

ITEM NUMBER: C 10/04/16

RECOMMENDATION FROM THE EXECUTIVE MAYOR: 19 APRIL 2016

MC 51/04/16 DELEGATION OF HERITAGE POWERS AND FUNCTIONS UNDER THE NATIONAL HERITAGE RESOURCES ACT (NO. 25 OF 1999) FROM HERITAGE WESTERN CAPE (HWC) TO THE CITY OF CAPE TOWN

It is **RECOMMENDED** that Council accepts the proposed delegations and that the Executive Director: Energy, Environment & Spatial Planning be authorised to finalise and enter into the agreement attached as Annexure B to the report on the agenda, to give effect to it.



REPORT TO COUNCIL

DATE 2016-04-19

1. ITEM NUMBER : **MC 51/04/16**
2. DELEGATION OF HERITAGE POWERS AND FUNCTIONS UNDER THE NATIONAL HERITAGE RESOURCES ACT (No 25 OF 1999) FROM HERITAGE WESTERN CAPE (HWC) TO THE CITY OF CAPE TOWN

DELEGERING VAN SEKERE ERFENISMAGTE EN FUNKSIES KRAGTENS DIE WET OP ERFENISHULPBRONNE, (NO. 25 VAN 1999) VANAF ERFENIS WES-KAAP NA DIE STAD KAAPSTAD

UGUNYAZISO LWAMAGUNYA ATHILE NOMSEBENZI WEZAMAFA APHANTSI KOMTHETHO WESIZWE ONGEMITHOMBO YOKULILIFA LEMVELI, UMTHETHO 25 KA-1995 UKUSUSELA KWABEZOLONDOLOZO LOKULILIFA LEMVELI BASENTSHONA KOLONI (HWC) UKUYA KWISIXEKO SASEKAPA G5001

3. STRATEGIC INTENT:

- Well-run City

- 3.1. The intention is to provide for all heritage decisions relating to local issues to be dealt with at local authority level, rather than at both local authority level and provincial levels as currently is the case.
- 3.2. Streamline development approvals processes and provide greater certainty to developers and community members in order to help nurture a climate conducive to appropriate development.
- 3.3. Provide for a more focused approach to heritage management by having a single authority at local level responsible for day to day heritage management.

4. PURPOSE

- 4.1. To request Council approve the proposed delegation of certain provincial level functions from Heritage Western Cape (HWC) to the City of Cape Town as detailed in the attached agreement approved by the council of Heritage Western Cape.

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SHH

5. FOR DECISION BY

Council

This report is for decision.

6. EXECUTIVE SUMMARY

On 1 April 2016, the City received a letter from the CEO of HWC requesting the Council adopt the attached proposed agreement. The agreement is for the City to manage all heritage resources and protected sites under the National Heritage Resources Act (NHRA) other than for Grade I and Grade II heritage resources (which are of national and provincial significance), National and Provincial Heritage Sites, human burials, and the permitting of archaeological excavations.

HWC has assessed the City's Environmental Resource Management Department in terms of the NHRA in October 2015 and found competent to manage heritage resources of a local significance.

The objective of the delegation is to cut red tape by bringing local heritage approvals down to local authority level as far as possible thus providing for a one shop stop for approvals in the City. As such it should lead to faster turn-around times for applications for development while providing for a more coherent approach to heritage management in the metropolitan area. It should provide greater certainty to developers and communities alike as there will be one single authority dealing with applications, as envisaged in Section 156(4) of the Constitution.

The delegation is in line with approved Council policies.

7. RECOMMENDATIONS

It is recommended that:

Council accepts the proposed delegations and that the Executive Director: EESP be authorized to finalize and enter into the agreement (Annexure B) to give effect to it.

AANBEVELINGS

Daar word aanbeveel dat:

Die Raad die voorgestelde delegerings aanneem en dat die uitvoerende direkteur: energie, omgewings- en ruimtelike beplanning gemagtig word om die ooreenkoms (bylae B) af te handel en aan te gaan om uitvoering daaraan te gee.

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IZINDULULO

Kundululwe ukuba:

IBhunga malamkele amagunya aphakanyisiweyo kwaye ukuba uMlawuli weSigqeba kwi-EESP makagunyaziselwe ukuqokumbela nokungena kwisivumelwano (isihlomelo B) ukufezekisa oku.

8. DISCUSSION/CONTENTS

The National Heritage Resources Act sets out a system of heritage management based on the three spheres of governance - local, provincial, and national. In terms of this Act, the responsibility to manage Grade III heritage resources lies with the local authority although the management functions are currently being administered at provincial level.

This in many cases creates a requirement for duplicate heritage approvals - by both the City and HWC resulting in longer approval times, confusion amongst developers and sometimes conflicting decisions between local and provincial levels of government.

This delegation is based on the need for efficient deployment of scarce resources, the removal of duplication of process, and the need for effective and efficient service delivery. The agreement embodies the imperative of co-operative governance while at the same time putting in place checks and balances to ensure that the City is competent and accountable for the responsible management of Grade III heritage resources in terms of this delegation.

It provides for specified heritage resources management functions currently managed by HWC under the National Heritage Resources Act to be delegated to the City in terms of Section 26 of the NHRA.

The objective of the agreement of delegation is to provide a mechanism for the City to manage:

- Grade III heritage resources as required in terms of the NHRA.
- Structures subject to protection in terms of S34 which are not conservation-worthy.
- Impact assessment relating to developments triggering S38 of the NHRA where these do not involve Grade I or Grade II heritage resources.

8.1. Constitutional and Policy Implications

The agreement is in line with section 156(4) of the Constitution in that it assigns to the local authority a function that would be most effectively administered

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locally and where the municipality has the capacity to administer it.

The agreement is in line with the Council approved Cultural Heritage Strategy, and the NHRA.

Both Department of Arts and Culture and HWC support the delegation of powers to manage Grade III heritage resources to the City.

8.2. Sustainability Implications

The contents of this report are in line with IMEP in terms of its Cultural Strategy as well as in terms of the integration of environmental and heritage issues into planning.

8.3. Legal Implications

The draft agreement has been reviewed on behalf of the City by external senior counsel as well as by the HWC legal advisor.

8.4. Staff Implications

No

The City has been undergoing a process of growing its heritage management capacity to take on the management of Grade III heritage resources as required under the National Heritage Resources Act. The competence of the City has been assessed and approved and as such no additional requirements are foreseen.

8.5. Risk Implications

Risks are minimized by an appeal system where decisions made by the City may be appealed to HWC.

ANNEXURES

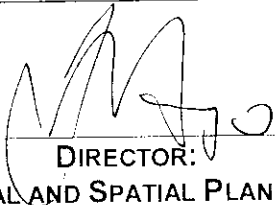
Annexures to the report to be listed here:

- A: Letter from the CEO of HWC to the City Manager dated 1 April 2016
- B: The proposed Agreement: "Agreement for the delegation of powers and functions by HWC to the City in respect of the management of activities relating to Grade III heritage resources and certain other places protected under the National Heritage Resources Act, Act 25 of 1999, excluding Grade I and Grade II heritage resource"

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FOR FURTHER DETAILS CONTACT:

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DIRECTORATE	EESP
FILE REF NO	



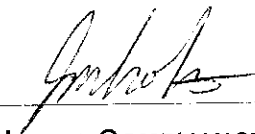
Comment:

EXECUTIVE DIRECTOR: ENERGY,
ENVIRONMENTAL AND SPATIAL PLANNING
J Hugo

NAME

DATE

05.04.2016



LEGAL COMPLIANCE

REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.

NON-COMPLIANT

NAME

Jean-Marie Holt

Comment:

TEL

021 400 2753

DATE

07/04/2016

^{JMH}
Certified as legally compliant:
Based on the contents of the report.

Kindly note that clause 4.B.7 of the agreement must be submitted for specific legal vetting prior to signature of the agreement. JMH This vetting must be done by legal services. SMH.

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A. G. Davis

EXECUTIVE DIRECTOR: COMPLIANCE AND
AUXILIARY SERVICES (ED: CAS)

SUPPORTED FOR ONWARD
SUBMISSION TO MAYOR / MAYCO
 / COUNCIL

NOT SUPPORTED

REFERRED BACK

COMMENT:

DATE

8/4/16

[Signature]

MAYORAL COMMITTEE MEMBER: ENERGY,
ENVIRONMENTAL AND SPATIAL PLANNING

COMMENT:

NAME

JFH via MELWE

DATE

11/24/2016