legislation even exists. In addition, duplication may cause egregious legal action if ever challenged.

Further detail is provided at **Appendix D**.

2.3 The site

Warnervale Airport is located within the suburb of Warnervale, in the Central Coast Local Government Area (LGA). The site is situated between a number of hills, less than 5km from the Lake Macquarie LGA, in the northern part of the Central Coast region.

Warnervale Airport in its local context



The northern boundary of the site is Sparks Road. Vehicular access to the airport is from Sparks Road via Jack Grant Avenue. Electricity infrastructure is located within the Sparks Road corridor. Mature trees border the road on its northern edge.

Buttonderry Creek generally flows in a west-east direction immediately north of the Sparks Road corridor. Porters Creek Wetland (the wetland) generally occupies the south of the site, as well as establishing the southern boundary. The wetland is the largest freshwater wetland on the Central Coast, and is considered to have high conservation value due to its ecological and biological diversity. The wetland also acts as a natural filter to reduce the level of industrial contaminants entering Wyong River, and is used as an emergency drinking water supply during times of severe drought.

The airport is within an area referred to in local planning terms as the Wyong Employment Zone (WEZ). Within 1.5km the airport is generally surrounded by existing or planned industrial subdivisions, or environmental lands such as the wetlands.

Existing residential and rural residential subdivisions occur in proximity to the airport. These areas include schools, aged care facilities and hospitals. Residential areas within around 7.5km include, but are not limited to:

- Watanobbi, Warnervale and Wadalba to the south and east
- Jilliby and Alison to the west of the Pacific Motorway
- Wyee and Bushells Ridge further north, in Lake Macquarie LGA.

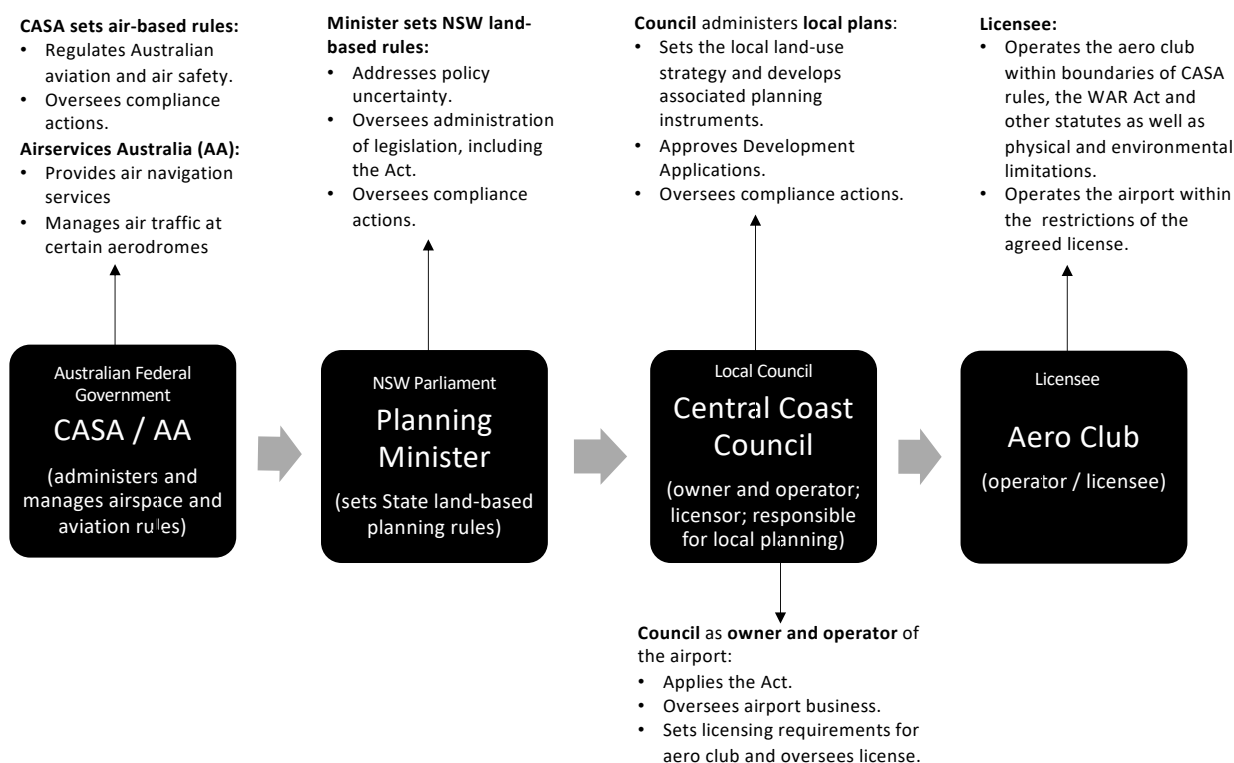
A number of urban release areas have also been identified for future residential development in proximity to the airport.

2.4 Warnervale Airport

Warnervale Airport, also known as Central Coast Airport, is located 70 kilometres north of Sydney and is owned and operated by Central Coast Council who provide an operating license to the Central Coast Aero Club. The Aero Club license expires late 2020, with Council currently investigating next-steps in this regard.

Federal, State and Local Government bodies have a role to play in administration of the Airport, as well as there being a licensee. These existing roles are illustrated below.

Warnervale Airport existing governance structure



2.4.1 Operational activities

CASA provides definitions for airport types. An 'Airport' is a civil aerodrome designed for the take-off and landing of passenger-carrying aircraft for the general public and/or cargo aircraft. For operational purposes, Warnervale Airport is an 'Aerodrome' and, by regulatory definition, an 'Aircraft Landing Area' (ALA). An ALA is of lower prescribed operating standards than a Certified or Regulated Aerodrome. ALAs are limited in the type of operations that can be carried out, and place a high level of operational requirements on the pilot.

The Warnervale Airport ALA is a facility for emergency services such as Police, Ambulance and Fire Services as well as an emergency diversion aerodrome for aircraft in distress. It provides a refuelling stop for aircraft on route to other destinations.

As for other Council facilities, the airport is a forum for various stakeholder and community activities and accommodates airport and flying related activities, skills training for pilots and engineers, recreation and training flying, scouts and high-school student experience and tourist activities.

2.4.2 Operational limitations

The operational use of an ALA is defined by the width of the runway and its effective operational length. Warnervale Airport ALA has one sealed runway which is 10 meters wide and 3,900 feet (approximately 1,196 meters) long. There is a limited taxiway and apron area for parking. Aircraft take off and approach paths are over open-land areas.

The runway is limited to light aircraft, that is aircraft less than 5,700 kgs Maximum Take-Off Weight (MTOW). Large turbo-prop or jet aircraft may not use this runway in its current form due to the prescribed MTOW and the physical dimensions of the runway.

The Central Coast Council, as the Aerodrome Operator, has particular rights of control with respect to operations at the ALA. These include devices such as curfew, types of aircraft operations restrictions and 'Fly Neighbourly' agreements through the 'Aeronautical Information Publication – En-route Supplement Australia' (ERSA). This control does not apply to airspace above the Aerodrome, which is regulated and administered by the Federal agency, CASA, as well as Airservices Australia (AA), which manages airspace.

The CASA Office of Airspace Regulation (OAR) is responsible for:

- providing advice to CASA on airspace regulation and review of airspace classifications
- designation and reviews of protective airspace (prohibited, restricted and danger areas)
- designation of air routes and airways and their conditions of use
- assessment of proposals for permanent and temporary airspace changes.

Proposed changes to the Australian airspace architecture are managed through the 'airspace change process' (ACP), to:

- ensure a robust safety case
- ensure appropriate stakeholder consultation
- check there are no airspace/aircraft operation implications for Environment Protection and Biodiversity Conservation Act 1999 Matters of National Environmental Significance, noting that aviation safety is always the prioritised
- conduct a risk assessment to determine if a residual risk remains that warrants the establishment, amendment or disestablishment of airspace
- conduct additional stakeholder consultation on the proposal (as necessary)

- assemble the supporting legal and aeronautical documentation to give effect to the ACP
- advise the proponent if the ACP is approved or not approved.

Airspace is designed and segregated in Classes (A to G) to provide appropriate services to the range of aviation operations, and considers aspects such as:

- Size, Weight, Speed and Type of operation of aircraft
- Categories such as Instrument or Visual Flight Rules.

For example, high-flying, heavy, fast, passenger carrying aircraft receive a vastly different service compared to low-flying, light, slow, recreation types of flying operations. These complexities, divisions and services are detailed at **Appendix G**.

The flying operations at Warnervale ALA currently operate in Class G Airspace (NON-CONTROLLED). Any development of Warnervale Airport and/or associated changes (increases) to flying activities are likely to implicate several higher Airspace Classes (CONTROLLED).

Warnervale ALA resides below a complex airspace architecture that services arrivals and departure at Sydney, Bankstown and, in the future, Western Sydney airport. The additional proximate airspace complexity and density, to the North, is the Joint User airport at Newcastle / RAAF Williamtown; Australia's Premier Fighter Air-Base.

Any changes to operations at Warnervale Airport would require extensive effort, cost and time to:

- change the registration / certification of the airport from an ALA to a Registered or Certified status
- address the CASA ACP approvals for integration into a complex and high-demand airspace that services current and future airports in the Sydney Basin as well as Newcastle / RAAF Williamtown
- comply with any Airservices Australia management requirements, including with regard to air traffic control communications, coordination, re-sectorisation and changes to procedures for separation and flow-control. For example, Warnervale ALA is currently permitted to operate only during daylight Visual Meteorological Conditions (VMC) because it does not have instrument approach systems or lighting for flying after daylight ends or begins.

The process would also involve economic studies as well as detailed and comprehensive noise and environmental studies, and a formal, structured Environmental Impact Assessment.

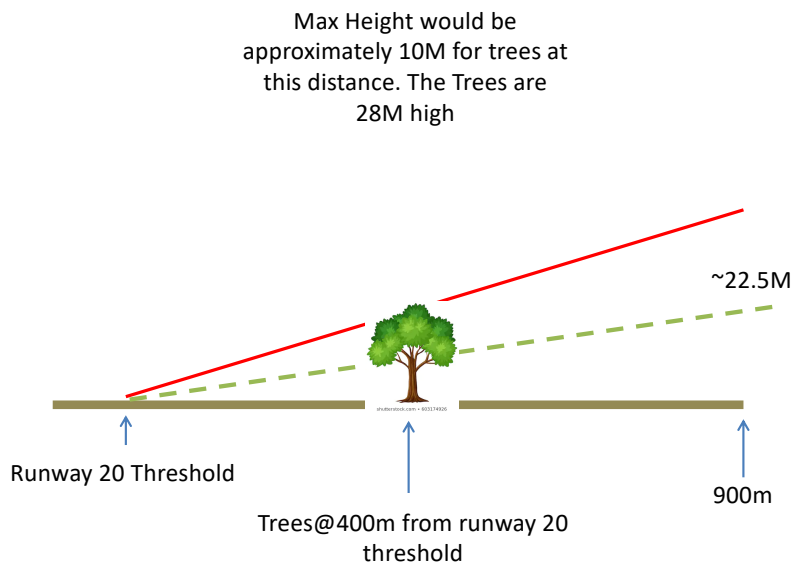
The *Warnervale Airport (Restrictions) Act 1996* also restricts operations, for example by means of the number of aircraft movements and by curfew. Without these restrictions the circuit rate is however self-limiting due to physical, operational and daylight VMC factors, and is also controllable by the Aerodrome Operator.

2.4.3 Man-made and environmental limitations

The major physical boundaries to the Airport include the M1 motorway to the west, Sparks Road to the north, and protected wetlands to the south. There is a line of trees on private land north of Sparks Road that are identified as an ecologically endangered community (EEC) under the *NSW Biodiversity Conservation Act 2016*. These trees are up to 28m high, and intrude approximately 18m into the Obstacle Limitation Surface (OLS) on the approach path for the runway, as illustrated overleaf. The trees pose an aviation hazard and effectively reduce the runway length to 900 meters, creating a safety risk. Council, the Aero Club and airport users are keenly aware of this intrusion.

Obstacle Limitation Surface (OLS) in relation to existing trees, February 2020

**Rough Approximation. For indicative use only.
Not validated. Not to be used for navigation.**



Photograph of the approach path of Warnervale Airport runway, February 2020



The photograph above shows the approach path of Warnervale Airport (Runway 20) and Departure path (Runway 02). Maximum tree height is approximately 28 meters (92 feet), intruding into the OLS by an estimated 18 meters and restricting the effective runway length.

2.4.4 Safety record

The record of safety events for a 32-year period at Warnervale ALA, as reported to the Australian Transport Safety Bureau, consists of four events with a causal factor of Pilot Human Factors and three events with causal factors of mechanical failure. None were attributable to the Aerodrome facility.

As such, the safety record for the airport would be considered by the aviation industry to be very good.

2.4.5 Legislative limitations

State and Regional planning statutes govern the use of land at the Airport, in addition to the Act, as do local planning instruments administered by Council. These statutes require a structured and orderly process to be followed for any change of use, or Development Application (DA), as outlined in the Environmental Planning and Assessment Act 1979 (EP&A Act).

For this Airport, existing environmental conditions, in particular the wetlands and EEC trees, as well as surrounding existing and proposed residential areas, would be required to be considered in detail in any process seeking operational changes.

The Review 2017 notes that in 1993, Council revised the masterplan for the airport, including an Environmental Impact Statement. Subsequent to this, Council issued development consent for the main runway. Around this time, Council and individual Councillors mooted a range of ideas for the ALA, including expanding the airport, increasing development at the airport, and making provision for jet aircraft. Some of these informal proposals were for sites other than the existing ALA location.

While these ideas captured local media attention as well as community and stakeholder responses, as illustrated in **Appendix F**, no Council endorsed feasibility studies, business cases, substantive reports, impact assessments or applications were made public for these proposals. That is, a formal planning process was not commenced. Nevertheless, public distrust and divergent stakeholder views were aggravated, setting the background for the Act, which it is understood was intended to provide community certainty regarding the ALA operations, while ensuring the ongoing operation of the airport.

In response to public concern, the Reviewers note that a separate but simultaneous Review is currently being undertaken by Council in its capacity as owner of the Airport, in relation to historic decisions made regarding Warnervale ALA. This Council Review is unrelated to the Warnervale Airport (Restrictions) Act 1996 Review of legislation, which is the subject of this report.

2.4.6 Emerging technologies

Emerging technologies that may affect the ALA include electric and other technology providing quieter aircraft engines, drones and flight-share options such as Uber Air (pending regulatory consideration by CASA). Electric aircraft would offer a reduced noise impact, but other restrictions would continue to apply.

Neither Council as owner and operator of the ALA, nor the Aero Club as licensee have a documented position on emerging technologies.

2.5 Maintaining confidence in the integrity of the legislative system

The need to maintain community confidence in the legislative system, and avoid uncertainty, is paramount. Trust in the system underpins community and stakeholder confidence, and is essential for meaningful citizen participation.

As discussed above, historical circumstances related to Warnervale Airport have resulted in distrust between the community and stakeholders regarding ALA operations. The introduction of the Act is understood to have

been a way of assisting to provide certainty for the community and stakeholders regarding limitations on Airport operations. Consultation as part of this Review indicates this distrust persists today.

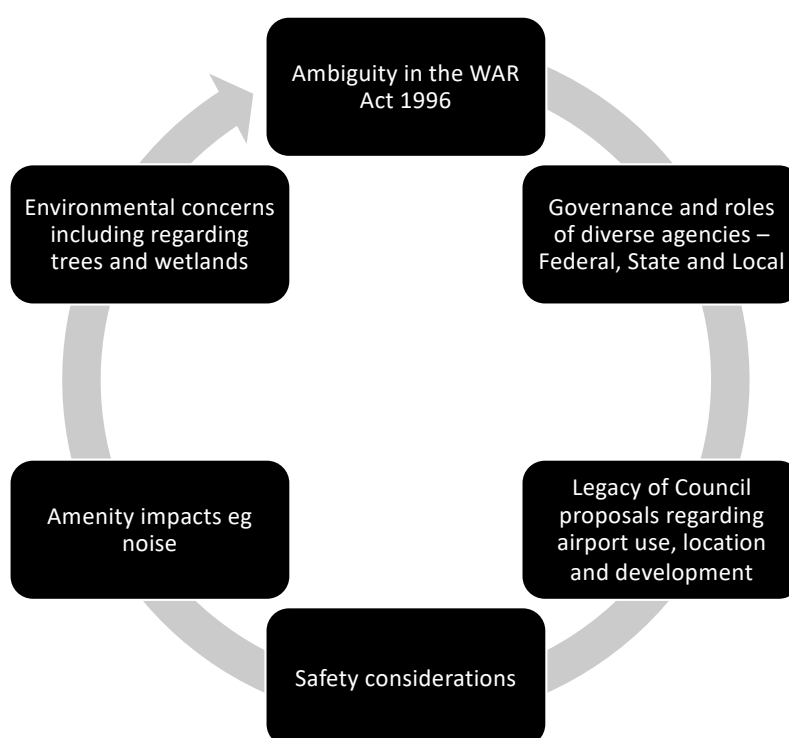
The triggers for this distrust, and uncertainty, are examined below.

2.6 Understanding the triggers of uncertainty

The Terms of Reference for this review point out that uncertainty was created when the airport runway was extended in 2015, thereby triggering State compliance action and the flight movement restriction provision of the Act.

Background information, as well as submissions, indicated to the Review Team that there are a number of causal factors of uncertainty regarding the Act in addition to that of the runway extension and subsequent flight movement restriction, neither of which were publicly explained. These uncertainties have resulted in confusion and distrust between stakeholders and groups, and a currently fractious and unsettled situation.

Through the Review process, key triggers of uncertainty were identified by the Reviewers as:



These triggers are explained further overleaf.

Trigger	Apparent causal factors
Ambiguity in the War Act 1996	<ul style="list-style-type: none"> The Act is unusual in that it is the only one of its kind for a local airport in NSW. The Object/s of the Act are not explicit, and wording of the Act is ambiguous. Explanatory notes are not included in the Act, making it unclear how the Act applies, how it relates to other items of legislation and how and why specifics (e.g. flight limitations, and penalties) apply. Compliance actions that have taken place at the Airport are unclear. It is unclear to the public if, when, or exactly why, the runway was extended and flight movement restrictions in the Act triggered.
Role of diverse agencies at Federal, State and Local levels	<ul style="list-style-type: none"> Governance of the airport is complex, with agencies at every level of government involved, including Federal Government (CASA); State Government (NSW DPIE) and Local Government (Council). In addition, the Airport is licensed to the Aero Club. The role and responsibility of each agency, and the licensee, is not clear to stakeholders or the community.
Legacy of airport proposals	<ul style="list-style-type: none"> Council appears to have over time supported a number of diverse proposals for the Airport and airport site, as well as for airports on alternative sites. These proposals range from expansion of the existing airport, to addition of business uses, to regional airports capable of accommodating jet planes on alternative sites. However, no Council endorsed public business cases, feasibility studies or environmental investigations are available. Council does not have a public vision statement, business plan or operations plan for the airport. There is confusion regarding the process whereby, or whether, Council approved applications such as the runway extension.
Safety	<ul style="list-style-type: none"> Community members are uninformed of the airport's actual safety record, and concerned regarding potential safety implications as a result of an airport being close to residential areas. There is anxiety regarding the safety implications for pilots of trees intruding in to the OLS, with a lack of clarity as to who is responsible for remedying this.
Amenity impacts	<ul style="list-style-type: none"> There are divergent views regarding amenity impacts of the airport, for example some stakeholders perceive no noise impacts while others find the airport noisy. There are differing views regarding the source of noise, from aircraft to parachutes opening, noting that parachuting is no longer supported at the site.
Environmental concerns	<ul style="list-style-type: none"> Conflicting views exist regarding the environmental qualities of trees adjacent to Sparks Road, as well as the Porters Creek wetlands. There is confusion regarding the feasibility of airport expansion on the site, due to the natural limitations of the environment, including the topography, wetlands and surrounding vegetation. There is confusion regarding the extent of environmental impact assessment required for any proposal related to the airport, including Council's own proposals.

2.7 Stakeholder views on the WAR Act 1996

Across the 939 unique submissions received, the Review Team observed that there are conflicting views regarding the Act.

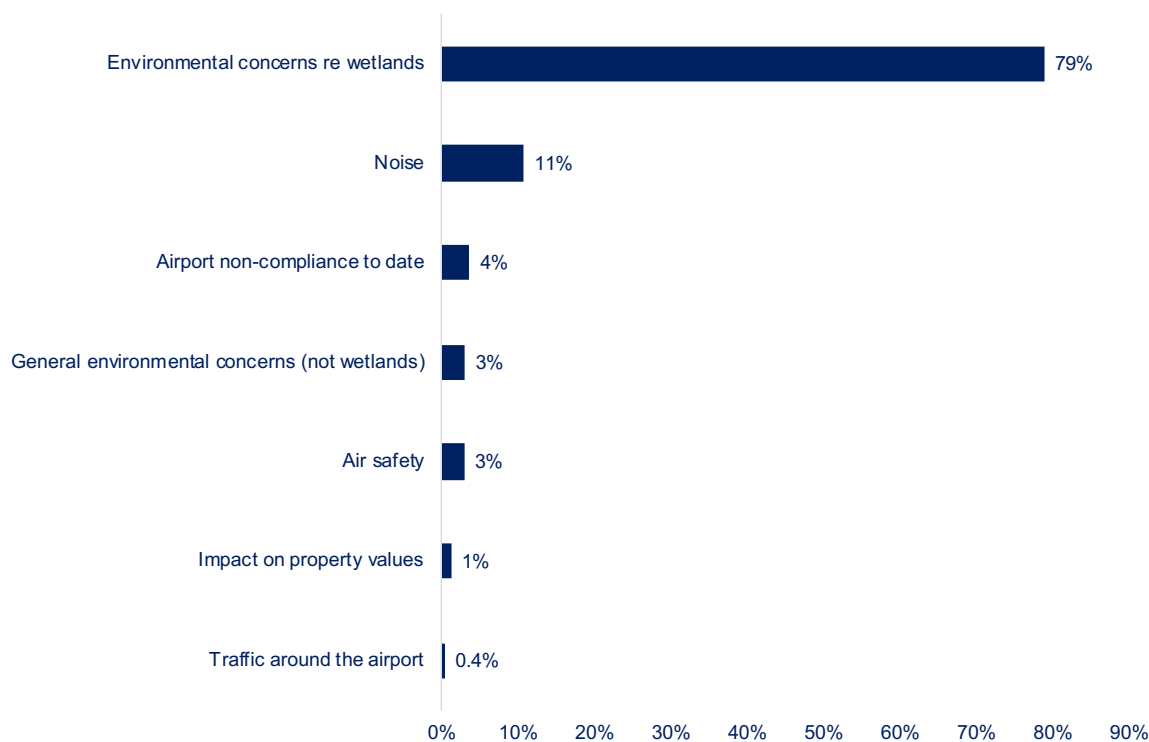
Stakeholders who consider the Act to be relevant and seeks its retention describe the Act as:

- Essential for environmental protection, in particular to protect the wetlands and Tuggerah lakes

- Essential for the protection of residents in relation to air quality, noise and water pollution
- A mechanism which provides certainty for the local community
- Increasingly relevant as more housing is proposed
- Necessary as Council has proved itself untrustworthy, does not have a strong record of managing its finances, and has acted historically by stealth and without due process, making it unrealistic to expect compliance going forward
- Important for reining in Council activity in relation to the airport, and ensuring transparency in relation to Council activities
- Working very well, and as such should continue but be subject to future review, when technologies will have changed, and quieter airplanes should be flying.

The following summary chart was produced by the Hunter and Central Coast office of DPIE, illustrating emerging themes from submissions in support of the Act.

Emerging themes from submissions in support of the Act



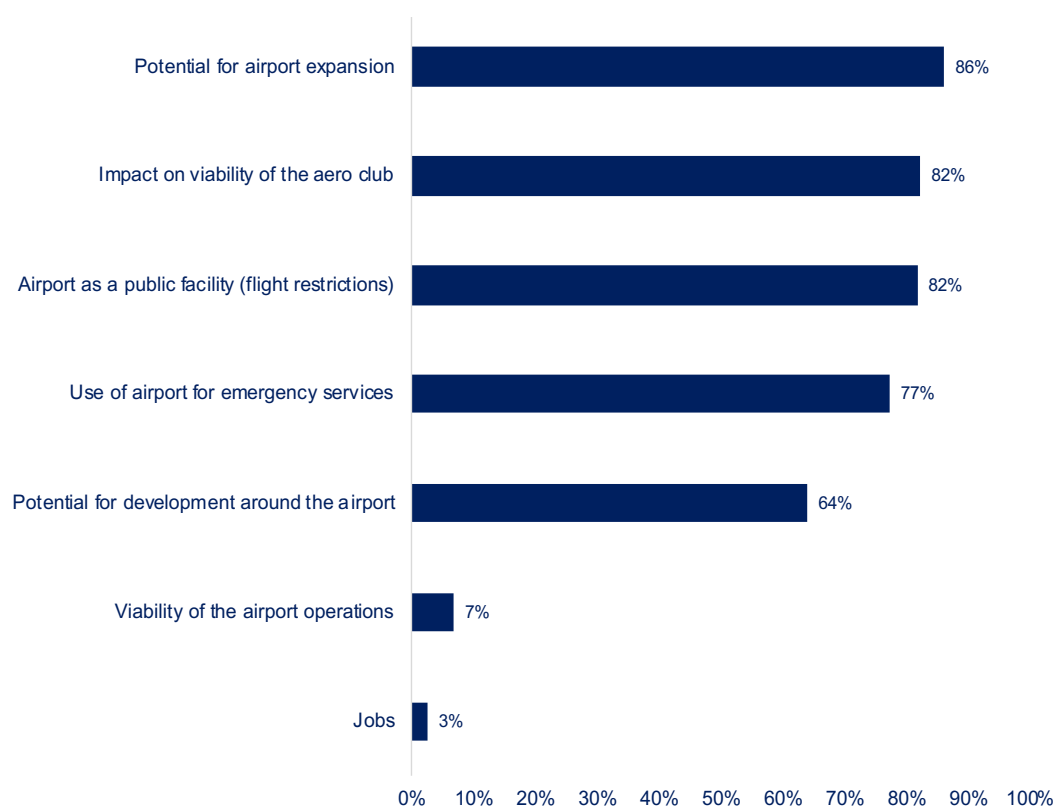
In the alternate, stakeholders who consider the Act to be irrelevant and favour repealing the Act describe it as:

- Unique and without precedent
- Hastily conceived and, as a result, clumsy and difficult to enforce

- Introduced in circumstances that were fraught as a result of Council proposing to approve the operation of jet aircraft, which is unfeasible, and regarding which position the current Council has distanced itself
- Unnecessarily restrictive and an administrative burden
- Duplicating Federal CASA legislation, which causes uncertainty for pilots
- Failing to recognise that the airport is inherently limited in its operations due to the local topography, wetlands and vegetation as well as the width, length and weight bearing capacity of the runway
- Economically restrictive as it doesn't recognise the important ongoing role of the airport, its contribution to local employment, as well as providing a pipeline of qualified pilots
- Socially limiting as it doesn't take account of the ways in which the airport provides a social facility that also contributes to local charities
- Not contemporary in its legislative form.

The following summary chart was produced by the Hunter and Central Coast office of DPIE, illustrating emerging themes from submissions NOT in support of the Act.

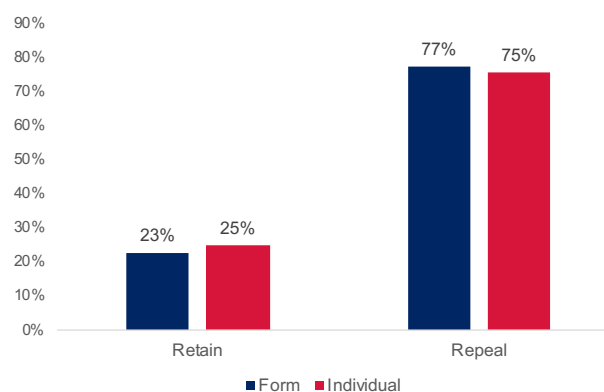
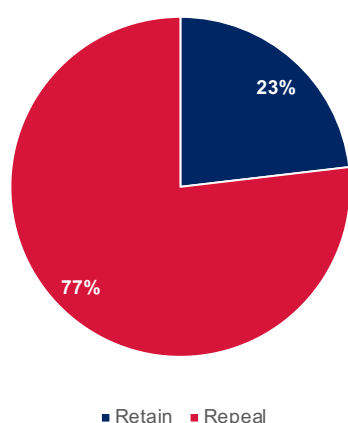
Emerging themes from submissions NOT in support of the Act



Overall, there were many more submissions in favour of repealing rather than retaining the Act. This was found to be the case regardless of whether form letters were taken into account. With all submissions taken into account, 23% of submissions favoured retaining the Act while 77% supported it being repealed.

When form letters were excluded, 25% of submissions favoured retaining the Act while 75% supported it being repealed, as illustrated in the following summary infographics produced by the Hunter and Central Coast office of DPIE.

Overall outcome of written submissions in relation to repealing or retaining the Act



Further information on submissions is provided at **Appendix E**.

2.8 Related statutory considerations

2.8.1 Aviation legislation

A detailed investigation of aviation legislation attributable to Warnervale Airport (**Appendix B**) found:

- **Duplication**

Existing legislation addresses aviation regulatory matters expressed in the Act, at a more appropriate and hierarchically senior legal level. This existing legislation is also more frequently updated than the Act, and accordingly more current and relevant.

- **Lack of appropriate definition**

The Act is complex and ambiguous as a result of not defining detail and intent, e.g. through explanatory notes, and by the inclusion of negative and positive numeric values which are undefined and not explained.

- **Inappropriate location of certain aviation regulatory limitations and restrictions**

Locating aviation regulatory limitations and restrictions in the Act, where not repeated in aviation information documentation, provides a critical risk to compliance for flight operations, as pilots would be more than likely not to know to refer to this unique piece of legislation at a small regional ALA.

- **Unrealistic enforcement**

Many of the regulatory matters, that demand monitoring and enforcement, are difficult to comply with without additional technology and 24-hour staffing at the airport.

- **Effect of poorly define penalties**

The effects of poorly defined penalties, for which application is also not defined, is that they may be directed to various entities e.g. potentially affecting income for Council, and aircraft operators while affecting the reliability of the ALA facility.

- **Due process must be followed**

Changes to the certification and operations at an aerodrome must follow due process and comply with aviation and development rules and procedures for movement areas, building infrastructure, obstacles and the implications of integrating into airspace and adjacent aviation operations.

- **Lack of an Exit-Plan**

The Act does not provide a defined an Exit-Plan, or reversal definition, should the Act be triggered.

2.8.2 Specific statutory considerations regarding the Act

The Review Team reflected on whether the Act could be improved by amendments while being cognisant that even minor amendments could be costly and complicated to achieve. This investigation indicated that each part of the Act required updating, with priority amendments including:

- Remove duplicated operational flying information as duplication compromises operational safety.
[Part 2]
- Remove illogical penalties.
[Parts 2 and 3]
- Remove controls that are complex and difficult to administer (including flight movement restrictions and the requirement for 24-hour notice for approvals) and achieve little outcome, and replace with logical and manageable processes, which would also be more flexible.
[Part 2]
- Update operational controls that would reduce the impact of flying on members of the community (e.g. curfews and weight limits).
[Part 2]
- Review the length of runway provision by realistically investigating what is actually possible on the site considering the site dimensions and existing environmental constraints.
[Part 3]

- Update review of proposal requirements to reflect current environmental planning legislation, which is clear regarding the need for independent review, and has always outlined details required for environmental assessment

[Part 4]

Lesser priority amendments would include:

- Updating and alignment of administrative matters, definitions and investigative powers.

[Parts 1 and 5]

The Review Team asserts that this extent of amendment implies that updating the Act to update and improve consistency and clarity of the legislation, align administrative matters, definitions and investigative powers, and to introduce flexibility would demand a comprehensive approach, requiring substantial change to each of its Parts (1 to 5), and considerable effort.

2.8.3 Environmental planning legislation

A detailed investigation of environmental planning legislation relevant to Warnervale Airport (**Appendix B**) found:

- **Duplication**

Existing legislation addresses all environmental and planning matters currently in the Act, at a more appropriate and hierarchically senior legal level. This existing legislation is also more frequently updated than the Act, and accordingly more current and relevant.

- **Council can no longer approve**

Existing, updated planning legislation limits Council's ability to consent to anything other than minor developments on its own land, and requires that the decision making body is an independent entity, being either a State, Regional or Local Planning Panel.

A Central Coast Local Planning Panel (LPP) is scheduled to commence in March this year. Once the LPP commences, it will determine development applications where Council is the applicant or landowner, and where Council hasn't delegated the function consent to a member of staff.

- **Due process must be followed**

It has always been, and remains the case, that development cannot legally be undertaken without following a due process as outlined in the EP&A Act 1979, which includes environmental and social assessment at a level of detail appropriate to the scale of development.

Consent from multiple agencies may be required prior to planning consent, e.g. Transport for NSW (previously Roads and Maritime Services); Environment, Energy and Science Group of DPIE.

- **Community protection**

Existing legislation provides for community protection, at both a more appropriate and hierarchically senior legal level, and a local level.

- **Environmental protection**

Existing legislation provides for environmental protection, at both a more appropriate and hierarchically senior legal level, and a local level.

- **Amenity impacts - noise**

Existing legislation provides for protection of amenity, including noise, at both a more appropriate and hierarchically senior legal level, and a local level.

- **Safety**

Existing legislation provides for safety at both a at both a more appropriate and hierarchically senior legal level, and a local level.

- **Currently permissible in IN1 but not E2**

Existing local legislation confirms that the airport is permissible in the area of the airport land zoned IN1 (General Industrial), but not in the airport land zoned E2 (Environmental Conservation), which covers the wetlands.

2.9 Comparison to similar airports in NSW and other jurisdictions

The CASA Airport national registry was examined as part of this Review. 731 Certified, Registered and ALA Aerodromes are listed. ALA's are not required to list so there would be an unknown number of additional airports that are ALA's. Of the 731, 331 are ALA's: 46% of the total listing. Of these, only 30 are similar to Warnervale and of these four are in NSW (Casino, Collarenebri, Hillston and Tottenham), managed by Council, with sealed runways.

Of all of the listings, none were found to have a specific Act of parliament to manages operational or other matters. Only Sydney Airport was found to have an Act: the Sydney Airport Curfew Act 1995, which deals with the complexities of aircraft movements regarding airport noise issues at this major aviation hub.

The table below summarises the governing environmental legislation for the four similar airports in NSW, as well as Cessnock, Kempsey and Lake Macquarie. In considering this table it is important to note that CASA and related Federal aviation legislation would sit above these statutory instruments, as would the NSW EP&A Act 1979. Further detail is provided at **Appendix C**.

The comparison confirms:

- No comparable airport has unique governing legislation
- All comparable airports are governed at a local level, primarily by a Local Environmental Plan (LEP)
- There are a variety of zones for similar airports; all are acceptable as other statutory instruments govern aviation and environmental requirements.

Comparison to similar airports in NSW

Warnervale	Ballina	Casino	Collarenebri	Hillston	Tottenham	Cessnock	Kempsey	Lake Macquarie
Warnervale Airport (Restrictions) Act 1996, as well as Wyong LEP 2013	Ballina Local Environmental Plan 2012	Richmond Valley Local Environmental Plan 2012	Walgett Local Environmental Plan 2013	Carrathool Local Environmental Plan 2012	Lachlan Local Environmental Plan 2013	Cessnock Local Environmental Plan 2011	Kempsey Local Environmental Plan 2013	Lake Macquarie Local Environmental Plan 2014
IN1 General Industrial and E2 Environmental Conservation	SP2 Infrastructure - Air Transport Facility	RU1 Primary Production	SP2 Infrastructure-Air Transport Facility	SP2 Infrastructure-Air Transport Facility	SP2 Air Transport Facilities	SP2 Infrastructure - Air Transport Facility	RU2 Rural Landscape	SP2 Airport

Further information regarding the relevant aviation as well as State and Local Environmental and Planning legal instruments is included at **Appendix B**.

2.10 Emerging themes

The Reviewers find that there are multiple causes of uncertainty in relation to the Act. The following are themes emerging from the Review investigations:

There are several triggers of uncertainty

Not only the extension of the runway has triggered uncertainty in relation to the Act, but ambiguity of the Act itself, the role of diverse agencies in governance of the Airport and aviation activities, amenity impacts and environmental concerns are causes of community and stakeholder suspicion and wariness. Related emerging themes as outlined below are also causal factors of uncertainty.

There is a legacy of Council ideas relating to the Airport, with related distrust

Historically Council and individual Councilors have mooted a variety of ideas related to the airport and aviation opportunities. Several of these are idealistic and unfeasible because of existing airport constraints including procedural approvals, the length of the runway, and surrounding topography and environmental conditions. These ideas were also not translated in to planning proposals, and appear to have been made public prior to business case and environmental assessments.

This legacy is the root cause of much distrust, which Review consultation indicates continues to persist. It is aggravated by Council not having a current, clearly stated position, public business or operations plan for the Airport.

Diverse and divergent views exist

While the Review Team understands that the rationale for the Act was to assist in reducing community uncertainty regarding the Airport, while ensuring ongoing Airport operations, the Review has highlighted persistent diverse and frequently opposing views regarding the Airport, its operations, and the benefits of the Act in controlling these. Community and stakeholder tensions remain apparent.

Legislative duplication exists

An investigation into the interaction of the Act with other legislation, has highlighted that the Act duplicates several other legislative instruments, without any unique contributions other than being site specific.

The Act is relatively aged and not consistent with more current instruments, or modern legal drafting approaches. It is ambiguous in its wording, and lacks a clear Objective and Explanatory Notes.

Statutory frameworks for other airports are less complex

A comparative analysis of the statutory frameworks that apply to airports of comparable scale in NSW and other jurisdictions indicates that the Act is unique and unprecedented. All other similar airports rely on the layering of Federal aviation instruments, State planning instruments and Local Environmental Plans (LEPs), which are Council driven but State-approved statutory planning instruments.

The Act is also difficult to administer. For example, the limit of daily take offs and landings is unclear in how it relates to some activities e.g. pilot training, which may require multiple take offs and landings.

Only Sydney Airport, an airport of substantially different scale and operations, was found to have specific legislation.

Safety considerations exist

While the community and local residents are concerned about the safety implications of living close to an airport, aviation safety is strictly governed by several aviation and air safety laws and guidelines, and the safety record of Warnervale Airport is very good.

Potential operational, compliance and safety considerations exist as a result of the Act not being easily known or apparent to pilots, who rely on CASA law and the ERSA, and who are primarily responsible for aviation safety at an ALA, or minor airport, such as Warnervale. In the case of an emergency, a pilot would be unlikely to have the time or awareness of an Act that manages operational information at any particular aerodrome, especially where there is a unique and unprecedented item of legislation

The existing trees along the northern edge of Sparks Road, which intrude into the OLS, however pose a real hazard and safety concern for pilots and the ALA.

Social and economic benefits of a local Airport are valued

Many stakeholders value the Airport as a community facility, with social and economic benefits. The aviation training opportunities provided by the Aero Club are strongly supported by many. Others however see little benefit in the airport and consider it a threat, or exclusive facility for the wealthy.

Environmental concerns exist

Proximity to the wetlands is both beneficial for the airport as it creates a natural buffer for operations, and challenging, as the wetlands restrict development and require special care. A number of Commonwealth, State and local statutes are in place to protect these environmental assets, which consultation confirms are of significant importance to the community.

The Review Team addresses these themes further in the following section.

3.0 Achieving clarity and certainty

3.1 Threshold question: does the Act remain relevant and necessary?

In considering whether the Act remains necessary, the Review Team took into account written and verbal submissions, site conditions and background research. Emerging themes were identified in the preceding section. The Review Team has a two-part response to the threshold question.

3.1.1 Does the Act remain relevant?

As for the preceding Review 2017, the current Review Team has found that the Act remains relevant primarily from the point of view that the local community, voiced through both written and verbal submissions to the Review, consider it an important protection for amenity and safety reasons related to the airport, and to prevent inappropriate development.

The Review exposed considerable distrust among community members, originating primarily from historically poorly prepared and managed Council-led proposals for the airport, and Council failure to follow due planning process in relation to these ideas, for example by undertaking environmental assessments, prior to publicising them in the media. It also appears that Council failed to follow due process in relation to extension of the runway.

In this regard, the Review Team considers that the Act had the intention of being an instrument for community confidence in the legislative system. However, the Review Team observes that it has not allayed suspicion and distrust in relation to the airport, as these emotions persist.

The Act has also not assisted legislative certainty, adding instead a layer of duplication and ambiguity to the hierarchy of legislative instruments.

3.1.2 Does the Act remain necessary?

The Review Team undertook in-depth examination of the Act to determine whether it remained current, as well as detailed analyses of related legislation, to examine whether the Act provides unique and necessary legal controls.

With regard to currency, the Review Team found that the Act is outdated in its presentation, and lacking what would now be considered legislative prerequisites, such as clearly stated Objective/s and Explanatory Notes. Moreover, several elements of the Act are no longer relevant while other elements have been superseded by changes to related legislation such as the EP&A Act, 1979, which is more frequently updated.

No comparable airport is governed by an Act, rendering the Act anachronistic in that it is the only instrument of its kind for a relatively minor item of local infrastructure. The Act is in addition difficult to oversee, resulting in administrative and operational challenges for both Council as the owner and operator, and the Aero Club as licensee.

Overall, the Review Team found that the Act duplicates a plethora of other primary Planning, Environmental, Aviation and Noise management legislation policy and processes. Moreover, the Act is out of date as it has been superseded by changes to these legislative items, which are more frequently revised. In this regard, it is inefficient, and contrary to the modernisation of legislation taking place in NSW and throughout Government, where streamlining of statutes and avoidance of duplication is underway as a priority.

In the case of aviation operations there are more appropriate references to ensure that pilots and the flying public are informed and aware of aerodrome considerations and in the case of an emergency, would be unlikely to have the time or awareness of an Act that manages aviation operational information at any particular aerodrome, especially where for a unique and unprecedented piece of legislation. In this regard, enforcement of the Act presents potential operational, compliance and safety risks.

This risk is aggravated by the Act being difficult to administer. For example, the limit of daily take offs and landings is unclear in how it relates to some activities e.g. pilot training, which may require multiple take offs and landings, and places responsibility on the airport operator to monitor and manage an ambiguous requirement which does not apply to other ALAs.

Overall, the Act appears intended to control and restrict operations and development at the aerodrome with an intent to ensure process is followed by the Central Coast Council as the Aerodrome Owner and Operator. These protections are however already embedded within other relevant legislation, policy and processes, with primary oversight by the Department of Planning, Industry and Environment.

3.1.3 Does the Act remain relevant and necessary?

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.

However, the Reviewers believe that the Act has had some symbolic relevance under the circumstances, and mechanisms are needed to assist community understanding of the situation and ensure community confidence. In particular community clarity and certainty must be addressed should the Act be repealed, for example in relation to existing statutes

3.2 Recommendations

The Review Team puts forward the following recommendations.

Recommendation 1.0: Repeal the Act

It is the Review Team's recommendation that the Act be repealed as soon as possible considering that it:

- Is ambiguous and outdated in its content as well as legal format, and with regard to key administrative processes
- Duplicates other primary legislation without adding any unique requirements
- Is difficult to administer, adding to operational complexity
- Affords some community certainty but has not resolved or even eased community and stakeholder differences

- Cannot easily be improved or updated by minor amendments, noting that even these would be costly and complex to undertake
- Adds complexity for pilots and as a result presents potential operational, compliance and safety risks.

1.1 Interim action if the Act cannot immediately be repealed

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.

Moreover, movements at an airport are intrinsically operationally restricted as a function of several factors, including runway length and airspace (circuit area) capacity during the period. The number 88 as currently noted in the section appears arbitrary without explanatory notes, especially when the operational saturation limiting factors are considered.

In addition, while the physical requirements cannot feasibly be enforced by an airport operator, prosecution can occur under the Act, resulting in procedural unfairness. This Section also lacks logic by not the process by which an increase or decrease in movements may be applied for or permitted.

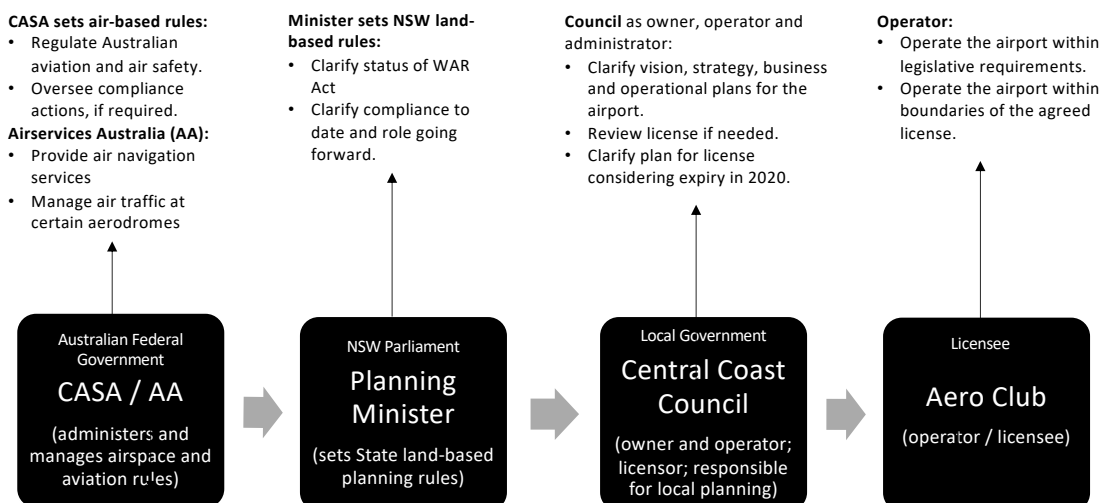
Recommendation 2.0: Ensure community confidence

Steps should be taken to improve community and stakeholder clarity and certainty. Recommendations in this regard are outlined below.

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. The Reviewers have identified this hierarchy of governance, and related responsibilities, as illustrated and discussed below.

Hierarchy of governance



2.2 Clarify legislative hierarchy of statutory protections

The range of statutes 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.

These statutes are outlined at **Appendix B**.

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. As Council has not followed this process in the past, they should also be reminded of procedural requirements, noting that these are set out in the EP&A Act 1979, and that thorough assessment of environmental and social factors is an essential prerequisite of any except the most minor of applications.

Additionally, there are Aviation Procedural Requirements, informed by the Civil Aviation Safety Authority, in relation to any changes that affect airport governance and flying in the Australian National Airspace System, which would need to be addressed.

In this regard, the inherent limitations of the site should be highlighted for all stakeholders, noting that many are still of the impression that expansion of the airport is feasible when it is in actuality highly constrained.

The community, stakeholders and Council should also be updated regarding changes to the EP&A Act, requiring applications to be determined by independent State, Regional or Local Planning Panels (depending on the scale and value of the application).

2.4 Council to clarify its position

The Review Team considers that the root cause of much community uncertainty is historic ideas put forward by Council and individual Councilors. Moreover, the Review Team observes that Council does not have a current, endorsed, publicly stated position with regard to the airport.

As such, the Review Team suggests that 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.

The Reviewers also observe that Council is currently updating its Local Environmental Plan (LEP), and that site specific requirements not already included in this instrument, could be integrated as part of the updating process if needed.

Recommendation 3.0: Urgent safety recommendation

While unrelated to the Terms of Reference for the Review, the issue of the EEC trees at the northern end of the aerodrome along Sparks Road, which intrude into the OLS, is a safety matter which the Reviewers believe requires urgent resolution. This is so that a stable and reliable effective operational runway length can be provided for landing and take-off, and the potential for impact with the current tree hazard is reduced.

Because the trees continue to grow, this risk will increase if not resolved. The Review Team notes that the CASA Airspace Change Process states that *'there are no airspace/aircraft operation implications for*

Environment Protection and Biodiversity Conservation Act 1999 Matters of National Environmental Significance, noting that aviation safety is always the top priority’.

4.0 Conclusion

4.1 Review Team findings

The Review Team recognises the symbolic importance of the Act for the community but notes that having the Act in place has not resolved or even eased community and stakeholder concerns. The Review Team also finds that the Act is out of date and administratively challenging to oversee.

The Review Team determines 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 should be repealed, but that actions are needed to ensure community confidence. In particular community clarity and certainty must be addressed should the Act be repealed.**

Moreover, the Review Team strongly recommends that the issue of the EEC trees at the northern end of the aerodrome along Sparks Road, which intrude into the OLS, requires urgent resolution as the **trees constitute a real safety risk.**

4.2 Response to Terms of Reference

Terms of Reference for the Review were published on the DPIE website. In summary, the Review Team was tasked with considering legislative amendments required to facilitate the operations of the Airport in a manner consistent with that prior to when the flight movement restrictions were triggered.

The threshold issue required to be investigated, with appropriate recommendations made, was set out as:

“whether the Act remains relevant and necessary.”

If the Review was to conclude that the Act remains relevant and necessary, then a number of areas of the Act were to be examined by the Review Team in detail including flight movement restriction provisions (Part 2), runway length restriction provisions (Parts 3 and 4), expansion proposal triggers (Part 4), updating and alignment of administrative matters, definitions and investigative powers (Part 5), as well as flexibility within the Act.

As the Review Team considers that the Act is symbolically relevant only, but ineffective and no longer necessary, the Review Team was, strictly speaking, not required to address these detail matters. However, where these have been considered in the body of the report, they are summarised in the table below, along with key findings. The table also indicates where further information can be found in the report.

Review in relation to Terms of Reference

Terms of Reference	Review reference and Review Team findings and recommendation/s
The overall objective of the <i>Warnervale Airport (Restrictions) Act Review 2019</i> (the Review) is to remove the current uncertainty created when the airport runway was extended thereby triggering	<p>Section 3. Achieving clarity and certainty.</p> <p>The Review finds that the Act should be repealed as soon as possible, with the following complementary steps to assist community confidence and understanding:</p> <ul style="list-style-type: none"> • Clarify governance

<p>the flight movement restriction provisions of the Act.</p> <p>The Review is to make recommendations to the Minister for Planning and Public Spaces on necessary legislative amendments to remove the current uncertainty.</p>	<ul style="list-style-type: none"> • Clarify legislative hierarchy of statutory protections • Clarify process for change of use and development applications • Council to clarify its position. <p>In addition, the Review Team strongly recommends that the issue of the EEC trees at the northern end of the aerodrome along Sparks Road, which intrude into the OLS, requires urgent resolution for safety reasons.</p>
<p>Does the Act remain relevant and necessary?</p>	<p>Section 3. Achieving clarity and certainty</p> <p>The Reviewers believe that the Act has had some symbolic relevance for the community under the circumstances, but 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 and should be repealed.</p> <p>However, the Review Team recommends that actions are needed to ensure community confidence. In particular community clarity and certainty must be addressed should the Act be repealed.</p>
<p>Review flight movement restriction provisions (existing Part 2) to assess whether restrictions are required and, if retention is preferred, to give consideration to flights counted (and how), curfews, monitoring and related matters.</p>	<p>Section 3. Achieving clarity and certainty; Appendix D</p> <p>The Review finds that the Act should be repealed as soon as possible.</p> <p>If for any reason the Act cannot be immediately repealed, the Review Team recommends that 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 a matter of priority as this section is administratively ineffective and cannot feasibly be physically enforced.</p>
<p>Review runway length restriction provisions (existing Part 3) to set current length and require any extension to be subject to an expansion proposal review (under Part 4).</p>	<p>Section 3. Achieving clarity and certainty and Section 2. Uncertainty re the WAR Act 1996; Appendix D</p> <p>The Review finds that the Act should be repealed as soon as possible.</p> <p>With regard to the runway length, the Review Team observes that length of the existing runway is inherently limited by the site configuration and environmental restrictions and that any potential extension would require due diligence and detailed investigation into what is actually possible on the site.</p>
<p>Review expansion proposal triggers – consideration and documentation of the range of developments that would trigger the Act's procedures for reviewing expansion proposals (existing Part 4).</p> <p>This recognises that expansion of Airport operations may require modifications to the runway length (current provision) as well as other aviation safety requirements such as lighting, ground and navigational aids.</p>	<p>Section 3. Achieving clarity and certainty and Section 2. Uncertainty re the WAR Act 1996; Appendix D</p> <p>The Review finds that the Act should be repealed as soon as possible.</p> <p>The Review Team considers that other legislation, such as the EP&A Act, is more current and outlines a relevant and effective process which should be followed in the event of any development application, noting that a development application is required for any upgrading, expansion, change of use or similar or related proposal.</p> <p>Similarly, CASA regulation is more current, better known to aviators and provides effective direction regarding aviation safety requirements such as lighting, ground and navigational aids for different types of airports.</p>
<p>Review the expansion proposal review framework taking into account whether establishment of a more effective and transparent expansion proposal review framework (Part 4) is required. This should be supported by terms that specify the information that is to be provided in</p>	<p>Section 3. Achieving clarity and certainty and Section 2. Uncertainty re the WAR Act 1996; Appendices B, C and D</p> <p>The Review finds that the Act should be repealed as soon as possible.</p> <p>The Review Team considers that other legislation, such as the EP&A Act, is more current and outlines a relevant and effective process which should be followed in the</p>

<p>applications made under the Act, the grounds upon which the Minister will determine any such application, and the procedures to be undertaken.</p> <p>The review should identify and document other relevant statutory requirements such as under the EP&A Act, State and Commonwealth environmental protection legislation and Commonwealth air navigation legislation.</p>	<p>event of any development application, noting that a development application is required for any upgrading, expansion, change of use or similar or related proposal.</p> <p>Similarly, CASA regulation is more current and detailed, better known to aviators and provides effective direction regarding aviation safety requirements, as well as developmental requirements for aerodromes and airspace.</p>
<p>Consider the need for updating and alignment of administrative matters, definitions and investigative powers taking into account recommendations on administrative amendments to address anomalies, alignment of definitions with relevant state and federal legislation and introduce investigative powers (Part 5).</p>	<p>Section 2. Uncertainty re the WAR Act 1996; Appendices B, C and D</p> <p>The Review Team found that the Act is poorly formatted and presented, as well as out of date. Substantial and comprehensive steps are required to update and align the Act in terms of administrative matters, definitions and investigative powers.</p> <p>The Review Team considers that the extent of amendment required would include significant change to each of the Parts (1 to 5) of the Act, and considerable cost and effort.</p>
<p>Consider flexibility noting that any key parameters of the Act that should be capable of variation (e.g. by prescription in regulations).</p>	<p>Section 2. Uncertainty re the WAR Act 1996; Appendix D</p> <p>The Review Team found that updating the Act to make it more flexible would require significant change to the Act, and considerable cost and effort.</p>
<p>Review the interaction and consistency of the Act with other legislation by undertaking a comparison with other relevant legislation, with particular emphasis on identifying areas of duplication.</p>	<p>Section 2. Uncertainty re the WAR Act 1996 and paragraphs 2.8 and 2.9; Appendices B, C and D</p> <p>A detailed review of relevant legislation is documented at Appendices B, C and D. Overarching findings are noted at paragraphs 2.8 and 2.9 where significant duplication is a key outcome.</p>
<p>Review statutory frameworks for similar airports by undertaking a comparative analysis of the statutory frameworks that apply to airports of similar scale in NSW and other Australian jurisdictions.</p>	<p>Section 2. Uncertainty re the WAR Act 1996, paragraph 2.9 and Appendix C</p> <p>A detailed review of relevant legislation is documented at Appendices B, C and D. Overarching findings are noted at paragraphs 2.8 and 2.9 where significant duplication is a key outcome.</p>
<p>Public submissions</p> <p>The review should seek and consider submissions by any interested individual or entity.</p>	<p>Section 1 Introduction, Section 2 Uncertainty re the WAR Act 1996 and Appendix E</p> <p>The Review Team invited both written and verbal submissions. A total of 939 unique submissions were received. Written submissions were reviewed and analysed by the Hunter and Central Coast office of DPIE.</p>
<p>Governance</p> <p>The reviewers should meet with the Minister and the Central Coast Mayor at the commencement of the review and to present the draft report.</p> <p>Fortnightly meetings will be held with senior executives of the Department and Council to update on progress.</p>	<p>Several meetings in person, on site and over the phone were held with representatives of the Minister and Mayor. Progress reports were provided fortnightly during the review process.</p>

4.3 Urgent safety consideration

Notwithstanding that this matter was outside of the scope of the 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.

4.4 Review exclusions

The Review Team notes that it was instructed that the future use of the airport land, and the comparative economic benefits of any alternate uses, and of the airport itself, was out of scope of the Review as the future use of the airport is a matter for Council, as the airport owner.

These matters have accordingly not been addressed.

Appendix A: History of the WAR Act 1996, previous review and compliance matters

The following table outlines the history of the WAR Act 1996, the previous review and compliance matters. The table has been prepared by the Hunter and Central Coast office of DPIE.

Date	Action
1 July 1996	WAR Act assented to.
1 June 1997	WAR Act commenced.
20 April 1998	Wyong Shire Council (Council) submits an application under clause 9(1) of the WAR Act asking the Minister to approve the site of a new 1,200 metre runway.
1 October 1998	Council submits an application under clause 8(4) of the WAR Act asking the Minister to increase the maximum length of the runway to 1,600 meters.
circa 8 March 2001	Minister approves Council's application for the proposed site of a new 1,200 metre runway and rejects Council's application to increase the maximum length of the runway to 1,600 meters.
1 July 2001	<p>A review of the WAR Act was to be undertaken as soon as possible after the period of 5 years from the date of assent (s.17 (2)). The terms of the review are outlined in s.17 (1).</p> <p>No evidence can be found that such a review was conducted in the time period specified. However, a review was conducted in 2016, generally following the review terms in s.17 (1).</p>
1 July 2002	<p>A report on the outcome of the review (above) is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years (s. 17(3)).</p> <p>No evidence can be found of such a report being tabled. A report on the review conducted in 2016 was not tabled in Parliament.</p>
27 May 2015	Council requests repeal of the WAR Act.
circa September 2015	Council extends existing runway.
early 2016	Review commenced to provide advice to the Minister on Council's request for repeal of the WAR Act.
2016 Compliance investigation	<p>DPIE undertook a compliance investigation into Council's runway extension in response to matters raised by a member of the public.</p> <p>The outcome (18 August 2016) included a fine for Council undertaking clearing of wetland vegetation without development consent.</p> <p>A voluntary undertaking was sought from Council to comply with the flight movement and curfew provisions in Part 2 of the WAR Act which applied as the runway had been extended.</p>

	No breach of the WAR Act was found to have occurred as the extended runway remained under the 1200 meters in S.8
mid 2017	Minister for Planning advised on outcomes of Review.
11 August 2017	The Minister for Planning supports the recommendation that the WAR Act be retained and announced on 11 August 2017 that the WAR Act would remain in place.
11 October 2019	Member for Terrigal announces second review into WAR Act in response to community and stakeholder uncertainty.

Appendix B: Review of aviation, environment and planning legislation

Aviation legislation

The following table reviews aviation legislation that relates to Warnervale Airport, in descending hierarchy, with particular emphasis on identifying areas of duplication.

Legislation	Relationship to Warnervale Airport
ICAO Annex 14 Aerodromes	<p>This is the annex from the Chicago Convention on International Civil Aviation that relates to Aerodromes. ICAO Annex 14 is the primary International Regulatory reference for Aerodromes, including regulatory provisions lower in the legislation hierarchy that apply to Warnervale ALA.</p> <p>Australia is a signatory to the Convention on International Civil Aviation, also known as the Chicago Convention, established the International Civil Aviation Organization, a specialized agency of the UN charged with coordinating international air travel. The Convention establishes rules of airspace, aircraft registration and safety, security, and sustainability, and details the rights of the signatories in relation to air travel. This is the Head of Power for Australian aviation legislation.</p>
Civil Aviation Act 1988	<p>The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents. The Act establishes CASA. The Civil Aviation Act is the Head of Power for the purpose of Aviation Regulations. The Act establishes the Civil Aviation Safety Authority (CASA) with functions relating to civil aviation, in particular the safety of civil aviation and for related purposes. CASA is responsible for Aerodrome Legislation, including that which applies to the Warnervale ALA.</p>
Airspace Act 2007	<p>The Airspace Act 2007 empowers the Australian Airspace Policy Statement and CASA's authority to regulate airspace. Aerodromes do not administer airspace above aerodromes.</p> <p>Airspace above the Warnervale airport is Class G, administered by CASA and is not the responsibility of the Aerodrome Operator.</p>
Civil Aviation Regulations 1988 (CAR's)	<p>CAR Volume 3, Part 9 refers to Aerodromes and applies to Aircraft landing Areas (ALA's) such as Warnervale Airport. CAR 95 is particularly relevant to obstacles affecting aerodromes:</p> <ul style="list-style-type: none"> Removal or marking of objects which constitute obstructions or potential hazards to air navigation... CASA may authorise a notice to be served upon the owner of the property in which the object is located directing the owner, within such reasonable time as is specified in the notice: <ul style="list-style-type: none"> (a)to remove the object or such portion of it specified in the notice as is practicable and necessary; or ... <p>This CAR directly affects the administration of regulatory provisions at Warnervale ALA, noting that the regulation could be applied to the trees north of Sparks Road which currently intrude into the AOL.</p>
Civil Aviation Safety Regulations 1998 (CASR's)	<p>CASR's do not apply to ALA's, such as Warnervale Airport. CASRs establish the regulatory framework (Regulations) within which all service providers must operate.</p>

<p>CASA Part 139 Manual of Standards – Aerodromes</p>	<p>The Part 139 MOS comprises specifications (Standards) prescribed by CASA, of uniform application, determined to be necessary for the safety of air operations.</p> <p>An aerodrome is an area authorised by the regulations for use as an aerodrome. The <i>Civil Aviation Regulations 1988</i> has the effect of authorising a place for use as an aerodrome if it is certified or registered under Part 139 of the <i>Civil Aviation Safety Regulations 1998 (CASR 1998)</i>. This document sets out certain standards for certified aerodromes, registered aerodromes, and other aircraft landing areas (ALA's) where aircraft arrive, depart or move that are not certified or registered (i.e. ALAs). Aerodrome safety is a vital link in aviation safety and the applicable provisions of the MOS must be complied with to ensure aviation safety.</p> <p>To avoid doubt, except in relation to the effects of Subpart 139.D (reporting officers and safety inspections), this MOS does not affect ALA's. The effect of Subpart 139.D of CASR 1998 is that when an aircraft with a maximum passenger seating capacity of more than 9 but not more than 30 seats uses an ALA at least once a week for regular public transport operations, the operator of the ALA must conduct safety inspections, and have at least 1 reporting officer...This Subpart does not apply to Warnervale ALA.</p> <p>Importantly, this Subpart does not apply to Warnervale ALA in its current configuration but may apply if the aerodrome is developed or Regular Public Transport operations are commenced.</p>
<p>CASA Office of Airspace Regulation (OAR)</p>	<p>The CASA OAR is responsible for providing advice to CASA on airspace regulation and review of airspace classifications, designation and reviews of protective airspace (prohibited, restricted and danger areas), designation of air routes and airways and their conditions of use and assessment of proposals for permanent and temporary airspace changes.</p>
<p>CASA airspace change process' (ACP)</p>	<p>The ACP manages proposed changes to the Australian airspace architecture to:</p> <ul style="list-style-type: none"> • check there are no airspace/aircraft operation implications for Environment Protection and Biodiversity Conservation Act 1999 Matters of National Environmental Significance, noting that aviation safety is always the top priority • determine if a residual risk remains that warrants the establishment, amendment or disestablishment of airspace • conduct additional stakeholder consultation on the proposal (as necessary) • assemble the supporting legal and aeronautical documentation to give effect to the ACP
<p>CASA RPA Chapter 8 – ALA's</p>	<p>CASA RPA Chapter 8 allows pilots engaged in other than regular public transport operations to determine suitable places for the operation of their aircraft. Such a place is called an "Aircraft Landing Area (ALA)", which may be an airplane landing area for fixed wing aircraft or a helicopter landing area for hover aircraft.</p> <p>There is no requirement to seek CASA sanction for the establishment of an ALA unless specifically requested by the owner, the Authority will not normally inspect an ALA, or publish its information in the AIP.</p> <p>CAR 92(1) puts the responsibility on the pilot to ensure that the place is suitable for use as an aerodrome; and having regard to all the circumstances of the proposed landing or take-off (including the prevailing weather conditions), that the aircraft can land at, or take off from, the place in safety.</p> <p>Where an ALA is provided by a person other than the pilot, then as far as the Authority is concerned, it would still be the pilot's responsibility to ensure that the facility provided is suitable for the intended aircraft operations.</p> <p>This CASA RPA clearly indicates the specific pilot responsibilities at an ALA and that CASA sanction is not required for an ALA.</p>
<p>Civil Aviation Advisory Publication No. 92-1 (1)</p>	<p>This Civil Aviation Authority Publication is central to the operational part of this review. It provides Guidelines for ALA's and is advisory.</p> <p>The responsibility for considering the suitability for a landing or take-off lie with the Pilot-in-Command and/or the Aircraft Operator.</p>

	<p>There is no legal compunction to comply, BUT</p> <ul style="list-style-type: none"> ALA's are not recommended for aircraft with a Maximum Take-Off weight greater than 5700kgs, <p>Aircraft engaged in the following operations may use an ALA:</p> <ul style="list-style-type: none"> Private Aerial Work – excluding student solo flying and student dual flying prior to successful completion of the General Flying Progress Test (GFPT) Charter. <p>Where extended operations are expected to be conducted at a landing area, the owner/operator is encouraged to provide markings similar to those found at government and licensed aerodromes.</p> <p>A pilot should not use a landing area without taking all reasonable steps to ensure the physical characteristics and dimensions are satisfactory.</p> <p>Except in an emergency, the consent of the owner/occupier is required before a landing area may be used.</p>
<p>CAAP No. 92-1 (1) CAR references:</p>	
<p>CAR 92 (1)</p>	<p>Use of aerodromes</p> <p>(1) A person must not land an aircraft on, or engage in conduct that causes an aircraft to take off from, a place that does not satisfy one or more of the following requirements:</p> <ul style="list-style-type: none"> (a) the place is an aerodrome established under the Air Navigation Regulations; (b) the use of the place as an aerodrome is authorised by a certificate granted, or registration, under Part 139 of CASR; (c) the place is an aerodrome for which an arrangement under section 20 of the Act is in force and the use of the aerodrome by aircraft engaged in civil air navigation is authorised by CASA under that section; (d) the place (not being a place referred to in paragraph (a), (b) or (c)) is suitable for use as an aerodrome for the purposes of the landing and taking off of aircraft; and, having regard to all the circumstances of the proposed landing or take off (including the prevailing weather conditions), the aircraft can land at, or take off from, the place in safety.
<p>CAR 93</p>	<p>Protection of certain rights</p> <p>Nothing in these Regulations shall be construed as conferring on any aircraft, as against the owner of any land or any person interested therein, the right to alight on that land, or as prejudicing the rights or remedies of any person in respect of any injury to persons or property caused by the aircraft</p>
<p>CAR 233</p>	<p>Responsibility of pilot in command before flight...</p> <p>(h) the aeronautical data and aeronautical information mentioned in sub regulation (1A) is carried in the aircraft and is readily accessible to the flight crew.</p> <p>(1A) For paragraph (1)(h), the aeronautical data and aeronautical information is the aeronautical data and aeronautical information:</p> <ul style="list-style-type: none"> (a) that is applicable to the route to be flown and to any alternative route that may be flown on that flight; and (b) that is published:

	(i) in the AIP; or ...
CAR 235	<p>235 Takeoff and landing of aircraft etc.</p> <p>(3) A manner of determining a maximum weight referred to in sub regulation (2) shall be such as to take into account such of the following considerations as CASA considers appropriate:</p> <p>(a) the type of aircraft;</p> <p>(b) the kind of operations to be carried out during the flight;</p> <p>(f) the aerodrome dimensions in the direction in which the aircraft is to take off or land;</p> <p>(g) the material of which the surface of the aerodrome in the direction in which the aircraft is to take off or land is constituted and the condition and slope of that surface;</p> <p>(h) the presence of obstacles in the vicinity of the flight path along which the aircraft is to take off, approach or land; ...</p>
Civil Aviation Orders (CAO's)	These regulations were researched in relation to the Warnervale Airport. There are no CAO's attributable to Aerodromes. CAO's are being progressively removed as information is being transferred into Civil Aviation Safety Regulations.
Civil Aviation Safety Regulation (CASR) Part 175	<p>CASR Part 175 establishes standards and legislative requirements for the quality and integrity of data and information used in air navigation. Specifically, information published in the Aeronautical Information Package (AIP), on aeronautical charts and contained within aeronautical navigation databases.</p> <p>This CASR is relevant because it relates to the aerodrome operational information provided to pilots planning to operate at Warnervale ALA provided within the Aeronautical Information Publication –En-Route Supplement Australia (ERSA)</p>
Aeronautical Information Publication (AIP)	AIP's contain aeronautical information of a lasting character essential to air navigation and in this case, for Warnervale ALA.
AIP Enroute Supplement Australia (ERSA)	ERSA provides particular operational information attributable to Aerodromes, including ALA. This is the standard operational planning reference for pilots pre- and in-flight.
PART 175.D – Aeronautical Data Originators – Data Product Specification: Uncertified / Unregistered Aircraft Landing Areas / Helicopter Landing Sites	The purpose of this document is to ensure that the AIS provider (Airservices) and the Aeronautical Data Originator – AIP Responsible Person meet the regulatory requirements of CASR Part 175. To register as the Aeronautical Data Originator – AIP Responsible Person the Aeronautical Data Originator (ADO) Form must be completed and returned to ado@airservicesaustralia.com . This is the mechanism whereby operational information for Warnervale ALA is provided in an operational format to pilots.
Small Regional Aerodrome Handbook (AAA)	Information regarding aerodromes provided by the Australian Airports Association (AAA) that provides generic information for operations to the different types of aerodromes.
CASA Aerodromes Register	Aerodromes certified or registered under the regulatory requirements of the Civil Aviation Safety Regulations Part 139 are included on the Aerodromes Register. Some ALA's, including Warnervale, are included in this Registry.
Sydney Airport Curfew Act 1995	Is a unique Act to impose a curfew and related restrictions on aircraft movements at Sydney Airport, and for related purposes.

Environment and Planning Legislation

The following table reviews environment and planning legislation that relates to Warnervale Airport, in descending hierarchy, with particular emphasis on identifying areas of duplication. The table has been prepared with the assistance of the Hunter and Central Coast Office of DPIE.

Legislation	Relationship to Warnervale Airport
<p>Environmental Planning and Assessment Act 1979 (EP&A Act) 1979 EXTRACT</p> <p>4.5 Designation of consent authority</p> <p>For the purposes of this Act, the <i>consent authority</i> is as follows:</p> <p>(a) in the case of State significant development—the Independent Planning Commission (if the development is of a kind for which the Commission is declared the consent authority by an environmental planning instrument) or the Minister (if the development is not of that kind),</p> <p>(b) in the case of development of a kind that is declared by an environmental planning instrument as regionally significant development—the Sydney district or regional planning panel for the area in which the development is to be carried out,</p> <p>(c) in the case of development of a kind that is declared by an environmental planning instrument as development for which a public authority (other than a council) is the consent authority—that public authority,</p> <p>(d) in the case of any other development—the council of the area in which the development is to be carried out.</p>	<p>The EP&A Act designates the consent authority, which as the following legal instruments confirm, would not be Council for:</p> <ul style="list-style-type: none"> • Air transport facilities that has a capital investment value of more than \$30 million. Such a development would designated State Significant and determined by an independent State planning body. • If considered a community facility, air transport facilities over \$5 million would be considered Regionally Significant and determined by an independent Regional planning body. • Council related development over \$5 million. Such a development would designated Regionally Significant and determined by an independent Regional planning body.
<p>State Environmental Planning Policy (SEPP) (State and Regional Development) EXTRACT</p> <p>Schedule 1 State significant development – general</p> <p>17 Air transport facilities</p> <p>Development for the purpose of air transport facilities that has a capital investment value of more than \$30 million.</p> <p>Schedule 7 Regionally Significant Development</p> <p>3 Council related development over \$5 million</p> <p>Development that has a capital investment value of more than \$5 million if—</p> <p>(a) a council for the area in which the development is to be carried out is the applicant for development consent, or</p> <p>(b) the council is the owner of any land on which the development is to be carried out, or</p> <p>(c) the development is to be carried out by the council, or</p> <p>(d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).</p> <p>5 Private infrastructure and community facilities over \$5 million</p> <p>Development that has a capital investment value of more than \$5 million for any of the following purposes -</p> <p>(a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems,</p>	<ul style="list-style-type: none"> • Air transport facilities that has a capital investment value of more than \$30 million. Such a development would designated State Significant and determined by an independent State planning body. • Council related development over \$5 million. Such a development would designated Regionally Significant and determined by an independent Regional planning body. • If considered a community facility, air transport facilities over \$5 million would be considered Regionally Significant and determined by an independent Regional planning body.

<p>telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,</p>	
<p>State Environmental Planning Policy (SEPP) (Infrastructure) EXTRACTS</p> <p>Division 1 Air transport facilities</p> <p>22 Development permitted without consent</p> <p>(1) Development for the purpose of an airport may be carried out by or on behalf of a public authority without consent on land in any of the following land use zones or in a land use zone that is equivalent to any of those zones—</p> <ul style="list-style-type: none"> • RU1 Primary Production, • RU2 Rural Landscape, • IN4 Working Waterfront, • SP1 Special Activities, • SP2 Infrastructure, • W2 Recreational Waterways, • W3 Working Waterways. <p>A reference in this clause to development for the purpose of an air transport facility includes a reference to development for any of the following purposes if the development is in connection with an air transport facility-</p> <ul style="list-style-type: none"> • construction works, • fencing, drainage or vegetation management. <p>23 Development permitted with consent</p> <p>Development for any of the following purposes may be carried out with consent on land within the boundaries of an existing air transport facility if the development is ancillary to the air transport facility—</p> <ul style="list-style-type: none"> • passenger transport facilities, • facilities for the receipt, forwarding or storage of freight, • hangars for aircraft storage or maintenance, • commercial premises, • industries, • recreation areas, recreation facilities (indoor) or recreation facilities (outdoor), • residential accommodation, • tourist and visitor accommodation. <p>8 Relationship to other environmental planning instruments</p> <p>Note.</p> <p>This clause is subject to section 3.28(4) of the Act.</p> <p>(1) Except as provided by subclause (2), if there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.</p> <p>Note.</p> <p>Subclause (1) does not prevent a local environmental plan from making provision about development of a kind specified in Part 3 in a particular zone if the provisions of this Policy dealing with development of that kind do not apply in that zone.</p>	<ul style="list-style-type: none"> • Confirms that consent is required for development ancillary to the air transport facility.

<p>(2) Except as provided by subclauses (3) and (4), if there is an inconsistency between a provision of this Policy and any of the following provisions of another environmental planning instrument, the provision of the other instrument prevails to the extent of the inconsistency—</p> <p>(a) clauses 10, 11 and 19 of <i>State Environmental Planning Policy (Coastal Management) 2018</i>,</p> <p>(b) all of the provisions of <i>State Environmental Planning Policy (State Significant Precincts) 2005</i>.</p> <p>(3) Clause 48B of this Policy prevails over clauses 10 and 11 of <i>State Environmental Planning Policy (Coastal Management) 2018</i> to the extent of any inconsistency.</p> <p>(4) A provision of this Policy that permits development for the purpose of emergency works or routine maintenance works to be carried out without consent, or that provides that development for that purpose is exempt development, prevails over clauses 10 and 11 of <i>State Environmental Planning Policy (Coastal Management) 2018</i> to the extent of any inconsistency, but only if any adverse effect on the land concerned is restricted to the minimum possible to allow the works to be carried out.</p> <p>(5) For the avoidance of doubt, development to which subclause (3) or (4) applies is not declared designated development for the purposes of the Act.</p>	<ul style="list-style-type: none"> • Coastal management clauses are in place to protect the wetlands, which are also zoned E2 Environmental Conservation, where an airport is not permitted. • The trees to the north of Sparks Road are identified as an ecologically endangered community (EEC) under the <i>NSW Biodiversity Conservation Act 2016</i>. Threatened ecological communities are managed under the <i>Biodiversity Conservation Program</i>.
<p>Wyong Local Environmental Plan 2013 EXTRACTS</p> <p>Land Use Tables</p> <p>IN1 General Industrial</p> <p>1 Objectives of zone</p> <ul style="list-style-type: none"> • To provide a wide range of industrial and warehouse land uses. • To encourage employment opportunities. • To minimise any adverse effect of industry on other land uses. • To support and protect industrial land for industrial uses. • To enable other land uses that provide facilities or services to meet the day-to-day needs of workers in the area. <p>2 Permitted without consent</p> <p>Nil</p> <p>3 Permitted with consent</p> <p>Depots; Food and drink premises; Freight transport facilities; Garden centres; General industries; Hardware and building supplies; Industrial training facilities; Kiosks; Landscaping material supplies; Light industries; Liquid fuel depots; Neighbourhood shops; Oyster aquaculture; Places of public worship; Plant nurseries; Roads; Rural supplies; Tank-based aquaculture; Timber yards; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development not specified in item 2 or 4</p> <p>4 Prohibited</p> <p>Agriculture; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Eco-tourist facilities; Educational establishments; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Function centres; Heavy industries; Heavy industrial storage establishments; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Information and education facilities; Jetties; Marinas; Mooring pens; Moorings; Open cut mining; Passenger transport facilities; Pond-based aquaculture; Public administration buildings; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Residential accommodation; Tourist and visitor accommodation; Water recreation structures; Wharf or boating facilities</p>	<ul style="list-style-type: none"> • Confirms that the IN1 General Industrial zoning allows for the airport and ancillary uses.

<p>E2 Environmental Conservation</p> <p>1 Objectives of zone</p> <ul style="list-style-type: none"> • To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. • To prevent development that could destroy, damage or otherwise have an adverse effect on those values. • To protect endangered ecological communities, coastal wetlands and littoral rainforests. • To enable development of public works and environmental facilities if such development would not have a detrimental impact on ecological, scientific, cultural or aesthetic values. <p>2 Permitted without consent</p> <p>Nil</p> <p>3 Permitted with consent</p> <p>Eco-tourist facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Oyster aquaculture; Recreation areas; Research stations; Roads; Water reticulation systems</p> <p>4 Prohibited</p> <p>Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3.</p> <p>Local clauses</p> <p>7. 7 Airspace operations</p> <p>(1) The objectives of this clause are as follows -</p> <ul style="list-style-type: none"> • to provide for the effective and ongoing operation of the Warnervale Airport by ensuring that its operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport, • to protect the community from undue risk from that operation. <p>(2) If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.</p> <p>(3) The consent authority may grant development consent for the development if the relevant Commonwealth body advises that -</p> <p>the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or</p> <p>the development will not penetrate the Limitation or Operations Surface.</p> <p>(4) The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be constructed.</p> <p>(5) In this clause—</p> <p><i>Limitation or Operations Surface</i> means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Warnervale Airport.</p>	<ul style="list-style-type: none"> • Confirms that the wetlands are protected, and that major development within the wetlands would not be possible even with consent. • Prevents development from taking place in the OLS without consultation with CASA. • Clause protects the community from undue risk from airport operations – addressing safety concerns. • Requires consultation with CASA before development is approved that may affect the OLS.
---	--

relevant Commonwealth body means the body, under Commonwealth legislation, that is responsible for development approvals for development that penetrates the Limitation or Operations Surface for the Warnervale Airport.

7.8 Development in areas subject to aircraft noise

(1) The objectives of this clause are as follows—

(a) to prevent certain noise sensitive developments from being located near the Warnervale Airport and its flight paths,

(b) to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,

(c) to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.

(2) This clause applies to development that—

is on land that—

- is near the Warnervale Airport, and
- is in an ANEF contour of 20 or greater, and
- the consent authority considers is likely to be adversely affected by aircraft noise.

(3) Before determining a development application for development to which this clause applies, the consent authority—

- must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and
- must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and
- must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.

(4) In this clause -

ANEF contour means a noise exposure contour shown as an ANEF contour on the Noise Exposure Forecast Contour Map for the Warnervale Airport prepared by the Department of the Commonwealth responsible for airports.

AS 2021-2000 means AS 2021—2000, Acoustics - Aircraft noise intrusion - Building siting and construction.

7.10 Council infrastructure development

(1) Development may be carried out by or on behalf of the Council without development consent on any land, other than land in a heritage conservation area, land containing a heritage item or land that is an environmentally sensitive area for exempt and complying development.

(2) Subclause (1) does not apply to the following development -

(a) the erection of a class 1–9 building under the Building Code of Australia,

(b) development that is not exempt development under State Environmental Planning Policy (Infrastructure) 2007 and has a capital value of more than \$5,000,000.

- Makes provision for noise concerns to be addressed in relation to the airport.

- Confirms that Council cannot approve infrastructure on its own land that has a capital value greater than \$5 million.

Appendix C: Statutory frameworks for similar airports in other locations in NSW

Comparative Planning Controls* for similar size NSW Aerodromes/ Airports

* SEPP Infrastructure 2007, Division 1- Air Transport Facilities and Section 9.1 Direction 3.5 Development Near Regulated Airports and Defence Airfields are common to all aerodromes, so these are not included in the table below which focuses on local planning controls exercised by Councils. This table has been prepared by the Hunter and Central Coast office of DPIE.

	Ballina	Casino	Cessnock	Collarenebri	Hillston	Kempsey	Lake Macquarie	Tottenham
1	<p>Airport Name</p> <p><i>Ballina Byron Gateway Airport</i></p> <p>https://www.ballina.info/airport/</p> <p>Operational Facilities:</p> <p>https://www.ballina.nsw.gov.au/cp_themes/default/page.asp?p=DOC-GLC-71-65-36</p>	<p><i>Casino Airport</i></p> <p>Guide:</p> <p>https://airportguide.com/airport/info/CSI</p> <p>Carriers:</p> <p>https://richmondvalley.nsw.gov.au/business/tourism/travel-to-the-valley/</p>	<p><i>Cessnock Airport</i></p> <p>1,097m runway, parallel taxiway, aprons and terminal building.</p> <p>http://www.cessnock.nsw.gov.au/community/business/airport</p>	<p><i>Collarenebri Aerodrome</i></p> <p>https://www.walgett.nsw.gov.au/wp-content/uploads/2018/01/Collarenebri-aeroi.pdf</p>	<p>Hillston Airport</p>	<p>Kempsey Airport</p> <p>Council operated airport at Aldavilla,</p> <p>https://www.kempsey.nsw.gov.au/economic/dev/airport.html</p>	<p>Lake Macquarie Airport also known as Pelican Airport, Belmont Airport and Aeropelican</p> <p>50mins drive from Newcastle Airport</p>	<p>Tottenham</p> <p>Edwards Aviation offers small jet charters ex Tottenham to regional NSW and the islands</p>
2	<p>Location</p> <p>210 Southern Cross Drive, Ballina (SIX Maps)</p> <p>Terminal is 3km north of Ballina town centre.</p>	<p>Lot 13 DP 1142601</p>	<p>7km N of Cessnock town centre in Pokolbin Vineyards area:</p> <p>453 Wine Country Drive, Pokolbin</p> <p>(terminal building)</p> <p>455 Wine Country Drive, Pokolbin</p> <p>(runway, taxiway & hangars)</p>	<p>1.9km north of Collarenebri</p>	<p>Lot 365 DP 726541</p> <p>Boundary Road, Hillston</p>	<p>7.4km west of Kempsey.</p> <p>Lot 1 DP 1144474 (runway)</p> <p>Lot 2 DP 1144474</p>	<p>Lot 1576 DP 755233</p>	<p>Lot 1 DP862360</p>

3	LGA	Ballina Shire Council	Richmond Valley Council	Cessnock City Council	Walgett Shire Council	Carrathool Shire Council	Kempsey Shire Council	Lake Macquarie City Council	Lachlan Shire
4	Local plan	Ballina Local Environmental Plan 2012 DCP: see line 13 see below	Richmond Valley Local Environmental Plan 2012 Richmond Valley DCP: see line 13 see below	Cessnock LEP 2011	Walgett Local Environmental Plan 2013	Carrathool Local Environmental Plan 2012	Kempsey LEP 2013 https://www.legislation.nsw.gov.au/#/view/EPI/2013/712	Lake Macquarie Local Environmental Plan 2014	Lachlan LEP 2013
5	Land use	SP2 Infrastructure-Air Transport Facility	RU1 Primary Production	SP2 Infrastructure-Air Transport Facility	SP2 Infrastructure-Air Transport Facility	SP2 Infrastructure-Air Transport Facility	RU2 Rural Landscape	SP2 Airport	SP2 Air Transport Facilities
7	Site-specific controls	NA	No APU's (Sch.1) cl.6.11- Airspace Operations: https://www.legislation.nsw.gov.au/#/view/EPI/2012/98/part6/cl6.11 DA Referrals to CASA	Sky-diving drop zone exclusion area (DCP Appendix 4) Hangar design guidelines (DCP Appendix 5) Site assessment checklist (DCP Appendix 6)	https://www.legislation.nsw.gov.au/#/view/EPI/2013/373/part6/cl6.4	None	None	None Width of this neck of land limits the runway length to 880m.	No APU's Attachment: 8.3: Cl.5.16 may be interpreted as protective of airport operations
10	Noise	cl.7.6 Development in areas subject to aircraft noise https://www.legislation.nsw.gov.au/#/view/EPI/2013/20/part7/cl7.6	Richmond Valley DCP 2016: Part 1-7 Noise Impact Assessment is focused on noise generated by land uses/ DA proposals	https://www.legislation.nsw.gov.au/#/view/EPI/2011/702/part7/cl7.5 DCP Section E7 Appendix 3- ANEF contours		None	Noise Management Plan 2018: http://www.kempsey.nsw.gov.au/council/meetings/2018-12-04/pubs/6-1-1-kempsey-airport-nmp-final-draft-nov-18.pdf		None

1 2	Special LEP clauses	cl.7.5 Airspace operations https://www.legislation.nsw.gov.au/#/view/EPI/2013/20/part7/cl7.5	Cl.6.11 Airspace Operations https://www.legislation.nsw.gov.au/#/view/EPI/2012/98/part6/cl6.11	Part 7 cl.7.5 (see web-link above- 'Noise')	https://www.legislation.nsw.gov.au/#/view/EPI/2013/373/part6/cl6.4 OLS provisions for the 3 airports in the Shire	None	Cl.7.7- Airspace Operations: https://www.legislation.nsw.gov.au/#/view/EPI/2013/712/part7/cl7.7	Cl.7.8 Airspace Operations https://www.legislation.nsw.gov.au/#/view/EPI/2014/605/part7/cl7.8	
1 3	DCP	No specific airport provisions	Richmond Valley DCP Part 1_11: Land Use Conflict Risk Assessment- I-11.3 'Buffers' refers to airport buffers but not standards or methods- based approaches specific to air operations or airports. Not receptor- focused.	Cessnock DCP, 21 July 2004 Part E – Specific Areas- E.7: Cessnock Airport DCP section E7 Appendix 2 contains OHLS map	Walgett Shire DCP 2015: No provision specific to air operations or airports	Carrathool Shire does not appear to have an operative DCP	Kempsey DCP 2013	No aerodrome provisions	No aerodrome provisions

Appendix D: Detailed review of the Act

The following table reviews the Act and its interaction and consistency with other legislation:

Warnervale Airport (Restrictions) Act 1996 New South Wales	Reviewer comment
<p>An Act to provide for restrictions on aircraft movements, and on the length and site of any runway, at Warnervale Airport; and for other purposes.</p>	<ul style="list-style-type: none"> Not explicit whether this is the Object of the Act. Operational Flying information is ordinarily within the Civil Aviation Safety Authority (CASA) document set, in particular the Aeronautical Information Publications (AIP) En-Route Supplement Australia (ERSA). This information would normally be carried in-flight by pilots. <p>As such there is duplication of legislation.</p> <p>Moreover, not including this information in the AIP could cause a flying safety risk as pilots would not know to refer to the Act, which is unique legislation for a minor ALA.</p> <p>CASA Reference: CAAP No. 92-1 (1)</p>
<p>Part 1 Preliminary</p> <p>1 Name of Act</p> <p>This Act is the Warnervale Airport (Restrictions) Act 1996.</p> <p>2 Commencement</p> <p>This Act commences on a day or days to be appointed by proclamation.</p> <p>3 Definitions In this Act:</p> <p>aircraft means any machine that can derive support in the atmosphere from the reactions of the air but does not include a glider.</p> <p>aircraft operator, in relation to an aircraft, means a person who conducts an aircraft operation using the aircraft.</p> <p>airport operator means the person who operates Warnervale Airport.</p> <p>Warnervale Airport means any airport situated on land at Warnervale (being land comprised in Lot 12 in DP 605250, Lot 24 in DP 53936, Lots 1 to 4 in DP 239691, Lots 22 and 23 in DP 773449 and Lot 27 in DP 228750).</p>	<ul style="list-style-type: none"> The term 'airport' is correct, in a generic form, in relation to Warnervale Aircraft Landing Area (ALA), which is also named Warnervale Airport: <p>airport / noun a civil aerodrome designed for the take-off and landing of passenger-carrying aircraft for the general public and/or cargo aircraft.</p> <p>Aerodrome. A defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft. There are three types of Aerodromes in descending order of regulation:</p> <ul style="list-style-type: none"> Certified, Regulated, Aircraft Landing Area (ALA). <p>Source: CASA</p> <ul style="list-style-type: none"> The Lots referred to have been superseded and no longer exist.
<p>Part 2 Restrictions on aircraft movements</p> <p>4 Application of Part</p> <p>(1) This Part does not apply to take offs and landings of aircraft at Warnervale Airport on an existing runway.</p> <p>(2) An existing runway is a runway that was constructed before the commencement of this section and that is not extended at any time after the commencement of this section.</p> <p>5 Curfew</p> <p>(1) There is a curfew period for Warnervale Airport that starts at 10 pm on each day and ends at 6.30 am on the next day. Aircraft</p>	<ul style="list-style-type: none"> No definition of 'extended' is offered, including application. Noted that a runway can include any surfaces or mixture of surfaces including sealed, gravel and/or grass. The dimension of a runway includes many formal design aspects such as Length, Width, Shoulders, Sight Distance, Longitudinal Slope, Transverse Slope, Runway Strip, Stopway, Fly-over Area, Displaced Threshold, Runway End Safety Area, Thresholds, Turning Areas, Bearing Strength, Effective

<p>must not take off from or land at Warnervale Airport during the curfew period.</p> <p>(2) An aircraft operator must not cause or permit an aircraft to take off or land in contravention of this section.</p> <p>Maximum penalty: 100 penalty units.</p> <p>(3) The airport operator must not cause or permit an aircraft to take off or land in contravention of this section.</p> <p>Maximum penalty: 100 penalty units.</p> <p>(4) This section is not contravened as a result of an aircraft taking off or landing in the circumstances described in section 7 (Emergencies). In proceedings for an offence against this Act under this section, or for an injunction under section 13, the onus is on the defendant to establish that an aircraft took off or landed in those circumstances.</p> <p>(5) If the maximum length for any runway at Warnervale Airport is increased under section 8, the Minister may, by order published in the Gazette, vary the curfew period for Warnervale Airport. The curfew period as varied has effect in place of the curfew period specified in subsection (1).</p> <p>6 Limit on number of daily take offs and landings</p> <p>(1) The total number of take offs and landings of aircraft at Warnervale Airport (added together) occurring between the end of the curfew period on a day and the start of the next curfew period on that day must not exceed 88.</p> <p>(2) The airport operator must not cause or permit an aircraft to take off or land if the takeoff or landing would result in a contravention of this section.</p> <p>Maximum penalty: 100 penalty units.</p> <p>(3) An aircraft taking off or landing in the circumstances described in section 7 (Emergencies) is to be disregarded for the purposes of this section. In proceedings for an offence against this Act under this section, or for an injunction under section 13, the onus is on the airport operator to establish that an aircraft took off or landed in those circumstances.</p> <p>(4) If the maximum length for any runway at Warnervale Airport is increased under section 8, the Minister may, by order published in the Gazette, change the number 88 referred to in subsection (1) to any other number. The number as changed has effect in place of the number 88 in subsection (1).</p> <p>7 Emergencies</p> <p>The curfew, and the limit on the number of daily take offs and landings of aircraft at Warnervale Airport, do not apply to an aircraft that takes off or lands at Warnervale Airport if:</p> <p>(a) the aircraft is being used for or in connection with a search and rescue operation, a medical emergency or a natural disaster, or</p> <p>(b) the pilot of the aircraft has declared an in-flight emergency, or</p> <p>(c) the aircraft has insufficient fuel to be diverted to another airport, or</p> <p>(d) there is an urgent need for the aircraft to take off or land to ensure the safety or security of the aircraft or any person or to avoid any damage to property.</p>	<p>Operational Length. (ICAO reference Annex 14 and CASA Reference Part 139 MOS).</p> <ul style="list-style-type: none"> • Standard practice is to place Curfew Times in the AIP ERSA so that pilots would have the information readily at hand. Pilots would not know to refer to this unique Act, resulting in a potential safety risk. • Realistically this cannot be physically enforced by an airport operator but prosecution can be affected. CASA reference CAAP No. 92-1 (1) et al. • Realistically this cannot be physically enforced by an airport operator but prosecution can be affected. • Emergency diversions are already permitted in CASA legislation. (CASA Reference CAAP No. 92-1 (1) et al.) • This is poorly described and ambiguous by not prescribing an increase or decrease in curfew times. • This cannot be realistically physically enforced. Movements at an airport are operationally restricted as a function of several factors including runway length and airspace (circuit area) capacity during the period. The number 88 appears arbitrary without explanatory notes, especially when the saturating limiting factors are considered. • Realistically this cannot be physically enforced by an airport operator but prosecution can be affected. • The penalty is arbitrary without explanatory notes. • This is poorly described by not prescribing an increase or decrease in permitted movements. • A development approval (EP&A Act) or pollution control license (POEO Act) can impose conditions related to timing and use. • Emergency diversions are already permitted in CASA legislation. The penalty appears arbitrary without explanatory notes, and penalties are doubled. (CASA Reference CAAP No. 92-1 (1) et al.)
---	--

<p>Part 3 Restrictions on length and site of runway</p> <p>8 Limit on length of runway</p> <p>(1) The maximum length for any runway (existing or proposed) at Warnervale Airport is 1,200 meters.</p> <p>(2) The airport operator must not cause or permit an aircraft to take off from or land at a runway at Warnervale Airport if the runway exceeds the maximum length for the runway.</p> <p>Maximum penalty: 100 penalty units.</p> <p>(3) The maximum length for any runway at Warnervale Airport may be increased to up to 1,800 meters by the Minister as provided for by this section.</p> <p>(4) Wyong Council may apply in writing to the Minister for such an increase.</p> <p>(5) The Minister may, after completion of the review and noise study referred to in Part 4, grant the increase or refuse to grant the increase.</p> <p>(6) The Minister grants an increase by specifying the increased maximum length in an order published in the Gazette. The increased maximum length so specified has effect in place of the maximum length specified in subsection (1) in respect of the runway concerned.</p> <p>9 Site of runway</p> <p>(1) A person must not carry out any work for the construction of a runway at Warnervale Airport, unless the site of the runway has been approved in writing by the Minister prior to the commencement of the work.</p> <p>Maximum penalty: 100 penalty units.</p> <p>(2) This section extends to work that was started before the commencement of this section and for that purpose a reference in this section to the commencement of the work is to be read as a reference to the continuation of the work after the commencement of this section.</p>	<ul style="list-style-type: none"> • The maximum runway length of 1,200 meters is suitable and appropriate from an aviation perspective for the type of operations that are realistically able to use Warnervale ALA i.e. maximum 5,700kgs. Taking into account the existing site boundaries and surrounding topography, environmental characteristics and land uses, it is hard to envisage how the runway could be lengthened. • Realistically, the ALA requirements, physical barriers and legislative processes beyond this Act preclude any development of Warnervale airport beyond its current configuration. • A development application, assessment and approval process under the EP&A Act could nevertheless establish the parameters of any development. There is no legal limit on the number of development application, assessment and approval processes that can be undertaken. Detailed and comprehensive environmental assessment would be required for any development application. • Existing physical constraints include the wetland to the south and the road and trees to the north. While the CMSEPP allows a pathway for development in the wetland, the E2 Conservation zone to the south (and to the north) would restrict the land uses that are permitted. • The penalty is arbitrary without explanatory notes (CASA Reference CAAP No. 92-1 (1) et al.) • The penalty is arbitrary without explanatory notes (CASA Reference CAAP No. 92-1 (1) et al.)
<p>Part 4 Review of proposal to expand operations at Warnervale Airport</p> <p>10 Application of Part</p> <p>(1) This Part applies only if Wyong Council applies in writing to the Minister for the grant of an increase in the maximum length for an existing or proposed runway at Warnervale Airport.</p> <p>(2) No more than one such application can be made unless the Minister otherwise directs.</p> <p>11 Independent review of proposal</p> <p>(1) The Minister is to appoint an independent person or persons to review any environmental impact study, and any other study, referred to the person or persons by the Minister that relates to a proposal to extend the runway at Warnervale Airport or to construct a new runway at that Airport.</p> <p>(2) The Minister is to put in place arrangements for community input on the review.</p>	<ul style="list-style-type: none"> • All development and activities at the Warnervale ALA (as defined in the EP&A Act) are required to follow planning process and require environmental assessment. There is no legal limit on the number of development application, assessment and approval processes that can be undertaken. Detailed and comprehensive environmental assessment would be required for any development application. • Legislation has changed since the Act was written. Council can now only assess and approve minor development proposals up to \$5M on its own land. Applications over and above this value require independent assessment, and determination by a local or regional Planning Panel is required. • Moreover, aviation related development applications are required to be assessed and determined by an independent body (source). • The Reviewers note that extension of the runway in 2015 appears to have occurred without environmental assessment and without due

<p>(3) The person or persons appointed to conduct the review are to be appointed by the Minister following consultation with Wyong Council.</p> <p>12 Noise study</p> <p>(1) The Minister is to make arrangements for the carrying out of a new study of the impact of aircraft noise arising from proposed operations of Warnervale Airport.</p> <p>(2) A person appointed to conduct the study must be an expert in the field and must be appointed by the Minister following consultation with Wyong Council.</p> <p>(3) The arrangements for the conduct of the noise study are to include arrangements for a survey, conducted independently of Wyong Council, of all residents within a 7.5 kilometre radius of any runway or proposed runway at Warnervale Airport. Those arrangements are to include arrangements for those residents to be informed of the noise study and invited to make submissions on the advantages and disadvantages of the proposed operations of Warnervale Airport.</p>	<p>planning process. It is also unclear to stakeholders and the community what, if any, penalty was applied in response to this, adding to general confusion and mistrust.</p> <ul style="list-style-type: none"> Legislative duplication. A detailed noise study would be an essential requirement for any proposal where noise is a potential environmental impact, and would be essential for any aviation related proposal. The study would be obliged to consider all 'sensitive receptors', in particular residents. The assessment process would require a public exhibition period, notification of such, and invitation to interested parties to make submissions in response. As above, assessment and determination could no longer be undertaken by Council as it is the owner of the land.
<p>Part 5 Miscellaneous</p> <p>13 Injunction to prevent contravention</p> <p>(1) If the Supreme Court is satisfied, on application, that a person has engaged in or is proposing to engage in conduct that constitutes or would constitute a contravention of this Act, the Court may grant an injunction, in such terms as the Court determines to be appropriate, restraining the person from engaging in any conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.</p> <p>(2) An application under this section may be brought by any person, whether or not any right of the person has been infringed by or as a consequence of the contravention.</p> <p>(3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.</p> <p>(4) The Court may rescind or vary an injunction granted under this section.</p> <p>(5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:</p> <p>(a) whether or not it appears to the Court that the person intends to engage again, or continue to engage, in conduct of that kind, and</p> <p>(b) whether or not the person has previously engaged in conduct of that kind, and</p> <p>(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.</p> <p>(6) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:</p> <p>(a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do an act or thing, and</p>	<ul style="list-style-type: none"> Extant within current Planning legislative requirements. This is legislative duplication. The EP&A Act and POEO Acts include penalties for a variety of offences (e.g. breach of consent conditions, undertaking development without consent). The Aircraft Noise Ombudsman (ANO) has been established to conduct independent administrative reviews of Airservices Australia and how it handles aircraft noise-related activities, such as the handling of complaints/enquiries, community consultation processes, and the presentation and distribution of aircraft noise-related information. The aviation industry works closely with the independent office of the ANO to improve the way in which it can respond to community concern about the impact of aviation on communities. Aircraft noise complaints are to be directed in the first instance to Airservices Australia's Noise Complaints and Information Services, however if little satisfaction is found through these channels, a complaint can be made to the ANO.

<p>(b) whether or not the person has previously failed to do that act or thing, and</p> <p>(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person fails to do that act or thing.</p> <p>(7) If the Minister makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Minister or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.</p> <p>14 Evidence</p> <p>In proceedings against a person for an offence against this Act, or for an injunction under section 13, if it is established that an aircraft took off or landed in contravention of a provision of this Act, it is to be presumed (in the absence of evidence to the contrary adduced by the person) that the person caused or permitted that takeoff or landing.</p> <p>15 Proceedings for offences</p> <p>Proceedings for an offence against this Act are to be disposed of summarily before the Local Court.</p> <p>16 Regulations</p> <p>The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.</p> <p>17 Review of Act</p> <p>(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.</p> <p>(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.</p> <p>(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.</p>	<ul style="list-style-type: none"> • Reviews can be imposed through development application. • Requirements of related legislation provide the opportunity for review and compliance action at any time regarding all aspects of operation.
--	---

Appendix E: Analysis of submissions

The Review invited both written and verbal submissions by any interested individual or entity. **939** unique written and verbal submissions were received. Of these, written submissions made up **927** of the numbers, while there were **15** face-to-face presentations at the public meeting, three of whom also provided written submissions. Written submissions were reviewed and analysed by the Hunter and Central Coast office of DPIE.

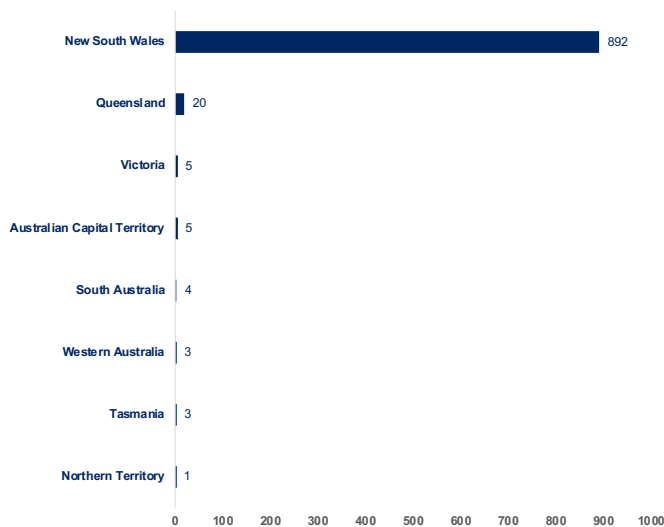
Of the submissions:

- **908** were from the general community. Of these, **79%** were 'form' letters (non-unique), being standardised letters dealing with frequently occurring matters.
- **7** were from elected officials.
- **1** was from an ex-politician.
- **6** were from aviation groups.
- **1** was from a community group.
- **2** were from environment groups.
- **1** was from local government officers.
- **1** was from a business group.
- **1** was from a property/development industry group.

While every effort was made by the Departmental team analysing the submissions to exclude multiple submissions from the same person or group, as well as submissions from fictitious email addresses, there is a small likelihood that some of these remain. Nevertheless, the overall outcome indicated that approximately **25%** of submissions were in favour of retention of the Act, while **75%** supported the Act being repealed. This is illustrated within the body of the report

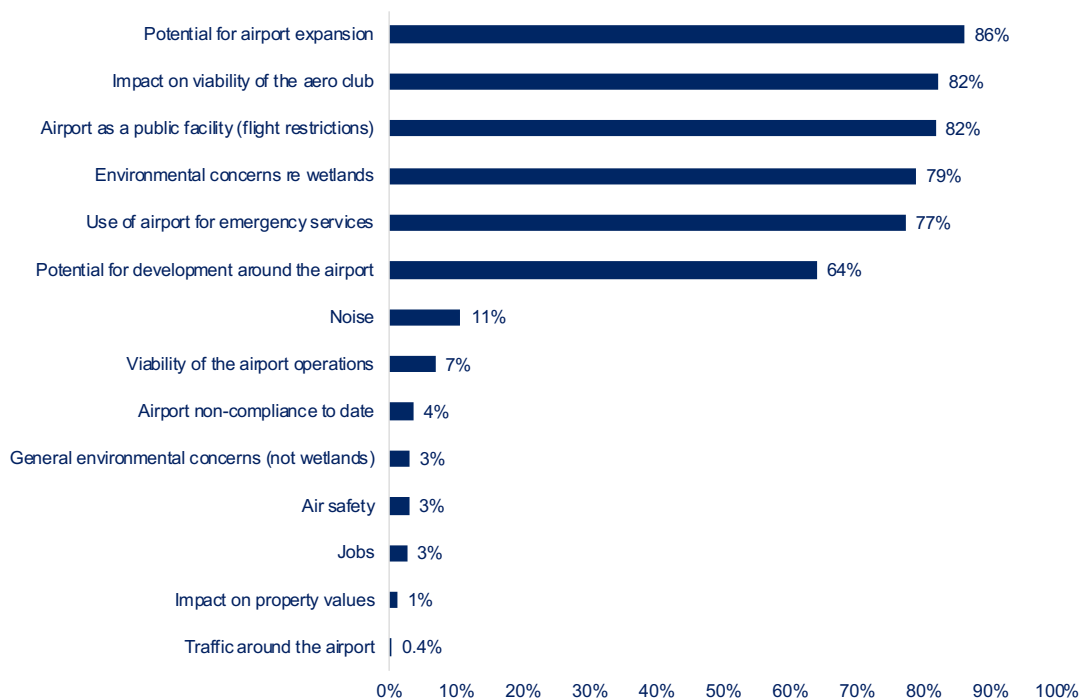
Of the **939** written submissions received, **96%** were from New South Wales, followed by **2%** from Queensland, and lesser amounts from other States. One submission was received from overseas. The State-wide distribution is graphed below.

Submissions by State, where identified



Themes emerging from written submissions are outlined below. These themes are examined in relation to those in support of retention of the Act, and repealing the Act, within the body of the report.

Percentage of comments by theme



Appendix F: Historical media articles regarding Warnervale airport

Historically, Council and individual Councillors have mooted several ideas for expanding the airport, increasing development at the airport, and making provision for jet aircraft. Some of these informal proposals have been for sites other than the existing ALA location. While the ideas have captured local media attention and driven community and stakeholder response, as below, no substantive reports, impact assessments or applications have been made public.

The media reports below are just three of many, and included to illustrate the style of reporting and dissent generated.

NEWS Page 8
November 7, 2017

Mayoral Minute on release of airport

A confidential master plan for the future expansion of the Central Coast Airport at Warnervale, will be put on public exhibition, if the new Central Coast Council decides to proceed with it, according to Central Coast Mayor, Cllr Jane Smith.

Cllr Smith called for an authorised proactive release of information relating to the future of the Wyong Economic Zone, including Central Coast Airport, in a Mayoral Minute at the October 23 ordinary Council meeting.

The proactive release of previously confidential documents was intended to be made under Section 7 of the Government Information (Public Access) Act 2009.

During the debate of the Mayoral Minute, several attempts were made by various Councillors to ensure that the plans for the future development of the area were kept out of the public domain.

Following the meeting, Cllr Smith said: "I am confident that the staff will provide a briefing that looks at long term plans for that area.

"The purpose of the briefing is to then decide whether they [the Councillors] want to proceed with that master plan or not.

"If they decide to proceed, the intention is that it goes out on public exhibition," she said.

In speaking in favour of the Mayoral Minute at the October 23 meeting, Cllr Smith said she noted "it would be appropriate for the new Council to review and reconsider direction, in light of key strategic planning documents".

Cllr Doug Vincent rose to suggest an amendment in support of moves to place more information about the future of the airport in the public domain.

"There is a master plan for this site and I can't see the master plan in the wording, so I would like to see if we can include that the master plan needs to be released to enable Council to assess its merit," Cllr Vincent said.

Even though the wording of the Mayoral Minute was amended in an effort to address Cllr Vincent's concerns, he, and several other Councillors, remained unconvinced.

"Is the master plan going to be included in the report, because that is what I am looking for?"

"It says draft master plan, but my understanding is there is a master plan, and hasn't that master plan gone before the Administrator?"

"I explicitly want it there that the master plan is released.

"We have been given an undertaking by staff that master plan will be included in the report... so the full master plan will be included in the report?"

Cllr Smith responded "that is my understanding".

Central Coast Council's Chief Counsel, Mr Brian Glendenning, said: "My understanding is ...the report that will come to the last meeting [of Council for the year] will have, for the Councillors, a copy of the draft masterplan, including the full staging, putting on record that the report will contain it.

Cllr Vincent also asked for the suspension of all works on the airport indefinitely, pending the outcome of the briefing to Council.

Cllr Smith did not accept the amendment.

She said the intent was that all contracts and works would be suspended until the briefing, for which a date has not yet been set.

Cllr Louise Greenaway also called for clarification of the intent of the Minute by asking for an end date for documents to be made available.

Cllr Troy Marquart said he was concerned that it was the second Council meeting in a row where there had been business put forward "quite late" by the Mayor, and he questioned whether it was necessary to call for a halt to all works.



Councillors will be briefed about confidential plans for the airport

information results in substantial debate

Mr Bell said that the only work under way at the airport was "general maintenance".

However, later in the debate, Cllr Greenaway said she had been given a list of seven consultants that provide services to Council in relation to the airport, "but the information is confidential, so I cannot state it at a public meeting," she said.

Deputy Mayor, Cllr Chris Holstein, called for the report on any documents to be released to be "a confidential report to council on matters to be publicly disclosed".

Cllr Smith refused to accept that amendment.

Cllr Holstein said there was usually a good reason why documents were kept confidential and he believed the Mayoral Minute "just leaves us a little bit open there".

Cllr Bruce McLachlan said he was concerned that the content of the Mayoral Minute made the Council appear to be "anti-progress".

Cllr McLachlan then moved an amendment to strike out reference to the suspension of works at the airport, which Cllr Marquart seconded.

Speaking against the amendment, Cllr Vincent said: "There are plenty of third parties out there who want a hold put on this until there is an understanding of the master plan.

"There is nothing saying in here that we are going to shut down what is already contracted... it sends a message that we want to have a look at this," he said.

"There are 35,000 people whose lives are going to be affected, they are all worried that they are going to get a jet airport in their backyard."

Cllr McLachlan said he was well aware of sentiment towards the airport but "this is the second meeting now where we are putting stop work orders and we are not a union movement, it is the wrong message that we are sending to the community, especially from a brand new Council.

The amendment was lost but was supported by Cllrs Marquart, Gale Collins, Pilon, McLachlan and Burke.

Cllr Kyle MacGregor then spoke in favour of the Mayoral Minute.

"There is an Act of Parliament that precludes this from being used as a jet airport, but potentially millions of dollars have already been spent," Cllr MacGregor said.

Cllr Vincent said: "This is long overdue and hopefully the community will get to understand what is happening at the Warnervale airport.

"We have got staff out there doing work on the fourth airport site when they could be out there doing good planning, good work for the community, on something that is going to happen," he said.

The Mayoral Minute was adopted by the Council, with all voting in favour except Cllrs Marquart and Gale Collins, who abstained.

In 1996, following community concerns

about the development of Warnervale Airport (as it was then named), the NSW Parliament passed the Warnervale Airport (Restrictions) Act 1996 (WAR Act), to restrict certain activities and development at the Warnervale Airport.

Subsequently, the airport land was included in the Warnervale Economic Zone (WEZ) for industrial development.

The site is at the upper catchment of Porters Creek Wetland, the largest freshwater wetland on the Central Coast.

Much of Porters Creek wetland is identified as a SEPP14 wetland, with the north east areas, including much of the location of WEZ, described as a "Wetland Management Area" in Chapter 3.10 of Wyong Shire Development Control Plan 2013.

In early 2015, Wyong Council started planning for a Regional Airport at Warnervale, despite the site being subject to the WAR Act.

In May 2015, the former Wyong Council applied to the then NSW Minister for Planning to have the WAR Act repealed.

That Minister initiated a review of the WAR Act.

In August, the current Minister for Planning refused that request.

On October 28, 2015, the former Wyong Council resolved to proceed with the Warnervale Airport development and adopted a masterplan.

That 2015 masterplan has never been out on public exhibition.

Council has spent funds to clear native vegetation and build assets such as roads, runways, buildings, a flood levee, fencing and security cameras in and around the Airport.

In addition, an Airport Manager was employed, and expressions of interest called to develop the airport.

There are also substantial other expenses such as planning, advertising, staff time and legal and planning consultants,

according to Cllr Smith's Mayoral Minute.

"Key Planning documents do not provide for an airport, including the Central Coast Regional Plan 2013 prepared by the NSW Government.

"Given that the proposed regional airport is not included in key planning documents and the State Government's recent decision to retain the WAR Act, it is appropriate for Council to re-consider the future direction of this site in consultation with the community."

A report will be provided to the ordinary meeting of the Council on November 27 on the draft Masterplan for the Central Coast Airport.

All works on the Central Coast Airport have been suspended until the date.

Source:
Agenda item 2.1, Oct 23
Meeting notes, Oct 23
Central Coast Council
ordinary meeting
interview, Nov 1
Jane Smith, Central Coast
Council
Jackie Pearson, Journalist



30 Nov 2017
Central Coast Express-Advocate, Gosford

Author: Fiona Killman • Section: General News • Article type : News Item
Audience : 112,823 • Page: 15 • Printed Size: 404.00cm² • Market: NSW
Country: Australia • ASR: AUD 1,526 • Words: 492 • Item ID: 881056639



isentia.mediaportal

Licensed by Copyright Agency. You may only copy or communicate this work with a licence.

Page 1 of 2

FAILURE TO LAUNCH FOR AIRPORT EXPANSION

Fiona Killman

THE long-held secret Central Coast Airport masterplan has landed, however the document will not be taking off for public comment, and its aims have been abandoned by the new look Central Coast Council.

Wyong Shire Council's Central Coast Aviation Hub Concept Plan details seven stages of development for the regional airport, including provision for manufacturing, training and air tourism services.

It includes plans for more than 30ha of terminal, industrial hangar and development site space.

At Monday night's council meeting, councillors grounded the

airport and dismissed staff recommendations to place the \$450,000 plan on public exhibition, which would allow for community feedback.

However, the plan can be viewed by the public on the council's website.

Labor councillor Doug Vincent successfully passed a motion to confirm support for the Warnervale Airport (Restrictions) Act, which prevents expansion of the airport site, ensures the current 1196m runway is maintained and suspends all upgrade work.

The concept plan had outlined seven stages of development spanning from 2017 to 2037.

Stage one includes a hangar and aircraft assembly facility to be

completed by September 2019, while stage 2 included increasing the width of the runway to 30m.

Stage 3 included a passenger terminal. Studies for Stage 3 also showed 63 residents to the north would be affected by increased noise emitted from the facility.

Stages 4 and 5 included retail sites and Stage 6 allowed for the expansion of the runway to 1799m, to be completed by 2033.

According to Deloitte Access Economics CGE modelling, building an 1800m runway would increase the local economy by a figure of \$312 million.

The hub would increase regional employment by 109 full time jobs per year. Data provided by firms who made a commitment to rent hangar space indicated the

hub would create around 950 full time jobs.

Costs for the 1800m runway hub would have included \$638 million in capital expenditure and \$2.28 billion in operational costs.

The council's surge ahead for airport expansion had been criticised by the State Government and expansion was quashed in August by Planning Minister Anthony Roberts who

refused to repeal the Warnervale Airport Restrictions Act.

Independent councillor Bruce McLachlan said the public should be given the opportunity to comment on the airport plans.

"Unfortunately certain councillors didn't think Central Coast residents' opinion warranted the \$10,000 outlay to

exhibit consultation on its own major infrastructure project," he said. "It's not our airport. It's the Central Coast residents' airport.

"Air travel has an exciting future and the Central Coast has an exciting opportunity to pull off a major coup. (Flying from the) Central Coast to Gold Coast or Noosa for a weekend, would probably rate highly for many Coast residents looking for a getaway."

Independent councillor Louise Greenaway was against putting the plan on public exhibition due to a number of "flaws" and its "preliminary nature".

"I think it's inappropriate to put this information before the community and ask them to comment," she said.

Appendix G: Australian Airspace Structure

The table below provides detailed information on the Australian Airspace Structure, as outlined by CASA.



Australian Airspace Structure

		CONTROLLED				NON-CONTROLLED
		CLASS A	CLASS C	CLASS D	CLASS E	CLASS G
		Above FL245 outside radar coverage Above FL190 within radar coverage	Terminal areas with ATC services En route between major centres	Regional and some metropolitan CTR and associated low-level CTA steps	Within continental Australia outside radar coverage above FL190 where Class A base is FL245 Within radar coverage in specific locations or corridors under Class C or Class A airspace. Generally base 1500 ft AMSL Surrounding or overlying some CTR Some low-level terminal airspace when the associated TWR is closed	Airspace which is not Class A-E Note: Conditions of operating in Restricted Areas override the existing Airspace Classification
IFR	Radio FQ	YES	YES	YES	YES	YES
	Transponder FQ	YES—including ADS-B OUT	YES—including ADS-B OUT	YES—including ADS-B OUT	YES—including ADS-B OUT	YES—including ADS-B OUT
	SUBJ ATC clearance	YES	YES	YES	YES, (unless conducting IFR pick-up)	NO
	Separation provided	All aircraft	All aircraft	IFR from IFR and Special VFR, (except during a VFR departure, or when conducting VFR climb or descent)	IFR from IFR (except during a VFR departure, or when conducting VFR climb or descent)	NO
	Service provided	ATC service	ATC service	ATC services for separation from IFR Traffic information about VFR flights (and traffic avoidance advice on request)	ATC services and traffic information about known VFR flights as far as practicable	Traffic information about other IFR and known VFR flights as far as practicable
Speed limits	N/A	N/A	250 KIAS max (unless the pilot informs ATC that a higher minimum speed is required for safety reasons) 200 KIAS max within 4 nm and 2500 ft AAL, (except with ATC approval)	250 KIAS max below 10,000 ft AMSL (unless a higher minimum speed is required for safety reasons)	250 KIAS max below 10,000 ft AMSL (unless a higher minimum speed is required for safety reasons)	
VFR	Radio FQ		YES	YES	YES	Above 5000 ft AMSL Vicinity of CTR, REG or ML or other AD specified in ERSA
	Transponder FQ		YES—within SSR coverage	N4 FQ, but always ON if fitted	YES—unless aircraft is unable to power a transponder	At or BLW the higher of 3000 ft AMSL or 1000 ft AGL—when CFR clear of cloud in reduced VMC
	SUBJ ATC clearance		YES	YES—by clearance or establishment of two-way communications	NO	YES—for flights above 10,000 ft AMSL Always ON if fitted
	Separation provided		VFR from IFR	NO	NO	NO
	Service provided		ATC services for separation from IFR VFR/VFR traffic information (and traffic avoidance advice on request)	IFR/VFR and VFR/VFR traffic information (and traffic avoidance advice on request)	On REQ—Surveillance information service (SS) and flight following—ATC workload permitting	On REQ—Surveillance information service (SS) and flight following, ATC workload permitting
	Flight visibility	VFR not permitted	8 km at or ABEV 10,000 ft AMSL 5000 m BLW 10,000 ft AMSL	5000 m	8 km at or ABEV 10,000 ft AMSL 5000 m BLW 10,000 ft AMSL	All aircraft at or ABEV 10,000 ft AMSL 8000 m All aircraft BLW 10,000 ft AMSL 5000 m Helicopters below 700 ft AGL See conditions in AP Balloons BLW 1500 ft AGL See conditions in AP
	Dist from cloud		1500 m horizontal 1000 ft vertical	600 m horizontal 1000 ft vertical above cloud 500 ft vertical below cloud	1500 m horizontal 1000 ft vertical	All aircraft ABEV the higher of 3000 ft AMSL or 1000 ft AGL 1500 m horizontal 1000 ft vertical All aircraft at or BLW the higher of 3000 ft AMSL or 1000 ft AGL Clear of cloud and in sight of ground or water Helicopters BLW 700 ft AGL See conditions in AP Balloons BLW 1500 ft AGL See conditions in AP
	Speed limits		250 KIAS max below 10,000 ft AMSL (unless a higher minimum speed is required for safety reasons)	250 KIAS max (unless the pilot informs ATC that a higher minimum speed is required for safety reasons) 200 KIAS max within 4 nm and 2500 ft AAL, (except with ATC approval)	250 KIAS max below 10,000 ft AMSL (unless a higher minimum speed is required for safety reasons)	250 KIAS max below 10,000 ft AMSL (unless a higher minimum speed is required for safety reasons)
SPECIAL VFR	Radio FQ		YES	YES		
	Transponder FQ		YES—within SSR coverage	N4 FQ, but always ON if fitted		
	Entry clearance		YES	YES		
	ATC separation		Special VFR from IFR	Special VFR from IFR		
	Flight information service	Special VFR not permitted	Special VFR from Special VFR when visibility is less than VMC	Special VFR from Special VFR when visibility is less than VMC	Special VFR not permitted	Special VFR not applicable
	Flight information service		ATC service	ATC service		
Flight visibility		1600 m fixed-wing 800 m helicopters 100 m for balloons BLW 500 ft AGL 3000 m for balloons at and ABEV 500 ft AGL	1400 m fixed-wing 800 m helicopters 100 m for balloons BLW 500 ft AGL 3000 m for balloons at and ABEV 500 ft AGL			
Dist from cloud		Clear of cloud	Clear of cloud			

Note: Some requirements are not applicable to military aircraft 1903/2676

For further information visit casa.gov.au or airservicesaustralia.com

Appendix H: Review 2017

The preceding Review 2017 is attached with permission of the Minister for Planning and Public Spaces as background and an input to the current Review 2020.



Warnervale Airport (Restrictions) Act 1996 Review Summary and Recommendations Report


Submitted to Department of Planning and Environment

CABINET IN CONFIDENCE

SUITE 2, 14 WATT STREET, NEWCASTLE NSW 2300
TEL +61 2 4925 3286 FAX +61 2 4925 3403 WWW.CITYPLAN.COM.AU
CITY PLAN STRATEGY & DEVELOPMENT P/L ABN 58 133 501 774

February 2017 | N-16039

Report Revision History

Revision	Date Issued	Prepared by	Reviewed by	Verified by
01	8/08/16	Amanda Wetzel <i>Regional Director</i>	Sue Francis <i>Executive Director</i>	
02	9/02/17	Amanda Wetzel <i>Regional Director</i>	Juliet Grant <i>Executive Director</i>	Juliet Grant Executive Director

This document is preliminary unless approved by a Director of City Plan Strategy & Development

CERTIFICATION

This report has been authorised by City Plan Strategy & Development on behalf of the Department of Planning and Environment. The accuracy of the information contained herein is to the best of our knowledge not false or misleading. The comments have been based upon information and facts that were correct at the time of writing this report.

Copyright © City Plan Strategy & Development P/L
ABN 58 133 501 774

All Rights Reserved. No material may be reproduced without prior permission. While we have tried to ensure the accuracy of the information in this publication, the Publisher accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication

Table of Contents

Executive Summary	1
1. Introduction.....	2
1.1 Background	2
1.2 Scope of the review	2
1.3 Review process / consultation.....	2
1.3.1 Written submissions	2
1.3.2 Key stakeholders	3
1.3.3 Subject matter experts.....	3
1.3.4 Literature review and research	3
1.4 Report structure.....	4
2. Context.....	5
2.1 Airport site and area description.....	6
2.1.2 Administrative boundaries	7
2.1.3 Sparks Road corridor.....	7
2.1.4 Waterways and wetlands.....	7
2.1.5 Landscape and topography.....	8
2.1.6 Surrounding urban and rural land uses	8
2.2 Circumstances leading to the WAR Act	9
2.2.1 Council DA554/93, made under the EP&A Act	10
2.2.2 Jorg Michael Breitkopf v Wyong Council.....	10
2.2.3 Amendments previously considered	10
2.3 WAR Act approvals history and current operability.....	12
2.3.1 Council DA554/93, made under the EP&A Act	13
2.3.2 Application to construct a new runway, made under the WAR Act.	13
2.3.3 Application to extend the runway length, made under the WAR Act	13
2.3.4 2015 works to existing runway	15
2.4 Strategic planning context	17
2.4.1 Central Coast Regional Strategy	18
2.4.2 Central Coast Regional Plan 2036	18
2.4.3 North Wyong Shire Structure Plan	20
2.4.4 Wyong Employment Zone	20
2.5 Regulatory frameworks applying	21
2.5.1 Civil Aviation Act 1988.....	21
2.5.2 Airspace Act 2007.....	23
2.5.3 Environmental Planning & Assessment Act 1979	24

2.5.4	Council's LEP and DCP.....	24
2.5.5	SEPP (Infrastructure) 2007	24
2.5.6	SEPP (State and Regional Development) 2011.....	25
2.5.7	SEPP (State Significant Precincts) 2005.....	25
2.5.8	SEPP 14 - Coastal Wetlands.....	25
2.5.9	Summary	25
3.	Summary of key issues	27
3.1	Policy objectives / intent of the Act.....	28
3.1.1	Relevance to the Review	28
3.1.2	Summary of matters raised / identified	28
3.1.3	Response.....	28
3.2	Current operability of the Act.....	29
3.2.1	Relevance to the Review	29
3.2.2	Summary of matters raised / identified	29
3.2.3	Response.....	30
3.3	Existing uses, operations and approvals.....	31
3.3.1	Relevance to the Review	31
3.3.2	Summary of matters raised / identified	31
3.3.3	Response.....	31
3.4	Potential airport expansion	32
3.4.1	Relevance to the Review	32
3.4.2	Summary of matters raised / identified	32
3.4.3	Response.....	33
3.5	Environmental impacts / constraints.....	34
3.5.1	Relevance to the Review	34
3.5.2	Summary of matters raised / identified	34
3.5.3	Response.....	34
3.6	Other legislative and regulatory matters.....	35
3.6.1	Relevance to the Review	35
3.6.2	Summary of matters raised / identified	35
3.6.3	Response.....	35
4.	Review of terms	36
4.1	Aircraft movements, including curfew and take off/landing limits.....	37
4.1.1	Intention and effect	37
4.1.2	Validity and effectiveness	37
4.1.3	Recommendations.....	38

4.2	Runway siting and design.....	39
4.2.1	Intention and effect.....	39
4.2.2	Validity and effectiveness.....	39
4.2.3	Recommendations.....	40
4.3	Independent investigations and review.....	41
4.3.1	Intention and effect.....	41
4.3.2	Validity and effectiveness.....	41
4.3.3	Recommendations.....	42
4.4	Informing and consulting the community.....	43
4.4.1	Intention and effect.....	43
4.4.2	Validity and effectiveness.....	43
4.4.3	Recommendations.....	44
4.5	Enforcement.....	45
4.5.1	Intention and effect.....	45
4.5.2	Validity and effectiveness.....	45
4.5.3	Recommendations.....	45
5.	Final recommendations.....	46
	References.....	48

Executive Summary

This Report provides a high-level review of the Warnervale Airport (Restrictions) Act 1996 (the WAR Act). The review considered whether the policy objectives of the WAR Act remain valid, and, if so, whether the WAR Act is effective in achieving those objectives. It is intended to assist decision-makers in determining whether the WAR Act should be retained in its current form, retained in a modified form, or repealed.

This review was undertaken by City Plan Strategy & Development on behalf of the NSW Department of Planning. Methods of analysis applied included:

- Review of written submissions;
- Consultation with selected key stakeholders;
- Consultation with subject matter experts;
- Literature review; and
- Desktop research of matters identified.

The review concluded that the WAR Act should be retained, because:

- It's policy objectives remain valid; and
- In principle, it remains the most effective means of achieving these objectives.

The review identified several WAR Act provisions that are considered inoperable or ineffective in their current form. Recommendations are provided for further investigations that may support amendments to the WAR Act, or the preparation of associated regulations. Recommended modifications are summarised below.

- Immediately remove aircraft movement restrictions applying to the general aviation activities operating Warnervale Airport's the existing runway. All stakeholders agreed that these provisions were never intended restrict the general aviation operations that existed at the time the Act came into force. These general aviation operations have continued unrestricted until 2015, without any major conflicts to surrounding amenity. The application of these restrictions, following upgrades to the Airport's runway in 2015, has the potential to immediately affect the ongoing viability of existing aviation businesses.
- Identify a broader range of developments that would trigger the WAR Act's review procedures. This recognises that expansion of Airport operations may require modifications to the runway length (current provision) as well as other aviation safety requirements such as lighting and ground and navigational aids.
- Establish a more effective and transparent review framework. This should also be supported by terms that specify the information that is to be provided in applications made under the WAR Act, the grounds upon which the Minister will determine any such application, and the procedures to be undertaken.
- Make administrative amendments to address anomalies, define key terms, and introduce investigative powers.

The Report also identifies major limitations of the review:

- The WAR Act's policy objectives had to be assumed, to form the basis for the Review.
- Council's long-term development objectives for the Airport are, at present, uncertain. This information is required to determine any modifications to specific terms applying to specified restrictions for aircraft movements and runway length.

1. Introduction

1.1 Background

The *Warnervale Airport (Restrictions) Act 1996* (the WAR Act) is a special act of State Parliament. It was introduced in response to extraordinary circumstances relating to land use and development planning decisions made previously for Warnervale Airport (the Airport), which may significantly expand commercial aviation activities operating from that facility.

The WAR Act was introduced, in part, to respond to local community concern about the potential for conflicts of interest arising from Council's dual role as the owner of Airport and relevant consenting planning authority for developments that could facilitate significant expansion of commercial aviation activities.

The WAR Act, in principle, supports the NSW Government's long-term vision for North Wyong, which is expected to accommodate some of the highest levels of population growth outside of Sydney. In its current form, the terms specified in the WAR Act require Central Coast Council (formerly Wyong Shire Council) (Council) to seek additional approvals from the State Minister for Planning (the Minister) for specified runway developments. The WAR Act also limits the length of any runway and imposes ongoing restrictions on aircraft movements.

Under section 17(1) of the WAR Act, it should have been reviewed by June 2002, with a report tabled in Parliament in June 2003. There is no record of this having occurred. The Minister directed the NSW Department of Planning and Environment to undertake a review of the WAR Act in 2016, in response to representations made by Council.

The NSW Department of Planning and Environment initiated the review in April 2016. City Plan Strategy and Development was appointed in July 2016 to finalise the review.

Initiatives undertaken prior to City Plan Strategy and Development's appointment include the:

- Public invitation for written submissions; and
- Meetings with selected key stakeholders, undertaken by Pearson Planning on behalf of the NSW Department of Planning and Environment.

1.2 Scope of the review

Under section 17(1) of the WAR Act, *"The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives."*

1.3 Review process / consultation

1.3.1 Written submissions

The NSW Department of Planning and Environment publicly invited written submissions to inform this review. In total, 55 separate submissions were received, noting multiple submissions were made by some individuals.

Each written submission was reviewed and summarised separately to identify and understand the matters raised for consideration by each submitter. These matters were documented and categorised to enable similar issues to be considered together.

1.3.2 Key stakeholders

Key stakeholders, identified by the NSW Department of Planning and Environment, were the subject of targeted consultation to inform the review. Pearson Planning conducted individual meetings in May 2016 with representatives from:

- Wyong Shire Council, former Airport owner and planning authority;
- Gosford Council, adjoining local government area;
- Lake Macquarie Council, adjoining local government area;
- Central Coast Aero Club, current Airport operator; and
- Central Coast Airport Action Group, local community interest group.

Records of these meetings were provided to City Plan Strategy and Development upon appointment. City Plan Strategy and Development conducted follow-up telephone interviews with each of the above stakeholders to validate views recorded from previous meetings and provide the opportunity for each to offer additional information or insights.

City Plan Strategy and Development also conducted telephone interviews with:

- Greg Piper, local member for Lake Macquarie
- David Harris, local member for Wyong
- Ian Reynolds, Administrator Central Coast Council, and Rob Noble, CEO Central Coast Council¹, current Airport owner and planning authority

Records of stakeholder engagements are provided in **Appendix B**.

1.3.3 Subject matter experts

City Plan Strategy and Development sought selected advice from NSW Government departments and subject matter experts in relation to:

- Federal civil aviation safety standards and regulations, and how these relate to Airport developments, particularly runway design; and
- The effectiveness of the WAR Act, in its current form, in relation to the compliance investigations conducted by the NSW Department of Planning and Environment in 2016.

1.3.4 Literature review and research

City Plan Strategy and Development also identified and reviewed a range of documents relevant to matters raised. These included:

- Current legislation and regulatory instruments;
- Current and draft strategic plans; and
- Publicly available technical codes, guidelines, standards or research studies;
- Documentation associated with assessments and approvals made in relation to the WAR Act, provided by the NSW Department of Planning and Environment

This Report refers to comparative regulatory instruments. These instruments are not legally in force for the Warnervale Airport, but do provide examples of how similar objectives have been achieved elsewhere in Australia. Comparative instruments include:

- Sydney Airport Curfew Act 1995;
- Adelaide Airport Curfew Act 2000; and
- Two regulations made under the Air Navigation Act 1920

¹ Central Coast Council is the amalgamation of the former Wyong Shire and Gosford Local Government Areas

- Air Navigation (Essendon Airport) Regulations 2001
- Air Navigation (Coolangatta Airport Curfew) Regulations 1999

1.4 Report structure

Review findings and recommendations are set out in:

- Section 2: Context
- Section 3: Summary of key issues
- Section 4: Review of terms
- Section 5: Final recommendations

Appendix A provides a summary table of considerations relevant to each of the WAR Act's sections.

Appendix B provides a record of stakeholder engagements.



2. Context

This section briefly sets out the context for the Review, including:

1. A description of the Airport site and its surrounding area;
2. The circumstances and events leading to the WAR Act's assent;
3. The relevant applications and approvals made in relation to proposed Airport developments;
4. The current strategic planning context for the Airport and its surrounding area;
5. Regulatory frameworks applying, including those relating to airport operations and associated developments, generally, and those that apply to the Airport's location specifically.

2.1 Airport site and area description

This section describes the key features contained within and around the Airport, and briefly identifies how they are relevant to land use planning tools (see **Info Box 1**) and other issues described later in the Report. Key features are generally illustrated in **Figure 1**.



Figure 1: Airport site location and context

Disclaimer: The WAR Act s.3 defines Warnervale Airport as "any airport situated on land at Warnervale (being land comprised in Lot 12 in DP 605250, Lot 24 in DP 53936, Lots 1 to 4 in DP 239691, Lots 22 and 23 in DP 773449 and Lot 27 in DP 228750)."

The above lots, as described, have been superseded since the WAR Act commenced.

This Review does not attempt to define, or re-define a boundary for the Airport. A general location of the Airport has been assumed to encompass any lands within Lot 3 in DP100750, Lot 26 in DP1159349 and Lot 221 in DP 812718 that are currently or are proposed to be used as an airport, as defined in the ISEPP.

Info Box 1: Tools for land use planning around airports

Land use planning around airports is predominantly influenced by, and has the potential to influence, Aircraft Noise Exposure Forecast (ANEF) and Obstacle Limitation Surface (OLS).

ANEF is used to identify areas that may be affected by aircraft noise and to categorise the noise level that is likely to be experienced. ANEF contours are given values of 20, 25, 30, 35 and 40. The higher the contour value, the greater the noise. The current benchmark for planning discourages sensitive uses, including residential, to be located within the 20 ANEF.

OLS is used to determine the extent to which vertical structures may obstruct air navigation. It provides a volume of airspace around and above an airport that must be object-free, and generally imposes limitations on the height of any structure within identified areas (e.g. buildings, trees, electricity poles, transmission towers, etc.)

Establishing ANEF contours and OLS requirements relies on assumptions about a range of factors, including the type of aircraft expected to use the facility, as well as the frequency of flight movements and normal flight paths or patterns.

2.1.1 Administrative boundaries

The Airport is situated within the suburb of Warnervale in the northern part of the Central Coast region. This site is entirely within the Central Coast LGA boundary.

The Airport is located less than 5km from the Lake Macquarie LGA boundary, and noise impacts are a cross-jurisdictional consideration.

2.1.2 Sparks Road corridor

Sparks Road corridor forms the northern boundary of the site. Vehicle access to the Airport is from Sparks Road via Jack Grant Ave, approximately 1.5km east of Pacific Motorway and approximately 5.5km west Pacific Highway.

Sparks Road is a Classified Road (State) pursuant to the NSW Road Act 1993. The road corridor is owned and managed by the NSW Roads and Maritime Service (RMS).

Aircraft require a minimum clearance height to the trees and electricity infrastructure situated within the Sparks Road corridor. These features, consequentially, influence the OLS, operational length of any existing runway, and the siting of any proposed new runway within the Airport.

2.1.3 Waterways and wetlands

The Airport is substantially situated within the Porters Creek floodplain (Wyang Shire Council, 2011).

Buttonderry Creek generally flows in an east-west direction immediately north of the Sparks Road corridor. Overland flows from Buttonderry Creek occur across the Airport site southward to Porters Creek Wetland.

Porters Creek Wetland generally forms the southern boundary of the site, and is the largest freshwater wetland on the Central Coast. It is considered to have high conservation value due its ecological and biological diversity, and acts as a natural filter to reduce the level of industrial contaminants entering Wyong River. It is also utilised as an emergency drinking water supply during times of severe drought.

2.1.4 Landscape and topography

The Airport is situated between a number of hills, which will continue to influence flight patterns. Aircraft access the Airport via an existing runway, generally using a north-south approach.

2.1.5 Surrounding urban and rural land uses

The Airport is within an area referred to as the Wyong Economic Zone (WEZ), and, within 1.5km is generally surrounded by existing or planned industrial subdivisions and environmental lands.

Existing residential and rural residential subdivisions occur in proximity to the Airport. These areas also incorporate particularly sensitive uses (for the purpose of noise attenuation), including schools, aged care facilities and hospitals. Residential areas within around 7.5km² include, but are not limited to:

- Watanobbi, Warnervale and Wadalba to the south and east;
- Jilliby and Alison to the west of the Pacific Motorway; and
- Wyee and Bushells Ridge further north (in Lake Macquarie LGA)

A number of future urban release areas have also been identified in proximity to the Airport. These are discussed in more detail in **Section 2.4**.

² Residential areas situated up to 7.5km is considered here, consistent with the notification requirements provided in the WAR Act s.12(3).

2.2 Circumstances leading to the WAR Act

A chronological summary of the events leading to the commencement of the WAR Act is provided in **Info Box 2**. Key milestones, identified in bold, are discussed in more detail in the following sub-sections.

Info Box 2: Chronology of events prior to commencement of the WAR Act

1972 – Warnervale airfield commenced operations (Wyong Shire Council, 2010).

1970s – WSC purchased Warnervale airfield from Central Coast Aero Club (CCAC), and entered into an agreement with the CCAC to continue operating the site (Wyong Shire Council, 2010).

1977 – The State Government released the Gosford-Wyong Structure Plan, which supported the Airport to "be expanded into a general aviation facility, should future demand warrant" (Department of Urban Affairs and Planning, 2000).

1979 – Federal and State Governments agree to runway alignments and lengths for the facility, and Section 149 Certificate notations were placed on all properties within a 4km radius of the airport (Wyong Shire Council, 2010).

1985 – The radius for Section 149 Certificate notations was extended to 6.5kms, following the completion of a full environmental study on the airport operations (Wyong Shire Council, 2010).

1987 – Land was rezoned by the State Government to 5(a) Special Uses – Aerodrome and height controls and a noise effect area were established as part of the accompanying planning controls (Wyong Shire Council, 2010).

1989 – WSC adopted a masterplan for the development of the airport (Wyong Shire Council, 2010).

1993 – WSC revised the masterplan for the airport, and a full Environmental Impact Statement (EIS) was prepared together with a Fauna Impact Statement (FIS). Both documents were publicly exhibited and public meetings were held. Comments were received from various State Government agencies (Wyong Shire Council, 2010).

1994 – WSC issued development consent (DA554/93) for the main runway.

1995 – WSC accepted an Expression of Interest proposal from Traders Finance to upgrade and operate the airport and tenders were called for the construction of the main runway, taxiway and apron areas (Wyong Shire Council, 2010).

1996 (May) – The Land and Environment Court (LEC) heard Jorg Michael Breitkopf v Wyong Council, which made claims against the validity of DA554/93. Judgement was reserved and the claims dismissed under EPA Act s.104A(22) time limitation clause.

1996 (July) – The Warnervale Airport (Restrictions) Act 1996 commenced as a Special Act of State Parliament, requiring additional approvals by the State Minister for Planning for specified Airport developments.

Info Box 3: Detailed chronology of milestone events (1994-1996)

1994

17 January - DA554/93 approved by Council

1995

25 July - Jorg Michael Breitkopf v Wyong Council Land and Environment Court (LEC) proceedings commenced

18 Oct - LEC granted leave to amend the proceedings

1996

11-21 March - LEC case heard

17 May - LEC reserves judgement, citing EPA Act s.104A(22) 3 month time limitation clause.

20 June - WAR Bill introduced and read for the first time in the Legislative Assembly

25 June - WAR Bill second reading in the Legislative Council

1 July - WAR Act commenced

2.2.1 Council DA554/93, made under the EP&A Act

Disclaimer: Documentation associated with Wyong Shire Council's DA554/93 has not been made available to the review team. All information stated in relation to DA554/93 has been derived from secondary sources, and is assumed to be correct.

In January 1994, Wyong Shire Council approved its own development application for works to upgrade Warnervale Airport. For the purposes of this Review, and relevant to the terms of the WAR Act, DA554/93 is assumed to give consent to construct a 1,800m runway in a new corridor adjacent to the existing runway. The existing runway was subsequently to be utilised as a taxiway (unknown, 2001). The corridor alignment is assumed to be the same as that proposed by Council in 1998, as illustrated in **Figure 2**.

2.2.2 Jorg Michael Breitkopf v Wyong Council

The Land and Environment Court heard Jorg Michael Breitkopf v Wyong Council during 1995-1996, which ultimately made three legal challenges:

- Denial of natural justice by virtue of the Council's failure to notify the Applicant of the existence of the development application;
- Alleged breach of section 77(3)(d1) of the EP&A Act by virtue of the want of signature by the person who had prepared the fauna impact statement; and
- Failure by the Council to properly assess the impact of the proposed development on flora and fauna.

The Commissioner found that the Applicant did not establish invalidity of the development consent on any of the bases considered. However, judgement was reserved citing the time limitations imposed on hearing the proceedings, as provided in section 104A of the EP&A Act (Jorge Michael Breitkopf v Wyong Council , 1996).

2.2.3 Amendments previously considered

The Local Member for Wyong introduced the Warnervale Airport (Restrictions) Bill as a private member's bill. This was debated in the Legislative Assembly on 20 June 1996 and the Legislative Council on 25 June 1996.

Four amendments were proposed during the WAR Bill's debate in the Legislative Council, to:

- Identify the Minister for Transport as the responsible minister; and

CABINET IN CONFIDENCE

- Three inter-related amendments to Part 4 review procedures, to:
 - Insert a new section 10(3) stating “The cost of the review and noise study under this Part are to be met by the Minister out of money legally available or to be provided by Parliament for this purpose.”
 - Add an additional line to section 11(3) stating “The person or persons are to be appointed by the Minister within 40 days after receipt of the application by Wyong Council referred to in section 10(1).”
 - Add a new section 11(4) stating “For the purpose of a review under this section, the person or persons appointed to conduct the review has the powers, authorities, protections and immunities conferred by the Royal Commission Act 1923 on a commissioner appointed under Division 1 of Part 2 of that Act. That Act (section 13 and Division 2 or Part 2 excepted) applies, with any necessary modifications, to a witness summoned by, or appearing before, any person appointed to conduct the review.”

The debate identified that:

- The proposed new section 11(4) responded to community concerns about the potential for conflicts of interest in Council’s role as both landowner and regulator;
- The proposed new section 10(3) would be required if the proposed new 11(4) was accepted, owing to the elevated level of inquiry; and
- The proposed additional line to section 11(3) was to ensure timely decision-making, in line with Environmental Planning & Assessment (EP&A) Act.

The above amendments were agreed to, in principle, by the Bill’s supporters during the debate, but negated to avoid delays to the Act’s commencement that would arise from a third reading of an amended Bill. The intention of negating these amendments was tactical in nature. More than one debating Member identified this intention as being to ensure the Act’s commencement occurred prior to commencement of construction of the runway proposed in DA554/93. To-date, these amendments have not been incorporated into the WAR Act.

2.3 WAR Act approvals history and current operability

A number of events have occurred since the WAR Act commenced, which have enacted certain provisions. A chronology of these events is summarised in **Info Box 4**.

This section provides a summary of approvals that have been considered, made or are otherwise relevant to the WAR Act. It also briefly discusses how the operability of WAR Act terms influence current operations within the Airport.

Info Box 4: Chronology of events following commencement of the WAR Act

1998 – WSC made two applications to the Minister: in April, for a 1,200m runway in a new location; and in October 1998, to extend the maximum length of the runway (as proposed) to 1,600m. A plan showing the proposed runway developments is provided in **Figure 3**.

2001 – The Minister approved WSC's proposed site for a 1,200m runway but rejected the application for an increase to 1,600m (Minister for Urban Affairs and Planning, 2001)³.

2001 - Traders Finance Australia ended its contract with WSC for construction and operation of the new runway (Wyong Shire Council, 2010).

2003 – WSC resolved not to proceed with a regional airport at Warnervale.

2003 – WSC entered into a new arrangement with CCAC, which is valid to 2021. This provides the Club has an option to purchase the airport site at market value. If the Club does buy the site, Council must ensure that obstacle limitation surfaces, noise controls and all such other controls as are necessary for the Club to continue to operate the airport remain in place (Wyong Shire Council, 2010).

2006 - NSW Government released the Central Coast Regional Strategy (NSW Department of Planning, 2006), identifying the Ministers intention to declare the WEZ, incorporating the Warnervale Airport, a State Significant Site. This is considered in **Section 2.4** of the Report.

2008 - The Minister declared the WEZ to be a State Significant Site under State Environmental Planning Policy (Major Projects) 2005. The application identified the Airport is intended to remain a local airport. Planning controls (land zonings, height restrictions and sound insulation requirements) are established on this basis (Wyong Shire Council, 2006). This is considered in **Section 2.4** of the Report.

2012 - NSW Government released the North Wyong Shire Structure Plan, identifying strategic land use and infrastructure planning objectives for the WEZ and surrounds (NSW Planning & Infrastructure, 2012). This is considered in **Section 2.4** of the Report.

2013 – WSC resolved to leave Warnervale a local airport

2000s – WSC investigated the suitability of alternative locations to develop a regional airport. None of these alternative locations were deemed suitable.

2015 – WSC undertook works to upgrade the existing runway, and extend it from 970m to 1196m. Works included clearing of vegetation at Porters Creek Wetland.

2016 - A Department of Planning and Environment investigation found works to upgrade and extend the runway in 2015 were undertaken without development consent.

2016 - NSW Government released the Central Coast Regional Plan, which does not identify Warnervale Airport (since renamed Central Coast Airport). This is considered in **Section 2.4** of the Report.

2016 - Amphibian Aerospace Industries lodged a Development Application (DA1453-2016) to Central Coast Council for the first stage of an aircraft manufacturing facility at Central Coast Airport.

³ The Minister did not enact the WAR Act's independent review procedures to consider WSC's application, citing that the application, as provided, lacked sufficient information to inform a credible review.

2.3.1 Council DA554/93, made under the EP&A Act

Disclaimer: Documentation associated with Wyong Shire Council's DA554/93 has not been made available to the review team. All information stated in relation to DA554/93 has been derived from secondary sources, and is assumed to be correct.

Under the EPA Act, consent would have lapsed after five years if work had not substantially commenced. Council completed construction of a new apron, concurrent with DA554/93 before the consent lapsed. This represents 'substantial commencement' of Council's proposal, and DA554/93 is considered to be operational (Department of Urban Affairs and Planning, 2000).

The WAR Act s.9(1) requires Council to obtain the Minister's approval prior to the commencement or continuation of any construction works in relation to the runway proposed in DA554/93.

2.3.2 Application to construct a new runway, made under the WAR Act

Disclaimer: Wyong Shire Council's application has not been made available to the review team. All information stated in relation to this application has been derived from secondary sources, and is assumed to be correct.

On 20 April 1998, Council submitted an application to the Minister, under s.9(1) of the WAR Act, for approval of the proposed site of a new 1,200m runway. The proposed runway corridor is assumed to be the same as that approved by Council DA554/93, as illustrated in **Figure 3**.

On 24 May, 2001, the Minister wrote to Council to approve the proposed siting of a new 1,200m runway, and advise that the curfew and aircraft movement restrictions specified in the terms of the WAR Act would apply to the new runway.

This application was assessed by the Department of Urban Affairs and Planning. This assessment included a review of the information provided by Council, including a range of technical studies that had previously formed part of Council's DA554/93 (Department of Urban Affairs and Planning, 2000). This assessment raised a number of issues with respect to the noise and environmental impact studies associated with Council's DA554/93 (discussed in **Section 3.5**) and made a number of recommendations for reviewing certain terms in the WAR Act (discussed in **Section 4.3**).

2.3.3 Application to extend the runway length, made under the WAR Act

Disclaimer: Wyong Shire Council's application was not available to the review team. All information stated in relation to this application has been derived from secondary sources, and is assumed to be correct.

On 1 October 1998, Council applied to the Minister, under s.8(4) of the WAR Act, to increase the maximum length of the runway at Warnervale Airport to 1,600m. It is assumed that, if accepted, Council intended to proceed with construction of a 1,600m runway in the corridor approved by Council DA554/93, as illustrated in **Figure 3**, and as supported by Council's plans shown in **Figure 2**.

The application was assessed by the Department of Urban Affairs and Planning. This assessment included a review of the information provided by Council, including a range of technical studies that had previously formed part of Council's DA554/93, as well as additional studies undertaken following gazettal of that consent (Department of Urban Affairs and Planning, 2000). This assessment determined the studies forming the application, collectively, provided inconsistent assumptions with respect to the type of aircraft and aviation activities that were expected at the Airport. Consequently, accurate assumptions could not

CABINET IN CONFIDENCE

be made to determine the noise or other environmental impacts that may arise from the development proposal. The issues, and the Department's corresponding recommendations for reviewing certain terms in the WAR Act are discussed elsewhere in the Report.

On 24 May, 2001, the Minister wrote to Council to reject this application, primarily citing that Council had not provided sufficient information to allow for an appropriate review to be undertaken under Part 4 of the WAR Act.

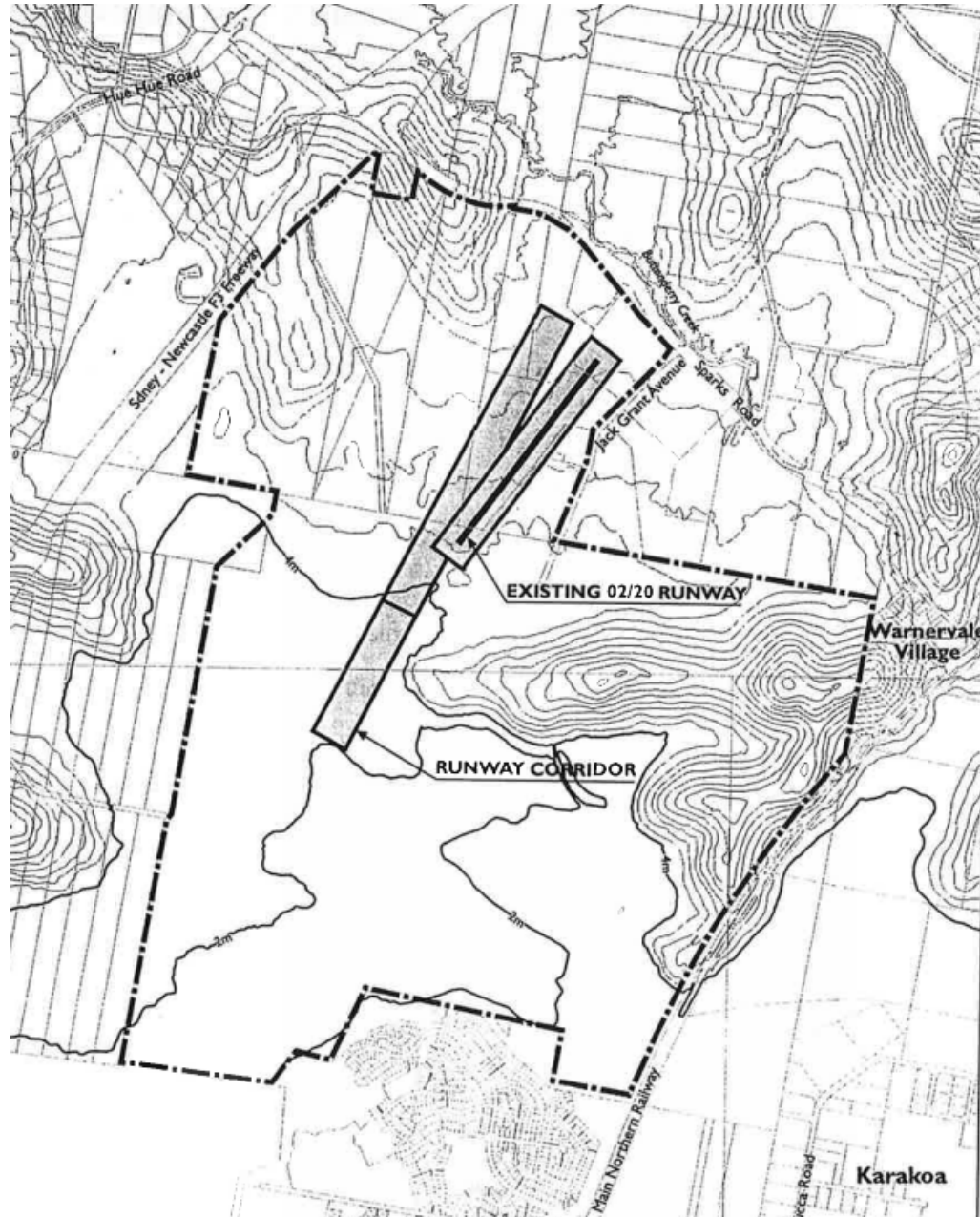


Figure 2: Runway corridor approved by Council in 1994, as reproduced in (Department of Urban Affairs and Planning, 2000)

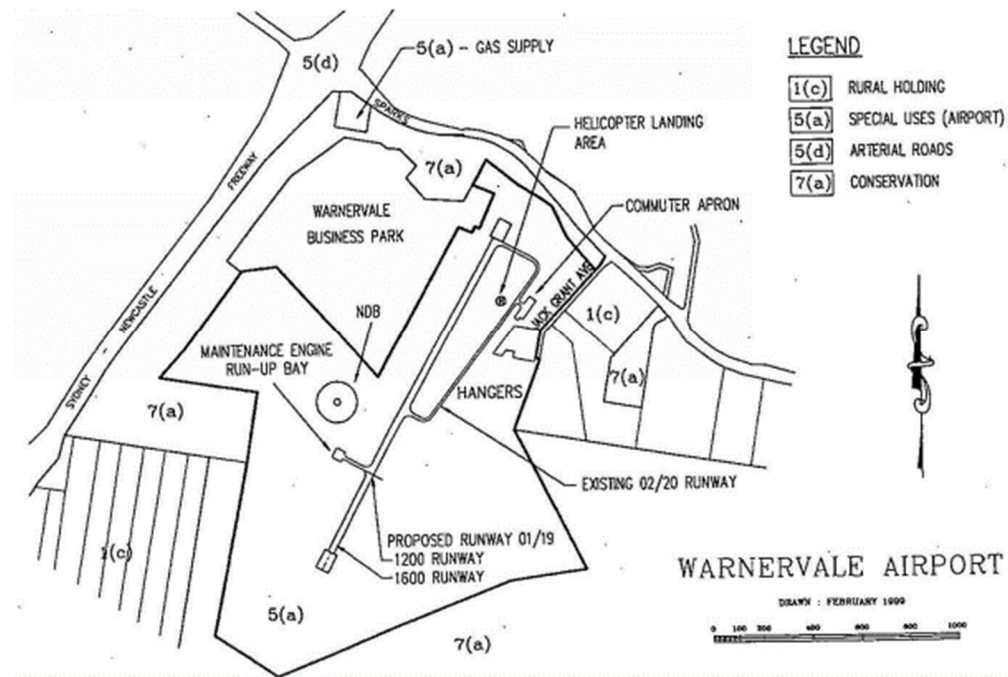


Figure 3: Plan of proposed runway developments considered by the Minister (Wyong Shire Council, 2010)

2.3.4 2015 works to existing runway

Disclaimer: Works undertaken in 2015 to the existing runway were investigated by the Department of Planning and Environment, relating to alleged contraventions to the EPA Act and WAR Act. This investigation found the works were undertaken without Development Consent. The Department of Planning and Environment provided limited information in relation to the extent of works undertaken and investigation proceedings to inform this Review.

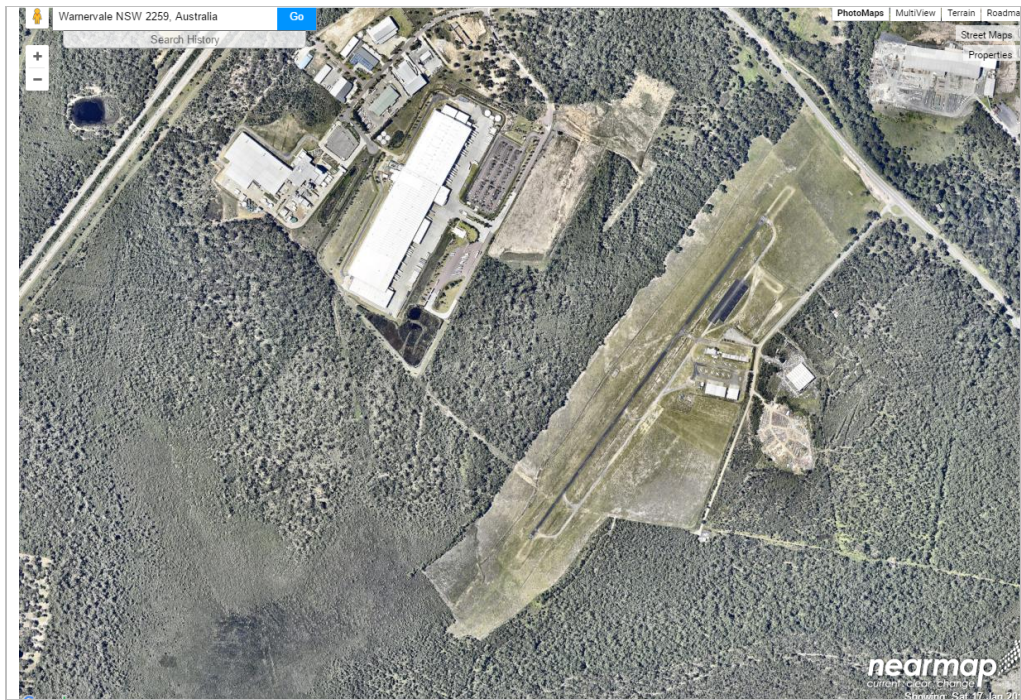
This Review does not set out to identify the intention of these works, nor is not intended to identify or substantiate any alleged contraventions.

In 2015 Wyong Council undertook construction works to the existing runway. This resulted in a longer, wider and stronger runway tarmac area, as well as an expanded area cleared of vegetation, forming the runway strip and fly-over area. These works are illustrated in **Figure 4**, showing comparative aerial photographs from January 2015 and February 2016. These works enable the Airport to accommodate larger aircraft, subject to relevant national aviation regulations and standards.

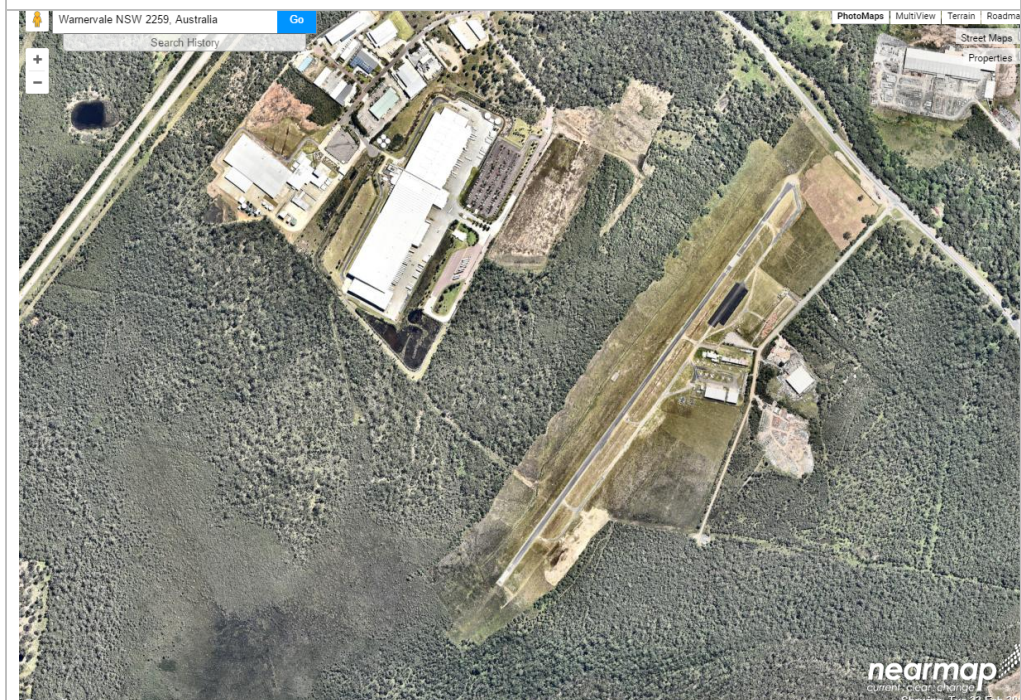
These works are considered to trigger clause 4(2) of the WAR Act, making Part 2 restrictions on aircraft movements applicable to the Airport's only existing runway.

Part 2 restrictions on aircraft movements mandate that the current site operator must not allow an aircraft to take off between 10pm on each day and 6:30am on the next day, and must limit the number of take offs and landings to (collectively) 88 on any given day. The current site operator has indicated that the application these restrictions would jeopardise the ongoing viability of current general aviation operations. This issue is discussed further in **Section 3.3**.

CABINET IN CONFIDENCE



January 2015



February 2016

Figure 4: Comparative aerial photographs illustrating runway upgrade works (Nearmap)

CABINET IN CONFIDENCE

2.4 Strategic planning context

The current strategic planning context assumes the Airport will continue to operate as a local airport. It is unclear whether this vision for the scale and nature of future uses at the Airport takes into account the limitations imposed by the Act. Regardless, it forms the current basis for urban land re-zonings, as well as the ongoing development of land and associated infrastructure commitments.

Several strategic plans guide decision-making with regards to land use, infrastructure and development in and around the Airport. In general:

- The Warnervale Aerodrome is situated within the Wyong Employment Zone (WEZ). The WEZ was declared a State Significant Precinct in 2008, and land was re-zoned to support the development concept envisaged at that time.
- The WEZ is situated within the North Wyong Shire Structure Plan area. A Structure Plan was released by the NSW Government in 2012. It sets out the process for re-zoning and developing a substantial amount of urban land to meet long-term regional housing and employment demands.
- The North Wyong Shire Structure Plan Area is part of broader planning areas and concepts including the Warnervale Regional Gateway and the Northern Growth Corridor, which were recently identified in the Central Coast Regional Plan 2036.
- All of the above areas are guided by a range of regional strategies and plans for the Central Coast, which are ultimately intended to support State-level objectives.

The relevant successive plans are illustrated in **Figure 5** and briefly summarised in the subsections below from state and regional level to site level. This section summarises the current strategic planning objectives and assumptions made in relation to the Airport, as provided in existing documents.

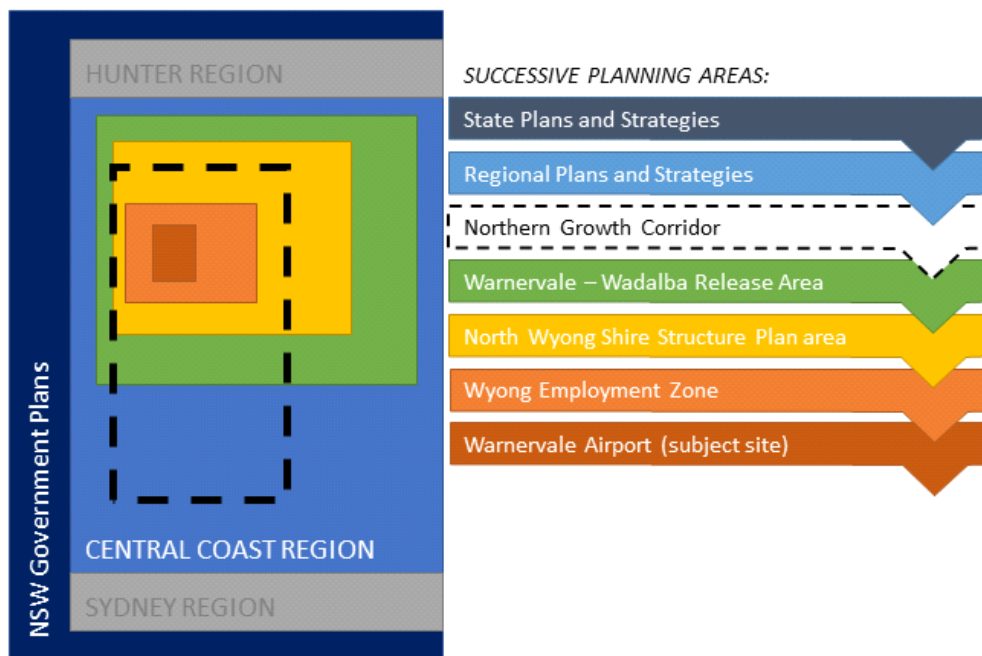


Figure 5: Summary of successive planning areas relevant to the Airport

2.4.1 Central Coast Regional Strategy

The Central Coast Regional Strategy (NSW Department of Planning, 2006) (CCRS) was the former State-level planning strategy applying to the area. It recognised that Warnervale Airport was owned by Wyong Shire Council and operated as a local airport. It directed the future of the airport to be considered as part of the rezoning for the Wyong Employment Zone area. The CCRC formed the basis for the Minister to declare the Wyong Employment Zone (WEZ) a State Significant Site in 2006 to support rezoning the Airport lands to facilitate industrial uses as part of a larger industrial area. The WEZ is still identified in the SEPP (State Significant Precincts) 2005.

The CCRC committed the NSW Government to recognise the regional and state significance of the WEZ in providing appropriate employment lands over the next 25 years by:

- leading the major strategic planning for this area;
- ensuring that Ministerial consent is required for major developments and infrastructure in that area; and
- providing a framework to inform future state and local infrastructure decisions.

The WAR Act is considered to support this commitment by requiring the Minister's to review and approve Airport development proposals.

The CCRS also formed the basis for the Minister to declare the Warnervale Town Centre a State Significant Site. The NSW Government subsequently prepared the North Wyong Shire Structure Plan to guide development in and around Warnervale Town Centre and the WEZ, recognising the need to coordinate planning for the largest urban release area in the Central Coast. The development forecasts set out in this document were used to develop state-level infrastructure strategies and contributions plans.

2.4.2 Central Coast Regional Plan 2036

The Central Coast Regional Plan 2036 (NSW Government, 2016) (CCRP) is the current State-level planning strategy applying to the area. The CCRP supports new development to be concentrated in the Northern Growth Corridor, from Warnervale to Tuggerah, illustrated in **Figure 6** (CCRP Direction 2). This generally reinforces the spatial planning framework previously set out in the North Wyong Shire Structure Plan 2012. It continues to focus new urban development opportunities within the Warnervale Regional Gateway, corresponding to the WEZ, and the Warnervale – Wadalba land release area. This envisages the WEZ to be the main economic gateway for the northern half of the Central Coast region.

The CCRP recognises plans that are already in place for the North Wyong Shire Structure plan area, including the WEZ. It aims to facilitate a local planning framework that supports local business and expects specialised industry clusters to occur in the WEZ (CCRP Direction 5). It recognises that the Wyong LEP already incorporates the high-level land use framework set out in the North Wyong Shire Structure Plan 2012. It intends to facilitate development within the WEZ by resolving biodiversity offsets and infrastructure contributions and biodiversity offsets (CCPR Action 2.13) by finalising biodiversity certification in the WEZ and reviewing development contributions in the North Wyong Shire Structure Plan area (CCRP Action 17.6).

The CCRP does not provide specific directions for Airport-related developments.



Figure 6: Northern Growth Corridor



Figure 6: Central Coast Regional Plan 2036 Northern Growth Corridor (NSW Government, 2016)

CABINET IN CONFIDENCE

2.4.3 North Wyong Shire Structure Plan

Based on the date of its release, it is reasonable to assume that the North Wyong Shire Structure Plan (NSW Planning & Infrastructure, 2012) was predicated on the Airport being a local facility.

The Structure Plan identifies a number of release areas, intended to accommodate residential and employment uses. These areas may be affected by Airport operations in a number of ways, notably including:

- Noise - new development in some locations may experience noise generated by aircraft. This would be a major consideration if Airport expansions result in changes to the timing or frequency of aircraft movements, types of aircraft, and flight paths.
- Traffic - vehicles accessing the Airport would rely on Sparks Road, which is also the major arterial road servicing the majority of the release areas. This would be a major consideration if Airport expansions were expected to include commercial passenger or freight operations.

2.4.4 Wyong Employment Zone

Council prepared a rezoning report to support the WEZ's State Significant Site application (Wyong Shire Council, 2006). This precedes the North Wyong Shire Structure Plan.

Council's report identifies concepts for specific precincts within the WEZ, including a Supplier Park adjacent to the Airport relating to proposals being developed by Woolworths. The report states that the airport would continue to operate as a local airport. This is the assumption that underpins the current land zoning, and subsequent structure planning undertaken for North Wyong.

The re-zoning report identifies actions for Council to prepare an environmental study the Airport Supplier Park and development controls to redefine noise and height controls for the continuation of a local airport as opposed to a regional airport. It is unknown whether these actions have been undertaken.

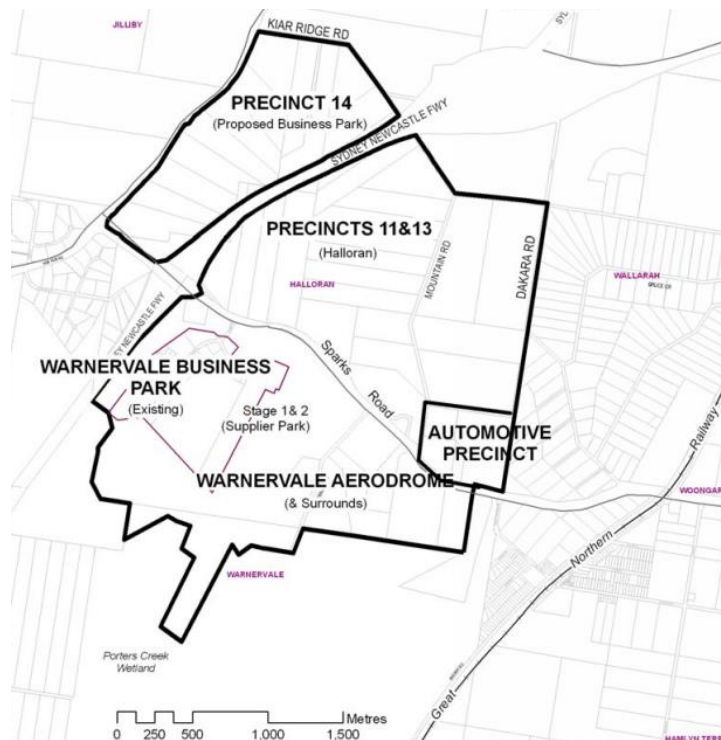


Figure 7: Indicative WEZ Development Concept Plan (Wyong Shire Council, 2006)

CABINET IN CONFIDENCE

2.5 Regulatory frameworks applying

In addition to the WAR Act, airport operations, and associated development, may be subject to several regulatory instruments. This section presents those instruments that are most relevant to this review, to generally identify circumstances where:

- Other Acts seeks to achieve similar objectives to the WAR Act;
- Airport developments or operations may be subject to assessment or monitoring procedures relating to aircraft safety or navigational requirements; or
- A body, other than Council, would be the consenting authority for the purposes assessing development proposals.

Section 3 of this Report identifies that the objectives of the WAR Act have been assumed as to:

- Allow for the ongoing operation of the Airport as a general aviation hub;
- Facilitate a transparent and timely decision-making process for developments proposed at Warnervale Airport; and
- Allow for future aviation activities to occur in a manner that protects the amenity of areas surrounding the Airport.

Regulatory instruments are considered at the Federal, State and Local level below. Provisions under these frameworks would continue to apply to the Airport if the WAR Act were repealed or amended.

2.5.1 Civil Aviation Act 1988

The Federal Government's *Civil Aviation Act 1988* framework is intended to maintain, enhance and promote the safety of civil aviation, with emphasis on preventing aviation accidents and incidents (Section 3A).

Under the *Civil Aviation Act 1988* framework, including the associated *Civil Aviation Regulations 1988*, and *Civil Aviation Safety Regulations 1998*, the Airport can be defined as an aerodrome. The Airport is not currently registered or certified in accordance with Part 139 of the *Civil Aviation Safety Regulations 1998*, and is therefore considered a non-controlled aerodrome.

As a non-controlled aerodrome, the Airport operator is subject to basic safety and operating procedures, noting it:

- Must establish an Obstacle Limitation Surface (OLS), in accordance with the *Manual of Standards Part 139 - Aerodromes*, pursuant to subpart 139.E of the *Civil Aviation Safety Regulations 1998*;
- May voluntarily prepare an Aircraft Noise Exposure Forecast (ANEF); and
- Can accommodate a mix of aircraft conducting commercial activities prescribed by regulation 206 of the *Civil Aviation Regulations 1988*.

All aerodrome operators must establish an OLS to assist in managing and monitoring obstacles that may occur within the airspace around the aerodrome, including vegetation and built structures. To determine an OLS, runways are classified as non-instrument or instrument runways, with instrument runways further categorised as non-precision or precision-approach runways.

An OLS has been established for the Airport, which is incorporated into the SEPP (State Significant Precincts) 2005 and Council's LEP (Clause 7.7), as described below. There is currently insufficient information to determine whether the Airport's runway is considered a non-instrument or instrument runway.

As an uncontrolled aerodrome, the Airport is not required to prepare an ANEF, but may do so voluntarily. As described above, an ANEF is a useful tool for land use planning around the Airport. Airservices Australia has responsibility for endorsing the technical accuracy of

ANEFs, but does not assess any of the data or assumptions in a qualitative way. Airservices Australia and the Aircraft Noise Ombudsman also handle noise enquires and investigate noise complaints made by members of the public.

As a non-controlled aerodrome, the Airport can accommodate a mix of aircraft conducting commercial activities, including passenger air transport, and large aircraft, to the extent that the runway and available flight paths can accommodate the aircraft's take-off and landing requirements. The onus predominantly lies with aircraft operators to comply with standards for emissions, noise and flight safety.

All aircraft operators conducting activities from the Airport, regardless of their size, purpose or ownership, are required to:

- Comply with emissions standards, pursuant to the *Air Navigation (Aircraft Engine Emissions) Regulations 1995*;
- Have a Noise Certificate, which is an authorisation granted by Airservices Australia under Part 2 of the *Air Navigation (Aircraft Noise) Regulations 1984*; and
- Have an Air Operator's Certificate (AOC), which is an authorisation granted by CASA under Section 27 of the *Civil Aviation Act 1988*.

The AOC describes the aircraft type, including categories for:

- Aircraft in Regular Passenger Transport (RPT) Operations;
- Transport Category Helicopters and Fixed Wing Operations 5700 kg Maximum Take-Off Weight (MTOW)
- Non Transport Category Helicopters and Fixed Wing Multi Engine and/or Turbine Powered Aircraft 5700kg MTOW in charter and aerial work operations; and
- Single-Engine Piston-Powered Aircraft in aerial work operations only.

An AOC is supported by an attachment called the Operations Specifications, relating to the aircraft type specified. The Operations Specification would include information relating to the runway requirements applying to the aircraft.

Subpart 139.D of the *Civil Aviation Safety Regulations 1998* would require the Airport operator to arrange for an annual safety inspection under if the aerodrome is:

- (a) used at least once a week by an aircraft that is engaged in regular public transport operations or charter operations, and
- (b) has a maximum passenger seating capacity of more than 9 but not more than 30 seats.

The safety inspection would consider the extent to which the aerodrome operations and facilities meet the *Manual of Standards Part 139 - Aerodromes*.

Under Part 139 of the *Civil Aviation Safety Regulations 1998* the Airport would be required to be certified if it:

- (a) has a runway that is suitable for use by aircraft having (i) a maximum passenger seating capacity of more than 30 seats; or (ii) a maximum carrying capacity of more than 3,400 kilograms; and
- (b) is available for use in regular public transport operations or charter operations by such aircraft.

The *Civil Aviation Safety Regulations 1998* certification process:

- Generally requires enhanced measures to ensure aerodrome facilities and operations meet national safety standards, set out in the *Manual of Standards Part 139 - Aerodromes*;
- Requires aerodrome operators to prepare an aerodrome manual (division 139.B.2); and

- Requires operators of certified aerodromes to comply with the relevant standards for planning and notice requirements that must be satisfied before aerodrome works may be carried out (subpart 139.245). The *Manual of Standards Part 139 - Aerodromes* encourages aerodrome operators to liaise with relevant planning authorities in this regard.

Part 139 of the *Civil Aviation Safety Regulations 1998* also allows aerodromes to register with CASA. Registered aerodromes must meet certain standards and quality assurance criteria, but have lower minimum operating standards than certified aerodromes. Registration is a voluntary process, and operators of aerodromes used in air transport operations, which are not required to be certified, can remain outside the aerodrome regulatory system.

In the reviewer's opinion, the *Civil Aviation Act 1988* is considered to apply alongside the WAR Act, because the Airport can continue to operate largely outside of its regulatory framework until it becomes a registered or certified aerodrome.

2.5.2 Airspace Act 2007

The Federal Government's *Airspace Act 2007* framework is intended to take account of the following matters to safely administer airspace in Australia: protection of the environment, efficient use of airspace, equitable access to airspace for all users; and national security (Section 3).

The *Australian Airspace Policy Statement 2015*, made pursuant to Part 2 of the *Airspace Act 2007* identifies that there are two major types of airspace: uncontrolled and controlled. Uncontrolled airspace identified as class G, whereas controlled airspace is further divided into classes A to E. As an uncontrolled aerodrome, the airspace around the Airport is automatically classified as uncontrolled (class G).

Any change to the airspace classification would need to be sought through CASA's Office of Airspace Regulation (OAR). Under its current operating procedures, set out in the *Airspace Risk and Safety Management Manual* (September 2016), the OAR has established procedures for assessing environmental impacts and consulting with relevant stakeholders and communities when considering airspace change proposals. These procedures apply in assessing proposed changes to instrument approaches, flight paths, hours of operations or use of existing runways. In their current form, the procedures generally relate consider the likely impacts of proposed changes to:

- Community noise;
- Aircraft emissions; and
- Matters of national environmental significance as defined by the *Environment Protection and Biodiversity Conservation Act 1999*.

The airspace classification, runway classification (non-instrument or instrument), aerodrome facilities, and operating conditions (e.g. weather) collectively determine whether Visual Flight Rules (VFR) or Instrument Flight Rules (IFR) apply to aircraft operations.

- VFR rely on the pilot's ability to see outside the cockpit to navigate the aircraft, with minimal support provided by the aerodrome operator. Additional improvements, such as wind direction indicators, obstacle markings, runway markings or runway lighting can increase the range of conditions under which aircraft may operate under VFR.
- Further improvements to enable aircraft to operate under IFR. These generally include ground radio navigation and landing aids, and may include a control tower.

Insufficient information was available to reviewers to determine whether the Airport's facilities can currently accommodate IFR flights. Development, including vegetation management, in and around the Airport may be required to facilitate airspace change proposals, and/or accommodate IFR flights. Some, but not all, of these works may require consent under the NSW Environmental Planning and Assessment Act framework, as described below.

In the reviewer's opinion, the *Airspace Act 2007* is considered to apply alongside the WAR Act, because the Airport can continue to operate largely outside its regulatory framework until it seeks to reclassify its airspace to a controlled category.

2.5.3 Environmental Planning & Assessment Act 1979

The intention of the NSW Government's *Environmental Planning & Assessment Act 1979* framework is set out in Section 5. Its objectives to encourage protection of the environment, and provide increased opportunity for public involvement and participation in environmental planning and assessment are considered to correlate with the assumed objectives of the WAR Act, but do not make the WAR Act's objectives redundant. In the reviewer's opinion, it is considered to apply above the WAR Act, because it establishes the consent framework upon which the WAR Act relies.

The *Environmental Planning & Assessment Act 1979* identifies the relevant authority for developments requiring consent would be:

- Council, for Part 4 assessments made under *Environmental Planning & Assessment Act 1979* of development proposals with a capital value less than \$5 million; and
- The Joint Regional Planning Panel (JRPP) for any development that has a capital investment value of more than \$5 million.

Section 76A requires consent for development as specified in environmental planning instruments, including State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs). Provisions in relevant SEPPs and Council's LEP are discussed in more detail below.

2.5.4 Council's LEP and DCP

The *Wyong Local Environmental Plan 2013* (Council's LEP):

- Applies the IN1 - General Industrial land use zoning to the land on which the Airport is situated;
- Requires consultation with the relevant Commonwealth agency, if development will penetrate the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Warnervale Airport (clause 7.7);
- Limits development encroaching into the 20ANEF (clause 7.8); and
- Identifies land surrounding the Airport as a Key Site for the purposes of clause 7.11, which allows building heights up to 20 metres, subject to a development control plan. This provision is valid until 2018.

The *Wyong Shire Development Control Plan 2013* (Council's DCP):

- Does not refer to, or provide, ANEF maps, for the purposes of applying LEP clause 7.8;
- Does not currently provide location-specific guidelines for development occurring within the Airport, for the purpose of applying clause 7.11; and
- Requires development occurring in other locations, including the Warnervale Business Park, to consider the OLS requirements associated with the Airport. An OLS map is not provided in the DCP, but can be assumed to refer to that provided in the SEPP (State Significant Precincts) 2005, described below.

2.5.5 SEPP (Infrastructure) 2007

Part 3, Division 1 of the *SEPP (Infrastructure) 2007* sets out development controls for air transport facilities, noting:

CABINET IN CONFIDENCE

- An air transport facility means an airport, or a heliport that is not part of an airport, and includes associated communication and air traffic control facilities or structures; and
- An airport means a place used for the landing, taking off, parking, maintenance or repair of aeroplanes (including associated buildings, installations, facilities and movement areas and any heliport that is part of the airport).

Clause 22 identifies prescribed zones where development for the purposes of an airport may be carried out by or on behalf of a public authority without consent. The Airport is not in a prescribed zone identified in clause 22, which means Council may not permit development without consent.

Clause 23, identifies development for any of the following purposes may be carried out with consent on land within the boundaries of an existing air transport facility, if the development is ancillary to the air transport facility:

- (a) passenger terminals,
- (b) facilities for the receipt, forwarding or storage of freight,
- (c) hangars for aircraft storage, maintenance and repair,
- (d) premises for retail, business, recreational, residential or industrial uses.

Council would remain the consent authority, subject to any other triggers. Under Schedule 3, concurrence is required from RMS for development proposals relating to an airport or aerodrome of any size.

2.5.6 SEPP (State and Regional Development) 2011

Under clause 17 of the *SEPP (State and Regional Development) 2011*, the Minister would be the consent authority for "development for the purpose of air transport facilities that has a capital investment value of more than \$30 million."

2.5.7 SEPP (State Significant Precincts) 2005

The Airport is located within the WEZ, which was declared a State Significant Site in 2006. It is identified in the Map Index for Schedule 3 and maps are provided to identify the Warnervale Aerodrome extent of operations, and OLS relating to the Airport runway (pre-2015 works).

Schedule 3 does not currently make any specific provisions for the WEZ.

2.5.8 SEPP 14 - Coastal Wetlands

Porters Creek Wetland, which forms the southern boundary of the Airport, is identified as a SEPP 14 Wetland (Figure). Under SEPP 14 provisions, Council remains the consent authority, and any application for works that may impact on the wetland would require the concurrence of the Secretary of Planning.

2.5.9 Summary

In the reviewer's opinion, the WAR Act remains the most effective means of achieving its assumed objectives, because:

- Federal-level legislative frameworks are considered to apply alongside the WAR Act. The Airport can continue operating outside the aerodrome regulatory system, as a non-controlled aerodrome, until it voluntarily seeks registration or is required to obtain certification.
- While other Acts described do seek objectives that accord with the WAR Act, are considered to overlap with the WAR Act's objectives to the extent that the WAR Act's objectives become redundant.

- The NSW Government's *Environmental Planning & Assessment Act 1979* framework is considered apply above the WAR Act. It identifies circumstances where a body, other than Council, would be the consenting authority for the purposes assessing development proposals (see Table 1).
- The Federal Government's *Civil Aviation Act 1988* and *Airspace Act 2007* frameworks also provide circumstances for a body, other than Council, to be a consenting authority for certain developments. These would apply if the Airport were to become a registered or certified aerodrome, or sought re-classification of its airspace.

Table 1: Summary of circumstances requiring development assessment or monitoring, including by a body other than Council.

Circumstance	Relevant assessment / authority
Development proposals requiring consent with a capital value less than \$5 million	Council is consent authority
Development proposals requiring consent with a capital value greater than \$5 million	JRPP is consent authority
Development proposals requiring consent with a capital value greater than \$30 million	Minister is consent authority
If the Airport is used at least once a week by an aircraft that is engaged in regular public transport operations or charter operations, and has a maximum passenger seating capacity of more than 9 but not more than 30 seats.	Annual safety inspection by CASA required
If the Airport has a runway that is suitable for use by aircraft having (i) a maximum passenger seating capacity of more than 30 seats; or (ii) a maximum carrying capacity of more than 3,400 kilograms; and is available for use in regular public transport operations or charter operations by such aircraft.	Certification by CASA required
If the Airport seeks reclassification of its airspace	Approval by Airservices Australia required

3. Summary of key issues

This section provides a summary of the predominant issues relevant to the WAR Act that have been raised and/or identified:

- In the 51 written submissions received by the Department of Planning and Environment in response to their call for public feedback to the Review;
- In meetings held by consultants acting on behalf of the Department of Planning and Environment with key stakeholders; or
- Through research undertaken by City Plan Strategy & Development acting on behalf of the Department of Planning and Environment.

These issues cover:

1. The policy objectives / intent of the WAR Act, which are to form the basis for the Review;
2. Circumstances relating to the terms of the WAR Act that have been enacted or are currently operable;
3. The influence of the WAR Act on the Airport's existing use, operations and approvals;
4. Circumstances, including public perception, surrounding the potential Airport expansion;
5. The scope and influence of environmental impacts and constraints on Airport-related development; and
6. Other legislative and regulatory matters.

The purpose of discussion in this section is to briefly highlight areas of concern or conflict that are relevant to the Review of the WAR Act. These form the basis for considering the influence of actions that may be taken with respect to retaining, modifying or repealing the WAR Act in **Section 4**.

3.1 Policy objectives / intent of the Act

3.1.1 Relevance to the Review

Under s.17(1) of the WAR Act, "The Minister is to review this Act to determine whether the **policy objectives** of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives."

Clearly defining and understanding the WAR Act's policy objectives is imperative to this Review.

3.1.2 Summary of matters raised / identified

- The WAR Act does not clearly define its policy objectives or intention. These must be assumed for the purpose of this review.
- The Act's long Title is "An Act to provide for restrictions on aircraft movements, and on the length and site of any runway, at Warnervale Airport; and for other purposes."
- There appears to be general agreement that the Act intends to allow for the ongoing operation of the Airport in its current form (general aviation facility).
- Objectives nominated by third parties generally fell into three broad categories to:
 - **Limit the future development and operations of the Airport**, with specific references to: restricting aircraft movements in the event that the existing runway is extended or a new runway is constructed; limiting the length of any runway; and preventing construction of a new runway except at a site approved by the Minister;
 - **Protect the amenity of the surrounding area**, with specific references made community and environmental interests such as noise, ecological and biological diversity, water supply, and traffic; and
 - **Ensure an open and transparent decision-making process**, with specific references to: providing for the independent review of proposals to expand operations; properly engaging the Minister and community.
- Those who support the Act to be retained generally consider it to be, at least in principle, more relevant now citing the quantum of urban growth that has occurred and is planned within the surrounding area.

3.1.3 Response

The review of terms provided in Section 4 assumes the policy objectives of the WAR Act are to:

- Allow for the ongoing operation of the Airport as a general aviation hub;
- Facilitate a transparent and timely decision-making process for developments proposed at Warnervale Airport; and
- Allow for future aviation activities to occur in a manner that protects the amenity of areas surrounding the Airport.

It is assumed that the WAR Act intends to achieve the above by placing reasonable limitations on future Airport development and operations, and by specifying the terms by which approvals, review and consultation will be conducted to consider development proposals.

3.2 Current operability of the Act

3.2.1 Relevance to the Review

Under s.17(1) of the WAR Act, "The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and **whether the terms of the Act remain appropriate for securing those objectives.**"

A number of the WAR Act's terms have been enacted, or are assumed to be operable. This issue considers these circumstances to identify areas of concern or conflict, which may suggest weaknesses in the WAR Act's provisions.

3.2.2 Summary of matters raised / identified

Part 2 aircraft movement restrictions are currently operable on the Airport's existing and proposed runways.

- The existing runway at the time of the WAR Act's commencement is assumed to be 970m long with a variable width between 7m to 9m, (Wyong Shire Council, 2010). Part 2 of the WAR Act did not apply to the runway in this form.
- Works were undertaken in 2015 to the existing runway. The extent of these works resulted in a longer, wider and stronger runway tarmac area, an expanded area cleared of vegetation to accommodate the runway strip and fly-over area. These works:
 - Are considered to constitute a runway extension for the purposes of s.4(2), enacting Part 2 restrictions on aircraft movements; and
 - Are considered to have required prior approval of the Minister, as mandated by s.9(1).
- The current length of the runway tarmac, as extended in 2015, does not exceed the 1,200m maximum length provided in s.8(2). However, the Act does not define the term **runway** for the purposes of measuring the maximum length. Additional elements of a runway include a runway strip and fly-over area, which require strict vegetation management for safety reasons.

Part 3 runway restrictions are operable for the construction of a new 1,200m runway, but inoperable for increasing the maximum length of any runway, unless the Minister directs otherwise.

- Wyong Council made an application to the Minister under s.9(1) of the WAR Act to approve commencement of construction of a 1,200m runway within the corridor approved by DA554/93.
 - The determination period exceeded 2 years, which reflects the level of uncertainty around the grounds for granting approval.
 - In granting the approval, the Minister advised that construction of the approved new runway would enact Part 2 restrictions on aircraft movements.
 - Part 2 restrictions on aircraft movements are generally considered to be too restrictive to (1) support the ongoing viability of the existing aviation business and (2) to justify the cost of capital works associated with building any new runway.

Part 4 is inoperable, unless the Minister directs otherwise.

- Wyong Council made an application to the Minister under s.8(4) of the WAR Act to extend the maximum length for a proposed runway to 1600m in 1998. This application was rejected by the Minister in 2001.
 - The Minister did not enact Part 4 review procedures under s.10(1). Instead, the Minister rejected the application, citing lack of adequate information required to assess the application. However, the Act does not specify on what

CABINET IN CONFIDENCE

grounds the Minister should determine any application for the increase of the maximum length of runway.

- Despite not being subject to Part 4 review procedures, this application is considered to enact s.10(2), which limits Wyong Council to make no more than one such application, unless the Minister directs otherwise.
- The determination period exceeded 2 years, which reflects the level of uncertainty around the grounds for determining any such application.

Part 5 enforcement provisions are operable

- No one enacted the injunction provisions when Council extended the runway in 2015, so this is probably an ineffective provision. However, it is still considered valid given the recent contravention, and should be retained.
- The Act doesn't provide powers for investigation. Comparative regulatory instruments include terms for relevant bodies to request the provision of information. These could be used as benchmarks for new WAR Act provisions.
- The majority of offences attracting penalties are in relation to aircraft movement restrictions, which would be incurred by the airport operator.
- One offence attracting penalties is identified for runway restrictions, which would be incurred by Council, as landowners.
- All offences attract 100 penalty units, but some are considered far more severe than others.

Part 5 review provisions have lapsed

- A review of the WAR Act was not undertaken, as prescribed, within 5 years from the date of assent, and a report on the outcome of the review has never been tabled in each House of Parliament.

3.2.3 Response

The matters raised identify a number of provisions that are unreasonable or ineffective. These are considered in more detail in the review of terms in **Section 4**. They form the basis for the Report's final recommendation to retain the WAR Act, in a modified form.

3.3 Existing uses, operations and approvals

3.3.1 Relevance to the Review

Under s.17(1) of the WAR Act, "The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and **whether the terms of the Act remain appropriate for securing those objectives.**"

One of the assumed policy objectives identified in **Section 3.1** is to allow for the ongoing operation of the Airport as a general aviation hub. This reflects the general consensus expressed in the written submissions and stakeholder interviews that the current operations are appropriate to the local context and acceptable to the local community.

This issue considers the current or potential influence of the WAR Act on this assumed policy objective.

3.3.2 Summary of matters raised / identified

- There appears to be general consensus that aviation activities currently undertaken at the Airport are acceptable and that the site is operating effectively.
- The application of Part 2 aircraft movement restrictions to the new 1,200m runway approved by the Minister in 2001 is seen to jeopardise the commercial feasibility of the project.
- The application of Part 2 aircraft movement restrictions to the existing runway, as upgraded in 2015, as currently mandated (10pm-6:30am curfew and daily maximum of 88 take offs and landings) are expected to jeopardise existing operations.
- Council substantially commenced development concurrent with DA554/93, and that consent is considered to be operational. The Minister gave approval for a 1,200m runway to be constructed within the runway corridor consistent with that proposed by DA554/93. No further consents are considered to be required prior to construction.

3.3.3 Response

In its assessment of the 1,200m runway, the Department concluded that the Act's restrictions were "probably too restrictive and should be reviewed." (Department of Urban Affairs and Planning, 2000). This has formed the basis for recommendations to immediately review of aircraft movement restrictions in relation to the existing runway (see **Section 4.1**).

3.4 Potential airport expansion

Disclaimer: This Review acknowledges concerns raised about the potential for expansion at the Airport that would lead to it functioning as a regular passenger transport facility. However, the commentary provided herein is not intended to consider or determine the suitability or commercial viability of Warnervale Airport to accommodate any particular type of aviation activity.

3.4.1 Relevance to the Review

Under s.17(1) of the WAR Act, "The Minister is to review this Act to determine **whether the policy objectives of the Act remain valid** and whether the terms of the Act remain appropriate for securing those objectives."

The WAR Act came into force in response to concerns about the types of aviation activities that may arise from the Airport expansions proposed by Council DA554/92. These concerns predominantly relate to the potential for conflicts of interest in Council's role as both landowner and regulator.

This issue identifies matters raised in relation to those concerns to consider whether they remain valid.

3.4.2 Summary of matters raised / identified

- Council has publicly committed to develop a regional airport somewhere on the Central Coast. This is viewed to be a priority infrastructure project to support economic development and employment growth.
 - The WAR Act has previously been considered too restrictive to allow for the level of expansion previously envisaged by Council for Warnervale Airport.
 - Council has recently resurrected its proposals for a regional Airport facility at Warnervale after investigations to establish a regional airport in alternative locations in Wyong Shire proved unsuccessful.
- The majority of written submissions questioned the commercial viability of a regional Airport anywhere on the Central Coast. These concerns appeared to assume that the regional Airport concept intended to introduce regular passenger transport services. These assertions pointed to recent studies undertaken to identify a new airport location to service growing passenger demand in Sydney (see info-box).
- Written submissions also suggested that runway extensions required to expand airport operations to accommodate regional-level services may not be technically feasible, due to location-specific environmental constraints (see Section 3.5).
- Council has not yet publicly specified the long-term development objectives of the Airport in this location to a degree that allows for accurate assumptions to be made about the type of commercial aviation uses or type of aircraft that would operate from the Airport. This limits the extent to which modelling can occur to plan for the management of noise, obstacles, traffic, vegetation and biodiversity offsets, water quality, flooding, etc.
- Council wrote to the Minister in 2015 asking for the WAR Act to be reviewed, and is publicly advocating for the Minister to repeal the Act.
- The majority of written submissions expressed concern about the lack of transparency and the potential for conflicts of interest in Council's decision-making process. This includes concerns raised in relation to Council's investigations of alternative Airport locations, as well as the recent re-focus on the Warnervale site. These submissions included a number of press releases and Council-prepared information that appeared to present inconsistent or misleading information about various Airport expansion proposals.

- In the absence of the WAR Act, Council would be the sole consent authority for the majority of development proposals, some of which may lead to expanded airport operations. The exception would be for any proposals with capital investments exceeding \$5m, which would be determined by the JRPP.
- Utilising a SEPP to appoint an alternative consent authority, such as the Minister or JRPP would be the only means of achieving a similar effect as the WAR Act. However, this would not provide for the independent review process allowed for in Part 4 of the WAR Act.

3.4.3 Response

The potential for expanded operations at Warnervale Airport appears to remain valid, and the WAR Act is considered to be the most effective means of achieving the policy objectives assumed in Section 3.1. This forms the basis for the Report's final conclusion to retain the WAR Act, though in a modified form.

Info Box 5: Long-term aviation needs planning for Sydney

The Central Coast region has consistently been considered by the Australian and NSW Governments to cater for the long-term aviation capacity for Sydney. The most recent study highlighted that the availability of sites suitable for developing airport infrastructure capable of accommodating regular public transport (RPT) had, over time, been limited by the continued release and development of urban lands (Independent Steering Committee, 2012). It identified that the Warnervale Airport had been reviewed by previous studies, but never shortlisted as a potential RPT location.

In 2012 the Committee considered the suitability of sites for either a:

Type 1 airport – a full service airport with a runway length up to 4,000 metres, capable of serving all market segments and accommodating a future parallel runway layout; or

Type 3 airport – a limited service airport with a runway length of up to 2,600 metres capable of serving all market segments but with a single runway layout only.

Warnervale Airport was not considered to be a suitable site, based on these criteria⁴.

⁴ The 2012 study did identify sites at Peats Ridge, Somersby and Wallarah as suitable, and shortlisted the site at Wallarah for further investigation. This site was subject to a proposed LEP amendment by Council.

3.5 Environmental impacts / constraints

3.5.1 Relevance to the Review

Under s.17(1) of the WAR Act, "The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and **whether the terms of the Act remain appropriate for securing those objectives.**"

One of the assumed policy objectives identified in **Section 3.1** is to ensure future aviation activities are undertaken in a manner that protects the amenity of areas surrounding the Airport.

This issue considers the current or potential influence of the WAR Act on this assumed policy objective.

3.5.2 Summary of matters raised / identified

- The Airport is bounded to the south by Porters Creek Wetland, which is the largest freshwater wetland on the Central Coast. It is identified as a SEPP 14 wetland, and a number of ecological studies have previously identified that has features considered to be of high conservation value. It is also utilised as an emergency drinking water supply during times of drought.
 - The siting of any runway in the Airport may result in the clearing of vegetation and ongoing vegetation management requirements that may extend into Porters Creek Wetland.
 - The overland flow of Butonderry Creek across the Airport has the potential to impact water quality in Porters Creek Wetland.
- Rural residential properties within the flight path of aircraft operating from the Airport rely on rainwater tanks for their drinking water supply. There may be potential for aircraft emissions to contaminate these supplies.
- Sparks Road corridor provides the main vehicle access to the Airport, and would likely require upgrading to support expanded airport operations, particularly if freight or passenger services are increased.
- Sparks Road corridor also penetrates the OLS for the existing runway, thereby limiting the operational length of the existing runway, proportional to its constructed length.
- The hills to the north of the runway are likely to penetrate the OLS for any new or extended runway. This may require vegetation to be cleared and managed and would likely have significant visual impacts.
- Assumptions made in previous environmental and noise studies are considered to be flawed and out-dated.
- Noise associated with existing general aviation uses are considered to be acceptable, and the majority of feedback received indicates the Airport operator is managing the site effectively.

3.5.3 Response

An assessment of the cumulative impacts arising from expanded airport operations cannot occur without an accurate understanding of the nature of proposed aviation activities. This forms the basis for recommendations made in Section 4.3 to improve the transparency and effectiveness of review procedures.

3.6 Other legislative and regulatory matters

3.6.1 Relevance to the Review

Under s.17(1) of the WAR Act, "The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and **whether the terms of the Act remain appropriate for securing those objectives.**"

A range of other legislative and regulatory matters were identified that are relevant to considering the effectiveness of the Act's provisions. This issue summarises matters raised in that regard.

3.6.2 Summary of matters raised / identified

- Written submissions seeking repeal of the WAR Act felt it was the only Act in Australia to impose such restrictions on an airport.
- The WAR Act does not specify on what grounds the Minister should determine any applications.
- Part 4 of the WAR Act requires the Minister to arrange for an independent review of aspects relating to development proposals that would normally be considered as part of an EPA Act Part 4 or Part 5 assessment, but does not appoint the Minister as the consent authority for the purposes of EPA Act.
- The WAR Act does not provide investigative powers for the terms it sets out. For example, there is power afforded to issue notifications to provide information.
- The WAR Act does not define several key terms that are relevant to its interpretation.
- There are no requirements to review the WAR Act since s.17(2) and s.17(1) have lapsed.
- Other legislative frameworks that currently apply alongside or above the WAR Act are not considered to collectively achieve the same objectives or effect that the WAR Act provides.

3.6.3 Response

Background research has identified the *Airports Act 1996* framework, which does not currently apply to the Airport, as a comparative regulatory instrument to the WAR Act. This provides an exemplary planning and approvals framework model for considering future Airport developments (see **Section 4.3**). Other instruments have been established to limit aircraft movements at Sydney, Adelaide, Essendon and Coolangatta Airports.

Other matters raised identify several provisions that are unreasonable or ineffective. These are considered in more detail in the review of terms in **Section 4**. They form the basis for the Report's final recommendation to retain the WAR Act, in a modified form.

4. Review of terms

This section briefly reviews the terms set out in the WAR Act's provisions to:

- Identify the intent and effect of including the provision in the WAR Act;
- Consider whether it is still valid to the policy objectives and, if so, whether it is effective in achieving those policy objectives; and
- Provide recommendations for how to improve the effectiveness of the WAR Act's terms, if relevant.

4.1 Aircraft movements, including curfew and take off/landing limits

4.1.1 Intention and effect

Part 2 of the WAR Act provides for restrictions on aircraft movements through the imposition of a curfew and daily maximum limit for take offs and landings. The primary intention of these restrictions is assumed to be to minimise the impacts of aircraft noise on surrounding uses, particularly residential uses.

Part 2 restrictions did not apply to the existing runway at the time the WAR Act commenced, which may suggest that they were not intended to apply to the Airport's existing general aviation operations. Instead, they were designed to become operable upon construction of a new runway, or extension of the existing runway. This may suggest that they were intended to apply predominantly to larger, and presumably noisier, aircraft.

Restrictions on aircraft movements also influence the commercial viability of aviation businesses that currently, or may in future, operate from the Airport. While it is not clear whether that was a deliberate intention of the provision, this effect is an important consideration for this Review as it relates to the assumed policy objective to allow for the ongoing operation of the Airport as a general aviation hub.

These restrictions would apply to the new 1,200m runway approved by the Minister in 2001, if constructed, and will influence the financial feasibility of that construction project. These restrictions also became operable to the Airport's only constructed runway in 2015, when that runway was extended. Consequently, they will influence the ongoing commercial viability of the existing general aviation operations.

4.1.2 Validity and effectiveness

The principle of restricting aircraft movements to manage noise impacts is valid. Comparative regulatory instruments apply similar curfew restrictions and, to a lesser extent, take off and landing restrictions. Under federal aviation regulations, airport operators at all aerodromes in Australia are responsible for managing noise impacts, including through restricting aircraft movements. This occurs through the self-imposition of curfew restrictions, along with other noise-abatement procedures applied through procedural manuals. Noise issues for all aerodromes in Australia are managed through the Aircraft Noise Ombudsman, which may investigate complaints and impose penalties to offending airport or aircraft operators.

No other legislative framework applying to the Airport was found to mandate similar provisions. Aircraft noise is generally managed by Airservices Australia. As a non-controlled aerodrome accommodating aircraft operating in non-controlled airspace, the Airport is not required, but may voluntarily, consult with the surrounding community to establish noise abatement measures. Members of the public may make complaints about aircraft noise and operations to the Airservice Australia's Aircraft Noise Ombudsman.

Specifying restrictions for aircraft movements in the WAR Act provides an enhanced level of certainty that aircraft noise levels will be effectively managed. It also provides greater opportunity for people to be informed and consulted during any review of the WAR Act's terms. Removing provisions for aircraft movements would lessen the extent to which the WAR Act achieves its policy objective to facilitate an open and transparent decision-making process for proposed developments. **Provisions for Aircraft movement restrictions, in principle, should be retained in the WAR Act.**

The terms specified for aircraft movement restrictions, in the WAR Act's current form and operability, are considered too restrictive to allow for ongoing general aviation activities. This issue has become more urgent since the restrictions were enacted on the Airport's only constructed runway in 2015, as they may now jeopardise existing Airport operations. **The terms of aircraft movement restrictions that apply to the existing runway should be immediately reviewed, to minimise or remove restrictions applying to general aviation aircraft.** This may be quickly achieved by removing penalty notices associated with these offences.

Determining reasonable aircraft movement restrictions for any unconstructed runway will require identification of the long-term objectives for Airport development, and the types of aviation uses that are expected to occur. This is discussed further in **Section 4.2**. The Department of Planning's assessment of Council's application to the Minister for approval to construct a new 1,200m runway identified a number of inconsistencies in the assumptions made to assess noise. These studies are now out-dated, and unlikely to accurately reflect the current vision for the Airport or noise emissions of modern aircraft. **The terms of aircraft movement restrictions that apply to any unconstructed runway should be reviewed, based on current and accurate assumptions about the types of future aviation uses that are expected.**

Comparative regulatory instruments provide examples of how aircraft movements may be more effectively managed to protect local amenity without compromising the commercial viability of existing or future aviation businesses. **The updated terms of aircraft movement restrictions should be based on aircraft characteristics that predominantly influence noise**, such as:

- Specifying the maximum aircraft weight that an airport operator may cause or permit to take off; and/or
- Specifying maximum aircraft noise emission level that an airport operator may cause or permit to take off or land.

The above terms may apply at any time, be applied within a curfew, or be limited to a maximum number of take offs and landings. This approach would allow for minimal aircraft movement restrictions to apply for general aviation aircraft, but apply more stringent restrictions to larger and/or noisier aircraft.

The WAR Act s.6(3) provides the Minister powers to amend the maximum number of daily take offs and landings for an approved runway longer than 1,200m, upon Gazettal. No provision is made to allow the Minister to vary the curfew period for the Airport, or the maximum number of daily take offs and landings for any runway of 1,200m or less. This appears to be an oversight, and **the WAR Act should be amended to provide the Minister powers to vary any aircraft movement restrictions terms for any runway.**

4.1.3 Recommendations

- Retain restrictions on aircraft movements in the WAR Act, in principle.
- Amend the WAR Act to provide the Minister powers to vary any aircraft movement restrictions for any runway.
- Consider identifying specific aircraft movement restriction terms based on aircraft maximum take-off weight or noise emission levels, when undertaking any review. Comparative provisions are available in similar regulatory instruments.
- Immediately review the aircraft restriction terms to minimise (or remove) restrictions for general aviation aircraft operating from the existing runway. An alternative response could be to immediately remove penalty notices associated with these restrictions.
- Commit to reviewing the current restrictions on aircraft movements in the WAR Act on any unconstructed runway, including that approved by the Minister in 2001. The trigger for that review should mandate submission of suitable information from Council to identify the long-term development objectives and intended future aviation uses (see **Section 4.3**). That review should also invite feedback from the local community (see **Section 4.4**).

4.2 Runway siting and design

4.2.1 Intention and effect

Part 3 restrictions on length and site of runway require the Minister's concurrence prior to the construction of any new runway at the Airport. Limiting the length of the runway influences the type of aircraft that may safely operate from the Airport, with larger aircraft generally requiring a longer minimum take-off distance. These restrictions also influence the total footprint of development or other OLS management actions required to construct and operate a runway.

The intention of providing runway restrictions does not appear to be to appoint the Minister as the consenting authority for the purpose of EPA Act assessments. Instead, these provide terms to enable the Minister to validate that the impacts of proposed developments at the Airport have been appropriately considered.

The provisions to allow Council to apply for an increase in the maximum specified length of a runway is a trigger for Part 4 review provisions, which are discussed in **Section 4.3**.

4.2.2 Validity and effectiveness

Council's role as both landowner and regulator of Warnervale Airport, for the purposes of land use and development planning, is not unique in Australia. However, the uncertainty around the long-term development objectives for an Airport situated in an area that has been planned to accommodate some of the highest levels of urban growth outside of Sydney is considered a valid reason for enhanced scrutiny.

The runway restrictions provided in the WAR Act are considered reasonable. In principle, these allow the Minister to undertake actions to facilitate an open and transparent decision-making process, thereby minimising the potential for conflicts of interest. These restrictions are currently the only statutory mechanism that allows for elevated oversight of Council's decisions in relation to development that could lead to significant changes in commercial aviation uses at the Airport.

An alternative approach could include incorporating provisions into an existing SEPP, or creating a new SEPP to appoint an alternative consenting authority (e.g. the Minister, JRPP or PAC) for EPA Act assessments of developments proposed at Warnervale Airport. This could be achieved, for example, through the introduction of new provisions for the WEZ in the SEPP (State Significant Precincts) 2005. **The runway restrictions should be retained until such time as an alternative mechanism to appoint an alternative consenting authority is provided.**

The prescribed maximum runway length of 1,200m is considered reasonable to support ongoing general aviation activity, and potentially accommodate other commercial uses. At the time the WAR Act came into force, the operable length of the existing runway is assumed to be around 800m, with a variable width of 7 to 9m. At these dimensions, the Airport was not capable of accommodating significant commercial uses other than general aviation uses. The 2015 runway upgrade has already increased range of commercial uses that may operate from the Airport. These works were undertaken without prior approval from the Minister.

Based on the described specification of the existing runway, as upgraded in 2015, the WAR Act's runway restriction terms may not, in their current form, be prescriptive enough to enable the Minister to consider all development proposals that could increase commercial aviation uses at the Airport. For example, Council could approve minor developments such as the runway lighting, ground radio navigation and landing aids, or a control tower without triggering the WAR Act runway restriction provisions. These developments could further enable a greater range of commercial uses without the Ministerial oversight that the WAR Act intends to provide. **The runway restriction terms should be broadened to also require approval from the Minister prior to construction of navigational improvements.**

This maximum potential runway length of 1,800m is considered to be reasonable, but may unduly raise expectations that a runway of that length is acceptable. This assertion is based

on location-specific environmental constraints discussed in **Section 3.5**, notably including Sparks Road corridor and Porters Creek Wetland, which form the Airport's northern and southern boundaries, respectively. Council's own application made in 1998 only sought the Minister's approval for an increase to 1,600m.

Removing the upper limit for a potential extension may further raise expectations that even greater runway lengths could be achieved. **The potential maximum runway length should be retained at 1,800m and may be reasonably reduced to 1,600m.**

Runway restriction provisions were enacted in 1998 when Council applied for the Minister's approval to commence construction of a 1,200m runway within the corridor proposed in Council's DA554/93, and to extend the maximum length of that runway to 1,600m. The determination period for these applications exceeded 2 years, largely owing to the WAR Act's omission of terms against which the Minister should assess these applications.

Furthermore, while these applications collectively related to a single proposal for a 1,600m runway within the Council-approved corridor, separate approaches were undertaken by the Department of Planning to assess each application. These assessments, made in 2001, recommended that the Minister undertake actions to improve the effectiveness of the WAR Act, including to:

- Review the WAR Act's aircraft movement restrictions in relation to the operation of the new 1,200m runway;
- Direct the Department to investigate benefits of using the WAR Act's regulation-making powers (s.16) to specify what any future application should contain; and
- Direct the Department to review the WAR Act (s.17).

The WAR Act should specify terms and procedures for determining any application made by Council in relation to runway restrictions, including the terms for enacting Part 4 review procedures. This is discussed further in **Section 4.3**.

4.2.3 Recommendations

- Retain the runway restriction provisions, in principle.
- Investigate the benefits of utilising alternative statutory mechanisms, such as SEPP (State Significant Precincts) 2005, to appoint a consenting authority other than Council for developments proposed at the Airport.
- Retain the prescribed maximum runway length for any runway as 1,200m.
- Consider reducing the allowance for the maximum runway length to be extended from 1,800m to 1,600m.
- Broaden runway restriction terms to require Minister's approval prior to the construction of any runway and the development of navigational improvements associated with any runway.
- Specify the terms and procedures the Minister will apply to any application made under runway restrictions in the WAR Act, or regulations made under s.17 of the WAR Act.

4.3 Independent investigations and review

4.3.1 Intention and effect

Part 4 review procedures intend to set out provisions for the Minister to facilitate an independent review of proposals that would lead to expanded commercial aviation operations at Warnervale Airport. These provisions allow for an independent review of the proposal to be undertaken, and the completion of a noise study.

Review procedure provisions also allow for the local community to be informed of and consulted on any proposed developments. This is discussed further in **Section 4.4**.

4.3.2 Validity and effectiveness

The motivation for requiring the increased level of scrutiny afforded by an independent review was established in **Section 4.2**.

Part 4 review procedures only apply to applications made by Council to increase the prescribed maximum length of an existing or proposed runway. However, as described in **Section 4.2**, other runway developments or navigational improvements also have the potential to lead to expanded commercial aviation operations. **Part 4 review procedures should apply to any application made in relation to runway restrictions, noting recommendations made in relation to these restrictions in Section 4.2.** This would more effectively achieve the intent of requiring independent review procedures, and provide for a more consistent approach to be taken in relation to all applications.

Council made an application in 1998 to increase the maximum length of the new 1,200m runway at the site that was approved by the Minister under the WAR Act. However, the Minister rejected that application without enacting Part 4 review procedures. This decision was taken following the Department of Planning's initial assessment of Council's application, which concluded that it did not include sufficient information upon which to undertake an independent review or prepare a noise study. **The WAR Act should specify terms and procedures for determining any application made in relation to runway restrictions, including the terms for enacting Part 4 review procedures.**

If they were to be enacted, Part 4 review procedures are not considered the most effective framework for facilitating a transparent and timely decision-making process. There are no regulations associated with the WAR Act, and the review provisions specified in the Act omit the:

- Minimum information that Council is expected to provide in their application;
- Roles and responsibilities for establishing terms for the independent review;
- Powers afforded to the independent reviewer (e.g. to request the provision of information);
- Financial responsibilities for costs incurred to undertake review procedures;
- Maximum timing to appoint appropriate persons to undertake the review and noise study; and
- Grounds on which the Minister will make a decision to approve or refuse an application.

The WAR Act's review procedures should, at minimum, be amended, or regulations established to set out the above terms. The scope of these procedures could also be substantially revised, using benchmarks such as the Airports Act 1996 as contemporary models (see Info Box 6).

Info Box 6: Planning and approvals framework applying to Commonwealth Airports

The Airports Act 1996 could provide a model for an improved review framework. This would provide for the Minister to approve a 20-year masterplan for the Airport prepared by Council. The masterplan would:

Clearly identified the long-term development objectives;

- Provide reasonable assumptions in relation to the scale and mix of commercial aviation uses, including general aviation (e.g. sport, recreational and training exercises), aerial work (e.g. crop dusting and freight), or passenger transport (e.g. charter and scheduled passenger services);
- Be developed in consultation with the community and other key stakeholders, including adjoining LGAs and relevant State agencies;
- Be subject to an independent peer review; and
- Form the basis for establishing ANEF and OLS maps to guide land use and development planning.

Upon approval of the masterplan, Council would be required to refer development proposals relevant to the runway restrictions to the Minister for approval. The Minister would review the application to determine whether it conforms to the approved masterplan. Any non-conformance would trigger an independent review.

The independent review would consider requirements to further review and updated ANEF or OLS maps, based on the nature of the proposal. It would also identify recommendations to vary the WAR Act's terms for aircraft movement restrictions or runway restrictions, if required.

4.3.3 Recommendations

- Extend the application of Part 4 review procedures to any application made in relation to runway restrictions. This would consequently apply to any application to extend the maximum length of a runway (as currently provided) as well as an application to construct a runway of any length.
- Specify the terms and procedures for determining any application made in relation to runway restrictions, including the terms for enacting Part 4 review procedures.
- Consider applying a new review procedure framework based on the development of a long-term masterplan for the Airport that is approved by the Minister.

4.4 Informing and consulting the community

4.4.1 Intention and effect

Part 4 review procedures identify provisions for the Minister to inform and consult with the community on proposed runway developments. The intention appears to be to facilitate an open and transparent decision-making process by raising awareness of and seeking feedback on potential changes to airport operations.

4.4.2 Validity and effectiveness

All Councils are required to comply with community consultation provisions set out in the EP&A Act and Local Government Act. These are considered reasonable for the majority of development proposals. Development proposals at the Airport have the potential to expand aviation operations, giving rise to a much larger impact footprint of people and properties. These potential impacts relate not only to amenity issues, such as noise and traffic. They also include potential economic or employment impacts of sub-regional significance. **Provisions to inform and consult with the community, should remain in the WAR Act.**

Community information and consultation provisions were included in the WAR Act as a direct result of concerns raised in relation to the notification of Council DA554/93. They seek to provide for the Minister to conduct consultation in association with the independent review of development proposals to expand airport operations. **Any consultation initiatives undertaken in relation to the WAR Act should be conducted independently of Council, to minimise potential for conflicts of interest.**

In their current form, the community information and consultation provisions would only be enacted in relation to an application to increase the maximum prescribed 1,200m length of an existing or proposed runway. This is not considered to be effective in ensuring community information and consultation on all types of development proposals that could lead to expanded Airport operations. In line with previous recommendations, **community information and consultation provisions should be extended to apply to any application received by the Minister in relation to runway restrictions.**

The WAR Act (s.12(3)) requires the person appointed to conduct the noise study to survey all residents within a 7.5km radius of an existing or proposed runway. This survey is:

- To be conducted independently of Council;
- Inform residents of the noise study; and
- Invite residents to make submissions on the advantages and disadvantages of the proposed Airport operations.

The requirement to notify residents living within 7.5km appears to be based on the maximum theoretical extent of noise impacts arising from future developments. This standard cannot be revised without reasonable assumptions as to the likely future airport operations, and associated types of aircraft. **Mandating notification of all residents within a 7.5km radius is reasonable**, as it is likely to encompass the maximum possible footprint of potential noise impacts.

Requiring a targeted consultation initiative such as the one described, would be an effective means of informing residents who may potentially be affected by changes to amenity. However, the invitation for submissions, as proposed, appears to be beyond that appropriate to a noise expert. **The terms of the targeted consultation initiative, as described in s.12(3), should be set out in a stand-alone and conducted by an appropriate person or persons.**

The community information and consultation provisions are intended to relate directly to Part 4 review procedures, which are considered ineffective in their current form. **Community information and consultation provisions should be reviewed in conjunction with the recommendations provided in Section 4.3**, which, if accepted, would result in changes to the review procedure framework.

CABINET IN CONFIDENCE

4.4.3 Recommendations

- Retain community information and consultation provisions in the WAR Act.
- Retain the provision for community information and consultation initiatives conducted under WAR Act to be carried out independently of Council.
- Extend the application of community information and consultation provisions to any application received by the Minister in relation to runway restrictions.
- Retain the minimum distance for directly notifying residents of any proposed runway developments at 7.5km
- Consider introducing a stand-alone clause setting out terms for an appropriate person or persons to independently inform and consult with the community about proposed runway developments.
- Update community information and consultation provisions in line with any changes to the Part 4 review procedures, as recommended in **Section 4.3**.

4.5 Enforcement

4.5.1 Intention and effect

Part 5 of the WAR Act sets out several provisions that allow the Act to be enforced. The intention appears to be to allow anyone to take action against real or proposed contraventions to the WAR Act, by seeking an injunction in the Supreme Court.

4.5.2 Validity and effectiveness

- No one enacted the injunction provisions when Council extended the runway in 2015, so this is probably an ineffective provision. However, it is still considered valid given the recent contravention, and should be retained.
- The Act doesn't provide powers for investigation. Comparative regulatory instruments include terms for relevant bodies to request the provision of information. These could be used as benchmarks for new WAR Act provisions.
- The majority of offences attracting penalties are in relation to aircraft movement restrictions, which would be incurred by the airport operator.
- One offence attracting penalties is identified for runway restrictions, which would be incurred by Council, as landowners.
- All offences attract 100 penalty units, but some are considered far more severe than others.
- The WAR Act does not define a number of key terms that are relevant to its interpretation.
- There are no requirements to review the WAR Act since s.17(2) and s.17(1) have lapsed.

4.5.3 Recommendations

- Undertake an administrative review to identify anomalies, define key terms, and introduce investigative powers.

5. Final recommendations

Final Recommendation: The WAR Act should be retained, but in a modified form.

The review has determined that the policy objectives, as assumed in this Report, remain valid, and the WAR Act, in principle, remains the most effective mechanism to achieve the policy objectives.

A number of the WAR Act's provisions and terms should be subject to further investigation that may result in amendments to the WAR Act, or the preparation of associated regulations. Key supporting recommendations are summarised below. These should be considered in relation to more detailed recommendations outlined in the Report.

Supporting recommendation: Immediately remove aircraft movement restrictions applying to general aviation activities operating at Warnervale Airport's existing runway.

In the reviewer's opinion, the 2015 runway works are considered to trigger clause 4(2) of the WAR Act, making Part 2 restrictions on aircraft movements applicable to the Airport's only existing runway.

All stakeholders agreed that these provisions were never intended restrict the general aviation operations that existed at the time the Act came into force. The unrestricted general aviation operations have continued without any major conflicts to surrounding amenity. The application of these restrictions has the potential to immediately affect the ongoing viability of existing aviation businesses operating from the Airport.

To do this, the Minister may need to:

- Amend the WAR Act to provide the Minister powers to vary any aircraft movement restrictions for any runway; and
- Amend the WAR Act to minimise or remove restrictions for general aviation aircraft operating from the existing runway OR immediately remove penalty notices associated with these restrictions.

Supporting recommendation: Commit to a broader review to determine aircraft movement restrictions for commercial aviation uses other than general aviation.

The current aircraft movement restrictions should remain in place until the long-term development objectives and intended future aviation uses at the Airport have been established by Council. These assumptions are required in order to consider the type of aircraft that are expected to utilise the Airport, and provide reasonable restrictions to balance noise and commercial development considerations.

Specific terms could be identified based on aircraft maximum take-off weight or noise emission levels. Similar provisions are already included in comparative regulatory instruments.

The WAR Act should also incorporate a provision that requires aircraft movement restrictions to be reviewed when changes are made that influence long-term development objectives and intended future aviation uses. That review should invite feedback from the local community.

Supporting recommendation: Identify a broader range of developments that would trigger the WAR Act's review procedures.

At present the WAR Act's review procedures only apply upon receipt of an application to extend the maximum length of the runway to longer than 1,200m. This does not achieve the intention of the provision, which is to allow for an independent review of proposals that could lead to expansions in Airport operations.

CABINET IN CONFIDENCE

In addition to the runway length, a range of other developments such as strengthening the runway, provision of runway lighting, and ground and navigational aids could lead to expansion of Airport operations. In most situations, Council would continue to be consent authority to approve such developments.

These types of development are not currently limited by the WAR Act, and consequently would not enable the independent review procedures intended to minimise the potential for conflicts of interest.

Supporting recommendation: Commit to establishing a more effective and transparent planning and review framework.

The WAR Act's current review procedures do not clearly establish roles and responsibilities, which may have led to the lengthy determination periods of previous applications made by Council. Further investigation is required to establish a more effective and transparent planning and review framework. This could be modelled on that set out by the Commonwealth Government's Airports Act 1996.

At minimum the WAR Act will need to be modified, or supported with associated regulations to:

- Specify the terms and procedures the Minister will apply to any application made under runway restrictions in the WAR Act, or regulations made under s.17 of the WAR Act.
- Extend the application of community information and consultation provisions to any application received by the Minister in relation to runway restrictions.

Any proposed changes should seek to retain the provision for community information and consultation initiatives conducted under WAR Act to be carried out independently of Council, and may reasonably retain the minimum distance for directly notifying residents of any proposed runway developments at 7.5km

Supporting recommendation: Commit to undertaking an administrative review

The review identified a number of administrative issues, including anomalies in current provision and omissions made in relation to key terms, and investigative powers. An administrative review is required to address these issues.

References

- Department of Urban Affairs and Planning. (2000). *Assessment Report: Wyong Shire Council Application, under clause 8(4) of the Warnervale Airport (Restrictions) Act 1996, requesting the Minister to increase the maximum length of any runway to up to 1,600m*. Sydney: Department of Urban Affairs and Planning.
- Department of Urban Affairs and Planning. (2000). *Assessment Report: Wyong Shire Council Application, under clause 9(1) of the Warnervale Airport (Restrictions) Act 1996, requesting the Minister's approval for the proposed site of the 1,200m runway at Warnervale Airport*. Sydney: Department of Urban Affairs and Planning.
- Independent Steering Committee. (2012). *Joint Study on aviation capacity in the Sydney Region*. Sydney: Australian and NSW Governments.
- Jorge Michael Breikopf v Wyong Council , NSWLEC 145 (Land and Environment Court of NSW May 17, 1996).
- Jorge Michael Breikopf v Wyong Council, NSWLEC 145 (NSW Land and Environment Court May 17, 1996).
- Minister for Urban Affairs and Planning. (2001, May 24). Letter to WSC Re Applications for approval under the WAR Act. Sydney.
- NSW Department of Planning. (2006). *Central Coast Regional Strategy 2006-2031*. Sydney: NSW Government.
- NSW Legislative Assembly. (1996, June 20). Warnervale Airport (Restrictions) Bill, transcripts of first and second reading. Sydney, NSW, Australia: NSW Legislative Assembly.
- NSW Planning & Environment. (2015). *Draft Central Coast Regional Plan*. Sydney: NSW Government.
- NSW Planning & Infrastructure. (2012). *North Wyong Shire Structure Plan* . Sydney: NSW Government.
- unknown. (2001, July 11). Memorandum of Advice to Wyong Shire Council re Warnervale Airport.
- Wyong Shire Council. (2006). *Wyong Employment Zone (WEZ) Rezoning: Report to the Ordinary Meeting of Council 28 Jun 2006*. Wyong: Wyong Shire Council.
- Wyong Shire Council. (2008). *State Significant Site Study: Wyong Employment Zone*. Wyong: Wyong Shire Council.
- Wyong Shire Council. (2010). *Warnervale Airport and Associated Lands Information Report in Council's Business Paper for its Ordinary Meeting 28 April*. Wyong: Wyong Shire Council.
- Wyong Shire Council. (2011). *Porters Creek Floodplain Risk Management Study*. Wyong: Wyong Shire Council.

Appendix A





Appendix A

WAR Act Review – Draft Summary and Recommendations Report

Status information	
<p>Currency of version Current version for 6 July 2009 to date (accessed 5 August 2016 at 11:45). Legislation on this site is usually updated within 3 working days after a change to the legislation.</p> <p>Provisions in force The provisions displayed in this version of the legislation have all commenced. See Historical notes</p> <p>Responsible Minister Minister for Planning and Infrastructure</p> <p>Authorisation This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.</p>	<p>When the WAR Bill was debated in the Legislative Council, a proposed amendment sought to make the Minister for Transport the responsible minister.</p>
Part 1 Preliminary	
<p>1. Name of Act This Act is the <i>Warnervale Airport (Restrictions) Act 1996</i>.</p>	-
<p>2. Commencement This Act commences on a day or days to be appointed by proclamation.</p>	-
<p>3. Definitions In this Act:</p> <p>aircraft means any machine that can derive support in the atmosphere from the reactions of the air but does not include a glider.</p> <p>aircraft operator, in relation to an aircraft, means a person who conducts an aircraft operation using the aircraft.</p> <p>airport operator means the person who operates Warnervale Airport.</p> <p>Warnervale Airport means any airport situated on land at Warnervale (being land comprised in Lot 12 in DP 605250, Lot 24 in DP 53936, Lots 1 to 4 in DP 239691, Lots 22 and 23 in DP 773449 and Lot 27 in DP 228750).</p>	<p>Other terms that may need to be defined include:</p> <ul style="list-style-type: none"> • Runway – for the purposes of measuring maximum length (s.8). This may include related terms, such as operable runway area, runway strip, flyover area, etc. • Environmental impact study – for the purpose of s.11 Independent Review. <p>Lot numbers have been superceded</p>

Part 2 Restrictions on aircraft movements

4. Application of Part

- (1) This Part does not apply to take offs and landings of aircraft at Warnervale Airport on an existing runway.
- (2) An existing runway is a runway that was constructed before the commencement of this section and that is not extended at any time after the commencement of this section.

Operable on all current runways

Works were undertaken in 2015 to the existing runway. The extent of these works resulted in a longer, wider and stronger runway tarmac area, an expanded runway strip and fly-over area (cleared of vegetation). These works are considered to constitute a runway extension for the purposes of s.4(2), enacting Part 2 restrictions on aircraft movements.

5. Curfew

- (1) There is a curfew period for Warnervale Airport that starts at 10 pm on each day and ends at 6.30 am on the next day. Aircraft must not take off from or land at Warnervale Airport during the curfew period.
- (2) An aircraft operator must not cause or permit an aircraft to take off or land in contravention of this section.

Maximum penalty: 100 penalty units.

- (3) The airport operator must not cause or permit an aircraft to take off or land in contravention of this section.

Maximum penalty: 100 penalty units.

- (4) This section is not contravened as a result of an aircraft taking off or landing in the circumstances described in section 7 (Emergencies). In proceedings for an offence against this Act under this section, or for an injunction under section 13, the onus is on the defendant to establish that an aircraft took off or landed in those circumstances.
- (5) If the maximum length for any runway at Warnervale Airport is increased under section 8, the Minister may, by order published in the Gazette, vary the curfew period for Warnervale Airport. The curfew period as varied has effect in place of the curfew period specified in subsection (1).

Operable on all current runways – recommended for review to relax restrictions.

Site operators indicated the curfew was established based on their standard operating procedures in 1996. These may now be too restrictive and may jeopardise ongoing general aviation operations. For example, this restriction poses seasonal challenges to existing pilot training operations, as night-training exercises require 3 hours' flying time after sunset.

Curfew periods provided in comparator Airport acts and regulations:

- Start at 11pm each day and end at 6am on the next day;
- Have additional provisions for the use of reverse thrust and missed approaches during curfew periods;
- Where multiple runways exist, have provisions for specific curfew periods on each runway, including during specified times and/or weekend allowances; and
- Have provisions or schedules that specify the types of aircraft to which quotas apply during the curfew period, or to which curfew restrictions do not apply (e.g. low noise heavy freight aircraft, propeller-driven or jet aircraft under 34,000kg that comply with noise standards, etc.).

6. Limit on number of daily take offs and landings

- (1) The total number of take offs and landings of aircraft at Warnervale Airport (added together) occurring between the end of the curfew period on a day and the start of the next curfew period on that day must not exceed 88.
- (2) The airport operator must not cause or permit an aircraft to take off or land if the take off or landing would result in a contravention of this section.

Maximum penalty: 100 penalty units.

- (3) An aircraft taking off or landing in the circumstances described in section 7 (Emergencies) is to be disregarded for the purposes of this section. In proceedings for an offence against this Act under this section, or for an injunction under section 13, the onus is on the airport operator to establish that an aircraft took off or landed in those circumstances.

- (4) If the maximum length for any runway at Warnervale Airport is increased under section 8, the Minister may, by order published in the Gazette, change the number 88 referred to in subsection (1) to any other number. The number as changed has effect in place of the number 88 in subsection (1).

Operable on all current runways – recommended for review to relax restrictions.

Site operators indicated the limit on daily take offs and landings was established based on their standard operating procedures in 1996. These may now be too restrictive and may jeopardise ongoing general aviation operations. For example, a single pilot training exercise may result in a single aircraft achieving 10 or more flight movements, as the purpose of the exercise is to practice take-offs and landings.

Site operators note that, prior to the runway being upgraded in 2015, they were accommodating over 300 flight movements per day on weekends.

Flight movement restrictions provided in comparator Airport acts and regulations:

- Identify quotas for specific types of aircraft, including during specified times and/or weekend allowances.

7. Emergencies

The curfew, and the limit on the number of daily take offs and landings of aircraft at Warnervale Airport, do not apply to an aircraft that takes off or lands at Warnervale Airport if:

- a) the aircraft is being used for or in connection with a search and rescue operation, a medical emergency or a natural disaster, or
- b) the pilot of the aircraft has declared an in-flight emergency, or
- c) the aircraft has insufficient fuel to be diverted to another airport, or
- d) there is an urgent need for the aircraft to take off or land to ensure the safety or security of the aircraft or any person or to avoid any damage to property.

Operable on all current runways

No issues raised.

This provision is similar to those provided in comparable Acts and regulations.

Part 3 Restrictions on length and site of runway

8. Limit on length of runway

- (1) The maximum length for any runway (existing or proposed) at Warnervale Airport is 1 200 metres.
- (2) The airport operator must not cause or permit an aircraft to take off from or land at a runway at Warnervale Airport if the runway exceeds the maximum length for the runway.

Maximum penalty: 100 penalty units.

- (3) The maximum length for any runway at Warnervale Airport may be increased to up to 1 800 metres by the Minister as provided for by this section.
- (4) Wyong Council may apply in writing to the Minister for such an increase.
- (5) The Minister may, after completion of the review and noise study referred to in Part 4, grant the increase or refuse to grant the increase.
- (6) The Minister grants an increase by specifying the increased maximum length in an order published in the Gazette. The increased maximum length so specified has effect in place of the maximum length specified in subsection (1) in respect of the runway concerned.

Operable on all current or proposed runways – recommended for review, or preparation of regulations, to specify terms and procedures

The length of the existing runway's tarmac, as extended in 2015, has been confirmed to be less than the maximum specified length of 1,200m.

Council applied to the Minister, under s.8(4) to increase the runway to 1,600m in 1998. This application was rejected in 2001, citing insufficient information upon which to undertake Part 4 review procedures. This 2-year determination period appears to indicate improvements are required to clarify the WAR Act's terms in this regard.

One of the policy objectives of the WAR Act is to ensure a transparent procedure providing meaningful community input is undertaken to consider proposed expansions to the Airport. If s.8 and s.9 are read in conjunction, seeking the Ministers approval, and the application of Part 4 review procedures, of runway specifications offers the potential for consideration of:

- the type of aircraft (and thereby the noise levels generated by larger aircraft) that are capable of taking off from and landing at the Airport, as regulated by Federal aviation standards; and
- the extent to which the siting of any runway impacts on structure height or the clearing and ongoing management of vegetation as mandated by OLS standards.

However, the WAR Act:

- does not define a runway for the purpose of measuring the maximum length; and
- does not specify on what grounds the Minister should determine an application to increase the maximum length of any runway.

Similar restrictions are not provided in comparable Acts or regulations.

9. Site of runway

- (1) A person must not carry out any work for the construction of a runway at Warnervale Airport, unless the site of the runway has been approved in writing by the Minister prior to the commencement of the work.

Maximum penalty: 100 penalty units.

- (2) This section extends to work that was started before the commencement of this section and for that purpose a reference in this section to the commencement of the work is to be read as a reference to the continuation of the work after the commencement of this section.

Operable – recommended for review, or preparation of regulations, to specify terms and procedures

In 1998, Council applied to the Minister under s.9(1) for approval to construct a 1,200m runway in the corridor to which consent was previously granted in DA554/93. This application was approved in 2001. This 2-year determination period appears to indicate improvements are required to clarify the WAR Act's terms in this regard.

Works were undertaken in 2015 to the existing runway. The extent of these works resulted in a longer, wider and stronger runway tarmac area, an expanded runway strip and fly-over area (cleared of vegetation). These works should have enacted s.9(1), requiring Minister's approval in writing prior to commencement.

See above commentary on the effect of Part 3 provisions in s.8 commentary above.

However, the WAR Act:

- does not specify on what grounds the Minister should consider an application for approval to construct a new runway;
- does not specify whether the Minister is intended to be the consent authority for the purposes of EPA Act assessments, or to review or consider the validity of consents granted in that regard.

Part 4 Review of proposal to expand operations at Warnervale Airport

10. Application of Part

- (1) This Part applies only if Wyong Council applies in writing to the Minister for the grant of an increase in the maximum length for an existing or proposed runway at Warnervale Airport.
- (2) No more than one such application can be made unless the Minister otherwise directs.

Operable, Council cannot make another application to extend the maximum length of any runway unless directed to do so by the Minister – recommended for review, or preparation of regulations, to specify terms and procedures

Council applied to the Minister, under s.8(4) to increase the runway to 1,600m in 1998. This application was rejected in 2001, citing insufficient information upon which to undertake Part 4 review procedures. This 2-year determination period appears to indicate improvements are required to clarify the WAR Act's terms in this regard. See commentary in relation to s.8 provisions above.

Council's 1998 application is considered to enact s.10(2), meaning Council may not make another application to extend the maximum length of any runway unless directed to do so by the Minister. The intention of this provision is unclear, and may be too restrictive as Council's 1998 application was rejected by the Minister before being subject of Part 4 review procedures.

The Legislative Council's debate of the WAR Bill indicates that the s.10(2) restriction to one application was to limit the cost to the NSW Government to undertake multiple reviews.

See further commentary in s.11 provisions below.

11. Independent review of proposal

- (1) The Minister is to appoint an independent person or persons to review any environmental impact study, and any other study, referred to the person or persons by the Minister that relates to a proposal to extend the runway at Warnervale Airport or to construct a new runway at that Airport.
- (2) The Minister is to put in place arrangements for community input on the review.
- (3) The person or persons appointed to conduct the review are to be appointed by the Minister following consultation with Wyong Council.

Would become operable upon receipt of application from Council – recommended for review, or preparation of regulations, to specify terms and procedures

Council applied to the Minister, under s.8(4) to increase the runway to 1,600m in 1998. This application was rejected in 2001, citing insufficient information upon which to undertake Part 4 review procedures. This 2-year determination period appears to indicate improvements are required to clarify the WAR Act's terms in this regard. See commentary in relation to s.8 provisions above.

The WAR Act does not define the term environmental impact study, or identify the minimum information necessary to be included in any studies.

Three inter-related amendments were proposed to Part 4 when the WAR Bill was debated in the Legislative Council. These were to:

- Insert a new s.10(3) stating "The cost of the review and noise study under this Part are to be met by the Minister out of money legally available or to be provided by Parliament for this purpose."
- Add an additional line to s.11(3) stating "The person or persons are to be appointed by the Minister within 40 days after receipt of the application by Wyong Council referred to in section 10(1)."
- Add a new 11(4) stating "For the purpose of a review under this section, the person or persons appointed to conduct the review has the powers, authorities, protections and immunities conferred by the Royal Commission Act 1923 on a commissioner appointed under Division 1 of Part 2 of that Act. That Act (section 13 and Division 2 or Part 2 excepted) applies, with any necessary modifications, to a witness summoned by, or appearing before, any person appointed to conduct the review."

The debate identified that:

- The proposed new 11(4) responded to community concerns about the potential for conflicts of interest in Council's role as both landowner and regulator;
- The proposed new 10(3) would be required if the proposed new 11(4) was accepted, owing to the elevated level of inquiry; and
- The proposed additional line to 11(3) was to ensure timely decision-making, in line with EPA Act .

The above amendments were agreed to, in principle, by the Bill's supporters during the debate, but negated to avoid delays to the Act's commencement that would arise from a third reading of an amended Bill. The reason for this was stated as being construction was scheduled to commence on the runway consented to in DA554/93 before the third reading would occur.

Part 4 Review of proposal to expand operations at Warnervale Airport

12. Noise study

- (1) The Minister is to make arrangements for the carrying out of a new study of the impact of aircraft noise arising from proposed operations of Warnervale Airport.
- (2) A person appointed to conduct the study must be an expert in the field and must be appointed by the Minister following consultation with Wyong Council.
- (3) The arrangements for the conduct of the noise study are to include arrangements for a survey, conducted independently of Wyong Council, of all residents within a 7.5 kilometre radius of any runway or proposed runway at Warnervale Airport. Those arrangements are to include arrangements for those residents to be informed of the noise study and invited to make submissions on the advantages and disadvantages of the proposed operations of Warnervale Airport.

Would become operable upon receipt of application from Council – recommended for review, or preparation of regulations, to specify terms and procedures

Council applied to the Minister, under s.8(4) to increase the runway to 1,600m in 1998. This application was rejected in 2001, citing insufficient information upon which to undertake Part 4 review procedures. This 2-year determination period appears to indicate improvements are required to clarify the WAR Act's terms in this regard. See commentary in relation to s.8 provisions above.

Lake Macquarie Council request that this should also identify requirements to consult them in relation to the noise study.

Part 5 Miscellaneous

13. Injunction to prevent contravention

- (1) If the Supreme Court is satisfied, on application, that a person has engaged in or is proposing to engage in conduct that constitutes or would constitute a contravention of this Act, the Court may grant an injunction, in such terms as the Court determines to be appropriate, restraining the person from engaging in any conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (2) An application under this section may be brought by any person, whether or not any right of the person has been infringed by or as a consequence of the contravention.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) The Court may rescind or vary an injunction granted under this section.
- (5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - a) whether or not it appears to the Court that the person intends to engage again, or continue to engage, in conduct of that kind, and
 - b) whether or not the person has previously engaged in conduct of that kind, and
 - c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
 - a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do an act or thing, and
 - b) whether or not the person has previously failed to do that act or thing, and
 - c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person fails to do that act or thing.
- (7) If the Minister makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Minister or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

Operable – recommended for review to clarify investigation powers and enforcement responsibilities

The WAR Act provides for any person to seek an injunction from the Supreme Court, but does not specify the responsible Minister, which would assist in determining which NSW Government department is responsible for monitoring compliance with the WAR Act's provisions. This may be assumed to be the Department of Planning (reporting to the Minister for Planning).

The WAR Act does not provide any powers for investigation. Comparable Acts and regulations include requirements to provide information, including (but not limited to) provisions for:

- Authorised persons to require operators to provide information in relation to the noise level of aircraft, flight paths, flight movement data;
- Specifications about what a notice to provide information must state; and
- Associated penalty units.

14. Evidence

In proceedings against a person for an offence against this Act, or for an injunction under section 13, if it is established that an aircraft took off or landed in contravention of a provision of this Act, it is to be presumed (in the absence of evidence to the contrary adduced by the person) that the person caused or permitted that take off or landing.

Operable – recommended for review to clarify investigation powers and enforcement responsibilities

See commentary in s.13 above.

15. Proceedings for offences

Proceedings for an offence against this Act are to be disposed of summarily before the Local Court.

Operable – recommended for review to clarify investigation powers and enforcement responsibilities

See commentary in s.13 above.

<p>16. Regulations The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.</p>	<p>No Regulations have been made under the WAR Act – recommended to be enacted. [compile recommendations from other sections' commentary]</p>
<p>17. Review of Act (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.</p>	<p>Operable The Minister did not enact s.17(2) or s.17(3) within the specified time frames. The WAR Act does not state the policy objectives to be used as the basis for review under s.17(1).</p>

Appendix B



Review of Warnervale Airport (Restrictions) Act 1996

Minutes of Stakeholder Meetings (6 May 2016) & Follow-up Phone Calls

Meeting	Notes
<p>Initial stakeholder meeting – 6 May 2016 (Richard Pearson)</p> <p>Central Coast Aero Club</p> <ul style="list-style-type: none"> ▪ Andrew Smith (President) ▪ James Stewart (Board Member) ▪ Jeremy Kerwin (Board Member) ▪ George Peterson (Board Member) 	<ul style="list-style-type: none"> - Central Coast Aero club is understanding of the aspirations of Wyong Council to expand the Airport’s functions - Considers the Act is not being used as it was intended - Aero club needs a workable system for curfew and movements, the unregulated jet activity pre-empted by residents is not occurring and the curfew and movements cap should not apply to the operations of the aero club. - The Act was intended to prevent uncontrolled noise levels from the airport in the event of expansion - The Aero Club’s operations include approximately 70% training and 30% private recreation hire - This includes small 2 passenger aircraft of 100 horsepower engines (light piston aircraft) some maintenance and engineering operations. - The Aero Club is one of few training facilities north of Sydney (Bankstown to the south and Cessnock to the north) - Prior to the extension of the runway there was no limit on take offs and landing - A take-off and landing is considered two movements - 88 movement cap now means that on a busy day the Aero Club training has met the movement cap prior to midday. - The cap on movements is causing financial implications for the Aero Club - The Aero Club has applied a self-imposed boundary circuit to avoid populated areas, the minimum required is 1000ft and the Aero Club provide an additional 500ft to avoid noise issues - The Aero Club receive limited complaints regarding noise - Aero Club consider that the Act is not achieving its aims - The future of the Airport should be focused around recreation aviation and general aviation, maintenance, engineering, tourism (mainly light piston aircraft not the jet aircraft, turbo props or freight aircraft that other larger airports operate).
<p>Follow-up phone call to Andrew Smith</p> <p>2 August 2016</p>	<p>He confirmed that the minutes of the stakeholder meeting of 6 May 2016 are accurate. Further comments made as follows:-</p> <ul style="list-style-type: none"> - Noted that the Aero club owned the land but not the runway. The had an agreement with council until 2021 for sole use for a flying school, sale of fuel etc. Until June 2015 they also had sole rights to maintain the runway but this was now done by Council. - Confirmed that Council did maintenance on the surface of the runway in august/September 2015. He thought it had been extended but noted that the tarmacked area is not the ‘runway’ as per the definition in CASA and that the runway is between the gable markers.

	<ul style="list-style-type: none"> - Noted that such definitions should be in the Act i.e. what is a running, what are aircraft movements because 88 movements means 44 take off and landings - Concerned that the curfew would affect night time training which is required for pilots. They have to do 3hour night training and that in summer say taking off at dark at say 8.30pm would not allow 3 hrs flying until 10pm - Considered that the original Act was intended to allow the existing operations of the flight school etc. but to restrict jet/piston planes and that the curfews related to that but that previously there was no limit on the number of movements. The Act would need to either increase the overall movements, define movements better or create curfews and movements to size of plane. E.g., 5700kg planes i.e. turbo prop planes very quiet and not intrusive. Limits should relate to jets and other planes over 5700kg
<p>Initial stakeholder meeting – 6 May 2016 (Richard Pearson) Lake Macquarie City Council</p> <ul style="list-style-type: none"> ▪ Andrew Donald ▪ John Andrews 	<ul style="list-style-type: none"> - Lake Macquarie would like the Wye Urban Release Area to be considered in the process. This was recently rezoned and there is concern regarding potential flight paths of an expanded airport at Warnervale. - Protections in the Act are appropriate. The Act requires an independent person to review a noise study prior to expansion - This provides assurance to Council and residents - The Act could be strengthened to identify how the public interest would be addressed in the event of an application to expand the Airport's operations - The Act could also be strengthened to insert additional guidance about the requirements for strategic planning and include a consultation process based on long term strategic planning - Expansion needs to address the sensitive landscape, wetland to the south, Wye URA to the north and surrounding residents via a EIS and or master plan to give the public confidence the issues have been considered - The future use of the Airport is considered to remain General Aviation - A Regional passenger airport or freight focused airport is considered difficult to achieve due to viability. The developing urban area and land sensitivity mean the market will determine is cannot expand - The Airport is within the WEZ and adjacent to employment zones so future use should be focussed around this. - Changes to the Act should include amendment to Clause 12 to direct consultation with Lake Macquarie Council as well.
<p>Follow-up phone call to Andrew Donald – 2 August 2016</p>	<p>He confirmed the minutes of Stakeholder discussions on 6 May are accurate and that the matters raised in his letter of 27 May 2016 remain. Further matters discussed as follows:-</p>

	<ul style="list-style-type: none"> - Wishes to retain Act but happy for modification subject to the mods including the 4 matters referenced previously - Wants to emphasise that the Act needs to be a long term strategy which included objectives as to the purpose of the Act and to include other stakeholders in its drafting - Was concerned that a passenger airport would have impact on noise - Confirmed that the 'numbers' in the Act are not the 'key' factors rather the impacts so not adverse to these changing subject to impact - Concerned that noise measurements relate to a radius of 7.5km when noise related impacts tend be more elongated like the ANEF contours - Noted that the Wye URA will have approx. 1200 dwellgs with the first DAs under consideration - Concerned that the Darknyung (sorry might be misspelt) Aboriginal Community should have been consulted and responded because of the Bushells ridge area where there is a PP to rezone to residential uses. This is in the flight path
<p>Initial stakeholder meeting – 6 May 2016 (Richard Pearson)</p> <p>Gosford Council</p> <ul style="list-style-type: none"> ▪ Anneke Polkamp ▪ Paul Anderson (CEO) 	<ul style="list-style-type: none"> - Gosford consider that strategic piece of work is required to consider the viability of a regional airport due to the growth projections of the region. - The Act is counterproductive to aviation operations and is too specific - Strategic review needs to consider: <ul style="list-style-type: none"> ○ Is a regional airport needed in the Central Coast Region? ○ If so what location is best? ○ What are the metrics around it, is it feasible, what are the social, economic and environmental considerations? ○ What needs to be located around it to support it? - Broadly the issues to consider in the review of the Act and its relevance include: <ul style="list-style-type: none"> ○ Transport ○ Centres and corridors and communities ○ Residential and urban development management
<p>Initial stakeholder meeting – 6 May 2016 (Richard Pearson)</p> <p>Wyang Shire Council</p> <ul style="list-style-type: none"> ▪ Mike Dowling ▪ Council's Legal Counsel – Brian Glendenning 	<ul style="list-style-type: none"> - The Act came about as a result of a 1993 consent that was challenged in the Land and Environment Court by the Central Coast Regional Airport Action Group - The consent prevailed - Local residents lobbied and it resulted in a private members Bill based on localised issues - The Act was passed and commenced even though there were existing provisions of the Environmental Planning and Assessment Act 1979 that managed any expansion. - Council's view that the Act responded to a minority group

	<ul style="list-style-type: none"> - The Act is successful in preventing anything occurring at the Airport, to the detriment of economic growth - There are considerable issues with growth of Bankstown and Camden airports as they are centred on General Aviation. - This justifies Warnervale Airport expanding on its General Aviation operations to support further growth, economic stimulus and employment - The Act impacts on current operations and financial stability - Consideration should be given to existing legislation that manages growth and expansion of Airports - Wyong Council's vision is short term expansion of the General Aviation operations but long term a Regional Airport. The comparison to Ballina Airport was made. - Consideration that SEPP14 Wetlands, ridge to the north will limit the ability for landing and take-off and therefore restrict the type of aircraft. - There is a need to consider economic and employment stability of the region. - The vision and plan for the Warnervale Airport was considered in a report to Council. Council indicated it was unable to provide the report due to commercial in confidence reasons.
<p>Initial stakeholder meeting – 6 May 2016 (Richard Pearson) Laurie and Jo Eyes</p>	<ul style="list-style-type: none"> - Purpose of the Act/intension of the Act was to protect the amenity of people and residents and the environment - The site is zoned for industrial purposes and so any development should be focused on this and what was committed to in the WEZ - The existing operations of the aero club were considered acceptable to residents - The operations and activity of the Aero Club has diminished over time, this is a result of general aviation activity on a whole declining - Wyong Council proposed for expansion and a new runway in 1993 and 1995 and the Minister was provided all relevant information, noise surveys and consultation and refused application. - The Act is achieving its aims in that it is restraining development of a regional airport, protecting the residents and environment and preventing sterilisation. - The Act should be amended to increase the penalties ten fold - The Act should also be amended to remove the possibility of further applications being considered by the Minister as the Council have exhausted that opportunity - Future use should be focussed on the commitments of the WEZ State Significant Site of 2008 as an industrial area.
<p>Follow-up phone call to Eyes 5 August 2016</p>	<p>They confirmed the minutes of the previous stakeholder discussions on 6 may 2016 were accurate. The went on to add:-</p> <ul style="list-style-type: none"> - Noted that they assisted to get the original WAR Act in place - Noted that there were no restrictions on the 'existing runway'

	<ul style="list-style-type: none"> - That my 'extending' the existing runway they may have affected existing operations which was not the intent of the Act - Thought that if the 'extension' works were withdrawn that the operation of the Act might be able to be reverted but accepted that one operational possibly the Act could not revert to not operational - Noted that the existing runway was 'fit for purpose' in respect of those prior and current operations - Thought the new central coast council may have alternate views of the airport and so Act should be a precaution until then - Noted '1000's' of dwelling built in flight path since the Act - Noted that since the Act Newcastle airport has approx. 1.1mill passengers and is a local and international airport so no need to expand Warnervale
<p>Initial stakeholder meeting – 6 May 2016 (Richard Pearson)</p> <p>Community Environment Network</p> <ul style="list-style-type: none"> ▪ John Asquith <p>Completed Monday 9th May 2016.</p>	<ul style="list-style-type: none"> - The Act is important as it inserts an independent person (Minister) and process into decision making for any expansion of the airport - Porters Creek wetlands are a very important part of any future planning of the airport - Lack of community confidence in Wyong Council to make decisions regarding the airport - The Act protects interests of potentially noise affected people - CEN largely accepting of current activities at airport but opposes any expansion for jet aircraft due to noise and other significant environmental impacts including potential for substantial removal of hill to north - CEN considers there to be ambiguity in some sections of the Act, for example wording in relation to injunctions which could be amended/clarified
<p>Follow-up phone call to John Asquith 2 August 2016</p>	<p>He confirmed that the minutes of the stakeholder meeting of 6 May 2016 are accurate and comments in letters of 23 May 2016, EDO letter of 6 November 2015, and his letter of 13 November 2015 remain. Further comments made as follows:-</p> <ul style="list-style-type: none"> - Confirmed that he was supportive of the airport per se but not as a Regional Airport - He wants to retain Act because he doesn't have confidence in the local politics but he is happy for the Act to be modified and clarified as to its intent - He confirmed that the local community were generally OK with the current operation with turbo props but concerned with jet noise - Wants greater definition of terms and objectives in any modified Act

<p>Follow-up phone-call with Greg Piper to 1 August 2016</p>	<p>Confirmed his position as stated in his letter of 27 May 2016 remains. He added that:</p> <ul style="list-style-type: none"> - He would prefer to see Act retained because it seems to be achieving its aims but noted that it may be being achieved not by the cap but by other reasons such as economic viability of uses - Said there seems to be confusions re the role of the airport and the previous mayors aspirations for expansion - Agreed that there could be consideration of a moderate increase in use of the airport in such uses as Avionics, flying school etc. but not keen on passenger or regional freight airport - Concerned with incremental increase in length of runway under guise of maintenance - Accept principle of amending the Act so long as the scope was acceptable
<p>Follow-up phone-call to David Harris 2 August 2016</p>	<p>Confirmed his position as stated in letter of 20 May 2016 remains. He added that:</p> <ul style="list-style-type: none"> - Reiterated that the purpose of the Act was to protect the area that was changing to residential. He confirmed that there are at least 4 new residential developments in the area - Confirmed that he has no real concerns with the current operation of the airport but noted that he is not sure it is viable. He stated that he understood that Council were planning to rezone it industrial some 10 years ago - He confirmed that he has little to no objection from residents regarding the current operation - Whilst he wants to retain the current Act he is willing to consider some change (expansion of operation) BUT he wants public scrutiny of any change although again he noted that he is not sure if this would be viable economically - He reaffirmed that the Act is more important and relevant now than when it was enacted because of the new residential development in the area.
<p>Follow-up teleconference with Ian Reynolds and Rob Noble 9 August 2016</p>	<p>Both confirmed the position already put by Their letter of 27 May 2016 and the discussions with Mike Dowling and Brian Glendenning. They added that:</p> <ul style="list-style-type: none"> - They are keen to repeal the Act since it has served its purpose and that the EP and A Act is the preferred and usual mechanism for consideration of such facilities. - They considered that the Act was not operational but did concede that it MAY have inadvertently become operational by virtue of 'actions taken' and that if the Act was retained it should be modified to ensure existing uses not affected.

	<ul style="list-style-type: none">- They also considered that if the Act was to remain then modifications to allow 'more than one' request for alteration to the runway length is required. A single undefined action of seeking to extend is not reasonable or desirable.- They want to ensure that if retained the Act allows for future uses and consequential modification to occur to accommodate the growing central coast area.
--	---