

## PROVINCIAL NOTICE

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[No. 195 of 2003]

### REGULATIONS REGARDING THE FREE STATE HERITAGE RESOURCES AUTHORITY

Under sections 23, 26(1) and 49(1) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), I, MW Mfebe, Member of the Executive Council responsible for Sport, Arts, Culture, Science and Technology in this Province hereby establish a provincial heritage resources authority, a body corporate, to be known as the Free State Heritage Resources Authority and which shall be governed by the Free State Heritage Resources Authority Council in accordance with the Act, as well as the regulations set out in the Schedule.

### SCHEDULE

#### Definitions

1. In these regulations any word or expression which is defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999) shall have the meaning assigned to it in that Act, unless the context indicates otherwise, and

“**Council**” means the Free State Heritage Resources Authority Council;

“**FSHRA**” means the Free State Heritage Resources Authority, established in terms of Section 23 of the Act; and

“**the Act**” means the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

#### Appointment of members of Council

2. (1) The Council must consist of the following members appointed by the MEC:
  - (a) at least five members appointed from nominations received;
  - (b) two additional members appointed as he or she deems fit, to ensure the necessary range of experience, expertise and representivity as prescribed in these regulation; and

- (c) the chief executive officer of the Free State Heritage Resources Authority.
- (2) The members of the Council contemplated in subregulation (1) must be appointed in accordance with the principles of transparency and representivity and their appointment must take into account -
- (a) special competence, experience and interest in the field of heritage resources, which includes social history, architecture, archaeology, palaeontology, urban planning, living heritage and victims of conflict; and
  - (b) that at least one member must have financial knowledge to support the efficient functioning of the FSHRA.
- (3) South African citizens who are ordinarily residents of the Free State are eligible for appointment to the Council.
- (4) At least 30 days before the date of appointment of the Council, the public and interested parties must, by means of notices in at least two newspapers circulating in the Province in accordance with the principles envisaged in subregulations (2) and (3), be invited to nominate members contemplated in subregulation (1)(a) to the Council.
- (5) Nominations contemplated in subregulation (4) must be received at least 14 days before the date of appointment of the Council and must be accompanied by the *curriculum vitae* and the consent of the nominee.
- (6) The MEC must publish all the names of the members who were appointed in the *Provincial Gazette*.
- (7) Subject to subregulations (10) and (11) the MEC must specify the period of appointment of each member of the Council in the notice envisaged in subregulation (6), taking into account the desirability of a balance between continuity of experience from one term of the Councils office to the next, and change in representivity.
- (8) A member of the Council must vacate his or her office if the member -
- (a) resigns in writing;
  - (b) has been absent from three consecutive meetings of the Council without the leave of the Council;
  - (c) is an unrehabilitated insolvent;

- (d) is found to be of unsound mind by a competent court; or
  - (e) is convicted of an offence involving dishonesty or bodily harm and is sentenced to imprisonment without the option of a fine.
- (9) The MEC may, after 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.
- (10) A member of the Council holds office for a period not exceeding three years, and may be reappointed.
- (11) If a member of the Council dies or vacates the office before the expiration of the period for which the member has been appointed, another person may be appointed to fill the vacancy for the unexpired portion of the period for which the member was appointed.

### **Chairperson of Council**

3. (1) The chairperson of the Council is elected, at a meeting chaired by the MEC, from the appointed members of the Council and holds office for the period or the unexpired portion of the period for which he or she has been appointed as member of the Council, unless the Council otherwise determines.
- (2) If the chairperson of the Council vacates the office as chairperson before the expiration of the period for which he or she was appointed, another member of the Council must, subject to subregulation (1), be elected as a chairperson of the Council from the appointed members of the Council.
- (3) If the chairperson of the Council is absent from a meeting of the Council or not able to preside at that meeting, the members present must elect one of their members to preside at that meeting and that person may, during that meeting and until the chairperson resumes his or her functions, perform all those functions.

### **Committees of Council**

4. 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 the Council considers competent or who possess specific skills and expertise.

### **Delegation of Functions**

5. (1) Subject to section 26 of the Act, the FSHRA may by majority decision of the Council delegate functions to persons or bodies referred to in section 26(1)(b) to (e) and (g) of the Act.

- (2) The delegation must be in writing and must clearly state the functions delegated, any conditions attached to the delegation, the delegatee and the period of delegation.
- (3) A delegation may only be revoked in writing.

### **Appeal process**

6. (1) Persons and bodies with an interest in, or who are affected by, a decision of a committee or other delegated representative of the FSHRA may appeal to the Council against such decision.
- (2) Such appeal must be made in writing within 14 days after the minutes, in which the decision was recorded, have been issued and such appeal must include the grounds on which the appeal is based together with a motivation.
- (3) The Council must consider an appeal within 21 days.
- (4) On receipt of an appeal against a decision of a delegatee or a committee to grant an application for a permit, the Council shall notify the applicant, whereupon such permit shall be suspended and no action may be taken under authority of such permit until the appeal has been considered and a decision has been made to confirm or withdraw the permit.
- (5) The Council may appoint a committee of experts, which must include at least two of its members who were not present when the original decision was made, to consider the appeal. The decision of such committee is final.
- (6) In considering an appeal, the Council must have due regard to -
  - (a) the cultural significance of the heritage resource in question;
  - (b) the principles set out in section 5 and prescribed under section 6 (2) of the Act;
  - (c) any other relevant factor which is brought to its attention by the appellant, any other person directly affected by the decision, or the delegated representative of the FSHRA.