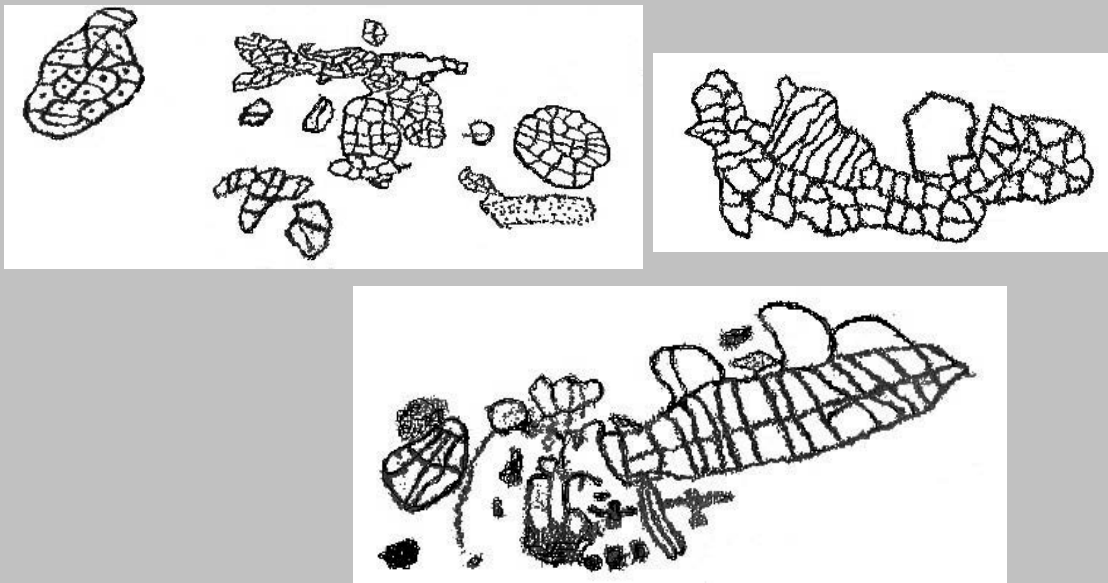


# A PHASE ONE ARCHAEOLOGICAL ASSESSMENT OF HERITAGE RESOURCES IN THE TRANS HEX DIAMOND CONCESSION *RICHTERSVELD*



*PREPARED FOR*

**TRANS HEX GROUP LTD.**

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## **EXECUTIVE SUMMARY**

An investigation of heritage resources in diamond mining areas under the control of Trans Hex has noted that numerous sites exist in the area. Many of the sites occur on the recent floodplains within a few hundred meters of the Orange River and are generally not affected by the actual mining operation. Of concern are the threats from mining related infrastructure on heritage sites e.g. roads, pump stations and prospecting activities often intrude on sensitive areas.

Many petroglyphs are found at Bloeddrift. These are found wherever dolomite is present including areas around the active mining. Damage has occurred as a result of a number of mining and related activities. Care should be taken to ensure that engravings are not damaged as these have the potential to become tourist attractions in the future. A more insidious form of damage is however the increase of graffiti that has taken place as a result of the increase in the number of people working in proximity to petroglyphs. It is suggested that Trans Hex design a campaign to educate employees (including subcontractors) as to the heritage value of the engravings. Such a campaign could be extended to schools and local communities as a public relations exercise.

It is suggested that where there is the potential for damage to occur to heritage sites, that they be identified and protected or mitigated by systematic archaeological excavation.

Front cover illustrations: a selection of engravings from Bloeddrift (various scales)

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# 1. INTRODUCTION

## 1.1 Background and brief

Prospecting and mining of diamonds has been taking place along the Orange river for many years. The area that is the subject of this investigation is the concession on the southern bank of the Orange River in the Richtersveld, currently mined by the Trans Hex Group. The nature of the mining is to recover diamonds from gravel deposits in palaeo-channels of the Orange. As with any river, there are areas of erosion and areas of deposition. It is the latter that are detected by prospecting and if the yield is high enough will be mined. This results in the mining being confined to certain areas rather than taking place along the entire length of the concession. The location of the concession and mining areas is shown in Figure 1.

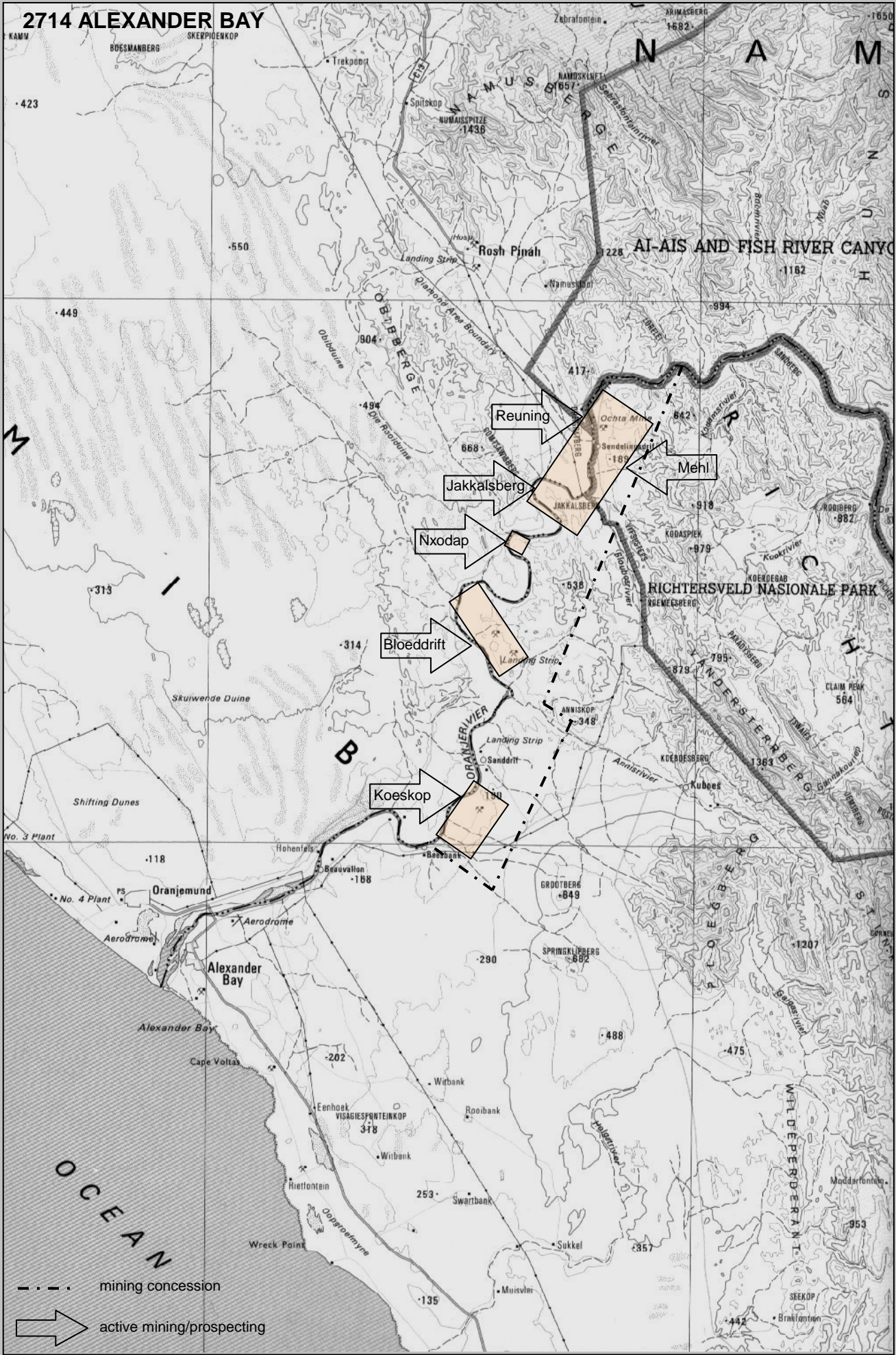
As can be seen from Figure 1, the concession extends into the Richtersveld National Park. It was the section that overlapped the park that was of primary concern to the National Monuments Council, who had requested Trans Hex to commission a Phase 1 archaeological study of that area. The Archaeology Contracts Office was appointed to conduct the study. In discussions with Trans Hex, it was suggested that the study be extended to cover other parts of the concession as well, so that an overall management plan could be prepared. A similar suggestion had been made in 1997 by representatives of the Kimberley office of the National Monuments Council and McGregor Museum (Morris & Turkington 1997). Under current and imminent legislation it is an offence to damage archaeological sites and it seemed appropriate to identify those areas where there may be problems as well as those where there were none.

An initial short scoping visit was made to the area during which we were accompanied by Mr. Herman Bruwer, who is responsible for the environmental management of the mine (Halkett 1998). Based on this visit, a proposal for the study was prepared which was based on the terms of reference suggested by the National Monuments Council. The brief included:

- an overview of previous work in the area;
- a field survey of the area;
- sites should be plotted on maps/plans from which their locations could be easily identified;
- assess the archaeological significance of sites as well as assessing vulnerability in terms of mining operations;
- liaise with Trans Hex to ascertain the sequence of mining;
- prepare a report laying out the findings of the investigation and suggesting methods for ongoing management of heritage resources, including mitigation measures for sites which could be destroyed by mining;
- make suggestions regarding access by tourists to rock engraving sites at Bloeddrif;

## 1.2 Defining the subject of the investigation

In undertaking this project we have examined a broad range of sites from the historical and pre-colonial period which collectively are termed heritage resources (these terms are fully explored in Section 3). These resources include Early and Middle Stone Age artefact scatters, San occupation sites, early herder encampments, rock engraving sites, graves and a single building.



**1** Location of the survey

0 25km

## **2. SCOPE OF THE PROJECT**

### **2.1 Archaeological goals**

The relative remoteness of the Richtersveld has meant that over the years, few archaeological projects have been undertaken there. While some archaeological excavations have been conducted near Sendelingsdrift (Jakkalsberg A and B), no systematic archaeological site surveys have been undertaken along this part of the Orange River. This, despite the fact that we know from the reports of early explorers, that both San hunter-gatherers and Khoekhoen<sup>1</sup> pastoralists were still to be found in the area at the beginning of the colonial era, and had existed here for millennia before that.

One of the goals of this assessment has therefore been to locate some of these sites and based on the results, to try and understand some basic settlement behaviour. In other words, we are trying to understand how pre-colonial people used the landscape, and the range of sites that were created in the process. By developing an understanding of land use, it is hoped that we will be able to extrapolate our findings more broadly to both active, and potential mining areas along the river which have not yet been studied, to ensure long term management of the heritage resources.

### **2.2 Previous studies**

In addition to fieldwork, we have made a survey of published and unpublished literature on the archaeology of the area in an attempt to get as broad a view possible of the distribution of sites. It must however be noted that very little archaeological research has been undertaken here and published material is scant. The engravings are perhaps an aspect of the archaeology that has elicited most comment from a broad range of visitors to the area. While their observations provide us with some confirmation of the location of engraving sites, other comments on the content are often speculative and therefore not very informative. The information obtained from this exercise has been integrated into the report and a full bibliography is presented at the end of the report.

### **2.3 Method**

The Trans Hex mining concession is quite large extending along the river from Koeskop in the south to just beyond Reuning (Sendelingsdrift) in the north (see Figure 1). In reality, only a relatively small part of this area is mined at present although ongoing prospecting may mean that the situation could change in the future.

In preparing this report, we have looked at different parts of the landscape in order to gain an understanding of the location of human occupation in the past while at the same time remaining cognizant of the need to assess impacts from current mining operations. This has been achieved by looking at the areas in and around active mining, as well as at areas where mining has taken place in the past. We have also looked at areas where no mining has, or is taking place at present, to test if our understanding of settlement pattern is correct.

The survey has been done by walking and driving through sections of the landscape and recording site locations. The locations have been plotted on extracts from enlarged aerial

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<sup>1</sup> This is the grammatically correct term. It is the common-gender plural of 'Khoe' in Nama and Korana and means more than one person, or people (Deacon 1999:129-130).

photographs and in addition, digital, slide and video photographic coverage of sites was kept and notes were made about the content. Sites were also assessed for uniqueness and research potential. While GPS fixes have been obtained for sites, these remain too inaccurate for use in planning.

### **3. BACKGROUND HISTORY OF THE NORTHERN CAPE**

The history of the Western and Northern Cape is long and complex spanning many thousands of years. Our current understanding of the history is based on archaeological observations as well as the surviving written texts from the colonial period. Broadly, four distinct periods of this history may be defined. These are summarised below to contextualise the findings made during this study.

#### **3.1 The Early Stone Age (ESA)**

Archaeological research has demonstrated that the earliest stone artefacts in South Africa, dating to about 1,7 million years ago, are found at the Sterkfontein caves in Gauteng where they are associated with the remains of *Homo habilis*. These tools are crude by later standards and have been assigned to the Oldowan industry. At approximately 1,5 million years, distinctive stone tools called handaxes appear and are believed to coincide with the emergence of the more evolved *Homo erectus/ergaster*. These tools appear to have been made according to much the same pattern until about 200 000 years ago.

Literally millions of handaxes have been found throughout South Africa, usually in places associated with rivers, pans or springs and, on rare occasions, in caves. They were recorded at a number of locations in South Africa as early as 1881, and even then the similarities with the oldest stage of the European Palaeolithic was noted. In the western Cape, handaxes were first described from the Stellenbosch vineyards in 1899 (Peringuey 1911), and because of their abundance in that area, from about 1926, sites with these tools were described as being part of the Stellenbosch culture. Today, handaxes are described as Acheulian, to emphasise the similarity with stone tools found particularly at St Acheul in France, and with those in the rest of Africa and parts of Europe and the Far East (Sampson 1974).

The favoured raw material for the production of Early Stone Age tools was quartzite. It is no coincidence therefore, that ESA sites are often found next to river beds where large quantities of water worn quartzite cobbles can be found. Since few stratified instances of these artefacts are found in association with organic remains, study of other aspects of life at that time remains difficult.

#### **3.2 The Middle Stone Age (MSA)**

Large cave sites discovered in the Kalk Bay mountains on the Cape Peninsula in the 1920s, contained deep deposits with large numbers of more refined stone artefacts in the lower parts of the sequences (Sampson 1974). These were recognisably different from ESA artefacts and had many similarities to artefacts found in the Palaeolithic sites of Europe. Similar kinds of artefacts have since been found on many open sites and on rare occasions, in the deposits of caves throughout South Africa. A larger selection of fine grained raw material was used for the manufacture of artefacts as new techniques of production, and secondary working into intricate tools, required more predictable flaking properties. Research has shown that these artefacts belong to a period known in South

Africa as the Middle Stone Age and date to the period between 40 000 and 200 000 years.

In some very rare instances where circumstances permit, fossil animal bone and marine shells have been found in association with the artefacts giving some indication of the diet and lifestyle of the makers. MSA people are thought to have been an early form of modern humans (*Homo sapiens*) who were capable of hunting large animals. Current theory is that early *Homo sapiens* evolved into fully modern form in Africa and migrated to Europe via the Middle East some 40 000 years ago (Klein 1989). It is believed that these new migrants may have been responsible for the demise of the Neanderthal populations in Europe. There has been a resurgence of interest in this period and a number of sites in the Cape are being investigated by local and international archaeological teams. Development of new dating techniques extending beyond the range of radiocarbon age determinations, is greatly enhancing this research.

### **3.3 The Late Stone Age (LSA)**

This period has been subjected to detailed study by archaeologists. Late Stone Age people ancestral to the San (Bushmen) and the Khoekhoen (Hottentots) of early colonial times lived in southern Africa some 40 000 years ago.

During most of the Holocene (last 10 000 years) southern Africa was inhabited by small groups of San hunter-foragers who were highly mobile. They hunted with bows and arrows, snared small animals and, where groups lived close to the shore, gathered shellfish and other marine resources, a habit which resulted in the use of the term "Strandlopers"<sup>2</sup>. They used digging sticks, often weighted with bored stones, to find a variety of subterranean vegetable foods, particularly iridaceous bulbs. Having a prodigious knowledge of the environment and the resources around them, their cultural repertoire included a complex belief system, aspects of which are represented in many rock painting and engraving sites in the northern and western Cape. Many paintings and engravings are understood as being closely linked with shamanistic ritual or belief (Lewis-Williams 1981).

The occurrence of sheep and pottery remains in archaeological sites dating to the last 2000 years and younger points to the appearance at that period of a new economy and way of life based on pastoralism. It seems most likely that groups of people, probably the ancestors of the Khoekhoen of colonial times adopted pastoralism, in this case with herds of fat-tailed sheep and later cattle (Smith 1987, Sealy and Yates 1994). With the advent of pastoralism, or soon afterwards, ceramic technology was introduced. While some San groups appear to have co-existed with pastoralists, it has been suggested that hunter-foragers were marginalised moving to areas where grazing opportunities were less attractive to pastoralists (Parkington et al 1986). The precise origin of early stock keeping and ceramic technology in southern Africa is still unclear but it is suggested that it was introduced from the north.

### **3.4 The Colonial Period**

When the Dutch colonists arrived to set up a replenishment station at the Cape in 1652, they encountered several Khoekhoen groups. Some of these groups lived for part of the

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<sup>2</sup> It has not been proven that there were indigenous groups who lived exclusively at the coast and entirely on marine foods, although hunter-foragers may have become more dependant on them when access to traditional food sources was limited by the influx of first, Khoekhoen pastoralists, and later European settlers.



year on the Cape Peninsula as part of their seasonal round, while the larger groups grazed herds of sheep and cattle in the Tygerberg Hills and Cape Flats and further afield.

First contact between Europeans and indigenous southern African pastoralist groups had however occurred much earlier when Portuguese mariners sailing down the coast in the 15th and 16th centuries had bartered supplies of meat from the Khoekhoen that they encountered at places such as Saldanha Bay (Smith 1985).

With the increase of shipping rounding the Cape, it was inevitable that some ships would be wrecked. Encampments were set up by the survivors of such wrecks, and they often recount meeting and trading with the indigenous groups (Raven-Hart 1967, Smith 1985) so that by the time that Van Riebeeck arrived, a history of contact had already been established.

At first the relationship between the Dutch and the Khoekhoen was one of co-operation, with a great deal of bartering taking place primarily to secure regular supplies of fresh meat. However, as the colony grew and free burghers were granted lands further away from Cape Town, grazing lands previously available to the Khoekhoen were encroached upon. The conflict for land began a process of attrition which, when accompanied by genocidal government policies and several deadly smallpox epidemics, broke down the indigenous population and its political structures. Those who survived were pressed into service as farm labour or settled around several large mission stations that had been established in the Cape.

According to the writings of early colonists, it appears that some San groups still existed in the Cape well into the colonial period. They pursued a largely hunting and foraging lifestyle and were often encountered in the more mountainous regions where there was less possibility of conflict with either the Khoekhoen or Dutch settlers (Parkington *et al* 1986). In the Roggeveld and further inland in the Karoo, the San suffered from repeated commando raids from the 1770s, but remnant groups maintained degrees of independence for another century (Deacon and Dowson 1996). Namaqualand and the upper Karoo were amongst the least desirable parts of the subcontinent in terms of early colonial penetration, and some Khoekhoen and San continued aspects of their traditional way of life and cultural repertoire here until they were displaced in the 19th century. The accounts of early travelers through Namaqualand, most notably that of Robert Jacob Gordon in 1779, clearly attest to the presence of indigenous hunter-forager and pastoralist groups in these areas (Raper & Boucher 1988). Similarly, the invaluable Bleek and Loyd records from people living in the Karoo in the 1870s provide insights into /Xam San life and folklore on the eve of their extinction (Deacon and Dowson 1996). The Nama, originally one of the Khoekhoen groups met by Gordon, still practice a form transhumant pastoralism in reservations in Namaqualand today.

The mountainous terrains of the Cape Fold Belt provided refuge in the early colonial era for Drosters (run-away slaves), many of whom forged links with the independent Khoesan in the area (Penn 1994). Colonial settlement was extended inland into the Roggeveld and the Hantam (Calvinia) in the 18th century.

#### **4. DESCRIPTION OF THE STUDY AREA**

The area that has been studied lies on the southern side of the Orange River in the area that is known as the Richtersveld. Lying some 40 km inland from the coast, the Richtersveld is a mountainous desert bisected by the Orange River and extending north

into southern Namibia. While water is available all year round along the Orange, and from the many springs that are found in the mountains, moisture derived from regular coastal mists that roll in from the cold Atlantic waters on the coast, sustain many of the inland plant and animal species on a year round basis. Occasional rain occurs during thunder storms with flash floods tending to occur during such times.

Although the presence of large dams on the Orange River maintains the water level all year round, in the past water would have been most plentiful during the summer, when rain is experienced in the greater catchment, and much lower during the winter. At periods of low water many shallow sand bars provided points where the river could be crossed. Many place names still reflect points where river crossings could be made, e.g. Sendelingsdrift, Bloeddrift etc. Periods of flood brought with them large amounts of silt and gravel which were deposited along the banks of the Orange as a series of terraces. Diamonds are found in the older gravel beds, and mining them makes for the dominant economic activity of the area today. In the past, other exotic rocks washed down amongst the gravels from higher upstream, were prized by the early inhabitants of the area for the production of stone artefacts.

The topography can be described in its simplest terms as generally mountainous except for areas along the Orange river where wide expanses of old flood plain can be found. Numerous water courses with their origin in the mountains bisect the silty floodplain before entering the Orange. A band of vegetation on average 200m in width grows along the Orange and consists mostly of acacia. Vegetation inland consists largely of succulent species, while trees are found along water courses.

While there are no large herds of grazing antelope to be found in the area today, troops of baboons frequent the mountains and periodically come down to the river to partake of both the water and the freshwater crustacea that live amongst the gravels, and Vervet monkeys inhabit the vegetation belt along the river. Fresh water fish, such as the catfish and the yellowfish are found in the Orange and judging by the amounts of bone in some of the ash middens on archaeological sites, early inhabitants made good use of this protein source. Before the building of the dams, there may have been seasons when fish were very easy to procure i.e. during the winter months when the river level dropped.

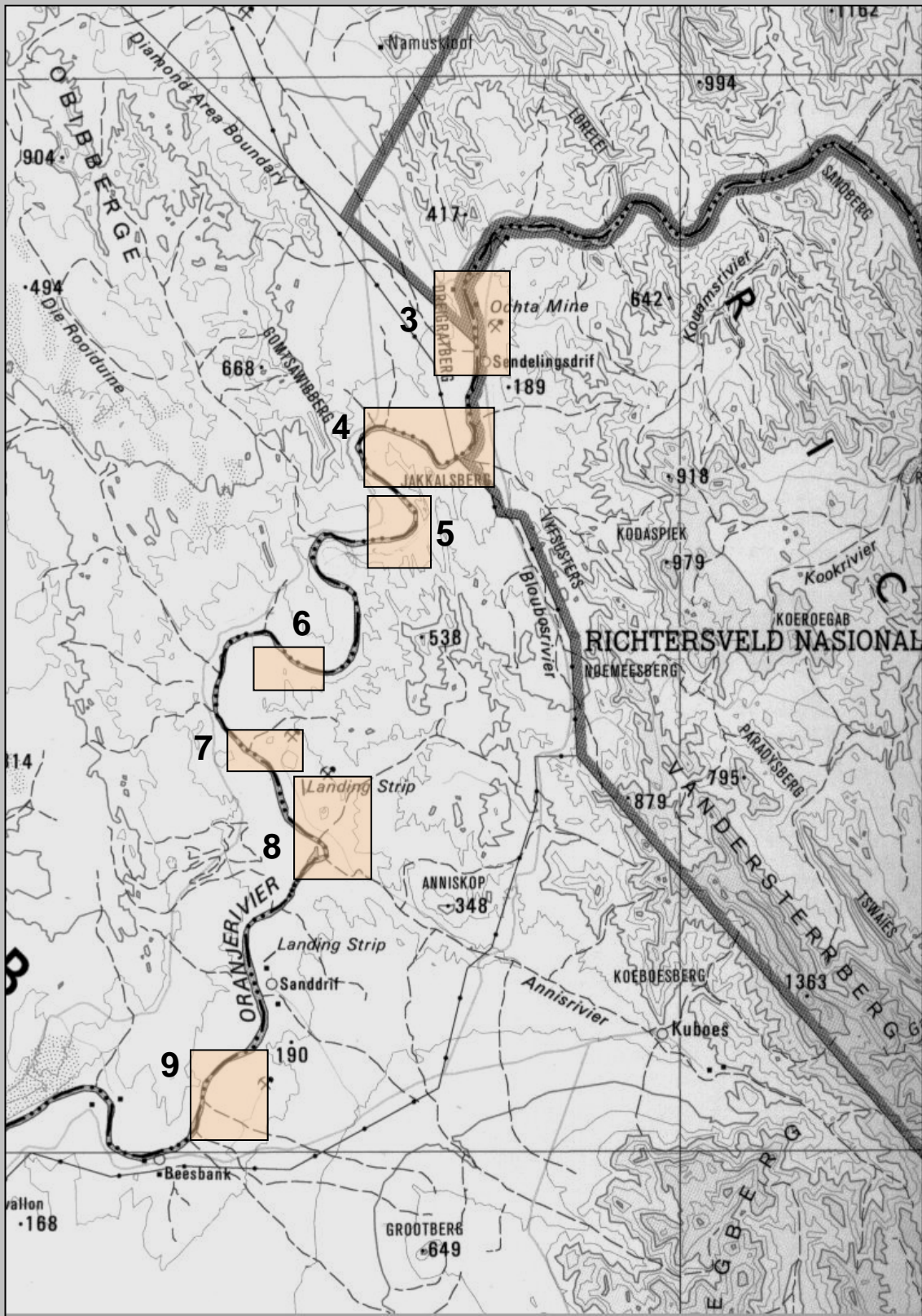
While many of the local inhabitants are employed in diamond mining, many are still pursuing a nomadic pastoralist lifestyle. Even those people who have settled in the more permanent villages such as Khubus or Sanddrift, often have huts along the Orange River where they stay while tending goats.

## **5. RESULTS OF THE SURVEY**

As the survey focussed on several areas (see Figure 1), description of the sites has been divided accordingly with site designations reflecting sub-regional locations within the larger areas. While the three areas coincide with the main mining zones, it will be seen that sites quite distant from mining are included. Presented below is a summary of the archaeological observations on an area by area basis. A summary of age and content of sites can be found in Table 1 and site locations are shown on extracts from aerial photographs (Figures 3-9), and the positions of the extracts is shown on Figure 2. It should be noted that areas that have been searched are shown within dotted white lines on the photos to differentiate areas where there are no sites from areas which have not been searched.

SITE	TYPE	±AGE (YRS BP)	Stone	Ceramics	Oes	Bone	Shell	Specials
AACE 1	Artefact scatter	<2000	x, lgs					
AACE 2	Artefact scatter	ESA,MSA,LSA	x					
JKB A/B	Artefact scatter	>2000	xxx, spec	xxx, dec	xxx, dec,bds	xxx	x	ash, burial
JKB C	Artefact scatter	>2000	xx, scr,spec	xx	x, dec,bds	x	x	
JKB D	Graves	<300						
JKB E	Artefact scatter (minimal)	>2000	x	x, dec		x		
JKB F	Artefact scatter	>2000	xxx, ugs,lgs,spec	xxx, dec,lug	xx, dec,bds,wc	x	xx	
JKB G	Artefact scatter	>2000	x	x	x	x		
JKB H	Artefact scatter	>2000	x, spec	xxx, lug,dec	xxx, bds	x		
JKB J	Graves	>300						
JKB K	Artefact scatter	>2000	x, spec	xxx	xxx	xx	x	
JKB L	Artefact scatter	<2000	xxx, seg,scr,bkd,spec		xxx, dec,bds	x	x	
JKB M	Artefact scatter	>2000	x	x, dec	x	x		ochre cakes
JKB N	Artefact scatter	<2000	xx, bkd,scr,seg,bscr		x, dec,bds	x	x	
JKB O	Artefact scatter	>2000	x, spec	xx	xxx, bds	xxx		burial
JKB P	Artefact scatter	>2000	x	xxx	x	x		
JKB Q/R	Artefact scatter	>2000	x	x, dec	x, bds	x		
JKB S	Graves	>300						
MEHL 1	Ruins	>300						bottles,ceramics
MEHL 2	Artefact scatter	>2000	x	xx, dec	x, dec	x	x	
NXP 1	Engravings	<300						
NXP 2	Artefact scatter (minimal)	<2000	x		x, dec	x		
NXP 3	Graves	>300						
RN 1	Engravings	<300						
BLD 1	Engraving	<300						
BLD 2	Engraving	<300						
BLD 3	Engraving	<300						
BLD 4	Engraving	<300						
BLD 5	Engraving	<300						
BLD 6	Engraving	<300						
BLD 7	Engraving	<300						
BLD 8	Engraving	<300						
BLD 9	Engraving	<300						
BLD 10	Artefact scatter (minimal)	<2000	x		x, bds			deposit
BLD 11	Artefact scatter in shelter	>2000	x	x	x	x		deposit
BLD 12	Engraving	<300						
BLD 13	Engraving	<300						
BLD 14	Engraving	<300						
BLD 15	Artefact scatter (minimal)	?	x		x, bd	x		stone circle?
BLD 16	Engraving	<300						
BLD 17	Engraving	<300						
BLD 18	Engraving	<300						
BLD 19	Engraving	<300						
BLD 20	Engraving	<50						
BLD 21	Artefact scatter	>2000	xxx, spec	xxx, dec	xxx, bds	xxx		hearths
BLD 22	Artefact scatter	<2000	xxx, bscr,mp,bkd	x	xxx, dec,pend	xxx	xx	
BLD 23	Artefact scatter	>2000	xxx, spec	xxx	xxx, bds	xxx	x	hearths, burial, Cu point
BLD 24	Artefact scatter	<2000	xxx, seg,trap,point		x	x		
BLD 25	Artefact scatter	<2000	x, seg			x		
BLD 26	Engraving	<300		x				
BLD 27	Engraving	<300						
BLD 28	Engraving	<5						
BLD 29	Engraving	<300						
BLD 32	Artefact scatter	>2000	xxx	xxx	xx, bds	x	x	burial, ash patch
BLD 33	Artefact scatter	<2000?	x, bkd scr	x	x, bs			
BLD 34A	Artefacts scatter	<10 000	x					MSA
BLD 34B	Engraving	<300						
BLD 35	Engraving	<300						
BLD 36	Engraving	<300						
BLD 37	Artefact scatter	<2000	x, seg,mp,scr,bscr		x, bds,dec			some MSA reuse
BLD 38	Artefact scatter	<2000	x, bscr	x				
BLD 39	Artefact scatter	>2000	xxx, scr,seg	x	x, bds	x	x	mixed assemblages
BLD 40	Artefact scatter	MSA/ESA	x, handaxe, h/st					
BLD 41	Graves	LSA						
KK 1	Artefact scatter (minimal)	>2000	x, scr	x	x	x		
KK2	Artefact scatter	>2000	x	xx	xx, bds	x	x	ash
KK3	Graves	>100						

**Table 1:** Summary of archaeological sites



**2**

Location of the aerial photos



## 5.1 Reuning

(More commonly known as Sendelingsdrift and sometimes called Ochta)

### 5.1.1 Site location

Judging by the number of archaeological sites found in this area, the wide expanses of old floodplains inland of the vegetation belt along the Orange river were obviously favoured in the past for human occupation. Having examined a good deal of the floodplain between the mining areas at Nxodap and Ace it would appear that most of the occupation was located between Reuning and Jakkalsberg, while some sites are to be found south of Jakkalsberg as well. However as one moves south, the wide, silty floodplain gives way to mountain ridges extending all the way to the river. Site locations are shown on Figures 3, 4 and 5.

We have noticed that sites with occupational debris tend to be located close to dry watercourses (which would flow during times of rain). Although we have not been able to test this, it appeared that modern Nama settlements also favour similar locations. The floodplains have also been favoured for graves. A single small rockshelter on the north west end of the Jakkalsberg showed no sign of occupation.

### 5.1.2 Site types and age

A range of sites was found including ESA/MSA stone scatters (usually on the higher gravel terraces) (AA2) (Figure 3), and what we believe are pre-pastoralist encampments (pre-2000 BP) (JKB L, JKB N, NXP2)(Figures 4 and 5), and pastoralist encampments (2000 BP–1800 AD) (JKB A/B, JKB C, JKB E, JKB F, JKB G, JKB H, JKB K, JKB M, JKB O, JKB P, JKBQ/R, ME2) (Figures 4 and 5). A single colonial site (ME1) (Figures 4) is believed to represent the remains of part of the original Sendelingsdrift mission station (Plate 1). Rock engravings are found immediately north of Reuning on dolomite exposures(RN1)(Figure 3) and on slabs that have been dislodged from the main outcrop. While there are engravings here that are of undoubted vintage, some recently executed graffiti is also present (Plate 2). A single engraved dolomite rock, obviously washed down in the gravels, was found to the east of Jakkalsberg (Plate 3).

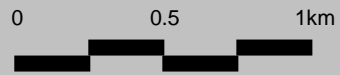
Numerous graves have been identified. Some of these show Christian influences (rectangular mounds of stone with crude headstones) and therefore date to within the last 200 years (JKB J, JKB S, NXP3) (Figures 4 and 5) (Plate 4), while others are more traditional in form with circular stone cairns covering them (JKB D) (Figure 4) (Plate 5). These most probably predate the colonial era, although at this stage it is impossible to say by how much. In one case a burial of a child was found eroding out of silts and did not appear to be covered by a cairn (Plate 6).

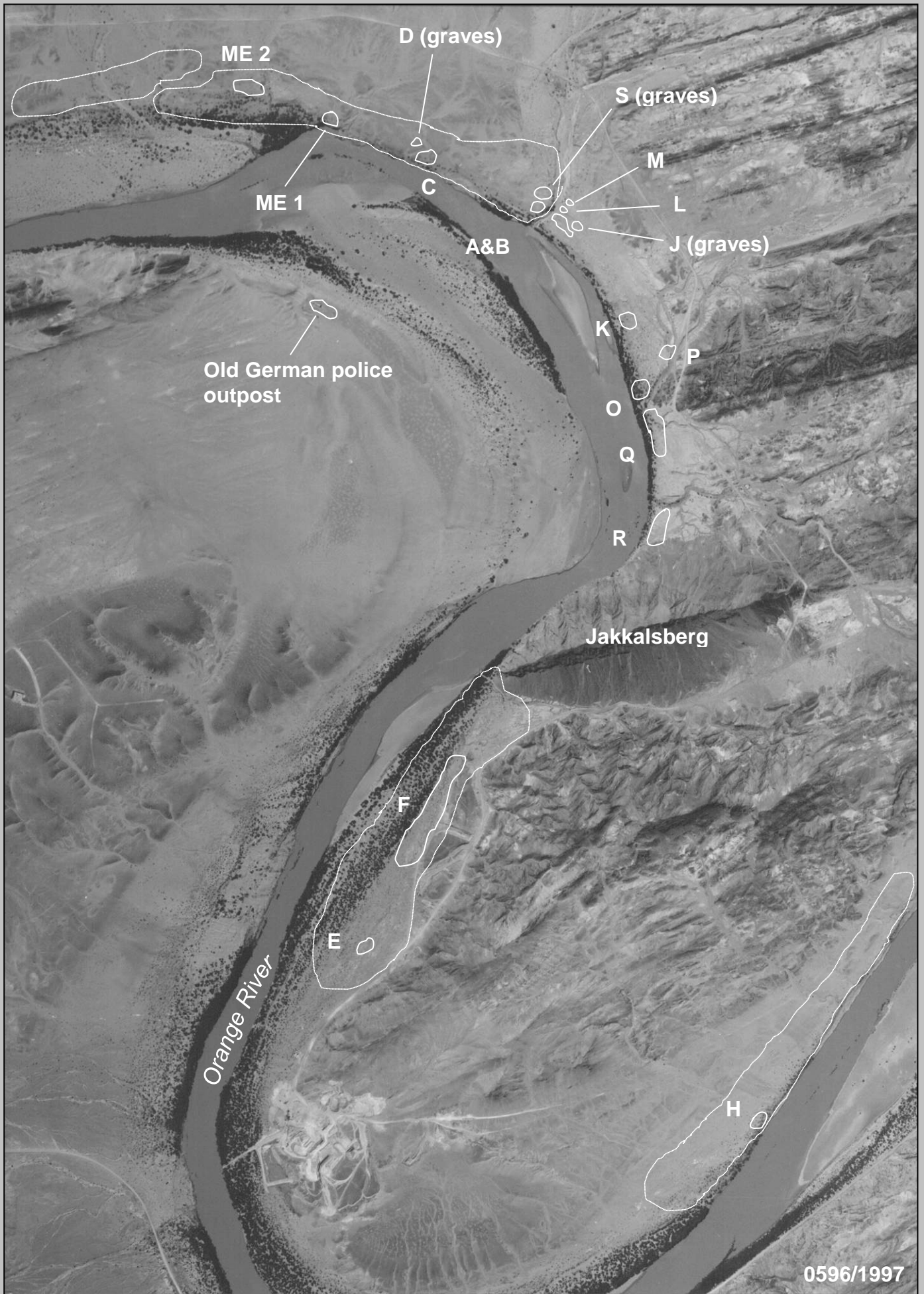
Excavations have been undertaken on the sites of Jakkalsberg A & B (Miller & Webley 1994, Brink & Webley 1996, Webley 1997). Based on the artefact content and age, these have been classified as herder sites. Radiocarbon dates from hearths on Jakkalsberg A place the occupation in the 7<sup>th</sup> century AD, with dates from site B being only slightly older. We would expect other sites like these containing indigenous ceramics to also fall within the last 2000 years.



**3**

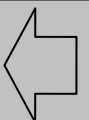
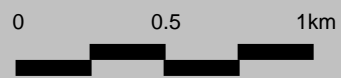
**Location of archaeological sites**





# 4

Location of archaeological sites





**5**

**Location of archaeological sites**





## 5.2 Bloeddrift

(also sometimes called Auchas, the Nama name, or Daberas)

### 5.2.1 Site location

Of the areas examined by us, Bloeddrift contains by far the greatest concentration of archaeological material. Most of the sites consist of engravings on dolomite surfaces, while a number of occupation sites are also present on the flood plain along the river. The large number of engravings is surely related to the amount of exposed dolomite here, where a vein of this material has manifested itself in the form of koppies and ridges. Figures 6, 7, and 8 show site locations.

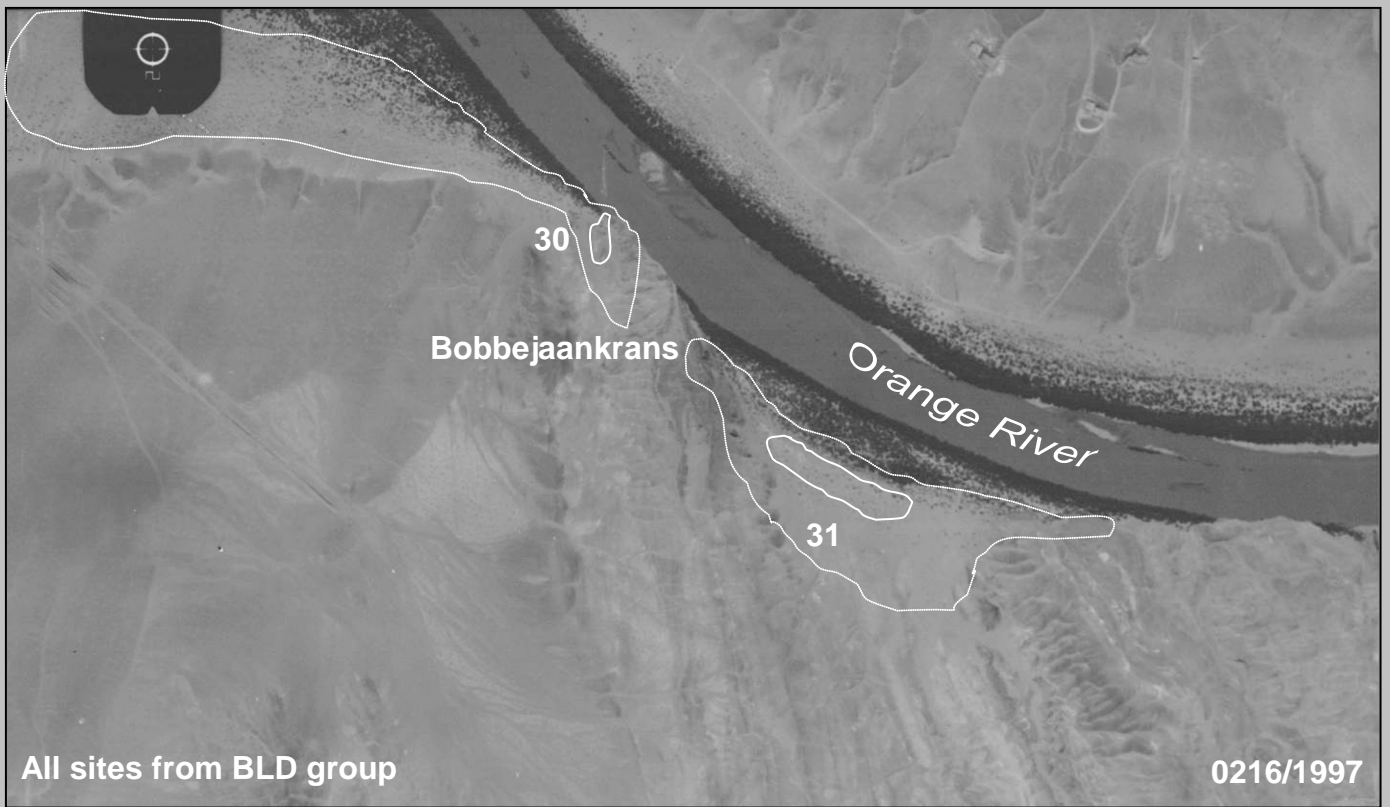
As was the case at Reuning, we have noticed that the large herder encampments (post 2000BP)(BLD21, BLD23, BLD32) (Figure 8) tended to be on the upper terrace along the Orange river close to dry watercourses (Plate 7). Most of these were observed to be eroding out from beneath columns of slackwater sediments (Plate 8) , while pre-ceramic sites occur close by in small deflation hollows (BLD22, BLD24, BLD25, BLD33, BLD37, BLD38) (Figure 8). These contain formal artefacts made on siliceous materials and also include small ostrich eggshell beads. This pattern is virtually the same near Jakkalsberg in the Reuning area. Two large water courses enter the Orange at Bloeddrift and a concentration of sites is found close to these. One of these dry channels is the Annis River, and it is probably no co-incidence that travelling up the course of this river leads to the small Nama village of Khubus. The river bed is used at present as a route to take herds of goats down to the Orange. The other major water course in the area has cut deeply into the bedrock between two of the prominent koppies and many engravings are found on the polished dolomite slabs in the bed.

The only rock shelter that we observed that contained any sign of occupation lies close to Bloeddrift at a prominent rock outcrop known locally as Bobbejaankrans (Plate 9). Modern Nama use of the shelter for penning goats has disturbed the earlier deposit, but potsherds and stone artefacts can be found on the talus slope. Engravings are present close by. On a subsequent visit we were informed by Mr. Tokkie Louw, that there are other rockshelters in the area, apparently with occupational deposits. We have unfortunately not been able to confirm this report yet.

### 5.2.2 Site types and age

While we have found occupation sites in the vicinity of engravings, it is not yet possible to directly link the engravings to either the pre or post 2000BP sites. Obviously there are some images i.e. those depicting horses and riders, wagons and oxen, and women in dresses that can be dated to the colonial period (Plates 10 and 11), as can recent graffiti, but these are in the minority. Some images are clearly older than others and show a lot of weathering. These can only be seen when the light strikes them at the right angle (Plates 12 and 13). A single image at Bloeddrift, consisting of a finely pecked male human figure, closely resembles painted examples from the Cederberg Mountains (Plate 13A). The painted examples are believed to have been executed by San hunter/gatherers and it may be the case with the engraved figure as well. The majority of engravings at this stage though, remain undated and the content enigmatic (Plates 14 and 15).

Sites containing MSA and ESA artefacts have been located on top of two of the koppies (BLD34, BLD40) (Figure 8) and one or two areas of engraving are present at this altitude as well. There is both patinated and unpatinated artefactual material visible. A single handaxe was observed at BLD 40. A pre-ceramic LSA site found closer to the river



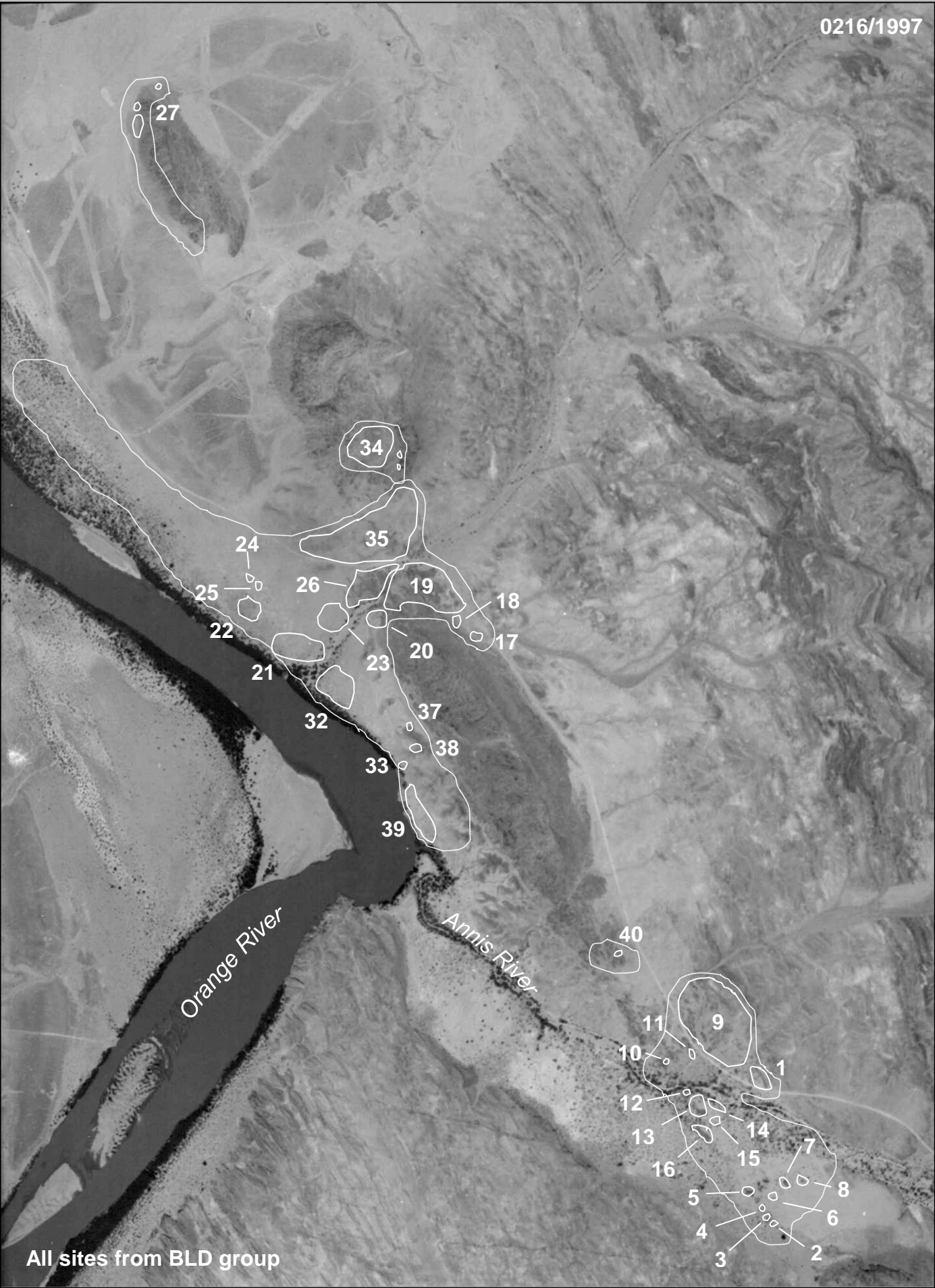
**6** Location of archaeological sites

0 0.5 1km



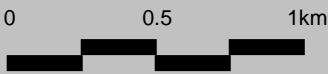
**7** Location of archaeological sites

0 0.5 1km



# 8

Location of archaeological sites



(BLD37) (Figure 8), contains clear evidence that flakes and blades of MSA age have been re-utilised for the production of artefacts and it may be that the MSA site on top of the koppie was raided from time to time for raw material. This seems unusual as siliceous raw materials are abundant in the river gravels. Perhaps it was not the material *per se* that was desired but rather the large flakes and blades that were the target?

During Early June of 1999, additional work was undertaken as part of a research exercise on site BLD23. The site was gridded and contents of the site recorded spatially by quadrant. Items such as beads, decorated pottery, lugs, hearths and manuports were plotted and one of the hearths was excavated to determine the thickness of the ash and to acquire a sample for radio carbon dating. Some identifiable bone was collected for purposes of identification. These observations will be published later in the year.

### 5.2.3 Comments

While there is not much literature specifically covering archaeology of the Richtersveld, when one does come across something it usually mentions the engravings at Bloeddrift. It seems that one specific site (BLD 28) (Figure 7) was well known, but visitors failed to recognise the presence of many others, even though it seems that they would have to have been passed by *en route* (Fock 1974: 118-120, Carstens et al 1987: 34-35,144). Today the road to the diamond diggings passes within a few meters of many engravings and the observant driver can see them from the car.

This suggests that there is indeed a concentration of engravings here which have been recognised by both locals and scholars who have passed through the area. While it may be reasonable to believe that this means that similar concentrations do not occur elsewhere in the area (because surely local knowledge would have highlighted the presence of others in different locations had they been there), this is not necessarily so. I have been informed by Mr. Robert Slingsby, an artist who has been interested in the engravings for many years, that he is aware of only one other major area of engravings, and that is to the west of Vioolsdrif (Slingsby, pers com).

Given the short time that we were in the area and the relatively small area that we were able to search, we found many more engraved sites than we were led to believe existed. It is therefore possible that other more remote areas contain similar engravings. Perhaps it is the case that, as with painted sites in the western Cape, there is general disinterest in them from the local community. There may be longstanding political reasons for this disinterest, not least being denigration of indigenous peoples to the extent that locals have possibly deliberately avoided tracing ancestry back to the first inhabitants of the area.

The greater proportion of the sites that have been located in this area do not appear to be threatened by mining at present. Past mining activities though have resulted in debris being dumped over engraved slabs (Plate 16), and engraved boulders were pushed away from their original locations during the preparation of a landing strip. It is possible that other engraved slabs were lost during this process. Because of the large amount of dolomite occurring in the area, great care must be taken when opening new mining areas, and in the location of spoil heaps and processing plants and related mining infrastructure. Borrow pits for road maintenance should also be carefully located.

## **5.3 Koeskop**

### **5.3.1 Site location**

This is perhaps the most heavily mined of the areas that we have looked at where mining takes place relatively close to the Orange River. In broad terms, the geomorphology of the area adjacent to the river is similar to both Bloeddrift and Reuning i.e. a vegetated belt and older silty floodplains inland. Perhaps one difference might be that the floodplains are not as elevated as they are at the other two locations. The positions of the sites are shown on Figure 9.

### **5.3.2 Site types and age**

Only 3 sites have been located in this area. One site is a relatively modern graveyard (KK3), while the other two sites are pre-colonial, with KK2 suggesting that it was a herder encampment and like others of this type, is eroding out from below silty flood deposits. The location of the pre-colonial sites (KK1 and KK2) closely corresponds to a prominent dry water course and we are of the opinion that both post date 2000BP.

## **5.4 Areas not containing sites**

The dotted areas shown in Figures 3 – 9, indicate approximate areas that have been searched. It can be seen from these that quite large areas are devoid of traces of occupation but equally quite large areas remain unsearched. A number of quick forays were made into the hills to the east of the main road between Reuning and the Five Sisters. No sites were located.

## **6. DISCUSSION OF OBSERVATIONS**

This study has not involved a comprehensive look at every piece of the landscape in the mining area. First and foremost, this has been an exercise to understand where sites are located in the landscape and to establish for the mining company, where they may have to embark on programs of mitigation. While most of the sites that we have located are close to the river, this does not mean that our searching was limited to this part of the landscape. We have looked at some inland areas, but in all cases were unable to locate any sites, apart from those at Bloeddrift. As mining is generally located closer to the Orange river our efforts have had to be primarily focussed there.

From our own observations and those of others it would seem that the archaeology is confined to two types of sites, namely open occupation sites and rock engraving sites. Only a single instance of minor occupational debris in a rock shelter was observed although it has been brought to our attention that other rockshelters are found in the dolomite hills around Bloeddrift. Open occupation sites are made up by two distinct types, each of which contains a different range of artefacts. While it is possible that these different assemblages represent coeval, but culturally different groups (see Smith 1995:302), it is more likely that the observed differences are time related and therefore represent the layering of human occupation of the area since the mid-Holocene (c5000BP). The excavations of Jakkalsberg A and B, herder sites, have produced radiocarbon dates of  $1330\pm60$ ,  $1300\pm25$ ,  $1420\pm25$  and  $1380\pm50$  (Webley 1997). Excavations of a herder site at Arrisdrift by Eric Wendt produced similar dates  $1200\pm50$ ,  $1250\pm130$ ,  $1300\pm50$ ,  $1280\pm40$  (Vogel & Visser 1981).



**9**

**Location of archaeological sites**



The artefactual remains on the herder sites observed by us, is consistent and is corroborated by Webley. These sites contain large amounts of indigenous ceramics, informal quartz assemblages, large ostrich eggshell beads, bone (sheep, fish noticeable) and hearths and/or ash heaps. Similar assemblages have been noted by Wendt at Arrisdrift and Robertshaw on the northern bank of the Great Fish River (Robertshaw 1978:149-163).

The apparent close association between areas of “dense” human occupation and rock engravings seems unequivocal, although we cannot establish any direct links between the two at this early stage of investigation. Some of the engravings depict aspects of colonial life and thus must date to the 18<sup>th</sup>, 19<sup>th</sup> or early 20<sup>th</sup> centuries, while most other engravings are more enigmatic, consisting of geometric shapes and areas of pecking that are difficult to date based on the subject matter alone. Beaumont et al (1995:248) suggest that pecked engravings post date fine line engravings (of which none have so far been observed in this study) and most likely were made after 2000 BP. There seems to be a strong suggestion that engravings are only found where suitable outcrops or exposures of dolomite are found. Outcrops such as these are numerous at Bloeddrift and not surprisingly this is where most engravings are to be found. Minor occurrences of engraving have been found on other dark, non-dolomitic rock types (near Nxodap) but these seem to be the exception rather than the rule.

Perhaps the most widely accepted explanation for the geometric shapes that are so common in the Richtersveld, and other sections of the arid interior, is that they represent entoptic hallucinations (Dowson 1992). In simpler terms, it is believed that these geometric shapes are seen by shamans during trance states, and are engraved on the rocks for ritual purposes. Clouds of dots, grids and spirals are suggested to be stage one hallucinations (Dowson 1992), with different patterns being observed during other stages. The beautifully engraved human figure at Bloeddrift (Plate 13A) suggests that other forms of engraving were practiced, but why so irregularly remains a mystery. Perhaps more of these exist to be found with more extensive exploration. While one or two animals have been noted at Bloeddrift (at least one ostrich and one or two other indeterminate quadrupeds), identifiable species such as gemsbok and rhino have been seen in the Sperregebiet Area 1 on the opposite side of the river where the dolomite exposed at Bloeddrift continues. Observations in the Sperregebiet seen during a recent visit, and examples of engravings in Hellskloof near Vioolsdrif shown in Dowson’s book (1992), show great similarities to those of this study area. It was these very Hellskloof engravings that inspire the art works of Robert Slingsby, who has some alternative explanations for the meaning of the images (Slingsby 1998). His interpretation, is that there is a cosmic connection and that crop circles, which appear in wheat fields in Europe, bear many similarities to the engravings. This explanation is unlikely to find favor among the more conventional scientific community but are nevertheless mentioned as they represent another point of view.

The conclusion that must be drawn from the site locations that we have, is that settlement focussed on the river. This seems to be the case for all types of sites and pertains particularly to those dating to the mid/late Holocene. Reasons for sites locating close to the river could be the availability of numerous resources including food (game attracted to the water, fish, freshwater shellfish, crabs, various plants), wood (for fires and for making hut spars and other items), and, procurement of fine grained, siliceous materials and quartzites found in the river gravels that were used for the manufacture of stone artefacts. Although it does not appear that people lived within the vegetation belt (a situation that seems to persist to this day – although the belt may have shifted with the meanderings of

the river), both shade and grazing for goats is provided here. A reason for this may be that prior to the building of the dams on the Orange, flash floods would have occurred. Although we cannot speculate extensively on the reasons at this stage, it appears that the herder encampments are, more often than not, located immediately adjacent to prominent dry water courses, usually running perpendicular to the Orange River. Similar site locations are noted on the Namibian side of the river.

In most cases herder sites have been found to be eroding out from beneath deposits of silt. This implies that periodic high floods have covered them. The fact that spatial patterning still seems to be preserved on some sites (hearths and ash heaps) seems to further imply that flooding reaching up to the area where the sites occur is of reasonably low energy and is a depositional rather than an erosional environment. In general, flooding seems to have been confined to the lower terraces and flooding on the upper ones must have occurred at times of exceptionally high rains inland (see Zawada et al, 1996).

Since the building of the dams upstream, regular high flood levels seldom occur. This has meant that the silt covering the sites is not being renewed. Erosion of the silts has exposed the sites, and while this is good from the point of view of site visibility, they are now extremely vulnerable to further erosion. Another serious flood could remove all trace of these sites. Given that the settlement history of the area is so sparse, loss of any occupation sites for any reason, be it natural or man-made would constitute a serious loss in archaeological and historical terms.

## **7. HERITAGE MANAGEMENT LEGISLATION**

There is often a misconception that history is based on written texts alone. In actual fact, the history of humankind is preserved in many other forms as well. While written texts in their various forms do indeed provide invaluable information, buildings, art, antiques and many other artefacts, are also aspects of history which in themselves tell a tale.

It is common knowledge that written texts document only a small fraction of the trajectory of human history, and the balance must be inferred from the remains of activities which people have left behind. This is particularly true in Africa where the human species evolved some 4 million years ago, but written records have only existed in some areas for last few hundred years. The bulk of this history must therefore be gained from examining the remains of human activity in all its forms which are preserved on archaeological sites. The perception that old buildings and archaeological sites are irrelevant is therefore clearly misguided.

Historical buildings, archaeological sites and other artefacts are non-renewable and once destroyed can never be replaced. This realisation has resulted in the formulation of statutory controls for the preservation of such resources in many countries in the world today. The International Council on Monuments and sites (ICOMOS), of which South Africa is now a member along with 84 other countries, seeks to apply the highest principles of conservation to the Monuments and Sites of the world (Deacon ed. 1996).

South Africa has always had an appreciation of its past and for years has had legislation to protect aspects of it. Legislation has in the past unfortunately tended to neglect the full spectrum of heritage, a shortcoming that has been rectified with promulgation of new legislation. The following sections deal with the legal aspects surrounding heritage resources.



## 7.1 Background to South African heritage legislation

Certain archaeological sites in South Africa have been afforded legal protection since 1911 when the Bushmen Relics Protection Act became the first body of legislation that specifically protected artefacts and sites of 'South African Bushmen or other aboriginals'. The first South African conservation authority, the Commission for the Preservation of Natural and Historical Monuments of the Union, was established in terms of the Natural and Historical Monuments Act of 1923. This body was more commonly known as the Historical Monuments Commission. In 1934, previous Acts were replaced by the Natural and Historical Monuments, Relics and Antiquities Act (see also Deacon and Pistorius 1996). This was superseded in 1969 with the creation of the National Monuments Council and formulation of the National Monuments Act. Various amendments have since been made to the Act, with the most recent amendment being in 1986. The legislation which currently applies to heritage material in its various forms is known as the National Monuments Act No. 28 of 1969 (as amended).

The National Monuments Council was invested under this legislation with powers to protect a variety of heritage resources as well as to declare national monuments and conservation areas. At present, archaeological, palaeontological, historical sites (including shipwrecks) and structures, and certain antiquities are protected. Destruction, damage, alteration, excavation or removal from the original site of a feature considered to be a heritage resource without permission from the Council is considered an offense (see also Pistorius 1996).

The Environment Conservation Act (Act 73 of 1989) and the Environment Conservation Amendment Act of 1992<sup>3</sup> forms the latest body of legislation that potentially supplements the National Monuments Act through the Integrated Environmental Management procedure. Although many archaeological sites have been identified and mitigated through this procedure, the existing National Monuments Act of 1969 (as amended) remains the primary piece of legislation in heritage management. The Minerals Act (Act 50 of 1991) and the Minerals Amendment Act (Act 103 of 1993) require plans for the conservation of the environment at, or in the vicinity of, any mine or works, to be detailed in an environmental management programme (EMP). The EMP must indicate how the natural and 'man-made' environment will be protected and rehabilitated during and after the mining.

After 1994, the National Monuments Act no longer reflected South Africa's changing priorities for cultural heritage conservation and in 1996 a White Paper on Arts, Culture and Heritage<sup>4</sup> outlined a new policy and vision for heritage in South Africa. New legislation was however needed to implement it. As the new Constitution gives concurrent powers to National and Provincial government for 'cultural matters', a new legislative framework was necessary to accommodate the new administrative system and to define the responsibilities of heritage authorities at national and provincial level. To fulfill these goals, a completely new set of legislation has been drafted and was tabled before the 1999 sitting of parliament. The new act will be known as "the National Heritage Resources Act of 1999". It is far more comprehensive than the existing body of legislation and introduces some fundamental changes to the *status quo*. It provides for the establishment of the South African Heritage Resources Agency (SAHRA) which will replace the existing

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<sup>3</sup> The Government Gazette, 26/6/92. No 14075. Substitution of section 22 of Act 73 of 1989.

<sup>4</sup> Department of Arts, Culture, Science and Technology. 1996. Draft White Paper on Arts, Culture and Heritage, June 1996. Pretoria: Government Printer.

National Monuments Council. The 6 current regional offices of the NMC will be transferred to the respective provinces where they will form the cores of provincial heritage authorities.

Until the implementation date of the new legislation is decided, the provisions of the National Monuments Act of 1969 (as amended) will continue to apply.

## **7.2 The National Monuments Act of 1969 (as amended)**

In this section we have reproduced specific portions of the National Monuments Act which apply specifically to archaeological and historical material. A full copy of the act is reproduced in Appendix A.

The main clauses are as follows:

12(2A) No person shall destroy, damage, excavate, alter, remove from its original site or export from the republic-

- a) any meteorite or fossil; or
- b) any drawing or painting on stone or a petroglyph known or commonly believed to have been executed by Bushmen; or
- c) any drawing or painting on stone known or commonly believed to have been executed by any other people who inhabited or visited the Republic before the settlement of Europeans at the Cape; or
- d) any implement, ornament or structure known or commonly believed to have been used or erected by people in paragraphs (b) and (c); or
- e) the anthropological or archaeological contents of graves, caves and rockshelters, middens, shell mounds or other sites used by such people; or
- f) any historical site, archaeological or palaeontological finds, material or object; except under the authority of and in accordance with a permit issued under this section.

An historical site is defined in the Act as any identifiable building or part thereof, marker, milestone, gravestone, landmark or tell older than 50 years.

12(2B) No person shall destroy, damage, excavate, alter, remove from its original site or export from the republic-

- d) any wreck or portion of a wreck, or any object derived from a wreck, known or generally accepted to have been in South African territorial waters longer than 50 years;
- e) any burial ground or grave referred to in section 3A (2) [war graves] except under the authority of and in accordance with a permit issued under this section.

12 (3)(a) The provisions of subsection (2A) shall not apply to the removal of anything other than deposits in any cave or midden, in the normal course of mining, engineering or any agricultural activities: Provided that anything referred to in section (2A) is found in the normal course of the said activities, the finder thereof or the owner of the land where it is found or the person who performs such activities, shall report the fact immediately to an institution referred to in the Cultural Institutions Act, 1969 (Act No. 29 of 1969).

12(4) On application by any person in the manner prescribed by regulation under this Act, the council may at its discretion, but subject to the directions of the minister, issue such a

person free of charge a permit to destroy, damage, excavate, alter, remove from its original site or export from the Republic any monument or any object referred to in subsection (2) or (2A), specified in the permit.

### **7.2.1 Application of the National Monuments Act**

Where there is a perceived threat to sites as defined in the Act, assessment is possible through a Phase 1 study (impact assessment). Groups capable of carrying out such work now exist at most universities and museums, and some private organisations have also been established. Payment for these investigations is the responsibility of the applicant (developer or landowner). If it is found during the Phase 1 that important sites are present then a Phase 2 program of mitigation is usually recommended, also at the cost of the applicant (developer or landowner). A report describing the finds is sent to the client and the NMC. Permission for rezoning, or to proceed with the development or other activities may be refused if these studies have not been undertaken. Numerous archaeological sites have been successfully mitigated in this way. On rare occasions, a resource of such value may be found that would prevent any new activity. There is no procedure prescribed in the National Monuments Act for applying the law.

### **7.3 New legislation: National Heritage Resources Act of 1999**

All that is required before this becomes law is for the date of implementation to be set. Extracts from the new act are reproduced below. A copy of the full draft bill is included as Appendix B and should be read in conjunction with the following points.

The main clauses are as follows:

#### **Definitions**

2. In this Act, unless the context requires otherwise-

- (i) "alter" means any action affecting the structure, appearance or physical properties of a place or object, whether by way of structural or other works, by painting, plastering or other decoration or any other means;
- (ii) "archaeological" means-
  - (a) material remains resulting from human activity which are in a state of disuse and are in or on land and are older than 100 years, including artefacts, human and hominid remains and artificial features and structures;
  - (b) rock art, being in any form of painting, engraving or any other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and is older than 100 years, including any area within 10m of such representation;
  - (c) wrecks, being any vessel or aircraft, or any part thereof which was wrecked in South Africa, whether on land, in the internal waters, the territorial waters or in the maritime culture zone of the Republic, as defined respectively in sections 3,4, and 6 of the Maritime Zones Act, 1994 (Act No.15 of 1994), and any cargo, debris or artefacts found or associated therewith, which is older than 60 years or which SAHRA considers to be worthy of conservation; and
  - (d) features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found;

Relating to what is protected:

## **General protections**

### **Structures**

**34.** (1) No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

### **Archaeology, paleontology and meteorites**

**35.** (4) No person may, except under the authority of a permit issued by a responsible heritage 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 material or palaeontological material or object, or any meteorite; or
- d) Bring onto use at an archaeological or palaeontological site any excavation equipment or any equipment which assists in the detection or recovery of metals or archaeological or palaeontological material or objects, or use such equipment for the recovery of meteorites.

### **Burial grounds and graves**

**36.** 3(a) No person may, without a permit issued by SAHRA or a provincial heritage resources authority -

- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
- (b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
- (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

### **7.3.1 Application of the Heritage Resources Act**

Unlike its predecessor, the new legislation contains procedures for implementation of the law. These are contained within Chapter II, Part 2 and Part 3 of the act. Sections with particular relevance are presented below.

### **Heritage resources management**

**38.** (1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as –

- (a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300 m in length;
  - (b) the construction of a bridge or similar structure exceeding 50 m in length;
  - (c) any development or other activity which will change the character of a site –
    - (i) exceeding 5000 m<sup>2</sup> in extent; or
    - (ii) involving three or more existing erven or subdivisions thereof; or
    - (iii) involving three or more existing 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 by SAHRA or a provincial heritage resources authority;
  - (d) the re-zoning of a site exceeding 10 000 m<sup>2</sup> in extent; or
  - (e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority, must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.
- (2) the responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1) –
- (a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; or
  - (b) notify the person concerned that this section does not apply.
- (3) The responsible heritage resources authority must specify the information to be provided in a report required under subsection (2)(a): Provided that the following must be included:
- (a) the identification and mapping of all heritage resources in the area affected;
  - (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;
  - (c) an assessment of the impact of the development on such heritage resources;
  - (d) 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;
  - (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
  - (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
  - (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.
- (4) The report must be considered timeously by the responsible heritage resources authority which must, after consultation with the person proposing the development, decide—
- (a) whether or not the development may proceed;
  - (b) any limitations or conditions to be applied to the development;
  - (c) what general protections in terms of this Act apply, and what formal

- protections may be applied, to such heritage resources;
- (d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and
- (e) whether the appointment of specialists is required as a condition of approval of the proposal.
- (5) A provincial heritage resources authority shall not make any decision under subsection (4) with respect to any development which impacts on a heritage resource protected at a national level unless it has consulted SAHRA.
- (6) The applicant may appeal against the decision of the provincial heritage resources authority to the MEC, who—
- (a) must consider the views of both parties; and
- (b) may at his or her discretion—
- (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the responsible heritage resources authority; and
- (ii) consult SAHRA; and
- (c) must uphold, amend or overturn such decision.
- (7) The provisions of this section do not apply to a development described in subsection (1) affecting any heritage resource formally protected by SAHRA unless the authority concerned decides otherwise.
- (8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environmental Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and 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 consent.
- (9) The provincial heritage resources authority, with the approval of the MEC may, by notice in the *Provincial Gazette*, exempt from the requirements of this section any place specified in the notice.
- (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 agreement**

**42.** (1) (a) SAHRA, or a provincial heritage resources authority may negotiate and agree with a provincial authority, local authority, conservation body, person, or community for the execution of a heritage agreement to provide for the conservation, improvement or presentation of a clearly defined heritage resource: Provided that the consent of the owner of such resource must be given.

(b) Such a heritage agreement must be in the form of a binding contract.

(2) A heritage agreement may include such terms and conditions as the parties think fit, including provision for public access, and provision for financial or other assistance from the heritage authority concerned.

(3) Without limiting subsection (2), a heritage agreement may be expressed to have effect in perpetuity or for any specified term, or to terminate upon the happening of a specific event.

(4) A heritage agreement may, with the consent of the owner of the resource concerned, be varied or cancelled by agreement between the parties.

(5) The consent of the owner of the resource concerned to the heritage agreement or any variation of the heritage agreement may be given, subject to the inclusion in the heritage agreement of any additional provisions or modified provisions, or to the deletion of such provisions, as the owner giving the consent considers necessary.

(6) Nothing in this Act requires a heritage resources authority to negotiate or agree with any person or authority to enter into or execute any heritage agreement.

(7) A heritage agreement in respect of a place attached to the land is binding on the owner of the place, as at the date of execution of the agreement, while the agreement remains in force.

(8) The owner of a national heritage site, a provincial heritage site or a place listed in a heritage register may, by a heritage agreement entered into with the heritage resources authority or local authority responsible for the protection of such place, or any person or body approved by such authority, appoint the heritage resources authority or the local authority or the person or body concerned, as guardian of the place.

(9) The heritage agreement referred to in subsections (7) or (8) may provide for—

(a) the maintenance and management of the place;

(b) the custody of the place and the duties of any person who may be employed in connection therewith;

(c) the occupation or use of the place by the owner or otherwise;

(d) the restriction of the right of the owner or occupier to do certain acts or things on or near the place;

(e) the facilities of access to be permitted to the public and to persons deputed by the guardian to inspect or maintain the place;

(f) the presentation of the place;

(g) the notice to be given to the guardian in case the owner intends to offer the land on which the place is situated for sale, lease or other disposal, and the right to

be

reserved to the guardian to have first refusal of such sale, lease or other disposal;

(h) the payment of any expenses incurred by the owner or by the guardian in connection with the maintenance of the place;

(i) any other matter connected with the protection or management of the place which

is agreed to by the owner and the guardian;

(j) the duration of the agreement, with provision for the earlier termination thereof

by

any party thereto; and

(k) the procedure for the resolution of any dispute arising out of the agreement.

(10) The owner of a place which is under guardianship shall, except as expressly provided by this Act, continue to have the same estate, right, title and interest in and to the place as before.

(11) Every heritage agreement has effect according to its tenor but subject to the provisions of this Act: Provided that—

(a) the execution of a heritage resources agreement in respect of a heritage resource must not prevent the heritage authority responsible for its protection from exercising any powers in this Act in relation to that resources; and

(b) nothing in terms of any heritage agreement shall permit or allow any person to

carry out any act contrary to the provisions of this Act.

## **Incentives**

**48.** (1) On advice from SAHRA the Minister, in concurrence with the Minister of Finance, may publish regulations on financial incentives for the conservation of heritage resources which form part of the national estate, or otherwise promote the purpose of this Act.

(2) An MEC or a local authority may in planning schemes or in by-laws under this Act or by other means provide incentives for the conservation of heritage resources as provided for in subsection (1).

## **Presentation of protected resources**

**49.** (1) Heritage resources authorities and local authorities must, wherever appropriate, co-ordinate and promote the presentation and use of places of cultural significance and heritage resources which form part of the national estate and for which they are responsible in terms of section 5 for public enjoyment, education, research and tourism, including—

(a) the erection of explanatory plaques and interpretive facilities, including interpretive centers and visitor facilities;

(b) the training and provision of guides;

(c) the mounting of exhibitions;

(d) the erection of memorials; and

(e) any other means necessary for the effective presentation of the national estate.

(2) Where a heritage resource which is formally protected in terms of Part 1 of this Chapter is to be presented, the person wishing to undertake such presentation must, at least 60 days prior to the institution of interpretive measures or manufacture of associated material, consult with the heritage resources authority which is responsible for the protection of such heritage resource regarding the contents of interpretive material or programs.

(3) A person may only erect a plaque or other permanent display or structure associated with such presentation in the vicinity of a place protected in terms of this Act in consultation with the heritage authority responsible for the protection of the place.

## **7.4 Sources of Impact**

We generally identify two major sources of impact on heritage material. These are defined as primary sources which are often large scale organised activities which modify the landscape, and secondary impacts which are of an *ad hoc* and usually more limited nature.

### **7.4.1 Primary sources of impact on archaeological material**

The activities identified below are generally responsible for the most damage to heritage resources.

- Development of land as a result of a structure plan
- Development of land as a result of a rezoning application
- Development of land as a result of a subdivision
- Establishment of housing developments not subject to conditions of 1,2,3 above.



- Establishment of townships
- Establishment of resorts
- Any development on undeveloped land
- Mining, prospecting and quarrying activities
- Construction of airports
- Construction of dams
- Construction of ports, harbours and marinas
- Laying of pipelines
- Construction of major sporting facilities
- Flood control schemes, canals, aqueducts, river diversions
- Any major landscaping, excavation or land remodeling projects
- Construction of roads
- Construction of railway lines
- Illegal demolition of structures over 60 years old
- Agricultural activity

#### **7.4.2 Secondary sources of impact on archaeological material**

These impacts can be as serious as those caused by large developments but are usually of more limited nature and occur on an *ad hoc* basis. They are generally associated with any increase in human activity resulting from the proximity of, for example, residential areas and recreational facilities. Primary impacts which lead to the increase in human use of an area will usually be accompanied by secondary impacts. Impact assessments must also consider these additional factors resulting from development activity. The *ad hoc* nature of the impact makes it difficult to control beyond educating the public as to the sensitivity of archaeological resources. We have identified some of the secondary impacts on archaeological sites below:

- Illegal collection of artefactual material or vandalising of sites
- Indiscriminate use of off-road vehicles
- *Ad-hoc* creation of dirt tracks or tracks for off-road vehicles
- Establishment of informal parking areas
- Establishment of Informal camp sites and picnic areas
- Dumping
- Unplanned footpaths
- Erosion resulting from any of the above or any other source.

### **7.5 Heritage management mechanisms**

The procedures that need to be adopted have been highlighted above as they form part of the legislation. Nevertheless, two management strategies are likely to be with us for some time. The first, a reactive style is undesirable and should be avoided. In reality though, specialists will always need to be able to deal with this for reasons which are more fully explained below. The second, proactive style of management is favored for reasons explained below.

#### **7.5.1 Reactive management**

Many heritage assessments or rescue excavations take place reactively because the archaeological potential of development is seldom taken into account at the initial planning

stage. In many cases management can be characterised as knee-jerk responses, with mitigation procedures carried out as a result of the intervention of an authority or lobbying by interest groups and members of the public, or if a find of significance is exposed during the course of earthmoving.

Whilst the reactive approach will always be a component of heritage resource management, it should not be seen as an acceptable mechanism for dealing with heritage issues. We realise that in some instances there will be no indication that important finds will be uncovered and the reactive approach therefore becomes unavoidable. This way of carrying out mitigation has many disadvantages for both the archaeologist and developer alike. One of the major disadvantages is in terms of delays to the development which can be extremely costly. In addition money will not have been budgeted for the purpose of mitigation and may mean that the archaeologist is forced to complete the task unsatisfactorily. Secondly, should any conservation worthy features be found, it may not be possible to preserve these for posterity.

### **7.5.2 Pro-active management**

The process consists of two phases of assessment, which we believe greatly lessens the need for the reactive approach to be adopted. These procedures are described below:

#### **7.5.2.1 Phase 1**

The heritage resource professional (archaeologist, architect, historian, palaeontologist) needs to be approached as early as possible in the planning phase of a project. The project is initially assessed as to whether it is likely to impact heritage resources. This stage of assessment is usually based on the knowledge of particular locations and recently has taken place during the submission of plans to the National Monuments Council Regional Planning Committee, but may also occur through more informal inquiries. If it is considered that impacts will occur, a Phase 1 investigation will be recommended. This is a more detailed study which will usually involve fieldwork and/or interrogation of archival material and other documentary sources, depending on the age of the remains. These investigations are paid for by the applicant. If no impacts are identified during the Phase 1 study, recommendation would be that no further mitigatory work need take place. A copy of the recommendations is sent to the client and NMC for implementation.

Recommendations may include a number of actions. Firstly, if no impacts are identified, permission will be granted to proceed with activity. If impacts are identified, the applicant has the option to avoid the resource through re-planning, or to mitigate the impact by removing it, or a sample of it. In some cases a resource may be of such a nature that it cannot be removed. Re-planning will be unavoidable under these circumstances. The latter process will usually be negotiated between the developer and the NMC.

#### **7.5.2.2 Phase 2**

Recommendations are usually implemented during what is known as a Phase 2 program and require further involvement of a heritage professional at the applicants cost. Permits usually need to be issued for material to be moved, sampled or documented. Provided that the mitigation is carried out satisfactorily, the applicant will be given permission to proceed, and will be allowed to remove the balance of material after issue of a permit from the NMC. The results of a Phase 2 study are presented as a report to both the client and

the NMC. Apart from allowing the NMC to assess the thoroughness of the mitigation, the report documents what has been found. As it is not always possible to carry out detailed research on excavated material at the Phase 2 stage because of the cost involved, the report allows other researchers who may wish to take the study further to know what is available.

### **7.5.2.3 Additional phases of work**

The completion of Phase 1 and Phase 2 studies is often where specialist archaeological intervention ends. A growing trend however exists to use the information derived during such studies to produce signage that informs the general public of the significance of archaeological sites. This is often done to add value to a development or to an area and can, if so desired, be used to generate publicity and to engender a sense of community involvement. The increase in what is known as eco-tourism has provided excellent incentive to make use of archaeological information. Examples of such use are Nelson Bay Cave on the Robberg peninsula at Plettenberg Bay, Matjies River Rock Shelter at Keurboomstrand, Wonderwerk Cave near Kuruman, where displays have been erected in the caves. Rock paintings can be visited in caves in the Giant's Castle region of the Drakensberg, and rock engravings are on display at Nootgedacht near Kimberley (Deacon & Deacon 1999:198). These are some of the more well known examples, but numerous smaller sites all over South Africa can now be visited. If planned properly, local community involvement can be used to help manage access to such sites and in so doing provide employment opportunities.

## **7.6 Management of public access to heritage resources**

Most archaeologists would agree that it is important to facilitate access by the public to sites of archaeological or historical interest. In the ideal world, all this would require would be a few sign boards. In reality though, if sites of interest, or museums were run in this way, there would be nothing left to see. The problems with vandalism and theft require measures to be in place to ensure controlled access while at the same time not making a site look like a prison and thereby ruining its initial attraction.

In the future, planning with regard to allowing access to heritage sites will have to be done in consultation with SAHRA (or the responsible provincial heritage resources authorities) in terms of Section 44 (2) of the Act.

## **8. CONCLUSIONS**

Most of the sites that have been located date to the later stone age and are primarily situated on the recent floodplains of the Orange River. Both herder and older hunter gatherer camps are recognised. At Bloeddrift, in addition to the old encampments on the floodplains, many petroglyphs are located on the numerous dolomite exposures.

As with the natural environment, archaeological sites also suffer from the impacts of mining and related activities. The task of this assessment has been to identify possible impacts, both negative and positive, which may result from ongoing mining. In an attempt to lessen the negative impacts, a number of recommendations are made at the end of the report. These recommendations take into account the fact that most heritage sites are finite resources which, once destroyed, can never be recreated.

At present, although the new legislation has been signed by the state president, it is not expected to become policy for at least another year. Until such time the old legislation remains in use.

## **9. RECOMMENDATIONS**

Proposed Heritage Management procedure for Trans Hex

The results of the survey have shown that there is a need for a system to be in place for the ongoing management of heritage material along the Orange River. As these heritage resources are finite, once destroyed, they can never be recreated. Management should however be relatively straightforward, as the number of sites is low, and they tend to occur in fairly predictable localities. The following site categories and generalised locations have been recognised;

- Early stone age (gravel terraces and koppies)
- Middle stone age (gravel terraces and tops of koppies)
- Late stone age (silty river banks near tributaries/gulleys, dolomite outcrops)  
(Pre- 2000BP hunter/gatherer sites, engravings?, graves , Post- 2000BP pastoralist sites, engravings?, graves)
- Colonial period (river bank)  
(buildings, graves)

A framework for ongoing management of the resources is proposed below.

### **9.1 Suggested management procedures for heritage sites**

#### **9.1.1 Early stone age sites (ESA)**

While ESA material is often found on gravels which are mined, the dispersed and reworked nature of the sites does not seem to warrant any mitigation. No mitigatable sites were found in any areas that were searched.

#### **9.1.2 Middle stone age sites (MSA)**

Although some material in the gravels may be of MSA origin, the only sites of definite MSA age found within the searched areas, were atop koppies at Bloeddrift. This is clearly not in an area that will ever be mined and so no mitigation is necessary.

#### **9.1.3 Late stone age sites (LSA)**

##### **9.1.3.1 Old herder and San camps**

Late stone age sites are most likely to be impacted through mining. Our observations suggest that they occur mainly on the silty river terraces. No mining or related activity should occur at or near areas where sites have been identified until mitigation has been undertaken.

If mining or related activities are to take place on similar areas of river bank which have not yet been investigated, Phase 1 investigations should be undertaken there.

The prospecting activities near to Jakkalsberg (in the area of the witgat boom) pose the most immediate threat to old herder occupation sites, old San camps and graves of any of the mining activities that were observed. The sites should be demarcated so that they are easily visible. If sites are determined to be in the path of mining, they can be removed by archaeologists with the necessary permissions from the relevant heritage authorities.

### **9.1.3.2 Graves**

In many cases stone mounds found on the river terraces mark pre-colonial graves. These also constitute sites and should not be disturbed by mining or related activities. In cases where they may be in the way, they can be removed by archaeologists with the necessary permissions from the relevant heritage authorities.

Graves should be identified and demarcated in areas where mining or related activities are likely to occur. Some graves have already been fenced by the mine (Plate 20).

### **9.1.3.3 Engravings/Petroglyphs**

It has been determined that engravings occur on dolomite outcrops and are vulnerable to mining and related activities. Most engravings observed during the investigation are found at Bloeddrift, where it was noted that some of the engravings have been damaged by past activities such as the dumping of rock (Plate 16), and construction of infrastructure (Plates 17 and 18). Mining activities have also led to an increase in the number of people staying in the area and some engraving sites are suffering from ongoing vandalism by way of graffiti (Plate 19).

Engraving sites at Reuning occur on vertically bedded dolomite exposures. Vegetation was noted growing in the cracks could eventually lead to the flaking off of large slabs of dolomite and may along with erosion of the bank by the Orange River be responsible for the slabs of material on the slope below. The presence of vegetation should be monitored and where it threatens engravings, be dealt with.

All dolomite outcrops should be considered sensitive and should be checked before mining or related activities that are likely to cause impact take place. This can easily be done by geologists or other staff of the mine. If engravings are found that will be in the path of mining, permission may be granted by the relevant heritage authorities to move them. A facility to house them may have to be set up for the purpose of housing them. The relevant heritage authorities should be consulted in this regard. Where possible though the preferred method of dealing with sites would be to leave them *in situ* and demarcating them so that they can be avoided.

The often unwitting vandalism of the sites by people carving names and other unsavory depictions onto the rocks must be dealt with by Trans Hex. These sites could one day be made available for tourists to the area, which will presumably be advantageous to the local community. All workers must be made aware of the heritage value of the engraving sites and urged not to damage the sites in any way. Perhaps a campaign of posters or leaflets could be undertaken for the information of all Trans Hex employees and sub-contractors. If designed in the right way, such a campaign for the preservation of the engravings could be extended to include local communities and the National Parks Board, and form the core of a public relations exercise showing Trans Hex's commitment to ongoing conservation of the natural environment..

### **9.1.3.3.1 Public access to rock engraving sites in the Richtersveld**

The mine has expressed an interest in making some engraving sites at Bloeddrift accessible to the public. While we support this concept, we urge that it be done with caution given the fragility of the resource. In allowing public access to sites, a number of points must be considered and these are presented below.

Sites that should be made accessible must satisfy the need for conservation, the needs of the public (tourists), of the local community and of the applicant (mining company);

- Requirements of the public;
  - they would require a good view of the engravings (to allow photographs to be taken) and the viewing position and the angle of sunlight and best time of the day for viewing need to be considered
  - they would also require adequate information about what they were viewing in the form of leaflets or sign boards
- The requirements of the landowner (in this case the mining company);
  - ensure compliance with the legislation applying to heritage sites
  - ensure that access does not interfere with the mining or breach the security of a diamond mining operation. In this case only sites that are far removed from the active mining would probably be considered.
  - ensure that while on the property, members of the public are safe
- From the conservation point of view;
  - sites that are easy to control are preferred i.e. there should be no small, easily moved slabs containing engravings at, or near the area, as these could potentially be stolen.
  - the robustness of the sites must be considered when allowing access as at some sites the surfaces are exfoliating and could be further degraded if walked on. Adequate controls should be in place to prevent damage. In general terms the more valuable or unique the site, the more physical control measures that need to be in place.

### **9.1.4 Colonial sites**

#### **9.1.4.1 Buildings**

A single building with potential heritage significance was located between Jakkalsberg and Reuning. This is possibly the remains of the Sendelingsdrift mission station. The site should be identified and demarcated and not be disturbed by mining or mining related activities.

#### **9.1.4.2 Graves**

A number of graves can by virtue of their shapes and presence of headstones be dated to within the last 300 years. As with pre-colonial graves these should not be disturbed. Any intention to move them if they lie in the way of mining must be preceded by certain legal steps required for exhumation where living relatives may still exist.

These graves should also be identified and demarcated.

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## 11. PROFESSIONAL TEAM

Report and photography  
Fieldwork

Dave Halkett  
Dave Halkett  
Tim Hart

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## **PHOTOGRAPHS**

Remains of the old Sendelingsdrift mission church.



Engraved slabs of dolomite north of Reuning - dislodged from the main outcrop by natural agents. Graffiti is present on the slab at center (Ochta Hotel).

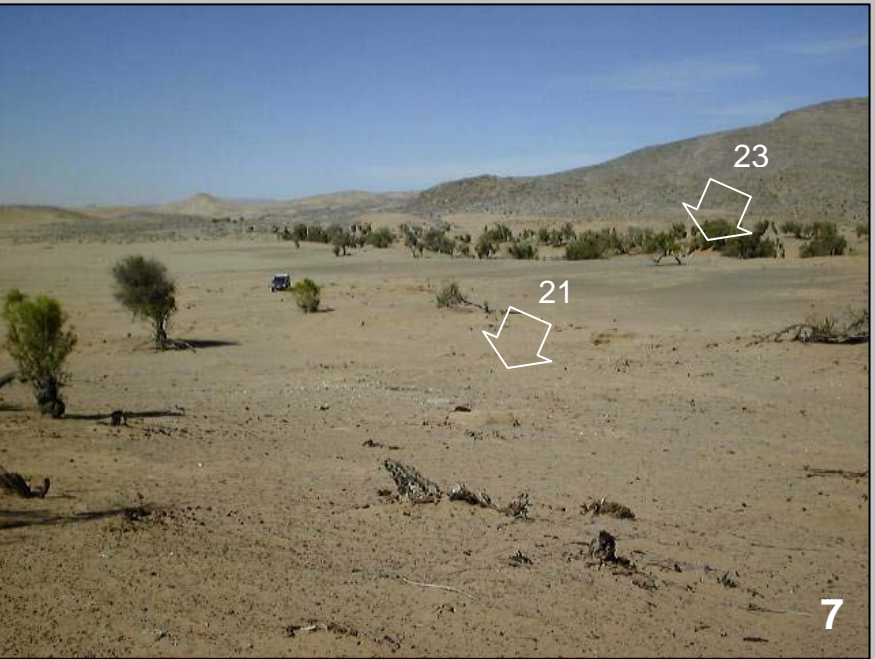
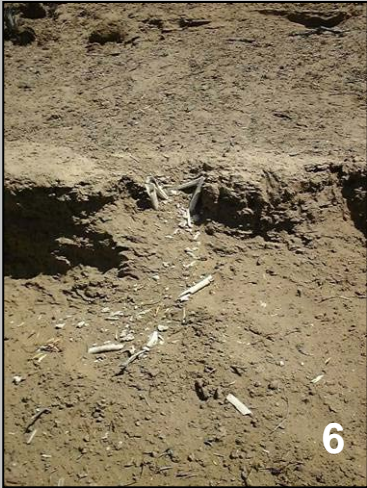


Engraved slab of rock near Jakkalsberg several kilometers from any outcrops.





Different types of graves 4, 5, 6



Two old herder encampments at Bloeddrift – dry gully at right marked by trees.



Lens of archaeological material eroding out of silt deposit.



9

View from the summit of Bobbejaankrans showing one of the few rockshelters located during the survey.



10

Engraving of an ox wagon and human figures at Bloeddrift– these clearly date to the colonial period.



11

Engravings of horses and riders at Bloeddrift – also from the colonial period. Infilled circles appear to be of similar vintage.

Older, heavily patinated engravings (top of rock) with recent engravings below – Bloeddrift



Older, heavily patinated engravings (partially obscured by sand) with recent engravings above – Bloeddrift



Finely pecked human figure at Bloeddrift



Enigmatic engraving of a type found on many rocks at Bloeddrift



Enigmatic engravings - Bloeddrift.



15

Engraved slabs of dolomite surrounded by dumped rubble – Bloeddrift.



16

Engraved dolomite slabs and the remains of flood damaged buildings – Bloeddrift.



17

Dolomite ridge with many engravings with a road built over a part of it – Bloeddrift.



18

Heavy graffiti covering older engravings – one of the problems that may arise if sites are opened to the public without the necessary control measures being in place.



19

Graves demarcated by fencing erected by Trans Hex – this certainly prevents accidental damage.



20



## **APPENDIX A**

### **The National Monuments Act of 1969 (as amended)**

The National Monuments Act was repealed in 1999 and replaced by the South African Heritage Resources Act. The full draft of the old legislation has for this reason been excluded from this version of the report.

## **APPENDIX B**

### **National Heritage Resources Act of 1999**

REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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CAPE TOWN, 28 APRIL 1999

VOL. 406 No. 19974

KAAPSTAD, 28 APRIL 1999

OFFICE OF THE PRESIDENT

No. 506. 28 April 1999

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—  
No. 25 of 1999: National Heritage Resources Act, 1999.

KANTOOR VAN DIE PRESIDENT

No. 506. 28 April 1999

Hierby word bekend gemaak dat die President sy goed-keuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—  
No. 25 van 1999: Wet op Nasionale Erfenishulpbronne. 1999.

## **ACT**

To introduce an integrated and interactive system for the management of thenational heritage resources; to promote good government at all levels, andempower civil society to nurture and conserve their heritage resources so that theymay be bequeathed to future generations; to lay down general principles for governing heritage resources management throughout the Republic; to introduce an integrated system for the identification, assessment and management of the heritage resources of South Africa; to establish the South African Heritage Resources Agency together with its Council to co-ordinate and promote the management of heritage resources at national level; to set norms and maintain essential national standards for the management of heritage resources in the Republic and to protect heritage resources of national significance; to control the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries; to enable the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources; to provide for the protection and management of conservation-worthy places and areas by local authorities; and to provide for matters connected therewith.

### **PREAMBLE**

This legislation aims to promote good management of the national estate, and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed. It helps us to define our cultural identity and therefore lies at the heart of our spiritual well-being and has the power to build our nation. It has the potential to affirm our diverse cultures, and in so doing shape our national character. Our heritage celebrates our achievements and contributes to redressing past inequities. It educates, it deepens our understanding of society and encourages us to empathise with the experience of others. It facilitates healing and material and symbolic restitution and it promotes new and previously neglected research into our rich oral traditions and customs.

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### **SCHEDULE**

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—

#### **Application and interpretation**

1. This Act binds the State.

#### **Definitions**

2. In this Act, unless the context requires otherwise—
  - (i) “alter” means any action affecting the structure, appearance or physical properties of a place or object, whether by way of structural or other works, by painting, plastering or other decoration or any other means; (xiil)
  - (ii) “archaeological” means—
    - (a) material remains resulting from human activity which are in a state of disuse and are in or on land and which are older than 100 years, including artefacts, human and hominid remains and artificial features and structures;
    - (b) rock art, being any form of painting, engraving or other graphic

representation on a fixed rock surface or loose rock or stone, which was executed by human agency and which is older than 100 years, including any area within 10m of such representation;

(c) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land, in the internal waters, the territorial waters or in the maritime culture zone of the Republic, as defined respectively in sections 3, 4 and 6 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), and any cargo, debris or artefacts found or associated therewith, which is older than 60 years or which SAHRA considers to be worthy of conservation; and

(d) features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found; (ii)

(iii) “conservation”, in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance; (vi)

(iv) “Council” means the Council of the South African Heritage Resources Agency established in terms of section 14; (xxxv)

(v) “cultural property agreement” in relation to a foreign state, means an agreement between South Africa and a foreign state or an international agreement to which South Africa and a foreign state are both parties, relating to the prevention of illicit international traffic in cultural property; (xx)

(vi) “cultural significance” means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance; (xix)

(vii) “Department” means the national department responsible for arts and culture and heritage; (viii)

(viii) “development” means any physical intervention, excavation, or action, other than those caused by natural forces, which may in the opinion of a heritage authority in any way result in a change to the 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 a structure at a place;

(b) carrying out any works on or over or under a place;

(c) subdivision or consolidation of land comprising, a place, including the structures or airspace of a place;

(d) constructing or putting up for display signs or hoardings;

(e) any change to the natural or existing condition or topography of land; and

(f) any removal or destruction of trees, or removal of vegetation or topsoil;

(xxix)

(ix) “Director-General” means the Director-General of the Department; (ix)

(x) “expropriate” means the process as determined by the terms of and according to procedures prescribed in the Expropriation Act, 1975 (Act No. 63 of 1975); (xxviii)

(xi) “foreign cultural property”, in relation to a reciprocating state, means any object that is specifically designated by that state as being of importance for archaeology, history, literature, art or science; (vii)

(xii) “*Gazette*” means the *Government Gazette*; (xl)

(xiii) “grave” means a place of interment and includes the contents, headstone or other marker of such a place, and any other structure on or associated with such place; (xvi)

(xiv) “heritage agreement” means an agreement referred to in section 42; (xiii)

(xv) “heritage register” means a list of heritage resources in a province; (xiv)

- (xvi) “heritage resource” means any place or object of cultural significance; (xi)
- (xvii) “heritage resources authority” means the South African Heritage Resources Agency, established in terms of section 11, or, insofar as this Act is applicable in or in respect of a province, a provincial heritage resources authority; (xii)
- (xviii) “heritage site” means a place declared to be a national heritage site by SAHRA or a place declared to be a provincial heritage site by a provincial heritage resources authority; (xv)
- (xix) “improvement”, in relation to heritage resources, includes the repair, restoration and rehabilitation of a place protected in terms of this Act; (xiv)
- (xx) “land” includes land covered by water and the air space above the land; (xvii)
- (xxi) “living heritage” means the intangible aspects of inherited culture, and may include—
- (a) cultural tradition;
  - (b) oral history;
  - (c) performance;
  - (d) ritual;
  - (e) popular memory;
  - (f) skills and techniques;
  - (g) indigenous knowledge systems; and
  - (h) the holistic approach to nature, society and social relationships; (xxi)
- (xxii) “local authority” means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (xxxii)
- (xxiii) “management”, in relation to heritage resources, includes the conservation, presentation and improvement of a place protected in terms of this Act; (v)
- (xxiv) “MEC”, unless otherwise stated and insofar as a provision of this Act is applicable in or in respect of a province, means the member of the executive council of a province responsible for cultural matters; (xxii)
- (xxv) “meteorite” means any naturally-occurring object of extraterrestrial origin; (xxiii)
- (xxvi) “Minister” means the Minister responsible for arts and culture; (xxiv)
- (xxvii) “national estate” means the national estate as defined in section 3; (xxv)
- (xxviii) “national symbols” means any heraldic representation so determined under section 5 of the Heraldry Act, 1963 (Act No. 18 of 1963); (xxvi)
- (xxix) “object” means any movable property of cultural significance which may be protected in terms of any provisions of this Act, including—
- (a) any archaeological artefact;
  - (b) palaeontological and rare geological specimens;
  - (c) meteorites; and
  - (d) other objects referred to in section 3; (xvii)
- (xxx) “owner” includes the owner’s authorised agent and any person with a real interest in the property and—
- (a) in the case of a place owned by the State or State-aided institutions, the Minister or any other person or body of persons responsible for the care, management or control of that place;
  - (b) in the case of tribal trust land, the recognised traditional authority; (x)
- (xxxi) “palaeontological” means any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace; (xxxii)
- (xxxii) “place” includes—
- (a) a site, area or region;



(b) a building or other structure which may include equipment, furniture, fittings and articles associated with or connected with such building or other structure;

(c) a group of buildings or other structures which may include equipment, furniture, fittings and articles associated with or connected with such group of buildings or other structures;

(d) an open space, including a public square, street or park; and

(e) in relation to the management of a place, includes the immediate surroundings of a place; (xxxiii)

(xxxiii) “planning” means urban and regional planning, as contemplated in the Physical Planning Act, 1991 (Act No. 125 of 1991), and provincial town planning and land use planning legislation; (iii)

(xxxiv) “planning authority” means an office of the State, including a province, a local authority or a regional authority, which is invested with a physical planning capacity; (iv)

(xxxv) “prescribe” means prescribed by regulation; (xvi)

(xxxvi) “presentation” includes—

(a) the exhibition or display of;

(b) the provision of access and guidance to;

(c) the provision, publication or display of information in relation to; and

(d) performances or oral presentations related to,

heritage resources protected in terms of this Act; (i)

(xxxvii) “provincial heritage resources authority”, insofar as this Act is applicable in a province, means an authority established by the MEC under section 23; (xxxiv)

(xxxviii) “public monuments and memorials” means all monuments and memorials—

(a) erected on land belonging to any branch of central, provincial or local government, or on land belonging to any organisation funded by or established in terms of the legislation of such a branch of government; or

(b) which were paid for by public subscription, government funds, or a public-spirited or military organisation, and are on land belonging to any private individual; (xxx)

(xxxix) “reciprocating state” means a foreign state that is party to a cultural property agreement; (xviii)

(xl) “regulations” means regulations made under this Act; (xxxvi)

(xii) “SAHRA” means the South African Heritage Resources Agency, established in terms of section 11; (xxxvii)

(xiii) “site” means any area of land, including land covered by water, and including any structures or objects thereon; (xiii)

(xiii) “State” includes a province; (xxxix)

(xiv) “structure” means any building, works, device or other facility made by people and which is fixed to land, and includes any fixtures, fittings and equipment associated therewith; (xii)

(xvi) “supported body” means a body funded or financially supported by the State, and includes State-owned enterprises; (xxvii)

(xvii) “this Act” includes the regulations; (xviii)

(xviii) “victims of conflict” means—

(a) certain persons who died in any area now included in the Republic as a direct result of any war or conflict as specified in the regulations, but excluding victims of conflict covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992);

(b) members of the forces of Great Britain and the former British Empire who died in active service in any area now included in the Republic prior to 4 August 1914;

(c) persons who, during the Anglo-Boer War (1899-1902) were removed as prisoners of war from any place now included in the Republic to any place outside South Africa and who died there; and

(d) certain categories of persons who died in the “liberation struggle” as defined in the regulations, and in areas included in the Republic as well as outside the Republic; (xxxviii)

(xviii) “wreck” has the meaning given under the definition of “archaeological” in this section. (xviii)

## CHAPTER I

### SYSTEM FOR MANAGEMENT OF NATIONAL HERITAGE RESOURCES

#### *Part 1: General Principles*

#### **National estate**

3. (1) For the purposes of this Act, 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.

(2) Without limiting the generality of subsection (1), the national estate may include—

(a) places, buildings, structures and equipment of cultural significance;

(b) places to which oral traditions are attached or which are associated with living heritage;

(c) historical settlements and townscapes;

(d) landscapes and natural features of cultural significance;

(e) geological sites of scientific or cultural importance;

(f) archaeological and palaeontological sites;

(g) graves and burial grounds, including—

(i) ancestral graves;

(ii) royal graves and graves of traditional leaders;

(iii) graves of victims of conflict;

(iv) graves of individuals designated by the Minister by notice in the *Gazette*;

(v) historical graves and cemeteries; and

(vi) other human remains which are not covered in terms of the Human Tissue Act, 1983 (Act No. 65 of 1983);

(h) sites of significance relating to the history of slavery in South Africa;

(i) movable objects, including—

(i) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects and material, meteorites and rare geological specimens;

(ii) objects to which oral traditions are attached or which are associated with living heritage;

(iii) ethnographic art and objects;

(iv) military objects;

(v) objects of decorative or fine art;

(vi) objects of scientific or technological interest; and  
(vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996).

(3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national estate if it has cultural significance or other special value because of—

- (a) its importance in the community, or pattern of South Africa's history;
- (b) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
- (c) its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
- (d) its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
- (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa; and
- (i) sites of significance relating to the history of slavery in South Africa.

## **Application**

4. This Chapter establishes the national system for the management of heritage resources which it applies throughout the Republic and—

- (a) also applies to the actions of the State and a local authority;
- (b) serves as guidelines by reference to which any heritage resources authority, whether established in terms of this Act or any other law, and any other competent authority must exercise any discretion or take any decision in terms of this Act or any other law dealing with heritage resources management;
- (c) serves as the general framework with which—
  - (i) any heritage resources authority must perform its functions and make recommendations; and
  - (ii) those recommendations must be considered by any competent authority in terms of this Act or any other law dealing with heritage resources management; and
- (d) establishes the South African Heritage Resources Agency to manage the national estate and makes provision for the establishment of provincial heritage resources authorities to manage provincial and local heritage resources.

## **General principles for heritage resources management**

5. (1) All authorities, bodies and persons performing functions and exercising powers in terms of this Act for the management of heritage resources must recognise the following principles:

- (a) 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;

(b) 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;

(c) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and

(d) heritage resources management must guard against the use of heritage for sectarian purposes or political gain.

(2) To ensure that heritage resources are effectively managed—

(a) the skills and capacities of persons and communities involved in heritage resources management must be developed; and

(b) provision must be made for the ongoing education and training of existing and new heritage resources management workers.

(3) Laws, procedures and administrative practices must—

(a) be clear and generally available to those affected thereby;

(b) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby; and

(c) give further content to the fundamental rights set out in the Constitution.

(4) 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.

(5) 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.

(6) Policy, administrative practice and legislation must promote the integration of heritage resources conservation in urban and rural planning and social and economic development.

(7) The identification, assessment and management of the heritage resources of South Africa must—

(a) take account of all relevant cultural values and indigenous knowledge systems;

(b) take account of material or cultural heritage value and involve the least possible alteration or loss of it;

(c) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;

(d) contribute to social and economic development;

(e) safeguard the options of present and future generations; and

(f) be fully researched, documented and recorded.

## **Principles for management of heritage resources**

6. (1) SAHRA, after consultation with the Minister, may by notice in the *Gazette*—

(a) prescribe any principle for heritage resources management in addition to, but not inconsistent with, the principles set out in section 5;

(b) prescribe any principle as set out in section 5 in greater detail, but not inconsistent therewith;

(c) publish for general information national policy relating to heritage resources management or any aspect thereof which is consistent with the principles set

out in section 5 or prescribed under paragraphs (a) and (b), whereupon such principle or policy must apply throughout the Republic.

(2) A provincial heritage resources authority may, by notice in the *Provincial Gazette*—

(a) prescribe any principles for heritage resources management in addition to, but not inconsistent with, the principles set out in section 5 or prescribed by SAHRA under subsection (1);

(b) prescribe any principle as set out in section 5 or prescribed by SAHRA under subsection (1) in greater detail, but not inconsistent therewith; and

(c) publish for general information provincial policy relating to heritage resources management or any aspect thereof which is consistent with the principles set out in section 5 or prescribed under subsection (1) or paragraphs (a) and (b) of this subsection, whereupon such principle or policy shall apply in the province on the basis set out in section 5.

(3) A heritage resources authority must, before prescribing any principle or general policy under subsection (1) or (2)—

(i) make a draft of such principle or policy available to the public; and

(ii) consider any comment on such draft received from any person during a reasonable period after such publication.

### **Heritage assessment criteria and grading**

7. (1) SAHRA, in consultation with the Minister and the MEC of every province, must by regulation establish a system of grading of places and objects which form part of the national estate, and which distinguishes between at least the categories—

(a) Grade I: Heritage resources with qualities so exceptional that they are of special national significance;

(b) Grade II: Heritage resources which, although forming part of the national estate, can be considered to have special qualities which make them significant within the context of a province or a region; and

(c) Grade III: Other heritage resources worthy of conservation, and which prescribes heritage resources assessment criteria, consistent with the criteria

set out in section 3(3), which must be used by a heritage resources authority or a local authority to assess the intrinsic, comparative and contextual significance of a heritage resource and the relative benefits and costs of its protection, so that the appropriate level of grading of the resource and the consequent responsibility for its management may be allocated in terms of section 8.

(2) A heritage resources authority may prescribe detailed heritage assessment criteria, consistent with the criteria set out in section 3(3), for the assessment of Grade II and Grade III heritage resources in a province.

### **Responsibilities and competence of heritage resources authorities and local authorities for identification and management of national estate**

8. (1) There is a three-tier system for heritage resources management, in which national level functions are the responsibility of SAHRA, provincial level functions are the responsibility of provincial heritage resources authorities and local level functions are the responsibility of local authorities. Heritage resources authorities and local authorities are accountable for their actions and decisions and the performance of

functions under this system.

(2) SAHRA is responsible for the identification and management of Grade I heritage resources and heritage resources in accordance with the applicable provisions of this Act, and shall co-ordinate and monitor the management of the national estate in the Republic.

(3) A provincial heritage resources authority is responsible for the identification and management of Grade II heritage resources and heritage resources which are deemed to be a provincial competence in terms of this Act.

(4) A local authority is responsible for the identification and management of Grade III heritage resources and heritage resources which are deemed to fall within their competence in terms of this Act.

(5) For the purpose of any application for a permit or other authorisation to perform any action which is controlled in terms of this Act or provincial heritage legislation, a formal protection by a heritage resources authority at a higher level takes precedence over any formal or general protection at a local level, without prejudice to any incentives offered at any level.

(6) (a) A provincial heritage resources authority or a local authority shall not perform any function in terms of this Act or any other law for the management of heritage resources unless it is competent to do so. The capacity of a provincial heritage resources authority or local authority shall be assessed in terms of criteria prescribed by the Minister, including the availability of adequate staff, expertise, experience and administrative systems, to be applied—

(i) by SAHRA, in the assessment of the capacity of provincial authorities to perform specific functions in relation to prescribed categories of heritage resources; and

(ii) by provincial heritage resources authorities, to establish the capacity of local authorities to perform any function under this Act:

Provided that, in the event of a dispute, the matter shall be submitted to arbitration.

(b) If an authority at provincial or local level does not have the capacity or is not competent to perform a specific function for which it is responsible under this section, that function shall be performed on an agency basis by an authority at a higher level or a competent authority on the same level.

(c) A provincial heritage resources authority or a local authority shall apply to the relevant authority for the assessment of its competence under paragraph (a) in the manner prescribed by the assessing authority, and may apply for reassessment within the period and on the conditions prescribed by the assessing authority.

(d) The assessing authority may at any time, and shall at least every two years, reassess the competence of a subordinate authority and review the assumption of functions and powers under this Act.

### **Rights, duties and exemptions of State and supported bodies**

9. (1) All branches of the State and supported bodies must give heritage resources authorities such assistance in the performance of their functions as is reasonably practicable.

(2) All branches of the State and supported bodies must, on the request of a heritage resources authority, make available for its use and incorporation into its data base any information which it has on record on heritage resources under its control: Provided that the body supplying such information may set out conditions regarding the disclosure and distribution of such information by the heritage resources authority.

(3) Each State department and supported body must—

(a) maintain and conserve the heritage resources under its control in accordance with standards and procedures set out in regulations by SAHRA in consultation with the Department of Public Works;

(b) submit annually to SAHRA a report on the maintenance and development of such resources;

(c) in accordance with regulations, on the request of the Minister, or within 10 years from the commencement of this Act, compile and submit to SAHRA, information on and an inventory of such heritage resources;

(d) on the request of the Minister and in accordance with regulations, prepare management plans for specified heritage resources;

(e) not take any action that adversely affects such a resource unless the authority concerned is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken;

(f) at the initiation of the planning process of the project, or at least 90 days before taking any action that could adversely affect such heritage resource, whichever is the greater, inform SAHRA of the proposed action and give them a reasonable opportunity to consider and comment on it; and

(g) where the destruction of such heritage resources is permitted in terms of this Act, record such resources in accordance with standards set by SAHRA and undertake any other mitigating actions which may be required by SAHRA.

(4) Where SAHRA has been informed of a proposed action by a State Department or supported body, it must, as soon as practicable, submit its comments to the Department or supported body.

(5) An action for the purpose of this section shall be deemed to include the making of a recommendation which, if adopted, would affect a heritage resource, the making of a decision, the approval of a programme, the issue of a licence or the granting of a permission.

(6) Compliance with subsection (3) does not exempt a State Department or supported body from complying with requirements in terms of this Act, regarding any heritage resource in its ownership which is protected in terms of this Act or equivalent provincial legislation.

(7) The head of a government body at the national level of government must—

(a) inform SAHRA of his or her intention to destroy or delete any architectural or technical drawings in whatever medium, as may be defined in the regulations published by SAHRA in consultation with the National Archivist; and

(b) make such drawings available to SAHRA free of charge if requested by SAHRA.

(8) The head of a government body at the provincial or local level of government must—

(a) inform the provincial heritage resources authority of his or her intention to destroy or delete any architectural or technical drawings in whatever medium; and

(b) make such drawings available to a heritage resources authority free of charge.

(9) The Registrar of Deeds must inform SAHRA or the relevant heritage resources authority, in a notice as prescribed, of the particulars of the registration of transfer or subdivision of any place which is formally protected by such heritage resources authority in terms of Part 1 of Chapter 2 of this Act, within 14 days of such registration.

(10) When—

(a) a place has been declared a national heritage site or a provincial heritage site under section 27;

(b) a place has been designated a protected area under section 28;

(c) a place has been provisionally protected for a period longer than six months under section 29;

(d) a place has been entered in a heritage register under section 30;

(e) a place has been included in a heritage area under section 31;

(f) a heritage agreement has been entered into in respect of a place for a period exceeding six months under section 42;

(g) an order of no development under section 51(8) has been made in respect of a place, the heritage resources authority concerned must furnish the Surveyor-General and the Registrar of Deeds in whose deeds registry the land in question is registered with—

(i) a copy of the notice in the *Gazette* or the *Provincial Gazette*;

(ii) the particulars of the protection;

(iii) a copy of any survey, including any diagram or plan, made under section 25(2)(d); and

(iv) a copy of the relevant order of no development or of a heritage agreement.

(11) The Registrar of Deeds must—

(a) endorse the title deed of the place in question filed in the deeds office;

(b) make an entry in the appropriate registers and upon the owner's title deed as soon as it is lodged in the deeds office, relating to the particulars furnished in terms of subsection (10);

(c) identify the area of the protected place; and

(d) clearly state the particulars of the protection order or heritage agreement.

(12) The Surveyor-General must—

(a) endorse upon the relevant records filed in his or her office an entry referring to the notice furnished in terms of subsection (10); and

(b) state the particulars of the protection order or heritage agreement in broad terms.

(13) (a) When—

(i) any notice is amended or withdrawn under section 27(7);

(ii) the designation of a protected area is withdrawn under section 28(1) or (2);

(iii) a provisional protection for a period longer than six months is withdrawn under section 29(1)(b) or (2)(b);

(iv) an entry in a heritage register is amended or deleted;

(v) a place is excluded from a heritage area; or

(vi) an order of no development is amended or repealed under section 51(11), the heritage resources authority concerned must furnish a copy of the notice or order to the Registrar of Deeds and the Surveyor-General.

(b) The Registrar of Deeds must make the necessary endorsement upon the relevant title deeds and in the appropriate registers.

(c) The Surveyor-General must make the necessary endorsement upon the relevant records filed in his or her office.

## **General principles of procedure**

**10.** (1) The general principles of procedure set out in subsection (2) apply to any decision regarding the administration and management of the national estate by an authority to which a responsibility has been assigned in terms of section 7 and any other



competent authority to which functions and powers for the administration and management of the national estate have been assigned or delegated, including any decision—

(a) to formally protect a heritage resource by notice in the *Gazette* or *Provincial Gazette*;

(b) to issue or not to issue a permit; and

(c) taken by any person or authority to whom an appeal is made.

(2) The decisions contemplated in subsection (1) must be taken in accordance with the following general principles:

(a) The decisions must be consistent with the principles or policy set out in section 5 or prescribed under section 6;

(b) a meeting at which decisions are taken, must be open to the public and the agenda and minutes must be available for public scrutiny: Provided that when there is good reason to do so, a matter may, by decision of the majority of members present, be declared confidential and the discussion and minutes may be excepted from public scrutiny;

(c) a person who may be affected by a decision has the right of appearance at such meeting; and

(d) written reasons must be given for any decision upon request.

## ***Part 2: Constitution, function, powers and duties of heritage resources authorities***

### **Establishment of South African Heritage Resources Agency**

11. There is hereby established an organisation to be known as the South African Heritage Resources Agency (SAHRA) which shall be a body corporate capable of suing and being sued in its corporate name and which shall be governed by a Council established in terms of section 14.

### **Object of SAHRA**

12. The object of SAHRA is to co-ordinate the identification and management of the national estate.

### **Functions, powers and duties of SAHRA**

13. (1) The general functions of SAHRA are to—

(a) establish national principles, standards and policy for the identification, recording and management of the national estate in terms of which heritage resources authorities and other relevant bodies must function with respect to South African heritage resources;

(b) co-ordinate the management of the national estate by all agencies of the State and other bodies and monitor their activities to ensure that they comply with national principles, standards and policy for heritage resources management;

(c) identify, record and manage nationally significant heritage resources and keep permanent records of such work;

(d) advise, assist and provide professional expertise to any authority responsible for the management of the national estate at provincial or local level, and assist any other body concerned with heritage resources management;

(e) promote and encourage public understanding and enjoyment of the national

estate and public interest and involvement in the identification, assessment, recording and management of heritage resources;

(f) promote education and training in fields related to the management of the national estate; and

(g) perform any other functions assigned to it by this Act or as directed by the Minister.

(2) Without limiting the generality of subsection (1) and in addition to the general powers and duties conferred in terms of section 25, SAHRA—

(a) must investigate and advise the Council on—

(i) the state of South Africa's heritage resources and any steps necessary to protect and conserve them;

(ii) national policy for the management of the national estate;

(iii) legislative amendment and enactment for the management of the national estate;

(iv) the repatriation of heritage resources which have been removed from South Africa and which SAHRA considers to be significant as part of the national estate;

(v) the role of the national estate in the development and promotion of a cultural profile for South Africa;

(vi) action and expenditure by the State for the identification and management of heritage resources, including financial incentives and concessions for heritage resources management;

(vii) education and training at all levels to promote the effective identification and management of the national estate;

(viii) any matter related to the operation of this Act; and

(ix) any other matter pertaining to the national estate or its management;

(b) must establish and maintain, for its own use and for the use of all heritage authorities and bodies and the public, the national heritage resources library, including documentary and other records relating to the national estate;

(c) must promote the systematic identification and recording of the national estate by—

(i) the development of a national strategy for the identification and assessment of heritage resources;

(ii) the establishment and funding of a standing South African Heritage Resources Survey which is tasked with annual projects aimed at identifying, assessing and documenting heritage resources;

(iii) the co-ordination and support of initiatives by provincial heritage resources authorities, any other bodies and persons to survey and record heritage resources;

(iv) the administration, co-ordination and funding of projects and research programmes aimed at the creation of graphic and other records of heritage resources;

(v) training programmes and other relevant activities aimed at conserving and documenting traditional South African building techniques and structural forms;

(vi) promoting the identification and recording of aspects of living heritage associated with heritage resources; and

(vii) projects aimed at increasing the volume and detail of information held in the inventory of the national estate referred to in section 39; and

(d) must prescribe national norms and standards for the recording of information about heritage resources in data bases maintained by itself and by provincial

heritage resources authorities.

### **Establishment and constitution of SAHRA Council**

**14.** (1) The affairs of SAHRA are under the control, management and direction of a Council consisting of—

(a) at least nine but not more than 15 members appointed by the Minister in the prescribed manner, of which nine members must respectively represent each of the provinces of South Africa; and

(b) the chief executive officer of SAHRA.

(2) The members of the Council contemplated in subsection (1)(a) must be appointed in accordance with the principles of transparency and representivity and their appointment must take into account the desirability that the members—

(a) have among them qualifications or special experience or interest in fields relevant to heritage resources, and the financial knowledge needed for the efficient functioning of SAHRA; and

(b) be representative of the relevant sectoral interests and the cultural and demographic characteristics of the population of the Republic.

(3) A member of the Council must vacate the office if the member—

(a) resigns in writing;

(b) has been absent from three consecutive meetings of the Council without the leave of the Council;

(c) is an unrehabilitated insolvent;

(d) is found to be of unsound mind by a competent court; or

(e) is convicted of an offence involving dishonesty or bodily harm and is sentenced to imprisonment without the option of a fine.

(4) The Minister may, after consultation with the Council, remove a member of the Council from office if in the opinion of the Minister there are sound reasons for doing so after hearing the member on those reasons.

(5) A member of the Council holds office for a period not exceeding three years, and may be reappointed.

(6) No member may serve more than two consecutive terms.

(7) If a member of the Council dies or vacates the office before the expiration of the period for which the member has been appointed, another person may be appointed to fill the vacancy for the unexpired portion of the period for which the member was appointed.

### **Chairperson of Council**

**15.** (1) The chairperson of the Council is elected from the appointed members of the Council and holds office for the period or the unexpired portion of the period for which he or she has been appointed as member of the Council, unless the Council otherwise determines.

(2) If the chairperson of the Council vacates the office as chairperson before the expiration of the period for which he or she was appointed, another member of the Council must, subject to subsection (1), be elected as a chairperson of the Council from the appointed members of the Council.

(3) If the chairperson of the Council is absent from a meeting of the Council or not able to preside at that meeting, the members present must elect one of their number to preside at that meeting and that person may, during that meeting and until the chairperson resumes his or her functions, perform all those functions.

## **Functions of Council**

**16.** The functions of the Council are to—

- (a) advise the Minister on matters concerning heritage resources management;
- (b) be responsible and accountable for the implementation of the functions, powers and duties of SAHRA;
- (c) advise and assist SAHRA in the performance of its functions, powers and duties;
- (d) promote the co-ordination of policy formulation and planning for the management of the national estate at national and provincial levels; and
- (e) furnish the Minister with such information as the Minister may require.

## **Meetings of Council**

**17.** (1) The Council may meet as often as necessary, but at least twice a year.

(2) A quorum for a meeting of the Council shall be a majority of its members.

(3) Any decision of the Council shall be taken by resolution of the majority of the members present at any meeting of the Council, and, in the event of an equality of votes

on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote as a member of the Council.

## **Committees of Council**

**18.** The Council may establish committees to assist it in the performance of its functions and, in addition to any members, it may appoint to such committees persons whom the Council considers competent or who possess specific skills and expertise.

## **Reimbursement of expenses incurred by members of Council and committees**

**19.** The Minister may, with the concurrence of the Minister of Finance, determine the reimbursement of expenses incurred by members of the Council and any committees it may establish who are not in the full-time employ of the State.

## **Employees of Council**

**20.** (1) The Council must appoint a senior member of staff as chief executive officer, who must—

(a) be responsible for the management of the affairs of SAHRA and who must report on those affairs to the Council as the Council may require;

(b) be the accounting officer charged with the responsibility of accounting for all the money received and the utilisation thereof and be responsible for the property of SAHRA;

(c) furnish the Council with an annual report on the financial affairs of SAHRA;

(d) be responsible for the appointment and management of the staff in accordance with the staffing policy in terms of subsection (2); and

(e) perform any other activities and duties assigned to the chief executive officer from time to time by the Council.

(2) The Council must, in consultation with the chief executive officer, determine the staff needs and staffing policies of SAHRA and the posts, conditions of service, remuneration, allowances, subsidies and other benefits of the staff in accordance with a

system approved by the Minister with the concurrence of the Minister of Finance.

(3) The Council must designate one of the staff of SAHRA as acting chief executive officer when the office of chief executive officer is vacant or when the chief executive officer is absent.

## Finances and property

21. (1) The funds of SAHRA consists of—

(a) moneys appropriated by Parliament to enable it to perform its functions and exercise its powers;

(b) fees and fines received under the regulations;

(c) fees received in payment of services;

(d) funds raised by and donations and contributions to it;

(e) trust funds vested in it;

(f) interest derived from investments; and

(g) moneys received from any other source.

(2) Subject to this section, SAHRA must use its funds to defray expenditure in connection with the performance of its functions.

(3) The Council may invest any money not required for immediate use or as a reasonable operating balance in accordance with the directions determined by the Minister in consultation with the Minister of Finance.

(4) The Council may establish and operate a reserve fund and may deposit therein such amounts as become available from time to time.

(5) SAHRA, with the approval of the Council—

(a) may not lend or borrow any money without the consent of the Minister given with the concurrence of the Minister of Finance;

(b) may purchase or otherwise acquire, hold, let, hire or receive in trust any real right in any immovable or movable property; and

(c) may not make over to any person to hold in trust or sell, exchange or otherwise alienate, or hypothecate, burden with a servitude or otherwise confer any real right in immovable property, without the approval of the Minister given with the concurrence of the Minister of Finance.

(6) Once during every financial year, at a time determined by the Minister, SAHRA must submit a statement of its estimated income and expenditure for the following financial year to the Minister for approval, granted with the concurrence of the Minister of Finance.

(7) SAHRA may during the course of a financial year submit supplementary estimates of its expenditure for that financial year to the Minister for approval, granted with the concurrence of the Minister of Finance.

(8) SAHRA must not incur any expenditure except in accordance with an estimate of expenditure approved under subsections (6) and (7).

(9) SAHRA must—

(a) keep full and correct accounts and records of all its financial transactions and affairs, including all its transactions in its capacity of trustee of any trust fund, and all properties under its control, and must ensure that all payments out of its funds are correctly made and properly authorised and that adequate control is maintained over its assets, or those in its custody, and the incurring of liabilities; and

(b) as soon as possible after the end of the financial year, draw up annual financial statements which must show money received and expenditure incurred and its assets and liabilities at the end of the financial year concerned.

(10) The financial year of SAHRA ends on 31 March each year.

(11) The accounts and annual financial statements referred to in subsection (9)(b) must be audited by the Auditor-General.

(12) The accounts and annual financial statements referred to in subsection (9)(b) must be available for public inspection.

## Reports

**22.** (1) As soon as practicable after the end of the financial year, SAHRA must compile and submit to the Minister a report on all its activities during that financial year, including a balance sheet and statements of income and expenditure certified by the Auditor-General.

(2) The report referred to in subsection (1) must include a description of the condition of the national estate during the period to which the report relates, including destruction and other losses incurred, threats to specific heritage resources or categories of heritage resources, and an account of offences and prosecutions and the results thereof.

(3) The Minister must table the report referred to in subsection (1) in Parliament within 14 days after receipt thereof if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ordinary session.

## Establishment of provincial heritage resources authorities

**23.** An MEC may establish a provincial heritage resources authority which shall be responsible for the management of the relevant heritage resources within the province, which shall be a body corporate capable of suing and being sued in its corporate name and which shall be governed by a Council constituted as prescribed by regulations published in the *Provincial Gazette*: Provided that the members of the Council shall be appointed in a manner which applies the principles of transparency and representivity and takes into account special competence, experience and interest in the field of heritage resources.

## Functions, powers and duties of provincial heritage resources authority

**24.** (1) A provincial heritage authority must—

(a) advise the MEC on the implementation of this Act or relevant provincial or municipal legislation;

(b) annually submit a report to the MEC regarding its activities during that year;

(c) promote the systematic identification, recording and assessment of heritage resources and heritage objects which form part of the national estate in a province;

(d) protect and manage heritage resources in a province which fulfil the heritage assessment criteria prescribed under section 7(1) for Grade II status;

(e) notify SAHRA of the presence of any heritage resource in the province which it considers fulfils the heritage assessment criteria prescribed under section 7(1) for Grade I status, nominate such resource for national level protection and furnish SAHRA with the information in its possession relating to such resource;

(f) maintain data bases on heritage resources in accordance with national standards, and at regular intervals furnish SAHRA with such data;

(g) establish policy, objectives and strategy plans for heritage resources management in the province;

(h) determine the competence of local authorities to manage heritage resources in accordance with the national system for the heritage grading of local authorities prescribed under section 8(6);

(i) co-ordinate and monitor the performance of local authorities in the implementation of their responsibilities in terms of this Act and provincial heritage legislation;

(j) assist local authorities to manage heritage resources in their areas of jurisdiction; and

(k) provide for any areas of responsibility in terms of this Act or any provincial heritage resources legislation when a local authority does not have competence, or has insufficient capacity, to perform a function in terms of the criteria prescribed under section 8(6).

## **General powers and duties of heritage resources authorities**

**25.** (1) A heritage resources authority must—

(a) furnish information, advice and assistance to enhance public sensitivity towards and awareness of the need for management of the national estate;

(b) maintain a list of conservation bodies which have, in accordance with regulations by the heritage resources authority concerned, registered their interest in—

(i) a geographical area; or

(ii) a category of heritage resources;

(c) regularly inspect heritage resources which are formally protected by the heritage resources authority concerned in terms of any provision of Part 1 of Chapter II;

(d) endeavour to assist any community or body of persons with an established interest in any heritage resource to obtain reasonable access to such heritage resource, should they request it, and may for this purpose—

(i) enter into negotiations with the owner of such resource;

(ii) facilitate the making of arrangements as may be required for the achievement of such access, including the execution of a heritage agreement under section 42; and

(iii) if such negotiations are unsuccessful, refer the matter to the Minister or MEC, as the case may be; and

(e) make arrangements to ensure the protection and management of all heritage resources and property owned or controlled by it or vested in it.

(2) A heritage resources authority may—

(a) promote and engage in research relating to the identification, assessment and management of the national estate as necessary for the performance of its functions;

(b) publish, or by any other means make available or distribute in any form, or cause to be published or distributed, any knowledge and information relating to the national estate and any of its functions or activities;

(c) inspect or document any heritage resource—

(i) which has the potential to become protected in terms of this Act;

(ii) which is, or which the heritage authority has reason to believe may be, so protected; or

(iii) which it wishes to document for research purposes, for purposes of building up a public record of heritage resources or as part of an investigation into a suspected offence in terms of this Act, and must maintain a register of such inspections;

(d) whenever it is investigating the desirability of protecting any place in terms of this Act, take such steps as it considers necessary—



- (i) for erecting beacons on the corners of and surveying and preparing a diagram or plan of such place; or
- (ii) for determining by survey the location of such place or object in relation to the beacons and boundaries of the land on which it is situated;
- (e) undertake or make arrangements for the presentation of any place under its control or, after consultation with the Department concerned, any heritage site which is owned by the State;
- (f) by agreement with the authority or body concerned, co-operate in the management of any heritage resource which is owned or controlled by the State or a supported body;
- (g) lend anything under its control to a museum or public institution, subject to such conditions as it deems necessary and appropriate;
- (h) subject to the provisions of section 59, make and from time to time amend regulations relating to any matter which the heritage authority concerned considers to be necessary or expedient to prescribe to fulfil its functions and implement its powers and duties under this Act, including—
  - (i) the standards of practice and qualifications required of individuals, institutions or other bodies for the performance of work on heritage resources protected in terms of, and in the various fields covered by, this Act; and
  - (ii) the monitoring of activities at protected sites;
- (i) create and where necessary register with the relevant authorities a badge, or an emblem for the authority, any of its projects or any category of protection provided for in terms of this Act;
- (j) where appropriate, affix to or otherwise display at any place protected in terms of this Act a badge or other sign indicating its status;
- (k) produce, acquire and market products relating to the national estate, or enter into arrangements for the production, acquisition and marketing of such products;
- (l) recover costs incurred by it and, where appropriate, charge for the provision of services rendered in terms of this Act, including but not limited to the—
  - (i) processing of applications received;
  - (ii) carrying out of investigations;
  - (iii) production, acquisition and marketing of products; and
  - (iv) provision of information;
- (m) arrange for the provision of insurance cover for—
  - (i) itself against any loss, damage, risk or liability which it may suffer or incur regarding any property under its control;
  - (ii) members of the council of a heritage resources authority, co-opted members, members of committees and members of its staff, in respect of bodily injury, illness, disablement or death incurred wholly and directly in the course of the performance of their duties on behalf of the heritage resources authority concerned;
- (n) enter into contracts; and
- (o) employ consultants to assist in the performance of its functions.

### **Delegation of functions or powers of heritage resources authorities**

**26.** (1) Subject to subsection (3), the Minister or MEC, as the case may be, may make regulations to enable a heritage resources authority to delegate in writing any of its functions or powers under this Act to all or any of the following:

- (a) In the case of SAHRA, any member of the Council;
  - (b) in the case of a provincial heritage resources authority, any member of its council;
  - (c) a committee or any member of a committee;
  - (d) any employee, heritage inspector, volunteer or other representative of the authority concerned;
  - (e) specified office bearers or members of a conservation body registered with it in terms of section 25(1)(b);
  - (f) in the case of SAHRA, a provincial heritage resources authority, provincial government, local authority, and any other authority which shows competence to perform such functions, by agreement with such authority;
  - (g) in the case of a provincial heritage resources authority, a local authority or any other body which is competent to perform such functions, by agreement with such authority or body.
- (2) A power delegated under subsection (1), when exercised by the delegate, shall for the purposes of this Act be deemed to be exercised by the heritage resources authority concerned: Provided that a delegate shall be held accountable to the heritage resources authority for all actions performed by him, her or it during the period of delegation.
- (3) A heritage resources authority may not delegate power to do any of the following:
- (a) Delegate any of its functions or powers under this section;
  - (b) make a recommendation to the Minister or MEC in terms of this Act;
  - (c) borrow money under section 21(5)(a);
  - (d) acquire or dispose of real property under section 21(5)(b) or (c); or
  - (e) adopt any statement of general policy or conservation management plan under section 47.
- (4) A delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power by the heritage resources authority: Provided that the delegation of any power to a provincial heritage resources authority in terms of an agreement under subsection (1)(f) shall only be revoked by SAHRA with the consent of the Minister, after SAHRA has consulted such provincial heritage resources authority.

## **CHAPTER II**

### **PROTECTION AND MANAGEMENT OF HERITAGE RESOURCES**

#### ***Part 1: Formal protections***

##### **National heritage sites and provincial heritage sites**

**27.** (1) SAHRA must identify those places with qualities so exceptional that they are of special national significance in terms of the heritage assessment criteria set out in section 3(2) and prescribed under section 6(1) and (2), and must investigate the desirability of their declaration as national heritage sites.

(2) A provincial heritage resources authority must identify those places which have special qualities which make them significant in the context of the province or a region in terms of the heritage assessment criteria set out in section 3(2) and prescribed under section 6(1) and (2) and must investigate the desirability of their declaration as provincial heritage sites.

(3) Any person may submit a nomination to SAHRA for a place to be declared a national heritage site or to the provincial heritage resources authority for a place to be

declared a provincial heritage site. The heritage resources authority concerned may prescribe the format and procedures for such nominations.

(4) A written motivation for the declaration of a place as a heritage site must be prepared and kept on record by the heritage resources authority.

(5) SAHRA may, by notice in the *Gazette*, declare any place referred to in subsection (1) to be a national heritage site.

(6) A provincial heritage resources authority may, by notice in the *Provincial Gazette*, declare any place referred to in subsection (2) and described in the notice to be a provincial heritage site.

(7) The heritage resources authority concerned may, by similar notice—

(a) amend any notice published under subsection (5) or (6); or

(b) withdraw any notice published under subsection (5) or (6) or paragraph (a) of this subsection.

(8) Before declaration of a place as a heritage site, or amendment or withdrawal of a notice under subsection (7), the heritage resources authority—

(a) must notify the owner;

(b) must notify the mortgage holder, the occupier and any other person with a registered interest in the property;

(c) must notify all conservation bodies which have, in terms of section 25(1)(b), registered their interest in the geographical area in which the proposed heritage site is situated, and give them at least 60 days to make submissions regarding the proposed declaration, amendment or withdrawal, and in the case of the owner, to propose conditions under which the action will be acceptable. All submissions must be considered by the heritage resources authority before a final decision is made; and

(d) before notifying the owner as provided in paragraph (a), must give to the owner reasonable opportunity for representations or submissions to be made in regard to the proposed notification.

(9) A heritage resources authority may at any time withdraw a notice which it has served in terms of subsection (8)(a).

(10) For the purposes of subsections (15) to (22), a place shall be deemed to be protected as a heritage site for six months from the date of service of a notice under subsection (8)(a) or until the notice is withdrawn or the place is declared to be a heritage site, whichever is the shorter period.

(11) Subject to subsection (12), if the owner objects to the proposed declaration of a place or proposes conditions which the heritage resources authority reasonably considers to be unacceptable, the heritage resources authority may, prior to the expiry of the notice in terms of subsection (10), renew a notice under subsection (8)(a), whereupon the protection under subsection (10) shall be extended for a further six months. If during this time consultation between the heritage resources authority and the owner fails to lead to the withdrawal of the owner's objection or the proposal of acceptable conditions, the heritage resources authority may declare the place to be a heritage site.

(12) The Minister, on the advice of SAHRA, must prescribe circumstances in which the State, a local authority or a supported body may object to the declaration as a heritage site of a place which it owns or controls.

(13) SAHRA must inform the provincial heritage resources authority, the provincial planning authority and the local authority within whose area of jurisdiction a national heritage site falls, within 30 days of its declaration.

(14) A provincial heritage resources authority must inform SAHRA, the provincial planning authority and the local authority within whose area of jurisdiction a provincial

heritage site falls, within 30 days of its declaration.

(15) SAHRA is responsible for the protection of national heritage sites in accordance with the provisions of this section.

(16) A provincial heritage resources authority is responsible for the protection of provincial heritage sites in accordance with the provisions of this section.

(17) Except in cases where the heritage resources authority considers it inappropriate, all heritage sites must be marked with a badge indicating their status.

(18) No person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the heritage resources authority responsible for the protection of such site.

(19) The responsible heritage resources authority may make regulations pertaining to heritage sites under its control, or to any other heritage site with the consent of the owner of that site—

(a) safeguarding heritage sites from destruction, damage, disfigurement, excavation or alteration;

(b) regulating the conditions of use of any heritage site or the conditions for any development thereof;

(c) regulating the admission of members of the public to a heritage site, and the fees payable for such admission.

(20) Any branch of the State or supported body which is the owner of a heritage site must maintain such site according to a minimum standard and according to a procedure prescribed by the responsible heritage resources authority after consultation with the relevant Departments of Works.

(21) The responsible heritage resources authority may, by agreement with the owner of a heritage site—

(a) conserve or improve any heritage site;

(b) construct fences, walls or gates around or on a heritage site;

(c) acquire or construct and maintain an access road to a heritage site over any land, and construct upon such land fences, walls or gates; or

(d) erect signs on or near a heritage site.

(22) No person may damage any fence, wall or gate constructed or sign erected by a heritage resources authority in terms of subsection (21).

(23) (a) All reproduction rights either in two or three dimensions in respect of a heritage site, subject to any existing rights and the agreement of the owner of such site, belong to the State and vest in the heritage resources authority responsible for the protection of such site or, by agreement, with the authority or public institution responsible for the management of such site.

(b) Subject to the provisions of paragraph (a), no person other than the owner of the site may make such reproduction for profit without a permit issued by SAHRA or a provincial heritage resources authority, as the case may be, which may prescribe the fees payable in respect of such reproduction and must deposit such fees in a trust fund dedicated to the conservation of such site or of heritage resources in general.

## **Protected areas**

**28.** (1) SAHRA may, with the consent of the owner of an area, by notice in the *Gazette* designate as a protected area—

(a) such area of land surrounding a national heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to

protect the view of and from such site; or

(b) such area of land surrounding any wreck as is reasonably necessary to ensure its protection; or

(c) such area of land covered by a mine dump.

(2) A provincial heritage resources authority may, with the consent of the owner of an area, by notice in the *Provincial Gazette* designate as a protected area—

(a) such area of land surrounding a provincial heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or

(b) such area of land surrounding any archaeological or palaeontological site or meteorite as is reasonably necessary to ensure its protection.

(3) No person may damage, disfigure, alter, subdivide or in any other way develop any part of a protected area unless, at least 60 days prior to the initiation of such changes, he or she has consulted the heritage resources authority which designated such area in accordance with a procedure prescribed by that authority.

(4) With regard to an area of land covered by a mine dump referred to in subsection (1)(c) SAHRA must make regulations providing for the protection of such areas as are seen to be of national importance in consultation with the owner, the Minister of Minerals and Energy and interested and affected parties within the mining community.

(5) A heritage resources authority may make regulations providing for specific protections for any protected area which it has designated, including the prohibition or control of specified activities by any person in the designated area.

(6) A local authority may, with the agreement of the heritage resources authority which designated a protected area, make provision in its town planning scheme or in by-laws for the management of such area.

### **Provisional protection**

**29.** (1) SAHRA, or a provincial heritage resources authority, may, subject to subsection (4), by notice in the *Gazette* or the *Provincial Gazette*, as the case may be—

(a) provisionally protect for a maximum period of two years any—

(i) protected area;

(ii) heritage resource, the conservation of which it considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; or

(iii) heritage resource, the protection of which SAHRA or the provincial heritage resources authority wishes to investigate in terms of this Act; and

(b) withdraw any notice published under paragraph (a).

(2) A local authority may, subject to subsection (4), by notice in the *Provincial Gazette*—

(a) provisionally protect for a maximum period of three months any place which it considers to be conservation-worthy, the conservation of which the local authority considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; and

(b) withdraw any notice published under paragraph (a):

Provided that it notifies the provincial heritage resources authority within seven days of such provisional protection.

(3) A provincial heritage resources authority may, by notice in the *Provincial Gazette*, revoke a provisional protection by a local authority under subsection (2) or provisionally protect a place concerned in accordance with subsection (1).

(4) A heritage resources authority or a local authority may not provisionally protect any heritage resource unless it has notified the owner of the resource in writing of the proposed provisional protection.

(5) A heritage resource shall be deemed to be provisionally protected for 30 days from the date of service of a notice under subsection (4) or until the notice is withdrawn or the resource is provisionally protected by notice in the *Gazette* or the *Provincial Gazette*, whichever is the shorter period.

(6) A heritage authority or a local authority may at any time withdraw a notice which it has issued under subsection (4).

(7) SAHRA shall inform the relevant provincial heritage authority and local authority within 30 days of the publication or withdrawal of a notice under subsection (1).

(8) A provincial heritage resources authority shall inform the relevant local authority within 30 days of the publication or withdrawal of a notice under subsection (1).

(9) A local authority shall inform the provincial heritage authority of the withdrawal of a notice under subsection (2)(b).

(10) No person may damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of a provisionally protected place or object without a permit issued by a heritage resources authority or local authority responsible for the provisional protection.

## **Heritage Registers**

**30.** (1) A provincial heritage resources authority must compile and maintain a heritage register listing the heritage resources in the province which it considers to be conservation-worthy in terms of the heritage assessment criteria set out in section 3(3) and prescribed under section 7.

(2) Subject to subsection (7), a provincial heritage resources authority may, by notice in the *Provincial Gazette*, list a heritage resource or amend or delete an entry in a heritage register.

(3) Heritage resources must be listed in accordance with—

(a) the sub-categories of Grade II and Grade III heritage resources prescribed under section 7, if any;

(b) the areas of jurisdiction of local authorities; and

(c) any additional categories prescribed by the provincial heritage resources authority in consultation with SAHRA.

(4) A provincial heritage resources authority must prescribe the procedure and information required for—

(a) the nomination of a resource for listing in a heritage register; and

(b) the compilation of an inventory of heritage resources referred to in subsection (5), which shall require at least compliance with such minimum standards as may be prescribed by SAHRA for the recording of information under section 39.

(5) At the time of the compilation or revision of a town or regional planning scheme or a spatial development plan, or at any other time of its choosing, or at the initiative of a provincial heritage resources authority where in the opinion of a provincial heritage resources authority the need exists, a planning authority shall compile an inventory of the heritage resources which fall within its area of jurisdiction and submit such inventory to the relevant provincial heritage resources authority, which shall list in the heritage register those heritage resources which fulfil the assessment criteria under subsection (1).

(6) A provincial heritage resources authority may approve an inventory of heritage

resources submitted to it by any person for listing in the heritage register.

(7) A provincial heritage resources authority shall not list a place in a heritage register without having consulted the owner of such place regarding *inter alia* the provisions to be established under subsection (11) for the protection of the place.

(8) The MEC may, after consultation with the MEC for local government, prescribe the process of consultation referred to in subsection (7).

(9) On publication of a notice in the *Provincial Gazette* concerning the listing in the heritage register of a place within its area of jurisdiction, or the amendment or deletion of an entry for such place, a local authority must notify the owner of such place.

(10) A local authority shall notify SAHRA and the provincial heritage resources authority when a place within its area of jurisdiction which is listed in the heritage register is destroyed, whereupon the provincial heritage resources authority shall record the destruction of the place against the entry in the heritage register for that place, and SAHRA shall record such destruction in the inventory of the national estate.

(11) Within six months of the publication of a notice in the *Provincial Gazette* concerning the inclusion in the heritage register of a place falling within its area of jurisdiction, every local authority must make provision for the protection of such place through the provisions of its planning scheme or by-laws under this Act: Provided that any such protective provisions shall be jointly approved by the provincial heritage resources authority, the relevant local authority and the provincial planning authority, and provided further that—

(a) the special consent of the local authority shall be required for any alteration to or development affecting a place listed in the heritage register;

(b) the local authority must, prior to the consideration of an application under paragraph (a), notify any conservation bodies which have, in terms of section 25(1)(b), registered their interest in the geographical area or type of property concerned and give them a reasonable period in which to register an objection or make other representations with respect to the application;

(c) in assessing an application under paragraph (a), the local authority shall consider—

(i) the cultural significance of the place and how this could be affected by the proposed alteration or development; and

(ii) any objection or representations under paragraph (b);

(d) where the local authority resolves to approve an application under paragraph (a) which would materially affect the cultural significance of the place and an objection to such approval has been registered under paragraph (b), unless the conservation body concerned withdraws such objection, the objection shall be deemed to be an appeal in terms of section 49 and the local authority shall submit the application and all relevant information to the relevant appeal body; and

(e) in the event of any alteration or development of a place listed in a heritage register being undertaken without the consent of the local authority, the local authority may require the owner to stop such work instantly and restore the site to its previous condition within a specified period. If the owner fails to comply with the local authority's requirements the local authority shall have the right to carry out such restoration work itself and recover the cost thereof from the owner.

(12) A provincial heritage resources authority or a local authority within whose area of jurisdiction such site is located may provisionally protect any place in an inventory referred to in subsections (5) and (6): Provided that such provisional protection shall be withdrawn when the place is listed in the heritage register.

(13) A local authority may mark any place falling within its area of jurisdiction listed in a heritage register with a badge indicating its status.

(14) Inclusion of a place in a heritage register shall not exempt any person from complying with the provisions of sections 35 and 36.

## Heritage areas

**31.** (1) A planning authority must at the time of revision of a town or regional planning scheme, or the compilation or revision of a spatial plan, or at the initiative of the provincial heritage resources authority where in the opinion of the provincial heritage resources authority the need exists, investigate the need for the designation of heritage areas to protect any place of environmental or cultural interest.

(2) Where the provincial heritage resources authority is of the opinion that the need exists to protect a place of environmental or cultural interest as a heritage area, it may request a planning authority to investigate its designation in accordance with proposals submitted by the provincial heritage resources authority with its request. The planning authority must inform the provincial heritage resources authority within 60 days of receipt of such a request whether it is willing or able to comply with the request.

(3) Where the planning authority informs the provincial heritage resources authority that it is willing and able, the provincial heritage resources authority must assist the planning authority to investigate the designation of the place as a heritage area.

(4) Where the planning authority does not so inform the provincial heritage resources authority, or informs the provincial heritage resources authority that it is not so willing and able, the provincial heritage resources authority may investigate the designation of the place as a heritage area and, with the approval of the MEC, designate such place to be a heritage area by notice in the *Provincial Gazette*.

(5) A local authority may, by notice in the *Provincial Gazette*, designate any area or land to be a heritage area on the grounds of its environmental or cultural interest or the presence of heritage resources, provided that prior to such designation it shall consult—

(a) the provincial heritage resources authority; and

(b) owners of property in the area and any affected community, regarding *inter alia* the provisions to be established under subsection (7) for the protection of the area.

(6) The MEC may, after consultation with the MEC responsible for local government, publish regulations setting out the process of consultation referred to in subsection (5).

(7) A local authority must provide for the protection of a heritage area through the provisions of its planning scheme or by-laws under this Act, provided that any such protective provisions shall be jointly approved by the provincial heritage resources authority, the provincial planning authority and the local authority, and provided further that—

(a) the special consent of the local authority shall be required for any alteration or development affecting a heritage area;

(b) in assessing an application under paragraph (a) the local authority must consider the significance of the area and how this could be affected by the proposed alteration or development; and

(c) in the event of any alteration or development being undertaken in a heritage area without the consent of the local authority, it shall have the power to require the owner to stop such work instantly and restore the site to its previous condition within a specified period. If the owner fails to comply with the requirements of the local authority, the local authority shall have the right to carry out such restoration work itself and recover the cost thereof from the



owner.

(8) A local authority may erect signage indicating its status at or near a heritage area.

(9) Particular places within a heritage area may, in addition to the general provisions governing the area, be afforded further protection in terms of this Act or other heritage legislation.

## Heritage objects

**32.** (1) An object or collection of objects, or a type of object or list of objects, whether specific or generic, that is part of the national estate and the export of which SAHRA deems it necessary to control, may be declared a heritage object, including—

(a) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects, meteorites and rare geological specimens;

(b) visual art objects;

(c) military objects;

(d) numismatic objects;

(e) objects of cultural and historical significance;

(f) objects to which oral traditions are attached and which are associated with living heritage;

(g) objects of scientific or technological interest;

(h) books, records, documents, photographic positives and negatives, graphic material, film or video or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), or in a provincial law pertaining to records or archives; and

(i) any other prescribed category.

(2) For the purposes of this section, an object within a type of objects declared to be a heritage object is deemed to be a heritage object.

(3) Before declaring any object contemplated in subsection (1) as a heritage object, SAHRA may give to the owner such prior opportunity for representations or submissions to be made in regard to the proposed declaration as may be practicable in the circumstances and in such manner as may be prescribed. Nothing herein contained shall oblige SAHRA to give such prior opportunity if the circumstances militate against this.

(4) SAHRA with the approval of the Minister may, by notice in the *Gazette*—

(a) declare an object, or a collection thereof, or a type of object or list of objects, whether specific or generic, to be a heritage object;

(b) amend any notice published under paragraph (a); or

(c) withdraw any notice published under paragraph (a) or amended under paragraph (b).

(5) SAHRA may not exercise its power under subsection (4) unless—

(a) in the case of a specific object or collection, it has served on the owner a notice of its intention and has given him or her at least 60 days to lodge an objection or suggest reasonable conditions regarding the care and custody of such object under which such declaration is acceptable; or

(b) in the case of a type of objects, it has—

(i) published a notice of provisional declaration in the *Gazette*;

(ii) by public advertisement and any other means it considers appropriate, made known publicly the effect of the declaration and its purpose; and

(iii) invited any interested person who might be adversely affected to make

submissions to or lodge objections with SAHRA within 60 days from the date of the notice, and has considered all such submissions and objections.

(6) An object or collection shall be deemed to be protected as a heritage object for six months from the date of service or publication of a notice under subsection (5)(a) or (5)(b)(i), or until such notice is withdrawn or the object or collection or type of objects is declared to be a heritage object, whichever is the shorter period.

(7) SAHRA must maintain a register of heritage objects in which all objects, collections of objects and types of objects which have been declared heritage objects must be listed.

(a) The register shall be in two parts:

(i) Part I: Heritage objects listed by type.

(ii) Part II A: Specific heritage objects as listed in the inventory of a public museum in South Africa or otherwise displayed or kept in secure conditions.

(iii) Part II B: Other specific heritage objects.

(b) SAHRA may prescribe the further division of the parts of the register into categories or other subdivisions.

(8) SAHRA must make available to the public, subject to subsection (9), a summary of information contained in the register.

(9) Where it is necessary to ensure the proper protection of a heritage object which is entered in the register, no information which may identify the location of the object must be accessible to any person except with the express consent of SAHRA, for so long as SAHRA may determine.

(10) SAHRA may designate any person or any institution in South Africa as an expert examiner for the purposes of this section, on the basis of his, her or its special knowledge.

(11) SAHRA may provide to the owner or custodian of a heritage object listed in Part II of the register of heritage objects a certificate or badge indicating its status.

(12) The owner of a heritage object listed in Part II of the register of heritage objects must notify SAHRA of the name and address of the new owner when such object is sold or otherwise alienated and must provide the new owner or custodian with any certificate or badge under subsection (11) relating to such a heritage object.

(13) No person may destroy, damage, disfigure or alter any heritage object, or disperse any collection which is listed in Part II of the register, without a permit issued by SAHRA.

(14) SAHRA may make regulations relating to the registration of dealers in heritage objects and the control of trade in heritage objects.

(15) It is the responsibility of the owner or custodian of a heritage object listed in Part II of the register of heritage objects, to keep the heritage object in good condition and in a secure place.

(16) The owner or custodian of a heritage object, listed in Part II of the register of heritage objects, must immediately report to SAHRA any loss of or damage to such a heritage object or any part thereof upon discovery of such loss or damage.

(17) No person may carry out any work of restoration or repair of a heritage object, listed in Part II of the register of heritage objects, without a permit issued by a duly authorised representative of SAHRA.

(18) On application by the owner or custodian of a heritage object listed in Part II of the register of heritage objects, SAHRA may at its discretion assist in funding any restoration or repair work undertaken by a restoration or repair craftsperson approved by SAHRA.

(19) No person may export or attempt to export from South Africa any heritage object

without a permit issued by SAHRA.

(20) No heritage object may be removed from South Africa other than through a customs port of entry, and the relevant export permit issued under subsection (19) or certificate of exemption issued under subsection (32) must be produced to a custom officer before removal from South Africa is effected or allowed.

(21) An application for such an export permit must be made in the manner and contain such information as prescribed by SAHRA.

(22) On receipt of an application to export a heritage object SAHRA may refer it to one or more expert examiners, who must submit to SAHRA a written report on the application.

(23) SAHRA must consider the report and—

(a) issue a permit to export the object concerned, subject to such conditions, if any, as SAHRA considers necessary; or

(b) refuse to issue a permit.

(24) In considering an application to export any object of a type listed in Part I of the register of heritage objects permanently, an expert examiner and SAHRA must consider whether the object—

(a) is of outstanding significance by reason of its close association with South African history or culture, its aesthetic qualities, or its value in the study of the arts or sciences; and

(b) is of such a degree of national importance that its loss to South Africa would significantly diminish the national heritage, and if satisfied that the object fulfils both these criteria, may not recommend the issue of a permit, or issue a permit, as the case may be, to export the object permanently.

(25) In the event of SAHRA refusing to issue an export permit the applicant may, within 30 days after such refusal, by written notice require the compulsory purchase of the heritage object to which such refusal relates.

(26) On receipt of a notification under subsection (25) SAHRA must—

(a) if it is of the opinion that a fair offer to purchase the object concerned might be made by a person or public authority in South Africa within the following six months, establish a delay period of not less than two months and not more than six months during which an export permit may not be issued in respect of such object; or

(b) on its own behalf or on behalf of a public institution or authority in South Africa or a person who will undertake to keep the object in the country, offer to purchase the object either by an immediate cash payment or by payment of compensation in such manner as the Minister in consultation with the Minister of Finance may determine; or

(c) in any other case, issue a permit to export the object concerned.

(27) Where SAHRA establishes a delay period under subsection (26)(a) in respect of a heritage object, it—

(a) must give written notice of the delay period to the applicant, and the Minister;

(b) must advise such institutions and public authorities in South Africa as it sees fit of the delay period and of the object in respect of which such delay period was established;

(c) may by public advertisement or any other means it deems appropriate make known the delay period and the object in respect of which it was established; and

(d) may stipulate that the heritage object concerned is deposited on temporary loan with a specified South African museum or public authority for the duration of the delay period.

(28) SAHRA, in consultation with the Minister, may extend a delay period established under subsection (26)(a) for a maximum period of two years.

(29) In the event that—

(a) during a delay period established under subsection (26)(a), an offer to purchase the heritage object concerned is made and the applicant and a public authority or person making such offer cannot agree as to the amount of a fair cash offer; or

(b) SAHRA and the applicant cannot agree as to the amount of a fair offer or compensation under subsection (26)(b), such dispute must be arbitrated by a panel appointed by the Minister, consisting of equal representatives of dealers in heritage objects, museums and collectors of heritage objects, which must determine the amount of a fair cash offer to purchase such heritage object and must notify the parties concerned and SAHRA thereof.

(30) Where a delay period established under subsection (26)(a) expires without a fair offer being made to purchase the heritage object concerned, SAHRA must forthwith on the request of the applicant issue a permit to export such heritage object.

(31) Where a delay period established under subsection (26)(a) expires and SAHRA is satisfied that a fair offer to purchase the heritage object concerned has been made, SAHRA may not issue a permit to export such heritage object.

(32) A person who intends to import an object which is of a type listed in Part I of the register of heritage objects, for temporary purposes or in circumstances in which the person may subsequently wish to export the object, may apply to SAHRA for a certificate of exemption authorising the export of the object concerned for the period specified in the certificate.

## **Part 2: General protections**

### **Import of objects protected in terms of laws of foreign states**

**33.** (1) No person may import into South Africa any foreign cultural property other than through a customs port of entry, and the export permit or other permission issued in the country of origin of such object must be produced to a customs officer before import to South Africa is effected or allowed.

(2) After a cultural property agreement between South Africa and a reciprocating state

comes into force, no person may import into South Africa any foreign cultural property that has been illegally exported from a reciprocating state.

(3) A customs officer who has reason to believe that a person is attempting to import an object in contravention of subsection (1) or (2), may withhold the object concerned and such object must be kept in the custody of SAHRA until such time, not exceeding six months, as an investigation into the provenance of such object is completed.

(4) SAHRA may, with the consent of the Minister and the Minister of Foreign Affairs, liaise and co-operate with the authority responsible for the protection of cultural property in any reciprocating state and may enter into agreements with any such authority with regard to the return to the country of origin of any heritage object or cultural property which is illegally imported into South Africa or the reciprocating state, whether specifically or in general.

## **Structures**

**34.** (1) No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

(2) Within three months of the refusal of the provincial heritage resources authority to issue a permit, consideration must be given to the protection of the place concerned in terms of one of the formal designations provided for in Part 1 of this Chapter.

(3) The provincial heritage resources authority may at its discretion, by notice in the *Provincial Gazette*, make an exemption from the requirements of subsection (1) within a defined geographical area, or for certain defined categories of site within a defined geographical area, provided that it is satisfied that heritage resources falling into the defined area or category have been identified and are adequately provided for in terms of the provisions of Part 1 of this Chapter.

(4) Should the provincial heritage resources authority believe it to be necessary it may, following a three-month notice period published in the *Provincial Gazette*, withdraw or amend a notice under subsection (3).

### **Archaeology, palaeontology and meteorites**

**35.** (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 offices 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 an 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.

(5) When the responsible heritage resources authority has reasonable cause to believe that any activity or development which will destroy, damage or alter any

archaeological or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure in terms of section 38 has been followed, it may—

(a) serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as is specified in the order;

(b) carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary;

(c) if mitigation is deemed by the heritage resources authority to be necessary, assist the person on whom the order has been served under paragraph (a) to apply for a permit as required in subsection (4); and

(d) recover the costs of such investigation from the owner or occupier of the land on which it is believed an archaeological or palaeontological site is located or from the person proposing to undertake the development if no application for a permit is received within two weeks of the order being served.

(6) The responsible heritage resources authority may, after consultation with the owner of the land on which an archaeological or palaeontological site or a meteorite is situated, serve a notice on the owner or any other controlling authority, to prevent activities within a specified distance from such site or meteorite.

(7) (a) Within a period of two years from the commencement of this Act, any person in possession of any archaeological or palaeontological material or object or any meteorite which was acquired other than in terms of a permit issued in terms of this Act, equivalent provincial legislation or the National Monuments Act, 1969 (Act No. 28 of 1969), must lodge with the responsible heritage resources authority lists of such objects and other information prescribed by that authority. Any such object which is not listed within the prescribed period shall be deemed to have been recovered after the date on which this Act came into effect.

(b) Paragraph (a) does not apply to any public museum or university.

(c) The responsible authority may at its discretion, by notice in the *Gazette* or the *Provincial Gazette*, as the case may be, exempt any institution from the requirements of paragraph (a) subject to such conditions as may be specified in the notice, and may by similar notice withdraw or amend such exemption.

(8) An object or collection listed under subsection (7)—

(a) remains in the ownership of the possessor for the duration of his or her lifetime, and SAHRA must be notified who the successor is; and

(b) must be regularly monitored in accordance with regulations by the responsible heritage authority.

## **Burial grounds and graves**

**36.** (1) Where it is not the responsibility of any other authority, SAHRA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit.

(2) SAHRA must identify and record the graves of victims of conflict and any other graves which it deems to be of cultural significance and may erect memorials associated

with the grave referred to in subsection (1), and must maintain such memorials.

(3) (a) No person may, without a permit issued by SAHRA or a provincial heritage resources authority—

(a) destroy, damage, alter, exhume or remove from its original position or

otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;

(b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or

(c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible heritage resources authority.

(5) SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection (3)(b) unless it is satisfied that the applicant has, in accordance

with regulations made by the responsible heritage resources authority—

(a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and

(b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Service and in accordance with regulations of the responsible heritage resources authority—

(a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and

(b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit.

(7) (a) SAHRA must, over a period of five years from the commencement of this Act, submit to the Minister for his or her approval lists of graves and burial grounds of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or *agents provocateur* and which, after a process of public consultation, it believes should be included among those protected under this section.

(b) The Minister must publish such lists as he or she approves in the *Gazette*.

(8) Subject to section 56(2), SAHRA has the power, with respect to the graves of victims of conflict outside the Republic, to perform any function of a provincial heritage resources authority in terms of this section.

(9) SAHRA must assist other State Departments in identifying graves in a foreign country of victims of conflict connected with the liberation struggle and, following negotiations with the next of kin, or relevant authorities, it may re-inter the remains of that person in a prominent place in the capital of the Republic.

## **Public monuments and memorials**

**37.** Public monuments and memorials must, without the need to publish a notice to this effect, be protected in the same manner as places which are entered in a heritage register referred to in section 30.

### **Heritage resources management**

**38.** (1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as—

- (a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
- (b) the construction of a bridge or similar structure exceeding 50 m in length;
- (c) any development or other activity which will change the character of a site—
  - (i) exceeding 5 000 m<sup>2</sup> in extent; or
  - (ii) involving three or more existing erven or subdivisions thereof; or
  - (iii) involving three or more erven or divisions 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 by SAHRA or a provincial heritage resources authority;
- (d) the re-zoning of a site exceeding 10 000 m<sup>2</sup> in extent; or
- (e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority,

must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

(2) The responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1)—

- (a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; or
- (b) notify the person concerned that this section does not apply.

(3) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2)(a): Provided that the following must be included:

- (a) The identification and mapping of all heritage resources in the area affected;
- (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;
- (c) an assessment of the impact of the development on such heritage resources;
- (d) 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;
- (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
- (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
- (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.



(4) The report must be considered timeously by the responsible heritage resources authority which must, after consultation with the person proposing the development, decide—

- (a) whether or not the development may proceed;
- (b) any limitations or conditions to be applied to the development;
- (c) what general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;
- (d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and
- (e) whether the appointment of specialists is required as a condition of approval of the proposal.

(5) A provincial heritage resources authority shall not make any decision under subsection (4) with respect to any development which impacts on a heritage resource protected at national level unless it has consulted SAHRA.

(6) The applicant may appeal against the decision of the provincial heritage resources authority to the MEC, who—

- (a) must consider the views of both parties; and
- (b) may at his or her discretion—
  - (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the responsible heritage authority; and
  - (ii) consult SAHRA; and
  - (c) must uphold, amend or overturn such decision.

(7) The provisions of this section do not apply to a development described in subsection (1) affecting any heritage resource formally protected by SAHRA unless the authority concerned decides otherwise.

(8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and 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 consent.

(9) The provincial heritage resources authority, with the approval of the MEC, may, by notice in the *Provincial Gazette*, exempt from the requirements of this section any place specified in the notice.

(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.

### **Part 3: Management**

#### **Inventory of national estate**

**39.** (1) For the purposes of the consolidation and co-ordination of information on

heritage resources, SAHRA must compile and maintain an inventory of the national estate, which must be in the form of a data base of information on heritage resources which it considers to be worthy of conservation, including—

(a) all places and objects with which it and its predecessors have been involved;

(b) all places and objects protected through the publication of notices in the *Gazette* or *Provincial Gazette*, whether in terms of this Act or provincial legislation;

(c) places and objects subject to general protections in terms of this Act or provincial legislation for the management of heritage resources; and

(d) any other place and object which it considers to be of interest, and for this purpose it must co-ordinate, and may prescribe, national standards for the recording of information by provincial heritage authorities.

(2) Heritage resources must be listed in the inventory in the format and under the categories prescribed by SAHRA.

(3) SAHRA may from time to time, after consultation with the relevant provincial heritage resources authority and the local authority concerned, make, amend or delete entries in the inventory: Provided that—

(a) all places listed in any heritage register must be entered in the inventory;

(b) a local authority must inform SAHRA on the destruction of a place listed in a heritage register, whereupon SAHRA must record such destruction in the inventory.

(4) A provincial heritage resources authority must, within 30 days of the listing of a heritage resource in a heritage register or the amendment or deletion of an entry, notify SAHRA and provide details of the listing, amendment or deletion.

(5) A provincial heritage resources authority must, at regular intervals in the manner prescribed by SAHRA, provide SAHRA with any information about heritage resources in the province which would increase the volume and detail of information held in the inventory.

(6) Any person has access to the inventory at the offices of SAHRA: Provided that information may be withheld if its disclosure may impact negatively on the privacy or economic interests of the owner or any person with an interest in a property, or a potential investor, or on the continued conservation of a heritage resource.

(7) SAHRA must at regular intervals, publish a summary and analysis of the inventory of the national estate.

### **National heritage resources assistance programme**

**40.** (1) Subject to section 21, SAHRA may provide financial assistance in the form of a grant or a loan to an approved body or an individual for any project which contributes to the purpose, and is in accordance with the principles as prescribed.

(2) SAHRA must prescribe the procedures for applications for approval and granting of financial assistance and the criteria for the assessment of projects.

(3) A loan may be approved in such amount and subject to such terms and conditions as SAHRA determines: Provided that a loan must be—

(a) at the rate of interest for the time being fixed by the Minister, in consultation with the Minister of Finance; or

(b) if the Minister, in consultation with the Minister of Finance, so approves—

(i) at the rate of interest fixed by the Minister in respect of that loan; or

(ii) without interest.

(4) Any financial assistance in terms of this section is to be provided out of a fund reserved by SAHRA for this purpose, which shall be called the National Heritage

Resources Fund.

### **Restitution of heritage objects**

**41.** (1) When a community or body with a *bona fide* interest makes a claim for the restitution of a movable heritage resource which is part of the national estate and is held

by or curated in a publicly funded institution, the institution concerned must enter into a process of negotiation with the claimants regarding the future of the resource.

(2) The Minister may make regulations regarding the establishment of *bona fide* interest in terms of subsection (1) and the conditions under which such claims may be made.

(3) In the absence of an agreement on a heritage resource which is the subject of negotiations in terms of subsection (1), the claimants or the institution concerned may appeal to the Minister, who must, with due regard to subsection 5(4) and in a spirit of compromise—

(a) mediate between the parties concerned with the aim of finding a mutually satisfactory solution; and

(b) in the absence of agreement between the parties concerned, make a final decision on the future of the resource, including any conditions necessary to ensure its safety, the conditions of access of the claimants or the institution or any other interested party to the resource, or any other appropriate conditions.

### **Heritage agreements**

**42.** (1) (a) SAHRA, or a provincial heritage resources authority may negotiate and agree with a provincial authority, local authority, conservation body, person, or community for the execution of a heritage agreement to provide for the conservation, improvement or presentation of a clearly defined heritage resource: Provided that the consent of the owner of such resource must be given.

(b) Such a heritage agreement must be in the form of a binding contract.

(2) A heritage agreement may include such terms and conditions as the parties think fit, including provision for public access, and provision for financial or other assistance from the heritage authority concerned.

(3) Without limiting subsection (2), a heritage agreement may be expressed to have effect in perpetuity or for any specified term, or to terminate upon the happening of a specific event.

(4) A heritage agreement may, with the consent of the owner of the resource concerned, be varied or cancelled by agreement between the parties.

(5) The consent of the owner of the resource concerned to the heritage agreement or any variation of the heritage agreement may be given, subject to the inclusion in the heritage agreement of any additional provisions or modified provisions, or to the deletion of such provisions, as the owner giving the consent considers necessary.

(6) Nothing in this Act requires a heritage resources authority to negotiate or agree with any person or authority to enter into or execute any heritage agreement.

(7) A heritage agreement in respect of a place attached to the land is binding on the owner of the place, as at the date of execution of the agreement while the agreement remains in force.

(8) The owner of a national heritage site, a provincial heritage site or a place listed in a heritage register may, by a heritage agreement entered into with the heritage resources

authority or local authority responsible for the protection of such place, or any person or body approved by such authority, appoint the heritage resources authority or the local authority or the person or body concerned, the guardian of the place.

- (9) The heritage agreement referred to in subsection (7) or (8) may provide for—
- (a) the maintenance and management of the place;
  - (b) the custody of the place and the duties of any person who may be employed in connection therewith;
  - (c) the occupation or use of the place by the owner or otherwise;
  - (d) the restriction of the right of the owner or occupier to do certain acts or things on or near the place;
  - (e) the facilities of access to be permitted to the public and to persons deputed by the guardian to inspect or maintain the place;
  - (f) the presentation of the place;
  - (g) the notice to be given to the guardian in case the owner intends to offer the land on which the place is situated for sale, lease or other disposal, and the right to be reserved to the guardian to have first refusal of such sale, lease or other disposal;
  - (h) the payment of any expenses incurred by the owner or by the guardian in connection with the maintenance of the place;
  - (i) any other matter connected with the protection or management of the place which is agreed to by the owner and the guardian;
  - (j) the duration of the agreement, with provision for the earlier termination thereof by any party thereto; and
  - (k) the procedure for the resolution of any dispute arising out of the agreement.

(10) The owner of a place which is under guardianship shall, except as expressly provided by this Act, continue to have the same estate, right, title and interest in and to the place as before.

(11) Every heritage agreement has effect according to its tenor but subject to the provisions of this Act: Provided that—

- (a) the execution of a heritage resources agreement in respect of a heritage resource must not prevent the heritage authority responsible for its protection from exercising any powers in this Act in relation to that resources; and
- (b) nothing in terms of any heritage agreement shall permit or allow any person to carry out any act contrary to this Act.

## **Incentives**

**43.** (1) On advice from SAHRA the Minister, in concurrence with the Minister of Finance, may publish regulations on financial incentives for the conservation of heritage resources which form part of the national estate, or otherwise promote the purpose of this Act.

(2) An MEC or a local authority may in planning schemes or in by-laws under this Act or by any other means provide incentives for the conservation of heritage resources as provided for in subsection (1).

## **Presentation of protected resources**

**44.** (1) Heritage resources authorities and local authorities must, wherever appropriate, co-ordinate and promote the presentation and use of places of cultural significance and heritage resources which form part of the national estate and for which they are responsible in terms of section 5 for public enjoyment, education, research and tourism,

including—

- (a) the erection of explanatory plaques and interpretive facilities, including interpretive centres and visitor facilities;
- (b) the training and provision of guides;
- (c) the mounting of exhibitions;
- (d) the erection of memorials; and
- (e) any other means necessary for the effective presentation of the national estate.

(2) Where a heritage resource which is formally protected in terms of Part 1 of this Chapter is to be presented, the person wishing to undertake such presentation must, at least 60 days prior to the institution of interpretive measures or manufacture of associated material, consult with the heritage resources authority which is responsible for the protection of such heritage resource regarding the contents of interpretive material or programmes.

(3) A person may only erect a plaque or other permanent display or structure associated with such presentation in the vicinity of a place protected in terms of this Act in consultation with the heritage resources authority responsible for the protection of the place.

### **Compulsory repair order**

**45.** (1) When the heritage resources authority responsible for the protection of a heritage site considers that such site—

- (a) has been allowed to fall into disrepair for the purpose of—
    - (i) effecting or enabling its destruction or demolition;
    - (ii) enabling the development of the designated land; or
    - (iii) enabling the development of any land adjoining the designated land; or
  - (b) is neglected to such an extent that it will lose its potential for conservation,
- the heritage resources authority may serve on the owner an order to repair or maintain such site, to the satisfaction of the heritage resources authority, within a reasonable period of time as specified in the order: Provided that the heritage resources authority must specify only such work as, in its opinion, is necessary to prevent any further deterioration in the condition of the place.

(2) Subject to subsection (3), upon failure of the owner to comply with the terms of an order under subsection (1) within the specified time, the authority which served the order may itself take such steps as may be necessary for the repair or maintenance thereof and recover the costs from the owner.

(3) If the owner can show good cause, he or she may, within 21 days of the service of a repair order under subsection (1)—

- (a) apply to the heritage resources authority which served the repair order for the extension of the time specified in the order; or
- (b) appeal to the Minister, in the manner prescribed under section 49.

### **Expropriation**

**46.** (1) The Minister may, on the advice of SAHRA and after consultation with the Minister of Finance, purchase or, subject to compensation, expropriate any property for conservation or any other purpose under this Act if that purpose is a public purpose or is in the public interest.

(2) The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act, and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for the purposes of such expropriation.

(3) Notwithstanding the provisions of subsection (2), the amount of compensation and the time and manner of payment must be determined in accordance with section 25(3) of the Constitution, and the owner of the property in question must be given a hearing before any property is expropriated.

### **General policy**

**47.** (1) SAHRA and a provincial heritage resources authority—

(a) must, within three years after the commencement of this Act, adopt statements of general policy for the management of all heritage resources owned or controlled by it or vested in it; and

(b) may from time to time amend such statements so that they are adapted to changing circumstances or in accordance with increased knowledge; and

(c) must review any such statement within 10 years after its adoption.

(2) Each heritage resources authority must adopt for any place which is protected in terms of this Act and is owned or controlled by it or vested in it, a plan for the management of such place in accordance with the best environmental, heritage conservation, scientific and educational principles that can reasonably be applied taking into account the location, size and nature of the place and the resources of the authority concerned, and may from time to time review any such plan.

(3) A conservation management plan may at the discretion of the heritage resources authority concerned and for a period not exceeding 10 years, be operated either solely by the heritage resources authority or in conjunction with an environmental or tourism authority or under contractual arrangements, on such terms and conditions as the heritage resources authority may determine.

(4) Regulations by the heritage resources authority concerned must provide for a process whereby, prior to the adoption or amendment of any statement of general policy

or any conservation management plan, the public and interested organisations are notified of the availability of a draft statement or plan for inspection, and comment is invited and considered by the heritage resources authority concerned.

(5) A heritage resources authority may not act in any manner inconsistent with any statement of general policy or conservation management plan.

(6) All current statements of general policy and conservation management plans adopted by a heritage resources authority must be available for public inspection on request.

## **CHAPTER III**

### **GENERAL PROVISIONS**

#### ***Part 1: Enforcement, appeals, offences and penalties***

#### **Permits**

**48.** (1) A heritage resources authority may prescribe the manner in which an application is made to it for any permit in terms of this Act and other requirements for permit applications, including—

(a) any particulars or information to be furnished in the application and any documents, drawings, plans, photographs and fees which should accompany

the application;

(b) minimum qualifications and standards of practice required of persons making application for a permit to perform specified actions in relation to particular categories of protected heritage resources;

(c) standards and conditions for the excavation and curation of archaeological and palaeontological objects and material and meteorites recovered by authority of a permit;

(d) the conditions under which, before a permit is issued, a financial deposit must be lodged and held in trust for the duration of the permit or such period as the heritage resources authority may specify, and conditions of forfeiture of such deposit;

(e) conditions for the temporary export and return of objects protected under section 32 or section 35;

(f) the submission of reports on work done under authority of a permit; and

(g) the responsibilities of the heritage resources authority regarding monitoring of work done under authority of a permit.

(2) On application by any person in the manner prescribed under subsection (1), a heritage resources authority may in its discretion issue to such person a permit to perform such actions at such time and subject to such terms, conditions and restrictions or directions as may be specified in the permit, including a condition—

(a) that the applicant give security in such form and such amount determined by the heritage resources authority concerned, having regard to the nature and extent of the work referred to in the permit, to ensure the satisfactory completion of such work or the curation of objects and material recovered during the course of the work; or

(b) providing for the recycling or deposit in a materials bank of historical building materials; or

(c) stipulating that design proposals be revised; or

(d) regarding the qualifications and expertise required to perform the actions for which the permit is issued.

(3) A heritage resources authority may at its discretion, in respect of any heritage resource protected by it in terms of the provisions of Chapter II, by notice in the *Gazette* or the *Provincial Gazette*, as the case may be, grant an exemption from the requirement to obtain a permit from it for such activities or class of activities by such persons or class of persons in such circumstances as are specified in the notice.

## Appeals

49. (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.

### **Appointment and powers of heritage inspectors**

**50.** (1) SAHRA or a provincial heritage resources authority may, in writing, appoint heritage inspectors: Provided that if a heritage inspector is a staff member of a government department or supported body, such appointment must only be made by agreement with the Minister or other person in charge of the administration of such department or body.

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

(3) The heritage resources authority must issue to each heritage inspector, other than a person referred to in subsection (2), an identity card containing a photograph and the signature of the heritage inspector.

(4) For the purposes of this section, a reference to an identity card in relation to a person referred to in subsection (2), is a reference to written evidence of the fact that he or she is a member of the bodies referred to in subsection (2).

(5) A person who ceases to be a heritage inspector must forthwith return his or her identity card to the heritage authority concerned.

(6) A heritage inspector, other than a customs and excise officer or a member of the South African Police Services in uniform, may not exercise his or her powers in terms of this Act in relation to another person unless the heritage inspector first produces the identity card for inspection by the other person: Provided that if the production of the identity card would endanger the health or safety of the heritage inspector, he or she must produce it as soon as is practicable to do so.

(7) Subject to the provisions of any other law, a heritage inspector or any person authorised by a heritage resources authority in writing, may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage resource protected in terms of the provisions of this Act, or any other property in respect of which the heritage resources authority is exercising its functions and powers in terms of this Act, and may take photographs, make measurements and sketches and use any other means of recording information necessary for the purposes of this Act.

(8) A heritage inspector may at any time inspect work being done under a permit issued in terms of this Act and may for that purpose at all reasonable times enter any place protected in terms of this Act.

(9) Where a heritage inspector has reasonable grounds to suspect that an offence in terms of this Act has been, is being, or is about to be committed, the heritage inspector may with such assistance as he or she thinks necessary—

(a) enter and search any place, premises, vehicle, vessel or craft, and for that purpose stop and detain any vehicle, vessel or craft, in or on which the heritage inspector believes, on reasonable grounds, there is evidence related to that offence;

(b) confiscate and detain any heritage resource or evidence concerned with the commission of the offence pending any further order from the responsible heritage resources authority; and

(c) take such action as is reasonably necessary to prevent the commission of an offence in terms of this Act.

(10) A heritage inspector may, if there is reason to believe that any work is being done or any action is being taken in contravention of this Act or the conditions of a permit



issued in terms of this Act, order the immediate cessation of such work or action pending any further order from the responsible heritage resources authority.

(11) A heritage inspector may require any person who he or she has reason to believe has committed an offence in terms of this Act to supply his or her name and address and reasonable evidence of his or her identity, and may arrest a person who refuses to comply with those requirements.

(12) A person—

(a) must comply with a request or requirement lawfully made in terms of this section to the extent that the person is capable of complying with it;

(b) may not knowingly furnish information that is false or misleading; and

(c) may not hinder or obstruct any heritage inspector in the exercise of his or her powers in terms of this section.

## Offences and penalties

**51.** (1) Notwithstanding the provisions of any other law, any person who contravenes—

(a) sections 27(18), 29(10), 32(13) or 32(19) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 1 of the Schedule;

(b) sections 33(2), 35(4) or 36(3) 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;

(c) sections 28(3) or 34(1) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 3 of the Schedule;

(d) sections 27(22), 32(15), 33(1), 35(6) or 44(3) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 4 of the Schedule;

(e) sections 27(23)(b), 32(17), 35(3), 36(3) or 51(8) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 5 of the Schedule;

(f) sections 32(13), 32(16), 32(20), 35(7)(a), 44(2), 50(5) or 50(12) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 6 of the Schedule.

(2) The Minister, with the concurrence of the relevant MEC, may prescribe a penalty of a fine or of imprisonment for a period not exceeding six months for any contravention or failure to comply with regulations by heritage resources authorities or by-laws by local authorities.

(3) The Minister or the MEC, as the case may be, may make regulations in terms of which the magistrate of the district concerned may—

(a) levy admission of guilt fines up to a maximum amount of R10 000 for infringement of the terms of this Act for which such heritage resources authority is responsible; 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 daily fine of R50 for the duration of the contravention, subject to a maximum period of 365 days.

(4) The Minister may from time to time by regulation adjust the amounts referred to in subsection (3) in order to account for the effect of inflation.

(5) Any person who—

(a) fails to provide any information that is required to be given, whether or not on the request of a heritage resources authority, in terms of this Act;

(b) for the purpose of obtaining, whether for himself or herself or for any other person, any permit, consent or authority in terms of this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;

(c) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to him or her in terms of this Act;

(d) obstructs the holder of a permit in terms of this Act in exercising a right granted to him or her by means of such a permit;

(e) damages, takes or removes, or causes to be damaged, taken or removed from a place protected in terms of this Act any badge or sign erected by a heritage

authority or a local authority under section 25(2)(j) or section 27(17), any interpretive display or any other property or thing;

(f) receives any badge, emblem or any other property or thing unlawfully taken or removed from a place protected in terms of this Act; and

(g) within the terms of this Act, commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any obligation imposed upon him or her by its terms, or who counsels, procures, solicits or employs any other person to do so,

shall be guilty of an offence and upon conviction shall be liable to such maximum penalties, in the form of a fine or imprisonment or both such fine and such imprisonment,

as shall be specified in the regulations under subsection (3).

(6) Any person who believes that there has been an infringement of any provision of this Act, may lay a charge with the South African Police Services or notify a heritage resources authority.

(7) A magistrate's court shall, notwithstanding the provisions of any other law, be competent to impose any penalty under this Act.

(8) When any person has been convicted of any contravention of this Act which has resulted in damage to or alteration of a protected heritage resource the court may—

(a) order such person to put right the result of the act of which he or she was found guilty, in the manner so specified and within such period as may be so specified, and upon failure of such person to comply with the terms of such order, order such person to pay to the heritage resources authority responsible for the protection of such resource a sum equivalent to the cost of making good; or

(b) when it is of the opinion that such person is not in a position to make good damage done to a heritage resource by virtue of the offender not being the owner or occupier of a heritage resource or for any other reason, or when it is advised by the heritage resources authority responsible for the protection of such resource that it is unrealistic or undesirable to require that the results of the act be made good, order such person to pay to the heritage resources authority a sum equivalent to the cost of making good.

(9) In addition to other penalties, if the owner of a place has been convicted of an offence in terms of this Act involving the destruction of, or damage to, the place, the Minister on the advice of SAHRA or the MEC on the advice of a provincial heritage resources authority, may serve on the owner an order that no development of such place may be undertaken, except making good the damage and maintaining the cultural value of the place, for a period not exceeding 10 years specified in the order.

(10) Before making the order, the local authority and any person with a registered interest in the land must be given a reasonable period to make submissions on whether the order should be made and for how long.

(11) An order of no development under subsection (9) attaches to the land and is binding not only on the owner as at the date of the order, but also on any person who becomes an owner of the place while the order remains in force.

(12) The Minister on the advice of SAHRA, may reconsider an order of no development and may in writing amend or repeal such order.

(13) In any case involving vandalism, and whenever else a court deems it appropriate, community service involving conservation of heritage resources may be substituted for, or instituted in addition to, a fine or imprisonment.

(14) Where a court convicts a person of an offence in terms of this Act, it may order the forfeiture to SAHRA or the provincial heritage resources authority concerned, as the

case may be, of a vehicle, craft, equipment or any other thing used or otherwise involved in the committing of the offence.

(15) A vehicle, craft, equipment or other thing forfeited under subsection (14) may be sold or otherwise disposed of as the heritage resources authority concerned deems fit.

## **Part 2: Miscellaneous**

### **Notices**

**52.** (1) SAHRA may, by publication of a further notice, amend or withdraw any notice which it has published in the *Gazette*.

(2) A provincial heritage resources authority may by publication of a further notice amend or withdraw any notice which it has published in the *Provincial Gazette*.

(3) SAHRA or a provincial heritage resources authority may prescribe the manner in which legally enforceable property descriptions may be published in notices in the *Gazette* or in the *Provincial Gazette*, as the case may be, in terms of the provisions of this Act including—

(a) methods of technology permissible in measuring areas; and

(b) methods to be used in compensating for margins of error in measurement.

### **Delegation of powers by Minister or MEC**

**53.** (1) The Minister may delegate any power, duty or function conferred or imposed upon him or her under this Act to the Deputy Minister or the incumbent of a designated post in the Department.

(2) The Minister may delegate any power, duty or function conferred or imposed upon him or her under this Act to the incumbent of a designated post in the provincial department responsible for culture.

### **By-laws by local authorities**

**54.** (1) A local authority may, with the approval of the provincial heritage resources authority, make by-laws—

(a) regulating the admission of the public to any place protected under this Act to which the public is allowed access and which is under its control, and the fees payable for such admission;

(b) regulating the conditions of use of any place protected under this Act which is under its control;

(c) for the protection and management of a protected area;

(d) for the protection and management of places in a heritage register;

(e) for the protection and management of heritage areas; and

(f) providing incentives for the conservation of any place protected under this Act within its area of jurisdiction.

(2) Any by-laws made under this section may prescribe fines for contravention thereof or failure to comply therewith, not exceeding an amount prescribed by the Minister under section 51(2).

### **Limitation of liability**

**55.** No person is liable in respect of anything done in terms of this Act in good faith and without negligence.

## **Exercise of powers outside Republic**

**56.** (1) A heritage resources authority may assist and co-operate with heritage bodies outside the Republic.

(2) If agreed upon between the Government of South Africa and the government of any other state, SAHRA has power, with the concurrence of the Minister, to perform in that state any functions which a heritage resources authority would be capable of performing in South Africa in terms of this Act.

(3) The Minister may make regulations concerning the application of any international convention, treaty or agreement relating to the protection of heritage resources which, in accordance with sections 231 to 233 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), forms part of the law of the Republic.

## **Applicability of provincial legislation**

**57.** Without prejudice to the provisions of this Act, in any province which has enacted legislation for the establishment of a provincial heritage resources authority and the management of heritage resources at provincial level, the provisions of such legislation must, as far as they relate to provincial areas of competence, take precedence over the equivalent provisions of this Act.

## **Transitional provisions and consequential amendments**

**58.** (1) For the purposes of this section, “the previous Act” means the National Monuments Act, 1969 (Act No. 28 of 1969).

(2) The National Monuments Council established by section 2 of the previous Act is hereby abolished and all its assets, rights, liabilities and obligations shall devolve upon SAHRA without formal transfer and without payment of any duties, taxes, fees or other charges. The officer in charge of registration of deeds registry must, on submission of the title deed and on application by the authority concerned, endorse such a title deed with regard to such development.

(3) Any person who was in the employment of the Council referred to in subsection (2), is regarded to have been appointed under this Act.

(4) The remuneration and other conditions of service of an employee contemplated in subsection (3) may not be less favourable than the remuneration and other conditions of service to which that employee was entitled to before.

(5) If a person appointed under subsection (3) or a person regarded to be so appointed, is dismissed, that person may within 14 days after the date of notification of the dismissal, appeal in writing against the dismissal to the Minister, who may confirm, vary or set aside the dismissal.

(6) The National Monuments Council library shall become part of the national heritage resources library established under section 13(2)(b).

(7) The committees established by section 3A of the previous Act are hereby abolished and all their assets, rights, liabilities and obligations shall devolve upon SAHRA without formal transfer and without payment of any duties, taxes, fees or other charges.

(8) Unless it would in any particular case obviously be inappropriate, any reference in any law, document or register, to the National Monuments Council must be construed as a reference to SAHRA and any such reference to an officer or employee of the

National Monuments Council must be construed as a reference to an employee of SAHRA performing functions or exercising powers similar to those of the first-mentioned officer or employee.

(9) All trust funds for which the National Monuments Council acted as trustee, including the War Graves Trust Fund referred to in section 9A of the previous Act, shall on the date of commencement of this Act become vested in SAHRA as part of the National Heritage Resources Fund referred to in section 40, and SAHRA must act as trustee on the same terms and conditions as existed prior to the commencement of this Act.

(10) On the establishment of a provincial heritage resources authority, arrangements must be made for the transfer of such assets, rights, liabilities and obligations of SAHRA in that province to the provincial heritage resources authority as the Minister and the MEC deem fit.

(11) Sites and objects which prior to the commencement of this Act were protected by notices in the *Gazette* in terms of the previous Act, shall, subject to the provisions of any provincial legislation for heritage resources conservation and any agreement in that regard, and without the need for the publication of notices in the *Gazette*, continue to be protected in terms of the following provisions of this Act:

(a) Immovable national monuments in terms of section 10 of the previous Act shall be provincial heritage resources sites: Provided that within five years of the commencement of this Act, the provincial heritage resources authorities in consultation with SAHRA, must assess the significance of such sites in accordance with the heritage assessment criteria set out in section 3(3) and prescribed under section 7(1) and SAHRA must declare any place which fulfils the criteria for Grade I status a national heritage site;

(b) immovable properties entered in the register in terms of section 5(1) of the previous Act must be entered in the heritage register for the province in which they are situated and in the inventory of the national estate;

(c) conservation areas in terms of section 5(9) of the previous Act shall be heritage areas: Provided that where no provision has been made for the protection of such areas in by-laws under the previous Act or in a town or regional planning scheme—

(i) sections 31(7)(a), (b) and (c) of this Act automatically apply to such heritage areas; and

(ii) the local or other planning authority concerned must provide for the protection of such area in accordance with the provisions of section 31 within three years of the commencement of this Act;

(d) provisionally declared immovable properties in terms of section 5(1)(c) of the previous Act are provisionally protected for such remaining period as specified in the notice of provisional declaration;

(e) national gardens of remembrance in terms of section 9C of the previous Act are provincial heritage sites;

(f) cultural treasures in terms of section 5(c) and movable national monuments in terms of section 10 of the previous Act are heritage objects.

(12) A notice under section 10(3)(a) or 5(5)(b) of the previous Act which was served within six months prior to the commencement of this Act shall be deemed to be a notice served by a provincial heritage resources authority in terms of section 27(8) or section 29(1) and (2) of this Act, as the case may be.

(13) A permit issued under the previous Act shall be deemed to be a permit issued by

the responsible heritage authority under the relevant section of this Act.

## **Regulations**

**59.** The Minister may, by notice in the *Gazette* make regulations regarding—  
(a) any matter which may or shall be prescribed in terms of this Act;  
(b) any other matter which may be necessary or expedient in order to achieve the objects of this Act.

## **Repeal**

**60.** The National Monuments Act, 1969 (Act No. 28 of 1969), and section 41(2) of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are hereby repealed.

## **Short title and commencement**

**61.** This Act shall be called the National Heritage Resources Act, 1999, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

## SCHEDULE

### **PENALTIES FOR NATIONAL HERITAGE ACT**

#### **(Section 51)**

1. A fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.
2. A fine or imprisonment for a period not exceeding three years or to both such fine and imprisonment.
3. A fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment.
4. A fine or imprisonment for a period not exceeding one year or to both such fine and imprisonment.
5. A fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment.
6. A fine or imprisonment for a period not exceeding three months or to both such fine and imprisonment.