

**Heritage Scoping Report for the Proposed Coal Prospecting Rights on Farms
Strasburg, Potsdam and Doornplaat, Indaka Municipality, Uthukela District.**

KwaZulu-Natal

Scoping Report submitted in terms of Section 38(3) of the National Heritage Resources Act (No. 25 of
1999)

Report Compiled for:

Black Cubans Minerals

by

eThembeni Cultural Heritage

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20 June 2018

Executive Summary

Black Cubans Minerals are applying for coal prospecting rights across three farms in the Indaka Municipality, Uthukela District, KwaZulu-Natal. The three farms, comprising Strasburg Farm 2391, Doornkraal 2392 and Potsdam Farm 2394, total some 37,355 km². The area is rural in character, consisting of grazing lands and terraced fields, with extensive, low density settlements throughout, with attendant livestock kraals.

The area has been occupied since the Early Stone Age, and archaeological material is known from the vicinity of the proposed prospecting area, in addition to burial grounds and graves, rock art sites and built cultural heritage. The palaeontology of the area is variable, comprising the mudrocks of the Volksrust Formation, which has high fossil sensitivity, and the sandstones, and shales of the very highly fossil sensitive Vryheid Formation. The Late Permian Volksrust Formation can contain very important amphibian and invertebrate remains as well as plant remains and petrified wood, with low-diversity marine to non-marine trace fossil assemblages. The Mid-Permian Vryheid Formation contains abundant Glossopteris flora, as well as rare fossil wood, diverse palynomorphs, trace fossils, rare insects, non-marine bivalves and fish scales. In this region these deposits are extensively intruded by Karoo dolerites, reducing the likelihood of the presence of significant fossils.

Impacts to heritage resources are possible as a result of the presence and activities of large drill rigs on site, as well as through the creation of new access roads, and artefact scatters, buried archaeological remains, as well as unmarked and informal graves and cemeteries are highly vulnerable. Prospecting can damage fossil material, but also does not provide an opportunity to study and assess formations due to the limited interventions of prospecting through coring.

Consequently, due to the possibility of archaeological heritage sites being impacted, as well as the possibility of finding graves or buried archaeological material, a field inspection was conducted to determine the likely presence of archaeological resources in the vicinity and along accesses to the proposed drill pads prior to prospecting commencing;

The following recommendations are made:

- A suitable qualified and experienced palaeontologist should be allowed access to the core samples during prospecting to inspect them for the presence of possibly significant fossils.
- In the event of the location of unmarked graves and or any other heritage resources during the prospecting processes the protocols in Appendix 2 must be adhered to.

Consequent to the proposed prospecting, should DMR issue a mining licence for the study area, a Phase Two survey of the actual mining footprint approved must be undertaken by a suitably accredited heritage practitioner; to determine the presence of any archaeological or other heritage resources within the proposed mining footprint, and whether any graves are located at abandoned homesteads outside of extant domestic precincts. The latter should run concurrently with a negotiated Relocation Action Plan (RAP) following the principles of FPIC¹, if a consequence of mining will require the compensated resettlement of families and their extant homesteads and agricultural fields.

¹ FPIC: Free, Prior and Informed Consent

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1. Introduction

Black Cubans Minerals are applying for coal prospecting rights across three farms in the Indaka Municipality, Uthukela District, KwaZulu-Natal. The three farms, comprising Strasburg Farm 2391, Doornkraal 2392 and Potsdam Farm 2394, total some 37,355 km² (Figures 1a-c); and fall respectively under the Ingwe, Sithole and Mthembu Traditional Authorities. The area is rural in character, consisting of grazing lands and terraced fields, with extensive, low density settlements throughout, with attendant livestock kraals.

2. Location

The proposed prospecting area is located some 30 km southeast of Ladysmith, in the Indaka Municipality, Uthukela District, KwaZulu-Natal on the northern bank of the Thukela River.

The three farms earmarked for coal prospecting are Strasburg Farm 2391, Doornkraal 2392 and Potsdam Farm 2394; also known as unregistered Rem of SITHOLE No.17481, Rem of MTHEMBU No.17538 and Rem of INGWE No. 17480.

3. Locality Plan

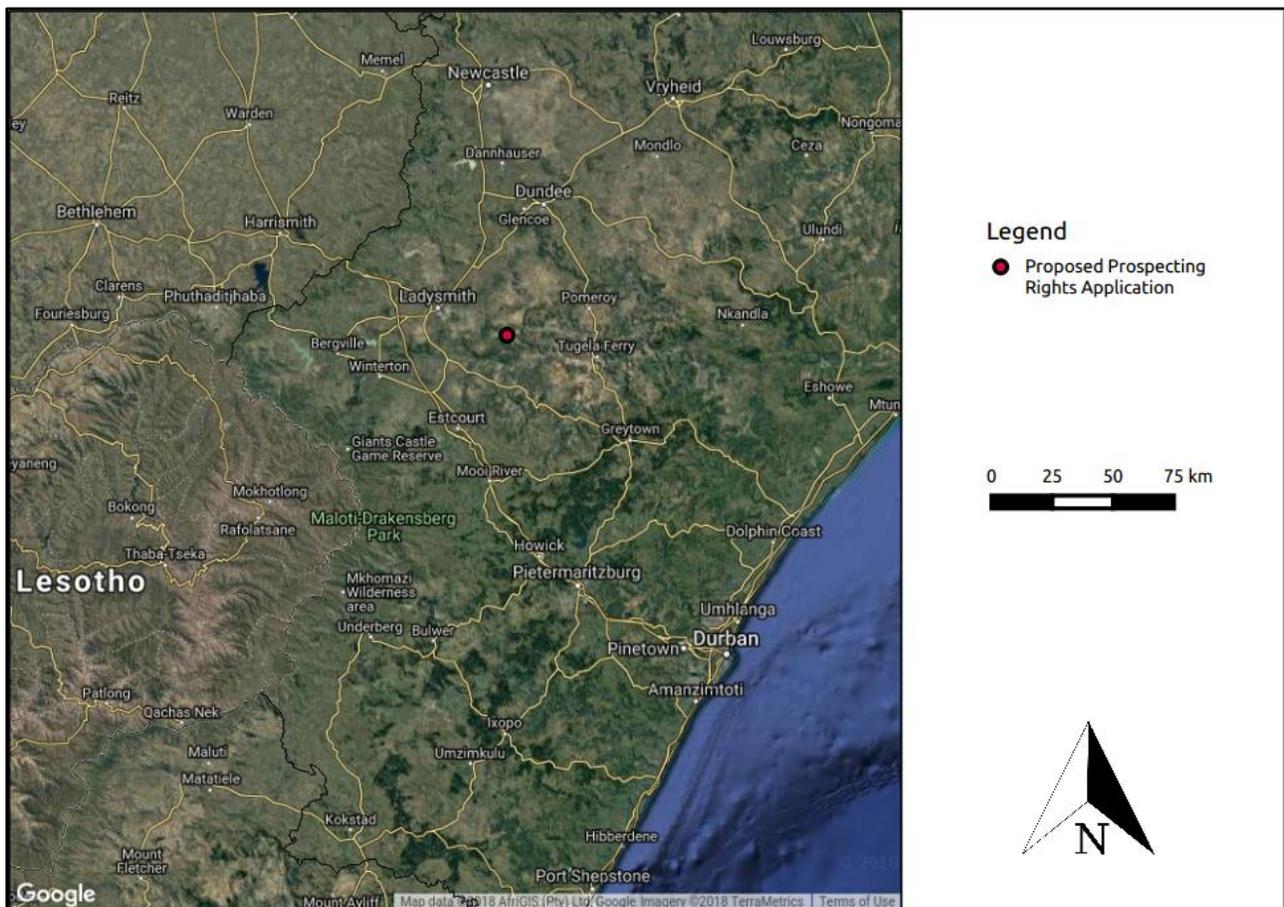


Figure 1a. Locality Plan showing proposed development area.

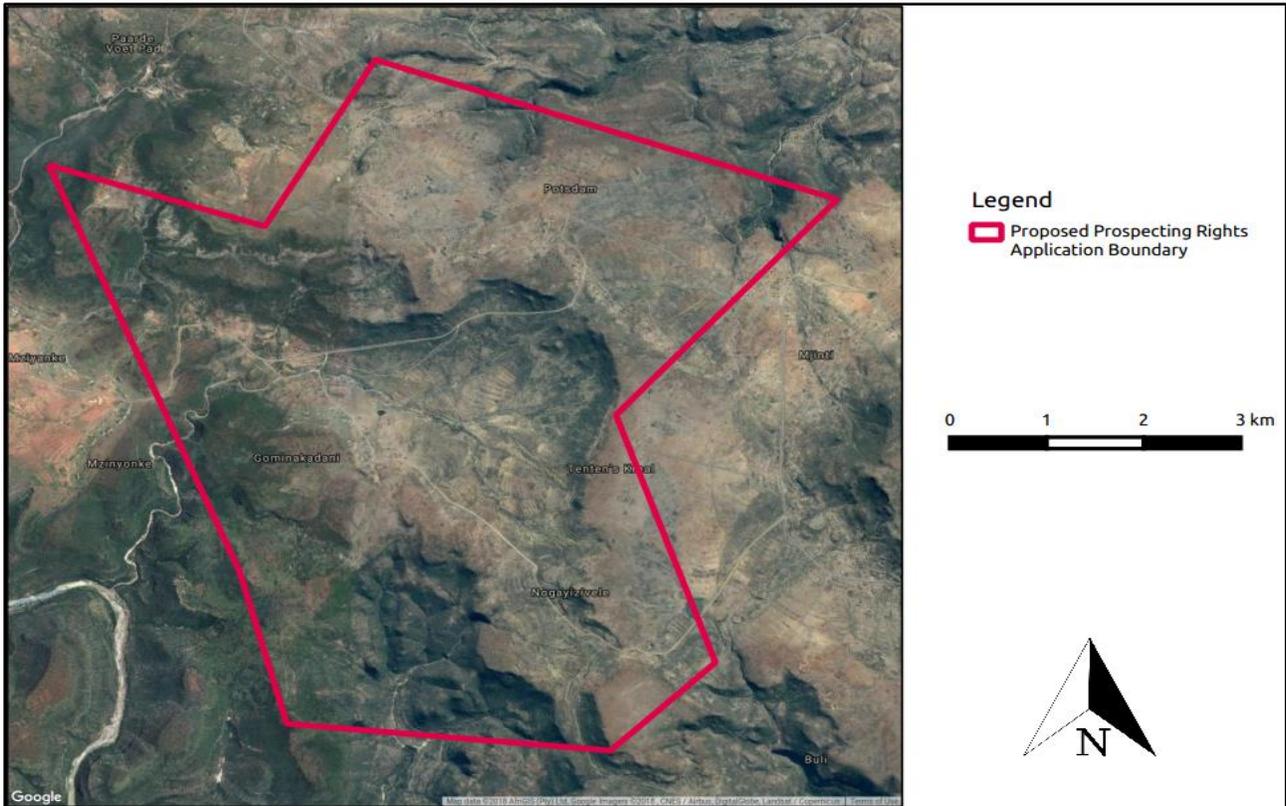


Figure 1b. Aerial image showing proposed prospecting application area.

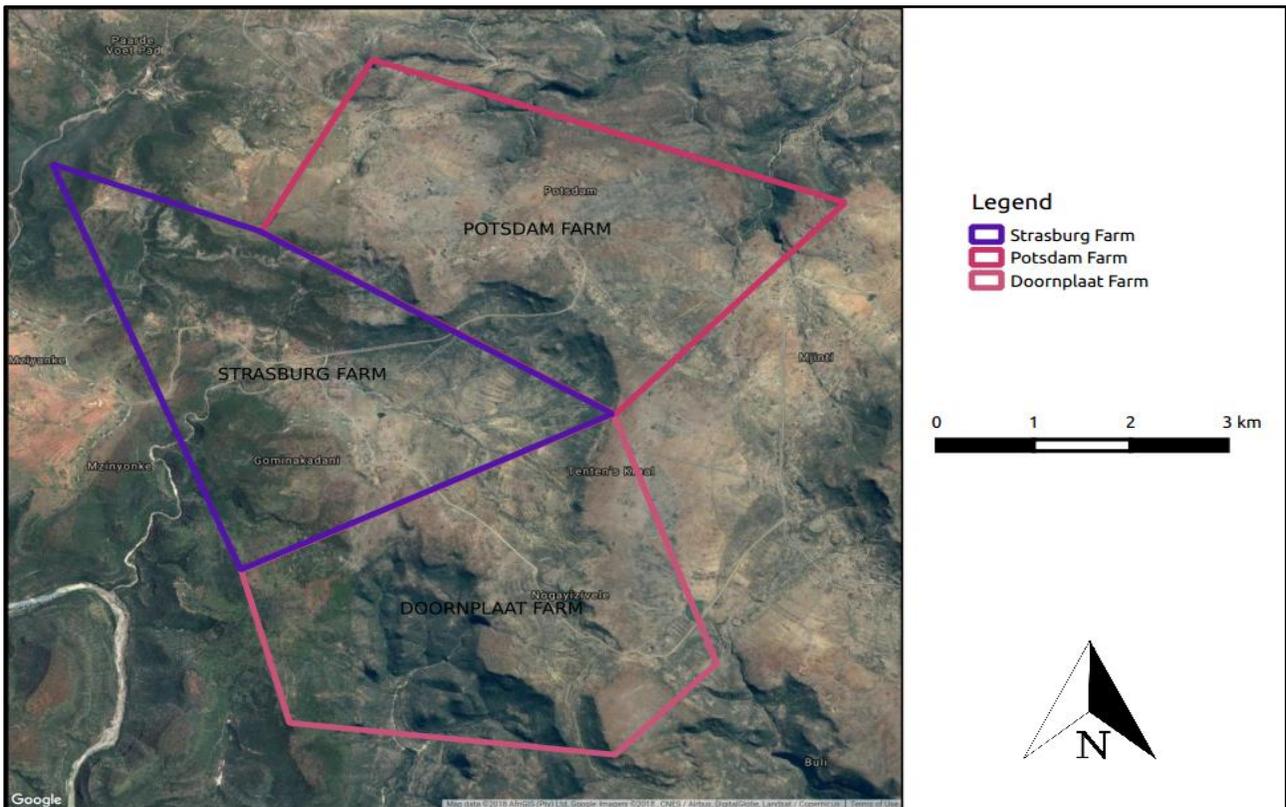


Figure 1c. Aerial image showing farms comprising proposed application area.

4. Description of the Receiving Environment

The proposed prospecting area is located within a rural setting, and predominant land use of the surrounding area is agricultural, with several low density settlements in the vicinity. The topography is varied, with lower areas to the west, rising up from the banks of the Thukela River, and higher lying land to the east. The area is largely under grazing, with numerous livestock kraals throughout, as well as several terraced fields. There is evidence throughout of relatively intensive use and reuse of the area through time, in the form of old field boundaries, fallow land, disused kraals and foot paths.

The area enjoys summer rainfall and the predominant vegetation type is Thukela Valley Bushveld, falling within the Sub-Escarpment Savannah Bioregion (Mucina et al. 2006).

5. Heritage Character of Area

For the purpose of this scoping assessment, the heritage character of the area has been derived from previous heritage work conducted in the vicinity of the proposed development, with surveys conducted up to 10kms from the study area consulted (Figure 2, Appendix 1). All of the heritage studies that have been conducted within this region are archaeological surveys, and include surveys of large areas of land for extensive developments, localised surveys for small developments and linear surveys for road alignments.

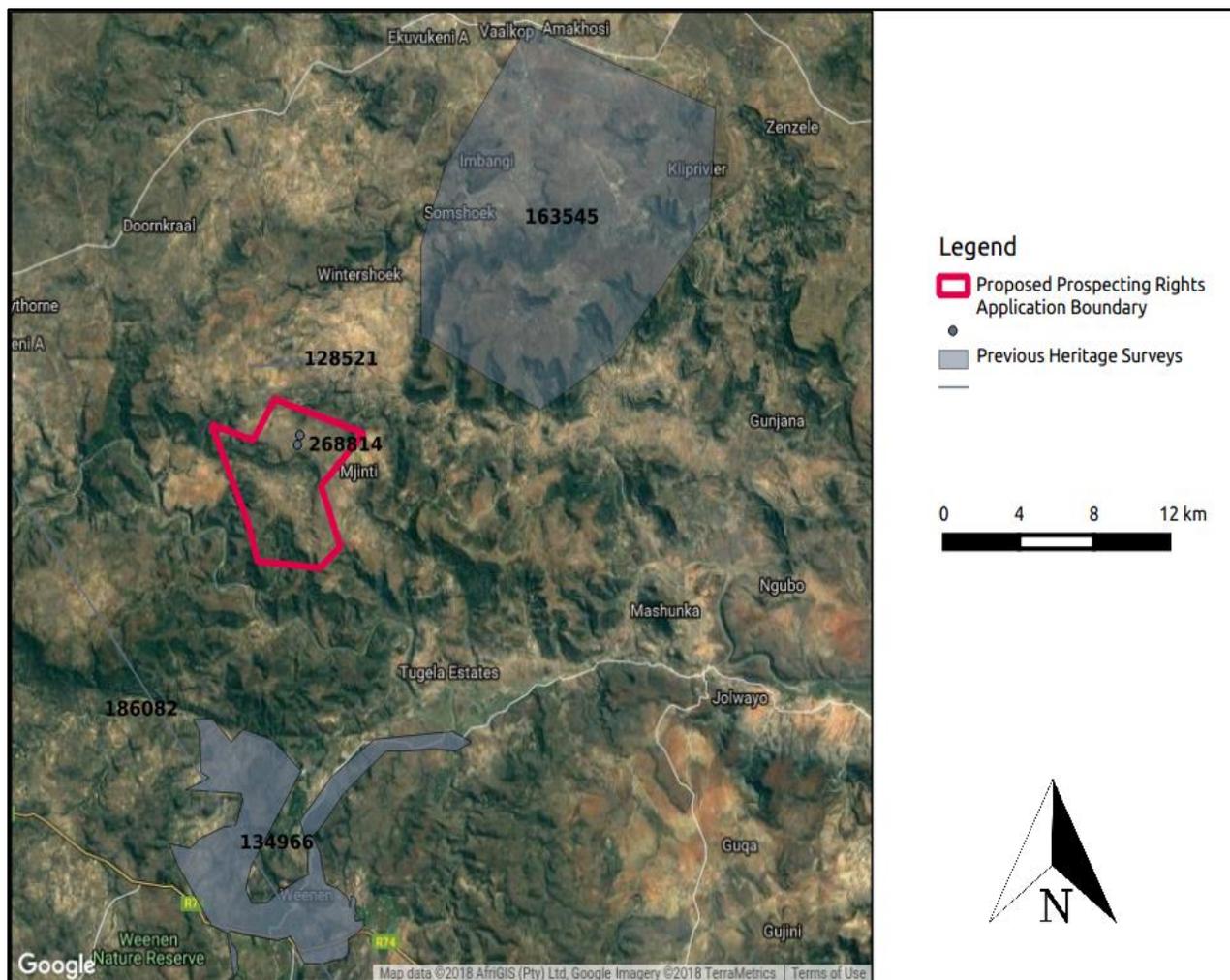


Figure 2. Previous Heritage Surveys near the proposed prospecting rights application area

No palaeontological assessments have been undertaken in the area. Palaeontological information has been derived from the SAHRIS Palaeosensitivity Map (2014), the SAHRIS Fossil Browser (2013) and the Palaeontological Technical Report for Kwazulu-Natal (Groenewald 2012).

The region is underlain by the Permian aged Volksrust and Vryheid Formations of the Ecca Group, Karoo Supergroup, which are of high and very high fossil sensitivity, respectively (SAHRIS 2014) (Figure 3). According to the SAHRIS Fossil Browser (2013), the Late Permian Volksrust Formation comprises dark grey shale, appearing as basinal dark mudrocks with phosphatic, carbonate or sideritic concretions, and minor coals. These rocks were laid down on an offshore shelf, but possibly also as nearshore, lacustrine or lagoonal deposits appearing as fluvial sandstone and red mudstone. This formation can contain trace fossils, rare temnospondyl amphibian remains, invertebrates (bivalves, insects), minor coals with plant remains, petrified wood, organic microfossils (acritarchs), and low-diversity marine to non-marine trace fossil assemblages. According to Groenewald (2012), the Volksrust Formation contains the first reported discovery of the bivalve *Megadesmus* genus in Africa. This discovery reveals that the north eastern Karoo Basin was still a marine environment at this time, and that, unlike in the southern basin region, terrestrial conditions did not yet prevail (ibid.).

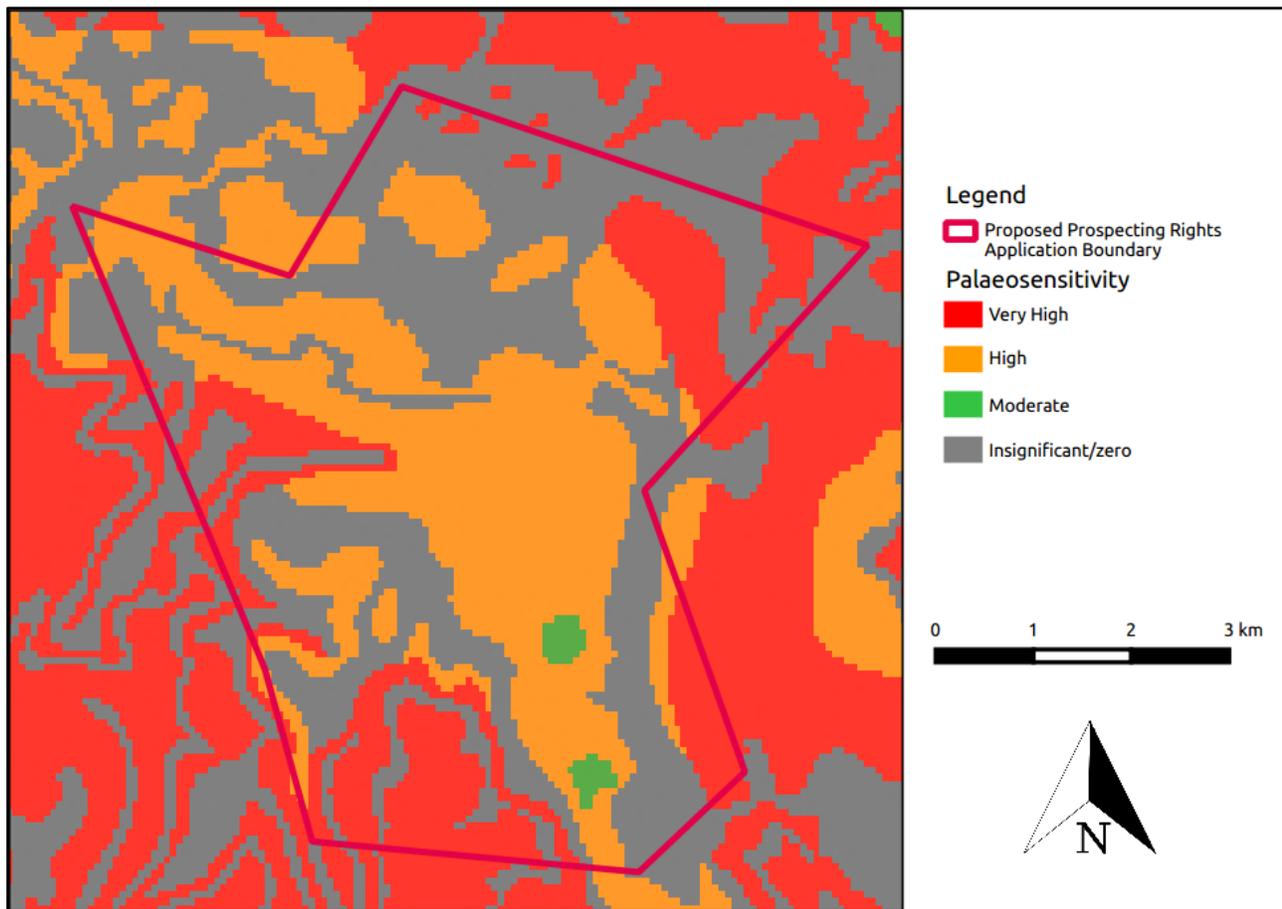


Figure 3. Palaeosensitivity map of the proposed prospecting rights area (SAHRIS 2013).

The Middle Permian Vryheid Formation consists of light grey, coarse to fine grained sandstone and siltstone, as well as dark coloured siltstones that occur due to the presence of carbon enrichment and coal beds (SAHRIS 2013). These deltaic mudrocks and sandstones, result from locally coastal and fluvial deposits, with occasional coal seams. The Vryheid Formation contains abundant plant fossils of *Glossopteris* (lycopods, rare ferns and horsetails, abundant glossopterids, cordaitaleans, conifers, ginkgoaleans) and other plant genera, rare fossil wood and diverse palynomorphs. It is the accumulation of this plant material that is responsible for the coal seams located in this formation (Groenewald 2012). There are also abundant, low diversity trace fossils, rare insects, possible conchostracans, non-marine bivalves, fish scales. The *Mesosaurus* – the earliest known reptile from the Karoo Basin - has been found in the southern part of the Karoo Basin, in layers that might correspond with the Natal Vryheid Formation (Groenewald 2012).

This region is known to have been inhabited since the Early Stone Age (ESA), with evidence for this long-term exploitation of the area comprising stone tools, usually identified as isolated artefacts, devoid of primary context (Prins and Hall 2013a; Prins 2015). Such finds are usually of low heritage significance as they are *ex situ* and seldom associated with any other archaeological material (Prins and Hall 2013b). These sites date to between 2 million and 200 000 years ago and are characterised by fairly crude tools such as choppers, cleavers and handaxes, with little technological change seen through time over this period.

Occupation of the area continued through the Middle Stone Age (MSA), over a period spanning between 200 000 and 30 000 years ago, and likely representing the activities of anatomically modern humans, *Homo sapiens* (Prins and Hall 2013a). Due to the age of such material, MSA artefacts are often encountered out of context and are, like the ESA material, seldom of great heritage significance. Despite this common signature, much MSA

material is to be found in cave sites, and several significant MSA cave sites occur in KwaZulu-Natal, including Sibudu Cave, Border Cave and Umhlatuzana Cave (ibid.). These people had more sophisticated procurement strategies and toolkits, with MSA stone tools generally smaller than those in the ESA. Some MSA tools are made from prepared cores, and on waste flakes, and include blades, flakes, scrapers and pointed tools that may have been hafted onto shafts or handles and used as spearheads. Backed tools appear between 70 000 and 60 000 years ago, and were almost certainly hafted on spears or arrow heads (ibid.).

The Later Stone Age (LSA) is considered to have started some 30 000 years ago, and is associated with the direct antecedents of the San. Due to the more recent age of LSA sites, as well as the widespread occurrence of LSA people in the landscape, LSA sites are the most abundant of the Stone Age sites found in South Africa. Several LSA sites are recorded in the vicinity of the study area, including surface scatters and cave deposits in archaeological context. Rock art is also present in the vicinity study area, in the form of rock paintings or rock engravings (Prins and Hall 2013b). The LSA hunter-gatherers, ancestral to the San people, were highly mobile, and likely exploited resources seasonally, following herd animals and seasonally available foods. Their toolkits were highly diverse, and comprised complex, composite tools made of small individual parts.

A shift in the hunter-gatherer economy occurred within the 800 or more years, with the arrival in the area of Bantu-speaking agro-pastoralists (van Schalkwyk 1996; Whitelaw 2015). The new dynamics in the region effected a change in San society, mode of living and material culture, as they interacted with the new settlers who farmed sheep, goat and cattle, as well as millet and sorghum, and smelted and worked metal. In eastern South Africa, these Early Iron Age (EIA) farmers tended to settle savannah environments along major water bodies with high annual precipitation (ibid.). Of the more than thirty EIA settlements recorded in the Thukela Basin, most are located on patches of rich colluvial soils close to the Thukela River or its tributaries. EIA settlements were initially established along the coastal littoral in the fifth century AD and later in the savannah woodland belt alongside rivers in the seventh century AD (ibid.). The Late Iron Age (LIA) sees a diminishing diversity of ceramic decorative styles and extensive establishment of stone walled settlements, although wattle and daub construction, which does not preserve well, was also common (Prins and Hall 2013b). Increasingly, power struggles broke out between these groups, culminating, eventually in extensive disruption across the wider area resulting from the expansion of the Zulu kingdom under Shaka in the early 19th Century (ibid.)

European settlers arrived in the region in the nineteenth century, arriving from the west as part of the Great Trek and from Port Natal where British settlers had landed in 1824. This incursion was met with fierce and bloody opposition while the Zulu nation was still in ascendancy, culminating in the Battle of Bloodriver (Prins and Hall 2013a). Following this victory, the Boers quickly settled throughout the Republic of Natalia, but this period was short-lived, as the Republic was annexed by the British in 1845, resulting in many Boer farms being abandoned (Gaigher 2013). In 1879 the Zulu kingdom was also invaded, resulting in many bloody encounters throughout the region, including skirmishes at Keates Drift and Jamesons Drift, near the project area, when British soldiers attempted to cross the Thukela River after their defeat at the battle of Isandlwana (Prins and Hall 2013b). The area then bore witness to further military activity with the outbreak of the First and Second Anglo-Boer War, with a series of operations taking place on the north bank of the Thukela River, including at Colenso Koppies, Wynne's Hills, Inniskilling (Hart's) Hill, Railway Hill, before the British were finally able to break through the Boer lines at Pieters Ridge and open the way to relieving Ladysmith. The Bambata Rebellion of 1906 can be considered the last of these historic violent encounters, and several associated incidents took place near the study area, including the Bambata Rock Ambush near Keates Drift.

Graves are likely throughout the study region, associated, predominantly either with historical period farms, Iron Age settlements or, more likely, recent settlements, be they currently occupied or abandoned (Anderson and Anderson 2012; Gaigher 2013; Prins and Hall 2013a, 2013b).

The cultural landscape can be considered to comprise the accumulated layers of transformation that the landscape has undergone since the Stone Age, although Stone Age landscapes are least obviously apparent. Far more obvious are the Iron Age interventions in terms of alteration to the landscape through agricultural practices, such as terracing, as well as settlement. In addition to this, the historical layering, similarly consisting of agricultural practices and settlement that transform the landscape, is present. The landscape is further imbued with enormous significance through the pervasive traces of military interventions, originally in the form of the Zulu expansion, then the various clashes and wars between the Zulu, Boers and English.

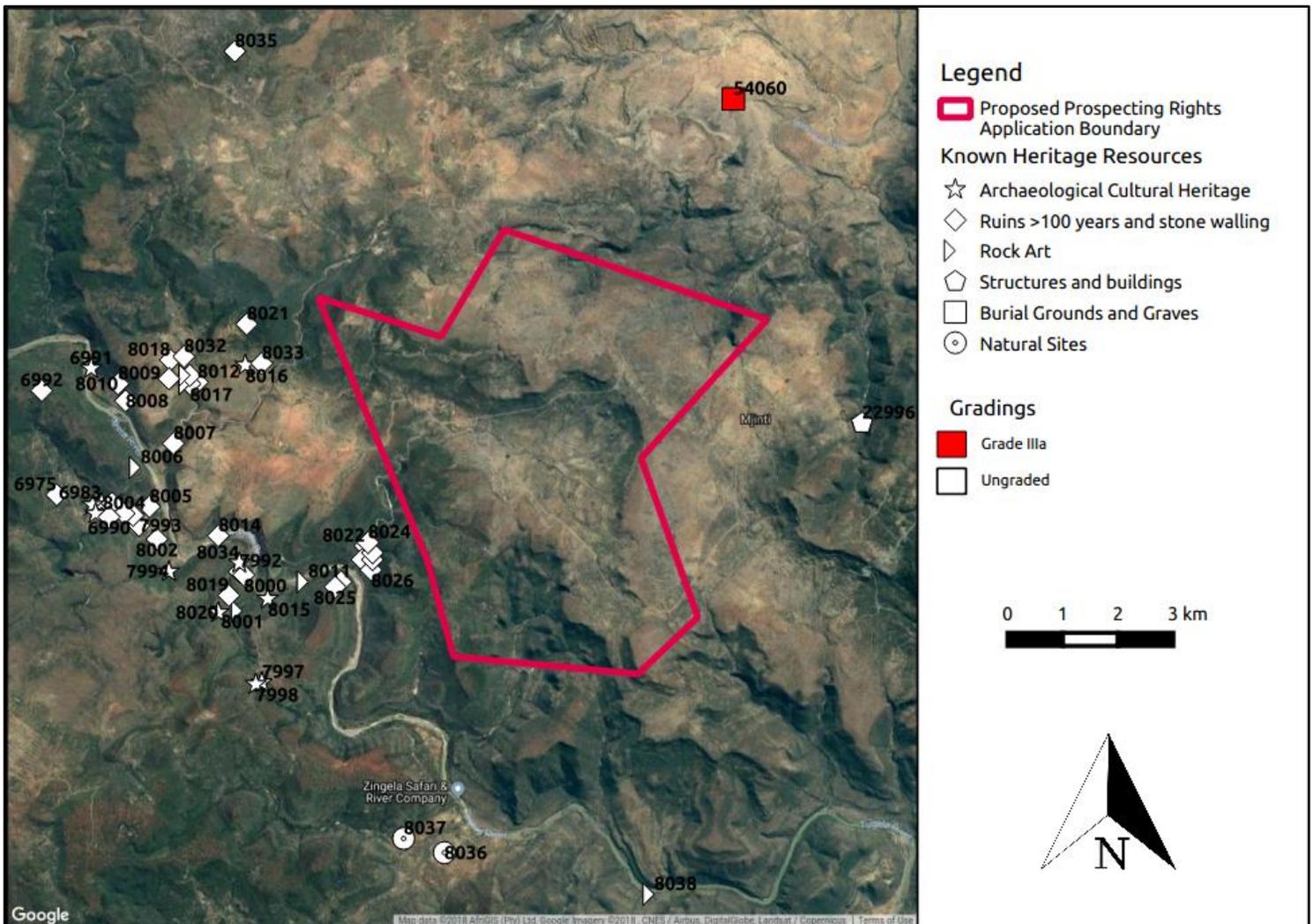


Figure 4. Known Heritage Resources in proximity to the proposed prospecting rights application area. SAHRIS Site ID's provided. See Appendix 1.

6. Anticipated Impacts to Known Heritage Resources

Impacts to heritage resources are possible as a result of the presence and activities of large drill rigs on site, as well as through the creation of new access roads. While built structures, stone-built walling and formal, walled cemeteries, are relatively resistant to unintentional damage from prospecting activities, being proud of the landscape and easily noticeable, artefact scatters, buried archaeological remains, as well as unmarked and informal graves and cemeteries are highly vulnerable. In terms of palaeontologically sensitive deposits,

prospecting can damage fossil material, but also does not provide an opportunity to study and assess formations due to the limited interventions of prospecting through coring. Core sampling can provide an opportunity to assess subterranean deposits for the presence of fossils and the necessity for palaeontological intervention ahead of open cast mining in future in the area.

7. Observations

The survey area was inspected by eThembeni staff on 19 and 20 June 2018. In accordance with legislation, no drilling activities had begun. Vehicle access was along district and local roads and more rudimentary tracks. (Figure 5). Foot surveys were conducted to the proposed drilling platforms where vegetation and rocky terrain prevented vehicular access. The portions of Doornplaat and Strasburg adjacent to the Thukela River comprise steeply incised wooded valleys where the basal cover precluded good observation of the ground. However, these areas are devoid of perennial water sources and were probably eschewed for human settlement throughout the Iron Age, precluding the potential presence of archaeological remains (Figure 6).

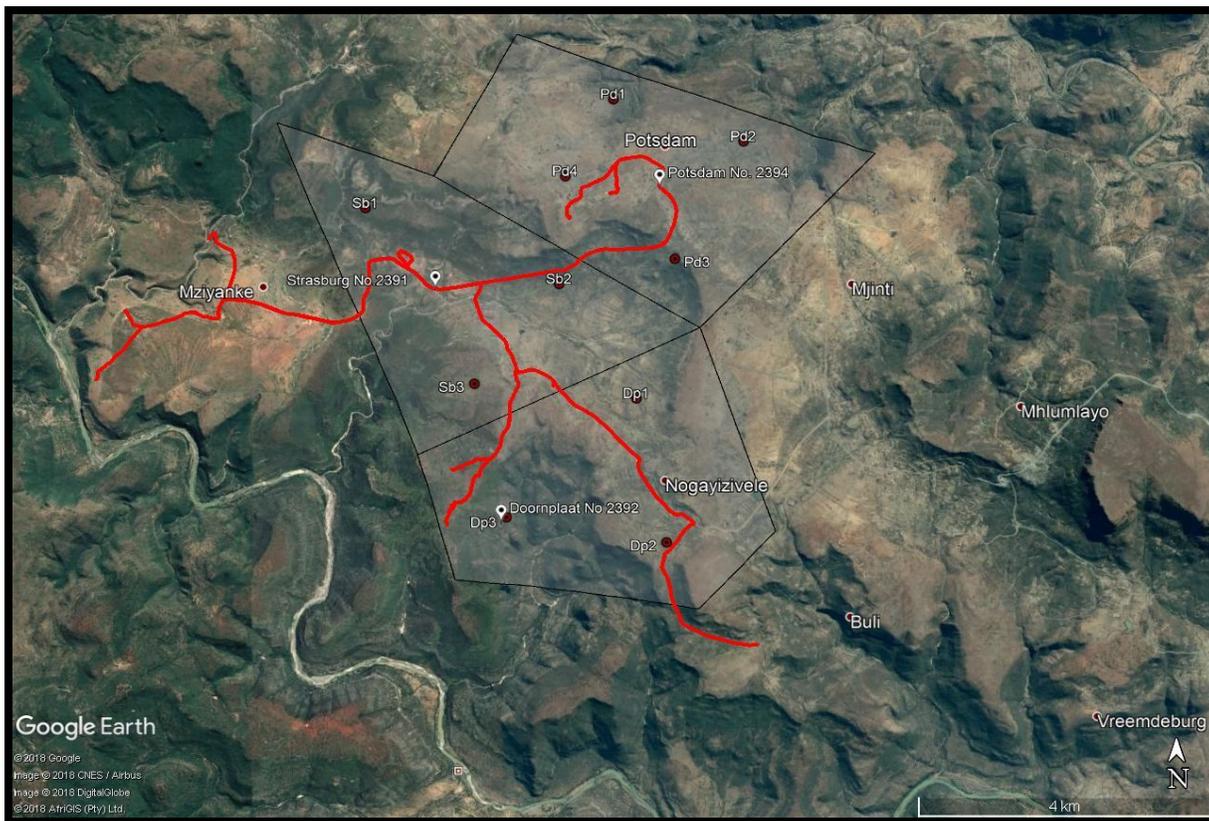


Figure 5. Vehicle track log of survey area.



Figure 6. Well wooded and steep topography of the study area adjacent to the Thukela River

The same could be said of the north and north eastern parts of the study area. However, here, the provision of potable water into the community has allowed for settlement expansion in a linear fashion along transport routes and pipeline alignments away from natural perennial water sources. Homesteads and homestead clusters are mostly fenced and contained, with graves located within the respective household precincts. Most fields are fenced or brush-piled as a deterrent to cattle raiding crops when in cultivation. More recent historical settlement and settlement expansion in and adjacent to the study area has overlain any conspicuous archaeology in the landscape, if indeed such existed. Consequently, the ten proposed drilling platforms pose a limited threat to discrete heritage resources. All can be accessed along existing tracks and paths with minimal disturbance of vegetation or agricultural fields (see Figure 7) and no impact on extant residential precincts is anticipated.

BLACK CUBANS MINERALS

Application for a Prospecting Right situated on
The Properties listed below

MAP LABEL	PROPERTY DESCRIPTION	EXTENT (HA)
2391	Strasburg No. 2391	1 214,4627
2392	Doornplaat No. 2392	1 231,0500
2394	Potsdam No. 2394	1 222,9600
		3 668,4727

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(Also known as unregistered Rem of SITHOLE No. 17481, Rem of MTHEMBU No. 17538 and Rem of INGWE No. 17480)

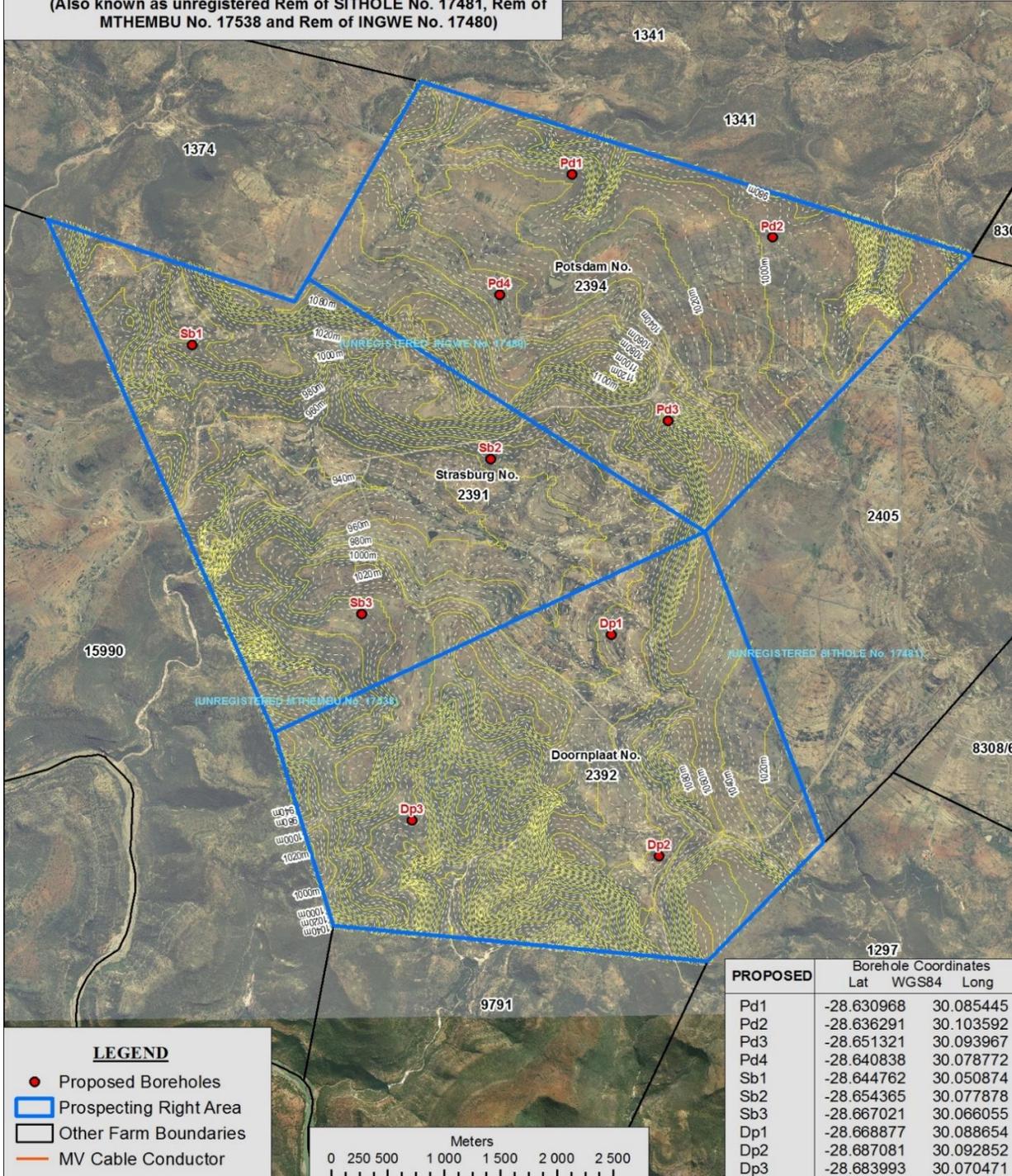


Figure 7. Proposed Drilling Platform locations (Figure provided by Client)

8. Recommendations

The following recommendations are made:

- A suitable qualified and experienced palaeontologist should be allowed access to the core samples during prospecting to inspect them for the presence of possibly significant fossils.
- In the event of the location of unmarked graves and or any other heritage resources during the prospecting processes the protocols in Appendix 2 must be adhered to.
- Consequent to the proposed prospecting, should DMR issue a mining licence for the study area, a Phase Two survey of the actual mining footprint approved must be undertaken by a suitably accredited heritage practitioner; to determine the presence of any archaeological or other heritage resources within the proposed mining footprint, and whether any graves are located at abandoned homesteads outside of extant domestic precincts. The latter should run concurrently with a negotiated Relocation Action Plan (RAP) following the principles of FPIC², if a consequence of mining will require the compensated resettlement of families and their extant homesteads and agricultural fields.

9. References

- Anderson, G. and Anderson, L. (2012). The Mitigation of all Heritage Sites Affected by the NMPP. Unpublished report for Transnet. [Online] Available at: <http://www.sahra.org.za/sahris/heritage-reports/nmpp-heidelberg-durban-pipeline>. [Accessed 18 June 2018].
- Gaigher, S. (2013). Phase 1 Heritage Impact Assessment Report - Mngwenya Road Upgrade Project, near Wittekleifontein, KZN. Unpublished report for GBS Environmental Consulting [online] Available at: <http://www.sahra.org.za/sahris/heritage-reports/hia-mngwenya-road-upgrade>. [Accessed 18 June 2018].
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- Prins, F. and Hall, S. (2013a). Weenen Reservoirs and Canals. Unpublished report for E&D Consulting Services. [Online] Available at: <http://www.sahra.org.za/sahris/heritage-reports/weenenreservoirsandcanals>. [Accessed 18 June 2018].
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- Whitelaw, GDA. 2015. Economy and Cosmology in the Iron Age of KwaZulu-Natal. Unpublished D.Phil. University of the Witwatersrand.

² FPIC: Free, Prior and Informed Consent

Appendix 1

Surveys and sites within 10kms of the proposed development area

Some 54 heritage sites are known within a 10km radius of the proposed development area. There are no formally protected sites, i.e. no Provincial or National Heritage Sites, and only a single site that is currently graded (see Figure 4, Appendix 1). This site, SAHRIS Site ID 54060, is a burial ground and is graded IIIa. The remaining sites consist of 11 sites containing archaeological artefacts, including isolated occurrences as well as more discrete tool scatters. There are six rock art sites, predominantly clustered along the banks of the Thukela River (Figure 4). There is a single building recorded, as well as two sites of natural heritage. The remaining sites are all recorded as ruins greater than 100 years, and represent Iron Age stone walling.

Two factors need to be considered in terms of the distribution and grading of these sites. Firstly, the vast majority of these sites represent research work undertaken by the KwaZulu-Natal Museum and/or Amafa. As the context of their discovery is not known, it is not clear whether their distribution reflects the extent of the survey, or a particular sampling strategy, or whether the sites are, in fact, confined to the immediate surrounds of the River. Secondly, that the sites are ungraded does not reflect their relative significance, but only the failure of the site recorders to provide field gradings to these sites. As such, it is possible, and likely that the various sites display a range of significance levels, but this cannot be determined at the scoping level.

Table 1: Surveys conducted within vicinity of proposed development

Author/s	Title	Report Type	Date	SAHRIS NID	SAHRIS Case ID
Frans Prins	Cultural Heritage Impact Assessment of the Proposed Upgrading of Access Road Along P349 (ZIKODE) near Ladysmith, KwaZulu-Natal	HIA	28/04/2015	268814	7462
Frans Prins, Sian Hall	Cultural Heritage Impact Assessment of the Proposed Douglas Water Supply Scheme, Umzinyathi District Municipality	HIA	08/05/2014	163545	5603
Frans Prins, Sian Hall	Weenen Reservoirs and Canals	HIA	14/10/2013	134966	2970
Frans Prins, Sian Hall	Weenen Waterworks HIA Report	HIA	14/10/2013	134967	2970
Gavin Anderson, Louise Anderson	The Mitigation of all Heritage Sites Affected by the NMPP. Unpublished report for Transnet	HIA	06/11/2012	186082	7013
Stephan Gaigher	Phase 1 Heritage Impact Assessment Report - Mngwenya Road Upgrade Project, near Wittekleifontein, KZN	HIA	21/08/2013	128521	2760

Table 2: Sites located within 10km of proposed development

Site ID	Site Number	Site Name	Site Type	Grading
54060	WITT01	Wittekleifontein 01	Burial Grounds & Graves	Grade IIIa
22996	AMAF1880	Vaalkop Lot 4	Building	Ungraded
6991	2829DB 020		Artefacts	Ungraded
7994	2830CA 003	Mabhija (Waterfall)	Artefacts	Ungraded
7997	2830CA 006	Emaneni	Artefacts	Ungraded
7998	2830CA 007		Artefacts	Ungraded
8015	2830CA 024		Artefacts	Ungraded
8016	2830CA 025		Artefacts	Ungraded
8020	2830CA 029		Artefacts	Ungraded
8034	2830CA 043		Artefacts	Ungraded
6983	2829DB 012	Mabhija (Waterfall)	Artefacts	Ungraded
6988	2829DB 017		Artefacts	Ungraded
6989	2829DB 018		Artefacts	Ungraded
8036	2830CA 045	Zingela	Natural	Ungraded
8037	2830CA 046	Zingela	Natural	Ungraded
8038	2830CA 047		Rock Art	Ungraded
8001	2830CA 010		Rock Art	Ungraded
8006	2830CA 015		Rock Art	Ungraded
8011	2830CA 020		Rock Art	Ungraded
8017	2830CA 026		Rock Art, Ruin > 100 years	Ungraded
8030	2830CA 039		Rock Art, Ruin > 100 years	Ungraded
6992	2829DB 021		Ruin > 100 years	Ungraded
7992	2830CA 001	Sigwanjana	Ruin > 100 years	Ungraded
7993	2830CA 002	Mabhija Gate	Ruin > 100 years	Ungraded
8000	2830CA 009		Ruin > 100 years	Ungraded
8002	2830CA 011		Ruin > 100 years	Ungraded
8003	2830CA 012		Ruin > 100 years	Ungraded
8004	2830CA 013		Ruin > 100 years	Ungraded
8005	2830CA 014		Ruin > 100 years	Ungraded
8007	2830CA 016		Ruin > 100 years	Ungraded

8008	2830CA 017		Ruin > 100 years	Ungraded
8009	2830CA 018	Olubomvu	Ruin > 100 years	Ungraded
8010	2830CA 019		Ruin > 100 years	Ungraded
8012	2830CA 021		Ruin > 100 years	Ungraded
8013	2830CA 022		Ruin > 100 years	Ungraded
8014	2830CA 023	Makahyana	Ruin > 100 years	Ungraded
8018	2830CA 027		Ruin > 100 years	Ungraded
8019	2830CA 028		Ruin > 100 years	Ungraded
8021	2830CA 030		Ruin > 100 years	Ungraded
8022	2830CA 031		Ruin > 100 years	Ungraded
8023	2830CA 032		Ruin > 100 years	Ungraded
8024	2830CA 033		Ruin > 100 years	Ungraded
8025	2830CA 034		Ruin > 100 years	Ungraded
8026	2830CA 035		Ruin > 100 years	Ungraded
8027	2830CA 036		Ruin > 100 years	Ungraded
8028	2830CA 037		Ruin > 100 years	Ungraded
8029	2830CA 038		Ruin > 100 years	Ungraded
8031	2830CA 040		Ruin > 100 years	Ungraded
8032	2830CA 041		Ruin > 100 years	Ungraded
8033	2830CA 042		Ruin > 100 years	Ungraded
8035	2830CA 044	Ecancane	Ruin > 100 years	Ungraded
6975	2829DB 004	Waterfall (Mabhija Furnace site A)	Ruin > 100 years	Ungraded
6987	2829DB 016		Ruin > 100 years	Ungraded
6990	2829DB 019		Ruin > 100 years	Ungraded

Appendix 2

STATUTORY REQUIREMENTS

GENERAL

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

1. National Environmental Management Act (NEMA) Act No 107 of 1998
 - a. Basic Environmental Assessment – Section (23)(2)(d)
 - b. Environmental Scoping Report – Section (29)(1)(d)
 - c. Environmental Impacts Assessment – Section (32)(2)(d)
 - d. Environmental Management Plan – Section (34)(b)
2. KwaZulu-Natal Heritage Act No 4 of 2008
 - a. Protection of heritage resources – Chapters 8 and 9
 - b. Heritage Resources Management – Chapter 10
3. National Heritage Resources Act (NHRA) Act No 25 of 1999
 - a. Definition and management of the national estate – Chapter I
 - b. Protection and management of heritage resources – Chapter II
 - c. Heritage Resources Management – Section 38
4. Minerals and Petroleum Resources Development Act (MPRDA) Act No 28 of 2002 Section 39(3)
 - a. Development Facilitation Act (DFA) Act No 67 of 1995
5. The GNR.1 of 7 January 2000: Regulations and rules in terms of the Development Facilitation Act, 1995 Section 31.

NATIONAL HERITAGE RESOURCES ACT NO 25 OF 1999

Heritage Impact Assessments

Section 38(1) of the National Heritage Resources Act of 1999 requires a heritage impact assessment in case of:

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

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

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

Definitions of heritage resources

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

- living heritage as defined in the National Heritage Council Act No 11 of 1999 (cultural tradition; oral history; performance; ritual; popular memory; skills and techniques; indigenous knowledge systems; and the holistic approach to nature, society and social relationships);
- ecofacts (non-artefactual organic or environmental remains that may reveal aspects of past human activity; definition used in KwaZulu-Natal Heritage Act 2008);
- places, buildings, structures and equipment;
- places to which oral traditions are attached or which are associated with living heritage;
- historical settlements and townscapes;
- landscapes and natural features;
- geological sites of scientific or cultural importance;
- archaeological and palaeontological sites;
- graves and burial grounds;
- sites of significance relating to the history of slavery in South Africa;
- movable objects, but excluding any object made by a living person;
- battlefields; and
- traditional building techniques.

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

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

- its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa.

A 'place' is defined as:

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

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

'Archaeological' means –

- material remains resulting from human activity which are in a state of disuse and are in or on land and are older than 100 years, including artefacts, human and hominid remains and artificial features and structures;
- rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and is older than 100 years including any area within 10 m of such representation;
- wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land, in the internal waters, the territorial waters or in the culture zone of the Republic, as defined respectively in sections 3, 4 and 6 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), and any cargo, debris or artefacts found or associated therewith, which is older than 60 years or which SAHRA considers to be worthy of conservation;
- features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found.

'Palaeontological' means –

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

MANAGEMENT OF GRAVES AND BURIAL GROUNDS

- Graves younger than 60 years fall under Section 2(1) of the Removal of Graves and Dead Bodies Ordinance No 7 of 1925 as well as the Human Tissues Act No 65 of 1983 and the National Health Act (Act 61 of 2003) Regulations relating to the management of human remains No.R.363 of 22 May 2013. Such graves are the jurisdiction of the National Department of Health and the relevant Provincial Department of Health and must be submitted for final approval to the Office of the relevant Provincial Premier. This function is usually delegated to the Provincial Member of the Executive Council for Local Government and Planning, or in some cases the MEC for Housing and Welfare.

Authorisation for exhumation and reinterment must also be obtained from the relevant local or regional council where the grave is situated, as well as the relevant local or regional council to where the grave is being relocated. All local and regional provisions, laws and by-laws must also be adhered to. In order to handle and transport human remains the institution conducting the relocation should be authorised under Section 24 of the Human Tissues Act No 65 of 1983 and the National Health Act (Act 61 of 2003) Regulations relating to the management of human remains No.R.363 of 22 May 2013.

- Graves older than 60 years situated outside a formal cemetery administered by a local authority fall under Section 36 of the National Heritage Resources Act No 25 of 1999 as well as the Human Tissues Act of 1983. Accordingly, such graves are the jurisdiction of the South African Heritage Resources Agency (SAHRA). The procedure for Consultation Regarding Burial Grounds and Graves (Section 36(5) of NHRA) is applicable to graves older than 60 years that are situated outside a formal cemetery administered by a local authority. Graves in the category located inside a formal cemetery administered by a local authority will also require the same authorisation as set out for graves younger than 60 years over and above SAHRA authorisation.

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

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

(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.