



## Heritage Western Cape

### Process for Mitigation of Heritage Resources in terms of S38 of the NHRA

*(To be read with the HWC S38 Process diagram)*

#### 1. BACKGROUND

Section 38(10) states that:

*“(10) Any person who has complied with the decision of a provincial heritage resources authority in subsection (4) or of the MEC in terms of subsection (6) or other requirements referred to in subsection (8), must be exempted from compliance with all other protections in terms of this Part, but any existing heritage agreements made in terms of section 42 must continue to apply”*

Heritage Western Cape (HWC) interprets this to mean that, in terms of section 38(10) of the NHRA<sup>1</sup>, an applicant is exempt from being required to apply for a permit if they have complied with a decision taken under the National Environmental Management Act or the Mineral and Petroleum Resources Development Act or if they have complied with the requirements of HWC in terms of Section 38(4). In order to ensure that heritage resources that will be impacted by development are adequately recorded, sampled and/or conserved, the relevant Heritage Resource Authority must ensure that its recommendations and requirements are established and clearly specified in the earlier stages of compliance, in order that they may be written into the Authorisation issued by the Decision Making Authority.

Throughout this process, HWC must ensure that appropriate standards of excavation, sampling, collection and recording will be maintained, and needs to understand whether the mitigation is intended to establish the extent of the site, its significance, or to rescue significant material.

Any MITIGATION<sup>2</sup> undertaken in terms of section 38 of the NHRA must comply with the conditions prescribed by HWC. HWC may base its' requirements on the RECOMMENDATIONS of the Specialist Report in terms of s. 38(3) / 38(4)(b & e) of the NHRA. RECOMMENDATIONS for the mitigation of the site(s) should be made by the Specialist Consultant, and must be provided with the general RECOMMENDATIONS in the Heritage Impact Assessment, for the approval of Heritage Western

---

<sup>1</sup> National Heritage Resources Act, No. 25 of 1999.

<sup>2</sup> **\*MITIGATION, in this context**, is defined as any intervention that will destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite; remove from its original position, or collect any such heritage resource, or export or attempt to export from the Republic any category of such heritage resource in order to recover information and material in order to mitigate against its loss through development. Investigative sampling of such resources must be undertaken by a qualified professional and approved by the heritage authority when required as part of any assessment process, in terms of other legislation.

Cape. These mitigation RECOMMENDATIONS will be referred to in-house, initially, as the 'Work Plan'.

What this means is that in place of a permit application, Heritage Western Cape may request additional information which may include any Mitigation needed to establish significance before a final comment or decision is issued. HWC will require a MITIGATION REPORT to be submitted following the completion of the work. It must comply with the minimum standards of reports as prescribed by SAHRA and HWC. The purpose of this document is to guide the creation of RECOMMENDATIONS that will ensure compliance with the SAHRA and HWC minimum standards and to indicate that recommendations for mitigation (work plan) be included in the general recommendations.

## **2. GUIDE TO RECOMMENDATIONS (part of the HIA)**

### **A. The Consultant, in the body of the HIA report, must:**

- Indicate, as far as this is possible before investigation, the current suggested SIGNIFICANCE and GRADING<sup>3</sup> of the site(s);
- Evaluate the IMPACT of the PROPOSED DEVELOPMENT (both direct and indirect) on the heritage resources;
- Motivate for any proposed alternatives that mitigate against destruction of heritage resources;
- Motivate the need for any NO-GO areas; or other mitigation of adverse effects, during and after the completion of the proposed development. Discussion of the need for dates, management or curation, and any further work or studies needed to establish site significance and/or conserve heritage site value.
- In compliance with section 38(3) and the Minimum Standards for Archaeological and Palaeontological curation, the following must be included:
  - A LOCALITY PLAN showing the exact geographic position of all known site(s), a table of lat/ lon co-ordinates of sites (wgs84) (decimal degrees);
  - Full CADASTRAL details of property: Site Name, Physical Address, Erf Number OR Farm Name and Number;
  - SITE PLAN(S), if available, showing the property layout and pertinent features relevant to the planned action;
  - SITE DESCRIPTION(S), summarising the expected nature and extent of the identified site(s);
  - Relevant contextual and scientific background information;
  - REFERENCES to relevant earlier studies or assessments;
  - VISUAL AIDS including photographs or videos of the site in its present form, where appropriate. Please provide captions and dates for all records;
  - Any ADDITIONAL PERTINENT INFORMATION (where such information is not available yet, it should be supplied in the Mitigation Report).

---

<sup>3</sup> HWC has a general Guide to Grading and will work towards a Guide for Grading of Archaeological/ Palaeontological sites.

## **B. The RECOMMENDATIONS (representing the ‘work plan’):**

### **If Mitigation is required the following applies:**

Considering the possible significance and grading of the site(s), the impact of the development, and possible alternatives and NO GO areas, the specialist must include in the general recommendations, RECOMMENDATIONS that represent a “Work Plan” for effective MITIGATION, that:

- MOTIVATE and DESCRIBE the archaeological or palaeontological intervention that needs to be undertaken. This should include:
  - - A concise DESCRIPTION of the PROPOSED SAMPLING / MITIGATION (and whether the intention is to undertake collection; testing; excavation to establish the significance of the site; excavation to rescue significant information and material; dating and/or other mitigation);
    - Motivation for the proposed action, with reference to conservation policy and/or principles, where appropriate;
    - Motivation for the use of mechanical equipment, if required;
    - Proposals for conservation of the site after the planned action, where appropriate;
    - Sufficient information to allow HWC to manage conditions and requirements (such as extent and standards of excavation, mapping and reporting, and allocation of material to a repository);
    - Area to be excavated, depth if known, etc;
    - Surface content, possible age.

These RECOMMENDATIONS for the mitigation of the site(s) must be made by the specialist consultant and must be provided as RECOMMENDATIONS in the Environmental/ Heritage Impact Assessment, for the approval of Heritage Western Cape.

## **3. IMPORTANT INFORMATION**

In addition, HWC, in order to assess the mitigation before final approval, will need:

### **A. Details of Specialist who will conduct the sampling (Phase 2) work (if known):**

- Name and title:
- Address & postal code:
- Contact numbers:
- E-mail:
- Qualifications and experience of the archaeological/palaeontological specialist:
- Current academic status of the applicant:
- Details of accreditation with Professional Association:
- Identity number / Passport number of the applicant:

If the specialist is not known, describe the professional qualifications and experience needed to do such work. The proposed specialist will be assessed by HWC in terms of their qualifications, experience and professional standing.

## **B. Approval of the Landowner:**

Landowner approval is required in terms of the National Heritage Resources Act. The specialist is required to ensure that the work is approved before proceeding.

## **C. Approval of the Repository/ Curating Institution:**

Heritage Western Cape *considers* that a condition of the approval will be that all material is the property of the State and as such written approval from an official repository where the materials and records will be curated will be required. The collections Agreement with the repository, or equivalent, must be supplied indicating that the institution takes responsibility for the collection.

## **D. Signature of Specialist and Date of Submission**

*HWC, August 2014*