

# **Guidelines for Heritage Impact Assessments required in terms of Section 38 of the National Heritage Resources Act (Act 25 of 1999)**

## **1. HERITAGE RESOURCES MANAGEMENT**

The heritage resources of South Africa have lasting value in their own right and provide evidence of the origins of South African society. These heritage resources are valuable, finite, non-renewable and irreplaceable and they must be carefully managed to ensure their survival (National Heritage Resources Act (No. 25 of 1999) s. 5(1)(a)).

The National Heritage Resources Act (NHRA) has introduced an integrated system for the identification, assessment and management of the heritage resources of South Africa. The NHRA makes provision for the general protection of heritage resources:

- Section 34 in respect of the built environment;
- Section 35 in respect of archaeology, palaeontology and meteorites; and
- Section 36 in respect of graves and burial grounds.

Section 38 sets out guidelines for Heritage Resources Management and the conditions under which heritage impact assessments are required when developments impact upon heritage resources. If disturbance is permitted by the appropriate authority, the impacts on heritage resource/s affected must be mitigated to ensure the recovery and recording of information about that site.

Reports resulting from the assessment of impacts to heritage resources, or their mitigation, are part of the management of these resources and it is necessary to ensure that the quality and content of such reports accurately identify and describe the resources prior to alteration or destruction, reflect the significance of the heritage resources and provide a narrative and record of their alteration.

## **1. SECTION 38 APPLICATION PROCEDURES**

In terms of section 38 of the NHRA, at the earliest stages of any development project, HWC must be informed through the submission of a completed Notification of Intent to Develop (NID) form. In response to the information provided in the NID form, HWC must determine whether or not heritage resources are likely to be impacted by the proposed development.

- If the proposed development triggers the requirement for a Heritage Impact Assessment (HIA) as part of other legislation such as the National Environmental Management Act (NEMA) or the Minerals and Petroleum Resources Development Act (MPRDA), then a process is followed in terms of section 38(8). For more information on this process, please see the agreement and addendum between HWC and the Department of Environmental Affairs and Development Planning (DEADP) (December 2015). In terms of section 38(8), HWC must provide comment on a submitted Heritage Impact Assessment (HIA) to the decision-making authority. However, section 38(8) states that any HIA submitted, must satisfy the requirements of section 38(3) of the NHRA.
- If the proposed development DOES NOT trigger the requirement for a Heritage Impact Assessment as part of other legislation, but does trigger the activities identified in section 38(1) of the NHRA, then HWC must follow the process set out in sections 38(1) to 38(4).

If HWC is able to ascertain from the NID that heritage resources are likely to be impacted by the proposed development, then, in terms of section 38(2), HWC must request an HIA that assesses the impacts of the proposed development on heritage resources. This HIA must satisfy the requirements of section 38(3) of the NHRA.

## **2. THE PURPOSE OF AN HIA**

A Heritage Impact Assessment must provide insight into the impact of the proposed development on heritage resources and provide mitigation measures to limit the effect of that impact. The HIA must provide the heritage authority with sufficient information to properly assess the significance of resources on and around a site and to understand the short, medium and long term consequences of the proposed development on heritage resources so that the heritage authority can make an informed comment (section 38(8)) or decision (section 38(4)) on the impacts of a proposed development.

At a minimum, a Heritage Impact Assessment must include the following:

- Title page including the HWC Reference number, applicable section of the NHRA<sup>1</sup> and author information;
- Executive summary (Refer to the HWC Circular dated November 2014 regarding the requirements for Executive Summaries);
- Table of contents;
- Background information on the project;
- A description of the property/affected environment;
- A description of methodology;
- History and evolution of the site and context;
- The identification of all heritage resources that will be impacted either directly or indirectly by the proposed development.
- The mapping and spatialisation of these identified resources. At least two maps are required (a regional map and a more detailed map (project polygon));
- An assessment of the significance of these identified resources. (Refer to the HWC Guide for Grading: Implications and Management, dated March 2016 for further information on assessing significance.)
- The details and summary of findings of specialist reports requested by HWC;
- An assessment of the impact of the development on such identified heritage resources;
- An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
- The results of consultation with communities and state bodies (e.g. local authorities) affected by the proposed development and other interested parties regarding the impact of the development on heritage resources including unabridged copies of the comments received;
- The consideration of alternatives and any plans for mitigation of any adverse effects during and after the completion of the proposed development;
- Conclusions;
- An integrated set of Recommendations;
- References.
- Relevant appendices which must include the full reports of any specialist assessments requested by HWC.

## **3. PHASING OF HERITAGE IMPACT ASSESSMENTS**

In complex development applications, it is sometimes useful to submit an HIA in phases. The submission of a phased HIA is only permitted in circumstances which would warrant this. Such circumstances would generally (but not always) limited to the following:

- A large scale and/or long term subdivisinal development which may follow a Package of Plans approach and where the development proposal cannot be sufficiently developed in the early phases of obtaining the broad land use rights or of disposing of the land parcels to different developers
- When it is prudent to obtain HWC's comment on the assessment of heritage resources and heritage indicators in order to strengthen a heritage argument for revised design proposals

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<sup>1</sup>Either s38(4) or s38(8)

HWC reserves the right to determine whether a phased HIA is acceptable on a case by case basis..

In such instances, HWC requires that the HIA is phased as follows:

Phase 1: The **identification** of all heritage resources that will be impacted either directly or indirectly by the proposed development.

The **mapping** and spatialisation of these identified resources. At least two maps are required (a regional map and a more detailed map (project polygon)), these must illustrate the cadastral boundaries of the property concerned.

An assessment of the **significance** of these identified resources. (Refer to the HWC Guide for Grading: Implications and Management for further information on assessing significance.)

The results of **consultation** with communities and state bodies affected by the proposed development and other interested parties regarding the **identification** of heritage resources and the assessment of their significance;

The details and summary of **findings of specialist reports** requested by HWC

**Heritage design indicators, required responses and recommendations**, including possible demolitions and guidelines for interventions / new development. If the development process requires Interim Comment on the overall development proposal, the SDP must be developed to a sufficient degree to enable a high level heritage impact assessment.

It should be noted that since a Phase 1 HIA does not satisfy the requirements of section 38(3), it cannot be approved or refused by HWC and no Record of Decision or Final Comment can be issued. HWC will only provide an interim comment, endorsing the identification and mapping of heritage resources and the assessment of significance. HWC may also endorse the heritage indicators and broad development parameters in principle, so as to give guidance for the preparation of more detailed development proposals.

Phase 2: *In a Phased HIA approach, this is generally appropriate at the Precinct Planning Phase and entails:*

An assessment of the impact of the development on identified heritage resources, incorporating the impact assessment of any specialist studies required by HWC;

An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;

If heritage resources are deemed to be negatively impacted, the consideration of alternatives and any plans for mitigation of any adverse effects during and after the completion of the proposed development;

The results of consultation with communities affected by the proposed development and other interested parties regarding the **impact** of the development on heritage resources including and unabridged copies of the comments received;

Conclusions, an Integrated set of Recommendations and relevant appendices which must include the full reports of any specialist assessments requested by HWC

In the case of a phased HIA, HWC will only issue a Record of Decision i.t.o. section 38(4) or a Final Comment i.t.o. section 38(8) after assessment of a Phase 2 report, once all the requirements of s38(3) have been satisfied.

#### **4. SPECIALIST STUDIES**

Refer to the attached documentation on the requirements pertaining to specialist studies for archaeological and palaeontological reports.

#### **5. CONCLUSION OF THE SECTION 38 PROCESS**

Once an HIA has been submitted that complies with section 38(3), HWC is required to respond in terms of either:

**Section 38(4):** HWC must determine whether or not the development may proceed;

- Any limitations or conditions to be applied to the development;
- What general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;
- Whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and
- Whether the appointment of specialists for further work is required as a condition of approval of the proposal.

**Section 38(8):** HWC must ensure that the evaluation fulfils its requirements and must make any comments and recommendations with regard to such development. These comments and recommendations must be taken into consideration by the relevant approving authority prior to the granting of consent.

It is important to note that, in terms of section 38(10), any person who has complied with the decision of a provincial heritage resources authority in terms of section 38(4) or other requirements referred to in section 38(8), must be exempted from compliance with all other general protections in terms of Chapter II Part 2 of the NHRA, including permits, but any existing heritage agreements made in terms of section 42 must continue to apply.

However, should HWC comments in terms of section 38(8) NOT be complied with, the general protections and permit requirements do still apply.

Any mitigation interventions that would normally fall within a general protection permitting process, that are approved in terms of a section 38 process, must be managed through the submission and approval of a Workplan (Refer to HWC Correspondence dated: August 2014 and May 2015).