

Department of Environment and Conservation (NSW)

ACCREDITATION

to undertake

**THREATENED SPECIES AND BIODIVERSITY
ASSESSMENTS**

A Discussion Paper

November 2004

Prepared by the Biodiversity Management Unit
Reform and Compliance Branch
Environment Protection and Regulation Division

Accreditation to undertake Threatened Species and Biodiversity Assessments

A Discussion Paper

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Accreditation to undertake Threatened Species and Biodiversity Assessments

A Discussion Paper

OVERVIEW OF ACCREDITATION SCHEME

An industry has grown around the assessment and mitigation of impacts on threatened species for developments. For some developments, more is spent on consultancy fees than on conservation. The information provided by consultants is used to make crucial decisions about the conservation values of a particular areas of land. It is crucial that this information is unbiased and objective, and to assist with achieving this, the NSW Government is proposing to accredit consultants engaged in this type of work.

This accreditation scheme has been developed by the NSW Government to provide professional and operational standards for consultants involved in threatened species assessment. It is hoped that the scheme will raise the overall standard of threatened species and biodiversity survey and assessment to the benefit of environmental professionals, their clients and ensure that environmental impacts are appropriately assessed.

Accreditation under this scheme is not initially proposed to be compulsory, but it is anticipated that clients will prefer the certainty offered by accredited professionals, and that accredited consultants will be preferred for government contracts.

The accreditation scheme is based on a points system which is set up in a similar manner to a drivers licence. Upon meeting the initial criteria for accreditation, a consultant initially receives 10 points and can advertise his or her accredited status. Accredited status indicates to clients that the consultant is a recognised professional experienced in threatened species assessments and is up-to-date with current legislation and scientific knowledge.

The accreditation criteria include compliance with NSW Government survey and assessment guidelines and policies, a code of conduct, licensing requirements and ongoing professional development. Non-compliance with the accreditation criteria will result in a consultant losing points, and ultimately losing accreditation. Removal of points will be in accordance with guidelines that will ensure a transparent and consistent approach. Minor breaches will result in the loss of 1 point, more significant breaches will incur larger point losses. Repeated minor breaches of the accreditation criteria could result in a major penalty if it appears that no effort has been made to correct the cause of the breach. Major breaches can result in instant loss of accreditation. Very minor breaches will trigger a warning letter and no loss of points.

An Accreditation Panel consisting of stakeholder representatives and experts in environmental impact assessment will oversee the scheme and make all decisions regarding applications, loss of points and removal of accreditation. As part of the accreditation scheme and ongoing assessment of compliance with accreditation criteria, the

accreditation panel can also undertake investigations in response to complaints by third parties or random audits of the reports prepared by accredited consultants.

It is proposed that fees are as follows: The application fee is \$150 and non-refundable. A successful applicant then pays \$350 for an initial accreditation period of 1 year. Following this initial accreditation period, renewal of accreditation is for a period of 3 years with either an annual fee of \$300 or a 3 year fee of \$800. The accreditation panel can attach conditions to the accreditation of a consultant.

Comments or complaints regarding the work or conduct of an accredited consultant can be made by third parties to the Accreditation Panel. Vexatious complaints will be disregarded. A consultant will be advised that a complaint has been made against them and will have the right to respond to the complaint prior to points being removed.

The scheme proposed in this Discussion Paper has been developed to meet the provisions of the Threatened Species Conservation Act 1995, as amended by the Threatened Species Legislation Amendment Bill 2004. This Bill also amended the Fisheries Management Act 1994 to provide for the development of an accreditation scheme for professionals involved in threatened aquatic biodiversity assessments. Discussions between the DEC and DPI to develop a scheme which covers both Acts are being held and may lead to changes to the scheme as it is proposed in this Discussion Paper.

INTRODUCTION

Background

The conservation of threatened species is fundamental to the protection of our natural heritage. In NSW the planning system requires consent authorities to consider the potential impacts of developments and activities on threatened species, populations and ecological communities in an informed and objective manner. Threatened species impact assessment forms a component of ecologically sustainable development and is based on the premise that 'significant effects' to threatened biota should be avoided, or at least minimised, wherever possible.

To be performed adequately, threatened species impact assessment requires a range of professional competencies, knowledge and expertise. Previously there has been no formal requirement for any level of training or knowledge to undertake threatened species impact assessment. Concerns have been raised that this situation undermines the profession as a whole and devalues the crucial role played by specialists in this growing field. To increase the veracity of the impact assessment process and address concerns of structural pressures within the existing system to under report the potential impacts of developments, the NSW Government has developed an accreditation scheme for professionals involved in threatened species impact assessment.

Accreditation or certification schemes are common in many professions that seek to set a standard for professional practice. In Australia, schemes have been developed for accountants, planners, project managers, contaminated sites auditors and others. Internationally, there are examples of schemes for environmental professionals, including in Canada, the USA and the United Kingdom. The Environment Institute of Australia and New Zealand (EIANZ) and the NSW Ecological Consultants Association (ECA) have both been involved in discussions regarding accreditation and certification schemes for environmental professionals over the past few years.

The NSW accreditation scheme proposed for professionals involved in threatened species impact assessments has adopted many of the features of similar schemes overseas, but is tailored to the particular requirements of environmental assessment and the planning system in NSW. It is a unique scheme that has been designed to be flexible in response to changes to the profession and the planning system.

As with other schemes, the NSW accreditation scheme combines standards of academic training and levels of experience with an ongoing assessment of work performed against set criteria. It also requires ongoing professional development for accredited persons. It is a transparent scheme that meets the requirements of environmental professionals, their clients and third parties interested in ensuring that environmental impacts are appropriately assessed.

The accreditation scheme will be administered by the Department of Environment and Conservation (DEC) which has responsibility for the implementation of the NSW Threatened Species Conservation Act 1995 (TSC Act). The TSC Act (which has just been substantially amended) sets the legislative context for the accreditation scheme. The DEC has many legislative responsibilities relating to threatened species issues that integrate with the accreditation scheme, particularly a role in concurrence under the Environmental

Planning & Assessment Act 1979 (EP&A Act) and licensing under the National Parks and Wildlife Act 1974 (NP&W Act).

The Department of Primary Industries (DPI) (formerly NSW Fisheries) has responsibility for implementing the Fisheries Management Act 1994 (FM Act) which provides for the conservation of threatened aquatic biodiversity. The FM Act was also recently amended to include a similar provision for an accreditation scheme for professionals involved in threatened biodiversity assessments. Discussions between the DEC and DPI to develop a scheme which covers both Acts are being held and may lead to changes to the scheme as it is proposed in this Discussion Paper.

Legislative Context

The accreditation scheme has been developed in response to the legislative responsibilities of the DEC under the TSC Act. Previously Section 113 of the TSC Act provided for only persons involved in the preparation of Species Impact Statements (SISs) to be the subject of an accreditation scheme (see below). However, as a result of the recent reforms to the TSC Act the provisions have been expanded to include accreditation for those involved in the preparation of assessments under Section 5A of the EP&A Act (i.e Assessments of Significance) and the preparation of environmental planning instruments (EPIs). This Discussion Paper refers to an accreditation scheme for ‘threatened species and biodiversity assessments’ which include Assessments of Significance, SISs and EPIs.

Section 113 of the TSC Act states the following:

“113 Director-General may accredit persons to prepare species impact statements

- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare species impact statements for the purposes of this Act.*
- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-general requires to effectively determine the application and must be accompanied by the fee fixed by the Director-General for the consideration of the application.*
- (3) An accreditation is to be for the period specified by the Director-General in the instrument of accreditation, and the accreditation (and any renewal of it) may be given subject to the conditions and restrictions (if any) specified in the instrument of accreditation.*
- (3A) Without limiting subsection (3), an accreditation is to include conditions that require a species impact statement to be prepared in accordance with survey standards approved from time to time by the Director-General by order published in the Gazette.*
- (4) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.”*

Section 126N of the Threatened Species Legislation Amendment Act 2004 states the following:

“126N Director-General may accredit persons to prepare threatened species assessments and surveys

- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to undertake and prepare surveys and assessments for use in connection with:
 - (a) biodiversity certification of EPIs under this Division, or*
 - (b) any assessment of the matters referred to in section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the Environmental Planning and Assessment Act 1979.**
- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and the application must be accompanied by the fee fixed by the Director-General for the consideration of the application.*
- (3) An accreditation is to be for the period specified by the Director-General in the instrument of accreditation, and the accreditation (or any renewal of it) may be given subject to the conditions and restrictions (if any) specified in the instrument of accreditation.*
- (4) Without limiting subsection (3), an accreditation is to include conditions that require surveys and assessments to be undertaken and prepared in accordance with standards approved from time to time by the Director-General by order published in the Gazette.*
- (5) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.*

Section 221ZR of the Threatened Species Legislation Amendment Act 2004 is the same as Section 126N and amends the Fisheries Management Act 1994.

Purpose of the Discussion Paper

The purpose of this Discussion Paper is to seek the views of stakeholders with an interest in an accreditation scheme for consultants engaged in threatened species impact assessments. While we welcome feedback on all areas of the scheme, questions are posed throughout the Discussion Paper to provide a guide to specific areas where input is sought. To assist you, a response sheet addressing all the questions posed can be found in Appendix 1.

Written comments should be sent to: Catherine Price
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OBJECTIVES

The objectives of the accreditation scheme are based on the objects of the TSC Act, and are:

- To ensure the impacts of actions affecting threatened species, populations or ecological communities are properly assessed;
- To provide a professional standard for threatened species impact assessment in NSW;
- To provide greater certainty for planning authorities and the community regarding the impact of actions on threatened species, populations or ecological communities;
- To assist in the delivery of ecologically sustainable development based on accurate and unbiased information; and
- To facilitate professional recognition for those involved in threatened species impact assessments.

THE ACCREDITATION PROCESS

The accreditation scheme consists of two main stages that together will ensure that an adequate standard of work is performed by accredited consultants on an ongoing basis (see Figure 1). These are:

- Stage 1: To gain accreditation, applications must meet set *'prerequisites for accreditation'*;
- Stage 2: To maintain accreditation, consultants are required to comply with *'accreditation criteria'* on an ongoing basis.

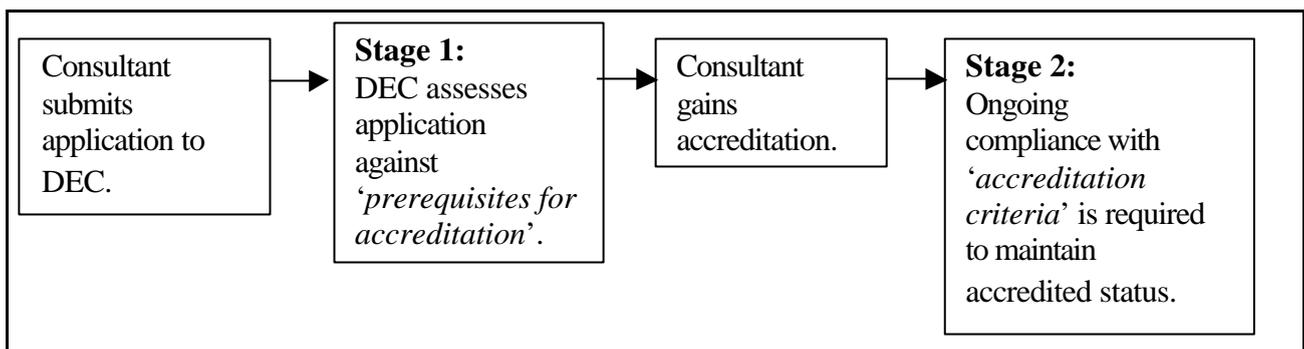


Figure 1 – General accreditation process outlining two stages of assessment.

The *'prerequisites for accreditation'* and the *'accreditation criteria'* are different but complement each other. They reflect the standards that the DEC sets as a minimum for consultants undertaking threatened species and biodiversity assessments. The specific criteria are discussed in the following sections of the Discussion Paper. Your comments on the specific criteria and/or the process as a whole are welcomed.

Stage 1 - Prerequisites for Accreditation

The accreditation panel assesses all applications for accreditation against the '*prerequisites for accreditation*' that emphasise relevant experience, knowledge and appropriate qualifications. Access to specialist expertise and the details of support teams may also be included in applications and will be considered as part of the assessment process.

The '*prerequisites for accreditation*' for preparing SISs are:

- a Science (or related) degree majoring in biology, zoology, botany, natural resources or environmental science (or related subjects);
- at least 5 years experience in threatened species impact assessment (or at least 10 years relevant experience if he/she does not possess a relevant degree), with at least 3 years experience in Australia;
- at least 2 years experience managing projects of relevance to threatened species and biodiversity assessment;
- comprehensive knowledge and understanding of NSW environmental legislation and planning system;
- knowledge and understanding of NSW and Commonwealth government policies relevant to natural resource management, biodiversity conservation and sustainable development;
- a thorough understanding of the principles of, and methods for, conducting threatened species and biodiversity assessments;
- demonstrated up-to-date knowledge of relevant developments in the scientific, technical, regulatory and legal fields relevant to the preparation of Species Impact Statements;
- appropriate arrangements for the provision of specialist expertise in areas where the applicant is not an expert;
- where applicable, appropriate arrangements for the supervision of any support team members who may assist the applicant in the preparation of Species Impact Statements, but may not have the same level of expertise;
- two references from relevant referees;
- a certificate of currency of professional indemnity insurance for at least \$5 million to cover the work of the applicant and his/her support team, and any other necessary professional insurance; and
- a signed 'Code of Conduct'.

The Code of Conduct outlines the responsibilities of the accredited consultant, conflict of interests and ethical standards of practice. It will largely be drawn from similar codes prepared by the Planning Institute of Australia, the EIANZ and ECA.

Question 1a:	Do you think the pre-requisites for accreditation are sufficient? Can you suggest or comment on criteria that could be added or removed?
Question 1b:	What elements should a Code of Conduct include?

Applying for Accreditation

Applying for accreditation under the scheme will be similar to applying for a job or tendering for a contract. A consultant will need to submit a completed application form with the required supporting information addressing the '*prerequisites for accreditation*' to the Executive Officer of the Accreditation Scheme. The accreditation panel can request additional supporting information, if necessary, during the assessment of an application.

Supporting information

The following documents and supporting information should accompany a completed application form to assist the accreditation panel assess applications in relation to the '*prerequisites for accreditation*':

- An academic transcript and evidence of other relevant courses undertaken.
- A current *curriculum vitae*.
- A list of projects the applicant has been involved in including a brief description of the applicants role within each, for example project manager or provision of expert advice.
- A copy of a relevant report or study completed by the applicant.
- A detailed statement addressing each of the following:
 - a) Comprehensive knowledge and understanding of NSW environmental legislation and planning system;
 - b) Knowledge and understanding of NSW and Commonwealth government policies relevant to natural resource management, biodiversity conservation and sustainable development;
 - c) A thorough understanding of the principles of, and methods for, conducting threatened species and biodiversity assessments;
 - d) Demonstrated up-to-date knowledge of relevant developments in the scientific, technical, regulatory and legal fields relevant to the preparation of Species Impact Statements.
- Details of the arrangements that are, or will be, in place to provide specialist expertise in areas where the applicant is not an expert and details of personnel used to support the applicant (see Use of Specialist Expertise and Support Team below).
- Two references from relevant referees;
- A certificate of currency of professional indemnity insurance for at least \$5 million to cover the work of the applicant and his/her support team, and any other necessary professional insurance; and
- A signed 'Code of Conduct'.

Use of Specialist Expertise and a Support Team

It is unrealistic to expect that an accredited consultant could be an expert in all areas required for the preparation of threatened species and biodiversity assessments in NSW. Accredited consultants are expected to be able to draw on a wealth of specialist expertise depending on the particular issues that arise when assessing the impact of a proposed activity. Consultation with, or the sub-contracting of, consultants with particular expertise ensures accurate assessments are undertaken using the latest information and techniques. Therefore, in order to adequately assess the ability of an applicant to undertake threatened species and biodiversity assessments, the DEC must assess the capabilities of the expertise that the applicant can draw upon. Examples of the type of specialist expertise that may be drawn upon include GIS applications, specialist flora or fauna knowledge, hydrologists, bushland rehabilitation and bushfire ecology.

Additionally, consultants often work as part of a team of people undertaking different parts of the study. If working as part of a team, an accredited consultant must adequately supervise team members to ensure that all parts of the study are undertaken in accordance with the accreditation criteria and that team members have appropriate levels of knowledge, experience and training for the tasks they are undertaking.

Consequently, an applicant is required to submit details of the arrangements for use of specialist expertise and their support team. The following information is provided to assist applicants with this part of their application:

- If specialists to be used by the applicant are from the same company as the applicant, a statement of their areas of expertise and a brief current curriculum vitae should be submitted. Similarly, for members of a support team from the same company, a brief description of each role to be undertaken and brief curriculum vitae outlining their relevant experience and qualifications is required;
- If a specialist or a member of the support team is accredited under this scheme, the applicant need only demonstrate that the services of the person are available for the applicant to use, if necessary. If the specialist or member of the support team and the applicant are not employed by the same company, a letter from them fulfils this criteria.
- If a specialist is not accredited under this scheme and is not from the same company as the applicant, a statement demonstrating their expertise in a particular area(s), a current curriculum vitae and a letter from the specialist should be submitted. There is a similar requirement for members of the support team who are not accredited and do not work for the same company as the accredited consultant.

Note: It is expected and understood that circumstances may arise where an accredited consultant requires the expertise of a third party who has not been listed in the accreditation application. In the application, the accreditation panel only requires details of specialists and team members who are regularly drawn upon and compliment the skills of the accredited consultant.

If members of the support team leave or new members join, an update must be sent to the accreditation panel detailing relevant experience, qualifications and the role that the new team members will now fulfil.

Additional options

Some professional certification schemes include knowledge tests as part of their criteria, for example the Certified Practising Accountants system. Theoretically, field and/or written knowledge tests could be incorporated into the accreditation procedure for threatened species impact assessments. Tests could cover flora and fauna identification skills, survey techniques, impact and threat assessment, biology and ecological understanding, ecosystem processes, development of relevant and appropriate mitigating measures, evaluation, monitoring, fire ecology.

However, the administration cost of schemes which include testing are generally higher given the need for tests to be constantly altered to avoid providing an advantage for later applicants. Realistically, most consultants would consult with experts if an issue arises that they are not familiar with. The requirement to list the details of available specialists may be a better method of assessing whether accredited consultants have access to a range of expertise. This requirement is similar to that in accreditation schemes for contaminated site auditors in NSW and environmental auditors in Victoria.

Interviewing applicants is also a common component of many other accreditation and certification schemes. Given the number of pre-requisites and the need for the scheme to be transparent, interviews are not regarded as necessary. However, they could be included as an option for the DEC to use if necessary.

- Question 2a:** Do you think field and/or written testing should form a component of the accreditation procedure?
- Question 2b:** If you agree with testing knowledge, what aspects of SIS preparation should the tests focus on?
- Question 2c:** Do you think that the option to interview applicants should be given to the accreditation panel as part of the accreditation procedure?

Stage 2 - Ongoing Compliance with Accreditation Criteria

Once an applicant gains accreditation under this scheme, he or she is required to comply with certain conditions and standards on an ongoing basis. These standards and conditions constitute the ‘*accreditation criteria*’. Ongoing accreditation requires a demonstration that the ‘*accreditation criteria*’ are adhered to at all times.

It is envisaged that the accreditation scheme will be based on a points system similar to a driver’s licence. This system is explained further on. Non-compliance with the

accreditation criteria can result in a consultant losing points, or for major non-compliances, instant loss of accreditation.

The ‘*accreditation criteria*’ are listed below:

1. A person must hold all relevant licences and permits to legally perform the tasks required, including:
 - Scientific Licence (under s132C of the National Parks and Wildlife Act 1974).
 - Relevant Animal Ethics Approvals
 - Wildlife Atlas Licence
 - Fisheries licences
2. A person must comply with all conditions of the licences and permits held.
3. A person must comply with all relevant DEC policies and guidelines. There are numerous DEC policies and guidelines that are directly and indirectly linked to activities that may be undertaken as part of impact assessment activities. Some examples of relevant policies and guidelines include:
 - Threatened Biodiversity Survey and Assessment Guidelines for Developments and Activities
 - Guidelines for the Assessment of Significance – Section 5A EP&A Act
 - Policy for the Translocation of Threatened Fauna in NSW
 - Hygiene Protocol for the control of disease in frogs
 - Threatened Species Disclosure Policy
 - Compensatory Habitat Policy (*under development*).
 - Offsets Policy (*under development*).
4. A person must comply with Director-General’s Requirements for SIS preparation, provide thorough and scientifically-based assessments of impacts on threatened species, populations and ecological communities, and develop appropriate ameliorative measures.
5. Support team members involved in the preparation of the study must be adequately supervised by the accredited person.
6. A person must demonstrate involvement in industry and professional development throughout the accreditation period, for example attendance at seminars, conferences, writing submissions to government regarding policy development, involvement in professional associations, publication of articles for publication in peer-reviewed journals.

Assessment of Compliance with Accreditation Criteria

Concurrence Reports

The DEC has a role in concurrence under the EP&A Act for activities that are considered to have a ‘significant effect’ on threatened species, populations or ecological communities and activities within critical habitat. The concurrence decision is detailed in a concurrence report that involves a review of the Species Impact Statement submitted with the development application.

Once the accreditation scheme is established, the Accreditation Panel will use concurrence reports for SISs to assess whether breaches of the accreditation criteria have occurred,

particularly regarding survey standards and complying with the Director-General's Requirements.

The use of concurrence reports to assess compliance with the accreditation criteria avoids a duplication of effort by the Accreditation Panel and will provide an additional incentive to have SISs prepared to the highest standard for those activities that are likely to have a significant impact on threatened species.

Ongoing compliance assessment

The Accreditation Panel may also decide to audit the work of an accredited consultant and may at any time request a copy of any relevant documents (including reports that are in preparation, field survey proformas and checksheets). This will enable the Accreditation Panel to assess whether the preparation of the study has been undertaken appropriately. The Accreditation Panel can audit a report produced by an accredited consultant at any time and can undertake audits of accredited consultants as many times as it requires during the accreditation period. An audit of a report may be triggered by a complaint from a third party, but a complaint does not necessarily trigger an audit of a report.

Figure 2 outlines the general procedure during an audit.

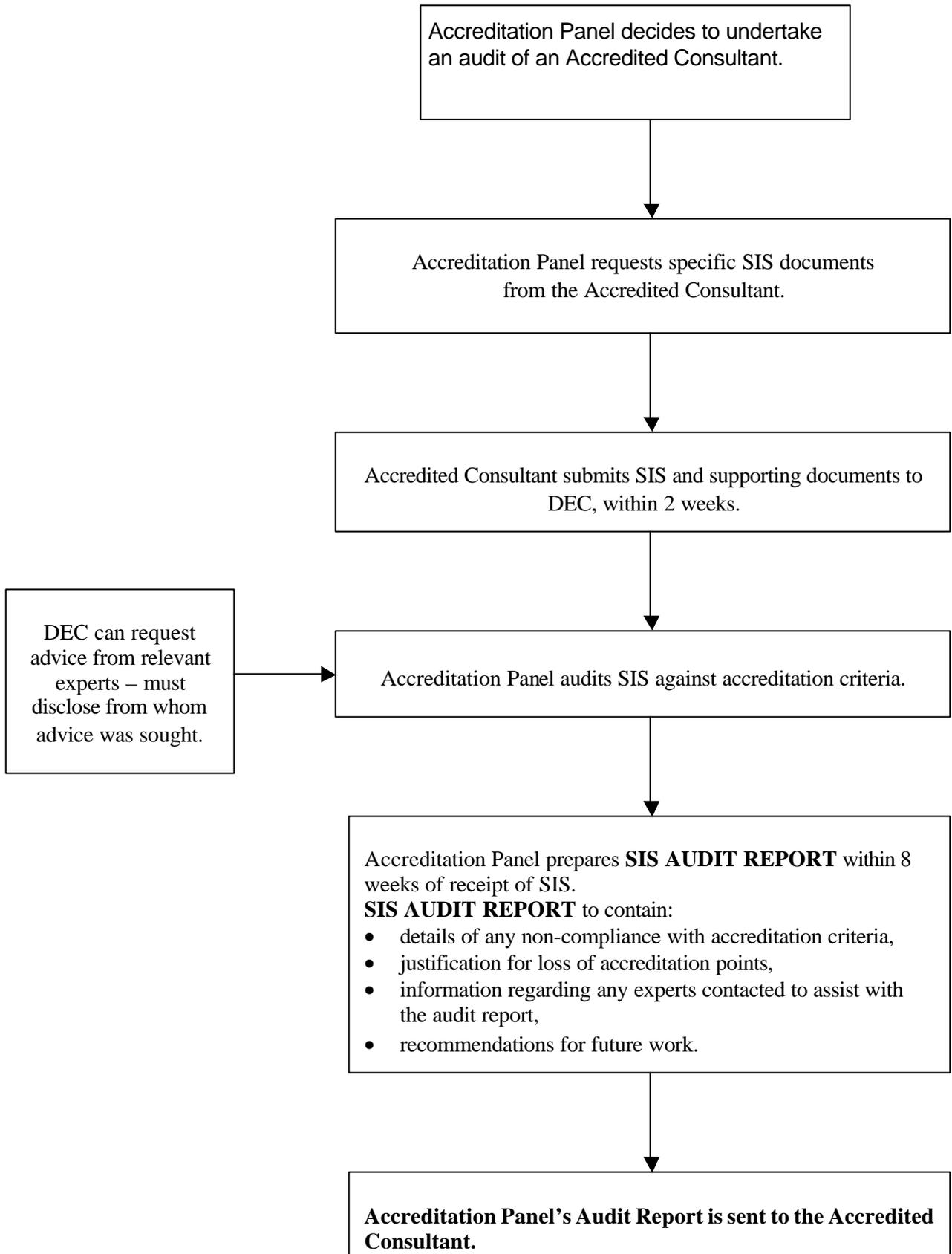
Additionally, the DEC has previously produced a checklist for consent and determining authorities and consultants to guide assessments of SISs against the Director-General's Requirements (Appendix 2). This checklist can be used by the Accreditation Panel, and interested third parties, to assess compliance with the accreditation criteria.

Alternative Option

Alternatively, reports could be peer reviewed based on the accreditation criteria. This would allow accredited consultants or independent scientific assessors to undertake audits of SISs using criteria developed by the DEC. This method of assessment was suggested by the Ecological Society of Australia in their position paper. If accredited consultants were to undertake audits, training would need to be undertaken to ensure a consistent approach and assessment.

Question 3a:	Is the audit process for SISs adequate? If not, what other elements should it contain?
Question 3b:	Should SISs be audited by the DEC or could this task be undertaken by accredited consultants? Please provide reasons for your comments.

Figure 2 – SIS AUDIT PROCEDURE



Length of Accreditation

It is proposed that the initial accreditation period be one year, with subsequent renewals for up to three years at the discretion of the accreditation panel. The period of accreditation could be varied depending on the performance of the particular consultant, with better performing consultants being granted longer accreditation periods. Another incentive for good performance could be to increase the accreditation fee if points are lost during the previous accreditation period. However this may not be efficient to administer.

Initial accreditation period – 1 year
Subsequent renewals – up to 3 years

Renewal Procedure

When applying for renewal of accreditation an accredited consultant will need to submit a completed renewal form accompanied by the accreditation fee, an updated project list and outline of professional development since the initial application.

The Executive Officer for the accreditation scheme will keep a file on each consultant applying for accreditation. The file will hold records of all correspondence from or regarding the consultant, complaints received, audit results and history of point losses for the consultant. A database will also be established to record details of accredited consultants and keep track of their points status.

The Executive Officer will contact the consultant to remind them when their accreditation will expire. Generally, at least 3 months warning will be provided to allow the consultant to prepare their application and provide the panel with time to consider any issues that may have arisen.

If a consultant does not submit their renewal application by the time advised then their accreditation will expire and they will be required to re-apply using the criteria for an initial application. In special negotiated circumstances, the renewal date may be able to be extended.

Expansion of Accreditation Scheme

The accreditation scheme has been designed to be flexible and can be expanded to include accreditation for preparing Assessments of Significance or EPIs using a tiered system. It is envisaged that three tiers of accreditation would be set, with a variation in the fees and some of the *'prerequisites for accreditation'* and *'accreditation criteria'*. The lowest level of accreditation, with lower fees and prerequisites, would be granted for preparation of Assessments of Significance and the highest level for preparation of environmental planning instruments. Accreditation for the preparation of Species Impact Statements would be the middle level of accreditation. The criteria most likely to vary would be years of experience required, and experience managing projects. Compliance with the DEC Survey and Assessment guidelines and other DEC policies would be mandatory within all tiers of accreditation. The Accreditation Panel could also audit reports prepared by all accredited consultants. A thorough understanding of NSW environmental legislation and planning system and methods of threatened species impact assessment would also be a criteria for all tiers of accreditation.

ASSESSMENT PANEL

The applications for initial accreditation, renewal of accreditation and removal of accreditation will be assessed by an Accreditation Panel appointed by the Director General of the Department of Environment and Conservation, with administrative support provided by DEC. The Panel, with input from DEC, will prepare guidelines for determining whether an instance of non-compliance is minor or major in nature and the disciplinary procedures. An appeal mechanism will be required for decisions made by the accreditation panel. Options for appeal include:

- a) to the Minister,
- b) to the Director General, or
- c) to an independent group.

Options for appeal need to consider common law principles and legal advice will be sought.

The exact representation on the panel is to be decided but it is suggested that:

- one member represent DEC (Reform and Compliance Branch – EPRD)
- one member represent local government (probably from the Local Government and Shires Association),
- one member with expertise in the role of ecological consultants, and nominated by professional associations and Ecological Society of Australia,
- one member be an independent academic scientist having expertise in threatened species impact assessment, and
- one member represent DIPNR and with planning expertise.

Depending on the preferred size of the Panel, it may be appropriate to also have DIPNR represented and a person with legal training and expertise in environmental legislation.

Expressions of Interest could be advertised seeking panel representatives. The DEC will provide administrative support to the Accreditation Panel. An Executive Officer (1 EFT) will be recruited to undertake administrative duties and to assist in the ongoing operation of the scheme.

Operation of Accreditation Panel

The Panel should seek to make unanimous decisions (similar to the NSW Scientific Committee), however any decision supported by a majority of all members of the panel will be a valid decision. At a minimum, 3 members of the panel must be present to constitute a quorum. The panel may conduct meetings remotely (phone/email) but must meet in person at least twice annually.

Minor breaches resulting in the loss of one point are not subject to appeal (unless this will result in suspension or cancellation of accreditation), however loss of points above this level is subject to an appeal mechanism as described below. In situations where an appeal is made it may review all previous decisions to remove points within the accreditation period. In the event of a consultant considering that they have been unfairly penalised by

the Accreditation Panel, in failing to renew accreditation, suspension or cancellation of accreditation or deduction of more than one point, an accredited person has the right to lodge an appeal to this decision.

POINTS SYSTEM

The accreditation scheme is based on a points system similar to a driver's licence. Upon meeting the initial criteria for accreditation, a consultant instantly receives 10 points and can advertise his or her accredited status. Non-compliance with the accreditation criteria can result in a consultant losing points, and once all 10 points are lost accreditation is removed.

Points are removed at the discretion of the accreditation panel. It is envisaged that minor breaches of the accreditation criteria will result in the loss of 1 point. More significant breaches will incur larger point losses. Extremely minor breaches may only warrant a warning letter and no loss of points. Repeated minor breaches of the accreditation criteria could result in a more significant penalty if it appears that no effort has been made to correct the cause of the breach. False claims or unethical conduct can result in instant loss of accreditation.

Guidelines for determining whether an instance of non-compliance is minor or major in nature and the appropriate disciplinary procedures will be prepared prior to the commencement of the accreditation scheme. These will ensure that disciplinary measures taken in response to instances of non-compliance are consistent and that the process is transparent.

Breaches of the accreditation criteria can be identified at any time but are most likely to be reported during audits of SISs initiated by the DEC or as a result of an investigation following a complaint by a third party.

Where minor breaches are repeated and poor management or lack of rigour is implicated on the part of the accredited person, a major penalty will be considered.

Major breaches would include non-compliance with the survey and assessment guidelines, inappropriate survey methods or timing of surveys, lack of survey effort, lack of knowledge of species ecology, inappropriate conclusions or assessment of impacts. Minor breaches would include breaches of certain licence conditions, breaches associated with a lack of process within the consultants business, lack of figures or maps within SISs.

The system for assessing non-compliance with the accreditation scheme will be revised after at least 12 months of operation. It is expected that there will need to be adjustments made to the criteria and guidelines following the introduction of the scheme. Information on the assessment of non-compliance by the accreditation panel will be sent to all accredited consultants and will be publicly available.

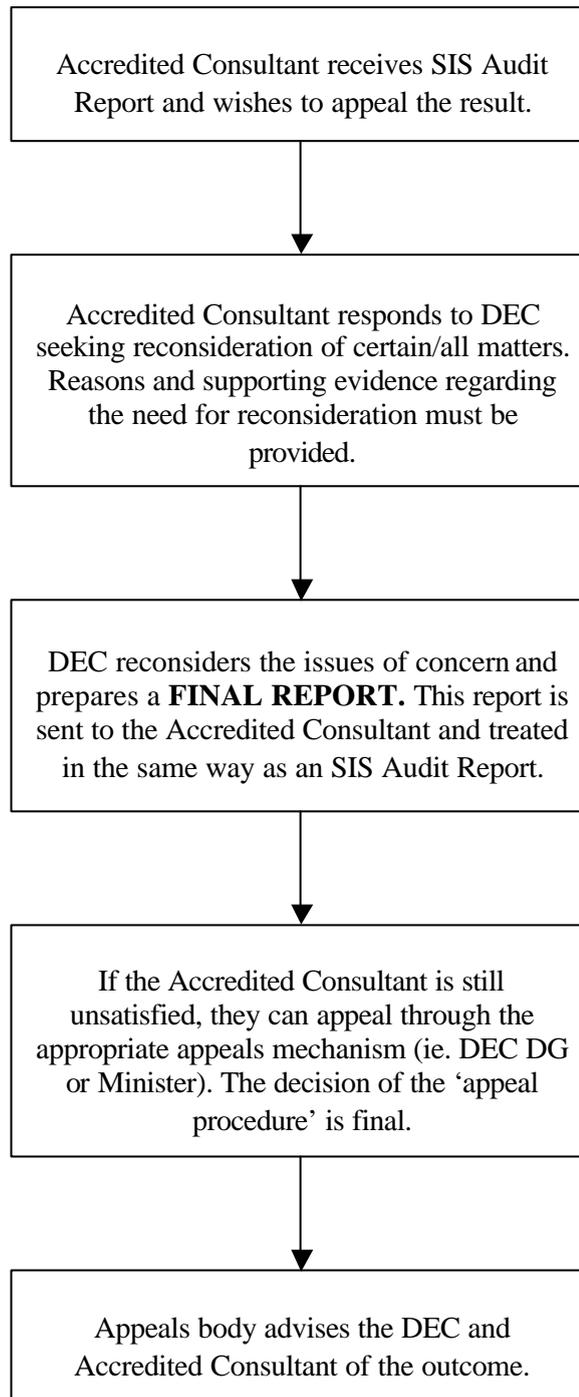
Points will be granted for the normal three year accreditation period. Whether the number of points retained by an accredited consultant can be publicly revealed will need to be considered, however at this stage only whether a consultant is accredited and the length of time for which they have been accredited should be publicly available.

An appeal mechanism will be available for decisions made by the accreditation panel (see Figure 3). Options for appeal include:

- d) to the Minister,
- e) to the Director General, or
- f) to an independent group.

The current proposal for the appeal mechanism is that appeal is made to the Minister for the Environment and will be made within 28 days. The Minister will then appoint a person/s independent of both the consultant and the accreditation panel, with relevant experience, whose decision is final. Such an appeal will incur a \$200 assessment fee.

Figure 3 – APPEAL PROCEDURE



PROCESSES TO BE DEVELOPED

Complaints Mechanism - External

A mechanism to allow complaints to be reported to the accreditation panel and then investigated will need to have regard to legal requirements and privacy provisions. The Executive Officer for the scheme should keep a register of complaints. The officer receiving the complaint could make an initial assessment of the severity of the claim and indicate in the register if it warrants further investigation. The register can track the progress of the investigation. Investigative procedures will need to be developed which take into account legal requirements.

Template letters to complainants (indicating whether the complaint is being followed up, and if not why not) and consultants (informing them a complaint has been made and if it is being followed up) will need to be developed. This letter to the consultant may include a request for documents to start the investigation.

Vexatious complaints will not be investigated. The accreditation panel will need to produce guidelines for assessing what constitutes a vexatious complaint.

Process for removing accreditation

A fair and transparent process for removing accreditation must be developed in line with legal principles. The accreditation panel will make decisions regarding the removal of accreditation and their decisions could be published on the DEC website.

In the event that an accredited person loses all their points and is no longer accredited, they cannot reapply for accreditation until a set amount of time has passed, which will be determined by the panel (for example 6 months).

COMPANY AND INDIVIDUAL ACCREDITATION

Individuals will be accredited within the NSW accreditation scheme, but whether companies who employ accredited individuals can also apply for a specific company level accreditation is undecided and input is sought. Most professional accreditation or certification schemes only offer individual schemes.

One concern is that if company accreditation is not offered, companies could employ accredited individuals in order to undertake SIS work and take on more jobs than the accredited individual can handle. This places the accredited individual at risk of losing their accreditation as a result of the practices of the company.

The ECA have suggested that businesses and corporations could apply for accreditation if:

- all of their employees, associates and sub-consultants have obtained individual accreditation;
- they have signed an agreement to comply with any best practice standards endorsed by the ECA; and

- they guarantee in writing that their employees will not undertake consulting work for which they are not accredited except under supervision.

However, this type of accreditation would only be possible if the DEC scheme allowed for different tiers of accreditation.

A similar points system would be applicable to accredited companies, i.e. a company receives a number of points on accreditation and loses them as a result of instances of non-compliance.

Question 4a: Do you think company and individual accreditation is necessary? Please detail your reasons.

Question 4b: What problems or benefits do you see from both types of accreditation?

Question 4c: If you think that company accreditation is desirable please specify how you think this should operate.

RECOGNITION OF ACCREDITED PARTIES

Accredited consultants (and potentially businesses) will want to be able to advertise their status. A logo to be used on letterhead or business cards could be developed for use by accredited consultants. The logo would need to be recognisable and simple in design. Rules for the use of the logo will need to be developed.

Additionally, DEC would be able to provide a list of accredited consultants to the public. The list would be available on the DEC website in addition to explanation of the scheme and promotion of the logo.

The cost of developing the logo will be met by the DEC and it should be available from the commencement of the scheme.

Question 5: Is a logo necessary? Consultants, would you advertise that you were accredited?

FEES

The TSC Act allows for a fee to be set for accreditation. The level such a fee could be would depend on the value consultants placed on being accredited (i.e. if it provides a market benefit), and whether DEC would require the scheme to be cost-neutral. An initial estimate is to set a non-refundable application fee of \$150, and then an accreditation fee of \$350 to be paid if the application is accepted. The renewal fee would also be \$300 annually or \$800 for 3 years.

It is estimated there may be approximately 100 consultants currently operating in NSW which would be interested in applying for accreditation.

Question 6: Is this fee structure reasonable?

RESOURCES

It is estimated that the scheme would require 1EFT as an Executive Officer to undertake administrative tasks to support the accreditation panel, collate information relevant to accreditation applications or complaints in addition to carrying out audits and investigations. It would be preferable for the officer to have a biological background to assist with undertaking tasks associated with audits and investigations. The fees need to be set at a level such that the longer term cost of maintaining this scheme will be met from fee revenue. In the start up phase DEC may provide some financial assistance with internal administrative support and development costs.

It is accepted that in establishing the scheme, the DEC will contribute to meeting the costs of the scheme. However, it is expected that over a period of time, 2 or 3 years, the scheme will become self-funding.

Promotion of the scheme during development and once established should be undertaken to maximise applications. Workshops to promote and explain the scheme to consultants and local government officers may assist its acceptance.

APPENDIX 1

The NSW Government is seeking input from members of the community to the questions asked in this Discussion Paper. The questions are listed below, with space for your comments. If you require more space, please use additional paper.

Your responses can be 1) mailed to: Catherine Price
Biodiversity Management Unit
PO Box A290
Sydney South NSW 1232

2) faxed: (02) 9995 5943

3) emailed: catherine.price@environment.nsw.gov.au

Question 1a: Do you think the pre-requisites for accreditation are sufficient? Can you suggest or comment on criteria that could be added or removed?

Question 1b: What elements should a Code of Conduct include?

Question 2a: Do you think field and/or written testing should form a component of the accreditation procedure?

Question 2b: If you agree with testing knowledge, what aspects of SIS preparation should the tests focus on?

Question 2c: Do you think that the option to interview applicants should be given to the accreditation panel as part of the accreditation procedure?

Question 3a: Is the audit process for SISs adequate? If not, what other elements should it contain?

Question 3b: Should SISs be audited by the DEC or could this task be undertaken by accredited consultants? Please provide reasons for your comments.

Question 4a: Do you think company and individual accreditation is necessary? Please detail your reasons.

Question 4b: What problems or benefits do you see from both types of accreditation?

Question 5: Is a logo necessary? Consultants, would you advertise that you were accredited?

Question 6: Is this fee structure reasonable?

APPENDIX 2



Checklist for determining if an SIS has met the requirements of the Director-General of National Parks and Wildlife (prepared by Central Threatened Species Unit)

Under the *Environmental Planning and Assessment Act 1979*, where a significant effect on threatened species, populations or ecological communities is likely, a development application is not valid unless it is accompanied by a species impact statement that satisfies the issued requirements of the Director-General of National Parks and Wildlife.

Therefore, before deciding to issue consent (or give approval) and consequently requesting the concurrence of the Director-General of National Parks and Wildlife, it is required of the consent or determining authority to determine whether the SIS meets the Director-General's requirements (DGRs).

This checklist has been drawn up to assist consent and determining authorities in this matter. In completing this checklist it should be noted that, in general, the testing of adequacy has tended to forgive minor concerns such as not providing requested maps and photographs, especially where the SIS can justify such omissions or where the authority is still able to make an informed decision. A comments column has been included to allow authorities to provide, among other things, reasons for their decisions or comments on whether an omission is significant.

Note also that this is a generic checklist and some items may not be relevant to the application being reviewed or the Director-General's requirements issued. If the requirements do not specify one of the matters below, then this should be noted in the comments column. Consultants preparing an SIS may also use this checklist as a brief guide to preparing the SIS.

**NSW
NATIONAL
PARKS
AND
WILDLIFE
SERVICE**

Matter	Yes/No	Comments
Has the SIS been signed by both its author and the applicant for consent/approval?		
Has the description of the proposal included all associated activities and works, such as hazard reduction zones, access roads and road upgrades, utilities, etc?		
Have all requested plans, maps and aerial photographs been provided?		
Has the SIS determined the subject species by reviewing the suggested list in the DGRs, other available information and survey results and assessing which species, populations and ecological communities are to be impacted by the development?		

Matter	Yes/No	Comments
Has the survey undertaken provided sufficient information to determine the likely impacts of the proposal on threatened species, populations and ecological communities?		
Have surveys been undertaken during the appropriate season(s) for the detection of the species that may possibly occur on site?		
Have surveys been undertaken during appropriate weather conditions?		
Have climatic conditions preceding the surveys (eg, drought c/f. wet) affected the possibility of subject species being detected?		
Have all specific survey methods, techniques and intensities requested in the DGRs been followed completely?		
Has the documentation of survey effort, locations and techniques provided sufficient information to determine the above?		
Has the assessment of impacts included the impacts of ALL activities associated with the development, including fire hazard reduction requirements, access road upgrades, downstream and downslope impacts, detention basins, severing of fauna movement corridors, etc.		
Has the SIS discussed the extent, conservation significance and security of other occurrences of the subject species' in the locality (locality is defined in the DGRs)?		
Has the SIS discussed the significance of the population/remnant to be affected, relative to others within the locality?		
Has the SIS discussed the extent, conservation significance and security of other occurrences of the subject species in the region (region is defined in the <i>Threatened Species Conservation Act 1995</i>).		
Has the SIS discussed the significance of the population/remnant to be affected, relative to others within the region?		
Have alternatives to the proposal been discussed? Alternatives may include relocation of infrastructure or, for example, reducing minimum lot size so that a similar number of lots may be realised whilst retaining a larger conservation lot within a		

Matter	Yes/No	Comments
subdivision.		
Has the discussion of alternatives included assessment of the economic (not merely financial) aspects of these alternatives (particularly, of not proceeding)?		
Have all proposals for compensatory actions (eg purchase or revegetation of habitat) been discussed with the relevant landowners/manager?		
Is there documented agreement for sale or revegetation activities?		
Is there agreement to change zoning or enter into a covenant on title in order to secure the conservation of the properties being purchased or revegetated?		
If translocation is proposed, has the impact of the translocation on the recipient site(s) been assessed?		
Has the SIS utilised relevant information from published draft and final recovery plans? If no plan has been published, but it is known that one is being prepared, has the SIS utilised advice from the NPWS as to the likely contents of that recovery plan (liaison to obtain this advice may have been specified in the DGRs)? For example, would the proposal result in the loss of a local population or remnant that a recovery plan describes as being of particular importance to the conservation of the species, population or ecological community?		
Has the SIS discussed the relationship of the proposal to any listed Key Threatening Processes (eg, does the proposal result in the need for High Frequency Fire as a fire hazard reduction measure, or does it result in the Clearing of Native Vegetation)?		
Has the SIS discussed the relationship of the proposal to any published Threat Abatement Plan (eg, does the proposal result in an increased threat in a manner that is specifically at odds with a published plan)?		
Have revised eight part tests been included?		
Has the "Additional Information" specified in		

Matter	Yes/No	Comments
section 9 of the DGRs been provided?		