



Department of
Environment and Conservation (NSW)

now incorporating the Environment Protection Authority

Your reference :
Our reference : 21846A1 BTF8374
Contact : Richard Whyte – 02 6332 7600

Mr Tim Ward
Environmental Planning Officer
Major Development Assessment
Department of Infrastructure, Planning and
Natural Resources
GPO Box 39
SYDNEY NSW 2001

North West Branch

29 April 2005

Dear Mr Ward,

I refer to your email dated 22 April 2005, and the Planning Focus Meeting (PFM) held on 21 April 2005 for a proposal by Slobobax Pty Ltd for a Freight Handling Complex, Great Western Highway, Raglan.

Please note that, although the Environment Protection Authority (EPA) is now a part of the Department of Environment and Conservation (DEC), certain statutory functions and powers continue to be exercised in the name of the EPA.

At the PFM I raised several matters which should be addressed in the Environmental Impact Statement (EIS) to be prepared in support of the proposed development. I wish to confirm those in writing, as requested at the PFM and in your email. The EPA's advice is as follows.

Regulatory Requirements and the Need for a Licence from the EPA

I wish to advise that under the Protection of the Environment Operations Act 1997 (the Act) an environment protection licence (licence) with the EPA is not required:

1. Where an activity is not a "scheduled activity" under Schedule 1 of the Protection of the Environment Operations Act 1997,
2. Where development works do not constitute Scheduled Development Works (scheduled development work being works associated with construction of an activity identified under Schedule 1 of the Act, to enable that activity to be carried on at the premises), or
3. In relation to Part 5.3 of the Act "Water Pollution", where the developments will not result in a direct discharge to water and there is generally a low likelihood of impact on waters, and any impacts can be mitigated by good site control and housekeeping or are undertaken in accordance with relevant guidelines (where available) to ensure pollution should not occur.

Based on the information provided at the PFM, the proposed Freight Handling Complex does not require licensing by the EPA as it is not a scheduled activity, does not constitute scheduled development works under the Act. In addition, the proposed activity should be able to be conducted in a manner so that there should be no pollution of waters.

Furthermore, I have confirmed with the Australian Rail Track Corporation (ARTC) that the proposed Freight Handling Complex, and all the activities associated with it (including rail movements, shunting etc along any spur line from their track) are entirely separate activities from those authorised by the environment protection licence held by the ARTC.

As such the proposal by Slobobax is not an Integrated Development Assessment for the EPA and Bathurst Regional Council would become the Appropriate Regulatory Authority (ARA) for the premises, should development consent be granted.

Noise Pollution

Noise modelling should be carried out and the noise assessment for the EIS conducted in accordance with the EPA's Industrial Noise Policy (January 2000).

In addition to the background noise monitoring being undertaken, the monitoring (and modelling) should also include sensitive noise receptors such as The Scots School and rural residential residences to the south east.

Importantly, towards the end of the PFM it became apparent that the company had yet to finalise its spur line design, and options for shunting rail trucks. Should shunting occur near the village of Raglan, the potential noise impacts could be unacceptable. Background noise monitoring and a noise assessment **must include the village of Raglan**. The assessment should not be limited to just those residences closest to the main railway line.

Air Pollution

The EIS must address the potential for air pollution. There will need to be major earth moving carried out during the construction of the proposed Freight Handling Complex and dust control measures must be implemented to minimise the emission of dust. These must be addressed in the EIS.

Also, the potential for air pollution from the operation of the Freight Handling Complex (eg. fumes), and proposed control measures, must be addressed in the EIS.

Water Pollution

The EIS must address the need for adequate sediment and erosion control during the construction phase, and also the management of stormwater and the control of pollutants (oils, greases etc) during the operational phase. The proponent and its consultants should refer to the appropriate guidelines on stormwater and erosion and sediment control.

Waste

The EIS must address the handling of waste from the proposed Freight Handling Complex. Waste should include the handling of domestic waste (sewage) and packaging waste generated on site.

Chemicals and Dangerous Goods

At this stage, according to the advice presented at the PFM, it is not intended for the Freight Handling Complex to handle the bulk movement of chemicals and Dangerous Goods. This should be confirmed in the EIS.

Should in the future it be proposed to handle these substances, then the operators of the Freight Handling Complex will be required to obtain the necessary approvals and consents from the relevant authorities.

Contaminated Land

The site for the proposed Freight Handling Complex must be assessed for any potential contamination. It will be necessary to gain information on the history of the site, and especially if it was previously as an orchard and chemicals were used on the site.

Flora, Fauna and Threatened Species

The EIS needs to address the potential impact on Flora, Fauna and Threatened Species. I have enclosed a set of *Environmental Assessment Guidelines Flora and Fauna* in order to provide you with the proper guidance material.

Aboriginal Cultural Heritage

The EIS needs to address the potential impact on Aboriginal Cultural Heritage. I have enclosed a set of *Environmental Assessment Guidelines Cultural Heritage and Interim Community Consultation Requirements for applicants* should Part 6 Approvals under the National Parks and Wildlife Act (1974) be required, in order to provide you with the proper guidance material.

If you have any queries regarding this matter please contact me at the Bathurst Office of the DEC on 02 6332 7600.

Yours sincerely



RICHARD WHYTE
Regional Manager Bathurst
Environment Protection & Regulation Division
Department of Environment and Conservation

Enclosed: Guideline Material (Flora and Fauna, Cultural Heritage)

ENVIRONMENTAL ASSESSMENT GUIDELINES FLORA AND FAUNA

INTRODUCTION

The *Environmental Planning and Assessment Act (1979) (EP&A Act)* requires that proponents of a development/activity and the Consent/Determining Authorities adequately assess the impact of a development or activity in any Environmental Impact Assessment (EIA) documents. These EIA documents include:

- Statement of Environmental Effects (SoEE), or
- Review of Environmental Factors (REF), or
- Environmental Impact Statement (EIS).

These are introductory, generic specifications of the Department of Environment and Conservation (DEC) for an adequate assessment of the impacts of a development proposal on native flora and fauna (ie including protected and threatened species). However, the DEC recognises that the scale and complexity of the project will to some extent, dictate the level of information that is required to address the questions posed below. Consequently, flora and fauna assessments need to be tailored to suit the proposal. For example, a development which is proposed on land which has already been totally (or substantially) cleared should address the issues raised below but the amount of work required to address these issues may be substantially less than if the area comprised undisturbed bushland and, therefore, of more significant wildlife habitat value. A preliminary assessment, including a desktop investigation and a preliminary site inspection, may indicate the need for a detailed survey of the site.

Aboriginal cultural heritage and archaeological sites may still be present on substantially disturbed areas and appropriate assessment of these is required. (Please refer to separate Cultural Heritage Assessment Guidelines included.)

It is up to the proponent (and later the consent and/or determining authorities after appropriate consultation) to determine the detail and comprehensiveness of assessment required to form legally defensible conclusions regarding the impact of the proposal. The scale and intensity of the proposed development should dictate the detail of investigation.

It is important that all conclusions are supported by adequate data and that these data are clearly presented in EIA documentation.

The DEC will consider the following issues when reviewing an EIA document:

1. **Concerns** - What are the DEC's concerns regarding the conservation of natural and cultural heritage in accordance with the relevant legislation? Is the proposal likely to affect natural and cultural heritage? How?
2. **Provision of Information** - Is adequate information provided for a valid assessment of the impacts?
3. **Validity of Conclusions** - Has the proponent arrived at valid conclusions as a result of the assessment of impacts?
4. **Recommended Conditions to Consent** - Should Consent or Approval be granted, what conditions (if any) are required to ensure that the project is developed, and thereafter managed in accordance with natural and cultural heritage conservation and the provisions of legislation administered by the DEC?

Thus the EIA document should fully describe the existing environment including flora and fauna, so that future impacts can be properly assessed and then reviewed (eg during the public participation phase).

FLORA

Background

The Australian flora comprises many endemic taxa and is therefore unique in the world.

The DEC is concerned at the extent to which vegetation has been cleared and otherwise modified in Western NSW. This high level of modification has been highlighted in the National State of the Environment Reports (1996 and 2001). Evidence strongly suggests that many plant species and communities are threatened with extinction.

Although the proposed site may be disturbed by various landuses, any remnants of native vegetation are of significant natural heritage value, including riparian and wetland areas. The area of vegetation and habitat at the proposed site may provide an area of high biological diversity, high conservation value or may not be well represented or protected elsewhere. It may also act as a corridor or migratory route for wildlife, drought refuge habitat or have other important values.

The NSW community places a high value on those areas of native vegetation that remain. The DEC is committed to the protection, appropriate management, and where necessary, rehabilitation of native vegetation. For these reasons, the DEC considers that careful planning should precede any development that involves further vegetation clearance or other significant impact within areas of remnant vegetation.

Report Requirements

The EIA documentation should include a report on the flora that includes the following:

- detailed location map and identification of the area surveyed (including the location of photographs, transects, areas of significance etc),
- at least one of the following: a land satellite image, vegetation communities map, aerial photograph, or a remnant vegetation map,
- a complete plant list (including scientific names of those plants) of all tree, shrub, ground cover and aquatic species, categorised according to country of origin (ie., native vs exotic),
- a detailed description of vegetation structure (in terms of a scientifically accepted classification system) and spatial distribution (i.e. plant densities and patterning) on the site, including a vegetation map,
- describe the condition and integrity of the vegetation including a description of any past disturbance,
- an account of the likely original vegetation communities (pre-, or at early settlement), and an assessment of the likely regional distribution of the original communities,
- an assessment of whether the plant communities are adequately represented in conservation reserves or otherwise protected,
- an account of the hydrology of the area and how this relates to the dynamics of the vegetation communities,
- a list of **known** and **likely** threatened species as listed under Schedules 1 & 2 (*Threatened Species Conservation Act 1995*) which might occur at the site. The DEC database needs to be accessed and the likelihood of occurrence of threatened flora species determined,
- an assessment of the impacts of the proposal on flora, on-site and off-site (eg siltation, water availability or drainage changes) and measures to mitigate these impacts,
- an assessment of the significance of the impact of the development at both the site and at the regional scale,
- a detailed rehabilitation/management plan including a list of the plant species to be used during rehabilitation (if required),
- detail methodologies used and a list of the reference literature cited, and
- any other issues that may be considered relevant.

The above guidelines will provide some of the information necessary to conduct an 'Eight Part Test of Significance' required for threatened flora and fauna under Section 5a of the *EP&A Act*, should threatened species be likely or known to occur in the locality of the subject development proposal. Similarly, it will provide some of the information required if an application is found to be necessary under the *Native Vegetation Conservation Act (1997)*. However the above relates mostly to the specific environmental assessment processes under the *EP&A Act* and does not constitute an 'Eight Part Test of Significance'.

Native Vegetation Conservation Act (1997)

The DEC wishes to stress that the proponents will need to consider the provisions of the *Native Vegetation Conservation Act (1997) (NVC Act)*. If the proposal involves the clearing of native vegetation it may require the consent of the Director General of Infrastructure, Planning and Natural Resources.

The *NVC Act* also allows for Regional Vegetation Committees to create Regional Vegetation Management Plans that will set guidelines for vegetation management in each region. Please contact the Department of Infrastructure, Planning and Natural Resources if the proposed development is in one of these Regions or if you have any other queries regarding the *NVC Act*.

FAUNA

Background

Evidence suggests that Western NSW has suffered the highest extinction rate for indigenous mammals of any region in the world. Many other vertebrate species are currently threatened. One of the major reasons for such a high level of extinction has been the destruction of habitat. Native vegetation including wetland, riparian and remnant environments, are very significant areas of fauna habitat. Therefore any development in such areas should fully consider the impact on fauna and its habitat.

Report Requirements

The EIA document should include a report on the fauna (including protected and threatened species), that includes the following:

- detailed location map and identification of the area surveyed (including the location of photographs, transects, areas of significance etc),
- at least one of the following: a land satellite image, vegetation communities map, aerial photograph, or a remnant vegetation map,
- a complete list of all **known** and **likely** terrestrial and aquatic species (eg birds, mammals, reptiles and amphibians including scientific names). It is suggested that invertebrates also be considered as they form part of the food chain for many fauna species,
- those species which are protected, threatened or listed under any international agreements, as well as introduced species,
- those species known or likely to breed in the area,
- any species which have specific habitat requirements found within the project area,
- those species or populations which may be near the limit of their geographic range or are a disjunct/isolated population,
- assessment of the importance or otherwise of the location as a corridor, migratory route or drought refuge, in relation to other remnant vegetation, riparian and wetland areas or habitat in the region,
- assessment of the impacts of the proposal on all fauna and its habitat, at both the site and at the regional scale,

- identification of any mitigation measures proposed to limit or ameliorate the impact of the proposal,
- detailed methodologies used and a list of the reference literature cited, and,
- any other issues that may be considered relevant.

SEPP No. 44 - Koala Habitat Protection

The Shire may be listed in Schedule 1 of SEPP No. 44 - Koala Habitat Protection. If so, the requirements of the SEPP regarding Koala habitat protection should be considered by the proponents.

THREATENED SPECIES OF FAUNA AND FLORA

Background

Apart from the need to consider the impact on protected species, the proponent will need to address the requirements of legislation that currently governs threatened species protection and impact assessment in NSW.

The *Threatened Species Conservation Act (1995) (TSC Act)* protects all threatened flora and fauna native to NSW (excluding fish and marine plants). The proponent will need to consider the provisions of this Act.

The *TSC Act* contains lists of threatened species, which are divided into 5 categories – those presumed extinct, endangered species, endangered populations, endangered ecological communities and vulnerable species. This Act also allows for the declaration of critical habitat, key threatening processes and the preparation of both Recovery Plans and Threat Abatement Plans. These listings and plans must be considered as part of the EIA process.

If an activity or development is proposed in a locality likely or known to be occupied by a threatened species, population, ecological community or critical habitat, any potential impact to that threatened species must be taken into account during the development assessment process. However under the *EP&A Act*, some types of development are not required to go through approval processes. Please note that a licence may still be required under the *TSC Act* if such a development/activity is likely to harm a threatened species, population or ecological community. An information circular (*Threatened Species Conservation Act 1995*) is available from the DEC for detailed information about the *TSC Act*.

Eight Part Test & Species Impact Statements

If during the flora or fauna assessment or survey, threatened species are found or are likely to occur in the area, the proponents must undertake an 'Eight Part Test of Significance' as outlined in section 5A of the *EP&A Act* to determine whether or not the development would be likely to have a significant impact upon threatened species.

The '8 Part Test' is a statutory mechanism which allows decision makers to assess whether a proposed development or activity is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats.

The '8 Part Test' is contained within section 5A of the *EP&A Act* and consists of eight factors which need to be addressed for informed decisions to be made regarding the effect of a proposed development or activity on threatened species, populations or ecological communities, or their habitats. An information circular ('Threatened Species Assessment under the EP&A Act: The 8 Part Test of Significance') is available from the DEC for detailed information about the '8 Part Test'.

Following threatened species assessment via the '8 Part Test', it may be necessary to prepare a Species Impact Statement (SIS). The proponent will need to prepare a SIS in the following circumstances:

- If (after having addressed Section 5A) the flora/fauna assessment concludes that there is likely to be a significant impact to threatened species, or
- The proposed development is likely to affect critical habitat declared under the TSC Act.

If a SIS is required, the proponent (not the consultant) must write to the Director-General of DEC for any formal requirements for the SIS that he might deem appropriate. The SIS must then be prepared in accordance with these requirements and provided to the Director-General. In some instances the Minister for the Environment will also need to be consulted for approval. An information circular ('Species Impact Statements') is available from the DEC for detailed information about this assessment.

Methods to reduce the impact on the protected and threatened species should be considered fully, and are considered an integral requirement within any SIS document.

The DEC advises that conducting an '8 Part Test' or a SIS according to the provisions of the *EP&A Act* and the *TSC Act* is a complex task and should be undertaken by suitably qualified person(s).

AVAILABLE DATA

The DEC can supply, at the standard cost, fauna prediction data and recorded fauna sightings data (Wildlife Atlas of NSW) to help in the investigation.

The following information on site recordings of Flora and Fauna is available from DEC:

- Atlas of NSW Wildlife (1995). A DEC database containing records of fauna and flora, including threatened species. Computer print-outs for all records on a 1:100,000 mapsheet are available (at cost) from the Data Exchange Officer on (02) 9585 6684.
- Threatened Species of Western NSW (Dec. 1996). Species profiles including likely distribution, habitat and threats. Ringbound folders are available at \$82.50 (incl. GST) (plus \$5.50 postage) from the Dubbo Office of the DEC, (02) 6883 5330.

Other reference literature may be available for the subject locality/region. The proponent should explore this possibility thoroughly.

FURTHER INFORMATION

Should you wish to clarify any issues raised here or require further information please feel free to contact:

Conservation Assessment and Planning Unit
Environment Protection and Regulation Division
Department of Environment and Conservation
North West Branch

48 -52 Wingewarra St (PO Box 2111)
DUBBO NSW 2830

PH (02) 6883 5330

FAX (02) 6884 9382

**ENVIRONMENTAL ASSESSMENT GUIDELINES
CULTURAL HERITAGE**

Aboriginal sites are widespread throughout New South Wales. There is considerable regional variation in the types of sites, their age, their contents and how they are situated on the landscape. It is important that these sites are conserved as fragile and irreplaceable Aboriginal heritage. In some cases there is Aboriginal oral tradition concerning specially significant sites or landscape features

The Department of Environment and Conservation (DEC) has a statutory role in the protection and preservation of Aboriginal sites. This includes reviewing and assessing the Aboriginal cultural and archaeological aspects of environmental studies, as well as a regulatory role in their impact or destruction.

The EIS or other environmental assessment should consider Aboriginal cultural heritage, even if the area is disturbed in some way. The EIS should consider:

- Accessing the DEC's Aboriginal Heritage Information Management System (AHIMS) in the initial planning stage. This is to determine if there are any already known sites which will require protection, or if there is a need for a Section 87 Permit or Section 90 Consent (see below). The AHIMS database is not a conclusive indicator that sites may exist in the development area. Information from the AHIMS database may be made available by the AHIMS Registrar. For contact details and general information about the Aboriginal Heritage Information Management System please refer to Attachment 1.
- The Aboriginal community (which may include Local Aboriginal Land Councils, Native Title Groups and Elders Groups) needs to be consulted so that they can be advised that there may be impact to sites relevant to their heritage. There also may be knowledge in the community about sites in the development area, particularly those related to oral tradition. This process of Aboriginal consultation should be maintained throughout the entire EIS procedure.
- An assessment of the need for an archaeological survey, and if so, to what level of detail. This should be defined by a study plan or research design. In most cases, an on-the-ground systematic archaeological investigation will be needed. If there is a likelihood of buried sites not visible on the surface, a Section 87 Permit from the DEC may be needed for sub-surface testing.
- The outcome of the survey is to determine what sites can be avoided, and what ones cannot. Another objective is to assess the significance of the sites. It maybe that damage or destruction of some sites is unacceptable, or that special safe-guards are needed for others.

this limitation, and the fact that all Aboriginal sites are protected under NSW legislation, the NPWS may recommend that a survey for Aboriginal sites is conducted where development is proposed.

Locational details are recorded as grid references. It is important to note that there *may* be errors in these recordings. If accurate site locations are required it may be necessary to confirm the locations on the ground.

If the information provided is to be used for ongoing purposes, it is recommended that regular updates are obtained as new records are continually being added to the database.

How to obtain Aboriginal sites data

To obtain information about recorded Aboriginal sites, a written request should be forwarded to the Aboriginal Sites Registrar (a request form is available if required). All requests must include;

- Company/organisation name (if applicable)
- Contact name, phone number and address details
- Purpose for which the information is required
- Copy of a topographic map with the area of interest clearly marked
- A cheque for \$30 per search area, made out to the DEC (unless other arrangements have been made with the Registrar)

Applications should be forwarded to:

The Aboriginal Sites Registrar
Cultural Heritage Division
Department of Environment and Conservation
PO Box 1967
Hurstville, NSW 2220. or fax (02) 9585 6466

Further information

For further information about the Aboriginal Sites Register, please contact the Aboriginal Sites Registrar (02 9585 6471; fax 02 9585 6466).

ATTACHMENT 1

THE ABORIGINAL HERITAGE INFORMATION MANAGEMENT SYSTEM GENERAL INFORMATION

The Department of Environment and Conservation (DEC) maintains the Aboriginal Heritage Information Management System (formerly the Aboriginal Sites Register of NSW). This database includes a computer database and site recording cards for all recorded Aboriginal sites in NSW, in addition to a database index of archaeological reports and a library of these reports. Information from the database may be made available for a variety of uses.

What information is available?

Information relating to recorded Aboriginal sites in a particular area may be made available upon request. The information is generally available in the form of a standard report from the Register database. This report lists all recorded sites within and/or surrounding the area of interest, with each record including the site identifying number, site type, site location and Australian Map Grid co-ordinates, date of recording and the name of the recorder of the site.

If the area of interest is particularly large (e.g. a river catchment), a Data Licence Agreement may be required. This agreement is a legal contract document between the Director-General of the DEC and a named client, and is designed to ensure that any data supplied under the agreement is used appropriately.

In some cases, written support from the relevant Local Aboriginal Land Council may be required before information can be provided from the Register.

How is the data provided?

Site information will generally be provided as a standard computer print out, however, digital computer formats on disk may be available for specific purposes.

Is there a charge for data?

The cost for supply of a standard report is \$30 per search area. An urgent database search may be conducted for \$60. More complex reports may incur an additional charge.

In particular circumstances there may be no charge for a report (e.g. for Aboriginal Land Councils, research purposes etc.). The waiving of any charge requires discussion with the Aboriginal Sites Registrar.

There is no charge imposed for a Data Licence Agreement, however, any data supplied under a Licence Agreement will generally be charged at the current "cost of transfer".

Are there any limitations in the data?

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

A broad overview of the Aboriginal Heritage Assessment process is contained in Attachment 2.

If Aboriginal objects/places are known to be directly or indirectly adversely affected, the Proponents will need to apply for, and be issued, a Section 87 Permit or a Section 90 Consent by the Director-General of the DEC to comply with the National Parks and Wildlife Act (1974). A necessary part of this is a written statement detailing the concerns and opinion of the proposed impact from the Aboriginal community.

Normally, Special Conditions are attached. These may include provisions for impact minimisation and salvage. Salvage is a form of mitigation by documenting in detail what is to be lost by the impact. Frequently it involves archaeological excavation and analysis, or other types of recovery and study.

Alternatively the development might be redesigned by the Proponent to accommodate and protect the site(s). The archaeological survey, analysis and reporting, as well as the negotiation with the Aboriginal community, can be a lengthy process. If a Permit for salvage is needed, then this can add on more time. It is important to begin the study for Aboriginal site impacts in the very earliest stages to avoid delays in the developments' timeline.

The DEC has produced detailed guidelines for consultants and these are available from the Cultural Heritage Manager.

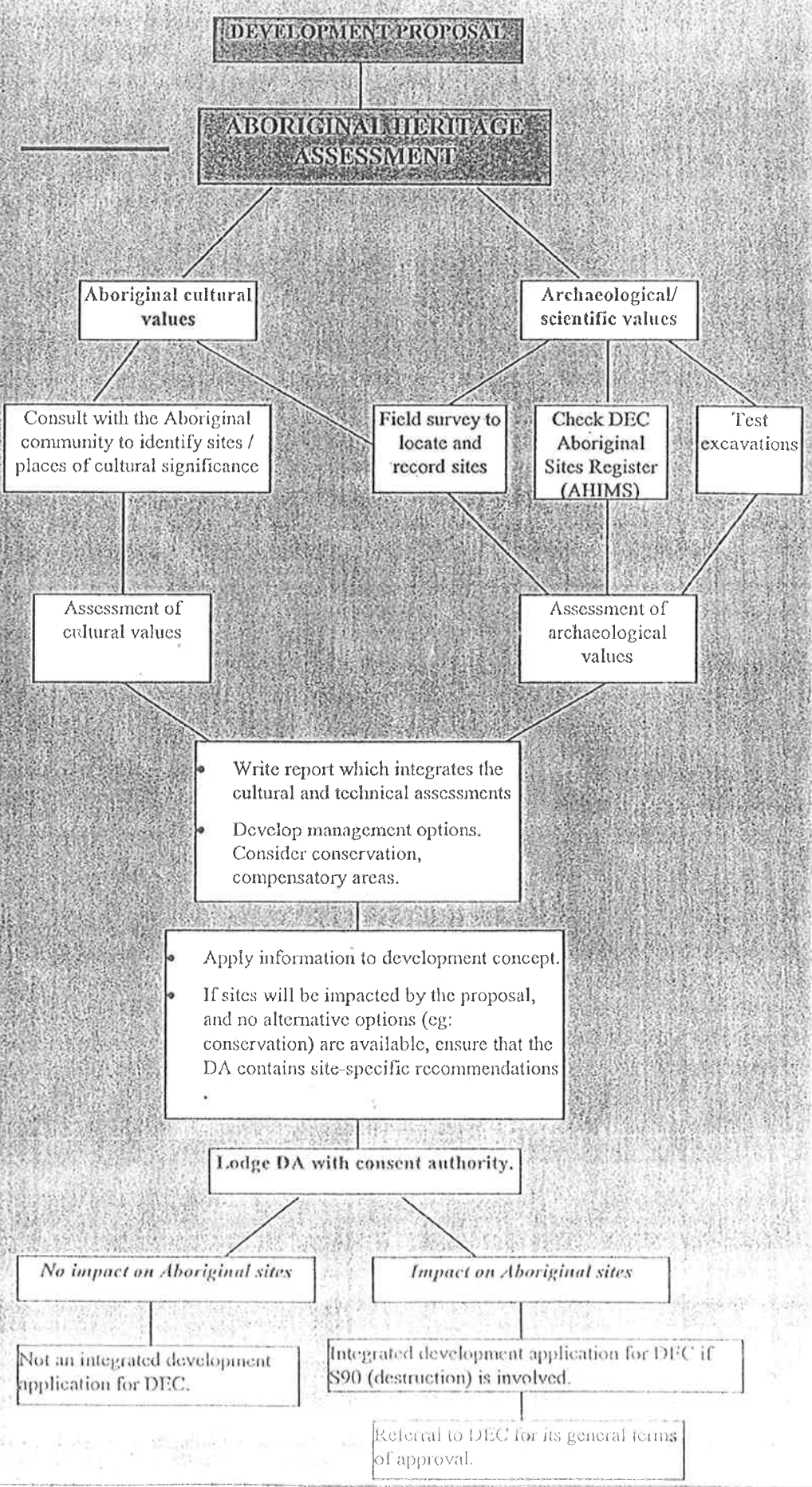
Further information should be sought from the Cultural Heritage Manager at the Dubbo Office of the DEC.

Cultural Heritage Manager
Western Aboriginal Heritage Unit
Department of Environment and Conservation

52 Wingewarra St
PO Box 2111
DUBBO NSW 2830

PH (02) 6883 5345
FAX (02) 6834 9382

- PROCESS**
1. Development proposal.
 2. Investigative studies and assessments. This could include: Aboriginal heritage, flora and fauna, hydrology, air, noise, social / economic etc.
 3. For Aboriginal heritage, information is required about:
 4. Information sources:
NB: Test excavations may be required. This requires a permit from DEC, allow 8 weeks for processing.
 5. Undertake assessment
 6. Prepare report and recommend management options.
 7. Apply this and information from other assessments to development concept and finalise development proposal. Avoiding impact on sites is the preferred strategy.
 8. Lodgement of DA with consent authority
 9. DA is an IDA if development will impact on Aboriginal sites in accordance with Section 90 of the NPW Act 1974.





National Parks And Wildlife Act 1974: Part 6 Approvals

**Interim Community Consultation Requirements
for Applicants**

1. The Department of Environment and Conservation (DEC) respects and acknowledges the role of Aboriginal people in the management and protection of their Cultural Heritage.
2. These interim guidelines are to guide persons seeking an approval under Part 6 of the National Parks and Wildlife Act.
3. DEC has developed these interim guidelines to clarify and reaffirm the intent of its policies regarding the requirements for consultation by proponents with members and representatives of Aboriginal communities.
4. These interim guidelines seek to be clear as to what the parties involved in this process should expect and in doing so, seek to be workable and fair to all parties.
5. The DEC is committed to developing a more detailed guideline to replace this interim guideline, based on consultation with the Aboriginal community and other stakeholders in 2005.

PART A: SCOPE AND INTRODUCTION

This is a document focussing on the requirements for engaging with the Aboriginal Community as part of the preparation of an application for a consent or permit under Part 6 of the NPW Act.

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 the DEC requires proponents to undertake consultation with the Aboriginal Community as an integral part of the impact assessment.

This document replaces all previous DEC or NPWS policy or procedural documents relating to Aboriginal Community consultation connected with Part 6 approvals. It applies to all applications lodged from 1 January 2005.

STATUTORY FRAMEWORK

Why does DEC manage Aboriginal cultural heritage? Where does it get its authority?

The *National Parks and Wildlife Act 1974* (the NPW Act) is the primary legislation regulating the protection of Aboriginal heritage through the administration of Part 6 of the NPW Act. The DEC administers the NPW Act.

Part 6 of the NPW Act provides protection for Aboriginal objects and Aboriginal places.

- *An Aboriginal object is any deposit, object or material evidence (not being a handicraft made for sale) relating to Aboriginal habitation of the area that comprises NSW, being habitation before or concurrent with the occupation of that area by persons of non- Aboriginal extraction, and includes Aboriginal remains (as defined within the meaning of the NPW Act).*
- *An Aboriginal place is a place which has been declared so by the Minister administering the NPW Act because he or she believes that the place is or was of special significance to Aboriginal culture. It may or may not contain Aboriginal objects¹.*

The DEC's responsibilities under part 6 of the NPW Act are triggered where an activity is likely to impact on Aboriginal objects (also referred to as sites) and declared Aboriginal Places. Such an activity requires the approval of the Director General of DEC under section 87 or section 90 of the NPW Act.² Section 91 of the Act requires that the DEC be notified by any person who is aware of the location of an Aboriginal Object within a reasonable time after discovery of that object.

¹ Aboriginal places are those that have been gazetted in accordance with section 84 of the NPW Act. It should be noted that the NPW Act does not provide protection for spiritual areas or natural resource areas that have no physical evidence of Aboriginal occupation or use, unless they have been declared an Aboriginal place.

² DEC section 87 permit is required to disturb, move and/or take possession of an Aboriginal object or disturb land for the purpose of discovering an Aboriginal object. DEC section 90 consent is required to destroy, damage or deface an Aboriginal object or Aboriginal Place. In the Act, these are collectively referred to as 'Approvals'.

The decision whether or not to issue a consent under Section 90 and or a permit under Section 87 of the NPW Act is the responsibility of the Director General of the DEC. It is the responsibility of the proponent to supply sufficient information to enable the Director General to make a decision.

Why the DEC requires consultation

The DEC recognises:

- that Aboriginal heritage has both cultural and scientific/archaeological significance and that both should be the subject of assessment to inform its decision making
- that Aboriginal people are the primary determinants of the significance of their heritage.
- that Aboriginal Community involvement needs to occur early in the assessment process to ensure that their values and concerns are taken fully into account, and so that their own decision-making structures are able to function;
- the information arising out of consultation allows the consideration of Aboriginal community views about significance and impact. It also allows the merits of management or mitigation measures to be considered in an informed way.

Hence, when administering its approval functions under the NPW Act, DEC requires that applicants consult with the Aboriginal community about the Aboriginal cultural heritage values (cultural significance) of Aboriginal objects and places within the area being considered for development.

However, community consultation is not a sign-off or approval process. The NPW Act establishes the Director General of DEC as the decision maker. The DEC recognises that its decisions will not always be consistent with the views of the Aboriginal Community, and that there may not always be agreement within the Aboriginal community. However, DEC will take into account all relevant information it receives as part of its decision making process.

The community consultation process ensures Aboriginal communities have the opportunity to improve assessment outcomes by:

- influencing the design of the assessment of cultural and scientific significance;
- providing relevant information regarding the cultural significance values of the objects/places;
- contributing to the development of cultural heritage management recommendations; and
- providing comment on draft assessment reports prior to their submission.

Summary of the Roles of the Parties

Proponent

Initiates the proposal, seeks the views of the Aboriginal Community about methodologies, gathers cultural and archaeological information, uses this information to assess its significance, undertakes assessment of potential impact, gathers the views of the Aboriginal community about potential impacts and the mitigation of these, and provides the results to DEC in a report to accompany applications for approval.

Aboriginal Community

The primary determinants of the significance of their heritage. May participate in the process through comment on the assessment methodology, contributing cultural knowledge, and commenting on cultural significance of potential impacts and/or mitigation measures. These comments are provided through the assessment process conducted by the proponent.

DEC

Is the decision maker, reviews information from the proponents including information about the views and knowledge provided by the Aboriginal Community, and makes a decision to grant or not grant approval (with or without conditions).

Service Providers

Various parties with specialist skills or knowledge can be engaged by proponents to help them fulfil their responsibilities. Services provided can include Aboriginal assessment and advisory services and archaeological services.

PART B: CONSULTATION REQUIREMENTS

In reviewing applications for consents and permits, the DEC will look to see that the following consultation requirements have been met.

1: Notification and Registration of Interests

The proponent or their consultant³ (referred to as 'the proponent' below) must actively seek to identify stakeholder groups or people wishing to be consulted about the project and invite them to register their interest.

To this end, it will be sufficient for the proponent to provide written notification to:

- a. the bodies listed below:
 - the Local Aboriginal Land Council(s)
 - the Registrar of Aboriginal Owners
 - Native Title Services
 - Local Council (s)
 - Department of Environment and Conservation⁴; and
- b. via an advertisement in the local print media

The notification must set out details of the proposal and invite registrations from interested groups or individuals. A closing date for registration of interest must also be included. The time allowed should reflect consideration of the project's size and complexity, but must in all cases allow at least 10 working days to respond.

The proponent must record all registrations received in writing before the closing date. The DEC requires the proponent to include all parties that have registered their interest in step 2 below. Respondents that do not register by the due date may still participate in the consultation process in step 3.

2: Preparation for the Assessment (design)

Proponents are required to undertake a cultural assessment and a scientific/archaeological assessment. These assessments are then to be integrated into a single Cultural Heritage Assessment report.

The proponent must present and/or provide the proposed methodology for the cultural and archaeological assessment to the registered stakeholders. The stakeholders are then provided with a reasonable time (at least 21 days) to review and provide feedback to the proponent, including identification of issues/areas of cultural significance that might affect, inform or refine the methodology. Comments should be provided in

³ Proponents may engage consultants to assist them. These could be Aboriginal or non-Aboriginal persons with appropriate expertise.

⁴ Address correspondence to The Executive Director Operations, Department of Environment and Conservation, PO Box A290, Sydney South 1232

writing, or may be sought verbally in a meeting with the registered respondents. In either case they should be documented in the proponent's assessment report.

The design of the cultural assessment must consider the following factors:

- Notifying Aboriginal people in sufficient detail about activities which may impact on Aboriginal heritage, so that their concerns can be identified;
- Providing the opportunity for Aboriginal people who hold knowledge to contribute to the assessment process;
- Identifying objects and places of significance to the Aboriginal community that may be impacted by the proposal so that these impacts can be avoided wherever possible; and
- Identifying whether there are culturally acceptable mitigative measures when impacts are considered to be unavoidable by the proponent.

The consultant must consider any comments provided and explain in the final report how those comments were considered in finalising the methodology. The DEC does not require that the proponent remunerate individuals or groups providing feedback on proposed cultural or archaeological methodology.

3: Drafting, Review and Finalisation of the Cultural Heritage Assessment Report

The proponent must execute their finalised assessment methodology and then produce a draft assessment report on the cultural and archaeological significance of the values that may be impacted by the proposal. The report must:

- detail the objects and places identified and how they will be impacted by the development;
- detail the consultation undertaken, how comments received at various times were considered; and
- include management and mitigation recommendations drawing on both information provided by the stakeholders and the results of the cultural and archaeological assessments.

Once the draft report is completed, notice of its availability must be provided to all the registered stakeholders identified in step 1, and the local Aboriginal Land Council (even if not registered) for comment.

Any additional stakeholders who have identified themselves to the proponent in writing after Step One must also be notified that the draft report is available and their comments invited.

After considering the comments received the consultant/proponent must then finalise the report demonstrating how comments received have been considered and submit it to the DEC for consideration with their application.

DEC DECISION

On receipt of sufficient information from the applicant, DEC will proceed to make its decision. The outcome of decision making will be either the granting or refusal of the application(s), with or without conditions. If consent is approved then, in imposing any

conditions, DEC will take into account the views of the Aboriginal stakeholders as reflected in the Cultural Heritage Assessment Report.

DEC does not seek to consult directly with the Aboriginal Community in relation to the issuing of consents under Part 6 of the NPW Act. This is because it requires the proponent to provide it with the views of and information from interested parties. In making its decision, however, the DEC will also consider any other relevant information that has been provided to it.

PART C: PROVISION OF ABORIGINAL ASSESSMENT AND ADVISORY SERVICES

In addition to providing feedback on the proposed methodology, registered stakeholders may lodge offers to provide Aboriginal assessment and advisory services to the proponent for the cultural assessment and/or the archaeological assessment.

In meeting DEC requirements, the proponent should expect that offers to participate in the archaeological assessment will detail skills and experience in one or more of the following:

- field identification and survey techniques (including confirmation of physical ability to undertake fieldwork);
- cultural knowledge; and
- ability to assist in communicating the results of the survey back to the stakeholders for the assessment of cultural values and significance and returning advice on their response to the proponent.

The number of Aboriginal people that a proponent might engage in the archaeological assessment will depend on the scale and nature of the project, and should provide a balance of field experience and cultural knowledge. The DEC anticipates that in some instances there will be multiple offers from suitably qualified, skilled or experienced Aboriginal people. DEC does not require all such people to be engaged, as the number and type of service providers to be engaged is a matter for proponents to determine. The focus should be on improving the outcome of the assessment process and may require some form of competitive selection by the proponent.

The DEC does not have or seek a role in the determination of fees or other terms of engagement for service providers. This is a contractual matter between the proponent and service providers. However, it is recommended that the proponent should ensure that the engagement of service providers is through a written agreement or contract that addresses all of the following:

- the services to be provided;
- roles and responsibilities of the parties;
- payment terms.

The above arrangements mirror the DEC's expectations regarding engagement of scientific archaeological services.