

FRAMEWORK OF THE WESTERN CAPE HERITAGE RESOURCES MANAGEMENT BILL, 2018

PREAMBLE

Taking into account: –

That the protection and conservation of the natural historical, cultural historical, archaeological and architectural heritage of the Western Cape for the benefit of present and future generations is a directive principle of provincial policy in the Constitution of the Western Cape, 1997 (Act 1 of 1998) and recognising that this principle must guide the Western Cape Government in making and applying laws;

The diverse nature of the heritage and heritage resources in the Western Cape;
and

Recognising that the management of heritage resources must be done in a sustainable manner;

Recognising that our heritage is a celebration of our achievements and that it facilitates reconciliation and restitution; and

Recognising the importance of the promotion of the economic well-being of the people of the Western Cape;

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BE IT ENACTED by the Western Cape Provincial Parliament as follows: -

CHAPTER 1

THE HERITAGE RESOURCES MANAGEMENT SYSTEM IN THE WESTERN CAPE

Application

1. (1) This Act applies to the identification, conservation, protection, management and administration of heritage resources in the Western Cape.
 - (2) The management system of heritage resources under this Act is interrelated with the framework of heritage resources management created by the National Heritage Resources Act, 1999 (Act 25 of 1999).
- Alt. The management of heritage resources under this Act is done in accordance with the principles of co-operative government in Chapter 3 of the Constitution of the Republic of South Africa, 1996.*

Definitions

2. In this Act, unless the context requires otherwise: -
 - (i) “alter” means any action affecting the structure, appearance or physical properties of a place, whether by way of structural or other works, by painting, plastering, or other decoration or any other means;
 - (ii) “buffer zone” means an area surrounding a site which is declared a World Heritage Site or being considered a World Heritage Site;
 - (iii) “cultural significance” means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance;
 - (iv) “grading” means the three-level system of grading of heritage resources established in terms of section 7(1) of the National Act;
 - (v) “Head of Department” means the head of the provincial department responsible for cultural affairs;
 - (vi) “heritage area” means any geographical area of cultural or heritage interest;
 - (vii) “heritage resource” means any place of cultural significance;

Alt. 'heritage resource' means any structure or place of cultural significance, and includes any structure or place listed on an inventory submitted to Heritage Western Cape for consideration to be included in the heritage register;

(viii) “Heritage Western Cape“ means the heritage resources authority for the Western Cape envisaged in section 23 of the National Heritage Resources Act, 1999 (Act 25 of 1999);

(ix) “intangible heritage” means the practices, representations, expressions, knowledge and skills that communities and groups recognise as part of their cultural heritage, and which is manifested in the domains of oral traditions and expressions, performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe, and traditional craftsmanship;

(x) “National Act” means the National Heritage Resources Act, 1999 (Act 25 of 1999);

(xi) “place” includes –

(a) a site or area;

(b) a building or other structure;

(c) a group of buildings or other structures; and

(d) an open space, including a public square, street or park;

(xii) “Provincial Minister” means the Provincial Minister responsible for cultural affairs;

(xiii) “provincial department” means the provincial department responsible for cultural affairs;

(xiv) “public monuments and memorials” mean architectural works or structures, and works of monumental sculpture and painting, which have cultural heritage value;

(xv) “SAHRA” means the South African Heritage Resources Agency;

(xvi) “Standing Committee” means the standing committee in the Western Cape Provincial Parliament responsible for cultural affairs;

(xvii) “structure” means any building or construction made by people and which is fixed to land, and includes any fixture, fittings and equipment associated therewith.

Purpose of the Act

3. The purpose of this Act is, to –

(a) introduce and maintain an integrated system for the identification, assessment and management of heritage resources in the Western Cape;

(b) promote good governance in relation to heritage resources management;

(c) empower civil society to nurture and conserve heritage resources;

(d) promote general principles for effective heritage resources management in the Western Cape;

- (e) set norms and maintain essential standards for the management of heritage resources in the Western Cape and to protect heritage resources of provincial and local significance,
- (f) promote public participation in the management of heritage resources; and
- (g) promote co-operation between the Heritage Western Cape, the South African Heritage Resources Agency and local authorities in the identification and management of heritage resources in the Western Cape.

Objectives of heritage resources management

4. The objectives of heritage resources management in the Western Cape are:

- (a) to protect and conserve the heritage resources in a sustainable manner;
- (b) to provide an integrated system for the identification, assessment, management, conservation and promotion of heritage resources in the Western Cape; and
- (c) to set norms and standards for the management and development of heritage resources in a fair and procedurally predictable manner.

Principles

5. (1) All authorities, bodies and persons performing functions and exercising powers in terms of this Act for the management of heritage resources in the Western Cape must recognise the following principles:

- (a) heritage resources are valuable, finite, non-renewable and irreplaceable and must be carefully managed;
- (b) every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and all organs of state have an obligation to manage heritage resources in the interests of all South Africans;
- (c) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to developing a unifying South African identity;
- (d) heritage resources management must guard against the use of heritage for sectarian purposes or political gain;
- (e) heritage resources form an important part of the history and beliefs of communities and must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management;
- (f) heritage resources contribute significantly to research, education, tourism and the economy, and they must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values;
- (g) heritage resources must be managed efficiently; and

(h) public participation can contribute to the effective management of heritage resources.

(2) In strengthening effective management of heritage resources in the Western Cape –

(a) the skills and capacities of persons and communities involved in heritage resources management must be developed; and

(b) provision must be made for the ongoing education and training of existing and new heritage resources management workers.

CHAPTER 2

INSTITUTIONAL ARRANGEMENTS

Establishment of Heritage Western Cape

6. (1) Heritage Western Cape is established as the provincial heritage resources authority for the Western Cape envisaged in section 23 of the National Heritage Resources Act, 1999 (Act 25 of 1999), and is responsible for the management of heritage resources in the Western Cape.

(2) Heritage Western Cape is a provincial public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act 1 of 1999).

Governance of Heritage Western Cape

7. (1) The affairs of Heritage Western Cape are governed by a Council constituted in accordance with this Act.

(2) The Provincial Minister must invite the general public to make nominations for persons to be appointed as members of the Council, and such nominations must be considered by the Standing Committee.

(3) The Standing Committee must compile a shortlist of not more than twenty suitable candidates and submit it to the Provincial Minister who must appoint the members of the Council from such shortlist of candidates.

(4) The Provincial Minister may make regulations to provide for the appointment process, qualifications of members, functioning of the Council, and matters incidental thereto.

(3) The Council of Heritage Western Cape will consist of at least four, but not more than fourteen, members as determined by the Provincial Minister and are appointed for a period of three years, which may be renewed for one more term.

(4) The Council must meet at least four times a year.

Chairperson of the Council

8. (1) The Provincial Minister must appoint one of the members of the Council as Chairperson for the period he or she has been appointed as member of the Council.

(2) The Chairperson must preside at all meetings of the Council, but if he or she is absent from a meeting or not able to preside at that meeting, the members present must elect one of the members present to preside at the meeting.

Committees of the Council

9. (1) The Council may establish committees to assist it in the performance of its functions, and in addition to any members, it may appoint to such committee persons who possess specific skills and expertise relevant to the management of heritage resources.

(2) Every committee established by the Council must be chaired by a person appointed by the Council.

(3) Any member of the Council and of its committees who is not in the full-time employ of the State may be paid such meeting allowances as are determined by the Provincial Minister after consultation with the provincial minister responsible for finance in the Western Cape.

Staff

10. (1) All executive and administrative functions of Heritage Western Cape and its Council must be performed by designated officials in the employ of the Provincial Department.

(2) All staff assigned to Heritage Western Cape must be suitably qualified for the respective functions they will perform, and the Council must facilitate skills development and learning opportunities for staff on a regular basis.

(3) The functions referred to in subsection (1) include –

- (a) the identification of and research into heritage and heritage resources;
- (b) strategic management;
- (c) the protection and management of heritage resources;
- (d) financial and administrative support;
- (e) secretarial services to the Council and its committees; and
- (f) the establishment and maintenance of databases and other resources.

Mandate of Heritage Western Cape

11. (1) Heritage Western Cape is responsible for: -

- (a) management of heritage resources in the Western Cape;
- (b) developing an integrated system for the identification, assessment, management, conservation and promotion of heritage resources in the Western Cape;
- (c) advising the Provincial Minister on the implementation of the National Heritage Resources Act, 1999 (Act 25 of 1999), this Act and municipal legislation;
- (d) promotion of the systematic identification, recording and assessment of heritage resources and heritage objects which form part of the national estate in the Western Cape;
- (e) protection of heritage resources in the Western Cape which fulfil the heritage assessment criteria for Grade II status in accordance with section 7(1) of the National Act;
- (f) notifying SAHRA of the presence of any heritage resource in the Western Cape which it considers fulfils the heritage assessment criteria prescribed in section 7 (1) of the National Act for Grade I status, nominating such resource for national protection and furnishing SAHRA with the information in its possession relating to such resource;
- (g) maintaining databases on heritage resources in the Western Cape in accordance with national standards, and regularly submitting such data to SAHRA;
- (h) establishing policy, objectives and strategic plans for heritage resources management in the Western Cape;
- (i) determining the competence of local authorities in the Western Cape to manage heritage resources at local level in accordance with the three-tier system of heritage resources management described in section 7(1) of the National Act;
- (j) co-ordination and monitoring of the performance of local authorities in the implementation of their responsibilities in terms of the National Act and this Act; and
- (k) assisting local authorities to manage heritage resources in their areas of jurisdiction.

(2) A local authority must not perform any function in terms of this Act or any other law for the management of heritage resources unless it is competent to do so.

(3) Heritage Western Cape must determine in accordance with subsection (1)(i) on a regular basis, but at least with three-year intervals, the competency of a local authority to perform its functions in terms of this Act and must provide a report to

the Provincial Minister as well as the council of such local authority that reflects the competency level of the local authority.

(4) If a local authority does not have the capacity or is not competent to perform a specific function for which it is responsible in terms of the National Act or this Act, that function must be performed on an agency basis by Heritage Western Cape or a competent authority at local government level or a competent organisation appointed by Heritage Western Cape.

(5) Heritage Western Cape may withdraw the competency of a local authority if such local authority is found to be not competent.

General powers and duties of Heritage Western Cape

12. (1) Heritage Western Cape must –

- (a) furnish information, advice and assistance to enhance public sensitivity towards and awareness of the need for heritage resources management;
- (b) maintain a list of conservation bodies which have registered their interest in –
 - (i) a geographical area; or
 - (ii) a category of heritage resources;
- (c) regularly inspect heritage resources which are formally protected in terms of Part 1 of Chapter II of the National Act;
- (d) endeavour to assist any community or body of persons with an established interest in any heritage resource to obtain reasonable access to such heritage resource, should they request it, and may for this purpose –
 - (i) enter into negotiations with the owner of such resource;
 - (ii) facilitate the making of arrangements as may be required for the achievement of such access, including the execution of a heritage agreement under section 27 of this Act; and
 - (iii) if such negotiations are unsuccessful, refer the matter to the Provincial Minister;
- (e) make arrangements to ensure the protection and management of all heritage resources and property owned or controlled by it or vested in it.

(2) Heritage Western Cape may –

- (a) promote and engage in research relating to the identification, assessment and management of the national estate as necessary for the performance of its functions;
- (b) publish, or make available or distribute in any form, or cause to be published or distributed, any knowledge and information relating to the national estate and any of its functions or activities;
- (c) inspect or document any heritage resource –

- (i) which has the potential to become protected in terms of the National Act;
 - (ii) which is, or which Heritage Western Cape has reason to believe may be, so protected; or
 - (iii) which it wishes to document for research purposes, for purposes of building up a public record of heritage resources or as part of an investigation into a suspected offence in terms of the National Act or this Act, and
must maintain a register of such inspections.
- (d) whenever it is investigating the desirability of protecting any place in terms of the National Act or this Act, take such steps as it considers necessary –
- (i) for erecting beacons on the corner of and surveying and preparing a diagram or plan of such place; or
 - (ii) for determining by survey, including by way of a geographical positioning system (GPS), the location of such place or object in relation to the beacons and boundaries of the land on which it is situated;
- (e) undertake or make arrangements for the presentation of any place under its control or, after consultation with the Provincial Department, any heritage site which is owned by the Western Cape Government;
- (f) by agreement with the authority or body concerned, co-operate in the management of any heritage resource which is owned or controlled by the State or a supported body;
- (g) lend anything under its control to a museum or public institution, subject to such conditions as it deems necessary and appropriate;
- (h) subject to the provisions of section 37, make and amend regulations relating to any matter which Heritage Western Cape considers to be necessary or expedient to prescribe to fulfil its functions and implement its powers and duties under the National Act and this Act, including –
- (i) the standards of practice and qualifications required of individuals, institutions or other bodies for the performance of work on heritage resources; and
 - (ii) the monitoring of activities at protected sites;
- (i) create and where necessary register with the relevant authorities a badge, or an emblem for Heritage Western Cape, any of its projects or any category of protection provided for in terms of the National Act and this Act;
- (j) where appropriate, affix to or otherwise display at any place protected in terms of the National Act or this Act a badge or sign indicating its status;
- (k) produce, acquire and market products relating to the national estate, or enter into agreements for the production, acquisition and marketing of such products;
- (l) recover costs incurred by it and, where appropriate, charge for the provision of services rendered in terms of the National Act or this Act;

- (m) enter into contracts; and
 - (n) employ consultants and appoint persons on contract to assist in the performance of its functions.
- (3) For the purpose of any application for a permit or other authorisation to perform any action which is controlled by this Act, a formal protection by Heritage Western Cape takes precedence over any formal or general protection at a local level, without prejudice to any incentives offered at any level.

Delegations

13. (1) The Provincial Minister may, subject to subsection (4), make regulations to enable Heritage Western Cape to delegate any of its functions or powers to any or all of the following –

- (a) any member of the Council of Heritage Western Cape;
 - (b) a committee or any member of a committee;
 - (c) a designated staff member employed in the Provincial Department;
 - (d) a heritage inspector as envisaged in section 33;
 - (e) a local authority which is competent to perform such functions, by agreement with such local authority; and
 - (f) specified office-bearers or members of a conservation body registered with Heritage Western Cape in terms of section 25(1)(b) of the National Act and which are competent to perform such functions.
- (2) The delegation referred to in subsection (1) –
- (a) must be done in writing following a decision by the Council to delegate a specific power or function;
 - (b) must clearly state the functions and powers delegated, any conditions attached to the delegation, and the period of the delegation, and
 - (c) may only be revoked in writing.
- (3) Heritage Western Cape may, by written agreement, provide financial or other resources – to a person or body so delegated to allow such person or body to perform the delegated function or power.
- (4) Heritage Western Cape may not delegate the power to do any of the following:
- (a) delegate any of its functions or powers under this section;
 - (b) make a recommendation to the Provincial Minister in terms of the National Act or this Act; and
 - (c) adopt any statement of general policy or conservation management plan under section 30.

Finances

14. (1) The funds of Heritage Western Cape consist of:

- (a) moneys appropriated by the Western Cape Provincial Parliament to enable it to perform its functions and exercise its powers;
- (b) fees and fines provided for in regulations;
- (c) fees received in payment of services;
- (d) funds raised by donations;
- (e) trust funds vested in it;
- (f) interest derived from investments; and
- (g) moneys received from any other source.

(2) Heritage Western Cape must, in accordance with the provisions of section 53 of the Public Finance Management Act, 1999 (Act 1 of 1999) annually submit to the Provincial Minister, at least six months before the start of the financial year, a budget of its estimated revenue and expenditure for that financial year for approval.

(3) Heritage Western Cape must not incur any expenditure except in accordance with an estimated budget approved in terms of subsection (2).

(4) Heritage Western Cape may invest any money not required for immediate use or as a reasonable opening balance in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999).

(5) Heritage Western Cape –

- (a) may purchase or otherwise acquire, hold, let, hire or receive in trust any real right in any immovable property, but the consent of the Provincial Minister must be obtained prior to the registration of the right on the title deed;
- (b) may purchase or otherwise acquire, hold, let, hire or receive in trust any movable property;
- (c) may not lend or borrow any money;
- (d) may not transfer to any person to hold in trust or sell, exchange or otherwise alienate, or hypothecate, burden with a servitude or otherwise confer any real right in immovable property, without the approval of the Provincial Minister.

Accounting authority

15. The Provincial Minister, in consultation with the Provincial Minister responsible for Finance, must appoint for Heritage Western Cape an accounting authority in terms of section 49 of the Public Finance Management Act, 1999 (Act 1 of 1999), who must be a senior staff member of the provincial department employed in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).

Reporting

16. (1) The accounting authority of Heritage Western Cape –

- (a) must keep full and proper records of its financial affairs;
- (b) prepare financial statements and reports for each financial year in accordance with section 55 of the Public Finance Management Act, 1999 (Act 1 of 1999);
- (c) must submit those financial statements within two months after the end of the financial year to the Auditor-General for auditing;
- (d) must submit within five months of the end of the financial year to the Provincial Treasury and the Provincial Minister –
 - (i) an annual report on its activities during that financial year;
 - (ii) the financial statements for that financial year after the statements have been audited; and
 - (iii) the report of the Auditor-General on those statements.

(2) The financial year of Heritage Western Cape ends on 31 March each year.

CHAPTER 3

MANAGEMENT OF HERITAGE RESOURCES

17. Integrated management

- (1) Heritage Western Cape must ensure that the identification, assessment, management and promotion of heritage resources is done in an integrated and coherent way.
- (2) Applications for permits in terms of Part 2 of Chapter 3 may include where relevant or required in terms of legislation comments or approval, as the case may be, from other persons or organs of state.
- (3) Intergovernmental cooperation between Heritage Western Cape and local government in the Western Cape must be conducted in the spirit of cooperative government, and a provincial heritage forum, consisting of representatives of Heritage Western Cape and each municipality, must be established to facilitate intergovernmental cooperation in the management of heritage resources.

Part 1: Formal protections

Provincial heritage sites

18. (1) Heritage Western Cape must identify those places which have special qualities which make them significant in the context of the Western Cape or a region in terms of the heritage assessment criteria in section 3(3) of the National Act and the grading system determined in section 7 of the National Act.

(2) Any person may submit a nomination to Heritage Western Cape for a place to be declared a provincial heritage site, and Heritage Western Cape may prescribe the format and procedures for such nomination, which must include appropriate public participation provisions.

(3) A written motivation for the declaration of a place as a provincial heritage site must be prepared and kept on record by Heritage Western Cape.

- (4) (a) Heritage Western Cape may, by notice in the *Provincial Gazette*, declare any place referred to in subsection (1) and described in the notice a provincial heritage site,
(b) may amend any notice published under paragraph (a), and
(c) may withdraw any notice published under paragraph (a) if the site has lost its cultural significance.

(5) Before declaration of a place as a provincial heritage site, or amendment or withdrawal of a notice under subsection (4), Heritage Western Cape –

- (a) must inform the owner of the proposed declaration, and give the owner reasonable opportunity for representations or submissions to be made regarding the proposed notice;
(b) must notify the mortgage holder, the occupier and any other person with registered interest in the property;
(c) must notify all conservation bodies which have registered their interest with Heritage Western Cape in the geographical area in which the proposed heritage site is situated, and give them at least 60 days to make submissions regarding the proposed declaration, amendment or withdrawal, and in the case of the owner, to propose conditions under which the action will be acceptable; and
(d) must consider all submissions received before a final decision is made.

(6) Heritage Western Cape may –

- (a) at any time withdraw a notice served in terms of subsection 5(a);
(b) renew a notice served in terms of subsection (5)(a) for a further six months while consideration is given to representations or submissions received from the owner.

(7) In case of a site being considered as a World Heritage Site or declared a World Heritage Site, Heritage Western Cape may, by notice in the *Provincial Gazette*,

declare any surrounding area, described in the notice, a buffer zone which must be protected in accordance with the provisions of section 19.

(8) A place must be deemed to be protected as a provincial heritage site for six months from the date of service of a notice under subsection (5)(a) or until the notice is withdrawn or the place is declared to be a provincial heritage site, whichever is the shorter period.

(9) Heritage Western Cape must inform SAHRA, the provincial planning authority and the local authority within whose area of jurisdiction a provincial heritage site falls, within 30 days of its declaration.

(10) All provincial heritage sites must be marked with a badge indicating their status, except in cases where Heritage Western Cape considers it inappropriate.

(11) No person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any provincial heritage site without a permit issued by Heritage Western Cape.

(12) Heritage Western Cape may make regulations pertaining to heritage sites under its control, or to any other heritage site with the consent of the owner of that site –

- (a) safeguarding heritage sites from destruction, damage, disfigurement, excavation or alteration;
- (b) regulating the conditions of use of any heritage site, including the maintenance thereof, or the conditions for any development thereof;
- (c) regulating the admission of members of the public to a heritage site, and the fees payable for such admission.

(13) Heritage Western Cape may, by agreement with the owner of a heritage site –

- (a) conserve or improve any heritage site;
- (b) construct fences, walls or gates around or on a heritage site;
- (c) acquire or construct and maintain an access road to a heritage site over any land, and construct upon such land fences, walls or gates; or
- (d) erect signs on or near a heritage site.

(14) No person may damage any fence wall or gate constructed or sign erected by Heritage Western Cape in terms of subsection (12).

(15) (a) All reproduction rights either in two or three dimensions in respect of a provincial heritage site, subject to any existing rights and the agreement with the owner of such site, belong to the state and vest in Heritage Western Cape being responsible for the protection of such site, or by agreement, with the authority or public institution responsible for the management of such site.

(b) Subject to the provisions of paragraph (a), no person other than the owner of the site may make such reproduction for profit without a permit issued by Heritage Western Cape, which may prescribe the fees payable in respect of such reproduction and must deposit such fees in a trust fund dedicated to the conservation of such site or of heritage resources in general.

Protected areas

19. (1) Heritage Western Cape may, by notice in the Provincial Gazette, provisionally designate as a protected area –

(a) such area of land surrounding a provincial heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or

(b) such area of land surrounding an archaeological or paleontological site or meteorite as is reasonably necessary to ensure its protection.

(2) A site must be provisionally protected for six months from the date of publication of the notice, during which period the owner of a site under provisional protection may make representations or submissions to Heritage Western Cape.

(3) Heritage Western Cape must invite the public to comment on the possible declaration of the site and must take the representations or submissions into consideration before designating an area as a protected area.

(4) No person may damage, disfigure, alter, subdivide or in any other way develop any part of a protected area unless, at least 60 days prior to the initiation of such changes, he or she has consulted with Heritage Western Cape and received permission for the proposed changes.

(5) Heritage Western Cape may make regulations providing for specific protections for any protected area which it has designated, including the prohibition or control of specified activities by any person in the designated area.

(6) A local authority must, with the consent of Heritage Western Cape, make provision in its town planning scheme or in by-laws for the management of a protected area.

Provisional protection

20. (1) Heritage Western Cape may, subject to subsection (4), by notice in the *Provincial Gazette*, -

(a) provisionally protect for a maximum period of two years any –

- (i) heritage resource, the conservation of which it considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; or
 - (ii) heritage resource, the protection of which Heritage Western Cape wishes to investigate in terms of the National Act; and
 - (b) withdraw any notice published under paragraph (a).
- (2) A local authority may, subject to subsection (4), by notice in the *Provincial Gazette*, -
- (a) provisionally protect for a period of three months any place which it considers to be conservation-worthy, the conservation of which it considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; and
 - (b) withdraw any notice published under paragraph (a).
- (3) Heritage Western Cape may, by notice in the *Provincial Gazette*, revoke a provisional protection by a local authority under subsection (2).
- (4) Heritage Western Cape or a local authority may not provisionally protect any heritage resource unless it has notified the owner of the resource in writing of the proposed provisional protection and given the owner of the site a reasonable time to make submissions, and which submissions must be considered before a notice of provisional protection may be issued.
- (5) A heritage resource must be deemed to be provisionally protected for 30 days from the date of service of a notice under subsection (4) or until the notice is withdrawn or the resource is provisionally protected by notice in the *Provincial Gazette*, whichever is the shortest period.
- (6) Heritage Western Cape must inform the relevant local authority within 30 days of the publication or withdrawal of a notice under subsection (1).
- (7) A local authority must inform Heritage Western Cape of the publication or withdrawal of a notice under subsection (2).
- (8) No person may damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of a provisionally protected place without a permit issued by Heritage Western Cape or a local authority responsible for the provisional protection.

Heritage register

21. (1) Heritage Western Cape must compile and maintain a heritage register listing the heritage resources in the Western Cape which it considers to be conservation-worthy in terms of the heritage assessment criteria in section 3 of the National Act and

the grading of heritage sites in section 7 of the National Act, and the heritage register includes all public monuments and memorials in the Western Cape.

(2) Heritage Western Cape may, by notice in the *Provincial Gazette*, list a heritage resource or amend or delete an entry in the heritage register only after following a consultation process as prescribed by regulation published by the Provincial Minister.

(3) Heritage resources must be listed in accordance with –

- (a) the sub-categories of Grade II and Grade III heritage resources prescribed under section 7 of the National Act, if any;
- (b) the areas of jurisdiction of local authorities; and
- (c) any additional categories prescribed by Heritage Western Cape in consultation with SAHRA.

(4) Heritage Western Cape must prescribe by regulation the procedure and information required for –

- (a) the nomination of a resource for listing in the heritage register; and
- (b) the compilation of an inventory of heritage resources referred to in subsection (5).

(5) Heritage Western Cape must request a planning authority or local authority to compile an inventory of heritage resources which fall within its area of jurisdiction and to submit such inventory to it for consideration to be included in the heritage register.

(6) Before Heritage Western Cape may approve an inventory of heritage resources submitted to it by any person or a local authority or planning authority, it must follow a public consultation process, including consultation with the owner of a place included in such inventory.

(7) A local authority must notify Heritage Western Cape when a place within its area of jurisdiction which is listed in the heritage register is destroyed, whereupon Heritage Western Cape must record the destruction of the place against the entry in the heritage register for that place.

(8) Within six months of the publication of a notice in the *Provincial Gazette* concerning the inclusion in the heritage register of a place falling within its area of jurisdiction, every local authority must make provision for the protection of such place through the provisions of its planning scheme or by-laws, subject to subsection (9).

(9) Any protective provisions must be jointly approved by Heritage Western Cape, the relevant local authority and the provincial planning authority.

(10) Heritage Western Cape or a local authority within whose area of jurisdiction such site is located may provisionally protect any place in an inventory referred to in

subsections (5) and (6), but such provisional protection is terminated when the site is listed in the heritage register.

(11) A local authority must mark any place falling within its area of jurisdiction listed in the heritage register with a badge indicating its status.

(12) Heritage Western Cape must, within 30 days of the listing of a heritage resource in the heritage register or the amendment or deletion of an entry, notify SAHRA and provide details of the listing, amendment or deletion.

(13) Heritage Western Cape must, at regular intervals in the manner prescribed by SAHRA, provide SAHRA with any information about heritage resources in the Western Cape to update the information in the inventory of the national estate held by SAHRA.

Heritage areas

22. (1) A planning authority, local authority or Heritage Western Cape must investigate the need for the designation of heritage areas to protect any place of environmental or cultural interest.

(2) The Provincial Minister may provide in regulations for –

(a) the procedures for such investigation,

(b) factors to be considered,

(c) the consultation process to be followed before any designation of heritage areas can be done,

(d) the protection of heritage areas,

(e) application for any alteration or development affecting a heritage area.

(3) A local authority must provide for the protection of a heritage area through the provisions of its planning scheme or by-laws under the National Act and this Act, but any such protective provisions must be jointly approved by Heritage Western Cape, the provincial planning authority and the local authority.

(4) Heritage Western Cape may direct a local authority to establish a heritage area.

(5) A local authority must erect signage indicating its status at or near a heritage area.

Part 2: General protections

Structures

23. (1) No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by Heritage Western Cape, but Heritage Western Cape may, by notice in the *Provincial Gazette*, provide for categories of permits.

(2) Heritage Western Cape may, by notice in the *Provincial Gazette*, make an exemption from the requirements of subsection (1) within a defined geographical area, or for certain defined categories of structure within a defined geographical area, or for certain defined types of alterations, or for certain defined structures which have no cultural significance.

(3) If Heritage Western Cape refuses an application to issue a permit in terms of subsection (1), it must provide reasons for the decision to the applicant.

(4) Within three months of the refusal to issue a permit, Heritage Western Cape must consider the protection of the place concerned in terms of one of the formal designations in Part 1 of this Chapter.

(5) Heritage Western Cape may, in case of an emergency, issue a permit immediately for the alteration or demolition of a structure referred to in subsection (1).

Archaeology, palaeontology and meteorites

24. (1) The protection of archaeological and palaeontological sites and material and meteorites in the Western Cape is the responsibility of Heritage Western Cape, subject to the provisions of section 8 of the National Act.

(2) Heritage Western Cape must, on behalf of the State, ensure that all archaeological objects, palaeontological material and meteorites in the Western Cape are lodged with a museum or other public institution that has a collections care policy acceptable to Heritage Western Cape, and may establish conditions for the conservation of such objects.

(3) (a) Any person who discovers archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity must immediately report the find to Heritage Western Cape, or to the nearest local authority or museum, which must immediately notify Heritage Western Cape.

(b) Heritage Western Cape must maintain a database of all archaeological or palaeontological objects or material or meteorites so discovered.

(4) No person may, without a permit issued by Heritage Western Cape –

- (a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;
- (b) destroy, damage, excavate, remove from its original position, collect or own archaeological or palaeontological material or object or any meteorite;
- (c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object or any meteorite; or
- (d) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects or use such equipment or the recovery of meteorites.

(5) When Heritage Western Cape has reasonable cause to believe that any activity or development which will destroy, damage or alter any archaeological or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure in terms of section 26 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 is 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 Heritage Western Cape 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 costs of such investigation from the owner or occupier of the site or from the person undertaking such development or proposing to undertake such development if no application for a permit is received within two weeks of the order being served.

(6) Heritage Western Cape may, after consultation with the owner of the land on which an archaeological or palaeontological site or a meteorite is situated, serve a notice on the owner or any other controlling authority, and owners of adjacent properties, to prevent activities within a specified distance from such site or meteorite.

Burial grounds and graves

25. (1) No person may, without a permit issued by Heritage Western Cape or a permit issued under section 36 of the National Act –

- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict as defined in section 1 of the National Act, or any burial ground or part thereof which contains such graves;
- (b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
- (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment or any equipment which assists in the detection or recovery of metals.

(2) Heritage Western Cape may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (1) (a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such grave, at the cost of the applicant and in accordance with any regulations made by Heritage Western Cape.

(3) Heritage Western Cape may not issue a permit for any activity under subsection (1) (b) unless it is satisfied that the applicant has, in accordance with regulations made by Heritage Western Cape –

- (a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground, and
- (b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

Development and heritage resources management

26. (1) Any person who intends to undertake a development categorised as –

- (a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length,
- (b) the construction of a bridge or similar structure exceeding 50m in length;
- (c) the construction of wind turbines or large scale solar energy installations;
- (d) any development or other activity which will change the character of a site–
 - (i) exceeding the cadastral boundaries;
 - (ii) more than 5000m² in extent;
 - (iii) involving three or more existing erven;
 - (iv) involving three or more erven or divisions thereof which have been consolidated within the past five years;
 - (v) abutting or adjacent to a provincial or national protected heritage site;or
 - (iii) the costs of which will exceed a sum set in terms of regulations by Heritage Western Cape;
- (b) the re-zoning of a site exceeding 10 000 m² in extent; or

(c) any other category of development or geographical area provided for in regulations by Heritage Western Cape, and which might affect any heritage resource, must when initiating or planning such a development, notify Heritage Western Cape and furnish it with details regarding the location, nature and extent of the proposed development.

(3) Heritage Western Cape must, within 14 days of receipt of a notification in terms of subsection (1) –

(a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report, in accordance with regulations made by Heritage Western Cape;

(b) notify the person concerned that the proposed development is exempted from the application of this section; or

(c) notify the person concerned that an additional 14 days are required to consider the matter before Heritage Western Cape would make a decision.

(4) An impact assessment report required in terms of subsection (3) must be compiled at the cost of the person proposing the development by a suitably qualified person or persons approved by Heritage Western Cape.

(5) The impact assessment report referred to in subsection (3) must be considered timeously by Heritage Western Cape which must, after consultation with the person proposing the development, decide –

(a) whether or not the development may proceed;

(b) any limitations or conditions to be applied to the development;

(c) what general protections in terms of the National Act or this Act apply, and what formal protection may be applied, to such heritage resources;

(d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and

(e) whether the appointment of specialists is required as a condition of approval of the proposal,

and communicate its decision in writing to the person proposing the development.

(6) Heritage Western Cape must not make any decision under subsection (3) with respect to any development which impacts on a heritage resource protected at national level unless it has consulted SAHRA.

(7) The provisions of this section do not apply to a development described in subsections (1) and (2) affecting any heritage resource formally protected under the National Act or this Act.

(8) The provisions of this section do not apply to a development described in subsections (1) and (2) if –

- (a) an evaluation of the impact of such development on heritage resources is required in terms of the National Environmental Management Act, 1998 (Act 107 of 1998), or the Minerals Act, 1991 (Act 50 of 1991) or any other legislation,
- (b) the requirements of Heritage Western Cape for such an impact assessment are fulfilled; and
- (c) any comments or recommendations of Heritage Western Cape with regard to such development have been taken into account prior to the granting of the consent.

(9) Heritage Western Cape, with the approval of the Provincial Minister, may, by notice in the *Provincial Gazette*, exempt from the requirements of this section any site specified in the notice.

(10) Heritage Western Cape may amend any conditions attached to the approval of a development in terms of subsection (5) and must inform the person proposing the development in writing of such amendment.

Heritage agreements

27. (1)(a) Heritage Western Cape may negotiate and agree with the provincial government, a local authority, conservation body, person, or community for the execution of a heritage agreement to provide for the conservation, improvement or presentation of a clearly defined heritage resource, subject to the consent of the owner of such resource.

(b) Such heritage agreement must be in the form of a binding contract.

(2) A heritage agreement may –

- (a) include such terms and conditions as the parties deem fit, including provision for public access, provision of a conservation management plan and provision for financial or other assistance from Heritage Western Cape;
- (b) be to have effect in perpetuity, or for a specified term or to terminate upon the happening of a specific event.

(3) A heritage agreement may, with the consent of the owner of the resource concerned, be amended or cancelled by agreement between the parties.

(4) The owner of a provincial heritage site or a place listed in the heritage register may, by a heritage agreement entered into with Heritage Western Cape or a local authority responsible for the protection of such place, or any person or body approved by such authority, appoint Heritage Western Cape or the local authority or the person or body concerned, the guardian of the place.

(5) Heritage Western Cape may make regulations on the conditions relating to the management, maintenance, use and access to a place which is the subject of a heritage agreement and matters related thereto.

(6) The owner of a place which is under guardianship must, except as expressly provided by the National Act or this Act, continue to have the same estate, right, title and interest in and to the place as before.

(7) Every heritage agreement has effect according to its tenor but subject to the provisions of the National Act and this Act, but –

(a) the execution of a heritage agreement must not prevent Heritage Western Cape or the local authority responsible for its protection from exercising any powers in the National Act or this Act in relation to that resources; and

(b) nothing in terms of any heritage agreement must permit or allow any person to carry out any act contrary to the National Act or this Act.

Presentation of protected resources

28. (1) Heritage Western Cape and local authorities must, wherever appropriate, co-ordinate and promote the presentation and use of places of cultural significance and heritage resources which form part of the national estate and for which they are responsible in terms of section 5 of the National Act for public enjoyment, education, research and tourism, including –

(a) the erection of explanatory plaques and interpretive facilities, including interpretive centres and visitor facilities;

(b) the training and provision of guides;

(c) the mounting of exhibitions;

(d) the erection of memorials; and

(e) any other means necessary for the effective presentation of the national estate.

(2) Where a heritage resource which is formally protected under the National Act or this Act, is to be presented, the person wishing to undertake such presentation must, at least 60 days prior to the institution of interpretive measures or manufacture of associated material consult with the heritage resources authority which is responsible for the protection of such heritage resource regarding the contents of interpretive material or programmes.

(3) A person may only erect a plaque or other permanent display or structure associated with such presentation in the vicinity of a place protected in terms of the National Act or this Act in consultation with the heritage resources authority responsible for the protection of the place.

Repair order

29. (1) When Heritage Western Cape being responsible for the protection of a heritage site considers that such site –

- (a) has been allowed to fall into disrepair, or
 - (b) is neglected to such an extent that it will lose its potential for conservation,
- it may serve on the owner an order to repair or maintain such a site, to the satisfaction of Heritage Western Cape in order to prevent any further deterioration in the condition of the site, within a reasonable period of time specified in the order.

(2) If the owner of a site fails to comply with the terms of an order under subsection (1) within the specified time, Heritage Western Cape may itself take such steps as may be necessary for the repair or maintenance thereof and recover the costs from the owner.

(3) If the owner of a site, despite the provisions of subsection (2), can show good cause, he or she may, within 21 days of the service of a repair order under subsection (1) –

- (a) apply to Heritage Western Cape for an extension of the time specific in the order; or
- (b) appeal to the Provincial Minister in terms of section 31 of this Act.

General policy and conservation management plans

30. (1) Heritage Western Cape must adopt for any place protected in terms of the National Act or this Act and which is owned or controlled by it or vested in it, a management plan for such place with the best environmental, heritage conservation, scientific and educational principles that can reasonably be applied taking into account the location, size and nature of the place and the available resources, and may from time to time review the plan.

(2) (a) A conservation management plan may at the discretion of Heritage Western Cape for a period not exceeding 10 years, be operated either solely by it or in conjunction with an environmental or tourism authority or under contractual arrangements, on such terms and conditions as Heritage Western Cape may determine.

(b) A conservation management plan referred to in paragraph (a) must be reviewed after 10 years, or at the end of the applicable contract, in order to ensure appropriate arrangements for the further management of the protected area.

(3) Heritage Western Cape may not act in any manner inconsistent with any general policy statement or conservation management plan.

(4) All general policy statements and conservation management plans adopted by Heritage Western Cape must be available for public inspection on request.

CHAPTER 4 GENERAL PROVISIONS

Permits

31. (1) Heritage Western Cape may prescribe, by way of regulations published in the *Provincial Gazette*, the manner in which an application is made to it for any permit in terms of this Act, and the conditions that may be specified for such permit.

(2) On application by any person in the manner prescribed under subsection (1), Heritage Western Cape may in its discretion issue to such person a permit to perform such actions at such time and subject to such terms and conditions as may be specified in the permit.

(3) Heritage Western Cape may at its discretion, in respect of any heritage resource protected by it in terms of the National Act or this Act by notice in the *Provincial Gazette*, grant an exemption from the requirement to obtain a permit from it for such activities or class of activities by such persons or class of persons in such circumstances as are specified in the notice.

Appeals

32. (1) The Provincial Minister must provide, by regulation published in the *Provincial Gazette*, for a system of appeal to the council of Heritage Western Cape against a decision of a committee or other delegated representative of Heritage Western Cape.

(2) Anybody wishing to appeal against a decision of the council of Heritage Western Cape must notify the Provincial Minister in writing within 30 days of the date when the decision of the council was communicated to the appellant/published.

(4) The Provincial Minister must, upon receipt of an appeal, appoint an independent tribunal, consisting of at least three experts, having expertise regarding this matter.

(5) The Provincial Minister may provide by regulation for reasonable remuneration to be paid to the members of an appeal tribunal for the hearings of the appeal tribunal.

(4) The tribunal appointed in terms of subsection (3) in considering the appeal must have due regard to –

- (a) the cultural significance of the heritage resources in question;
- (b) heritage conservation principles; and
- (c) any other relevant factor which is brought to its attention by the appellant or Heritage Western Cape.

Heritage inspectors

33. (1) Heritage Western Cape may, in writing, appoint appropriately qualified heritage inspectors, but if a heritage inspector is a staff member of a government department or supported body, such appointment shall only be made by agreement with the Head of Department or other person in charge of the administration of such body.

(2) Heritage Western Cape must issue to each heritage inspector an identity card containing a photograph and the signature of the heritage inspector, and may provide in regulations, published in the *Provincial Gazette*, for the use of such identity card by such heritage inspector.

(3) Subject to the provisions of any other law, a heritage inspector or any other person authorised by Heritage Western Cape in writing, may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage resource protected in terms of the National Act or this Act, or any other property in respect of which Heritage Western Cape is exercising its functions and powers and may take photographs or videos, make measurements and sketches and use any other means of recording information necessary for the purposes of the National Act or this Act.

(4) A heritage inspector may at any time inspect work being done under a permit issued in terms of the National Act or this Act and may for that purpose at all reasonable times enter any place protected under the National Act or this Act.

(5) Where a heritage inspector has reasonable grounds to suspect that an offence in terms of the National Act or this Act has been, is being or is about to be committed, the heritage inspector may with such assistance as he or she thinks necessary –

- (a) enter and search any place, premises, vehicle, vessel or craft, and for that purpose stop and detain any vehicle, vessel or craft, in or on which the heritage inspector reasonably believes there is evidence related to that offence;
- (b) confiscate and detain any heritage resource or evidence concerned with the commission of the offence pending any further order from Heritage Western Cape; and
- (c) take such action as is reasonable necessary to prevent the commission of an offence in terms of the National Act or this Act.

(6) A heritage inspector may, if there is reason to believe that any work is being done or any action is being taken in contravention of this Act or the conditions of a permit issued in terms of this Act, order the immediate cessation of such work or action pending any further order from Heritage Western Cape.

(7) A heritage inspector may require any person who he or she has reason to believe has committed an offence in terms of this Act to supply his or her name, address and reasonable evidence of his or her identity, and may arrest a person who refuses to comply with these requirements.

(8) A person –

- (a) must comply with a request or requirement lawfully made in terms of this section to the extent that the person is capable of complying with it;
- (b) may not knowingly furnish information that is false or misleading; and
- (c) may not hinder or obstruct any heritage inspector in the exercise of his or her powers in terms of this section.

Incentives

34. The Provincial Minister or a local authority may in planning schemes or by-laws under this Act or by any other means provide incentives for the conservation of heritage resources.

Offences and penalties

35. (1) A member of the Council, a member of staff of Heritage Western Cape, an advisor, agent or other person employed by or acting on behalf of Heritage Western Cape is guilty of an offence if he or she directly or indirectly accepts any unauthorised fee or reward from any person in respect of, or in connection with, any service rendered or anything done or offered by Heritage Western Cape.

(2) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by Heritage Western Cape, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of Heritage Western Cape.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of Heritage Western Cape is guilty of an offence.

(4) Any person convicted of an offence –

- (a) in terms of subsections (1), (2) or (3) is liable to a fine or to imprisonment for a period not exceeding that determined by national legislation for corruption; or
- (b) in terms of section 18, 19, 20, 24, 25 or 33 is liable to a fine or to imprisonment for a period not exceeding five years.

The Provincial Minister may prescribe a penalty of a fine or of imprisonment for a period not exceeding six months for any contravention or failure to comply with regulations by Heritage Western Cape.

(2) The Provincial Minister may make regulations in terms of which the magistrate of the district concerned may –

(a) levy admission of guilt fines up to a maximum amount of R10 000 or a percentage of the total cost of development for infringement of the provisions of this Act;

(b) serve a notice upon a person who is contravening a specified provision of this Act or has not complied with the terms of a permit issued by Heritage Western Cape, imposing a daily fine of a minimum of R100 for the duration of the contravention, subject to a maximum period of 365 days.

Delegation of powers by Provincial Minister

36. The Provincial Minister may delegate any power or function conferred or imposed on him or her under the National Act or this Act, except the power to make regulations, to the incumbent of a designated post in the Department.

Regulations

37. (1) The Provincial Minister may provide in regulations published in the *Provincial Gazette*, for –

(a) registration of conservation bodies with Heritage Western Cape;

(b) nomination and appointment of members of the council of Heritage Western Cape in accordance with section 7;

(c) standards of practice, monitoring of activities and qualifications required of individuals, institutions or other bodies for the performance of work on heritage resources in accordance with section 12(2);

(d) criteria to assess the competence of a local authority to fulfil its duties in terms of this Act and the National Act;

(e) delegations;

(f) fees and fines;

(g) creation of buffer zones and the management of provincial heritage sites in accordance with section 18;

(h) protected areas;

(i) the heritage register;

(j) heritage areas;

(k) burial grounds and graves;

(l) development and heritage resource management in accordance with section 26;

(m) issuing of permits in accordance with section 31;

- (n) the appeals procedures, remuneration of appeals tribunal and related matters in accordance with section 32;
- (o) heritage inspectors; and
- (p) any other matter which may be necessary or expedient in order to achieve the objects of this Act.

(2) Heritage Western Cape may publish regulations in the *Provincial Gazette* on any matter under its jurisdiction and provided for in terms of this Act that may be necessary or expedient in order to achieve the objects of this Act.

Municipal by-laws

38. (1) A local authority may, with the approval of Heritage Western Cape, make by-laws –

- (a) regulating the admission of the public to any place protected under this Act to which the public is allowed access, and which is under its control, and the fees payable for such admission;
- (b) regulating the conditions of use of any place protected under this Act which is under its control;
- (c) for the protection and management of a protected area;
- (d) for the protection and management of places in a heritage register;
- (e) for the protection and management of heritage areas; and
- (f) providing incentives for the conservation of any place protected under this Act within its area of jurisdiction.

(2) Any by-laws made under this section may prescribe fines for contravention thereof or failure to comply therewith, not exceeding an amount prescribed under section 51(2) of the National Act.

Short title and commencement

39. This Act shall be called the Western Cape Heritage Resources Management Act, and shall come into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*.