

Kyneton Airfield Local Law No. 12 2018

Draft Community Impact Statement

Background

Macedon Ranges Shire Council owns the Kyneton Airfield which was established in 1966. It is operated and managed for the Council under a service agreement with the Kyneton Aero Club.

The airfield is an unregistered airfield, meaning that it is not registered or classified under the Commonwealth Government's Civil Aviation Safety Rules. It is a small airfield with 2 runways providing for general and recreational aviation operations. It is not equipped with appropriate facilities for many types of aircraft and can only accept limited types of light aircraft. It provides some facilities for privately owned aircraft and can be an important resource for emergency services when required.

Many specialist land uses such as airfields and motor racing facilities have historically been established away from urbanised areas but as development encroaches, their previous isolation is reduced, which creates new problems with community safety and amenity. Many potential hazards to safe aircraft operation can emerge over time.

While the airfield is unregistered, owners and operators still strive for best practice in many processes and requirements that apply to registered airfields, including those of Air Services Australia. The airfield operates under a fly neighbourly policy where pilots are encouraged to follow noise abatement procedures to minimise impact on nearby land. While these are voluntary procedures for pilots to follow, mandatory operating and safety procedures will always have precedence over the observation of voluntarily applied policies.

In the absence of the application of Commonwealth controls, Council is currently reviewing how it can practically achieve greater control over the airfield and its surroundings to address potential safety problems. Council is proposing to better manage some of the amenity issues resulting from airfield operations, such as guiding hours of operation through an Operations Manual which is being developed.

Council is also exploring the application of State planning laws which would involve amendments to Council's Planning Scheme. Planning Scheme amendments can take a long time. A local law, which Councils have the power to make under the *Local Government Act 1989* (the Act), is the approach considered by Council to be the most efficient option for achieving the desired level of control in the short term.

Reasons for the Proposed Local Law

In the absence of practical and achievable options to minimise potential hazards to those using the airfield (and potentially those within the vicinity of the airfield), a local law is the most realistic and viable approach to managing hazards in proximity to the Kyneton Airfield.

Councils cannot make local laws that contain requirements that may be incompatible, duplicate or be inconsistent with an Act of Parliament or a Planning Scheme. There are currently no provisions in State legislation or the Macedon Ranges Planning Scheme applying to airfields. If Council sought an amendment to the Macedon Ranges Planning Scheme it could achieve the desired level of control but this could take a considerable amount of time.

Federal legislation does not apply to the Kyneton Airfield because of its size and the nature of its operations.

Objectives of the Local Law

The Local Law objectives are simple. They are to:

- Implement interim measures to assist with the safe operation of the Kyneton airfield;
- regulate and control potential hazards that could be a risk to the community and the safe operation of the airfield; and
- apply controls which will complement other measures being applied by the Council to assist with the safe operation of the airfield which is an unregistered airfield.

Nature of the Controls

The Local Law is a single purpose Local Law. It prohibits an owner or occupier in the vicinity of the airfield from permitting or allowing on land occupied by them, any use or activity, whether natural or manmade, from being or becoming a hazard to the safe operation of aircraft using the airfield. The types of hazards include those penetrating or having the potential to penetrate the obstacle limitation surface (“OLS” - a series of surfaces in the airspace around the airfield which limits the height above ground level of objects surrounding the airfield) such as structures, trees or cranes as well as lights that can blind or glare a pilot or conditions on land that attract birds.

Analysis of matters considered

Matter reviewed	Comments
Existing legislation that might be used instead	There does not appear to be any existing legislation that would achieve the desired result.
Whether there is more appropriate State legislation	There does not appear to be any State legislation that would achieve the desired result.
Overlap with existing legislation	The proposed amendment does not appear to overlap or duplicate or create an inconsistency with existing legislation. The airfield is classified under Federal legislation as an unregistered airfield so it

Matter reviewed	Comments
	<p>is not possible to apply any relevant requirements that would assist with managing potential hazards in the vicinity of the airfield.</p>
<p>Overlap with the Macedon Ranges Planning Scheme</p>	<p>It is the absence of controls applying to airfields in the Macedon Ranges Planning Scheme that is the reason for the Local Law.</p> <p>It may be possible to achieve amendments to the Planning Scheme in the future that will provide Council with the necessary controls and if that occurs, there will not be any need for the continued operation of the Local Law and it could be repealed.</p>
<p>Assessment of risk</p>	<p>A risk assessment has been undertaken and while the airfield is not a high volume use airfield, risks to aircraft have been assessed from hazards and potential hazards in the vicinity. Matters considered in the assessment included the proximity of trees and the storage of vehicles such as cranes. The potential hazards from birds to safe aircraft operation is well known and documented. The airfield is in close proximity to a waste transfer station and to water treatment works, both sources of attraction for birds and that was also taken into consideration.</p> <p>The proposed Local Law is all about reducing risk to aircraft operators using the airfield and potentially land owners and occupiers in the vicinity of the airfield.</p> <p>The Local Law requirements are designed to manage risk through the prohibition of hazards that penetrate the obstacle limitation surface. Owners or occupiers of land on which a hazard exists are required to notify Council so that appropriate risk reduction strategies can be considered and</p>

Matter reviewed	Comments
	<p>applied. It also requires a permit to be obtained to temporarily penetrate the obstacle limitation surface. This enables Council to advise the Airfield operator so that appropriate information can be provided to pilots using the airfield.</p> <p>There could be times when the airfield is in greater use than normal such as when it is used by emergency services. Macedon Ranges is a high fire risk area. The airfield has been used and will continue to be used extensively during major fires. It is used for certain aircraft involved in different aspects of fire control and response such as helicopters, fire spotting aircraft and other aircraft to transport emergency relief crews into the area. The airfield is also used by the Police Airwing Service for training. There is a need to provide safe conditions for all possible contingencies.</p>
Restriction on competition	<p>A review of the proposed Local Law against the competition policy principles has been undertaken.</p> <p>There are some businesses in proximity to the airfield that could be impacted by the restrictions, but only in a minimal way. Given that there is currently no practical or realistic alternatives for managing the risk, it is considered that any restriction on competition is outweighed by the benefit to the community in applying a balanced approach to the safe operation of the airfield by reducing hazards.</p>
Penalties	<p>The penalties proposed in the Local Law are considered to be reasonable and proportionate to the primary purpose of the Local Law which is community safety.</p>

Matter reviewed	Comments
Permit requirements and enforcement approach	<p>The Local Law allows a temporary penetration of the obstacle limitation surface by requiring an owner, occupier or business operator to apply for a permit. It sets out the requirements applying to landowners and occupiers in the vicinity of the airfield to achieve an appropriate level of safety and reduce the risk of items penetrating the OLS or risks caused by lighting or increased bird activity. The permit is essentially a simple notification to Council and no fee is payable.</p> <p>Council can issue a Notice to Comply on a person considered to be breaching the Local Law. The Notice to Comply can specify the remediation work considered necessary to remedy the breach of the Local Law. Failure to comply with the Notice to Comply is an offence and can attract a penalty. If a person fails to undertake the prescribed work, the Local Government Act 1989 allows the Council to undertake the work or contract another person to do it and recover the costs.</p> <p>While the application and enforcement of the Local Law provisions is considered to be a last resort measure, it provides a means by which Council can enforce safety if other approaches have failed.</p>
Benchmarking with adjoining Councils	<p>There are no adjoining Councils that operate airfields. Warrnambool City Council operates an airfield but it is used for (limited) passenger movement and freight as well as recreational flying. It is a different type of operation to the Kyneton Airfield and cannot be used for comparison purposes.</p>
Consultation undertaken	<p>During the development stages the draft Local Law was discussed with Kyneton Airfield Advisory Committee. Some clarification of provisions in the</p>

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	<p>Local Law were sought and some amendments made to address matters raised by the Committee.</p> <p>There has been some preliminary consultation with the community which involved both targeted consultation in March 2018 with residents and businesses abutting the airfield and broader consultation with the wider community in April 2018 where feedback was sought on the proposed Local Law. Some changes were made to the proposed approach.</p> <p>Council is required to undertake additional consultation under section 223 of the Local Government Act 1989 and to hear any submissions made when a person requests to be heard.</p>
<p>Consideration of the Human Rights and Equal Opportunity Act – “the Charter”</p>	<p>It was concluded that on balance the proposals in the Local Law were not incompatible with the rights in the Charter. The proposed Local Law does not prevent activities and uses on land in the vicinity of the airfield from being undertaken, but prohibits activities and uses that could be a hazard to aircraft if a certain situation is allowed to continue. The measures in the Local Law are considered to be reasonable and proportionate to the circumstances.</p>