



Letter

In terms of Section 49 of the National Heritage Resources Act (Act 25 of 1999)

Attention: Adv. James Higgo Vorster
Vorster & Marx Attorneys
KWV Building
3rd floor
57 Main Street
Paarl

Application for permit to fill historical open-pit mine at Jagersfontein, Free State with reworked mine dump.

**RE: JAGERSFONTEIN COMMUNITY TRUST: REQUEST FOR REASONS AND NOTICE OF APPEAL:
PERMIT 308 (CASE 508) DATED 3 JUNE 2013**

- **NOTICE OF APPEAL AGAINST THE DECISION OF THE SOUTH AFRICAN HERITAGE RESOURCES AGENCY (SAHRA) IN RESPECT OF THE ISSUE OF PERMIT 308 (CASE 508) IN TERMS OF SECTION 35(4) OF THE NATIONAL HERITAGE RESOURCES ACT 25 OF 1999 (“NHRA”); AND**
- **REQUEST FOR WRITTEN REASONS IN TERMS OF SECTION 5 OF THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT 3 OF 2000 (“PAJA”) READ with SECTION 49(1) OF THE NHRA**

BACKGROUND

The Archaeology, Palaeontology, Meteorites, Heritage Objects and Burials (APMHOB) Permit Committee of the South African Heritage Resources Agency received a permit application from the Free State Provincial Heritage Resources Authority on the 30th of August 2012 regarding the request to allow filling of the hand dug mine pit at Jagersfontein with reworked mine dumps. The application was submitted by Mr Nicholas Whitcutt, from Nicholas Whitcutt Architects, on behalf of the Jagersfontein Developments (Pty) Ltd. The original application included:

- Letter from Free State PHRA to Mr Dumisani Sibayi, SAHRA Executive Officer for Heritage Resources Management dated 27 August 2012
- Application to Free State PHRA for filling of pit at Jagersfontein mine dated 16th May 2012
- Appendices to the application (2 volumes), including:
 - Report prepared by SRK Consulting for Jagersfontein Developments on Review of Jagersfontein Pit Stability and Backfilling Options dated April 2012
 - Presentation of structural integrity of the pit, rehabilitation, public value and impact.





- Phase I Impact Assessment of the dormant Jagersfontein Mine (Free State) in terms of archaeological and other heritage sites compiled by Loudine Philip dated 31 March 2009

The item was circulated amongst permit committee members on the 4th of September 2012 and it was decided to invite the applicant for a presentation to the permit committee at the meeting that was held in Cape Town on the 25th of October 2012. Mr Nicholas Whitcutt, of Nicholas Whitcutt Architects, and Dr Graham Howell, of SRK Consulting, gave a presentation of the proposed activities. Mr Henk van Zuydam, representing Jagersfontein Developments (Pty) Ltd, also attended this section of the meeting.

The plan presented to SAHRA involved the filling of the mine pit with reworked material from the mine dumps around the pit. At the end of the filling, which is expected to take 18-20 years, the top of the pit would become a wetland. This approach has already been used by De Beers for the De Beers Hole in Kimberley. This should clarify point 6 in your letter dated 19.06.2013.

The APMHOB permit committee members raised several questions about the project since no clear plans were presented and the heritage value of the pit seemed not to have been appropriately considered. Minutes from the meeting related to the discussion of this issue are provided.

In order to assess and better understand this application, two SAHRA officials (Dr Mariagrazia Galimberti and Ms Kathryn Smuts) undertook a site visit on the 22nd of November 2012 along with two members of the APMHOB permit committee, Dr Amanda Esterhuysen and Dr John Rogers. On site they were met by Mr Henk van Zuydam and Mr Marius de Villiers. The report on the site visit is provided.

SAHRA consulted with the Geological Society of South Africa to understand:

- whether the pit itself had geological value
- whether structurally filling of the pit could be avoided.

A further meeting was held at SAHRA on the 24th of April 2013 with Mr Henk van Zuydam, Mr Marius de Villiers and Mr Gys Hoon. The meeting was requested by Jagersfontein Developments (Pty) Ltd after SAHRA requested more information on the 28th of February 2013.

After the meeting, the information received was reverted to our permit committee members and the issue was tabled for the following meeting of the APMHOB permit committee held on the 30th of May 2013. The minutes from the meeting related to the discussion of this issue are provided.

RE: NO NOTICE OF PERMIT APPLICATION TO JAGERSFONTEIN COMMUNITY TRUST AND THE ABSENCE OF REASONS

The Jagersfontein community was not directly involved in the process since the application was undertaken





under s. 35(4) of the National Heritage Resources Act (NHRA), no. 25 of 1999 which does not require social consultation.

SAHRA however requested compliance with the public participation process requested in s. 38(3)(e) of the NHRA, which will be triggered once the Jagersfontein Developments start a process under the Mineral and Petroleum Resources Development Act (MPRDA), no. 28 of 2002 and/or the National Environmental Management Act (NEMA), no. 107 of 1998.

The reasons why the decision was taken were:

- The stability of the pit is compromised. SRK Consulting informed SAHRA that the likelihood of a successful stabilization of the pit is currently very slim and extremely expensive. This is due to the different geology of the pit compared to other hand dug pits, such as, for instance, the Big Hole. This poses a safety risk for any further activity to be undertaken around the pit.
- Currently neither SAHRA nor the PHRA have the financial means to be able to stabilize the site.
- SAHRA has requested in several occasions (all of which are minuted) for Jagersfontein Developments (Pty) Ltd to clarify the legal standing of the company in regards to compliance with the MPRDA and the NEMA. SAHRA was supplied with the explanation that because of the De Beers Consolidated Mines Ltd vs Ataquu Mining (Pty) Ltd judgment (case no. 3215/06) held in the High Court of South Africa (Orange Free State Provincial Division), the Jagersfontein Developments (Pty) Ltd was exempted from further compliance with any other aspect of the MPRDA and NEMA.
- While the pit itself may be considered of national significance, the buildings around it would be of provincial significance, which would require a dual nomination between the two agencies.
- SAHRA has recognised and acknowledged the important historical and cultural significance of the Jagersfontein mine pit, however geologically the conservation of the pit may not be possible.

The damage to the workers' hostel was reported to SAHRA as an accident. Since the buildings are younger than 100 years, the responsibility, according to the NHRA, lies with the PHRA. No evidence is brought forward to clearly identify the destruction of the building as a voluntarily demolition and not as an accidental event, which resulted in the unfortunate destruction of the NE section of the compound.

Please note the mine pit is not a national heritage site but it is protected under s. 35(4) of the NHRA.

SAHRA believes that the impact of the filling of the pit on the heritage significance of the site will be mitigated if Jagersfontein Developments (Pty) Ltd complies with the following conditions, which are binding for them as the permit holder:

- The issuing of the permit does not represent an automatic consent to any application regarding the mine pit which will be submitted in terms of s. 38(8) of the National Heritage Resources Act.
- SAHRA will further comment on this project once any applications under NEMA and/or the MPRDA are submitted.



The South African Heritage Resources Agency

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- SAHRA recommends that the social consultation process undertaken under NEMA or the MPRDA takes into consideration the heritage aspect of the pit.
- A detailed and complete plan of the proposed filling must be submitted to SAHRA for further comments before the filling of the mine pit is started.
- A full recording of the open pit should be undertaken before any filling activities may commence. Ideally, the pit should be recorded by means of photogrammetry, laser scanning and/or remote sensing. We invite the applicant to engage with SAHRA on details and possible solutions for this recording.
- SAHRA agrees that the rim of the pit must be maintained for posterity.
- SAHRA requires that the museum of the mine pit be upgraded and made accessible to visitors so that the historical significance of Jagersfontein will still be highlighted.
- A permit report should be submitted by the end of June of each year to both SAHRA and the FSPHRA to report on the activities authorised and requested in this permit.

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

Yours faithfully

Mariagrazia Galimberti
Heritage Officer: Archaeology
South African Heritage Resources Agency

Colette Scheermeyer
SAHRA Head Archaeologist
South African Heritage Resources Agency

ADMIN:

Direct URL to case: <http://www.sahra.org.za/node/58629>

