1. INTRODUCTION

1.1 Introduction

vidamemoria heritage consultants were appointed by the City of Cape Town: Finance Directorate: Department Property Management to investigate the heritage status of the proposed Clifton Precinct development area and provide an assessment of the legal implications such designation may have on proposed development in terms of the National Heritage Resources Act (No 25 of 1999).

1.2 Scope of work

The scope of this statement considers an investigation into the heritage status of the proposed development area, investigates heritage proclamations, highlights legal implications and considers heritage status and legal implications of site within its immediate context.

1.3 Methodology

In compiling this statement the following was conducted:

- Consider designation as a conservation area
- Consider documentation held at South African Heritage Resources Agency and the City of Cape Town
- Consider heritage overlay zones and heritage areas
- Consider all heritage proclamations relevant to the site, including general and formal protections in terms of the National Heritage Resources Act
- Consider legal implications of any designations in terms of the National Heritage Resources Act
- Consider heritage status and legal implications of site within its immediate context

1.4 Limitations

- No public participation has been conducted as component of the investigation
- The report is not to be submitted by vidamemoria to Heritage Western Cape for consideration

1.5 Statement structure

Section 1: Introduction, scope of work, methodology, limitations 1
Section 2: Proclamations and background relevant to the proposed development area 2
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Relevant Extracts of the National Heritage Resources Act
2. PROCLAMATIONS AND BACKGROUND

Clifton Scenic Reserve was proclaimed as a national monument in 1948 within Government Gazette Notice 3932 dated 13/2/1948, by the Minister of the Interior in terms of the Natural and Historical Monuments, Relics and Antiques Act (Act 4 of 1934). The proclamation considered the area of land between the sea and Victoria Road from Fourth Beach at Clifton to Glen Beach at Camps Bay within the Municipality of Cape Town, in the Province of the Cape of Good Hope. Government Gazette Notice 4271 dated 28 October 1949 amended the description of the Clifton Scenic Reserve to make reference to the high water mark in a series of SG diagrams. Proclamation was supported and it was decided to permit provision of public amenities subject to the Commissions approval.

[Image of Gazette Notice 3932 dated 13/2/1948]

[Image of Clifton Scenic Reserve map]

Clifton on sea and district Bungalow-Key Clcababa1, Acc.No-83/418, Dew.No-711.40968712 CLI
A City Engineers Report (Ref 1/1985) examined the sale and lease of the bungalow sites. The report noted that sale to tenants was not a desirable alternative, many tenants would have to leave, as they would not be able to afford to purchase the properties. The report noted that views regarding sale of bungalows were made regardless of whether or not the area was a proclaimed national monument. Recommendations were made in the City Engineers report (Ref 120/1983) with regard to development conditions so as to maintain the (present) character of the bungalow areas. The Housing Committee of the City recommended the sale of sites in the bungalow areas subject to proclamation as national monuments so as to preserve the (present) character.

The 1985 City Engineer reports noted the apparent perception that proclamation would result in a halt to change was not well founded. Further to City Executive Committee decisions in June 1983 pertaining to the Bungalow areas, the National Monuments Council moved to provisionally declare all of the Bungalow areas and adjacent beaches as national monuments, seemingly at the request of the Bungalow Owners Association. The Council had objected to such provisional proclamations. In 1946 and later in 1989 Council objected to further proclamation proposals, suggesting that the areas be designated as conservation areas rather than monuments.

The City Engineer highlighted the importance of establishing a balance between private domain and public amenity, where it was felt that the bungalows and gardens contribute towards the public domain. The Engineers report highlights the responsible role of the Council in constraining the tendency to exert private domain over public land and access to beaches as well as to build ever larger buildings. It is thus understandable that the policies highlighted for the area would relate to use of land and role of the area in maintaining beaches as public resources and maintaining views. Policy A.1.2 dated 1983 (City Engineers report 120/1983) notes that the present built form character of the bungalow area should permit sympathetic and sensitive change, unless and until a use or uses may be decided by the Council, after 20 years have elapsed, as being of greater public benefit. Policy A.1.3 further states that options should be maintained for potential and presently unforeseen uses which may be for public benefit in the long term future.
Part of the Ridge was leased to a sports club, with Maidens Cove as a beach amenity for Coloured people. Between the amenity area developed by Council for the Coloured community and Victoria Road lies the Glen Country Club with bowling greens, a cricket oval and tennis courts. The club leased the ground and part had been fenced in, with additional fences denied in favour of landscaping. The original permanent occupants of Clifton were poor people and the bungalows were cheap structures, however, after the Second World War, the character of Clifton changed. Further to changing scale and nature of houses, the Council suggested conditions for control in 1981 for the area in general and the bungalows in particular. Access to the beach was considered a fundamental issue and it was suggested that the Council in consultation with the National Monuments Council investigate possibilities for reclamation of public land.

A City Engineers report (1983) refers to the historic importance of the Clifton area as relating to public amenity and history of resorts along the coast. Cape Towns’ best beach resorts were Woodstock and Muizenberg, however Clifton soon became popular and Council zoned the area as public open space.

In 1981 the Clifton Bungalow Owners Association objected to a plan by Council to lease a 2 ha site for a proposed hotel development, citing that the proposal would impact the public facilities in the area and result in environmental effects, calling for the conservation of Clifton in its current form. Reference was made to fine fabric built up steadily and sensitively within a picturesque part of the Peninsula.
Council Executive Committee minutes (1981) notes that Council had the legal right to sell any of its lands transferred to it by its Crown Grants dated 1923-05-09 for Clifton and 1915-04-22 for Camps bay and Bakoven. The later grant, under which the Council acquired seashore land from Maidens Cove, through Glen Beach and Camp Bay to and including Bakoven, included a condition ‘that the Government shall have the right of resuming at any time, without compensation, the land …. or any portion thereof, should it be required for Naval, Military or other public purposes’. The Council may legally lease any of the foregoing lands for 99 years, or any other period, with the same assumption of the condition by the lessee that the Government might resume ownership.

In 1981, The Clifton Scenic Reserve was a proclaimed national Monument and as such was subject to certain development controls exercised by the National Monuments Council. The reserve extends from the tennis courts south of the Ridge to the middle of the Bungalow Area at Glen Beach. The City Engineer report notes that nothing can be done which may damage, alter or constitute a removal from the proclaimed area in terms of the War Graves and National Monuments Act (Act 28 of 1969), without the approval of the national Monuments Council. The Act also stated that the National Monuments Council shall endeavour to ensure that land in the immediate vicinity of a monument is not developed in such a way that will affect the aspect of or view from the monument. However, little power is conferred on the National Monuments Council with regard to control over development or change on adjacent land. The National Monuments Council may however declare a new national monument provided certain qualifying criteria are met.

The shortage of first class hotel accommodation was highlighted by Council in 1981, felt to inhibit the development of the tourism industry. A new club building had been proposed, that could have been integrated within the terraces of a future hotel. The Clifton area was also identified as lacking facilities such as restaurants, cafes and bars where people can relax on terraces and enjoy sea and coastal views. The Ridge was thus identified as a ‘magnificent’ site for a first class international hotel. A large enough site replacing the tennis courts and parking facilities would accommodate a hotel but also a recreation and leisure center. It was envisaged that a complex of buildings would occupy the southern portion of the site with a small port providing beach access. The proposal included the removal of approximately 5 bungalows. Public right of way to be maintained was highlighted as an important consideration.

The proposal also included a number of residential units a, none of which would be permitted to exceed the level of Victoria Road, a scenic drive in terms of the provisions of the Town Planning Scheme. It was noted that guidelines and controls be enforced to avoid a negative impact not only just to Clifton but also on the coastline. A lease of no more than 50 years was proposed.
Significance of the Clifton Scenic Reserve was noted by the National Monuments Council as ‘preservation of a comparatively unspoilt beauty spot in the midst of a residential area, a stretch of the foreshore which retains the natural vegetation, of which but little remains elsewhere along this coast within the built-up area’. The preservation of the open space, on which no structures could obscure the view along the coast from the main road could be erected, would incorporate a portion of ground (to be) leveled and converted into a field for sports. The intention was that the portion between Glen Beach and Maidens Cove on the sea side and the main or Victoria Road will not be built upon but will, as far as possible be preserved in its natural state.

A meeting of the National Monuments Council in 1946 noted that the strip of untouched natural ground situated between the refuse tip and Glen Beach was recommended for preservation as open space. Such proposal was supported, however, it was recommended that such portion be attached to and form part of the adjoining land towards Clifton proposed to be laid out as recreation grounds for Europeans and non-European persons.

Formal objections were lodged by the Town Clerk in 1947 to the proclamation of open space between Victoria Road and the sea, Fourth Beach, Clifton to Glen Beach, Camps Bay. The objection noted that the area was already reserved under the town planning scheme as public open space and intended to be developed as part of the land as playing fields and the remainder in its natural state. It was noted that the natural scenic beauty of the area would not be disturbed. The Minister of Interior proclaimed the Clifton Scenic Reserve as a monument in terms of the Natural and Historical Monuments Relics and Amenities Act, Act 4 of 1934. Promulgated by Government Notice dated January 1948 which appeared in the Government Gazette 3932 of February 1948 in which the Clifton Scenic Reserve was described as follows:

‘The area of land between the sea and Victoria Road from Fourth Beach at Clifton to Glen Beach at Camps Bay within the Municipality of Cape Town in the Province of the Cape of Good Hope’

The effect of proclamation of the area was to prohibit any alterations, including the erection of any structures or the provision of public amenities without the prior written consent of the Commission.
In 1956, proposals to lease land to the Camps Bay and District Sporting and Social Club for sports facilities – part of the scenic reserve – was approved subject to the condition that no structures should interfere with the view of the rocks and the sea from Victoria Drive; and that no further development of similar nature will be allowed other than the leveling and grassing of the rubbish dumps.

Lease of City land to be leased to The Camps Bay and District Sports and Social Club, Clifton Scenic Reserve 1960 Sy413/1

Area approved by Historical Monuments Commission for Sports Field Development

Clifton Scenic Reserve 8/3/46/ 24/6/49
Further declaration of the bungalow areas drew criticism from the Chairman of the City Councils’ Town Planning Committee as well as from the City Engineer. The decision was referred to as ‘premature, ill-advised and hostile to the City’s long term interests, severely limiting – not necessarily for high rise development – the options for the area. As the area was zoned for public open space, the City believed that the national Monuments Council had allowed itself ‘to be used by local neighbourhood political interests’. The declaration was viewed by the Clifton Bungalow Owners Association as an extension of the 1948 scenic reserve declaration. The City noted that declaration had not been motivated and no history had been included. The then director of the National Monuments Council indicated that the decision had been informed through the area forming part of the ‘cultural history of Cape Town but also South Africa’.

Correspondence between the City of Cape Town and the National Monuments Council in October and November 1984 highlighted the difference in opinions with regard to proclamation and management of the Clifton bungalow sites. The City noted that the control over the sites for a number of years had led to the unique character of atmosphere of the area, whilst reviewing the future of the area over a number of years. The City stressed that no details had been provided as to the grounds on which the declaration had been granted, questioning the formal and / or informal criteria used as the basis for proclamation. In addition, questioning whether proclamation was warranted. The motivation put forth was ‘the National Monuments Council has for some time been concerned about the preservation of the bungalow development area and the surrounding beach at Clifton, Glen Beach, Bakoven, which ….is of great historical and environmental significance’. Declaration on the basis of historical importance appeared – in the opinion of the City – to be of questionable footing as many facts were unsubstantiated, overstated and did not correspond to historical documents available, for example the Thom survey of 1900.
Mention was made of the considerable conservation benefits that the National Monuments act had brought to the country, however the City disputed the level of significance ascribed to the bungalow areas. The continued control by the City was ascribed to areas reserved in the Town Planning Scheme for public open space, ownership and strict and comprehensive development controls.

The National Monuments Council responded and referred to the initial proclamation in 1948 of a large tract of land as a scenic reserve with subsequent efforts to protect the site and surrounding bungalow areas. The unique atmosphere of the area was attributed to the unique small scale tightly knit character, beaches, little conflict between residential and recreational uses, scale of the environment, views across the sea, indigenous bush and public access to the beach. The National Monuments Council re-iterated the view that sites were of National significance. The (then) Act referred to historical and not historic significance, with historical seen to be based on history and historic relating to a thing that must form an item of history. Historical significance was thus considered to be broader and therefore the state of the bungalows was not a key factor. National Monuments Council correspondence refers to the proclamation of the bungalow areas as national monuments preserving such sites from large scale development by the City itself, and further makes reference to the Bungalow Owners Association welcoming proclamation as national monuments with the very object of preventing this evil. The National Monuments Council declaration of the bungalow areas rested upon aesthetic interest and historical interest, considered as strong justification for proclamation. Advantages of proclamation were highlighted as control over alterations, prevention of subdivision or consolidation of land considered detrimental to the retention of the quality of the area, control of re-development of consolidated land and control of aesthetics of new developments.
3. LEGISLATIVE FRAMEWORK

The National Monuments Council was the national heritage conservation authority of South Africa, the successor body to the Historical Monuments Commission. The National Monuments Council came into being through the promulgation of the National Monuments Act of 1969 and ceased to exist March 2000 when it was replaced by the South African Heritage Resources Agency and the provincial heritage resources established in terms of the National Heritage Resources Act of 1999.

Provincial heritage sites are places that are of historic or cultural importance within the context of the province concerned and for this reason declared in terms of Section 27 of the National Heritage Resources Act. Such designation came into effect with the introduction of the NHRAct on 1 April 2000 when all former national monuments declared by the former National Monuments Council and its predecessors became provincial heritage sites as provided for in Section 58 of the Act. In terms of Section 58(11) of the NHRAct, the Clifton Scenic Drive is thus considered as a provincial heritage site, where immovable national monuments in terms of section 10 of the previous Act shall be provincial heritage resources sites (See extract of NHRAct). Formal protection thus applies in terms of Section 27 of the National Heritage Resources Act.

Formal protection in terms of the National Heritage Resources Act

Both provincial and national heritage sites are protected under the terms of Section 27 of the NHRAct and a permit is required to work on them. Provincial heritage sites are declared and administered by the relevant provincial heritage resources authority. Section 27(18) states that No person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the heritage resources authority responsible for the protection of such site.

Section 27 application for a permit entails an application making application to the relevant provincial heritage resources authority, namely Heritage Western Cape. Documentation is to include a historical background, relevant plans and visual aids, motivation for proposed action, comments of conservation bodies, impact assessment reports concerning heritage and / or archeology and any additional pertinent information regarding the site, place or structure that will assist Heritage Western Cape to consider the application. Heritage Western Cape would specify the level and detail of information required in this regard.

Section 58 makes reference to immovable national monuments in terms of section 10 of the previous Act shall be provincial heritage resources sites provided that within five years of the commencement of the NHRAct, the provincial heritage resources authorities in consultation with SAHRA, must assess the significance of such sites in accordance with the heritage assessment criteria set out in section 3(3) and prescribed under section 7(1) and SAHRA must declare any place which fulfils the criteria for Grade I status a national heritage site. The Clifton Scenic reserve has not been declared in terms of this section of the Act as a Grade 1 resource.
General protection in terms of the National Heritage Resources Act

Legislative requirements of the National Heritage Resources Act, No 25 of 1999: sections 34, 35, 36 and 38. Where these sections refer:

- Section 34: Structures
- Section 35: Archaeology, palaeontology and meteorites and Section 36: Burial grounds and graves
- Section 38: Heritage Resource Management

Section 34: Structures older than 60 years

34. (1) No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

An application needs to be submitted to Heritage Western Cape for any alterations or demolition of structures older than 60 years. An application form is to be completed and supporting documentation may include identification of heritage resources within the immediate context, analysis of the significance of heritage resources affected by the proposed development and specialist studies including archaeological investigation.

Section 35: Archaeology, palaeontology meteorites and Section 36: Burial grounds and graves

Permits must be obtained before on-site investigation can commence. Investigative permits in terms of section 35 and 36 will only allow the minimum necessary disturbance of the site and will allow a test excavation/s to be conducted to assess the likelihood of burials or other archaeological remains, or indicate that the property is likely to be clear of archaeology/burials.

Section 38: Heritage Resource Management

Section 38 of the National Heritage Resources Act (No 25 of 1999) specifies that a development listed in terms of Section 38 requires at the very earliest stages of initiating a development a Notification of Intent to Develop be submitted to the responsible heritage resources authority. The formal response to the Intent to Develop serves as the brief for further work to be conducted.

38. (1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as-

(a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
(b) the construction of a bridge or similar structure exceeding 50 m in length;

(c) any development or other activity which will change the character of a site-

(i) exceeding 5 000 m² in extent; or

(ii) involving three or more existing erven or subdivisions thereof; or

(iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or

(iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a phra;

(d) the re-zoning of a site exceeding 10 000 m² in extent; or

(e) any other category of development provided for in regulations by SAHRA or a phra,

must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

Notification of Intent to Develop

The primary aim of the NID is to fulfill the statutory requirements of the NHRA and to determine the requirement for any further heritage assessment in terms of Section 38 of the NHRAct. The brief of a NID calls for a preliminary investigation that serves to highlight heritage concerns, issues and way forward for proposed action. In terms of the Section 38(2) the relevant heritage resources authority may decide whether or not the proposed development may proceed, any conditions that should be applied, what general protections may apply, what formal protections should be applied, whether or not compensation is required with respect to damage to heritage resources and whether or not specialists need to be appointed as a condition of approval.

Heritage Impact Assessment

Heritage impact assessments are often conducted in phases, with the first phase identifying heritage resources and significance of heritage resources within particular contexts. The second phase of the impact assessment calls for the assessment of the positive and negative heritage impacts of the proposed development.

Section 38 (3) outlines the requirements for a heritage impact assessment and states that the following must be included:

(a) The identification and mapping of all heritage resources in the area affected;
(b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;

(c) an assessment of the impact of the development on such heritage resources;

(d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;

(e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;

(f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives;

(g) plans for mitigation of any adverse effects during and after the completion of the proposed development.

Section 38 (4) of the NHRA requires that Heritage Western Cape review studies conducted and consider whether or not the proposed development may proceed; any conditions that should be applied, what general protections may apply, what formal protections should be applied, whether or not compensation is required with respect to damage to heritage resources and whether or not specialists need to be appointed as a condition of approval.

As Section 38 of the National Heritage Resources Act (Act 25 of 1999) does not apply whilst an Environmental Impact Assessment is being carried out in terms of EIA Regulations, where such requirements of a Heritage Impact Assessment are covered, comment and recommendations from the relevant authorising agency on the heritage component of the EIA are to be forwarded to DEA & DP prior to any consent being given. In the absence of an EIA being conducted, the relevant heritage agency acts as the authorizing body.

Heritage Impact Assessments are to be submitted as a single and well-integrated report with a similarly integrated set of recommendations. Separate studies are no longer be accepted by HWC, thus all specialist studies ie archaeology and palaeontology must be integrated within the HIA and appended to HIA.
Grading of heritage resources

The National Heritage Resources Act (Act 25 of 1999) requires that all heritage resources be graded in order to assign the appropriate level of management responsibility to a heritage resource and indicate its significance. Grading is thus a very important tool in defining heritage significance and is an important step in the process towards the formal protection of a heritage resource, such as a declaration as 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. Heritage resources can be graded, ungraded or ungradeable:

**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.

**Ungraded**
The Heritage Authority has not yet applied its mind in order to determine a grading for the resource or we do not, yet, have sufficient information to determine the grading.

**Ungradeable**
The resource does not have enough heritage significance to be retained as part of the National Estate. I.e. Not conservation-worthy

The grading process is an iterative one and as such, gradings can change based on new information. Upon detailed investigation, it may be determined that the grading may change. Therefore, the most recent grading by a committee of HWC's Council is the grading for a heritage resource.

**Grade I Sites** (National Heritage Sites): South Africa’s national heritage sites must as a whole represent the collective and balanced story of our South African consciousness as we understand it today. They must be the key sites which best illustrate the events, peoples and systems which have brought us to our current state of nationhood. They must represent development which occurred in South Africa, from its earliest geological formation, to the beginnings of humanity, and through its peopling - illustrating the traditions, values, conflicts and achievements which formed the South Africa we live in today. Proposed Grade I sites are so exceptional they are of outstanding significance to South Africa. Such sites should satisfy the criteria set out in Section 3(b3) and Section 7 of the Act, and its regulations. The book of our national heritage sites should tell the story of our South African nationhood and reflect a balanced recognition of all areas of our Heritage. Grade I sites must enjoy authenticity and carry a universal value and symbolic importance that promotes human understanding and contributes to nation building, and their loss would significantly diminish the national heritage. Once declared, Grade I sites become National Heritage Sites and are managed by the South African Heritage Resources Agency.

**Grade II Sites** (Provincial Heritage Sites): Sites graded as Grade II sites must enjoy a provincial sphere of significance, while satisfying the requirements of Section 3(3) and Section 7 of the Act, and its regulations. Grade II sites are so special that they need to be given a status beyond being granted recognition by being entered in the heritage register, but are not of outstanding national significance. They may be rare examples of their kind, or
otherwise be highly representative of a type. They may connect closely to an event or figure of provincial/regional significance. Grade II sites should enrich the understanding of the cultural, historical, social and scientific development of the Western Cape and of region in which it is situated. The intrinsic, comparative and contextual significance of the heritage resource must be determined. The responsibility of the management to be allocated in terms of section 8 of the Act will be determined in the grading process. Once declared, Grade II sites become Provincial Heritage Sites and are managed by HWC (Western Cape). Grade II sites may include, but not limited to:

(a) places, buildings, structures and immovable equipment of cultural significance;
(b) places to which oral traditions are attached or which are associated with living heritage;
(c) historical settlements and townscapes;
(d) landscapes and natural features of cultural significance;
(e) geological sites of scientific or cultural importance;
(f) archaeological and palaeontological sites;
(g) graves and burial grounds;
(h) sites of significance relating to the history of slavery and the Khoesan in the Western Cape;
(i) sites of significance relating to the liberation struggle in the Western Cape.

The cultural significance or other special value that Grade II sites may include, but are not limited to:

(a) its importance in the community or pattern of the history of the Western Cape;
(b) the uncommon, rare or endangered aspects that it possess reflecting the Western Cape’s natural or cultural heritage;
(c) the potential that the site may yield information that will contribute to an understanding of the Western Cape’s natural or cultural heritage;
(d) its importance in demonstrating the principal characteristics of a particular class of the Western Cape’s natural or cultural places or objects;
(e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group in the Western Cape;
(f) its importance in demonstrating a high degree of creative or technical achievement at a particular period in the development or history of the Western Cape;
(g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
(h) its strong or special association with the life or work of a person, group or organization of importance in the history of the Western Cape; and
(i) sites of significance relating to the history of slavery and/or the Khoesan in the Western Cape.
**Grade III Sites** (Local Heritage Resources): It has become practice to separate the Grade III category of heritage resources into three sub-categories to enable effective management. It is suggested that the first of these sub-categories (Grade IIIA) be for heritage resources of local significance and of sufficient significance to be placed on the heritage register. It should be noted immediately that such heritage resources must also be protected through the local zoning scheme or a local by-law.

Grade IIIA heritage resources: This grading is applied to 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 heritage resources: This grading is applied to 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. Like Grade IIIA buildings and sites, 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 heritage resources: This grading is applied to buildings and/or sites whose significance is, in large part, a significance that contributes to the character or significance of the environs. These buildings and sites should, as a consequence, only be protected and regulated if the significance of the environs is sufficient to warrant protective measures, regardless of whether the site falls within a Heritage Protection Overlay Zone (HPOZ) or Heritage Area.

(Extracted HWC Guide to Grading Version 14, June 2015)
4. LEGISLATIVE IMPLICATIONS

Clifton Scenic Reserve was proclaimed as a national monument in 1948 and later in terms of the National Monuments Act. In terms of Section 58(11) of the NHRAct, the Clifton Scenic Drive is thus considered a provincial heritage site, where *immovable national monuments in terms of section 10 of the previous Act (National Monument’s Act) shall be provincial heritage resources sites*. **Formal protection** thus applies in terms of Section 27 of the National Heritage Resources Act and a permit application must be made to the relevant provincial heritage resources authority, Heritage Western Cape. **General protection** requires that a Notification be submitted and a heritage impact assessment be undertaken to assess the impact on identified heritage resources. Requirements of general protection may be incorporated within application for permit in terms of S27.

In 1996 it was noted by the National Monuments Council that the intent to provisionally declare (Bakoven) bungalow areas had not been renewed and that applications were to be handled at local authority level. Such jurisdiction can be confirmed through investigation of bungalow proclamations, where so required in terms of proposed development area.

Victoria Road through Sea Point, Clifton, Camps Bay and Bakoven is identified as a Scenic Drive overlay Zone in terms of the City of Cape Town Zoning Scheme. The scenic drive has been identified as offering a representative scenic view of Camps Bay and the Atlantic Ocean with a high visual quality with many view opportunities. It is noted that Bakoven, Clifton and Glen Beach are identified within the list of Local Area Overlay Zones in terms of Section 17.5.1, however, are not listed within the list of heritage protection overlay zones in terms of Section 17.1.3 of the City of Cape Town Zoning Scheme.

**Key heritage issues to consider:**

- Develop a statement of significance
- Consider history and development of the Clifton and Bungalow area
- History relating to the initial tenants of the bungalows and users of public space
- Identification of key historical public spaces
- Determining key views of historical significance
- Loss of public amenity due to sale of bungalow areas
- Public benefit of proposed intervention within the proposed Clifton development area
- History of segregated public amenities
- Impact of loss of public amenities (over time) and role and use of public space over time
- Access to public amenities and public open space over time
Sources

- City of Cape Town Zoning Scheme Reualtions
- City of Cape Town (February 2002) Scenic Drive Network Management Plan Volume 3: assessment and evaluation of s1 and s2 routes identification of projects, programmes and management policies Final Report
- City of Cape Town (undated): Bungalow Areas in terms of Section 112
- City of Cape Town: 1990: Clifton, Glen Beach and Bakoven Bungalow areas
- City of Cape Town: Special meeting of the executive committee 1981-03-27 to discuss the development controls and the town planning scheme and proposed improved facilities
- Correspondence dated 24 February 1956 Cape Town Municipality: Proposed lease of land to Camps Bay and District Sports and Social Club
- Clifton Camps Bay and Bakoven Bungalow Areas: Review of development controls and the town planning scheme and proposed improved facilities
- Clifton-on-Sea and District Bungalow Owners Association: Clifton, Camps Bay and Bakoven Areas: Review of development controls and the town planning scheme and proposed improved facilities. Commentary by the Association on the Report 13/1981 dated 1981-02-27 from the City Engineer. SAHRA Library ref: 4/8/83 Key CLCABABA1 83/418 711.40968712CLI
- Government Gazette No 3932 dated 13/2/1948
- Government Gazette No 4271 dated 28/10/1949
- Heritage Western Cape (June 2015): Guide to Grading in terms of the National Heritage Resources Act (Version 14 for comment)
- National Monuments Council: November 1984: Correspondence to the Town Clerk with regard to the proposed provisional declaration as a national monument: Bungalow areas
- National Monuments Council: April 1946: minutes of meeting
- City of Cape Town: 1989: Correspondence to the National Monuments Council with regard to the proposed provisional declaration as a national monument: Bungalow areas
- City of Cape Town: 1989: Current status of the proposed future development controls in respect of the bungalow sites at Clifton, Glen Beach and Bakoven
- Town Clerk: October 1984: Correspondence to the National Monuments Council with regard to the proposed provisional declaration as a national monument: Bungalow areas
No. 25 of 1999: National Heritage Resources Act, 1999

https://en.wikipedia.org/wiki/Provincial_heritage_site_(South_Africa)

SAHRA Files / boxes:
- 2/K/Kaa/291/A Bungalows Clifton General WC Box 114 Jan 1981 – April 1990
- 11/K/Kaa/7 Clifton Bakoven Glen Beach Bungalow Areas WC Box 198 Part 7 October 1984 – Jan 1985
- 11/K/Kaa/7 Clifton Bakoven Glen Beach Bungalow Areas WC Box 198 Part 8 Jan 1985 – April 1987
- 11/K/Kaa/7 Clifton Bakoven Glen Beach Bungalow Areas WC Box 198 Part 9 May 1987 – March 1989
- 11/K/Kaa/7 Clifton Scenic Reserve Part 1 WC Box 196 March 1946 – June 1949
- 11/K/Kaa/7 Clifton Scenic Reserve Part 2 WC Box 196 June 1949 – October 1960
- 11/K/Kaa/7 Clifton Scenic Reserve Part 3 WC Box 196 December 1960 – September 1973
- 11/K/Kaa/7 Clifton Scenic Reserve Part 5 WC Box 197 September 1982 – September 1984

Graphics:
- Clifton on sea and district Bungalow-Key Cocababa1, Acc.No-83/418, Dew.No-711.40968712 CLI
- Updated policy plan for Clifton, Glen Beach and Bakoven Bungalow Area January 1985- Plan. No -Sy727a
- Clifton, Camps Bay and Bakoven Bungalows Area review of development control and town planning scheme and proposed improved facilities
- Clifton Scenic Reserve 8/3/86/ 24/6/49
- Clifton Scenic Reserve October 1960 Sy413/1
- Clifton Scenic Reserve 8/346/24/6/49
- Clifton Scenic Reserve 8/3/46/ 24/6/49
- Clifton Bakoven Glen Beach Bungalow Area 11/K/Kaa/7

Articles:
- Cape Times 3/7/1981: Clifton Plan opposed
- The Argus 30/1/1985: Higher rental likely for bungalow dwellers
- The Argus 30/1/1985: Clifton: monuments body does not have expertise
- Rand Daily Mail: November 1946: Council objects to strip of Cape shore as monument
- Cape Times: November 1946: Beach strip not sacrosanct: Monument project rouses Council
- Cape Times: 1987: Plans for Maidens Cove
- Cape Times: 1984: Council to fight Clifton decision
- Cape Times: undated: Architects slam Monuments Council over Clifton plan
- Municipal Beat: undated: why the haste over Clifton?
- Cape Times: undated: Councilor insults Monuments Council
- The Argus: 1984: Monument declaration may have to be explained
- The Cape Times: Clifton declaration criticized
Extract NHRA: Section 27: National heritage sites and provincial heritage sites

27. (1) SAHRA must identify those places with qualities so exceptional that they are of special national significance in terms of the heritage assessment criteria set out in section 3(2) and prescribed under section 6(1) and (2), and must investigate the desirability of their declaration as national heritage sites.

(2) A provincial heritage resources authority must identify those places which have special qualities which make them significant in the context of the province or a region in terms of the heritage assessment criteria set out in section 3(2) and prescribed under section 6(1) and (2) and must investigate the desirability of their declaration as provincial heritage sites.

(3) Any person may submit a nomination to SAHRA for a place to be declared a national heritage site or to the provincial heritage resources authority for a place to be declared a provincial heritage site. The heritage resources authority concerned may prescribe the format and procedures for such nominations.

(4) A written motivation for the declaration of a place as a heritage site must be prepared and kept on record by the heritage resources authority.

(5) SAHRA may, by notice in the Gazette, declare any place referred to in subsection (1) to be a national heritage site.

(6) A provincial heritage resources authority may, by notice in the Provincial Gazette, declare any place referred to in subsection (2) and described in the notice to be a provincial heritage site.
(7) The heritage resources authority concerned may, by similar notice-

(a) amend any notice published under subsection (5) or (6); or

(b) withdraw any notice published under subsection (5) or (6) or paragraph (a) of this subsection.

(8) Before declaration of a place as a heritage site, or amendment or withdrawal of a notice under subsection (7), the heritage resources authority-

(a) must notify the owner;

(b) must notify the mortgage holder, the occupier and any other person with a registered interest in the property;

(c) must notify all conservation bodies which have, in terms of section 25(1)(b), registered their interest in the geographical area in which the proposed heritage site is situated, and give them at least 60 days to make submissions regarding the proposed declaration, amendment or withdrawal, and in the case of the owner, to propose conditions under which the action will be acceptable. All submissions must be considered by the heritage resources authority before a final decision is made; and

(d) before notifying the owner as provided in paragraph (a), must give to the owner reasonable opportunity for representations or submissions to be made in regard to the proposed notification.

(9) A heritage resources authority may at any time withdraw a notice which it has served in terms of subsection (8)(a).

(10) For the purposes of subsections (15) to (22), a place shall be
deemed to be protected as a heritage site for six months from the date of service of a notice under subsection (8)(a) or until the notice is withdrawn or the place is declared to be a heritage site, whichever is the shorter period.

(11) Subject to subsection (12), if the owner objects to the proposed declaration of a place or proposes conditions which the heritage resources authority reasonably considers to be unacceptable, the heritage resources authority may, prior to the expiry of the notice in terms of subsection (10), renew a notice under subsection (8)(a), whereupon the protection under subsection (10) shall be extended for a further six months. If during this time consultation between the heritage resources authority and the owner fails to lead to the withdrawal of the owner's objection or the proposal of acceptable conditions, the heritage resources authority may declare the place to be a heritage site.

(12) The Minister, on the advice of SAHRA, must prescribe circumstances in which the State, a local authority or a supported body may object to the declaration as a heritage site of a place which it owns or controls.

(13) SAHRA must inform the provincial heritage resources authority, the provincial planning authority and the local authority within whose area of jurisdiction a national heritage site falls, within 30 days of its declaration.

(14) A provincial heritage resources authority must inform SAHRA, the provincial planning authority and the local authority within whose area of jurisdiction a provincial heritage site falls, within 30 days of its declaration.

(15) SAHRA is responsible for the protection of national heritage sites in accordance with the provisions of this section.
(16) A provincial heritage resources authority is responsible for the protection of provincial heritage sites in accordance with the provisions of this section.

(17) Except in cases where the heritage resources authority considers it inappropriate, all heritage sites must be marked with a badge indicating their status.

(18) No person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the heritage resources authority responsible for the protection of such site.

(19) The responsible heritage resources authority may make regulations pertaining to heritage sites under its control, or to any other heritage site with the consent of the owner of that site-

(a) safeguarding heritage sites from destruction, damage, disfigurement, excavation or alteration;

(b) regulating the conditions of use of any heritage site or the conditions for any development thereof;

(c) regulating the admission of members of the public to a heritage site, and the fees payable for such admission.

(20) Any branch of the State or supported body which is the owner of a heritage site must maintain such site according to a minimum standard and according to a procedure prescribed by the responsible heritage resources authority after consultation with the relevant Departments of Works.

(21) The responsible heritage resources authority may, by agreement with the owner of a heritage site-
(a) conserve or improve any heritage site;

(b) construct fences, walls or gates around or on a heritage site;

(c) acquire or construct and maintain an access road to a heritage site over any land, and construct upon such land fences, walls or gates, or

(d) erect signs on or near a heritage site.

(22) No person may damage any fence, wall or gate constructed or sign erected by a heritage resources authority in terms of subsection (21).

(23) (a) All reproduction rights either in two or three dimensions in respect of a heritage site, subject to any existing rights and the agreement of the owner of such site, belong to the State and vest in the heritage resources authority responsible for the protection of such site or, by agreement, with the authority or public institution responsible for the management of such site.

(b) Subject to the provisions of paragraph (a), no person other than the owner of the site may make such reproduction for profit without a permit issued by SAHRA or a provincial heritage resources authority, as the case may be, which may prescribe the fees payable in respect of such reproduction and must deposit such fees in a trust fund dedicated to the conservation of such site or of heritage resources in general.

Extract NHRA: Section 58: Transitional provisions and consequential amendments

58(11) Sites and objects which prior to the commencement of this Act were protected by notices in the Gazette in terms of the previous Act, shall, subject to the provisions of any provincial legislation for heritage
resources conservation and any agreement in that regard, and without the need for the publication of notices in the Gazette, continue to be protected in terms of the following provisions of this Act:

(a) Immovable national monuments in terms of section 10 of the previous Act shall be provincial heritage resources sites: Provided that within five years of the commencement of this Act, the provincial heritage resources authorities in consultation with SAHRA, must assess the significance of such sites in accordance with the heritage assessment criteria set out in section 3(3) and prescribed under section 7(1) and SAHRA must declare any place which fulfils the criteria for Grade I status a national heritage site;

(b) immovable properties entered in the register in terms of section 5(1) of the previous Act must be entered in the heritage register for the province in which they are situated and in the inventory of the national estate;

(c) conservation areas in terms of section 5(9) of the previous Act shall be heritage areas: Provided that where no provision has been made for the protection of such areas in by-laws under the previous Act or in a town or regional planning scheme-

(i) sections 31(7)(a), (b) and (c) of this Act automatically apply to such heritage areas; and

(ii) the local or other planning authority concerned must provide for the protection of such area in accordance with the provisions of section 31 within three years of the commencement of this Act;

(d) provisionally declared immovable properties in terms of section 5(1)(c) of the previous Act are provisionally protected for such
remaining period as specified in the notice of provisional declaration;

(e) national gardens of remembrance in terms of section 9C of the previous Act are provincial heritage sites;

(f) cultural treasures in terms of section 5(c) and movable national monuments in terms of section 10 of the previous Act are heritage objects.

(12) A notice under section 10(3)(a) or 5(5)(b) of the previous Act which was served within six months prior to the commencement of this Act shall be deemed to be a notice served by a provincial heritage resources authority in terms of section 27(8) or section 29(1) and (2) of this Act, as the case may be.

(13) A permit issued under the previous Act shall be deemed to be a permit issued by the responsible heritage authority under the relevant section of this Act.