

THE STATUS OF THE COH WHS UNDER THE CONVENTION- LEGAL REVIEW

The World Heritage Committee inscribed the COH WHS onto the World Heritage List in December 1999 as a cultural property and not as a natural property. The conditions in the Operational Guide lines for the preservation of natural properties, namely, the conditions of integrity, are more stringent than the conditions for the preservation of cultural properties, namely, the conditions of authenticity. In order to maintain the listing of the COH WHS as a cultural property, the Republic of South Africa must continue to comply with these conditions of authenticity which require:

- adequate *legal (whether at the national, provincial or municipal level) and/or well-established contractual protection and management mechanisms* to preserve the COH WHS; and
- effective implementation of such laws or contracts, and management mechanisms by way of *suitable administrative arrangements*.

The conditions of integrity for natural properties are not obligatory for cultural properties such as the COH WHS. These obligations of integrity entail, *inter alia*:

- adequate long-term legislative, regulatory or institutional protection;
- the use of zoning to identify areas immediately adjacent to the WHS, so-called buffer zones, to protect the property from the direct effects of human encroachment and the impacts of outside resource use; and
- a management plan for the property which may differentiate between areas in the WHS by designating distinct management zones such as core, buffer and transitional zones.

The Republic of South Africa is not obliged to comply with the conditions of integrity in its management of the COH WHS. This means that, under the Convention, the use of zoning and a management plan are not strictly necessary for the preservation of the COH WHS.

Nevertheless, the fact that the COH WHS was not also inscribed onto the World Heritage List as a natural property does not mean that the COH WHS has no natural conservation value. The Convention does not prohibit the Republic of South Africa from managing the COH WHS as if it were a natural property. This would be in excess of the conditions of authenticity for cultural properties and more in line with the conditions of integrity for natural properties (including, the use of a zoning system in the management of the COH WHS).

The consultants share the view that the integrity of the natural environments included in the COH WHS (e.g. the geophysical formations such as the dolomitic ridges) is probably necessary for the preservation of the cave formations at the COH WHS (including their visual quality and “sense of place”). This applies particularly to those cave formations yet to be identified which house or may house palaeontological and other cultural heritage resources. In other words, as a practical matter, the preservation of the cultural heritage of the COH WHS is dependent on the preservation of its natural heritage. If there is a sound basis in fact for this view, then the alignment of the management strategy for the COH WHS with the conditions of integrity by way of the adoption by DACEL (as the COH-WHA) of environmental management standards would be legitimate. This would be provided that those standards are reasonable and rationally related to the cultural heritage preservation objectives as set forth in the WHCA and the Convention.

THE KEY CULTURAL AND ENVIRONMENTAL HERITAGE LEGISLATION IMPACTING ON LAND USE ACTIVITIES IN THE COH WHS

The key cultural and environmental heritage legislation impacting on the COH WHS are the WHCA, the NHRA, the National Environmental Management Act No. 107 of 1998 (the “NEMA”) and Section 23 of the Environment Conservation Act No. 73 of 1989 (the “ECA”), each as amended.

WORLD HERITAGE CONVENTION ACT

In the area of the COH WHS, the WHCA falls under the administration of the Environmental Minister and, once established, the COH -WHA. The Environmental Minister may make regulations for the management and preservation of the COH WHS, and may empower the COH -WHA to make rules on such matters affecting the COH WHS as prescribed by the Environmental Minister.

The main import of the WHCA is that the COH WHS must be managed and preserved in accordance with:

- the principles of sustainable development set forth in the WHCA and other legislation such as the NHRA and the NEMA, which together entail the balancing of socio-economic development needs with cultural and/or environmental heritage conservation needs; and
- an integrated management plan (“IMP”) approved by the Environmental Minister, subject however, to applicable law such as the NHRA and the NEMA.

The distinguishing feature of the WHCA is that it is expressly subject to applicable law, in particular, the NHRA and the NEMA which prevail to the extent of any inconsistency with the WHCA. These two Acts, therefore, remain as the pre-
- eminent pieces of cultural conservation and environment conservation legislation. Stated differently, the WHCA is a parallel regulatory instrument not intended to override or replace existing legislation, but instead, intended to be co-ordinated within and otherwise complement the existing regulatory framework.

NATIONAL HERITAGE RESOURCES ACT

According to the NHRA and its regulations, palaeontological sites and materials and any national monuments or cultural treasures declared as such under the now repealed National Monuments Act No. 28 of 1969 (the "NMA"), which are located in the COH WHS, fall under the administration of the South African Heritage Resources Agency (the "SAHRA"). This is unless Gauteng establishes its own Heritage Resources Authority (the "HRA"). However, if the SAHRA declares the COH WHS to be a National Heritage Site (the "NHS"), and any palaeontological materials located therein as "heritage objects", then the COH WHS and any such heritage objects will remain under the administration of the SAHRA notwithstanding the appointment of the Gauteng HRA. It has been assumed that the SAHRA will declare the COH WHS as a NHS and, accordingly, that the Gauteng HRA, once established, will not be the responsible HRA for cultural heritage matters affecting the COH WHS.

The main import of the NHRA and the regulations thereunder, is that it:

- provides for ownership by the State of those fossils that are not held by the possessor thereof under a permit (whether issued under the NHRA, the NMA or equivalent provincial legislation) and that are not registered with the SAHRA by 31 March 2002; and
- provides for notification to, and approval by, the SAHRA of certain types of land developments in all areas, and for compulsory assessments of and reporting on the potential impact of those land developments on heritage resources.

NATIONAL ENVIRONMENTAL MANAGEMENT ACT NO. 107 OF 1998 (THE "NEMA") AND SECTION 23 OF THE ENVIRONMENT CONSERVATION ACT NO. 73 OF 1989 (THE "ECA"), EACH AS AMENDED

In the area of the COH WHS, the NEMA and Section 23 of the ECA (which relates to the establishment of limited development areas, an "LDA") fall under the administration of the Environmental Minister, the Director General of the national Department of Environmental Affairs and Tourism (the "DEAT"), the Gauteng MEC for environmental matters (the "Gauteng Environmental MEC") and the head of DACEL (the "HOD DACEL").

The main import of the NEMA is that it:

- empowers the Gauteng Environmental MEC, with the concurrence of the Environmental Minister, to make regulations prohibiting or otherwise controlling specified new land use activities in a specified geographical area (such as the COH WHS), and to require environmental impact assessments of such specified activities prior to their commencement;
- empowers the HOD:DACEL to require land users (including those in the COH WHS) who have engaged or are engaging in land uses, whether lawful or unlawful, that have polluted or are polluting the environment to undertake measures for the remediation of the affected land; and
- empowers the Gauteng government to influence the content of the integrated development plan (the “IDP”) and spatial planning decisions of the WRDM.

The main import of Section 23 of the ECA is that it empowers the responsible authority in the Gauteng government to declare the whole or any part of the COH WHS an LDA. This would result in the automatic prohibition of any new land development in the LDA which is undertaken without an assessment of the impact thereof on the environment in the LDA or without the prior approval of the responsible authority.

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