

# Construction Heritage Management Plan

## DOCUMENT INFORMATION

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Signature			
Date	12 February 2021	12 February 2021	12 February 2021

### A W EDWARDS PTY LIMITED

**REVISION**

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**AW EDWARDS** acknowledges the Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander people and culture, and to their Elders past and present.

**“COMMUNITY”**  
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## **1 INTRODUCTION**

### **1.1 BACKGROUND**

The Sydney Metro City & Southwest is a 30 kilometre metro rail between Chatswood and Bankstown, including; 17 kilometres of new tunnel from Chatswood, under the harbour to Sydenham connecting seven new underground stations at Crows Nest, Victoria Cross (North Sydney), Barangaroo, Pitt Street, Martin Place, Central and Waterloo. Upgrading 13 kilometres of the Bankstown line, including 11 existing stations; Sydenham, Marrickville, Dulwich Hill, Hurlstone Park, Canterbury, Campsie, Belmore, Lakemba, Wiley Park, Punchbowl and Bankstown plus southern service facilities.

Several separate environmental impact assessments of the project were progressed by Transport for NSW (TfNSW). In May 2016, an environmental impact statement (EIS) for the Chatswood to Sydenham section of the project was placed on public exhibition. A preferred infrastructure report on the Chatswood to Sydenham component (the PIR) was then prepared and publicly released in October 2016. The project was approved on 9 January 2017 (SSI 15\_7400) (project planning approval). Following approval, six modifications have been approved by NSW Department of Planning, Infrastructure and Environment (DPIE).

A W Edwards has been appointed by Sydney Metro to construct the Crows Nest Integrated Station Development (the project).

### **1.2 PURPOSE**

This Construction Heritage Management Plan (CHMP) describes how A W Edwards will avoid, minimise and manage impacts to Aboriginal and non-Aboriginal heritage during construction of the project.

This CHMP forms part of the Construction Environmental Management Plan (CEMP) for the project and was prepared in accordance with:

- The relevant planning approvals and conditions of approval (CoA) for the project (refer to Chapter 2)
- Applicable legislation and regulatory requirements
- Sydney Metro Construction Environmental Management Framework – Chatswood to Sydenham (CEMF)
- Revised Environmental Mitigation Measures (REMMs)
- Sydney Metro contractual requirements, including the Project Deed and Scope of Work and Technical Criteria.

### **1.3 PROJECT OVERVIEW**

Crows Nest Station will be between the Pacific Highway and Clarke Lane (eastern side of the Pacific Highway) and between Oxley Street and south of Hume Street. It will be strategically located to the south of the existing station at St Leonards and close to the leisure and retail strip along Willoughby Road.

Crows Nest Station will support the St Leonards specialised centre as a southern gateway to commercial and mixed use activities. The station will also improve access to the restaurants and specialist shops in the Crows Nest village. Crows Nest Station will:

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- Create a new transport focus on the southern side of the St Leonards specialised centre
- Maximise legibility and connectivity with the local urban structure
- Integrate the station with local improvement plans and make a positive contribution to the sense of place.

Refer to Chapter 2 of the CEMP for detailed scope of work and construction methodology.

**1.4 OBJECTIVES**

The Chatswood to Sydenham Submissions and Preferred Infrastructure Report identified the following environmental performance outcome for construction:

- The project would be sympathetic to heritage items and, where feasible and reasonable, avoid and minimise impacts to non-Aboriginal heritage items and archaeology

The following heritage management objectives, consistent with those described in Section 10.1 of the CEMF will be applied to the project:

- Implement measures to appropriately identify, avoid and manage all known items Aboriginal and non-Aboriginal heritage significance that may be impacted by the project
- Implement Sydney Metro's Unexpected Heritage Finds Procedure (SM-18-00105232) to avoid accidental impacts on heritage items, places or value
- Conduct routine training to maximise awareness of Aboriginal and historic heritage management for the project (including assessment and notification of unexpected finds)
- Identify, investigate, record and assess the significance of any discovered Aboriginal and historic heritage items, including any cultural features
- Avoid harm, destruction and defacement of human remains, including Aboriginal burials in accordance with the Sydney Metro Exhumation Management Plan (CoA E27).

**1.5 CONSULTATION**

In accordance with CoA C3 for the project, the CHMP must be prepared in consultation with the Heritage Council of NSW (or its delegate) and the relevant Council(s). The consultation period began on the 27/11/2020 and ended on the 18/12/2020.

The plan was submitted for consultation to the Heritage Council of NSW on 27/11/2020 who reviewed the CHMP in relation to historic heritage management and is satisfied with the measures outlined in it for the management of historic heritage. North Sydney Council was also consulted on the 27/11/2020 and had no additional feedback on the plan as of 18/12/2020.

**1.6 ENVIRONMENTAL MANAGEMENT STRUCTURE**

This CHMP is part of A W Edward's environmental management framework for the project and is supported by other documents such as:

- Construction Environmental Management Plan (CEMP)
- Construction Noise and Vibration Management Plan (CNVMP)
- Community and Stakeholder Engagement Plan

- Environmental Control Maps (ECMs), inclusive of relevant heritage management measures.

## **1.7 APPROVAL**

This CHMP will be reviewed by Sydney Metro, endorsed by the Independent Environment Representative and submitted to the Secretary of DPIE for approval in accordance with CoA C8.

This CHMP will be submitted for approval to the Secretary of DPIE no later than one month before commencement of construction of the project.

Construction will not commence until the CEMP and sub-plans (including this CHMP) have been approved.

## 2 LEGAL AND APPROVAL REQUIREMENTS

### 2.1 PLANNING APPROVALS

Sydney Metro City & Southwest has been declared as Critical State Significant Infrastructure (CSSI) under Division 5.2 of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act) and State Environmental Planning Policy (State and Regional Development) 2011. There are two CSSI planning approvals for Sydney Metro City & Southwest:

- Construction and operation of the section between Chatswood and the Sydenham dive site known as “CSSI\_7400”, which was granted on 9 January 2017. Several modifications to CSSI\_7400 have since been approved. A W Edwards will be required to comply with CSSI\_7400, including the modifications to this approval, to the extent required by Sydney Metro.
- The section of the rail corridor between Sydenham and Bankstown and is known as “CSSI\_8256” and does not have any requirements that are relevant to the project.

Any future amendments to the CSSI approval (Chatswood to Sydenham) will be subject to Sydney Metro approval and will continue to be managed and lodged by Sydney Metro.

The environmental assessments relevant to the project, which have been referenced during the preparation of this CHMP are:

- Sydney Metro City & Southwest – Chatswood to Sydenham – Environmental Impact Statement (TfNSW, 2016)
- Sydney Metro City & Southwest – Crows Nest Over Station Development – Environmental Impact Statement (TfNSW, 2018)
- Minor Works Approval for Enabling Works (CN-PCMW-001 Site Establishment Works) – April 2020.

### 2.2 LEGISLATION AND REGULATORY REQUIREMENTS

Legislation relevant to heritage management includes:

- EP&A Act
- NSW National Parks and Wildlife Act 1974 (NPW Act)
- NSW Heritage Act 1977 (Heritage Act)
- Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

As the project is CSSI, the requirements of the Heritage Act and the NPW Act are assessed under Part 5.1 of the EP&A Act, and therefore no separate permits or approvals under the Heritage Act or NPW Act will be required.

As outlined further in Chapter 5, as required by CoA E20, in the event that a potential relic(s) is/are discovered, construction will cease in the affected area and an Excavation Director notified to assess the significance level of the find(s).

### 2.3 GUIDELINES

The following Sydney Metro and TfNSW guidelines are applicable:

- Sydney Metro Unexpected Heritage Finds Procedure
- Sydney Metro Exhumation Management Plan

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- Sydney Metro City & Southwest Construction Noise and Vibration Strategy (SM-ES-ST-210)
- TfNSW Environmental Incident/Non-Compliance Report (9TP-FT-101)
- TfNSW Environmental Incident Classification and Reporting (9TP-PR-105).

The following guidelines may be of relevance to the project in the event of an unexpected heritage find:

- Code of Practice for the archaeological investigation of Aboriginal objects in NSW (OEH, 2010)
- Aboriginal cultural heritage consultation requirements for proponents 2010 (OEH, 2010)
- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH, 2011)
- Assessing Significance for Historical Archaeological Sites and Relics (NSW Heritage Branch, Department of Planning, 2009)
- NSW Heritage Manual 1996 (Heritage Office and Department of Urban Affairs and Planning, 1996)
- Assessing Heritage Significance (NSW Heritage Office, 2001)
- Levels of Heritage Significance (NSW Heritage Office, 2008)
- Statements of Heritage Impact (Heritage Office, 2002)
- NSW Government's Aboriginal Participation in Construction Guidelines (2007)
- How to Prepare Archival Recording of Heritage Items (Heritage Branch 1998)
- The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance (Australia ICOMOS, 2013)
- NSW Heritage Council's Criteria for Assessment of Excavation Directors (2011)
- NSW Heritage Office Archaeological Assessments (1996)
- NSW Heritage Council's Photographic Recording of Heritage Items Using Film or Digital Capture (2006) guidelines
- NSW Heritage Office Guidelines for Management of Human Skeletal Remains (1998).

## 2.4 PROJECT APPROVAL REQUIREMENTS

This CHMP has been produced to demonstrate compliance with the relevant CoA stipulated in SSI\_7400, as summarised in Table 2.4.

The CoA relevant to the project have been confirmed via the Sydney Metro Chatswood to Sydenham Staging Report (Sydney Metro, 2019).

*Table 2.4: CoA requirements*

ITEM	REQUIREMENT	DOCUMENT REFERENCE
C3	The following CEMP sub-plans must be prepared in consultation with the relevant government agencies identified for each CEMP sub-plan and be consistent with the CEMF and CEMP referred to in Condition C1: (g) Heritage – prepared in consultation with the Heritage Council (or delegate) and relevant Council(s)	This CHMP Section 1.5
C4	The CEMP sub-plans must state how: (a) the environmental performance outcomes identified in the EIS as amended by the documents listed in A1 will be achieved	Chapter 4
	(b) the mitigation measures identified in the EIS as amended by documents listed in A1 will be implemented	Chapter 4
	(c) the relevant terms of this approval will be complied with	Section 2.4

ITEM	REQUIREMENT	DOCUMENT REFERENCE
	(d) issues requiring management during construction, as identified through ongoing environmental risk analysis, will be managed.	Chapter 4
C5	The CEMP sub-plans must be developed in consultation with relevant government agencies. Where an agency(ies) request(s) is not included, the Proponent must provide the Secretary justification as to why. Details of all information requested by an agency to be included in a CEMP sub-plan as a result of consultation and copies of all correspondence from those agencies, must be provided with the relevant CEMP sub-plan.	Section 1.5
C8	Construction must not commence until the CEMP and all CEMP sub-plans have been approved by the Secretary. The CEMP and CEMP sub-plans, as approved by the Secretary, including any minor amendments approved by the ER (or AA in regard to the Noise and Vibration sub-plan), must be implemented for the duration of construction. Where the CSSI is being staged, construction of that stage is not to commence until the relevant CEMP and sub-plans have been approved by the Secretary.	Section 1.7
E10	The Proponent must not destroy, modify or otherwise physically affect any Heritage item not identified in documents referred to in Condition A1.	Section 5.1
E15	The Proponent must salvage items of heritage value from heritage listed buildings and structures to be demolished, before they are demolished, and assess options for its sympathetic reuse (including integrated heritage displays) on the project or other options for repository, reuse and display. Suitable repository locations must be established in consultation with Relevant Council(s). Any State listed items or elements for salvage must be determined in consultation with the Heritage Division of the OEH.	No heritage listed buildings or structures are planned to be demolished.
E17	The Archaeological Assessment Research Design Report (AARD) in the documents listed in A1 must be implemented. Final Archaeological Method Statements must be prepared in consultation with the Heritage Council of NSW (or its delegate) before commencement of archaeological excavation works. The final methodology must: (a) provide for the detailed analysis of any heritage items discovered during the investigations (b) include detailed site specific archaeological management and artefact management strategies (c) include cored soil samples for soil and pollen for the Pitt Street site within the Tank Stream Valley (d) provide for a sieving strategy.	Not applicable to the project given that the works will not impact upon archaeological sites or require archaeological excavation.
E18	Before excavation of archaeological management sites, the Proponent must nominate a suitably qualified Excavation Director who complies with the Heritage Council of NSW's Criteria for Assessment of Excavation Directors (July 2011) to oversee and advise on matters associated with historic archaeology and advise the Department and OEH. Where archaeological excavation is required, the Excavation Director must be present to oversee excavation and advise on archaeological issues. The Excavation Director must be given the authority to advise on the duration and extent of oversight required as informed by the provisions of the approved AARD and Excavation Methodology. A final archaeological report must be submitted to the Heritage Council of NSW within two (2) years of the completion of archaeological excavation on the project. The report must include	Not applicable to the project given that the works will not impact upon archaeological sites or require archaeological excavation.

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	information on the entire historical archaeological program relating to the CSSI.	
E19	<p>An Unexpected Heritage Finds Procedure must be prepared:</p> <p>(a) To manage unexpected heritage finds in accordance with any guidelines and standards prepared by the Heritage Council of NSW or OEH</p> <p>(b) By a suitably qualified and experienced heritage specialist. The procedure must be included in the AARD and must be implemented for the life of the project.</p>	Chapter 5 Appendix A
E20	<p>In the event that a potential relic/s is/are discovered, relevant construction must cease in the affected area and the Excavation Director must be notified and assess the significance level of the find/s and provide mitigation advice according to the significance level and the impact proposed. The Excavation Director must attend the site in accordance with E18 to oversee the excavation where relics of State significance are found.</p> <p>The Secretary must be notified at the same time as the Heritage Council of NSW (or its delegate) of any relic of State significance found.</p> <p>An Archaeological Relic Management Plan specific to the relic of State Significance must be prepared in consultation with the Heritage Council of NSW (or its delegate) to outline measures to be implemented to avoid and/or minimise harm to and/or salvage the relic of State significance.</p> <p>Construction in the vicinity of the discovery must not recommence until the requirements of the ARMP have been implemented, in consultation with the Excavation Director. The Proponent must notify the Secretary in writing of the outcome of consultation on the Archaeological Relic Management Plan with the Heritage Council of NSW.</p>	Chapter 5 Appendix A
E21	<p>The Proponent must prepare a Heritage Interpretation Plan which identifies and interprets the key Aboriginal and Non-Aboriginal heritage values and stories of heritage items and heritage conservation areas impacted by the CSSI. The Heritage Interpretation Plan must inform the Station Design and Precinct Plan referred to in Condition E101. The Heritage Interpretation Plan must be prepared in accordance with the NSW Heritage Manual, the NSW Heritage Office's Interpreting Heritage Places and Items: Guidelines (August 2005), and the NSW Heritage Council's Heritage Interpretation Policy and include, but not be limited to:</p> <p>(a) a discussion of key interpretive themes, stories and messages proposed to interpret the history and significance of the affected heritage items and sections of heritage conservation areas including, but not limited to the Sydney Terminal and Central Railway Stations Group, Martin Place Station, Sydenham Station and Sydenham Pit and Drainage Pumping Station Precincts</p> <p>(b) identification and confirmation of interpretive initiatives implemented to mitigate impacts to archaeological Relics, heritage items and conservation areas affected by the CSSI including</p> <ol style="list-style-type: none"> <li>i. use of interpretative hoardings during construction</li> <li>ii. community open days</li> <li>iii. community updates</li> <li>iv. station and precinct design</li> </ol> <p>(c) Aboriginal cultural and heritage values of the project area including the results of any archaeological investigations undertaken.</p>	<p>The Heritage Interpretation Plan was previously completed during the design phase of the project.</p> <p>Section 4.3</p> <p>Any interpretive hoardings will be installed in line with the Construction Visual and Landscape management Plan.</p>

ITEM	REQUIREMENT	DOCUMENT REFERENCE
	The Heritage Interpretation Plan must be prepared in consultation with the Heritage Council of NSW (or its delegate), Relevant Councils and Registered Aboriginal Parties, and must be submitted to the Secretary before commencement of construction.	
E23	The Proponent must take all reasonable steps so as not to harm, modify or otherwise impact any Aboriginal object associated with the CSSI except as authorised by this approval	Chapter 5
E24	Before excavation, the Proponent must implement the Aboriginal Cultural Heritage Assessment prepared for the CSSI and included in the PIR. Excavation and/or salvage must be undertaken by a qualified archaeologist in consultation with the Registered Aboriginal Parties for the CSSI.	Section 3.1.2
E25	Where previously unidentified Aboriginal objects are discovered during construction of the CSSI, construction must stop in the vicinity of the affected area and a suitable qualified and experienced Aboriginal heritage expert must be contacted to provide specialist heritage advice, before works recommence. The measures to consider and manage this process must be specified in the Heritage Management sub-plan required by Condition C3 and, where relevant, include registration in the OEH's Aboriginal Heritage Information Management System (AHIMS).	Section 4.1 Chapter 5 Appendix A
E26	This approval does not allow the Proponent to harm, modify, or otherwise impact human remains uncovered during the construction and operation of the CSSI, except in accordance with the Exhumation Management Plan	Chapter 5
E27	An Exhumation Management Plan must be prepared to guide the relocation of recovered human remains. The Exhumation Management Plan must be prepared: (a) in consultation with, and meeting the requirements of, the OEH and NSW Health (b) in accordance with the Guidelines for Management of Human Skeletal Remains (NSW Heritage Office, 1998b) and NSW Health Policy Directive – Exhumation of human remains (December 2013), and other relevant guidelines and standards prepared by the Heritage Council of NSW or OEH. The Exhumation Management Plan must be submitted to the Secretary for information before the commencement of excavation works.	Appendix B
E30	The Proponent must conduct vibration testing before and during vibration generating activities that have the potential to impact on heritage items to identify minimum working distances to prevent cosmetic damage. In the event that the vibration testing and monitoring shows that the preferred values for vibration are likely to be exceeded, the Proponent must review the construction methodology and, if necessary, implement additional mitigation measures.	Section 6.3
E31	The Proponent must seek the advice of a heritage specialist on methods and locations for installing equipment used for vibration, movement and noise monitoring of heritage-listed structures.	Section 6.3
E100	The Proponent must establish a Design Review Panel (DRP) to refine design objectives for place making, public realm and urban and heritage integration applicable to the length of the project and provide advice on the application of the objectives to key design elements in relation to place making, architecture, heritage, urban and landscape design and artistic aspects of the CSSI. The DRP must:	The DRP was previously established by Sydney Metro and would be consulted as

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<b>ITEM</b>	<b>REQUIREMENT</b>	<b>DOCUMENT REFERENCE</b>
	(a) comprise five members who are experts in one of the identified design elements	required during the project.
	(b) include	
	i. the NSW Government Architect as Chair (or their representative)	
	ii. a representative from the Heritage Council	
	(c) meet at least four times a year, or any other timeframe agreed by the DRP	
	(d) keep meeting minutes and a schedule of action items arising from each meeting.	
	Relevant Council(s) and other key stakeholders such as UrbanGrowth NSW and must be invited to participate in DRP meetings to advise on local issues and applicability of design review outcomes as they relate to the local context of each station location.	

## 2.5 CONSTRUCTION ENVIRONMENTAL MANAGEMENT FRAMEWORK

This CHMP has been produced to demonstrate compliance with the Sydney Metro Construction Environmental Management Framework as summarised in Table 2.5.

*Table 2.5: CEMF requirements*

<b>ITEM</b>	<b>REQUIREMENT</b>	<b>DOCUMENT REFERENCE</b>
10.1 (a)	The following heritage management objectives will apply to construction:	-
	i) Embed significant heritage values through any architectural design, education or physical interpretation	Chapter 4 Table 4.1
	ii) Minimise impacts on items or places of heritage value	Chapter 4
	iii) Avoid accidental impacts on heritage items	Appendix A Chapter 4 Table 4.1-4.4
	iv) Maximise worker's awareness of Aboriginal and non-Aboriginal (historic) heritage.	Chapter 4 Section 6.2
10.2 (a)	Principal Contractors will develop and implement a Heritage Management Plan which will include as a minimum:	This CHMP
	i) Evidence of consultation with Registered Aboriginal Parties and the NSW Heritage Council	Section 1.5 Consultation with RAPs not required.
	ii) Identify initiatives that will be implemented for the enhancement of heritage values and minimisation of heritage impacts, including procedures and processes that will be used to implement and document heritage management initiatives	Chapter 4
	iii) The heritage mitigation measures as detailed in the environmental approval documentation	Chapter 4
	iv) The responsibilities of key project personnel with respect to the implementation of the plan	Chapter 4 Section 6.1
	v) Procedures for interpretation of heritage values uncovered through salvage or excavation during detailed design	N/A The Heritage Interpretation Plan (HIP) concluded that the works at Crows Nest are neither in a conservation

ITEM	REQUIREMENT	DOCUMENT REFERENCE
		area or permanently affect heritage buildings.
		The HIP recommends that opportunities to tell the story of the early land holdings and describe the lives and contribution of Berry and Wollstonecraft could be considered in the final station design.
	vi) Procedures for undertaking salvage or excavation of heritage relics or sites (where relevant), consistent with and any recordings of heritage relics prior to works commencing that would affect them	Chapter 5
	vii) Details for the short and/or long term management of artefacts or movable heritage	Chapter 5
	viii) Details of management measures to be implemented to prevent and minimise impacts on heritage items (including further heritage investigations, archival recordings and/or measures to protect unaffected sites during construction works in the vicinity)	Chapter 4
	ix) Procedures for unexpected heritage finds, including procedures for dealing with human remains	Chapter 5 Appendix A
	x) Heritage monitoring requirements	Section 6.3
	xi) Compliance record generation and management	Section 6.7
10.2 (b)	The Contractor's regular inspections will include checking of heritage mitigation measures.	Section 6.3
10.2 (c)	Compliance records will be retained by the Contractor. These will include: <ul style="list-style-type: none"> <li>i) Inspections undertaken in relation to heritage management measures</li> <li>ii) Archival recordings undertaken of any heritage item</li> <li>iii) Unexpected heritage finds and stop work orders</li> <li>iv) Records of any impacts avoided or minimised through design or construction methods.</li> </ul>	Section 6.7
10.3	Examples of heritage mitigation measures include: <ul style="list-style-type: none"> <li>i. Any heritage item not affected by the works will be retained and protected throughout construction</li> <li>ii. During construction undertake professional archaeological investigation, excavation, and reporting of any historical Indigenous heritage sites of state significance which will be affected. Reporting may be completed as construction progresses</li> <li>iii. Undertake archival recordings of all non-Indigenous heritage items affected by the works prior to commencement of works</li> <li>iv. Implement unexpected heritage find procedures for Indigenous and non-Indigenous heritage items.</li> </ul>	Section 4.2 Section 2.2 Chapter 5 Appendix A N/A Chapter 5 Appendix A

## 3 HERITAGE CONTEXT AND POTENTIAL IMPACTS

### 3.1 ABORIGINAL HERITAGE

#### 3.1.1 Existing environment

Evidence of Aboriginal occupation in NSW dates back to around 50,000 to 60,000 years at Lake Mungo (in NSW's southwestern region, about 110 km northeast of Mildura) and up to 30,000 years at Parramatta. Prior to the appropriation of their land by Europeans, Aboriginal people lived in small family or clan groups that were associated with particular territories or places. The language group spoken across Sydney was known as Darug. The Darug language group is thought to have covered the area south from Port Jackson, north from Botany Bay, and west from Parramatta (TfNSW, 2016).

Archaeological and historical records indicate that marine and estuarine resources formed an important part of the subsistence activities of the Aboriginal people that inhabited the Port Jackson area. Shellfish not only formed an important subsistence resource, but were also used as fish-hooks, shafted onto spears, used for repairing spears, and for cutting. Other locally available raw materials, including quartz, were also favoured for cutting edges (TfNSW, 2016).

#### 3.1.2 Potential impacts

Prior to bulk earthworks completed as part of earlier phases of the Crows Nest Integrated Station Development, the site was located on a crest away from major watercourses and was likely to contain shallow soils (associated with Ashfield Shale). Construction of commercial buildings, roads and a large rail cutting is likely to have impacted or removed previous archaeological deposits (TfNSW, 2016).

The site has low archaeological significance as high levels of previous ground disturbance would have impacted any surface or subsurface Aboriginal sites. As the site was located on a sandstone ridge and slope landform with shallow soils, any remnant archaeological deposits that previously existed were likely to be low density and unlikely to represent areas of focus for Aboriginal occupation (TfNSW, 2016).

Given that all soil profiles have been previously removed from the site prior to A W Edwards occupation of the site, no archaeological potential is expected to remain and the requirement for an archaeologist being present during excavation work is made redundant. In the event of an unexpected archaeological find, A W Edwards would proceed in line with the Sydney Metro Unexpected Heritage Finds Procedure and an archaeologist would be engaged to investigate.

### 3.2 NON-ABORIGINAL HERITAGE

#### 3.2.1 Existing environment

Historic plans suggest that the earliest structures in the study area are from the late 19th century associated with the Berry's Estate subdivision (TfNSW, 2016).

The lower North Shore was generally held in large estates until the mid-19th century when subdivision of the area occurred more frequently. After the T1 North Shore Line was completed in 1893, suburban settlement in the area continued. However, due to difficulties crossing the harbour, this was slow (TfNSW, 2016).

As illustrated in Figure 3.1, the project is located within proximity to two local heritage items listed under the North Sydney Local Environment Plan, namely:

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- St Leonards Centre located adjacent to the site on Clarke Lane
- Higgins Buildings located opposite the Pacific Highway on the corner of Hume Street.

The site had the potential to contain archaeological remains associated with late 19th and early 20th century residential subdivision (TfNSW, 2016).

**3.2.2 Potential impacts**

The project would result in negligible indirect impacts to the Higgins Buildings, associated with visual impact. Similarly, the project would result in negligible visual impacts to the St Leonards Centre, however construction works have potential to result in direct impacts to the building if vibration levels are not appropriately managed (TfNSW, 2016).

There was previously a low to moderate potential for archaeological remains at the site associated with historical residential and commercial development of the precinct (TfNSW, 2016).

The excavation of the cut-and-cover station resulted in the complete removal of archaeological remains within the station box footprint. As such, given that all soil profiles have been previously removed from the site prior to A W Edwards occupation of the site, no archaeological potential is expected to remain.

Figure 3.1: Heritage constraints



## 4 HERITAGE MANAGEMENT

### 4.1 ABORIGINAL HERITAGE

Table 4.1 outlines the REMMs to be implemented for the project to minimise the potential for impacts to unidentified Aboriginal objects.

*Table 4.1: Aboriginal heritage REMMs*

REFERENCE	MITIGATION MEASURE	TIMING	RESPONSIBILITY
AH1	Aboriginal stakeholder consultation would be carried out in accordance with the NSW Office of Environment and Heritage's Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010.	Pre-construction	A W Edwards
AH2	The cultural heritage assessment report would be implemented.	Pre-construction	A W Edwards
AH4	Appropriate Aboriginal heritage interpretation would be incorporated into the design for the project in consultation with Aboriginal stakeholders.	Pre-construction	Sydney Metro

Table 4.2 outlines the mitigation and management measures to be implemented by A W Edwards during construction of the project to minimise the potential for impacts to unidentified Aboriginal objects.

*Table 4.2: Aboriginal heritage mitigation and management measures*

MITIGATION MEASURE	TIMING	RESPONSIBILITY
Implement the Sydney Metro Unexpected Heritage Finds Procedure (Appendix A) in the event that unexpected cultural Aboriginal heritage finds are encountered during construction, including human remains.	Construction	All personnel and contractors
Before the start of construction, all personnel working on site will be trained regarding the Sydney Metro Unexpected Finds Procedure and about their responsibilities in accordance with this CHMP. All construction staff would receive training in the recognition of Aboriginal cultural heritage material. This training would include information such as the importance of Aboriginal cultural heritage material and places to the Aboriginal community, as well as the legal implications of removal, disturbance and damage to any Aboriginal cultural heritage material and sites identified during the works.	Pre-construction Construction	Environment & Planning Manager

### 4.2 NON-ABORIGINAL HERITAGE

Table 4.3 outlines the REMMs to be implemented for the project to minimise the potential for impacts to surrounding items of heritage significance.

**Construction Heritage Management Plan***Table 4.3: Non-Aboriginal heritage REMMs*

<b>REFERENCE</b>	<b>MITIGATION MEASURE</b>	<b>TIMING</b>	<b>RESPONSIBILITY</b>
NAH2	The archaeological research design would be implemented. Significant archaeological findings would be considered for inclusion in heritage interpretation (as per NAH8) for the project and be developed in consultation with the relevant local council.	Pre-construction	A W Edwards
NAH3	An Exhumation Policy and Guideline would be prepared and implemented. It would be developed in accordance with the Guidelines for Management of Human Skeletal Remains (NSW Heritage Office, 1998b) and NSW Health Policy Directive – Exhumation of human remains (December 2013). It would be prepared in consultation with NSW Heritage Office and NSW Health.	Pre-construction	A W Edwards
NAH8	Appropriate heritage interpretation would be incorporated into the design for the project in accordance with the NSW Heritage Manual, the NSW Heritage Office's Interpreting Heritage Places and Items: Guidelines (August 2005), and the NSW Heritage Council's Heritage Interpretation Policy.	Pre-construction	Sydney Metro

Table 4.4 outlines the mitigation and management measures to be implemented by A W Edwards during construction of the project to minimise the potential for impacts to surrounding items of heritage significance.

*Table 4.4: Non-Aboriginal heritage mitigation and management measures*

<b>MITIGATION MEASURE</b>	<b>TIMING</b>	<b>RESPONSIBILITY</b>
Implement the Sydney Metro Unexpected Heritage Finds Procedure (Appendix A) in the event that any potential archaeological objects of non-Aboriginal significance are identified during construction.	Construction	All personnel and contractors
Before the start of construction, all personnel working on site will be trained regarding the Sydney Metro Unexpected Finds Procedure and about their responsibilities in accordance with this CHMP. All construction staff would receive training in the recognition of non-Aboriginal heritage material including potential relics which may be encountered. This training would include information such as the legal implications of removal, disturbance and damage to any relics identified during the works.	Pre-construction Construction	Environment & Planning Manager
All construction personnel would be briefed on the presence and significance of local heritage items within proximity to the project, along with the measures required to ensure the protection of any items of heritage significance for the duration of the works.	Pre-construction Construction	Environment & Planning Manager
Carry out property condition surveys of heritage listed buildings within 50 metres of the project site and/or transportation routes.	Pre-construction	Project Engineer

**Construction Heritage Management Plan**

<b>MITIGATION MEASURE</b>	<b>TIMING</b>	<b>RESPONSIBILITY</b>
Structural and vibration monitoring may be required in accordance with the CNVMP.	Construction	All personnel and contractors
Issues requiring management during construction, as identified through ongoing environmental risk analysis, will be managed.	Construction	Environment & Planning Manager
Sydney Metro's Exhumation Management Plan will be followed in the event of the discovery of human skeletal remains during construction.	Construction	Environment & Planning Manager

**4.3 HERITAGE INTERPRETATION PLAN**

A Heritage Interpretation Plan (HIP) has been prepared by Sydney Metro and identifies the key Aboriginal and non-Aboriginal heritage values and stories of heritage items and heritage conservation areas affected by the CSSI. The Heritage Interpretation Plan must inform the Station Design and Precinct Plan referred to in Condition E101.

The HIP outlines site specific heritage interpretation responses relative to the potential impacts to Aboriginal and non-Aboriginal heritage. Notably, Section 5.3 of the HIP states the interpretation response for Crows Nest station is to tell the story of the early land holdings and describe the lives and contribution of Berry and Wollstonecraft. Construction of Crows Nest Station is a construct only contract, therefore the incorporation of heritage values into the design of the station is outside the scope of this CHMP.

## 5 PROCEDURES

Sydney Metro have prepared an Unexpected Heritage Finds Procedure (refer to Appendix A) to provide a method for managing unexpected heritage items (both Aboriginal and non-Aboriginal) that are discovered during construction of the project. The procedure meets the requirements of the CoA E19 and E25. The procedure outlines methods which take all reasonable steps so as not to harm, modify or otherwise impact any Aboriginal object associated with the CSSI.

As required by CoA E20, in the event that a potential relic(s) is/are discovered, construction will cease in the affected area and an Excavation Director notified to assess the significance level of the find(s). The Excavation Director will provide mitigation advice according to the significance level and the impact proposed. Based on the find and advice from the Excavation Director, an Archaeological Relics Management Plan (ARMP) will be produced in the event unexpected relics of State significance are discovered during construction. The ARMP will be prepared in consultation with the Heritage Council of NSW (or its delegate) to outline measures to be implemented to avoid and/or minimise harm to and/or salvage the relic of State significance. Construction in the vicinity of the discovery will not recommence until the requirements of the ARMP have been implemented, in consultation with the Excavation Director. This process will be carried out in accordance with the Sydney Metro Unexpected Heritage Find Procedure (Appendix A).

Sydney Metro will notify the Secretary in accordance with CoA E20 in the event of any relic of State significance being identified and detail the outcome of consultation on the ARMP with the Heritage Council of NSW.

### 5.1 UNEXPECTED HERITAGE FIND PROCEDURE

A W Edwards acknowledges Condition E10, that it must not destroy, modify or otherwise physically affect any Heritage item not identified in documents referred to in Project Planning Approval Condition A1.

The planning approval defines an 'Unexpected heritage find' as:

*A potential heritage item discovered unexpectedly (usually during construction) but not identified in the EIS or PIR, or Archaeological Method Statements prepared under Condition E17 or E24 where assessment is required to determine if the item is a relic or is an Aboriginal object.*

*Unexpected heritage finds do not include human remains.*

If unexpected finds (Aboriginal or non-Aboriginal), archaeological features or unidentified Aboriginal objects are exposed during construction of the project, all construction activities will cease immediately in the affected area and the Sydney Metro Unexpected Heritage Finds Procedure (Appendix A) would be implemented.

Human remains are not expected to be unearthed during the project. As such, in accordance with the note for CoA E27, it is highly likely that any human remains uncovered as part of the work would be under the jurisdiction of the NSW State Coroner and must be reported to NSW Police immediately. If any human remains are located NSW Police will be immediately notified. If required, Sydney Metro's Exhumation Management Plan (refer to Appendix B), which incorporates the Exhumation Policy and Guideline referred to in REMM NAH3, will be implemented.

## **6 COMPLIANCE MANAGEMENT**

### **6.1 ROLES AND RESPONSIBILITIES**

The overall roles and responsibilities for A W Edwards personnel are outlined in Chapter 4 of the CEMP. Specific responsibilities for the implementation of mitigation measures specific to heritage management are detailed in Chapter 4 of this CHMP.

### **6.2 TRAINING**

All employees, contractors and staff working on site will undergo site induction training relating to Aboriginal and non-Aboriginal heritage management issues, including:

- Requirements of this CHMP
- Relevant legislation
- The location of known heritage constraints within proximity to the works, including establishment of exclusion or 'no-go' zones
- Roles and responsibilities for heritage management
- Procedure to follow in the event of an unexpected heritage item find or discovery of human remains during construction works
- Disciplinary action around non-compliance with this CHMP.

Further details regarding staff induction and training are outlined in Chapter 6 of the CEMP.

### **6.3 MONITORING AND INSPECTIONS**

General requirements and responsibilities in relation to inspections and compliance monitoring are documented in Chapter 9 of the CEMP. Routine environmental inspections will include determination of compliance with this CHMP.

To ensure the St Leonards Centre is sufficiently protected during the project, vibration monitoring may be required in accordance with the CNVMP as vibration from construction work has the potential to impact on the fabric of the heritage item.

Where activities may result in impacts to heritage buildings, a review of the construction activities will be undertaken by the Planning & Environment Manager to determine the appropriate monitoring. Input from a heritage specialist and vibration consultant may also be required. The location of monitoring equipment will be documented on the ECM.

### **6.4 NON-CONFORMANCES**

Non-conformances will be identified, managed and documented in accordance with Section 9.4 of the CEMP.

### **6.5 COMPLAINTS**

Complaints will be recorded and addressed in accordance with Section 7.4.2 of the CEMP and the Community and Stakeholder Engagement Plan.

### **6.6 AUDITS**

Audits (both internal and external) will be undertaken to assess the effectiveness of management and mitigation measures, compliance with this CHMP, planning approval conditions and relevant guidelines. Audit requirements are detailed in Section 9.3 of the CEMP.

## **6.7 RECORD MANAGEMENT**

Compliance records would be maintained as detailed in Section 11.2 of the CEMP and may include the following aspects regarding heritage management:

- Inspections undertaken in relation to heritage management measures
- Archival recordings undertaken of any heritage item
- Documentation and assessment reporting of any unexpected heritage finds
- Records of any impacts avoided or minimised through design or construction method
- Vibration monitoring data.

The above records will be made available to Sydney Metro.

## **7 REVIEW AND IMPROVEMENT**

The CHMP will be reviewed annually to ensure compliance with legislative requirements and its suitability and effectiveness for the project.

The review may be in the form of:

- A formal management review
- A second party audit
- Inclusion as a separate item at a site meeting.

The Planning & Environmental Manager may review and update the CHMP more regularly where:

- Significant changes in design or construction activities occur
- Where targets are not being achieved
- In response to lessons learned, audits and non-conformity reports.

Should the document review process identify any issues or items within the documents that need updating, it is the responsibility of A W Edwards to prepare the revised documents. The revised document will then be issued to Sydney Metro and the independent ER for endorsement of the changes prior to implementation. Updates to the CHMP may be approved by the independent ER where the amendments are deemed to be minor, significant changes will be consulted on and approved by the Secretary.

## APPENDIX A – UNEXPECTED HERITAGE FIND PROCEDURE



# Sydney Metro Unexpected Heritage Finds Procedure

[SM-18-00105232]

Sydney Metro Integrated Management System (IMS)

<b>Applicable to:</b>	Sydney Metro
<b>Document Owner:</b>	Author/Document owner
<b>System Owner:</b>	IMS element owner (generally a member of the Executive)
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## 1. Purpose

This procedure is applicable to the Sydney Metro program of works including major projects delivered under Critical State Significant Infrastructure Planning Approvals (CSSI), early CSSI minor and enabling works and works that are subject to the NSW Heritage Act (1977) including s57/139 and s60/140 exemptions and permit approvals.

This procedure has been prepared for Sydney Metro programs to provide a method for managing unexpected heritage items (both Aboriginal and non-Aboriginal) that are discovered during preconstruction (pre-Construction Heritage Manage Plan approval), construction phases (post Construction Heritage Manage Plan approval) and for works subject to the NSW Heritage Act (1977).

An ‘unexpected heritage find’ can be defined as any unanticipated archaeological discovery, that has not been previously assessed or is not covered by an existing approval under the Heritage Act 1977 (Heritage Act) or National Parks and Wildlife Act 1974 (NPW Act).

In NSW, there are strict laws to protect and manage heritage objects and relics. As a result, appropriate heritage management measures need to be implemented to minimise impacts on heritage values; ensure compliance with relevant heritage notification and other obligations; and to minimise the risk of penalties to individuals, Sydney Metro and its contractors. This procedure includes Sydney Metro’s heritage notification obligations under the Heritage Act, NPW Act and the Coroner’s Act 2009 and the requirements of the conditions of approval (CoA) issued by NSW Department of Planning and Environment.

Note that a Contractor must not amend the Sydney Metro Unexpected Finds Procedure without the prior approval of Sydney Metro.

It should be noted that this procedure must be read in conjunction with the relevant CSSI conditionals of approval (if applicable), the contract documents and other plans including the Sydney Metro Exhumation Management Plan and procedures developed by the contractor during the delivery of the Sydney Metro works.

### 1.1. Legislation that does not apply

The following authorisations are not required for Sydney Metro approved Critical State Significant Infrastructure (and accordingly the provisions of any Act that prohibits an activity without such an authority do not apply):

- Division 8 of Part 6 of the Heritage Act 1977 does not apply to prevent or interfere with the carrying out of approved State significant infrastructure.
- An approval under Part 4, or an excavation permit under section 139, of the Heritage Act 1977,
- An Aboriginal heritage impact permit under section 90 of the National Parks and Wildlife Act 1974,

This document provides relevant background information in Section 4, followed by the technical procedure in Sections 6 and 7. Associated guidance referred to in the procedure can be found in Appendices 1-6.

## 2. Scope

Despite earlier investigation, unexpected heritage items may still be discovered during works on a Sydney Metro site. When this happens, this procedure must be followed. This procedure provides direction on when to stop work, where to seek technical advice and how to notify the regulator, if required.

This procedure **applies to**:

- the discovery of any unexpected heritage item, relic or object, where the find is not anticipated in an approved Archaeological Assessment Design Report (AARD) or Archaeological Method Statements (AMS) that are prepared as part of the planning approval for that project.

This procedure must be followed by all Sydney Metro staff, contractors, subcontractors or any person undertaking works for Sydney Metro. It includes references to some of the relevant legislative and regulatory requirements, but is not intended to replace them.

This procedure **does not apply** to:

- The discovery and disturbance of heritage items as a result of investigations being undertaken in accordance with the Office of Environment and Heritage's (OEH) *Code of Practice for Archaeological Investigations of Aboriginal Objects in NSW 2010*<sup>1</sup>; an Aboriginal Heritage Impact Permit (AHIP) issued under the NPW Act; or a permit approval issued under the Heritage Act.
- the discovery and disturbance of heritage items as a result of construction related activities, where the disturbance is permissible in accordance with an AHIP; or an approval issued under the Heritage Act or CSSI /CSSD planning approval;

## 3. Definitions

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

	Definitions
<b>AHIP</b>	Aboriginal Heritage Impact Permit
<b>Aboriginal object</b>	An Aboriginal object is any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains. An Aboriginal object may include a shell midden, stone tools, bones, rock art, Aboriginal-built fences and stockyards, scarred trees and the remains of fringe camps.
<b>CEMP</b>	Construction Environmental Management Plan
<b>CoA</b>	Conditions of Approval
<b>CSSD</b>	Critical State Significant Development
<b>CSSI</b>	Critical State Significant Infrastructure
<b>EP&amp;A Act</b>	<b>NSW Environmental Planning and Assessment Act 1979</b>
<b>Excavation</b>	A person that complies with the Heritage Council of NSW's Criteria for Assessment of

<sup>1</sup> An act carried out in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* as published by the Department in the Gazette on 24 September 2010 is excluded from the definition of **harm** an object or place in section 5 (1) of the NPW Act.

<b>Director</b>	Excavation Directors (July 2011) to oversee and advise on matters associated with historic archaeology. Note this applies to a specific project/program and requires consultation and/or approval by OEH.
<b>Heritage Act</b>	NSW <i>Heritage Act 1977</i>
<b>NPW Act</b>	NSW <i>National Parks and Wildlife Act 1974</i>
<b>OEH</b>	Office of Environment and Heritage
<b>SM</b>	Sydney Metro
<b>Relic (non-Aboriginal heritage)</b>	<p>A relic means any deposit, artefact, object or material evidence that:</p> <ul style="list-style-type: none"> <li>a) relates to the settlement of the area that comprises NSW, not being Aboriginal settlement, and</li> <li>b) is of State or local significance.</li> </ul> <p>A relic may include items such as bottles, utensils, remnants of clothing, crockery, personal effects, tools, machinery and domestic or industrial refuse.</p>
<b>TfNSW</b>	Transport for New South Wales
<b>Work (non-Aboriginal heritage)</b>	Archaeological features such as historic utilities or buried infrastructure that provide evidence of prior occupations such as former rail or tram tracks, timber sleepers, kerbing, historic road pavement, fences, culverts, historic pavement, buried retaining walls, cisterns, conduits, sheds or building foundations, but are also subject to assessment by the Excavation Director to determine its classification

## 4. Types of unexpected heritage items and corresponding statutory protections

The roles of project, field and environmental personnel (including construction contractors) are critical to the early identification and protection of unexpected heritage items.

**Appendix 1** illustrates the wide range of heritage discoveries found on Sydney Metro projects and provides a useful photographic guide. Subsequent to confirmation of a heritage discovery it must then be identified and assessed by Excavation Director. An ‘unexpected heritage item’ means any unanticipated discovery of an actual or potential heritage item, for which Sydney Metro does not have approval to disturb<sup>2</sup> and/or have an existing management process in place.

These discoveries are categorised as either:

- (a) Aboriginal objects
- (b) Historic (non-Aboriginal) heritage items
- (c) Human skeletal remains.

The relevant legislation that applies to each of these categories is described below and is also addressed in the Sydney Metro Exhumation Management Plan).

### 4.1. Aboriginal objects

The NPW Act protects Aboriginal objects which are defined as:

<sup>2</sup> Disturbance is considered to be any physical interference with the item that results in it being destroyed, defaced, damaged, harmed, impacted or altered in any way (this includes archaeological investigation activities).

*“any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains”<sup>3</sup>.*

Examples of Aboriginal objects include stone tool artefacts, shell middens, axe grinding grooves, pigment or engraved rock art, burials and scarred trees.

**IMPORTANT!**

**All Aboriginal objects, regardless of significance, are protected under law.**

If any impact is expected to an Aboriginal object, an AHIP is usually required from OEH. Also, when a person becomes aware of an Aboriginal object they must notify the Director-General of OEH about its location<sup>4</sup>. Assistance on how to do this is provided in Section 7 (Step 5).

## 4.2. Historic heritage items

Historic (non-Aboriginal) heritage items may include:

- Archaeological ‘relics’
- Other historic items (i.e. works, structures, buildings or movable objects).

### 4.2.1. Archaeological relics

The Heritage Act protects *relics* which are defined as:

*“any deposit, artefact, object or material evidence that relates to the settlement of the area that comprises NSW, not being Aboriginal settlement; and is of State or local heritage significance”<sup>5</sup>.*

Relics are archaeological items of local or state significance which may relate to past domestic, industrial or agricultural activities in NSW, and can include bottles, remnants of clothing, pottery, building materials and general refuse.

**IMPORTANT!**

**All relics are subject to statutory controls and protections.**

If a relic is likely to be disturbed, a heritage approval is usually required from the NSW Heritage Council<sup>6</sup>. Also, when a person discovers a relic they must notify the NSW Heritage Council of its location<sup>7</sup>.

### 4.2.2. Other historic items

Some historic heritage items are not considered to be ‘relics’, but are instead referred to as works, buildings, structures or movable objects. Examples of these items that may be encountered include culverts, historic pavements, retaining walls, tramlines, rail tracks, timber sleepers, cisterns, fences, sheds, buildings and conduits. Although an approval under the Heritage Act may not be required to disturb these items, their discovery must be managed in accordance with this procedure.

<sup>3</sup> Section 5(1) NPW Act.

<sup>4</sup> This is required under section 89(A) of the NPW Act and applies to all Sydney Metro projects.

<sup>5</sup> Section 4(1) Heritage Act.

<sup>7</sup> This is required under section 146 of the Heritage Act and applies to all Sydney Metro projects.

As a general rule, an archaeological relic requires discovery or examination through the act of excavation. For an unexpected find an archaeological excavation permit under section 140 of the Heritage Act may be required to do this. In contrast, ‘other historic items’ either exist above the ground surface (e.g. a shed), or they are designed to operate and exist beneath the ground surface (e.g. a culvert).

### 4.3. Human skeletal remains

Also refer to Sydney Metro Exhumation Management Plan for a more detailed explanation of the approval processes.

Human skeletal remains can be identified as either an Aboriginal object or non-Aboriginal relic depending on ancestry of the individual (Aboriginal or non-Aboriginal) and burial context (archaeological or non-archaeological). Remains are considered to be archaeological when the time elapsed since death is suspected of being 100 years or more. Depending on ancestry and context, different legislation applies.

As a simple example, a pre-European settlement archaeological Aboriginal burial would be protected under the NPW Act, while a historic (non-Aboriginal) archaeological burial within a cemetery would be protected under the Heritage Act. For a non-Aboriginal archaeological burial, the relevant heritage approval and notification requirement described in Section 3.1 would apply. In addition to the NPW Act, finding Aboriginal human remains also triggers notification requirements to the Commonwealth Minister for the Environment under section 20(1) of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Commonwealth).

#### **IMPORTANT!**

**All human skeletal remains are subject to statutory controls and protections.**

All bones must be treated as potential human skeletal remains and work around them must stop while they are protected and investigated urgently.

However, where it is suspected that less than 100 years has elapsed since death, the human skeletal remains come under the jurisdiction of the State Coroner and the Coroners Act 2009 (NSW). Such a case would be considered a ‘reportable death’ and under legal notification obligations set out in section 35(2); a person must report the death to a police officer, a coroner or an assistant coroner as soon as possible. This applies to all human remains less than 100 years old<sup>8</sup> regardless of ancestry (i.e. both Aboriginal and non-Aboriginal remains). Public health controls may also apply.

Guidance on what to do when suspected human remains are found is provided in Appendix 5.

## 5. Legislative Requirements

Table 1 identifies some of the relevant legislation/regulations for the protection of heritage and the management of unexpected heritage finds in NSW. It should be noted that significant

<sup>8</sup> Under section 19 of the *Coroners Act 2009*, the coroner has no jurisdiction to conduct an inquest into reportable death unless it appears to the coroner that (or that there is reasonable cause to suspect that) the death or suspected death occurred within the last 100 years.

penalties exist for breaches of the listed legislation as a result of actions that relate to unauthorised impacts on heritage items. Further, it is noted that heritage that has been assessed and is being managed in accordance with relevant statutory approvals(s) is exempt from these offences.

To avoid breaches of legislation, it is important that Sydney Metro and its contractors are aware of their statutory obligations under relevant legislation and that appropriate control measures are in place to ensure that unexpected heritage items are appropriately managed during construction. Contractors/Alliances will need to ensure that they undertake their own due diligence to identify any other legislative requirements that may apply for a given project.

**Table 1 Legislation and guidelines for management of unexpected heritage finds**

Relevant Requirement	Objectives and offences
<b><i>Environmental Planning and Assessment Act 1979 (EP&amp;A Act)</i></b>	Section 115ZB Giving of approval by Minister to carry out a project.
<b><i>Environmental Planning and Assessment Act 1979 (EP&amp;A Act)</i></b>	Requires heritage to be considered within the environmental impact assessment of projects.  This guideline is based on the premise that an appropriate level of Aboriginal and non-Aboriginal cultural heritage assessment and investigations and mitigation have already been undertaken under the relevant legislation, including the EP&A Act, during the assessment and determination process. It also assumes that appropriate mitigation measures have been included in the conditions of any approval.
<b><i>Heritage Act 1977 (Heritage Act)</i></b>	The Heritage Act provides for the care, protection and management of heritage items in NSW.  Under section 139, it is an offence to disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed, unless the disturbance or excavation is carried out in accordance with an excavation permit issued by the Heritage Division of the OEH.  Under the Act, a relic is defined as: <i>‘any deposit, artefact, object or material evidence that: (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and (b) is of State or local heritage significance.’</i>  A person must notify the Heritage Division of OEH, if a person is aware or believes that they have discovered or located a relic (section 146). Penalties for offences under the Heritage Act can include six months imprisonment and/or a fine of up to \$1.1million.

Relevant Requirement	Objectives and offences
<p><b>National Parks and Wildlife Act 1974 (NPW Act)</b></p>	<p>The NPW Act provides the basis for the care, protection and management of Aboriginal objects and places in NSW.</p> <p>An Aboriginal object is defined as: <i>‘any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains’.</i></p> <p>An ‘Aboriginal place’ is an area declared by the Minister administering the Act to be of special significance with respect to Aboriginal culture. An Aboriginal place does not have to contain physical evidence of occupation (such as Aboriginal objects).</p> <p>Under section 87 of the Act, it is an offence to harm or desecrate an Aboriginal object or place. There are strict liability offences. An offence cannot be upheld where the harm or desecration was authorised by an AHIP and the permit’s conditions were not contravened. Defences and exemptions to the offence of harming an Aboriginal object or Aboriginal place are provided in section 87, 87A and 87B of the Act.</p> <p>A person must notify OEHL if a person is aware of the location of an Aboriginal object.</p> <p>Penalties for some of the offences can include two years imprisonment and/or up to \$550,000 (for individuals), and a maximum penalty of \$1.1 million (for corporations).</p>

## 6. Unexpected heritage finds protocol

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

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

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

- remains of rail infrastructure including buildings, footings, stations, signal boxes, rail lines, bridges and culverts
- remains of other infrastructure including sandstone or brick buildings, wells, cisterns, drainage services, conduits, old kerbing and pavement, former road surfaces, timber and stone culverts, bridge footings and retaining walls
- artefact scatters including clustering of broken and complete bottles, glass, ceramics, animal bones and clay pipes
- Archaeological human skeletal remains.

## 6.2. Managing unexpected heritage finds

In the event that an unexpected heritage find (the find) is encountered on a Sydney Metro site, the flowchart in Figure 1 must be followed. There are eight steps in the procedure. These steps are summarised in Figure 1 and explained in detail in Table 2.

Figure 1 Overview of steps to be undertaken on the discovery of an unexpected heritage item

### IMPORTANT!

Sydney Metro may have approval to impact on certain heritage items during construction. If you think that you may have discovered a heritage item and you are unsure whether an approval is in place or not, **STOP** works and follow this procedure.

Table 2 Specific tasks to be implemented following the discovery of an unexpected heritage item

Step	Task	Responsibility	Guidance and tools
<b>1</b>	<b>Stop work, protect item and inform the Excavation Director</b>		
1.1	Stop all work in the immediate area of the item and notify the Project Manager	Contractor/ Supervisor	<b>Appendix 1</b> (Identifying Unexpected Heritage items)
1.2	Establish a 'no-go zone' around the item. Use high visibility fencing, where practical. No work is to be undertaken within this zone until further investigations are completed and, if required, appropriate approvals are obtained. Inform all site personnel about the no-go zone.	Project Manager/ Contractor/ Supervisor	
1.3	Inspect, document and photograph the item.	Archaeologist and or Excavation Director	<b>Appendix 2</b> (Unexpected Heritage Item Recording Form) <b>Appendix 3</b> (Photographing Unexpected Heritage items)
1.4	Is the item likely to be bone? If <b>yes</b> , follow the steps in Appendix 4 – 'Uncovering bones'. Where it is obvious that the bones are human remains, you must notify the local police by telephone immediately. They may take command of all or part of the site. Also refer to the Sydney Metro Exhumation Management Plan If <b>no</b> , proceed to next step.	Excavation Director	<b>Appendix 4</b> (Uncovering Bones)

Step	Task	Responsibility	Guidance and tools
1.5	Inform the Excavation Director of the item and provide as much information as possible, including photos and completed form ( <b>Appendix 2</b> ). Where the project has a Sydney Metro Environmental Manager, the Environmental Manager should be involved in the tasks/process.	Contractors Project Manager	
1.6	Can the works avoid further disturbance to the item? Project Manager to confirm with Sydney Metro's Environment Manager. Complete the remaining tasks in Step 1.	Contractors Project Manager	
1.7	Excavation Director and Sydney Metro Environmental Manager to advise the Project Manager whether Sydney Metro has approval to impact on the 'item'. Does Sydney Metro have an approval or permit to impact on the item? If <b>yes</b> , work may recommence in accordance with that approval or permit. There is no further requirement to follow this procedure. If <b>no</b> , continue to next step.	Contractors Project Manager	
1.8	Has the 'find' been damaged or harmed? If <b>yes</b> , record the incident in the Incident Management System Implement any additional reporting requirements related to the planning approval and CEMP, where relevant.	Contractors Project Manager, Excavation Director	
<b>2</b>	<b>Contact and engage an archaeologist and/or an Aboriginal heritage consultant</b>		
2.1	If an archaeologist and/or Aboriginal heritage consultant has been previously appointed for the project, contact them to discuss the location and extent of the item and arrange a site inspection, if required. The project CEMP may contain contact details of the archaeologist/Aboriginal heritage consultant. Where there is no project archaeologist engaged for the works engage a suitably qualified consultant to assess the find: if the find is a non-Aboriginal deposit, engage a suitably qualified and experienced archaeological consultant if the find is likely to be an Aboriginal object, engage an Aboriginal heritage consultant to assess the find.	Contractors Project Manager, Excavation Director	
2.2	If requested, provide photographs of the item taken during Step 1.3 to the archaeologist or Aboriginal heritage consultant.	Contractors Project Manager, Excavation Director	<b>Appendix 3</b> (Photographing Unexpected Heritage items)

Step	Task	Responsibility	Guidance and tools
<b>3</b>	<b>Preliminary assessment and recording of the find</b>		
3.1	In a minority of cases, the archaeologist/Aboriginal heritage consultant may determine from the photographs that no site inspection is required because no heritage constraint exists for the project (e.g. the item is not a 'relic', a 'heritage item' or an 'Aboriginal object'). Any such advice should be provided in writing (e.g. via email or letter with the consultant's name and company details clearly identifiable) to the Sydney Metro Project Manager.	Archaeologist/ Aboriginal heritage consultant/ Excavation Director	Proceed to Step 8
3.2	Arrange site access for the archaeologist/Aboriginal heritage consultant to inspect the item as soon as practicable. In the majority of cases a site inspection is required to conduct a preliminary assessment.	Contractors Project Manager, Excavation Director	
3.3	Subject to the archaeologist/Aboriginal heritage consultant's assessment, work may recommence at a set distance from the item. This is to protect any other archaeological material that may exist in the vicinity, which may have not yet been uncovered. Existing protective fencing established in Step 1.2 may need to be adjusted to reflect the extent of the newly assessed protective area. No works are to take place within this area once established.	Archaeologist/ Aboriginal heritage consultant Contractors Project Manager, Excavation Director	
3.4	The archaeologist/Aboriginal heritage consultant may provide advice after the site inspection and preliminary assessment that no heritage constraint exists for the project (e.g. the item is not a 'relic' or a 'heritage item' or an 'aboriginal item'. Any such advice should be provided in writing (e.g. via email or letter with the consultant's name and company details clearly identifiable) to the Metro Project Manager.  Note that :  a relic is evidence of past human activity which has local or State heritage significance. It may include items such as bottles, utensils, remnants of clothing, crockery, personal effects, tools, machinery and domestic or industrial refuse  an Aboriginal object may include a shell midden, stone tools, bones, rock art or a scarred tree  a "work", building or standing structure may include tram or train tracks, kerbing, historic road pavement, fences, sheds or building foundations.	Archaeologist/ Aboriginal heritage consultant/ Contractors Project Manager, Excavation Director	Proceed to Step 8 Refer to <b>Appendix 1</b> (Identifying heritage items)

Step	Task	Responsibility	Guidance and tools
3.5	Where required, seek additional specialist technical advice (such as a forensic or physical anthropologist to identify skeletal remains). The archaeologist/Aboriginal heritage consultant can provide contacts for such specialist consultants.	Excavation Director Archaeologist	
3.6	Where the item has been identified as a 'relic' or 'heritage item' or an 'Aboriginal object' the archaeologist should formally record the item.	Archaeologist/ Aboriginal heritage consultant	
3.7	OEH (Heritage Division for non-Aboriginal relics and Planning and Aboriginal Heritage Section for Aboriginal objects) can be notified informally by telephone at this stage by the Sydney Metro Environmental Manager Any verbal conversations with regulators must be noted on the project file for future reference.	Contractors Project Manager, Excavation Director	
<b>4</b>	<b>Section 4 not used</b>		
<b>5</b>	<b>Notify the regulator, if required.</b>		
5.1	Based on the findings of the archaeological or heritage management plan and corresponding legislative requirements, is the find required to be notified to OEH and the Secretary? If <b>no</b> , proceed directly to Step 6 If <b>yes</b> , proceed to next step.	Sydney Metro Environmental Manager Excavation Director	
5.2	If notification is required, complete the template notification letter, including the archaeological/heritage management plan and other relevant supporting information and forward to the Sydney Metro Principal Manager Sustainability Environment and Planning (Program) for signature.	Sydney Metro Environmental Manager Excavation Director	<b>Appendix 6</b> (Template Notification Letter)
5.3	Forward the signed notification letter to OEH and the Secretary.  Informal notification (via a phone call or email) to OEH prior to sending the letter is appropriate. The archaeological or heritage management plan and the completed site recording form (Appendix 2) must be submitted with the notification letter (for both Aboriginal objects and non-Aboriginal relics). For Part 5.1 projects, the Department of Planning and Environment must also be notified.		

Step	Task	Responsibility	Guidance and tools
5.4	A copy of the final signed notification letter, archaeological or heritage management plan and the site recording form is to be kept on file and a copy sent to the Sydney Metro Project Manager.	Contractors Project Manager, Excavation Director	
<b>6</b>	<b>Implement archaeological or heritage management plan</b>		
6.1	Modify the archaeological or heritage management plan to take into account any additional advice resulting from notification and discussions with OEH.	Contractors Project Manager, Excavation Director	
6.2	Implement the archaeological or heritage management plan. Where impact is expected, this may include a formal assessment of significance and heritage impact assessment, preparation of excavation or recording methodologies, consultation with Registered Aboriginal Parties, obtaining heritage approvals etc., if required.	Contractors Project Manager, Excavation Director	
6.3	Where heritage approval is required contact the Sydney Metro Environment Manager for further advice and support material. Please note there are time constraints associated with heritage approval preparation and processing.	Contractors Project Manager, Excavation Director	
6.4	Assess whether heritage impact is consistent with the project approval or if project approval modification is required from the Department of Planning and Environment.	, Excavation Director/Sydney Metro Environmental Manager	
6.5	Where statutory approvals (or project approval modification) are required, impact upon relics and/or Aboriginal objects must not occur until heritage approvals are issued by the appropriate regulator.	Contractors Project Manager, Excavation Director	
6.6	Where statutory approval is not required but where recording is recommended by the archaeologist/Aboriginal heritage consultant, sufficient time must be allowed for this to occur.	Contractors Project Manager, Excavation Director	
6.7	Ensure short term and permanent storage locations are identified for archaeological material or other heritage material removed from site, where required. Interested third parties (e.g. museums, local Aboriginal land councils, or local councils) should be consulted on this issue. Contact the archaeologist or Aboriginal heritage consultant for advice on this matter, if required.	Contractors Project Manager, Excavation Director	
<b>7</b>	<b>Section 7 Not Used</b>		

Step	Task	Responsibility	Guidance and tools
<b>8</b>	<b>Resume work</b>		
8.1	Seek written clearance to resume project work from the project Excavation Director/Archaeologist/Aboriginal heritage consultant. Clearance would only be given once all archaeological excavation and/or heritage recommendations and approvals (where required) are complete. Resumption of project work must be in accordance with the all relevant project/heritage approvals/determinations.	Contractors Project Manager, Excavation Director	
8.2	If required, ensure archaeological excavation/heritage reporting and other heritage approval conditions are completed in the required timeframes. This includes artefact retention repositories, conservation and/or disposal strategies.	Contractors Project Manager, Excavation Director	
8.3	Deleted		
8.4	If additional unexpected items are discovered this procedure must begin again from Step 1.	All	

## 7. Responsibilities

Table 3 Roles and Responsibilities

Role	Responsibility or role under this guideline
<b>Contractor / Supervisor</b>	Stop work immediately when an unexpected heritage find is encountered. Cordon off area until Environmental Manager /Excavation Director advises that work can recommence.
<b>Contractor or Environment Manager</b>	Manage the process of identifying, protecting and mitigating impacts on the 'find'. Liaise with Sydney Metro Project Manager and Environment Manager and assist the archaeologist/Aboriginal heritage consultant with mitigation and regulatory requirements. Complete Incident Report and review CEMP for any changes required. Propose amendments to the CEMP if any changes are required.
<b>Contractor's or Project Heritage Advisor or Consultant</b>	Provide expert advice to the Sydney Metro Environment Manager on 'find' identification, significance, mitigation, legislative procedures and regulatory requirements.
<b>Environmental Representative</b>	Independent environmental advisor engaged by Sydney Metro Ensures compliance with relevant approvals (new and existing).
<b>Heritage Division of OEH</b>	Regulate the care, protection and management of relics (non-Aboriginal heritage). Delegated authority for Heritage Council Issue excavation permits.

Role	Responsibility or role under this guideline
<b>Registered Aboriginal Parties (RAPs)</b>	Aboriginal people who have registered with Sydney Metro to be consulted about a proposed project or activity in accordance with the OEH <i>Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010</i> .
<b>Sydney Metro Environment Manager</b>	Notify the Sydney Metro Principal Manager, Environmental Management of 'find' and manage Incident Reporting once completed by Environmental Manager.
<b>Contractors Project Manager</b>	Ensures all aspects of this procedure are implemented. Advise Contractor / Supervisor to recommence work if all applicable requirements have been satisfied and the Excavation Director /Project Archaeologist has approved recommend of work.

## 8. Seeking Advice

Advice on this procedure should be sought from the Sydney Metro Environment a Manager in the first instance. Contractors and alliance partners should ensure their own project environment managers are aware of and understand this procedure. Technical archaeological or heritage advice regarding an unexpected heritage item should be sought from a suitably qualified and experienced archaeologist/Aboriginal heritage consultant.

## 9. Related documents and references

- Environmental Incident Classification and Reporting – 9TP-PR-105
- Guide to Environmental Control Map – 3TP-SD-015
- NSW Heritage Office (1998), *Skeletal remains: guidelines for the management of human skeletal remains*.
- Roads and Maritime Services (2015), *Standard Management Procedure Unexpected Heritage Items*.
- Department of Environment and Conservation NSW (2006), *Manual for the identification of Aboriginal remains*.
- Sydney Metro Exhumation Management Plan

## 10. List of appendices

The following appendices are included to support this procedure:

- Appendix 1: Examples of finds encountered during construction works
- Appendix 2: Unexpected Heritage Item Recording Form
- Appendix 3: Photographing Unexpected Heritage Items
- Appendix 4: Uncovering Bones
- Appendix 5: Archaeological Advice Checklist
- Appendix 6: Template Notification Letter

## 11. Document history

Version	Date of approval	Notes
1.1		Incorporates ER comments 21/06/17
1.2		Amends p13 step 8 reference to s146 added
1.3		Incorporates Planning Mods 1-4 including amended CoA E20
1.4		Incorporates ER comments 21/03/18
2.0		Removes SSI 15-7400 COA reference

## Appendix 1: Examples of finds encountered during construction works



Photo 1 - Aboriginal artefacts found at the Wickham Transport Interchange, 2015



Photo 2 – Aboriginal artefacts (shell material) found at the Wickham Transport Interchange, 2015



Photo 3 1840s seawall and 1880s retaining wall uncovered at Balmain East, 2016



Photo 4 Sandstone pavers uncovered at Balmain East, 2016



Photo 5 - Platform structure at Hamilton Railway Station classified as a 'work' by the project archaeologist - Wickham Transport Interchange project, 2015

Photo 6 - Platform structure at Hamilton Railway Station classified as a 'work' by the project archaeologist - Wickham Transport Interchange project, 2015



Photo 7 - Sandstone flagging and cesspit - Wynyard Walk project, 2014



Photo 8 - Chinese Ming Dynasty pottery and English porcelain/pottery dating back to early 19th century - Wynyard Walk project, 2014



Photo 9 - Pottery made by convict potter Thomas Ball during the early settlement - Wynyard Walk project, 2014

The following images, obtained from the Roads and Maritime Services' *Standard Management Procedure for Unexpected Heritage items 2015*, can be used to assist in the preliminary identification of potential unexpected items during construction and maintenance works.



Photo 10 - Top left hand picture continuing clockwise: Stock camp remnants (Hume Highway Bypass at Tarcutta); Linear archaeological feature with post holes (Hume Highway Duplication), Animal bones (Hume Highway Bypass at Woomargama); Cut wooden stake; Glass jars, bottles, spoon and fork recovered from refuse pit associated with a Newcastle Hotel (Pacific Highway, Adamstown Heights, Newcastle area) (RMS, 2015).

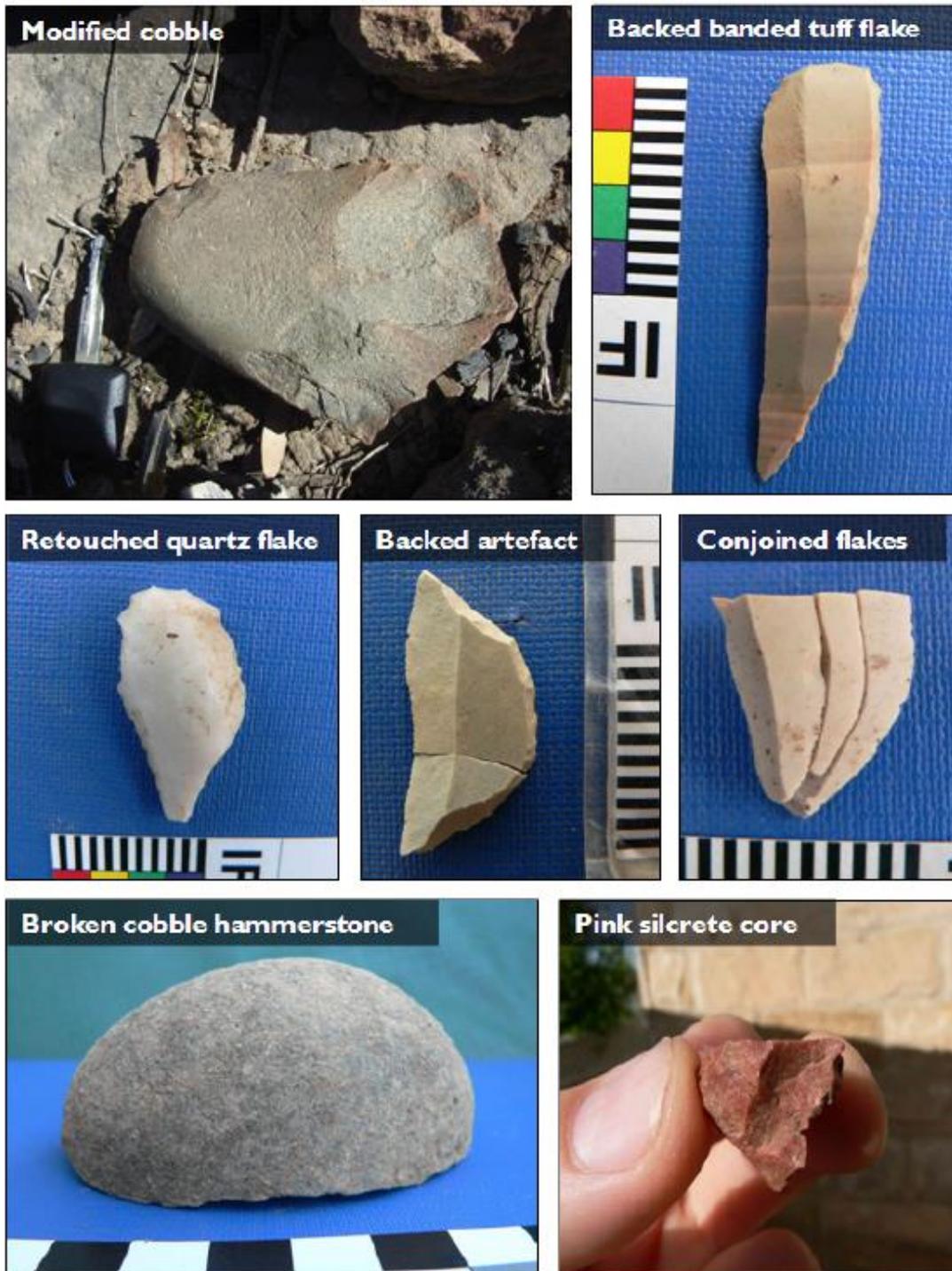


Photo 11 - Top left hand picture continuing clockwise: Stock camp remnants (Hume Highway Bypass at Tarcutta); Linear archaeological feature with post holes (Hume Highway Duplication), Animal bones (Hume Highway Bypass at Woomargama); Cut wooden stake; Glass jars, bottles, spoon and fork recovered from refuse pit associated with a Newcastle Hotel (Pacific Highway, Adamstown Heights, Newcastle area) (RMS, 2015).

## Appendix 2 - Unexpected heritage item recording form

Example of unexpected heritage item recording form:

This form is to be completed Excavation Director on the discovery of an archaeological heritage item during construction or maintenance works			
Date:		Recorded by:	
		(include name and position)	
<b>Project name:</b>			
<b>Description of works being undertaken:</b>			
<b>Description of exact location of item</b>			
<b>Description of item found</b> <i>(What type of item is it likely to be? Tick the relevant boxes).</i>			
<b>A. A relic</b>	<input type="checkbox"/>	A 'relic' is evidence of a past human activity relating to the settlement of NSW with local or state heritage significance. A relic might include bottle, utensils, plates, cups, household items, tools, implements, and similar items	
<b>B. A 'work', building or structure'</b>	<input type="checkbox"/>	A 'work' can generally be defined as a form infrastructure such as track or rail tracks, timber sleepers, a culvert, road base, a bridge pier, kerbing, and similar items	
<b>C. An Aboriginal object</b>	<input type="checkbox"/>	An 'Aboriginal object' may include stone tools, stone flakes, shell middens, rock art, scarred trees and human bones	
<b>D. Bone</b>	<input type="checkbox"/>	Bones can either be human or animal remains. <b>Remember that you must contact the local police immediately by telephone if you are certain that the bone(s) are human remains.</b>	
<b>E. Other</b>	<input type="checkbox"/>		
<b>Provide a short description of the item</b> <i>(E.g. metal rail tracks running parallel to the rail corridor. Good condition. Tracks set in concrete, approximately 10 cm below the current ground surface).</i>			

(Uncontrolled when printed)

<p><b>Sketch</b> <i>(Provide a sketch of the item's general location in relation to other road features so its approximate location can be mapped without having to re-excavate it. In addition, please include details of the location and direction of any photographs of the item taken)</i></p>			
<p><b>Action taken</b> (Tick either A or B)</p>			
<p>A. Unexpected item <b>would not</b> be further impacts on by the works</p>	<input type="checkbox"/>	<p><b>Describe how works would avoid impact on the item.</b> (E.g. the rail tracks would be left in situ and recovered with paving).</p>	
<p>B. Unexpected item would be further impacted by the works</p>	<input type="checkbox"/>	<p><b>Describe how works would impact on the item.</b> (E.g. milling is required to be continued to a depth of 200 mm depth to ensure the pavement requirements are met. Rail tracks would need to be removed.)</p>	
<p>Excavation Director</p>		<p>Signature</p>	
		<p>Signature</p>	

**Important**

**It is a statutory offence to disturb Aboriginal objects and historic relics (including human remains) without an approval. All works affecting objects and relics must cease until an approval is sought.**

**Approvals may also be required to impact on certain works.**

## Appendix 3 - Photographing unexpected heritage items

Photographs of unexpected items in their current context (*in situ*) may assist archaeologists/Aboriginal heritage consultants to better identify the heritage values of the item. Emailing good quality photographs to specialists can allow for better quality and faster heritage advice. The key elements that must be captured in photographs of the item include its position, the item itself and any distinguishing features. All photographs must have a scale (ruler, scale bar, mobile phone, coin etc.) and a note describing the direction of the photograph.

### Context and detailed photographs

It is important to take a general photograph (Figure 1) to convey the location and setting of the item. This will add value to the subsequent detailed photographs also required (Figure 2).

**Removal of the item from its context (e.g. excavating from the ground) for photographic purposes is not permitted.**

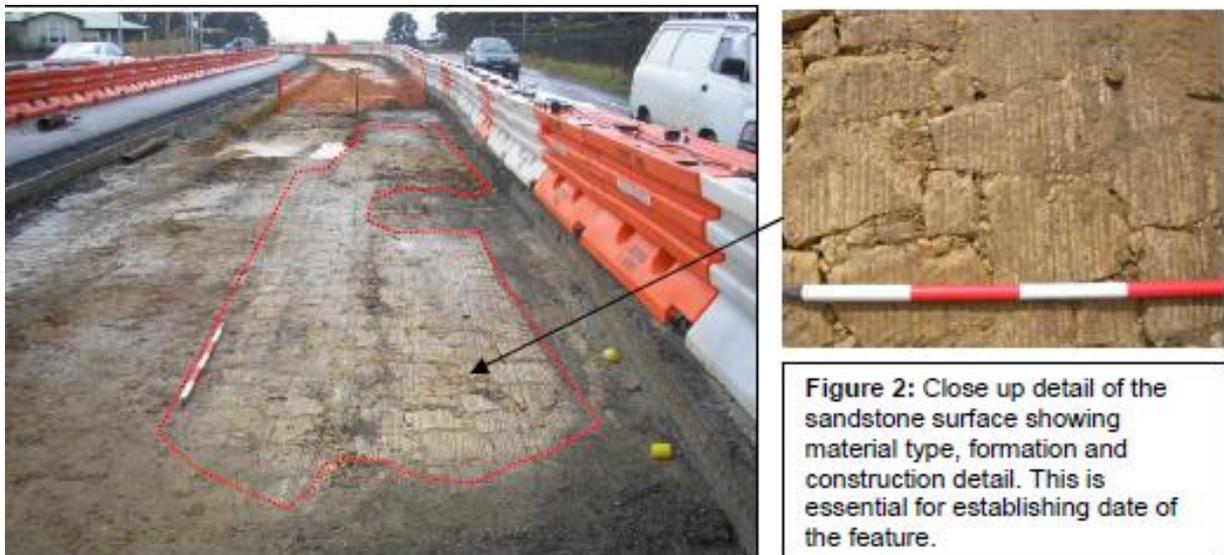


Figure 1: Telford road uncovered on the Great Western Highway (Leura) in 2008 (RMS, 2015).

### Photographing distinguishing features

Where unexpected items have a distinguishing feature, close up detailed photographs must be taken of these features, where practicable. In the case of a building or bridge, this may include diagnostic details architectural or technical features. See Figures 3 and 4 for examples.



Figure 3: Ceramic bottle artefact with stamp.



Figure 4: Detail of the stamp allows 'Tooth & Co Limited' to be made out. This is helpful to a specialist in gauging the artefact's origin, manufacturing date and likely significance.

### Photographing bones

The majority of bones found on site will those of be recently deceased animal bones often requiring no further assessment (unless they are in archaeological context). However, if bones are human, the police must be contacted immediately (see Appendix 6 for detailed guidance). Taking quality photographs of the bones can often resolve this issue quickly. The project archaeologist can confirm if bones are human or non-human if provided with appropriate photographs.

Ensure that photographs of bones are not concealed by foliage (Figure 5) as this makes it difficult to identify. Minor hand removal of foliage can be undertaken as long as disturbance of the bone does not occur. Excavation of the ground to remove bone(s) should not occur, nor should they be pulled out of the ground if partially exposed.

Where sediment (adhering to a bone found on the ground surface) conceals portions of a bone (Figure 6) ensure the photograph is taken of the bone (if any) that is not concealed by sediment.



Figure 5: Bone concealed by foliage.



Figure 6: Bone covered in sediment

Ensure that all close up photographs include the whole bone and then specific details of the bone (especially the ends of long bones, the *epiphysis*, which is critical for species identification). Figures 7 and 8 are examples of good photographs of bones that can easily

be identified from the photograph alone. They show sufficient detail of the complete bone and the epiphysis.



Figure 7: Photograph showing complete bone.



Figure 8: Close up of a long bone's epiphysis.

## Appendix 4 - Uncovering bones

This appendix provides advice regarding:

- what to do on first discovering bones
- the range of human skeletal notification pathways
- additional considerations and requirements when managing the discovery of human remains.

### 1. First uncovering bones

#### Refer to the Sydney Metro Exhumation Management Plan

Stop all work in the vicinity of the find. All bones uncovered during project works should be **treated with care and urgency** as they have the potential to be human remains. The bones must be identified as either human or non-human as soon as possible by a qualified forensic or physical anthropologist.

On the very rare occasion where it is immediately obvious from the remains that they are human, the Project Manager (or a delegate) should **inform the police by telephone** prior to seeking specialist advice. It will be obvious that it is human skeletal remains where there is no doubt, as demonstrated by the example in Figure 1<sup>9</sup>. Often skeletal elements in isolation (such as a skull) can also clearly be identified as human. Note it may also be obvious that human remains have been uncovered when soft tissue and/or clothing are present.

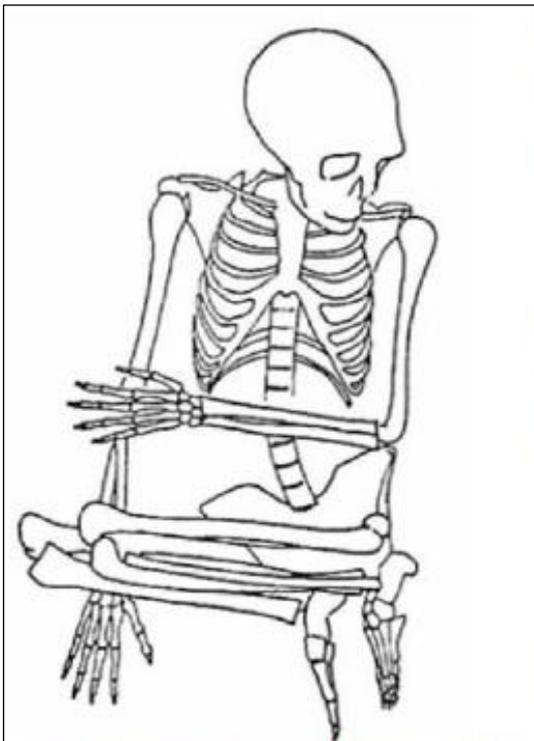


Figure 1: Schematic of a complete skeleton that is 'obviously' human<sup>12</sup>.



Figure 2: Disarticulated bones that require assessment to determine species.

<sup>9</sup> After Department of Environment and Conservation NSW (2006), *Manual for the identification of Aboriginal Remains*: 17

This preliminary phone call is to let the police know that a specialist skeletal assessment to determine the approximate date of death which will inform legal jurisdiction. The police may wish to take control of the site at this stage. If not, a forensic or physical anthropologist must be requested to make an on-site assessment of the skeletal remains.

Where it is not immediately obvious that the bones are human (in the majority of cases, illustrated by Figure 2), specialist assessment is required to establish the species of the bones. Photographs of the bones can assist this assessment if they are clear and taken in accordance with guidance provided in Appendix 3. Good photographs often result in the bones being identified by a specialist without requiring a site visit; noting they are nearly always non-human. In these cases, non-human skeletal remains must be treated like any other unexpected archaeological find.

If the bones are identified as human (either by photographs or an on-site inspection) a technical specialist must determine the likely ancestry (Aboriginal or non-Aboriginal) and burial context (archaeological or forensic). This assessment is required to identify the legal regulator of the human remains so **urgent notification** (as below) can occur.

Preliminary telephone or verbal notification by the archaeologist to the Sydney Metro Principal Manager Sustainability Environment and Planning (Program) is appropriate. This must be followed up later by a formal letter notification to the relevant regulator when a management plan has been developed and agreed to by the relevant parties.

## 2. Range of human skeletal notification pathways

The following is a summary of the different notification pathways required for human skeletal remains depending on the preliminary skeletal assessment of ancestry and burial context.

### A. Human bones are from a recently deceased person (less than 100 years old).

#### Action

A police officer must be notified immediately as per the obligations to report a death or suspected death under s35 of the *Coroners Act 2009* (NSW). It should be assumed the police will then take command of the site until otherwise directed.

### B. Human bones are archaeological in nature (more than 100 years old) and are likely to be **Aboriginal** remains.

#### Action

The OEH (Planning and Aboriginal Heritage Section) must be notified immediately. The Aboriginal Cultural Heritage Advisor must contact and inform the relevant Aboriginal community stakeholders who may request to be present on site.

### C. Human bones are archaeological in nature (more than 100 years old) and likely to be non-Aboriginal remains.

#### Action

The OEH (Heritage Division) must be notified immediately

Figure 3 summarises the notification pathways on finding bones.

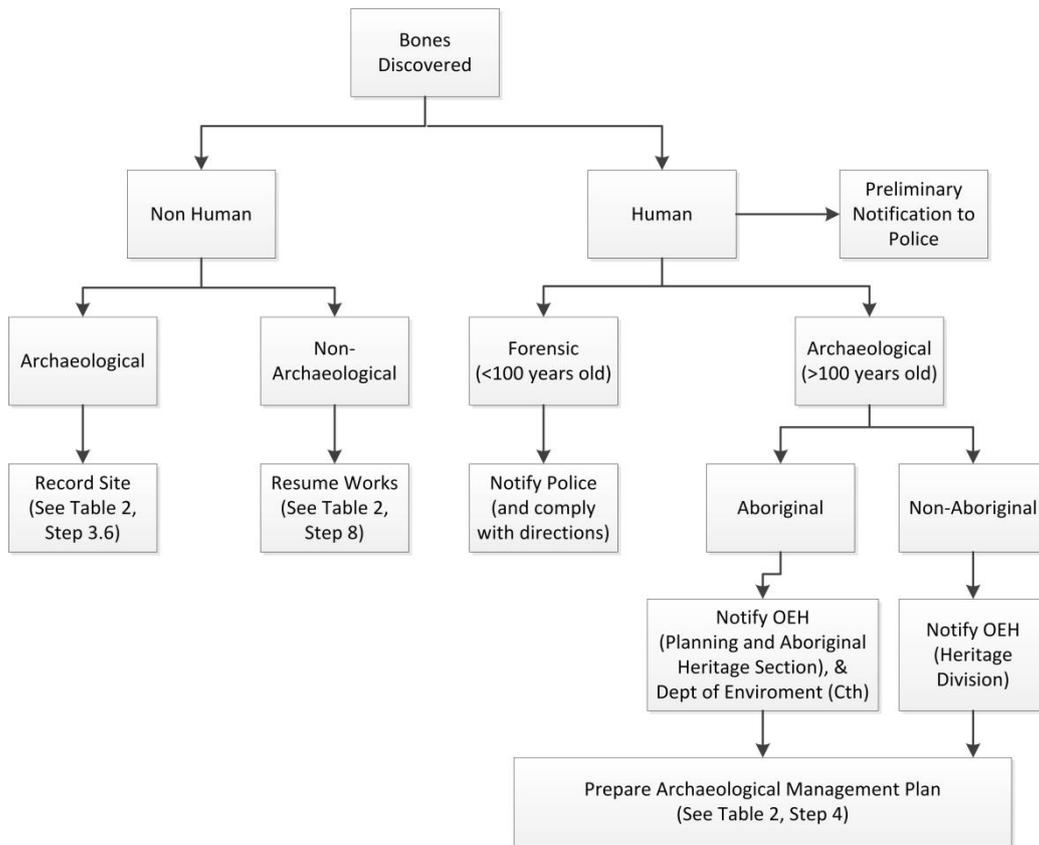


Figure 3 Overview of steps to be undertaken on the discovery of bones

After the appropriate verbal notifications (as described in 2B and 2C above), the Project Manager must proceed through the *Unexpected Heritage Items Exhumation Management Plan* (Step 4). It is noted that no *Exhumation Management Plan* is required for forensic cases (2A), as all future management is a police matter. Non-human skeletal remains must be treated like any other unexpected archaeological find and so must proceed to record the find as per Step 3.6.

### 3. Additional considerations and requirements

Uncovering archaeological human remains must be managed intensively and needs to consider a number of additional specific issues. These issues might include facilitating culturally appropriate processes when dealing with Aboriginal remains (such as repatriation and cultural ceremonies). Project Managers may need to consider overnight site security of any exposed remains and may need to manage the onsite attendance of a number of different external stakeholders during assessment and/or investigation of remains.

Project Managers may also be advised to liaise with local church/religious groups and the media to manage community issues arising from the find. Additional investigations may be required to identify living descendants, particularly if the remains are to be removed and relocated.

If exhumation of the remains (from a formal burial or a vault) is required, Project Managers should also be aware of additional approval requirements under the *Public Health Act 1991* (NSW). Specifically, Sydney Metro may be required to apply to the Director General of NSW

Department of Health for approval to exhume human remains as per Clause 26 of the *Public Health (Disposal of Bodies) Regulation 2002 (NSW)*<sup>10</sup>.

Further, the exhumation of such remains needs to consider health risks such as infectious disease control, exhumation procedures and reburial approval and registration. Further guidance on this matter can be found at the NSW Department of Health website.

In addition, due to the potential significant statutory and common law controls and prohibitions associated with interfering with a public cemetery, project teams are advised, when works uncover human remains adjacent to cemeteries, to confirm the cemetery's exact boundaries.

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<sup>10</sup> This requirement is in addition to heritage approvals under the *Heritage Act 1977*.

## Appendix 5 - Archaeological/heritage advice checklist

The archaeologist/Aboriginal heritage consultant must advise the Sydney Metro Principal Manager Sustainability Environment and Planning (Program) of an appropriate archaeological or heritage management plan as soon as possible after an inspection of the site has been completed (see Step 4). An archaeological or heritage management plan can include a range of activities and processes, which differ depending on the find and its significance.

In discussions with the archaeologist/Aboriginal heritage consultant the following checklist can be used as a prompt to ensure all relevant heritage issues are considered when developing this plan. This will allow the project team to receive clear and full advice to move forward quickly. Archaeological and/or heritage advice on how to proceed can be received in a letter or email outlining all relevant archaeological and/or heritage issues.

	Required	Outcome/notes
<b>Assessment and investigation</b>		
• Assessment of significance	Yes/No	
• Assessment of heritage impact	Yes/No	
• Archaeological excavation	Yes/No	
• Archival photographic recording	Yes/No	
<b>Heritage approvals and notifications</b>		
• AHIP, section 140, section 139 exceptions etc.	Yes/No	
• Regulator relics/objects notification	Yes/No	
• Notification to Sydney Trains for s170 heritage conservation register	Yes/No	
• Compliance with CEMP or other project heritage approvals	Yes/No	
<b>Stakeholder consultation</b>		
• Aboriginal stakeholder consultation	Yes/No	
<b>Artefact/heritage item management</b>		
• Retention or conservation strategy (e.g. items may be subject to long conservation and interpretation)	Yes/No	
• Disposal strategy	Yes/No	
• Short term and permanent storage locations (interested third parties should be consulted on this issue).	Yes/No	
• Control Agreement for Aboriginal objects	Yes/No	

## Appendix 6 - Template notification letter

Insert on TfNSW letterhead  
Select and type date]  
[Select and type reference number]

XXX

Manager, Conservation  
Heritage Division, Office of Environment and Heritage  
Locked Bag 5020  
Parramatta NSW 2124

[Select and type salutation and name],

### Re: Unexpected heritage item discovered during Sydney Metro activities.

I write to inform you of an unexpected [select: relic, heritage item or Aboriginal object] found during Sydney Infrastructure and Services construction works at [insert location] on [insert date] in accordance with the notification requirement under select: section 146 of the *Heritage Act 1977* (NSW). [Where the regulator has been informally notified at an earlier date by telephone, this should be referred to here].

**NB:** On finding Aboriginal human skeletal remains this letter must also be sent to the Commonwealth Minister for the Environment in accordance with notification requirements under section 20(1) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Commonwealth).

[Provide a brief overview of the project background and project area. Provide a summary of the description and location of the item, including a map and image where possible. Also include how the project was assessed under the *Environmental Planning and Assessment Act 1979* (NSW) (e.g. Part 5). Also include any project approval number, if available].

Sydney Metro [or contractor] has sought professional archaeological advice regarding the item. A preliminary assessment indicates [provide a summary description and likely significance of the item]. Please find additional information on the site recording form attached.

Based on the preliminary findings, Sydney Metro [or contractor] is proposing [provide a summary of the proposed archaeological/heritage approach (e.g. develop archaeological research design (where relevant), seek heritage approvals, undertake archaeological investigation or conservation/interpretation strategy). Also include preliminary justification of such heritage impact with regard to project design constraints and delivery program].

The proposed approach will be further developed in consultation with a nominated Office of Environment and Heritage staff member.

Should you have any feedback on the proposed approach, or if you require any further information, please do not hesitate to contact [Environment and Planning Project Manager] on (02) XXXX XXXX.

Yours sincerely

[Sender name]

Sydney Metro Principal Manager Sustainability Environment and Planning (Program) [Attach the archaeological/heritage management plan and site recording form]

## APPENDIX B – SYDNEY METRO EXHUMATION MANAGEMENT PLAN



Integrated  
Management  
System

# Exhumation Management Plan

SM ES-PW-315/1.0

Sydney Metro Integrated Management System (IMS)

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## 1. Introduction

Sydney Metro have developed this Exhumation Management Plan (ExMP) to provide Sydney Metro and their contractors with guidance on managing the discovery of human skeletal remains during the course of the Sydney Metro program of works.

Sydney Metro is Australia's biggest public transport project. From the northwest, metro rail is being extended under Sydney Harbour, through new underground city stations and beyond to the south west. In 2024, Sydney will have 31 metro railway stations and a 66km standalone metro railway system, revolutionising the way Australia's biggest city travels (refer to Figure 1).

The purpose of this ExMP is to address relevant planning conditions of approval where required, by providing a clear and concise process to follow in the event of the discovery of potential human remains during project works.

The policy document may be used for the Sydney Metro program, although there is a focus on human remains at Central Station (associated with the former Devonshire Street cemetery). Potential for human remains had been identified in the Archaeological Assessment and Research Design (AARD) for Sydney Metro – City & Southwest Chatswood to Sydenham (Artefact Heritage, 2016) and subsequently presence of human remains has been confirmed during archaeological investigation for the Central Station Main Works (CSMW).

This ExMP will be reviewed prior to its implementation on any future Sydney Metro project that has potential to impact on a known cemetery or burial ground. A review may require amendment the ExMP to tailor additional controls or management procedures that are specific to the impacted cemetery or burial ground. In addition, the requirements of the relevant Planning Approval, including consultation on any amendment, will be assessed during the review of this ExMP prior to its implementation.

## 2. Methodology

This ExMP satisfies the relevant planning requirements, by outlining the procedure for the discovery and management of human remains within the Sydney Metro program. The ExMP addresses the following:

- Discussion of relevant legislation and guidelines, (e.g. Coroners Act 2009, Heritage Act 1977, Guidelines for the Management of Human Skeletal Remains and the Public Health Regulations 2012).
- Archaeological methodology for excavation of remains including processes for appropriately handling remains in accordance with the relevant guidelines.
- Preparation of a flow chart process to be used by contractors to respond to the discovery of suspected human remains.
- Post-exhumation management primarily around relocation, processing and long-term arrangements.
- Process for nomination of a physical anthropologist and temporary storage location.
- Process for additional analysis including DNA testing, isotope analysis and environmental sampling, and discussion on requirements for public involvement.



Figure 1: 2019 Sydney Metro Program Project overview and station locations

## 2.1. Overview of legislative requirements for dealing with human remains

The following section provides an overview of the various legislation that would apply to the discovery, management and relocation of human remains. A discovery of suspected human remains may be subject to different Acts and requirements, thereby triggering different notification pathways based on the specific circumstances involved.

For all areas other than Central Station within the CSMW boundary, the first step will always be to notify the NSW Police. Confirmation of the age (antiquity) and nature of the skeletal remains as well as the reasons for the disturbance will dictate which Act and provisions will be applicable. Note that provisions for Central Station would not require Police notification as it is confirmed by the Coroner that the remains are associated with the Devonshire Street Cemetery and would follow the requirements in Section 4, Central Station.

Although approval under the Heritage Act 1977 and the National Parks and Wildlife Act 1974, is not required for a Critical State Significant Infrastructure (CSSI) project, notification to the Heritage Council under s146 of the Heritage Act, and notification of an Aboriginal object under the National Parks and Wildlife Act is still required for discovery of archaeological human remains.

The provisions of the Coroners Act 2009 and Public Health Regulation 2012 apply under a CSSI approval. Compliance with this legislation would be fulfilled through adhering to the processes outlined in this plan, noting the special considerations for the CSMW site.

## 2.2. Discovery of human remains and forensic cases: Coroners Act 2009 (NSW)

For a discovery of suspected human remains less than 100 years old, the remains would come under the jurisdiction of the State Coroner and the Coroners Act 2009 (NSW). Such a case would be considered a 'reportable death' and, under legal notification obligations set out in s35 (2); a person must report the death to a police officer, a coroner or an assistant coroner as soon as possible. This applies to all human remains less than 100 years old, regardless of ancestry (i.e. both Aboriginal and non-Aboriginal remains).

### *35 Obligation to report death or suspected death*

*(1) This section applies to any person who has reasonable grounds to believe that a death or suspected death of another person:*

*(a) is a reportable death or occurred in circumstances that would be examinable under Division 2 of Part 3.2, and*

*(b) has not been reported in accordance with subsection (2).*

*(2) A person to whom this section applies must report the death or suspected death concerned to a police officer, a coroner or an assistant coroner as soon as possible after becoming aware of the grounds referred to in subsection (1).*

*Maximum penalty (subsection (2)): 10 penalty units.*

*(3) A police officer to whom a death or suspected death is reported under this section is required to report the death or suspected death to a coroner or assistant coroner as soon as possible after the report is made.*

*(4) An assistant coroner to whom a death or suspected death is reported under this section is required to report the death or suspected death to a coroner as soon as possible after the report is made.*

*(5) A coroner to whom a death or suspected death is reported under this section is required to inform the State Coroner of the report as soon as practicable after the report is made.*

## 2.3. Historical human remains: Heritage Act 1977 and Guidelines for the Management of Human Skeletal Remains under the Heritage Act 1977

The Heritage Act 1977 and Guidelines for the Management of Human Skeletal Remains under the Heritage Act 1977<sup>1</sup> apply to historic burials in New South Wales. It should be noted that the Guidelines are outdated in terms of the current statutory framework.

The definition of an archaeological 'relic' under the Heritage Act changed in 2009. A relic is no longer defined as an object of at least 50 years of age, but is now defined as an archaeological deposit or artefact that has heritage significance at a local or State level. New guidelines, Assessing Significance for Historical Archaeological Sites and 'Relics', have been endorsed by the Heritage Council and should be used to assess the level of heritage or archaeological significance of the remains. With reference to burial grounds, objects such as headstones, grave enclosures and grave goods, as well as buried human remains, may be a 'relic'.

<sup>1</sup> NSW Heritage Office, 1998.

If the project is approved as CSSI, an application to the NSW Heritage Council for an excavation permit (either Section 140 or Section 60) is not required. Notification to the NSW Heritage Council (or delegate) is required under the CSSI approval if unexpected relics of State significance or human remains are located.

## **2.4. Aboriginal human remains: National Parks and Wildlife Act 1974**

The National Parks and Wildlife Act, administered by the NSW Office of Environment and Heritage (OEH), provides statutory protection for all Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) under Section 90 of the Act, and for 'Aboriginal Places' (areas of cultural significance to the Aboriginal community) under Section 84.

Discovery of Aboriginal burials and/or human remains would be addressed in the projects Aboriginal Cultural Heritage Assessment Report (ACHAR). ACHARs would be prepared in accordance with the OEH 'Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation'<sup>2</sup>, the OEH 'Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW'<sup>3</sup>, the OEH 'Aboriginal cultural heritage consultation requirements for proponents 2010'<sup>4</sup>, the OEH 'Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales'<sup>5</sup>.

If suspected human skeletal remains are uncovered at any time during the archaeological management program, the process outlined in this ExMP and detailed in the flow chart is to be followed. Management of the remains would be guided by consultation with the nominated Registered Aboriginal Parties (RAPs) for the project, in adherence to the ACHAR.

## **2.5. Exhumation of human remains: Public Health Regulation 2012 (NSW) and the NSW Health Policy Statement – Exhumation of human remains (2013)**

Public Health Regulation 2012 and the NSW Health Policy Statement – Exhumation of human remains of the Public Health Regulation 2012 provides specific regulation for the exhumation of bodies in NSW.

Under Clause 70, an application for approval to exhume the remains of a dead person may be made to the Director-General via an approved form to the Director of the local Public Health Unit that acts on behalf of the Director-General of NSW Health. Exhumation is not to take place unless an authorised officer or a NSW Health member of staff is present at the exhumation (the grave may be excavated to the lid of the coffin but nothing must be disturbed until the arrival of the authorised officer) (Clause 72). An authorised officer must be present at the exhumation to ensure the correct interment is opened and that all of the remains are exhumed, and to enforce the protection of public health should this be necessary.

Sydney Metro would be required to apply to the Secretary of Health for approval to exhume human remains as per Clause 26 of the Regulations.

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<sup>2</sup> NSW Department of Environment and Conservation, 2005.

<sup>3</sup> OEH 2011.

<sup>4</sup> Department of Environment, Climate Change and Water 2010.

<sup>5</sup> OEH 2010.

Note that special consideration has been made for works at Central Station within the CSMW boundary that impact the former Devonshire Street Cemetery (Section 4).

## 2.6. NSW Ministry of Health Policy Statement – Exhumation of human remains (2013)

The NSW Ministry of Health Policy Statement on the exhumation of human remains provides the policy to be observed by Public Health Units located in Local Health Districts on receipt of an application to seek permission for approval of the exhumation of human remains under the Public Health Regulation 2012. Public Health Units (PHUs) of Local Health Districts (LHDs) in NSW facilitate the approval for an exhumation.

Under Clause 69 a person must not exhume a body unless the exhumation of the remains has been approved by the Director-General. An application for permission to exhume the remains of a deceased person is to be made to the Public Health Unit on the approved form which is contained at the [NSW Health website](#).

The required form is appended to this ExMP for ease of reference.

Note that the title of Director General of Health was replaced with the Secretary of Health when the Public Health Act and Public Health Regulation were amended. However, the Policy Directive PD2013-046 has not been amended to reflect this change.

## 2.7. Work Health and Safety Act 2011

The Work Health and Safety Act 2011 provisions apply to protect personnel involved in the exhumation procedure by creating and maintaining safe and healthy work practices and are enforced by WorkCover NSW. Graves, crypts and vaults could be considered to be confined spaces in some circumstances under health and safety legislation. More information on safe work practices is available at or by contacting SafeWork NSW via their website or directly.

Health and safety aspects of working with human remains should be considered. Generally, working with archaeological human skeletal remains requires no extra precautions to be taken beyond normal health and safety regulations. Once any necessary site health and safety precautions have been taken, the exhumation of human remains can proceed.

# 3. Procedure for the discovery, management and relocation of human remains

This procedure provides project managers, principal contractors and the project archaeologist/Excavation Director with advice on the steps to follow upon uncovering suspected human remains. Information on the potential for burials and human remains would be included in the general project induction for all personnel. The induction would include the procedure to manage these finds as set out in this ExMP.

## 3.1. Initial discovery of bones: What do we do?

To avoid doubt, all suspected bone items must be treated as potential human skeletal remains, and work around them must stop while they are protected and investigated as a matter of urgency.

### 1. Stop Work and preliminary notification

Upon the discovery of bone (suspected human remains), all work in the area of the find must stop and the remains must be confirmed as being human or not.

The Project Archaeologist/Excavation Director must be notified

Preliminary notification must be made to the NSW Police in compliance with Section 35 of the Coroners Act 2009 (also refer to special conditions for Central Station noted in section 4).

<b>What?</b>	When bones are uncovered at a site, all work in the area the find must <b>stop immediately</b> and the site must be secured.
<b>Who?</b>	The discoverer will <b>immediately</b> notify machinery operators so that no further disturbance of the remains will occur, as well as notify the foreman/site supervisor, principal contractor, project archaeologist/Excavation Director and Sydney Metro Environmental Manager). Preliminary notification to the NSW Police will be undertaken by the Sydney Metro Environmental Manager. Notification should provide verbal description of the remains and inform the police that consultation with technical specialists is being undertaken to confirm that the remains are human, as well as the burial context (archaeological or less than 100 years old, refer Step 2).
<b>How?</b>	Inform all site personnel of restricted access to the area of the discovery until further notice. Area must be fenced off (flagging or temporary exclusion fencing).
<b>Actions</b>	Notify site supervisor, principal contractor, project archaeologist / Excavation Director and Sydney Metro Environmental Manger of the find and protect the suspected remains until an initial assessment can be undertaken by a technical specialist. Preliminary notification to NSW Police.

## 2. Confirm human provenance

Skeletal remains could either be articulated and in a recognisable form of burial such as a coffin or common burial position of the body (e.g. supine, prone or flexed) or they could be disarticulated or fragmented remains. Within the boundaries of a known historic burial ground, there is a high probability of the remains being human. In a suspected forensic case (less than 100 years old), the remains may have clothing and/or human tissue. Disarticulated or fragmented bones are often uncovered and these may require specialist assessment to determine legal jurisdiction.

If suspected human remains are identified during the course of project works, preliminary notification must be made to the NSW Police in compliance with Section 35 of the Coroners Act 1999 (refer Step 1) (also refer to special conditions for Central Station noted in section 4, Central Station). NSW Police would be contacted immediately upon receipt of confirmation of human provenance (also refer to special conditions for Central Station noted in section 4).

<b>What?</b>	Confirmation that the remains are human, their burial context - whether they are forensic (less than 100 years) or archaeological (older than 100 years) and suspected ancestry (Aboriginal or non-Aboriginal).
<b>Who?</b>	Excavation Director and or Forensic or physical anthropologist, or archaeologist with specialist skills such as an osteoarchaeologist.
<b>How?</b>	Consultation could be undertaken as either an on-site inspection or via good quality photos sent to the nominated technical specialist of 1) the remains; and 2) the site general site location of the discovery.
<b>Actions</b>	Contact nominated technical specialists to confirm that the remains are: a) human, b) burial context (archaeological or forensic), and c) suspected ancestry (Aboriginal or non-Aboriginal). For the duration of the Sydney Metro project, the nominated technical specialists are: <ul style="list-style-type: none"> <li>• Forensic Anthropologist – TBC by contractor for project area.</li> </ul>

<ul style="list-style-type: none"> <li>Nominated Excavation Director – TBC by contractor for project area.</li> </ul> <p>The archaeologist may be able to identify the nature of remains without input from the Forensic Anthropologist. The Forensic Anthropologist should be contacted as required.</p>
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### 3. Notification based on jurisdiction (forensic or archaeological)

Once confirmation is received from the technical specialist that the remains are of human origin, there are three possible statutory pathways to follow based on the assessment:

- **Forensic case (remains are less than 100 years old):** If it is determined by specialist assessment (Step 2) that the remains are forensic, the remains come under the jurisdiction of the State Coroner and the Coroners Act 2009. The NSW Police would likely secure the site and will advise on the procedure to be followed.
- **Archaeological – non-Aboriginal human remains (more than 100 years old).** Actions: Notification to OEH Heritage Division. Follow the Archaeology Exhumation Methodology as set out in Step 4.
- **Archaeological – suspected Aboriginal human remains (more than 100 years old).** The RAPs must be present where it is reasonably suspected that Aboriginal burials or human remains have been encountered. Recording of Aboriginal ancestral remains must be undertaken by, or be conducted under the direct supervision of a specialist. Actions: Notify RAPs and follow ACHAR Notification to OEH. Follow the Archaeology Exhumation Methodology as set out in Step 4.

### 4. Archaeological Exhumation Methodology

The following section provides the archaeological methodology for exhumation and the appropriate handling of human remains.

**Securing the Site:** The strategy for the excavation and removal of human remains must be sensitive to public opinion and ethical issues and exhumation activities should not be visible to the general public. The site may need to be screened off from public areas, not only with hoarding but also in some cases with a roof to screen the site off from overlooking buildings. At all times, human remains should be treated with respect and dignity. The perimeter of the excavation site should be demarcated by plastic tape or flagging, with only technical staff allowed within this area for the duration of exhumation activities.

The site should be protected from the elements including flooding, contamination with dust or debris, and other disturbance. These measures would be formulated by the Excavation Director in consultation with the contractor and Sydney Metro where required and may differ from site to site.

**Excavation Director:** Archaeological investigations are to be managed by a suitably qualified Excavation Director with experience in the historical archaeology of Sydney and management of human remains. For sites with potential for locally significant remains, the Excavation Director should meet the NSW Heritage Council criteria for locally significant archaeological sites. For sites with potential for State significant archaeology the Excavation Director should meet the NSW Heritage Council criteria for State significant archaeological sites.

**Excavation and Recording:** Exhumation and recording is to be undertaken in accordance with best practice forensic and Heritage Council guidelines. Prior to

removal, the remains should be fully recorded in situ to understand their surrounding archaeological context. This will include recording any disturbances to the burial, identification of bones present. In some cases, the deposit of bones may be a mixture of articulated and disarticulated remains. Care should be taken to distinguish articulated remains and to assess if they represent commingled individuals or disturbed remains belonging to one individual, and to record them accordingly.

**Recording:**

- A standard context recording system will be employed.
- Detailed survey and/or measured drawings would be prepared and include location of remains within the overall site (position of the body, the direction of the burial, noting any stratigraphic relationships with other archaeological features).
- Any associated artefacts (potential grave goods, burial furniture) would be recorded and collected by context for later analysis.
- Digital photography, in RAW format, using photographic scales and photo boards where appropriate. A photographic record of all phases of the work on site would be undertaken.
- Registers of contexts, photos, samples and drawings would be kept.

**Excavation:**

- Detection of the extent of the grave/remains (if disarticulated).
- Surface soils removed in excavation units of 100mm (site dependent) using small tools.
- Expose remains with soft paint brushes and pedestal the remains.
- Record position and depth of remains.
- Soil removed would be sieved through 3mm mesh to examine for teeth and bone fragments.
- Soil samples may be taken from the abdominal and/or chest areas of the body (articulated remains) to retrieve evidence of gallstones or worm infestations.
- Exhumation must be under the control of the Excavation Director, with the assistance of a Forensic Anthropologist if required. Exhumation permit/s, provided by NSW Ministry of Health may also require the presence of an authorised officer or a member of staff of the Ministry of Health.
- Further excavation of the bottom of the pit (grave) following removal to confirm the absence of further remains.

**Relocation of bones:**

- Removal and collection of skeletal remains to follow standard forensic practice of labelling.
- Remove remains from the ground systematically and place in plastic bags according to anatomical areas of the body.
- Bags should not be air-tight and should have ventilation holes to prevent deterioration of fragile skeletal material. Each bag should contain labels and

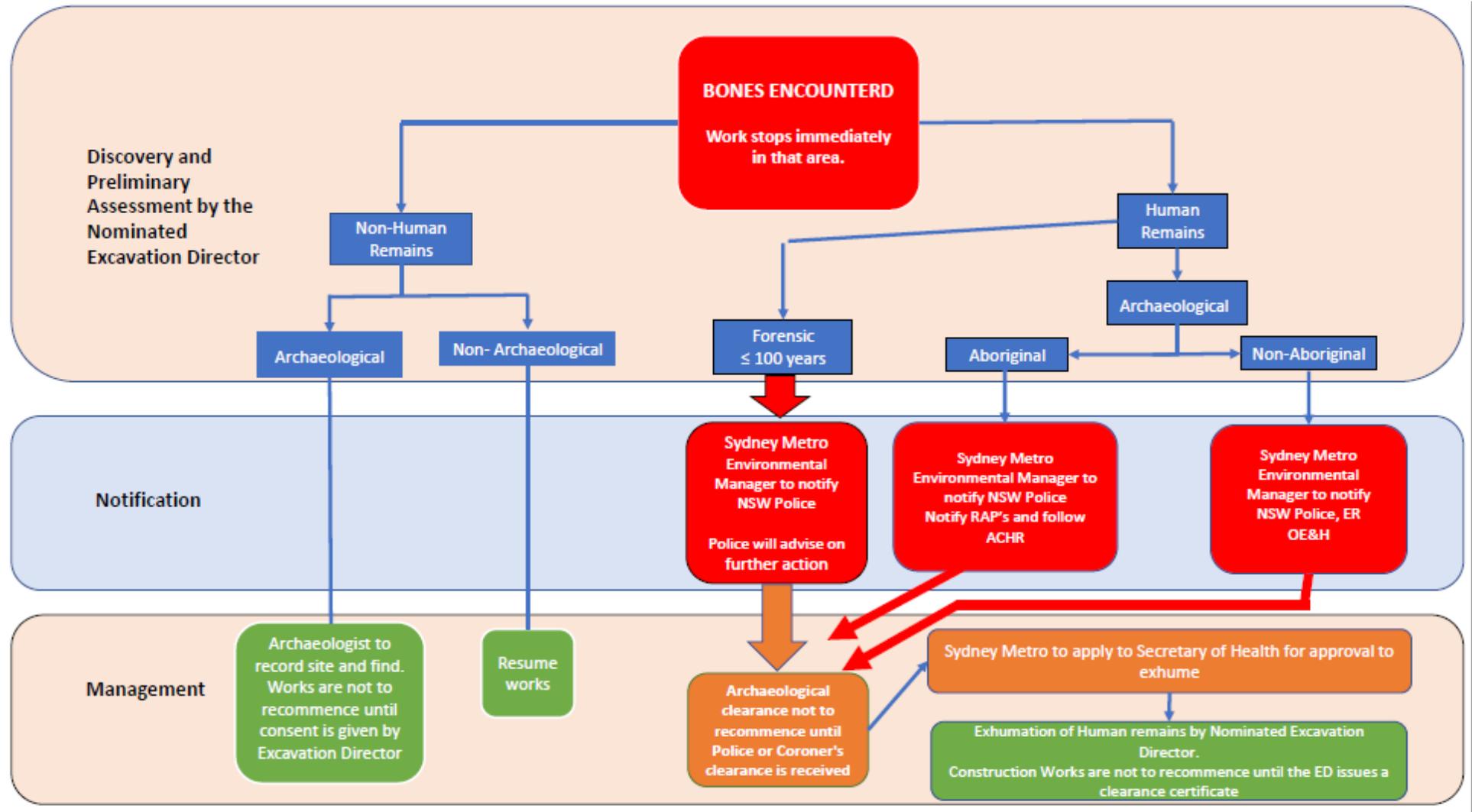
the separate bags should then be placed in a large plastic bag, crate or box, labelled with the context information.

- The remains should be placed in a sturdy, large cardboard box (approximately 600 x 300 x 200 mm) for relocation to off-site processing location.

**Resume work:** Construction work may only recommence upon receipt of clearance certificate from the Excavation Director and may require additional NSW Ministry of Health approval. If a forensic case, written authorisation from the NSW Police is required.

**Reporting:** A report would be prepared following the completion of the program of exhumation works, separate to the archaeological excavation report for the project. This report would include skeletal analysis catalogue, comprehensively describe the process of exhumation, detail the recording of the remains and synthesise the results of any further laboratory testing. An assessment of significance for the remains would be provided and interpreted within the context of the archaeological research design (response to research questions.)

Figure 2: Exhumation Policy flow chart



## 4. Central Station

### 4.1. Brief historical overview: Devonshire Street cemetery (Central Station)

The northern part of the Central Station site was formerly occupied by the nineteenth century Devonshire Street cemetery; specifically the Church of England, Presbyterian, Wesleyan and Roman Catholic burial areas. The burial grounds, called the Sandhills Cemetery or the Devonshire Street Cemetery, was consecrated in 1820<sup>6</sup>. The site was chosen due to the remote location of the cemetery compared to the growing town of Sydney. The cemetery was eventually declared at capacity, and took no more burials from 1865 onwards. Images from the 1890s, shortly before the cemetery was resumed for the expansion of the station, show that the original brick walls for the burial ground were still intact<sup>7</sup>.

Proposals raised in the 1880s and 1890s for the construction of a larger station facility at Central Station were adopted, and the clearing of the Devonshire Street cemetery commenced in 1901. On 17 January 1901, the government issued a notice declaring that representatives of any deceased in the cemetery must remove their relatives within two months<sup>8</sup>. By 1902 clearing had been completed.



Figure 3: Plan of proposed Central railway station with Devonshire Street cemetery marked in red and the current station footprint indicated by the blue line<sup>9</sup>

<sup>6</sup> *The Sydney Gazette and New South Wales Advertiser*, 5 February 1820.

<sup>7</sup> Artefact Heritage, 2016. *Sydney Metro City & Southwest Chatswood to Sydenham Historical Archaeological Assessment & Research Design*. Report to Jacobs/Arcadis/RPS, pp.227-228.

<sup>8</sup> *The Sydney Morning Herald*, 25 January 1901.

<sup>9</sup> Source: State Records NSW, SR Map 6408 with overlay by Artefact Heritage 2016.

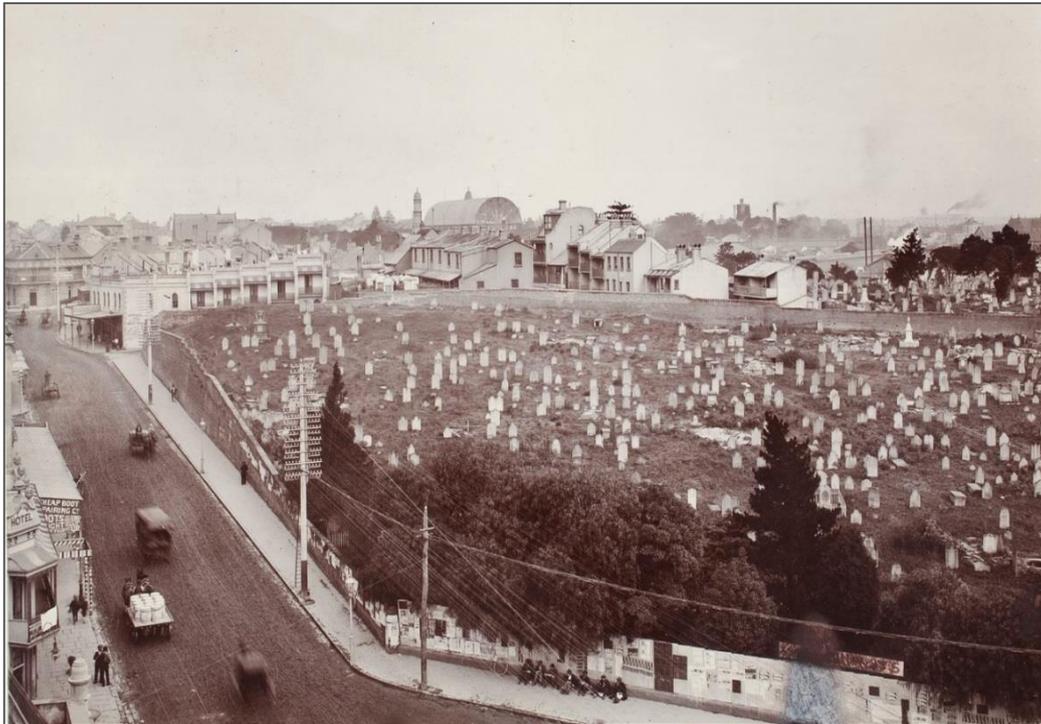


Figure 4: 1890s photo of the Church of England area of the Devonshire Street cemetery, facing south from north-eastern corner<sup>10</sup>

## 4.2. Archaeological potential of former Devonshire Street cemetery, Central Station

Artefact Heritage have prepared an historical AARD for the City & Southwest Chatswood to Sydenham project to assess archaeological potential and recommend appropriate management and mitigation measures. Central Station was assessed as having low potential for State significant archaeological remains associated with Devonshire Street cemetery as follows:

*The Devonshire Street cemetery was located in the northern half of the Central Station site. Remaining material from the cemetery could include structural remains such as former footings for the deconstructed burial ground walls, residual brick and stone tombs, and tombstones. Coffins, coffin furniture and human skeletal remains and associated artefacts may also be preserved. Evidence of grave excavation in the form of cut soils and potential clay and sand backfill would be located from the base of the grave shaft to the top of the former ground level.<sup>11</sup>*

During works at the CSMW site, human remains were located in definable burials (including vaults) and scattered in redeposited fill. This ExMP applies to human skeletal remains or burial-related archaeological material.<sup>12</sup>

<sup>10</sup> Source: State Library of New South Wales

<sup>11</sup> Artefact Heritage 2016: 238.

<sup>12</sup> Ibid, pp.255-257

## 4.3. Special consideration for approvals at the CSMW site

### 4.3.1. Discovery of human remains and forensic cases: Coroners Act 2009 (NSW)

Consultation with the Coroner has confirmed that fragmented human remains discovered at the CSMW site do not require notification to the NSW Police, as the Coroners Act would not apply, if they meet **all** of the following criteria:

- They are disarticulated bone pieces or fragments, either within an identified burial site such as a grave cut or vault, or dissociated from their original context. For example disarticulated bones, bone fragments or teeth including those found in situ, in redeposited fill or when sieving deposits.
- Are not associated, in a definable burial site, with elements that could identify the interred such as a name plate, certain types of coffin goods such as personal effects, and or a headstone;
- They are more than 100 years old;
- They meet the requirements for exhumation under the Permit issued by SLHDPHU dated 21 January 2019; and
- They have been confirmed to meet the above criteria by a forensic or physical anthropologist, or archaeologist with specialist skills such as an osteoarchaeologist.

Exhumation of human remains: Public Health Regulation 2012 (NSW) and the **h**.

### 4.3.2. NSW Ministry of Health Policy Statement – Exhumation of human remains (2013)

Sydney Local Health District Public Health Unit has issued a permit, dated 21 January 2019, approving site wide (CSMW) exhumation of fragmented skeletal remains under certain conditions as outlined in the permit. This provides for the management of fragmented remains without the need to seek separate permits for scattered remains that are often only identified during the sieving process, or are not associated with definable burial sites (for example within redeposited fill).

Note that additional health permits may be required if substantial remains such as full or partial articulated skeletal remains, or other elements such as grave goods or coffin nameplates, are found on site.

## 5. Excavation and post-excavation tasks

The following tasks relate to responses to the identification of human remains on site. All management should be in accordance with the AARD and relevant Archaeological Method Statement (AMS), and be overseen by the Excavation Director. The Excavation Director would nominate a Forensic Anthropologist where required.

### 5.1. Research Questions

The following research questions should be used guide exhumations, should intact burials, disarticulated remain, burial cuttings or associated material culture be uncovered during works. These research questions are based on research undertaken for the Sydney Metro City & Southwest Chatswood to Sydenham AARD, and review of previous archaeological

excavations that involved recording and removal of human remains. Additional research questions may be provided in project specific AMS documents. Note that some of the questions particularly relate to the former Devonshire Street Century at Central Station.

The research questions are a guide only, and could be added to or amended by the Excavation Director, depending on the nature of the find.

### Social History and Burial Practices

- Does the location of the burial/burial cutting correspond with historic plans/descriptions of the Devonshire Street Cemetery? Are these sources reliable?
- Is there evidence of exhumation?
- Do graves cut into older ones? What can this tell us about nineteenth century burial practices in Sydney, and how does this compare to other excavated cemetery sites in the region?
- What is the distance between burials (if multiple burials uncovered)? Does this conform to known nineteenth century burial practices?
- What type of fill was used within grave cuttings? What can this tell us about the surrounding environment and burial practices at the time?
- What materials/tree species were used to produce coffins? Can coffin manufacturing techniques or fastening methods (use of mortar, screws, nails, tacks) be identified? Does this match known burial practices of the time? If alternative methods are identified, what can this tell us about the manufacturer or economic/social landscape?
- Evidence of brick vaults were found during excavations at the Old Sydney Burial Ground in 1991 and 2003,<sup>13</sup> is there evidence of similar practices at the Devonshire Street Cemetery?
- Can the class or rank of the individual be identified via coffin materials, grave goods or clothing/shrouds?
- Which direction is the burial orientated? How does this correspond with the known/hypothesised location of denomination areas?
- Previous excavations of historic cemeteries have noted the use of quicklime in burials,<sup>14</sup> is there evidence for similar practices at the Devonshire Street Cemetery?
- If the burial is associated with additional individuals, can a familial relationship be assessed through DNA or other genetic markers identifiable within the skeletal remains (e.g. impacted third molar)?
- Can an exchange between burial practices in Britain and colonial Sydney be identified through the burial remains? Is there evidence for alternative burial practices associated with additional cultures?

<sup>13</sup> Godden Mackay, 1991. Old Sydney Burial Ground, Sydney Town Hall: Archaeological monitoring excavation. Prepared for the Council of the City of Sydney and the Heritage Council of NSW and Casey & Lowe, 2006. Recording of Graves, Old Sydney Burial Ground, Sydney Town Hall, 2003-2005, for Otto Cserhalmi i + Partners, on behalf of the City of Sydney.

<sup>14</sup> Hewitt, G. & Wright, R., 2004. Identification and Historical Truth: The Russell Street Police Garage Burials. Australasian Historical Archaeology, Vol. 22.

## Environmental Factors and Scientific Analysis

- What is the condition of the bones? How does their condition compare to known or nearby burials of the same age? What environmental or man-made factors may have influenced the decomposition process?
- Can the health, nutrition, sex, race, stature or age be identified through the skeletal remains? Is there evidence of trauma on the bones? Is there evidence of pathology on the bones (e.g. syphilis, tuberculosis, tumours)?
- If archaeobotanical analysis is carried out, what can it tell us about the surrounding environment and nearby plant species? Can pre/post-European landscapes be determined within the archaeobotanical record?
- Can stable isotope analysis address any questions regarding diet, country of origin and nutrition?
- Can DNA testing address any questions not answerable by the skeletal remains themselves, such as sex, familial relationships (if buried with another individual/s) or race?
- Is there potential for DNA to be tested against any individuals who may come forward as a descendant of the deceased?

## 5.2. Process for DNA Testing, Isotope Analysis and Environmental Sampling

### 5.2.1. Pre-Excavation

The Excavation Director, in consultation with the Forensic Anthropologist, will nominate a suitable laboratory prior to works commencing. Approval for the analysis of skeletal remains, soil samples and material samples from the laboratory would also be sought prior to works commencing.

### 5.2.2. Excavation

In order to prevent cross-contamination, the following sample collection and excavation process should be followed:

- The location, quantity and material (bone, teeth, hair, soil, wood) of samples will be determined by the Excavation Director or Forensic Anthropologist prior to its collection;
- Samples would be stored in a safe, secure and climate controlled location while excavations are in progress. This would be chosen by the Excavation Director or Forensic Anthropologist on site;
- Each collected sample would be given a unique catalogue number and a sample register would be recorded throughout the excavation;
- “Clean Excavation’ procedures would be followed during the excavation of burials and during the sample collection process.<sup>15</sup> This would include:

<sup>15</sup> Guidelines for ‘clean excavation’ are based on procedures outlined in: Yang, D. Y. & Watt, K. 2005. Contamination controls when preparing archaeological remains for ancient DNA analysis. *Journal of Archaeological Science*, vol. 32, pp. 331–336 and Society for Historical Archaeology, 2015-2017. *Research and Analysis of Artefacts*. Accessed online at: <https://sha.org/conservation-facts/faq/analysis/#C> on 25/5/2017.

- Latex gloves would be worn by individuals excavating and/or handling bone or soil samples. Gloves would be changed for each bone and/or individual to prevent cross-contamination;
- Excavation tools/brushes would be cleaned prior to and after the collection of each sample to prevent cross-contamination;
- In some cases, a face mask would be worn when samples for DNA analysis are being collected;
- Bone samples for DNA testing would be collected with surrounding in situ soil and should not be cleaned prior to bagging;
- It may be necessary for individuals involved in sample collection to submit DNA for comparison in the event of cross-contamination; and
- All bags containing samples for analysis would be bagged and labelled appropriately to prevent cross contamination and ensure they are handled and stored correctly.

### 5.2.3. Post-Excavation

Upon the completion of excavations, samples will be transported to nominated laboratories for analysis. A record of their location will be taken.

## 5.3. Reporting

The results of the investigation of human remains and the exhumation will be included in the archaeological reporting for the project in accordance with the project AARD.

Once finalised, all archaeological excavation and data analysis reports will be submitted to:

- The relevant local Council and Library;
- The Heritage Office Library;
- The State Library of NSW; and
- Made available online for public access and educational purposes.

Further, if significant remains are identified during excavations, the results and findings would be published in academic journals and conference papers where feasible.

## 5.4. Public Involvement

Archaeological excavations associated with the Devonshire Street Cemetery have uncovered remains directly associated with early settlement and burial practices in colonial Sydney. Such remains are likely to generate public interest. Therefore, public engagement and education would be incorporated into the Central Station project and other Metro projects, if relevant and feasible.

Public involvement may include:

- Media releases;
- Public Open Days;
- Preparation of brochures detailing the archaeological excavations;
- Interpretive signage and online blog posts or site diaries while excavations are taking place; and

- The preparation of a Heritage Interpretation Plan designed to provide interpretation of the site within the new development upon the completion of works.

Due to sensitive nature of human skeletal remains, these recommendations would be adapted and modified as appropriate under the direction of Sydney Metro and the Excavation Director.

Such recommendations would also be considered and require approval from relevant Stakeholder Groups such as known or potential descendants of the deceased, the NSW Heritage Division/Heritage Council, local Council and the Royal Australian Historical Society.

## 5.5. Temporary Storage and Permanent Repository or Resting Place for Remains

### 5.5.1. Temporary Storage

Upon the completion of archaeological excavations, skeletal remains should be boxed separately and temporarily stored within a safe, secure and temperature controlled environment to allow for further analysis of the remains. This location would be chosen by the Excavation Director and the Forensic Anthropologist and comply with NSW legislative requirements. Permanent Repository or Resting Place for Remains.

A permanent repository or resting place for remains is dependent on the nature and volume of skeletal remains. As this cannot be determined prior to excavations taking place, the following recommendations should act as guidelines only. Final arrangements would be dictated by Sydney Metro the Excavation Director, Forensic Anthropologist, identified descendants of the deceased and/or Stakeholder Groups upon the completion of excavations and subsequent analysis.

Recommendations for permanent repositories or resting places for remains include:

- Reinterment and Commemoration at:
  - Rookwood Cemetery (where many exhumed burials from the Devonshire Street Cemetery were historically re-buried);
  - An appropriate and respectful location within the former perimeters of the Devonshire Street Cemetery; and
  - A cemetery chosen by descendants of the deceased (if identified and confirmed by DNA testing).

## 6. Accountabilities

The Sydney Metro Executive Director, Safety, Sustainability & Environment is accountable for this Plan including authorising the document, monitoring its effectiveness and performing a formal document review.

Direct Reports to the Program Director are accountable for ensuring the requirements of this Plan are implemented within their area of responsibility.

Direct Reports to the Program Director who are accountable for specific projects/programs are accountable for ensuring associated contractors comply with the requirements of this Plan.

## 7. Definitions

All terminology in this Plan is taken to mean the generally accepted or dictionary definition. Other terms and jargon specific to this Plan are defined within [SM QM-FT-435 Integrated Management System \(IMS\) Glossary](#).

## 8. Related Documents and References

### Related Documents and References

- n/a

## 9. Superseded Documents

### Superseded Documents

Exhumation Management Plan Version 2.2

## 10. Document History

Version	Date of approval	Notes
1.1	May 2017	New IMS document.
2.0	July 2017	Incorporates Stage 2 (Section 3)
2.1	February 2019	Extended for Metro Program wide application, includes changes specific Central Station management, incorporates comments received from the State Coroner's Office, NSW Police, NSW Health, Sydney Metro Environmental, Environmental Representatives engaged on the Central site and the Office of Environment and Heritage.
2.2	February 2019	Incorporates comments received from Artefact Heritage and Denise Donlan issued to Health and OEH HD for consultation
3.0	May 2019	Incorporates Health, Coroner and OEH comments

## 11. Schedule of Acronyms

Acronym	Meaning
AARD	Archaeological Assessment and Research Design
ACHAR	Aboriginal Cultural Heritage Assessment Report
AMS	Archaeological Method Statement
CSMW	Central Station Main Works
CSSI	Critical State Significant Infrastructure
ER	Environmental Representative (Independent)
ExMP	Exhumation Management Plan (this plan)
OEH	Office of Environment and Heritage
PHU	Public Health Unit
RAPs	Registered Aboriginal Parties
SLHDPHU	Sydney Local Health District Public Health Unit
SMEM	Sydney Metro Environmental Manager

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**Appendix 1**

NSW Health Policy Directive for Exhumation of Human Remains

## Exhumation of Human Remains

**Document Number** PD2013\_046

**Publication date** 05-Dec-2013

**Functional Sub group** Population Health - Environmental

**Summary** This document provides the policy to be observed by NSW Health in receipt of an application to seek permission for approval of the exhumation of human remains under clauses 69-72 of the Public Health Regulation 2012. This Policy Directive will provide the conditions on which approvals may be granted for exhumation of human remains.

**Replaces Doc. No.** Burials - Exhumation of Human Remains [PD2008\_022]

**Author Branch** Environmental Health

**Branch contact** Environmental Health 94245823

**Applies to** Local Health Districts, Environmental Health Officers of Local Councils, Ministry of Health, Public Health Units, Public Hospitals

**Audience** Authorised officers from Public Health Units and local councils

**Distributed to** Public Health System, Environmental Health Officers of Local Councils, NSW Ambulance Service, Ministry of Health, Public Health Units, Public Hospitals

**Review date** 05-Dec-2018

**Policy Manual** Patient Matters

**File No.** 08/1292

**Status** Active

### Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

## EXHUMATION OF HUMAN REMAINS

### PURPOSE

This document provides the policy to be observed by Public Health Units located in Local Health Districts, on receipt of an application to seek permission for approval of the exhumation of human remains under the *Public Health Regulation 2012*. Common reasons for exhuming bodies include to repatriate the remains overseas or to relocate the body to another cemetery plot or vault.

### MANDATORY REQUIREMENTS

Under Clause 69 of the *Public Health Regulation 2012* a person must not exhume a body unless the exhumation of the remains has been approved by the Director-General.

An application for approval to exhume the remains of the body of a dead person may be made to the Director General by:

- An executor of the estate of the dead person
- The nearest surviving relative of the dead person
- If there is no such executor or relative available to make the application a person who, in the opinion of the Director-General, is a proper person may make the application.

An application is to be made in the approved form and it is to be accompanied by:

- A certified copy of the death certificate relating to the dead person
- A statutory declaration as to the relationship of the applicant to the dead person and the dead persons wishes, if any, regarding the disposal of his or her body
- An application fee.

Under Clause 71 of the *Public Health Regulation 2012* the Director-General may:

- Grant an approval to exhume the remains of a body
- Refuse the application.

Under Clause 72, an exhumation cannot take place without an authorised officer or a Ministry of Health staff member present. A person must not proceed with an exhumation if the authorised officer or Ministry of Health staff member who is present at the exhumation, orders the exhumation to stop.

Under Clause 78, if the applicant seeks to have the exhumed body cremated a separate application can be made for an exemption from providing the required cremation documentation, provided the body has been buried for longer than 10 years. The minimum 10 year period is strictly enforced. An application under this clause is to be accompanied by a fee of \$100.

### IMPLEMENTATION

Authorised officers in Public Health Units of Local Health Districts are responsible for assessing applications for exhumation of human remains and either approving with a set of conditions or rejecting the application. Authorised officers should ensure that all of the required document has been submitted with the application fee and that an appropriate person has applied for the application. The approval granted is valid for a period of three months after the approval is granted.

## REVISION HISTORY

Version	Approved by	Amendment notes
December 2013 PD2013_046	Deputy Director-General, Population and Public Health	This document is an updating of the original document due to legal changes under the Public Health Regulation 2012
23 April 2008 PD2008_022	Director-General	This document provided the policy to be observed by NSW Health in receipt of an application to seek permission for approval of exhumation of human remains under clauses 25 – 28 of the Public Health (Disposal of Bodies) Regulation 2002. It provided the conditions upon which approvals could be granted for the exhumation of human remains.

## ATTACHMENTS

1. Exhumation of Human Remains: Procedures

## Exhumation of Human Remains

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**Issue date:** December-2013

PD2013\_046

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## 1 BACKGROUND

### 1.1 Introduction

Exhumation of human remains may occur for a number of reasons, including:

- To satisfy family wishes, where the family of the deceased person may want the remains to be moved to another burial ground, to another part of the state or country or abroad, or even to have the remains cremated
- To obey Coronial orders requiring exhumation for forensic (criminal) investigation
- To enable the use of closed cemeteries for redevelopment or for the construction of new infrastructure such as a road or airport.

A variety of people, including authorised officers, cemetery authorities, and funeral directors are involved at different stages of exhumation procedures.

Public Health Units (PHUs) of Local Health Districts (LHDs) in NSW facilitate the approval for an exhumation however there is no obligation to proceed with an exhumation once it has been approved.

The objectives of this document are:

- To assist authorised officers with processing applications to exhume
- To standardise the management of an exhumation so as to prevent a public health risk and protect community amenity in the handling of remains.

### 1.2 Key definitions

These definitions are repeated from the *Public Health Act 2010* and Public Health Regulation 2012 for clarity:

<b>Body</b>	Means the body of a dead person, but does not include the cremated remains of the person
<b>Burial</b>	Includes putting the body in a vault
<b>Cemetery Authority</b>	Means the person or body that directs the operations of a cemetery
<b>Coroner</b>	Means a person who exercises or performs the functions of a coroner in accordance with the <i>Coroners Act 2009</i>
<b>Dead person</b>	Includes a still-born child (see definition of Still birth)
<b>Exhumation</b>	Means the removal of a dead person's remains (not being cremated remains) from a grave or vault, but does not include their removal from one vault for immediate transfer to another vault in the same cemetery or their temporary removal for the purposes of reburial in the same grave or vault

<b>Funeral director</b>	Means a person (other than the operator of a mortuary transport service) who, in the conduct of the person's business, engages, for the purpose of burial, cremation or transport, in the collection, transport, storage, preparation or embalming of bodies or engages in the conduct of exhumations
<b>Prescribed infectious diseases</b>	Means any one of the following diseases: avian influenza in humans, diphtheria; plague, respiratory anthrax; smallpox; severe acute respiratory syndrome, tuberculosis and any viral haemorrhagic fever (including Lassa, Marburg, Ebola, and Congo-Crimean fevers)
<b>Proper person</b>	The Director General has the power to decide whether a person is a 'proper person' to make an application to exhume the remains of a dead person
<b>Nearest surviving relative</b>	Means: (a) In relation to a still-born child a parent, or sibling at or above the age of 16 years, of the child (b) In relation to a dead person who is not a still-born child – the spouse or de facto partner of the dead person immediately before death, a parent of the dead person, a child at or above the age of 16 years of the dead person or any relative of the dead person who was residing with the dead person when he or she died
<b>Still-birth</b>	Consistent with the <i>Births, Deaths &amp; Marriages Act 1995</i> , means the birth of a child that exhibits no sign of respiration or heartbeat, or other sign of life, after birth and that: (a) Is of at least 20 weeks' gestation (b) If it cannot be reliably established whether the period of gestation is more or less than 20 weeks, has a body mass of at least 400 grams at birth

### 1.3 Legal and legislative framework

#### Public Health Regulation 2012

Division 4 of Part 8 of the Public Health Regulation 2012 provides specific regulation for the exhumation of bodies.

#### *Clause 69 Exhumation without approval prohibited*

- (1) A person must not exhume the remains of a body unless the exhumation of those remains has been:
  - (a) Ordered by a coroner
  - (b) Approved by the Director-General.

- (2) However, a funeral director may, without a coroner's order or Director-General's approval, transfer a coffin from a vault in a cemetery to a mortuary for the purpose of the coffin being immediately repaired and returned to the vault.
- (3) A funeral director must return the coffin to the cemetery within 24 hours of its transfer.

### *Clause 70 Application to exhume remains*

- (1) An application for approval to exhume the remains of the body of a dead person may be made to the Director-General by:
  - (a) An executor of the estate of the dead person
  - (b) The nearest surviving relative of the dead person
  - (c) If there is no such executor or relative available to make the application a person who, in the opinion of the Director-General, is a proper person in all the circumstances may make the application.
- (2) An application is to be made in the approved form and is to be accompanied by:
  - (a) A certified copy of the death certificate relating to the dead person
  - (b) A statutory declaration as to the relationship of the applicant to the dead person and the dead person's wishes, if any, regarding the disposal of his or her body (so far as any such wishes are known to the applicant)
  - (c) An application fee (please check with the PHU for the current fee).
- (3) In this clause, death certificate means a certificate given by a medical practitioner as to the cause of death or issued under the *Births, Deaths and Marriages Registration Act 1995*.

All applications to exhume remains must be made in writing using an approved form to the Director of the local Public Health Unit that acts on behalf of the Director-General of the NSW Ministry of Health. The application fee may increase periodically in line with the Consumer Price Index.

### *Clause 71 Approval to exhume remains*

- (1) The Director-General may:
  - (a) Grant an approval to exhume the remains of a body, subject to any conditions specified in the approval
  - (b) Refuse the application.
- (2) An approval granted under this clause remains valid for three months from the date of the approval or for a period agreed to by the Director-General.

The PHU is not bound to approve the application. The PHU may approve, subject to conditions, or refuse the application. An approval is normally given for 3 calendar months and this date will be specified in a schedule of conditions attached to the approval document. Any further extension of time may require re-application and re-approval. An approval initially for longer than three calendar months should be negotiated with the PHU.

### *Clause 72 Exhumation not to take place without authorised officer present*

- (1) A person must not proceed with an exhumation unless an authorised officer or a member of staff of the Ministry of Health is present at the exhumation.
- (2) A person must not proceed with an exhumation if the authorised officer or Ministry staff member who is present at the exhumation orders the exhumation to stop.

The grave may be excavated to the lid of the coffin but nothing must be disturbed until the arrival of the authorised officer. An authorised officer must be present at the exhumation to ensure that the correct interment is opened, to ensure that all of the remains are exhumed and to enforce the protection of public health should this be necessary. The authorised officer has the power to order that the exhumation be stopped immediately under adverse circumstances. An example of where this may occur is where the weather is very poor with heavy rain. The initial order to stop is to be given verbally and then confirmed in writing to all parties involved, within 24 hours.

Division 5 of Part 8 of the Public Health Regulation 2012 provides for cremation of deceased persons.

### *Clause 78 No cremation without documentation*

Clause 78 does not apply to a cremation of the body of a dead person that has been buried for at least 10 years if the cremation is carried out in accordance with an exemption granted by the Director-General following an application by:

- 1) An executor of the estate of the dead person
- 2) The nearest surviving relative of the dead person
- 3) If there is no such executor or relative available to make the application a person who, in the opinion of the Director-General, is a proper person in all the circumstances to make the application.

This is a new addition to the Exhumation section of the Regulation that may be used where a person makes a separate application to have the exhumed body cremated following the exhumation.

Note: The Director-General's authority under Clause 78 (4) of the Public Health Regulation 2012 (Delegations Manual page 8.66, delegation (PH590)) is the power to decide whether a person is a "proper person" to make an application in the absence of an executor or surviving relative.

### ***Work Health and Safety Act 2011***

The *Work Health and Safety Act 2011* and Code of Practice for Excavation provisions apply to protect personnel involved in the exhumation procedure by creating and maintaining safe and healthy work practices. Graves, crypts and vaults could be considered to be confined spaces in some circumstances under health and safety legislation. The *Work Health and Safety Act 2011* makes reference to working in confined spaces.

WH&S matters are enforced by WorkCover NSW. More information on safe work practices is available at <http://www.workcover.nsw.gov.au/default> or by contacting Workcover NSW direct on 13 10 50.

### ***Heritage Act 1977***

The *Heritage Act 1977* and Guidelines for the Management of Human Skeletal Remains under the *Heritage Act 1977* applies to relic burials. Any burial site over 50 years old is considered to be relic under the *Heritage Act*. If the site is listed on the State Heritage Register then approval is required from the Heritage Council of NSW.

An application must be made to the Heritage Office before any disturbance, removal or work commences on the site. Approval for an exhumation under the Public Health Regulation 2012 does not obviate the necessity to obtain approval under the *Heritage Act 1977*. For further information contact the Heritage Office of NSW or visit: <http://www.heritage.nsw.gov.au>.

### ***Coroner's Act 2009***

A coroner may order an exhumation for the purposes of forensic investigation or a criminal investigation. Such an order is outside the ambit of the Public Health Regulation 2012. The Police may request that an authorised officer from the Ministry of Health or the local Public Health Unit be present at the coronial exhumation.

### ***Births, Deaths and Marriages Registration Act 1995***

Section 41(2) of the *Births, Deaths and Marriages Registration Act 1995* requires that if human remains (other than cremated remains) are removed from NSW, the funeral director or other person who arranges for the removal of the remains from NSW must, within 28 days of disposal of the remains outside NSW, give the Registrar notice of the new location of interment. The act is available at: [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/bdamra1995383/](http://www.austlii.edu.au/au/legis/nsw/consol_act/bdamra1995383/). The Registry of Births, Deaths and Marriages may be contacted via: <http://www.bdm.nsw.gov.au>.

## **2 APPLICATION REQUIREMENTS**

An application for permission to exhume the remains of a deceased person is to be made to the PHU on the approved form which is contained at the NSW Ministry of Health website at <http://www.health.nsw.gov.au/environment/dotd/Documents/form-c70-application-to-exhume.pdf>

The application must be made by either:

- An executor of the estate of the deceased
- The nearest surviving relative

- If there is no such executor or relative available to make the application a person who, in the opinion of the Director-General, is a proper person in all the circumstances to make the application.

The application must be accompanied by:

- A certified copy of the death certificate (death certificate issued by the Registry of Births, Deaths and Marriages)
- A statutory declaration that states:
  - The relationship between the applicant and the deceased or the reason the applicant is the proper person to make the application
  - If the deceased left any instructions regarding the disposal of their body/remains if known
  - In addition to the above an applicant should declare that he or she has consulted each nearest surviving relative and that they have no objection to the proposed exhumation
  - An application fee (please check with the PHU for the current fee).

Note: If there is no agreement amongst nearest surviving relatives, the applicant should seek independent legal advice regarding this issue. The applicant should advise if there is an intention to cremate the body following the body being exhumed, and the appropriate form completed.

### 3 APPROVAL BY PUBLIC HEALTH UNITS

Approval by PHUs for an exhumation must be given by formal correspondence.

#### 3.1 Delegation

The Director-General's authority under clauses 69(1), 70(1)(c) and 71 of the Public Health Regulation 2012 has been delegated to the Chief Health Officer, Director Health Protection, Public Health Officer or Public Health Unit Director as appointed under Section 121 of the Act (delegation PH/308, PH309).

#### 3.2 Special Considerations on Exhumation Approval

Special consideration should be given to the approval of an exhumation if the deceased was infected with a prescribed infectious disease. For example if the deceased was infected with diphtheria or tuberculosis, exhumation should not be permitted in the first year of interment.

Although not prohibited, an exhumation of the remains of a body that was buried without a coffin will be approved only where the cemetery authority and funeral director have agreed to proceed with the exhumation, especially during the first three years of interment.

### 3.3 Conditions of Approval

After due consideration of the application and the statutory declaration(s), the PHU should then consider applying appropriate conditions to facilitate an approval.

There are two standard sets of approval conditions which can be applied as appropriate:

- Appendix 2 – Schedule A - Conditions of Approval for Exhumation from a Grave
- Appendix 3 – Schedule B - Conditions of Approval for Exhumation from an Above Ground Structure

Any other additional conditions that are deemed necessary to permit the exhumation may be added to schedule A or B based on the individual circumstances of the exhumation. If some conditions are unwarranted they may be removed from the relevant schedule.

### 3.4 Approval Instrument

An approval must be in writing and must be signed the Director General or their delegate. A template to assist in the approval process can be found at Appendix 4. This template is to be completed by the Authorised Officer in order to facilitate approval by the delegate.

### 3.5 Notification of Approval

The approval instrument is retained on file as a record that approval was granted by the Director General or their delegate. Therefore it is necessary to advise the applicant, the cemetery authority and the funeral director of the approval.

The attached letter templates may be used for approval notification of the exhumation to the applicant, funeral director and Cemetery Authority.

- Appendix 5 – Sample Letter to Applicant
- Appendix 6 – Sample Letter to the Cemetery Authority and Funeral Director

### 3.6 Refusals

If after due consideration the application is to be refused then the applicant should be notified in writing specifying the reasons for refusal. Ideally the applicant should consult the PHU in the first instance to discuss the requirements and possible restrictions on an application to exhume.

### 3.7 Cremation of Remains

Division 5 of Part 8 of the Public Health Regulation 2012 sets out the requirements for documentation for cremations in NSW and includes the requirement for a cremation application form, a cremation certificate and the cremation permit. The documentation confirms the identity of the body to be cremated and the cause of death and ensures that a coroner's investigation has been conducted where necessary.

After the body is exhumed the next of kin may wish to have the body cremated. However there may be cases whereby the body does not have the required paperwork necessary for cremation. Clause 78 of the Public Health Regulation 2012 provides an exemption for

the required documentation for cremation where the body has been buried for longer than 10 years. An application under this clause is to be accompanied by a fee.

The Director General has the power to approve an exemption and the executor or the nearest surviving relative or another proper person may make application on form 'Application for Exemption by the Director – General to the Requirement for Documentation for Cremation to Proceed: Permission for Cremation of Exhumed Remains of a Body Buried more than 10 years ago with statutory declaration'. The minimum 10 year period will be strictly enforced and this matter should be clarified prior to any exhumation approval where it is planned for the remains to be subsequently cremated. The application form is available at:

<http://www.health.nsw.gov.au/environment/dotd/Documents/form-c78-application-for-exemption.pdf>

## APPENDIX 1

### Schedule A

#### CONDITIONS OF APPROVAL FOR EXHUMATION FROM GRAVE

1. The exhumation is to be carried out in the presence of a Public Health Unit's authorised officer or other authorised officer of the NSW Ministry of Health or Local Council authorised Officer and person appointed by Cemetery Authority.
2. At least 48 hours notice of the exhumation arrangements shall be given to the Public Health Unit.
3. Day and time of the exhumation shall be arranged by the participating parties and agreed to by the Public Health Unit.
4. The approval granted is valid for a period of three months and shall lapse on \_\_\_/\_\_\_/\_\_\_\_\_, unless a further approval is granted.
5. The presence of any relative of the deceased at the exhumation is strictly prohibited.
6. No animals are to be permitted within the exhumation site.
7. The cemetery authority and funeral director shall be responsible for the work health and safety of all persons involved in the exhumation and shall ensure that all NSW WorkCover requirements are complied with.
8. If, during the course of the exhumation, it is determined necessary to stop the exhumation by either the exhumation supervisor / cemetery manager or authorised Officer, for any valid reason e.g. work health and / or public health risk, then the exhumation must cease.
9. The remains of the deceased shall be enclosed in a body bag and placed into a new coffin with a name plate attached inscribed with the name of the deceased.
10. The remains of the original coffin are to be placed in the new coffin where possible. Where there is an excess of remains of the original coffin, these remains should be disposed in a sanitary and agreed manner.
11. Excavated soil should be back filled. The soil that was removed from immediately above and around the coffin should be replaced first.
12. If the exhumed remains are to be transferred to another cemetery, a funeral director shall be contracted to transfer the remains from the cemetery grounds or carry out preparatory work for the safe reinterment of the remains.
13. The exhumation will not proceed during or following a period of heavy rainfall within the preceding 24 hours of the appointed time of exhumation. The cemetery manager is to confirm that satisfactory conditions exist for the exhumation to proceed two hours prior to the commencement of the exhumation.
14. Used disposable protective equipment and materials are to be placed in a sealed plastic bag and disposed of in a sanitary manner.

## **APPENDIX 2**

### **Schedule B**

#### **CONDITIONS OF APPROVAL FOR EXHUMATION FROM ABOVE GROUND STRUCTURE**

1. The exhumation is to be carried out in presence of a Public Health Unit authorised officer or other authorised officer of the NSW Ministry of Health or Local Council authorised Officer and person appointed by Cemetery Authority.
2. At least 48 hours notice of the exhumation arrangements shall be given to the Public Health Unit.
3. Date and time of the exhumation shall be arranged by the participating parties and agreed to by the Public Health Unit.
4. An approval granted is valid for a period of three months and shall lapse on \_\_\_/\_\_\_/\_\_\_, unless a further approval is granted.
5. The cemetery authority and funeral director shall be responsible for the work health and safety of all persons involved in the exhumation and shall ensure that all NSW WorkCover requirements are complied with.
6. If, during the course of the exhumation, it is determined necessary to stop the exhumation by either the exhumation supervisor / Cemetery Manager or authorised officer, if for any valid reason e.g. worker health and/or public health risks, then the exhumation must cease.
7. Used disposable protective equipment and materials are to be placed in a sealed plastic bag and disposed in a sanitary manner.

**APPENDIX 3**

{LETTERHEAD}

**APPROVAL INSTRUMENT TEMPLATE**

**Public Health Unit  
Environmental Health Section**

**File Number:** [XXXXXX]

**PURPOSE:** To approve of the exhumation of the late \_\_\_\_\_

**RECOMMENDATION:**

Approval is granted by the Director General pursuant to clause 71(1)(a) *Public Health Regulation* 2012 to [NAME OF APPLICANT] to exhume the remains of the late [NAME OF DECEASED].

**KEY ISSUES:**

[DETAILS OF THE APPLICATION, STATUTORY DECLARATION, RELEVANT ISSUES, MANAGEMENT PLAN AND JUSTIFICATION OF SUGGESTED CONDITIONS ARE TO BE INCLUDED HERE]

**BACKGROUND:** (TO BE COMPLETED BY PHU)

**CONSULTATION:** (TO BE COMPLETED BY PHU WHERE APPROPRIATE)

The approval be subject to compliance with the conditions specified in \*Schedule A / Schedule B and to expire on \_\_\_\_/\_\_\_\_/\_\_\_\_.

**Signature:** Authorised officer

**Author:**

**Telephone:**

**Date:**

- 1 Authorised officer
- 2 Public Health Unit Director/ Public Health Officer [SIGN AND DATE]:  
Approved via delegation from the Director-General PH308, PH309 page 8.63 Public Health Delegations Manual under clause 69(1) and 70(1) (C) *Public Health Regulation* 2012.
3. Authorised officer

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## APPENDIX 4

{LETTERHEAD}

### SAMPLE LETTER TO APPLICANT

[APPLICANT'S NAME]  
[ADDRESS]

Dear [APPLICANT'S NAME]

Reference is made to your application of [DATE] requesting approval to exhume the remains of late [NAME OF DECEASED] from \*grave / vault / crypt No: \_\_\_\_\_, Section \_\_\_\_\_, [NAME OF PLACE OF INTERMENT OR CEMETERY] for the purpose of re-interment to [NAME OF PLACE FOR RE-INTERMENT].

Approval has been granted by the Director-General pursuant to clause 71 (1) (a) *Public Health Regulation 2012*, subject to compliance with the conditions specified in \*Schedule A / Schedule B attached.

The funeral director and cemetery authority have been advised of the approval.

Should you have any inquiries please contact the authorised officer [EHO] on [TELEPHONE] or (EMAIL ADDRESS).

Yours sincerely,

[NAME]  
**Public Health Unit Director/Public Health Officer**

## APPENDIX 5

{LETTERHEAD}

### SAMPLE LETTER TO CEMETERY AUTHORITY AND FUNERAL DIRECTORS

[NAME]  
[ADDRESS]

[DATE]

Dear [NAME]

#### **EXHUMATION OF THE REMAINS OF THE LATE [NAME OF DECEASED]**

Approval has been granted for the exhumation of the late [NAME OF DECEASED] from \*grave / vault / crypt No: \_\_\_\_\_, Section \_\_\_\_\_, [NAME OF PLACE OF INTERMENT OR CEMETERY] in accordance with clause 71(1) (a) of the *Public Health Regulation 2012*, and subject to compliance with the conditions specified in Schedule A / Schedule B attached.

A copy of the approval letter is attached for your information.

Should you have any inquiries please contact [Authorised Officer] on [TELEPHONE] or email address.

Yours sincerely,

[NAME]  
**Public Health Unit Director/Public Health Officer**

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**Addendum 2**

NSW Health Permit Application form

**APPLICATION TO EXHUME REMAINS**  
PUBLIC HEALTH REGULATION, 2012 Clause 70(2)

In accordance with the requirements of Clause 70 (2) of the Public Health Regulation 2012, I .....  
(Full name of applicant)

..... of ..... hereby  
(Address)

apply for permission to exhume the remains of the late .....  
(Name of deceased)

from Grave No:....., Section: ....., being a single

interment within the ..... Cemetery, for the purpose of .....

I seek permission to exhume for the following reason/s:

The deceased: *(cross out which is not applicable)*

- was not known to be infected with a prescribed infectious disease as defined in clause 53 of the Public Health Regulation 2012; or
- was known to be infected with a prescribed infectious disease as defined in clause 53 of the Public Health Regulation 2012

I am entitled to make this application, because I am: *(tick one)*

1.  The executor of the estate of the deceased; or
2.  The nearest surviving relative of the deceased; or
3.  If there is no such executor or relative available to make the application, another the proper person to make the application for the reasons set out below:

.....  
(Full reasons for proper person to make application)

Attached is:

1. A certified copy of the death certificate of the deceased.
2. A statutory declaration as to:
  - My relationship to the deceased; and
  - the wishes of the deceased regarding the disposal of the body (if known);
  - the reasons why the Director-General may consider me the proper person in all the circumstances to make the application (if applicable)
3. The application fee of \$.....

**The exhumation is to be supervised in strict accordance with the attached Plan of Management**

by .....  
employed with .....(Funeral Director/Cemetery)  
in the capacity of .....

Signature: ..... Date: .....  
(Applicant)

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**Addendum 3**

Central Station Heath Permit

Fil Cerone  
Director Environment, Sustainability and Planning Sydney Metro  
Level 43, 680 George Street  
**SYDNEY NSW 2000**

Dear Mr Cerone

Reference is made to your application of 16<sup>th</sup> January 2019 requesting approval to exhume the fragmented skeletal remains from an old burial vault at the former Devonshire Street Cemetery located at Central Railway Station near Platform 13. I note that this is for the purpose of salvage and reburial of the remains.

Approval has been granted pursuant to clause 71(1)(a) of the *Public Health Regulation 2012* to exhume and re-inter the remains, subject to the remains being treated with dignity and respect, and in compliance with Sydney Metro's *Exhumation Management Plan Version 2.0 (SMEMP2)*. If the remains are to be transferred to another cemetery for re-interment, a funeral director shall be contracted to transfer the remains to the cemetery and to carry out any necessary preparatory work for the safe reinterment of the remains. The remains are to be placed in a coffin for reinterment and an identifying plate with name (if known) or other identifying details should be attached. For example the plate might state "Unknown Burial from Former Devonshire St Cemetery, reinterred here on <date>".

This approval will extend to any further fragmented skeletal remains found at the former Devonshire Street Cemetery located at Central Railway Station in the areas being excavated for the new Sydney Metro, as shown on the site plan in Annexure A. Should any substantial remains, such as full or partial articulated skeletal remains, or other elements such as grave goods or coffin name plate be found on the site that could identify the interred, the Sydney Local Health District Public Health Unit (SLHDPHU) will need to be advised as soon as practicable. Additional assessment or further approvals may be required at that time subject to the nature of the discovery.

Should you have any enquiries, please do not hesitate to contact Geoff Tan, Environmental Health Officer on (02) 9515-9420.

Yours sincerely



Dr Zeina Najjar  
**Acting Director, Public Health**

21<sup>st</sup> January 2019

## Annexure A

