

**HERITAGE STATUS QUO REPORT FOR
GRAVES IDENTIFIED ALONG THE ACCESS
ROAD TO DAM SWITCHING STATION
PROJECT NEAR THE VAALKOP DAM IN THE
MADIBENG LOCAL MUNICIPALITY IN THE
NORTH WEST PROVINCE OF SOUTH
AFRICA**

OCTOBER 2020

1. Document Information

Item	Description
Proposed development and location	Dam Switching Station project near the Vaalkop dam in the Madibeng Local Municipality in the North West Province of South Africa
Purpose of the study	To verify the status of burial site and to deliniate the site from the access road construction as well as proposing feasible mitigation measures
Coordinates for burial site	S25° 18' 10.6" E027° 29' 43.7"
Municipality	Madibeng Local Municipality
Predominant land use of surrounding area	Agriculture, powerlines, road, and transport.
Heritage Consultant	MuTingati
Developer/Applicant	Eskom
Reference no.	
Date of Report	07 October 2020

NATIONAL LEGISLATION AND REGULATIONS GOVERNING THIS REPORT

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

DECLARATION OF INDEPENDENCE

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

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

Expertise:

Trust Mlilo, MA. (Archaeology), BA Hons, PDGE and BA General & (Univ. of Pretoria) ASAPA (affiliation member) and more than 15 years of experience in archaeological and heritage impact assessment and management. Mlilo is an accredited member of the Association for Southern African Professional Archaeologists (ASAPA), Amafa akwaZulu Natali and Eastern Cape Heritage Resources Agency (ECPHRA). He has conducted more than hundred AIA/HIA Studies, heritage mitigation work and heritage development projects over the past 15 years of service. The completed projects vary from Phase 1 and Phase 2 as well as heritage nominations, heritage management work for government, municipalities (Ekurhuleni) parastatals (Eskom) and several private companies such as BHP Billiton, Rhino Minerals now South 32.

Independence

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

Conditions relating to this report

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

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

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

Signed by



07 October 2020

2. Acknowledgements

The author acknowledges Eskom project managers for the information regarding the burial site in question.

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4. Executive Brief

This report outlines the heritage investigation results of burial site identified along the access road to the Dam Switching Station. It emerged that a large traditional burial site was identified during construction of access road to the switch station barely 10m from the road servitude. The site was not previously identified during the Environmental authorisation phase (Pistorius 2013). As such the burial site is treated as chance find and appropriate measures to protect the site during construction and operational phase must be mooted. MuTingati Heritage Consultants in collaboration with Eskom officials undertook the investigation of the burial site in question. The Phase 2 mitigation exercise was commissioned by Eskom.

The heritage mitigation exercise involved assessing the state of the burial site, whether the current construction impacted on any graves at the site as well as delineating the site for future reference. The site inspection confirmed that there the site in question is indeed a traditional burial site with approximately 50 graves. The burial site is barely 10m from the access road servitude.

The site inspection was conducted in accordance with the Section 36 of the National Heritage Resources Act (Act No 25 of 1999) and the Human Tissue Act (1983). Based on the assessment conducted by the heritage specialist it seems the graves are more than 60 years old and have long been forgotten because there is no sign of visitation at the site. The study noted that excavation of the road has been completed without affecting the burial site. As such construction of the road may proceed as planned under strict monitoring especially rehabilitation of stockpiled topsoil along the road servitude will require monitoring since we are not sure no grave was affected during excavation on the road servitude.

5. ABBREVIATIONS

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

6. Definitions

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

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

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

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

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

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

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

Environmental impact assessment An Environmental Impact Assessment (EIA) refers to the process of identifying, predicting and assessing the potential positive and negative social, economic and biophysical impacts of any proposed project, plan, programme or policy which requires authorisation of permission by law and which may significantly affect the environment. The EIA includes an evaluation of alternatives. As well as recommendations for appropriate mitigation measures for minimising or avoiding negative impacts, measures enhancing the positive aspects of the proposal and environmental management and monitoring measures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. INTRODUCTION

BRIEF BACKGROUND

South Africa has a history of migrations, wars and forced removals of black populations during colonial and apartheid eras. Black people were forcefully removed from their land to create space for colonial farmers and miners. These activities left a trail of abandoned burial sites which are sometimes not properly marked. These burial sites are commonly found close to archaeological sites and abandoned settlements; they may be found in abandoned and neglected burial sites or occur sporadically anywhere as a result of prehistoric activity, victims of conflict or crime. It is often difficult to detect the presence of archaeological human remains on the landscape as these burials, in most cases, are not marked at the surface. Human burials and human remains are usually identified when they are exposed through erosion, earth moving activities and construction such the case with this access road. In some instances, packed stones or bricks may indicate the presence of informal burials. If any human bones are found during the course of construction work, then they should be reported to an archaeologist and work in the immediate vicinity should cease until the appropriate actions have been carried out by the archaeologist. Where human remains are part of a burial, they would need to be exhumed under a permit from either SAHRA (for pre-colonial burials as well as burials later than about AD 1500) or Department of Health for graves younger than 60 years.

The initial Heritage Impact Assessment (HIA) report was conducted by Pistorius in (2013) and did not identify the burial site. All the specialist studies were conducted as required by the NEMA Regulations. The project received a Record of Decision (RoD) dated 16/04/2014. Construction of the project commenced on the 14th of February 2018 and it was stopped due to Eskom financial constraints. Construction at the site resumed on the 31st of August 2020 and DEA was notified in accordance with the (RoD). It was during construction that the affected burial site was identified. Work along the road servitude was suspended and SAHRA was notified accordingly on the 2nd of October 20120 (see appended email). In addition, heritage opinion was sought from archaeologists. It is against this background that Eskom instructed the author to inspect and determine the status of the burial site. Heritage specialist from MuTingati visited and inspected the site on the 2nd of October 2020. The site inspection exercise confirmed that the site is not protected and has not been maintained. From a heritage perspective in accordance with Section 36 of the NHRA, the graves must be preserved *in situ*. The remaining construction activities at the site must be monitored by an archaeologist and a monitoring report must be submitted to SAHRA Burial Grounds and Graves Unit. In addition, a management plan must be drawn to ensure proper protection of the burial site during and after construction.

8. AIMS OF THE INVESTIGATION

The aims of the site investigations were as follows:

- To investigate the nature of the site, the age, types of burials in order to determine their protection level ie older than 60 years are protected by the NHRA and graves younger than 60 years are protect by the Human Tissue Act.
- To establish the status of the graves in question
- To assess the condition of the site
- To identify interested and affected parties related to the site in question.
- To investigate heritage mitigation options to deal with the burial site in question.

The inspection process at the affected site was necessitated by the need protect the burial site while construction is going on.

9. DESCRIPTION AND LOCATION OF THE BURIAL SITE AND ACCESS ROAD

The access road under construction is approximately 100m long and 4m in width. The burial site contains more than 50 traditional graves marked by oval shaped stone piles. The site is located barely 10m from the access road servitude, however, if properly managed the site can be protected while construction of the access road continues. It should be borne in mind that burial grounds and gravesites are accorded the highest social significance threshold (see Appendix 3). They have both historical and social significance and are considered sacred. Burial sites have spiritual and cultural significance. Culture and religion play an important role in human burials. As such graves retain the highest significance threshold and they must not be tempered with. In African culture death is interpreted to mean a transition from a physical world to the spiritual world or a lifeafter of the ancestors (Mhlongo 2017). As such burials facilitate the deceased's connection with the living world and the afterlife (Miller and Rivera 2006, Ngubane 2004). Thus, burial sites function as long-term memorials and final resting places for the deceased. Graves provide the platform for families to visit and communicate with the dead (Ngcongong 2005). Thus, the affected burial site is significant to the families who interred their beloved ones at the site.



Figure 1: Position of the tombstones in question (Author 2020)



Figure 2: Position of the burial site in question and access road (Author 2020)

10. METHODOLOGY

This document falls under Phase 2 heritage mitigation and therefore aims at providing an informed heritage-related opinion about the status of the site in question and the subsequent mitigation measures. This is usually achieved through a combination of a review of any existing literature and a basic site inspection. As part of the desktop study, published literature and cartographic data, as well as archival data on history of the cemetery were consulted. The desktop study was followed by field investigation conducted on the 2nd of October 2020. The field assessment was conducted according to generally accepted HIA practices and aimed at assessing the condition of the site and circumstances surrounding the missing of such a huge burial site. We conducted a random transect walk across the site to establish the extent of the site. The site was geo-referenced with a hand held Global Positioning System (GPS) for recording the location/position of the site in relation to access road construction. Each grave was inspected to check if it has not been tampered with. Detailed photographic recording of the graves was also undertaken where relevant. The findings were then analysed in relation to the outstanding construction activities along the road servitude. The result of this investigation is a report indicating the options to deal with the affected burial site.

11. LEGAL CONTEXT

In terms of Section 36(3) of the National Heritage Resources Act, no person may, without a permit issued by the relevant heritage resources authority:

- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
- (b) destroy, damage, alter, exhume or remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
- (c) Bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation, or any equipment which assists in the detection or recovery of metals.

Human remains that are less than 60 years old are subject to provisions of the Human Tissue Act (Act 65 of 1983) and to local regulations. Exhumation of graves must conform to the standards set out in the Ordinance on Excavations (Ordinance no. 12 of 1980) (replacing the old Transvaal Ordinance no. 7 of 1925). Permission must also be gained from the descendants (where known), the National Department of Health, Provincial Department of Health, Premier of the Province and local police. Furthermore, permission must also be gained from the various landowners (i.e. where the graves are located and

where they are to be relocated to) before exhumation can take place. Human remains can only be handled by a registered undertaker or an institution declared under the Human Tissues Act (Act 65 of 1983 as amended).

The NHRA classify Graves and burial grounds into the following categories

- ❖ ancestral graves
- ❖ royal graves and graves of traditional leaders
- ❖ graves of victims of conflict
- ❖ graves designated by the Minister
- ❖ historical graves and cemeteries
- ❖ human remains

(4) SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible heritage resources authority.

(5) SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection (3)(b) unless it is satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority—

(a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and

(b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Service and in accordance with regulations of the responsible heritage resources authority—

- (a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and
- (b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit.

12. PUBLIC CONSULTATIONS

The study team consulted some farm workers and residents for any leads regarding the ownership of the affected burial site. Most of the farm workers are fairly new in the area and have no idea about the burial site. We also reached out to farms located several kilometres from the burial site, but our effort did not yield anything. Since burial site was not affected within concluded that the project can go ahead while observing strict measures to protect the site. SAHRA was informed about site and its potential exposure to the construction site.

13. RESULTS OF THE SITE INVESTIGATION

The author inspected and assessed the affected burial site and the road construction servitude, from a technical perspective the road and switch station have been approved and lay out plans have also been approved. In addition, construction on the switch station and access road servitude is already at an advanced stage. Given this scenario, it is technically prudent to proceed with the approved plan regardless of the limited buffer zone. If professionally managed construction can go ahead without affecting the identified burial site. Known heritage resources in the context of development do not provide challenges during construction because we can always plan around them.

Description of the Burial site

The site visit recorded a traditional burial site comprising of approximately 50 graves. The site is not currently protected. The graves are marked by oval shaped stone piles with distinctive headstones. All the graves conform to the East west orientation. The graves are arranged in rows although some are isolated. It seems the site has been neglected for years and there is no sign of visitation at the site. Most graves are now concealed by dense vegetation cover which compromised visibility during the site inspection. There is no sign of any family member visiting the site for any purpose. The heritage team confirmed that no grave was disturbed at the site. The study noted that the burial site is located barely 10m from the road servitude. In terms of the heritage regulations the 10m buffer zone falls short of the

required 20 to 25m buffer zone. However, this being a chance find, the construction of the road may proceed under strict monitoring to ensure that none of the graves located near the road servitude are affected during construction. Note that Chance Finds means Archaeological artefacts, features, structures or historical cultural remains such as human burials that are found accidentally in context previously not identified during cultural heritage scoping, screening and assessment studies. Such finds are usually found during earth moving activities such as road construction as is the case with the burial site in question. It should be noted that excavation along the road servitude is nearing completion and it is unlikely that any grave might have been disturbed during excavation.

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

The significance of burial grounds and grave sites is closely tied to their age and historical, cultural, and social context. Nonetheless, every burial site should be considered as of high socio-cultural significance protected by practices, a series of legislations, and municipal ordinances. The following are site photos of the access road servitude and the burial site in question.



Plates 1: Shows burial site discovered during construction.**lates 2:** Shows excavations along access road servitude.



Plates 3: Shows switch station construction site.



Plates 4: Shows traditional graves in the vicinity of access road.



Plates 5: Shows graves cover by dense grass cover



Plate 6: Shows graves covered by vegetation.

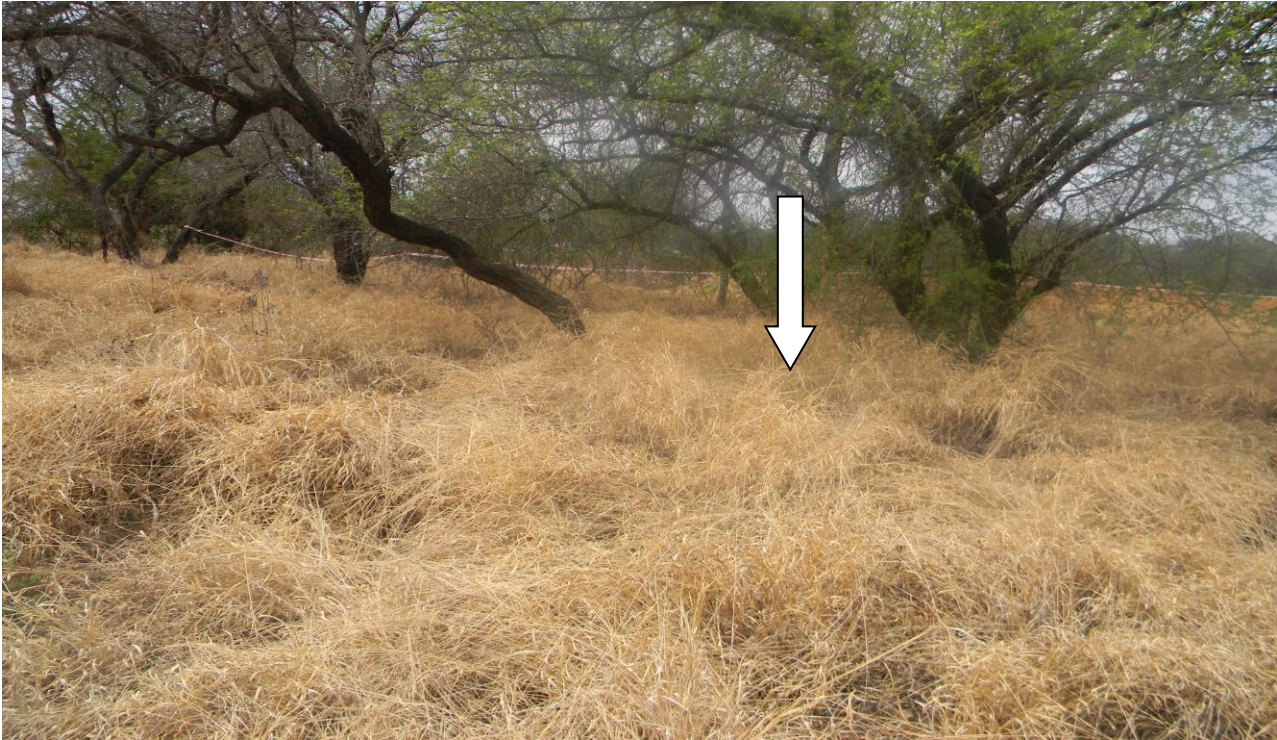


Plate 7: Shows graves covered by dense grass cover.



Plate 8: Shows burial site in question.



Plate 9: Shows graves whose location is shown by tall grass.



Plate 10: Shows a metal sheet grave marker at its secondary location.



Plate 11: Shows grave marker at the burial site. Note that some graves may be marked by such grave markers only without stone piles.



Plate 12: Shows grinding stone recorded at the burial site. Note that grinding stones are associated with graves of female individuals



Plate 13: Shows grave marker suggesting that they could be a flat grave under the tree



Plate 14: Shows grave marker



Plate 15: Shows grave marker suggesting that some graves at the site are not marked by stone piles



Plate 16: Shows the burial site marked by danger tape and construction impact zone depicted by stockpiled soils



Plate 17: Shows access road under construction

14. MITIGATION MEASURES

The investigation confirmed that the burial site falls within the construction impact zone, however, construction impacts may be avoided by employing the following mitigation measures.

- The contractor on site must use standard construction equipment that does not require more space on the limited buffer zone
- The burial site must be properly delineated and barricaded during construction.
- All stockpiled topsoil must be removed from the vicinity of the burial site.
- The access road must be edged by 3-course barrier to avoid any vehicles driving into the site
- Should it be that the burial site was disturbed by mining activities, then proper procedures to obtain family consent and burial permit from SAHRA Burial Ground Graves Unit must be adhered to

15. ACCIDENTAL DISCOVERIES/DISTURBANCE OF GRAVES

This being a case of construction activities in the vicinity of a “burial site” the regulations state that when a grave is damaged accidentally in the course of development or other activity: a). SAHRA Burial Ground

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

16. RECOMENDATIONS

Based on the assessment conducted by MuTingati, the following recommendations must be adhered to.

- Construction workers on the access road must be inducted about potential impacts of construction activities on the identified burial site and how these impacts can be minimised without compromising the project construction schedule
- Construction on the switch station may continue while construction on the access is still on halt pending heritage induction of construction workers
- The site must be protected while construction of the access road is underway.
- The remaining construction activities at the site must be monitored by a professional archaeologist to ensure that any accidental damage to any of the graves can be promptly dealt with.
- The archaeologist must search for any potential human remains accidentally exposed during excavation on the road servitude.
- A management plan must be drawn for the burial site since it not going to be relocated, the management plan will ensure protection of the site during construction and operational phases of the access road.
- No stone robbing or removal of any material is allowed. Any disturbance or alteration on this graveyard would be illegal and punishable by law, under section 36 (3) of the National Heritage Resources Act NHRA of 1999 (Act 25 of 1999).
- No dumping of construction material is allowed within the burial site and no un-monitored alteration or excavation within the cemetery may occur.
- Noteworthy that any measures to cover up any accidental damage of graves or to collect any grave goods is illegal and punishable by law. In the same manner, no person may exhume or collect such remains, whether of recent origin or not, without the endorsement by relevant authority.

17. CONCLUDING REMARKS

MuTingati was requested by Trans Africa Projects (TAP) on behalf of Eskom to investigate the status of the burial site and implication to the ongoing construction of access road to the new switch station. Although there is a limited buffer zone, it is my considered opinion that construction of the road may proceed as planned under strict monitoring to ensure that graves are protected during construction. The burial site must be protected while construction is underway. This report concludes that construction may resume pending a monitoring report and management plan. The measures are informed by the results of the study and principles of heritage management enshrined in the NHRA, Act 25 of 1999.

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SAHRA. What to do when Graves are uncovered accidentally.

19. APPENDICES

APPENDIX 1: RECORD OF DECISION (RoD)



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X 447 · PRETORIA · 0001 · Fedsure Building · 315 Pretorius Street · PRETORIA
Tel (+ 27 12) 310 3911 · Fax (+ 2712) 322 2682

NEAS Reference: DEA/EIA/0002008/2013

DEA Reference: 14/12/16/3/3/1/956

Enquiries: Mahlatshe Shubane

Telephone: 012-395-1781 **Fax:** 012-320-7539 **E-mail:** mshubane@environment.gov.za

Mr Owen Mokwala
Eskom Holdings SOC Limited
P.O. Box 1319
RUSTENBURG
0300

Fax: 086-668-2987
Tel: (014)-565-1169

PER FACSIMILE / MAIL

Dear Mr Mokwala

ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: GN R543; GN R544 AND GN R546 OF 18 JUNE 2010: PROPOSED CONSTRUCTION OF A 100M X 100M 88/22KV DAM SWITCHING STATION, THREE 88KV INTERCONNECTOR POWER LINES AND DISMANTLING OF THE T-OFF ARRANGEMENT WITHIN RUSTENBURG AND MADIBENG LOCAL MUNICIPALITIES IN THE NORTH WEST PROVINCE

With reference to the above application, please be advised that the Department has decided to grant authorisation. The environmental authorisation (EA) and reasons for the decision are attached herewith.

In terms of Regulation 10(2) of the Environmental Impact Assessment Regulations, 2010 (the Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 12 (twelve) days of the date of the EA, of the Department's decision in respect of your application as well as the provisions regarding the submission of appeals that are contained in the Regulations.

Your attention is drawn to Chapter 7 of the Regulations, which prescribes the appeal procedure to be followed. This procedure is summarised in the attached document. Kindly include a copy of this document with the letter of notification to interested and affected parties.

Should the applicant or any other party wish to appeal any aspect of the decision a notice of intention to appeal must be lodged by all prospective appellants with the Minister, within 20 days of the date of the EA, by means of one of the following methods:

By facsimile: 012-320-7561;
By post: Private Bag X447,
Pretoria, 0001; or
By hand: 2nd Floor, Fedsure Building, North Tower,
Cnr. Lilian Ngoyi (Van der Walt) and Pretorius Streets,
Pretoria.

APPEALS PROCEDURE IN TERMS OF CHAPTER 7 OF THE NEMA EIA REGULATIONS, 2010 (THE REGULATIONS) AS PER GN R. 543 OF 2010 TO BE FOLLOWED BY THE APPLICANT AND INTERESTED AND AFFECTED PARTIES UPON RECEIPT OF NOTIFICATION OF AN ENVIRONMENTAL AUTHORISATION (EA)

APPLICANT	INTERESTED AND AFFECTED PARTIES (IAPs)
1. Receive EA from the relevant Competent Authority (the Department of Environmental Affairs [DEA]).	1. Receive EA from Applicant/Consultant.
2. Within 12 days of date of the EA notify all IAPs of the EA and draw their attention to their right to appeal against the EA in terms of Chapter 7 of the Regulations.	2. N/A.
3. If you want to appeal against the EA, submit a notice of intention to appeal within 20 days of the date of the EA with the Minister of Water and Environmental Affairs (the Minister).	3. If you want to appeal against the EA, submit a notice of intention to appeal within 20 days of the date of the EA. with the Minister of Water and Environmental Affairs (the Minister).
4. After having submitted your notice of intention to appeal to the Minister, provide each registered IAP with a copy of the notice of intention to appeal within 10 days of lodging the notice.	4. After having submitted your notice of intention to appeal to the Minister, provide the applicant with a copy of the notice of intention to appeal within 10 days of lodging the notice.
5. The Applicant must also serve on each IAP; <ul style="list-style-type: none"> a notice indicating where and for what period the appeal submission will be available for inspection. 	5. Appellant must also serve on the Applicant within 10 days of lodging the notice, <ul style="list-style-type: none"> a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.
6. The appeal must be submitted in writing to the Minister within 30 days after the lapsing of the period of 20 days provided for the lodging of the notice of intention to appeal.	6. The appeal must be submitted to the Minister within 30 days after the lapsing of the period of 20 days provided for the lodging of the notice of intention to appeal.
7. Any IAP who received a notice of intention to appeal may submit a responding statement to that appeal to the Minister within 30 days from the date that the appeal submission was lodged with the Minister.	7. An Applicant who received notice of intention to may submit a responding statement to the appeal to the Minister within 30 days from the date that the appeal submission was lodged with the Minister.

NOTES:

1. **An appeal against a decision must be lodged with:-**
 - a) the Minister of Water and Environmental Affairs if the decision was issued by the Director- General of the Department of Environmental Affairs (or another official) acting in his/ her capacity as the delegated Competent Authority;
 - b) the Minister of Justice and Constitutional Development if the applicant is the Department of Water Affairs and the decision was issued by the Director- General of the Department of Environmental Affairs (or another official) acting in his/ her capacity as the delegated Competent Authority;

2. **An appeal lodged with:-**
 - a) the Minister of Water and Environmental Affairs must be submitted to the Department of Environmental Affairs;
 - b) the Minister of Justice and Constitutional Development must be submitted to the Department of Environmental Affairs;

3. **An appeal must be:-**
 - a) submitted in writing;
 - b) accompanied by:
 - a statement setting out the grounds of appeal;
 - supporting documentation which is referred to in the appeal; and
 - a statement that the appellant has complied with regulation 62 (2) or (3) together with copies of the notices referred to in regulation 62.

If the applicant wishes to lodge an appeal, it must also serve a copy of the notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where, and for what period, the appeal submission will be available for inspection, should you intend to submit an appeal.

Please include the Department (*Attention: Director: Integrated Environmental Authorisations*) in the list of interested and affected parties, notified through your notification letter to interested and affected parties, for record purposes.

Appeals must be submitted in writing to:

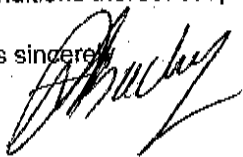
Mr Z Hassam, Director: Appeals and Legal Review, of this Department at the above mentioned addresses or fax number. Mr Hassam can also be contacted at:

Tel: 012-310-3271

Email: AppealsDirectorate@environment.gov.za

The authorised activities shall not commence within twenty (20) days of the date of signature of the authorisation. Further, please note that the Minister may, on receipt of appeals against the authorisation or conditions thereof suspend the authorisation pending the outcome of the appeals procedure.

Yours sincerely



Mr Ishaam Abader

Deputy Director-General: Legal, Authorisations, Compliance and Enforcement

Department of Environmental Affairs

Date: 16/04/2014

CC:	Ms N Mapira	Shumani SHE Specialists (EAP)	Tel: 015-297-2410	Fax: 086-5441-1997
	Mr O Skosana	NW Department of Economic Development, Environment, Conservation and Tourism	Tel: 018-389-5159	Fax: 018-389-5006
	Dr MK Mako	Rustenburg Local Municipality	Tel: 014-590-3551	Fax: 014-590-3552



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Environmental Authorisation

In terms of Regulation 36 of the Environmental Impact Assessment Regulations, 2010

Construction of a 100 x 100m 88/22kV Dam Switching Station, three 88kV interconnector power lines and dismantling of the T-off arrangement within the Rustenburg and Madibeng Local Municipalities in the North West Province

Bojanala Platinum District Municipality

Authorisation register number:	<i>14/12/16/3/3/1/956</i>
NEAS reference number:	<i>DEA/EIA/0002008/2013</i>
Last amended:	<i>First issue</i>
Holder of authorisation:	<i>ESKOM HOLDINGS SOC LIMITED</i>
Location of activity:	<i>NORTH WEST PROVINCE: Within the Rustenburg Local Municipality and Madibeng Local Municipality</i>

This authorisation does not negate the holder of the authorisation's responsibility to comply with any other statutory requirements that may be applicable to the undertaking of the activity.

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Decision

The Department is satisfied, on the basis of information available to it and subject to compliance with the conditions of this environmental authorisation, that the applicant should be authorised to undertake the activities specified below.

Non-compliance with a condition of this authorisation may result in criminal prosecution or other actions provided for in the National Environmental Management Act, 1998 and the EIA regulations.

Details regarding the basis on which the Department reached this decision are set out in Annexure 1.

Activities authorised

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act 107 of 1998) and the Environmental Impact Assessment Regulations, 2010 the Department hereby authorises –

ESKOM HOLDINGS SOC LIMITED

with the following contact details –

Mr Owen Mokwala
Eskom Holdings SOC Limited
PO Box 1319
RUSTENBURG
0300

Tel: (014) 565 1169
Fax: (086) 668 2987
E-mail: MokwalM@eskom.co.za

Department of Environmental Affairs
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to undertake the following activities (hereafter referred to as "the activity") indicated in Listing Notices 1, and 3 (GN R. 544 & 546):

Listed activities	Activity/Project description
<p><u>GN R544 Item 10:</u> The construction of facilities or infrastructure for the transmission and distribution of electricity - (i) Outside urban areas or industrial complexes with a capacity of more than 33 but less than 275 kilovolts.</p>	<p>The proposed project is for the construction of 3 x 88 kV power lines.</p>
<p><u>GN R544 Item 24:</u> The transformation of land bigger than 1000m² in size to residential, retail, commercial, industrial or institutional use, where at the time of the coming into effect of this schedule such land was zoned open space, conservation or had an equivalent zoning</p>	<p>The area to be transformed is 100m x 100m for the 88/22kV Dam Switching Station.</p>
<p><u>GN R546 Item 12:</u> The clearance of an area of 300 square metres or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation. (a) Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004.</p>	<p>Vegetation clearance will be done for substation building and the total footprint will be 100m x 100m within critically endangered vegetation.</p>

as described in the Basic Assessment Report (BAR) dated November 2013 at:

Preferred Site Option 1	Latitude	Longitude
Dam Switching Station	25° 18' 15.46" S	27° 29' 44.78" E

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Preferred Mogwase Route Option 1	Latitude	Longitude
Starting point of the activity	25° 18' 16.49" S	27° 29' 43.23" E
Middle point of activity	25° 17' 32.43" S	27° 29' 27.04" E
End point of activity	25° 17' 59.56" S	27° 28' 04.02" E

Preferred Vaalkop Route Option 1	Latitude	Longitude
Starting point of the activity	25° 18' 16.88" S	27° 29' 42.62" E
Middle point of activity	25° 18' 06.06" S	27° 29' 34.19" E
End point of activity	25° 18' 27.73" S	27° 28' 01.35" E

Preferred Twin River Route Option 1	Latitude	Longitude
Starting point of the activity	25° 18' 16.06" S	27° 29' 43.90" E
Middle point of activity	25° 18' 00.82" S	27° 29' 37.95" E
End point of activity	25° 17' 45.46" S	27° 29' 32.02" E

- for the proposed construction of a 100 x 100m 88/22kV Dam Switching Station, three 88kV interconnector power lines and dismantling of the T-off arrangement within the Rustenburg and Madibeng Local Municipalities in the North West Province, hereafter referred to as "the property".

The infrastructure associated with this facility includes:

- a. 100x100m 88/22kV Dam Switching Station;
- b. Dam Switching Station will include 4 x 88kV feeder bays;
- c. Three 88kV interconnector power lines (1,1 km Twin River power line, 1,4 km Vaalkop power line and 4,7 km Mogwase power line);
- d. Height of the pole will be approximately 21m to 24m aboveground;
- e. Average span length between towers will be 200m to 250m;
- f. Access road of approximately 100m long with a width of approximately 5m to the switching station;
- g. Servitude width of approximately 31m (15.5 on either side of the power line); and
- h. Dismantle the T-off arrangement.

Conditions of this Environmental Authorisation

Scope of authorisation

1. The preferred route Option 1 for Twin River, Vaalkop and Mogwase power lines and Dam Switching Station Option 1 is hereby approved.
2. Authorisation of the activity is subject to the conditions contained in this authorisation, which form part of the environmental authorisation and are binding on the holder of the authorisation.
3. The holder of the authorisation is responsible for ensuring compliance with the conditions contained in this environmental authorisation. This includes any person acting on the holder's behalf, including but not limited to, an agent, servant, contractor, sub-contractor, employee, consultant or person rendering a service to the holder of the authorisation.
4. The activities authorised may only be carried out at the property as described above.
5. Any changes to, or deviations from, the project description set out in this authorisation must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder of the authorisation to apply for further authorisation in terms of the regulations.
6. This activity must commence within a period of five (5) years from the date of issue of this authorisation. If commencement of the activity does not occur within that period, the authorisation lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken.
7. Commencement with one activity listed in terms of this authorisation constitutes commencement of all authorised activities.
8. The holder of an environmental authorisation must notify the competent authority of any alienation, transfer and change of ownership rights in the property on which the activity is to take place.

Notification of authorisation and right to appeal

9. The holder of the authorisation must notify every registered interested and affected party, in writing and within 12 (twelve) calendar days of the date of this environmental authorisation, of the decision to authorise the activity.
10. The notification referred to must –
 - 10.1. specify the date on which the authorisation was issued;
 - 10.2. inform the interested and affected party of the appeal procedure provided for in Chapter 7 of the Environmental Impact Assessment Regulations, 2010;
 - 10.3. advise the interested and affected party that a copy of the authorisation will be furnished on request; and
 - 10.4. give the reasons of the competent authority for the decision.
11. The holder of the authorisation must publish a notice –
 - 11.1. informing interested and affected parties of the decision;
 - 11.2. informing interested and affected parties where the decision can be accessed; and
 - 11.3. drawing the attention of interested and affected parties to the fact that an appeal may be lodged against this decision in the newspaper(s) contemplated and used in terms of regulation 54(2)(c) and (d) and which newspaper was used for the placing of advertisements as part of the public participation process.

Management of the activity

12. The Environmental Management Programme (EMPr) submitted as part of the Application for EA is hereby approved. This EMPr must be implemented and adhered to.
13. The EMPr must be included in all contract documentation for all phases of the development.
14. Changes to the EMPr, which are environmentally defensible, shall be submitted to this Department for approval before such changes could be effected.
15. The Department reserves the right to amend the EMPr should any impacts that were not anticipated or covered in the BAR dated November 2013 be discovered.
16. The provisions of the approved EMPr including recommendations and mitigation measures in the BAR dated November 2013 and specialist studies shall be an extension of the conditions of this EA and therefore noncompliance with them would constitute noncompliance with the EA.

Commencement of the activity

22. The authorised activity shall not commence within twenty (20) days of the date of signature of the authorisation.
23. An appeal under section 43 of the National Environmental Management Act (NEMA), Act 107 of 1998 (as amended), does not suspend an environmental authorisation or exemption, or any provisions or conditions attached thereto, or any directive, unless the Minister, MEC or delegated organ of state directs otherwise.
24. Should you be notified by the Minister of a suspension of the authorisation pending appeal procedures, you may not commence with the activity until such time that the Minister allows you to commence with such an activity in writing.

Notification to authorities

25. Fourteen (14) days written notice must be given to the Department that the activity will commence. Commencement for the purposes of this condition includes site preparation. The notice must include a date on which it is anticipated that the activity will commence, as well as a reference number. This notification period may coincide with the Notice of Intent to Appeal period.

Operation of the activity

26. Fourteen (14) days written notice must be given to the Department that the activity operational phase will commence.

Site closure and decommissioning

27. Should the activity ever cease or become redundant, the applicant shall undertake the required actions as prescribed by legislation at the time and comply with all relevant legal requirements administered by any relevant and competent authority at that time.

Monitoring

17. The applicant must appoint a suitably experienced independent Environmental Control Officer (ECO) for the construction phase of the development that will have the responsibility to ensure that the mitigation/rehabilitation measures and recommendations referred to in this authorisation are implemented and to ensure compliance with the provisions of the EMPr.
 - 17.1. The ECO shall be appointed before commencement of any authorised activities.
 - 17.2. Once appointed, the name and contact details of the ECO must be submitted to the *Director: Compliance Monitoring* of the Department.
 - 17.3. The ECO shall keep record of all activities on site, problems identified, transgressions noted and a task schedule of tasks undertaken by the ECO.
 - 17.4. The ECO shall remain employed until all rehabilitation measures, as required for implementation due to construction damage, are completed and the site is ready for operation.
 - 17.5. Records relating to monitoring and auditing must be kept on site and made available for inspection to any relevant and competent authority in respect of this development.

Recording and reporting to the Department

18. All documentation e.g. audit/monitoring/compliance reports and notifications, required to be submitted to the Department in terms of this authorisation, must be submitted to the *Director: Compliance Monitoring* at the Department.
19. The holder of the authorisation must submit an environmental audit report to the Department within 30 days of completion of the construction phase (i.e. within 30 days of site handover) and within 30 days of completion of rehabilitation activities.
20. The environmental audit report must indicate the date of the audit, the name of the auditor and the outcome of the audit in terms of compliance with the environmental authorisation conditions as well as the requirements of the EMPr.
21. Records relating to monitoring and auditing must be kept on site and made available for inspection to any relevant and competent authority in respect of this development.

Specific conditions

28. No construction must take place within 32m of a watercourse without a Water Use Licence from the Department of Water Affairs.
29. Anti-collision devices such as bird flappers must be installed where power lines crosses avifaunal corridors, as recommended by the avifaunal specialist.
30. Concrete mixing on site during construction (If mixed on the ground) must be conducted on plastic sheeting.
31. The site manager must ensure that drinking and cleansing water is available on site for all workers.
32. A community liaison officer must be appointed by the contractor to ensure that, as far as possible, labourers from the local area are appointed.
33. The Rehabilitation Plan must include the management and control of alien invasive plants.
34. A botanist must be appointed to perform a final walkthrough of the alignment to identify sensitive plant species, and assist in identifying the areas that require protection.
35. An integrated waste management approach must be implemented that is based on waste minimisation and must incorporate reduction, recycling, re-use and disposal where appropriate.
36. Any solid waste shall be disposed of at a landfill licensed in terms of section 20 (b) of the National Environment Management Waste Act, 2008 (Act 59 of 2008).

General

37. A copy of this authorisation and the approved EMPr must be kept at the property where the activity will be undertaken. The authorisation and approved EMPr must be produced to any authorised official of the Department who requests to see it and must be made available for inspection by any employee or agent of the holder of the authorisation who works or undertakes work at the property.
38. The holder of the authorisation must notify both the *Director: Integrated Environmental Authorisations* and the *Director: Compliance Monitoring* at the Department, in writing and within 48 (forty eight) hours, if any condition of this authorisation cannot be or is not adhered to. Any notification in terms of this condition must be accompanied by reasons for the non-compliance.

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39. National government, provincial government, local authorities or committees appointed in terms of the conditions of this authorisation or any other public authority shall not be held responsible for any damages or losses suffered by the applicant or his successor in title in any instance where construction or operation subsequent to construction be temporarily or permanently stopped for reasons of non-compliance by the applicant with the conditions of authorisation as set out in this document or any other subsequent document emanating from these conditions of authorisation.

Date of environmental authorisation: 16 APRIL 2014



Mr Ishaam Abader

Deputy Director-General: Legal, Authorisations, Compliance and Enforcement
Department of Environmental Affairs

APPENDIX 2: BURIAL RELOCATION PROJECT METHOD STATEMENT

. DISCOVERY AND NOTIFICATION

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

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

SITE PROTECTION AND IDENTIFICATION

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

. INVESTIGATION AND REPORTING

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

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

REPORTING

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

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

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

SITE DISPOSITION AGREEMENT (MANAGEMENT PLAN)

4.1 When the site or remains are identified

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

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

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

Site disposition agreements shall determine such things as:

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

8. the provision for future maintenance of the cemetery or site where the human remains are to be located;
9. access to the site and ways to prevent disturbance;
10. any other issue agreed upon.

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

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

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

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

ARBITRATION

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

. RECORDS

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

BURIAL RELOCATION & REBURIAL

- Burial Relocation involves the identification of each grave and the manual excavation of the interred remains. Human remains, coffin features, and grave goods are exposed, their positions in the grave are carefully recorded, and maps and photographs of each grave are made following standard archaeological recovery techniques.

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

Risks

1. Legal Risks

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

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

Reputational risk

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

Mitigation

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

Operational risks

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

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

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

Mitigation

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

Financial risks

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

Human Remains Handling Risks

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

20. APPENDIX 3: GENERAL PRECAUTIONS

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

PERSONAL PROTECTIVE EQUIPMENT

Hand Protection:

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

Foot Protection:

Footwear should similarly protect against sharp debris.

Hygiene:

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

SUMMARY

- In general, personnel involved in the recovery and handling of human remains from a burial site can limit risk from potential exposure by following the guidelines below.
- Vinyl or Latex gloves should be worn.
- Masks and protective eyewear or face shields should be worn during procedures that are likely to generate fluids to prevent exposure of mucous membranes of the mouth, nose, and eyes.
- Gowns or aprons should be worn during procedures that are likely to generate splashes of blood or other body fluids.
- Hands and other skin surfaces should be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands should be washed immediately after gloves are removed.

- Ensure universal precautions for blood and body fluids.
- Ensure use of body bags.
- Ensure disinfection of vehicles and equipment.
- Bodies do not need to be disinfected before disposal (except in case of cholera).
- Vaccinate workers against hepatitis B.

21. APPENDIX 4: HUMAN REMAINS AND BURIALS IN DEVELOPMENT

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

1. First, establish the context of the burial:

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

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

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

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

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

A. Human remains that are NOT protected in terms of the National Heritage Resources Act (i.e. less than 60 years old and not a grave of a victim of conflict or of cultural significance) are subject to provisions of the Human Tissue Act and to local and regional regulations, for example Cemeteries Ordinances applicable in different Provincial and local Authorities.

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

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

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

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

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

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

DEFINITIONS AND APPLICABLE REGULATIONS

1). A "Cemetery" is defined as any land, whether public or private, containing one or more graves.

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

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

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

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

a). A statement of where the body is to be re-interred.

b). Why it is to be exhumed.

c). The methods proposed for exhumation.

d). Written permission from local authorities, nearest available relatives and their religious body owning or managing the cemetery, and where all such permission cannot be obtained, the application must give reasons why not.

6). The Administrator has the power to vary any conditions and to impose additional conditions.

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

5. Human remains from the graves of victims of conflict, or any burial ground or part thereof which contains such graves and any other graves that are deemed to be of cultural significance may not be destroyed, damaged, altered, exhumed or removed from their original positions without a permit from the National Heritage Resources Agency. They are administered by the Graves of Conflict Division at the SAHRA offices in Johannesburg.

"Victims of Conflict" are:

a). Those who died in this country as a result of any war or conflict but excluding those covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992).

b). Members of the forces of Great Britain and the former British Empire who died in active service before 4 August 1914.

c). Those who, during the Anglo Boer War (1899-1902) were removed from South Africa as prisoners and died outside South Africa, and,

d). Those people, as defined in the regulations, who died in the "liberation struggle" both within and outside South Africa.

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

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

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

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

a). Has made satisfactory arrangements for the exhumation and re- interment of the contents of such a grave at the cost of the applicant.

b). Has made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such a grave and,

c). Has reached an agreement with these communities and individuals regarding the future of such a grave or burial ground.

PROCEDURE FOR CONSULTATION

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

1). Archival and documentary research regarding the origin of the grave or burial ground;

2). Direct consultation with local community organizations and/or members;

3). The erection for at least 60 days of a notice at the grave or burial ground, displaying in all the official

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

4). Advertising in the local press.

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

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

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

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

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

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

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

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

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

TREAT HUMAN REMAINS WITH RESPECT

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

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

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

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

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

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

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

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

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

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

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

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

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

22. APPENDIX 5: LEGAL BACKGROUND AND PRINCIPLES OF HERITAGE RESOURCES MANAGEMENT IN SOUTH AFRICA

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

General principles for heritage resources management

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

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

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

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

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

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

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

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

(3) Laws, procedures and administrative practices must—

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

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

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

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

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

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

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

Burial grounds and graves

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

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

(3) (a) No person may, without a permit issued by SAHRA or a provincial heritage resources authority—

(a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;

(b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or

(c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible heritage resources authority.

(5) SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection (3)(b) unless it is satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority—

(a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and

(b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Service and in accordance with regulations of the responsible heritage resources authority—

(a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and

(b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit.

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

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

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

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

General policy

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

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

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

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

(2) Each heritage resources authority must adopt for any place which is protected in terms of this Act and is owned or controlled by it or vested in it, a plan for the management of such place in accordance with the best environmental, heritage conservation, scientific and educational principles that can reasonably be applied taking into account the location, size and nature of the place and the resources of the authority concerned and may from time to time review any such plan.

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

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

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

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