



iLifa leMveli leNtshona Koloni
Erfenis Wes-Kaap
Heritage Western Cape

PART III

PROCEDURES



PROCEDURE FOR THE GRADING OF FORMER NATIONAL MONUMENTS

Grading of former national monuments, now all provincial heritage sites, which were declared before the National Heritage Resources Act came into effect on 1 April 2000 is required in terms of that Act.

The following sets out a step by step procedure for the process of grading of former national monuments:

1. Grading should commence with the completion of a survey form and using HWC's 'Short Guide to and Policy Statement on Grading' for guidance. The form may be completed as part of the compilation of an inventory, during which grading of provincial heritage sites is compulsory, or may be done for individual former national monuments.
2. Proposed gradings must be submitted to the Inventories, Gradings and Interpretations Committee (IGIC) for evaluation whereafter a recommendation is made regarding the proposed grading.
3. Should the committee be of the opinion that a former national monument warrants Grade III status or is ungradable this must be conveyed to the owner of the site, explaining what new protective measures will apply and allowing the owner 30 days to express an opinion on the matter and to advance arguments against the proposal should the grading be disputed.
4. If an owner responds negatively to the proposed grading and/or new protective measures the matter must once again be put to the IGIC for consideration and the committee may change its recommendation on the basis of the arguments made by an owner.
5. After recommendations as contemplated in 3 and 4 above are finalised by the IGIC they must be submitted to the Council of HWC for approval.
6. Where a site is believed by the Council to be Grade I, the matter must be referred to SAHRA for its decision.
7. Until SAHRA expresses its opinion the site shall be treated as if it is Grade II.
8. If SAHRA disagrees with the grading the site shall thereafter be deemed to be Grade II.
9. Final gradings shall be entered into the database.
10. The owners of Grade II sites shall be issued with a PHS badge for fixing on their properties.

11. The owners of Grade III sites shall be informed that their properties will be placed on the heritage register, what protective measures apply and that once this is done they will receive a new badge.
12. A gazette notice placing Grade III sites on the heritage register for protection under Section 30 of the NHRA and withdrawing notices of declaration as a national monument shall be drafted and published and thereafter a heritage register badge sent to each owner for fixing on their property.
13. For ungradable sites a gazette notice withdrawing the notices of declaration as a national monument shall be drafted and published whereafter owner shall be informed that the site is no longer a provincial heritage site and of any general protections in terms of the National Heritage Resources Act that may apply to the site.
14. In all instances owners shall be informed that they may retain the national monuments badge on their property, but that it cannot be replaced should it be lost or damaged.
15. In a situation where the Council believes that a group of former national monuments that are either Grade III or ungradable are best accommodated within a heritage area it may decide that provincial heritage site status not be withdrawn until a suitable heritage area has been created.

APPROVED BY THE COUNCIL OF HERITAGE WESTERN CAPE: 29 August 2012

HERITAGE WESTERN CAPE - OPERATIONAL PROTOCOL FOR THE DECLARATION OF PROVINCIAL HERITAGE SITES (DESK INSTRUCTION)

(This protocol covers process leading to protection of sites under the terms of section 27 of the NHRA.)

This protocol applies to staff responsible for the processing of nominations for provincial heritage sites. It is a procedure authorised by the Chief Executive Officer of Heritage Western Cape (CEO) and may only be deviated from with the express consent of the CEO.

Abbreviations:

ADPS	Assistant Director Professional Services
ADAS	Assistant Director Administrative Support
ADPRP	Assistant Director Policy, Research and Planning
AS	A team's administrative support officer/clerk.
CEO	Chief Executive Officer
Council	The Council of HWC
DDHRM	Deputy Director Heritage Resources Management
ExCo	Executive Committee of the Council of HWC
HO	Heritage Officer
HWC	Heritage Western Cape
I&AP	Interested and affected party
IGIC	Inventories, Gradings and Interpretations Committee of HWC
NHRA	National Heritage Resources Act
NID	Notification of Intent to Develop
PHS	Provincial Heritage Site
RoD	Record of decision

1. INITIATION OF NOMINATION:

1.1 The process of nomination may be initiated in several ways:

- 1.1.1 HWC may initiate it in terms of section 27(2) of the NHRA. This will occur on the instruction of the Council, a committee or the CEO.
- 1.1.2 A member of the public may submit a nomination in terms of section 27(3) of the NHRA.
- 1.1.3 A nomination may be required in terms of section 34(2) of the NHRA following refusal of an application concerning a Grade II site. (See Section 5 Heritage Western Cape - Operational Protocol for the Processing of Applications Made in Terms of the NHRA.)

1.2 Nomination Dossiers:

- 1.2.1 Regardless of the origin of the nomination, in order to be processed, a nomination must be made in the approved format.

- 1.2.2 Where necessary the ADPRP must assist a member of the public making a nomination with guidance on the completion of the form and the quality of information required for a nomination to be processed.
- 1.2.3 Where relevant or necessary to the understanding of the site, additional information may be annexed to the nomination form.
- 1.2.4 Where the owner is the nominator of the site or has otherwise commissioned the nomination, the nomination should be accompanied by a letter indicating that the owner supports the declaration of the site.

2. PROCESSING OF SITES NOT PREVIOUSLY GRADED BY THE COUNCIL OF HWC

2.1 Submission to team meeting:

- 2.1.1 Any nomination which originates from within HWC and which is deemed by the ADPRP to be ready for processing, or which has been received from the public and regardless of its condition, must be discussed at a weekly staff team meeting prior to its submission to the IGIC.
- 2.1.2 The team must formulate a recommendation with regard to nomination, the significance of the site and specifically how it should be graded.
- 2.1.3 If the recommendation of the ADPRP to the team meeting is that the site is a Grade II site, recommendations regarding the boundaries of the site should be made to the team which should discuss these and determine the boundaries to be recommended to the IGIC.

2.2 Submission to the IGIC for Grading

- 2.2.1 After the nomination has been to a team meeting, the ADPRP must place it on the agenda of the next meeting of the IGIC and the nomination dossier must be circulated by the AS to members thereof as part of the agenda.
- 2.2.2 The IGIC must formulate a decision with regard to nomination, the significance of the site and specifically how it should be graded.

2.3 Obtaining the initial opinion of the owner of the site in terms of section 27(8)d:

- 2.3.1 HWC must communicate the decision of IGIC to the landowner regarding the significance and grading of the site.
- 2.3.2 If the IGIC determines that the site has Provincial Significance (Grade II), this letter must inform the owner that HWC is investigating the nomination of the site as a Provincial Heritage Site.
- 2.3.3 The landowner is provided with 30 days in which to respond to HWC.

2.4 Formal Notification in terms of section 27(8), with 60 days allowed for submissions regarding the proposed declaration, and in the case of the owner, to propose conditions under which the action will be acceptable.

- 2.4.1 Where not already indicated in a letter addressed to HWC that the owner is in favour of declaration, the ADPRP must, in terms of Section 27(8)a, send a standard letter to the owner of the property;
- 2.4.2 The ADPRP must, in terms of Section 27(8)b and c, send a standard letter to the:

- 2.4.2.1 The mortgage holder and/or occupant [27(8)b]; and
 - 2.4.2.2 Relevant conservation bodies [27(8)c]
 - 2.4.3 In terms of section 27(10), place shall be deemed to be protected as a heritage site for six months from the date of service of a notice under 2.4.1 or until the notice is withdrawn or the place is declared to be a heritage site, whichever is the shorter period.
- 2.5 Submission to the IGIC:
- 2.5.1 After 60 days have passed, the ADPRP must place it on the agenda of the next meeting of the IGIC and the nomination dossier must be circulated by the AS to members thereof as part of the agenda.
 - 2.5.2 Any I&APs, e.g. the land owner, nominator, registered conservation body, etc., must be notified of the meeting and invited to attend if they so wish. This must be done by the ADPRP in terms of procedures for notification of I&APs.
 - 2.5.3 Where the nominator is from outside HWC, they must be informed that they will be provided with an opportunity to address the committee on the nomination.
 - 2.5.4 The ADPRP must make a presentation to the IGIC, setting out a summary of the nomination dossier, reasons for the proposed grading and a recommendation concerning whether or not the site should be declared.
 - 2.5.5 A diagram and/or a written description of the proposed boundaries of the site should also be presented.
 - 2.5.6 Should the IGIC decide to amend any aspect of the dossier or the proposed boundaries, the landowner and the nominator must be informed of these amendments.
 - 2.5.7 The landowner and nominator must be advised of the HWC Council decision-making process.
- 2.6 Submission to the HWC Council:
- 2.6.1 Once the IGIC has formulated a recommendation on a nomination the matter must be placed by the ADPRP on the agenda of the forthcoming Council meeting, and the nomination dossier and recommendation of the IGIC must be circulated by the AS to members thereof as part of the agenda.
 - 2.6.2 Where it is an urgent matter, after discussion with and the agreement of the CEO, it may be placed on the agenda of the ExCo.
 - 2.6.3 Any I&APs, e.g. the land owner, nominator, registered conservation body, etc., must be notified of the meeting and invited to attend if they so wish. This must be done by the ADPRP in terms of procedures for notification of I&APs. Where the nominator is from outside HWC, they must be informed that they will be provided with opportunity to address the committee on the nomination.
 - 2.6.4 The ADPRP must make a presentation to the Council, setting out a summary of the nomination dossier and the recommendation of the IGIC concerning the grading/whether or not the site should be declared and its recommendations concerning boundaries.
 - 2.6.5 A diagram and/or a written description of the proposed boundaries of the site should also be presented by the ADPRP.

- 2.6.6 The opinion of the owner, or where none has been forthcoming, an outline of the effort made to obtain the owners opinion, must also be presented by the ADPRP.
- 2.6.7 Where the Council resolves not to declare the site, the nominator, if from outside HWC, the owner and I&APs should within seven days be informed of the decision and provided with reasons for it. The letter to this effect is to be prepared by the ADPRP and signed by the CEO.
- 2.6.8 Where the Council determines that the nominated site is Grade III and it is not already on the municipal inventory and/or Register, the ADPRP must within seven working days add it to the inventory for the municipality concerned, whereafter the procedure for placing it on the Register must be initiated in instances where mechanisms for that exist at municipal level.

3. PROCESSING OF SITES THAT HAVE PREVIOUSLY BEEN GRADED BY THE COUNCIL OF HWC

- 3.1 In instances where as part of an inventory or for any other reason the IGIC or Council has determined that the nominated heritage resource is a Grade II site, the same process as that set out above is to be followed, other than that it is to be noted that the site already has the appropriate grading and that the process embarked upon is a follow-up to that.
- 3.2 Where the staff team or the IGIC is of the opinion that the grading is not correct and that a site does not hence warrant declaration as a PHS it may recommend a new grading, and other than in instances where the nomination has been submitted by a member of the public, may first follow the procedure for grading before submitting a nomination.

4. OWNER'S FINAL OPINION

- 4.1 Within no longer than seven days following the decision of the Council to declare a site and approval of the boundaries thereof, the ADPRP must inform the landowner and provide a final opportunity to comment if no letter of support has yet been submitted.
- 4.2 Where the opinion of the owner is negative the ADPRP must immediately submit the owner's response to the IGIC and Council in that order, and to inform I&APs. Recommendations may be made that address any concerns raised by the owner and that do not compromise the integrity or heritage significance of the site.
 - 4.2.1 When the matter is once again put to the IGIC by the ADPRP, it must include a recommendation and motivations as to whether the matter of declaration should be dropped or proceeded with despite the owner's objection, or whether the owner should again be asked for an opinion.
 - 4.2.2 Where the Council resolves that:
 - 4.2.2.1 the matter should be dropped, the ADPRP must, unless the Council decides otherwise, and within seven days, inform the owner and I&APs of this decision.

4.2.2.2 the owner should again be asked for an opinion, I&APs should be informed by the ADPRP of this decision within seven days, and the same procedure set out above should once again be followed.

4.2.2.3 declaration should proceed, the ADPRP must inform the owner of the decision within seven days and thereafter, allow time for an appeal to be lodged before proceeding with declaration.

In proceeding with the declaration, the process outlined in section 27(11) must be followed.

5. DECLARATION:

5.1 This part of the procedure may only be followed if:

5.1.1.1 the Council has decided that the site is Grade II, has resolved that it should be declared and has approved the boundaries of the area to be declared.

5.1.1.2 the owner has been informed of the grading, decision to declare and the boundaries and is in agreement.

5.1.1.3 the period permitted for appeal of decisions of the Council, or thereafter the Tribunal have lapsed.

5.1.1.4 in the case of a state-owned property, a conservation management plan has been approved by the Council.

5.2 The ADPRP must within two weeks of the above formulate a Gazette Notice for the site and submit it to the legal advisor, DD and CEO to sign off.

5.3 Thereafter it must immediately be submitted by the ADPRP for translation into all three Provincial languages and thereafter publication on a date to be determined in discussion with the CEO.

5.4 In terms of Section 27(14) of the NHRA and within no longer than 30 days after publication of the Gazette Notice, the ADPRP must ensure that SAHRA, the municipality within whose area of jurisdiction the new PHS falls and the provincial planning authority, are informed of the declaration and sent a copy of the notice.

6. DEPROCLAMATION

6.1 Should an existing PHS no longer warrant such formal protection, either based on the application of a new grading or on notification from HWC Staff or the public, Steps 1 to 5 outlined above must be followed.

6.2 Should it be considered necessary, HWC must publish a notification advertisement indicating its intention to deproclaim a PHS.

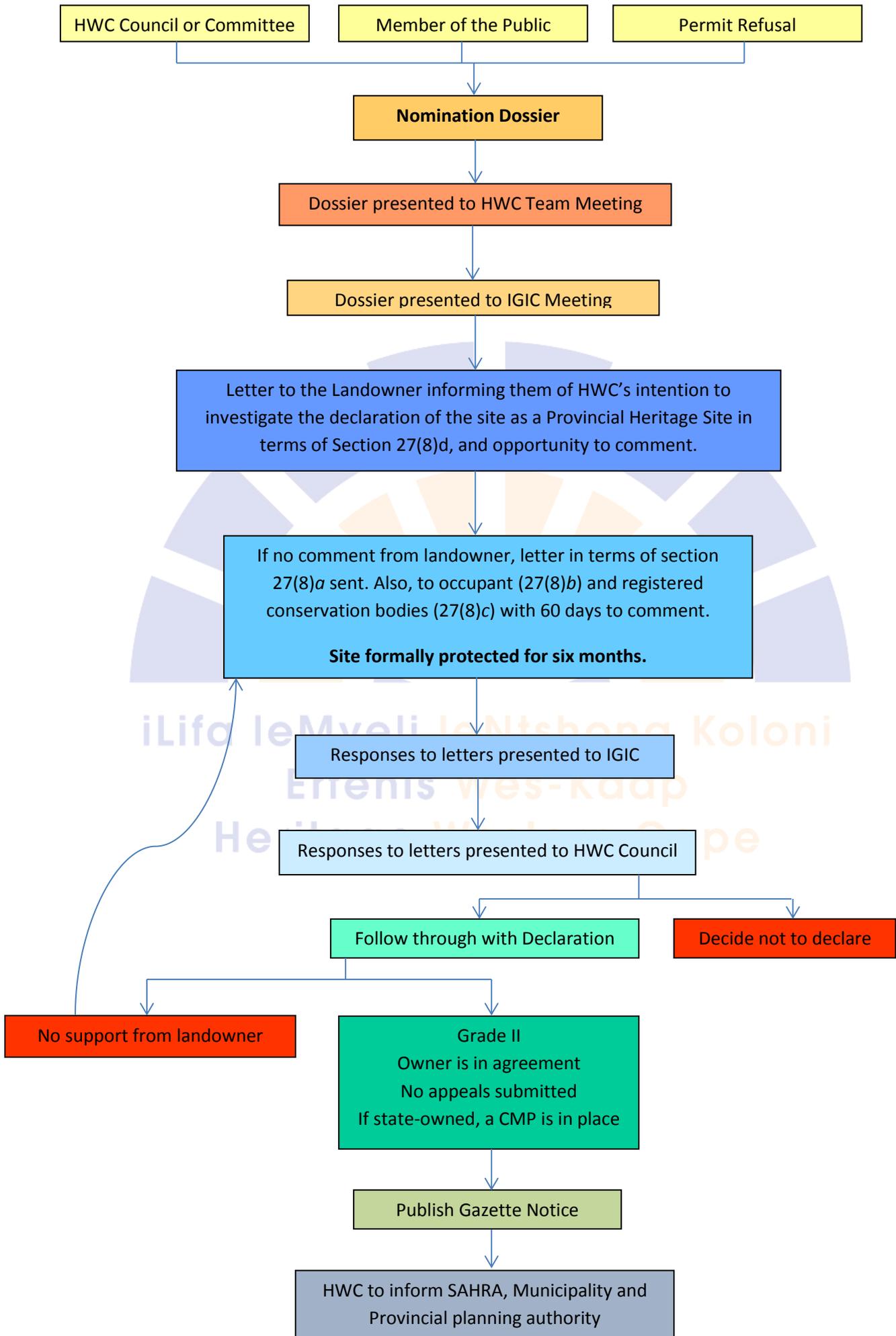
6.3 A Withdrawal Gazette Notice must be published in the Provincial Government Gazette.

Version issued after agreement of staff: _____
CEO's Signature

ACCEPTANCE BY OFFICIALS:

Name: _____ Signature: _____ Date: _____ 20__

PROCESS FOR THE DECLARATION OF PROVINCIAL HERITAGE SITES



HERITAGE WESTERN CAPE - OPERATIONAL PROTOCOL FOR THE PROCESSING OF APPLICATIONS MADE IN TERMS OF THE NHRA

(Version 2, 15 December 2012)

This protocol applies to staff responsible for the processing of applications (including all types of statutory submissions in terms of the NHRA, such as HIAs, appeals, etc.) made terms of relevant section of the NHRA. It is a procedure authorised by the Chief Executive Officer of Heritage Western Cape (CEO) and may only be deviated from with the express consent of the CEO.

Abbreviations:

ADPS	Assistant Director Professional Services
ADAS	Assistant Director Administrative Support
AS	A team's administrative support officer/clerk.
CEO	Chief Executive Officer
DDHRM	Deputy Director Heritage Resources Management
HO	Heritage Officer
HWC	Heritage Western Cape
NID	Notification of Intent to Develop
RoD	Record of decision

1. RECEIPT AND DISTRIBUTION OF APPLICATIONS:

1.1 Applications may be received over the counter, by mail or courier, or in the case of an appeal, by e-mail.

1.1.1 A receipt indicating the date of delivery and the case number will be made out for all applications received over the counter, with one copy being provided to the deliverer and another retained by HWC.

1.1.2 The HWC counter will be open between 09:00 and 12:00, or by appointment outside of these hours, and the ADPF will determine a roster for counter duty by HOs.

1.1.3 Appointments for personal delivery may be made outside of these hours if the deliverer has good reason not to be able to make delivery during times at which the front desk is open, eg: is travelling from an outlying area.

1.1.4 Service provided by HOs at the front desk shall include the following:

- A check for completeness, applicants being informed if information is missing from an application and the missing material noted at the top of the front page of the application.
- Advice on the completion of forms and applications.
- Preliminary opinions on how it is felt the application is likely to be received or a problem presented by an application view and guidance on how these might be resolved, provided it is made clear that this is an opinion only and not the formal view of HWC.

- 1.1.5 Incomplete applications received may either be taken back by the deliverer or treated in accordance with the remainder of this section, but **may not** be processed further until all outstanding information is delivered. The applicant must be informed that all subsequent information submitted must include the case number in order to ensure that new material can be placed with that already submitted.
- 1.2 Applications delivered by other means, or at other times without an appointment with an HO, must be received by administrative staff and the deliverer informed that they cannot be checked for completeness.
- 1.3 All applications received over the counter and by mail or courier must be entered into the incoming mail register before close of work on the day of receipt and stamped on the front page with the date of the day received.
- 1.4 After such entry applications will immediately be placed on the ASDPS's shelf.
- 1.5 The ADPS will on at least a daily basis allocate all items found on the 'unallocated cases' shelf to HOs. He should do so on the basis of a quick assessment of the application and consideration of the major skills and experience needed by the Heritage Officer and other skills and experience needed in the team concerned. The ADPS will also allocate a case number to each application which will be written in the top right hand corner of the front page of the application. (See system for allocating codes, Annexure 1.)
- 1.6 Applications will then be placed in the pigeon holes of the relevant case officers and the ADPS will send an e-mail to the case officer informing him/her of the cases allocated and the case number for each.
- 1.7 In the absence of the ADPS only the DDHRM may distribute applications and allocate case numbers and must do so in the same way as set out above.
- 1.8 Within a working day of receipt of a new case a Heritage Officer must inform the applicant that s/he is responsible for the case; what the case number is; that it **must** be used for all further correspondence; what his/her contact details are and that no correspondence or other contact regarding the case will be countenanced until 10 working days have lapsed since the date of application.
- 1.9 Should the case officer be absent from work for more than two days after allocation of work, the ADPS shall ensure that the applicant is informed of the case number and who the case officer is.
- 1.10 The ADPS must maintain a database of cases with their case numbers. A copy of the database must be sent to each case officer, the DDHRM, CEO and CEO's Secretary at least every Friday afternoon.
- 1.11 The ADPS is responsible for ensuring that all material concerning an application received after allocation is assigned the same case number as the original material received.

2. STORAGE OF MATERIAL RELATED TO CASES:

- 2.1 Upon receipt of a new case a case officer must create a 'case folder' on the C: drive of his/her computer. The name of the case folder must be the case number.
- 2.2 All digital material concerning the case must be stored in the case folder.
- 2.3 All e-mail correspondence related to the site must be saved in this folder.

- 2.4 Presentations to committees on the case must be saved in the case folder. The version of the presentation that must be saved is the one presented to a committee, not a version that is amended by it or during the course of a meeting.
- 2.5 As far as is possible material received in hardcopy should be scanned and saved in the case folder.
- 2.6 When a case is closed, (ie: upon the lapsing of the 14 day appeal period, or after a tribunal hearing) a 'C' should be added at the beginning of the name of the case folder. Should the case be reopened (eg: if a matter goes to court) and the case once again becomes 'live' the 'C' should be removed from the folder name.

3. INITIAL PROCESSING OF APPLICATIONS:

- 3.1 Case Officers should avoid being out of office on Fridays and may only be so with the express consent of the ADPF or a more senior manager.
- 3.2 If a case is allocated before close of work on a Wednesday and unless the case officer has very good reason for not dealing with it by the end of the Thursday of the week in which it is allocated, the case must be prepared for and presented at the team session that takes place each Friday morning. Consent not to prepare a case within this deadline may be given by the ADPS.
- 3.3 Preparation of cases for discussion by teams will include reading through the material submitted and familiarisation with its contents.
- 3.4 Applications which are found to be incomplete shall be treated as follows:
 - 3.4.1 If there is doubt about their completeness there should be discussion with the ADPS or in his absence another manager.
 - 3.4.2 The applicant should be informed immediately of what must be provided before processing can continue and told to quote the case number prominently on any additional material that is submitted.
 - 3.4.3 Under no circumstance may incomplete applications be discussed at team or committee meetings.
- 3.5 In the case of post-NID Section 38 cases all materials requested by the IAR Committee must be received before processing of an application proceeds further.
- 3.6 Priority is to be given to ensuring that all NID applications received in the course of a week are submitted to Friday team sessions as responses must be provided to applicants within 14 days of receipt of the application.
- 3.7 All cases not related to Section 38 that are presented to team meetings must include the HO's proposed grading of the heritage resources concerned; a recommendation from the HO as to what decision should be taken and whether or not s/he feels the case can/should be handled in terms of delegations to staff or should go to the relevant Committee.

4. PRESENTATIONS TO COMMITTEES:

- 4.1 Each application presented to a committee must be accompanied by a slide presentation to which the case officer speaks. These should be done on the standards HWC slide presentation format.
- 4.2 Slide presentations must address the following in the order shown:

1.	Agenda Item, Site Name & Case Number, Site Status incl. area protected if applicable
2.	Person/s who compiled the application/report, consultants used, etc. Citation of source of material used in slide presentation, eg: consultant's report. Cite title of report, name/s of author and date. (Only needed if source material is copyrighted)
3.	Site Grading (Outside grading if done + staff grading)
4.	What does the application propose?
5.	Previous decisions taken regarding the present application.
6.	Locality plan/s
7.	Photographs and other graphic material
8.	Input of municipality and other stakeholders
9.	Applicants/Consultants recommendation/s if these have been made (Mainly IA Committee).
10.	Recommendation of staff

- 1.1 HO's must take care to use standardised terminology when formulating draft decisions (See Annexure 2)
- 1.2 The final versions of presentations must be provided to the AS by no later than 12:00 on the day preceding a meeting.
- 1.3 The presentation must be on the standard slides (See Annexure 3).

2. FOLLOW-UP ON REQUESTED MATERIAL:

- 2.1 Applications in terms of Sections 27-31, 34, 35, 37 and 38 NIDs:
 - 2.1.1 If an application received is incomplete the case officer must provide the details to the team's AS who should pend it for a period of two weeks.
 - 2.1.2 After the two weeks have elapsed the AS should check with the case officer whether the material has been received and if not pend the case for a week and e-mail the applicant to ascertain when it will be delivered stating that the date should not exceed a month hence. The case should then be pended for a month, which pending should lapse if a date for delivery is provided before then.
 - 2.1.3 Once a date for delivery is received the case should be repended accordingly.
 - 2.1.4 If material requested is again not received the case officer should call the applicant to ascertain whether the applicant wishes to proceed with the application and if not the case should be closed. If the case is to proceed it should be pended once more to a date not exceeding a month, after which if material is still not received the applicant should be told by the AS via e-mail that the case has been closed and that a new application should be lodged if s/he wishes the application to proceed.

2.1.5 In such cases the matter should be referred by the AS to the ADPS to ascertain whether a heritage inspector should visit the site concerned to ascertain whether work is proceeding without authorisation.

2.2 Section 38 Processes other than NIDs:

2.2.1 Where an HIA or other further actions are required the response to the applicant should include a request that a date be provided for receipt of such material and the AS requested to pend the matter for a month to await such a response.

2.2.2 If a date is received the AS must pend the matter accordingly and follow-up on the pending date if no material has been received by the case officer.

2.2.3 If a date is not received within a month the AS is to request a date by e-mail and pend the case for a further month, whereafter the matter should proceed as per 4.1.4 and 4.1.5.

2.3 Refusal of Section 34 Applications:

2.3.1 When a letter is sent to the owner of a site requesting opinion on the idea of formal protection of the site, the matter must be pended by the AS for a period of two months and if there is no response within that time the HO concerned must be altered and continue the process as set out elsewhere in this document.

3. ISSUING OF PERMITS, COMMENTS, R.O.DS AND OTHER RESPONSES TO APPLICATIONS:

3.1 Permits, comments, RoDs, and other correspondence with applicants must be conducted in writing and in the required standard formats where these exist.

3.2 Where a standard format does not exist correspondence arising from committee or team meetings is to be conducted in the format of an ordinary business letter..

3.3 Permits, RoDs and Final Comments must be dated on the fourth working day after the meeting of a committee, or if resolved in terms of delegations to management, the date of the Friday following the team meeting or if it is a holiday, the following working day.

3.4 Other responses arising from committee meetings that do not trigger the 14 day appeal period must be issued by no later than the sixth working day after a meeting, or the Friday following a team meeting.

3.5 Correspondence requiring the signature of the CEO must be with the CEO's secretary by no later than 15:00 on the day preceding that on which they are dated.

3.6 The CEO or in his absence the DDHRM must sign such correspondence by no later than 10:00 on the date of issue.

3.7 All such correspondence must be despatched before the case officer concerned leaves the office on the day of issue.

3.8 In the absence of an HO the ADPS is to ensure that arrangements are made to despatch correspondence within the required timeframes.

4. APPEALS:

4.1 If an appeal is not lodged within the required 14 day period, the case is to be closed in the manner set out.

- 4.2 Where a notification of appeal is received within the stipulated timeframes, the applicant is to be informed of the date of the next Appeals committee and the procedure for conducting an appeal.
- 4.3 It should be noted that in terms of Section 38(6) any appeal against a Section 38 decision is directly to the Tribunal.
- 4.4 Where application is made under Section 38(8) HWC does not make the decision and appeal is to the decision making authority, eg: DEADP, DEA, DMR, etc.
- 4.5 The view of the HWC Council is that actions prior to the issuing of an RoD under section 38(4) do not constitute a decision, but a comment and are therefore not subject to appeal. An applicant who wishes to appeal against a Section 38(8) decision must hence be informed accordingly.

5. SECTION 34 APPLICATIONS THAT HAVE BEEN REFUSED:

- 5.1 Recommendations to BELCom to refuse a permit in terms of Section 34 must include a recommendation concerning the formal protection that should be applied to the site in question.
- 5.2 Where BELCom decides to refuse a permit contrary to the recommendation of staff, the case officer must request the committee to include in its decision a recommendation concerning the relevant formal protection to be applied.
- 5.3 Any Section 34 application that is refused is to be followed up within no longer than a week after expiry of the appeals period, or date of receipt of a Tribunal decision, with the standard letter requesting the owners opinion on the declaration of the site in terms of the relevant formal protection.
- 5.4 If the response of the owner is positive the case officer should proceed with preparations for declaration of the site in accordance with a timeframe agreed to after discussion with the management at the following team meeting and the nomination dossier must be submitted to the DDHRM within a period not exceeding six months, whereafter it shall be tabled at a meeting of the Declarations Review Committee.
- 5.5 If the owner is not in accord with the idea of formal protection the matter must be tabled at the next meeting of the Declarations Review Committee, after which the matter will proceed according to a decision of the Committee.
- 5.6 If the owner does not respond within two months s/he must be informed via a registered letter, containing a copy of the previous correspondence, that it is the intention of HWC to submit the matter of formal protection to its Declarations Review Committee, for its consideration. Thereafter the process should proceed in the same way as set out immediately above.

6. REQUESTS FOR THE OPINION OF A COMMITTEE:

- 6.1 In instances where a project is particularly complex or where there is other good reason for an opinion to be sought in advance of an application being submitted, this may be done after the issue has been cleared with the DDHRM.

- 6.2 Opinions are to be treated in the same way and according to the same timeframes as other applications.

7. AGENDAS:

- 7.1 The deadline for submission of applications for monthly meetings other than IACom is 12:00, seven calendar days prior to a meeting.
- 7.2 The deadline for submission of applications for IACom is 14 calendar days prior to each meeting.
- 7.3 Applications received after 12:00 on a closing day must be marked under the date stamp with the time received.
- 7.4 Should an HO or other official wish to include an application received after deadline this may only be done with the consent of the DDHRM who must discuss the matter with the ADAS before reaching a decision on the matter.
- 7.5 Items for inclusion on the agenda of any meeting must be provided by HOs to their AS by no later than 09:00 on the Monday preceding a meeting.
- 7.6 If an HO is absent, the ASDPS must ensure that such information required in terms of 9.5 is provided to the AS.
- 7.7 The agenda items from each team must be compiled by the team AS and consolidated and checked by the AS for Team West.
- 7.8 The AS for Team West must distribute Agendas before close of business on the Monday preceding a meeting.
- 7.9 Agendas are to be sent to the website administrator for inclusion on the website of HWC at the same time as they are distributed.

8. DECISIONS AND MINUTES:

- 8.1 Decisions of committees and team meetings must be captured on screen by the case officer during the course of a meeting.
- 8.2 The DDHRM must ensure that at the end of a committee meeting the Chairperson is reminded to propose a motion adopting decisions taken at the meeting.
- 8.3 By 09:00 on the day following a team or committee meeting HOs must provide the AS with an MS Word version of the decisions pertaining their items.
- 8.4 By 12:00 on the day following the meeting the AS for Team West must distribute a consolidated list of decisions to all HOs, managers and in the case of a committee, to committee members.
- 8.5 By close of work on the second working day following a meeting the list of decisions must be sent to the website administrator.
- 8.6 AS's are responsible for compiling the minutes for their teams and shall do so by no later than five working days after a meeting.
- 8.7 The AS for team West is responsible for consolidating the minutes of teams checking through the document, correcting errors and sending it to the DDHRM by no later than sixth working day after a meeting.

- 8.8 The DDHRM shall then read through the minutes, make further corrections and sign them off before returning them to the AD Team West by no later than seventh working day after a meeting.
- 8.9 The AS Team West shall distribute the draft minutes signed off by the DDHRM by no later than close of business eight working days after a meeting.
- 8.10 Corrections received from members of the committee within seven days of draft minutes being sent to them shall, unless they are contradictory, be incorporated into the minutes a final draft of which shall be distributed to members of the committee by no later than three working days after closure of the period for comment.
- 8.11 The minutes as finalised at the following meeting of a committee must be signed by the Chairperson.
- 8.12 The AS or other official responsible for minutes shall send a copy of the signed document to the website administrator for inclusion on the website of HWC on the working day following signature.

9. MONITORING BY ADPS

If a case is closed following the periods allowed for appeal or tribunal appeal period has lapsed, etc. a 'C' is to be added to the front of the case number in the directory in which material is stored. If for any reason the case is reopened the 'C' is to be removed.

10. FORMAT OF DOCUMENTS ON WEBSITES

Documents mentioned for inclusion on the HWC website shall be in locked PDF format.

11. DEALING WITH THE PUBLIC

- 11.1 In all dealings with the public concerning applications under the terms of the NHRA officials must:

11.1.1 Apply the Batho Pele principles:

Consultation: We can only assume to know what our customers want. The only way we can find out for certain is by asking them. This can be done through surveys, questionnaires, meetings, suggestion boxes, izimbizo and by talking to our customers. It's important to report back to customers so they know what to expect, and to our staff so they know what is expected from us.

Service Standards: Citizens should be told about the level and quality of the services they receive. If possible they should be given an opportunity to choose the service they want.

The standards we set are the tools we can use to measure our performance, and therefore need to be realistic depending on available resources. We should also be able to measure these standards so that everyone can see if they are being met.

Access: There is much more involved when referring to access. It means making it easy for our customers to benefit from the services we provide. Easy access can be made possible by: -having wheelchair ramps, disabled parking bays, taking our

services out to the community. Staff attitude may determine how approachable your component/directorate/department is.

Courtesy: We must be polite and friendly to our customers. Customers should be treated with respect and consideration. We must always be willing to assist. Telephone etiquette is vital. All our correspondence must be respectful.

Information: Citizens should be given full accurate information about the public services they are entitled to receive. Information is about reaching all our customers to make sure they are well informed about the services our department provides. This may be done in a number of ways-for example through newspapers, radio, posters and leaflets. It's important to remember that different customers have different needs and they do not all speak the same language.

Openness and Transparency: We should be open about our day to day activities, how much our departments receive, how that money is spent. This information should be available to the public. Annual reports, strategic plans, service commitment charters, etc. must be made available to the public. We should tell our customers where to complain and how to do it.

Redress: Redress is making it easy for people to tell us if they are unhappy with our service. We should train staff to deal with complaints in a friendly, helpful manner. An apology, full explanation and effective, speedy remedy should be offered when the promised standards of service have not been delivered. When complaints are made, we must give our customers a sympathetic ear. Have positive Responses to complaints.

Value for Money: We need to make the best use of available resources. Avoid wastage of time, money, and other resources. It also means eliminating waste, fraud and corruption and finding new ways of improving services at little or no cost.

Encouraging Innovation and Rewarding Excellence: Innovation: using new ways of doing things. Encourage partnerships with different sectors in order to improve service delivery. Rewarding Excellence is also about rewarding the staff who "go the extra mile" in making it all happen.

Customer Impact: If we put all the Batho Pele Principles into practice, we then increase the chances of improvement in our service delivery. This in turn will have a positive impact on our customers. It is about how the nine principles link together to show how we have improved our overall service delivery. Here we look at the benefits we have given to our customers both internally and externally.

Leadership and Strategic Direction: Our leaders must create an atmosphere which allows for creativity. Management must ensure that goals are set and that planning is done.

11.1.2 Assist applicants to understand their responsibilities and to understand what is required of them in terms of applications.

11.1.3 Where it helps an applicant to understand processes and generally what is required of them, or where it helps staff to understand and/or process an application meetings may be held with applicants.

Version issued after agreement of staff: 31 August 2012 _____
CEO's Signature

ACCEPTANCE BY OFFICIALS:

Name: _____ Signature: _____ Date: _____ 20__

**HERITAGE WESTERN CAPE
CASE NUMBER CODING SYSTEM**

Codes for creation of case numbers will consist of the following in the order as set out below:

- Year code
- Month code
- Day code
- Case officer code (as of Aug 2013):

Guy Thomas	GT
Johnathon Windvogel	JW
Ntombi Nkoane	NK
Ronnie Nyuka	RN
Shaun Dyers	SD
Tamar Grover	TG
Troy Smuts	TS
Zwelibanzi Shiceka	ZS
- Numbering for the day: 01, 02, 03, 04, etc.

eg: The first case allocated to Guy Thomas on 1 Aug 2013 would have the following code: **130801GT01**. The fourth case allocated to her on the same day would be 130801GT04.

STANDARDISED TERMINOLOGY FOR IMPACT ASSESSMENT PROCESSES

There are a multitude of terminologies used to refer to aspects of the impact assessment process. This causes confusion that compromises and/or delays the processing of applications. HWC hence uses the following standardised terminology to convey its decisions and for ease of understanding on the part of impact assessors and applicants:

Notification of Intent to Develop:

The first step in the initiation of an impact assessment review process by HWC regardless of which body or section of legislation has triggered the process.

Heritage Impact Assessment (HIA):

The report on further actions arising from a Notification of Intent to Develop. This report should contain all of the information, analyses, etc. requested following the NID process. (It is not exclusively a study of the built environment and/or issues of history, as many seem to prefer.)

Study or Specialist Study:

A particular focus requested by HWC as part of an HIA, eg: an archaeological study, a palaeontological study, a visual impact study, etc. Such a study generally forms a chapter of an HIA.

Desktop Study:

A study of available literature on material likely to be found in the area to be impacted upon by a proposed development, eg: a desktop palaeontological study.

Record of Decision:

The decision made by HWC at the conclusion of an impact assessment process in terms of Section 38(4) of the NHRA.

Integrated (as in 'integrated HIA' or 'integrated recommendations'):

A single HIA document containing all the studies, etc. required, or a single set of non-contradictory recommendations put together by the team that compiled the HIA.

Interim Comment:

A comment made by HWC during the course of an impact assessment process.

Final Comment:

A comment made by HWC at the conclusion of an impact assessment process under the terms of Section 38(8) of the NHRA or other legislation.

Permit:

A consent issued in terms of Section 48 and arising from an application concerning sites protected terms of Sections 27, 29, 34 or 35 of the NHRA.

TITLE PAGE:



GENERAL PAGES:





**Western Cape
Government**

Environmental Affairs and
Development Planning



**Western Cape
Government**

Cultural Affairs and Sport



iLifa leMveli eNtshona Koloni
Erfenis Wes-Kaap
Heritage Western Cape

BETTER TOGETHER.

**OPERATIONAL AGREEMENT/
STANDARD OPERATING PROCEDURE (SOP):
COORDINATION OF
ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs)
& HERITAGE IMPACT ASSESSMENTS (HIAs)**

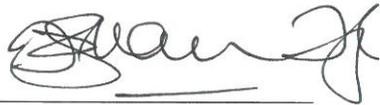
DECEMBER 2015

**Sign Off and Date of Effect of this Operational Agreement /
Standard Operating Procedure (SOP)**

This Operational Agreement/Standard Operating Procedure (SOP) is hereby agreed by the Western Cape Department of Environmental Affairs and Development Planning (DEA&DP) and the Western Cape Provincial Heritage Resources Authority ("Heritage Western Cape") (HWC) for implementation from the following

date of effect: 10 DECEMBER 2015

All amendments to this Operational Agreement/SOP will be jointly decided by HWC and DEA&DP and will only come into effect once reduced to writing.



Piet van Zyl

Head of Department

Department of Environmental Affairs & Development Planning

10.12.2015

Date



Dr Erfol Myburg

Interim Chief Executive Officer

Heritage Western Cape

10.12.2015

Date

PREAMBLE

ACKNOWLEDGING that-

everyone has the right to an environment that is not harmful to his or her health or well-being, and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably;

sustainable development requires the consideration of all relevant factors including that the disturbance of landscapes, sites, buildings and objects that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;

with respect to every application for an environmental authorisation ensure that, amongst other requirements, the actual and potential impacts on cultural heritage and the national estate be identified, predicted, investigated, assessed and evaluated to the extent necessary;

procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment must ensure, with respect to every application for an environmental authorisation coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state; and

the different authorities must cooperate with one another in mutual trust and good faith by consulting with one another, coordinating their actions and legislative requirements and adhering to agreed procedures.



INTRODUCTION

In terms of Section 24(2) the National Environmental Management Act of 1998 (Act No. 107 of 1998) (NEMA) certain activities have been identified which may not commence without environmental authorisation from the environmental authority and which must be subjected to environmental impact assessment (EIA).

Section 38 of the National Heritage Resources Act of 1999 (Act No. 25 of 1998) (NHRA) lists certain development activities and requires that any person who intends to undertake such development activities must first give notice to the heritage resources authority to determine if a heritage impact assessment (HIA) will be required. If a heritage assessment is required then the person may only proceed once the approval of the heritage authority has been obtained.

In order to avoid duplication and allow for coordination in terms of the requirements in terms of NEMA and the NHRA, Section 38(8) of the NHRA states that if the development activities listed in Section 38(1) must be subjected to EIA in terms of NEMA, then a separate HIA and approval from the heritage resources authority are not required, provided that the environmental authority must:

- ensure that if the relevant heritage resources authority requires an HIA it fulfils the requirements of the heritage resources authority, &
- any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the environmental authority's consent.

As such, if a NEMA EIA is required for the development activities listed in terms of Section 38 of the NHRA, then separate HIA and EIA processes may not be followed and separate decisions may not be issued in terms of the NHRA and NEMA. An EIA process will be followed and if the heritage resources authority requires a HIA, then the HIA must be undertaken as one of the EIA specialist studies, but the environmental authority must ensure that the heritage resources authority's requirements in terms of the assessment are met. A separate heritage approval may also not be issued, but the environmental authority must take into account the comments and recommendation of the heritage resources authority prior to granting or refusing environmental authorisation.



STANDARD OPERATING PROCEDURE: EIAs AND HIAs

In terms of the 2014 EIA Regulations once an application for Environmental Authorisation has been submitted all potential or registered interested and affected parties (I&APs) must be given a period of at least 30 days to submit comments on the Basic Assessment Report (BAR) or Scoping Report (SR). Similarly, once a Scoping Report has been accepted the Environmental Impact Assessment (EIA) Report must be compiled and registered I&APs must be given a period of at least 30 days to submit comments on the EIA Report. Following the commenting period the BAR/SR/EIA Report together with the comments received must be submitted to the Competent Authority for decision-making. In order for Heritage Western Cape to make a final comment on an EIA application, Heritage Western Cape must take into account any comments submitted by any registered heritage conservation bodies. As such, Heritage Western Cape's final comments on a BAR/SR/EIA Report will not be submitted at the same time as the submission of the comments of the other I&APs.

In practice there are two options to address this challenge:

Option 1: As provided for in Section 40(3) of the 2014 EIA Regulations (GN No. R. 982 of 4 December 2014 refers) a Basic Assessment Report (BAR) or Scoping Report (SR) could be made available to I&APs prior to submission of the application for Environmental Authorisation (referred to as a "Pre-Application BAR/SR"), in which case the BAR/SR that must be made available for comment following the submission of the application (referred to as the "Draft BAR/SR") would be accompanied by the comments (including the comments of the registered heritage conservation bodies) received on the pre-application report.

Option 2: As provided for in Sections 19(1)(b) and 23(1)(b) of the 2014 EIA Regulations a Revised BAR or Revised Environmental Impact Assessment (EIA) Report must be released for a second 30-day commenting period if significant changes have been made or significant new information has been added to the Draft BAR or Draft EIA Report which changes or information was not contained in the reports released for comment during the first 30-day commenting period. Because the comments of the relevant registered heritage conservation bodies are considered significant information, it would mean that when a Revised BAR/EIA Report is released for comment it would be accompanied by the comments (including the comments of the registered heritage conservation bodies) received on the Draft BAR/EIA Report. No provision is, however, made for a "Revised" Scoping Report to be generated and released for a second 30-day commenting period.

For Heritage Western Cape to therefore make an informed final comment on a BAR, SR and EIA Report, it is therefore recommended that a Pre-Application BAR and Pre-Application SR always be released for comment, while in terms of an EIA Report it would be necessary to release a Draft EIA Report and Revised EIA Report for comment.

- **HIAs & EIA Basic Assessment with a Pre-Application Basic Assessment Report released for comment prior to submission of the Application for Environmental Authorisation.**
See attached Excel Sheet (sheet 1).
- **HIAs & EIA Scoping & Environmental Impact Reporting with a Pre-Application Scoping Report released for comment prior to submission of the Application for Environmental Authorisation.**
See attached Excel Sheet (sheet 2).





Heritage Western Cape

Process for Mitigation of Heritage Resources in terms of S38 of the NHRA

(To be read with the HWC S38 Process diagram)

1. BACKGROUND

Section 38(10) states that:

“(10) Any person who has complied with the decision of a provincial heritage resources authority in subsection (4) or of the MEC in terms of subsection (6) or other requirements referred to in subsection (8), must be exempted from compliance with all other protections in terms of this Part, but any existing heritage agreements made in terms of section 42 must continue to apply”

Heritage Western Cape (HWC) interprets this to mean that, in terms of section 38(10) of the NHRA¹, an applicant is exempt from being required to apply for a permit if they have complied with a decision taken under the National Environmental Management Act or the Mineral and Petroleum Resources Development Act or if they have complied with the requirements of HWC in terms of Section 38(4). In order to ensure that heritage resources that will be impacted by development are adequately recorded, sampled and/or conserved, the relevant Heritage Resource Authority must ensure that its recommendations and requirements are established and clearly specified in the earlier stages of compliance, in order that they may be written into the Authorisation issued by the Decision Making Authority.

Throughout this process, HWC must ensure that appropriate standards of excavation, sampling, collection and recording will be maintained, and needs to understand whether the mitigation is intended to establish the extent of the site, its significance, or to rescue significant material.

Any MITIGATION² undertaken in terms of section 38 of the NHRA must comply with the conditions prescribed by HWC. HWC may base its' requirements on the RECOMMENDATIONS of the Specialist Report in terms of s. 38(3) / 38(4)(b & e) of the NHRA. RECOMMENDATIONS for the mitigation of the site(s) should be made by the Specialist Consultant, and must be provided with the general RECOMMENDATIONS in the Heritage Impact Assessment, for the approval of Heritage Western

¹ National Heritage Resources Act, No. 25 of 1999.

² ***MITIGATION, in this context**, is defined as any intervention that will destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite; remove from its original position, or collect any such heritage resource, or export or attempt to export from the Republic any category of such heritage resource in order to recover information and material in order to mitigate against its loss through development. Investigative sampling of such resources must be undertaken by a qualified professional and approved by the heritage authority when required as part of any assessment process, in terms of other legislation.

Cape. These mitigation RECOMMENDATIONS will be referred to in-house, initially, as the 'Work Plan'.

What this means is that in place of a permit application, Heritage Western Cape may request additional information which may include any Mitigation needed to establish significance before a final comment or decision is issued. HWC will require a MITIGATION REPORT to be submitted following the completion of the work. It must comply with the minimum standards of reports as prescribed by SAHRA and HWC. The purpose of this document is to guide the creation of RECOMMENDATIONS that will ensure compliance with the SAHRA and HWC minimum standards and to indicate that recommendations for mitigation (work plan) be included in the general recommendations.

2. GUIDE TO RECOMMENDATIONS (part of the HIA)

A. The Consultant, in the body of the HIA report, must:

- Indicate, as far as this is possible before investigation, the current suggested SIGNIFICANCE and GRADING³ of the site(s);
- Evaluate the IMPACT of the PROPOSED DEVELOPMENT (both direct and indirect) on the heritage resources;
- Motivate for any proposed alternatives that mitigate against destruction of heritage resources;
- Motivate the need for any NO-GO areas; or other mitigation of adverse effects, during and after the completion of the proposed development. Discussion of the need for dates, management or curation, and any further work or studies needed to establish site significance and/or conserve heritage site value.
- In compliance with section 38(3) and the Minimum Standards for Archaeological and Palaeontological curation, the following must be included:
 - A LOCALITY PLAN showing the exact geographic position of all known site(s), a table of lat/ lon co-ordinates of sites (wgs84) (decimal degrees);
 - Full CADASTRAL details of property: Site Name, Physical Address, Erf Number OR Farm Name and Number;
 - SITE PLAN(S), if available, showing the property layout and pertinent features relevant to the planned action;
 - SITE DESCRIPTION(S), summarising the expected nature and extent of the identified site(s);
 - Relevant contextual and scientific background information;
 - REFERENCES to relevant earlier studies or assessments;
 - VISUAL AIDS including photographs or videos of the site in its present form, where appropriate. Please provide captions and dates for all records;
 - Any ADDITIONAL PERTINENT INFORMATION (where such information is not available yet, it should be supplied in the Mitigation Report).

³ HWC has a general Guide to Grading and will work towards a Guide for Grading of Archaeological/ Palaeontological sites.

B. The RECOMMENDATIONS (representing the ‘work plan’):

If Mitigation is required the following applies:

Considering the possible significance and grading of the site(s), the impact of the development, and possible alternatives and NO GO areas, the specialist must include in the general recommendations, RECOMMENDATIONS that represent a “Work Plan” for effective MITIGATION, that:

- MOTIVATE and DESCRIBE the archaeological or palaeontological intervention that needs to be undertaken. This should include:
 - - A concise DESCRIPTION of the PROPOSED SAMPLING / MITIGATION (and whether the intention is to undertake collection; testing; excavation to establish the significance of the site; excavation to rescue significant information and material; dating and/or other mitigation);
 - Motivation for the proposed action, with reference to conservation policy and/or principles, where appropriate;
 - Motivation for the use of mechanical equipment, if required;
 - Proposals for conservation of the site after the planned action, where appropriate;
 - Sufficient information to allow HWC to manage conditions and requirements (such as extent and standards of excavation, mapping and reporting, and allocation of material to a repository);
 - Area to be excavated, depth if known, etc;
 - Surface content, possible age.

These RECOMMENDATIONS for the mitigation of the site(s) must be made by the specialist consultant and must be provided as RECOMMENDATIONS in the Environmental/ Heritage Impact Assessment, for the approval of Heritage Western Cape.

3. IMPORTANT INFORMATION

In addition, HWC, in order to assess the mitigation before final approval, will need:

A. Details of Specialist who will conduct the sampling (Phase 2) work (if known):

- Name and title:
- Address & postal code:
- Contact numbers:
- E-mail:
- Qualifications and experience of the archaeological/palaeontological specialist:
- Current academic status of the applicant:
- Details of accreditation with Professional Association:
- Identity number / Passport number of the applicant:

If the specialist is not known, describe the professional qualifications and experience needed to do such work. The proposed specialist will be assessed by HWC in terms of their qualifications, experience and professional standing.

B. Approval of the Landowner:

Landowner approval is required in terms of the National Heritage Resources Act. The specialist is required to ensure that the work is approved before proceeding.

C. Approval of the Repository/ Curating Institution:

Heritage Western Cape *considers* that a condition of the approval will be that all material is the property of the State and as such written approval from an official repository where the materials and records will be curated will be required. The collections Agreement with the repository, or equivalent, must be supplied indicating that the institution takes responsibility for the collection.

D. Signature of Specialist and Date of Submission

HWC, August 2014

PROCEDURE FOR APPEAL TO COUNCIL OF HWC (DESIGNATED APPEAL COMMITTEE)

1. Any decision of a committee of HWC or other delegated representative of HWC **to grant or refuse a permit, consent or authority** must be communicated by HWC to all Interested and Affected Parties (defined for the purpose of the Policy as registered conservation bodies and persons or bodies with an interest in or affected by a decision, including the original applicant) within **5 working days** of the decision.
2. An appeal to HWC's Council must comply with the requirements of the Policy. These include:
 - a. A duly completed prescribed appeal form obtainable from the office of the CEO of HWC or from the HWC website;
 - b. a detailed statement setting out the grounds of appeal in full;
 - c. supporting documentation which is referred to in the appeal submission; and
 - d. a statement and proof that the appellant has complied with 3 below.
3. An appeal to HWC's Council must be submitted to HWC and all Interested and Affected Parties by the appellant within **14 working days** of the date on which the decision was made known in writing by HWC (see step 1 above).
4. HWC must, within **5 working days** of having received the appeal submission, assess whether the requirements of the Policy for the Lodging of an Appeal have been met (see (see steps 2 and 3 above)).
5. If the appeal has been duly lodged (i.e. if steps 2 and 3 above have been complied with by the appellant), the appellant and all Interested and Affected Parties must be notified by HWC in writing within **5 working days** of having received the appeal submission by sending all parties the Notice of Receipt of Appeal annexed.
6. If the appeal has **not** been duly lodged (i.e. if steps 2 and 3 above have **not** been complied with by the appellant), the appeal will **not** be considered by HWC and this must be communicated in writing to the appellant.
7. The original applicant (if not the appellant), the original decision-maker and Interested and Affected Parties may submit Responding Statements to HWC within **5 working days** of receipt of the aforesaid notice of appeal. The person submitting a Responding Statement must also ensure that copies are provided to Interested and Affected Parties and to the appellant (also within **5 working days** of receipt of the aforesaid notice of appeal).
8. The appeal submission and Responding Statements must be submitted to the HWC by the respective parties by hand, by email, or by facsimile.
9. The appeal will be heard by the Appeal Committee, regardless of whether or not all parties are present, on the date stipulated in the notice of appeal referred to in Step 5 above.
10. The Appeal Committee must make a decision within **10 working days** of the hearing of the appeal.

11. The Appeal Committee decision must be communicated by HWC in writing to the appellant and all Interested And Affected Parties within **7 working days** of the appeal decision. This communication shall refer to the right to appeal against the decision to the provincial Minister.

DIAGRAM ILLUSTRATING TIME PERIODS



**APPEAL TO THE MEMBER OF THE EXECUTIVE COUNCIL OF THE
PROVINCIAL GOVERNMENT OF THE WESTERN CAPE RESPONSIBLE FOR
CULTURAL AFFAIRS AND SPORT, IN A HERITAGE RESOURCE MATTER**

APPEALS TRIBUNAL PROCEDURE

1. LEGISLATIVE FRAMEWORK

1.1 RESPONSIBILITY OF THE MEC

The mandate of the Member of the Executive Council responsible for Cultural Affairs and Sport (the MEC) to hear appeals lodged at the office of the MEC in Heritage matters, derives from section 49 of the National Heritage Resources Act, Act 25 of 1999, which reads as follows:

- (1) *Regulations by the Minister and the MEC must provide for a system of appeal to the SAHRA Council or a provincial heritage resources council against a decision of a committee or other delegated representative of SAHRA or a provincial heritage resources authority.*
- (2) *Anybody wishing to appeal against a decision of the SAHRA Council or the council of a provincial heritage resources authority must notify the Minister or MEC in writing within 30 days.*

The Minister or MEC shall then appoint an independent tribunal, consisting of three experts, having expertise regarding the matter.

- (3) *The tribunal contemplated in subsection (2), in considering the appeal referred to it by the Minister or the MEC, 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 the heritage resources authority.*

1.2 RIGHT TO APPEAL

1.2.1 The legislation provides for a person or body to appeal against a decision of Heritage Western Cape (HWC) and the appeal lodged with the MEC should be substantiated and submitted in writing within a specified time, i.e. 30 days.

1.2.2 Section 49 of the National Heritage Resources Act (the Act) should however be read together with the regulations as promulgated in Provincial Notice 336 of 2002 (*Provincial Gazette* 5937 of 25 October 2002) setting out the establishment of Heritage Western Cape and detailing to a certain degree the manner and time frames within which appeals are to be lodged at the office of the MEC.

1.2.3 Regulation 12 of PN 336 of 2002 in sub-regulations 6 and 7 dealing with appeals to the MEC, reads as follows:

(6) *When persons or bodies referred to in sub regulation (1) wish to appeal against a decision of the Council of Heritage Western Cape or its appeal committee to grant or refuse a permit, consent or authority, an appeal, stating the grounds of appeal, must be lodged with the provincial Minister in writing within 21 working days of the date on which the decision of the Council of Heritage Western Cape or its appeal committee was made known in writing to the appellant.*

(7) *When persons or bodies referred to in sub regulation (1) wish to appeal against the failure of the Council of Heritage Western Cape or its appeal committee to consider the appeal within the prescribed time, an appeal, stating the grounds of appeal, must be lodged with the provincial Minister in writing within 21 working days of the last date on which the appeal had to be considered by the Council of Heritage Western Cape or appeal committee, as the case may be.*

2. RECEIVING AN APPEAL

2.1 Appeals to the MEC must be lodged with the Ministry of Cultural Affairs and Sport (the Ministry) or the Secretariat responsible for the Appeals lodged with the MEC (the Secretariat).

2.1.1 Appeals

a) must be in writing and addressed to the MEC,

- b) must set out the grounds of appeal,
- c) can be lodged on either
 - i) the substance/merits of the decision, and/or
 - ii) procedure

2.2.1 **Appeals must not be lodged at the offices of Heritage Western Cape.** Any appeals purporting to be so lodged should be returned to the sender as soon as possible, together with a copy of the Appeals Procedure document. Copies of such correspondence should be provided to the Ministry or the Secretariat.

NB: HWC **will not** receive the appeals on behalf of the MEC and HWC cannot be held responsible for the appellant's **failure to observe** time-frames as set out in the Act and Regulations.

2.3 In terms of sub-regulation 12(6) read with sub-regulation 12(1) of PN 336 of 2002, only persons or bodies with a **bona fide interest** in, or who are **affected** by, a decision of the Council of HWC or its appeal committee to grant or refuse a permit, consent or authority, may lodge an appeal.

2.4 Acknowledgement of receipt of the appeal lodged with the MEC is to be issued by the Office of the MEC or the Secretariat.

2.5 The Secretariat shall forward a copy of the appeal as received by the MEC to the CEO of HWC and request the CEO to submit the record of the hearing before the appeal committee to the Secretariat in order to process the appeal.

2.6 The appeal received should be circulated to the persons or parties identified as persons or bodies with a bona fide interest in, or who are affected by, a decision of the Council of HWC or its appeal committee, to obtain inputs and comments.

2.7 The CEO is responsible for forwarding the entire record that served before the appeal committee to the secretariat. This includes but is not limited to:

- (a) all submissions /documents that served before the committee that first adjudicated the application (eg Belcom)
- (b) the record of decision(s) of such committee (eg Belcom)
- (c) the grounds of appeal to the appeal committee
- (d) all submissions/documents that served before the appeal committee
- (e) the minutes of the respective hearings
- (f) the record of decision(s) of the appeal committee
- (g) any reasons provided in respect of the record of decision(s)
- (h) any correspondence relevant to the appeal to the MEC
- (i) any comments the CEO or case officer of HWC may have in response to the appeal lodged with the MEC.

2.8 The Secretariat must consult with the Chief Director Cultural Affairs and the CEO of HWC to ascertain if there are any other persons or bodies with a bona fide interest in, or who are affected by the appeal lodged, that should be given an opportunity to comment or provide input on the appeal.

2.9 The appeal document as received by the Office of the MEC will then be sent to the interested or affected person/s or body/bodies in order for these persons or bodies to comment thereon, and a strict deadline when the response is to be submitted should be communicated to the respondents. A copy of this Appeals Procedure document may be provided to any party on request.

2.10 The respondents should be informed that if no comments are received by the due date, the matter will be decided on the information submitted by the appellant and/or other interested parties or commenting bodies.
Late submissions will only be entertained at the discretion of the Chairperson of the Tribunal.

2.11 The response from the respondent/s shall be communicated to the appellant by the Secretariat in order for the appellant to deal with any issues, which may be in dispute, and a date is to be set, and communicated, for the replying comments, if any, by the appellant.

- 2.12 The rebuttal by the appellant will be the final documentation received for the specific appeal and all communication received after the date by which the rebuttal was to have been handed in, will not be considered by the Tribunal in deciding the matter.
- 2.13 Submissions to the Tribunal do not have to be in a specific format and can include heads of argument which is optional.
- 2.14 Only once all the comments and input have been received by the Secretariat, can the appeal documentation be referred to the appointed Tribunal.

3. APPOINTMENT OF TRIBUNAL

- 3.1 The Secretariat must liaise with the Office of the MEC, and also ascertain from the Chief Director of Cultural Affairs and the CEO of HWC if any of the proposed members of the Tribunal may have had previous knowledge or involvement in any of the appeals.
- 3.2 The Secretariat will draft a memorandum to the MEC for the appointment of three experts to serve on the Tribunal and, once approved, contact them to inform them of their appointment and to arrange a suitable date and venue for the meeting of the Tribunal.
- 3.3 The experts who are to serve on the Tribunal are to be chosen from a list of experts, approved by the MEC, who are eligible to serve on the Tribunal. This list should be reviewed from time to time.
- 3.4 Experts on the list will be chosen to serve on Tribunals on an ad hoc basis, based on the grounds of the appeal and the experience of the various individuals, bearing in mind the expertise that is required in order to resolve the

issue giving rise to the appeal. In exceptional cases experts whose names do not appear on the list may be appointed.

- 3.5 The MEC must appoint one of the chosen members on the Tribunal to serve as the Chairperson, and the Chairperson will lead the proceedings at the formal meeting of the Tribunal.
- 3.6 The Secretariat will confirm the appointment of the various experts by the MEC, to the Tribunal by issuing letters of appointment.

4. TRIBUNAL MEETING

- 4.1 The Secretariat must confirm the proposed date of the Tribunal meeting in the letter of appointment of the experts to the Tribunal. The following information will be sent to the members of the Tribunal:
 - 4.1.1 Date, time and venue of the meeting;
 - 4.1.2 Agenda for the meeting;
 - 4.1.3 Appeal documentation to be considered.
- 4.2 The Appeal documentation and information packages are to include the following:
 - 4.2.1 A memorandum prepared by the relevant Heritage Case Officer providing a chronological summary of events with the relevant annexures;
 - 4.2.2 A verbatim record of decisions and the reasons for the decisions taken by the delegated, BELCOM or APM Committee and the Appeal Committee of HWC, where relevant;

- 4.2.3 The approved and signed minutes of the relevant BELCOM or APM Committee and Appeal Committee of HWC meeting reflecting the decisions taken and reasons for the decisions;
- 4.2.4 Any record(s) of decision(s) issued by HWC; and
- 4.2.5 Annexures of all relevant documents.
- 4.3 The agenda and information packages shall be provided to the members of the Tribunal at least 5 working days before the date of the Tribunal meeting.
- 4.4 The arrangements for the proposed meeting of the Tribunal as well as any possible site visit should also be conveyed timeously to all the parties to allow them to decide if they would like to be present at either the site visit or during the meeting and to make any further input that may be required by the Tribunal. Arrangements for a site visit should preferably be done in consultation with all relevant parties and decided upon by the Chairperson of the Tribunal. **This is particularly important as the appellant may not be the registered owner of the property and the necessary approvals must be obtained from the owner or his/her representative to inspect the property.**
- 4.5 After perusal of the information supplied by the appellants and the respondents as well as the documentation supplied by HWC, the members of the Tribunal may request the Secretariat to arrange a site visit before the date of the meeting or on the date of the meeting, as the case may be, should the members deem it necessary that the site or sites be inspected. A notice of the planned site visit shall be sent out timeously by the Secretariat to all the parties involved in the Appeal.
- 4.6 The site inspection is part of the proceedings before the Tribunal and must be attended by the Tribunal members, the Secretariat, the HWC case officer and/or the CEO of HWC, the appellant, the respondent(s), and could also be attended

by relevant conservation bodies, and the local or planning authority should their presence and input be deemed necessary. Any observations and comments made at the site visit should be recorded as part of the proceedings before the Tribunal.

- 4.7 The Tribunal shall meet on the pre-arranged time and venue for the meeting.
- 4.8 Should there be a need for a second or follow-up Tribunal meeting on another date, the members of the Tribunal chosen to attend to the specific appeal will then attend all ensuing meetings that are needed in order to reach a final decision and convey this to the MEC.
- 4.9 Parties to the proceedings have a statutory right of appearance at a meeting where a decision will be taken which may affect them (See Section 10(2)(c) of the Act).
- 4.10 Each party is allowed to have one heritage consultant and one legal representative attend the meeting, and such attendance is to be communicated to the Secretariat before the meeting together with the names of the representatives.
 - 4.10.1 Should an appellant or a respondent wish to have more than one legal representative and one consultant attending the meeting for purposes of making representations, such intention should be communicated to the Secretariat in writing **before the date of the meeting**, stipulating who will be in attendance. The Secretariat will then obtain approval from the Chairperson of the Tribunal and communicate the decision to the party making the request. Alternatively, such parties may attend the meeting as observers but shall have no right to participate in the discussions, unless the Chairperson directs otherwise.
 - 4.10.2 If it is deemed necessary in the opinion of the Chairperson of the Tribunal, the local authority will be contacted timeously for purposes of attending the site visit and the meeting in order to provide information regarding their position on a

particular matter and any decision that was taken by the local authority in the matter before the Tribunal. The attendance of the local authority should be deemed necessary where a written report or comment on the matter from the local authority is not available on the file of HWC.

- 4.11 The Chairperson of the Tribunal welcomes the parties present at the meeting and spells out the procedure for the meeting at the outset thereof.
- 4.12 Verbal representations in the meeting are to be made for purposes of **elucidating** the written submissions only.
- 4.13 The appellant will be allowed an opportunity to make verbal representations first.
- 4.14 Thereafter the respondent/s will be allowed time to make verbal representations to the Tribunal.
- 4.15 The appellant will thereafter be allowed to make a verbal reply in clarification of any factual or legal issue that may have arisen.
- 4.16 The members of the Tribunal may at any time pose questions to any of the parties in order to clarify any issue.
- 4.17 The Chairperson shall then adjourn the Tribunal meeting to allow the members of the Tribunal to deliberate in order to reach a decision. When the tribunal meeting reconvenes, the Chairperson shall read the decision of the Tribunal to the meeting.
- 4.18 The proceedings of the meeting are to be recorded as follows:
 - 4.18.1 The public proceedings before the Tribunal are to be recorded.
 - 4.18.2 The audio recording of the meeting is to be made available to the parties upon a written request after the decision has been communicated to the parties.

4.18.3 The recordings of the meetings are to be kept on file for a period of 6 months after the decision has been communicated to the parties, in case the decision needs to be reviewed or revisited by the Tribunal members, after which period it will be destroyed.

4.19 The decision(s) of the Tribunal is/are to be handed to the Secretariat, who will inform the MEC, after which it will be communicated to the parties represented at the meeting/hearing, including HWC.

5. MINUTES

5.1 The draft copy of the minutes must be handed to the Chairperson of the Tribunal within 10 working days from the day on which the final decision has been reached by the Tribunal.

5.2 The Chairperson will then have a period of 5 working days to consult with the other members of the Tribunal, in person or electronically, and approve the minutes by appending his or her signature thereto.

5.3 The Secretariat will prepare the draft letters to the parties, containing the decision of the Tribunal, with copies for interested and affected parties.

5.4 The Secretariat will prepare a memorandum to the MEC, including:

- (a) the formal finding, as well as the minutes, of the Tribunal,
- (b) the draft letters to the parties and interested parties, and
- (c) all the relevant information submitted to the Tribunal.

6. CONSIDERATION OF THE DECISION OF THE TRIBUNAL BY THE MEC AND COMMUNICATION WITH THE APPELLANT AND PARTIES WITH A BONA FIDE INTEREST REGARDING THE OUTCOME OF THE APPEAL LODGED WITH THE MEC

6.1 The MEC shall consider the memorandum and sign the documentation off.

6.2 The Secretariat will communicate the decision to the parties, including Heritage Western Cape, by supplying them with signed letters informing them of the Tribunal's decision in the matter.