



**Western Cape  
Government**  
Environmental Affairs and  
Development Planning



**Western Cape  
Government**  
Cultural Affairs and Sport



**Ilifa leMveli eNtshona Koloni  
Efenis Wes-Kaap  
Heritage Western Cape**

BETTER TOGETHER.

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

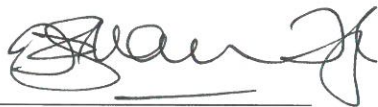
**DECEMBER 2015**

**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 3-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).

