



19 July 2012

TO: The Manager Archaeology Permits Unit  
South African Heritage Resources Agency  
111 Harrington Street  
Cape Town

BY HAND AND E-MAIL

Attention:      Mariagrazia Galimberti

ROBBEN ISLAND OLD POWER STATION: EXCAVATION OF COOLING POND.

I refer to your e-mails to myself, the archaeologist [Mary Patrick], Rivaaj Mahabeer and Richard Whiteing.

I refer to my Discussions with Sonja Warnich and Collette Scheermayer of 29 September 2011, my correspondence of 12 October 2011, and their subsequent written response on 22 November 2011.

In these discussions and my correspondence I had made it clear that the cooling Pond did not fall within the **legal definition of “Archaeological”** in terms of Section 2(ii)(a) of the National Heritage Resources Act, 25 of 1999; and I quote:

“... material remains resulting from human activity which are in a state of disuse and are in or on land and which are **older than 100 years**,.....”

The cooling pond was constructed in ca 1943 to service the water cooled engines in the Old Power Station. The cooling pond is **not** older than 100 years and does not fall within the legal definition of - “archaeological”.

Therefore, any application for the excavation of the cooling pond **cannot be done in terms of section 35** of the National Heritage Resources Act [NHRA], 25 of 1999 as this relates to “archaeology” in the legal sense only. If SAHRA were to do so it would be *ultra vires*.

Since Robben Island is a National Heritage Site any excavation **must be done in terms of Section 27** of the NHRA.

For this reason I approached SAHRA to provide the process in terms of which this should be done.

The fact that we submitted, at the insistence of the archaeologist, an application form 302 and paid the R100 fee was **erroneous in extremis** because this form is specifically intended for Section 35 of the NHRA and not Section 27. We followed this route, we have to admit, **in error** because of our own work pressure and tight time frames for the project with no further advice or responses from SAHRA. I wish to reiterate that SAHRA **cannot** issue a permit in terms of Section 35 of the NHRA for an excavation in this particular instance.

If SAHRA required an application form to permit the Phase 1 archaeological survey then it should have been done on form 307 for a Section 27, which your letter of 22 November does not specifically require for the Phase 1 survey and report.

It was, however, my understanding from your letter dated 22 November 2011 that:

“.....SAHRA requests the following:

- A Phase 1 archaeological survey must be undertaken by a professional qualified archaeologist prior to any work being carried out.
- **Following receipt of a Phase 1 archaeological assessment report**, SAHRA APM will advise further, taking into consideration the to the [sic] recommendations of the archaeologist.

It is advised that the above documentation be included in the Section 27 of the NHRA permit **application as supporting documentation**,, [sic] to be reviewed by the SAHRA Built Environment and Cultural Landscape Permit Committee (BELCom). The Built Environment and APM units will liaise directly in order to ensure a streamlined process in this regard.”

I again tried to contact your offices in February 2012 to ensure that the process was still on track. I had to unfortunately leave a message at the time as the APM unit were all out of the office.

Neither your letter of 22 November 2011 nor any other communication specifically states that an application form 307 for a section 27 must be completed. In fact your letter clearly states the process, which I understood needed to be followed.

On Friday 15 June 2012 the Permit application form 307 for section 27 was submitted electronically, with the hard copy following on Monday 18 June 2012. The documents included the Phase 1 archaeological assessment as required by your letter of 22 November 2011.

On Monday 25 June 2012 the matter was on the agenda of the SAHRA BELCom.

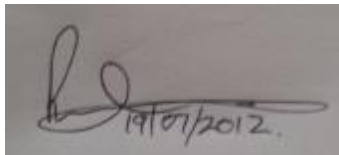
In conclusion, the process as outlined by your letter of 22 November 2011 was followed because:

1. A Phase 1 archaeological assessment was carried out by a qualified archaeologist.
2. SAHRA has received the Phase 1 archaeological report.
3. The report with supporting documentation including form 307 was submitted to SAHRA BELCom.

What has, unfortunately, not happened is the APM advising further as per the undertaking in your letter of 22 November 2011. There also appears to have been a lack of the direct liaison between the respective SAHRA units undertaken in your letter of 22 November 2011. What is also of concern is the length of time from my first discussions regarding the matter to your formal response on 22 November 2011 and your subsequent e-mails.

SAHRA as an administrative organ of state is subject to the provisions of the Promotion of Administrative Justice Act [PAJA], 3 of 2000. While we have understanding for SAHRA's lack of adequate resources, I cannot see how this matter should not be concluded within the parameters of the PAJA, 3 of 2000 as a matter of urgency.

Yours sincerely



Ron Viney