



HERITAGE WESTERN CAPE (“HWC”)

GREEN MARKET SQUARE, PROTEA ASSURANCE BUILDING, CAPE TOWN 8001

**CODE OF CONDUCT FOR COUNCIL, COMMITTEES
AND MEMBERS OF COUNCIL AND ITS COMMITTEES**

CODE OF CONDUCT FOR COUNCIL, COMMITTEES AND MEMBERS OF COUNCIL AND ITS COMMITTEES

Adopted by Executive Committee on **17 June 2011**
Revised by the Council on **3 August 2011**

1. INTRODUCTION

1.1 General

The National Heritage Resources Act, 25 of 1999 ("the Act") and regulations under the terms of the Act, published as Provincial Notice 336 of 25 October 2002, established Heritage Western Cape ("HWC") together with its Council to co-ordinate and promote the management of heritage resources in the Western Cape Province; to set norms and maintain standards for management of heritage resources and to protect heritage resources of provincial significance; and to provide for the protection and management of the conservation-worthy places and areas by local authorities. The Council has in its turn established committees to assist it in its performance of these responsibilities.

1.2 The purpose of the Code

1.2.1 In order to give effect to the relevant Constitutional provisions as well as the National Heritage Resources Act, 25 of 1999 relating to HWC Council members and members of committees, all Council and committee members are expected to comply with the provisions of the Code of Conduct set out herein.

1.2.2 The Code should act as a guideline to the HWC Council and its committees as well as members thereof in their individual capacities as to what is expected of them from an ethical point of view, both in their individual conduct and their conduct in relationship with the Department of Cultural Affairs and Sport (DCAS), HWC Management, Staff and the Public.

1.2.3 The primary purpose of the Code is to promote exemplary conduct in order to give credence to the HWC, its Council and committees.

1.3 The object of HWC

1.3.1 The object of HWC is to be responsible for the identification and management of Grade II heritage resources and heritage resources which are deemed to be a provincial competence in terms of the Act. It also carries responsibility for Grade III heritage resources where such responsibility has not been assumed by local government.

1.4 Establishment of the HWC Council

14.1 HWC Council ("Council") is established in terms of section 23 of the National Heritage Resources Act, 25 of 1999 which provides that the affairs of HWC are governed by the HWC Council constituted as prescribed by regulations published in the *Provincial Gazette*. (See published as *Provincial Notice 336 of 25 October 2002*.)

14.2 The members of Council shall be appointed in a manner which applies the principles of transparency and representivity and takes into account special competence, experience and interest in the field of heritage resources.

1.5 Functions, Powers and duties of the HWC

1.5.1 Section 24 of the Act, which deals with the functions of Council provides as follows:

"A Provincial Heritage Authority must –

(a) Advise the MEC...

(b) Annually submit...

(c) Promote...

(d) Protect and manage...

- (e) *Notify SAHRA...*
- (f) *Maintain...*
- (g) *Establish policy...*
- (h) *Determine...*
- (i) *Co-ordinate...*
- (j) *Assist...*
- (k) *Provide for any...*

1.6 General Powers and duties of HWC

1.6.1 *The general powers and duties of HWC are set out in section 25(1) of the National Heritage Resources Act, 25 of 1999.*

2. CORE PRINCIPLES

Fiduciary duties

2.1 The most important duties of Council and committee members are that they must –

- (a) act independently at all times with unfettered discretion;
- (b) exercise independent judgment; and
- (c) take decisions according to the best interests of HWC and in accordance with the provisions of the Act and in the case of committees the delegations made to them by the Council.

Selflessness

2.2 Members must act in the best interests of the Council and/or committee and must not improperly seek or accept any financial or other advantages for themselves or people closely connected with them.

Integrity

2.3 Council and committee members must –

- 2.3.1 not allow themselves to be placed in a situation where their integrity or independence could justifiably be called into question;
- 2.3.2 promote the unity and the well-being of HWC in performing his or her functions by virtue of his or her appointment as a member of the Council or a committee;
- 2.3.3 serve the public in an unbiased and impartial manner in order to create public confidence in HWC and DCAS;
- 2.3.4 be polite and helpful when members of the public, conservation bodies, public bodies, and other persons or bodies appear before it;
- 2.3.5 not unfairly discriminate against a member of the public on account of race, gender, ethnic, political persuasion, conscience, belief, culture or language;
- 2.3.6 not abuse his or her position as a member of Council or a committee to promote or prejudice the interest of any person, body, political party or interest group;
- 2.3.7 respect and protect every person's dignity and his or her rights enshrined in the Constitution; and
- 2.3.8 execute all reasonable instructions given by Council or committee, provided that the instruction/s are not in conflict with the provisions of the Constitution, the NHRA and/or any other law;
- 2.3.9 use the appropriate channels to air his or her grievances or to direct representations to the Chairperson of Council or committee.

Accountability

- 2.4 Council and committee members are accountable for their conduct, and should be prepared to justify it at all times;

Openness

- 2.5 Council and committee members should be open about their decisions.

Honesty

- 2.6 Council and committee members must declare their relevant financial and other interests in accordance with the rules on declarations of interests set out in this Code and by DCAS.

Leadership

- 2.7 Council and committee members should promote these principles and lead by example.

Equality and diversity

- 2.8 Council and committee members must comply with best practice on equality and diversity issues and promote compliance by others. In this context, "best practice" includes, but is not limited to, relevant legislation and HWC's, in the absence thereof, DCAS's own Equality and Diversity Policy.

Respect

- 2.9 Council and committee members should follow the principles of mutual respect in all their dealings and be prepared to accept that others may have equally strong views in good faith that differ from their own.

- 2.10 Council and committee members should treat colleagues with respect and not engage in any behaviour towards other members or staff which might reasonably be interpreted as discriminatory, bullying or harassment.

3. APPLICATION OF THE PRINCIPLES

Collegiality

- 3.1 Council and committee members should recognize that decisions with which they disagree may be made by a majority of the Council. Members may dissent, but should not seek to frustrate the implementation of decisions properly reached.

Roles of members and staff

- 3.2 Council and committee members must recognize that staff are part of a line management structure responsible to the Chief Executive Officer of HWC for the implementation of decisions, and not to individual Council members.
- 3.3 Council and committee members must not place staff in any position where this principle referred to in clause 3.2 might be compromised.

Confidentiality

- 3.4 Council and committee members must take all appropriate steps to safeguard information given to them in confidence or which otherwise comes into their possession in circumstances where confidentiality arises.
- 3.5 For the avoidance of doubt, it is permissible for such information to be given to another Council or committee member (unless that member has a conflict of interest which would prevent him or her having access to the information).

- 3.6 A Council and committee member shall not release official information to the public unless he or she has the necessary authority from the Chairperson of Council, the relevant committee or the CEO as the case may be.

Meetings of Council and its Committees

- 3.7 The regulations, which deal with meetings of Council, provide that Council must meet at least four times a year.
- 3.8 In addition, the following is provided for in the Act:
- 3.8.1 A quorum for a meeting of the Council shall be a majority of its members.
- 3.8.2 Any decision of the Council or a committee shall be taken by resolution of the majority of the members present at any meeting of the Council, and, in the event of equality of votes on any matter, the person presiding at the meeting in question should have a casting vote in addition to his/ her deliberative vote as a member of the Council.
- 3.8.3 The quorum of a committee shall be determined by the Council.
- 3.8.4 If the Chairperson of the Council or a committee is absent from a meeting of the Council or not able to preside at that meeting, the members present must elect one of their number to preside at that meeting and that person may, during that meeting until the Chairperson resumes his/ her functions, perform all those functions.

Standards of debate and conduct at meetings

- 3.9 Council and Committee Members –

- 3.7.1 must uphold high standards of courtesy and respect in meeting debates.
- 3.7.2 are required to ensure that they familiarise themselves with each and every document which forms part of the discussion information pack, prior to the commencement of the meetings.
- 3.7.3 must, in order to ensure orderly discussion at meetings, ensure that all points by members are made through the Chairperson and only once the Chairperson acknowledges that the point/s may be made by the member.
- 3.7.4 must respect the Chairperson's direction in conducting of meetings.

Voting

- 3.8 Voting shall be done by show of hands unless one third of members request a secret ballot.

Regulatory matters

- 3.9 When dealing with regulatory matters, members should bear in mind the primacy of the public interest and should strive to ensure that their decisions on such matters cannot be legally challenged.

Financial matters

- 3.10 Members of Council must:
 - 3.10.1 deal responsibly and prudently with financial matters, particularly proposals for expenditure.
 - 3.10.2 on discovery of any unauthorized, irregular or fruitless and wasteful expenditure, must immediately report, in writing,

particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods and services, also to the relevant tender board.

Gifts and hospitality

- 3.11 Council and committee members must not accept gifts or hospitality where this might cause their integrity or independence to be questioned.
- 3.12 Gifts and hospitality over the value of R300,00 must be reported to Chairperson of Council and shall be duly recorded in Council meetings.

Meetings : Agenda Items

- 3.13 The Council secretariat shall be responsible for communicating with Council members and HWC Management for the enrolment of Agenda Items to be placed on the Agenda;
- 3.14 Council members and HWC Management, after having being requested in writing by the Council secretariat to submit Agenda items to be enrolled on the Council Agenda, shall cause to submit for the attention of the secretariat the time stipulated in the request. Agenda items not submitted within the period referred to in this clause, shall not form part of the Agenda, save with the permission of the Chairperson only;
- 3.15 The Agenda Items submitted for enrollment by Council members or the HWC Management shall clearly reflect which items are for Council's approval or for noting. It is the responsibility of Council members and the HWC Management to indicate which items are for the Council's "approval" or for "noting".
- 3.16 The secretariat shall after receipt of the information referred to above, convey the agenda to all Council members.

- 3.17 The HWC Management shall be responsible for compiling and approving the agendas of committee meetings, which shall be made up of applications and associated items received since the previous meeting of the committee in question.

Meetings : Minutes of Meetings

- 3.18 The secretariat shall transmit via e-mail the minutes in typed form to all Council or committee Chairperson within 7 working days after of a meeting.
- 3.19 The Chairperson shall respond with comment and correction to the minutes within a period of no longer than seven calendar days.
- 3.20 The secretariat shall take these corrections into account and circulate the corrected version of the minutes to all members, for consideration at their next meeting.

Attendance at meetings

- 3.21 Members should commit themselves –
- 3.21.1 to attending Council and committee meetings, unless prevented by compelling personal or professional reasons, and should seek leave of absence only where this is absolutely necessary.
- 3.21.2 and ensure that they arrive sufficiently early prior to commencement of Council meetings.
- 3.21.3 to communicate with the Chairperson should they be unable to attend meetings and/or will be unable to attend the meetings on time.

Speaking for HWC

- 3.22 Members must not represent themselves as speaking officially for HWC when this is not the case, and should take care to avoid as far as possible being placed in a position where they might be misrepresented as speaking for HWC or DCAS.

4. COMPLAINTS AGAINST COUNCIL AND COMMITTEE MEMBERS AND BREACH OF THE CODE

Complaint

- 4.1 Any complaint against a member under this Code must be referred to a sub-committee constituted by Council for consideration.

Investigation

- 4.2 The sub-committee will investigate the complaint or breach and report to the Council, which will have the power to administer any sanction, except those sanctions which may be administered by the MEC.
- 4.3 To decide its own procedure (which may include the power for the Chair or Vice-Chair to dismiss any complaint he or she deems to be trivial or vexatious in nature).

Breach of Code

- 4.4 A member breaches this Code if the member –
- (a) contravenes or fails to comply with a provision of this Code;
 - (b) when disclosing a registrable interest, willfully provides the Registrar with incorrect or misleading details.
- 4.5 Notwithstanding the provisions contained in the Code, the MEC may consultation with the Council, remove a member of the Council from

office if in the opinion of the MEC there are sound reasons for doing so after hearing the member on those reasons.

5. CONFLICTS OF INTERESTS AND DECLARATION OF INTERESTS

5.1 General

5.1.1 There will be a standing item on the agenda of every meeting for disclosure of interests of members.

5.1.2 Members must declare all relevant interests at the time the matter concerned arises, whether or not those interests have been included in the register of members' interests. In case of doubt, an interest should always be declared.

5.1.3 If a member has an interest which could lead him or her to be influenced, or to be reasonably seen to be influenced, by the real possibility of significant personal gain (or loss) of a financial or non-financial nature, the interest will be deemed to be prejudicial and the members should not speak or vote on that matter, and must withdraw from the meeting room for the duration of the discussion of that matter.

5.1.4 If a member is the representative of a party to a matter being considered by Council or a committee the member may represent that party provided that it is declared and that s/he leaves the room at the time of decision making.

5.1.5 If a member has an interest in a matter where no significant personal gain (or loss) could arise, but has a personal connection or previous involvement in an issue, the member shall recuse him or herself from the discussion except at the discretion of the Chairperson.

5.1.6 In addition to the clause above, the member who may have an interest in a matter may not be part of the decision making process, not make any recommendations or discussions in as far as the matter is concerned. The member shall withdraw him or herself from the meeting for the duration of the matter under discussion, but must be readmitted to the meeting after the matter is dealt with as an Agenda Item.

5.1.7 A member who has identified a potential area of conflict of interest should consult the Chairperson for guidance on the way forward. If the potential area of conflict concerns the Chairperson, he or she must consult the members present at the meeting.

6.2 Register of interests

Members shall register their interests in the format and at the time determined annually by DCAS.

6.3 Failure to register Interest

6.3.1 Any member who willfully –

- (1) fails to disclose an interest in terms of this Code; or
- (2) when disclosing an interest, willfully and intentionally provides incorrect or misleading details,

and may be guilty of misconduct and/or may at the discretion of the CEO be excluded from participating in the proceedings of the Council or committee/s concerned until such matters are resolved.

7. COMMITTEES OF COUNCIL

Appointment of Committees of Council

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

8. TRAINING

Directive by Council Chairperson/Chief Executive Officer

- 8.1 If it will enhance the performance of Council work, the Chairperson or Chief Executive Officer may direct that the members be trained covering aspects which relates to the HWC's functions, eg: (1) Induction of Council members, (2) Governance Training, (3) the National Heritage Resources Act, 25 of 1999, etc.

9 RELATIONSHIP BETWEEN COUNCIL AND ITS COMMITTEES AND STAFF

The Council and committees shall –

- 9.1 foster a good working relationships with HWC Management, HWC Staff, DCAS and DCAS Staff and shall have a working relationship that will enhance service delivery and the integrity of the institution;
- 9.2 put the interest of the public first in the execution of their duties;
- 9.3 without fear or favour execute their duties as envisaged in the South African Constitution, the National Heritage Resources Act, 25 of 1999 and other applicable legislation;
- 9.4 strive to be familiar with and abides by all statutory, instructions provided by the MEC responsible for the Department Cultural Affairs

and Sport, this Code of Conduct, as well as other instructions and policies applicable to their conduct and duties; and

- 9.5 co-operate with public institutions established under legislation and the constitution in promoting the public interest.

DONE AND SIGNED ON _____ AT _____ ON

THIS _____ DAY OF _____ 2011

CHAIRPERSON on behalf of the HWC COUNCIL