

HERITAGE ASSOCIATION OF SOUTH AFRICA

CONSTITUTION

PREAMBLE

The intention of this document is to provide a legal persona for all natural and legal personas to associate and pursue stated objectives.

The Constitution is to be construed in a manner consistent with the intent of the provisions of the Constitution of the Republic of South Africa and to assist with the implementation of the provisions and principles of the:

- National Environmental Management Act (NEMA) 107/1998
- National Heritage Resources Act (NHRA) 2/1999
- National Heritage Council Act (NHCA) 11/1999 and
- any amendments to the above

1. NAME

The name of the organisation hereby constituted shall be the Heritage Association of South Africa, hereafter abbreviated in this Constitution to HASA which should at all times bear reference to the fact that it is a successor in title to the Simon van der Stel Foundation.

2. THE ORGANISATION

The organisation shall:

- A. exist in its own right, separately from its Associates, namely individuals and autonomous bodies;
- B. continue to exist despite the changes that may occur in regard to the individuals or autonomous organisations that constituted HASA at the time of its inauguration.

3. DEFINITIONS

- A. "Council" is the committee of the Associates elected at each Annual General Meeting (AGM) and responsible for the implementation and establishment of policy between AGMs and HASA.
- B. "Associate" shall mean an individual or autonomous body that subscribes to the objectives of HASA in the classes referred to under 5.2: Classes of Associates.
- C. "Executive Committee" shall mean a non-policy making body delegated to act for the Council to manage and administer the organisation on a day to day basis.
- D. "He/his/him" as reference to gender shall have the same meaning as the feminine form.
- E. "Heritage Resources" means the National Estate as defined in the NHRA.
- F. The "Annual General Meeting" (AGM) or "Special General Meeting (SGM)" shall mean the meetings of HASA associates.
- G. "Members" refers to the four Members of the HASA Reserve Fund.
- H. Awards shall mean the Simon van der Stel gold medals and national merit awards.

4. OBJECTIVES

The objectives of HASA are:

- A. To be an umbrella body for all associates as defined in 5.2 Classes of Associates, dedicated to the principles and objectives of national legislation referred to in 1.0 The Preamble.
- B. To advocate and make publicly aware the need for the conservation of the heritage resources of South Africa by all means possible including the use of public digital media and an internet based website.
- C. To liaise and co-operate with other organisations and structures having an interest in the conservation of heritage resources in South Africa.
- D. To provide a national perspective and collective opinion on matters of conservation of heritage resources in South Africa when approached to do so, or on its own initiative.
- E. To recognize the contribution of individuals, associations and corporate bodies' life time commitment and contribution to the objectives of this organization by the awarding of national awards and gold medals

5. ASSOCIATES

A. Eligibility

Associate status of HASA shall be open to all groups and to individuals who profess an interest in the conservation of the National Estate and who shall agree to abide by the letter and spirit of this Constitution.

B. Classes of Associates

The classes of Associates are:

i. Associate Bodies

Associate Bodies are organisations that profess to share the objectives of this Constitution. Associate bodies are entitled to be represented at all AGMs and SGMs. One individual can be nominated to represent the organisation and to vote on behalf of the Associate Body at such meetings.

ii. Honorary Associates

The award of honorary membership shall be determined by an AGM or SGM on condition that notice of this intention is circulated at least fourteen (14) days before the meeting. The Council or any Associate may nominate an individual or corporate entity for Honorary Associate status.

iii. Individual Associates

In circumstances where there is no functioning/active heritage organisation in an area but there is an active individual with concern for heritage conservation, such an individual may be admitted as an Associate, as if he represented an organisation.

iv. Voting Rights of Associates

All Associates have one (1) vote at AGMs and SGMs.

v. Termination of Associate Status

Associates shall cease to be Associates upon resignation in writing, or the Council may decide in its sole discretion, to suspend or terminate the associateship of any individual or organisation. In the event that the Council decides to withdraw associate status the Associate shall have the right to appeal against the decision.

vi. Appeals against Termination of Associateships

- i. The appeal hearing shall be by an independent arbitrator who must be appointed by the Council within fourteen (14) days. The independent arbitrator shall be approved by both parties, shall be the master of the proceedings and shall issue a written reasoned decision.
- ii. In the event that the two parties cannot agree on an arbitrator within the time stipulated, the Council shall appoint an independent arbitrator and the Council's decision shall be final and binding upon the appellant.

vii. Associate Subscriptions

- i. The AGM shall decide whether annual subscriptions are to be paid by Associates in any financial year and, if so, what the subscription shall be in the various categories of associateship. The Council may exempt Associates at their discretion.
- ii. Associates in arrears of their subscriptions may be stripped of their voting power if the Council sees fit.
- iii. An Associate who refuses to contribute after an application for exemption to pay has been refused by the Council may be stripped of his right to vote by the Council provided that the Associate may appeal the decision of the Council.

6. BUSINESS AND AFFAIRS

A. Financial Year

The financial year of HASA shall be from 1st July to 30th June.

B. Annual Accounts

The Council shall appoint an appropriately qualified person to verify the accounts and report on the conduct of the finances of both its accounts as well as those of the independent reserve account.

C. Reimbursement

HASA may not give any of its money or property to staff, Associates or office bearers, provided that it may pay for work or reimburse expenses that a staff member Associate or office bearer has incurred on behalf of HASA. Authority for such payments shall be approved by the Council in writing prior to the expense being incurred.

D. Indemnity

Every member of the Council or any sub-committee, agent or servant of HASA shall be indemnified out of the funds of HASA against all costs, charges, expenses, losses and

liabilities incurred by him in the authorised conduct of HASA's business, and in the discharge of his authorised duties. Such person/s shall not be liable for any loss incurred other than due to his own willful acts or defaults.

E. Liability

i. Associates

Every Associate's liability shall be limited to his unpaid subscriptions

ii. The HASA Reserve Fund

The HASA Reserve Fund shall be liable only for the difference between any funds granted annually to HASA and what has been dispersed to the Association in terms of the annual grant.

7. COUNCIL

A. Nomination and Election of the Council

- i. The Chairperson shall be elected at the AGM. The Chairperson cannot serve for more than three (3) consecutive years except when by a two thirds majority ballot his term may be extended for a maximum period of one additional year.
- ii. The Council consisting of six (6) members shall be elected at the AGM.
- iii. The office bearers shall be elected by the Council from within its own ranks at its first meeting.

B. Powers and duties of the Council

- i. The Council shall be responsible for managing the affairs of the Association in terms of its mandate.
- ii. Subject to the terms of this Constitution the Council shall have the power to set policy which does not conflict with the Constitution or the mandate of the AGM or SGM and shall distribute any policy decisions taken to the Associates.
- iii. Carry out the approved policy of HASA during its term of office.
- iv. Generally deal with the property of the Association including buying, letting, hiring, exchange, transfer and receipt of all funds due to HASA by way of donation, contribution including debentures, stocks and shares provided that HASA may only invest its funds with a registered financial institution, or in such other manner as may be prescribed from time to time by an AGM.
- v. All transactions that involve physical movable or immovable property must be confirmed by an AGM.
- vi. Initiate and defend legal proceedings in the name of HASA and perform all legal acts and execute such legal and other documents as may be necessary with the approval of a general meeting.
- vii. The Council may co-opt additional persons to the Council and to sub-committees of the Council who shall have voting powers and which the next AGM must confirm.

- C. Delegate any of its powers, except policy making powers, to sub-committees.
 - i. Rescind the delegated powers so given at any time.
 - ii. Set the criteria for, advertise and assess nominations for the gold medals and national awards which shall be issued at the Council's discretion.

D. Council Meetings

- i. The Council members can meet or hold meetings with the assistance of technology. In either instance, the decisions shall be valid and binding provided they conform to the constitutional provisions and accepted standards.
- ii. The Council shall determine how, where and when it shall meet provided that Council members shall meet in person once out of a total of at least three (3) times in a year.
- iii. Voting at all meetings of the Council shall be in accordance with accepted voting procedures.
- iv. When a voting deadlock occurs, the Chairman or the presiding officer shall use his vote as a casting vote.
- v. The Chairman of the Council may adjourn a meeting *sine die* or to a date determined by the meeting.
- vi. A quorum for any meeting shall be fifty percent (50%) of the members plus one (1). If a quorum is not present the Chairman can adjourn the meeting for thirty (30) minutes and then recommence with members present (in person or by skype).

E. The Executive Committee of the Council

The Council may appoint an executive committee with a defined brief, or terms of reference, and with defined delegated powers.

F. Sub-Committees or Portfolio Committees of Council

The Council may:

- i. Appoint sub-committees/portfolio committees.
- ii. Define how many members sub-committee/portfolio committees shall comprise and their terms of reference.
- iii. Delegate specific powers to sub-committees/portfolio committees.
- iv. Withdraw these delegated powers as and when it deems fit.

G. Annual General Meeting (AGM)

i. Date of Meeting

- An AGM shall be held once in every twelve (12) month period, within six (6) months of the end of the financial year.
- The date, time and place of an AGM or SGM will be determined by the Council.

ii. Notice of Meeting

All Associates must be notified of the date and venue of such a meeting, in writing, at least twenty one (21) days before the date of the meeting.

iii. **Agenda**

The agenda for an AGM shall be determined by the Council and must include:

- A Chairman's review of the previous year's business.
- A financial report of HASA's accounts for the financial year.
- Fixing of subscription fees.
- Election of Chairman and Council.
- Additional agenda items may be added from the floor at the meeting.
- Report to the members in respect of the awards made.

iv. **Quorum**

A quorum for the AGM shall be twenty five percent (25%) of the Associates present in person or by designated proxy. If a quorum is not present at the scheduled time for the meeting to commence, the Chairman may adjourn the meeting for at least thirty (30) minutes when the meeting resumes, the number of associates that are present, shall then constitute a quorum.

v. **Secret Ballots**

Any resolution to be voted on at an AGM may be decided by a majority show of hands, or the Associates can decide by a show of hands that a secret ballot should be held. The Chairman of the meeting may decide in the absence of a request (by delegates) to hold a secret ballot.

vi. **Proxy Votes**

Any Associate who is eligible to attend and vote at any meeting, but who is unable to attend in person, shall be entitled to vote by proxy on any matter raised. An authorization should be signed by the Associate (not able to attend the meeting) and sent to the Secretary/Chairman prior to the meeting.

H. Special General Meetings (SGM)

i. **Reasons for SGM**

- An SGM may be called by the Council as and when it is deemed necessary.
- An SGM must also be called by the Council when five (5) Associates have:
 - all signed the request for a meeting.
 - submitted the request to the Council and stated the reasons for, and the purpose of, the proposed meeting.

ii. **Date of Meeting**

The date, time and place of an SGM will be determined by the Council.

iii. **Notice of Meeting**

All Associates must be notified of the date and venue of such a meeting, in writing, at least twenty one (21) days before the date of the meeting.

i. **Agenda**

- When an SGM is called on the initiative of the Council it (the Council) shall determine the agenda.

- When an SGM is held in terms of subsection 7.7.1 the agenda must first deal with the matter raised for the meeting and can then include other business.

v. Decision of the SGM

The decision of the SGM will be final and binding on the Council.

vi. Quorum

A quorum for the SGM shall be twenty five percent (25%) of the Associates present in person or by designated proxy. If a quorum is not present at the scheduled time for the meeting to commence, the Chairman may adjourn the meeting for at least thirty (30) minutes when the meeting resumes, the number of associates that are present, shall then constitute a quorum.

vii. Secret Ballots

Any resolution to be voted on at an SGM may be decided by a majority show of hands, or the Associates can decide by a show of hands that a secret ballot should be held. The Chairman of the meeting may decide in the absence of a request (by delegates) to hold a secret ballot.

viii. Proxy Votes

Associates are entitled to vote by proxy as set out for AGMs 7.7.6 of the HASA Constitution.

8. AMENDMENT OF THE CONSTITUTION

A. Written Notice

Amendments to the Constitution in the form of a written special resolution of the Associates shall be decided upon at an AGM or SGM of HASA, convened for that purpose, and upon written notice of such meeting having been communicated to each Associate no less than twenty one (21) days before the date of the meeting.

B. Ballot Vote Required

A ballot vote is required to change this Constitution. This requires that at least two thirds of the Associates present vote for the proposed change.

9. PERPETUAL SUCCESSION

HASA shall continue notwithstanding changes to the composition of its Associates or office bearers and shall only be deemed to have become dormant if it is unable to fulfill its purpose and/or objectives.

10. INTERPRETATION

If any dispute should arise at any Council or general meeting with regard to the interpretation of this Constitution, the Chairman of the meeting shall rule thereon. Such a ruling may be overturned by a majority by those physically present at the meeting provided that the minimum quorum is maintained.

11. DISSOLUTION OF HASA

HASA may be dissolved and/or reconstituted and/or merged with another association with similar purposes and objectives, when:

- A. A resolution is passed by not less than two thirds of Associates present in person or by proxy at a duly constituted meeting of the Associates of HASA.
- B. A merger has occurred or is due to take place, then the assets of HASA may be transferred to the body with which the merger is being effected, unless the terms of the merger specifically exclude the assets of HASA.
- C. A properly constituted application is made to the Supreme Court by an Associate of HASA on the grounds that HASA has become dormant, or is unable to fulfill its purposes or objectives, then the assets of HASA shall be transferred to the body with which the merger is being effected. Such application shall not be brought until the Associate requiring dissolution has arranged a general meeting that did not achieve a quorum.
- D. Upon dissolution of the association the copyright for the Simon van der Stel awards must be transferred to ensure the survival of the awards.
- E. No resolution of the Association can lead to the transfer of the funds held in the HASA Reserve Fund unless the permanent members have the right to veto the resolution.

12. THE HASA RESERVE FUND

A. Incorporation of the Simon van der Stel Foundation Trust Fund

The former Trust Fund of the Simon van der Stel Foundation, which was the Heritage South Africa Trust Fund, is hereby incorporated into the Constitution of HASA as an Associate for the benefit of the Association but its assets do not become the property of HASA who remains the sole beneficiary of this fund while HASA is legally constituted.

B. Name of the Fund

The Reserve Fund will be known as the HASA Reserve Fund and the HASA Reserve Fund will become an Associate of HASA with its liability limited in terms of the HASA Constitution.

C. Members of the Fund

The HASA Reserve Fund shall have four (4) Members:

- i. Two permanent (being existing members) who must nominate successors upon their retirement.
 - o Both of these Members have the right of veto individually.
 - o The two permanent Members and their successors must at all times act independently in terms of their mandate to protect the funds of the HASA Reserve Fund for successive generations.
- ii. Two Members to be appointed by the Council of HASA each year.

D. Right of Veto

All decisions by the Members shall be a majority decision, subject always to each of the permanent Members' right of veto.

E. Verification of Accounts

The accounts of the HASA Reserve Fund shall be approved by the Members and verified by a competent person nominated by the Association then laid before the AGM for their information.

F. Conditions

The HASA Reserve Fund is maintained to provide for the reasonable running expenses of HASA with the following conditions:

- i. The HASA Reserve Fund undertakes to distribute to HASA a minimum of fifty percent (50%) of its accrued income in any one year. Undistributed previous income can be added to the annual distribution.
- ii. The HASA Reserve Fund can refuse to distribute income to HASA for good reason.
- iii. The HASA Reserve Fund must maintain a balance of assets to a minimum of Five Hundred Thousand Rand (R500 000.00).
- iv. The control of the HASA Reserve Fund is vested with the two permanent Members provided their decision carries the support of one of the two HASA nominated Members.
- v. The permanent Members may serve on the Council of HASA but retain their independent powers.
- vi. In the event that the permanent Members approve a distribution contrary to a previously approved medium term investment policy, a simple majority of Associate members of HASA can call a special meeting of the HASA Reserve Fund to seek an explanation and, if necessary, act as if they were Members of the HASA Reserve Fund and instigate legal action as Beneficiaries of the HASA Reserve Fund.

G. Investments

- i. The Members are authorized to make medium term investments with a registered financial institution including unit trusts and other approved products with the objective of protecting the basic fund of Five Hundred Thousand Rand (R500 000.00) against inflation.
- ii. The Members must provide for the distribution to the Association for the medium term period out of near cash investments when making investment decisions.

H. Indemnity

The Members are indemnified against any claim in the same manner and with the same restrictions as set out in 6.4 of the HASA Constitution.

I. Legal Powers of the Members

- i. The Members have the legal power to open and operate banking and investment accounts with any financial institution registered in South Africa in the name of the HASA Reserve Fund.
- ii. The Members have the legal power to sign and operate these accounts as provided for by the banking regulations of the country.

- iii. All signing authority must be with at least two (2) Members, one of which must be a permanent Member.
- iv. The HASA Reserve Fund is not authorized to own property other than for the generating of income for HASA or its successor.
- v. The HASA Reserve Fund stands security for HASA for more than one (1) years accrued income.

13. DISPUTE RESOLUTION

In the event of a dispute arising between the Members themselves, the Members and HASA, the Members and any other party, the conditions of the initial registered Simon van der Stel Trust must be consulted to ascertain the true intention and purpose of the Trust.

14. ACCEPTANCE

Accepted at a Council meeting on this day

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And passed, unanimously, by Associates at a general meeting on this day

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Signed:

Chairman:

Printed Name Signature

Secretary:

Printed Name Signature