

PROCEDURE FOR EXEMPTING A DEFINED GEOGRAPHICAL AREA FROM THE REQUIREMENTS OF SECTION 34 AND SECTION 38 OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)

NOTE: This procedure should be read together with the Sections 34(1), 34(3) and 38(9) of the National Heritage Resources Act, 25 of 1999 (NHRA), the Promotion of Administrative Justice Act, 3 of 2000 (PAJA) as well as the Heritage Western Cape Regulations, relating to the consultation process for listing heritage resources in the Heritage Register.

Purpose

This procedure provides a clear step by step process for the exemption of geographical areas with limited heritage resources from the requirement to obtain a permit under S34(1) of the Act for the alteration or demolition of 60 year old structures; and from the requirements of s38 impact assessment. The exemption is intended to reduce the number of applications submitted to Heritage Western Cape (HWC), and to provide certainty and a more streamlined process for development in these areas.

Conservation Worthy Heritage Resources

Conservation worthy resources identified within the area being considered for exemption from s34(1) must be formally protected under the NHRA. This could be by placement of the provincial Heritage Register in terms of s30, declaration as a Heritage Site in terms of s27, or where there is a cluster of heritage resources, the declaration of a Heritage Area in terms of s31 of the NHRA. This procedure is based on conservation-worthy heritage resources being placed on the Heritage Register.

The Exemption Process

Local Authorities may initiate and assist HWC with implementing the exemption process as follows.

Exempting a defined geographical area from the provisions of Section 34(1) of the NHRA should be administered in the following manner:

Step 1: Carry out a Heritage Survey

The area in question must be subjected to a comprehensive heritage survey or audit which must identify conservation-worthy heritage resources, and include:

- An executive summary of no more than 15000 words
- Survey information
 - Name of the survey;
 - Date of the survey;
 - The names, qualifications and expertise of the individuals who undertook the audit or survey;
 - The survey methodology;
 - The boundary of the area surveyed
 - Any public participation carried out.
- Heritage resource information
 - Site name;
 - Erf number and street address;
 - Proposed grading;
 - Statement of significance;
 - Resource type;
 - Resource description;
 - The zoning of the resource as per the Municipal Zoning Scheme;
 - Current use of the resource (i.e. residential dwelling, school etc);
 - Estimated date the resource was constructed or came about (age of resource);
 - Recent dated photographs of the resource as well as photographs of its surrounding environment.

- Proposed exemption area
 - A map of the proposed geographical area to be exempted;
 - A map showing street names and clearly identifying the heritage resources (including their boundaries and erf numbers) to be placed on the Heritage Register.
 - A short historical background to the proposed exemption area that will consider the historical development of the area, social history of the area, and any significances attached to the area.

Note: The survey must include ongoing consultation with the Local Authority and should be available in digital format for inclusion in the SAHRIS (www.sahra.org.za/sahris) and local authority inventories.

Step 2: Submission of Draft Exemption Report to IGIC

A Draft Exemption Report must be drawn up for submission to IGIC.

- This report seeks to:
 - Inform IGIC of the proposed exemption area;
 - Provide a preliminary list of Grade III heritage resources for consideration for the provincial Heritage Register;
 - Receive comment from IGIC regarding the proposed exemption area and list of Grade III heritage resources;
 - Receive permission to proceed with the public participation process.
- This report must contain:
 - A motivation and overview of the proposed exemption area with recommendations
 - A copy or access to the heritage survey as provided in Step 1
 - If there is no provision in the local town planning scheme for the protection of heritage resources placed on the Heritage Register, a draft bylaw for their protection under the NHRA (drawn up in partnership with the local authority and HWC);
 - Comments from the Local Authority
- IGIC must consider the report and the list of proposed Grade III heritage resources and indicate any concerns and make recommendations. It must also determine whether:
 - Step 3 (Public Consultation) can be embarked upon, or whether
 - IGIC requires a resubmission of an updated draft Exemption Report and list of Grade III heritage resources before public consultation take place.

Step 3: Consultation

A public participation process in terms of the PAJA must be conducted during the assessment of the proposed exemption and the identification of heritage resources for the provincial Heritage Register. The comments of such a public participation process must form part of the final documentation submitted to IGIC.

The public participation process should take place as follows:

- A notice regarding the identification of Grade III heritage resources for the Heritage Register should be sent to the owners requesting comment on their proposed placement on the Heritage Register and protection through the local authority's planning scheme or the draft bylaw under the NHRA;
- The following notices should be published simultaneously:
 - A notice in 3 official languages must be published in the Provincial Gazette calling for comments on the proposed exemption of the geographical area; and the identification of heritage resources for the Heritage Register. The notice should comply with the attached notice (Annexure A);
 - The notice must be published in the local newspapers;
 - The notice must be sent to the relevant registered conservation bodies;
 - The notice must be posted for 30 calendar days on the Local Authority, as well as the HWC website, in the 3 official languages;
- The commenting period will commence from the date of the publication of the notice in the gazette;
- All comments received must initially be reviewed by HWC in consultation with the local authority.

- HWC must:
 - Compile a Public Consultation Report including comments and responses to the participation and to the owner notification;
 - Send responses to the interested parties;
 - Advise the applicant to finalize the Exemption Report and list of Grade III Heritage Resources for submission to IGIC.

Step 4: Submission of Final Exemption Report to IGIC

- The following must be submitted to IGIC for recommendation to HWC Council:
 - The final Exemption Report (including amendments as a result of the consultation process);
 - The list of sites proposed for the Heritage Register;
 - Any draft by-laws for the protection of heritage resources on the Heritage Register; or
 - The protective mechanism in the local planning scheme;
 - Any owner comments on the proposed Heritage Register sites; and the public participation report.

IGIC must make a recommendation for the HWC Council regarding:

- Acceptance of the proposed exemption s34(3) exemption;
- Acceptance of the proposed exemption s38(9) exemption;
- Acceptance of the list of proposed sites for the formal protection.

Step 5: Protection of Heritage Resources on the Heritage Register

- HWC must inform the Local Authority of its intention to place the identified heritage resources on the Heritage Register
- HWC must inform the owners of these heritage resources that their properties' placement on the Heritage Register will be considered by HWC Council on the relevant date, and that they may be present at the HWC Council meeting
- Owners must be invited to make written representation regarding the placement of their property on the Heritage Register and its protection through the local planning scheme or by-laws under the NHRA.

Step Six: Decision by HWC Council¹

All involved parties must be invited to be present at the HWC Council meeting, and the HWC Council must decide whether:

- To approve the proposed s34(3) exemption area;
- To recommend to the MEC the exemption for impact assessment under s38(9);
- To approve the formal protection of the identified heritage resources for example through placement on the Heritage Register.

Step 7: Final Steps

- Gazetting of the Heritage Register sites and any other required formal protections;
- Gazetting of the s34(3) exemption area;
- Gazetting of the s38(9) exemption area on support being received by the MEC;
- Notification of the local authority and all interested parties including Heritage Register site owners;
- Notification of the Title Deeds Office and Surveyor General's Office of the gazetting of the Heritage Register sites;

Note: The normal HWC timeframes applying to agendas, meetings and minutes apply.

.....
Michael Janse van Rensburg
Chief Executive Officer

For assistance: Mr Jonathan Windvogel (Town and Regional Planner)
 Email: Jonathan.Windvogel@westerncape.gov.za
 Contact number: 021 483 5959

References: *Government of the Republic of South Africa. National Heritage Resources Act. (1999) South Africa: Western Cape Province.* Government of the Republic of South.

¹ IGIC has the internal delegations to approve s34(3) exemptions on behalf of HWC Council and to take decisions on behalf of HWC Council regarding s38(9) exemptions and may decide to implement these delegations.