

Western Cape, South Africa

Western Cape Biosphere Reserves Act

Western Cape Biosphere Reserves Regulations, 2012

Provincial Notice 182 of 2013

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Western Cape South Africa

Western Cape Biosphere Reserves Act

Western Cape Biosphere Reserves Regulations, 2012 Provincial Notice 182 of 2013

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The Provincial Minister of Local Government, Environmental Affairs and Development Planning in the Province of the Western Cape has made the regulations set out in the Schedule in terms of section 10 of the Western Cape Biosphere Reserves Act, 2011 (Act 6 of 2011).

1. Definitions

In these regulations, "the Act" means the Western Cape Biosphere Reserves Act, 2011 (Act 6 of 2011), and unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act retains that meaning.

2. Public participation in establishment of biosphere reserve

- (1) Any person, group of persons or organ of state requesting preliminary approval for the establishment of a biosphere reserve as contemplated in section 3(1) of the Act (in this regulation referred to as "the applicant") must—
 - (a) publish a notice of the proposed establishment of a biosphere reserve in the *Provincial Gazette* and at least two newspapers distributed in the area in which the biosphere reserve is to be located; and
 - (b) if the proposed biosphere reserve is to include any private land—
 - (i) send a copy of the notice by registered post to the last known postal address of each owner of land within the affected area; and
 - (ii) inform in an appropriate manner any other person whose rights to that land could be affected by the establishment of the biosphere reserve.
- (2) The notice contemplated in subregulation (1)(a) must—
 - (a) invite members of the public to submit to the applicant written representations on, or objections to, the establishment of the biosphere reserve within 60 days from the date of publication of the notice in the *Provincial Gazette*;
 - (b) contain sufficient information to enable members of the public to submit meaningful representations or objections; and
 - (c) include a clear description or map of the area that will be incorporated in the biosphere reserve.
- (3) The applicant may allow any interested person to present oral evidence to the applicant, but such evidence must be allowed in instances where the proposed establishment of the biosphere reserve could affect the rights or interests of a local community.

- (4) The applicant must give due consideration to all representations and objections received or presented before submitting the request for preliminary approval of the establishment of a biosphere reserve to the Minister.

3. Establishment of Biosphere Reserve Interim Committee

- (1) A Biosphere Reserve Interim Committee must comprise at least the following:
- (a) One representative nominated by each district municipality within whose area of jurisdiction the proposed biosphere reserve or part thereof is located;
 - (b) one representative nominated by each local municipality within whose area of jurisdiction the proposed biosphere reserve or part thereof is located;
 - (c) one representative nominated by each metropolitan municipality within whose area of jurisdiction the proposed biosphere reserve or part thereof is located;
 - (d) one representative nominated by the Department;
 - (e) one representative nominated by the provincial department responsible for agriculture;
 - (f) one representative nominated by CapeNature;
 - (g) one representative nominated by Agri Wes-Cape;
 - (h) one representative nominated by all ratepayers' associations located within the proposed biosphere reserve or part thereof, after a nomination process undertaken by the ratepayers' associations;
 - (i) one representative nominated by all community-based organisations located within the proposed biosphere reserve or part thereof, after a nomination process undertaken by the community-based organisations; and
 - (j) one representative nominated by all non-governmental organisations with an interest in the proposed biosphere reserve, after a nomination process undertaken by the non-governmental organisations.
- (2) The persons nominated in accordance with subregulation (1) must elect a chairperson.
- (3) The chairperson must provide the Minister with the particulars of the persons nominated, in order for the Minister to assess whether the Biosphere Reserve Interim Committee will be broadly representative as required by section 3(5) of the Act.
- (4) If the Minister is not satisfied that the proposed composition of the Biosphere Reserve Interim Committee adheres to the requirements of section 3(5) of the Act, the Minister must refer the matter to the chairperson.
- (5) If necessary for the purpose of allowing the Biosphere Reserve Interim Committee to continue with the compilation of an application for UNESCO designation of the biosphere reserve, the Minister may approve the proposed composition of the Biosphere Reserve Interim Committee after due consideration of the nominations even if it does not fully comply with the requirements set out in subregulation (1).
- (6) Any person, or person representing the group of persons or organ of state contemplated in section 3(1) of the Act, may elicit nominations from the entities listed in subregulation (1) for the membership of the Biosphere Reserve Interim Committee.

4. Establishment of Management Committee

- (1) The Biosphere Reserve Interim Committee must—
 - (a) within 30 days after the publication of the notice of the designation of the biosphere reserve contemplated in section 4(5) of the Act publish a notice in the *Provincial Gazette* and at least two newspapers distributed in the area of the biosphere reserve inviting the public to submit within 60 days from the date of publication of the notice in the *Provincial Gazette* names of persons for appointment to the Management Committee of the biosphere reserve;
 - (b) within 30 days after the expiry of that sixty-day period provide the Minister with the names and particulars of the persons it intends to appoint to the Management Committee; and
 - (c) within 30 days of the Minister's endorsement of those appointments establish the Management Committee and appoint its members.
- (2) The Management Committee must comprise the following portfolios or areas of responsibility or any combination thereof:
 - (a) Chairperson;
 - (b) vice chairperson;
 - (c) accounting officer;
 - (d) biodiversity and conservation;
 - (e) community affairs;
 - (f) labour;
 - (g) commerce;
 - (h) education;
 - (i) economic development and planning;
 - (j) marketing and public relations; and
 - (k) tourism.
- (3) The Management Committee must appoint persons with suitable technical expertise to support and advise it.
- (4) The Management Committee must submit the names of the persons appointed in accordance with subregulation (3) to the Minister for endorsement, and these persons must comprise at least the following:
 - (a) One representative nominated by the Department;
 - (b) one representative nominated by the provincial department responsible for agriculture;
 - (c) one representative nominated by CapeNature;
 - (d) one representative nominated by each district municipality within whose area of jurisdiction the biosphere reserve or part thereof is located;
 - (e) one representative nominated by each local municipality within whose area of jurisdiction the biosphere reserve or part thereof is located; and
 - (f) one representative nominated by each metropolitan municipality within whose area of jurisdiction the biosphere reserve or part thereof is located.
- (5) The Minister may on request of the Management Committee approve other portfolios or areas of responsibility to be provided for in the Management Committee.

- (6) The Minister may on request of the Management Committee approve other technical expertise to be provided in support of the Management Committee.
- (7) The management of a biosphere reserve contemplated in section 11(1) of the Act must—
 - (a) nominate suitable persons to fill the portfolios or areas of responsibility contemplated in subregulation (2);
 - (b) nominate persons with suitable technical expertise as contemplated in subregulation (3);
 - (c) provide the Minister with the names and particulars of the persons it nominates to the Management Committee; and
 - (d) establish the Management Committee and appoint its members once the Minister has endorsed those nominations.
- (8) If necessary for the purpose of the continued management of a biosphere reserve, the Minister may approve the proposed composition of the Management Committee even if it does not fully comply with the requirements set out in subregulation (2).

5. Compilation of constitution

- (1) The Management Committee must adopt as the legal form of the biosphere reserve—
 - (a) a non-profit company in terms of the Companies Act, 2008 ([Act 71 of 2008](#)); or
 - (b) a nonprofit organisation in terms of the Nonprofit Organisations Act, 1997 ([Act 71 of 1997](#)).
- (2) The constitution as contemplated in section 5(4)(b) of the Act must be compiled in terms of the legal form adopted in accordance with subregulation (1).
- (3) The constitution of the biosphere reserve must provide for at least the following:
 - (a) A code of conduct for members;
 - (b) accountability and responsibility;
 - (c) standing rules of order;
 - (d) the role and responsibilities of the Management Committee; and
 - (e) a mechanism for dispute resolution.

6. Participation of interested and affected parties in preparation of framework plan

- (1) The Management Committee, in preparing a framework plan as contemplated in section 6(1) of the Act, must publish the products as contemplated in regulation 7(1) in the *Provincial Gazette* and at least two newspapers distributed in the area of the biosphere reserve.
- (2) The Management Committee must invite interested and affected parties to submit to the Management Committee written representations or objections on the products within 60 days from the date of publication in the *Provincial Gazette*.
- (3) The Management Committee must, where the proposed framework plan could affect the rights or interests of a local community, allow any interested or affected party to make oral representations to the Management Committee.
- (4) The Management Committee must give due consideration to all representations and objections received or presented before preparing the final framework plan.
- (5) The Minister must publish the approved framework plan in the *Provincial Gazette*.

7. Drafting of framework plan

- (1) A framework plan must include at least the following products:
 - (a) A report on the current status of the geographical area concerned, including problems and issues;
 - (b) a project framework, including goals and objectives;
 - (c) a spatial-development report;
 - (d) a first draft plan and further draft plans, if needed; and
 - (e) a final draft plan.
- (2) In order to ensure that interested and affected parties and the competent authorities participate fully in the process principle of planning, each product listed in subregulation (1) must include—
 - (a) a drafting phase;
 - (b) a stakeholder participation phase; and
 - (c) an endorsement phase.
- (3) Any amendment made to a framework plan as contemplated in section 6(7) of the Act must be undertaken in terms of the process contemplated in subregulations (1) and (2).

8. Transitional provisions

- (1) Should a biosphere reserve existing in the Province on the date of commencement of the Act not constitute a legal form as contemplated in regulation 5(1), the Management Committee as appointed in terms of section 11(1)(a) of the Act must comply with regulation 5(1) within 12 months of the date of commencement of these regulations.
- (2) Subject to subregulations (3) and (4), the Minister may approve a spatial plan in existence before the commencement of the Act as a framework plan in terms of the Act.
- (3) The Minister may approve a spatial plan in terms of subregulation (2) as a framework plan, if he or she is satisfied that—
 - (a) the spatial plan is consistent with the provisions of the Act;
 - (b) inputs submitted by organs of state, interested and affected parties and the public have been addressed adequately;
 - (c) the spatial plan does not compromise or impede municipal planning; and
 - (d) the spatial plan complies with any other requirements that the Minister considers applicable.
- (4) If the Minister is not so satisfied, he or she may—
 - (a) amend the spatial plan to meet the requirements of subregulation (3) before approving it as a framework plan;
 - (b) refer the spatial plan to the Management Committee concerned to address the requirements of subregulation (3) and to resubmit it to the Minister for reassessment; or
 - (c) withdraw the spatial plan.
- (5) The Minister must within 10 days of taking a decision to approve a spatial plan as a framework plan, or a decision to amend or withdraw a spatial plan, in terms of this regulation publish a notice of the decision in the *Provincial Gazette*.

9. Financial assistance

- (1) A Biosphere Reserve Interim Committee or Management Committee may make an application to the Minister for financial assistance for a project, as contemplated in section 8 of the Act, and must in its application—
 - (a) submit a business plan;
 - (b) submit a budget;
 - (c) indicate to what extent the financial assistance will be used to attain the objectives of the Man and the Biosphere Programme;
 - (d) indicate to what extent the financial assistance will support departmental strategic goals and objectives; and
 - (e) indicate what measures will be put in place to ensure effective, efficient and transparent financial management and internal control.
- (2) If the Minister approves an application for financial assistance contemplated in subregulation (1), the Minister and the relevant Biosphere Reserve Interim Committee or Management Committee must conclude a written memorandum of agreement concerning the financial assistance.
- (3) A Biosphere Reserve Interim Committee or Management Committee in receipt of financial assistance contemplated in section 8(1) of the Act must—
 - (a) for audit purposes retain all expenditure vouchers, on all of which the biosphere-reserve project numbers must be indicated and which include cashed cheques; and
 - (b) forward to the Minister within five months of the end of the financial year of the biosphere reserve the audited financial statements for the biosphere reserve.
- (4) A Biosphere Reserve Interim Committee or Management Committee contemplated in subregulation (3) must—
 - (a) submit a written report on the operational and project progress to the Minister every month as well as on the request of the Minister;
 - (b) submit a final report on the project to the Minister within 40 days of the completion of a project; and
 - (c) grant the Department access to project information and the financial records of the biosphere reserve at all reasonable times after the Department has given written notice to the Biosphere Reserve Interim Committee or Management Committee of its intention to inspect the financial records.
- (5) The written report contemplated in subregulation (4)(a) must contain relevant project information, including financial records, updated time frames and revised deliverables (where applicable), and information on the project's management and organisation, stakeholder participation and ownership.
- (6) Should a Biosphere Reserve Interim Committee or Management Committee contemplated in subregulation (3) not start with a project, the project will be deemed to be cancelled with effect from—
 - (a) three months after the funds have been paid over for that project; or
 - (b) the later date as agreed upon in writing between the Biosphere Reserve Interim Committee or Management Committee and the Minister, and all funds already provided as financial assistance under section 8(1) of the Act must be refunded, including interest thereon, calculated at the prevailing interest rate set by the South African Reserve Bank, to the Minister within 30 days from the date of cancellation of the project.

- (7) Funds provided by the Minister as financial assistance under section 8(1) of the Act for or during a financial year of the biosphere reserve must be used before the end of that financial year, or before such later date as agreed upon in writing between the Biosphere Reserve Interim Committee or Management Committee and the Minister.
- (8) Funds provided by the Minister as financial assistance under section 8(1) of the Act and not used, including interest thereon calculated at the prevailing interest rate set by the South African Reserve Bank, must be paid back to the Minister immediately on completion of the project.
- (9) Notwithstanding subregulations (7) and (8), the Minister may in writing allow the Biosphere Reserve Interim Committee or Management Committee to roll over surplus funds, including interest thereon, to the following financial year to be used for the purposes of operational expenditure or any other biosphere-reserve projects, subject to the conclusion of a new memorandum of agreement between the Biosphere Reserve Interim Committee or Management Committee and the Minister, which must include a business plan and budget approved by the Minister.
- (10) A Biosphere Reserve Interim Committee or Management Committee may obtain financial assistance from other sources in order to execute its mandate in terms of the Act and the Biosphere Programme.

10. Reporting

- (1) In the annual report contemplated in section 5(4)(c) of the Act, the Management Committee must provide at least the following:
 - (a) The amount of funding received from provincial and national government sources, a description of the projects completed and the budget allocation per project;
 - (b) the amount of funding received from municipalities, a description of the projects completed and the budget allocation per project;
 - (c) the amount of funding received from non-governmental and donor organisations, a description of the projects completed and the budget allocation per project;
 - (d) the composition of the Management Committee;
 - (e) a schedule of meetings held and attendance of Management Committee members;
 - (f) the composition of the staff of the Management Committee;
 - (g) the number of jobs created through the implementation of projects;
 - (h) the area within the biosphere reserve put under formal conservation status;
 - (i) particulars of the implementation of the biosphere-reserve operational and corporate management plan and framework plan; and
 - (j) any other matter the Minister may request the Management Committee to report on.
- (2) Any subsequent changes in the composition of the Management Committee or in the persons with suitable technical expertise appointed in terms of regulation 4(3) must be reported to the Minister within 30 days of the changes taking place.

11. Appeal to Minister

- (1) A person wishing to appeal against a decision referred to in section 9(5) of the Act must lodge a notice of appeal with the Minister within 20 days of being notified of the decision, or if not notified, of becoming aware of the decision.

- (2) The notice of appeal must specify at least—
 - (a) the name of the appellant;
 - (b) a description of the matter to which the appeal refers;
 - (c) details of the decision to which the appeal refers;
 - (d) the grounds of appeal; and
 - (e) a brief summary of the facts on which the appellant relies.
- (3) The Minister may confirm, set aside or vary the decision concerned.
- (4) The Minister must make a decision as contemplated in subregulation (3) within 30 days of the notice of appeal being lodged in terms of subregulation (1).

12. Withdrawal of biosphere-reserve status

If, in terms of a review as contemplated in section 5(5) of the Act, it is found that a biosphere reserve no longer complies with the Man and the Biosphere criteria, the Minister—

- (a) may, after consultation with the Management Committee and interested and affected parties, recommend the withdrawal of the biosphere-reserve status of the biosphere reserve; and
- (b) must forward the recommendation to the national Minister for submission to UNESCO.

13. Short title

These regulations are called the Western Cape Biosphere Reserves Regulations, 2013.