

Department of State Growth

Bird Nest Management Protocol

Department of State Growth

Acknowledgements

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- Department of State Growth;
- Department of Primary Industries, Parks, Water and the Environment; and
- Forest Practices Authority.

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1. Introduction

1.1 Overview

This document defines the procedures and requirements to be undertaken by all workers who encounter both known and unanticipated bird nests whilst operating within a Department of State Growth (the Department) works area.

Projects involving clearance of native vegetation, or where they occur at sites where threatened species have been recorded, will be subject to an ecological investigation prior to the works phase. This protocol **does not** replace the requirement for pre-construction surveys but rather is to address unanticipated nest discovery and to provide management guidelines for known nests where required (noting that the ecological survey recommendations and associated permits override the contents of this protocol where they exist).

This Bird Nest Management Protocol is to be followed for clearing any bird nest found in a tree during works for the Department, which were not identified during or prior to site investigations. Where surveys have identified habitat trees containing known nests, these will be marked as such on the Drawings included within the Contract Specifications. Those trees/nests outside of the direct footprint are to be protected.

Where required, tree felling/nest removal and preparatory work is to be undertaken with the presence of a suitably qualified ecologist.

1.2 Application of the Protocol

This protocol applies to all Department of State Growth and Contractors working on Department projects. It is the Department's aim that any nests will be identified in site investigations, with specific actions for managing such nests included in the Contract Specifications.

The Protocol is designed to provide guidance on unanticipated discovery of nests at 'brownfield' sites (i.e. works along the existing road network). The Protocol is not designed for application at 'greenfield' sites (i.e. roads on a new alignment), but will likely provide some guidance for such works.

For the purposes of this protocol, only birds' nests located within trees are included. Many Tasmanian birds are coastal or wetland species which nest in coastal terrain or margins of waterways. These types of nests are not covered by this protocol. Additionally, the Protocol does not cover hollow-dwelling birds. Where uncertainty exists, please contact the Environment and Development Approvals (EDA) for advice.

1.3 Objectives of this protocol

The objectives of this protocol are to provide clear process outlining the actions to be taken when a bird nest is encountered during works, consistent with relevant environmental legislation (outlined below).

1.4 Relevant Legislation

A number of pieces of legislation provide for the protection of bird nests in Tasmania including:

- *Nature Conservation Act 2002*
- *Threatened Species Protection Act 1995*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Wildlife (General) Regulations 2010*

Nests and eggs of birds listed under schedules of the *Wildlife (General) Regulations 2010* are considered an 'individual of the animal' under the *Nature Conservation Act 2002* (Section 3 (subsection (2))), and therefore a permit is required to damage or destroy a nest or 'take' eggs.

This Protocol will be reviewed as required to ensure it is consistent with any changes to the listing status of threatened species and/or legislative changes.

2. Nest Assessment

As soon as a nest is located within the works area the following steps must be followed.

2.1 Identification of nest

If a nest is identified during the course of works:

- **Check Contract Specifications (including general arrangement drawings) to ensure there are no specific management actions already identified for the nest.**

If there are, follow the management measures specific to this nest outlined in the site Construction Environmental Management Plan (CEMP).

- Is the nest within the active works area? Y/N
Will the tree containing the nest be directly or indirectly impacted by the works? Y/N

Note that indirect impacts maybe noise, or line of sight issues ¹

- If **YES** proceed to Nest Assessment below.
- If **NO**, erect site exclusion fencing around the tree containing the nest to identify it as a 'no go zone' or 'environmental management zone'. It is preferred that exclusion fencing should be placed at a minimum of 50m (unless other specified) from the tree where reasonably practical. This is to ensure disturbance to the species is minimised. This fencing shall be maintained until otherwise advised by the Superintendent. Complete the nest observation form in 0 and submit along with photographs to Environment and Development Approvals (EDA) (contact details in Section 0) at the Department within two days of the nest being observed.

2.2 Nest Assessment

If the nest will require removal:

- Record the location and flag the tree as an exclusion zone'. The nest and exclusion zone must not be disturbed until this protocol has been completed.
- If possible, contractor to observe the nest from a distance to check for any sign of activity (i.e. birds flying to/from the nest). Record any observed activity on the nest observation form (0). Take photographs of the nest and submit the forms and photographs to EDA at the Department.
- The contractor must arrange for a suitably qualified ecologist to assess the nest and determine whether it is actively in use, and if so by which species.
- The ecologist must complete the remainder of the nest observation form, including:
 - Is the nest in use?
 - If in use, which species is most likely to be using the nest?. Is it a Category A or Category B species (see below)?
 - If possible, and only if safe for an ecologist and the birds to do so, comment on whether there are eggs or chicks present in the nest?

¹ Indirect impacts to a wedge tailed eagles nest is deemed to be works within 500 m or 1 km line of sight. If unsure then advice should be sought from the Department or PCAB.

- Photographs and grid reference coordinates, to an accuracy of at least +/- 10m
- Project chainage
- It is the Contractor's responsibility to ensure the ecologist completes the nest observation form. The Contractor must submit the form to the Superintendent within seven days of nest being assessed.
- If required, the Department will obtain a permit from DPIPWE.

Category A Species

For the purposes of this protocol, Category A bird species are those listed under Schedule 1 of the *Wildlife (General) Regulations 2010* and under the Tasmanian *TSPA 1995* or the Commonwealth *EPBCA 1999*.

The attending ecologist must review the listing status of any bird utilising the nest and confirm whether it is threatened. At the time of writing, the following threatened bird species are included as Category A given their listing status and use of constructed nests in trees²:

- Grey goshawk (*Accipiter novaehollandiae*)
- Wedge-tailed eagle (*Aquila audax fleayi*)
- White-bellied sea eagle (*Haliaeetus leucogaster*)

The below species only require consideration for works being undertaken on King Island

- Brown thornbill (King Island only) (*Acanthiza pusilla archibaldi*)
- Scrubtit (King Island only) (*Acanthornis magna greeniana*)

If the contractor identifies any of the above species occurring in a nest identified on site, they must stop work immediately and define a 50 m exclusion zone around the nest tree. Note a 100 m exclusion zone is required for Grey goshawk. **EDA must be notified and a permit/advice obtained by the Department.**

Category B Species

Category B species are considered to be all species that construct nests, listed under Schedules 2 and 4 of the *Wildlife (General) Regulations 2010* that are not Category A species.

Category C Species

Category C species are those *not* listed under the *Wildlife (General) Regulations 2010* that are not Category A or B species. This includes three cormorants, forest raven and introduced birds.

The attending ecologist must review the following list and confirm whether the species is Category B or Category C.

² As noted previously, this list only contains those threatened species that construct nests in trees/shrubs and may be encountered during Department of State Growth works. It does not include other listed marine, freshwater and hollow nesting species.

2.3 Nest clearance

Ideally, clearance of a bird nest should be undertaken at a time of year when the chance of a nesting bird, eggs or chicks being present is low i.e. autumn and early winter. However, where the bird's nest has been discovered after starting works, and a permit for clearance does not exist, it should be removed according to the following procedures:

Category A Species

The nest must not be disturbed (including clearing) without approval from the Department of Primary Industries, Parks, Water and the Environment (DPIPWE). **This is a Hold Point.**

A Permit will be required prior to any works. The requirement for a permit, and the permit application will be undertaken by the EDA. Details of the timing and method for removal will be outlined in the permit conditions. For these species consideration of avoiding the nest location is critical, as permit approvals will likely take some time, and are best avoided.

Establish a buffer zone around the nest (50 m is a recommended minimum but this may be modified on advice from DPIPWE and/or EDA). No works shall impact the buffer zone until a permit has been obtained. If a 50 m buffer is not achievable (i.e. physical constraints such as an existing road limiting the buffer size) then mark out a buffer as close as possible to the required 50 m and advise EDA.

Category B Species and Inactive Nests

If the attending ecologist has confirmed the nest is being used by or likely to be used by all category B species (listed under the Wildlife (General) Regulations 2010) a permit to take from DPIPWE will need to be obtained by State Growth. **This is a Hold Point.**

Once a permit has been obtained, the nest can be removed as per the Protocol (in accordance with any permit conditions), and after the nest reporting form has been completed.

Nests of non-listed species

If the attending ecologist has confirmed the nest is either **being used by or likely to be used by a category B (ii) species**, the nest does not require a permit from DPIPWE. The nest can be removed according to the following process and the contractor shall complete the nest reporting form and submit it to the EDA.

Nest tree felling process

Note that this process does not apply to species utilising hollow bearing trees. The process of felling must proceed in accordance with the following steps and any other relevant Permit requirements:

1. Trees are to be shaken/tapped at least three times prior to felling by suitably experienced contractor personnel to attempt to passively evict any nesting birds.
2. Only if practical and safe to do so, remove the nest safely by hand (using gloves), if possible.
3. Where clearing the nest by hand is not practical or safe, the removal of the nest may involve the supervised use of a chainsaw to remove the limb/section containing the nest, or by an experienced plant operator overseen by the supervising ecologist.

The use of invasive techniques to clear birds should only be implemented when circumstances prevent the passive eviction of contained fauna.

The contractor shall have a suitably qualified wildlife carer available (on call) to manage any injured or juvenile birds.

The above steps are the minimum requirements for clearance works and any permit issued by DPIPWE may have further conditions³. The conditions of these permits supersede the requirements of this protocol, and shall be implemented in addition to the above clearance procedure.

2.4 Stop work procedure

Although the above steps will minimise the risk of fauna or viable bird eggs being present in the nest when it is removed, there remains a residual risk that fauna may be present.

In the unlikely event that a Category A species is observed leaving the nest when the nest has been deemed a category B nest or unoccupied, then a stop work procedure will be applied and further consultation and advice sought from both State Growth and DPIPWE. Species identification will be undertaken by the suitably qualified ecologist.

The stop work procedure shall include as a minimum, the tree shall be left standing (if safe and practicable to do so) and advice to be sought from DPIPWE prior to re-starting the tree felling process (permits to be obtained prior to restarting the tree felling process if deemed necessary by DPIPWE).

Where required, the contractor shall arrange for a suitably qualified wildlife carer to supervise a relocation/release of evicted fauna, including the holding of any injured fauna.

³ This may include supervision of tree felling works by an appropriately qualified ecologist.

3. Reporting

The Nest Observation reporting form (0) shall be completed by the contractor. The contractor should complete the following details on the form:

- Date
- Time
- Name of Contractor (company)
- Name of employee
- Nest location (Chainage/ easting and northing)
- Any bird activity observed entering/leaving the nest during the initial 15 minute observation period
- Photographs

The Department or the attending ecologist must then complete the remainder of the form.

The suitably qualified ecologist will document the results of all bird nest removal works including fauna handling, treatment and release details. The form must then be submitted to the Department within seven days of the observation/felling being completed.

4. Contacts

Department of State Growth

Manager, Environment and Development Approvals (EDA)

03 6166 3388

EDA@stategrowth.tas.gov.au

Department of Primary Industries, Parks, Water and Environment

Policy & Conservation Advice Branch

9am-5pm, Monday to Friday

03 6165 4381

ConservationAssessments@dpiuwe.tas.gov.au

Appendix A – Nest Observation Report Form

Nest Observation Reporting Form

Initial Nest Observation (Contractor to Fill in)							
Nest Location (easting/northing and chainage)	Date and time of observation	Name of Contractor and contact details	Observations (e.g. size of nest, location in tree)	Activity	Date form sent to EDA	Exclusions zone installed (Y/N)	Photographs taken?

Follow Up Nest Observation (Department of State Growth/Ecologist to Fill in)									
Nest Use Status: Birds present? Species? Eggs/chicks?	Category A or Category B Species?	Photographs taken?	Permits required and permit number if applicable	Ecologist name and contact details	Contractor name	Fate of nest e.g. Destroyed or Left in situ or Protected	Date/time of felling	Fate of bird/s if present? e.g. Dead or Alive or Injured....	Notes: e.g. Relocated or taken to Wildlife carer or Escaped....

Appendix B – Nesting Birds Listed Under the Wildlife (General) Regulations 2010

The below lists of nesting birds are a subset of fauna listed under the Wildlife (General) Regulations 2010. They include threatened (Table 1) and non-threatened bird species (Table 2) that may construct nests or utilise nests of other species, that may possibly be encountered during Department of State Growth works. Note the Department of State Growth's permit does not include Category B species found on King Island.

For a complete list of birds listed under the regulations, refer to the Wildlife (General) Regulations 2010, available at www.thelaw.tas.gov.au

Table 1 Category A Species – (listed under the *Threatened Species Protection Act 1995*)

Common name	Species
Grey goshawk	<i>Accipiter novaehollandiae</i>
Wedge-tailed eagle	<i>Aquila audax fleayi</i>
White-bellied sea eagle	<i>Haliaeetus leucogaster</i>
Brown thornbill (King Island only)	<i>Acanthiza pusilla archibaldi</i>
Scrubtit (King Island only)	<i>Acanthornis magna greeniana</i>
Black currawong (King Island)	<i>Strepera fuliginosa coleii</i>

Table 2 Category B Species – listed under Wildlife (General) Regulations 2010

Common name	Species
Brown goshawk	<i>Accipiter fasciatus</i>
Collared sparrowhawk	<i>Accipiter cirrhocephalus</i>
Whistling kite	<i>Haliastur sphenurus</i>
Australian hobby	<i>Falco longipennis</i>
Common bronzewing	<i>Phaps chalcoptera</i>
Horsfield's bronze-cuckoo	<i>Chalcites basalis</i>
Shining bronze-cuckoo	<i>Chalcites lucidus</i>
Pallid cuckoo	<i>Cuculus pallidus</i>
Eastern spinebill	<i>Acanthorhynchus tenuirostris</i>
Little wattlebird	<i>Anthochaera chrysoptera</i>
Yellow wattlebird	<i>Anthochaera paradoxa</i>
Noisy miner	<i>Manorina melanocephala</i>
Strong-billed honeyeater	<i>Melithreptus validirostris</i>
New Holland honeyeater	<i>Phylidonyris novaehollandiae</i>
Scarlet robin	<i>Petroica phoenicea</i>
Grey shrike-thrush	<i>Colluricincla harmonica</i>
Golden whistler	<i>Pachycephala pectoralis</i>
Satin flycatcher	<i>Myiagra cyanoleuca</i>
Grey fantail	<i>Rhipidura albiscapa</i>
Black-faced cuckoo-shrike	<i>Coracina novaehollandiae</i>
Grey butcherbird	<i>Cracticus torquatus</i>
Australian magpie	<i>Cracticus tibicen</i>
Black currawong	<i>Strepera fuliginosa</i>
Grey currawong	<i>Strepera versicolor</i>
Silvereye	<i>Zosterops lateralis</i>
Bassian thrush	<i>Zoothera lunulata</i>
Brown goshawk	<i>Accipiter fasciatus</i>
Collared sparrowhawk	<i>Accipiter cirrhocephalus</i>

Nankeen Night Heron	<i>Nycticorax caledonicus</i>
White-faced Heron	<i>Egretta novaehollandiae</i>
White-necked Heron	<i>Ardea pacifica</i>