

**Samy's Wholesalers Extension, Erf 44500, Transvaal Road, Kimberley,
Sol Plaatjie Municipality, Northern Cape, South Africa**



- 11 December 2014 -

Attention:

Philip Hine (South African Heritage Resources Agency – SAHRA APM Unit)

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

Development at the above-mentioned construction site¹ (study site² measuring 1,600m²) was stopped on 16 October by NBYKB, based on the inferred heritage sensitivity thereof, probably forming part of a 'defunct Black migrant worker cemetery', dating to the 1870's. The NBYKB 'cease work order' was issued in terms of the NHRA 1999³, Section 35(5), but not specifying the period for which construction at the site needed to be halted, as stipulated in Section 35(5)(a). The project proponent, Tom Pillay, P&V Pillay Family Trust, was requested to commission a Heritage Impact Assessment (HIA), conducted by Stephan Gaigher, with relevant project documentation referenced as:

- o Notification of Intent to Develop (NID) 2014. NBYKB: Samy's Wholesalers; and
- o Gaigher, S. (G&A Heritage). 2014. *Heritage Impact Assessment Report for the Proposed Expansion of the Samy's Wholesalers Warehouse, Kimberley, Northern Cape.*

The NID was submitted to NBYKB on 3 November and the applicable HIA on 5 November.

On 19 November Tom Pillay requested ArchaeoMaps to follow up on the SAHRA APM Unit response on the HIA, in order to attempt mitigating project management schedules on site and legal agreements with construction contractors. On 20 November ArchaeoMaps forwarded digital copies of the above listed documents to the SAHRA APM Unit. Hard copies of the reports were hand delivered by Dr. Allan Grootboom (Northern Cape, Dept. Arts & Culture) to the SAHRA premises, Cape Town. On 24 November and 8 December ArchaeoMaps followed up (e-mail correspondence: Philip Hine) on a SAHRA HIA response on the project, primarily requesting an expected date of response, but without the request addressed by

¹ 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.

² In accordance with the National Heritage Resources Act, No 25 of 1999 (NHRA 1999), Section 38 (1) the development is exempted from a compulsory Notification of Intent to Development to the SAHRA APM Unit.

³ National Heritage Resources Act, No 25 of 1999 (NHRA 1999).

SAHRA. On 24 November Philip Hine acknowledged receipt of project documentation on the mentioned date (20 November). On 9 December the development was registered by Philip Hine on SAHRIS, with SAHRIS CaseID 6899.

In lack of a specified timeframe associated with the NBYKB 'cease work order' and follow up requests for a SAHRA response date, legal response dates associated with Heritage Resource Management were referred to. The NHRA 1999, Section 38(2) makes provision for a 14 day commenting period after a NID has been submitted, as a norm with this referring to either the requirement (and specifics thereof) or exemption from a HIA. Section 38(4) deals primarily with the SAHRA / PHRA comment on the HIA, if requested, but without a specific legal timeframe thereto, stating simply that reports 'must be considered timeously'. For project compliance and planning purposes, in lack of a specified 'cease work order' timeframe or elsewhere in the legislation, the Section 38(2) 14 day commenting period had to be submitted to the relevant government department with due reference to the request for extension to the project's Authorization. The NHRA 1999, Section 38(2) states: 'The responsible heritage authority must, within 14 days of receipt of a notification in terms of subsection (1)...' For purposes of the Samy's Wholesalers Extension development, the following assumptions were made:

- 14 working days since confirmed receipt date of relevant documents by the SAHRA APM Unit : 20 November adding 14 working days = 10 December.

[Section 36 of the NHRA 1999 deals directly with Burial Ground and Graves. In the absence of surface identified graves in the Gaigher (2014) report, but with the heritage sensitivity of the site as a probable burial ground highlighted therein, based directly on the 2004 discovery of human skeletal remains during construction of the Samy's Warehouse depot development (see Morris 2004), Section 36(3)(b) and Section (36)(3)(c) may apply directly to the site. Offences and penalties in the event of non-compliance are addressed in Section 51(1), 51(2) and 51(3) of the NHRA 1999.]

Since submission of the HIA the construction Authorization for the Samy's Wholesalers Extension development has expired. Prior to expiration Tom Pillay requested an extension to the Authorization, granted by the Sol Plaatjie Municipality Building Control Unit, with conditions similar to the original, including the clause on no deviation from the building plans, with a 3 month extension leave and an expiration date of 8 February 2015. **In order to meet conditions of the extended Authorization it is requested that:**

- **Construction at the Samy's Wholesalers Extension site proceeds, provided that on-site archaeological monitoring be done during all phases of 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).**
- **Should any graves be identified the developer will apply for another extension to the Sol Plaatjie Municipality Building Control Unit and if and where relevant, deviation from the approved plans.**

The above request is based on the expiration date of the extended Authorization:

- With the construction industry closing for the festive season and with pressing time constraints to ensure the drafting of new contract agreements for construction, to commence ASAP in 2015, in order to meet the extended Authorization deadline.
- Without a SAHRA HIA response stipulating heritage requirements and with SAHRA closure for permit applications on 1 December arrangements for heritage permits meeting legal Authorization dates are not possible. Provisional monitoring can be accommodated in the Authorization deadline and thus included in project contract agreements (with provision for conditions thereto).

General Heritage Concerns - Summary

Human skeletal remains were encountered in 2004 during construction of the Samy's Wholesalers depot. When the 1st remains were encountered Tom Pillay contacted the police, who duly investigated the case, originally inferred to be a murder scene. After discovery of the 2nd skeleton and with cognizance to the inferred age of the remains, the case was

referred to Dr. David Morris (Head of Archaeology, McGregor Museum, Kimberley). Morris (2004)⁴ uncovered remains of 4 individuals from the parking lot of the said development site, 78 Transvaal Road. The graves were described as: *'The four graves lay in a regular row and, together, are highly suggestive that this site is part of a larger burial ground: it can be predicted that possibly many more graves would be found in the immediate vicinity.'* Notable from the excavation report is damage to 2 of the graves, one (Grave C / Skeleton 4) having evidently been badly impacted on by former infrastructural (sewerage) development, with only the feet found *in-situ*. The second (Grave B / Skeleton 3) was described as badly disturbed, due to a later structure having been built over the grave. Morris based his inference of the area being part of a *'defunct Black migrant worker cemetery'* on an archival article from the Diamond News, dated 29 March 1879. The newspaper clipping states, quoted from Morris (2004): *'The Diamond News newspaper of 29 March 1879 reports on a burial ground in this area in which the dead were buried at a rate of about 600 per annum over a period of probably about 8 years. A sanitary inspection revealed that the graves in this 'native burial ground' (north of what is now called the Pioneers' Cemetery) were 'of a depth totally inadequate', some as little as 2 feet deep, and they were often only 6-8 inches apart. It was recommended that a new burial ground be found 'for the native population'. Burial subsequently took place at a spot which in 1883 was officially proclaimed as the Gladstone Cemetery.'* Further thereto Morris states: *'Subject to further findings, it could be that there are up to 4,000-5,000 burials in this relative informal 1870's African pioneers burial ground.'*

Morris (2004) includes a fairly substantial list of confidential (and other) reports to the McGregor Museum on skeletal remains found by developers in the area, not reported on to heritage authorities, including amongst others graves found at the Samy's Wholesalers depot site during foundation excavations of the warehouse, but not clarifying the then resultant report to the police on skeletal remains, by Tom Pillay, when these were discovered in the parking lot of the said development.⁵

However, Morris (2004) also states that Tom Pillay denied the discovery of remains other than that reported during construction of the Samy's Wholesalers depot development in 2004. This statement was repeated to ArchaeoMaps by Tom Pillay, 2014. In addition it was stated that during extension of the depot site in 2008 no further remains were found.

Municipal records indicate a large scale 1940's residential development in the area (most possibly overlying, at least in part, the former cemetery), with house plans for 6A & 6B Lawrence Road (1958) and 8 Lawrence Road (1949) still on record. According to municipal records many of these houses were demolished in the 1980's during the construction of Quinn Street (and associated infrastructural and 'renewal' developments at the time), but without a known report on skeletal remains having been identified during the road construction development (Tyabashe-Kesiamang, 2014⁶).

The possibility of further skeletal remains being identified on the Samy's Wholesalers Extension site, Erf 44500, Kimberley remains a contentious concern. The realities of cultural overlay are particularly evident in Kimberley, with its rich Colonial Period history owing specifically to the diamond rush, resultant rapid town and city expansion, and related continuous town 'renewal' programs – throughout its turbulent history, always ensuring its claim as a 'modern town'. This is evident in the vicinity of the study site: The 1980's infrastructural impact on the 1940's residential area remains (in itself now a protected heritage layer, although tangible remains thereof have, aside from conserved buildings, *en large* been destroyed), which in turn is inferred to have impacted on the 1870's Black migrant worker cemetery. Evidence of large scale cultural overlay will limit possibilities of archaeological testing, including Ground Penetrating Radar (GPR) scanning, proposed by Gaigher (2014) or mechanical surface peeling, proposed as an alternative archaeological testing method by ArchaeoMaps to SAHRA (e-mail correspondence: Philip Hine, 24 November) and successfully used at Gladstone Cemetery.

⁴ Morris, D. (McGregor Museum). 2004. *Skeletons found at 78 Transvaal Road, Kimberley. Report to SAHRA. Permit 80/04/04/005/51.*

⁵ The existence and contents of the Morris (2004) report was 1st brought to the attention of Tom Pillay, project proponent of the original Samy's Wholesalers development, 78 Transvaal Road, Kimberley when a copy of this report together with the new HIA by Gaigher (2014) was forwarded to SAHRA by ArchaeoMaps – 20 November, with the e-mail forwarded for the attention of Tom Pillay.

⁶ Tyabashe-kesiamang, N. (Executive Director: Strategy, Economic development and Planning, Sol Plaatjie Municipality. Letter – RE: Erven 7542-7545 (Erven 7542-7545 being the residential zoning prior to the application for rezoning as commercial, noe Erf 44500).

The absence of early Kimberley maps makes interpretation particularly difficult. No early, 1870-1900, Kimberley town maps could to date be obtained, not from the Sol Plaatjie Municipality and not from the offices of the Chief Surveyor General, whilst it can reasonably be inferred that such maps are also not available in the archives of the McGregor Museum.

The difference between the rich record of skeletal finds reported on by Morris (2004), the infrequent finds at the Samy's Wholesalers depot site, 2 additional skeletons discovered at a development site in the direct vicinity (Gaigher 2014), the number of grave and burial sites that have been encountered across Kimberley, many of which have been mitigated by Dr. David Morris and not necessarily ascribed to formal burial grounds and the absence of known finds during construction of Quinn Street needs consideration. With reference thereto it is recommended that development proceed, provided on-site monitoring, which will serve to identify skeletal remains should they be encountered during the course of development and ensure that they are dealt with according to archaeological process and standard requirements, whilst allowing development to meet legal extended Authorization deadlines or provide evidence for additional extension and deviation applications.

I trust SAHRA and NBYKB approves of the *Departure from SAHRA APM Unit Recommendation Requirements and Entreaty for 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.



Map 1: Samy's Wholesalers Extension Site, Erf 44500, Kimberley



Plate 1: Aerial view of Erf 44500 from the south-east



Plate 2: View of a portion of the study site from the north-west, with the parking lot where graves were uncovered in 2004 and indicating the 2008 extension to the Samy's Wholesalers depot