

Appendix 1: Legal and Policy Framework

An understanding of the policy and legal framework that underscores heritage conservation ensures that the Conservation Management Plan criteria for decision-making are appropriately enforced and adhered to by both the Municipality and developers, landowners and other users of the landscape. They indicate how it is to be managed, and by whom.

1. National Heritage Resources Act (Act 25 of 1999).
2. Provincial Spatial Development Framework (PSDF), especially the Policy framework for Heritage and Scenic Resources (2014).
3. Spatial Planning and Land Use Management Act (SPLUMA).
4. Western Cape Land Use Planning Act (LUPA).
1. Heritage Western Cape (HWC) Policies and Guidelines.
2. Municipal Policy and Planning Context with Zoning Schemes under the Land Use Planning Ordinance (LUPO) and Heritage Protection or Special Overlay Zones, and HWC recommendations for municipal zoning scheme by-laws.

1.1 National Heritage Resources Act (Act 25 Of 1999)

The NHRA serves as the controlling legal framework for heritage management in South Africa. South African heritage legislation is broad ranging and provides theoretical protection to all categories of heritage. The Act lays down general principles for governing heritage resources management and provides for the identification, assessment, and management of the heritage resources.

A heritage resource is defined as “any place or object of cultural significance¹” (NHRA Section 26(16)). Heritage resources significant enough to be considered part of the national estate (Section 3(2) of the NHRA) may include, *inter alia*:

- Places, buildings, structures and equipment of cultural significance;
- Places to which oral traditions are attached or which are associated with living heritage;
- Historical settlements and townscapes;
- Landscapes and natural features of cultural significance;
- Geological sites of scientific or cultural importance;
- Archaeological sites and objects;
- Graves and burial grounds;
- Sites of significance relating to the history of slavery in South Africa;
- Moveable objects including military objects, fine art, books, records, documents, archaeological and paleontological objects, and materials.

¹ Cultural heritage significance means aesthetic, historical, scientific, architectural, spiritual, technological and/or social significance. The process of deciding why and whether a place is of heritage significance is called a heritage assessment. Understanding heritage significance is essential to making sound decisions about the future of the heritage resource, to assess development proposals and to ensure the appropriate level of heritage management is arranged.

Assessment of the heritage value or significance of places and objects, and ensuring adequate legal protection, follows a clear sequence of actions, as follows:

- Identification of places and objects that have apparent value in heritage terms;
- Identification of significant factors that make the place or object valuable in heritage terms;
- Assessment of significance using heritage assessment criteria;
- Determination of degree of significance of the place or object (grading);
- Assignment of the appropriate level of formal legal protection and management by the relevant heritage authority.

A culturally significant resource or site is considered part of the national estate if it has cultural significance or any other special values due to:

- Its importance to the community, or pattern of South Africa's history;
- Its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural history;
- Its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
- Its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
- Its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- Its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- Its strong association with a particular community or cultural group for social, cultural or spiritual reasons;
- Its strong and special association with the life or work of a person, group or organisation of importance in the history of South Africa;
- Sites of significance in relation to the history of slavery.

The NHRA provides formal protections for National and Provincial Heritage Sites. Such sites must be declared by way of a notice in either the Government or Provincial Gazette. Provincial heritage resources authorities must compile and maintain a heritage register that lists the heritage resources in the province which they consider conservation worthy.

The NHRA provides two main protection mechanisms for heritage resources:

1. General protections: Structures older than 60 years (Section 34), archaeological and palaeontological remains (Section 35), and historical burials (Section 36). Section 38 of the NHRA lists certain categories of development which will require a heritage impact assessment to be undertaken should the provincial heritage authority (HWC) have reason to believe that heritage resources will be impacted.
2. Formal protections: Section 27 of the NHRA makes provision for the formal protection of heritage resources as a national or provincial heritage site, depending on whether they are deemed to be of Grade I or II heritage significance, respectively. Section 30 (Heritage Register) and Section 31 (Heritage Areas) provides formal protection for Grade III resources. Grade III, or local heritage resources, are to be protected under the provisions

of local authority zoning schemes (Land Use Planning Ordinance). Local heritage resources should be managed by the local authority, but the provincial heritage authority must first have deemed it competent to perform functions assigned to local authorities in terms of the NHRA.

The criteria² listed under Section 7 of the NHRA should be applied in assessing the significance of heritage resources for Grade I, II and III heritage resources, namely:

Table 1: Heritage Resource Grading

Grade I	Heritage resources with qualities so exceptional that they are of special national significance.
<u>Grade II</u>	Heritage resources which, although forming part of the national estate, can be considered to have special qualities which make them significant within the context of a province or a region.
<u>Grade III</u>	Other heritage resources worthy of conservation. Heritage resources assessment criteria, consistent with those set out in Section 3(3), must be used by a heritage resources authority or a local authority to assess the intrinsic, comparative and contextual significance of a heritage resource and the relative benefits and costs of its protection, so that the appropriate level of grading of the resource and the consequent responsibility for its management may be allocated in terms of Section 8.

There are numerous sections of the NHRA which set out what local authorities should do with respect to the identification, protection and management of heritage resources, including powers that can be conferred once the local authority is deemed competent. Specific sections of the NHRA make provision for:

- The designation and management of heritage areas [Section 26(1), 31(1) (5)(7), 34(1), 47)];
- The identification of heritage resources [Section 30(5)];
- The integration of heritage into planning [Section (31(8), 28(6))];
- The protection of heritage resources [Section 31(7)]; and
- The interpretation and use of heritage resources [Section (31(8), 44(1))].

The NHRA enables and encourages the integration of heritage management and planning functions. The provisions of Section 30(5) and Section 31 are explicit with respect to the responsibilities of planning authorities to compile a heritage inventory of heritage resources within their respective areas of jurisdiction, and to *designate and protect* “*areas of environmental or cultural value*” as *heritage areas*.

Section 30(5) requires that the heritage inventory is submitted to the provincial heritage

² In terms of Section 7(1) of the NHRA, published regulations providing for grading systems and heritage resources assessment criteria (Government Gazette No. 24893. Government Notice No. 694 dated 30 May 2003).

authority, i.e. Heritage Western Cape, which shall then consult with the owners of properties proposed to be listed on the provincial heritage register and gazette the listing (Section 30(7) and (9)). Thereafter, and within six months of this gazetting, the planning authority must provide for the *protection and regulation of the listed heritage resources through the provisions in the zoning scheme*.

Section 31(1) of the NHRA requires that “A *planning authority must at the time of revision of a town or regional planning scheme, or the compilation or revision of a spatial plan, or at the initiative of the provincial heritage authority where in the opinion of the provincial heritage resources authority the need exists, investigate the need for the designation of heritage areas to protect any place of environmental or cultural interest*”. Where such a heritage area is designated in terms of a notice in a Provincial Gazette, either by a local authority or a provincial heritage authority, it is the responsibility of the local authority to provide for its *protection through the provisions of planning schemes or by-laws under the NHRA*.

1.2 Provincial Spatial Development Framework (PSDF 2014)

The Spatial Planning and Land Use Management Act (SPLUMA) was promulgated in 2013. This was followed by the Western Cape Land Use Planning Act (LUPA) promulgated in 2014. Later in 2014, the Department of Environmental Affairs and Development Planning (DEADP) finalised the Provincial Spatial Development Framework. This framework updated provincial spatial development policies and guidelines, and includes (for the first time) an Inventory and Policy Framework for Heritage and Scenic Resources. This improved the integration between heritage and planning contexts (see Winter and Oberholzer, Policy Framework for Heritage and Scenic Resources, 2014).

In terms of Spatial Policy 1 of the PSDF (2014), the “Provincial Sense of Place, Heritage and Cultural Landscapes” must be protected, managed and enhanced. According to the PSDF, many areas within the Stellenbosch Municipality fall into the category of “small towns, villages and hamlets, i.e. those most vulnerable at a Provincial or regional scale”. The special qualities of such a town are informed by the underlying logic and settlement structure of that town. This can be informed by:

- Landscape setting and edge conditions, e.g. topographical containment, agricultural edges;
- Scale and hierarchy, e.g. town, village and hamlet;
- Geometry, e.g. linear, grid and informal;
- Grain and texture, e.g. subdivision, street blocks, setbacks, built form;
- Distinctive rural morphology, e.g. river farmlands, agricultural allotments;
- Public realm, e.g. main street, public spaces;
- Planting patterns and role of water, e.g. leiwater.

1.3 Heritage Western Cape (HWC) Policies and Guidelines

The following Provincial guidelines are of relevance to the survey and management of heritage resources:

1.3.1 Policy for Marking Protected Sites (29 August 2012)

HWC adopted a policy for the erection of badges to mark sites that are formally protected. This was a precursor to the implementation of new badges for Provincial Heritage Sites. All former National Monuments, if graded as Grade II, should have the HWC Provincial Heritage Site badge.

1.3.2 Guidelines for Public Monuments and Memorials (26 August 2015)

Public monuments and memorials which have cultural significance or special value can be considered to be part of the national estate. They are protected as heritage resources (Sections 27 or 37) and managed, generally, through placement on the heritage register. This guideline recognizes the ability of public monuments and memorials to reflect the whole of South Africa's history and to express the identity of the nation, which includes different cultural groups.

1.3.3 Grading: Purpose and Management Implications (16 March 2016)

In terms of Section 8(4) of the NHRA, "A local authority is responsible for the identification and management of Grade III heritage resources and heritage resources which are deemed to fall within their competence in terms of this Act". Registered Conservation Bodies play an extremely important role in assisting with the identification of heritage resources which are important to the community, and can provide local knowledge in determining their significance. The benefits to local authorities in implementing heritage management in terms of the NHRA include the protection of local resources, giving certainty to local property owners as to what is and is not protected, and enabling them to have their applications dealt with at a local level. The specific management tools discussed in the guideline include Grading (Sections 7 and 8), Surveys (Section 30), Heritage Registers (Section 30) and Heritage Areas (Section 31).

Grading is an important step in the process towards the formal protection of a heritage resource, such as the declaration of a National Heritage Site, Provincial Heritage Site, or, in the case of Grade III heritage resources, the placing of a resource on the Heritage Register. It is not an end in itself, but a means of establishing an appropriate level of management for the purpose of future formal protection.

Heritage resources can be:

Graded: The heritage authority has applied its mind in order to determine a grading for the resource or sufficient information is available to determine the grading in terms of section 3(3) of the NHRA.

Not yet graded: The heritage authority has not yet applied its mind in order to determine a grading for the resource or there is not, yet, sufficient information to determine the grading.

NCW: Not conservation-worthy. The heritage authority has applied its mind and the resource does not have enough heritage significance to be included in the National Estate, i.e. Insufficient Heritage Significance or "Ungradeable". This category is important as not all old places or structures are significant in terms of the NHRA.

Table 2: Grade III Heritage Resources subcategories

Grade IIIa	Buildings and sites that have sufficient intrinsic significance to be regarded as local heritage resources; and are significant enough to warrant that any alteration is regulated. Such buildings and sites may be representative, being excellent examples of their kind, or may be rare. In either case, they should receive maximum protection at local level.
Grade IIIb	Buildings and/or sites of a marginally lesser significance than Grade IIIa and/or of lesser quality. Such buildings and sites may have similar significances to those of a Grade IIIa building or site, but to a lesser degree. Such buildings and sites may be representative, being excellent examples of their kind, or may be rare, but less so than Grade IIIa examples. They would receive less stringent protection than Grade IIIa buildings and sites at local level, and in this context, internal alterations should not be regulated.
Grade IIIc	Buildings and/or sites where significance is, in large part, their contribution to the character or significance of the environs.

1.4 Municipal Policy and Planning Context

**1.4.1 Zoning Schemes under the Land Use Planning Ordinance (LUPO):
(a) Special Overlay Zones**

At the local level, the most effective means for protecting areas of heritage significance has been through the designation of Special Areas / Conservation Areas / Special Overlay Zones in terms of the provisions of their municipal zoning schemes.

An alternative legal mechanism for the protection of areas of heritage significance is through separate municipal by-laws rather than zoning schemes. However, this alternative is not desirable from an integrated planning and heritage perspective. Separate laws for planning and heritage functions at a municipal level is likely to undermine the ability to integrate and balance planning and heritage issues.

Many municipalities are still in the process of combining their various zoning schemes and inherited substructures into one single 'integrated' zoning scheme. There are possible risks to heritage environments from integrated zoning schemes, such as over-simplification to a "one size fits all" approach. Common examples are inappropriate building set-backs from streets and provisions for parking, which can adversely impact or even destroy the historical character and fabric of rural towns and villages.

Proposed **Special Overlay Zones** within the Stellenbosch Municipality include the rural landscapes of Jonkershoek Valley, Idas Valley and Dwars River Valley, in addition to the core town Heritage Areas of Stellenbosch and Franschhoek. Several villages and town areas are identified as Townscape Character Areas (Heritage Inventory: Phase 3 document), which should also be integrated into the zoning scheme as Special Overlay Zones.

Zoning scheme provisions can also be used to protect scenic routes. Stellenbosch Municipality has designated a number of routes within the Stellenbosch municipal area as **Scenic Overlay Zones**.

Additionally, it is strongly recommended that the Zoning Scheme include a definition for grading, so that the grading system for properties within the Stellenbosch Municipality can be aligned with, but stand-alone from, the NHRA. The relevant gradings for the management of

heritage resources within Stellenbosch Municipality are outlined in Table 5 below.

1.4.2 Recommended municipal zoning scheme by-laws (HWC)

HWC's Short Guide to Grading suggests model clauses that could be used in by-laws to protect and manage Grade IIIa and IIIb heritage resources, and also a model clause for creating Heritage Areas / Heritage Overlay Zones and regulating development within such areas. With respect to Grade IIIc buildings and sites, these would only be protected and regulated if the significance of the environs is sufficient to warrant protective measures. In other words, these buildings and/or sites will only be protected if they are within declared Heritage Areas or Heritage Overlay Zones.

Table 3: Proposed Municipal By-law Clause

Grade IIIa	No Grade IIIa building or structure and/or listed on the Provincial Heritage Register shall be demolished, altered or extended nor shall any new building or structure be erected on the property occupied by such building or structure without the Municipality's special consent; the Municipality shall take account of the provincial heritage resources authority's requirements; and the Municipality shall not grant its special consent if such proposed demolition, alteration, extension or new building or structure will be detrimental to the character and/or significance of the building or structure
Grade IIIb	No Grade IIIb building or structure and/or listed on the Provincial Heritage Register, other than an internal wall, surface or component, shall be demolished, altered or extended nor shall any new building or structure be erected on the property occupied by such building or structure without the Municipality's special consent; the Municipality shall take account of the provincial heritage resource authority's requirements; and the Municipality shall not grant its special consent if such proposed demolition, alteration, extension or new building or structure will be detrimental to the character and/or significance of the building or structure
Conservation Area	The following provisions shall apply within an area listed hereunder and depicted on the Zoning Map as being a Conservation Area: (a) No building or structure other than an internal wall or partition therein shall be demolished or erected unless written application has been made to the Municipality and the Municipality has granted its special consent thereto; (b) The Municipality shall not give its special consent if such demolition, alteration, extension erection, as the case may be, will be detrimental to the protection and/or maintenance and/or enhancement of the architectural, aesthetic and/or historical character and/or significance, as the case may be, of the area in which such demolition, alteration, extension or erection is proposed.

1.4.3 Protection and management of significant landscapes and routes of heritage and scenic value

A number of practical issues need to be considered regarding the appropriate protection and management of landscapes and scenic routes of heritage and scenic value, especially in cases

where these cut across municipal boundaries, cover an expansive area and/or involve different components and levels of significance. Landscapes of existing or proposed Grade I and II heritage status would not necessarily benefit from a blanket set of heritage controls. Formal protection may need to be accompanied by exemptions for certain types of interventions (e.g. relating to day-to-day farming operations within productive agricultural areas). Some may be more appropriately managed at municipal level by way of special overlay zones, delegations and/or by joint heritage agreements between the relevant heritage and competent planning authority.

1.4.4 Heritage Agreement

Section 42 of the NHRA makes provision for heritage agreements (a binding contract) to be entered into between heritage authorities and others regarding the management of a heritage resource, provided that the consent of the owner of the resource is given. This legal mechanism can resolve practical issues relating to the appropriate management of heritage resources requiring the co-ordination and co-operation of various role-players and decision-making authorities.

1.4.5 Heritage Component of Spatial Development Frameworks

Heritage input into the preparation of Spatial Development Frameworks (SDFs) is necessary to ensure effective integration of heritage management and planning issues within significant heritage contexts, such as Stellenbosch Municipality. The scope of heritage input at SDF level must include the heritage inventory and should refer to general heritage principles and guidelines at a spatial level, in particular to the heritage implications of growth management strategies, e.g. urban edge demarcation, densification strategies and infill development. This CMP plays a strategic role in that process.³

1.5 Institutional Arrangements for Administration of the CMP

The Landscape Units, Scenic Routes and Heritage Sites have all been graded according to the HWC Grading guidelines. The grading carries clear legal responsibilities, management implications and guidelines for development.

Table 4: Grading and Management Strategies

Grading	Management Strategies	
	Sites	Landscapes, Townscapes and Scenic Routes

³ The implementation of this CMP will focus specifically on impacts to heritage resources as identified in the Stellenbosch Municipal Heritage Inventory. Impacts to biodiversity, ecological resources, watercourses and other kinds of environmental resources are understood to be managed in terms of other legislation such as Water Services Act (1997), National Water Act (1998), Protected Areas Act (2003), Western Cape Ecological Communities Bill (2010), NEM Air Quality Act (2004), NEM Biodiversity Act (2004), NEM Waste Act (2004), MPRDA (2008), World Heritage Convention Act (1999), Western Cape Nature Conservation Board Act (1998), Western Cape Biodiversity Spatial Plan (2017), Western Cape Biosphere Reserves Act (2011), Western Cape Land Administration Act (1998), Western Cape Nature Conservation Laws Amendment Act (2000), National Forests Act (1988), Conservation of Agricultural Resources Act (1993) and others. Where impacts to such resources in turn negatively impact on the heritage significance of a place, guidelines are recommended to manage such impacts.

Grade I	Declaration ito s.27 Management by SAHRA	Declaration ito s.27 Management by SAHRA
Grade II	Declaration ito s.27 Management by HWC	Proposed SOZ with management criteria as per the CMP, and a Heritage Agreement with HWC
Grade IIIa	Placement on Provincial Register ito section 30(7)	Proposed SOZ with management criteria as per the CMP
Grade IIIb	Placement on Provincial Register ito section 30(7)	Proposed SOZ with management criteria as per the CMP
Grade IIIc	Placement on Provincial Register ito section 30(7)	Proposed SOZ with management criteria as per the CMP
NCW	Apply to lift s34(1) to HWC	Apply to lift s34(1) to HWC

1.5.1 Possible Ways Forward: National Heritage Resources Act:

(a) Grade III Sites (section 30 of the NHRA):

In terms of the NHRA, once an inventory has been approved by HWC (as the Stellenbosch ones have), then:

- The owner of each graded structure must be consulted. The regulations being drafted by HWC will determine how this consultation must take place.
- Once the owner has been consulted, the Heritage Register as per the inventory must be published in the Provincial Gazette by HWC.
- Within 6 months of gazetting, the Stellenbosch Municipality must make provision for the protection of the Heritage Register buildings in terms of its by-laws or zoning scheme.
- Once the by-laws are approved, the Stellenbosch Municipality becomes the decision-maker for the Heritage Register and the provisions of Section 34 fall away (however Sections 35, 36, 38 etc still apply).
- The municipality can mark the Heritage Register sites with a badge.

(b) Landscape Units, Townscapes and Scenic Routes (Section 31 of the NHRA):

In terms of the NHRA, once an inventory has been approved by HWC (as the Stellenbosch ones have), and specific areas of heritage significance have been identified for formal protection, then:

- The owners of all properties within the identified area must be consulted. The regulations being drafted by HWC will determine how this consultation must take place.
- Once the owners and HWC have been consulted, the Heritage Area can be designated by publication of a notice in the Provincial Gazette.
- Within 6 months of the publication of the gazette, the Stellenbosch Municipality must make provision for the protection of the Heritage Area in terms of its zoning scheme (HPOZ).

- Once the by-laws are approved, the Stellenbosch Municipality becomes the decision-maker for the Heritage Area.
- The municipality can mark the Heritage Area with a badge.

1.5.2 Possible Ways Forward: Stellenbosch Spatial Development Framework (SDF) and Integrated Zoning Scheme (IZS)

The current draft Scheme makes provision for Urban and Rural Conservation Overlay Zone areas. The Stellenbosch and Franschhoek Urban Conservation Areas preserve the special areas status quo of the current schemes. The Idas Valley, Dwarsriver and Jonkershoek Rural Conservation Overlay Zone are new areas which were based on the demarcated cultural landscapes and other approved studies. The municipality can demarcate other such overlay zone areas (based on new approved studies/Council policies/SDF) or change the current demarcations. The municipality can control certain activities in overlay zone areas by specifying additional controls in specified areas. There is therefore significant scope for the Municipality to amend the Scheme in future with more detailed provisions, or to demarcate new Urban and Rural Conservation Areas or Special Overlay Zones (SOZs), or to add more specific provisions for any of the existing or future areas. In all of these Overlay Zone areas, any development requires the municipality's approval before it can proceed (refer to the Scheme for the detailed requirements).

1.5.3 Way forward for the implementation of the CMP

Although Section 31 of the NHRA provides Heritage Areas as a mechanism to manage areas of heritage significance, **it is proposed that the landscape units identified as having heritage significance in the Stellenbosch Municipal Heritage Inventory (ie. graded II, IIIa, IIIb or IIIc) be managed through the provisions of the Stellenbosch SDF and IZS through Special Overlay Zones.** In this way, the Stellenbosch Municipality will ensure compliance with the criteria for decision-making proposed in this CMP (i.e. to ensure the conservation and management of the identified heritage significance of the landscape units) before making any decisions to approve any proposed development.

It is proposed that the **Department of Spatial Planning, Heritage and Environment of the Directorate Planning and Economic Development** of Stellenbosch Municipality is responsible for the overarching administration and implementation of the CMP. The Department is currently responsible for, among others, the following functions:

1. Serving as the municipal representative and interface with all other spheres of government as it relates to heritage planning and management.
2. Facilitating and regulating heritage planning and management in accordance with the SDF and the associated package of municipal policies which collectively represent the common ground for all land-use decisions in the municipality.
3. Assisting municipal departments and other stakeholders with the incorporation of the directives of the CMP in their sectoral plans and the package of municipal policies.
4. Ensuring ongoing compliance of sectoral departments and other stakeholders with the CMP and the package of municipal policies.