



*National Parks and Wildlife Act 1974:  
Part 6 Approvals*

**Interim Community Consultation Requirements  
for Applicants**

- 1. The Department of Environment and Conservation (DEC) respects and acknowledges the role of Aboriginal people in the management and protection of their cultural heritage.*
- 2. These interim guidelines are to guide persons seeking an approval under Part 6 of the National Parks and Wildlife Act 1974.*
- 3. DEC has developed these interim guidelines to clarify and reaffirm the intent of its policies regarding the requirements for consultation by proponents with members and representatives of Aboriginal communities.*
- 4. These interim guidelines seek to be clear as to what the parties involved in this process should expect and, in doing so, seek to be workable and fair to all parties.*
- 5. DEC is committed to developing a more detailed guideline to replace this interim guideline, based on consultation with the Aboriginal community and other stakeholders in 2005.*

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## Part A: Scope and introduction

This is a document focusing on the requirements for engaging with the Aboriginal community as part of the preparation of an application for a consent or permit under Part 6 of the *National Parks and Wildlife Act 1974*.

Input from the Aboriginal community is an essential part of assessing the significance of those Aboriginal objects likely to be impacted by an activity. Hence DEC requires proponents to undertake consultation with the Aboriginal community as an integral part of the impact assessment.

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

### Statutory framework

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

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

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

- An **Aboriginal object** is any deposit, object or material evidence (not being a handicraft made for sale) relating to Aboriginal habitation of the area that comprises NSW, being habitation before or concurrent with the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains (as defined within the meaning of the NPW Act).
- An **Aboriginal place** is a place which has been declared so by the Minister administering the NPW Act because he or she believes that the place is or was of special significance to Aboriginal culture. It may or may not contain Aboriginal objects.<sup>1</sup>

DEC responsibilities under part 6 of the NPW Act are triggered where an activity is likely to impact on Aboriginal objects (also referred to as sites) and declared Aboriginal places. Such an activity requires the approval of the Director General of DEC under section 87 or section 90 of

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

the NPW Act.<sup>2</sup> Section 91 of the Act requires that DEC be notified by any person who is aware of the location of an Aboriginal object within a reasonable time after discovery of that object.

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

## **Why DEC requires consultation**

DEC recognises that:

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

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

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

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

- influencing the design of the assessment of cultural and scientific significance
- providing relevant information regarding the cultural significance values of the objects/places
- contributing to the development of cultural heritage management recommendations

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

- providing comment on draft assessment reports prior to their submission.

## **Summary of the roles of the parties**

### **Proponent**

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

### **Aboriginal community**

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

### **DEC**

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

### **Service providers**

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

## Part B: Consultation requirements

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

### 1: Notification and registration of interests

The proponent or their consultant<sup>3</sup> (referred to as 'the proponent' below) must actively seek to identify stakeholder groups or people wishing to be consulted about the project and invite them to register their interest.

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

(a) the bodies listed below –

- Local Aboriginal Land Council(s)
- Registrar of Aboriginal Owners
- Native Title Services
- local council(s)
- Department of Environment and Conservation<sup>4</sup>, and

(b) via an advertisement in the local print media.

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

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

### 2: Preparation for the assessment (design)

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

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

<sup>4</sup> Address correspondence to Executive Director Operations, Department of Environment and Conservation, PO Box A290, Sydney South NSW 1232.

The proponent must present and/or provide the proposed methodology for the cultural and archaeological assessment to the registered stakeholders. The stakeholders are then provided with a reasonable time (at least 21 days) to review and provide feedback to the proponent, including identification of issues/areas of cultural significance that might affect, inform or refine the methodology. Comments should be provided in writing, or may be sought verbally in a meeting with the registered respondents. In either case they should be documented in the proponent's assessment report.

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

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

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

### **3: Drafting, review and finalisation of the Cultural Heritage Assessment Report**

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

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

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

Any additional stakeholders who have identified themselves to the proponent in writing after Step 1 must also be notified that the draft report is available and their comments invited.

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

## **DEC decision**

On receipt of sufficient information from the applicant, DEC will proceed to make its decision. The outcome of decision-making will be either the granting or refusal of the application(s), with or without conditions. If consent is approved then, in imposing any conditions, DEC will take into account the views of the Aboriginal stakeholders as reflected in the Cultural Heritage Assessment Report.

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

## **Part C: Provision of Aboriginal assessment and advisory services**

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

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

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

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

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

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

The above arrangements mirror DEC expectations regarding engagement of scientific/archaeological services.