

**HERITAGE MANAGEMENT PLAN FOR GRAVES LOCATED ON
THE EDGE OF THE MINING RIGHT APPLICATION SITE LOCATED
ON PORTION OF PORTION 1 OF THE FARM
KLEINZUCKERBOSCHPLAAT 5 IS IN THE MAGISTERIAL
DISTRICT OF WITBANK, MPUMALANGA PROVINCE**

Heritage Management Plan

August 2020

1 DOCUMENT INFORMATION

Item	Description
Proposed development and location	Mining right application on Portion of Portion 1 of the farm Kleinzuikerboschplaat 5 IS, Ogies in eMalahleni Local Municipality , Mpumalanga Province.
Purpose of the study	To deliniate the grave site and provide site management measures in respect of the mining right application
1:50 000 Topographic Map	2628 AB
Coordinates for burial site	S26° 03' 32.35" E29° 03' 18.50" (OG4); S26° 03' 29.53" E29° 03' 14.88" (OG4A); S26° 03' 29.38" E29° 03' 19.62" (OG4B).
Municipalities	eMalahleni Local Municipality
Predominant land use of surrounding area	Commercial, mining, industrial, powerlines, road, and transport.
Applicant	Greater Witbank Youth Primary Co-operative
Reference no.	MP 30/5/1/13/2/1(11740) EM
Heritage Consultant	Integrated Specialist Services (Pty) Ltd
Date of Report	30 August 2020

NATIONAL LEGISLATION AND REGULATIONS GOVERNING THIS REPORT

This is a specialist report' and is compiled in terms of the National Heritage Resources Act 25 of 1999 and National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended, and the Environmental Impact Assessment Regulations, 2014.

DECLARATION OF INDEPENDENCE

In terms of Chapter 5 of the National Environmental Management Act of 1998 specialists involved in Impact Assessment processes must declare their independence.

I, Trust Mlilo, do hereby declare that I am financially and otherwise independent of the client and their consultants, and that all opinions expressed in this document are substantially my own, notwithstanding the fact that I have received fair remuneration from the client for preparation of this report.

Expertise:

Trust Mlilo, MA. (Archaeology), BA Hons, PDGE and BA General & (Univ. of Pretoria) ASAPA (affiliation member) and more than 15 years of experience in archaeological and heritage impact assessment and management. Mlilo is an accredited member of the Association for Southern African Professional Archaeologists (ASAPA), Amafa akwaZulu Natali and Eastern Cape Heritage Resources Agency (ECPHRA). He has conducted more than hundred AIA/HIA Studies, heritage mitigation work and heritage development projects over the past 15 years of service. The completed projects vary from Phase 1 and Phase 2 as well as heritage nominations, heritage management work for government, municipalities (Ekurhuleni) parastatals (Eskom) and several private companies such as BHP Billiton, Rhino Minerals.

Independence

The views expressed in this document are the objective, independent views of Mr Trust Mlilo and the survey was carried out under TPR Mining Resources (Pty) Ltd. Integrated Specialist Services (Pty) Ltd has no any business, personal, financial or other interest in the on going development apart from fair remuneration for the work performed.

Conditions relating to this report

The content of this report is based on the author's best scientific and professional knowledge as well as available information. Integrated Specialist Services (Pty) Ltd reserves the right to modify the report in any way deemed fit should new, relevant or previously unavailable or undisclosed information become known to the author from on-going research or further work in this field, or pertaining to this investigation.

This report must not be altered or added to without the prior written consent of the author and TPR Mining Resources (Pty) Ltd. This also refers to electronic copies of the report which are supplied for the purposes of inclusion as part of other reports, including main reports. Similarly, any recommendations,

statements or conclusions drawn from or based on this report must make reference to this report. If these form part of a main report relating to this investigation or report, this report must be included in its entirety as an appendix or separate section to the main report.

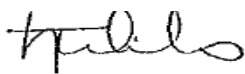
Copyright: This report and the information it contains is subject to copyright and may not be copied in whole or part without written consent of TPR Mining Resources (Pty) Ltd., and Integrated Specialist Services (Pty) Ltd except that the report can be reproduced by The Greater Witbank Youth Primary Cooperative and The South African Heritage Resources Agencies to the extent that this is required for the purposes of the Archaeological and Heritage Management purposes in accordance with the National Heritage Resources Act, Act 25 of 1999.

Geographic Co-ordinate Information: Geographic co-ordinates in this report were obtained using a hand-held Garmin Global Positioning System device. The manufacturer states that these devices are accurate to within +/- 5 m.

Maps: Maps included in this report use data extracted from the NTS Map and Google Earth Pro.

Disclaimer: The Author is not responsible for omissions and inconsistencies that may result from information not available at the time this report was prepared.

Signed by

A handwritten signature in black ink, appearing to be 'H. P. de V.' or similar, written in a cursive style.

30 August 2020

Acknowledgements

The author acknowledges TPR Mining Resources (Pty) Ltd and Greater Witbank Youth Primary Cooperative for their assistance with project information, and previous reports for the project as well as responding to technical queries related to the project.

2 TABLE OF CONTENTS

1	DOCUMENT INFORMATION	2
2	TABLE OF CONTENTS.....	5
3	EXECUTIVE BRIEF	6
4	ABBREVIATIONS.....	7
5	DEFINITIONS.....	8
6	INTRODUCTION	11
7	AIMS OF THE MANAGEMENT PLAN.....	12
8	METHODOLOGY	12
9	CONTEXT OF THE CEMETERY/DESCRIPTION OF THE AFFECTED CEMETERY	13
10	LEGAL CONTEXT	22
11	PUBLIC CONSULTATIONS	25
12	PRESERVATION OF THE SITE: REQUIREMENTS	26
13	MONITORING OF SITE.....	27
14	MITIGATION MEASURES.....	27
15	ACCIDENTAL DISCOVERIES/DISTURBANCE OF GRAVES.....	28
16	RECOMENDATIONS.....	28
17	CONCLUDING REMARKS.....	29
18	BIBLIOGRAPHY	30
19	APPENDIX 1:BURIAL RELOCATION PROJECT METHOD STATEMENT.....	31
20	APPENDIX 2: GENERAL PRECAUTIONS.....	35
21	APPENDIX 3: HUMAN REMAINS AND BURIALS IN DEVELOPMENT.....	- 37 -
22	APPENDIX 4: LEGAL BACKGROUND AND PRINCIPLES OF HERITAGE RESOURCES MANAGEMENT IN SOUTH AFRICA	40

3 EXECUTIVE BRIEF

This document is a management plan for a section of a cemetery that is located within mining right application site on Portion of Portion 1 of the farm Kleinzuikerboschplaat 5 IS, Orgies in eMalahleni Local Municipality, Mpumalanga Province. Integrated Specialists Services (Pty) Ltd heritage specialists undertook the assessment and delineation of the affected burial site in relationship to the mining right application site for Greater eMalahleni Youth Primary Co-operative. The Phase 3 Management Plan was commissioned by Greater eMalahleni Youth Primary Cooperative. The exercise constitutes delineation of the burial site in question and providing measures to avoid any potential damage to the site especially during the operational phase of the proposed coal mining development. This exercise is in response to the directive issued by DMR (Ref: MP 30/05/1/1/3/2/2/1(11740 EM) dated 04 August 2020. The DMR directive instructed the applicant to address issues raised during a site inspection that involved the applicant and DMR officials.

A graveyard consisting of about 200 graves (Pelser 2018, Cilliers 2015) is located on the southern edge of the mining right site. (see Figs. 1 & 2). The earliest, dated grave is from 1950, although they could be some older graves without inscribed headstones. In addition, based on its location within the graveyard, it is unlikely that it is the oldest grave. These graves would fall under regulations such as subsection 1 of Section 36 (see particularly 36 (3) (a) (b)) of the National Heritage Resources Act, and the Human Tissues Act. Exhumation of graves less than 60 years old would fall under the Exhumations Ordinance, Ordinance No.12 of 1980. A Phase 1 archaeological impact assessment was carried out by Pelsers (2018) for the mining right application which identified the cemetery and Cilliers (2015) recorded the same cemetery while doing HIA for a powerline project. The HIA study could not delineate the burial site due to dense grass and vegetation. Integrated Specialist Services (Pty) Ltd specialists conducted the second assessment of the burial site in relation to the revised mining right site which was reduced from 5ha to 3.5ha to provide adequate buffer zone for the graveyard (see Figure 3). Based on the new sketch plan of the mining right application site the proposed coal mining will not directly impact on the graveyard (see Appendix 3), in terms of SAHRA requirements a management plan has to be submitted for the graveyard to ensure its safety during the operational phase of the mining project. A management plan (in this case a conservation management plan) is designed to preserve, present and maintain a place and its values, and must provide objectives, clear operational requirements and future development guidance. It must also identify responsible parties and include a monitoring process.

4 ABBREVIATIONS

AIA	Archaeological Impact Assessment
C	Contractor
CECO	Construction Environmental Conservation Officer
EAP	Environmental Assessment Practitioner
ECO	Environmental Conservation Officer
EIA	Environmental Impact Assessment
EM	Environmental Manager
EMP	Environmental Management Plan
HIA	Heritage Impact Assessment
ISS	Integrated Specialist Services (Pty) Ltd
LIA	Late Iron Age
NHRA	Nation Heritage Resources Act, Act 25 of 1999
PM	Project Manager
SM	Site Manager
SAHRA	South African Heritage Resources Agency

5 DEFINITIONS

The following terms used in this Archaeological /Heritage Impact Assessment are defined in the National Heritage Resources Act [NHRA], Act Nr. 25 of 1999, South African Heritage Resources Agency [SAHRA] Policies as well as the Australia ICOMOS Charter (*Burra Charter*):

Archaeological Material remains resulting from human activities, which are in a state of disuse and are in, or on, land and which are older than 100 years, including artifacts, human and hominid remains, and artificial features and structures.

Chance Finds means Archaeological artefacts, features, structures or historical cultural remains such as human burials that are found accidentally in context previously not identified during cultural heritage scoping, screening and assessment studies. Such finds are usually found during earth moving activities such as powerline pole position excavations.

Compatible use means a use, which respects the cultural significance of a place. Such a use involves no, or minimal, impact on cultural significance.

Conservation means all the processes of looking after a place so as to retain its cultural significance.

Cultural Heritage Resources Same as **Heritage Resources** as defined and used in the National Heritage Resources Act (Act No. 25 of 1999). Refer to physical cultural properties such as archaeological and palaeontological sites; historic and prehistoric places, buildings, structures and material remains; cultural sites such as places of ritual or religious importance and their associated materials; burial sites or graves and their associated materials; geological or natural features of cultural importance or scientific significance. **Cultural Heritage Resources** also include **intangible resources** such as religion practices, ritual ceremonies, oral histories, memories and indigenous knowledge.

Cultural significance means aesthetic, historic, scientific, social or spiritual value for past, present or future generations.

Cultural Significance also encompasses the complexities of what makes a place, materials or intangible resources of value to society or part of, customarily assessed in terms of aesthetic, historical, scientific/research and social values.

Environment The surroundings within which humans exist and that are made up of: i. the land, water and atmosphere of the earth;

ii. micro-organisms, plant and animal life;

iii. any part or combination of (i) and (ii) and the interrelationships among and between them; and,

iv. the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being. This includes the economic, social, cultural, historical and political circumstances, conditions and objects that affect the existence and development of an individual, organism or group.

Environmental impact assessment An Environmental Impact Assessment (EIA) refers to the process of identifying, predicting and assessing the potential positive and negative social, economic and biophysical impacts of any proposed project, plan, programme or policy which requires authorisation of permission by law and which

may significantly affect the environment. The EIA includes an evaluation of alternatives. As well as recommendations for appropriate mitigation measures for minimising or avoiding negative impacts, measures enhancing the positive aspects of the proposal and environmental management and monitoring measures.

Expansion means the modification, extension, alteration or upgrading of a facility, structure or infrastructure at which an activity takes place in such a manner that the capacity of the facility or the footprint of the activity is increased;

Fabric means all the physical material of the place including components, fixtures, contents and objects.

Grave A place of interment (*variably referred to as burial*), including the contents, headstone or other marker of such a place, and any other structure on or associated with such place. A grave may occur in isolation or in association with others where upon it is referred to as being situated in a cemetery (*contemporary*) or **Burial Ground** (*historic*).

Heritage impact assessment (HIA) refers to the process of identifying, predicting and assessing the potential positive and negative cultural, social, economic and biophysical impacts of any proposed project, plan, programme or policy which requires authorisation of permission by law and which may significantly affect the cultural and natural heritage resources. The HIA includes recommendations for appropriate mitigation measures for minimising or avoiding negative impacts, measures enhancing the positive aspects of the proposal and heritage management and monitoring measures.

Historic Material remains resulting from human activities, which are younger than 100 years, but no longer in use, including artefacts, human remains and artificial features and structures.

Impact The positive or negative effects on human well-being and / or on the environment.

In Situ material Material culture and surrounding deposits in their original location and context, for example an archaeological site that has not been disturbed by farming.

Interested and affected parties Individuals, communities or groups, other than the proponent or the authorities, whose interests may be positively or negatively affected by the proposal or activity and/ or who are concerned with a proposal or activity and its consequences.

Interpretation means all the ways of presenting the cultural significance of a place.

Late Iron Age this period is associated with the development of complex societies and state systems in southern Africa.

Material culture means buildings, structure, features, tools and other artefacts that constitute the remains from past societies.

Mitigate The implementation of practical measures to reduce adverse impacts or enhance beneficial impacts of an action.

Place means site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views.

Protected area means those protected areas contemplated in section 9 of the NEMPAA and the core area of a biosphere reserve and shall include their buffers;

Public participation process A process of involving the public in order to identify issues and concerns, and obtain feedback on options and impacts associated with a proposed project, programme or development. Public Participation Process in terms of NEMA refers to: a process in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to specific matters

Setting means the area around a place, which may include the visual catchment.

Significance can be differentiated into impact magnitude and impact significance. Impact magnitude is the measurable change (*i.e. intensity, duration and likelihood*). Impact significance is the value placed on the change by different affected parties (*i.e. level of significance and acceptability*). It is an anthropocentric concept, which makes use of value judgments and science-based criteria (*i.e. biophysical, physical cultural, social and economic*).

Site A distinct spatial cluster of artefacts, structures, organic and environmental remains, as residues of past human activity.

Use means the functions of a place, as well as the activities and practices that may occur at the place.

6 INTRODUCTION

Brief Background

In the course of Heritage Impact Assessment for the proposed Greater Witbank Youth Primary Co-operative mining right application at Ogies, a cemetery was recorded on the southern edge of the mining right application (Pelser 2018). The same cemetery was also recorded by Cilliers (2015) during survey for a powerline development cutting across the mining right application site. Pelsers (2018) utilised site descriptions provided by (Cilliers 2020). The initial survey by Pelsers (2018) could not establish the extent of the cemetery in respect of the mining right application site due to dense vegetation cover. As a result, DMR officials and the applicant visited the site to assess the extent of the burial site in relation to the mining right application. Following the site visit DMR wrote a directive to the applicant dated 04 August 2020 instructing the client among other things to submit a management plan for the graves, provide a buffer zone for the graves and to submit a sketch plan of the mining right application site. It is against this background that Greater Witbank Youth Primary Co-operative requested the author to compile a cultural heritage management plan for the cemetery in accordance with DMR directives. It should be noted that Greater Witbank Youth Primary Cooperative reduced the size of the mining right application site from 5ha to 3.5ha to provide adequate buffer zone for the affected graves (see Figure 1). This study was commissioned to fulfil the requirements set out in the DMR's directive. Comments from SAHRA Burial Ground and Graves Unit in Pretoria must be submitted together with BAR as instructed by DMR.

7 AIMS OF THE MANAGEMENT PLAN

The aims of the site investigations were as follows:

- To establish the extent of cemetery in relationship with the mining right application site.
- To provide mitigation measures for appropriate management of the cemetery during the operational stage of the mining development.
- To investigate potential options or mitigation measures to avoid the affected burial site without altering the development plan significantly.
- To investigate the nature of the site, the age, types of burials in order to determine their protection level i.e older than 60 years are protected by the NHRA and graves younger than 60 years are protect by the Human Tissue Act.
- To establish whether the site is still active or not and whether there are any custodian or families coming to conduct rituals at the site. This information is vital when eventually you want to track custodians to relocate the graves or to fence around the site.

The inspection process at the affected site was necessitated by the need to delineate the cemetery in respect of the proposed mining right application. This exercise involved the heritage specialists, the applicant. ISS Heritage specialists were responsible for assessing and suggesting appropriate mitigation measures to protect the site from the proposed mining and associated infrastructure.

8 METHODOLOGY

This document falls under Phase 3 heritage mitigation and therefore aims at providing protection of gravesite threatened by the mining right application. This is usually achieved through a combination of a review of any existing literature and a basic site inspection. As part of the desktop study, published literature and cartographic data, as well as archival data on hisory of the cemetery were consulted. The desktop study was followed by field investigation conducted on the 28th of August 2020 by team of two archaeologists and representatives of the applicant. The field assessment was conducted according to generally accepted HIA practices and aimed at assessing the impact of the proposed mining development. We conducted a random transect walk across the site to eastablish the extent of the site in

relation to the mining right application. The site was geo-referenced with a hand held Global Positioning System (GPS) for recording the location/position of the last line of graves near the boundary of the proposed mining right applicao. Detailed photographic recording of the graves was undertaken. The findings were then analysed in view of the proposed new reduced sketch plan for the mining right application. The result of this investigation is a managementy plan mainly focussing on the protection of the affected cemetery. The main focus of the survey involved a pedestrian survey which was conducted across the cemetery and the mining right application.

9 CONTEXT OF THE CEMETERY/DESCRIPTION OF THE AFFECTED CEMETERY

There are three recorded graveyard sites (sites OG 4, 10 and 12) which were identified during the physical survey and with the help of previously located graveyards during heritage surveys (Cilliers 2015). Description: A large historic graveyard. There are more than 200 graves located here, some have headstones with the particulars of the deceased on them and others do not. The graves range from those who are under 60 years old and those who are older than 60 years (Cilliers 2015). Names and surnames on the headstones suggest that this was a community graveyard of local mine and farm workers. Sites OG 4A and 4B in the List of Site Locations represent the northern and south-eastern extremities of the graveyard site. Although the biggest section of this cemetery that contains a large number of graves falls outside of and on the south-eastern boundary of the development area, some graves fall inside and very close to it (Pelser 2018). The significance of burial grounds and gravesites is closely tied to their age and historical, cultural, and social context. Nonetheless, every burial should be considered as of high socio-cultural significance protected by practices, a series of legislations, and municipal ordinances.



Plates 1: Shows the graves that fall within the mining right application site.



Plates 2: Shows the section graveyard outside the mining right application site.



Plates 3: Shows some of the old graves at the graveyard.



Plates 4: Shows graves outside the mining right application site adjacent to R545.



Plates 5: Shows graves outside the mining right application which are associated with the ones that fall within the mining right application.



Plates 6: Shows graves near R545 road to Kriel.



Plate 7: Shows some of the graves that exhibit maintenance by families.



Plate 8: Shows section of the cemetery with sparsely populated graves.



Plate 9: Shows graves with collapsing tombstones



Plate 10: Shows some graves with inscribed headstones.



Plate 11: Shows graves falling within the original mining right application site.



Plate 12: Shows the last line of graves falling within the original mining right application site.



Plate 13: Shows last grave falling within the original mining right application site.



Plate 14: Shows graves at the north eastern end of the cemetery falling within the original mining right application site.



Figure 1: Layout plan for the mining right application site and the recorded burial site (TPR Mining Resources (Pty) Ltd).

10 LEGAL CONTEXT

Burial grounds and graves

36. (1) Where it is not the responsibility of any other authority, SAHRA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit.

(2) SAHRA must identify and record the graves of victims of conflict and any other graves which it deems to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and must maintain such memorials.

(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 a 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.

(7) (a) SAHRA must, over a period of five years from the commencement of this Act, submit to the Minister for his or her approval lists of graves and burial grounds of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or agents provocateur and which, after a process of public consultation, it believes should be included among those protected under this section.

(b) The Minister must publish such lists as he or she approves in the Gazette.

(8) Subject to section 56(2), SAHRA has the power, with respect to the graves of victims of conflict outside the Republic, to perform any function of a provincial heritage resources authority in terms of this section.

(9) SAHRA must assist other State Departments in identifying graves in a foreign country of victims of conflict connected with the liberation struggle and, following negotiations with the next of kin, or relevant authorities, it may re-inter the remains of that person in a prominent place in the capital of the Republic.

Human remains that are less than 60 years old are subject to provisions of the Human Tissue Act (Act 65 of 1983) and to local regulations. Exhumation of graves must conform to the standards set out in the Ordinance on Excavations (Ordinance no. 12 of 1980) (replacing the old Transvaal Ordinance no. 7 of 1925). Permission must also be gained from the descendants (where known), the National Department of Health, Provincial Department of Health, Premier of the Province and local police. Furthermore, permission must also be gained from the various landowners (i.e. where the graves are located and where they are to be relocated to) before exhumation can take place. Human remains can only be handled by a registered undertaker or an institution declared under the Human Tissues Act (Act 65 of 1983 as amended).

The NHRA classify Graves and burial grounds into the following categories

- ❖ ancestral graves
- ❖ royal graves and graves of traditional leaders

- ❖ graves of victims of conflict
- ❖ graves designated by the Minister
- ❖ historical graves and cemeteries
- ❖ human remains

Extracts from The Exhumations Ordinance, Ordinance no. 12 of 1980 “To prohibit the desecration, destruction and damaging of graves in cemeteries and receptacles containing bodies; to regulate the exhumation, disturbance, removal and re-interment of bodies, and to provide for matters incidental thereto”.

A “cemetery” is defined as any land, whether public or private, containing one or more graves.

A “grave” includes: -

- (1) any place, whether wholly or partly above or below the level of ground and whether public or private, in which a body is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not; and
- (2) any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure of whatsoever nature forming part of or appurtenant to a grave.

No person shall desecrate, destroy or damage any grave in a cemetery, or any coffin or urn without written approval of the Administrator.

No person shall exhume, disturb, remove or re-inter anybody in a cemetery, or any coffin or urn without written approval of the Administrator.

Application must be made for such approval in writing, together with:

- (a) a statement of where the body is to be re-interred; and
- (b) why it is to be exhumed.
- (c) The methods proposed for exhumation.

Written permission from local authorities, nearest available relatives and them religious body owning or managing the cemetery; and where all such permission cannot be obtained, the application must give

reasons why not. The Administrator has the power to vary any conditions and to impose additional conditions.

5. Anyone found guilty and convicted is liable for a maximum fine of R200 and a maximum prison sentence of six months.

11 PUBLIC CONSULTATIONS

Stakeholders:

The question needs to be addressed as to whether there are stakeholders from the community, and if so, whether, and how should they be involved in the process. Very few family members visit the graveyard, this is evidenced by new flowers placed on graves and some graves cleaned and decorated. However, most graves are neglected and forgotten. This would have to be determined, if thought necessary, by a separate process.

Responsible parties:

It is not clear who is responsible for the management of the graveyard. This will necessitate a medium-term and a long-term management plan for the graveyard. The medium-term plan will encompass the treatment of the graveyard during the operational phase of the mining development. This is to ensure that there is no accidental damage to the graveyard during mining, and also to ensure that there is no plundering of the graves during the mining phase. The long-term plan will need to be set in place to ensure that the graveyard is maintained, that it does not become an area that is subject to vandalism or neglect within the development, and that it remains preserved. The applicant will have to bear responsibility for the implementation of the medium-term plan, and this will need to be monitored by SAHRA. The long-term plan will be the responsibility of the owners of the graves, and this will need to be established, and agreements entered into before mining takes place. Again, SAHRA Burial Grounds and Graves Unit need to monitor the situation, unless there is an agreement reached with the local Municipality to take over the maintenance of the graveyard.

Decisions that will have to be made will include who controls access to the site by visitors, who will keep the site clean (ie of litter etc), and who will be responsible for general maintenance of the fencing, and also of the graveyard area itself. These decisions will have to be made by the relevant stakeholders, and responsibilities determined.

12 PRESERVATION OF THE SITE: REQUIREMENTS

The graveyard should not be developed further in any way, unless there is consensus about this between the various stakeholders, including SAHRA.

Medium-term plan

The medium-term plan is to ensure that the graveyard is not damaged or vandalised during the construction phase of the project. Preservation of the site will require the determination of the extent of the area to be demarcated as the graveyard area. The graveyard will have to be fenced off for the duration of the construction phase of the project. The fence will have to be a sturdy construction, which will ensure that unauthorised access to the graveyard is impossible, and with a lockable gate (if there is to be a gate).

Long-term plan:

A decision will need to be made as to whether the graveyard should be permanently fenced. In terms of the continuous management of the graveyard, this is the recommended option, as it defines the area, and also makes monitoring of the state of the graveyard easier. It will also ensure that the graveyard is not used as a recreational area (eg. children playing on the graves) and that the area is treated with respect. The type of fence constructed to surround the area will need to meet both security and aesthetic requirements and should be determined in consultation with SAHRA Burial Ground and Graves Unit. The following issues will also have to be addressed in the long-term plan:

1. Maintenance of the graveyard.

The graveyard is an informal one and is located in the open veld. Some of this character should be maintained if possible. In other words, the graveyard should not be cleaned of all the vegetation growing between and on the graves and should not be transformed with gravel or paving between the graves. Shrubs and trees associated with the graveyard or individual graves must not be removed as these serve as markers for reference by family members. The graves themselves should not be “neatened up” (this would be contrary to regulations), and neither should they be tampered with in any way without the involvement of custodians or affected families. However, a certain level of maintenance would have to be conducted. This would entail managing erosion. The mining activity will alter the landscape and has the potential to create water channels that will flood the cemetery. Litter will need to be removed, and it will be necessary to ensure that the fence is maintained, so that the site is not used for inappropriate or illegal

activities such as garbage dumping. A maintenance programme will have to be drawn up and the relevant parties responsible identified.

2 Responsible parties.

The applicant in collaboration with family members will be responsible for the maintenance of the graveyard, the surrounding fence, and for monitoring the site for vandalism or other activities. In this situation the parties responsible need to be identified at an early stage of the development, and any legal documentation or agreements relating to the position of the development and its future relationship with any legal bodies, needs to take this aspect into account.

13 MONITORING OF SITE

It is essential that the site be monitored on a regular basis. This will be the function of the responsible parties identified above, but SAHRA Burial Ground Graves Unit should also monitor the site on an annual basis. The responsible parties for monitoring the site will include the owner of the site, the Municipality if they are to be involved in the maintenance of the site, and any other stakeholders identified. The families will need to be provided with access to monitor the site on a continual basis, with a clearly identified procedure to be followed if maintenance (other than routine maintenance determined above) needs to proceed. Monitoring and maintenance procedures need to be clearly defined within the agreements reached relating to the site.

14 MITIGATION MEASURES

The investigation confirmed that reduction of the mining right application site will provide a buffer zone as instructed by DMR (see Figure 1). In addition, since the grass was burnt, we were able to identify all the graves in the cemetery and were able to determine the extent of the site and therefore demarcate the graveyards. As such it was decided that the most viable mitigation measure would be fence the burial site, however this must be done in consultation with families. Three mitigation measures were mooted.

- The burial site must be preserved *in situ*.
- The burial site must be fenced however, the fence must provide 4 entrances for families to enter without barriers
- Families must be informed about the proposed mining and the potential impacts of the mining activities.

- Notify interested and affected parties about the ongoing construction which may impact the graves.
- Cover the working area with mesh net to avoid dust on graves and memorials within the cemetery.

15 ACCIDENTAL DISCOVERIES/DISTURBANCE OF GRAVES

This being a case of proposed mining development in the vicinity of a burial site the regulations state that when a grave is damaged accidentally in the course of development or other activity: a). SAHRA Burial Ground Graves Unit or the provincial heritage resources authority (or delegated representative) must, in co-operation with the Police, inspect the site and decide whether it is likely to be older than 60 years or otherwise protected in terms of the Act; and whether any further graves exist in the vicinity. b). If the suspected burial is likely to be so protected, no activity may be resumed in the immediate vicinity of the suspected grave, without due investigation approved by SAHRA Burial Ground Graves Unit or the provincial heritage resources authority). SAHRA Burial Ground Graves Unit or the provincial heritage resources authority may at its discretion modify these provisions in order to expedite the satisfactory resolution of the matter. Archaeological materials, which include human and hominid remains that are older than 100 years (see definition in section 2 of the Act), are protected by the National Heritage Resources Act (Section 35(4), which states that no person may, without a permit issued by the responsible heritage resources authority - destroy, damage, excavate, alter or remove from its original site any archaeological or palaeontological material.

16 RECOMENDATIONS

Based on the assessment conducted by ISS and results of consultation the applicant provided adequate buffer zone on the new 3.5ha mining right application site. It is the considered opinion of the author that the mining right application may be approved subject to recommendations provided below. The mining right application may be approved subject to the following recommendations:

- A professional archaeologist must be retained to monitor the erection of the fence to protect the cemetery
- The applicant must put up erosion control measures to protect the site from excessive run off from the mine
- The applicant must provide 4 access points for the cemetery
- Access to the mining right application must not pass through the cemetery

- The applicant must put on-site notices informing families about the need to fence the cemetery
- The contractor must ensure that no grave goods or artefacts should be removed from the graves.
- No stone robbing or removal of any material is allowed. Any disturbance or alteration on this graveyard would be illegal and punishable by law, under section 36 (3) of the National Heritage Resources Act NHRA of 1999 (Act 25 of 1999).
- The developer/contractor must maintain a buffer zone of approximately 100m between graves and the working area in accordance with heritage legislation.
- No dumping of construction material is allowed within the burial site and no un-monitored alteration or excavation within the cemetery may occur.
- Mine workers must be notified and oriented about the sensitivity of the affected burial site before construction commences.
- Noteworthy that any measures to cover up any accidental damage of graves or to collect any grave goods is illegal and punishable by law. In the same manner, no person may exhume or collect such remains, whether of recent origin or not, without the endorsement by relevant authority.

17 CONCLUDING REMARKS

Integrated Specialist Services (Pty) Ltd was appointed by Greater Witbank Youth Primary Co-operative to investigate, delineate the affected graveyard and compile a management plan for the affected graves. In terms protection of the graveyard, the measures provided are adequate, however, should need arise further mitigation measures will be mooted since a management plan is subject to reviews at reasonable intervals. This report concludes that the proposed mining development may proceed as planned subject to recommendations herein made (See Appendices 1, 2 &3). The measures are informed by the results of the study and principles of heritage management enshrined in the NHRA, Act 25 of 1999.

18 BIBLIOGRAPHY

Australia Icomos (1999) *The Burra Charter: The Australia ICOMOS charter for places of cultural significance*. Burwood.

Bickford, A and Sullivan, S. 1977. "Assessing the research significance of historic sites" in S Sullivan and s. Bowdler (eds), *Site Surveys and Significance assessment in Australian Archaeology*. Canberra: ANU.

Brothwell, D.R. 1981. *Digging up Bones: The excavation, treatment, and study of human skeletal remains*. UK: OUP.

Burke, H. And Smith, C. 2004. *The archaeologist's field handbook*. Allen and Unwin. Australia.

Gaigher, S. 2017. *Phase 1 Heritage Impact Assessment Report for the proposed new Modder Ext 4 Residential Development on part of the Remainder of Portion of the Farm Modderfontein 76 IR near Benon Ekurhuleni Metropolitan Municipality, Gauteng Province*

Gaigher, S. 2017. *Phase 1 Heritage Impact Assessment Report for the proposed new Modder Ext 6 light industrial development on part of the remainder of Portion 1 of the farm Modderfontein 76 IR near Benoni Ekurhuleni Metropolitan Municipality, Gauteng Province*.

Hammond-Tooke, D.1993. *The roots of Black South Africa*. Johannesburg: Jonathan Ball Publishers.

Human Tissue Act, 1983 (Act No.65 of 1983)

Huffman, T.N. 2009. *Heritage Assessment for Modderfontein Project Gauteng*

Murimbika M. & Huffman, TN. 2003 (December Issue). *Shona ethnography and Late Iron Age Burials* Journal of African Studies, Vol.1 (2): 237-246.

National Heritage Resources Act (No. 25 of 1999).

National Heritage Resources Act (No 25 of 1999). 2002. Regulations.

SAHRA. 2002. General Introduction to surveys, impact assessments and management plans.

SAHRA. 2002. General guidelines to Archaeological Permitting Policy.

SAHRA. What to do when Graves are uncovered accidentally.

19 APPENDIX 1: BURIAL RELOCATION PROJECT METHOD STATEMENT

1. DISCOVERY AND NOTIFICATION

If human burial remains are accidentally discovered during development at the construction site the following guidelines apply:

- a) The finder will immediately cease any further activity at the site and report the site to the Project ECO. The ECO will notify the heritage expert (Archaeologist) and authorities.

2. SITE PROTECTION AND IDENTIFICATION

- a) The ECO and the Archaeologist and the permitting authority shall take reasonable measures to protect the site from environmental factors and any form of unauthorized interference or disturbance.
- b) Based on the evidence reported at the scene, the Archaeologist will investigate the site and make a preliminary determination as to the nature of the remains.
- c) Existing site inventories, land use records, and community, and authorities, should be consulted as soon as possible about possible identification of the remains. Some examination of the site/remains may be required to determine its cultural affiliation and age, and whether or not the site is modern or historic.
- d) The Archaeologist shall apply and acquire the relevant exhumation and rescue Permit from SAHRA Graves and Burial Unit.

3. INVESTIGATION AND REPORTING

- a) The ECO will direct the Archaeologist to carry out an investigation under any required permits, in consultation with the affected custodians (if available) and other affected parties, to make an initial report citing, if possible, the cultural affiliation of the human remains.
- b) Within a reasonable time to be specified by the EO, and the affected parties, the Archaeologist shall deliver a written report and any notification not yet made, to:
 - the ECO, and the affected custodians if appropriate;
 - the SAHRA;
 - the permitting authority of SAHRA Graves and Burials Unit
 - any other representative of the interred, if known.
- c) The written report shall attempt to identify:
 - the representative group of the interred;
 - the geographic boundaries of the site;

- the grave offerings or other heritage resources that may be associated with the remains or the site.

d) The Archaeologist may, with the agreement of the proper authority and the representative of the interred, if known, remove all or part of the human remains for temporary custody where the remains may otherwise be at risk prior to their re-burial at a safe site.

3.1 REPORTING

a) If the site is determined to be a contemporary burial site, the appropriate representative will be contacted in writing to provide further direction on the disposition of the remains.

b) Project contractors carrying out authorized activity where a historic or archaeological burial site is discovered can continue that activity with the consent of the EO, where appropriate. The activity must stay 150 meters away from the grave while further arrangements are made by the Archaeologist to rescue and relocate the remains to a safe cemetery.

d) The Archaeologist may publish notice of the discovery in a newspaper or other public notice seeking information on the remains and alerting members of the public about the impending relocation of the remains to a predetermined formal cemetery or burial ground.

4. SITE DISPOSITION AGREEMENT (MANAGEMENT PLAN)

4.1 When the site or remains are identified

a) The site shall not be disturbed and the EO, if on direct path of Project development work, shall initiate discussions towards entering into a site disposition agreement with the representative of the interred where applicable.

b) If the site is a historic or archaeological burial site, there must be joint approval of the site management plan on reburial as stated in the scope of services in terms of contract between Project proponents and Sativa.

c) Decisions regarding reburial, relocation or other disposition should be determined on a case by case basis in consultation with those concerned and in a timely manner.

Site disposition agreements shall determine such things as:

1. the interim care of the human remains;
2. the scope and extent of analysis to be performed on the human remains, if any;
3. the exact location of the place where the human remains are to remain or to be interred;
4. the style and manner of disinterment, if applicable;
5. the style and manner of reinterment, if applicable;
6. the time period in which disinterment and reinterment is to take place;

7. the procedures relating to, and the final disposition of any grave offerings discovered with the human remains and any additional analysis of them;
8. the provision for future maintenance of the cemetery or site where the human remains are to be located;
9. access to the site and ways to prevent disturbance;
10. any other issue agreed upon.

4.2 When no representative is identified or no disposition is specified:

If disposition is not specified by a representative, or the remains are not claimed or no affiliation is established within a reasonable time, the Archaeologist shall with the necessary SAHRA permits and approvals provide for the following disposition:

- a) cover and leave the remains where they were found and have the site recorded as a burial site/heritage site, if on land suitable for a burial site; or
- b) have the remains disinterred and reinterred in the nearest appropriate cemetery; or
- c) remove the remains from the site for analysis and may have them reinterred in a recognized cemetery or;
- d) may act as the temporary repository of the remains until they are re-located for reburial at designated cemetery.

(Where the remains were found on Construction Site but are not historic or archaeological remains, the Archaeologist may remove the remains in consultation with the Project EO and the affected parties.)

5. ARBITRATION

- a) If no disposition or reburial agreement or management plan is reached within a reasonable time the matter may be referred to arbitration for settlement.

6. RECORDS

- a) A record of the site and a report of the discovery and disposition plan shall be kept by the Archaeologist, for future reference to protect the site or identify the re-burial site.
- b) Access to information about discovered sites will be addressed in any site management plan developed under these guidelines, and will be protected under the Access to Information and Protection of Privacy legislations, and the NHRA.

7. BURIAL RELOCATION & REBURIAL

- Burial Relocation involves the identification of each grave and the manual excavation of the interred remains. Human remains, coffin features, and grave goods are exposed, their positions in the grave

are carefully recorded, and maps and photographs of each grave are made following standard archaeological recovery techniques.

- Once excavation and examination are completed, the interred along with their grave goods are inventoried and carefully wrapped in acid-free tissue. Human remains are arranged anatomically and all materials are placed in specially designed containers, specified by the laws and regulations governed by the state where the re-interment location has been determined. The goal of re-interment is to restore as much of the original mortuary meaning as possible.
- Burial relocation is extremely culturally sensitive and Project and contractors/service provider staff understands that the utmost respect must be shown to the interred, as well as the descendant communities. We advocate respectful involvement of descendent communities in the relocation process, whenever possible, and have an excellent reputation for communicating with descendant groups.
- BST Funeral and Sativa Travel and Environmental Consultants (Pty) Ltd has extensive experience conducting cemetery relocations for government agencies, other cultural resource firms, developers and private citizens in South Africa. We assure our clients as well as the descendent communities that the greatest amount of respect and care is taken when excavating and relocating these cemeteries.

8. Risks

1. Legal Risks

Project is exposed to a myriad of legal requirements on the local and national level when having to relocate burials. Burial relocation can infringe a number of human rights enshrined in the Constitution and legislations such the NHRA. If not carried out properly, grave relocation can impact the right to burial and dignity. Community opposition may result in protests and delays on development.

Mitigation

When human remains are identified during the development, all measures must be taken to ensure the law applicable regulations are enforced including mandatory public notifications.

2. Reputational risk

Relocation of human burials in particular also brings with it high risks for the Project's reputation which is exacerbated by the instantaneous spread of news across the world via the internet. Lack of proper planning and management may lead to negative consequences, which in turn may affect the Project's reputation.

Mitigation

Human remains identified in development contexts should be handled with utter most care to ensure the exhumation and relocation takes place in accordance with the law.

3. Operational risks

Legal action arising from the inadequate planning and implementation of burial relocation may result in Project's permission to work on the mining site being revoked via preliminary injunctions.

Operational risks may also arise from community protests directly. Cases of community opposition and protests, has previously disrupted work for days and weeks, involving, for example, the blockage of construction sites and vital roads and infrastructure. Construction may be delayed or disrupted.

Protests may be violent and impact on the health and safety of Project staff perpetuating work delays in construction and operations. Project facilities, machinery, housing and other assets may be damaged and rendered unusable.

Mitigation

The security trench servitude should have adequate security. All burial related matters should be held by the professional heritage team and reburial specialists. Human remains discovered during development should be reported to the ECO urgently and the Archaeologist notified in time to avoid any delays with the remains exposed on site. All exhumations and reburial exercises should be handled or schedule in a manner that does not require the remains to be held elsewhere temporarily.

4. Financial risks

Legal, reputational and operational risks may also lead other financial costs to the project. Moreover, costs may arise from legal action or disruptions in operations and work delays. Additional costs may be incurred when public protests require work to stop on site as a result of human remains discovery on site.

5. Human Remains Handling Risks

Exhumation, handling, transportation and reburial of human remains also pose a threat to public health if not handled to strict protocols. This risk is particularly highest in contemporary burials.

20 APPENDIX 2: GENERAL PRECAUTIONS

The following precautionary measures can help employers and employees remain safe and healthy whilst handling human remains. The transportation, handling and storage of human remains must also be carried out in a manner that preserves public safety and maintains the dignity of the deceased person.

PERSONAL PROTECTIVE EQUIPMENT

Hand Protection:

When handling potentially infectious materials, use appropriate barrier protection including latex and nitrile gloves (powder-free latex gloves with reduced latex protein content can help avoid reaction to latex allergies). These gloves can be worn under heavy-duty gloves which will, in turn, protect the wearer from cuts, puncture wounds, or other injuries that break the skin (caused by sharp environmental debris or bone fragments). A combination of a cut-proof inner layer glove and a latex or similar outer layer is preferable.

Foot Protection:

Footwear should similarly protect against sharp debris.

Hygiene:

- Wash your hands with soap and water or with an alcohol-based hand cleaner immediately after you remove your gloves.
- Give prompt care to any wounds sustained during work with human remains, including immediate cleansing with soap and clean water. Workers should also be vaccinated against hepatitis B, and get a tetanus booster if indicated.
- Ensure disinfection of vehicles and equipment.

SUMMARY

- In general, personnel involved in the recovery and handling of human remains from a burial site can limit risk from potential exposure by following the guidelines below.
- Vinyl or Latex gloves should be worn.
- Masks and protective eyewear or face shields should be worn during procedures that are likely to generate fluids to prevent exposure of mucous membranes of the mouth, nose, and eyes.
- Gowns or aprons should be worn during procedures that are likely to generate splashes of blood or other body fluids.
- Hands and other skin surfaces should be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands should be washed immediately after gloves are removed.
- Ensure universal precautions for blood and body fluids.
- Ensure use of body bags.
- Ensure disinfection of vehicles and equipment.
- Bodies do not need to be disinfected before disposal (except in case of cholera).
- Vaccinate workers against hepatitis B.

21 APPENDIX 3: HUMAN REMAINS AND BURIALS IN DEVELOPMENT

Developers, land use planners and professional specialist service providers often encounter difficult situations with regards to burial grounds, cemeteries and graves that may be encountered in development contexts. This may be before or during a development project. There are different procedures that need to be followed when a development is considered on an area that will impact upon or destroy existing burial grounds, cemeteries or individual graves. In contexts where human remains are accidentally found during development work such as road construction or building construction, there are different sets of intervention regulations that should be instigated. This brief is an attempt to highlight the relevant regulations with emphasis on procedures to be followed when burial grounds, cemeteries and graves are found in development planning and development work contexts. The applicable regulations operate within the national heritage and local government legislations and ordinances passed in this regard. These guidelines assist you to follow the legal pathway.

1. First, establish the context of the burial:

A. Are the remains less than 60 years old? If so, they may be subject to provisions of the Human Tissue Act, Cemeteries Ordinance(s) and to local, regional, or municipal regulations, which vary from place to place. The finding of such remains must be reported to the police but are not automatically protected by the National Heritage Resources Act (Act 25 of 1999).

B. Is this the grave of a victim of conflict? If so, it is protected by the National Heritage Resources Act (Section 36(3a)). (Relevant extracts from the Act and Regulations are included below).

C. Is it a grave or burial ground older than 60 years, which is situated outside a formal cemetery administered by a local authority? If so, it is protected by the National Heritage Resources Act (Section 36(3b)).

D. Are the human or hominid remains older than 100 years? If so, they are protected by the National Heritage Resources Act (Section 35(4), see also definition of "archaeological" in Section 2).

2. Second, refer to the terms of the National Heritage Resources Act most appropriate to the situation, or to other Acts and Ordinances:

A. Human remains that are NOT protected in terms of the National Heritage Resources Act (i.e. less than 60 years Cultural Heritage Management Plan, Orgies, Mpumalanga Province

old and not a grave of a victim of conflict or of cultural significance) are subject to provisions of the Human Tissue Act and to local and regional regulations, for example Cemeteries Ordinances applicable in different Provincial and local Authorities.

B). All finds of human remains must be reported to the nearest police station to ascertain whether or not a crime has been committed.

C). If there is no evidence for a crime having been committed, and if the person cannot be identified so that their relatives can be contacted, the remains may be kept in an institution where certain conditions are fulfilled. These conditions are laid down in the Human Tissue Act (Act No. 65 of 1983). In contexts where the local traditional authorities given their consent to the unknown remains to be re-buried in their area, such re-interment may be conducted under the same regulations as would apply for known human remains.

3. In the event that a graveyard is to be moved or developed for another purpose, it is incumbent on the local authority to publish a list of the names of all the persons buried in the graveyard if there are gravestones or simply a notification that graves in the relevant graveyard are to be disturbed. Such a list would have to be compiled from the names on the gravestones or from parish or other records. The published list would call on the relatives of the deceased to react within a certain period to claim the remains for re-interment. If the relatives do not react to the advertisement, the remains may be re-interred at the discretion of the local authority.

A. However, it is the responsibility of the developer to ensure that none of the affected graves within the cemetery are burials of victims of conflict. The applicant is also required in line with the heritage legislation to verify that the graves have no social significance to the local communities.

B. It is illegal in terms of the Human Tissue Act for individuals to keep human remains, even if they have a permit, and even if the material was found on their own land.

4. The Exhumations Ordinance (Ordinance No. 12 of 1980 and as amended) is also relevant. Its purpose is "To prohibit the desecration, destruction and damaging of graves in cemeteries and receptacles containing bodies; to regulate the exhumation, disturbance, removal and re-interment of bodies, and to provide for matters incidental thereto". This ordinance is supplemented and support by local authorities regulations, municipality by-laws and ordinances.

DEFINITIONS AND APPLICABLE REGULATIONS

- 1). A "Cemetery" is defined as any land, whether public or private, containing one or more graves.
- 2). A "grave" includes "(a) any place, whether wholly or partly above or below the level of ground and whether public or private, in which a body is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and (b) any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure of whatsoever nature forming part of or appurtenant to a grave.
- 3). No person shall desecrate, destroy or damage any grave in a cemetery, or any coffin or urn without written approval of the Administrator.
- 4). No person shall exhume, disturb, remove or re-inter anybody in a cemetery, or any coffin or urn without written approval of the Administrator.
- 5). Application must be made for such approval in writing, together with:
 - a). A statement of where the body is to be re-interred.
 - b). Why it is to be exhumed.
 - c). The methods proposed for exhumation.
 - d). Written permission from local authorities, nearest available relatives and their religious body owning or managing the cemetery, and where all such permission cannot be obtained, the application must give reasons why not.
- 6). The Administrator has the power to vary any conditions and to impose additional conditions.
- 7). Anyone found guilty and convicted is liable for a maximum fine of R200 and maximum prison sentence of six months.
5. Human remains from the graves of victims of conflict, or any burial ground or part thereof which contains such graves and any other graves that are deemed to be of cultural significance may not be destroyed, damaged, altered, exhumed or removed from their original positions without a permit from the National Heritage Resources Agency. They are administered by the Graves of Conflict Division at the SAHRA offices in Johannesburg.

"Victims of Conflict" are:

 - a). Those who died in this country as a result of any war or conflict but excluding those covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992).
 - b). Members of the forces of Great Britain and the former British Empire who died in active service before 4 August 1914.

- c). Those who, during the Anglo Boer War (1899-1902) were removed from South Africa as prisoners and died outside South Africa, and,
- d). Those people, as defined in the regulations, who died in the "liberation struggle" both within and outside South Africa.

6. Any burial that is older than 60 years, which is outside a formal cemetery administered by a local authority, is protected in terms of Section 36(3b) of the National Heritage Resources Act. No person shall destroy damage, alter, exhume or remove from its original position, remove from its original site or export from the Republic any such grave without a permit from the SAHRA.

There are some important new considerations applicable to B & C (above).

SAHRA may, for various reasons, issue a permit to disturb a burial that is known to be a grave of conflict or older than 65 years, or to use, at a burial ground, equipment for excavation or the detection or the recovery of metals.

(Permit applications must be made on the official form Application for Permit: Burial Grounds and Graves available from SAHRA or provincial heritage resources authorities.) Before doing so, however, SAHRA must be satisfied that the applicant:

- a). Has made satisfactory arrangements for the exhumation and re- interment of the contents of such a grave at the cost of the applicant.
- b). Has made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such a grave and,
- c). Has reached an agreement with these communities and individuals regarding the future of such a grave or burial ground.

PROCEDURE FOR CONSULTATION

The regulations in the schedule describe the procedure of consultation regarding the burial grounds and graves. These apply to anyone who intends to apply for a permit to destroy damage, alter, remove from its original position or otherwise disturb any grave or burial ground older than 60 years that is situated outside a formal cemetery administered by a local authority. The applicant must make a concerted effort to identify the descendants and family members of the persons buried in and/or any other person or community by tradition concerned with such grave or burial ground by:

- 1). Archival and documentary research regarding the origin of the grave or burial ground;
- 2). Direct consultation with local community organizations and/or members;
- 3). The erection for at least 60 days of a notice at the grave or burial ground, displaying in all the official

languages of the province concerned, information about the proposals affecting the site, the telephone number and address at which the applicant can be contacted by any interested person and the date by which contact must be made, which must be at least 7 days after the end of the period of erection of the notice; and

4). Advertising in the local press.

The applicant must keep records of the actions undertaken, including the names and contact details of all persons and organizations contacted and their response, and a copy of such records must be submitted to the provincial heritage resources authority with the application. Unless otherwise agreed by the interested parties, the applicant is responsible for the cost of any remedial action required.

If the consultation fails to reach an agreement, the applicant must submit records of the consultation and the comments of all interested parties as part of the application to the provincial heritage resources authority.

In the case of a burial discovered by accident, the regulations state that when a grave is discovered accidentally in the course of development or other activity:

a). SAHRA or the provincial heritage resources authority (or delegated representative) must, in co-operation with the Police, inspect the grave and decide whether it is likely to be older than 60 years or otherwise protected in terms of the Act; and whether any further graves exist in the vicinity.

b). If the grave is likely to be so protected, no activity may be resumed in the immediate vicinity of the grave, without due investigation approved by SAHRA or the provincial heritage resources authority; and

c). SAHRA or the provincial heritage resources authority may at its discretion modify these provisions in order to expedite the satisfactory resolution of the matter.

d. Archaeological material, which includes human and hominid remains that are older than 100 years (see definition in section 2 of the Act), is protected by the National Heritage Resources Act (Section 35(4)), which states that no person may, without a permit issued by the responsible heritage resources authority - destroy, damage, excavate, alter or remove from its original site any archaeological or palaeontological material.

The implications are that anyone who has removed human remains of this description from the original site must have a permit to do so. If they do not have a permit, and if they are convicted of an offence in terms of the National Heritage Resources Act as a result, they must be liable to

a maximum fine of R100 000 or five years imprisonment, or both.

TREAT HUMAN REMAINS WITH RESPECT

a). Every attempt should be made to conserve graves in situ. Graves should not be moved unless this is the only means of ensuring their conservation.

b). The removal of any grave or graveyard or the exhumation of any remains should be preceded by an historical and archaeological report and a complete recording of original location, layout, appearance and inscriptions by means of measured drawings and photographs. The report and recording should be placed in a permanent archive.

c). Where the site is to be re-used, it is essential that all human and other remains be properly exhumed and the site left completely clear.

d). Exhumations should be done under the supervision of an archaeologist, who would assist with the identification, classification, recording and preservation of the remains.

e). No buried artifacts should be removed from any protected grave or graveyard without the prior approval of SAHRA. All artifacts should be re-buried with the remains with which they are associated. If this is not possible, proper arrangements should be made for the storage of such relics with the approval of SAHRA.

f). The remains from each grave should be placed in individual caskets or other suitable containers, permanently marked for identification.

g). The site, layout and design of the area for re-interment should take into account the history and culture associated with, and the design of, the original grave or graveyard.

h). Re-burials in mass graves and the use of common vaults are not recommended.

i). Remains from each grave should be re-buried individually and marked with the original grave markers and surrounds.

j). Grouping of graves, e.g. in families, should be retained in the new layout.

k). Material from the original grave or graveyard such as chains, kerbstones, railing and should be re-used at the new site wherever possible.

l). A plaque recording the origin of the graves should be erected at the site of re-burial.

m). Individuals or groups related to the deceased who claim the return of human remains in museums and other institutions should be assisted to obtain documentary proof of their ancestry

22 APPENDIX 4: LEGAL BACKGROUND AND PRINCIPLES OF HERITAGE RESOURCES MANAGEMENT IN SOUTH AFRICA

Extracts relevant to this report from the National Heritage Resources Act No. 25 of 1999, (Sections 5, 36 and 47):

General principles for heritage resources management

5. (1) All authorities, bodies and persons performing functions and exercising powers in terms of this Act for the management of heritage resources must recognise the following principles:

(a) Heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival;

(b) every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all South Africans;

(c) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and

(d) heritage resources management must guard against the use of heritage for sectarian purposes or political gain.

(2) To ensure that heritage resources are effectively managed—

(a) the skills and capacities of persons and communities involved in heritage resources management must be developed; and

(b) provision must be made for the ongoing education and training of existing and new heritage resources management workers.

(3) Laws, procedures and administrative practices must—

(a) be clear and generally available to those affected thereby;

(b) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby; and

(c) give further content to the fundamental rights set out in the Constitution.

(4) Heritage resources form an important part of the history and beliefs of communities and must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management.

(5) Heritage resources contribute significantly to research, education and tourism and they must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.

(6) Policy, administrative practice and legislation must promote the integration of heritage resources conservation in urban and rural planning and social and economic development.

(7) The identification, assessment and management of the heritage resources of South Africa must—

- (a) take account of all relevant cultural values and indigenous knowledge systems;
- (b) take account of material or cultural heritage value and involve the least possible alteration or loss of it;
- (c) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;
- (d) contribute to social and economic development;
- (e) safeguard the options of present and future generations; and
- (f) be fully researched, documented and recorded.

Burial grounds and graves

36. (1) Where it is not the responsibility of any other authority, SAHRA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit.

(2) SAHRA must identify and record the graves of victims of conflict and any other graves which it deems to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and must maintain such memorials.

(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.

(7) (a) SAHRA must, over a period of five years from the commencement of this Act, submit to the Minister for his or her approval lists of graves and burial grounds of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or agents provocateur and which, after a process of public consultation, it believes should be included among those protected under this section.

(b) The Minister must publish such lists as he or she approves in the Gazette.

(8) Subject to section 56(2), SAHRA has the power, with respect to the graves of victims of conflict outside the Republic, to perform any function of a provincial heritage resources authority in terms of this section.

(9) SAHRA must assist other State Departments in identifying graves in a foreign country of victims of conflict connected with the liberation struggle and, following negotiations with the next of kin, or relevant authorities, it may re-inter the remains of that person in a prominent place in the capital of the Republic.

General policy

47. (1) SAHRA and a provincial heritage resources authority—

(a) must, within three years after the commencement of this Act, adopt statements of general policy for the management of all heritage resources owned or controlled by it or vested in it; and

(b) may from time to time amend such statements so that they are adapted to changing circumstances or in accordance with increased knowledge; and

(c) must review any such statement within 10 years after its adoption.

(2) Each heritage resources authority must adopt for any place which is protected in terms of this Act and is owned or controlled by it or vested in it, a plan for the management of such place in accordance with the best environmental, heritage conservation, scientific and educational principles that can reasonably be applied taking

into account the location, size and nature of the place and the resources of the authority concerned, and may from time to time review any such plan.

(3) A conservation management plan may at the discretion of the heritage resources authority concerned and for a period not exceeding 10 years, be operated either solely by the heritage resources authority or in conjunction with an environmental or tourism authority or under contractual arrangements, on such terms and conditions as the heritage resources authority may determine.

(4) Regulations by the heritage resources authority concerned must provide for a process whereby, prior to the adoption or amendment of any statement of general policy or any conservation management plan, the public and interested organisations are notified of the availability of a draft statement or plan for inspection, and comment is invited and considered by the heritage resources authority concerned.

(5) A heritage resources authority may not act in any manner inconsistent with any statement of general policy or conservation management plan.

(6) All current statements of general policy and conservation management plans adopted by a heritage resources authority must be available for public inspection on request.