



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

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| No. 287 | 2004 |
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#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 27 of 2004: National Heritage Act, 2004.

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## ACT

**To provide for the protection and conservation of places and objects of heritage significance and the registration of such places and objects; to establish a National Heritage Council; to establish a National Heritage Register; and to provide for incidental matters.**

*(Signed by the President on 19 December 2004)*

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**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows: -

## **PART I - PRELIMINARY**

### **Definitions**

1. In this Act, unless the context otherwise indicates -

“alter” in relation to a place or object, means to modify or change the structure, appearance or physical properties of the place or object, whether by way of structural or other works, by painting, plastering or other decoration or any other means;

“appointed member” means a member of the Council appointed under section 4(1)(b);

“archaeological” in relation to a place or an object, means -

- (a) any remains of human habitation or occupation that are 50 or more years old found on or beneath the surface on land or in the sea;
- (b) rock art, being any form of painting, engraving or other representation on a fixed rock surface or loose rock or stone which is 50 or more years old;

“archaeological site” means an area in which archaeological objects are situated;

“building” includes a structure, work or fixture and any part of a building, work or fixture;

“conservation” includes -

- (a) the retention of the heritage significance of a place or object; and
- (b) the protection, maintenance, preservation, restoration, reconstruction or sustainable use of a place or object;

“Council” means the National Heritage Council established by section 3;

“develop”, in relation to a place, means -

- (a) to construct or alter a place or a building on the place;
- (b) to demolish or remove a building or works on the place;
- (c) to carry out any works on, over or under the place;
- (d) to subdivide or consolidate land comprising the place or any buildings on the place; or
- (e) to place or relocate a building or works on the place,

and “development” has a corresponding meaning;

“Director” means the Director of the Council appointed under section 16(1);

“government building” means a building on State land;

“heritage” means places and objects of heritage significance;

“heritage significance” means aesthetic, archaeological, architectural, cultural, historical, scientific or social significance;

“land” includes any right to, privilege over, claim to, or any interest, whether corporeal or incorporeal, in the land or proceeds derived from that land;

“listed building” means a building included in the Register under section 53 as a listed building, and “listing” has a corresponding meaning;

“local authority” means a local authority council as defined in the Local Authorities Act, 1992 (Act. No 23 of 1992);

“local authority area” has the meaning assigned in the Local Authorities Act, 1992;

“Minister” means the Minister responsible for Culture;

“object” means any movable article, and includes -

- (a) an archaeological object;
- (b) palaeontological and rare geological objects;
- (c) meteorites;
- (d) ethnographic art objects;
- (e) military objects;
- (f) objects of decorative or fine art;
- (g) objects of scientific or technological interest;
- (h) books, records, documents, photographic positives and negatives, film, or video material or sound recordings, excluding those that are public records to which the Archives Act, 1992 (Act No. 12 of 1992) applies;

“owner” includes -

- (a) in relation to land situated in a communal land area as defined in the Communal Land Reform Act, 2002 (Act No. 5 of 2002) -
  - (i) the person who holds a right in respect of that land under that Act; or
  - (ii) if no person holds such a right in respect of the land, the Communal Land Board having jurisdiction under that Act in that area;
- (b) in relation to other State land, means the Minister or public authority that manages or controls the land;
- (c) in relation to any land or other property, a person who in terms of any law -
  - (i) has a right, privilege, claim to; or
  - (ii) holds any security over or interests in,the property or proceeds from the property; or

- (d) a person who in terms of any law holds or is entitled to hold any land or other property on behalf another person.

“palaeontological object” means any fossilised remains or fossil trace of animals or plants which lived in the past;

“palaeontological site” means an area in which palaeontological objects are situated;

“place” means an area of land, with or without improvements, and includes -

- (a) a building;
- (b) a garden;
- (c) a tree;
- (d) the remains of a ship or part of a ship;
- (e) an archaeological site;
- (f) a site;
- (g) land associated with anything specified in paragraphs (a) to (e);

“possess”, in relation to an item, includes -

- (a) having the custody or control of the item by any means; or
- (b) controlling access to the item, whether personally or with the assistance of another,

and “possession” has a corresponding meaning;

“presentation” in relation to heritage resources protected under this Act, includes -

- (a) exhibition or display;
- (b) provision of access and guidance;
- (c) provision, publication or display of information;

“protected object” means an object declared and registered as a heritage object under Division 3 of PART IV;

“protected place” means a place declared and registered as a heritage place under Division 3 of PART IV;

“provisional protection order” means a provisional protection order made under section 41;

“public authority” means any body corporate or unincorporated established by or under an Act of Parliament for performing functions defined in that Act, but does not include a local authority;

“Register” means the Namibian Heritage Register established under section 24;

“Registrar of Deeds” has the meaning assigned in the Registration of Deeds Act, 1937 (Act No. 47 of 1937);

“State land” includes land vested in, or controlled by, a public authority;

“this Act” includes any regulation made under this Act;

“works” includes -

- (a) any physical intervention, excavation or action that may result in a change to the nature, appearance or physical nature of a place;
- (b) any change to the natural or existing condition or topography of land;
- (c) any removal of trees, vegetation or topsoil;

#### **State to be bound**

2. This Act binds the State.

### **PART II- HERITAGE ADMINISTRATION**

#### **Division 1 - The National Heritage Council**

##### **National Heritage Council**

3. There is established a body corporate to be called the National Heritage Council, capable of suing or being sued in its corporate name, acquiring holding and disposing of movable and immovable property and performing all such acts as bodies corporate may by law perform.

##### **Constitution of the Council**

4. (1) The Council consists of not less than seven and no more than fifteen members, being -

- (a) the Permanent Secretary responsible for Culture; and
- (b) such other persons as the Minister may appoint, of whom at least forty percent must be women.

(2) Before appointing members under subsection (1)(b) the Minister must invite nominations of persons for appointment -

- (a) from the public, through advertisement in at least two newspapers circulating generally in Namibia; and
- (b) from organisations involved in the field of heritage, by letters sent to the organisations.

(3) An invitation for nominations must state -

- (a) the manner in which nominations must be submitted; and
- (b) the cut-off date for the submission of nominations.

(4) If the Minister has received no or insufficient nominations by the cut-off date for nominations, the Minister may appoint the required number of persons whom the Minister considers suitable.

(5) When appointing members of the Council the Minister must take geographic representation into account.

(6) The names of appointed members, the date from which their appointments are of effect and the period for which they are appointed must be published by notice in the *Gazette*.

### Functions of the Council

5. (1) The functions of the Council are -
- (a) to advise the Minister on the state of Namibia's heritage resources and on any steps necessary to protect and conserve them;
  - (b) to identify, conserve, protect and manage places and objects of heritage significance;
  - (c) to develop and revise from time to time the criteria for assessing the heritage significance of places and objects and determining whether those places or objects warrant inclusion in the Register;
  - (d) to initiate measures for or with respect to -
    - (i) the conservation of;
    - (ii) the provision of access to;
    - (iii) the presentation of;
    - (iv) the publication of information concerning;places or objects of heritage significance;
  - (e) to introduce measures and exercise control aimed at preventing the destruction, removal or injudicious treatment of, or deterioration or damage occurring in, places that have or may have heritage significance or special interest;
  - (f) to advise government ministries, offices and agencies, local authorities and public authorities on matters relating to the conservation and protection of places and objects of heritage significance;
  - (g) to advise the Minister or any other authority involved in administering any law relating to planning on proposed planning schemes or amendments to planning schemes which may affect the protection of places or objects of heritage significance;
  - (h) to promote public understanding of Namibia's heritage and develop and conduct community information and education programs;
  - (i) to liaise with other bodies responsible for or engaged in activities, relating to the protection, conservation, management and promotion of Namibia's heritage;
  - (j) to initiate and undertake or financially assist programs of research related to the identification, conservation or interpretation of Namibia's heritage; and
  - (k) to carry out any other functions conferred on the Council by or under this Act or any other law.
- (2) For the purpose of performing its functions, the Council may -

- (a) purchase or otherwise acquire or receive in trust or by donation any immovable or movable property or any interest in immovable or movable property which is, or is proposed to be declared, a heritage place or a heritage object under this Act, and entrust any heritage object so acquired to the custody of the National Museum, the National Art Gallery, the National Archives or any other museum or institution, as the Council may determine;
- (b) take such measures as the Council may determine for the preservation, conservation, restoration and security of any protected place or protected object, including the provision of incentives in such manner as it may think fit, and render financial assistance to any person or authority or body of persons who satisfies the Council that they have the necessary professional skills to carry out preservation and restoration work in relation to a protected place or protected object;
- (c) in relation to a protected place or protected object which is in private ownership, enter into an agreement with the owner with a view to the conservation of its environment or its preservation or presentation to members of the public;
- (d) by agreement with the owner of any land acquire or construct and maintain an access road over that land to any protected place and to construct upon the land fences, walls or gates along or across the road or to enclose that place;
- (e) insure in the name of the Council any property under its control and to insure the Council against any risk arising out of the exercise of its powers or the performance of its functions;
- (f) subject to the consent of the Minister, granted after consultation with the Minister of Finance -
  - (i) to lease, exchange, transfer to trustees to hold in trust or otherwise alienate or, hypothecate or burden with a servitude a protected place or other immovable property; or
  - (ii) to lend, exchange, transfer to trustees, to hold in trust or otherwise delegate control over a protected object or other movable object,owned by the Council or controlled on behalf of the State by the Council; or
- (g) appoint Honorary Heritage Officers to assist the Council in its functions on a voluntary basis.

### **Chairperson and Vice-Chairperson**

6. (1) The Chairperson and Vice-Chairperson of the Council are elected by the members of the Council from among their number at the first meeting of the Council.

(2) The Council may at any time remove the Chairperson or the Vice-Chairperson from office and elect another member in that office.

### **Term of office**

7. (1) An appointed member holds office for a period, not exceeding three years, specified in the instrument of his or her appointment.

(2) A retiring member of the Council is eligible for reappointment.

**Vacation of office**

**8.** (1) An appointed member ceases to hold office if he or she -

- (a) resigns his or her office by giving notice in writing signed by him or her to the Minister;
- (b) has been absent from three consecutive meetings of the Council without leave of the Council; or
- (c) is removed from office under subsection (2).

(2) The Minister may at any time, by notice in writing, remove an appointed member from office if the Minister is satisfied, after having given the member an opportunity to be heard, that the member -

- (a) is incapable of performing the duties of a member; or
- (b) is guilty of neglect of duty or misconduct.

**Filling of casual vacancies**

**9.** If the office of an appointed member becomes vacant, the Minister may appoint another person as member of the Council to fill the casual vacancy.

**Alternate members**

**10.** (1) The Minister may appoint an alternate member for each member of the Council.

(2) An alternate member may act in the place of the member for whom he or she is the alternate member if -

- (a) the member is absent or unable to perform the duties of his or her office;
- (b) the member and the alternate member agree that the alternate member is to act in the member's place; or
- (c) the member's position is vacant.

(3) An alternate member must not act for longer than 6 months in a member's vacant position.

(4) An alternate member has all the functions of the member when acting in the place of that member.

**Meetings of the Council**

**11.** (1) The first meeting of the Council must be held at a place and time determined by the Minister and any meeting of the Council thereafter must be held at a place and time determined by the Council.

(2) The Council must meet at least three times in every calendar year.

(3) The Chairperson of the Council -

- (a) must convene the next meeting of the Council if for any reason a meeting determined by the Council cannot take place; and

- (b) may at any time convene a special meeting of the Council.
- (4) The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson, must preside at a meeting of the Council.
- (5) If neither the Chairperson or Vice-Chairperson are present at a meeting the members present must elect a member to preside at that meeting.
- (6) At a meeting of the Council -
  - (a) a majority of the members of the Council forms a quorum;
  - (b) all questions are decided by a majority of votes of the members present and voting; and
  - (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote.
- (7) The Council may invite any person who has expert knowledge of a matter before the Council for determination to attend the meeting and take part in discussions in relation to that matter, but that person has no vote.
- (8) An act or decision of the Council is not invalid only because of a defect or irregularity in or in connection with the appointment of a member of the Council.
- (9) The Council -
  - (a) may regulate its own proceedings; and
  - (b) must cause minutes of proceedings and decisions at each meeting of the Council to be kept.

### **Committees**

- 12. (1) The Council may establish one or more committees -
  - (a) consisting solely of members of the Council, to carry out any functions of the Council delegated or assigned to it by the Council; or
  - (b) consisting of members only, or members and other persons as the Council may determine, to investigate and make recommendations to the Council on any matter referred to it by the Council.
- (2) The Council must designate a member of the Council to be the chairperson of a committee.
- (3) The Chairperson of the Council may attend a meeting of a committee of which he or she is not a member and may take part and vote in the proceedings thereof as if he or she were appointed as a member thereof.
- (4) The Council may at any time dissolve or reconstitute a committee.
- (5) The Council is not divested or relieved from a power or duty which has been delegated or assigned to a committee.
- (6) A decision of a committee in the exercise of a power delegated to it is subject to approval by the Council, and the Council may at any time vary or set aside the decision.

**Remuneration**

**13.** (1) A member of the Council or a committee, other than a staff member of the Public Service, is entitled to receive the fees and travelling and other allowances determined by the Minister, with the concurrence of the Minister of Finance.

(2) Fees and allowances determined under subsection (1) may differ according to the offices held or functions performed by different members.

**Disclosure of interest**

**14.** (1) A member of the Council or of a committee who has a direct or indirect financial or personal interest -

- (a) in a contract or proposed contract with the Council; or
- (b) in a matter being considered or proposed to be considered by the Council or a committee of which he or she is a member,

must, as soon as is practicable after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Council or the committee, as the case may be.

(2) Subsection (1) does not apply to an interest which is held as a member of a public company common with other members of that company.

(3) A disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting at which it is made.

- (4) A person who makes a disclosure in terms of subsection (1) must not -
  - (a) take any further part in any consideration or discussion of the contract, proposed contract or other matter;
  - (b) take part in any vote on the contract, proposed contract or other matter; or
  - (c) be counted for the purposes of a quorum.

(5) A person who makes a full and accurate disclosure under subsection (1) and who complies with subsection (4)(a) and (b) is not in breach of any duty owed by him or her to the Council by reason of his or her interest in the contract, proposed contract or other matter about which the disclosure was made.

(6) A person who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 1 year, or to both that fine and that imprisonment.

**Immunity from liability**

**15.** The Minister, the Council, a member of the Council or a member of a committee is not liable for anything done or omitted to be done in good faith -

- (a) in the carrying out a function or power under this Act or any other law; or
- (b) in reasonable belief that the act or omission was in the carrying out of a function or power under this Act or any other law.

**Division 2 - Director and Staff****Director**

**16.** (1) The Council must appoint a suitable person to be the Director of the Council.

- 2) Subject to the directions of the Council, the Director is responsible for -
- (a) the formation and development of an efficient administration to manage the affairs of the Council and to implement its decisions;
  - (b) the organisation, management and discipline of the staff of the Council;
  - (c) carrying out any other functions assigned to the Director by the Council.

**Staff**

**17.** The Council may appoint such other employees as it considers necessary to assist in the performance of the Council's functions.

**Conditions of service**

**18.** The Council determines the remuneration and other conditions of service and benefits of the Director and other employees of the Council.

**PART III****FINANCIAL PROVISIONS****Funds of the Council**

- 19.** (1) The funds of the Council consist of -
- (a) money appropriated by Parliament for the purposes of the Council;
  - (b) fees and other money paid to the Council under this Act;
  - (c) interest derived from investments; and
  - (d) money received from any other source.

(2) The Council must annually submit to the Minister, at a time determined by the Minister, a statement of the Council's estimated income and expenditure for its next financial year for approval by the Minister, with the concurrence of the Minister of Finance.

(3) The Council may during the course of a financial year submit to the Minister supplementary estimates of expenditure for that financial year for approval by the Minister, with the concurrence of the Minister of Finance.

(4) The Council may not incur any expenditure except in accordance with an estimate of expenditure approved under subsection (2) or (3).

(5) The Director is the accounting officer of the Council and is responsible for accounting for -

- (a) all money received and payments made by the Council; and
- (b) all assets and the discharging of all liabilities of the Council.

**Bank accounts**

**20.** (1) The Council must open and maintain accounts with a banking institution, as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998), as may be necessary for the performance of the functions of the Council.

(2) The Council must ensure that -

- (a) all money received by or on behalf of the Council is deposited into its bank account as soon as is practicable after the receipt thereof;
- (b) any payment by the Council is made from its bank account; and
- (c) no money is withdrawn, paid or transferred from its bank account without the Council's authority.

(3) Cheques or orders drawn on the Council's bank account must be signed on its behalf by two persons authorised for that purpose by resolution of the Council.

**Investment of money**

**21.** Any money of the Council that is not immediately required for expenditure by the Council may be invested at a banking institution referred to in section 20(1) or another registered financial institution approved by the Minister.

**Financial year, accounts and audit**

**22.** (1) The financial year of the Council ends on 31 March of each year.

(2) The Council must -

- (a) cause proper books and records of account to be kept in accordance with generally accepted accounting practice and procedure to represent fairly the state of affairs and business of the Council and to explain its transactions and financial position; and
- (b) not later than three months after the end of each financial year, cause annual financial statements to be prepared showing, with appropriate particulars, the money received and expenditure incurred by the Council during the financial year and its assets and liabilities as at the end of that financial year.

(3) The books and records of account and the annual financial statements of the Council must be audited by the Auditor-General.

**Reports and financial statements**

**23.** (1) The Council must -

- (a) furnish to the Minister such information as the Minister may from time to time in writing require in connection with the activities and financial position of the Council; and
- (b) each year, within six months of the end of its financial year, submit to the Minister -
  - (i) a report on its activities in respect of that financial year; and
  - (ii) copies of the Council's audited financial statements and the auditor's report for that financial year;

(2) The Minister must lay a copy of the report and the financial statements referred to in subsection (1)(b) upon the Table in the National Assembly within 30 days of the receipt thereof if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within thirty days after the commencement of its first ensuing ordinary session.

#### **PART IV**

### **SYSTEM OF HERITAGE PROTECTION**

#### **Division 1 - The Namibian Heritage Register**

##### **Namibian Heritage Register**

**24.** (1) The Council must establish and maintain a register, to be called the Namibian Heritage Register, in respect of heritage places and heritage objects protected under this Act.

(2) The Register, or any part thereof, may be maintained in a form which the Council considers expedient, including in electronic form.

##### **Categories of registration**

**25.** (1) A place or object must be recorded in the Register in either of the following categories -

- (a) heritage places; or
- (b) heritage objects,

and in accordance with such further classifications as the Council may determine.

(2) Classifications under subsection (1) may include parts for -

- (a) national monuments, being heritage places -
  - (i) declared as national monuments under section 35; and
  - (ii) which were national monuments immediately before the commencement of this Act by virtue of a declaration made under the National Monuments Act, 1969; (Act No. 28 of 1969).
- (b) protected places;
- (c) listed buildings;
- (d) protected objects -
  - (i) listed generically;
  - (ii) listed in the inventories of the National Museum, National Art Gallery, the National Archives or any other museum or institution; or
  - (iii) in possession of an individual or a body corporate or association of persons under section 56.

(3) The Council may maintain in the Register parts for the recording of places and objects in respect of which limited identifying details are given, if the Council determines -

- (a) that they may be at risk of damage or removal if fully identified in the Register; and
- (b) that their protection cannot reasonably be secured otherwise.

#### **Information to be included in Register**

**26.** (1) Except in the case of places or objects referred to in section 25(3), the Council must record in the Register sufficient details to identify the places and objects included therein, including details relating to their location, ownership, and heritage significance.

(2) The Council is not required to include in the Register the name or exact location of a historic shipwreck or a historic shipwreck object referred to in section 57 of which the name or exact location is not known.

#### **Copies and inspection of Register**

**27.** (1) Copies of the Register, duly amended, must be kept -

- (a) at the office of the Council; and
- (b) any other place which the Council may determine and make known by notice in the *Gazette*.

(2) A copy of the Register, or any part thereof, must be made available for inspection by members of the public during normal office hours.

(3) The parts of the Register referred to in section 25(3), as well as any information not disclosed in relation to the items contained therein, are not open for inspection by any person, except with the express consent of the Council, and subject to the conditions determined by the Council.

(4) Inspection of the Register, or any part thereof is subject to payment of an inspection fee as may be determined by the Council, with the approval of the Minister.

### **Division 2 - Procedure for Declaration and Registration**

#### **Council to make recommendation to Minister for declaration**

**28.** (1) The Council may submit to the Minister a recommendation that -

- (a) a place be declared a heritage place; or
- (b) an object be declared a heritage object.

(2) A recommendation under subsection (1) may be made by the Council, either -

- (a) of its own motion; or
- (b) upon a nomination made by any person or body.

(3) A recommendation to the Minister under subsection (1) must -

- (a) be in writing;
- (b) include a statement of the heritage significance of the place or object; and

- (c) specify the category and classification in the Register in respect of which the place or object is recommended to be declared a heritage place or heritage object.

#### **Nomination for declaration**

**29.** (1) A nomination by a person or body that a place or object be declared a heritage place or a heritage object must -

- (a) be made in writing to the Council in a manner approved by the Council; and
- (b) specify the reasons as to why the place or object warrants to be so declared.

(2) The Council must not accept a nomination of a place or object under subsection (1) if, in the preceding 12 months -

- (a) the Council had refused to recommend to the Minister that the place or object be declared a heritage place or heritage object;
- (b) the Minister had refused to declare the place or object as a heritage place or heritage object; or
- (c) a previous declaration of that place or object as a heritage place or a heritage object has been revoked under this Act,

but the Council may accept the nomination if the Council receives significant information relating to that place or object which was not available to the Council and the Minister in reaching the decision referred to in paragraph (a), (b) or (c).

(3) If a nomination under subsection (1) is made in relation to a place which is an archaeological site the Council may accept a nomination of any archaeological objects associated with that place or any artefact or unique specimen which includes an archaeological object associated with that place for declaration as an archaeological object.

(4) A nomination can be made -

- (a) in respect of an archaeological object whether or not the object is located on or under the place or whether or not the exact location of the object is known;
- (b) in respect of all objects associated with the place, whether or not the number or nature or the exact location of the objects is known; and
- (c) without the extraction of the object from the place.

(5) The Council may ask a person or body nominating a place for further information to assist the consideration of the nomination.

(6) If the Council determines not to accept a nomination made in relation to a place or object it must in writing notify the nominator of its decision and furnish the reason for the decision.

#### **Notice of proposed recommendation**

**30.** (1) If the Council determines to recommend to the Minister that a place or object be declared a heritage place or a heritage object, the Council must give notice in accordance with subsection (2) to -

- (a) the owner of the place or object;
  - (b) the nominator, if any, of the place or object; and
  - (c) the relevant local authority in whose area of jurisdiction the place is situated,
- (2) A notice under subsection (1) must -
- (a) be in writing;
  - (b) set out the terms of the recommendation;
  - (c) include sufficient information to identify the place, or object, whether by reference to maps, diagrams or otherwise;
  - (d) include a brief statement of the heritage significance of the place or object;
  - (e) advise the owner that the Council will submit its recommendation to the Minister after a period of 60 days from the date the notice of the proposed recommendation is published under subsection (4);
  - (f) advise the owner that the owner may, within that period of 60 days -
    - (i) make a submission on the proposed recommendation to the Council; and
    - (ii) request a hearing in relation to that submission; and
  - (g) set out a summary of the rights and obligations under this Act of the owners of protected places or protected objects of that kind.

(3) Despite subsection (2)(c), the Council may determine that, in relation to an archaeological site, some details of identification should not be included in the notice if the Council believes that there is a real danger that the site may be damaged or an archaeological object may be removed or damaged by a person if those details were known.

(4) The Council must cause a notice of a proposed recommendation that a place or an object be declared as a heritage place or a heritage object to be published in a newspaper circulating generally in the area in which the place or object is located at least 60 days before the date on which the Council proposes to submit its recommendation to the Minister.

#### **Obligations of owner**

**31.** (1) The owner of a place or object to whom notice has been given under section 30(2) must within 10 days after receipt of that notice advise the Council of -

- (a) any works or activities that are being carried out in relation to the place or object at the time the notice is given; and
- (b) any works or activities that are proposed to be carried out in relation to the place or object.

(2) After a notice has been given under section 30(2), and before the Minister takes a decision on the place or object, the owner must not, without the prior written approval of the Council, carry out or permit to be carried out any works or activities in relation to that place or object that could adversely affect the place or object.

(3) If, before the Minister's decision on a place or object to which a notice under section 30(2) relates, the owner proposes to dispose of the whole or any part of that place or object, the owner must -

- (a) advise the Council of the proposed disposal at least 10 days before entering into a contract for that disposal; and
- (b) before entering into a contract for that disposal, give a copy of the notice under section 30(2) to the person who, under the proposed contract, is to acquire the place or object or part of the place or object.

(4) An owner of a place who fails to comply with any provision of this section commits an offence and is liable to a fine not exceeding N\$ 10 000 or to imprisonment for a period not exceeding 1 year, or to both such fine and such imprisonment.

### **Submissions**

**32.** (1) Any person may make a written submission to the Council in relation to a proposed recommendation of the Council that a place or object be declared a heritage place or heritage object.

(2) A submission under subsection (1) must be made within 60 days after the date that the notice of the proposed recommendation is published under section 30(4).

(3) A submission must relate only to the issue whether or not a place is of heritage significance.

(4) A person making a submission under this section may in that submission request an opportunity to be heard by the Council in relation to the submission.

### **Procedure if no submissions are received**

**33.** If no submissions have been received in respect of the proposed declaration the Council may, after expiry of the submission period referred to in section 32(2), submit its recommendation to the Minister.

### **Procedure if submissions are received**

**34.** (1) The Council must examine each submission in relation to a proposed declaration which has been made in the required time, and may -

- (a) ask the person making the submission for more information in relation to the submission;
- (b) conduct a hearing into the proposed declaration.

(2) The Council must conduct a hearing into a proposed declaration if a person with a real and substantial interest in the place requests a hearing by the Council in a submission under section 32.

(3) After considering any submissions and conducting any hearing into a proposed declaration, the Council may determine -

- (a) that the place or object is not of heritage significance and does not warrant inclusion in the Register;
- (b) that the place or object is of heritage significance and should be included in the Register;

(c) that part of the place is of heritage significance and should be included in the Register;

(d) that the place, or part of the place, or the object may be of heritage significance and that a provisional protection order should be made in respect of the place or that part of the place or the object.

(4) When making a recommendation that a place be declared a heritage place, the Council may recommend that the place be declared a national monument if the place is of major significance and importance in relation the national heritage.

(5) If, when making a recommendation that a place be declared a heritage place, the Council considers that -

(a) the heritage significance of that place would be substantially less if the land or any part of the land which is or has been used in conjunction with the place were developed; or

(b) land surrounding that place is important to the protection or conservation of the place or contributes to the understanding of the place,

the Council may make a recommendation that that land be included for declaration as being part of the place, whether or not the land is in the same ownership as the place.

(6) A recommendation in respect of land referred to in subsection (5) must be made with the consent of the owner.

(7) Upon making a determination under this section the Council must provide a report to the Minister on the proposed declaration, including a report on any submissions considered or hearing conducted and the Council's determination concerning the declaration which the Council recommends should be made by the Minister in relation to the place or object.

### **Division 3 - Declaration of Heritage Places and Heritage Objects and Registration**

#### **Decision of Minister**

**35.** After considering the report of the Council, the Minister -

(a) may make any determination recommended by the Council or that the Council could have made under section 34; and

(b) must notify the Council in writing of the determination made under paragraph (a).

#### **Notice of declaration and registration**

**36.** (1) If the Minister determines that a place or part of a place or an object be declared a heritage place or heritage object, the Council, upon receiving the Minister's notification, must -

(a) include the place or part of the place or the object in the Register;

(b) give notice to the owner of the declaration and inclusion in the Register of the place or object;

(c) publish notice in the *Gazette* of the inclusion of that place or part of the place or the object in the Register as a heritage place or heritage object.

(2) A notice to an owner under subsection (1)(b), may include a determination by the Council as to works and activities that can be carried out in relation to the protected place or the protected object without the need for a permit under PART V.

(3) The notice under subsection (1)(c) must -

- (a) specify the category or categories of the Register and the part of the register under which the place or object is included; and
- (b) include sufficient information to provide reasonable identification of the place or object.

(4) Despite subsection (3)(b), the Council may, in relation to a place or object recorded in a part of the register referred to in section 25(3), include only limited identifying details as contemplated in that section.

### **Notice to Registrar of Deeds**

**37.** (1) The Council must lodge with the Registrar of Deeds, in the prescribed manner, notice of any matter concerning any inclusion in, removal from or amendment to the Register which affects land.

(2) The Registrar of Deeds must make such endorsements or recordings in the appropriate documents and registers of the Deeds Registry, and any affected title deed or other document submitted to the Registrar, as are necessary to reflect the subject matter of the notice in respect of the land concerned.

(3) The Registrar of Deeds may require any evidence of the identity of any land affected by a notice lodged under subsection (1).

### **Certificates**

**38.** (1) A person may apply to the Council for a certificate stating in respect of any place or object described in the application -

- (a) whether or not the place or object is included in the Register under this Act and the category in which it is registered;
- (b) whether or not the place or object is subject to a provisional protection order, and if so the date of the order;
- (c) whether or not the place or object is being considered by the Council under this Act for inclusion in the Register;
- (d) whether or not a nomination has been made under this Act for inclusion of the place or object in the Register;
- (e) whether a building is a listed building.

(2) An application in terms of subsection (1) must -

- (a) be in a form approved by the Council;
- (b) state particulars of the place or object in respect of which the certificate is required; and
- (c) be accompanied by the appropriate fee as determined by the Council, with the approval of the Minister.

**Notice of sale of protected place or object**

**39.** The owner of a protected place or protected object who proposes to enter into a contract of sale of the whole or any part of that place or object must notify the Council in writing of the prescribed information about that contract at least 30 days before the contemplated date of conclusion of the contract.

**Amendment or removal of item on Register**

**40.** (1) The Council may amend an item in, or remove an item from, the Register.

(2) Divisions 2 and 3 of this Part apply to an amendment or removal under subsection (1) in the same way as those Divisions apply to the declaration and registration of a place or object.

**Division 4 - Provisional Protection Orders****Power to make provisional protection order**

**41.** (1) The Minister, on recommendation of the Council, may make a provisional protection order in relation to a place or object if, in the opinion of the Minister, it is necessary or desirable to do so for the purposes of this Act.

(2) A provisional protection order must be in the prescribed form.

(3) The Council must cause the provisional protection order to be served on the owner, occupier or person apparently in charge of the place or object.

(4) In the case of -

(a) a place which is a government building or State land; or

(b) an object which is in or on a government building or State land,

the Council must give the order required to be served under subsection (3) to a Minister or a public authority or any other person responsible for the care, management or control of that building or land.

**Effect of provisional protection order**

**42.** (1) A provisional protection order takes effect on the service of the order under section 41.

(2) For the period that a provisional protection order continues in force in relation to a place or object in terms of section 45, such place or object is deemed for all purposes of this Act to be a protected place or protected object.

**Display of provisional protection order**

**43.** (1) A person who has been served with a provisional protection order under section 41 in relation to a place must cause a notice of the existence of that order to be continuously displayed in a conspicuous position on the place for the period that the order is in force.

(2) A notice referred to in subsection (1) must be in a form approved by the Council.

**Authorisation of certain works to be carried out**

**44.** Despite anything to the contrary in PART V, while a provisional protection order is in force in respect of a place or object, the Council may authorise any reasonable works or activities on the place or object which may assist -

- (a) in determining the heritage significance of the place or object; and
- (b) in the consideration of the place or object for declaration under section 35 and inclusion in the Register.

**Period of provisional protection order**

**45.** (1) A provisional protection order relating to a place or object continues in force -

- (a) for a period of 6 months or any further period specified by the Minister under subsection (3); or
- (b) until the place or object is declared a heritage place or a heritage object in accordance with section 35 and included in the Register,

whichever first occurs.

(2) The Minister, on recommendation of the Council, may at any time revoke a provisional protection order.

(3) The Minister may at any time extend the period of which a provisional protection order continues in force.

(4) A notice of an extension under subsection (3) must be served in the same manner as the provisional protection order is served.

**PART V - PERMITS****Certain activities prohibited**

**46.** (1) A person must not -

- (a) remove or demolish;
- (b) damage or despoil;
- (c) develop or alter; or
- (d) excavate,

all or any part of a protected place.

(2) A person must not -

- (a) remove or demolish;
- (b) damage or despoil;
- (c) alter or excavate; or
- (d) export from Namibia,

a protected object.

(3) A person must not relocate or disturb the position of a fixed protected object.

(4) Subsections (1), (2) and (3) do not apply to works or activities -

(a) carried out in accordance with a permit issued under this PART; or

(b) for which the Council has determined that a permit is not required pursuant to section 36(2) or section 47.

(5) A person who contravenes a provision of subsection (1), (2) or (3) commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

### **Exemption from permit**

**47.** (1) The Council may from time to time determine classes of works or activities which may be undertaken in respect of any protected place or protected object or class of protected places or protected objects without a permit under this PART.

(2) The Council must give written notice without delay to the owner of a protected place or protected object of a determination made under subsection (1) which affects that place or object.

(3) An owner may apply to the Council for a determination that a permit is not required in respect of particular works or activities in relation to a protected place or protected object.

(4) If the Council makes a determination under subsection (1) or (3), those works and activities may be carried out in relation to that protected place or protected object without a permit under this PART.

(5) The Council may at any time amend or revoke a determination made under subsection (1) or (3).

(6) The Council must give written notice without delay to the owner of protected place or protected object of an amendment or revocation under subsection (5) which affects that place or object.

### **Application for permit**

**48.** (1) A person may apply to the Council for a permit to carry out works or activities in relation to a protected place or protected object.

(2) An application must -

(a) be accompanied by the prescribed fee; and

(b) if the applicant is not the owner of the protected place or protected object, include the consent of the owner that the works or activities may be carried out in relation to that place or object.

(3) An applicant may at any time -

(a) withdraw an application; or

(b) with the consent of the Council make amendments to an application.

(4) In this section “owner” in relation to -

- (a) a place which is a government building or State land; or
- (b) an object which is in or on a government building or State land,

means a Minister, a public authority or any other person responsible for the care, management or control of that building or land.

### **Publication of application**

- 49.** (1) On receiving an application under section 48, the Council -
- (a) must cause notice of the application to be published in a newspaper circulating generally in the area in which the protected place or protected object is situated, if the Council considers that the proposed works or activities may detrimentally affect that place or object;
  - (b) must make a copy of the application available at the office of the Council during normal office hours for inspection by members of the public for the period of 14 days after the notice is published under paragraph (a); and
  - (c) may require the owner of the protected place or protected object to cause a copy of the application to be continuously displayed in a conspicuous position on that place or the place where the object is located for a specified period not exceeding 14 days.
- (2) The Council may -
- (a) require the owner of a protected place or protected object to give the notice referred to in subsection (1)(a) at the owner's expense; or
  - (b) if that notice is given by the Council, recover the costs of publication from the owner.

### **Submissions**

**50.** (1) If notice of an application is given under section 49(1) any person may lodge a written submission with the Council in relation to the application.

(2) A submission must be lodged within 14 days after the notice is given under section 49(1).

### **Matters to be considered in determining application for permit**

**51.** (1) In considering an application for a permit, the Council must have regard to -

- (a) the extent to which an approval of the application would affect the heritage significance of the protected place or object;
- (b) the extent to which a refusal of the application would affect the reasonable or economic use of the protected place or object, or cause undue financial hardship to the owner in relation to that place or object;
- (c) any submissions made under section 50;
- (d) if the applicant is a public authority, the extent to which a refusal of the application would unreasonably detrimentally affect the ability of the public authority to carry out a statutory function specified in the application; and
- (e) any matters relating to the protection and conservation of the place or object

that the Council considers relevant.

(2) The Council may ask the applicant or any person who has made a submission for additional information in relation to the application or submission that the Council thinks necessary to assist the determination of the application.

(3) Before determining an application, the Council may require the applicant to obtain from a person with appropriate professional qualifications or experience, at the applicant's expense, a statement as to the impact the proposed works and activities may have on the place or object to which the application relates and the risk of damage to the place or object.

(4) The Council must determine an application for a permit within 90 days after its receipt, but the Council, with the consent of the applicant or, if the applicant refuses consent, with the approval of the Minister, may extend that period by a further period not exceeding 30 days.

(5) If the Council obtains an extension in accordance with subsection (4), the Council must notify the applicant within 7 days of that extension and the period of the extension.

#### **Issue of permit**

**52.** (1) After considering an application and any submissions relating to the application, the Council may determine -

- (a) to issue the permit for the proposed works and activities;
- (b) to issue the permit for some of the proposed works and activities specified in the application and approved by the Council; or
- (c) to refuse to issue the permit.

(2) A permit may be issued on any conditions the Council thinks fit, including a condition requiring -

- (a) the applicant to carry out, at the applicant's expense, any protective works which the Council may specify;
- (b) that the works or activities be carried out under the supervision of a person with appropriate professional qualifications or experience as specified in the permit, at the applicant's expense;
- (c) in the case of a permit authorising excavation of a site, that Namibian citizens, as may be specified in the permit, be engaged in the activities for the purpose of receiving professional training.

(3) The Council must, within 7 days of making a determination under subsection (1) -

- (a) issue the permit to the applicant;
- (b) issue the permit for some of the works or activities approved by the Council under paragraph (b) of that subsection and give the applicant a written notice of refusal to issue a permit in respect of the works and activities not approved; or
- (c) give the applicant written notice of the refusal to issue the permit.

- (4) A notice of refusal under subsection (3)(b) or (c) must set out -
  - (a) the reasons for the refusal; and
  - (b) a statement of the applicant's right of appeal under section 61.

## **PART VI - SPECIAL PROVISIONS FOR PROTECTION AND MANAGEMENT OF CERTAIN HERITAGE RESOURCES**

### **Listed Buildings**

**53.** (1) The Council may identify, and include in the Register as listed buildings, any buildings which are worthy of protection and conservation.

(2) The Council must record in respect of each listed building sufficient details to identify the building, including details of its location, ownership and heritage significance.

- (3) The Council must give notice of the listing of a building -
  - (a) in the case of a building situated within a local authority area, to the relevant local authority;
  - (b) in the case of a building situated outside a local authority area, to the owner of that building.

(4) A local authority must give notice to every owner of a listed building situated within its local authority area of the fact of the listing of that building under this section.

(5) A notice given to the owner of a listed building by the Council under subsection (3)(b) and by a local authority under subsection (4) must include a statement advising the owner of the obligations and liabilities of owners of listed buildings under subsections (6), (7), (12), (13) and (14).

(6) An owner of a listed building to whom notice has been given under subsection (3) or (4) must not carry out or cause or permit to be carried out any work for the alteration or development of that building without prior written consent obtained in accordance with this section.

(7) An application for consent under subsection (6) must be made at least 30 days before work for the alteration or development of the listed building is proposed to begin and must be submitted -

- (a) in the case of a building situated within a local authority area, to the relevant local authority; and
- (b) in the case of a building situated outside a local authority area, to the Council.

(8) A local authority, other than a local authority with delegated authority under subsection (9), must without delay and not later than 7 days after receiving an application under subsection (7)(a), submit the application to the Council and provide the Council with the prescribed information in relation to the application.

- (9) The Council may -
  - (a) delegate to any local authority the power to consider and determine an application submitted to that authority under subsection (7)(a); and

- (b) may impose conditions in relation to the exercise of that power by the local authority.
- (10) The Council and a local authority with delegated power under subsection (9) -
  - (a) may ask an applicant for further information to assist the determination of the application; and
  - (b) must determine the application within 30 days of the receipt of the application.
- (11) A local authority must forthwith give notice to the Council of any consent given by the local authority under subsection (10) and details of the consent given.
- (12) If an owner or occupier of a listed building alters or develops that building in contravention of subsection (6) -
  - (a) the relevant local authority, in the case of a listed building situated within the area of a local authority; or
  - (b) the Council, in the case of a listed building situated outside a local authority area,may require the owner or occupier to stop any work for the alteration or development of that building and to restore it to its previous condition or design.
- (13) If an owner or occupier fails to comply with the requirement of a local authority or the Council under subsection (12), the local authority or the Council may without further notice -
  - (a) take possession of the building;
  - (b) cause the necessary restoration work to be carried out; and
  - (c) recover from that owner or occupier the cost of the restoration work.
- (14) An owner who contravenes subsection (6) commits an offence and is liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.

### Conservation areas

- 54.** (1) The Council may, by notice in the *Gazette*, declare any area defined in the notice to be a conservation area on the ground of its historic, aesthetic or scientific interest.
- (2) Before the Council declares an area situated within a local authority area to be a conservation area, the Council must consult with the relevant local authority.
- (3) If the Council and the local authority fail to agree on the declaration of the conservation area, the local authority may in writing request the Minister to review the decision of the Council in relation to the declaration of the conservation area.
- (4) In determining a review under subsection (3), the Minister may confirm or cancel the decision of the Council and may by notice in the *Gazette* revoke a notice issued by the Council under subsection (1).

(5) A person must not undertake the work referred to in subsection (6) unless that person has complied with all the requirements of this section and permission has been given to that person by the Council in terms of subsection (10).

(6) A person who intends to undertake within a conservation area -

- (a) a development which exceeds 10 000 square metres in extent or the estimated costs of which exceed N\$2 million;
- (b) the construction of a road, wall, powerline, pipeline, canal or any other similar form of linear development or barrier exceeding 300 metres in length; or
- (c) the construction of a bridge or similar structure exceeding 50 metres in length,

must, at least 90 days before the work is planned to begin, give notice to the Council of the proposed work and of the location where the work is proposed to be carried out.

(7) The Council, with the consent of the Minister responsible for environment, must as soon as is practicable, but in any event not later than 30 days after receipt of the notification, inform the person who gave the notice whether the Council requires him or her to obtain, at his or her expense, an environment impact assessment from a person with appropriate professional qualifications or experience, with a view to determining -

- (a) the existence of heritage resources in the vicinity of the relevant area where work is to be carried out;
- (b) the impact of the proposed work on those resources; and
- (c) the extent to which the proposed area and height of the proposed development may be obtrusive in relation to the area and height of any protected place or listed building in the vicinity.

(8) The report on the environment impact assessment must be submitted to the Council and the Minister responsible for the environment.

(9) The Council may require the person proposing to undertake the work to meet with the Council for the purpose of discussing the report and ways to minimize any adverse effect of the work on heritage resources as may be indicated in the report.

(10) The Council may, after considering the report and any other information submitted to it in terms of this section, permit, subject to any conditions which it may impose, the person who has given notice to it in terms of subsection (6), to undertake the proposed work.

(11) The Council may, in a notice under subsection (1) or a subsequent notice, prohibit that any building situated within the conservation area which is 50 or more years old be demolished without the written consent of the Council.

#### **Archaeological and palaeontological sites, meteorites and other heritage resources**

**55.** (1) The Council may cause to be erected at suitable places within or on the boundaries of or near a registered archaeological or palaeontological or meteorite site notices indicating that the site is a protected place.

(2) The fact that a notice is not erected under subsection (1) does not affect the liability of any person for a contravention of this Act relating to archaeological or palaeontological sites or archaeological or palaeontological objects or meteorites.

(3) All archaeological and palaeontological objects and meteorites are the property of the State, except such an archaeological or palaeontological object the private possession and ownership of which -

- (a) was acquired not in contravention of section 12 of the National Monuments Act, 1969 (Act No. 28 of 1969) or a law repealed by that Act; or
- (b) is acquired by virtue of a consent issued under this section.

(4) A person who discovers any archaeological or palaeontological object or meteorite must as soon as practicable report the discovery to the Council.

(5) If the Council has reason to believe that any activity or development is being carried out in or on any area of land which is believed to be an archaeological or palaeontological or meteorite site without a permit under section 52 and that the activity or development may destroy, damage or alter that site, the Council may -

- (a) serve on the owner or occupier of the site or on the person undertaking the activity or development an order to cease that activity or development immediately for the period specified in the order;
- (b) carry out or cause to be carried out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists on the land and whether the activity or development may adversely affect that site;
- (c) if the Council considers that the activity or development may adversely affect the archaeological or palaeontological site, assist the person on whom the order has been served under paragraph (a) to apply for a permit in accordance with section 48; and
- (d) recover the costs of the investigation from the person on whom the order has been served under paragraph (a) if the investigation shows that an archaeological or palaeontological site exists on the land and that a permit under section 52 is required for carrying out that activity or development.

(6) The Council, after consultation with the owner of any land on which an archaeological or palaeontological site or a meteorite is located, may serve a notice on that owner to prohibit any activities indicated in the notice within a specified distance from that site or meteorite.

(7) Unless authorised by a permit under section 52, a person must not, without a consent issued under subsection (8) -

- (a) use an archaeological or palaeontological object or meteorite for the purpose of study, conservation or presentation;
- (b) uncover or expose, or move from its original position, any archaeological or palaeontological object or meteorite;
- (c) carry out an investigation or survey of any land for the purpose of finding any archaeological or palaeontological object or meteorite;
- (d) alter or develop any land on or in which an archaeological or palaeontological site or a meteorite is believed to be located;
- (e) carry out an act likely to endanger an archaeological or palaeontological object or meteorite;

- (f) within the area of a registered archaeological site be in possession of any excavation equipment or equipment designed or used for the detection of metals or archaeological or palaeontological objects or meteorites; or
- (g) whether as principal or agent -
  - (i) buy or sell;
  - (ii) export or attempt to export from Namibia;
  - (iii) have in his or her possession for the purpose of sale or export, any archaeological or palaeontological object or any meteorite;
- (8) An application for a consent referred to in subsection (7) must -
  - (a) be made to the Council; and
  - (b) be accompanied by the prescribed fee.
- (9) The Council may issue a consent subject to any conditions that the Council thinks fit, including a condition -
  - (a) that the activity authorised by the consent be supervised by a person with appropriate professional qualifications or experience as specified in the consent;
  - (b) that any archaeological or palaeontological object or meteorite found in the course of the activity authorised by the consent must be recorded, conserved and dealt with in a way specified in the consent; and
  - (c) that Namibian citizens, as may be specified in the consent, be engaged in the activity authorised by the consent for the purpose of receiving professional training.
- (10) A person who contravenes or fails to comply with an order under subsection (5)(a), a notice under subsection (6), any provision of subsection (7) or any condition imposed under subsection (9), commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

#### **Duty of persons possessing an archaeological or palaeontological object or meteorite**

**56.** (1) A person who is in possession of an item which is an archaeological or a palaeontological object or meteorite on the date of commencement of this Act must, within the period as the Minister may determine by notice in the *Gazette*, notify the Council of his or her possession of that item and provide the information prescribed in the notice in relation to the item.

(2) An item in respect of which a person without reasonable cause does not give the notification under subsection (1), is deemed to have come into that person's possession after the commencement of this Act.

(3) If a person gives notification under subsection (1) in respect of an item of which that person or any other person acquired possession otherwise than as contemplated in section 55(3), that item, unless the Council directs otherwise, remains in the person's possession -

- (a) in the case of an individual, until the person's death; or
- (b) in the case of a body corporate or trust or an association of persons, until the date determined by the Minister by notice in the *Gazette*,

provided the person or a representative of the body corporate, trust or association, at the request of the Council, signs a written undertaking as determined by the Council to take the measures as the Council may require for the protection and safe-keeping of the item and not to part with the possession thereof, except to the Council or any person or institution specified by the Council.

(4) Arrangements for the transfer of an item in the circumstances contemplated in subsection (3), must be made, in the case of a deceased person, between his or her executors and the Council, and in any other case between the representative of the body corporate, trust or association.

(5) A person referred to in subsection (3) who fails to comply with a written demand of the Council to rectify any breach of a condition of an undertaking referred to in that subsection within the period specified by the Council must, on the written direction of the Council, deliver the item to the Council or any person or institution specified by the Council.

### **Historic shipwrecks and shipwreck objects**

**57.** (1) The remains of all ships that have been situated on the coast or in the territorial waters or the contiguous zone of Namibia for 35 years or more are historic shipwrecks for the purposes of this section.

(2) All articles that have been situated on the coast or in the territorial waters or the contiguous zone of Namibia for 35 years or more and that were associated with ships are historic shipwreck objects for the purposes of this section.

- (3) The Minister may, by notice in the *Gazette*, declare that -
  - (a) subsection (1) does not apply to the remains, or part of the remains, of a particular ship or class of ships; or
  - (b) subsection (2) does not apply to any specified article or class of articles.
- (4) If the Council proposes to recommend to the Minister -
  - (a) under section 28, that -
    - (i) a place where the remains of a ship are located be declared a protected place; or
    - (ii) an article associated with a ship be declared a protected object; or
  - (b) under section 41 that a provisional protection order be made in relation to a place where an article or articles appearing to be the remains of a ship are located.

the Council must obtain and submit to the Minister, together with the Council's report and recommendation, any comments or advice which the Minister responsible for fisheries and marine resources may wish to make or give in relation to the proposed declaration.

### **Site management**

- 58.** (1) The Council must progressively introduce and maintain -

- (a) for each protected place which is a national monument; and
- (b) for any other protected place as the Council may determine,

a site management plan in accordance with the best cultural, environmental, ecological, scientific and education principles that can reasonably be applied, taking into account the location, size and nature of the site and the extent of the resources of the Council.

(2) The management of a site in accordance with subsection (1), or any activity connected with the management of a site, may be undertaken -

- (a) solely by the Council;
- (b) by the Council in conjunction with staff members of the Ministry of Environment and Tourism designated by the Minister responsible for that Ministry; or
- (c) by any person, traditional authority as defined in the Traditional Authorities Act, 2000 (Act No. 25 of 2000), institution or undertaking in accordance with the terms and conditions of a contract entered into between the Council and the person, traditional authority as defined in the Traditional Authorities Act, 2000 (Act No. 25 of 2000), institution or undertaking, with the approval of the Minister.

(3) A site management plan may relate to -

- (a) the enclosure of the site, or such parts thereof as need to be kept secure;
- (b) the provision of authorised points of entry, access routes and parking facilities;
- (c) the imposition and collection of admission charges;
- (d) the employment of trained guides and other attendants for providing information, assistance and other services to visitors;
- (e) the provision of information and education about the site which will lead to an understanding and appreciation of the heritage significance and values associated with the site;
- (f) the provision of facilities for the convenience or enjoyment of visitors, including the sale of refreshments and items of interest;
- (g) the construction and maintenance of camping or other facilities for the accommodation of visitors; and
- (h) any other matter which the Council considers necessary or expedient for the conservation and management of the site.

(4) The Council must cause to be displayed at each authorised point of entry to a managed site -

- (a) the emblem of the Council; and
- (b) the conditions on which access to the site is permitted.

## PART VII - MISCELLANEOUS

### Service of notices, orders and other documents

**59.** (1) Any notice, order or other document required to be served on or given to a person under this Act, may be served or given -

- (a) by delivering it to that person;
  - (b) by leaving it at the person's usual or last known place of residence;
  - (c) by forwarding it by post in a prepaid registered letter addressed to the person at his or her usual or last known postal address or place of residence;
  - (d) by forwarding it electronically to that person at his or her last known place of residence or business; or
  - (e) in the case of a place, by displaying it at that place.
- (2) If a provisional protection order is served -
- (a) on a person other than the owner of the place or object to which the order relates; or
  - (b) in the manner referred to in subsection (1)(e),

the Council must as soon as possible after the service of the order -

- (c) cause a copy of the order to be served on the owner in accordance with subsection (1)(a), (b), (c) or (d); or
- (d) if the address of the owner is unknown, cause a copy of the order to be published in a newspaper circulating generally in Namibia.

### Appointment and powers of heritage inspectors

**60.** (1) The Council may appoint persons to be heritage inspectors for the purposes of this Act.

(2) A staff member of the Public Service or a public authority may be appointed as heritage inspector only with the consent of the Minister or other person in charge of the relevant Ministry or of the public authority.

(3) Each member of the Namibian Police Force and each customs and excise officer is a heritage inspector.

(4) The Council must issue to each heritage inspector, other than a person referred to in subsection (3), an identity card containing a photograph and the signature of the heritage inspector.

(5) A heritage inspector, other than a person referred to in subsection (3), who seeks to exercise any power under this Act in relation to any person must produce his or her identity card for inspection by that person.

(6) A heritage inspector may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage resource protected in terms of this Act, or any other property in respect of which the Council may exercise its functions and powers under this Act, and may take photographs, make measurements and sketches and use any other means of recording information necessary for the purposes of this Act.

(7) A heritage inspector may at any time inspect work being done under a permit or consent issued in terms of this Act and may for that purpose at all reasonable times enter any place protected in terms of this Act.

(8) If a heritage inspector has reasonable grounds to suspect that an offence in terms of this Act has been, is being, or is about to be committed, the heritage inspector may, with such assistance as he or she thinks necessary -

- (a) enter and search any place or premises, other than a private dwelling, or any vehicle, vessel or craft, and for that purpose stop and detain any vehicle, vessel or craft, in or on which the heritage inspector believes, on reasonable grounds, there is evidence related to that offence;
- (b) confiscate and detain any heritage resource or evidence concerned with the commission of the offence; and
- (c) take any action reasonably necessary to prevent the commission of an offence in terms of this Act.

(9) A heritage inspector may, if there is reason to believe that any work is being done or any action is being taken in contravention of this Act or the conditions of a permit or consent issued in terms of this Act, order the immediate cessation of such work or action pending any further order from the Council.

(10) A heritage inspector may require any person who he or she has reason to believe has committed an offence in terms of this Act to supply his or her name and address and reasonable evidence of his or her identity, and may arrest a person who refuses to comply with that requirement.

### **Appeals**

**61.** (1) A person who is aggrieved by -

- (a) a refusal of the Council to accept a nomination under section 29;
- (b) a refusal of the Council to grant a permit or any consent under this Act;
- (c) a condition imposed by the Council in relation to any permit or consent under this Act;
- (d) a decision of the Council in relation to an appeal under subsection (2); or
- (e) or any order issued or prohibition imposed or any other decision which affects any real and substantial interest of the person in a protected place or protected object or a place or object which may be of heritage significance,

may appeal against the decision of the Council to the Minister in the prescribed manner.

(2) A person who is aggrieved by a decision of a local authority with delegated authority under section 53 in relation to an application for consent in respect of a listed building, may appeal against that decision to the Council in the prescribed manner, who may confirm or refuse the appeal.

(3) In determining an appeal under subsection (1), the Minister may -

- (a) confirm the Council's decision;
- (b) refer the matter back to the Council for reconsideration in accordance with any directions the Minister may give; or

- (c) make any decision which the Council could have made in relation to the matter under this Act.

### **Regulations**

**62.** (1) The Minister, on the recommendation of the Council, may make regulations relating to -

- (a) the issuing of any permit or consent under this Act;
- (b) the control of excavations or other works or activities carried out in relation to a protected place or protected object;
- (c) any application made to the Council or a local authority with delegated power under this Act, including the particulars or information to be furnished and any documents, drawings, plans and photographs to accompany such application; and
- (d) generally relating to any matter required or permitted to be prescribed under this Act or which the Minister considers necessary or expedient to prescribe for the purpose of achieving the objects of this Act.

(2) The Minister may make regulations relevant to international conventions or agreements to enforce measures concerning trade in items of national heritage belonging to states other than Namibia.

- (3) Regulations made under this section may -
  - (a) differentiate between different classes of persons or different places or objects;
  - (b) make provision for the granting of exemptions from any provision thereof;
  - (c) create an offence for any contravention thereof or any failure to comply with a provision thereof; and
  - (d) prescribe penalties in respect of any such offence not exceeding a fine of N\$4 000 or imprisonment for a period of 1 year.

### **Offences and penalties**

- 63.** (1) A person commits an offence who -
- (a) fails to comply with a request or requirement lawfully made under this Act;
  - (b) for the purpose of obtaining, whether for himself or herself or for any other person, any permit, consent or other authority in terms of this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;
  - (c) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to him or her under this Act;
  - (d) obstructs the holder of a permit or consent under this Act in exercising a right authorised by the permit or consent;

- (e) hinders or obstructs a heritage inspector in the exercise of any power or the performance of any duty under this Act;
- (f) damages, takes or removes, or causes to be damaged, taken or removed from a place protected in terms of this Act any badge, sign, notice or thing displayed or erected by the Council or a local authority;
- (g) receives any badge, emblem or any other property or thing unlawfully taken or removed from a place protected under this Act.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding N\$8 000 or imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment.

(3) If a person is convicted of an offence under this Act which has resulted in damage to or alteration of a protected heritage resource, the court may -

- (a) order that person to remedy the result of the act of which he or she was convicted, in a manner and within the period specified by the court, and upon the person failing to comply with the order, order the person to pay to the Council a sum equivalent to the cost of making good; or
- (b) if it is of the opinion that such person is not in a position to make good damage done to the heritage resource by virtue of the offender not being the owner or occupier of a heritage resource or for any other reason, or that it is unrealistic or undesirable to require that the results of the act be made good by the offender, order the offender to pay to the Council a sum equivalent to the cost of making good.

#### **Exemption from taxes and protection of copyright**

**64.** (1) Notwithstanding anything to the contrary in any other law contained, no duty, tax or fees, other than a duty, tax or fee levied under the law relating to customs and excise, is payable by the Council to the State in respect of anything done or any transaction under this Act or in respect of any document required in connection with anything so done or with any such transaction.

(2) Notwithstanding sections 5 and 27(5) of the Copyright and Neighbouring Rights Act, 1994, (Act No. 6 of 1994) copyright in any work, as defined in section 1 of that Act, published by the Council vests in the Council, who may exercise all the rights of a copyright owner under that Act.

#### **Educational role of Council**

**65.** (1) The Council in the performance of its education function must publish a statement approved by the Minister of the Council's policy for the protection of Namibia's heritage.

(2) In performing that function, to the extent of personnel and financial resources available to the Council, the Council may -

- (a) liaise and consult with local authorities and community leaders in relation to the protection, conservation and maintenance of protected places and protected objects and their environment;
- (b) educate and encourage owners of land and members of the public to report and protect discoveries of places and objects of cultural, artistic, natural, palaeontological, archaeological, historical or scientific interest;

- (c) publish or promote the publication of guidebooks and similar publications, having an educational purpose in respect of all or any parts of Namibia and its heritage;
- (d) issue broadsheets and leaflets for use by visitors to protected places and protected objects;
- (e) carry out and encourage research into national, regional and local history of Namibia and its heritage, and publish the useful results of the research;
- (f) contribute to and encourage the training of staff and the professional development of persons working in the field of heritage;
- (g) encourage public awareness and participation in heritage matters.

### **Remedial works**

**66.** (1) In the event of any breach of a provision of this Act or an obligation under this Act on the part of a person charged with the custody of a protected place or protected object whereby damage is caused to that place or object, the Council may -

- (a) by notice in writing require that person to remedy the damage within a specified period and at the person's own expense; and
- (b) upon failure of the person to comply with the notice, itself enter upon the property and to remedy or cause to be remedied the damage and recover the cost for the remedial work from that person, except if the person proves that he or she was not responsible for the damage either directly or indirectly through default or neglect.

(2) If a person has defaced, destroyed, removed, altered or damaged a memorial tablet at a protected place or the Council's emblem or any sign or notice erected by the Council, the Council may cause the damage to be repaired or the tablet, emblem sign or notice to be replaced and recover the cost thereof from that person.

### **By-laws of Council and local authorities**

**67.** (1) The Council, with the approval of the Minister, may, by notice in the *Gazette*, make by-laws in relation to -

- (a) the admission of members of the public to protected places to which access is allowed under the control of the Council and the fees payable for admission;
- (b) the conditions of use by any person of any protected place or protected object which is under the control of the Council;
- (c) the safeguarding and protection of, and access of members of the public to, any protected place or object in the possession of a private person;

(2) A local authority may, with the approval of the Minister, granted on the recommendation of the Council, make by-laws in relation to -

- (a) the admission of the public to a protected place to which the public is allowed access under the control of the local authority and the fees payable for admission;
- (b) the conditions of use by any person of a protected place or object which is under the control of the local authority.

(3) A by-law made under this section may prescribe fines not exceeding N\$2 000 or imprisonment for a period not exceeding 6 months for any contravention thereof or failure to comply therewith.

### **Transitional provisions**

**68.** (1) All assets, rights liabilities and obligations of the National Monuments Council constituted under the National Monuments Act, 1969 (Act No. 28 of 1969) vest in the Council on the commencement of this Act.

(2) Any immovable property referred to in subsection (1) vests in the Council without formal transfer and without payment of transfer duty, stamp duty or any other fee or charge, but subject to any existing right, charge, obligation registered in or over the property.

(3) The Registrar of Deeds must make the necessary endorsements in the registers and records of the Deeds Registry and on any title deed or other document submitted to the Registrar to give effect to the provisions of subsection (2).

(4) A person who immediately before the date of commencement of this Act was a member of the National Monuments Council referred to in section 2 of the National Monuments Act, 1969 (Act No. 28 of 1969) continues to serve as member of the Council for a period of 1 year from the date of commencement of this Act and is deemed to have been appointed under this Act.

(5) Every person who, immediately before the date of commencement of this Act, was employed by the National Monuments Council referred to in subsection (1), becomes on that date an employee of the Council -

- (a) at the same remuneration and conditions of service as applied to him or her immediately before that date; and
- (b) without any interruption in the employment of that person.

### **Repeal of laws and savings**

**69.** (1) Subject to subsection (2) -

- (a) the National Monuments Act, 1969 (Act No. 28 of 1969);
- (b) the National Monuments Amendment Act, 1970 (Act No. 22 of 1970);
- (c) the National Monuments Amendment Act, 1971 (Act No. 30 of 1971);
- (d) the National Monuments Act Amendment Act, 1979 (Act No. 7 of 1979); and
- (e) the National Monuments Amendment Act, 1979 (Act No. 35 of 1979);

are repealed.

(2) Any regulation or by-law made and anything done under a provision of a law repealed by subsection (1), and which may be made or done under a provision of this Act, is deemed to have been made or done under the corresponding provision of this Act.

### **Short title and commencement**

**70.** This Act is called the National Heritage Act, 2004 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

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