

APPENDIX 1

Legislative Framework:

1) LEGISLATION: KWAZULU-NATAL HERITAGE ACT NO: 4 OF 2008, SECTION 36

36. General protection: Battlefield sites, **archaeological sites, rock art sites, palaeontological sites,** historic fortifications, meteorite or meteorite impact sites.—(1) No person may destroy, damage, excavate, alter, write or draw upon, or otherwise disturb any battlefield site, archaeological site, rock art site, palaeontological site, historic fortification, meteorite or meteorite impact site without the prior written approval of the Council having been obtained on written application to the Council.
- (2) Upon discovery of archaeological or palaeontological material or a meteorite by any person, all activity or operations in the general vicinity of such material or meteorite must cease forthwith and a person who made the discovery must submit a written report to the Council without delay.
- (3) The Council may, after consultation with an owner or controlling authority, by way of written notice served on the owner or controlling authority, prohibit any activity considered by the Council to be inappropriate within 50 meters of a rock art site.
- (4) No person may exhume, remove from its original position or otherwise disturb, damage, destroy, own or collect any object or material associated with any battlefield site, archaeological site, rock art site, palaeontological site, historic fortification, meteorite or meteorite impact site without the prior written approval of the Council having been obtained on written application to the Council.
- (5) No person may bring any equipment which assists in the detection of metals and archaeological and palaeontological objects and material, or excavation equipment onto any battlefield site, archaeological site, rock art site, palaeontological site, historic fortification, or meteorite impact site, or use similar detection or excavation equipment for the recovery of meteorites, without the prior written approval of the Council having been obtained on written application to the Council.
- (6) (a) The ownership of any object or material associated with any battlefield site, archaeological site, rock art site, palaeontological site, historic fortification, meteorite or meteorite impact site, on discovery, vest in the Provincial Government and the Council is regarded as the custodian on behalf of the Provincial Government.

APPENDIX 2

2) The South African Heritage Resource Act no: 25 of 1999, definition 1(d), section 35, section 50 (heritage inspectors), and for offences and penalties, section 51

Section 35 Archaeology, palaeontology and meteorites

(1) Subject to the provisions of section 8, the protection of archaeological and palaeontological sites and material and meteorites is the responsibility of a provincial heritage resources authority: Provided that the protection of any wreck in the territorial waters and the maritime cultural zone shall be the responsibility of SAHRA.

(2) Subject to the provisions of subsection (8) (a), all archaeological objects, palaeontological material and meteorites are the property of the State. The responsible heritage authority must, on behalf of the State, at its discretion ensure that such objects are lodged with a museum or other public institution that has a collection policy acceptable to the heritage resources authority and may in so doing establish such terms and conditions as it sees fit for the conservation of such objects.

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

(4) No person may, without a permit issued by the responsible heritage resources authority –

(a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;

(b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;

(c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or

(d) bring onto or use at any archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

Appointment and powers of heritage inspectors

50 (2) By force of this section, each member of the South African Police Services and each custom and excise officer is deemed to be a heritage inspector.

Offences and Penalties

51 (1) Notwithstanding the provisions of any other law, any person who contravenes – (b) section 35(4) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 2 of the Schedule.

51 (2) The Minister, with the concurrence of the relevant MEC, may prescribe a penalty of a fine or imprisonment for a period not exceeding six months...

51 (3)(a) The Minister or the MEC, as the case may be, may make regulations in terms of which the magistrate of the district may – levy admission of guilt fines up to a maximum of R10 000,00 for infringement....and

(b) serve a notice upon a person who is contravening a specified provision of this Act or has not complied with the terms of a permit issued by such authority, imposing a fine of R50,00 for the duration of the contravention, subject to a maximum of 365 days.

Permit requirements:
What constitutes development?

Definition 1 (d)

“development” means any physical intervention, excavation or action, other than those caused by natural forces, which may in any way result in a change of nature, appearance or physical nature of a place or influence its stability and future well-being; including –

- (a) construction, alteration, demolition, removal or change of use of a place or structure on the place,
- (b) carrying out any works on or over or under the place;
- (c) subdivision or consolidation of land comprising a place, including the structures of airspace;
- (d) construction or putting up for display signs.
- (e) any change to the natural or existing condition or topography of land;
- (f) any removal or destruction of trees or removal of vegetation or topsoil.

Section 36(1) General Protection

Structures:

Any proposed demolition, addition or alteration of structures or parts thereof, which are older than 60 years, shall be subject to the following:

- (a) thirty days prior to the commencement of such a proposed activity a permit shall be applied for from Amafa.
- (d) Conditions stipulated in terms of permits issued under this provision shall be of such nature so as to facilitate the recycling of historical building materials and the revision of design proposals.
- (e) Where a permit is refused, the Council shall within a three-month period give consideration to the protection of the site in terms of one of the formal classifications provided for in section 19 to 25 (e.g. Heritage Landmark, Provincial Landmark, Heritage Object, Heritage Conservancies, Provisional Protection or designating a suitable buffer area as a Sensitive Site.

Heritage resources management:

(1) Any person wishing to undertake a project described in terms of the following categories:

- (a) construction of a road, wall, power line, pipe line, canal or other similar form of linear development or barrier exceeding 300m in length.
- (b) construction of a bridge or similar structure exceeding 50m in length; and
- (c) any development that will change the character of an area of land or water –
 - (i) exceeding 5 000m² in extent;
 - (ii) involving three or more existing erven, or subdivisions thereof, or
 - (iii) involving three or more erven, or subdivisions thereof, which have been consolidated within the past five years; or
 - (iv) the costs of which will exceed a sum set in terms of regulations; or
 - (v) any other category of development provided for regulations, shall the earliest stages of initiating development, notify the Council of Amafa and furnish it with details regarding the location, nature and extent of the proposed development.

(2) within 14 days of receipt of the notification the Council will notify the person that he/she must submit and Heritage Impact Assessment Report at the cost of the person proposing the development.

(3) the HIA must include the following

- (a) identification and mapping of heritage resources in the area affected;
- (b) an assessment of the significance of such heritage resources
- (c) an assessment of the impact of the development on the resources

(d) an evaluation of above-mentioned in relation to socio-economic benefits derived from development

(e) should heritage resources be adversely affected by the proposed development, the consideration of alternatives; and

(f) plans for mitigation of any adverse effects during and after completion of the proposed development

(4) The HIA will be considered timeously by the Council, which shall then decide whether the proposed development can proceed or not; whether any limitations or conditions are to be applied to the development, what general protections apply and what formal protections can be applied to such heritage resource.

APPENDIX 3

3) Applying guidelines of the Burra Charter to Rock Art Management in South Africa

Preamble: The Burra Charter was adopted by the Australian National Committee of the International Council on Monuments and Sites (ICOMOS) in 1979. Revisions were adopted in 1981, 1988 and 1999. The Burra Charter provides guidance for the conservation and management of places with cultural significance.

Strategies: The management of rock art sites includes the following strategies: maintenance, physical conservation as well as visitor management.

1) Maintenance According to the Burra Charter, article 1.5, maintenance can be defined as the continuous protection of the setting, fabric and contents, distinguishing it from repair, which would indicate restoration or reconstruction.

Maintenance includes baseline documentation, condition assessment reports and continuous monitoring (regular inspections and the replication of recording methods). This is based on the rationale of minimum intervention and preventative care e.g. checking that the fire breaks are carried out, removing dead wood inside caves and rock shelter that poses a fire threat, trimming shrubs that are rubbing against rock art panels, checking that the visitors' infrastructure (fences, walk ways, signage) are maintained and repaired if necessary.

2) Physical conservation: According to the Burra Charter, "conservation means all the processes of looking after a place so as to retain its cultural significance"(Article 1: Definitions 1.4) This also includes direct intervention at a site, e.g. stabilisation, adaptation, restoration and reconstruction.

a) Stabilisation or preservation (article 1.6) can be defined as preserving what exists as it is or retarding deterioration (not improvement) e.g. establishing a drip line, consolidation treatment to stabilise paintings and engravings.

b) Adaptation: According to article 1.9, 1.10, 1.11, 6, 7 and 21 adaptation embodies, modifying a place to suit compatible uses and it is acceptable where it will supplement the conservation of the place and if it does not substantially subtract from the cultural significance of a site.

Adaptation must be limited to which is essential to allow use of the place in accordance with the Statement of Goals and Objectives, e.g. modifying a site to allow for low impact tourism (The construction of fences, signage, board walks, benches, etc. at rock art sites).

c) Restoration involves returning the existing fabric to a known earlier state by removing accretions without introducing new materials (article 1.7 & 19). This can only be done if there is sufficient evidence of an earlier state and only if removing the fabric reveals the cultural significance of the place/setting.

This process is limited to the removal of post-contact graffiti (younger than 100 years) as well as the removal of stains caused by lichen, vascular plants and the removal of birds and insect nests obliterating the art.

d) Reconstruction: implies returning a site as near as possible to a known earlier state (article 1.8 & 20). This is aimed at legibility as well as the aesthetic presentation of a site/artefact. New as well as old materials are used in the process. Reconstruction must be limited to the completion of a dilapidated entity (it should not involve the majority of the fabric).

Reconstruction is not applicable in South Africa as there are no San descendants left to renovate their rock art by retouching original panels (It is however allowed in Australia, where the original artists are living and still paint and renovate their art).

3) Visitor management: The management of visitors includes the employment of guides, custodians, the development of interpretive programmes as well as the construction and maintenance of visitors' facilities. E.g. signs, physical barriers, walk ways, etc which correlates intrinsically with strategies related to adaptation. (See physical conservation strategies).