

## Appendix Two

### Extracts from South African legislation pertinent to biophysical and cultural heritage.

Legislation under which resources are managed.	Responsible Department, or administrative agency.	Synopsis of content related to biophysical environment.	Synopsis of content related to cultural environment.
National Parks Act. No 57 of 1976.	South African National Parks	Regulate the creation of National Parks that meets the criteria of the Act. See Section 2 Item 2.1.3 for an explanation of the content related to biophysical environment.	See Section 2 Item 2.1.3 for a full explanation of the content related to cultural environment.
Culture Promotion Act, No. 35 of 1983	Department of Arts, Culture and Technology.	None	To provide for the preservation, development, fostering, and extension of culture in the Republic by planning, organizing, co-ordinating and providing facilities for the utilization of leisure and for non-formal education; for the fostering of educational and development and promotion of cultural relations with other countries; and for the establishment of regional councils for cultural affairs...
Environment Conservation Act. No. 73 of 1989	Department of Environmental Affairs and Tourism	<p>2.(1) Subject to the provision of subsection (2) the Minister may by notice in the Gazette determine the general policy to be applied with a view to:</p> <p>(a) the protection ecological processes, biophysical systems and the biophysical beauty as well as the preservation of biotic diversity in the biophysical environment;</p> <p>(b) the promotion of sustained utilization of species and ecosystems and the effective application and reuse of biophysical resources;</p> <p>(c) the protection of the environment against disturbance, deterioration, defacement, poisoning or destruction as a result of man-made structures, installation, processes all products or human activity; and</p> <p>(d) the establishment, maintenance and improvements of environments which contribute to a generally acceptable quality of life with the inhabitants of the Republic of South Africa.</p> <p>See Section Two Item 2.1.4 for an explanation of the content related to biophysical environment.</p>	<p>Section 2 of the principal Act is hereby amended</p> <p>(b)by the addition to subsection (1) of the following paragraphs: ('(d) the establishment and maintenance and improvement of acceptable human living environments which contribute to a generally acceptable quality of life for the inhabitants in accordance with the environmental values and environmental needs of communities of the Republic of South Africa;';</p> <p>(b) by the addition to subsection (1) of the following paragraphs: (e) the promotion of the effective management of cultural resources in order to ensure the protection and responsible use thereof;</p> <p>(f)the promotion of environmental education in order to establish an environmentally literate community with a sustainable way of life;</p> <p>See Section 2 Item 2.1.4 for a full explanation of the content related to cultural environment</p>

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Physical Planning Act, No. 125 of 1991	Department of Land Affairs		
Minerals Act , No 50 of 1991	Department OF Minerals and Energy	The Mining Act require a Environmental Management Programme Report (EMPR) to be completed according to the Aide-Memoir 1992, as published by the Department of Mineral and Energy. The EMPR requires the assessment of the possible impact prospecting or mining activities would have on the environment, before permission and permits for these activities are to be given.	The Mining Act require a Environmental Management Programme Report (EMPR) to be completed according to the Aide-Memoir 1992, as published by the Department of Mineral and Energy. The EMPR requires the assessment of the possible impact prospecting or mining activities would have on the social, cultural and archaeological resources, before permission and permits for these activities are to be given
Tourism Act, No. 72 of 1993	Department of Environmental Affairs and Tourism	3. The object of the board shall be, with due regard to the sustainability of environmental resources, to promote tourism by encouraging persons to undertake travels to and in the Republic	3. The object of the board shall be, with due regard to the sustainability of environmental resources, to promote tourism by encouraging persons to undertake travels to and in the Republic
Maritime Zones Act, no 15 of 1994	Department of Transport	The Act provide for the maritime zones of the Republic; and to provide for matters nested therewith: to include Internal waters, Territorial waters, Maritime cultural zone, Contiguous zone, Exclusive economic zone, and the Continental shelf.	Maritime cultural zone 6. (1) The sea beyond the territorial waters referred to in section 4, but within a distance of twenty four nautical miles from the baselines, shall be the maritime cultural zone of the Republic. (2) Subject to any other law the Republic shall have, in respect of objects of an archaeological or historical nature found in the maritime cultural zone, the same rights and powers as it has in respect of its territorial waters.
Development Facilitation Act, No. 67 of 1995	Departments of Land Affairs, Housing, Agriculture,	Definitions: (viii) 'environment' means the environment as defined in section 1 of the Environment Conservation Act, 1989 (Act No. 73 of 1989); (xiv) (ix) 'environmental evaluation' means an evaluation of the environmental impact of a proposed land development, conducted in accordance with the integrated environmental management guidelines (h) Policy, administrative practice and laws should promote sustainable land development at the required scale in that they should- (iii) promote sustained protection of the environment; (v) ensure the safe utilisation of land by taking into consideration factors such as geological formations and hazardous undermined areas. (viii) encourage environmentally sustainable land development practices and processes.	General principles for land development (c) Policy, administrative practice and laws should promote efficient and integrated land development in that they- (i) promote the integration of the social, economic, institutional and physical aspects of land development; (iv) optimise the use of existing resources including such resources relating to agriculture, land, minerals, bulk infrastructure, roads, transportation and social facilities;

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Constitution of the Republic of South Africa. No 108 of 1996	The Constitutional Court of South Africa	<p>Chapter Two- Bill of Rights Environment 24. Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of biophysical resources while promoting justifiable economic and social development</p>	<p>Chapter Two- Bill of Rights Language and culture 30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights. Cultural, religious and linguistic communities 31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community to enjoy their culture, practise their religion and use their language; and to form, join and maintain cultural, religious and linguistic associations and other organs of civil society. (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.</p>
National Water Act, No. 36 of 1998	Department of Water Affairs and Forestry	<p>Definitions and interpretations (xvii) protection in relation to a water resource means - (a) maintenance of the quality of the water resource to the extent that the water resource may be used in an ecologically sustainable way; (b) prevention of the degradation of the water resource; and (c) the rehabilitation of the water resource, (xxi) "riparian habitat" includes the physical structure and associated vegetation of the areas associated with a watercourse which are commonly characterised by alluvial soils, and which are inundated or flooded to an extent and with a frequency sufficient to support vegetation of species with a composition and physical structure distinct from those of adjacent land areas; (xxiv) "watercourse" means - (a) a river or spring; (b) a biophysical channel in which water flows regularly or intermittently; (c) a wetland, lake or dam into which, or from which, water flows; (d) any collection of water which the Minister may, by notice in the Gazette, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks; (xxvii) "water resource" includes a watercourse, surface water, estuary, or aquifer;</p>	None

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EIA Implementation of Section 21, 22 and 26 of the Environment Conservation Act, April 1998	Department of Environmental Affairs and Tourism	Regulates Environmental Impact Assessments. See Section 2 Item 2.1.4.1 for an explanation of the contents related to the biophysical environment.	Regulates Environmental Impact Assessments. See Section 2 Item 2.1.4.1 for an explanation of the content related to cultural environment
National Forest Act, No. 84 of 1998	Department of Water Affairs and Forestry	<p>The purposes of this Act are to-- promote the sustainable management and development of forests for the benefit of all; create the conditions necessary to restructure forestry in State forests; provide special measures for the protection of certain forests and trees; promote the sustainable use of forests for environmental, economic, educational, recreational, cultural, health and spiritual purposes; promote community forestry; promote greater participation in all aspects of forestry and the forest products industry by persons disadvantaged by unfair discrimination.</p> <p>Interpretation.- 'biological diversity' means genetic diversity, species diversity and ecosystem diversity; 'forest' includes-- a biophysical forest, a woodland and a plantation; the forest produce in it; and the ecosystems which it makes up 'habitat' means the place where a plant or animal biophysically grows or lives</p> <p>(3) The principles are that-- biophysical forests must not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use is preferable in terms of its economic, social or environmental benefits; a minimum area of each woodland type should be conserved; and forests must be developed and managed so as to-- conserve biological diversity, ecosystems and habitats; (sustain the potential yield of their economic, social and environmental benefits; promote the fair distribution of their economic, social, health and environmental benefits; promote their health and vitality; conserve biophysical resources, especially soil and water; conserve heritage resources and promote aesthetic, cultural and spiritual values; and advance persons or categories of persons disadvantaged by unfair discrimination.</p>	<p>The purposes of this Act are to-- promote the sustainable use of forests for environmental, economic, educational, recreational, cultural, health and spiritual purposes;</p> <p>(3) The principles are that-- conserve heritage resources and promote aesthetic, cultural and spiritual values; and</p> <p>12. Declaration of trees as protected.--</p> <p>(1) The Minister may declare-- a particular tree; a particular group of trees; a particular woodland; or trees belonging to a particular species, to be a protected tree, group of trees, woodland or species.</p> <p>(2) The Minister may make such a declaration only if he or she is of the opinion that the tree, group of trees, woodland or species is not already adequately protected in terms of other legislation.</p> <p>(3) In exercising a discretion in terms of this section, the Minister must consider the principles set out in section 3 (3).</p>

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National Environmental Management Act, No. 107 of 1998	Department of Environmental Affairs and Tourism	To provide for cooperative environmental governance by establishing principles for decision making on matters affecting the environment, institutions that will promote cooperative governance and procedures for coordinating environmental functions exercised by organs of state; and to provide for matters connected therewith. See Section Two Item 2.1.5 for an explanation of the content related to the biophysical environment.	To provide for cooperative environmental governance by establishing principles for decision making on matters affecting the environment, institutions that will promote cooperative governance and procedures for coordinating environmental functions exercised by organs of state; and to provide for matters connected therewith. See Section Two Item 2.1.5 for an explanation of the content related to the biophysical environment.
Cultural Institutions Act, No. 119 of 1998	Department of Arts, Culture and Technology.	None	To ... provide for the establishment of certain institutions, to establish a National Museums Division; and to provide for matters connected therewith. Establishment of declared institutions and specifically Flagship Institutions.
National Heritage Council Act, No. 11 of 1999	Department of Arts, Culture and Technology.	To establish a juristic person to be known as the National Heritage Council; to determine its objects, functions and method of work; to prescribe the manner in which it is to be managed and governed; to regulate its staff matters and financial affairs; and to provide for matters connected therewith. Definitions: (iii) "living heritage" means the intangible aspects of inherited culture, and may include— (h) the holistic approach to nature, society and social relationships;	To establish a jurists person to be known as the National Heritage Council; to determine its objects, functions and method of work; to prescribe the manner in which it is to be managed and governed; to regulate its staff matters and financial affairs; and to provide for matters connected therewith. Definitions: (iii) "living heritage" means the intangible aspects of inherited culture, and may include— (a) cultural tradition; (b) oral history; (c) performance; (d) ritual; (e) popular memory; (f) skills and techniques; (g) indigenous knowledge systems; and (h) the holistic approach to nature, society and social relationships;

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National Heritage Resources Act, No. 25 of 1999	Department of Arts, Culture and Technology.	<p>The Act promotes the holistic approach to nature, society and social relationships, however, little is stated regarding biophysical environment.</p> <p>'conservation', in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance;</p> <p>(xxxii) 'place' includes-</p> <p>(a) a site, area or region;</p> <p>(d) an open space, including a public square, street or park; and</p> <p>(e) in relation to the management of a place, includes the immediate surroundings of a place.</p> <p>See Section Two Item 2.1.6 for an explanation of the content related to biophysical environment</p>	<p>The purpose of the Act is to introduce an integrated and interactive system for the management of the national heritage resources; to promote good government at all levels, and empower civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations;</p> <p>to lay down general principles for governing heritage resources management throughout the Republic;</p> <p>to introduce an integrated system for the identification, assessment and management of the heritage resources of South Africa;</p> <p>to establish the South African Heritage Resources Agency together with its Council to co-ordinate and promote the management of heritage resources at national level;</p> <p>to set norms and maintain essential national standards for the management of heritage resources in the Republic and to protect heritage resources of national significance;</p> <p>to control the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries;</p> <p>to enable the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources;</p> <p>to provide for the protection and management of conservation-worthy places and areas by local authorities; and</p> <p>to provide for matters connected therewith</p> <p>11. There is hereby established an organisation to be known as the South African Heritage Resources Agency (SAHRA) which shall be a body corporate capable of suing and being sued in its corporate name and which shall be governed by a Council established in terms of section 14.</p> <p>Object of SAHRA</p> <p>12. The object of SAHRA is to co-ordinate the identification and management of the national estate.</p> <p>See Section Two Item 2.1.6 for an explanation of the content related to cultural environment.</p>

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World Heritage Convention Act, No. 49 of 1999	Department of Environmental Affairs and Tourism	<p>(i) the cultural and environmental protection and sustainable development of, and related activities within, World Heritage Sites;</p> <p>To provide for the incorporation of the World Heritage Convention into South African law; the enforcement and implementation of the World Heritage Convention in South Africa; the recognition and establishment of World Heritage Sites; the establishment of Authorities and the granting of additional powers to existing organs of state; the powers and duties of such Authorities, especially those safeguarding the integrity of World Heritage Sites; where appropriate, the establishment of Boards and Executive Staff Components of the Authorities; integrated management plans over World Heritage Sites; land matters in relation to World Heritage Sites; financial, auditing and reporting controls over the Authorities; and to provide for incidental matters.</p>	<p>(i) the cultural and environmental protection and sustainable development of, and related activities within, World Heritage Sites;</p> <p>To provide for the incorporation of the World Heritage Convention into South African law; the enforcement and implementation of the World Heritage Convention in South Africa; the recognition and establishment of World Heritage Sites; the establishment of Authorities and the granting of additional powers to existing organs of state; the powers and duties of such Authorities, especially those safeguarding the integrity of World Heritage Sites; where appropriate, the establishment of Boards and Executive Staff Components of the Authorities; integrated management plans over World Heritage Sites; land matters in relation to World Heritage Sites; financial, auditing and reporting controls over the Authorities; and to provide for incidental matters.</p>
Council for Built Environment Act, No. 43 of 2000	Department of Public Works	<p>3. The objects of the council are to—</p> <p>(a) promote and protect the interests of the public in the built environment;</p> <p>(b) promote and maintain a sustainable built environment and biophysical environment;</p> <p>(c) promote ongoing human resource development in the built environment;</p> <p>(d) facilitate participation by the built environment professions in integrated development in the context of national goals;</p> <p>(e) promote appropriate standards of health, safety and environmental protection within the built environment;</p>	<p>Although not directly stated, one may infer that cultural heritage falls within the realm of the built environment.</p> <p>3. The objects of the council are to—</p> <p>(a) promote and protect the interests of the public in the built environment;</p> <p>(b) promote and maintain a sustainable built environment and biophysical environment;</p> <p>(c) promote ongoing human resource development in the built environment;</p> <p>(d) facilitate participation by the built environment professions in integrated development in the context of national goals;</p> <p>(e) promote appropriate standards of health, safety and environmental protection within the built environment;</p>

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White Paper on the Development and Promotion on Tourism in South Africa	Department of Environmental Affairs and Tourism.	<p>Item 5.6 addresses Environmental management Specific principles and policy guidelines for environmental management as it relates to the tourism industry are as follows:</p> <ul style="list-style-type: none"> <li>• sustainable and responsible tourism development should be promoted and encouraged, inter alia by means of incentives to private enterprises and communities</li> <li>• make mandatory the conduct of Integrated Environmental Management procedures for all new tourism projects</li> <li>• encourage ongoing social and environmental audits of tourism projects conducted in an inexpensive, rapid and participatory way</li> <li>• encourage tourism development in areas where tourism offers a competitive form of land-use and ensure that tourism is integrated into land-use plans for such areas</li> <li>• explore creative means of ensuring that neighbouring communities participate in and benefit from economic activities generated in and around conservation areas</li> <li>• encourage the creation of successful pilot tourism programmes which demonstrate, in tangible ways, the benefits that ecologically sensitive tourism schemes can have over other, more damaging forms of land use</li> <li>• promote sustainable and responsible consumption of water and energy in tourism plants, using readily available technology and encouraging sustainable waste disposal, green packaging and recycling</li> <li>• support mandatory environmental management practices in ecologically sensitive areas such as the coastal zone, wetlands, etc.</li> </ul> <p>ensure tourism plant does not deprive communities of access to coastal resources needed for their livelihoods</p>	<p>Item 5.7 addresses cultural resource management<sup>1</sup>: Apart from its biodiversity South Africa also has a unique cultural diversity. There exists little knowledge about the cultural resources within the environment and consequently the unconscious destruction of these biophysical assets poses a major threat. The cultural environment includes much more than museums and unique archaeological sites. It also includes mission settlements, sites of slave occupation, urban space used for ritual purposes, rock art sites, rock formations and biophysical landscapes which have national and international cultural significance. The Government is committed to effectively managing and conserving the cultural resources of South Africa. The following guidelines should apply:</p> <ul style="list-style-type: none"> <li>• ensure tourism takes note of cultural heritage resources within specific communities and environments.</li> <li>• cultural resources should be managed to the negotiated benefit of all interested parties within the communities.</li> <li>• access to management of cultural resources should be as broad as possible within specific communities and should promote co-operation between all affected parties.</li> </ul> <p>Land use planning and development projects for tourism should include effective protection and sustainable utilisation of cultural resources.</p>

<sup>1</sup> Government of South Africa, May, 1996. White paper, The Development and Promotion of Tourism in South Africa. Department of Environmental Affairs and Tourism