

**STATUS QUO REPORT FOR SEVERAL TOMBSTONES PILED AT
KLIPSPRUIT COLLIERY NEAR ORGIES IN EMALAHLENI LOCAL
MUNICIPALITY IN MPUMALANGA PROVINCE.**

Heritage Status Quo Report

SEPTEMBER 2020



SATIVA

1. Document Information

Item	Description
Proposed development and location	Removal/distruction of tombstones piled at Klipspruit Colliery in eMalahleni Local Municipality, Mpumalanga Province.
Purpose of the study	To verify the status of piled tombstones and investigate circumstances surrounding their disposal as well as proposing feasible mitigation measures
Coordinates for burial site	S26° 06' 16.77" E029° 02' 10.84"
Municipality	eMalahleni Local Municipality
Predominant land use of surrounding area	Mining, powerlines, road, and transport.
Undertaker	Mafu's Funeral Home 4 Rhodes Street, Witbank
Developer/Applicant	South32 SA Coal Holdings (Pty) Ltd 39 Melrose Boulevard Melrose Arch Johannesburg, 2076 South Africa
Reference no.	(TSC) No. 4540702170
Heritage Consultant	Sativa Travel and Environmental Consultants (Pty) Ltd
Date of Report	14 September 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 Mafu's Funeral Home. Sativa Travel and Environmental Consultants (Pty) Ltd has no any business, personal, financial or other interest in the on going mining 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. Sativa Travel and Environmental Consultants (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 South 32 (KPSX: South) 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.

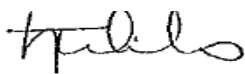
Copyright: This report and the information it contains is subject to copyright and may not be copied in whole or part without written consent of Mafu's Funeral Home, and Sativa Travel and Environmental Consultants (Pty) Ltd except that the report can be reproduced by South32(KPSX: South) and The South 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



14 September 2020

2. Acknowledgements

The author acknowledges South32(KPSX: South) project managers for the information regarding the burial site in question.

3. TABLE OF CONTENTS

1.	DOCUMENT INFORMATION.....	I
2.	ACKNOWLEDGEMENTS	III
3.	TABLE OF CONTENTS.....	IV
4.	EXECUTIVE BRIEF	V
5.	ABBREVIATIONS.....	VI
6.	DEFINITIONS.....	VII
7.	INTRODUCTION	1
7.1.	BRIEF BACKGROUND	1
8.	AIMS OF THE INVESTIGATION.....	1
9.	METHODOLOGY	2
10.	LEGAL CONTEXT	4
11.	PUBLIC CONSULTATIONS	6
12.	RESULTS OF THE SITE INVESTIGATION.....	7
13.	MITIGATION MEASURES	13
14.	ACCIDENTAL DISCOVERIES/DISTURBANCE OF GRAVES.....	13
15.	RECOMENDATIONS	14
16.	CONCLUDING REMARKS	14
17.	BIBLIOGRAPHY	16
18.	APPENDICES	17
19.	APPENDIX 1: . DISCOVERY AND NOTIFICATION.....	18
20.	APPENDIX 2: GENERAL PRECAUTIONS	23
21.	APPENDIX 3: HUMAN REMAINS AND BURIALS IN DEVELOPMENT	- 25 -
22.	APPENDIX 4: LEGAL BACKGROUND AND PRINCIPLES OF HERITAGE RESOURCES MANAGEMENT IN SOUTH AFRICA.....	28

4. Executive Brief

Mafu's Funeral Home in collaboration with Sativa were commissioned by South32 (KPSX south) to verify the status of tombstones located within Klipspruit Colliery. The Phase 2 mitigation exercise was commissioned by South32 (KPSX: South). This report outlines the heritage investigation results of tombstones identified within the Klipspruit Colliery near Ogies in Mpumalanga Province. It emerged that a scatter of tombstones was identified initially by the then archaeologist for Mafu's Funeral Home (Mulaifa Development Projects). The archaeologists visited the site and concluded that the site was a disturbed/relocated burial site, and the tombstones in question do not constitute graves within their original location. However, no report was written to explain the circumstances of the tombstones in question. Their status was not confirmed in writing. Sativa Travel and Environmental Consultants (Pty) Ltd in collaboration with Mafu's Funeral Home undertook the investigation of the circumstances and the status of the tombstones in question.

The heritage mitigation exercise involved assessing the state and form of the tombstones. The site inspection confirmed that there are pieces of tombstones for approximately 20 graves which were piled at the original burial site. The existing fence around the site was erected by the mine during construction work at the site. The site inspection was conducted in accordance with the Section 36 of the National Heritage Resources Act (Act No 25 of 1999) and the Human Tissue Act (1983). Based on the assessment conducted by the Sativa heritage team, it seems the graves were relocated from somewhere, but the large and inscribed granite tombstones were not properly disposed in accordance with the burial permit conditions. As such their disposal constitute a heritage problem that should once again involve the Prinsloo family. However, it should be borne in mind that the site may be a result of mining activities which might have destroyed a burial site. As such we must apply for a test excavation permit to verify if indeed the graves were relocated. Further investigation must be conducted to verify the status of the tombstones and the reason for stockpiling them. The study noted that the tombstones are not in their original positions and are not orderly arranged. The state of the tombstones presents two scenarios which must be dealt with effectively, the graves may have been relocated and the tombstones were left at the site or the site may have been disturbed by mining activities and the graves are not yet removed.

5. 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
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

6. 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*):

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.

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.

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.

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.

7. INTRODUCTION

7.1. Brief Background

The site in question was part of the graves and burial grounds identified during Phase 1 Heritage Impact Assessment specialist study for Klipfontein 3 IS farms at Orgies in Mpumalanga Province. The grave relocation conducted by Mafu's Funeral Home and Mulaifa Development projects covered the Wildebeesfontein 327 JS and Wildebeesfontein 15 ISH in Ogies, and Klipfontein 3IS Farm in Orgies, eMalahleni Local Municipality of Mpumalanga Province. Mulaifa Development Projects archaeologists conducted the field survey of the area to verify the graves as identified during Phase 1 studies (Mabuda and Munyayi 2019). Mulaifa Development Projects archaeologists inspected the site in question but did not produce a report regarding the status of the tombstones (Mafu Peers.com). It is against this background that South 32 (KPSX: South) instructed Mafu's Funeral Home to inspect the site to determine the status of the suspicious site. Heritage specialist from Sativa visited and inspected the site on the 14th of September 2020. The site inspection exercise confirmed that the site is protected by fencing although the tombstones are scattered and not arranged in order. From a heritage perspective in accordance with Section 36 of the NHRA, authorisation must be obtained from SAHRA Burial Ground and Graves Unit in Pretoria before removal or disposal of the tombstones. The affected family must be involved in the disposal process and they must consent to any method of disposal of the tombstones. In addition, the removal of the tombstones must be monitored by a professional archaeologist and a mitigation report must be compiled and submitted to SAHRA Burial Ground and Grave Unit in Pretoria.

8. AIMS OF THE INVESTIGATION

The aims of the site investigations were as follows:

- 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 the status of the tombstones in question
- To assess the condition of the site
- To identify interested and affected parties related to the site in question.
- To investigate heritage mitigation options to deal with the site in question.

The inspection process at the affected site was necessitated by the need to verify the status of the tombstones stockpiled within the mining area.

9. METHODOLOGY

This document falls under Phase 2 heritage mitigation and therefore aims at providing an informed heritage-related opinion about the status of the site in question and the subsequent mitigation measures. 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 history of the cemetery were consulted. The desktop study was followed by field investigation conducted on the 14th of September 2020. The field assessment was conducted according to generally accepted HIA practices and aimed at assessing the condition of the site and circumstances surrounding the stockpiling of tombstones at the site. We conducted a random transect walk across the site to establish the extent of the site. The site was geo-referenced with a hand held Global Positioning System (GPS) for recording the location/position of the site in relation to mining development. Each tombstone was inspected to check if it is sitting on its original position. Detailed photographic recording of the tombstones was also undertaken where relevant (see Plates 1-10). The findings were then analysed in view of the two possible scenarios. The result of this investigation is a report indicating the options to deal with the tombstones in question.



Figure 1: Position of the tombstones in question

10. LEGAL CONTEXT

In terms of Section 36(3) of the National Heritage Resources Act, no person may, without a permit issued by the relevant 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 or 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, or any equipment which assists in the detection or recovery of metals.

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

(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.

Legislations governing farm burials

South African farmers traditionally buried members of their own family on the farm but not next to farmhouses. Times have changed, however, and the practice of burying people in family graveyards on the farm has to a large extent disappeared. The Act (Extension of Tenure Security Act, 1997 (Act No.62 of 1997) initially made no provision for burials on farms – only for visiting existing family graves. In 2002 the Act was amended to allow for burial on a farm in certain instances, namely where the deceased had been a long-term occupier or where the person had at the time of his/her death been an occupier on a farm where it was customary to allow burials. Under these

circumstances the landowner is obliged to permit the burial although he/she may set reasonable conditions for such burial. The landowner is also free to allow burials even where the Act does not require it, in which case it would be his/her choice to do so. Graves and burials are regulated in urban areas by municipal regulations, which could differ from one municipality to the next. The provisions of the Extension of Tenure Security Act must be read in conjunction with any municipal ordinance relating to burials where this is applicable to farmland. The Mogale City ordinance on graveyards, for instance, stipulates as follows: "Section 51: Burials on farms 51. No further burials will be permitted on farms where the municipality has established rural cemeteries for such purpose. Existing farm cemeteries will be deemed as closed as from 1 January 2006 and all burial needs emanating from such farmlands will be directed to the public cemeteries that will be allocated by the Municipality". It is also important to note that in terms of the Registration of Births and Deaths Act (Act 51 of 1992), no body may be buried before a burial order had been issued by the Police or the Department of Home Affairs.

The traditional Christian method of positioning the coffin or shroud covered body in the grave was to have the body with the head to the west, feet to the east. The location of the burial may be determined by taking into account concerns surrounding health and sanitation, religious concerns, and cultural practices. Some cultures keep the dead close to provide guidance to the living, while others "banish" them by locating burial grounds at a distance from inhabited areas. Some religions consecrate special ground to bury the dead, and some families build private family cemeteries. Most modern cultures document the location of graves with headstones, which may be inscribed with information and tributes to the deceased. However, some people are buried in anonymous or secret graves for various reasons. Sometimes multiple bodies are buried in a single grave either by choice (as in the case of married couples), due to space concerns, or in the case of mass graves as a way to deal with many bodies at once.

11. PUBLIC CONSULTATIONS

Consultation is guided by Section 36(5a&b) of the NHRA Act 25 of 1999. It is thus my assumption that the affected graves were removed after consultation and an agreement was made with the descendant family as envisaged in the said section. We initially engaged SAHRA Burial Ground and Graves Unit regarding the matter, they requested a written submission and the Status quo report. To date SAHRA has instructed us to apply for test excavation to prove beyond doubt that indeed the tombstones do not constitute a burial site. We also consulted one of the Prinsloo family members who promised to come and assist with information relating to the graves in question. Arrangements were made to meet him on site; however,

Prinsloo did not turn up for the site verification. The heritage team also consulted the then project manager for background information but did not provide any information regarding the site. Our breakthrough was on Friday the 25th of September when we met with Mike Koen (Director of Capital Projects) contactable on 082 419 5806. He confirmed that the current location of tombstones was on the initial mining right area applied for around 2008. We searched for Environmental Impact Assessment reports for that period but could not get the Heritage reports even on the SAHRIS website or internet in general. It should be noted that SAHRIS website only came into effect around 2012, which means some reports before 2012 may be missing in their archives.

We consulted Mr Koen who confirmed that the mine does not intend to mine at the site since it falls approximately 60m from the mining boundary, however, he confirmed that the site falls within the blasting area, hence the concern to deal with the stockpiled tombstones. During our engagement with several mine workers at Klipspruit Colliery, Mr Koen discovered that Andries Fourie (082 419 5791), Adie van Taak and Terry Dodd (082 557 4808) stayed at the farmhouse adjacent to the site from 2008 to 2010. Mr Koen contacted Andries Fourie who confirmed that there were no graves located near the farmhouse. Usually farmers do not bury their relatives next to the farmhouse as is the case with the stockpiled tombstones which are located barely 10m from the derelict farmhouse. This was also supported by Terry Dodd who confirmed that there were no graves near the farmhouse. Which means that the tombstones are probably located at a secondary location, however, the question remains, who removed the graves, who brought them to the location and why were they stockpiled?

12. RESULTS OF THE SITE INVESTIGATION

Sativa team inspected and assessed the tombstones in question. The site is protected by a fence and trench. There is no sign of any family member visiting the site for any purpose. The heritage team confirmed that the tombstones are probably not in their original positions. It is most likely that the graves were removed from somewhere but due to the size of the tombstones the undertaker may have failed to relocate the tombstones together with the human remains and other grave goods. However, it is also possible that the affected family/families may have requested the undertaker to preserve the tombstones at the burial site. The worst-case scenario would be that the burial site might have been destroyed during clearance and earth moving activities at the site. It is the last scenario that makes it imperative to apply for a test excavation permit from SAHRA Burial Grounds and Grave Unit to verify if indeed the graves and remains were relocated.

Significance valuation for Burial Ground, Historic Cemeteries, and Individual Graves

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 an inscribed tombstone



Plates 2: Shows broken tombstones.



Plates 3: Shows broken tombstones.



Plates 4: Shows broken tombstones scattered at the site.



Plates 5: Shows broken tombstones.



Plates 6: Shows broken tombstones



Plate 7: Shows broken tombstones.



Plate 8: Shows tombstones scattered within the site.



Plate 9: Shows tombstones piled at the site in question.



Plate 10: Shows tombstones piled at the site in question.

13. MITIGATION MEASURES

The investigation confirmed that all the tombstones are probably not in their original positions, however, they are still protected by the NHRA as heritage objects and more importantly by Section 36 of the NHRA that protect graves and grave goods/funerary objects. As such the following mitigation measures were mooted.

- The tombstones in question must be protected while investigations are underway.
- The tombstones must not be destroyed or disposed of without consent from the affected family.
- Permission from SAHRA may be required to destroy the tombstones in accordance with the NHRA.
- Notify interested and affected parties about the ongoing construction activities which may impact of the potential graves.
- The site must be test excavated by a professional archaeologist to ensure that indeed the graves were relocated to a safer place.
- Should it be that the site is burial site disturbed by mining activities, then proper procedures to obtain family consent and burial permit from SAHRA must be adhered to.

14. ACCIDENTAL DISCOVERIES/DISTURBANCE OF GRAVES

This being a case of activities in the vicinity of a “potential burial site” the regulations state that when a grave is damaged 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 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 or the provincial heritage resources authority). SAHRA 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.

15. RECOMENDATIONS

Based on the assessment conducted by Mafu's Funeral Home and Sativa, the following recommendations must be adhered to.

- The site must be protected while investigations are underway.
- The project archaeologist must apply for test excavation permit to determine if indeed the tombstones were brought to the site from somewhere.
- The Prinsloo family must be consulted regarding the circumstances surrounding the piling of tombstones.
- Permission/consent to remove or destroy the tombstones must be sought from the affected family.
- The tombstones must not be removed or destroyed without authorisation from SAHRA. It should be borne in mind that the tombstones are protected first as graves goods/funerary objects and secondly as heritage objects. Whether graves are removed or not, they still retain their heritage significance.
- A professional archaeologist/heritage practitioner must be retained to monitor and document the removal, destruction, or disposal of the tombstones.
- Should the ongoing investigation establish that the affected graves were not relocated, then proper procedures to obtain consent and burial permits must be followed.
- 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).
- No dumping of construction material is allowed within the burial site and no un-monitored alteration or excavation within the cemetery may occur.
- 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.

16. CONCLUDING REMARKS

Mafu's Funeral Home in collaboration with Sativa Travel and Environmental Consultants (Pty) Ltd were instructed by South32 (KPSX: South) to investigate the status of the piled tombstones and the

circumstances surrounding their abandonment. In terms of heritage in respect of the removal or destruction of the tombstones the tombstones are protected by the NHRA whether or not the graves were removed. The site must be protected while investigations are underway. The site must not be destroyed with a permit from SAHRA and involvement of the affected family. This report concludes that ongoing investigation must be concluded before any mitigation measures are implemented on the site. The measures are informed by the results of the study and principles of heritage management enshrined in the NHRA, Act 25 of 1999.

17. 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)

<http://www.growinggreatness.co.za/wp-content/uploads/2015/10/Protocol-on-farm-burials.pdf>

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.

18. APPENDICES

19. APPENDIX 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 ISS.

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 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.