



**Office of
Environment & Heritage**
NSW National Parks & Wildlife Service



Guidelines for preparing a Review of Environmental Factors

**How to assess the environmental impacts of activities within
national parks and other reserves**

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Preface

The Office of Environment and Heritage (OEH) is a NSW Government agency primarily responsible for working with the community to protect and conserve our environment, including our natural and cultural heritage, and developing related policies and programs. OEH implements government regulations and reform initiatives for environmental conservation and is also a significant land manager.

The National Parks and Wildlife Service (NPWS) is part of OEH. NPWS manages lands reserved or acquired under the *National Parks and Wildlife Act 1974* (NPW Act). That includes more than 860 national parks, nature reserves and other lands, totaling around 8.75% of NSW.

As part of its environmental responsibilities, OEH assesses the impacts of activities within reserves and those impacting on the natural and cultural heritage of NSW. OEH has developed the *Guidelines for preparing a Review of Environmental Factors* (The Guidelines) for activities which require approval from OEH in order to assist with this important task. The Guidelines have been prepared for anyone proposing to undertake an activity within lands reserved or acquired under the NPW Act. This includes both external proponents and OEH.

These guidelines will help:

- decide whether a Review of Environmental Factors (REF) is required (Section 1)
- prepare an REF (Section 2)
- develop the content of the REF (Section 3)
- understand post-determination requirements (Section 4).

Key points:

- Activities within national parks and other reserves will usually require **both**:
 - environmental assessment to meet requirements of the *Environmental Planning and Protection Act 1979* (EP&A Act) (e.g. an REF), **and**
 - statutory approval under the NPW Act or NPW Regulation (e.g. lease, licence, easement or consent).
- Proponents should consult with OEH before commencing a REF:
 - Legal permissibility and in-principle OEH support must be confirmed first.
- It is standard practice for OEH to be the determining authority for all REFs for activities within national parks and other reserves.
- Consultation with stakeholders is a key part of preparing the REF.

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Acronyms and abbreviations

AHIP	Aboriginal Heritage Impact Permit
AHIMS	Aboriginal heritage information management system
AMG	Australian map grid
CE	Chief Executive
CMP	conservation management plan
CRA	conservation risk assessment
DP&E	Department of Planning and Environment
EIS	environmental impact statement
EMP	environmental management plan
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Reg	Environmental Planning and Assessment Regulation 2000
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	environmental planning instrument
FM Act	<i>Fisheries Management Act 1994</i>
HHIMS	historic heritage information management system
ILUA	indigenous land-use agreement
LEP	local environmental plan
NES	national environmental significance
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NP&W Reg	National Parks and Wildlife Regulation 2009
NPWS	National Parks and Wildlife Service (part of OEH)
NT Act	<i>Commonwealth Native Title Act 1993</i>
OEH	Office of Environment and Heritage
REF	Review of Environmental Factors
REP	regional environmental plan
RF Act	<i>Rural Fires Act 1997</i>
ROTAP	rare or threatened Australian plant
SCA	state conservation area
SEPP	State Environmental Planning Policy
SHR	State Heritage Register
SIS	species impact statement
TSC Act	<i>Threatened Species Conservation Act 1995</i>

Section 1: Is an REF required?

Proponents should initially contact the NPWS regional office that manages the park or reserve in which the proposed activity is to be undertaken, to discuss:

- the types of approvals that may be required from OEH
- the proposed activity
- information requirements
- legal permissibility
- OEH policies relevant to the activity.

While OEH may provide a proponent with general guidance on these matters, it is the responsibility of the proponent to ensure all necessary approvals are identified and obtained prior to the activity proceeding. It is recommended that proponents seek legal advice if they are not sure whether the activity they are proposing is permissible.

Special note: before commencing the REF

Proponents should *not* proceed to prepare an REF unless:

- legal permissibility has been confirmed
- it has been confirmed that there are no pre-existing approvals for the activity (such as permits, licences or easements)
- the activity has in-principle support from the relevant NPWS national park office.

For further information, contact the [NPWS regional offices](#).

1.1 What is an REF?

An REF is an environmental assessment undertaken to assist in meeting the requirements of Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It is completed before OEH undertakes an activity, or grants approval allowing an external party to undertake an activity.

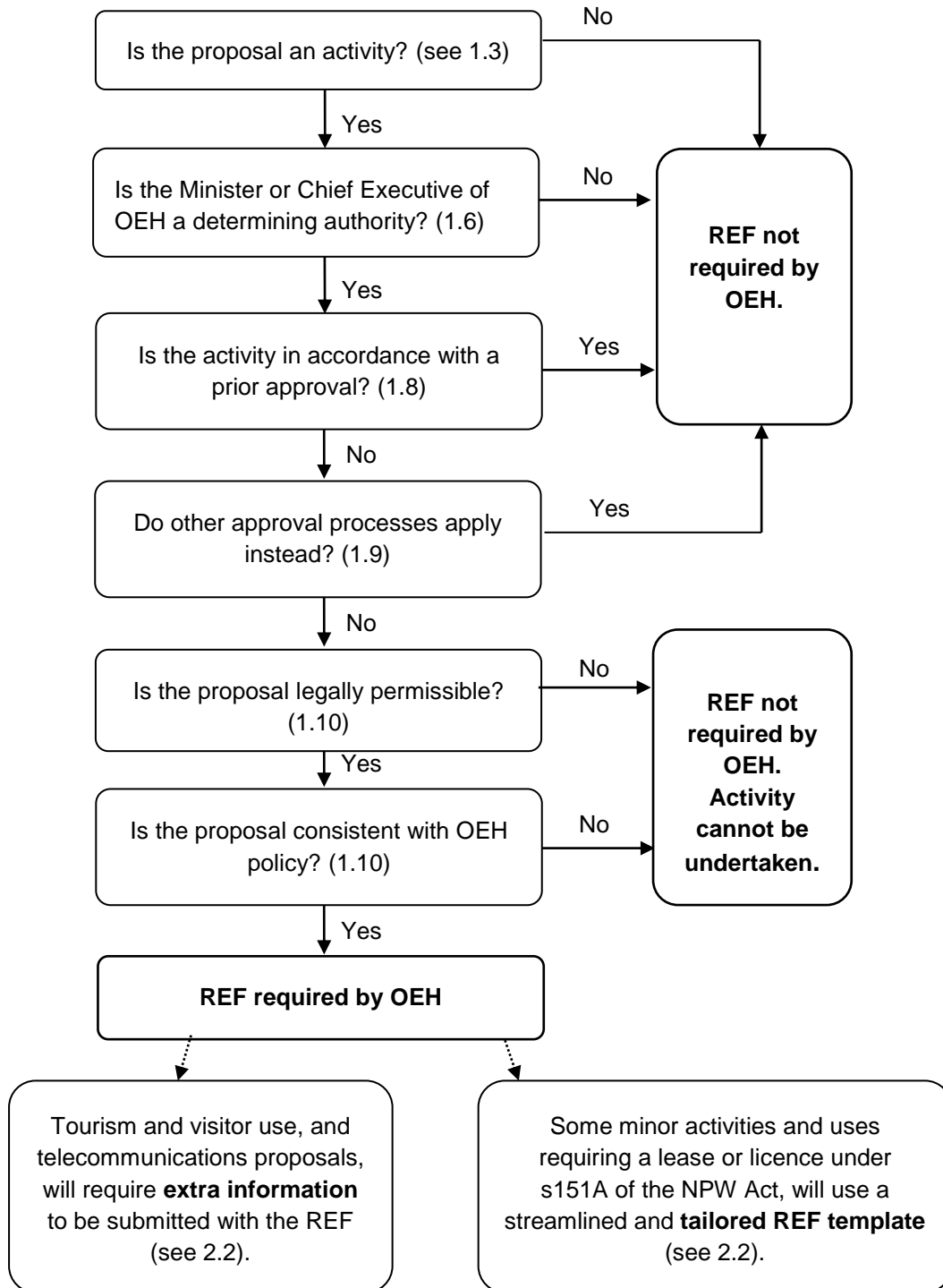
An REF examines the significance of likely environmental impacts of a proposal and measures required to mitigate adverse impacts to the environment. An REF:

1. Assists and documents the determining authority's determination of whether an activity should be approved, taking into account to the fullest extent possible all matters affecting or likely to affect the environment (s.111 EP&A Act). It further assists in the development of appropriate conditions should approval be given.
2. Assists the determining authority's determination of whether the activity is likely to have a significant effect on the environment or significantly affect threatened species, populations or ecological communities or their habitats, in which case an environmental impact statement (EIS) and/or species impact statement (SIS) will need to be prepared and considered before approval may be granted (s.112 EP&A Act).

An REF precedes the granting of an approval to an external party for an activity (i.e. lease, licence, easement). An approval cannot be granted until the REF is determined.

1.2 When is an REF required?

The following flowchart assumes that the activity is to be assessed under Part 5 of the EP&A Act (i.e. development consent is not required and it is not State Significant Development or State Significant Infrastructure). To determine whether an REF is required, check each of the following:



Certain activities are exempt from the need for an REF

- **EP&A Act general exemptions**

The EP&A Act states that an REF will not be required in any of the following circumstances:

1. An activity whose environmental impact has already been considered, and is subsequently modified so that the overall impact of the activity is reduced
2. The activity is a routine activity (e.g. the maintenance of infrastructure) that the Minister for Planning has determined to be of low environmental impact and is carried out in accordance with a code approved by the Minister
3. The activity (or part of the activity) has been approved or is to be carried out by another determining authority after environmental assessment in accordance with Part 5. That is, if another determining authority has already prepared an REF (or EIS or SIS) and otherwise complied with Part 5 in respect of an activity, other determining authorities who may have a role in granting approvals for the activity do not need to prepare an REF or consider an EIS.

These exemptions arise under section 110E of the EP&A Act which provides that sections 111 and 112 do not apply in respect to the above activities. This means that neither an REF nor an SIS will be required before the determining authority carries out an activity or grants approval for the activity to be carried out.

Similarly, the Courts have also found that herbicide spraying is not an activity under the EP&A Act (*Rundle v Tweed Shire Council* (1989) 68 LGRA 308). For further guidance on pesticides, refer to the Pesticides Policy Directive. If relevant, please contact your local National Parks office for a copy of this document.

- **Exempt development**

In addition, some environmental planning instruments (LEPs, regional environmental plans [REPs], SEPPs) identify certain types of 'exempt development'. These also do not require preparation of an REF.

SEPP (Infrastructure) 2007 states that certain categories of development which are of no more than minimal environmental impact are 'exempt development'. The SEPP applies to NSW generally, including OEH reserves. If development is exempt under this SEPP, no REF will be required.

OEH has also developed specific procedures for dealing with exempt development under the SEPP. These require proponents to prepare and submit a Conservation Risk Assessment (CRA) to OEH, prior to obtaining consent to undertake works within an OEH reserve. For a copy of any of the procedures please contact your local National Parks office.

Assessing impacts

Despite the above, OEH may still decide that an REF or some other form of environmental assessment is required on policy grounds, in order to satisfy itself as to the impact of a proposal. Further, for the first general exemption described above, some level of environmental assessment will be required in order to determine whether there will be a reduction in overall impact as a result of the modification to the activity.

In the case of proposals seeking a lease or licence for the purposes listed in s.151A of the NPW Act, there may be occasions where neither an REF nor a CRA is required. For example, where an existing café is to continue to operate in an unchanged manner but will be under a new lease. In this situation the café does not require assessment under the EP&A Act; however, the proposal will still have to address the sustainability assessment criteria adopted by the Chief Executive. Refer to section 2.2 for more information.

Modification of a determined REF

Where an REF for a proposal has already been determined, it may be modified with approval from OEH. Any proposal will be considered in accordance with any OEH guidelines current at the time of submission, and in accordance with the provisions of Part 5 of the EP&A Act.

The level of environmental assessment required for a proposed modification needs to match the possible level of impact from any change. Proponents should consider any proposal to modify an activity against the following categories:

- *Very minor changes to an activity* – for very minor alterations or additions that are able to be undertaken within the provisions of the existing determination, it is likely that no formal environmental assessment will be required. Proponents may, however, need to check or seek modification of other approvals/consents (e.g. lease, licence or easement conditions)
- *Substantially the same or reducing the environmental impact of an activity subject to an REF* – these can be addressed via an addendum to the original REF based on additional information (OEH may then issue a revised determination for the modified activity and may apply new conditions to the proposal)
- *Substantially different to the original approved activity* – these will require completion of a new REF (or potentially an EIS if there are significant environmental impacts).

Before submitting a modification proposal you should consult your local National Parks office to determine the appropriate assessment and approval process.

1.3 Is the proposal an activity?

The word ‘activity’ is defined in s.110 of the EP&A Act as:

- the use of land
- the subdivision of land
- the erection of a building
- the carrying out of a work
- the demolition of a building or work.

Section 4 of the EP&A Act provides some further clarification of the meaning of some of the above terms:

1. A reference to the **use of land** includes a reference to a change of building use.
2. A reference to the **erection of a building** includes reference to:
 - (a) the rebuilding of, the making of alterations to, or the enlargement or extension of a building

- (b) the placing or relocating of a building on land
- (c) enclosing a public place in connection with the construction of a building
- (d) erecting an advertising structure over a public road
- (e) extending a balcony, awning, sunshade or similar structure or an essential service pipe beyond the alignment of a public road.

3. A reference to the carrying out of a work includes a reference to:

- (a) the rebuilding of, the making of alterations to, or the enlargement or extension of a work
- (b) enclosing a public place in connection with the carrying out of a work.

In addition, the EP&A Reg may prescribe other acts, matter or things for the purposes of this definition. At the time of publication of this document, no further matters have been prescribed as activities by the EP&A Reg.

In the past, OEH has considered the following as activities:

- Construction of buildings of any type
- Demolition of structures
- Construction of roads, tracks, trails, bridges, lookouts, car parks, visitor areas, camping areas, helipads or airstrips
- Quarries or gravel pits
- Waste disposal facilities
- Any earthwork or other work likely to change drainage patterns
- Installation of pipelines and sewer lines and other sewage works or waste water treatment plants
- Installation of electricity and telecommunication towers, lines or underground cables
- Maintenance, redevelopment or reconstruction of any of the above (however an REF will not be required if this was approved under some form of prior approval or the maintenance was covered by the original REF and subsequent approval document)
- Clearing vegetation.

The above list is not exhaustive and each potential activity must be assessed to see if it fits the definition of 'activity' above.

The definition of 'activity' does not include:

- any act, matter or thing for which development consent under Part 4 is required or has been obtained
- any act, matter or thing that is prohibited under an environmental planning instrument
- exempt development
- development carried out in compliance with an order under Division 2A of Part 6
- any development of a class or description that is prescribed by the regulations for the purposes of this definition.

Infrastructure maintenance

OEH has also developed specific environmental assessment procedures for certain types of infrastructure works and other development. For a copy of any of the procedures listed below please contact your local National Parks office. Such procedures include:

- inspection and maintenance of TransGrid and Integral Energy (now Endeavour Energy) infrastructure located within the national parks system
- operation, maintenance and inspection of Sydney Water assets.

Where a proposal falls within these particular categories, then the relevant procedures should be applied instead of these Guidelines.

1.4 Development consent under Part 4 is not required

If an activity is on land reserved under the NPW Act and is for a use authorised under the Act, development consent under Part 4 of the EP&A Act will not be required. This broad exemption is provided by clause 65 of the Infrastructure SEPP.

In general practice, this means that activities within reserved lands do not require local council planning consent, so long as they may be authorised under the NPW Act.

However, for certainty, seek legal advice and/or refer to:

- any applicable SEPPs
- the LEP that applies to the land
- the EP&A Act
- local council or DP&E.

It should also be noted that this exemption only applies to reserved lands. Lands that have been acquired, but not yet formally reserved, may still require consent under Part 4.

1.5 State significant projects under the EP&A Act

Projects that are declared to be State Significant Development or State Significant Infrastructure do not require an REF. Instead, they are assessed according to separate provisions of the EP&A Act.

Proponents should refer to the State and Regional Development SEPP to see which activities may be declared as State Significant Development or Infrastructure. More specific detail on the process can be found on the [Department of Planning and Environment's website](#).

Proponents proposing to undertake State Significant projects within an OEH reserve will need to consult with OEH first to discuss whether it is legally permissible and appropriate, and then contact DP&E to obtain the environmental assessment requirements.

Some projects may also require proponents to obtain landowner's consent before planning approval can be granted. The requirements for landowner's consent for certain projects are set out in clauses 8F and 49 of the EP&A Reg. If landowner's consent is required for a project within an OEH reserve then the proponent should contact OEH as soon as possible.

1.6 Who is a determining authority?

A determining authority is defined in s.110 EP&A Act as a Minister or public authority and, in relation to any activity, means the Minister or public authority by or on whose behalf the activity is or is to be carried out or any Minister or public authority whose approval is required in order to enable the activity to be carried out.

Public authority means:

- (a) a public or local authority constituted by or under an Act
- (b) a government Department
- (c) a statutory body representing the Crown
- (d) a chief executive officer within the meaning of the *Public Sector Management Act 1988* (including a Director-General)
- (e) a statutory State owned corporation (and its subsidiaries) within the meaning of the *State Owned Corporations Act 1989*
- (f) a chief executive officer of a corporation or subsidiary referred to in paragraph (e)
- (g) a person prescribed by the regulations for the purposes of this definition.

In the context of activities within the national parks system, either OEH or the Minister for the Environment will typically be a determining authority. This will depend on who has statutory responsibility for granting approval for an activity under the relevant legislation administered and whether OEH is carrying out an activity or approving any financial accommodation.

For the purposes of this document and ease of reference, the term 'OEH' will be used to collectively refer to OEH and the Minister in their capacity as determining authority. Proponents will be advised as to the appropriate determining authority during initial discussions with OEH regarding a proposal.

Note: the term 'approval' is defined to include a consent, licence, permission or any form of authorisation and includes a provision of financial accommodation to another person.

OEH will not be a determining authority for the activity if the activity can be undertaken without the approval of OEH or Part 5 of the EP&A Act does not apply. The circumstances in which this might occur are covered above.

Special note: determination of an REF is not an 'approval'

The purpose of an REF is to assess and consider the environmental impacts of an activity before it is undertaken by OEH, or before OEH grants an 'approval' to an external proponent allowing them to undertake an activity.

As noted above, the approval granted to an external proponent is usually a lease, licence, easement, consent or similar permission given under the NPW Act.

OEH does not grant such approvals to itself. For an OEH activity, following REF determination, a final decision to proceed with an activity will be subject to normal internal processes for expenditure and other related decisions.

1.7 What if there is more than one determining authority?

As noted above, when there is more than one determining authority s.110E of the EP&A Act provides that if one has already determined the REF, then other determining authorities are not required to do so. This does not negate the need for approvals under the NPW Act, or other legislation, to be obtained by the proponent.

In addition, despite the provisions of s.110E it is standard practice for all REFs within OEH lands to be submitted to OEH for assessment and determination. This is necessary to ensure that OEH has adequate opportunity to consider the potential impacts on the particular reserve, before OEH grants approval for the activity to proceed.

1.8 Is there a prior approval?

If approval has already been obtained from OEH (such as a lease, licence, easement or consent), Part 5 of the EP&A Act does not apply and there is no need for an REF to be prepared. The ways in which prior approvals may have been obtained are detailed below.

In the case where prior approval exists, it is recommended that the proponent should:

- consult with OEH regarding any management issues that may be relevant to undertaking the activity
- ensure that an environmental management plan (EMP) is in place which covers the activity.

The activity is part of an activity which is already approved

If approval has already been obtained from OEH for the activity, which included an assessment under Part 5 of the EP&A Act, then there is no need to provide a second REF. As an example, this includes maintenance which was approved as part of the construction of the work. However, the maintenance must have been included as part of the initial assessment and comply with any conditions of the original approval.

Existing interests

An existing interest is defined in the NPW Act as ‘any authority, authorisation, permit, lease, licence, or occupancy’ granted by the Crown which existed prior to the land being reserved under the NPW Act (refer ss. 39 and 47H NPW Act). Examples of existing interests include authorities, permits, leases, licences or occupancies for pipelines, marinas, electricity transmission lines and roads.

If the activity can be undertaken in accordance with the terms and conditions of an existing interest and no further approval from OEH is required, then an REF is generally not required. However, if the holder of an existing interest requires an Aboriginal Heritage Impact Permit under the NPW Act or an approval under the *Heritage Act 1977*, then an REF will be required if the work constitutes an ‘activity’.

The onus rests with the proponent to demonstrate an existing interest. The following information will be required for this purpose:

- The authority, authorisation, permit, lease, licence, or occupancy document (including dates and terms and conditions)
- Documentation indicating the date of gazettal of the relevant portion of reserve.

If the authority was given, or authorisation occurred after the gazettal of the relevant portion of the reserve then it is not an existing interest. If an existing interest cannot be demonstrated, then normal approval procedures apply, including the preparation of an REF.

Section 187 gives the Minister administering the NPW Act the power to govern existing interests issued under the *Forestry Act 1916*, the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* and the *Western Lands Act 1901*. In some instances, the Minister may renew or extend the term of an existing interest and this also requires an REF.

Existing easement agreements, leases, and licences

If there is an existing easement agreement (s.153 NPW Act), lease or licence granted under the NPW Act after the reserve was gazetted and the activity is being carried out under and in accordance with the easement agreement, lease or licence, then no REF is required. Works that go beyond the extent of what was approved under, or the conditions of, the existing easement agreement, lease or licence will require an REF.

Activities undertaken in accordance with Commonwealth legislation

Existing telecommunications facilities may have been constructed pursuant to Commonwealth legislation which provided an exemption from state legislation. Maintenance of these facilities can be undertaken without OEH approval or an REF, as permitted by the Commonwealth *Telecommunication Act 1997*. Only maintenance as defined under the Commonwealth *Telecommunication Act 1997* is exempt.

Works associated with existing interests, leases, licences and in accordance with Commonwealth legislation

Works associated with existing interests, leases, licences and in accordance with Commonwealth legislation may go beyond the extent of this form of approval but are ancillary to the primary activity. Examples include associated access tracks and survey lines and new ventilation shafts and test drilling sites for mining activities. These activities require approval from OEH (under the NPW Reg) and accordingly, an REF is likely to be required.

1.9 Do other approval processes apply instead?

An REF does not need to be prepared when the following approval processes apply:

Bushfire hazard reduction work

REFs are not required in respect of emergency bushfire hazard reduction work carried out on any land (s.100C[2] *Rural Fires Act 1997* [RF Act]). REFs are also not required for other managed bushfire hazard reduction work on OEH land (i.e. land reserved or acquired under the NPW Act) so long as (s.100C[3] RF Act):

- the work is carried out in accordance with a bushfire risk management plan that applies to the land
- there is a bushfire hazard reduction certificate in force in respect of the work and the work is carried out in accordance with any conditions specified in the certificate
- the work is carried out in accordance with the provisions of a bushfire code applying to the land specified in the certificate.

If the works do not meet these requirements, then an REF must be prepared. An REF must also be prepared for managed bushfire hazard reduction work on land declared as critical habitat which is “excluded land” (cl.43 of the *Rural Fires Regulation 2013* and s.100C[3] *Rural Fires Act 1997*).

A bushfire hazard reduction certificate for OEH land can be obtained from OEH.

1.10 Is the proposal legally permissible?

NPW Act & Wilderness Act 1987

All activities on reserved land must be consistent with the objects and purpose of the NPW Act and any adopted plan of management for the area. Activities are generally restricted to those with a conservation or public use and enjoyment purpose.

Sections 151–153D of the Act specify the uses for which leases, licences or easements can be granted. This includes a range of visitor and tourist uses, as listed in s.151A.

Given the conservation focus of the park system, development activities are typically limited to those that have minimal impact and for which there are no practical off-reserve options.

If an activity is not permissible under the NPW Act or other legislation regulating the activity, then the activity cannot be undertaken. OEH cannot grant approval for activities that are not legally permissible. The permissibility of the activity should therefore be identified early in the process and prior to the preparation of an REF.

Activities cannot be approved by OEH if:

- the activity is prohibited under the NPW Act
- the activity is not in accordance with a plan of management. Under sections 81 and 81A of the NPW Act, all operations on park must be in accordance with the plan of management for a park (if one has been adopted). This specifically includes all activities permitted by leases, licences and easements. Information can be found on the [Plans of management webpage](#).
- the activity is being carried out in a wilderness area and it is not consistent with the objects of the *Wilderness Act 1987* (s 3), the management principles for wilderness areas (s 9) or is prohibited.

EP&A Act

It is sometimes the case that an environmental planning instrument (EPI), such as a council local environmental plan, may indicate that certain uses or developments are prohibited within reserved land.

However, SEPP (Infrastructure) 2007 provides that certain types of development are permitted without development consent. Under clause 65 of the SEPP, this includes development for *any purpose* on land reserved under the NPW Act.

This means that an activity may be undertaken within OEH lands, even if it is prohibited under an EPI, so long as the project is authorised under the NPW Act. However, it should be noted that this will not apply where there is any inconsistency with the provisions of SEPP 14 – Coastal Wetlands, SEPP 26 – Littoral Rainforests, or SEPP (Major Development) 2005.

The practical effect of the above is that in most circumstances development consent (which is usually a council approval) will not be required within OEH lands. Instead, all activities will be assessed under Part 5 of the EP&A Act via the completion and determination of an REF.

As noted in section 1.4, in the case of the NPW Act this exemption from Part 4 of the EP&A Act only applies to reserved land, or land that has been rezoned E1 under an EPI. For land that has been acquired but not yet reserved, it may still be necessary to obtain council consent. 1.11 Addressing permissibility

As a proponent, you will be asked whether or not the activity is legally permissible. Guidance on determining permissibility is contained in Appendix 1. Permissibility must be determined **before** commencing preparation of an REF.

In some cases, permissibility may not be clear and proponents will need to seek independent legal advice. If the REF is submitted and permissibility is not clear, the activity may be refused or OEH may request that the proponent obtain and provide legal advice on the permissibility of the proposed activity before the REF is considered further.

Note: if an activity is legally permissible, it does not mean that the REF will necessarily be approved, or that there is in-principle approval. Consideration of the likely impacts of the activity and the consistency of the activity with OEH policy (see below), is also required and this may result in refusal.

If an activity is permissible, this only identifies that OEH has the legal power (discretion) to make a decision on the proposed activity.

In addition, OEH cannot grant retrospective or back-dated approval for activities that have already commenced or have been completed.

Is the proposal consistent with OEH policy?

Activities which are inconsistent with OEH policy should be identified as early as possible in the process. This is to minimise REFs being prepared which are unlikely to gain OEH approval and reduce the potential for proponents to invest in proposals which are unlikely to be approved.

Publicly available [OEH policies](#) can be found on the Policies webpage.

Proponents should also liaise with the relevant NPWS regional office to determine the policies that apply.

In determining the REF, if OEH finds that the activity is inconsistent with policy, the proponent will be informed and the REF will generally be refused. To avoid this, the proponent should consider modifying the proposal so that it is consistent with OEH policy.

In addition, many SEPPs that relate to protection of particular environments (such as coastal wetlands and koala habitat) do not apply to OEH reserves. This is because the reservation of land is considered the highest level of protection available to support conservation of these values. Nevertheless, it is OEH policy that the principles of the SEPPs are applied to proposed on-park activities. When deciding whether the REF is sufficiently comprehensive, OEH will also consider the assessment requirements that would apply under those SEPPs if the land were not reserved.

Note: if an activity is consistent with OEH policy, it does not mean that the REF will be approved or that there is in-principle approval. The proposed activity still needs to be permissible and consideration of the likely impacts of the activity may result in refusal.

Section 2: Preparing an REF

2.1 Who prepares an REF?

REFs are prepared by the proponent. The proponent may engage a consultant for this purpose. The REF must be certified by the proponent and not the consultant(s) (where consultant(s) are used).

OEH does not prepare REFs on behalf of external proponents.

2.2 Format

REF template

REFs are to be prepared in accordance with the OEH REF [template](#). The template must be used for activities within OEH reserves. Where OEH is the determining authority for activities outside of OEH reserves, the template may also be used but is not compulsory.

The REF template is based on key elements and considerations contained in the REF determination guidelines. This document identifies the factors to be taken into account by a determining authority when considering activities under Part 5 EP&A Act (cl 228[1][b][i] EP&A Reg).

The REF template also includes the factors to be taken into account under the assessment of significance under section 5A of the EP&A Act. The assessment of significance is used to determine whether the proposed activity is likely to significantly affect threatened species, populations, or communities.

Note: tailored REF templates are also available for:

- **minor activities and uses requiring a lease or licence under s.151A of the NPW Act** – this includes activities such as concerts and events involving less than 400 people. A streamlined REF and Sustainability Assessment (see below) is required for such proposals.

Extra information required for some proposals

Certain activities will require additional information to be submitted together with the REF. This includes:

- **visitor use or tourism proposals and other purposes listed in s.151A of the NPW Act** – s.151B of the NPW Act requires that the Minister must be satisfied of certain matters before granting a lease or licence for the purposes in s.151A. The Minister must also have regard to assessment criteria adopted by the Chief Executive.

Note: The REF template incorporates consideration of some of these matters. In addition, a separate Sustainability Assessment will need to be completed by the proponent and submitted with the REF. Further information on the assessment criteria, and guidelines and templates for completing the sustainability assessment, is available on the [Development guidelines webpage](#).

- **broadcasting or telecommunications facilities** – s.153D of the NPW Act requires that the Minister must be satisfied of certain matters before granting a lease, licence, easement or right of way for such facilities (see Appendix 1) .

Note: The REF template includes consideration of these matters.

- **activities within the Sydney Drinking Water Catchment** – the Drinking Water Catchments REP No.1 contains specific criteria that must be addressed for all activities within the catchment.

Note: The REF template includes consideration of these matters.

2.3 Timing of REFs

An REF must be prepared and determined *prior* to carrying out the activity or the grant of any approvals allowing the activity to proceed (e.g. lease, licence, or park consent). The purpose of the REF is to examine and take into account to the fullest extent possible all matters likely to affect the environment by reason of the activity when considering whether or not to carry out the activity (s.111(1) EP&A Act).

Pre-REF and lodgement

As noted in section 1, *before* commencing preparation of an REF, the proponent should make contact with the relevant National Parks office to discuss the proposal. This is a critical step and can avoid unnecessary delay and uncertainty. The initial consultations should be used to determine whether the proposal:

- is an activity and requires an REF
- is legally permissible and consistent with OEH policy
- is subject to a pre-existing approval
- requires other approvals, such as for historic or Aboriginal heritage issues
- requires additional information to be submitted with the REF (e.g. visitor use and tourism proposals requiring a lease or licence under s.151, NPW Act).

Where a proposal cannot be confirmed as legally permissible, or where external proponents do not have the in-principle support of OEH, it should not proceed to the REF stage. In addition, where other approvals may be required, specific discussions should occur with OEH and other agencies to ensure that the timing of relevant assessments integrate with preparation of the REF. In many cases the assessments required for other approvals will need to be either completed or taken to an advanced stage, so as to inform the final proposal presented in the REF.

For example, projects that will require approvals under the Heritage Act 1977 (for historic heritage) or an Aboriginal Heritage Impact Permit under the NPW Act, should ensure that sufficient assessment is undertaken prior to the REF being completed. It is generally not sufficient to submit an REF for an activity that requires such approvals on the basis that assessments will be completed at a later date.

An REF and any other associated approvals (see Section 4), need to be made sufficiently in advance of when the activity is proposed to occur to allow time for the REF to be determined by OEH. Discussions with other government agencies from which approval may be required should also occur prior to preparing the REF. Activities that are undertaken without the necessary approvals will be investigated by OEH and further action considered in accordance with OEH's [prosecution guidelines](#).

Where an REF is for a complex or major proposal, the proponent should discuss with OEH whether there is merit in a draft REF being submitted for initial review. This can ensure that significant assessment issues can be considered early to enable further revision of the REF prior to final submission.

Lodgement

The OEH will generally determine a fully completed REF within 40 calendar days of its receipt, subject to the following:

- if the activity is considered by OEH to require internal consultation the determination time frame will be extended by an additional 14 days
- if it is decided that public exhibition of the proposal is required the determination time frame will be extended by at least an additional 30 days
- if additional information is required from the proponent in order to determine the REF, the time taken for the information to be provided by the applicant will be added to the 40 days.

Note: the 40-day timeframe does not include approvals or other arrangements that may need to be made following determination of the REF (see Section 4 of these Guidelines).

2.4 Fees

Fees for the determination of REFs are charged by OEH under s.143(1) NPW Act and also relate to REFs for activities regulated under the TSC Act and *Wilderness Act 1987*. Fees consist of an initial fee and a final fee, and are intended to ensure that costs are recovered.

REF determination fees are **separate from any lease or licensing fees**. For information on lease or licensing fees contact NPWS.

If the purpose of the activity is environmental remediation or conservation and the proponent is a community group, a request for a waiver of fees can be made with submission of the REF.

Initial fee

Proponents are required to pay an initial fee of \$170.

Final fee

Proponents are required to pay a final fee. The final fee is based on the main costs incurred by OEH in assessing and determining the REF. These costs include:

- OEH staff time associated with the assessment of the REF (charged at \$50/hour), including investigation of the site, meetings, travel time, review of the documentation
- travel expenses for site inspections etc. (charged at \$0.24/km)
- additional expenses, charged at actual cost. These may include accommodation costs, additional travel expenses, external legal advice or other specialist advice
- any costs associated with the public exhibition of the REF, including advertising (if required).

Proponents who provide high-quality, accurate information are therefore advantaged, as the final fee is likely to be lower.

If the activity is for a complex or technically challenging proposal, such as a telecommunications facility or accommodation proposal using innovative construction methods or sustainability features, the assessment will often require detailed and up-to-date knowledge of relevant standards and techniques, including technical and legislative matters. OEH may need to obtain advice to assist in the assessment by employing a consultant with knowledge in this area. The costs for these services will be included in the final application fee to the proponent.

When a lease or licence agreement is required, a fee for preparation of this agreement is also payable before finalisation of the agreement. For more information on lease and licensing fees contact NPWS.

2.5 Supporting information

For some sections, the REF format specifies that particular information is to be attached. This information ensures that OEH meets statutory and public accountability obligations. If this information is not provided, the REF is not considered to be complete and will not be processed and/or will be refused.

Two hard copies of the REF are to be submitted to OEH as well as an electronic copy. Additional copies of the REF and supporting information may be required by OEH if other statutory approvals are required or if the REF is to be publicly exhibited. Provision of additional copies and any explanatory or illustrative materials for exhibition purposes are the responsibility of the proponent.

2.6 Consultation

Consultation is a part of the REF process which assists in the identification of impacts. In addition to consultation initiated by the proponent, further consultation and/or public

exhibition may also be required during determination. The details of any consultation need to be specified in the REF including who was consulted, when and the results of the consultation.

At the minimum, proponents should undertake the following consultation *prior* to finalising the REF and any supporting material:

- Consultation with **OEH** where the activity requires an Aboriginal heritage impact permit (s.90, NPW Act), historic heritage approvals (s.60 or 140 *Heritage Act 1977*), or requires the preparation of an SIS
- Consultation with the **EPA** where the activity requires an environment protection licence (POEO Act)
- Consultation with the **relevant local council(s)** especially where the activity is likely to strain the capacity of the road system, adversely affect the movement of traffic in the area, significantly affect land in the locality, or is locally contentious
- Consultation with **adjoining landowners, leaseholders, other government agencies or specific stakeholders** should also be undertaken where the activity, or its impacts, are likely to affect their interests
- Consultation with the **community**, if the activity is likely to affect sites of importance for recreational or other values, or access to these sites
- Consultation with the **local Aboriginal community** is required if the area to be impacted is known or has the potential for Aboriginal sites to be present or has the potential to be culturally sensitive (see 2.6.2)
- Consultation with NSW **Department of Primary Industries** is required for activities that are likely to affect or are partially located within a marine park or aquatic reserve; are likely to consist of dredging or reclamation works; harm marine vegetation such as seagrass, mangroves or macro-algae; impede fish passage; or have a significant effect on threatened species, endangered ecological communities or endangered populations listed in the FM Act
- Consultation (and possibly referral) may be required with the **Commonwealth Department of Environment** if it concerns a Matter of National Environmental Significance as defined under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

In undertaking consultation, the proponent must provide a sufficient level of information about the activity to allow the organisation or person being consulted to fully understand what is being proposed. This may include making available a copy of the draft REF and threatened species assessment of significance and SIS, as well as engineering specifications and any other supporting information.

Please note that the above references to consultation on aquatic reserves or marine parks relates to preliminary consultation during the preparation of an REF. This preliminary consultation does not replace any statutory requirement for consultation under any required concurrence or approval.

The form of consultation may include a stakeholder meeting or workshop, consultation letters, pamphlets in letter boxes, posters in public spaces or a publicly advertised and exhibited REF.

Consultation with local councils and public authorities

The Infrastructure SEPP specifically requires consultation with local councils, by or on behalf of a public authority, in the following circumstances:

- Clause 13 – where development carried out will have an impact on council-related infrastructure or services (including: stormwater, local road systems, sewerage systems, public places, footpaths)
- Clause 14 – where development which may be carried out without development consent will have an impact on a local heritage item (as listed in the LEP)
- Clause 15 – where a development carried out will change flood patterns on flood liable land, where that development may be carried out without development consent.

Documentation of any such consultation with council should be included in the REF.

The Infrastructure SEPP also requires consultation with certain NSW agencies for some development types. For example, Roads and Maritime Services where the proposal involves structures in navigable waters, or traffic generating development above specified thresholds.

Consultation with Aboriginal communities

OEH respects and acknowledges the role of Aboriginal people in the management and protection of Aboriginal cultural heritage. Input from the Aboriginal community is an essential part of assessing the significance of those Aboriginal objects likely to be impacted by an activity. Hence OEH requires proponents to undertake consultation with the Aboriginal community as an integral part of the impact assessment.

A description of the consultation process and documentation from the Aboriginal community must be included in the REF if there is a likelihood that Aboriginal cultural heritage is present on the site and may be impacted by the proposed activity. Extensive guidance on consultation with Aboriginal people and communities can be found in OEH's 'Aboriginal Cultural Heritage Consultation requirements for proponents' (see [Consultation requirements](#)). The requirements as set out in that document (and the NPW Reg) will need to be followed if the proponent intends to apply for an Aboriginal heritage impact permit.

Consultation for visitor use and tourism proposals

Sections 151F and 151G of the NPW Act require public consultation and referral of certain types of leases and licences to the NP&W Advisory Council, or other identified advisory committees.

Further information on the consultation and referral requirements is provided in the OEH Leases and Licences Referral [Policy and Procedures](#).

Public exhibition

Public exhibition involves making the entire application, including the REF and all supporting documentation available to the community for comment for a certain period of

time. Public exhibition aims to raise awareness of the proposed activity and to assist the determining authority to assess the significance of likely environmental impacts.

Proponents should discuss early with OEH whether an REF will require public exhibition. As a guide, OEH would generally require REFs for the following activities to be placed on public exhibition:

- Potentially controversial proposals with a high level of public interest
- Major or complex projects
- Applications for telecommunications facilities under s.153D of the NPW Act (except proposals that are considered small-scale, such as the co-location of new facilities on existing infrastructure)
- Major impact to a heritage site listed on the State Heritage Register or areas of Aboriginal heritage significance
- Activities that may significantly impact park visitors or neighbours.

2.7 Environmental impact statement

EISs are likely to be required instead of REFs in the following circumstances:

- If there is likely to be a significant effect on the environment (environment is defined as including 'all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings' in s.4 EP&A Act)
- If the activity affects a SEPP 14 wetland or an equivalent community (most coastal wetlands on-park have not been mapped) by clearing, construction of a levy, draining, filling or any other proposed works (SEPP 14 maps can be obtained from DP&E)
- If the activity affects a SEPP 26 littoral rainforest or equivalent community (most littoral rainforests on-park have not been mapped) or its buffer (SEPP 26 maps can be obtained from the DP&E)
- If the activity is *of a kind* to those described in the State and Regional Development SEPP, but does not satisfy the exact criteria to be State Significant Development of Infrastructure under that SEPP
- If the activity is *of a kind* described in Schedule 3 of the EP&A Regulation. This schedule relates to designated development under Part 4 of the EP&A Act but gives OEH a good indication that the activity is one that is likely to significantly affect the environment
- If the activity affects cultural heritage items and the works are likely to have a high or major impact on the fabric, setting or community values.

In cases where an activity is to be carried out by a public authority that is also the determining authority, and the authority forms the view that an EIS would be required under Part 5 of the EP&A Act; the project will be assessed as State Significant Infrastructure (Schedule 3 of the State and Regional Development SEPP).

This means that if OEH is the proponent and determining authority for a project that would trigger the need for an EIS, then that project will be subject instead to the assessment and approval requirements for State Significant Infrastructure. This will still require preparation of an EIS but the planning approval will be determined by the Minister for Planning and Environment (or their delegate).

2.8 Species impact statement

An SIS is likely to be required if an activity is likely to have a significant effect on:

- an endangered ecological community or its habitat
- threatened flora species, populations or their habitats
- threatened fauna species, populations or their habitats
- any impact on critical habitat.

Section 3.9 provides more detail.

Section 3: The content of an REF

An REF can be very short or very detailed depending on the nature of the activity, the sensitivity of the environment and the proposed environmental safeguards. The REF must clearly demonstrate that the proponent has sought to avoid and minimise adverse impacts on the environment. Where such impacts have been avoided and minimised to the fullest extent practicable, the REF also considers whether mitigation, environmental safeguards or offsetting actions are needed to maintain and improve environmental values.

The REF must clearly state what approval is being sought and address the relevant issues as completely as possible. A list of the types of approvals that may be obtained from OEH under the NPW Act and NP&W Reg is provided in Appendix 2.

Minimal detail is required in the REF on issues of marginal relevance. If an issue is not applicable this should be stated within the REF with a brief explanation of the reasons.

The proponent should be aware that any commitments made in the REF may be formalised into the conditions of approval for the proposal. Consequently, environmental protection and conservation measures should not be proposed if they are impractical, unrealistic or beyond the financial viability of the proposed activity.

As noted in section 2.2, additional information will be required to be submitted with the REF for proposals involving:

- visitor use or tourism proposals and other purposes listed in s.151A of the NPW Act
- telecommunications facilities proposed under s.153D of the NPW Act (refer to Appendix 1)
- activities within the Sydney Drinking Water Catchment.

3.1 Issues to be considered

The following is a condensed summary of the matters to be taken into account when considering the likely impact of an activity on the environment. These include any:

- environmental impact on a community
- transformation of a locality
- environmental impact on the ecosystems of the locality
- reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality
- effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations
- impact on the habitat of protected fauna (within the meaning of the NPW Act)
- endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air
- impacts on threatened species, populations, or communities
- long-term effects on the environment

- degradation of the quality of the environment
- risk to the safety of the environment
- reduction in the range of beneficial uses of the environment
- pollution of the environment
- environmental problems associated with the disposal of waste
- impact on coastal processes and coastal hazards, including those under projected climate change conditions
- increased demands on resources (natural or otherwise) that are, or are likely to become in short supply
- cumulative environmental effect with other existing or likely future activities.

Proponents should also refer to the DP&E publication titled 'Is an EIS Required – Best Practice Guidelines for Part 5 of the *Environmental Planning and Assessment Act 1979*' for further guidance on the factors that must be taken into account when considering the likely impact of an activity on the environment.

Further direction on preparing the content of an REF is given below.

3.2 The proposed activity

The objectives of the proposed activity should be clearly stated and justified. The statement should refer to:

- the size and type of the proposed activity
- the anticipated level of performance in meeting the required environmental standards
- the staging and timing of the proposed activity and any plans for future expansion
- the proposals relationship to any other activity
- how the proposed activity accords with the principals of ecologically sustainable development.

Special note: exercise caution in 'project splitting'

Projects are occasionally proposed that involve multiple elements, spread over a large area, with funding streams and physical staging potentially occurring over a longer period of time than more typical projects. Examples might include: the redevelopment of existing high profile visitor precincts; works to rehabilitate lands impacted by previous land uses; and priority infrastructure upgrades (such as installation of modern sewage systems).

In such cases, it is often reasonable and appropriate that projects are broken into discrete stages so that they can be planned and implemented in a logical and controlled manner. Each stage would then be subject to appropriate detailed environmental assessment through the REF process.

In these circumstances, care should be taken to avoid breaking down projects into smaller components to such an extent that the cumulative impacts of the overall proposal are no longer apparent. For example, the impacts of a project on threatened species may seem negligible when considered in a series of small-scale stand-alone REFs spread across a geographical area, but the total impact may be significant. The key risks here are an increased chance of environmental damage and an insufficient level of assessment and scrutiny.

Options to avoid these risks include:

- preparing **master plans** or **precinct plans** for larger projects to guide the overall scope of works and identification of potential environmental impacts. These can then provide the framework within which individual REFs can be prepared. Public consultation at this scale, and before any REFs are prepared for individual stages, can also be an important tool to ensure the community is fully informed
- careful planning of the **size, scope and sequence** of individual REFs being prepared for a large proposal to avoid inadvertently creating sub-projects of a scale that lack context, make it difficult to assess overall impacts and do not provide clarity of the overall likely outcome to the community.

Describing the activity

The REF must contain a full comprehensive description of the proposal. The description should be written so that a person who is not familiar with the area or the proposed activity can understand. All aspects and phases of the proposed activity should be described, as well as the estimated timing of the activity. The description must include:

- the size of the proposed activity footprint
- a description of any ancillary activities, for example, advertising or other signage (including any event sponsorship such as banners and marquees), additional roads, infrastructure or bushfire hazard reduction works which are ancillary to the activity
- a description of all stages of a project, including the pre-construction, construction, operation, post-construction/operation, decommissioning and remediation stages
- appropriate project plans, including locality, design, construction and cross-section
- a description of any possible maintenance, future extensions or additions
- construction timetable and staging, hours of construction, proposed construction methods and materials
- the collection, storage and onsite management for all materials used in construction
- any earthworks or site clearing and reuse and disposal of cleared material (including use of spoil on site)
- measures to support sustainability outcomes, including materials choice (such as recycled content) and water and energy efficiency
- any mitigation measures and management options proposed to prevent, control, abate or mitigate identified environmental impacts associated with the proposal and to reduce risks to human health and prevent the degradation of the environment. Mitigation and management options may include biodiversity conservation measures, Aboriginal cultural heritage protection measures, other cultural heritage protection measures, noise mitigation measures, dust control measures, erosion and sediment control measures and waste management. This should include an assessment of the effectiveness and reliability of the measures and any residual impacts after these measures are implemented.

Where best practice guidelines are available for the proposal these should be referred to when describing the proposed activity. Best practice guidelines are not a replacement for the preparation of REFs; rather, they provide greater consistency and certainty when assessing the likely impact of proposals and carrying out works.

Some types of activities involving building or infrastructure works will require separate certification to ensure compliance with the Building Code of Australia and relevant Australian Standards. This usually occurs at the conclusion of the REF determination process, before works physically commence. Refer to the OEH *Construction Assessment Procedures* for further information.

Special note: for lease proposals under s. 151 NPW Act involving new buildings or structures

Section 151A(5) of the NPW Act states that the Minister must not grant a lease for visitor or tourist-use purposes that authorises the erection of a new building or structure (e.g. an accommodation building), unless the plan of management identifies the purpose as permissible and the general location for the new building.

The REF template requires the proponent to demonstrate that this requirement has been, or will be, met before the grant of a proposed lease.

Reasons for the activity and consideration of alternatives

The reasons for the activity and possible alternatives need to be included in the REF. The REF is a tool for OEH to manage impacts to reserves and the environments within reserves. To do this, the REF requires an examination of alternatives to the activity which may have a lesser environmental impact.

Stating the reasons behind the proposed activity assists in identifying possible alternatives. As an example, the reasons behind carrying out a proposed upgrading of a walking track could include:

- providing an upgraded track to cater for increased visitor numbers
- providing safe access within the reserve
- improving the condition of the existing track and minimising erosion.

Any reasonable alternatives should be considered. The alternatives should include different technologies, locations, design, construction methods and operational management, as well as the 'do nothing' option. Negative outcomes resulting from the 'do nothing' option should be reflected in the reasons for undertaking the activity.

You will need to provide justification for why the proposed activity is the preferred option. This should include what would happen if the activity is not approved. Selection of the preferred option should be justified in terms of:

- ability to satisfy the objectives of the proposal
- relative environmental and other costs of each alternative
- acceptability of environmental impacts and contribution to identified environmental objectives
- acceptability of any environmental risks or uncertainties
- reliability of proposed environmental impact mitigation measures
- efficient use (including maximising reuse) of land, raw materials, energy and other resources.

Special note: proposals requiring a lease or licence under s. 151 NPW Act

The sustainability assessment criteria adopted by the Chief Executive under s. 151B(3) require specific consideration of site suitability. The REF template prompts proponents to include an assessment of site suitability to satisfy this requirement. Further information on completing the assessment of site suitability is available on the [Development guidelines](#) webpage.

3.3 The site

The location of the proposed activity should be described using grid coordinates (eastings and northings), AMG zone, the datum used in the collection of the coordinates, Lot/DP number(s), a description of the location and a locality plan. The locality plan should show the location of the proposed activity in relation to adjoining land and allotments.

Maps, photographs, diagrams and a site plan to assist with the description should be attached. The site plan should show the proposed activity, including dimensions and alignments, existing structures (including dimensions and alignments), sectional elevations and contour plan (preferably a one-metre contour interval reduced to Australian Height Datum).

3.4 The existing environment

The REF must include a comprehensive description of the existing environment and surrounds that would be affected by the proposed activity. This includes the site on which the activity is proposed to occur and its surrounding environment.

The description should also focus on those environmental features that will magnify or exacerbate the potential impacts of the proposed activity or those onsite features that limit the degree or expected impact. For example, in some cases, likely episodes of high rainfall may be important and may need to be considered along with annual rainfall, while vegetation condition is just as important to document as the vegetation type present.

The description of the existing environment must provide enough detail to place the proposal in its local and regional environmental context including:

- meteorological data (e.g. rainfall, temperature and evaporation, wind speed and direction)
- topography (landform element, slope type, gradient and length)
- surrounding land-uses (potential synergies and conflicts)
- geomorphology (rates of landform change and current erosion and deposition processes)
- soil types and properties (including erodibility, engineering and structural properties, dispersibility, permeability, presence of acid sulfate soils and potential acid sulfate soils)
- ecological information (water system habitat, vegetation, fauna)
- existence or likely existence of Aboriginal cultural heritage (see 3.6 for more information)
- availability of services.

3.5 Threatened species, populations and ecological communities

All REFs must include a statement as to whether or not threatened species, populations and ecological communities are likely to occur in the proposed subject site and study area. **Subject site** refers to the area directly affected by the proposal and **study area** means the subject site and any additional areas which are likely to be affected by the proposal, either directly or indirectly. The study area should extend as far as is necessary to take all potential impacts into account.

If it is found that threatened species, populations and/or ecological communities occur or are likely to occur in the subject site and/or study area then an Assessment of Significance must be included with your REF.

OEH has prepared [Assessment of Significance Guidelines](#) to help applicants and/or proponents to interpret and apply the factors of assessment. These factors need to be considered when assessing whether an action, development or activity is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

To find out this information, see the current lists on the [threatened species](#) and [aquatic species](#) pages.

3.6 Aboriginal cultural heritage

Values

Aboriginal cultural heritage consists of places and items that are significant to Aboriginal people's traditions, observances, customs, beliefs and history. Aboriginal cultural heritage is dynamic and may comprise both tangible and non-tangible elements. Aboriginal cultural heritage encompasses things made and used in earlier times such as stone tools, art sites and ceremonial or burial grounds, as well as more recent evidence such as old mission buildings, massacre sites and cemeteries.

Aboriginal people have occupied the NSW landscape for at least 50,000 years. The evidence and important cultural meanings relating to this occupation are present throughout the landscape, as well as in documents and the memories, stories and associations of Aboriginal people. Therefore, an activity that has impact on the landscape may impact on Aboriginal cultural heritage.

For Aboriginal people, the significance of individual features is derived from their inter-relatedness within the cultural landscape. This means that features cannot be assessed in isolation, but must be considered in a holistic manner. This may require a range of assessment methods with the close involvement and participation of Aboriginal people. Assessment will include lands, waterways, landscape features and native plants and animals that are culturally significant to Aboriginal people.

As with the heritage of all peoples, Aboriginal cultural heritage provides essential links between the past and present for Aboriginal people. It is an essential part of Aboriginal identity.

Protection

Aboriginal heritage is protected under the NPW Act. The Act sets up knowing and strict liability offences for harming or desecrating Aboriginal objects and Aboriginal places. Harm is defined in the NPW Act and encompasses destroying, defacing, damaging or moving.

The NPW Act (ss.87A & 87B) also establishes a number of exemptions from the offence provisions, including:

- works by OEH to conserve or protect Aboriginal objects or places
- emergency fire fighting or bush fire hazard reduction work under the *Rural Fires Act 1997*
- certain emergency actions under the *State Emergency and Rescue Management Act 1989*
- anything specifically required or permitted under a conservation agreement
- the carrying out of non-commercial traditional Aboriginal cultural activities.

In addition, the NPW Act (s.87) and NPW Regulation (cll.80A and 80B) provide defences to the 'strict liability' offence of harming an Aboriginal object (this type of offence may apply even if a person was unaware that they were harming an Aboriginal object). The defences include:

- the proponent can demonstrate that they had exercised due diligence to determine whether the proposed activity was likely to harm an Aboriginal object and, on the basis of that assessment, had reasonably determined that harm would not occur (see below the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*)
- that the proposal was classed as a 'low impact activity' by cl.80B. Examples include maintenance of existing trails and utilities, soil conservation works, flood mitigation works, exempt development on disturbed land and certain types of mining exploration work. The NP&W Reg prescribes the types of low impact activities that can occur on 'disturbed' land and on any land (whether disturbed or undisturbed) and provides examples.

Assessment

It is OEH policy that all REFs must state whether or not the proposed activity is likely to have an impact on Aboriginal cultural heritage and must include information on how this assessment was made. This is considered necessary given that one of the key purposes for reserving land under the NPW Act is to provide for the ongoing protection of Aboriginal cultural heritage. To ensure that all on-park activities undertake an appropriate level of assessment, the REF template incorporates and builds on the requirements outlined in the OEH [*Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*](#)..

Addressing Aboriginal cultural heritage issues early in the planning assessment and approval process will identify conservation solutions that can be incorporated into a proposal and applied during the project implementation phase.

If it is considered through the REF process that an activity is likely to impact on Aboriginal objects or Aboriginal places then the proponent will need to redesign the proposal to avoid impacts as the first priority. If impacts are unavoidable, the proponent will need to apply for an Aboriginal Heritage Impact Permit (AHIP) under s.90 of the NPW Act. The AHIP application must be accompanied by an impact assessment.

Proponents should also refer to the [Applying for an Aboriginal Heritage Impact Permit: Guide for applicants](#).

The key purpose of the Aboriginal Heritage Impact Assessment is to determine the cultural significance of the Aboriginal heritage site of concern in consultation with the Aboriginal community and seek to avoid impact on the heritage accordingly.

OEH has also prepared a [Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW](#). This has been developed to support the process of investigating and assessing Aboriginal cultural heritage. It specifies the minimum standards for archaeological investigation undertaken in NSW under the NPW Act. An Aboriginal Cultural Heritage Assessment that requires an archaeological investigation to be undertaken must be done in accordance with the requirements of this Code.

The Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW establishes requirements for:

- **undertaking test excavation as a part of archaeological investigation without an AHIP** – if you comply with these requirements and you harm an Aboriginal object when undertaking test excavations, your actions will be excluded from the definition of harm and as such you will not be committing an offence of harm to an Aboriginal object
- **carrying out archaeological investigation in NSW where an application for an AHIP is likely to be made** – under the NPW Act, the Chief Executive can require that certain information accompanies an application for an AHIP. This Code explains what that information is in relation to archaeological investigations.

An AHIP is still required for archaeological excavations where the Code does not apply, e.g. within an Aboriginal Place.

For proposals that require an AHIP, the consultation requirements that must be carried out prior to lodging an application for an AHIP are specified in the National Parks and Wildlife Regulation 2009. Further guidance on consultation with Aboriginal people and communities can be found in [Aboriginal Cultural Heritage Consultation requirements for proponents](#).

Information sources

OEH keeps a register of all **recorded** Aboriginal objects and Aboriginal places in NSW. The register is called the Aboriginal Heritage Information Management System (AHIMS). An online search of [AHIMS](#) can be undertaken to discover if an Aboriginal object has been recorded, or an Aboriginal place declared, on a parcel of land.

It is essential to note that a report from AHIMS lists recorded sites only and does not represent a comprehensive list of all Aboriginal objects or Aboriginal places in a specified area. In any given area there may be a number of undiscovered and/or unrecorded Aboriginal objects.

If you are aware of any other sources of information, these need to be used to identify if Aboriginal objects are likely to be present in the area. Other sources of information can include previous studies, reports or surveys that have been commissioned or are known to exist. Refer to the Due Diligence Code for a range of examples and publications which may also assist in identifying Aboriginal objects.

Further information on Aboriginal heritage regulation can be found on the OEH [website](#).

As noted above proponents should also refer to [Applying for an Aboriginal Heritage Impact Permit - Guide for applicants](#).

3.7 Impact assessment

The REF must include a detailed analysis of the impacts of the proposal on the environment including the cumulative impact of the proposal on the receiving environment especially where there are sensitive receivers. As noted above, care should be taken to avoid any risks associated with “project-splitting”.

The extent and nature of the impacts will assist in determining whether or not there will be a significant impact. Where necessary, the analysis should also establish links between different areas of assessment to enable a full assessment of environmental impacts (e.g. assessment of impacts on air quality will often need to draw on the analysis of traffic, health, social, soil and/or ecological systems impacts).

The assessment needs to consider impacts at all phases of the project cycle including exploration (if relevant or significant), construction, routine operation, start-up operations, rehabilitation and decommissioning if relevant.

The level of assessment should be commensurate with the risk to the environment. Possible methodology to identify and prioritise issues is described under the heading ‘Methodology to categorise impacts’ below.

Where alternate methodology is used, the REF must provide an overview of the methodology used to identify and prioritise issues. The methodology should take into account:

- relevant NSW Government guidelines
- best practice guidelines
- REFs for similar projects
- relevant research and reference material
- relevant preliminary studies or reports for the proposal
- consultation with stakeholders.

Regardless of the methodology used, the REF must provide a summary of the outcomes of the process including:

- all issues identified including local, regional and global impacts
- key issues which will require a full analysis (including comprehensive baseline assessment)
- issues not needing full analysis though they may be addressed in the mitigation strategy
- justification for the level of analysis proposed.

Mitigation measures

The REF must also describe any mitigation measures and management options proposed to prevent, control, abate or mitigate identified environmental impacts associated with the proposal and to reduce risks to human health and prevent the degradation of the environment. This should include an assessment of the effectiveness and reliability of the measures and any residual impacts after these measures are implemented.

Where measures to avoid and mitigate are not possible, offset strategies may need to be considered. These may include offsite or local area proposals that contribute to the long-term environment protection and/or conservation. It should be noted that offset strategies are a last resort and should only be considered where the impacts cannot be avoided or mitigated.

Further information on the use of biodiversity offsets can be found on the [BioBanking: a market-based scheme webpage](#).

The REF should also outline any proposed approach (such as an environmental management plan) that will demonstrate how commitments made in the REF will be adhered to. Areas that should be described include:

- operational procedures to manage environmental impacts
- monitoring procedures
- training programs
- community consultation
- complaint mechanisms including site contacts (where applicable)
- strategies to use monitoring information to improve performance
- strategies to achieve acceptable environmental impacts and to respond in event of incidents.

Methodology to categorise impacts

Each impact should be estimated on its extent, size, scope, intensity and duration in order to categorise the impacts as negligible; low, medium or high adverse; or positive impact. For instance, impacts should be ranked as having a high adverse impact if they are very intense or affect a large area or significant numbers of individuals or species over a long period of time. Impacts that adversely affect threatened species or environmentally significant areas would also attract a ranking of high impact.

The potential importance of each impact should be estimated and take into account all the criteria used to analyse the nature of the impact. This includes the following:

- The level of confidence in predicting the impact
- The reversibility of the impact
- The effectiveness of the proposed methods to manage or mitigate the impact
- Compliance with any relevant policies or plans
- The extent of public interest
- Whether further information is required to confidently determine the impact of the activity.

For instance, impacts should be ranked as high adverse if there is a high level of uncertainty about the impacts themselves. Proposals which do not comply with standards or policies should also be regarded as having the potential to have a medium or high adverse impact. In some instances the overall benefits of a proposal will be positive. Where this is the case, the positive aspects of the impact should be commented upon.

Table 1 provides a guide to categorising the impacts.

Table 1: Guide to categorising the extent of the impact

Analysis of impact	Low adverse	High adverse
Size	Small scale size/volume	Large scale/volume
Scope	Localised	Extensive
Intensity	Small impact dispersed over a long period	Large impact over a short or long period
Duration	Short term	Long term
Level of confidence in predicting impacts	High confidence/knowledge and past experience	Low confidence, numerous uncertainties and unknowns
Level of reversibility of impacts	Impacts are reversible and rehabilitation likely to be successful	Reversibility impossible or unlikely due to cost or other factors
Ability to manage or mitigate the impacts	Effective mitigation measures available	Mitigation measures untested or unavailable
Ability of the impacts to comply with standards, plans or policies	Total compliance	Uncertain or part compliance
Level of public interest	Low interest and predictable impacts on community	High interest and uncertain impacts on community
Requirement for further information on the impacts of the activity or mitigation	High level of understanding and information on the impact	Low level of information on and understanding of key issues

Specific environmental issues that must be addressed in the REF are discussed below.

3.8 Physical and chemical impacts

Is the proposal likely to impact on soil quality or land stability?

The impacts on soil quality and land stability may include:

- degradation of soil quality from contamination, salinisation or acidification
- loss of soil or soil degradation from wind or water erosion
- loss of structural integrity of the soil
- increased risk of land instability with high risks from landslides or subsidence.

In determining the likely impact, the following matters should be considered:

- The extent of the proposed disturbance in terms of area and how this compares to the surrounding landscape
- Prior disturbance to the ground surface (e.g. mechanical scraping, ripping, quarrying, ploughing, trenching, digging, filling or excavating)
- Whether the impact is likely to occur in an area which is sensitive to disturbance such as:
 - buried building foundations, sub-surface archaeological remains or on- ground scatters or features
 - a water catchment, an area in which there are natural waterbodies, wetlands or a groundwater recharge area
 - coastline or dunes, alpine areas, karst features or other unique landforms
 - erosion prone areas or areas with slopes greater than 18°
 - subsidence or slip areas
 - areas with acid sulfate, sodic or highly permeable soils
 - areas with salinity or potential salinity problems
 - areas with degraded or contaminated soil or contaminated water.

When disturbances will occur to a previously undisturbed ground or to an area which is sensitive to disturbance, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments then you will need to provide strong justification for your conclusion.

If work is proposed in a subsidence or slip area, any conclusion as to the likely impact must be based on geotechnical advice.

Is the activity likely to affect a waterbody, watercourse or wetland or natural drainage system?

OEH considers waters to mean the whole or any part of any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam, tidal waters (including the sea) or underground waters. Waters will be affected if the activity pollutes waters, uses water contained in it or the activity involves the storage of water.

The types of impact on water should be identified, as follows:

1. The redirection of flow
2. Changes to the area, volume or flow of a waterbody
3. The actual or likely pollution of waters (as defined by the *Protection of the Environment Operations Act 1997*).

In assessing possible impacts on waters, proponents should reference the ambient Water Quality and River Flow Objectives for the receiving waters. These refer to the community's agreed environmental values and human uses endorsed by the NSW Government as goals for the ambient waters. These environmental values are published on the *website*.

The REF should state the environmental values listed for the catchment and waterway type relevant to your proposal and assess if the proposal will maintain or protect the objectives or make a contribution to the objectives being met over time. That should include consideration of potential groundwater impacts and [NSW Government policies for groundwater protection](#).

The level of impact will be medium or high adverse if the impact occurs in sensitive areas. Sensitive areas include:

- water catchments, wetlands or groundwater recharge areas
- coastline or dunes, alpine areas, karst features or other unique landforms
- erosion prone areas or areas with slopes greater than 18°
- subsidence or slip areas
- areas with acid sulfate, sodic or highly permeable soils
- areas with salinity or potential salinity problems
- areas with degraded or contaminated land or water.

If you determine the impacts are not medium or high adverse in these sensitive environments then you will need to provide strong justification for your conclusion. The REF should clearly explain and justify how impacts will be avoided or mitigated.

Guidelines for assessing the impact on the ecological character of a Ramsar wetland under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) are available from the Commonwealth Department of the Environment.

Is the activity likely to change flood or tidal regimes, or be affected by flooding?

When the proposal will result in alteration to flood or tidal regimes, either of a temporary or permanent nature, or the proposal will be affected by flooding (indication of flood levels should be provided, e.g. 1:20 years), it is likely that the level of impact is medium or high adverse. If you consider the impact not to be medium or high in this sensitive environment you will need to provide strong reasons for this conclusion.

Other medium or high adverse impacts will result if the impact is likely to occur in areas sensitive to such disturbance including:

- a water catchment, wetland or groundwater recharge area
- coastline or dunes, alpine areas, karst features or other unique landforms

- erosion prone areas or areas with slopes greater than 18°
- subsidence or slip areas
- an area with acid sulfate, sodic or highly permeable soils
- an area with salinity or potential salinity problems
- an area with degraded or contaminated land or water.

If you determine the impacts are not medium or high adverse in these sensitive environments then you will need to provide strong justification for your conclusion.

Is the activity likely to affect coastal processes and coastal hazards, including those under projected climate change conditions?

Erosion is a major risk along the NSW coast. Current projections for sea level rise and increased storm activity and impacts will exacerbate existing risks and pose new challenges for the management of coastal reserves. Areas likely to be affected include lands along the coastline, beaches, coastal lakes, estuaries, tidal reaches of coastal rivers and low-lying land surrounding these areas.

In determining the likely impact of proposed activities in these areas, the following planning criteria from the *NSW Coastal Planning Guideline: Adapting to Sea Level Rise* (DOP, 2010) should be applied:

- Avoids or minimises exposure to immediate coastal risks (within the immediate hazard area or floodway)
- Provides for the safety of residents, workers or other occupants onsite from risks associated with coastal processes
- Does not adversely affect the safety of the public offsite from a change in coastal risks as a result of the development
- Does not increase coastal risks to properties adjoining or within the locality of the site
- Infrastructure, services and utilities onsite maintain their function and achieve their intended design performance
- Accommodates natural coastal processes including those associated with projected sea level rise
- Coastal ecosystems are protected from development impacts
- Existing public beach, foreshore or waterfront access and amenities are maintained.

Impacts are likely to be considered medium or high if there is a reasonable risk of adverse consequences based on consideration of the proximity and exposure to coastal hazards, and the likely severity of impacts on a particular type of activity. As a guide, the following activities in coastal risk areas are likely to be considered at most risk and would require detailed assessment and justification:

- Visitor or tourist facilities and amenities including accommodation, visitor centres, kiosks and cafes, toilet blocks, picnic areas, walking tracks (including bridges) etc
- Park management infrastructure, such as depots, materials storage areas, roads, trails and utilities (e.g. sewage treatment works)
- Non-park infrastructure, such as pipelines, electricity transmission lines, telecommunications facilities and roads.

Does the proposal involve the use, storage or transport of hazardous substances or the use or generation of chemicals which may build up residues in the environment?

Hazardous substances are materials presenting a danger to people, property and the environment. They include flammable, explosive, toxic, radioactive, carcinogenic or mutagenic substances and chemicals that may build up a residue in the environment, such as fertilisers, herbicides and pesticides.

The type of impact on the environment should be determined taking into account the nature of hazardous substances or chemicals and their potential to:

- affect air quality with associated economic, health, ecosystem or amenity impacts
- affect water quality with associated economic, health, ecosystem or amenity impacts
- cause a degradation of soil quality due to contamination, salinisation or acidification.

In determining the likely impact, the following matters in particular should be considered:

- The level of information/degree of confidence regarding the potential impact on the environment of the hazardous substance(s)
- The degree of community interest/concern with respect to the transport, use or generation of the substance(s)
- Regulatory requirements regarding the management of particular materials (e.g. *Radiation Control Act 1990*) and its transportation.

Where the chemicals or hazardous substance is being transported and used in line with an approved best practice guideline, a low level of impact may be more easily demonstrable. If no such guideline exists, then you will need to demonstrate that the impacts are low and can be acceptably managed.

This type of impact in environmentally sensitive areas is likely to be medium or high adverse. Environmentally sensitive areas include:

- water catchments, wetlands, groundwater recharge areas or natural waterbodies
- areas with acid sulfate, sodic or highly permeable soils
- areas with salinity or potential salinity problems
- areas with degraded or contaminated land or water
- areas with degraded air quality.

If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Does the activity involve the generation or disposal of gaseous, liquid or solid wastes or emissions?

The definition of emissions includes greenhouse gases or chemicals which are ozone-depleting or produce photo-chemical smog.

The type of impact should be identified taking into account the generation or disposal of waste, the emission of greenhouse gases, ozone-depleting chemicals or precursors to photo-chemical smog, and the potential to:

- affect air quality with associated economic, health, ecosystem or amenity impacts
- affect water quality with associated economic, health, ecosystem or amenity impacts
- cause a degradation of soil quality due to contamination, salinisation or acidification.

Measures to minimise waste generation should be applied to each stage of the project. The REF must determine and identify:

- the volume and type of waste that will be generated
- reuse, recycle and disposal methods for each material
- how waste will be stored and treated on site
- statutory requirements under the *Protection of the Environment Operations Act 1997* and provisions of the Waste Regulation.

Further information on the regulatory requirements for the management of waste is available on the [EPA website](#).

In determining the likely impact level, the following matters should be considered in the REF:

- Whether there are approved processes for waste disposal that will be used
- Whether the activity complies with OEH, EPA and WorkCover guidelines
- Whether the activity will have a long-term impact
- Whether the generation and/or disposal of waste will provoke strong community interest
- Whether the activity complies with OEH policies where they exist.

When the generation and/or disposal of waste, greenhouse gas emissions, chemicals affecting the ozone layer or photo-chemical smog is not in line with approved guidelines, processes or policies, or when a long-term impact may result or when there is strong community interest in the issues, you will need to provide strong justification why you consider the impact to be other than medium or high adverse.

Medium or high impact levels are likely to occur in areas sensitive to this type of impact. Such areas include:

- water catchments, wetlands, groundwater recharge areas or natural waterbodies
- coastlines or dunes, alpine areas, karst features or other unique landforms
- erosion prone areas or areas with slopes greater than 18°
- subsidence or slip areas
- areas with acid sulfate, sodic or highly permeable soils
- areas with salinity or potential salinity problems
- areas with degraded or contaminated land or water
- areas with degraded air quality.

If you determine the impacts are not medium or high adverse in these sensitive environments, you will need to provide strong justification for your conclusion.

Will the activity involve the emission of dust, odours, noise, vibration, or radiation in the proximity of residential/urban areas or other sensitive locations?

Where the emission of dust, odours, noise, vibration or radiation is not in line with approved guidelines, processes or policies, where a long-term impact may result or where there is strong community interest in the issues, you will need to provide strong reasons should you consider the impact to be other than medium or high adverse.

Medium or high impact levels are likely to occur in areas sensitive to this type of impact. Such areas include:

- a water catchment, wetland, groundwater recharge area or natural waterbody
- an area with degraded or contaminated land or water
- areas in close proximity to residences or other sensitive receivers
- an area with degraded air quality.

If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

3.9 Biological impacts

Is any vegetation to be cleared or modified? (includes vegetation of conservation significance)

Clearing or modifying vegetation includes pruning or destroying individual plants, thinning, ringbarking and felling. It also includes clearing or modifying marine vegetation such as seagrass, mangroves, kelp (in which case consultation and a permit from the Department of Primary industries may be required).

If vegetation is to be cleared or modified, describe the number of individuals or area of plants or vegetation communities to be cleared or modified, and compare this with the total number of individuals or area of plants or vegetation communities in the general location of the proposal and the larger region.

In determining the likely level of impact, the following matters should be considered:

- the status of the species, population or vegetation community. Species, populations or vegetation communities listed as threatened are of greatest concern, followed by rare or threatened Australian plants (ROTAPs) and species or vegetation communities known to be of regional or local significance. (Note: the impact on exotic/introduced species of cultural value is considered under 3.12 and 3.13)
- whether [protected native plants](#) will be affected
- whether the individual, species or vegetation community is of any other particular value (e.g. economic or social value)
- whether the vegetation provides important habitat for native species including threatened species (e.g. hollow-bearing trees, critical food resources such as winter flowering eucalypts, roosting sites etc)
- the nature and extent of the clearing or modification proposed

- the condition and size of the vegetated area to be cleared or modified and its proximity to other areas of native vegetation (e.g. local or regional vegetation corridors)
- the likely response of the species, population or vegetation community to the type of disturbance proposed (list reference)
- the likely response of exotic/introduced flora, and how this impacts on native species
- the potential for regeneration reduced by the proposal
- the result of any threatened species assessment of significance (7 part test).

Where clearing or modification is proposed to an individual plant, species, population or vegetation community of particular conservation value, or where the extent of clearing of native vegetation is medium to large in the local context, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments then you will need to provide strong justification for your conclusion.

Is the activity likely to have a significant effect on threatened flora or fauna species, populations, or their habitats, or critical habitat; or an endangered ecological community or its habitat?

If there is a likelihood of threatened species being present, which may be the situation depending on the type, quantity and quality of habitats present on the subject site and/or study area, the REF must include a threatened species Assessment of Significance (under s. 5A of the EP&A Act).

Assessments must be consistent with any relevant recovery and threat abatement plans and should be undertaken in accordance with OEH's Threatened Biodiversity Survey and Assessment Guidelines, any specific environmental impact assessment profiles and/or guidelines being compiled by OEH and profiles for [threatened species](#).

The objective of the assessment process is to provide information to enable decision-makers to ensure that developments deliver the following environmental outcomes:

1. Maintain or improve biodiversity values (i.e. there is no net impact on threatened species or native vegetation)
2. Conserve biological diversity and promote ecologically sustainable development
3. Protect areas of high conservation value (including areas of critical habitat)
4. Prevent the extinction of threatened species
5. Protect the long-term viability of local populations of a species, population or ecological community
6. Protect aspects of the environment that are matters of national environmental significance.

The assessment is designed to provide information and analysis to demonstrate that feasible alternatives have been considered, that the project has been designed to be consistent with the principles outlined above and where there are impacts, that adequate mitigation measures are implemented.

An 'assessment of significance' must include any threatened species, populations, ecological communities and/or critical habitats listed in the schedules of the TSC Act and FM Act. A list of these can be generated from the [Atlas of NSW Wildlife](#). An SIS is required if the Assessment of Significance indicates that there will be a significant effect on threatened species, populations and communities, or their habitats. The requirements of an SIS are outlined under the Threatened Species Act Division 2, Part 6.

Guidelines for assessing the impact on threatened entities listed under the EPBC Act are available from the Australian Department of the Environment.

Does the activity have the potential to endanger, displace or disturb fauna (including fauna of conservation significance) or create a barrier to their movement?

Displacing or disturbing fauna includes modification of habitat.

If the activity is likely to affect fauna species or their habitat, describe the area, condition and value of the habitat to be affected and compare this with the total habitat in the subject site, study area, and the larger region.

In determining the likely impact, the following matters should be considered:

- The conservation significance of the species or population (note: in formulating these lists, one of the issues often taken into account is whether species or populations are represented in national parks or nature reserves. Species or populations that are represented are usually considered secure from threat within the park. Therefore, any proposal that may have an impact on them needs to be rigorously assessed)
- Whether the affected fauna are protected native fauna (see the [Protected species webpage](#))
- Whether the species or population is of any other particular value (e.g. economic or social value)
- Whether the fauna species is at the limit of its natural distribution
- The nature and extent of the disturbance proposed
- The likely response of the species or population to the type of disturbance proposed (list reference)
- Whether the species or population will be able and likely, to use the area once the disturbance is over
- The likely response of exotic/introduced fauna and how this impacts on native species
- If a barrier to movement is to be created, whether this affects the lifecycle of the species and whether this is permanent or temporary.
- The results of the threatened species assessment of significance (seven-part test).

When displacement or disturbance of a species or population of a particular conservation value is proposed, or when a barrier to movement will be created, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Is the activity likely to impact on an ecological community of conservation significance?

If the activity is likely to affect an ecological community of conservation significance, describe the area, condition and value of the habitat to be affected and compare this with the total habitat in the subject site, study area and the larger region. An ecological community is 'an assemblage of species occupying a particular area' and includes micro-organisms, fungi, vertebrate and invertebrate fauna.

In determining the likely impact, the following matters should be considered:

- Whether the ecological community has additional values (e.g. economic or social values)
- The nature and extent of the disturbance proposed
- The condition and size of the ecological community area to be cleared or modified
- The likely response of the community to the type of disturbance proposed (list reference)
- Whether the community will be able and is likely to use the area once the disturbance is over
- The likely response of exotic/introduced fauna, and how this impacts on the community
- If a barrier to movement is to be created, whether this impact will affect the lifecycle of the species making up the community and whether this is permanent or temporary
- The results of the threatened species assessment of significance (7 part test).

If the activity is likely to cause a threat to biological diversity or the ecological integrity of a community, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments then you will need to provide strong justification for your conclusion.

Is the activity likely to cause a threat to the biological diversity or ecological integrity of an ecological community?

An ecological community is not limited to those of conservation significance. Threats may be direct (e.g. clearing) or indirect (e.g. creation of a bushfire risk to a community sensitive to bushfire, impact on a physical or chemical landscape component essential to a species, endangered ecological community such as groundwater dependent ecosystems, or hydrological behaviour).

Where a proposal is likely to cause a threat to the biological diversity or ecological integrity of an ecological community, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Is the activity likely to introduce noxious weeds, vermin, feral species or genetically modified organisms into an area?

When a proposal is likely to introduce noxious weeds, vermin, feral species or genetically modified organisms into an area, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Proponents will also need to consider whether the proposed activity constitutes or is part of a [key threatening process](#).

3.10 Community impacts

Is the activity likely to affect existing community services or infrastructure?

Infrastructure includes roads, power, water, drainage, waste management, educational, medical or social services.

When the impact will be great enough to cause concern within the community, or community services or infrastructure will be affected, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Does the activity affect sites of importance to the local or broader community for their recreational or other values or access to these sites?

Sites of importance include places of conservation, heritage or cultural significance. These are discussed in more detail in 3.12 and 3.13.

As part of the impact assessment, consider the extent and nature of the impact and the importance of the sites to the community.

When sites of importance to the community for their recreational or other values will be affected to the degree that consultation is deemed to be appropriate, it is likely that the level of impact is medium or high. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Is the activity likely to affect economic factors?

Proponents should consider any impacts that may affect economic activity (including both decreases and increases), have a cost to the community or individuals, or impact on the community's economic stability.

The assessed level of impact will have to take into account the unique economic circumstances of the area and community. In general, impacts that have a direct adverse effect on local economies are likely to be rated at a medium to high level.

Is the activity likely to have an impact on the safety of the community?

Note: impacts on safety from bushfire are considered below.

As part of the assessment, describe the extent and nature of the impact on the safety of the community.

When the proposal is likely to create a safety risk for the community, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Is the activity likely to cause a bushfire risk?

The guideline [Planning for Bushfire Protection \(NSW Rural Fire Service\)](#) provides information on assessing the level of risk.

Buildings or other constructions may require an asset protection zone in accordance with the guidelines and may also be required to comply with the necessary Building Code of Australia standards. Although 'Planning for Bushfire Protection' does not specifically apply to activities undertaken within reserves, the guideline is relevant for activities which have the potential to involve bushfire risk, such as accommodation or tourism developments.

When an activity is likely to cause or be subject to a high bushfire risk in an area of particular conservation value or public use, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Is the activity likely to cause impacts on the visual or scenic landscape?

As part of the assessment of impacts to the visual or scenic landscape, describe the extent and nature of the impact. The use of photos, maps and diagrams may assist in demonstrating the degree of impact.

Describe the extent and nature of the impact. In determining the likely impact, the following matters should be considered:

- The view shed of the activity (i.e. from what area will the activity be able to be seen)
- Whether there are any particular points within the view shed of the activity which may cause concern (e.g. lookouts, popular walking tracks, neighbours)
- Whether there are any impacts such as loss of privacy, glare or overshadowing of members of the community
- The impacts of any ancillary aspects of the activity, such as permanent or temporary signage (including sponsorship and advertising associated with events and functions)
- Whether the design of the activity such that it is visually sympathetic to the surrounding environment and blends in, or will it stand out as an obvious feature.

When an activity is likely to cause a noticeable impact to the visual or scenic landscape, it is likely that the level of impact is medium or high. If you determine the impacts are not medium or high in these sensitive environments you will need to provide strong justification for your conclusion.

3.11 Natural resource impacts

Is the activity likely to result in the degradation of the park or any other area reserved for conservation purposes?

Areas reserved for conservation purposes include national parks and reserves, as well as land zoned environmental protection under a local environmental plan, aquatic reserve under the FM Act, heritage items or land which is the subject of a conservation agreement.

The REF should describe the nature and extent of the impact on the area reserved for conservation purposes.

An activity which degrades land reserved for conservation purposes is likely to be considered as having high adverse impact. Such an activity is unlikely to be permissible in a park reserved for conservation purposes.

Is the activity likely to affect the use of, or the community's ability to use, natural resources?

Natural resources include land and soil, water, air and minerals.

As part of the impact assessment, describe the nature of the impact on the use of, or the community's ability to use, natural resources.

With regard to impacts on water resources, consider the impact on water quality or quantity where the community is relying on national parks, nature reserves and Special Areas for the protection of water catchments and water supply.

If the proposed activity is also within a hydrological catchment the REF will need to include an assessment of whether the activity will have a neutral or beneficial effect on water quality under SEPP (Sydney Drinking Water Catchment) 2011.

When an activity is going to impact on water quality or quantity either within or exiting a reserve, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Is the activity likely to involve the use, wastage, destruction or depletion of natural resources including water, fuels, timber or extractive materials?

Describe the nature and extent of the use of the natural resources, including any opportunities to use recycled materials (e.g. timber), or accredited alternatives (e.g. timber from certified sustainable sources).

When a considerable amount of natural resources from the reserve are to be used, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse in these sensitive environments you will need to provide strong justification for your conclusion.

Unless the activity relates to an existing interest, such an activity will usually not be in accordance with the reserve's plan of management and will be inconsistent with OEH policy. The REF is therefore likely to be refused.

Does the activity provide for the sustainable and efficient use of water and energy?

Activities within OEH lands are expected to incorporate best practice techniques in water and energy efficiency, in support of reduced greenhouse gas emissions. This includes the use of high efficiency fittings, such as taps, fixtures, lighting, insulation and windows. Opportunities should be identified for rainwater collection and reuse and the use of renewable energy (e.g. photovoltaics, solar hot water, wind power and green energy purchase).

As noted in section 2.2 visitor or tourism proposals that require a lease or licence under s.15A NPW Act require a sustainability assessment to be prepared and submitted with the REF.

3.12 Aboriginal cultural heritage impacts

All Aboriginal heritage is protected under the NPW Act. The Act sets up knowing and strict liability offences for harming or desecrating Aboriginal objects and Aboriginal places. Harm is defined in the NPW Act and includes destroying, defacing, damaging an Aboriginal object and or Aboriginal place, or moving an Aboriginal object. Further information can be found on the OEH [Protection and regulation of Aboriginal cultural heritage](#) webpage.

All activities within OEH reserves require a consideration of likely impacts on Aboriginal cultural heritage values. Refer to Section 3.6 for more information, including advice on guidelines to be used during the assessment process and in consultation with Aboriginal communities. Aboriginal cultural heritage issues must be addressed early in the planning and development approval process so that conservation solutions can be determined and applied throughout any future construction stage. The impact assessment steps below include a number of mechanisms that will enable Aboriginal cultural heritage issues to be proactively dealt with in the planning process.

Following the steps below will assist in undertaking an assessment of Aboriginal cultural heritage impacts, as well as assist proponents with meeting requirements set out in OEH's *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*.

Special note: proponent responsibilities in meeting due diligence

While all effort and care has been taken to ensure the requirements of the Due Diligence Code are accurately reflected in these guidelines and the REF template, proponents are responsible for ensuring that they understand the provisions of the Code and have satisfied themselves that all relevant steps have been followed.

Full compliance with the Code is required in order to obtain a defence to the strict liability offence under the NPW Act for harming or desecrating Aboriginal objects and Aboriginal places. As the Code may be revised from time to time, proponents should ensure that they refer to the most current, adopted version.

The Due Diligence Code is available on the OEH [Protection and regulation of Aboriginal cultural heritage](#) webpage.

Specific reference should be made to the diagrams in the Code to assist in deciding if applying the due diligence code is appropriate, and if it is, how the process operates.

In addition to the generic OEH Due Diligence Code, the NP&W Regulation also adopts other industry specific codes of practice, such as the *NSW Minerals Industry Due Diligence Code of Practice for the Protection of Aboriginal Objects* and the *Plantation and Reforestation Code*. If relevant to a proposal, due diligence may also be exercised by complying with one of these codes.

Aboriginal objects and Aboriginal places

The first step in considering potential impacts on Aboriginal cultural heritage is to undertake a preliminary assessment to identify the risk of impacts to Aboriginal objects or Aboriginal places. The key matters to be considered and addressed as part of the preliminary assessment and documented in the REF are set out below.

As described in Section 3.6, the NPW Regulation provides a defence to the 'strict liability' offence of harming an Aboriginal object if the proposal is classed as a 'low impact activity' by cl.80B. This type of offence may apply even if a person was unaware that they were harming an Aboriginal object. Examples include maintenance of existing trails and utilities, soil conservation works, flood mitigation works, exempt development on disturbed land and certain types of mining exploration work. Consideration should be given to whether or not a low impact activity is being undertaken.

However, it is OEH policy for all proposals within reserves (even listed low impact activities) that proponents consider potential impacts on Aboriginal cultural heritage.

Will the activity disturb the ground surface or any culturally modified trees (e.g. a scar tree)?

The Due Diligence Code acknowledges that activities that disturb the ground surface or culturally modified trees, will have a higher potential to harm Aboriginal objects. Proponents should ensure that the REF clearly indicates if the proposal may have such impacts.

Does the activity affect known Aboriginal objects or Aboriginal places?

Aboriginal objects are physical evidence of the use of an area by Aboriginal people, and may take a number of forms, for example:

- physical objects, such as stone tools, Aboriginal-built fences and stockyards, scarred trees and the remains of fringe camps
- material deposited on the land, such as middens
- the ancestral remains of Aboriginal people.

Aboriginal places may be declared under the NPW Act for land that 'is or was of special significance to Aboriginal culture'. An area can have spiritual, natural resource usage, historical, social, educational or other types of significance. Aboriginal places may or may not contain physical evidence of Aboriginal occupation.

To help identify known Aboriginal objects, proponents can undertake a search of the AHIMS database and should also consider all other known sources of information.

If the search results indicate that AHIMS contains information about recorded Aboriginal objects or places in the area where the activity is proposed, then copies of those records must be obtained and used (along with any other information) to confirm where the objects or places are likely to be located.

If there are AHIMS records in the area where the activity will occur then you will need to consider if you can avoid these areas, as outlined below.

Is the activity located in areas where landscape features indicate the presence of Aboriginal objects?

Proponents should also consider whether the area of the activity contains landscape features that are likely to indicate the presence of Aboriginal objects. The Due Diligence Code identifies the following key landscape features in non-disturbed land as areas where further investigation may be required:

- within 200m of waters¹
- within a sand dune system²
- on a ridge top, ridge line or headland
- within 200m below or above a cliff face
- within 20m of or in a cave, rock shelter or a cave mouth.

The REF should identify whether any of these features are within the area to be directly or indirectly affected by the activity.

¹ 'Waters' means the whole or any part of: any river, stream, lake, lagoon, swamp, wetlands, natural watercourse, tidal waters (including the sea). Note: the boundary of tidal waters is defined as the high water mark.

² Refers to sand ridges and sand hills formed by the wind, usually found in desert regions, near a lake or in coastal areas. In areas of western NSW, windblown dunes can occur along the eastern edges of ephemeral lakes (called lunettes dunes). They can also occur along the banks of rivers

Can harm to objects or disturbance of landscape features be avoided?

If the above assessment indicates that Aboriginal objects or landscape features are known or likely to be present in the area of the activity, then the REF must demonstrate the steps that will be taken to avoid harm to these as the first priority. Possible solutions include reducing the proposed footprint of a project, re-positioning particular elements, or controlling and limiting access to areas.

Consultation with the Aboriginal community is critical at this stage to ensure they have early input into the design and decision-making stages, on the necessary steps to avoid impacts. This should involve an inspection of the site with representatives of the relevant Aboriginal groups and may also involve persons with appropriate qualifications or training in locating and identifying Aboriginal objects.

If it is clearly demonstrated that harm can be avoided (or that no objects or places are known or likely to be present) then assessment of the proposal can proceed with caution, without the need for further investigation or the preparation of an AHIP application.

If there is still potential for harm or disturbance to occur to objects or landscape features, and it cannot be avoided for certain, then you should proceed to the next step.

Desktop assessment and visual inspection

If the activity is on land that is not disturbed or contains known Aboriginal objects, and it is not possible after completing the above steps to definitively conclude that harm will not occur, then a desktop assessment and inspection should be undertaken.

The desktop assessment involves considering readily available information and should consider the whole activity area, not just areas where any Aboriginal objects have been recorded on AHIMS or areas where landscape features are located. Minimum information to be reviewed includes previous heritage studies or reports, including any archaeological studies on AHIMS.

A visual inspection of the area should also occur to see if Aboriginal objects can be identified or are likely to be present below the surface. This visual inspection must be done by a person with expertise in locating and identifying Aboriginal objects. The person with expertise could be an Aboriginal person or a person with experience in locating and identifying Aboriginal objects or a consultant with appropriate qualifications or training in locating and identifying Aboriginal objects.

Where either the desktop assessment or visual inspection indicates that there are (or are likely to be) Aboriginal objects in the area of the proposed activity, more detailed investigation and impact assessment will be required (see below). Where the desktop assessment or visual inspection does not indicate that there are (or are likely to be) Aboriginal objects, you can proceed with caution without an AHIP application.

Further investigations and impact assessment

If, after following the above processes, there is still a reasonable risk or potential that Aboriginal objects, Aboriginal places or sensitive landscape features could be adversely

affected by a proposal, then consistent with the precautionary principle it should either be reconsidered or further detailed investigations undertaken.

Further investigations should include the following:

- Identifying the Aboriginal cultural heritage values associated with the area. This includes consulting Aboriginal people about cultural knowledge or responsibilities for the country in which the proposed project occurs, and undertaking relevant written and oral research and field investigations
- Understanding the significance of the identified Aboriginal cultural heritage value
- Assessing the impact of the proposed development on Aboriginal objects and Aboriginal places
- Describing and justifying the proposed outcomes and alternatives
- Documenting the Aboriginal cultural heritage impact assessment and the conclusion and recommendations to afford appropriate protection of Aboriginal cultural heritage.

The involvement and participation of appropriate Aboriginal people will greatly assist the collection of the above information and the development of management outcomes; however, it is not mandatory at this point. Appropriate Aboriginal people could be identified through locally established networks or if the activity is within a park that has a co-management agreement, contact could be with the board.

If it is concluded that an activity will have unavoidable and justified impacts on Aboriginal objects or Aboriginal places then the proponent should apply for an AHIP under Section 90 of the NPW Act. Holding an approved AHIP provides a defence against prosecution under the NPW Act for harming an Aboriginal object. Consultation with Aboriginal people must be in accordance with the [Aboriginal cultural heritage consultation requirements for proponents](#), when applying for an AHIP.

Information on preparing an AHIP application is available on the [AHIP webpage](#). Preparation of the AHIP application should occur concurrent with the REF process to inform and shape the final proposal detailed in the REF.

- **Other Aboriginal heritage cultural values**

Aboriginal objects and Aboriginal places are not the only matters that require consideration during the REF process. Proponents should also address the following, where relevant.

Does the activity affect wild resources or access to these resources, which are used or valued by the Aboriginal community?

Wild resources are defined as including native and introduced species of flora and fauna which are used for food, medicine and materials. It includes the land and sea from which these resources are obtained. For example, a beach, a pathway through a forest, or a stand of trees could fall within this definition. Wild resources include the use of land, flora and fauna as well as peoples sense of identity and spirituality and connection with country.

The use of wild resources forms an important aspect of Aboriginal people's past and contemporary association with the land. Along with the spiritual or ceremonial links, the use of wild resources is an integral part of the cultural significance of country.

Consultation with the local Aboriginal communities is often required (see 2.6). The results of consultation should be used as a basis for the assessment of the impact of the activity. Describe the wild resource/s which are likely to be affected (this should include type, use, location, significance and likely extent of distribution of resource), the nature extent and significance of impacts and options for mitigating impacts. This may include both direct and indirect impacts.

Does the proposal affect areas subject to native title claims, indigenous land use agreements or joint management?

Native title exists unless it has been extinguished in accordance with the Commonwealth *Native Title Act 1993* (NT Act). Because the national park system has been created and extended over time, the way in which the NT Act applies will vary from site to site. For example, it is possible that native title may potentially exist in some parts of a park but not the whole park.

Special note: has native title been extinguished?

Examples of acts that extinguish native title if they were carried out at any time before 1 January 1994 are:

- the grant of freehold title
- entering a commercial or residential lease
- entering an exclusive possession agricultural or pastoral lease, including most Western lands leases
- undertaking certain lawful public works
- other 'scheduled interests' listed in the NT Act, which includes certain leases granted under current and previous national parks legislation.

It is OEH policy to presume that native title still exists across much of the national park system, unless OEH definitely knows that native title has been extinguished. OEH needs to consider if a proposed action, such as constructing a building or road or the granting of a lease or licence, will be a "future act" that affects native title.

If native title has not been extinguished, or this cannot be confirmed, it may be necessary to follow "future act" procedures set out in the NT Act. The procedures mainly involve notification and consultation of native title claimants. For internal proponents, further guidance is available in an [OEH Legal Eye](#) 2012/02. External proponents should obtain their own advice how to meet future act requirements (the web-site of the National Native Title Tribunal has general information).

Many on-park activities can occur in a way which does not affect native title, as they would not restrict Aboriginal people from exercising their cultural traditions on park if native title rights were subsequently recognised. Examples may include activities with low physical impact, such as granting consent for day use of a park, undertaking pest species control or installing picnic shelters and interpretive information.

Actions that have a higher risk of adversely affecting native title include: construction of public or private infrastructure works on park, including those involving major earthworks; new buildings; and activities that will require a lease under the NPW Act.

Proponents should identify potential native title issues as early as possible when a major project is proposed. Practical steps include:

- if there is an Indigenous Land Agreement, check the requirements for future acts in the agreement
- if native title has been determined and there is no Indigenous Land Use Agreement, contact the NPWS Aboriginal Heritage and Joint Management Team
- check when the actual parcel of land on which the works will occur was added to the park and if it was privately owned as freehold land in the past. If it was, then native title will have been extinguished
- check the [National Native Title Tribunal website](#) to see if a native title claim or a native title determination or an Indigenous Land Use Agreement exists over all or part of the park
- if the works relate to a relatively small area of land (and there is no determination of native title), undertake a land tenure history search to identify whether native title has been extinguished
- if there has not been a determination of native title, consider if the activity would be “low-impact” under the NT Act. Examples may include: pest species control; minor building alterations; bush fire control; demolition; infrastructure maintenance; environment protection works; etc
 - *in general, low impact activities are unlikely to impact native title and would usually not require notification under NT Act processes*
- check if the activity involves the grant of leases or licences, or construction of new, permanent buildings, structure or infrastructure. Examples may include: leases providing long-term exclusive use of an area; construction of new accommodation or administrative buildings; new public infrastructure (such as transmission lines, roads or pipelines); fences and gates; flood mitigation works; and new fire trails
 - *these types of activities have greater risk of impacting native title, and will generally require notification under NT Act processes.*

In some cases it may be necessary to obtain legal advice on whether native title may exist and if notification is required.

If the activity requires notification, you must write to any native title holders or claimants for the area in which your activity is proposed to occur, if known, or to Native Title Services Corp, and provide opportunity to comment within 28 days.

When the native title claimants do not support the proposed activity, strong justification will be required for the impact to be considered to be a level other than medium or high adverse.

Similarly, in the case of areas that are the subject of an indigenous land-use agreement (ILUA) or joint managed parks, proponents should ensure consultation with the relevant Aboriginal stakeholders. Further information on parks that are jointly managed or covered by an ILUA can be found on the [Existing joint management agreements](#) webpage.

3.13 Historic cultural heritage impacts

What is the impact on places, buildings, landscapes or moveable historic heritage items?

The REF should identify any items of historic, cultural or natural heritage. These include:

- places identified on the World Heritage List or the National Heritage List. These listings can be accessed in the Commonwealth Department of Environment website.
- items listed in the State Heritage Register (SHR). These are items which are recognised as being of State heritage significance. Listings may be obtained through the [OEH Heritage webpage](#).
- items that are not listed on the SHR but have been identified by OEH as being of State Significance as a result of a heritage assessment
- other items listed on the OEH Heritage and Conservation Register (under s. 170 of the *Heritage Act 1977*). This register lists all items of historic heritage significance managed by OEH and is contained in the Historic Heritage Information Management System (HHIMS). External proponents seeking access to HHIMS data should contact the relevant NPWS regional office in the first instance.
- any place, building, landscape or movable heritage items older than 25 years but not listed on the above registers also need to be included in the REF.

The REF should describe the nature of the impact on historic, cultural or natural heritage and how it relates to the purpose of the activity. The REF must not only deal with the physical impacts of the activity but with the impact on the heritage values of the place. This question can only be answered following an assessment and understanding of the significance of the heritage item. Such an assessment will usually be included in a conservation management plan or similar planning document, such as a heritage impact statement.

Activities affecting heritage items or places may require specific approval under the NSW Heritage Act 1977. That includes activities affecting:

- items on the State Heritage Register (s. 60 Heritage Act)
- non-Aboriginal “relics” (s. 140 Heritage Act).

Further information on the type of assessment required is available in the:

- NPWS *Guide to approvals: Cultural heritage items on land gazetted under the NPW Act*
- [OEH Heritage webpage](#).

In addition, activities having a significant impact on the values of places on the World Heritage List or National Heritage List will require assessment in accordance with requirements of the EPBC Act. That may also trigger the provisions of the [NSW Assessment Bilateral Agreement](#). Information on how to assess the significance of impacts to these places is available on the website of the Commonwealth Department of the Environment.

When an activity is likely to have a significant impact on known heritage items and is inconsistent with a conservation management plan there will need to be strong justification to proceed.

Special note: obtaining advice and appropriate expertise

Except for minor activities that have no adverse impacts, advice from a suitably qualified heritage expert should be sought as early as possible when planning for a project involving a heritage item or place. It is the proponent's responsibility to engage and utilise appropriate heritage advice and expertise.

Proponents should also consult initially with NPWS with respect to the technical planning, assessment and approval requirements. NPWS regional staff should be the first point of contact; however, and they may need to seek further guidance from other staff with architectural, archaeological and curation expertise.

Is any vegetation of cultural landscape value likely to be affected (e.g. gardens and settings, introduced exotic species, or evidence of broader remnant land uses)?

This relates to exotic plantings, landscapes and site features as part of the context and setting for historic heritage places or broader scale cultural landscapes. Cultural landscapes, for instance, may include evidence of former land uses such as pastoralism and grazing and other forms of land clearing.

As with historic structures, it is only possible to assess the impacts of an activity subsequent to understanding the heritage values. Similarly, conservation management plans or heritage impact statements are typically the mechanism used to inform this assessment.

If the proposal is likely to reduce significant landscape values and impacts cannot be improved, there will need to be clearly justified reasons for progressing with the activity.

3.14 EPBC Act matters

Is the proposal likely to impact on matters of national environmental significance under the EPBC Act?

Listed matters of national environmental significance (MNES) include certain threatened species and ecological communities, migratory species, Ramsar wetlands, the Commonwealth marine environment, and world or national heritage listings. As a first step, proponents should refer to the [EPBC Act Protected Matters Search Tool](#).

If MNES are present or may potentially be impacted by the activity an assessment must be undertaken as part of the REF. This will also assist in determining whether referral to the Commonwealth, or Commonwealth approval, is required. Guidelines for assessing the impact of proposals on MNES are available on the Department of the Environment and Energy's [Significant Impact Guidelines 1.1 - Matters of National Environmental Significance webpage](#).

Assessment Bilateral

There is an Assessment Bilateral Agreement between the Australian and NSW governments. Under the agreement, certain projects that require Commonwealth approval under the EPBC Act, may be assessed in accordance with NSW environmental planning processes. For example, impacts to a nationally listed species may be assessed as part of an REF.

The agreement only relates to the process by which a project is “assessed”. It does not remove the need to still obtain Commonwealth approval if the activity will have a significant impact on MNES. Its main effect, therefore, is to streamline and integrate the assessment process.

Special note: activities that may impact matters of national environmental significance

During preparation of the REF, if the assessment indicates that an on-park activity is likely to have a significant impact to MNES:

- the proponent should make contact with NPWS as soon as possible. NPWS will then seek further advice from the OEH Regional Operations Group regarding application of the Assessment Bilateral Agreement.
- the scope and nature of the activity should be reconsidered to identify whether it can be modified to avoid having a significant impact
- if a significant impact cannot be avoided and the activity is considered by OEH to be adequately justified, then a referral to the Commonwealth will be required to determine if an EPBC Act approval is needed.

3.15 Summary of impacts and conclusions

This section of the REF summarises the impacts and considers the cumulative effects of the activity based on the classification of individual impacts as low, medium or high adverse, negligible or positive.

In addition to medium and high impacts, consideration should also be given to the overall effects of the low impacts. Although impacts may be of only low to medium concern when considered individually, the cumulative effect of the impacts could be substantial.

In the case where impacts cannot be avoided, the proponent should include full details of any mitigation measures, environmental safeguards or offsets proposed (including any offset site and/or offsetting actions).

Evaluating significance

When considering the likely environmental significance of the impacts associated with the proposed activity proponents should consider:

- How extensive are the impacts?
- How adverse are the impacts on environmentally sensitive areas?
- How acceptable are the impacts considering the nature of the impacts?

If necessary, proponents should refer to the DP&E publication titled 'Is an EIS Required – Best Practice Guidelines for Part 5 of the *Environmental Planning and Assessment Act 1979*' for guidance on evaluating the significance of the impacts of any proposed activity on the environment.

Further guidance is provided below and draws on that publication.

Extensive impacts – in deciding if the impacts of an activity are likely to significantly affect the environment, the type, degree and range of each impact must be considered on its merits. If an impact is extensive in terms of spatial or time dimensions and intensity or severity, there is potentially a high risk to the environment.

Impacts which adversely impact on environmentally sensitive areas are likely to be significant – the impacts of activities undertaken in environmentally sensitive areas are more likely to be significant than similar activities proposed in less sensitive locations. Relatively small activities carried out in sensitive locations can result in substantial impacts on the environment. A precautionary approach should be adopted for activities proposed in locations known to be environmentally sensitive, including careful investigation of alternatives and mitigation strategies. Activities that are likely to indirectly affect sensitive locations may also be considered to significantly affect the environment.

Impacts with a low level of acceptability because of the nature of the impacts are likely to be significant – when considering the impacts of an activity, the extent of the potential impacts is only one factor to be considered. Impacts that are not very extensive may still significantly affect the environment.

Any impact that results in a threat to the health or safety of individuals or the community has a low acceptability level. In considering the risks to the community, particular attention should be given to the welfare of children, the aged or any disadvantaged group. Any impact that threatens biodiversity also has a low level of acceptability and has the potential to significantly affect the environment.

Activities that will adversely affect a community's amenity, or unacceptably change or transform a locality, or place at risk items, buildings or localities that are particularly valued by the community will be considered significant. It can also be expected that the community will have a low acceptance of impacts that threaten property values or decrease the options for a secure livelihood of individuals or the community generally.

Conclusions

To conclude an REF, you will decide whether:

- there is likely to be a significant effect on the environment (if so, an EIS is required)
- there is likely to be a significant effect on threatened species, populations, ecological communities or their habitats (if so, an SIS is required)
- the activity is in respect of land that is, or is part of, critical habitat (if so, an SIS is required).

When deciding whether there is likely to be a significant effect on the environment, it must be determined whether the activity as a whole has a significant effect on the environment. Reasons should be given for the decision. The impact of the proposed activity, not the

impact of the activity as it will be undertaken mitigated by conditions imposed by an approval, is what must be assessed.

Note: in making the above decisions, a medium or high level of impact is likely to be considered significant. Examples of activities that have the potential to have significant effect on the environment include circumstances where:

- the impacts from the proposed activity would result in a permanent and adverse change to the environment
- there is a low level of confidence in forecasting outcomes
- risks to the environment, including irreversible change, are apparent given the natural sensitivity and/or induced sensitivity because of cumulative impacts
- it is known that the environment is already stressed and the activity may further exacerbate this.

The ranking of the potential significance of the individual impacts of an activity must be considered as well as the aggregation of all the impacts of the activity. The cumulative effect could result in the activity as a whole having a significant effect.

The conclusion of the REF also requires proponents to identify whether the activity will require certification to meet the requirements of the Building Code of Australia or relevant Australian Standards. This is necessary to ensure that any requirements for certification are identified early and can be built into any conditions of approval for the REF should it be successfully determined.

Section 4: Post-approval

4.1 What do I need to do before starting work?

After OEH has considered the REF, the proponent will be sent a letter with the determination notice attached. Activities requiring an REF are generally only determined subject to conditions.

The conditions of the determination may include requirements to undertake certain things prior to commencing works. Examples include:

- preparing an environmental management plan to guide the activity
- lodging a bank guarantee
- ensuring compliance with the Building Code of Australia and other relevant technical or industry standards (refer OEH [Construction Assessment Procedures](#)).

In carrying out the activity, the proponent (or another person who carries out the activity on behalf of the proponent) must ensure compliance with:

- all the conditions of the approval
- the description of the activity given in the REF, any environmental safeguards and any other commitments given in the REF
- the plans required to be submitted in the conditions of the REF approval.

OEH post-approval requirements

The granting of approval/s by OEH after consideration of an REF does not negate the proponents need to seek any other approvals, agreements, licences, permits or consents that may be required for the activity to proceed.

Table 2 in Appendix 2 lists some of the types of approvals that may be required from OEH. It is the proponent's responsibility for gaining any other approvals or licences required from other state government authorities. Discussions should also be held with these other agencies prior to submitting the REF to OEH.

Commonwealth legislation and approvals

Commonwealth environmental impact assessment procedures will be triggered under the EPBC Act if the activity is likely to significantly affect a matter listed as having national environmental significance (MNES). Activities would be considered to be a 'controlled action' under the EPBC Act if they are likely to impact significantly upon:

- the world heritage values of a declared World Heritage property
- the ecological character of a Ramsar wetland
- the national heritage values of a declared national heritage place
- nationally listed threatened species and communities
- listed migratory species
- the Commonwealth marine environment.

As noted in section 3.14 above, an activity likely to have a significant impact on MNES should be reconsidered in the first instance, and advice sought as soon as possible from OEH on the assessment requirements.

Telecommunications facilities may also require approval under the Commonwealth *Telecommunications Act 1997*. For more information contact the [Australian Communications Authority](#).

Appendix 1: Permissibility

Refer to Section 1.2 of these guidelines for more information about how permissibility fits into the REF process.

A1.1 National Parks and Wildlife Act 1974

The activity must be consistent with the aims, objectives and provisions of the NPW Act for it to be permissible. As a guide, an activity is likely to be permissible if:

1. the purpose of the activity is directly related to the purpose and management principles for the reserve, as identified in ss 30E - 30K
2. the activity is consistent with the plan of management (see below)
3. the activity is for a use which is specified in Part 12 NPW Act (ss 151 – 153E) or is expressly authorised by another section of the NPW Act
4. the activity is undertaken in accordance with the terms and conditions of an existing interest
5. the activity is subject to legislation that overrides the NPW Act.

There may be other instances in addition to those listed above when an activity is considered permissible. It is recommended that legal advice be sought if the permissibility of the activity is not clear.

Consistency with plans of management and park management policies

All activities (with the exception of activities undertaken under an existing interest) must be consistent with the plan of management for the reserve in order for it to be permissible (s.81 NPW Act). Often [plans of management](#) are silent on a particular issue and in these instances guidance regarding the permissibility of an activity must be sought from the overall intent, scheme and objectives of the Plan.

All activities must also be consistent with current [parks management policies](#).

Wilderness

In respect of land that is within a wilderness area, under s.153A NPW Act, the Minister or Chief Executive is not permitted to:

1. grant a lease or licence under s.151 NPW Act
2. grant a lease, licence, easement or right of way under s.153D NPW Act.

Permissibility of particular types of activities

- **Visitor and tourism uses and other purposes under s.151 NPW Act**

Section 151 NPW Act allows the Minister to grant a lease or licence within a reserve (including any buildings or structures). The purposes for which a lease or licence may be granted are identified in s.151A. These include accommodation for visitors and tourists and a range of visitor facilities.

The NPW Act also specifies matters that the Minister must be satisfied of before granting a lease or licence (s.151B). The Minister must also have regard to assessment criteria adopted by the Chief Executive.

Where an REF is required for a lease or licence proposal under s.151, specific information will need to be included within the REF. In addition, the REF will need to be accompanied by a Sustainability Assessment.

Further information on application of the criteria and supporting guidelines for completing the Sustainability Assessment are provided on the [Development guidelines webpage](#).

- **Pipelines and power lines**

Section 153 NPW Act enables the Minister for the Environment to grant easements for pipelines and power lines. The appropriateness of exercising this power is dependent on OEH policies and the level of environmental impact.

New pipelines and power lines constructed and used by public utility providers are permissible. Approvals are subject to OEH policies, the level of environmental impact and approval by OEH and the Minister in accordance with Part 5 of the EP&A Act. It is not permissible to construct new pipelines and power lines for private use.

The maintenance, replacement or augmentation of existing pipelines and power lines does not require further approval by OEH if:

1. the existing pipeline or power line is subject to an easement granted under s.153
2. NPW Act, which allows such work to be undertaken without further approval and the works are in accordance with the terms and conditions of the easement
3. the existing pipeline or power line is the subject of an existing interest under s.39
4. NPW Act, which allows such work to be undertaken without further approval and the works are in accordance with the terms and conditions of the interest.

If it cannot be satisfactorily demonstrated that the pipeline or power line is the subject of an existing interest, approval by OEH for the works will be required where such works are permissible. In these instances, an REF will be required for the maintenance program and for any proposed works. OEH will also require the proponent to enter into a section 153 easement agreement for the existing pipeline or power line if one does not already exist. This requirement will be placed as a condition on any approval granted.

- **Telecommunication facilities**

It is generally permissible for the Minister to grant leases, licences, easements or rights of way through or in any land reserved under the NPW Act for the purpose of the erection, use, or maintenance of telecommunications facilities (s.153D NPW Act). The exceptions to this permissibility are as follows:

1. The telecommunications facility is within Aboriginal areas
2. The telecommunications facility is within areas specifically designated as 'remote natural areas' in a plan of management (these areas must be indicated, specified, named, or entitled as such in the plan of management)
3. The telecommunications facility is within declared wilderness under the *Wilderness Act 1987* (s.153A NPW Act)
4. The Minister is not satisfied that the telecommunications facility meets all of the tests set out in section 153D NPW Act (see below in regard to interpretation of s.153D)

5. The telecommunications facility is not consistent with the management principles for the reserve (ss 30E–30J NPW Act)
6. The telecommunications facility is not in accordance with an adopted plan of management (s.81 NPW Act).

New telecommunications facilities, including new facilities proposed to be co-located with existing facilities, require approval under section 153D unless they are authorised by a facility installation permit or are defined as a low-impact facility under the *Telecommunications Act 1997*. Existing facilities, if not an existing interest or existing telecommunications interest, will generally require an approval under section 153D for use and maintenance proposed (if maintenance is not within the definition of ‘maintenance’ under the *Telecommunications Act 1997*).

An existing telecommunications interest is an existing telecommunications facility within the meaning of the *Telecommunications Act 1997 (Cth)*. Section 188 of the NPW Act allows the Minister to permit the grant of a lease or licence by these existing facilities. It can only be used to formalise a facility that was in existence under the authority of the *Forestry Act 1916*, the *Crown Lands Act 1989*, the *Crown Lands (continued Tenures Act 1989)*, or the *Western Lands Act 1901* or where the Commonwealth legislation permitted its construction and exempted it from authorisation under State legislation. Section 188 cannot be used for a new facility, including a new facility which is to be co-located on an existing facility (in this case, the facility would need to comply with section 153D).

In terms of the interpretation of section 153D, the following should be used:

Telecommunications facility means:

1. any part of the infrastructure of a telecommunications network
2. any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network (s.7 *Telecommunications Act 1997*).

Telecommunications network means:

- A system or series of systems that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy.

Telecommunications facilities include towers, masts, antennas and lines, as well as associated tracks or roads, electricity infrastructure and asset protection zones for use in connection with a telecommunications network.

If the telecommunications facility is proposed under section 153D NPW Act, there are a number of tests which need to be satisfied for it to be permissible. The following information should be supplied for this purpose:

1. Documentation of the steps taken to investigate alternative sites on land not reserved under the NPW Act, the location of alternative sites and why these are not feasible
2. If the telecommunications facility is to be above ground, an explanation of how the site of the facility will cover the minimum area possible
3. An explanation of how the design and construction of the facility is in such a manner as to minimise:
 - a. the risk of damage to the facility from bushfires
 - b. the risk of visual impact of the facility.

4. An explanation of how the site of the proposed facility (including all associated infrastructure) has been selected within the area reserved under the NPW Act, including taking into account the following:
 - a. any plan of management relating to the land concerned
 - b. minimisation of the environmental impacts of the facility.
5. A description of the proposed means of access to the facility, including what existing means of access are available
6. A description of the areas to be served by the facility, the service which the telecommunications facility will provide and why the particular facility is essential to provide these services and how the service relates to the proponents forward planning (including likely future implications for the proposed facility such as opportunities for future co-location, and the strategic significance of the facility)
7. An indication of when the facility is likely to become redundant (e.g. the end of the facility's useful economic life) and a description of how the site is to be restored after the facility becomes redundant
8. A description of existing structures and disturbed sites and an assessment of whether the proposed facility could be co-located with these structures and sites (in undertaking the assessment, impacts to natural and cultural heritage are to take priority) as well as whether the proponent for the facility is the owner of the structure on which the facility is to be attached, or a co-user.

The following documentation and/or assessment should also be provided:

- A maintenance plan, including a description of the maintenance that is likely to be required for the facility, including weed and bushfire management. The maintenance plan should include the time of visit, duration, the nature of work, the equipment to be used and any requirements for assistance from OEH
- An evaluation of the net benefit of the new facility to the NSW community, including future needs
- An assessment of the impact on core business and compromising the delivery of core business services to the community
- Implications for on-park management practices (park management practices should not have to change in response to the construction of the facility, for example, bushfire hazard management).
- **Mines and mineral exploration**

Mining and petroleum activities, including exploration and extraction, are only permissible within SCAs. They are not permissible within any other class of reserve unless they are the subject of an existing interest or authorised by an Act of Parliament.

New activities related to mineral and petroleum exploration in SCAs, or mining and extraction, will require either approval or concurrence of the Minister for the Environment, as set out in s.47J NPW Act. Consent may also be required under the NP&W Reg to enter and undertake works within a reserve.

- **Roads**

Section 153B NPW Act enables the Minister to grant an easement or right of way through a reserve for accessing other land which is completely or partially surrounded by the reserve. Section 153B provides a range of constraints and considerations regarding this power.

- **Infrastructure associated with development adjoining the reserve**

Developments adjoining the reserve are often associated with a range of ancillary activities and infrastructure including stormwater discharge pipes, water quality control structures, fuel management zones etc. These are generally not permissible within the reserve. As an exception to this, instances may occur where water quality control structures or fuel management zones are required within the reserve irrespective of the adjoining development and may be justified as being for the purpose of environmental protection and safety. These will generally be approved only when there is existing development and not for new development. In other words, there must be a tangible environmental benefit for the reserve or a safety imperative.

A1.2 EP & A Act

Relevant SEPPs, REPs and LEPs should be checked to ensure that the activity is permissible under these instruments and that the activity fits within their objectives. This should include a consideration of whether heritage items to be affected may be included on Heritage Schedules of LEPs and REPs.

When the activity is prohibited under relevant EPIs, the activity may still proceed so long as it is authorised under the NPW Act. Refer to section 1.2 for more information. In addition, where an activity would otherwise be prohibited by the EPI, the REF should include clear justification for why it is considered appropriate and justified.

A1.3 *Wilderness Act 1987*

The proponent needs to establish if the location of the activity is in an area identified as wilderness under the *Wilderness Act 1987*. An activity in a wilderness area will be not be permissible unless it is in accordance with the aims and objectives of the *Wilderness Act 1987*, a wilderness protection agreement or in accordance with the plan of management for the wilderness area.

If the activity is to be carried out in respect of land that is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*) the activity is not to be carried out unless consent to the activity required under that *Wilderness Act 1987* has been obtained (s.112(1A) EP&A Act).

Additional matters to be considered for wilderness areas include the following:

1. That wilderness areas are generally undisturbed
2. That wilderness areas are managed to allow natural ecological process to continue with minimal intervention
3. Most development in wilderness areas is prohibited and any activity must be compatible with wilderness principles
4. The plan of management for any wilderness area
5. If a wilderness agreement does relate to the site of the activity, the activity must be consistent with and satisfactory, under the terms of the agreement.

Appendix 2: Types of approvals

The following table 2 contains a list of common approvals that may need trigger the requirement to undertake a REF before they can be granted. This is a guide only and does not cover all approvals that external proponents may need to obtain from OEHL prior to proceeding to undertake an activity on land reserved or acquired under the NPW Act. Proponents should refer to the legislation, consult with the NPWS regional office and obtain independent legal advice.

Table 2: Types of approvals which may be obtained from OEHL

Section/	Short title	Type of approval (summary only)
ss. 40(2), 53(2), 71S, 71BD(1) NPW Act	Grant of a permit to graze	The Minister may concur to the grant of a permit to graze over any part of a travelling stock reserve or camping reserve under the control of the Rural Lands Protection Board
ss. 43, 47K, 58, 58S(1), 71S, 71BD(1) NPW Act	Soil research	OEHL may concur to the carrying out of experimental or research work pursuant to Part 6 of the Soil Conservation Act 1938
ss. 44(2), s.47K, 58, 58S(1), 71S & 71BD(1) NPW Act	Lease under Fisheries Management Act	The Minister may concur to the grant of a lease under the Fisheries Management Act 1994 in respect of lands or in respect to any of the waters beneath which those lands are submerged.
s.47J(3), 47J(4), 71S, & 71BD(1) NPW Act	Renewal or extension of mining interest	The Minister may concur to the grant of, renewal of, or extension of a mining interest.
s.47J(7), 71S & 71BD NPW Act	Exercise of certain rights	The Minister may approve the exercise of certain rights under the Mining Act 1992 or Offshore Minerals Act 1999.
s.90 NPW Act	Harm or desecrate Aboriginal objects or places	OEHL may give consent, subject to conditions and restrictions specified therein, to allow a person to harm or desecrate an Aboriginal object or place.
s.131 (1) NPW Act	Licence to pick plants	OEHL may issue a licence authorising a person to pick protected native plants.
s.132 NPW Act	Licence to grow plants	OEHL may issue a licence authorising the owner or occupier of private land to grow upon that land protected native plants for the purposes of sale.

Section/	Short title	Type of approval (summary only)
s.151 & s.151A	Lease or licence of land for general purposes or sustainable visitor/tourist purposes or adaptive reuse and use of modified natural areas.	The Minister may grant a lease or licence, including any building or structures on the land. The lease or licence may authorise exclusive use, erection of a new building or structure, or modification of an existing building or structure.
s.152(1) NPW Act	Licence to trade within certain reserved lands	OEH may grant licences to carry on trades, businesses or occupations.
s.153(1) NPW Act	Easement or right of way for the purposes of access or pipelines or electricity transmission etc	The Minister may grant for joint or several use easements or rights of way through, upon or in reserved land for the purpose of providing access to any area included in any lease or licence, or for the construction of pipelines, or for the erection of standards, posts, wires and appliances for the conveyance or transmission of electricity, or for any other purpose deemed necessary.
s.153B NPW Act	Granting of interests in water catchment special areas	The Minister may grant leases of, or licences to occupy or use, or easements or rights of way through, on or in, lands to which this section applies for the purpose of enabling the Sydney Catchment Authority, the Sydney Water Corporation or the Hunter Water Corporation to exercise its functions in relation to water or wastewater infrastructure on the lands concerned.
s.153C(1) NPW Act	Easements, right of way or licences for land locked areas	The Minister may, grant an easement, right of way or licence through or over land reserved under the NPW Act for the purposes of access to other land if the other land is completely or partially surrounded by land reserved under the Act and the Minister is satisfied of certain conditions.
s.153D NPW Act	Leases, licences and easements for tele-communications facilities	For the purpose of the erection, use or maintenance of telecommunications facilities, the Minister may grant leases of, or licences to occupy or use, or easements or rights of way through, on or in, any land reserved under this Act, subject to such terms and conditions as the Minister may determine.
s.156A(2) NPW Act	Consent to damage reserved land	OEH may give consent to a person to remove any water other than for purposes authorised by or under any Act or for the purposes of personal use on the land, or damage or remove any vegetation, rock, soil, sand, stone or similar substance, or damage any object or place of cultural value; on or in land reserved under the NPW Act.
s.171(1)(b) NPW Act	Authority to harm animals and destroy vegetation	OEH may authorise any person to harm animals within certain reserves and harm protected fauna outside reserves and fell, cut, destroy, injure, remove or set fire to any tree, timber or vegetation within a nature reserve or karst conservation reserve.

Section/	Short title	Type of approval (summary only)
cl 7(5) NP&W Reg	Consent to use of vehicles, horses, camels, vessels and machines in a park, or open gates	OEH may consent, subject to conditions, to a person operating, driving or using vehicles or certain animals; or opening, damaging or destroying any gate, barrier or similar device in a park; or removing, shifting, damaging or destroying any obstruction that has been positioned or created so as to restrict or obstruct vehicular access to the park.
cl 11(2)(a) NP&W Reg	Consent to littering and damage	OEH may consent, subject to conditions, to a person littering etc or causing damage etc to any fixture, improvement, rock, tree, equipment, water supply or relic in a park, contrary to cl 11(1).
cl 17(2) NP&W Reg	Consent to erection or use structures	OEH may consent, subject to conditions, to a person erecting, altering, extending or occupying any building or certain structures in a park
cl 18(2) NP&W Reg	Consent to gather vegetation	OEH may consent, subject to conditions, to a person gathering, destroying etc any vegetation; or possessing any vegetation; or introducing exotic vegetation into a park, contrary to cl 18(1).
cl 22 NP&W Reg	Consent to sporting, recreational and other activities	OEH may consent, subject to conditions, to a person conducting, taking part in, organising, attending or participating in any sporting, recreational or other activities in a park, contrary to cl 21(1).
cl 23(2) NP&W Reg	Consent to research activities	OEH may consent, subject to conditions, to a person carrying out research in a park, contrary to cl 23(2).
cl 28(1) NP&W Reg	Licence for marinas and moorings	OEH may grant licences for marinas and moorings in Cowan Water subject to any terms and conditions which may be imposed by OEH.
s.15 Wilderness Act 1987	Development by statutory authority in wilderness area	The Minister may give consent to a statutory authority to carry out development in a wilderness area subject to a wilderness protection agreement or a conservation agreement.