

Phase 1 Heritage Impact Assessment Report:

Proposed Dodoma Avenue (Kennedy Road) Housing Project,  
eThekweni Metropolitan Municipality,  
KwaZulu-Natal

Prepared for

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**29 May 2014**

## MANAGEMENT SUMMARY

eThembeni Cultural Heritage was appointed by eThekweni Municipality to undertake a Phase 1 Heritage Impact Assessment of a proposed housing project, in compliance with Section 38 of the National Heritage Resources Act 25 of 1999 as amended.

### HERITAGE RESOURCE DESCRIPTIONS AND SIGNIFICANCE

#### Places associated with oral traditions or living heritage

A Hindu prayer site is located on the Dodoma Avenue boundary of the proposed development site. Residents have attested that the site has been associated with local Hindu spiritual beliefs and practices for generations and is a place of active and ongoing living heritage. Accordingly, the heritage significance of this place of living heritage is as follows:

| Value      | Scope of significance |        |            |            |          |               |
|------------|-----------------------|--------|------------|------------|----------|---------------|
|            | specific community    | local  | regional   | provincial | national | international |
| aesthetic  | low                   | low    | low        | low        | low      | low           |
| historical | high                  | high   | low-medium | low        | low      | low           |
| aesthetic  | medium                | medium | low-medium | low        | low      | low           |
| social     | high                  | high   | medium     | low        | low      | low           |

#### Traditional burial places

Residents attest that the proposed development site includes at least six graves of people ancestral to the local Indian community, at least one of which is located on the proposed show house site. All human remains have high heritage significance at all levels for their spiritual, social and cultural values.

### ASSESSMENT OF DEVELOPMENT IMPACT

#### Places associated with oral traditions or living heritage

The heritage significance of the Hindu prayer site will be wholly destroyed if the development proceeds according to its current nature and layout.

| Mitigation measures | Nature   | Extent | Duration | Intensity | Irreplaceable resource loss | Consequence | Probability | Significance of impact |
|---------------------|--|--------|----------|-----------|-----------------------------|-------------|-------------|------------------------|
| unmanaged           | negative   | low    | low      | low       | low                         | low         | low         | low                    |
| managed             | Effective on-site mitigation will only be possible if the nature and layout of the proposed development are altered substantially. It may be possible to re-establish the prayer site and its heritage significance in a different location. |        |          |           |                             |             |             |                        |

#### Traditional burial places

Human remains could be present anywhere within the proposed development site, all of which still present will be destroyed if the development proceeds in any form.

| Mitigation measures | Nature   | Extent | Duration | Intensity | Irreplaceable resource loss | Consequence | Probability | Significance of impact |
|---------------------|--|--------|----------|-----------|-----------------------------|-------------|-------------|------------------------|
| unmanaged           | negative   | low    | low      | low       | low                         | low         | low         | low                    |
| managed             | Effective on-site mitigation is not possible if the proposed development proceeds in any form. It may be possible to relocate the burials spiritually and thus retain their heritage significance in a new location. |        |          |           |                             |             |             |                        |

## **RECOMMENDED MITIGATION**

At least two mitigation options are possible for this project:

### **On-site mitigation**

It would be virtually impossible to manage the identified heritage resources effectively *in situ* and retain their heritage significance. Accordingly, the entire proposed development, including the show house, should be relocated to an alternative development site.

The municipality should implement a rehabilitation plan for the site in consultation with Amafa and residents to restore the sanctity of the heritage resources as far as is possible, and in accordance with the requirements of the NHRA and the KwaZulu-Natal Heritage Act for permits. Ideally such rehabilitation should accommodate the recognised need for open space and a play area for resident children.

A heritage specialist should be appointed to monitor any further earthworks periodically, but at least on a weekly basis, as determined by Amafa.

### **Off-site mitigation**

There is no bar in Hindu scriptures to a ritual and spiritual cleansing of a burial place and transference of spirits to another place of sanctity. Further, no religious offence should be taken to engage the claimant community with an offer of an alternative off-site prayer place that was mutually agreeable to both parties.

The municipality should engage with the CEDF and residents to explore the option of relocating the spiritual significance of the heritage resources within the proposed development site, before proceeding with the development.

Amafa should be informed as an interested and affected party throughout the process.

A heritage specialist should be appointed to monitor earthworks periodically, but at least on a weekly basis, as determined by Amafa.

## **RECOMMENDED MONITORING**

To be stipulated by Amafa to monitor site rehabilitation or construction activities.

## **CONCLUSION**

We recommend that the development proceed with the proposed heritage mitigation and have submitted this report to Amafa aKwaZulu-Natali in fulfilment of the requirements of the National Heritage Resources Act. The client may contact Ms Bernadet Pawandiwa at Amafa's Pietermaritzburg office in due course to enquire about the Council's decision.

If permission is granted for the development to proceed, the client is reminded that the Act requires that a developer cease all work immediately and adhere to the protocol described in Section 9 of this report should any heritage resources, as defined in the Act, be discovered during the course of development activities.

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## **1 INTRODUCTION**

eThembeni Cultural Heritage was appointed by eThekweni Municipality to undertake a Phase 1 Heritage Impact Assessment of a proposed housing project, in compliance with Section 38 of the National Heritage Resources Act 25 of 1999 as amended (NHRA; refer to Appendix A).

South Africa's heritage resources are both rich and widely diverse, encompassing sites from all periods of human history. Resources may be tangible, such as buildings and archaeological artefacts, or intangible, such as landscapes and living heritage. Their significance is based upon their aesthetic, architectural, historical, scientific, social, spiritual, linguistic, economic or technological values; their representivity of a particular time period; their rarity; and their sphere of influence.

The integrity and significance of heritage resources can be jeopardized by natural (e.g. erosion) and human (e.g. development) activities. In the case of human activities, a range of legislation exists to ensure the timeous identification and effective management of heritage resources for present and future generations.

This report represents compliance with a full Phase 1 HIA (excluding a specialist palaeontological study) for the proposed development, for submission to Amafa aKwaZulu-Natali for review and comment.

## **2 TERMS OF REFERENCE**

A Phase 1 HIA must address the following key aspects:

- the identification and mapping of all heritage resources in the area affected;
- an assessment of the significance of such resources in terms of heritage assessment criteria set out in regulations;
- an assessment of the impact of the development on heritage resources;
- 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;
- the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
- if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
- plans for mitigation of any adverse effects during and after completion of the proposed development.

### 3 PROJECT DESCRIPTION<sup>1</sup>

eThekweni Municipality intends to construct low cost housing on the proposed development site to accommodate approximately 70 families, as well as a show house. The parameters of the proposed development are as follows:

- Three-storey accommodation;
- Sectional title;
- Parking on Dodoma Avenue;
- Pedestrian access linking Dodoma Avenue and social facilities located within development;
- Stepped, landscaped pedestrian walkways;
- Appropriate traffic calming devices;
- Appropriate hard and soft landscaping and trees; and
- Sufficient yard space for play.

Figure 1 illustrates the proposed site layout, with the show house located on block A.

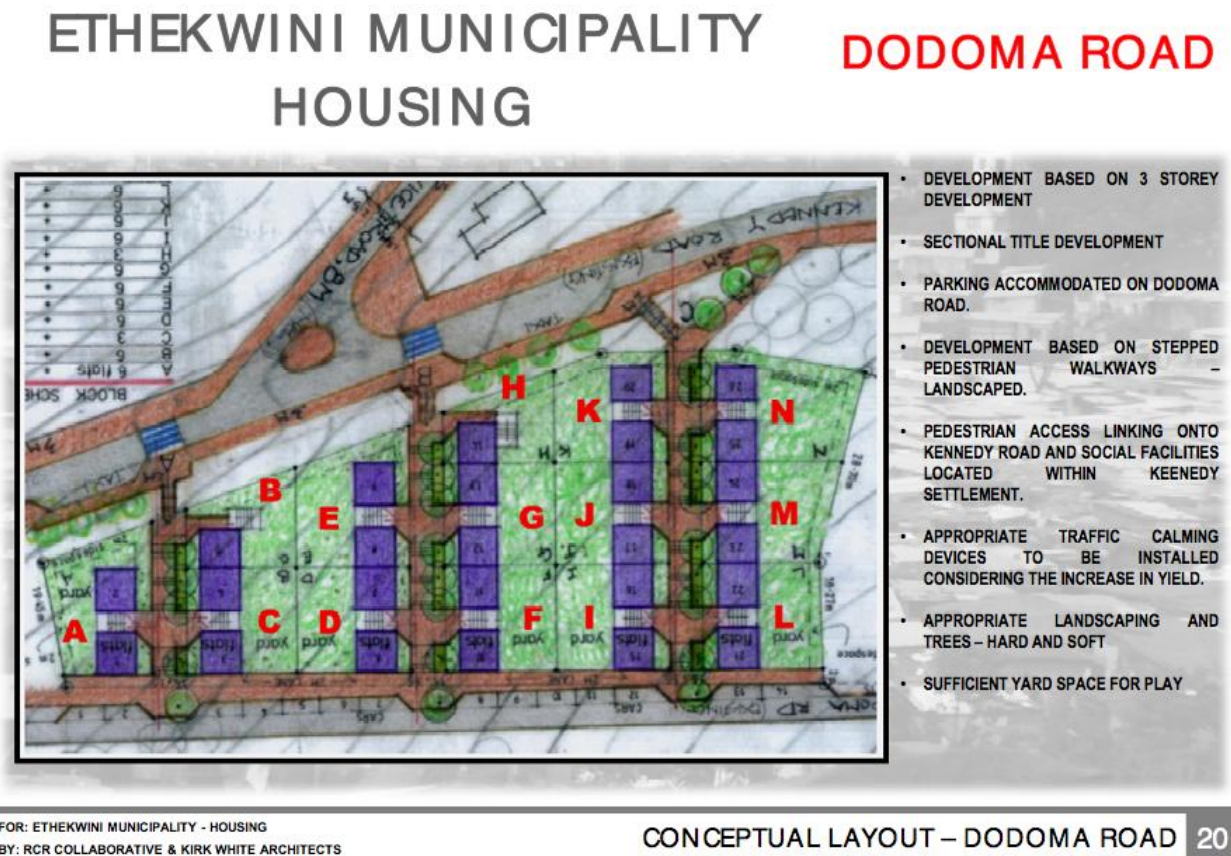


FIGURE 1 LAYOUT OF PROPOSED HOUSING DEVELOPMENT (SOURCE: THE CLIENT).

<sup>1</sup> Information obtained from the client.

## 4 PROJECT LOCATION AND ENVIRONMENTAL DESCRIPTION

The proposed development site is located north of the Durban Central Business District, immediately south of the uMngeni River and the Springfield industrial area and east of the N2 highway (Table 1; Figures 2-4). Prior to recent earthworks the site was vegetated with both indigenous and exotic grasses, shrubs and trees.

TABLE 1 PROPERTY LOCATION DETAILS.

|  |   |
|--|---|
| <b>Local Municipality</b>                  | n/a                                       |
| <b>District Municipality</b>               | eThekweni Metropolitan Municipality (ETH) |
| <b>Surveyor General 1:50 000 map sheet</b> | 2930DD & 2931CC Durban                    |
| <b>Co-ordinates</b>                        | 29°48'35.90"S 30°58'45.45"E               |
| <b>Property description</b>                | Erven 402-408 Springfield                 |
| <b>Property extent</b>                     | 0.6 hectares                              |



FIGURE 2 PROPOSED PROJECT LOCATION IN ETHEKWINI MUNICIPALITY.



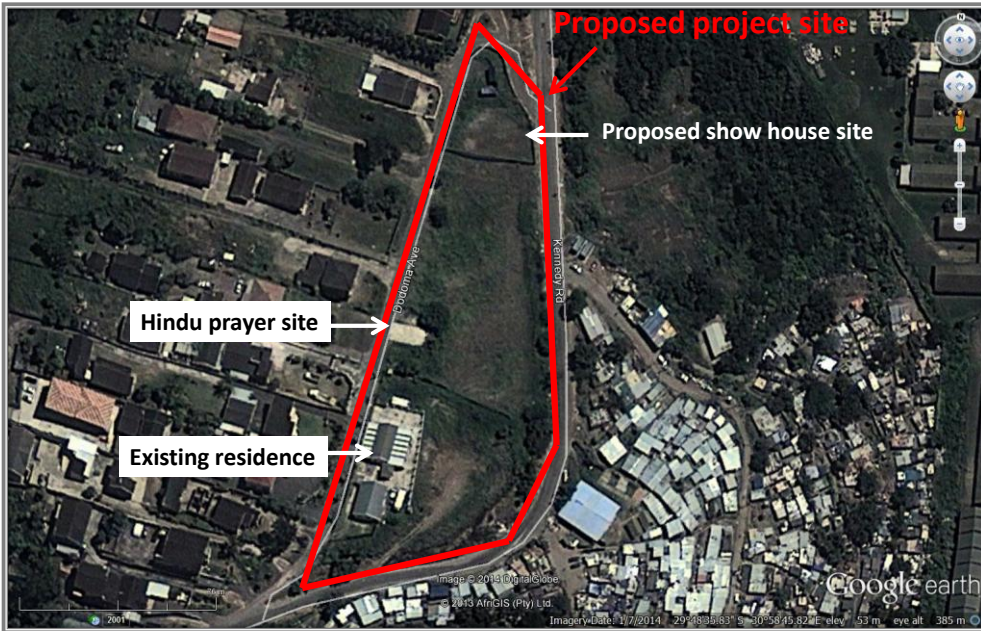


FIGURE 3 DETAILS OF PROPOSED PROJECT LOCATION IN LOCAL CONTEXT.

**2930DD &  
2931CC  
Durban**

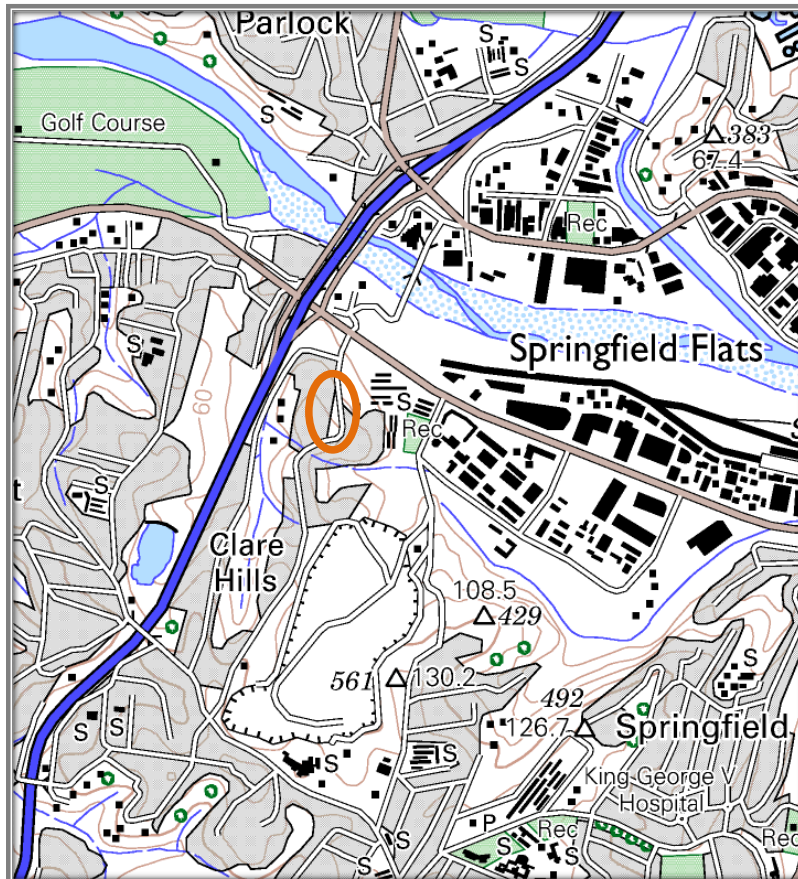


FIGURE 4 EXTRACT FROM RELEVANT 1:50 000 MAP SHEET INDICATING LOCATION OF DEVELOPMENT.

## 5 SITE HISTORY

The proposed development site has been vacant for decades. Figures 5 and 6 illustrate the site in 1931 and 1949, respectively<sup>2</sup>.



FIGURE 5 AERIAL PHOTOGRAPH OF DEVELOPMENT SITE IN 1931.

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<sup>2</sup> Provided by Mr Kirk White, Project Architect.



**FIGURE 6 AERIAL PHOTOGRAPH OF DEVELOPMENT SITE IN 1949.**

Figure 7-10 are Google Earth images of the proposed development site taken at various intervals from 2001. The construction of the residence on the south-western corner of the site occurred in 2008/9, while the cement slab formalising the Hindu prayer site was constructed on 5 November 2013 (K White pers. comm.; Figure 10).

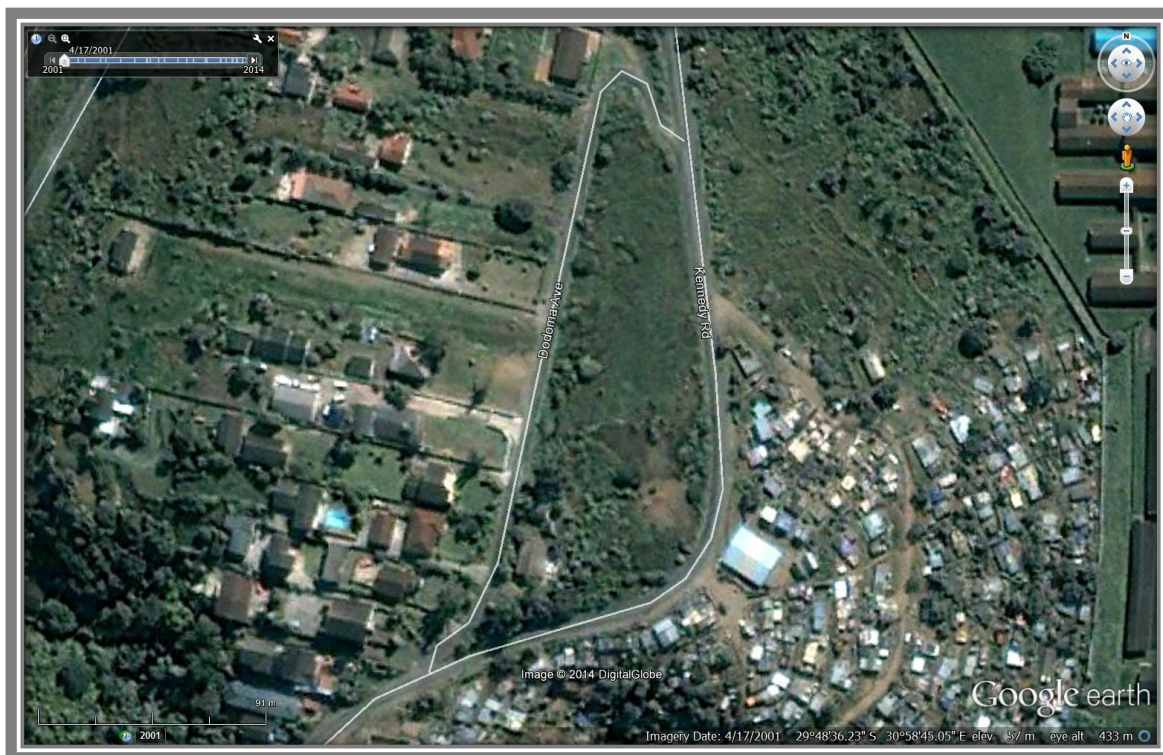
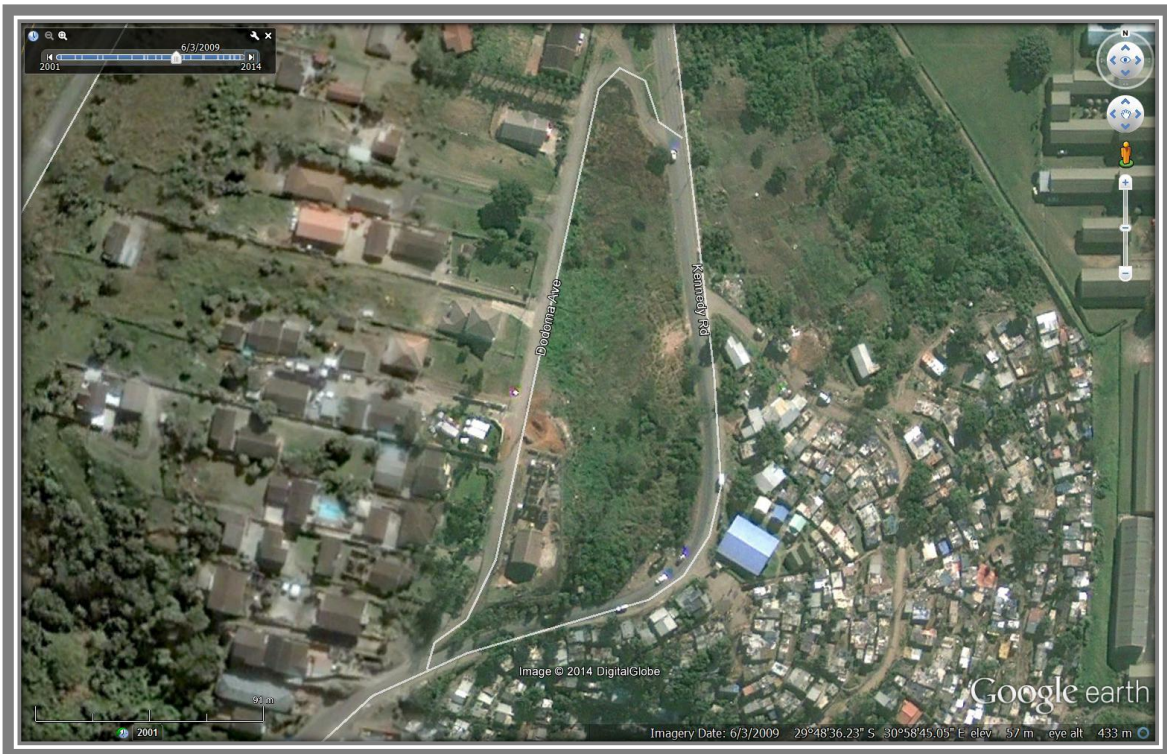


FIGURE 7 PROPOSED DEVELOPMENT SITE 17 APRIL 2001 (SOURCE: GOOGLE EARTH).



FIGURE 8 PROPOSED DEVELOPMENT SITE 29 MARCH 2004 (SOURCE: GOOGLE EARTH).



**FIGURE 9 PROPOSED DEVELOPMENT SITE 3 JUNE 2009 (SOURCE: GOOGLE EARTH).**



**FIGURE 10 PROPOSED DEVELOPMENT SITE 7 JANUARY 2014 (SOURCE: GOOGLE EARTH).**

Figure 11 illustrates the excavations undertaken on site prior to our site visit. The proposed show house site is located in the foreground and the area in which human remains were allegedly present located in the left background (see below).



**FIGURE 11** EARTHWORKS ON SITE IN DECEMBER 2013 (SOURCE: AMAFA).

The Clare Estate Development Forum (CEDF) notified Amafa of the presence of human remains on the proposed development site on 19 November 2014. According to the CEDF and residents who attended the site meeting on 1 March 2014 (Appendix B) the proposed development site includes at least six graves of people ancestral to the local Indian community, at least one of which is located on the proposed show house site.

It is not clear whether these graves, which were unmarked by formal headstones, were damaged or wholly destroyed by the earthworks already undertaken for this project. However, Amafa staff members identified and removed bones from the site on 11 December 2013 (Figure 12), which have been submitted for specialist analysis to ascertain whether or not they are of human origin. The results of this analysis are pending.



**FIGURE 12** FAUNAL REMAINS LOCATED BY AMAFA ON THE PROPOSED DEVELOPMENT SITE (SOURCE: AMAFA).

## 6 HERITAGE RESOURCES AND SIGNIFICANCE

In this section we describe the heritage resources that we identified as potentially affected by the proposed development, and assess their significance in terms of the criteria provided in Appendix G.

Undertaking these tasks has been complicated by competing contestations between project members and certain interested and affected parties regarding, among other issues, the history of land ownership.

We argue that the issue of land ownership does not affect the identification and significance of heritage resources on the proposed development site. No matter which individual or organisation has owned the land, its vacant state over a period of at least eighty years, as evidenced in Section 5, has led to a perception among residents that it is 'commonage'. The use of commonage for spiritual purposes, including burial, is well established in southern Africa, as are its uses to graze domestic animals, grow crops, construct formal and informal dwellings and dump refuse, for example.

We have no evidence that the eThekweni Municipality, as current site owner, has contested the land uses on the proposed development site at any time, thereby reinforcing the perception of the land as commonage, or in some way privately owned.

A further complicating factor has been that of the faunal remains recovered from the site by Amafa staff members as described in Section 5. At the time of their site visit and during subsequent communications between Amafa, the CEDF and residents, the impression was created that the bones were of human origin. Amafa recommended that 'Use of a baseline hand-held auguring equipment otherwise referred to as a ground penetrating radar (GPR) should be explored as a means of detecting sub-surface anomalies on the site', further bolstering the impression that the presence of burials on site could be verified.

Unfortunately this is not the case for this project. The use of such technology (which is prohibitively expensive in this country) could well locate no burials, due to both the limitations of the equipment and its user, and the fact that extensive earthworks may already have removed all traces of human remains from the site. Accordingly, a negative result would advance the investigation of the presence of burials no further and we have not considered this option.

Appendix G describes the methodology employed in this study and Table 2 summarises the heritage resource types assessed and our observations.

**TABLE 2 HERITAGE RESOURCE TYPES ASSESSED.**

| <b>Heritage resource type</b>                             | <b>Observation</b>   |
|---|--|
| Places, buildings, structures and equipment               | None were identified within the proposed development area. |
| Places associated with oral traditions or living heritage | See below  |
| Landscapes  | None were identified within the proposed development area. |
| Natural features  | None were identified within the proposed development area. |
| Traditional burial places                                 | See below  |
| Ecofacts  | None were identified within the proposed development area. |
| Geological sites of scientific or cultural importance     | None were identified within the proposed development area. |
| Archaeological sites                                      | None were identified within the proposed development area. |
| Historical settlements and townscapes                     | None were identified within the proposed development area. |
| Public monuments and memorials                            | None were identified within the proposed development area. |
| Battlefields  | None were identified within the proposed development area. |



## PLACES ASSOCIATED WITH ORAL TRADITIONS OR LIVING HERITAGE

A Hindu prayer site is located on the Dodoma Avenue boundary of the proposed development site at 29° 48' 36"S 30° 58' 44.3E (Figures 3 and 13).



FIGURE 13 HINDU PRAYER SITE ADJACENT TO DODOMA AVENUE.

According to the CEDF and residents who attended a site meeting on 1 March 2014 (Appendix B) the proposed development site has been associated with local Hindu spiritual beliefs and practices for generations and is a place of active and ongoing living heritage.

This statement has been verified by written testimony from Mr Vidan Maharaj, whose late grandfather Mr Meghu Maharaj of 287 Kennedy Road initiated the Sithla (Goddess) Matha (Mother) Pooja (Prayer) in 1911. Mr Vidan Maharaj is the third generation priest in his family and is involved in 'the various Panch Pooja's held at Kennedy road grounds' (Appendix C):

'The reason why Sithla Matha is worshiped in the site for so many years is for the protection and well being and prosperity of people and the community of large. The current prayer site was used for many decades by the community members for the pooja and its location did not interfere with any graves or burials sites.'

Accordingly, the heritage significance of this place of living heritage is as follows:

**TABLE 3 HERITAGE SIGNIFICANCE OF DODOMA AVENUE PLACE OF LIVING HERITAGE.**

| Value      | Scope of significance |        |            |            |          |               |
|------------|-----------------------|--------|------------|------------|----------|---------------|
|            | specific community    | local  | regional   | provincial | national | international |
| aesthetic  | low                   | low    | low        | low        | low      | low           |
| historical | high                  | high   | low-medium | low        | low      | low           |
| aesthetic  | medium                | medium | low-medium | low        | low      | low           |
| social     | high                  | high   | medium     | low        | low      | low           |

### TRADITIONAL BURIAL PLACES

The presence of human remains on the proposed development site has been attested to by Mr Kishore Gokal and Mrs Sharlene (Usha) Singh, grandson and great granddaughter of the Gokul family, respectively (Appendices D, E and F).

Mrs Usha Singh, who lives at 31 Dodoma Avenue, writes as follows (Appendix F):

'I live directly opposite the land where my great grandparents practised Indrajal. These family members were Ordained Priests from India. Indrajal is a very dangerous and highly effective type of Black Magic- it can kill someone. Once practised on, it never leaves instead like a parasite it's attached to family members – who practised it and the land it's practised on. It attacks women and children especially as they are impressionable. If practised incorrectly or deviously- can take a life.

These family members buried remains of bodies as they believed that bones would be used to steal powerful gifts that they had received from Indrajal. In turn all ordained priests were buried here. The land has remained vacant because of its evil and dangerous powers'.

All human remains have high heritage significance at all levels for their spiritual, social and cultural values.

## 7 ASSESSMENT OF DEVELOPMENT IMPACT

### PLACES ASSOCIATED WITH ORAL TRADITIONS OR LIVING HERITAGE

The heritage significance of the Hindu prayer site will be wholly destroyed if the development proceeds according to its current nature and layout (Table 4). Accommodation of the prayer site within the proposed development is likely to lead to an unsatisfactory compromise. First, the heritage values and significance of the site will probably be lost given the changes to its sense of place. Secondly, the concomitant loss of housing infrastructure will probably render the development unviable, given existing site constraints.

**TABLE 4 DEVELOPMENT IMPACT ON PLACE ASSOCIATED WITH LIVING HERITAGE.**

| Mitigation measures | Nature   | Extent | Duration | Intensity | Irreplaceable resource loss | Consequence | Probability | Significance of impact |
|---------------------|--|--------|----------|-----------|-----------------------------|-------------|-------------|------------------------|
| unmanaged           | negative   | low    | low      | low       | low                         | low         | low         | low                    |
| managed             | Effective on-site mitigation will only be possible if the nature and layout of the proposed development are altered substantially. It may be possible to re-establish the prayer site and its heritage significance in a different location. |        |          |           |                             |             |             |                        |

### TRADITIONAL BURIAL PLACES

The exact locations of graves are unknown and techniques and equipment for their detection, such as ground penetrating radar, would be prohibitively expensive and yield equivocal results. Accordingly, we assume that human remains could be present anywhere within the proposed development site, all of which still present will be destroyed if the development proceeds in any form (Table 5).

**TABLE 5 DEVELOPMENT IMPACT ON TRADITIONAL BURIAL PLACES.**

| Mitigation measures | Nature   | Extent | Duration | Intensity | Irreplaceable resource loss | Consequence | Probability | Significance of impact |
|---------------------|--|--------|----------|-----------|-----------------------------|-------------|-------------|------------------------|
| unmanaged           | negative   | low    | low      | low       | low                         | low         | low         | low                    |
| managed             | Effective on-site mitigation is not possible if the proposed development proceeds in any form. It may be possible to relocate the burials spiritually and thus retain their heritage significance in a new location. |        |          |           |                             |             |             |                        |

## 8 RECOMMENDED MITIGATION MEASURES

At least two mitigation options are possible for this project:

### ON-SITE MITIGATION

As stated in Section 7, it would be virtually impossible to manage the identified heritage resources effectively *in situ* and retain their heritage significance. Accordingly, the entire proposed development, including the show house, should be relocated to an alternative development site.

The municipality should implement a rehabilitation plan for the site in consultation with Amafa and residents to restore the sanctity of the heritage resources as far as is possible, and in accordance with the requirements of the NHRA and the KwaZulu-Natal Heritage Act for permits. Ideally such rehabilitation should accommodate the recognised need for open space and a play area for resident children.

A heritage specialist should be appointed to monitor any further earthworks periodically, but at least on a weekly basis, as determined by Amafa.

### OFF-SITE MITIGATION

We obtained an expert opinion that there is no bar in Hindu scriptures to a ritual and spiritual cleansing of a burial place and transference of spirits to another place of sanctity<sup>3</sup>. Further, no religious offence should be taken to engage the claimant community with an offer of an alternative off-site prayer place that was mutually agreeable to both parties.

The municipality should engage with the CEDF and residents to explore the option of relocating the spiritual significance of the heritage resources within the proposed development site, before proceeding with the development.

Amafa should be informed as an interested and affected party throughout the process.

A heritage specialist should be appointed to monitor earthworks periodically, but at least on a weekly basis, as determined by Amafa.

## 9 RECOMMENDED MONITORING

To be stipulated by Amafa to monitor site rehabilitation or construction activities.

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<sup>3</sup> Opinion of Mr Ashwin Trikamjee, Chairman of the South African Hindu Mahashba, referred to eThembeni by Mr D.D. Bikha, a member of the Management Board of the Clare Estate Umgeni Hindoo Crematorium Society.

## **10 PROTOCOL FOR THE IDENTIFICATION, PROTECTION AND RECOVERY OF HERITAGE RESOURCES DURING CONSTRUCTION AND OPERATION**

It is possible that sub-surface heritage resources could be encountered during the construction phase of this project. The Environmental Control Officer and all other persons responsible for site management and excavation should be aware that indicators of sub-surface sites could include:

- Ash deposits (unnaturally grey appearance of soil compared to the surrounding substrate);
- Bone concentrations, either animal or human;
- Ceramic fragments, including potsherds;
- Stone concentrations that appear to be formally arranged (may indicate the presence of an underlying burial, or represent building/structural remains); and
- Fossilised remains of fauna and flora, including trees.

In the event that such indicator(s) of heritage resources are identified, the following actions should be taken immediately:

- All construction within a radius of at least 20m of the indicator should cease. This distance should be increased at the discretion of supervisory staff if heavy machinery or explosives could cause further disturbance to the suspected heritage resource.
- This area must be marked using clearly visible means, such as barrier tape, and all personnel should be informed that it is a no-go area.
- A guard should be appointed to enforce this no-go area if there is any possibility that it could be violated, whether intentionally or inadvertently, by construction staff or members of the public.
- No measures should be taken to cover up the suspected heritage resource with soil, or to collect any remains such as bone or stone.
- If a heritage practitioner has been appointed to monitor the project, s/he should be contacted and a site inspection arranged as soon as possible.
- If no heritage practitioner has been appointed to monitor the project, the head of archaeology at Amafa's Pietermaritzburg office should be contacted; telephone 033 3946 543).
- The South African Police Services should be notified by an Amafa staff member or an independent heritage practitioner if human remains are identified. No SAPS official may disturb or exhume such remains, whether of recent origin or not.
- All parties concerned should respect the potentially sensitive and confidential nature of the heritage resources, particularly human remains, and refrain from making public statements until a mutually agreed time.
- Any extension of the project beyond its current footprint involving vegetation and/or earth clearance should be subject to prior assessment by a qualified heritage practitioner, taking into account all information gathered during this initial HIA.

## 11 CONCLUSION

We recommend that the development proceed with the proposed heritage mitigation and have submitted this report to Amafa in fulfilment of the requirements of the NHRA. According to Section 38(4) of the Act the report shall be considered timeously by the Council which shall, after consultation with the person proposing the development, decide—

- whether or not the development may proceed;
- any limitations or conditions are to be applied to the development;
- what general protections in terms of the NHRA apply, and what formal protections may be applied to such heritage resources;
- whether compensatory action shall be required in respect of any heritage resources damaged or destroyed as a result of the development; and
- whether the appointment of specialists is required as a condition of approval of the proposal.

The client may contact Ms Bernadet Pawandiwa at Amafa's Pietermaritzburg office (telephone 033 3946 543) in due course to enquire about the Council's decision.

If permission is granted for development to proceed, the client is reminded that the NHRA requires that a developer cease all work immediately and adhere to the protocol described in Section 9 of this report should any heritage resources, as defined in the Act, be discovered during the course of development activities.

## 12 BIBLIOGRAPHY

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## **APPENDIX A STATUTORY REQUIREMENTS**

### **General**

The Constitution of the Republic of South Africa Act 108 of 1996 is the source of all legislation. Within the Constitution the Bill of Rights is fundamental, with the principle that the environment should be protected for present and future generations by preventing pollution, promoting conservation and practising ecologically sustainable development. With regard to spatial planning and related legislation at national and provincial levels the following legislation may be relevant:

- Physical Planning Act 125 of 1991
- Municipal Structures Act 117 of 1998
- Municipal Systems Act 32 of 2000
- Development Facilitation Act 67 of 1995 (DFA)
- KwaZulu-Natal Planning and Development Act 6 of 2008.

The identification, evaluation and management of heritage resources in South Africa is required and governed by the following legislation:

- National Environmental Management Act 107 of 1998 (NEMA)
- KwaZulu-Natal Heritage Act 4 of 2008 (KZNHA)
- National Heritage Resources Act 25 of 1999 (NHRA)
- Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA)

### **KwaZulu-Natal Heritage Act 4 of 2008 (KZNHA)**

This Act is implemented by Amafa aKwaZulu-Natali/Heritage KwaZulu-Natal, the provincial heritage resources authority charged to provide for the conservation, protection and administration of both the physical and the living or intangible heritage resources of the province; along with a statutory Council to administer heritage conservation in the Province.

### **National Heritage Resources Act 25 of 1999 (NHRA)**

The NHRA established the South African Heritage Resources Agency (SAHRA) together with its Council to fulfill the following functions:

- co-ordinate and promote the management of heritage resources at national level;
- set norms and maintain essential national standards for the management of heritage resources in the Republic and to protect heritage resources of national significance;
- control the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries;
- enable the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources; and
- provide for the protection and management of conservation-worthy places and areas by local authorities.

### **Heritage Impact Assessments**

Section 38(1) of the NHRA may require a Heritage Impact Assessment in case of:

- the construction of a road, wall, power line, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
- the construction of a bridge or similar structure exceeding 50m in length;
- any development or other activity which will change the character of a site—

- (i) exceeding 5 000m<sup>2</sup> in extent; or
  - (ii) involving three or more existing erven or subdivisions thereof; or
  - (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or
  - (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
- the re-zoning of a site exceeding 10 000m<sup>2</sup> in extent; or
  - any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority.

Reports in fulfilment of NHRA Section 38(3) must include the following information:

- the identification and mapping of all heritage resources in the area affected;
- an assessment of the significance of such resources in terms of the heritage assessment criteria set out in regulations;
- an assessment of the impact of the development on such heritage resources;
- 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;
- the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
- if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
- plans for mitigation of any adverse effects during and after completion of the proposed development.

It is incumbent upon the developer or Environmental Practitioner to approach the South African Heritage Resources Agency (SAHRA) or Amafa to ascertain whether an HIA is required for a project; what categories of heritage resource must be assessed; and request a detailed motivation for such a study in terms of both the nature of the development and the nature of the environment. In this regard we draw your attention to Section 38(2) of the NHRA which states specifically that 'The responsible heritage resources authority must ... 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'. In other words, the heritage authority must be able to justify a request for an Archaeological, Palaeontological or Heritage Impact Assessment. The Environmental Practitioner may also submit information to the heritage authority in substantiation of exemption from a specific assessment due to existing environmental disturbance, for example.

### **Definitions of heritage resources**

The Act defines a heritage resource as any place or object of cultural significance i.e. of aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance. This includes, but is not limited to, the following wide range of places and objects:

- living heritage as defined in the National Heritage Council Act 11 of 1999 (cultural tradition; oral history; performance; ritual; popular memory; skills and techniques; indigenous knowledge systems; and the holistic approach to nature, society and social relationships);
- ecofacts (non-artefactual organic or environmental remains that may reveal aspects of past human activity; definition used in KwaZulu-Natal Heritage Act 2008);
- places, buildings, structures and equipment;
- places to which oral traditions are attached or which are associated with living heritage;
- historical settlements and townscapes;
- landscapes and natural features;



- geological sites of scientific or cultural importance;
- archaeological and palaeontological sites;
- graves and burial grounds;
- public monuments and memorials;
- sites of significance relating to the history of slavery in South Africa;
- movable objects, but excluding any object made by a living person; and
- battlefields.

Furthermore, a place or object is to be considered part of the national estate if it has cultural significance or other special value because of—

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

**Archaeological** means –

- material remains resulting from human activity which are in a state of disuse and are in or on land and are older than 100 years, including artefacts, human and hominid remains and artificial features and structures;
- 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 is older than 100 years including any area within 10m of such representation;
- 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 culture zone of the Republic, as defined respectively in sections 3, 4 and 6 of the Maritime Zones Act 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;
- features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found.

**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.

A **place** is defined as:

- a site, area or region;
- a building or other structure which may include equipment, furniture, fittings and articles associated with or connected with such building or other structure;
- a group of buildings or other structures which may include equipment, furniture, fittings and articles associated with or connected with such group of buildings or other structures;
- an open space, including a public square, street or park; and
- in relation to the management of a place, includes the immediate surroundings of a place.

**Public monuments and memorials** means all monuments and memorials:

- erected on land belonging to any branch of central, provincial or local government, or on land belonging to any organisation funded by or established in terms of the legislation of such a branch of government; or
- which were paid for by public subscription, government funds, or a public-spirited or military organisation, and are on land belonging to any private individual.

**Structures** 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.

## Management of Graves and Burial Grounds

### — Definitions

#### Grave

The NHRA defines a grave as 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 a place.

The KwaZulu-Natal Cemeteries and Crematoria Act 12 of 1996 defines a grave as an excavation in which human remains have been intentionally placed for the purposes of burial, but excludes any such excavation where all human remains have been removed.

#### Burial ground

The term 'burial ground' does not appear to have a legal definition. In common usage the term is used for management purposes to describe two or more graves that are grouped closely enough to be managed as a single entity.

#### Cemetery

The KwaZulu-Natal Cemeteries and Crematoria Act 1996 defines a cemetery as any place

- (a) where human remains are buried in an orderly, systematic and pre-planned manner in identifiable burial plots;
- (b) which is intended to be permanently set aside for and used only for the purposes of the burial of human remains.

### — Protection of graves and cemeteries

No person may damage, alter, exhume, or remove from its original position any grave, as defined above, without permission from the relevant authority, as detailed in the following table.

| Grave type  | Relevant legislation  | Administrative authority – disinterment                            | Administrative authority – reburial  |
|---|---|--|--|
| Graves located within a formal cemetery administered by a local authority   | KwaZulu-Natal Cemeteries and Crematoria Act 12 of 1996  | National and / or Provincial Departments of Health                 | If relocated to formal cemetery – relevant local authority.  |
| Graves younger than 100 years located outside a formal cemetery administered by a local authority and the graves of victims of conflict | KwaZulu-Natal Heritage Act 4 of 2008<br>KwaZulu-Natal Cemeteries and Crematoria Amendment Act 2 of 2005 | Amafa aKwaZulu-Natali, the provincial heritage resources authority | If relocated to private or communal property – Amafa.<br>If relocated to formal cemetery – Amafa and relevant local authority. |

## — Procedures required for permission to disinter and rebury graves

The procedure for consultation regarding burial grounds and graves (Section 36 of the NHRA) is applicable to all graves located outside a formal cemetery administered by a local authority. The following extract from this legislation is applicable to this policy document:

SAHRA or Amafa may not issue a permit for any alteration to or disinterment or reburial of a grave 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.

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 Services 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.

### **The Vermillion Accord on Human Remains<sup>4</sup>**

#### **Adopted in 1989 at WAC Inter-Congress, South Dakota, USA**

1. Respect for the mortal remains of the dead shall be accorded to all, irrespective of origin, race, religion, nationality, custom and tradition.
2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonably inferred.
3. Respect for the wishes of the local community and of relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.
4. Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.
5. Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.
6. The express recognition that the concerns of various ethnic groups, as well as those of science are legitimate and to be respected, will permit acceptable agreements to be reached and honoured.

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<sup>4</sup> <http://www.worldarchaeologicalcongress.org/>

## APPENDIX B RECORD OF SITE MEETING ON 1 MARCH 2014



**ETHEMBENI  
CULTURAL  
HERITAGE**

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10 March 2014

**Attention**      **Mr Kamal Maharaj** (eThekweni Municipality)  
                      **Ms Annie van de Venter** (Amafa aKwaZulu-Natali)

**Record of meeting held on 1 March 2014  
In respect of activities on proposed site of  
Dodoma Avenue (Kennedy Road) Housing Project, Durban,  
KwaZulu-Natal, South Africa**

eThembeni has been appointed by the Housing Settlements Unit of eThekweni Municipality to undertake a Phase 1 Heritage Impact Assessment (HIA) of the abovementioned project, in compliance with the National Heritage Resources Act 25 of 1999 (NHRA).

eThembeni staff member Mr Len van Schalkwyk undertook a site visit on Wednesday 26 February 2014, accompanied by Mr Kirk White, the Project Architect. While on site Mr van Schalkwyk telephoned Mr Kamal Maharaj of the municipality and requested that on-site grass cutting be continued in accordance with Amafa's recommendations to improve soil surface visibility. Municipal workers recommenced grass cutting the following day, Thursday 27 February 2014, having started their activities on Monday 24 February.

On Friday 28 February 2014 Mr Nishan Brijmohan, Interim Chairman of the Clare Estate Development Forum (CEDF) notified Ms van de Venter of Amafa of these activities by email. He expressed concern that the CEDF and residents had not been informed of and/or been invited to participate in such activities, leading to speculation among next-of-kin that burial places could be disturbed further, whether intentionally or inadvertently.

eThembeni responded to Mr Brijmohan immediately by telephone, suggesting a site meeting the following morning, Saturday 1 March 2014. This document is a record of that meeting, compiled by eThembeni staff members, and subsequently reviewed and endorsed by the attendees as per the appended email (Appendix B).

|                  |  |           |                                     |
|------------------|--|-----------|-------------------------------------|
| <b>Date</b>      | 1 March 2014   |           |                                     |
| <b>Time</b>      | 10:00-11:30  |           |                                     |
| <b>Place</b>     | Hindu prayer site on proposed Dodoma Avenue (Kennedy Road) Housing Project site, Durban (see Appendix A Figures 1 and 2) |           |                                     |
| <b>Attendees</b> | Mr Kishore Gokal   | resident  | 082 961 6494                        |
|                  | Mr Bishoon Singh   | resident  | 073 312 0500                        |
|                  | Mr Nishan Brijmohan  | CEDF      | 083 230 5355 nishan@nskfright.co.za |
|                  | Mr Sachin Misra  | CEDF      | 082 562 4888 misrasachin0@gmail.com |
|                  | Ms Elizabeth Wahl  | eThembeni | 082 529 3656 thembeni@iafrica.com   |
|                  | Mr Len van Schalkwyk   | eThembeni | 082 655 9077 thembeni@iafrica.com   |

Attendees clarified their interests in the proposed development and agreed to proceed harmoniously in the interests of expediting the provision of housing in the area.

### **CEDF representatives and residents asserted the following:**

- The proposed development site was not sold by the residents. It was expropriated by the municipality approximately 60 years ago and sold to a Mr Ishmael about 30 years ago. However, Mr Ishmael demanded restitution from the municipality almost immediately when he discovered that he had purchased the site without being informed of development restrictions on the land due to the presence of Hindu ancestral burials.
- Residents have good relationships with the future occupants of formal housing in the area and support efforts to provide housing, in anticipation of improved living conditions for all concerned.
- Residents and the CEDF had not been kept fully informed regarding the proposed development project and its progress.
- Despite requests to the municipality residents and the CEDF have not been provided with studies regarding the viability of the proposed project with regard to services provision (particularly sewerage) and traffic impacts.
- Residents and the CEDF question the value of the proposed show house, which will occupy a relatively large area yet provide occupation for relatively few (if any) people. Future residents have seen a model of their proposed residences and are satisfied with the plans and have no need to see a show house before being provided with their own accommodation.
- The proposed development site (including the show house site) is being used as a 'scapegoat' by the municipality to delay the provision of housing in the immediate general area. Since other land has been designated for housing provision in the area, the attendees suggest that the show house is relocated there to satisfy political agendas.
- The proposed development site has been associated with local Hindu spiritual beliefs and practices for generations and is a place of active and ongoing living heritage.
- Ancestral graves are/were present throughout most of the proposed development site, including the show house site. The Singh and Maharaj families discussed purchasing the said property to expand their dairy farm. However, upon discussion with the elders, the idea was rejected, since the site was a known grave site.
- Attendees do not wish to have a housing project on the proposed development site. Instead, the site should be protected as a sacred place in some manner, and managed as open green space for the enjoyment of the community as a whole, especially by children who are currently forced to play in the streets and in private gardens.

**eThembeni staff members asserted the following:**

- eThembeni accepts the testimony by residents that at least six unmarked Hindu ancestral burial places are/were present within the proposed development site.
- Some or all such graves were damaged or destroyed by earthmoving activities associated with the proposed Dodoma Avenue (Kennedy Road) Housing Project, despite protests by residents.
- The use of subsurface methods to locate possible burial places (including ground penetrating radar) would be prohibitively expensive and ultimately produce inconclusive results, since the magnitude of soil removal is such that all burials may have been destroyed and any human remains removed from site.
- The ‘Stop Work Order’ issued by Amafa to the municipality on 22 January 2014 prohibiting further construction activities on any part of the proposed development site remains valid, since the entire site (including the proposed show house precinct) is a Hindu sacred site that contains or contained Hindu ancestral burials.

**Proposed actions**

- Mr Gokal and Mr Singh must be notified timeously to ensure their presence on site during any and all site meetings/interventions/activities.

**All to Gokal and Singh**
- Whenever possible correspondence concerning this project should be undertaken in writing. If telephonic communication is unavoidable, a record of such conversation should be formalised and emailed between the parties concerned as soon as possible after the communication.

**All**
- Mr Misra will coordinate the compilation of a summary of Hindu beliefs and practices relevant to the history and use of the proposed development site.

**Misra**
- Mr Gokal and Mr Singh will coordinate the written compilation of a history of the settlement of Indian families in the immediate and greater development area, including interviews with former residents where possible.

**Gokal and Singh**
- eThembeni will undertake video interviews with key informants as identified by Mr Gokal and Mr Singh.

**eThembeni**
- The housing project team will provide eThembeni with a record of the entire public participation process pertaining to this project.

**Housing project team**
- Amafa will provide eThembeni with a record of all correspondence between themselves, the project team and other I&APs.

**Amafa**
- Mr Brijmohan will provide eThembeni with a record of all correspondence between the CEDF, residents, the project team and other interested and affected parties, including Amafa.

**Brijmohan**
- The housing project team will provide eThembeni, Amafa and the CEDF with copies of studies regarding the viability of the proposed project with regard to services provision (particularly sewerage) and traffic impacts.

**Housing project team**
- eThembeni will liaise with the municipality and Amafa to compile a record of the land legal history of the proposed development site.

**eThembeni/municipality/Amafa**

We look forward to working towards a satisfactory resolution of this matter with all concerned.

Yours sincerely



Len van Schalkwyk and Elizabeth Wahl

## Appendix A

### Site illustrations and photographs

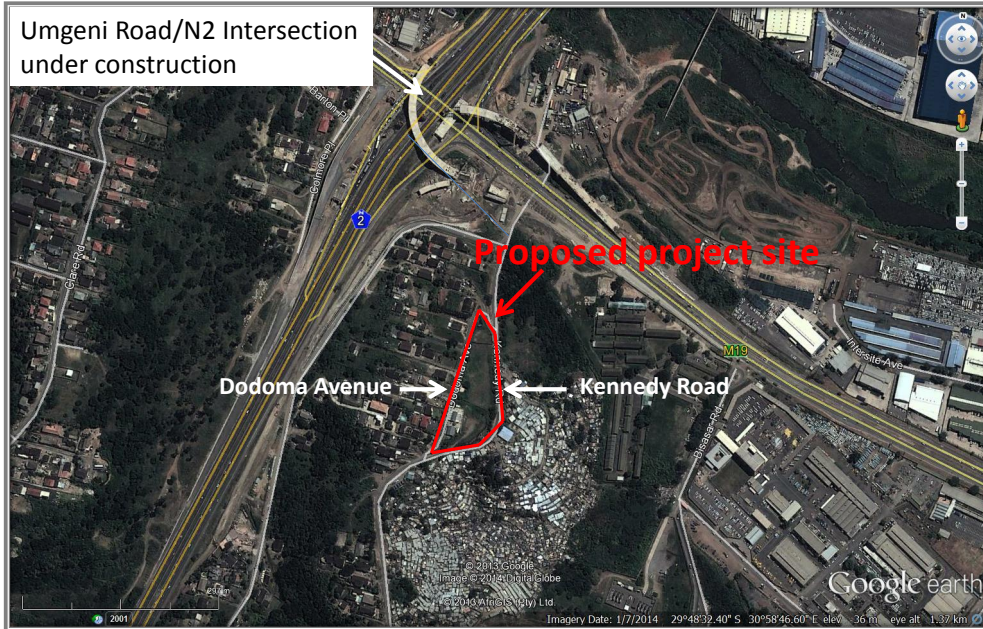


FIGURE 1 PROPOSED DODOMA AVENUE (KENNEDY ROAD) HOUSING PROJECT IN REGIONAL CONTEXT (DATE OF GOOGLE EARTH IMAGE 7 JANUARY 2014).

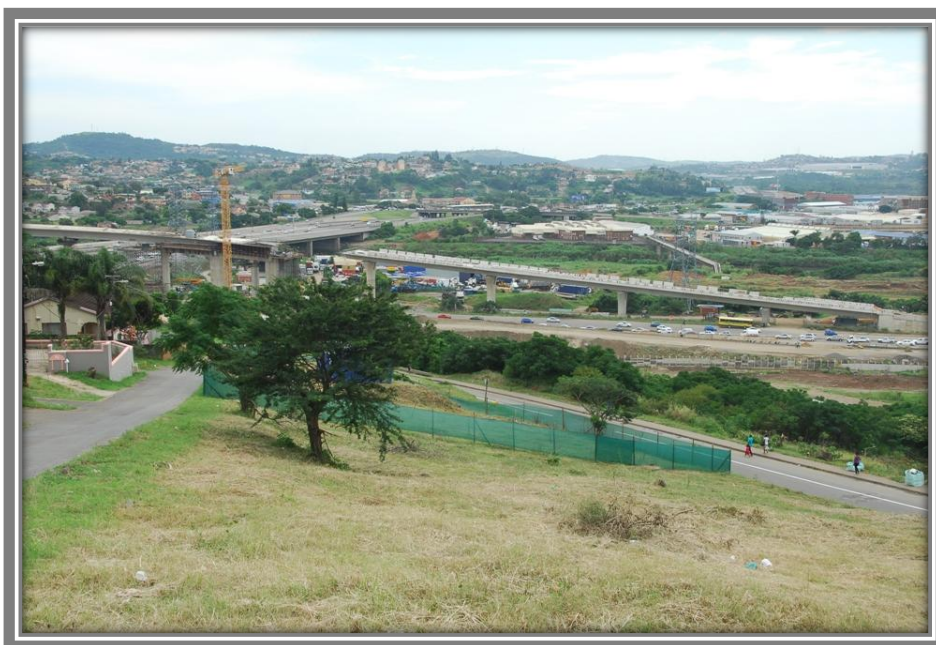


FIGURE 2 PROPOSED DODOMA AVENUE (KENNEDY ROAD) HOUSING PROJECT IN LOCAL CONTEXT (DATE OF GOOGLE EARTH IMAGE 7 JANUARY 2014).





**FIGURE 3 DODOMA AVENUE HINDU PRAYER SITE (1 MARCH 2014).**



**FIGURE 4 DODOMA AVENUE PROPOSED SHOW HOUSE SITE (FENCED) (1 MARCH 2014).**



**FIGURE 5 DODOMA AVENUE SITE MEETING ATTENDEES 1 MARCH 2014**  
**L TO R MR VAN SCHALKWYK; MR GOKAL; MR SINGH; MR BRIJMOHAN; MR MISRA.**

## Appendix B

### Acceptance of site record by attendees

Hi Len and Beth,

Thank you for the constructive meeting that you held with the residents and CEDF on 01 March 2014. Your timeous response is much appreciated.

We refer to your email of 04 March 2014:

The email and its attachments have been further discussed by the attendees. Please take note of the following amendments :

- 1) Dodoma Place should read Dodoma Avenue.
- 2) Page 1 - paragraph 2 - Municipal workers commenced grass cutting on 24 February 2014.
- 3) Page 2 - point 1 - Expropriation was over 60 years ago and the purchase by Mr. Ishmael was about 30 years ago.
- 4) Page 2 - point 8 - The site was not a dairy farm belonging to the Singh family. The Singh and Maharaj families discussed purchasing the said property to expand their dairy farm. Upon discussion with the elders, the idea was rejected, reason being, the site was a known grave site.

We consider the minutes to be true and correct after above amendments have been effected.

Kind Regards

Nishan Brijmohan

## APPENDIX C TESTIMONY OF MR V MAHARAJ<sup>5</sup>

8 Alysham Close  
Reservoir Hills  
Durban  
4091

8 March 2014

Clare Estate Development Forum (CEDF)

N. Brijmohan

RE: Dodoma Avenue Prayer Site

The Sithla (Goddess) Matha (Mother) Pooja (Prayer) was initiated by my grandfather, the late, Mr Meghu Maharaj of 287 Kennedy Road in 1911. Mr Maharaj was involved in various other Hindu societies including the Clare Estate Shiv Temple and was one of the founding members of the Clare Estate Crematorium. The Pooja is dedicated to Mother Sithla and is an intricate ceremony involving many rituals and offerings.

I, Mr Vidan Maharaj, am the third generation of priest in my family who took on the privilege of officiate the Sitha Matha Punch Pooja. After the passing of my father (*Mr. Manilal Maharaj*) in 1996, I dedicated much of my life to god and took on Hindi and Sanskrit classes. I have acquired my qualifications as a priest and how to officiate pooja in 2006 and is still pursuing further research on Hinduism.

Coming from a family of Pundiths (priest), I has been part of many charitable events and involved in the organization of religious festivals for the public at large. The most current of these events include the Mass Hawan by the *SHANKARNATH RAMAYAN SATHSANGH (SRS)*, Shiv Pooja held at CESCO HOUSE, Clare Road every Monday and the various Panch Pooja's held at Kennedy road grounds, including the Sithla matha's Pooja. I am currently also a member of the body that organizes and prepares for the pooja annually.

Indians from our area used to collect rations in the early years of us landing here. A part of this ration was milled flour and sugar that we Indians could not grind or process. The women folk used to prepare this flour and sugar and make Prasad (sweet offerings), which would be offered to the deity. Nowadays women go and collect these ingredients from neighboring households in the form of alms and the term used to describe this process is, "asking for Bheek".

At the completion of the pooja and its rituals, the Prasad would be distributed amongst the community members. By indulging in this Prasad you are not only showing respect but will be blessed and protected by the deity herself. The central deity worshipped at the prayer is Sithla Matha but offerings and worship are given to other deities as a means of acknowledging them and giving them their deserved respect on their allocated dates. The land also hold the Janda (holy

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<sup>5</sup> Received by email.

flag) of lord Shiva and Lord Hanuman, which is a sign of victory in the community and daily prayers has to be done on the flag to show respect and ensure future victory.

The reason why Sithla Matha is worshiped in the site for so many years is for the protection and well being and prosperity of people and the community of large. The current prayer site was used for many decades by the community members for the pooja and its location did not interfere with any graves or burials sites.


As hindu's we do worship and pray for our ancestor but we do not combine the worship of deities with the worship of departed souls, worshipping the both together would anger one or both the deity and the soul. Also when we worship a deity we have to face in a eastward direction and when we worship ancestor we have to face in a southward direction which is another reason why these two classes of pooja's cannot be mixed. Hindu pooja's are performed with utmost respect and regard to avoid being punished and by combining the two would bring disaster and bad luck to our community which defeats the purpose of the Sithla Matha's Pooja.

If you have any further queries, please do not hesitate to contact me on 083 3589 380.

.....

Pt. V.Maharaj

## APPENDIX D AFFIDAVIT OF MR K GOKAL



**SOUTH AFRICAN POLICE SERVICES : SYDENHAM**

**AFFIDAVIT**

NAME : Keshor Gokal

SEX : M AGE : 53

ID NO. : 6006175126086

RES. ADDRESS: 19A Dodoma Avenue  
Clare Estate

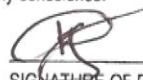
TELEPHONE : (031) 2692863 (W)

BUSINESS ADDRESS : \_\_\_\_\_

STATES IN ENGLISH UNDER OATH

The property that is being constructed on in Dodoma Avenue was my family's. They lived and buried their own in order to preserve culture. Council and construction member were informed of the graves which belonged to the Scottish Family from India. The ~~creator~~ driver was pointed out the graves he was ~~suspecting~~ as bone were found all etc. They put it down to two but they continued uprooting graves. All parties were aware and no consultation was done prior. The dignity of the people was not considered in this matter and construction continued. The remains were loaded of to dump site. It seems history <sup>and</sup> consultation process and dignity was totally ~~removed~~.

I know and understand the content of this statement.  
I have no objection to taking the prescribed oath.  
I consider the prescribed oath to be binding on my conscience.



SIGNATURE OF DEPONENT

**SOUTH AFRICAN POLICE SERVICE**

THE STATION COMMANDER

2014 -01- 22

SYDENHAM

**SOUTH AFRICAN POLICE SERVICE**

I certify that the above statement was taken by me and that the deponent has acknowledged that he / she knows and understands the contents thereof. The statement was sworn to / affirmed before me and the deponent's signature / mark /thumb print was placed thereon in my presence at

Sydenham on 2014 - 01 - 22 (dated) at 11 : 55 (time).

SIGNED BY : [Signature]  
COMMISSIONER OF OATHS

|                     |   |
|---------------------|---|
| NAME IS AND SURNAME | <u>PURAY DP</u>                                   |
| BUSINESS ADDRESS    | <u>SAPS SYDENHAM, 3 McCafferty Road, Sherwood</u> |
| RANK                | <u>w/o</u>  |

## APPENDIX E AFFIDAVIT OF MRS S SINGH



SOUTH AFRICAN POLICE SERVICES : SYDENHAM

**AFFIDAVIT**

NAME : SHARLENE SINGH  
 SEX : FEMALE AGE: 38  
 ID NO. : 7507020121080  
 RES. ADDRESS: 31 DODOMA AVENUE, CLARE ESTATE  
DURBAN, 4091  
 TELEPHONE : (H) 031 810082 (W) \_\_\_\_\_  
 BUSINESS ADDRESS : \_\_\_\_\_

STATES IN ENGLISH UNDER OATH

I, SHARLENE SINGH, HEREBY STATE THAT THE PROPERTY OPPOSITE WHERE I RESIDE BELONGS TO MY GRANDPARENTS FAMILY. AS THEY WERE FAITH HEALERS, THEY BURIED FAMILY ON THE PROPERTY TO PROTECT THEMSELVES.

URING THE ESCAVATION, I INFORMED THE CONTRACTOR ON SITE OF THIS WHICH HE IGNORED - THE GRAVES HAVE BEEN DISTURBED AND 2/6 WERE DUG UP AND REMOVED BY ESCAVATION CONTRACTORS

SOUTH AFRICAN POLICE SERVICE  
 THE STATION COMMANDER  
 2014-01-17  
 SYDENHAM  
 SOUTH AFRICAN POLICE SERVICE

I know and understand the content of this statement.  
 I have no objection to taking the prescribed oath.  
 I consider the prescribed oath to be binding on my conscience.

SIGNATURE OF DEPONENT

I certify that the above statement was taken by me and that the deponent has acknowledged that he / she knows and understands the contents thereof. The statement was sworn to / affirmed before me and the deponent's signature / mark /thumb print was placed thereon in my presence at

Sydenham on 17 January 2014 (dated) at 13 : 40 (time).

SIGNED BY: [Signature] ST  
 COMMISSIONER OF OATHS

|                    |  |
|--------------------|--|
| NAME & AND SURNAME | <u>[Signature]</u>                         |
| BUSINESS ADDRESS   | SAPS SYDENHAM, 3 McCAFFERTY ROAD, SHERWOOD |
| RANK               | <u>CS1</u>                                 |

## APPENDIX F TESTIMONY OF MRS U SINGH<sup>6</sup>

Dear Constitutional Body

My name is Mrs Usha Singh, I am a born again Christian. My children are Christians- we believe in Jesus Christ.

I live directly opposite the land where my great grandparents practised Indrajal. These family members were Ordained Priests from India. Indrajal is a very dangerous and highly effective type of Black Magic- it can kill someone. Once practised on, it never leaves instead like a parasite it's attached to family members – who practised it and the land it's practised on. It attacks women and children especially as they are impressionable. If practised incorrectly or deviously- can take a life. These family members buried remains of bodies as they believed that bones would be used to steal powerful gifts that they had received from Indrajal. In turn all ordained priests were buried here. The land has remained vacant because of its evil and dangerous powers.

The Dong Maharaj's who lived in Dodoma Avenue practised Indrajal. My great grandmother was Sursuthie Maharaj.

My fathers (Jairam Gokul) sister who lived on the land disappeared, we know her as Tiny Poowa, my dad's youngest sister Badwa went insane and my dad's brother Natalie went insane and was committed to Fort Napier.

My dad moved Badwa off the property and she lived with us in our home. My mum was a sister from a Brethren Fellowship- constantly prayed over us and our home to keep us safe from wrongful or dangerous setbacks from my father's family. Badwa had 2 children-Laleetha and Krishna. Laleetha was born a few days before me- my mom took care of her as my aunt was insane and kept chanting and talking to herself.

My dad did prayers every year to rid any effects that may harm our family.

I myself believe in Jesus Christ, I don't believe in acts done by my great family members.

Should you wish to contact me- feel free.

Warm regards

Usha Singh

31 Dodoma Avenue, Clare Estate, Durban, 4091, KZN, RSA

W: +27312012906

H: +27318110082

E: goldenscissors@ananzi.co.za

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<sup>6</sup> Received by email.



## APPENDIX G METHODOLOGY

### Site survey

eThembeni staff members inspected the proposed activity area on 26 February and 1 March 2014 and completed a controlled-exclusive surface survey, where 'sufficient information exists on an area to make solid and defensible assumptions and judgements about where [heritage resource] sites may and may not be' and 'an inspection of the surface of the ground, wherever this surface is visible, is made, with no substantial attempt to clear brush, turf, deadfall, leaves or other material that may cover the surface and with no attempt to look beneath the surface beyond the inspection of rodent burrows, cut banks and other exposures that are observed by accident' (King 1978; see bibliography for other references informing methodological approach).

The site survey comprised a visual survey of the proposed activity area. Geographic coordinates were obtained using a handheld Garmin global positioning unit (WGS 84).

### Assessment of heritage resource value and significance

Heritage resources are significant only to the extent that they have public value, as demonstrated by the following guidelines for determining site significance developed by Heritage Western Cape (HWC 2007) and utilised during this assessment.

### Grade I Sites (National Heritage Sites)

Regulation 43 Government Gazette no 6820. 8 No. 24893 30 May 2003, Notice No. 694 states that: Grade I heritage resources are heritage resources with qualities so exceptional that they are of special national significance should be applied to any heritage resource which is

- a) Of outstanding significance in terms of one or more of the criteria set out in section 3(3) of the NHRA;
- b) Authentic in terms of design, materials, workmanship or setting; and is of such universal value and symbolic importance that it can promote human understanding and contribute to nation building, and its loss would significantly diminish the national heritage.

1. Is the site of outstanding national significance?
2. Is the site the best possible representative of a national issue, event or group or person of national historical importance?
3. Does it fall within the proposed themes that are to be represented by National Heritage Sites?
4. Does the site contribute to nation building and reconciliation?
5. Does the site illustrate an issue or theme, or the side of an issue already represented by an existing National Heritage Site – or would the issue be better represented by another site?
6. Is the site authentic and intact?
7. Should the declaration be part of a serial declaration?
8. Is it appropriate that this site be managed at a national level?
9. What are the implications of not managing the site at national level?

## **Grade II Sites (Provincial Heritage Sites)**

Regulation 43 Government Gazette no 6820. 8 No. 24893 30 May 2003, Notice No. 694 states that: Grade II heritage resources are those with special qualities which make them significant in the context of a province or region and should be applied to any heritage resource which -

- a) is of great significance in terms of one or more of the criteria set out in section 3(3) of the NHRA; and
- b) enriches the understanding of cultural, historical, social and scientific development in the province or region in which it is situated, but that does not fulfil the criteria for Grade 1 status.

Grade II sites may include, but are not limited to –

- (a) places, buildings, structures and immovable 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; and
- (g) graves and burial grounds.

The cultural significance or other special value that Grade II sites may have, could include, but are not limited to –

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

## **Grade III (Local Heritage Resources)**

Regulation 43 Government Gazette no 6820. 8 No. 24893 30 May 2003, Notice No. 694 states that: Grade III heritage status should be applied to any heritage resource which

- (a) fulfils one or more of the criteria set out in section 3(3) of the NHRA; or
- (b) in the case of a site contributes to the environmental quality or cultural significance of a larger area which fulfils one of the above criteria, but that does not fulfill the criteria for Grade 2 status.

### **Grade IIIA**

This grading is applied to buildings and sites that have sufficient intrinsic significance to be regarded as local heritage resources; and are significant enough to warrant *any* alteration being regulated. The significances of these buildings and/or sites should include at least some of the following characteristics:

- Highly significant association with a
  - historic person
  - social grouping
  - historic events
  - historical activities or roles
  - public memory

- Historical and/or visual-spatial landmark within a place
- High architectural quality, well-constructed and of fine materials
- Historical fabric is mostly intact (this fabric may be layered historically and/or past damage should be easily reversible)
- Fabric dates to the early origins of a place
- Fabric clearly illustrates an historical period in the evolution of a place
- Fabric clearly illustrates the key uses and roles of a place over time
- Contributes significantly to the environmental quality of a Grade I or Grade II heritage resource or a conservation/heritage area

Such buildings and sites may be representative, being excellent examples of their kind, or may be rare: as such they should receive maximum protection at local level.

#### Grade IIIB

This grading is applied to buildings and/or sites of a marginally lesser significance than grade IIIA; and such marginally lesser significance argues against the regulation of internal alterations. Such buildings and sites may have similar significances to those of a grade IIIA building or site, but to a lesser degree. Like grade IIIA buildings and sites, such buildings and sites may be representative, being excellent examples of their kind, or may be rare, but less so than grade IIIA examples: as such they should receive less stringent protection than grade IIIA buildings and sites at local level and internal alterations should not be regulated (in this context).

#### Grade IIIC

This grading is applied to buildings and/or sites whose significance is, in large part, a significance that contributes to the character or significance of the environs. These buildings and sites should, as a consequence, only be protected and regulated *if the significance of the environs is sufficient to warrant protective measures*. In other words, these buildings and/or sites will only be protected if they are within declared conservation or heritage areas.

### **Assessment of development impacts**

A heritage resource impact may be defined broadly as the net change, either beneficial or adverse, between the integrity of a heritage site with and without the proposed development. Beneficial impacts occur wherever a proposed development actively protects, preserves or enhances a heritage resource, by minimising natural site erosion or facilitating non-destructive public use, for example. More commonly, development impacts are of an adverse nature and can include:

- destruction or alteration of all or part of a heritage site;
- isolation of a site from its natural setting; and / or
- introduction of physical, chemical or visual elements that are out of character with the heritage resource and its setting.

Beneficial and adverse impacts can be direct or indirect, as well as cumulative, as implied by the aforementioned examples. Although indirect impacts may be more difficult to foresee, assess and quantify, they must form part of the assessment process. The following assessment criteria have been used to assess the impacts of the proposed development on identified heritage resources:

| Criteria  | Rating Scales | Notes   |
|---|---------------|---|
| Nature  | Positive      | An evaluation of the type of effect the construction, operation and management of the proposed development would have on the heritage resource.   |
|   | Negative      |   |
|   | Neutral       |   |
| Extent  | Low           | Site-specific, affects only the development footprint.  |
|   | Medium        | Local (limited to the site and its immediate surroundings, including the surrounding towns and settlements within a 10 km radius);  |
|   | High          | Regional (beyond a 10 km radius) to national.   |
| Duration  | Low           | 0-4 years (i.e. duration of construction phase).  |
|   | Medium        | 5-10 years.   |
|   | High          | More than 10 years to permanent.  |
| Intensity   | Low           | Where the impact affects the heritage resource in such a way that its significance and value are minimally affected.  |
|   | Medium        | Where the heritage resource is altered and its significance and value are measurably reduced.   |
|   | High          | Where the heritage resource is altered or destroyed to the extent that its significance and value cease to exist.   |
| Potential for impact on irreplaceable resources   | Low           | No irreplaceable resources will be impacted.  |
|   | Medium        | Resources that will be impacted can be replaced, with effort.   |
|   | High          | There is no potential for replacing a particular vulnerable resource that will be impacted.   |
| Consequence<br>a combination of extent, duration, intensity and the potential for impact on irreplaceable resources). | Low           | A combination of any of the following:<br>- Intensity, duration, extent and impact on irreplaceable resources are all rated low.<br>- Intensity is low and up to two of the other criteria are rated medium.<br>- Intensity is medium and all three other criteria are rated low. |
|   | Medium        | Intensity is medium and at least two of the other criteria are rated medium.  |
|   | High          | Intensity and impact on irreplaceable resources are rated high, with any combination of extent and duration.<br>Intensity is rated high, with all of the other criteria being rated medium or higher.   |
| Probability (the likelihood of the impact occurring)  | Low           | It is highly unlikely or less than 50 % likely that an impact will occur.   |
|   | Medium        | It is between 50 and 70 % certain that the impact will occur.   |
|   | High          | It is more than 75 % certain that the impact will occur or it is definite that the impact will occur.   |
| Significance<br>(all impacts including potential cumulative impacts)  | Low           | Low consequence and low probability.<br>Low consequence and medium probability.<br>Low consequence and high probability.  |
|   | Medium        | Medium consequence and low probability.<br>Medium consequence and medium probability.<br>Medium consequence and high probability.<br>High consequence and low probability.  |
|   | High          | High consequence and medium probability.<br>High consequence and high probability.  |

## **Assumptions and limitations of this HIA**

- The description of the proposed project, provided by the client, is accurate.
- Soil surface visibility varied from good to non-existent. Heritage resources might be present below the surface or in areas of dense vegetation and we remind the client that the NHRA requires that a developer cease all work immediately and observe the protocol in Section 9 of this report should any heritage resources, as defined in the Act, be discovered during the course of development activities.
- No subsurface investigation (including excavations or sampling) were undertaken, since a permit from Amafa is required to disturb a heritage resource.
- A key concept in the management of heritage resources is that of non-renewability: damage to or destruction of most resources, including that caused by bona fide research endeavours, cannot be reversed or undone. Accordingly, management recommendations for heritage resources in the context of development are as conservative as possible.
- Human sciences are necessarily both subjective and objective in nature. eThembeni staff members strive to manage heritage resources to the highest standards in accordance with national and international best practice, but recognise that their opinions might differ from those of other heritage practitioners.
- Staff members involved in this project have no vested interest in it; are qualified to undertake the tasks as described in the terms of reference (refer to Appendix H); and comply at all times with the Codes of Ethics and Conduct of the Association of Southern African Professional Archaeologists.
- eThembeni staff members take no personal or professional responsibility for the misuse of the information contained in this report, although they will take all reasonable precautions against such misuse.

## APPENDIX H SPECIALIST COMPETENCY AND DECLARATION OF INDEPENDENCE

### Specialist competency

Len van Schalkwyk is accredited by the Cultural Resources Management section of the Association of South African Professional Archaeologists (ASAPA) to undertake HIAs in South Africa. Mr van Schalkwyk has a master's degree in archaeology (specialising in the history of early farmers in southern Africa) from the University of Cape Town and 25 years' experience in heritage management. He has worked on projects as diverse as the establishment of the Ondini Cultural Museum in Ulundi, the cultural management of Chobe National Park in Botswana and various archaeological excavations and oral history recording projects. He was part of the writing team that produced the KwaZulu-Natal Heritage Act 1997. He has worked with many rural communities to establish integrated heritage and land use plans and speaks good Zulu.

Mr van Schalkwyk left his position as assistant director of Amafa aKwaZulu-Natali, the provincial heritage management authority, to start eThembeni in partnership with Elizabeth Wahl, who was head of archaeology at Amafa at the time. Over the past decade they have undertaken almost 1000 HIAs throughout South Africa, as well as in Mozambique.

Elizabeth Wahl has a BA Honours in African Studies from the University of Cape Town, majoring in archaeology, and has completed various Masters courses in Heritage and Tourism at the University of KwaZulu-Natal. She is currently studying for an MPhil in the Conservation of the Built Environment at the University of Cape Town. She is also a member of ASAPA.

Ms Wahl was an excavator and logistical coordinator for Glasgow University Archaeological Research Division's heritage programme at Isandlwana Battlefield; has undertaken numerous rock painting surveys in the uKhahlamba/Drakensberg Mountains, northern KwaZulu-Natal, the Cederberg and the Koue Bokkeveld in the Cape Province; and was the principal excavator of Scorpion Shelter in the Cape Province, and Lenjane and Crystal Shelters in KwaZulu-Natal. Ms Wahl compiled the first cultural landscape management plan for the Mnweni Valley, northern uKhahlamba/Drakensberg, and undertook an assessment of and made recommendations for cultural heritage databases and organisational capacity in parts of Lesotho and South Africa for the Global Environment Facility of the World Bank for the Maloti Drakensberg Transfrontier Conservation and Development Area. She developed the first cultural heritage management plan for the uKhahlamba Drakensberg Park World Heritage Site, following UNESCO recommendations for rock art management in southern Africa.

### Declaration of independence

We declare that Len van Schalkwyk, Elizabeth Wahl and eThembeni Cultural Heritage have no financial or personal interest in the proposed development, nor its developers or any of its subsidiaries, apart from in the provision of HIA and management consulting services.

