



## HERITAGE WESTERN CAPE PUBLIC CONSULTATION GUIDELINES

### Promotion of Administrative Justice Act (PAJA, Act 3 of 2000)

Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair. For the purpose of HWC, such administrative action pertains to any decision of HWC taken in terms of the National Heritage Resources Act (NHRA, Act 25 of 1999).

### Rights and legitimate expectations

In terms of NHRA, “those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities.”

In terms of section 5(1) of the NHRA, Heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival; every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all South Africans; heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and heritage resources management must guard against the use of heritage for sectarian purposes or political gain.

Importantly, in terms of this Guideline, the NHRA notes that Heritage resources form an important part of the history and beliefs of communities and *must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management.*

To this end, the NHRA requires that, in terms of section 25(1)(b), HWC maintain a list of conservation bodies which have, in accordance with regulations by the heritage resources authority concerned, registered their interest in a geographical area; or a category of heritage resources.

### Fair Administrative Procedure

“Fair administrative procedure” depends on the circumstances of each case. In terms of section 3 of PAJA, HWC must ensure that such person is given:

- Adequate notice of the nature and purpose of the proposed administrative action
- Reasonable opportunity to make representations
- A clear statement of the administrative action
- Adequate notice of any right of review or internal appeal, where applicable
- Adequate notice of the right to request reasons for the action

In terms of section 4 of PAJA, HWC has decided to follow:

#### 1. Notice and Comment Procedure as outlined in section 4(3) of PAJA

In terms of section 4(3) of PAJA, HWC must require that:

- Appropriate steps are taken to communicate the administrative action to those likely to be materially and adversely affected by it and call for comments from them.
- Any comments received are considered prior to taking the administrative action.

## 2. Process for Consultation with registered Conservation bodies

A process for public consultation is envisaged in the NHRA through the registration of Conservation Bodies in terms of section 25(1) of the NHRA.

Conservation bodies are interested parties in the management of our heritage resources. Registered conservation must be consulted when applications are received for particular geographical areas or categories of heritage resources for which they have registered in terms of section 25(1) of the National Heritage Resources Act, 1999.

A list of registered conservation bodies can be found on our website: <http://www.hwc.org.za/conservation-bodies>

## 3. Local Authorities

The relevant Local Authority must be consulted. It is also recommended that the local Ward Councillor be informed.

### **HWC Recommendations in terms of this Guideline: Sections 27, 29 (excluding minor works, and emergency permits), and in fulfilment of the provisions of 38(3)(e) of the NHRA**

Heritage Western Cape recommends that any application made to HWC for a decision in terms of sections 27 and 29, and as well as fulfilment of the provisions of section 38(3)(e), of the NHRA, is advertised as follows:

- An advertisement is placed in a local newspaper. The format of the notice is attached as Annexure A.
- An A3 size laminated copy of the notice placed in clear public view on the property or site to which the application pertains for a minimum of 30 days.
- A copy of the application is to be left at the local library or other appropriate public place for the 30 day period.
- Email or written correspondence with the relevant registered Conservation Body/Bodies and Local Authority allowing a minimum of 30 days for comment.
- In addition to the above, depending on the significance of the heritage resource and the nature and extent of the work proposed, as well as public interest, HWC may require that broader consultation is held, which may include a public meeting.

### **Proof of Consultation Process**

For all applications made to HWC that require a decision in terms of sections 27, 29, 30, 31 and 34, as well as decisions in terms of section 38(4) of the NHRA, HWC requires proof of consultation in terms of the Notice and Comment Procedure outlined in (1) above as well as in terms of the Process for Consultation with registered Conservation Bodies outlined in (2) above.

Such proof includes:

- A copy of the published newspaper notice if applicable.
- Photographs of the notice on the site.
- Copies of any comments received.
- Contact details of any person who has indicated their interest in the application.
- Copies of correspondence with registered Conservation Bodies and Local Authority.

### **HWC Requirements in terms of this Guideline: Section 35**

In terms of section 5(5) of the NHRA, Heritage resources contribute significantly to research, education and tourism and they must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.

Most archaeological and palaeontological sites are located in rural areas, with no relevant local newspaper, and that are difficult to access. To this end, HWC requires that applications for permits in terms of section 35 of the NHRA, are advertised as follows:

- An advertisement is placed in a local newspaper where possible.
- Email or written correspondence with the relevant registered Conservation Body/Bodies and Local Authority allowing a minimum of 30 days for comment.
- Written correspondence with the landowner explaining the proposed action.

After issue of the permit:

- Formal reporting and distribution of the information learned through the research process.

### **Proof of Consultation Process**

For all applications made to HWC that require a decision in terms of sections 35 of the NHRA, HWC requires proof of consultation in terms of the Notice and Comment Procedure outlined in (1) above as well as in terms of the Process for Consultation with registered Conservation Bodies outlined in (2) above.

Such proof includes:

- Copies of any comments received.
- Contact details of any person who has indicated their interest in the application.
- Copies of correspondence with registered Conservation Bodies and Local Authority.
- Copies of correspondence with the landowner.

After the issue of the permit:

- Evidence of formal reporting and distribution of information learned through the research process

### **Exemption from compliance with the above requirements**

Should any individual or applicant be unable to comply with the above recommendations e.g. emergency rescues or interventions, the following action, depending on the nature of the emergency, should be taken:

- Written correspondence to HWC indicating reasons for non-compliance.
- Negotiation with HWC regarding how HWC can assist with ensuring that an application is compliant with the above requirements.
- Where, in the opinion of HWC, an application will not impact on the significance of the structure or site or other identified heritage resources, as the case may be, and will be undertaken by an expert with the appropriate qualifications and/or experience, the application may be exempted from public consultation.

**Annexure A**

**NOTICE**

APPLICATION IN TERMS OF THE NATIONAL HERITAGE RESOURCES ACT, 1999, ACT 25 OF 1999 (THE NHRA)

Please note that an application is being made in terms of S\_\_\_\_\_of the NHRA regarding the following property:

ERF/FARM PORTION\_\_\_\_\_ SUBURB/FARM\_\_\_\_\_

TOWN\_\_\_\_\_ LOCAL/ DISTRICT MUNICIPALITY\_\_\_\_\_

STREET ADDRESS\_\_\_\_\_

Short Description of the work to be done:

Alterations/Demolition\_\_\_\_\_

A copy of the application can be obtained from:

Name:\_\_\_\_\_

e-mail:\_\_\_\_\_

Telephone:\_\_\_\_\_

Postal Address:\_\_\_\_\_

A Hard copy of the application may be viewed at \_\_\_\_\_.

Any person wishing to object or comment **on heritage grounds** to the application must make such comment /objection in writing to the above address on or before\_\_\_\_\_. (30 days from the date of publication).

**Kindly note that objections or comments that are not made on heritage grounds will not be considered.**

A copy of this notice must be displayed on the site for the full 30 days terminating on the date above.