



11 October 2019

Annlin Matabane
South African Heritage Resources Agency
Office 101, 1st Floor, Suncardia Mall
541 Madiba Street
Pretoria

CASE ID: 14041 INTERIM COMMENT CLARIFICATION

Ergo Mining (Pty) Ltd (hereinafter Ergo) identified exposed human remains from a burial ground adjacent to the City Deep 4L2 Mine Dump in Johannesburg (hereinafter 4L2 Dump) in May 2019. Ergo appointed Digby Wells Environmental (hereinafter Digby Wells) to provide specialist support in respect of the discovery to comply with instruction issued by South African Heritage Resources Agency (SAHRA) Burial Ground and Graves (BGG) Unit on 23 May 2019.

In telephonic consultation with the SAHRA BGG Unit, verified via emails dated 28 May 2019 (*appended to this letter*) the following approach was confirmed:

- Determination of the burial ground extent;
- Compilation of a Site Inspection Report (SIR); and
- Development of a Heritage Site Management Plan (HSMP).

Digby Wells, on behalf of Ergo, submitted the SIR on the South African Heritage Resources Information System (SAHRIS) on 09 July 2019 for comment. Subsequently, Digby Wells compiled and submitted the detailed HSMP via SAHRIS on 01 August 2019.

The SAHRA BGG Unit issued interim comment on these submission on Monday, 30 September 2019, distributed to Digby Wells on 10 October 2019. Having reviewed the issued interim comments, there are some points I would like clarification on to ensure the exposed *ex-situ* mortal remains are mitigated as expediently as possible, and the proponent adheres to the legislative requirements.

These are presented in the following table:

Table 1: Interim Comments Extracts and Applicable Comments or Clarification Questions

Interim Comment Extract	Comment / Clarification Question
<p><i>Paragraph 3:</i> SAHRA BGG notes the heritage statement, and provides that it did not adequately address processes and procedures regarding the graveyards conservation, management and protection as well as providing processes and procedures for access</p>	<p>Please note, in the Heritage Statement, the burial grounds and graves were not identified or recorded. Consequently, there was no reason to detail processes or procedures for the conservation, management, protection or access to the burial ground.</p> <p>The Heritage Statement did provide for a Monitoring and Chance Finds Protocol, with which the proponent complied upon the identification of the exposed, <i>ex-situ</i> mortal remains.</p> <p>This notwithstanding, a detailed HSMP was compiled and submitted to define processes and procedures for the conservation, management, protection and access to the burial ground.</p>
<p>Interim Comment 1: SAHRA has reviewed the details of the proposed mitigation recommendations in the heritage inspection report and supports these recommendations regarding the mining activity and the rehabilitation of the site.</p>	<p>The recommendations and way forward, captured under Chapter 3 of the SIR (pg. 14) are as follows:</p> <p><i>The current status quo of the exposed human remains is that they are ex-situ. It is recommended the exposed human remains be reinterred within the manually excavated whole immediately, and the grave rehabilitated. The SAHRA BGG Unit must authorise this prior to implementation.</i></p> <p><i>Other immediate remedial actions to consider include the establishment of a buffer zone of no less than 25 m, and clear demarcation of the extent of the burial ground.</i></p> <p><i>Given the nature of the reclamation activities, it is recommended Ergo develop an HSMP to promote the continued in-situ conservation of the individual graves within the burial ground.</i></p> <p>There are no recommendations specifically addressing mining activity or site rehabilitation.</p> <p>The HSMP however, provides for Remedial Mitigation and Rehabilitation, as well as Preventative Protection under sub-sections 5.2 and 5.3 respectively.</p> <p>This notwithstanding, Digby Wells notes the SAHRA BGG Units support of the recommendations of the SIR.</p>

Interim Comment Extract	Comment / Clarification Question
<p>Interim Comment 2:</p> <p>SAHRA BGG requires that the remains that have been affected by earth moving activities, the exposed remains, be supplemented by a rescue excavation permit application, for their protection and conservation. In this process a full public participation process to identify these remains must be provided.</p>	<p>Digby Wells has been unable to identify any regulations or policy / procedure documents for a rescue excavation permit process. As such, we request SAHRA please detail the applicable process and procedure.</p> <p>This notwithstanding, the SAHRA BGG require a full public participation process to be completed in support of the required rescue excavation permit application. This requirement contradicts, in our understanding of a rescue excavation, the intent of immediate remedial action and consequently requires the application process to comply with Chapters IX and XI of GN R 548 in which a 60-day notification period is stipulated.</p> <p>To minimise the current impact to the exposed, <i>ex-situ</i> mortal remains, Digby Wells requests the SAHRA BGG Unit use its discretion to modify the interim comment to expedite the satisfactory resolution of the matter in terms of Chapter XII Section 42(3) of GN R 548.</p>
<p>Interim Comment 3:</p> <p>Due to the location of this heritage resource being on an active mining area, a detailed HIA will be required by Ergo mine.</p>	<p>During the application for Environmental Authorisation in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), Digby Wells completed the Heritage Statement to comply with the requirements encapsulated in Section 38(8) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) (NHRA).</p> <p>This submission was subsequently accepted by SAHRA and final comment issued.</p> <p>This notwithstanding, the SIR details an impact assessment under sub-section 2.3 and provides reasoned management measures.</p> <p>Given that no listed activities under Section 38(1) of the NHRA are triggered or the Section 38(8) provision of the NHRA applicable, Digby Wells requests that the requirement of a Heritage Impact Assessment be excluded from the prescribed requirements.</p>

Interim Comment Extract	Comment / Clarification Question
<p>Interim Comment 4: In order to comply with NHRA regulations test excavations and trenches maybe required to ensure the identification of other graves or any other heritage resources in the larger area. In an effort to provide a detailed map of the cemetery and ensure no other human remains fall outside of the proposed area to be demarcated by the fence. This will require that an application for test trenches be provided.</p>	<p>Digby Wells has been unable to identify the specific provisions in GN R548 that may require test excavations and trenches in the identification of graves. As such, we request SAHRA BGG please highlight the applicable section of GN R 548 and detail the applicable process and procedure.</p> <p>The absence of such regulations notwithstanding, the exposure of graves through excavation and trenching poses undue risk of damage to sub-surface mortal remains.</p> <p>The HSMP presents the site extent and proposes for the demarcation of the cemetery. The boundaries of this can easily be extended to watercourse running adjacent to the burial ground.</p> <p>Digby Wells requests the SAHRA BGG Unit use its discretion to modify the interim comment to expedite the satisfactory resolution of the matter in terms of Chapter XII Section 42(3) of GN R 548.</p>

Thank you for your consideration of the contents of this letter. I trust you will prioritise expedient, satisfactory resolution that facilitates appropriate remedial mitigations measures on the exposed, *ex-situ* mortal remains.

Regards,



Justin du Piesanie

Divisional Manager: Social and Heritage Services