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12.1 Notice of Rescission Motion (Cr Y Wenham)

Cr Wenham has indicated her intention to move the following rescission motion.

Background

At the Council meeting held 19 June 2012, Council considered a request from Pulse Aero to permanently carry out maintenance on aircraft not permanently located at Aldinga Airfield.

The Land Management Agreement (LMA) exists over the land. The LMA, prohibits maintenance occurring on the aircraft not permanently located at the Aldinga Airfield. The LMA has been in effect since 1992.

It is said the LMA was established as an outcome of dispute over the former District Council of Willunga Development consent conditions for the operation of an Authorized Landing Area by Aldinga Aviation.

At the 19 June 2012 rigorous and lengthy debate occurred on Pulse Aero's request. A tied vote to not approve lost on the casting vote of the Deputy Mayor who chaired the meeting.

Since this meeting several pieces of information new to the Council have become available.

The 19 June 2012 report to Council to assist members in their deliberations and updates provided at the meeting to Elected Members identified 'NO' planning approval was required under the Development Act for the activity of maintenance to aircraft not permanently located at Aldinga Airfield.

In relation to the information provided in the report and updates some members expressed concern regarding the process being undertaken in considering Pulse Aero's request. Some members expressed concern with regard to conflicting legal opinion and suggested Council should perhaps err on the side of caution and not grant approval until further clarity could be obtained through further investigation and some members decision was influenced by Councils legal advice advising Development Approval was not required.

On Thursday 28 June 2012, Elected Members received an email advising Solicitors advice provided earlier the same evening advising on original condition of a Development Approval in 1977 by the former District Council of Willunga requires Development Approval under the Development Act to vary conditions of the 1977 Development Approval to allow maintenance servicing of aircraft not permanently located at Aldinga Airfield refer to attachment 1 and attachment 2.

This update confirms information provided to Council and information used in debate and deliberations of Council was incorrect.

Given that incorrect advice influenced some members deliberations its time Council reconsiders its decision.

Whilst it can be argued the Development Assessment process is independent of Council and the Council LMA decision will not influence the development assessment process as they are two separate processes it could also be argued in the spirit of absolute transparency and independent decision making of Councils planning processes, if Council had no opinion on the matter public confidence can be strengthened by the fact Council had no influence on the Development assessment process as Council will have no opinion if this motion is rescinded.

Further to this, the reality is Pulse Aero cannot at this time undertake maintenance on aircraft not permanently located at Aldinga Airfield even with Councils LMA approval.

If Council is of the mind to rescind its decision to grant approval it makes no difference to Pulse Aero activity.

The difference rescission could make however is an independent assessment of the application that could provide guidance to the Council in its deliberations in the future if Development Approval is granted and no doubt could be casted over Councils influence or otherwise of the Development Assessment process.

Additionally new archived information has become available that assists in understanding in more detail the former District Council of Willunga's intent with regards to the 10 Development Consent Conditions to the Development approval of Aldinga Airfield.

Given the relationship between the LMA and the 10 Development conditions of consent, that being the LMA replicated the conditions of consent, the new information assists to further clarify the LMA intent of the former District Council of Willunga perspective (attachment 3- 1977 Development consent and conditions)

The initial application to the former council, dated 2 October 1976, attachment 4, sought 'in principle' approval for an airfield on private land to be purchased by a group of local air craft owners.

The former Council wrote to the applicant on 18 October 1976 indicating the Council was prepared to give approvals subject to requirement, it indicated 'in principal support'.

On 3 November 1976 the establishment of Aldinga Aviation occurred via election of officers of the company and five directors. At this meeting the board approved South Coast Air Centre Pty Ltd to conduct a flying school for three years. The purpose of the flying school was to create revenue for Aldinga Aviation. At the same meeting maintenance facility was endorsed as revenue stream possibility for Aldinga Aviation (attachment 5).

Runway works commenced after the 3 November 1976 meeting and the completion of runways was completed by the official opening of the flying school operations on 6 February 1977.

During late February 1977 and March 1977 the former Council received numerous complaints from residents regarding aircraft activities from Aldinga Airfield.

On the 18 March 1977 the former Council wrote to Aldinga Aviation reminding them the Council had only provided 'in principle' support and advised the Council would be considering the lodged application of 7 March 1977 for hangers at the 23 March 1977 Council meeting. (Attachment 6)

At the 23 March 1977 meeting Council received further complaints and opposition to the function of the landing area. The former Council advised Aldinga Aviation no further consideration would be given on their application until they had responded to the complaints and opposition. (Attachment 7)

At the 9 May 1977 Council meeting the Council resolved that Aldinga Aviators letter of response be received and the complete file forwarded to the Council's Town Planning Consultant for report and recommendation. (Attachment 8)

Also at the 9 May 1977 meeting the Council received a letter from the Director of the Department of transport suggesting a meeting with all involved parties.

In May 1977 the Manager and Chief flying instructor of South Coast Air Centre Pty Ltd, the operator of the flying school at Aldinga Airfield wrote to the former Council's Town Planning Consultant outlining changes and moves that could be initiated at the airfield to help overcome complaints from ratepayers regarding noise. The Manager identifies within this letter the suggestions in this letter could only apply to pilots of the school as the flying school has no control over other users at the Airfield. (Attachment 9)

These proposed moves in essence became condition 1, 2,3,4,5 and 10 of the 10 conditions of Consent for Development and replicated in the LMA.

In early June 1977 the former Councils Town Planning Consultants wrote to Aldinga Aviation seeking information to assist in preparing their final report to Council, they sought in part: (attachment 10)

- Existing and proposed frequency of flights.
- The proportion of total flights made by South Coast Air Flying School.
- Intentions to grant landing rights for use of airfield to other flyers of flying schools (other than shareholders).
- Indication of foreseeable development of airfield seeking full details of all proposed buildings, car park areas, drainage, landscaping.
- Views regarding discouragement of aircraft overflying certain geographically sensitive areas such as Adey Road.
- Plans that depict current proposal which may depart from original plans.

In early July 1997 Royal Aero Club of SA Inc wrote that after discussions at Parafield, they confirm the Royal Aero Club of SA is very interested in flying operations at Aldinga and welcome the opportunity to extend their flying training operation at Aldinga airfield. (Attachment 11)

The details provided assist us to gain further understanding of the concerns of community, the former Council and desired intent of Aldinga Aviation prior to consent being given.

Issues of noise were evident, issues of air traffic volumes and proposed growth of air traffic were also evident as Aldinga Aviation's desire to increase commercial

activity at the airfield to provide economic return to shareholders and running of the airfield meant increases in flight maintenance.

Having considered the Town Planning Consultants report and recommendation the former Council granted Development Consent on the 11 July 1977 subject to 10 conditions. (refer to attachment 3)

Condition 1 identifying the preferred runway was to address community concerns of noise.

Condition 2 enforced a curfew to reduce impacts on community.

Condition 3 requiring maximum rate of climb was to reduce impacts on community.

Condition 4 to confirm no-non standard operations were to take place. Complaints had been received non-standard operations were occurring, however Aldinga Aviation investigations never identified they occurred. The condition 4 reiterated what is required.

Condition 5 confirms operation to climb at 1000 feet before turning, this was in response to community concerns of aircraft height and noise when turning over houses.

Condition 7 restricting flying school operations to ground activities, tells us the former Council wanted to limit traffic volumes.

Condition 8 restricting maintenance to aircraft domiciled at the Airfield, tells us the former Council, despite being aware Aldinga Aviation wanted and needed maintenance for non-domiciled air craft for economic return disagreed and condition maintenance of aircraft domiciled at Aldinga Airfield.

Condition 9 requiring landscaping plans be submitted for approval a general condition on near all development applications.

Condition 10 seeking noise sensitive area maps being displayed at the Airfield and brought to the attention of fliers to avoid flights over noise sensitive areas in response to community concerns.

Nearly all of these conditions are to control and reduce the impacts of the Airfield on community and restrict flight movements and volumes.

As previously mentioned the LMA resulted from dispute with the conditions as Aldinga Aviation were of the view the Council provided its 'in principle' support in October 1976.

It is evident near all clauses within the LMA replicate the conditions of Development consent conditions provided to control future Development at the Authorized landing area, Aldinga Airfield.

Discussions with residents and previous shareholders of Aldinga Aviation, people around at the time of Development consent and LMA agreement both confirm the intent of the clause "3.4 (f) that except in emergencies aircraft maintenance shall only be carried out on the Aldinga landing area on air crafts permanently located there and on such other aircraft as may be approved by the Council." Was to allow shareholders to bring in their own aircraft that are being restored from other areas for extended maintenance and restoration and or for visiting pilots who may choose

to stay in the area for longer periods of time who may require maintenance over an extended period of time. Both previous shareholders and community are consistent in their understandings that this clause's intent was never designed to facilitate a commercial maintenance company the opportunity to bring in other aircraft not domiciled to Aldinga Airfields.

The consistency in the community and previous shareholders' understanding are both consistent with the Development approval conditions. If the former Council wished to allow maintenance of non-domiciled aircraft it would not have conditioned against it. It is clear the LMA Clause 3.4, a negotiated compromise from the Development Consent Condition 8, was to allow maintenance by decision of Council in unique instances and not to provide open slather and/or conditioned use for ongoing maintenance for commercial gain.

Further to this the former Council wrote to Aldinga Aviation advising it was withholding planning approval on another application until such time as Council's letter of 26 July 1977 was replied (attachment 12) the Council sought to finalise the conditions of consent.

In March 1978 the Department of Transport carried out a series of tests in the Aldinga Area. The objective was to determine the location of aircraft patterns associated with Aldinga Airfield's 03 and 14 strips to assess how flight paths might avoid overflying the recognised Adey Road Noise sensitive area (attachment 13).

On the 1 August 1977 the former Council wrote to Aldinga Aviation noting no further reply had been received in finalising the matter of conditions of consent and sought the information within 14 days.

Additionally this letter advised that the Council had not at anytime given planning approval for the operation of a flying school from the Aldinga airfield (attachment 14).

On the 7 September 1978 the Council wrote to Aldinga Aviation noting it was Aldinga Aviation's view that when Council provided 'in principle' support in October 1976 the council granted approval for the flying school. The Council advised it did not share this opinion. The Council also advised further complaints of noise had been received. Department Transport state the 'institution of Noise Abatement Procedures at ALA has not resulted in a significant reduction of noise problems. This is either due to failure of pilots to comply with the requirements or to faults in the procedure'. The department makes a variety of suggested changes the main being strip use of 32 and closure of 03/21 runway (attachment 15).

In November 1978 Aldinga Aviation wrote to the former Council advising the flight officer would display a large aerial photograph with noise sensitive areas clearly marked requesting all pilots to avoid these areas where possible. Attached to this letter was a copy of the Rules Governing use at Aldinga Airfield, site plan and map used to create large aerial photographs of noise sensitive areas (attachment 16).

Since last year Aldinga Aviation has been asked to display a map displaying the historic noise sensitive areas, as required by their 1977 Development Consent and LMA responsibilities. To date Aldinga Aviation have been unable to produce copies of the historic noise sensitive areas since requested last year.

What members may notice is the noise sensitive is North of Aldinga Road bounded by South Road, Bayliss Road and Malpas Road.

The bulk of complaints currently received from community are now from residents south of Aldinga Road.

It would appear that a mitigation of noise complaint in the past, by changing circuits, runways etc has perhaps now increased the problem of noise in other areas, no doubt exacerbated by the current flying school flight movements being in excess of 40,000 movements per year.

Perhaps it may be worth noting that the flight school previous owners only allowed up to 10 flight per day, some 3 ½ thousand per year.

When considering rescission of the decision of Pulse Aero I draw members attention to the fact the 1977 Development Approval and LMA when referring to 'noise sensitive areas' does not consider the areas currently effected the most by noise, air traffic height and air traffic volume.

The motion as passed by Council does not capture all areas required to be considered by noise assessment.

Further to this consideration needs to be given that if the current noise sensitive areas are to be included with historic noise sensitive areas the area required by assessment is dramatically increased and I'm sure as would the cost for assessment . Perhaps clarity on who pays may assist the Council in determining if it still wishes to proceed.

Lastly to assist in understanding the former District Council of Willunga's view of development ongoing at the airfield I provide attachment 17 which shows clearly the former Council was of the view enough development had occurred at the site.

In Summary

New information has become available, information not available at the June 19 2012 Council meeting.

Initial legal advice on Pulse Aero requirements to not need Development Approval, has now been identified to be incorrect.

Council should not place itself in a position to be seen as influencing planning assessments and/or perceived to be influencing planning outcomes. By rescinding it's approval to Pulse Aero makes no difference to Pulse Aero Activity until Development Approval is granted.

Activities at Aldinga Airfield have not been without their controversies since prior to Development Consent.

The former Willunga Council's Development Consent with 10 conditions and LMA where intended to control future development and address community concerns while allowing the airfield to operate.

The LMA Clause 3.4 was never intended to be used by Council to allow commercial maintenance on non-domiciled aircraft indefinitely but rather in special circumstance of short periods of time.

Rescission Motion

MOVED Cr Wenham that the motion of Council passed on 19 June 2012 at item 9.1 of the agenda, Aldinga Airfield LMA request:

That:

- a. Council approve the application by Pulse Aero to carry out maintenance on an average of 5 aircraft per week over a month that are not permanently located at Aldinga airfield, in accordance with the authority permitted under clause 3.4(f) of the Land Management Agreement numbered 7372584, and pursuant to the remaining obligations under the Land Management Agreement and conditions.*
- b. The approval be conditional upon a noise mitigation management plan being prepared within three months of the date of Council's decision, for approval by Council staff having regard to advice from an acoustic consultant, the management plan to include a methodology to ensure the location and orientation of aircraft are maintained. In the event that an appropriate noise mitigation management plan is not submitted or is not suitable for approval, the issue of permission under clause 3.4(f) of the Land Management Agreement be returned to Council for further consideration.*

be rescinded