



NSW NATIONAL PARKS & WILDLIFE SERVICE

Guidelines for preparing a Review of Environmental Factors

How to assess the environmental impacts
of activities within NSW national parks

2021 edition



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Preface

The National Parks and Wildlife Service (NPWS) is responsible for the care, control and management of most land reserved or acquired under the *National Parks and Wildlife Act 1974* (NPW Act). That includes more than 870 national parks, nature reserves and other parks, which cover over 7 million hectares of land or around 9% of New South Wales. NPWS also manages other public lands, including some flora reserves under the *Forestry Act 2012* for which the Department of Planning and Environment (the Department) Secretary has been appointed land manager.

Management of these areas involves a wide range of responsibilities, including plant and animal conservation, fire management, and provision of opportunities for sustainable tourism and visitation, research, education and volunteering programs.

NPWS is committed to the conservation of NSW's biodiversity and cultural heritage. As part of its environmental responsibilities as a public land manager, NPWS ensures that no activities within its parks and reserves occur without environmental impact assessment required under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The *NPWS Guidelines for Preparing a Review of Environmental Factors* have been developed to assist this important task. They are to be used by anyone proposing to undertake an activity within lands reserved or acquired under the NPW Act, both external proponents and NPWS staff.

These Guidelines will help proponents to:

- 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 Assessment Act 1979* (EP&A Act), *Environmental Planning and Assessment Regulation* (EP&A Reg) and relevant State Environmental Planning Policies and Instruments

and

- statutory approval under the NPW Act or NPW Regulation (e.g. a lease, licence, easement or consent).

Proponents should consult with NPWS **before** commencing an REF to confirm legal permissibility and in-principle support.

It is standard practice for the REFs for all activities in national parks and other reserves to be submitted to NPWS for determination due to NPWS's role in the approval of works under the NPW Act.

Consultation with stakeholders is a major part of preparing the REF.

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Acronyms and abbreviations

Acronym	Meaning
AHIP	Aboriginal heritage impact permit
AHIMS	Aboriginal Heritage Information Management System
AOBV	area of outstanding biodiversity value
BC Act	<i>Biodiversity Conservation Act 2016</i>
BC Reg	Biodiversity Conservation Regulation 2017
BDAR	biodiversity development assessment report
BFEAC	Bush Fire Environmental Assessment Code
BioNet VIS	BioNet Vegetation Information System
CMP	conservation management plan
Cwth	Commonwealth
DPI	Department of Primary Industries
the Department	Department of Planning and Environment (NSW)
EIS	environmental impact statement
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	(Cwth) <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
HRC	hazard reduction certificate
ILUA	Indigenous land use agreement
LEP	local environmental plan
MGA	Map Grid of Australia (projection under the <u>Geocentric Datum of Australia</u>)
MNES	matters of national environmental significance
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NPW Reg	National Parks and Wildlife Regulation 2019
NPWS	NSW National Parks and Wildlife Service (part of the Department)
NRAR	Natural Resources Access Regulator
NT Act	(Cwth) <i>Native Title Act 1993</i>
PCT	plant community type
REF	Review of Environmental Factors
REP	regional environmental plan
RF Act	<i>Rural Fires Act 1997</i>

Guidelines for preparing a Review of Environmental Factors

Acronym	Meaning
ROTAP	rare or threatened Australian plant
SCA	state conservation area
SEE	statement of environmental effects
SEPP	state environmental planning policy
SoHI	statement of heritage impact
SIS	species impact statement
SSD	state significant development
SSI	state significant infrastructure

1. Is an REF required?

Proponents should initially contact the NSW National Parks and Wildlife Service (NPWS) office that manages the park in which their proposed activity is to be undertaken, to discuss:

- the proposed activity (the 'proposal')
- legal permissibility
- NPWS policies relevant to the proposal
- the types of approvals that may be required from NPWS
- information requirements.

It should be noted that additional approvals may be required from other NSW and Australian government agencies. While NPWS may provide a proponent with general guidance on these approvals, it is the responsibility of the proponent to ensure all necessary approvals are identified and obtained before proceeding with a proposal. It is recommended that proponents seek legal advice if they are not sure whether the proposal is permissible and what other approvals may be required.

Before commencing the REF, proponents should ensure:

- 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 Area Manager.

For further information, contact the local NPWS office for the park.

1.1 What is an REF?

An REF is an environmental assessment under Div.5.1 of the Environmental Planning & Assessment Act 1979 (EP&A Act). It is completed before NPWS undertakes an activity, or before an approval is granted allowing an external party to undertake an activity. It examines the significance of likely environmental impacts of a proposal and details measures required to mitigate adverse impacts to the environment. An REF assists with the:

1. 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 (in accordance with section 5.5 EP&A Act)
2. identification of appropriate conditions should approval be given
3. determination of whether the activity is likely to have a significant effect on the environment or significantly affect threatened species, populations, ecological communities or their habitats, in which case an environmental impact statement (EIS) and/or species impact statement (SIS) or biodiversity development assessment report (BDAR) will need to be prepared and considered before approval may be granted (s.5.7 EP&A Act).

An REF needs to be prepared before any approval is granted for a proposed activity to proceed. This includes the granting of a lease, licence or easement under the *National Parks and Wildlife Act 1974* (NPW Act) or consent under the National Parks and Wildlife Regulation 2019 (NPW Reg) to an external party for a proposal. An REF will be considered as part of the application to grant the approval.

1.2 When is an REF required?

Figure 1 provides an outline of the considerations required to determine whether an REF is required.

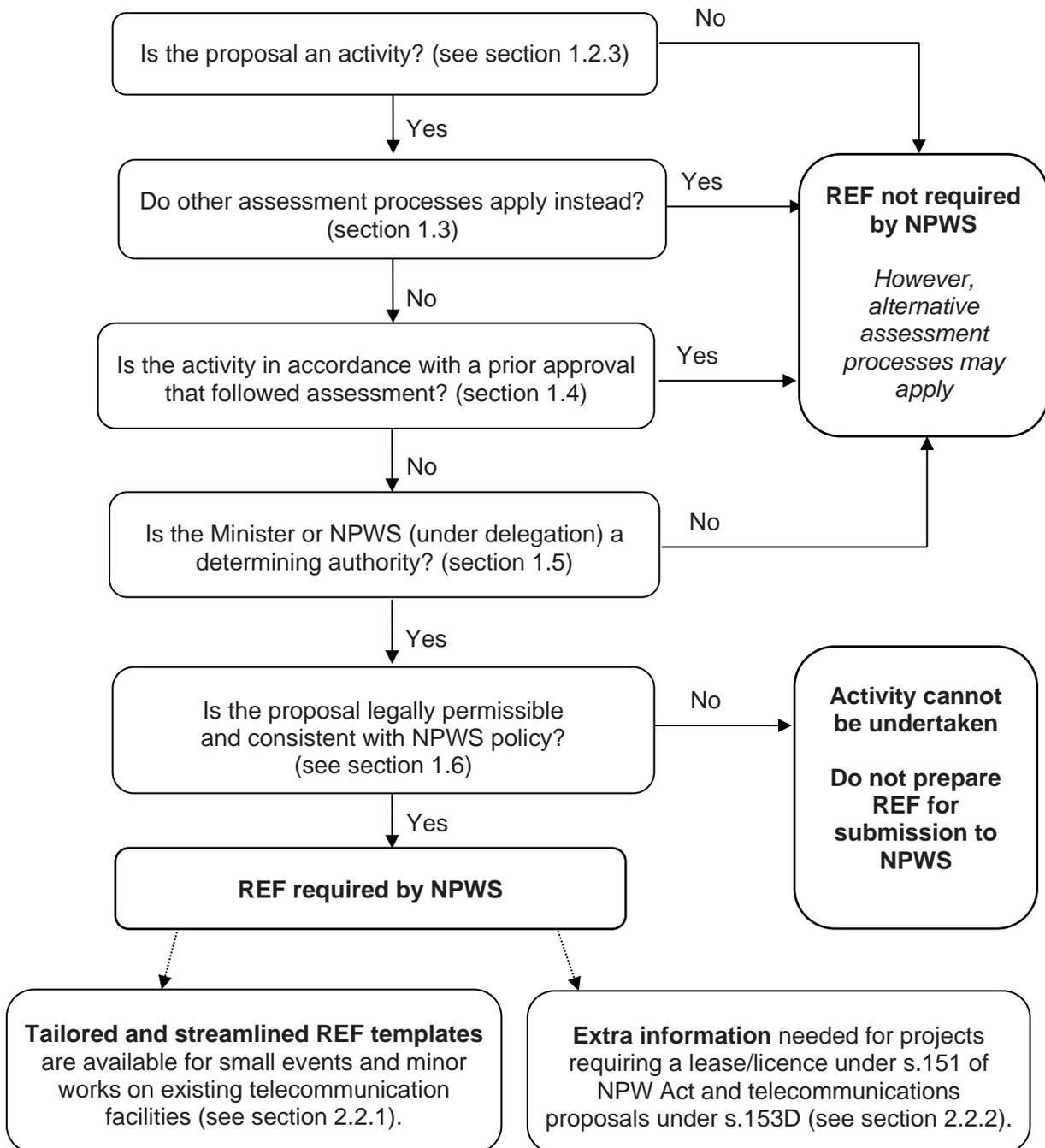


Figure 1. Flow chart: is an REF required?

1.2.1 Certain activities do not need an REF

General exemptions under the EP&A Act

Section 5.4 of the EP&A Act provides that s.5.5 and s.5.7 do not apply (and so an REF will not be required) in respect to the following activities:

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. a routine activity (e.g. the maintenance of infrastructure) that the Minister for Planning and Public Spaces has determined to be of low environmental impact and is carried out in accordance with a code approved by the Minister
3. an activity (or part thereof) which has been approved or is to be carried out by another determining authority after environmental impact assessment in accordance with Part 5 of the EP&A Act.

In these circumstances, neither an REF (nor a SIS or EIS) is required. However, even if another determining authority has already complied with Part 5 of the EP&A Act, NPWS will still thoroughly review that environmental impact assessment (if one has been prepared) to identify whether the environmental impacts on the park are acceptable and, if so, what conditions may be appropriate before granting approval for the activity to proceed on park. See Section 1.5 of these Guidelines.

Where a modification is proposed to reduce the overall impact of the activity, NPWS will require documentation to confirm the reduction of the activity's overall impacts. See Section 1.2.2 of these Guidelines.

Exempt development

Some environmental planning instruments (e.g. state environmental planning policies) identify certain types of 'exempt development' which are of no more than minor environmental impact. These do not require preparation of an REF.

The State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) covers a range of infrastructure works, mainly by public authorities, identifying some of them as exempt development if they meet certain standards. The Infrastructure SEPP applies to all of New South Wales, including NPWS-managed lands.

Other SEPPs identify exempt development in NPWS parks without the restriction that works must be carried out by or on behalf of a public authority to be considered exempt development. These include:

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) – applies across most NPWS lands except wilderness areas, areas of outstanding biodiversity value and the ski resort areas in Kosciuszko National Park
- State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007 (Alpine Resorts SEPP) – applies in the ski resort areas of Kosciuszko National Park
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP) – applies in state conservation areas and some Part 11 land only.

No REF will be required if an activity is identified as exempt development under these SEPPs and the relevant standards are fully met. However, NPWS approval will still be required.

Assessing impacts

Despite the above, NPWS may still decide that some other form of environmental assessment is required on policy grounds, to satisfy itself as to the impact of a proposal.

For the first general exemption of s.5.4 of the EP&A Act, some level of environmental assessment will be required to confirm there will be a reduction in overall impact as a result of the modification to the activity. See Section 1.2.2 of these Guidelines.

For exempt development, NPWS has developed specific procedures. For works unrelated to mineral or petroleum exploration activities, these require proponents to prepare and submit a conservation risk assessment before obtaining consent to undertake works in NPWS parks. For exploration activities, the application for a land access arrangement must include sufficient information to check on the requirements for exempt development (also known as 'non-assessable prospecting'). For a copy of any of these procedures or forms, please contact the local NPWS office.

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 conservation risk assessment is required. For example, where an existing cafe is to continue to operate in an unchanged manner but will be under a new lease. In this situation the cafe does not require further assessment under the EP&A Act; however, the proposal will still have to address the sustainability assessment criteria adopted under s.151B of the NPW Act. See Section 2.2.2 of these Guidelines for more information.

Infrastructure works under a protocol

NPWS has developed specific environmental assessment procedures for some infrastructure works (including maintenance and emergency works) associated with utilities. Such procedures cover:

- inspection and maintenance of infrastructure managed by TransGrid, Ausgrid and Integral Energy (now Endeavour Energy)
- operation, maintenance and inspection of Sydney Water assets.

For a copy of any of these procedures please contact the local NPWS office.

Where a proposal falls within this category, then the relevant procedures should be initially applied instead of these Guidelines. These Guidelines apply if the proposal falls outside the scope of any current protocol and attached consent, and meets the definition of an 'activity' (see Section 1.2.3 of these Guidelines).

1.2.2 Modification of a determined REF

Where an REF for a proposal has already been considered and the relevant approval issued, it may be modified with approval from NPWS. Any proposal will be considered in accordance with any NPWS 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:

- **Administrative modifications** – which aim to correct a minor error, misdescription or miscalculation in the instrument of the REF determination. This requires no assessment, but changes are required to ensure the validity of the determination notice and any approval in place for the activity.
- **Very minor changes to an activity** – for very minor alterations or additions that can be undertaken within the provisions of the existing determination. It is likely that no formal environmental assessment will be required but proponents may need to seek modification of the approvals in place for the activity (e.g. lease, licence or easement conditions).
- **Substantially the same activity subject to an REF** – for changes in footprint, design or equipment resulting in a similar (including lower) level of environmental impact. These can be addressed via an addendum to the original REF based on additional information. NPWS may then issue a revised determination notice for the modified activity with some new or varied conditions. Any approval under the NPW Act or other legislation may also need to be modified.
- **Substantially different to the original approved activity** – for any change in purpose, a relocation of the proposal and any changes in design/equipment that may lead to a substantially increased impact. These will require completion of a new REF (or potentially an EIS if significant environmental impacts are likely).

Before submitting a proposed modification, you should consult the local NPWS office to determine the appropriate assessment and approval process. A template for an addendum report is available on request.

1.2.3 Is the proposal an ‘activity’?

The word ‘activity’ is defined in s.5.1 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 5.1 includes the clarification that the definition of ‘activity’ does not include:

- any development of a class or description that is prescribed by the EP&A Act regulations for the purposes of the definition of activity¹
- any act, matter or thing for which development consent under Part 4 is required or has been obtained
- exempt development.

¹ This currently includes the demolition of temporary structures (clause 227AA of the EP&A Regulation).

Section 1.4 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 making extensions or other alterations to an existing building and relocating a building.
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.

Based on the above, and in reference to relevant case law, the following are activities which will usually trigger the need for an REF:

- construction of buildings other than those which may be constructed as exempt development (e.g. picnic shelters, shade structures and park entry booths)
- demolition of structures other than those structures the erection of which would be exempt development (e.g. shade shelters, small lookouts or stairways on walking tracks)
- construction of roads, vehicle trails, cycleways, bridges (including pedestrian bridges), large lookouts, new visitor areas, camping areas, helipads or airstrips
- quarries or gravel pits
- waste disposal facilities
- any earthworks or other works likely to change drainage patterns
- installation of pipelines and sewer lines, other sewage works or wastewater treatment systems
- installation of telecommunication towers, lines or underground cables
- maintenance, redevelopment or reconstruction of any of the above (however, an REF will not be required if any of these works were covered by the original REF and subsequent approval document)
- clearing vegetation in excess of the minimum required for exempt development.

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

1.3 Do other assessment processes apply instead?

An REF does not need to be prepared for those works where other assessment processes apply.

1.3.1 Bushfire hazard reduction work

Under s.100C(2) of the Rural Fires Act 1997 (RF Act), assessment under the EP&A Act (i.e. an REF) is not required in respect of emergency bushfire hazard reduction work.

Managed bushfire hazard reduction work in NPWS parks also does not require REFs but only if the works comply with s.100C(3) of the RF Act. If the works meet these requirements, then an environmental assessment under the Bush Fire Environmental Assessment Code

(BFEAC) is sufficient and the work is covered by a bush fire hazard reduction certificate (HRC). An HRC for NPWS-managed land can be obtained from NPWS.

If the works do not meet the BFEAC requirements and are an activity, then an REF must be prepared.

Certain lands are excluded from the BFEAC under either the RF Act (coastal wetlands and littoral rainforests) or the RF Regulation (areas of outstanding biodiversity value). An REF, or possibly an EIS or SIS would be required for hazard reduction work on these lands.

The BFEAC is also restricted on some other lands / vegetation types, including wilderness, other types of rainforests and wetlands, alpine complex and coastal dune vegetation within 100 metres of the mean high-water mark. An REF would likely be required for any hazard reduction work other than the manual removal of noxious or environmental weeds in these areas (depending on the scope and impact of the proposed work).

1.3.2 State significant infrastructure

Some activities in NPWS parks are state significant infrastructure (SSI). These do not require an REF. Instead, they are assessed according to separate provisions under Div.5.2 of the EP&A Act and require an EIS.

SSI is identified through the State Environmental Planning Policy (State and Regional Development) 2011 (State and Regional Development SEPP). Of relevance to NPWS parks, it includes visitor or tourism projects in NPWS parks worth more than \$10 million if not proposed by a public authority. It also includes activities proposed by a public authority (other than a council or county council) if that authority thinks that an EIS would be required under Div.5.1 of the EP&A Act (e.g. due to the likelihood of its significant environmental impact).

In addition, the Minister administering the EP&A Act may declare certain projects to be Critical SSI. More specific detail on the process can be found on the Department of Planning and Environment (the Department) Planning and Assessment website.

Proponents planning to undertake SSI projects within NPWS-managed land will need to consult with NPWS first to discuss whether the proposal is legally permissible and appropriate. They then contact the Planning Secretary to apply for the environmental assessment requirements. The planning approval is determined by the Minister administering the EP&A Act (currently the Minister for Planning and Public Spaces).

Proponents may also require landowner's consent before planning approval can be granted. The requirements for landowner's consent are set out in clause 193 of the EP&A Regulation. If landowner's consent is required, then the proponent should contact NPWS as soon as possible. In most cases, the Minister administering the NPW Act (currently the Minister for Environment and Heritage) needs to provide landowner's consent. For parks reserved under Part 4A of the NPW Act, landowner's consent would be provided by the NSW Aboriginal Land Council on the recommendation of the Board of Management.

Where landowner's consent is not required (e.g. for Critical SSI or SSI by a public authority) it is replaced by notification requirements under cl.193(4) of the EP&A Regulation. For lands reserved under Part 4 of the NPW Act or acquired under the NPW Act, any written notification should be provided direct to the Minister administering the NPW Act. For Part 4A reserves, notification should be sent to the NSW Aboriginal Land Council and Board of Management.

1.3.3 Development requiring consent under Part 4 of the EP&A Act

If an activity is on land reserved or acquired under the NPW Act and is for a use authorised under the Act, development consent under Part 4 of the EP&A Act will generally not be required. This is provided by cl.65 of the Infrastructure SEPP and is supported by standard wording in local environment plans for lands zoned *E1 National Parks and Nature Reserves*. In general practice, this means that most activities on NPWS parks do not require development consent under Part 4 of the EP&A Act, as long as they are authorised under the NPW Act.

There are four major exceptions to this general rule:

1. state significant development (SSD)
2. designated development
3. some coastal protection works
4. works (other than by public authorities) in the alpine resorts of Kosciuszko National Park.

With the exception of ski resort lessees submitting development applications in their leased areas of Kosciuszko National Park, proponents will typically need to obtain landowner's consent before development consent is granted under Part 4. The requirements for landowner's consent are set out in cl.49 of the EP&A Regulation. Any modification to a development consent already granted under Part 4 will also require landowner's consent under cl.115 of the EP&A Regulation. If landowner's consent is required for a project within a NPWS park, then the proponent should contact NPWS as soon as possible. In most cases, the Minister administering the NPW Act needs to provide landowner's consent. For parks reserved under Part 4A of the NPW Act, landowner's consent would be provided by the NSW Aboriginal Land Council on the recommendation of the Board of Management.

For proposals by public authorities or for a development application for public notification development, landowner consent is not required if the proponent instead gives notice of the application in accordance with cl.49(2) of the EP&A Regulation. By definition under cl.49(5), public notification development does not include mining or petroleum (gas) production in state conservation areas.

State significant development

The State and Regional Development SEPP specifies certain activities to be state significant development (SSD) but only if another environmental planning instrument already identifies that the activity is only permissible with development consent under Part 4 (see cl.8(1)(a) of the State and Regional Development SEPP).

Of relevance to NPWS parks, cl.7 of the Mining SEPP identifies that underground mining on any land and mining or petroleum production in state conservation areas require development consent under Part 4. The State and Regional Development SEPP then identifies that any mining or petroleum (gas) production (but not exploration activities) in an environmentally sensitive area of state significance (including state conservation areas) is SSD (see Schedule 1 cl.5).

Also of relevance to NPWS parks are some large-scale developments that involve tenures other than park and are declared to be SSD on those other tenures. Once part of a proposal is identified as SSD, the entire proposal is treated as SSD (see s.4.38 of the EP&A Act).

Proponents planning to undertake SSD within NPWS-managed land will need to consult with NPWS first to discuss whether the proposal is legally permissible and appropriate. They then contact the Planning Secretary for the environmental assessment requirements. Development consent is usually provided by the Minister administering the EP&A Act but can sometimes be the Independent Planning Commission if specified under an environmental planning instrument (EPI).

Designated development

Designated development is high-impact development (e.g. likely to generate pollution) or development that is in or near an environmentally sensitive area (e.g. a wetland) and warrants public scrutiny via a detailed EIS.

Schedule 3 of the EP&A Regulation provides a list of designated development for several industries. Examples of relevance to NPWS parks include:

- marinas or other related land or water shoreline facilities that moor, park or store vessels – but only of a certain size or number
- new quarries or quarry expansions in national parks, historic sites, nature reserves or declared wilderness.

Other SEPPs and EPIs may also identify designated development. For example, designated development includes works (other than routine maintenance or environmental protection works) on NPWS parks in areas that have been mapped as coastal wetlands or littoral rainforest under the State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP), where either:

- the works are not consistent with an adopted plan of management for the park, or
- the land is acquired but not reserved under the NPW Act.

See cl.10(6) of the Coastal Management SEPP.

For certainty regarding the planning approval pathway, it is recommended that proponents seek legal advice and refer to any applicable EPI, the local council or the Department's Planning and Assessment Group.

Proponents planning to undertake designated development within NPWS-managed land will need to consult with NPWS first to discuss whether the proposal is legally permissible and appropriate. They then contact the Planning Secretary for the environmental assessment requirements. Due to Schedule 7 cl.7 of the State and Regional Development SEPP, development consent for the above examples of designated development is provided by the local Regional/District Planning Panel.

Certain coastal protection works

Under cl.19 of the Coastal Management SEPP, development for the purpose of coastal protection works in a NPWS park will require development consent under Part 4 of the EP&A Act in the following circumstances:

- where the proponent is a person other than a public authority
- where the proponent is a public authority, except for:
 - works identified in the relevant certified coastal management program (previously known as a coastal zone management plan)
 - beach nourishment

- temporary placement of sandbags (for a period not more than 90 days)
- routine maintenance works or repairs to an existing coastal protection structure.

Coastal protection works include any structure that reduces the impact of coastal hazards on land adjacent to tidal waters, such as seawalls, revetments and groynes.

Under the State and Regional Development SEPP (cl.8A of Schedule 7), coastal protection works requiring development consent under Part 4 are declared to be regionally significant development. Development consent for regionally significant development is provided by the Regional/District Planning Panel. Applications for regionally significant development are supported by another form of environmental impact assessment known as a Statement of Environmental Effects (SEE).

Alpine resorts

The NSW alpine resort areas include Thredbo, Perisher Range (including Bullocks Flat), Mount Selwyn, Charlotte Pass, Kosciuszko Mountain Retreat, Ski Rider and Sponars Chalet. Although located within Kosciuszko National Park, alpine resort development assessments are generally governed by Part 4 of the EP&A Act and the Alpine Resorts SEPP. The Minister administering the EP&A Act is the consent authority for land in the alpine resort areas, including ski resort development.

Applications for ski resort development are also supported by a SEE. Development applications and the SEE are referred to NPWS for comment, including in relation to the application of the NPW Act. Under the EP&A Regulation (cl.12 of Schedule 6), ski resort lessees do not need to obtain landowner's consent before lodging a development application for works in their lease area. Landowner's consent (from the Minister administering the NPW Act) is, however, required for development within areas covered by a licence.

Within the resort area, infrastructure development by public authorities is still 'development without consent' due to cl.25 of the Alpine Resorts SEPP. Unless a state significant project, such proposals will be subject to assessment via an REF for consideration by NPWS.

1.3.4 Other triggers for environmental impact statements

If NPWS determines from the information provided in the REF that a significant effect on the environment is likely, an EIS will be required under s.5.7 of the EP&A Act. In s.1.4 EP&A Act, the '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'. If the significant effect only relates to threatened species, populations or communities, an area of outstanding biodiversity value or critical habitat, an SIS or BDAR plus an REF (rather than an EIS) will be required (see Section 1.3.5 of these Guidelines).

In addition to this and the other legal requirement in relation to SSI or development and designated development, NPWS may decide that an EIS is required instead of an REF in the following circumstances:

- if the activity is **of a kind similar** to those listed as designated development described in Schedule 3 of the EP&A Regulation
- if the activity is likely to have a high or major impact on the fabric, setting or community values of a cultural heritage item

- if it is realised early in the preparation of an REF that there is a high level of uncertainty regarding the potential impacts of the activity and that greater certainty regarding planning timeframes can be achieved through the EIS process.

1.3.5 Species impact statement

Under s.7.2 of the *Biodiversity Conservation Act 2016* (BC Act), an activity is defined as being 'likely to significantly affect threatened species' if:

- the activity is carried out in a declared area of outstanding biodiversity value (AOBV), **or**
- the test of significance (5-part test) determines that the proposal will significantly affect threatened species or ecological communities.

For these activities, s.7.8 of the BC Act requires the preparation of either a SIS or a BDAR.

For activities determined under Division 5.1 of the EP&A Act to which s.7.8 of the BC Act apply, the proponent can choose whether to prepare a SIS or BDAR. In general, NPWS will always favour the preparation of a SIS over a BDAR, as this provides more flexibility to ensure that impacts on park values are offset by actions that enhance those values within the park.²

If the proposal is SSI or SSD, however, s.7.9 of the BC Act stipulates that the EIS must include a BDAR unless it has been determined that the activity is not likely to have any significant impact on biodiversity values.

The *Fisheries Management Act 1994* (FM Act) requires preparation of a SIS if the test of significance prepared in accordance with that Act (7-part test) determines that an activity is likely to significantly affect threatened species, populations or ecological communities. This test includes consideration of whether the activity is likely to have an adverse effect on critical habitat declared under the FM Act.

Section 3.7.1 of these Guidelines provides more detail on tests of significance in relation to threatened species, populations or ecological communities.

1.4 Is there a prior approval?

If approval has already been obtained for the activity and the approval was issued following environmental impact assessment under the EP&A Act, there is no trigger for Part 5 of the EP&A Act to apply, and no REF is required. 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 NPWS regarding any management issues that may be relevant to undertaking the activity
- ensure that an environmental management plan is in place which covers the activity.

² Under the current rules of the Biodiversity Offset Scheme, offset credits cannot be retired on lands reserved under the NPW Act.

1.4.1 The activity is part of an activity which is already approved

If approval has already been obtained from NPWS 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.

1.4.2 Existing interests

An existing interest is recognised under the NPW Act where it was covered by ‘any authority, authorisation, permit, lease, licence, or occupancy’ granted by the Crown which existed before the land was reserved (see s.39, s.47H, s.47ZA, s58 and s.58S of the NPW Act). Examples of existing interests include permits, leases, licences or occupancies for boat sheds, apiary sites, marinas, pipelines, electricity transmission lines and roads. Existing interests are recognised for all reserve categories except Aboriginal areas.

If the activity can be undertaken in accordance with the terms and conditions of an existing interest and no further approval from NPWS is required, then an REF is generally not required. However, if the holder of an existing interest is proposing works that will expand the footprint of disturbance, intensify the use or require additional approvals (such as an Aboriginal Heritage Impact Permit under the NPW Act or a s.60 approval under the Heritage Act 1977), then an REF will be required if the work meets the definition of 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 that the authority was current at the date of reservation of the relevant portion of park (e.g. paid invoice for rental covering that period of time).

If the authorisation had lapsed or had been cancelled before reservation of the park, 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 of the NPW Act gives the Minister administering the NPW Act the power to govern existing interests on reserved lands that were issued under the *Forestry Act 2012* or the *Crown Land Management Act 2016* (or previous legislation). In some instances, the Minister may renew or extend the term of an existing interest. This may trigger the need for an REF.

1.4.3 Existing easements, leases and licences under the NPW Act

If an activity is carried out under and in accordance with an existing easement, lease or licence granted under the NPW Act (e.g. s.151 or s.153), then no REF is usually required. Additional works (that go beyond the extent of what was approved under the existing authorisation or its conditions) will require additional approval from NPWS and, depending on the scale and nature of the works, an REF.

1.4.4 Activities undertaken in accordance with Commonwealth legislation

Legislation enacted by the Australian Government may provide an exemption from state legislation, including the EP&A Act and NPW Act.

Under the *Cwth Telecommunication Act 1997*, for example, licensed carriers may install new telecommunications facilities in NPWS parks without environmental impact assessment or authorisation under NSW legislation. This can occur in very limited circumstances, however, such as temporary defence installations or if a facility installation permit has been granted. The standard exemption for a 'low-impact facility' does not apply to lands reserved for conservation purposes. The determination which sets out what types of facilities are low-impact and where they can occur is the Telecommunications (Low-impact Facilities) Determination 2018.

The Telecommunication Act also allows licensed carriers to maintain existing facilities without NPWS approval or an REF. This includes alteration, removal or repair of the original facility, the replacement of whole or part of the facility, and vegetation management. Maintenance of existing facilities may also include co-location of additional facilities but only if these additional facilities are fully inside existing buildings or existing ducts, pits or underground conduits.

Ancillary works associated with these activities (other than vegetation management), such as works to improve vehicular access or modifications to existing buildings, would require approval from NPWS and, accordingly, an REF may be required.

1.5 Determining authority for Part 5 assessments

A determining authority is defined in s.5.1 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 whose approval is required in order to enable the activity to be carried out. The term 'public authority' is defined in s.1.4 EP&A Act.

In the context of activities within NPWS parks, the determining authority is technically the Secretary of the Department or the Minister administering the NPW Act. This role is exercised by senior staff in NPWS under delegation, depending on who has statutory responsibility for granting approval for the activity under the NPW Act and the scale of the activity's impacts (including social and community impacts). Where NPWS is the proponent for an activity, or is otherwise contributing financially to the project, NPWS avoids a potential conflict of interest by ensuring that the proponent of the activity does not take on the function of the determining authority.

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

1.5.1 What if there is more than one determining authority?

The definition under s.5.1 of the EP&A Act can lead to a situation where there is more than one determining authority (e.g. where works are proposed by a public authority other than NPWS). In this situation, s.5.4(c) of the EP&A Act provides that if one determining authority

has already assessed the impact on the environment having regard to the REF, other determining authorities are not required to do so.

Despite the provisions of s.5.4, it is standard practice for all REFs relating to activities within NPWS lands to be submitted to NPWS for assessment. This is because environmental impact assessment by one determining authority does not negate the need for approvals under the NPW Act to be obtained by the proponent. This rule cannot however be applied for a multi-tenure proposal being carried out by another public authority.

Even if another public authority has determined the REF, NPWS will still need to review it thoroughly before NPWS grants approval for the activity to proceed, subject to appropriate conditions, under the NPW Act/Regulation. This effectively requires the determination process to be followed (including documentation through, for example, completion of a determination report to assist with the decision to grant the approval).

Determination of an REF is not an ‘approval’

The purpose of an REF is to assess the environmental impacts of an activity before it is undertaken by NPWS, or before NPWS grants an ‘approval’ to an external proponent allowing them to undertake an activity.

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. If the REF determination supports the activity proceeding, then the NPWS approval will be the relevant authority issued under the NPW Act or NPW Regulation. This approval is required for **all proponents external to NPWS**, including NSW Government agencies and the Department divisions other than NPWS.

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

Before granting such an approval, NPWS must satisfy itself that:

- the environmental assessment has been undertaken in accordance with Division 5.1 of the EP&A Act
- granting approval for the works under the NPW Act/Regulation is consistent with the objects of the NPW Act and is permissible (see Section 1.6 of these Guidelines)
- the proposal is appropriate for the park and that any adverse impacts on park values can be avoided or mitigated to an acceptable level.

1.5.2 What if any of the works are not on park?

NPWS has limited jurisdiction to carry out works on lands not under its control, either as lands reserved or acquired under the NPW Act, or other public lands for which it is the appointed land manager. However, under s.146 of the NPW Act, NPWS can enter into an agreement with another landholder to carry out works on their land where this assists in the management of or access to the park. This agreement must be in place before such works can be legally carried out by NPWS.

For off-park works, the relevant local environmental plan (LEP) is important as this determines not only the planning approvals required but permissibility of the works.

- If the proposed off-park works are listed as 'development without consent' then those works would also be subject to an REF. If the off-park works are part of a proposal that also incorporates activities on lands under NPWS control, they can be covered by the same REF as the on-park component.
- If the proposed off-park works are listed as 'development with consent' then those works are subject to development consent under Part 4 of the EP&A Act. Contact should be made with the local council regarding their processes.
- If the LEP does not identify the off-park part of the proposal as either 'development without consent' or 'development with consent' under that land's zoning, it is likely to be 'prohibited' and cannot proceed.

1.6 Addressing permissibility

As a proponent, you will be asked if the activity is permissible under legislation and NPWS policy. Permissibility must be determined to be likely **before** commencing preparation of an REF. In those cases where permissibility is not clear, proponents may seek independent legal advice to support their proposal. Ultimately however, it is NPWS who needs to form the view that the activity is permissible before granting the approval. If the REF is submitted and permissibility is not adequately addressed, the activity may be refused.

The following provides a summary of the major considerations. Further guidance on determining permissibility is contained in **Appendix A**.

If an activity is likely to be permissible and consistent with NPWS policy, this only identifies that NPWS has the legal power (discretion) to make a decision on the proposed activity. It does not mean that the activity **will** be approved, or that there is in-principle approval.

1.6.1 Is the proposal legally permissible?

If an activity is not permissible under the NPW Act or other legislation that applies to the park, then the activity cannot be undertaken. NPWS cannot grant approval for activities that are not legally permissible. The likely permissibility of the activity should therefore be identified early in the process and before work has started on preparing an REF.

National Parks and Wildlife Act

All authorisations issued under the NPW Act for activities on NPWS parks must give effect to the objects of the NPW Act and be consistent with any adopted plan of management for that park. Hence, activities are generally restricted to those relating to the conservation of natural or cultural heritage, or to public use and enjoyment. The exception to this general rule applies to existing interests (see Section 1.4.2 of these Guidelines).

Section 151A of the NPW Act lists the uses for which leases or licences can be granted under s.151 of the NPW Act. This includes a range of visitor and tourist uses, listed in

s.151A(1)(b), which can apply for all park categories other than nature reserves and declared wilderness.

Other sections in Part 12 of the NPW Act (namely s.153, s.153B, s.153C, s.153D and s.153E)³ outline other uses for which licences, leases or easements (including rights of way), may be issued. In authorising these uses, the Minister is still bound to give effect to the objects of the NPW Act and the public interest in the protection of a park's values and the management of the park.

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

Lease proposals 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 purposes under s.151 that authorises the erection of a new building or other structure, unless the plan of management identifies the purpose as permissible and the general location for the new structure.

The REF template requires the proponent to demonstrate that this requirement has been, or will be, met. If a draft amendment to the plan of management has been exhibited, the approval for the structure cannot be granted until after the amendment has been adopted.

Environmental planning instruments

Environmental planning instruments (EPI) are not a major determinant of permissibility for development on NPWS-managed lands. The key exception is the Alpine Resorts SEPP. It lists the developments that are permissible in each resort area and prohibits any development that is not specified.

Most LEPs have the standard instrument's wording in E1 zones, that effectively prohibits development that is not authorised under the NPW Act in lands zoned as E1.

Where areas of NPWS land are not zoned E1, the LEP may indicate that some uses or developments are prohibited. The Infrastructure SEPP prevails over the LEP. Clause 65 of the Infrastructure SEPP provides that development **for any purpose** may be carried out without development consent on land reserved or acquired under the NPW Act if the development is for a use **authorised** under the NPW Act.

Particular caution is required for proposals that extend beyond NPWS lands as the LEP can determine permissibility for the off-park components. The off-park components must not be identified as prohibited under the LEP for it to be permissible. As discussed in Section 1.5.2 of these Guidelines, any off-park component must be permissible without development consent under the LEP for an REF to be the appropriate assessment pathway.

³ Not all sections of Part 12 of the NPW Act apply across all categories of park.

Wilderness areas

Wilderness areas in New South Wales are declared under the Wilderness Act. Almost all declared wilderness in the State lies within NPWS parks. In line with its management principles (s.9 of the Wilderness Act), wilderness is managed in a way that maintains its wilderness values by limiting activities likely to damage natural and cultural heritage, or the solitude experienced by park visitors.

Under s.153A of the NPW Act, licences or other authorisations cannot be granted in wilderness areas under either s.151 or s.153D of the NPW Act. Authorisations under s.153B of the NPW Act are also prohibited (see s.153B(9)).

Plans of management

Under s.81 of the NPW Act, all operations in a park must be consistent with its plan of management (if one has been adopted) unless the action is being undertaken for the management of a declared asset of intergenerational significance (AIS) and is consistent with the AIS conservation action plan. Section 81A specifies that this includes all activities in an area covered by a lease, licence or easement. Section 151A(5) states that, before any lease may authorise construction of new buildings or structures for a visitor or tourism purpose, the plan of management must identify the purpose and general location of those structures.

Plans of management are available on the NSW Environment website or from the local NPWS office.

1.6.2 Is the proposal consistent with NPWS policy?

Proponents should liaise with the local NPWS office to determine the policies that may apply. Publicly available park policies are available on the NSW Environment webpage. For works in declared wilderness, consistency with the Wilderness Policy must be demonstrated.

In considering the REF for the activity, if NPWS finds that the activity is inconsistent with policy, the activity will generally be refused. Hence, activities which are inconsistent with NPWS policy should be identified as early as possible in the process to minimise the risk of proponents investing in proposals which are unlikely to be approved. To avoid this situation, the proponent should consider modifying the proposal so that it is consistent with NPWS policy.

While some SEPPs relating to protection of particular environments (such as the Koala Habitat SEPP) do not apply to NPWS parks, it is NPWS policy that the principles of the SEPPs are applied to proposed on-park activities. When deciding whether the REF is sufficiently comprehensive, NPWS will also consider the assessment requirements that would apply under those SEPPs if the land were not reserved.

1.7 Native title

Native title persists in many areas of NPWS parks. Certain activities and developments, known as 'future acts' under the *Cwth Native Title Act 1993* (NT Act), have the potential to affect native title in these areas. The REF template used by NPWS provides guidance on how the future act procedures required by the NT Act can be followed. These procedures must be followed to validate works that may impact native title.

The procedures vary according to the date of reservation of the park. They do not apply if native title has already been extinguished. 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.

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', including:
 - erection of a building or a structure that is fixed to the landscape
 - construction of a road, bridge or railway
 - drilling a well/bore for obtaining water
 - major earthworks.

Many on-park activities can occur in a way which does not affect native title, as they would not restrict Aboriginal people from practising their culture (i.e. exercising native title rights and interests) on park. Examples may include activities with low physical impact, such as granting consent for day use of a park, undertaking pest species control or installing interpretive displays in existing visitor precincts. However, in areas where there has been a determination of native title, some of these low-impact activities may also require notifications and consultation (see Section 2.5.3 of these Guidelines).

Actions that can affect native title include:

- construction or upgrades of public or private infrastructure or public works (as defined above)
- activities that will require a new lease under the NPW Act, particularly one providing exclusive use of an area (but not a renewal or extension of term of an existing lease).

Proponents should identify potential native title issues as early as possible when a project is proposed.

Practical steps include:

- Check if there is an Indigenous land use agreement (ILUA) by checking the [National Native Title Tribunal website](#). If there is an ILUA, check the requirements in the agreement and follow them.
- Check the [National Native Title Tribunal website](#) to see if a native title claim or a native title determination exists over the site.
- If native title has not been determined, undertake a land tenure history search to identify the date of reservation of the area of park and whether native title has been extinguished (this may be documented in the park's plan of management or historical parish maps).

- If the actual parcel of land on which the proposal will occur was privately owned freehold or part of a perpetual Western Lands lease in the past, NPWS assumes native title has been extinguished and the activity is not a future act.
- Check if the area of park was reserved on or before 23 December 1996 and if the activity is a 'public work' that is consistent with the purpose of the park's reservation.
 - If so, Part 2 Division 3 subdivision J of the NT Act can validate the future act through prescribed notification requirements (see Section 2.5.3 of these Guidelines).
 - Subdivision J may not apply for parks reserved after this date and does not apply to lands that are acquired (but not reserved) under the NPW Act.
- If subdivision J does not apply (e.g. if the area of park was reserved after 23 December 1996 or because the public works are not consistent with the purpose of the park's reservation), check if the activity involves the construction of a 'facility for services to the public' as defined under the NT Act.
 - Examples listed under the NT Act (in Part 2 Division 3 subdivision K) include public infrastructure such as roads, jetties, navigation markers, electricity transmission lines, pipelines, flood management works, sewers, telecommunications infrastructure, weather stations or any other similar infrastructure.
 - As long as reasonable access to the land or waters in the vicinity of the infrastructure is not prevented, such works can be validated under subdivision K without notification.
- If subdivision K does not apply, consider if the activity would be 'low-impact' under Part 2 Division 3 subdivision L of the NT Act. Examples may include:
 - excavation or clearing – but only to the extent that is necessary for the protection of public health or safety
 - tree lopping
 - clearing of introduced animals or plant species (i.e. pest and weed control)
 - minor building alterations
 - maintenance or demolition of existing infrastructure
 - environmental protection works.

In general, low-impact activities are unlikely to affect native title and are validated under subdivision L without notification.

In some cases, where subdivisions J, K and L do not apply, the only way to validate a future act is through negotiation of an ILUA. In this circumstance, NPWS staff are advised to contact the [NPWS Aboriginal Heritage and Partnerships Team](#) to discuss how to proceed. External proponents should seek their own legal advice.

The National Native Title Tribunal's website has general information on [future acts and processes](#). For NPWS proponents, further guidance is available in [Legal Eye 2012/02](#) or from the [NPWS Aboriginal Heritage and Partnerships Team](#).

External proponents may need to obtain their own advice on how to meet future act requirements.

Further details on the notification requirements under subdivision J of the NT Act are given in Section 2.5.3 of these Guidelines.

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 but, in this case, the REF must be certified by the proponent and not the consultant(s).

NPWS does not prepare REFs on behalf of external proponents. The only exception relates to boundary fencing for which NPWS has entered into a boundary fencing agreement with a neighbour. The preparation of the REF (or conservation risk assessment if the works are exempt development) is part of the in-kind contribution NPWS makes to the establishment of appropriate stock-proof fencing, consistent with the NPWS Boundary Fencing Policy.

2.2 Format

2.2.1 REF template

Generally, REFs are to be prepared using the NPWS REF [template](#). The template must be used for activities occurring within lands that NPWS manages.

The REF template used by NPWS is based on key elements and considerations contained in the publication *Is an EIS Required?: Best practice guidelines for Part 5 of the Environmental Planning and Assessment Act 1979*. This document, published in the mid-1990s by the then Department of Planning, is still considered a guideline for the purposes of [cl.228 of the EP&A Reg](#). It identifies the factors to be taken into account by a determining authority (other than a local council) when considering activities under Part 5 of the EP&A Act.

The REF template also includes reference to the test for determining whether an activity likely to significantly affect threatened species, ecological communities or their habitat in accordance with [s.7.3 of the BC Act](#) and [s.221ZV of the FM Act](#) (the '5-part' or '7-part' tests, respectively). It also prompts for consideration of native title and the impacts of the proposal on matters of national environmental significance under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Tailored REF templates are also available for:

- **minor activities and uses requiring a lease or licence** under [s.151 of the NPW Act](#) – this includes activities such as concerts and events involving fewer than 400 people. A streamlined REF and sustainability assessment (see below) is required for such proposals
- **maintenance of existing telecommunications facilities or installation of additional minor facilities on existing towers** – this is to be used only for activities where there will be no ground or vegetation disturbance and the visual impacts of the facility will not be increased.

2.2.2 Extra information required for some proposals

The following activities will require additional information to be submitted together with the REF.

- **Purposes requiring a lease or licence under s.151 of the NPW Act – Section 151B of the NPW Act** requires that, before granting a new lease or licence under s.151, certain matters related to compatibility, suitability and sustainability must be satisfied. In determining this, there must be regard to the assessment criteria adopted under s.151B. This requirement does not apply in the alpine resorts of Kosciuszko National Park.

The REF template incorporates consideration of some of these matters. However, 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 at Sustainability assessments for lease and licence proposals.

NPWS has a policy of requiring consideration of these matters for **all** proposals of a similar kind to those listed in s.151A, irrespective of whether it is subject to a lease or licence.

- **Broadcasting or telecommunications facilities – Section 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 A).

The REF template (and the tailored template for minor work on existing telecommunication facilities/towers) includes consideration of these matters.

- **Activities within the Sydney Drinking Water Catchment – the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011** (Sydney Drinking Water Catchment SEPP) contains specific criteria that must be addressed for all activities within the catchment. The REF template includes consideration of these matters.
- **Activities in the riverine environment of the River Murray – the Murray Regional Environmental Plan No 2 – Riverine Land 1994** outlines planning principles that must be taken into account for development without consent with the potential to adversely affect the riverine environment of the 'River Murray' (which means the Murray River, the waters and the bed and banks of its tributaries and associated water bodies, including related anabranches, creeks, lagoons, lakes, billabongs and wetlands). The REF template prompts for consideration of these principles.

2.3 Timing of REFs

An REF must be prepared and submitted to NPWS for consideration and determination **before** carrying out the activity and **before** NPWS grants any approvals allowing the activity to proceed (e.g. lease, licence or park consent).

The purpose of the REF is to assist the determining authority 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 or to approve the activity (in line with s.5.5(1) EP&A Act).

NPWS cannot grant retrospective or back-dated approval for activities that have already commenced or have been completed.

2.3.1 Before REF preparation and lodgement

As noted in Section 1, **before** commencing preparation of an REF, the proponent should make contact with the relevant NPWS 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 if the proposal:

- is an activity under the EP&A Act requiring an REF
- is legally permissible and consistent with NPWS 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. sustainability assessments or certification of construction works).

Where a proposal cannot be confirmed as legally permissible or does not have NPWS's in-principle support, it should **not** proceed to the REF stage. In addition, where other approvals may be required, specific discussions should occur with NPWS and other agencies to ensure that the timing of relevant assessments integrate with preparation of the REF. In many cases, the assessments required for those other approvals will need to be partially or fully completed to inform the final proposal as presented in the REF.

For example, proponents of projects that will require approvals under the Heritage Act (for historic heritage) or an Aboriginal heritage impact permit under the NPW Act, should ensure that sufficient assessment is undertaken before the REF is 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 applications for any other associated approvals (see Section 4 of these Guidelines) need to be made sufficiently in advance of when the activity is proposed to occur to allow time for the REF to be considered and approvals to be issued. Discussions with other government agencies from which approval may be required should also occur before preparing the REF. Activities that are undertaken without the necessary approvals will be investigated and further action considered in accordance with published Prosecution Guidelines.

Where an REF is for a complex or major proposal, the proponent should discuss with NPWS whether there is merit in their submission of a draft REF for initial review. This can ensure that any potential gaps in the assessments or other issues with the REF can be identified early and to enable further revision of the REF before final submission.

2.3.2 After lodging the REF

REFs for works on NPWS parks will generally be lodged with the relevant local NPWS office, marked to the attention of the Area Manager.

NPWS will aim to review a fully completed REF within 40 calendar days of its receipt, subject to the following:

- if the activity is considered by NPWS 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 Lodgement

The REF is to be submitted to NPWS as electronic copy in a form that meets accessibility standards. If the REF will be exhibited by NPWS (see Section 2.5.4 of these Guidelines), two hard copies of the complete REF will be required.

2.4.1 Fees

Fees for the determination of REFs are charged by NPWS under s.143(1) of the NPW Act. Fees consist of an initial fee and a final fee, and are intended to ensure that costs are recovered.

NPWS has notified the Australian Tax Office that these fees are GST exempt. GST would only be payable on those additional expenses where NPWS has been charged GST (e.g. advertising for an REF's public exhibition).

REF determination fees are **separate from any lease or licensing fees**. For information on lease or licensing fees contact NPWS at npws.property@environment.nsw.gov.au.

If the purpose of the activity is environmental remediation or conservation and the proponent is a not-for-profit community group, a request for a waiver of fees can be made with submission of the REF.

Fees outlined below are as of July 2021 and are subject to change in line with the Sydney consumer price index.

Initial fee

Proponents are required to pay an initial fee of \$220.

Final fee

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

- staff time associated with the assessment of the REF (charged at \$72/hour), including investigation of the site, meetings, travel time, review of the documentation
- travel expenses for site inspections etc. (charged at the official business rate of \$0.68/km)

- additional expenses charged at actual cost (which may include accommodation costs, additional out-of-pocket travel expenses, external legal advice or any 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. NPWS may need to obtain advice to assist in the assessment by employing an expert consultant with knowledge in this area.

The costs for these services are to be met by the proponent and 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. This is in addition to the REF determination fee. For more information on lease and licensing fees, contact NPWS.

2.4.2 Supporting information

For some sections, the REF format specifies that supporting information is to be attached. This information ensures that NPWS meets statutory and public accountability obligations.

If this supporting information is not provided, the REF is not considered to be complete and will not be processed and/or will be refused.

2.5 Consultation

Consultation is a key 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, **before** finalising the REF and any supporting material, proponents should consult with **any stakeholders** (such as adjoining landowners, lessees, Aboriginal community members or other government agencies) if the activity, or its impacts, are likely to affect their interests. For example:

- Consultation with **local councils** (including county councils) if the proposal may impact on council services or infrastructure.
- Consultation with **Department of Primary Industries (DPI) Fisheries** is required by public authorities (other than councils) for activities that are likely to be considered 'dredging' or 'reclamation' works in 'water land' (including areas subject to intermittent inundation) under the definitions of the FM Act. Additional consultation by NPWS is required before approvals can be granted for such works.

- Consultation with **DPI Fisheries** is also required for any activity that is likely to harm marine vegetation such as seagrass, mangroves or macro-algae; impede fish passage; or significantly affect threatened species, populations or ecological communities listed under the FM Act.
- Consultation with **the Department's Biodiversity and Conservation Division** is required if the activity is likely to significantly adversely impact on threatened species, populations or communities listed under the BC Act.
- Consultation with **Heritage NSW** is required if the activity requires an Aboriginal heritage impact permit (AHIP) (s.90 NPW Act) or historic heritage approvals (s.60 or s.140 Heritage Act 1977)
- Consultation with the NSW Environment Protection Authority (**EPA**) is required if the activity requires an environment protection licence (*Protection of the Environment Operations Act 1997*).
- Consultation with the **local Aboriginal community** is required if the project will affect an area under joint management, if notification is required under the *Native Title Act 1993* (NT Act) or if the area is known or has the potential for Aboriginal sites to be present or to be culturally sensitive. See Section 2.5.3 of these Guidelines for more information.
- Consultation with adjacent landowners, interest groups and others in the **local community** is required if the activity is likely to affect sites of importance for recreational or other values, or access to these sites.
- Consultation (and possibly referral) may be required with the relevant department within the **Australian Government** if the proposal may significantly adversely impact a matter of national environmental significance as defined under the EPBC Act.

In undertaking consultation, the proponent must provide sufficient 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 a draft REF, as well as engineering specifications and any other supporting information. 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 draft REF.

Please note that the above references to consultation relate to preliminary consultation during the preparation of an REF. This preliminary consultation does not replace any statutory requirement for consultation or notification under any required concurrence or approval.

2.5.1 Consultation with local councils and public authorities

Clauses 13–15A of the Infrastructure SEPP require consultation with local councils in relation to activities by or on behalf of a public authority, including NPWS, in the following circumstances:

- where a proposal will result in more than minor impacts on council-related infrastructure or services (including local road networks, stormwater, sewerage or water supply systems, public places, footpaths) – cl.13
- where a proposal will have an impact on the heritage significance of a local heritage item (as listed in the LEP) – cl.14
- where a proposal will change flood patterns on flood-liaible land by more than a minor extent – cl.15

- where an 'activity' is proposed for land within a coastal vulnerability area⁴ but is inconsistent with a certified coastal management program – cl.15A.

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

For certain proposals involving works on flood-labile land, consultation with the State Emergency Service may also be required under cl.15AA. These proposals include research and monitoring stations, bushfire hazard reduction, stormwater management systems and roads but only if a provision of the Infrastructure SEPP other than cl.65 is used to identify the works as 'development without consent'. This consultation is not prompted in the NPWS REF template.

Clause 16 of the Infrastructure SEPP requires consultation with specified government agencies where an activity proposed by or on behalf of a public authority may affect their interests. For example:

- Development comprising a fixed or floating structure in or over navigable waters requires consultation with Transport for NSW
- a proposed activity on land in a mine subsidence district requires consultation with Subsidence Advisory (formerly the Mine Subsidence Board).

Prompts for these consultations are included in the NPWS REF template.

2.5.2 Consultation for certain proposals requiring a lease or licence

The REF template prompts the proponent to indicate if the proposal triggers:

- Section 151F of the NPW Act – which requires public consultation when a lease or licence provides for erection of new buildings or structures (including temporary structures), significant modification of an existing structure or a change in use (including a purpose for which either land or structures have previously not been used)
- Section 151G of the NPW Act – which requires referral of certain leases and licences to the NPW Advisory Council or other identified advisory committees.

This consultation is coordinated by NPWS before any such lease or licence may be issued. The public consultation requirements under s.151F can be met through exhibition of an REF (see Section 2.5.4 of these Guidelines).

2.5.3 Consultation with Aboriginal communities

NPWS respects and acknowledges the role of Aboriginal people in the management and protection of Aboriginal cultural heritage and also their connection and involvement in the management of Country within NPWS parks. Input from the Aboriginal community is an essential part of assessing the significance of Aboriginal objects or places likely to be impacted by an activity. Hence, NPWS requires proponents to undertake consultation with representatives of the relevant Aboriginal community or groups as an integral part of the

⁴ Mapping of coastal vulnerability areas, when it becomes available, will be at:
http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement

impact assessment. Relevant Aboriginal groups may include Aboriginal joint management groups, native title claimants, native title holders and registered Aboriginal parties.

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. Extensive guidance on consultation with Aboriginal people and communities can be found in [Aboriginal Cultural Heritage Consultation Requirements for Proponents](#). The requirements as set out in that document (and the NPW Regulation) **are mandatory** if the proponent intends to apply for an AHIP under s.90 of the NPW Act. However, proponents are encouraged to consult with the Aboriginal community for all proposals.

If there is an ILUA over the area where the proposal is occurring, proponents will need to refer to the ILUA and follow its procedures relating to how and when to engage and consult with the native title holders.

Parks reserved under Part 4A are on Aboriginal-owned land and leased by NSW Government for the purposes of the park. Proponents must consult with the relevant Board of Management regarding proposals on these parks and such consultation may be subject to any timeframes or other requirements of the lease or as stipulated by the Board.

In the case of other joint managed parks, proponents should ensure consultation with the relevant Aboriginal stakeholders and any consultation committee established under that agreement. Further information on parks that are jointly managed or covered by an ILUA can be found on the [Existing joint management agreements](#) webpage.

Native Title Act future act notification procedures

As discussed in Section 1.7 of these Guidelines, NPWS assumes that native title still exists across much of the national park system, unless NPWS knows that native title has been extinguished. 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. Proponents should follow the steps in Section 1.7 to determine which native title future acts procedures need to be applied.

For areas of park reserved before 23 December 1996, proponents should assume that native title holders, native title claimants or their legal representatives may need to be notified and given an opportunity to comment on any proposal that is a 'public work' affecting areas outside the footprint of an existing public work.

The procedures under Part 2 Division 3 Subdivision J involve formal notification (i.e. sending a letter describing the proposal) and providing an opportunity for comment on the proposal within 28 days. This letter must be sent to:

- native title holders (if native title has been determined) or native title claimants (if a claim has been registered), and their legal representatives or
- Native Title Services Corp in the absence of any determination or claim.

An ILUA may establish alternative future act requirements to those in the NT Act. In the circumstance where an ILUA exists, the future acts requirements in the ILUA take precedence over the requirements in the NT Act.

If the native title holders or claimants advise they do not support the proposed activity, NPWS will often require strong justification before granting an approval.

2.5.4 Public exhibition

Public exhibition involves making the entire application, including the REF and all supporting documentation, available to the community for comment for a specified 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 NPWS whether an REF will require public exhibition. As a guide, NPWS would generally require REFs for the following activities to be placed on public exhibition:

- potentially controversial proposals or proposals that are likely to have a high level of public interest
- major or complex projects which may have serious adverse impacts or for which there is any uncertainty as to the significance of impacts
- 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)
- proposals which involve 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.

In addition, exhibition of an REF may satisfy the consultation requirements for certain leases and licences under the NPW Act as flagged in Section 2.5.2 of these Guidelines.

There may also be requirements under the EP&A Regulation for an REF to be published before works commence. This requirement may be met through exhibition of an REF before its determination.

If NPWS decides it requires exhibition before determination, this will be arranged by NPWS on a website under its control. The proponent will be required to provide an electronic copy that meets current web accessibility standards and any explanatory or illustrative materials at exhibition locations.

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 park's 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 NPWS (or the Minister) under the NPW Act and NPW Regulation is provided in Appendix B.

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. Hence, environmental protection and conservation measures should not be proposed if they are impractical, unrealistic or beyond the financial viability of the proposed activity / proponent.

As noted in Section 2.2.2 of these Guidelines, additional information will be required to be submitted with the REF for proposals involving:

- leases or licences under s.151 of the NPW Act, such as visitor use or tourism proposals or any other purpose listed in s.151A of the NPW Act
- leases, licences or easements for telecommunications facilities under s.153D of the NPW Act (refer to Appendix A)
- activities within the Sydney Drinking Water Catchment
- activities within the riverine environment of the River Murray.

3.1 Issues to be considered

In preparing these guidelines and the REF template, NPWS has used the publication entitled *Is an EIS Required?: Best practice guidelines for Part 5 of the Environmental Planning and Assessment Act 1979*, which provides guidance on the factors that must be taken into account when considering the likely impact of an activity on the environment. This has been confirmed to be a current guideline for the purposes of cl.228 of the EP&A Regulation. It provides greater detail than the following factors listed in cl.228:

- any environmental impact on a community of people
- any transformation of a locality
- any environmental impact on the ecosystems of the locality
- any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality
- any 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
- any impact on the habitat of protected animals (within the meaning of the BC Act)
- any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air

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

The definition of 'environment' includes 'all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings'. It includes the cultural and social environment, as well as the natural environment.

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

3.2 The proposed activity

Section 1 of the REF prompts for a brief description of the proposal. This needs to be short and brief, stating clearly what is proposed and the purpose of the activity.

Further details are prompted in Section 6, and should cover the size and type of the proposed activity, the staging and timing of the proposed activity and any plans for future expansion, and the proposal's relationship to any other activity, including future maintenance works (either routine or major).

In Section 7, the objectives of the proposed activity should be clearly stated and justified.

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. 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 sewerage 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, standalone 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:

- Prepare **master plans** for larger projects to guide the overall scope of works and to identify potential environmental impacts at the larger scale. These plans can then provide the framework within which individual REFs are 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.
- Carefully plan the **size, scope and sequence** of the individual REFs to avoid inadvertently creating subprojects 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.

Note that, if the total capital investment value of visitor use or tourism proposals will exceed \$10 million, **an EIS** will be required if the proponent is not a public authority (see Section 1.3.2).

A single EIS may also be the most appropriate form of environmental impact assessment if there is a high level of uncertainty of the significance of potential cumulative impacts of a large proposal (see Section 1.3.4).

3.2.1 Describing the activity

The REF must contain a comprehensive description of the proposal in Section 6. The description should be written so that a person who is not familiar with the area or the proposed activity can understand what is being proposed and where impacts may arise. 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 or upgrades, 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, post-construction (operation, repairs and maintenance), decommissioning and remediation
- appropriate project plans, including locality, design, construction and cross-section
- 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 onsite use of spoil)
- measures to support sustainability outcomes, including materials choice (such as recycled content) and how water and energy efficiency outcomes will be achieved
- a description of any possible future extensions or additions
- 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 cited 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 on conclusion of the REF determination process, before works physically commence. Refer to the NPWS [Construction Assessment Procedures](#) for further information.

3.2.2 Reasons for the activity and consideration of alternatives

The REF is a tool for NPWS to manage impacts to its parks and their environments. To do this, the REF requires an examination of alternatives to the activity which may have a lesser environmental impact.

Therefore, the reasons for the activity and possible alternatives need to be included in the REF.

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 park
- 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.

3.3 The site

The location of the proposed activity should be described using grid coordinates (eastings and northings), Map Grid of Australia (MGA) 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 1-metre contour interval reduced to Australian height datum).

The description of the site should refer to the following two areas:

- the subject site, which is the area directly affected by the proposal
- the study area, which is the subject site and any additional areas which are likely to be affected by the proposal, either directly or indirectly, and should extend as far as is necessary to take all potential impacts into account.

Site suitability

Proposals requiring a lease or licence under s.151 of the NPW Act must explicitly address the sustainability assessment criteria adopted under s.151B(3). This includes specific consideration of site suitability.

It is NPWS policy that a similar consideration of site suitability is included for all proposals like those listed under s.151A of the NPW Act, not just those requiring a lease or licence.

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.

3.4 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 plant community type that is 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, wind speed and direction), but focusing on aspects that will affect the activity in terms of its timing and potential impacts
- topography (landform, slope, gradient and length)
- surrounding land uses (potential synergies and conflicts)
- geomorphology (e.g. in relation to current erosion and deposition processes)
- soil types and properties (including erodibility, engineering and structural properties, dispersibility, permeability, and the presence of known or potential acid sulfate soils)
- ecological information (see Section 3.4.1 of these Guidelines for more information)
- existence or likely presence of Aboriginal cultural heritage (see Section 3.4.2 of these Guidelines for more information)
- historic heritage values present, including whether any items are listed on the State Heritage Register or the relevant LEP
- availability of services such as electricity, water and sewerage systems.

3.4.1 Biodiversity

In describing the existing environment present at or in proximity to the site, both terrestrial and aquatic biota should be considered. The REF should outline the vegetation present in terms of plant community types, consistent with the NSW BioNet Vegetation Information System (BioNet VIS). It should also consider and describe any aquatic habitats present in the vicinity of the works and downstream.

The structure of the vegetation and any habitat features in the area should be noted (including hollow-bearing trees, standing dead trees, logs on the ground, caves, bridges and culverts). The site's proximity to any declared natural asset of intergenerational significance (AIS) or area of outstanding biodiversity value (AOBV) should be noted.

In identifying the assemblage of species likely to occupy the site of the proposed activity, a candidate species list should be compiled. This is more than just those species recorded in the past on the subject land (though those must be included in the candidate species list). A broader area should be used to establish this list from past records (of at least 10 kilometres in radius in eastern and central New South Wales, and 50 kilometre in radius in the western parts of the state). These records may need to be supplemented by survey effort. Any field surveys should be timed appropriately to locate species of key interest (e.g. to coincide with the flowering times of plants or breeding times of frogs).

The REF must include a statement as to whether or not threatened species (including populations) and ecological communities are likely to occur in the proposed subject site and study area. This requirement relates to threatened species listed under the BC Act, the FM Act and/or the EPBC Act.

If it is found that threatened species (including populations) and/or ecological communities occur or are likely to occur in the subject site and/or study area (or use habitat in these areas, even just on a seasonal basis), then a test of significance must be included with your REF. See Section 3.7.1 of these Guidelines.

3.4.2 Aboriginal cultural heritage

Aboriginal cultural heritage consists of places and items that are significant to Aboriginal people's traditions, observances, customs, beliefs and history. It encompasses both tangible and non-tangible elements, including 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.

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. It is therefore important to recognise that Aboriginal culture is a **living** culture and includes traditions, observances, customs, beliefs and history. Access to Country, continued use of cultural resources and continued cultural practice are important for maintaining that culture.

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. Therefore, an activity that impacts on the landscape in a park may impact on Aboriginal cultural heritage.

An activity may also impact on Aboriginal cultural heritage by limiting access to culturally important places or cultural resources, or by impacting on cultural resources.

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, including the close involvement and participation of Aboriginal people.

In describing the existing environment, the REF should include a description of the lands, waterways, landscape features and native plants and animals that are culturally significant to Aboriginal people; and not just the objects and places afforded legal protection under Part 6 of the NPW Act.

It is NPWS 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 and conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including but not limited to places, objects and features of significance to Aboriginal people.

To ensure that all on-park activities undertake at least a minimal level of investigation into the likelihood of Aboriginal objects being present, the REF template incorporates and builds on the requirements outlined in the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales. See Section 3.10.1 of these Guidelines.

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's implementation.

Part of the process of investigating and assessing the values present at the site and study area may involve archaeological investigations. The Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales specifies the minimum standards for these investigation. An Aboriginal cultural heritage assessment that requires an

archaeological investigation to be undertaken must be done in accordance with the requirements of this Code.

An AHIP under s.90 of the NPW Act is required for archaeological excavations where the Code does not apply, for example, within an Aboriginal Place or within 50 metres of a midden. Further information on applying for AHIPs is available on Heritage NSW's [AHIP webpage](#).

For proposals that require an AHIP, the consultation requirements that must be carried out before lodging an application for an AHIP are specified in the NPW Regulation. Further guidance on consultation with Aboriginal people and communities can be found in [Aboriginal Cultural Heritage Consultation Requirements for Proponents](#). Modified consultation requirements as specified in Indigenous land use agreements may apply in certain parks.

Information sources

There is a register of all recorded Aboriginal objects and Aboriginal places in New South Wales. 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 if an Aboriginal place has been 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. It also may not record important landscape cultural features, the presence of wild cultural resources or other intangible elements that are of cultural significance. 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.

3.5 Impact assessment – an overview

This section provides an overview of the impact assessment process. Specific environmental issues that must be addressed in the REF are discussed in the following sections.

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, maintenance, 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 Section 3.5.2 of these Guidelines ('Methodology to categorise impacts').

Where another 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 method 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.

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.

3.5.1 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 long-term environmental 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.

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.

3.5.2 Methodology to categorise impacts

Each impact should be estimated (in terms of its extent, size, scope, intensity and duration) in order to categorise the impacts in one of the following categories:

- negligible
- low, medium or high adverse
- positive.

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 adverse impact.

The potential importance of each impact should be estimated and consider 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 impacts of a proposal will be positive (i.e. it is beneficial). Where this is the case, provide comment on the positive aspects of the impact.

Table 1 provides a guide to categorising impacts.

Table 1. Guide to categorising impacts

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
Compliance 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	High level of understanding and information on the impact	Low level of information on and understanding of key issues

3.6 Physical and chemical impacts

3.6.1 Assessment questions on 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 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, 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. If a landslide or rockfall hazard has been identified, the REF should include the risk assessment (using the Health and Safety Risk Matrix) and confirm if professional geotechnical advice has been sought on managing the risk. If the risk is assessed as high adverse, a risk treatment plan must also be attached. For further guidance, refer to the procedures associated with the NPWS Landslides and Rockfalls Policy.

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

'Waters' is considered to mean the whole or any part of any river, stream, lake, lagoon, swamp, wetland, 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, extracts water, involves the storage of water, or will lead to a temporary or permanent physical modification of a watercourse or waterbody such as the dredging or reclamation of 'water land'.

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 through increased sedimentation or chemical contamination.

While a public authority does not require approval under the *Water Management Act 2000* to undertake various works within 40 metres of a river, the REF should have regard to the Guidelines for Controlled Activities on Waterfront Land prepared by the NSW Natural Resources Access Regulator (NRAR). In particular, the REF should assume there is the potential for impacts on waterways when works occur within the riparian corridor widths based on watercourse order as classified under the Strahler system (see Figure 2 and Table 1 of the NRAR guidelines).

In assessing possible impacts on waters, proponents should refer to the ambient Water Quality and River Flow Objectives for the receiving waters. These are goals endorsed by the NSW Government for environmental values and human uses of ambient waters. The REF

should assess if the proposal will maintain or protect the objectives or contribute to meeting the objectives for the catchments and/or waterways relevant to the proposal.

This should include consideration of potential impacts on groundwater quality and groundwater-dependent ecosystems.

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

- drinking 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° (i.e. 32%)
- 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, 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 significance of impacts on the ecological character of a Ramsar wetland under the EPBC Act are available from the Australian Government. See Section 3.12 of these Guidelines.

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, it is likely that the level of impact is medium or high adverse. Similarly, the level of impact is medium or high adverse if the proposal will be affected by flooding; in which case the REF should provide an indication of flood levels that will affect the proposal (e.g. 1:20 years). If you consider the impact not to be medium or high, 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, 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?

The NSW Coastal Management Act 2016 and the Coastal Management SEPP make provision for coastal vulnerability areas to be identified and mapped, and for planning controls to be placed on these lands. No areas have been mapped at this stage (July 2021) but many councils have assessed coastal hazards and these assessments can be used for planning purposes.

Erosion is a major risk along the NSW coast and 15 coastal erosion hotspots have been identified to date⁵. Current projections for sea level rise and increased storm activity and impacts will exacerbate existing risks and pose new challenges for the management of lands and infrastructure within coastal areas managed by NPWS. Areas likely to be affected include lands along sandy shorelines, coastal lakes and lagoons, estuaries, tidal reaches of coastal rivers and low-lying lands surrounding these areas.

In determining the likely impact of proposed activities in these areas, the following principles should be applied:

- avoid or minimise exposure to immediate coastal hazards
- provide for the safety of park visitors, residential caretakers, workers or others from risks associated with coastal processes
- do not adversely affect the public safety of offsite locations from a change in coastal risks as a result of the development
- do not increase coastal risks to properties adjoining or within the locality of the site
- situate infrastructure, services and utilities onsite so they can maintain their function and achieve their intended design performance for their full design life
- accommodate natural coastal processes including those associated with projected sea level rise
- protect coastal ecosystems from development impacts
- maintain existing public beach, foreshore or waterfront access and amenities.

Impacts are likely to be considered medium or high adverse 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 the type of activity. As a guide, the following activities in coastal hazard 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.

⁵ OEH 2017, *Coastal Erosion in New South Wales: Statewide exposure assessment*, Office of Environment and Heritage, Sydney NSW, <https://climatechange.environment.nsw.gov.au/-/media/NARCLim/Files/Climate-Change-Impact-Reports/Coastal-Erosion-in-New-South-Wales-Statewide-Exposure-Assessment-report.PDF>.

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. They also include chemicals that may build up a residue in the environment, such as fertilisers, and some herbicides and pesticides.

The type of impact on the environment should be determined considering 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 should be explicitly considered:

- the level of information and degree of confidence regarding the potential impact on the environment of the hazardous substance(s)
- the degree of community interest or concern with respect to the transport, use or generation of the substance(s)
- regulatory requirements regarding the management and transportation of particular materials (e.g. under the *Radiation Control Act 1990* or Protection of the Environment Operations (Waste) Regulation 2014).

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. For example, where the chemical or hazardous substance is being transported and used in line with an approved best practice guideline or code, a low level of impact may be demonstrated.

If no such guideline or code exists, then you will need to outline clearly what measures will be used and justify that, by following these measures, the potential impacts can be acceptably managed to a low level.

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

The generation of emissions (including the emission of greenhouse gases, ozone-depleting chemicals or precursors to photo-chemical smog, as well as smoke) and liquid wastes (including accidental events such as diesel spills) have 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.

Generation of solid waste and its disposal adds to the environmental risks of the project, increases truck movements or has unintended consequences (including reputational risks to NPWS).

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

- the volume and type of waste and emissions that will be generated
- the risk of accidental emissions and how that will be avoided
- 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 Protection of the Environment Operations (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:

- Will approved processes for waste disposal be used?
- Does the activity comply with NPWS, EPA and WorkCover guidelines?
- Will the activity have a long-term impact?
- Will the generation and/or disposal of waste provoke strong community interest?
- Does the activity comply with NPWS 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:

- those in close proximity to residences, schools or public recreation areas
- drinking 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° (i.e. 32%)
- 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 already 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?

Similar to the previous question, it is NPWS policy to consider the potential ecosystem and amenity impacts of any dust emissions or odours, noise, vibration or radiation caused by the proposal. The surrounding areas of park should be considered a sensitive environment for these factors (i.e. consideration of impacts should not be limited to the sensitive receptors of nearby schools, hospitals, offices or residential and public recreation areas as defined under the Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales).

The EPA's Noise Policy for Industry provides an amenity noise level for 'area specifically reserved for passive recreation (e.g. national park)' that is equivalent to a daytime rural residential setting of 50 dB(A). For proposals near campgrounds, the night-time rural residential amenity noise level of 40 dB(A) should be applied.

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 drinking water catchment, wetland, groundwater recharge area or natural waterbody
- an area with degraded or contaminated land or water
- areas in close proximity to visitor facilities (campgrounds, picnic areas), other public recreation areas, residences, schools or other sensitive receivers
- an area with already 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.

3.7 Biodiversity impacts

The objective of the assessment of impacts on biological diversity (biodiversity) is to enable decision-makers to ensure that developments deliver the following environmental outcomes:

- maintain or improve biodiversity values (i.e. there is no net impact on threatened species or native vegetation)
- conserve biodiversity and promote ecologically sustainable development
- protect areas of high conservation value
- protect the long-term viability of local populations of a species, population or ecological community and prevent their local extinction (extirpation).

3.7.1 Tests of significance for threatened species or communities

Threatened species and ecological communities (or their habitats) likely to be affected by the activity must be identified and considered in the REF via a relevant test of significance. This is a requirement of s.1.7 of the EP&A Act.

Threatened species, populations and ecological communities are listed in the relevant schedules of the BC Act and FM Act. Those listed under the EPBC Act are listed in the Australian Government's *Species Profile and Threats Database* (for species or communities). During the listing process, one of the matters often considered is whether the species or community is adequately represented in the protected area system (i.e. in national parks or nature reserves) and so is secure from many threats affecting it. Any proposal that may add to the existing level of threats present in the reserve system, and may impact on threatened species or communities present in a park, needs to be rigorously assessed.

Assessments must be consistent with the test of significance for the relevant species or community as required by the relevant legislation.

- For entities listed under the BC Act (including populations listed under the former *Threatened Species Conservation Act 1995*), the test requires consideration of the factors outlined in s.7.3 of the BC Act and is known as the '5-part test' – refer to the NSW Threatened Species Test of Significance Guidelines.
- For entities listed under the FM Act, the test requires consideration of the factors outlined in s.221ZV of the FM Act and is known as the '7-part test' – refer to the Threatened Species Assessment Guidelines: The assessment of significance.
- For entities listed under the EPBC Act, the significant impact criteria vary according to the category of listing as outlined in the relevant chapter of the Matters of National Environmental Significance: Significant impact guidelines 1.1.

Tests of significance may be prepared for relevant groupings based on essential habitat requirements and foraging or nesting behaviours, based on information obtained in any specific environmental impact assessment guidelines, recovery plans or threatened species profiles. Suggested groupings include shorebirds, micro-bats, hollow-dependent mammals, nectivorous birds, woodland birds, forest owls and stream-dependent frogs.

As discussed in Section 3.4.1 of these Guidelines, selecting the species to be subject to these tests should involve a collation of existing records (using the Atlas of Living Australia and the NSW BioNet Species Search, formerly known as the Atlas of NSW Wildlife) using a search of available records within a broad area. This may need to be supplemented by site-specific surveys. This candidate list of species can be refined through explicit consideration of habitat, which should be documented and based on a site inspection.

Tests of significance should be presented in an appendix to the REF, with overall conclusion drawn from the combined consideration of all factors/criteria.

If any test of significance identifies the proposal is likely to have a significant impact on a threatened species or community, the proponent should notify the NPWS Area Manager immediately and consider redesigning or relocating the proposal to avoid such impacts. If this is not possible, SIS requirements should be sought if the species or communities likely to be significantly affected are listed under NSW legislation (see Section 1.3.5 of these Guidelines). If the species or communities are listed under the EPBC Act, the relevant department in the Australian Government should be contacted (see Section 3.12 of these Guidelines).

3.7.2 Impact assessment questions on biodiversity impacts

Is the proposed activity likely to affect any declared area of outstanding biodiversity value or critical habitat or environmental asset of intergenerational significance?

Areas of outstanding biodiversity value (AOBVs) are declared under the BC Act and details are available in the online register. They were formerly known as ‘critical habitat’ under the Threatened Species Conservation Act.

Critical habitat declared under the FM Act is listed in a separate register.

Assets of intergenerational significance (AIS) are declared under s.153G of the NPW Act, and can be declared for their biodiversity values – often areas of key importance for the future persistence of threatened species.

Under the BC Act and FM Act, any activity carried out **in** a declared AOBV or critical habitat is deemed to be likely to significantly affect threatened species and the REF will need to be accompanied by a SIS (see Section 1.3.5 of these Guidelines).

Activities which are located in proximity to AOBVs or critical habitat or AIS must consider the potential for impacts on these areas which are, by definition, considered to be highly sensitive environments. Medium or high impact levels are likely to occur if any of the physical or chemical changes to the environment identified in the previous section may extend to the AOBV or critical habitat.

Is any vegetation likely to be cleared or modified, including ecological communities and plant community types of conservation significance?

Clearing or modifying vegetation includes pruning or destroying individual plants, thinning, ringbarking and felling. The clearing or modification due to a proposal also includes any clearing or modification arising from any works ancillary to the proposal, such as access trails, car parking and turnarounds, fencing, stockpile sites, electricity supply and asset protection zones.

If vegetation is to be cleared or modified:

- describe the plant community type (PCT) consistent with the NSW Government’s BioNet Vegetation Classification application, with any vegetation of conservation significance (see below) highlighted
- quantify the level of clearing by identifying the number of individuals or area of plants or vegetation communities to be cleared or modified
- compare the level of clearing for each PCT with the total number of individuals or area of vegetation communities in the general location of the proposal (including other areas of the park and surrounding district).

Consideration of the potential impacts of vegetation clearing/modification must include any clearing or modification of aquatic or marine vegetation.

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

- the nature and extent of the clearing or modification proposed (including any clearing or modification related to ancillary works)
- the condition (integrity) of the vegetated area to be cleared or modified

- its proximity to other areas of native vegetation (e.g. local or regional vegetation corridors that provide for wildlife movement)
- the conservation significance of the vegetation (see below)
- the results of any tests of significance for threatened ecological communities (see Section 3.7.1 of these Guidelines)
- whether the vegetation provides important habitat for wildlife (e.g. hollow-bearing trees, critical food resources such as winter-flowering eucalypts, roosting sites etc.)
- whether the individual, species or vegetation community is of any other value (e.g. economic or social value)
- the likely response of the vegetation community to the type of disturbance proposed and likelihood of natural regeneration of the area at the completion of the proposal (i.e. whether assisted revegetation will be needed)
- the likely response of exotic/introduced flora, and how this will impact on the remaining areas of native vegetation or the re-establishment of native vegetation on the site at the completion of the proposed activity.

Ecological communities of conservation significance

An ecological community is ‘an assemblage of species occupying a particular area’ and includes micro-organisms, fungi, vertebrate and invertebrate fauna. Ecological communities of conservation significance include those:

- listed as threatened under the BC Act, FM Act or EPBC Act
- considered poorly represented in the reserve system as documented in relevant reports (e.g. reports prepared for regional forest agreements)
- identified in the NSW Biodiversity Values Map – noting that the map itself is not statutorily relevant for an REF.

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, you will need to provide strong justification for your conclusion.

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

The proposal may displace or disturb fauna during its construction and its operational stages, through modification of habitat or from noise, odours and the presence of machinery and people. 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 surrounding park.

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

- the nature and extent of the disturbance proposed
- the conservation significance of the species or population, including whether it is at the limit of its natural distribution

- whether the species or population is of any other particular value (e.g. economic or social value)
- the likely response of the species or population to the type of disturbance proposed
- whether the species or population will be able to and likely to use the area once the disturbance associated with the proposal's construction is over
- the likely response of exotic/introduced fauna and how this will impact 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 any tests of significance for threatened species or threatened population (see Section 3.7.1 of these Guidelines).

When displacement or disturbance of a species or population of 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 result in the removal of protected flora or plants or fungi of conservation significance?

The vegetation to be cleared as part of the proposal during its construction and its operational stages may include protected flora listed under the BC Act (including plants and fungi). Plants protected under the FM Act (such as saltmarsh, mangroves, seagrasses and seaweeds) must be considered.

If the activity is likely to affect plant/fungi 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 surrounding park.

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

- the nature and extent of the disturbance proposed
- the likely response of the species or population affected by the proposed disturbance
- the conservation significance of any affected species
- whether the species or population has any other particular value (e.g. economic or social value)
- whether the species or population will be able to and likely to re-establish in the area once the disturbance associated with the proposal's construction is over
- the likely response of exotic/introduced species and how this will impact on native species
- the results of any tests of significance for threatened species (see Section 3.7.1 of these Guidelines).

When considering the conservation status of a species, those 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, including those at the limit of their distribution.

When clearing of a species or population of conservation value is proposed, 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. If any marine vegetation is likely to be affected, consultation and a permit from DPI Fisheries may be required.

Is the activity likely to contribute to a key threatening process to biodiversity or ecological integrity?

Key threatening processes are listed under both the BC Act and FM Act. Threats arising from a proposal may be direct (e.g. clearing) or indirect (e.g. creation of a bushfire risk to a community sensitive to bushfire, or hydrological changes that may impact on groundwater-dependent ecosystems).

Where a proposal is likely to contribute to a key threatening process, 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 the sensitive environments of the park, you will need to provide strong justification for your conclusion.

Is the activity likely to introduce pests (including weeds, pathogens and feral animals) or genetically modified organisms into an area?

A pest is a weed, feral animal or pathogen that can have negative environmental, economic and social impacts. They are most commonly introduced species. Regional strategies prepared by Local Land Services identify priority weeds and pest animals in each region, however, this often doesn't include all environmental weeds that are of potential concern on lands managed by NPWS. Pathogens such as *Phytophthora cinnamomi* or myrtle rust (*Austropuccinia psidii*) can devastate vegetation of high conservation value in our parks.

NPWS recommends appropriate mitigation measures are identified to prevent the introduction of pests into its parks. These may include, for example, washdown procedures for any plant, equipment or vehicles being used as part of the proposal. Without appropriate mitigation measures being in place, proponents and NPWS may be failing to discharge a biosecurity duty under the NSW *Biosecurity Act 2015*.

When a proposal is likely to introduce any pests 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.

3.8 Community impacts

3.8.1 Assessment questions relating to 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 a site(s) that is important to the local or broader community for their recreational or other values or access to these sites?

Sites of importance include places used for recreation or social gatherings; and may include areas of conservation, heritage or cultural significance to which the community may have a sense of ownership (e.g. a national park that was reserved following active lobbying efforts). Aboriginal cultural and historic heritage values are discussed in more detail in Sections 3.10 and 3.11 of these Guidelines.

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 on economic activity. This should include both decreases and increases in employment, industry and property values; whether there will be short-term or long-term costs to the community or individuals; or if there may be impacts 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?

As part of the assessment, describe the extent and nature of the proposal's impact on community safety, arising from matters other than bushfire (see below). Consider the safety of park neighbours as well as visitors to the park and NPWS staff.

If the proposal aims to address a known safety issue (e.g. as documented in the local NPWS Visitor Safety Risk Register), the level of impact is medium or high positive.

If, on the other hand, 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?

Planning for Bushfire Protection contains specifications for building on land identified as bushfire prone. It is recognised as a standard for the purposes of development assessed under Part 4 of the EP&A Act and various other planning instruments.

Although not enforceable for the purposes of development assessed under Division 5.1 of the EP&A Act, it provides useful guidance on assessing and mitigating the level of bushfire risk, particularly for activities such as accommodation or tourism developments.

Buildings or other constructions may require an asset protection zone or be constructed of fire-rated materials to comply with *Planning for Bushfire Protection*. Buildings should comply with the relevant Australian standard (*AS 3959:2018 Construction of buildings in bushfire-prone areas*) and the Building Code of Australia.

When an activity is likely to cause or be subject to a high bushfire risk in an area of 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 affect 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 viewshed of the activity (i.e. from what area will the activity be able to be seen)
- whether there are any particular points within the viewshed of the activity which may cause concern (e.g. lookouts, popular walking tracks, neighbours)
- any direction provided in the park's plan of management
- 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 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.

3.9 Natural resource impacts

3.9.1 Assessment questions relating to 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 LEP, aquatic reserves and marine parks under the *Marine Estate Management Act 2014* or land which is the subject of a conservation agreement (including biobanking stewardship agreement).

The REF should describe the nature and extent of the impact on any of these types of conservation areas.

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?

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, including water, air and minerals.

With regard to impacts on water resources, consider the impact on water quality or quantity where the community is relying on NPWS parks (whether or not the park is in a water authority's Special Area) for the protection of water catchments and water supply, including groundwater. If the proposed activity is within the Sydney Drinking Water Catchment, the REF will need to include an assessment of whether the activity will have a neutral or beneficial effect on water quality under the Sydney Drinking Water Catchment SEPP as additional information.

When an activity is going to impact on water quality or quantity either in or as it leaves a NPWS park, 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). Reducing vehicle movements or using a standalone solar power supply can avoid unnecessary wastage of fuels.

When a considerable amount of natural resources from the park are proposed 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, any activity which will be using natural resources obtained from the park will usually not be in accordance with the park's plan of management and will be inconsistent with NPWS 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 NPWS lands are expected to incorporate best practice techniques in water and energy efficiency, in support of sustainability outcomes and reduced greenhouse gas emissions. This can be achieved through the use of high efficiency fittings (i.e. taps, fixtures, lighting) and the choice of building materials (including insulation and double-glazed 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 2.2.2 of these Guidelines, any proposal requiring a lease or licence under s.151 of the NPW Act (and equivalent activities proposed by NPWS) require a sustainability assessment to be prepared and submitted with the REF.

3.10 Aboriginal cultural heritage impacts

The key purpose of the impact assessment for Aboriginal cultural heritage values is to identify any potential impacts on the Aboriginal cultural significance of the subject site and study area in consultation with the Aboriginal community and seek to avoid those impacts. A key part of this process is consultation with relevant members of the Aboriginal community (see Section 2.5.3 of these Guidelines).

Certain aspects of Aboriginal heritage are 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 Heritage NSW's [AHIP webpage](#).

Low-impact acts or omissions

It is acknowledged that the NPW Regulation provides a defence to the 'strict liability' offence of harming an Aboriginal object if the proposal is classed as 'low impact acts or omissions' by cl.58. 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. This defence, however, only applies to the offence of harming an Aboriginal object with no knowledge. The defence does not apply to the offence of harming an Aboriginal object if that object is known to be present in the vicinity of the activity.

It is NPWS policy that, for all proposals within parks (even listed low-impact acts), proponents should consider potential impacts on Aboriginal cultural heritage.

All activities within NPWS parks require a consideration of likely impacts on Aboriginal cultural heritage values. Refer to Section 3.4.2 of these Guidelines for more information on what Aboriginal cultural heritage values may include. Aboriginal cultural heritage issues must be addressed early in planning an activity so that conservation solutions can be identified without delaying the proposal's determination. The impact assessment steps below include several mechanisms that will enable Aboriginal cultural heritage issues to be proactively dealt with in the planning process.

If at any stage in the REF process it is considered that an activity is likely to impact on Aboriginal objects or Aboriginal places, the proposal should be redesigned to avoid impacts as the first priority. If impacts are unavoidable, the proponent will need to apply for an AHIP under s.90 of the NPW Act. The AHIP application must be accompanied by an impact assessment. Proponents should refer to the [Applying for an Aboriginal Heritage Impact Permit: Guide for applicants](#).

3.10.1 Assess the potential for impacts on objects and places

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 the publication, *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*. Following the Due Diligence Code can provide a legal defence against prosecution for harming Aboriginal objects if, after following due diligence, it was determined Aboriginal objects were unlikely to be present. This defence does not apply to the offence of harming an Aboriginal object if such an object is known to occur within the vicinity of the proposal.

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.

As the Code may be revised from time to time, proponents should ensure that they refer to the most current, adopted version on the Heritage NSW website.

In addition to the generic Due Diligence Code, other industry-specific codes of practice may be adopted under the NPW Regulation, 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.

Will the activity disturb the ground surface or any modified trees?

Activities that disturb the ground surface or culturally modified or 'scarred' trees (which may have a human cause), 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 or occur in close proximity to known Aboriginal objects or Aboriginal places or an Aboriginal cultural asset of intergenerational significance?

To help identify known Aboriginal objects or places, proponents can undertake a search of the AHIMS database. 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, fish traps, Aboriginal-built fences and stockyards, modified trees and the remains of fringe camps
- material deposited on the land, such as middens
- the ancestral remains of Aboriginal people.

Aboriginal places are declared under the NPW Act for land that 'is or was of special significance to Aboriginal culture'. An Aboriginal place 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. In addition, some areas may be identified as 'Aboriginal places of heritage significance' under the local environmental plan.

Aboriginal cultural assets of intergenerational significance are declared under s.153G of the NPW Act.

If the AHIMS search results indicate that there are 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 high likelihood of Aboriginal objects being present?

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 200 metres of waters (including rivers, streams, lakes, lagoons, swamps, wetlands, other natural watercourses and tidal waters)
- within a sand dune system, including windblown dunes on the edges of ephemeral lakes (called lunettes dunes) in western New South Wales, or along the banks of rivers, as well as in the coastal zone
- on a ridge top, ridge line or headland
- within 200 metres below or above a cliff face
- in or within 20 metres of 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.

Can disturbance of objects or landscape features be avoided?

If the above assessments indicate that Aboriginal objects or landscape features are known or likely to be present in the area of the activity, then the first priority is to avoid harm to them. The REF must clearly outline the steps that will be taken to achieve avoidance of harm during the proposal's pre-construction, construction, operational and restoration stages. Possible solutions include reducing the proposed footprint of a project, realigning certain parts of the proposed works, 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 of steps to avoid impacts. This should involve an inspection of the site with representatives of the relevant Aboriginal groups (refer to Section 2.5.3 of these Guidelines) 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 then assessment of the proposal can proceed with caution, without the need for further investigation or the preparation of an AHIP application.

Desktop assessment and visual inspection

If the activity is on land that 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, and the results of consultation with the Aboriginal community (see Section 2.5.3 of these Guidelines).

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.

3.10.2 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, it should either be reconsidered, or further detailed investigations undertaken. This is consistent with the precautionary principle.

Further investigations should include the following:

- identifying the Aboriginal cultural heritage values associated with the area – a process that includes consulting Aboriginal people about cultural knowledge or responsibilities for the Country in which the activity is proposed to occur, and undertaking relevant written and oral research and field investigations (see Section 2.5.3 of these Guidelines)
- 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.

If it is concluded that an activity will have unavoidable and justified impacts on Aboriginal objects or Aboriginal places, the proponent should apply for an AHIP under s.90 of the NPW Act. Holding an approved AHIP provides a defence against prosecution under the NPW Act for harming an Aboriginal object. When applying for an AHIP, consultation with Aboriginal people must either be in accordance with the Aboriginal cultural heritage consultation

requirements for proponents or with modified consultation requirements established under an ILUA.

Information on preparing an AHIP application is available on Heritage NSW's [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.

3.10.3 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, in the REF.

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 plants and animals 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 are important for their utilisation, as well as people's sense of identity, 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 to determine wild resources of importance in an area (see Section 2.5.3 of these Guidelines). The results of consultation should be used as a basis for the assessment of the impact of the activity. The REF should describe:

- the wild resource/s which are likely to be affected (this should include type, use, location, significance and likely extent of distribution of the resource)
- the nature, extent and significance of impacts
- options for mitigating both direct and indirect impacts.

When an activity is going to impact on wild resources and Aboriginal people's access to wild resources, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse, you will need to provide strong justification for your conclusion.

Does the activity affect Aboriginal people's access to culturally important places?

Aboriginal cultural heritage includes culturally significant places and places that are important for cultural practices. While these places may be identified as sites that are afforded legal protection under the NPW Act, access to the sites is also an important aspect of Aboriginal cultural heritage as it is essential for Aboriginal community to maintain connections to Country.

It is important to recognise Aboriginal people's access to country so that they are able to continue to undertake the obligations and responsibilities of looking after heritage sites.

Some places (e.g. sites used for protection activities, ceremonial activities, or that are important for teaching and passing on knowledge) will require ongoing access. However, increasing levels of visitation by the general public to some places may desecrate or undermine the value(s) of that place.

When an activity is going to prevent Aboriginal people's access to culturally important locations or open up culturally important locations to the general public, it is likely that the level of impact is medium or high adverse. If you determine the impacts are not medium or high adverse, you will need to provide strong justification for your conclusion.

3.11 Historic cultural heritage impacts

3.11.1 Assessment questions on historic cultural heritage impacts

What is the impact on places, buildings or landscapes of heritage significance?

What is the impact on relics or moveable heritage items, or an area with a high likelihood of containing relics?

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 – see the Australian Government's [Heritage webpage](#)
- items listed in the State Heritage Register and recognised as being of state heritage significance – see Heritage NSW's [State Heritage Inventory webpage](#).
- areas that have been declared cultural assets of intergenerational significance under the NPW Act due to non-Aboriginal heritage values
- items that are not listed on the State Heritage Register but have been identified by NPWS as being of potential state significance as a result of a heritage assessment – contact the relevant NPWS office for the park
- items or places listed as having local heritage significance under the local environmental plan
- other items listed on the NPWS Heritage and Conservation Register (under [s.170 of the Heritage Act 1977](#)) – known as the Historic Heritage Information Management System (HHIMS) – contact the relevant NPWS office for the park
- cultural landscapes as documented in research reports – for example those available on the Department's [Cultural Landscapes webpage](#)
- relics (as defined under the Heritage Act) or any area with a high likelihood of containing relics
- any place, building, landscape or moveable heritage items older than 25 years but not listed on the above registers also need to be considered in the REF due to their protection under the NPW Regulation.

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 (CMP), or revision to an existing CMP, or a statement of heritage impact (SoHI).

Activities affecting items on the State Heritage Register, maritime heritage or non-Aboriginal 'relics' may require specific approval under the NSW Heritage Act.

The [NPWS Guide to Historic Heritage Approvals](#) has been prepared to assist NPWS staff to:

- ensure that heritage approvals are obtained, where required, before any works are undertaken
- provide a consistent level of heritage impact assessment
- ensure that any SoHIs prepared are consistent with the relevant guidelines
- understand the requirements following the issue of an approval
- understand the range of cultural heritage protected on park.

Further information on the type of assessment required is available from [Heritage NSW](#).

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. See Section 3.12 of these Guidelines.

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

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 Area staff should be the first point of contact, however, they may need to seek further guidance from other staff with architectural, archaeological and curation expertise.

Is any vegetation of cultural value likely to be affected?

This relates to gardens, other 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, timber harvesting and other forms of land clearing.

As with historic structures, it is only possible to assess the impacts of an activity on vegetation of cultural value subsequent to understanding the heritage values. Similarly, CMPs or SoHIs are typically the mechanism used to inform this assessment.

If the proposal is likely to reduce significant landscape values and impacts cannot be improved, the level of impact is likely to be considered medium or high adverse, and there will need to be clearly justified reasons for progressing with the activity. If you determine the impacts are not medium or high adverse, you will need to provide strong justification for your conclusion.

3.12 EPBC Act matters

3.12.1 Assessment questions on EPBC Act matters

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

Matters of national environmental significance (MNES) potentially adversely affected by proposals in NSW parks may include:

- threatened species and ecological communities listed under the EPBC Act (with the exception of extinct and conservation-dependent species and vulnerable ecological communities)
- migratory species listed in international agreements
- the ecological character of a wetland of international significance (Ramsar wetlands)
- national heritage values of listed national heritage places
- World Heritage values of listed World Heritage sites and properties.

As a first step, proponents should refer to the [EPBC Act Protected Matters Search Tool](#) and provide search results as an attachment to the REF.

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 from the Australian Government's website at: [Matters of National Environmental Significance: Significant impact guidelines 1.1](#).

The significant impact assessment for MNES should be detailed as a separate attachment to the REF.

If a proposal on NPWS land that is being assessed by an REF is identified as a controlled action under the EPBC Act, assessment requirements will be provided by the relevant Australian Government department. It is the proponent's responsibility to prepare an assessment based on the Commonwealth's requirements and obtain any necessary Commonwealth approval under the EPBC Act.

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 contact the relevant NPWS Area Manager as soon as possible
- 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 NPWS to be adequately justified, then a referral to the Commonwealth will be required to determine if an EPBC Act approval is needed.

Guidance on referrals is available on the Australian Government's [EPBC Act Publications and Resources webpage](#).

Assessment bilateral does not apply

There is an Assessment Bilateral Agreement between the Australian and NSW governments under the EPBC Act. Under the agreement, certain projects that require Commonwealth approval under the EPBC Act may be assessed in accordance with NSW environmental planning processes.

Following amendments in March 2020, the bilateral agreement no longer covers assessments under Division 5.1 of the EP&A Act, such as REFs.

3.13 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.

Similarly, while the impacts of the proposal under current consideration may be considered acceptable, the cumulative impacts of it and other proposals planned to occur in the vicinity (including off park) must be considered. See note on 'project splitting' in Section 3.2 of these Guidelines.

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 offsetting actions which, under NPWS policy, should occur on lands under NPWS control where possible).

3.13.1 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 publication titled *Is an EIS Required – Best Practice Guidelines for Part 5 of the Environmental Planning and Assessment Act 1979* (Department of Planning 1995) 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.

The following impacts are likely to be 'significant'

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 that adversely affect environmentally sensitive areas

The impacts of activities undertaken in environmentally sensitive areas are more likely to be significant than similar activities proposed in less sensitive locations. By definition under cl.1.5 of the Codes SEPP, all lands reserved or acquired under the NPW Act are considered environmentally sensitive areas. 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 their nature

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. Factors which may indicate a low level of acceptability include:

- threats to the health or safety of individuals or the community, particularly children, the aged or any disadvantaged group
- threats to the natural or cultural heritage values of a park, particularly the values for which a park has been reserved or where threats are inconsistent with or undermine conservation programs (noting that such activities have the potential to significantly affect the environment)
- adverse impacts on a community's amenity
- major changes or transformations of a locality valued by the community
- risks to items, buildings or heritage items that are particularly valued by the community
- impacts that threaten property values or decrease the options for a secure livelihood of individuals or the community generally.

3.13.2 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 required⁶)
- there is likely to be a significant impact on MNES (if so, referral to the Australian Government 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. A medium or high level of impact is likely to be considered significant.

Circumstances when a proposal may have a significant impact

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.

Certification of buildings or structures

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.

The NPWS Construction Assessment Procedures provides guidance on activities likely to require certification.

⁶ See Section 1.3.5 of these Guidelines.

4. Post-determination

After NPWS has considered the REF and the proponent has paid the invoiced fees (see Section 2.4.1 of these Guidelines), the proponent will be sent a letter with the determination notice attached and advised of the next steps in gaining NPWS approval for the works. Activities requiring an REF are generally only determined subject to conditions, which form the basis of the conditions of approval.

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 determination and approval
- the description of the activity given in the REF, including any mitigation measures or other environmental safeguards and any other commitments stated in the REF and any plans that form part of the description of the activity
- the additional plans required to be submitted in the conditions of the approval.

4.1 What do I need to do before starting work?

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

- obtaining a formal approval under the NPW Act in the form of a lease, licence or easement under the NPW Act or a consent under the NPW Regulation consistent with the REF's determination
- preparing an environmental management plan to guide construction works
- lodging a bank guarantee
- ensuring structures comply with the Building Code of Australia and other relevant technical or industry standards (refer NPWS [Construction Assessment Procedures](#)).

Table 2 in Appendix B lists some of the types of approvals that may be required from NPWS.

4.1.1 Other approvals that may be required

The granting of approval(s) by NPWS after determination of an REF does not negate the need for proponents to seek any other approvals, agreements, licences, permits or consents that may be required for the activity to proceed. It is the proponent's responsibility for gaining any other approvals or licences required from other government agencies. Discussions should have been held with these other agencies before submitting the REF to NPWS for determination.

If there is any change to the activity due to conditions of these subsequent approvals, the proponent will need to seek a modification to the REF's determination (see Section 1.2.2 of these Guidelines).

Commonwealth environmental impact assessment procedures and approval requirements will be triggered under the EPBC Act if the activity is likely to significantly affect a 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 3.12 of these Guidelines, an activity likely to have a significant impact on MNES should be reconsidered in the first instance, advice sought as soon as possible from NPWS, and a referral made to the Australian Government which will provide any necessary assessment requirements.

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

4.2 Compliance with conditions during the project

Once compliance with all pre-construction conditions has been achieved, and all necessary approvals have been obtained, the proposed activity may commence. All aspects of the activity must comply with conditions of any approval (which include the conditions of determination). Compliance with conditions helps in achieving best practice environmental protection management, protects park values and also avoids the need for any enforcement action by NPWS or other government agencies.

Efforts to minimise the likelihood of non-compliance with conditions during the project start during the REF's preparation. The proponent should ensure that the proposed mitigation measures identified in the REF are practical, easy to implement, and achievable within the resources and funding available to the proponent.

It is the proponent's responsibility to ensure that all staff, contractors and subcontractors involved in the project abide with and carry out the mitigation measures outlined in the REF (or as otherwise imposed as conditions of any approval following the REF's determination). Onsite briefings and detailed job plans will help to ensure contractors and relevant staff are aware of the conditions they must follow, including mitigation measures.

Monitoring of compliance with conditions during the construction phase will be carried out by NPWS. This may be scheduled or ad hoc and may require the assistance of the proponent. NPWS is not the only agency that monitors compliance of activities undertaken on park. Depending on the type of proposal, its location and the extent of authorised impacts, DPI Fisheries and the EPA might also have roles in monitoring compliance.

NPWS's compliance role is principally legislated by the NPW Act and NPW Regulation. An immediate aim of any compliance is remediation of harm to the environment including park values. In some circumstances, an approval under the NPW Act or NPW Regulation will provide a defence to offences under the NPW Act and NPW Regulation. If the conditions attached to the approval under the NPW Act or NPW Regulation are breached, however, the defence will no longer apply. Both the proponent and any responsible individuals may be subject to prosecution under the NPW Act. Depending on the location and type of impacts of the activity, other legislation (such as the BC Act and Protection of the Environment Operations Act) may also apply.

Reporting non-compliance

If a non-compliance is identified as part of a project, the proponent is to report the breach to the Environment Line on 131 555 as soon as practicably possible, as this allows reports to be immediately logged in the compliance record system. The proponent should then immediately notify the NPWS contact officer for the project and the NPWS Area Manager.

Appendix A. Permissibility

Refer to Section 1.6 of these Guidelines for how permissibility fits into the REF process.

A.1 National Parks and Wildlife Act 1974

The activity must be consistent with the aims, objectives and provisions of the National Parks and Wildlife Act 1974 (NPW Act) for it to be permissible. As a guide, an activity is likely to be permissible if:

1. the following requirements are met:
 - a. the purpose of the activity is directly related to the purpose and management principles for the reserve, as identified in s.30E to s.30K
 - b. the activity is consistent with the plan of management (see below)
 - c. the activity is for a use which is specified in Part 12 NPW Act (s.151A to s.153E) or is expressly authorised by another section of the NPW Act; or
2. the activity is undertaken in accordance with the terms and conditions of an existing interest; or
3. 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

All activities (except for activities undertaken under an existing interest) must be consistent with the plan of management for the park in order for it to be legally permissible (s.81 of the 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 (with reference also to the provisions under the NPW Act, NPW Regulation and the current relevant park management policies).

Wilderness

In respect of land that is within a wilderness area, the Minister is not permitted to:

1. grant a lease or licence under s.151 NPW Act – see s.153A(a) NPW Act
2. grant a lease, licence, easement or right of way under s.153D for a telecommunication facility – see s.153A(c) NPW Act
3. grant an interest under s.153B for water-related or wastewater-related infrastructure in a special area of Sydney's or the Hunter's water supply – see s.153B(9) NPW Act.

Permissibility of some activity types

Visitor uses and other purposes under s.151 NPW Act

Section 151 of the NPW Act allows the Minister to grant a lease or licence within lands reserved under the NPW Act (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. These include giving effect to the objects of the NPW Act (s.151(3)) and the sustainability assessment criteria adopted under s.151B.

Where an REF is required for a lease or licence proposal under s.151, specific information regarding the purpose of that lease/licence will need to be included within the REF and 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 powerlines

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

New pipelines and powerlines constructed and used by public utility providers are permissible. Approvals are subject to NPWS policies, the level of environmental impact and approval by NPWS and the Minister.

It is not permissible to construct new pipelines and powerlines on park for private use.

The maintenance or replacement of existing pipelines and powerlines does not require further approval by NPWS if:

- the existing pipeline or powerline is subject to an easement granted under s.153 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 (see Section 1.4.3 of these Guidelines)
- the existing pipeline or powerline is the subject of an existing interest under the NPW Act, and the authorisation relating to that existing interest allowed such work to be undertaken without further approval and the works are in accordance with the terms and conditions of the interest (see Section 1.4.2 of these Guidelines)
- the works are within the terms of a protocol and consent negotiated with the utility provider (see Section 1.2.1 of these Guidelines).

If it cannot be satisfactorily demonstrated that the pipeline or powerline is the subject of an existing interest, approval by NPWS 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. NPWS will also require the proponent to enter into a s.153 easement agreement for the existing pipeline or powerline 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 purposes of the erection, use or maintenance of telecommunications facilities (s.153D NPW Act). The exceptions to this permissibility are as follows:

- the telecommunications facility is within Aboriginal areas
- 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)
- the telecommunications facility is within declared wilderness under the Wilderness Act – see s.153A NPW Act
- the Minister is not satisfied that the telecommunications facility meets all of the tests set out in s.153D NPW Act – see below in regard to interpretation of s.153D
- the installation of the telecommunications facility would be contrary to an adopted plan of management – s.81 and s.81A of the NPW Act.

New telecommunications facilities, including new facilities proposed to be co-located with existing facilities, require approval under s.153D unless they are authorised under the *Cwth Telecommunications Act 1997* by a facility installation permit or because they are temporary defence installations (see Section 1.4.4 of these Guidelines). Existing facilities, if not an existing interest or existing telecommunications interest, will generally require an approval under section 153D for use and any proposed maintenance (if maintenance is not within the definition of ‘maintenance’ under the *Cwth Telecommunications Act*).

Section 188 of the NPW Act allows the Minister to formalise an existing facility that was authorised under the *Forestry Act 2012* or the *Crown Lands Management Act 2016* (or previous related legislation) 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 new facility would need to comply with s.153D).

In terms of the interpretation of s.153D, the following definitions should be used:

- Telecommunications facility means:
 - any part of the infrastructure of a telecommunications network
 - 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 *Cwth Telecommunications Act*).
- 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.

This means that telecommunications facilities include towers, masts, antennae and lines (including underground 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 for authorisation under s.153D of the NPW Act, there are several 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 NPWS.
- 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 state conservation areas and Part 11 land. They are not permissible within any other category of reserved land 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 state conservation areas, or mining and petroleum production, will require either approval or concurrence of the Minister administering the NPW Act, as set out in s.47J NPW Act. Consent will also generally be required under the NPW Regulation to enter and undertake works within a state conservation area or on Part 11 land.

A separate internal NPWS document outlines the procedures for considering proposed exploration activities in state conservation areas and on Part 11 land. For exploration activities declared to be exempt development under cl.10 of the Mining SEPP no REF is required.

Roads for property access

Section 153C of the NPW Act enables the Minister to grant an easement or licence through reserved lands for accessing other land which is completely or partially surrounded by the park. Section 153C provides a range of constraints and considerations regarding this power. The easement or licence may include permissions for maintenance works to be carried out by the landholder or a contractor working on their behalf.

Certain roads of access remain excluded from the reservation as park under various reservations Acts, and those roads may continue to be used for the purposes which existed before the surrounding park's reservation without any easement or licence. If such an easement or licence is required (e.g. if the purpose changes or an upgrade to the road is required), this would be formalised under s.149 of the NPW Act. Roadworks to maintain or improve certain access roads may be approved to be carried out by third parties under s.188D of the NPW Act.

Infrastructure associated with development adjacent to parks

Developments adjacent to parks often include a range of ancillary activities and infrastructure including stormwater discharge pipes, water quality control structures, fire management zones etc. These are generally not permissible within park.

As an exception to this, instances may arise where water quality control structures or fire management zones are required in park irrespective of the adjacent 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 park or a safety imperative.

A.2 Wilderness Act 1987

An activity in a wilderness area will not be permissible unless it is consistent with the aims and objectives of the Wilderness Act or in accordance with any plan of management for the wilderness area. The proponent needs to establish if the location of the activity is in an area declared or nominated as wilderness under the Wilderness Act.

If the activity is to be carried out in respect of land that is, or is part of, a wilderness area, the activity is not to be approved unless there has been consideration of the impacts on wilderness values in line with s.5.5(3) of the EP&A Act.

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

1. Wilderness areas are generally undisturbed and are to be managed to allow natural ecological process to continue with minimal intervention or be restored.
2. Most development in wilderness areas is prohibited and any activity must be compatible with wilderness principles (s.9 of the Wilderness Act).

Appendix B. Types of approvals

Table 2 contains a list of common approvals that may trigger the requirement for an 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 NPWS before carrying out an activity on land reserved or acquired under the NPW Act. Proponents should refer to the legislation and consult with the relevant NPWS office and may need to obtain independent legal advice.

Note that Aboriginal Heritage Impact Permits under s.90 of the NPW Act to harm or desecrate Aboriginal objects or places are now issued by Heritage NSW (part of the Department of Premier and Cabinet) and not by NPWS.

Table 2. Types of approvals which may be obtained from NPWS

Section/ clause*	Short title	Type of approval (summary only)
NPW Act ss.40(2), 53(2), 71S, 71BD(1)	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 which is situated within a park.
NPW Act ss.43, 47K, 58, 58S(1), 71S, 71BD(1)	Soil research	The Department's Secretary may concur to the carrying out of experimental or research work pursuant to Part 6 of the <i>Soil Conservation Act 1938</i> .
NPW Act ss.44(2), 47K, 58, 58S(1), 71S & 71BD(1)	Lease under Fisheries Management Act	The Minister may concur to the grant of a lease under the FM Act in respect of lands or in respect to any of the waters beneath which those lands are submerged.
NPW Act ss.47J(3), 47J(4), 71S & 71BD(1)	Renewal or extension of mining interest	The Minister may concur to the grant of, renewal of, or extension of a mining interest.
NPW Act ss.47J(7), 71S & 71BD	Exercise of certain rights	The Minister may approve the exercise of certain rights under the <i>Mining Act 1992</i> or <i>Offshore Minerals Act 1999</i> .
NPW Act s.149	Lease or licence of acquired land	The Minister may grant leases or licences with respect to land acquired under Part 11 of the NPW Act.
NPW Act s.151	Lease or licence of land for general or sustainable visitor/tourist purposes.	The Minister may grant a lease or licence, including any building or structures on the land for a purpose listed under s.151A. The lease or licence may authorise exclusive use, erection of a new building or structure, or modification of an existing building or structure.
NPW Act s.152(1)	Licence to trade within reserved lands	The Department's Secretary may grant licences to carry on trades, businesses or occupations.

Section/ clause*	Short title	Type of approval (summary only)
NPW Act s.153(1)	Easement or right of way for the purposes of access or utilities	The Minister may grant (for joint or several use) easements 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.
NPW Act s.153B	Granting of interests in water catchment special areas	The Minister may grant leases, licences or easements or rights of way 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.
NPW Act s.153C(1)	Easements, rights 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 NPW Act and the Minister is satisfied of certain conditions. Private property access through certain parks may not require authorisation due to the provisions regarding access roads in the legislation which reserved that section of park.
NPW Act s.153D	Leases, licences and easements for telco facilities	For the purpose of the erection, use or maintenance of telecommunications (telco) facilities, the Minister may grant leases, licences or easements or rights of way through, on or in certain lands reserved under this Act, subject to such terms and conditions as the Minister may determine.
NPW Act s.156A(2)	Consent to damage reserved land	The Department's Secretary 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.
NPW Act s.171(1)(b)	Authority to harm animals and destroy vegetation	The Department's Secretary may authorise any person to harm animals within certain reserved land and fell, cut, destroy, injure, remove or set fire to any tree, timber or vegetation within a nature reserve or karst conservation reserve.
NPW Act s.188D(1)	Authorising works to maintain or improve access roads	The Department's Secretary may authorise work to be carried out on certain access roads to enable the road to continue to be used for the purposes for which the road was used before the road's corridor was vested in the Minister. Such maintenance and improvement work may be carried out even if it involves ancillary work on adjoining reserved land.
NPW Reg cl.10(6)	Consent to use vehicles, animals, vessels and machines in a park, or open gates	The park authority may consent, subject to conditions, to a person operating, driving or using certain vehicles (e.g. heavy machinery) or an animal; operating a vessel in a commercial operation or in restricted waters; opening, damaging or destroying a gate, barrier or similar device in a park.

Section/ clause*	Short title	Type of approval (summary only)
NPW Reg cl.13(2)(a)	Consent to littering and damage	The park authority 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).
NPW Reg c.19(4)	Consent to interfere with non-Aboriginal cultural heritage	The park authority may consent, subject to conditions, to a person interfering with or removing any deposit, object or material evidence that is more than 25 years old, contrary to cl.19(3)(d).
NPW Reg cl.20(2)	Consent to erection or use structures	The park authority may consent, subject to conditions, to a person erecting, altering, extending or occupying any building or certain structures in a park.
NPW Reg cl.21(2)	Consent to gather vegetation	The park authority may consent, subject to conditions, to a person gathering, destroying etc. vegetation; possessing vegetation; or introducing vegetation into a park, contrary to cl.18(1).
NPW Reg cl.25(3)(a)	Consent to sporting, recreational and other activities	The park authority 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.25(1).
NPW Reg cl.26(2)	Consent to research activities	The park authority may consent, subject to conditions, to a person carrying out research in a park.

* NPW Act = *National Parks and Wildlife Act 1974* (version as amended at 26 October 2018); and
NPW Reg = *National Parks and Wildlife Regulation 2019* (version as amended at 5 December 2019).