



JAGERSFONTEIN
DEVELOPMENTS

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Department of Human Settlements, Water and Sanitation
The Minister – Mr. Senzo Mchunu
185 Francis Baard Street
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Thursday, 07 July 2022

Your ref: [9/2/321/0001]

Dear Sir/Madam

RESPONSE TO OBJECTION PURPORTEDLY LODGED BY THE JAGERSFONTEIN COMMUNITY TRUST AGAINST JAGERSFONTEIN DEVELOPMENT (PTY) LTD’S APPLICATION FOR A PERMIT IN TERMS OF SECTION 38(1) OF THE NATIONAL HERITAGE RESOURCES ACT 25 OF 1999 FOR THE PROPOSED BACKFILLING OF THE OLD JAGERSFONTEIN PIT LOCATED ON PORTION 15 OF THE FARM JAGERSFONTEIN 14 IS SITUATED IN THE MAGISTERIAL DISTRICT OF XHARIEP, FREE STATE PROVINCE.

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Directors: J Malherbe; JM Eaglestone; CF Potgieter; HJ van Zuydam; S Puwani | REG NR.: 2010/015335/07 | VAT NR.: 4050256819

1. INTRODUCTION

- 1.1 Jagersfontein Developments (Pty) Ltd (“**JD**”) submitted an application in June 2019 under section 38 of the National Heritage Act 25 of 1999 (“**NHRA**”) to backfill the historically mined opencast pit present on Portion 15 of the Farm Jagersfontein 14 IS, situated in the Magisterial District of Xhariep, Free State Province (the “**Pit**”), referred to as the “**Section 38 Application**”.
- 1.2 JD subsequently instructed various specialists and obtained a heritage impact assessment (“**HIA**”) and socio-economic impact assessment (“**SEIA**”) in support of the Section 38 Application; and a public participation process (“**PPP**”) was held in respect of the Reports (discussed below).
- 1.3 An objection, dated 21 February 2022, was submitted to the parties listed above by Esias Jeremia Gerber (“**Gerber**”), purportedly representing the Jagersfontein Community Trust (“**JCT**”), alleging that the PPP held in the Section 38 Application was insufficient (the “**Objection**”).
- 1.4 The Objection was only received by JD on 22 March 2022, when it was forwarded to JD by the FSHRA.
- 1.5 This constitutes the response of JD to the Objection.

2. POINT *IN LIMINE*

- 2.1 Prior to responding to Geber’s allegations regarding insufficient PPP, JD sets out the points in limine below.
- 2.2 Gerber has submitted the Objection on the basis that he is the authorised representative of the JCT. No power of attorney by the trustees of the JCT (“**Trustees**”) for Gerber to act on behalf of the JCT or resolution by the Trustees that the Objection should be submitted has been attached to the Objection.

- 2.3 Furthermore, the trust deed of the JCT is not included nor the Masters reference number for JCT. It is therefore unclear what the purpose of the JCT is and whether the Trustees are empowered under the relevant trust deed to submit objections to administrative applications and act, or appoint third parties to act, on behalf of the JCT in this regard.
- 2.4 There is furthermore no evidence that the Jagersfontein Community are in support of the JCT and the Objection. Various members of the Community have confirmed that Geber is not acting on behalf of the Community and he is not a resident of Jagersfontein. (See attached email of Surprise Xhwantini, dated 11 April 2022 and letter of Mokgotis Khobo).
- 2.5 Due to the above, there is no proof that Gerber has the locus standi to lodge the Objection on behalf of the JCT and furthermore represent the Jagersfontein Community.
- 2.6 Various views purportedly raised by the Jagersfontein Community at the public meeting on 2 December 2021 are cited by Gerber. Gerber however does not appear to have been present at the meeting and the basis on which he can cite what was stated in the meeting is unclear.
- 2.7 The lack of clarity and absence of the necessary information and supporting documentation regarding the above makes it very difficult to adequately respond to the Objection. Consequently, JD reserves the right to supplement this response if any additional information or documentation in respect of the above is received from Gerber or the Trustees of the JCT.
- 2.8 Notwithstanding the above, should the SAHRA or FSHRA consider the Objection when processing the Section 38 Application, the following additional responses below should be considered.

3. PUBLIC PARTICIPATION HELD IN SECTION 38 APPLICATION

- 3.1 It is submitted that the manner in which the Section 38 Application was advertised and the PPP process held was thorough; allowed for meaningful engagement; and accords with the prescripts of the Promotion of Administrative Justice Act 3 of 2000 (“**PAJA**”).

3.2 The PPP involved the following:

3.2.1 a household survey, conducted in November 2019, comprising 69 households randomly selected and located in Jagersfontein Town, Itumeleng and Charlesville, which neighbour the proposed project site. This sample represented a 10% sample size of the population in the Jagersfontein communities;

3.2.2 a number of key informant interviews to inform the SEIA, including the Ward Councillor of Ward 6, the Captain of the Jagersfontein Police Station, and Head of Department at Boaramelo Combined School, the Chairman of the Farmers Association, the Manager of the Itumeleng Community Trust, teachers at the After Day Care Centre, and a doctor at the Diamant District Hospital;

3.2.3 two public consultation meetings, held at the Mayibuye Community Hall in Itumeleng on 26 November 2019 and 2 December 2021. In respect of the latest public meeting:

3.2.3.1 community members assisted in advertising the meeting, through pamphlets; A4 posters at all the local shops; a loudspeaker, with the involvement of the local municipality; and facebook and wassap communications. This is confirmed by the email of Surprise Xhwantini and letter of Mokgosi Khobo;

3.2.3.2 it was initially arranged to have the meeting in the school hall, as the community hall is degraded. Following a meeting with the Mayor of Kopanong, Mokgosi Khobo and JD before the meeting, it was however decided that it would be preferable to have the meeting at the community hall, as it was more likely that it would be a success at this venue. (See letter of letter of Mokgosi Khobo);

3.2.3.3 the meeting held in December 2021 was well attended by approximately 100 Community members, as well as the Mayor of Kopanong, the Ward Councillor

Tseletsele and JD Management. Meeting participants were handed hard copies of a Background Information Document (“BID”);

- 3.2.4 a public notice was published in the Bloemfontein Courant on the 3 December 2021. This notice aimed to inform the public about the proposed project;
- 3.2.5 the public notice and the BID aimed to provide information about the proposed Section 38 Application; and the specialist reports available for review at the Jagersfontein Library. They also served to inform the public that electronic copies of the specialist reports were also available for review on request from Turn 180 Environmental Consultants;
- 3.2.6 following the Community meeting held in 2021, Community members were also provided with the opportunity to review and comment on the following specialist reports, which were available for public review at the Jagersfontein Library: Civil Engineer Design Drawings and Report; Integrated Water and Waste Management Plan; Waste Classification; Geohydrological assessment and modelling reports; a motivation and formal application to SAHRA; and the HIA and SEIA;
- 3.2.7 the public review period ran from between 10 December 2021 and 4 February 2022; and
- 3.2.8 several written comments were submitted by individuals expressing their views on the Section 38 Application.
- 3.3 The various documents relating to the PPP will be submitted to SAHRA as part of the Section 38 Application, including the attendance registers and minutes of the meetings; the BID and public notice; and the written comments submitted.

4. RESPONSE TO OBJECTION

- 4.1 JD’s responses to the Objection are set out below.
- 4.2 It does not respond to every allegation raised in the Objection and the failure to so should not be construed as an admission of any such allegation.

4.3 December 2021 Public Meeting

4.3.1 Given that approximately 100 Community members attended the December 2021 meeting, it is clear that the meeting was adequately advertised and the required change in the venue was not an obstacle to members attending the meeting.

4.3.2 It is denied that the failure to properly advertise the meeting or the change in venue was raised as an issue by any member of the Community at the December 2021 meeting. All issues raised by attendees were recorded in the meeting minutes by an independent consultancy, Surveya Global. The minutes do not reflect any contentions in this regard, in particular that the Community members vividly expressed their outrage in the way that JD had conducted itself during the PPP.

4.3.3 It is further denied that the meeting was abruptly adjourned by JD when Community members raised their contentions regarding the procedurally unfair process adopted by JD. As is reflected in the minutes, JD's specialists presented on the relevant information regarding the proposed backfilling of the Pit and the Community members were given an opportunity to express their views on the proposed backfilling, which they duly did.

4.3.4 It does not appear that Gerber himself attended the meeting and he does not set out from whom the information regarding what was discussed in the meeting was obtained. It is therefore submitted that these contentions should not be considered by SAHRA / FSHRA when processing the Section 38 Application.

4.4 JD's previous NHRA application to backfill the Pit

4.4.1 As noted by Gerber, JD withdrew the application it submitted in 2013 to backfill the Pit, which was submitted under section 35 of the NHRA ("**2013 Section 35 Application**"), subsequent to the appeal by JCT. The 2013 Section 35 Application is therefore not material to the current Section 38 Application.

4.4.2 Gerber has no grounds to contend that the 2013 Section 35 Application was withdrawn to avoid PPP; and this is a mere sweeping statement with no basis. It is clear from the above that thorough PPP was held for the current Section 38 Application.

4.4.3 The Section 38 Application is not a "carbon copy" of the 2013 Section 35 Application. It has been submitted under a different section of the NHRA and

includes extensive specialist reports, following extensive investigations by the specialists, which have been made available to the public for comment.

4.4.4 Given the above, it is unclear how these issues raised by Gerber can be grounds for an objection against the current Section 38 Application.

4.5 The relevant legal authorities

4.5.1 Whilst unclear how this furthers the arguments contained in Objection, it should be noted that JD is not an organ of state conducting a public function or an administrator that held an administrative hearing, as alleged by Gerber. JD is a private entity, established in terms of the company laws of South Africa.

4.5.2 For purposes of the Section 38 Application thorough and meaningful consultation with the public was held through the PPP which accord with the requirements of PAJA. Records of the PPP will be submitted to the SAHRA.

5. CONCLUSION

5.1 It should be noted that Gerber does not set out any substantive grounds for why the Section 38 Application should be refused.

5.2 Given that extensive PPP was held, it is clear that the Objection should not be a basis for SAHRA to refuse the Section 38 Application.



Marius De Villiers

On behalf of

JAGERSFONTEIN DEVELOPMENTS (PTY) LTD