

Jason Voigt  
A/Project Director M1 Extension to Raymond Terrace  
Level 6, 6 Stewart Avenue  
Newcastle, NSW, 2301

06/09/2023

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Subject: Updated Unexpected Finds Protocol - Biodiversity

Dear Mr Voigt

I refer to your submission of the updated Unexpected Finds Protocol (UFP) for Biodiversity (Version 4, dated August 2023) submitted to the department for approval on 30 August 2023 as required by Condition E2 of SSI 7319.

I note that:

- The UFP contains only minor updates following consultation with the Department of Climate Change, Energy, Environment and Water (DCCEEW);
- Evidence of consultation with DCCEEW was submitted to the department; and
- DCCEEW were satisfied their comments were satisfactorily addressed in the updated UFP.

You are reminded that the Unexpected Finds Protocol must be implemented throughout the duration of the works.

Accordingly, as nominee of the Planning Secretary, I approve the Unexpected Finds Protocol (Biodiversity) (Version 4, August 2023).

You are reminded that if there are any inconsistencies between the approved plan and the conditions of approval, the conditions prevail. Please ensure you make the document publicly available on the project website at the earliest convenience.

If you wish to discuss the matter further, please contact Grant Brown at [grant.brown@dpie.nsw.gov.au](mailto:grant.brown@dpie.nsw.gov.au)

Yours sincerely



Grant Brown  
Team Leader  
Infrastructure Management

As nominee of the Planning Secretary

Dominic Crinnion  
Director, Infrastructure Management  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

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**Re: M1 Pacific Motorway extension to Raymond Terrace (SSI 7319)**

30 August 2023

**Condition of Approval E2 – Submission of Unexpected Finds Protocol – Biodiversity**

**Dear Dominic,**

I refer to the subject project approved by the Minister for Planning on 8 November 2022.

Transport for NSW (Transport) notes the Unexpected Finds Protocol – Biodiversity (the Protocol) required under Condition E2 was approved by the Planning Secretary on 21 February 2023.

Transport also notes that consultation has been carried out on the projects Flora and Fauna Management Sub-plans with the Department of Climate Change, Energy, Environment and Water (DCCEEW), in accordance with Condition C5. As part of this consultation DCCEEW provided feedback on the Protocol which was provided as a supporting document.

As a result of this consultation Transport provided proposed amendments to the Protocol to DCCEEW on 30 August 2023. DCCEEW provided acceptance and close out of the proposed amendments on 31 August 2023.

In accordance with Condition E2 Transport provides the updated Protocol (version 4) to the Planning Secretary for approval.

Please contact Lawson Gill on 0448 768 382 or by email at [lawson.gill@transport.nsw.gov.au](mailto:lawson.gill@transport.nsw.gov.au) if you require further information.

Sincerely,



Jason Voigt

Project Director M1 Extension to Raymond Terrace

Enc:

- M12RT Unexpected Finds Protocol – Biodiversity (version 4)
- M12RT Unexpected Finds Protocol – Biodiversity - Consultation with DCCEEW

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Transport  
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# Unexpected Threatened Species and Threatened Ecological Communities Finds Protocol

M1 Pacific Motorway Extension to Raymond  
Terrace  
SSI 7319

August 2023



[transport.nsw.gov.au](https://transport.nsw.gov.au)

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# Acknowledgement of Country

Transport for NSW acknowledges the traditional custodians of the land on which we work and live.

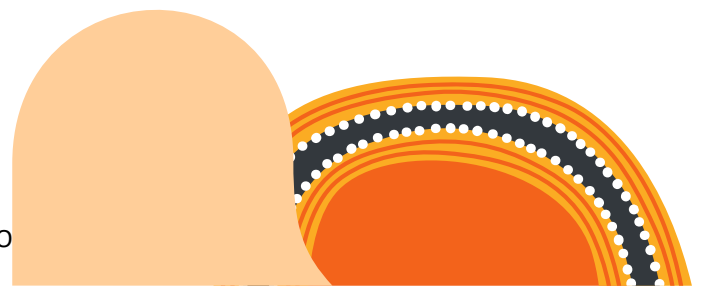
We pay our respects to Elders past and present and celebrate the diversity of Aboriginal people and their ongoing cultures and connections to the lands and waters of NSW.

Many of the transport routes we use today – from rail lines, to roads, to water crossings – follow the traditional Songlines, trade routes and ceremonial paths in Country that our nation’s First Peoples followed for tens of thousands of years.

Transport for NSW is committed to honouring Aboriginal peoples’ cultural and spiritual connections to the lands, waters and seas and their rich contribution to society.

# Table of Contents

<b>1.</b>	<b>Acronyms and Abbreviations</b> .....	<b>5</b>
<b>2.</b>	<b>Introduction</b> .....	<b>6</b>
2.1	Purpose.....	6
2.2	Scope.....	7
2.3	Training and Inductions.....	7
2.4	Relevant Legislation and Guidelines.....	7
2.5	Roles and responsibilities.....	7
2.6	Review.....	8
<b>3.</b>	<b>Procedure</b> .....	<b>9</b>
<b>4.</b>	<b>Records</b> .....	<b>12</b>



## Versions

Version	Amendment notes
V0.1	1 <sup>st</sup> draft for internal review
V0.2	Updated for internal review
V3.0	Issued to DPE for review
V4.0	Updated following DCCEEW consultation

# 1. Acronyms and Abbreviations

Acronym	Definition
BC Act	<i>NSW Biodiversity Conservation Act 2016</i>
BCD	Biodiversity and Conservation Division of the Environment and Heritage Group of the Department of Planning and Environment
CEMP	Construction Environment Management Plan
CFFMP	Construction Flora and Fauna Management sub plan
FFCMP	Fauna and Flora Construction Monitoring Program
CoA	Conditions of Approval
DCCEEW	Department of Climate Change, Energy, Environment and Water
DPE	NSW Department of Planning and Environment
DPE Water	NSW Department of Planning and Environment-Water Group
DPI Fisheries	NSW Department of Primary Industries - Fisheries
EEC	Endangered Ecological Community
EIS	Environmental Impact Statement
Environmental Manager	The Contractor's Environmental Manager
EP&A Act	<i>NSW Environmental Planning and Assessment Act 1979</i>
EPBC Act	<i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i>
ER	The Environmental Representative of the SSI
ESO	Transport Senior Environment and Sustainability Officer
Low Impact Works	As defined by the NSW Infrastructure Approval
PCT	Plant Community Type
Project	M1 Pacific Motorway Extension to Raymond Terrace
Submissions Report	M1 Pacific Motorway Extension to Raymond Terrace Submissions Report June 2022
SSI	State Significant Infrastructure
TEC	Threatened Ecological Community
Transport	Transport for NSW

## 2. Introduction

### 2.1 Purpose

This procedure details the actions to be taken if any threatened species or threatened ecological communities (TEC), are unexpectedly encountered during the M1 Pacific Motorway Extension to Raymond Terrace Project works. This procedure has been developed to satisfy E2 and E3 of the Conditions of Approval (CoA) and Environmental Mitigation Measure REMM B03. The procedure has been prepared in accordance with Biodiversity Guidelines: Protecting and managing biodiversity on RTA project' (RTA 2011).

**Table 1 Relevant Conditions**

Condition	Details	Where compliance is addressed
CoA-E2	An Unexpected Finds Protocol must be developed for threatened species and threatened ecological communities before the commencement of Work. The Unexpected Finds Protocol must be submitted to the Planning Secretary for approval at least one month before the commencement of Work. Work cannot commence until the unexpected finds protocol is approved by the Planning Secretary. The Unexpected Finds Protocol must be implemented throughout the duration of Work.	This Procedure
CoA-E3	On the discovery of potential or actual impacts to any threatened species or ecological communities not listed in Condition E7, all work in the associated location must stop to prevent further impact and the Planning Secretary and BCD notified. Work in the associated location is not to recommence until approval to recommence work in the associated location has been issued by the Planning Secretary in consultation with BCD.	Section 3
REMM B03	If any threatened species, not assessed in the biodiversity assessment, are identified in the construction footprint, the unexpected species find procedure is to be followed under 'Biodiversity Guidelines: Protecting and managing biodiversity on RTA projects' (RTA 2011).	This Procedure

## 2.2 Scope

This procedure is applicable to all Work conducted by site personnel that have the potential to come into contact with threatened flora and fauna species and TECs, not previously identified as occurring within the project boundary as per the Submission Report Biodiversity Assessment, during the M1 Pacific Motorway Extension to Raymond Terrace Project Works.

## 2.3 Training and Inductions

All site personnel (including sub-contractors) will be inducted on the potential threatened species and TEC occurring, or likely to occur, within the Project area and the requirements of this Procedure. Training will include inductions, toolbox talks, pre-starts and targeted training as required.

## 2.4 Relevant Legislation and Guidelines

- Biodiversity Guidelines: Protecting and managing biodiversity on RTA projects
- *Threatened Species Conservation Act 1995 (TSC Act)*
- *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*
- *Biodiversity Conservation Act 2016 (BC Act)*
- *Fisheries Management Act 1994 (FM Act)*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *National Parks and Wildlife Act 1974*
- National Parks and Wildlife Regulation 2019
- Significant Impact Guidelines 1.1 – Matters of National Environmental Significance (DCCEE 2013)

Note; Section 1.5 of the Revised Biodiversity Assessment report (Appendix E of the Submissions Report states “This biodiversity assessment is facilitated under Clause 28 of the Biodiversity Conservation (Savings and Transitional) Regulation 2016 which permits the proponent to submit the application in accordance with the former planning provisions. This approach was approved by DPIE (formerly Department of Planning and Environment) on 13 November 2017. As such, the former provisions of the Threatened Species Conservation Act 1995 (TSC Act) remain in force for this assessment, rather than the Biodiversity Conservation Act 2016 (BC Act).”

## 2.5 Roles and responsibilities

The Contractor Environmental Manager (or delegate) will be notified in the event of a potential unexpected threatened species or TEC find on site during the works. The Contractor Environmental Manager will then notify the Transport Senior Environment and Sustainability Officer (ESO) of the potential unexpected find. The Contractor Environmental Manager will organise for the Project Ecologist to assess the find. The Contractor Environmental Manager is the key contact point for the ESO in regard to this Procedure.

The Project Ecologist will advise on the nature of any find, including whether it should be considered “unexpected” in terms of the Planning Approval, whether the species is listed as a threatened species or forms part of a TEC, the “no-go” zone for any nearby works, any controls that should be put in place to manage the find and the likely impact to the threatened species or TEC from the proposed work. The Project Ecologist will develop any required management plan

(or equivalent) for the management of any unexpected find. The Project Ecologist will report to the Contractor Environmental Manager.

It is noted that the Project Ecologist may call on technical specialists (i.e. specialists with certain types of species for instance) to assist in any identification and management of a threatened species/TEC.

The ESO will liaise between relevant government agencies in the event that an impact to a threatened species or TEC has occurred or is likely to occur.

All site personnel are responsible for reporting any unexpected threatened species or TEC finds for the duration of the Project.

For the Low Impact Work (as defined by the NSW Infrastructure approval) where a dedicated Contractor Environmental Manager may not be engaged, the ESO will be responsible for fulfilling the role of the Contractor Environmental Manager as described within this document.

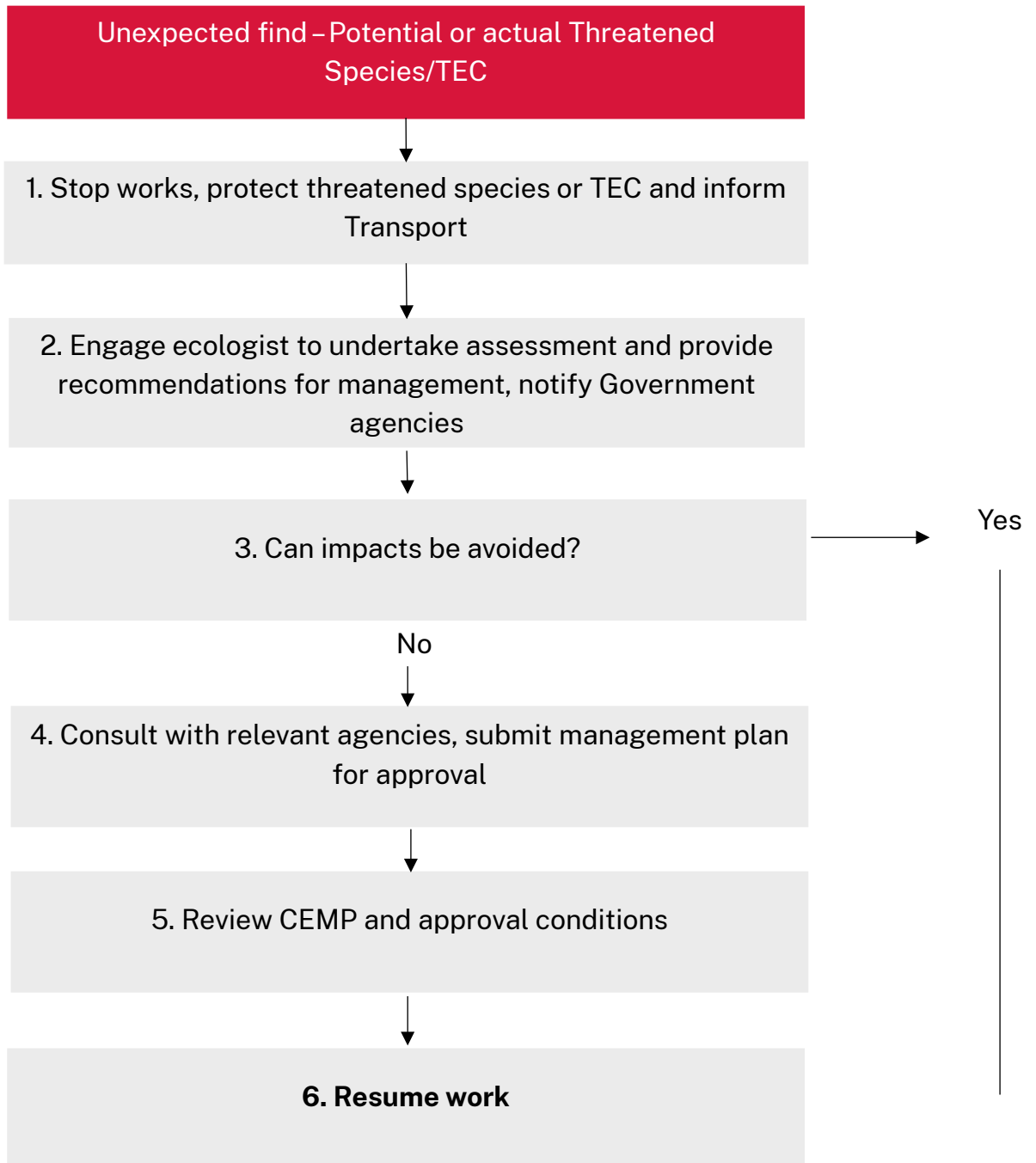
## 2.6 Review

This Procedure will be reviewed annually or earlier as needed in response to an unexpected find, audit finding, incident or near miss. Where changes to the procedure are required, the procedure will be resubmitted to the Planning Secretary in accordance with Condition E2.

### 3. Procedure

In the event an unexpected threatened species is encountered during site works, the following procedure (Figure 1) must be followed. This procedure has been prepared in accordance with the Unexpected Threatened Species Finds Procedure Flow Chart (source Biodiversity Guidelines: Protecting and managing biodiversity on RTA projects (RTA, 2011) and updated to meet the requirements of CoAE2, CoA E3 and REMM B03.

**Figure 1: Unexpected Threatened Species and Threatened Ecological Communities Finds Procedure Flow Chart**



The detailed actions relating to each step are included below.

### **Step 1. Stop work, protect threatened species or TEC and inform Transport**

If an unexpected threatened species or TEC is encountered during excavation/construction activities:

- Immediately after encounter, stop all work in the immediate area of the find and notify the Contractor Environmental Manager, Contractor Project Manager and Site Supervisor. The Contractor Environmental Manager (or delegate) will notify the ESO.
- The Contractor Project Manager or Site Supervisor will be responsible for establishing a 'no-go zone' around the find as soon as practical. The no-go zone will be established using high visibility fencing and signage where practicable. The location of the 'no-go zone', and any other necessary controls, will be confirmed with the Project Ecologist.
- The Contractor Environment Manager will report the Unexpected find to Transport as a 'report-only' in accordance with the Transport Environmental Incident Procedure (EMF-EM-PR-0001).

### **Step 2. Engage ecologist to undertake assessment and provide recommendations for management, notify Government agencies**

- The Project Ecologist (or technical specialist) will survey the find and confirm whether the find constitutes an unexpected threatened species or TEC.
- If it is determined that the find is not unexpected, works in the vicinity of the species/community must only recommence once the identified measures from the approval, permit or appropriate safeguard are in place. After having done so no further action will be required. If an unexpected find is confirmed, continue with this process.
- The Project Ecologist will assess if there have been any impacts on the find from the Project Works to date and provide recommendations to be implemented until approvals can be sought.
- If the threatened species or TEC has been impacted an environmental incident report will be raised in accordance with Transport's Environmental Incident Procedure.
- The Planning Secretary, BCD and other relevant government agencies will be notified informally by telephone or email by the ESO as soon as the ecologist confirms the find is unexpected.
- Other relevant agencies for notification may include DPE Water, DPI Fisheries and DCCEEW.
- The Project Ecologist will assess the potential impacts on the find from Project Works and develop a draft management plan.
- The management plan will implement the following principles in order of the below hierarchy;
  1. Avoid impacts to the threatened species or TEC – this may include design changes, work practice changes or timing of works
  2. Minimise impacts – in circumstances where minor impacts cannot be avoided, the Project Ecologist/Contractor must still make efforts to reduce any impacts as far as reasonably possible. This includes design changes, changes to work practices, timing of works or relocating a find (where appropriate and possible). Offsetting may still be required for minimised impacts
  3. Offset – in circumstances where impacts cannot be avoided the impacts to the find are to be offset as appropriate to the type of find.

- The management plan will be prepared with consideration to the relevant CEMP sub-plans, revised environmental mitigation measures, Minister's Conditions of Approval, and assessment documentation.
- The ecologist will submit this plan to the Contractors Project Manager and Environment Manager outlining all relevant issues and constraints.
- The Contractor Environmental Manager and Project Manager will review the management plan. The Plan will be submitted to Transport for review and approval.

### **Step 3. Can impacts be avoided?**

- If the impacts to threatened species or TEC can be avoided, then work may resume.
- If the impacts cannot be avoided, move to step 5.

### **Step 4. Consult with the relevant agencies. Submit management plan for approval**

- If required, a formal notification letter will be prepared by the Contractor and Project Ecologist.
- The draft notification letter will then be sent to the ESO for review.
- The signed notification letter and management plan will be submitted to relevant government agencies by Transport.
- The ESO will notify and consult with relevant government agencies on the proposed management of the unexpected find if required. This could include the opportunity for a site inspection.
- Any comments received by relevant government agencies will be considered and where required, the management plan will be modified. Transport will submit for the plan approval.
- Where Unexpected Finds are uncovered during Low Impact Works, consultation will occur with the Planning Secretary and other relevant government agencies to determine whether works may continue as Low Impact Works, or whether works must continue as construction under an approved CEMP.

### **Step 5. Review CEMP and approval conditions**

- The CEMP will be updated as appropriate with any changes resulting from the find and final Threatened Species/TEC management plan. The updated CEMP will incorporate additional conditions arising from any further approvals, such as Planning Approval Modifications, and consultation if relevant. If an update to the CEMP is required, approval will be sought from the ER or DPE, in consultation with relevant government agencies, as appropriate.
- The Threatened Species/TEC management plan and updated CEMP will be implemented. This includes adding any changes to the CEMP in site induction material. Site workers will be updated during toolbox talks.

### **Step 6. Resume work**

- Work in the associated location is not to recommence until approval to recommence work in the associated location has been issued by the Planning Secretary in consultation with BCD.

- The Contractor Project Manager will seek written clearance to resume project work from Transport Project Manager in consultation with the ecologist and relevant government agencies.
- Work will resume with any Threatened Species/TEC Management Plan and updated CEMP and sub-plans implemented if appropriate.

## 4. Records

Accurate records will be maintained substantiating all work activities associated with the Project or relevant to the conditions of approval, including measures taken to implement this procedure.



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