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Manuscripts of original research undertaken in southern Africa will be considered for publication. These may include reports of current research projects, site reports, rock art panels, rescue excavations, contract projects, reviews, notes and comments. Students are encouraged to submit short reports on projects. *Southern African Field Archaeology* also welcomes general information on archaeological matters such as reports on workshops and conferences.

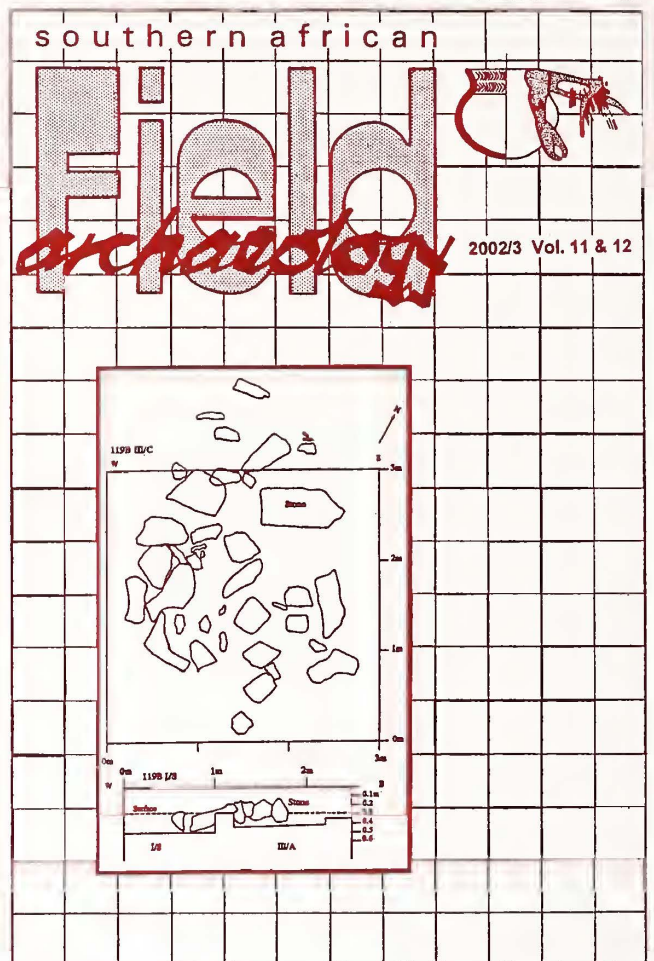
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Cover illustration:

Plan of a grain bin stand in trench III/C at Letsibogio Dam, see p. 4.

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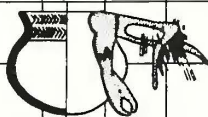
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OPINIONS

PROVINCES, ARCHAEOLOGY AND THE NATIONAL HERITAGE RESOURCES ACT

Archaeologists and palaeontologists in South Africa have become increasingly frustrated over the past two years in their efforts to comply with the National Heritage Resources Act (No. 25 of 1999) which replaced the National Monuments Act (Act 28 of 1969) on 1 April 2000. New legislation often leads to discontent because people have to change their way of doing things (Rudner & Rudner 1973; Van der Merwe 2003). Rudner & Rudner, for example, were unhappy that the National Monuments Act made it necessary to apply for a permit to collect surface archaeological material. The problem with the new Act has more to do with the lack of political will and bureaucratic expertise to decentralise operations from SAHRA (the South African Heritage Resources Agency which replaced the National

Monuments Council at national level) and establish a system to administer it at provincial level.

When the new Act came into force in 2000, all nine provinces in the country were given two years to set up provincial heritage resources authorities (known as PHRAs) to enable them to assume the responsibilities assigned to them by the Act.¹ The purpose of decentralising the management of archaeological and palaeontological resources is entrenched in the South African constitution which places decision-making about the significance of culture and heritage in the hands of the lowest level of competent governance. The vision in drafting the Act was to enable a bottom-up approach to heritage resources management to develop.

The Act is structured so that, with efficient co-operative governance, local authorities, communities, researchers and developers will conduct surveys of heritage resources and involve communities in the identification and assessment of places of significance to them. Ideally this process should form part of regional and municipal planning. Information can also be generated during the course of development or academic research and by heritage resources authorities who identify geographical or cultural gaps.

Survey information and records from the files of the former National Monuments Council will form the basis for a heritage register in each province that would be managed by a provincial heritage resources authority. With the aid of criteria developed jointly by the provincial and national bodies, the PHRAs must grade the identified places into Grade III (local significance), Grade II (provincial significance) and Grade I (national significance). In addition, PHRAs have been given 5 years until 1 April 2005 to re-assess and grade all former national monuments that automatically became provincial heritage sites when the Act came into force.

Grade I sites should then be formally declared as National Heritage Sites by SAHRA and will be managed by SAHRA at national level. Permits for archaeological or palaeontological work at a Grade I site will be issued by SAHRA. Any places not formally graded, such as most archaeological and palaeontological sites, are protected by general provisions of the Act and are the exclusive responsibility of provincial heritage resources authorities.

If this system of co-operative governance can be developed, it will be far more effective than the old system

of one archaeologist at national level being responsible for all permits and the management of all sites throughout the country. The Act creates the potential to appoint at least one archaeologist and one palaeontologist in each province, and to encourage local authorities also to employ such professionals for the identification and management of sites.

Putting this system into place has taken longer than most people expected, even in a worst-case scenario. Provincial Ministers and Department officials responsible for heritage were informed at meetings as early as 1996 and 1997 that PHRAs would have to be established, but through a lack of political will, a lack of capacity and perceived difficulties in obtaining funding, no action was taken. By April 2002, when the period for establishment prescribed in Regulations by the National Minister of Arts and Culture expired, only one province, KwaZulu-Natal (KZN), had established a PHRA. One can assign blame in several quarters for the slow progress, but perhaps the most crucial obstacle was the absence of provision for funding. KZN was able to overcome this problem because the KwaZulu Monuments Council had already been in operation for decades and had an existing structure and budget.

Unfortunately, although the Act makes provision for SAHRA to take over exclusive provincial duties on behalf of a province if the province lacks capacity, the section in which this is provided for is not adequately linked to other related sections of the Act. As a result, in a court case in the Eastern Cape in 2002, Judge Kroon ruled that SAHRA could not assume these responsibilities without a formal written request from a provincial heritage resources authority or PHRA. Because eight of the provinces had not established their PHRAs, there was no authority available to request SAHRA to act on their behalf and to issue permits legally.

The delay in establishing PHRAs has been a disaster for the management of heritage resources. The Public Finance Management Act (PFMA) relating to public entities, and tighter bureaucratic and budgetary controls aimed at eliminating corruption, have made the process more complicated than it may have been in 2000. The situation has been exacerbated by the lack of leadership and guidance in the national Department of Arts and Culture (DAC) and the lack of knowledgeable staff both there and in the provincial departments and ministries. The rapid turnover of staff in the heritage sector generally has further inhibited co-operation between national and provincial government and between the Department and SAHRA.

The following steps have to be taken by a province to establish a PHRA and to enable permit applications to be processed:

- The provincial minister and department responsible for arts and culture must decide to establish a PHRA and must take the necessary steps to provide for it in the provincial budget. Ideally, this is the stage at which the province must decide whether it will set up a fully functional PHRA Council with staff to implement its decisions, or whether it will appoint a PHRA Council and request SAHRA to act as its agent on all or some of its responsibilities. Both options require some strategic and budgetary planning.
- Regulations must be published in the provincial gazette by the provincial minister responsible for Arts and

Culture that set out how the Council of the PHRA will be appointed and what the responsibilities of the members will be. At the time of writing (4 February 2004), all provinces had done this, although most of them published their Regulations only in 2003. The PHRA must be a public entity in terms of the PFMA which means that all Council members are personally responsible for the expenditure and business of the PHRA unless they formally delegate this responsibility.

- The provincial minister must advertise for nominations of members of the public willing to serve on the Council of the PHRA for three years. All provinces have done this. I am aware of details only in the Western Cape where more than 60 nominations were received and seven people were appointed.
- The provincial minister, usually assisted by the relevant Standing Committee of the provincial legislature, must appoint between 7 and 14 Council members from the list of nominees, depending on the number required in the Regulations, taking care to include people with the required skills and expertise who are representative of the demography of the province. Thus far, only Free State has not yet appointed a Council. North West has selected the Council members, but they have not yet been formally appointed.
- Once the members of the PHRA Council have been appointed, a meeting must be arranged by the provincial department and a Chairperson must be appointed by the provincial minister or by the Council members, depending on what the Regulations require.
- The Council must register as a public entity with the national treasury and must draw up a Strategic Plan for the next 3 years with a budget attached. The Strategic Plan must indicate which of the provincial legal responsibilities in the Act it wishes to manage and which it will not. The plan and budget must be submitted to the provincial department for forwarding to treasury.
- Depending on what duties the PHRA wishes to perform, and consequently on the budgetary arrangements that have been made (usually including token remuneration and reimbursement of expenses for Council members who attend formal meetings), the PHRA may:
 - in collaboration with the provincial department, appoint staff and purchase office equipment if budgeted for in the Strategic Plan in order to implement decisions and manage the office;
 - open a bank account; and
 - appoint an accounting officer if this will not be the Council.
- The PHRA should then formally apply to SAHRA Council for the competence of the PHRA to be assessed.
- If the PHRA does not meet the criteria for competence set by SAHRA, the PHRA may formally request SAHRA to perform duties on its behalf on an agency basis.

This is the route that has been, or will soon be, taken by seven of the nine provinces. With the exception of KZN and the Western Cape, all PHRAs have requested, or are expected to request, SAHRA to take over responsibility for archaeology, palaeontology and meteorites on an

agency basis. Applications are reviewed by the SAHRA permit committee and by the Chairpersons of the PHRAs. Formal agreements have already been signed for Gauteng and Limpopo provinces. They have been drafted for the Northern Cape and Eastern Cape and will be drafted in the next few months by North West and Mpumalanga. Free State is expected to go the same route later in the year. Gauteng was assessed as competent to take on responsibilities related to the built environment.

- When SAHRA assesses a PHRA as competent to carry out its responsibilities for archaeology, palaeontology and meteorites in terms of the Act, the PHRA should, amongst other actions:
 - establish policies and procedures for dealing with applications;
 - appoint committees of experts to advise it;
 - draft regulations for the submission and assessment of permit applications or other duties as identified in the Act;
 - if required in terms of the National Environmental Management Act or Environment Conservation Act, publish the draft regulations for public comment and then finalise and publish them in the provincial gazette;
 - delegate specified responsibilities to departmental officials, PHRA staff and/or specialist committees appointed by the Council – for example, a committee consisting of Council members, archaeologists and palaeontologists may be appointed to assess permit applications and/or archaeological impact assessments, and to make policy, recommendations and decisions that will be carried out by the archaeologist appointed to the staff;
 - draw up formal agreements with SAHRA regarding those sections of the Act that give SAHRA and PHRAs joint or shared responsibility (such as graves and burial grounds) to clarify who will be responsible for what;
 - draw up a formal agreement with the provincial department of environmental affairs with regard to the procedure to be followed for the assessment and records of decision of archaeological impact assessments;
 - establish a database that is compatible with SAHRA's national database and ensure that copies of all permits, reports and impact assessments are lodged with SAHRA; and
 - develop a logo and corporate identity, and distribute pamphlets and other information to inform the public of the existence of the PHRA and its responsibilities.

This is the route that has been taken by Amafa aKwaZulu Natali (the KwaZulu Natal provincial heritage resources authority), and by Heritage Western Cape, the PHRA in that province. Amafa has posts for two Archaeologists and a total staff complement of about 40. One of the archaeological posts is vacant but an appointment will be made soon following the resignation of Annie van der

Venter. The other is filled by Themba Zwane. Heritage Western Cape has appointed Dr Antonieta Jerardino as Archaeologist and a junior position will be filled in the new financial year. The Heritage Western Cape Strategic Plan has made provision for the appointment of a total of 16 staff members that will include a palaeontologist.

Various strategies have been adopted to overcome the problems experienced in the provinces, but none has been entirely satisfactory. Because archaeologists working at sites managed at national level have been able to apply to SAHRA for permits, there has been pressure to assess sites as Grade 1 to enable research to proceed. Taking a longer term view, the Palaeontological Society of South Africa has lobbied SAHRA and the national Minister to consider amending the Act to make palaeontology an exclusively national responsibility, arguing that research areas frequently straddle provincial boundaries. Neither of these is an ideal solution, however, and will increase the burden on SAHRA without building capacity at provincial and local level.

All archaeologists and palaeontologists can participate in the democratic process by nominating fellow practitioners to PHRA Councils when the opportunity arises again in 3 years. They can encourage PHRAs to budget for and prioritise the appointment of provincial archaeologists and palaeontologists and indicate their willingness to serve on archaeology and palaeontology permit review committees. They can draw attention to the significance of archaeological and palaeontological resources by making the results of surveys available to PHRAs and the national database.

As the progress achieved by Heritage Western Cape and KwaZulu Natal has shown, it is possible to establish a PHRA with a staff complement and budget exceeding that of a SAHRA provincial office (which in the Western Cape has only two staff members). Each PHRA that delegates its responsibilities to SAHRA delays the development of capacity. The sooner provinces accept their responsibilities the better.

Note:

¹ Although much of the Act refers to the built environment and cultural landscapes, this review of provincial progress is limited to responsibilities related to archaeology and palaeontology. It excludes maritime archaeology and exports as these are a national responsibility of SAHRA.

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