

**DRAFT WESTERN CAPE BILL ON
BIOSPHERE RESERVES, 2009**

2 SEPTEMBER 2009

BILL

To facilitate the designation, management and planning of biosphere reserves; and to provide for matters incidental thereto.

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

Definitions

1. 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 MAB Programme;

“Biosphere Reserve Interim Committee” means a committee established in terms of section 2(4);

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

“MAB criteria” means the general criteria for an area to qualify for designation as a biosphere reserve, as determined by the MAB Programme;

“MAB Programme” means the Man and Biosphere Programme of UNESCO;

“Management Committee” means a committee established in terms of section 4(2)(a);

“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;

“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 role player 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;

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

Preliminary approval to establish biosphere reserve

- 2.(1) Any person or 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 prescribed format and must set out the prescribed particulars, including 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 grants the request, a Biosphere Reserve Interim Committee must be established in the prescribed manner, in accordance with any directive issued by the Minister.
- (5) The Biosphere Reserve Interim Committee must be broadly representative of all interested persons, institutions and communities.

Application for UNESCO designation as biosphere reserve

- 3.(1) The Biosphere Reserve Interim Committee must compile an application for UNESCO designation of the biosphere reserve in the format and in accordance with the process required by UNESCO.
- (2) The Biosphere Reserve Interim Committee must submit the application to the Minister.
- (3) If the Minister is satisfied that the application complies with the relevant MAB criteria, the Minister must forward the application to the national Minister for submission to UNESCO.
- (4) If UNESCO designates the biosphere reserve, the Minister must give notice in the *Provincial Gazette* of the designation and that sections 4 and 5 become applicable.

Management of biosphere reserves

- 4.(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 issued simultaneously with the notice referred to in section 3(4) or as soon as possible thereafter.
- (2)
 - (a) After designation of a biosphere reserve, a Management Committee must be established in the prescribed manner to replace the Biosphere Reserve Interim Committee.
 - (b) Upon establishment of the Management Committee, the functions of the Biosphere Reserve Interim Committee are automatically transferred to the Management Committee.
- (3) The Management Committee—
 - (a) is responsible for the management of the biosphere reserve, subject to this Act and the directions of the Minister;
 - (b) must compile a statute for the biosphere reserve in the prescribed manner;
 - (c) must provide an annual report on its activities to the Minister, and
 - (d) must compile a framework plan, as contemplated by section 5, for the Biosphere Reserve.

- (4) The Minister must periodically, at least every ten 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 MAB Programme, and report to the national Minister.

Framework plan for biosphere reserve

- 5.(1) The Management Committee must as soon as possible after its appointment prepare a framework plan for the biosphere reserve in accordance with the process principle of planning and the approval procedure as prescribed.
- (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 prepared, including conditions as to the manner in which the framework plan is to be made known and as to inspection and representations by inhabitants of the area concerned and by any other interested parties in the preparation of the framework.
- (3) The framework plan must comply and be consistent with any spatial development framework or framework plan or other plan in terms of any legislation, including any—
 - (a) environmental plan or 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 section 39 of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003); and
 - (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);
- (4) Despite subsection (3), a framework plan that is inconsistent with a plan referred to in that subsection can be approved in so far as it is more restrictive than that plan.

- (5) The Management Committee within must 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)
 - (a) 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.
 - b) The Minister may amend a biosphere reserve's framework plan in the prescribed way.
- (7) 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.
- (8) 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 framework plan may not take away current land use rights;
 - (b) should an existing legal land use not comply or be consistent with a framework plan at the approval of the plan, that land use may continue to be exercised until interrupted for at least six months or until further building plan approval may be required, whichever is the earlier; and
 - (c) should a land use referred to in paragraph (b) be interrupted for at least six months or should further building plan approval in regard thereto be required, the use of the land concerned must be caused to comply or be consistent with the framework plan.
- (9) Questions concerning compliance, consistency and conformity in respect of land use in relation to framework plans and in respect of framework plans in relation to each other, must be dealt with as follows:
 - (a) A land use complies with a framework plan, if the framework plan's designation explicitly provides for the land use concerned.
 - (b) A land use is consistent with a framework plan, if the framework plan's designation 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.

- (c) A proposed land use that does not comply with or is inconsistent with an applicable framework plan, cannot be approved unless the framework plan is appropriately amended either before the approval concerned or simultaneously therewith.
 - (d) A framework plan functioning at a lower level complies with a framework plan functioning at a higher level, if the higher-order framework plan's designations explicitly provide for the lower-order framework plan's proposals.
 - (e) A framework plan functioning at a lower level is consistent with a framework plan functioning at a higher level, if the higher-order framework plan's designations do not explicitly provide for the lower-order framework plan's proposals, but those proposals in the particular locations would not conflict with the goals of the designations concerned.
 - (f) A framework plan intended to function at a lower level but which does not comply with or is inconsistent with an applicable framework plan functioning at a higher level, cannot be approved unless the higher-order framework plan is appropriately amended either before the approval concerned or simultaneously therewith.
- (10) Any question that arises as to consistency in terms of this section must be referred to the Minister for a consistency ruling.

Extension of biosphere reserve

- 6.(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 3 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 3.

Funding of biosphere reserves

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

Regulations

- 8.(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;
 - (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 be made only with the concurrence of the member of the provincial Cabinet of the Western Cape responsible for finance.

Existing biosphere reserves

- 9.(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 the longer period approved by the Minister, submit a framework plan for the biosphere reserve to the Minister in accordance with section 5.

Short title and commencement

10. This Act is called the Western Cape Act on Biosphere Reserves, 2009, and takes effect on a date determined by the Premier by proclamation in the *Provincial Gazette*.