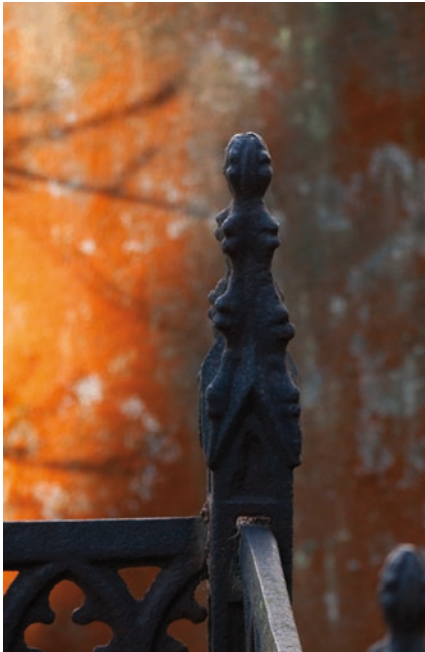




HERITAGE NEW ZEALAND
POUHERE TAONGA



Heritage New Zealand Pouhere Taonga
Archaeological Guidelines Series

Koiwi Tangata Human Remains



25 August 2014



Contents

1.	Introduction	4
2.	Executive summary	4
3.	Definitions	5
4.	Legislative framework	6
	<i>Coroners Act 2006</i>	6
	<i>Burial and Cremation Act 1964</i>	6
	<i>Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA)</i>	6
	<i>Protected Objects Act 1975</i>	7
	<i>Te Ture Whenua Maori Act 1993</i>	8
4.1	Can more than one Act apply?	8
4.2	Key agencies – roles and responsibilities	8
	Heritage New Zealand	8
	New Zealand Police	9
	Ministry of Health	9
	Tangata Whenua	9
	Other agencies	10
5.	Significance of koiwi tangata/human remains in the New Zealand context	10
6.	Burial practices and their importance	11
7.	Guidelines	12
7.1	Accidental discovery – how to proceed	12
7.2	Guidelines for the general public	12
7.3	Guidelines for the Police	13
7.4	Guidelines for developers	14
7.5	Guidelines for consultant archaeologists	15
7.6	Guidelines for Department of Conservation staff	16
7.7	Guidelines for Heritage New Zealand staff (archaeologists and pouarahi)	17
7.8	Guidelines for tangata whenua (iwi, hapu and whanau)	18
8.	Minimum standards for recording and recovery	19
9.	Deliberate excavation of known burials (cemeteries, urupa etc)	22

10.	Repository	23
11.	Re-interment	23
11.1	Re-interment of Koiwi tangata/human remains of Maori origin	23
11.2	Re-interment of koiwi tangata/human remains of non-Maori origin	23
12.	Cultural considerations	24
	Glossary	27
	Appendix 1 – Contacts	29
	Bibliography	33
	Appendix 2 – disinterment application guidelines	34
	Appendix 3 – An example of a field recording sheet for human remains	38
	Appendix 4 – International precedents	41
	United States	41
	Australia	43
	United Kingdom and Ireland	43

Copyright © Heritage New Zealand Pouhere Taonga 2014

Reproduction, adaptation, or issuing of this publication for educational or other non-commercial, personal purposes is authorised without the prior permission of the copyright holder(s). Reproduction, adaptation, or issuing of this publication for resale or other commercial purposes is prohibited without the prior permission of the copyright holder(s).

Cover photos:

Bolton Street Memorial Park. *Photos, Touch Design*

ISBN 978-0-908577-98-9 (online)

1. Introduction

The *Koiwi Tangata/Human Remains Guidelines* have been prepared by Heritage New Zealand Pouhere Taonga for use by staff, heritage administrators and consultants, archaeologists, the police, territorial local authorities (TLAs), government departments, project managers, property owners, and the general public. At any time these people may be involved in the discovery, excavation, exhumation, storage, re-interment or repatriation of koiwi tangata/human remains.

2. Executive summary

The *Koiwi Tangata/Human Remains Guidelines* provide advice for a culturally responsible mechanism for the management of koiwi tangata/human remains that have been either uncovered through accidental discovery or deliberately excavated/exhumed in emergency response situations, or as a result of natural processes e.g. coastal erosion. In the majority of cases it will be found that these koiwi tangata/human remains are Maori in origin, so these Guidelines have a deliberate focus in that direction, and recognise the kaitiaki role that Maori play in determining what happens in the management of the discovery of koiwi tangata/human remains.

Heritage New Zealand is the lead agency for the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand and makes numerous decisions on heritage matters. The range of decisions in the management of koiwi tangata/human remains is wide and complex, and requires compliance with a range of legislation in New Zealand.

The *Koiwi Tangata/Human Remains Guidelines* provide a process to assist managers and staff of Heritage New Zealand to make decisions that are consistent with New Zealand legislation.

The guidelines are intended to:

- ▶ set out best practice procedures for external stakeholders e.g. tangata whenua (at iwi, hapu or whanau level), Government agencies (e.g. DOC, OTS) territorial local authorities, police, the general public, etc
- ▶ provide internal direction to Heritage New Zealand staff for the management of koiwi tangata/human remains
- ▶ ensure compliance with New Zealand legislation, and
- ▶ provide advice and direction on customary practice and protocols (tikanga and kawa), while recognising that individual iwi and hapu will have their own particular practices.

These Guidelines should be read by Heritage New Zealand staff in conjunction with the Heritage New Zealand Koiwi Tangata/Human Remains Policy. The *Koiwi Tangata/Human Remains Policy* provides direction for Heritage New Zealand staff in exercising

their responsibilities pursuant to the *Heritage New Zealand Pouhere Taonga Act 2014* (the Act). The policy also defines protocols for the management of koiwi tangata/human remains and the position of Heritage New Zealand on relevant issues including legislative compliance, stakeholder relationships, and cultural safety.

It is important to stress that these guidelines are not intended to apply to existing cemeteries and urupa (although they are briefly covered in Section 9) – it is to provide advice and assistance for the accidental and unexpected finds of koiwi tangata/human remains.

3. Definitions

Heritage New Zealand defines koiwi tangata/human remains as koiwi tangata/human remains (particularly bones) that have not been made, or incorporated into an artefact.

‘Cultural items’ refers to any taonga/artefacts discovered with the koiwi tangata/human remains. Heritage New Zealand does not classify koiwi tangata/humans remains as taonga or artefacts.

‘Discovery’ of koiwi tangata/human remains usually occurs accidentally (earth moving/excavating), or through exposure by natural processes such as coastal erosion. During development projects this sometimes can include both individual bones or burials, or larger clusters that may be considered urupa.

‘Descendant groups’ include any known groups or people that have a genealogical or whakapapa connection to the koiwi tangata/human remains.

4. Legislative framework

The five main pieces of legislation that have particular relevance to the way in which koiwi tangata/human remains are dealt with in New Zealand include:

1. *Coroners Act 2006*
2. *Burial and Cremation Act 1964*
3. *Heritage New Zealand Pouhere Taonga Act 2014*
4. *Protected Objects Act 1975*
5. *Te Ture Whenua Maori Act 1993*

Coroners Act 2006

Section 14(1) of the *Coroners Act 2006* requires that “a person who finds a body in New Zealand must report that finding to a member of the police as soon as practicable”.

This requirement means that any discovery of human remains requires notification to the New Zealand Police. It is the responsibility of the police to establish whether or not the site is a crime scene.

Burial and Cremation Act 1964

The *Burial and Cremation Act 1964* controls the burial, cremation, and exhumation of bodies as well as the management of burial grounds and cemeteries.

Sections 51 and 55 of the *Burial and Cremation Act 1964* make it an offence to:

...remove any body or the remains of any body buried in any cemetery, Maori burial ground, or other burial ground or place of burial without licence under the hand of the Minister.

The Ministry of Health is responsible for the administration of this legislation and disinterment licences can be applied for through the local Public Health Units (contact details are provided in the Appendix 1). Even when a disinterment licence is not required it is good practice to contact the local Public Health Unit so that they are aware of the situation. Guidance on when a disinterment licence is required is provided in Appendix 2.

Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA)

Heritage New Zealand is responsible for administering the HNZPTA. The purpose of this Act is to identify, preserve, protect and conserve the cultural heritage of New Zealand. The Act contains statutory powers in relation to the protection of archaeological sites.

The HNZPTA defines an archaeological site as:

... any place in New Zealand, including any building or structure (or part of a building or structure), that–

- i) was associated with human activity that occurred before 1900 or is the site of a wreck of any vessel where that wreck occurred before 1900; and*
- ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand.*

This is a broad definition that encompasses a wide variety of site types of both Maori and European origin and includes burials and cemeteries both in isolation or where they occur with other archaeological evidence.

Section 42 of the HNZPTA provides blanket protection for all archaeological sites such that:

Unless an authority is granted under sections 48, 56(1)b, or 62 in respect of an archaeological site, no person may modify or destroy, or cause to be modified or destroyed, the whole or any part of that site if the person knows, or ought reasonably to have suspected, that the site is an archaeological site.

Part 4 of the HNZPTA requires that Heritage New Zealand maintains a New Zealand Heritage List of historic places, historic areas, wahi tupuna, wahi tapu and wahi tapu areas. The purposes of this list are to inform the public, notify owners and be a source of information for the purposes of the *Resource Management Act 1991* (the RMA).

Heritage New Zealand has provided previous guidance on the types of places that may be considered to be wahi tapu. These include:

- ▶ Burial places
- ▶ Rua koiwi – places where koiwi tangata/human remains are kept, rock overhangs, caves, hollow trees etc.
- ▶ Places where baptismal rites were performed
- ▶ Burial places of placenta, etc.
- ▶ Sites where koiwi tangata/human remains were removed unless tapu has been lifted
- ▶ Battle grounds where blood was spilt
- ▶ Caverns and underwater burial places
- ▶ Sources of water for death rites.¹

The principles of the Treaty of Waitangi are provided for under section 7 of the HNZPTA.

Protected Objects Act 1975

The Protected Objects Act 1975 (POA) is administered by the Ministry for Culture and Heritage and regulates:

- ▶ the export of protected New Zealand objects
- ▶ the illegal export and import of protected New Zealand and foreign objects, and
- ▶ The sale, trade and ownership of taonga tuturu.

Cultural items derived from an archaeological burial site consisting of any object, assemblages, scientific samples and organic remains (especially taonga tuturu) are regulated and controlled by the Ministry for Culture and Heritage pursuant to the POA. The term taonga tuturu includes all finished items made by Maori and those items used by Maori (MCH guidelines give examples such as tekoteko, toki/adze, wakahaia, kaheru/

¹ Extract from Maori Heritage Committee Paper no. 1993/2/4, Maori Heritage Committee Meeting, 9 February 1993.

spade, matau/fishhooks, taiaha and patu, and carved firearms from the New Zealand Wars). However, it does not include waste and by-products of manufacturing such as flakes, shells, oven stones and other ‘scientific material’ unless there is evidence that the object had a secondary use.

Te Ture Whenua Maori Act 1993

The *Te Ture Whenua Maori Act 1993* provides for the gazettal of urupa – Maori burial grounds. Gazettal occurs in instances where new urupa are created on Maori freehold or general land blocks (section 338 *Te Ture Whenua Maori Act 1993*).

4.1 Can more than one Act apply?

More than one Act may apply in discovery of koiwi tangata/human remains. For example, the accidental discovery of human remains requires, pursuant to section 14(1) of the *Coroners Act 2006*, that the police are notified as soon as practicable. If the discovery occurs within an area in which Heritage New Zealand has reasonable cause to suspect that it is an archaeological site, then an authority pursuant to Heritage New Zealand may be required before the remains are removed.

Similarly, if koiwi tangata/human remains are to be exhumed from a known urupa or cemetery a disinterment licence will be required from the Ministry of Health pursuant to sections 51 and 55 of the *Burial and Cremation Act 1964*.

In some instances iwi, hapu or whanau may wish to inter koiwi in an urupa which is within a known archaeological area. If there is reasonable cause to suspect that the area is archaeological Heritage New Zealand at its discretion, may direct that an archaeological authority be obtained.

Heritage New Zealand advises that in all circumstances involving the care and management of koiwi tangata/human remains, that the police, Heritage New Zealand, local public health unit, and tangata whenua are notified in the first instance.

4.2 Key agencies – roles and responsibilities

The following are considered to be key agencies and groups that should be involved in koiwi tangata/human remains care and management:

Heritage New Zealand

Heritage New Zealand is the statutory authority and lead agency for the promotion, identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand. Where koiwi tangata/human remains have been discovered as a result of excavation or through natural processes the local office of Heritage New Zealand must be notified immediately. It is the statutory role and function of Heritage New Zealand to determine if the site is archaeological and if so whether an archaeological authority will be required to exhume the remains. Exhumation of koiwi tangata/human remains in an

archaeological context without an archaeological authority or the expressed permission of a Heritage New Zealand archaeologist is potentially an offence under the HNZPTA. Wilful damage and destruction of archaeological sites is a criminal offence in New Zealand and carries fines of up to \$300,000.

New Zealand Police

The New Zealand Police are the lead agency responsible for reducing crime and enhancing community safety in New Zealand. The New Zealand Police is a decentralised organisation divided into 12 districts, a National Headquarters, and service centres. Each district has a central station from which subsidiary and suburban stations are managed. In all instances of koiwi tangata/human remains discovery, the central or suburban police station must be notified, as it is the role of the New Zealand Police pursuant to s14(1) of the *Coroners Act* to determine if the site in which the remains have been uncovered is a crime scene. If there is cause to suspect the site may be archaeological, then the Police should seek the advice of a trained archaeologist to confirm this.

The New Zealand Police employ Iwi Liaison Officers who advise on Maori protocol and procedures. These officers are based in central stations and maintain a contact database for iwi, hapu and whanau within the respective areas of jurisdiction. Iwi Liaison Officers can provide advice and guidance on matters relating to iwi involvement in koiwi tangata/human remains management.

Ministry of Health

The Ministry of Health is a policy advisor to the Minister of Health, an agent of the Minister for monitoring and overseeing District Health Boards, and a provider of regulatory and other functions. The Ministry administers various statutes including the *Burial and Cremations Act 1964*. The Minister has delegated the authority to issue disinterment licences under section 51 of the Act to the Group Manager, Communicable Disease and Environmental Health Policy. Public Health Units located within regions throughout the country determine if a disinterment licence will be required in all cases of discoveries of koiwi tangata/human remains. They should be contacted to determine if a disinterment licence will be required. Contact details of Public Health Units are included in Appendix 1. Any proposal to disinter burials from a cemetery will require a disinterment licence.

Tangata Whenua

Tangata whenua is a Maori term which literally translates as ‘people of the land’ and is often used to describe the indigenous people of New Zealand. Tangata whenua social structure can be divided into three levels of kinship: iwi, hapu and whanau. An iwi is an entity consisting of a collection of interrelated sub-tribal groups – hapu. A hapu comprises closely related whanau groups, and in both a traditional and contemporary context is the authority for local tangata whenua issues. Each hapu has a defined boundary (rohe) but in some instances there are shared areas of jurisdiction.

The majority of cases of discovery of koiwi tangata/human remains are of tangata whenua derivation. It is essential, therefore, that hapu/iwi are contacted immediately following discoveries to ensure cultural protocol is adhered to and decisions for exhumation and reinterment are culturally appropriate.

Other agencies include:

- ▶ New Zealand Archaeological Association (NZAA).
- ▶ Ministry for Culture and Heritage (MCH).
- ▶ Territorial and regional authorities.
- ▶ Ministry of Justice – Maori Land Court.
- ▶ Department of Conservation (DOC).
- ▶ Universities (biological anthropologists).
- ▶ Historic Cemeteries Conservation Trust.
- ▶ Local and regional museums.

5. Significance of koiwi tangata/human remains in the New Zealand context

Death and its associated rituals are of great importance to all societies. In most cases places of burial in New Zealand will have some social and historical importance to local communities, particularly due to the cultural traditions and customary practices associated with burials.

Human remains of Maori origin are of special significance to iwi, hapu and whanau. Burial sites either known or recently discovered are in most cases regarded as highly significant to Maori communities.

The handling of koiwi tangata/human remains following discovery needs to be carried out in a sensitive manner and to respect the wishes of any descendants of the deceased individual(s), or those who now hold manawhenua or kaitiaki ahi ka roa.

Koiwi tangata/human remains can be uncovered through a variety of factors. In New Zealand one of the most common causes is through natural processes such as coastal erosion. The other major cause is through the accidental discovery of previously unknown burials on development sites. Both of these situations may contain additional archaeological material.

Heritage New Zealand staff are often one of the first ports of call for advice or guidance following the discovery of koiwi tangata/human remains and one of the major challenges for staff is to deal with the discovery in a manner that is both sensitive to any cultural issues that may be present as well as ensuring a consistency in approach to the application of the necessary legislation.

6. Burial practices and their importance

Whilst it is possible to distinguish a variety of burial types in New Zealand and make some broad statements about burial customs, such as the predominance of primary burial during the early period and secondary burial in later prehistory, it is impossible to ascribe particular burial practices to a particular time. There appears to have been considerable regional variation within Maoridom in terms of continuity and change in burial ritual, and even within the same burial plot there can be variety in burial types.

It is logical to assume that the Polynesian settlers brought their burial customs with them. Typical Polynesian practice was to emphasise the relationship of the living and the dead by burying individuals in or close to settlements. This assumption is borne out by the archaeological evidence from known early New Zealand sites such as Wairau Bar and the Washpool where burials have been discovered in clusters close to the main settlement area of the site. However, there is variability in the way that individuals were treated, even within the same burial place (Davidson 1984: 173).

These early burials are typically in shallow graves in either prone (face down), flexed or “crouched” positions. Grave goods such as moa eggs and adzes as well as items for personal ornamentation also sometimes occur. Secondary burials are also known from some early period sites. Flexed burials are known throughout the prehistoric period and in some areas are known to occur into the early historic period. Although flexed burials are known from early sites, they are generally considered to be a later style of burial (Trotter and McCullough 1989: 94). Sometimes the skull has been removed in the case of secondary burials, perhaps for the purpose of treasuring or lamenting over a particular relative (Davidson 1984: 178).

Cave burials are another known burial type, the majority of which occurred away from settlement sites. This type of burial tends to be later, although a late 15th/early 16th century example is known from Palliser Bay. Many of these are secondary, where the body appears to have been given an initial ground burial to allow decomposition, after which the bones are removed and placed in a cave. Occasionally the whole body was placed in a cave. The most well-known example of this type of burial is from Mary Island on Lake Hauroko in south Westland. In this particular instance, a woman was wrapped in a cloak of flax and feathers and placed on a bier at the entrance to the cave (Davidson 1984; Trotter and McCullough 1989). The exact reasons for this type of burial practice are unknown; they may have been hidden away for fear of desecration by enemies or possibly due to the dangerous tapu nature of ancestral bones to living descendants (Davidson 1984: 177).

European and historic Maori burial practices tend to be based within a Christian framework of consecrated cemeteries (particularly in urban environments). Most commonly, the body is placed in a supine position within a wooden coffin and the grave marked with some form of marker such as a wooden cross or a headstone. Maori did not universally use coffins – in some places blankets were used until the 1920s. Small family plots are known in more remote farming settlements and isolated graves are also recorded. In areas such as Taranaki, small cemeteries associated with casualties from the New Zealand Wars may be scattered around a district.

7. Guidelines

7.1 Accidental discovery – how to proceed

The incidental or accidental discovery of koiwi tangata/human remains is by far the most common event that most people are likely to encounter.

This scenario can vary from the reporting by a member of the public of the discovery of individual bones, to the discovery of koiwi tangata/human remains during development earthworks. Different responses may be required and each situation will need to be addressed on a case-by-case basis. There are standard procedures that must be followed in each instance.

Heritage New Zealand should be contacted to undertake a preliminary examination of the remains to determine if they are human, and to provide advice on compliance matters pursuant to the HNZPTA. In every situation of discovery, the police must be notified as they need to be satisfied that the remains are not evidence of a crime scene.

Preservation *in situ* of the remains should always be the preferred outcome when previously unknown human remains are encountered. No matter what the final resolution of the situation, any remains need to be handled with respect.

There can be potential conflicts between cultural wishes, scientific goals and the economic purposes of the developer. In these instances it is important to ensure that cultural perspectives are appropriately considered. Scientific analysis of koiwi tangata/human remains should only be pursued through agreement with a mandated representative of the descendant group.

Challenges faced by Heritage New Zealand staff include the on-site relationship with the police and pathologists who are required to establish that the burial does not represent a crime scene.

The discovery of koiwi tangata/human remains can generate particular interest from the media. There will be many occasions where it is simply not appropriate for any discussion to take place with the media. Heritage New Zealand should contact the Media and Communications team so that any media enquiries can be managed and assisted.

7.2 Guidelines for the general public

When bone material is encountered that may be human, it is important that the remains are not disturbed. If necessary, cover the bones to prevent further exposure or disturbance.

Contact the police and Heritage New Zealand as soon as possible. If possible, collect information about the exact location of the material to assist in relocation of the site, the

nature of the disturbance (for example, whether the material eroded out naturally), or if there is any other material associated with the bone (such as, clothing, nails, shell etc). Note: if the remains are associated with archaeological deposits, it is not legal to disturb the site, or remove the bone material without an archaeologist present.

Recommended steps to be followed by the general public:

1. Notify local police
2. Notify Heritage New Zealand
3. Contact tangata whenua (iwi authority/tribal runanga/Iwi Resource Management Unit/local marae). The police or Heritage New Zealand will be able to advise who to contact.

7.3 Guidelines for the Police

The New Zealand Police are involved in all cases of koiwi tangata/human remains discovery. Their primary role of the Police is to determine if a crime has been committed.

In most instances of discovery the remains will be within an archaeological context. From an archaeological perspective, the context of material in an archaeological site is extremely important. Therefore, disturbance of such material should be minimised and it is unlawful to disturb archaeological remains without an archaeological authority from Heritage New Zealand.

The following considerations should be taken into account:

- ▶ Are the remains associated with shell, stone artefacts, other bones, nails or timber?
- ▶ Are the remains in a coastal or inland dune system, cleft or rock shelter?
- ▶ Are the burials flexed, that is, laid out flat?
- ▶ Is there marked wear of the teeth?
- ▶ Is there a complete absence of dental fillings?
- ▶ Are the bones completely defleshed and brown?

It is important to be aware that not all prehistoric Maori or historic Maori/non-Maori will have marked wear on the teeth, nor will all forensic skeletons have dental fillings.

Only very recently buried bodies will not be completely defleshed, as skeletonisation occurs within months rather than years in most circumstances. Exceptions are in those cases where mummification may have occurred, such as interments in very dry caves or extreme situations, such as where a death has occurred above the permanent snow line.

Be aware that the colour of the bone can be more reflective of the burial matrix than the passing of time. Soil and climatic conditions such as pH, soil composition, humidity and temperature determine the state of preservation or deterioration of the bones to a much greater extent than the passing of time. In many cases the condition or colour of the bone is not an indication of age.

If there is a likelihood that the remains are archaeological, ensure that no further disturbance occurs to the site and contact the regional Heritage New Zealand archaeologist if they haven't already been notified. Police no longer have jurisdiction over the site once it is established that it is not a crime scene. Police pathologists, therefore, should not remove the remains from the site.

Recommended steps to be followed by New Zealand Police:

1. Coordinate with Police Maori Liaison Officers.
2. Contact and collaborate with Heritage New Zealand.
3. Contact and collaborate with tangata whenua (iwi authority/tribal runanga/Iwi Resource Management Unit/local marae).

7.4 Guidelines for developers

When earthworks are undertaken for development, there is a possibility that koiwi tangata/human remains may be encountered. To mitigate risk of accidental discovery contact Heritage New Zealand prior to commencing excavation to determine if works will require an archaeological authority. If they do not, it may be prudent to have an Accidental Discovery Protocol prepared in association with iwi and Heritage New Zealand.

If koiwi tangata/human remains are encountered while undertaking earthworks it is imperative that works in the vicinity of the find cease (approximately 5m radius is seen as adequate to allow for both protection and space for people to work) and that the area is secured. If the work is being undertaken under an archaeological authority then the project archaeologist must be advised immediately following the find. The local police station should also be contacted at the same time. If you are operating without an archaeological authority, notify Heritage New Zealand at the same time that you notify the police. Tangata whenua should also be contacted at this time.

An archaeological authority may be required from Heritage New Zealand before work affecting the site can recommence, particularly if the remains are identified as human and within an archaeological context.

The discovery of human remains can be an emotional experience for all parties but particularly for descendant groups. It is important that the process around decisions about the next step is not rushed. If the remains are of Maori derivation tangata whenua may request time to consult with the whanau, hapu or iwi about the find. Heritage New Zealand Maori Heritage Advisors/Pouarahi can provide assistance with this process.

The following issues relate to discoveries of koiwi tangata/human remains:

- ▶ Whether the remains should stay where they are.
- ▶ Whether a disinterment licence is required from the local Public Health Unit.
- ▶ What protocols will be required for their removal if *in situ* preservation is not possible.
- ▶ The final location of the remains.
- ▶ The level of recording of the remains and any further scientific analysis.
- ▶ Who will remove the remains?

Heritage New Zealand will expect to know the results of this consultation to inform the next step(s) to resolve the matter.

Recommended steps to be followed by developers:

1. Contact project archaeologist (if working under an archaeological authority).
2. Contact local police.
3. Contact Heritage New Zealand.
4. Contact tangata whenua (iwi authority/tribal runanga/Iwi Resource Management Unit/local marae).

7.5 Guidelines for consultant archaeologists

Consultant archaeologists are often the first to be notified of the discovery of koiwi tangata/human remains as a result of developments, especially if they are present in a professional role. Equally, koiwi tangata/human remains can be uncovered during the research excavations – something that was very common in the 1960s. It is therefore essential that the contract archaeologist contacts all stakeholders as soon as practicable. This will include Heritage New Zealand, police, tangata whenua and the local Public Health Unit.

The police will need to be satisfied that the remains are not part of a crime scene. Heritage New Zealand and tangata whenua will need to establish whether it will be possible to leave the remains *in situ* and, if not, the appropriate methods and protocols to remove the remains. If removal is the preferred option, the professional advice of an experienced bioarchaeologist should be sought (see Appendix 1) if iwi believe it is appropriate that the remains should be retained for analysis/study. They will be able to ensure that standard recording of material *in situ* takes place and that any exhumation is conducted in a manner which meets professional standards.

The following issues should be discussed:

- ▶ Whether the remains should stay where they are.
- ▶ What protocols will be required for their removal if *in situ* preservation is not possible.
- ▶ The level of recording of the remains and any further scientific analysis.
- ▶ Who will remove the remains? Ideally this should be done by a bioarchaeologist.
- ▶ The final location of the remains.

All work involving koiwi tangata/human remains must be undertaken mindful of the NZAA Code of Ethics. There will also usually be specific protocols identified by tangata whenua around the exhumation of a burial, which may include the following:

- ▶ Appropriate containers for removing remains.
- ▶ Use of appropriate field equipment (that is, not home garden tools).
- ▶ Restrictions on consumption of food or drink near the site.
- ▶ No smoking.
- ▶ Use of water for cleansing by rinsing the hands.

For more information refer to the cultural safety section of these guidelines (Section 12).

If the material to be removed is not going to be immediately reburied, it is important that a repository for the remains is identified prior to their removal. This repository should be acceptable to descendant groups. Appropriate repositories may include the local morgue, undertaker, church or museum. The back of the car or garage is not considered to be appropriate.

7.6 Guidelines for Department of Conservation staff

Koiwi are frequently found on public conservation lands, and in these instances Department of Conservation (DOC) staff will be often be the first to be notified. Finds of koiwi may result from natural processes (such as coastal erosion), be reported by staff or the general public, or may be the result of earthworks (undertaken by staff, contractors, or volunteers working on conservation lands). The Department has developed internal procedures for the discovery of koiwi which are consistent with these guidelines.

The find should be reported to the relevant Area Manager, and a site visit must be undertaken by DOC historic staff as soon as possible following notification of the discovery of human remains. If the historic staff member is inexperienced in identifying human remains they may wish to arrange for a suitably qualified consultant to accompany them, or undertake the site visit on their behalf.

If the find is a result of earthworks then any machinery working in the area should cease and the site secured until a resolution is reached. If the find is exposed as a result of natural processes then the site should be appropriately secured, and any practical steps taken to prevent further loss. The DOC historic staff member should confirm that all appropriate notifications to Heritage New Zealand, police and tangata whenua have been made. It is the responsibility of the historic staff member to notify the local Public Health Unit of the find following formal identification of the remains as human.

DOC staff involved in handling human remains should do so in accordance with the Department's *Koiwi Policy* and any protocols identified by tangata whenua.

Steps to be followed by DOC staff:

1. Ensure site is secured. Koiwi should not be otherwise interfered with.
2. If discovery is by staff, record location, time of discovery, detailed description of the site and if possible document with photographs.
3. If discovery is by non-DOC staff, request details of location and circumstance of discovery.
4. Advise Area Manager, Pou Kura Taiao manager and historic staff.
5. Historic staff to ensure that Heritage New Zealand, police, Public Health Unit and tangata whenua have been advised of the discovery.

7.7 Guidelines for Heritage New Zealand staff (archaeologists and pouarahi)

Heritage New Zealand archaeological staff are notified of the discovery of human remains in a number of different contexts. In the past there has been an ad hoc approach to how these are dealt with. It is the purpose of these guidelines to standardise the Heritage New Zealand response.

A site visit must be undertaken as soon as possible following notification of the discovery of human remains, particularly in situations where no archaeological authority has been granted. If a Heritage New Zealand archaeologist is unable to make the visit for any reason, a professional archaeologist may be approached to undertake the visit on Heritage New Zealand's behalf. The consultant may invoice Heritage New Zealand for this visit. Additionally, if the Heritage New Zealand archaeologist is inexperienced in identifying human remains, it is recommended that they seek an experienced bioarchaeologist to accompany them on the site visit.

On arriving at the discovery site the Heritage New Zealand archaeologist needs to ensure that all machinery working in the area has ceased and that the site has been secured until a resolution is reached. Heritage New Zealand must confirm that all appropriate notifications to the police and tangata whenua have been made. It is the responsibility of Heritage New Zealand to notify the local Public Health Unit of the find as well as following formal identification of the remains as human.

The Heritage New Zealand archaeologist needs to make a decision about whether an archaeological authority will be required (if not already granted) for removal, if it is not possible to preserve the remains *in situ*. As a standard guide, if the koiwi tangata/human remains are on their own and not associated with any remaining archaeological material, then an archaeological authority may not be required to exhume the remains, provided that detailed recording occurs.

It may be necessary to decide whether the expertise of a bioarchaeologist is required to record and remove the human remains. A bioarchaeologist should always be consulted, even if this involves them sending images and descriptions of the finds.

The Heritage New Zealand archaeologist will endeavour to ensure that the project manager has advised iwi, hapu and whanau of the incident. Heritage New Zealand staff handling human remains will do so in accordance with Heritage New Zealand *Koiwi Tangata/Human Remains Policy* and any protocols identified by tangata whenua.

Steps to be followed by Heritage New Zealand staff:

1. Secure site.
2. Ensure police, Public Health Unit and tangata whenua have been advised of the discovery.
3. Ensure compliance with Part 1 of the HNZPTA, and with the *Koiwi Tangata/Human Remains Policy*.

7.8 Guidelines for tangata whenua (iwi, hapu and whanau)

Iwi, hapu and whanau play an important role as kaitiaki in the care and management of koiwi tangata/human remains following discovery. As stated earlier, the majority of these remains discovered are of Maori derivation. Therefore, it is essential that iwi, hapu and whanau can immediately and effectively deal with the various and often unexpected issues associated with their accidental discovery.

In situations where tangata whenua are first on the scene it is important that they are aware of the many possible questions they may have to consider: should the koiwi tangata/human remains be removed or not, where should they be taken, who should handle the koiwi tangata/human remains, which kaumatua should be contacted, should any analysis be permitted.

Recommended steps to be followed by tangata whenua:

1. Contact kaumatua.
2. Contact New Zealand Police.
3. Contact Heritage New Zealand Regional or Area Archaeologist and Maori Heritage Advisor.
4. Contact the local Public Health Unit.

In response to various requests throughout the country, Heritage New Zealand is available to assist iwi, hapu and whanau develop accidental find protocols.

8. Minimum standards for recording and recovery

(Contributed by Dr Nancy Tayles, Dr Hallie Buckley and Dr Judith Littleton)

Determining whether bones are human is the first task. This may be straightforward in cases involving whole bones, particularly where they are articulated. Identification of fragmented, degraded or disarticulated bones is very much more difficult and requires a very detailed knowledge of human koiwi tangata/human anatomy and experience with human burials. Particularly where the skeleton is buried flexed or has been disturbed, the bones can appear very different from standard textbook descriptions. Infant and child skeletons and even the small bones of adult hands and feet can easily be confused with animal bones. Best practice would therefore have an experienced bioarchaeologist present from the first examination of the bones *in situ* to confirm the bones as human.

Clearly, given the few bioarchaeologists in the country, this may not be practical in all cases. Detailed photographs, including a scale, can always be shown or sent to a bioarchaeologist, doctor or pathologist for an opinion. Depending on the quantity and location of the bones and whether or not they are in danger if not immediately removed, the decision should be made as follows:

- A. In the case of fragmented, disarticulated or individual bones, it may be necessary to send them to a bioarchaeologist for identification as human. If this is not possible, they could be photographed in as much detail as possible and these images assessed by a bioarchaeologist. This would allow a considered identification in many cases. There may be little to be learned from such remains but alternatives 1 or 2a overleaf could be offered to iwi or other interested parties.
- B. Where there are complete articulated bones and the archaeologist is confident they are human, immediate consideration must be given to whether the remains could be forensic rather than archaeological. If they are possibly forensic, the police and/or coroner are responsible for making any records they require and for any remains they remove from the site. For bones deemed to be archaeological and where recovery is imperative because of potential loss, ideally a bioarchaeologist should direct the operation.

Once the bones are identified as both human and archaeological, the next stage is the exposure of the remains to ensure that all koiwi tangata/human elements are recovered. This is particularly difficult where bones are poorly preserved or disturbed. The bones of infants and children are more complex and fragile than those of adults and could be easily missed. Foetal bones *in situ* also could be easily missed. It is important for the recording and reconstruction of the burial (and further assessments of whether there are likely to be more burials in the same area) to keep a detailed photographic record and notes of the excavation and removal. An example of a field record form is given in Appendix 4.

To determine how many individuals are present requires detailed knowledge of human anatomy and experience in working with human remains, particularly where they are fragmented.

Once the koiwi tangata/human remains are fully exposed, the next stage is determination of whether they may be koiwi tangata or the historic burial(s) of non-Maori. This requires a detailed knowledge of the koiwi tangata/human characteristics of Maori and non-Maori. While it is acknowledged that these are described in publications, the descriptions are of stereotypes and few individuals will conform in all respects to this stereotypical description. Recognition of the subtleties of variation among Maori remains, as with other populations, requires experience beyond that accessible in any text.

The next issue is whether the burial is pre- or post-European. This often relies upon consideration of the grave style and artefacts as well as the human remains. Prehistoric Maori human remains may have a characteristic pattern of dental pathology, with very worn teeth, 'fern-root' plane wear on the molars, loss of teeth during life and multiple sites of inflammation or infection in the supporting bone of the jaws but this is not a universal pattern and the absence of such a pattern is not indicative of a non-Maori burial. Historic burials are likely to contain metal artefacts that immediately confirm the time period of interment but not the ancestry (Maori or non-Maori) of the individual(s) represented.

Once remains are identified as koiwi tangata, either historic or prehistoric, the local runanga should be offered the option of a bioarchaeological examination of the bones. These remains have lain anonymously since burial and since they are now to be disturbed, the option of 'reading' from the bones should be offered, to allow the person or people represented to tell their story. There is the possibility, where preservation is good, of addressing questions such as "what was this person's life like?"

There are osteologists at both the University of Otago (Bioarchaeology Group) and the University of Auckland (Anthropology Department) who have the expertise and are willing to provide this service for iwi. Consultants may also employ a trained bioarchaeologist.

There are several ways in which this could be approached. These are all dependent on the quality and quantity of preservation of the koiwi remains:

1. A bioarchaeologist attending the excavation could give a minimal on-the-spot report. This could identify the individual or individuals represented, transforming them from human remains into a person or people. The number of individuals represented, estimates of age at death, sex, and observations on muscularity, body size and height, and any disease present are possible, depending on the state of preservation and the time available.
2. A second option is for the koiwi to be taken temporarily to a university for analysis. The time period involved would be discussed with the iwi but would normally be very brief, perhaps days or weeks. Both universities have dedicated research laboratories, with strictly controlled access, where the koiwi are treated with the dignity and respect, following appropriate tikanga. There are several levels of analysis that could be performed.
 - a) The most basic would be an extension of the individual identification in 1 above. The ability to examine the bones with proper lighting, space to lay them out, and a lack of time pressure would ensure that the findings were more accurate as well as allowing further analysis of the circumstances of the burial. If agreed by the iwi, the bones would be gently cleaned to enable better observation of details. This option would be purely for observation and completely non-destructive.

- b) The next level of analysis would provide more detailed information through further non-destructive analysis such as detailed analysis of teeth, x-rays of the bones, in particular to confirm diagnosis of any disease but also to identify the characteristics reflecting relationships among individuals. Facilities vary by university but both have extra levels of analysis.
- c) A third level of analysis would provide even more detail about the lives of the individuals by determining characteristics of their diet, whether they had migrated from elsewhere to the region where they were buried. This would involve the removal and destructive analysis of a small sample of bone (less than a 10cm length for all analyses) or individual teeth. These samples could be processed for characteristics of bone chemistry (stable isotopes), DNA or dating. There could be significant expenses involved in this analysis. It may be possible to fund small samples from a grant.

When an iwi chooses to accept analysis of the koiwi, a plain English report would be prepared for presentation to the iwi, both orally and in writing, detailing the findings along with a full technical description for iwi and involved authorities. Further, where an iwi is willing, the specialists involved would keep a copy of the findings to incorporate into work aimed at understanding the lives of prehistoric and historic Maori, based on the stories held in koiwi. Any publication resulting from this work would need to be discussed with the relevant groups. This ultimately could provide Maori with a deeper understanding of the detail of the lives of their tupuna, complementing that provided by oral history and archaeology.

9. Deliberate excavation of known burials (cemeteries, urupa etc)

New Zealand archaeologists do not deliberately excavate known burials for research purposes only. However, there are occasions when archaeological intervention is required or requested, although this should always be regarded as a last resort and only if other options have been exhausted.

A Disinterment Licence will be required from the Ministry of Health prior to the exhumation of a known burial. The Ministry application guidelines are attached as Appendix 2. Generally, the Ministry will require a written application which outlines the reason for it and the consent of the next of kin as well as a death certificate. In the case of historical burials the Ministry acknowledges that there may be difficulty in tracking down descendants and that the cause of death may not be known. There is a small fee charged for the processing of disinterment licences and generally, if all of the documentation is present, the licence can be processed within three days of submission of the application.

Extensive community consultation may be required prior to the exhumation of known burials. Where a cemetery is involved, it is important to attempt to contact the descendants of those interred in the cemetery to obtain their permission to undertake the exhumation.

An archaeological authority will be required for the disinterment of any human remains that predate 1900. The application will require an archaeological assessment as well as evidence of consultation with tangata whenua if it is a Maori cemetery or urupa, or with the descendants of the deceased (where they can be identified).

Heritage New Zealand is likely to require the involvement of a biological anthropologist to ensure that standard recording of material *in situ* takes place and that any exhumation is conducted in a manner which meets standard professional criteria.

A final repository for the remains must be identified prior to the commencement of the work.

10. Repository

Temporary repositories for koiwi tangata/human remains may include museums, churches, mortuaries, marae, pathologists' laboratories, or elsewhere on-site if it is deemed to be secure. Generally, it is considered culturally inappropriate to store koiwi tangata/human remains in vehicles, offices or homes, or any container associated with food. Usually, tangata whenua will expect to be consulted on the location for repository. If in doubt, consult with Heritage New Zealand Maori Heritage Advisers and archaeologists for advice on where best to store the remains. It is essential that Heritage New Zealand staff members involved in this process maintain accurate records (file notes) for the temporary relocation of koiwi tangata/human remains.

11. Re-interment

The preferred practice for interment of koiwi tangata/human remains is within the original context. However, this is not always possible or appropriate, particularly where the find site is within an area designated for development, that is, rural/residential subdivision, public works, recreational reserves etc.

11.1 Re-interment of Koiwi tangata/human remains of Maori origin

The preferred practice for tangata whenua is to re-inter within, or within close proximity to, the original site. If the remains have been uncovered as a result of development works and it is deemed inappropriate to re-inter in the original find site, a gazetted urupa should be considered. If this happens to be an urupa within an archaeological area, an archaeological authority under the HNZPTA may be required. This is at the discretion of Heritage New Zealand Area or Regional Archaeologists. In all cases, appropriate time should be provided to tangata whenua to allow them to fulfil customary practices and protocols.

11.2 Re-interment of koiwi tangata/human remains of non-Maori origin

Best practice for the interment of non-Maori human remains is within the original burial site. If this is not a viable option it is recommended that an alternative location is identified in consultation with the descendant group. If there are no known descendants, the remains may be interred within a public cemetery in consultation with the local Public Health Unit.

12. Cultural considerations

Application and implementation of cultural safety in practice requires the recognition and respect of cultural beliefs and practices common to a particular group of people. In the context of these guidelines, this includes but is not restricted to ethnic, social, religious/spiritual and gender groups in New Zealand.

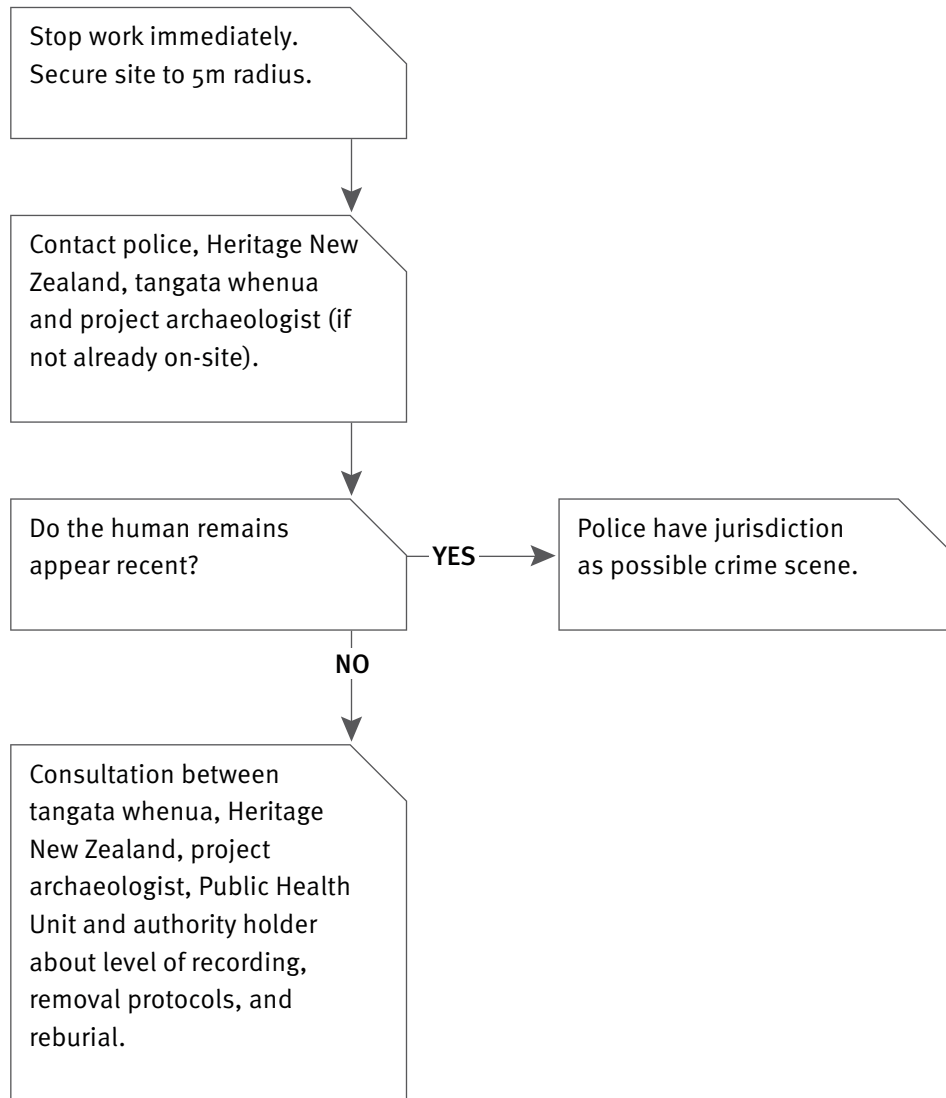
Unsafe practice is that which consists of any action that detracts from, or undermines, the cultural integrity of any individual or group associated with the koiwi tangata/human remains. All cultures disapprove of people intentionally digging up human remains for non-legitimate purposes.

Tikanga Maori should be observed in all cases of koiwi tangata/human remains discoveries of Maori origin. This will require that tangata whenua are advised and actively involved in managing finds in the first instance. These guidelines recognise that tangata whenua have separate protocols for the care and management of koiwi tangata/human remains, and therefore it is up to tangata whenua to advise on appropriate conduct for assessing, exhuming and storing the remains. To assist in this process, interested parties involved in discoveries should allow for:

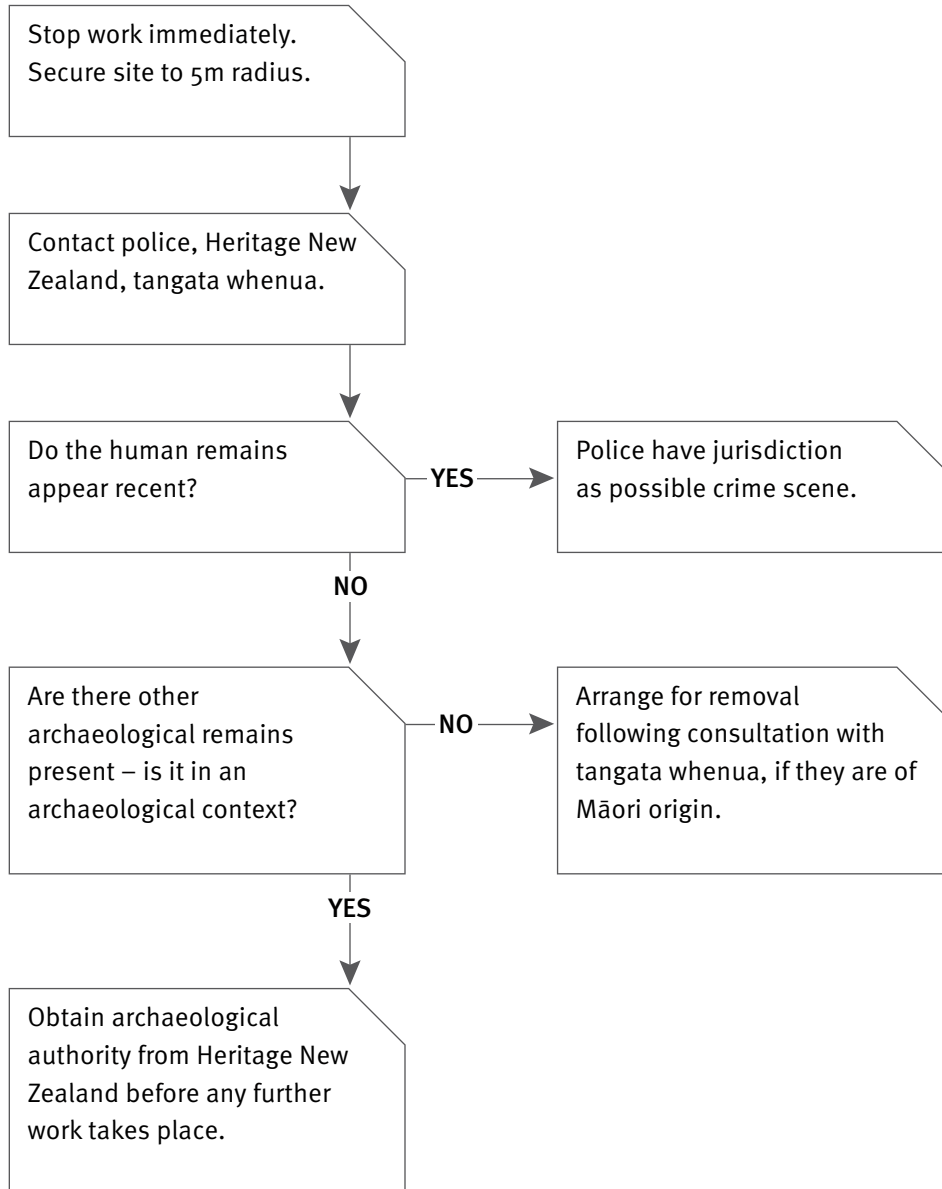
- ▶ Sufficient time to be provided for karakia (prayer) and tauparapara (incantations).
- ▶ Refraining from eating and carrying food and drink within proximity to works or activities associated with the remains.
- ▶ Use of appropriate tools for exhuming remains, that is, not home gardening implements.
- ▶ Use of appropriate containers and receptacles, that is, nothing currently or previously used for containing food.
- ▶ Provision for a designated repository or an agreed storage facility, that is, not residences or places of work.
- ▶ Provision of water on-site for cleansing/tapu removal.

Best practice is to consult with tangata whenua as soon as practicable to ascertain the nature of the cultural safety protocols to be observed as part of the discovery process.

ACCIDENTAL DISCOVERY WHERE ARCHAEOLOGICAL AUTHORITY HAS BEEN GRANTED



ACCIDENTAL DISCOVERY WHERE NO ARCHAEOLOGICAL AUTHORITY HAS BEEN GRANTED



Glossary

Archaeological authority – authorisation required under the *Heritage New Zealand Pouhere Taonga Act 2014* prior to the modification or destruction of an archaeological site.

Artefact – an object made or modified by humans.

Burial and grave – the term ‘grave’ relates to the hole dug in the ground for a body or coffin. The term ‘burial’ relates to the body and/or coffin placed in a grave.

Burial sites – include any natural or physically prepared location (below or above ground) in which koiwi tangata/human remains have been interred. This can include, but is not restricted to, the following: conventional graves, caves, rock overhangs, tree hollows, midden. There is an important distinction that is made between ‘cemetery’ and ‘burial ground’, both of which can apply to formal burial sites. A ‘**cemetery**’ is for the burial of the dead generally and they are usually managed by TLAs. There are some old private cemeteries that were established prior to the *Burial and Cremation Act 1964*. A ‘**burial ground**’ is a burial place for members of a specified denomination, and they are generally called denominational burial grounds and administered by a church or religious group.

Cultural items – as for artefacts.

Disinterment – the removal of human remains from their place of burial. In the New Zealand context exhumation requires a disinterment licence. Also referred to as exhumation.

Excavation – refers to the removal of cultural material or human remains using archaeological techniques and undertaken by professional archaeologists. Excavation in New Zealand requires an archaeological authority from Heritage New Zealand.

Flexed burial – positioned with knees drawn up to the chest, often lying on one side. Also known as “crouched” burials.

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

In situ – literally ‘in place’. In the context of these guidelines *in situ* refers to the exact place the remains were found.

Koiwi tangata – human remains of Maori origin.

Prone burial – lying in an extended position, face down.

Reinterment – reburial.

Repatriation – the return of human remains, generally speaking from overseas, to a descendent group. This situation arises when human remains have been held in museum or other collections and/or have undergone scientific study.

Secondary burial – a burial where the bones are disarticulated, having been left exposed for the flesh to decay or previously buried elsewhere. In some cases the skull may be absent.

Supine burial – lying in an extended position, face up.

Tangata whenua – local tribal group.

Taonga – artefacts of Maori origin.

Taonga tuturu – is defined in the *Protected Objects Act 1975* as an object that:

- a) *Relates to Maori culture, history or society; and*
- b) *Was, or appears to have been:*
 - i) *manufactured or modified in New Zealand by Maori;*
 - ii) *brought into New Zealand by Maori; or*
 - iii) *used by Maori; and*
- c) *Is more than 50 years old.*

Tapu – sacred.

Tikanga – customs, traditions.

Urupa – Maori burial ground.

Wahi tapu – a place sacred to Maori in the traditional, spiritual, religious, ritual or mythological sense.

Appendix 1 – Contacts

Heritage New Zealand contacts

Northland Area Office

(Northland)
PO Box 836
KERIKERI 0245
tel: (09) 407 0470
fax: (09) 407 3454

Northern Regional Office

(Auckland, Hauraki Thames, Coromandel)
PO Box 105-291
AUCKLAND 1143
tel: (09) 307 9920
fax: (09) 303 4428

Lower Northern Area Office

(Bay of Plenty, Waikato, Gisborne)
PO Box 13339
TAURANGA 3141
tel: (07) 577 4530
fax: (07) 578 1141

Central Regional Office

(lower North Island, Nelson/Tasman, Marlborough)
PO Box 19173
WELLINGTON 6149
tel: (04) 494 8320
fax: (04) 802 5180

Southern Regional Office

(West Coast, Canterbury)
PO Box 4403
CHRISTCHURCH 8140
tel: (03) 357 9629
fax: (03) 374 2433

Dunedin Area Office

(Otago/Southland)
PO Box 5467
DUNEDIN 9058
tel: (03) 477 9850
fax: (03) 477 3893

Public Health Unit contacts

Northland District Health Board

PO Box 742
WHANGAREI 0140
tel: (09) 430 4100
026 366 1725 (after hours)
fax: (09) 430 4124

Auckland Regional Public Health Service

(South Auckland, Central Auckland and North/West Auckland districts)
Private Bag 92605, Symonds Street,
AUCKLAND 1150
tel: (09) 262 1855
(09) 623 4600 (after hours)
fax: (09) 630 7431

Health Waikato

(Waikato and northern parts of Ruapehu)
PO Box 505
Waikato Mail Centre
HAMILTON 3240
tel: (07) 838 2569
021 999 521 (after hours)
fax: (07) 838 2382

Toi Te Ora Public Health (Whakatane)

PO Box 241
WHAKATANE 3158
tel: (07) 306 0847
026 111 980 (after hours)
fax: (04) (07) 306 0987

Public Health Unit contacts (continued)

Toi Te Ora Public Health (Tauranga)

PO Box 2121, TAURANGA
tel: (07) 571 8975
026 111 980 (after hours)
fax: (07) 578 5485

Toi Te Ora Public Health (Rotorua)

PO Box 1858, ROTORUA 3040
tel: (07) 349 3520
(07) 349 3522 (after hours)
fax: (07) 346 0105

Tairāwhiti District Health Board

(Hawke's Bay and Chatham Islands)
PO Box 447, NAPIER 4140
tel: (06) 834 1815
(06) 878 8109 (after hours)
fax: (06) 878 8109

Taranaki District Health

Private Bag 2016, New Plymouth Central
NEW PLYMOUTH 4342
tel: (06) 753 7798
fax: (06) 753 7788

Hawke's Bay District Health Board

(Hawke's Bay and Chatham Islands)
PO Box 447, NAPIER 4140
tel: (06) 834 1815
fax: (06) 878 8109

MidCentral District Health Board

(Palmerston North)
(Manawatu, Whanganui and southern part of Ruapehu)
PO Box 2056, Palmerston North Central
PALMERSTON NORTH 4440
tel: (06) 350 9110
(06) 350 9110 (after hours)
fax: (06) 350 9111

MidCentral District Health Board

(Whanganui)
(Manawatu, Wanganui and southern part of Ruapehu)
Private Bag 3003, Wanganui Mail Centre
WANGANUI 4540
tel: (06) 348 1775
(06) 348 1234 (after hours)
fax: (06) 348 1783

Hutt Valley District Health Board

(Lower Hutt)
(Wellington, Hutt and Wairarapa)
Private Bag 31907, LOWER HUTT 5040
tel: (04) 570 9002
(04) 570 9007 (after hours)
fax: (04) 570 9211

Hutt Valley District Health Board

(Masterton)
(Wellington, Hutt and Wairarapa)
Private Box 58, MASTERTON 5840
tel: (06) 370 5020
(06) 946 9800 (after hours)
fax: (06) 370 5029

Nelson Marlborough District Health Board (Nelson)

PO Box 647, NELSON 7040
tel: (03) 546 1537
(03) 546 1800 (after hours)
fax: (03) 546 1542

Nelson Marlborough District Health Board (Blenheim)

PO Box 46, BLENHEIM 7240
tel: (03) 520 9914
(03) 520 9999 (after hours)
fax: (03) 578 9517

Public Health Unit contacts (continued)

Community and Public Health

(Christchurch)
(Canterbury, South Coast and West Coast)
PO Box 1475, Christchurch Mail Centre
CHRISTCHURCH 8140
tel: (03) 364 1777
026 367 4231 (after hours)
fax:(03) 379 6125

Community and Public Health (Timaru)

(Canterbury, South Coast and West Coast)
Private Box 510, TIMARU 7940
tel: (03) 688 6019
0274 975 249 (after hours)
fax:(03) 688 6091

Community and Public Health

(Greymouth)
(Canterbury, South Coast and West Coast)
PO Box 443, GREYMOUTH 7840
tel: (03) 768 1160
(03) 768 0499 (after hours)
fax:(03) 768 1169

Public Health South (Dunedin)

(Otago and Southland)
PO Box 5144, Moray Place
DUNEDIN 9058
tel: (03) 474 1700
(03) 474 0999 (after hours)
fax:(03) 474 0221

Public Health South (Invercargill)

(Otago and Southland)
PO Box 1601, INVERCARGILL 9840
tel: (03) 211 0900
(03) 211 0900 (after hours)
fax:(03) 211 0899

Public Health South (Queenstown)

(Otago and Southland)
PO Box 2180, Wakatipu
QUEENSTOWN 9349
tel: (03) 442 2500
fax:(03) 442 2505

New Zealand Police contacts

Notifications of koiwi tangata/human remains are responded to by different units depending on the location of the find. Calls should be made to the local police station with a request to be put through to the nearest Comms Centre. The staff there will ensure that the notification is responded to by the correct personnel.

Contact numbers for all police stations can be found on the New Zealand Police website:
<http://www.police.govt.nz/district/phonebook.html>

Bioarchaeologist contacts

University of Otago

Department of Anatomy and Structural Biology

PO Box 913
DUNEDIN 9054

Dr Nancy Tayles
tel: (03) 479 7372
email: nancy.tayles@otago.ac.nz

Dr Hallie Buckley
tel: (03) 479 5775
email: hallie.buckley@otago.ac.nz

Dr Sian Halcrow
tel: (03) 479 5265
email: sian.halcrow@otago.ac.nz

University of Auckland

Department of Anthropology

Private Bag 92019
Auckland Mail Centre
AUCKLAND 1142

Dr Judith Littleton
tel: (09) 373 7599
email: j.littleton@auckland.ac.nz

Consultant (bio)archaeologists

Beatrice Hudson

CFG Heritage Limited

PO Box 10015

Dominion Road

AUCKLAND 1024

tel: (09) 309 3436

email: beatrice.h@cfg.heritage.com

Bibliography

- Davidson, J. 1984. *The Prehistory of New Zealand*. Longman Paul: Auckland.
- Historic Scotland. 1997. *The Treatment of Human Remains in Archaeology*. Historic Scotland Operational Policy Paper 5.
- McManamon, F. P. 2000a. Archaeological and Historic Preservation Act (AHPA). In Ellis, L. (ed.) *Archaeological Method and Theory: An Encyclopedia*. Garland Publishing Company: New York and London.
<http://www.nps.gov/archeology/tools/laws/AHPA.htm>, accessed 23 Nov 2007.
- McManamon, F. P. 2000b. The Archaeological Resources Protection Act of 1979 (ARPA). In Ellis, L. (ed.) *Archaeological Method and Theory: An Encyclopedia*. Garland Publishing Company: New York and London.
<http://www.nps.gov/archeology/tools/laws/ArPA.htm>, accessed 23 Nov 2007
- McManamon, F. P. 2000c. The Native American Graves Protection and Repatriation Act (NAGPRA). In Ellis, L. (ed.) *Archaeological Method and Theory: An Encyclopedia*. Garland Publishing Company: New York and London.
<http://www.nps.gov/archeology/tools/laws/NAPRA.htm>, accessed 23 Nov 2007.
- NSW Heritage Office. 1998. Koiwi tangata/human Remains. *Guidelines for the Management of Human Koiwi Tangata/Human Remains Under the Heritage Act 1977*. Harley and Jones Pty Ltd: Sydney.
- Ossafreelance. 2004. *A Basic Overview for the Recovery of Human Remains from Sites Under Development*. British Archaeological Jobs Resource.
- O’Sullivan, J. and Killgore, J. 2003. *Human Remains in Irish Archaeology*. An Chomhairle Oidhreachta/The Heritage Council.
- Trotter, M. and McCullough, B. 1989. *Unearthing New Zealand*. Government Printing Office: Wellington.

Appendix 2 – disinterment application guidelines

GUIDELINES FOR DISINTERMENT LICENCE APPLICATIONS

1.0 Introduction

- 1.1 The Minister of Health’s powers to issue disinterment licences under section 51, *Burial and Cremation Act 1964* (“the Act”) have been delegated to the Group Manager, Population Health Protection. Section 51 of the Act provides that:

It shall not be lawful to remove from its burial place any body, or the remains of any body, buried in any cemetery, Maori burial ground, or other burial ground, or place of burial, without licence under the hand of the Minister and except in accordance with such conditions as he may prescribe.

- 1.2 Because the Act does not specify an administrative procedure for making an application and for the issue of a licence for disinterment, the Ministry of Health (“the Ministry”) has developed the following guidelines to assist in assessing applications consistently and transparently.

2.0 Applications for disinterment licences

- 2.1 An application form for the applicants to complete when applying for a licence for disinterment is attached as Appendix 1 to these guidelines. Applications must be in writing and are usually made by:
- ▶ person(s) related to the deceased
 - ▶ the executor of the will of the deceased
 - ▶ a funeral director acting on behalf of either of the above
 - ▶ an iwi/Maori authority acting on behalf of the close relatives, or
 - ▶ a person acting for the family.
- 2.2 Applications should be submitted to the applicant’s local District Health Board (“DHB”) Public Health Unit addressed to the Health Protection Officer, who will assess the application and forward it, together with a report and recommendations, to the Group Manager, Population Health Protection, Ministry of Health, PO Box 5013, Wellington. If the proposed disinterment is urgent, details of the disinterment may be e-mailed or faxed to the applicant’s local DHB Public Health Unit.
- 2.3 The fee (see clause 3.5) and all supporting papers (see clauses 3.1 to 3.4) must accompany the application.
- 2.4 Please note that it is not usual to issue licences between one month and one year after burial because of decomposition during this period. If a body has been embalmed,

this limitation may not apply, depending on the drainage of the site, likely state of the casket and recommendation of the Health Protection Officer. Applications to disinter within one month of interment may be deferred if the deceased died of an infectious disease.

- 2.5 A licence is normally issued three working days after receipt by the Ministry of a complete application. Unless otherwise indicated, the licence is issued to the applicant and copied to the local DHB Public Health Unit Health Protection Officer who reported on the application.
- 2.6 These guidelines are to assist the Ministry, Health Protection Officers and applicants. Application of the guidelines may depend on the circumstances of an individual application.

3.0 Disinterment application requirements

- 3.1 *Assessment of the application by a Health Protection Officer:* The Health Protection Officer will assess the submitted documentation to ensure that it is complete, review the application and prepare a report for the Ministry.
- 3.2 *Next of kin of the deceased:* Before a disinterment licence is issued, the wishes of all next of kin (for example, spouse, parent(s)' children, sibling(s), guardian(s)) must be confirmed in writing. Each family or whanau member is required to:
- ▶ indicate their consent (or otherwise), and
 - ▶ note their respective relationship with the deceased.

Any given authority for a person to speak for other next of kin must be specified in writing and signed by the person giving the authority.

The Ministry usually only approves applications for disinterment licences where there is absolute agreement among next of kin. Where there is no absolute agreement, the Ministry will not act as a negotiator.

For Pacific families, an elder may have authority to speak on behalf of the deceased, even though the elder may not be a close relative of the deceased. A representative nominated in writing by the extended family is acceptable.

- 3.3 *Reason for the disinterment:* The application must state the reason for the disinterment. Examples of reasons may include cultural reasons, burial in the wrong plot, relatives who have moved to another area, or mental anguish. Each reason will be assessed on its own merits. Frivolous reasons will not be accepted.
- 3.4 *Cause of death:* The original certificate of death or a certified copy (for example, countersigned as a true and accurate copy by a Justice of the Peace or a Health Protection Officer) is required with each application, so that the cause of death and other details can be confirmed to assist with determining the licence application.

In cases where a death certificate cannot be obtained in time to submit with the application (for example, the certificate has not yet been issued), the Ministry will accept a statement from the cemetery or burial ground authority identifying where the deceased is buried and a statement describing the cause of death.

- 3.5 *Licence fee*: A \$90.00 fee (including GST) is payable to the Ministry for each licence applied for. Usually one licence is required for each body that is to be disinterred, although exceptions would include a common grave. The fee may be waived where special reasons make it appropriate to do so (for example, compassionate or hardship grounds). Any request for a waiver should be supported by documentary evidence of hardship or alternative justification.
- 3.6 *Application to be made under oath*: The licence application must include a sworn statement from the applicant that the information contained within it is true and correct, and be witnessed by a Justice of the Peace, serving Police Officer or Court official. An example of a statutory declaration is attached as Appendix 2 to these guidelines.

4.0 Supervision of Disinterments

- 4.1 Disinterment occurs whenever a casket (or body) is uncovered, even if only partially uncovered. A Health Protection Officer must supervise the disinterment unless that requirement is specifically waived in the issued licence. Supervision of the disinterment by a Health Protection Officer is to ensure that the disinterment is carried out with due respect to the deceased and in a sanitary manner so as to prevent any public health risk arising or any offence being created to the body and any family/next of kin that may be present. The licence will be copied to the Health Protection Officer to whom the application was first lodged.
- 4.2 The person(s) undertaking the disinterment are responsible for ensuring that the disinterment is legally, safely and properly carried out, with decency and due respect to the deceased and adjacent burial sites.
- 4.3 The Department of Labour has published an 'Approved Code of Practice for Safety in Excavations and Shafts for Foundations' and, in particular, the following extract is relevant:

Excavation requirements

- 4.3.1.1 Excavations shallower than 1.5m: Excavations shallower than 1.5m have been known to collapse. If an employee is in the trench and bending over at the time of the collapse, he or she may suffer serious injury. Employers are to consider such excavations and determine if special precautions or work methods are necessary.
- 4.3.1.2 Excavations 1.5m or deeper: Excavations greater than or equal to 1.5m deep are particularly hazardous and must be shored unless:
- (a) The face is cut back to a safe slope and the material in the face will remain stable under all anticipated conditions of work and weather, or

- (b) Shoring is impracticable or unreasonable, and safety precautions certified by a registered engineer to be adequate have been taken.

4.4 Such work is also notifiable under Regulation 26 of the Health and Safety in Employment Regulations 1995. The Department of Labour has published the notification form required and a list of what is notifiable (refer www.osh.dol.govt.nz/order/catalogue/pdf/form-hazwk.doc).

5.0 Registrar to be notified when body removed or disposed of

5.1 Where the body is not returned to the same plot, the licence holder must give full details as to where and how the body was disposed of to the Registrar for Births, Deaths, and Marriages at the Department of Internal Affairs (as required by section 51 of the Births, Deaths, Marriages and Relationships Registration Act 1995).

Addendum

Subsequent to the completion of these guidelines, Heritage New Zealand has received further advice from the Ministry of Health on the requirements for obtaining a disinterment licence:

There have, over the years, been a number of applications for disinterments following the accidental discoveries of human remains.

The Ministry of Health have reviewed the application of section 51 of the *Burial and Cremation Act 1964*, particularly as it applies to accidental discovery and uncovering of human remains during archaeological or road site excavations.

The Ministry has now determined that where body or body parts are discovered on a site that is not a burial site, for example, part of an archaeological dig, road works etc, or if the police are searching for a body that is not in a recognised burial site, a disinterment licence is not required.

The practical effect of this is that the Ministry does not require a person to obtain a disinterment license under section 51 of the *Burial and Cremation Act 1964* unless removal of the body is from a cemetery, urupa, denominational burial ground, private burial ground, burial in a special place, or any burial site that is formally known to be such (for example, burial in a special place, historical burial ground, executed prisoners in prison yards). The person may still be subject to other legal obligations, for example, from the land owner, police, council, Heritage New Zealand or other authorities.

Disinterment licences would not be required where an excavation may inadvertently uncover remains (for example, archaeological dig, roading or building excavations), or, as another example, where the Police may be searching for homicide victims that may have been allegedly buried by the offender.

The Ministry suggests that it would be good practice when human remains are discovered for Heritage New Zealand or an archaeologist to contact the local Public Health Unit to let them know what is happening.

Appendix 3 – An example of a field recording sheet for human remains

ID:	Provenance:	Excavator:	Date:
------------	--------------------	-------------------	--------------

Burial type (circle):

In grave cut	In other feature (#)	No cut visible
Articulated	Partially articulated	Disarticulated
Notes:		
Bone Condition: Good Fragile Fragmented Burnt Other/describe:		

Position (circle):

Extended	Flexed	Crouched	
Prone	Supine	Right side	Left side
Bundled	Dispersed		
Position sketch and notes (note joints flexed/extended, <u>indicate which parts are articulated</u> , additional loose bone, artefacts):			

Accompanying artefacts:

Notes re grave/feature containing remains (size, shape, fill, relationships):

Long bone measurements (mm)

Femur	L	R	Humerus	L	R
Tibia	L	R	Radius	L	R
Fibula	L	R	Ulna	L	R
Femoral head diameter	L	R			

Position notes (flexed/extended etc)

Shoulder	L	R	Elbow	L	R
Wrist	L	R	Hand/fingers	L	R
Hip	L	R	Knee	L	R
Ankle	L	R	Foot/toes	L	R
Neck:		Torso:		Head/face orientation:	

Sex estimate:

Pelvis

Sciatic notch score	L	R	Subpubic concavity	L	R
Pubis shape			Ventral arc		
Medial I-P ramus			Pre-aur. Sulcus/dorsal pubis pitting		
Sacrum shape:			Other notes:		

Cranium

Mastoid process	L	R	Supra orbital margin	L	R
Mental eminence					
Nuchal crest:			S.O ridge/ glabella		

Age estimate (adult – for immature remains see extra sheet):

Medial clavicle	L	R	Iliac spine	L	R
Annular rings C/Th/L			Spheno-occipital		
Auricular surface	L	R	Pubic symph (S/B)	L	R

Notes (eg. cranial shape see NMT sheet; pathology):

Assessment of Ancestry		Observer
Characteristic	Polynesian	West European
<i>Back of skull</i>	Pentagonal	Rounded
<i>Cranial form</i>	High rounded, angular	Medium
<i>Cranial base</i>	Flat	Angled
<i>Malar form</i>	Visible from superior view	Not visible from superior view
<i>Temporals</i>	Straight	Rounded
<i>Cheekform</i>	Malars turn back at right-angles to face	Rounded, reduced
<i>Orbital form</i>	Rhomboid	Rhomboid
<i>Nasal breadth</i>	Medium	Narrow
<i>Nasal sill</i>	Dull/absent to rounded	Sharp
<i>Nasal profile</i>	Concave/concavo/convex	Straight
<i>Face protrusion</i>	Flat	Moderate
<i>Palate form</i>	Hyperbolic	Parabolic
<i>Mandibular angle</i>	Square	Oblique-square
<i>Rocker jaw</i>	Rocker, robust	Medium
<i>Mandibular body</i>	Long continuous curve (rocker form), robust	Non-"rocker", medium
<i>Coronoid process</i>	Tall, broad	Reduced
<i>Chin</i>	Median projection, Submental arch	Bilateral form, prominent projection
<i>Mandibular condyle</i>	Oriented upwards or forwards	Oriented backwards
<i>Incisors</i>	Blade, some shoveling (c75%)	Blade, shoveling rare
<i>Femoral torsion</i>	>25 degrees	<c15 degrees
<i>Tibia</i>	Squatting facets	No squatting facets*
<i>Fovea</i>	Oval	Circular
<i>Humerus</i>	Development of deltoid tuberosity	Reduced
<i>Tibia</i>	Horizontal tibial platform	Angled
<i>Shafts of long bones</i>	Bowed	Straight
<i>Clavicle</i>	Costoclavic lig. Insertion marked	uncommon

Comments/additional NM traits:

Appendix 4 – International precedents

Many countries have policies and guidelines for the appropriate treatment of human remains. Of most relevance to the New Zealand situation are those countries with indigenous peoples whose ancestors are those most likely to be discovered. No matter the part of the world or whoever the remains may be, the primary principle involved in the treatment of remains is to handle them with respect.

United States

Burials and human remains are protected under legislation at both federal and state levels in the United States.

The *National Historic Preservation Act 1966* (NHPA) established the National Register of Historic Places and also requires that any Federal project must identify and carry out an assessment of effects on archaeological sites.

The *Archaeological and Historic Preservation Act 1974* (AHPA) authorises all federal agencies “to fund archaeological investigations, reports, and other kinds of activities to mitigate the impacts of their projects on important archaeological sites” (McManamon 2000a). It authorises the Secretary of the Interior “upon notification that significant historical or archaeological data may be irrevocably lost or destroyed to undertake necessary studies independent of, although with some consultation with, the federal agency responsible for undertaking, funding, or licensing the project” (McManamon 2000a).

The *Archaeological Resources Protection Act 1979* (ARPA) protects archaeological sites on public and Indian lands. The “main focus of ARPA is on regulation of legitimate archaeological investigation on public lands and the enforcement of penalties against those who loot or vandalise archaeological resources” (McManamon 2000b). It also legislates for federal land managers to establish public awareness programmes as well as undertaking archaeological surveys of federal land.

The *Native American Graves Protection and Repatriation Act 1990* (NAGPRA) “describes the rights of Native American lineal descendants, Indian tribes and Native Hawaiian organisations with respect to the treatment, repatriation, and disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony ... with which they can show a relationship of lineal descent or cultural affiliation” (McManamon 2000c). It is also intended to provide greater protection to Native American burial sites and “more careful control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on federal and tribal lands” (McManamon 2000c) by requiring consultation with Indian tribes or Native Hawaiian organisations prior to any archaeological investigation or following the accidental discovery on federal or tribal land.

Each state also has specific legislation protecting archaeological sites and burials. In Indiana, for example, it is illegal to disturb archaeological sites containing artefacts dating before 11 December 1816, or human remains dating on or before 31 December 1939, without a permit from the Indiana Department of Natural Resources (Indiana Archaeology Law Question and Answer Sheet).

The State of Hawaii's Administrative Rules contain a chapter entitled Rules of Practice and Procedure Relating to *Burial Sites and Human Remains*² which:

... governs practice and procedure relating to the proper care and protection of burial sites found in the state before the island burial councils and the department of land and natural resources ... The legislature finds that Native Hawaiian burial sites are especially vulnerable and often not afforded the protection of law which assures dignity and freedom from unnecessary disturbance (e.g. Honakahua). In order to avoid future disputes arising from the discovery of human skeletal remains fifty years or older, sections [of Hawaii Revised Statutes] were amended or enacted in part to provide additional protection for Native Hawaiian burial sites of high preservation value such as areas with a concentration of koiwi tangata/human remains, or prehistoric or historic burials associated with important individuals or events, that are within a context of historic properties, or have known lineal descendants. The photographing of human skeletal remains reasonably believed to be Native Hawaiian may take place only after consultation with known lineal descendants and the appropriate council.

These Rules provide for the establishment of Island Burial Councils for each of the Hawaiian Islands which comprise representatives from each geographic region as well as development and large property owner representatives. The responsibility of the councils is to: determine preservation or relocation of previously identified Native Hawaiian burial sites; assist the Department of Land and Natural Resources in the inventory and identification of Native Hawaiian burial sites by providing information obtained from families and other sources; make recommendations to the department about the management, treatment and protection of Native Hawaiian burial sites; maintain a list of appropriate Hawaiian organisations, agencies and offices to notify regarding the discovery of Native Hawaiian koiwi tangata/human remains, any burial goods and burial sites; deem department records relating to the location and description of Native Hawaiian burial sites sensitive; and to decide whether to recognise claimants as lineal or cultural descendants.

The Rules are highly prescriptive for all aspects of procedures following discovery, including identification of ethnicity, the levels of recording, removal, storage, and reburial or repatriation of human remains. Penalties for unlawfully damaging a burial site include a maximum fine of \$10,000 USD for each separate offence, a fine equivalent to the value of the lost or damaged site, seizure and disposition by the State of all equipment used in the damage to the site as well as the vehicle used to transport the offender to and from the site. Additionally, each day in breach of the law constitutes a separate offence.

² An electronic version of this chapter can be obtained from the website of the Department of Land and Natural Resources State of Hawaii State Historic Preservation Division, www.hawaii.gov/dlnr/hpd/pdfs/barrules.PDF

Australia

Like the US, Australia has both federal and state heritage legislation. The general state legislation, such as the Victorian *Heritage Act 1995*, protects all non-Aboriginal archaeological sites while separate legislation and administrative bodies are responsible for the protection of any Aboriginal sites (Aboriginal Affairs Victoria and the *Aboriginal Heritage Act 2006*). In New South Wales it is the *National Parks and Wildlife Act 1974* that protects Aboriginal objects and places in the state, while in Queensland the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* protect sites of Aboriginal or Torres Strait Islander origin.

The Queensland Department of Natural Resources and Mines has prepared comprehensive guidelines about what to do following the discovery of Aboriginal and Torres Strait Islander human remains. As in New Zealand, the police must be contacted on the discovery of human remains to determine whether a crime may have been committed. Once the police are satisfied on this matter, they contact the Cultural Heritage Coordination Unit of the Department of Natural Resources and Mines who take responsibility for liaising with the appropriate Aboriginal or Torres Strait Islander community to arrange for reburial. Under Queensland legislation Aboriginal or Torres Strait Islander people who have a traditional or familial link with Aboriginal human remains are considered to be the owners of those remains. It is also a requirement that anybody who knows about the location of possible Aboriginal or Torres Strait Islander human remains must notify the Department as soon as practicable following notification to the police. Failure to do so constitutes an offence.

A comprehensive guideline on koiwi tangata/human remains has also been prepared by the New South Wales Heritage Office. If the remains appear to be recent and may be forensic the police must be contacted. If the remains are Aboriginal in origin and are not recent, the *National Parks and Wildlife Act 1974* applies, while the *Heritage Act 1977* applies to any non-Aboriginal remains that are more than 50 years old. Both of these latter acts require an excavation permit for the removal of the remains to occur. The *Public Health Act 1991* and the Public Health Regulation 1991 apply where a member of the public wishes to have a relative exhumed and relocated. Where a burial is over 50 years old both the *Heritage Act 1977* and the *Public Health Act 1991* apply (NSW Heritage Office 1998).

United Kingdom and Ireland

The rights and role of indigenous people is not a factor when dealing with archaeological human remains in the United Kingdom. There is a long history of study of koiwi tangata/human remains and detailed guidelines have been prepared for the recording of material recovered during excavation. There are, however, still statutory requirements that must be fulfilled on the discovery of human remains.

In England, the police must be notified following the discovery of previously unknown human remains. If they are found to be archaeological and removing them is desirable, a coroner's licence is required from the Home Office before they can be legally removed.

Development of disused burial grounds in England requires removal of all burials as well as notification to the general public and any known relatives. If it has been bought by compulsory purchase the Towns and Country Planning Regulations apply. If the land is consecrated the Church of England has jurisdiction and an application for the granting of a

faculty is required from the Church to allow the disturbance of human remains. If the land is a recognised burial ground and unconsecrated and the proposed work is not related to the extension of a church or as the result of non-building related work, the *Disused Burial Grounds Act 1981* applies and direction from the Home Office needs to be sought (Ossa Freelance 2004).

In Ireland an excavation licence is required under the *National Monuments Act 1930* to “dig or excavate in any land ... for the purpose of searching generally for archaeological objects or of searching for, exposing or examining any particular structure or thing of archaeological interest” (O’Sullivan and Killgore 2003). In situations where human remains are encountered, the coroner has initial legal possession of the remains until they are established as archaeological. Additionally, disinterment from a burial ground requires an exhumation licence from the local authority under the *Local Government (Sanitary Services Act) 1948*. An exception to the requirement for an excavation licence exists where “the finder of an archaeological object ‘has reasonable cause to believe that it is necessary to remove it so as to preserve it or keep it safe’ (e.g. a skeleton eroding out of a beach dune). In cases like this the finder can remove the remains to any safe place with[in] (sic) 30 miles of discovery but must contact the Director of the National Museum within 96 hours” (O’Sullivan and Killgore 2003).

The situation in Scotland is less clear. Notification to the police following the discovery of human remains is required, as elsewhere. However, the ‘right of sepulchre’ is strongly protected under Scottish law and under civil law disinterment of human remains may constitute an offence, particularly where living relatives, an interested party (for example, a landowner), or the Court (acting on the deceased’s behalf) might object (Historic Scotland 1997: 22). It would appear that currently “archaeologists, while they have the legal right to investigate sites of archaeological interest, do not have any legal right to examine human remains” (Historic Scotland 1997: 8). One example of this situation is a case where the Court was petitioned by Historic Scotland to disinter bodies at Whithorn Priory so that repairs could be carried out on adjacent buildings. The petition was turned down because of local objections (Historic Scotland 1997: 8). Public opinion is therefore highly influential in determining the right to study archaeological human remains.