

# **EMAKHAZENI LOCAL MUNICIPALITY**



## **HERITAGE RESOURCES AND CULTURAL INSTITUTIONS BY-LAWS**

Under the provisions of section 156 of the Constitution of the Republic of South African, 1996 (Act 108 of 1996), the Emakhazeni Local Municipality, enacts as follows:-

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#### **Interpretation**

In these By-laws, unless the context indicates otherwise -

**"Council"** means the Highlands Municipal Council;

**"cultural institution"** means a museum, theatre, lecture room and similar institutions established in terms of section 25 of these By-laws;

**"heritage and cultural facility"** means a –

- (a) heritage site as defined in section 1 of the National Heritage Resources Act, 1999 (Act No.25 of 1999);
- (b) a place of cultural significance as identified by a badge or in a notice board contemplated in section X; and
- (c) cultural institution,;

**"official"** means a person appointed in accordance with the provisions of section 2,

And any other word or expression to which a meaning has been assigned in the Cultural Promotion Act, 1983 (Act No. 35 of 1983), Cultural Affairs Act (House of Assembly), 1989 (Act No.65 1989), National Arts Council Act, 1997 (Act No. 56 of 1997), Cultural Institutions Act, 1998(Act No. 25 of 1999), carries that meaning.

## **2. Principles and objectives**

The Council, acting within framework of the principles, and striving to realize the objectives expressed in the Acts contemplated in section 4, hereby adopts these By-laws to protect, manage and control those sites and objects of the national estate, as set out in section 3 of the National Heritage Resources Act, 1999 (Act No. 25 of 1990), entrusted to it under section 26 (1) (f) of said Act, and those cultural institutions established by the Council in terms of section 25 of these By-laws.

## **3. Application**

These By-laws apply to those cultural institutions which the Council has established in terms of section 25, and those heritage resources, heritage sites and heritage objects to which powers and functions of a heritage resource to which powers and functions of a heritage resources authority were delegated in terms of section 26 (1) (f) of the Act, 1999 in respect of such Grades as contemplated in section 7, within the Highlands municipal area.

## **4. Legislation specifically referred to**

These By-laws refer specially to the –

- (a) Cultural Promotion Act, 1983 (Act No. 35 of 1983);
- (b) Cultural Affairs Act (House of Assembly), 1989 (Act No. 65 of 1989);
- (c) Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (d) National Arts Council Act, (Act No. 56 of 1997);
- (e) Cultural Institutions Act, 1998 (Act No. 119 of 1998); and
- (f) National Heritage Resources Act, 1999 (Act No. 25 of 1999).

## **CHAPTER 1: GENERAL PROVISIONS**

## **5. Number of visitors**

For the purpose of protecting and managing the heritage and cultural facilities and heritage objects contemplated in these By-laws, the Council may by resolution determine –

- (a) the maximum number of a persons who or, where applicable, vehicles which may be present at a specific time in or at a heritage and cultural facility; and

(b) different numbers of persons or , where applicable, different classes of vehicles, as contemplated in paragraph (a) , for different heritage and cultural facilities,

In respect of those heritage resource or heritage site which the council, in terms of National Heritage Resources Act, 1999 (Act No. 25 of 1999) or any other law, may establish, protect or manage, and those cultural institutions which the Council has established in terms of section 25 of these By-laws.

## **6. Admission to heritage and cultural facility**

(1) A heritage and cultural facility is open to the public at the times, dates and subject to such conditions regarding the entry to and activities that may be undertaken upon the heritage and cultural facility, as determined by the Council by resolution in respect of different heritage and cultural facilities, including conditions regarding the driving of a motor vehicle and different classes of motor vehicles in heritage sites.

(2) The Municipal Manager may from time to time grant to any person or person, during such hours and for such period as he or she may deem fit, the exclusive use of a heritage and cultural facility.

(3) The heritage authority or the Council may by resolution for reasons of maintenance, development, security, safety or public health, temporarily or permanently –

- (a) close a heritage and cultural facility or a portion thereof; or
- (b) suspend all or any activities thereon.

(4) Where a person in a heritage and cultural facility has committed an offence in terms of these By-laws or any other law, an official may order such person to leave the heritage and cultural facility, and a person so ordered to leave –

- (a) must forthwith leave the heritage and cultural facility by the shortest route available to the public;
- (b) may not enter any heritage and cultural facility during the period of six months immediately succeeding the relevant order, unless –
  - (i) the Municipal Manager has authorized him or her thereto in writing; or
  - (ii) he or she has not, within three months of being so ordered, been prosecuted and found guilty of an offence contemplated above.

(5) Where an official on reasonable grounds suspects that a person wishing to enter a heritage and cultural facility intends to commit an offence in terms of these By-laws or any other law in or at the heritage and cultural facility, he or she may refuse entry to such person.

(6) A person who fails to obey an order issued in terms of subsection (4) commits an offence.

## **7. Entrance fees**

(1) The heritage resource authority or the Council may by resolution levy different entrance fees and issue entrance tickets in respect of person of different classes of vehicles, which entitle such person, groups or vehicles (the "ticket holder") to enter upon a heritage and cultural facility and grants concessions in respect of entrance fees payable.

(2) An entrance fee is payable at the entrance to a heritage and cultural facility, except where another place is indicated on a notice board erected in terms or section 8 (1), and for each person, group or vehicle as contemplated in subsection (1).

(3) An entrance ticket contemplated in subsection (1) is valid for the period, as contemplated in subsection (4) in respect of which an entrance fee has been paid.

(4) An entrance fee contemplated in subsection (1) is payable in respect of each day or portion thereof during which a person, group or vehicle is or remains in heritage and cultural facility, provided that no fee is payable in respect of the day on which such heritage and cultural facility is left, heritage and cultural facility is left before 10:00 of such day and such day is not the day of arrivals in such heritage and cultural facility.

(5) No fee contemplated in subsection (1) is payable, however, where the whole or any portion of the period in respect of which such fee has been paid has not been or cannot be utilized, the fee which has been paid in respect of each full day which has not been utilized may, with the approval of the Municipal manager, be repaid, and for the purposes of this subsection "full day" means a period of 24 hours commencing at 10:00 of any day.

(6) An official may require any person in a heritage and cultural facility to produce forthwith to such official the entrance ticket issued to the person in terms of subsection (1), and a person who fails to produce such entrance ticket or person who enters a heritage and cultural facility without having paid the entrance fee as contemplated in subsection (1) commits an offence.

## **8. Notice boards**

(1) The heritage resource authority or, where applicable, the Council may erect a notice board at the entrance to or in the immediate vicinity of a heritage and cultural facility, on which any of the following are displayed:

- (a) The times, dates and conditions contemplated in section 6(1);
- (b) the fees payable in terms of section 7; and
- (c) a notice relating to a resolution taken in terms of section 6(3),

However, where no such notice board has been so erected, and subject to the provisions of section 9, no activities may be undertaken upon the heritage and cultural facility.

(2) No person other than an official or other person authorized to do so in these By-laws or other law may move or alter the contents of, and no person may deface or otherwise tamper with a notice board erected by the heritage resource authority or the Council in terms of these By-laws.

(3) A notice posted by the heritage resource authority or the Council in terms of these subsection 8(1) -

- (a) must be clearly visible and readable;
- (b) must be written in such language or languages as the heritage authority or the Council may determine; and
- (c) may contain a graphic representation to convey meaning.

(4) A person who enters a heritage and cultural facility in contravention of the times, dates and conditions contemplated in subsection (1) (a) and a resolution contemplated in subsection (1) (c), as displayed on a notice board, or who undertakes an activity upon a heritage and cultural facility as contemplated in subsection (1), or who contravenes a provision of subsection (2) commits an offence.

## **9. Consent required for certain activities**

(1) No person may, without the written consent of the Municipal Manager first having been obtained at, in or upon a heritage and cultural facility-

- (a) arrange, hold present or attend –
  - (i) a public entertainment;
  - (ii) a meeting;
  - (iii) a public gathering or procession, exhibition or performance; or
  - (iv) an auction;
- (b) from the general public, collect money or any other goods for charity or any other purpose;
- (c) display or distribute a pamphlet, placards, painting, book, handbill or a painted, written or painted work;
- (f) conduct any trade, occupation or business;
- (g) display, sell or rent out present for sale or rent any wares or articles;
- (i) tell fortunes for compensation;

- (j) play any musical instruments or sign;
- (k) have in his or her possession a firearm, air pistol, bow , knife, slingshot, or fireworks;  
or
- (l) in any manner disturb such heritage and cultural facility.

(2) No person may, without the written consent of the Municipal Manager first having been obtained bring into a heritage and cultural facility an alcoholic beverage, and Person who has obtained such consent may consume such beverage, at a designated area set aside for this purpose only.

(3) No person may, without the written consent of the Municipal Manager first having been obtained cook, prepare or sell, in a heritage and cultural facility, food of any kind, and a person who has obtained such consent may cook, prepare or sell such food at a designated area set aside for this cook, purposed only must ensure that the preparation and cooking of food is done in a clean and sanitary manner so as not give rise to excessive smoke or other nuisance or entail any danger to health.

(4) No person may, without the written consent of the Municipal Unit Manager having been obtained kindle a fire in a heritage and cultural facility, except for the purpose of barbecuing food, and a person who has obtained such consent such fire at a designated area set aside for this purpose only may not leave any fire which he or she has kindle or used without completely extinguishing the fire or the embers thereof.

(5) No person may, without the written consent of the Municipal Manager first having been obtained erect or establish in or on a heritage and cultural facility any fence, structure, dam, shelter or anything else and a person and a person who has obtained such consent erect such fence, structure, dam, shelter or anything else, park such or pitch such tent at a designated area set aside for this purpose only.

(6) No person may, without the written consent of the Municipal Manager first having been obtained bring into, have in his or her possession in a cultural facility a firearm.

(7) A person who wishes to obtain the consent of the Municipal Manager contemplated in subsection (1),(2) or 27 (2) (f) of the Act, must complete and submit to the Municipal Manager a form similar to the form in Schedule 1, which schedule refers, and the Municipal Manager may refuse consent, or grant consent, which consent will be indicated on the above form, subject to any such conditions as he or she deems necessary and subject to the prescribed fee as contemplated in section 11 having been paid, and a person who wishes to sell food must, in addition to the provisions of any and applicable by- laws in force in the Highlands municipal area relating to-

- (a) the licensing and control of undertakings that sell food to the public; or

(b) the hawking of food by street traders or pedlars.

(8) A person who has been granted consent in terms of subsection (7) must at all times when undertaking an activity for which consent has been granted, keep the form in his or her possession, and must forthwith produce the form on request of an official.

(9) A person who contravenes a provision of subsection (1) to (6) or (8) commits an offence.

## **10. Permit**

(1) Despite the provisions of section 5, 6(3), and 7 (1), the Municipal Manager may, on written application submitted to him or her in a form similar to the form in Schedule 2, which schedule refers, and subject to any such conditions as he or she may deem necessary to be imposed, issue a permit in a form similar to the form in Schedule 2, free of charge-

(a) to a group of people, such as , but not limited to ,a group of bona fide students; or

(b) to a person who is undertaking scientific, educational or similar research.

(2) The holder of a permit issued in terms of subsection (1) or section 48 of the National Heritage Resources Act, 1999 must, on arrival at the heritage and cultural facility concerned, display such permit to the control official, and a person who fails to do so, commits an offence.

(3) The holder of a permit who undertakes an activity in contravention of a condition imposed on him or her commits an offence.

## **11. Prescribed fees**

The Council has determined the prescribed fees payable in terms of these By-law, which fees are stipulated in Schedule 3, and the Council may review such fees.

## **12. Animals**

(1) No person may in contravention of a notice board erected in terms of section 8(1) bring upon the heritage and cultural facility any animal.

(2) A person who, in terms of a resolution taken in terms of section 6(1), is permitted to bring an animal upon a heritage and cultural facility, must have direct and physical control over the animal by means of a leash or other device, and may not bath or other device, and may not bath, wash or allow such animal to enter or remain in any pond, fountain or ornamental water

(3) A person who contravenes a provision subsection (1) or (2) commits an offence.

13. Prohibited behavior

(1) In addition to behavior which constitutes an offence in terms of section 51 (5) of the Act, no person –

- (a) may loiter or linger about in a heritage and cultural facility if he or she –
  - (i) leads the life of a loiterer;
  - (ii) lacks and determinable and legal refuge;
  - (iii) leads a lazy, debauched or disorderly existence;
  - (iv) habitually sleeps in a public street, public place or on a private; or
  - (v) habitually begs for money or goods or persuades others to beg for money or goods on his or her behalf;
- (b) may bring into a heritage and cultural facility any drugs as defined in section 1 of the Drugs and drugs Trafficking Act, 1992 (Act No.140 of 1992);
- (c) who –
  - (i) is in a state of intoxication or under the influence of any drug may enter or remain in, and such person shall not be admitted to a heritage and cultural facility;
  - (ii) knows that he or she is suffering from a communicable disease as defined in section 1 of the Health Act 63 of 1977, may enter upon or remain in a heritage and cultural facility;
- (d) may in or at a heritage and cultural facility –
  - (i) break, damage, destroy, tamper with, misuse, disfigure or use in a manner contrary to a notice erected in respect of such heritage an cultural facility or heritage object, anything (whether movable or immovable), or remove such movable thing from the heritage and cultural facility, or fail to observe a notice which was erected by the Council in respect of such heritage and cultural facility or heritage and cultural facility or heritage object or fail to observe an instruction by a person permitted to manage and such heritage and cultural facility or heritage object;
  - (ii) throw or roll down a rock, stone or object from a mountain, koppie, slope of cliff;
  - (iii) pull out, pick, cut or damage any flora growing in the heritage and cultural facility, or have such flora in his or her possession;

- (iv) walk on a flowerbed;
- (v) walk, stand, sit or lie on grass;
- (vi) write, paint, draw graffiti or a representation on a structure or path;
- (vii) excavate soil, sand or stone or remove organic or inorganic objects;
- (viii) interfere with water flow, obstruct water, divert a streams or drain a wetland;
- (ix) deface or disfigure anything on the heritage and cultural facility by pasting or affixing in any way any bills, papers place cards, notices or anything else;
- (x) burn refuse so as to cause an unpleasant or offensive smell or the production of smoke nuisance;
- (xi) except in a container provided for that purpose dump, discard, drop, leave or place any litter, refuse, rubble, stone, sand, soil material, bottles, wood, metal, manure, offal, fish, filth or any object or thing or thing that may cause injure to any person or be prejudicial to the health of the inhabitants of the municipality, or permit to be done;
- (xii) misuse, pollute or contaminate in any way a water source, water supply, a dam or river with fuel, oil, garbage, offal, bilge, sewerage, refuse, stone, sand, soil or rubble of any kind;
- (xiii) wash any crockery or laundry or hang out clothes, except at places indicated by notice for that purpose;
- (xiv) use or try to use anything in such heritage and cultural facility for any purpose other than that for which it is designed or determined by notice;
- (xv) throw away any burning or smouldering object;
- (xvi) behave or conduct himself or herself in an improper, indecent or unbecoming manner such as by making an improper gesture, inciting or urging someone to perform a disorderly or indecent act;
- (xvii) cause a disturbance, use foul, lewd, dirty or indecent language, behave or conduct himself or herself in an unruly or violent manner, fight, shout, argue, beg, sing, play musical instruments, use loud speakers, radio reception devices, television sets, or similar equipment, or perform any act with the purpose of disturbing the good order or which may constitute a danger or nuisance to others;
- (xviii) defecate, urinate or undress, except in such building or on premises intended for that purpose;

- (xix) lie on a bench or seating place provided in the heritage and cultural facility or use it in such a manner that other users or potential users find it impossible to make use thereof;
- (xx) swim, walk or play in a fish pond, fountain, dam, artificial feature or pond;
- (xxi) perform any act that may detrimentally affect the integrity of the heritage and cultural facility or of an heritage object;
- (xxii) enter or use a toilet facility intended or indicated as such by notice for a members of the opposite sex;
- (xxiii) stay or sleep over night other than in terms of section 15;
- (xxiv) hunt, injure, disturb, feed, kill, hurt, follow , disturb, ill-treat or catch an animal, or disturb, destroy or remove a bird, nest or egg, or skin or gut a live animal, except if authorized to do so under section 10 (2) (a);
- (xxv) fire a firearm, airgun or air pistol , except if necessary consent as contemplated in section 9 (6) has been obtained, or discharge a bow, firework or use a slingshot or catapult;
- (xxvi) in any way whatsoever prejudice the safety, convenience of rights of other persons;
- (xxvii) obstruct or interfere with any official appointed by the Council in the proper execution of his or her official duties;
- (xxviii) play or conduct a game of any nature whatsoever ;
- (xxix) expose his or her body or clothe indecently; or
- (xxx) discard of a burning or smouldering object;
- (e) may enter-
  - (i) or leave a heritage and cultural facility other than by way of the official entry and exit point;
  - (ii) a heritage and cultural facility without having paid the entrance fees as contemplated in section 7 (1); or
  - (f) may release any wild animal, bird or flora into a heritage and cultural facility;

(2) A person who contravenes a provision of subsection (1) commits an offence.

#### **14. Vehicles**

(1) Where a person is permitted in terms of a resolution contemplated in section 6 (1) to drive a vehicle in a heritage site or a portion of a heritage site, he or she may not –

- (a) travel with the vehicle elsewhere than on a road constructed by the heritage resource authority;
  - (b) drive the vehicle or cause or permit it to be driven at a speed in excess of the speed indicated on a notice board erected by the heritage resource authority in terms of section 8 (1); or
  - (c) wash, polish or repair a vehicle, except emergency repairs to a vehicle.
- (2) The provisions of subsection (1) do not apply to an emergency vehicle while lawfully in use as such, or a vehicle used in an emergency, or a vehicle used by an official in the discharge of his or her duties.
- (3) A person who contravenes a provision subsection (1) commits an offence.

### **15. Camping in heritage site**

- (1) Where in terms of a resolution completed in section 6 (1) a person is permitted to camp in a heritage site, the person may camp in a designated area set aside for that purpose only.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

### **16. Certain provisions do not apply to official**

Those provisions in these By-laws that relate to the activities normally undertaken in a household, the contravention of which would otherwise constitute an offence in terms of these By-laws, do not apply to:

- (a) An official who lives on a heritage site;
- (b) a relation of the official who lives with or visits him or her at his or her at his or her home, however the Council may from time to time determine the maximum number of visits per year by a relation; and
- (c) a person who, at the request of the official, visits him or her in the heritage site, however the Municipal Manager may from time determine the maximum number of visits per year by a person

## **CHAPTER II: HERITAGE RESOURCES**

### **17. Interpretation**

In this Chapter, unless the context indicates otherwise, "**Act**" means the National Heritage Resource Act, 1999 (Act No. 25 of 1999), and any other word or expression has the meaning assigned to it the Act.

## 18. Principle of Chapter II

- (1) Those heritage resource of South Africa, and specifically failing within the Highlands municipal area, which are, which are of cultural significance or other special value for the present community and for future generations, are listed in subsection (2) and must be considered part of the national estate and fall within the sphere of operations of the Council as heritage resource authority
- (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 significance;
  - (f) archaeological and palaeontological sites;
  - (g) graves and burial grounds, including –
    - (i) ancestral graves;
    - (ii) royal graves and graves of traditional learders;
    - (iii) graves of victims of conflict, including of persons connected with the liberation struggle and died in exile or as a result of the action of State security forces or *agents provocateur*;
  - (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) movable recovered from the soil or waters of South Africa, including archaeological 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) 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 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 organization of importance in the history of South Africa; and
- (i) sites of significance relating to the history of slavery in South Africa.

## **19. Powers and functions of Council**

The Council has –

- (a) all such powers and functions of a heritage resources authority as delegated to it in terms of section 26 (1) (f) of the Act, 1999 in respect of such Grades as contemplated in section 7 of the Act, and such responsibilities and competence as contemplated in section 8 of the Act; and
- (b) such rights and duties as contemplated in section 9 of the Act, and hereby acts in accordance with the provisions of section 54 of the Act.

## **20. Procedure at meeting**

- (1) When the Council intends to take a decision regarding –
  - (a) the administration and management of the national estate, the administration and management of which has been assigned or delegated to the Council; or
  - (b) a responsibility which has been assigned to the Council under section 7 of the Act, 1999,

Including a decision as contemplated in section 10 (1) of the Act; such decision must be taken in accordance with the general principles contemplated in section (2).

- (2) (a) The decision must be consistent with the principles or policy set out in section 5 or prescribed in section 6 of the Act.
- (b) A meeting at which a decision is to be taken, must be open to the public and the agenda and minutes must be available for public scrutiny, however, when there are good reasons to do so, a matter may, by decision of a majority of members present, be declared confidential and the discussion and minutes may be exempted from public scrutiny.
- (c) A person who may be affected by a decision has the right of appearance at the meeting.
- (d) Written reasons must be given for any request.

## **21. Formal protection of privately owned heritage sites**

(1) In the instance where a heritage site has not been put under the control of the Council in terms of the Act, the Council may formally protect the site in a manner contemplated in part 1 of Chapter II of the Act, and may, with the consent of the owner of the site, make regulations with the aim of –

- (a) safeguarding the site from destruction, damage, disfigurement, excavation or alteration;
  - (b) regulating the use of the site;
  - (c) imposing conditions for any development of the site; and
  - (d) regulating the admission of members of the public to the site, and the fees payable for such admission.
- (2) The Council may, by agreement with the owner of a heritage site –
- (a) conserve or improve the site;
  - (b) construct fences, walls or gates around or on the site;
  - (c) acquire or construct and maintain an access road to the site over any land, and construct upon such land fences, walls or gates;
  - (d) erect signs on or near the site; or

- (e) obtain all reproduction rights either in two or three dimensions.

## **22. Protection and management of protected areas, heritage areas and heritage objects**

(1) The Council must make provision in its planning scheme to provide for the protection and management, and in these by laws provide for the protection and management of –

- (a) a protected area, in accordance with section 28 (5) and (6) of the Act;
- (b) a heritage resource listed in terms of section 30 (3) of the Act and subject to the provisions of said section;
- (c) a heritage area designated in terms of section 31(5) of the Act; and
- (d) heritage objects as contemplated in section 32 of the Act.

(2) The Council shall protect and manage the areas, resources and objects contemplated in subsection (1) in accordance with the provisions of Chapter II of the Act, and may for these purposes enter into any heritage agreement contemplated in said Chapter, or issue any permit contemplated in Chapter III of the Act, and may provisionally protect a heritage source in accordance with the provisions of section 31 of the Act

## **CHAPTER III: CULTURAL INSTITUTIONS**

### **23. Interpretation**

In this Chapter, unless the context indicates otherwise –

“Acts” means the –

- (a) Cultural Promotion Act, 1983 (Act No. 35 of 1983);
- (b) Cultural Affairs Act (House of Assembly), 1989 (Act No. 65 of 1983); and
- (c) Cultural Institutions Act, 1989 (Act No. 119 of 1988), and regulations made under said Acts;

“living heritage” has the meaning assigned to it in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);

“presentation” has the meaning assigned to it in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

### **24. Principles and objectives of Chapter III**

The Council, acting within the framework of, and in the spirit which pervades, and striving to realize the objectives which are expressed in the Cultural Promotion Act, 1983 (Act No. 35 of 1983), Cultural Affairs Act (House of Assembly), 1989 (Act No. 65 of 1989), National Arts Council Act, 1997 (Act No. 56 of 1997) and the cultural Institutions Act, 1998 (Act No. 119 of 1998), adopts this Chapter with the aim of regulating such cultural institutions and activities as are falling within its competency, and further to –

- (a) preserve, develop, foster or extend culture as it finds expression in the municipal area in particular by means of non-formal out-of-school education of adults and youthful person in the following fields:
  - (i) the visual arts, music and literary arts;
  - (ii) the acquisition, in popular fashion, of knowledge of the applied, natural and human sciences;
  - (iii) the utilization of leisure, including physical recreative activities which are of such a nature as not be courses of training with a view to participating in competitions;
  - (iv) such other fields as the minister may from time to time determine;
- (b) to provide, and encourage the provision of, opportunities for person to practice the arts;
- (c) to promote –
  - (i) the appreciation, understanding and enjoyment of the arts;
  - (ii) the general application of the arts in the community;
  - (iii) and uphold the right of any person to freedom in the practice of the arts;
  - (iv) and facilitate national and international liaison between individuals and institutions in respect of the arts; and
  - (v) and develop the arts and to encourage excellence in regard to those;
- (d) to foster the expression of a national identity and consciousness by means of the arts;
- (e) to give the historically disadvantaged such additional help and resources as are required to give them greater access to the arts; and
- (f) to address historically imbalances in the provision of infrastructure for the promotion of the arts.

## **25. Council to establish and maintain cultural institutions**

- (i) The council may, in the spirit of the Acts, by resolution-
  - (a) establish, acquire, erect, construct, carry on , assist or promote within the area under its jurisdiction, such cultural institutions as it may deem necessary to realize the objectives of said Acts, and must maintain such and existing cultural institutions; and
  - (b) establish, maintain, carry on, or contribute to bands and orchestras for musical performances in public places or municipal halls, and generally provide musical entertainment in such place or halls, and make charges in connection therewith,and hereby carries on, assists and promotes the cultural institutions stipulated in Schedule 4.
- (2) The Council, when incurring expenditure in respect of acting in terms of subsection (1), must do so within its budgetary limits.
- (3) The Council may at a cultural institution-
  - (a) make presentations, give lectures or performances of cultural significance or otherwise, whether relating to the living heritage or not, and make charges therefore; and
  - (b) sell, let, distribute or in any other manner dispose of any catalogue, publication, reproduction, postcard, colour slide, film, photo or any other item which is related to the activities of such cultural institution.

## **26. Cultural committee**

- (1) The Council must appoint a cultural committee, the membership and constitution of which is to be decided upon by the Council, to oversee the general management and control of cultural institutions completed in section 25.
- (2) When appointing the members of a cultural committee, the Council must have regard to the underlying principles and objectives of the Acts, and must appoint persons who have the necessary expertise, knowledge and who are suitably qualified to make a constructive input to the committee's discussions.
- (3) The official appointed in terms of section 27 must fulfil such functions and duties as assigned to him or her by the cultural committee, and must report to the cultural committee at such times and on such matters as the cultural committee may by resolution decide.

## **CHAPTER IV : MISCELLANEOUS PROVISIONS**

### **27. Enforcement officials**

(1) The Council must within its powers contemplated in section 19 (a) appoint an official as Heritage Inspector as contemplated in section 50 of the National Resources Heritage Act, 1999, and such officials has such powers, duties and functions as delegated to it in terms of said section.

(2) The Council must appoint an official as Cultural inspector, which inspector may be the same official appointed in terms of subsection (1), to implement and manage the provisions of the provisions of these By-laws and such official has such powers, duties and functions as delegated to him or her by the Council, and a person commits and offence if he or she –

- (a) assaults, resists, obstructs, hinders, delays or interferes with an official in the exercise of his or her powers or the performance of his or her duties or functions or in any other way attempt to prevent the exercise of such powers or the performance of such duties or functions;
- (b) offers any inducement to an official or makes any threat, whether of violence or otherwise, in relation to such official or a member of his or her family or a person dependent on him or her or her property in order to persuade or prevent such official from exercising any of his or her powers or performing any of his or her duties or functions;
- (c) not being an official, by words, conduct or demeanour pretends that he or she is an official; or
- (d) not being an official, wears a uniform or part of uniform or an insignia designed and intended for use by an official of the Highlands Municipality, or an imitation of such uniform or insignia.

## **28. Costs**

(1) Should a person through his or her actions or activities in a cultural institution, including any appurtenances in the cultural institutions, or in respect of anything contained in a cultural institution necessitate the Council to incur expenses, such as replacement or repair, for any damage in respect of such institution or thing, the Council may recover all costs incurred from that person, and if more than one person is liable for costs incurred, the liability must be

apportioned as agreed among the persons concerned according to the degree to which each was responsible for the damage.

## **29. Penalties**

(a) A person who has committed an offence in terms of section 51 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), is on conviction liable to such penalty as stipulated in section 51 (2) or (3), whichever is applicable, of the Act.

(b) A person who has committed an offence in terms of these By-laws is, on conviction, and subject to penalties prescribed in any other law, liable to a fine, or in default of payment, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of fine, or to both such fine and such imprisonment and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment for a period not exceeding one month.

## **30. Authentication and services of notices and other documents**

(1) A notice issued by the Council in terms of these By-laws is deemed to be duly issued if it is signed by an authorized official.

(2) Any notice or other document that is served on a person in terms of these By-laws is regarded as having been duly served-

These By-laws are regarded as having been duly served –

- (a) when it has been delivered to that person personally;
- (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
- (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;
- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
- (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in the Republic in a conspicuous place on the land or business premises to which it relates;
- (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or

- (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document is served on the owner,

Occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupiers, or holder of the property or right in question, and it is not necessary to name that person .

### **31. Appeal**

- (1) A person whose rights are affected by a decision of an official of the Council acting in terms of these By-laws may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.
- (2) The appeal authority contemplated in subsection (3) must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) When the appeal is against a decision taken by –
  - (a) a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;
  - (b) the Municipal Manager, the Executive Mayor is the appeal authority; or
  - (c) a political structure or political officer bearer, or a Councilor the Council is the appeal authority.
- (4) The appeal authority must commence with an appeal within six weeks of receipt of the notice of appeal and decide the appeal within a reasonable time.

### **32. Conflict and repeal of by-laws**

- (1) Should there be any conflict between these By- laws and other by –laws of Council, these By-laws prevail.

(2) The provisions of any by-laws are hereby repealed insofar as they relate to matters provided for in these B-laws.

**33. Short title and commencement**

These By-laws may be cited as the Highlands Heritage Resources and Cultural Institutions By-laws, and commence on a date as determined by the Council and published in the provincial Gazette.

DRAFT

**SCHEDULE 1**

**(Section 9 (7))**

**APPLICATION FOR CONSENT TO UNDERTAKE CERTAIN ACTIVITIES**

..... *(full name of applicant)*

Hereby applies in terms of the Highlands Heritage Resources and Cultural Institutions By-laws, 2004, for consent to undertake at

.....

*(description of public amenity)*

For the purpose of

.....

*(give the reason why you wish to undertake the activity)*

The activity of

.....

*(full description of activity)*

Date.....

Signed..... *(for applicant)*

.....

.....

.....

.....

*(address of applicant)*

**CONSENT**

Above-mentioned person is hereby granted consent to undertake the activity as specified public amenity.

**CONDITION**

.....  
.....  
.....

**SIGNATURE OF COUNCIL**

Name of Manager.....

Date.....

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**SCHEDULE 2**

**(Section 10(1))**

**APPLICATION FOR PERMIT**

..... *(full name of applicant)*

Hereby applies in terms of the Highlands Public Amenities By-laws, 2004, for a permit to undertake at

.....

*(description of public amenity)*

For the purpose of

.....

*(give the reason why you wish to undertake the activity)*

The activity

.....

*(full description of activity such as the species and number or mass of the fauna or flora or the name or description of anything else and the number thereof in respect of which the permit is granted)*

During

.....

*(specify the date and time)*

Date.....

Signed..... *(for applicant)*

.....

.....

.....

.....

*(address of applicant)*

**PERMIT**

Above-mentioned person is hereby granted a permit to undertake the activity as specified in the specified public amenity.

**CONDITIONS**

.....  
.....  
.....

*(specify in the activities which the permit holder is allowed to undertake)*

**SIGNATURE OF COUNCIL**

Name of Official.....

Rank.....

Date.....

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**SCHEDULE 3**

**(Section 11)**

**FEES**

1. Entrance fees (section7):

ABC Museum

RXX,xx per person

XYZ Site

RXX,xx per person/ vehicle

etc etc

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**SCHEDULE 4**

**(Section 25)**

**CULTURAL INSTITUTIONS**

1. ABC Museum.

2. XYZ Site.

etc. etc.

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