

**PHASE 1 HERITAGE IMPACT ASSESSMENT FOR THE
PROPOSED NEW FURTHER EDUCATION TRAINING
COLLEGE (FET), MBHAMBANANA, KWAZULU NATAL
PROVINCE.**

FEBRUARY 2014

Prepared For:



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EXECUTIVE SUMMARY

Nemai Consulting was appointed by Masetlaoka Scott Wilson (MSW) Engineers as the independent Environmental Assessment Practitioner (EAP) to undertake the environmental assessment of the proposed construction of a Further Education Training (FET) College in Mbhambanana, a small village in the Umkhanyakude District Municipality in far northern KwaZulu Natal.

Part of the environmental assessment includes a Phase 1 Heritage Impact Assessment (HIA), which serves to identify any cultural heritage resources occurring on sites which may be impacted upon by the proposed construction. If any resources are found, mitigation measures and recommendations for the protection of such resources will be provided. The report will be submitted to the Provincial Heritage Resources Authority for comment as per the National Heritage Resources Act (Act No 25 of 1999).

There is only one site alternative for the proposed project. Other site alternatives were not considered as the land is vacant and is owned by the Local Municipality that has allocated it for future educational infrastructure developments.

During site investigations scatters of stone artefacts were found that have low significance because of the ephemeral nature of the finds. In addition, a heap of rocks was found close to the remains of stone walling and because it was not possible to determine the exact nature of the pile of stones, it was decided that it should be treated as a potential grave that could be affected by the proposed development.

It was therefore recommended that instead of moving the 'grave', it should be clearly demarcated and fenced off before construction starts. Other structures found on the site (the remains of a concrete structure, a concrete man-hole) are considered to be of low significance.

It is therefore recommended based on the survey that the construction may proceed from a heritage perspective. The contractor must ensure that the potential grave site is clearly

demarcated and fenced with a 5m buffer to protect the grave and that there are no construction activities within 5m of the river bank.

A specialist to be appointed to undertake a watching brief in terms of paleontological sensitivity during the initial construction period.



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TERMINOLOGY

BP	Before Present
EIA	Early Iron Age
MIA	Middle Iron Age
FET	Further Education and Training
LIA	Late Iron Age
ESA	Early Stone Age
MSA	Middle Stone Age
LSA	Late Stone Age
SAHRA	South African National Resources Agency
NHRA	National Heritage Resources Act
SAPS	South African Police Services
ya	years ago

VERIFICATION OF QUALIFICATIONS

Verification	Name	Qualification	Professional Registration
Authors	Jean Beater	MA (Heritage Studies)	Member of Association of South African Professional Archaeologists
	Ms Makhosazana Mngomezulu	BSc (Hons) Archaeology BSc (Hons) Physical Anthropology	Member of Association of South African Professional Archaeologists Member of Cultural Resources Management

Date:

Signature:

TERMS OF REFERENCE (ToR)

The approach utilised for this report were:

- To undertake a Phase 1 HIA in accordance with the National Heritage Resources Act (Act No. 25 of 1999) and KwaZulu Natal Heritage Act (Act No.4 of 2008);
- To identify and map all heritage resources in the area affected, as defined in Section 3 of the National Heritage Resources Act (Act No. 25 of 1999), including archaeological and palaeontological sites on or close (within 100m) of the proposed sites;
- To assess the significance of such resources in terms of the heritage assessment criteria as set out in the SAHRA regulations;
- To evaluate the impacts of the construction on heritage resources relative to the sustainable social and economic benefits to be derived from the construction;
- To provide mitigation measures to safeguard heritage resources; and
- To comply with specific requirements and guidelines of the Provincial Heritage Resources Authority – Amafa aKwaZulu Natali.

LEGISLATIVE REQUIREMENTS

- National Heritage Resources Act (Act No. 25 of 1999)
 - Section 3
 - Section 34
 - Section 38
- KwaZulu Natal Heritage Act (Act No.4 of 2008)

1. BACKGROUND INFORMATION OF THE PROJECT

Masetlaoka Scott Wilson (MSW) Engineers appointed Nema Consulting to undertake the requisite environmental authorisation process for the construction of a new FET college at Mbhambanana.

The site is located in the Umkhanyakude District Municipality of the KwaZulu-Natal Province and within the Jozini Local Municipality. The Mbhambanana Campus site is situated on Farm 14585 of Mbhambanana along the Ngwavuma River and north of D1837 and D850 roads. It is currently used as grazing for cattle and other animals and there are areas of dense vegetation.

There is only one site alternative for the proposed project. Other site alternatives were not considered as the land is vacant and is owned by the Local Municipality that has allocated it for future educational infrastructure developments.

The development footprint is approximately 10 ha in size. The proposed development triggers a Heritage Impact Assessment (HIA) according to Section 38 (1) (a) of the National Heritage Resources Act 1999 (Act No. 25 of 1999) which states that:

“(1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as-

- (c) any development or other activity which will change the character of a site—
- (i) exceeding 5 000 m² in extent”.

The site surveys were conducted on 09 September 2013 for the proposed college only; and 20 February 2014 for the expansion of the proposed Mbhambanana Campus to incorporate a water treatment plant.

Area and linear developments such as the development envisaged can have a permanent destructive impact on heritage resources and the objective of the study was to identify any cultural heritage resources occurring on sites which may be impacted upon by the proposed construction. If any resources are found, mitigation measures and

recommendations for the protection of such resources will be provided. This report was prepared according to the National Heritage Resources Act 1999 (Act No. 25 of 1999) (Appendix A).

2. LOCATION AND DESCRIPTION OF THE STUDY AREA

The study area is located on the outskirts of Bhambanana close to the Ngwavuma River in the far north of the KwaZulu Natal Province (see figure 1-3). Photographs of the study area have been uploaded on the SAHRIS website.

Figure 1: Locality Map of the study area 1:50 000.

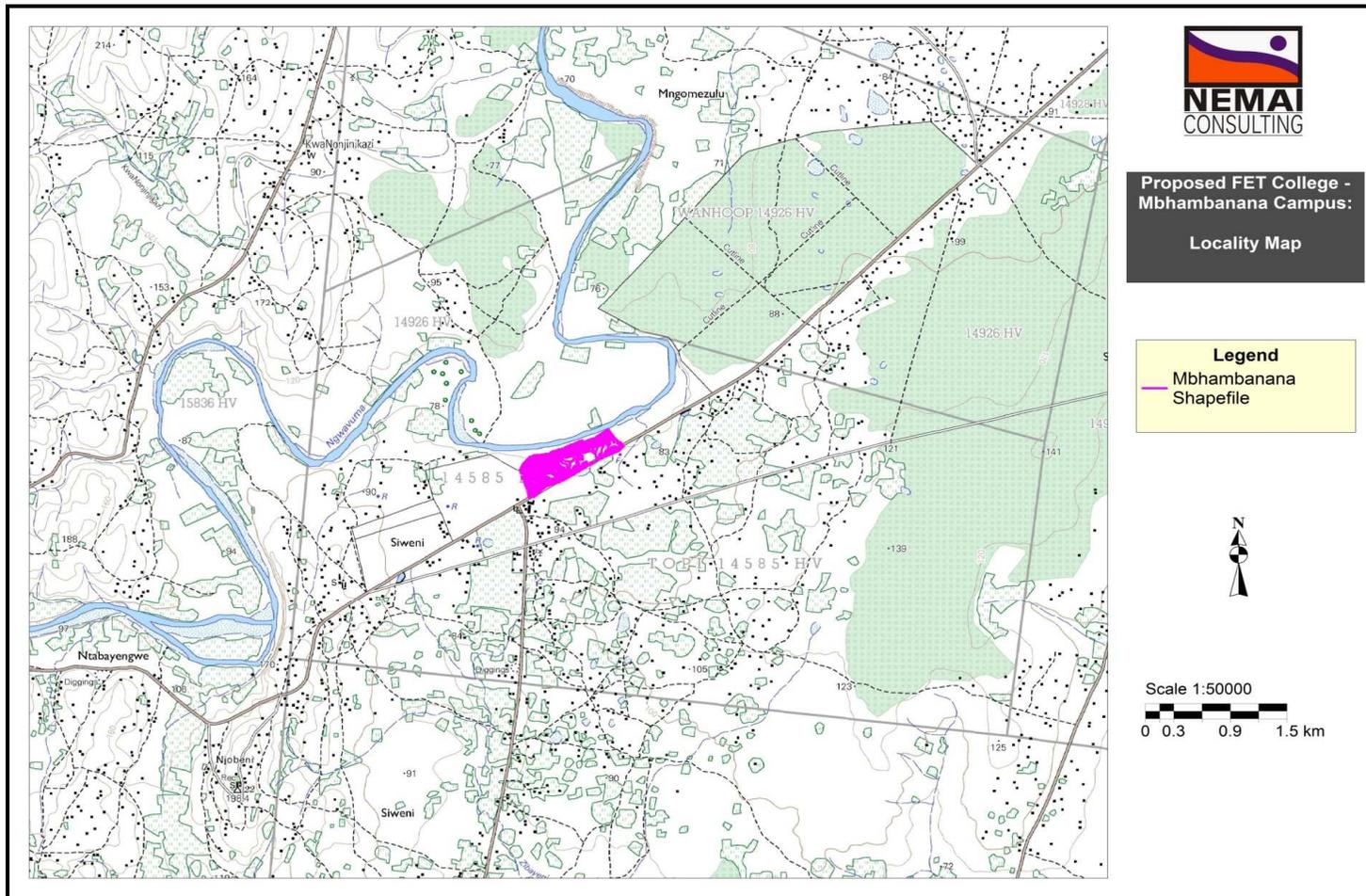


Figure 2: Locality Map of the study area 1:30 000

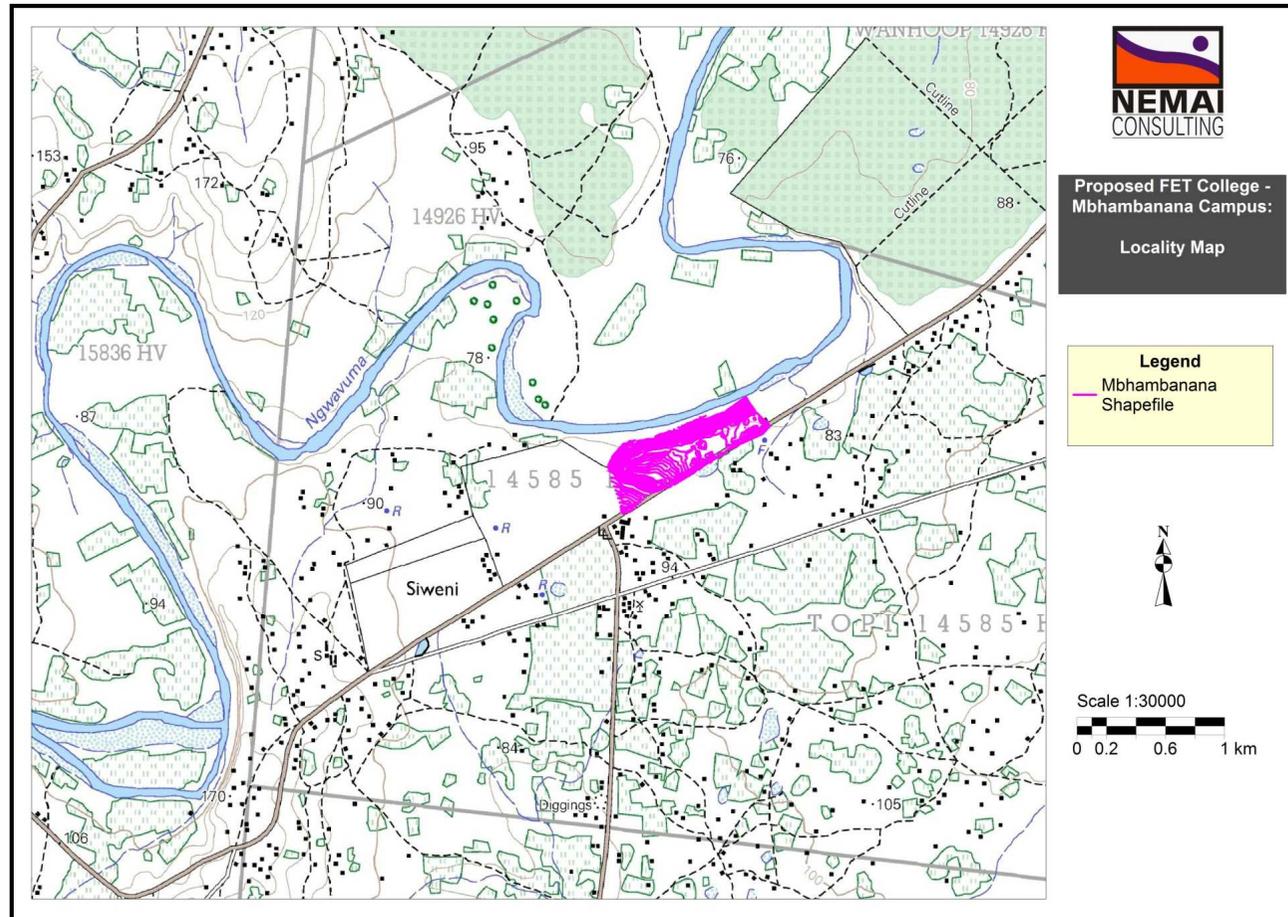


Figure 3: Aerial View of the study area



3. HISTORICAL BACKGROUND OF THE STUDY AREA

The relevance of providing historical background on human history is to allow the reader to have a better understanding of what is meant by archaeological and cultural/historical features of the proposed area irrespective of whether or not such heritage resources are found.

3.1 Archaeological

Stone Age

The Stone Age is a time period that dates between 2 million years ago (ya) to 2000 ya. Due to the vast character found within stone tools of this period, it was then divided into three phases; Early Stone Age (ESA), Middle Stone Age (MSA) and the Late Stone Age (LSA). ESA dates between 2 million ya and 2 00 000 Before Present (BP). Industries associated with this time period includes Oldowan, Acheulean and Fauresmith. ESA stone tools include hammer stones, flakes, cores, handaxes and cleavers (Pelser 2009).

The more refined stone tools appeared during the MSA. MSA dates between 2 00 000 and 25 000 to 20 000 BP, this varies with location. Industries associated with this time period includes the Howieson's Poort. The stone tools which characterise this period include scrapers, blades, points and flake. Lastly is the LSA which dates between 25 000 and 20 000 to 2 000 BP. Stone tools of this period are characterised by their small size; this includes backed knives and borers (Pelser 2009).

Iron Age

According to Huffman (2007) Iron Age marks the early evidence of farming community in southern Africa. Animal husbandry, crop farming, pottery and metal working were introduced which in due time liberated hunter gatherers to change their way of life which is less mobile (Carruthers 1990). Due to vast technological discrepancies and settlement pattern within this period, it was divided into three. The Early Iron Age (EIA) dates to AD

200 – 900, Middle Iron Age (MIA) dates to AD 900 – 1300, and the Late Iron Age (LIA) dates to AD 1300 – 1840 (Huffman 2007).

In the larger surrounds of the Mbhambanana site, Border Cave is a rock shelter on the western scarp of the Lebombo Mountains in KwaZulu-Natal near the border between South Africa and Swaziland. Border Cave has a remarkably continuous stratigraphic record of occupation spanning about 200ka. Anatomically modern *Homo sapiens* skeletons together with stone tools and chipping debris were recovered.¹

Excavations for guano in 1940 by a certain W. E. Barton of Swaziland, revealed a number of human bone fragments and were recognised as extremely old by Professor Raymond Dart, who had visited the site in July 1934, but had carried out only a superficial examination. In 1941 and 1942, a team sponsored by the University of the Witwatersrand carried out a more thorough survey. Subsequent excavations in the 1970s were rewarded with rich yields. The site produced not only the complete skeleton of an infant, but also the remains of at least five adult hominins. Also recovered were thousands of artifacts, and the remains of more than 43 mammal species, three of which are now extinct.

Animal remains from the cave show that its early inhabitants had a diet of bushpig, warthog, zebra and buffalo. Raw materials used in the making of artifacts include chert, rhyolite, quartz, and chalcedony, as well as bone, wood and ostrich egg shells.

3.2 Historical

In terms of more ‘recent’ history, a section of the Ndwandwe tribe, headed by the Gaza family, had their home beneath this mountain until they were conquered by Shaka in 1819 and the head of the family, Soshongane, fled with his followers into Mozambique, where he established the Shangaan tribe.²

¹ www.archaeology.about.com – Border Cave by K. Kris Hirst

² www.ghostmountaininn.co.za/ourhistory - The Legend of Ghost Mountain

From early times it had become customary to bury the bodies of Chiefs on Ghost Mountain. Soshongane and his descendants, although they lived many miles away in Mozambique, were carried back to the Ghost Mountain when they died. Their bodies, mummified and wrapped in the black bull skins, had to be transported by bearers who travelled by night and hid during the day to avoid detection by the Zulus.

After the Anglo-Zulu War in 1879, when the British tried to rule Zululand by dividing it into separate states, each with its own ruler, there was a period of chaotic rivalry, feuding and fighting. The two principal rivals were Prince Dinuzulu, the son of the deposed Zulu King Cetshwayo, and his Usuthu warriors, and Zibhebhu, head of the powerful Mandlakazi section of the Zulus.

In a series of fights, Zibhebhu gained the upper hand. Dinuzulu, in desperation, enlisted 600 Boers and Germans for their help. In June 1884 Dinuzulu's army of Zulus and Europeans invaded Zibhebhu's territory.

Zibhebhu and his Mandlakazi section were considered to be made up of the finest warriors, but he had little chance against the opposition. Zibhebhu made a fighting retreat to the Mkuze River Pass through the Lebombo, and on the 5th of June, in a rugged gorge beneath Ghost Mountain, there was a vicious struggle known as the Battle of Tshaneni. The Mandlakazi fought stubbornly but heavy rifle fire from Dinuzulu's army mowed them down and they broke and fled into the dense forest country of Tongaland.

The Zululand area saw activity during the Anglo-Boer War (1899 – 1902). On 3 November 1899 the Boers formally took possession of the Ingwavuma district for a short period and a system of Zulu spies for spied on behalf of the British was expanded in the valleys of the Mkhuze and Phongolo during the War.³

³ www.samilitaryhistory.org/journal.html de V Minnaar, A. 1989. Zululand and the Anglo-Boer War (1899-1902).

Dinizulu and other Zulu Chiefs organised raids into the South African Republic during the War to bring back livestock from Boer farms and it was estimated that at least 10 000 cattle, together with a few thousand sheep, were rounded up in a space of two months.

4. METHODOLOGY

A desktop study was conducted on the proposed site as well as a site visit. This was to identify any other heritage resources that may be impacted on due to the proposed construction of the college.

Heritage resource means any place or object of cultural significance (NHRA No. 25 of 1999). National Heritage Resources Act 1999 (Act No. 25 of 1999) was utilised as a source of reference to identify what is known as a heritage resource. The photographs were taken during a site visit conducted by Jean Beater on 20 February 2014. Some of these can be found below in Figs. 4 – 5.

Figure 4: Photograph of Site



Figure 5: Photograph of site

5. RESULTS AND DISCUSSION

5.1 Site survey

Archaeological

A few isolated scattered stone artefacts (see Fig. 6 – 7 as an example) were found within the proposed site. It is unclear as to the context of their distribution in the study area. These stone tools can be classified as those of the ESA and the MSA period with characteristics of cores and points. These artefacts could have been displaced both vertically and spatially through many millennia of erosion and other natural processes with site transformation processes having reduces their long term integrity and significance. In these terms the artefacts are considered, as an occurrence, to be of low significance.

Figure 6: Stone tool found on site



Figure 7: Scattered stone tools found on site



Historical

A cement structure that was demolished apart from the floor area was found at S27°51'.43 E32°9'.37. It is unclear what the structure was but intended for as no associated or other associated infrastructure could be found (Fig. 7).

Figure 8: Partially demolished cement structure



The remains of old stone walling that could have formed part of a cattle kraal were observed at S27°51'.40 E32°9'.32 (Fig. 8). Some old wooden standards near the wall may have been the entrance to the kraal but much of the wall has been reduced to scattered piles of stone and the area is heavily overgrown with vegetation.

Close to this area was a pile of rocks (Fig. 9) at S27°51'.40 E32°9'.32 that could have formed part of the wall mentioned above. It could also signify the site of a grave. Discussions with the Induna, Mr. Ndlanzi and another Mbhambana resident revealed that, to their knowledge, there were no graves in the study area.

However, because it is not possible to determine the exact nature of the pile of stones, unless it is excavated, it should be treated as a potential grave that will be affected by

the proposed development. It is recommended that instead of moving the grave, it is clearly demarcated and fenced off before construction starts if this is possible.

Figure 9: Stone walling



Figure 10: Possible grave



A brick and cement man-hole that may be situated in the servitude on the southern boundary of the proposed college development was also observed.

Figure 11: Man-hole



Paleontological

The Palaeo Sensitivity Map of KwaZulu Natal was consulted as well as the and the Fossil Sensitivity map on SAHRIS indicated that the area in which the site of the proposed FET college falls is an area of very high paleontological sensitivity (see Fig.11 below).

In discussion⁴ with the Deputy Director of Amafa, Ms. A. van der Venter, she indicated that a watching brief by an appropriately experienced specialist during the construction of the college would be acceptable to Amafa to ensure that if fossiliferous material is found, the correct procedures are followed in terms of the removal of material.

An appropriately experienced specialist would be a palaeontologist, an archaeologist with paleontological experience or an ECO with a zoological degree who had sufficient knowledge to be able to identify fossiliferous material.

Additional mitigation recommended is the training of staff to have a basic knowledge of heritage material that could be found on site

⁴ Pers comm on 27/02/204

5.2 Discussion

Based on the site inspection it is possible that a grave site will be impacted by the development as well as the remains of a cattle kraal wall and concrete structure. The pile of rocks that could potentially be a grave is of high significance whilst the stone walling and concrete structure are of little significance.

The few stone tools found on site are ephemeral scatters that appear to be situated in a secondary context and are therefore considered to be of low significance.

As the site is situated on an area that is described as highly sensitive from a paleontological perspective. It is highly possible that fossiliferous material may be found during earthworks and Amafa has recommended that a specialist with relevant experience is appointed to monitor the earth works (a watching brief) who will have the authority to stop work if such material is found and will apply to Amafa for a permit to remove the material.

6. LEVEL OF SIGNIFICANCE

The level of significance of the site and the cultural resources varies between social, historical, spiritual, scientific and aesthetic value.

Social value embraces the qualities for which a place has become a focus of spiritual, political, national, or other cultural sentiments to a majority or minority group. This may be because the site is accessible and well known, rather than particularly well preserved or scientifically important (SAHRA Regulations); for instance community halls and parks. There appears not to be social value attached to the study area.

The proposed site has historical significance. There is evidence that the area was used for farming activities historically as indicated by the remains of the kraal wall and wooden standards. The site is still used for agricultural purposes mainly as grazing for

cattle and is therefore fairly disturbed. The position of the pile of rocks close to the remains of the kraal wall could signify the grave of the owner of the animals that were kept within the kraal. The pile of rocks that could potentially be a grave is of high significance whilst the stone walling and concrete structure are of little significance.

The few stone tools found on site are ephemeral scatters that appear to be situated in a secondary context and are therefore of low significance. It is however recommended that a 5m buffer between the proposed development area and the river banks be clearly demarcated as there is the potential of finding concentrated deposits of archaeological material along the river banks.

There was no physical evidence of religious activities such as well-used areas where people worship; white-washed stones that designate areas of worship, *etc.* This means the site is not spiritually significant.

Scientific value refers to research purposes. The site has no observable scientific value nor aesthetic value that refers to the unique beauty of the site.

6.1 Impacts

The heritage assessment was undertaken to identify the impact (s) that the development may have on any heritage resources in the proposed area of development.

The proposed development could impact on a site that could potentially be a grave. Graves are well protected in terms of heritage legislation. In terms of the KwaZulu Natal Heritage Act, traditional burial places are protected in terms of a general protection clause (section 35) where it is stated that such graves not located in a formal cemetery may not be damaged, altered, exhumed, removed from its original position or otherwise disturbed without prior written approval of the Amafa aKwaZulu-Natali Heritage Council.

It is therefore recommended that the site is not moved and that it is clearly demarcated and fenced off before construction starts with a 5m buffer between the site and the fence.

6.2 Mitigation measures

- All staff involved in the construction phase should be provided with basic training in regards to the nature of heritage resource material that may be found on site and informed of their obligation to report any items found during the construction process.
- For any chance finds, all work will cease in the area affected and the Contractor will immediately inform the Project Manager. A registered heritage specialist must be called to site for inspection. The Provincial Heritage Resources Authority-KwaZulu Natal Province (AMAFA) must be informed about the finding.
- Permits to be obtained from AMAFA if heritage resources are to be impacted upon.
- All heritage resources found in close proximity to the construction area, in this case the site of the potential grave, to be protected by a 5m buffer in which no construction can take place. The buffer to be highly visible to construction crews.
- Under no circumstances may any heritage material be destroyed or removed from site.
- Should any remains be found on site that is potentially human remains, the South African Police Service should also be contacted.

7. RECOMMENDATIONS AND CONCLUSION

This report must be submitted to the Amafa aKwaZulu Natali for comment as per the National Heritage Resources Act (Act No. 25 of 1999) and KwaZulu Natal Heritage Act (Act No.4 of 2008).

In conclusion, the construction may proceed from a heritage perspective. The contractor must ensure that the potential grave site is clearly demarcated and fenced with a 5m buffer to protect the grave and that there are no construction activities within 5m of the river bank.

A specialist to be appointed to undertake a watching brief in terms of paleontological sensitivity during the initial construction period.

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APPENDIX A – SECTIONS OF APPLICABLE LEGISLATION

9. LEGISLATION

National Heritage Resources Act 25 of 1999

9.1 Section 3 of NHRA 25 of 1999

According to **Section 3** under **National Estate** of the National Heritage Act 25 of 1999 the heritage resources in South Africa includes the following:

“(1) For the purposes of this Act, those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities.

(2) Without limiting the generality of subsection (1), the national estate may include –

- (a) places, buildings, structures and equipment of cultural significance;
- (b) places to which oral traditions are attached or which are associated with living heritage;
- (c) historical settlements and townscapes;
- (d) landscapes and natural features of cultural significance;
- (e) geological sites of scientific or cultural importance;
- (f) archaeological and paleontological sites;
- (g) graves and burial grounds, including—
 - (i) ancestral graves;
 - (ii) royal graves and graves of traditional leaders;
 - (iii) graves of victims of conflict;
 - (iv) graves of individuals designated by the Minister by notice in the *Gazette*;
 - (v) historical graves and cemeteries; and
 - (vi) other human remains which are not covered in terms of the Human Tissue Act, 1983 (Act No. 65 of 1983);
- (h) sites of significance relating to the history of slavery in South Africa;
- (i) movable objects, including:
 - (i) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
 - (ii) objects to which oral traditions are attached or which are associated with living heritage;
 - (iii) ethnographic art and objects;
 - (iv) military objects;
 - (v) objects of decorative or fine art;
 - (vi) objects of scientific or technological interest; and
 - (vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996).

(3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national estate if it has cultural significance or other special value because of –

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

9.2 Section 34 of NHRA 25 of 1999

According to **Section 34** under **Structures** of the National Heritage Act 25 of 1999 specific procedures need to be followed when building older than 60 years are identified in the development:

"(1) No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

(2) Within three months of the refusal of the provincial heritage resources authority to issue a permit, consideration must be given to the protection of the place concerned in terms of one of the formal designations provided for in Part 1 of this Chapter.

(3) The provincial heritage resources authority may at its discretion, by notice in the Provincial Gazette, make an exemption from the requirements of subsection (1) within a defined geographical area, or for certain defined categories of site within a defined geographical area, provided that it is satisfied that heritage resources falling into the defined area or category have been identified and are adequately provided for in terms of the provisions of Part 1 of this Chapter.

(4) Should the provincial heritage resources authority believe it to be necessary it may, following a three-month notice period published in the Provincial Gazette, withdraw or amend a notice under subsection (3).

9.3 Section 38 of NHRA 25 of 1999

According to **Section 38** under **Heritage resources management** of the National Heritage Act 25 of 1999 the heritage resources in South Africa should be managed in the following:

“(1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as—

(a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;

(b) the construction of a bridge or similar structure exceeding 50 m in length;

(c) any development or other activity which will change the character of a site—

(i) exceeding 5 000 m² 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;

(d) the re-zoning of a site exceeding 10 000 m² in extent; or

(e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority, must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

(2) The responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1)—

(a) 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. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; or

(b) notify the person concerned that this section does not apply.

(3) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2)(a): Provided that the following must be included:

(a) The identification and mapping of all heritage resources in the area affected;

- (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;
 - (c) an assessment of the impact of the development on such heritage resources;
 - (d) 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;
 - (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
 - (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
 - (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.
- (4) The report must be considered timeously by the responsible heritage resources authority which must, after consultation with the person proposing the development, decide—
- (a) whether or not the development may proceed;
 - (b) any limitations or conditions to be applied to the development;
 - (c) what general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;
 - (d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and
 - (e) whether the appointment of specialists is required as a condition of approval of the proposal.
- (5) A provincial heritage resources authority shall not make any decision under subsection (4) with respect to any development which impacts on a heritage resource protected at national level unless it has consulted SAHRA.
- (6) The applicant may appeal against the decision of the provincial heritage resources authority to the MEC, who—
- (a) must consider the views of both parties; and
 - (b) may at his or her discretion—
 - (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the responsible heritage authority; and
 - (ii) consult SAHRA; and
 - (c) must uphold, amend or overturn such decision.
- (7) The provisions of this section do not apply to a development described in subsection (1) affecting any heritage resource formally protected by SAHRA unless the authority concerned decides otherwise.
- (8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of

Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.

(9) The provincial heritage resources authority, with the approval of the MEC, may, by notice in the *Provincial Gazette*, exempt from the requirements of this section any place specified in the notice.

(10) Any person who has complied with the decision of a provincial heritage resources authority in subsection (4) or of the MEC in terms of subsection (6) or other requirements referred to in subsection (8), must be exempted from compliance with all other protections in terms of this Part, but any existing heritage agreements made in terms of section 42 must continue to apply.

KwaZulu Natal Heritage Act, 2008 (Act No. 4 of 2008)

9.4 Section 35 of KwaZulu Natal Heritage Act 2008

General protection: Traditional burial places

No grave –

(a) not otherwise protected by this Act; and

(b) not located in a formal cemetery managed or administered by a local authority,

may be damaged, altered, exhumed, removed from its original position, or otherwise disturbed without the prior written approval of the Council having been obtained on written application to the Council.