



DOC16/18348

Senator Dean Smith  
Chair  
Parliamentary Standing Committee on Public Works  
pwc@aph.gov.au

Dear Senator Smith

**Follow up questions from public hearing into AIR5431 Project 27 November 2015**

I refer to your request for further information following questions on notice that Hunter Water undertook during the hearing on 27 November 2015 into the AIR5431 Project. Please note that NSW Environment Protection Authority (EPA) is responding on behalf of the Hunter Water Corporation. Please find questions and answers at Attachment A.

I note that since the hearing, the EPA was invited by the Department of Defence (Defence) to attend an initial site briefing and tour of the Williamstown RAAF Base on 17 December 2015. The visit allowed representatives from the Williamstown Expert Panel and its subgroups, as well as from various NSW Agencies, the opportunity to view the current construction activities at the Base and share knowledge and information regarding site activities.

During this inspection, Defence provided the EPA with a Project EHS Management Plan which provides the overall management practices for the key risks affecting environment, health and safety for the New Air Combat Capability Facilities Project.

If you require further information please contact Laura Wythes, Incident Coordinator – Williamstown Taskforce, EPA on (02) 9995 6858 or [laura.wythes@epa.nsw.gov.au](mailto:laura.wythes@epa.nsw.gov.au).

Yours Sincerely

**15 JANUARY 2016**

**NIALL JOHNSTON**  
**Acting Director**  
**Hazardous Incidents and Environmental Health**  
**Environment Protection Authority**

Attachment A – Follow up questions from Public Hearing into AIR4531

## Attachment A

1. Recent media coverage states that the NSW EPA has warned residents in the Hunter Region not to eat seafood from local waterways or to drink bore water. What has led to this decision?

Once the NSW EPA became aware of offsite migration and the potential pathway for human exposure, the EPA moved to enact precautionary closures of local fisheries and provided advice for residents not to consume milk or eggs from animals inside the investigation area. Multiple NSW Government agencies, in particular NSW Health, provided additional advice to support this action.

2. How long do you believe this will be necessary?

The Expert Panel has extended the precautionary fishing closures and consumption advice until 30 June 2016. This is to allow a full human health risk assessment to be completed that will provide a better understanding of human exposure pathways and tolerable daily intake. Depending on the outcome of the risk assessment, the precautionary advice may be lifted, amended or extended.

3. What is the impact on local businesses?

The NSW EPA is aware of a number of businesses affected by the closures, in particular people working in the fishing industry who are directly impacted by the precautionary fisheries closures. Please be advised that the best agency to answer this question is DPI Food Authority/ DPI Fisheries in regard to the food industry and the Department of Premier Cabinet/local council for other business impacts.

4. Please confirm when the EPA last sought access to inspect work at Williamstown base.

The EPA was provided access to the Williamstown RAAF base on the 17 December 2015. Key points presented to the group over the course of the site visit provided a primary focus on new construction works and future developments. It is noted that there was limited provision of information regarding source areas, including the extent of lack of observable control efforts.

The EPA recommended to Defence, in a letter dated 31 December 2015, that Defence review their strategy to prevent contaminated overflows from the source areas to prevent any potential for further offsite migration of contamination. We also stated the importance of finalising the Trade Waste Agreement with Hunter Water. Additionally, the EPA encouraged Defence to review their community engagement strategy regarding provision of information and construction activities that may impact the migration of PFC contamination.

5. Please identify the key differences between the Commonwealth's *Environment Protection and Biodiversity Act 1999* and the *NSW Protection of the Environment Operations Act 1997* in terms of Defence obligations?

Broadly speaking, the Commonwealth *Environment Protection and Biodiversity Act 1999* (EPBC Act) regulates matters of national environmental significance as well as actions with significant environmental impact taken by the Commonwealth or Commonwealth agencies or on Commonwealth land. The NSW *Protection of the Environment Operations Act 1997* (POEO Act) regulates pollution matters in NSW generally, in particular, any actions or activities that cause or are likely to cause pollution in NSW.

The EPBC Act is administered by the Federal Department of Environment. It is not a general environmental law that regulates the environment in the way that NSW laws do. There is no specific head of power under the Constitution for the Commonwealth Parliament to legislate with respect to the environment. The Act outlines the actions that require assessment under the EPBC Act. These include 'matters of national environmental significance' and 'Commonwealth actions and actions taken on Commonwealth land'. Both can be 'controlling provisions' meaning that an action will be a

‘controlled action’. The relevant legal threshold is a significance threshold. This creates a general environmental impact assessment duty under the Act if an action is taken by the Commonwealth and likely to have a significant impact on the environment. It is an offence to carry out a controlled action, however relevant defences are available.

The POEO Act 1997 is a NSW Act administered by the NSW EPA. It consolidated former more specific individual legislation related to specific media such as air or water. It sets up a licensing system for certain higher risk ‘scheduled’ activities. For those licensed activities, the EPA is the appropriate regulatory authority. For other activities, the local council is generally the appropriate regulatory authority. The EPA and councils have powers to issue clean up and prevention notices when they are the appropriate regulatory authority. Licences issued by the EPA for scheduled activities can be varied, revoked or suspended. There are three tiers of offences, those involving intent or negligence and pollution of air and water for example, those that are strict liability offences and those that are penalty notice offences. There are various powers given to the EPA and authorised officers to carry out inspections and investigations and commence prosecutions.