

**PHASE 1 HERITAGE IMPACT ASSESSMENT**

**PROPOSED CEDAR PARK DEVELOPMENT SITUATED ON PORTIONS 5 AND 64  
OF THE FARM BULTFONTEIN 533 JQ, CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY, GAUTENG PROVINCE.**

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## **EXECUTIVE SUMMARY**

*Archaeology Africa* was appointed by *Marsh Environmental Services* to undertake a Phase 1 Heritage Impact Assessment for the proposed construction of the Cedar Park development on Portions 5 and 64 of the farm Bultfontein 533-JQ. The developer is *Panamo Properties 103 (Pty) Ltd.*

Four sites were located which can be classified into two different types, namely one cemetery and three sites which can be classified as multi-component in that they are historic sites which has the possibility of containing graves. Mitigation measures for all these sites have been made under Section 4.3.

It is the opinion of the author of this report that on the condition that all the recommendations made in this report are adhered to, the development may continue.

This report will be submitted to the South African Heritage Resources Agency. Any changes and/or additions made by them must be adhered to.

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## **1. PROJECT BACKGROUND**

*Archaeology Africa* was appointed by *Marsh Environmental Services* to undertake a Phase 1 Heritage Impact Assessment for the proposed construction of the Cedar Park development on Portions 5 and 64 of the farm Bultfontein 533-JQ. The developer is *Panamo Properties 103 (Pty) Ltd.*

This study forms part of the upgrade of the existing Environmental Scoping and/or Impact Assessment Report.

## **2. DESCRIPTION OF STUDY AREA AND PROPOSED DEVELOPMENT**

### **2.1 Study Area**

The study area is situated a short distance to the south of the Jukskei River between Pretoria and Mogale City. It consists of undulating land intersected by a small stream.

The proposed development is situated within an area which has been utilised for farming purposes for more than a hundred years. As a result almost the entire study area can be described as disturbed by ploughing activities.

### **2.2 Proposed Development**

The proposed activity consists of the development of the Cedar Water / Adventure Park, which involves the development of a large-scale adventure park offering various world class tourism and leisure activities. Attractions include the largest water park in the southern hemisphere, the largest hedge maze in the world, the largest dedicated kids entertainment area and so forth. Emphasis is on a quality leisure experience and safety and security. The development will also rehabilitate a wetland on the site, create a sanctuary for indigenous birds, use indigenous vegetation and contribute to the cleanup of the Jukskei River. See Annexure C for the Proposed Development Layout Plan.



Plate 1      General view of a section of the study area.



Plate 2      Another view of a section of the study area.

### **3. METHODOLOGY**

#### **3.1 Desktop Study**

The primary aim of the desktop study is to compile as much available information as possible on the heritage resources of the area. Such a study also helps in providing historical context for any sites that are located. The desktop investigation focussed on the study of archival maps. The following institutions were visited for the desktop study:

- National Archives, Pretoria
- UNISA Library, Pretoria

#### **3.2 Field Surveys**

The fieldwork was undertaken on Thursday, 18 October 2007 by a team consisting of two individuals. Location data was captured with a Garmin Summit handheld GPS receiver set to WGS84 as datum. Data was captured when accuracy greater than 6m was indicated by the instrument. The location data was represented using Arcview Geographic Information Systems (GIS) software. Photographs were taken with a Canon PowerShot A430 digital camera.

#### **3.3 Consulting with Local Interested and/or Affected Parties**

Informal discussions were held with local residents met during the fieldwork. A public participation process was also undertaken by *Marsh Environmental Services*.

#### **3.4 Aspects regarding Visibility and Constraints**

Not subtracting in any way from the comprehensiveness of the fieldwork undertaken, it is necessary to realise that the heritage resources located during the fieldwork do not necessarily represent all the heritage resources located there. This may be due to various reasons, including the subterranean nature of some archaeological sites and dense vegetation cover. As such, should any heritage features and/or objects not included in the present inventory be located or observed, a heritage specialist must immediately be contacted. Such observed or located heritage features and/or objects may not be disturbed or removed in any way until such time that the heritage specialist has been able to make an assessment as to the significance of the site (or material) in question. This is true for graves and cemeteries as well.

## 4. FINDINGS

### 4.1 Desktop Study Findings

#### 4.1.1 Cartographic findings

The study of historic and archival maps represents a valuable tool in the identification of heritage sites within a defined area.

##### 4.1.1.1 Pretoria Sheet of the Major Jackson Series, June 1902

**Figure 1** below depicts an enlarged section of the Pretoria sheet of the Major Jackson Series (National Archives, Maps, 3/551). This series was produced during the South African War (1899-1902) by the Mapping Section of the Field Intelligence Department under the supervision of Major R.M. Jackson of the Royal Engineers. The sheet depicted below is the Revised Edition dated to June 1902.

The only heritage features depicted on the map sheet are the old farm houses on the western boundary of the farm. These features are situated outside and to the west of the study area.

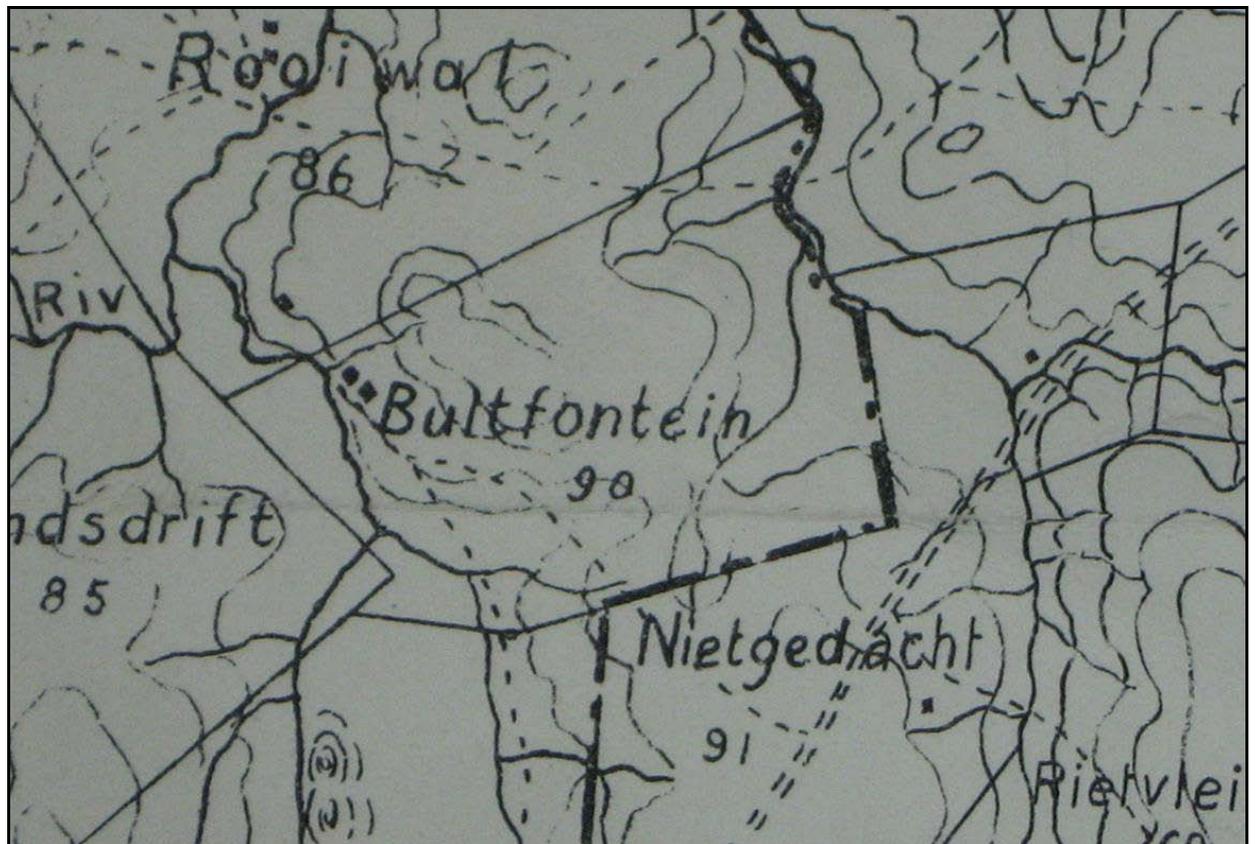


Figure 1 First edition of the 2528CB topographical sheet.

#### 4.1.1.2 2527DD Sheet, First Edition 1943

**Figure 2** below depicts an enlarged section of the First Edition of the 2527DD Topographical Sheet. The map was surveyed and drawn by the 45 Survey Company of the South African Engineering Corps in September 1943. The depicted sheet was reprinted in 1958.

The following observations can be made from the map:

- A single building is depicted within the proposed development area. It is possible that this represents the farm labourer dwelling(s) (see Site 2) that was found during the fieldwork.



Figure 2 First edition of the 2527DD topographical sheet.

#### 4.1.2 Early Farm Ownership History

The farm Bultfontein (old number 90) was first inspected on the 20<sup>th</sup> of September 1856 by A.P. van der Walt. On the 1<sup>st</sup> of December 1868 it was officially registered in the name of Jacobus Abraham Botes. Botes remained owner of the farm until his death sixteen years later. On the 30<sup>th</sup> of September 1884 the farm was transferred from the estate of J.A. Botes to Hendrik Stephanus Pretorius. Bultfontein remained in his possession for the remainder of his life. On the 13<sup>th</sup> of June 1914 it was transferred from the estate of H.S. Pretorius to the estate of Anna Maria Pretorius (born Botes). The farm remained in her estate for two years, when from the 18<sup>th</sup> of February 1916 onwards it was subdivided into six different portions which were transferred to six different individuals. On the 18<sup>th</sup> of February 1916 three one sixth portions were transferred from the estate of A.M. Pretorius (born Botes) to Johannes Stephanus Botes, Louis Frederik Botes and Dorothea Johanna Wessels (born Botes) respectively. On the 10<sup>th</sup> of March 1916 another one sixth share in the farm was transferred from the estate of A.M. Pretorius to Anna Eleonora Debora Wessels (born Botes). On the 12<sup>th</sup> of April 1916 the fifth one sixth portion of the farm was transferred from the estate of A.M. Pretorius (born Botes) to Joseph Petrus Hermanus Steyn, Catharina Frederika Johanna Susanna Steyn (married to Marthinus Christoffel Barnard), Dorothea Johanna Steyn (married to Jeremias Jesaija Bezuidenhout), Martha Johanna Steyn (married to Matheus Jacobus Swart), Antonie Johannes Stephanus Steyn, Anna Eleonora Steyn (married to Petrus Hermanus Cornelis Wolvaardt), Jacobus Marthinus Steyn, Anna Maria Steyn (married to Johannes Nicolaas Neuhoff), Jacoba Marthina Steyn (married to Hendrik Oostenwald Ekstein Knolsen) and Abraham Adriaan Steyn. The sixth one sixth portion was transferred on the 3<sup>rd</sup> of July 1916 to Anna Catharina Phillippina Botes, Catharina Johanna Susanna Botes, Anthonie Johannes Stephanus Botes, Sybrand Gerhardus Botes, Abraham Adrian Botes, Johanna Maria Lowica Botes and Louis Frederik Botes.

#### 4.2 Social Consultation Findings

The informal consultations with local residents encountered during the fieldwork resulted in the identification of a number of heritage sites. Significant in this was the recollection of Mr. Giel Pretorius that an old man was buried in the stone kraal forming part of the farm labourer settlement identified as Site 2 in this report.

The public participation process undertaken by *Marsh Environmental Services* did not reveal any heritage-related issues or information.

## 4.3 Survey Findings

### 4.3.1 Site 1

#### 4.3.1.1 Site Location

Locality: 25.95567 S  
27.94731 E

#### 4.3.1.2 General Description

The site is situated against the western boundary of the development's eastern component. It consists of a cemetery containing six stonelined graves. While none of the graves have formal headstones bearing names identifying the deceased, it is evident that the cemetery is still looked after and visited by associated families. Evidence for this can be found in the fact that the vegetation on the cemetery has recently been cleared, as well as the presence of "Boxer" tobacco parcels. According to Mr. Giel Pretorius, who has resided on the property for 68 years, the family associated with the graves still reside on the property.

#### 4.3.1.3 Current Protection Status

Graves and burial grounds fall under various legislative protections, depending on factors such as where the graves are located as well as their age. Such legislation may include the National Heritage Resources Act 25 of 1999, the Removal of Graves and Dead Bodies Ordinance (Ordinance no. 7 of 1925), the Human Tissues Act 65 of 1983, the Ordinance on Excavations (Ordinance no. 12 of 1980) as well as any local and regional provisions, laws and by-laws that may be in place.

#### 4.3.1.4 Site Significance

Burial grounds have high levels of emotional, religious and historical significance. As a result the site is deemed to be of **High Significance**.

#### 4.3.1.5 Impact of Proposed Development on Site

According to the present development layout plan (refer Annexure C) the cemetery is situated within an area earmarked for the development of the 'extreme thrill zone'

component of the Cedar Park Development. As a result the impact of the development on the site is deemed to be severe and the consideration of mitigation measures imperative.

#### **4.3.1.6 Mitigation**

Two alternative mitigation measures for the cemetery exist, namely *in situ* preservation and alternatively relocation. In terms of preservation, the following mitigation measures would be required:

- Fencing of the site, with a lockable gate on one side.
- A site management plan must be compiled with which the cemetery's conservation during the Construction and Operational Phases can be ensured. The management plan would address aspects such as site monitoring and the cleaning of the cemetery.
- Monitoring of the site's continued preservation must also be undertaken. The frequency of monitoring visits will be outlined in the site management plan.
- It is of immense importance to realise that the affected families will have to be consulted in terms of the future management of their cemetery. Procedures for access by these families to their ancestral graves will also have to be ensured.

Should the decision be made for the cemetery to be relocated, a full relocation process inclusive of a detailed social consultation process and in cognisance of all the relevant legislation can be undertaken. Such a relocation process can only be undertaken by a suitably qualified specialist.



Plate 3 General view of the cemetery.



Plate 4 One of the graves from the cemetery. Note the glass vases and containers.

## **4.3.2 Site 2**

### **4.3.2.1 Site Location**

Locality: 25.95597 S  
27.94117 E

### **4.3.2.2 General Description**

An historic site containing a number of associated stone structures is situated on the western component of the development area to the north of the stream. It contains amongst other unidentified structures a large rectangular livestock enclosure ( $\pm$  10 m x 10m) as well as four smaller rectangular structures ( $\pm$  3 m x 4 m) which appear to be the foundations for dwellings.

The site can be identified as a farm labourer's settlement. Although its age is not known, it can be considered to be at least 60 years old. This is based on the fact that according to Mr. Giel Pretorius (who has resided on the farm for the last 68 years) an old black man used to stay here during the late 1930s. Mr. Pretorius can also remember that this person was later buried in the livestock enclosure.

Furthermore, past experience has shown that in some cases stillborn babies were buried in close proximity to the homes of their parents and especially along the sides of the parents' dwelling. As this site was abandoned some time ago, no direct information with regards to the presence (or not) of stillborn graves are presently available.

### **4.3.2.3 Current Protection Status**

Structures older than 60 years fall under the protection of Section 34(1) of the National Heritage Resources Act 25 of 1999.

Graves and burial grounds fall under various legislative protections, depending on factors such as where the graves are located as well as their age. Such legislation may include the National Heritage Resources Act 25 of 1999, the Removal of Graves and Dead Bodies Ordinance (Ordinance no. 7 of 1925), the Human Tissues Act 65 of 1983, the Ordinance on Excavations (Ordinance no. 12 of 1980) as well as any local and regional provisions, laws and by-laws that may be in place.

#### **4.3.2.4 Site Significance**

Without the presence of graves, the site can be considered to have some significance in that it evidently represents an abandoned farm labourer dwelling. This said it can certainly not be considered as unique. Without the presence of graves the site can be considered to be of Medium Significance. However, the presence of graves necessitates that the site must be given a higher significance rating. All graves have high levels of emotional, religious and historical significance. As a result the site is deemed to be of **High Significance**.

#### **4.3.2.5 Impact of Proposed Development on Site**

According to the present development layout plan (refer Annexure C) the cemetery is situated within an area earmarked for the development of the 'waterpark' component of the Cedar Park Development. As a result the impact of the development on the site is deemed to be severe and the consideration of mitigation measures imperative.

#### **4.3.2.6 Mitigation**

The mitigation of the site must focus on the following three aspects:

- structures older than 60 years
- grave of the old man in the livestock enclosure
- possible graves of stillborn babies

It is important to note that none of these mitigation measures can be undertaken on its own and for the site to be suitably mitigated, mitigation of all three aspects must be undertaken. It is also important to note that the mitigation measures are mutually dependant, for example the site notices and newspaper advertisements required as part of the public participation in terms of the adult grave will be of relevance to any stillborn babies as well.

#### **Mitigation of structures older than 60 years**

The National Heritage Resources Act 25 of 1999 states that no structures older than 60 years may be altered or demolished without a permit from the relevant heritage authority. The following mitigation measures are recommended:

- Surveying and drawing of a site layout plan
- Photographic recording
- Compilation of a document set containing both a qualitative description of the site, site layout plan as well as photographs. This documentation set must accompany the application for the destruction

### **Mitigation of the grave situated in the livestock enclosure**

At present the exact position of the grave is not known. As a result it would not be possible to recommend the *in situ* preservation of the site. The best mitigation would be:

- Social consultation to establish whether any families for the deceased can be found. This process must include bilingual newspaper advertisements and site notices, as well as communication with elderly residents of the area.
- Permit application to the South African Heritage Resources Agency, the Provincial Department of Health and the Provincial Department of Local Government for the grave to be exhumed and relocated.
- Once the permits have been obtained, the exhumation and relocation of the grave can take place. As the exact position of the grave is uncertain, test excavations across the entire livestock enclosure may be required.

### **Mitigation of the possible graves of stillborn babies**

As indicated above, it is not presently known whether any stillborn graves are located on site. The following mitigation measures will establish whether such graves are indeed located here and should any graves be located, the proper way of mitigating them:

- Social consultation to establish whether anyone is aware of stillborn babies buried here. This process must include bilingual newspaper advertisements and site notices, as well as communication with elderly residents (and erstwhile residents) of the area. However, it is possible for this social consultation process and the one undertaken for the grave in the livestock enclosure to run parallel to each other.
- Once the permit for the destruction of the structures has been obtained, test excavations must be undertaken on the insides and exteriors of the dwelling foundations.
- Should graves be identified, and on the condition that the public participation period stated in the bilingual newspaper advertisements and site notices have expired, they can be exhumed and relocated.



Plate 5 General view of the site. The livestock enclosure (back) and one of the small structures (front) can be seen.



Plate 6 Closer view of the livestock enclosure showing the entrance.

### 4.3.3 Site 3

#### 4.3.3.1 Site Location

Locality: 25.95510 S  
27.94056 E

#### 4.3.3.2 General Description

The site consists of the remains of an abandoned mud brick dwelling. The dwelling was evidently used as farm labourer accommodation. Although the age of the structure is not known, it is very doubtful that it would be older than 60 years.

Past experience has shown that in some cases stillborn babies were buried in close proximity to the homes of their parents and especially along the sides of the parents' dwelling. As this site was abandoned some time ago, no direct information with regards to the presence (or not) of stillborn graves are presently available.

#### 4.3.3.3 Current Protection Status

As the structure is not considered to be older than 60 years, it does not fall under any legislative protection. However, as the possibility exists for stillborn babies to be buried here, the site must be considered as not only a structure but also as the possible location for a grave (s).

Graves and burial grounds fall under various legislative protections, depending on factors such as where the graves are located as well as their age. Such legislation may include the National Heritage Resources Act 25 of 1999, the Removal of Graves and Dead Bodies Ordinance (Ordinance no. 7 of 1925), the Human Tissues Act 65 of 1983, the Ordinance on Excavations (Ordinance no. 12 of 1980) as well as any local and regional provisions, laws and by-laws that may be in place.

#### 4.3.3.4 Site Significance

Without the presence of graves, the site can be considered to have no significance. However, the possible presence of graves necessitates that the site must be given a higher significance rating. All graves have high levels of emotional, religious and historical significance. As a result the site is deemed to be of **High Significance**.

#### **4.3.3.5 Impact of Proposed Development on Site**

According to the present development layout plan (refer Annexure C) the site is situated within an area earmarked for the development of the 'waterpark' component of the Cedar Park Development. As a result the impact of the development on the site is deemed to be severe and the consideration of mitigation measures imperative.

#### **4.3.3.6 Mitigation**

As indicated above, it is not presently known whether any stillborn graves are located on site. The following mitigation measures will establish whether such graves are indeed located here and should any graves be found, the proper way of mitigating them:

- Social consultation to establish whether anyone is aware of stillborn babies buried here. This process must include bilingual newspaper advertisements and site notices, as well as communication with elderly residents (and erstwhile residents) of the area.
- Once the permit for the destruction of the structures has been obtained, test excavations must be undertaken on the insides and exteriors of the dwelling foundations.
- Should graves be identified, and on the condition that the public participation period stated in the bilingual newspaper advertisements and site notices have expired, they can be exhumed and relocated.



Plate 7      General view of the site.

#### 4.3.4 Site 4

##### 4.3.4.1 Site Location

Locality: 25.95490 S  
27.94170 E

##### 4.3.4.2 General Description

The site is situated on the eastern boundary of the western component of the development area. It consists of a small rectangular stone structure ( $\pm 3$  m x 4 m) with a possible grave a short distance to the north-west. The possible grave consists of a n oval shaped stone concentration with an upright stone in the middle.

As the age of the site is not known, it is assumed for the purposes of this report that it is older than 60 years. Although the exact function of the rectangular structure is not presently known, it is possible that it represents a feature associated with the nearby stone-built farm labourer dwelling (see Site 2).

##### 4.3.4.3 Current Protection Status

Structures older than 60 years fall under the protection of Section 34(1) of the National Heritage Resources Act 25 of 1999.

Graves and burial grounds fall under various legislative protections, depending on factors such as where the graves are located as well as their age. Such legislation may include the National Heritage Resources Act 25 of 1999, the Removal of Graves and Dead Bodies Ordinance (Ordinance no. 7 of 1925), the Human Tissues Act 65 of 1983, the Ordinance on Excavations (Ordinance no. 12 of 1980) as well as any local and regional provisions, laws and by-laws that may be in place.

##### 4.3.4.4 Site Significance

Without the presence of graves, the site can be considered to have very little significance. However, the presence of graves necessitates that the site must be given a higher significance rating. All graves have high levels of emotional, religious and historical significance. As a result the site is deemed to be of **High Significance**.

#### **4.3.4.5 Impact of Proposed Development on Site**

According to the present development layout plan (refer Annexure C) the cemetery is situated within an area earmarked for the development of the 'waterpark' component of the Cedar Park Development. As a result the impact of the development on the site is deemed to be severe and the consideration of mitigation measures imperative.

#### **4.3.4.6 Mitigation**

The mitigation of the site must focus on the following two aspects:

- structures older than 60 years
- possible grave

#### **Mitigation of structures older than 60 years**

The National Heritage Resources Act 25 of 1999 states that no structures older than 60 years may be altered or demolished without a permit from the relevant heritage authority. The following mitigation measures are recommended:

- Surveying and drawing of a site layout plan
- Photographic recording
- Compilation of a document set containing both a qualitative description of the site, site layout plan as well as photographs. This documentation set must accompany the application for the destruction

#### **Mitigation of the possible grave**

- Social consultation to establish whether any families for the deceased can be found. This process must include bilingual newspaper advertisements and site notices, as well as communication with elderly residents of the area.
- Permit application to the South African Heritage Resources Agency, the Provincial Department of Health and the Provincial Department of Local Government for the grave to be exhumed and relocated.
- Once the permits have been obtained, the exhumation and relocation of the grave can take place. As the exact position of the grave is uncertain, test excavations across the entire livestock enclosure may be required.



Plate 8 General view of the rectangular structure.



Plate 9 The stone concentration can be seen.

## **5. HERITAGE REQUIREMENTS IN TERMS OF SECTION 38 (3) OF THE NATIONAL HERITAGE RESOURCES ACT NOT DEALT WITH IN THE PREVIOUS SECTION.**

### **5.1 “The identification and mapping of all heritage resources in the area affected”**

This requirement has been suitably addressed in Section 4 Findings. With the GPS coordinates obtained from the field, the different sites were individually plotted using Arcview 8.1 GIS Software. Refer Annexure B Site Distribution Maps.

### **5.2 “A(a)n evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;”**

A number of socio-economic benefits are expected to be derived from the proposed developments. These include:

- The project is expected to create temporary employment opportunities during the Construction Phase (in excess of 6000 jobs) and permanent employment opportunities during the Operational Phase (in excess of 4000 jobs). The communities who will benefit most from these employment opportunities will be Cosmo City and Diepsloot.
- Increased tourism in the area increasing prosperity to surrounding communities.
- Increase in the area’s land values.
- Contribution to the upgrade of services in the area.
- Safe and secure leisure experience outside of urban areas and contribution to public amenities.

Although a number of sites with High Significance status were located within the proposed development areas, the impact of the development on these can be suitably mitigated to allow for very little negative impact on the heritage fabric of the area. It stands to reason therefore that when a comparison is drawn between the mitigated impact of the proposed development on the heritage sites and the significant socio-economic benefits to be derived from the project, the benefits would certainly far outweigh the envisaged impact after mitigation.

### **5.3 “T(t)he results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;”**

As required by EIA Regulations 22, 23 and 26 the Environmental Conservation Act 73 of 1989, a public participation process for the proposed development has been undertaken. This included Public Participation Meetings as well.

During the fieldwork component informal discussions were held with local residents.

## **6. CONCLUSIONS AND GENERAL RECOMMENDATIONS**

*Archaeology Africa* was appointed by *Marsh Environmental Services* to undertake a Phase 1 Heritage Impact Assessment for the proposed construction of the Cedar Park development on Portions 5 and 64 of the farm Bultfontein 533-JQ.

Four sites were located which can be classified into two different types, namely one cemetery and three sites which can be classified as multi-component in that they are historic sites which has the possibility of containing graves. Mitigation measures for all these sites have been made under Section 4.3.

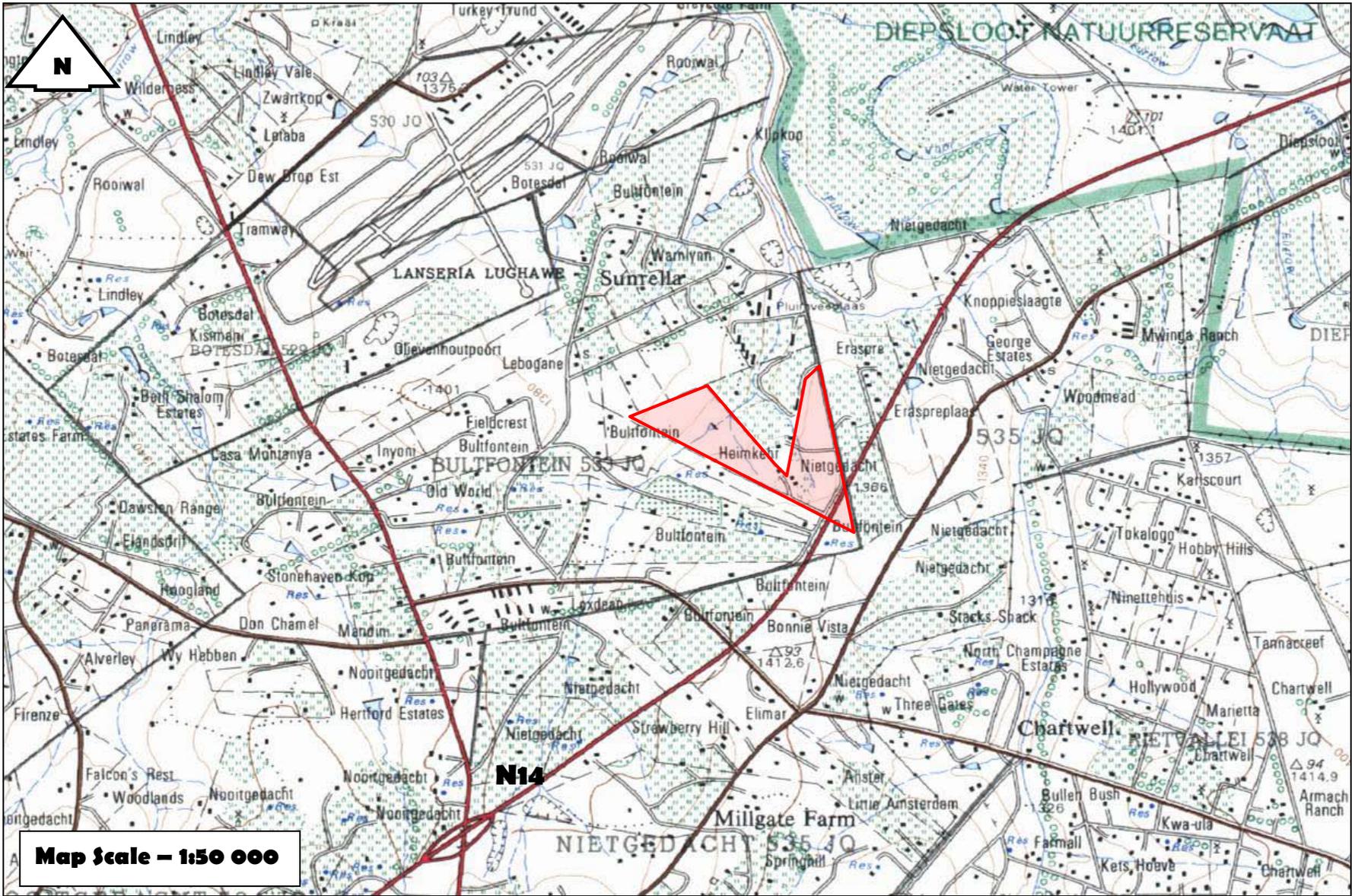
It is the opinion of the author of this report that on the condition that all the recommendations made in this report are adhered to, the development may continue.

This report will be submitted to the South African Heritage Resources Agency. Any changes and/or additions made by them must be adhered to.

The following general recommendations can be made:

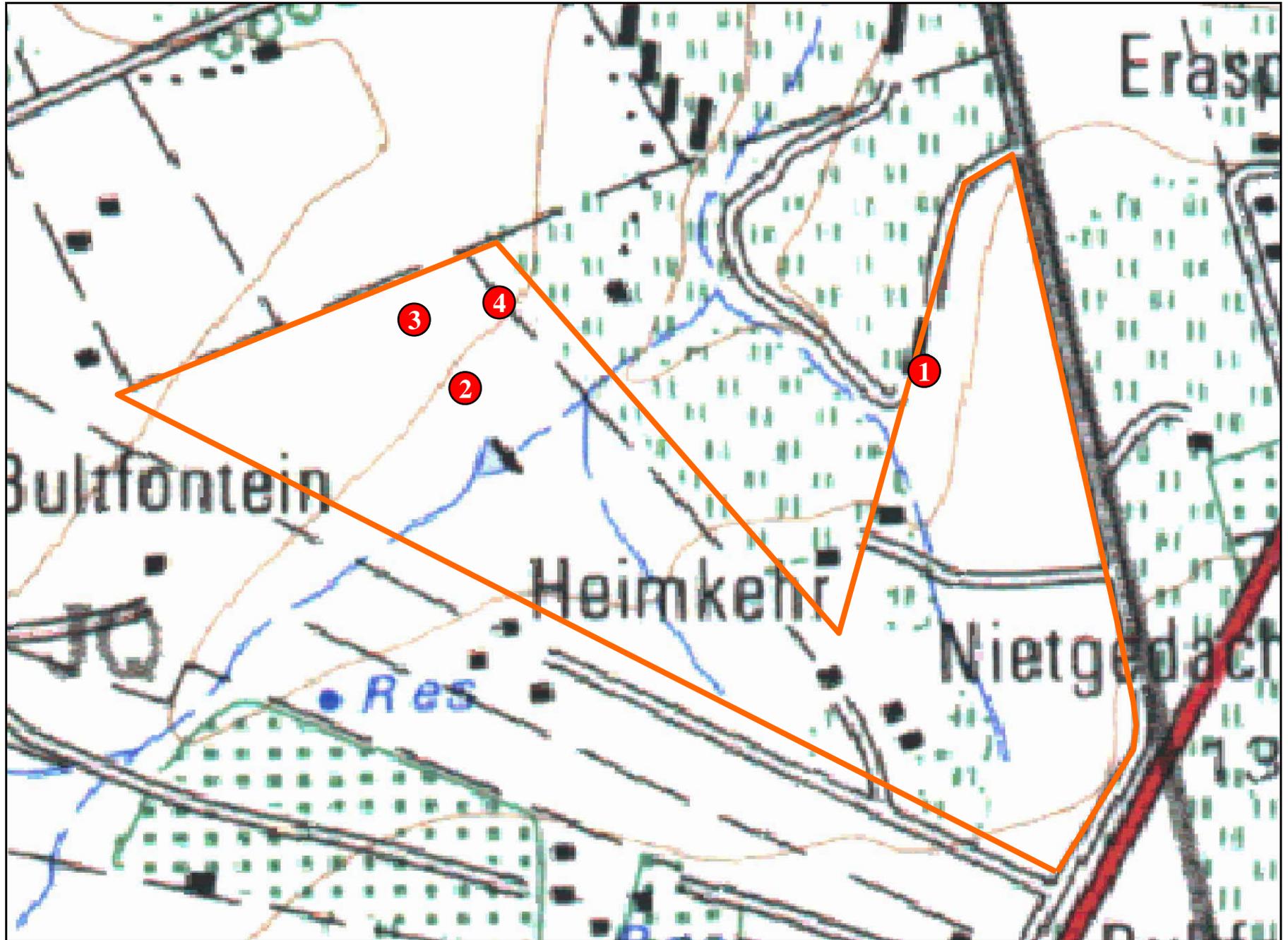
- Although some stone artefacts were observed on the surface of the site, no concentrations or sites were found. To ensure that no subterranean Stone Age deposits are situated on site, it is recommended that an archaeological watching brief be implemented. This entails the monitoring of excavations during the construction phase and can be undertaken by way of a few site visits during this phase. Should any archaeological deposits be located, the significance thereof would have to be established and based thereon archaeological rescue work may be required.

**ANNEXURE A – LOCALITY MAP**



**Map Scale – 1:50 000**

**ANNEXURE B – SITE DISTRIBUTION MAP**



**ANNEXURE C – PROPOSED DEVELOPMENT LAYOUT PLAN**

## **ANNEXURE D – LEGISLATIVE FRAMEWORK**

## LEGISLATIVE FRAMEWORK

South Africa has a number of legislative measures in place aimed at protecting its heritage resources. Of these the most important is the National Heritage Resources Act 25 of 1999.

### 1. National Heritage Resources Act 25 of 1999

The promulgation of the National Heritage Resources Act 25 of 1999 brings the conservation and management of heritage resources in South Africa on par with international trends and standards.

Section 38 (3) of the act provides an outline of ideally what should be included in a heritage report. The act states:

*“(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.”*

Replacing the old National Monuments Act 28 of 1969, the Heritage Resources Act offers general protection for a number of heritage related features and objects (see below).

**Structures** are defined by the Heritage Resources Act as “...any building, works, device or other facility made by people and which is fixed to land, and includes any fixtures,

*fittings and equipment associated with it.*" In section 34 of the Act the general protection for structures is stipulated. It is important to note that only structures older than 60 years are protected. Section 34(1) of the National Heritage Resources Act reads as follows: "*No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.*"

The second general protection offered by the Heritage Resources Act which is of relevance for this project, is the protection of **archaeological sites and objects (as well as paleontological sites and meteorites)**. Section 35(4) of the National Heritage Resources Act states that:

*"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 assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites."*

In order to understand exactly what is protected, it is important to look at the definition of the concept "**archaeological**" set out in section 2(ii) of the Heritage Act:

- "(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 10m 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, as defined respectively in sections 3, 4 and 6 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), 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; and
- (d) features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found;..."

The third important general protection offered by the Heritage Resources Act that is of importance here, is the protection of **graves and burial grounds**. Section 36(3) of the National Heritage Resources Act states that:

*"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."*

Of importance as well is section 36 (5), which relates to the conditions under which permits will be issued by the relevant heritage authority should any action described in section 36 (3), be taken. Section 36(5) reads that:

*"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."*

This section of the Act refers to graves and burial grounds which are older than 60 years and situated outside of a formal cemetery administered by a local authority.

Section 36 (6) of the act refers to instances where previously unknown graves are uncovered during development and other activities.

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

## **2. Other Legislation**

In terms of graves, other legislative measures which may be of relevance include the Removal of Graves and Dead Bodies Ordinance (Ordinance no. 7 of 1925), the Human Tissues Act 65 of 1983, the Ordinance on Excavations (Ordinance no. 12 of 1980) as well as any local and regional provisions, laws and by-laws that may be in place.