



# **Commonwealth approval EPBC 2013/6963 conditions compliance tracking and management annual report**

**Nambucca Heads to Urunga Pacific Highway  
Upgrade**

February 2022 – January 2023

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## Glossary / Abbreviations

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Acronyms used in this document

Acronym	Definition
BEM	Benchmark Environmental Management
CAR	Corrective Action Request
CEMP	Construction Environmental Management Plan
Clear Milkvine	Marsdenia longiloba
Cryptic Forest Twiner	Tylophora Woollsii
Ecos	Ecos Environmental Pty Ltd
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
ER	Environmental Representative - A suitably qualified and experienced person independent of project design and construction personnel employed for the duration of construction. The principal point of advice in relation to all questions and complaints concerning environmental performance.
NCR	Non Conformance Report
NGOMP	Norton and Griffin Offset Management Plan
SAP	Sensitive Area Plan
SES	Sandpiper Ecological Surveys
TFOMP	Threatened Flora Offset Management Plan
TFMP	Threatened Flora Management Plan
TFOS	Threatened Flora Offset Strategy

# Introduction

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## 1.1 Purpose of this document

The purpose of this document is to facilitate demonstration by Transport for New South Wales (TfNSW) of satisfactory compliance with the Commonwealth approval conditions for the Nambucca Heads to Urunga Pacific Highway Upgrade project with particular reference to Condition 24, which requires an annual report addressing compliance with each of the conditions of approval. The report covers the ninth period from February 2022 to January 2023.

For each condition, one or more actions are identified which, once implemented, will achieve satisfactory compliance with the condition. Where appropriate, the timing for completion of individual actions is identified.

For each action, the minimum relevant documentation to support demonstration of compliance is identified. This documentation would inform any future compliance audit.

Where an approval condition makes reference to information being provided to the Commonwealth Minister for the Environment, the associated action(s) assumes that this information will be provided, in the first instance, to the Commonwealth Department of the Environment.

## 1.2 Key dates

The timing for compliance with certain approval conditions is linked to specific dates as follows:

- |  |                  |
|--|------------------|
| • Commonwealth approval:                           | 26 November 2013 |
| • Start of construction:                           | 4 December 2013  |
| • Completion of construction:                      | 14 February 2018 |
| • Expiry of Commonwealth approval                  | 1 January 2031   |
| • Publish 9 <sup>th</sup> Annual Compliance Report | 4 March 2023     |

## 1.3 Responsibility for compliance

Responsibility for compliance with all approval conditions sits with TfNSW.

## 1.4 NSW planning approval

Condition 29 (of the Commonwealth approval) provides for the use of plans, strategies or reports required under the NSW approval to satisfy the requirements of the Commonwealth approval, subject to provision of a separate document demonstrating how the document addresses the relevant Commonwealth approval requirements.

Specialists in the fields of flora and fauna have been engaged by TfNSW and the construction contractor to undertake various ecology-related management activities with regard to complying with the NSW planning approval and the CEMP. The following specialist had been engaged to undertake ecology related activities prior to the EPBC approval:

- Benchmark Environmental Management (BEM) has prepared an ecological monitoring program that addresses relevant matters in the NSW planning approval. The ecological

monitoring program has been incorporated into the CEMP for the contractor to implement during construction.

- Ecos Environmental (Ecos) has been engaged by TfNSW to prepare a Threatened Flora Translocation Program that addresses relevant matters in the NSW planning approval and has additionally been engaged by the contractor to provide advice on the implementation of the translocation program and provide specialist advice on flora to implement other CEMP requirements.
- Sandpiper Ecological Surveys (SES) has been engaged by the contractor to provide specialist advice on fauna to implement CEMP requirements.
- SES has been engaged by TfNSW to undertake the ongoing operational phase monitoring as required under the approved ecological monitoring program.

This document contains actions relevant to compliance with Commonwealth approval requirements.

## 1.5 Definitions for action status conditions

TBA	To Be Arranged - Further works required prior to starting action.
In progress	Action initiated but not yet complete.
Ongoing	Action in place but ongoing works required to ensure compliance.
Compliant	Action completed and compliant with Condition of Approval

## 1.6 Non-Compliances with EPBC Conditions

No non-compliances were recorded for the period February 2022 to January 2023.

## Condition 1

The person taking the action must not clear more than:

- a) 171 ha of Koala habitat;
- b) 184 ha of Grey-headed Flying-fox habitat
- c) 166 ha of Spotted-tail Quoll habitat;
- d) 73 ha of habitat for the Swift Parrot and Regent Honeyeater; and
- e) 36 ha of habitat for the Cryptic Forest Twiner and Clear Milkvine.

Action	Timing	Status	Compliance evidence
1.1 Progressive review of area cleared	Regularly during construction	Compliant	Record of clearing numbers
1.2 Review outstanding clearing requirements at 75% clearing to confirm clearing limitation targets will be met	Construction (75% clearing)	Compliant	Memo provided 18-6-2014
1.3 Confirm clearing limitation targets have been met	Post-construction	Compliant	As built survey of actual clearing area.

Final Clearing Quantities (EN1 FDD + Additions)			
Habitat Type	Final Clearing Quantity (ha)	Limit (ha) as per Condition 1 Approval	Current Difference showing remaining habitat (ha) under Condition 1 Approval
Koala	157.89	171	13.11
Grey-headed Flying-fox	170.84	184	13.16
Spotted –tail Quoll habitat	71.40	166	94.60
Swift Parrot and Regent Honeyeater	71.40	73	1.60
Cryptic Forest Twiner and Clear Milkvine	34.11	36	1.89

Mainline clearing was completed during 2014. Small amounts of clearing were undertaken throughout 2015 and 2016.

Clearing has been completed and the table above (Final Clearing Quantities (EN1 FDD + Additions) shows the final figures for each habitat type. Clearing totals for each habitat type were less than the approved limits in accordance with Condition 1.



## Condition 2

Within 30 days of the completion of *construction* works, the person taking action must:

- a) notify the Minister in writing of the completion of construction; and
- b) provide a report (supported by appropriate mapping) that clearly shows the location of all vegetation and EPBC species habitat cleared as a result of the action, and that demonstrates compliance with Condition 1.

Action	Timing	Status	Compliance evidence
2.1 Prepare works as executed Environmental and Clearing Plans to show extent of clearing.	Within 30 days of construction completion	Compliant	Report & supporting mapping provided
2.2 Calculate final clearing quantity and include in summary table.	Within 30 days of construction completion	Compliant	Report & supporting mapping provided
2.3 Provide written notification (letter) of completion of construction and report to Dept of the Environment	Within 30 days of construction completion	Compliant	Notification letter provided 7/03/18.

Completion of construction occurred on 14 February 2018. A report was produced and included in the February 2017 to January 2018 Annual Compliance report.

## Condition 3

The *person taking the action* must undertake progressive rehabilitation of *EPBC species' habitat* in areas where *temporary infrastructure* is to occur or, where *short term* impacts are anticipated. Where appropriate, the landscaping / rehabilitation of these areas must be done in a manner that targets the needs and requirements of *EPBC species*.

Action	Timing	Status	Compliance evidence
3.1 Finalise urban design and landscape plan to capture rehabilitation and revegetation temporary works and areas of short term impact.	Pre-construction or prior to any works in EPBC species habitat areas during construction	Compliant	Urban Design and Landscape Plan
3.2 Implement rehabilitation / landscaping of affected areas as per landscape design.	Following cessation of use of affected areas	Compliant	No EPBC species habitat was cleared as part of the creation of temporary infrastructure

Note: Urban Design Landscape Plan was approved by NSW Department of Planning (DoP) in February 2015.

Landscape planting commenced on Wednesday 4<sup>th</sup> November 2015. All permanent landscaping works have been completed across the project. Ongoing maintenance works including weed management will be undertaken by the contractor for three years following construction completion under their deed requirements.

No EPBC species habitat was cleared as part of the creation of temporary infrastructure or short term impacts as part of the project.

All sites classified as Temporary Infrastructure for the project were located in areas where no confirmed EPBC habitat was located, and also no Biometric vegetation communities were cleared for the creation of these sites i.e. located in areas previously cleared for agricultural or Forestry purposes.

## Condition 4

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At completion of construction (and every three years thereafter for the life of this approval or until *the Minister* has agreed in writing that further revisions are no longer required) a progress report assessing the effectiveness of restoring habitat on site (in accordance with Condition 3) must be provided to *the Minister*.

Action	Timing	Status	Compliance evidence
4.1 Annual Compliance Report Number 3 to Dept of the Environment	March 2017	Compliant	SAP's showing temporary infrastructure was not located within EPBC Species habitat

Landscape planting commenced on Wednesday 4<sup>th</sup> November 2015. All permanent landscaping works have been completed across the project. Ongoing maintenance works including weed management will be undertaken by the contractor for three years following construction completion under their deed requirements.

No EPBC species habitat was cleared as part of the creation of temporary infrastructure or short term impacts as part of the project.

All sites classified as Temporary Infrastructure for the projects were located in areas where no confirmed EPBC habitat was located, and also no Biometric vegetation communities were cleared for the creation of these sites i.e. located in areas previously cleared for agricultural or Forestry purposes.

## Condition 5

Prior to *commencement of the action* the person taking the action must engage a *suitably qualified expert* to:

- a) map any areas of habitat for EPBC species that lie adjacent to the construction zone;
- b) map the locations of known individuals of Clear Milkvine and Cryptic Forest Twiner that lie adjacent to the construction zone;
- c) map any areas of lowland rainforest of subtropical Australia that lie adjacent to the construction zone; and
- d) clearly mark exclusion zones along (or around) these areas on site.

Action	Timing	Status	Compliance evidence
5.1 Engage suitably qualified expert	Prior to start of construction	Compliant	Ecos Environmental mapped vegetation and habitat types with information included in SAPs.
5.2 SAPs to show required items	Prior to construction in affected areas	Compliant	SAPs drafted prior to start of construction. SAPs – amended as required with any updated information
5.3 Exclusion zones to be marked on site as appropriate	Prior to construction in affected areas	Compliant	Exclusion zone delineation installed prior to construction in affected areas and maintained as required. Ongoing compliance documented through surveillance checklist.
5.4 SAPs Updated	Construction	Compliant (last revised October 2014)	SAPs updated following new information or removal of sensitive area. Tracked through updated revision of the SAPs.

## Condition 6

To mitigate and reduce indirect impacts on the *exclusion zones* identified as a requirement of Condition 5, the *person taking the action* must:

- a) ensure that temporary and high visibility fencing will be erected to restrict access to exclusion zones. Temporary fencing must be of a design appropriate to deter the passage of vehicles or placement of construction materials, equipment and waste, in exclusion zones where accidental incursion could reasonably occur;
- b) implement measures to prevent the spread or establishment of new or additional weed species, soil or plant pathogens into these exclusion zones as a result of construction;
- c) implement stormwater management measures to prevent the unintentional diversion or discharge of stormwater during both construction and operation over exclusion zones; and
- d) implement targeted measures for managing construction impacts to Cryptic Forest Twiner and Clear Milkvine associated with dust, sedimentation and erosion.

Action	Timing	Status	Compliance evidence
6.1 Implement protection measures:			
(a) Fencing of exclusion zones	During construction	Compliant	Exclusions zones installed prior to clearing. Exclusion delineation to be maintained until construction completion. Environmental surveillance checklist documenting compliance.
(b) Prevent spread of weeds, soil or pathogens	During construction	Compliant	CEMP measures include implementation of TfNSW best practice measures detailed in the biodiversity guidelines. Including plant wash down prior to entry onto site and separation and segregation of weed infested topsoil. Environmental surveillance checklist documenting compliance.

(c) Stormwater measures to prevent discharge of stormwater during construction and operation over exclusion zones	Detailed design and during construction	Compliant	Detailed design includes the retention and treatment of road runoff adjacent to sensitive areas.  CEMP measures include implementation of best practice erosion and sediment controls during construction. Environmental surveillance checklist documenting compliance
(d) Implement target measures to manage construction impacts to threatened flora.	During construction	Compliant	Directly and indirectly impacted threatened flora removed from site through implementation of Threatened Flora Management Plan.  CEMP includes best practice measures to manage dust and erosion and sedimentation impacts. Environmental surveillance checklist documenting compliance.  Progressive revegetation to be undertaken to provide dense ground cover that excludes weeds. Revegetation checklists maintained monthly.
6.2 Monitor In-situ Roadside Threatened Flora	Every 6 months for the first two years and then yearly for 5 years.	Compliant - (Monitoring completed in Jan 2021)	Summary of roadside threatened plant monitoring was included in the 2022 annual EPBC Compliance Report Appendix 1.

Appendix 1 provided details of the results of the NH2U Year 5 (Operational phase) monitoring of Slender Marsdenia. Since the Year 3 report recommended cessation of monitoring of in-situ plants, no further evaluation of them is provided beyond that provided in the Year 4 report (Richards 2021), which showed that two of three performance indicators (PIs) had been met.

It should be noted, that all three PIs for Slender Marsdenia were met in Year 3, and the third PI was not met in Year 4. This fluctuation in survival and condition in Slender Marsdenia is discussed in more detail in the NH2U Year 5 Report (Appendix 1).

[Note- Mr Richards is a recognised species expert for slender marsdenia (*Marsdenia longiloba*) in accordance with Section 5.3 of the Biodiversity Assessment Method 2020.]

## Condition 7

The *person taking the action* must engage a *suitably qualified expert* to undertake pre-clearing fauna searches within all areas proposed for disturbance, including: hollow bearing trees, logs, existing culverts and bridges, no earlier than 48 hours prior to the removal of vegetation occurring in that area to ensure that the area is free of the *Koala* and *Spotted-tail Quoll*.

Action	Timing	Status	Compliance evidence
7.1 Engage suitably qualified expert	Prior to start of construction	Compliant	Sandpiper Ecological Surveys engaged by contractor in accordance with SWTC Appendix 5.
7.2 Pre-clearing fauna searches identified as activity in fauna management plan (or equivalent)	Prior to start of construction	Compliant	BEM Ecological Monitoring Program
7.3 Undertake pre-clearing fauna searches as required	Prior to start of construction in specified areas	Compliant	Environmental surveillance checklist.

Sections 2.1 and 3.2 of the ecological monitoring program prepared by BEM and the approved CEMP addresses undertaking pre-clearing fauna searches and fauna relocation.

Section 5 of the ecological monitoring program prepared by BEM addresses reporting.

## Condition 8

The *person taking the action* must implement measures to relocate and/or ensure the appropriate care of individuals of *EPBC species* that are identified during searches referred to in condition 7.

Action	Timing	Status	Compliance evidence
8.1 Provide for appropriate fauna relocation measures in CEMP documentation	Prior to construction	Compliant	Fauna rescue procedure contained within the FFMP. A specific koala relocation strategy has been prepared and forms an attachment to the Clearing and Grubbing Environmental Work Method Statement.
8.2 Relocate affected fauna as per procedures in ecological monitoring program	As part of pre-clearing activities	Compliant	Environmental surveillance checklist.

Note:

CEMP contains fauna rescue procedure and a specific koala relocation strategy was developed by SES in consultation with NSW EPA Senior Threatened Species Officer.

No EPBC fauna was relocated or EPBC threatened flora observed during the reporting period.



## Condition 9

Prior to *commencement of the action* the *person taking the action* must engage a *suitably qualified expert* to collect baseline data on *local populations* of the *Koala* and *Spotted-tail Quoll*. The data must address the likely densities and distribution of these species within all habitat *adjacent to the construction* footprint that are likely to contain these species and that are likely to be adversely impacted by *the action* (as determined by a *suitably qualified expert*).

Action	Timing	Status	Compliance evidence
9.1 Engage suitably qualified expert	Prior to start of construction	Compliant	TfNSW engagement of BEM.
9.2 Review existing baseline data and assess adequacy with regard to specified matters for management of impacts on identified fauna species	Prior to completion of clearing.	Compliant	Short report or equivalent documenting review outcomes and any identified information gaps
9.3 Where substantive information gaps are identified, develop strategy to obtain required information	Prior to construction activity in adjacent to areas containing potential habitat for either of the two species	Compliant	Short report or equivalent documenting methodology used for monitoring, results of monitoring and compiling the new results with existing information.

Note:

BEM provided the report in August 2014 that consolidates actions 9.2 and 9.3. The report concluded that the local koala population in the vicinity of the Project corridor is of low density. Consequently, the available information is insufficient to determine an accurate estimate of the koala population. However, assuming there is a low density of koalas in the locality, the Project corridor appears to traverse only a small number of home ranges of individual koalas. The project design incorporates a combination of fauna exclusion fencing and fauna underpass structures within 500 metres of each sample site where koala activity was recorded. The Project is expected to have minimal impact on the viability of the local koala population by preventing direct mortalities during vegetation clearing and operation and by maintaining opportunities for safe koala movement across the Project corridor once operational.

In reference to Spotted Tail Quolls, no quolls were identified during the study. This is not definitive evidence that the species does not occur in the study area. Whether there is a resident population is uncertain but the distribution of records and presence of recent (2010) records are sufficient to conclude that quolls utilise the study area. Quolls are predicted to occur at low densities and with heightened awareness records may be obtained during construction or in the operational phase. Given the predicted occurrence of quolls the implementation of specific measures, such as underpasses and fauna fencing is warranted to enable quolls to effectively cross the upgraded highway.

Koala surveys completed by OEH (Jon Turbill) for Bellingen and Nambucca Shire Councils were also used to assess the need for fauna fencing. Following a meeting onsite, further fauna fencing was specified for the south of Oyster Creek. This followed Kola sightings to the immediate east of Oyster Creek during OEH monitoring. This fencing has been installed.

## Condition 10

The person taking the action must construct and maintain fauna crossings and fencing in areas that are likely to benefit the Koala and Spotted-tail Quoll.

Action	Timing	Status	Compliance evidence
10.1 Provide for fauna crossings and fencing in detailed design	During design	Compliant	Final design showing required fauna crossings and fencing.
10.2 Construct fauna crossings and fencing	Construction	Compliant	As provided in previous Annual Compliance reports
10.3 Undertake regular maintenance of fauna crossings and fencing	Post-construction	Compliant	Annual reporting and/or maintenance inspection reports.

Note:

Construction of the permanent fauna fencing commenced in June 2015.

All combined /dedicated fauna crossing have been completed and installation of the vertical and horizontal refuge poles that offer connection from the mitigation structures to the adjacent native vegetation. A total of 22 combined and 4 incidental crossing have been constructed on the project

The project scope has increased to include approximately 4km of additional permanent fauna fencing to be installed around the Waterfall Way intersection. The fencing will start at the Shortcut/South arm intersection and work its way to the northern most extent of the project. This followed the Koala road kill recorded in August 2014 immediately south of the existing Waterfall Way Interchange. This work was completed in the first half of 2016.

Fauna Fencing was completed in August of 2016.

Ongoing review and maintenance as required of the fauna fence and crossings continues during the operational phase.

Following a Spotted Tailed quoll strike in May 2021, TfNSW completed (September 2021) an extension of the floppy top fauna fence from approximate Chainage 80950 to tie into Short Cut Rd overpass bridge abutments on both the west and eastern side of the alignment. This was an extension of approximately 550 m on both sides of the NH2U alignment, and a total of approximately 1100m of additional fauna fence. This extension of the floppy top fauna fence has effectively created a 'closed' fauna fencing system of approximately 5km in this section of the NH2U project, from the northern Raleigh interchange south to the Kalang River Bridge

## Condition 11

The *person taking the action* must engage a *suitably qualified expert* to advise on the design and location of *fauna crossings*, fencing and road medians, for the purpose of maintaining habitat connectivity and facilitating the safe passage of the *Koala* and *Spotted-tail Quoll* across the Pacific Highway.

A *suitably qualified expert* must also be engaged to design a comprehensive monitoring program that tests the *long term success* of these measures.

Action	Timing	Status	Compliance evidence
11.1 Design development in consultation with NSW EPA Biodiversity Specialist	During design	Compliant	Environmental Design Fauna Crossing Refinements report approved by NSW DP&I.
11.2 Engage suitably qualified expert to design monitoring program	Prior to start of construction	Compliant	TfNSW engagement of BEM
11.3 Prepare monitoring program	Prior to start of construction	Compliant	BEM Ecological Monitoring Program

Note:

Monitoring addressed via Section 3.5 of BEM ecological monitoring program.

The Before-After Control Versus Impact (BACI) design of the monitoring program requires the monitoring of the fauna crossings prior to the installation of the fauna fence (i.e. before the underpass structures become operational).

The first stage of the construction phase underpass monitoring was conducted in October and November 2014. The second stage was undertaken in February and March 2015.

## Condition 12

To inform the *long term success* of *fauna crossings*, fencing and road medians the *person taking the action* must engage a *suitably qualified expert* to prepare a strategy for monitoring and recording any road kill sightings of the *Koala* and *Spotted-tail Quoll* along the *Pacific Highway*. Prior to *commencement of the action*, the road kill monitoring and recording strategy must be implemented.

Action	Timing	Status	Compliance evidence
12.1 Ecological Monitoring Program to include road kill monitoring and recording strategy	Prior to start of construction	Compliant	Section 3.5.3 of the Ecological Monitoring Program specifies road mortality monitoring and recording strategy
12.2 Implement strategy	Prior to start of construction and ongoing during construction	Compliant	Environmental surveillance checklist developed
12.3 Report on outcomes of monitoring strategy	Construction Post-construction	Compliant	Annual reporting- Appendix 2 of the 2022 Annual Compliance Report included outcomes of roadkill monitoring.

One road kill of Spotted-Tail Quoll was recorded during the reporting period.

- 12 May 2021, Spotted-Tail Quoll road kill observed approximately 400m south of the Short Cut Road Overpass.

The road strike was reported to the EPA and an inspection of the Fauna Fence was completed. The inspection identified no obvious defects in the fauna fence and all gates were closed in the surrounding areas of the road kill.

Given this was the second Spotted-Tail Quoll recorded as road kill on the project (first strike recorded 19 Nov 2020) and in the same area of the Project, TfNSW reviewed the extent of fauna fence in the areas of the quoll strikes, and considered it feasible and warranted to extend the fauna fence.

On the 15 September 2021, TfNSW completed the extension of the floppy top fauna fence from approximate Chainage 80950 to tie into Short Cut Rd overpass bridge abutments on both the west and eastern side of the alignment. This was an extension of approximately 550 m on both sides of the NH2U alignment, and a total of approximately 1100m of additional fauna fence. This extension of the floppy top fauna fence has effectively created a 'closed' fauna fencing system of approximately 5km in this section of the NH2U project, from the northern Raleigh interchange south to the Kalang River Bridge.

## Condition 13

One year following the *completion of construction works*, the *person taking the action* must provide a report to *the Minister* detailing the success and/or failings of *fauna crossings*, fencing and road medians in achieving their intended purpose. The report must address (but need not be limited to):

- a) baseline data collected as a requirement of conditions 9 and 12;
- b) the number, design and location of fauna crossings, fencing and road medians, accompanied by maps and photographs;
- c) details of a monitoring program to determine the long-term success of fauna crossings, fencing and road medians (including timing, duration, methodology, and performance objectives);
- d) the success of fauna crossings to date; and
- e) a comparison of data / results from other projects involving upgrades to the Pacific Highway regarding the long-term success of fauna crossings and/or fencing;

The report must be updated on a three-yearly basis until the *long term success of fauna crossings* has been proven or *the Minister* has agreed in writing that further revisions are no longer required. All updated reports must be provided to *the Minister* within three years of the last report having being submitted.

Action	Timing	Status	Compliance evidence
13.1 Provide fauna crossings, fencing and road medians outcomes report to Dept of the Environment	February 2019	Compliant	Transmittal form (and any confirmation of receipt)
13.2 Provide updated fauna crossings, fencing and road medians outcomes report to Dept of the Environment	February 2022	Compliant	Transmittal form (and any confirmation of receipt). The Operational Phase Biodiversity Monitoring Report 2021 is available in Appendix 2 of the 2022 EPBC Compliance Report.
13.3 Provide updated fauna crossings, fencing and road medians outcomes report to Dept of the Environment	February 2024	TBA	Transmittal form (and any confirmation of receipt)

A summary of the ecological monitoring outcomes of the Operational Phase Biodiversity Monitoring 2021/22 is provided below, with the full report available in Appendix 2 of the 2022 EPBC Compliance Report.

- Dog and fox accounted for the majority (95%) of feral predator underpass use in 2021. A proactive approach is warranted given the level of dog activity at koala sites and time between monitoring periods (i.e. year 7 - 2023). Collaborative feral dog trapping programs have been successful on other Pacific Hwy Projects (Sandpiper Ecological 2021) and it is recommended that a similar program be implemented at Dalhousie, Martells Bridge, Martells South and Martell's North.
- Monitoring has shown that fauna furniture is functional, and underpasses are providing safe passage for close to 90% of the mammal species recorded in adjacent habitat.
- Eight cover-dependent and/or low mobility species have been recorded using underpasses at NH2U, with an additional sixteen recorded in the adjacent habitat.
- During autumn monitoring, a spotted-tailed quoll was confirmed using fauna furniture at Martell's South.
- Koala was recorded on three occasions, including two complete crossings of the Dalhousie and Martell's North underpasses in spring 2021. The third record was of an individual on the west side of Dalhousie one week before the complete crossing was recorded. Complete crossings by koala have now been recorded at three of the seven impact sites, including a record at Tyson's in 2019. Results are encouraging despite low population density in the study area

## Condition 14

Should monitoring associated with conditions 11 to 13 demonstrate that the use of *fauna crossings* and/or fencing is not achieving its intended purpose or is having a detrimental effect upon *EPBC species* (as determined by *the Minister*), *the Minister* may request that the *person taking the action* implement alternative forms of mitigation and/or corrective actions to address the relevant impacts to *EPBC species*. Such measures must be implemented as requested.

Action	Timing	Status	Compliance evidence
14.1 Implement additional mitigation/corrective actions	As and when directed by the Minister	TBA	As directed by the Minister

One road kill of Spotted-Tail Quoll was recorded during the reporting period.

- 12 May 2021, Spotted-Tail Quoll roadkill was observed approximately 400m south of the Short Cut Road Overpass.

The road strike was reported to the EPA and an inspection of the Fauna Fence was completed. The inspection identified no obvious defects in the fauna fence and all gates were closed in the surrounding areas of the roadkill.

Given this was the second Spotted-Tail Quoll recorded as roadkill on the project (first strike recorded 19 Nov 2020) and in the same area of the Project, TfNSW reviewed the extent of fauna fence in the areas of the quoll strikes and considered it feasible and warranted to extend the fauna fence.

On the 15 September 2021, TfNSW completed the extension of the floppy top fauna fence from approximate Chainage 80950 to tie into Short Cut Rd overpass bridge abutments on both the west and eastern side of the alignment. This was an extension of approximately 550 m on both sides of the NH2U alignment, and a total of approximately 1100m of additional fauna fence. This extension of the floppy top fauna fence has effectively created a 'closed' fauna fencing system of approximately 5km in this section of the NH2U project, from the northern Raleigh interchange south to the Kalang River Bridge.



## Condition 15

The person taking the action must implement a salvage and translocation program for all individuals of *Clear Milkvine* and *Cryptic Forest Twiner* that are proposed to be cleared as a result of the action. Translocation procedures must be developed and implemented by a suitably qualified expert in accordance with *Guidelines for the Translocation of Threatened Plants in Australia* prepared by the Australian Network for Plant Conservation.

Action	Timing	Status	Compliance evidence
15.1 Engage suitably qualified expert	Prior to construction	Compliant	Engagement of Ecos to prepare Threatened Flora Management Plan.
15.2 Develop translocation procedures	Prior to construction	Compliant	Ecos TFMP developed in consultation with NSW EPA Biodiversity Specialist and approved by NSW DP&I.
15.3 Implement translocation procedures	During construction	Compliant	Annual reporting. First report completed January 2015. Second report completed January 2016, third report completed 2017, and fourth report completed 2018, fifth report 2019, sixth report 2020, and seventh report 2021.

### Notes:

These two species are referenced in Section 2.7 (*Establishment of translocation areas*) of the BEM ecological monitoring program by their scientific names, ie *Marsdenia longiloba* (Clear Milkvine), and *Tylophora woolfsii* (Cryptic Forest Twiner).

A Threatened Flora Translocation Program was developed by Ecos in consultation with the NSW Biodiversity Specialist and approved by the NSW DP&I. The program includes a salvage and translocation program for all individuals of *Clear Milkvine* and *Cryptic Forest Twiner* that are proposed to be cleared and the program is considered to meet the requirements of Condition 15.

## Condition 16

One year following the *completion of construction works, the person taking the action* must provide a report to *the Minister* detailing the long term success of the translocation program. The report must include, but need not be limited to:

- a) background information on translocated species (in relation to ecological requirements and life history);
- b) the scope of the translocation program (with respect to timing, duration, methodology, and objectives, as well as comprehensive details on the recipient translocation site(s) and how they meet the ecological requirements of each species);
- c) details of a comprehensive monitoring program to determine the long-term success of translocation; and
- d) the success of translocation to date.

Action	Timing	Status	Compliance evidence
16.1 Prepare translocation outcomes report addressing specified matters and other relevant matters	2019	Compliant	Feb 2019 EPBC annual compliance tracking report
16.2 Provide translocation outcomes report to Dept of the Environment	Feb 2019	Compliant	Transmittal form (and any confirmation of receipt) - Feb 2019 EPBC annual compliance tracking report

## Condition 17

The report must be updated on a three-yearly basis to provide further insights on the *long-term success* of translocation. All reports must be provided to *the Minister* and made available on the *person taking the action's* website for the life of this approval or until *the Minister* has agreed in writing that further revisions are no longer required.

Action	Timing	Status	Compliance evidence
17.1 Update translocation outcomes report and provide to Dept of the Environment	February 2022	Complaint Final Monitoring and Report	Completed report Transmittal form (and any confirmation of receipt). (Appendix 1 Threatened Flora Monitoring Report 2021)

In accordance with the approved Threatened Flora Management Plan, the following performance indicators (PIs) are used to evaluate the threatened species translocations (salvage translocation and population enhancement):

- All directly impacted individuals of threatened species were salvaged and relocated to the receival sites.
- At least 60% of transplant and enhancement individuals are surviving after the first year, 50% after five years and 40% after eight years.
- At the end of the monitoring program (8 years), at least 50% of surviving individuals have a Condition Class of 3 or higher.

### Slender Marsdenia

- All directly impacted Slender Marsdenia were salvaged and relocated to the receival sites.
- After eight years of monitoring, the mean survival rate (i.e. Condition Class 2 or better) of all Slender Marsdenia plants stands at **45.1%**, which exceeds the Performance Indicator for Year 8. The actual percentage of surviving plants is likely to be much higher, as many plants that currently lack an aerial stem (i.e. are currently in Condition Class 1) would still be alive and may resprout in the future. Many years of field observations of wild and translocated Slender Marsdenia plants by the author strongly indicates that this is a natural part of the life history of this species. As noted in the NH2U Year 4 report (Richards 2021) successful achievement of the PIs for this species is as dependent on climatic factors as much as anything else. A wet, mild 'La Niña' weather pattern arrived in October 2021 following a very dry 4-month period. It would be expected that more plants will produce aerial shoots, and be in better overall condition, should such a weather pattern persist.
- Probably for the above reasons, only the third Performance Indicator for Slender Marsdenia has not been met. Currently, 83 plants (**28%**) are in Condition Class 3 or greater. Despite this third PI not being met, the species expert (Peter Richards) considers that the translocation program for Slender Marsdenia has been successful, and there is a very high likelihood that the translocated population will persist into the future. The translocated Slender Marsdenia population is not exhibiting a trend of

continual reduction in plant numbers. Surviving plants appear to be established and would be expected to exhibit annual change in apparent health, depending upon prevailing climatic conditions. The third PI is problematic with regard to a plant such as Slender Marsdenia which can sporadically die back to its subterranean rhizome and not produce an aerial stem for more than 4 years (Richards 2019).

[Note- Mr Richards is a recognised species expert for slender marsdenia (*Marsdenia longiloba*) in accordance with Section 5.3 of the Biodiversity Assessment Method 2020.]

## Condition 18

With reference to the *department's offset policy*, the *person taking the action* must provide for *the Minister's* approval a threatened flora offset strategy for the *Clear Milkvine* and *Cryptic Forest Twiner*, within 12 months of the date of this approval. *The Minister* will only approve the Threatened Flora Offset Strategy (TFOS), if it demonstrates how a threatened flora offset meeting no less than 90 % of the direct offset requirements (as determined *by the department* in accordance with the offset user guide) will be legally secured in perpetuity within two years of the date of this approval.

Note: At the time the offset required by condition 18 is submitted for approval, the person taking *the action* may ask the Minister to consider that the salvage and translocation program required by condition 15, meets 10% of the offset requirements for the *Clear Milkvine* and *Cryptic Forest Twiner*.

Action	Timing	Status	Compliance evidence
18.1 Prepare TFOS in accordance with Dept of the Environment offset policy and addressing specified matters	By 26 Nov 2014	Compliant	Completed TFOS
18.2 Submit TFOS to Dept of the Environment for approval	By 26 Nov 2014	Compliant Final Report approved by DoE 19/07/2016	Transmittal form (and any confirmation of receipt)

### Action 18.1:

Tender assessment – (Complete)

Draft for TfNSW review expected (Complete)

TfNSW review (Complete)

Final of the TFOS (Complete)

### Action 18.2:

Submitted to DoE for approval 21/11/2014

Comments received from DoE 02/09/2015

Amended report provided to DoE 02/10/2015

Variation letter submitted to DoE on 20/11/2015 to request the removal of a timeframe to secure the offset property in perpetuity and tie that in with the approval of the TFOMP.

Comments received from DoE 30/11/2015

TFOS was resubmitted in 2/6/2016

The TFOS was approved by DoE on 19/07/2016 and was published on the projects website.

## Condition 19

The *person taking the action* must provide a plan for the management and delivery of the offset requirements of the threatened flora offset to *the Minister* for approval no later than 30 June 2015. The Threatened Flora Offset Management Plan (TFOMP) must include, but need not be limited to:

- a) map(s) and shapefiles that clearly define the location and boundaries of the offset;
- b) details on the quality of the offset;
- c) information about Clear Milkvine and Cryptic Forest Twiner (in relation to ecology, biology and conservation status) to inform appropriate management actions;
- d) performance objectives and management actions that will enable maintenance and enhancement of Clear Milkvine and Cryptic Forest Twiner the offset and habitat covered by the plan;
- e) demonstration that any management actions to be undertaken will not adversely impact EPBC species (for example, this may apply to herbicide usage);
- f) a description of funding arrangements or agreements including work programs and responsible entities;
- g) an assessment of the baseline population and distribution for Clear Milkvine and Cryptic Forest Twiner within the offset, including:
  - (i) the number of plants protected and their location;
  - (ii) plant and habitat condition; and
  - (iii) age classes.
- h) measures for regular monitoring of the status of individuals of Clear Milkvine and Cryptic Forest Twiner and their habitat as measured against the baseline population and distribution, including:
  - (i) fluctuations in population size and distribution;
  - (ii) life cycle patterns
  - (iii) habitat requirements; and
  - (iv) response to disturbances and/or management actions.
- i) Provision to revise the approved threatened flora offset management plan in response to the findings of research associated with condition 20(h).
- j) The approved TFOMP must be implemented within seven days of its approval.

Action	Timing	Status	Compliance evidence
19.1 Prepare TFOMP addressing specified matters and other relevant matters	By 30 Jun 2015	Compliant	Completed TFOMP

19.2 Provide TFOMP to Dept of the Environment for approval	By 30 Jun 2015	Compliant (revised document was resubmitted to DoE on 7/11/2016) Plan approved 4/7/2017	Transmittal form (and any confirmation of receipt)
19.3 Implement TFOMP	Within 7 days of Minister's approval	Compliant	Annual reporting Gazettal of Yuraarla Flora Reserve on 15 April 2020.

#### Action 19.1:

GHD engaged and property surveys completed

An area within Boambee State Forrest has been identified and TfNSW are currently negotiating with State Forests regarding protection of this area in perpetuity as a Flora Reserve.

TfNSW wrote to DoE on 30/06/2015 requesting urgent consideration of the TFOS and seeking an extension of time to submit the TFOMP by 3 months, until 30/09/2015.

#### Action 19.2

TFOMP was submitted to DoE on the 02/10/2015 for approval.

Comments received from DoE on 30/11/2015.

The revised document was resubmitted to DoE on 7/11/2016.

TFOMP approved by DoE on 4 July 2017

#### Action 19.3

- Boambee SF (FCNSW) – TfNSW has paid the compensation funding to FCNSW. The new Yuraarla Flora Reserve was gazetted on 15 April 2020 (NSW Government Gazette No. 107 of 29 May 2020). This was provided to Post Approvals via email on 29 June 2020.

## Condition 20

Within three months from the date of this approval, the person taking the action must provide to the Minister, a strategy that details how, and when, the Norton Offset Site and Griffin Offset Site (as described in the referral documentation), will be legally secured in perpetuity by the person taking the action.

If the EPBC species habitat cleared as a result of the action is less than the impacts described in the referral documentation, then any surplus biodiversity offset areas included in the offset management plans referred to in condition 19 and condition 21 could be secured as biodiversity offsets for other actions undertaken by the person taking the action and included in the offset strategies for those actions.

Action	Timing	Status	Compliance evidence
20.1 Prepare strategy to legally secure offset sites in perpetuity	By 26 Feb 2014	Compliant	Both Norton and Griffin sites have been purchased by TfNSW.
20.2 Provide strategy to Dept of the Environment	By 26 Feb 2014	Compliant	Letter provided to DoEE on 11-2-2014



## Condition 21

Within 12 months from the date of this approval, the *person taking the action* must provide to *the Minister* for approval, a plan for the management of the Norton Offset Site and Griffin Offset Site. The Norton and Griffin Offset Management Plan (NGOMP) must be targeted to the ecological requirements of the *Koala*, *Grey-headed Flying-fox*, *Spotted-tail Quoll*, *Regent honey eater* and *Swift Parrot* and build upon the ideas and concepts described in the *referral*. The plan must include, but need not be limited to:

- a) map(s) and shapefiles that clearly define the location and boundaries of the offset sites;
- b) details on the quality of the offset with reference to all EPBC species this plan is intended to protect;
- c) information about the Koala, Grey-headed Flying-fox, Spotted-tail Quoll, Regent honey eater and Swift Parrot (in relation to ecology, biology and conservation status) to inform appropriate management actions;
- d) the results of targeted field surveys within both offset sites (undertaken at any ecologically appropriate time of the year) to assess habitat suitability and presence / absence of individuals in relation to the Koala, Grey-headed Flying-fox, Spotted-tail Quoll, Regent honey eater and Swift Parrot;
- e) clear performance objectives and management actions that will enable maintenance and enhancement of habitat within the offset area, as well as contribute to the better protection of individuals and/or populations of EPBC species onsite;
- f) an assessment of the baseline population for EPBC species which are detected within the offset area during field surveys;
- g) demonstration that any management actions to be undertaken will not adversely impact EPBC species (for example, this may apply to pest control);
- h) a description of funding arrangements or agreements including work programs and responsible entities;
- i) details of a comprehensive long term monitoring program for determining the effectiveness of management actions;
- j) commitments to undertake contingency measures and corrective actions in the event that performance objectives are not met; and
- k) anticipated timeframes for achieving performance objectives.
- l) The approved Norton and Griffin offset management plan must be implemented within seven days of its approval.

Action	Timing	Status	Compliance evidence
21.1 Prepare NGOMP addressing specified matters and other relevant matters	By 26 Nov 2014	Compliant	Completed NGOMP

21.2	Provide NGOMP to Dept of the Environment	By 26 Nov 2014	Compliant - submitted to DoE on the 11/12/14 Re-submitted on the 23/12/16 Plan Approved 5/7/2017	Transmittal form (and any confirmation of receipt)
21.3	Implement NGOMP	Within 7 days of Minister's approval	Compliant	Annual update / reporting Execution of BioBanking Agreements. Retirement of ecosystem credits.

**Note:**

It is assumed that satisfactory documentary evidence of implementation of the NGOMP would be provided through annual reporting.

**Action 21.1:**

Prepare brief for tender (Complete)

Tender assessment (Complete);

Draft for TfNSW review (Complete);

TfNSW review (Complete)

**Action 21.2:**

Final - (Complete)

Submitted to DoE for approval on the 11/12/14.

Comments received from DoE on February 2016

NGOMP re-submitted for approval on 23 December 2016.

NGOMP approved by DoE on 5 July 2017

**Action 21.3:**

- Norton (TfNSW) and Swain (private) – BioBanking Agreements have been executed by OEH and registered on title. The Swain BBA became active in February 2019, after TfNSW purchased the ecosystem credits. The ecosystem credits for Swain were retired by TfNSW on 2 September 2021. Norton became active in late February 2021 after being on-sold. TfNSW retired the required ecosystem credits from the Norton offset property on 2 September 2021.
- Griffin (TfNSW) – TfNSW transferred the land title and associated management funding to NPWS in late 2021. NPWS have commenced the gazettal process.

## Condition 22

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Within one month after the commencement of *the action*, the *person taking the action* must advise *the Department* in writing of the actual date of commencement.

Action	Timing	Status	Compliance evidence
22.1 Provide written advice to Dept of the Environment of actual date of commencement	4 Jan 2014	Compliant	Signed copy of letter on TfNSW letterhead. Provided to DoEE on 4-1-2014.



## Condition 24

Within three months of every one year anniversary of the commencement of the action, the person taking the action must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans as specified in the conditions. Documentary evidence providing proof of the date of publication and noncompliance with any of the conditions of this approval must be provided to the Department at the same time as the compliance report is published.

Action	Timing	Status	Compliance evidence
24.1 Prepare compliance report and upload to project website	By 4 Mar 2015	Compliant	Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.
24.2 Prepare compliance report and upload to project website	By 4 Mar 2016	Compliant	Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.
24.3 Prepare compliance report and upload to project website	By 4 Mar 2017	Compliant	Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.
24.4 Prepare compliance report and upload to project website	By 4 Mar 2018	Compliant	Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.
24.5 Prepare compliance report and upload to project website	By 4 Mar 2019	Compliant	Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.
24.5 Prepare compliance report and upload to project website	By 4 Mar 2020	Compliant	Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.
24.5 Prepare compliance report and upload to project website	By 4 Mar 2021	Compliant	Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.

24.5 Prepare compliance report and upload to project website	By 4 Mar 2022	Compliant	Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.
24.5 Prepare compliance report and upload to project website	By 4 Mar 2023	Compliant	This Report uploaded to project website. Advice provided to Dept on date of publication and any non-compliances.

## Condition 25

Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.

Action	Timing	Status	Compliance evidence
25.1 Identify potentially suitable auditor(s)	On direction of the Minister	TBA	Tenderer(s) proposal(s) documenting expertise
25.2 Provide auditor's details to Dept of the Environment for approval	On direction of the Minister	TBA	Transmittal form (and any confirmation of receipt)
25.3 Auditor to develop audit criteria	Following receipt of Minister's approval	TBA	Completed audit criteria
25.4 Provide audit criteria to Dept of the Environment for approval	Following receipt of Minister's approval	TBA	Transmittal form (and any confirmation of receipt)
25.5 Conduct audit and document findings	Following receipt of Minister's approval	TBA	Completed audit report
25.6 Provide audit report to Dept of the Environment	At completion of audit	TBA	Transmittal form (and any confirmation of receipt)

No independent audit of compliance has been requested from *the Minister* to date.

## Condition 26

If the person taking the action wishes to carry out any activity otherwise than in accordance with the TFOS, TFOMP, or NGOMP as specified in these conditions, the person taking the action must submit to the Department for the Minister's written approval a revised version of that TFOS, TFOMP, or NGOMP. The varied activity shall not commence until the Minister has approved the varied TFOS, TFOMP, or NGOMP in writing. The Minister will not approve a varied TFOS, TFOMP, or NGOMP unless the revised TFOS, TFOMP, or NGOMP will result in an equivalent or improved environmental outcome over time. If the Minister approves the TFOS, TFOMP, or NGOMP then that TFOS, TFOMP, or NGOMP must be implemented in place of the TFOS, TFOMP, or NGOMP originally approved.

Action	Timing	Status	Compliance evidence
26.1 Assess potential departure(s) from TFOS, TFOMP and/or NGOMP as relevant	As required	TBA	Consistency assessment
26.2 Revise TFOS, TFOMP and/or NGOMP as relevant	As required	TBA	Revised TFOS, TFOMP and/or NGOMP as relevant
26.3 Provide revised TFOS, TFOMP and/or NGOMP as relevant to Minister for approval	As required	TBA	Transmittal form (and any confirmation of receipt)
26.4 Implement revised TFOS, TFOMP and/or NGOMP as relevant in accordance with the Minister's written approval	Prior to any action that would not be consistent with the original approval or subsequent modified approval(s)	TBA	Annual reporting



## Condition 27

If the Minister believes that it is necessary or convenient for the better protection of listed threatened species and communities to do so, the Minister may request that the person taking the action make specified revisions to TFOS, TFOMP, or NGOMP specified in these conditions and submit the varied TFOS, TFOMP, or NGOMP for the Minister's written approval. The person taking the action must comply with any such request. The revised approved TFOS, TFOMP, or NGOMP must be implemented. Unless the Minister has approved the TFOS, TFOMP, or NGOMP, then the person taking the action must continue to implement the TFOS, TFOMP, or NGOMP originally approved, as specified in these conditions.

Action	Timing	Status	Compliance evidence
27.1 Revise TFOS, TFOMP and/or NGOMP as relevant as per directed by the Minister	As directed by the Minister	TBA	Completed revised TFOS, TFOMP and/or NGOMP as relevant
27.2 Provide revised TFOS, TFOMP and/or NGOMP as relevant to Dept of the Environment for approval	As directed by the Minister	TBA	Transmittal form (and any confirmation of receipt)
27.3 Implement revised TFOS, TFOMP and/or NGOMP as relevant in accordance with Minister's written approval	As directed by the Minister	TBA	Annual reporting

## Condition 28

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If, at any time after five years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the Minister.

Action	Timing	Status	Compliance evidence
28.1 Obtain written agreement of the Minister to substantially commence the project	As required after 25 Nov 2018	Compliant	Minister's written agreement. Action substantially commenced on the 4 December 2013

## Condition 29

Unless otherwise agreed to in writing by the Minister, the person taking the action must publish all management plans and reports referred to in these conditions of approval on their website. Each management plan or report must be published on the website within 1 month of being approved, or where approval is not required, on the same day as the report is provided to the Minister.

### Note

Any plan, strategy or report that has been prepared as a requirement of a state legislation approval (in relation to the action) may be used to satisfy the requirements of any of the above conditions, providing the relevant criteria have been met (as specified in these conditions). Where the option is employed, the plan, strategy or report must be accompanied by a standalone document detailing where each of the relevant criteria have been addressed within that plan, strategy or report. This note is particularly relevant to conditions 13, 16, 17, 19, 21 and 25.

Action	Timing	Status	Compliance evidence
29.1 Upload approved NGOMP to project website (21)	Within 1 month of the Minister's approval	Compliant	NGOMP uploaded to project website
29.2 Upload approved TFOMP to project website (19)	Within 1 month of the Minister's approval	Compliant	TFOMP uploaded to project website
29.3 Upload fauna crossings, fencing and road medians outcomes report to project website (13)	1 year following construction completion	Compliant	Report uploaded to project website
29.4 Upload translocation outcomes report to project website (16)	1 year following construction completion	Compliant	Report uploaded to project website
29.5 Upload updated fauna crossings, fencing and road medians outcomes report to project website (13)	Every 3 year following 29.3 report as above	Compliant	2021/22 Report uploaded to project website and included in the 2022 Report as Appendix 2.
29.6 Upload updated translocation outcomes report to project website (17)	Every 3 year following 29.4 report as above	Compliant	2021/22 Report uploaded to project website and included in the 2022 Report as Appendix 1.

