

**REVIEW OF ENABLING AND REGULATORY LEGISLATION
AND
REVIEW OF NATIONAL AND INTERNATIONAL BEST PRACTICE**
Zoë Henderson & Karen van Ryneveld

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Summary:

Cultural heritage resources in South Africa are comprehensively protected under the National Heritage Resources Act, no. 25 of 1999 and under the National Environmental Management Act no. 107 of 1998. Both these Acts require assessments to be carried out should development be proposed in the area of a heritage resource. Management plans are required to ensure the conservation and sustainable use of heritage resources, with permits required should any alteration or destruction of the resources be planned.

International guidelines for best practice indicate in detail what should be included in management plans and conservation protocols for cultural heritage sites and structures. Implementation of the guidelines will ensure that not only are efforts to protect cultural heritage resources the most effective, but that the best use of resources (funding, human etc) is implemented. In all cases cultural heritage resources are not seen in isolation, but in the context of their setting, both in the landscape, and in the socio-economic, historical or spiritual relationship with their relevant communities and other stakeholders.

1. Background and brief

The Baviaanskloof Mega-Reserve project is a partnership to secure the conservation of globally significant biodiversity in the Baviaanskloof region; and to facilitate the preservation of both threatened Natural and Cultural Heritage resources, while ensuring that people benefit.

The brief is provide a Heritage Assessment Study of the Baviaanskloof Conservation area, as well as identifying areas and sites which can be developed as part of a tourism route for the Kloof. The development recommendations will inform a Marketing and Implementation plan for the Baviaanskloof Conservation Area.

This chapter examines the enabling and regulatory legislation against which any proposed developments can take place. It also provides a review of national and international best practice, which will inform the conservation of Cultural Heritage resources within the Conservation area (see Appendix 1 for a comprehensive list).

There are various aspects that need to be considered in a project of this kind. The first aspect is the identification of Cultural Heritage resources, and to determine the level of conservation the various resources require. One of the aims of the Baviaanskloof Mega-Reserve project is to ensure that people benefit from the conservation of the cultural heritage resources in the area. This will be through the mechanism of the development of tourism opportunities centred on the creation of a Cultural Heritage trail. Sites have been identified which will be opened to visitors. These sites will require management plans to ensure their conservation and sustainability as tourism resources. This report therefore deals with two aspects of management plans, that is the process whereby the plans are developed, and the contents of the management plans themselves.

The requirements for management plans have to be site-specific. The process of developing the management plan for each site is a lengthy one. The purpose of this report is to set out the process required to develop management plans for the individual sites, and the trail as a whole, as well as providing guidelines for the aspects that need to be developed per site. The development of individual site management plans will be part of the phase two development of the project, and will be based on decisions about the scope and direction of the project which need to be taken by the Project Management Unit of the Wilderness Foundation (PMU). Once these decisions have been taken, which include decisions as to the number and type of sites or places which will be marketed for tourism purposes, the PMU will need to appoint a specialist to develop individual site management plans. These will need to be done in conjunction with the South African Heritage Resources Agency.

Cultural Heritage Sites in the Mega-Reserve which are not being developed for visitors, but which have been identified must also be managed. They form part of the National Estate, and are thus also protected by legislation. Management plans for these sites focus on the conservation and protection of the sites, and are much simpler than those that have to be managed for sustainable use for tourism purposes as well.

2. Managing Cultural Tourism

Tourism, both national and international, has been identified as an income generating activity, which can be of benefit to both urban and rural communities. In rural areas, outstanding natural and cultural features or occurrences can act as major tourist attractions, thus providing a potential source of income to local communities.

The ICOMOS International Cultural Tourism Charter (ICOMOS 1999a) is a useful guideline for providing direction in the development of a tourist attraction at the Baviaanskloof Mega-Reserve.

The charter sets out six principles, which are listed below:

1. Since domestic and international tourism is among the foremost vehicles for cultural exchange, conservation should provide responsible and well-managed opportunities for members of the host community and visitors to experience and understand that community's heritage and culture at first hand.
2. The relationship between Heritage Places and Tourism is dynamic and may involve conflicting values. It should be managed in a sustainable way for the present and future generations.
3. Conservation and Tourism planning for Heritage places should ensure that the visitor experience will be worthwhile, satisfying and enjoyable.
4. Host communities and indigenous peoples should be involved in planning for conservation and tourism.

Tourism and conservation activities should benefit the host community.

6. Tourism promotion programmes should protect and enhance Natural and Cultural Heritage characteristics.

Cultural tourism is based on the sustainable management of cultural heritage resources, and the presentation of an accessible, enjoyable, and authentic experience.

3. South African Legislative environment

This part of the exercise is to understand the South African enabling and regulatory legislative environment, which will inform all aspects of the management of the Cultural Heritage of the Baviaanskloof Mega-Reserve.

The project is informed by, amongst others, the following legislation:

- National Heritage Resources Act (no. 25 of 1999) (see Appendix 2)
- National Environmental Management Act (no. 107 of 1998)

Of this legislation, the most relevant to the project is the National Heritage Resources Act (no. 25 of 1999). This Act provides guidelines on what is defined as our National Estate, including Cultural Heritage Resources. It also details how sites should be preserved, or at least evaluated, and under what conditions.

3.1. Defining the National Estate

In terms of the National Heritage Resources Act (NHRA), Section 3, the National Estate includes:

- places, buildings, structures and equipment of cultural significance;
- places to which oral traditions are attached or which are associated with living heritage;
- historical settlements and townscapes;
- landscapes and natural features of cultural significance;
- geological sites of scientific or cultural importance;
- archaeological and palaeontological sites;
- graves and burial grounds, including—
 - ancestral graves;
 - royal graves and graves of traditional leaders;
 - graves of victims of conflict;
 - graves of individuals designated by the Minister by notice in the Gazette;
 - historical graves and cemeteries; and

- other human remains which are not covered in terms of the Human Tissue Act, 1983 (Act No. 65 of 1983);
- sites of significance relating to the history of slavery in South Africa;

The cultural heritage resources identified in the Baviaanskloof Mega-Reserve project area fall under the general protections of the NHRA as follows:

- All structures older than 60 years
- All archaeological (including rock art) sites older than 100 years
- All military sites older than 75 years
- All Palaeontological and meteorite sites and material
- Graves and graveyards outside a formal cemetery administered by a local authority that are older than 60 years
- Living Heritage Sites, including those places identified by oral tradition
- Certain Landscapes

The Act sets out permitting obligations should any development be envisaged at the sites. For instance, any building older than 60 years can only be altered, or demolished, once a permit has been issued to that effect in accordance to the NHRA.

The NHRA also requires significance rating of sites for conservation purposes and provides guidelines for the grading of sites, and their declaration as heritage sites.

No sites within the Baviaanskloof Mega-reserve are formally protected heritage sites. However, all cultural heritage resources are subject to the general protections as listed above. The landowner on whose property the individual sites or structures fall is required by law to ensure that the sites or structures are not damaged or destroyed. These sites or structures have therefore to be managed in such a way so as to ensure their preservation. If the sites or structures have been identified as having the potential to be used in other ways (for example, as educational or tourism destinations or facilities), management plans will have to address the questions specifically, and provide a plan for the sustainable use of the site.

All sites which are opened to the public have first to be registered with SAHRA, which will require a conservation management plan to be submitted for the site. The NHRA contains guidelines on the management of archaeological and other sites. SAHRA has also made available certain documentation relating to the creation of management plans for sites and the creation of site museums.

There are two aspects to the creation of management plans. The first aspect is the process of creating a management plan for a site or place. The process involves stakeholder engagement, consultation and the creation of specific goals, as well as indications of the implementation and monitoring of responsibilities. The second aspect is the actual plan itself, and the detail included to manage the physical aspects of the site, the fabric of the buildings or the context of the site.

The following are generic requirements. The Baviaanskloof Mega-Reserve is a project which operates on several different layers. At the lowest level the project deals with individual sites and places, each of which has to be managed. At the following level, the project deals with groups of sites, which can form mini trails within the reserve. These trails also have to be managed. At the most general level, the project attempts to manage a section of the South African landscape, and as such needs to be aware of the context of the area within the larger framework of Provincial requirements and objectives.

3.2. Process for developing management plans

The process by which management plans for particular sites are developed can be summarised as follows (adapted from SAHRA n.d. (a)):

1. Assessment of the scope of the project and the identification of stakeholders.
2. Documentation of the physical condition of the site, current status, and gathering of all available information from written and oral sources.
3. Evaluation of the cultural significance, authenticity and integrity of the site, as well as a situational analysis must take place in order to identify key issues.
4. The management plan should be developed incorporating the specific objectives of the project, the plan of action and implementation, and the strategy for monitoring the project.
5. The management plan needs to be communicated to all stakeholders, and the necessary resources and persons responsible for the implementation of the plan should be identified.

3.3. Site management requirements

Management plans must include solutions for the following (SAHRA n.d. (a) & (b)):

- Interpretation of the site (this has to be put together by a specialist)
- Visitor arrangements – whether visitors can approach the site unsupervised, or only with a guide.
- Signposting
- Parking facilities (these may not be closer than 100 m from the site, they must be off-road, and preferably on a tarred or bricked surface to limit dust in the area)

- Facilities: litter bins, toilet facilities (if considered relevant). Additional facilities such as a shop or restaurant can be considered depending on the volume of visitors to the site.
- An interpretive area at the beginning of the path to the site, separate from it, can be considered. This introduces visitors to the site, and can place it in the greater context.
- A path from the car park/ basic facilities to the site should be clearly marked, and constructed in such a way as to prevent erosion, entering the site at a position where damage to the site (deposits, rock art, structures etc) will be minimal.
- Information at the site must be placed in such a way so as not to interfere with the visitor experience of the site (this includes unobstructed views and movement around the site).
- Information panels at the entrance to the site should also include a section on visitor etiquette at the site.
- Protection of the site: An evaluation must be done of the sensitivity of the site, and protection of the deposits, structures or art at the site must be put in place. Issues such as the covering of the deposits, the creation of psychological or physical barriers between the visitors and sensitive areas (e.g. art or fragile structures), and the creation of boardwalks need to be investigated. In the case of a rock art site, graffiti should be removed (this must be done by a trained specialist). In terms of the NHRA, rock art sites include an area of 10m around the site, which is off-limits to development or intervention.
- Monitoring mechanisms need to be put in place whereby the site is regularly checked for deterioration, vandalism or overuse. Mechanisms must also be in place to attend to problems identified as soon after identification as possible.

3.4. National Environmental Management Act

In the National Environmental Management Act no. 107 of 1998 (NEMA) the cultural environment is subsumed under the general term 'environment' (see definition of 'environment'). NEMA provides for the management of the environment to ensure that all inhabitants of South Africa live in environments that are not harmful to their health and well-being, while promoting the conservation of the environment, and the ecologically sustainable development and use of natural resources.

Various factors are considered in the promotion of sustainable development, including the principle of minimising impacts on cultural heritage:

'that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied.'

NEMA, Section 2 (4)(a).

NEMA makes provision for the recognition of the interests of all interested and affected parties in environmental matters (NEMA, Section 2 (4)(f & g)). It is therefore necessary that the process of development of the Cultural Heritage Resources of the Baviaanskloof Mega-Reserve is done in consultation with all the relevant stakeholders.

According to the NEMA regulations, developments require an Environmental Impact Assessment (EIA), which in the case of the development of facilities at Heritage sites in the Reserve, will also require Heritage Impact Assessments as part of the EIA process.

4. International legislation and charters

The following international conventions, charters and guidelines have been consulted in order to establish suggestions for best practice in this project: UNESCO (various conventions), and guidelines such as 'Definitions of Cultural sites' and ICOMOS (various charters), and management plans and best practice for sites and structures. Various concepts that are relevant to the project are discussed below.

4.1. Principles and guidelines for the presentation of cultural heritage sites

In the Australia ICOMOS (Inc) Annual Report (2005 – 2006) of the International Committee on interpretation and presentation of cultural heritage sites (ICIP), the aim is stated as seeking 'to encourage a wide public appreciation of cultural heritage sites as places and sources of learning and reflection about the past, as well as valuable resources for sustainable community development and intercultural and intergenerational dialogue' (Summerton 2006).

Various issues need to be addressed if cultural heritage sites are to be used as resources. It is necessary to understand the cultural significance of the site or place. In order to do this, issues such as authenticity, context, intellectual integrity and social responsibility must be explored through the use of "appropriate techniques and technologies" (Summerton 2006). A process must be followed which is logical and inclusive of all interested and affected parties, as well as official bodies, and professionals with the relevant scientific background and understanding.

4.2. Determining the cultural 'significance' of a site:

In order to create a management plan for a site or structure, it is necessary to determine the cultural significance of a site or structure.

Useful guidelines for the establishment of cultural significance can be found in the Australia ICOMOS: Burra Charter Guideline – Cultural Significance 1988. These guidelines refer to a previous version of the Burra Charter. New guidelines, which are compatible with the revised charter (of 1999), are still awaited. However, the 1988 guidelines for cultural significance do provide useful concepts for the Baviaanskloof project.

The Burra Charter (of 1999) defines Cultural Significance as meaning the ‘aesthetic, historic, scientific, social or spiritual value for past, present or future generations’ (Australian Burra Charter, 1999, Article 1.2). These aspects of a place need to be described and assessed in order to make a statement about the cultural significance of the place. The collection of information must include the historic development of the site or place, its current authenticity, functions and scientific or research potential, and its relationship with its setting and other places in respect of design, technology, use, origin etc. It is also necessary to record the cultural influences on the place in the past and in the present, including present usages and spiritual value (Australian Burra Charter Guideline – Cultural Significance, 1988, Article 3.2).

Once the relevant information has been collected, it is possible to make an assessment of the cultural significance (Australian Burra Charter Guideline – Cultural Significance, 1988, Article 3.3). This assessment requires that the information about the site or place be collected in detail and with care. The principal significance of the place should be determined, but all other aspects of significance should be considered, as well as unresolved aspects. The statement of cultural significance should be clear, and should be based on fact, not hypotheses.

4.3. Conservation

‘Conservation is an integral part of the management of places of cultural significance and is an ongoing responsibility’.

‘The Burra Charter advocates a cautious approach to change: do as much as necessary to care for the places and to make it useable, but otherwise change it as little as possible so that its cultural significance is retained’

(Australian Burra Charter, 1999, Preamble).

The Australian Burra Charter Guideline – Conservation Policy, 1988, also refers to a previous version of the Burra Charter, but as with the guidelines of Cultural Significance, provides guidelines

which are relevant to the present project. The development of a conservation policy can only follow the preparation of the statement of cultural significance.

A conservation policy document is specific to each site or place, and is a plan on how the policy may be achieved in both the short and the long term (Australian Burra Charter Guideline – Conservation Policy, 1988, Article 2.0). The policy will need to cover the following issues:

- Conservation of the *fabric* of the place, as well as its *setting*.
- The *use* of the place should be identified, as well as constraints on the use, or combinations of uses, which are compatible with the cultural significance of the place.
- The way in which the significance of the place is *interpreted* and communicated should be identified in the conservation policy.
- The *management* of the place, including levels of responsibility, who makes decisions, how they are recorded and communicated, and how maintenance is provided for, should be clearly set out in the conservation plan.
- *Controls* should be set in place for the *physical intervention* during the conservation process, including specifying the degree and nature of the interventions, ensuring that proper analyses are carried out of the material, and providing for the dissemination of the resultant information.
- The policy should also identify any *constraints* which may impact on the investigation or accessibility of the place.
- Guidelines need to be specified for dealing with *future development* of the place.
- The policy must contain provision for *adoption and review*.

The Australian Burra Charter Guideline – Conservation Policy, 1988, also sets out two important aspects which need to be covered. The first is to examine the consequences of the conservation policy. The implementation of the conservation policy could have certain consequences, which would need to be addressed. These would be the affect on the significance, the setting and the owner, users and other stakeholders which changes to the place might have.

The second aspect is to set out the strategy for the implementation of the conservation policy. This strategy must address matters such as the:

- Financial resources to be used
- The technical specialists and other people to be consulted and used
- The sequence of events
- The timing of events
- The management of the strategy.

This would form a work plan for the actual work done on the place or site.

4.4. Interpretation:

'Interpretation should enhance understanding and enjoyment and be culturally appropriate (Article 25, Australian Burra Charter, 1999).

The Australian Burra Charter (1999) advocates the following process (Article 26):

1. Before any work commences on a place, it should be thoroughly investigated. This investigation should include analysis of the physical, documentary, oral and other evidence.
2. Written statements of cultural significance and policy (which can be justified) must be incorporated into the management plans for the site.
3. People who have associations with the place, as well as those involved in its management, should have the opportunity be able to contribute to the understanding of the cultural significance of the place, and where appropriate, they should also participate in its conservation and management.

4.5. Records and Responsibility:

Records:

All records of decisions, conservation, history, maintenance etc should be placed in a permanent archive, where they can be accessed, subject to culturally appropriate, security and privacy requirements (Australian Burra Charter, 1999, Article 32).

Australian Burra Charter, 1999, Article 27, further states that the 'existing fabric, use, associations and meanings should be adequately recorded before any changes are made to the place.' In other words there is a process to be followed in recording during any conservation takes place at a site or of a structure.

Responsibility:

The organisations and individuals responsible for management decisions should be named and specific responsibility taken for each such decision (Australian Burra Charter, 1999, Article 29).

The Australian Burra Charter, 1999, Article 30, states: 'Competent direction and supervision should be maintained at all stages, and any changes should be implemented by people with appropriate knowledge and skills'.

This is an extremely important statement that needs to be factored into ANY work at the sites. It has budget implications, as specialists are required to be a part of the planning and implementation

processes of any conservation or maintenance actions at the sites. It is vital that unskilled labour is properly supervised, and that all maintenance and conservation work is carried out according to a detailed plan, and with the right equipment.

4.6. Management of Cultural heritage Sites

Various types of Cultural Heritage sites have been identified within the Baviaanskloof Mega-Reserve.

Archaeological sites

A number of archaeological sites have been identified as potentially part of the heritage trail that can be developed for visitors in the Baviaanskloof Mega-Reserve.

The basic principle in dealing with the Archaeological Heritage component of the project is that it is a fragile and non-renewable resource (NHRA, ICOMOS 1990). This must inform all decisions related to the management of archaeological sites within the Reserve. All Archaeological sites are protected in terms of the NHRA, and their protection must be integrated into all policy decisions, whether conservation, natural or cultural, or planning for tourism or other development.

The objective of archaeological heritage management should be *in situ* conservation (ICOMOS 1990, Article 6). To achieve this there has to be informed, and consistent maintenance, conservation and management of the archaeological sites and occurrences within the reserve area. A conservation programme needs to be developed, carried out and monitored for sites that are identified as having potential for tourism and educational purposes, and those sites which are not to be opened to the public.

The understanding of archaeological sites is based upon scientific investigation by qualified archaeologists. A specialist archaeologist has to be involved in all aspects of management planning and implementation.

Rock Art sites

Rock Art sites require the same protections as archaeological sites, with the added component of the fragility of the art. Images on the rock surface are particularly vulnerable, as they can be affected not only by natural forces of deterioration, such as damp, dust, flaking of the rock surface

or fire, but by human and animal induced deterioration as well. Animals can rub against the rock surface, or build their nests there, while humans touching the rock surface, or deliberately damaging the paintings often provide one of the greatest threats to managing the art.

Historical sites

There are several small settlements, public buildings and individual houses relating to the European farming activities within the Baviaanskloof Mega-Reserve area which have been identified as relating to the history of European settlement of the area. According to the NHRA all structures older than 60 years are protected and a permit is needed to alter or destroy these structures. The structures may appear to be nondescript, but are representative of the vernacular architecture of the area. They are the remains of the historical use of the landscape, and as such represent the latest layering of human use of the area.

The ICOMOS *Charter on the Built Vernacular Heritage (1999)* states that although vernacular heritage is often informal and utilitarian, it is nevertheless important as it reflects the culture of local communities and their relationship with their surroundings. This is very much the case within the Baviaanskloof area. As such the protection of this heritage will depend on the involvement and support of the community, and also responsible authorities, including government. Vernacular heritage is particularly vulnerable, as it can become obsolete or be allowed to decay as the socio-economic status of communities change. Traditional construction skills and craftsmanship can be lost as older generations die out, and the globalisation of economies and cheaper alternatives to traditional construction methods become available.

Various Principles of Conservation are presented in the ICOMOS *Charter on the Built Vernacular Heritage (1999)*, as well as Guidelines in Practice. The two most relevant Principles for the Baviaanskloof project are that:

- the vernacular heritage of the Mega-Reserve is an integral part of the cultural landscape, and must form part of the conservation approach of the Mega-Reserve
- the vernacular heritage should be understood in a broad sense, not just as the buildings and remains of structures that are present, but also the spaces around them, how these places were used and understood, and the traditions and intangible associations that are attached to them.

In terms of the project, this translates into a respect for the remains of structures, and a serious commitment to maintain their integrity.

The Guidelines in Practice set out in the ICOMOS *Charter on the Built Vernacular Heritage* (1999) are clear about the process that is to be followed when dealing with vernacular structures. These can be linked to the specific stages within the process of developing management plans as recommended by SAHRA (see Section 2.2.). The research and documentation of the structures will need to include structural analysis by specialists. Any interventions, whether for conservation, restoration or adaptation of structures should, where possible, be undertaken using traditional building methods and materials. Where interventions are necessary to preserve the buildings or structures, and modern materials have to be used, these materials should maintain a “consistency of expression, appearance, texture and form throughout the structure, and a consistency of building materials” (ICOMOS 1999b). Restoration of buildings should be sensitive to changes that have been made to the buildings through time, and not remove the changes, but incorporate them into the understanding of the structure and place.

Shared built heritage:

This heritage is increasingly being recognised as having a place to help achieve social and political goals in a multi-cultural context not only between nations, but also between different cultures within a nation. The concept deals specifically with the colonial built environment, and the need to share this environment (Jean 2006). It must be recognised that aspects of the historical environment can be understood from different points of view, and the documentation and presentation of this aspect needs to be approached with sensitivity and inclusivity.

Ruined buildings:

Several of the structures within the Baviaanskloof Mega-Reserve area are no longer complete. The remains range from standing buildings in need of repair to foundations without any standing walls. All structures or traces of structures have to be managed within the policy guidelines of the NHRA.

Structures or buildings will deteriorate and decay if they are not maintained. The rate of decay is determined by various factors, including deliberate dismantling of parts of the structure, roof problems, quality of the construction material, such as sun-dried bricks, or the invasion of plants or animals and insects.

In some cases the structures are already in an advanced state of decay, and it is not possible or economically viable to either repair the damage, or arrest further decay. The question then arises as to the course of action that is required: is the gradual disappearance of the structure simply managed, or are attempts made to slow the process down, halt it, or even to reverse it? The guidelines for best practice in this case are scanty.

The Venice Charter (ICOMOS 1964) mentions ruins (although in the context of archaeological excavation), and states that they should be maintained, and measures necessary for permanent conservation taken. There are however, no real guidelines for the management of ruins.

It is important to remember that natural and cultural heritage are part of a dynamic process. Landscapes change continually, and although conservation is an attempt to redirect processes of change, in some cases change has to form a part of the understanding of the landscape, with the documentation of this change (and in some cases gradual disappearance) in lieu of invasive conservation measures.

Graves and Graveyards

The graves and graveyards of the Baviaanskloof Mega-Reserve area must also be managed. All graves and graveyards older than 60 years and outside a formal cemetery, are the responsibility of SAHRA. Some graves and graveyards are accessible and have been included in the potential tourism trail of the Reserve.

The Vermillion Accord on Human Rights states that respect for the mortal remains of the dead, and for the wishes concerning the disposition of their bodies is required. As such, graves and graveyards need to be documented and their management addressed. The following guidelines for their management have been suggested:

1. All graves and graveyards have to be documented fully.
2. Graves and graveyards have to be assessed as to their current physical condition.
3. Stakeholders must be identified, and their views and wishes concerning the graves and their management obtained.
4. All graves should be monitored for vandalism and decay.
5. Responsibility for maintaining individual graves and graveyards should be ascertained.
6. Maintenance programmes should be set in place, and basic cleaning up should take place regularly. It is particularly important, during this cleaning phase, to make sure that no vegetation is growing on the graves, and that no insects or other animals have access to the graves.

Living Heritage

Living Heritage includes the intangible aspects of the cultural heritage of an area, and is usually related to traditional cultural practices and ways of doing. Community involvement in the

documentation of living heritage sites is vital, and the process of capturing oral histories should form an integral part of the planning process.

“Global concern about living landscapes and the ‘cleaning up’ of cultural landscapes to create pristine settings for World Heritage places is [a matter] of concern. It has been noted [that] heritage is moving from single items to groups of places and to comprehensive heritage involving the intangible” (Ramsay 2006:36-37). Although this statement is concerned primarily with World Heritage sites, in the context of the Baviaanskloof Mega-Reserve, it is important to note the principle that cultural heritage is a complex issue, and that the presentation of heritage should be sensitive to nuances and layers of meaning.

5. Assessment of routes and landscapes

The tourism route which is proposed for the Baviaanskloof Mega-Reserve is made up of several different components. These are various sites, both prehistoric and historic, which are set in a very scenic natural landscape. The visitor experience of the route will be that of a layered human occupation within the context of a particular natural environment.

Although the tourism experience of the landscape will be more varied than in a single-themed cultural route (eg the Klondike Gold Rush epic journey route (Masson, n.d.)), it will still need to maintain an integrity as a route that will be recognisable to visitors. The character-defining elements of the route need to be interrelated and contextualised. The elements of the route can be understood as being the designated place, the natural and cultural landscape and the built resources (adapted from Masson, n.d.). The designated place is the Baviaanskloof area itself, the rugged nature of the route, and the places and sites of cultural significance along the route. The cultural places within the natural landscape can be natural formations which have become cultural through use, and through marking the natural landscape. Examples of this would be the archaeological sites, and the rock art on the cave walls, respectively. Built resources on the landscape include the remains of houses, other farm buildings and public buildings such as churches or schools. Other marks on the landscape which can be incorporated into an interpretation of the layers of human activity on the landscape are graves and graveyards, as well as tracks and roads.

The importance of conceptualising the proposed development of the area as a larger landscape or as a route, is that there has to be:

- consistency in dealing with sites and places along the route in terms of management and interpretation

- an overarching theme which will contextualise the experience for the visitor
- understandable linkages between different experiences
- on a practical level, signposting which has to be consistent and clear

6. Conclusion

The Baviaanskloof Mega-Reserve project has to be legally compliant, and will benefit from a well-thought-through approach, informed by international and national standards of best practice.

Planning is a key component to a project of this nature, and it is vital that stakeholders are identified and involved from the beginning of the project. A properly conceptualised and planned project will ensure its success and the most efficient use of financial resources.

Terminology

The following definitions are from the Burra Charter (Article 1, Australian Burra Charter, 1999):

Maintenance: 'the continuous protective care of the fabric and setting of a place'. It is fundamental to conservation.

Repair: 'involves restoration or reconstruction'

Preservation: 'maintaining the fabric of a place in its existing state and retarding deterioration'

Restoration: 'returning the existing fabric of a place to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material'

Reconstruction: 'returning a place to a known earlier state and is distinguished from restoration by the introduction of new material into the fabric'

Compatible use: 'a use which respects the cultural significance of a place. Such a use involves no, or minimal, impact on cultural significance'

Setting: 'the area around a place, which may include the visual catchment'

Conservation: 'based on a respect for the existing fabric, use, associations and meanings. It requires a cautious approach of changing as much as necessary but as little as possible'. It also 'requires the retention of an appropriate visual setting and other relationships that contribute to the cultural significance of the place'.

Acronyms

ICOMOS: International Council on Monuments and Sites

NEMA: National Environmental Management Act no. 107 of 1998

NHRA: National Heritage Resources Act no. 25 of 1999

PMU: Project Management Unit of the Wilderness Foundation

SAHRA: South African Heritage Resources Agency

UNESCO: United Nations Educational, Scientific and Cultural Organisation

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APPENDIX 1

List of relevant legislation and international best practise

South African Legislation

National Heritage Resources Act, no 25 of 1999

National Environmental Management Act, no. 107 of 1998

World Heritage Convention Act, no. 49 of 1999

Environmental Conservation Act, no. 73 of 1989

International Best Practise

UNESCO: Recommendations on International Principles Applicable to Archaeological Excavations 1956

UNESCO: Convention concerning the Protection of the World Cultural and Natural Heritage 1972

UNESCO: Convention for the Safeguarding of the Intangible Cultural Heritage 2003

UNESCO: The Johannesburg declaration on World Heritage in Africa and sustainable development (2002)

ICOMOS: International charter for the conservation and restoration of monuments and sites (the Venice charter 1964)

ICOMOS: Charter for the protection and management of the archaeological heritage (1990)

ICOMOS: Guidelines on education and training in the conservation of monuments, ensembles and sites (1993)

ICOMOS: The Nara document on Authenticity (1994)

ICOMOS: Principles for the recording of monuments, groups of buildings and sites (1996)

ICOMOS: Declaration of ICOMOS marking the 50th anniversary of the Universal Declaration of Human Rights (1998)

ICOMOS: Charter in the Built Vernacular Heritage (1999)

ICOMOS: International Cultural Tourism Charter: Managing tourism at places of Heritage significance (1999)

ICOMOS: ICOMOS Charter – Principles for the analysis, conservation and structural restoration of Architectural Heritage (2003)

Australia ICOMOS: Burra Charter: The Australian ICOMOS charter for the conservation of places of cultural significance (1999)

Australia ICOMOS: Australian Burra Charter Guideline – Conservation Policy, 1988

Australia ICOMOS: Australian Burra Charter Guideline – Cultural Significance, 1988

The Vermillion Accord on Human Remains, 1989

APPENDIX 2

Relevant sections from the **National Heritage Resources Act no. 25 of 1999.**

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; (xiii)

(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;

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

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

(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;

(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;
(xiv) “heritage agreement” means an agreement referred to in section 42;
(xv) “heritage register” means a list of heritage resources in a province;
(xvi) “heritage resource” means any place or object of cultural significance;

(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;

(xix) “improvement”, in relation to heritage resources, includes the repair, restoration and rehabilitation of a place protected in terms of this Act;

(xx) “land” includes land covered by water and the air space above the land;

(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;

(xxiii) “management”, in relation to heritage resources, includes the conservation, presentation and improvement of a place protected in terms of this Act;

(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;

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

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

(xiii) “State” includes a province;

(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;

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.

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.

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.

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.

(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.

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 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.

Part 2: 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.
- (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.

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.

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.

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.