
Archaeological Site Inspection -

**MINING IMPACT ON TWO GRAVEYARD SITES,
SMITSDRIFT MINING AREA, BOOMPLAATS 21,
SCHMIDTSDRIFT DISTRICT,
NORTHERN CAPE, SOUTH AFRICA**

DATE: 2007-06-20



REPORT TO -

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1) INTRODUCTION

On Monday the 11th of June 2007 the Communal Property Association (CPA) of the Smitsdrift Community reported on mining impact at two graveyard sites situated within the Smitsdrift mining area. The report was made to the South African Heritage Resources Agency (SAHRA) Northern Cape office and the developer, NARE Diamonds Limited. Diamond mining activities in both areas were immediately ceased. Both sites were inspected on Tuesday the 12th of June in the company of representatives of NARE Diamonds Limited, relevant sub-contractors, the CPA and SAHRA Northern Cape. SAHRA Northern Cape requested an Archaeological Site Inspection (ASI) of both sites prior to commencement of development activities in the vicinities of the damaged cultural resources. The ASI was requested in terms of the National Heritage Resources Act, No 25 of 1999 (NHRA 1999), under which both graveyard sites are legally protected. ArchaeoMaps was contracted to conduct the requested ASI. The ASI was conducted on Saturday the 16th of June 2006.

1.1) THE DEVELOPMENT AREA

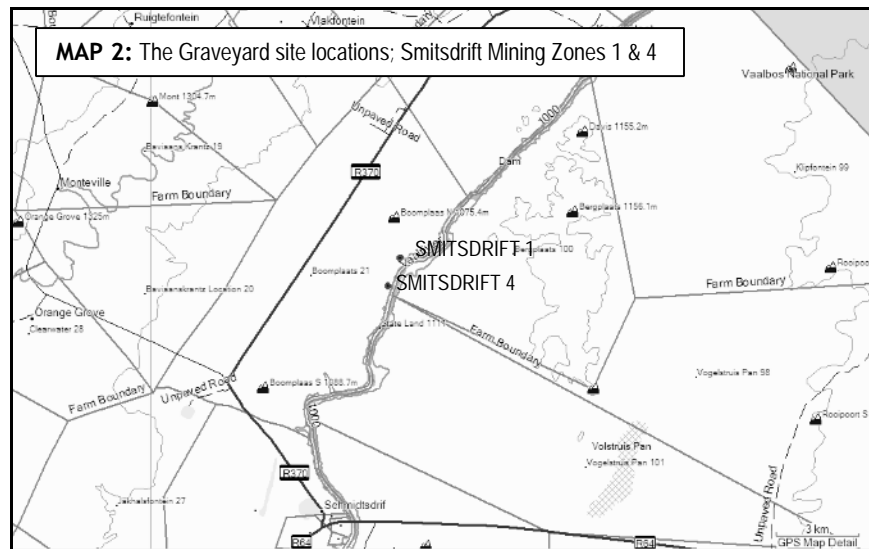
The NARE Diamonds Limited mining area is situated on the Smitsdrift Community owned property Boomplaats 21, Schmidtsdrift District, Northern Cape. The property is situated approximately 70km east of Kimberley along the R64 and immediately west of the Vaal River. Alluvial diamond development focuses primarily on the Vaal River gravels.

The borders of the NARE Diamonds Limited mining area were not made available for the purposes of the ASI. Instead, the ASI focused only on the two graveyard sites impacted on by sub-contractors of NARE Diamonds Limited.



1.2) MINING IMPACT ON GRAVEYARD SITES AT SMITSDRIFT MINING ZONES 1 AND 4

Reported mining impact on graveyard sites centered on two localities described as Smitsdrift Mining Zones 1 and 4. At both localities the resources under question comprise of small formal graveyards, culturally associated with the BaThlaping (Tswana), currently under custodianship of the landowner, the resident BaThlaping Community, represented by the CPA.



2) THE ARCHAEOLOGICAL SITE INSPECTION

The ASI was conducted on the 16th of June, 2007. The ASI focused only on the two reported on damaged cultural heritage sites namely the graveyard site at Smitsdrift Mining Zone 1 and the graveyard site at Smitsdrift Mining Zone 4.

The one day ASI was conducted by one archaeologist. GPS co-ordinates were taken with a Garmin e-Trex Vista GPS (datum WGS84). Photographic documentation was done with a Casio X-S2 Exilim camera. A combination of Garmap and Google Earth software was used in the display of spatial information.

Archaeological and cultural heritage site significance assessment and associated mitigation recommendations were done according to the system prescribed by SAHRA (2005).

FIELD RATING	GRADE	SITE SIGNIFICANCE	RECOMMENDED MITIGATION
National Significance	Grade 1	High Significance	Site conservation / Site development
Provincial Significance	Grade 2	High Significance	Site conservation / Site development
Local significance	Grade 3A	High Significance	Site preservation or extensive mitigation before development destruction
Local significance	Grade 3B	High Significance	Site preservation or extensive mitigation before development destruction
Generally Protected A	-	High / Medium Significance	Site preservation or mitigation before development destruction
Generally Protected B	-	Medium Significance	Site preservation or mitigation / test excavation / systematic sampling before development destruction
Generally Protected C	-	Low Significance	No archaeological mitigation required – Site destruction

TABLE 1: Archaeological and cultural heritage site significance and mitigation recommendations

2.1) THE ACHAEOLOGICAL SITE INSPECTION RESULTS

2.1.1) THE SMITSDRIFT MINING ZONE 1 GRAVEYARD SITE

The Smitsdrift Mining Zone 1 graveyard is located at S28° 37' 06.9"; E24° 05' 30.6", comprising a currently fenced approximate 0.2ha area. Thirty five (35) graves were identified within the fenced area. However more graves may well be present, the demarcations of which have been obscured or destroyed by mining impact.

The graveyard site is currently fenced. Subsequent to fencing mining activities have also impacted on the fence. Primary mining impact on the site pre-dates fencing with clear evidence of earthmoving machinery impact on the graveyard area and individual graves. The fence has been erected within less than 0.5m from some graves, increasing in distance. Mining activities does not seem to have impacted on any human remains. Damage is thus restricted to the graveyard area and individual grave demarcations including head and footstones, grave outlines and stacked stone demarcations.

Maintenance to the fenced graveyard area has also been neglected; cleared vegetation is heaped between and over graves and removed grave markers have been piled in an area towards the center of the graveyard. As previously

mentioned mining has already impacted on the fence, of inferior standard and without measures allowing formal access to the site.

The fence, or heritage site conservation measure, was thus most importantly not erected prior to development proceeding in the general area. Neither was the fence erected within the prescribed proximity for conservation requirements of cultural heritage resources as previously re-determined (Van Ryneveld & Timothy 2003) and approved by SAHRA particularly for graveyard and grave sites situated within the Smitsdrift mining area, where a buffer zone of approximately 30m around a cultural heritage resource was approved.

A low density of Middle Stone Age (MSA) lithic artefacts were identified at the graveyard locality. Large scale disturbance in the general area and mining impact on the site itself were not conducive to the recording of artefact ratios (artefacts: m²). Artefacts were produced from fine grained dolorite, quartzite, hornfels and other local raw material. The immediate surroundings of the graveyard are largely destroyed by mining activities and currently comprise of large exposed sections, mine dumps and dams. High exposed sections did not yield any information on artefact contexts; inspection was hampered by safety issues related to the height of unstabilized sections. The find however does secure a Stone Age presence in the general mining area.

Mining activities in the Smitsdrift Mining Zone 1 area was resumed approximately 2 months ago. Development is currently at the final rehabilitation stage.

✂ SITE SIGNIFICANCE AND RECOMMENDATIONS: The graveyard site at Smitsdrift Mining Zone 1 is ascribed a Medium - High Significance and a Generally Protected A field rating, implying conservation of the site or mitigation prior to development impact. Based on the Phase 1 Archaeological Impact Assessment (AIA) of the development area and the SAHRA recommendations thereon (not available at the time of the ASI) and subsequent grave related agreements between SAHRA, the previous developer, New Diamond Corporation (NDC) and the CPA, it can reasonably be stated that, in contravention with the NHRA 1999, SAHRA recommendations of heritage site conservation or mitigation prior to development were not complied with by the developer, NARE Diamonds Limited.

Considering the present state of impact on the graveyard site and the development being in its final rehabilitation stage the only salvage measure for heritage conservation is limited to erection of a proper fence around the graveyard. Mining impact does not allow the recommended approximate 30m buffer zone proximity of a fence from a graveyard. The fence will thus have to be constructed within the proximity boundaries prescribed by mining impact, thereby limited to the same position as the current fence. While fencing the developer should take caution not to further impact on graves, primarily graves situated particularly close to the fence. Fencing should allow for formal access to the site by means of at least one access gate.

At present no recommendation regarding rehabilitation of individual graves will be made. It is recommended that rehabilitation of individual graves be the decision of the CPA in association with SAHRA and the developer, NARE Diamonds Limited. Should the CPA, as custodian of cultural heritage resources on the Smitsdrift communal property, require rehabilitation of individual graves, such rehabilitation should be done according to standards prescribed by SAHRA.

Summarized recommendations:

- 1) It is recommended that development (rehabilitation) proceed after appropriate fencing for conservation purposes has been completed at the Smitsdrift Mining Zone 1 graveyard and after the conservation measures taken (fencing) has been inspected and approved by SAHRA.
- 2) It is recommended that development (rehabilitation) proceed after a minimum of a written agreement, between the CPA and NARE Diamonds Limited, on the way forward regarding the rehabilitation of individual graves at the Smitsdrift Mining Zone 1 graveyard site. The agreement has to be approved by SAHRA, who will be responsible for ensuring that proposed grave rehabilitation measures are in accordance with the legislative requirements of the NHRA 1999, associated regulations and prescribed minimum standards of practice.



IMAGE 1: Large scale mining impact immediately adjacent to the Smitsdrift Mining Zone 1 graveyard



IMAGE 2: Mining impact in close proximity to the graveyard fence



IMAGE 3: Mining impact in close proximity to the graveyard fence



IMAGE 4: Mining impact in close proximity to the graveyard fence



IMAGE 5: The existing graveyard fence – the only heritage conservation measure currently in place



IMAGE 6: Mining impact on the graveyard fence. Note the close proximity of the fence and mining impact to the upright gravestone



IMAGE 7: The upright gravestone in close proximity to the fence and mining impact



IMAGE 8: Stone grave demarcations at the non-maintained Smitsdrift Mining Zone 1 graveyard site



IMAGE 9: Graves situated within the Smitsdrift Mining Zone 1 graveyard



IMAGE 10: Graves situated within the Smitsdrift Mining Zone 1 graveyard



IMAGE 11: A pile of stones located near the center of the graveyard. The stones are interpreted as having been removed from their original positions



IMAGE 12: Middle Stone Age (MSA) artefacts collected from the surface of the graveyard site at Smitsdrift Mining Zone 1

2.1.2) THE SMITSDRIFT MINING ZONE 4 GRAVEYARD SITE

The Smitsdrift Mining Zone 4 graveyard is located at S28° 37' 38.6"; E24° 05' 15.8". The graveyard is currently fenced including an approximate 0.1ha area containing thirty six (36) recorded graves. At least six (6) recorded graves were negatively impacted on by mining disturbance. More graves may well be present, the demarcations of which may well have been obscured by mining impact.

The graveyard site is currently fenced. Mining impact on the site pre-dates fencing with clear evidence of earthmoving machinery impact on the graveyard area and individual graves, particularly in the eastern and western corners of the graveyard. Mining activities does not seem to have impacted on any human remains. Damage is thus restricted to the graveyard area and individual graves including head and footstones, grave outlines and stacked stone demarcations.

The fence has been erected with an approximate 2-3m buffer zone around the perimeter of the graveyard, with continued mining impact evident immediately adjacent to the fence. The erected fence is of acceptable standard, however corner and supporting posts are not properly secured and there is at present no provision for formal access to the graveyard. The fence, as conservation measure to the cultural heritage resource, was evidently not constructed prior to development impact in the area. The fence was also not erected within the prescribed proximity for conservation requirements of cultural heritage resources as previously re-determined (Van Ryneveld & Timothy 2003) and approved by SAHRA particularly for graveyard and grave sites situated within the Smitsdrift mining area, where a buffer zone of approximately 30m around a cultural heritage resource was approved.

No other archaeological material was discovered during assessment of the surface area of the graveyard. Assessment of the mining section forming the north-eastern boundary of the graveyard also yielded no archaeological material.

Based on section heights and associated safety measures further large scale mining sections in the immediate vicinity were not inspected.

Mining activities in the Smitsdrift Mining Zone 4 area was resumed approximately 1 month ago. Development is currently at the final rehabilitation stage.

✂ SITE SIGNIFICANCE AND RECOMMENDATIONS: The graveyard site at Smitsdrift Mining Zone 4 is ascribed a Medium - High Significance and a Generally Protected A field rating, implying conservation of the site or mitigation prior to development impact. Based on the Phase 1 AIA of the development area and the SAHRA recommendations thereon (not available at the time of the ASI) and subsequent grave related agreements between SAHRA, the previous developer, NDC and the CPA, it can reasonably be stated that, in contravention with the NHRA 1999, SAHRA recommendations of heritage site conservation or mitigation prior to development were not complied with by the developer, NARE Diamonds Limited.

Considering the present state of impact on the graveyard and the development being in its final rehabilitation stage the only salvage measure for heritage conservation is limited to upgrading of the existing fence in an attempt to meet an acceptable conservation standard. Mining impact does not allow the recommended approximate 30m buffer zone proximity for the fence from the cultural heritage resource, it is thus suggested that the fence be upgraded in its current locale. The fence itself is of acceptable standard, however corner and supporting posts needs to be properly secured. In addition the upgrading process should accommodate the inclusion of a minimum of one access gate to the graveyard.

At present no recommendation regarding rehabilitation of individual graves will be made. It is recommended that rehabilitation of individual graves be the decision of the CPA in association with SAHRA and the developer, NARE Diamonds Limited. Should the CPA, as custodian of cultural heritage resources on the Smitsdrift communal property, require rehabilitation of individual graves, such rehabilitation should be done according to standards prescribed by SAHRA.

Summarized recommendations:

- 1) It is recommended that development (rehabilitation) proceed after recommended fence upgrading (the securing of corner and supporting fence posts and the addition of a least one access gate) for conservation purposes has been completed at the Smitsdrift Mining Zone 4 graveyard and the measures inspected and approved by SAHRA.
- 2) It is recommended that development (rehabilitation) proceed after a minimum of a written agreement, between the CPA and NARE Diamonds Limited, on the way forward regarding the rehabilitation of individual graves at the Smitsdrift Mining Zone 1 graveyard site. The agreement has to be approved by SAHRA, who will be responsible for ensuring that proposed grave rehabilitation measures are in

accordance with the legislative requirements of the NHRA 1999, associated regulations and prescribed minimum standards of practice.



IMAGE 13: General view of the fenced Smitsdrift Mining Zone 4 graveyard



IMAGE 14: View from the graveyard, indicating the close proximity of large scale mining impact



IMAGE 15: Mining sections of more than 3m in height, situated adjacent to the Smitsdrift Mining Zone 4 graveyard



IMAGE 16: Large scale mining impact immediately adjacent to the Smitsdrift Mining Zone 4 graveyard



IMAGE 17: Large scale mining impact adjacent to the Smitsdrift Mining Zone 4 graveyard



IMAGE 18: Mining sections of more than 3m in height, situated immediately adjacent to the Smitsdrift Mining Zone 4 graveyard



IMAGE 19: The approximate 2m in height mining section north east of the graveyard proved to be archaeologically sterile



IMAGE 20: View from the graveyard, note the mining impact on graves in the foreground



IMAGE 21: View from the Smitsdrift Mining Zone 4 graveyard with graves in the foreground



IMAGE 22: View of the graveyard with an undisturbed grave in the foreground



IMAGE 23: Graves from the Smitsdrift Mining Zone 4 graveyard



IMAGE 24: Graves from the Smitsdrift Mining Zone 4 graveyard



IMAGE 25: Graves from the Smitsdrift Mining Zone 4 graveyard, note the mining impact on the graveyard in the foreground



IMAGE 26: The result of mining impact on the graveyard - A single line of stones representing remains of a grave

DEVELOPMENT AREA	ARCHAEOLOGICAL SITES, FIND PLACES AND FEATURES	IMAGE NR	CO-ORDINATES	
			SOUTH	EAST
Smitsdrift Mining Zone 1 Graveyard				
Development Area				
-	A	Image 1-12	S28° 37' 06.9"	E24° 05' 30.6"
-	B		S28° 37' 07.0"	E24° 05' 32.1"
-	C		S28° 37' 05.6"	E24° 05' 30.9"
-	D		S28° 37' 05.6"	E24° 05' 32.5"
Smitsdrift Mining Zone 4 Graveyard				
Development Area				
-	A	Image 13-26	S28° 37' 38.6"	E24° 05' 15.8"
-	B		S28° 37' 39.5"	E24° 05' 15.5"
-	C		S28° 37' 39.2"	E24° 05' 14.9"
-	D		S28° 37' 38.3"	E24° 05' 15.3"

TABLE 2: GPS co-ordinates of the proposed development area, identified and associated sites and features

2.2) SUMMARISED CONCLUSION

Assessment of the two gravesites at Smitsdrift Mining Zones 1 and 4 indicated that mining activities negatively impacting on formally protected cultural heritage resources were due to the fact that required cultural heritage conservation recommendations and requirements were not complied with prior to development. In both cases conservation measures were attempted only after mining had already damaged the resources, including both graveyard areas and individual graves contained therein. Conservation measures applied comprised of fencing. Erected fences were not constructed within the 30m buffer zone proximity measures recommended and approved by SAHRA. The inferior quality fence at the Smitsdrift Mining Zone 1 graveyard site encroaches to approximately 0.5m, increasing in distance, on the protected graveyard site. The fence furthermore does not allow formal access to the site. Fencing at the Smitsdrift Mining Zone 4 graveyard site allows for a 2-3m conservation buffer zone around the graveyard. The fence will need to be upgraded. Upgrading should also accommodate formal access to the site. In both cases mining impact immediately surrounding the cultural heritage resources does not at present allow compliance to initially recommended, and SAHRA approved conservation measures.

3) RECOMMENDATIONS

In accordance with the Mineral and Petroleum Resources Development Act, No 28 of 2002 (MPRDA), represented by the Department of Minerals and Energy (DME), the National Environmental Management Act, No 107 of 1998 (NEMA), represented by the Department of Environmental Affairs and Tourism (DEAT) and the National Heritage Resources Act, No 25 of 1999 (NHRA 1999), represented by the South African Heritage Resources Agency (SAHRA), the responsibility for environmental compliance prior to development lies with the developer, in the particular case with NARE Diamonds Limited. By implication, archaeological and cultural heritage, as a compulsory specialist sub-section to development environmental requirements thus also rests with the developer. Developer neglect of compliance to cultural heritage resources conservation measures are thus in fact an offence in terms of the above mentioned legislation.

3.1) PRIMARY RECOMMENDATIONS

The two protected cultural heritage resources, namely the graveyard sites at Smitsdrif Mining Zones 1 and 4, have been impacted on to an extent that SAHRA recommended conservation measures can no longer be set in place. Current recommendations are based on minimal available options left to secure at least a level of security to the resources:

1) Smitsdrift Mining Zone 1 graveyard site:

It is recommended that development (rehabilitation) proceed after appropriate fencing for conservation purposes has been completed at the Smitsdrift Mining Zone 1 graveyard and after the conservation measures taken (fencing) has been inspected and approved by SAHRA.

2) Smitsdrift Mining Zone 4 graveyard site:

It is recommended that development (rehabilitation) proceed after recommended fence upgrading (the securing of corner and supporting fence posts and the addition of a least one access gate) for conservation purposes has been completed at the Smitsdrift Mining Zone 4 graveyard and the measures inspected and approved by SAHRA.

3) Smitsdrift Mining Zones 1 and 4 graveyard sites:

It is recommended that development (rehabilitation) proceed after a minimum of a written agreement, between the CPA and NARE Diamonds Limited, on the way forward regarding the rehabilitation of individual graves at the Smitsdrift Mining Zones 1 and 4 graveyard sites. The agreement has to be approved by SAHRA, who will be responsible for ensuring that proposed grave rehabilitation measures are in accordance with the legislative requirements of the NHRA 1999, associated regulations and prescribed minimum standards of practice.

3.2) ADDITIONAL RECOMMENDATIONS

Based on continued discrepancies with regards to archaeological and cultural heritage resources management in the Smitsdrift mining area, by both the former developer, NDC (Van Ryneveld & Timothy 2003; 2004) and the current developer, NARE Diamonds Limited, it is recommended that the developer submit and 'Archaeological and Cultural Heritage Management and Monitoring Plan' to SAHRA in order to ensure future compliance to minimum legislative requirements.

(The 'Archaeological and Cultural Heritage Management and Monitoring Plan' should be based on identified heritage resources situated within the proposed development area and associated recommendations as per the Phase 1 Archaeological / Heritage Impact Assessment. As per the SAHRA requirements such an assessment and recommended management and monitoring plan should be inclusive of all palaeontological and archaeological (inclusive of Stone Age, Iron Age and Historical Period sites) deposits, built structures older than 60 years, sites of cultural significance associated with oral histories, burial grounds and graves, graves of victims of conflict and cultural landscapes or viewsapes, as defined and protected by the NHRA 1999. Should no such document exist the developer should ensure that the required information be compiled by appropriate specialists. Should portions of the required information be available the developer should ensure that additional information be compiled by relevant specialist.)

5) ACKNOWLEDGEMENTS

I would like to thank Mr. Shakes Swababa (Bo Karoo Mining sub-contractors) for arrangements and Horace Abrahams, Joseph Saal and Tian Goosen (Reho Mining sub-contractors) for accompanying me to the sites and supplying on-site and development information.

6) REFERENCES CITED

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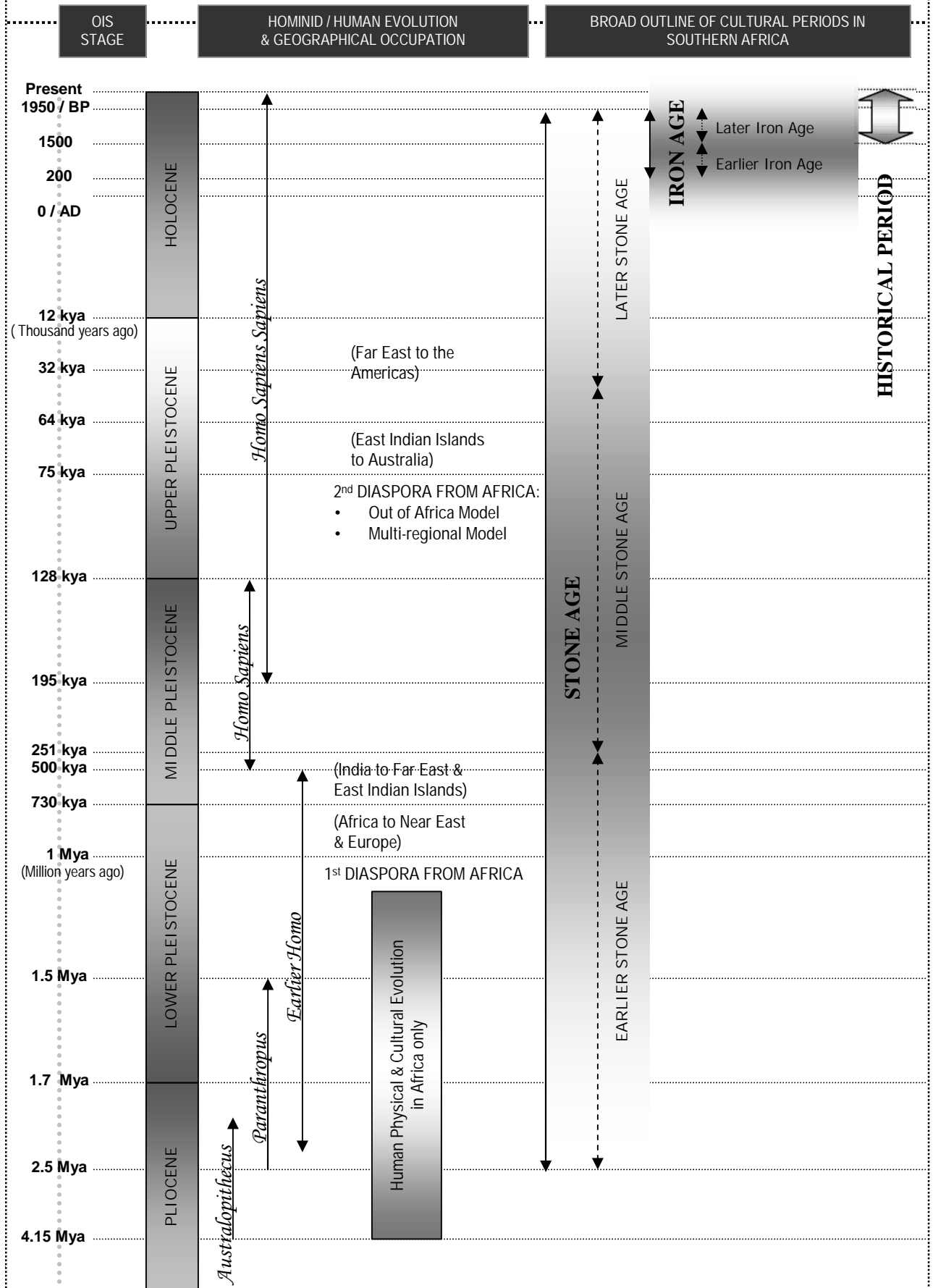
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Schematic Outline of the Pre-historic and Historic Periods



Extracts from the
NATIONAL HERITAGE RESOURCES ACT (NO 25 OF 1999)

DEFINITIONS

Section 2

In this Act, unless the context requires otherwise:

- ii. "Archaeological" means –
 - a) material remains resulting from human activity 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;
 - b) rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and which is older than 100 years, including any area within 10 m of such representation;
 - c) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land, in the internal waters, the territorial waters or in the maritime culture zone of the Republic," and any cargo, debris, or artefacts found or associated therewith, which is older than 60 years or which SAHRA considers to be worthy of conservation.
- viii. "Development" means any physical intervention, excavation or action, other than those caused by natural forces, which may in the opinion of a heritage authority in any way result in a change to the nature, appearance or physical nature of a place, or influence its stability and future well-being, including –
 - a) construction, alteration, demolition, removal or change of use of a place or structure at a place;
 - b) carrying out any works on or over or under a place;
 - c) subdivision or consolidation of land comprising, a place, including the structures or airspace of a place;
 - d) constructing or putting up for display signs or hoardings;
 - e) any change to the natural or existing condition or topography of land; and
 - f) any removal or destruction of trees, or removal of vegetation or topsoil;
- xiii. "Grave" means a place of interment and includes the contents, headstone or other marker of such a place, and any other structure on or associated with such place;
- xxi. "Living heritage" means the intangible aspects of inherited culture, and may include –
 - a) cultural tradition;
 - b) oral history;
 - c) performance;
 - d) ritual;
 - e) popular memory;
 - f) skills and techniques;
 - g) indigenous knowledge systems; and
 - h) the holistic approach to nature, society and social relationships.
- xxxi. "Palaeontological" means any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace;
- xli. "Site" means any area of land, including land covered by water, and including any structures or objects thereon;
- xliv. "Structure" means any building, works, device or other facility made by people and which is fixed to land, and includes any fixtures, fittings and equipment associated therewith;

NATIONAL ESTATE

Section 3

- 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 palaeontological 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).

STRUCTURES

Section 34

- 1) No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

ARCHAEOLOGY, PALAEOLOGY AND METEORITES

Section 35

- 3) Any person who discovers archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity must immediately report the find to the responsible heritage resources authority, or to the nearest local authority offices or museum, which must immediately notify such heritage resources authority.
- 4) No person may, without a permit issued by the responsible heritage resources authority –
 - a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;
 - b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;
 - c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or
 - d) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assists in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.
- 5) When the responsible heritage resources authority has reasonable cause to believe that any activity or development which will destroy, damage or alter any archaeological or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure in terms of section 38 has been followed, it may –
 - a) serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as is specified in the order;
 - b) carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary;
 - c) if mitigation is deemed by the heritage resources authority to be necessary, assist the person on whom the order has been served under paragraph a) to apply for a permit as required in subsection 4); and
 - d) recover the costs of such investigation from the owner or occupier of the land on which it is believed an archaeological or palaeontological site is located or from the person proposing to undertake the development if no application for a permit is received within two weeks of the order being served.
- 6) The responsible heritage resources authority may, after consultation with the owner of the land on which an archaeological or palaeontological site or meteorite is situated, serve a notice on the owner or any other controlling authority, to prevent activities within a specified distance from such site or meteorite.

BURIAL GROUNDS AND GRAVES

Section 36

- 3) 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 of any burial ground or grave referred to in subsection 3a) 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 3b) 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.

HERITAGE RESOURCES MANAGEMENT

Section 38

- 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 300 m 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 subdivisions thereof which have been consolidated within the past five years; or
 - iv. the costs which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
 - d) the rezoning 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
- 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.

APPOINTMENT AND POWERS OF HERITAGE INSPECTORS

Section 50

- 7) Subject to the provision of any other law, a heritage inspector or any other person authorised by a heritage resources authority in writing, may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage resource protected in terms of the provisions of this Act, or any other property in respect of which the heritage resources authority is exercising its functions and powers in terms of this Act, and may take photographs, make measurements and sketches and use any other means of recording information necessary for the purposes of this Act.
- 8) A heritage inspector may at any time inspect work being done under a permit issued in terms of this Act and may for that purpose at all reasonable times enter any place protected in terms of this Act.
- 9) Where a heritage inspector has reasonable grounds to suspect that an offence in terms of this Act has been, is being, or is about to be committed, the heritage inspector may with such assistance as he or she thinks necessary –
 - a) enter and search any place, premises, vehicle, vessel or craft, and for that purpose stop and detain any vehicle, vessel or craft, in or on which the heritage inspector believes, on reasonable grounds, there is evidence related to that offence;
 - b) confiscate and detain any heritage resource or evidence concerned with the commission of the offence pending any further order from the responsible heritage resources authority; and
 - c) take such action as is reasonably necessary to prevent the commission of an offence in terms of this Act.
- 10) A heritage inspector may, if there is reason to believe that any work is being done or any action is being taken in contravention of this Act or the conditions of a permit issued in terms of this Act, order the immediate cessation of such work or action pending any further order from the responsible heritage resources authority