

ELOFF MINING COMPANY (PTY) LTD

STATUS QUO AND PRE-MITIGATION HERITAGE IMPACT ASSESSMENT REPORT FOR SUSPECTED RELOCATED BURIALS IDENTIFIED DURING PHASE 1 IMPACT ASSESSMENT STUDY FOR ELOFF MINING COMPANY PTY LTD PROPOSED ELOFF PHASE 3 PROJECT IN STRYDPAN 243 IR, PORTION 19 FARM IN DELMAS TOWN, STEVE TSHWETE LOCAL MUNICIPALITY, MPUMALANGA

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MANAGEMENT SUMMARY

BACKGROUND

Eloff Mining Company PTY Ltd commissioned the Environmental Impact Assessment (EIA) study which was conducted by Environmental Impact Management Services (EIMS). In turn EIMS appointed Professional Graves Solutions (PGS) Pty Ltd to conduct Heritage and Archaeological Impact Assessment, (2020). The study focuses on graves and burial grounds, historical structure as identified during Heritage Impact Assessment specialists study for the proposed development of mining activities within Strydpan 243 IR, portion 19. Human burial (graves) were identified during Phase 1 Heritage Impact Assessment for the proposed development of mining activity in the study area in Delmas town of Mpumalanga Province.

Mulaifa Development Projects, was commissioned by Eloff Mining Company to conduct Phase 2 heritage mitigation study for the burial grounds and graves recorded within the footprint of the proposed mining development area. Mulaifa Development Projects archaeologists and physical cultural property specialists conducted field survey of the area in an attempt to verify the graves as identified during the Phase 1 studies. The set of graves are listed as site (KG8) within the phase one (1) report. The total number of three (03) graves according to the HIA report published by PGS are identified on phase 1 report.

SUMMARY RESULTS

Mulaifa Development Projects' heritage specialist team surveyed the affected farms in an attempt to confirm the location and distribution of burial ground and grave sites and verify their condition and status in situ context. Upon inspection, the said graves show the signs of tempering if not legally/illegally exhumed and reburied somewhere. But although the exact number of graves cannot be confirmed due to the nature of disturbances on site, the total number of possible identified graves, for the purpose of consistent with PGS report is three (3).

This report is produced in order to provide competent authorities with background information regarding the status for the said graves and motivate for the test excavation permit application.

Recommendations

- 3 graves (according to Phase 1 Heritage Impact Report) was identified along the proposed Eloff phase 3 project footprint and servitude at Strydpan 243 IR farm.
- The survey confirmed that the affected landscape has a long history of human occupation making it an active cultural landscape where there is a possibility of encountering previously unknown graves in the project receiving area during subsurface construction work.
- The test excavation permit must be issued to ascertain if the affected grave still has graves contents or they have been legally exhumed and relocated to a safer place.
- Should the test excavation results found to contain human remains (grave contents), due process for graves exhumation will be followed in line with the NHRA.
- In the likely event that no custodians will come forward or will be identified, the graves will be treated as unknown graves and as such they will fall within the jurisdiction of the National Heritage Resources Act (NHRA) 25 of 1999 under the assumption and observation that some of the graves have been confirmed to be older than 60 years.
- The mining development footprint will cover the historic and active cultural landscape with historic and contemporary human settlements. This provides for a high probability of encountering chance finds and previously unknown graves during sub-surface construction work. The proposed mining development will cover historic homestead remains where there are high possibilities of encountering unmarked burials such for infants (stillborn) that are traditionally buried in homesteads as opposed to being buried in cemeteries. As such, it is recommended that heritage-monitoring program be developed for implementation during the construction period.

1. INTRODUCTION

Mulaifa Development Projects was commissioned by Eloff Mining Company Pty Ltd (Eloff Colliery) to conduct Phase 2 heritage mitigation for burial ground and graves relocation from the proposed mine development footprint. Mulaifa Development Projects' archaeologists and heritage specialist team conducted a field survey for the proposed mining footprint. The survey which was informed by phase one study conducted by PGS and constitute phase two (heritage mitigation) identified 3 grave marked by disturbed headstone located at site KG8 as referred to on HIA Phase 1

This report provides the results of the field study conducted to confirm the status quo of the affected burial grounds within the project receiving area. The study was conducted within the framework of the legislations including the Section 36 of the National Heritage Resources Act (Act No 25 of 1999) and will soon apply the Human Tissue Act (1983).

2. AIM OF THE STUDY

The study was commissioned as part of a Phase 2 Heritage Mitigation exercise for Eloff Mining Company Pty Ltd (Eloff Colliery) Mine development project. The study is part of the proposed grave relocation mitigation process aimed at relocating identified graves from the footprint of the mining development to safer locations. In addition, the study sought to:

- ❑ Confirm the existence of the burial ground and graves situated within the proposed Eloff Colliery mine development footprint.
- ❑ Conduct site condition survey of all recorded burial grounds and gravesite in the project's primary footprint impact zone. The primary impact zone being the direct path of the development.
- ❑ Make further recommendations on mitigation measures with the view to reduce specific adverse impacts and enhance positive impacts on the affected burial sites.

- Take responsibility for communicating with SAHRA and other related authorities in order to obtain the relevant test excavation permit and thereafter burial/graves exhumation and relocation permits and authorization.

3. SPECIALIST QUALIFICATIONS

Mulaifa Development Projects compiled this Report on behalf of Eloff Mining Company (Pty) Ltd. Mulaifa Development Project led by Mr. M.M Mabuda and Mr. Munyai R.R has more than 15yrs experience in the heritage and cultural resources management consulting and development industry. Both project members are registered with the Association of Southern African Professional Archaeologists (ASAPA) and the PI has CRM accreditation within ASAPA.

4. ASSUMPTIONS AND LIMITATIONS

Regardless of the comprehensiveness of the fieldwork undertaken, it is necessary to realize that this heritage report outlines the resources located during the fieldwork which is limited to graves and burial grounds. As such the report do not necessarily represent all the possible heritage resources present within the area. Other classes of heritage resources in the area were covered under the Phase 1 HIA study conducted as part of proposed Eloff Phase 3 Environmental Impact Assessment. This study was restricted to physically identifiable burial grounds and graves and in particular graves that are suspected to have been exhumed and relocated.

This report is in support for an application to conduct test excavation for the identified burial ground/graves, which may not be disturbed or removed in any way until such time that the heritage authority issues the test excavation permit.

5. HERITAGE LEGISLATION

The present study was conducted in line with applicable legislations and regulations. The identification, evaluation and assessment of any cultural heritage site, artefact, physical cultural properties, burial grounds and graves, intangible heritage or find in the South African context is required and governed by the following legislation:

1. National Environmental Management Act (NEMA) Act 107 of 1998
2. National Heritage Resources Act (NHRA) Act 25 of 1999
3. Minerals and Petroleum Resources Development Act (MPRDA) Act 28 of 2002
4. Development Facilitation Act (DFA) Act 67 of 1995
5. National Heritage Resources Act (NHRA) Act 25 of 1999
 - a) Protection of Heritage resources – Sections 34 to 36; and
 - b) Heritage Resources Management – Section 38

The NHRA stipulates that cultural heritage resources may not be disturbed without authorization from the relevant heritage authority. Section 34 (1) of the NHRA states that “no person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority...” The NEMA (No 107 of 1998) states that an integrated EMP should (23:2 (b)) “...identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage”. In accordance with legislative requirements and EIA rating criteria, the regulations of SAHRA and ASAPA have also been incorporated to ensure that a comprehensive legally compatible HIA report is compiled.

As highlighted in introductory sections of this report, the study specifically focuses on burial grounds and graves affected by the proposed Eloff Colliery mining development. Law irrespective of their ages protects all burial grounds and individual graves. Furthermore, there are regulations, which control handling and management of human remains and grave goods. Specifically, in terms of the Section 36 (3) of the National

Heritage Resources Act, 1999 (Act No. 25 of 1999) no person may, without a permit issued by the relevant heritage resources authority:

- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
- (b) destroy, damage, alter, exhume or remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
- (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment, which assists in the detection or recovery of metals.

Therefore, in addition to the formal protection of culturally significance graves, all graves which are older than 60 years and which are not located in a cemetery (such as ancestral graves in rural areas), are protected. Communities, which have an interest in the graves, must be consulted before any disturbance can take place. The graves of victims of conflict and those associated with the liberation struggle will have to be included, cared for, protected and memorials erected in their honour where practical. Regarding graves and burial grounds, the NHRA distinguishes between the following:

- Ancestral graves
- Royal graves and graves of traditional leaders
- Graves of victims of conflict
- Graves of individuals designated by the Minister by notice in the Gazette
- Historical graves and cemeteries
- Other human remains, which are not covered in terms of the Human Tissue Act, 1983 (Act No.65 of 1983).

All human remains are also protected under the Human Tissue Act, 1983 (Act No.65 of 1983). In addition, Municipal Ordinances provide for both burial grounds/cemetery and gravesites within certain localities.

6. GRAVE OUTSIDE NHRA PROTECTION

Graves younger than 60 years of age fall under Section 2(1) of the Removal of Graves and Dead Bodies Ordinance (Ordinance no. 7 of 1925) as well as the Human Tissues Act (Act 65 of 1983) and are the jurisdiction of the National Department of Health and the relevant Provincial Department of Health and must be submitted for final approval to the Office of the relevant Provincial Premier.

This function is usually delegated to the Provincial MEC for Local Government and Planning, or in some cases the MEC for Arts and Culture. Authorisation for exhumation and re-interment must also be obtained from the relevant local or regional council where the grave is situated, as well as the relevant local or regional council to where the grave is being relocated. All local and regional provisions, laws and by-laws must also be adhered to. In order to handle and transport human remains the institution conducting the relocation should be authorised under Section 24 of Act 65 of 1983 (Human Tissues Act).

Graves older than 60 years, but younger than 100 years fall under Section 36 of Act 25 of 1999 (National Heritage Resources Act) as well as the Human Tissues Act (Act 65 of 1983) and are the jurisdiction of the South African Heritage Resource Agency (SAHRA).

The procedure for consultation regarding Burial Grounds and Graves (Section 36(5) of Act 25 of 1999) is applicable to graves older than 60 years that are situated outside a formal cemetery administered by a local authority. Graves in the category located inside a formal cemetery administered by a local authority will also require the same authorisation as set out for graves younger than 60 years over and above SAHRA authorisation.

If the grave is not situated inside a formal cemetery but is to be relocated to one, permission from the local authority is required and all regulations, laws and by-laws set by the cemetery authority must be adhered to.

7. PREVIOUSLY UNIDENTIFIED BURIAL SITES/GRAVES

The proposed mining development is situated in a historic and contemporary cultural landscape with prehistoric, historic and contemporary human settlements and homestead remains. Given the history of human occupation of the affected area, there is a possibility that previously unknown burials may be discovered during subsurface construction work. Should burial sites be accidentally found, they must be reported to the nearest police station to ascertain whether or not a crime has been committed and a heritage expert should be called in to establish whether the burial is covered by the NHRA. If there is no evidence for a crime having been committed, and if the person cannot be identified so that their relatives can be contacted, the remains must be kept in an institution where certain conditions are fulfilled. These conditions are laid down in the Human Tissue Act (Act No. 65 of 1983). In contexts where the local traditional authorities give their consent to the unknown remains to be re-buried in their area, such re-interment may be conducted under the same regulations as would apply for known human remains.

8. SOCIAL CONSULTANCY

The research team has been liaising with Eloff Mining Company Project Development Team members to help trace the families that were relocated from the affected project area. Although the consultations have thus far not identified any family members associated with the identified grave, the process is ongoing. Nonetheless, since status quo of the said graves suggest that they have been exhumed, test excavation results will yield positive outcomes, in that, should excavation uncovers human remains, due process for grave exhumation will follow. An onsite notice and newspaper advert will be published, a window period for social and ethnological consultation will remain open until such time

that graves will be relocated in line with the requirements of the National Heritage Resources Act to ensure that the potential custodians are identified and consulted about the proposed relocation of the affected graves.

9. METHODOLOGY

The methods in this study followed an HIA process that consisted of three steps:

Step I – Literature Review: The background information to the field survey leans greatly on the Heritage Impact Assessment Report completed for Eloff Mining Company Pty Ltd by Digby Wells Environmentals and Professional Graves Solutions (PGS) Pty Ltd, 2019.

Step II – Physical Survey: A physical survey was conducted on foot through the proposed Eloff Colliery mine development project area, in particular where the grave in question is identified by qualified archaeologists (16 December 2019), aimed at locating and documenting graves and burial ground and their in-situ status. A follow up site visit with representatives of SAHRA took place on the 2nd of September, where it was also agreed that a test excavation permit application must be lodge for consideration.

Step III – The final step involved the recording and documentation of relevant burial grounds and gravesites, as well as the assessment of sites in terms of the heritage impact assessment criteria and report writing.

10. RESULTS: BURIAL GROUNDS AND GRAVES

The field survey identified 3 graves marked as KG8 as per PGS Phase one Heritage Impact Assessment report. All these graves as reported on phase 1 report are located within an area earmarked for the mining development. During thorough inspection, it was suspected that these graves have either been legally exhumed or illegally tampered with.

It is with this view that the test excavation permit be issued to ascertain the existence of the graves in question.

As highlighted in previous sections, burial grounds and gravesites are accorded the highest social significance threshold. They have both historical and social significance and are considered sacred. Wherever they exist they may not be tempered with or interfered with during any proposed development. It is important to note that the possibility of encountering human remains during subsurface earth moving works anywhere on the landscape is ever present.

10.1 BURIAL GROUND 1 (KM-BG1)

Burial Ground KG8 is located at the following coordinates: 26 ° 12' 23.06" S and 28 ° 38' 44,2" E. There is THREE grave recorded on this site. This information is contained in phase 1 report and confirmed by our field survey during graves identification exercise.



Plate 1. View of one of the grave in a positions reflecting tempering or exhumation.



Plate 2. Reflect number of headstones scattered around the site, indication that the said graves have been tempered with.

11. SUMMARY RECOMMENDATIONS AND CONCLUDING REMARKS

This report is limited to survey and confirmation of location of burial ground and gravesites in relation to Eloff Mining Company Pty Ltd (Eloff Colliery) development project. No other physical cultural properties are discussed herein. The burial ground and graves are classified as of high cultural significance. Grave(s) identified on this report, after test excavation exercise, should be mitigated prior to the mining construction works commencing. The gravesite identified is on the direct path of the mining development footprint and therefore should be relocated.

- i. All graves identified within the mine footprint are under threat one way or the other from the proposed mining and associated developments. Such recorded graves directly affected should be rescued or salvaged by exhumation and relocated as soon as the necessary permits are obtained.
- ii. An urgent Burial Ground and Graves heritage permit from SAHRA will be applied for, should the test excavation results prove that the said graves still contain grave contents. This will be done in order to allow all affected graves that fall under the NHRA to be exhumed and relocated as stipulated by applicable laws and SAHRA regulations.