

**HERITAGE MITIGATION REPORT FOR EXCAVATION OF SUSPECTED  
HUMAN BURIALS IDENTIFIED ACCIDENTALLY DURING  
CONSTRUCTION WORK AT KUSILE POWER STATION IN EMALAHLENI  
LOCAL MUNICIPALITY IN MPUMALANGA PROVINCE.**



**Report Prepared for Eskom SOC Ltd. Kusile Power Station**

**Prepared by Nzumbululo HS**

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## **CAVEAT**

**DRAFT HERITAGE MITIGATION REPORT FOR THE EXCAVATION OF SUSPECTED HUMAN BURIALS IDENTIFIED ACCIDENTALLY DURING CONSTRUCTION WORK AT KUSILE POWER STATION IN EMALAHLENI LOCAL MUNICIPALITY; IN MPUMALANGA PROVINCE.**

**Authorship:** This Report has been prepared by Dr. M. Murimbika (Principal Investigator & Professional Archaeologist) assisted by Mr. T. Mlilo for Eskom (Kusile Power Station). The report is for the review of the South African Heritage Resources Agency (SAHRA).

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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.

The survey was carried out within the context of tangible and intangible cultural heritage resources as defined by the SAHRA Regulations and Guidelines as to the authorisation proposed exhumation and reburial of graves affected by the power station development (Kusile Power Station).

Signed by Principle Investigator:



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McEdward Murimbika (Ph.D.),  
September 2012

## **ACKNOWLEDGEMENTS**

The author acknowledges the assistance of Eskom (Kusile Power Station) for the provision of maps of affected areas and potential custodians.

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## 1. MANAGEMENT SUMMARY

Mafu's Funeral Home is contracted by Eskom SOC Limited Kusile Power Station to render rescue and grave relocation services for the Kusile Power Station Development. During current construction activities, suspected human graves and burial features were accidentally discovered during site clearance work on construction site for the development of an ash dump at the Kusile Power Station in eMalahleni Local Municipality in Mpumalanga Province. Mafu's Funeral Home, in collaboration with Nzumbululo Heritage Solutions, we called in to assess the site and to conduct heritage mitigation and rescue exercise for the affected sites. A preliminary Status Quo study by Nzumbululo at the affected site confirmed eight (8) oval-shaped stone cairns, characteristic of traditional graves. By their form, orientation and distribution, the stone cairns resembled traditional graves and as such in line with heritage legislation and regulation, the construction project managers suspended work on affected site pending the outcome of a full heritage assessment of the status of the site. Nzumbululo carried out social consultations with the Affected and Interested Parties (A&IPs) for the project. Some community members who were relocated from the area prior to the Kusile Power Station development were traced and consulted on the proposed graves mitigation exercise. However, none of the known community members confirmed knowledge of existence of the suspected graves nor laid any custodianship claim.

Consultations and engagements with the developer (Eskom Kusile Power Station management), local authorities and other A&IPs, it was resolved that the suspected graves should be investigated, rescued and be relocated to Phola Cemetery. A graves screening exercise was conducted and the project archaeologist concluded that the oval stone cairns were in form and nature most probably older than 60 years and of unknown origin. This meant that these graves fell under the jurisdiction of the National Heritage Act 25 of 1999. In line with the said legislation, Nzumbululo applied for and obtained an urgent SAHRA Rescue Permit [Permit Number 12/07/001/86] for eight (8) suspected graves.

The test excavations and the full excavation of the entire stone cairns did not yield any biological human remains. The excavations did not recover any possible grave goods. Each stone cairn site was excavated in layers in order to determine any previous ground surface disturbance. It was concluded that the sites were either symbolic traditional ritual burials or

if there were human remains previously, they were destroyed over time due to soil<sup>v</sup> chemical degradation in which case no bio-remains were preserved. Given the undisturbed nature of the ground surface below the stone cairns, it was unlikely that there human remains were ever physically buried on these sites. The archaeologist concluded that the former scenario was most like the case. The following sections of the report provide the results of the social consultancy and excavation exercise that were carried out in line with the relevant permits and applicable regulations.

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### 3. ABBREVIATIONS

AIA	Archaeological Impact Assessment
HIA	Heritage Impact Assessment
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
Nzumbululo	Nzumbululo Heritage Solutions (South Africa)
EMP	Environmental Management Plan
NHRA	National Heritage Resources Act, Act 25 of 1999.
EO / ECO	(Environmental Officer/ Environmental Control Officer)
SAHRA	South African Heritage Resources Agency

### 4. DEFINITIONS

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

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

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

**Chance Finds** Archaeological artefacts, features, structures or historical cultural remains such as human burials that are found accidentally in context previously not identified during cultural

heritage scoping, screening and assessment studies. Such finds are usually found during earth moving activities such as water pipeline trench excavations.

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

**EO or ECO** (Environmental Officer/ Environmental Control Officer) is Eskom official or Agency responsible for the administration of the land on which the site is located.

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

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

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

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

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

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

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

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

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

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

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



## 1. INTRODUCTION

There are construction activities currently underway at the Kusile Power Station in Nkangala District Municipality in Mpumalanga Province. During construction work on portion of the development site earmarked for ash dump installation, four suspected burial sites were accidentally discovered. In line with the project EMP and applicable heritage legislation, the Eskom site management authority at Kusile Power Station suspended work on affected sites and called in the professional archaeologists from the contracted service provider, Mafu Funerals. The contractor works in association with Nzumbululo Heritage Solutions, specialist's heritage manager, who initiated the process to verify the suspected burials.

The site survey was undertaken on the 2<sup>nd</sup> of July and 2<sup>nd</sup> August 2012 and confirmed the high probability of the identified stone cairns being traditional graves and burials sites. A total of eight potential graves were identified on the direct path of the development. The heritage specialists concluded by recommending that all suspected graves be considered for protection or relocation to allow the project to proceed. Mafu Funeral Home in collaboration with Nzumbululo Heritage Solutions (South Africa) initiated the relevant procedures for Phase 2 heritage mitigation process (also see Appendixes 1 -3).

The Affected and Interested Parties (A&IPs) were consulted. As such a rescue and relocation plan was mooted and implemented. The heritage mitigation exercise involved, survey, investigation and exhumation with the objective to relocate the graves in compliance with relevant legislations including the Section 36 of the National Heritage Resources Act (Act No 25 of 1999) and the Human Tissue Act (1983). This report provides the details about this mitigation exercise.

## 2. HERITAGE LEGISLATION

All burial grounds and individual graves are protected by law irrespective of their age. Furthermore, there are regulations, which control handling and management of human remains and grave goods. In terms of the Section 36 (3) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) no person may, without a permit issued by the relevant heritage resources authority:

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

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

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

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

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

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

### **2.1. PREVIOUSLY UNIDENTIFIED BURIAL SITES/GRAVES**

Phase 1 HIA study at Kusile was conducted during Environmental Impact Assess process in 2006 for the proposed development of the Kusile Power Station. The study indicated that the affected project area has several listed burial sites (see Plate 1). The developer also conducted a community relocation program that saw all known graves relocated along the relocation of communities that resided on site and immediate vicinity. However, given the long prehistory and contemporary of human occupation of the affected area, there was a possibility that previously unknown burials may be discovered. There

were standing recommendations that during the power station development, should burial sites outside the NHRA be accidentally found, they must be reported to the nearest police station to ascertain whether or not a crime has been committed. If there is no evidence for a crime having been committed, and if the person cannot be identified so that their relatives can be contacted, the remains must be kept in an institution where certain conditions are fulfilled. These conditions are laid down in the Human Tissue Act (Act No. 65 of 1983). In contexts where the local traditional authorities give their consent to the unknown remains to be re-buried in their area, such re-interment may be conducted under the same regulations as would apply for known human remains.



**Plate 1: View of Burial Ground Site KSA 3 with one grave before the exhumation.**

### **3. SOCIAL CONSULTANCY**

The heritage management team conducted on the ground consultations with the Eskom project management team and known community members who were relocated from the affected site. In line with applicable regulated procedures, social consultations were conducted to identify the legal custodians of the suspected graves. The research team has been liaising with Eskom's Lands and Development Department contact person (G.Ntuli) to trace families that were relocated from the affected project area. The team also consulted KobusMasilela a former resident of Kusile area. The consultations did not confirm any link between the relocated communities and the suspected graves.





Plate 2: View of On-site legal notices posted at Phola Cemetery.

#### 4. RECOMMENDED MITIGATION MEASURES

The suspected burial sites were marked by oval-shaped stone cairns, consistent with traditional African burial sites or graves. All these sites were within and on the direct path of the ash dump construction activities. None of them showed any sign of recent or regular maintenance. Once all consultations were done, the Nzumbululo team proceeded to make other legal preparations for the relocation programme. Nzumbululo archaeologists applied for and obtained a Graves and Burial ground Rescue permit from SAHRA ([Permit Number 12/07/001/86] issued for the period 08-08 2012-01-10 2013) to exhume and relocate the affected graves. The project management authorities were to follow any indicated wishes of local community with regards to the procedure and protocols during the reburial ceremony as enshrined in section 36 of the National Heritage Resources Act No 25 of 1999. The eight identified possible gravesites were documented. The survey exercise confirmed that the graves met the general location, form, shape and orientation of traditional graves.

## 5. THE EXCAVATION AND EXHUMATION

Once Nzumbululo received the rescue permit from SAHRA, appropriate logistical arrangements were made with Mafu Funeral Home who had the responsibility of conducting the exhumation, relocation and reburial of all the graves under the guidance of the Nzumbululo Principal Investigator permit holder to ensure compliance with the permit conditions. On the 13<sup>th</sup> of August Mafu Funeral Home team began the exhumation of the graves. Nzumbululo archaeologists and Eskom project managers and supervisors monitored the exercise. Mafu Funeral Home set up standard equipment and procedures for the exhumation and reburial exercise. The process was open to stakeholders to inspect the proceedings. Two exhumation teams were assigned one grave at a time. The excavation exercise took two days, the first excavation was conducted on the 13<sup>th</sup> of August and the second on the 20<sup>th</sup> of August instant. The exhumation started by carefully removing stones and searching for grave goods before the actual exhumation. The excavation was done layer by layer to ensure that no grave goods or associated materials were damaged or disturbed during the process. On the 13<sup>th</sup> of August 2012 KSA 1 graves located within Kobus Masilela's abandoned homestead were excavated. All the three suspected graves KSA 1, 2 and 3 were excavated and did not yield any skeletal remains or grave goods.

Further five suspected graves were excavated on the 20<sup>th</sup> of August at the three sites of KSA 2, 3 and 4. The suspected gravesites were excavated up to a depth of about 1m. However, none of these sites yielded any human remains or burial goods. In all the cases the soils were compact signifying a natural soil profile which was an indication that there was no previous underground disturbance as would be expected in historic or prehistoric burial sites.

As such it was concluded that the suspected stone cairns were not physical human burials. Nzumbululo archaeologists, Eskom environmentalists and project supervisors continuously monitored the exercise when all the eight suspected burial sites were excavated. For compliance and confirmation purposes, Eskom representatives were requested to verify the findings before any of the excavated sites were backfilled. The exhumation process test-excavated all eight stone cairns and confirmed beyond doubt that there were no physical human remains associated with any of the cairns. The excavation was crucial to ensure that possible human remains were not going to be accidentally destroyed during the project construction

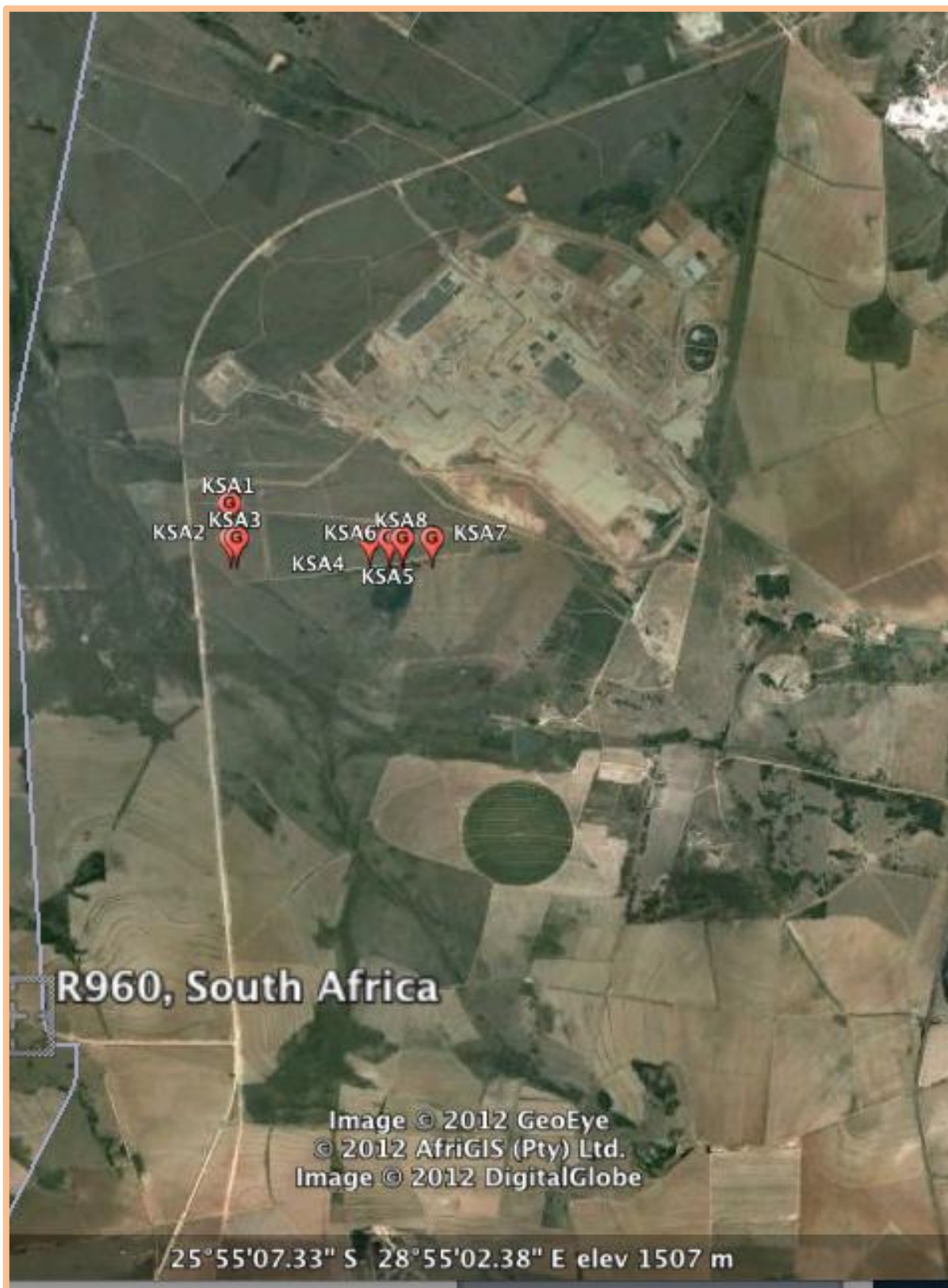


Figure 1: Aerial view of locations of suspected burials sites situated on path of ash dump development at Kusile Station.



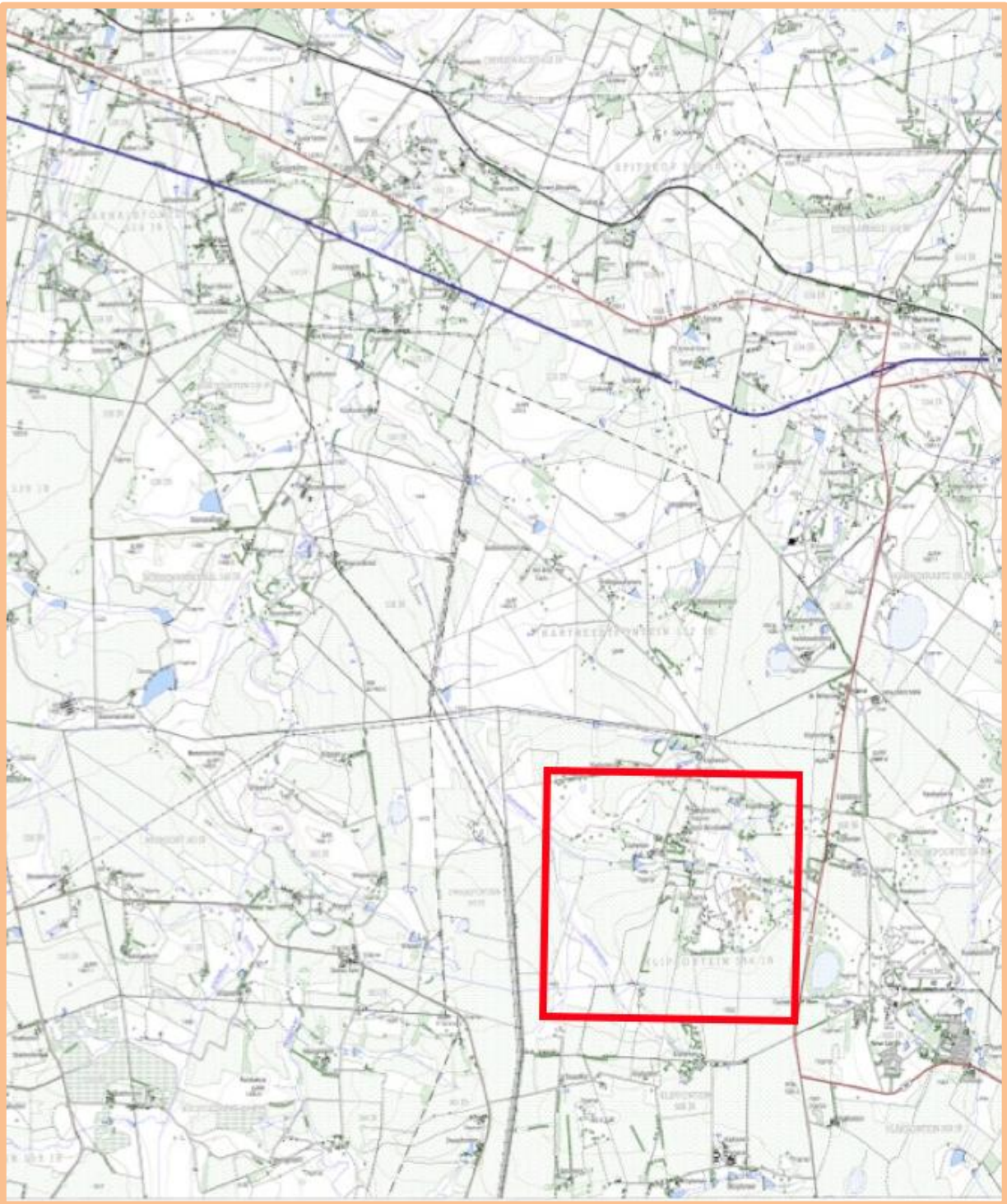


Figure 2: Affected burials at Kusile Power Station. (Topographic Map Ref. 2528DD).

### 5.1. REBURIAL EXERCISE

No reburial was conducted since it was proven through the test excavations that the suspected stone cairns were not physical human burials or none of them yielded physical cultural materials or biological human remains.

**Table 1: Summary of skeletal remains and grave goods recovered from each grave**

Grave name and number	Skeletal remains	Grave goods	Coordinates
KSA1	0	0	S25° 55' 55.3" E28° 53' 51.3".
KSA2	0	0	S25° 56' 04.9" E28° 53' 51.6"
KSA 3	0	0	S25° 56' 04.9" E28° 53' 53.4"
KSA4	0	0	S25° 56' 04.9" E28° 54' 32.6".
KSA5	0	0	S25° 56' 04.9" E28° 54' 38.4".
KSA 6	0	0	S25° 56' 04.9" E28° 54' 42.1".
KSA 7	0	0	S25° 56' 04.9" E28° 54' 51.0".
KSA8	0	0	S25° 56' 04.9" E28° 54' 33.3".



**Plate 3& 3: View of Mafu Funeral Home team A excavating grave number 8 (L) and Team B working on grave number 4.**





Plates 4 & 5: View of empty pits for burial site 8.

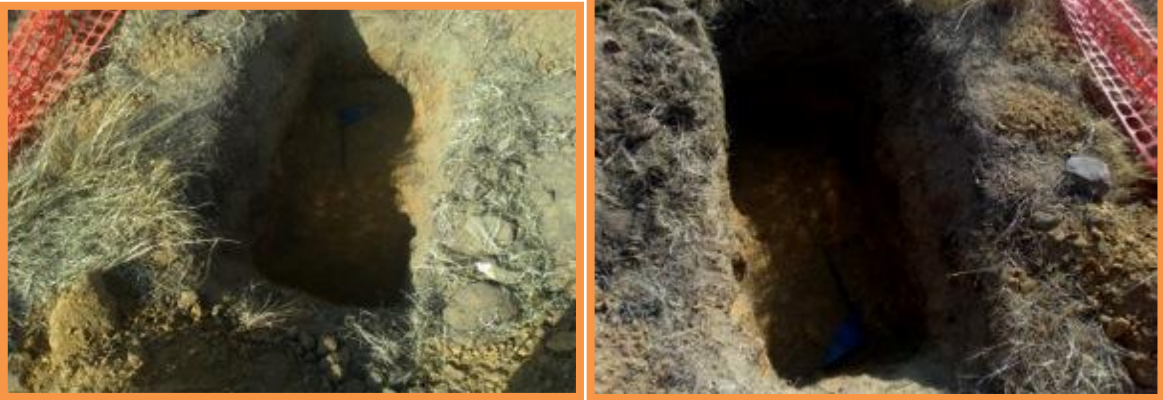


Plates 6 & 7: View of empty pits dug on suspected burial site 7.



Plates 8 and 9: View of empty pit excavated on suspected grave number 4 and excavated site on suspected grave number 5





Plates 10 and 11: View of pit dug on suspected grave number 6.



Plates 12 and 13: View of Eskom supervisor inspecting excavated pits.



Plates 14: View of site KSA 4 after backfilling and rehabilitation.

## 6. DISCUSSION

The project archaeologist concluded that there were no biological human remains that were associated with all eight identified stone cairns. Although the sites physically resembled traditional African, burial and gravesites, none of them yield any material culture usually associated with human burials. The absence of any biological human remains could be explained in three possible ways. First, the sites were stone piles created by previous occupants during some activities that required stones to be cleared off the surface. Second the stone piles were burial site markers where human remains may have been destroyed by natural soil chemical degradation process. Third, the stone cairns were traditional symbolic burials where no biological human remains were available for burial and the affected community conducted ritual burials by creating symbolic graves where rituals could be conducted in honour of the dead. In such cases, the deceased's remains may have been destroyed in a fire or may have died by being washed away by a river, or any other circumstances where the human remains could not be recovered for burial. All the three scenarios are a possibility in this case. Nonetheless, test excavations confirmed beyond doubt that there were no biological or cultural burial materials remains that were associated with any of the eight sites. As such, no reburial exercise was conducted. The current development may be recommended to proceed as planned on the affected site.

## 7. SUMMARY RECOMMENDATIONS AND CONCLUDING REMARKS

Human remains and graves are sensitive and are usually a difficult matter to deal with, especially if it involves exhumation and reburial to open space for development work like mining, road and railway construction as in the case of the Kusile graves. Such a challenge calls for a participatory approach where all stakeholders are involved from the conceptualization of the project to the implementation of the project. Everything possible and necessary was done in preparation of this project. The successful test excavation of the suspected graves was a result of a detailed, tedious and long exercise involving different interested parties. At the end, the project was successfully completed.

Nzumbululo team would like to acknowledge and thank all members of the Kusile Execution Team, local authorities and members who participated and facilitated this exercise without whose assistance the program would not have succeeded.

The Nzumbululo team would like to single out the Kusile Execution Team for facilitating the entire processes. We would like to single out Kobus Masilela and family for their active involvement in the



exercise; they sometimes left their duties to accompany us to the site. We would like to thank Mr Peter De Klerk [Eskom project supervisor] for tirelessly working with all parties throughout the project. Special thanks go to MushayiMudzielwana for coordinating the entire process.

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## APPENDIX 1: BURIAL RELOCATION PROJECT METHOD STATEMENT

### 1. Discovery and Notification

If human burial remains are accidentally discovered during development at Kusile Power Station site the following guidelines apply:

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

### 2. Site Protection and Identification

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

### 3. Investigation and Reporting

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

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

### 3.1 Reporting

- a) If the site is determined to be a contemporary burial site, the appropriate representative will be contacted in writing to provide further direction on the disposition of the remains.
- b) Eskom contractors carrying out authorised activity where a historic or archaeological burial site is discovered can continue that activity with the consent of the EO, where appropriate. The activity must stay 150 meters away from the grave while further arrangements are made by the Archaeologist to rescue and relocate the remains to a safe cemetery.
- d) The Archaeologist may publish notice of the discovery in a newspaper or other public notice seeking information on the remains and alerting members of the public about the impending relocation of the remains to a predetermined formal cemetery or burial ground.

## 4. Site Disposition Agreement (Management Plan)

### 4.1 When the site or remains are identified

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 Kusile Site but are not historic or archaeological remains, the Archaeologist may remove the remains in consultation with the Eskom EO and the affected parties.)

#### 5. Arbitration

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

#### 6. Records

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

#### 7. Burial Relocation & Reburial

- Burial Relocation involves the identification of each grave and the manual excavation of the interred remains. Human remains, coffin features, and grave goods are exposed, their positions in the grave are carefully recorded, and maps and photographs of each grave are made following standard archaeological recovery techniques.
- Once excavation and examination are completed, the interred along with their grave goods are inventoried and carefully wrapped in acid-free tissue. Human remains are arranged anatomically and all materials are placed in specially designed containers, specified by the laws and regulations governed by the state where the re-interment location has been determined. The goal of re-interment is to restore as much of the original mortuary meaning as possible.
- Burial relocation is extremely culturally sensitive and Eskom 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.

- Mafu and Nzumululo Heritage Solutions has extensive experience conducting cemetery relocations for government agencies, other cultural resource firms, developers and private citizens in South Africa. We assure our clients as well as the descendent communities that the greatest amount of respect and care is taken when excavating and relocating these cemeteries.

## 8. Risks

### 1. Legal Risks

Eskom 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 an applicable regulations are enforced including mandatory public notifications.

### 2. Reputational risk

Relocation of human burials in particular also brings with it high risks for the Eskom'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 Eskom's reputation.

#### Mitigation

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

### 3. Operational risks

Legal action arising from the inadequate planning and implementation of burial relocation may see the Eskom have its permission to construct revoked via preliminary injunctions.

Operational risks may also arise from community protests directly. Cases of community opposition and protests have 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 Eskom staff perpetuating work delays in construction and operations. Eskom facilities, machinery, housing and other assets may be damaged and rendered unusable.

#### Mitigation

Kusile Station site 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 scheduled in a manner that does not require the remains to be held elsewhere temporarily.

#### 4. Financial risks

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

#### 5. Human Remains Handling Risks

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

#### 6. General Precautions

The following precautionary measures can help employers and employees remain safe and healthy while 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.

#### 7. 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.



## APPENDIX 2: HUMAN REMAINS AND BURIALS IN DEVELOPMENT CONTEXT

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

### 1. First, establish the context of the burial:

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

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

C. Is it a grave or burial ground older than 60 years which is situated outside a formal 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.

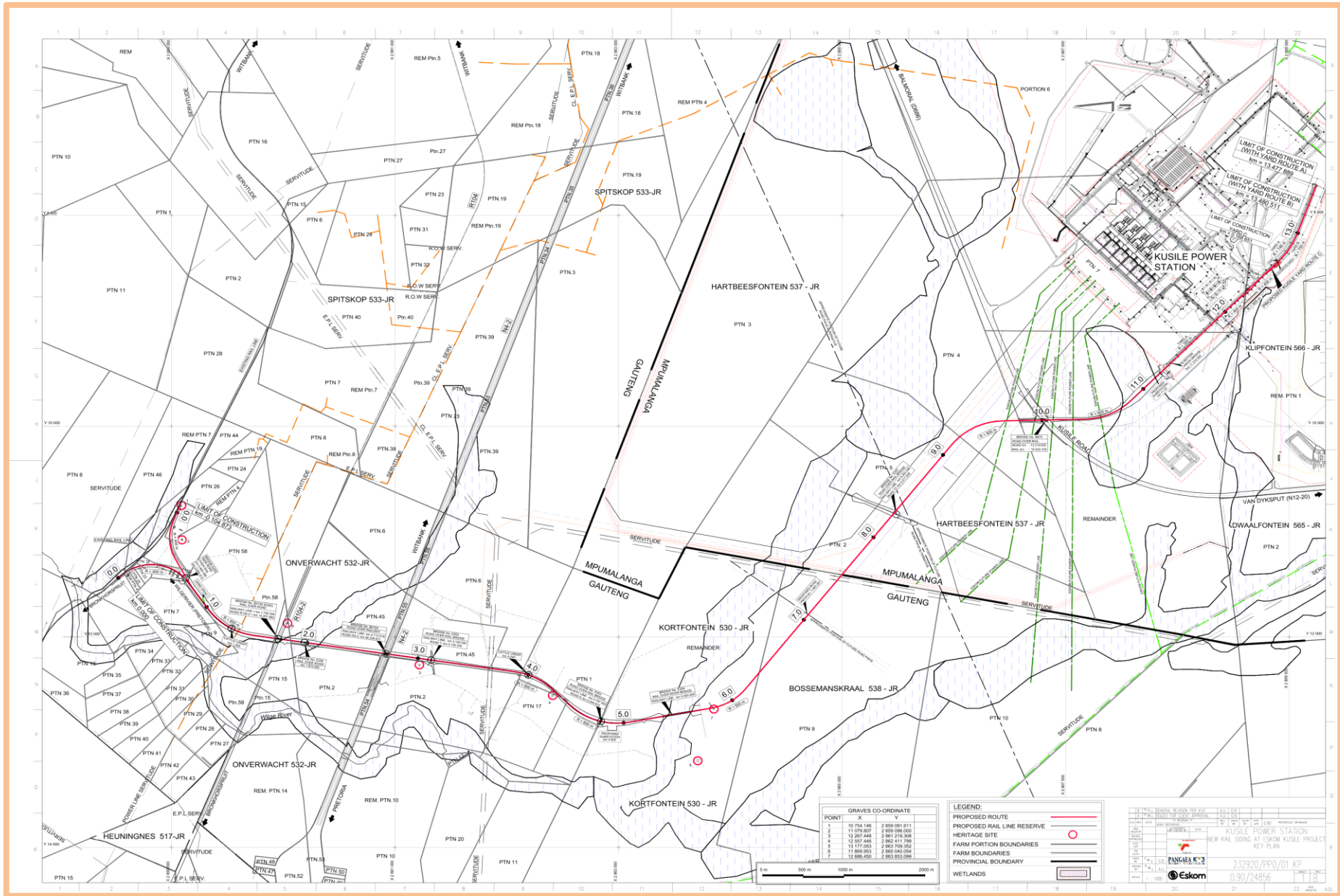
m). Individuals or groups related to the deceased who claim the return of human remains in museums and other institutions should be assisted to obtain documentary proof of their ancestry.

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.

### APPENDIX 3: DEVELOPMENT LAYOUT MAP FOR KUSILE POWER STATION SITE AND ASSOCIATED INFRASTRUCTURE.



# APPENDIX 4: COPY OF SAHRA BGG EXCAVATION PERMIT



237 LYNNWOOD ROAD, BROOKLYN, 0181  
SUITE NO.12, PRIVATE BAG X1 MENLO PARK 0102  
TEL: (012) 362 2535/1327 • FAX: (012) 362 1049



**SOUTH AFRICAN HERITAGE RESOURCES AGENCY**  
237 LYNNWOOD ROAD, BROOKLYN, 0181  
SUITE NO.12, PRIVATE BAG X1 MENLO PARK 0102  
TEL: (012) 362 2535/1327 • FAX: (012) 362 1049  
PERMIT No. 12/07/001/86

Issued under Section 36(3) of the National Heritage Resources Act, No.25 of 1999. Permission is hereby given to: Dr M. Murimbika (ID: 711127 5797 18 9) (Archaeologist) of: Nzumbululo Holdings Pty Ltd, Vorna Valley Midrand 1685  
for: the rescue exhumation and relocation of eight graves accidentally discovered during the course of site clearance for the construction work and any additional less than ten graves located within the project development area at Kusile Power Station, eMalahleni Local Municipality, Mpumalanga Province.  
The following conditions apply:

1. If the permit holder is not present on the site at all times then SAHRA must be provided with the names and qualifications of the authorised representatives.
2. Adequate recording methods as specified in the Regulations and Guidelines pertaining to the National Heritage Resources Act must be used. Note that the position of the grave must be marked on a plan of the site, and the marked on a 1:50 000 maps.
3. Human remains must at all times be handled with respect and graves should not be disturbed except where unavoidable. The consultation procedures as indicated in the gazetted regulations of the National Heritage Resources Act (25 of 1999) must be observed as appropriate. The recommendations for removal of graves and exhumations and for reburial made in SAHRAs Policy "what to do when graves are uncovered" section 3, must be observed as far as possible.
4. The exhumed human remains must be relocated for reburial at an identified municipal cemetery within the district municipality as indicated in the permit application.
5. A report on excavation must be submitted to SAHRA on or before 01 October 2013.
6. Reprints of all published papers, or copies of these or reports resulting from this work must be lodged with the relevant Provincial Heritage Resources Authority and SAHRA
7. If a published report has not appeared within three years of lapsing of this permit, the report required in terms of the permit will be made available to researchers on request.
8. It is the responsibility of the permit holder to obtain permission from the landlord for each visit, and conditions of access imposed by the landlord must be observed.
9. It is the responsibility of the permit holder to fill in excavations and protect the sites during and after excavation to the satisfaction of the SAHRA and the landowner.
10. SAHRA shall not be liable for any losses, damages or injuries to persons or properties as results of any activities in connection with this permit.
11. SAHRA reserves the right to cancel this permit by notice to the permit holder.
12. This permit is subject to a general appeal and may be suspended should any appeal against the decisions be received by SAHRA within 14 days from the date of the permit. SAHRA may not be held responsible for any losses or injuries incurred in the event of any suspension or retraction of this permit.

This permit is valid until 01 October 2013.  
for CHIEF EXECUTIVE OFFICER \_\_\_\_\_  
Date: 08 August 2012



Place: Pretoria.

**B.G.G**

Date: 08 August 2012

Enquiries: Troy Phili  
Email: [tphili@sat.sahra.org.za](mailto:tphili@sat.sahra.org.za)

Dr. M. Murimbika  
Nzumbululo Holdings Pty Ltd  
Vorna Valley  
Midrand  
1685

Dear Dr Murimbika

**Attention: Dr M. Murimbika**

**By Fax: 086 544 2177**

RESCUE PERMIT NO: 12/07/001/86

The permit for the rescue excavation of eight graves located on four sites accidentally discovered during the site clearance for the construction work, hereby applies. This permit also covers any additional less than ten graves that may be possibly discovered within the development area of Kusile Power Station, eMalahleni Municipality, Mpumalanga Province.

The permit is issued with an understanding that the applicant would be present during the rescue excavation and relocation process.

SAHRA wishes you all the success during the proposed exhumation and relocation process.

Yours Sincerely

Troy Phili  
Manager: Burial Grounds and Graves Unit