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CaseID: 15304

Date: Wednesday September 23, 2020

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Final Comment

In terms of Section 38(8) of the National Heritage Resources Act (Act 25 of 1999)

Attention: Louis Walters

Louis Walters Trust

Propose clearance of approximately 18 hectares of vegetation for agricultural purposes, on portion 35 of the farm Karino Farm 134-JU, near Mbombela, City of Mbombela, Mpumalanga Province

Louis Walters Trust is proposing to clear 18 hectares of natural vegetation on the farm Karina 134 JU, City of Mbombela Local Municipality of Mpumalanga Province. They propose to establish a macadamia orchard in the cleared area.

They have appointed Core Environmental (Pty) Ltd to undertake a Basic Assessment (BAR) application process in support of an Environmental Authorisation application in terms of the National Environmental Management Act, 1998 (NEMA), as amended for listed activities in the NEMA EIA Regulations 2014, as amended.

A Basic Assessment Report was been submitted to SAHRA in terms of section 38(8) of the National Heritage Resources Act, 25 of 1999 for commenting. The heritage sections of the BAR state that the NHRA stipulates that an HIA is only required for a development more than 5 hectares of land, when in fact the NHRA, section 38(1) states that SAHRA must be notified of a development that is 5000m²(0.5 hectares) and more. However, this stipulation for section 38(1) is for developments that do not trigger the NEMA EIA Regulations, 2014, as amended. Developments that trigger the NEMA EIA Regulations, also trigger section 38(8) of the NHRA, which states that heritage must be considered in terms of section 38(3). Section 38(3) of the NHRA determines that a Heritage Impact Assessment must be undertaken.

As such, this Basic Assessment application has not considered heritage in terms of section 38(8) of the NHRA, and has incorrectly applied section 38 of the NHRA.

Interim Comment

In terms of the National Heritage Resources Act, no 25 of 1999 (NHRA), heritage resources, including archaeological or palaeontological sites over 100 years old, graves older than 60 years, structures older than 60 years are generally protected. They may not be disturbed without a permit from the relevant heritage

**Proposed clearance of vegetation for agricultural purposes, farm Karino 134-JU,
near Mbombela, Mpumalanga Province**

Our Ref: 15304



an agency of the
Department of Arts and Culture

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resources authority. In contexts of development applications, the developer must ensure that no heritage resources will be impacted by the proposed development, by lodging an application to SAHRA and submitting detailed development specifications as a notification of intent to develop. If the application is made in terms of s. 38 (8) of the NHRA then it is incumbent on the developer to ensure that a Heritage Impact Assessment (HIA) is undertaken, as s. 38(2)a does not apply. Such a study should follow the SAHRA 2007 Minimum Standards: Archaeological and Palaeontological Components of Impact Assessment Reports and section 38(3) of the NHRA.

The HIA must be undertaken by a suitably qualified archaeologist and it must comply with section 38(3) of the National Heritage Resources Act, Act 25 of 1999 (NHRA). Once the report is submitted to the case for commenting, SAHRA will provide further comments on this proposed development.

The HIA must be provided to SAHRA prior to the submission of the final BAR to the competent authority. All these documents will be assessed by SAHRA and the comment issued must be included in the final BAR.

Should you have any further queries, please contact the designated official using the case number quoted above in the case header.

Yours faithfully

Nokukhanya Khumalo
Heritage Officer
South African Heritage Resources Agency

Phillip Hine

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Manager: Archaeology, Palaeontology and Meteorites Unit
South African Heritage Resources Agency

ADMIN:

Direct URL to case: <http://www.sahra.org.za/node/538268>
(DARDLEA, Ref:)