



# Unexpected Heritage Finds Guideline

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DMS-SD-115

Supporting Document – Applicable to Infrastructure & Place  
**Divisional Management System**

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## Document history

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| 4.0     | 12 July 2021     |                  | Reference to Environmental Incident Procedure updated. |

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## 1. Purpose

The purpose of this document is to provide guidance to site personnel in the event that an unexpected heritage find is encountered on a Infrastructure and Place (IP) site.

An 'unexpected heritage find' can be defined as any unanticipated archaeological discovery, that has not been previously assessed or is not covered by an existing excavation permit, and that has potential heritage value.

In New South Wales, there are strict laws to protect and manage heritage objects and relics. As a result, appropriate heritage management measures need to be implemented to minimise impacts on heritage values, ensure compliance with relevant heritage notification and other obligations, and to minimise the risk of penalties to individuals, IP and its contractors.

## 2. Scope

In some instances, even when appropriate and robust cultural heritage assessments are undertaken during the environmental impact assessment process, some heritage objects or relics are not identified, and are subsequently found on a IP site. This guideline outlines the procedure that should be followed in those circumstances.

This guideline includes references to some of the relevant legislative and regulatory requirements but is not intended to replace them. It is not intended to replace any requirements identified as part of the environmental impact assessment process

This guideline does not apply to:

- Aboriginal and non-Aboriginal cultural heritage objects or relics found during investigations undertaken to inform the environmental assessment, in accordance with relevant legislation and the [Planning Approvals and Environmental Impact Assessment – DMS-ST-051](#). These environmental impact assessments typically identify all heritage items before the project is implemented
- cultural heritage investigations undertaken to comply with conditions set out in any land use planning approval for a project
- archaeological investigations permitted under the *National Parks and Wildlife Act 1974* (NPW Act) or the *Heritage Act 1977* (Heritage Act).

## 3. Definitions

All terminology in this document is taken to mean the generally accepted or dictionary definition with the exception of the following terms which have a specifically defined meaning:

|                     |   |
|---------------------|---|
| <b>CEMP</b>         | Construction environmental management plan                |
| <b>EM</b>           | Contractor/alliance environment manager                   |
| <b>EP&amp;A Act</b> | NSW <i>Environmental Planning and Assessment Act 1979</i> |
| <b>EPM</b>          | IP environment and planning manager                       |
| <b>Heritage Act</b> | NSW <i>Heritage Act 1977</i>                              |
| <b>NPW Act</b>      | NSW <i>National Parks and Wildlife Act 1974</i>           |
| <b>NSW</b>          | New South Wales   |
| <b>OEH</b>          | NSW Office of Environment and Heritage                    |
| <b>PME</b>          | Principal Manager Environmental Management                |

TSR

TfNSW Standard Requirement

## 4. Accountabilities

The Director Planning and Environment Services is accountable for this document including authorising the document, monitoring its effectiveness and performing a formal document review.

Project directors are accountable for ensuring the requirements of this document are implemented within their area of responsibility.

Project directors who are accountable for specific projects/programs are accountable for ensuring associated contractors follow this document to the extent they are required under the TfNSW Standard Requirements (TSR).

Contractors are accountable for following this document, where this guideline forms a part of their contract.

## 5. Legislative requirements

Table 1 identifies some of the relevant legislation/regulations for the protection of heritage and the management of unexpected heritage finds in NSW. It should be noted that significant penalties exist for breaches of the listed legislation as a result of actions that relate to unauthorised impacts on heritage items. Further, it is noted that heritage that has been assessed and is being managed in accordance with an environmental impact assessment is exempt from these offences.

To avoid breaches of legislation, it is important that IP and its contractors are aware of their legislative obligations under relevant legislation and that appropriate management measures are in place to avoid impacts on unexpected heritage items during construction. Contractors/alliances will need to ensure that they undertake their own due diligence to identify any other legislative requirements that map apply for a given project.

**Table1 Legislation and guidelines for management of unexpected heritage finds**

| Relevant Requirement  | Objectives and offences   |
|---|---|
| <b><i>Environmental Planning and Assessment Act 1979 (EP&amp;A Act)</i></b> | <ul style="list-style-type: none"> <li>• Requires heritage to be considered within the environmental impact assessment of projects.</li> <li>• This guideline is based on the premise that an appropriate level of Aboriginal and non-Aboriginal cultural heritage assessment and investigations and mitigation have already been undertaken under the relevant legislation, including the EP&amp;A Act, during the assessment and determination process. It also assumes that appropriate mitigation measures have been included in the conditions of any approval.</li> </ul>   |
| <b><i>National Parks and Wildlife Act 1974 (NPW Act)</i></b>                | <ul style="list-style-type: none"> <li>• Provides for the protection and management of Aboriginal objects.</li> <li>• An Aboriginal object is defined as: <i>'any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains'</i>.</li> <li>• It is an offence to harm or desecrate an Aboriginal object or place. These are strict liability offences. An offence cannot be upheld</li> </ul> |

| Relevant Requirement     | Objectives and offences  |
|--------------------------|--|
|                          | <p>where the harm or desecration was authorised by an Aboriginal heritage impact permit and the permit's conditions were not contravened.</p> <ul style="list-style-type: none"> <li>• A person must notify the Heritage Branch of OEH if a person is aware of the location of an Aboriginal object.</li> <li>• Penalties for some of the offences can include 2 years imprisonment and/or up to \$550,000 (for individuals), and a maximum penalty of \$1.1million (for corporations).</li> </ul>   |
| <b>Heritage Act 1977</b> | <ul style="list-style-type: none"> <li>• Provides for the care, protection and management of relics.</li> <li>• A relic is defined as: <i>'any deposit, artefact, object or material evidence that: (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and (b) is of State or local heritage significance.'</i></li> <li>• It is an offence to disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed, unless the disturbance or excavation is carried out in accordance with an excavation permit issued by the Heritage Branch of the OEH.</li> <li>• A person must notify the Heritage Branch of OEH, if a person is aware or believes that they have discovered or located a relic. Penalties for offences under the Heritage Act can include 6 months imprisonment and/or up to \$1.1million.</li> </ul> |

## 6. Unexpected heritage finds protocol

### 6.1. What is an unexpected heritage find?

An 'unexpected heritage find' can be defined as any unanticipated archaeological discovery that has not been identified during a previous assessment or is not covered by an existing permit under relevant legislation such as the NPW Act or Heritage Act. The find may have potential cultural heritage value, which may require some type of statutory cultural heritage permit or notification if any interference of the heritage item is proposed or anticipated.

The range of potential archaeological discoveries can include but are not limited to:

- Aboriginal stone artefacts, shell middens, burial sites, engraved rock art, scarred trees
- remains of rail infrastructure including buildings, footings, stations, signal boxes, rail lines, bridges and culverts
- remains of other infrastructure including sandstone or brick buildings, wells, cisterns, drainage services, conduits, old kerbing and pavement, former road surfaces, timber and stone culverts, bridge footings and retaining walls
- artefact scatters including clustering of broken and complete bottles, glass, ceramics, animal bones and clay pipes
- archaeological human skeletal remains.

## 6.2. Managing unexpected heritage finds

In the event that an unexpected heritage find (the 'find') is encountered on a IP site, the flowchart in Figure 1 should be followed. Table 2 indicates roles and responsibilities referred to in Figure 1.

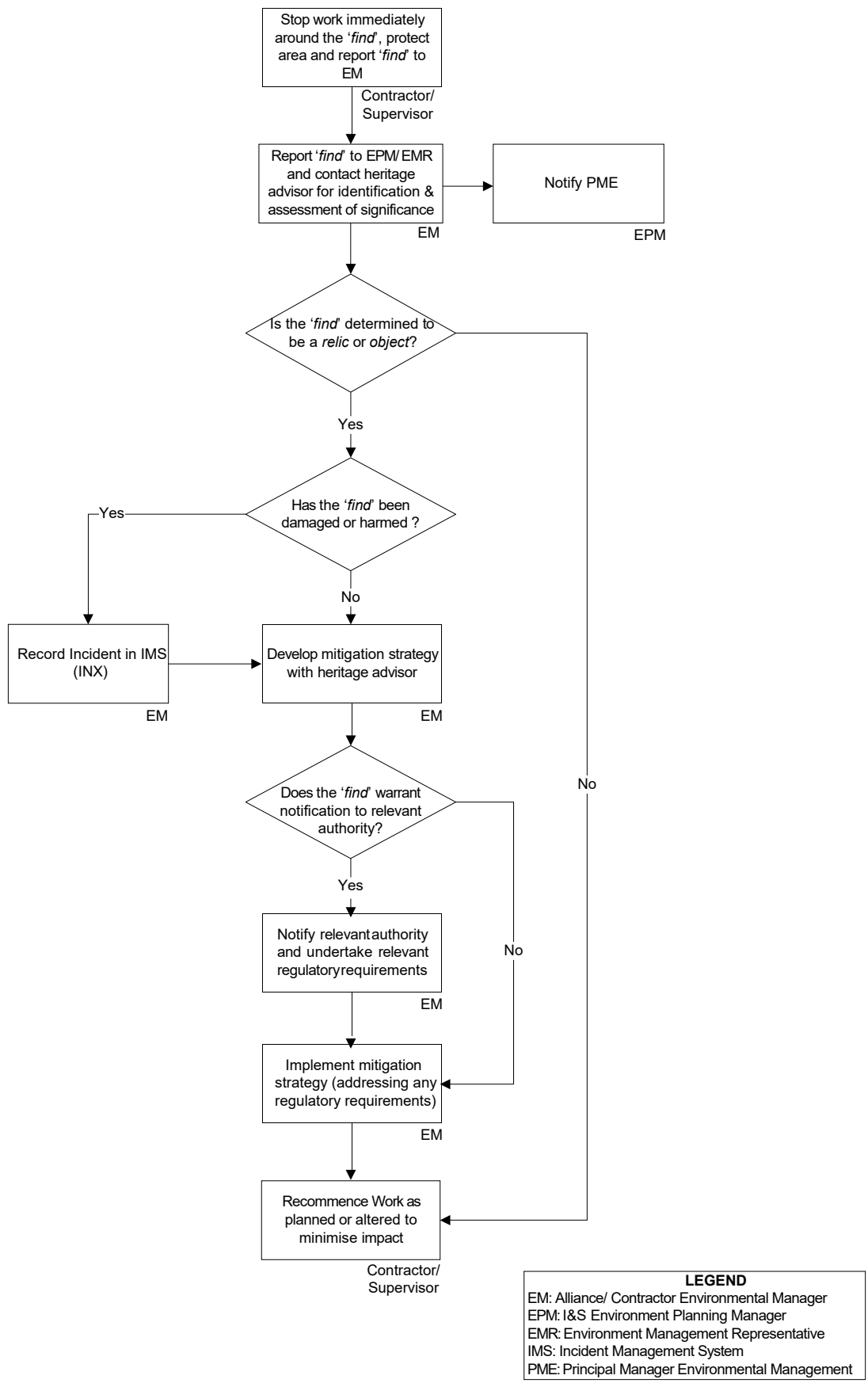


Figure 1: Unexpected heritage finds flowchart

**Table 2: Roles and responsibilities within Figure 1**

| Abbreviation used in flowchart | Role  | Responsibility or role under this Guideline  |
|--------------------------------|---|--|
| Contractor/supervisor          | Contractor / supervisor   | Stop work immediately when an unexpected heritage find is encountered. Cordon off area until EM advises that work can recommence.  |
| EM                             | Contractor or alliance environment manager                                  | <p>Manage the process of identifying, protecting and mitigating impacts on the 'find'.</p> <p>Liaise with heritage advisor and relevant authorities on significance of the find, mitigation and regulatory requirements.</p> <p>Complete incident report and review CEMP for any changes required. Propose amendments to the CEMP if any changes are required.</p> <p>Advise Contractor / supervisor to recommence work.</p> |
| Heritage advisor               | Contractor's or project heritage advisor or consultant                      | Provide expert advice to the EM on 'find' identification, significance, mitigation, legislative procedures and regulatory requirements.  |
| EPM                            | IP environment and planning manager   | Notify PME of 'find' and manage incident reporting once completed by EM.   |
| Relevant authorities           | Environment Protection and Regulation Group of OEH (for Aboriginal objects) | <p>Regulate the care, protection and management of Aboriginal objects.</p> <p>Issue Aboriginal heritage impact permits.</p>  |
|                                | Heritage Branch of OEH (for relics)   | <p>Regulate the care, protection and management of relics.</p> <p>Issue excavation permits.</p>  |

## 7. Related documents and references

[Environment Incident Procedure EMF-13-PR-0001](#)

[Planning Approvals and Environmental Impact Assessment – DMS-ST-051](#)

[Guide to Environmental Control Map – DMS-SD-015](#)