

Skeletal Remains



NSW
Heritage
Office

Skeletal Remains

**Guidelines for the Management of
Human Skeletal Remains under the Heritage Act 1977**



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Office

Acknowledgements

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Cover:

Top: Bailey Family Cemetery on "The Glen"
Middle & Bottom: Excavation on the site of the Prince of Wales Hospital, formerly Randwick Destitute Children's Asylum Cemetery.

Photographs courtesy Godden Mackay Logan

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INTRODUCTION

These guidelines are for heritage administrators, developers, site owners and project managers, consultants, archaeologists and the general public. At some stage these people may be confronted with the exhumation, excavation or management of human skeletal remains and burials.

CHANGING ATTITUDES TO DEATH

In the last two centuries there have been major changes in community attitudes to death. In Europe until the late 18th century, traditional practice meant that when a burial ground was full, all of the skeletons were exhumed and placed in a charnel house to make way for new burials.

In the 19th century the development of a Romantic attitude to death and dying saw the creation of an elaborate framework of ritual and custom. Formal mourning customs developed as an attempt to relieve the horror and grief of bereavement in an era when death was a frequent visitor to all classes of society.

In the late 20th century the pattern is very different. The Romantic perception of death has been replaced by a more rational and pragmatic perception. The construction of crematoria, memorial gardens, and the development of the modern lawn cemetery with its negation of the associations of death, provides evidence of this significant change in social attitudes and burial customs. Today death and knowledge about death are kept hidden.

The majority of the wider community is infrequently confronted with questions about the dead or about the appropriate treatment of human remains and burial sites. Professionals who work with the dead, including those in the funeral industry, physical anthropologists, archaeologists and forensic scientists associated with the Coroner tend to hold fairly unemotive and pragmatic views. The rest of the community, especially those with strong religious or spiritual beliefs regarding the dead, may have widely varying views and strong emotional reactions.

WHY IS IT NECESSARY TO HAVE THESE GUIDELINES?

These guidelines have been developed to address those situations in which disturbance of human skeletal remains or burials occurs. They address appropriate requirements and procedures for the treatment of such material under the *Heritage Act 1977* (NSW).

The disturbance and exhumation of human remains in NSW is not a recent phenomenon. There are a number of well-documented historic instances involving the exhumation and clearing of former burial grounds in both the 19th and 20th centuries. The best known are probably the redevelopment of the Old Sydney Burial Ground in 1868 and of the Devonshire Street Cemetery in 1902. Development projects throughout the 20th century and anticipated development projects in recent years have also involved the clearing or relocation of burial sites. Single exhumations also occur from time to time under the provisions of the *Coroner's Act, 1980* and the *Public Health Act, 1991* (NSW).

A number of circumstances involving the disturbance of burial sites have arisen in recent years which have involved the use of the Heritage Act. Such disturbance may be inadvertent, as in the case of accidental discovery or chance finds, or it may be deliberate vandalism such as the desecration of burials or vaults. It may also arise due to other reasons, for example on-site works or site redevelopment.

WHICH ACT AND WHOSE PROCEDURES APPLY?

Once human skeletal remains have been identified, the current legislation in NSW means that human remains and burials and associated artefacts, are potentially subject to different Acts and requirements depending upon the specific case and circumstances involved. The nature of either the discovery, the age or nature of the skeletal remains, or the reasons for the disturbance will dictate which Act, and relevant procedures will apply.

IDENTIFICATION AND INITIAL PHYSICAL EVALUATION

As soon as remains are found work must stop and the remains must be confirmed as being human or not. At this stage the remains should also be identified as being either Aboriginal or non-Aboriginal. The antiquity of the remains should also be established; that is, whether they are pre-contact Aboriginal, historic Aboriginal, historic non-Aboriginal, or whether they are forensic (Aboriginal or non-Aboriginal). Assessment of the ancestry (ethnicity) of the remains should be determined by a physical anthropologist. Assessment of the antiquity (date) of the remains should be determined by a physical anthropologist and an archaeologist. If historic burial artefacts are present then a historical archaeologist should be called.

Following are some scenarios that you may encounter:

(i) The remains appear to be recent and thus may be forensic

The *Coroner's Act, 1980* gives the State Coroner jurisdiction over deaths which have occurred within NSW during the last 100 years (Part 3, Sections 13B-13C). The Act also specifies cases in which an inquest should be held (Sections 13(1) and 13A). These include violent or unnatural death, sudden death with cause unknown, suspicious or unusual death and cases where a medical practitioner has not given a certificate as to the cause of death [Section 13(1)(d)]. In cases where the Coroner has the jurisdiction to hold an inquest the Coroner also has the right to take possession of the remains of a person and this right takes "priority over any other right to possession of the remains of a person." (Section 24).

Part 6 of the Coroners Act deals with post-mortem examinations, exhumations and special tests. Specific situations in which the Coroner may order an exhumation are described in Section 53. These include cases where an inquest has not been held or has not been completed, and cases where a further post-mortem examination or special tests on the remains are considered desirable by the Coroner.

Section 53 provides for the Coroner to issue a warrant for exhumation of remains and requires that any member of the police force to whom the warrant is directed must execute it.

Human skeletal remains may therefore be exhumed under the Coroners Act if they are the remains of a person who died within the last 100 years and if the Coroner decides that an inquest should be held and, for that purpose, a post-mortem or other special test is required (Section 53).

Action: Contact police

(ii) The remains are Aboriginal and are not recent
The National Parks and Wildlife Act 1974 (as amended 1989) is relevant to Aboriginal skeletal remains, when they are either pre-contact in date or do not occur within cemeteries also used by Europeans (i.e. historic cemeteries).

Part 6 (Sections 83-91) of the National Parks and Wildlife Act contains provisions concerning the ownership and appropriate treatment of Aboriginal relics. It is an offence to disturb or excavate land in order to find a relic, or to move, disturb or take a relic, except in accordance with a valid permit (Sections 86-87). It is also an offence to cause or permit the destruction of or damage to Aboriginal relics except with the written consent of the Director (Section 90).

The National Parks and Wildlife Service has prepared a specific document relating to Aboriginal skeletal remains which should be referred to for further information (see Bibliography).

A Police Commissioner's Instruction (120.08) helps police deal sensitively with the skeletal remains of Aboriginal people. It states:

"If any material is suspected of being of Aboriginal origin and there are no suspicious circumstances, then the site must be secured and a National Parks and Wildlife Officer contacted to identify the remains. Police are also asked to contact the nearest Aboriginal Community Liaison Officer."

Action: Contact National Parks and Wildlife Service

(iii) The remains are non-Aboriginal and more than 50 years old

The Heritage Act, 1977 (as amended 1987) is relevant to historic burials or skeletal remains which have been buried for more than 50 years.

Previous interpretations and decisions of the Heritage Council indicate that any feature or physical object from any New South Wales cemetery which is 50 or more years old may be a "relic". Such objects may include headstones, grave enclosures or other elements, as well as buried human remains. Buried human remains are considered to fall within the definition of a relic under the category of 'any deposit, object or material evidence'. Such material may also relate to 'the settlement of the area which comprises New South Wales'. The remains of the people who settled a place may also be regarded as significant material evidence of the settlement of that place.

If a relic is subject to an interim or permanent conservation order, then approvals will need to be obtained for activities which may damage, despoil, move, expose or alter it (Section 57, Section 60).

Part 6, Division 9 of the Heritage Act is concerned with the protection of relics which are not subject to conservation orders.

Section 139 states that:

"A person shall not disturb or excavate any land for the purpose of discovering, exposing, or moving a relic, not being a relic subject to a conservation instrument, except in accordance with an excavation permit."

Under the Heritage Act it is illegal to disturb or excavate land to discover, expose or move a relic without an excavation permit under either Section 60 (when the relic is subject to a conservation order) or Section 140 (when the relic is not subject to a conservation order). Permits may be issued unconditionally or subject to conditions. The current "standard conditions" for permits include a provision that if any Aboriginal relics are uncovered, excavation or disturbance of the site must stop and the National Parks and Wildlife Service should be advised in accordance with S91 of the National Parks and Wildlife Act.

Procedures and archaeological assessment guidelines

adopted by the Heritage Council and available from the Heritage Office describe requirements and procedures for assessing a potential historical archaeological site and for obtaining an excavation permit.

Action: Contact Heritage Office

(iv) A member of the public wants to have a relative exhumed and moved

The Public Health Act, 1991 and the Public Health Regulation, 1991 are concerned with the protection of Public Health interests. The Public Health Act allows for regulations to be made on matters such as the disposal of human remains, the conduct of mortuaries and crematoria, and on issues relating to infectious diseases and the disposal of bodies, including "the embalming, interment, disposal, and exhumation of the bodies of deceased persons" [Section 82(2)(r)].

The Public Health Regulation 1991 establishes more specific requirements relating to public health aspects, within Part 5 – Disposal of Bodies. Part 5, Division 4 is specifically concerned with Exhumation, with Clauses 36 to 39 outlining provisions for the removal of human remains. It is illegal to exhume the remains of a body without appropriate approval. Applications to exhume remains may be made by the executor of an estate, a relative or "a proper person in all the circumstances to make the application" [Clause 37(1)(c)]. Exhumations must be supervised by an officer of the Department of Health or by an environmental health officer.

Approvals to exhume remains are made on a prescribed form and are usually granted subject to standard conditions. At present these conditions require compliance with a pro-forma plan of management, covering issues such as condition, identification and location of the grave, exhumation methods (including dewatering, shoring and protection of adjoining graves), and issues relevant to personnel including provision of specific personal protective equipment (for wet and dry grave sites). Other standard conditions deal with matters such as screening of grave sites from public view, requirements for the transfer of remains from the burial site and requirements for supervision.

Approval under the Public Health Act does not override approval required under the Heritage Act.

Action: Contact your local public health unit of the NSW Department of Health

(v) *The Local Council wishes to close or convert a cemetery*

The Conversion of Cemeteries Act, 1974 allows Local Councils to make application to close and convert cemeteries into "rest" or "pioneer memorial parks."

On heritage grounds use of this Act is not favoured. The Heritage Council publication *Cemeteries: Guidelines for their Care and Conservation* (1992) notes that the conversion of cemeteries does not accord with established conservation principles such as those elaborated in the Burra Charter of Australia ICOMOS, nor with the provisions of the more recent Heritage Act 1977. As discussed under (iii) above, an excavation permit application under the Heritage Act would be required.

(vi) *An exhumation is to occur in a cemetery which has its own Act*

A number of New South Wales cemeteries or former cemeteries are subject to their own Acts which impose requirements relevant to their particular individual circumstances. The most prominent sites include Rookwood Necropolis and Gore Hill Cemetery, each of which has their own specific Acts. These particular cemetery Acts do not override the operation of any of the other legislation previously described.

An unknown number of former cemeteries and other burial sites including former denominational churchyards and burial grounds have also been converted to "rest parks". Prior to the passing of the Conversion of Cemeteries Act in 1974 individual cemetery Acts were passed to permit such conversions. The provisions included in such Acts are either identical to, or strongly resemble, those of the subsequent Conversion of Cemeteries Act 1974.

(vii) *What happens if I donate my body to a University School of Anatomy?*

The Anatomy Act, 1977 is relevant for the bodies of those people who have expressed the wish for donation, or consented to anatomical examination of their body after death. Earlier versions of the Act were made to prevent the practices of 'grave robbing' or 'body snatching' of the recently dead for the purpose of anatomical dissection. The Act refers to fleshed bodies rather than skeletal remains, although it does not exclude them.

The Anatomy Act will not be used for the purposes of managing remains under the Heritage Act.

CAN MORE THAN ONE ACT APPLY ?

Whilst the existing legislation means that some burials might potentially be exhumed under the provisions of the Public Health Act, thereby avoiding the need to comply with the requirements of the Heritage Act, this is not an acceptable alternative for those remains or burials assessed as being of heritage significance.

Material assessed as being of lesser or no significance in heritage and/or research terms should be managed in accordance with the identified significance. In these cases, it may be appropriate for the material to be dealt with by non-specialists in compliance with all legislative requirements.

It is possible that more than one Act may apply in particular circumstances. For example, the Heritage Act and the Public Health Regulation can operate together:

- (i) if the remains are over 50 years old and relate to the settlement of New South Wales, not being Aboriginal settlement, an excavation permit will be required under the Heritage Act;
- (ii) if the excavation of the remains referred to in point (i) will involve the removal of the remains from a grave or vault, the order of a coroner or the approval of the Director-General of the Department of Health will also be required under the Public Health Regulation;

(iii) there is no inconsistency or conflict between the Heritage Act and the Public Health Regulations. Where both that Act and the Regulation apply to remains, both must be complied with.

In the case of initial archaeological "test" excavations intended to confirm or identify the extent of a cemetery, only the Heritage Act would apply. This is because such excavations would record the presence of grave sites but would leave them in-situ and therefore would not require the removal of remains from graves.

In cases where a warrant for exhumation has been issued under Section 53 of the Coroners Act for the removal of human remains more than 50 years old, the police officer executing the warrant would not require an excavation permit under the Heritage Act.

IS THIS BURIAL IMPORTANT?

Community attitudes and values mean that nearly all historic burials will have some potential historic and social significance due to their association with strong cultural traditions or religious beliefs regarding death and burial.

In NSW the process of finding out whether an item is important or not is called **assessing significance**. Historic burials and skeletal remains are no different from any other potentially significant heritage item. They should be treated in the same way and to the same level as any other surviving physical evidence of the past.

In NSW the heritage system requires three steps:

- (i) investigate significance
- (ii) assess significance
- (iii) manage significance.

The *NSW Heritage Manual* published by the Heritage Office in 1996 discusses this system.

For assessing heritage significance there are two types of criteria, those which deal with the nature of significance (a range of values) and those which deal with the degree of significance (comparative values). These are outlined in the *Heritage Assessments* section of the *NSW Heritage Manual*.

The criteria are:

NATURE OF SIGNIFICANCE CRITERIA

Criterion 1 – historical significance
(evolution and association)

An item having this value is significant because of the importance of its association with, or position in, the evolving pattern of the cultural history of NSW. Both individual and collective burials may be historically significant.

For some historic burials it may be possible to identify specific individuals. This will be the case for formally marked burials and for any other securely identifiable graves which are documented by other records such as a burial register, or a cemetery grave/plot map. In such cases additional and specific research can be completed to obtain biographical and genealogical information, including for example, the cause of death noted on death certificates. Specific research will permit assessment of the historic significance of particular individuals and their burial sites.

Findings from several historic cemetery excavation projects have indicated that even for well-documented individuals and groups, the surviving historic record is often inaccurate and inadequate. A more comprehensive understanding of past ways of life will be obtained from the completion of complementary physical research.

Even when individual identification is not possible for burials or skeletal remains, for example, due to the absence of grave markers or specific and accurate burial records, other contextual historic information may exist. This may enable research of a specific past population and matters such as their choice of burial place and interment practices. Information of this type will often allow the profile of the population of a cemetery or other burial site to be established. This may include issues such as class and status, economic and environmental circumstances, religious and cultural matters, ethnic or racial identification. In addition, specific historic events might be reflected in the cemetery population, such as accidents, disasters, diseases or epidemics.

In the 19th and 20th centuries there has been a dramatic and well-documented change in attitudes to death and associated traditions and mortuary practices. As primary physical evidence, historic burials and individual graves may be expected to document and reflect these changes.

Criterion 2 – aesthetic significance
(scenic/architectural qualities, creative accomplishment)

An item having this value is significant because it demonstrates positive visual or sensory appeal, landmark qualities and/or creative or technical excellence.

In most cases historic burials or skeletal remains are not likely to be significant under this criterion. The exception will be when burials occur within cemeteries or grave sites with associated elements such as headstones and formal layouts or landscapes. In these cases assessment should deal with the matters elaborated in other guideline documents which are referenced in the bibliography.

Criterion 3 – technical/research significance
(archaeological, industrial, educational, research potential and scientific significance values)

Items having this value are significant because of their contribution or potential contribution to an understanding of our cultural history or environment.

Human remains and burial sites may have particular research value to professional practitioners such as historians, archaeologists and physical anthropologists. This value is of major importance in the assessment of historic burials and human skeletal remains.

The archaeological value of historic burials lies in the fact that they provide primary physical evidence of past human conditions and activities. This evidence may be expected to include and demonstrate matters such as funerary traditions and mortuary practices, burial practices and choices, grave orientation (both linked to religious/cultural and social aspects), and material culture as reflected in both individually specific grave goods, and more general coffin morphology and hardware. Burials may

also be expected to yield evidence relevant for other typical archaeological analysis such as stratigraphic sequences, environmental circumstances, date ranges, seriation and site use over time.

Skeletal remains from historic cemeteries and burials also have great scientific and research potential. They can contribute to substantive questions about the physical condition of people in the past. In particular, they can give information on the following:

- assessment of race
- assessment of sex
- disease
- age, growth and development
- nutrition and general health status
- genetic relationships
- issues of forensic and archaeological value, for example, rates of decay and differential preservation.

Some cemeteries may have particular significance. For example, large cemeteries may provide an indication of the range of variation present in a community. Appreciation of the range of variation in skeletal remains at a given time in history is probably the most important quest for physical anthropology. Cemeteries dating from particularly early settlements could also be highly significant. The skeletal remains from individual burials are generally not as significant as large cemeteries. However, an exception to this may be when a known person with a well-documented history is to be excavated.

The scientific or research value of skeletal remains will depend upon the following:

- a) skeletal remains may contribute to the answering of **present** research questions in Australian history and in more global research questions of human variation and history;
- b) skeletal remains may have the **potential** to answer future research questions in Australian history and in more global research questions of human variation and history. New techniques developed in the future may allow new information to be obtained from stored material. New research questions may also be developed which can be applied to this material;

- c) skeletal remains may be representative of a range of variation or type in a region. It may be possible to identify collections of skeletal remains or unexcavated cemeteries of potential research value which should be preserved as a resource for future scientific research;
- d) skeletal remains may show features which are unique.

In order to assess the scientific and research value the following factors must also be taken into consideration:

- provenance
- date range
- sample size
- degree of preservation
- completeness of remains
- presence of pathology
- biological age of remains
- ancestry
- sample size.

Criterion 4 – social significance
(contemporary community esteem).

Items having this value are significant through their social, spiritual or cultural association with a recognisable community. Burials may also be significant to particular individuals.

In contemporary society there still exists a strong cultural tradition of respect for the dead and for places of interment. Sites such as cemeteries and graves may be regarded as spiritual, holy and sacrosanct places especially when they were formally consecrated or dedicated. The contemporary community will often be concerned about the disturbance of former burial sites and the appropriate treatment of human remains. It is generally expected that human remains will be treated with respect.

Many burial sites will be associated with particular 'communities of interest' (including individuals and families). For these communities individual sites and burials may have particular meaning, which will need to be researched and identified to establish social significance. Interest groups may include local residents, direct descendants, local and family

historians and religious groups, for example parishioners and clergy. In some instances there may also be specific groups linked to racial or ethnic affiliations or distinctions.

DEGREE OF SIGNIFICANCE CRITERIA

Criterion A – representativeness

Items having this value are significant because they represent an important class of significant items or environments.

Individual burials and skeletal remains should be considered as one specific example of a larger class of items including other remains, graves and cemeteries. They may contribute physical evidence which reflects and records past conditions. They may be broadly representative of specific burial practices, including now defunct traditions, customs and processes.

Criterion B – rarity

An item meeting this value is significant because it reflects a rare, endangered or unusual aspect of our history or cultural environment.

Although not a particularly rare type of item, human skeletal remains (particularly material included within formal cemeteries and burial sites) are infrequently available for intensive examination. Such material may be expected to provide evidence which is not commonly available for examination and analysis. In this sense, the archaeological excavation of single burials or of a sample of burials from any historic burial site is still relatively rare. When such evidence is assessed as being of potential significance it will provide an opportunity for investigation of the type of research areas noted under Criterion 3 above.

As unaltered primary material, human skeletal remains and other sub-surface remains present in association with historic burials or within burial sites, are likely to provide highly accurate evidence of burial practices and other past conditions. Individual burials and burial sites may also contribute specific evidence of defunct customs or processes and should be assessed as a specific variant of a more general group of burial or 'cemetery' category items.

Other Assessment Documents

Other heritage guideline documents specifically discuss the assessment of significance for certain types of items, and subject to particular site circumstances may also be relevant to the assessment of individual historic burials or burial sites.

Cemeteries: Guidelines for their Care and Conservation (1992) discusses particular aspects of heritage significance relevant to cemeteries and burial grounds. The document also outlines appropriate management procedures. It establishes the basic principle that if extensive works are proposed on an important cemetery or other burial site, a formal conservation plan should be prepared which will assess significance, identify constraints and requirements and develop an appropriate conservation policy for the site.

Archaeological Assessments (1996) outlines issues and procedures relevant to historical archaeological sites in NSW and makes specific comment regarding 'research potential' (included within Criterion 3 above). This is often the most relevant value in the assessment of archaeological sites. Once it has been determined that a site may have archaeological deposits, relics or other physical features, relevant historic and research themes or questions to which such deposits may contribute information need to be established. This is usually done by means of a formal research design submitted at the same time as an excavation permit application under either Section 60 or Section 140 of the Heritage Act, 1977.

Results of the Assessment

The assessment of significance should be presented as a written document prepared by specialists. The document should include the analysis of evidence and consideration of the above criteria and should include a formal *Statement of Significance*. This statement summarises all the values identified by the assessment of significance.

This is the most important part of the assessment process because it determines future management.

**THE REMAINS ARE SIGNIFICANT
HOW DO I PROCEED?**

If the remains or burial site are found to be of heritage significance then their treatment must be in accordance with the identified heritage value. It will be necessary to prepare an appropriate management policy. This should take the form of a conservation policy which will require examination and assessment of the following:

- site condition
- requirements to retain significance
- requirements to investigate research potential
- client or proponent requirements
- mitigation and alternatives
- external/legislative requirements.

In many cases, it will be appropriate that the proponent establishes a process of community consultation, and requests community approval for any proposals which may require disturbance of burials.

COMMUNITY CONSULTATION

If community consultation is appropriate, a public meeting should be held in which the proponent sets out what it intends to do, and how it intends to do it, so that all interested people are informed and consulted.

The meeting should be well advertised in local and state newspapers. A background report giving details of the proposals should be made available to interested parties for study in the local library before the public meeting. The proposed types of analysis of the remains should be described, including any physically invasive analysis such as DNA testing.

The community of interest may include descendants, the church and parishioners if it is a church cemetery, local residents, the Aboriginal Land Council, the municipal council, local schools, the local historical society, National Trust group and family history association. The descendants of those buried should always be given an opportunity to comment and participate in decision making. Community consultation should take place after a draft assessment of significance has been produced for the site, but before the management policy document has been finalised.

PRINCIPLES

As a general principle human skeletal remains and burial sites assessed as being of heritage significance should not be disturbed. In accordance with established heritage conservation principles, the excavation and moving of human remains and burials should always be regarded as a last resort, to be pursued when all other avenues have been exhausted. This is particularly the case where disturbance occurs due to inadequate or incomplete site research, assessment and planning by the proponents of a development. In some cases of site redevelopment involving burials, the heritage issues and requirements (such as the involvement of professional archaeologists) have been considered at a late stage in the site planning, and the proposed development and future site use was already on critical path or already approved.

The Heritage Council of NSW should be invited to comment on all conservation policy documents at draft and/or public exhibition stage. The management policy should be adopted by all relevant agencies.

CONSERVATION POLICY

The *Conservation Policy* will determine the future of the site.

(i) Site to be conserved

The preferred option for the conservation of any site of significance is always to retain the site where it is, undisturbed. The proponent may have to alter its development plans for the site so that the human remains can remain undisturbed.

(ii) Site to be disturbed

It will not always be feasible to achieve conservation in situ. In such cases, excavation must be shown to be a justifiable option in the circumstances, with adequate planning and sufficient resources allocated to ensure that disturbance and removal occurs in a sensitive and dignified manner. The cultural and spiritual value of the human remains, as well as any specific legislative requirements should be respected.

Other activities such as land-use change and site development or other environmental modification and disturbance can threaten a site. Professional and controlled excavation and removal by archaeologists and other appropriate specialists is necessary prior to the destruction of human remains and burials.

Where human skeletal material and burials have been assessed as having additional or particular significance for their scientific research potential (including osteological, biological and archaeological research questions and issues) this evidence should not be lost through disturbance and inadequate recording methodologies. It is not appropriate that skeletal remains with assessed heritage and/or research value simply be removed to make way for development by providing site clearance.

If the proponent cannot leave the remains in situ and the site is assessed as significant then the remains should be excavated by appropriate specialists. These will include an historical archaeologist and a physical anthropologist.

The proponent must apply for an excavation permit under Section 140 of the Heritage Act 1977, naming the excavation director and stating their experience and qualifications. The sensitivity of skeletal remains means that the excavation director must have considerable and relevant experience. The permit application will include how the remains are to be excavated and what research questions are to be addressed in the research design formulated specifically for the site.

ARCHAEOLOGICAL RESEARCH DESIGN

The research questions for the site will be developed from the details of its history and the assessment and statement of significance. The research questions initially formulated may be modified as new evidence emerges, and new research questions may be investigated.

When significant burials are disturbed, appropriate resources should be allocated for thorough analysis, documentation and reporting of results. Remains will also need to be housed in a secure location until they are re-interred.

ARCHAEOLOGICAL MANAGEMENT POLICY

The archaeological management policy should describe the following:

- how the site will be managed and kept secure, both during and after the excavation of the human remains;
- how the excavated material is to be curated and stored;
- whether the remains will be retained in a museum, for the short or long term, or reburied;
- who will have access to the material;
- any possible publicity and viewing of the remains by the media and interested parties both during the excavation and study;
- the type of ceremony and commemoration to take place if they are to be reinterred.

Specific issues considered should include:

i) Excavation issues

Personnel who may need to be involved

Archaeologist, physical anthropologist, officer of the Department of Health, cemetery manager, local government heritage officer.

Occupational Health and Safety

Those involved in the handling of human remains or coffins or associated soil should comply with the Occupational Health and Safety Act. In particular, such people should be vaccinated against Hepatitis B and Tetanus, and protective clothing including plastic gloves should be worn.

Recording

Excavations should be recorded to normal professional standards, following any guidelines issued by the NSW Heritage Office.

ii) Access issues

Access

Access to the excavation should be limited to those directly involved. As a general rule, volunteers and the general public would not be actively involved in any excavation of human remains.

Security

If a burial has to be left unattended then it should be secured by a fence with a locked gate and the perimeter patrolled by a security guard. Depending upon public access, it may also be necessary to provide screens on fences.

Public participation

On a long term excavation the public and special interest groups, for example, historical societies and family history societies, could be invited to observe the process at specified times.

Professional participation

On long term excavations members of the relevant professional associations and peers should be invited to observe.

iii) Management issues

Management during excavation and analysis

A management committee may need to be established to monitor the excavation and analysis, and to ensure that the conservation policy is adhered to. The management committee should meet regularly during excavation, and less frequently during post-excavation analyses, report preparation and re-interment. The committee should contain representatives of the excavation team, the proponent, the community, the Heritage Council or Heritage Office and officers from other government departments involved.

Publicity

Publicity and photography would be strictly controlled by the archaeologist in charge.

Interpretation

An interpretation policy for the site such as signs on the fence surrounding the excavation, A4 leaflets, public lectures, a newsletter distributed to all interested parties, and articles in the local paper should be developed. Interpretation should be prepared and distributed before and during the progress of the excavation.

Curated material

Curated material may be in the form of skeletal remains, soil samples, excavation records including drawings and plans, artefacts, grave goods and images including photographs, X-rays and CT scans. Collected skeletal remains may require temporary or permanent storage. Permanent or long-term curation allows for replication of results as well as the application of new techniques to extracting scientific information from the remains. Storage should be of a respectful nature and in an area which is secure, and in a nominated permanent repository. The Heritage Council may apply conditions on the permit regarding ongoing curation and management. Publication of data and conditions on the use of data should be determined in consultation with the Heritage Office.

After the initial report is released, access to the data or any human remains in storage by bone fide researchers should be unrestricted as long as any protocols established during the course of the project regarding publication, copying or display are adhered to. If human remains are in long-term storage, access for educational purposes should be allowed, subject to compliance with relevant protocols covering such issues as purpose of access and publication of information gained during access.

Professional access to data

In order to ensure future professional access to data, ownership of data collected during excavation and research should be clearly established. Data should be lodged in an appropriate, publicly accessible repository.

RE-INTERMENT AND COMMEMORATION

Once the analysis of the remains has been completed, if re-interment is the recommended policy then appropriate commemorative arrangements must be made. At the community meeting which outlines the excavation methodology and conservation policy, re-interment and commemoration methods can be canvassed. Descendants should have opportunity to comment on the nature of the re-interment ceremony and the way in which the burials are commemorated. Issues to be considered if re-interment is recommended are:

- reburial in a mass grave or in individual coffins or shrouds;
- burials to be oriented in the same direction as they were originally found;
- burials to be placed in the same spatial relationship to each other as they were excavated;
- the re-interment site should be chosen carefully. The wishes of descendants should be considered. The reburial site and commemorative monument should not detract from the significance of the new location;
- It may be appropriate to hold a commemorative ecumenical ceremony at the conclusion of reinterment with groups such as descendants, church, local council and community representatives and the site archaeologists and other professionals present;
- Physical commemoration or interpretation of the burial site should also be carried out. This may include both the original and the subsequent burial site, if remains have been moved. Options would include a plaque, memorial garden, or some other monument.

**CONSERVATION OF ABOVE GROUND
CEMETERY ELEMENTS**

In addition to any buried remains, cemeteries which are affected by development proposals may also include above ground cemetery elements. Such items may include: headstones, footstones or other cemetery monuments, associated items such as grave kerbing or iron grave railings, other enclosures and grave furniture. When these items are more than 50 years old they may also be subject to the relics provisions of the Heritage Act.

When archaeologically supervised excavations are being carried out it is also possible that they will uncover additional cemetery elements such as headstones or other grave markers which have become buried on the site.

It is therefore necessary that the conservation policy prepared for the cemetery site also considers the appropriate treatment of any associated cemetery elements. Matters considered should include the recording of the existing fabric, configuration and layout of the cemetery prior to disturbance, and the treatment of headstones or other features either already present on the surface or discovered during excavations at the site. In this context issues relating to headstones and other cemetery elements may include physical conservation requirements, re-location (either to another site or to a storage facility), recording and cataloguing. The possible re-location of existing headstones and other cemetery fabric will also be relevant to issues associated with the future commemoration of the cemetery or the re-interment of exhumed human remains.

Additional information about above ground cemetery elements is contained in the *Cemeteries Guidelines* published by the Heritage Council in 1992. This publication discusses matters such as documentation and recording, types of cemetery monuments, conservation principles and repair issues. As a general principle, the *Guidelines* note that the movement or relocation of cemetery monuments is not a recommended conservation procedure because the significance of individual monuments is diminished when they are removed from their original context. All elements of cemetery monuments should be retained and conserved.

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GLOSSARY

For the purpose of these procedures:

Aboriginal remains (under the National Parks and Wildlife Act) means the body or the remains of the body of a deceased Aboriginal, but does not include:

- (a) a body or the remains of a body buried in a cemetery in which non-Aboriginals are also buried, or
- (b) a body or the remains of a body dealt with or to be dealt with in accordance with a law of the State relating to medical treatment or the examination, for forensic or other purposes, of the bodies of deceased persons.

Australia ICOMOS is a non-government organisation comprised of heritage professionals. It promotes good practice in caring for culturally important places.

burial and grave The grave is the hole in the ground dug for the body or coffin, and includes the soil used to fill the hole. The burial is the body or coffin placed in the grave.

burial artefacts These are the non-human remains buried in a grave, and include the remains of the coffin, shroud or clothes, name plate, as well as rings, rosary beads, books, or other objects buried with the dead.

burial markers These are surface artefacts which indicate burials, for example headstones, footstones and grave surrounds.

burial ground is an area of land, possibly no longer identifiable from surface evidence, once set aside for the disposal of human remains by burial.

Burra Charter and Guidelines Charter adopted by Australia ICOMOS which established the nationally accepted standard for the conservation of places of heritage significance.

cemetery The definition is the same as for 'burial ground' above.

churchyard A burial ground adjacent to a church. Usually denominational.

conservation All the processes of looking after a place so as to retain its heritage significance. It includes maintenance and may, according to circumstances, include preservation, restoration, reconstruction and adaptation and will be commonly a combination of more than one of these.

curation refers to the care of the physical condition of an object e.g. packaging, conservation, storage in appropriate surroundings.

excavation refers to the removal of relics and/or human remains involving the use of archaeological techniques and recording methods and completed by professional archaeologists. In the context of these guidelines 'excavation' involves use of the NSW Heritage Act and will require the issue of an Excavation Permit.

exhumation refers to the removal of human remains from a burial place or vault for immediate transfer to another location, either a new grave site or a vault. This is usually carried out by professionals such as funeral directors and cemetery staff. In the context of these guidelines 'exhumation' involves use of the NSW Public Health Act and will require compliance with the provisions of that Act. The Coroner may also issue a warrant for exhumation.

forensic means pertaining to the law. Hence forensic anthropology is that branch of science which uses anthropological knowledge to solve a legal problem. Skeletal remains may be described as 'forensic' rather than archaeological if they are recent and if they are involved in a legal matter e.g. where the cause of death may be suspicious.

Heritage Council is a body of fourteen members which represent various organisations and have a range of skills. The Council meets monthly to consider heritage issues and to advise the Minister for Urban Affairs and Planning.

Heritage Office is the state government agency which provides support for the Heritage Council and undertakes the day-to-day administration and management of heritage issues.

human remains refers to bones, teeth, skin, muscle, cartilage, tendons, ligaments, organs, hair and nails. Cremated remains, embalmed remains, and mummified remains are also human remains. See also Aboriginal remains.

post-contact refers to the time after the first contact between Aborigines and Europeans, i.e. any time after 1770.

pre-contact is the time before European contact in NSW, i.e. before 1770.

proponent refers to the person or organization who puts forward a proposal.

relic (under the National Parks and Wildlife Act) means any deposit, object or material evidence (not being a handicraft made for sale) relating to indigenous and non-European habitation of the area that comprises New South Wales, being habitation both prior to and concurrent with the occupation of that area by persons of European extraction, and includes Aboriginal remains.

relic (under the Heritage Act) means any deposit, object or material evidence -

(a) which relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement; and

(b) which is 50 or more years old.