



OVERCOMING INCREASINGLY COMMON ROADBLOCKS TO COMMENCE EXPLORATION





Disclaimer

This presentation has been prepared to give a general overview of matters title holders should consider prior to and during the conduct of exploration activities. It is not intended to be a comprehensive insight into all relevant statutory requirements.

Approval requirements may vary per tenement, per activity, per location and over time. Advice as to approval requirements should be sought in consideration of the individual, unique nature of proposed exploration activities.

The content of this advice does not constitute legal advice, nor is it intended to be a substitute for legal advice and should not be relied upon as such. Hetherington makes no guarantee or promise express or implied that statements contained within this presentation are legally binding.

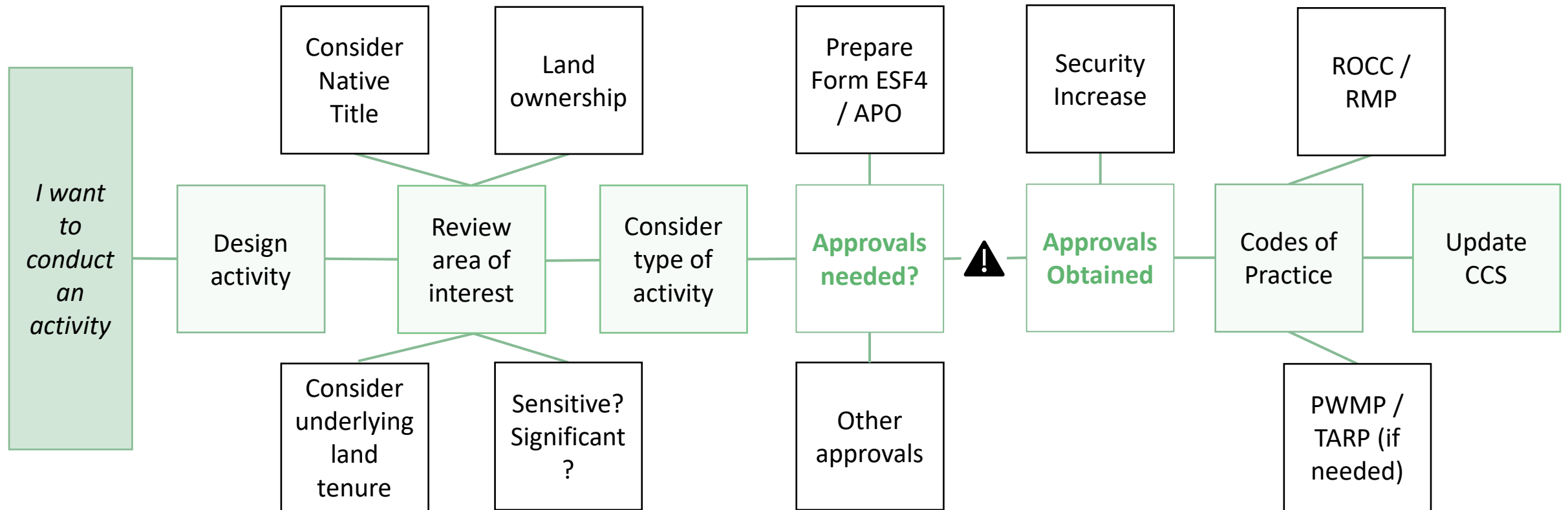


Discussion points

- ✗ Land access requirements, drafting approvals and securities.
- ✓ Potential, unexpected obstacles which can arise between knowing an approval is needed and executing that approval.

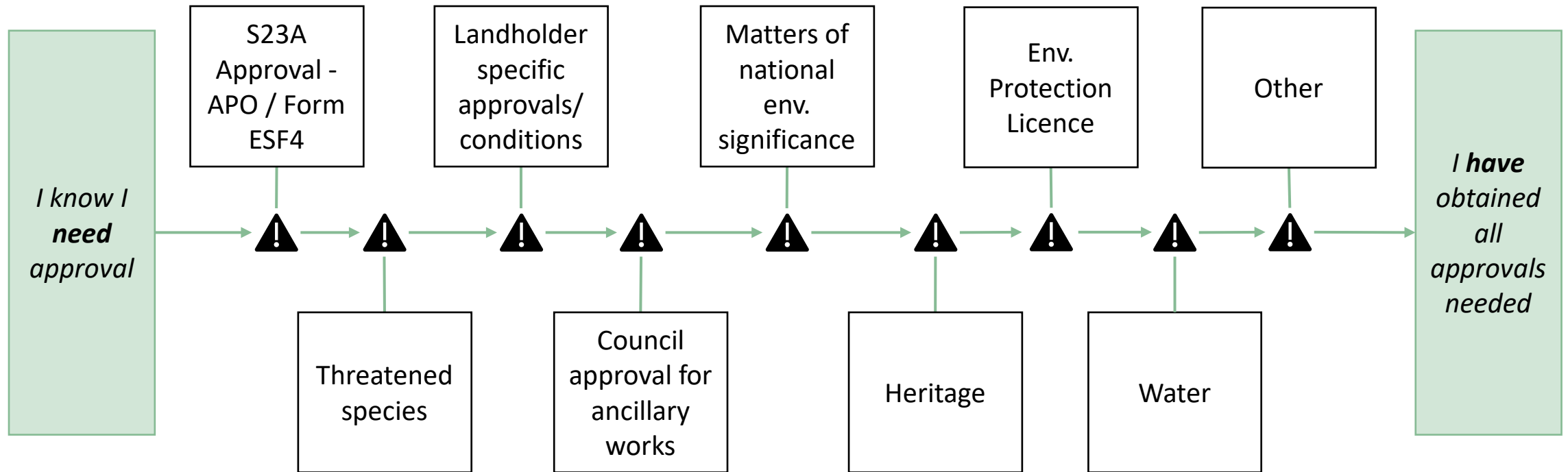
The Approvals Process

But not necessarily in order



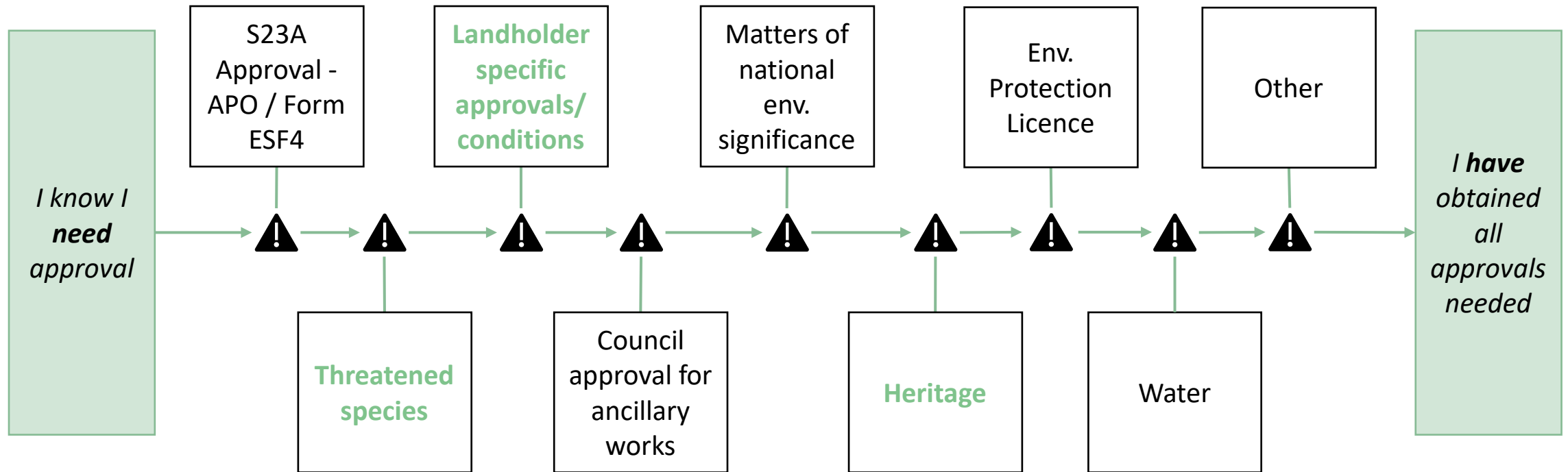
From needing to obtaining approval

Potential roadblocks



From needing to obtaining approval

Potential roadblocks



LANDHOLDER SPECIFIC CONDITIONS

Issue one:

*My landholder is the
National Parks and Wildlife
Service (NPWS)*





Land controlled by the NPWS

When may the NPWS be considered a landholder?

Reserved land controlled by the NPWS where it has a significant environmental value:

- State conservation areas.
- Where tenure pre-dates the reserve.
- Although mining and exploration is prohibited on most land controlled by the NPWS (such as National Parks, Nature Reserves and Karst Conservation Areas).

When?

Other land held by the NPWS which may be reserved a later date:

- Land acquired for conservation of species, populations or communities, or to preserve, protect and prevent damage to Aboriginal objects and places.
- Part 11 lands under the *National Parks & Wildlife Act 1974* (NSW).



Managing the approvals process

For assessable activities

*I want to
conduct an
assessable
activity*

Step 1: Consultation

Discuss with the relevant regional office the activity proposed, approval requirements (environmental assessment plus consents and licences), legal permissibility and obtain in-principal support for exploration.

Step 2: Prepare environmental assessment

Consider legal permissibility and consistency, consultation required, nature of activity, existing environment (soil, geology, water, ecology, values), all potential impacts, mitigation strategies and possible alternatives. Pay initial \$170 fee.

Step 3: Determination of environmental assessment

- Generally, 40 calendar days for determination, excluding other approvals that may be required.
- Excludes additional time for supply of further information, if requires public exhibition/internal consultation.

Step 4: Post determination

Receipt of determination notice. Obtain Land Access Arrangement. Meet pre activity requirements (such as an Environmental Management Plan, bank guarantee plus other approvals). Ensure compliance with conditions and terms of approval.



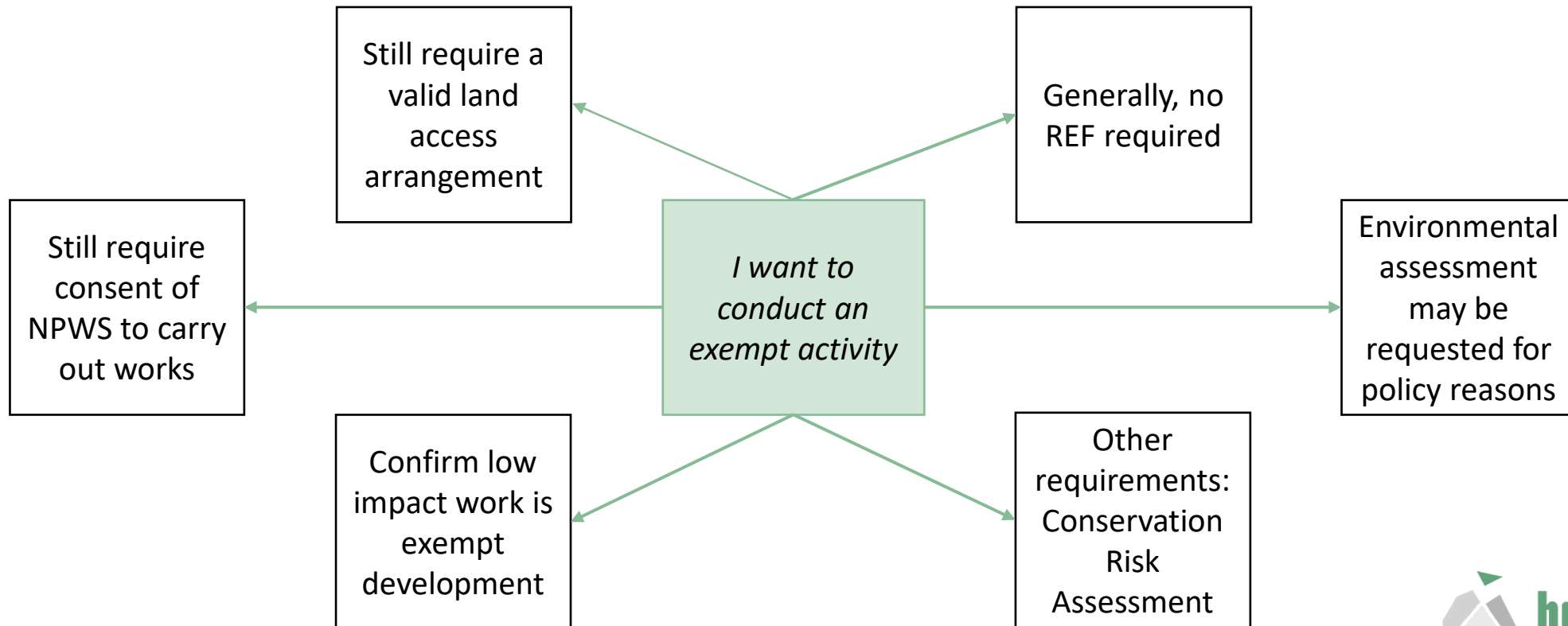
Dual approval requirements?

ESF4/APO and the REF assessed by the NPWS

Warning – still require approval from the Department of Regional NSW for assessable prospecting operations under the *Mining Act 1992* (NSW).

What about exempt activities?

Approval and consent requirements





What to expect when the NPWS is your landholder

Documents and Delays

CATEGORY	EXPECTATION
Approvals.	Review of environmental factors required for assessable prospecting operations, possibly exempt activities for policy reasons. Dual approval from other Departments required.
Costs.	Multiple – compensation for activities, specialist advice for environmental assessments, processing costs.
Time.	Delays caused by undertaking of environmental assessments and negotiating land access arrangements.

Recommend starting the process early!

THREATENED SPECIES

Issue two:

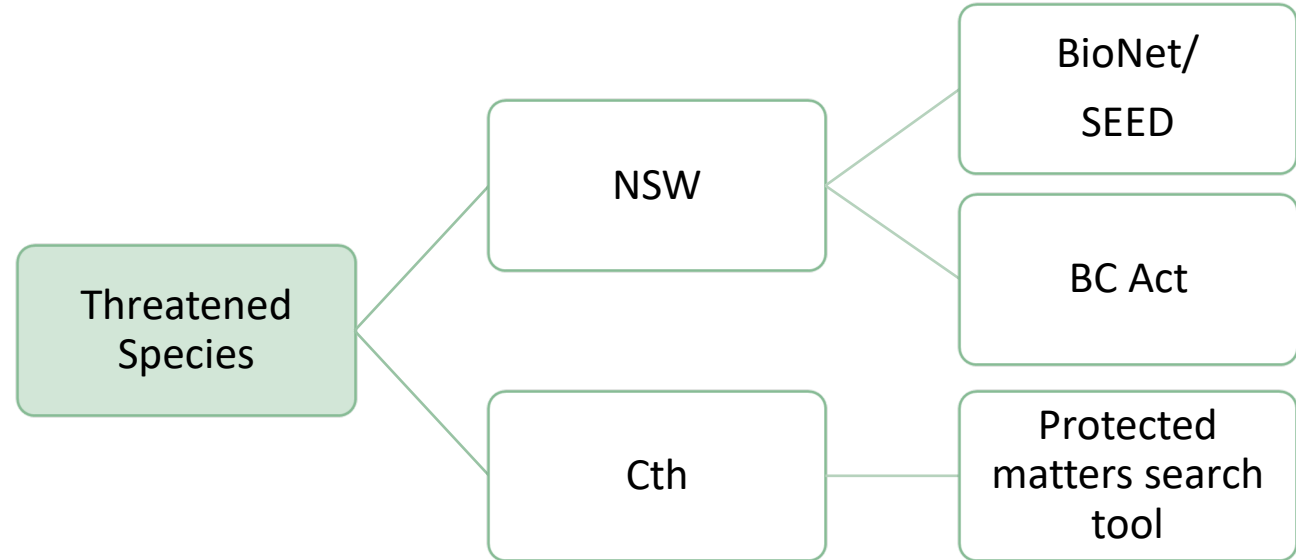
I've identified a threatened species in my area of interest



Identifying threatened species

In your application area

- Offences for impacting threatened species and habitats.
- Species can be listed under NSW legislation, Cth legislation or both.
- NSW: Threatened species include those listed under Schedule 1 of the *Biodiversity Conservation Act*.
- Cth: Threatened species to be listed by legislative instrument. Published by Department of Agriculture, Water and the Environment (**DAWE**).



Help!

I've identified a threatened species under NSW Legislation



Conduct a self assessment

Is there a real potential for impact to species?
Short term nature of activities is not enough to say no



There is a real potential for impact

- Assessment of significance to be completed and lodged with an approval application.
- Referral to Biodiversity Conservation Science Directorate (BCS).
- Species Impact Statement is required if significant effect is likely.



There is no real potential for impact

- Explanation to be provided within the approval application with mitigation measures.
- Standard assessment by the NSW Resources Regulator.

Help!

I've identified a threatened species under NSW Legislation



Completing an assessment of significance

Section 7.3 of the *Biodiversity Conservation Act 2016* (NSW)



Obtain species list:

- Develop a list of threatened species/ ecological communities that may be directly or indirectly affected.



Impact on life cycle of species & extinction risk

- Understand species life cycle.
- Understand the use of species habitat and how this changes at times, during certain seasonal conditions, as a result of disturbance etc.



Key threatening process

- Assess whether proposal is likely to exacerbate a prescribed key threatening process (Schedule 4 of the Act).



Impact on habitats

- Habitat removal, modification, fragmentation and isolation as a result of proposed activities.
- Quantitative and qualitative approach to be adopted to assess habitat importance.

Help!

I've identified a threatened species under NSW Legislation



Completing an assessment of significance

Application and assessment



The applicant should consider:

- Pre-construction, construction and operation phases.
- Direct and indirect impacts.
- On site and offsite impacts.
- Frequency and duration.
- Sensitivity of the receiving environment.
- Degree of confidence with which the impacts of the action are known and understood.



The decision maker will consider:

- Whether the list of species is appropriate and comprehensive.
- Whether indirect and direct impacts have been considered.
- Whether impacts across the full project life cycle have been considered.
- Appropriate measures to minimize impacts.
- Currency of data relied upon.
- Application of the precautionary principle.



Help!

I've identified a threatened species under Commonwealth Legislation



Assessment:

- Level of impact? Significant?
- Ecological review.



Referral:

- Responsibility of the Department of Agriculture, Water and the Environment.



Pre-referral meeting:

- Specifics of program.
- Other ecological matters can be discussed.



Costs:

- \$6,577 fee for referral process.
- Additional costs for specialists (ecologists).



Time:

- Allow for studies, meetings and assessment.
- Can be quicker than State process.

HERITAGE

Issue three:

*My area of interest may
contain an Aboriginal
heritage object*





Identifying Aboriginal objects

In your area of interest

You are **not sure** if Aboriginal objects are likely to be present on the land

or

Know objects are likely to be present but are not sure if an activity will harm objects.

Due Diligence

- ☑ AHIMS searches;
- ☑ Previous studies;
- ☑ Utilising local knowledge;
- ☑ Site assessments; and
- ☑ Determine possible harm.

Regardless, you are required to assess and address cultural heritage impacts as part of the approvals process.



Help!

There's an Aboriginal object in my area of interest!

Option 1: Avoid and mitigate

- Avoid all objects, places or sensitive sites in the disturbance area and within 50 metres of the disturbance area.
- Measures in place to avoid harm – flagging tape, fencing.
- Be considerate of indirect impacts (like vibration).
- Prepare (and execute) approval accordingly.



What to do?

Option 2: Aboriginal heritage impact permit

- Must be obtained when harm (not trivial) to an Aboriginal object or place is unavoidable through exploration activities.
- Approval for an Aboriginal heritage impact permit must be sought in addition to an exploration activity approval.
- Question whether you should.

Why are these my options?

Rules, Regulations and Defences

It is an offence to harm or desecrate an Aboriginal object under the *National Parks and Wildlife Act 1974* (NSW).

Defences to prosecution for an offence include:

- Harm was authorised by an impact permit.
- Due diligence to determine whether action would harm an Aboriginal object has been completed and it was reasonably determined no Aboriginal object would be harmed.

Why?

Exploration Code of Practice – Environmental Management: All measures to prevent harm to Aboriginal cultural heritage. Imposed on approvals/ Conditions of Title.

Beyond legal impacts: Integrity, brand, strategy and social responsibility.

QUESTIONS?

