

Western Cape, South Africa

Western Cape Biosphere Reserves Act Act 6 of 2011

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Western Cape South Africa

Western Cape Biosphere Reserves Act

Act 6 of 2011

Published in Western Cape Provincial Gazette 6936 on 13 December 2011

Assented to on 12 December 2011

Commenced on 1 May 2013 by Western Cape Biosphere Reserves Act: Commencement

*[This is the version of this document from 13 December 2011
and includes any amendments published up to 1 March 2024.]*

[Repealed by Western Cape Biodiversity Act, 2021 (Act 6 of 2021) on 15 November 2022]

(Afrikaans text signed by the Premier)

ACT

To facilitate the designation and management of biosphere reserves in the province of the Western Cape; to regulate land use in such reserves through the compilation of framework plans; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the Western Cape, as follows:—

1. Definitions

In this Act, unless the context indicates otherwise—

"biosphere reserve" means an area designated for inclusion in the World Network of Biosphere Reserves by the International Coordinating Council of the Man and the Biosphere Programme;

"Biosphere Reserve Interim Committee" means a committee established in terms of section 3(4);

"Department" means the provincial department responsible for land use planning in the Province;

"framework plan" means the spatial plan compiled for a biosphere reserve in accordance with section 6;

"higher level", with regard to a framework plan or other relevant plan, means a larger area of planning, and usually a smaller scale of planning, than the area and scale of such framework plan or other relevant plan;

"Land Use Planning Ordinance" means the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985);

"lower level", with regard to a framework plan or other relevant plan, means a smaller area of planning, and usually a larger scale of planning, than the area and scale of such framework plan or other relevant plan.

"Management Committee" means a committee established in terms of section 5(2);

"Man and the Biosphere criteria" means the general criteria for an area to qualify for designation as a biosphere reserve, as determined by the Man and the Biosphere Programme;

"Man and the Biosphere Programme" means the programme in terms of which biosphere reserves are established by UNESCO;

"Minister" means the member of the provincial Cabinet of the Western Cape responsible for land use planning;

"national Minister" means the Minister in the national Government responsible for environmental management;

"organ of state" means an organ of state as defined in section 239 of the [Constitution of the Republic of South Africa, 1996](#);

"prescribed" means prescribed by regulation in terms of this Act;

"process principle of planning" means the principle in terms of which a plan is compiled in phases through the method of—

- (a) drafting two or more documents in sequence, identifying relevant goals, objectives, problems, issues, policies and strategies, while progressing from the more general in the first document to the more specific in the last; and
- (b) submitting each document for roleplayer input and decision maker review before compiling a draft plan for advertisement;

"Province" means the Province of the Western Cape;

"this Act" includes regulations made under this Act; and

"UNESCO" means the United Nations Educational, Scientific and Cultural Organisation, and includes the International Coordinating Council of the Man and the Biosphere Programme.

2. Purpose of Act

The purpose of this Act is to—

- (a) promote the protection of areas of high biodiversity value and ecological importance in the Province as biosphere reserves designated in terms of the Man and the Biosphere Programme;
- (b) make provision for protection by law of biosphere reserves or proposed biosphere reserves;
- (c) ensure that any development in biosphere reserves is undertaken and managed in a sustainable manner taking into account the purpose of a biosphere reserve;
- (d) ensure that any development within a biosphere reserve is managed in accordance with the principle of sustainability through the development, application and enforcement of the requisite framework plan; and
- (e) ensure that the need for and purpose of biosphere reserves, and the type of development to be allowed in and around biosphere reserves, are taken into account when any spatial development decision which may potentially impact on the biosphere reserves is taken.

3. Preliminary approval to establish biosphere reserve

- (1) Any person, group of persons or organ of state may request the Minister to preliminarily approve the establishment of a biosphere reserve in the Province.
- (2) The request must be in the format determined by the Man and the Biosphere Programme and must include the proposed composition of the Biosphere Reserve Interim Committee.
- (3) Before submission of the request to the Minister, the prescribed public participation process must be undertaken.
- (4) If the Minister preliminarily approves the request, a Biosphere Reserve Interim Committee must be established in the prescribed manner and subject to the conditions determined by the Minister.
- (5) The Biosphere Reserve Interim Committee must be broadly representative of all relevant interested persons, institutions and communities.

4. Application for UNESCO designation as biosphere reserve

- (1) The Biosphere Reserve Interim Committee must compile an application for UNESCO designation of the biosphere reserve, in the format determined by the Man and the Biosphere Programme.
- (2) The Biosphere Reserve Interim Committee must, within 12 months after its establishment in terms of [section 3\(4\)](#) or a longer period as approved by the Minister, submit the application to the Minister for consideration.
- (3) If the Minister refuses the application or does not receive it within the period or extended period referred to in subsection (2), the application as well as the preliminary approval of the establishment of the biosphere reserve lapse.
- (4) If the Minister is satisfied that the application complies with the relevant Man and the Biosphere criteria, the Minister must forward the application to the national Minister for submission to UNESCO.
- (5) If UNESCO designates the biosphere reserve, the Minister must give notice in the *Provincial Gazette* of the designation and add that sections [5](#) and [6](#) become applicable.

5. Management of biosphere reserve

- (1) The Minister must ensure that a biosphere reserve is properly managed in accordance with management principles determined by the Minister and which must be published simultaneously with the notice referred to in [section 4\(5\)](#) or as soon as possible thereafter.
- (2) After designation of a biosphere reserve, a Management Committee must be established in the prescribed manner to replace the Biosphere Reserve Interim Committee.
- (3) Upon establishment of the Management Committee the functions of the Biosphere Reserve Interim Committee are automatically transferred to the Management Committee.
- (4) The Management Committee—
 - (a) is responsible for the management of the biosphere reserve, subject to this Act and the management principles referred to in subsection (1);
 - (b) must compile a constitution for the biosphere reserve in the prescribed manner and containing the prescribed particulars;
 - (c) must provide an annual report on its activities to the Minister, municipalities in whose areas of jurisdiction the biosphere reserve is located and adjacent municipalities; and
 - (d) must compile a framework plan for the biosphere reserve.
- (5) The Minister must periodically, and at least every 10 years, with effect from the designation of a biosphere reserve, review the status, functioning, effectiveness and framework plan of the biosphere reserve according to the relevant objectives, strategies and guidelines of the Man and the Biosphere Programme, and report thereon to the national Minister.

6. Framework plan for biosphere reserve

- (1) The Management Committee must, as soon as possible after its appointment, prepare a spatial plan (in this Act referred to as a framework plan) for the biosphere reserve in accordance with the process principle of planning and the prescribed approval procedure.
- (2) The Minister may determine conditions, in accordance with the process principle of planning, as to the manner in which the framework plan is to be drafted, and draft products and the approved plan are to be made known, which must include conditions with regard to inspection of draft products and representations by any interested and affected parties, including inhabitants of the area concerned, in the course of the preparation of the framework plan.

- (3) Subject to subsection (4), the framework plan must comply and be consistent with any spatial framework or plan in terms of any legislation, including any—
- (a) environmental implementation plan or environmental management plan referred to in Chapter 3 of the National Environmental Management Act, 1998 ([Act 107 of 1998](#));
 - (b) integrated management plan referred to in Chapter IV of the World Heritage Convention Act, 1999 ([Act 49 of 1999](#));
 - (c) integrated development plan referred to in section 25 of the Local Government: Municipal Systems Act, 2000 ([Act 32 of 2000](#));
 - (d) management plan referred to in Chapter 4 of the National Environmental Management: Protected Areas Act, 2003 ([Act 57 of 2003](#)), insofar as the biosphere reserve may include an existing special nature reserve, national park, nature reserve or protected environment as defined in that Act;
 - (e) national biodiversity framework, bioregional plan or biodiversity management plan referred to in Chapter 3 of the National Environmental Management: Biodiversity Act, 2004 ([Act 10 of 2004](#));
 - (f) plan under the National Environmental Management: Integrated Coastal Management Act, 2008 ([Act 24 of 2008](#));
 - (g) plan under the Physical Planning Act, 1991 ([Act 125 of 1991](#)); and
 - (h) plan under Chapter 1 of the Land Use Planning Ordinance.
- (4) Notwithstanding subsections (3) and (6), a framework plan which is inconsistent with a framework or plan referred to in that subsection can be approved insofar as it is more restrictive than that framework or plan.
- (5) The Management Committee must within 12 months after designation of the biosphere reserve, or the longer period approved by the Minister, submit the framework plan to the Minister for approval.
- (6) If the Minister approves the framework plan, it is regarded as a plan approved in terms of section 4(6) of the Land Use Planning Ordinance.
- (7) The Minister may amend a framework plan in the prescribed manner.
- (8) Other than the appointment of the Management Committee and the preparation of the framework plan, no further steps may be taken to implement the designation conditions of the biosphere reserve before the approval of the framework plan.
- (9) All land uses and land use plans within a biosphere reserve must comply or be consistent with the framework plan concerned: Provided that—
- (a) the provisions of the framework plan do not take away current land use rights;
 - (b) should an existing legal land use not comply with or be inconsistent with a framework plan at the time of the approval of the plan, that land use may continue to be exercised until interrupted for at least two years or until further building plan approval may be required, whichever is the earlier;
 - (c) should a land use referred to in paragraph (b)—
 - (i) be interrupted for at least two years; or
 - (ii) require further building plan approval,the use of the land concerned must be caused to comply or be consistent with the framework plan; and

- (d) where subparagraph (ii) of paragraph (c) would apply, but additional building plan approval is in the opinion of the municipal manager concerned not required for the purpose of land use or building expansion, that municipal manager may approve that building plan without requiring compliance with paragraph (c).
- (10) Questions relating to compliance, consistency and conformity in respect of land use in relation to a framework plan, or in respect of a framework plan in relation to plans or frameworks under other legislation, must be dealt with as follows:
 - (a) In relation to a framework plan existing in terms of this Act—
 - (i) a land use complies with the framework plan if the designation on the framework plan explicitly provides for the land use concerned;
 - (ii) a land use is consistent with the framework plan if the designation on the framework plan does not explicitly provide for the land use concerned, but the land use in the particular location would not conflict with the goals of the designation; and
 - (iii) a proposed land use which does not comply with or is inconsistent with the framework plan may not be approved, unless the framework plan is appropriately amended, either before the approval concerned or simultaneously therewith.
 - (b) In relation to a framework plan being approved, revised or amended in terms of this Act—
 - (i) the framework plan complies with a higher level framework or plan existing under other legislation and functioning at a higher level in relation to the framework plan, if the designations of the higher level framework or plan explicitly provide for the proposals of the lower level framework plan;
 - (ii) the framework plan is consistent with a higher level framework or plan existing under other legislation and functioning at a higher level in relation to the framework plan, if the designations of the higher level framework or plan do not explicitly provide for the proposals of the lower level framework plan, but those proposals in the particular locations would not conflict with the goals of the designations concerned; and
 - (iii) the framework plan must comply or be consistent with a higher level framework or plan existing under other legislation and functioning at a higher level in relation to the framework plan, and may not be approved, revised or amended in a way that does not comply with or is inconsistent with a higher level framework or plan existing under other legislation and functioning at a higher level in relation to the framework plan unless the higher level framework or plan is appropriately amended under the legislation concerned, either before the approval, revision or amendment concerned or simultaneously therewith.
 - (c) In relation to a framework plan existing in terms of this Act—
 - (i) a framework or plan existing under other legislation and functioning at a lower level in relation to the framework plan, complies with the framework plan if the designations of the framework plan explicitly provide for the proposals of the lower level framework or plan;
 - (ii) a framework or plan existing under other legislation and functioning at a lower level in relation to the framework plan, is consistent with the framework plan if the designations of the framework plan do not explicitly provide for the proposals of the lower level framework or plan, but those proposals in the particular locations would not conflict with the goals of the designations concerned;
 - (iii) a framework or plan contemplated under other legislation and intended to function at a lower level in relation to the framework plan must comply or be consistent with the framework plan, and may not be approved unless the framework plan is appropriately amended, either before the approval concerned or simultaneously therewith; and

- (iv) a framework or plan existing under other legislation and functioning at a lower level in relation to the framework plan must comply or be consistent with the framework plan, and may not be revised or amended in a way which does not comply with or is inconsistent with the framework plan, unless the framework plan is appropriately amended, either before the revision or amendment concerned or simultaneously therewith.
- (11) When a dispute arises concerning consistency, the matter must be referred to the Minister for a ruling.

7. Extension of biosphere reserve

- (1) The Management Committee of a biosphere reserve may at any time apply for the extension of the reserve.
- (2) An application for the extension of a biosphere reserve follows the same procedure as described in [section 4](#) for new designations.
- (3) For the purposes of subsection (2) the Management Committee must perform the functions assigned to the Biosphere Reserve Interim Committee by [section 4](#).

8. Funding of biosphere reserve

- (1) The Minister may, in accordance with an appropriation by the Provincial Parliament of the Western Cape, give financial or other assistance in respect of the establishment, operation, management or extension of, or in respect of conservation within, a biosphere reserve.
- (2) The assistance may be made subject to conditions determined by the Minister with the concurrence of the member of the provincial Cabinet responsible for finance.

9. Delegation

- (1) The Minister may, subject to subsection (7), delegate any power or function to an official in the Department to exercise or perform on his or her behalf.
- (2) Any delegation referred to in subsection (1) may be made subject to such terms, conditions and restrictions as the Minister may determine.
- (3) The Minister is not divested of any power delegated by him or her.
- (4) A delegation in terms of this section may authorise an official in the Department to sub-delegate all or any of the delegated powers or functions.
- (5) Any person aggrieved by a decision taken in terms of a delegated power or function referred to in subsection (1), has a right of appeal to the Minister against the decision in the manner and within the period prescribed.
- (6) The Minister may amend or withdraw any delegation.
- (7) The Minister may not delegate his or her powers in terms of [section 5\(1\)](#) or [section 10](#).

10. Regulations

- (1) The Minister may make regulations regarding—
 - (a) any matter which must or may be prescribed in terms of this Act;
 - (b) principles for the management of biosphere reserves; and
 - (c) any matter which it is necessary or expedient to prescribe for the implementation of this Act.

- (2) Regulations with financial implications for the Province may only be made with the concurrence of the member of the provincial Cabinet responsible for finance.

11. Existing biosphere reserves

- (1) The management of a biosphere reserve existing in the Province on the date of commencement of this Act must within three months after that date—
 - (a) appoint a Management Committee in the prescribed manner; and
 - (b) transfer its functions to the Management Committee.
- (2) The Management Committee must within 12 months after its appointment, or a longer period approved by the Minister, submit a framework plan for the biosphere reserve to the Minister in accordance with [section 6](#).

12. Short title and commencement

This Act is called the Western Cape Biosphere Reserves Act, 2011, and takes effect on a date to be determined by the Premier by proclamation in the *Provincial Gazette*.