

30 April 2021

ENFORCEABLE UNDERTAKING

Part 11

Work Health and Safety Act 2011

The commitments in this enforceable undertaking
are offered to SafeWork NSW

by

Transport for NSW

ABN 18 804 239 602

Privacy statement

SafeWork NSW respects your privacy and is committed to protecting personal information. The information provided on this document is for the purpose of making an undertaking to SafeWork NSW given for the purposes of part 11 of the WHS Act. This information will be managed within the requirements of the current state government privacy regime.

SafeWork NSW may publish the undertaking and the information contained in it for purposes identified in the undertaking or for other appropriate legal purposes in various publications such as newspapers and on its website. SafeWork NSW may be required to disclose personal information to other regulatory agencies in accordance with other law enforcement activities which may be conducted as part of an investigation. Further information on our privacy policy is available at www.SafeWork.nsw.gov.au

Enforceable Undertaking

Purpose

The purpose of this enforceable undertaking is to document the undertakings offered to SafeWork NSW pursuant to Part 11 of the Work Health and Safety Act 2011 (**WHS Act**) in connection with matters relating to alleged contraventions of the WHS Act or the Work Health and Safety Regulations 2011 (**the Regulations**).

Section 1 – General information

a. Details of the person proposing the undertaking

Registered Address:	231 Elizabeth Street Sydney NSW 2000
Postal address:	231 Elizabeth Street Sydney NSW 2000
Telephone contact:	████████████████████
Email address:	██████████@transport.nsw.gov.au
Legal structure:	Corporation and NSW Government Agency
Type of business:	Government
Commencement date of the entity:	1 November 2011
Number of workers:	Full-time: Permanent: 8323 / Temporary: 1775 Part-time: Permanent: 1441 / Temporary: 155 Casual: 221
Products and/or services:	Transport for NSW leads the development of safe, integrated and efficient transport systems for the people of NSW.

b. Details of the alleged contravention

It is alleged by SafeWork NSW that on 21 June 2018, Transport for NSW failed to discharge its obligations as a person conducting a business or undertaking under sections 19(1), 32 and 33 of the WHS Act in that it did not ensure so far as reasonably practicable the health and safety of workers.

c. Details of the events surrounding the alleged contravention

On 21 June 2018, road maintenance work was being undertaken by ██████ Shire Council (**Council**) pursuant to a road maintenance contract with Transport for NSW. Tragically, a worker engaged by the Council suffered fatal injuries, consistent with being struck by mobile plant, while undertaking that work.

d. An acknowledgement that SafeWork NSW alleged a contravention has occurred

It is acknowledged that SafeWork NSW has alleged that Transport for NSW has contravened sections 19(1), 32 and 33 of the WHS Act.

e. The details of any injury that arose from the alleged contravention

The worker sustained fatal injuries.

f. The details of any enforcement notices issued that relate to the alleged contravention

Were enforcement notices received?

No

or

Yes Please provide details in the table below.

Date issued	Notice type	Notice number	Contravention	Action taken in response to notice

g. A statement of assurance about future work health and safety behaviour

Transport for NSW is committed to complying with its obligations under the WHS Act and ensuring, so far as reasonably practicable, the health and safety of all workers and those who may be affected by its business or undertakings.

When an alleged contravention is associated with an injury/illness

h. The details of the type of workers compensation provided (if the injured person(s) is a worker of the person)

The worker was not an employee of Transport for NSW. Transport for NSW is not aware if any workers compensation payment was provided as a consequence of the worker's death.

i. The details of the support provided, and proposed to be provided, to the injured person(s) to overcome the injury/illness

Does the alleged contravention involve injury to a person?

No

or

Yes The worker was employed by ██████ Shire Council at the time of the incident.

The following support has been provided to the worker and/or their family:

Date	Description of support	Comments
21 June 2018	Transport for NSW offered condolences to the worker's family and friends.	As the worker was not an employee of Transport for NSW, Transport for NSW liaised with the Council to pass on its condolences.
21 June 2018	Transport for NSW offered access by the Council's workers to its trauma assist service (face to face) and Employee Assistance Program.	The Council took up this offer and Transport for NSW facilitated onsite attendance by its trauma assist service on 17 July 2018.

j. The details of any existing work health and safety management system (WHSMS) at the workplace including the level of auditing currently undertaken

Transport for NSW has an existing Regional Maintenance WHSMS compliant with AS/NZS 4801:2001. Third party auditing of the workplace against AS/NZS 4801:2001 is conducted on a yearly basis. The Regional Maintenance WHSMS is also audited annually and accredited by the Federal Safety Commission.

In addition, a Safety Management Framework for Transport has recently been developed to enable a consistently safe standard of operations in how safety and wellbeing is managed across Transport's business.

k. The details of any consultation undertaken within the workplace regarding the proposal of an enforceable undertaking

Transport for NSW has consulted (with consultation being led by the Deputy Secretary, Safety Environment & Regulation) with the Secretary of Transport, Deputy Secretary Regional and Outer Metropolitan and relevant Executives, Centre for Road Safety, Health and Safety specialists and management about the proposal of an enforceable undertaking, its content and intent. The leadership team support entry into an enforceable undertaking, and are committed to ensuring implementation of the strategies in it.

Transport for NSW intends to continue to consult with relevant individuals to ensure delivery of the strategies in the enforceable undertaking, after it has been approved.

l. A statement of regret that the incident occurred (i.e. not an admission of guilt)

Transport for NSW deeply regrets the circumstances leading up to the incident that occurred on 21 June 2018 and that the Worker sustained fatal injuries as a result of the incident.

m. Any rectifications made as a result of the alleged contravention

Transport for NSW has implemented a number of initiatives since the incident to seek to improve systems and processes, and reduce the risk of recurrence of a similar incident, including those set out below:

Description	\$ Amount
1. Transport for NSW attended internal briefings and events with ██████ Shire Council workers to discuss expectations, requirements and best practice around road maintenance activities (including on issues such as 'Workers on Foot' practices)	\$13,500
2. Transport for NSW presented at a ██████ Shire Council induction day in September 2018 to share best practice insights in relation to 'Worker on Foot' risks	\$4,500
3. Transport for NSW provided ██████ Shire Council with a copy of the Transport for NSW Worker on Foot Training package	Nil
4. Transport for NSW commissioned a formal overarching audit of ██████ Shire Council – conducted by an independent third party - to verify the Council's safety performance and compliance in the provision of routine maintenance and construction services under its contractual arrangement with Transport or NSW. While this was an existing and anticipated assurance activity under Transport for NSW's broader WHS management systems, it had the dual benefit of being scheduled at a time when additional information had become available as a result of the investigation into the incident. Accordingly, it was implemented with a view to assisting with ongoing verification but also complementing any post-incident rectification action.	\$30,000
5. Transport for NSW developed a "Worker on Foot" audit checklist to facilitate Transport for NSW auditing worksites to verify compliance with contractual and WHS obligations. In December 2018 and January 2019, Regional Maintenance Council Contract (RMCC) councils in the Western Region were audited using this checklist, provided an audit report and required to implement any necessary action to address any identified areas for attention.	\$24,000
6. Transport for NSW introduced a requirement for all RMCC Council Safety Management Plans for construction projects in the Western Region to be audited by an external third party before any construction work commences and to be subsequently audited once work has commenced.	\$114,000
7. Transport for NSW coordinated a state-wide audit/assurance program (extending to all 69 councils that work with Transport for NSW) to obtain information around trends and areas that may require additional support noting the variances in council sizes, maturity and expenditure to assist Transport for NSW in determining the allocation of resources between RMCC councils as well as developing more targeted monitoring and verification activities. This assurance involves:	\$887,500 (plus ongoing costs)

<ul style="list-style-type: none"> • establishing a baseline as to the level of councils' compliance with contractual requirements • collaborating with councils to develop an acceptable response to any corrective actions and monitoring progress until closed out (through the Contracts Manager) • utilising audit data/findings to support forward action which may result in categorisation of councils, and • using category rating to determine follow up audit schedule frequency and assist in the effective allocation of Transport for NSW resources with the aim of assisting 'at risk councils' with the establishment and implementation of best practice WHS approaches and contractual compliance. 	
<p>8. Transport for NSW established a working group to:</p> <ul style="list-style-type: none"> • oversee completion of the above audit/assurance program and close out of corrective action requests • act as an escalation point for audit outcomes from the assurance program where major non-conformances present a need for review of contracting arrangements in the view of Contract Managers • identify key areas of focus for improvement to determine and drive outcomes to address key areas of concern • advise senior leadership on strategy and opportunities in relation to industry wide improvement, including approaches to Local Government bodies with a view to creating ownership and commitment from within and across councils, and • review internal assurance opportunities including assessing and determining strategies to enforce consistent approaches to RMCC management and expectations. 	Ongoing cost
<p>9. Transport for NSW has updated its regional maintenance contracts with councils to require R2 prequalification as per the Austroads National Prequalification Scheme, which requires councils to develop and maintain an independently audited WHS Management System with the aim of providing a further level of assurance in councils' safety management. Transitional arrangements are currently in place with the explicit requirement for all councils to attain the pre-qualification by 30/6/2021.</p>	\$1,020,000 for developing the WHS Management Systems (plus \$340,000 every three years for certification of Systems) ¹

TOTAL AMOUNT SPENT ON RECTIFICATIONS

\$2,093,500 (PLUS ONGOING COSTS)

¹ While this is the estimated cumulative cost incurred or anticipated to be incurred by councils, generally councils will recoup the costs from TfNSW as indirect costs in delivery of RMCC works.

n. A commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

Transport for NSW commits that the behaviour that led to the alleged contravention has ceased and that it will take all reasonably practicable steps to prevent recurrence of this type of incident.

o. A commitment to the ongoing effective management of work health and safety risks

Transport for NSW commits that it will exercise its best endeavours to the ongoing effective management of work health and safety risks.

p. A statement of ability to comply with the terms of the enforceable undertaking

Transport for NSW acknowledges that it has the financial ability to comply with the terms of this enforceable undertaking and will set aside a dedicated portion of the budget of Transport for NSW's Regional and Outer Metropolitan division to support the initiatives in this undertaking.

q. The person is required to provide information regarding any prior work health and safety convictions

SafeWork NSW requests a list outlining details of any prior work health and safety convictions or findings of guilt under work health and safety legislation² or work health and safety related legislation.

No Insert entity name has had no prior work health and safety convictions.

or

Yes The list is attached as an annexure.

2. Subject to any local legal constraints such as spent conviction legislation.

r. Statement regarding relationships with beneficiaries

Transport for NSW acknowledges there are no known current relationships with any of the beneficiaries outlined in the enforceable undertaking, other than the existing relationships with RMCC councils.

s. Intellectual property licence

Transport for NSW grants SafeWork NSW a permanent, irrevocable, royalty-free, worldwide, non-exclusive license to use, reproduce, distribute, electronically transmit, electronically distribute, adapt, and modify any materials developed as a result of this enforceable undertaking.

t. A commitment to participate constructively in all compliance monitoring activities of the undertaking

Transport for NSW acknowledges that the responsibility for demonstrating compliance with this undertaking rests with the person who has given this undertaking. Evidence to demonstrate compliance with the terms will be provided to SafeWork NSW by the due date for the term.

Transport for NSW acknowledges that SafeWork NSW may undertake other compliance monitoring activities to verify the evidence that is provided and compliance with the relevant term. The evidence provided to demonstrate compliance with the undertaking will be retained by the person who has given this undertaking until advised by SafeWork NSW that the undertaking has been completely discharged.

Transport for NSW acknowledges that SafeWork NSW may initiate additional compliance monitoring activities, such as inspections, as considered necessary at SafeWork NSW's expense.

Transport for NSW acknowledges that should there be any delay in the commencement/delivery of the enforceable undertaking based on current community and workplace health and safety concerns and related business continuity disruption caused by COVID-19, this will be subject to mutual agreement (confirmed in writing) between Transport for NSW and SafeWork NSW.

u. Acknowledgement of enforceable undertakings guidelines

Transport for NSW has read and understood SafeWork NSW Enforceable Undertakings Guidelines and Enforceable Undertakings Customer Service Standard.

Section 2 – Enforceable Terms

a. An acknowledgement that the enforceable undertaking will be published and publicised

Transport for NSW acknowledges that the enforceable undertaking will be published on SafeWork NSW's internet site and may be referenced in SafeWork NSW's publications.

Transport for NSW will, within thirty (30) days of the date of acceptance of this enforceable undertaking, cause a public notice to be published in the Land and Sydney Morning Herald, which will be drafted using the script provided in Annexure 1.

Transport for NSW acknowledges that the public notice will be published in the above newspaper, will be 1/8 of a page in size and the script will be approved by SafeWork NSW prior to the public notice being published. Failure to adhere to these conditions may result in SafeWork NSW requesting another public notice be published.

b. A commitment regarding linking the strategy and promotion of benefits to the enforceable undertaking

Transport for NSW is committed to ensuring that any promotion of a benefit arising from this enforceable undertaking will clearly link the benefit to the undertaking and that the undertaking was entered into as a result of the alleged contravention.

c. A commitment to disseminate information about the undertaking to workers, and other relevant parties (which may include work health and safety representatives), and in the annual report (if applicable)

Transport for NSW agrees to disseminate information about the enforceable undertaking within the workplace, including to the members of any health and safety committee, and health and safety representatives. This information will be disseminated through an organisation-wide email and, for employees in Regional Maintenance, through face to face team meetings (such as toolbox talks), and will be completed within 3 months from the date of acceptance of the enforceable undertaking. In addition, information about the enforceable undertaking will be disseminated to councils through initiative 1 (Safety Leadership Summit).

Transport for NSW commits that it will publish details of the enforceable undertaking in the first annual report due after the date the undertaking is accepted. Transport for NSW's annual report is published by about mid December each year.

Transport for NSW commits that any strategies that involve safety information being provided to the industry and/or community will be subject to SafeWork NSW's review and approval of the content prior to dissemination.

Strategies that will deliver benefits to the workplace, industry and the community

Transport for NSW (TfNSW) is committed to the work health and safety of its employees, contractors and the community, and seeks to implement – in addition to its current program of continuous improvement – a number of strategies to benefit the workplace, industry and community. TfNSW acknowledges that transport and construction are listed as 'priority sectors' in SafeWork's Work Health and Safety Roadmap 2022. Accordingly, the strategies set out in this document are aligned with the Roadmap, are consistent with the goals articulated in SafeWork NSW's Government Sector Plan, and target improved safety within its own workforce, industry and the regional community in NSW.

d. Strategies that will deliver workplace & industry benefits

1. Safety Leadership Summit (Officer level)

Scope:

This strategy is designed to build commitment and capability of Executives and 'Officers' across the Regional Maintenance Council Contract (RMCC) councils in the areas of safety leadership and culture, due diligence, and management of critical risks. It is proposed that a 6 hour 'Safety Leadership Summit' is developed and systematically rolled out across NSW regional hub locations to encompass the 67 regional RMCC councils. The intent of the Summit is to target executive level roles within RMCC councils (General Manager / Director of Engineering & Assets) with the expectation that at least one (but preferably two) of these roles are in attendance. The scope of the Summit will incorporate awareness training, education, and discussion around:

- Safety culture – the importance and responsibility of safety leadership in moving beyond a compliance mindset to a leadership driven safety culture.
- Primary duties of Officers under the Work Health and Safety Act 2011 as independent PCBUs and shared PCBU.
- Due diligence requirements of an 'Officer' and how to effectively discharge these duties in practice to meet the six pillars of due diligence.
- Risks and effective risk management principles and controls for:
 - working near traffic at temporary worksites (roads and bridges); and
 - safe handling and the movement of plant (loading, transit and unloading)
- Common elements and findings identified through the recent RMCC audit and assurance program and effective means for addressing these to improve and create safe work practices and resilient systems of work.

The Summit will culminate in a call to arms for these senior leaders to sign a 'statement of intent' to make a tangible commitment to safety excellence in their respective council operations and cooperation between TfNSW and RMCC regional councils to enhance safety standards and safe work practices, particularly in relation to temporary works on roads and bridges, and including by way of continuous improvements and upskilling workers.

Target issue:

This strategy was determined by TfNSW after undertaking extensive research, data collection and analysis to inform itself of the key critical risks facing regional councils, their employees, contractors, and industry engaged in delivering road construction and maintenance across NSW. In further support of this strategy, the recent government stimulus investment announcements will result in excess of \$2 billion into regional road and bridge infrastructure over the next four years.

This will see an uplift in the number of temporary worksites across NSW regional roads and bridges, and hence a greater risk exposure to workers near plant and traffic.

Tangible outputs / deliverables:

The proposed strategy includes the following key deliverables:

1. Development and delivery of training needs analysis, training plan and change management plan for the Safety Leadership Summit.
2. Development and delivery of communication package requesting attendance at the Safety Leadership Summit, particularly in the context of there being a joint desire to enhance safety standards, safe work practices, and the importance of cooperation between RMCC councils and TfNSW to achieve this.
3. Development and delivery of a training package for use at the Safety Leadership Summits.
4. Development of supporting collateral materials to be provided for Summit attendees to utilise at their respective councils.
5. Delivery of a 6 hour Safety Leadership Summit to RMCC council 'Officers' (eg. General Managers / Director of Engineering & Assets) at 9 regional locations spread across NSW to maximise accessibility and coverage for the relevant RMCC councils to attend. Timing of the Summits will be aligned with existing regional forums to minimise additional time and expense so as to mitigate the imposition of travel for the various councils.
6. Development of a 'statement of intent' which RMCC councils will be asked to sign, together with TfNSW, confirming the joint commitment between TfNSW and councils to safety excellence and cooperation in enhancing safety standards and safe work practices in particular in relation to temporary works on roads and bridges, including by way of continuous improvements and upskilling workers.
7. Evaluation: Conduct evaluation of strategy objectives and outcomes achieved through:
 - i. Developing a survey to conduct before each Summit and immediately post each Summit for attendees. This will allow TfNSW to continually improve Summits and to identify changes in understanding and undertakings related to:
 - Officer duties and responsibilities, and due diligence activities;
 - Risks and effective risk management principles and controls for working near traffic and safe handling and the movement of plant
 - Safety culture and safety leadership activities
 - ii. Incorporate as a standing agenda item discussion about continuous improvement and progress in line with the 'statement of intent' commitments to safety excellence and sharing of best practices arising from the Summit at:
 - Peer exchange meetings with regional groups of councils; and
 - Contract progress meetings with individual councils under the RMCC.
8. Audit & Assurance: Build and embed the following into the TfNSW assurance process:
 - i. Incorporating outcomes derived from the Summit and 'statement of intent' into the existing RMCC audit / assurance process and program to validate inclusion in the systems and practices at councils.
 - ii. Complete roll-out of new contractual requirement under the RMCC for councils to achieve R2 pre-qualification in accordance with the National Pre-qualification Scheme, and commence governance reporting for ongoing compliance to senior leadership in Network & Assets.

Audience / beneficiaries:

It is proposed that the Summit would target 'Officer' level roles across regional councils (General Manager / Director of Engineering & Assets), and include the Directors for Regional Assets and Regional Maintenance within TfNSW.

Delivery method:

The training will be developed and delivered through a combination of in-house and external industry specialist resources. It is anticipated that the training package will incorporate a variety of mediums such as face-to-face and/or virtual delivery, and will include a mix of educational presentations, case study discussions, practical demonstrations, and symbolic commitment activities including signing the 'statement of intent'.

Timeframes:

It is proposed that the strategy will commence within one month of this undertaking being accepted and will be completed within 36 months of acceptance of the enforceable undertaking. The proposed timeframes for the key phases in the strategy are outlined below:

Description	Duration	Timeframe from approval
Select and on board internal resourcing & external industry specialists	2 mth	mth 1 – mth 3
Development of training needs analysis, training plan and change management plan.	1 mth	mth 3 – mth 4
Development of training package for use at the safety leadership summits including presentation materials across various mediums, 'statement of intent', and supporting collateral materials	4 mths	mth 4 – mth 8
Consult with SafeWork NSW and seek endorsement of the design and content of the Safety Leadership Summit	1 mth	mth 8 – mth 9
Preparation and delivery of pilot session and incorporate feedback into final training package	1 mth	mth 9 – mth 10
Delivery of the 6 hour Safety Leadership Summit at 9 regional locations across NSW	11 mths	mth 10 – mth 21
Conduct evaluation of strategy objectives and outcomes: <ul style="list-style-type: none"> survey (pre-summit and immediate post-summit) standing agenda item for peer exchange group regional council meetings and contract progress meetings regarding continuous improvement and progress in commitments to 'safety excellence' and sharing of best practices arising from the Summit 	24 mths	mth 12 – mth 36
Embedding & governing: <ul style="list-style-type: none"> review and ensure outcomes from the Summit are incorporated into RMCC audit & assurance processes and programs; and requirement for councils to achieve R2 pre-qualification in accordance with the National Pre-qualification Scheme, including the ongoing monitoring and reporting of compliance to senior leadership in Network & Assets. 	24 mths	mth 12 – mth 36

Work health and safety outcome:

The proposed strategy will:

- educate and improve the understanding of council Officers about their obligations and responsibilities under the WHS legislation as Officers, and how to lead a positive safety culture.
- uplift the understanding of council Officers on the practical implementation of relevant duties, risks and controls of working in and around traffic, and loading/transit/unloading of plant.
- improve the understanding of council Officers as to common elements that require focus in their safety management systems as identified through the RMCC audit/assurance program, and how to create and embed resilient systems and safe work practices.
- assist with the reduction of safety incidents arising from acts or omissions of council Officers, council employees and relevant council contractors associated with working near traffic and loading/transit/unloading of plant.
- promote continuous improvement in safety practice through embedding discussions at routine meetings and forums, and validation through assurance activities.

Cost Breakdown:

Description	\$ Amount
Development of content, training, and presentations for the Safety Leadership Summit	██████████
Delivery of Safety Leadership Summit across Regional NSW (internal & external presenters, travel & accommodation, venue & equipment hire, catering)	██████████
Supporting collateral development and publication	██████████
Resourcing for strategy coordination, administration and governance encompassing all strategies within the EU (Workplace, Industry and Community) for a 3 year timeframe.	██████████

Total estimated cost: \$1,030,000

2. Safe working near traffic and safe handling and movement of plant awareness training

Scope:

This strategy is designed to build awareness and capability in regional RMCC council supervisors, team leaders, frontline workers and contractors in the effective identification and management of risks associated with working near traffic, and safe handling and movement of plant. This strategy will see the development and provision of the following for all RMCCs in NSW to utilise and roll out to their workforce and third party partners:

1. a 'safe working near traffic and safe handling and movement of plant awareness' training package; and
2. a 1 day 'train-the-trainer' course for council nominated employees to be trained and equipped to roll out and facilitate the training course to their workers and contractors at their respective councils. These trained personnel will be provided with access to online resources, and supporting materials and collateral.

The scope of the 'safe working near traffic and safe handling and movement of plant awareness' training will incorporate awareness training, education, and discussion around:

- Duties of all workers under the WHS Act 2011
- Risks and effective risk management principles and controls for:

- working near traffic at temporary worksites (roads and bridges); and
- safe handling and the movement of plant (loading, transit and unloading of plant at temporary worksites)

Target issue:

This proposed strategy was determined by TfNSW after undertaking extensive research, data collection, analysis, and consideration of findings from RMCC audits and assurance activities, to inform itself of the key critical risks facing regional councils, their employees, contractors, and industry engaged in delivering road construction and maintenance across NSW. In further support of this strategy, the recent government stimulus investment announcements will result in excess of \$2 billion into regional road and bridge infrastructure over the next four years. This will see an uplift in the number of temporary worksites across NSW regional roads and bridges, and hence a greater risk exposure to workers near plant and traffic.

Through providing a complimentary high quality training package and corresponding ‘train-the-trainer’ course to RMCC councils, this strategy not only addresses key systemic findings identified in the RMCC audit and assurance program, but also aims to effectively mitigate this increased risk exposure through building internal capability and consistency for effective identification and management of risks associated with working near traffic, and handling and movement of plant across NSW RMCC councils.

Tangible outputs / deliverables:

The proposed strategy includes the following key deliverables:

1. Development and delivery of training needs analysis, training plan and change management plan for the ‘safe working near traffic and safe handling and movement of plant awareness’ training.
2. Development and delivery of training package for ‘safe working near traffic and safe handling and movement of plant awareness’ training across a variety of mediums including powerpoint presentations, video presentations, case study and scenario discussions, practical demonstrations, and assessments.
3. Development of a 1 day ‘train-the-trainer’ program.
4. Development of supporting collateral materials for training attendees.
5. Provision and delivery of a 1 day ‘train-the-trainer’ program for nominated council trainers at 6 regional locations across NSW to maximise accessibility and coverage for the relevant RMCC councils nominated trainers to attend. One ‘train-the-trainer’ session will be scheduled at each of the 6 regional locations per year for a two year period (12 sessions in total dependent upon uptake).
6. Evaluation: A training evaluation assessment will be conducted to confirm understanding of risks and effective risk management principles and controls for working near traffic and safe handling and the movement of plant. In addition, a standing agenda item at the council regional peer exchange group meetings will be created to discuss progress and feedback regarding the ‘safe working near traffic and safe handling and movement of plant awareness’ training (or equivalent) across regional councils.
7. Audit & Assurance: Build and embed the following into the TfNSW assurance process:
 1. Verify and validate competency and conformance to effective risk management principles and controls for working near traffic and safe handling and the movement of plant as per RMCC audit / assurance process and program.
 2. Complete roll-out of new contractual requirement under the RMCC for councils to achieve R2 pre-qualification in accordance with the National Pre-qualification Scheme, and commence governance reporting for ongoing compliance to senior leadership in Network & Assets.

Audience / beneficiaries:

The intended primary audience / beneficiaries for the ‘safe working near traffic and plant awareness training’ would be RMCC council nominated trainers. RMCC councils will be encouraged to target project manager / supervisor level as their nominated trainer. Through the provision of the ‘train-the-trainer’ program, the council nominated trainers would be trained and equipped to facilitate the ‘safe working near traffic and safe handling and movement of plant awareness’ training at their respective councils. Frontline supervisors, team leaders, frontline workers and contractors would then become secondary beneficiaries from this training strategy when the training is rolled out to them through their council nominated trainer. In facilitating the train-the-trainer program routinely in six regional locations over a 2 year period, the strategy is designed to encourage attendance through providing advance notification of course dates, mitigate the imposition of travel for the various attendees from the councils, and cater for natural attrition of nominated council trainers.

Delivery method:

The training will be developed and delivered through a combination of in-house and external industry specialist resources. It is anticipated that the training package will incorporate a variety of mediums such as PowerPoint presentations, video presentations, case study and scenario discussions, practical demonstrations, and assessments. The components and delivery mode of the train-the-trainer course will include:

Course Component	Delivery mode
Working near traffic at temporary worksites (roads and bridges)	The theory component will be delivered through classroom style presentation, with the practical application delivered through case study & scenario discussion.
Safe handling and the movement of plant (loading, transit and unloading)	The theory component will be delivered through classroom style presentation, with the practical application delivered through live demonstration and/or video case study demonstration.

The train-the-trainer sessions will be limited to 15 trainees per session to promote active participation and interaction, and allow for one-to-one feedback and coaching. TfNSW would ideally like a minimum of 100 council attendees to be trained during the course of the program.

Timeframes:

This strategy will commence within one month of this undertaking being accepted and will be completed within 36 months of acceptance of the enforceable undertaking. The proposed timeframes for the key phases in the strategy are outlined below:

Description	Duration	Timeframe from approval
Select and on board internal resourcing & external industry specialists.	2 mth	mth 1 – mth 3
Development and delivery of training needs analysis, training plan and change management plan.	1 mth	mth 3 – mth 4
Development of training package for ‘safe working near traffic and safe handling and movement of plant awareness’ including train-the-trainer materials such as presentations, demonstration videos and supporting collateral materials. Development of the training packages will include 3 consultation checkpoints with SafeWork NSW.	6 mths	mth 4 – mth 10

Consult with SafeWork NSW and seek endorsement of the design and content of the training package.	1 mth	mth 10 – mth 11
Conduct pilot train-the-trainer session and incorporate feedback into final training package.	2 mths	mth 11 – mth 13
Conduct train-the-trainer program. The 1 day program will be facilitated at 6 regional locations across NSW, where one ‘train-the-trainer’ session will be scheduled at each of the 6 regional locations per year for a two year period (12 sessions in total dependent upon uptake).	23 mths	mth 13 – mth 36
Conduct evaluation of strategy objectives and outcomes: <ul style="list-style-type: none"> • training evaluation assessment • standing agenda item at the RMCC council regional peer exchange group meetings to discuss progress and feedback regarding the ‘safe working near traffic and safe handling and movement of plant awareness’ training. 	23 mths	mth 13 – mth 36
Embedding & governing: <ul style="list-style-type: none"> • review and incorporate audit criteria covering working near traffic and safe handling and movement of plant (loading, transit and unloading) into RMCC audit & assurance processes and programs; and • requirement for councils to achieve R2 pre-qualification in accordance with the National Pre-qualification Scheme, including the ongoing monitoring and reporting of compliance to senior leadership in Network & Assets. 	23 mths	mth 13 – mth 36

Work health and safety outcome:

The proposed strategy will:

- build internal capability within councils to be able to consistently deliver industry best practice awareness training to frontline supervisors, team leaders, frontline workers and contractors about practical implementation of risk controls for working in and around traffic, and safe loading / transit / unloading of plant at temporary worksites.
- assist the attendees to embed improved practices for traffic management and movement of plant, and resilient systems and safe work practices.
- assist with the reduction of safety incidents arising from acts or omissions of council Officers, council employees and relevant council contractors associated with working near traffic and loading/transit/unloading of plant.

Cost Breakdown:

Description	\$ Amount
Development of ‘safe working near traffic and safe handling and movement of plant awareness’ training package	██████████
Development of ‘train-the-trainer’ training package for delivery of ‘safe working near traffic and safe handling and movement of plant awareness’ training	██████████
Delivery of ‘train-the-trainer’ training sessions across regional NSW (train-the-trainer facilitators, travel & accommodation, venue and equipment hire)	██████████

Supporting collateral development and publication	
Plant & equipment for practical demonstrations	

Total estimated cost: \$445,000

Total estimated cost of workplace & Industry benefits \$1,475,000

e. Strategies that will deliver community benefits

3. Community Safety Awareness Campaign

Scope:

This proposed strategy will see TfNSW develop and execute an awareness campaign across regional NSW. The objective of the campaign is to raise awareness of the vulnerability to workers at temporary work zones (roads and bridges). The role of the campaign is to encourage drivers to take care and remain vigilant to ensure the safety of people working in these temporary work zones. The campaign will be developed and delivered through the TfNSW Centre for Road Safety led by the Public Affairs and Marketing team (PAM).

Target issue:

This strategy was determined by TfNSW after undertaking extensive research, data collection and analysis to inform of the key critical risks facing regional Councils, their employees, contractors, and industry engaged in delivering road construction and maintenance across NSW. In further support of this strategy, the recent government stimulus investment announcements will result in excess of \$2 billion into regional road and bridge infrastructure over the next four years. This will see an uplift in the number of temporary worksites across NSW regional roads and bridges, and hence a greater risk exposure to workers near plant and traffic.

Tangible outputs / deliverables:

The proposed strategy includes the following key deliverables:

1. Development and delivery of a 'problem & opportunity definition brief' for the media campaign
2. Development of a 'Behaviour change campaign plan', which will be subject to review and approval by SafeWork NSW
3. Development of all campaign materials
4. Campaign launch in accordance with approved Campaign Plan
5. TfNSW to provide SafeWork NSW with evaluation reporting on the community awareness campaign including:
 - i. viewing and engagement rates of campaign
 - ii. statistical analysis of incident data before, during and following the campaign

Evaluation of the campaign effectiveness across key metrics as reported by research agency Ipsos.

Audience / beneficiaries:

The target audience is all road users travelling in Regional NSW over the age of 17. The campaign with not only target residents of these regional areas, but also non-residents travelling through regional areas where road or bridge works are occurring. Additional supporting materials may also be developed to increase awareness of roadside workers at temporary worksites.

Delivery method:

The campaign will be developed through a combination of in-house resources (including the Centre for Road Safety) and external media and creative agencies. TfNSW and the Centre for Road Safety will consult with a creative agency to identify the most appropriate creative strategy and media campaign. Once the creative strategy and media campaign has been proposed, TfNSW will consult SafeWork NSW regarding the proposed campaign during the peer review process. The appropriate delivery methods will be determined in the course of development of the creative strategy, however, it is anticipated they could include free to air television, out of home and radio, geo-targeted to specific regional NSW areas, as well as digital display, and paid social and online video hyper-localised to areas where road upgrade projects are underway.

Timeframes:

It is proposed that the strategy will commence within one month of this undertaking being accepted and will be completed within 28 months of acceptance of the enforceable undertaking. The proposed timeframes for the key phases in the strategy are outlined below:

Description	Duration	Timeframe from approval
Development of problem definition brief	1 mth	mth 1 – mth 2
Undertake review and identification of regional areas to be targeted to inform media campaign and schedule	1 mth	mth 2 – mth 3
Brief Creative Agency	1 mth	mth 2 – mth 3
Creative Strategy and Development	2 mths	mth 2 – mth 4
Peer Review	2 mths	mth 2 – mth 4
Concept Testing and Research	2 mths	mth 3 – mth 5
Media Strategy and Planning	3 mths	mth 3 – mth 6
Consult with SafeWork NSW regarding the proposed creative strategy and media campaign	1 mth	mth 6 – mth 7
Production	3 mths	mth 7 – mth 10
Campaign Despatch	1 mth	mth 10 – mth 11
Campaign Effectiveness Reporting	18-21mths	mth 11- mth 28

Work health and safety outcome:

This strategy will raise awareness in the minds of motorists about the risks to workers in temporary work zones on roads and bridges. The campaign aims to make meaningful connection with motorists and result in improved driver behavior and compliance with traffic management requirements and rules associated with the temporary work zones within which they travel to ensure their own safety, and the safety of workers in these temporary work zones.

Cost Breakdown:

Add additional rows as required

Description	\$ Amount
Internal resourcing for project, strategy coordination and governance, problem definition brief	
Creative Development and Production	
Media planning and buying	
Research	
Campaign evaluation	

Total estimated cost: \$940,000

Total estimated cost of community benefits \$940,000

TOTAL ESTIMATED VALUE OF THE UNDERTAKING \$2,415,000

f. A commitment to establish and maintain (or maintain if a system already exists) a WHSMS

Transport for NSW considers its existing Regional Maintenance WHSMS complies with the principles of AS/NZS 4804: 2001 Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques and Transport for NSW is committed to ensuring ongoing compliance with those principles during the term of this undertaking.

Transport for NSW acknowledges that the Regional Maintenance WHSMS will be maintained in accordance with the standard.

g. A commitment to ensure the WHSMS is audited by third party auditors

Transport for NSW commits to ensuring the Regional Maintenance WHSMS will be audited by accredited third party auditors to meet the requirements of AS/NZS 4801: 2001 Occupational Health and Safety Management Systems – Specification with guidance for use, in accordance with established timeframes as set by SafeWork NSW.

Transport for NSW acknowledges that the third party auditors selected to perform WHSMS audits must be certified by a certification body accredited by JAS-ANZ to ISO/IEC 17024: 2004 (or a later version) General requirements for bodies operating certification of persons.

Transport for NSW acknowledges that details of the auditors’ qualifications against the stated requirements will be provided with audit reports submitted to SafeWork NSW.

Transport for NSW acknowledges that an initial third party audit will be undertaken within 12 months and two further third party audits will be undertaken during the course of the undertaking, no later than 24 months and 36 months following the date of acceptance of the enforceable undertaking.

h. A commitment to provide a copy of each finalised WHSMS audit report to SafeWork NSW

Transport for NSW acknowledges that audit reports received from the auditor will be sent to SafeWork NSW, within 6 weeks of the audit along with a letter certifying that the report has not been altered from the copy provided to the person by the auditor.

Transport for NSW acknowledges that within 3 months of receipt of the auditor's written report, SafeWork NSW will be advised of the intended action in addressing each of the report's recommendations.

i. A commitment to implement the recommendations from these audits (unless otherwise negotiated with SafeWork NSW)

Transport for NSW commits to fully implementing the intended actions arising from the audit. The timing for implementation from receipt of the audit report will be as soon as reasonably practicable given the particular action identified unless otherwise agreed by SafeWork NSW.

Section 3 – Offer of undertaking

As a duly authorised person of Transport for NSW, I offer this undertaking and commit to the terms herein.

Signed: 

.....
[Duly authorised person]

Name: Tara McCarthy

Position: Deputy Secretary, Safety,
Environment and Regulation

Dated at Sydney this 30th day of April,
2021

Section 4 – SafeWork NSW’s acceptance of undertaking

The duration of an enforceable undertaking is determined by the content of the agreed terms. An enforceable undertaking commences and is enforceable once accepted by SafeWork NSW. The enforceable undertaking will be concluded on written advice from SafeWork NSW when all requirements of the undertaking have been satisfactorily executed.

I accept this undertaking as an enforceable undertaking under section 216 of the WHS Act.

Signed: 

Name: Valerie Griswold

Position: Executive Director, Investigations and Enforcement.

Authorised delegate for SafeWork NSW, an agency within the Department of Customer Service.

Dated at Parramatta this 4th day of May 2021
[suburb] [month] [year]

Annexure 1 – Public Notice of SafeWork NSW’s acceptance of undertaking

Notice of Acceptance of an Enforceable Undertaking under Part 11 of the Work Health and Safety Act 2011.

On 21 June 2018, a worker of ██████ Shire Council, suffered fatal injuries while undertaking roadwork pursuant to a contractual arrangement between ██████ Shire Council and Transport for NSW.

SafeWork NSW investigated the incident and subsequently alleged that Transport for NSW contravened section 19, 32 and 33 of the Work Health and Safety Act 2011.

This notice has been placed under the terms of an enforceable undertaking and acknowledges acceptance of an undertaking, that is enforceable under the Act, from Transport for NSW, ABN 18 804 239 602 as finalisation of the abovementioned alleged contravention.

The undertaking requires the following actions by Transport for NSW:

- The development and roll-out across NSW regional hub locations of a ‘Safety Leadership Summit’ for regional council executives and officers with whom Transport for NSW has a maintenance contract.
- The development and provision to all such regional councils of a ‘safe working near traffic and safe handling and movement of plant awareness’ training package, and a 1 day ‘train the trainer’ course for council nominated employees to be trained and equipped to roll-out and facilitate the training course to their workers and contractors at their respective councils.
- The development and roll-out of a community awareness media campaign across NSW raising awareness of the high risk to workers at temporary work zones (roads and bridges) and the impetus and responsibility on all drivers to take care and remain vigilant for the safety of people working in these temporary zones.

The full undertaking and general information about enforceable undertakings is available at www.safework.nsw.gov.au.

Annexure 2 – Prior Convictions – Roads and Maritime Services

On 1 December 2019, Roads and Maritime Services (**RMS**) merged with Transport for NSW (**TfNSW**), with the effect that RMS ceased to exist and TfNSW became the successor to RMS and took on all the rights, liabilities, powers, and duties, of RMS.

TfNSW does not have any prior convictions. However, below are prior convictions for RMS (and its predecessors) in the preceding 10 years:

Year	Entity	Contravention	Plea	Penalty
2013	Roads & Traffic Authority (RTA)	Section 10(1) OHS Act 2000	Guilty	\$175,000
2012	RMS	Section 8(2) OHS Act 2000	Guilty	\$150,000
2011	RTA	Section 10(1) OHS Act 2000	Guilty	\$175,000
2011	RTA	Section 10(1) OHS Act 2000	Guilty	\$180,000