



Mr David Sullivan
Committee Secretary
Senate Foreign Affairs, Defence and Trade References Committee
PO Box 6100
Parliament House, Canberra ACT 2600

Dear Mr Sullivan

As part of its evidence to the 7 April 2016 hearing of the Committee's Inquiry into Contamination caused by fire fighting foams at RAAF Base Williamtown and other sites, the Department undertook to provide information in response to questions taken on notice. These questions relate to the Department's regulatory role under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and actions considered for assessment and approval under the EPBC Act that relate to RAAF Base Williamtown.

Our submission dated 21 April 2016 addressed the Department's role in the whole-of-government response to legacy contamination from the use of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA), along with the Department's policy and regulatory responsibilities in administering the EPBC Act.

This submission provides additional information on specific referrals and assessments under the EPBC Act, as they relate to RAAF Base Williamtown, including the Department of Defence's F-35 Lightning II Joint Strike Fighter (JSF) project (EPBC 2010/5747).

Overview

As described in the previous submission, the Commonwealth Environment Minister can only statutorily intervene in environmental matters and make approval decisions in relation to actions that are likely to significantly impact the following nationally protected matters under Part 3 of the EPBC Act:

- World Heritage properties;
- National Heritage places;
- Wetlands of international importance (often called 'Ramsar' wetlands after the international treaty under which such wetlands are listed);
- Nationally threatened species and ecological communities;
- Migratory species;
- Commonwealth marine areas;
- the Great Barrier Reef Marine Park;

- Nuclear actions (including uranium mining);
- a water resource, in relation to coal seam gas development and large coal mining development; and
- the whole of the environment, but only in those instances where the actions affect, or are taken on, Commonwealth land, or are carried out by a Commonwealth agency (actions on Commonwealth land or taken by a Commonwealth agency).

An 'action' is defined broadly in the EPBC Act and can include a project, a development, an undertaking, an activity or a series of activities, or an alteration of any of these things.

For the purposes of a 'whole of the environment assessment' for where the actions affect, or are taken on, Commonwealth land, or are carried out by a Commonwealth agency, section 528 of the EPBC Act defines 'environment' as:

- a. ecosystems and their constituent parts including people and communities ('ecosystem' is defined in the EPBC Act as 'a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functioning unit')
- b. natural and physical resources
- c. qualities and characteristics of locations, places and areas
- d. heritage values of places ('heritage value' is defined as including 'the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians'; 'Indigenous heritage value' is defined as meaning 'a heritage value of the place that is of significance to Indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history'), and
- e. the social, economic and cultural aspects of a thing mentioned in paragraphs a, b or c above.

Under the EPBC Act, it is the responsibility of the person proposing to take an action to 'self-assess' and consider whether their proposal is likely to have a significant impact on a nationally protected matter, and if so it must be referred under Part 7 of the EPBC Act. On receipt of the referral, the Commonwealth Environment Minister determines whether the proposed action is likely to have a significant impact on one or more nationally protected matters (including the whole of the environment for actions on Commonwealth land or taken by a Commonwealth agency) and, if so, that further assessment and approval under Parts 8 and 9 of the EPBC Act is required.

It is important to note actions that are not likely to have a significant impact on nationally protected matters, including actions on Commonwealth land or taken by a Commonwealth agency, are not required to be referred under the EPBC Act and do not require approval. Whether or not an action is likely to have a significant impact on nationally protected matters is assessed on a case by case basis, taking into account the circumstances of the proposed activity and the sensitivity of the receiving environment.

There are two specific features of the regulatory framework that are particularly relevant to the Committee's understanding of the relevance and applicability of the EPBC Act to the Terms of Reference for this Inquiry – transitional provisions for activities that pre-date the commencement of the EPBC Act and the handling of split referrals.

The EPBC Act contains a range of transitional provisions, including sections 43A and 43B, which exempt certain actions from the assessment and approval provisions of the Act. Under section 74A of the EPBC Act, the Commonwealth Environment Minister has the ability to request the person proposing to take an action to refer a larger action for consideration. The decision in relation to whether or not the referred action is part of a 'larger action' is a discretionary one, and there are a range of circumstances in which a 'split referral' would be acceptable.

Further information about general EPBC Act assessment and approval processes, including transitional provisions and the handling of split referrals was provided in our previous submission.

Flying Operations of the F-35 Lightning II Joint Strike Fighter (EPBC 2010/5747)

The Committee requested clarification as to which actions were referred under the EPBC Act by Department of Defence for their Flying Operations of the F-35 Lightning II JSF project. In addition, the Committee sought further information about whether the Department considered the Department of Defence's referred action to be part of a larger action ('split referral').

On 25 November 2010, the Department of Defence referred the proposed flying operations of the JSF at the RAAF Base Williamtown and Salt Ash Air Weapons Range in New South Wales, RAAF Base Tindal in the Northern Territory, and other secondary urban locations around Australia ('the proposed action').

Documentation submitted to the Department for the proposed action can be found on the EPBC notices page (<http://epbcnotices.environment.gov.au/referralslist/>) using the EPBC reference number 2010/5747.

On 23 December 2010, a delegate of the Minister determined that approval was required as the proposed action was likely to have a significant impact on the following controlling provisions under the EPBC Act:

- Wetlands of international importance (sections 16 and 17B);
- Listed threatened species and ecological communities (sections 18 and 18A);
- Listed migratory species (sections 20 and 20A); and
- Commonwealth action (section 28).

A delegate of the Minister directed that the proposed action be assessed through the Environmental Impact Statement (EIS) process.

Consideration of whether the action was part of a larger action (or 'split referral')

The Department of Defence stated in the referral documentation that the action was a component of a larger action. The referral documentation stated that, as the second phase of JSF acquisitions to be based at RAAF Base Amberley near Ipswich in Queensland, would occur no sooner than 2024, and required further decisions to be made by Government, those flight operations were excluded from the scope of the referral.

The Department of Defence also stated in the referral documentation that the action was related to other actions or proposals, which were described as follows:

The replacement, upgrade, and maintenance of facilities that will be used by JSF aircraft are considered to be on-going activities at Defence bases. In accordance with Defence Environmental Policy and Defence's Environmental Management System, all facility works associated with the JSF aircraft are subject to environmental impact assessment.

Defence's environmental impact assessment activities follow the EPBC Act Significant Impact Guidelines...in order to determine whether significant impacts are likely and a referral under the EPBC Act is required. Where it is unlikely that significant environmental impacts will arise, Defence still considers and manages the effects of these activities on the environment through an internal protocol known as an Environmental Clearance Certificate. This process ensures there is still a robust process for environmental management to minimise the potential for adverse environmental outcomes.

The scope for new and/or upgraded facilities to support JSF operations is in the planning stage and is subject to on-going environmental investigation. The facilities planning activity has identified a potential need to extend the runway at RAAF Williamtown to accommodate JSF operations. Depending on the final length and configuration of the runway extension and therefore its environmental impact, this element of the project may require referral for consideration under the EPBC Act.

The runway extension could form part of the EPBC assessment of the JSF flying operations or could be referred as a separate project with an EPBC assessment run in parallel to the JSF flying operations assessment.

The referral documentation provided to the delegate of the Minister who determined that the action was a controlled action, included the information about the activities described above and indicated that the proposed action was considered to be a component of a larger action. The power to request the referral of a larger action, as described in section 74A of the EPBC Act, is a discretionary power, and was not exercised on this occasion. No referral has subsequently been received by the Department in relation to the RAAF Base Williamtown runway or facilities.

Other EPBC Act referrals and assessments relating to RAAF Base Williamtown

The Committee requested the Department identify all the projects that had been referred under the EPBC Act that are associated with or occur near to RAAF Base Williamtown.

In addition to the Department of Defence's JSF project discussed previously, information in relation to four other referrals which are associated with or occur near to RAAF Base Williamtown is provided in Attachment A. A description of each action and the statutory decision(s) made in association with the referral is provided.

I hope the above information, in conjunction with the Department's written submissions and testimony given at the hearing on 7 April 2016, assists with the Committee's understanding of the roles and responsibilities of the Department in relation to the Terms of Reference for Part B of the Committee's Inquiry.

Yours sincerely

Dean Knudson
Deputy Secretary

29 April 2016



ATTACHMENT A: EPBC Act referrals and assessments relating to RAAF Base Williamtown (as at 28 April 2016)

EPBC Reference	Proponent	Description of action	Statutory outcome(s)
2014/7324	Department of Defence	<p>The Department of Defence proposes to remove twelve heritage buildings from RAAF Base Williamtown, near Newcastle in New South Wales. The buildings are identified in the statement of significance for the Williamtown RAAF Base Group, a place entered on the Commonwealth Heritage List (Place ID: 105639). The size, design and layout of the buildings severely limit their ability to support modern Air Force operations. The buildings occupy land that is required to support future Defence capability.</p>	<p><u>16 October 2015</u> Not a controlled action if taken in a particular manner (relating to heritage considerations associated with a Commonwealth action) – no further assessment required.</p>
2011/5985	Hunter Water Corporation	<p>The proposed Williamtown Wastewater Transfer Scheme (WWTS) will consist of approximately 14km of sewer pipeline, a new regional wastewater pumping station (WWPS) located within the proposed Williamtown Aerospace Park (WAP) development, and an intermediate WWPS located in the general vicinity of the Masonite Rd, Cabbage Tree Rd and Tomago Rd intersection.</p> <p>An on-site wastewater treatment plant and pond currently services the RAAF Base Williamtown and Newcastle Airport. There is currently no trunk wastewater service available to service WAP or any other future development in the Williamtown area.</p>	<p><u>04 November 2011</u> Not a controlled action if taken in a particular manner (relating to Wetlands of international importance and acid sulphate soils and Alligator Weed) – no further assessment required.</p>

2010/5747	Department of Defence	<p>The referred action is the proposed flying operations of the F-35 Lightning II Joint Strike Fighter (JSF) at RAAF Base Williamtown and Salt Ash Air Weapons Range in New South Wales and RAAF Base Tindal in the Northern Territory.</p> <p>(Refer submission above for more information)</p>	<p><u>23 December 2010</u> Controlled action – significant impacts on: listed threatened species and communities; Wetlands of international importance; listed migratory species; and, Commonwealth land.</p> <p><u>10 July 2015</u> Approved with conditions</p>
2009/5063	Hunter Land Development Pty Ltd	<p>The proposal is for Williamtown Aerospace Park (WAP), a Special Purpose industrial subdivision and development to service the existing RAAF Base Williamtown and Newcastle Airport, located at Williamtown, NSW.</p> <p>It is proposed to subdivide by Torrens Title the site into approximately 123 allotments. The development layout for the WAP is contiguous with the southern boundary of RAAF Base Williamtown. The proposal for the WAP includes the development of approximately 124ha of land with around 53ha specifically attributed for Defence and airport related development over six stages.</p> <p>Part of the development also occurs within RAAF Base Williamtown (Commonwealth Land) as a proposed towway to connect to the existing runway to provide airside access for select WAP allotments. The construction of the proposal will involve the clearing of native and exotic vegetation and filling over most of the site</p>	<p><u>17 November 2009</u> Controlled action – significant impacts on: listed threatened species and communities; Commonwealth land.</p> <p><u>27 July 2011</u> Approved with conditions, relating primarily to clearing impacts on threatened species and Commonwealth heritage impacts.</p>

2001/362	Department of Defence	<p>Department of Defence propose to undertake a redevelopment of RAAF Base Williamtown, including the construction of facilities to support Airborne Early Warning & Control Aircraft. The work involved:</p> <ul style="list-style-type: none"> • repair, and upgrade of existing operational support facilities; • repair, upgrade and construction of engineering services; and, • demolition and construction of operational, support and commercial facilities. <p>The work does not involve clearing of extensive areas of natural vegetation, important habitat or disruption of threatened species.</p>	<p><u>22 August 2001</u> Not a controlled action.</p>
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