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Statement of significance – Impact on identified heritage resources as indicated on Drawing Ntshongeni Urban Core Rev 17 drawn March 01, 2022 (12 April 2022)

Debbie Whelan of Archaic Consulting was requested by Hlalelo Makwabe from Tongaat Hulett Developments (Pty). Ltd to prepare a statement with respect to impact of proposed road network layouts on the properties surrounding the Kassier Road extension and the N3 Highway at the Shongweni interchange.

This is with respect to potential impact on properties identified as being of heritage value, or of no heritage value, in the report compiled by Archaic Consulting in May 2012 entitled *Assessment and Mapping of Heritage Resources on the Shongweni Estate for Tongaat Hulett Properties*.

Hlalelo Makwabe provided Archaic Consulting with the drawing described in the title of this document, for assessment against the abovementioned report. Additional features as per the extended development proposals are;

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- Inclusion of an on-site sewage treatment plant to act as a temporary sewage solution associated with construction of the Urban Core Precinct, until such time that the eThekweni Municipality upgrades the Umhlatazana Waste Water Treatment Plant to service the ultimate sewage requirements associated with the entire Ntshongweni Mixed Use Development (Urban Core Precinct). The temporary Sewage Treatment plant is intended to process approximately 1.95 Mega Litres (ML) of effluent per day. The package plant will be located at the same location as the previously proposed/ assessed pump station which had a footprint of 26m x 25m, whereas the new sewage package plant will have a footprint of 76m x 49m. The treated effluent will be discharged into the Channelled Valley Bottom wetland associated with the Wekeweke Stream.
- Construction of a new loop road near the entrance of the development site. The proposed loop road is anticipated to result in the clearing of approximately 5.2 hectares (ha) of vegetation (sugar cane).
- Construction of a Public Transport (PT) holding facility along the intersection of Kassier Road and the P559 Road. The PT holding area will have a footprint of approximately 6500 square metres.

Of the 11 features of architectural or built nature, the only properties significantly impacted by the road and development routing, is the property described as Estate Management House 2 in the abovementioned report, as well as Seasonal Labour Compound. Further, it must be noted that the original report indicated graves at S29° 48.166'; E30° 43.930'; whilst these are well away from the intended development area, this must be noted and flagged.

The original report prepared in 2012 noted the following for Estate Management House 2.

Estate Management House 2 (S29°48'30.57" E30°44'44.11")

This property was securely fenced and inaccessible. However, it could be seen from its access road, and similar to the property in section 5.3, was difficult to photograph given its position deep onto the site and heavy vegetation. Thus, a photograph is not included.

This is a ranch style suburban building of conventional construction and materials. It is of recent construction, possibly late 1960's to early 1970's. It has no architectural merit and is of similar ilk to the house described in section 5.3. Note, however, that this house is situated in a well-established garden.



Fig 27: Estate management house 2

Estate management house 2 Age: 1960s-1970s	Local	Regional	National	International
Architectural	low	low	low	low
Historical	low	low	low	low
Social	low	low	low	low
Technical	low	low	low	low
Scientific	low	low	low	low

Mitigation: Possibility to retain garden

Recommendations:

The submitted layout intends to **demolish** this site in full in order to provide for residential stands. The original report in May 2012 indicated that this building is of limited architectural, or any other value and noted as mitigation, the possibility for retaining the garden or elements thereof. At the time of writing the building was noted as being late 1960s early 1970s, which would have put it as around 45 years old. Note, the building may currently be over 50 years old. At 60 years old, demolition would be subject to approval by *Amafa*.

Current decision as of 2022: demolition is an option. No change from original report.

The original report produced in May 2012 indicated the following for the Seasonal Labour Compound:

Seasonal Labour compound (S29°48'35.35" E30°44'33.81")

As with the Labour compound in 5.5 above, this compound is also well appointed and slightly elevated, and situated in the middle of the cane fields. It consists of a number of buildings, arranged around a series of courtyard spaces, with established trees in and around these courtyards. There is a football field to the north east of it.



Fig 28 &29: Courtyard in seasonal labour compound

The buildings themselves are utilitarian, constructed out of stretcher bond brickwork, bagged and rule jointed with steel section standard windows, and 'Big Six' asbestos sheeting. Flippant elements of Modernism such as *brise soleil* and screens add privacy. Rooms lead onto the courtyards which assist in constructing a strong sense of place. As with the Full-time labour compound, this complex provides an opportunity for reuse.



Fig 30: Edge from the access road



Fig 31: Courtyard

Seasonal labour compound Age: 1960s?	Local	Regional	National	International
Architectural	low	low	low	low
Historical	low	low	low	low
Social	medium	medium	low	low
Technical	low	low	low	low
Scientific	low	low	low	low

Mitigation: None - However, it is suggested that though these structures do not fall within the ambit of the KwaZulu-Natal Provincial Heritage Act no 4 of 2008, there is opportunity for reuse of what are, at face value, solid and well-designed buildings.

Recommendations:

The submitted layout intends to **closely skirt** this site in full in order to achieve a road layout. The original report in May 2012 indicated that this building is of limited architectural, or any other value, but given its position as a labour compound, it would have medium local and regional social value. It noted as mitigation the possibility for reusing the buildings in the new development.

Current decision as of 2022: Minimal impact indicated. No change from original report. Note the proceedings for identification and monitoring of potential archaeology in the development process.

Appendix 1 General reminder on Management of Graves and Burial Grounds

- **Graves younger than 60 years** are protected in terms of Section 2(1) of the Removal of Graves and Dead Bodies Ordinance 7 of 1925 as well as the Human Tissues Act 65 of 1983. Such graves are the jurisdiction of the National Department of Health and the relevant Provincial Department of Health and must be submitted for final approval to the Office of the relevant Provincial Premier. This function is usually delegated to the Provincial Member of the Executive Council for Local Government and Planning, or in some cases the MEC for Housing and Welfare.

Authorisation for exhumation and reinterment must also be obtained from the relevant local or regional council where the grave is situated, as well as the relevant local or regional council to where the grave is being relocated. All local and regional provisions, laws and by-laws must also be adhered to. In order to handle and transport human remains the institution conducting the relocation should be authorised under Section 24 of the Human Tissues Act 65 of 1983.

- **Graves older than 60 years situated outside a formal cemetery administered by a local authority** are protected in terms of Section 36 of the NHRA as well as the Human Tissues Act of 1983. Accordingly, such graves are the jurisdiction of SAHRA. The procedure for Consultation Regarding Burial Grounds and Graves (Section 36(5) of NHRA) is applicable to graves older than 60 years that are situated outside a formal cemetery administered by a local authority. Graves in the category located inside a formal cemetery administered by a local authority will also require the same authorisation as set out for graves younger than 60 years over and above SAHRA authorisation.

If the grave is not situated inside a formal cemetery but is to be relocated to one, permission from the local authority is required and all regulations, laws and by-laws set by the cemetery authority must be adhered to.

The **protocol for the management of graves older than 60 years situated outside a formal cemetery administered by a local authority** is detailed in Section 36 of the NHRA:

- (3) (a) No person may, without a permit issued by SAHRA or a provincial heritage resources authority—
- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
 - (b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
 - (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.
- (4) SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible heritage resources authority.

(5) SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection (3)(b) unless it is satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority—

(a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and

(b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Service and in accordance with regulations of the responsible heritage resources authority—

(a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and

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

Appendix 2. The Vermillion Accord on Human Remains¹ (as adopted in 1989 at WAC Inter-Congress, South Dakota, USA)

1. Respect for the mortal remains of the dead shall be accorded to all, irrespective of origin, race, religion, nationality, custom and tradition.

2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonably inferred.

3. Respect for the wishes of the local community and of relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.

4. Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.

5. Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.

6. The express recognition that the concerns of various ethnic groups, as well as those of science are legitimate and to be respected, will permit acceptable agreements to be reached and honoured.

Appendix 3. Statutory Requirements

General

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

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

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

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

¹ <http://www.worldarchaeologicalcongress.org/>

KwaZulu-Natal Heritage Act 4 of 2008 (KZNHA) and subsequent iterations

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

National Heritage Resources Act 25 of 1999 (NHRA)

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

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

Heritage Impact Assessments

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

- the construction of a road, wall, power line, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
- the construction of a bridge or similar structure exceeding 50m in length;
- any development or other activity which will change the character of a site—
 - (i) exceeding 5 000m² in extent; or
 - (ii) involving three or more existing erven or subdivisions thereof; or
 - (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or
 - (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
- the re-zoning of a site exceeding 10 000m² in extent; or
- any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority.

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

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

It is incumbent upon the developer or Environmental Practitioner to approach the South African Heritage Resources Agency (SAHRA) or Amafa to ascertain whether an HIA is required for a project; what categories of heritage resource must be assessed; and request a detailed motivation for such a study in terms of both the nature of the development and the nature of the environment. In this regard we draw your attention to Section 38(2) of the NHRA which states specifically that 'The

responsible heritage resources authority must ... if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report'. In other words, the heritage authority must be able to justify a request for an Archaeological, Palaeontological or Heritage Impact Assessment. The Environmental Practitioner may also submit information to **the heritage authority** in substantiation of exemption from a specific assessment due to existing environmental disturbance, for example.

Definitions of heritage resources

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

- living heritage as defined in the National Heritage Council Act 11 of 1999 (cultural tradition; oral history; performance; ritual; popular memory; skills and techniques; indigenous knowledge systems; and the holistic approach to nature, society and social relationships);
- ecofacts (non-artefactual organic or environmental remains that may reveal aspects of past human activity; definition used in KwaZulu-Natal Heritage Act 2008);
- places, buildings, structures and equipment;
- places to which oral traditions are attached or which are associated with living heritage;
- historical settlements and townscapes;
- landscapes and natural features;
- geological sites of scientific or cultural importance;
- archaeological and palaeontological sites;
- graves and burial grounds;
- public monuments and memorials;
- sites of significance relating to the history of slavery in South Africa;
- movable objects, but excluding any object made by a living person; and
- battlefields.

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

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

Archaeological means –

- material remains resulting from human activity which are in a state of disuse and are in or on land and are older than 100 years, including artefacts, human and hominid remains and artificial features and structures;
- rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and is older than 100 years including any area within 10m of such representation;
- wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land, in the internal waters, the territorial waters or in the culture zone of the Republic,

as defined respectively in sections 3, 4 and 6 of the Maritime Zones Act 15 of 1994, and any cargo, debris or artefacts found or associated therewith, which is older than 60 years or which SAHRA considers to be worthy of conservation;

- features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found.

Palaeontological means any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace.

A **place** is defined as:

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

Public monuments and memorials means all monuments and memorials:

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

Structures means any building, works, device or other facility made by people and which is fixed to land, and includes any fixtures, fittings and equipment associated therewith.

Management of Graves and Burial Grounds

– Definitions

Grave

The NHRA defines a grave as a place of interment and includes the contents, headstone or other marker of such a place, and any other structure on or associated with such a place.

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

Burial ground

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

Cemetery

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

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

– **Protection of graves and cemeteries**

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

Grave type	Relevant legislation	Administrative authority – disinterment	Administrative authority – reburial
Graves located within a formal cemetery administered by a local authority	KwaZulu-Natal Cemeteries and Crematoria Act 12 of 1996 Human Tissue Act 65 of 1983	National and / or Provincial Departments of Health	If relocated to formal cemetery – relevant local authority.
Graves younger than 100 years located outside a formal cemetery administered by a local authority and the graves of victims of conflict	KwaZulu-Natal Heritage Act 4 of 2008 Human Tissue Act 65 of 1983	Amafa aKwaZulu-Natali, the provincial heritage resources authority	If relocated to private or communal property – Amafa. If relocated to formal cemetery – Amafa and relevant local authority.

– **Procedures required for permission to disinter and rebury graves**

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

SAHRA or Amafa may not issue a permit for any alteration to or disinterment or reburial of a grave unless it is satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority—

- (a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and
- (b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

Any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Services and in accordance with regulations of the responsible heritage resources authority—

- (a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and
- (b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit.