

# Unexpected heritage items procedure

July 2022



# Acknowledgement of Country

Transport for NSW acknowledges the traditional custodians of the land on which we work and live.

We pay our respects to Elders past and present and celebrate the diversity of Aboriginal people and their ongoing cultures and connections to the lands and waters of NSW.

Many of the transport routes we use today – from rail lines, to roads, to water crossings – follow the traditional Songlines, trade routes and ceremonial paths in Country that our nation’s First Peoples followed for tens of thousands of years.

Transport for NSW is committed to honouring Aboriginal peoples’ cultural and spiritual connections to the land, waters and seas and their rich contribution to society.



# Document control

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# Versions

Version	Date	Amendment notes
1.0	Nov 2011	First issue
1.1	Jul 2012	Amended to reflect that (a) unexpected finds do not include items covered by a relevant approval; (b) Aboriginal people must be consulted where an unexpected find is likely to be an Aboriginal object; (c) the Department of Planning and Environment must be notified in accordance with Step 5 of this procedure for Part 3A and Part 5.1 projects.
1.2	Oct 2013	Amended to clarify that the procedure applies to all types of unexpected heritage items, not just archaeological items. The procedure introduces the term 'Historic Items' to cover both 'archaeological relics' and 'other historic items' such as works, structures, buildings and movable objects. The title of the document has been amended to better reflect this clarification.
1.3	Mar 2015	The procedure was streamlined to address all project types including maintenance works. The separate maintenance procedure (formerly Appendix B) was removed. Names and titles updated throughout.
1.4	May 2022	Rebranded from Roads and Maritime to Transport for NSW. Minor updates for example to accommodate government department name changes, legislation updates, combining contacts from appendix d with former Section 5 as the new Section 7; adjustment of roles and titles following organisational change; clarification of who the procedure applies to in section 2.

# Contacts and further information



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# 1. Purpose

This procedure has been developed to:

- Provide a consistent method for managing unexpected heritage items (both Aboriginal and non-Aboriginal) that are discovered during activities undertaken by Transport for NSW (Transport) or contractors on behalf of Transport.
- Address Transport's obligations under the *Heritage Act 1977* (NSW), *National Parks and Wildlife Act 1974* (NSW), *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and the *Coroner's Act 2009* (NSW).

# 2. Scope

This procedure assumes that an appropriate level of Aboriginal and non-Aboriginal heritage assessment has been completed before work commences on site. In some cases, such as exempt development, detailed heritage assessment may not be required. Despite appropriate and adequate investigation, unexpected heritage items may still be discovered during maintenance and construction works. 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 and following Transport for NSW (Transport) internal reporting, if required.

**Important: This procedure applies to all Transport construction and maintenance activities.**

However, when working for Sydney Trains, Rail Delivery and Sydney Metro divisions within Transport please refer to their separate unexpected finds procedures that will apply.

This procedure applies to:

- The discovery of any unexpected heritage item (usually during construction), where Transport does not have approval to disturb the item or where safeguards for managing the disturbance (apart from this procedure) are not contained in the environmental impact assessment.
- All Transport projects that are approved or determined under, Part 4 (Division 4.7), Part 5 or Division 5.2 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act), or any development that is exempt under the Act.

This procedure applies to staff performing work for Transport. 'Staff' includes all permanent, temporary and casual staff, staff seconded from another organisation and contingent workers including labour hire, professional services contractors and consultants.

This procedure does not apply to:

- The legal discovery and disturbance of heritage items as a result of investigations being undertaken in accordance with Heritage NSW, Department of Planning and Environment *Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW (2010)*; an Aboriginal Heritage Impact Permit (AHIP) issued under the *National Parks and Wildlife Act 1974* (NSW); or an approval issued under the Heritage Act<sup>1</sup>.
- The legal discovery and disturbance of heritage items as a result of investigations (or other activities) that are required to be carried out for the purpose of complying with any environmental assessment requirements under Part 4, including Division 4.7, or Part 5, including Division 5.2 of the EP&A Act.

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<sup>1</sup> Transport heritage obligations are incorporated into the conditions of heritage approvals

- The legal discovery and disturbance of heritage items as a result of construction related activities, where the disturbance is permissible in accordance with an AHIP<sup>2</sup>; an approval issued under the *Heritage Act 1977* (NSW); the Minister for Planning's conditions of project approval; or safeguards (apart from this procedure) that are contained in the relevant environmental impact assessment.

All construction environment management plans (CEMPs) must make reference to and/or include this procedure (often included as a heritage sub-plan). Where approved CEMPs exist they must be followed in the first instance. Where there is a difference between approved CEMPs and this procedure, the approved CEMP must be followed. Where an approved CEMP does not provide sufficient detail on particular issues, this procedure should be used as additional guidance. When in doubt always seek environment and legal advice on varying approved CEMPs.

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<sup>2</sup> The Procedure for Aboriginal cultural heritage consultation and investigation (2011) recommends that applicable Part 4 and Part 5 projects that are likely to impact Aboriginal objects during construction seek a whole-of-project AHIP. This type of AHIP generally allows a project to impact known and potential Aboriginal objects within the entire project area, without the need to stop works. It should be noted that an AHIP may exclude impact to certain objects and areas, such as burials or ceremonial sites. In such cases, the project must follow this procedure.

## 3. Types of unexpected heritage items and their legal protection

The roles of project, field and environmental staff are critical to the early identification and protection of unexpected heritage items. Appendix A illustrates the wide range of heritage discoveries found on Transport projects and provides a useful photographic guide. Subsequent confirmation of heritage discoveries must then be identified and assessed by technical specialists (usually an archaeologist).

An 'unexpected heritage item' means any unanticipated discovery of an actual or potential heritage item, for which Transport does not have approval to disturb<sup>3</sup> or does not have a safeguard in place (apart from this procedure) to manage the disturbance.

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.

### 3.1 Aboriginal Objects

The *National Park and Wildlife Act 1974* (NSW) protects Aboriginal objects which are defined as:

*“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>4</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 Aboriginal Heritage Impact Permit (AHIP) is usually required from Heritage NSW<sup>5</sup> and when a person becomes aware of an Aboriginal object they must notify the Department of Premier and Cabinet Secretary about its location<sup>6</sup>. Assistance on how to do this is provided in Section 6 (step 5).

### 3.2 Historic heritage items

Historic (non-Aboriginal) heritage items may include:

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

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<sup>3</sup> Disturbance is considered to be any physical interference with the item EP&A Act that results in it being destroyed, defaced, damaged, harmed, impacted or altered in any way (this includes archaeological investigation activities).

<sup>4</sup> Section 5(1) *National Park and Wildlife Act 1974* (NSW).

<sup>5</sup> Except when, Division 4.7 of Part 4 or Division 5.2 of Part 5 applies.

<sup>6</sup> This is required under s89(A) of the *National Park and Wildlife Act 1974* (NSW) and applies to all projects assessed under Division 4.7, Part 4, and Division 5.2 Part 5 of the EP&A Act, including exempt development.

### 3.2.1 Archaeological relics

The *Heritage Act 1977* (NSW) 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>7</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 protection.**

If a relic is likely to be disturbed, a heritage approval is usually required from the Heritage Council of NSW<sup>8</sup>. When a person discovers a relic, they must notify the Heritage Council of NSW of its location<sup>9</sup>. Advice on how to do this is provided in Section 6 (Step 5).

### 3.2.2 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 Transport may encounter include culverts, historic road formations, historic pavements, buried roads, retaining walls, tramlines, cisterns, fences, sheds, buildings and conduits. Although an approval under the *Heritage Act 1977* (NSW) (Heritage Act) may not be required to disturb these items, their discovery must be managed in accordance with this procedure.

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

Despite this difference, it should be remembered that relics can often be associated with ‘other heritage items’ such as archaeological deposits within cisterns and underfloor deposits under buildings.

## 3.3 Human skeletal remains

Human skeletal remains can be classed as:

- Reportable deaths.
- Aboriginal objects.
- Relics.

Where it is suspected that less than 100 years has elapsed since death, human skeletal remains come under the jurisdiction of the State Coroner and the *Coroners Act 2009* (NSW). Under s 35(2) of that Act, 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>10</sup> regardless of ancestry. Public health controls may also apply.

Where remains are suspected of being more than 100 years old, they are considered to be either Aboriginal objects or non-Aboriginal relics depending on the ancestry of the individual. Aboriginal human remains are

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<sup>7</sup> Section 4(1) *Heritage Act 1977* (NSW).

<sup>8</sup> Except when Division 4.7 of Part 4 or Division 5.2 of Part 5 of the *EP&A Act* applies.

<sup>9</sup> This is required under s146 of the *Heritage Act* and applies to all projects assessed under, Part 4, including Division 4.7, Part 5 and including Division 5.2 of the *EP&A Act*, including exempt development.

<sup>10</sup> Under s 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.



protected under the *National Parks and Wildlife Act 1974*, while non-Aboriginal remains are protected under the *Heritage Act 1977* (NSW).

The approval and notification requirements of these Acts are described above in Sections 3.1 and 3.2. Additionally, the discovery of Aboriginal human remains also triggers notification requirements to the Commonwealth Minister for the Environment under s 20(1) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

**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.

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

## 4. Procedure overview

On discovering something that could be an unexpected heritage item ('the item'), the following procedure must be followed. There are eight steps in the procedure. These steps are summarised in Figure 1 below and explained in detail in Section 6.

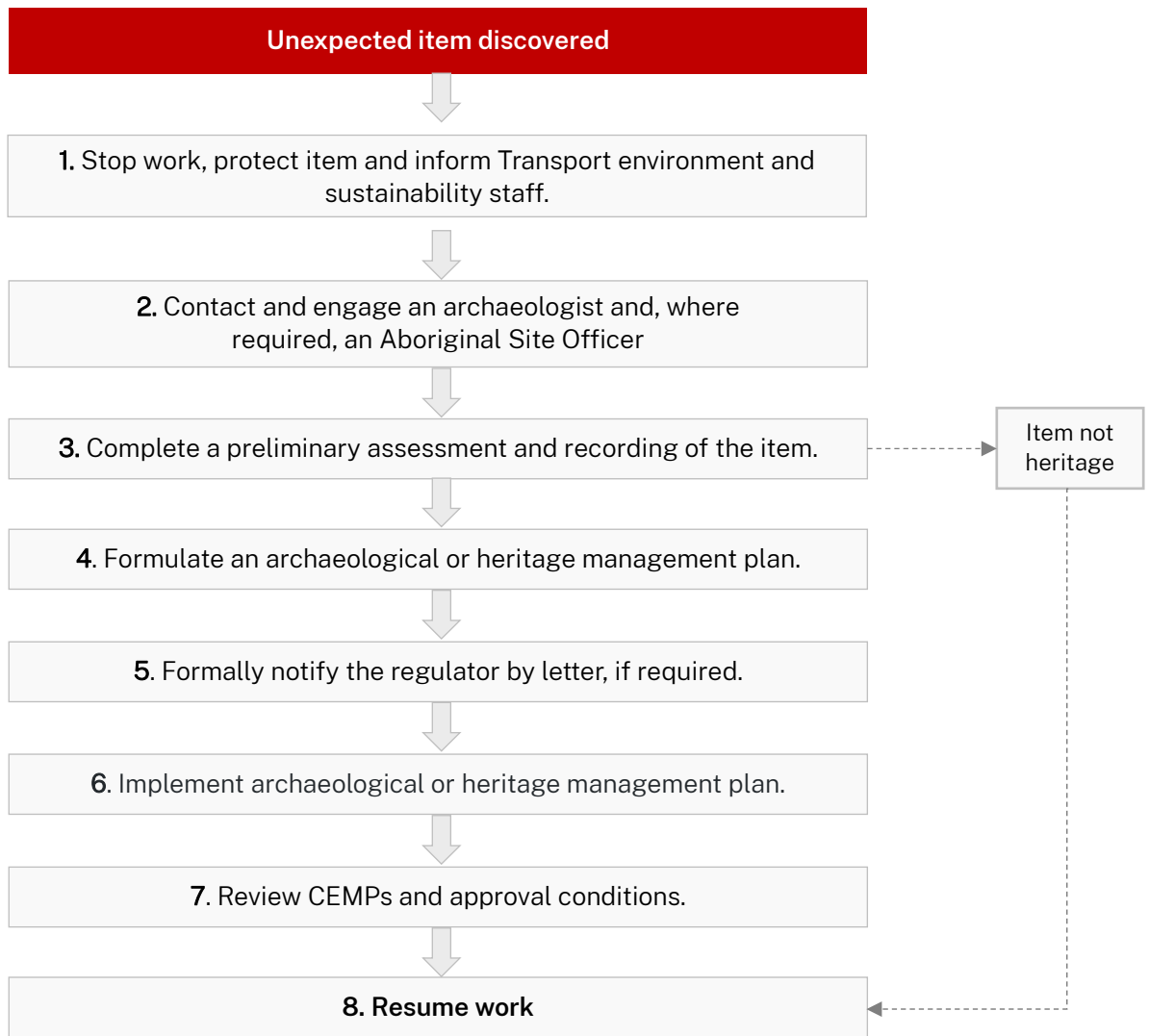


Figure 1: Overview of steps to be undertaken on the discovery of an unexpected heritage item.

**Important:**

Transport may have approval or specific safeguards in place (apart from this procedure) to impact on certain heritage items during construction. If you discover a heritage item and you are unsure whether an approval or safeguard is in place, **STOP** works and follow this procedure.

## 5. Related information

### 5.1 Related Transport policies and framework

- [Transport Environment and Sustainability Policy](#)
- [Environment & Sustainability Management Framework](#)
- Cultural heritage policy

### 5.2 This procedure should be read in conjunction with:

- Procedure for Aboriginal Cultural Heritage Consultation and Investigation
- EMF-HE-GD-0077 Cultural heritage guidelines
- Environmental Impact Assessment Procedure for Routine and Minor Works EMF-PA-PR-0081
- Environmental Impact Assessment Procedure for Bushfire Hazard Reduction - EIA-P06
- Environmental Impact Assessment Procedure for Review of Environmental Factors EMF-PA-PR-0070
- Environmental Impact Assessment Procedure for State Significant Infrastructure EMF-PA-PR-0072
- EMF-EM-PR-0001 Environmental Incident Procedure

**Important:**

If you are working under a contract that predates 19 July 2021 under legacy Roads and Maritime work, please contact the Assurance and performance improvement team via [nevops@transport.nsw.gov.au](mailto:nevops@transport.nsw.gov.au)

### 5.3 Other relevant reading material

- NSW Heritage Office (1998), Skeletal remains: guidelines for the management of human skeletal remains.
- Department of Environment and Conservation NSW (2006), Manual for the identification of Aboriginal remains.

## 6. Unexpected heritage items procedure

### 6.1 Specific tasks to be implemented following discovery of an unexpected heritage item.

Aboriginal Cultural Heritage Officer (ACHO); Aboriginal Sites Officer (ASO); Archaeologist (A); Project Manager (PM); Environment and sustainability Staff (RS); Registered Aboriginal Parties (RAPs); Senior Specialist (Heritage) (SS(H)); Team leader –Roads and Maintenance or equivalent (TL -RM); Works supervisor –Roads and Maintenance (WS -RM).

Step	Task	Responsibility	Guidance and tools
<b>1</b>	<b>Stop work, protect item and inform Transport environment and sustainability staff</b>		
1.1	Stop all work in the immediate area of the item and notify the Project Manager or Team Leader-RM. (For maintenance activities, the Team Leader is to also notify the Works Supervisor-RM).	All	<b>Appendix A</b> (Identifying unexpected heritage items)
1.2	Establish a 'no-go zone' around the item. Use high-visibility fencing where practical.	PM or TL-RM	
1.3	Inform all site personnel about the no-go zone. No further interference, including works, ground disturbance, touching or moving the item must occur within the no-go zone.	PM or TL-RM	
1.4	Inspect, document and photograph the item using 'Unexpected Heritage Item Recording Form (Appendix B).	PM or TL-RM	<b>Appendix B</b> (Unexpected Heritage Item Recording Form)  <b>Appendix C</b> (Photographing Unexpected Heritage items)
1.5	Is the item likely to be bone?  If <b>yes</b> , follow the steps in Appendix E. 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.  If <b>no</b> , continue to next step.		<b>Appendix E</b> (Uncovering bones)
1.6	Is the item likely to be:  a) A relic? (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, rockery, personal effects, tools, machinery and domestic or industrial refuse)  and/or  b) An Aboriginal object? (An Aboriginal object may include a shell midden, stone tools, bones, rock art or a scarred tree).		<b>Appendix A</b> (Identifying heritage items)

	<p>If <b>yes</b>, proceed directly to Step 1.8 If <b>no</b>, proceed to next step.</p>		
1.7	<p>Is the item likely to be a 'work', building or standing structure? (This may include tram tracks, kerbing, historic road pavement, fences, sheds or building foundations).</p> <p>If <b>yes</b>, can works avoid further disturbance to the item? (E.g., if historic road base/tram tracks have been exposed, can they be left in place?) If yes, works may proceed without further disturbance to the item. Complete Step 1.8 within 24 hours.</p> <p>If works cannot avoid further disturbance to the item, works must not recommence at this time. Complete the remaining steps in this procedure.</p>		<b>Appendix A</b> (Identifying heritage items)
1.8	<p>Inform relevant Transport Environment and Sustainability staff of item by providing them with the completed Appendix B.</p>	PM or WS-RM (ES)	<b>Section 7</b> (Seeking advice)
1.9	<p>Environment and Sustainability staff to advise Project Manager or Works Supervisor whether Transport has an approval or safeguard in place (apart from this procedure) to impact on the 'item'. (An approval may include an approval under the Heritage Act, the National Parks and Wildlife Act or the Environmental Planning and Assessment Act).</p> <p>Does Transport have an approval, permit or appropriate safeguard in place to impact on the item?</p> <p>If <b>yes</b>, work may recommence in accordance with the approval, permit or safeguard. There is no further requirement to follow this procedure.</p> <p>If <b>no</b>, continue to next step.</p>		
1.10	<p>Liaise with Traffic Management Centre where the delay is likely to affect traffic flow.</p>	PM or WS-RM	
1.11	<p>Report the item as a 'Reportable Event' in accordance with the Transport <i>Environmental Incident Procedure (EMF-EM-PR-0001)</i>. Implement any additional reporting requirements related to the project's approval and CEMP, where relevant.</p>	PM or WS-RM	Environmental Incident Procedure EMF-EM-PR-0001

Step	Task	Responsibility	Guidance and tools
<b>2</b>	<b>Contact and engage an archaeologist and, where required, an Aboriginal site officer</b>		
2.1	<p>Contact the project (on-call) archaeologist to discuss the location and extent of the item and to arrange a site inspection, if required. The project CEMP may contain contact details of the project archaeologist.</p> <p>OR</p> <p>Where there is no project archaeologist engaged for the works, engage a suitably-qualified and experienced archaeological consultant to assess the find. A list of heritage consultants is available on the Transport contractor panels on the <a href="#">Buy NSW (NSW government)</a> homepage.</p> <p>Environment and sustainability staff and Transport heritage staff can also advise on appropriate consultants.</p>	PM or WS-RM (A; ES; SS(H))	<p><b>Section 7</b> (Seeking advice)</p> <p><a href="#">Buy NSW (NSW government)</a></p>
2.2	Where the item is likely to be an Aboriginal object, speak with your Aboriginal Cultural Heritage Officer to arrange for an Aboriginal Sites Officer to assess the find. Generally, an Aboriginal Sites Officer would be from the relevant local Aboriginal land council. If an alternative contact person (i.e., a RAP) has been nominated as a result of previous consultation, then that person is to be contacted.	PM or WS-RM (ACHO; ASO)	
2.3	If requested, provide photographs of the item taken at Step 1.4 to the archaeologist, and Aboriginal Sites Officer if relevant.	PM or WS-RM (ES)	<b>Appendix C</b> (Photographing Unexpected Heritage items)
<b>3</b>	<b>Preliminary assessment and recording of the find</b>		
3.1	In a minority of cases, the archaeologist (and Aboriginal Sites Officer, if relevant) may determine from the photographs that no site inspection is required because no archaeological 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) and confirmed by the Project Manager or Works Supervisor -RM.	A/PM/ASO/ WS-RM	Proceed to Step 8
3.2	Arrange site access for the archaeologist (and Aboriginal Sites Officer, if relevant) to inspect the item as soon as practicable. In most cases, a site inspection is required to conduct a preliminary assessment.	PM or WS-RM	
3.3	Subject to the archaeologist's assessment (and the Aboriginal Sites Officer's assessment, if relevant), 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 has 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.	A/PM/ASO/ WS-RM	
3.4	The archaeologist (and Aboriginal Sites Officer, if relevant) may provide advice after the site inspection and preliminary assessment that no archaeological 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) and confirmed by the Project Manager or Works Supervisor -RM.	A/PM/ASO/ WS-RM	Proceed to Step 8

3.5	Where required, seek additional specialist technical advice (such as a forensic or physical anthropologist to identify skeletal remains). Environment and sustainability staff and/or Transport heritage staff can provide contacts for such specialist consultants.	ES/SS(H)	<b>Appendix D</b> (Key environmental contacts)
3.6	Where the item has been identified as a 'relic', 'heritage item' or an 'Aboriginal object' the archaeologist should formally record the item.	A	
3.7	The regulator can be notified informally by telephone at this stage by the archaeologist, Project Manager (or delegate) or Works Supervisor -RM. Any verbal conversations with regulators must be noted on the project file for future reference.	PM/A/WS-RM	
<b>4</b>	<b>Prepare an archaeological or heritage management plan</b>		
4.1	The archaeologist must prepare an archaeological or heritage management plan (with input from the Aboriginal Sites Officer, where relevant) shortly after the site inspection. This plan is a brief overview of the following: (a) description of the feature (b) historic context if data is easily accessible (c) likely significance (d) heritage approval and regulatory notification requirements (e) heritage reporting requirements (f) stakeholder consultation requirements (g) relevance to other project approvals and management plans etc.	A/ASO	<b>Appendix F</b> (Archaeological/Heritage Advice Checklist)
4.2	In preparing the plan, the archaeologist with the assistance of environment and sustainability staff must review the CEMP, any heritage sub-plans, any conditions of heritage approvals, conditions of project approval (and or Minister's Conditions of Approval) and heritage assessment documentation (e.g., Aboriginal Cultural Heritage Assessment Report). This will outline if the unexpected item is consistent with previous heritage/project approval(s) and/or previously agreed management strategies. The Project Manager and environment and sustainability staff must provide all relevant documents to the archaeologist to assist with this. Discussions should occur with design engineers to consider if re-design options exist and are appropriate.	A/ES/PM	<b>Appendix F</b> (Archaeological/Heritage Advice Checklist)
4.3	The archaeologist must submit this plan as a letter, brief report or email to the Project Manager outlining all relevant archaeological or heritage issues. This plan should be submitted to the Project Manager as soon as practicable. Given that the archaeological management plan is an overview of all the necessary requirements (and the urgency of the situation), it should take no longer than two working days to submit to the Project Manager.	A	
4.4	The Project Manager or Works Supervisor must review the archaeological or heritage management plan to ensure all requirements can reasonably be implemented. Seek additional advice from environment and sustainability staff and Transport heritage staff, if required.	PM/ES/SS(H)/ WS-RM	

Step	Task	Responsibility	Guidance and tools
<b>5</b>	<b>Notify the regulator, if required.</b>		
5.1	Review the archaeological or heritage management plan to confirm if regulator notification is required. Is notification required?  If <b>no</b> , proceed directly to Step 6 If <b>yes</b> , proceed to next step.	PM/ES/SS(H)/ WS-RM	
5.2	If notification is required, complete the template notification letter.	PM or WS-RM	<b>Appendix G</b> (Letter notification template)
5.3	Forward the draft notification letter, archaeological or heritage management plan and the site recording form to r environment and sustainability staff and Senior Specialist (Heritage) for review, and consider any suggested amendments.	PM/ES/SS(H)/ WS-RM	
5.4	Forward the signed notification letter to the relevant regulator (i.e., notification of relics must be given to the Heritage NSW,) while notification for Aboriginal objects must be given to the relevant Aboriginal section of Heritage NSW.  Informal notification (via a phone call or email) to the regulator prior to sending the letter is appropriate. The archaeological management plan and the completed site recording form must be submitted with the notification letter. For Division 4.7 (SSD) and Division 5.2 (SSI) EP&A Act projects, the Department of Planning and Environment must also be notified.	PM or WS-RM	<b>Appendix D</b> (Key environmental contacts)
5.5	A copy of the final signed notification letter, archaeological or heritage management plan and the site recording form should be kept on file by the Project Manager or Works Supervisor-RMD and a copy sent to the Senior Environmental Specialist (Heritage).	PM or WS-RM	
<b>6</b>			
6.1	Modify the archaeological or heritage management plan to take into account any additional advice resulting from notification and discussions with the regulator.	A/PM or WS-RM (ES)	
6.2	Implement the archaeological or heritage management plan. Where impact is expected, this would include such things as 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.	PM or WS-RM (RAPs and ES)	PACHCI Stage 3
6.3	Where heritage approval is required contact environment and sustainability staff for further advice and support material. Please note time constraints associated with heritage approval preparation and processing. Project scheduling may need to be revised where extensive delays are expected.	PM/ES/WS-RM	
6.4	For Division 4.7 (SSD) and Division 5.2 (SSI) EP&A Act projects, assess whether heritage impact is consistent with the project approval or if project approval modification is required from the Department of Planning and Environment. Seek advice from environment and sustainability staff and Environment and Sustainability specialist staff if unsure.	PM/ES	



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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.	PM or WS-RM	
6.6	Where statutory approval (or Division 4.7 (SSD)/ Division 5.2 (SSI) of the EP&A Act project modification) is not required and where recording is recommended by the archaeologist, sufficient time must be allowed for this to occur.	PM or WS-RM	
6.7	Ensure short term and permanent storage locations are identified for archaeological material or other heritage material is removed from site, where required. Interested third parties (e.g., museums or local councils) should be consulted on this issue. Contact environment and sustainability staff and Senior Specialist (Heritage) for advice on this matter, if required.	PM or WS-RM	
<b>7</b>	<b>Review CEMPs and approval conditions</b>		
7.1	Check whether written notification is required to be sent to the regulator before recommencing work. Where this is not explicit in heritage approval conditions, expectations should be clarified directly with the regulator	PM	
7.2	Update the CEMP, site mapping and project delivery program as appropriate with any project changes resulting from final heritage management (e.g., retention of heritage item, salvage of item). Updated CEMPs must incorporate additional conditions arising from any heritage approvals, and Aboriginal community consultation if relevant. Include any changes to CEMP in site induction material and update site workers during toolbox talks.	PM	
<b>8</b>	<b>To resume work</b>		
8.1	Seek written clearance to resume project work from environment and sustainability staff and the archaeologist (and regulator, if required). Clearance would only be given once all archaeological excavation and/or heritage recommendations (where required) are complete. Resumption of project work must be in accordance with all relevant project/heritage approvals/determinations.	ES/A/PM/WS-RM	
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.	PM/A/WS-RM	
8.3	Forward all heritage/archaeological assessments, heritage location data and its ownership status to the Senior Specialist (Heritage). They will ensure all heritage items in Transport's ownership and/or control are considered for the Transport S170 Heritage and Conservation Register.	PM/SS(H)/ WS-RM	
8.4	If additional unexpected items are discovered this procedure must begin again from Step 1.	PM/TL-RM	

## 7. Seeking advice

Advice on this procedure should be sought from Transport’s Environment and Sustainability heritage staff (see contact details below). Contractors and alliance partners should ensure their own project environment managers are aware of and understand this procedure. Environment and sustainability staff can assist non-Transport project environment managers with enquires concerning this procedure.

**Important: Transport staff and contractors must not seek advice on this procedure directly from Heritage NSW without first seeking advice from Environment and Sustainability heritage staff or environment and sustainability staff.**

Technical archaeological or heritage advice regarding an unexpected heritage item should be sought from the contracted archaeologist. Technical specialist advice can also be sought from heritage staff within Environment and Sustainability to assist with the preliminary archaeological identification and technical reviews of heritage/archaeological reports.

### Key environmental contacts

Region	Role	Phone
Northern region (including the Hunter)	David Nalder - Snr Manager, Aboriginal Engagement (North)	0447 717 866
South and West region	Bobbi Brodie - Snr Manager, Aboriginal Engagement South & West	0429 684 583
Sydney region	Jodie Towney - Snr Aboriginal Engagement Specialist (Sydney)	0476 823 146
Environment and Sustainability	Denis Gojak - Senior Specialist (Heritage) <a href="mailto:Denis.gojak@transport.nsw.gov.au">Denis.gojak@transport.nsw.gov.au</a> Please cc the following email: <a href="mailto:es_heritage@transport.nsw.gov.au">es_heritage@transport.nsw.gov.au</a>	8843 3053 0400 474 405

### Heritage regulators

Department/Office	Contact	Phone
Heritage NSW, Department of Planning and Environment	<a href="#">Heritage NSW</a>	(02) 9873 8500
Department of Agriculture, Water and the Environment (DAWE) (Commonwealth)	<a href="#">DAWE</a>	(02) 6272 3933

### Project-specific contacts

Position	Name	Phone
Project Manager		
Site/Alliance Environment Manager		
Environmental Officer		
Aboriginal Cultural Heritage Officer		
Consultant Archaeologist		
Local Police Station		
Environment Line		131 555

## 8. Definitions

<INSTRUCTION: Do not include words or terms that have a commonly understood meaning - delete message.>

Term	Definition
Archaeologist	Archaeologist
ACHO	Aboriginal Cultural Heritage Officer
AHIP	Aboriginal Heritage Impact Permit
ASO	Aboriginal Site Officer
CEMP	Construction Environment Management Plan
HNSW	Heritage NSW, Department of Planning and Environment
PACHCI	Procedure for Aboriginal Cultural Heritage Consultation and Investigation
PM	Project Manager
RAP	Registered Aboriginal Parties
E&S	Environment and Sustainability (branch)
SS(H)	Senior Specialist (Heritage)
TL-RM	Team Leader –Roads and Maintenance or equivalent role
Transport	Transport for NSW
WS-RM	Works Supervisor –Roads and Maintenance or equivalent role

## 9. Accountabilities

Role	Responsibility
Aboriginal Cultural Heritage Officer (ACHO)	Provides Aboriginal cultural heritage advice to project teams. Acts as Aboriginal community liaison for projects on cultural heritage matters. Engages and consults with the Aboriginal community as per the <i>Transport Procedure for Aboriginal Cultural Heritage Consultation and Investigation</i> .
Aboriginal Sites Officer (ASO)	Is an appropriately trained and skilled Aboriginal person whose role is to identify and assess Aboriginal objects and cultural values. For details on engaging Aboriginal Sites Officers, refer to <i>Transport Procedure for Aboriginal Cultural Heritage Consultation and Investigation</i> .
Archaeologist (A)	Professional consultant, contracted on a case-by-case basis to provide heritage and archaeological advice and technical services (such as reports, heritage approval documentation, etc.). Major projects with complex heritage issues often have an on-call project archaeologist.
Project Management (PM)	Ensures all aspects of this procedure are implemented. The PM can delegate specific tasks to a construction environment manager, Transport site representatives or environment and sustainability staff, where appropriate.
Environment and sustainability staff (ES)	Provide advice on this procedure to project teams. Ensuring this procedure is implemented consistently by supporting the PM. Supporting project teams during the uncovering of unexpected finds. Reviewing archaeological management plans and liaising with heritage staff and archaeological consultants as needed.
Registered Aboriginal Parties (RAPs)	RAPs are Aboriginal people who have registered with Transport to be consulted about a proposed project or activity in accordance with OEH's Aboriginal cultural heritage consultation requirements for proponents (2010).
Senior Specialist (Heritage)	Provides technical assistance on this procedure and archaeological technical matters, as required. Reviewing the archaeological management plans and facilitating heritage approval applications, where required. Assists with regulator engagement, where required.
Team Leader -Roads and Maintenance (TL-RM)	Ensures Maintenance staff stop work in the vicinity of an unexpected heritage item. Completes <i>Unexpected Heritage Item Recording Form in Appendix B</i> and notifies WS-RM.
Technical Specialist	Professional consultant contracted to provide specific technical advice that relates to the specific type of unexpected heritage find (for example a forensic or physical anthropologist who can identify and analyse human skeletal remains).
Works Supervisor - Roads and Maintenance (WS-M)	Ensures Roads and Maintenance staff are aware of this procedure. Supports the Team Leader -Roads and Maintenance during the implementation of this procedure and ensures reporting of unexpected heritage items through environment management systems.

# Appendix A: Identifying unexpected heritage items

The following images can be used to assist in the preliminary identification of potential unexpected items (both Aboriginal and non-Aboriginal) during construction and maintenance works. Please note this is not a comprehensive typology.



**Figures:** 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).



**Figures:** Top left hand picture continuing clockwise: woodstave water pipe with tar and wire sealing (Horsley drive); tram tracks (Sydney); brick lined cistern (Clyde); retaining wall (Great Western Highway, Leura).



**Figures:** Top left-hand picture continuing clockwise: road pavement (Great Western Highway, Lawson); sandstone kerbing (Parramatta Road, Mays Hill); Telford sandstone road base (Great Western Highway, Leura); ceramic conduit and sandstone culvert headwall (Blue Mountains, NSW); corduroy timber road base (Entrance Road, Wamberal).



Alignment pin



Survey tree



Alignment stone



Survey tree

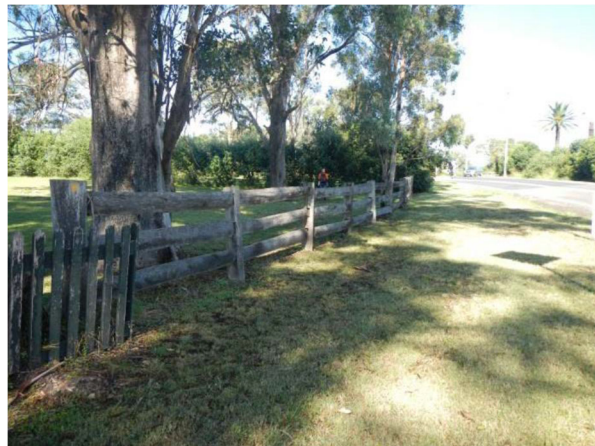


Milestone

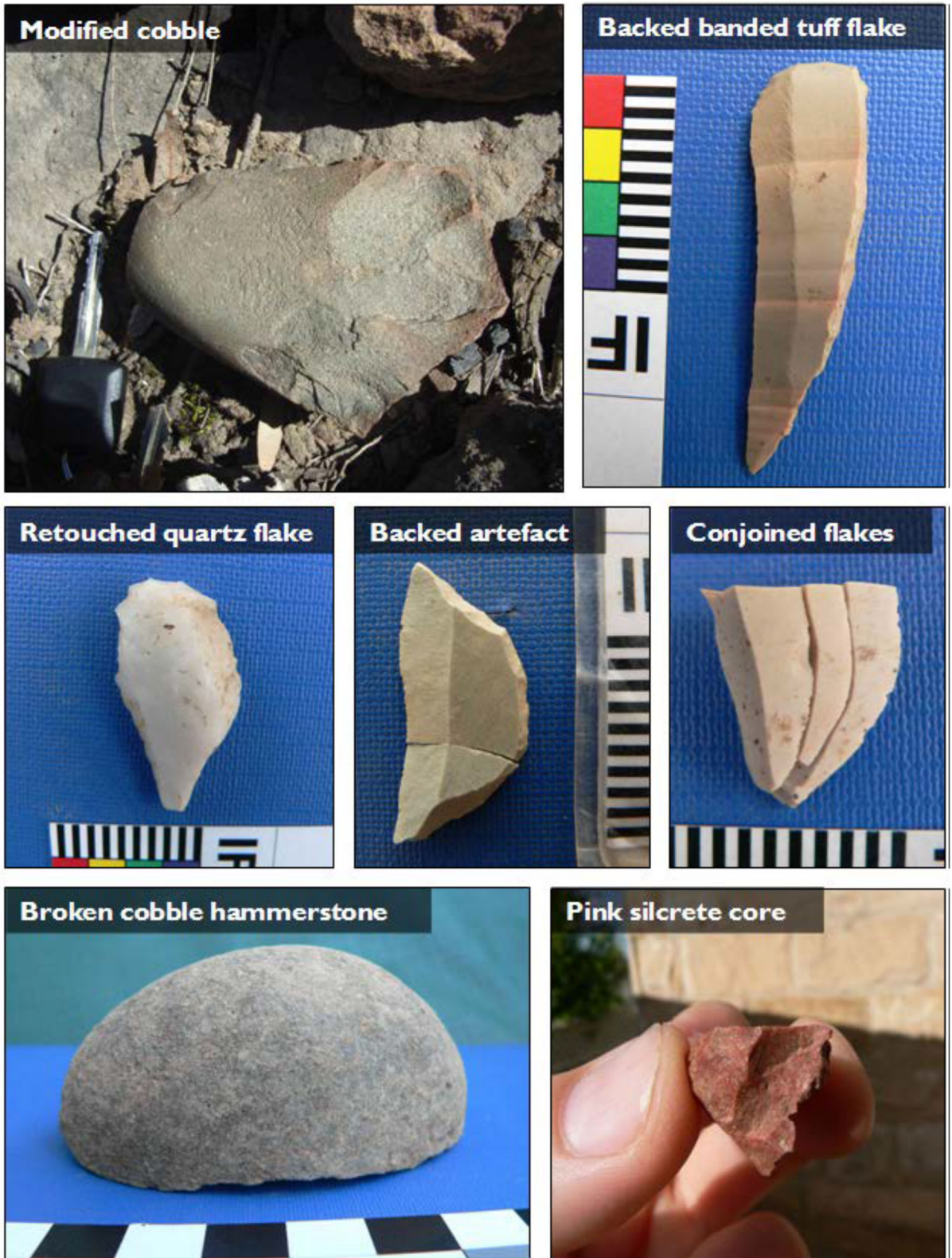


**Figures:** Top left-hand corner continuing clockwise: alignment pin (Great Western Highway, Wentworth Falls); survey tree (MR7, Albury); survey tree (Kidman Way, Darlington Point, Murrumbidgee); survey tree (Cobb Highway, Deniliquin); milestone (Great Western Highway, Kingswood, Penrith); alignment stone (near Guntawong Road, Riverstone). Please note survey marks may have additional statutory protection under the *Surveying and Spatial Information Act 2002*.





**Figures:** Top left-hand corner continuing clockwise: remnant bridge piers (Putty Road, Bulga); wooden boundary fence (Campbelltown Road, Denham Court); dairy shed (Ballina); *Golden Arrow Mine Shaft Act 2002*.



**Figures:** Top left-hand corner: culturally-modified stone discovered on Main Road 92, about two kilometres west of Sassafras. The remaining images show a selection of stone artefacts retrieved from test and salvage archaeological excavations during the Hume Highway Duplication and Bypass projects from 2006-2010

# Appendix B: Unexpected heritage item recording form

## TRANSPORT FOR NSW - UNEXPECTED HERITAGE ITEM

Date		Recorded by	Name
			Position
Project name			
<b>Description of works being undertaken</b> (e.g., removal of failed pavement by excavation and pouring concrete slabs in 1m x 1m replacement sections).			
<b>Description of exact location of item</b> (e.g., Within the road formation on Parramatta Road, east bound lane, at the corner of Johnston Street, Annandale, Sydney)			
<b>Description of item found (What type of item is it likely to be? Tick the relevant boxes)</b>			
A. Relic	<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 bottles, utensils, plates, cups, household items, tools, implements, and similar items.	
B. 'Work, building or structure'	<input type="checkbox"/>	'Work' can generally be defined as a form of infrastructure such as tram tracks, a culvert, road base, a bridge pier, kerbing, and similar items.	
C. An Aboriginal object	<input type="checkbox"/>	An 'Aboriginal object' may include stone tools, stone flakes, shell middens, rock art, scarred trees and human bones.	
D. Bone	<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>	
E. Other	<input type="checkbox"/>		
<b>Provide a short description of item</b> (e.g., Metal tram tracks running parallel to road alignment. Good condition. Tracks set in concrete, approximately 10cms (100 mm) below the current ground surface).			

**Sketch**

(Provide a sketch map of 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).

**Action taken (tick either A or B)**

A. Unexpected item **would not** be further impacted by works

**Describe how works would avoid impact on the item**

(e.g., the tram tracks will be left in situ, and recovered with road paving).

B. Unexpected item **would** be further impacted by works

**Describe how works would impact on the item**

(e.g., milling is required to be continued to 200 mm depth to ensure road pavement requirements are met. Tram tracks will need to be removed).

Project manager / works supervisor signature

## Appendix C: Photographing unexpected heritage items

Photographs of unexpected items in their current context (in situ) may assist heritage staff and archaeologists 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) 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 much value to the subsequent detailed photographs also required (Figure 2).



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



**Figure 4:** Close up detail of the sandstone surface showing material type, formation and construction detail. This is essential for establishing date of the feature.

### Photographing distinguishing features

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

### 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, Transport must contact the police immediately (see Appendix F for detailed guidance). Taking quality photographs of the bones can often resolve this issue quickly. Heritage staff in Environment and Sustainability Branch 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 E: Uncovering bones

This appendix provides project managers with:

- (1) advice on what to do when bones are discovered.
- (2) guidance on the notification pathways.
- (3) additional considerations and requirements when managing the discovery of human remains.



## 1. First uncovering bones

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. Therefore, they must be identified as either human or non-human as soon as possible by a qualified forensic or physical anthropologist. These specialist consultants can be sought by contacting environment and sustainability staff and/or Environment and Sustainability heritage staff.

On the very rare occasion where it is instantly 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. 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 clothing are present.



Figure 1: Schematic of complete skeleton that is obviously human<sup>11</sup>.



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

This preliminary phone call is to let the police know that Transport is undertaking 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 '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 C. Good photographs often result in the bones being identified by a specialist without requiring a site visit; noting they are nearly

<sup>11</sup> After Department of Environment and Conservation NSW (2006), Manual for the identification of Aboriginal Remains:

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 Project Manager or environment and sustainability staff is considered appropriate. This must be followed up later by Transport's formal letter notification as per Appendix G 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

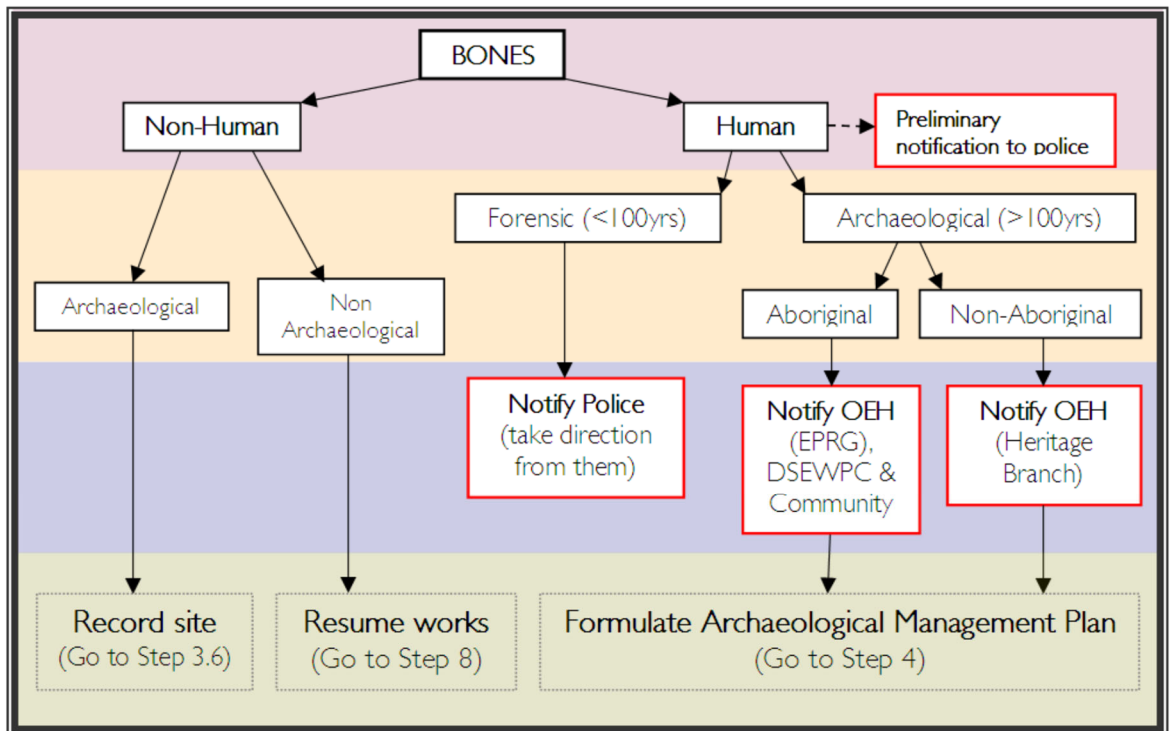
The Heritage NSW and the Transport Aboriginal Cultural Heritage Officer (ACHO) must be notified immediately. The ACHO must contact and inform the relevant Aboriginal community stakeholders who may request to be present on site. Relevant stakeholders are determined by Transport's Procedure for Aboriginal Cultural Heritage Consultation and Investigation (PACHCI).

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

#### Action

Heritage NSW must be notified immediately.

The diagram below summarises the notification pathways on finding bones.



After the appropriate verbal notifications (as described in B and C), the Project Manager must proceed through the Unexpected Heritage Items Procedure to formulate an archaeological management plan (Step 4). Note no archaeological management plan is required for forensic cases (A), 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 recording 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). Transport’s ACHO can provide advice on this and how to engage with the relevant Aboriginal community. Project Managers, more generally, may also 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 2010* (NSW). Specifically, Transport is 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 Regulation 2012* (NSW)<sup>12</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 [NSW Health](#).

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.

<sup>12</sup> This requirement is in addition to heritage approvals under the *Heritage Act 1977*.

# Appendix F: Archaeological Heritage Advice Checklist

The following checklist can be used by the Project Manager and the archaeologist to ensure all relevant archaeological issues are considered when developing the management plan required at Step 4 of this procedure.

An archaeological or heritage management plan can include a range of activities and processes, which differ depending on the find and its significance.

Assessment and Investigation	Required	Outcomes/notes
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>		
AHIPs, s 140, s 139 exceptions, s 60, etc.	Yes/No	
Regulator relics/objects notification.	Yes/No	
Transport's S170 Heritage and Conservation Register listing requirements.	Yes/No	
Compliance with CEMP or other project heritage approvals.	Yes/No	
<b>Stakeholder consultation.</b>		
Aboriginal stakeholder consultation requirements and how it relates to Transport's <i>Procedure for Aboriginal Cultural Heritage Consultation and Investigation</i> (PACHCI).	Yes/No	
Advice from Environment and sustainability staff, Aboriginal Cultural Heritage Advisor, Transport heritage team.	Yes/No	
<b>Artefact/heritage item management.</b>		
Retention or conservation strategy (e.g., items may be subject to long conservation and interpretation) Disposal strategy (e.g., former road pavement) Short-term and permanent storage locations (interested third parties to be consulted on this issue).	Yes/No	
Control Agreement for Aboriginal objects.	Yes/No	
<b>Program and budget.</b>		
Time estimate associated with archaeological or heritage conservation work.		
Total cost of archaeological heritage work.		

# Appendix G: Notification letter template

**Drafting guidance:** Paste the details below into a Transport for NSW letter template.

[Insert date]

[Insert reference number]

[Insert file number]

[Insert recipient's name and address, see Appendix D]

[Insert salutation and name],

**Re: Unexpected heritage item discovered during Transport for NSW (Transport) works.**

I write to inform you of an unexpected [select: relic, heritage item or Aboriginal object] found during Transport works at [insert location] on [insert date]. [Where the regulator has been informally notified at an earlier date by telephone, this should be referred to here].

This letter is in accordance with the notification requirement under [select: section 146 of the *Heritage Act 1977* (NSW) or section 89(A) of the *National Parks and Wildlife Act 1974* (NSW)].

NB: There may be not be statutory requirement to notify of the discovery of a 'heritage Item that is not a relic or Aboriginal object].

#### **Drafting guidance**

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

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

Transport [or contractor on behalf of Transport] 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.

Resulting from these preliminary findings, Transport [or contractor on behalf of Transport] is proposing [provide a summary of the proposed archaeological/heritage approach (eg 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.

Please contact me if you have any input on this approach or if you require any further information.

Yours sincerely

[Sender name and position]

[Attach the archaeological/heritage management plan and site recording form].



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