



THE PROPOSED ESTABLISHMENT OF THE ANDERSON SUBSTATION

PHASE 1 HERITAGE IMPACT ASSESSMENT

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1 EXECUTIVE SUMMARY

Eskom Holdings Limited is proposing the construction of a new 400kV Transmission Line, and a proposed new 400kV Substation as part of their Tshwane Strengthening Scheme Project. The proposed power line will be approximately 40km in length and will run between the proposed new Anderson Substation, which will be located to the north east of the Nuclear Energy Corporation of South Africa (NECSA), in Flora Park on portion 83 of the farm Schurveberg 488 JQ, to the existing Dinaledi Substation which is located approximately 8km north east of Brits.

The proposed power line will be constructed in the following two Municipal Areas: Madibeng Local Municipality (North West) and the City of Tshwane Local Municipality (Gauteng). The proposed substation is earmarked for construction within the City of Tshwane Local Municipality. Please note that a separate Environmental Impact Assessment (EIA) process is being undertaken for the proposed Anderson-Dinaledi 400kV Power line.

The surface survey was conducted and completed on 21 August 2012. This report was undertaken according to the National Heritage Resources Act (NHRA) of 1999 (Act No 25 of 1999) (appendix A). Heritage resources were found in and around the proposed substation, namely, two graves and scattered stone tools. The identified resources will be handled according to Sections 35 and 36 of the NHRA.

It is therefore recommended that based on the survey that the construction may not proceed until a phase 2 assessment of the proposed site is undertaken to determine whether the site is of archaeological significance. It is possible that the phase 2 will reveal nothing of significance and the substation can proceed. The graves must be protected by means of placing a buffer of 15m around the graves so that no construction activity can impact on them.

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1 Appendix A: List of legislation applicable to the site
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2 TERMINOLOGY

BP	Before Present
EIA	Early Iron Age
MIA	Middle Iron Age
LIA	Late Iron Age
ESA	Early Stone Age
MSA	Middle Stone Age
LSA	Late Stone Age
SAHRA	South African National Resources Agency
NHRA	National Heritage Resources Act
SAPS	South African Police Service
ya	years ago

3 INTRODUCTION

Electricity is generated, supplied and distributed by Eskom via a network called a “Grid”. The amount of electricity being fed into the grid must always match what the customers are taking out. The amount of electricity required by the customers varies not just from day to day, but from minute to minute. As electricity demand increases, and loads are connected, more power stations and associated substations and lines need to be built to meet the electricity demands.

The Medupi integration identified the need for the new 2 x Spitskop-Dinaledi 400kV lines to transmit power further into the grid beyond Spitskop. The Dinaledi Main Transmission Substation (MTS) is the main node to link the Waterberg generation and the Mpumalanga pools. Dinaledi MTS is connected by 400kV lines to Bighorn (Rustenburg), Apollo (Pretoria) and will be connected by 2x400kV lines to Spitskop (Northam). This meshed network will be linked to the Central Grid by establishing a new 400kV line from Dinaledi MTS to a new substation called Anderson.

Over the past 15 years, load in the Pretoria area has increased by 80%. This load is anticipated to double in the next 20-30 years, to meet the future electricity requirements in this area and as part of the Tshwane Strengthening project a new substation named Anderson is proposed to feed the Hartbeespoort and neighbouring areas. This new substation will be linked to the existing Dinaledi Main Transmission Substation by a 40km 400kV line.

Nemai Consulting was appointed by Eskom Holdings to undertake an Environmental Impact Assessment (EIA) on the proposed Anderson substation on portion 83 of the farm Schurveberg 488 JQ, Flora Park in the Gauteng Province. Part of the EIA is a Heritage Impact Assessment (HIA) which serves to identify cultural heritage resources which may be impacted by the proposed development. If any resources are found, mitigation measures and recommendations for the protection of such resources are to be given. The report will be submitted to the relevant heritage authority for comment as per the National Heritage Resources Act (NHRA) of 1999 (Act No 25 of 1999).

4 TERMS OF REFERENCE (TOR)

Approach

- To undertake a Phase 1 Heritage Impact Assessment in accordance with the NHRA (Act No. 25 of 1999).
- To identify and map of all heritage resources in the area affected, as defined in Section 2 of the NHRA, including archaeological and palaeontological site in close proximity with the proposed development.
- To assess the significance of such resources in terms of the heritage assessment criteria as set out in the regulations.
- To assess the impact of the development on such heritage resources.
- To evaluate the impacts of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development.
- To identify heritage resources that will be adversely affected by the proposed development.
- To prepare a heritage sensitivity map (Google earth), based on the findings of the study.
- To identify heritage resources to be monitored.
- To provide mitigation measures during the construction phase; if heritage resources are found during this phase the responsible heritage authority should be informed and the services of a heritage specialist obtained to assess the new finds;
- To comply with specific requirements and guidelines of the relevant Provincial Authority.

5 LOCATION AND DESCRIPTION OF THE STUDY AREA

The proposed Anderson substation is located in Flora Park, West of Pretoria in the Gauteng Province. The proposed substation is situated on portion 83 of the farm Schurveberg 488 JQ 83, as well as slightly in portion 82 and 76 of the portion 82 of the farm Schurveberg 488 JQ. The vegetation was short - medium grassland and in most parts it was recently burnt; which made it easier to identify heritage material. Figure 1-Figure 2 indicates the study area where the proposed substation is located.

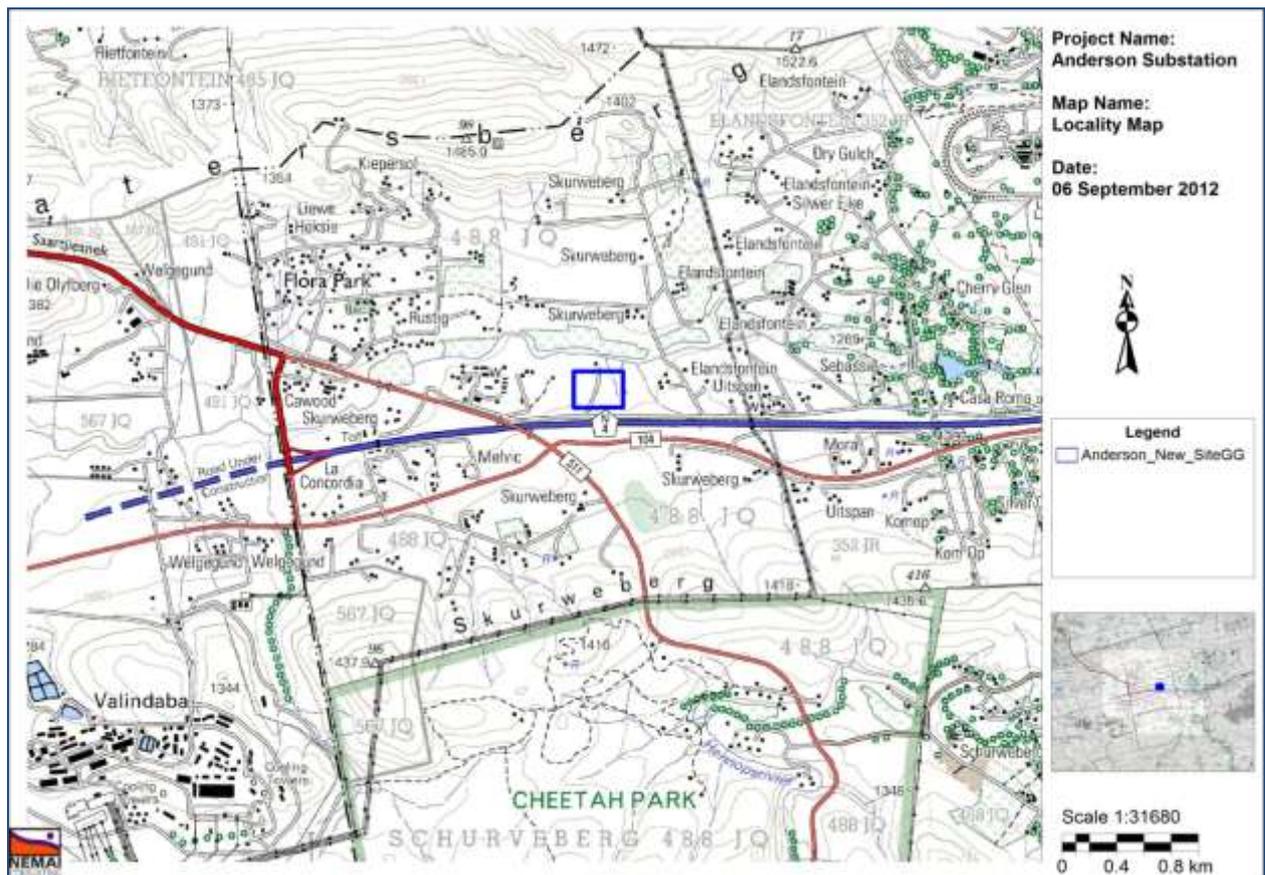


Figure 1 1:50 000 Map of the Study Area.

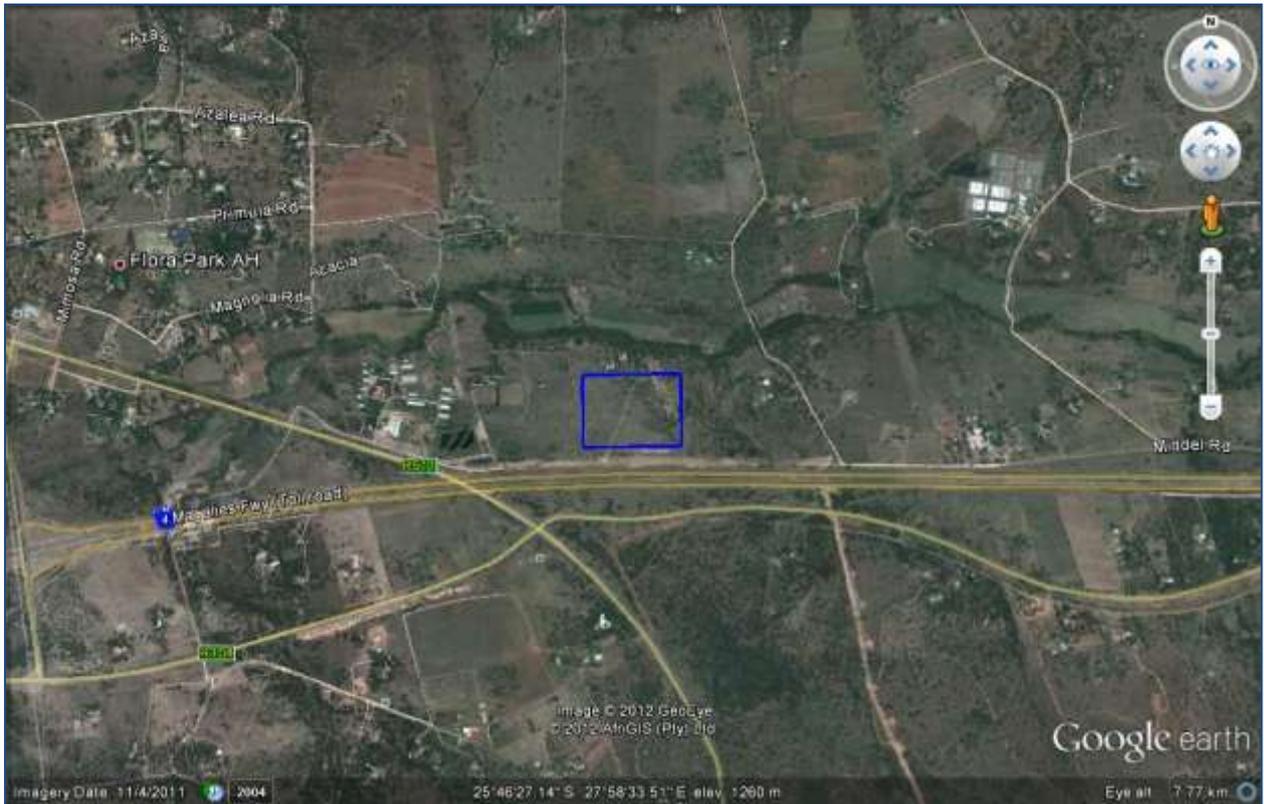


Figure 2 Aerial view of the study area with the proposed substation.

6 BACKGROUND OF THE STUDY AREA

The archaeological and historical background of the area surrounding the study area is rich and well researched. This includes the renowned world heritage site The Cradle of Humankind located south west of the study area.

6.1 Archaeological background

The Stone Age is a time period that dates between 2 million years ago to 2000 ya. Due to the vast technological differences found within stone tools of this period, it was then divided into three phases; Early Stone Age (ESA), Middle Stone Age (MSA) and the Late Stone Age (LSA).

ESA dates between 2 million ya and 2 00 000 Before Present. Industries associated with this time period includes Oldowan, Acheulean and Fauresmith. ESA stone tools include hammer stones, flakes, cores, handaxes and cleavers (Pelser 2009). The more refined stone tools appeared during the MSA. MSA dates between 2 00 000

and 25 000 to 20 000 BP, this varies with location. Industries associated with this time period includes the Howieson's Poort. The stone tools which characterise this period include scrapers, blades, points and flake. Lastly is the LSA which dates between 25 000 and 20 000 to 2 000 BP. Stone tools of this period are characterised by their small size; this includes backed knives and borers (Pelsner 2009).

The western Gauteng area consists of heritage sites including the Cradle of Humankind. This site is rich in terms of the fossilised hominids and archaeological materials of the Stone Age. This World Heritage Site includes sites like the Sterkfontein Cave, Kromdraai and Swartkrans (Carruthers 1990).

According to Huffman (2007) Iron Age marks the early evidence of farming community in southern Africa. Animal husbandry, crop farming, pottery and metal working were introduced which in due time liberated hunter gatherers to change their way of life which is less mobile (Carruthers 1990).

Due to vast technological discrepancies and settlement pattern within this period, it was divided into three periods. The Early Iron Age (EIA) dates to AD 200 – 900, Middle Iron Age (MIA) dates to AD 900 – 1300, and the Late Iron Age (LIA) dates to AD 1300 – 1840 (Huffman 2007).

In Gauteng, there is evidence of **Type N** walling dating to LIA (Maggs 1976; as cited in Huffman 2007). The N- comes from the name of the hill Ntsuanatsatsi, the legendary place of origin for the Fokeng cluster (Huffman 2007). This type of walling spread to the hilly areas of Gauteng between the fifteenth and seventeenth centuries.

6.2 Historical background

In the east of the study area is the Pretoria CBD. Pretoria also known as Tshwane was founded in 1855 and was declared a Capital of the South African Republic, which was then the Boer Republic in Transvaal (Grobler 2002). President Marthinus Pretorius named it after his father, Andries Pretorius, who had become a hero of the

Voortrekkers after his victory over the Zulu Kingdom in the battle of Blood River in 1838(Grobler 2002).

The history that took place in Pretoria is well demonstrated in the museums and monuments and landmarks found within and around the Pretoria CBD (Central Business District). These museums, just to mention a few, include; African Window Museum which exhibits works like the rock art; Kruger House Museum and Ditsong Natural Cultural History Museum. Monuments and landmarks just to mention a few include Church Square, the Union Building and the Voortrekker Monument.

In the west of the study area is the dam called the Hartbeespoortdam. The dam was proposed in the early 1900's as a possible water supply for Pretoria and the Rand (Nightingale 1991). The Department of Transvaal Irrigation conducted an investigation on the feasibility of the scheme. However, the First World War delayed the process of the development. This was not the only delay of the development as there was also a dispute between the Department and the local farmer, Mr van Maarseveen, over the acquisition of land (Nightingale 1991). After four years of the dispute a solution was reached where Mr van Maarseveen was awarded a certain amount of money. It was only in the early 1920s that the building of Hartbeespoortdam commenced and it was completed in 1923 (Nightingale 1991).

As a result, the study area is located in an area surrounded by rich pre-history and history.

7 METHODOLOGY

A background research of the study area was conducted prior to the field survey. The purpose of the research was to acquire information as to what to expect in the study area. A field survey by foot was conducted on 21 August 2012. This was to identify heritage resources that may be impacted by the proposed project. The NHRA was used as a source of reference to identify what is known as a heritage resource (see Appendix A of this report). A Garmin (Global Positioning System) GPS was used to record coordinates of sites found, and a digital camera used to take relevant photographs.

8 FINDINGS

Archaeological and historical heritage resources were found in and around the proposed study area.

8.1 Archaeological

Scatters of stone tools were found in the area of the proposed substation (refer fig. 3). These are typical of Early – Middle Stone Age tools which date back to 2 millions ya to 20 000 ya. It is however difficult to conclude that the study area is a Stone Age site due to the context in which these materials were found. This type of archaeological material is a common occurrence in the area given the fact that it is located close to the Cradle of Humankind and Magaliesberg where such stone tools have been discovered. It should be noted that the site has been previously disturbed; therefore, it is possible that these stone tools are isolated finds.

Archaeological materials are protected by section 35 (4) (b) where it is stated that no person may, destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or objects or any meteorite.





Figure 3 Example of stone tools found. Possibly flakes for first two and handaxes for the last two.

8.2 Historical

Two graves and one possible grave were found within 1 km of the proposed substation on portion 82 of the farm Schurveberg 488 JQ (refer fig. 4 - 5). The two graves are located at S 25°46.416' E 27°58.407' and the possible grave is located S 25°46.415' E 27°58.422' (refer fig. 5). The first two graves are ± 36 years (Truia Swartz 2012 Tel. Comm) and one belongs to Shorty while the writing on the other headstone was faded and could not be deciphered.

Graves less than 60 years are handled according to section 36(6) where it states that subject to the provision of any other law, any person who in 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 (SAPS) 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.

It should be noted however, that the graves are not going to be directly affected by the development since they are outside the footprint of the project. But because they are in close proximity, they might be affected during the construction phase of the project; hence they must be fenced before the construction commences.

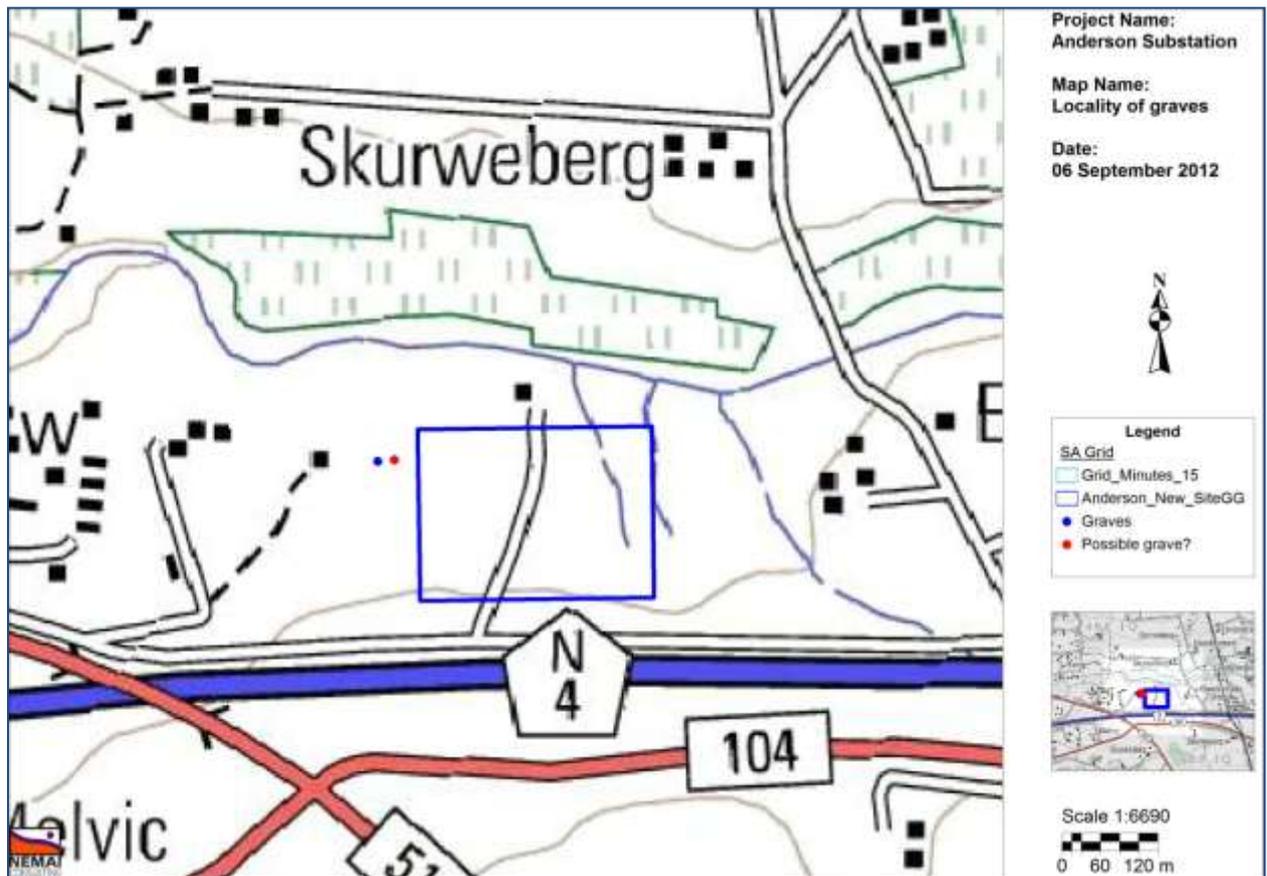


Figure 4 1: 50 000 map of the locality of the graves.



Figure 5 the two graves identified in the close proximity of the study area.



Figure 6 a possible grave

Other heritage remains found that were however not assessed as significant are: several foundations/floors of a structure that are located at S 25°46.394' E 27°58.407' on portion 82 of the farm Schurveberg 488 JQ (refer fig 7);

Foundations of a mud house located between a water tank (S 25°46.504' E 27°58.678') and the occupied house (S 25°46.407' E 27°58.352') on portion 82 of the farm Schurveberg 488 JQ.

Possible remains of a structure (S 25°46.427' E 27°58.556') on portion 83 of the farm Schurveberg 488 JQ;

Foundation of stonewalling located (S 25°46.399' E 27°58.636') on portion 76 of the farm Schurveberg 488 JQ (refer fig 8);

The remains of a structure to house chickens that was never completed due to a misunderstanding between the contractor and employees (Tel. Comm. du Plessis 2012). The structure is long rectangular shaped structure with the northernmost entrance located at S 25°46.539' E 27°58.569' and the southernmost entrance located at S 25°46.540' E 27°58.631' in portion 83 of the farm Schurveberg 488 JQ (refer fig 9).



Figure 7 Foundation/floors identified in close proximity of the study area



Figure 8 Foundation of stonewalling identified in close proximity of the study area.



Figure 9 Remains of the chicken house.

9 POTENTIAL FOR FURTHER FINDINGS

It is possible, based on the surface survey, that further unearthed graves and archaeological materials especially stone tools may be discovered during the construction process.

If this does occur, construction in the area where the material is found should cease immediately and the finds should be reported to the relevant heritage authority and the services of a qualified heritage consultant should be obtained to assess the significance of the finds. The consultant should advise on suitable measures to be taken to address the finds that could include:

- a. further excavation and investigation by relevant specialist
- b. no further excavation and continuance of work
- c. avoidance of site and sanitisation of site from work area

10 LEVEL OF SIGNIFICANCE

The level of significance of the site and the cultural resources found varies between social, historical, spiritual, scientific and aesthetic value.

Social value embraces the qualities, for which a place has become a focus of spiritual, political, national, or other cultural sentiments to a majority or minority group. This may be because the site is accessible and well known, rather than particularly well preserved or scientifically important (SAHRA Regulations); for instance community halls and parks. The study area has resources of social value.

The proposed site has no evidence of significant or known historical events or related structures. There was also no physical evidence of religious activities such as well used areas where people worship; white-washed stones that designate areas of worship, etc. Scientific value refers to research purposes. There is no evidence that the site/study area was used for research or scientific purpose. Aesthetic value refers to the unique architectural structure; none was identified on site as all structures found were either demolished or partly demolished.

11 IMPACTS OF THE PROPOSED PROJECT

This section of the report is to identify the impact(s) that the development may have on the heritage resources found.

The proposed development has the possibility of negatively impacting on the graves. This may occur given the fact that the graves are located in less than 1 kilometre to the proposed site. Although they fall outside the footprint of the project, they may be disturbed during the construction phase; hence a fence must be placed around them. This can however be avoided by ensuring that the substation is not built on the graves and that during the construction phase the graves are protected by means of placing a buffer of 15m around the graves so that no construction activity can impact on them.

The development may have a negative impact as the proposed site may hold archaeological material of significance that are presently not visible.. This means an application for a permit in terms of the NHRA (Act No. 25 of 1999) will be necessary to conduct the phase 2 assessment.

12 RECOMMENDATION

There are two options when dealing with graves. The first option is that the graves should be exhumed and skeletal remains to be reburied. This is an extensive process involving social consultation and permitting from SAHRA.

The second option is to place a fence around the graves and note that no work is allowed 15 metres away from the fence. It therefore recommended that in this particular case, the second option is the most appropriate given the fact that it is not within the proposed site but approximately a kilometre away. The buffer zone will protect the graves from any destruction during the process of the construction.

Archaeologically it recommended that a phase 2 assessment be conducted to prove if whether or not the proposed area is in fact an archaeological site. The number and significance of stone tools discovered during the phase 2 assessment will then determine whether the site can be used for the construction of the proposed substation. If any finds are deemed to be of significance they will contribute to the research conducted around the area.

This report must be submitted to the relevant heritage authority for comment as per section 38(4) of the NHRA.

13 CONCLUSION

In conclusion, the development may not proceed until a phase 2 assessment has been conducted to be certain that the proposed site does not contain archaeological material of significance. It is possible that the phase 2 will reveal nothing of significance and the substation can proceed.

14 REFERENCES

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APPENDIX A – LIST OF LEGISLATION APPLICABLE TO THE SITE

15 LEGISLATION

National Heritage Resources Act 25 of 1999

15.1 Section 3 of NHRA 25 of 1999

According to **Section 3** under **National Estate** of the National Heritage Act 25 of 1999 the heritage resources in South Africa includes the following:

“(1) For the purposes of this Act, those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities.

(2) Without limiting the generality of subsection (1), the national estate may include –

- (a) places, buildings, structures and equipment of cultural significance;
- (b) places to which oral traditions are attached or which are associated with living heritage;
- (c) historical settlements and townscapes;
- (d) landscapes and natural features of cultural significance;
- (e) geological sites of scientific or cultural importance;
- (f) archaeological and paleontological sites;
- (g) graves and burial grounds, including—
 - (i) ancestral graves;
 - (ii) royal graves and graves of traditional leaders;
 - (iii) graves of victims of conflict;
 - (iv) graves of individuals designated by the Minister by notice in the *Gazette*;
 - (v) historical graves and cemeteries; and
 - (vi) other human remains which are not covered in terms of the Human Tissue Act, 1983 (Act No. 65 of 1983);
- (h) sites of significance relating to the history of slavery in South Africa;
- (i) movable objects, including:
 - (i) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
 - (ii) objects to which oral traditions are attached or which are associated with living heritage;
 - (iii) ethnographic art and objects;
 - (iv) military objects;
 - (v) objects of decorative or fine art;
 - (vi) objects of scientific or technological interest; and
 - (vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996).

(3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national estate if it has cultural significance or other special value because of –

- (a) its importance in the community, or pattern of South Africa's history;
- (b) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
- (c) its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
- (d) its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
- (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa; and
- (i) sites of significance relating to the history of slavery in South Africa".

15.2 Section 7 of NHRA 25 of 1999

According to **section 7 (1)** on NHRA 25 of 1999, SAHRA has a system of grading which rates the level of significance of the resources found.

"(1) SAHRA, in consultation with the Minister and the MEC of every province, must by regulation establish a system of grading places and objects which form part of the national estate, and which distinguishes between at least the categories –

- (a) Grade I: Heritage resources with qualities so exceptional that they are of special national significance;
- (b) Grade II: Heritage resources which, although forming part of the national estate, can be considered to have special qualities which make them significant within the context of a province or a region; and
- (c) Grade III: Other heritage resources worthy of conservation, and which prescribes heritage resources assessment criteria, consistent with the criteria set out in section 3 (3), which must be used by heritage resources authority or a local authority to assess the intrinsic, comparative and contextual significance of a heritage resource and the relative benefits and costs of its protection, so that the appropriate level of grading of the resource and the consequent responsibility for its management may be allocated in terms of section 8".

15.3 Section 35 of NHRA 25 of 1999

According to **Section 35** under **Archaeology, palaeontology and meteorites** of the National Heritage Act 25 of 1999 specific procedures need to be followed when graves are identified in the development:

(1) Subject to the provisions of section 8, the protection of archaeological and palaeontological sites and material and meteorites is the responsibility of a provincial heritage resources authority: Provided that the protection of any wreck in the territorial

waters and the maritime cultural zone shall be the responsibility of SAHRA.

(2) Subject to the provisions of subsection (8)(a), all archaeological objects, palaeontological material and meteorites are the property of the State. The responsible

heritage authority must, on behalf of the State, at its discretion ensure that such objects

are lodged with a museum or other public institution that has a collection policy acceptable to the heritage resources authority and may in so doing establish such terms

and conditions as it sees fit for the conservation of such objects.

(3) Any person who discovers archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity must immediately report the find to the responsible heritage resources authority, or to the nearest local authority offices or museum, which must immediately notify such heritage resources authority.

(4) No person may, without a permit issued by the responsible heritage resources authority—

(a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;

(b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;

(c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or

(d) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

(5) When the responsible heritage resources authority has reasonable cause to believe

that any activity or development which will destroy, damage or alter any archaeological

or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure in terms of section 38 has

been followed, it may—

(a) serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as is specified in the order;

(b) carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary;

(c) if mitigation is deemed by the heritage resources authority to be necessary, assist the person on whom the order has been served under paragraph (a) to apply for a permit as required in subsection (4); and

(d) recover the costs of such investigation from the owner or occupier of the land on which it is believed an archaeological or palaeontological site is located or from the person proposing to undertake the development if no application for a permit is received within two weeks of the order being served.

(6) The responsible heritage resources authority may, after consultation with the owner of the land on which an archaeological or palaeontological site or a meteorite is situated, serve a notice on the owner or any other controlling authority, to prevent activities within a specified distance from such site or meteorite.

(7) (a) Within a period of two years from the commencement of this Act, any person in possession of any archaeological or palaeontological material or object or any meteorite which was acquired other than in terms of a permit issued in terms of this Act,

equivalent provincial legislation or the National Monuments Act, 1969 (Act No. 28 of 1969), must lodge with the responsible heritage resources authority lists of such objects

and other information prescribed by that authority. Any such object which is not listed

within the prescribed period shall be deemed to have been recovered after the date on

which this Act came into effect.

(b) Paragraph (a) does not apply to any public museum or university.

(c) The responsible authority may at its discretion, by notice in the *Gazette* or the *Provincial Gazette*, as the case may be, exempt any institution from the requirements of

paragraph (a) subject to such conditions as may be specified in the notice, and may by

similar notice withdraw or amend such exemption.

(8) An object or collection listed under subsection (7)—

(a) remains in the ownership of the possessor for the duration of his or her lifetime, and SAHRA must be notified who the successor is; and

(b) must be regularly monitored in accordance with regulations by the responsible heritage authority.

15.4 Section 36 of NHRA 25 of 1999

According to **Section 36** under **Burial grounds and graves** of the National Heritage Act 25 of 1999 specific procedures need to be followed when graves are identified in the development:

“(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 permission 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 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 into 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 a location 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.

15.5 Section 38 of HNRA 25 of 1999

According to **Section 38** under **Heritage resources management** of the National Heritage Act 25 of 1999 the heritage resources in South Africa should be managed in the following:

“(1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as—

(a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;

(b) the construction of a bridge or similar structure exceeding 50 m in length;

(c) any development or other activity which will change the character of a site—

(i) exceeding 5 000 m² in extent; or

(ii) involving three or more existing erven or subdivisions thereof; or

- (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or
 - (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
 - (d) the re-zoning of a site exceeding 10 000 m² in extent; or
 - (e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority, must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.
- (2) The responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1)—
- (a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; or
 - (b) notify the person concerned that this section does not apply.
- (3) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2)(a): Provided that the following must be included:
- (a) The identification and mapping of all heritage resources in the area affected;
 - (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;
 - (c) an assessment of the impact of the development on such heritage resources;
 - (d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
 - (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
 - (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
 - (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.
- (4) The report must be considered timeously by the responsible heritage resources authority which must, after consultation with the person proposing the development, decide—
- (a) whether or not the development may proceed;
 - (b) any limitations or conditions to be applied to the development;
 - (c) what general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;
 - (d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and

(e) whether the appointment of specialists is required as a condition of approval of the proposal.

(5) A provincial heritage resources authority shall not make any decision under subsection (4) with respect to any development which impacts on a heritage resource protected at national level unless it has consulted SAHRA.

(6) The applicant may appeal against the decision of the provincial heritage resources authority to the MEC, who—

(a) must consider the views of both parties; and

(b) may at his or her discretion—

(i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the responsible heritage authority; and

(ii) consult SAHRA; and

(c) must uphold, amend or overturn such decision.

(7) The provisions of this section do not apply to a development described in subsection (1) affecting any heritage resource formally protected by SAHRA unless the authority concerned decides otherwise.

(8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.

(9) The provincial heritage resources authority, with the approval of the MEC, may, by notice in the *Provincial Gazette*, exempt from the requirements of this section any place specified in the notice.

(10) Any person who has complied with the decision of a provincial heritage resources authority in subsection (4) or of the MEC in terms of subsection (6) or other requirements referred to in subsection (8), must be exempted from compliance with all other protections in terms of this Part, but any existing heritage agreements made in terms of section 42 must continue to apply.