

**PHASE 1 HERITAGE IMPACT ASSESSMENT FOR THE
PROPOSED TRUCK AND WAREHOUSING FACILITY NEAR
ESTCOURT, KWAZULU NATAL PROVINCE.**

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Prepared For:

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EXECUTIVE SUMMARY

Nemai Consulting was appointed by Commaro Investment cc represented by Mr Moosa Suleman as the independent Environmental Assessment Practitioner (EAP) to undertake the environmental assessment of the proposed construction of a facility of approximately 19 hectares on Portion 220 of the farm Wagondrift No 798 near Estcourt in the midlands of KwaZulu Natal.

Part of the environmental assessment includes a Phase 1 Heritage Impact Assessment (HIA), which serves to identify any cultural heritage resources occurring on sites which may be impacted upon by the proposed construction. If any resources are found, mitigation measures and recommendations for the protection of such resources will be provided. The report will be submitted to the Provincial Heritage Resources Authority (Amafa aKwaZulu Natali) for comment as per the National Heritage Resources Act (Act No 25 of 1999).

There is only one site alternative for the proposed project. The reason for this is that the location has been approved by the Department of Agriculture to be used for the purpose of:

- Petrol filling station and garage
- Café roadhouse
- Overnight facilities for heavy transport

In addition the need for the development has been identified in the Umtshezi Municipal Development Spatial Framework which identified the site for mixed use development.

However, there are two layout options that have been considered in this assessment.

During the site investigation, no heritage resources of significance were noted. However, the area is situated in an area of very high palaeontological significance interspersed with areas of no known palaeontological significance according to the

KwaZulu Natal palaeo map hence a desktop study was undertaken to assess the presence of sensitive palaeontological material on site.

It is therefore recommended based on the assessment that the construction may proceed. However, depending on the results of the desktop study, these findings may need to be amended.



TABLE OF CONTENTS

EXECUTIVE SUMMARY	ii
TABLE OF CONTENTS	iv
TERMINOLOGY	v
VERIFICATION OF QUALIFICATIONS	vi
TERMS OF REFERENCE (ToR)	vii
1. BACKGROUND INFORMATION of THE PROJECT	8
2. LOCATION AND DESCRIPTION OF THE STUDY AREA	8
3. HISTORICAL BACKGROUND OF THE STUDY AREA	10
3.1 Archaeological	10
3.2 Iron Age	11
3.3 Historical	12
4. Site alternatives	13
5. METHODOLOGY	14
6. RESULTS AND DISCUSSION	16
6.1 Site survey	16
6.2 Discussion	18
6.3 Assessment of alternative layouts	18
6.4 Mitigation measures	22
7. RECOMMENDATIONS and CONCLUSION	22
8. REFERENCES	24

List of Figures

Figure 1: Position of facility in relation to N3.....	9
Figure 2: Estcourt shale and siltstone complex matrix (Pes, brown). Dolerite formations (Jd) are shown in red	10
Figure 3: Layout alternative 1.....	13
Figure 4: Layout alternative 2.....	14
Figure 5: Pile of rocks with view looking towards site on crest of hill	15
Figure 6: View of project area and surrounds.....	15
Figure 7: View away from project area towards watercourse.....	16
Figure 8: SAHRA Palaeo Sensitivity Map	17

List Appendices

Appendix A: List of legislation applicable to the site	17 - 24
Section 3 of NHRA 25 of 1999	
Section 38 of NHRA 25 of 1999	
Sections 33 – 36 KwaZulu Natal Heritage Act	

TERMINOLOGY

BP	Before Present
ECO	Environmental Control Office
EIA	Early Iron Age
ESA	Early Stone Age
LIA	Late Iron Age
LSA	Late Stone Age
MIA	Middle Iron Age
MSA	Middle Stone Age
NHRA	National Heritage Resources Act
PIA	Paleontological Impact Assessment
SAHRA	South African National Resources Agency
SAPS	South African Police Services
ya	years ago

VERIFICATION OF QUALIFICATIONS

Verification	Name	Qualification	Professional Registration
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TERMS OF REFERENCE (ToR)

The approach utilised for this report were:

- To undertake a Phase 1 HIA in accordance with the National Heritage Resources Act (Act No. 25 of 1999) and KwaZulu Natal Heritage Act (Act No.4 of 2008);
- To identify and map all heritage resources in the area affected, as defined in Section 3 of the National Heritage Resources Act (Act No. 25 of 1999), including archaeological and palaeontological sites on or close (within 100m) of the proposed sites;
- To assess the significance of such resources in terms of the heritage assessment criteria as set out in the SAHRA regulations;
- To evaluate the impacts of the construction on heritage resources relative to the sustainable social and economic benefits to be derived from the construction;
- To provide mitigation measures to safeguard heritage resources; and
- To comply with requirements and guidelines of the Provincial Heritage Resources Authority – Amafa aKwaZulu Natali.

LEGISLATIVE REQUIREMENTS

- National Heritage Resources Act (Act No. 25 of 1999)
 - Section 3
 - Section 38
- KwaZulu Natal Heritage Act (Act No.4 of 2008)
 - Sections 33 - 36

1. BACKGROUND INFORMATION OF THE PROJECT

Nemai Consulting was appointed by Commaro Investment cc to undertake an environmental authorisation process for the construction of a proposed truck and warehousing facility near Estcourt in KwaZulu Natal. The facility is to be located on a short distance from the N3 highway between Durban and Johannesburg and the proposed development will be approximately 19 hectares (ha) in size. There are two site alternatives for the proposed project that will be discussed in more detail below.

The development footprint is approximately 19 ha in size thus it triggers a Heritage Impact Assessment (HIA) according to Section 38 (1) (a) of the National Heritage Resources Act 1999 (Act No. 25 of 1999) which states that:

“(1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as-

- (c) any development or other activity which will change the character of a site—
- (i) exceeding 5 000 m² in extent”.

Area and linear developments such as the development envisaged can have a permanent destructive impact on heritage resources and the objective of the study was to identify any cultural heritage resources occurring on sites which may be impacted upon by the proposed construction. If any resources are found, mitigation measures and recommendations for the protection of such resources will be provided.

This report was prepared according to the National Heritage Resources Act 1999 (Act No. 25 of 1999) (Appendix A).

2. LOCATION AND DESCRIPTION OF THE STUDY AREA

The facility is to be located on portion 220 of the farm Wagondrift No 798 near Estcourt in the midlands of KwaZulu Natal. It is situated a short distance from the N3 highway between Durban and Johannesburg and is located at approximately S29°02'42.16 E29°53'48.50 (Fig. 1).

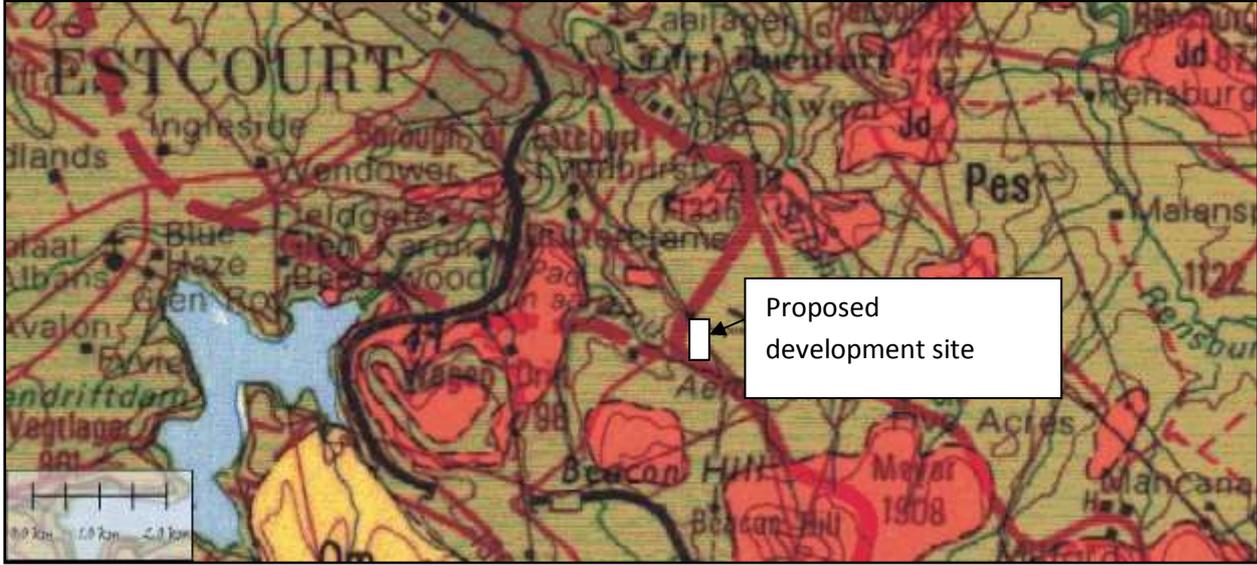


Figure 1: Position of facility in relation to N3

The proposed development will be approximately 19 hectares (ha) in size and will include the following:

- Warehousing for the purpose of commercial and light industrial activities;
- Offices for businesses
- Truck facilities (may include storage, maintenance and sale of vehicles);
- Parking area for vehicles
- Above-ground fuel storage facility
- Overnight resting area with sleeping facilities for truck drivers
- Associated infrastructure for service provision (i.e. water, sewer, stormwater, electricity and waste) and
- Access road

According to Geotechnical Report for the proposed development, the facility is situated on the site is underlain by Dark Grey Shale, Siltstone and Sandstone of the Estcourt Formation, Beaufort Group within the Karoo Sequence.



Explanation: Pes - Adelaide Subgroup, Estcourt Formation

Jd – Dolerite.

Figure 2: Geology of the study area

3. HISTORICAL BACKGROUND OF THE STUDY AREA

The relevance of providing historical background on human history is to allow the reader to have a better understanding of what is meant by archaeological and cultural/historical features of the proposed area irrespective of whether or not such heritage resources are found.

3.1 Archaeological

The archaeology of KwaZulu-Natal like that of most of southern Africa covers several archaeological periods including the Stone Age (Early, Middle & Late) and the Iron Age and more recent historic archaeology (the last 500 years).

Stone Age

The Stone Age is a time period that dates between 2 million years ago (ya) to 2000 ya. Due to the vast character found within stone tools of this period, it was then divided into three phases; Early Stone Age (ESA), Middle Stone Age (MSA) and the Late Stone Age (LSA). ESA dates between 2 million ya and 2 00 000 Before Present (BP). Industries associated with this time period includes Oldowan, Acheulean and Fauresmith. ESA stone tools include hammer stones, flakes, cores, handaxes and cleavers (Pelsner 2009).

The more refined stone tools appeared during the MSA. MSA dates between 2 00 000 and 25 000 to 20 000 BP, this varies with location. Industries associated with this time period includes the Howieson's Poort. The stone tools which characterise this period include scrapers, blades, points and flake. Lastly is the LSA which dates between 25 000 and 20 000 to 2 000 BP. Stone tools of this period are characterised by their small size; this includes backed knives and borers (Pelsner 2009).

According to Tomose (2013), the project area falls within a region mostly known for Stone Age archaeology material culture- the rock art sites of Estcourt and in uKhahlamba Drakensberg Mountain Range in the west. The caves, plains, valleys and hills of KwaZulu-Natal are also known to have once been occupied by the San people often referred to as San hunter-gathers or the Bushman. This is evident in the name of the Bushman's River that is situated some 2.5 km downstream from the project area.

3.2 Iron Age

According to Huffman (2007) Iron Age marks the early evidence of farming community in southern Africa. Animal husbandry, crop farming, pottery and metal working were introduced which in due time liberated hunter gatherers to change their way of life which is less mobile (Carruthers 1990). Due to vast technological discrepancies and settlement pattern within this period, it was divided into three. The Early Iron Age (EIA) dates to AD 200 – 900, Middle Iron Age (MIA) dates to AD 900 – 1300, and the Late Iron Age (LIA) dates to AD 1300 – 1840 (Huffman 2007).

According to Tomose (2013), defining archaeological traits of the Iron Age people in KwaZulu Natal and other parts of southern Africa is represented through distinct ceramic traditions, stone walls and other structural features such as grain bins and hut floor remains and kraals. The KwaZulu-Natal region of southern Africa is known to have been occupied by the Nguni language speakers of the Eastern Bantu Language Stream. Iron Age structural features characterised this region include stone wall structures defined as the Central Cattle Pattern (C.C.P) (e.g. Huffman, 2007).

The earliest known “stonewalling type” in this region is known as Moor Park and it dates from 14th to 16th Centuries AD. The sites of Moor Park stonewalling are located in the defensive position on the hilltops in the Midlands, from Bergville to Dundee some distance from the project area.

There are large exposed fossil beds as well as fossilised trees on Makhabeni Hill which is situated some distance from the project area.

3.3 Historical

The farm on which the proposed facility is to be built is Wagendrift which suggests that there was a drift or crossing in the River that was used by transport wagons en route to the Witwatersrand from Port Natal.

A fort was built in Estcourt in 1847 to guard the fording place over the Bushman River staging point on the road from Pietermaritzburg to the north. In 1863 the town was named after Thomas Escourt, an English parliamentarian who had promoted immigration to Natal.

In early January 1879, according to Laband (2009), shortly before the outbreak of the Anglo-Zulu War, the Natal Government proclaimed the laager outside the village of Estcourt as the central defensive post for the settlers of the region. It consisted of a blockhouse, three associate guardhouses and stables. It was used as barracks for the Natal Mounted Police until 1900.

According to Jones and Jones (1999), in the early stages of the Anglo-Boer War, 1899-1902, the town was garrisoned by 150 men of the Natal Royal Rifles and by a squadron of the Imperial Light Horse. Armoured reconnaissance trains were pushed northwards from Estcourt

towards Colenso including the train that was ambushed by the Boer forces at Blaauwkrantz on 15 November 1899. The garrison to some 800 mounted troops and 4, 400 infantry and artillery.

The Boers attempted to outflank the British at Estcourt but were defeated at Brynbella Hill/Willow Grange on 21 November 1899 and retired without threatening the town. Thereafter, it became an important staging post for troops involved in attempts to relieve the siege of Ladysmith.

4. SITE ALTERNATIVES

There are two site layout alternatives for the project. Layout option 1 and layout option 2 are indicated in Fig. 3 and 4 below.



Figure 3: Layout alternative 1



Figure 4: Layout alternative 2

5. METHODOLOGY

A desktop study was conducted on the proposed site to establish the historical context of the area in which the development is to take place. A site visit took place in November 2013 which was to identify any other heritage resources that may be impacted on due to the proposed construction of the facility.

Heritage resource means any place or object of cultural significance (NHRA No. 25 of 1999). National Heritage Resources Act 1999 (Act No. 25 of 1999) was utilised as a source of reference to identify what is known as a heritage resource. The photographs were taken during the site visit conducted in November 2013. Some of these can be found below in Figs. 5 - 7.



Figure 5: Pile of rocks with view looking towards site on crest of hill



Figure 6: View of project area and surrounds



Figure 7: View away from project area towards watercourse

6. RESULTS AND DISCUSSION

6.1 Site survey

Archaeological

No archaeological material or sites were found on the proposed site. There are piles of rocks that could have constituted walls or structures but there is no context that could help determine the heritage nature (if any) of these piles and therefore they are regarded to have no significance.

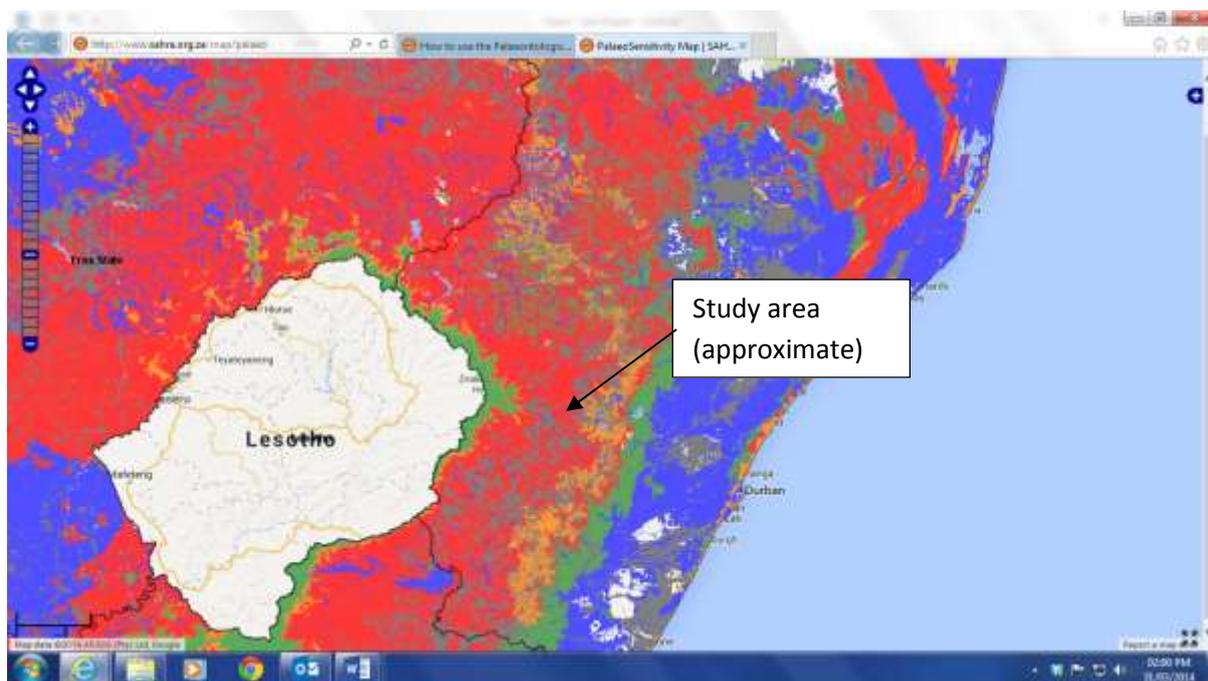
Historical

Remains of an old structure was found outside the project area and is of no significance. No other heritage resources were found on the project site.

Paleontological

The Palaeontological Sensitivity Map of KwaZulu Natal was consulted as well as the Fossil Sensitivity map on SAHRIS. The maps indicated that the area in which the site of the proposed

facility could fall in an area of very high paleontological sensitivity that is interspersed with areas of no known palaeontological sensitivity (see Fig. 8 below).



Colour	Sensitivity	Required Action
RED	VERY HIGH	field assessment and protocol for finds is required
ORANGE/YELLOW	HIGH	desktop study is required and based on the outcome of the desktop study, a field assessment is likely
GREEN	MODERATE	desktop study is required
BLUE	LOW	no palaeontological studies are required however a protocol for finds is required
GREY	INSIGNIFICANT/ZERO	no palaeontological studies are required
WHITE/CLEAR	UNKNOWN	these areas will require a minimum of a desktop study. As more information comes to light, SAHRA will continue to populate the map.

Figure 8: SAHRA Palaeo Sensitivity Map

A desktop palaeontology assessment was undertaken (see Appendix D) and the findings were that the site of development is underlain by Permian aged rocks of the Estcourt formation. The Estcourt formation is well known for rich assemblages of plant fossils. Due to the deep weathering of the Estcourt formation sediments and relatively thick soil layers, fossils will only be present in areas where surface deposits have been disturbed or eroded to expose such sediments hence a moderate paleontological sensitivity rating is allocated to the site.

It was however recommended that a Phase 1 PIA be undertaken to record the presence of fossils prior to construction and during removal of topsoil at the start of the construction phase.

6.2 Discussion

Based on the site inspection, there are no visible cultural heritage and archaeological sites on the project area. However, it should be noted that archaeological sites are often found beneath the surface hence care must be taken when the site is excavated as this process may lead to archaeological sites been revealed. Mitigation measures described below deal with chance finds.

6.3 Assessment of alternative layouts

6.3.1 Assessment methodology

The alternative layouts were assessed in order to establish possible which site is preferred from a heritage perspective.

The assessment methodology used is undertaken in terms of the impact of on heritage resources during construction. Impact are analysed below with regard to their nature, extent, magnitude, duration, probability and significance. The following definitions apply:

Extent of the impact:

- The extent of the impact will be assessed according to the following parameters:
- **(1)** Limited to the site and its immediate surroundings.
- **(2)** Local/ Municipal extending only as far as the local community or urban area.
- **(3)** Provincial/Regional.
- **(4)** National i.e. South Africa.
- **(5)** Across International borders.

Duration of the impact:

- The lifespan of the impact will be assessed in terms of the duration of the impact, i.e.:
- **(1)** Immediate (less than 1 year).
- **(2)** Short term (1-5 years).
- **(3)** Medium term (6-15 years).
- **(4)** Long term (the impact will cease after the operational life span of the project).
- **(5)** Permanent (no mitigation measures or natural process will reduce impact after construction).

Magnitude of the impact: The magnitude or severity of the impacts will be indicated as either:

- **(0)** None (where the aspect will have no impact on the environment).
- **(1)** Minor (where the impact affects the environment in such a way that natural, cultural and social functions and processes are not affected).
- **(2)** Low (where the impact affects the environment in such a way that natural, cultural and social functions and processes are slightly affected).
- **(3)** Moderate (where the affected environment is altered but natural, cultural and social functions and processes continue albeit in a modified way).
- **(4)** High (where natural, cultural or social functions or processes are altered to the extent that it will temporarily cease)
- **(5)** Very high / don't know (where natural, cultural or social functions or processes are altered to the extent that it will permanently cease).
-

Probability of occurrence: The likelihood of the impact actually occurring will be indicated as either:

- **(0)** None (impact will not occur).
- **(1)** Improbable (the possibility of the impact materializing is very low as a result of design, historic experience or implementation of adequate mitigation measures).
- **(2)** Low probability (there is a possibility that the impact will occur).
- **(3)** Medium probability (the impact may occur).
- **(4)** High probability (it is most likely that the impact will occur).
- **(5)** Definite / do not know (the impact will occur regardless of the implementation of any prevention or corrective actions or if the specialist does not know what the probability will be based on too little published information).

Cumulative impact:

The impact of the development is considered together with additional developments of the same or similar nature and magnitude. The combined impacts may be:

- Negligible – i.e. the net effect is the same as the single development
- Marginal – i.e. the impact of two developments of a similar nature is less than twice the impact of a single development. This implies it is better to place the two developments in the same environment rather than in separate environments.
- Compounding – the impact of two developments is more than twice the impact of two single developments therefore it is better to split the two developments into separate environments.

Significance of the Impact:

Based on a synthesis of the information contained in the points above, the potential impacts will be assigned a significance weighting (S). The weighting is formulated by adding the sum of the numbers assigned to extent (E), duration (D) and magnitude (M) and multiplying this sum by the probability (P) of the impact hence $S=(E+D+M)*P$.

The above process allows that the same assessment is used to assess the significance of impacts post mitigation that is, to assess whether the implementation of mitigation measures will reduce the significance weighting of a specific impact.

Table 1: Significance score description

Average Score	<u>Significance</u>	Significance Score	Description
0	Negligible	0	There is no impact
1	Low	1-15	Impact is of a low order, mitigation measures are easy and simple or not required
2	Low-Medium	16-30	Impact is higher but with limited effect, mitigation measures are feasible and easily achieved
3	Medium	31-45	Impact is real but not substantial and mitigation is both feasible and fairly easily possible
4	Medium-High	46-60	Impact is substantial and mitigation measures are difficult, expensive and time consuming
5	High/Fatal Flaw	>60	Impact is of the highest order and there are few, if any, mitigation measures to offset impact

Table 2: Alternative Layout 1 assessment

Damage, destruction, removal or alteration to cultural heritage resources, archaeological sites and palaeontology.	
Extent	Local (2)
Duration	Permanent (5)
Magnitude	Low (2)
Probability	Low (2)
Significance	(2+5+2) x 2 = 18 Low – Medium –
Reversibility	No
Cumulative impacts	Negligible
Discussion	The smaller footprint of Alternative 1 means that the extent of impact on potential heritage sites including archaeological, cultural-heritage and palaeontological sites is less than with Alternative 2. The site is situated well away from a watercourse where the potential for finding possible archaeological material is higher.

Table 3: Alternative layout 2 assessment

Damage, destruction, removal or alteration to cultural heritage resources, archaeological sites and palaeontology	
Extent	Local (2)
Duration	Permanent (5)
Magnitude	Moderate (3)
Probability	Medium (3)
Significance	(2+5+3) x 3 = 30 Low – Medium / Medium
Reversibility	No
Cumulative impacts	Marginal
Discussion	Alternative layout 2 is much bigger than alternative 1 therefore making the it more possible that heritage resources if any can be impacted on by the proposed development. The development impacts directly on the watercourse where archaeological material such as tools could be found.

Although both alternative score in the low to medium significance impact, the score for alternative 1 is lower because the possibility or probability of impacts occurring is less because of the size or extent of the proposed development.

From a heritage perspective, **alternative layout 1** is preferred.

6.4 Mitigation measures

- All staff involved in the construction phase should be provided with basic training in regards to the nature of heritage resource material that may be found on site and informed of their obligation to report any items found during the construction process.
- For any chance finds, all work will cease in the area affected and the Contractor will immediately inform the Project Manager. A registered heritage specialist must be called to site for inspection.
- The Provincial Heritage Resources Authority-KwaZulu Natal Province (AMAFA) must be informed about the finding.
- Permits to be obtained from AMAFA if heritage resources are impacted upon.
- All heritage resources found in close proximity to the construction area, in this case the site of the potential grave, to be protected by a 5m buffer in which no construction can take place. The buffer to be highly visible to construction crews.
- Under no circumstances may any heritage material be destroyed or removed from site.
- Should any remains be found on site that is potentially human remains, the South African Police Service should also be contacted.
- The developer and environmental control officer (ECO) must be informed of the fact that fossils might be present in all eroded and disturbed areas and where the topsoil have been or will be removed to expose shale and mudstone of the Estcourt Formation.

7. RECOMMENDATIONS AND CONCLUSION

This report must be submitted to the Amafa aKwaZulu Natali for comment as per the National Heritage Resources Act (Act No. 25 of 1999) and KwaZulu Natal Heritage Act (Act No.4 of 2008).

In conclusion, the construction may proceed from a cultural heritage and archaeological perspective using alternative layout 1.

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APPENDIX A – SECTIONS OF APPLICABLE LEGISLATION

National Heritage Resources Act 25 of 1999
Section 3 of NHRA 25 of 1999

According to **Section 3** under **National Estate** of the National Heritage Act 25 of 1999 the heritage resources in South Africa includes the following:

“(1) For the purposes of this Act, those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities.

(2) Without limiting the generality of subsection (1), the national estate may include –

- (a) places, buildings, structures and equipment of cultural significance;
 - (b) places to which oral traditions are attached or which are associated with living heritage;
 - (c) historical settlements and townscapes;
 - (d) landscapes and natural features of cultural significance;
 - (e) geological sites of scientific or cultural importance;
 - (f) archaeological and paleontological sites;
 - (g) graves and burial grounds, including—
 - (i) ancestral graves;
 - (ii) royal graves and graves of traditional leaders;
 - (iii) graves of victims of conflict;
 - (iv) graves of individuals designated by the Minister by notice in the *Gazette*;
 - (v) historical graves and cemeteries; and
 - (vi) other human remains which are not covered in terms of the Human Tissue Act, 1983 (Act No. 65 of 1983);
 - (h) sites of significance relating to the history of slavery in South Africa;
 - (i) movable objects, including:
 - (i) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
 - (ii) objects to which oral traditions are attached or which are associated with living heritage;
 - (iii) ethnographic art and objects;
 - (iv) military objects;
 - (v) objects of decorative or fine art;
 - (vi) objects of scientific or technological interest; and
 - (vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996).
- (3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national estate if it has cultural significance or other special value because of –

- (a) its importance in the community, or pattern of South Africa's history;
- (b) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
- (c) its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
- (d) its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
- (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa; and
- (i) sites of significance relating to the history of slavery in South Africa".

Section 38 of NHRA 25 of 1999

According to **Section 38** under **Heritage resources management** of the National Heritage Act 25 of 1999 the heritage resources in South Africa should be managed in the following:

"(1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as—

- (a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
- (b) the construction of a bridge or similar structure exceeding 50 m in length;
- (c) any development or other activity which will change the character of a site—
 - (i) exceeding 5 000 m² in extent; or
 - (ii) involving three or more existing erven or subdivisions thereof; or
 - (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or
 - (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
- (d) the re-zoning of a site exceeding 10 000 m² in extent; or
- (e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority, must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

- (2) The responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1)—
- (a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; or
 - (b) notify the person concerned that this section does not apply.
- (3) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2)(a): Provided that the following must be included:
- (a) The identification and mapping of all heritage resources in the area affected;
 - (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;
 - (c) an assessment of the impact of the development on such heritage resources;
 - (d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
 - (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
 - (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
 - (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.
- (4) The report must be considered timeously by the responsible heritage resources authority which must, after consultation with the person proposing the development, decide—
- (a) whether or not the development may proceed;
 - (b) any limitations or conditions to be applied to the development;
 - (c) what general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;
 - (d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and
 - (e) whether the appointment of specialists is required as a condition of approval of the proposal.
- (5) A provincial heritage resources authority shall not make any decision under subsection (4) with respect to any development which impacts on a heritage resource protected at national level unless it has consulted SAHRA.
- (6) The applicant may appeal against the decision of the provincial heritage resources authority to the MEC, who—

- (a) must consider the views of both parties; and
- (b) may at his or her discretion—
- (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the responsible heritage authority; and
- (ii) consult SAHRA; and
- (c) must uphold, amend or overturn such decision.
- (7) The provisions of this section do not apply to a development described in subsection (1) affecting any heritage resource formally protected by SAHRA unless the authority concerned decides otherwise.
- (8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.
- (9) The provincial heritage resources authority, with the approval of the MEC, may, by notice in the *Provincial Gazette*, exempt from the requirements of this section any place specified in the notice.
- (10) Any person who has complied with the decision of a provincial heritage resources authority in subsection (4) or of the MEC in terms of subsection (6) or other requirements referred to in subsection (8), must be exempted from compliance with all other protections in terms of this Part, but any existing heritage agreements made in terms of section 42 must continue to apply.

KwaZulu Natal Heritage Act 2008 (Act No. 4 of 2008)

Section 33: General protection: Structures

(1)(a) No structure which is, or which may reasonably be expected to be older than 60 years, may be demolished, altered or added to without the prior written approval of the Council having been obtained on written application to the Council.

(b) Where the Council does not grant approval, the Council must consider special protection in terms of sections 38, 39, 40, 41 and 43 of Chapter 9.

(2) The Council may, by notice in the *Gazette*, exempt –

(a) a defined geographical area; or

(b) defined categories of sites within a defined geographical area,

from the provisions of subsection (1) where the Council is satisfied that heritage resources falling in the defined geographical area or category have been identified and are adequately protected in terms of sections 38, 39, 40, 41 and 43 of Chapter 9.

(3) A notice referred to in subsection (2) may, by notice in the *Gazette*, be amended or withdrawn by the Council.

Section 34: General protection: Graves of victims of conflict

No person may damage, alter, exhume, or remove from its original position –

(a) the grave of a victim of conflict;

(b) a cemetery made up of such graves; or

(c) any part of a cemetery containing such graves,

without the prior written approval of the Council having been obtained on written application to the Council.

Section 35: General protection: Traditional burial places

(1) No grave –

(a) not otherwise protected by this Act; and

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

(2) The Council may only issue written approval once the Council is satisfied that –

- (a) the applicant has made a concerted effort to consult with communities and individuals who by tradition may have an interest in the grave; and
- (b) the applicant and the relevant communities or individuals have reached agreement regarding the grave.

Section 36: General protection: Battlefield sites, archaeological sites, rock art sites, palaeontological sites, historic fortifications, meteorite or meteorite impact sites

- (1) No person may destroy, damage, excavate, alter, write or draw upon, or otherwise disturb any battlefield site, archaeological site, rock art site, palaeontological site, historic fortification, meteorite or meteorite impact site without the prior written approval of the Council having been obtained on written application to the Council.
- (2) Upon discovery of archaeological or palaeontological material or a meteorite by any person, all activity or operations in the general vicinity of such material or meteorite must cease forthwith and a person who made the discovery must submit a written report to the Council without delay.
- (3) The Council may, after consultation with an owner or controlling authority, by way of written notice served on the owner or controlling authority, prohibit any activity considered by the Council to be inappropriate within 50 metres of a rock art site.
- (4) No person may exhume, remove from its original position or otherwise disturb, damage, destroy, own or collect any object or material associated with any battlefield site, archaeological site, rock art site, palaeontological site, historic fortification, 28 meteorite or meteorite impact site without the prior written approval of the Council having been obtained on written application to the Council.
- (5) No person may bring any equipment which assists in the detection of metals and archaeological and palaeontological objects and material, or excavation equipment onto any battlefield site, archaeological site, rock art site, palaeontological site, historic fortification, or meteorite impact site, or use similar detection or excavation equipment for the recovery of meteorites, without the prior written approval of the Council having been obtained on written application to the Council.
- (6)(a) The ownership of any object or material associated with any battlefield site, archaeological site, rock art site, palaeontological site, historic fortification, meteorite or meteorite impact site, on discovery, vest in the Provincial Government and the Council is regarded as the custodian on behalf of the Provincial Government.
- (b) The Council may establish and maintain a provincial repository or repositories for the safekeeping or display of –
 - (i) archaeological objects;

- (ii) palaeontological material;
- (iii) ecofacts;
- (iv) objects related to battlefield sites;
- (v) material cultural artefacts; or
- (vi) meteorites.

(7) The Council may, subject to such conditions as the Council may determine, loan any object or material referred to in subsection (6) to a national or provincial museum or institution.

(8) No person may, without the prior written approval of the Council having been obtained on written application to the Council, trade in, export or attempt to export from the Province –

- (a) any category of archaeological object;
- (b) any palaeontological material;
- (c) any ecofact;
- (d) any object which may reasonably be regarded as having been recovered from a battlefield site;
- (e) any material cultural artefact; or
- (f) any meteorite. 29

(9)(a) A person or institution in possession of an object or material referred to in paragraphs (a) – (f) of subsection (8), must submit full particulars of such object or material, including such information as may be prescribed, to the Council.

(b) An object or material referred to in paragraph (a) must, subject to paragraph (c) and the directives of the Council, remain under the control of the person or institution submitting the particulars thereof.

(c) The ownership of any object or material referred to in paragraph (a) vest in the Provincial Government and the C