

Buitengewone Provinsiale Koerant

5598

Vrydag, 29 September 2000

Provincial Gazette Extraordinary

5598

Friday, 29 September 2000

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

INHOUD

PROVINSIALE KENNISGEWING

P.K. 523 29 September 2000

Die volgende Konsep Wetsontwerp word hierby vir algemene inligting en kommentaar gepubliseer:—

Toerisme Konsep Wetsontwerp vir die Wes-Kaap

Enige persoon of organisasie wat kommentaar oor die Konsep Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 13 Oktober 2000:

- (a) deur dit te pos aan:
Hoof van Departement:
Departement van Ekonomiese Sake
Landbou en Toerisme
Posbus 979
Kaapstad
8000

- (b) deur dit te faks:
Faks Nr. (021) 483-3018/483-5425

Mnr. C. du Preez
Hoof van Departement

CONTENTS

PROVINCIAL NOTICE

P.N. 523 29 September 2000

The following Draft Bill is hereby published for general information and comment:—

Tourism Draft Bill for the Western Cape

Any person or organisation wishing to comment on the Draft Bill is requested to lodge such comment in writing before or on 13 October 2000:

- (a) by posting it to:
Head of Department:
Department of Economic Affairs
Agriculture and Tourism
P.O. Box 979
Cape Town
8000

- (b) by faxing it:
Fax No. (021) 483-3018/483-5425

Mr. C. du Preez
Head of Department

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To repeal the Western Cape Tourism Act, 1997 (Act 3 of 1997), so as to provide for the establishment of a provincial tourism marketing agency, for its objects and functions, for the manner in which it is to be managed and for its staff members; to regulate provincial tourism development, including the activities and functions of the provincial government in relation thereto; to provide for the continued existence of local tourism bureaux and regional tourism organisations established in terms of the previous Act by deeming them to have been established in terms of a standard local tourism by-law; and to provide for matters incidental thereto.

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

**CHAPTER 1
INTERPRETATION**

Definitions

- 1.** (1) In this Act, unless the context indicates otherwise—
- (i) “**accredited tourism service provider**” means a tourism establishment or service accredited by Cape Tourism in terms of section 5(1)(c); 5
 - (ii) “**board**” means the board of Cape Tourism;
 - (iii) “**Cape Metropole**” means the area of jurisdiction of the Metropolitan Municipality;
 - (iv) “**Cape Tourism**” means the juristic person established in section 2; 10
 - (v) “**chairperson**” means the chairperson of the board of Cape Tourism Cape Tourism;
 - (vi) “**chief executive officer**” means the chief executive officer of Cape Tourism as contemplated in section 12;
 - (vii) “**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996); 15
 - (viii) “**convention bureau services**” means any services established by Cape Tourism in terms of section 5(1)(b)(iii) to promote conventions, conferences, meetings, events and exhibitions in the Province;
 - (ix) “**deputy chairperson**” means the deputy chairperson of the board as contemplated in section 6(6); 20
 - (x) “**district municipality**” means a district municipality in the Province as provided for in section 1 of the Structures Act, 1998 (Act 117 of 1998);
 - (xi) “**Forum**” means the Ministerial Provincial Tourism Forum established in terms of section 22; 25

- (xii) “**integrated tourism information system**” means a user-friendly computerized directory of information relevant to tourism in the Province, which must include accredited tourism service providers, their services and establishments and tourism practitioners;
- (xiii) “**local authorities**” means all municipalities in the Province; 5
- (xiv) “**Local Government Transition Act**” means Local Government Transition Act, 1993 (Act 209 of 1993);
- (xv) “**local municipality**” means a local municipality in the Province as provided for in section 1 of the Structures Act, 1998 (Act 117 of 1998) but shall in Chapter 3 of this Act, include the Metropolitan Municipality; 10
- (xvi) “**Metropolitan Municipality**” means the metropolitan municipality established in terms of the Structures Act, 1998 (Act 117 of 1998);
- (xvii) “**Ministerial Provincial Tourism Forum**” means the Ministerial Provincial Tourism Forum established in terms of section 22;
- (xviii) “**prescribe**” means prescribe by regulation in terms of section 23; 15
- (xix) “**previous Act**” means the Western Cape Tourism Act, 1997 (Act 3 of 1977), as amended;
- (xx) “**Province**” means the Province of the Western Cape;
- (xxi) “**provincial government**” means the government of the Province;
- (xxii) “**provincial local government organisation**” means the organisation 20 recognised under section 2(1)(b) of the Organised Local Government Act, 1997 (Act 52 of 1997);
- (xxiii) “**provincial Minister of Finance**” means the member of the Provincial Cabinet responsible for financial matters;
- (xxiv) “**Provincial Parliament**” means the legislature of the Province; 25
- (xxv) “**responsible Minister**” means the member of the Provincial Cabinet responsible for tourism;
- (xxvi) “**Satour**” means the South African Tourism Board as established by the Tourism Act, 1993 (Act 72 of 1993);
- (xxvii) “**specified date**” means the date specified by the responsible Minister by 30 notice in the *Provincial Gazette* for the commencement by Cape Tourism of its activities;
- (xxviii) “**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
- (xxix) “**tourism establishment**” means a tourism establishment as prescribed by 35 regulation;
- (xxx) “**tourism practitioner**” means the operator of a tourism establishment or service; and
- (xxxi) “**tourism service**” means a tourism service as prescribed by regulation;
- (xxxii) “**tourist**” means a person spending one night or more but less than a year 40 away from home;
- (xxxiii) “**Western Cape Tourism Board**” means the board established by the previous Act.

(2) Where in this Act any functionary is required to take a decision in consultation with another functionary, such decision must require the concurrence of such other functionary; provided that if such other functionary is a body of persons it must express its concurrence in accordance with its own decision-making procedures. 45

CHAPTER 2 Cape Tourism

50

Establishment of Cape Tourism

2. A juristic person which shall be known as Cape Tourism, and which must consist of a board, a chief executive officer and staff, is hereby established.

Cape Tourism successor to assets and liabilities of Western Cape Tourism Board

3. (1) On the specified date, all assets, rights liabilities and obligations of the Western Cape Tourism Board will be transferred to Cape Tourism. 55

(2) The Registrar of Deeds must make all the entries and endorsements necessary to give effect to subsection (1) in or on any documents in his or her office or submitted to him or her.

(3) No fees or other monies shall be payable in respect of such entry or endorsement.

(4) The responsible Minister shall, when promulgating the specified date, make provision for the disestablishment of the Western Cape Tourism Board.

Main object of Cape Tourism

4. Cape Tourism must, subject to the provisions of section 5, formulate and implement a comprehensive tourism marketing strategy for the Province, on an ongoing basis. 5

Functions of Cape Tourism

5. (1) In order to achieve its main object, Cape Tourism must and in accordance with any agreement pursuant to the provisions of section 22(2)(d)—

(a) market tourism: 10

(i) to the Province internationally in cooperation with Satour; and

(j) to and within the Province domestically;

(b) establish, manage and maintain:

(i) a tourism registration and accreditation system for the Province which must comprise accredited tourism service providers; 15

(ii) in conjunction with the accredited tourism service providers and the private sector, a provincial tourism database, including an integrated tourism information system; and

(iii) convention bureau services;

(c) determine requirements for accreditation in respect of: 20

(i) the display and use of the “i”-sign; and

(ii) the display and use of the Cape Tourism logo

and, on application by a tourism service provider complying with such requirements, accredit such tourism service provider for the purposes of displaying and using the “i” sign or the Cape Tourism logo, or both, as the case may be; 25

(d) monitor, support and co-ordinate the activities of the accredited tourism service providers;

(e) provide guidelines to local authorities on the minimum standards of services as provided for in terms of section 21(c) for municipal structures involving tourism, including entities referred to in section 18; 30

(f) ensure that a code of conduct for tourism practitioners and accredited tourism service providers is compiled and published in the *Provincial Gazette* as provided for in section 23(2);

(g) open and administer offices in the Province; 35

(h) identify and promote new tourism products and packages in the Province, including new themes and routes;

(i) promote tourism-related arts and crafts in the Province;

(j) in partnership with provincial and local government, raise levels of awareness and understanding of tourism and its importance to the Province, and 40

(k) generate income.

(2) Cape Tourism may, subject to the provisions of this Act and the provisions of the Public Finance Management Act, 1999 (Act 1 of 1999), for the purpose of performing the functions as contemplated in subsection (1)—

(a) co-operate and enter into agreements with any natural or legal person or persons, any organ of state or organisation; 45

(b) in consultation with the responsible Minister and the Ministerial Provincial Tourism Forum, lease, purchase or acquire, let, sell, exchange or alienate, mortgage, burden with a servitude or confer any real right in, immovable property, and 50

(c) hire, purchase or acquire, hire out, sell, exchange or alienate, pledge or confer any other real right in, movable property, and

- (d) subject to subsection (b) above, perform all other functions that a juristic person may in law perform.

Board of Cape Tourism

6. (1) Cape Tourism will be governed by a board, which shall consist of the following members: 5
- (a) two representatives of the provincial government appointed by the responsible Minister;
 - (b) two representatives of the Metropolitan Municipality appointed by that Municipality;
 - (c) two representatives of the district municipalities in the Province appointed by the provincial local government organisation; 10
 - (d) three representatives of the private tourism sector appointed by the responsible Minister, in consultation with the Ministerial Provincial Tourism Forum;
 - (e) the chief executive officer of Satour;
 - (f) the chief executive officer of the Western Cape Nature Conservation Board. 15
- (2) The members referred to in subsections (1)(a), (b), (c) and (d) must be persons with knowledge and experience in tourism, and at least one of the members referred to in each of subsections (1)(a), (b) and (c) must be a tourism practitioner.
- (3) The members referred to in—
- (a) subsections (1)(a) and (d) become members of the board from the date upon which their appointment is confirmed by the responsible Minister; 20
 - (b) subsections (1)(b) and (c) become members of the board from the date upon which the responsible Minister is notified of their appointment.
- (4) The responsible Minister must, before confirming any appointment in terms of subsection 3(a)— 25
- (a) in the prescribed manner and by way of notice in the Provincial Gazette, and in such other media as the responsible Minister may consider appropriate, publish the name of the person concerned and invite any interested parties to submit to him or her, within the period specified in the notice, any objections which they might have to the proposed appointment, stating the grounds for the objections; and 30
 - (b) consider any such objections received.
- (5) The responsible Minister must—
- (a) before making any appointment in terms of subsection (1)(d), by notice in the *Provincial Gazette*, in such other media as the responsible Minister may consider appropriate, invite any interested parties in the private tourism sector to submit to him or her, within the period and in the manner prescribed in the notice, the names of persons who in the opinion of such interested parties are fit and proper persons to be so appointed stating the grounds upon which such opinion is based; 35
 - (b) consider the nominations received in terms of subsection (a) and, subject to section 6(1)(d), appoint such persons as the responsible Minister may deem fit. 40
- (6) The board must, from among the members referred to in subsections (1)(a), (b), (c) and (d), appoint a chairperson and deputy chairperson of the board, which appointment must be for a period not exceeding three years. 45

Periods of office of members of board of Cape Tourism, qualifications for appointment, vacation of office and filling of vacancies

7. (1) Any member of the board who holds office in terms of:
- (a) section 6(1)(a), (b), (c) and (d) shall subject to the provisions of subsection (2), remain in office for a period of three years; provided that at any time the provincial government, the Metropolitan Municipality and the district municipalities shall be entitled to replace their representatives on the board, in which event any such replacement shall remain in office for the unexpired period of the representative's term of office; 50
 - (b) section 6(1)(e) or (f) must, subject to the provisions of subsection (2), remain in office for as long as he or she is the chief executive officer of Satour or the chief executive officer of the Western Cape Nature Conservation Board, as the case may be. 55

- (2) A person is disqualified from being appointed or remaining a member of the board if he or she—
- (a) is declared insolvent or of unsound mind by a competent court;
 - (b) is or has been—
 - (i) convicted of any offence and sentenced to imprisonment without the option of a fine; or
 - (ii) removed from office in terms of subsection (3), or
 - (c) becomes a member of Parliament, or a provincial legislature.
- (3) The responsible Minister may, in consultation with the Ministerial Provincial Tourism Forum, remove a member of the board from office on the grounds of gross misconduct, incapacity or gross incompetence or if such member is absent from three consecutive meetings of the board without the consent of the board.
- (4) A member of the board who wishes to resign before the expiry of his or her term of office, must do so in writing and must address such letter of resignation to the chairperson of the board.
- (5) A member of the board vacates office, other than by reason of the expiry of his or her term of office under subsection (1) when he or she—
- (a) is disqualified in terms of subsection (2); or
 - (b) is removed in terms of subsection (3); or
 - (c) resigns in terms of subsection (4).
- (6) If, for any reason, the office of a member of the board referred to in section 6(1)(a), (b), (c) or (d) becomes vacant before the expiry of his or her term of office, a new representative must be appointed in accordance with the provisions of section 6 for the unexpired part of the member's term of office.
- (7) Any member of the board whose period of office has expired is eligible for reappointment.

Meetings and decisions of the board of Cape Tourism

8. (1) The first meeting of the board must be held at a time and place determined by the responsible Minister, and thereafter the board must meet at such times and places as may be determined by the chairperson from time to time, provided that the board must meet at least once every three months.
- (2) The chairperson may at any time, either of his or her own volition or at the written request of no fewer than four members of the board, by way of written notice convene an extraordinary meeting of the board, which must be held at the time and place determined by the chairperson.
- (3) A notice whereby an extraordinary meeting of the board is convened must state the purpose of that meeting.
- (4) The quorum for the meeting of the board is six members; provided that at least one of the two members referred to in each of subsections (a), (b), and (c) of section 6(1) must be present.
- (5) If the chairperson is for any reason unable to act, or the office of chairperson is vacant, the deputy chairperson must act as chairperson.
- (6) If both the chairperson and the deputy chairperson are absent from a meeting of the board, the members present must elect one of their number to preside at the meeting.
- (7) The decision of a majority of the members present at a meeting of the board shall constitute a decision by the board; and in the event of an equality of votes on any matter the person presiding at the meeting must, in addition to a deliberate vote, have a casting vote.
- (8) A decision taken by the board at a time when there is a vacancy on the board, or when any person who is not entitled to sit as a member of the board sits as a member is not invalid if—
- (a) the decision is taken by a majority of the members of the board, and
 - (b) at least six of the members comprising that majority are entitled to sit as members.
- (9) The board may allow any person who is not a member of the board to attend any meeting of the board and may allow such person to take part in the proceedings at such meeting, without having the right to vote.
- (10) When the board is in session, a member thereof may not take part in the discussion of, or participate in the making of a decision on, any matter in which that member or that member's spouse, partner or employer has any personal or direct or indirect pecuniary interest, unless that member first declares the extent, nature and

particulars of that interest; provided that the board may require that any member who has declared such an interest must recuse himself or herself from the proceedings regarding such matter.

(11) Any member of the board who contravenes the provisions of subsection (10) is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding twelve months. 5

(12) Minutes must be kept of meetings of the board and of any committees appointed by the board, which must be signed by the person who presides at the next meeting.

(13) The minutes of meetings of the board will be public documents.

Committees of board of Cape Tourism 10

9. The board may establish the committees it considers necessary to assist in the performance of its functions and may appoint the members of its committees, which may include members of the board and staff of Cape Tourism.

Delegation of functions of board of Cape Tourism

10. (1) The board represents Cape Tourism and all acts performed by the board or on its authority will be deemed to be acts of Cape Tourism. 15

(2) Subject to subsections (3), (4) and (5) the board may by resolution delegate any power and assign any duty conferred on it by or in terms of this Act to the chairperson, the chief executive officer or a committee of the board.

(3) The board must not be divested of any power or relieved of any duty so delegated or assigned. 20

(4) A delegation or assignment—

(a) may be made subject to conditions determined by the board;

(b) may include the power to subdelegate or further assign subject to conditions determined by the board; 25

(c) must be fully communicated to the delegatee or assignee in writing.

(5) The board may by resolution—

(a) amend or revoke a delegation or assignment made in terms of subsection (2);

(b) withdraw any decision, other than a decision which confers a right or entitlement on any third party, made in terms of an assignment or delegation, and decide the matter itself. 30

Remuneration of members of board of Cape Tourism and its committees

11. The members of the board and its committees, other than the chief executive officer and the staff of Cape Tourism, must be paid out of the funds of Cape Tourism the remuneration and allowances determined by the responsible Minister, in consultation with the provincial Minister of Finance and after consultation with the Ministerial Provincial Tourism Forum and published by the responsible Minister in the *Provincial Gazette*. 35

Chief executive officer of Cape Tourism

12. (1) The board must appoint a fit and proper person with knowledge of, and experience in, management and tourism as chief executive officer of Cape Tourism; provided that no member of the board and no person who is disqualified from being appointed or remaining a member of the board, may be appointed as chief executive officer. 40

(2) The chief executive officer must be appointed, for such period, not exceeding five years, as the board must determine and may be reappointed upon expiry of that period, after consultation with the responsible Minister. 45

(3) The chief executive officer is eligible for reappointment.

(4) The chief executive officer must—

(a) ensure that Cape Tourism performs its functions in terms of this Act; 50

(b) report to the board on the functioning and effective performance of Cape Tourism;

- (c) compile a written report on the functioning and effective performance of Cape Tourism and must submit such report to the responsible Minister, the Metropolitan Municipality and the district municipalities on a six monthly basis;
 - (d) be in charge of the other employees of Cape Tourism and of such employees as may be seconded to Cape Tourism from the Provincial Government and the local authorities; 5
 - (e) attend the meetings of the board;
 - (f) ensure that proper minutes are kept of the meetings of the board and any committees of the board, and 10
 - (g) perform the other functions assigned to him or her by or in terms of this Act.
- (5) If the chief executive officer is absent or for any reason unable to perform his or her functions, or whenever there is a vacancy in the office of chief executive officer, the board must appoint another person to act as chief executive officer of Cape Tourism during such absence or inability or until a chief executive officer has been appointed in terms of subsection (1). 15
- (6) An acting chief executive officer must, for the duration of his or her appointment, perform the functions of the chief executive officer.
- (7) The person who, immediately before the specified date, was the chief executive officer of the Western Cape Tourism Board in terms of the previous Act must, from the specified date until the date when the appointment of Cape Tourism's first chief executive officer in terms of subsection (1) of this section takes effect, act as chief executive officer of Cape Tourism, provided that the person so acting is not precluded from being appointed as the chief executive officer of Cape Tourism in terms of subsection (1); provided further that the provisions of this subsection shall not be construed as conferring any right or expectation of whatsoever nature that the chief executive officer of the Western Cape Tourism Board will be appointed as the chief executive office of Cape Tourism. 20 25

Staff of Cape Tourism

13. (1) Subject to the written directions of the board, the chief executive officer may appoint such staff for Cape Tourism as are reasonably necessary to perform the work arising from Cape Tourism's functions in terms of this Act. 30
- (2) The terms and conditions of employment of the chief executive officer and other staff of Cape Tourism, including their remuneration, allowances, subsidies and other service benefits, are determined by the board in accordance with a system approved by the responsible Minister in consultation with the provincial Minister of Finance and published in the *Provincial Gazette*. 35
- (3) The persons who, immediately before the specified date, were employees of the Western Cape Tourism Board in terms of the previous Act, are from that date deemed to be employees of Cape Tourism and will be deemed to have been appointed in terms of subsection (1). 40
- (4) The terms and conditions of employment applicable to the persons referred to in subsection (3) immediately before the specified date, continue, with effect from the specified date, until such time as it is redetermined by the board, in terms of subsection (2); provided that— 45
- (a) those terms and conditions of employment may not be less favourable than before the redetermination;
 - (b) those persons' respective periods with the Western Cape Tourism Board must be regarded as pensionable service for the person of any pension fund or scheme of which they are members after the specified date, and 50
 - (c) the leave which has been accumulated by each of those persons while employed by the Western Cape Tourism Board is deemed to be leave accumulated by them in service of Cape Tourism.
- (5) The board may, in consultation with the responsible Minister and the provincial Minister of Finance, establish, manage and administer any pension or provident fund or medical scheme for the benefit of the staff of Cape Tourism or have such fund or scheme administered by another body or person. 55

Funds and assets of Cape Tourism

- 14.** (1) The funds and assets of Cape Tourism shall consist of—
- (a) monies appropriated by the Provincial Parliament and the local authorities, in particular the Metropolitan Municipality and the district municipalities;
 - (b) donations, bequests or contributions; provided that conditional donations, bequests or contributions—
 - (i) shall be accepted for the benefit of Cape Tourism in consultation with the responsible Minister and the provincial Minister of Finance;
 - (ii) shall be used in accordance with such conditions, unless altered by agreement between the donor, the board, the responsible Minister and the provincial Minister of Finance, and
 - (c) income generated by Cape Tourism in accordance with the provisions of this Act, including fees for services and user charges determined by the board.
- (2) The chief executive officer must open a banking account in the name of Cape Tourism with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990) and must deposit all money received by Cape Tourism into that account.
- (3) The chief executive officer may, on behalf of Cape Tourism, invest in the Republic, in a manner approved by the board, in consultation with the responsible Minister and the provincial Minister of Finance, any money received by Cape Tourism, which is not required for immediate use.
- (4) All cheques, promissory notes and other documents requiring signature on behalf of Cape Tourism must be signed by the chief executive officer and a senior employee of Cape Tourism, or in such manner as the board may decide; provided always that at least two signatories are required.

Financial year of Cape Tourism 25

- 15.** The financial year of Cape Tourism ends on 31 March, provided that the first financial year is from the specified date to 31 March of the following year.

Financial Control of Cape Tourism

- 16.** Cape Tourism will be deemed to be a provincial public entity for purposes of the Public Financial Management Act, 1999 (Act 1 of 1999) and is subject to the financial controls contained in that Act; provided that the board must also submit to the Metropolitan Municipality and the district municipalities the reports and statements referred to in section 55(1)(d) of Act 1 of 1999 within the period referred to in that section. 30

Judicial management or liquidation 35

- 17.** Notwithstanding the provisions of any other law, a resolution of the Provincial Parliament is required before Cape Tourism may be placed in judicial management or liquidation.

CHAPTER 3

EXISTING LOCAL TOURISM BUREAUX AND REGIONAL TOURISM ORGANISATIONS 40

Existing entities

- 18.** All entities which, on the date of commencement of this law, are local tourism bureaux or regional tourism organisations established in terms of the previous Act are deemed, from the date of commencement of this law, to have been established in terms of the Standard Local Tourism By-Law contained in the Schedule to this Act. 45

Application for accreditation as an accredited tourism service provider

19. The entities referred to in section 18 and other municipal structures involving tourism are not precluded from applying in terms of section 5(1)(c) to be accredited tourism service providers.

Recommendations of the board 5

20. The board may, for the purposes of exercising the functions of Cape Tourism, investigate the optimal number of municipal structures involving tourism within the area of jurisdiction of each local authority and may make recommendations to such local authority in regard thereto.

CHAPTER 4 10 **PROVINCIAL TOURISM DEVELOPMENT**

Provincial tourism development policy

21. The provincial government must formulate and, in co-operation with Cape Tourism, the local authorities and the private sector, implement a comprehensive tourism development policy for the Province on an ongoing basis, which must include— 15

- (a) tourist safety and security;
- (b) spatial planning and development, public infrastructure and road signage;
- (c) norms and standards for tourism establishments and services;
- (d) education programmes, including raising levels of awareness and understanding of tourism and its importance to the Province; 20
- (e) business advisory services, including services available to persons from previously disadvantaged communities;
- (f) new tourism products and packages in the Province, including new themes and routes;
- (g) locally produced tourism-related arts and crafts; 25
- (h) the facilitation of the removal of barriers to entry into the tourism industry for previously disadvantaged communities and individuals;
- (i) the establishment of standard entrepreneur support programmes facilitating appropriate skills, education and training;
- (j) ensuring that national and provincial marketing initiatives are conducted in liaison with local marketing initiatives; 30
- (k) the monitoring of national norms and standards; and
- (l) minimising the negative social and environmental impact of tourism.

Ministerial Provincial Tourism Forum

22. (1) There is hereby established a committee, called the Ministerial Provincial Tourism Forum, consisting of— 35

- (a) the responsible Minister, who is the chairperson;
- (b) the chairperson of the standing committee in the Provincial Parliament responsible for tourism;
- (c) the chairpersons of the executive committees of the local authorities, or their nominees, and 40
- (d) the chairperson of Cape Tourism, or a member of the board nominated by the chairperson; provided that he or she shall not be required or entitled to participate in any decision relating to the members of the board of Cape Tourism. 45

(2) The functions of the Forum are to—

- (a) promote a comprehensive tourism policy for the Province which takes full account of the tourism needs of— 50
 - (i) the local authorities;
 - (ii) the provincial government; 50
 - (iii) the tourism industry; and
 - (iv) tourists;

- (b) share information and views on all aspects of tourism in the Province,
 - (c) co-ordinate action on matters of mutual interest to the provincial government and the local authorities; and
 - (d) facilitate and monitor agreements to be reached between the responsible Minister and the provincial organisation representing municipalities in the Province in terms of section 163(a) of the Constitution and Cape Tourism, within twelve months of the specified date, in order to—
 - (i) ensure that the provincial government and the local authorities exercise their respective powers and perform their respective functions in relation to tourism in a manner that does not encroach on the integrity of the other, and co-operate with one another in mutual trust and good faith in matters concerning tourism in the Province; and
 - (ii) enable a unified policy to be implemented in relation to issues which include, but are not limited to, marketing, including new product development, and participation and contribution to a tourism database in the Province.
- (3) The Forum may draw up such rules regarding the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum for its meetings, and any other matter it may deem necessary or expedient for the proper performance of its functions.
- (4) The performance of the Forum must not be invalid merely because there is a vacancy in the Forum.

CHAPTER 5

Functions and Duties of Provincial Government

23. Provincial government may—
- (a) appoint and fund a tourism protector to investigate complaints regarding accredited tourism service providers and tourism practitioners, and to report to the board regarding the outcome of such investigations;
 - (b) after consultation with the Forum, publish a Code of Conduct for tourism practitioners and accredited tourism service providers in the *Provincial Gazette*.

CHAPTER 6 GENERAL PROVISIONS

Offences and penalties

24. (1) Any person who displays or otherwise makes use of the “i”-sign or who displays or otherwise makes use of the the Cape Tourism logo, is guilty of an offence unless such person is an accredited tourism service provider in terms of section 5(1)(c).
- (2) Any person contravening the provisions of section 24(1), shall on conviction be liable to a period of imprisonment not exceeding one year or an equivalent fine.
- (3) [POLICING — TO BE DISCUSSED WITH THE MINISTER]

Regulations

25. The responsible Minister may, after consultation with the Ministerial Provincial Tourism Forum, make regulations in respect of any matter which may or must be prescribed in terms of this Act, and in respect of any other matter which he or she may deem necessary for the achievement of the objects of this Act; provided that regulations with financial implications must be made in consultation with the provincial Minister of Finance.

Repeal of the Western Cape Tourism Act

26. The Western Cape Tourism Act, 1997 (Act 3 of 1997), is hereby repealed.

Short title and commencement date

27. This Act is called the Western Cape Tourism Act, 2000, and will come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*; provided that such date may not precede the first general election of municipal councils in terms of the Constitution and the Structures Act.

5

SCHEDULE STANDARD LOCAL TOURISM BY-LAW

Preamble

The Government of the Province of the Western Cape wishes to support, strengthen and promote local government's capacity to administer and promote local tourism. The Government of the Province of the Western Cape provides such support by adopting this By-Law, which facilitates a smooth transition to the new constitutional dispensation under which local government has executive authority and the right to administer local tourism and, furthermore, may make by-laws in this regard. This By-Law applies to all municipalities in the Province, provided that any municipality may exempt itself from any or all of the provisions of this By-Law by way of a by-law.

Definitions

1. In this Law, unless the context indicates otherwise—

- (1) "bureau" means a local tourism bureau established in terms of section 25 of the Western Cape Tourism Act, 3 of 1997, and deemed in terms of section 18 of the Western Cape Tourism Act 2000 to have been established in terms of this By-Law;
- (2) "district municipality" means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155(1) of the Constitution as a category C municipality;
- (3) "local municipality" means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155(1) of the Constitution as a category B municipality;
- (4) "metropolitan municipality" means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155(1) of the Constitution as a category A municipality;
- (5) "municipality" means the metropolitan, district and local municipalities;
- (6) "Province" means the Province of the Western Cape;
- (7) "regional tourism organisation" means a regional tourism organisation established in terms of section 19 of the Western Cape Tourism Act, 3 of 1997, and deemed in terms of section 18 of the Western Cape Tourism Law 2000 to have been established in terms of this Law.

Application

2. This By-Law applies to all municipalities within the Province; provided that any municipality may amend or repeal any or all of the provisions of this By-Law by way of a by-law.

Local Tourism Bureaux

3. (1) All bureaux in existence at the commencement of this By-Law are deemed to have been established in terms of this By-Law by the local municipality within whose jurisdiction they fall.

- (2) A local municipality may not establish any further bureaux or other organisation for the promotion and administration of local tourism in terms of this By-Law and any further such bureau or organisation must be established in terms of a new by-law promulgated for that purpose.
- (3) A local municipality may by resolution of its council disestablish any bureau in its area of jurisdiction; provided that such resolution provides for—
 - (a) transfer of persons in the employ of such bureau to such local municipality (where such persons are not employees of such local municipality), subject to conditions not less favourable than those under which they serve and applicable labour law;
 - (b) the winding-up or transfer of assets, liabilities, rights and obligations of such bureau to such local municipality, including the protection of such assets from attachment and sale in execution; and
 - (c) the continued application of the resolutions of such bureau and the extent thereof.

Objects of Bureaux

4. The functions of a bureau are —

- (1) to formulate a tourism policy and strategy for its area of jurisdiction, within a framework set by the local municipality in whose area they fall, and, where appropriate, for surrounding districts;
- (2) to market its area of jurisdiction as a tourist destination and any product within the area in cooperation with surrounding municipalities and the province;
- (3) to provide an information and assistance service to encourage tourists to visit the local area in a way which is mutually beneficial to the tourist and the local community;
- (4) to develop and promote tourism skills and awareness within the local community to achieve the maximum sustainable benefits from tourism through the widest possible participation in the local tourism industry;
- (5) to promote the development of appropriate tourism infrastructure and products, including attractions, accommodation and transport and shopping facilities;
- (6) to elect its representatives on the regional tourism organisation;
- (7) to protect and advance, within the tourism industry, emerging business and previously disadvantaged persons or categories of persons;
- (8) to identify and promote the natural and cultural assets of its area;
- (9) to produce and distribute appropriate tourist literature, in conjunction with accredited tourism service providers, as defined in the Western Cape Tourism Act, 2000;
- (10) to organise and market local tourism events, conferences and meetings, in conjunction with accredited tourism service providers, as defined in the Western Cape Tourism Act, 2000;
- (11) to establish and maintain, or cause to be established and maintained, a database linked to that of [Western] Cape Tourism of the information required for the formation and implementation of a tourism policy and a tourism policy strategy; and
- (12) to undertake other related activities in order to achieve its main object;

provided that a local municipality may by resolution of its council amend, add to or remove any of the functions set out above.

Composition and functioning of Bureaux

5. (1) The bureaux are non-compulsory, non-profit and non-self-interest structures and consist of members of—

- (a) tourism establishments within the area of the local municipality concerned;
- (b) the general public within the area of the local municipality concerned;
- (c) business organisations within the area of the local municipality concerned;
- (d) the local municipality concerned; and
- (e) other bureaux by virtue of subparagraphs (a) to (d).

(2) Membership of a bureau is renewable annually.

(3) Each bureau must elect an executive committee, comprising a chairperson, a vice chairperson and any additional members as may be determined by the annual general meeting of members; provided that at least one, but not more than two, of the members of the executive committee must be members contemplated in subsection (1)(d); provided further that the chairperson or vice chairperson may not be a member contemplated in subsection (1)(d).

(4) The bureau may, at a meeting of its members, elect a local marketing committee which must, in conjunction with a local development committee appointed by the local municipality within whose jurisdiction the bureau falls, assist, advise, and support the bureau in the execution of its marketing and development functions and objectives, provided that one of the members contemplated in subsection (1)(d) must be elected to the local marketing committee; provided further that a local municipality may by resolution of its council amend or add to the committees which a bureau may elect.

(5) The executive committee contemplated in subsection (3) must appoint a secretariat of the bureau, which secretariat must also act as the secretariat for the local committees.

(6) If the chairperson of a bureau or a local committee is for any reason unable to act as chairperson, the vice chairperson of that bureau or local committee, as the case may be, must perform the functions of the chairperson.

(7) The local committees must each elect a chairperson and a vice chairperson from amongst its members.

(8) A bureau must appoint a person as chief executive officer, who must be its accountable officer, be in charge of the other employees of the bureau and be responsible to the bureau.

(9) A bureau may, in consultation with the local municipality in its area —

- (a) determine and pay to its employees remuneration, allowances, bonuses, subsidies and pensions and other service benefits; and
- (b) determine and pay gratuities to its employees and former employees, and to the dependants of its employees and former employees, in the case of death or injury of such employees which occurred in the course of their employment.

Vacation of Office of Members of Executive Committee

6. (1) The office of a member of an executive committee becomes vacant if he or she —

- (a) is declared insolvent or of unsound mind by a competent court;
- (b) is removed from office in terms of subsection (2);
- (c) is convicted of an offence and sentenced to imprisonment without the option of a fine, but no-one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined;
- (d) is absent from three consecutive meetings of the executive committee without the consent of the chairperson;
- (e) submits his or her resignation in writing to the chairperson;
- (f) becomes a member of Parliament or a Provincial Legislature;
- (g) dies.

(2) The local municipality within whose jurisdiction the bureau falls, or a duly-constituted committee of that municipality responsible for tourism, may remove a member of the executive committee on the ground of misconduct, incapacity or gross incompetence.

Delegation of powers, functions and duties

7. (1) The executive committee may delegate to any of its committees or employees any power, function or duty assigned to the executive committee, or conferred or imposed upon it, in terms of this By-Law.

(2) The delegation of a power, function or duty under subsection (1) does not preclude the exercise of that power, the performance of that function or the carrying out of that duty by the executive committee.

(3) The executive committee may at any time amend or revoke any delegation under subsection (1).

Constitution of Bureaux

8. Subject to the provisions of this By-Law, and in consultation with the members contemplated in section 6(1)(d), each bureau must adopt a written constitution.

Funds

9. (1) The funds of the bureau consist of —

- (a) appropriations from the local municipality concerned, pursuant to an annual budget submitted in terms of section 10(4)(b) and approved by the local municipality;
- (b) donations, bequests, sponsorships or contributions;
- (c) any income generated so as to achieve its objects; and
- (d) membership fees.

(2) The executive committee of a bureau must determine membership fees, which may include fees for different categories of members, and such fees must be approved at the annual general meeting of the members.

(3) Membership fees must be paid annually on renewal of membership; provided that the members contemplated in section 6(1)(a) are not be liable to pay membership fees.

Accountability arrangements of Bureaux

10. (1) The chief executive officer of the bureau, appointed in terms of section 5(8), is to be the accounting officer of the bureau and he or she must account for all money received, all payments made and all property acquired, received, held or disposed of by the bureau.

(2) The accounting officer must —

- (a) keep a full and correct record of all money received or spent by the bureau, and of the assets, liabilities, and financial transactions of the bureau; and
- (b) as soon as possible, but not more than three months after the end of the financial year of the bureau, draw up annual financial statements which shall consist of —
 - (i) a balance sheet;
 - (ii) an income statement;
 - (iii) a cash flow statement; and
 - (iv) notes to the annual financial statements.

(3) The records and annual financial statements referred to in subsection (2) must be audited by the Auditor-General.

(4) A bureau must annually, but not more than six months after the end of a financial year, after completion of the annual audit —

- (a) submit to the chief executive officer of the local municipality for its area of jurisdiction, a report on its affairs and activities during that financial year and its audited annual financial statements, which report and financial statements must be tabled at the next meeting of that local municipality; and
- (b) submit a budget for the ensuing financial year and a business plan to the chief executive officer of the local municipality for its area of jurisdiction, which budget and business plan must be considered at the next meeting of that local municipality.

Regional Tourism Organisations

11. (1) All regional tourism organisations in existence at the commencement of this By-Law are deemed to have been established in terms of this By-Law by the district municipality or metropolitan municipality within those jurisdiction they fall.

(2) A district municipality or metropolitan municipality may not establish any further organisations for the promotion and administration of local tourism in terms of this By-Law and any further such organisation must be established in terms of a new by-law promulgated for that purpose.

(3) A district municipality or metropolitan municipality may by resolution of its council disestablish any regional tourism organisation in its area of jurisdiction; provided that such resolution provides for —

- (a) the transfer of persons in the employ of such regional tourism organisation (where such persons are not employees of such district municipality or metropolitan municipality) to such district municipality or metropolitan municipality, subject to conditions not less favourable than those under which they serve and applicable labour law;
- (b) the winding-up or transfer of assets, liabilities, rights and obligations of such regional tourism organisation to such district municipality or metropolitan municipality, including the protection of such assets from attachment and sale in execution; and
- (c) the continued application of the resolutions of such regional tourism organisation and the extent thereof.

Objects of Regional Tourism Organisations

12. In conjunction with the local tourism bureaux in the district,

(1) The objects of the regional tourism organisations are —

- (a) to formulate regional tourism policy within a framework set by the district municipality or metropolitan municipality in whose area they fall, and to promote, support and facilitate the implementation of such policy;
- (b) to promote and market tourism in their areas of jurisdiction by encouraging persons to undertake visits to and in the region;

- (c) to establish and maintain, or cause to be established and maintained, a database linked to that of [Western] Cape Tourism of the information required for the formation and implementation of a regional tourism policy and a regional tourism policy strategy;
- (d) to assist and support any bureau within its area of jurisdiction;
- (e) to protect and advance within the tourism industry emerging business and persons or categories of persons disadvantaged by unfair discrimination;
- (f) to identify and promote the natural and cultural assets of its area; and
- (g) to undertake other related activities;

provided that a metropolitan municipality or district municipality may by resolution of its council amend, add to or remove any of the functions set out above.

Composition and functioning of Regional Tourism Organisations

13. (1) Each regional tourism organisation consists of the following members —

- (a) two representatives from each bureau in its area of jurisdiction; and
- (b) three persons nominated by the district municipality or metropolitan municipality concerned, as the case may be: provided that experience and knowledge of tourism shall be considered when a decision is made to nominate persons in terms of subsection (1)(b).

(2) The members of a regional tourism organisation must elect at its first meeting, from among its members —

- (a) an executive committee comprising a chairperson, a vice chairperson and at least three additional members, provided that at least one of the members of the executive committee must be a member contemplated in subsection (1)(b); provided further that the chairperson or vice chairperson may not be a member contemplated in subsection (1)(b);
- (b) a regional marketing committee, which must, in conjunction with a regional development committee appointed by the district municipality or metropolitan municipality within whose jurisdiction the regional tourism organisation falls, assist, advise and support the regional tourism organisation in the execution of its marketing and development functions and objectives, provided that one of the members contemplated in subsection (1)(b) must be elected to the regional marketing committee and another of those members must be elected to the regional development committee; provided further that a metropolitan municipality or district municipality may by resolution of its council amend or add to the committees which a regional tourism organisation may elect.

(3) The executive committee must appoint a secretariat of the regional tourism organisation, which secretariat must also act as the secretariat for the regional committees.

(4) The chairperson and the vice chairperson of the executive committee must be the chairperson and the vice chairperson of the regional tourism organisation, respectively.

(5) The regional committees must each elect a chairperson and a vice chairperson from amongst its members.

(6) The functions of a regional committee are to assist, advise and support the regional tourism organisation in the execution of its marketing functions and objectives.

(7) If the chairperson of a regional tourism organisation or a regional committee is for any reason unable to act as chairperson, the vice chairperson of that regional tourism organisation or regional committee, as the case may be, must perform the functions of the chairperson.

(8) The members of the executive committee and regional committees may be paid out of the funds of the regional tourism organisations the remuneration and allowances determined by the district or metropolitan municipality within whose jurisdiction the regional tourism organisation falls.

(9) A regional tourism organisation may, in consultation with the district municipality or metropolitan municipality, as the case may be, in its area —

- (a) determine and pay to its employees remuneration, allowances, bonuses, subsidies and pensions and other service benefits; and
- (b) determine and pay gratuities to its employees and former employees, and to the dependants of its employees and former employees, in the case of death or injury of such employees which occurred in the course of their employment.

(10) A regional tourism organisation must appoint a person as chief executive officer, who must be the accountable officer, be in charge of the other employees of the organisation and be responsible to the organisation.

(11) The provisions of sections 6 and 7 of this By-Law apply, *mutatis mutandis*, to a regional tourism organisation.

Constitution of Regional Tourism Organisation

14. Subject to the provisions of this By-Law, and in consultation with the members contemplated in section 13(1)(b), each regional tourism organisation must adopt a written constitution.

FUNDS

15. The funds of a regional tourism organisation consist of —

- (1) appropriations from the district municipality or metropolitan municipality, as the case may be, for its area of jurisdiction, pursuant to an annual budget submitted in terms of section 18(3)(b) and approved by the district municipality or metropolitan municipality, as the case may be;
- (2) donations, bequests, sponsorships or contributions; and
- (3) any income generated so as to achieve its objects.

Accountability arrangements of Regional Tourism Organisations

16. (1) The chief executive officer of the regional tourism organisation, appointed in terms of section 13(10), must be the accounting officer of the regional tourism organisation and he or she must account for all money received, all payments made and all property acquired, received, held or disposed of by the regional tourism organisation.

(2) The provisions of sections 10(2) and 10(3) apply, *mutatis mutandis*, to a regional tourism organisation.

(3) A regional tourism organisation must annually —

- (a) after the end of a financial year, within three months of the completion of the annual audit submit to the chief executive officer of the district municipality or metropolitan municipality, as the case may be, for its area of jurisdiction, a report on its affairs and activities during that financial year and its audited annual financial statements, which report and financial statements must be tabled at the next meeting of that district municipality or metropolitan municipality, as the case may be; and
- (b) before or on the date prescribed, submit a budget for the ensuing financial year and a business plan to the chief executive officer of the district municipality or metropolitan municipality, as the case may be, for its area of jurisdiction, which budget and business plan must be considered at the next meeting of that district municipality or metropolitan municipality, as the case may be.

Short Title and Commencement

17. This Law is called the Standard Local Tourism By-Law and comes into operation on the date of commencement of the Western Cape Tourism Act, 2000.