



**HERITAGE STATUS QUO REPORT:  
FOR THREE SUSPECTED GRAVES DISCOVERED  
DURING CONSTRUCTION WORK ALONG ERMELO  
TO MAJUBA RAILWAY SERVITUDE IN  
MPUMALANGA PROVINCE.  
November 2013**

*Reveal. Sustain*



**NZUMBULULO**

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November 2013**

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*For and on behalf of  
Eskom*

*Approved by: Dr. McEdward Murimbika  
Signed:*

*Position: Principal Investigator  
Date: November 2013*

This report has been prepared by Nzumbululo Cultural Heritage and Development the trading name of Nzumbululo (Pty) Limited, one of the few consultancies able to combine natural, cultural and social environmental expertise under a one-stop consultancy supported by local expertise and knowledge with sub-Saharan regional reach and experience.

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## EXECUTIVE STATEMENT

This Heritage Status Quo report details the condition of three stone cairn sites suspected to be graves exposed during construction work along Ermelo to Majuba Railway servitude in PixleyKa Semi Local Municipality in Mpumalanga Province. In 2009, an HIA Phase 2 mitigation exercise was conducted for this project where 13 known graves were relocated from the path of the development. However, following the discovery of the previously unknown potential graves, Eskom Generation commissioned Nzumbululo Heritage Solutions to conduct further assessment. A Project initiation meeting was held on the 4<sup>th</sup> of November 2013 with Eskom project manager. This was followed by a site visit and Nzumbululo Heritage Specialist conducted inspection on the same day. The site visit aimed at assessing condition and verifying the status of the suspected graves affected by construction of Ermelo to Majuba Railway line. The heritage team established that the stone cairns have the potential of being burial sites and that if they were, they could be more than 60 years and as such both the National Heritage Resources Act 25 of 1999 and the Human Tissue Act would automatically protect them.

However, the site survey could not conclusively rule the stone cairns as graves. Consultations with communities that resided in the project area before as well as families that had graves relocated from the region in 2009 did not identify any potential claimant. The consulted elders from the area confirmed that all known graves in the area were relocated in 2009. As a precautionary measure, the developer and Nzumbululo HS resolved to secure relevant heritage permits to exhume the suspected graves with the intention of relocating any human remains that may be recovered from the sites. As such, an urgent Grave Relocation Permit is being applied for as part of this mitigation exercise.

## 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

The purpose of this report is to provide status quo of three suspected graves discovered this November 2013 during railway construction work along the Ermelo to Majuba Railway servitude in PixleyKaSeme Local Municipality in Mpumalanga Province. The sites are marked by stone cairns that are located at two sites (57.3km peg and 43km peg) along the railway servitude. In 2009 Nzumbululo Heritage Solutions conducted Phase 2 HIA mitigation in the same area for the same project by relocating 13 burials from the Ermelo to Majubarailway servitude. It is in this context that precautionary measures are proposed to treat the stone cairns as potential grave sites.

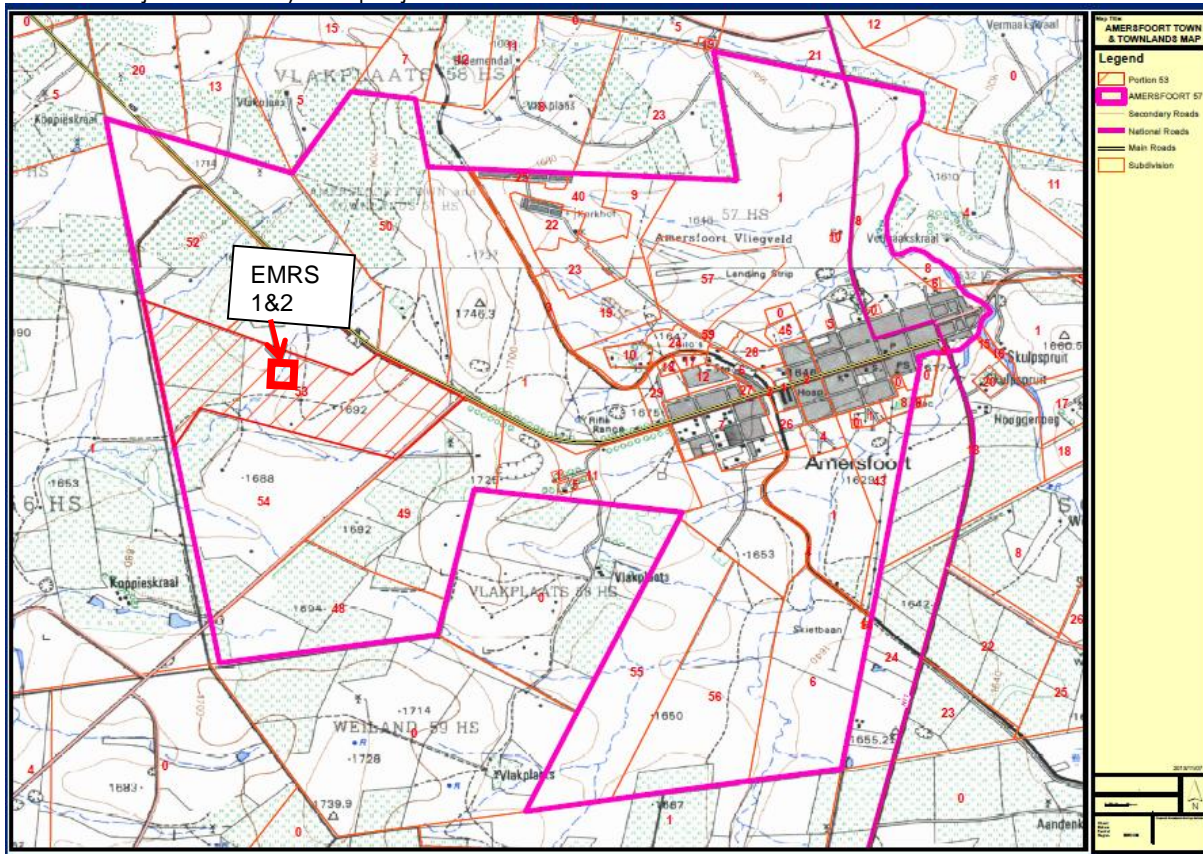
## 2. PROJECT BACKGROUND

In 2009 Nzumbululo Heritage Solutions conducted Phase 2 Heritage mitigation for burials identified along the Ermelo to Majubarailway servitude. Nzumbululo Heritage Solutions applied and obtained a burial permit from SAHRA for graves older than 60 years and Mafu Funeral Home obtained a burial permit from the Department of Health for graves younger than 60 years. The team relocated graves to Zamokuhle Cemetery in Amersfoort and other places near Amersfoort. The Ermelo to Majuba railway servitude project was suspended and only resumed in 2013. During clearance for the Ermelo to Majuba Railway servitude, three suspected burials were exposed and work at the two sites was suspended. Nzumbululo Heritage Solutions was appointed by Eskom to conduct urgent rescue exercise for suspected burials. Nzumbululo heritage specialist accompanied by Eskom project manager conducted a site inspection on the 4<sup>th</sup> of November 2013 to verify the status of the suspected graves.

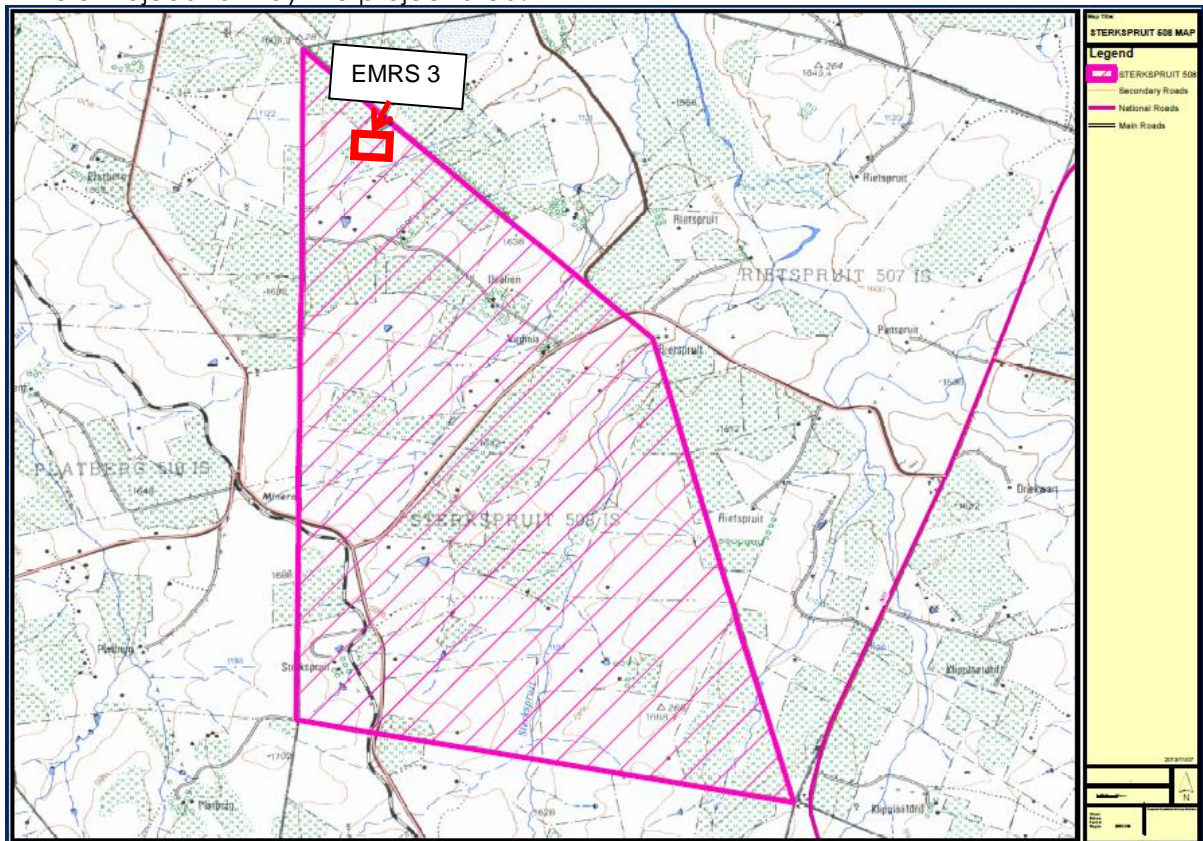
The stated aims of the project are:

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

**Figure 1:** Topographic map reference 2629DD-showing location of suspected graves along the Ermelo Majuba railway line project area.



**Figure 2:** Topographic map reference 2729BB-showing location of suspected graves along the Ermelo Majuba railway line project area.



### 3. PROJECT TERMS OF REFERENCE

The terms of reference for the project identified the need to conduct Phase 2 heritage mitigation for three suspected graves along the Ermelo to Majuba power station railway servitudewith 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.
- Survey affected project area for any burial sites
- Rescue suspected burial sites identified during construction work
- 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
- Secure relevant permits for relocation of burials
- Production of Final report, Submission of Report & Sign-off; Project Closure

### 4. PROJECT OVERSIGHT

The overall Ermelo to Majuba railway line project is under the oversight of Eskom Generation. Nzumbululo was retained to conduct the heritage mitigation for the three suspected burials whereas Mafu Funeral Home will be retained for the actual relocation of the suspected burials.

## 4. ERMELO –MAJUBA RAILWAY SERVITUDE HERITAGE STATUS QUO

Phase 1 Archeological Impact Assessment conducted in 2009 identified more than 47 graves along the railway servitude that required relocation prior to commencement of construction work along the railway servitude. The burials were relocated in 2009 but due to overgrown vegetation three burials might have been missed. During construction work along the railway servitude three suspected graves were discovered. The suspected graves are all contemporary and may not be older than 60 years.

### 4.1. 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 the National Heritage Resources Act of 1999

*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).

#### **4.2. 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.

## 5. RESULTS OF THE SITE INSPECTION

Nzumbululo Heritage conducted a site visit and inspected the two burial sites along the railway servitude to verify the status of the suspected graves exposed during construction.

### Burial ground Site 1(EMRS 1 &2)

Two suspected graves were discovered on the center of the Ermelo to Majuba railway servitude at the 57.3km peg near Amersfoort in Mpumalanga province. The suspected burials are located at GPS Coordinates S27° 00' 29.3377" and E029° 48' 49.03358". Although slightly disturbed the burials are marked by oval shaped stone piles that resemble contemporary and historic graves. No surface burial goods were recorded on either of the two suspected graves. The orientation of the suspected graves could not be established because the site is slightly disturbed. From a heritage perspective it is safe to treat them as real graves.

### PHOTOGRAPHIC DOCUMENTATION OF SUSPECTED GRAVES.



Plate 1: View of suspected grave at site 1 (EMRS 1) located at 57.3km peg near Amersfoort (Photo: Author 2013).



Plate 1: View of suspected grave at site 1 (EMRS 2) located at 57.3km peg near Amersfoort (Photo: Author 2013).

### **Burial ground Site 2 (EMRS 3)**

One suspected grave was discovered on the center of Ermelo to Majuba railway servitude at the 43km peg near Amersfoort in Mpumalanga Province. The suspected burials are located at GPS Coordinates S26° 53' 12.64392" and E029° 49' 11.04857". The suspected burial site is located near the position where one grave was removed in 2009 (see attached mitigation report). The suspected burial is marked by oval shaped stone piles and a large stone on the center of the suspected grave. Although it is not common burial practice to place a large boulder on the center of a grave, the form is very suspicious and qualifies to be a real grave. No grave goods were recorded on the surface. The orientation of the suspected grave could not be established because the site is slightly disturbed. The survey could not identify distinct headstones on the suspected grave. Remains of a stone structure were recorded outside the railway servitude near the suspected burial site. From a heritage perspective it is safe to treat the site as a burial.





Plate 3 and 1: (Top and Bottom). View of suspected grave at site 2 (EMRS 3) located at 43km peg near Amersfoort (Photo: Author 2013).

## 5.1. Consultations.

After site inspection Nzumbululo specialist went on to consult informants and some affected families at Amersfoort. David Twala and Nkosi confirmed that they could be some unknown graves which could have been missed during the relocation exercise in 2009 (See attached Mitigation report). A list already exists of families that were relocated from the project area dating back to 2009 mitigation exercises.



Plate 5: View of a key informant and resident of Amersfoort (David Twala) posing for a photo during consultations (Photo: Author 2013).

## 6. RECOMMENDATIONS

- The following Heritage Permit from SAHRA or Department of Health is required for:
  - Rescue permit for the three burials,
- No destruction of suspected burial sites shall commence prior to obtaining the relevant rescue permit as stated above.
- Nzumbululo Specialist will consult potential custodians and informants to consent where applicable.
- Heritage Specialist (Nzumbululo Heritage Solutions) will submit relevant application to SAHRA in order to secure a rescue permit for the three suspected burials.

# APPENDICES

## APPENDIX 1: BURIAL PERMITS

**IZAK JOHANNES FISCHER**  
EX OFFICIO  
KOMMISSARIS VAN EDE  
COMMISSIONER OF OATHS  
VIR DIE REPUBLIEK VAN SUID-AFRIKA  
FOR THE REPUBLIC OF SOUTH AFRICA  
HOOF VAN SEKURITEIT  
HEAD OF SECURITY  
MAJUBA POWER STATION / KRAGSTABIE  
PRIVATBAU 9001 VOLKSRUST 2470  
PRIVATE BLD 9001 VOLKSRUST 2470  
IN EEN VAN ARTIKEL  
IN TERME VAN SECTION



*I. J. Fischer*  
20/5/09  
I HEREBY CERTIFY THAT THIS IS  
A TRUE COPY OF THE ORIGINAL  
DOCUMENT

VAN DER WEG OP VREDERECTERS  
OF THE JUSTICE OF PEACE  
EN KOMMISSARISSE VAN EDE  
AND COMMISSIONERS OF OATHS  
16 VAN / OF 1965

**SOUTH AFRICAN HERITAGE RESOURCES AGENCY**  
BRAAMFONTEIN CENTRE, 11<sup>TH</sup> FLOOR, 23 JORRISON STREET, BRAAMFONTEIN, 2001  
PO BOX 32272, BRAAMFONTEIN, 2017  
TEL: (011) 403-2460 • FAX: (011) 339-3347

9/2201/0001

### PERMIT NO. BC/09/03/002/87

Issued under Section 36(3) of the National Heritage Resources Act, Act No. 25 of 1999. Permission is hereby given:

to: Mr M Murimbika (ID 7111275797189),  
of: Nzumbululo Heritage Solutions, Postnet 345, Private Bag 9307, Polokwane, 0700  
for: the exhumation & reburial of 13 graves that are 60 years or older and that are located in the railway servitude,  
along: the Majuba-Ermelo Rail Siding, at approximately S265221.3, E294906.2,  
on: plns 48 and 52, Amersfoort Town & Townlands 57 HS, and Vlakplaats 558 HS,  
in: the Gert Sibande/Amersfoort District, Mpumalanga Province.

The following conditions apply:

1. If the permit holder is not to be present on the site at all times then SAHRA must be provided with the names and qualifications of the authorised representatives.
2. Adequate recording methods as specified in the Regulations and Guidelines pertaining to the National Heritage Resources Act must be used. Note that the position of the grave must be marked on a plan of the site, and the site marked on a 1:50 000 map.
3. A standard site record form must be lodged with the National Cultural History Museum.
4. Human remains must at all times be handled with respect. The consultation procedures as indicated in the gazetted regulations of the National Heritage Resources Act (Act No. 25 of 1999) must be observed as appropriate. The recommendations for removal of graves and exhumations and for re-burial made in SAHRA's Policy 'What to do when graves are uncovered', section 3, must be observed as far as possible.
5. Reburial of the remains will be in the Amersfoort Cemetery (Esizakeleni).
6. A report on the excavation must be submitted to SAHRA on or before 1 May 2010.
7. Reprints of all published papers, or copies of theses or reports resulting from this work must be lodged with the relevant Provincial Heritage Resources Authority and SAHRA.
8. If a published report has not appeared within three years of the lapsing of this permit, the report required in terms of the permit will be made available to researchers on request.
9. It is the responsibility of the permit holder to obtain permission from the landowner for each visit, and conditions of access imposed by the landowner must be observed.
10. It is the responsibility of the permit holder to fill in excavations and graveshafts and protect sites during and after excavation to the satisfaction of the SAHRA and the landowner.
11. SAHRA shall not be liable for any losses, damages or injuries to persons or properties as a result of any activities in connection with this permit.
12. SAHRA reserves the right to cancel this permit by notice to the permit holder.
13. This permit is subject to a general appeal and may be suspended should an appeal against the decisions be received by SAHRA within 14 days from the date of the permit. SAHRA may not be held responsible for any costs or losses incurred in the event of the suspension or retraction of this permit.

This permit is valid until 1 May 2010.

for CHIEF EXECUTIVE OFFICER

Date: 7 April 2009

Place: Braamfontein, Johannesburg

## 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 support 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 research in 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.

## 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 and 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.

## 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.

## 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.

ESKOM ENTERPRISE

**HERITAGE MITIGATION REPORT FOR THE EXHUMATION AND  
REBURIAL OF HUMAN GRAVES IDENTIFIED DURING THE  
PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT  
ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE  
FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA  
SEME, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE**

**MAY 2009***Compiled for:***c/o Mafu Funeral Home for Eskom Enterprises**

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## REPORT DETAILS

**PROJECT:** PROPOSED ESKOM COAL SUPPLY PROJECT, RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME MUNICIPALITY, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE

**REPORT TITLE:** HERITAGE MITIGATION REPORT FOR THE EXHUMATION AND REBURIAL OF HUMAN GRAVES IDENTIFIED DURING THE PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE

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**REFERENCE NO.:** 2008/12HIA/MIT03

**STATUS OF REPORT:** 1<sup>ST</sup> EDITION

**FINAL ISSUE:** Date: 16 May 2009

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## ABBREVIATIONS

<b>AIA</b>	Archaeological Impact Assessment
<b>HIA</b>	Heritage Impact Assessment
<b>EIA</b>	Environmental Impact Assessment
<b>EIAR</b>	Environmental Impact Assessment Report
<b>HeSSA</b>	Nzumbululo Heritage Solutions (South Africa)
<b>EMP</b>	Environmental Management Plan
<b>SAHRA</b>	South African Heritage Resources Agency

## DEFINITIONS

**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 artefacts, human and hominid remains, and artificial features and structures.

**Chance Finds** 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.

**Cultural Heritage Resources** Same as Heritage Resources as defined and used in the South African 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** 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.

**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 or burial ground.

**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.

**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.

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

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



# **HERITAGE MITIGATION FOR THE PROPOSED EXHUMATION AND REBURIAL OF HUMAN BURIALS IDENTIFIED DURING THE PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE**

## **1. INTRODUCTION**

During the Phase 1 Archaeological and Heritage impact assessment study for the proposed Ermelo to Majuba railway line in Gert Sibande District Mpumalanga Province, forty nine (49) graves were identified within and in the close proximity of the railway line servitude. It was recommended that all affected graves be considered for protection or relocation during the construction phase of the railway line project. Mafu Funeral Home commissioned Nzumbululo Heritage Solutions (South Africa) [HeSSA] to conduct the Phase 2 mitigation process for the affected graves (also see Appendixes 1 -3). The Affected and Interested Parties (A&IPs) were consulted. Out of the 49 graves identified within the project area, only 17 were within the path of the rail construction route. As such a rescue and relocation plan was mooted and implemented. The heritage mitigation exercise involved exhumation and relocation of identified graves in compliance with relevant legislations including the Section 36 of the National Heritage Resources Act (Act No 25 of 1999) and the Human Tissue Act (1983). This report provides the details about this mitigation exercise.

## **2. BRIEF BACKGROUND**

Phase 1 Archaeological and HIA study identified 49 graves as potentially affected by the proposed rail construction project. A preliminary study Status Quo study by HeSSA (Appendix 1) identified 17 of the 49 graves as directly affected by the construction project. HeSSA carried out social consultations with the Affected and Interested Parties (A&IPs) for the project. The descendants and custodians of the affected graves were tracked and engaged on the mitigation exercise. HeSSA sought consent from the affected families to relocate the graves to a safer and protected site away from the rail construction route.

This exercise involved the affected families, the developer, local authorities and other A&IPs. The custodians of the affected graves gave consent to rescue and relocated the graves to a safer site. It was also agreed that the graves should be relocated to Amersfort Cemetery. A graves screening exercise was conducted and 13 of the 17 affected graves were classified as being older than 60 years. This meant that these graves fell under the jurisdiction of the National Heritage Act 25 of 1999. In line with the said legislation, HeSSA applied for and obtained a SAHRA Graves and Burial Grounds Permit [Permit Number BG/09/03/002/87] for 13 graves which are over 60

years old. Mafu Funeral Home obtained a burial permit from the Health Authorities under the Human Tissue Act for all the graves under 60 years of age (also see Appendix 3). The following sections of the report provide the results of the social consultancy, exhumation and relocation exercise that were carried out in line with the relevant permits and applicable regulations as well as the wishes of the affected families.

### **3. 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 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).

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).

### **3.1 Previously unidentified burial sites/graves**

The law (particularly the NHRA) also protects graves that are discovered accidentally during construction work. The SAHRA regulations of grave 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.

There is a high possibility that the proposed railway construction may encounter previously unknown graves. 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.

## **4. PUBLIC CONSULTATION**

As indicated above (and in HIA and Status Quo reports [Appendix 1] the proposed railway line servitude area yielded forty nine (49) known graves distributed on seven (7) sites within the servitude area. Others were located in close proximity of the development zone. All the identified graves are clearly marked. Summary historic study of the area confirmed that most of the graves are historical and probably belong to farm workers and white farmers in the affected areas. All graves were tagged, recorded and photographed during this field exercise (see Appendix 1)

In preparation for the graves relocation exercise, Mafu Funeral Home in collaboration with HeSSA Archaeologists obtained Burial Ground at Amersfoort cemetery (Esizakeleni). This

was communicated to the A&IPs and all family descendants (those who could be tracked down). A common consensus was reached during a public A&IPs meeting that all the graves be relocated to Amersfoort Cemetery (Esizakelani). The local authorities responsible for this cemetery also gave consent.

The legislated notification and advertizing exercises were conducted in order to give Interested and Affected Parties opportunity to comment or lodge their objection with relevant authorities. The notices were placed in national and local newspapers and on-site pin-up notices.

From the 5<sup>th</sup> of January 2009, the HeSSA archaeologists and field team continued with the consultations with those community members who claimed to have graves within affected farms. We consulted land owners KoosDafel, Francois Lotz and Faan De Swart who confirmed that most of the graves identified belonged to previous farm workers. The majority of people consulted did not have full details of the deceased but they confirmed that the graves belong to their ancestors. Most of the present farmers either bought the farms in last couple of decades or the farm workers' descendents have since moved away from the farm and the local areas.

The field researchers proceeded to Amersfoort, Bethal, Morgenzon, Ermelo, Standerton, Volkrust, Dagakraal and the surrounding farming areas to consult. According to the then Mayor of Amersfoort CouncillorMapaseka Madonsela the affected area is not administered by traditional leadership since it is in a commercial farming area. There are no records with regard to people who worked in the farms and primary information was scarce.

In follow up consultations, project managers held a meeting with the Eskom project supervisor (Mathews Mashiloane) and the appointed Undertaker (Mafu Funeral Home) in Witbank. The purpose of the meeting was to share notes on the progress and challenges faced by the three parties. HeSSA archaeologists outlined the nature of the project, progress and challenges so far. The undertaker reported on her progress with regards to legal notices and advertising in the print media and radio. Mafu Funerals advertised in the *Daily Sun* twice on the 24<sup>th</sup> and the 31<sup>st</sup> December 2008, the *Recorder* on the 21<sup>st</sup> of December 2008 and the notices were also played in the local Ligwalagwala FM radio throughout the month of December 2008. Legal notices were also posted at various points in the affected area and the surrounding areas. The project managers from HeSSA, Mafu Funeral Home and Eskom agreed to meet on the 17<sup>th</sup> and 18<sup>th</sup> of January at Amersfoort for the verification of custodians and signing of concern letters.





**Plates 1 & 2:** Additional legal notices about the proposed grave relocation were placed in public area across the surrounding areas including these that were placed at Amersfoort.



**Plate 3:**Community members who attended public meeting held at Amersfoort Hall



**Plates 4 and 5:** Identified custodians of the affected graves signing consent document while other help point out their graves.

## 5 DESCENDANT FAMILY CONSENTS

In addition to public meetings, the project management team held a series of consultations with individual descendant families to secure their consent to relocate their ancestral graves. We held another public meeting with community members at Amersfoort on the 17<sup>th</sup> and 18<sup>th</sup> of January to deal with people who had responded to the newspaper and radio adverts and those who were consulted by the HeSSA team. The Mafu Funeral Home Director outlined the reasons for seeking relocation of the graves. She also outlined the legal implications of being an interested party or affected party with regards to the affected graves. The HeSSA team outlined the provisions of NHRA as well as the implications and provisions of the Human Tissue Act. The people were given the opportunity to ask questions and their concerns were recorded. After the meeting, those present taken for a site visit to the graves to show them the affected graves. The majority of people realised that their graves were not affected.

On the 18<sup>th</sup> of January we tracked David Mkwanzani and his family members, ShotiMkwanzani and Harriet Dlodlu who accompanied Mkwanzani to grave site where they identified two graves which they said belonged to their relatives i.e. *EliyaMkwanzani* and the other one for *EgnessMkwanzani*. David Mkwanzani signed the consent letters and he agreed to co-operate with the project team. The deceased *EliyaMkwanzani* is the grandmother of David Mkwanzani and *EgnessMkwanzani* is the sister of David. David Mkwanzani, ShotiMkwanzani and Harriet Dlodlu of 1062 Zamokhuhle Amersfoort stood in as descendants and David signed the concern letters (Plates 1 & 2).

The Mkwanzani family did not have information on the other graves within the same gravesite. David Mkwanzani claims he was shown the grave by his grand mother. This particular burial site is contemporary but information about descendants is very scarce. It is imagined that most of the farm workers who worked at this farm, known to the community as KwaMaqubambuzi, were seasonal workers. We tracked Jabile in KwaNdorokwane near Amersfoort on the 18<sup>th</sup> of January and unfortunately her mother who was believed to be having more information had just passed away so we could not obtain further information.

On the 19<sup>th</sup> of January we tracked Nomvula Mlotshwa (contact mobile 07955905220) the daughter of NaMlotshwa of 1527 Morgenzon (mobile phone number 0787387287) who is a direct custodian of the graves identified on Site 3 (see Appendix 1). She promised to consult her uncle Aaron Mlotshwa who can stand in for (NaMlotshwa) who was not available at that time. On the 28<sup>th</sup> of January we consulted the Mlotshwa family and they identified 3 graves as belonging to their family and NaMlotshwa signed the consent letters after the details of the project and the legal implications of the consent forms were explained to her.

We also confirmed that there is only one affected grave at BGS7 site which is located further northeast of R35 Road on Portion 9 of the Farm Sterkspruit 508 IS. Further consultations revealed that at BGS6 and 7, three graves belonged to the Mabasa family. We consulted MzundeMabasa who confirmed that the graves belonged to his but he could not single them out the undertook to consult with his family for further information. Eventually, the family agreed to have the graves relocated to Amersfoort Cemetery. During social consultations, based on information from the A&IPs, we confirmed that there were only two graves affected at BGS6 Site (Appendix 1) located northeast of the R35 Road across the old railway line on Portion 7 of the Farm Sterkspruit 508 IS. The two graves were classified children's graves marked Grave 43 and 44 at GPS coordinates S26° 53 795' E029° 48 988'.



**Plate 6 and 7:** Project team members holding consultations and facilitating signing of consent letters during the project.

## 6 RECOMMENDED MITIGATION MEASURES

All the identified graves were intact and undisturbed. The deceased's families did not maintain their graves because they were on private land within the commercial farms. Once all consultations and consents were secured, the HeSSA team proceeded to make other legal preparations for the relocation programme. HeSSA archaeologists applied for and obtained a Burial permit from SAHRA ([Permit Number BG/09/03/002/87] issued for the period April 2009-May 2010) to exhume and relocate the affected graves. The project management authorities were to follow the wishes of local community with regards to the procedure and protocols during the reburial ceremony as enshrined in section 36 of the National Heritage Resources Act No 25 of 1999.

## 7. THE EXCAVATION AND EXHUMATION

HeSSA were issued with the burial relocation permit from SAHRA. Mafu Funeral Home had the responsibility of conducting the exhumation, relocation and reburial of all the graves with

HeSSA Principal Investigator being responsible for the monitoring of the exercise to ensure compliance with the permit conditions. On the 4<sup>th</sup> of May Mafu Funeral Home team began the exhumation of the graves. The exercise was monitored by HeSSA archaeologists and Eskom project managers and supervisors. Mafu Funeral Home set up standard equipment and procedures for the exhumation and reburial exercise. Custodians were given the opportunity to inspect and carry out traditional rituals before exhumation started. All the graves were intact by the time of exhumation. Two teams were assigned one grave at a time.

The exhumation started by carefully removing stones and selecting grave goods before the actual exhumation. The excavation was done layer by layer to ensure that no grave goods or associated materials were damaged or disturbed during the process. The exercise was continuously monitored by HeSSA archaeologists, Eskom environmentalists, project supervisors, custodians and members of the community. Custodians or family members carried out their rituals as work progressed from one grave to the other. The exhumation was to a large extent disturbed by water logging in some cases. However, the experienced undertakers carefully recovered both the grave goods and skeletal remains without any major complication and to the satisfaction of all parties.

### 7.1 Summary of skeletal remains and grave goods recovered from each grave

Grave name and number	Skeletal remains	Grave goods
1 Name and date of birth of deceased not known	Unidentifiable bone fragments in clay loam soils Fragmented radius	Fragments of iron sheets 4 coffin nails Preserved coffin fragments
2 Name and date of birth of deceased not known	Seriously fragmented skull bones	Coffin nails Fragments of iron sheets Coloured soils
3 Name and date of birth of deceased not known	No remains found	Coffin fragments 14 coffin nails Discolouring of soil
4 Name and date of birth of deceased not known	Skeletal remains were fragments 2 fragmented rib bones 32 loose teeth	Fragments of iron sheets, coffin nails, coffin fragments
5 Name and date of birth of deceased not known	Skeletal remains heavily fragmented Fragmented skull bones 3 fragments of rib bones Fragmented jaw bone Fragmented scapula bones 2 fragments of humerus Fragments of pelvic bones	Fragments of iron sheets 6 Coffin nails
6 Name and date of birth of deceased not known	No remains found	Fragments of iron sheets Coffin nails Soil colouring
7 Name and date of birth of deceased not known	Fragments of two rib bones Radius fragment	Fragments of iron sheets Coffin nails

	Scapular fragments Complete skull	Soft grey soils Vehicle leaf spring
8 Name and date of birth of deceased not known	Fragmented bones beyond identification Bones mixed with clay-loam soils	Fragments of iron sheets Coffin nails
9 Name and date of birth of deceased not known	No remains found	Fragments of iron sheets 3 Coffin nails Coloured soils
10 Name and date of birth of deceased not known	No remains found	Fragments of iron sheets 7 Coffin nails
27 Thandi Mlotshwa	The grave did not yield skeletal remains	Fragments of iron sheets Fragments of cloth/ blankets used to cover
28 Delisile Mlotshwa (1 year old)	The grave did not yield skeletal remains	Toy/doll Plate cycle rim 6 Coffin nails Preserved coffin fragments Fragments of iron sheets
29 Sibusiso Mlotshwa (9 months old)	The grave did not yield any skeletal remains	Fragments of iron sheets Fragmented coffin Wooden pot
43 Name and date of birth of deceased not known	No remains found	Soil colouring Evidence of secondary deposition of soil
44 Name and date of birth of deceased not known	No remains found	Fragments of iron sheets Coffin nails
47 Name and date of birth of deceased not known	Fragmented skull bones Fragments of rib bones Right and left humerus Fragment of radius Fragmented scapular bones	Fragments of iron sheets Coffin nails

## 8. THE REBURIAL CEREMONY

Arrangements were made such that after exhumation and reburial ceremony for each grave would be done on the same day. The undertaker secured enough provisions for the exhumation and reburial exercises. There were two vehicles to ferry the remains to the burial site at the Amersfoort cemetery. On average we exhumed and reburied 4 graves per day. After exhumation the team would immediately proceed to rebury the remains. This approach was efficient to avoid the complications of having to handle the remains overnight in a different facility somewhere else. The exercise started at GGS 1 for the Mkwanzani family. There were two graves, one for *EliyaMkwanzani* and another for *EgnessMkwanzani*.



**Plate 8 and 9:** Local community members performed rituals to appease the deceased.



**Plate 10 and 11:** BGS1 shows the Mkwanzu family performing burial rituals before the remains were relocated and reburied at a formal cemetery.

On the second day we went to GBS 3 graves which belong to the Mlotshwa family. We exhumed all the 3 graves 27, 28 and 29. The family representatives were present and they performed their rituals at intervals during the exhumation and reburial. The three graves were for children and they did not yield skeletal remains. We obtained grave goods and fragments of iron sheets used to cover the graves (see table for details). The remains for grave 28 and 29 were relocated and reburied in Morgenzon Cemetery at GPS coordinates S27° 00 199' E O29° 48 752' and Grave 27 was relocated and reburied in Ermelo at the Hendrina Road Cemetery at GPS coordinates S26 °30 419' and E029° 58 979'.

On the third day we proceeded to site GBS6 where we exhumed one, Grave 43 believed to have been burial for a two months old infant and Grave 44 for an infant whose age is not known. The family representatives were present through out all the proceedings. Grave number 43 yielded remains of a blanket that was originally used to wrap the corpse or coffin. The grave also yielded fragments of iron sheet which were used to cover the coffin. The remains were relocated and reburied in Dagakraal.



**Plate 12 and 13** BGS6,Nkosifamily members inspecting the exhumation and rehabilitation of the site.



**Plate 14 and 15:** Shows the reburial ceremony at Dagakraal and the new grave is marked with a headstone

On the 4<sup>th</sup> and 5<sup>th</sup> day we went on to exhume the remaining 8 graves i.e. grave number 1, 2, 3,6,7,8.9 and 10 at Grave Site 1. Due to the age of the graves and the acidity of soils at the site, skeletal remains were not well preserved and most were fragmented. The fragmented nature of the skeletal remains made it extremely difficult to systematically record these bones during the exhumation (See summary of skeletal remains and grave goods recovered from each grave). The funeral undertaker, Eskom representatives and HeSSA team supervised the proceedings. After all the 10 graves were exhumed the site was rehabilitated (See plate 16). The undertaker proceeded to rebury the remains at Amersfoort Cemetery at GPS coordinates S27° 01 946' E029° 48 993' (See plates 11 and 12 for the relocated graves).



**Plates 16 and 17:** Shows BGS1 excavation of grave number 1 and 2 in progress. The excavation process revealed that most remains were seriously fragmented and in some cases we did not find skeletal remains.



**Plates 18 and 19:** Rehabilitation of BGS1 after exhumation and worker carefully packing the remains found in grave number 3.

The reburial ceremony took place at Amersfoort Cemetery. All the graves were marked with cement plaster and a headstone bearing the name of the deceased (where available), the grave number and date of reburial (see Plates 20 & 21).

## 9. HUMAN SKELETAL ANALYSIS

No biological or bio-physical analysis of any of the remains was conducted on any of the remains that were exhumed and re-interred during this project. No biological or grave goods samples were collected or retained after the reburial of all the affected graves and remains. All remains and associated grave goods were reinterred as was agreed with the A&IPs and the deceased's families.





**Plates 20 and 21:** Shows 12 new graves at Amersfoort cemetery. All graves have standard headstones.

## 10 CONCLUDING REMARKS

Human remains and graves are sensitive and are usually a difficult matter to deal with, especially if it involves exhumation and reburial to open space for development work like mining, road and railway construction as in the case of the Majuba graves. Such a challenge calls for a participatory approach where all stake holders are involved from the conceptualization of the project to the implementation of the project. Everything possible and necessary was done in preparation of this project. The successful relocation of the affected graves was a result of a detailed, tedious and long exercise involving different interested parties some of whom had opposing views when the project started. At the end, the project was successfully completed. As such HeSSA team would like to acknowledge and thank all members of the community, local authorities and family members who participated and facilitated this exercise without whose assistance the program would not have succeeded.

The HeSSA team would like to single out the Amersfoort Municipality staff, local commercial farmers especially Francois Lotz, Eskom staff from Majuba, and members of the Amersfoort community for allowing us to interview them during the consultations. We would like to single out David Twala and Baba Nkosi for their active involvement in the exercise; they some times left their duties to accompany us to potential custodians. We would like to thank Mr Mathews Mashiloane [Eskom project supervisor] for tirelessly working with all parties through out the project. Special thanks go to the Mlotshwa, Dladla, and Nkosi, Mkwanzani families and other members, far too many to mention by names. We would like to thank the general Amersfoort and Ermelo communities for their assistance and understanding during the entire project cycle.

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## 11. APPENDIX 1: FURTHER PICTORIAL PRESENTATION OF THE EXHUMATION EXERCISE



**Plate 1 & 2** Shows shade prepared by Mafu Funeral Home and Mkwanzifamily members performing the initial rituals before excavations started, (Pictures by Mathews Mashiloane [Eskom])



**Plate 3&4** Shows excavation of grave 48 at BGS6, note that this was confirmed as a grave by members of the community but the excavation revealed that it was not a graveand Mkwanzzi family being assistedto put some remains in the coffin.(Photos curtesy of Mathews Mashiloane [Eskom])



**Plate 5 & 6** Shows the David Mkwanzzi leading the way to the grave and undertakers making final touches to the tombstone (Photos by Mathews Mashiloane [Eskom])



**Plate 7 & 8** Shows the Mlotshwa family at Morgenzon cemetery and Hendrina Road cemetery in Ermelo



**Plate 9 & 10** Shows BGS2 and BGS5 which are in the close proximity of the railway servitude, note that we concluded that the two sites can be fenced off to avoid interference by the proposed development.

**APPENDIX 2: HERITAGE MITIGATION REPORT FOR THE EXHUMATION AND REBURIAL OF HUMAN GRAVES IDENTIFIED DURING THE PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME, GERT SIBANDE DISTRICT MPUMALANGA PROVINCE,**

**UPDATED PROGRESS REPORT**

**JANUARY 2009**

*Compiled for:*

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**REPORT DETAILS**

**PROJECT:** PROPOSED ESKOM COAL SUPPLY PROJECT, RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME MUNICIPALITY, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE

**REPORT TITLE:** STATUS QUO REPORT – HERITAGE MITIGATION FOR THE PROPOSED EXHUMATION AND REBURIAL OF HUMAN BURIALS IDENTIFIED DURING THE PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE

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**REFERENCE NO.:**

**STATUS OF REPORT:** Revised  
**FINAL ISSUE:**

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## ABBREVIATIONS

<b>AIA</b>	Archaeological Impact Assessment
<b>HIA</b>	Heritage Impact Assessment
<b>EIA</b>	Environmental Impact Assessment
<b>EIAR</b>	Environmental Impact Assessment Report
<b>HeSSA</b>	Nzumbululo Heritage Solutions (South Africa)
<b>EMP</b>	Environmental Management Plan
<b>SAHRA</b>	South African Heritage Resources Agency

## DEFINITIONS

**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 artefacts, human and hominid remains, and artificial features and structures.

**Chance Finds** 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.

**Cultural Heritage Resources** Same as Heritage Resources as defined and used in the South African 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** 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.

**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 or burial ground.

**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.

**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.

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



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

# **PROGRESS REPORT – HERITAGE MITIGATION FOR THE PROPOSED EXHUMATION AND REBURIAL OF HUMAN BURIALS IDENTIFIED DURING THE PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE**

## **1. INTRODUCTION**

During the Phase 1 Archaeological and Heritage impact assessment study for the proposed Ermelo to Majuba power station railway line in Gert Sibande District, forty nine (49) graves were identified within and in the close proximity of the railway line servitude and twenty three (23) graves were identified within the servitude area. As mitigation to this impact, the study recommended that all affected graves be relocated before railway construction begins. To date we have identified legal custodians for 4 graves within the servitude area and another four outside the servitude area. Mafu Funeral Home commissioned Nzumbululo Heritage Solutions to conduct the Phase 2 mitigation exercise for the proposed development. This report provides the results of the social consultancy that has been going on after the preliminary field study conducted to confirm the status quo of the affected burial grounds within the project area. The proposed heritage mitigation would involve exhumation and relocation and reburial of identified graves in compliance with relevant legislations including the Section 36 of the National Heritage Resources Act (Act No 25 of 1999) and the Human Tissue Act (1983). Further social research was commissioned to determine the custodianship of the graves in line with South African Heritage Resources Agency regulations. Farm owners, farm workers and PixleykaSeme Municipality representatives at Amersfoort were consulted with the view to secure collective decisions with regards to the proposed burial relocations.

## **2. AIM OF THE STUDY**

This report emanates from the social consultations, which forms part of a Phase 2 Heritage Assessment process aimed at identifying the descendants or custodians of the identified graves and burial ground within the affected project area. Prior to physical intervention to relocate the graves, certain legal and compliance processes are required. A reconnaissance survey was conducted in order to confirm the Locational and status quo of the affected burial sites. In addition, as part of this mitigation phase, we:

Consulted with the affected and other interested parties in regard to the impact on the grave and burial sites within the railway servitude route.

Made further recommendations on mitigation measures with the view to reduce specific adverse impacts and enhance specific positive impacts on the affected burial sites.

Identified some and discuss with local communities (where applicable) on potential impacts of the proposed railway construction on graves and burials sites within the affected area and made the necessary recommendations on how to handle the matter.

Take responsibility for communicating with the Mpumalanga Heritage Agency, SAHRA and other related authorities in order to obtain the relevant burial relocation permits and authorization.

### 3. HERITAGE LEGISLATION

All burial grounds and individual graves are protected by law irrespective of their age. Furthermore, there are regulations which control handling and management of human remains and grave goods. 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).

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.

#### ***Previously unidentified burial sites/graves –***

During the proposed railway development, should burial sites outside the NHRA be accidentally found, they must be reported to the nearest police station to ascertain whether or not a crime has been committed. 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 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.

#### **4. SOCIAL CONSULTANCY**

As indicated in previous reports the proposed railway line servitude area yielded forty nine ( $\pm 49$ ) graves distributed on seven (7) sites within the servitude area and close proximity of the development zone. All the identified graves are clearly marked. Summary historic study of the area confirmed that most of the graves are historical and probably for farm workers and white farmers in the affected areas. All graves were tagged, recorded and photographed during this field exercise. The following are summary descriptions of the identified burial grounds

Mafu Funeral Home in collaboration with HeSSA Archaeologists have obtained a Burial Ground at Amersfoort cemetery (Esizakeleni) and all the interested and affected parties who attended the meeting agreed to have all the graves relocated to Amersfoort cemetery (Esizakeleni).

The legislated notification and advertising exercise was conducted in order to give Interested and Affected Parties opportunity to comment or lodge their objection with relevant authorities. The notices were placed in Newspapers and on-site pin-up notices.

From the 5th January 2009 the HeSSA archaeologists and field team continued with the consultations with those who claimed to have graves within affected farms. We consulted KoosDafel, Francois Lotz and Faan De Swart and they confirmed that most of the graves identified belonged to previous farm workers. The majority of people consulted do not have full or conclusive information. Most of the farmers either bought the farms in last couple of decades or the farm workers' descendents have since moved away from the farm and the local areas. The field researchers proceeded to Amersfoort, Bethal, Morgenzon, Ermelo, Standerton, Volkrust, Dagakraal and the surrounding farming areas to consult. According to the Mayor of AmersfoortcouncillorMapaseka Madonsela, the area is not administered by traditional leadership as it is in a commercial farming area. There are no records with regard to people who worked in the farms, information is scarce.

To hasten the progress of the project we held a meeting with the Eskom project supervisor (Mathews Mashiloane) and the appointed undertaker (Wonderful Mafu) in Witbank. The purpose of the meeting was to share notes and clarify the project issues with the undertaker and the new Eskom project supervisor. The three representatives started by acknowledging that the project is behind schedule and there are challenges associated with such a process which requires the team to work closely. The new project supervisor indicated that he did not get notes and reports on previous work covered and as such requested draft reports for him to acquaint himself with the project. HeSSA archaeologists outlined the progress with regard to identifying custodians and challenges encountered during the process. The undertaker reported on her progress with regards to legal notices and advertising in the print media and radio. Mafu Funerals advertised in the Daily sun twice on 24<sup>th</sup> and 31<sup>st</sup> December 2008, The Recorder on 21<sup>st</sup> of December 2008 and the local Ligwalagwala FM radio through out the month of December 2008. and they also displayed legal notices at various points in the affected area and the surrounding areas. In the meeting the three representatives agreed to meet on the 17<sup>th</sup> and 18<sup>th</sup> at Amersfoort for the verification of custodians and signing of concern letters. The three

representatives agreed to work closely and to keep each party informed of the latest developments with regard to the project.



**Plates 1 & 2** Shows some of adverts displayed at Amersfoort.

As planned we met at Amersfoort on the 17<sup>th</sup> and 18<sup>th</sup> to deal with people who had responded to newspaper and radio adverts and those who were consulted by the HeSSA team. The meeting started at 9 am. Wonderful Mafu chaired the meeting and Trust Mliilo took the minutes. Mafu outlined the purpose of the meeting to the people and she outlined the legal implications of being an interested party or affected party with regards to graves. The HeSSA archaeologist also outlined the provisions of Act 25 of 1999 to the people present. The people were given the opportunity to ask and their concerns were recorded. After the meeting we then took the people to the gravesites to show them the affected graves. The majority of people realised that their graves were not affected and they requested to be relieved.

MrMajelimaneDladla positively identified 4 graves on site 4 and he agreed to sign the concern letters as the custodian of all the graves at site 4. The provisions of the concern letter were read and illustrated to him before signing. He also brought family members who acknowledged his claims.

On the 18<sup>th</sup> we tracked David Mkwanzani and his family members. ShotiMkwanzani and Harriet Dladlu accompanied David Mkwanzani. David Mkwanzani and his family identified two graves which they said belonged to their relatives i.e. *EliyaMkwanzani* and the other one whose name they only refer to as NaMkwanzani. David signed the concern letters and he agreed to cooperate with the project team. Eskom representatives also inducted the members of the community who participated in this process.



**Plate 3:** Members of public who attending the meeting held at Amersfoort hall.



**Plate 4:** David Mkwanzani at BGS1 site identifying *EliyaMkwanzani's* grave.

#### 4.1. BURIAL GROUND SITE 1 [BGS1]

The BGS1 site is situated 300m off the Majuba-Standerton\Perdkop Road near the junction R35 Road. This site is situated on the 60km peg of the proposed railway line on Portion 48 of Amersfoort Town and Town Land 57.H.S cluster. There are 10 graves on BGS1 site and only two graves have been claimed i.e. grave number 4 belonging to *EliyaMkwanzani* and grave number 5 belonging to *NaMkwanzani*. The deceased *EliyaMkwanzani* is the grand mother of David Mkwanzani and *NaMkwanzani* is the sister of David. David Mkwanzani, ShotiMkwanzani and Harriet Dlundlu of 1062 Zamokhuhle Amersfoort stood in as descendants and David signed the concern letters (plates 1 & 2). The Mkwanzani family does not have information on the other graves within the same gravesite. David Mkwanzani claims he was shown the graves by his grandfather. Efforts are underway to consult the nearby chief at Dagakraal. The idea of including the nearby chief is to seek for a traditional intervention to the whole process of identifying custodians of the affected graves. We appreciate that the affected area is not under the jurisdiction of traditional leadership but the chief as a custodian of the traditional culture may stand in for those graves that may not be claimed and can make binding decisions.

The burial site is contemporary but information of custodians is very scarce Most of the farm workers who worked at this farm known to the community as KwaMaqubambuzi were seasonal workers. We

tracked Jabile in KwaNdorokwane near Amersfoort on the 15<sup>th</sup> of January and unfortunately her mother who was believed to be having more information had just passed away so we could not obtain information on Burial grave site one. Further consultations are underway.

#### 4.2 BURIAL GROUND SITE 2 [BGS 2]



**Plates 5 and 6:** Grave site BGS2 marked by grave located within stone enclosures note that the disturbed and doubtful enclosures are rather closer to the servitude than the clearly identified graves which are significantly off the affected area.

BGS2 site is situated within 5km of BGS1 site to the southwest of R35 road between 55km and 60 km railway line pegs on Portion 48 of Amersfoort Town and Town Land 57 HS. There are 15 graves on this site and they were marked as Graves 11 to 26 (Plates 3 & 4). The graves are in a cluster of three (3) stone enclosures. The graves are not within the demarcated servitude area but they are  $\pm 20$  meters away from the servitude boundary. Based on the technical details associated with railway construction, we initially concluded that these graves will be interfered with and may be completely destroyed during construction related earth works. The site GPS coordinates are S27° 00 289' E029° 48 746'.

We concluded that if the two disturbed enclosure do not yield graves then site BGS 2 can be left in situ and Eskom should make an undertaking to protect the graves from being impacted upon during the construction phase. The descendants should be informed of the proposed development and should be allowed to inspect their graves before, during and after construction.

We tracked the Malinga family and they claimed that they got at the site later when the graves were already there. The majority of people who were consulted claim that the graves where there since the 1940s. Mr Nkosi (73) who grew up in the area promised to track some of his peers who might have information and he will relay the information to us as soon as he gets the leads. Further consultations are still being conducted and follow up with former farm owners is still being done to ensure enough information is gathered before making conclusions.

#### 4.3. BURIAL GROUND SITE 3 [BGS 3]

The BGS3 site is located about 300m west of BGS2 on Portion 52 of Amersfoort Town and Town Land 57 HS. The site GPS coordinates are S27° 00 251' E029° 48 741'. Three graves were identified

at this site and they were labelled as Grave 27, 28 and 29. All are within the servitude area of the proposed railway line. Grave 27 is isolated and marked by packed stones in an oval shape and a welded peg with a chain (Plate 5). Graves 28 and 29 are located next to each other in a stone enclosure and both are marked by oval shaped stone cairns with grave goods such as metal teapot and a wagon rim (Plate 6). This cluster of graves is associated with other clearly marked graves just out of the railway line servitude (Plates 6 & 7). The status of grave number 27 is very doubtful; though it resembles a traditional African grave it might have been a stone pigsty because the chain on the centre of the stone cairns might have been used to tie animals as such this grave would require test excavation to verify its status.



**Plate 7 and 8:** BGS3 where two graves are in an enclosure and one grave is isolated out of the enclosure.



**Plates 9 and 10:** View of graves outside the servitude area but closely associated with site BGS3.

On the 15<sup>th</sup> of January we tracked Nomvula Mlotshwa (07955905220) the daughter of NaMlotshwa of 1527 Morgenzon (0787387287) who is a direct custodian of the graves at site 3. She promised to consult Aron Mlotshwa her uncle who can stand in for NaMlotshwa who is still undergoing traditional initiation for sangomas. On the 28<sup>th</sup> of January 2009 Mathews Mashiloane consulted the Mlotshwa family and they identified two graves as belonging to their family. Aaron Mlotshwa signed the concern letters after the details of the project and the legal implications of the concern forms were explained to him. The Mlotshwa family claims there are two more graves for children located close to their graves but they could not identify them possibly because of their small size and the vegetation cover.



#### 4.4 BURIAL GROUND SITE 4 [BGS 4]

The BGS4 site is located north east of R35 Road in Vlaakplaats 558 HS Farm. There are four (4) graves at BGS4 and they were labelled as Grave 30, 31, 32 and 33 (Plates 9 & 10). The graves are marked by oval shaped stone cairns and two of the graves are marked by burnt clay bricks. BGS4 is not directly within the fenced off servitude route, however, the graves are a mere 5m from the servitude boundary and may potentially be impacted upon during construction phase.



**Plates 11 and 12:** signing of consent for a (Left). Family members at Site BGS4 where four graves were identified by Majalimane

On the 17<sup>th</sup> of January we met the Dladla family represented by MajelimaneDladla (63) who claimed that the affected graves at site 4 belong to his family. He consulted his family members; Mica Dladla, EmericaDladla, KesiyaDladla and they agreed that MajerimaniDladla would be the family representative for this project. Majelimane signed the concern letters on behalf of his family. Majelimane could not remember the names of the deceased and even the dates of death; he will consult with family members to get all the necessary details about the deceased. The latest information we obtained from Eskom project planners is that the farm owner Faan De Swart requested Eskom to shift the servitude of the proposed railway line to avoid impacting on his pine trees as such the graves on site BGS4 can also be avoided since there are under the pine trees in question.

#### 4.5 BURIAL GROUND SITE 5 [BGS 5]

The BGS5 site is located northeast of R35 Road adjacent to the old railway line in the Remainder of the Farm Sterkspruit 508 IS. The site is located at GPS coordinates S26° 56 020' E 029° 48 778'. Six graves, Grave 34, 35, 36, 38 and 39 were recorded at this burial ground. They all are arranged in rows and marked by stone cairns (Plates 11 – 14). One of the graves, probably the oldest one, has a broken concrete inscribed headstone. The inscriptions are in the Dutch or Afrikaans language and are not very visible, only the date 1881 is clearly visible. Another grave at the site has a rose planted on top of it. The form of these graves is slightly different from the other identified on other sites. The headstones and inscriptions on some headstones suggest that BGS5 has historic white settler burials. The graves are older than 60 years and as such they fall under the NHRA jurisdiction. This conclusion is based on the information inscribed on one of the headstones and oral evidence from MsibiMagangeni, a farm worker who came to the farm in the 1950s. The stone enclosure surrounding BGS5 is in about ±1,5m from the servitude fence. We concluded that the graves are at a high risk of

destruction during the construction phase and therefore should be exhumed and relocated to a safer place.



**Plate 13:** BGS5 with five graves attributed to historic white settler communities.

In principle, it is recommended that the graves should be left and protected *in situ* if possible. In the unlikely event that the railway construction contractor issues guarantee that the BGS5 and associated graves will be protected during the construction phase, the sites may then be fenced off before any construction work begins. This would ensure that they will not be interfered with during and after construction. If this is not possible, then they should be relocated with the rest of the affected burial grounds.

Due to the historical nature of the gravesite the majority of people consulted do not have information about the custodians nor their whereabouts. The graves belong to early colonial white settlers who settled in the area during the 1880s. Since the graves are more than 60 years old we will need to apply for a permit from SAHRA (please note that the permit application is a process and we cannot guarantee the duration). Further consultations are underway to gather as much information as possible before making final conclusions about the site.

#### **4.6. BURIAL GROUND SITE 6 [BGS 6]**

The BGS6 site is located northeast of the R35 Road across the old railway line on Portion 7 of the Farm Sterkspruit 508 IS at GPS coordinates location S26° 53 795' E029° 48 988'. The site appears to be an old site and all the graves are typical of traditional African graves. There are eight graves at this site labelled as Grave 40,41,42,43,44,47,48 and 49 (Plates 15 – 18); three of them are fenced off by a stone enclosure and they have associated metal grave goods. Two graves were identified outside the main enclosure at GPS coordinates location S26° 53 795' E029° 48 988'. All the graves are marked by oval shaped stone cairns. Three more graves were identified outside the enclosure at GPS coordinates location S26° 53 824' E029° 49 009'; one of them had a vehicle number plate on top (Plate 18). All graves at BGS6 site are located within the proposed railway line servitude area and will have to be relocated before construction begins.



**Plates 14, 15, 16 and 17:** View of graves at the Site BGS6.

#### **4.7. BURIAL GROUND SITE 7 [BGS 7]**

The BGS7 site is located further northeast of R35 Road on Portion 9 of the Farm Sterkspruit 508 IS. Two graves were identified; one grave was found in a stone enclosure marked by oval shaped stone cairns at GPS coordinates S26° 53 284' E029° 49 116' whereas the second grave is located outside the enclosure also marked by oval shaped stone cairn at GPS coordinates S26° 53 280' E 029° 49 113' (Plate 19 & 20). All the graves are within the servitude area and should be relocated as part of the proposed mitigation exercise.



**Plates 18 and 19:** View of Site BGS7 graves. Judging from their shape, orientation and form, these graves belong to African communities.

Further consultations revealed that at BGS6 and 7 there are graves belonging to the Mabasa family, we consulted MzundeMabasa who admitted that indeed some of the graves may be for his family members but could not single them out. MuzundeMabasa is still consulting with his relatives to obtain more information about the gravesites in question. Mabuza of ZamokhuhleArmersfoort claims that one of the two graves at GBS7 belongs to his father but he is yet to consult with others and verify the

position. After further consultations we discovered that MzundeMabasa and Mabuza were referring to some graves far off the servitude area.

## 5 SUMMARY RECOMMENDATIONS AND CONCLUDING REMARKS

- In line with Phase 1 HIA recommendations, all the affected graves should be exhumed and reburied as soon as the necessary approvals are obtained. However, if guarantees can be secured from the developer that those graves recorded just outside the fenced-off servitude area may be saved from construction related interference, it is ideal that such graves be fenced off and be preserved *in situ*.
- All graves that do not fall under the NHRA will be treated and relocated within the Human Tissue Act of 1983 and the local municipality graves and human burial ordinances.
- Mafu Funerals should go ahead with the application for the necessary permits for the 4 contemporary graves within the servitude area whose concern letters have been obtained and as soon as the permits are obtained the exhumation and relocation of the graves should go ahead.
- HeSSA archaeologists are going to apply for Graves heritage permits for all the graves that fall under the NHRA in order to facilitate their exhumation and relocation as stipulated by applicable laws and SAHRA regulations
- HeSSA accredited heritage professional will oversee the relocation exercise and the actual exhumation and re-interment will be conducted by the professional Undertaker ie. Mafu Funerals
- Given the long history of human occupation in the affected project area, it is highly likely that previously unidentified graves may be discovered subsurface during the proposed construction work. As such it is strongly recommended that a Heritage Monitoring program be incorporated within the project's Environmental Management Plan (EMP) covering the period of construction.
- Should previously unknown or unidentified graves be discovered during the construction phase, they should be reported to heritage authorities to allow for their rescue before work proceeds on affected site.
- HeSSA will provide a complete report of the whole mitigation process to the developer and SAHRA.

## 6. ACKNOWLEDGEMENTS

HeSSA archaeologists would like to thank members of the community listed below for coming forward to identify and verify the affected graves; we would like to thank even those who verified telephonically. **NB** The list does not include people who were consulted but did not have or provide any meaningful information with regards to the affected graves. Several people were consulted but the social consultancy is still going on. Most of the people with knowledge of the affected area live in and around Amersfoort and some are still in the commercial farming area within the project area:

<ul style="list-style-type: none"> <li>▪ David Mkwanzani (43) ID number 6501135264084</li> <li>▪ MajerimaniDladla (63)</li> <li>▪ EmericaDladla</li> <li>▪ Mica Dladla</li> <li>▪ KesiyaDladla</li> <li>▪ David Twala</li> <li>▪ Francois Lotz</li> <li>▪ PindileMkwanzani (Bethal)</li> <li>▪ TimotiMnisi</li> <li>▪ Joshua Nkosi</li> <li>▪ MabuzaNdundulwane</li> <li>▪ VusiShabangu (Ermelo)</li> <li>▪ ZiphoSithebe</li> <li>▪ Masuku Km (Ermelo)</li> <li>▪ MzundeMabasa</li> <li>▪ RieteTshabalala (Majuba)</li> <li>▪ Zwane Douglas</li> <li>▪ NaMlothwa (Morgenzon)</li> <li>▪ Isaac Gule (0834334315 Newcastle)</li> <li>▪ Piet Van WYK :(0768676317 Newcastle)</li> <li>▪ Ngwenya family:(0731758922)</li> </ul>	<ul style="list-style-type: none"> <li>▪ MagangeniMsibi</li> <li>▪ Martha Nwenya (93)</li> <li>▪ Shabangu Thomas (Bethal)</li> <li>▪ Soli Mloyi (Sterkspruit)</li> <li>▪ MariyaMthetho (Sterkspruit)</li> <li>▪ NomsaMathembula</li> <li>▪ Nkosi Rosina</li> <li>▪ JabulaneSthebe</li> <li>▪ EnneNdzunza</li> <li>▪ MuziSithebe</li> <li>▪ Mbatha Stefani</li> <li>▪ Aaron Mlothswa</li> <li>▪ The list below was supplied Mafu funeral by the appointed undertaker</li> <li>▪ Shabangu :(0782967021)</li> <li>▪ NomsaMembe: (0769581500)</li> <li>▪ JabululeLephato: (0782071499)</li> <li>▪ Khumalo: (0343664915)</li> <li>▪ ThandiJiyane: (0725250920 Volkrust)</li> <li>▪ Solomon Mokoena: (0730360290)</li> <li>▪ Isaac Motloung (0829630218)</li> </ul>
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**APPENDIX 3: STATUS QUO REPORT – HERITAGE MITIGATION FOR THE PROPOSED EXHUMATION AND REBURIAL OF HUMAN BURIALS IDENTIFIED DURING THE PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE**

**NOVEMBER 2008**

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**REPORT DETAILS**

**PROJECT:** PROPOSED ESKOM COAL SUPPLY PROJECT, RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME MUNICIPALITY, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE

**REPORT TITLE:** STATUS QUO REPORT – HERITAGE MITIGATION FOR THE PROPOSED EXHUMATION AND REBURIAL OF HUMAN BURIALS IDENTIFIED DURING THE PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE

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**REFERENCE NO.:**

**STATUS OF REPORT:** Draft

**FINAL ISSUE:** Date:

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**PROFESSIONAL SERVICE PROVIDER (PSP)** Nzumbululo Heritage Solutions (South Africa) cc.



## **MANAGEMENT SUMMARY**

### **BACKGROUND**

Nzumbululo Heritage Solutions cc was commissioned on behalf of Eskom to conduct a Phase 2 heritage mitigation exercise which involve mapping and relocation of historic graves identified during the Phase 1 Archaeological and heritage impact study for the proposed Ermelo to Majuba Power Station railway line in PixleyKaSeme, Gert Sibande District, Mpumalanga Province. This report provides the status quo of the affected burial grounds and graves situated within the cultural landscape earmarked for the proposed development project.

### **SUMMARY RESULTS**

The Nzumbululo Heritage Solutions heritage specialist team re-surveyed the railway line route to confirm the location and status of the graves recorded during the Phase 1 HIA study. A total of 49 graves on seven (7) historical burial grounds were recorded within and in the close proximity of the railway line servitude. All these graves identified within the proposed railway line servitude will be destroyed by the proposed railway construction. The graves should be relocated to new designated locations before the construction phase of the railway line begins.

### **CONCLUSIONS**

- Forty-nine (49) graves were identified within the railway line servitude boundary along the 70km long route. These graves are concentrated on seven (7) burial grounds.
- An exercise to identify the custodians of the graves has commenced in order to seek consent from the affected parties.
- A proportion of the graves are older than 60 years and as such they fall within the jurisdiction of the National Heritage Resources Act (NHRA) 25 of 1999. As such, relevant permits will need to be secured from the Graves and Burial Unit of the South African Heritage Resources Agency (SAHRA).
- Legal notices and announcements need to be published in order to comply with requirements of exhuming and re-interring human remains as legislated in the NHRA and Human Tissue Act (1983) and the relevant sections of the local Graves and Burial Ordinances.
- A heritage monitoring program should be applied as part on the project's Environmental Management Plan [EMP]. This would ensure that should previously unidentified graves be found during the development phase, they may be rescued and relocated to a safe site.

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**ABBREVIATIONS**

<b>AIA</b>	Archaeological Impact Assessment
<b>HIA</b>	Heritage Impact Assessment
<b>EIA</b>	Environmental Impact Assessment
<b>EIAR</b>	Environmental Impact Assessment Report
<b>HeSSA</b>	Nzumbululo Heritage Solutions (South Africa)
<b>EMP</b>	Environmental Management Plan
<b>SAHRA</b>	South African Heritage Resources Agency

## DEFINITIONS

**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 artefacts, human and hominid remains, and artificial features and structures.

**Chance Finds** 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.

**Cultural Heritage Resources** Same as Heritage Resources as defined and used in the South African 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** 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.

**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 or burial ground.

**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.

**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.

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

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

**STATUS QUO REPORT – HERITAGE MITIGATION FOR THE PROPOSED EXHUMATION AND REBURIAL OF HUMAN BURIALS IDENTIFIED DURING THE PHASE 1 ARCHAEOLOGICAL AND HERITAGE IMPACT ASSESSMENT STUDY FOR THE PROPOSED RAILWAY LINE FROM ERMELO TO MAJUBA POWER STATION IN PIXLEY KA SEME, GERT SIBANDE DISTRICT, MPUMALANGA PROVINCE**

## 1. INTRODUCTION

During the Phase 1 Archaeological and Heritage impact assessment study for the proposed Ermelo to Majuba power station railway line in Gert Sibande District, twenty-three graves were identified within the railway line servitude. As mitigation to this impact, the study recommended that all affected graves be relocated before railway construction begins. Mafu Funeral Home.commissioned Nzumbululo Heritage Solutions to conduct the Phase 2 mitigation exercise for the proposed development. This report provides the results of the preliminary field study conducted to confirm the status quo of the affected burial grounds within the project area. The proposed heritage mitigation would involve exhumation and relocation and reburial of identified graves in compliance with relevant legislations including the Section 36 of the National Heritage Resources Act (Act No 25 of 1999) and the Human Tissue Act (1983). Further social research was commissioned to determine the custodianship of the graves in line with South African Heritage Resources Agency regulations. Farm owners, farm workers and PixleykaSeme Municipality representatives at Amersfoort were consulted with the view to secure collective decisions with regards to the proposed burial relocations.

## 2. AIM OF THE STUDY

The Archaeological study was commissioned essentially to identify, exhume and rebury graves within and in close proximity of the railway line servitude area. Table 1 below summarises the objectives of the HIA study.

**Table 1:** Terms of Reference

PURPOSE	ACTIVITIES
To fulfil requirements of the National Heritage Resources Act, Act No. 25 of 1999, Section 38. In so doing - Identify and describe (in terms of their conservation and / or preservation importance) sites of cultural and archaeological importance that may be affected by the proposed development activities. This study should include the identification of gravesites. Identify and describe impacts on archaeological and cultural heritage resources associated with the proposed filling stations development within the affected areas.	Identify, describe and map sites of archaeological, historical or cultural interest affected by the construction project. Identify, where possible, the gravesites affected by the development. Describe the importance or significance of these sites and whether these sites need to be conserved, protected or relocated. Describe the procedures for mitigation or relocation of sites and provide an indication of time required for these management measures to be implemented. Document findings and recommendations.

### 3. HERITAGE LEGISLATION

Among all the laws and regulations drafted for the protection of the natural and cultural resources and the environment, the following acts have particular relevance to the management of heritage sites (cultural and historical sites) wherever they are found in the Republic.

- The National Heritage Resources Act, No.25 of 1999
- National Environment management Act (NEMA), No.107 of 1998
- The National Heritage Council Act, No.11 of 1999, and regulations
- Environmental Conservation Act, No.73 of 1989
- Tourism Act, No.72 of 1993
- The Mineral Amendment Act, No.103 of 1993
- Cultural Institutions Act, No.119 of 1998
- World Heritage Convention Act, No.49 of 1999
- Cultural Laws Amendment Bill, No.46 of 2000

In terms of Section 35 (4) 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, destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or material or any meteorite; or bring onto, or use at an archaeological or palaeontological site any excavation equipment or any equipment that assists in the detection or recovery of metals

or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

Clearly, archaeological and palaeontological sites, materials, and meteorites are seen in the NHRA as “the source of our understanding of the evolution of the earth, life on earth and the history of people.” In this context, the law emphasize that the management of heritage resources is integrated with environmental resources and this means that heritage resources should be assessed and, if necessary, rescued before development is allowed to take place.

In areas where there has not yet been systematic survey to identify conservation-worthy places, a permit is required to alter or demolish any historic structure older than 60 years or military installation of over 75 years old. This will apply until a survey is done and identified heritage resources are formally protected.

### 4. STATUS OF THE GRAVES

The proposed railway line servitude area yielded forty nine (49) graves at seven (7) sites within the servitude area and close proximity of the marked zone. All the identified graves at all the sites were not disturbed. The affected area is a farming area and we concluded that the majority of graves are historical and probably for farm workers and white farmers in the affected area.

#### 4.1. GRAVE SITE: I

The site is situated 300m east of Majuba Standerton road near the R35 junction and the

60km peg of the proposed railway line in portion 48 of Amersfoort town and town land 57.H.S

A cluster with a total of 10 graves was recorded at this site GPS coordinates S27° 01 947' E029° 48 996'.The graves are indicated by packed stones in an oval shape and there are placed in two rows. One grave has an inscribed head stone written, *EliyaMkwananzi* and grave number 8 has a vehicle leaf spring placed on top. All the identified graves are within the railway line servitude area. The two field archaeologists undertaking the mitigation survey marked each grave with a peg and assigned a number to each grave written on a plastic tag or flag.



**Plates 1 and 2** Gravesite number 1 with 10 graves, note the grave with a headstone written *EliyaMkwananzi*.

#### 4.2 GRAVE SITE: 2

The site is situated south west of R35 road between 55km peg and 60 km peg of the proposed railway line in portion 53 of Amersfoort town and town land 57 HS. The identified graves are in a cluster of 3 stone enclosures. The graves are not within the demarcated servitude area but are in the close proximity of the servitude area  $\pm 9$  meters. We concluded that these graves will be impacted upon during construction phase hence should also be exhumed and reburied at a safe place. The site referred to as number 2 GPS coordinates S27° 00 289' E029° 48 746' yielded 15 graves in total and the graves were numbered from 11 to 26. The first enclosure yielded 13 graves indicated by packed stones in an oval form. The graves are arranged in two rows both enclosure number 2 and 3 yielded one grave each. Each grave identified at the site was marked by a peg and assigned a number written on a plastic tag.



**Plates 3 and 4:** BGS 2; note that the graves are in a stone enclosure.

#### 4.3. GRAVE SITE: 3

The grave site is located 300 west of the site referred to as number 2. The site is in portion 52 of Amersfoort town and town land 57 H S. GPS coordinates S27° 00 251' E029° 48 741' Three graves were identified at this site and there are all within the servitude area of the proposed railway line. The graves were numbered from 27, 28 and 29. The first grave at this site is isolated; it is marked by packed stones in an oval shape and a welded peg with a chain. Two graves were identified in one stone enclosure, there are marked by packed stones and grave goods like metal teapot and a wagon rim. This cluster of graves is closely associated with clearly marked graves out of the railway line servitude



**Plates 5 and 6:** View of site number 3 with three graves in the servitude area.





**Plates 7 and 8** View of grave site outside the servitude area but closely associated with site number 3 will give a clue about site number 3.

#### 4.4 GRAVE SITE: 4

The site is located north east of R35 road in Vlaakplaats 558 H S. The identified graves are not necessarily within the servitude area but are within the close proximity of the proposed railway line servitude about  $\pm 5\text{m}$  and may be impacted upon especially during construction phase.

Four graves were identified and numbered 30, 31, 32 and 33. The graves are marked by oval shaped stone packs and two of the graves are marked by burnt clay bricks



**Plates 9 and 10:** View of BGS 4 .

#### 4.5 GRAVE SITE: 5

The site is located north east of R35 road adjacent to the old railway line in remainder of the farm Sterkspruit 508 I S GPS coordinates  $S26^{\circ} 56 020'$   $E 029^{\circ} 48 778'$ . The site is in the close proximity of the proposed railway line servitude  $\pm 1,5\text{m}$  from the servitude fence. We concluded that the graves are at a high risk of destruction during the construction phase and therefore should be exhumed and relocated to a safer place. Basing on the information inscribed on one headstone and oral evidence from MsibiMagangeni a farm work who came at the farm in the 1950s we concluded that this cluster of graves may be regarded as archaeological graves thus they fall under SAHRA. Five graves

were identified fenced by a stone enclosure, there are marked by oval shaped stone packs. One grave probably the oldest one has a broken inscribed headstone. The inscriptions are in the Dutch language and are not very visible, only the date 1881 is clearly visible; another grave at the site has a rose planted on top of it. The graves are arranged in rows and were numbered from 34, 35, 36, 38 and 39.



**Plates 11,12,13 and14:** View of an archaeological gravesite identified within the project area.

#### **4.6. GRAVESITE: 6**

The site is located north east of the R35 road across the old railway line in portion 7 of the farm Sterkspruit 508 I S GPS coordinates S26° 53 795' E029° 48 988' Eight graves were identified at the site, three of them are fenced by a stone enclosure with metal grave goods. Two graves were identified outside the main enclosure; GPS coordinates S26° 53 795' E029° 48 988' the graves are marked by oval shaped stone packs. Three more graves were identified outside the enclosure GPS coordinates S26° 53 824' E029° 49 009', one of them had a vehicle number plate on top. The graves were numbered from 40,41,42,43,44,47,48 and 49 All graves are located within the proposed railway line servitude area.

**4.7. GRAVE SITE 7**

The site is located further north east of R35 in portion 9 of the farm Sterkspruit 508 I S. Two graves were identified, one grave was found in a stone enclosure marked by oval shaped stone packs GPS coordinates S26° 53 284' E029° 49 116' .Another grave is located outside the enclosure also marked by oval shaped stone packs GPS coordinatesS26° 53 280' E 029° 49 113' All the graves are within the servitude area.



**Plates 15, 16, 17 and 18:** View of graves at the site Number 6



**Plates 19 and 20:** View of graves at BGS7 site.

**5. SOCIAL CONSULTANCY**

From the 20<sup>th</sup> to the 24<sup>th</sup> November 2008 HeSSA Archaeologists went to Majuba Ermelo railway line servitude area to identify and document graves which were identified on the proposed railway line during the phase 1 Archaeological and Heritage Impact study. HeSSA Archaeologist tracked commercial farmers within

the affected areas. The majority of farmers confirmed that most of the graves identified belonged to farm workers in the affected areas but could not provide leads to the descendents or custodians of the graves. The farmers consulted did not have details of the origins of the diseased farm workers. We proceeded to Amersfoort where we consulted Mr Bonele Ngwenya the Technical manager at the Local municipality who referred us to Mapaseka E Madonsela who is the mayor and councillor of Amersfoort. The mayor and councillor agreed to convene a meeting with residents and farmers in her constituency concerning the plight of graves. She promised to inform us as soon as the meetings are held. So far she has appointed a working committee to coordinate the project and she is yet to send us their details. We agreed that by week ending 7 November we should have identified the custodians where possible.

## 6 RECOMMENDED MITIGATION MEASURES

- In mitigation HeSSA recommended that all the forty nine affected graves should be exhumed and reburied as soon as the necessary approvals are obtained
- HeSSA Archaeologists are going to apply for a Heritage permit to excavate and relocate the affected graves from South African Heritage Agency

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## APPENDIX 3: BURIAL GROUNDS & HUMAN REMAINS IN DEVELOPMENT CONTEXTS

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*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 of 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 give their consent to the unknown remains to be re-buried in their area, such reinterment 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 reinterment. If the relatives do not react to the advertisement, the remains may be reinterred 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 any body 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 reinterred.

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 organisations 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 artefacts should be removed from any protected grave or graveyard without the prior approval of SAHRA. All artefacts 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 reinterment 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.