

Exhumation Management Plan

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Infrastructure Contract

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Document Control

The Project Director is responsible for ensuring that this plan is reviewed and approved. The Project Director is responsible for updating this plan to reflect changes to the project, legal and other requirements, as required.

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Any revisions or amendments must be approved by the Project Director and/or client before being distributed / implemented.

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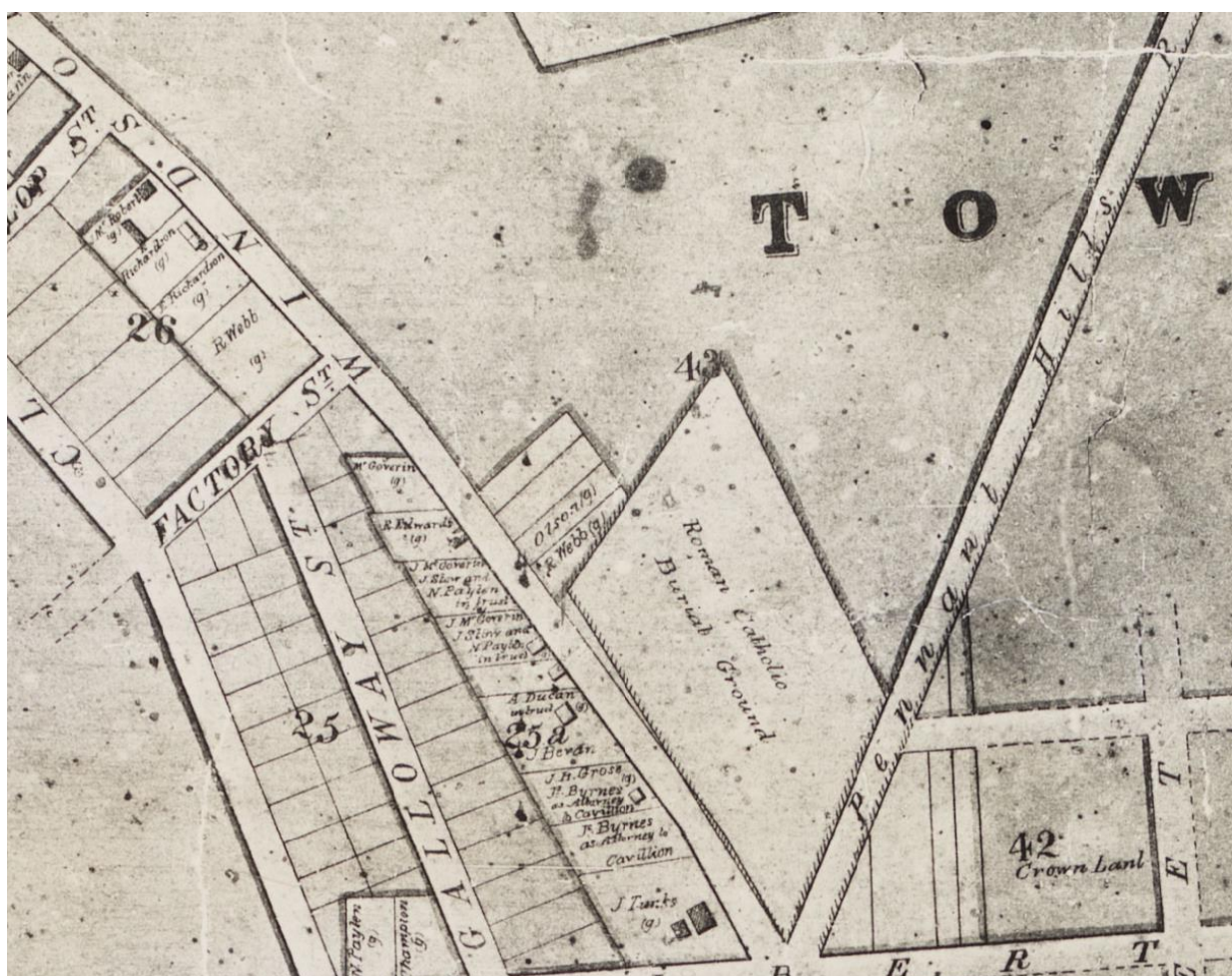
Appendix A – Exhumation Management Plan

Parramatta Light Rail—Infrastructure

Exhumation Management Plan

Report prepared for Parramatta Connect

September 2020



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Report Register

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The report has been reviewed and approved for issue in accordance with the GML quality assurance policy and procedures.

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1.0 Introduction

1.1 Project Background

Stage 1 of the Parramatta Light Rail (PLR) will connect Westmead to Carlingford via the Parramatta central business district (CBD) and Camellia. The PLR proponent is Transport for NSW (TfNSW) and it received approval as Critical State Significant Infrastructure (CSSI) in May 2018. Parramatta Connect—a CPB Contractors and Downer EDI Works Joint Venture—has been selected to deliver the PLR Infrastructure works.

The PLR transects a rich archaeological landscape. Desktop assessment identified potential to encounter archaeological burial sites and human skeletal remains during works. The project alignment on Church Street is within a portion of land resumed from St Patrick's Roman Catholic Cemetery (established in 1821). It also includes the Eliner Magee and Child grave site off Grand Avenue and adjacent to the Carlingford rail line.

This Exhumation Management Plan (EMP) has been prepared in response to the Recommended Environmental Mitigation and Management Measure (REMMM) HE-5 as defined in the Submissions and Preferred Infrastructure Report (SPIR).

Exhumation and archaeological excavations of graves and burial sites is not proposed as part of the PLR Infrastructure works. However, due to an inconsistency between the SPIR REMMM HE-5 and the Project Approval (CoA E61 – see below), Parramatta Connect has prepared this EMP as a standalone document prior to conducting construction works in sensitive archaeological areas such as St. Patrick's Cemetery.

The EMP provides the framework and procedures for the discovery, assessment, notification and management of burial sites and human remains if encountered during works. It also provides an archaeological context, procedures and methodologies should archaeological excavation of human remains be required during the project.

1.2 Conditions of Approval

Modifying or removing human remains is not permitted under the PLR Conditions of Approval (CoA) E61.

CoA Heritage E61—Nothing in this approval permits the Proponent to harm, modify, or otherwise impact human remains uncovered during construction and operation of the CSSI.

This means additional approval will be required to move or alter archaeological human remains encountered during PLR works. Information on approvals are provided in Section 3.6.

1.3 Relevant Reports and Guidelines

Other reports relevant to this EMP are:

- GML 2020, Parramatta Light Rail Stage 1—Historical Archaeological Research Design and Investigation Methodology, report prepared for Parramatta Connect in January 2020 (HARD 2020)
- Artefact Heritage 2017, Parramatta Light Rail Non-Aboriginal [Historical] Archaeological Assessment, prepared for WSP/Jacobs on behalf of TfNSW (HAA 2017)

- Kelleher Nightingale Consulting 2017, Parramatta Light Rail Aboriginal Cultural Heritage Assessment Report, prepared for WSP/Parsons Brinckerhoff on behalf of TfNSW (ACHAR 2017).

This report has been prepared in accordance with the following guideline and relevant project example:

- NSW Heritage Office 1998, 'Skeletal Remains—Guideline for the Management of Human Skeletal Remains under the Heritage Act 1977' (Skeletal Remains 1998)
- Sydney Metro, Exhumation Management Plan Version 3, 14 May 2019.

1.4 Authorship

This EMP has been prepared by Ana Klasen (GML Graduate Heritage Consultant, Archaeologist) and Abi Cryerhall (GML Principal / Manager, Archaeology).

1.5 Limitations

This EMP has been prepared in response to REMMM HE-5. It provides the procedure for the discovery of skeletal remains during works. It also includes detailed management and methodologies for archaeological human skeletal remains. However, as there is currently no approval to remove or impact human skeletal remains, archaeological excavations of graves or burial sites cannot be undertaken (CoA E61). Additional approvals would be sought if remains are encountered and can't be avoided through design modification.

Details of long-term storage and/or reinterment of archaeological human skeletal remains are yet to be determined and would be subject to consultation with relevant stakeholders, such as City of Parramatta Council and the Catholic Diocese of Parramatta as relevant (e.g. for HAMU 8 - St Patricks Cemetery), and any identified descendants. If remains are Aboriginal, then consultation with the project's Aboriginal Focus Group (AFG) members would also be undertaken.

1.6 Definitions

Explanation for terms and abbreviations used in this EMP are provided in the table below.

Table 1.1 Terms and definitions

Terms	Explanation
Aboriginal object	Means 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
Aboriginal remains	Means the body or the remains of the body of a deceased Aboriginal person, but does not include a body or the remains of a body buried in a cemetery in which non-Aboriginal persons are also buried
ACHAR	Aboriginal Cultural Heritage Assessment Report
AFG	Aboriginal Focus Group
Burial	A burial is the body, human remains or coffin within a grave

Terms	Explanation
Burial artefacts	These are the non-human remains buried in a grave and include coffin remains, clothing or shroud, name plate, religious items such as rosary beads, personal items such as rings, necklaces or other jewellery, and other objects buried with the dead
Burial markers	Items used to indicate a burial and grave location, and include headstones, footstones and edging
CoA	Conditions of Approval
CPBD JV or JV	CPB Contractors and Downer Joint Venture
CSSI	Critical State Significant Infrastructure
DPC	Department of Premier and Cabinet
DPIE	Department of Planning, Industry and Environment
Excavation Director	The nominated archaeological excavation director for the PLR project in accordance with CoA E72
ER	Environmental Representative
Exhumation	Refers to the removal of human remains from a burial place or vault for transfer to another location.
Faunal remains	Refers to animal bones, teeth, cartilage and skin not culturally modified or manufactured for another use such as leather, jewellery, cutlery, soap, candles
Forensic and archaeological	Human remains which are less than 100 years old. In this EMP the term 'archaeological' is used to distinguish human remains greater than 100 years old from 'forensic' cases
Forensic anthropologist	A physical anthropologist with specialism in applying skeletal analysis and archaeological techniques in criminal cases or the legal process
Grave	A grave is the hole dug into the ground to place the burial and includes the soil to refill the hole
HAMU	Historical Archaeological Management Unit
HARD	Historical Archaeological Research Design and Investigation Methodology
Heritage NSW	Regulatory authority for heritage within DPC
HMP	Heritage Management Sub-plan
Human remains	Refers to human bones, teeth, skin, muscle, cartilage, tendons, ligaments, organs, hair and nails. Also includes cremated remains, embalmed remains and mummified remains
OEH	Office of Environment and Heritage (now Heritage NSW – DPC)
PLR	Parramatta Light Rail Stage 1 Westmead to Carlingford
Relics	Means any deposit, artefact, object or material evidence that relates to the settlement of NSW, not being Aboriginal settlement, and is of state or local heritage significance
TfNSW	Transport for New South Wales

2.0 Legislative Context

2.1 Preamble

The PLR project approval does not include impact or removal of human remains (CoA E61). There are several pieces of legislation that would apply should human remains be encountered during PLR works. Notification, approval and procedure requirements will depend on the circumstances of the find and whether the human remains are determined to be forensic (less than 100 years old) or archaeological (more than 100 years old).

2.2 Coroners Act 2009 (NSW)

The *Coroners Act 2009* (NSW) (Coroners Act) gives the State Coroner jurisdiction over deaths which have occurred in NSW during the last 100 years (Part 3.1, Sections 18 and 19). Human remains that are less than 100 years old are considered 'forensic' and a 'reportable death'. In these cases, the find must be reported as a death to the NSW Police and the NSW Coroner immediately (Part 3.4, Section 35). The NSW Coroner also has the right to hold an inquest, establish a coronial investigation scene and take possession of the human remains (Part 3.2 Section 21 and Part 3.4 Sections 40-43). This applies to all human remains less than 100 years old, regardless of ancestry (i.e. both Aboriginal and non-Aboriginal remains).

Notification to the NSW Police is to be made in the event that human remains are discovered during PLR works according to CoA E62. However, human remains found during works within HAMU 8 and other archaeological sites will likely be determined 'archaeological' (greater than 100 years old) rather than forensic and are unlikely to trigger reporting requirements under the Coroners Act.

The Provisions of the Coroners Act apply under an CSSI approval such as the PLR project approval.

2.3 Heritage Act 1977 (NSW)

The *Heritage Act 1977* (NSW) (Heritage Act) is relevant to historic burials and archaeological human remains. Human remains are considered 'material evidence' and are included within the definition of a 'relic' under the Heritage Act (Part 1 Section 4):

relic means 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.

Section 146 of the Heritage Act requires any person who believes they have discovered or located a 'relic' to notify the Heritage Council of NSW (or Heritage NSW, DPC as its delegate). Notification under Section 146 applies to the PLR project (CoA E73). The procedure for notification under Section 146 of the Heritage Act is provided in Section 5.3.14 of the HARD 2020. Additional archaeological excavation permits under Section 139 of the Heritage Act are not required for CSSI approved projects.

In this EMP the term 'archaeological' is used to distinguish human remains greater than 100 years old from 'forensic' cases.

2.4 National Parks and Wildlife Act 1974 (NSW)

The *National Parks and Wildlife Act 1974* (NSW) (NPW Act) is relevant to Aboriginal skeletal remains (Aboriginal remains) where they are pre-contact in date or do not occur within historic cemeteries (Part 1 Section 5.1). Archaeological Aboriginal remains are considered 'material evidence' and are included in the definition of 'Aboriginal objects' under the NPW Act (Part 1 Section 5.1):

Aboriginal object means 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.

Heritage NSW, DPC must be notified if Aboriginal remains are unexpectedly encountered during PLR works (Part 6 Section 89A). Unexpected Aboriginal remains are to be managed in accordance with the Heritage Management Sub-Plan (CoA C3), the ACHAR 2017 and outcomes of consultation with the AFG and Heritage NSW. Additional Aboriginal heritage impact permits under Section 90 of the NPW Act are not required for CSSI approved projects.

2.5 Public Health Act 2010 and Public Health Regulation 2012 (NSW)

The *Public Health Act 2010* (NSW) and the Public Health Regulation 2012 provide requirements for the disposal and exhumation of 'bodies'—defined as 'the body of a dead person but not including cremated remains.' Exhumation 'means the removal of a dead person's remains (not being cremated remains) from a grave or vault' and this 'does not include their removal from one vault for immediate transfer'. According to the Public Health Regulation 2012, exhumation of bodies requires approval from the Secretary of the NSW Health Department (Part 8 Clause 70 and 71). Exhumations require an authorised officer of the NSW Health Department to be present (Part 8 Clause 72).

Exhumation applications are facilitated by Public Health Units of the Local Health District. Further details on exhumation applications are provided in the *NSW Health Policy Statement—Exhumation of Human Remains 2013*. The application form can be found on the NSW Health website (<<https://www.health.nsw.gov.au/environment/dotd/Documents/form-c70-application-to-exhume.pdf>>) and is appended to this report (Appendix B).

Exhumation approval from NSW Health under the Public Health Regulation 2012 will be required if exhumations for PLR are proposed (unless removed by NSW Police or NSW Coroner in forensic cases).

2.6 NSW Ministry of Health Policy Statement—Exhumation of Human Remains 2013

This policy on the exhumation of human remains is used by Public Health Units (PHUs) in Local Health Districts on receipt of an application for permission to exhume human remains under the Public Health Regulation 2012. The policy and application form to exhume human remains is available on the NSW Health website and is appended to this report (Appendix A).

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.

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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.

3.0 Procedure for Discovery of Skeletal Remains

3.1 Introduction

The following section outlines the procedure to be followed when skeletal remains (bones) are discovered during the PLR works. Skeletal remains can be either faunal (animal) or human in origin. This section outlines the notifications and approvals required if the bones are identified as suspected or confirmed human. It also provides an outline of the management of archaeological human remains. The procedure is illustrated in Figure 3.1 below and provided in Appendix C.

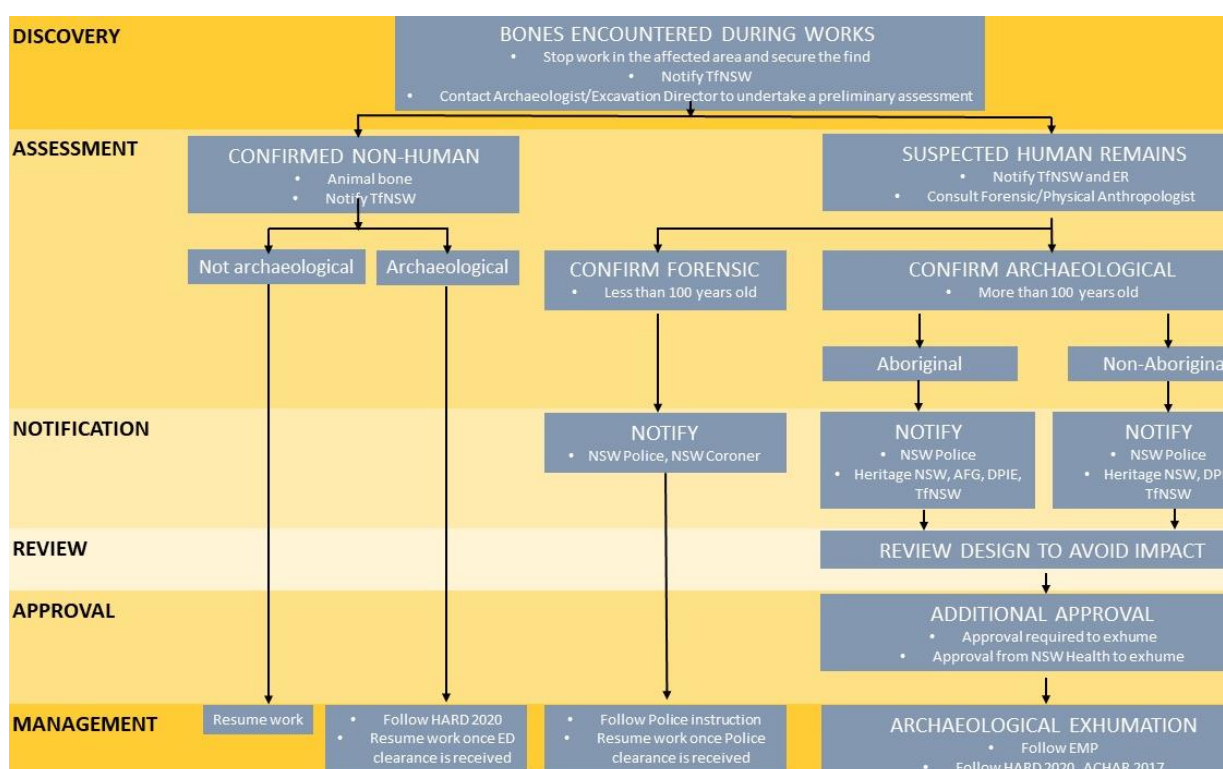


Figure 3.1 Outline of the procedure for discovery of skeletal remains (bones) during the PLR Infrastructure works.

3.2 Discovery of Bones

When bones are encountered during works, they could be of animal or human origin. Animal bones are frequently found within fills and deposits during excavation works in urban environments. Human remains are less commonly encountered outside historic cemetery sites. Additional vigilance applies to works in HAMU 8 and 31—as these are adjacent to historic cemeteries or grave sites, and the former institutional sites HAMU 4, 13, 20, 20a and 21.

The procedure to follow if bones are encountered during construction works is as follows:

- Stop work in the affected area immediately.
- Secure the location and find. Depending on the circumstances of the discovery, this may include fencing off the area, leaving the find in the location or replacing it within the location it was found, covering the trench and find.

- Notify Transport for NSW of the bone find.
- Contact the Archaeologist / Excavation Director to request a preliminary assessment to determine if the find is animal bone or suspected human remains.
 - If the Archaeologist / Excavation Director are not on site take a photo of the bones, send an SMS (text message) and follow up with a phone call.
 - The Archaeologist / Excavation Director will attend site if the provenance and type of bone is uncertain from the photos.

3.3 Assessment

Assessment of unexpected bone finds during construction works

Animal bone is commonly found in fills in sites and below the footpaths and roads in historic urban centres. In most cases of unexpected finds of bone during construction works the Archaeologist and/or the Excavation Director will identify them as animal bone.

The Excavation Director will attend site if there is uncertainty about the origin of the bone(s). The Excavation Director will assess and determine whether they are animal or suspected human remains, and whether the context is archaeological or potentially forensic.

As identifying bone found during works as suspected human remains can sometimes be challenging, as bone can be fragmentary and there is little contextual information, further advice from a forensic/physical anthropologist may be sought.

Preliminary notifications to the ER and TfNSW will be made if the finds are suspected human and/or further advice from an anthropologist is being sought.

Once the unexpected find of bone is confirmed as human remains the NSW Police must be notified immediately in accordance with CoA E62 and the Coroner's Act.

Assessment of human remains found during archaeological excavations

Suspected human remains may be encountered during archaeological excavations. The Excavation Director will provide assessment and advice regarding the finds. The assessment process will include confirming the archaeological context (more than 100 years old) and whether the suspected human remains are indicators or unrecorded burials or associated with medical procedures (amputations etc). Such instances will trigger notification and management requirements for Archaeological human remains (see Section 3.4.2 and 3.4.3 below).

Human remains can also be found in archaeological contexts that are not necessarily related to a burial. Remains such as teeth, human hair or nail clippings can be found during excavations of domestic or institutional sites. Teeth that are confirmed as extractions and hair or nail clippings associated with grooming will be treated as artefacts and not trigger notifications and management under the EMP.

Assessment of suspected human remains found during archaeological investigations will also include consultation with an experienced forensic/physical anthropologist to confirm and positively identify the remains as human, or not.

3.4 Notification

Formal notifications must be made following confirmation of human remains by a forensic anthropologist and/or Excavation Director. Parramatta Connect will manage the notifications in consultation with Transport for NSW.

3.4.1 Forensic

The notification requirements and jurisdiction for human remains less than 100 years old is as follows:

- Notify the NSW Police and NSW Coroner.
- Notify the ER and TfNSW.
- Forensic human remains are under the jurisdiction of the NSW Coroner.
- Coroners Act, Public Health Act and Public Health Regulation 2012 apply.

3.4.2 Archaeological—non-Aboriginal

The notification requirements for non-Aboriginal remains more than 100 years old is as follows:

- Notify the NSW Police and NSW Coroner.
- Notify the Heritage NSW under Section 146 of the Heritage Act.
- Notify the ER and TfNSW.
- PLR project CoA, HMP, EMP and HARD 2020 requirements apply.

3.4.3 Archaeological—Aboriginal

The notification requirements for Aboriginal remains more than 100 years old is as follows:

- Notify the NSW Police and NSW Coroner.
- Notify the Heritage NSW under Section 89A of the NPW Act and the PLR project AFG.
- Notify the ER and TfNSW.
- PLR project CoA, HMP, EMP and ACHAR 2017 requirements apply.

3.5 Design Review

A review of the design and construction methodologies will be undertaken with the aim of avoiding impact or harm to human remains found during works. The design review process is provided in the HARD 2020.

3.6 Approval

The PLR project approval does not allow human remains to be harmed, modified, impacted or removed. Archaeological exhumations and removal or relocation of human remains requires additional approval to be sought.

For exhumation of human remains approval is to be sought from the NSW Health Department under the Public Health Regulation 2012 (unless removed by NSW Police or NSW Coroner in forensic cases). NSW Health have advised that some of the key NSW Health requirements for exhumation, includes:

- Respectful treatment of all remains
- Identity of individual(s) should be confirmed if possible
- NSW Health Environmental Health Officer (EHO) is required to be on site during exhumation
- Workplace Health and Safety requirements to be identified and implemented
- Cemetery management would normally be contacted when exhuming from distinct cemeteries
- Privacy of exhumations (e.g. through screening) must be maintained.

Other matters for consideration when organising exhumations as advised by NSW Health:

- Weather conditions
- Availability of the NSW Health EHO's
- Death Certificate to be included with exhumation application (where available)
- Funeral Director may be required to be involved in exhumation/transfer of remains
- Temporary storage requirements – remains should be stored in a licenced mortuary.

Approval for archaeological exhumations, removal and relocation of human remains will also require consultation with the Heritage NSW, and the AFG for Aboriginal remains.

For all areas of the project alignment (unless otherwise agreed with the NSW Coroner) following notification to Police or NSW Coroners, exhumations of human remains are not to occur until Police or NSW Coroners clearance is received (where required).

3.7 Management

3.7.1 Faunal Remains

If the bone is confirmed as animal (faunal) the following management applies:

- Faunal remains confirmed non-archaeological:
 - Resume works.
- Faunal remains confirmed archaeological:
 - Follow HARD 2020 and ACHAR 2017.
 - Resume works once Excavation Director clearance is received.

3.7.2 Forensic Human Remains

If the human remains confirmed or suspected to be forensic (less than 100 years old) the following management applies:

- Notify the NSW Police, NSW Coroner, ER and TfNSW.
- Follow NSW Police and NSW Coroner's instruction.
- Resume works once Police/Coroner clearance is received.

3.7.3 Archaeological Human Remains

If the archaeological human remains (greater than 100 years old) are confirmed, the following management applies:

- Follow EMP, HARD 2020 and ACHAR 2017.
- Consult with the PLR AFG if remains are Aboriginal.
- Consult with Heritage NSW as required.
- Redesign to avoid impact and conserve in situ where possible.
- Obtain NSW Health exhumation approval to undertake archaeological exhumation where impacts cannot be avoided by redesign.
- Undertake archaeological excavation (exhumation) by the Excavation Director, and forensic anthropologist input as required.
- Resume works once Excavation Director clearance, and AFG if remains are Aboriginal, is received.

Detailed management and methodologies for archaeological excavations of human remains is provided in Section 5.

3.8 Responsibilities

Responsibility for the procedures relating to the discovery and management of human remains are outlined the table below.

Table 3.1 EMP responsibilities

Stage	Tasks	Responsible
Discovery	Stop work in affected area	Parramatta Connect and its Contractors
	Secure and protect find	
	Archaeological assessment and preliminary identification	Nominated Excavation Director
Assessment	Suspected human remains ER and TfNSW notification	Environment & Sustainability Manager
	Confirm human remains	Nominated Excavation Director Forensic/Physical Anthropologist
Notification	Notify NSW Police and TfNSW if forensic (less than 100 years old)	Environment & Sustainability Manager
	Notify Heritage NSW, TfNSW and AFG if archaeological (more than 100 years old) and Aboriginal	Environment & Sustainability Manager Nominated Excavation Director
	Notify Heritage NSW and TfNSW if archaeological (more than 100 years old) and non-Aboriginal	Environment & Sustainability Manager Nominated Excavation Director
Review	Review design to avoid impact and conserve in situ where possible	Parramatta Connect Environment & Sustainability Manager Excavation Director
Approval	Obtain approvals to exhume where impacts cannot be avoided by redesign	Parramatta Connect
	NSW Department of Health approval to exhume	Parramatta Connect

4.0 Archaeological Background

4.1 Introduction

The following section provides an overview of the potential for human remains from the HAA 2017, ACHAR 2017 and HARD 2020. Note that the PLR project does not intend to exhume burials at the sites included in this section. The EIS identified that the PLR project has potential to encounter archaeological human remains adjacent to the current boundary of St Patrick's Roman Catholic Cemetery (HAMU 8). GPR survey and test excavation were undertaken to inform a design review to ensure works avoid areas with potential graves. The PLR project boundary also includes the grave site of 'Elinor Magee and child' (HAMU 31). The area is being used as a compound and the grave site has been cordoned off and protected. There may be unexpected finds of human remains in other areas of the project alignment in archaeological contexts, for example within historic and former institutional sites.

4.2 St Patrick's Roman Catholic Cemetery

The PLR alignment adjacent to St Patrick's Roman Catholic Cemetery is referred to as a Zone 1 Historical Archaeological Management Unit 8 (HAMU 8) (Figure 4.1). It has potential for state significant archaeological remains of the cemetery and human remains. Exhumation at HAMU 8 is not proposed.

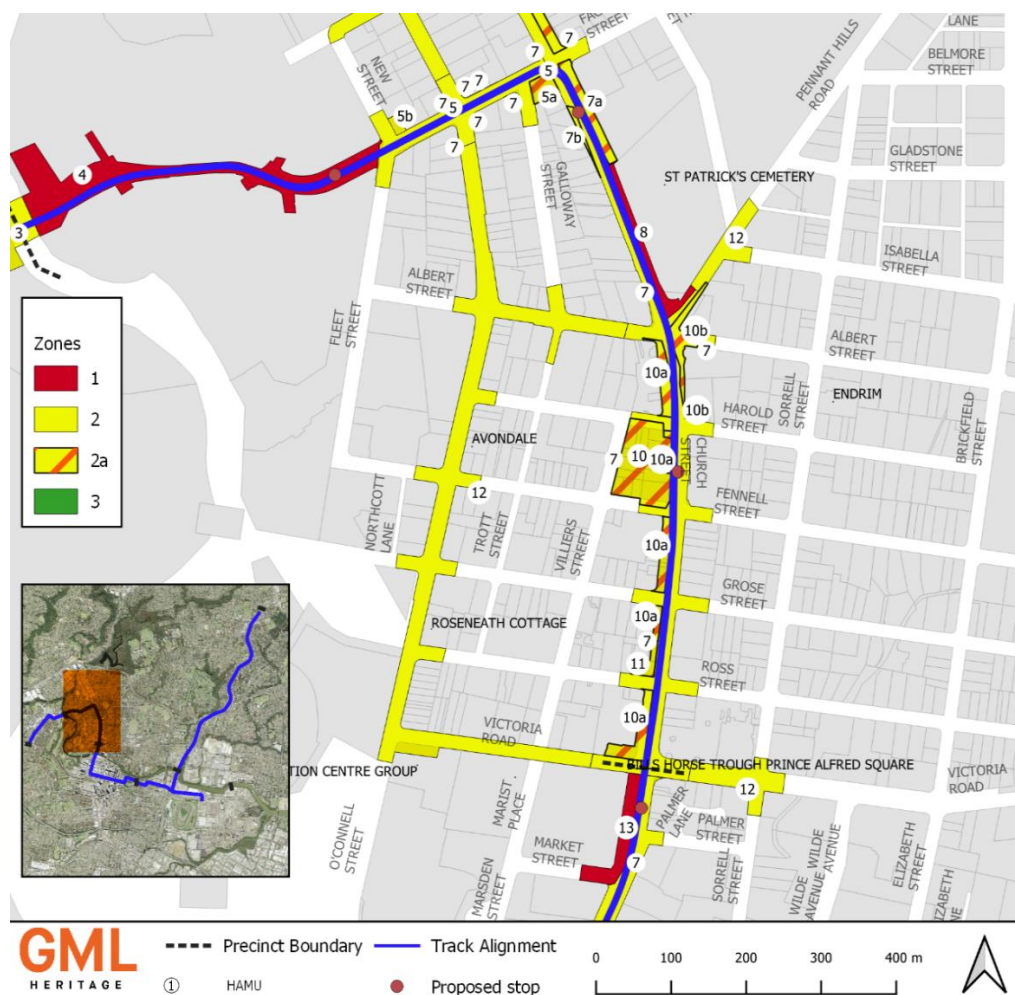


Figure 4.1 Parramatta North precinct HAMUs and HAMU 8—St Patrick's Catholic Cemetery. (Source: GML 2019)

4.2.1 History

St Patrick's Roman Catholic Cemetery is the oldest formal Catholic cemetery in Australia. In 1822 Father John Joseph Therry, a priest from Cork, Ireland, applied to the Colonial Government for funds to establish a burial ground for the exclusive use of Catholics in Parramatta. In 1826, Father Therry secured a block of land at the junction of Pennant Hills Road and Church Street (then Windsor Road). However, three headstones in the cemetery date from 1824, indicating that it was used prior to this date. The site was fenced in 1834 to define the boundaries and the foundation stone of the sandstone mortuary chapel built in the Gothic Revival style was laid in August 1844 (Figure 4.2).¹

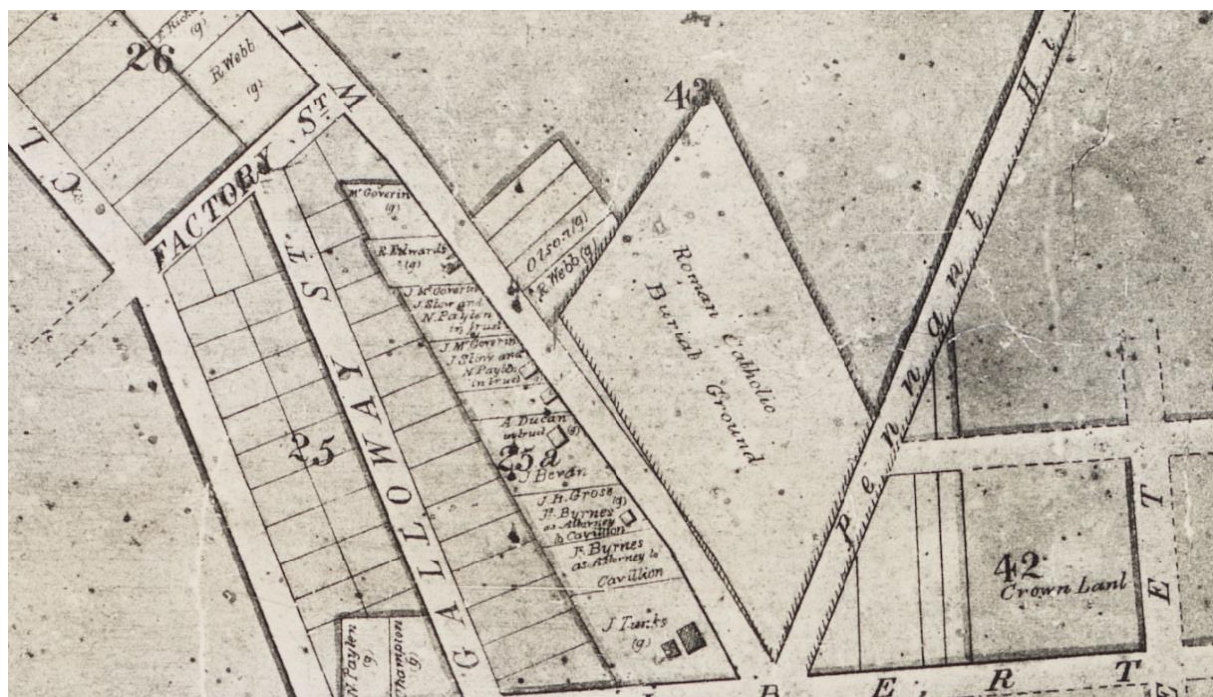


Figure 4.2 Brownrigg Plan of the Town of Parramatta, 1844, showing St Patrick's Roman Catholic Cemetery. (Source: State Library of NSW)

The boundaries of the graveyard remained unchanged until 1930 when part of it was resumed for the widening of the intersection of Church Street and Pennant Hills Road. The area that was resumed was the location of the former Sexton's Cottage. Church Street was subsequently widened in stages and various works were undertaken throughout the twentieth century. A survey in 1954 indicated that the cemetery had been used for only three burials in recent years. It was closed in 1972.²

St Patrick's Roman Catholic Cemetery has the graves of at least 44 known convict burials. Among them are two Irish rebels. It is also the resting place of early priests in the colony, members of the Capuchin and Franciscan communities and later waves of Catholic migrants, including German, Italian and Chinese communities.³ The cemetery preserves the heritage of an important phase in the history of Irish and Catholic Australia. It represents their struggle for recognition and religious freedom in a Protestant-dominated and largely British colonial society.

4.2.2 Archaeological Assessment

Since the 1930s road adjustments and widenings have occurred on the Church Street cemetery boundary and at the intersection with Pennant Hills Road. A narrow strip of the cemetery reserve along

Church Street was resumed for bus lane widening. The State Heritage Register listing entry includes reference to the headstones being removed from the resumed area but not the burials.

St Patrick's Roman Catholic Cemetery includes convict burials and burials of marginalised people of the early colony whose graves were not marked. Archaeological evidence of the cemetery below the grass verge, Church Street footpath and road reserve could include human remains (either in situ or redeposited), graves, coffins and coffin furniture, burial artefacts such as jewellery, clothing, buttons, and burial marker fragments. These archaeological remains are state significant.

PLR works in HAMU 8 with potential to encounter human remains and associated archaeology include service searching using slot trenches and potholes, utility relocations, track slab and road construction.

4.2.3 Cemetery Boundary

The eastern boundary of the cemetery has been adjusted several times. The original cemetery boundary at the corner of Church Street and Pennant Hills Road extended further south than the current boundary. The eastern boundary with Church Street has been adjusted to allow for road widening in the 1930s. More recently a physical boundary (timber post and rail fence) has been installed at a set-back from the actual lot boundary which is the eastern side of the footpath. The space between the footpath and the timber fence is lined with trees and a grass verge. This area is still part of the cemetery and the PLR project boundary is within it.

4.2.4 GPR and Archaeological Testing Results

GPR survey adjacent to the cemetery and within the PLR project boundary was undertaken in August 2019. The survey also included analysis of data from previous GPR investigations undertaken in 2009 and 2010. Works in 2010 were in advance of bus lane and footpath works undertaken by Roads and Maritime Services. Several potential graves were identified within the PLR project boundary. Test excavations were undertaken in September 2019. The trench locations included two of the potential graves identified in the GPR survey. Other trenches were placed at intervals along the cemetery boundary. Four grave cuts were identified within two test trenches. The testing confirmed the presence of graves and the potential for others within the tree lined verge to the east of the footpath and the timber fence boundary of the cemetery.

GML Heritage

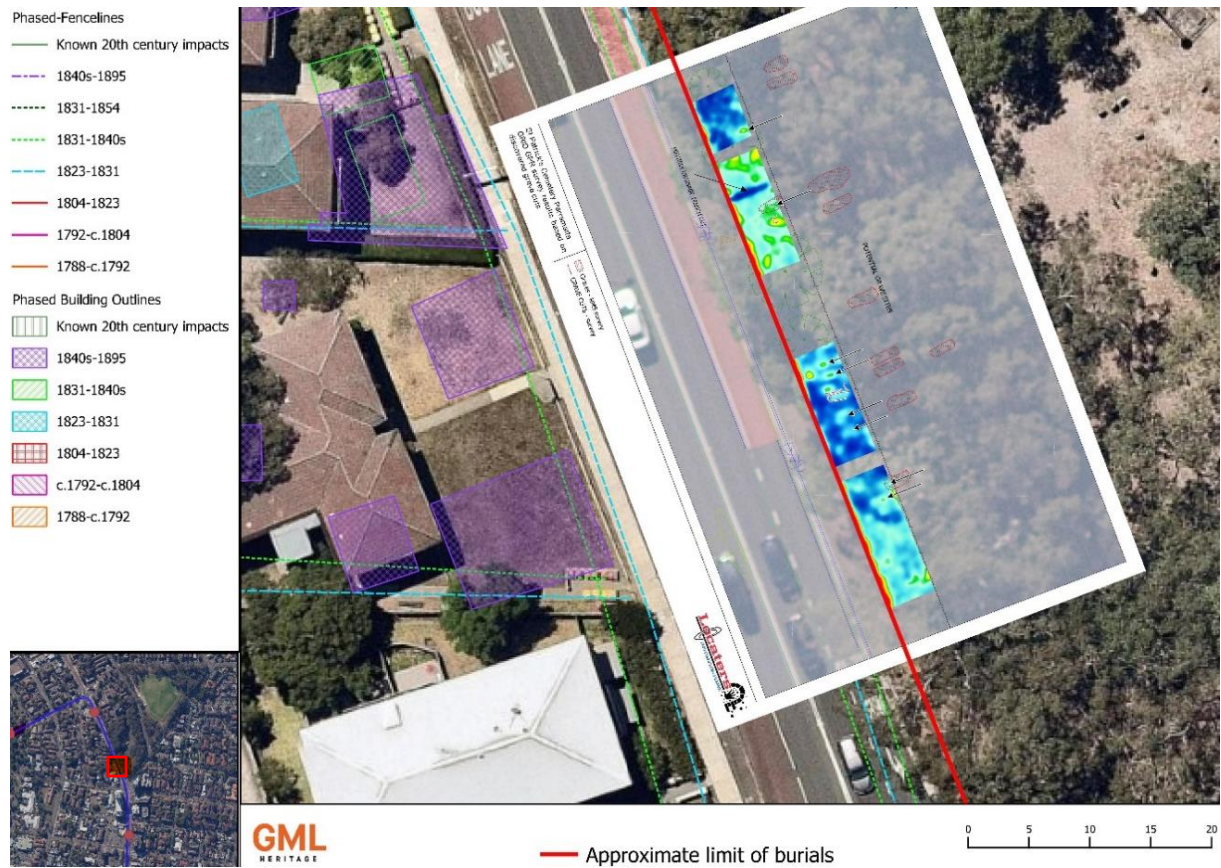


Figure 4.3 GPR survey and likely grave sites with the approximate limit of potential for burials indicated with the red line. (Source: GML 2019)



Figure 4.4 Grave cuts identified in testing. (Source: GML 2019)

4.2.5 Design Review

The GPR and archaeological testing results informed a review of the design adjacent to St Patricks Cemetery. The investigations identified the cemetery boundary with known and potential graves located to the east of the current footpath (Figure 4.5). A current visual marker for this boundary is provided by the row of trees in the grassed verge to the east of the footpath. Design review included moving the overhead wiring structures within the track area and revising the new footpath design so it was not within the historic cemetery and graves area.

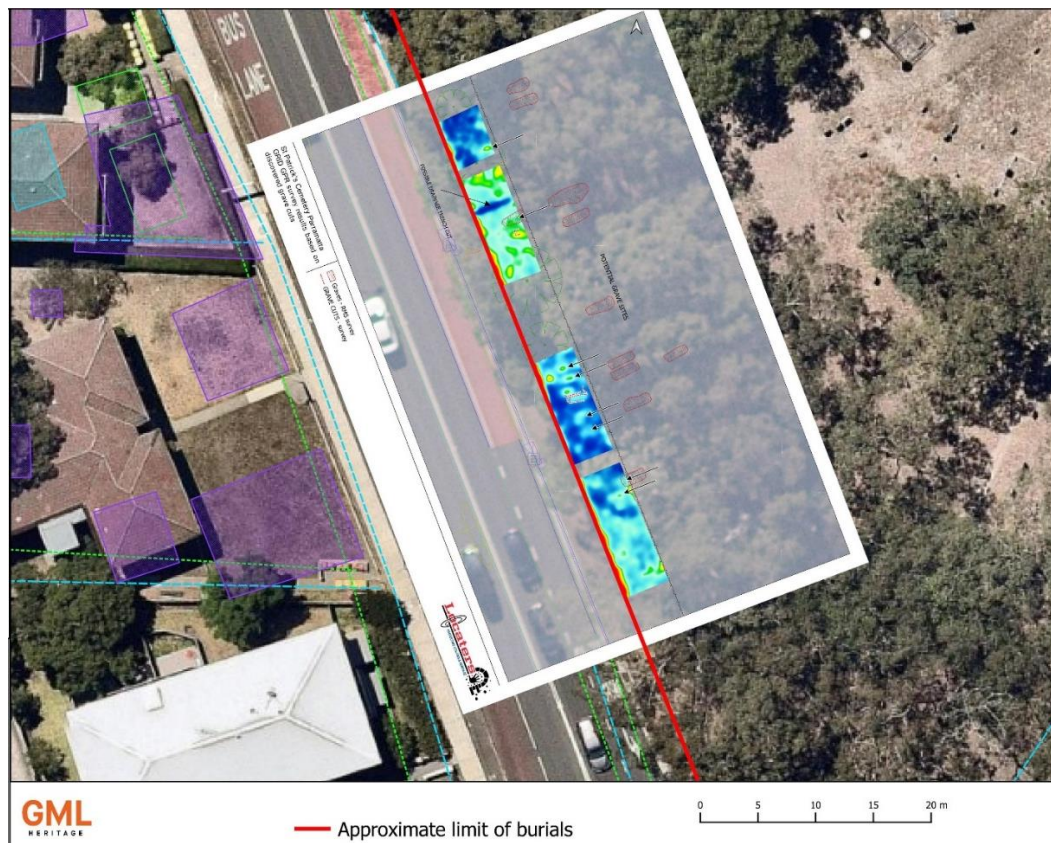


Figure 4.5 GPR survey results from Locators calibrated with the archaeological testing results and RMS results from 2010 identifying the limit of potential for burials (red line). included results from RMS survey in 2010. (Source: Locators and GML 2019)

4.3 Elinor Magee and Child

The PLR alignment is adjacent to the Elinor Magee grave site—HAMU 31 (Figure 4.6). It is a Zone 1 HAMU and has potential for state significant archaeology associated with the grave site, including human remains. In 1791, on the south side of the river, Charles Williams—also known as Christopher McGee or Magee—was granted 30 acres near today’s Camellia Station. He married fellow convict Elinor (or Eleanor) McCabe and the couple had two children. In 1793 Elinor, one of the children and another woman drowned in the Parramatta River near Breakfast Cove. Elinor and the child were buried near their house adjacent the river. The grave is located on the south side of the river to the east of Parramatta Bridge and the Carlingford rail line.

The grave site is within the PLR project boundary and the surrounding area is currently being used as a laydown area. The grave site has been protected and there is no intention to impact it.

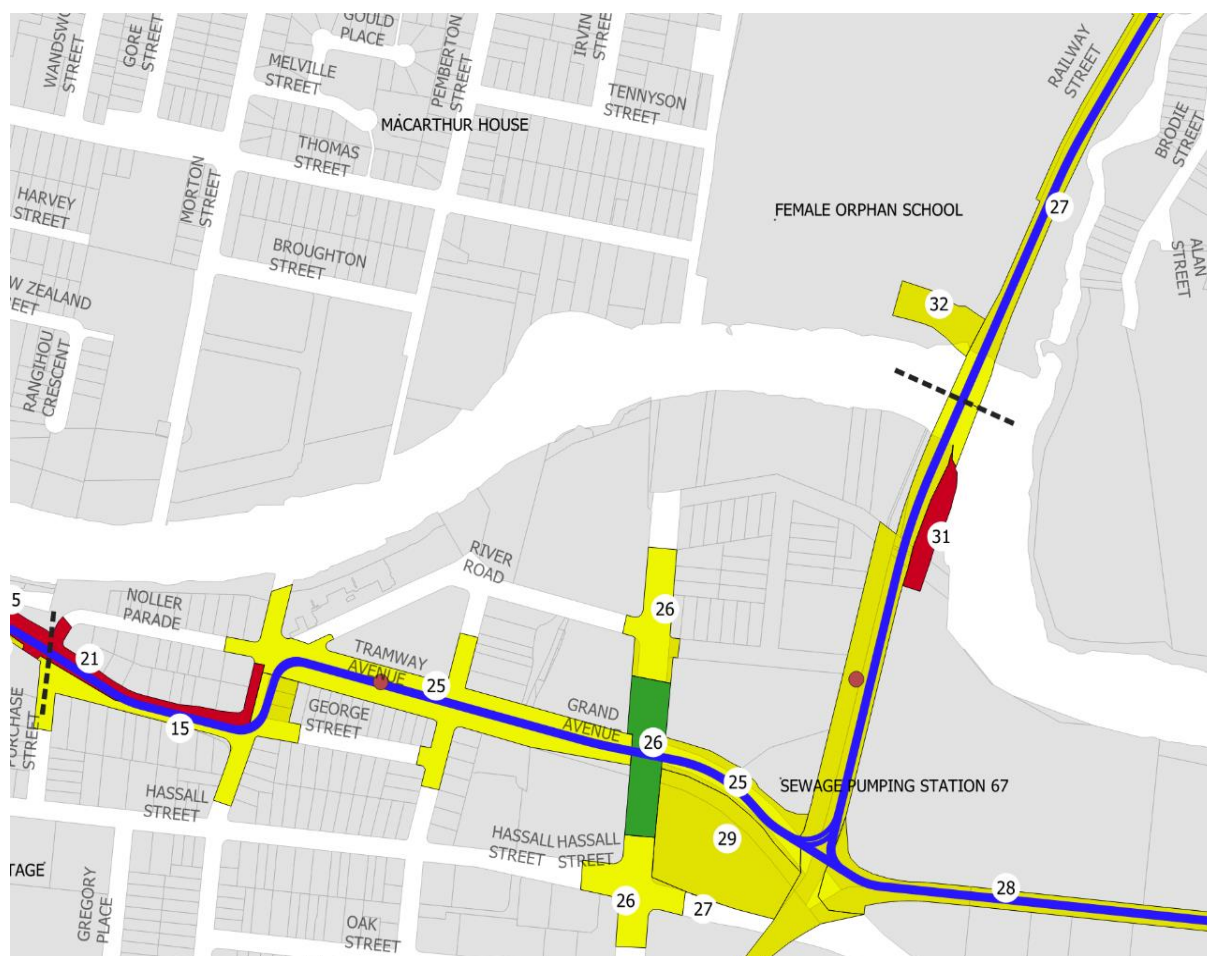


Figure 4.6 Rosehill and Camellia precinct HAMUs and HAMU 31—Elinor Magee grave site. (Source: GML 2019)

4.4 Institutional Sites

Human remains can be encountered outside historic cemeteries and have previously been found during archaeological urban excavations including at former institutional sites in Parramatta. Archaeological excavations of the 1792–1844 Convict Hospital site (now the Parramatta Justice Precinct) uncovered skeletal remains of three neonate burials and an adult hand with a rubbish pit (Casey & Lowe 2007). The PLR alignment is through four historic institutional sites where the potential for encountering unexpected human remains may increase. These sites are identified in the HAA 2017 and HARD 2019 as:

- HAMU 4—‘Government mill races, Mrs Betts’ house, former Lunatic Asylum’ located in the Cumberland Hospital East precinct
- HAMU 13—‘First and Second Parramatta Gaol, and Female Factory’ located at Prince Alfred Square
- HAMU 20 and 20a—‘Former Soldiers’ District, Ancient Aboriginal and Colonial Landscape and Military Barracks’ located at Robin Thomas Reserve

- HAMU 21—‘Government commissariat, military barracks and Benevolent Asylum’ located on George Street near Queen’s Wharf.

4.5 Aboriginal Sites

The potential for archaeological remains of Aboriginal burials is not specifically addressed in the ACHAR 2017. However, Aboriginal stakeholders expressed general concern for burials as their locations are not known and can be found anywhere (ACHAR 2017, p 8). The ACHAR provides a procedure for managing discoveries of human remains and this has been incorporated into this EMP. Any uncovering of Aboriginal remains will require careful and sensitive management and could cause project delays.

5.0 Management of Archaeological Human Remains

5.1 Introduction

This section provides detailed management and methodologies for archaeological exhumation (excavation) of non-Aboriginal human remains, should it be required as part of the PLR Infrastructure project. It focuses on archaeological excavation of burials and other deposits containing human remains in HAMU 8—Church Street adjacent St Patrick's Roman Catholic Cemetery but is applicable to the Approved Project.

Graves and human skeletal remains found in HAMU 8 are expected to predate the 100-year threshold and be considered archaeological rather than forensic. Therefore, they will be in the jurisdiction of the PLR project and nominated Excavation Director rather than the NSW Police.

Archaeological human remains associated with burials will not be archaeologically excavated without the appropriate approvals (see Section 3). Consultation with the AFG will also be required where the human remains are Aboriginal. Additional methodologies and management requirements may apply.

5.2 Human Remains in Archaeological Excavations

Human remains may be encountered during archaeological salvage excavations undertaken as part of the PLR project. Salvage excavations within former institutional sites, and in some cases urban domestic sites, have some potential for unrecorded burials and evidence of medical procedures such as amputations. Such instances will trigger notification, design review and approval (see Section 3.4, 3.5 and 3.6) and management requirements for exhumation (see below).

Human remains can also be found in archaeological contexts such as backfills within rubbish pits, cesspits and wells, that are not necessarily related to a burial. Remains such as teeth, human hair or nail clippings can be found during excavations of domestic or institutional sites. Teeth that are confirmed as extractions and hair or nail clippings associated with grooming will be treated as artefacts and not trigger notifications and management under the EMP. The methodologies and procedures for artefact management in the HARD 2020 apply.

5.3 Conservation in Situ

Generally, the most appropriate outcome for archaeological human remains is that they are protected and conserved in situ without harm, modification or removed. The HARD 2020 Section 5.3.5 provides the design review to avoid impact process for state significant archaeological findings during PLR works. This process also applies to archaeological human remains found during works.

Changing the PLR alignment is unlikely to be possible. Archaeological excavation of human remains, if found in Church Street adjacent to St Patrick's Roman Catholic Cemetery, will likely be required. This may also be the case for other parts of the PLR project area if archaeological human remains are unexpectedly encountered within the track alignment.

5.4 Archaeological Exhumation Methodology

There are specific archaeological methodologies for excavation of burial-related archaeology in addition to those included in the HARD 2020 and the ACHAR 2017. The following should be read in conjunction with the HARD 2020 Section 5 and the ACHAR 2017 Appendix E. Additional requirements may be

necessary if the remains are found to be Aboriginal. The AFG may require particular procedures to be followed and storage or security provisions for recovered remains.

5.4.1 Archaeological Site Establishment

The archaeological exhumation area should be secured and protected. Additional measures, such as ATF, shade cloth or hoarding, will be required to exclude other PLR works, contractors and the public from the archaeological exhumation area. The area should not be visible to the public or other PLR workers.

5.4.2 Approved Personnel

The number of PLR personnel should be limited to those necessary to undertake the archaeological exhumations and manage the site. Only the approved project Excavation Director, archaeologists, a physical anthropologist, and required representatives from Parramatta Connect and TfNSW should be permitted within the archaeological exhumation area.

5.4.3 Archaeological Exhumation Team

The archaeological excavation must be led by an Excavation Director who meets the Heritage Council of NSW criteria for State significant archaeological sites and who has experience in archaeological excavations of human remains. The team must include experienced archaeologists and a physical anthropologist. Where the remains are Aboriginal, the representatives from the PLR AFG must also be on the excavation team.

5.4.4 Excavation Methodology

In addition to the HARD 2020 and ACHAR 2017 methodologies, archaeological excavation of human remains will include the following steps.

- Define the extent of the grave cuts, vault remains or deposits containing human remains in plan.
- Survey and photograph the pre-excavation details and context.
- Excavate grave (or vault) fills in 50mm spits until the top of the coffin remains and/or skeletal remains are visible. Excavation should be undertaken carefully using trowels. The excavation should be in plan (no half sections).
- Survey and photograph the mid-excavation details and context.
- Expose the extent of the coffin and/or skeletal remains in situ using a leaf trowel and soft-bristle brush. The grave fills should be removed in such a way to partially pedestal—or 3D—the skeletal remains but without dislodging them. Excavation should be delicately undertaken to avoid damage to the bones or displacing them. The excavator must wear gloves at all times.
- Survey, photograph, record and prepare detailed measured drawings once the extent of the coffin remains and/or skeleton is exposed in situ. See recording methodology below (Section 5.3.5).
- Remove the skeletal remains, wearing surgical gloves, and place in artefact bags by anatomical area—such as right hand, left hand, right ribs, left ribs etc. Each bag will be labelled to identify context and anatomical area. See lifting methodology below (Section 5.4.6).

- Remove and retain any grave goods (jewellery, buttons, textile etc), coffin timbers and furniture (brackets, handles, nails etc), label and bag by context.
- Excavate remaining grave (or vault) fill to fully expose the cut and natural/deposits below.
- Survey and photograph the post-excavation details and context.
- Sieve 100% of grave fills and/or deposits with containing displaced human remains through a 3mm mesh. Sieving can be either dry or wet depending on the soil conditions and the condition of the skeletal remains. The Excavation Director will confirm the sieving methodology.
- Cover graves and exposed skeletal remains to ensure they are not exposed causing a change in conditions – such as becoming wet or dry.
- Secure graves and exposed skeletal remains overnight by covering with ply or other similar.

5.4.5 Identifiable Burials

During archaeological excavation, a burial may become identifiable from a gravestone, name plate on the coffin or other coffin attachments and personal items. If this occurs, then works affecting that burial would cease and further research and consultation undertaken to determine the individual. Additional approval and management may be required under the Public Health Regulation 2012 and the NSW Ministry of Health Policy Statement—Exhumation of Human Remains 2013 (see Section 2.5, 2.6 and Appendix A).

5.4.6 Recording Methodology

In addition to the HARD 2020 and ACHAR 2017 recording system the following will be undertaken to record archaeological human remains:

- A skeleton record sheet will be used for graves and burials. Information recorded includes specific details such as burial orientation, intactness and condition, presence and location of human remains coffin remains and burial-related artefacts.
- Detailed survey and measured drawings will be prepared for pre, mid and post excavation of graves, in situ skeletal remains and other burial-related features. Measure drawings in plan and cross sections (length and width) will be at 1:10 in scale.
- Topographical analysis will be undertaken where required to assess and predict the extent of graves or fills containing displaced human remains.
- Skeletal remains, coffin furniture and grave artefacts will be collected and labelled in accordance by context and any additional requirements of the physical anthropologist.

5.4.7 Lifting Skeletal Remains and Temporary Storage

Human skeletal remains and burial-related artefacts may be deteriorated and in poor condition. They will require additional treatment during the lifting process and during temporary storage. Advice from the physical anthropologist and a materials conservator will be sought where required.

- Human remains will be lifted and bagged by anatomical areas in accordance with standard burial archaeology practice. The lifting sequence and bagging is as follows:

- Lift left arm and place in one bag, lift left hand and place in one bag.
- Lift right arm and place in one bag, lift right hand and place in one bag.
- Lift left leg and place in one bag, lift left foot and place in one bag.
- Lift right leg and place in one bag, lift right foot and place in one bag.

Note if it is not possible to distinguish and separate the hands or feet, they should be bagged together (both hands together or both feet together).

- Lift skull, mandible and teeth and bag together.
- Lift ribs, place left ribs in one bag, place right ribs in one bag.
- Lift torso (pelvis, vertebrae etc) and bag together.
- The human skeletal remains and organic artefacts will be placed in plastic finds bags and include a label within a small plastic label bag. Air will be trapped in the bags to provide additional protection from crushing. Foam or other material will be used to protect fragile bone or organic finds. The remains will be placed in sturdy and secure containers immediately following excavation for temporary storage.
- The condition in which human skeletal remains and other organic artefacts (coffin timber, cloth, leather etc) are found will be maintained during temporary storage. Input from a materials conservator will be required during and/or after exhumation.
- Excavated human remains and burial artefacts will be relocated from site at the end of each day. The temporary storage space must be temperature controlled and secure. A secure temporary storage location is yet to be identified—ideally they would be stored in the physical anthropologist's laboratory. The temporary storage location must be confirmed prior to archaeological excavations of burials commence. This location would be chosen by the Excavation Director and physical anthropologist and comply with NSW legislative requirements.

5.5 Research and Reporting

A set of archaeological research questions will guide excavations of graves and associated archaeological remains. The research questions for HAMU 8 are provided in the HARD 2020 and are repeated below. These research questions may be amended depending on the findings. Additional research questions will need to be formulated for any other archaeological exhumation outside of HAMU 8.

Additional archival and scientific analysis will be undertaken as part of archaeological investigations of burial sites and human remains.

5.5.1 Research Questions

Initial research questions for HAMU 8 in the event archaeological excavation of burials is required are as follows.

- Where was the original cemetery boundary on Church Street and how was it formed? Is there evidence of more than one boundary change or resumption?

- Is there evidence of clandestine burials outside the official cemetery boundaries?
- Is there evidence of the exhumation process and methods during the 1930s resumption to widen Church Street? Did the exhumation follow similar patterns observed at Old Sydney Burial Ground and Devonshire Street Cemetery, and not all burials were removed?
- What does the archaeology tell us about Roman Catholic burial practices and customs in the early nineteenth century? How do the practices change over time? How do these compare to other religious denominations?
- What does the archaeological and scientific evidence tell us about health, diet, status and ethnicity of those buried in, or outside, the cemetery?

5.5.2 Scientific Analysis

Human skeletal remains will be analysed by an experienced physical anthropologist. Analysis will include the following:

- Assessment of age, height and sex.
- Assessment of ethnicity, such as Aboriginal or non-Aboriginal.
- Assessment of health and disease.

Where appropriate samples will be taken for isotope analysis to investigate origin and diet. Samples will be selected in consultation with the physical anthropologist and laboratory undertaking the analysis.

Coffin remains (timber and furniture) and burial-related artefacts will be catalogued and analysed by the project artefact specialist.

5.5.3 Archival Research

The aim of the archival research will be to identify, where possible, the individuals archaeologically exhumed. Research may be undertaken in consultation with relevant organisations such as the Catholic Diocese of Parramatta, NSW National Trust Cemeteries Committee, Heritage NSW and local historical groups with knowledge of the cemetery. The results of the archival research will also inform the long-term storage and/or reinterment options.

5.5.4 Reporting

Reporting will be in accordance with the HARD 2020 and ACHAR 2017.

A preliminary findings report will be prepared following the completion of the excavation. This report will outline the results and include an outline of the post-excavation analysis, archival research, conservation requirements and post-excavation management (storage, consultation, re-interment etc).

A final report will be prepared once the archaeological analysis, research and specialists' analysis has been completed. The final report will include detailed descriptions of the findings, a response to the research questions, reassessment of significance, outcomes of archival research and any consultation undertaken, and location of the skeletal remains and artefacts (whether in long-term storage or re-interred).

5.6 Long-Term Storage and Reinterment

Archaeologically excavated human skeletal remains will require appropriate long-term storage and/or reinterment following completion of the post-excavation analysis. The details of long-term storage and/or reinterment are yet to be confirmed.

Reinterment within St Patrick's Roman Catholic Cemetery is the preferred outcome for any remains from HAMU 8. This will require consultation with the City of Parramatta, the Catholic Diocese of Parramatta and any identified descendants of the deceased, and other stakeholder groups.

- ¹ Office of Environment and Heritage, State Heritage Inventory, 'St. Patrick's Roman Catholic Cemetery', viewed 8 February 2019 <<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5053428>>.
- ² Office of Environment and Heritage, State Heritage Inventory, 'St. Patrick's Roman Catholic Cemetery', viewed 8 February 2019 <<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5053428>>.
- ³ Office of Environment and Heritage, State Heritage Inventory, 'St. Patrick's Roman Catholic Cemetery', viewed 8 February 2019 <<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5053428>>.

6.0 Recommendations

6.1 Recommendations

- The procedures for the discovery of skeletal remains should be included in the PLR Infrastructure project induction, Construction Heritage Management Plan and be made available to all contractors and at worksites.
- The project CoA E61 does not allow for removal of human remains. However, this EMP has been prepared as it is required by REMMM HE-5 as defined in the SPIR. It should be submitted to Heritage NSW for review and comment as required by REMMM HE-5.
- An experienced forensic/physical anthropologist should be identified to consult in matters related to suspected human remains found unexpectedly during construction works and during archaeological excavations.
- If human remains or suspected human remains are unexpectedly found during works then the assessment and notifications procedures outlined in Section 3 of this EMP should be followed.
- Design review should be undertaken if archaeological human remains are discovered during works to avoid impact and conserve the remains in situ where possible.
- Approval and a permit to exhume from NSW Health would be required for archaeological exhumations.
- If archaeological exhumations are required by the project the following is recommended:
 - a materials conservator should be engaged to provide advice and undertake stabilisation/conservation of significant burial-related artefacts if archaeological exhumations are required during the project.
 - temporary and long-term storage requirements and procedures for reburial should be determined. If the remains are Aboriginal, this will have to be done in consultation with the AFG.
- Review and update this EMP based on results of consultation, if exhumation approval(s) are received and when archaeological exhumations are confirmed to be required.

Appendix A—NSW Health Policy for Exhumation of Human Remains

Policy Directive



Exhumation of Human Remains

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.

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Policy manual Patient Matters

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Previous reference N/A

Status Review

Functional group Population Health - Environmental

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

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

Audience Authorised officers from Public Health Units and local councils

Secretary, NSW Health

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



Issue date: December-2013

PD2013_046

Exhumation of Human Remains



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EXHUMATION OF HUMAN REMAINS



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 Coroner 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:

Body	Means the body of a dead person, but does not include the cremated remains of the person
Burial	Includes putting the body in a vault
Cemetery Authority	Means the person or body that directs the operations of a cemetery
Coroner	Means a person who exercises or performs the functions of a coroner in accordance with the <i>Coroners Act 2009</i>
Dead person	Includes a still-born child (see definition of Still birth)
Exhumation	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

EXHUMATION OF HUMAN REMAINS

Funeral director	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
Prescribed infectious diseases	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)
Proper person	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
Nearest surviving relative	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
Still-birth	Consistent with the <i>Births, Deaths & 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.

EXHUMATION OF HUMAN REMAINS



- (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.

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*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.

EXHUMATION OF HUMAN REMAINS



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/. 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

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- 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.

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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

EXHUMATION OF HUMAN REMAINS



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>

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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.

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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.

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APPENDIX 3

{LETTERHEAD}

APPROVAL INSTRUMENT TEMPLATE

Public Health Unit
Environmental Health Section

File Number: [XXXXX]

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

EXHUMATION OF HUMAN REMAINS**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

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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

Appendix B— NSW Health Permit Application form



Health

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)

Appendix C—Discovery of Skeletal Remains Procedure

