



DIGBY WELLS
ENVIRONMENTAL



Thabametsi Coal Mine

Burial Grounds and Graves: Social Consultation and Entitlement Framework Report

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Exxaro Coal (Pty) Ltd

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EXECUTIVE SUMMARY

Exxaro Coal (Pty) Ltd (Exxaro) has respectively submitted a Mining Right Application (MRA) and an application for Environmental Authorisation (EA), in addition to other applications, to the Department of Mineral Resources (DMR) and the Limpopo Department of Economic Development, Environment and Tourism (LEDET) to develop the Thabametsi Coal Mine (the Thabametsi Project). This Project will be developed on five farms near Lephalale (Ellisras) in the Waterberg District Municipality, Limpopo Province.

Exxaro appointed Digby Wells Environmental (Digby Wells) as independent environmental consultants to investigate the environmental, socio-economic and cultural aspects of the Thabametsi Project, required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) (MPRDA), National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA) and other applicable legislation.

The MRA and EA application were supported by Environmental Impact Assessments (EIA), an Environmental Management Programme (EMPR) and an Environmental Management Plan (EMP). One of the specialist studies undertaken by Digby Wells for the EIA/EMPR (2013) and EIA/EMP (2014) reports was a Heritage Impact Assessment (HIA) completed in January 2013. This study identified amongst other heritage resources, two burial grounds containing one and seven graves respectively.

The HIA report was submitted to the South African Heritage Resources Agency (SAHRA) and the Limpopo Heritage Resources Authority (LIHRA) on 31 January 2013. The SAHRA issued a "Final Comment" wherein it required the identified graves to be mitigated in accordance with all applicable legislation.

Exxaro consequently appointed Digby Wells to undertake a Burial Grounds and Graves Consultation (BGGC) process to register Interested and Affected Parties (&APs) and identify and consult next-of-kin (NoK) of the deceased buried on the properties on which the Thabametsi Project will be developed.

The BGGC process was undertaken in accordance with the National Heritage Resources Act, No. 25 of 1999 (NHRA) process as regulated through Governmental Notice Regulation (GN R) 548, 2 June 2000.

This document provides proof of concerted efforts made to identify and consult with NoK and agreements reached between Exxaro and NoK to relocate the latter's family graves.

Project description and motivation

The first phase of the Thabametsi Project intends to mine coal via open pit and underground mining methods for supply to a proposed Independent Power Producer (IPP) coal-fired power station, which will be located north of the proposed project area. During the development phase of the proposed mine, coal will be trucked to the Grootegeluk Coal Mine. Further expansion of the proposed Thabametsi Coal Mine will follow the rail capacity



expansions and raw water supply additions (MCWAP2) to the area. Development will include an open pit and supporting infrastructure; developments of specific importance of this report include *inter alia*:

- Infrastructure construction
 - Removal of topsoil and vegetation;
 - Development of haul roads and use of borrow pits;
 - Transport of construction material; and
 - Construction of surface infrastructure including wash plant, offices, pipeline, powerlines, product stockpile areas.
- Mining development area:
 - Blasting;
 - Development of initial bench for mining; and
 - Topsoil and overburden stockpiling.
- Water management activities
 - Storm water diversion berms;
 - Construction of pollution control dams and reticulation systems;
 - Construction of clean water dams; and
 - Construction of sewerage treatment plant.
- Mining activities:
 - Removal of overburden;
 - Drilling and blasting (explosive use);
 - Overburden stockpiling;
 - ROM stockpile; and
 - Use and maintenance of haul roads.

These activities will pose significant risks to the identified burial grounds and graves. The entire mining area will furthermore be fenced for security and safety reasons. Access into the mining area by surrounding local communities will be restricted due to inherent risks associated with operational mining sites.

Exxaro therefore initiated a BGGC process to identify and consult with NoK to reach agreement on relocating graves that will be affected by the Thabametsi Project.

Methodology

The following activities were completed during the BGGC process:

- Data collection;
- Developing participation and consultation materials; and
- Participation and sign-off of relocation agreements.

Data collection and description of graves

In general, the graves are situated within a typical rural agricultural landscape. Graves can be grouped into three main categories in terms of their location:

- Graves in a clearly defined burial ground that account for the majority;
- Isolated marked graves located in natural scrub / veldt; and
- Unmarked graves with no surface evidence in undefined burial grounds (pointed out by NoK).

Surface dressing of the graves vary between commercial granite covering and headstones, concrete covering and headstone, brick covering with markers, stone covering and grave markers, stone covering with no markers, and no surface dressings.

The total number of affected graves that could be verified through surface evidence at the time of compiling this report is 10. Of these, seven are located within a clearly defined burial ground – site S.36-002. The remaining three are isolated graves located in the veld, identified through visible grave Table 4 dressings. An additional nine alleged graves were pointed out by Mr Tloki David Maluleke in two undefined burial grounds: there are visible surface evidence for these graves. Another alleged unmarked grave was pointed out by Mr Steven Tibanyane.

A register of all identified burial grounds and graves is provided in the table below.

List of identified graves per farm

Farm	Grave no.	Deceased	Description	Date	No. graves
RE of Vaalpensloop 3131 LQ	S.36-002/1	Matlou , Smith	Single grave in burial ground	30/08/1959	1
	S.36-002/2	Matlou , Anna / Mmannana	Single grave in burial ground	Unknown	1
	S.36-002/3	Tibanyane , Klaas	Single grave in burial ground	09/04/1960	1
	S.36-002/4	Tibanyane , Mishack Tshidi Lesisana	Single grave in burial ground	12/04/1980	1
	S.36-002/5	Serumula , Stephina	Single grave in burial ground	26/09/1984	1
	S.36-002/6	Tibanyane , Lotta	Single grave in burial ground	16/01/1985	1
	S.36-002/7	Tibanyane , Mferoane	Single grave in burial ground	1990	1
Leeuwdrift 312 LQ	S.36-015	Gwane , Semenson	Isolated grave	Unknown	1



Farm	Grave no.	Deceased	Description	Date	No. graves
Van der Waltspan 310 LQ	S.36-016	Komo , Frans	Isolated grave	25/04/1985	1
Jackalsvley 309 LQ	S.36-017	Pretorius , Jacobus Johannes	Isolated grave	05/03/1950	1
	S.36-018	Maluleke	Unmarked grave	Unknown	2
	S.36-019	Maluleke	Unmarked grave	Unknown	7

Agreement framework

An Agreement Framework was developed and presented to Exxaro for comment. This document informed discussions and consultation with NoK. Certain principles were included in the Agreement Framework prior to the first public meeting based on best practice, prior experience and the Exxaro Grave Relocation Policy. The Agreement Framework was continuously updated as a 'living' document throughout the formal consultation process. NoK were invited to comment on the Agreement Framework; their comments were then submitted to Exxaro for approval and, if approved, incorporated into an updated version of the Agreement Framework. In terms of South African legislation and best practice standards, the Agreement Framework refers both to graves that will need to be relocated and those that will may need to be conserved *in situ*. The Agreement Framework outlined the following:

- The legal framework within which consultation and agreements pertaining to grave relocation and associated rights will take place;
- Definition and categories of affected NoK;
- Eligibility of NoK for remedial action; and
- Rights to remedial action.

Two agreements were developed based on the Agreement Framework and presented to Exxaro and NoK. These agreements defined the terms of relocation and the rights and responsibilities of the various parties involved:

- A **General Agreement** was developed that formalised the Agreement Framework. All NoK were invited to sign-off on the General Agreement. The General Agreement does not constitute consent for relocation, but merely confirms that Exxaro and the NoK agree to the general principles contained in the Agreement Framework. As with the Agreement Framework, the General Agreement refers to both to-be-relocated and to-be-conserved graves.



- A **NoK Agreement** was developed that contained principles specific to grave relocation, including consent to relocate. NoK Agreements are specific to each NoK, as these agreements formalises the mutually agreed rights and responsibilities of the two parties.

Consultation and participation

Participation and consultation with NoK and other stakeholders were accomplished through 17 meetings in a 33-month period that commenced in April 2014. Meetings included an initial public project clarification meeting, six group NoK meetings, five individual NoK meetings, an authority meeting and three meetings with other interested parties.

Attendees at the public meeting were requested to inform any other persons who may be affected by the process, and provide Digby Wells and / or Exxaro with such details.

Following the public meeting, all NoK meetings were scheduled with input from NoK and other stakeholders who were notified and reminded of the follow-up meetings via Short Message Services (SMSs). After the first public meeting, all NoK were collected and transported to and from their places of residence to the venue.

The first six meetings were facilitated by Digby Wells; Exxaro was represented at meetings from 26 July 2015. Attendees were requested to sign attendance registers, and proceedings were recorded through digital voice and video recordings. Information was presented using PowerPoint presentations, providing hardcopies of agendas, minutes and other documentation. Most documents were made available in both English and translated into SeTswana on request.

List of meetings held

Date	Venue	Meeting type	Number of attendees			
			NoK	Interested Parties	Digby Wells	Exxaro
12 April 2014	Mogol Club, Lephallale	Public project clarification meeting	9	4	4	
30 May 2014	Mogol Club, Lephallale	Group NoK meeting	5	2	3	
31 May 2014	Vaalpensloop	Site visit with NoK	7		2	
12 June 2014	Mogol Club, Lephallale	Group NoK meeting	6	4	3	1
18 June 2014	Jackhalsvley	Site visit	1		1	



Date	Venue	Meeting type	Number of attendees			
			NoK	Interested Parties	Digby Wells	Exxaro
26 June 2014	Mogol Club, Lephallale	Group NoK meeting	10	7	3	
22 May 2015	Mogol Club, Lephallale	Group NoK meeting	4	18	3	5
10 July 2015	Marapong Public Library	Group NoK meeting	6	12	2	6
13 August 2015	Ga-Seleka	Individual NoK meeting – Catherine Leola	2	-	1	1
13 August 2015	Ga-Seleka	Individual NoK meeting – Israel Nkoati	2	-	1	1
13 August 2015	Steilloop	Individual NoK meeting – MJ Tibanyane	1	-	1	1
14 August 2015	Marapong	Individual NoK meeting – Emmie Mashabane	1	-	1	1
14 August 2015	Shongwane	Individual NoK meeting – Fannie Serumula	2	-	1	1
26 August 2015	Marapong Public Library	Group NoK meeting	2	5	1	1
1 October 2015	Lephallale Mayoral Office	Authority meeting				1
16 October 2015	Exxaro Head Office	CRL meeting		1	1	4
17 November 2015	Exxaro Onverwacht Office	CRL & NoK meeting	2	1	1	1



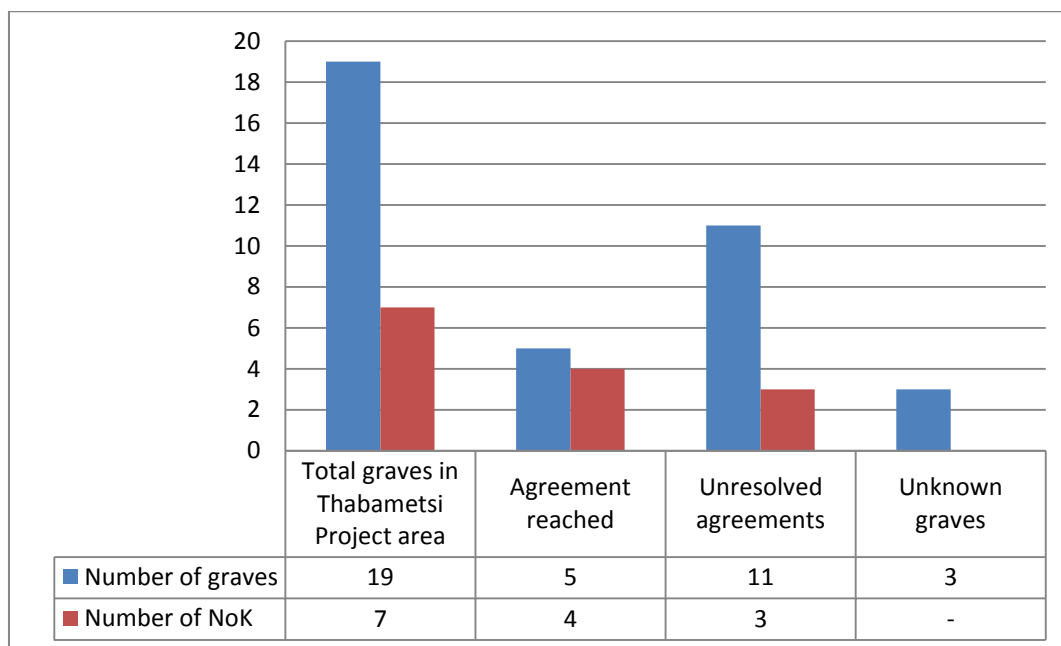
Date	Venue	Meeting type	Number of attendees			
			NoK	Interested Parties	Digby Wells	Exxaro
30 November 2015	Exxaro Onverwacht Office	CRL & NoK meeting	4	2	1	2

Sign-off of agreements

In principle, NoK engaged during the consultation process agreed to the principles and remedial actions presented and discussed at each of the six meetings held (12 April 2014 to 10 July 2015).

The total number of affected graves that have been identified for relocation amounted to 19. This number includes graves not originally identified in the HIA (mentioned in 1.1 below). The consultation process identified seven NoK, accounting for 16 of the 19 graves (84% success rate). NoK of only three graves could not be identified (16% of total graves).

As at the time of compiling this report, four of the seven NoK have formally agreed to relocate their family graves, accounting for five graves (26% of total grave count). Three NoK have not agreed, accounting for 11 graves (58% of the total grave count). However, of these 11 graves, the actual existence of nine graves will need to be confirmed through GPR and test excavations.



Results of consultation and agreements



The relatives who have signed off on the Agreements are the bona fide NoK or representatives of the deceased as summarised in Table 22. The graves associated with these NoK account for five of seven graves contained in a single burial ground (S.36-002) on Vaalpensloop 313 LQ.

List of graves and NoK in agreement

Grave no.	Deceased	Date of burial	NoK	NoK's relationship to deceased
S.36-002/2	Matlou , Anna / Mmannana	Unknown	Nkoati , Lettia / Israel	Cousin
S.36-002/3	Tibanyane , Klaas	09/04/1960	Leola , Catherine Mathaga	Spouse
S.36-002/4	Tibanyane , Mishack Tshidi Lesisana	12/04/1980	Mashabane , Makgaetsi Emmie	Grandchild
S.36-002/5	Serumula , Stephina	26/09/1984	Serumula , Isamai Fanie	Child
S.36-002/7	Tibanyane , Mferoane	1990	Mashabane , Makgaetsi Emmie	Grandchild

Notwithstanding the concerted efforts made to contact and consult NoK to reach agreement on the relocation all affected graves, no agreements have been reached with Messrs Steven Tibanyane, David Maluleke and Jacob Matlou. The graves associated with these NoK are listed in Table 23. These graves account for two graves in burial ground S.36-002 on Vaalpensloop 313 LQ, and nine graves on Jackalsvley 309 LQ.

List of graves and unresolved NoK agreements

Grave no.	Deceased	Date of burial	NoK	NoK's relationship to deceased
S.36-002/1	Matlou , Smith	30/08/1959	Closest living relative	Matlou , Jacob
S.36-002/6	Tibanyane , Lotta	16/01/1985	Son	Tibanyane , Steven
S.36-018	Maluleke ,	Unknown	Closest living relative	Maluleke , Tloki
S.36-019	Maluleke ,	Unknown	Closest living relative	Maluleke , Tloki

The signed agreements between NoK and Exxaro are attached as Appendix C. The Agreements were based on the Agreement Framework, amended with input from NoK and Exxaro, as captured in the minutes.

Preferred reburial sites

Following the final group NoK meeting individual meetings with NoK were scheduled at their places of residence. The purpose of these meetings was to finalise the Agreements and obtain sign-off between Exxaro and NoK. The NoK who signed the relocation agreements indicated their preferences for reburial sites as follows:

- Mr Fannie Seremula, who requested that his family grave be exhumed and reburied in Shongwane 3;
- Mrs Catherine Leola family who requested that her family grave be exhumed and reburied in Marapong;
- Mrs Emmie Mashabane who requested that her two family graves be exhumed and reburied in Marapong; and
- Mrs Maria Nkoati who requested that her family grave be exhumed and reburied in Marapong.
- The three graves without any identified NoK will all be reburied within registered municipal cemeteries in Lephalale.

Customary requirements submitted by NoK

Consultation further resulted in agreements between NoK and Exxaro regarding requirements by NoK to practice their living heritage associated with grave relocation. Exxaro has agreed to provide certain items, based on the requirements submitted by NoK who have formally agreed to relocating their family graves.

The requirements submitted by NoK were considered by Exxaro, taking into account NoK's cultural practices and reasonable demands. The requirements that were finally agreed to resulted from consultation and negotiation between Exxaro and NoK.

NoK furthermore requested that the ceremonial event be hosted at the Mogol Club, Lephalale as a single event that all the families can attend.

Proposed way forward

With regard to the graves associated with NoK who have not reach agreement Digby Wells is of the opinion that these graves will be at risk both during the development and later operation of the Thabametsi Project. Should these graves remain *in situ*, not only will there be direct, physical risk to the graves, but access to the sites will be greatly restricted and pose significant safety and health risks to any family visiting the sites.



In addition the actual existence and location of nine graves on Jackalsvley have not been determined. These burial grounds will need to be subjected to GPR and test excavations.

Digby Wells, on behalf of Exxaro, proposes to submit permit applications to relocate all 19 graves that will be affected by the Thabametsi Project. Graves S3.6-002/1, 002/6, 018 and 019 are therefore included in the permit applications, with specific reference to Regulation 40(3) of GN R 548.

In support of the application, this document and its appendices provide proof of the concerted efforts made to contact and reach agreement with the identified NoK over a 33-month period.

PERMIT APPLICATION OVERVIEW

For ease of reference, sections in this report with specific relevance to the conditions required in terms of the NHRA: Regulation Chapter IX and XI are outlined in the table below

NHRA: Regulations Chapter XI – Procedure for consultation regarding burial grounds and graves (NHRA Section 36(5))	Relevant BGGC report section
(a) The name and address, erf/stand/farm number or geographical coordinates of the grave or burial ground and the magisterial district;	5.1
(b) the name, address, telephone and/or fax numbers of the planning authority for the place;	4.3
(c) details of the action(s) for which application is made, in accordance with the Guidelines;	8.4
(d) motivation for the proposed action(s), including supporting documentation and research, in accordance with the Guidelines;	4.1
(e) details of the cost of the action(s);	TBC
(f) the name, identity number, address, telephone and/or fax number, qualifications, relevant experience and signature of the person who will be responsible for the action(s);	4.2
(g) the name, identity number, address, telephone and/or fax number and signature of the owner of the land on which the grave or burial ground is situated;	4.2
(h) in the case of the exhumation or removal of a grave, the name, identity number, address, telephone and/or fax number, qualifications, relevant experience and signature of the archaeologist who will supervise the work;	4.4
(i) in the case of destruction or damage of any burial ground or grave referred to in regulation 33 (a), details of arrangements for the exhumation and reinternment of the contents of such graves;	6 & 8
(j) in the case of any activity under regulation 33 (b) of these regulations	
(i) details of efforts made to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and	2.2, 2.3 & 7
(ii) copies of agreements reached with such communities or individuals regarding the future of such grave or burial ground;	8
(k) the name, identity number, address, telephone and/or fax number and signature of the applicant, if the owner is not the applicant;	4.2
(l) any other relevant information required by the provincial heritage resources authority.	NA

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1 Introduction

1.1 Project background

Exxaro Coal (Pty) Ltd (Exxaro) has respectively submitted a Mining Right Application (MRA) and an application for Environmental Authorisation (EA), in addition to other applications, to the Department of Mineral Resources (DMR) and the Limpopo Department of Economic Development, Environment and Tourism (LEDET) to develop the Thabametsi Coal Mine (the Thabametsi Project). This Project will be developed on five farms near Lephalale (Ellisras) in the Waterberg District Municipality, Limpopo Province.

Exxaro appointed Digby Wells Environmental (Digby Wells) as independent environmental consultants to investigate the environmental, socio-economic and cultural aspects of the Thabametsi Project, required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) (MPRDA), National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA) and other applicable legislation.

The MRA was submitted to the DMR in accordance with the MPRDA on 31 January 2013 (DMR reference LP30/5/1/2/2/10013MR). This application was supported by an Environmental Impact Assessment (EIA) and Environmental Management Programme (EMPR) report as required by Regulation 49 of the MPRDA.

The application for EA was submitted to LEDET in accordance with the NEMA in September 2014 (LEDET reference 12/1/9/2/-W44). This application was supported by an EIA and Environmental Management Plan (EMP) report to comply with the NEMA for the authorisation of listed activities contained in Government Notice Regulation (GN R) 544 of 18 June 2010, GN R 545 of 18 June 2010, and GN R 546 of 18 June 2010.

One of the specialist studies undertaken by Digby Wells for the EIA/EMPR (2013) and EIA/EMP (2014) reports was a Heritage Impact Assessment (HIA). The South African Heritage Resources Agency (SAHRA) was notified of the proposed Thabametsi Project and consequently required that a HIA be undertaken in accordance with the National Heritage Resources Act, 1999 (Act 25 of 1999) (NHRA) (Hine 2012). The SAHRA specifically required that the HIA must include assessments of the following components:

- Archaeology;
- Palaeontology;
- Built structures older than 60 years;
- Sites of cultural significance associated with oral histories;
- Burial grounds and graves;
- Graves of victims of conflict; and
- Cultural landscapes or views.

The HIA was undertaken in 2012 and completed in January 2013 to comply with the SAHRA's requirements and the NHRA. The HIA identified amongst other heritage resources, two burial grounds containing one and seven graves respectively.

The HIA report was submitted to the SAHRA and the Limpopo Heritage Resources Authority (LIHRA) on 31 January 2013. Submission was made online via the South African Heritage Resources Information System (SAHRIS) (Case ID 569). The SAHRA issued a "Final Comment" on the HIA on 27 August 2013 (Galimberti 2013), wherein it stated that as the graves are younger than 60 years, section 36 of the NHRA does not apply. However, other relevant legislation must be adhered to, as outlined in section 3 below.

1.2 Scope of work

Exxaro appointed Digby Wells to undertake a Burial Grounds and Graves Consultation (BGGC) process to register Interested and Affected Parties (&APs) and identify and consult next-of-kin (NoK) of the deceased buried on the properties on which the Thabametsi Project will be developed.

The BGGC process was undertaken in accordance with the NHRA process contained in GN R 548, 2 June 2000.

1.3 Purpose and contents of report

The purpose of this document is to provide a record of the consultation process and agreements reached with identified NoK whose family graves will need to be relocated as part of the development of the Thabametsi Project.

The report is structured as follows:

- Chapter 2 describes the activities undertaken during the BGGC process and the compilation of this report;
- Chapter 0 provides a brief outline of the legal framework applicable to the BGGC process;
- Chapter 4 is a summary of the project description and motivation to exhume and relocate the identified graves;
- Chapter 5 summarises collected data and describes the to-be-relocated graves;
- Chapter 6 summarises the principles and remedial actions that were developed based on the legal framework, international standards and Exxaro's Grave Relocation Policy;
- Consultation and participation that was undertaken is recorded in Chapter 7; and
- Agreements reached between Exxaro and NoK are summarised in Chapter 8.

2 Methodology

The following activities were completed during the BGGC process:

- Data collection;
- Developing participation and consultation materials; and
- Participation and sign-off of relocation agreements.

2.1 Data collection

2.1.1 Legal review

Relevant national and provincial legislation, international best practice standards, and Exxaro policy were reviewed. The purpose was to ensure that the Thabametsi Project BGGC process adhered to all conditions contained in these documents.

2.1.2 Verification survey and preliminary grave registration

The burial grounds identified in the HIA (Karodia & Higgitt 2012) were verified during a graves census survey undertaken in 2013. This information was used to develop a preliminary grave register based on visible information inscribed on grave dressings. The grave register was included in the development of announcement material described in 2.2 below.

2.1.3 Additional data collection

Supplementary site visits were undertaken during consultation with NoK (as discussed in 2.3 and 7 below). During these site visits NoK were requested to verify graves as theirs, as well as point out any other burial grounds or graves they may have knowledge of and that may not have been identified during the HIAs.

Site visits were undertaken on four occasions:

- 31 May 2014;
- 16 June 2014 (NoK did not arrive on site);
- 18 June 2014; and
- 30 November 2015.

2.1.4 Grave database development

As mentioned in 2.1.2 above, a preliminary grave register was developed using information inscribed on grave dressings. This register was captured in a MS Excel database in which each grave was assigned a unique identifier, with additional fields added for each identifier to capture data collected during participation and consultation, such as deceased and NoK details. The final, updated grave register is attached as Appendix D.

2.2 Developing participation and consultation materials

2.2.1 Public announcement

Public announcement materials were developed in accordance with Regulation 39 of GN R 548. The materials included:

- Landowner notification letters;
- A Background Information Document (BID);
- Print media notices; and
- Site notices.

Landowners were notified of the BGGC process through letters submitted either per email or delivered per hand on 28 October 2013.

The BGGC process was formally announced through the placement of media and site notices in English and SeTswana. Site notices were placed at:

- Burial ground S.36-002 and S.36-016 and access routes to the Thabametsi Project area on 28 March 2014; and
- The Lephalale (28 March 2014) and Marapong Public Libraries (31 March 2014).

A press notice was placed in “The Mogol Post” of 10 April 2014. All notices contained information required in terms of Regulation 39 of GN R 548. Copies of the media and site notices are attached as Appendix A

The BID was made available to persons who attended the first consultation meeting (see 2.3 below). This document described the Thabametsi Project and its possible effect on graves, and also provided an outline of the relevant legal framework. The BID included the preliminary grave register as well as a registration and comment form to allow I&APs and NoK to register and / or comment on the BGGC process and proposed grave relocation. A copy of the BID is attached in Appendix A.

2.2.2 Development of relocation agreements

An Agreement Framework was developed and presented to Exxaro for comment. This document would inform the discussions and consultation with NoK. Certain principles were included in the Agreement Framework prior to the first public meeting based on best practice, prior experience and the Exxaro Grave Relocation Policy (referred to in 3.3 below). The Agreement Framework was continuously updated as a ‘living’ document throughout the formal consultation process. NoK were invited to comment on the Agreement Framework; their comments were then submitted to Exxaro for approval and, if approved, incorporated into an updated version of the Agreement Framework. In terms of South African legislation and best practice standards, the Agreement Framework refers both to graves that will need

to be relocated and those that will may need to be conserved *in situ*. The Agreement Framework outlined the following:

- The legal framework within which consultation and agreements pertaining to grave relocation and associated rights will take place;
- Definition and categories of affected NoK;
- Eligibility of NoK for remedial action; and
- Rights to remedial action.

Two agreements were developed based on the Agreement Framework and presented to Exxaro and NoK. These agreements defined the terms of relocation and the rights and responsibilities of the various parties involved:

- A **General Agreement** was developed that formalised the Agreement Framework. All NoK were invited to sign-off on the General Agreement. The General Agreement does not constitute consent for relocation, but merely confirms that Exxaro and the NoK agree to the general principles contained in the Agreement Framework. As with the Agreement Framework, the General Agreement refers to both to-be-relocated and to-be-conserved graves. Copies of signed General Agreements are attached as Appendix C.
- A **NoK Agreement** was developed that contained principles specific to grave relocation, including consent to relocate. NoK Agreements are specific to each NoK, as these agreements formalises the mutually agreed rights and responsibilities of the two parties. Copies of signed NoK Agreements are attached as Appendix C

2.3 Participation and consultation

2.3.1 Identification and registration of NoK

The majority of NoK were identified during the early phases of the BGGC process (such as during the public meeting discussed in 2.3.2 below). However, NoK identification was an incremental process: small numbers of additional NoK came to light and were included in consultation until fairly late in the process.

2.3.2 Consultation

Consultation with stakeholders included identified NoK and their legal representatives (where applicable), as well as other stakeholders, such as:

- Lephalale Local Municipality;
- Local ward councillors; and
- The Commission for the Promotion and Protection of the Rights of cultural, Religious and Linguistic Communities (CRL).

Identified NoK and other stakeholders were consulted through different forums that included:

- **1 public meeting** where the Thabametsi Project was introduced to a wider audience than only the NoK. The purpose of the public meeting was to identify NoK who did not respond to any of the public announcements or site notices.
- **5 group NoK meetings** were held after completion of the public meetings, when the specialist team was confident that the majority of NoK had been identified. NoK were invited to these meetings with the purpose of negotiating and agreeing on the content of the Agreement Framework described in 2.2.2 above and 6 below.
- **4 individual meetings** were held with NoK following the final group NoK meeting. The purpose of these individual meetings was mainly to obtain sign-off on the agreements referred to in 2.2.2 above and 0 below.
- **5 additional meetings** with NoK who have not agreed to relocation have been held, including two meetings where the CRL was present.
- **1 meeting with the Mayor of Lephalale Local Municipality** was held in Lephalale attended by Exxaro representatives.
- **1 meeting with the CRL** was held at Exxaro's Pretoria head office attended by a CRL commissioner, Exxaro and Digby Wells representatives.

With the exception of the first public meeting (which was announced via the media and site notices mentioned in 2.2.1 above), all NoK meetings were scheduled with input from NoK; meeting participants were notified and reminded of the follow-up NoK meetings via SMS (see Appendix B). After the first public meeting, attendees were provided with transport to and from the venue. The dates, times and venues of meetings are listed in Table 21: List of meetings held below

Consultation with identified NoK is summarised in Chapter 7 below. Formal records of meetings are attached in Appendix C.

3 Legal and policy framework

This section outlines the relevant South African legal and policy framework that governs grave relocation. In view of the fact that this framework does not stipulate minimum acceptable standards with regards to the consultation process, or provide sufficient guidance in terms of rights to remedial action, reference is also made below to Exxaro's Grave Relocation Policy.

3.1 National legislation

3.1.1 The National Health Act, 2003 (Act No. 61 of 2003) (NHA)

The NHA provides the general framework within which various state structures and other institutions need to operate in respect of human health, including exhuming human remains.

This Act does not provide any details specific to exhumation, transport and reburial of human remains, but makes provision for regulations concerning these actions.

3.1.2 Government Notice Regulation 363, 22 May 2013 (GN R 363) (NHA Regulations)

The NHA Regulations outline the process by which human remains may be exhumed and reburied. Although these Regulations do not consider consultation with NoK, it does prescribe certain activities that need to be taken into account during consultation and consequent agreements reached between Exxaro and NoK, including:

- Reburial can only take place in a burial site for which environmental authorisation has been granted in terms of the National Environmental Management Act, 1998, as amended, i.e. reburial is restricted to established and registered municipal cemeteries;
- Should reburial take place within a private burial site, such site must have been subject to a land survey by the local government and include waste management and ablution facilities;
- Exhumation must be undertaken by a registered funeral undertaker;
- Human remains must be placed and sealed in a container and placed in a substitute coffin; and
- The reburial must be registered with the local government.

3.1.3 The National Heritage Resources Act, 1999 (Act No. 25 of 1999) (NHRA)

The NHRA enforces the general protection of burial grounds and graves under Section 36. As such, the South African Heritage Resources Agency Burial Grounds and Graves (SAHRA BGG) Unit requires that any physical alteration to the integrity of burials be applied for and permitted.

Section 36(3) specifically states that where graves that are generally protected in terms of this Act will be impacted on, a permit application must be made to the responsible heritage resources authority. These so-called Section 36(3) permits for the exhumation and relocation of burials may only be granted if appropriate arrangements for the exhumation and re-internment of the contents of such graves have been made at the cost of the applicant and in accordance with the NHRA Regulations. These include:

- Evidence of concerted efforts to contact and consult NoK of affected burial grounds or graves; and
- Records of agreements reached with NoK regarding the future of burials.

3.1.4 Government Notice 548, 2 June 2000 (GN R 548) (NHRA: Regulations)

The NHRA: Regulations regulate both consultation (Regulations Chapter XI) and NHRA Section 36(3) permit applications (Regulations Chapter IX).

Regulation 39 requires the applicant – in this case Exxaro – to provide evidence of concerted efforts made to identify the descendants and family members, i.e. the *bona fide* NoK, of the deceased. Such identification must be done through:

- Archival and documentary research regarding the origin of the burial ground or grave;
- Direct consultation with local community organisations and / or members who may assist in identifying *bona fide* NoK;
- The erection of site notices at the burial ground or grave for at least 60 days; and
- Advertising in local press.

The applicant is further required to keep accurate record of all actions undertaken to identify NoK and submit these to the SAHRA BGG. Records must include the details of all persons and organisations contacted and their responses.

Regulation 40 requires the applicant to consult with NoK regarding the effect of any proposed grave relocation in order to reach agreement on the future of burial grounds and graves. Exxaro is required to cover costs of actions on which agreement was reached between Exxaro and identified NoK: whether in terms of relocation or *in situ* conservation.

Chapter IX outlines the permit application process and prescribes the relevant information that must be submitted to the SAHRA BGG unit.

3.2 Provincial legislation and local by-laws

3.2.1 The Exhumations Ordinance 12 of 1980

The Exhumations Ordinance regulates the exhumation, disturbance, removal and re-interment of human remains and matters incidental thereto. Section 3 of this Ordinance outlines the process in respect of consultation and approvals required for the exhumation and relocation of human remains.

The Ordinance furthermore, in terms of Section 3(2)(iii) requires that written consent for the exhumation and relocations must be given by *bona fide* NoK, defined as, in order of precedence:

1. The surviving spouse or partner of the deceased;
2. In the absence of a surviving spouse or partner, the eldest adult child of the deceased;
3. In the absence of an adult child, a parent of the deceased;
4. In the absence of a parent, an adult sibling of the deceased; and
5. In the absence of a sibling, the closest adult relative of the deceased.

3.3 Exxaro Grave Relocation Policy

The Exxaro Grave Relocation Policy is largely founded on the Acts and international standards referred to above. Exxaro has stated that the purpose of this Policy is to:

- Formulate a co-ordinated approach with respect to relocating graves of non-landowning households within Exxaro's mining right areas; and
- Provide guidelines for graves found and remaining within the mining right areas before, during and after operations are conducted.

The scope of this Policy applies to Exxaro as a legal entity and each of its subsidiaries, trusts, and any ventures controlled by Exxaro. Exxaro requires all its wholly owned subsidiaries to adopt this Policy.

The following Exxaro Grave Relocation Policy principles apply to the Thabametsi Project BGGC process:

- **Relocation of graves within mining area:** Exxaro acknowledges that graves are special places that serve as a bridge to the past, memorialising the deceased and serves as sacred places to remember and celebrate their lives. Grave relocation is inherently sensitive that must be approached with due sensitivity and respect. Exxaro is therefore obliged to take or follow an approach that is balanced between its requirements, respect for the deceased, family directives, cultural considerations and compliance with National, Provincial and local applicable laws.
- **Relocation and expenses:** Exxaro will not exhume, or cause to exhume any grave without consent from *bona fide* NoK obtained through extensive consultation, proof of which will be submitted in support of applicable permit applications. Exxaro will furthermore cover all costs associated with:
 - The exhumation and reburial of graves and the relocation of graves dressings;
 - Repair of dressings that may be damaged during relocation;
 - Supply of new grave dressings in the absence of existing dressings;
 - Ceremonial practices.
- **Next of Kin unwillingness to grant consent:** In the event that NoK do not consent to grave relocation, Exxaro will:
 - Exxaro will conduct impact assessments on such graves to assess for example: effect of mining around graves or undermining graves; effect of mitigation measures such as fencing graves off;
 - Periodical inspect *in situ* graves to monitor any damage, which if occurs will be repaired immediately;
 - Should Exxaro's Executive Committee (ExCo) determine that mitigation measures will not sufficiently protect graves, it may decide to implement grave



relocation without the consent of NoK. Exxaro will develop a communication plan to explain its actions.

- **Graves without identified NoK:** In the event that NoK cannot be identified, graves will be relocated in their absence but in the presence of officials in accordance with the applicable legal framework. The same obligations that apply to graves with NoK will apply, except with regard to covering costs of cultural ceremonies.
- **Exhumation and reburial:** Exxaro will cover the costs to:
 - Appoint a qualified and experienced archaeologist to apply for all relevant permits, and oversee, record and manage the exhumation process;
 - Appointment registered funeral undertaker to exhume, transport and rebury deceased; and
 - Collect NoK from an agreed central venue to the exhumation site and reburial site if required.
- **Ceremonial practices:** NoK will be entitled to practice their culture, and Exxaro will attend to appropriate NoK expenses through:
 - Covering costs associated with ceremonial practices that may be required by NoK, as agreed between the two parties;
 - Expenses for ceremonial practices will be in-kind and not cash;
 - Exxaro will provide transport for NoK from an agreed central venue to attend the event.
- **Grave dressing:** Exxaro will compensate NoK for existing grave dressings through:
 - Appointing a contractor to remove grave dressings;
 - Repair or replace grave dressings damaged or destroyed during relocation;
 - Replacement of grave dressings will be with similar dressings, taking into account possible restrictions imposed through cemetery regulations;
 - The replacement of grave dressings with the minimum acceptably dressing if existing dressings are disallowed in a cemetery due to cemetery regulations.
- **New grave sites:** Exxaro will purchase new grave plots and relocate graves to existing municipal cemeteries in the surrounding towns or mutually agreed site with the NoK.
- **Cash compensation:** Exxaro will not pay any cash compensation to NoK for relocating their graves. Exxaro has determined that there are no legal requirements for financially compensating NoK, other than precedents that have been created by other developers.

4 Project description

This section summarises the information required in terms of NHRA: Regulation 34(3) to apply for a Section 36(3) exhumation and relocation permit for the 155 graves located within the Thabametsi Project area. This section includes:

- A brief description of the Thabametsi Project and activities in motivation of the permit application;
- Details of the affected properties and legal land owner;
- Details of the responsible planning authority; and
- Persons / entities that will be responsible to implement the grave relocation should the required permits and approvals be awarded.

4.1 Project description and motivation

The first phase of the Thabametsi Project intends to mine coal via open pit and underground mining methods for supply to a proposed Independent Power Producer (IPP) coal-fired power station, which will be located north of the proposed project area. During the development phase of the proposed mine, coal will be trucked to the Grootegeluk Coal Mine. Further expansion of the proposed Thabametsi Coal Mine will follow the rail capacity expansions and raw water supply additions (MCWAP2) to the area. At this point in time it is foreseen that from 2021 both Power Station Coal (PSC) and Semi-Soft Coking Coal (SSCC) will be produced. The Run of Mine (RoM) coal suitable for PSC and SSCC will be transported to the respective clients by rail. Underground mining will start in 2022, producing Metallurgical Coal (Met Coal) RoM which will be transported to the South Mine Complex plant for beneficiation.

Development will include an open pit and supporting infrastructure; developments of specific importance of this report include *inter alia*:

- Infrastructure construction
 - Removal of topsoil and vegetation;
 - Development of haul roads and use of borrow pits;
 - Transport of construction material; and
 - Construction of surface infrastructure including wash plant, offices, pipeline, powerlines, product stockpile areas.
- Mining development area:
 - Blasting;
 - Development of initial bench for mining; and
 - Topsoil and overburden stockpiling.

- Water management activities
 - Storm water diversion berms;
 - Construction of pollution control dams and reticulation systems;
 - Construction of clean water dams; and
 - Construction of sewerage treatment plant.

- Mining activities:
 - Removal of overburden;
 - Drilling and blasting (explosive use);
 - Overburden stockpiling;
 - ROM stockpile; and
 - Use and maintenance of haul roads.

These activities will pose significant risks to the identified burial grounds and graves. The entire mining area will furthermore be fenced for security and safety reasons. Access into the mining area by surrounding local communities will be restricted due to inherent health and safety risks associated with operational mining sites.

Exxaro therefore initiated a BGGC process to identify and consult with NoK to reach agreement on relocating graves that will be affected by the Thabametsi Project.

4.2 Applicant and landowner details and consent

Exxaro is currently the legal landowner of the farms McCabesvley 311 LQ, Van Der Waltspan 310 LQ, Zaagput 307 LQ, Jackhalsvley 309 LQ, Vaalpensloop 313 LQ Remaining Extent and Vaalpensloop 313 LQ Portion 1.

The contact details of the responsible Exxaro representative and title deed information are summarised in Table 1. As both landowner and applicant, Exxaro has provided written consent for the proposed exhumation, in accordance with NHRA: Regulation 34(3)(g). The official signed document is attached as Appendix C.

Table 1: Title Deed and landowner details

Property	Owners / occupiers	Description
McCabesvley 311 LQ	Exxaro Coal (Pty) Ltd	No agriculture or occupants. Only mine infrastructure. Game farming and trophy hunting.
Van Der Waltspan 311 LQ	Exxaro Coal (Pty) Ltd	Game farming and trophy hunting.
Zaagput 307 LQ	Exxaro Coal	Cattle and some game farming.



Property	Owners / occupiers	Description
	(Pty) Ltd	
Jackalsvley 309 LQ	Exxaro Coal (Pty) Ltd	No occupants. Farm rented to Hardus Steenekamp who uses it for game farming.
Vaalpensloop 313 LQ Remaining Extent	Exxaro Coal (Pty) Ltd	Game farming.
Vaalpensloop 313 LQ Portion 1	Exxaro Coal (Pty) Ltd	No occupants. Some game farming.
Graaffwater 456 LQ (Portion 2)	Exxaro Coal (Pty) Ltd	Cattle and game farming. No occupants. (This property is outside the mining area)
Landowner details		
Name	Mrs Babsie Crane	
Position	Exxaro Project Manager	
Telephone	012 307 4953	
Email	babsie.crane@exxaro.com	

4.3 Responsible planning authority

As stated in 1.1 above, the Thabametsi Project is located near Lephalale in the Limpopo Province. The responsible planning authority is the Lephalale Local Municipality. Details of the project location and planning authority are listed in Table 2.

Table 2: Thabametsi Project geographical location and planning authority details

Geographical location	
Province	Limpopo
District Municipality	Waterberg District Municipality
Local Municipality	Lephalale Local Municipality
Magisterial District	Ellisras
Nearest Town/s	Lephalale



Properties	See Table 2
Planning authority	
Name	Lephalale Local Municipality
Address	Private Bag X136 Lephalale 0555 Civic Centre Onverwacht c/o Joe Slovo and Douwater Road
Contact person	Ms E. M. Tukakgomo Municipal Manager
Telephone	014 762 1409 / 082 496 5280
Fax	086 536 3506
Email	Riekie.coetzee@lephalale.gov.za

4.4 Responsible persons / entities

As mentioned in 1.2 above Exxaro appointed Digby Wells to conduct the BGGC consultation process with NoK.

Exxaro will furthermore appoint Digby Wells as the 'responsible persons' contemplated in NRHA: Regulation 34(3)(f) and (h) to implement the proposed exhumation and relocation of the affected graves.

Exxaro will appoint responsible service providers through a tender process, taking cognisance of all legal requirements and ensuring 'responsible persons' to the minimum requirements outlined in Table 3.

Table 3: Requirements for 'responsible persons'

Project aspect	Qualification & experience
Archaeologist	Johan Nel (Digby Wells) BA Honours Archaeology >15 years' experience

Undertaker to be appointed	Registered funeral undertaker who can operate within the ELM Proven experience in grave relocation projects
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5 Data collection results and description of graves

This section provides a description of the graves located in the Thabametsi Project area. It is informed by the data collection activities outlined in 2.1 above, which included:

- A review of a previous HIA report (Pistorius 2010);
- The survey undertaken by Digby Wells during the EIA processes mentioned in 1.1 above; and
- Identification of graves by NoK during site visits.

In general, the graves are situated within a typical rural agricultural landscape. Graves can be grouped into three main categories in terms of their location:

- Graves in a clearly defined burial ground that account for the majority;
- Isolated marked graves located in natural scrub / veldt; and
- Unmarked graves with no surface evidence in undefined burial grounds (pointed out by NoK).

Surface dressing of the graves vary between commercial granite covering and headstones, concrete covering and headstone, brick covering with markers, stone covering and grave markers, stone covering with no markers, and no surface dressings.

5.1 Results of site visits and surveys

The total number of affected graves that could be verified through surface evidence at the time of compiling this report is 10. Of these, seven are located within a clearly defined burial ground – site S.36-002. The remaining three are isolated graves located in the veld, identified through visible grave Table 4 dressings. An additional nine alleged graves were pointed out by Mr Tloki David Maluleke in two undefined burial grounds: there are visible surface evidence for these graves. Another alleged unmarked grave was pointed out by Mr Steven Tibanyane.

The location of all identified burial grounds and graves are listed in Table 4 and depicted in Plan 1.

Table 4: List of affected graves

Farm	Grave no.	Deceased	Description	Date	No. graves
RE of Vaalpensloop 3131 LQ	S.36-002/1	Matlou, Smith	Single grave in burial ground	30/08/1959	1



Farm	Grave no.	Deceased	Description	Date	No. graves
	S.36-002/2	Matlou, Anna / Mmannana	Single grave in burial ground	Unknown	1
	S.36-002/3	Tibanyane, Klaas	Single grave in burial ground	09/04/1960	1
	S.36-002/4	Tibanyane, Mishack Tshidi Lesisana	Single grave in burial ground	12/04/1980	1
	S.36-002/5	Seremula, Stephina	Single grave in burial ground	26/09/1984	1
	S.36-002/6	Tibanyane, Lotta	Single grave in burial ground	16/01/1985	1
	S.36-002/7	Tibanyane, McFarlane	Single grave in burial ground	1990	1
Leeuwdrift 312 LQ	S.36-015	Gwane, Semenson	Isolated grave	Unknown	1
Van der Waltspan 310 LQ	S.36-016	Komo, Frans	Isolated grave	25/04/1985	1
Jackalsvley 309 LQ	S.36-017	Pretorius, Jacobus Johannes	Isolated grave	05/03/1950	1
	S.36-018	Maluleke	Unmarked grave	Unknown	2
	S.36-019	Maluleke	Unmarked grave	Unknown	7

Plan 1: Location of graves in relation to Thabametsi Project development footprint

5.1.1 S.36-002

The burial ground is located on Vaalpensloop 313 LQ Re. The burial ground contains seven graves with different grave dressings depicted in Figure 1. The graves are associated with the Tibanyane, Matlou and Seremula families. Inscriptions on the headstones enabled the deceased to be identified as indicated in.

The graves will require relocation as they are located within the proposed open cast pit as depicted in Plan 1.



Figure 1: S.36-002 located on Vaalpensloop 313 LQ Re (Karodia & Higgitt, 2013)

Table 5: List of deceased buried in S.36-002 and identified NoK

Grave no.	Deceased	NoK	Place of Residence	Contact
S.36-002/1	Matlou , Smith	Matlou , Jacob	Maropong	0784433246
S.36-002/2	Matlou , Anna / Mmannana	Nkoati , Lettia / Israel	Ga-Seleka	0836679657 / 0721200110
S.36-002/3	Tibanyane , Klaas	Leola , Catherine Mathaga	Ga-Seleka	0721204994
S.36-002/4	Tibanyane , Mishack Tshidi Lesisana	Mashabane , Makgaetsi Emmie	Maropong	0837257224
S.36-002/5	Serumula , Stephina	Serumula , Isamai Fanie	Shongwane 3	0732693718
S.36-002/6	Tibanyane , Lotta	Tibanyane , Steven	Maropong	0781862347
S.36-002/7	Tibanyane , Mferoane	Mashabane , Makgaetsi Emmie	Maropong	0837257224

5.1.2 S.36-015

The grave site is located on Leeuwdrift 309 LQ. The grave dressing consists of three stone that mark the location of the grave, with an iron cross as a grave marker as depicted in Figure 2. The deceased could be identified as “Semenson Gwane” based on visible inscription on the grave dressing.

Although the grave will not be directly impacted on by the proposed mine infrastructure, it is considered at risk as depicted in Plan 1 and will need to be relocated.



Figure 2: S.36-015 located on Jackalsvley 309 LQ (Pistorius, 2010)

5.1.3 S.36-016

The gravesite is located on Van der Waltspan 301 LQ. The grave dressing consists of a cement slab and headstone as depicted in Figure 3. Inscriptions on the headstones enabled the deceased to be identified as “Frans Komo”.

The grave will be at risk due to construction activities and infrastructure development as depicted in Plan 1 and will need to be relocated.



Figure 3: S.36-016 located on Van der Waltspan 310 LQ (Pistorius, 2010)

5.1.4 S.36-017

The gravesite is located in on Jackalsvley 309 LQ. The grave dressing comprises of cement and brick as shown in Figure 4. Inscriptions on the headstones enabled the deceased to be identified as “Jacobus Johannes Pretorius”.

Although the grave is situated within the proposed underground mining area as depicted in Plan 1, access will be restricted and there are possible risks of subsidence. This grave should therefore be considered at risk and should be relocated.



Figure 4: S.36-017 located on Jackalsvley 309 LQ

5.1.5 S.36-018 and S.36-019

These alleged burial grounds are located in on Jackalsvley 309 LQ, no visible surface evidence of graves exist (see Figure 5 and Plan 1). The family, represented by Mr David Tloki Maluleke, is also uncertain of the exact position of the graves within the burial grounds.

To determine the actual existence and location of graves at these sites, it will be necessary to undertake various investigations that may include:

- Non-intrusive surveys using ground penetrating radar (GPR) to ascertain the likelihood of graves; and
- Test excavations to verify GPR results.

Should the tests provide proof of graves, the graves must be considered for relocation as access to the burial ground it is situated within the proposed underground mining area as depicted in Plan 1. Access to the site by family members will be significantly restricted due to mine health and safety risks. In addition, the site could possibly be at risk of subsidence once the area is undermined.

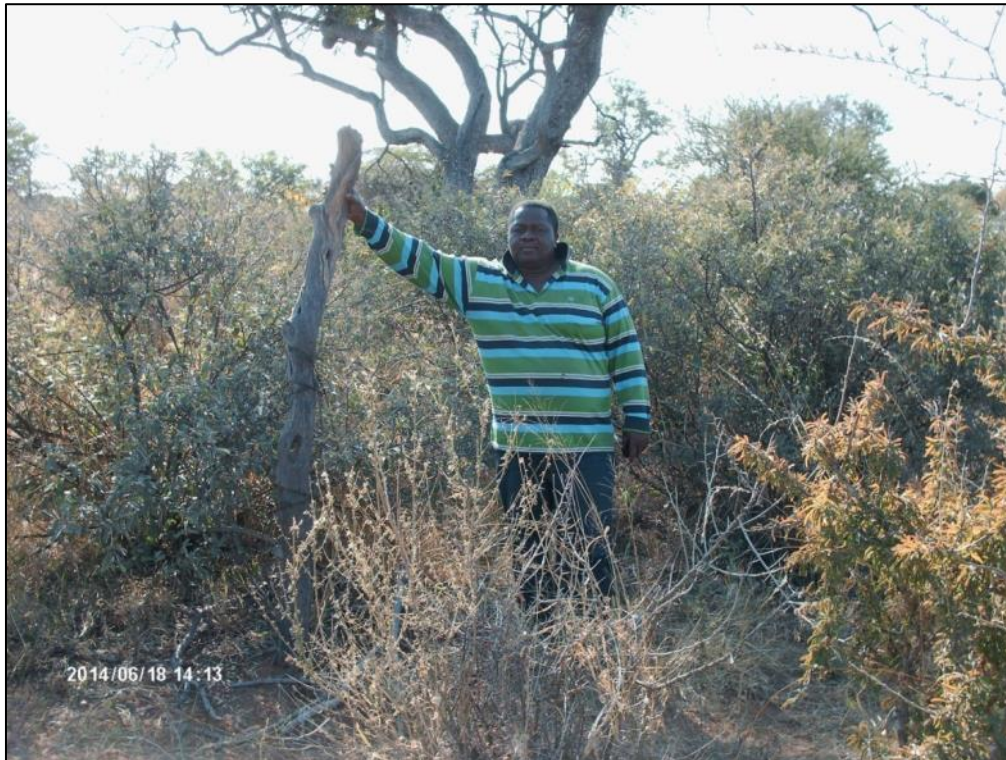


Figure 5: Mr T Maluleke standing at S.36-018 located on Jackalsvley 309 LQ



Figure 6: Mr T Maluleke pointing to S.36-019 located on Jackalsvley 309 LQ

6 Agreement framework

The Agreement Framework referred to in 2.2.2 above outlined the principles for remedial actions to which affected NoK has certain rights. The Agreement Framework was presented to NoK and updated following their comments and input into the document. The Agreement Framework defined who will be eligible for remedial action.

The Agreement Framework presented here is founded on the legal and policy framework described in 0 above. This chapter comprises:

- A glossary of terms and definitions;
- Categories of graves;
- Eligibility; and
- Remedial actions, principles and agreements;
- Agreed criteria regarding the eligibility of NoK for remedial action and assistance in terms of each category of grave;
- A narrative description of each agreed remedial action;
- Agreed principles in respect of remedial actions and entitlements to which NoK are entitled to, in tabular format indicating initial draft entitlements and final agreed entitlements.

The final agreements attached as Appendix C, are the results of NoK consultation and input, summarised in 0 below. At each meeting, NoK were encouraged to participate in the decision-making process. The Agreement Framework and final agreements must be understood with reference to the definitions provided in Section 6.1.

6.1 Definitions and Terms

In lieu of appropriate definitions and guidelines within the South African grave relocation legal framework, especially with reference to rights to remedial action certain established definitions were adapted for use throughout this document. Definitions were adapted from the Acts referred to in Section 0 above, as well as definitions contained in the *International Finance Corporation Handbook for Preparing a Resettlement Action Plan* (2012).

Table 6: Terms and definitions used in the Agreement Framework

Term	Definition
Agreement	The negotiated and legally binding arrangement between Exxaro and Next of Kin resulting from consultations, including any remedial actions or other reasonable actions required by the Next of Kin. In relation to graves, an agreement must include principles for re-establishment of graves and recompense.



Term	Definition
Applicant	The person or entity that is responsible for any development that will destroy, damage, alter, remove from its original position, or otherwise disturb any grave or burial ground.
Conservation	The protection, maintenance, preservation and sustainable use of graves to safeguard their cultural significance.
Consultation	The action or process of discussing the effect of proposals on graves with identified next of kin with the aim of reaching agreement about the future of such grave or burial ground. Consultation may include one-on-one, focus group or public meetings, telephonic conversations, and written communication. Records of consultation with next of kin must be kept including comments made by any interested party.
Development	In relation to graves, any physical intervention, excavation, or action, other than those caused by natural forces, which may in any way result in a change to the nature, appearance or physical nature of a burial ground or grave, or influence its stability and future well-being.
Grave	A place of interment that includes the contents, headstone or other marker of such a place, and any other structure on or associated with such place.
Improvement	The repair, restoration and rehabilitation of a grave as part of <i>in situ</i> conservation of subsequent to grave relocation.
Living heritage	In relation to graves, means the intangible aspects of inherited culture that may include cultural tradition, ritual and the holistic approach to nature, society and social relationships, including performances relating to burial, to graves or to the continuing relationship between the deceased and the living NoK.
Management	The conservation, presentation and improvement of a burial ground or grave.
Next of Kin	<p>Next-of-kin of graves means the living relative/s of the deceased buried in a grave. The order of precedence of NoK is determined in accordance with the Exhumation Ordinance as:</p> <ul style="list-style-type: none"> ■ The surviving spouse or partner of the deceased; ■ In the absence of a surviving spouse or partner, the eldest adult child of the deceased; ■ In the absence of an adult child, a parent of the deceased; ■ In the absence of a parent, and adult sibling of the deceased; and ■ In the absence of a sibling, the closest adult relative of the deceased.



Term	Definition
Owner	The landowner on whose property the grave is located, including: <ul style="list-style-type: none"> ■ In the case of privately owned land, the owner's authorised agent; ■ In the case of land owned by the State or State-aided institutions, the Minister or any other person or body of persons responsible for the care, management or control of that place; ■ In the case of tribal trust land, the recognised traditional authority.
Performance	In relation to graves, the action or process of performing a task or function at the burial ground or ground.
Presentation	In relation to burial grounds and graves includes the erection of grave dressings, provision of access to graves and performances.
Re-establishment	In relation to grave relocation, means actions and items required to re-establish graves at new locations in a manner similar to that of the original grave, grave relocation including the removal and re-erection of grave dressings, purchase of new coffins and grave plots, and possible performances. The rate of re-establishing graves must be calculated on the market value of the actions and items, plus transaction costs.
Relocation	In relation to graves means the exhumation, relocation and re-interment of the contents of a grave from its original location to an alternative location.
Relocation assistance	Support provided to Next of Kin whose graves are relocated, and may include transportation and food, that are provided by Exxaro to affected Next of Kin during the grave relocation process.
Remedial action	Actions agreed on, following consultation between Exxaro and Next of Kin, to remediate impacts on graves. Remedial actions may include conservation, improvement, presentation, and relocation. Costs of remedial actions are the responsibility of Exxaro, unless otherwise agreed to.

6.2 Categories of Graves

The categorisation of affected graves is required for the development of a comprehensive and detailed Agreement Framework. Three categories of graves were defined based on possible impacts, listed in Table 7 below.

Table 7: Categories of graves in the Thabametsi Project area

Category	Definition
Category 1: Unaffected graves	Burial grounds and graves that are located on properties comprising the project area but will not be at direct physical risk due to project activities; these will therefore not be relocated, but will be conserved <i>in situ</i> . NoK will not be at unmanageable personal risk during visits to gravesites. NoK may, however, experience loss of <i>unrestricted</i> access to sites due to restrictions imposed on them by Exxaro – for example due to health and safety policies and considerations; and
Category 2: To-be-relocated graves with identified NoK	Graves that will be at direct physical risk due to project activities and will therefore require relocations, as well as graves located in the mining area where significant risks to visitors and access restrictions will manifest.
Category 3: To-be-relocated graves with no identified NoK	Graves without identified NoK will be relocated in their absence but in the presence of officials in accordance with NHA Regulations.

6.3 Eligibility

With regard to NoK's eligibility for remedial action and assistance certain criteria were proposed per category outline in Section 6.2 above. These criteria are presented in Table 8 below.

Table 8: Eligibility for remedial actions

Category	Criteria
NoK associated with Category 1 graves	All <i>bona fide</i> NoK of Category 1 graves will be eligible for remedial action, including: <ul style="list-style-type: none"> ■ The opportunity to provide input into a CMP that will be submitted to the SAHRA BGG for approval; ■ Access to burial grounds and graves for the purposes of improvement, performance and presentation; and ■ Being timeously informed regarding any change to the existing status quo of conserved burial grounds and graves.
NoK associated with Category 2 graves	<i>Bona fide</i> NoK of Category 2 graves will be eligible for remedial action, including <ul style="list-style-type: none"> ■ In situ conservation of their gravesites for the duration of the permit application process and until such time as exhumation takes place; and ■ Exhumation and re-establishment of graves.



Category	Criteria
Category 3 graves	<ul style="list-style-type: none"> ■ Gravesites for which NoK have not been identified will be ■ Relocated to an established, registered municipal cemetery if there is any risk to the sites due to project activities, or if access will be restricted; or ■ Conserved <i>in situ</i> in accordance with the CMP if such sites will not be physically impacted on and access can be provided

6.4 Principles, remedial actions and stakeholder rights

This section outlines principles for remedial actions to which NoK have certain rights, based on the Agreement Framework and final input into the Agreement Framework by NoK and other stakeholders during the participation and consultation process.

6.4.1 Principles regarding rights to consultation

The NHRA and NHRA Regulations require that concerted effort is made to:

- Identify all possible stakeholders and NoK; and
- Consult identified NoK regarding the future of affected burial grounds and graves.

The purpose of this consultation process is to provide NoK with adequate information to enable them to make prior and informed decisions regarding the *in situ* conservation or relocation of graves, whichever may be the case. The principles to the right to consultation as a remedial action are listed in Table 9 below, including draft and agreed rights to which NoK are eligible.

Table 9: Principles of the consultation process

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
Exxaro must ensure that all possible affected stakeholders are identified in respect of proposals regarding the future of burial grounds and graves.	Exxaro will ensure that <i>bona fide</i> NoK are identified and consulted with regard to the future of identified graves	Unchanged
Affected stakeholders may include landowners, relatives of the deceased, traditional and local authorities, and conservation groups.		
Exxaro must consider providing travel assistance to NoK to attend meetings.	Exxaro will collect and provide transport for	Exxaro will collect and provide transport for NoK within a 100

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
Travel assistance must exclude cash reimbursements for any travel related expenses, including fuel, public transport or air travel.	stakeholders within a 50 km radius of the meeting venue.	km radius to enable NoK resident at Ga-Selaka and Shongwane
NoK who cannot attend focus group meetings will need to elect and appoint representatives to act on their behalf.		

6.4.2 Category 1 Graves

6.4.2.1 Plan for in situ management plan of graves

The NHRA affords burial grounds and graves general protection. The purpose of this remedial action is therefore to develop a CMP with the aim to provide a set of management principles that must be adhered to where gravesites will remain *in situ* in the Thabametsi Project area. Such *in situ* conservation may be required either until grave relocation of specific sites become necessary or inevitable, or into perpetuity. Management of *in situ* conserved gravesites is a joint responsibility between Exxaro and NoK. However, the primary onus is on Exxaro as both landowner and developer. The CMP must be included into all operational plans, procedures and programmes established by Exxaro and should be reviewed at least every five years.

The principles of the CMP as a remedial action are listed in Table 10 below, including draft and agreed rights to which NoK are eligible.

Table 10: Principles for in situ management plan of graves

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
A Conservation Management Plan (CMP) must be drafted at the cost of the Applicant	Affected NoK and landowners will be entitled to provide input into the CMP through consultation	Unchanged
A CMP must be an inclusive, participatory decision-making process with input from all affected persons, including NoK and landowners.		
The CMP must include agreements on the conservation, presentation and improvement of burial grounds and graves		

6.4.2.2 Conservation of burial grounds and graves

To give further affect to the NHRA, Exxaro must ensure that burial grounds and graves are conserved *in situ*. Exxaro is therefore required to protect, maintain and preserve gravesites to ensure the sustainable use of these heritage resources to safeguard their cultural significance. This is especially important given that NoK will be unable to access gravesites unrestricted, as they will be located within the boundary of an operational mine.

The principles of *in situ* conservation are listed in Table 11 below, including draft and agreed rights to which NoK are eligible.

Table 11: Principles for conservation of burial grounds and graves

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
Exxaro must protect and conserve burial grounds and graves that will remain <i>in situ</i> in the project area	Exxaro will ensure that the status quo of the burial grounds and graves are maintained throughout the life of the project.	Unchanged
	Exxaro will fence burial grounds and grave to safeguard sites against possible direct, physical damage.	Unchanged
	Exxaro will maintain sites through cleaning and periodic monitoring in lieu of unrestricted access by NoK.	Unchanged

6.4.2.3 Access to conserved burial grounds and graves

To give effect to the NHRA requirement to safeguard the cultural significance of burial grounds and graves through sustainable use, Exxaro must implement remedial action that will enable NoK to access their gravesites for living heritage purposes. However, taking into consideration that the gravesites will be located within an operational mining area, NoK will be obliged to adhere to Exxaro health and safety policies that are based on the Mine Health and Safety Act, 1996 (Act 29 of 1996) (MHSA).

The principles for access to *in situ* conserved gravesites are listed in Table 12 below, including draft and agreed rights to which NoK are eligible.

Table 12: Principles for access to conserved burial grounds and graves

Remedial action principles / comments	Draft Entitlement	Final Agreed Entitlement
<p>Exxaro will acknowledge the right of NoK to access conserved burial grounds and graves to ensure sustainable use of the sites and safeguard their cultural significance</p>	<p>NoK will be entitled to access gravesites, within constraints that may be imposed by any health and safety policies, regulations and legislation.</p>	<p>Exxaro will be entitled to advance notice of proposed site visits to enable necessary arrangements to be made.</p>
	<p>NoK will be entitled to improvement of their burial grounds and graves, within constraints that may be imposed by any health and safety policies, regulations and legislation.</p>	
	<p>NoK will be entitled to presentation of their burial grounds and graves, within constraints that may be imposed by any health and safety policies, regulations and legislation.</p>	<p>NoK will be entitled to access and improve gravesites, and presentation and performances at gravesites under safety escort.</p>
	<p>NoK will be entitled to performances at their burial grounds and graves, within constraints that may be imposed by any health and safety policies, regulations and legislation.</p>	
<p>Exxaro will have indemnity from any risk, injury, damage or other impact on NoK when visiting gravesites.</p>	<p>Exxaro will be entitled to indemnify itself of any claims in the event of loss, injury, death or any other risk experienced by NoK when accessing graves.</p>	<p>Exxaro will require NoK to comply with standard operational procedures regarding visitor access to mine properties.</p> <p>Exxaro will have indemnity from any incident that may result in injury or death of NoK as a result</p>



Remedial action principles / comments	Draft Entitlement	Final Agreed Entitlement
		of pre-existing medical conditions, and that is unrelated to any activity for which Exxaro may be responsible, to reduce the risk to Exxaro with regard to incident reporting, investigation and possible temporary mine closure.
	NoK will be entitled to sign informed consent indemnifying Exxaro Arnot Coal of any loss, injury, death or any other risk experienced when visiting graves.	Exxaro will provide approved transport for, and escort NoK to gravesites.

6.4.2.4 Improvement to burial grounds and graves

A remedial action that is required to safeguard the cultural significance of burial grounds and graves is to enable NoK to improve gravesites. This may include the repair, restoration and rehabilitation of graves and the immediate surrounding space. Improvement to gravesites will be made at the cost of NoK, unless mining activities have changed the *status quo* of the sites.

The principles for improvement to *in situ* conserved gravesites are listed in Table 13 below, including draft and agreed rights to which NoK are eligible.

Table 13: Principles for improvement of conserved burial grounds

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
Exxaro will allow NoK to repair, restore and rehabilitate burial grounds and graves	NoK will be entitled to improve the existing state of conserved burial grounds and graves, at their own cost	Unchanged, but refer to 6.4.2.3 above in terms of principles and entitlements regarding access.
	NoK will be entitled to being informed of any changes to burial grounds and graves as a result of project activities, or	Exxaro will draft status quo reports for every <i>in situ</i> burial ground and grave to monitor the condition of these sites throughout the operational lifespan of the mine, or until grave relocation is



Remedial action principles	Draft Entitlement	Final Agreed Entitlement
	changes in ownership	completed.
		NoK will be entitled to being informed of any changes to burial grounds and graves noted in monitoring reports, or changes in ownership.
Exxaro will repair, restore and rehabilitate burial grounds and graves affected by project activities resulting from Exxaro's development	Exxaro will cover the costs of improvement to burial grounds and graves, in the event that project-related activities have resulted in damage to such sites.	Unchanged

6.4.2.5 Presentation of burial grounds and graves

Presentation of burial grounds and graves is a required remedial action to enable the sustainable use and cultural significance of these sites. Presentation may include the placing of grave dressings, or the provision of access to, and performances at, gravesites as described under 0 above and 0 below.

The principles for presentation of *in situ* conserved gravesites are listed in Table 14 below, including draft and agreed rights to which NoK are eligible.

Table 14: Principles for presentation of conserved burial grounds and graves

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
Exxaro will allow NoK presentation of / at the burial grounds and graves	NoK will be entitled to access their graves erect for the purposes of erecting new grave dressings	Unchanged, but refer to 6.4.2.3 above in terms of principles and entitlements regarding access.
	NoK will be responsible for all costs associated with erecting new grave dressings	Unchanged.

6.4.2.6 Performances at burial grounds and graves

Sustainable use of burial grounds and graves may require performing certain actions at sites associated with living heritage. This remedial action therefore gives effect to the NHRA requirement to safeguard the cultural significance of gravesites.

The principles for performances at *in situ* conserved gravesites are listed in Table 15 below, including draft and agreed rights to which NoK are eligible.

Table 15: Principles for performances at conserved burial grounds and graves

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
Exxaro will acknowledge the right of NoK to express their living heritage	NoK will be entitled to performing actions associated with living heritage at graves.	Unchanged, but refer to above in terms of principles and entitlements regarding access.
	NoK will be responsible for all costs associated with performances.	Unchanged.

6.4.2.7 Recompense for *in situ* conservation

Provided that all remedial actions referred to above are considered and implemented, no financial or other recompense will be paid to NoK whose gravesites will be conserved *in situ*.

The principles for performances at *in situ* conserved gravesites are listed in Table 16 below, including draft and agreed rights to which NoK are eligible.

Table 16: Principles for recompense for conserved burial grounds and graves

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
Exxaro will not compensate NoK whose burial grounds and graves are conserved <i>in situ</i> .	NoK will not be entitled to any recompense in the form of solatia or otherwise for the conservation of graves	Unchanged, but refer to above regarding entitlements related to mining activity related changes to <i>status quo</i> of gravesites.



6.4.3 Category 2 Graves

6.4.3.1 Relocation of graves

Section 36(5) and Regulation 40 of the NHRA requires as a remedial action consultation with NoK. The purpose of this remedial action is, therefore, to develop a GRP based on a set of agreed principles to be adhered to when relocating graves. NoK have the right and encouraged to participate in the decision-making process to reach agreements regarding the relocating process. This extends to NoK being provided with all relevant information to enable them to give prior and informed consent to grave relocation.

Graves may require relocation if:

- Gravesites are at direct risk of destruction or damage due to development related activities;
- There are significant risks to NoK and / or graves should the graves remain *in situ*;
- NoK specifically requests relocation during consultation.

The principles for relocation of graves are listed in Table 17 below, including draft and agreed rights to which NoK are eligible.

Table 17: Principles for grave relocation

Remedial action principles	Draft Entitlement	Final Agreed Entitlement
Exxaro will cover the costs of exhuming, relocating and re-interring the contents of graves	Exxaro will implement a grave relocation process in accordance with applicable legislation.	Unchanged.
	Exxaro will appoint a qualified and registered archaeologist to manage the grave relocation process.	Unchanged.
	Exxaro will cover the cost to engage a registered funeral undertaker to exhume, transport and re-inter the contents of graves under supervision of a qualified archaeologist.	Unchanged.
Exxaro will cover the costs to identify and consult NoK regarding proposals to relocate graves	NoK will be entitled to participate in the decision-making process in order to reach agreements regarding relocating graves	Unchanged.
	NoK will be entitled to provide informed consent prior to exhuming	Unchanged.



Remedial action principles	Draft Entitlement	Final Agreed Entitlement
	the contents of graves	

6.4.3.2 Re-establishment of graves

Section 36(4) and regulations 34(2)(i), 35(c), and 40(2) of the NHRA requires as a remedial action agreement with NoK regarding the exhumation and re-internment of the contents of graves. The purpose of this remedial action is, therefore, to reach agreements with NoK regarding the exhumation and re-internment of their graves.

The principles for re-establishment of relocated graves are listed in Table 18 including draft and agreed rights to which NoK are eligible.

Table 18: Principles for re-establishment of relocated graves

Remedial action principles / comments	Draft Entitlement	Final Agreed Entitlement
Exxaro will cover all costs for the establishment of new graves.	NoK will be entitled to have the contents of their graves re-interred in new grave plots in established cemeteries of their choice, within reason and relevant legal frameworks.	<ol style="list-style-type: none"> 1. Fannie Serumula indicated that his deceased NoK must be relocated to Shongwane 2. Helen Mokau indicated that her deceased NoK must be relocated to Marapong 3. Catherine Leola indicated that her deceased NoK must be relocated to Marapong 4. Relocation of NoK of Steve Tibanyane and Jacobus Matlou still unresolved 5. NoK of Maluleke family on Jackhalsvley still unresolved. 6. Exxaro also provided NoK with the option to have their deceased relatives reburied in a special relocation cemetery on Vaalpensloop that Exxaro was prepared to establish. This cemetery would:



Remedial action principles / comments	Draft Entitlement	Final Agreed Entitlement
		<ul style="list-style-type: none"> ■ Be located in an area easily accessible from major routes; ■ Include adequate facilities, including ablutions and a dedicated space to slaughter sacrificial animals; ■ Not include any access restrictions; and ■ Be strictly reserved to accommodate deceased that may be exhumed and relocated - the burial of recently deceased persons would not be allowed.
	Exxaro will cover costs associated with the procurement and registration of new grave plots	Unchanged.
Exxaro will cover costs for improvement and presentation of new grave sites after re-interment.	NoK will be entitled to the removal of existing commercial or artisan dressings, such as granite headstones, and re-erected at the new gravesite, with the provision that cemetery regulations make allowance for such dressings.	Unchanged.
	NoK will be entitled to the have non-commercial or non-artisan dressings such as brick-and-mortar dressings, replaced at the new gravesite with commercial grave dressings of similar costs.	Unchanged.
	NoK will be entitled to grave markers at the new grave where existing grave dressings comprised only	Removed, all NoK entitled to standard grave dressings.



Remedial action principles / comments	Draft Entitlement	Final Agreed Entitlement
	stone-packed cairns or were absent.	
	Exxaro will repair or replace grave dressings damaged as a result of relocation	Unchanged.
	Exxaro will replace grave dressings disallowed in new cemetery due to cemetery regulations with minimum acceptable dressing	Unchanged.
Exxaro will ensure that new grave sites are registered in the names of the <i>bona fide</i> NoK	NoK will be responsible for costs of improvement and presentation of new grave sites after re-establishment	Exxaro will not be responsible for the maintenance, repair, or any other action, after graves have been re-established at new locations.
		NoK will be responsible for costs of improvement and presentation of new grave sites after re-establishment, without any claims or recourse to Exxaro.
Exxaro will acknowledge the right of NoK to express their living heritage in respect of burial grounds and graves, and cover reasonable costs associated with performances that may be associated with such living heritage	NoK will be entitled to expressing their living heritage	Unchanged.
	Logistical arrangements and needs will be determined and agreed on in consultation with NoK	Unchanged.
	Exxaro will cover expenses associated with logistical arrangements and physical needs of NoK in order to express their living heritage	NoK will not be paid any funds related to arrangements and physical needs required for any customary ceremonies and rituals.
		Exxaro will, in lieu of any cash payment, cover expenses associated with logistical arrangements and procure agreed on items required by NoK to express their living heritage.

6.4.3.3 Solatia

Solatia or any other form of cash compensation is not required in terms of any Act or Regulation governing grave relocation. However, precedents have been set in many other projects in the region where the developer had paid cash compensation directly to NoK instead of the assuming responsibility for the procurement and provision of NoK requirements. This may have created expectations by communities that they will benefit financially from grave relocation.

Solatia in relation to grave relocation refers to an acknowledgement that grave relocation may cause inconvenience and a sense of loss. Given that Exxaro will not compensate affected NoK in cash, but will procure and provide the requirements requested by NoK, the offer of solatia had been included in the consultation process from the start.

However, Exxaro developed its Grave Relocation Policy during the course of consultation and implemented this Policy across all its current GRP projects. The Policy does not make provision for any form of cash compensation.

Any form of cash compensation was therefore excluded from the Agreement Framework. As a result, no entitlements with regard to solatia were agreed on and this remedial action was excluded from the final Agreements (See Table 19).

Table 19: Principles for solatia

Remedial action principles / comments	Draft Entitlement	Final Agreed Entitlement
Exxaro acknowledge that grave relocation may result in perceptions of loss and inconvenience and loss experienced	Exxaro will acknowledge the inconvenience and possible loss experienced by NoK as a financial token.	Solatia removed from Agreement Framework following development of Exxaro Grave Relocation Policy and adoption thereof by Exxaro Executive Committee.
NoK will not receive any additional payment, other than recompense in the form of a solatium, for attending meetings or giving consent.	Only <i>bona fide</i> NoK as defined under Section 3 of the Exhumations Ordinance will be entitled to receiving solatia, i.e. only the single, closest living relative will be eligible.	
Beneficiaries of solatia will be NoK defined in accordance with the Exhumation Ordinance, i.e. the closest relative of the deceased. This means that only one closest living relative will receive solatia.		



6.4.4 Category 3 graves

Exxaro agreed to the following principles and remedial actions listed Table 20 with regard to graves of which no NoK were identified.

Table 20: Principles for graves with unidentified NoK

Remedial action	Remedial action principles	Entitlement
Relocation of graves	Exxaro will cover the costs of exhuming, relocating and re-interring the contents of graves	Exxaro will implement a grave relocation process in accordance with applicable legislation
		Exxaro will appoint a qualified and registered archaeologist to manage the grave relocation process
		Exxaro will cover the cost to engage a registered funeral undertaker to exhume, transport and re-inter the contents of graves under supervision of a qualified archaeologist
Re-establishment of graves	Exxaro will cover all costs for the establishment of new graves.	Exxaro will cover costs associated with the procurement and registration of new grave plots in the nearest municipal cemetery
		Exxaro will remove and re-erect existing commercial or artisan dressings, such as granite headstones, and re-erected at the new gravesite, with the provision that cemetery regulations make allowance for such dressings.
	Exxaro will cover costs for improvement and presentation of new grave sites after re-interment.	Exxaro will provide grave markers at the new grave where existing grave dressings did not comprise commercial or artisan dressings. Grave markers will indicate the grave number, origin and date of relocation of the grave.
		Exxaro will repair or replace grave dressings damaged as a result of relocation
		Exxaro will replace grave dressings disallowed in new cemetery due to cemetery regulations with minimum acceptable dressing



7 Consultation and participation

Participation and consultation with NoK and other stakeholders were accomplished through 17 meetings in a 33-month period that commenced in April 2014. As mentioned in 2.3.2 above, meetings included an initial public project clarification meeting, six group NoK meetings, five individual NoK meetings, an authority meeting and three meetings with the CRL.

Attendees at the public meeting were requested to inform any other persons who may be affected by the process, and provide Digby Wells and / or Exxaro with such details.

Following the public meeting, all NoK meetings were scheduled with input from NoK and other stakeholders who were notified and reminded of the follow-up meetings via Short Message Services (SMSs). After the first public meeting, all NoK were collected and transported to and from their places of residence to the venue.

The first six meetings were facilitated by Digby Wells; Exxaro was represented at meetings from 26 July 2015. Attendees were requested to sign attendance registers, and proceedings were recorded through digital voice and video recordings. Information was presented using PowerPoint presentations, providing hardcopies of agendas, minutes and other documentation. Most documents were made available in both English and translated into SeTswana on request.

Table 21: List of meetings held

Date	Venue	Meeting type	Number of attendees			
			NoK	Interested Parties	Digby Wells	Exxaro
12 April 2014	Mogol Club, Lephale	Public project clarification meeting	9	4	4	
30 May 2014	Mogol Club, Lephale	Group NoK meeting	5	2	3	
31 May 2014	Vaalpensloop	Site visit with NoK	7		2	
12 June 2014	Mogol Club, Lephale	Group NoK meeting	6	4	3	1
18 June 2014	Jackhalsvley	Site visit	1		1	
26 June 2014	Mogol Club, Lephale	Group NoK meeting	10	7	3	



Date	Venue	Meeting type	Number of attendees			
			NoK	Interested Parties	Digby Wells	Exxaro
22 May 2015	Mogol Club, Lephale	Group NoK meeting	4	18	3	5
10 July 2015	Marapong Public Library	Group NoK meeting	6	12	2	6
13 August 2015	Ga-Seleka	Individual NoK meeting – Catherine Leola	2	-	1	1
13 August 2015	Ga-Seleka	Individual NoK meeting – Israel Nkoati	2	-	1	1
13 August 2015	Steilloop	Individual NoK meeting – MJ Tibanyane	1	-	1	1
14 August 2015	Marapong	Individual NoK meeting – Emmie Mashabane	1	-	1	1
14 August 2015	Shongwane	Individual NoK meeting – Fannie Serumula	2	-	1	1
26 August 2015	Marapong Public Library	Group NoK meeting	2	5	1	1
1 October 2015	Lephale Mayoral Office	Authority meeting				1
16 October 2015	Exxaro Head Office	CRL meeting		1	1	4
17 November 2015	Exxaro Onverwacht Office	CRL & NoK meeting	2	1	1	1
30 November	Exxaro Onverwacht Office	CRL & NoK meeting	4	2	1	2



Date	Venue	Meeting type	Number of attendees			
			NoK	Interested Parties	Digby Wells	Exxaro
2015						

7.1 Clarification Meeting, 12 April 2014

Details of this meeting were announced via site notices and media adverts as described in 2.2.1 above. The meeting was held at the Mogol Club, Lephalale and attended by 14 Interested and Affected Parties (I&APs) that include eight family representatives, a traditional healer, and five Interested Parties (IPs).

The purpose of the meeting was to:

- Introduce the Thabametsi Project and present the graves identified to date;
- Outline and explain the legal framework and process within which consultation and grave relocation would take place;
- Identify NoK and any other I&APs;
- Present the Agreement Framework; and
- Commence consultation.

The following significant issues arose at this meeting:

- The following matters were raised by Mr S Tibanyane:
 - His dissatisfaction at not having been contacted before the site notices and media adverts were placed, as well as enquiring why only graves and heritage are being discussed and not land claim issues;
 - Submission of copies of several letters and applications including *inter alia* to the Land Claims Commission and the CRL; and
 - Categorically stated that he will not agree to relocate his family grave, and that he will not allow the Thabametsi Project to be developed.
- All attendees requested that representatives from the LLM and the Seleka Traditional Authority be invited to the next meeting.

Digby Wells contacted the LLM to request that a representative attend the next meeting. The LLM indicated that Mr Thompson Nyadzani must be requested to attend all future meetings.

Digby Wells also contacted the Seleka Traditional Authority to request that a representative attend the following meeting. The Authority indicated that Ms Sophia Matlou will represent them.

Detailed minutes of this meeting are attached as Appendix B.

7.2 NoK meeting, 30 May 2014

Details of this meeting were circulated to all persons who registered at the public meeting as NoK or IPs, via SMS, and per hand delivered invitations. The meeting was held at the Mogol Club, Lephalale and attended by six NoK, Ms Sophia Matlou representing the Seleka Traditional Authority and Mr Thompson Nyadzani as a LLM representative. Identified NoK who did not attend included Messrs Steven Tibanyane and David Maluleke.

The purpose of the meeting was to outline and explain the legal framework and process within which consultation would take place. The Agreement Framework was also presented, for discussion and comment.

The attending NoK agreed in principle to the remedial actions, principles and entitlements contained in the Agreement Framework.

Significant matters arising included:

- A query by the NoK why Exxaro did not attend the meeting; and
- NoK requested that traditional beer be allowed on site for ritual purposes when visiting their graves.

Detailed minutes and attendance of this meeting are attached as Appendix B.

7.3 NoK meeting, 12 June 2014

Details of this meeting were circulated to all persons who registered at the preceding meetings as NoK or IPs, via SMS. The meeting was held at the Mogol Club, Lephalale and attended by eight NoK, Ms Sophia Matlou representing the Seleka Traditional Authority and Mr Thompson Nyadzani as a LLM representative. In addition, a representative from Exxaro also attended, as per the request of the NoK made in the previous meeting. Identified NoK who did not attend included Messrs Steven Tibanyane and David Maluleke.

The purpose of the meeting was to present the Agreement Framework as amended following the previous meetings and for discussion and comment.

The attending NoK agreed in principle to the remedial actions, principles and entitlements contained in the Agreement Framework.

Significant matters arising included:

- NoK raised concerns regarding their personal safety on mine property, should their should their graves be conserved *in situ*;
- NoK were requested to submit their requirements to perform customary practices in terms of grave relocation at the next meeting; and
- The NoK indicated that they would prefer the ceremonial event to be held at Mogol Club.

Detailed minutes and attendance of this meeting are attached as Appendix B.

7.4 NoK meeting, 26 June 2014

Details of this meeting were circulated to all persons who registered at the preceding meetings as NoK or IPs, via SMS. The meeting was held at the Mogol Club, Lephalale and attended by 12 NoK, Ms Sophia Matlou representing the Seleka Traditional Authority and Mr Thompson Nyadzani as a LLM representative. In addition, a representative from Exxaro also attended, as per the request of the NoK made in the previous meeting. Identified NoK who did not attend included Messrs Steven Tibanyane and David Maluleke.

The purpose of the meeting was to present the Agreement Framework as amended following the previous meetings and finalise the Framework to prepare the final agreements between Exxaro and NoK. The meeting therefore focussed on the remedial actions applicable to grave relocation.

The attending NoK agreed in principle to the remedial actions, principles and entitlements contained in the Agreement Framework, with the exception of the solatia issue.

Significant matters arising included:

- Attending NoK all agreed in principle to relocate their family graves and indicated their preferred places of reburial;
- NoK also submitted their requirements for the relocation ceremony, including amounts they expect for as solatia, totalling R 500 000.00;
- The solatia amounts were not accepted and the NoK requested Exxaro to be present at the following meeting to respond to their questions and concerns.
- Attendees raised concerns regarding their personal safety on mine property, should their should their graves be conserved *in situ*;
- NoK were requested to submit their requirements to perform customary practices in terms of grave relocation at the next meeting; and
- The NoK indicated that they would prefer the ceremonial event to be held at Mogol Club.

During this period, Exxaro was in the process of drafting its Grave Relocation Policy, outlined in 3.3 above. All consultation was therefore postponed until the Policy was finalised and approved by the Exxaro Executive Committee.

Detailed minutes and attendance of this meeting are attached as Appendix B.

7.5 NoK meeting, 22 May 2015

Details of this meeting were circulated to all persons who registered at the preceding meetings as NoK or IPs, via SMS. The meeting was held at the Mogol Club, Lephalale and

attended by 13 NoK, Ms Sophia Matlou representing the Seleka Traditional Authority and Mr Thompson Nyadzani as a LLM representative. In addition, a representative from Exxaro also attended, as per the request of the NoK made in the previous meeting. Identified NoK who did not attend included Messrs Steven Tibanyane and David Maluleke.

The purpose of the meeting was to summarise the consultation process to date, present the Exxaro Grave Relocation Policy and Framework Agreement and come to a final resolution and way forward.

No resolution could be reached between the attending NoK and Exxaro with regard to the proposed grave relocation of the NoK's family graves.

Significant matters arising included:

- Issues regarding culturally specific customs that need to be adhered to in relation to grave relocation;
- Issue regarding cash compensation for grave relocation;
- The legal advisors for Chief Seleka had not seen the Exxaro Grave Relocation policy and requested copies and time to review the policy against other policies in the country.

The meeting was concluded without any final resolution reached. Detailed minutes and attendance of this meeting are attached as Appendix B.

7.6 NoK meeting, 10 July 2015

Details of this meeting were circulated to persons who registered at the preceding meetings as NoK or IPs, via SMS. The meeting was held at the Marapong Public Library, Lephalale. The meeting was attended by representatives of all the NoK, with the exception of Messrs David Maluleke and Jacob Matlou, the Seleka Traditional Authority and their legal advisors, ward councillors, and Exxaro officials.

The purpose of the meeting was to reach final agreement between Exxaro and NoK regarding the relocation of their family graves, and to plan the consultation process following this meeting.

The attending NoK agreed to exhume and relocate their family graves in line with the remedial actions, principles and entitlements contained in the Agreement Framework, as amended throughout the consultation process.

Significant matters arising included:

- General consensus among the Seleka Traditional Authority and their legal advisors, as well as attending NoK that the consultation process must end and agreements signed off;
- Individual consultation with NoK will be undertaken during August 2015 to reach final agreements and sign-off on these.



Individual meetings with NoK were held from 13 to 14 August 2015 – these meetings are not summarised in this section of the report, as the outcomes are summarised in 0 below.

Detailed minutes and attendance of this meeting are attached as Appendix B.

7.7 NoK meeting, 26 August 2015

A meeting was scheduled at the request of NoK who did not agree to grave relocation. The meeting was held at the Marapong Public Library. NoK were notified of the meeting via SMS and telephone calls.

The purpose of this meeting was to consult with the Messrs Maluleke, Tibanyane and Matlou in terms of their request to involve the CRL.

The following matters were raised:

- Mr Motsekga of the Seleka Traditional Authority confirmed that Exxaro will ensure all required rituals will be performed for grave relocation;
- Mr Steven Tibanyane stated that a land claim has been lodged for Vaalpensloop, and that if the graves are relocated the land claim will not be taken into consideration;
- Adv. Seshoka stated that the land claim and grave relocation process are two separate issues.

Exxaro requested that Adv. Seshoka close the meeting and arrange a follow up meeting where the CRL will be present to address any issues raised by the NoK.

Detailed minutes and attendance of this meeting are attached as Appendix B.

7.8 NoK meeting, 17 November 2015

Details of this meeting were circulated to Messrs Tibanyane, Matlou and Maluleke by Adv. Seshoka, as per agreement reached in the previous meeting. The meeting was held at Exxaro's office in Onverwacht, Lephalale.

The meeting was attended by Exxaro representatives, NoK who included Messrs Tibanyane and Maluleke and their relatives, Mr Kgositsoi Sedupane from the CRL and Mr Tele Maphoto, Head of Programmes: Restitution of the Department of Rural Development and Land Reform (Limpopo).

The purpose of the meeting was to enable the families to raise issues directly with the CRL as previously requested. The CRL and Department of Rural Development and Land Reform representatives would also be taken to site to familiarise themselves with Thabametsi Project area.

The following significant matters were raised:

- Mr Steven Tibanyane provided a summary of his association with Vaalpensloop in support of land claim submitted by him in 2014. He also stated that he is not willing to relocate his grave or discuss this matter further – his main concern is the land claim;



- Mr David Maluleke stated that he is not willing to relocate his family graves, but that if it has to happen, the graves should be relocated to another part of Jackalsvley;
- Mr Joel Ngobeni stated that he last visited his family graves in 1961, and cannot remember where they are situated anymore;
- The CRL and Department of Rural Development and Land Reform both confirmed that the grave relocation and land claims processes are two separate issues: the one does not affect the other;
- The Department of Rural Development and Land Reform further stated that land claims can only be awarded to claimants who had been land owners or labour tenants, and who were forcibly removed; and
- The planned site visit did not take place.
- Detailed minutes and attendance of this meeting are attached as Appendix B.

7.9 NoK site visit, 30 November 2015

Following the meeting of 17 November, a site visit was arranged. This site visit was attended by CRL commissioners, a local ward councillor, Adv. Seshoka and Messrs Tibanyane and Maluleke. Transport was provided to the NoK.

No records of this meeting were kept.

8 Sign-off of agreements

8.1 Summary of consultation process

The results of the NoK consultation are presented in Section 7 above. In principle, NoK engaged during the consultation process agreed to the principles and remedial actions presented and discussed at each of the six meetings held (12 April 2014 to 10 July 2015).

The total number of affected graves that have been identified for relocation amounted to 19. This number includes graves not originally identified in the HIA (mentioned in 1.1 above). The consultation process identified seven NoK, accounting for 16 of the 19 graves (84% success rate). NoK of only three graves could not be identified (16% of total graves).

As at the time of compiling this report, four of the seven NoK have formally agreed to relocate their family graves, accounting for five graves (26% of total grave count). Three NoK have not agreed, accounting for 11 graves (58% of the total grave count). However, of these 11 graves, the actual existence of nine graves will need to be confirmed through GPR and test excavations.

The aforementioned figures are graphically depicted in Figure 7.

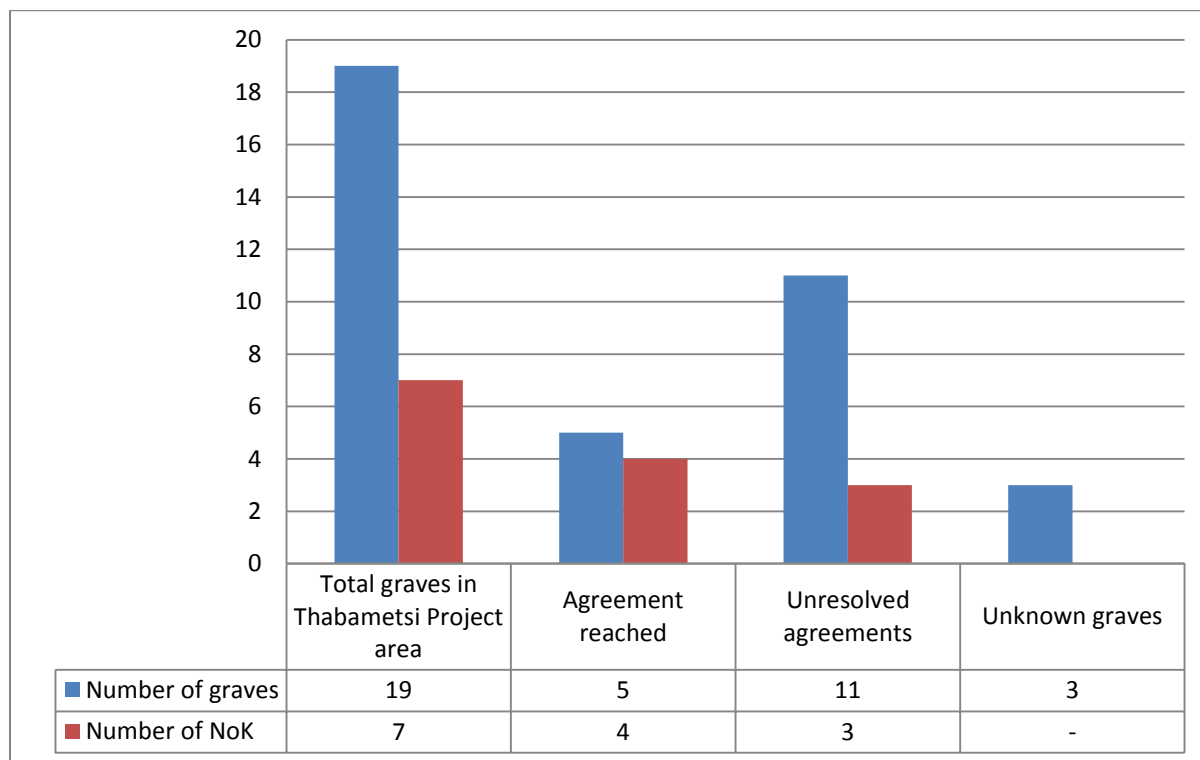


Figure 7: Summary of consultation results

The relatives who have signed off on the Agreements are the bona fide NoK or representatives of the deceased as summarised in Table 22. The graves associated with these NoK account for five of seven graves contained in a single burial ground (S.36-002) on Vaalpensloop 313 LQ.

Table 22: List of graves and NoK in agreement

Grave no.	Deceased	Date of burial	NoK	NoK's relationship to deceased
S.36-002/2	Matlou , Anna / Mmannana	Unknown	Nkoati , Lettia / Israel	Cousin
S.36-002/3	Tibanyane , Klaas	09/04/1960	Leola , Catherine Mathaga	Spouse
S.36-002/4	Tibanyane , Mishack Tshidi Lesisana	12/04/1980	Mashabane , Makgaetsi Emmie	Grandchild
S.36-002/5	Serumula , Stephina	26/09/1984	Serumula , Isamai Fanie	Child
S.36-002/7	Tibanyane , Mferoane	1990	Mashabane , Makgaetsi Emmie	Grandchild

Notwithstanding the concerted efforts made to contact and consult NoK to reach agreement on the relocation all affected graves, no agreements have been reached with Messrs Steven Tibanyane, David Maluleke and Jacob Matlou. The graves associated with these NoK are

listed in Table 23. These graves account for two graves in burial ground S.36-002 on Vaalpensloop 313 LQ, and nine graves on Jackalsvley 309 LQ.

Table 23: List of graves and unresolved NoK agreements

Grave no.	Deceased	Date of burial	NoK	NoK's relationship to deceased
S.36-002/1	Matlou , Smith	30/08/1959	Closest living relative	Matlou , Jacob
S.36-002/6	Tibanyane , Lotta	16/01/1985	Son	Tibanyane , Steven
S.36-018	Maluleke ,	Unknown	Closest living relative	Maluleke , Tloki
S.36-019	Maluleke ,	Unknown	Closest living relative	Maluleke , Tloki

The signed agreements between NoK and Exxaro are attached as Appendix C. The Agreements were based on the Agreement Framework, amended with input from NoK and Exxaro, as captured in the minutes (attached as Appendix B).

8.2 Preferred reburial sites

Following the final group NoK meeting, summarised in 7.6 above, individual meetings with NoK were scheduled at their places of residence. The purpose of these meetings was to finalise the Agreements and obtain sign-off between Exxaro and NoK. The NoK who signed the relocation agreements indicated their preferences for reburial sites as follows:

- Mr Fannie Seremula, who requested that his family grave be exhumed and reburied in Shongwane 3;
- Mrs Catherine Leola family who requested that her family grave be exhumed and reburied in Marapong;
- Mrs Emmie Mashabane who requested that her two family graves be exhumed and reburied in Marapong; and
- Mrs Maria Nkoati who requested that her family grave be exhumed and reburied in Marapong.

The three graves without any identified NoK will all be reburied within registered municipal cemeteries in Lephale.

8.3 Customary requirements submitted by NoK

Consultation further resulted in agreements between NoK and Exxaro regarding requirements by NoK to practice their living heritage associated with grave relocation. Exxaro has agreed to provide certain items, based on the requirements submitted by NoK who have formally agreed to relocating their family graves.

The requirements submitted by NoK were considered by Exxaro, taking into account NoK's cultural practices and reasonable demands. The requirements that were finally agreed to resulted from consultation and negotiation between Exxaro and NoK.

NoK furthermore requested that the ceremonial event be hosted at the Mogol Club, Lephalale as a single event that all the families can attend.

8.4 Proposed way forward

With regard to the graves associated with NoK who have not reach agreement mentioned in 7 and 8.1 above, Digby Wells is of the opinion that these graves will be at risk both during the development and later operation of the Thabametsi Project. Should these graves remain *in situ*, not only will there be direct, physical risk to the graves, but access to the sites will be greatly restricted and pose significant safety and health risks to any family visiting the sites.

In addition the actual existence and location of nine graves on Jackalsvley have not been determined. These burial grounds will need to be subjected to GPR and test excavations as stated in 5.1.5 above.

Digby Wells, on behalf of Exxaro, proposes to submit permit applications to relocate all 19 graves that will be affected by the Thabametsi Project. Graves S3.6-002/1, 002/6, 018 and 019 are therefore included in the permit applications, with specific reference to Regulation 40(3) of GN R 548.

In support of the application, this document and its appendices provide proof of the concerted efforts made to contact and reach agreement with the identified NoK over a 33-month period.

9 References

- IFC. (2012). *Handbook for Preparing a Resettlement Action Plan*. Washington: the International Finance Corporation (IFC).
- Karodia, S., & Higgitt, N. (2013). *Heritage Impact Assessment for the proposed Thabametsi Project, Lephalale, Limpopo Province*. Randburg: Digby Wells Environmental.
- Pistorius, J. (2010). *A Phase 1 Heritage Impact Assessment Study for Exxaro's Proposed New Thaba Metsi Open Cast Coal Mine near Lephalale in the Limpopo Province of South Africa*. Archaeology and Heritage Management Consultants.



Appendix A: Public announcement material



Appendix B: Records of meetings



Appendix C: Signed agreements



Appendix D: Grave register