

APPENDIX 2

Extracts From the Regulations Applicable to the National Heritage Resources Act (Act No.25 of 1999).

Schedule B, Chapter IX : Application for Permit: Burial Grounds and Graves (Regulations for Section 36 (3))

Applicability

33. These regulations apply to any person applying for a permit to—
- (a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb a grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
 - (b) destroy, damage, alter, exhume or 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;
 - (c) bring into 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;

Application requirements and procedure

34. (1) Permit applications must be made on the official form *Application for permit: Burial Grounds and Graves*, available from SAHRA or any provincial heritage resources authority.
- (2) Permit applications must be submitted to the relevant provincial heritage resources authority.¹
- (3) The following must be supplied with the application—
- (a) name and address, erf/stand/ farm number or geographical co-ordinates of the grave or burial ground and magisterial district;
 - (b) name, address, telephone and/or fax numbers of the planning authority for the place;
 - (c) details of the action/s for which application is made, in accordance with Guidelines;
 - (d) motivation for the proposed action/s, including supporting documentation and research, in accordance with Guidelines;
 - (e) details of the cost of the action/s;
 - (f) name, identity number, address, telephone and/or fax number, qualifications, relevant experience and signature of the person who will be responsible for the action/s;
 - (g) name, identity number, address, telephone and/or fax number and signature of the owner of the land on which the grave or burial ground is situated;
 - (h) in the case of the exhumation or removal of a grave, the name, identity number, address, telephone and/or fax number, qualifications, relevant experience and signature of the archaeologist who will supervise the work;
 - (i) in the case of destruction or damage of any burial ground or grave referred to in section 2 (a) of these regulations, details of arrangements for the exhumation and reinterment of the contents of such graves;
 - (j) in the case of any activity under section 2 (b) of these regulations,
 - (i) details of efforts made to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and
 - (ii) copies of agreements reached with such communities or individuals regarding the future of such grave or burial ground;
 - (k) name, identity number, address, telephone and/or fax number and signature of the applicant, if the owner is not the applicant;
 - (l) any other relevant information required by the provincial heritage resources authority.
- (4) The provincial heritage resources authority may at its discretion refer an application to SAHRA or to experts in the field for comment and advice on any conditions that should be imposed in the permit.

Minimum qualifications and standards of practice

35. A permit will only be issued for exhumation or removal which is to be done—
- (a) under the supervision of a qualified archaeologist;
 - (b) with due respect for any human remains and the customs and beliefs of any person or community concerned with such grave or burial ground and, when requested, in the presence of such person or community representative;
 - (c) after arrangements have been made for the re-interment of any human remains and the re-interment or curation of any other contents of such grave or burial ground, to the satisfaction of SAHRA;
 - (d) in accordance with any Guidelines.

¹ Section 36 is ambiguous about whether the responsibility for permits vests with SAHRA or provincial heritage authorities. The original intention in the draft legislation was for this to be a provincial competence, in accordance with the principle that powers be devolved to the lowest competent level of government.

Schedule A, Chapter IX: Discovery of Previously Unknown Grave (Regulations for Section 36(6))

Applicability

7. (1) These regulations apply when a grave, the existence of which was previously unknown, is discovered in the course of development or any other activity.
- (2) Such grave must not be disturbed in any way after it is discovered except under authority of the provincial heritage resources authority.²

Investigation

8. (1) As soon as possible after notification of the discovery of the grave, the provincial heritage resources authority or its delegated representative must, in co-operation with the South African Police Service, inspect such grave and decide whether or not there is reason to believe—
- (a) that the grave is likely to be older than 60 years or otherwise protected in terms of the Act; and
 - (b) that any further graves exist in the vicinity.
- (2) If it is decided that the grave is likely to be so protected, no activity referred to in regulation 7 (1) may be resumed in the immediate vicinity of such grave or in the area in which additional graves are likely to be found, unless an investigation is undertaken by a person and in a manner approved by the provincial heritage resources authority to establish the facts of the matter.³
- (3) If the investigation in regulation 8 (2) confirms that any grave is protected, the Act and the provisions in regulations 4, 5 and 6 shall apply in respect of any person who intends to disturb such grave; provided that the provincial heritage resources authority may at its discretion modify such provisions in order to expedite the satisfactory resolution of the matter.

Schedule A, Chapter VIII: Procedure for Consultation Regarding Burial Grounds and Graves (Regulations for Section 36 (5))

Applicability

4. (1) These regulations apply to any person with the intention to apply for a permit to destroy, damage, alter, 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.
- (2) The person in regulation 4(1) is hereafter referred to as the applicant.

Identification procedure

5. (1) The applicant must make a concerted effort to identify the descendants and family members of the persons buried in and/or any other person or community by tradition concerned with such grave or burial ground by—
- (a) archival and documentary research regarding the origin of the grave or burial ground;
 - (b) direct consultation with local community organisations and/or members;
 - (c) the erection for at least 60 days of a notice at the grave or burial ground, displaying, in all the official languages of the province concerned, information about the proposals affecting the site, the telephone number and address at which the applicant can be contacted by any interested person and the date by which contact must be made, which must be at least 7 days after the end of the period of erection of the notice; and
 - (d) advertising in the local press.
- (2) The applicant must keep records of the actions undertaken under regulations 5(1), including the names and contact details of all persons and organisations contacted and their response, and a copy of such records must be submitted to the provincial heritage resources authority with the application.

Consultation and agreement

6. (1) The applicant must consult any interested parties identified through the process in regulation 5 regarding the effect of the proposals on the grave or burial ground, with the aim of reaching agreement about the future of such grave or burial ground.
- (2) Unless otherwise agreed by the interested parties, the applicant is responsible for the cost of any remedial action required in terms of an agreement under regulation 6 (1), whether modification of any proposals to retain the grave or burial ground, or excavation and re-interment of any grave, or any other reasonable action required by the interested parties.
- (3) If the consultation under regulation 6 (1) fails to result in agreement, the applicant must submit records of the consultation and the comments of all interested parties as part of the application to the provincial heritage resources authority.

² The intention is that the provincial heritage resources authority may thus authorise some form of minimal disturbance for the purposes of the investigation under 8 (2), without going through a whole permit application procedure.

³ Note that in the wording of Ss 36 (6)(b) of the Act there is an unfortunate assumption that discovery leads to removal, which is not necessarily the case. There is an option here to leave the grave undisturbed, in which case further investigation will not be required. This could be useful if the "activity" is easily modified, e.g. ploughing a field. It also limits the onus on the authority to investigating the "reasonable likelihood" of the grave being significant, without shifting an unfair burden onto the discoverer - who may just have been going about his/her daily business and have neither the desire nor the means to go through an onerous procedure as a result.