

uMsimbithi Mining (PTY) LTD

DRAFT-STATUS QUO AND PRE-MITIGATION HERITAGE IMPACT ASSESSMENT REPORT INCORPORATING SOCIAL CONSULTATION FOR BURIALS IDENTIFIED DURING PHASE 1 IMPACT ASSESSMENT STUDY FOR uMSIMBITHI MINING IN BELFAST, eMAKHAZENI LOCAL MUNICIPALITY, MPUMALANGA PROVINCE, SA.

March, 2021

PREPARED BY

Mulaifa Development Projects
Heritage Management Division
15B Botano Building
c/o Lichen & Embarkment Road
Centurion, 0157
Tel: +27 (0) 12 663 6102
Fax: +27 (0) 86 608 3013
E-mail: info@mulaifaprojects.co.za

PREPARED FOR

UMSIMBITHI MINING (Pty) Ltd
4th Floor, Illovo Edge Commercial Building
11 Harries Road, Illovo

Johannesburg, 2196
Tel : +27 (0) 11 243 5200
Fax: +27 (0) 12 460 2417
E-mail: info@umsmining.co.za



DOCUMENT INFORMATION

TITLE: STATUS QUO AND PRE-MITIGATION HERITAGE IMPACT ASSESSMENT REPORT INCORPORATING SOCIAL FACILITATION FOR BURIALS IDENTIFIED DURING PHASE 1 IMPACT ASSESSMENT STUDY FOR UMSIMBITHI MINING (PTY) LTD, WONDERFONTEIN COLLIERY IN BELFAST, eMAKHAZENI LOCAL MUNICIPALITY, IN MPUMALANGA PROVINCE.

PURPOSE OF SCOPE:

The purpose of this document is to document burial grounds and graves affected by the proposed Mining development of uMsimbithi Colliery. The development is located in Wonderfontein Farm in Belfast Town, eMakhazeni Local Municipality, Mpumalanga Province.

DOCUMENT VERIFICATION

Signature: Position: Archaeologist
Name: Mabuda M. Moses **Date:** 05 March 2021

ENDOSED

Client Project Responsible Officer to sign off.

Signature Position: Community Manager
Name: Mr. Thanyani Nthangeni **Date:**

Issue	Date	Reason For Issue	Responsible	Accountable
1	05/03/2021	Consideration and on-ward Approval of Heritage Agency	Mr. Munyai RR	Mr. M. Mabuda
2	12/09/18			

Recipients: UMSIMBITHI MINING (PTY) LTD

CAVEAT

STATUS QUO AND PRE-MITIGATION HERITAGE IMPACT ASSESSMENT REPORT FOR BURIALS IDENTIFIED DURING PHASE 1 IMPACT ASSESSMENT STUDY FOR uMSIMBITHI MINING (PTY) LTD (uMsimbithi Colliery) IN BELFAST TOWN OF eMAKHAZENI LOCAL MUNICIPALITY, IN MPUMALANGA PROVINCE.

Authorship: The report was prepared by Mr. M.M Mabuda (Professional Archaeologist) assisted by Mr. R.R. Munyai. The report was prepared for uMsimbithi Mining (Pty) Ltd.

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 the client, and Mulaifa Development Projects except that the Report may be reproduced by the client and the South African Heritage Resources Agency to the extent that this is required for the purposes of the Heritage Management purposes in accordance with the National Heritage Resources Act, Act 25 of 1999

Details of the equipment used

- Geographic Co-ordinate Information: Geographic co-ordinates in this report were obtained using a hand-held Garmin Global Positioning System device Garmin Oregon 650. The manufacturer states that these devices are accurate to within +/- 5 m.
- Digital Camera: Canon IXUS 185

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.

The survey was carried out within the context of tangible and intangible cultural heritage resources as defined by the SAHRA Regulations and Guidelines as to the authorisation for the proposed exhumation and reburial of graves affected by the mine extension.

Signed by: Archaeologist

Mr. M.M. Mabuda (BA. Hons, 2003, Archaeology, MDev, 2016)

ACKNOWLEDGEMENTS

The author acknowledges the assistance of Mr. Lucky Madzhuta and Mr. Thanyani Nthangeni from uMsimbithi Mining (Pty) Ltd, Wonderfontein Colliery.

MANAGEMENT SUMMARY

BACKGROUND

uMsimbithi Mining (PTY) Ltd (Wonderfontein Colliery) commissioned the graves relocation studies with the sole aim of exhuming and relocating graves which is located in the mining area of Wonderfontein colliery. The study focuses on graves and burial grounds identified during Phase 1 Heritage Impact Assessment specialists study for the proposed development of mining activities within Wonderfontein farm. Human burials (graves) were identified during Phase 1 Heritage Impact Assessment for the proposed expansion of mining activity at Wonderfontein Colliery at Belfast Town, Mpumalanga Province.

Mulaifa Development Projects, was commissioned by uMsimbithi Mining (Pty) Ltd to conduct Phase 2 heritage mitigation study for the burial grounds and graves recorded within the footprint of the proposed mining development area. Mulaifa Development Projects archaeologists and physical cultural property specialists conducted field survey of the area in an attempt to verify the graves as identified during the Phase 1 studies. The set of graves are listed as site number nine (GY09) within the phase one (1) report. The total estimated number of sixty (60) graves were identified on site.

SUMMARY RESULTS

Mulaifa Development Projects' heritage specialist team surveyed the affected graveyard in an attempt to confirm the location and distribution of burial ground and grave sites and verify their condition and status in situ context. One graveyard was identified with the help of mining personnel, and that graveyard, marked as GY09 has an estimated total of 60 graves.

RECOMMENDATIONS

- The survey confirmed that the affected landscape has a long history of human occupation making it an active cultural landscape where there is a possibility of encountering previously unknown graves in the project area during subsurface construction work.
- Sixty (60) graves were identified and recorded as part of this "Status Quo Heritage Impact management study". It is recommended that an extensive family consultation accompanied by social facilitation be conducted in order to ascertain the exact number of graves remained, noting that some of the graves had previously been relocated.

- However, onsite notices and newspaper adverts have been published calling upon the potential claimants or custodians of the burials sites to come forward before the graves are placed under a relocation program. Such notices form part of the public consultation process aimed at affording an opportunity to the direct descendants of the deceased to submit their concerns, objections or consent to allow the said graves to be relocated. This exercise is conducted as part of legal requirement under sections of the National Heritage Resources act, Act 25 of 1999 and the human tissue Act 65 of 1983
- A committee of 6 members is in place to help deal with the proposed graves exhumation and relocation exercise. This committee is comprised of members whom are direct descendants of the deceased. The position of the committee is that the affected families has no objection to the proposed exhumation and relocation of the affected grave conditionally.
- In the likely event that there are unclaimed graves or no descendants will come forward, the graves will be treated as unknown graves and as such they will fall within the jurisdiction of the National Heritage Resources Act (NHRA) 25 of 1999 under the assumption and observation that some of the graves have been confirmed to be older than 60 years.
- The proposed development will certainly destroy the said grave(s). As such these grave(s) should be relocated to safer areas. Before any interference with the burial ground and graves, an urgent exhumation permit application should be lodged with South African Heritage Resources Agency (SAHRA) Burial Grounds and Graves Unit and the Mpumalanga Provincial Department of Health to secure the relevant permission for urgent intervention to rescue, salvage and relocate the burials to formal burial ground.
- The mining development footprint will cover the historic and active cultural landscape with historic and contemporary human settlements. This provides for a high probability of encountering chance finds and previously unknown graves during sub-surface construction work. The proposed mining development will cover historic homestead remains where there are high possibilities of encountering unmarked burials such for infants (stillborn) that are traditionally buried in homesteads as opposed to being buried in cemeteries. As such, should such case arise during the course of development, construction must immediately cease, and an Archaeologist or SAHRA must be called.

TABLE OF CONTENTS

Document information.....	- 2 -
Caveat.....	- 2 -
ACKNOWLEDGEMENTS	- 3 -
MANAGEMENT SUMMARY	- 4 -
background.....	- 4 -
summary results.....	- 4 -
recommendations	- 4 -
table of contents	- 6 -
ABBREVIATIONS	- 8 -
DEFINITIONS	- 8 -
1. INTRODUCTION	- 11 -
2. AIM OF THE STUDY.....	- 11 -
3. Specialist Qualifications	- 11 -
4. Assumptions and Limitations	- 12 -
5. HERITAGE LEGISLATION	- 12 -
6. Grave outside NHRA Protection.....	- 14 -
7. previously unidentified burial sites/graves.....	- 14 -
8. Social consultancy	- 15 -
9. Methodology	- 15 -
9.1. site significance	- 16 -
9.2. Methodology for Impact Assessment	- 16 -
<i>Impact Rating</i>	- 16 -
<i>Certainty</i>	- 16 -
10. Results: Burial grounds and graves	- 17 -
10.1 burial ground (GY09).....	- 17 -
11. General Applicable HERITAGE MANAGEMENT GUIDELINES.....	- 21 -

12. SUMMARY RECOMMENDATIONS AND CONCLUDING REMARKS..... - 21 -

13. Grave Relocation Process..... - 22 -

14. BIBLIOGRAPHY..... - 23 -

ABBREVIATIONS

AIA	Archaeological Impact Assessment
HIA	Heritage Impact Assessment
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
EMP	Environmental Management Plan
ASAPA	Association of South African Professional Archaeologists
CRM	Cultural Resource Management
NHRA	National Heritage Resources Act, Act 25 of 1999.
NEMA	National Environmental Management Act
EO / ECO	(Environmental Officer/ Environmental Control Officer)
PHRA	Provincial Heritage Resources Agency
SAHRA	South African Heritage Resources Agency

DEFINITIONS

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

Burial site the location of any human grave or remains that have been interred, cremated or otherwise placed, and include ossuaries, single burials, multiple burials; rock cairns; cave or cache burials etc. not situated within a cemetery.

Burial Site which is defined as: a place outside a recognized cemetery where the remains of a cultural ancestor of indigenous people have been interred, or otherwise placed.”

Chance Finds 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 trench excavations.

Cultural Heritage Resources Same as Heritage Resources as defined and used in the South African Heritage Resources Act (Act No. 25 of 1999). Refer to physical cultural properties such as archaeological and paleontological 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 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.

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 or burial ground.

Grave offering any object or objects associated with the human remains that may reflect the religious practices, customs or belief system of the interred.

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.

Historic under the NH Resources Act this generally means something older than 60 years.

Human remains mean the remains of a dead human body and include partial skeletons, bones, cremated remains and complete human bodies that are found outside a recognized cemetery” (adapted from NHR Act)

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.

Material- Buildings, structure, features, tools and other artefacts that constitute the remains from past societies.

Recognized cemetery a defined area of land that is set aside for the burial of human bodies.

Representative means a descendant of the interred or of the person whose remains are found, or where no descendant survives or is identified, an official representative of the appropriate custodians of the burial site or the closest culturally affiliated group, religious denomination, military or authority as evidenced by the location or mode of burial. Where no representative can be determined the Archaeologist shall act as the representative on unclaimed or unknown burials and the EO at Kangala Mine at the discretion and with the consent of the SAHRA, the custodian representative group.

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

Site disposition agreement means a written agreement to be reached between the EO and the representative of the interred regarding the disposition of the remains, including any disinterment and re-interment, and management plan. Management plan means a plan to identify the roles of the representative, Archaeologist and land owner or manager respecting the care and protection of the site, including a consideration of site records, site access, and ways to protect a site from disturbance until the proper exhumation, relocation and reburial is completed.

Heritage -That, which is inherited and forms part of the National Estate (Historical places, objects, fossils as defined by the National Heritage Resources Act 25 of 1999).

Heritage resources – This means any place or object of cultural significance.

1. INTRODUCTION

Mulaifa Development Projects was commissioned by uMsimbithi Mining (Pty) Ltd (uMsimbithi Colliery) to conduct Phase 2 heritage mitigation for burial ground and graves relocation exercise from the proposed uMsimbithi mine extension development footprint. Mulaifa Development Projects' archaeologists and heritage specialist team conducted a field survey for the proposed mining footprint. The survey which, was a follow up of the phase one study conducted by Anton Pelser Archaeological Consulting (APAC) and constitute phase two (heritage mitigation) identified one (1) graveyard marked and identified as GY09.

This report provides the results of the field study conducted to confirm the status quo of the affected burial grounds within the project receiving area. The study was conducted within the framework of the legislations including the Section 36 of the National Heritage Resources Act (Act No 25 of 1999) and will soon apply the Human Tissue Act (1983).

2. AIM OF THE STUDY

The study was commissioned as part of a Phase 2 Heritage Mitigation exercise for uMsimbithi Mining (Pty) Ltd (uMsimbithi Colliery) Mine extension project. The study is part of the proposed grave relocation mitigation process aimed at relocating identified graves from the footprint of the mining development to safer locations. In addition, the study sought to:

- ❑ Confirm the existence of the burial ground and graves situated within the proposed uMsimbithi Colliery development footprint.
- ❑ Conduct site condition survey of all recorded burial grounds and gravesite in the project's primary footprint impact zone. The primary impact zone being the direct path of the development.
- ❑ Make further recommendations on mitigation measures with the view to reduce specific adverse impacts and enhance positive impacts on the affected burial sites.
- ❑ Take responsibility for communicating with SAHRA and other related authorities in order to obtain the relevant burial relocation permits and authorization.

3. SPECIALIST QUALIFICATIONS

Mulaifa Development Projects compiled this Report for uMsimbithi Mining (Pty) LTD (uMsimbithi Colliery). Mulaifa Development Project led by Mr. M.M Mabuda and Mr. Munyai R.R has more than 15yrs experience in the heritage and cultural resources management consulting and development industry. Both project members are registered with the Association of Southern African Professional Archaeologists (ASAPA) and the PI has CRM accreditation within ASAPA.

4. ASSUMPTIONS AND LIMITATIONS

Regardless of the comprehensiveness of the fieldwork undertaken, it is necessary to realize that the heritage resources located during the fieldwork were limited to graves and burial grounds. As such the study do not necessarily represent all the possible heritage resources present within the affected area. Other classes of heritage resources in the area were covered under the Phase 1 HIA study. This study was restricted to physically identifiable burial grounds and graves. This means surficial unidentifiable graves and burial grounds, for example those covered by dense vegetation or have no visible signature are not accounted for herein. As such, should any burial/grave site (or any protected heritage features and/or objects for that matter) not included in the present inventory be located or observed, a heritage specialist must immediately be contacted.

Such observed or located heritage features and/or objects may not be disturbed or removed in any way until such time that the heritage specialist had been able to make an assessment as to the significance of the site (or material) in question. This applies to graves and cemeteries as well. In the event that any graves or burial places are located during the development the procedures and requirements pertaining to graves and burials will apply as set out in annexure 1 below.

5. HERITAGE LEGISLATION

The present study was conducted in line with applicable legislations and regulations. The identification, evaluation and assessment of any cultural heritage site, artefact, physical cultural properties, burial grounds and graves, intangible heritage or find in the South African context is required and governed by the following legislation:

1. National Environmental Management Act (NEMA) Act 107 of 1998
2. National Heritage Resources Act (NHRA) Act 25 of 1999
3. Minerals and Petroleum Resources Development Act (MPRDA) Act 28 of 2002
4. Development Facilitation Act (DFA) Act 67 of 1995
5. Human Tissue Act (HTA) Act 65 of 1983.

The NHRA stipulates that cultural heritage resources may not be disturbed without authorization from the relevant heritage authority. Section 34 (1) of the NHRA states that “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...” The NEMA (No 107 of 1998) states that an integrated EMP should (23:2 (b)) “...identify, predict and evaluate the actual and potential impact

on the environment, socio-economic conditions and cultural heritage". In accordance with legislative requirements and EIA rating criteria, the regulations of SAHRA and ASAPA have also been incorporated to ensure that a comprehensive legally compatible Heritage Management report is compiled.

As highlighted in introductory sections of this report, the study specifically focuses on burial grounds and graves affected by the planned extension of uMsimbithi Colliery mining development. Law irrespective of their ages protects all burial grounds and individual graves. Furthermore, there are regulations, which control handling and management of human remains and grave goods. Specifically, in terms of the Section 36 (3) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) 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 equipment, or any equipment, which assists in the detection or recovery of metals.

Therefore, in addition to the formal protection of culturally significance graves, all graves which are older than 60 years and which are not located in a cemetery (such as ancestral graves in rural areas), are protected. Communities, which have an interest in the graves, must be consulted before any disturbance can take place. The graves of victims of conflict and those associated with the liberation struggle will have to be included, cared for, protected and memorials erected in their honour where practical. Regarding graves and burial grounds, the NHRA distinguishes between the following:

- Ancestral graves
- Royal graves and graves of traditional leaders
- Graves of victims of conflict
- Graves of individuals designated by the Minister by notice in the Gazette
- Historical graves and cemeteries
- Other human remains, which are not covered in terms of the Human Tissue Act, 1983 (Act No.65 of 1983).

All human remains are also protected under the Human Tissue Act, 1983 (Act No.65 of 1983). In addition, Municipal Ordinances provide for both burial grounds/cemetery and gravesites within certain localities.

6. GRAVE OUTSIDE NHRA PROTECTION

Graves younger than 60 years of age fall under Section 2(1) of the Removal of Graves and Dead Bodies Ordinance (Ordinance no. 7 of 1925) as well as the Human Tissues Act (Act 65 of 1983) and are the jurisdiction of the National Department of Health and the relevant Provincial Department of Health and must be submitted for final approval to the Office of the relevant Provincial Premier.

This function is usually delegated to the Provincial MEC for Local Government and Planning, or in some cases the MEC for Arts and Culture. Authorisation for exhumation and re-interment must also be obtained from the relevant local or regional council where the grave is situated, as well as the relevant local or regional council to where the grave is being relocated. All local and regional provisions, laws and by-laws must also be adhered to. In order to handle and transport human remains the institution conducting the relocation should be authorised under Section 24 of Act 65 of 1983 (Human Tissues Act).

Graves older than 60 years, but younger than 100 years fall under Section 36 of Act 25 of 1999 (National Heritage Resources Act) as well as the Human Tissues Act (Act 65 of 1983) and are the jurisdiction of the South African Heritage Resource Agency (SAHRA).

The procedure for consultation regarding Burial Grounds and Graves (Section 36(5) of Act 25 of 1999) is applicable to graves older than 60 years that are situated outside a formal cemetery administered by a local authority. Graves in the category located inside a formal cemetery administered by a local authority will also require the same authorisation as set out for graves younger than 60 years over and above SAHRA authorisation.

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

7. PREVIOUSLY UNIDENTIFIED BURIAL SITES/GRAVES

The proposed mining development is situated in a historic and contemporary cultural landscape with prehistoric, historic and contemporary human settlements and homestead remains. Given the history

of human occupation of the affected area, there is a possibility that previously unknown burials may be discovered during subsurface construction work. Should burial sites be accidentally found, they must be reported to the nearest police station to ascertain whether or not a crime has been committed and a heritage expert should be called in to establish whether the burial is covered by the NHRA. 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 must 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 give 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.

8. SOCIAL CONSULTANCY

The research team has been liaising with uMsimbithi colliery Project Development Team members and the committee representing the direct descendants of the deceased to trace other and get relocation consents from families that were relocated from the affected project area. Although consultations have thus far yielded positive response from the committee members regarding the proposed exhumation and relocation of graves identified at GY09 site, the issues surrounding compensation is withholding progress in relation to consents, however the process is ongoing. Nonetheless, an onsite notice and newspaper advert has been published, a window period for social and ethnological consultation is still open until such time that graves will be relocated in line with the requirements of the National Heritage Resources Act to ensure that the potential custodians are identified and consulted about the proposed relocation of the affected graves.

9. METHODOLOGY

The methods in this study followed an HIA process that consisted of three steps:

Step I – Literature Review: The background information to the field survey leans greatly on the report completed for uMsimbithi Mining (Pty) Ltd by Anton Pelsler Archaeological Consulting (APAC) Pty Ltd, (report number APAC020/66, 2020).

Step II – Physical Survey: A physical survey was conducted on foot through the proposed Kangala mine development project area, in particular where the grave in question is located by qualified archaeologists (16 July 2018), aimed at locating and documenting graves and burial ground sites falling within the proposed mining development footprint.

Step III – The final step involved the recording and documentation of relevant burial grounds and gravesites, as well as the assessment of sites in terms of the heritage impact assessment criteria and report writing.

9.1. SITE SIGNIFICANCE

The grave including all unidentified burial grounds and gravesite covered by this report fall under the Generally Protect category and they all retain a High and Medium Significance. Therefore, all the sites that are on the direct path of the development should be protected in situ or mitigated before destruction.

9.2. METHODOLOGY FOR IMPACT ASSESSMENT

Impact Rating

The impact of the planned mining development is considered VERY HIGH from both a heritage and developmental perspectives.

These impacts would be considered by society as constituting a major and usually permanent change to the (natural and/or socio-cultural) environment, and usually result in severe or very severe effects, or beneficial or very beneficial effects.

Example: The permanent loss of physical cultural properties or cultural landscape would be viewed by informed society as being of VERY HIGH significance.

Certainty

DEFINITE: More than 90% sure of a particular fact. Substantial supportive data exists to verify the assessment.

PROBABLE: Over 70% certainty of a particular fact, or of the likelihood of an impact occurring.

POSSIBLE: Only over 40% certainty of a particular fact or of the likelihood of an impact occurring.

UNSURE: Less than 40% certainty of a particular fact or likelihood of an impact occurring.

The uMsimbithi Colliery mine development impacts are considered certain on any graves or burial ground on its direct path. The grave and burial grounds sites within the mining servitude fall within the probable and possible impact region given the fact that the mining development will be associated with auxiliary developments such as service and access roads servitude, demarcation fence lines and boundaries as well as potential temporary construction camps and material storage sites during the proposed development.

10. RESULTS: BURIAL GROUNDS AND GRAVES

The field survey identified one burial site with an estimated number of 60 graves on it. All these graves as reported on by APAC are requiring exhumation from their current location, since they are located within an area earmarked for a mining development. As highlighted in previous sections, burial grounds and gravesites are accorded the highest social significance threshold. They have both historical and social significance and are considered sacred. Wherever they exist they may not be tempered with or interfered with during any proposed development. It is important to note that the possibility of encountering human remains during subsurface earth moving works anywhere on the landscape is ever present.

10.1. GRAVEYARD NUMBER 9 (GY09)

Burial Ground number nine (GY09) is located at the following coordinates: 25° 50' 23.53" S and 29° 52' 20'.20"E. There is an estimated sixty (60) grave recorded on this site. Although report by APAC estimated 57 graves on this grave site, our field investigation identified an additional three (3) graves. The burial ground is located within a portion of Wonderfontein 428 JS Farm.

Table 1: Impact Assessment for GY09 site.

Impact	Impact Significance	Heritage Significance	Certainty	Duration	Mitigation
Permanent destruction	Very High	General Protection for all graves and Burial Grounds	Definite	Permanent	Required

Table 1.1 Details of deceased at GY09

Qty	Old Grave No.	New Grave No.	Deceased Name	Death Date	Grave age
1	GYNR44	GY09/1	No name	No details	
2	GYNR48	GY09/2	Dolo Dortjie Thugwana	2012.07.10	9 yrs.
3	GYNR49	GY09/3	Jacob Msongelwa Thugwana	No details	
4	GYNR50	GY09/4	Sarah Thugwana	1984	31 yrs.

5	GYNR71	GY09/5	Koos Mlingo Thugwana	No details	
6	GYNR70	GY09/6	(Baby) Gertrude Thugwana	No details	
7	GYNR69	GY09/7	(Baby) Busi Thugwana	No details	
8	GYNR42	GY09/8	Catherine Thugwana	No details	
9	GYNR43	GY09/9	Phephelaphi Thugwana	No details	
10	GYNR41	GY09/10	Solomon Mokoena	No details	
11	GYNR40	GY09/11	(Baby) Sesiki Sebanyoni	No details	
12	GYNR34	GY09/12	(Baby) Buti Sebanyoni	No details	
13	GYNR38	GY09/13	No details	No details	
14	GYNR61	GY09/14	Sunny Motau	No details	
15	GYNR28	GY09/15	(Baby) Mhlekwana Sebanyoni	No details	
16	GYNR33	GY09/16	(Baby) Phumzile Ntuli	No details	
17	GYNR32	GY09/17	Piet Mbalekwi Mokwena	No details	
18	GYNR31	GY09/18	No details	No details	
19	GYNR30	GY09/19	No details	No details	
20	GYNR29	GY09/20	No details	No details	
21	GYNR23	GY09/21	Jobhana Mokoena	No details	
22	GYNR22	GY09/22	Johanna Mokoena	No details	
23	GYNR21	GY09/23	No details	No details	
24	GYNR74	GY09/24	(Baby) Peter Sekele	No details	
25	GYNR75	GY09/25	(Baby) Tumelo Sekele	No details	
26	GYNR72	GY09/26	Bhuti Mthombeni	No details	
27	GYNR80	GY09/27	(Baby) Kamogelo Sekele	No details	
28	GYNR79	GY09/28	(Baby) Zukana Sekele	No details	
29	GYNR64	GY09/29	No details	No details	
30	GYNR60	GY09/30	No details	No details	
31	GYNR13	GY09/31	Martha Zimu	No details	
32	GYNR45	GY09/32	No details	No details	
33	GYNR62	GY09/33	Joseph Mkhayi	22.01.1979	
34	GYNR25	GY09/34	(Baby) Betty Moloko		
35	GYNR24	GY09/35	(Baby) Betty Mahlangu Moloko	No details	
36	GYNR26	GY09/36	Mhlekwana Sebanyoni	No details	

37	GYNR35	GY09/35	(Baby) Thoko Sebanyoni Zimu	No details	
38	GYNR36	GY09/38	Alfred Mahlangu	No details	
39	GYNR39	GY09/39	(Baby) Refilwe Sekele	No details	
40	GYNR46	GY09/40	Velaphi Rebecca Ntuli	No details	
41	GYNR73	GY09/41	Emmely Mthombeni	No details	
42	GYNR52	GY09/42	No details	No details	
43	GYNR53	GY09/43	No details	No details	
44	GYNR54	GY09/44	No details	No details	
45	GYNR59	GY09/45	Johannes Andries Mahlangu	No details	
46	GYNR67	GY09/46	Sarah Sebanyoni	No details	
47	GYNR66	GY09/47	(Baby) Sarah Sebanyoni	No details	
48	GYNR65	GY09/48	Sarah Sebanyoni	No details	
49	GYNR37	GY09/49	Catherine Mahlangu	No details	
50	GYNR27	GY09/50	(Baby) Boshiwe Sebanyoni	No details	
51					
52					
53					
54					
55					
56					
57					
58					
59					
60					



Plate 1 depicts GY09 identified on site.



Plate 2. Note that the pointed grave facing west, while other graves are facing north.

11. GENERAL APPLICABLE HERITAGE MANAGEMENT GUIDELINES

This study has confirmed that there are graves located on the direct path of the proposed mining development as previously reported. This site is practically unavoidable hence the need to exhume and relocate them. Should the decision not to relate the affected graves made, the heritage management plan must be developed for supervision and monitoring purpose during and after blasting, especially in a radius of 100m apart from the graves.

In the event that human remains are uncovered or previously unknown graves are discovered in the course of the proposed development a qualified archaeologist needs to be contacted and an evaluation of the finds made. If the remains are to be rescued, salvaged, exhumed and relocated, the relocation procedures as accepted by SAHRA need to be followed. This includes an extensive social consultation process.

12. SUMMARY RECOMMENDATIONS AND CONCLUDING REMARKS

This report is limited to survey and confirmation of location of burial ground and gravesites in relation to the uMsimbithi Mining (Pty) Ltd uMsimbithi Colliery development project at the Wonderfontein Farm. No other physical cultural properties are discussed herein. The burial ground and graves are classified as of high cultural significance. All grave(s) should be mitigated prior to the mining construction works commencing. The site identified is on the direct path of the mining development footprint and therefore should be relocated.

- i. All graves identified within the mine footprint are under threat one way or the other from the proposed mining and associated developments. Such recorded graves directly affected should be rescued or salvaged by exhumation and relocated as soon as the necessary permits are obtained.
- ii. An urgent Burial Ground and Graves heritage permit from SAHRA should be obtained to allow all affected graves that fall under the NHRA to be exhumed and relocated as stipulated by applicable laws and SAHRA regulations.
- iii. All graves that do not fall under the NHRA will be treated and relocated within the Human Tissue Act of 1983 and the local municipality graves and human burial ordinances.
- iv. Should any link be established between the burials and any community or families, consent must be secured from the custodians of the burials before the relocation exercise is conducted.
- v. The relocation exercise will be overseen by the accredited heritage professional and a professional Undertaker will conduct the actual exhumation and re-interment.

Should additional previously unidentified graves be identified within the development path or buffer zones during construction works, the following measures must be taken.

- i. Mitigation of graves will require a fence around the cemetery with a buffer of at least 10 meters.
- ii. If graves are accidentally discovered during construction, activities must cease in the area affected and a qualified archaeologist be contacted to evaluate the find. To remove the remains a rescue permit must be applied for with SAHRA and the local South African Police Services must be notified of the find.

13. GRAVE RELOCATION PROCESS

Where the graves are to be relocated, a full grave relocation process that includes comprehensive social consultation must be followed.

The grave relocation process must include:

- i. A detailed social consultation process, that will trace the next of kin and obtain their consent for the relocation of the graves, that will be at least 60 days in length;
- ii. On-Site notices indicating the intent of the relocation
- iii. Newspaper Notice indicating the intent of the relocation
- iv. A permit from the local authority;
- v. A permit from the Provincial Department of health;
- vi. A permit from the South African Heritage Resources Agency if the graves are older than 60 years or unidentified and thus presumed older than 60 years;
- vii. An exhumation process that keeps the dignity of the human remains and cultural rights intact;
- viii. An exhumation process that will safeguard the legal implications towards the developing company;
- ix. The actual exhumation and reburial process must be done by a reputable funeral undertaker company that is well versed in graves relocations;
- x. The process must be conducted in such a manner as to safeguard the legal rights of the families as well as that of the developing company.

Given the long history of human occupation in the affected project area, it is highly likely that more previously unidentified graves may be discovered subsurface during the on-going construction work. Should previously unknown or unidentified graves be discovered during construction phase, they should be reported to heritage authorities to allow for their rescue before work proceeds on affected site. (See Appendix 1 for additional applicable conditions, guidelines and procedures for handling human remains relocation programmes).

14. BIBLIOGRAPHY

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.

BURKE, H. And SMITH, C. 2004. The archaeologist's field handbook. Allen and Unwin. Australia.

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

HUMAN TISSUE ACT, 1983 (Act No.65 of 1983)

HUFFMAN, TN. 2007. Handbook to the Iron Age: The archaeology of pre-colonial farming societies of Southern Africa. Pietermaritzburg: Univ. of KwaZulu-Natal Press.

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.

15. APPENDIX 1: HUMAN REMAINS AND BURIALS IN DEVELOPMENT CONTEXT

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 substation 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 development site 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 “Municipality” 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 in 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