MUSEUM OF ARCHAEOLOGY AND ANTHROPOLOGY

MANAGEMENT COMMITTEE

SUB-COMMITTEE ON REPATRIATION OF ARTEFACTS

REPORT
Executive Summary

The Sub-Committee was established to advise the Committee of Management of the Museum of Archaeology and Anthropology (MAA) and Trinity College, Cambridge, on a request by Mr David Shoebridge M.L.C. and Mr Rodney Kelly for return of four spears taken from the Gweagal people of New South Wales by Captain James Cook and his crew in 1770, now part of the Cook-Sandwich collection which the Earl of Sandwich gave to Trinity College, Cambridge, and held in the MAA.

The Sub-Committee has considered the request in the light of its supporting documentation, an evaluation by the Curators of the MAA, and the views of outside experts, including an elder of the La Perouse Aboriginal community living in the area from which the spears originated and a member of the Gweagal Families Group.

Having deliberated, the Sub-Committee recognised the great significance of the spears, not only to the Gweagal people, but to all Australian citizens, and indeed anyone who is interested in Australian culture and history. It regarded it as very important to continue to cultivate strong cultural links and exchanges with indigenous Australians, particularly members of the Gweagal people, in relation to the spears, as well as to take steps to continue to increase the accessibility of the spears to everyone for whom the artefacts are culturally, historically, and educationally significant.

Nevertheless, the Sub-Committee has concluded that at present these objectives can best be fostered while retaining the spears in the Cook-Sandwich Collection in Cambridge, because (i) the request contains no clear proposal for housing and conserving the spears if they were to be returned, (ii) there is no commitment by a competent Australian institution to care for the spears, (iii) removing parts of the Cook-Sandwich collection, which is of great historical, scientific and educational importance nationally and internationally, would cause considerable harm by depriving the collection of its integrity; and (iv) it is very important that any request for a change to the current situation of the spears should be made only after full consultation with accredited representatives of the Gweagal people, and on terms which command their support.

The Sub-Committee therefore advises that Trinity College should not accede to the request.
I. The receipt of the request for repatriation and the Sub-Committee’s establishment

1. By letter dated 1 November 2016 sent to Professor Nicholas Thomas, Director and Curator of the Museum of Archaeology and Anthropology (MAA), Mr David Shoebridge M.L.C., acting on behalf of Mr Rodney Kelly, requested the repatriation of spears held in the MAA’s collection to the Gweagal people of New South Wales. The artefacts are:

   D.1914.1 Four-pointed fishing spear, 138.4 cm;
   D.1914.2 Three-pointed fishing spear, 132 cm;
   D.1914.3 Three-pointed fishing spear, 138 cm;
   D.1914.4 Hunting or fighting spear, 153 cm.

2. Three of the spears are fishing spears; the fourth is a lance, which would have been used both for hunting and as a fighting spear. The four spears are part of the Cook-Sandwich Collection, consisting of items which Captain James Cook collected from many parts of the Pacific Islands and Pacific Rim, and documented, during his first voyage there between 1768 and 1771. On his return to England, Captain Cook gave this collection to the Earl of Sandwich, his patron at the Admiralty. The Earl of Sandwich passed about 100 items, with an inventory, to Trinity College, Cambridge in October 1771, for educational and scientific purposes. The inventory is held in the Wren Library in Trinity College. The College transferred the artefacts for exhibition to the MAA in two phases, in 1914 and 1924.

3. The MAA has curatorial responsibility for the collection, which remains the property of Trinity College. Professor Thomas therefore informed the College and the MAA’s Management Committee of the request. At a meeting on 2 November 2016, having consulted Trinity College, the Committee resolved to establish a Sub-Committee to consider the request for repatriation in accordance with the MAA’s published procedure for requests for repatriation, and to advise the Committee and, if requested, Trinity College. Trinity College, by its Librarian, Dr Nicolas Bell, in due course stated that it would be glad to receive the Sub-Committee’s advice. By subsequent email circulation, the Committee on 23 November 2016 agreed the membership and Terms of Reference of the Sub-Committee.

4. The Sub-Committee met for the first time on 16 January 2017. We received and considered the request with its supporting documents. In accordance with the MAA’s published Guidelines for Consideration of Requests for Return of Cultural Property, available in the Internet at http://maa.cam.ac.uk/guidelines-for-consideration-of-requests-for-return-of-cultural-property/ (hereafter ‘Guidelines’), we also received and considered written advice from the MAA’s curators. We were very conscious of the sensitivity of the matters to which the request related, and wished to ensure that we received appropriate advice as to the views of recognised representatives of the Gweagal people regarding both the substance of the request, and the standing of Mr Kelly in respect of the spears to which the request related. We therefore sought comments from a number of...
people, and were greatly assisted by extremely helpful and illuminating responses from Dr Shayne Williams, of the Gweagal Families Group, an elder of the La Perouse Aboriginal community living in the area from which the spears originated, and Dr Maria Nugent, Research Fellow in the Australian Centre for Indigenous History at the Australian National University. We record our immense gratitude to everyone who has put their expertise and experience at our disposal. It has helped us to understand the aspirations and sensitivities which surround difficult issues relating to matters of cultural heritage in this particular context.

5. We held meetings on 16th January and 19th April 2017, after which we deliberated on and agreed our report by email circulation.

6. Throughout our work, we have had at the forefront of our minds the ten questions listed in section B of the Guidelines:

1. If the request concerns one or more objects from a collection, what will be the effects on that collection as a whole?

2. What is the importance of each item, assessed in terms of
   a. General cultural and historical significance
   b. Reasons for return (cultural, historical, sociological, political)
   c. Rarity
   d. Reasons for retention
   e. Possible alternatives (eg substitution of a copy, or another object, from this or another museum)?

3. How was the object collected/excavated and acquired by this Museum? How does this compare with established practice and legal requirements, both now and at the time of acquisition?

4. What is the status of the body or individual making the request? Is there any direct relationship between this body or individual and the object or objects in question?

5. What is the standing and competence of the institution, if any, where the object would be kept?

6. How would the object’s availability for study be affected if it were returned? Are there implications for its documentation?

7. What action can this Museum take to foster links with the applicant institution and/or the country concerned?

8. Are there any constraints, legal or otherwise, on its removal from this Museum’s collections?

9. If the object is to be returned, is it to be a gift, exchange, or loan?

10. What are the implications, if any, vis-à-vis the Museum’s agreed disposals policy?

7. Nevertheless, this report does not address the questions in that order; instead, we deal with them in the order which seems most appropriate in the light of the particular circumstances of this request.
8. We append the following papers to this report:
   a. the terms of reference and membership of the Sub-Committee (Appendix 1);
   b. the request (Appendix 2);
   c. the Curators’ evaluation (Appendix 3);
   d. correspondence with Dr Maria Nugent (Appendix 4);
   e. correspondence with Dr Shayne Williams (Appendix 5);
   f. minutes of the Sub-Committee’s meetings (Appendix 6).

II. The acquisition and the cultural and historical significance of the spears

9. We recognise that the spears are of particular cultural and historical significance to the Gweagal people, and more broadly to all indigenous Australians and the Australian public as a whole, both because they are exceptionally rare examples of artefacts of a type commonly made and used by the Gweagal people in 1770, and because of the way they represent a unique and momentous event. The occasion in 1770 on which they were removed by Captain Cook was the first recorded encounter between east-coast Australians and Europeans.

10. It was not an amicable encounter. According to the contemporaneous accounts contained in journals kept by Captain Cook, the naturalist Joseph Banks, and other members of the expedition, their ship, the Endeavour, arrived at Botany Bay on 28 April 1770. A party attempted to land, and were resisted by Gweagal warriors, who threw spears at them. Members of the landing party used firearms in response. One Gweagal man was injured, and they all withdrew, leaving behind weapons. The landing party explored and found an empty camp from which they removed spears and other artefacts without the consent of the Gweagal people, although they left some ribbons and trinkets by way of compensation. The four spears now in the MAA were among the artefacts removed.

11. It is impossible to compare this method of acquisition with ethical methods of acquisition of artefacts by museums at the time, because (as explained below) the collection was unparalleled at the time; it is probable that no extensive, systematic, documented collection of artefacts from non-European societies by European collectors had ever before been assembled. The lawfulness of the acquisition at the time is hard to assess, since we have no information about the rules which operated at the time among the Gweagal people about taking of weapons following armed confrontation, and the state and applicability of English law and public international law as they applied in 1770 is sufficiently uncertain to make it an unsafe basis for our consideration. The spears were taken without the consent of Gweagal people, and today would be treated as having been unlawfully taken under the law of New South Wales (which, of course, did not exist in 1770).

12. On 11\textsuperscript{th} October 2016, the Australian Senate agreed to a motion (proposed by Senator Rachel Siewart, a Whip for the Green Party) which asserted that the Gweagal people and their descendants “are the rightful and lawful owners of all artefacts produced on their territory, including the shield and spears held in the British Museum and the Cambridge Museum of
Archaeology and Anthropology”. The Gweagal people, however, are not a legally constituted corporate group, a fact which casts doubt on the claim. Furthermore, the Government of Australia does not accept it. Senator James McGrath, Assistant Minister to the Prime Minister of Australia, speaking on behalf of the Government, while recognising and acknowledging “the strong connection of these artefacts to the Gweagal people of New South Wales”, stated, “Australian law recognises the legal title of the … Cambridge Museum of Archaeology and Anthropology to these artefacts”. See Senate Hansard, 11th October 2016, p. 37. (For reasons explained above, paragraph 2, references to the MAA in Senator McGrath’s remarks, and also in the motion proposed by Senator Siewart, should have been to Trinity College, Cambridge.)

13. In these circumstances, we do not consider that it is helpful to consider the law, or modern museum practice, as a guide in relation to the request for return of these implements.

14. The spears are, at one level, merely a group of everyday implements, and probably were not out of the ordinary at the time they were made. From today’s perspective, however, the group of spears is likely to be unique: they are probably the earliest indigenous Australian artefacts to survive today (although it is possible that a shield, currently in the British Museum, may have been acquired on the same occasion). The circumstances in which they fell into the hands of Captain Cook did much to set the tone for subsequent, difficult relations between indigenous Australian and British visitors to and settlers in Australia. Nevertheless, there is irony in the fact that, as Dr Williams noted in his letter to us, the spears would almost certainly not have survived had the landing party from Endeavour not removed them from Australia. If they were to be lost or destroyed, they would be irreplaceable.

15. In these circumstances, we recognise that the spears are of immense historical and cultural significance to the Gweagal people today, because they are some of the earliest artefacts forming part of their cultural heritage to have survived to the present day, and as relics of an historic occasion which was the precursor to immense social and cultural upheavals and difficulties which affected the lives of their ancestors and themselves. The symbolic, cultural and historical importance of the spears to modern Australia as a whole is reflected by the keenness of Australian museums in recent decades to arrange for their loan for major exhibitions, and by the enthusiasm with which Australian scholars and students visit Cambridge to see and work on items forming part of the Cook-Sandwich collection at Trinity College and in the MAA.

16. For scholars, students, and other people outside Australia with an interest in Australian history and culture, the Cook-Sandwich collection, and the spears within it, are of great importance, in three ways. First, from the perspective of European ethnography, the spears are, as the Curators write in their evaluation, “at present the only objects known definitely to have been collected from any part of Australia during any of Cook’s voyages; they are also apparently the first artefacts collected from Australia by any European, that remain documented today”. Thus they are a major landmark in the history of European exploration and ethnography. Secondly, the collection as a whole has “exceptional historical significance as the only collection of artefacts collected during Cook’s first voyage accompanied by early documentation. The selection of pieces was deliberate and representative of the places visited; the collection, by a considerable margin the largest known from the first voyage, is a coherent historical formation in its own right, rather than simply a group of individual specimens”. This makes the Cook-Sandwich collection as a whole of great historical and scientific importance. Thirdly, the
presence of the collection, and of the spears within it, in Cambridge is of considerable value to
scholars, students and the general public in the northern hemisphere who visit the MAA to
understand something of the culture and history of indigenous Australians.

17. We conclude that the spears are of immense cultural and historical significance to the Gweagal
people and to Australians generally, and to anyone interested in Australian history and culture;
whilst the Cook-Sandwich collection as a whole, and the spears as an integral part of it, are of
immense historical, cultural and ethnographical importance to people everywhere.

III. Reasons for returning the spears

18. In the light of section II, above, we consider that the strongest reason for returning the spears is
the cultural and historical importance of the spears to the Gweagal people and to Australians in
general. Easier accessibility to the spears for Australians would be culturally and historically
beneficial for them. Every people and nation has a legitimate interest in curating and
celebrating emblematic artefacts representing its identity and cultural heritage.

19. When dealing with artefacts as culturally and historically significant as the spears, however, it is
important to ensure that they are dealt with in a way that respects the collective views of the
Gweagal people and of Australians, so far as they can be ascertained. Mr Kelly, in support of his
request, provides a good deal of information about his own relationship to one Cooman, a
member of the group of Gweagal warriors who confronted Captain Cook in April 1770. We are
not able to verify or disprove Mr Kelly’s claim to be a descendant of Cooman. In relation to the
identification of Cooman as one of the people who faced Captain Cook’s landing party, and
related matters of genealogy, we have received very helpful advice from Dr Maria Nugent, of the
Australian National University, whose letter to us is attached (Appendix 5). Even if Mr Kelly’s
descent could be firmly established, Mr Kelly does not claim to be an accredited representative
of the Gweagal people. As noted in paragraph 4, above, we therefore sought advice from Dr
Shayne Williams, whose credentials as a representative of the Gweagal people are explained in
his letter to us (Appendix 4).

20. Bearing in mind the significance of the spears, Dr Williams’s view, expressed in his letter, is that,
in an ideal world, if they were to be returned, they should be held, under a binding agreement,
in perpetuity by a recognised museum in Australia. Mr Kelly’s request suggests that the spears
might be exhibited at a site at Kurnell, as close as possible to the location of the encounter in
April 1770, or alternatively held at the Australian Museum in Sydney. Dr Williams, on the other
hand, points out that no arrangements are in place to fund and build a museum at Kurnell, that
nobody has come forward to take responsibility for caring for the spears and protecting them
against illegal appropriation, that consideration would have to be given to the question of
ownership of the spears (not least in order to avoid disputes between different families
descended from the Gweagal population of 1770), and that Kurnell might not be an easy place
for people to access.

21. As to the possibility of the spears being held by the Australian Museum, we understand that no
formal approach has been made to establish whether the Museum would be able or willing to
care for and exhibit the spears, should they be sent to Australia.

22. Dr Williams’s view is that, as matters currently stand, the most useful focus for efforts would be
to find ways of building on the arrangements which have been made in the past for indigenous
Australians to study the artefacts at close quarters. This need not involve sending the spears to Australia (although they have been exhibited there on loan). Dr Williams wrote, “... we should be exploring opportunities for cultural exchange and partnership with Trinity College. Trinity College, the British Museum and undoubtedly other educational institutions within Britain could consider ways of participating in cultural scholarship in partnership with Australian universities so that learning access becomes less of an issue. This in turn may create greater space for the matter of repatriation to be considered closely and carefully over time”.

23. Looking at the interests of Australians as a whole, there is some evidence that representative institutions would support the repatriation of the spears. Mr Kelly included with his request the texts of two motions supporting the request, moved in and, we understand, passed by the Legislative Council of the Parliament of New South Wales and the Senate of the Australian Commonwealth Parliament respectively. We note that these resolutions do not have legal force, but they demonstrate support in representative chambers for the request. On the other hand, we note that the policy of the Government of the Commonwealth of Australia, which is constitutionally responsible for representing the Commonwealth of Australia internationally, is to support requests for repatriation from abroad of human ancestral remains and associated notes and data, but not artefacts (although it supports return of secret sacred objects to communities within Australia from other parts of Australia, and does not seek to prevent or discourage communities from engaging in discussions with foreign institutions concerning artefacts held abroad): Department of Communications and the Arts, Australian Government Policy on Indigenous Repatriation, September 2016, pp. 5-6; and, in relation to the spears to which Mr Kelly’s and Mr Shoebridge’s request relates, Senator McGrath’s statement on behalf of the Government of Australia, Senate Hansard, 11th October 2016, pp. 37-38.

IV. Reasons for retaining the spears

24. The main reasons for retaining the spears, as outlined in the advice tendered by the Curators of the MAA, are of three kinds.

25. First, the integrity of the collection as a whole is of great importance scientifically, historically, culturally, and educationally. As noted above, the spears are a part of a larger collection, made by Captain Cook and his crew during the 1768-1771 voyage, which as a whole marks an historically and culturally important stage in the development of systematic, scholarly study of non-European civilisations by European scientists. The individual items in the collection are important in themselves, but the collection as a whole has an importance greater than the sum of its parts. It is an historical record of a remarkable development in ethnographic study by Europeans in the second half of the eighteenth century. When held in an institution where it can be appropriately curated and made available to scholars and other interested people from all parts of the world for study and appreciation, it facilitates, in one place, understanding of many civilisations, and of the scientific and intellectual environment in which study of different civilisations took place at the time when the collection was made. These opportunities for study and understanding would be significantly reduced if individual pieces of the collection were to be removed and relocated.

26. Secondly, no arrangements are in place for housing and looking after the spears, or for making them accessible to interested Australians and scholars more generally, were they to be sent to Australia now. The spears are fragile, susceptible to damage, and require expert care on a
continuing basis. It would be irresponsible to send such important cultural artefacts away without clear, enforceable standards for their custody being in place, and without suitable resources and practical arrangements for caring for and safeguarding them.

27. Thirdly, the cultural importance of the spears to the Gweagal people makes it important that, if the spears were to be sent to Australia, the identity of the recipient and the responsibility for care of and accessibility to them after their arrival should be acceptable to the indigenous community, as mediated through the community’s recognised representatives. The letter from Dr Williams, who is such a representative, tells us that no acceptable arrangements or resources (or clear plans) are yet in place, and that in these circumstances the best course of action would be to concentrate on encouraging arrangements whereby Trinity College can further develop co-operative activity between indigenous Australians and the College. Examples might include study visits by indigenous Australian scholars and students, and exploring possibilities for loan, including longer-term loan, to appropriate institutions, following up the loan to the National Museum of Australia over 2015-16. We note that Senator McGrath, addressing the Australian Senate on 11th October 2016 on behalf of the Government of Australia, said, “It is encouraging to see institutions such as the National Museum of Australia working with UK museums to create new opportunities for access to the significant Indigenous objects held in these collections.” (Senate Hansard, 11th October 2016, p. 37.) We respectfully agree.

V. Our view as to the appropriate response to the request

28. Taking full account of all these considerations and the helpful information and advice contained in the request, the Curators’ assessment, and communications from Dr Williams and Dr Nugent, we have come to the firm conclusion that Trinity College should not accede to the request by Mr Kelly and Mr Shoebridge M.L.C.

29. We recognised that the spears are artefacts of significant importance not only to the Gweagal people, but to all Australian citizens, and indeed anyone who is interested in Australian culture and history. We regard it as very important to continue to cultivate strong cultural links and exchanges with indigenous Australians, particularly members of the Gweagal people, in relation to the spears, as well as to improve the future accessibility of the collection, in order to increase the accessibility of the spears to everyone for whom the artefacts are culturally, historically, and educationally significant. At present, however, we have come to the conclusion that the enterprise can best be fostered while retaining the spears in the Cook-Sandwich Collection in Cambridge, because:

a. there is no clear proposal for housing and conserving the spears if they were sent to Mr Kelly, and no commitment by a competent Australian institution to care for the spears;

b. removing parts of the Cook-Sandwich collection, which is of great historical, scientific and educational importance nationally and internationally, would cause considerable harm by depriving the collection of its integrity; and

c. it is very important that any request for a change to the current situation of the spears should be made only after full consultation with accredited
representatives of the Gweagal people, and on terms which command their support.

30. We therefore:

a. advise Trinity College that, in our respectful view, the College should not accede to the request by Mr Kelly and Mr Shoebridge M.L.C.; and

b. report accordingly to the Committee of Management of the Museum of Archaeology and Anthropology.
APPENDIX 1

Sub-Committee’s Terms of Reference

1. The Sub-Committee shall consider the request for repatriation of the spears currently held in the Museum, and shall advise the Management Committee and, if requested, Trinity College, Cambridge on the most appropriate response.

2. The Sub-Committee shall report as soon as possible.

3. In formulating its advice, the Sub-Committee shall have regard to the desirability of maintaining a consistent approach, so far as possible, to requests for repatriation across Collegiate Cambridge.

4. The Sub-Committee may co-opt additional members as it considers appropriate, and may take external advice, subject in each case to availability of funds to cover any resulting costs.

Sub-Committee’s Membership

Professor Cyprian Broodbank (John Disney Professor of Archaeology and Director of the McDonald Institute for Archaeological Research, University of Cambridge)

Dr Nicolas Bell (Librarian of Trinity College, Cambridge)

Professor David Feldman (Rouse Ball Professor of English Law, University of Cambridge, and Chair of the Management Committee of the Museum of Archaeology and Anthropology), Chair of the Sub-Committee

Mr Tim Knox (Director and Marlay Curator of the Fitzwilliam Museum, University of Cambridge)

Professor Joel Robbins (Sigrid Rausing Professor of Social Anthropology, University of Cambridge)

Mr David Parsons (Deputy Head of Legal Services, University of Cambridge)

Ms Sarah Collins (Communications Officer, External Communications, University of Cambridge)

In attendance:

Mrs Felicity Eves-Rey, Secretary of the Sub-Committee

Professor Nicholas Thomas (Professor of Historical Anthropology, and Director and Curator, Museum of Archaeology and Anthropology, University of Cambridge)
APPENDIX 2

THE REQUEST
Dear Professor,

RE: Request for the return of the Gweagal Spears

Please find enclosed a request for the repatriation of spears held in your Cook Collection to the Gweagal people of Sydney, Australia. The request is made on behalf of Mr Rodney Kelly, a direct descendent of the warrior Cooman from whom these spears were taken. Mr Kelly makes this request on behalf of the Gweagal people.

If you wish to discuss this request further you can reach my office on +61 2 9230 3030 or david.shoebridge@parliament.nsw.gov.au

Mr Kelly can also be contacted directly at rkelly77@gmail.com or +61 421 243 148.

Thank you for your consideration of this matter.

Yours sincerely,

David Shoebridge,
NSW Greens MP and Aboriginal Justice Spokesperson
Submission to the Museum of Archaeology and Anthropology, University of Cambridge on behalf of Mr. Rodney Kelly

1 November 2016
A. Artefacts being claimed

This submission seeks the return of artefacts held by the Museum to their traditional, and continuing, owners, the Gweagal people of the Dharawal tribe. The artefacts in question are spears that were taken without consent or legal authority by Captain Cook and his party during their first landing at what is now known as Botany Bay, 28 April 1770. The four surviving spears have bone points. Two of the spears have three prongs and one has four prongs. The fourth spear is "a single shaft with a hardwood head". The Garara (fishing spears) are now held by the Museum of Archaeology and Anthropology, University of Cambridge.

B. Genealogy

The artefacts are being claimed by Mr Rodney Kelly, a Gweagal man from the Dharawal tribe of South Sydney, New South Wales, Australia. Mr Rodney Kelly is the direct descendent of the warrior Cooman from whom the spears, together with a shield that is now held at the British Museum, were taken.

Mr Kelly was born 18 November 1977 in Bega, NSW to Barry Kelly and Joy Thomas. Mr Kelly’s mother, Joy Thomas, is the great-great-great granddaughter of Elizabeth Cooman. This is shown on a family tree, prepared for Ms Thomas in 2012, by NTSCORP, the Native Title Service Provider for Aboriginal Traditional Owners. The Registrar of Births, Deaths and Marriages 1788-1905 NSW Volume 125 shows a child named Elizabeth Cooman was born to a father named Cooman and a mother named Nelly O.L. in the year 1821.

Cooman, the father of Elizabeth Cooman, had two wives with whom he fathered children. One being Nelly O.L. (Nah Doongh) and the other being Biddy Coolman (Cooman). This is evident in an 1840-1849 (approx.) illustration by P.H.F. Phelps titled ‘Australian Aborigines’ which depicts Cooman with two women, thought to be his two wives.

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2 Cambridge, University Museum of Archaeology and Anthropology, Cook Collection, UCMAAD, 1914, pp. 1-4.
3 See annexure A.
4 See annexure B.
We assert that Cooman, the husband of Nelly and Biddy, is the descendant of warrior Cooman from whose the shield and spears were taken. This is evident in primary sources collated by historian Keith Vincent Smith in his contribution to the *Lines in the Sand*.

In 1901, in a letter to the editor of the *Bulletin*, A.G. Stephens, Mary Everitt, refers to a Biddy Giles (the now remarried Biddy Cooman) whose husband, “Old Cooman or Coomung” was a “tiny child when Capt. Cook came”7. This is corroborated by a letter to William Houston in 1905, in which Richard Longfield recounts the oral history of the first landing in Botany Bay, as told earlier to him by Biddy Coolman (Cooman)8. In this oral history Biddy identifies the spearman as Cooman, the grandfather of her husband, also known as Cooman9. Death certificates show that Biddy and Nelly’s husband Cooman died in Liverpool in 185610.

We submit that primary sources, oral history and legal documents together demonstrate that Mr Rodney Kelly is a direct descendant of the warrior Cooman.

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9 Ibid, pg. 16.
C. Basis of Claim

According to traditional Dharawal law, it is culturally and spiritually imperative that artefacts from Dharawal country, remain on Dharawal country as they form part of the continuing story of that place. For the Gweagal people ‘there is a cultural philosophy behind the making of the spear’\(^{11}\) that connects them with culture and country.

Dharawal man, Michael Ingrey, speaks of the significance of the shield and spears in the Encounters exhibition catalogue where he describes the artefacts as a connection to traditions that pre-date colonisation and provide Indigenous communities with ‘strength in an identity’ prior to first contact\(^{12}\). To the Gweagal people these artefacts are national treasures that ‘represent a whole history of this country’\(^{13}\).

The shield and spears are of significance not just to the Gweagal people but to Indigenous communities across Australia as they represent Aboriginal resistance to the destruction of culture and community following invasion and colonisation\(^{14}\). The ability for Aboriginal communities to tell the story of first contact on their own terms and in their own words, with their own artefacts may help in the healing and reconciliation process. To the extent that they are available, artefacts form the time and point of first resistance, are unique and essential to Aboriginal people’s narrative of resistance and survival.

We acknowledge that while the artefacts may be of scientific, educational and historical value to Cambridge University and to the British public this cannot be validly compared to the interests of the Gweagal people. Artefacts created by and for Indigenous communities unquestionably have greater value within those communities than in any external cultural institution. To the extent the broader British people have an interest in the artefacts, this is acknowledged and respected. It is not however determinative.

The artefacts are also of immense educational and historical value to the Australian public as they are evidence of the nature of Aboriginal Australia’s first contact and first resistance. The landing of Captain Cook at Botany Bay in 1770 is a moment of historical significance to the Australian public and to Australia’s Indigenous communities alike. It foreshadows the arrival of the First Fleet in 1788 and the subsequent invasion and colonisation of Australia. It is an important part of the process of

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\(^{12}\) Ibid, pg. 49.

\(^{13}\) Ibid, pg. 50.

\(^{14}\) Ibid.
decolonisation that artefacts collected by imperial powers are returned to their traditional, rightful and lawful owners. Allowing the artefacts to be returned to the traditional owners, who will then be in a position to co-operate with an Australian museum so that they are accessible to the Australian public and Indigenous communities, will aid in the process of reconciliation.

D. How the artefacts were originally removed and acquired

First contact between colonialists and Australia’s first peoples was made on the shores of what is now known as Botany Bay on 29 April 1770. The diaries of Captain James Cook, Joseph Banks and Sydney Parkinson, all of whom were aboard the Endeavour for its first Pacific voyage, detail first contact and the collection of the artefacts in question.

Captain James Cook writes of landing in Botany Bay in Volume I of his journals15. Cook describes how he fired with a musket at two Aboriginal men on the shore and how one of the men ‘lay hold of a Shield or target to defend himself’16.

Joseph Banks writes of the encounter in his Endeavour Journal, referring to the men being ‘armed with long pikes and a wooden weapon made something like a short scymetar’17. Banks further writes of:

A man who attempted to oppose our Landing came down to the Beach with a shield of an oblong shape about 3 feet long and 1¼ broad made of the bark of a tree; this he left behind when he ran away and we found upon taking it up that it plainly had been pierced through with a single pointed lance near the centre.18

The diaries of Sydney Parkinson contain a drawing by the author titled ‘Two of the Natives of New Holland, Advancing to Combat’19 which depicts two Aboriginal men, one of whom is carrying a shield which resembles the Gweagal shield and the other who carries a spear resembling those in question. Parkinson’s diary suggests this shield is the Gweagal shield as it is described as ‘a shield, of an oval figure, painted white in the middle, with two holes in it to fee through’20. Parkinson also writes that this shield, ‘lances’ and other weapons were taken by the crew of the Endeavour when they left21.

16 Ibid., p. 305.
20 Ibid.
21 Ibid.
Cook further writes in volume 1 of his journal how after he had ordered musket fire upon the two Aboriginal men who resisted his landing and who threw two "darts" (read spears) at his landing party that he advanced up the hill where:

"We found here a few small huts made of the bark of trees in one of which were four or five small children with whom we left some strings of beads etc. A quantity of darts lay about the huts these we took away with us."

At no time does any party assert that the spears or other artefacts were given as part of a quid pro quo or that any relevant permission was sought or obtained for their removal by Cook. It is a basic tenet of the common law, and was as at 1770, that a person who does not own property cannot confer it on another except with the true owner's authority. This is a principle that was inherited in the common law from Roman law as expressed in the term "nemo dat quod non habet."

The historical facts that underpin the acquisition of the artefacts is a non-contentious issue. The Museum of Archaeology and Anthropology, University of Cambridge website states that these artefacts were collected within an hour of Cook's first landing in Botany Bay and are the first Aboriginal artefacts known to have been collected by colonialists.

Mr Kelly asserts that the Gweagal people did not intend to relinquish possession of these artefacts by leaving them on the ground, which was common practice, as in indigenous traditional culture there is no concept of theft. This assertion is fully supported by the historical record.

At common law Cook did not have legal title to the artefacts which he took without permission or consent from the Gweagal people. Not having good title in the first place Cook and his party were unable to grant good title to any purported successor in title. This includes the Museum of Archaeology and Anthropology.

The Gweagal people, and Mr Rodney Kelly, therefore remain the rightful and lawful owners of the shield and spears as there was no permission granted for them to be taken.

E. The future of the artefacts if returned

Arrangements are advanced to have the Australian Museum house the spears should they be returned to Australia. The artefacts will as such be housed in an appropriate manner with respect to

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their age, fragility and historical significance but will be made accessible to the Australian public and Indigenous communities by way of a public display. The Gweagal people have expressed their desire to display these artefacts as a celebration of their culture. Arrangements are also proposed for the secure and respectful display of the artefacts on country, on the site of their initial removal.

F. Policy of the country of origin

The Australian government has made a commitment to recognising ‘the value and importance of preserving, revitalising and strengthening Indigenous culture’ as a means of reconciliation and healing past traumas. The objectives of the Australian government’s policy on Indigenous repatriation broadly are to address ‘the injustice of Australia’s shared past’, to empower Indigenous communities and to ‘recognise Indigenous communities as the focal point for Indigenous repatriation’.

The Australian government’s policy in regard to the repatriation of Indigenous cultural artefacts is underpinned by two international legal instruments relating to Indigenous cultural heritage to which Australia has assented.

The Declaration on the Rights of Indigenous Peoples Article 12 states that "Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains." Further to that the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions provides a framework for the preservation of Indigenous cultural heritage under which the Gweagal shield and spears fall.

All levels of Australian government have reflected this commitment to reconciliation processes through their support for the return of the Gweagal shield and spears. On August 24, 2016, NSW State Parliament unanimously supported a motion calling for the return of the Gweagal shield and spears, and recognising the Gweagal people as the rightful and lawful owners of all artefacts produced on their territory. On October 11, 2016, the Australian Federal Parliament supported a

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34 National Museum of Australia (2015), Encounters: Revealing Stories of Aboriginal and Torres Strait Islander Objects from the British Museum, National Museum of Australia Press, pg. 52
38 See annexure E.
motion supporting the repatriation of these important artefacts to the Gweagal people and asked for diplomatic assistance to be extended to Mr Kelly on his trip to England. On October 12, 2016, Bega Shire Council supported a motion supporting the return of the Gweagal shield and associated artefacts and recognising the work of local resident Rodney Kelly in the campaign for their return. On October 24, 2016 Sutherland Shire Council supported a similar motion.

Yours Sincerely,

David Sheehan

NSW Greens MP and Aboriginal Justice Spokesperson

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29 See annexure F.
References


Cambridge, University Museum of Archaeology and Anthropology (1914), Cook Collection, UCMAAD.


Annexure A:

Family tree prepared for Ms Joy Thomas by NTSCORP, 14 June 2012
Joy Thomas: ANCESTORS AND DESCENDANTS
Compiled by NTSCORP, 14 June 2012
PH: 02 9310 3188 FAX: 02 9310 4177

THIS GENEALOGY REPRESENTS INFORMATION COLLECTED SO FAR. FURTHER INFORMATION MAY BE DISCOVERED IN THE FUTURE WHICH ALTERS THIS GENEALOGY.

Johnny MCGRAITH
Died: 21 Feb 1923 in Sydney, NSW. BORN: 1856 in Wallaga Lake, NSW.

Peter THOMAS
Died: 10 Aug 1902 in Bega, NSW. BORN: 1855 in Eden, NSW.

Annie MCGRAITH
Died: 21 Feb 1923 in Sydney, NSW. BORN: 1859 in Eden, NSW.

James WIDDY
Died: 21 Feb 1923 in Sydney, NSW. BORN: 1856 in Wallaga Lake, NSW.

William THOMAS
Died: 10 Aug 1902 in Bega, NSW. BORN: 1855 in Eden, NSW.

Mary A:
Died: 7 Jan 1859. BORN: 1856 in Eden, NSW.

Gabbo Ted THOMAS
Died: 24 Apr 1899 in Nowra, NSW. BORN: 1855 in Eden, NSW.

Francine KELLY
Died: 24 Apr 1899 in Nowra, NSW. BORN: 1859 in Eden, NSW.

Janice Marie KELL
Died: 24 Apr 1899 in Nowra, NSW. BORN: 1859 in Eden, NSW.
Annexure B:

Registered Births, Deaths & Marriages 1788-1905, NSW Volume 125.
grazier and Mary Fitzgerald, half-caste of Macquarie River,
Born: 2.1854.
Baptised 21.1.1859 Parish of Dubbo (121/8734)

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**Volume 125**

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**Volume 126**

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Annexure C:

Mary Everitt, Upper Picton, letter to A.G. Stephens, Sydney, 24 June 1901, 2/950a, Hayes Collection, University of Queensland Library, Brisbane.
Annexure D:

Richard Longfield to W Houston, 1905, Archives of Captain Cook's Landing Place Trust, Box 12, Item 141, 2, 6.
Notes of an interview between Mr. Dunsby, one of the trustees of Deptford Foundling House (Kurnell) and Mr. Brownfield, at Kurnell on Sunday, the 22nd of January 1905.

In the course of a leisurely conversation Mr. Brownfield, who is 77 years of age, said he had played about Kurnell frequently when a boy, and knew the place well.

The longfield be pines which stand in front of the trustees' cottage at Kurnell were planted in 1845. Mr. Threlkeld obtained the young trees from the captain of a small sailing vessel, and gave them to the estate of his laycock (Trelawny). The laycock took them to Kurnell in his boat, and the longfield was left him when they were planted just in front of the old cottage which stood on the ground between the present cottage and the trees. The old cottage was built by Capt. Dunsby, an old whaling skipper.

Deptford House constructed a small dock just in front of the northwestern pine tree, and some of the old machinery is still to be seen. He could never keep the dock clear of tar, however.

John Dunsby came to Kurnell somewhere about 1820. He had a grant of land here.
The name Xerxes is not a corruption of "Terr nell", but of its real name of the place "Terr nell", pronounced "Xennel".

The last chief of the tribe whose headquarters were at Xerxes and Bundlenyack, the name signifying "Chief", and being borne by each successive Chieftain, just as each of the ancient Egyptian rulers was called Pharaoh. The Longfield knew him Bundlenyack was an old man, at least 60 years of age. M. Longfield was then 60 or 70 years of age. Bundlenyack died at Xerxes, he was the last member of his tribe. Bundlenyack had no traditions of Capt. Coke's ship; but one of the old women of the tribe whom M. Longfield knew told her father was killed at Xerxes by the bite of a sea serpent in his throat, a the tradition did not come to him through him, but through her uncle, who told her about the landing of Capt. Coke. She said he told her he had when Coke came to lend the blacks went down to meet him, and then "they all ran away! Two fellows stood: Coke shot them in the legs: and they run away too!"

M. Longfield showed his niece a photograph of Johnny Melors, a half-caste of the Coke's River tribe.
Questioned in the president's court, he stated that nothing of the sort of boat-building had ever been able to reverse the natives of the bay except by decimating at the date of the discovery of Botany Bay. He said he saw no error, for he had been many of them in both cases at Jarvis Bay years ago. There was a creek called Berrara Creek, and he had seen the natives go up this creek in their canoes after oysters and spearing fish. He remembers well hearing a great hubbub hubbub one day and wondering what it could be about and presently the two tamaus came paddling their heads following a spear treading upright through the waves at a great speed. They had speared a big fish and had got away with the spear in him. They caught him eventually.

Mr. Stedwards was a Sydney whaler and a good gentleman. Oysters were plentiful at Burnell then, so he came over every Saturday after them.

In those days people coming to Burnell came in a boat fromahaback at the mouth of Cook's River.

Here was an old keel (deed the longfield first saw it) at Jarvis Bay where one of the whaler's surgeons was buried. He longfield did not know.
what became of it.

Mr. Longfield does not remember having seen the tree at Newell which was marked by Capt. Cook. Mr. Newell was born in 1821, and though he had been at Newell ever since he had left the Longfield, never heard him speak of it.

In 1841 "be" (Mr. Longfield and Capt. Duryea?) were digging a stone well. They did not want to carry stone fromagy. There was a shell-bank so be chose just to the southwest of its present home, as they put it near one to dig to shells out and make piece cut. In digging them out he came on a skeleton, almost complete. He broke some of the bones in using the pick, but the skull was perfect. After taking the shells away he buried the bones again, but shortly after that Mr. Longfield went up-country, and he learned from his sister afterwards that Shuttleworth asked for the skull. He said it must be the skull of a man, Sunderland, one of Capt. Cook's crew who was buried there. Mr. Longfield does not know where Shuttleworth ever did get it, but about three years ago he made inquiries from his sister and she said he did. Mr. Longfield does not know what became of Mr. Shuttleworth's family, he is positive that the skeleton was not that of a
black. He saw it himself. The old fellow discovered it, and they went down, and had a look at it. There was a black's camp on the hill just above the place of the fort, and he was asked that blacks could not buy anywhere near a permanent camp. Down at Jerris Bay he has seen a black bury his dead, and they always go right away from the camp for the purpose.

He sat down in front of the cottage a little to the north were there when he was a boy of 16 or 17 years of age, and down in the corner (end of boldt monument) her to was a lump of stone, which was still standing. He does not know how boldt came to put the monument there he did.

When Cornell died, he left his property to his grandson in equal shares and the portion. He Cornell fell to John Laycock, father of John Laycock Turnbull. Turnbull pays the rest of his property in order to purchase the house of Caleb Dexter, and within three months he Dexter was burned down. He had allowed the insurance policy to lapse. He lost everything. He left to mortgage, sold his property to Boldt.

There was an old hut here (to the south of the present cottage) where there is
a pile of old water casks, he say.

He said, "Longfield was strange being here, all the empty bottles from the house were taken down and stacked against the end of the hut. Old Mary, Squealer's wife, came and asked for the old bottles, and they were given to her. None of them had ever been in a tem. She looked into each one as she packed it up, and after she had looked through the heap one day, in terror and surprise she said, 'snake, snake! There was a black snake had curled up inside it.' The old man went down, and, instead of putting a cork in the bottle, he broke it on the ground there, and then he had to run. Yet they, though, more than left his long, was in a pocket bottle.

Old Billy Goodwin has often passed to the Longfield about Capt. Cork's landing. He said his uncle was a little boy at the time. She used to tell him, too, about going overland to Sydney harbor from here. He often told him he never was of Sydney harbor, but he cannot think of it now.

The name of the best land was named Norway — land. And of that Norway is a corruption of the, and is so named because open to the best wind.

The north east wind is called — from which Battle is named, has long to reach name of that part of the coast.
In a beach called paire to the north of Rottnest Island, a month after the ship in which the captain was wrecked, (30 August 1801) a gale could have been felt with keel which had been driven ashore by the gale. The keel was cut up by the surf.

curratel means a gale from the east
burracoon - a gale from the north (Aboriginal word)
burracoon - a gale from the best
the prefix "curra" - a gale

The method adopted by the natives in making canoes was this: they seek to get a sheet of stringy bark about 12 feet long and of the proper width to form the hull. They trimmed both ends and took all the outside loose bark off until they got it about as thick as rope handle. Then they put one end over the fire and kept it wet with water until they got drawn up. That softened the bark so that they could bend it like teak. The end was then folded inwards and pressed flat and a skewer run through: then tied round with either a vine or a piece of stringy bark. The other end was then similarly treated; and two two speakers or straw were put across to keep the gummies apart.

(That gives a rough idea, showing folded in ends &c.)
When first at Longfield's father came out he went to Douglas' last. He was ten about it. He remembers to last for. Upon came not one day and said he had walked from Tevers. He never was in town but upon wanted to come it. He passed over the from that it's father to make a canoe. That went with him. He made one of those native canoes is about half an hour and I swam the river like a duck. He had learned how to make it from the blacks on the Neumbridge.

A favorite sport of his blacks of Harwell was spear fishing by touch—light at night. He used to go out with one fellow. He was very clever at it. He hung a light about three feet out from the end of the boat and we were slowly paddled the boat very gently.

He forbearance, on his father, is it else, using a net, but his is not successful where he went is very salt, as the phraseology is the better reveals its art.

In the old days fish was wonderfully plentiful in Botany Bay. The garden at the foot of the cottage was manned with fish.

There was a native year, grew on the second point to the south very abundantly. He fishes called the point down from the evermaternal.
The first point to the south was called Boise, from the native tall heron there.

Here is the name of the white honeysuckle.

Inuck Bay (properly "Tshenuel") was so called because of the abundance of lily pilly that grew there.

The native name of Cornville was here more.

Boise was about 40 years of age when Mr. Longfield knew her (in about 1840?).

The shell bank was caused by the natives having there the shells of the oyster and other shellfish by gathered for food, fish bones, and the bones of many animals they killed. It would represent the accumulations of many years, since the first came here, the beach has been gradually built up by the waters of the Bay.

The bank was right against the beach of the land—now it is some feet inland. The bushes growing at the northern end of the shell bank were not there then. They have been planted since.

Mr. Longfield then indicated on the map the approximate position of Boise's point.
Annexure E:

Births, Reg #4106, 1865, New South Wales Registrar-General, Sydney.
## Death Certificate

**Date and place of death:**
- August 1866
- Asylum, Liverpool

**Name and occupation:**
- Boomer

**Sex and age:**
- Male, 20 years old

**Cause of Death:**
- Duration of last illness: medical attendant; when he last saw deceased

**Name and occupation of informant:**
- Thomas Burman, Master of the Asylum, Liverpool

**Particulars of Registration:**
- Date and where buried: 1st April 1866, Liverpool
- Name and religion of minister and names of witnesses of burial:
  - John battled, sexton
  - Mr. Quillen, witness
  - Dr. Wallis

**Place of marriage, age, and to whom:**
- Place of marriage: Liverpool
- Age: 21
- To whom: Miss

**Before accepting copy, sight unaltered original. The original has a coloured background.**

**Register of Deaths, Births and Marriages**
- Sydney, 06 October 2016

[Stamp]
Annexure F:

Notice of Motion, Legislative Council of NSW, 22\textsuperscript{nd} June 2016
LEGISLATIVE COUNCIL

NOTICE OF MOTION

Mr Shoebridge says—

Mr PRESIDENT:

I give notice that on the next sitting day I will move:

1. That this House notes that:
   a. In 1770 two members of the Gweagal people stood on the shore of the place now called Botany Bay as a boat containing James Cook and some of his crew approached the shore.
   b. The Gweagal men were holding spears and a shield and they attempted to warn off the interloper, an action that was responded to with gunfire.
   c. One of the men, Cooman, was shot in the leg and he ran for cover, dropping his shield.
   d. This shield, and a number of spear and other artefacts from their camp were taken by Cook and given to the British Museum when he returned there, and the shield and a number of the spears remain in the museum’s collection.
   e. A significant number of the spears taken are now also held by the Cambridge Museum of Archaeology and Anthropology.

2. That this House acknowledges that:
   a. It is a core part of Aboriginal belief that artefacts must be kept on the Country they came from, as they form a part of the ongoing story of that place.
   b. State laws covering Aboriginal cultural heritage in New South Wales recognise the strong connection between Aboriginal people, their land and their artefacts.
   c. The Gweagal People and their descendants are the rightful and lawful owners of all artefacts produced on their territory including the shield and spears held in the British Museum and the Cambridge Museum of Archaeology and Anthropology.

3. That this House acknowledges the work done by Cooman’s descendant Rodney Kelly to push for the repatriation of these important artefacts.

4. That this House supports the repatriation of these important artefacts to the Gweagal people.
Annexure G:

Hansard, Australian Senate Proof Motions, Indigenous Artefacts
Speech, Tuesday 11th October
THE SENATE

PROOF

MOTIONS

Indigenous Artefacts

SPEECH

Tuesday, 11 October 2016

BY AUTHORITY OF THE SENATE
Senator SIEWERT (Western Australia—Australian Greens Whip) (15:43): I, and also on behalf of Senator Rhinegold, move:  

That the Senate—

(a) notes that:

(i) in 1770, two members of the Gweagal people stood on the shore of the place now called Botany Bay, as a boat containing James Cook and some of his crew approached the shore,

(ii) the Gweagal men were holding spears and a shield and they attempted to warn off the intruders, an action that was responded to with gunfire,

(iii) one of the men, Coomans, was shot in the leg and he ran for cover, dropping his shield,

(iv) this shield and a number of spears and other artefacts from their camp were taken by James Cook and given to the British Museum when he returned there, and the shield and a number of the spears remain in the Museum’s collection, and

(v) a significant number of the spears taken are now also held by the Cambridge Museum of Archaeology and Anthropology;

(b) acknowledges that:

(i) it is a core part of Aboriginal belief that artefacts must be kept on the country they came from, as they form a part of the ongoing story of that place,

(ii) laws covering Aboriginal cultural heritage in New South Wales recognise the strong connection between Aboriginal people, their land and their artefacts, and

(iii) the Gweagal people and their descendants are the rightful and lawful owners of all artefacts produced on their territory, including the shield and spears held in the British Museum and the Cambridge Museum of Archaeology and Anthropology;

(c) recognises the work done by Cooman’s descendant Mr Rodney Kelly to push for the repatriation of these important artefacts;

(d) supports the repatriation of these important artefacts to the Gweagal people; and

(e) requests the Australian Government extend diplomatic assistance to Mr Rodney Kelly while he is in the United Kingdom seeking the return of the artefacts.
APPENDIX 3

THE CURATORS’ EVALUATION

Request for the return of Gweagal spears, submitted by David Shoebridge MLC on behalf of Mr Rodney Kelly

Curators’ evaluation

11 January 2017

Background
The Forward Plan of the Museum of Archaeology and Anthropology states that one of the institution’s primary purposes is to ‘make the collections accessible to audiences locally, regionally, nationally and internationally, including especially to members of originating communities’. Curators and staff have a particular responsibility to engage in dialogue with members of Indigenous communities regarding artefacts and collections, which may include works of exceptional historical, cultural and/or spiritual significance, in some cases made by, or otherwise intimately associated with known individual ancestors. The Museum acknowledges that Indigenous groups may consider that the case for the repatriation of particular artefacts may be compelling. While repatriation claims are made far less frequently than media commentators sometimes presume - within the last twenty years, MAA has received just four formal claims - we are committed to respectful, honest and open engagement with claimants, and the careful, open-minded, case-by-case consideration of claims. We also seek to share collections, for example through loans of varying duration to appropriate institutions in the originating countries or communities, especially in the case of artefacts of exceptional historic and cultural significance, that have educational and heritage significance, and where equivalent collections may not be otherwise accessible to communities.

Collections made during the three voyages of Captain James Cook of 1768-71, 1772-75, and 1776-80 are considered among the most significant of all ethnographic collections. This is so not only because of the navigator’s fame (for some, notoriety), but because the art works and artefacts obtained include the very first collected from many parts of the Pacific and Pacific rim. The objects were acquired in the context of encounters considered by both Indigenous people and Europeans to have shaped, for better or worse, subsequent histories of interaction and colonisation.

The collections possess a still broader significance in that they are the first to have been made, in an extensive and systematic fashion, from native peoples in any part of the world.

Some 2000 artefacts with documented Cook voyage provenances are extant in museums worldwide, but considerably fewer are known to have been collected during the first voyage of 1768-1771 than on either the second or third. Just two collections were precisely documented in the immediate aftermath of an expedition: one from the second voyage, made by the naturalist Forster, which was gifted to the University of Oxford and is now in the Pitt Rivers Museum; the other was assembled by
Cook, presented by him to his Admiralty patron, the Earl of Sandwich, who in turn donated some 100 artefacts to Trinity College in October 1771, which arrived with an inventory, extant in the Wren Library; it was placed on deposit at MAA in two stages in 1914 and 1922. The Cook-Sandwich collection in fact appears to be the first ethnographic collection, made from any part of the world, to be systematically documented for accession within an educational institution.

**The spears**

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>D.1914.1</td>
<td>Four-pointed fishing spear</td>
<td>138.4 cm</td>
</tr>
<tr>
<td>D.1914.2</td>
<td>Three-pointed fishing spear</td>
<td>132 cm</td>
</tr>
<tr>
<td>D.1914.3</td>
<td>Three-pointed fishing spear</td>
<td>138 cm</td>
</tr>
<tr>
<td>D.1914.4</td>
<td>Hunting or fighting spear</td>
<td>153 cm</td>
</tr>
</tbody>
</table>

The circumstances of acquisition of the artefacts which form the Cook-Sandwich collection are well documented in the sense that encounters with indigenous people at the various places visited are described in the journals written at the time by Cook himself, the naturalist Joseph Banks and other voyage participants. These indicate that in Tahiti and New Zealand - from where most pieces were collected - artefacts were obtained through gift exchange or barter. In the case of the four spears now in Cambridge, the circumstances were different. As has been frequently noted, the landing of a party from the *Endeavour*, at the time of the ship's arrival in Botany Bay on 28 April 1770, was resisted by Gweagal, the indigenous people of the area. According to the journals, they threw spears at the mariners and were shot at; upon suffering an injury, one man picked up a shield, before withdrawing. The Europeans then looked around the area, and came upon a camp; there they 'thought it no improper measure' to remove some 40-50 spears they found, suspecting that their tips might be poisoned. While some ribbons and trinkets were left by way of compensation, there is no doubt that the spears were removed without the consent of their owners. Most of the 40-50 removed are unlikely to have been retained for the duration of the voyage; it is noted elsewhere in voyage journals that artefacts obtained in one place were commonly given away at another, or discarded.

The spears were thus obtained through an act of disarmament, rather than as scientific specimens, but by the time of the *Endeavour*'s return to England they had, in effect, been reclassified as such: two featured in a drawing made by Banks' draughtsman, John Frederick Miller, who prepared a set of some thirty, highly accurate natural-history style illustrations of artefacts collected over the course of the voyage.

While a shield in the British Museum is thought to have been removed on the same occasion, and has also been the more prominent focus of the current repatriation campaign, its identification is less certain than has been stated. The four spears in Cambridge are the only ones associated with the encounter that are extant and documented; they are at present the only objects known definitely to have been collected from any part of Australia during any of Cook's voyages; they are also apparently the first artefacts collected from Australia by any European, that remain documented today.
The presence of the spears in the Cambridge collection has long been well known to scholars and others interested. One or more spears have been exhibited at MAA continuously since a 1990 redisplay; two were featured in ‘Gifts and Discoveries’, for the Museum’s reopening following refurbishment, which focussed on artefacts of special historical significance (shown over 2012-13). The artefacts have been loaned to exhibitions elsewhere such as ‘James Cook and the exploration of the Pacific’, a major project initiated by the Kunst- und Ausstellungshalle der Bundesrepublik, Bonn, shown also in Vienna and Bern (over 2009-11), and to ‘Encounters’ at the National Museum of Australia (November-April 2015-16). A further request, from the Australian Museum in Sydney, has been received in relation to an exhibition marking the bicentenary of Cook’s visit in 2020. The showing in Canberra prompted the campaign and claim initiated by Rodney Kelly, which has been widely reported in the Australian media.

**Comments in relation to guidance**

The policy states that points B.1-10 are ‘issues that need to be considered in every case’

1. **If the request concerns one or more objects from a collection, what will be the effects on that collection as a whole?**

The Cook-Sandwich collection has, as is noted above, exceptional historical significance as the only collection of artefacts collected during Cook’s first voyage accompanied by early documentation. The selection of pieces was deliberate and representative of the places visited; the collection, by a considerable margin the largest known from the first voyage, is a coherent historical formation in its own right, rather than simply a group of individual specimens. The significance of the assemblage would be reduced were artefacts now subtracted from it. Any dispersal of material would diminish opportunities to further analyse, interpret or exhibit a comparative range of works from it; and might preclude the possibility of ever exhibiting the collection in its entirety.

2 (a) **General cultural and historical significance**

The spears are quotidian implements of subsistence. Three are multi-pronged fishing spears; the fourth is a hunting or fighting lance. Though intricately crafted, and in some viewers’ eyes unexpectedly impressive and evocative, their significance is above all historical. Assessments of the April 1770 encounter vary in their emphasis, but are inevitably seen in the context of Joseph Banks’ subsequent recommendation of Botany Bay as the site of the penal colony that was established by the First Fleet at Port Jackson in 1778, and the succeeding dispossession of the Indigenous Australian population across the continent as a whole. The artefacts are thus indissociable from the inauspicious beginnings of the relationship between the British and Indigenous Australians. But for Gweagal, they are also unique material expressions of the life of the community prior to its disruption by British settlement.

2 (b) **Reasons for return (cultural, historical, sociological, political)**
The claim is said to be made 'on behalf of Mr Rodney Kelly' who in turn is said to make the claim 'on behalf of the Gweagal people'.

Mr Kelly refers to documentation of his descent from a man named Cooman, said to be one of those who resisted Cook's landing. The artefacts now in the British Museum and MAA were, it is stated, the property of Mr Kelly's ancestor and were appropriated without his consent. It is not clear what level of consensus among historians and relevant Indigenous experts there may be regarding the identity of the men who challenged Cook.

A wider claim is made that the artefacts evidence the invasive nature of the first contacts in 1770, and that the spears thus possess exceptional heritage and educational significance in Australia. The claim (page 5) notes that the artefacts may have 'scientific, educational and historical value to Cambridge University and to the British public' but states that 'this cannot be validly compared to the interests of the Gweagal people'. The submission continues, 'Artefacts created by and for Indigenous communities unquestionably have greater value within those communities than in any external cultural institution.'

2 (c) Rarity

The spears are, in effect, unique, though it is possible that further research may identify others likely to have been obtained on the same occasion.

2 (d) Reasons for retention

From an academic and curatorial perspective, the coherence and significance of the Cook-Sandwich collection constitutes a compelling reason for maintaining that collection in its integrity, that is, as a collection held, cared for, exhibited and managed by a single institution.

The exceptional significance of the specific artefacts to Indigenous Australians and Australian publics must be acknowledged.

The submission does not address the question of whether, or the extent to which, the interests in the artefacts of Gweagal people, and the Australian public, would be supported through periodic or medium-term loan of some, or all, of the spears to Australian institutions, such as the Australian Museum and/or other appropriate institutions in the Sydney region.

As has been stated above curators across the museum sector are expected to respect, and where appropriate give special consideration to, Indigenous and community interests in historic objects. The Shoebridge proposition that artefacts 'unquestionably have greater value within those communities' may appear self-evident, but the 'value' that fragile historic works now have is unavoidably different to the use value and significance the things had for their makers. If their 'value' now includes the potential to educate, it is commonly the case that artefacts have wide reach and impact precisely because they are situated in 'external cultural institutions'. Certain Indigenous
leaders and representatives have accordingly described museum pieces as 'ambassadors', artefacts that play a positive role through display in prestigious international institutions, representing Indigenous cultures and aspirations.

It may also be noted that the 'value' that the spears have - i.e. their capacity to evidence and evoke the encounter of April 1770 - follows from their preservation, and the preservation of associated documentation, by Trinity College and the Museum of Archaeology and Anthropology.

2 (e) Possible alternatives

In this instance what are claimed are the specific, historic objects, not artefacts of this genre; as is noted elsewhere, loan may be seen as an alternative to repatriation.

3 How was the object collected?...

See above

4 What is the status of the body or individual making the request?

Mr Kelly has documented his descent from Indigenous Sydney region families of the nineteenth century.

Gweagal do not constitute a legally incorporated tribal organisation but are widely acknowledged as being represented by the La Perouse Land Council, an officially recognised community group based in the Sydney suburb of La Perouse, near Botany Bay and home to many Indigenous Sydney-region people. The LPLC are not a party to the request. We have been advised that Mr Kelly has not responded to requests to meet with the group.

Dr Shayne Williams, widely acknowledged as a senior elder of the group, and a commentator on matters including repatriation, has expressed, on the one hand, support for museums' role in preserving artefacts, and on the other questioned whether the protracted, complex and potentially divisive nature of campaigns to repatriate artefacts should be a priority for Indigenous peoples.¹

The curators consider it highly important that the Gweagal Families Group, an informal group within the La Perouse community, and the La Perouse Land Council, are asked if they wish to communicate views to the sub-committee.

5 What is the standing and competence of the institution, if any, where the object would be kept?

The claim asserts that 'Arrangements are advanced to have the Australian Museum house the spears should they be returned to Australia', but reference is also made to the desirability of exhibition 'on the site of their initial removal'. A senior staff member at the Australian Museum has confirmed that Mr Kelly contacted the Museum by telephone some time ago to raise the matter, but stated also that a proposed follow-up meeting did not take place.

6  How would the objects’ availability for study be affected if it were returned?

Not known

7  What action can the Museum take to foster links...

MAA curators have extensive and longstanding links with Indigenous Australians from various parts of the continent, and with Australian academics and museums. There is scope for extending these, and in particular it would be desirable to give elders such as Dr Shayne Williams an opportunity to visit the Museum.

8  Are there any constraints, legal or otherwise...

Trinity College is the legal owner of the Cook-Sandwich collection. Should the committee determine that the artefacts should be repatriated, that finding would take the form of a recommendation to the college's Council.

9  If the object is to be returned, is it to be a gift, exchange or loan?

The currently pending loan request, from the Australian Museum, and any future request should be managed through the Museum's normal loan procedures, and submitted to the Museum Committee for approval, rather than considered by the present Sub-committee.

10 What are the implications, if any for the Museum’s agreed disposals policy?

N/A
APPENDIX 4. LETTERS TO AND FROM DR MARIA NUGENT
Dr Maria Nugent
Australian Centre for Indigenous History, School of History
College of Arts and Social Sciences
The Australian National University
Acton, ACT 2601
Australia

By email to maria.nugent@anu.edu.au

Dear Dr Nugent,

I write on behalf of the Sub-Committee on Repatriation of Artefacts in the Museum of Archaeology and Anthropology in this University. The Museum has received a request for the repatriation of four spears, currently in the ownership of Trinity College, Cambridge. The spears form part of a collection of about 100 artefacts assembled by Captain Cook during his first voyage between 1768 and 1771 and presented to his patron, the Earl of Sandwich, who in turn gave them to the College with an inventory. As you are aware Captain Cook acquired the spears when he landed at Botany Bay in 1770 and encountered members of the Gweagal people.

The request was sent to the Museum, where artefacts from the collection have been exhibited for about 100 years. The Museum has no property in the artefacts, but its Committee of Management has established the Sub-Committee on Repatriation of Artefacts to consider the request in the light of the Museum’s published guidance and to give advice to Trinity College, which will decide what to do in the light of that advice.

The parties making the request are Mr David Shoebridge, MLC and Aboriginal Justice Spokesperson for the Greens in the New South Wales Parliament, and Mr Rodney Kelly, who is said to be a direct descendant of the warrior Cooman from whom, it is said, the spears were taken. Mr Kelly is said to make the request on behalf of the Gweagal people.

The Sub-Committee would be highly appreciative of any comments you may have on the claim. In particular, we would appreciate your view of the identification of Mr Kelly’s ancestor, Cooman, as being one of the men who resisted Cook’s landing. Is the identification well-supported by documentary or oral history, and what degree of scholarly, historical consensus is there on this point? We would also welcome any broader comments you have, on any aspect of the claim.
A copy of the request, which includes the motions put to the Legislative Council and the Senate respectively, are enclosed, together with a copy of the Museum’s published guidance on responding to requests for repatriation.

The Sub-Committee would be extremely grateful if you could reply by 28th February.

Thank you in advance for your help with this important matter.

Yours sincerely,

[Signature]

Chair, Sub-Committee on Repatriation of Artefacts
Date 27 February 2017

To: Professor David Feldman
Chair, Sub-Committee on the Repatriation of Artefacts in the Museum of Archaeology and Anthropology
University of Cambridge

Dear Professor Feldman,

I am writing in response to your request (4 February 2017) for comments on the claim made by Mr Shoebridge, MLA and Mr Rodney Kelly for the repatriation of four spears in the collection of artefacts assembled by Captain Cook. In particular, you have solicited my views “on the identification of Mr Kelly’s ancestor, Cooman, as being one of the men who resisted Cook’s landing. Is the identification well-supported by documentary or oral history; and what degree of scholarly, historical consensus is there on this point?”

The identification of Cooman as being one of the men who resisted Cook’s landing is not well supported by documentary or oral history. It is speculation for which there is no corroborating evidence.Moreover there is no scholarly, historical consensus about this identification. The identification appears to have been advanced by one historian alone, Keith Vincent Smith (see Smith 2008 and 2009). No other scholars writing on the subject have confirmed it (see, for example, Goodall and Cadzow 2009; Nugent 2005 a & b and 2009; Irish 2014).¹

The evidence provided in the Submission in support of the claim is flimsy and confusing. Of particular concern is that on page 3 the Submission refers to an oral history, which is ascribed to an Aboriginal woman referred to as Biddy Coolman (Cooman). The source for this oral history is included as Annexure D. The Submission says that: “In this oral history Biddy identifies the spearman as Cooman, the grandfather of her husband, also known as

Cooman”. I can see no evidence that this oral history says that. All that is said is: “... that when Cook came to land the blacks went down to meet him, and then ‘they all run away : two fellows stand : Cook shot them in the legs : and they run away too’.” As is clear, there is no reference to the name of the spearman, or any mention that the spearman was the grandfather of the narrator’s husband. Unless there is other evidence that has not been cited which shows that Biddy Coolman (Cooman) named the spearman or identified him as her husband’s grandfather, this appears to be either an accidental misrepresentation of the text or a fanciful elaboration of it.

The authors of the Submission are not solely to blame here. They repeat the wording of a 2008 essay by Keith Vincent Smith. Smith is the main authority cited in the Submission for the identification of Cooman (see fns 6-10). That essay is also apparently the source for Rodney Kelly’s ‘discovery’ of Cooman as an ancestor. In the essay, Smith writes that “Biddy, ‘who often yarneyed with Mr Longfield,’ said the spearman’s name was Cooman and that he was the ancestor of her husband, also called Cooman, and often described as “the last of the Georges River Tribe”’. Smith cites one source (the same source as Annexure D) which, as already explained, does not include Biddy saying that “the spearman’s name was Cooman and that he was the ancestor of her husband, also called Cooman”. (It is also worth pointing out that “the last of the Georges River Tribe”, which appears in quotation marks in Smith’s essay, does not appear at all in the cited document. This might suggest that the author is drawing on other sources, but without citing them.)

No new evidence is provided in the Shoebridge/Kelly Submission to corroborate Smith’s original assertion in his 2008 essay that the name of “one of the two brave warriors who launched their spears at James Cook’s landing party” was Cooman (Smith, 2008, p. 14). While various primary sources are discussed in and attached to the Submission, they are all inconclusive in supporting the assertion about the identification of Cooman as being one of the two men who resisted Cook.

Other oral histories told by Aboriginal people in the same period as Biddy Coolman (Cooman), i.e. in the 1830s and 1840s, do not offer a name for either of the two men who resisted Cook in 1770. (Many of these other oral histories are described and quoted in Smith’s 2008 essay (p. 13). I also discuss most of them in my book, Captain Cook Was Here, 2009.) By not naming either of the two men, they provide no corroborating evidence for Smith’s claim about Cooman being one of them.

In general, there is much uncertainty about many Aboriginal people around Sydney and Botany Bay in the late eighteenth and early nineteenth centuries, and for which the

\[\text{2} \text{In my view, it is not absolutely clear from the document that the narrator of this oral history was Biddy Coolman (Cooman). There are other possibilities for its source, which have not been canvassed.}\]


\[\text{4} \text{There are a number of flaws in the evidence presented in the Submission, not all directly related to the matter of the identification of Cooman. I can provide details of these flaws, if the Subcommittee requires.}\]
documentary and oral history is often inconclusive and sometimes contradictory. While there is often an understandable desire to reconstruct Aboriginal genealogies and kin relationships, to give names to Aboriginal people who go unnamed in the imperial and colonial records, and to replace historical uncertainty with solid conviction, it is simply not always possible to do so given the nature of the sources.

The question must be asked: what does the assertion of the identity or name of one of the two men who resisted Cook in 1770 add to the request for the return of the spears? In my view, very little. As the subcommittee is no doubt aware, there are many Gweagal people who are interested in the material held in the MAAA, but who do not believe that their claim or access to it need rest on the identification of either of the two men on the beach in 1770, or on the assertion of direct descent from one or both of them. Rather than pursue what appears to be a non-existent paper trail leading to the incident on the beach in late April 1770, time and effort would be better spent on preparing claims that represent the collective views of all the people who have an interest in and connection to the collections currently held at MAAA.

It is unfortunate that historical claims which derive from inconclusive evidence, are based on questionable interpretative leaps, and are not presented in ways that recognize and respect the complexities of writing “early contact” history from fragmentary sources, should become a central plank in a Submission concerning issues as important as the present and future care and custodianship of Indigenous Australian cultural material at the MAAA. My concern is that in the process of the Submission being prepared, historical speculations and misinterpretations are entering public discourse and records (including Hansard) as historical facts. Considerable effort and time is now required to explain, correct and refute them.

Yours sincerely

Maria Nugent
School of History
Research School of Social Sciences
College of Arts & Social Sciences
Australian National University
APPENDIX 5

LETTERS TO AND FROM DR SHAYNE WILLIAMS
Dr Shayne Williams,
Gweagal Families Group,
New South Wales,
Australia

By email to shayne.williams473@gmail.com

Dear Dr Williams,

I write on behalf of the Sub-Committee on Repatriation of Artefacts in the Museum of Archaeology and Anthropology in this University. The Museum has received a request for the repatriation of four spears, currently in the ownership of Trinity College, Cambridge. The spears form part of a collection of about 100 artefacts assembled by Captain Cook during his first voyage between 1768 and 1771 and presented to his patron, the Earl of Sandwich, who in turn gave them to the College with an inventory. As you are aware, Captain Cook acquired the spears when he landed at Botany Bay in 1770 and encountered members of the Gweagal people.

The request was sent to the Museum, where artefacts from the collection have been exhibited for about 100 years. The Museum has no property in the artefacts, but its Committee of Management has established the Sub-Committee on Repatriation of Artefacts to consider the request in the light of the Museum’s published guidance and to give advice to Trinity College, which will decide what to do in the light of that advice.

The parties making the request are Mr David Shoebridge, MLC and Aboriginal Justice Spokesperson for the Greens in the New South Wales Parliament, and Mr Rodney Kelly, who is said to be a direct descendant of the warrior Cooman from whom, it is said, the spears were taken. Mr Kelly is said to make the request on behalf of the Gweagal people. Motions supporting the request have been put to the Legislative Council of the Parliament of New South Wales and the Senate of the Australian Commonwealth Parliament. A copy of the request, which includes the motions put to the Legislative Council and the Senate, are enclosed, together with a copy of the Museum’s published guidance on responding to requests for repatriation.

At its first meeting on 16th January, the Sub-Committee noted that neither Mr Kelly nor Mr Shoebridge appears to have any recognised representative status to act on behalf of the Gweagal people. The Sub-Committee therefore instructed me to write to you, and also to the Chief Executive Officer of the La Perouse Local Aboriginal Land Council, seeking your comments on the request. Your views on all aspects of the request would be very welcome.

David Feldman QC (Hon), MA DCL (Oxon), Hon LLD (Bristol), FBA, FRSA
Rouse Ball Professor of English Law

27th January 2017
The Sub-Committee would be extremely grateful if you could reply by **28th February**.

Thank you in advance for your help with this important matter.

Yours sincerely,

Chair, Sub-Committee on Repatriation of Artefacts
Dear Professor Feldman,

I would like to begin by thanking you for your recent correspondence regarding the repatriation request your committee is considering in reference to the Gweagal spears, which form part of Trinity College’s collection of artefacts gathered by Captain James Cook during his voyages and presented to Trinity College by Earl Sandwich.

I am both pleased and honoured to have been asked to express my thoughts on this matter. I will, however, preface my thoughts with the statement that I do not claim to speak on behalf of any other Indigenous person. I will, however, begin with a cultural description of myself so that your committee can assess the validity of my cultural voice in terms of this matter.

I am a member of the La Perouse Aboriginal community, which is located on the northern side of Botany Bay in Sydney, Australia. Kurnell, which is where the Gweagal spears emanate from, is located on the southern side of the same bay. My cultural heritage in terms of this region of Sydney can be traced through both my father’s family history and my mother’s family history in that both my maternal and paternal grandmothers are of Dharawal ancestry. It is worth noting that the Dharawal language was spoken from the La Perouse region down, through the Illawarra region, which is south of Sydney and the upper part of the Shoalhaven, which is south of the Illawarra. This region, known broadly as Dharawal Country, does include Kurnell. This means that I am a Dharawal person, and as such have a strong cultural bond to the southern region of Sydney, including Kurnell, as well as the Illawarra and Shoalhaven districts south of Sydney. I am also recognised locally as a Dharawal cultural knowledge holder and was awarded a Centenary Medal in acknowledgement of this.

My views regarding repatriation are as follows. I separate the matter of repatriation of artefacts from the issue of return of human remains. I am a strong advocate for the return of human remains. Certainly, I strongly believe that our ancestors who were taken from Country should be returned and buried on Country. My view regarding artefacts, however, is not as straightforward. I believe, in the first instance, that we must acknowledge that artefacts such as the Gweagal spears only exist today because they were preserved by places like Trinity College. I also believe that in respect to artefacts such as the Gweagal spears exact individual ownership may be very difficult, perhaps even impossible, to substantiate. I further believe that the repatriation of fragile organic items such as the spears, which are susceptible to decay, cannot take place unless there is a guarantee that they will housed correctly in accordance with museum preservation and conservation standards.

Last year, when our National Museum in Canberra hosted the Encounters exhibition I spoke publicly about the Gweagal spears and the Botany Bay shield, held by the British Museum,
which was displayed with the spears. I expressed my personal gratitude to the British Museum and Trinity College for giving me and my peoples the opportunity to encounter tangible cultural items that were once utilised by our ancestors. I made it known how emotional it made me feel to see these items in person. I also made it known that I believe very strongly that whilst the spears and shield may have come from Kurnell, that they were deeply symbolic to all, the Indigenous peoples of Australia, and as such of national significance. This viewpoint is founded on the fact that the Gweagal spears and shield were collected after an altercation between Cook and his landing party and local Gweagal warriors. This altercation is now known in the annals of Australia's history as the first encounter between the British, who subsequently established a convict settlement in Port Jackson that is now commonly referred to as the beginnings of our nationhood, and we, the Indigenous peoples of the continent now known as Australia.

The fact that the spears in question were collected at Cook's landing site, which has been established beyond doubt as Kurnell, means that it is reasonable to conclude that the spears in question were most likely of Gweagal provenance. The matter of general cultural attribution is therefore not at issue. That noted, it must be said that we do not know the individual identities of any of the Gweagal population of 1770, and we certainly cannot link any individual Gweagal person of that time to any of the spears that were obtained by Cook and his landing party. We can only make generalised assumptions about the Gweagal people of 1770 based on written descriptions made by Cook himself, and other members of his landing party including Sir Joseph Banks.

It is my view that in order for a repatriation claim to be successful there would need to be a binding agreement that ensures that the artefacts are held in perpetuity by a recognised museum, such as the National Museum of Australia. In an ideal world, yes, it would be fantastic to have the Gweagal spears permanently housed on Australian shores, but where? It is a complex issue, especially if it is proposed that they be housed at Kurnell. Would Local, State and/or Federal Governments be willing to finance the building of a suitable museum standard keeping place? Would private entrepreneurs be willing to contribute? Would the spears location at Kurnell reduce accessibility? Who would be appointed caretaker of these items? Would their location at Kurnell spark local cultural dispute over whose family allegedly owns them? Would the spears be secure against the risk of illegal appropriation? These are the types of questions that in my view need to be predicted and workshopped before repatriation can become a reality.

As an Indigenous academic and educator, whose core focus is the facilitation of cultural education, I believe very strongly that cultural artefacts such as the Gweagal spears hold tremendous educational value for us. It would be valuable, for instance, to be able to participate in the study of these artefacts at close quarters in order to discover what they are made of and how they are made and so on. This would facilitate greater understanding of our foundational cultures and enable us to reintroduce and/or reinforce cultural practise within our communities. Does this mean that we must have the spears in our possession to learn about them? I would say that rather than argue this point we should be exploring opportunities for cultural exchange and partnership with Trinity College. Trinity College, the British Museum and undoubtedly other educational institutions within Britain could consider ways of participating in cultural scholarship in partnership with Australian universities so that learning access becomes less of an issue. This in turn may create greater space for the matter of repatriation to be considered closely and carefully over time.
I sincerely hope that my submission is of help to the committee and its deliberations. I feel very strongly that Trinity College has already shown significant generosity towards us in allowing the spears to come to Australia last year. I also feel that it behoves us to acknowledge that Trinity College has had these precious items as a significant aspect of their wider collection for hundreds of years and that Trinity College should be acknowledged for the guardianship they have provided in terms of our precious cultural heritage.

I sincerely thank you for allowing my cultural voice to be heard.

Yours Sincerely

[Signature]

Dr Shayne Williams
Language and Culture Consultant
NSW AECG Inc.
APPENDIX 6

MINUTES OF THE SUB-COMMITTEE’S MEETINGS

UNIVERSITY OF CAMBRIDGE
MUSEUM OF ARCHAEOLOGY AND ANTHROPOLOGY
COMMITTEE OF MANAGEMENT
SUB-COMMITTEE ON REPATRIATION OF ARTEFACTS

The Sub-Committee met on Monday 16th January 2017 at 2.00 p.m. in the Moot Court Room, room G28, David Williams Building.

MINUTES

Present: Dr Nicolas Bell, Ms Sarah Collins, Professor David Feldman (in the chair), Mr Tim Knox, Mr David Parsons
In attendance: Professor Nicholas Thomas
Apologies: Professor Cyprian Broodbank, Professor Joel Robbins

17.01 WELCOME

The Chair welcomed those present, thanked everyone for their willingness to participate in the work of the Sub-Committee, and reminded the Sub-Committee that it had been established in response to a request dated 1 November 2016 from Mr David Shoebridge, NSW MLC and Aboriginal Justice Spokesperson for the Green Party, to the Museum of Archaeology and Anthropology (MAA), for repatriation of certain Gweagal spears in the Cook-Sandwich Collection (Paper SC 2/17). Mr Shoebridge was acting in support of a claim by Mr Rodney Kelly, a member of the Gweagal people claiming descent from one of the Gweagal warriors who had confronted Captain Cook and his party when they first landed at Botany Bay in 1770, and to whom the spears may have belonged.

The Sub-Committee noted that the collection was owned by Trinity College and that the spears in question had for a long time been exhibited in the MAA.

17.02 TERMS OF REFERENCE, MEMBERSHIP, AND PUBLISHED GUIDANCE

The Sub-Committee noted its Terms of Reference, membership, and the guidance relating to requests for repatriation of artefacts which was published on the website of the Museum of Archaeology and Anthropology (MAA) (Paper SC 1/17).

The Sub-Committee noted that its function was to offer advice to Trinity College to be taken into account when the College came to decide how to act in the light of the request for repatriation. Dr Bell explained that, whilst the request had been addressed to the MAA, the College wanted to hear the University’s position, and would make its own decision, taking into account the recommendations of the Sub-Committee.

17.03 DECLARATIONS OF INTEREST

The interests of the following were noted:

Dr Bell, as a Fellow of Trinity College;
Professor Feldman, as Chairman of the Committee of Management of the MAA;
Professor Thomas, as the Curator and Director of the MAA.

17.04 CONSIDERATION OF THE REQUEST FOR REPATRIATION

The Sub-Committee considered the documentation available in the light of the criteria set out in the published guidance. As required by the guidance, the Sub-Committee received and took into account an evaluation from the Curators of the MAA (drafted by Professor Thomas) of the request advanced by Mr Shoebridge (Paper SC 3/17). This had been structured by reference to the matters set out in the published guidelines.

The Sub-Committee took particular note of the following matters.

(a) The standing of those making the request.
   a. Mr Shoebridge made the request on behalf of Mr Kelly, who in turn was said to be making it on behalf of the Gweagal people.
   b. Whilst the Gweagal population had been dispersed following the British settlement of Botany Bay, it was likely that Mr Kelly was of Gweagal descent.
   c. The Gweagal people has no corporate or formal identity, and Mr Kelly appeared to have no formal representative role in relation to the Gweagal people, unlike representative groups such as the Gweagal Families Group (of which Dr Shayne Williams was Senior Elder) or the La Perouse Local Aboriginal Land Council, widely recognised as representing the Gweagal people in the vicinity of Botany Bay. Neither the Council nor the Gweagal Families Group is currently party to the request.
   d. Motions apparently passed in the Legislative Council of the Parliament of New South Wales and in the Senate of the Australian Commonwealth Parliament refer to the “Gweagal people and their descendants” as “the rightful and lawful owners of all artefacts produced on their territory, including the shield and spears held in the British Museum and the Cambridge Museum of Archaeology and Anthropology”. It is clear, however, and in the public domain, that ownership of the Cook-Sandwich collection lies with Trinity College, at least as a matter of the law of England and Wales.

(b) The importance of the collection
   a. The Cook-Sandwich Collection of artefacts gathered during Cook's first voyage (1768-71), presented to the Earl of Sandwich on Cook's return, is the first to have been collected by European explorers in a systematic fashion from native populations in other parts of the world. The Curators in their evaluation noted that the 100 or so items gifted by the Earl to Trinity College in October 1771, with an inventory now in the Wren Library, and placed on deposit in the MAA in two stages in 1914 and 1922, appeared to be the first ethnographic collection, made from any part of the world, to be systematically documented for accession within an educational institution. This makes the collection as a whole immensely important on historical grounds.
   b. The collection thus represents a careful, systematic selection of artefacts, rather than a mere assemblage of individual artefacts, making a coherent historical formation whose integrity is of historical importance going beyond the importance of any one piece in it.
   c. If the collection were to be dispersed by disposal of individual artefacts, it would reduce the historical value of the collection as a whole, and make it at best extremely unlikely that it could ever be exhibited in its entirety (a possibility under consideration to mark the 250th anniversary of the voyage in 2018-21).

(c) Cultural and historical significance of the spears
   a. The spears themselves were day-to-day implements of subsistence, of impressive workmanship but mainly important as (I) part of the history of the relationship
between the British and indigenous Australians and (ii) material expressions of the Gweagal’s community life and culture prior to their disruption by British settlement.

b. The spears are the only known surviving examples of spears obtained on the occasion of the first landing.

c. The artefacts are said to be of exceptional significance to indigenous Australians and the Australian public as a whole.

d. On the other hand, the coherence and historical significance of the Cook-Sandwich collection provide compelling reasons, from academic and curatorial perspectives, for maintaining the integrity of the collection as a single collection held, cared for and exhibited and managed by a single institution.

e. A request for the same spears was made in 2000-01 by Sutherland Shire Council. On the advice of the MAA Committee of Management, the request was refused.

(d) *Circumstances in which the spears were collected*

a. The spears were collected without the consent of the members of the Gweagal people in circumstances of largely hostile confrontation.

(e) *Possible alternatives to repatriation and unconditional transfer of ownership, and standing and competence of institution which might take the spears if repatriated*

a. No alternatives are considered in the request.

b. The request mentions the Australian Museum, although it is not clear whether the Australian Museum would be willing to curate the spears. The request also refers to desirability of exhibition on the site from which they were originally removed, which would not be the Australian Museum.

17.05 **NEXT STEPS**

After lengthy discussion, the Sub-Committee *resolved*:

1. that Professor Feldman should write to the Chief Executive of the La Perouse Local Aboriginal Land Council and Dr Shayne Williams, Senior Elder of the Gweagal Families Group, as the bodies with recognised representative status in relation to the Gweagal people, seeking their comments on the request;

2. that the Sub-Committee should reassemble to give further consideration to its recommendations in the light of their comments.

Professor Thomas and Professor Feldman thanked the members of the Sub-Committee for their time and deliberations.

The meeting ended at 3.10 p.m.
MINUTES

Present: Dr Nicolas Bell, Professor David Feldman (Chair), Mr Tim Knox, Mr David Parsons, Professor Cyprian Broodbank.

In attendance: Professor Nicholas Thomas, Mrs Felicity Eves-Rey

Apologies: Ms Sarah Collins, Professor Joel Robbins

17.06 DECLARATIONS OF INTEREST

No new interests were declared, but the interests of the following remain:
Dr Bell, as a Fellow of Trinity College;
Professor Feldman, as Chairman of the Committee of Management of the MAA;
Professor Thomas, as the Curator and Director of the MAA.

17.07 MINUTES OF MEETING HELD ON 16TH JANUARY 2017

The minutes of the meeting were agreed subject to two minor amendments being made. Page 2 (c).b. should be changed to read “The spears are the only known surviving examples of spears obtained on the occasion of the first landing.” Page 3 (c).c. should read “The artefacts are said to be of exceptional significance to indigenous Australians and the Australian public as a whole.”

17.08 MATTERS ARISING FROM THE MINUTES

The sub-committee noted the correspondence between the Chair, Mr Chris Ingrey (Chief Executive Officer, La Perouse Local Aboriginal Land Council), Dr Shayne Williams (Senior Elder, Gweagal Families Group), and Dr Maria Nugent (Australian Centre for Indigenous History, Australian National University). It was noted that the sub-committee had yet to receive a response from Mr Ingrey. The Sub-Committee expressed its gratitude for and appreciation of the very careful, sensitive and constructive advice received already from Dr Williams and Dr Nugent. It was agreed that all correspondents should be informed of the sub-committee’s end findings.

17.09 OTHER DEVELOPMENTS SINCE THE LAST MEETING

The sub-committee heard that since the last meeting, arrangements had been put in place (supported by Trinity College) for Dr Williams to visit to the UK in May 2017. During his visit Dr
Williams will study the Gweagal spears held in the Cook-Sandwich collection at the MAA, as well as other artefacts held in the British Museum in London.

It was noted that Mr Kelly and his delegation had made a request to visit the University to talk with the Sub-Committee about the request for repatriation of the Gweagal spears, but that the Chair had decided that such a meeting would be unnecessary and inappropriate, but that Mr Kelly was welcome to submit additional written material for the attention of the Sub-committee if he wished to do so, but nothing had been received. Sub-committee members were reminded that Mr Kelly and his delegation visited representatives only last year, and that Mr Kelly had already submitted a good deal of material with the written request from Mr Shoebridge. The Sub-committee endorsed the Chair’s response.

17.10 FURTHER CONSIDERATION OF REQUEST FOR REPATRIATION

The Sub-committee discussed Mr Kelly’s request for repatriation of the Gweagal spears in the Cook-Sandwich collection and the information contained in the letters received by Dr Nugent and Dr Williams.

The Sub-committee expressed concern about:

(a) arrangements for housing and conserving the spears if they were handed to Mr Kelly, in view of the absence from the request of any clear proposals and of a commitment by a competent Australian institution to caring for the spears;
(b) the harm that would be caused if parts of the Cook-Sandwich collection, which is of great historical, scientific and educational importance nationally and internationally, were to be removed, depriving the collection of its integrity;
(c) serious doubts as to whether Mr Kelly was entitled to be regarded as representing the Gweagal people, when there were recognised, representative bodies who were not parties to the request; the Sub-committee considered it to be very important that any change to the current situation of the spears should be made only after full consultation with accredited representatives of the Gweagal people.

In the light of this, it was resolved to recommend that Mr Kelly’s and Mr Shoebridge’s request to repatriate the Gweagal spears should be refused.

However, the Sub-committee recognised that the spears were artefacts of significant importance not only to the Gweagal people, but to all Australian citizens, and indeed anyone who is interested in Australian culture and history, and stressed the importance of continuing to cultivate strong cultural links and exchanges, as well as finding ways to improve the future accessibility of the collection.

17.11 NEXT STEPS

The sub-committee agreed:

1. That Professor Feldman should put the recommendations and findings of the sub-committee into a draft report – to be circulated to the sub-committee for comment;
2. That, once finalised, Professor Feldman should send the report to the Museum Management Committee and Trinity College Librarian;
3. That Professor Feldman should notify Mr Kelly and Mr Shoebridge of the outcome, if the College so requests;
4. That Professor Feldman should notify Dr Nugent, Dr Williams and Mr Ingrey of the outcome (once known to the claimants).

Thanks were extended to the sub-committee and to Professor Feldman for their time and deliberations.

The meeting closed at 12.55 p.m.