



## **HERITAGE SITE CONDITION SURVEY REPORT**

**APPLICATIONS FOR HERITAGE IMPACT  
ASSESSMENT PHASE 2 MITIGATION STUDY FOR  
MDLOTI RIVER DEVELOPMENT: HAZELMERE DAM  
RAISING KWAZULU NATAL PROVINCE.**

**September 2013**



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### APPLICATIONS FOR HERITAGE IMPACT ASSESSMENT PHASE 2 MITIGATION STUDY FOR MDLOTI RIVER DEVELOPMENT: HAZELMERE DAM RAISING KWAZULU NATAL PROVINCE.

September 2013

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*Date:* September 2013

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## EXECUTIVE STATEMENT

This Heritage Site Condition Survey Report details the condition of sites identified during Phase 1 Heritage Study for Mdloti River Development: Hazelmere Dam raising KwaZulu Natal Province (Anderson, 2002). The Phase 2 mitigation exercise was commissioned by DWA through DHD Construction. The study has been conducted to provide background and status of affected heritage sites within the impact zone of the proposed Hazelmere Dam Raising Projects. This report is intended as auxiliary record in support of the following Phase 2 Heritage Permits Applications:

- Burial Ground and Graves Permit (Rectification of site renovation activities)
- Destruction permit for remains of a historic structure; and
- Archaeological Excavation permit.

A Project initiation meeting was held on the 8<sup>th</sup> of May 2013 with Ingerop Project Manager and Environmental Specialist from Nemaï Consulting. A site visit and Reconnaissance Survey was conducted by Nzumbululo Principal Investigator (Dr. M. Murimbika) and Heritage Specialist (Mr. M Mabuda) on the 13<sup>th</sup> of May 2013. The site visit aimed at assessing condition and verifying heritage structures, archaeological sites and burial grounds affected by the scheduled raising of the Hazelmere Dam. The heritage team established that the burial ground site dates to 1898 and as such both the Amafa Act No. 4 of 2008 and the National Heritage Resources Act 25 of 1999 automatically protect it. The heritage team also noted that although Phase 1 HIA study was conducted and assessed by Amafa and an ROD has been issued by the department of Environmental Affairs, renovation work on the graves in the historic cemetery had commenced without the relevant permits from heritage authority. However at the advice of the Heritage Specialist team, all renovation and preservation work on the graves in the historic cemetery was accordingly suspended pending formal application for relevant permits and subsequent approval by Amafa KwaZulu Natal Council and the South African Heritage Resources Agency (SAHRA) in line with recommendations herein made.

## ABBREVIATIONS

AIA	Archaeological Impact Assessment
C	Contractor
CECO	Construction Environmental Conservation Officer
EAP	Environmental Assessment Practitioner
ECO	Environmental Conservation Officer
EIA	Environmental Impact Assessment
EM	Environmental Manager
EMP	Environmental Management Plan
HIA	Heritage Impact Assessment
LIA	Late Iron Age
NHRA	Nation Heritage Resources Act, Act 25 of 1999
PM	Project Manager
SM	Site Manager
SAHRA	South African Heritage Resources Agency

## DEFINITIONS

The following terms used in this Archaeological /Heritage Impact Assessment are defined in the National Heritage Resources Act [NHRA], Act Nr. 25 of 1999, South African Heritage Resources Agency [SAHRA] Policies as well as the Australia ICOMOS Charter (*Burra Charter*):

**Archaeological Material** remains resulting from human activities, which are in a state of disuse and are in, or on, land and which are older than 100 years, including artifacts, human and hominid remains, and artificial features and structures.

**Chance Finds** means Archaeological artefacts, features, structures or historical cultural remains such as human burials that are found accidentally in context previously not identified during cultural heritage scoping, screening and assessment studies. Such finds are usually found during earth moving activities such as water pipeline trench excavations.

**Compatible use means** a use, which respects the cultural significance of a place. Such a use involves no, or minimal, impact on cultural significance.

**Conservation** means all the processes of looking after a place so as to retain its cultural significance.

**Cultural Heritage Resources** Same as **Heritage Resources** as defined and used in the National Heritage Resources Act (*Act No. 25 of 1999*). Refer to physical cultural properties such as archaeological and palaeontological sites; historic and prehistoric places, buildings, structures and material remains; cultural sites such as places of ritual or religious importance and their associated materials; burial sites or graves and their associated materials; geological or natural features of cultural importance or scientific significance. **Cultural Heritage Resources** also include **intangible resources** such as religion practices, ritual ceremonies, oral histories, memories and indigenous knowledge.

**Cultural significance** means aesthetic, historic, scientific, social or spiritual value for past, present or future generations.

**Cultural Significance** also encompasses the complexities of what makes a place, materials or intangible resources of value to society or part of, customarily assessed in terms of aesthetic, historical, scientific/research and social values.

**Environment** The surroundings within which humans exist and that are made up of: i. the land, water and atmosphere of the earth;

ii. micro-organisms, plant and animal life;

iii. any part or combination of (i) and (ii) and the interrelationships among and between them; and,

iv. the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being. This includes the economic, social, cultural, historical and political circumstances, conditions and objects that affect the existence and development of an individual, organism or group.

**Environmental impact assessment** An Environmental Impact Assessment (EIA) refers to the process of identifying, predicting and assessing the potential positive and negative social, economic and biophysical impacts of any proposed project, plan, programme or policy which requires authorisation of permission by law and which may significantly affect the environment. The EIA includes an evaluation of alternatives. As well as recommendations for appropriate mitigation measures for minimising or avoiding negative impacts, measures enhancing the positive aspects of the proposal and environmental management and monitoring measures.

**Expansion** means the modification, extension, alteration or upgrading of a facility, structure or infrastructure at which an activity takes place in such a manner that the capacity of the facility or the footprint of the activity is increased;

**Fabric** means all the physical material of the place including components, fixtures, contents and objects.

**Grave** A place of interment (*variably referred to as burial*), including the contents, headstone or other marker of such a place, and any other structure on or associated with such place. A grave may occur in isolation or in association with others where upon it is referred to as being situated in a cemetery (*contemporary*) or **Burial Ground** (*historic*).

**Heritage impact assessment** (HIA) refers to the process of identifying, predicting and assessing the potential positive and negative cultural, social, economic and biophysical impacts of any proposed project, plan, programme or policy which requires authorisation of permission by law and which may significantly affect the cultural and natural heritage resources. The HIA includes recommendations for appropriate mitigation measures for minimising or avoiding negative impacts, measures enhancing the positive aspects of the proposal and heritage management and monitoring measures.

**Historic Material** remains resulting from human activities, which are younger than 100 years, but no longer in use, including artefacts, human remains and artificial features and structures.

**Impact** The positive or negative effects on human well-being and / or on the environment.

**In Situ** material Material culture and surrounding deposits in their original location and context, for example an archaeological site that has not been disturbed by farming.

**Interested and affected parties** Individuals, communities or groups, other than the proponent or the authorities, whose interests may be positively or negatively affected by the proposal or activity and/ or who are concerned with a proposal or activity and its consequences.

**Interpretation** means all the ways of presenting the cultural significance of a place.

**Late Iron Age** this period is associated with the development of complex societies and state systems in southern Africa.



**Material culture** means buildings, structure, features, tools and other artefacts that constitute the remains from past societies.

**Mitigate** The implementation of practical measures to reduce adverse impacts or enhance beneficial impacts of an action.

**Place** means site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views.

**Protected area** means those protected areas contemplated in section 9 of the NEMPAA and the core area of a biosphere reserve and shall include their buffers;

**Public participation process** A process of involving the public in order to identify issues and concerns, and obtain feedback on options and impacts associated with a proposed project, programme or development. Public Participation Process in terms of NEMA refers to: a process in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to specific matters

**Setting** means the area around a place, which may include the visual catchment.

**Significance** can be differentiated into impact magnitude and impact significance. Impact magnitude is the measurable change (*i.e. intensity, duration and likelihood*). Impact significance is the value placed on the change by different affected parties (*i.e. level of significance and acceptability*). It is an anthropocentric concept, which makes use of value judgments and science-based criteria (*i.e. biophysical, physical cultural, social and economic*).

**Site** A distinct spatial cluster of artefacts, structures, organic and environmental remains, as residues of past human activity.

**Use** means the functions of a place, as well as the activities and practices that may occur at the place.

## 1. INTRODUCTION

This report emanates from a Site Condition Survey conducted to kick-off Phase 2 Heritage Assessment work at Hazelmere Dam Raising Project site. The provides status quo of heritage sites affected by the proposed raising of the Hazelmere Dam in KwaZulu Natal Province. The heritage sites include a more than 100 year Oakford Priory Cemetery, derelict remains of a historic stable, and two archaeological sites recorded during Phase 1 archaeological study for the proposed Hazelmere Dam Raising development project in KwaZulu-Natal.

## 2. PROJECT BACKGROUND

In 2002 Department of Water Affairs and Forestry and Umgeni Water commissioned Hazelmere dam raising feasibility study and EIA study. As part of the study, an archaeological report was completed<sup>1</sup>. Amafa reviewed the report and made relevant recommendations clearing the project to proceed subject to Phase 2 Heritage mitigation processes.

Further need was subsequently identified to Phase 2 mitigation and rescue archaeological work to salvage heritage resources affected by the rising water levels when the dam wall is raised. DHD Construction, the project contractor acting on instructions from the Department of Water Affairs and the project managers Ingerop commissioned this study. The project environmentalists are Nema Consulting<sup>2</sup>.

Project inception meeting between Nzumbululo and project environmentalists and managers was held at Ingerop in Johannesburg on the 8<sup>th</sup> of May 2013. The inception meeting was followed up with a reconnaissance site visit by Nzumbululo Principal Investigators on the 13<sup>th</sup> of May 2013.

The stated aims of the project are:

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<sup>1</sup>Gavin Anderson, 2002. Hazelmere Dam Raising Feasibility Study: Archaeological Survey.

<sup>2</sup>Ciaran Chidley (Senior Environmentalist – Nema Consulting) & Ian Fitz (Project Manager Ingerop)

- Provision of Heritage Services – Phase 2 Mitigation Excavation, Mapping, Reporting and Destruction Permit Application
- Grave Survey, Verification, Exhumation and Undertaker Services & Reburial Exercise



**Figure 1: Location of Hazelmere Dam project area.**

### **3. PROJECT TERMS OF REFERENCE**

The terms of reference for the project identified the need to conduct Phase 2 heritage mitigation for the proposed Hazelmere Dam rising project with the specific objectives being:

- 1. Nzumbululo Project Team meets the Client Management Team to develop final project terms.
- 2. Consultations with the affected parties & Desktop study
- 3. Site Investigation and assessment/Field Survey.
- 4. Permit Applications
- 5. Exhumation/ Excavation and Relocation/ Re-interment
- 6. Compilation of Final Report for submission to the client and relevant departments.

Some expected outcomes of the project are:

- Survey of the affected grave sites/ cemetery.
- Survey affected project area for any heritage sites
- Rescue archaeological sites identified during phase 1 HIA study
- Record and document all graves according to set out format
- Where available, Produce database of legal custodians of graves
- Where applicable, Secure consent for exhumation, relocation and re-interment from burial custodians
- Secure services of Undertakers & Exhume / Excavate affected graves
- Relocate and re-inter the human remains
- Conduct additional survey of flood line area
- Collate data from study and final processes.
- Secure relevant permits to rescue and document affected and protected heritage sites
- Production of Final report, Submission of Report & Sign-off; Project Closure

## **4. PROJECT OVERSIGHT**

The overall Hazelmere Dam project is under the oversight of the Department of Water Affairs. Nzumbululo was retained to conduct the HIA study through DHD Construction, the contracting project managers on site. Ingerop Limited are the project management unit whereas Nemaï Consulting are the project Environmental consultants.

### **4.1. Representation on the Project**

- Ian Fitz (Project Manager Ingerop) Department of Environmental Affairs ;
- Ciaran Chidley (Senior Environmentalist – Nemaï Consulting)
- Nico Oosthuizen – DHD Construction contractors of site.
- Department of Water Affairs



#### 4.2. Role of DWA Designated Project Manager

- Monitor the implementation of the project, ensure that the work plan is adhered to;
- Provide comments and inputs on the deliverables as set out on the TOR;
- Avail all information that will assist the service provider (Nzumbululo) to execute the project;
- When required, Attend the stakeholder engagement; and
- Recommend for approval of the deliverables;

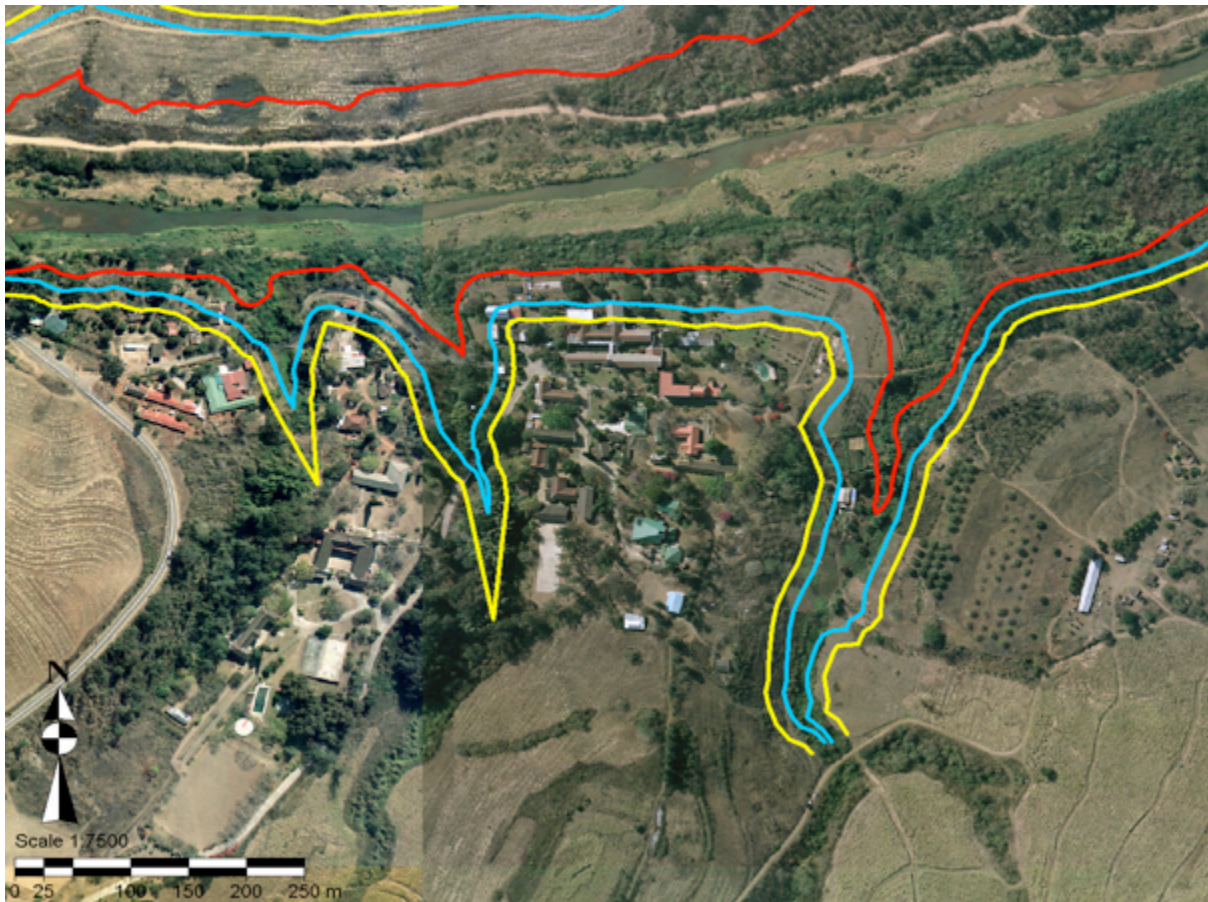


Figure 2: Projected flood lines and effect on Oakford Priory (Source: Ingerop).

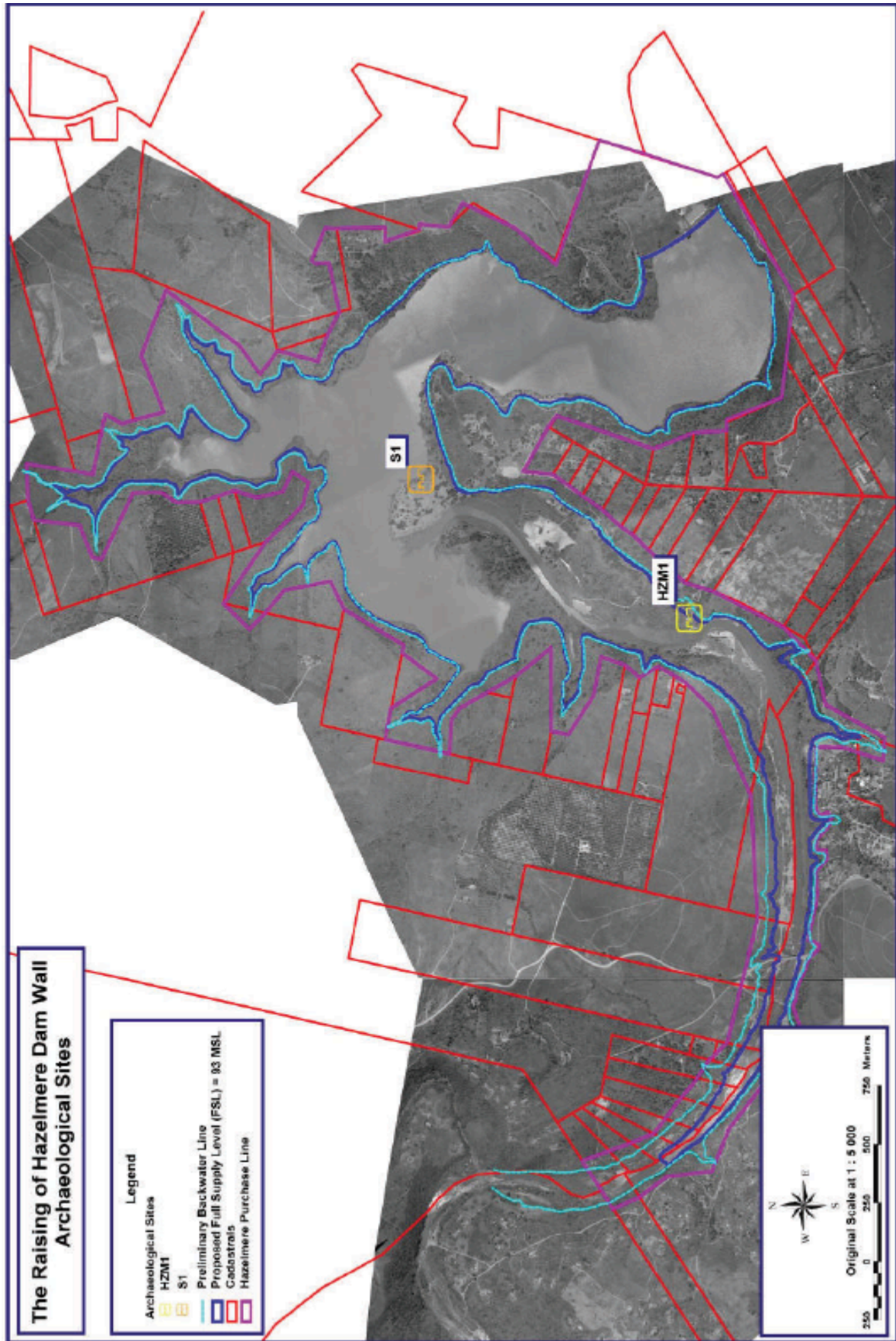


Figure 3: Location of archeological sites identified during Phase 1 HIA study (Source: G Anderson, 2002).



## 5. HAZELMERE DAM SITE HERITAGE STATUS QUO

Phase 1 Archeological Impact Assessment conducted in 2002 identified two Iron Age Archaeological sites that require salvage excavation prior to the affected area being flooded. The report also identified two cemeteries within the project site, where one of the cemeteries will be affected by the 100-year flood line.

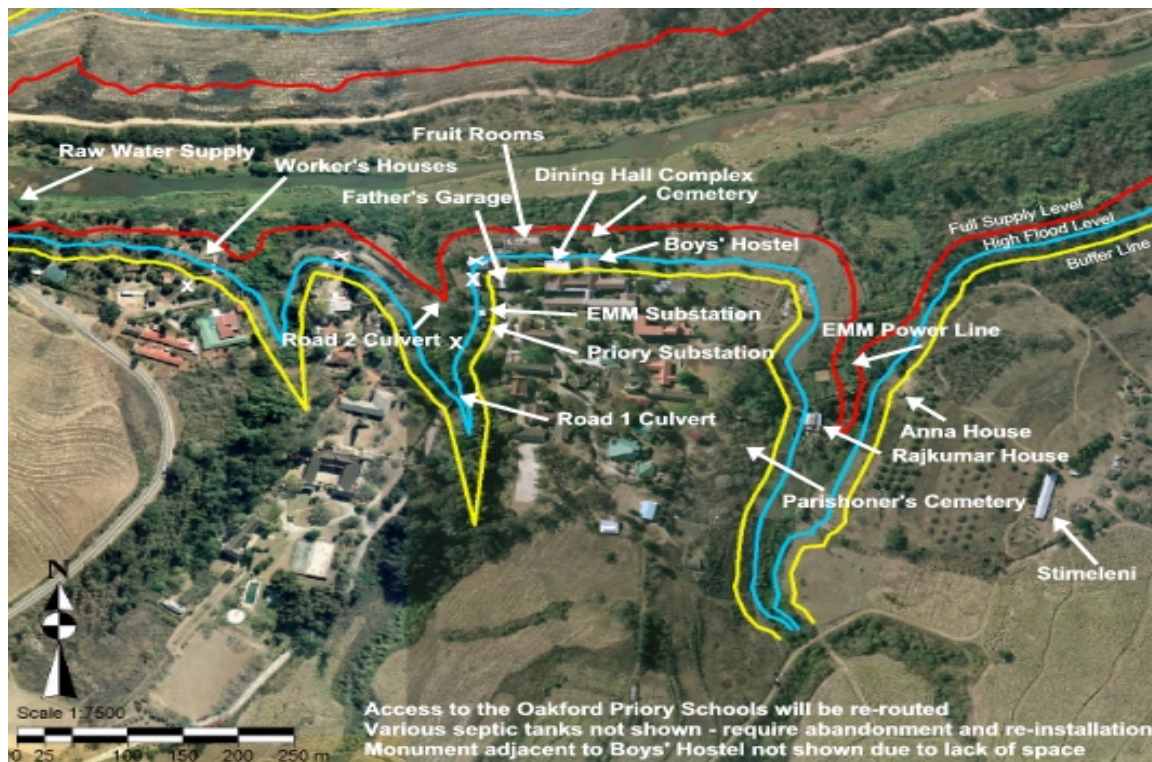


Figure 4: Structures, buildings and featured affected by proposed dam flooding (Source: Ingerop).

### 5.1. Heritage Legislation

All burial grounds and individual graves are protected by law irrespective of their age or location within the Republic of South Africa. Furthermore, there are regulations which control handling and management of human remains and grave goods. In terms of Amafa KwaZulu Natal Act 4 of 2008:

*Section 34. General protection: Graves of victims of conflict — No person may damage, alter, exhume, or remove from its original position—*

- (a) the grave of a victim of conflict;*
- (b) a cemetery made up of such graves; or*

*(c) any part of a cemetery containing such graves, without the prior written approval of the Council having been obtained on written application to the Council.*

*Section 35. General protection: Traditional burial places.—(1) No grave—*

*(a) not otherwise protected by this Act; and*

*(b) not located in a formal cemetery managed or administered by a local authority, may be damaged, altered, exhumed, removed from its original position, or otherwise disturbed without the prior written approval of the Council having been obtained on written application to the Council.*

*(2) The Council may only issue written approval once the Council is satisfied that— (a) the applicant has made a concerted effort to consult with communities and individuals who by tradition may have an interest in the grave; and*

*(b) the applicant and the relevant communities or individuals have reached agreement regarding the grave.*

In addition to the provincial legislation, all burial grounds and classified heritage resources are protect by the NHRA.

*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 already 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).

Furthermore, all human remains are also protected under the Human Tissue Act, 1983 (Act No.65 of 1983). In addition, Municipal Ordinances provide additional protection for both burial grounds/cemetery and gravesites within certain localities under their jurisdiction (Appendix 3).

## **5.2. Previously Unidentified Burial Sites/Graves**

Several legal tools (particularly Sec. 36 of NHRA) protect graves that are discovered accidentally during construction work. The SAHRA regulations of graves also indicates that should such graves be disturbed in the course of development work, the affected area should be sealed off while the heritage authorities issue instructions on the way forward.

As such, should burial sites within or outside the NHRA be accidentally found, they must be reported SAHRA Graves and Burial Grounds Office or to the nearest police station. The heritage authority or the police will help ascertain whether the discovered burial is recent or is under the NHRA.

If the grave falls outside the NHRA, the police may want to establish whether a crime has been committed or the burial is in its original primary position. 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 may be relocated to a safer site in consultation with the other A&IPs or be kept in an institution where certain conditions are fulfilled according to the Human Tissue Act or the NHRA. 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.

## **6. RESULTS OF RECONNAISSANCE SITE VISIT**

Nzumbululo Principal Investigator (Dr. M. Murimbika) and Lead Heritage Specialist (Mr. M. Mabuda) conducted a site visit and conducted a reconnaissance survey on the project area to verify the status of heritage sites identified during Phase 1 HIA study in 2002.

### **Burial grounds and graves**

A historic missionary cemetery was recorded during the site visit. The site has more than 100 graves belonging to the Oakford Dominican sisters. The main entrance to the cemetery bears an inscription of the date for the establishment of the cemetery, marked as 1898. At the centre of the cemetery there is a plaque marked by a large cross on the top and inscription dedicated to the founders of Priory and fallen sisters. However, the graves had already been interfered with as the contractors were in the process of renovation the grave tombstones to secure them from erosion or impact of possible future floods in the area.

Originally, all the graves were marked by vertical crosses and nametags attached to the crosses (see Plates 1-7 below). The burials were arranged in rows in well-designed landscape. The site has been well maintained and decorated by lawn and flowers. The site was documented in detail prior to the site visit. Although the site will be affected by the 100-year flood as a result of raising of the Hazelmere dam, it was agreed between the developer, Department of Water Affairs, and the custodians of the cemetery, The Catholic Dominican Convent, during public participation that the cemetery be preserved and protect in situ.

## 7. PHOTOGRAPHIC DOCUMENTATION OF THE CEMETERY BEFORE REMOVAL OF THE CROSSES.



Figure 5: Plate 1 and 2: Main entrance to the cemetery (Note the date for the establishment of the cemetery inscribed on the pillar) and a well terraced section of the cemetery (also note beautiful flowers and shrubs that characterize the Oakford Cemetery (Photo: Nemai Consulting, May, 2008).



Figure 6: Plate 3 and 1: Graves in the Oakford Cemetery marked by crosses arranged in rows (L and R) (Photo: Nemai Consulting, May, 2013).





**Figure 7: Plate 5 and 6: A large plaque on the center of Oakford Cemetery (L) and graves marked by crosses with name tags attached (R) (Photo: Nema Consulting, May, 2013).**

### **PHOTOGRAPHIC DOCUMENTATION OF THE SITE AFTER REMOVAL OF CROSSES**



**Figure 8: Plate 7: Crosses, headstones and grave markers that have been removed from the graves in the on the Oakford Cemetery (Photo: Author, May, 2013).**

As such the affected graves were not to be relocated, as the cemetery would be preserved in situ. It was also agreed that the vertical crosses marking the graves will be replaced by horizontal concrete headstones (see minutes dated 28 October 2011). It was upon this agreement that the responsible DWA contractor started removing the crosses from the graves in preparation for installation of appropriate new grave markers. Unfortunately, there was an administrative over site. Although Amafa had pre-approved the development subject to Phase 2 being conducted, relevant heritage permits were still required. However, at the advice of Nzumbululo heritage specialists, renovation and demolition work at the cemetery was



suspended immediately (also see Plates 7-9). In a bid to adhere to the stipulations of the relevant legislation the rectification permit application process was initiated. This report is part and parcel of the rectification and heritage permit application process.



**Figure 9: Plate 8: Section of the Oakford Priory Cemetery that has been cleared. This site enjoys automatic protection under the heritage laws and should not have been interfered with prior to securing relevant legal permits (Photo: Author, May, 2013).**



**Figure 10: Plate 9: Crosses, headstones and grave markers that have been removed from the graves in the on the Oakford Cemetery (Photo: Author, May, 2013).**

## Structures and Buildings

The stone-wall stable historic structure identified in Phase 1 Report was found to be partially intact (Plate 10). No demolition work was done prior to this study. The structure is protected by Amafa and SAHRA regulations because it is estimated to be dated more than 60 years. As such a destruction permit is required before any destruction commences. The developer does not intend to physically destroy the remains of this stable, however, the remains are located within the 100-year flood line meaning it may be affected by floods at some stage should the water rise to that 100-year line.



**Figure 11: Plate 10: View of derelict stable which is earmarked for demolition (Photo: Nemaï, May, 2011).**





**Figure 12: Plate 11: View of derelict stable as seen during the site condition survey in May 2013 This structure has been renovated several times in its history of use(Photo: Author, May 2013).**

### **Archaeological sites**

Archaeological sites were recorded in Phase 1 study. Two of the sites were classified as of Grade 3 Local significance with research potential. As such, Phase 1 HIA recommended that the sites be excavated prior to flooding being allowed. However, the condition of these sites since they were identified in 2002 survey could not be verified during the May 2013 site visit due to dense vegetation cover in the project area. Further field survey is scheduled for the flood area to confirm the status of the sites and ascertain the presence or absence of any other archaeological sites in the flood area.

Based on the recommendation of the Phase 1 HIA study and Amafa comments then, a Phase 2 Archaeological excavation Permits has been applied for as part of the mitigation exercise for the dam project.



**Figure 13: Plate 12: A plaque showing the date the Oakford Priory Cemetery was established (Photo: Author, May, 2013).**

### **7.1. Legal Authorisation**

A section of Oakford Priory settlement falls within the 100-year flood zone of the Hazelmere Dam. This section has building, structures, features and burial ground situated within the flood zone. Any structure older than 60 years within Oakford Priory falls under automatic protection from the Amafa Act 4 and the NHRA Act 25 of 1999. The Oakford Priory burial ground dates to 1898, making it more than a 100 years old and it requires a legal permit from Amafa for interference or destruction (see Plate 12). The graveyard may not be interfered with in any manner without a permit issued by the heritage authorities.

The demolition works conducted at the burial ground to date at the Oakford Priory Graveyard have since been suspended in accordance with Section. 34 and Sec 35 of the Amafa KwaZulu Natal Act 4 of 2008 and Section 36 and 38 of the National Heritage Resources Act, Act 25 of 1999. As a corrective measure for the prior interference on the historic cemetery, Nzumbululo Heritage Solutions has been requested to handle the destruction/demolition/ ratification permit application process to fulfill the requirements of section 34 and section 35 of the Amafa KwaZulu Natal Act 4 of 2008 and section 36 and 38 of the National Heritage Resources Act 25



of 1999 before any further work can commence on the site. It is in this context that this report is issued to support the relevant applications.



Figure 14: Plate 13: All installations and statue marking the Oakford Cemetery are part of the protected cultural landscape and may not be disturbed any further without a legal permit from heritage agencies (Photos: Author, May, 2013).



**Figure 15: Plate 14: All materials removed from the Oakford cemetery should be protected and no further work may be conducted on site until heritage permits are secured (Photos: Author, May, 2013).**

## 8. RECOMMENDATIONS

For Phase 2 Heritage Assessment and mitigation work to be completed, a suite of Heritage Permits is required. The following Heritage Permits from Amafa are been applied for:

- Archeological Rescue Excavation of 2 Iron Age sites recorded in Phase 1 HIA,
  - Rectification Permit for the Oakford Priory Burial Ground,
  - Destruction Permit for the historic Stable building within flood line area at Oakford Priory.
- 
- No demolition works and destruction of sites, features and burials at Oakford burial ground older than 60 years shall commence or proceed prior to obtaining the relevant heritage permits as stated above.
  - All head and tomb stones as well as any associated materials removed from the graves on site may not be moved or be interred with until such time that a permit is secure from the heritage authorities with instructions of how the process may proceed.
  - All documentation and records of the planned conversion of the Oakford Cemetery grave head stones in order to prepare them for possible 100-year flooding in future should be provided to the heritage specialists during the conversion exercise.
  - No demolition of building, structure or feature older than 60 years at Oakford Priory and affected project areas may be conducted without a permit from the Heritage Authority.
  - Heritage Specialist (Nzumbululo Heritage Solutions) submits relevant applications to Amafa in order to secure permits for further work at the Oakford Cemetery, rescue excavation of archaeological sites recorded in Phase 1 HIA, destruction permit for Stable building recorded in Phase I HIA.
  - Although the protected historic cemetery was interfered with prior to a relevant permit was issued. The specialists note that all work that was being done on site was in line with recommend renovation and preservation of the affected graves on site in situ. As such, the interference was not criminal in intent but rather mitigatory. A permit may be issued to clear the way for the preservation renovations to be completed.
  - The heritage specialists for this project recommends to Amafa KZN to issue the listed permits in accordance with applicable conditions.



## 9. APPENDICES

### 10. APPENDIX 1: PUBLIC PARTICIPATION MINUTES OF MEETING - NO.1

<b>Project Title:</b>	Hazel mere Dam: Demolitions at Oak ford Priory
<b>Meeting Title</b>	Project Briefing
<b>Client Contract Ref</b>	DHD W0568 WTE
<b>Client Order Nr.</b>	W 0568 WTE
<b>Client PM</b>	IAN FITZ (PROJECT MANAGER) AND NICO OOSTHUIZEN (PROJECT LIASON)
<b>Nzumbululo Heritage solution</b>	Dr. McEdward Murimbika (Project Director), M Mabuda (Project Manager), H. Mlotshwa (Project Coordinator)

		<b>Venue:</b>	<b>Block E, Edenburg Terraces 348 Rivonia Boulevard</b>		
<b>Meeting Date:</b>	<b>8 May 2013</b>	<b>Time: (From)</b>	<b>11:00hrs</b>	<b>Time: (To)</b>	<b>12:00Hrs</b>
<b>Attendees:</b>	<b>Nzumbululo heritage Solutions (ST) staff and TWP staff</b> <ol style="list-style-type: none"> <li>1. McEdward Murimbika of Nzumbululo Heritage Solutions (Project Director)- MM</li> <li>2. Moses Mabuda of Nzumbululo heritage Solutions (Project Manager)-MM</li> <li>3. Hellen Mlotshwa of Nzumbululo Heritage Solutions (Project Coordinator)- HM</li> <li>4. Ciaran Chidley (Senior Environmentalist) – Nema Consulting</li> <li>5. Ian Fitz (Project manager) Ingerop</li> </ol>				
<b>Meeting Chair</b>	Ian Fitz				
<b>Minutes Scribe</b>	Hellen Mlotshwa (HM)				
<b>Purpose of Meeting:</b>	Project briefing for the Hazelmere Dam Raising Demolition of buildings at Oakford priority				

1	<b>Welcome and Opening</b>	<b>Action</b>	<b>By Date</b>
	Ian Fitz welcomed and thanked everyone for availing themselves for the briefing.	IF	
2	<b>Apologies</b>		
	Ian Fitz apologised for being ushered at the boardroom he was busy preparing his office as he expected the meeting to be held in his office	IF	
3	<b>BRIEFING BY CIARAN CHIDLEY</b>		
	<p><u>Presentation</u></p> <ul style="list-style-type: none"> <li>Phase was done and two sites were identified falling under the Iron Age and Nzumbululo is coming in to do phase 2.</li> <li>Nzumbululo to check for other buildings, which might be over 60 years.</li> <li>There are a number of graves identified and are classified into two groups the on public and the public, which basically speaks about the nuns as it is a Roman catholic church and the non public and public refers to the ordained and the non ordained sisters</li> </ul>	CC/MM	
4	<b>Grave verification</b>		
	<ul style="list-style-type: none"> <li>Nzumbululo will resurvey the affected project area and confirm all the graves and demarcate those affected.</li> <li>The graves are characterised into 3 (1. birth, 2.when they gave their lives to God, and 3. Death)</li> <li>Nzumbululo to contact Sister Muson- the manager for Dominican</li> <li>Ian advised that all communication should go through DHD who appointed Nzumbululo Heritage Solutions and Ian to be copied so he can be on the loop of what is happening on the project.</li> </ul>	ALL	All Project Phases
5	<b>Site meeting</b>		
	<ul style="list-style-type: none"> <li>There is a scheduled site meeting, which will be on 29 May 2013; Nzumbululo is invited to attend so they can meet others who are involved in the project.</li> <li>Nzumbululo has organised a site visit with Nico DHD for 13 May 2013</li> </ul>	MM, MM	Reporting Phase

<b>6</b>	<b>Map Production</b>		
	<ul style="list-style-type: none"> <li>• Ian organised a map to use for getting to know the area.</li> <li>• Ciaran C to send Nzumbululo Jpeg map for the site</li> </ul>		
	<b>Resolutions</b>		
	<ul style="list-style-type: none"> <li>• Ciaran to send contacts for Sister Munson</li> <li>• Ciaran to send JPEG map</li> </ul>	<b>ALL</b>	
	<b>Closure and Comments</b>		
	Ian thanked everyone for their inputs and closed the meeting. <b>Meeting closed at 12H25</b>		

Signed: Ian Fitz \_\_\_\_\_

Nzumbululo Heritage Solutions: Dr M Murimbika \_\_\_\_\_

Scribe: Hellen Mlotshwa \_\_\_\_\_



## 11.APPENDIX 2: BURIAL GROUNDS AND GRAVE SITES IN DEVELOPMENT CONTEXT

Developers, land use planners and professional specialist service providers often encounter difficult situations with regards to burial grounds, cemeteries and graves that may be encountered in development contexts. This may be before or during a development project. There are different procedures that need to be followed when a development is considered on an area that will impact upon or destroy existing burial grounds, cemeteries or individual graves. In contexts where human remains are accidentally found during development work such as road construction or building construction, there are different sets of intervention regulations that should be instigated. This brief is an attempt to highlight the relevant regulations with emphasis on procedures to be followed when burial grounds, cemeteries and graves are found in development planning and development work contexts. The applicable regulations operate within the national heritage and local government legislations and ordinances passed in this regard. These guidelines assist you to follow the legal pathway.

1. First, establish the context of the burial:

A. Are the remains less than 60 years old? If so, they may be subject to provisions of the Human Tissue Act, Cemeteries Ordinance(s) and to local, regional, or municipal regulations, which vary from place to place. The finding of such remains must be reported to the police but are not automatically protected by the National Heritage Resources Act (Act 25 of 1999).

B. Is this the grave of a victim of conflict? If so, it is protected by the National Heritage Resources Act (Section 36(3a)). (Relevant

extracts from the Act and Regulations are included below).

C. Is it a grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority? If so, it is protected by the National Heritage Resources Act (Section 36(3b)).

D. Are the human or hominid remains older than 100 years? If so, they are protected by the National Heritage Resources Act (Section 35(4), see also definition of "archaeological" in Section 2).

2. Second, refer to the terms of the National Heritage Resources Act most appropriate to the situation, or to other Acts and Ordinances:

A. Human remains that are NOT protected in terms of the National Heritage Resources Act (i.e. less than 60 years old and not a grave of a victim of conflict or of cultural significance) are subject to provisions of the Human Tissue Act and to local and regional regulations, for example Cemeteries Ordinances applicable in different Provincial and local Authorities.

B). All finds of human remains must be reported to the nearest police station to ascertain whether or not a crime has been committed.

C). 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 may 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 given 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.

3. In the event that a graveyard is to be moved or developed for another purpose, it is incumbent on the local authority to publish a list of the names of all the persons buried in the graveyard if there are gravestones or simply a notification that graves in the

relevant graveyard are to be disturbed. Such a list would have to be compiled from the names on the gravestones or from parish or other records. The published list would call on the relatives of the deceased to react within a certain period to claim the remains for re-interment. If the relatives do not react to the advertisement, the remains may be re-interred at the discretion of the local authority.

A. However, it is the responsibility of the developer to ensure that none of the affected graves within the cemetery are burials of victims of conflict. The applicant is also required in line with the heritage legislation to verify that the graves have no social significance to the local communities.

B. It is illegal in terms of the Human Tissue Act for individuals to keep human remains, even if they have a permit, and even if the material was found on their own land.

4. The Exhumations Ordinance (Ordinance No. 12 of 1980 and as amended) is also relevant. Its purpose is "To prohibit the desecration, destruction and damaging of graves in cemeteries and receptacles containing bodies; to regulate the exhumation, disturbance, removal and re-interment of bodies, and to provide for matters incidental thereto". This ordinance is supplemented and supported by local authorities regulations, municipality by-laws and ordinances.

#### DEFINITIONS AND APPLICABLE REGULATIONS

1). A "Cemetery" is defined as any land, whether public or private, containing one or more graves.

2). A "grave" includes "(a) any place, whether wholly or partly above or below the level of ground and whether public or private, in which a body is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and (b) any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure

of whatsoever nature forming part of or appurtenant to a grave.

3). No person shall desecrate, destroy or damage any grave in a cemetery, or any coffin or urn without written approval of the Administrator.

4). No person shall exhume, disturb, remove or re-inter anybody in a cemetery, or any coffin or urn without written approval of the Administrator.

5). Application must be made for such approval in writing, together with:

a). A statement of where the body is to be re-interred.

b). Why it is to be exhumed.

c). The methods proposed for exhumation.

d). Written permission from local authorities, nearest available relatives and their religious body owning or managing the cemetery, and where all such permission cannot be obtained, the application must give reasons why not.

6). The Administrator has the power to vary any conditions and to impose additional conditions.

7). Anyone found guilty and convicted is liable for a maximum fine of R200 and maximum prison sentence of six months.

5. Human remains from the graves of victims of conflict, or any burial ground or part thereof which contains such graves and any other graves that are deemed to be of cultural significance may not be destroyed, damaged, altered, exhumed or removed from their original positions without a permit from the National Heritage Resources Agency. They are administered by the Graves of Conflict Division at the SAHRA offices in Johannesburg.

"Victims of Conflict" are:

a). Those who died in this country as a result of any war or conflict but excluding those covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992).



b). Members of the forces of Great Britain and the former British Empire who died in active service before 4 August 1914.

c). Those who, during the Anglo Boer War (1899-1902) were removed from South Africa as prisoners and died outside South Africa, and,

d). Those people, as defined in the regulations, who died in the "liberation struggle" both within and outside South Africa.

6. Any burial that is older than 60 years, which is outside a formal cemetery administered by a local authority, is protected in terms of Section 36(3b) of the National Heritage Resources Act. No person shall destroy damage, alter, exhume or remove from its original position, remove from its original site or export from the Republic any such grave without a permit from the SAHRA.

There are some important new considerations applicable to B & C (above).

SAHRA may, for various reasons, issue a permit to disturb a burial that is known to be a grave of conflict or older than 65 years, or to use, at a burial ground, equipment for excavation or the detection or the recovery of metals.

(Permit applications must be made on the official form Application for Permit: Burial Grounds and Graves available from SAHRA or provincial heritage resources authorities.)

Before doing so, however, SAHRA must be satisfied that the applicant:

a). Has made satisfactory arrangements for the exhumation and re- interment of the contents of such a grave at the cost of the applicant.

b). Has made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such a grave and,

c). Has reached an agreement with these communities and individuals regarding the future of such a grave or burial ground.

#### PROCEDURE FOR CONSULTATION

The regulations in the schedule describe the procedure of consultation regarding the

burial grounds and graves. These apply to anyone who intends to apply for a permit to destroy damage, alter, remove from its original position or otherwise disturb any grave or burial ground older than 60 years that is situated outside a formal cemetery administered by a local authority. The applicant must make a concerted effort to identify the descendants and family members of the persons buried in and/or any other person or community by tradition concerned with such grave or burial ground by:

1). Archival and documentary research regarding the origin of the grave or burial ground;

2). Direct consultation with local community organizations and/or members;

3). The erection for at least 60 days of a notice at the grave or burial ground, displaying in all the official languages of the province concerned, information about the proposals affecting the site, the telephone number and address at which the applicant can be contacted by any interested person and the date by which contact must be made, which must be at least 7 days after the end of the period of erection of the notice; and

4). Advertising in the local press.

The applicant must keep records of the actions undertaken, including the names and contact details of all persons and organizations contacted and their response, and a copy of such records must be submitted to the provincial heritage resources authority with the application.

Unless otherwise agreed by the interested parties, the applicant is responsible for the cost of any remedial action required.

If the consultation fails to reach an agreement, the applicant must submit records of the consultation and the comments of all interested parties as part of the application to the provincial heritage resources authority.

In the case of a burial discovered by accident, the regulations state that when a

grave is discovered accidentally in the course of development or other activity:

- a). SAHRA or the provincial heritage resources authority (or delegated representative) must, in co-operation with the Police, inspect the grave and decide whether it is likely to be older than 60 years or otherwise protected in terms of the Act; and whether any further graves exist in the vicinity.
- b). If the grave is likely to be so protected, no activity may be resumed in the immediate vicinity of the grave, without due investigation approved by SAHRA or the provincial heritage resources authority; and
- c). SAHRA or the provincial heritage resources authority may at its discretion modify these provisions in order to expedite the satisfactory resolution of the matter.
- d). Archaeological material, which includes human and hominid remains that are older than 100 years (see definition in section 2 of the Act), is protected by the National Heritage Resources Act (Section 35(4)), which states that no person may, without a permit issued by the responsible heritage resources authority - destroy, damage, excavate, alter or remove from its original site any archaeological or palaeontological material. The implications are that anyone who has removed human remains of this description from the original site must have a permit to do so. If they do not have a permit, and if they are convicted of an offence in terms of the National Heritage Resources Act as a result, they must be liable to a maximum fine of R100 000 or five years imprisonment, or both.

#### TREAT HUMAN REMAINS WITH RESPECT

- a). Every attempt should be made to conserve graves in situ. Graves should not be moved unless this is the only means of ensuring their conservation.
- b). The removal of any grave or graveyard or the exhumation of any remains should be preceded by an historical and archaeological report and a complete recording of original location, layout, appearance and inscriptions by means of

measured drawings and photographs. The report and recording should be placed in a permanent archive.

- c). Where the site is to be re-used, it is essential that all human and other remains be properly exhumed and the site left completely clear.
- d). Exhumations should be done under the supervision of an archaeologist, who would assist with the identification, classification, recording and preservation of the remains.
- e). No buried artifacts should be removed from any protected grave or graveyard without the prior approval of SAHRA. All artifacts should be re-buried with the remains with which they are associated. If this is not possible, proper arrangements should be made for the storage of such relics with the approval of SAHRA.
- f). The remains from each grave should be placed in individual caskets or other suitable containers, permanently marked for identification.
- g). The site, layout and design of the area for re-interment should take into account the history and culture associated with, and the design of, the original grave or graveyard.
- h). Re-burials in mass graves and the use of common vaults are not recommended.
- i). Remains from each grave should be re-buried individually and marked with the original grave markers and surrounds.
- j). Grouping of graves, e.g. in families, should be retained in the new layout.
- k). Material from the original grave or graveyard such as chains, kerbstones, railing and should be re-used at the new site wherever possible.
- l). A plaque recording the origin of the graves should be erected at the site of re-burial.
- m). Individuals or groups related to the deceased who claim the return of human remains in museums and other institutions should be assisted to obtain documentary proof of their ancestry.

## 12. APPENDIX 3: BURIAL RELOCATION PROJECT METHOD STATEMENT

### 1. DISCOVERY AND NOTIFICATION

If human burial remains are accidentally discovered during development at the construction site the following guidelines apply:

- a) The finder will immediately cease any further activity at the site and report the site to the Project ECO. The ECO will notify the heritage expert (Archaeologist) and authorities.

### 2. SITE PROTECTION AND IDENTIFICATION

- a) The ECO and the Archaeologist and the permitting authority shall take reasonable measures to protect the site from environmental factors and any form of unauthorized interference or disturbance.
- b) Based on the evidence reported at the scene, the Archaeologist will investigate the site and make a preliminary determination as to the nature of the remains.
- c) Existing site inventories, land use records, and community, and authorities, should be consulted as soon as possible about possible identification of the remains. Some examination of the site/remains may be required to determine its cultural affiliation and age, and whether or not the site is modern or historic.
- d) The Archaeologist shall apply and acquire the relevant exhumation and rescue Permit from SAHRA Graves and Burial Unit.

### 3. INVESTIGATION AND REPORTING

a) The ECO will direct the Archaeologist to carry out an investigation under any required permits, in consultation with the affected custodians (if available) and other affected parties, to make an initial report citing, if possible, the cultural affiliation of the human remains.

b) Within a reasonable time to be specified by the EO, and the affected parties, the Archaeologist shall deliver a written report and any notification not yet made, to:

- the ECO, and the affected custodians if appropriate;
- the SAHRA;
- the permitting authority of SAHRA Graves and Burials Unit
- any other representative of the interred, if known.

c) The written report shall attempt to identify:

- the representative group of the interred;
- the geographic boundaries of the site;
- the grave offerings or other heritage resources that may be associated with the remains or the site.

d) The Archaeologist may, with the agreement of the proper authority and the representative of the interred, if known, remove all or part of the human remains for temporary custody where the remains may otherwise be at risk prior to their re-burial at a safe site.

#### 3.1 REPORTING

a) If the site is determined to be a contemporary burial site, the appropriate representative will be contacted in writing to provide further direction on the disposition of the remains.

b) Project contractors carrying out authorized activity where a historic or archaeological burial site is discovered can continue that activity with the consent of the EO, where appropriate. The activity must

stay 150 meters away from the grave while further arrangements are made by the Archaeologist to rescue and relocate the remains to a safe cemetery.

d) The Archaeologist may publish notice of the discovery in a newspaper or other public notice seeking information on the remains and alerting members of the public about the impending relocation of the remains to a predetermined formal cemetery or burial ground.

#### 4. SITE DISPOSITION AGREEMENT (MANAGEMENT PLAN)

4.1 When the site or remains are identified

a) The site shall not be disturbed and the EO, if on direct path of Project development work, shall initiate discussions towards entering into a site disposition agreement with the representative of the interred where applicable.

b) If the site is a historic or archaeological burial site, there must be joint approval of the site management plan on reburial as stated in the scope of services in terms of contract between Project and Mafu.

c) Decisions regarding reburial, relocation or other disposition should be determined on a case by case basis in consultation with those concerned and in a timely manner.

Site disposition agreements shall determine such things as:

1. the interim care of the human remains;
2. the scope and extent of analysis to be performed on the human remains, if any;
3. the exact location of the place where the human remains are to remain or to be interred;
4. the style and manner of disinterment, if applicable;
5. the style and manner of reinterment, if applicable;
6. the time period in which disinterment and reinterment is to take place;

7. the procedures relating to, and the final disposition of any grave offerings discovered with the human remains and any additional analysis of them;

8. the provision for future maintenance of the cemetery or site where the human remains are to be located;

9. access to the site and ways to prevent disturbance;

10. any other issue agreed upon.

4.2 When no representative is identified or no disposition is specified:

If disposition is not specified by a representative, or the remains are not claimed or no affiliation is established within a reasonable time, the Archaeologist shall with the necessary SAHRA permits and approvals provide for the following disposition:

a) cover and leave the remains where they were found and have the site recorded as a burial site/heritage site, if on land suitable for a burial site; or

b) have the remains disinterred and reinterred in the nearest appropriate cemetery; or

c) remove the remains from the site for analysis and may have them reinterred in a recognized cemetery or;

d) may act as the temporary repository of the remains until they are re-located for reburial at designated cemetery.

(Where the remains were found on Mine Site but are not historic or archaeological remains, the Archaeologist may remove the remains in consultation with the Project EO and the affected parties.)

#### 5. ARBITRATION

a) If no disposition or reburial agreement or management plan is reached within a reasonable time the matter may be referred to arbitration for settlement.

## 6. RECORDS

- a) A record of the site and a report of the discovery and disposition plan shall be kept by the Archaeologist, for future reference to protect the site or identify the re-burial site.
- b) Access to information about discovered sites will be addressed in any site management plan developed under these guidelines, and will be protected under the Access to Information and Protection of Privacy legislations, and the NHRA.

## 7. BURIAL RELOCATION & REBURIAL

- Burial Relocation involves the identification of each grave and the manual excavation of the interred remains. Human remains, coffin features, and grave goods are exposed, their positions in the grave are carefully recorded, and maps and photographs of each grave are made following standard archaeological recovery techniques.
- Once excavation and examination are completed, the interred along with their grave goods are inventoried and carefully wrapped in acid-free tissue. Human remains are arranged anatomically and all materials are placed in specially designed containers, specified by the laws and regulations governed by the state where the re-interment location has been determined. The goal of re-interment is to restore as much of the original mortuary meaning as possible.
- Burial relocation is extremely culturally sensitive and Project and contractors/service provider staff understands that the utmost respect must be shown to the interred, as well as the descendant communities. We advocate respectful involvement of descendent communities in the

relocation process, whenever possible, and have an excellent reputation for communicating with descendant groups.

- Funeral and Nzumbululo Heritage Solutions has extensive experience conducting cemetery relocations for government agencies, other cultural resource firms, developers and private citizens in South Africa. We assure our clients as well as the descendent communities that the greatest amount of respect and care is taken when excavating and relocating these cemeteries.

## 8. RISKS

### 1. Legal Risks

Project is exposed to a myriad of legal requirements on the local and national level when having to relocate burials. Burial relocation can infringe a number of human rights enshrined in the Constitution and legislations such the NHRA. If not carried out properly, grave relocation can impact the right to burial and dignity. Community opposition may result in protests and delays on development.

### Mitigation

When human remains are identified during the development, all measures must be taken to ensure the law an applicable regulations are enforced including mandatory public notifications.

### 2. Reputational risk

Relocation of human burials in particular also brings with it high risks for the Project's reputation which is exacerbated by the instantaneous spread of news across the world via the internet. Lack of proper planning and management may lead to negative consequences, which in turn may affect the Project's reputation.

#### Mitigation

Human remains identified in development contexts should be handled with utter most care to ensure the exhumation and relocation takes place in accordance with the law.

#### 3. Operational risks

Legal action arising from the inadequate planning and implementation of burial relocation may result in Project's permission to construct the Mine project site being revoked via preliminary injunctions.

Operational risks may also arise from community protests directly. Cases of community opposition and protests, has previously disrupted work for days and weeks, involving, for example, the blockage of construction sites and vital roads and infrastructure. Construction may be delayed or disrupted.

Protests may be violent and impact on the health and safety of Project staff perpetuating work delays in construction and operations. Project facilities, machinery, housing and other assets may be damaged and rendered unusable.

#### Mitigation

Mine Station site should have adequate security. All burial related matters should be held by the professional heritage team and reburial specialists. Human remains discovered during development should be reported to the ECO urgently and the Archaeologist notified in time to avoid any delays with the remains exposed on site. All exhumations and reburial exercises should be handled or schedule in a manner that does not require the remains to be held elsewhere temporarily.

#### 4. Financial risks

Legal, reputational and operational risks may also lead other financial costs to the project. Moreover, costs may arise from

legal action or disruptions in operations and work delays. Additional costs may be incurred when public protests require work to stop on site as a result of human remains discovery on site.

#### 5. Human Remains Handling Risks

Exhumation, handling, transportation and reburial of human remains also pose a threat to public health if not handled to strict protocols. This risk is particularly highest in contemporary burials.



## 13.APPENDIX 4: GENERAL PRECAUTIONS

The following precautionary measures can help employers and employees remain safe and healthy whilst handling human remains. The transportation, handling and storage of human remains must also be carried out in a manner that preserves public safety and maintains the dignity of the deceased person.

### PERSONAL PROTECTIVE EQUIPMENT

Hand Protection:

When handling potentially infectious materials, use appropriate barrier protection including latex and nitrile gloves (powder-free latex gloves with reduced latex protein content can help avoid reaction to latex allergies). These gloves can be worn under heavy-duty gloves which will, in turn, protect the wearer from cuts, puncture wounds, or other injuries that break the skin (caused by sharp environmental debris or bone fragments). A combination of a cut-proof inner layer glove and a latex or similar outer layer is preferable.

Foot Protection:

Footwear should similarly protect against sharp debris.

Hygiene:

- Wash your hands with soap and water or with an alcohol-based hand cleaner immediately after you remove your gloves.
- Give prompt care to any wounds sustained during work with human remains, including immediate cleansing with soap and clean water. Workers should also be vaccinated against

hepatitis B, and get a tetanus booster if indicated.

- Ensure disinfection of vehicles and equipment.

### SUMMARY

- In general, personnel involved in the recovery and handling of human remains from a burial site can limit risk from potential exposure by following the guidelines below.
- Vinyl or Latex gloves should be worn.
- Masks and protective eyewear or face shields should be worn during procedures that are likely to generate fluids to prevent exposure of mucous membranes of the mouth, nose, and eyes.
- Gowns or aprons should be worn during procedures that are likely to generate splashes of blood or other body fluids.
- Hands and other skin surfaces should be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands should be washed immediately after gloves are removed.
- Ensure universal precautions for blood and body fluids.
- Ensure use of body bags.
- Ensure disinfection of vehicles and equipment.
- Bodies do not need to be disinfected before disposal (except in case of cholera).
- Vaccinate workers against hepatitis B.

## 14. APPENDIX 5: LEGAL BACK GROUND AND PRINCIPLES OF HERITAGE RESOURCES MANAGEMENT IN SOUTH AFRICA

Extracts relevant to this report from the National Heritage Resources Act No. 25 of 1999, (Sections 5, 36 and 47):

### **General principles for heritage resources management**

5. (1) All authorities, bodies and persons performing functions and exercising powers in terms of this Act for the management of heritage resources must recognise the following principles:

(a) Heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival;

(b) every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all South Africans;

(c) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and

(d) heritage resources management must guard against the use of heritage for sectarian purposes or political gain.

(2) To ensure that heritage resources are effectively managed—

(a) the skills and capacities of persons and communities involved in heritage resources

management must be developed; and

(b) provision must be made for the ongoing education and training of existing and new heritage resources management workers.

(3) Laws, procedures and administrative practices must—

(a) be clear and generally available to those affected thereby;

(b) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby; and

(c) give further content to the fundamental rights set out in the Constitution.

(4) Heritage resources form an important part of the history and beliefs of communities and must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management.

(5) Heritage resources contribute significantly to research, education and tourism and they must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.

(6) Policy, administrative practice and legislation must promote the integration of heritage resources conservation in urban and rural planning and social and economic development.

(7) The identification, assessment and management of the heritage resources of South Africa must—

(a) take account of all relevant cultural values and indigenous knowledge systems;

(b) take account of material or cultural heritage value and involve the least possible alteration or loss of it;

(c) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;

(d) contribute to social and economic development;

(e) safeguard the options of present and future generations; and



(f) be fully researched, documented and recorded.

### **Burial grounds and graves**

36. (1) Where it is not the responsibility of any other authority, SAHRA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit.

(2) SAHRA must identify and record the graves of victims of conflict and any other graves which it deems to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and must maintain such memorials.

(3) (a) No person may, without a permit issued by SAHRA or a provincial 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, 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.

(4) SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible

heritage resources authority.

(5) SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection (3)(b) unless it is satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority—

(a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and

(b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Service and in accordance with regulations of the responsible heritage resources authority—

(a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and

(b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit.

(7) (a) SAHRA must, over a period of five years from the commencement of this Act, submit to the Minister for his or her approval lists of graves and burial grounds of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or agents

provocateur and which, after a process of public consultation, it believes should be included among those protected under this section.

(b) The Minister must publish such lists as he or she approves in the Gazette.

(8) Subject to section 56(2), SAHRA has the power, with respect to the graves of victims of conflict outside the Republic, to perform any function of a provincial heritage resources authority in terms of this section.

(9) SAHRA must assist other State Departments in identifying graves in a foreign country of victims of conflict connected with the liberation struggle and, following negotiations with the next of kin, or relevant authorities, it may re-inter the remains of that person in a prominent place in the capital of the Republic.

#### **General policy**

47. (1) SAHRA and a provincial heritage resources authority—

(a) must, within three years after the commencement of this Act, adopt statements of general policy for the management of all heritage resources owned or controlled by it or vested in it; and  
(b) may from time to time amend such statements so that they are adapted to changing circumstances or in accordance with increased knowledge; and

(c) must review any such statement within 10 years after its adoption.

(2) Each heritage resources authority must adopt for any place which is protected in terms of this Act and is owned or controlled by it or vested in it, a plan for the management of such place in accordance with the best environmental, heritage conservation, scientific and educational principles that can reasonably be applied taking into account the location, size and nature of the place and the resources of the authority concerned, and may from time to time review any such plan.

(3) A conservation management plan may at the discretion of the heritage resources authority concerned and for a period not exceeding 10 years, be operated either solely by the heritage resources authority or in conjunction with an environmental or tourism authority or under contractual arrangements, on such terms and conditions as the heritage resources authority may determine.

(4) Regulations by the heritage resources authority concerned must provide for a process whereby, prior to the adoption or amendment of any statement of general policy or any conservation management plan, the public and interested organisations are notified of the availability of a draft statement or plan for inspection, and comment is invited and considered by the heritage resources authority concerned.

(5) A heritage resources authority may not act in any manner inconsistent with any statement of general policy or conservation management plan.

(6) All current statements of general policy and conservation management plans adopted by a heritage resources authority must be available for public inspection on request.