

# **Bay Street, Port Glasgow Archaeological Assessment**

Data Structure Report

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issued 7<sup>th</sup> October 2008

revised 6<sup>th</sup> November 2008



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## 1 Overview

- 1.1 This Data Structure Report presents the findings of archaeological investigative works commissioned by Clyde Homes Bay Street Ltd. Clyde Homes Bay Street Ltd is undertaking a residential development on a site adjacent to Bay Street, Port Glasgow (NGR: NS32577441).
- 1.2 Their development site is bisected by the existing historic building relating to the Gourrock Rope Works. A condition has been placed upon the granted planning consent by Inverclyde Council requiring a staged programme of archaeological works to investigate the archaeological potential of both halves of the site. In order to facilitate understanding of the archaeological issues and response the two halves of the development area will be referred to as Area A, the eastern half of the site, and Area B, the western half of the site.
- 1.3 Inverclyde Council, based on the advice of the West of Scotland Archaeology Service, identified two key archaeological issues relating to the two portions of the development area. These related to a historic burial ground located in Area A and the potential for ribbon settlement associated with the road running to Newark Castle which could lie in the northern portions of either Area A or B.
- 1.4 Through liaison with the West of Scotland Archaeology Service a desk-based assessment was undertaken by Rathmell Archaeology Ltd. This was used to inform the development of a Written Scheme of Investigation which was subsequently agreed between Clyde Homes Bay Street Ltd and Inverclyde Council.
- 1.5 In accordance with the agreed Written Scheme of Investigation, a series of test pits were completed across both areas to address issues of archaeological survival of the ribbon settlement within the extent of the development. This was followed by the strip of the proposed building footprint in Area A which had been designed to confirm the past clearance of the burial ground and recover any human skeletal material which had been missed.

## 2 Background

- 2.1 Port Glasgow existed as a harbour and small town prior to receipt of the burgh charter in 1775. Before receiving status as a Burgh of Barony from Parliament Port Glasgow had grown as a settlement, which collected about the approach to Newark Castle and the neighbouring harbour.
- 2.2 The oldest part of Newark Castle is the square keep at the south end of the east wing and is dated to the 15<sup>th</sup> century. The keep is four storeys high and has been extensively altered since its construction. Various other additions to this original structure have been added including the gatehouse block to the west, which is three storeys high and dated to the mid 16<sup>th</sup> century. The remaining structures to the north are dated from 1597-99. There are various types of gunloops in the rubble walls.
- 2.3 The proximity to Newark Castle and Port Glasgow suggests the potential for related post-medieval settlement. Examination of Roy's Military Map (1747-55) for the area shows potential ribbon settlement along a road running to the west from Newark Castle. Such ribbon settlement of this road may have medieval origins and there is a potential for this to lie within Area B. The surrounding area has been heavily remodelled in the last century including removal of The Episcopal Church of St Mary, to the east of the development area, in order to make way for the road improvements. The Church of St Mary was constructed in 1857 by the Architect John Henderson and is depicted on the 1<sup>st</sup> Edition Ordnance Survey.
- 2.4 After the receipt of the burgh charter Port Glasgow became recognised as one of the primary port towns feeding trade and industry in Glasgow. British manufacturers of every description paid port duties for mooring their ships and transporting their goods through the port. By the late 1800s Port Glasgow was the principal Clyde port for North American Timber. The port therefore supported international trade as well as more local industries. The Statistical Accounts of Scotland (1791-99) note the subsequent growth and decline of the settlement is

related to that of American industry during this period.

- 2.5 Gourock Rope Works (NMRS: NS37SW 30, NS37SW 29) was founded on this site in 1757 and is mentioned in the 1791-99 Statistical Accounts, County of Renfrew, because it kept a record of annual rainfall. The works was dominated by a 7 storey structure which was converted from a sugar refinery. However, by the 1800s the Gourock Rope Works had been considerably enlarged and employed around 474 people. Several other buildings were constructed to expand the Rope Works and it was involved in the manufacture of rope and sailcloth. The ropewalk, the remains of which exist, beyond the railway line to the south of the development area is probably 18<sup>th</sup> century in date.
- 2.6 *Area A*
- 2.6.1 Area A currently stands as a small, triangular piece of waste ground. The boundaries shown on the early edition Ordnance Survey maps are not the same as the current boundaries of Area A. The northern boundary has contracted due to the removal of buildings relating to the Rope Works. The western boundary has shifted east so that some of the western portion of the site (including a section of what was the burial ground) has been lost to the development of the Rope Works central building as modern flats. It was during this development that boxes of disarticulated human remains were uncovered in a service trench (WoSAS *pers comm*). The southern boundary has remained the same however and is formed by the railway embankment.
- 2.6.2 The burial ground is represented on the 1840-80 1st Edition Ordnance Survey map and on later mapping is shown to be disused by 1913. The area of the burial ground is visible in an oblique aerial photograph taken in 1964. The area of the burial ground is shown and appears to still be a plot of enclosed grassland without sign of construction. The plot of land immediately to the north appears to be a paved back lot although it may now represent the last surviving section of the 19<sup>th</sup> century incarnation of the cemetery. As far as is possible to tell from the photograph the ground level of the back lot appears to be slightly higher than the surrounding plots.
- 2.6.3 It is attested, although not in identifiable documents, that the lairs in the graveyard had been cleared prior to construction of industrial buildings in 1970. However, while excavations were being carried out for services last year two ossuary boxes were recovered which contained disturbed and disarticulated human remains. It should be noted that the discovery of the ossuary boxes took place to the west, out with the development area in the site of Gourock Rope Works. However, this raised the potential that there were burials or disarticulated human skeletal remains on site.
- 2.6.4 Through the regression of information from Ordnance Survey mapping onto recent surveys of the site we can demonstrate that the burial ground covered the south-western corner, about one third, of Area A extending out from the neighbouring plot of land containing the Gourock Rope Works. The area of the burial ground is almost entirely overlain by the profile of the warehouse facility built in 1970. At this stage there is limited evidence to suggest to what extent the construction of the warehouse disturbed any remaining graveyard soils, however from the previous use of the area it would most likely have involved some levelling of Area A.
- 2.7 *Area B*
- 2.7.1 The western half of the development area currently stands as waste ground the western third of which has been contaminated by Japanese Knot Weed. An area of exclusion was formed around this and no works took place within the contaminated area. A large spoil heap exists just south-east of centre on the remaining two thirds of the area to a height of almost 4m above current ground level and spreads up to 20m-25m in diameter. The archaeological concern in this area is with the potential survival of medieval ribbon settlement relating to Newark Castle. However, the potential for survival of such remains is limited by the extent of development and disturbance which is known to have taken place in Area B.
- 2.7.2 The 1<sup>st</sup> Edition Ordnance Survey maps of Port Glasgow, dated to 1840, show Area B as being heavily developed with large buildings fronted along Bay Street to the north and extending down the western half of the site. The south-eastern portion of the site appears to be back



Fig. 1a: 1855-90 1<sup>st</sup> Ed OS – 1 inch

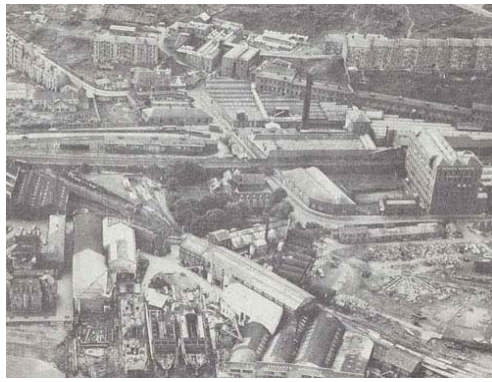


Fig. 1b: Aerial View of Newark, 1964



Fig. 1c: Roy's Military Map (1747-55)



Figure 1d: 1840-80 1<sup>st</sup> Edition OS

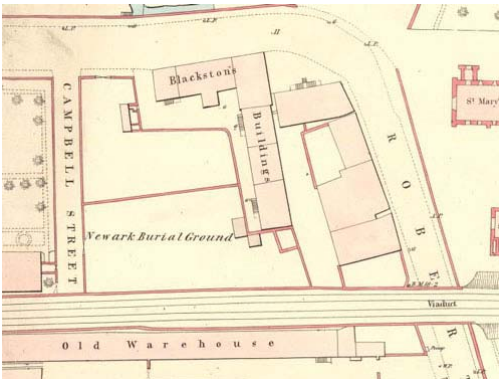


Fig. 1e: 1856-57 OS Town Plan, Area A

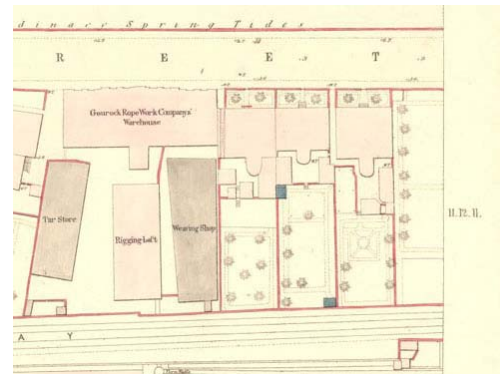


Fig. 1f: 1856-57 OS Town Plan, Area B

plots at this time. The 1856 Ordnance Survey Town Plan of Port Glasgow shows a very similar picture. In this depiction the western half of Area B has been completely developed with industrial buildings relating to the Gourock Rope Works. The eastern half appears to be domestic dwellings fronted on to Bay Street with accompanying back plots.

- 2.7.3 Development of Area B continues into the 1900's. In Ordnance Survey Mapping from 1897 the back plots of the domestic dwellings in Area B are already being developed and additional buildings are shown. In 1913 the whole of Area B is shown as built up ground as the buildings of the Gourock Rope Works completely enclose the domestic dwellings and the back plots are built over. From this evidence we can suggest that Area B will be heavily disturbed.

### 3 Project Works

- 3.1 The programme of works commenced with a desk-based assessment of the development area. This assessment involved the consultation of publicly accessible archives, including: National Monuments Record of Scotland; National Library of Scotland; National Map Library of Scotland; Historic Scotland and the West of Scotland Archaeology Service Sites and Monuments Record.
- 3.2 The subsequent on-site intrusive evaluation comprised two elements: a test pitting exercise to locate areas of survival of the ribbon settlement; and the area reduction of the footprint of the new residential block in Area A to confirm the absence of human skeletal material. These works were conducted concurrently between 16<sup>th</sup> and 25<sup>th</sup> September 2008.
- 3.3 In total some 14 Test Pits were excavated: 4 in Area A and 10 in Area B. This sample was higher than the requirement of 12 Test Pits agreed in the Written Scheme of Investigation (Matthews 2008).
- 3.4 The ground reduction in Area A comprised roughly 392 m<sup>2</sup>. Although this is less than the requirement of the Written Scheme of Investigation (Matthews 2008) the archaeological issue was competently addressed and the exposure of extensive human skeletal material obliged a substantial change of tactics.
- 3.5 Specifically, Area A's groundworks became focused upon the characterisation of the survival of the human remains discovered during the initial Test Pitting. To achieve this the Test Pit exercise in Area A was succeeded by an area strip over the overlap of the 19<sup>th</sup> century cemetery wall and the development footprint extending to a 4m buffer on either side of this zone as agreed by the Written Scheme of Investigation.
- 3.6 Geotechnical boreholes were carried out prior to archaeological supervision of groundworks in both Areas A and B. On inspection by an archaeologist these appear to be located out-with any areas of archaeological survival in Area A, near the sewer to the east corner of the site. Test-Pitting in Area B suggests that the bore-holes were unlikely to disturb archaeological sediments since no archaeologically significant remains were uncovered by the Test-Pitting exercise. In Area A it also seems that the boreholes have been restricted to ground which has already been disturbed by the emplacement of services such as the sewer and the culverts in the east end of the site. Geotechnical activity in the west end of the site is more likely to have disturbed archaeological deposits. However no human remains were discovered during these works.
- 3.7 The findings for Areas A and B will be examined separately. Although both areas are part of the same planning application they are geographically separate land parcels. The second reason is that the archaeological assessment of both areas had to address different issues raised in the Written Scheme of Investigation (Matthews 2008).
- 3.8 All works were conducted in accordance with the Institute of Field Archaeology's Standards and Policy Statements and Code of Conduct and Historic Scotland Policy Statements. The exposure of human skeletal material was reported to the Police who attended site. Close liaison was maintained throughout with the West of Scotland Archaeology Service, the Police, the procurator fiscal and Inverclyde Council,

## 4 Findings: Area A

- 4.1 The archaeological works in Area A comprised the cutting of 4 test-pits and an area strip covering the overlap between the footprint of the new building and the estimated extent of the 19<sup>th</sup> century burial ground. The ground-works took place between the 18<sup>th</sup> and 24<sup>th</sup> September 2008.
- 4.2 *Test Pits*
- 4.2.1 The test pits were targeted on locations within the development area that would address several issues (see Figure 2 for locations, Appendix 1 for full descriptions). The first was the assessment of the impact of the 20<sup>th</sup> century warehouses upon the underlying sediments; the second was the potential survival of archaeology out-with any previously developed areas. Each test pit was 2m-3m long by 1.6m-2m wide by up to 2.5m deep down to natural subsoil where possible. None were placed to impact on the known 'cleared' burial ground.
- 4.2.2 The present condition of Area A can be characterised as industrial wasteland formed by raised demolition deposits in the centre of the site and mixed woodland and plant growth around the site margins. There are recent dump deposits of stone, wood, mixed steel and concrete with glass and plastic from recent fly-tipping on the surface of the site. The demolition deposits are a metre above the surrounding ground levels and have been compressed over the past 10-20 years into a mound within the centre of the site. These deposits were reduced to the level of the surrounding margins with the supervision of an archaeologist onsite. Disarticulated human remains were occasionally recovered from the lower demolition deposits.
- 4.2.3 The upper deposits consisted of a series of demolition deposits, levelling deposits, industrial waste and the remains of the 20<sup>th</sup> century warehouse buildings and associated structures, which were formed in the late 19<sup>th</sup> to late 20<sup>th</sup> century. The general context for these deposits over 20<sup>th</sup> century structures is (014) with the other deposits on the margins given (021), (029) and (031).
- 4.2.4 Test Pit 4 was the only Pit to encounter natural subsoil. This test pit reached up to 2.3m in depth where grey clay was encountered. Test Pit 1 was positioned in the east end of the site on lower ground and was 1.6m wide by 2m long. It was initially positioned 5m to the north where one of several culverts was encountered. This was not disturbed and the pit was repositioned. Excavation ceased after uncovering a concrete floor at 960mm deep ([016]) and an internal brick wall [017] running down its southwest side. Test Pit 2 was located along the northern boundary of the site on the raised ground. It was 2m wide by 2m long with 1.8m depth of demolition material atop a concrete surface [018] where excavation ceased. Test Pit 3 was located to the northwest of Test Pit 2 and was 3m by 2m by up to 2.5m deep.
- 4.2.5 During the excavation of Test Pit 3, human remains (Small Find Number 001) were discovered within the spoil from the test pit in an organic clay deposit (020) under demolition deposits (021), (022), and (023). Upon further investigation coffin remains were identified within the section of the Test Pit partially hidden by water (water table). Excavation ceased immediately on this discovery and the Greenock Police and West of Scotland Archaeological Service were notified. The human remains were not touched before the Police could make their inspection of the remains.
- 4.2.6 Once satisfied that these were not a result of criminal activity the archaeologist onsite was allowed to recover the human remains and identifiable coffin fragments which were removed from the test pit. These were recorded and stored appropriately according to Historic Scotland policy guidelines (Historic Scotland Operational Policy Paper 5). After consultation with the West of Scotland Archaeology Service the implementation of the Written Scheme of Investigation continued with a view to discovering the extent of the survival of further burials within the development area, especially those potentially directly impacted upon by the proposed development. Test Pit 3 was backfilled after the clearance of the disturbed remains. It was agreed with the West of Scotland Archaeology Service that it was unsafe and impractical to fully excavate the graves due to their depth and position beneath the water table.



4.2.7 Test Pit 4 was subsequently placed within the development footprint in order to identify further areas of survival under the heaviest overburden onsite. Test Pit 4 was 2.5m long by 2m wide and the demolition deposits extended to a depth of 2.3m onto natural grey clay, (018). No further human remains were recovered from this Test Pit.

4.2.8 A Police Officer from the Port Glasgow Office visited site on the 22<sup>nd</sup> September and requested brief updates of progress and was kept informed of further discoveries during the area strip.

#### 4.3 Area Strip

4.3.1 The area strip took place from the 19<sup>th</sup> to the 25<sup>th</sup> September 2008 and revealed that the burial ground survives to some extent along the western boundary of the development area (see Figure 2). Prior to archaeological works, original ground levels for the burial ground were derived from historical maps and estimated depths to of natural subsoil were inferred with reference to current ground surface heights. The expectation had been that during the reduction, one metre of potential demolition deposits were to be stepped and a further 1m of sediments were then to be removed to expose natural subsoils down to estimated depths.

4.3.2 Before the full estimated depth was reached several *in situ* graves were uncovered in the southwest section of the site within the known extent of the burial ground. These contained both heavily disturbed and intact human remains. Where disarticulated or disturbed, these remains were recorded and removed; elsewhere these remains were preserved *in situ*. The ground surface in which these burials were cut consists of heavily disturbed and very compact grey clay with frequent glazed ceramics, glass and metal fragments. The grave cuts were not visible in plan view due to this mixed deposit.

4.3.3 The closely cut graves were revealed 200mm-250mm below the 1m step in Sondage 1 (Figure 2 and 3j). The grave-cuts themselves were difficult to identify unless in section and two skulls contained within one grave were disturbed by the machine during the excavation of Sondage 1. It was found later however that one of the individuals within this grave was likely to have come from an upper layer of graves and the remains had been pushed into the coffin below probably by the overburden of the 20<sup>th</sup> century demolition material. A test hole, 700mm by 500mm wide by 800mm deep, between two of the best preserved coffins was hand dug in order to explore the depth of grave-layers here. The graves were found to be two to three layers deep (including the disturbed/ disarticulated bone layer above). The natural subsoil was encountered at the base of this test-hole and consisted of very compact light grey clay, (034). The wood from the coffins, each typically 1.5m long by 400mm wide by 600-700mm deep, was also very well preserved on the top layer of the graves here although disturbed by overburden of demolition material.

4.3.4 The upper layer of clay (025) was frequently found to be disturbed and surface cleaning of this area at the initial depth of 1m-1.2m from present ground surface consistently recovered disarticulated human bones. These were recorded and removed appropriately. On occasion wooden coffin remains allowed grave locations to be identified but these were infrequent as survival varied across the clay (025) in the southwest of the site. In some areas grave-cuts and coffins were masked by dump deposits, which when removed by machine would only threaten the underlying graves. Dump deposits were found just north of Sondage 1 and therefore may account for the lack of grave cuts and coffin material in this area.

4.3.5 The number of disarticulated remains recovered from the assessment numbered elements of at least seven individuals and at least a further seven individuals' remains were left *in situ*. The *in situ* remains were orientated east-west, all within wood coffins. Occasional iron and metal objects were recovered from around these graves and are thought to be coffin furniture such as hinges, nails etc but no other grave-goods were encountered. This is fairly typical of Christian graves, being generally modestly adorned. The layout of the graves remains to a certain extent estimated rather than quantified because of the difficulties with these deposits. The external limits of the remains in relation to the development footprint can however be quantified since there is a clearer picture of survival along the eastern limits of the 19<sup>th</sup> century boundary on site.

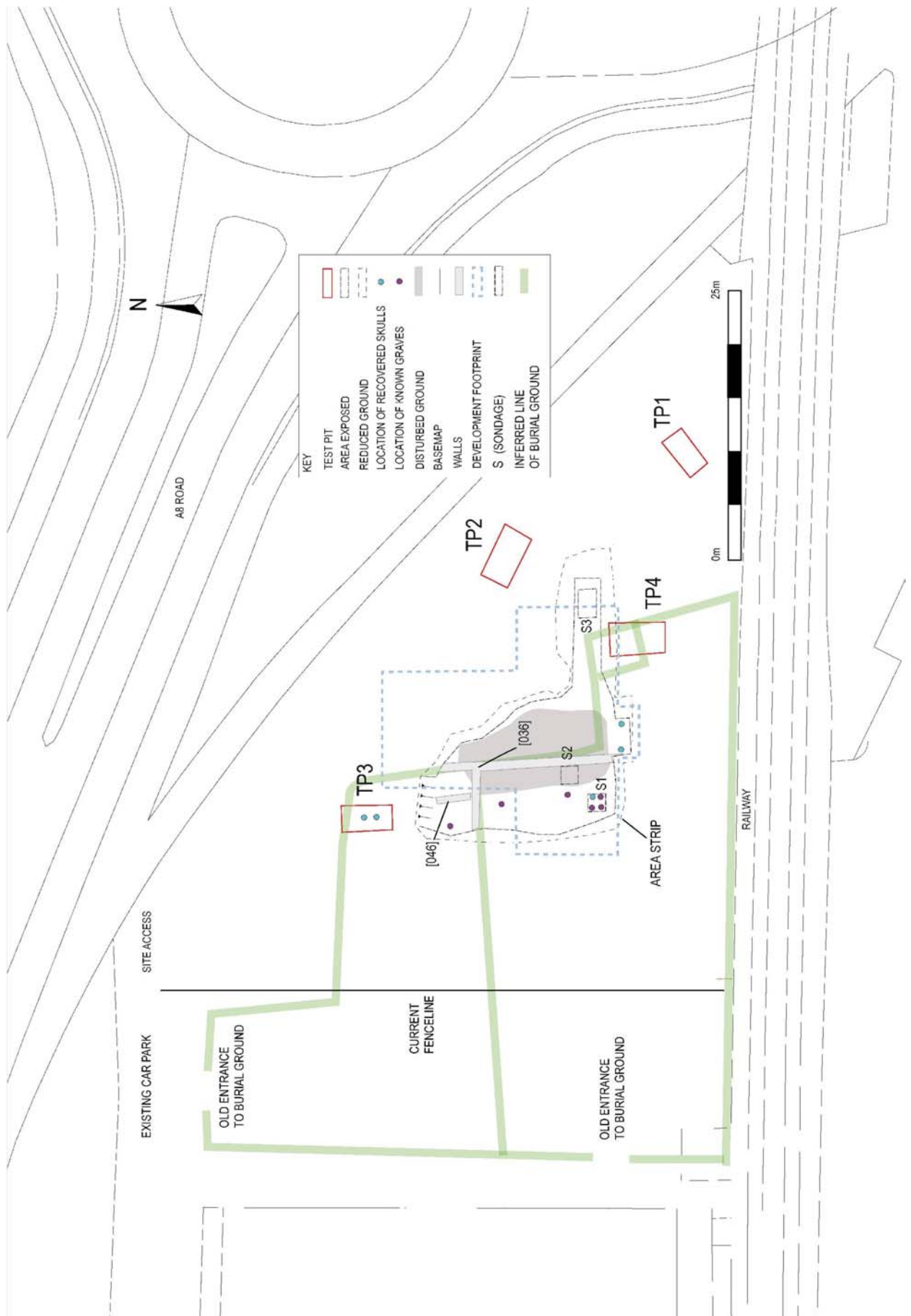


Figure 2: Area A – Test Pit Locations and Area Strip

- 4.3.6 The 19<sup>th</sup> century cemetery wall was discovered on the 23<sup>rd</sup> September ([036], see Fig.3l). This was built from large pink sandstone masoned blocks each roughly 300mm by 400mm, one large or two medium blocks wide and up to 900mm deep on founds potentially another 400mm deep into natural clay (034). The wall runs from south to north through the centre of the area strip with a central junction where the wall runs westwards forming a retaining wall following the 1<sup>st</sup> edition Ordnance Survey layout of the cemetery. While the north to south element of this boundary forms the eastern limit of the burial ground, the retaining wall does not delineate areas of graveyard survival. The wall running east to west retains the ground to the south.
- 4.3.7 A further subsidiary wall, [046], runs north from the retaining wall, to the northern limit of excavation (See Fig.3k). A grave was found to the northwest of this wall [046] in the far northwest of the area strip which is located near the human remains found in Test Pit 3. To the east of this wall no graves were encountered nor graveyard deposits. Levelling deposits were removed from between this wall and the adjacent northern section of [036] to the east and natural clay was met at a depth of 1.2m from the top of wall [036]. The foundations of [046] were found at a depth of 900mm from top of [036] and is probably therefore a subsidiary wall likely delineating a western boundary for a later structure. This area seems to have been emptied and subsequently infilled at some point, the subsidiary wall partially retaining the ground to the west of it. The wall is very badly truncated and only survives to one course deep at the base of [036] this suggests also that the wall, although later than the graveyard deposits, predates the 20<sup>th</sup> century construction activity onsite.
- 4.3.8 A metalled road with rough cobbles was discovered running north-south along the eastern side of the cemetery wall, beneath which a salt-fired drain was exposed with water still running through it, at a depth of 800mm from the top of wall [036]. This road is probably the access into the 19<sup>th</sup> century industrial buildings here. Test Pit 2 is located to the northeast of this road where there is 2m of demolition material sitting on a concrete surface. The area strip to the east of the road indicates a similar level of archaeological sterility as that within the test pits to the east of the cemetery wall. The burial ground is partially disturbed by steel reinforced concrete columnar bases emplaced around the north to south section of [036] midway through the building footprint, fortunately leaving the wall itself relatively intact. The graves in this area however have been probably removed or destroyed by the construction of the bases. To the east beyond this, the clay (034) was more compact and contained no cultural material. The inferred line of wall [036] extends into this area but no remains of that wall were encountered as the strip travelled eastwards.
- 4.3.9 West of Scotland Archaeological Service suggested an extension to the north of the area strip to inform on the sediments near Test Pit 3 given the unexpected recovery of human remains from this test pit. It was found that there were additional graves to the north, beyond the cemetery wall, and that these survive at a lower ground level than those to the south. The wall [036] is up to 900mm deep on its north side but meets the ground level on its south side. This seems to indicate that the original ground surface naturally fell away towards the north and the wall was built to partially retain the southern section of the cemetery.
- 4.3.10 The area of the proposed stairwell in the centre of the footprint of the new build at the southern limit was stripped last and was about 4m long by 3m wide. The demolition deposits were about 2m deep from the existing ground surface, 1m deep after the initial ground reduction. Human remains were encountered at similar levels to the initial discoveries within the area strip to the west but these burials were heavily disturbed by the overburden of the demolition material (see Fig.3h). Two coffins were found to be severely disturbed when removing the demolition deposits and their upper extents were enfolded within the demolition material rather than within the clay (025) like those to the west.
- 4.3.11 The disturbed human remains were recorded and removed and excavation ceased just above the clay in which other graves were thought to exist. The position of these graves again lies within the 19<sup>th</sup> century wall [036] as it extended eastwards. It is likely then that the graves remain to the south of the 19<sup>th</sup> century wall [036] but they are likely to be more disturbed than those to the west as the demolition intrudes into the natural deposits more extensively at this location. This may be due to the higher level of natural subsoil on the southern graveyard



Fig. 3a: Area A – Pre Excavation



Fig. 3b: Area A – Test Pit 1



Fig. 3c: Area A – Test Pit 2



Fig. 3d: Area A – Test Pit 3



Fig. 3e: Area A – Test Pit 3 with Coffins



Fig. 3f: Area A – Test Pit 4



Fig. 3g: Area A – Eastern Area Strip



Fig. 3h: Area A – Proposed Stairwell Strip





Fig. 3i: Area A – Mid-excavation Area Strip from the South



Fig. 3j: Area A – Sondage 1 with in situ Coffins, from the South



Fig. 3k: Area A – North of Cemetery Wall looking Northeast



Fig. 3l: Area A – South of Cemetery wall, Area Strip looking Southeast



extending from the railway embankment.

- 4.3.12 The present ground surface is 810mm above wall [036], 1.24m above the original ground level of the southern burials and 1.93m above the original ground level of the northern burials. The southern burial ground sits 430mm under the top of what survives of wall [036]. The northern burials sit up to 1.2m below the top of wall [036]. In relative terms the ground of the northern burials then sits 690mm below that of the southern burials, with wall [036] retaining the ground to the south. The heights of the burials within the stairwell (along the southern boundary of the area strip) are at the same height as the wall [036] 14m to the north. The original ground level must rise 430mm from north to south over that 14m.
- 4.3.13 The remaining question is that of the contemporaneity of the north and south burial grounds and the relevance of the delineation of the 19<sup>th</sup> century boundary wall. This may be informed by the relative depth of the natural subsoils over the two areas. The drop in height between the south and north burials may be explained if the natural clay (034) has a similar drop in height from south to north over the entire site. The drop can also be measured from the findings from Test Pit 3. Coffins were found at a depth concurrent with the falling ground level from wall [036] and subsequently over the entire area. Although not definitive this would suggest that the graves from both sections are contemporaneous. The only other explanation for the differing ground levels is that the northern ground has been reduced, probably at some point in the 20<sup>th</sup> century. This would be feasible since it has been evidenced that part of the northern graveyard has already been altered in recent times with the addition of a subsidiary wall and the clearance of the intervening ground between walls [046] and [036].

## 5 Findings: Area B

### 5.1 Test Pits

The archaeological works in Area B comprised the cutting of 10 test-pits (see Figure 4 for locations, Appendix 1 for full descriptions). The ground-works took place between the 16<sup>th</sup> and 17<sup>th</sup> September 2008. No significant archaeological deposits were encountered within any of the test pits completed.

- 5.2 The test pits were targeted on locations within the development area that would address several issues. The first was the assessment of the impact of the 19<sup>th</sup> and 20<sup>th</sup> century warehouses upon the underlying sediments; the second was the potential survival of archaeology out-with any disturbed areas and the third was the potential survival of the medieval ribbon settlement along the northern boundary of the site. Each test pit was 2-3m long by 1.6m wide by up to 2.5m deep down to natural subsoil where possible.
- 5.3 No artefacts were recovered from any of the test-pits. The upper deposits consisted of a series of demolition deposits, levelling deposits, industrial waste and the remains of the 20<sup>th</sup> century warehouse buildings and associated structures which previously inhabited this area. These generally extended up to 1m in depth where natural light brown clay was reached.
- 5.4 The test pits had to be positioned out-with an area of exclusion that contained Japanese Knotweed in the southwest corner of the site. The site had been cleared and a resultant spoil heap commanded the space at the centre of the site. The spoil heap within this area was partially removed so that the underlying sediments could be explored. This was achieved through the emplacement of Test Pit 7.
- 5.5 Test Pits 2, 6, 7 and 8 contained remains of 19<sup>th</sup> and 20<sup>th</sup> century walls either in large pink sandstone blocks or in red brick with associated concrete floor surfaces. The remains of the 19<sup>th</sup> and 20<sup>th</sup> century structures usually extended from 650mm-1.6m deep. The overlying demolition deposits also extended up to 1.4m in depth in Test Pit 4. This would suggest that there is limited potential for any archaeological survival within Area B and that survival would be restricted to the areas beyond any 19<sup>th</sup> and 20<sup>th</sup> century activity on site. These warehouse structures clearly dominate the site on the Ordnance Survey map from 1856. The only area that could have held archaeological deposits was that south of the residential housing which ran along the northern boundary of the site. Test Pits 3, 6, 7 and 9 are located here and no

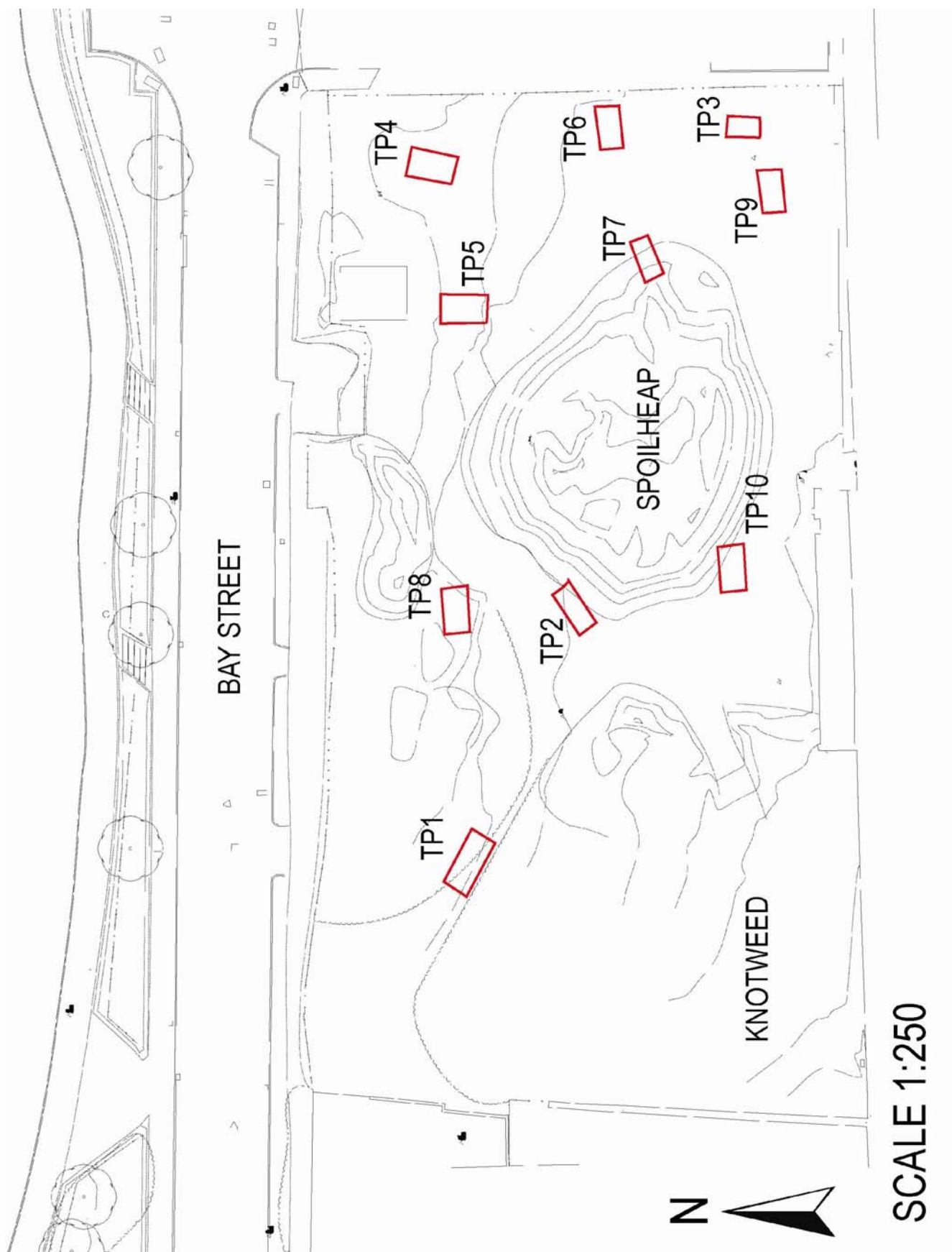


Figure 4: Area B – Test Pit Locations





Fig. 5a: Pre Ex Area B



Fig. 5b: Area B – Test Pit 1



Fig. 5c: Area B – Test Pit 2



Fig. 5d: Area B – Test Pit 3



Fig. 5e: Area B – Test Pit 4



Fig. 5f: Area B – Test Pit 6



Fig. 5g: Area B – Test Pit 7



Fig. 5h: Area B – Test Pit 8

archaeological deposits or structures were encountered.

- 5.6 The demolition deposits out with the warehouse structures would also have impacted upon any underlying deposits. The upper deposits onsite consisted of a series of demolition deposits generally grouped as context (001). There was no evidence for topsoil, other organic deposits across Area B or any signs of agricultural drainage. The gardens on the 1<sup>st</sup> edition Ordnance Survey contained walled structures and were ornamented. No evidence of these was encountered.
- 5.7 Natural clay was encountered within all test pits except Test Pit 10 which was abandoned after reaching a concrete surface at 200mm depth. The natural clay was light brown stony clay, (005) or mixed grey-brown stony clay, (002). The shallowest depth for encountering natural clay was between 400mm-410mm from Test Pit 3 and Test Pit 1 respectively. The lack of any topsoil or even a plough-soil or hill-wash suggests that the area has been cleared and possibly levelled at some point in the past 200 years which would result in archaeological survival being remote in the extreme especially considering that the natural subsoil exists at such a relatively shallow depth of 410mm.

## 6 Discussion

### 6.1 *Nineteenth Century burial ground*

- 6.1.1 In the absence of documentary evidence for the clearance of the burial ground and the extensive evidence for *in-situ* graves from this evaluation, it appears reasonable to infer that no formal clearing of the burial ground was undertaken prior to the 1970 construction of the industrial warehouse. There has been substantial disruption and loss from the burial ground, but this appears to relate to the impacts from construction and demolition rather than the managed removal of graves.
- 6.1.2 The inhumations exist not only within the mapped 19<sup>th</sup> century boundary wall for the burial ground. The graves also extend to the north beyond this wall at a lower ground level. It seems that although not mapped as such on 1<sup>st</sup> edition OS mapping the northern plot is in fact part of the burial ground. The southern portion of the burial ground was slightly elevated from the northern portion. It is possible that the 19<sup>th</sup> century construction of the wall going westwards was an attempt to support the southern ground and that the north area was contemporary to the graves of the southern area.
- 6.1.3 The identified bounding cemetery wall runs northwards along the burial ground's eastern side and then curves westwards, before turning south along Campbell Street, in front of the Rope Works building, according to the 1<sup>st</sup> edition Ordnance Survey mapping. The central retaining wall seemingly constructed to support the southern ground as the slope falls from the south to the north. The inferred line of the cemetery indicated in Figure 2 shows the potential survival of graves to extend out-with the current development area to the west. This would position Test Pit 3 at the northern periphery of the burial ground should the 19<sup>th</sup> century wall delineate the only survival of human remains. If the human remains predate the 19<sup>th</sup> century wall, which is a possibility considering the confluence of the form of the burials within the falling ground of the site, there may be some survival beyond the 19<sup>th</sup> century boundary. It is unlikely that this is the case due to the disturbance caused by the surrounding cobbled road and the underlying services therein, which would probably be similar along the northern boundary of the old cemetery and the road which was continued there.
- 6.1.4 It seems that the eastern extension of [036] may have been truncated by later development and demolition given that this section of the wall did not appear during Test Pitting or the area strip. This is not surprising considering the disturbance to the burials along the railway embankment.
- 6.1.5 The inhumations alone suggest a relatively recent date for the graveyard. The inhumations were all within wooden coffins preserved relatively well in places where demolition has not infringed upon lower sediments. Human bone survives well and occasionally organic material such as hair was recovered from more recently interred individuals. Coffin furniture was also

recovered from some of the grave cuts but the metal objects were typically eroded and difficult to identify. They were all on an east-west alignment (heads on the west side). These graves survive 1.5m-2.5m from the present ground surface. Demolition layers have consistently intruded upon the graves within the southern higher ground. Concrete columnar bases have displaced some graves on the interior of [036] directly under the development footprint. The graves out-with the footprint of the development only survive well along the western boundary. Since the ground naturally slopes as it extends north the burials in the north area will inevitably be waterlogged as suggested by the findings from Test Pit 3.

- 6.1.6 In light of the desk based assessment we may be seeing survival of the eastern periphery of the graveyard depicted on 1st edition OS maps. The ground surface after removal of mounded demolition material (i.e. as reached within the reduction area) is akin to the level of the new car park to the west. Thus the graveyard has the potential to remain intact to the west of the development area.
- 6.1.7 At least 7 partly intact lairs were identified within the footprint of the new build structure, each lair containing between 2-3 layers of coffins. Given the density and distribution of these lairs we would anticipate a further seven lairs within this same area. This gives an estimate range of between 22 and 42 inhumations within these lairs. Expanding our consideration to the extent of the graveyard within the development area this number could be at the very least, be quadrupled (88 to 164 inhumations). Beyond the development site boundary within the potential limits of the original burial ground, there could be a comparable number of inhumations suggesting that the overall number of uncleared, recoverable inhumations may be in the order of 174 to 328. Clearly these numbers are inferences and depend significantly on the depth of lairs and survival through subsequent construction and demolition works.
- 6.1.8 There are two explanations for the format of the two-tiered graveyard. The first is that the graveyard was originally one area and was consolidated in the 19<sup>th</sup> century into two levels of burials. One where the higher ground was maintained and the lower, over time, became disused and anonymous as a burial ground creating the false impression that the burials were restricted to the higher ground and that the wall [036] was formed around an access road rather than around the cemetery. The second possibility is that the lower ground represents a different phase of burials. These could predate the southern burials or comprise an area of overspill in a later phase of internment. It is difficult to discern at this time but the first interpretation is fairly sound with consideration of the sloping ground and the fact that the burials remain consistent across both sections of the graveyard.
- 6.1.9 In the light of this report, the previous discoveries of human remains under the car park to the west may have been inhumations. If they were Ossuary boxes, however, they could be evidence of localised clearance of burials during the use of the burial ground.
- 6.1.10 In terms of future mitigation the burial ground within the western portion of the development area may be under threat from ground-works which extend beyond 1m in depth but only in the south of the site since the ground slopes and the graveyard deposits increase in depth the further north they extend. On this illustration, the most sensitive areas out-with the direct impact of the development footprint have been highlighted. To the south, west and southwest of the building footprint lies the area most likely to be affected by the proposed development.
- 6.1.11 It seems prudent to note that the removal of pre-existing inhumations on this site has not been officially recorded. On the development of this ground in the late 20<sup>th</sup> century it seems that the industrial buildings have extensively intruded upon the 19<sup>th</sup> century burial grounds and it is possible that the grounds were partially cleared of human remains for the later buildings since no graves survive to the east of the 19<sup>th</sup> century wall. However during demolition works the surviving remains to the west have been heavily intruded upon and the lack of reporting on the presence of these remains cannot be accounted for.
- 6.2 *Medieval ribbon settlement*
- 6.2.1 The archaeological assessment failed to identify any significant archaeological features within the development area which related to the medieval occupation. The disturbance caused by the construction of industrial buildings and general industrial activity onsite over the past two

hundred years appears to have removed the potential for archaeological structures to exist in Area B and the northern and eastern portions of Area A.

- 6.2.2 If medieval structures existed within the development area it seems possible that the construction of the early Victorian industrial buildings along the northern boundary of Area B has removed these structures. The depth and extent of disturbance caused by the demolition and clearance of the 20<sup>th</sup> century structures also suggests that archaeological survival is negligible.
- 6.2.3 There were no residual artefactual material from the medieval or post-medieval recovered from the development area. The only pre-industrial structures identified were those from the mid nineteenth century in association with the burial ground in Area A (see above). The test pitting in Area A investigated islands of potential survival that were mapped as having avoided structure until the very last industrial build, these areas were also archaeologically sterile. The inference from the test-pitting was that Area B had been levelled down at some point during modern industrial builds.
- 6.2.4 While this evaluation cannot confirm that the historic mapped ribbon settlement was not on the development area, there appears to be no likelihood for the survival of such material should it have been here.

## 7 Recommendations

- 7.1 The appropriateness and acceptability of our recommendations to deal with the archaeological condition rest with Inverclyde Council and the West of Scotland Archaeology Service, their advisors. Confirmation that the above recommendations are acceptable should be confirmed with these bodies prior to the implementation of any development works whose appropriateness may rely on these recommendations.
- 7.2 Given the presence of human skeletal material on-site the judgement of the Sherriff Court, Crown Prosecution Service, Police and Inverclyde Council should also be sought for the appropriate treatment of the burials which have not been previously cleared from the development site by the responsible body.
- 7.3 The presence of the uncleared burial ground within the consented development area constitutes such a significant issue that we strongly recommend our client take legal advice as to their position relative to the law.
- 7.4 *Area A*
  - 7.4.1 In archaeological terms there is the accepted convention that the preferred option for significance deposits are their preservation *in-situ*; even where this leads to the masking of such remains by new built forms above. Thus in archaeological terms an acceptable strategy is the responsible and managed excavation of those burials which have the potential to be adversely impacted up by the build and the preservation *in-situ* of the others,
  - 7.4.2 We have estimated that up to 42 individuals may be interred within the building footprint and these remains will require full excavation should the development proceed on the basis of a preference to preservation *in-situ*. The process for this is already established within the agreed Written Scheme of Investigation.
  - 7.4.3 However, given that the graveyard appears to be active until the mid or late nineteenth century there is a clear social and moral question as to whether the burials should be viewed as an archaeological issue or by cemetery standards. Given that as recently as the 1960's the council had intended to clear this graveyard there is potentially a strong obligation to complete (or undertake) this process for the remains of all individuals here buried.
  - 7.4.4 Further the means by which this can be resolved goes beyond the archaeological and planning realm. Clear guidance and instruction is needed from the Police, Local Authority, Crown Prosecution Service and Sherriff Court. Without this, any action to further the development within Area A could reasonably be taken as Violation of Sepulchre. We can only

conceive of this being effective by the cemetery department of the local authority applying to the Sherriff Court for an order to exhume all bodies interred within the now defunct burial ground.

- 7.4.5 The liabilities for the clearing of the burial ground, both within and outwith the current development area appear uncertain and are in themselves a legal issue of complexity.

## 7.5 Area B

- 7.5.1 The absence of identifiable medieval or post-medieval features or artefacts from this area has evidenced that this ground is effectively archaeologically sterile. Hence we recommend that no further archaeological works are appropriate in support of the development programme for this portion of the application area.

## 7 Conclusion

- 7.1 A programme of archaeological assessment and evaluation works was undertaken on a development area at Bay Street, Port Glasgow (centred NGR: NS32577441) in respect to the proposed development of ground surrounding the existing brick built conversion of Gourrock Rope Works. The development ground falls into two separate portions split by the extant Rope Works building.
- 7.2 In the eastern area (Area A) the investigative works sought to confirm the clearance of the historic nineteenth century burial ground and to recover any missed skeletal material. However, the works confirmed the burial ground, though built over in the 1970s, had not been cleared and a significant number of inhumations remain within the lairs. The consented development of this ground, should it proceed, raises legal issues regarding the common law crime of Violation of Sepulchres and the need to see the respectful clearance of part or all of the burial ground.
- 7.3 The western area (Area B) had the potential for ribbon development associated with the medieval and post-medieval roadway into Newark Castle. However, test pitting confirmed that the scale of industrial development and subsequent demolition works had sterilised this area. Hence for the western area we have recommended that no further archaeological works are appropriate.

## 8 References

### 8.1 Cartographic References

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Ordnance Survey	1840-80	<i>Renfrewshire</i> , 1 <sup>st</sup> Ed– 1 inch to the Mile
Ordnance Survey	1855-90	<i>Renfrewshire</i> , 2 <sup>nd</sup> Ed– 1 inch to the Mile
Ordnance Survey	1856-57	<i>Port Glasgow</i> , Town Plan.

### 8.2 Bibliography

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Barr, James, Re. *New Statistical Accounts of Scotland*, Account of 1834-45 vol.7 p.62: Port Glasgow, County of Renfrew

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## Appendix 1: Test Pit Details

Within this appendix a standardised set of data pertaining to the test pits is presented.

Test Pit / Area	Orientation	Size	Topsoil Depth	Subsoil Character	Modern Features	Significant Features	Artefacts
Area A: TP.1	NE-SW	2m by 2m by 0.96m	N/A	The surface across the test pit comprises a demolition deposit (014), consisting of stone, glass, metal, clay, iron, concrete and brick all mixed. This deposit continues to a depth of 860-960mm. Within this deposit are more concentrated lenses of rubble. Enclosed within this deposit is a brick wall [015]. Below both (014) and [015] is a concrete surface [016].	1m x 210mm x 700mm Red brick floor which sits on top of a concrete floor found at a depth of 960mm at the base of test pit (restricting further investigation). At eastern edge of test pit there was a mixture of red brick and sandstone wall which stood at 1m deep x 1.6m wide x an unknown length.	None	None
Area A: TP. 2	E-W	2m by 2m by 1.8m	N/A	The surface across the test pit comprises a demolition deposit (014) consisting of stone, glass, metal, clay, iron, concrete and brick all mixed, found also in TP.1. This deposit continues to a depth of 1.8m where a concrete floor [016] lies below.	Concrete floor found at a depth of 1.8m at the base of the test pit.	None	None

Test Pit / Area	Orientation	Size	Topsoil Depth	Subsoil Character	Modern Features	Significant Features	Artefacts
Area A: TP.3	N-S	2m by 2m by 2.4m	N/A	The surface across the test pit comprises a demolition deposit (021), a moderately compact grey layered stones / chuckies / mixed angular stones (similar to Type 1) to a depth of 500mm. Similar debris (022), consisting of dark grey stone / chuckies continues to a depth of 1m. Below this a moderately compacted mixed pink and grey angular stone chuckies deposit (023) lies to a depth of 1.5m. These demolition deposits seal in dark brown organic clay with frequent ceramic inclusions (020). Found at 1.5m – 2.4m depth This deposit contains coffins (019) and (024) which appear at a depth of 2.3m.	None	Possible Graves	Coffins [(019) and (024)]  Human Remains – Skull and related disarticulated bones. Finds No: 001
Area A: TP.4	N-S	2m by 2m by 2.3m	N/A	The surface across the test pit comprises a demolition deposit (029), a moderate compaction, brown organic mixed silt with stone inclusions to a depth of 200mm. Below this lies deposit (030) a light sandy crushed concrete which sits at a small angle across the test pit from 200mm on the	None	None	None



Test Pit / Area	Orientation	Size	Topsoil Depth	Subsoil Character	Modern Features	Significant Features	Artefacts
				south to 400 mm on the north side. The demolitions deposits continue down to a depth of 1.3m with light brown grey coarse sand (031) and then to 2.3m with a light brown grey coarse sand (032) which lies above deposit (018), a light blue grey compact clay with few inclusions that appears on the base of the test pit with an unknown depth. This could be the natural subsoil.			
Area B: TP.1		2m by 2m by 1.2m	N/A	The surface across the test pit comprises demolition debris (001) which consists of grey mixed clay with sand, ash, glass, metal, ceramic, plastic and wood to a depth of 410mm. Below this lies a mixed stony grey brown clay deposit (002) to a depth of 1.2m at the base of the test pit.	None	None	None
Area B: TP.2		2m by 2m by 1.4m	N/A	The surface across the test pit comprises demolition (001). There is a stepped wall [003] with foundations (004) which carry on to a depth of 600mm. Below this lies deposit (002) a mixed stony grey brown clay deposit to 1.4m. This deposit is also seen in	Red brick (hand moulded) wall [003] with foundations (004) Running N-S.	None	None

Test Pit / Area	Orientation	Size	Topsoil Depth	Subsoil Character	Modern Features	Significant Features	Artefacts
				TP.1.			
Area B: TP.3		2m by 1.6m by 1.5m	N/A	Across the surface of the test pit lies the demolition deposit (001) to a depth of 400mm which is the same deposit seen in TP.1. Also seen is TP.1 is the deposit which lies below (001), the mixed stony grey brown clay deposit (002) to a depth of 1m. Below this, to the base of the test pit at 1.5m is mixed stony brown clay (005) which could be the natural subsoil (?)	None	None	None
Area B: TP.4		2m by 3m by 1.7m	N/A	Across the surface of the test pit lies the demolition deposit (001) to a depth of 1.2m which is the same deposit seen in TP.1 & 2. At the top section of this deposit there is interference from hedges and bushes growing beside the area. Below this lies pink sandy stony demolition debris	None	None	None

Test Pit / Area	Orientation	Size	Topsoil Depth	Subsoil Character	Modern Features	Significant Features	Artefacts
				(006) to a depth of 1.4m. Like in TP.4, to the base of the test pit is a natural subsoil like deposit of brown stony clay (005) to a depth of 1.7m.			
Area B: TP.5		2m by 2.5m by 1.5m	N/A	Across the surface of the test pit lies the demolition deposit (001) to a depth of 700mm which is the same deposit seen in TP.1, 2 & 4. Below this lies the deposit of brown stony clay (005) to a depth of 1m. At the edge of the test pit there are 20 <sup>th</sup> century wall and foundations present but not seen in section. The foundations level at 1m at the same depth as (005). Below this deposit to the bottom of the test pit at 1.5m is the mixed stony grey brown clay (002) seen also in TP.1&2.	Associated 20 <sup>th</sup> century wall and foundations.	None	None
Area B: TP.6		2m by 2.5m by 1.9m	N/A	Across the surface of the test pit lies the demolition deposit (001) to a depth of 200mm which is the same deposit seen in previous test pits. This lies on top of	20 <sup>th</sup> century wall [012] and its foundations (013) similar to (008).	None	None

Test Pit / Area	Orientation	Size	Topsoil Depth	Subsoil Character	Modern Features	Significant Features	Artefacts
				a red brick wall face [012] to a depth of 800mm with its foundations (013) below to a depth of 1m. Underneath these modern features is the mixed stony grey brown clay (002) to a depth of 1.2m continuing in a similar deposit of brown stony clay (005) to the bottom of the test pit at 1.9m. Both of these deposits being present in previous test pits.			
Area B: TP.7		2m by 1.6m by 1.5m	N/A	<p>Directly below the surface the test pit uncovered red brick wall [007] to a depth of 600mm with the walls mixed brick foundations (008) continuing to a depth of 750mm. Below these modern inclusions is mixed brown, moderately compact clay (009) with inclusions of glass and ceramics. Churned in places from weight of overburden to a depth of 1.2m. From this deposit to the bottom of the test pit is the brown stony clay (005) visible in other test pits in the area to a depth of 1.5m.</p> <p>* In order to put in this test pit, part of the spoil heap</p>	20 <sup>th</sup> century red brick wall [007] and its foundations (008).	None	None

Test Pit / Area	Orientation	Size	Topsoil Depth	Subsoil Character	Modern Features	Significant Features	Artefacts
				present in Area B had to be moved.			
Area B: TP.8		2m by 3m by 2m	N/A	Across the surface of the test pit lies the demolition deposit (001) to a depth of 200mm which is the same deposit seen in previous test pits. Below this is another demolition deposit (011) which is almost the same as (001) as a mixed clay with sand, ash, glass etc. which goes down to a depth of 1.4m. Within this demolition deposit there are inclusions of large sandstone blocks which line the sides of this test pit. Another demolition deposit of mixed brown, moderately compact clay with inclusions of glass and ceramics (009) continues down to a depth of 1.6m. Below these demolition deposits is a mixed stony brown clay deposit (005)	Large sandstone blocks – most likely connected with demolition of 20 <sup>th</sup> century building.	None	None

Test Pit / Area	Orientation	Size	Topsoil Depth	Subsoil Character	Modern Features	Significant Features	Artefacts
				lies beneath (009) to the bottom of the test pit at a depth of 2m.			
Area B: TP.9		2m by 2m by 1.6m	N/A	Across the surface of the test pit lies the demolition deposit (001) to a depth of 400mm which is the same deposit seen in previous test pits. Below this deposit lies moderately compact yellow mixed clay with few inclusions (010) to a depth of 600mm. Like in other test pits, below these layers lies the mixed stony brown clay deposit of (005) to the base of the test pit at 1.6m.	None	None	None
Area B: TP.10		2m by 1m by 150mm	N/A	Directly below the surface and across the test pit lies an organic type material to a depth of around 150mm, which was producing trees. Below this was concrete that couldn't not be broken through and due to this the test pit was abandoned.	N/A	N/A	N/A

## Appendix 2: Registers

### *Context Register*

<b>Context No.</b>	<b>Area/ Trench</b>	<b>Type</b>	<b>Description</b>	<b>Interpretation</b>
001	B	Topsoil	Grey mixed clay with sand, ash, glass, metal, ceramic, plastic and wood	Demolition Debris
002	B	Subsoil	Mixed stony grey brown clay	Natural Subsoil
003	B	Structural	20 <sup>th</sup> Century floor surface for warehouse. Red brick (hand moulded). 500mm	Warehouse Floor
004	B	Structural	Foundations of [003]. Mixed deposit, red sandstone. 200mm deep.	Floor Foundations
005	B	Subsoil	Mixed stony brown clay	Natural Subsoil
006	B	Deposit	Sandy pink stony demolition debris	Demolition Debris
007	B TP 7	Structural	Brick wall. Red bricks. 600mm deep	20 <sup>th</sup> Cent. Brick wall
008	B TP 7	Structural	Foundations for wall [007]. Mixed red brick	20 <sup>th</sup> Cent. Foundations of [007]
009	B	Subsoil	Mixed brown, moderately compact clay with inclusions of glass and ceramics. Churned in places from weight of overburden.	Disturbed Natural Subsoil
010	B	Deposit	Moderately compact yellow mixed clay with few inclusions. Seals underlying layers.	Disturbed/ Re-deposited natural clay from 20 <sup>th</sup> cent. Actions.
011	B TP 8	Deposit	Same as (001). Mixed clay, sand, ash, glass etc.	20 <sup>th</sup> cent. Demolition Debris.

Context No.	Area/ Trench	Type	Description	Interpretation
012	B TP 6	Structural	Brick wall face. Red bricks	20 <sup>th</sup> cent. Wall
013	B TP 6	Deposit	Mixed red brick foundations for wall [012]. Similar to (008)	Foundations for wall [012]
014	A TP 1/2	Deposit	Stone, glass, metal, clay, iron, concrete and brick (mixed). Extends up to 1.18m deep (TP2). Comprises raised area of site.	20 <sup>th</sup> Cent. Demolition Deposit
015	A TP 1	Structural	1m x 210mm x 700mm brick floor. Red brick (50 x 200 x 150 mm) each herringbone patterned. One course deep and sit on concrete floor (016).	20 <sup>th</sup> Cent. Brick floor surface.
016	A	Structural	1.6m x 2m x unknown depth concrete. Very compact. Found at 960mm depth in TP1	20 <sup>th</sup> Cent. Floor surface.
017	A	Structural	A mixture of red brick and sandstone wall at the eastern end of TP1 in Area A. Large blocks 300mm x 450mm (masoned). Similar to those in area B. 1m deep, two courses) x 1.6m wide x unknown length.	20 <sup>th</sup> Cent. Outer wall of warehouse.
018	A TP4	Deposit	Light blue grey compact clay with few inclusions.	Natural subsoil (?)
019	A TP3	Wood	“Coffin” – Same as (024). 300mm deep x 400mm wide x unknown length. Contains human remains. Found at 1.2-3m depth in (020) soils. Located out with known burial ground boundary (estimated) to 5-	Coffin of unknown date



Context No.	Area/ Trench	Type	Description	Interpretation
			8m to the north.  For skeleton details see Context Record – skeleton (019)	
020	A TP3	Deposit	Dark brown organic clay with frequent ceramic inclusions. Found at 1.5m – 2.4m depth. This deposit contains coffins (019) and (024).	POSSIBLE graveyard soil with unknown date.
021	A TP3	Deposit	Moderately compact grey layered stones / chuckies/ mixed angular stones (Type 1). Modern.	20 <sup>th</sup> Cent. Demolition deposit.
022	A TP3	Deposit	Dark grey stone/ chuckies similar to (021)	20 <sup>th</sup> Cent. Demolition deposit.
023	A	Deposit	Moderately compacted mixed pink and grey angular stone chuckies.	20 <sup>th</sup> Cent. Demolition deposit.
024	A TP3	Wood	Coffin in TP3 which is the same as coffin (019). Parallel to (019). Orientated E-W.	Coffin of unknown date.
025	A	Deposit	Soft, greasy, medium grey, wet clay with inclusions of ceramics likely compressed into clay from demolition layer (026) above. Full extent of deposit unknown, likely to extend within boundaries of wall (036). This deposit contains (027). 1.3m from the surface human remains were found within this deposit.  For skeleton details see Context Record – skeleton (025)	Disturbed clay deposit. POSSIBLY to do with grave cut backfill (?).

Context No.	Area/ Trench	Type	Description	Interpretation
026	A	Deposit	Mixture of compact and loose grey and orange demolition sand, gravel and rubble with inclusions of brick fragments, concrete type areas and general demolition. Full extent of deposit is unknown but has a depth of 1m.	Surface demolition deposit.
027	A	Deposit	Firm but waterlogged medium grey clay with inclusions of small fragments of demolition rubble situated around disarticulated bones SF.002. Full extent unknown as only exposed in small area of sondage 1. Contained by (025)	Disturbed clay deposit similar – possible disturbed grave-cut (??)
028	A	Wood	Base of small coffin running E-W into western limit of excavation. Situated in (025). c 0.75 x 0.30m exposed.  Associated human remains. For skeleton details see Context Record – skeleton (028).	Base of coffin of unknown date.
029	A TP 4	Deposit	Brown organic mixed silt. Moderate compaction with stone inclusions.	Demolition Deposit
030	A TP 4	Deposit	Light sandy crushed concrete.	Demolition Deposit.
031	A TP 4	Deposit	Dark grey brown sandy clay	Demolition Deposit.
032	A TP 4	Deposit	Light brown grey coarse sand	Demolition Deposit.
033	A Sondage 1	Wood	Large wooden box coffin partially exposed within sondage 1 in south west corner of stripped area. Coffin is exposed in west facing section.	Large Coffin of unknown date.

Context No.	Area/ Trench	Type	Description	Interpretation
			Approx. 0.20 x 0.10m exposed in section. Coffin is within (025) and on top of clay (034).	
034	A	Deposit	Compact medium grey clay with inclusions of solid lighter grey clay and small stones. Exposed within sondage 1 but likely to be of greater extent. Situated below clay (025).	Natural clay (??)
035	A	Wood	Small lower end of coffin (feet end) exposed in east facing section of sondage 1. Quite badly damaged and needs more investigation to know its extent. Associated coffin furniture found.	Coffin of unknown date.
036	A	Structural	Pink sandstone wall. Large cut boulders of sandstone. L-shaped wall running into southern and western limits of excavation. Abutted by (045) and (046). E-W c. 8.20 x 0.60 x 0.93m. N-S c.9.0 x 0.60 x 0.40m. Association with surrounding 'burial' clays and natural type clays is as yet unclear.	Wall. POSSIBLE boundary wall of graveyard (??).
037			VOID	
038	A	Deposit	Loose orange sandy gravel with no inclusions. Full extent unknown but depth of c. 0.30m	Make-up / levelling deposit.
039	A	Deposit	Firm black gravel with larger stone inclusions. Full extent unknown but depth of c. 0.45m	Make-up / levelling deposit.

Context No.	Area/ Trench	Type	Description	Interpretation
040	A	Deposit	Soft dark grey clay with some inclusions of rubble and stone. Full extent unknown. Similar to (025). Contains coffin remains.	Disturbed clay deposit. POSSIBLY to do with grave cut backfill (?).
041	A	Deposit	Firm black gravel demolition deposit with large amounts of stone and brick rubble. Similar to (021) and (022) but more compressed into clay (042) which lays below	Demolition Deposit
042	A	Deposit	Soft dark grey clay. Full extent unknown. Similar to clay deposits (025) and (040). Contains human remains (SF. 014 and 015).	Disturbed clay deposit. POSSIBLY to do with grave cut backfill (?).
043	A	Surface	Rough cobbled surface c. 3x3m with individual rough cut cobbles c. 200mmx500mm	Rough cobbled surface.
044	A	Wood	Wooden coffin running E-W severely damaged by demolition deposit (041) above. Too disturbed to have any detail.	Coffin of unknown date.
045	A	Structural	Pink and yellow sandstone block built wall. Running N-S, most likely a continuation of wall (036).	Wall. Possibly connected with boundary of graveyard (??)
046	A	Structural	Yellow block sandstone foundations of wall abutting wall (036). Most likely dry stone bonding but unclear. Running N-S of the middle of E-W of wall (036).	Foundations of Wall.

*Drawing Register*

<b>Drawing No.</b>	<b>Sheet No.</b>	<b>Area/ Trench</b>	<b>Drawing Type</b>	<b>Scale</b>	<b>Description</b>	<b>Drawer</b>	<b>Date</b>
001	01	Area A	Section	1:20	Sample Section TP.1	KS	18/09/2008
002	01	Area A	Plan	1:50	Plan of TP.1	KS	18/09/2008
003	01	Area A	Section	1:20	Sample Section TP.2	KS	18/09/2008
004	01	Area A	Section	1:10	Sample Section TP.3	KS	18/09/2008
005	01	Area A	Section	1:20	Sample Section TP.4	KS/NCM	18/09/2008
006	02	Area A	Section	1:10	Sample Section test hole in sondage.	NCM	22/09/2008

*Samples Register*

<b>Sample No.</b>	<b>Area / Trench</b>	<b>Context</b>	<b>Sample Type</b>	<b>Description / Quantity</b>	<b>Excavator</b>	<b>Date</b>
001	A	025	Wood	Base of Coffin SF. 002	KS	19/09/2008
002	A	025	Wood	Head of Coffin SF. 008 related to SF. 005 + 006	KS	19/09/2008
003	A	025	Wood	Head of Coffin SF.004	NCM	19/09/2008
004	A	035	Wood	Wood of Coffin in sondage	NCM	22/09/2008
005	A	044	Wood	Wood from damaged coffin SF.014+015	KS	24/09/2008

*Finds Register*

<b>Find No.</b>	<b>Area/ Test Pit</b>	<b>Context No.</b>	<b>Material Type</b>	<b>Description</b>	<b>Excavator</b>	<b>Date</b>
001	A	019 /	Bone	Human Skull and	KS	17/09/2008

Find No.	Area/ Test Pit	Context No.	Material Type	Description	Excavator	Date
	TP.3	020		associated disarticulated bone (from spoil)		
002	A	025	Bone	Human Leg bones (?) Disarticulated (?)	KS	19/09/2008
003	A	025/028	Bone	Human Leg Bones. Disarticulated (?)	NCM	19/09/2008
004	A	025	Bone	Human Skull	NCM	19/09/2008
005	A	025	Bone	Human Skull in close proximity to SF.006	NCM	19/09/2008
006	A	025	Bone	Human Skull in close proximity to SF.005	NCM	19/09/2008
007	A	025	Wood	Coffin related to SF.002 skeleton	KS	19/09/2008
008	A	025	Wood	Coffin related to SF.004 skeleton	NCM	19/09/2008
009	A Sondage 1	035	Wood	Coffin in Sondage 1	NCM	22/09/2008
010	A Sondage 1	033	Wood	Coffin in Sondage 1	NCM	22/09/2008
011	A	025	Metal	Iron Coffin furniture	NCM	22/09/2008

Find No.	Area/ Test Pit	Context No.	Material Type	Description	Excavator	Date
	Sondage 1					
012	A	025	Bone	Disarticulated (?) Skeleton (interior cemetery)	KS	23/09/2008
013	A	040	Wood	Coffin remains from external cemetery (outside wall 036)	KS	23/09/2008
014	A	042	Bone	Human disarticulated bone (spoil) Leg Bone (?)	KS	24/09/2008
015	A	042	Bone	Human Skull in close proximity to SF.014	KS	24/09/2008
016	A	025	Bone	Bone still in situ (only partially visible)	NCM	24/09/2008



*Photographic Register*

Image No.	Print		Slide		Digital	Description	From	Date
	Film No.	Neg. No.	Film No.	Neg. No.				
1	1	28	1	1	1	Pre. Ex of Area B	E	16/09/08
2	1	29	1	2	2	Pre. Ex of Area B	NW	16/09/08
3	1	30	1	3	3	Pre. Ex of Area B	SW	16/09/08
4	1	31	1	4	4	TP.1 General oblique	NW	16/09/08
5	1	32	1	5	5	TP.1 Section	W	16/09/08
6	1	33	1	6	6	TP.2 Section	E	16/09/08
7	1	34	1	7	7	TP.2 General	N	16/09/08
8	1	35	1	8	8	TP.3 General oblique section	SE	16/09/08
9	1	36	1	9	9	TP.3 General oblique section	SE	16/09/08
10	2	1	1	10	10	TP.3 General	S	16/09/08
11	2	2	1	11	11	TP.4 Section	NW	16/09/08
12	2	3	1	12	12	TP.4 General	N	16/09/08
13	2	4	1	13	13	General shot of Rope Works with old building imprint	W	16/09/08
14	2	5	1	14	14	TP.5 General	N	16/09/08
15	2	6	1	15	15	TP.5 Section	NNW	16/09/08
16	2	7	1	16	16	TP.6 General	E	16/09/08
17	2	8	1	17	17	TP.6 Section (N Facing)	ENE	16/09/08
18	2	9	1	18	18	TP.6 Section (S Facing)	ESE	16/09/08
19	2	10	1	19	19	TP.7 General	SE	16/09/08
20	2	11	1	20	20	TP.7 General with wall	NW	16/09/08
21	2	12	1	21	21	TP.7 Section	SSW	16/09/08
22					22	TP.8 Section	WSW	16/09/08
23					23	TP.8 Section	WSW	16/09/08
24					24	TP.8 Section	NE	16/09/08
25					25	TP.8 with wall	NE	16/09/08
26					26	TP.8 with wall	E	16/09/08
27					27	TP.8 with wall	NE	16/09/08
28					28	Large masoned blocks in TP.8	W	16/09/08
29					29	Abandoned TP.10 SW of spoil heap	NE	16/09/08
30					30	Abandoned TP.10 SW of spoil heap	N	16/09/08
31					31	TP.9 General	S	16/09/08
32					32	TP.9 Section	SSW	16/09/08
33					33	TP.9 Section	SW	16/09/08

Image No.	Print		Slide		Digital	Description	From	Date
	Film No.	Neg. No.	Film No.	Neg. No.				
34					34	TP.9 Section	SW	16/09/08
35					35	Pre Ex Area A	N	17/09/08
36			1	22	36	Pre Ex Area A	W	17/09/08
37			1	23	37	Pre Ex of cobbles (abandoned TP)	S	17/09/08
38			1	24	38	General Shot (abandoned TP) over culvert	S	17/09/08
39			1	25	39	S Facing Section TP. 1	S	17/09/08
40			1	26	40	General shot TP.1	E	17/09/08
41			1	27	41	General shot of TP.1	E	17/09/08
42			1	28	42	Close up of floor and wall in TP.1	N	17/09/08
43			1	29	43	Section of TP.2	NW	17/09/08
44			1	30	44	General shot of TP.2	W	17/09/08
45			1	31	45	General shot of TP.3 Area A	S	17/09/08
46			1	32	46	General shot of TP.3 Area A	SE	17/09/08
47			1	33	47	General shot of TP.3 Area A	SW	17/09/08
48			1	34	48	Close up of coffin in section	W	17/09/08
49			1	35	49	Coffins in Section	W	17/09/08
50	3	1	1	36	50	Spoil heap with human and coffin remains	N	17/09/08
51	3	2	2	1	51	Spoil heap with human and coffin remains	N	17/09/08
52	3	3	2	2	52	Close up front on shot of skull	N	17/09/08
53	3	4	2	3	53	Close up front on shot of skull	N	17/09/08
54	3	5	2	4	54	Human remains and coffin facing east	W	17/09/08
55	3	6	2	5	55	Close up of human remains and coffin facing east	W	17/09/08
56	3	7	2	6	56	General spoil heap shot facing SE	NW	17/09/08
57	3	8	2	7	57	General shot TP.4 Area A	S	18/09/08
58	3	9	2	8	58	General shot TP.4 Area A	SW	18/09/08
59	3	10	2	9	59	General shot TP.4 Area A	N	18/09/08
60	3	11	2	10	60	TP.4 Section Area A	SW	18/09/08
61	3	12	2	11	61	General shot of SF.002 – Disarticulated leg bone (Area A)	NE	19/09/08
62	3	13	2	12	62	Close up of SF.002 – Disarticulated leg bone (Area A)	N	19/09/08
63	3	14	2	13	63	Shot of coffin wood (028) in situ	E	19/09/08
64	3	15	2	14	64	Close up shot of (028) with bones in section	E	19/09/08
65	3	16	2	15	65	Shot of section with bones SF.003 and (028) in situ	E	19/09/08
66	3	17	2	16	66	General shot of Sondage 1	S	22/09/08
67	3	18	2	17	67	General shot of Sondage 1	S	22/09/08

Image No.	Print		Slide		Digital	Description	From	Date
	Film No.	Neg. No.	Film No.	Neg. No.				
68	3	19	2	18	68	Coffin in Sondage 1	W	22/09/08
69	3	20	2	19	69	Skulls in Sondage 1 – SF. 005 / 006	W	22/09/08
70	3	21	2	20	70	General shot of Sondage 1	NE	22/09/08
71	3	22	2	21	71	Close up of skulls in Sondage 1	W	22/09/08
72	3	23	2	22	72	Test hole in Sondage 1	W	22/09/08
73	3	24	2	23	73	Test hole in Sondage 1	W	22/09/08
74	4	1	2	24	74	Test hole in Sondage 1	N	22/09/08
75					75	Close up of test hole in Sondage 1	N	22/09/08
76	4	2	2	25	76	Close up of test hole in Sondage 1	W	22/09/08
77					77	General shot of test hole in Sondage 1	E	22/09/08
78	4	3	2	26	78	General shot of test hole in Sondage 1	S	22/09/08
79					79	Working shots	N	22/09/08
80					80	Working shots	NW	22/09/08
81					81	Working shots	S	22/09/08
82					82	Working shots	SW	22/09/08
83					83	Working shots	W	22/09/08
84	4	4	2	27	84	General shot of Area A East Clearance	W	23/09/08
85	4	5	2	28	85	N Facing sections in Sondage 2 Cleared to the east	WNW	23/09/08
86	4	6	2	29	86	General shot of warehouse wall [036]	S	23/09/08
87	4	7	2	30	87	General shot of Area A strip (east end)	W	23/09/08
88	4	8	2	31	88	Sample section (N Facing) Area A Strip (east end)	N	23/09/08
89	4	9	2	32	89	Sondage 3 East End Area A General Shot	W	23/09/08
90	4	10	2	33	90	Sondage 3 east end Area A close up section facing	WNW	23/09/08
91	4	11	2	34	91	Sondage 3 east end Area A general oblique shot	WNW	23/09/08
92	4	12	2	35	92	General shot post ex strip from east	E	23/09/08
93	4	13	2	36	93	General Shot post ex strop facing west	E	23/09/08
94					94	General shot post ex of southern area strip (E-W)	W	24/09/08
95					95	General shot post ex showing pegged out area	NW	24/09/08
96					96	General shot post ex showing pegged out area close up	NW	24/09/08
97					97	General shot post ex southern area strip (E-W)	E	24/09/08
98					98	General shot post ex southern area strip (E-W)	NE	24/09/08
99					99	General shot post ex southern area strip (E-W)	W	24/09/08
100					100	General shot of wall [036]	SE	24/09/08
101	4	14	2	1	101	Close up General shot of wall [036]	SE	24/09/08

Image No.	Print		Slide		Digital	Description	From	Date
	Film No.	Neg. No.	Film No.	Neg. No.				
102	4	15	2	2	102	Wall [036] Running N-S	SE	24/09/08
103					103	Close up of wall [036]	N	24/09/08
104					104	General shot of wall [036]	NW	24/09/08
105					105	General shot of wall [036]	NW	24/09/08
106	4	16	2	3	106	Coffin SF.013 North of Cemetery Wall	E	24/09/08
107	4	17	2	4	107	Coffin SF.013 North of Cemetery Wall	NE	24/09/08
108	4	18	2	5	108	General shots of site		24/09/08
109	4	19	2	6	109	General shots of site		24/09/08
110	4	20	2	7	110	General shots of site		24/09/08
111	4	21	2	8	111	General shots of site		24/09/08
112	4	22	2	9	112	General shots of site		24/09/08
113	4	23	2	10	113	General shots of site		24/09/08
114					114	General shots of site		24/09/08
115					115	General shots of site		24/09/08
116					116	Section on southern edge of strip	N	24/09/08
117	4	24	2	11	117	Showing water covered graves SF.014 / 015	E	24/09/08
118	4	25	2	12	118	Showing water covered graves SF.014 / 015	W	24/09/08
119	4	26	2	13	119	Showing graves SF.014 / 015 and clay (042) directly under demo layer (043)	W	24/09/08
120	4	27	2	14	120	Cobbled Surface (043)	W	24/09/08
121	4	28	2	15	121	Cobbled Surface (043)	SW	24/09/08
122	4	29	2	16	122	Wall [045]	W	24/09/08
123	4	30	2	17	123	Area between (045) and (046) Showing also (040)	S	24/09/08
124	4	31	2	18	124	Wall [045] and foundations of wall [046]	SW	24/09/08
125	4	32	2	19	125	Wall [046] foundations	S	24/09/08
126	4	33			126	General shots of site		24/09/08
127	4	34			127	General shots of site		24/09/08
128	4	35			128	General shots of site		24/09/08
129	4	36			129	General shots of site		24/09/08
130					130	General shots of site		24/09/08
131					131	General shots of site		24/09/08

## Appendix 3: Discovery &amp; Excavation in Scotland

<b>LOCAL AUTHORITY:</b>	Inverclyde
<b>PROJECT TITLE/SITE NAME:</b>	Bay Street, Port Glasgow
<b>PARISH:</b>	Port Glasgow
<b>NAME OF CONTRIBUTOR:</b>	Katie Sludden
<b>NAME OF ORGANISATION:</b>	Rathmell Archaeology Limited
<b>TYPE(S) OF PROJECT:</b>	Assessment
<b>NMRS NO(S):</b>	NS37SW 30, NS37SW 29
<b>SITE/MONUMENT TYPE(S):</b>	Cemetery/ Burial Ground
<b>SIGNIFICANT FINDS:</b>	In situ graves, Human Remains, 19 <sup>th</sup> Century Cemetery Boundary
<b>NGR (2 letters, 6 figures)</b>	NS32577441
<b>START DATE (this season)</b>	16 <sup>th</sup> September 2008
<b>END DATE (this season)</b>	25 <sup>th</sup> September 2008
<b>PREVIOUS WORK (incl. DES ref.)</b>	None
<b>PROPOSED FUTURE WORK:</b>	Area B requires no future archaeological works. The treatment of Area A remains as yet unresolved.
<b>MAIN (NARRATIVE) DESCRIPTION:</b> (may include information from other fields)	<p>A Programme of archaeological assessment works was undertaken on a development area at Bay Street, Port Glasgow (centred NGR: NS32577441), in respect to the proposed development of ground surrounding the existing brick built conversion of Gourrock Rope Works.</p> <p>The Test Pitting exercise encountered human remains within Area A to the east of the Rope Works while Area B to the west was found to be archaeologically sterile. The strip of the proposed building footprint in Area A uncovered the 19<sup>th</sup> century cemetery boundary wall and identified the survival of in situ graves along the western side of the development footprint. Disarticulated and disturbed human remains were recovered from 20<sup>th</sup> century demolition deposits and in situ graves were preferentially retained in situ.</p>
<b>PROJECT CODE:</b>	RA08025
<b>SPONSOR OR FUNDING BODY:</b>	Clyde Homes Bay Street Limited
<b>ADDRESS OF MAIN CONTRIBUTOR:</b>	8 Ashgrove Workshops, Kilwinning, Ayrshire KA13 6PU
<b>E MAIL:</b>	contact@rathmell-arch.co.uk
<b>ARCHIVE LOCATION (intended/deposited)</b>	Report to West of Scotland Archaeology Service and archive to National Monuments Record of Scotland.

## Appendix 4: Historic Scotland Policy Paper: Human Remains

Presented in the subsequent pages are the reproduced pages of Annex A entitled '*The Legal Position Relating to the Treatment of Human Remains*' extracted from Historic Scotland's Operational Policy Paper 5, '*The Treatment of Human Remains in Archaeology*'.

### Annex A

#### THE LEGAL POSITION RELATING TO THE TREATMENT OF HUMAN REMAINS

This paper, reproduced here by kind permission of its author, was first published by the Institute of Field Archaeologists as an Annex to Technical Paper No.11 '*The Law and Burial Archaeology*' (Garratt-Frost, S. 1992). The latter covers matters relating to the treatment of human remains under English Law and provides an interesting contrast with the position in Scotland outlined in the paper below.

Following its publication, the penultimate section of this paper, Grave goods and personal effects attracted some critical comment over the distinction made in the paper between objects covered by Treasure Trove law and those covered by the Civic Government (Scotland) Act 1982. Although beyond the immediate scope of this policy statement, it is worth pointing out that the two pieces of legislation overlap although drawn up with different intents in mind (Treasure Trove law is intended primarily to covers the discovery of antiquities 'without known heritor' where as the Civic Government (Scotland) Act may be applied most appropriately to recently lost or abandon goods). In law, neither may be considered to take precedence over the other and procedurally the same result should pertain i.e. the reporting of discoveries to an appropriate authority.

#### SCOTS LAW

by James Logie <sup>1</sup>

The Scots law concerning the topics covered in the body of this paper [IFA Technical Paper No.11] is altogether different from that in England. The relevant English statutory provisions have no application in Scotland, and the ecclesiastical measures discussed have no Scottish counterpart. The various areas discussed below are governed almost wholly by the common law, and this gives rise to several difficulties. Most of the leading authorities are pre-twentieth century - the last reported case of the crime of violation of sepulchres (the common law crime of unlawful interference with human remains), for example, was reported in 1899. It is not certain that a Court today would necessarily consider itself bound by some of the statements made in those cases (although in the most recent authority of which the writer is aware, the Sheriff not only applied the earlier cases but stated that he agreed with the sentiments expressed therein – The Secretary of State for Scotland, Petitioner, 1991). In addition, it cannot be said that the common law in these areas is by any means settled. There are obvious contradictions in judicial dicta which remain unresolved, and in many areas judges simply refuse to lay down specific rules on key points, leaving much to the discretion of judge (or jury) in individual cases. These factors obviously make it extremely difficult to give definite guidance in respect of many points, and it is important to heed the advice given in the body of this paper that anything contained herein is no substitute for taking specific legal advice relative to the circumstances of a particular excavation. Penalties for breach of the laws discussed below may not now be as severe as they once were (death or transportation could be the consequence of violation of sepulchres), but it is still important to ensure that the law's requirements are not contravened.

<sup>1</sup> James C Logie is a solicitor in the Office of the Solicitor to the Secretary of State for Scotland..

#### **Disinterment of human remains**

There are provisions in both civil and criminal law which deal with the disinterment of human remains. The basic premise on which both are established is that human remains are sacred whenever they are interred, and that graves or tombs are not to be disturbed. This protection is, however, not necessarily absolute. One possible limitation which can conveniently be dealt with here before passing on to deal with the provision made in each area in more detail is the result of the passage of time.

The earliest authorities favoured an approach which protected human remains forever: 'It is clear as the sun at noonday that, by the common law, no person can interfere with these graves or do anything affecting the ground that can tend in any way to injure the feelings of the connections of those who are interred. No-one

has a right to break up the ground of interment to the remotest periods of time. There the dust must forever remain.’ (Earl of Mansfield v Wright, 1824). Furthermore, there is at least one example of a Court granting an Order in perpetuity to protect human remains (Hill v Wood, 1863 – although the Order was subsequently revoked by the Court

– Bowie, Petitioner, 1967).

This is not a view which has found universal favour however. In a case decided seventy years later, it was considered a very well established fact that ‘human remains resolve into their original dust, and it is by no means necessary to maintain the ground in which they are buried intact.’ (Steel v Kirk Session of St Cuthbert’s Parish, 1891). It has also been stated that graves are only protected against disturbance until ‘the process of disintegration is complete’ (Encyclopaedia of Scots Law, volume 2 para. 1266). This of course only serves to beg the question, when do remains ‘resolve into their original dust’ or complete ‘the process of disintegration’? In Steel, the bodies to be disinterred had been buried for at least seventeen years before the application to disinter (which was granted) was made. Similarly, a warrant to disinter was granted in a case where it appeared that the last body had been buried some seven years before (Sister Jarlath, Petitioner, 1980) and there is a suggestion that the lapse of ten years after burial would be sufficient to take human remains outwith the protection afforded to them by the criminal law (H M A v Coutts, 1899).

This latter view is now probably that which applies in criminal cases, but it should not be thought that it is followed to the exclusion of that first stated above in civil cases. In The Secretary of State for Scotland, Petitioner, 1991, there is a suggestion that exactly the same legal principles and accordingly the same legal protection apply ‘whether the process of disintegration is complete or not’. From the reported cases, it would seem that this is almost certainly the rule applied where there is a living relative or other interested party who either makes a reasoned objection to an application for judicial authority to disinter or even seeks a Court Order restraining the proposed disinterment. Thus, although it may be reasonably argued on a number of grounds that the more moderate view of legal protection for human remains for a limited period of time should now prevail as it is now the most common in the reported cases, there are some circumstances in which it does not apply, and even in other circumstances there is still room for doubt. Furthermore, even if the more moderate view does prevail, no definite period for which the protection will last can be stated. Thus the examples given above should be treated as such, and not as rules of law. In one criminal case where this issue was squarely faced, the presiding judge explained that although it may be difficult to satisfy a jury that human remains attracted legal protection ten years after interment, ‘I am not prepared to hold as a matter of law that there is any precise duration of time that . . . justifies the removal of bodies. . .’ (H M A v Coutts, 1899).

Turning now to the protection which the civil law affords human remains, such protection lies largely (although not exclusively) in the hands of any living relatives or those having the ownership or management of the ground in which the remains are interred. Most of the reported cases concern attempts by a living relative to prevent the disinterment or other action which allegedly desecrates human remains or applications by them to disinter human remains for burial elsewhere. The general position of the law is that human remains are sacred wherever they are interred (for at least some period of time) and interference with the remains can only be justified by ‘a strong case indeed’, ‘the occurrence of a strong necessity’ or ‘some absolute necessity or some such high expediency’ (Hill v Wood, 1863) - clearly a difficult test to satisfy. In practice, this rule means that an interdict may be sought against anyone disturbing or proposing to disturb human remains prohibiting them from doing so by a living relative of the deceased or anyone else having an interest to bring an action (such as the owner of the land in question). However, the fact that there are no living relatives involved or that no other person objects to disinterment does not mean that the law’s protection lapses: ‘The right of sepulchre is a right pertaining to the dead but which the living have a title to enforce. Indeed, even if the living do not exercise their right to enforce it, the Court may do so on behalf of the Deceased.’ (The Secretary of State for Scotland, Petitioner, 1991).

There are three recognised exceptions to the general rule of non-disturbance of remains:

- if those having the management of a public burial ground are compelled to disturb the grave from considerations of necessity or expediency;

- if the burial was in ground in which there was no right of burial because, for example, the person buried there had no title to the land or other acquired right to be buried there. This exception does not necessarily cover persons who have been buried outwith recognised graveyards or burial places or who have never actually been buried but left where they lay when they died this issue is discussed further below;



· perhaps the most significant exception is where a warrant has been obtained from the Sheriff Court (or in rare cases, the Court of Session) to disinter a body. Such a warrant can be obtained by Summary Application to the Court, but the procedure is very unusual and there are few reported cases covering the law to be applied to them. The applications are usually made by a relative or those responsible for the ground in which the remains are buried - there is even a suggestion that an application by someone other than a relative is incompetent (*Black v McCallum*, 1723), but this case does not appear to have been followed and in several cases, it has been accepted that a Petitioner having some form of responsibility for the ground in which the bodies were interred can raise a Petition for a warrant to disinter (see e.g. *Sister Jarlath, Petitioner*, 1980 and *The Secretary of State for Scotland, Petitioner*, 1991). The question of title to sue has not yet been resolved in respect of other prospective Petitioners, and may therefore pose a problem for anyone seeking a warrant who does not fall into one of these categories.

The Court may take a wide number of variety into account in determining such an application, one of which is the opinion of living relatives of the deceased, if any can be traced. Indeed, in most cases, this appears to be the crucial factor. If living relatives object, the Sheriff will have to weigh the reasons for the proposed disinterment against the objections. In view of the standard which the Petitioner must meet to justify interference with the remains of the dead as explained above, he might face an uphill struggle to overcome objections by relatives. It would appear that it is best practice, even where an application is to be unopposed, that a Petitioner should obtain letters of consent from any traceable living relative.

Another factor commonly taken into account is the feasibility of disinterment. This factor takes two forms. The first is the obvious meaning, namely whether disinterment is physically possible. The second, however, is that the bodies will be disinterred and reinterred 'With decency and respect' (*Sister Jarlath, Petitioner*, 1980). Although not specifically spelt out in the cases dealing with the exceptions to the general rule discussed above at (a) and (b), it should be noted that this point also applies to them in that bodies which are to be disinterred in reliance on either of those exceptions must also be disinterred and reinterred with decency and respect.

There is no reported case of a warrant being granted for reasons other than the relatives wishing the reburial of the remains in another place or for necessary work to be carried out to the burial ground or buildings thereon, and even these 'justifications' are not always accepted by the Court which is the ultimate arbiter of, for example, whether the works are necessary immediately (see, for example, *The Secretary of State for Scotland, Petitioner*, 1991). In particular, there is no reported case of a warrant to disinter being granted for archaeological, educational or scientific reasons. The closest analogy is probably *The Secretary of State for Scotland, Petitioner*, 1991, in which a Petition to disinter bodies to allow remedial work to Whithorn Priory, founded by St Ninian (AD 396) was refused, partly because of objections from one person who had members of their family buried in the area in which disinterment was proposed. Accordingly, it would appear that a warrant to disinter for archaeological or scientific reasons might be difficult to obtain if there are reasonable objections.

The situation may be different if there are no objections and it appeared to the Court that in the process of disinterment and reinterment, the remains will be treated with all due reverence - but even this tentative view is subject to the weight a Court will apply to the reasons for disinterment given in the Petition in view of the stiff test which has to be met to justify interference with human remains, and the attitude it takes to the period for which the legal protection of human remains extends.

If the disinterment cannot be brought under any of these three headings, then it is illegal in terms of the civil law. Furthermore, it may also be in breach of the criminal law.

It is a crime at common law, known as 'violation of sepulchres', to interfere with human remains. This crime can only be committed after the corpse had been buried or entombed in some way - it would appear that it is the ordinary law of theft which protects bodies before interment (as it probably does properly in relation to disinterred bodies) (*Dewar v H M A*, 1945, and *Gordon*, page 479). The essence of the crime is the disturbance, or attempted disturbance, of human remains without lawful authority, and it is completed when the body is moved from its resting place, however slightly. The purpose behind the disturbance is irrelevant in determining whether not the crime has been committed, as is whether or not offender gained any benefit from the commission of the crime (*H M A v Coutts*, 1899). The leading criminal law text book suggests that the crime is not committed if there is a reverent removal of human remains from their resting place followed by some other reverent disposal of the remains (*Gordon*, page 999). There would appear to

be considerable merit in this suggestion, particularly in view of the fact that appears that the crime was originally intended to prevent ‘grave robbing’ of the Burke and Hare variety. However, there is no authority to directly support this proposition, and, existing authorities, it may even be suggested that it is erroneous, so it may be unsafe to rely on it.

One matter which does seem clear in relation to violation sepulchres, however, is that the crime can only be committed in respect of a body which is in a condition to be regarded an object worthy of reverential treatment, so that there comes a time when a body is so far gone in dissolution that removal no longer constitutes the crime of violation of sepulchres (see *H M A v Coutts*, 1899, particularly with reference to the points made with respect to this case in the discussion of the effect of lapse of time above). However, the exact time at which a body crosses the line from being one worthy reverential treatment to one which is not is not the subject legal rules, but is an issue of fact to be determined in each case, so no precise guidance can be given on this particular matter.

### **Human Remains outwith recognised burial grounds or graveyards**

It will have been noted that the above discussion is concerned primarily with human remains which are in areas which we accepted burial places either at the time when the relevant case was decided or at some time prior to the decision. However, what is the situation when the remains in question are not in such an area, but have clearly been left where the person died or were buried in private ground.) The answer may not be significantly different from the position discussed above. There is, in law, no distinction between formal burial grounds and other places where bodies are buried. Consideration of nuisance and public health aside anyone has the right to devote for the purposes of burial part of any ground which they own. Furthermore, the basis which both the civil and criminal law are founded appear to the securing of the proper and reverential treatment of human remains, and there is no reason for suggesting that this do not or should not apply where human remains are outwith what would generally be recognised as burial places. Thus, *H M A v Coutts*, 1899, Lord McLaren defined the crime violation of sepulchres as being ‘the act of disturbing a body which is in a condition to be regarded as an object of reverential treatment’, without making any reference to that body presence in a burial ground.

There is no authority of which the writer is aware concerning the disinterment of a body outwith a recognised burial ground, and accordingly the position cannot be stated with any certainty there are obviously some different considerations which might apply in such cases, such as the difficulty which would arise in respect of the identification of the human remains. Nonetheless, it would be surprising if the considerations served to make different rules applicable to different human remains dependent on what is ultimately a fairly arbitrary distinction between the different places where they were found.

### **The removal of tombstones and other memorials**

Tombstones and similar memorials are almost certainly what are known in law as ‘fixtures’. The general principle, unchanged for over 300 years, has been stated as follows: ‘It is a rule in the Roman law, which we follow, in *inaedificatum solo cedit solo*; for thereby all buildings of houses, walls, dykes etc. and generally all things fixed to the ground or walls are accounted as part of the ground.’ (*Stair 11, i, 38*). In other words, a fixture is something which has lost its independent moveable status through its attachment to heritable property.

There are a number of criteria which determine whether or not something is or has become a fixture, and as a general rule these are likely to be satisfied by tombstones and similar memorials. However, it should be pointed out that this is only a generalisation and of course individual cases may have different consequences. This is not the place for a full discussion of the various issues concerned, but a discussion of them will be found in Carey Miller, chapter 3.

Ownership of tombstones or memorials will therefore vest in the owner of the land to which they are attached. In cases where they are not fixtures, ownership will probably remain vested in the person who purchased and erected them or their heirs. However, in either case, the consequences of interference with tombstones or similar memorials without the owner’s consent are likely to be the same.

In terms of the civil law, anyone so interfering may be prohibited from doing so by an interdict granted by the Court on the application of the owner. Further, if the tombstone or memorial was actually removed, an action for its return would be competent and compensation would be payable to the owner in respect of such matters as any damage caused to it and the costs of replacing it in its original position. The removing of a tombstone or memorial without consent may well result in a criminal prosecution for theft against

those removing it, or in cases where it is simply damaged, those causing the damage may be liable for prosecution for malicious mischief or vandalism.

### **Grave goods and personal effects**

It could be argued that goods and personal effects buried with a corpse remain, at least for some time, the property of the deceased's heirs. It is suggested that the better view, however, is that these items fall into the category of abandoned goods (into which category they would also fall even if the first view offered is correct, after the passage of the appropriate time or if no heirs can be traced). In law, these items would therefore fall into the ownership of the Crown. 'So with us treasure in the earth, whose proper owner cannot be known, are not his in whose ground they are found nor the finder's but belong to the King.' (Erskine, 11, i, 2). In the leading case on this subject, an expedition from the University of Aberdeen had located valuable antiquities on St Ninian's Isle in Shetland, which were held to fall into the ownership of the Crown (Lord Advocate v University of Aberdeen and Budge, 1963).

It follows from this that, as with tombstones and memorials, those attempting to remove them without the Crown's consent could be interdicted from doing so. An action for recovery would lie if the goods were actually taken, and similar action for damages could be raised in appropriate circumstances. Equally, the same criminal prosecutions as could be brought in respect of the removal of, or damage to, personal effects found during an excavation.

However, it should be noted that statute does provide a specific procedure which is now to be followed when abandoned property is found. Readers are referred to the Civic Government (Scotland) Act 1982, sections 67-79, for the detailed provisions governing this matter. Briefly, the Act provides that any person taking possession of any property without the authority of the owner in circumstances which make it reasonable to infer that the property has been lost or abandoned shall take reasonable care of it and shall, without unreasonable delay, deliver the property or report the fact that he has taken possession of it to the police or other specified persons, giving a description of the property and information as to where it was found. The functions of the Chief Constable are then set out in some detail in the Act, but one of them is to make appropriate arrangements for the care and custody of the property. If the property is not claimed within the statutory time limit (two months, or shorter if the goods in question cannot be kept conveniently for such a period), the Chief Constable may decide to give them to the finder or grant him some form of reward. If it is the former, the finder will become the owner subject to the previous owner's right to recover possession of the property as owner within one year after it was handed over to the finder. Failure to report the find, without reasonable excuse, could lead to a fine of £50.

### **Conclusion**

As the above discussion should illustrate, there are considerable complexities and areas of doubt in this particular branch of Scots law. Those wishing to know their rights and obligations in this sphere are not assisted by conflicting judicial dicta and cases which, while citing the recognised formulae, do not seem to apply them particularly rigorously. An overview of the cases would appear to suggest that the crucial factors in most are the attitudes of the relatives of the deceased and the owner of the land in which the remains are situated. However, particularly in the criminal sphere, to lay too much stress on only one factor is to grossly oversimplify the law. In particular cases, legal advice linked to the particular circumstances should be obtained if breaches of the rules discussed above are to be avoided.

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