

APPENDIX G: HERITAGE LETTER OF EXEMPTION



**ETHEMBENI
CULTURAL
HERITAGE**

The Secretary
Heritage Officers Committee
Amafa Heritage and Research Institute
195 Langalibalele St.
Pietermaritzburg 3200.
Tel. 033 3946543.

15 November 2023

Attention: Khanyi Zondi
khanyi.zondi@amafainstitute.org.za

Application for Exemption from a Phase I Heritage Impact Assessment
Basic Assessment: Newcastle P233 D1331 Culvert Upgrades
Madadeni Township, Newcastle Local Municipality
Amajuba DM, KwaZulu Natal.

eThembeni Cultural Heritage was appointed by CEN Environmental to assess the potential impacts on heritage resources of the upgrading of culverts along the P233 and D1331 roads in Madadeni, Newcastle. The overall project relates to the upgrading of the 2 gravel roads to either concrete or blacktop within the existing road reserves. No widening of roads are proposed, and no EIA listed activities are triggered for the road upgrades.

As part of the project the following culverts will be upgraded / upsized or the movement of >10m³ of material in a watercourse, thus triggering a BAR and WULA: 4 x low level culverts on the D1331 and 5 x low level culverts on the P233. See **Figure. 1**.

No physical inspection of the culvert locations has been undertaken. The greater Madadeni study area is well known to the author, having undertaken numerous heritage assessments in the area over the last 2 decades, including road, powerline, bulk water, and wastewater pipeline servitudes for the Newcastle municipality, Astron Energy; and the heritage component of the Newcastle EMF in 2012, when the current study area was extensively canvassed in the formulation of the eThembeni Heritage Report.

The Madadeni study area is described as urban to peri-urban. Residential plots are generally fenced, and family graves sites are observably contained within these domestic precincts. The establishment of Madadeni was an *apartheid* construct to provide formalised residential settlement for incoming workers to the Newcastle Riverside mining and manufacturing industrial area. The expansion of Madadeni to its

PO Box 20057 Ashburton 3213 MSUNDUZI KwaZulu-Natal South Africa

MOBILE +27 82 655 9077 ~ FAX (+27) 86 672 8557 ~ EMAIL: THEM BENI@IAFRICA.COM

CK 94/022770/23 ~ VAT No 4690238268 ~ CSD Supplier No MAAA0360106
Director: Leonard van Schalkwyk

present boundaries took place post 1979 under the KwaZulu Government where previous commercial farms were taken out of agricultural production and laid out for township development. Post 1994 Madadeni was incorporated into the Newcastle Local Municipality.



Figure 1. Madadeni Township and the location of culverts proposed for upgrading
(see kml. uploaded to SAHRIS Case File)

Prior to suburban expansion the landscape comprised grassland with an expanding pioneer *Acacia siberiana* woodland component and was utilised largely for commercial cattle production and maize cultivation. The greater part of the region is overlain with deep colluvial sands derived from the palaeo-stream courses of the Umzinyathi / Buffalo River. The depth of the overburden is observable in many dongas draining towards the Umzinyathi, many 3-4m in depth and perched on palaeosols and not the parent rocks. The underlying parent lithology is the Vryheid Formation of the Ecca Group. Whilst flagged as being of potential palaeontological significance it is the coal bearing formation of the wider area but is unlikely to be exposed during culvert construction.¹

Consequently, no further palaeontological mitigation is advocated.

¹ Groenewald, G. (2012). *Palaeontological Technical Report for Kwazulu-Natal*. Unpublished report for Amafa. Available at: <http://www.sahra.org.za/sahris/heritage-reports/kzn-palaeotechnical-report>

Random, colluvially borne Middle Stone Age (MSA) flakes, usually patinated and water worn, have been previously observed ubiquitously in the area, particularly at donga out-flows . (Personal observations). These MSA residues are of low scientific significance and warrant no further mitigation.

Late Iron Age (LIA) stone-walled *isibaya* and hut circles are known to the immediate north, east and west of Madadeni. These cluster however along the foothills of the eastern extension of the Drakensberg range and have not been observed along the Ingogo, Ncome and Umzinyathi drainage lines. This may be due to these drainages forming a NW to SE series of hygrophilous grasslands, wetlands and vleis that are seasonally saturated. Thus, they have historically been eschewed for homestead settlement and only accessed for grazing of livestock. 20th Century commercial agriculture and other infrastructure developments have transformed this hydrology to drier conditions less prone to inundation.

Archaeological graves are not anticipated and current burial practices within the peri-urban settlements of Madadeni are within the fenced family homestead precincts. Traditionally, burial in or close to wetlands or stream courses is eschewed and no impacts to any graves at the *loci* of the culvert upgrades is anticipated.

Consequently, no heritage resources of any significance are anticipated in (1) wetlands and drainage lines associated with the proposed culvert upgrades and, (2) in the areas of active commercial agriculture for over 100 years that have subsequently been transformed to peri-urban plots with associated domestic household settlements.

Recommendations

Accordingly, we request that Amafa grant an exemption from an HIA for the proposed road upgrade project, allowing the developments to proceed with no further heritage resource mitigation. A Chance Find Protocol is appended for inclusion in the final EMPR for adherence by the implementing agent (contractor).

In this regard, please can you notify us timeously via the loaded SAHRIS case file as to the decision of Amafa.

Yours sincerely



Len van Schalkwyk
Principal Practitioner.

Appendix 1

Protocol for the Identification, Protection and Recovery of Heritage Resources during Construction and Operation

It is possible that sub-surface heritage resources could be encountered during the construction phase of this project. The Environmental Control Officer and all other persons responsible for site management and excavation should be aware that indicators of sub-surface sites could include:

- Ash deposits (unnaturally grey appearance of soil compared to the surrounding substrate);
- Bone concentrations, either animal or human;
- Ceramic fragments, including potsherds;
- Stone concentrations that appear to be formally arranged (may indicate the presence of an underlying burial, or represent building/structural remains); and
- Fossilised remains of fauna and flora, including trees.

In the event that such indicator(s) of heritage resources are identified, the following actions should be taken immediately:

- All construction within a radius of at least 20m of the indicator should cease. This distance should be increased at the discretion of supervisory staff if heavy machinery or explosives could cause further disturbance to the suspected heritage resource.
- This area must be marked using clearly visible means, such as barrier tape, and all personnel should be informed that it is a no-go area.
- A guard should be appointed to enforce this no-go area if there is any possibility that it could be violated, whether intentionally or inadvertently, by construction staff or members of the public.
- No measures should be taken to cover up the suspected heritage resource with soil, or to collect any remains such as bone or stone.
- If a heritage practitioner has been appointed to monitor the project, s/he should be contacted and a site inspection arranged as soon as possible.
- If no heritage practitioner has been appointed to monitor the project, the head of archaeology at Amafa's Pietermaritzburg office should be contacted; telephone 033 3946 543).
- The South African Police Services should be notified by an Amafa staff member or an independent heritage practitioner if human remains are identified. No SAPS official may disturb or exhume such remains, whether of recent origin or not.
- All parties concerned should respect the potentially sensitive and confidential nature of the heritage resources, particularly human remains, and refrain from making public statements until a mutually agreed time.
- Any extension of the project beyond its current footprint involving vegetation and/or earth clearance should be subject to prior assessment by a qualified heritage practitioner, taking into account all information gathered during this initial heritage impact assessment.

Management of Graves and Burial Grounds

- Graves younger than 60 years fall under Section 2(1) of the Removal of Graves and Dead Bodies Ordinance No 7 of 1925 as well as the Human Tissues Act No 65 of 1983 and the National Health Act (Act 61 of 2003) Regulations relating to the management of human remains No.R.363 of 22 May 2013. Such graves are the jurisdiction of the National Department of Health and the relevant Provincial Department of Health and must be submitted for final approval to the Office of the relevant

Provincial Premier. This function is usually delegated to the Provincial Member of the Executive Council for Local Government and Planning, or in some cases the MEC for Housing and Welfare.

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

- Graves older than 60 years situated outside a formal cemetery administered by a local authority fall under Section 36 of the National Heritage Resources Act No 25 of 1999 as well as the Human Tissues Act of 1983. Accordingly, such graves are the jurisdiction of the South African Heritage Resources Agency (SAHRA) or a Provincial Heritage Resources Authority (PHRA).² The procedure for Consultation Regarding Burial Grounds and Graves (Section 36(5) of NHRA) is applicable to graves older than 60 years that are situated outside a formal cemetery administered by a local authority. Graves in the category located inside a formal cemetery administered by a local authority will also require the same authorisation as set out for graves younger than 60 years over and above SAHRA authorisation.

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

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

(3) (a) No person may, without a permit issued by SAHRA or a provincial heritage resources authority—
(a) destroy, damage, alter, exhume, or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves.

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

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

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

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

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

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

(6) Subject to the provision of any other law, any person who during development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately

² In KwaZulu-Natal this would be the Amafa Heritage and Research Institute.

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 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.

DECLARATION OF INTEREST BY SPECIALIST



KWAZULU-NATAL PROVINCE

ECONOMIC DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

	(For official use only)
Provincial Reference Number:	
NEAS Reference Number:	KZN / EIA /
Waste Management Licence Number (if applicable):	
Date Received by Department:	

DETAILS OF SPECIALIST AND DECLARATION OF INTEREST

Submitted in terms of section 24(2) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or for a waste management licence in terms of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

KINDLY NOTE:

1. This form is current as of **May 2021**. It is the responsibility of the Applicant / Environmental Assessment Practitioner ("EAP") to ascertain whether subsequent versions of the form have been released by the Department.

PROJECT TITLE

NEWCASTLE D1331 & P233 CULVERT UPGRADES, NEWCASTLE LOCAL MUNICIPALITY, AMAJUBA DISTRICT MUNICIPALITY, KWAZULU NATAL

DISTRICT MUNICIPALITY

AMAJUBA DISTRICT MUNICIPALITY

1. SPECIALIST INFORMATION

Specialist name:	eThebeni Cultural Heritage		
Contact person:	Leonard van Schalkwyk		
Postal address:	PO Box 20057 ASHBURTON		
Postal code:	3213	Cell:	0826559077
Telephone:	None	Fax:	0866728557
E-mail:	thembeni@iafrica.com		

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DECLARATION OF INTEREST BY SPECIALIST

Professional affiliation(s) (if any)	ASAPA (Reg. No 0165) APHP (PHP0071)		
Project Consultant / EAP: EAPASA Registered EAP number:	Lucille Behrens – CEN IEM Unit 2016/38		
Contact person:	Lucille Behrens		
Postal address:	140 Kruger Gardens, 62 Admiralty Way, Summerstrand		
Postal code:	6001	Cell:	082 922 1645
Telephone:	082 320 3111	Fax:	
E-mail:	lucille@environmentcen.co.za		

2. DECLARATION BY THE SPECIALIST

I, Leonard Outram van Schalkwyk are that --

General declaration:

- I act as the independent specialist in this application;
- do not have and will not have any vested interest (either business, financial, personal or other) in the undertaking of the proposed activity, other than remuneration for work performed in terms of the Environmental Impact Assessment Regulations, 2014;
- I will perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;
- I declare that there are no circumstances that may compromise my objectivity in performing such work;
- I have expertise in conducting the specialist report relevant to this application, including knowledge of the Act, regulations and any guidelines that have relevance to the proposed activity;
- I will comply with the Act, regulations and all other applicable legislation;
- I have no, and will not engage in, conflicting interests in the undertaking of the activity;
- I undertake to disclose to the applicant and the competent authority all material information in my possession that reasonably has or may have the potential of influencing - any decision to be taken with respect to the application by the competent authority; and - the objectivity of any report, plan or document to be prepared by myself for submission to the competent authority;
- all the particulars furnished by me in this form are true and correct; and
- I am aware that a person is guilty of an offence in terms of Regulation 48 (1) of the EIA Regulations, 2014, if that person provides incorrect or misleading information. A person who is convicted of an offence in terms of sub-regulation 48(1) (a)-(e) is liable to the penalties as contemplated in section 49B(1) of the National Environmental Management Act, 1998 (Act 107 of 1998).



Signature of the specialist:

Name of company:
eThembeni Cultural Heritage Management

Date:
16 February 2024

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