

HERITAGE WESTERN CAPE - OPERATIONAL PROTOCOL FOR THE DECLARATION OF PROVINCIAL HERITAGE SITES (DESK INSTRUCTION)

(This protocol covers process leading to protection of sites under the terms of section 27 of the NHRA.)

This protocol applies to staff responsible for the processing of nominations for provincial heritage sites. It is a procedure authorised by the Chief Executive Officer of Heritage Western Cape (CEO) and may only be deviated from with the express consent of the CEO.

Abbreviations:

ADPS	Assistant Director Professional Services
ADAS	Assistant Director Administrative Support
ADPRP	Assistant Director Policy, Research and Planning
AS	A team's administrative support officer/clerk.
CEO	Chief Executive Officer
Council	The Council of HWC
DDHRM	Deputy Director Heritage Resources Management
ExCo	Executive Committee of the Council of HWC
HO	Heritage Officer
HWC	Heritage Western Cape
I&AP	Interested and affected party
IGIC	Inventories, Gradings and Interpretations Committee of HWC
NHRA	National Heritage Resources Act
NID	Notification of Intent to Develop
PHS	Provincial Heritage Site
RoD	Record of decision

1. INITIATION OF NOMINATION:

1.1 The process of nomination may be initiated in several ways:

- 1.1.1 HWC may initiate it in terms of section 27(2) of the NHRA. This will occur on the instruction of the Council, a committee or the CEO.
- 1.1.2 A member of the public may submit a nomination in terms of section 27(3) of the NHRA.
- 1.1.3 A nomination may be required in terms of section 34(2) of the NHRA following refusal of an application concerning a Grade II site. (See Section 5 Heritage Western Cape - Operational Protocol for the Processing of Applications Made in Terms of the NHRA.)

1.2 Nomination Dossiers:

- 1.2.1 Regardless of the origin of the nomination, in order to be processed, a nomination must be made in the approved format.

- 1.2.2 Where necessary the ADPRP must assist a member of the public making a nomination with guidance on the completion of the form and the quality of information required for a nomination to be processed.
- 1.2.3 Where relevant or necessary to the understanding of the site, additional information may be annexed to the nomination form.
- 1.2.4 Where the owner is the nominator of the site or has otherwise commissioned the nomination, the nomination should be accompanied by a letter indicating that the owner supports the declaration of the site.

2. PROCESSING OF SITES NOT PREVIOUSLY GRADED BY THE COUNCIL OF HWC

2.1 Submission to team meeting:

- 2.1.1 Any nomination which originates from within HWC and which is deemed by the ADPRP to be ready for processing, or which has been received from the public and regardless of its condition, must be discussed at a weekly staff team meeting prior to its submission to the IGIC.
- 2.1.2 The team must formulate a recommendation with regard to nomination, the significance of the site and specifically how it should be graded.
- 2.1.3 If the recommendation of the ADPRP to the team meeting is that the site is a Grade II site, recommendations regarding the boundaries of the site should be made to the team which should discuss these and determine the boundaries to be recommended to the IGIC.

2.2 Submission to the IGIC for Grading

- 2.2.1 After the nomination has been to a team meeting, the ADPRP must place it on the agenda of the next meeting of the IGIC and the nomination dossier must be circulated by the AS to members thereof as part of the agenda.
- 2.2.2 The IGIC must formulate a decision with regard to nomination, the significance of the site and specifically how it should be graded.

2.3 Obtaining the initial opinion of the owner of the site in terms of section 27(8)d:

- 2.3.1 HWC must communicate the decision of IGIC to the landowner regarding the significance and grading of the site.
- 2.3.2 If the IGIC determines that the site has Provincial Significance (Grade II), this letter must inform the owner that HWC is investigating the nomination of the site as a Provincial Heritage Site.
- 2.3.3 The landowner is provided with 30 days in which to respond to HWC.

2.4 Formal Notification in terms of section 27(8), with 60 days allowed for submissions regarding the proposed declaration, and in the case of the owner, to propose conditions under which the action will be acceptable.

- 2.4.1 Where not already indicated in a letter addressed to HWC that the owner is in favour of declaration, the ADPRP must, in terms of Section 27(8)a, send a standard letter to the owner of the property;
- 2.4.2 The ADPRP must, in terms of Section 27(8)b and c, send a standard letter to the:

- 2.4.2.1 The mortgage holder and/or occupant [27(8)b]; and
 - 2.4.2.2 Relevant conservation bodies [27(8)c]
 - 2.4.3 In terms of section 27(10), place shall be deemed to be protected as a heritage site for six months from the date of service of a notice under 2.4.1 or until the notice is withdrawn or the place is declared to be a heritage site, whichever is the shorter period.
- 2.5 Submission to the IGIC:
 - 2.5.1 After 60 days have passed, the ADPRP must place it on the agenda of the next meeting of the IGIC and the nomination dossier must be circulated by the AS to members thereof as part of the agenda.
 - 2.5.2 Any I&APs, e.g. the land owner, nominator, registered conservation body, etc., must be notified of the meeting and invited to attend if they so wish. This must be done by the ADPRP in terms of procedures for notification of I&APs.
 - 2.5.3 Where the nominator is from outside HWC, they must be informed that they will be provided with an opportunity to address the committee on the nomination.
 - 2.5.4 The ADPRP must make a presentation to the IGIC, setting out a summary of the nomination dossier, reasons for the proposed grading and a recommendation concerning whether or not the site should be declared.
 - 2.5.5 A diagram and/or a written description of the proposed boundaries of the site should also be presented.
 - 2.5.6 Should the IGIC decide to amend any aspect of the dossier or the proposed boundaries, the landowner and the nominator must be informed of these amendments.
 - 2.5.7 The landowner and nominator must be advised of the HWC Council decision-making process.
- 2.6 Submission to the HWC Council:
 - 2.6.1 Once the IGIC has formulated a recommendation on a nomination the matter must be placed by the ADPRP on the agenda of the forthcoming Council meeting, and the nomination dossier and recommendation of the IGIC must be circulated by the AS to members thereof as part of the agenda.
 - 2.6.2 Where it is an urgent matter, after discussion with and the agreement of the CEO, it may be placed on the agenda of the ExCo.
 - 2.6.3 Any I&APs, e.g. the land owner, nominator, registered conservation body, etc., must be notified of the meeting and invited to attend if they so wish. This must be done by the ADPRP in terms of procedures for notification of I&APs. Where the nominator is from outside HWC, they must be informed that they will be provided with opportunity to address the committee on the nomination.
 - 2.6.4 The ADPRP must make a presentation to the Council, setting out a summary of the nomination dossier and the recommendation of the IGIC concerning the grading/whether or not the site should be declared and its recommendations concerning boundaries.
 - 2.6.5 A diagram and/or a written description of the proposed boundaries of the site should also be presented by the ADPRP.

- 2.6.6 The opinion of the owner, or where none has been forthcoming, an outline of the effort made to obtain the owners opinion, must also be presented by the ADPRP.
- 2.6.7 Where the Council resolves not to declare the site, the nominator, if from outside HWC, the owner and I&APs should within seven days be informed of the decision and provided with reasons for it. The letter to this effect is to be prepared by the ADPRP and signed by the CEO.
- 2.6.8 Where the Council determines that the nominated site is Grade III and it is not already on the municipal inventory and/or Register, the ADPRP must within seven working days add it to the inventory for the municipality concerned, whereafter the procedure for placing it on the Register must be initiated in instances where mechanisms for that exist at municipal level.

3. PROCESSING OF SITES THAT HAVE PREVIOUSLY BEEN GRADED BY THE COUNCIL OF HWC

- 3.1 In instances where as part of an inventory or for any other reason the IGIC or Council has determined that the nominated heritage resource is a Grade II site, the same process as that set out above is to be followed, other than that it is to be noted that the site already has the appropriate grading and that the process embarked upon is a follow-up to that.
- 3.2 Where the staff team or the IGIC is of the opinion that the grading is not correct and that a site does not hence warrant declaration as a PHS it may recommend a new grading, and other than in instances where the nomination has been submitted by a member of the public, may first follow the procedure for grading before submitting a nomination.

4. OWNER'S FINAL OPINION

- 4.1 Within no longer than seven days following the decision of the Council to declare a site and approval of the boundaries thereof, the ADPRP must inform the landowner and provide a final opportunity to comment if no letter of support has yet been submitted.
- 4.2 Where the opinion of the owner is negative the ADPRP must immediately submit the owner's response to the IGIC and Council in that order, and to inform I&APs. Recommendations may be made that address any concerns raised by the owner and that do not compromise the integrity or heritage significance of the site.
 - 4.2.1 When the matter is once again put to the IGIC by the ADPRP, it must include a recommendation and motivations as to whether the matter of declaration should be dropped or proceeded with despite the owner's objection, or whether the owner should again be asked for an opinion.
 - 4.2.2 Where the Council resolves that:
 - 4.2.2.1 the matter should be dropped, the ADPRP must, unless the Council decides otherwise, and within seven days, inform the owner and I&APs of this decision.

4.2.2.2 the owner should again be asked for an opinion, I&APs should be informed by the ADPRP of this decision within seven days, and the same procedure set out above should once again be followed.

4.2.2.3 declaration should proceed, the ADPRP must inform the owner of the decision within seven days and thereafter, allow time for an appeal to be lodged before proceeding with declaration.

In proceeding with the declaration, the process outlined in section 27(11) must be followed.

5. DECLARATION:

5.1 This part of the procedure may only be followed if:

5.1.1.1 the Council has decided that the site is Grade II, has resolved that it should be declared and has approved the boundaries of the area to be declared.

5.1.1.2 the owner has been informed of the grading, decision to declare and the boundaries and is in agreement.

5.1.1.3 the period permitted for appeal of decisions of the Council, or thereafter the Tribunal have lapsed.

5.1.1.4 in the case of a state-owned property, a conservation management plan has been approved by the Council.

5.2 The ADPRP must within two weeks of the above formulate a Gazette Notice for the site and submit it to the legal advisor, DD and CEO to sign off.

5.3 Thereafter it must immediately be submitted by the ADPRP for translation into all three Provincial languages and thereafter publication on a date to be determined in discussion with the CEO.

5.4 In terms of Section 27(14) of the NHRA and within no longer than 30 days after publication of the Gazette Notice, the ADPRP must ensure that SAHRA, the municipality within whose area of jurisdiction the new PHS falls and the provincial planning authority, are informed of the declaration and sent a copy of the notice.

6. DEPROCLAMATION

6.1 Should an existing PHS no longer warrant such formal protection, either based on the application of a new grading or on notification from HWC Staff or the public, Steps 1 to 5 outlined above must be followed.

6.2 Should it be considered necessary, HWC must publish a notification advertisement indicating its intention to deproclaim a PHS.

6.3 A Withdrawal Gazette Notice must be published in the Provincial Government Gazette.

Version issued after agreement of staff: _____
CEO's Signature

ACCEPTANCE BY OFFICIALS:

Name: _____ Signature: _____ Date: _____ 20__

Name: _____ Signature: _____ Date: _____ 20__

Name: _____ Signature: _____ Date: _____ 20__

Name: _____ Signature: _____ Date: _____ 20__

Name: _____ Signature: _____ Date: _____ 20__

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