

**Samy's Wholesalers Extension, Erf 44500, c/o Quinn & Lawrence Streets,
Kimberley, Sol Plaatjie Municipality, Northern Cape, South Africa**



- 18 December 2014 -

Attention:

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**RE: DEPARTURE FROM SAHRA APM UNIT RECOMMENDATION REQUIREMENTS (not issued to date) AND
NOTIFICATION OF DEVELOPMENT TO PROCEED, WITH CONDITIONS.**

Construction at the above-mentioned construction site was stopped on 16 October under a 'cease work order' issued by NBYKB, in terms of the NHRA 1999, Section 35(5). Please note that the development application does not require compulsory Notification of Intent to Develop (NID) to SAHRA in terms of Section 38(1) of the NHRA 1999¹.

The NHRA 1999, Section 35(5) states:

When the responsible heritage resources authority has reasonable cause to believe that any activity or development which will destroy, damage or alter any archaeological or palaeontological site is underway, and where no application for a permit has been submitted and no heritage resources management procedure in terms of section 38 has been followed, it may –

- (a) Serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as specified in the order;
- (b) Carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary;
- (c) If mitigation is deemed by the heritage resources authority to be necessary, assist the person on whom the order has been served under paragraph (a) to apply for a permit as required in subsection (4); and
- (d) Recover the cost of such investigation from the owner or occupier of the land on which it is believed an archaeological or palaeontological site is located or from the person proposing to undertake the development if no application is received within two weeks of the order being served.

¹ National Heritage Resources Act, Section 38(1) – The Samy's Wholesalers Extension development construction footprint measures 1,600m². No linear development measuring 300+m is associated with the development. Rezoning is applicable, and based on the consolidation of 2 erven only, zoned as 'residential', to be rezoned as 'commercial' (Erf 44500), with the rezoning application being under 5,000m².

The 'cease work order' was based on the inferred heritage sensitivity of the area, being (part of) an 1870's Black migrant worker cemetery, with grave mitigation reported on by Morris (2004)² during development of the Samy's Wholesalers depot development, 78 Transvaal Road, Kimberley.

The 'cease work order' did not stipulate a period for which work had to be stopped. The order however included preliminary investigation procedures, requesting a Phase 1 Heritage Impact Assessment (HIA) together with proof of public consultation.

- The requested Phase 1 HIA was done by Gaigher (2014)³ and submitted to NBYKB on 5 November. The Gaigher (2014) report made recommendations for further archaeological testing and associated mitigation / conservation to 'either salvage the heritage resource in danger' or 'investigate alternatives' as stipulated in the order. Efforts by Gaigher to follow up on a SAHRA response on the report proved unsuccessful (E-mail correspondence S. Gaigher to T. Pillay: 17 November).
- The project proponent, Tom Pillay, P&V Pillay Family Trust, submitted proof of public consultation to NBYKB. The consultation process did not identify any descendants, very similar to results of the Morris (2004) public consultation process. Consultation however indicated that should skeletal remains be identified, dignified reburial should be prioritized and pending site specific findings the developer has preliminary agreed to the erection of a small on-site memorial. Rather deconstructive outcomes of both public processes may well be directly related to the inferred type site (believed to be a defunct Black migrant workers' cemetery) and specifically the associated age (1870's), more than 100 years old, making the inferred site essentially archaeological in nature, by NHRA 1999 definition.

On 19 November ArchaeoMaps was requested by Tom Pillay to follow up on a SAHRA response to the project. On 20 November relevant heritage reports were e-mailed to SAHRA by ArchaeoMaps and hand delivered by Dr. Allan Grootboom to the SAHRA APM Unit premises, CPT. On 24 November Philip Hine acknowledged receipt of documents. ArchaeoMaps followed up on a SAHRA response on 24 November and 8 December. To date no official SAHRA response on the project has been issued and no communiqué regarding a way forward for development with reference to Section 35(5) has been forthcoming.

In lack of a stipulated timeframe stating the period for which work had to be stopped at the site and in the absence of a SAHRA response addressing the way forward for development in terms of Section 35(5) of the NHRA 1999, the developer applied for an extension to the development Authorization, granted by the Sol Plaatjie Municipality Building Control Unit with an original expiration date of 6 December⁴. A 3 month extension leave was granted, with an expiration date of 8 March 2015 (stated erroneously as 8 February in the LoR dated 11 December). In order to meet the extended Authorization expiration date a proposal (entreaty) for development to proceed, with conditions⁵, was submitted to the SAHRA APM Unit on 11 December, but again without response thereto.

In lack of SAHRA communication on the project, inconsistencies in implementation of the Section 35(5) process and in order to meet conditions of the extended Authorization, this serves to notify SAHRA and NBYKB of development to proceed, with conditions, as follows:

² Morris, D. (McGregor Museum). 2004. *Skeletons found at 78 Transvaal Road, Kimberley. Report to SAHRA. Permit 80/04/04/005/51.*

³ Gaigher, S. (G&A Heritage). 2014. *Heritage Impact Assessment Report for the Proposed Expansion of the Samy's Wholesalers Warehouse, Kimberley, Northern Cape.*

⁴ Sol Plaatjie Municipality - Dept. Strategy, Economic Development and Planning – Building Control Unit. Provisional Authorization to Commence with Construction Work at C/O Lawrence Road and Quinn Street in Kimberley on Erf 44500. Issued to Tom Pillay [P&V Pillay Family Trust]. Conditions of the Authorization included amongst others that there may be no deviation from the plans submitted to Council for approval. Validity of the Authorization expired on 6 December 2014.

⁵ Van Ryneveld, K. (ArchaeoMaps). 2014. [SAHRIS CaseID 6899] – Samy's Wholesalers Extension, Erf 44500, Transvaal Road, Kimberley, Sol Plaatjie Municipality, Northern Cape, South Africa. RE: Departure from SAHRA APM Unit Recommendation Requirements (not issued to date) and Entreaty for Development to Proceed, with Conditions.

- Construction at the Samy's Wholesalers Extension site will proceed. On-site archaeological monitoring will be done during all phases of vegetation clearing, foundation / trench excavations and earthworks.
- Should any skeletal remains be identified all construction work will be ceased in the vicinity of the find, and reported on to SAHRA and NBYKB. Due process relating to grave mitigation will be followed (in the interim, for development planning purposes, provisional quotes for grave relocation have been obtained from ASAPA accredited CRM PI Grave Relocation specialists).
- [I trust that in the event of skeletal remains being identified relevant SAHRA Units will, with respect to particulars of the Section 35(5) process to date, be responsive and that the developer will be able to rely on SAHRA assistance to ensure prompt issuing of permits.]
- Development on site will proceed with cognizance to Section 50 of the NHRA 1999, provided that basic SHE / SHEQ requirements will be respected at all times.
- Should any graves be identified the developer will apply for another Authorization extension to the Sol Plaatjie Municipality Building Control Unit and if and where relevant, deviation from the approved plans.

In order to meet the extended Authorization date the developer is at present attempting to finalize legal agreements with construction consultants. Construction work at site will need to start ASAP in 2015.

With reference to inconsistencies relating to implementation of the Section 35(5) procedure the following:

1. [Pending satisfactory communication by SAHRA relating to implementation of the Section 35(5) procedure] the developer will not financially commit to archaeological testing and mitigation on the remainder of the property, not to be impacted on by the Samy's Wholesalers Extension development.
2. The developer will not be responsible for diversion of the Section 35(5) procedure *in lieu* of Section 35(4) and Section 36(3) stipulations or any penalties that may relate thereto as stipulated in Section 52(1)(b).

I trust SAHRA and NBYKB approves of the *Departure from SAHRA APM Unit Recommendation Requirements and Notification of Development to Proceed, with Conditions*, with the purpose to ensure legal extended Authorization requirements, whilst ensuring a culturally compliant responsible development.



Yours faithfully,

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Submitted on behalf of the project proponent, Tom Pillay, P&V Pillay Family Trust.