

AN INQUIRY INTO THE PRESENCE OF A SMALL INFORMAL CEMETERY ON  
THE FARM KLEIN BABYLONS TOREN, KLAPMUTS, WESTERN CAPE

(Assessment conducted under Section 38 (8) of the  
National Heritage Resources Act No 25 of 1999.

Prepared for:

MALHERBE RUST ARCHITECTS

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**ACO Associates cc**  
Archaeology and Heritage Specialists

Prepared by  
Tim Hart

**ACO Associates**  
8 Jacobs Ladder  
St James  
Cape Town  
7945

Phone (021) 706 4104

Fax (086) 603 7195

Email: [Tim.Hart@aco-associates.com](mailto:Tim.Hart@aco-associates.com)

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### **Appendix A Maps and diagrams**

### **Appendix B Proton magnetometer survey**

## 1 Introduction

ACO Associates was appointed by Chris Fick of Malherbe Rust Architects to investigate the presence of a number of unmarked and marked graves at a location on the farm Klein Babylons Toren (portion 1 of farm 1380). The site which previously served as a compound of workers cottages associated with Backsberg estate has been acquired by Babylons Toren with a view to the construction of holiday cottages, the subject of a broader HIA process by Mr Andre Pentz. The graves are humble in nature, iether not marked or marked with simple cement headstones. Those which are legible indicate a recent date 1976-1980. A number of vague disturbances, and mounds on the ground surface indicate the possibility of there being more than the 4 that were clearly marked. The graves lie outside of a municipal cemetery and although indications are that they appear to be quite recent, the establishment of the burial site has followed none of the normal statutory requirements and is in all likelihood illegal in terms of the National Health Act of 2003 and its regulations, as well as previous legislation. The provincial burial ordinance was only in operation from 1980 onwards. Before then burial was relatively un-regulated.



Figure 1 Humble grave stones and earth mounds indicate presence of graves.

This report tries to answer two questions:

1. The age of the graves need to be established so the correct legal process needs to be identified with a view to their exhumation and reburial. Graves that are greater than 60 years of age have additional protection in terms of the NHRA. For other graves the National Health Act of 2003 and its regulations applies as well as local and provincial by-laws.
2. The extent and number of graves needs to be established in order to determine the size of the task at hand.

## **2 Applicable Legislation**

There are three main sources of legislation that govern the management of graves and human remains.

The National Health Act no 61 2003 plays a role in the management of human remains in terms of the handling and treatment of mortal remains, the permitting of people and organisations that work with human remains. Regulations relating to the management of human remains were thereafter published in 2013. These prescribe in some detail processes for the regulation of human burials, the development of cemeteries and the procedures for exhumation and reburial.

The National Heritage Resources Act 25 of 1999 (section 36) governs the management and protection of human graves that lie **outside** of the jurisdiction of a municipality. These include unregulated farm and historical burial grounds and accidentally discovered graves. The emphasis of the legislation is the protection of historical graves that are over 60 years of age (section 36) as well as the protection of graves of Victims of Conflict within and outside the borders of the county. Section 35 of the National Heritage Resources Act protects archaeological material which includes human remains that are over 100 years of age in any place. Hence human remains within a managed cemetery that are over 100 years of age are considered to be archaeological in nature and should be treated as such.

### **2.1 Municipal by-laws**

The Cape Metropolitan areas has a by-law for cemeteries that lie within the jurisdiction of a city or are a municipal cemetery this by law applies. It is similar to the National Health Act regulations but allows the City certain powers to authorise the relocation of a grave to another cemetery or part of the same cemetery once they have been buried for more than 20 years. Besides regulating the health and environmental aspects relating to the management, care, burial, exhumation and transportation of human remains, the by-law also indicates appropriate conduct within a cemetery and places some emphasis on the maintenance of dignity and tranquillity.

### **2.2 Appeal**

Both the cemeteries by-law of the City of Cape Town and the National Heritage Resources Act allows the rights for appeal for any person affected by an action involving human remains. The mechanism of appeal is not indicated in the by-law and it is unclear if this has ever been tested, however the by-law does provide a mechanism for community liaison. Only matters relating to victims of conflict or graves of more than 100 years of age will invoke the appeals process of the National Heritage Resources Act.

## **3 Method**

The site has been subject to physical inspection by ACO, and thereafter a proton magnetometer survey (appendix b) was carried out to try and establish if there were any

more graves on the site than what could be noted on the surface. The study has also relied heavily on aerial photographs and a small amount of local oral history to achieve an understanding of past events. Unfortunately the 1966 – 67 aerial photo series is of very poor resolution and was found to not be useful. The report on the proton magnetometer scan is appended as appendix B. The remote sensing operation was partially successful in that it was possible to verify the general extent of the graves but proved difficult to identify individual graves as a result of periferal interference caused by a deep sewer and recently moved piles of soil.

#### 4 Findings

The annotated images (appendix A) depict the site through time indicating that it was used for agriculture well into the 20<sup>th</sup> century.

The balance of evidence indicates that the graves are recent and are in all likelihood contemporary with or later than the 1960's type workers cottages on the site. The graves are likely to be less that 60 years of age and therefore are not protected under the National Heritage Resources Act unless contrary evidence come to light. Four simple cement grave stones have survived which are iether marked with paint or have the deceased details scratched informally into the wet cement.

Indications are that a number of human remains may have been exhumed from the site in about 2011 to make way for a large drain/sewer that was built at that time. This is consistent with oral history that some bodies had been removed and reburied at Klapmuts. The 2011 Google aerial series depicts the works quite well. There was major excavation, laying of sewers and also what appears to be agricultural drainage. A SAHRIS check has revealed that no applications were lodged for exhumation with SAHRA at that time.

The proton magnetometer survey indicated that there were up to 7 graves, however there is a good possibility that some graves may be doubled so it is suggested that provision be made for about 12 bodies. Indications are that the graves are not spread over the site but are confined to a specific area, possibly 3 rows running from north-west to south east with head end of the graves orientated towards the south west.



Figure 2 According to the legible grave stone (above) the deceased passed away in 1976(?)



Figure 3 The deceased passed away in 1980

## 5 Conclusion and way forward

Indications are that no permits are required in terms of section 36 of the National Heritage Resources Act. The site lies outside of a municipal cemetery and is therefore not within municipal control although it is advised to consult with them, especially the local authority environmental health officer and the local police when the work is done. In terms of the National Health Act of 2003 and the regulations (2013) with respect to undertakers and cemeteries, the exhumation must be done by an undertaker and the mortal remains re-interred in a legal municipal cemetery. An experienced undertaker will be able to enact this process and conclude negotiations with next of kin if they can be identified.

It is suggested that not only are the obvious graves be excavated for exhumation, but areas between graves need to be opened as well as the chances of unmarked graves are very high. Past experience has shown that opening up the entire area of the graves and systematically working it from end to end would be the best way to locate all human remains.

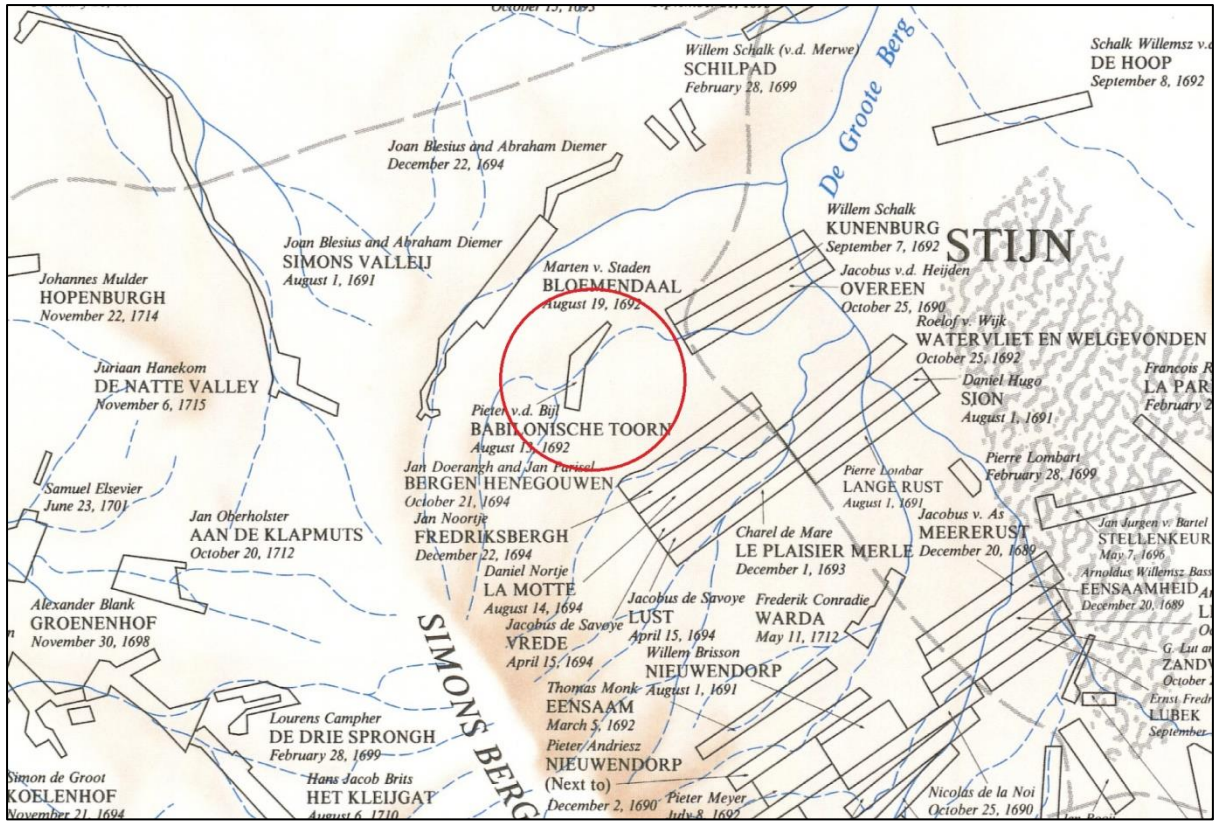
It is worth being mindful that the establishment of a new cemetery triggers a full EIA process and is very costly. The identification of an existing cemetery is the best option for reburial. Cremation may also be considered, however next of kin would need to be in agreement as cremation is not an accepted cultural practise in many societies.

Unless specifically requested, there is no legal reason for archaeological input to the process. The graves being less than 60 years of age do not fall within NHRA general protection. A precautionary application can be lodged with SAHRA under section 36 if the proponent desires, however indications are that this wont be necessary unless oral history indicates graves are present that are older than 60 years. Unfortunately in the absence of clear historical evidence, dating of the graves is not possible.

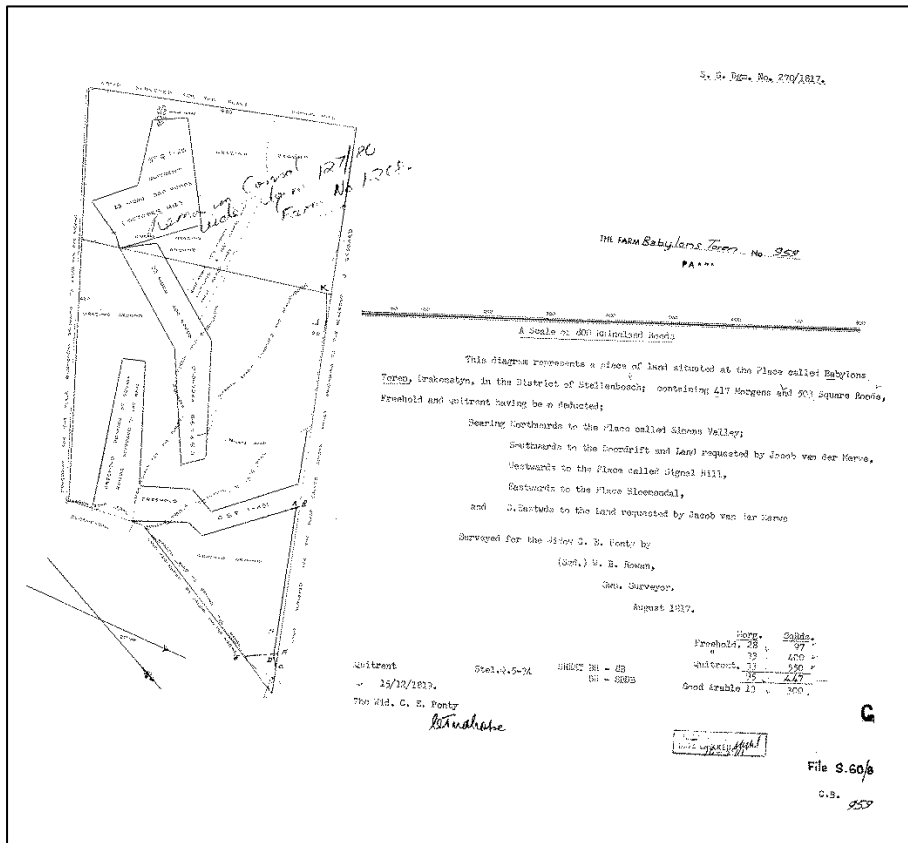
## Appendix A

Sequence of maps and diagrams showing the site over time.



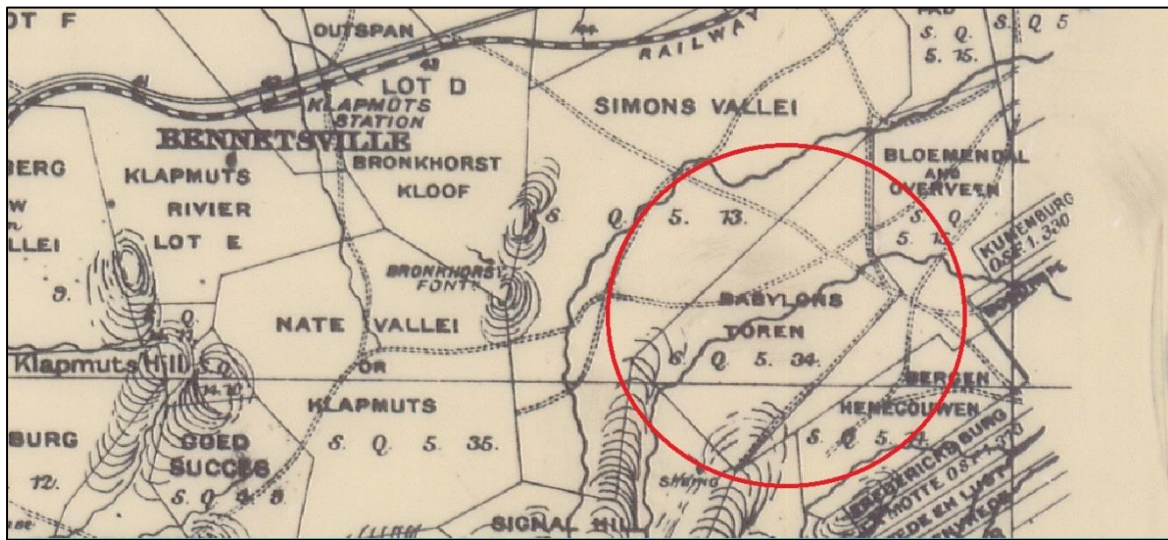


Babylonstoren, Guelke Cape Colony 1657-1750. Babylons Toren is an old cape farm granted in 1692.

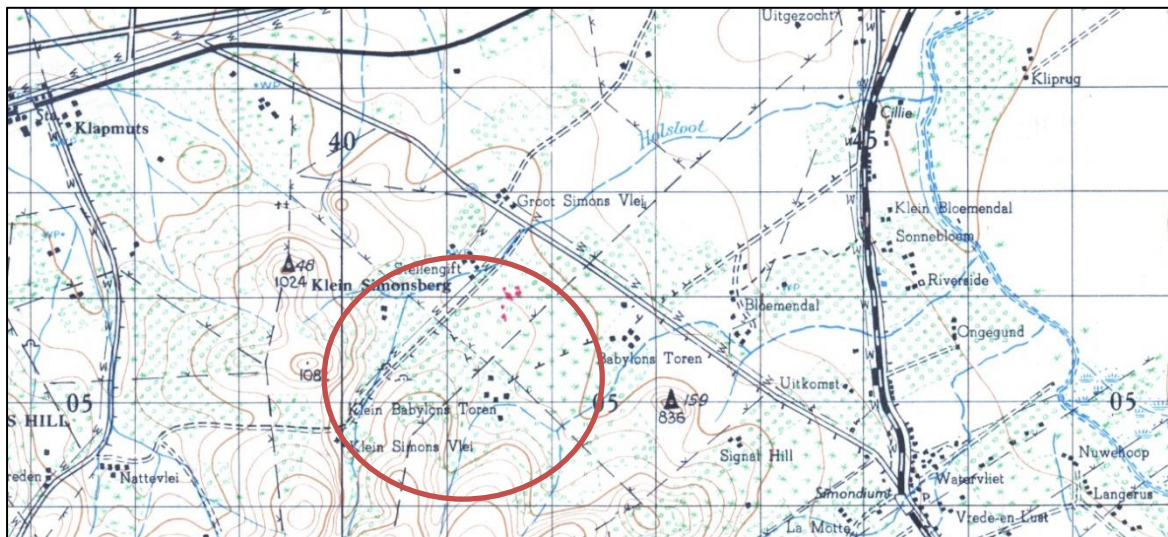




Babylonstoren SG diagram 1819.

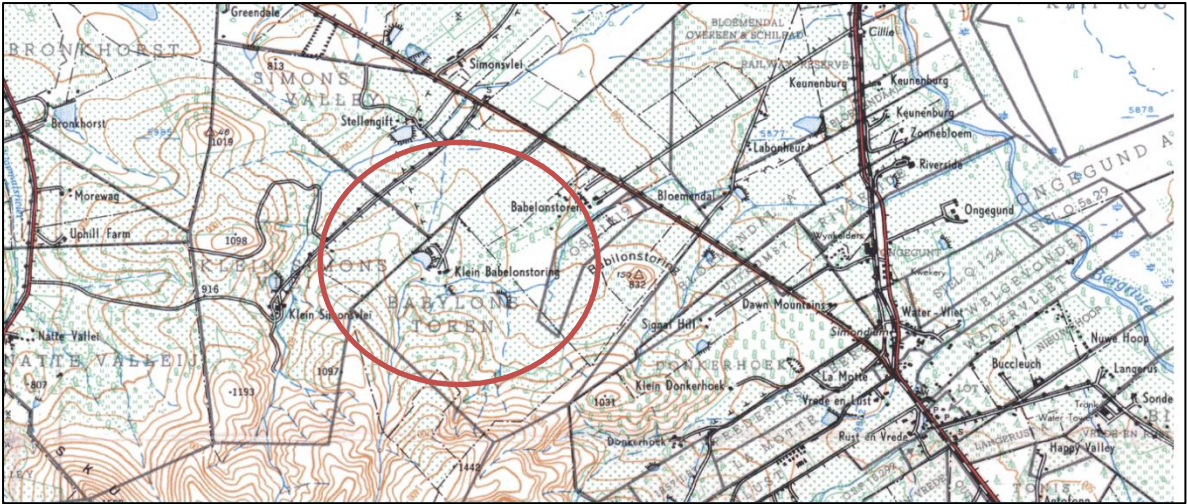


Southern districts 1880-1900 Babylonstoren. There is not enough detail to indicate presence of graves.

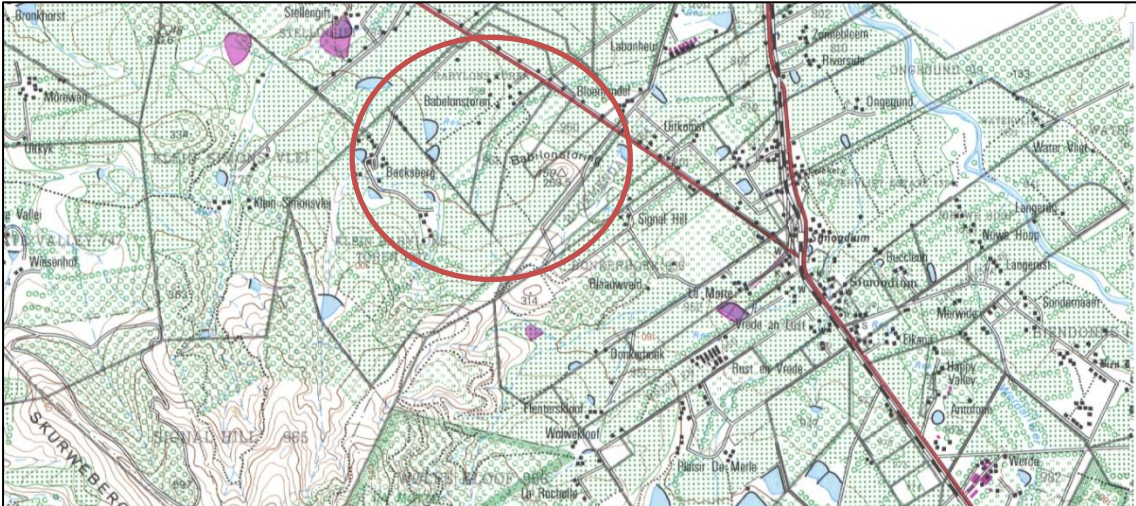


1:50000, 1935 Klein Babylonstoren. No cemeteries are indicated although it was common practise to include this kind of information on early topographic maps. A number of farm buildings were present in the area relating to the farm "Klein Babylons Toren".

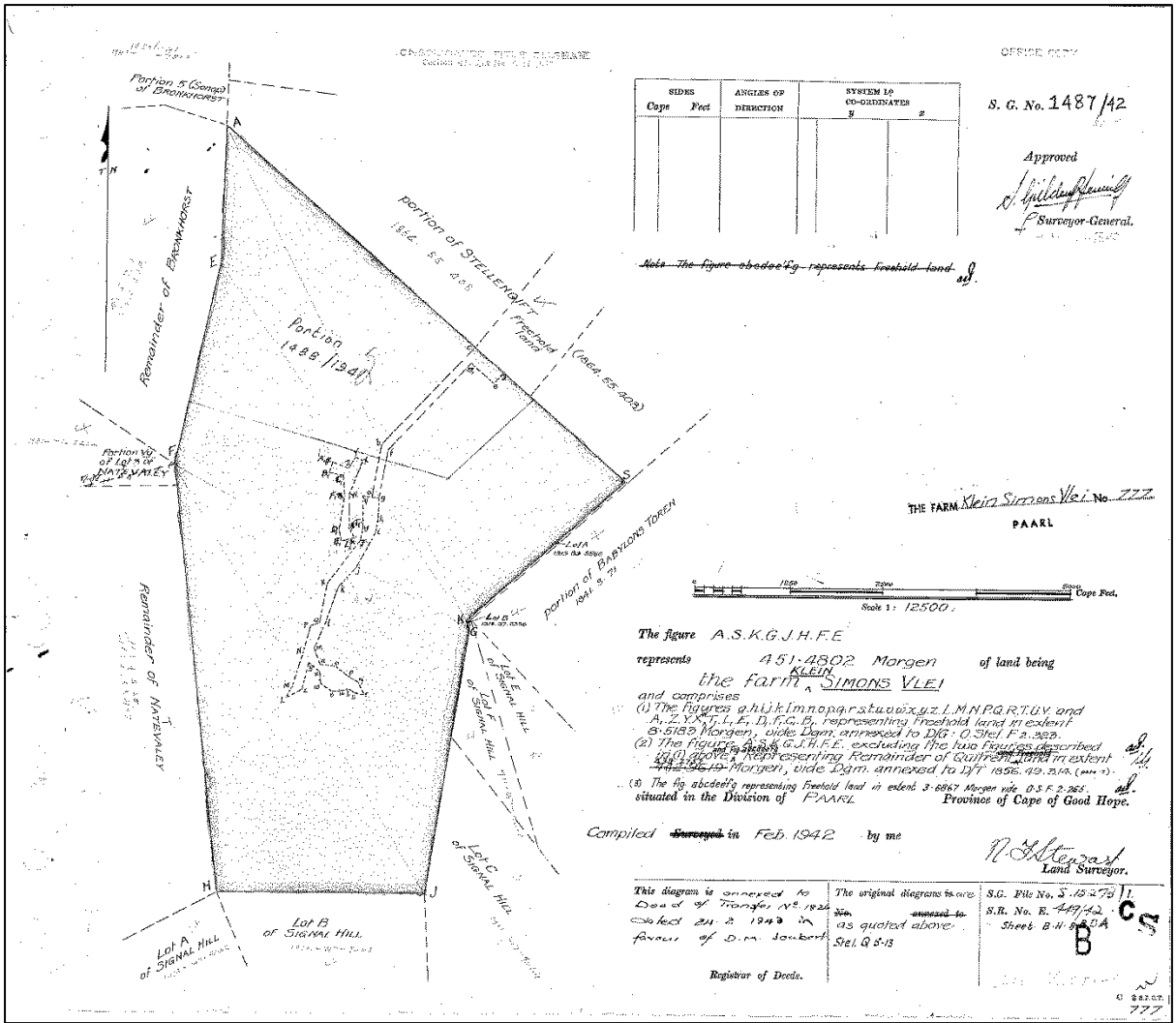




1:50000 Babylonstoren 1959. A dam is indicated but no residential structures apart from the farm (Backsberg).

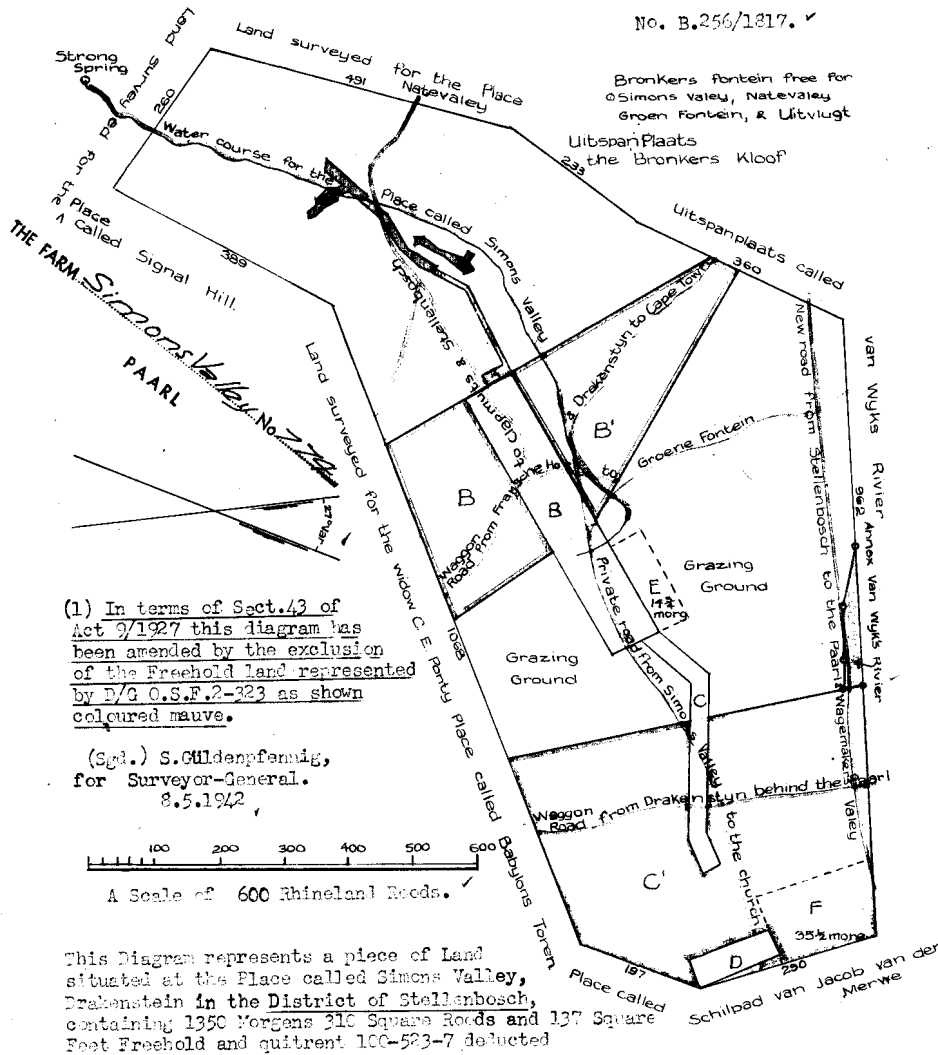


1:50000, Babylonstoren, 1988. Staff houses are not indicated.



Babylonstoren and neighboring farms, SG diagram 1942

No. B.256/1817.



(1) In terms of Sect.43 of Act 9/1927 this diagram has been amended by the exclusion of the Freehold Land represented by D/G O.S.F.2-323 as shown coloured mauve.

(Sgt.) S. Gildenfennig,  
for Surveyor-General.  
8.5.1942

This Diagram represents a piece of Land situated at the Place called Simons Valley, Drakenstein in the District of Stellenbosch, containing 1350 Morgens 210 Square Rods and 137 Square Feet Freehold and quitrent 100-523-7 deducted

Bearing North & N.Westwards against Uitspan Plaats van Myks River and Bronkows Fountain and the Place called Matevaley  
Southwards to the Place called Babylons Toren  
S.E. & S.Westwards to the Place called Signal Hill  
East to the Place Schilpad belonging to Jacob van der Merwe

Surveyed for the Revd. W.I. Gibbard by,

(Sgt.) W.B. Rowan,

Memo.	Morg.	Sq.Rds.	Sim. Surveyor.
Good Arable cultivated, space E	14	450	sewed with wheat August, 1817.
Common arable uncultivated " F	35	300	
Grazing Ground	1200	160	1350-310-137
Freehold and Quitrent			100-523-7
			Whole Chart 1491-727

Copied from diagram relating to Title ..... Deed No. Stel. 2.5810 dated 15.12.1919  
for Surveyor-General  
10.1964

Sheet BH-8B  
BH-82DA

CHECKED BY

For list of deductions see back of diagram

J.K./J.C.M.

Babylonstoren and neighboring farms SG diagram 1817.





Babylons Toren Aerial Photograph 1938. In 1938 the boundary between Klein Babylons Toren and Babylons Toren is indicated. There are no indications of the workers houses. The land is agricultural – either cereals or grazing.

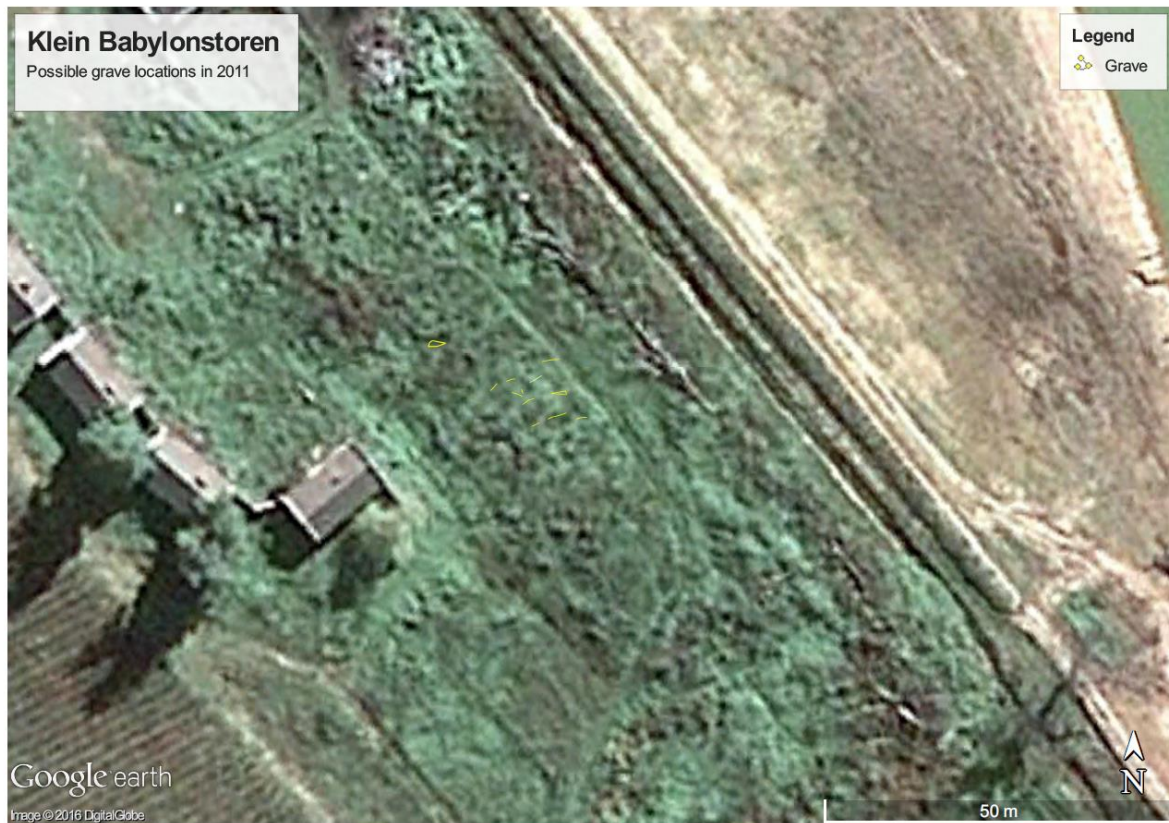


Babylons Toren Aerial Photograph 1945. There is evidence of a few small buildings in the northern corner of the project area, however the areas of the graves appears to be cultivated.





Babylons Toren Aerial Photograph 1953. The project area had not changed much in the last 20 years. Indications are that the land is cultivated at this time.



Google Earth image of 2011. The yellow lines mark the position of graves, which at this time were very overgrown.





Google Earth Image of 2012. The landscape has been transformed by construction of services. It is possible that some graves were moved at this time.

## Appendix B

Proton magnetometer survey (supplied separately).

