

Complying with Heritage Legislation

a guide for Planners, Developers & Prosecutors



Places of cultural significance enrich people's lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. They are historical records, that are important as tangible expressions of peoples identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the landscape. They are irreplaceable and precious. These places of cultural significance must be conserved for present and future generations

(adapted from the Burra Charter)

South Africa has recognized the value of heritage and its constitution makes heritage a concurrent function, allowing the Provinces to manage their own heritage matters.

The KwaZulu Natal Heritage Act (Act 4 of 2008) makes provision for the establishment of a public entity - Amafa / Heritage KwaZulu Natali, to administer heritage matters on behalf of the Provincial government, and read together with the South African Heritage Resources Act of 1999 provides the legislative framework for protection of heritage within KwaZulu Natal.



THE KZN HERITAGE ACT

One of the main objectives of the KwaZulu- Natal Heritage Act (The KZN Act) is to provide for conservation, protection and administration of both the physical and the living or intangible Heritage Resources of the province of KwaZulu Natal.

The KZN Act is read together with the National Heritage Resources Act, Act 25 of 1999.

Amafa aKwaZulu-Natali is a statutory body created in terms of Section 5 of the KZN Act and is responsible for the identification, conservation, protection and administration of Heritage Resources in KwaZulu Natal. With specific reference to this document, it administers the compliance process related to activities that could impact upon heritage resources



All structures older than 60 years are automatically protected



Developments in rural areas often impact upon protected traditional burial grounds

HERITAGE RESOURCES

The Act (Chapter 8, Section 33-38) defines various categories of heritage resources, which are afforded protection in terms of their significance.

GENERAL PROTECTION is afforded to all heritage resources that meet stipulated criteria, while **SPECIAL PROTECTION** is afforded all sites proclaimed as “monuments” by existing provincial heritage legislation, as well as the now repealed National Monuments Act, KwaZulu Monuments Act and KZN Heritage Act (Act 10 of 1997). All such sites are now afforded the designation of Landmark.. A schedule appended to the KZN Heritage Act lists all Landmarks.

GENERAL PROTECTION: MEETS STIPULATED CRITERIA
HERITAGE LANDMARK: PROCLAIMED SITE IN PRIVATE OWNERSHIP
PROVINCIAL LANDMARK; PROCLAIMED SITE IN OWNERSHIP OF THE PROVINCE
HERITAGE OBJECT: PROCLAIMED OBJECT

GENERAL PROTECTION

The Act prohibits alteration of any of the following heritage resources without a written permit from Amafa. Alteration is deemed to mean “demolish, alter, exhume, destroy, deface or disturb”

STRUCTURES OVER 60 YEARS

Any structure which is or could be reasonably expected to be older than 60 years is protected. The Act protects ALL structures over the age of 60 years irrespective of whether they are proclaimed or listed in a heritage registers. A permit is required to effect any change to such a structure.



ARCHAEOLOGICAL SITES

Any structure older than 100 years, or site that provides evidence of human activity, which is older than 100 years is protected



ROCK ART SITES

Any rock art panel or rock art site is protected. No person may visit a rock art site without a permit.

TRADITIONAL BURIAL PLACES

Not every grave located outside of a formal cemetery is protected. However those deemed to be clan ancestral sites are protected. Such sites would generally also be protected in terms of the archaeological site clause.



BATTLEFIELDS

All battlefields are protected. It is also illegal to remove any artefact from a battlefield, or to make use of equipment such as a metal detector to find such artefacts, unless with the authority of a permit



HISTORIC FORTIFICATIONS

GRAVES OF VICTIMS OF CONFLICT

PALAEONTOLOGICAL SITES

METEORITES (METEOR IMPACT SITES)

PUBLIC MEMORIALS.

Memorials funded or maintained with public money are protected



HERITAGE RESOURCES: BUILT ENVIRONMENT

The Act protects buildings over 60 years old. In order to address possible impact that development may have on protected structures, a permit application process has been implemented that requires developers wishing to alter or demolish such structures, to apply for a permit from Amafa. The developer, making use of the appropriate application form, which is available in hard copy from Amafa, or may be downloaded from its website, furnishes Amafa with the necessary information, after which a panel of experts either grants or refuses permission for the development. In most cases permission is granted, sometimes with the developer required to make design changes in order to adhere to sound conservation principles. The permit may require the work to be monitored to ensure that the conditions of the permit are met. The most common contravention in this regard are demolition or alteration without the necessary permit and failure to adhere to permit conditions. If Amafa becomes aware of contraventions in either event, it is obligated to lay criminal charges. Owners of protected buildings may also be charged with 'Demolition by Neglect' if they fail to maintain a protected structure. Note that an owner is obliged to maintain a protected structure, and in so doing is permitted to alter the structure by replacing "like with like" without having to apply for a permit. The examples below are commonly encountered valid permit applications.

HEIGHT ALTERATION

Any change to the number of storeys requires a permit.

ADDITIONS

Any alteration involving addition or removal of a wall, verandah
eg Addition of an extra room, removal of internal wall.
Lean to structures

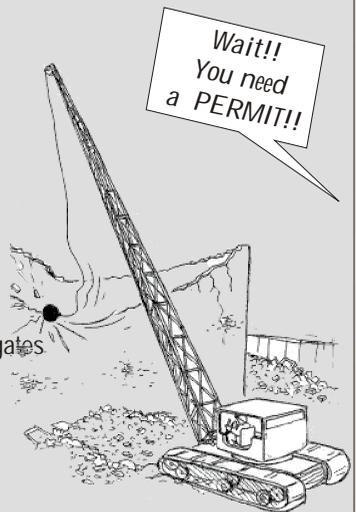
CHANGE IN FORM AND FABRIC

Any alteration whereby a feature is replaced with a different form.

eg Replacing wooden veranda supports with steel supports
Replacing a wooden floor with a screed
Changing the roofing material or colour
Changing door and window frames and addition of security gates

RENOVATION

eg Changing internal support structure
Repainting walls or coating roof to a different colour
Replacing gutters (unless like with like)
Replacing to different finish



HERITAGE RESOURCES: LISTED ACTIVITIES

Because developers are unlikely to possess an in depth knowledge of heritage resources on the proposed development footprint, and may inadvertently damage or destroy these, the South African Heritage Resources Act (Section 38) lists various activities that automatically require a permit be obtained from Amafa.

ANY ACTIVITY AT ALL THAT WILL IMPACT UPON A SPECIALLY PROTECTED SITE

LINEAR DEVELOPMENTS IN EXCESS OF 300m

New roads

Landing strips and runways

Pipelines and canals

Bridges

Power lines

Walls.

DEVELOPMENTS THAT WILL ALTER AN AREA IN EXCESS OF 5000m²

Any alteration to the character of an area of land . This includes already developed agricultural land

Creation of new forestry areas or new crop fields

Golf courses and housing developments and Eco Estates

DEVELOPMENTS ALTERING AN AREA IN EXCESS OF 3 ERVEN/ SUBDIVISIONS

Any development on an area greater than three erven.

ANY REZONING IN EXCESS OF 10000m²

Any of the above activities triggers the commencement of a permit process. As with the previously mentioned process, forms are available, that allow the nature of the proposed development to be clearly described. The Act requires that Amafa provide a response within two weeks of receipt of such an application. Making use of a provincial database, Amafa staff ascertain the likelihood of impact on heritage resources and issue either a “No Objection” response or an instruction that a heritage impact assessment is required. Amafa provides developers with a list of accredited heritage practitioners who are qualified to carry out such assessments. The heritage assessment may either find no heritage of significance, allowing the development to proceed, or may require secondary work to mitigate the presence of sensitive heritage resources. The most commonly encountered contravention is failure to inform Amafa of a listed development. In such a case Amafa is obliged to take action. Failure to adhere to the recommendations of the Heritage assessment have also resulted in charges being laid

COMPLIANCE WITH HERITAGE LEGISLATION: Ignorance of the Law

Ignorance of the law is often a reason given for non-compliance with heritage legislation. In both the National and Provincial legislation the principle of “strict liability” applies., meaning that intent to break the law does not have to be proved. The onus lies upon the public to ensure they comply with heritage legislation.

COMPLIANCE WITH HERITAGE LEGISLATION: Notice to owners

No obligation is placed on Amafa to give notice to any owner of a heritage resource located on their property. The onus rest fully with the owner or occupier of a property to inform themselves regarding the status of heritage resources on their property. The Act does however make provision for a process of consultation to be initiated when a site has been identified for inclusion into a heritage register.

COMPLIANCE WITH HERITAGE LEGISLATION: Penalties

The Penalties for contravention of Heritage Legislation are set out in Section 51 of the National Heritage Resources Act.

Section 51(3) The Minister or the MEC, as the case may be, may make regulations in terms of which the magistrate of the district concerned may-

- (a) levy admission of guilt fines up to a maximum amount of R10 000 for infringement of the terms of this Act for which such heritage resources authority is responsible;

and

- (b) serve a notice upon a person who is contravening a specified provision of this Act or has not complied with the terms of a permit issued by such authority, imposing a daily fine of R50 for the duration of the contravention, subject to a maximum period of 365 days

In terms of Section 51(8), the court is also competent to order restoration in cases where the contravention has result in damage to or alteration of a protected Heritage Resource. The court may also order an offender to pay to Amafa a sum equivalent to the cost of making good the damage or alteration.

DEFINITIONS: terms used in Heritage

“Site” - area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views.

“Cultural Significance” - means aesthetic, historic, scientific, social or spiritual value for past, present or future generations. Cultural significance is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects. Sites may have a range of values for different individuals or groups.

“Fabric” means all the physical material of the place including components, fixtures, contents, and objects.

“Repair” - Restoration or reconstruction (see below)

“Restoration” means returning the existing fabric of a place to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material.

“Reconstruction” means returning a place to a known earlier state and is distinguished from restoration by the introduction of new material into the fabric.

“Conservation” means all the processes of looking after a place so as to retain its cultural significance

“Preservation” means maintaining the fabric of a place in its existing state and retarding deterioration

“Alter”: Any action affecting the fabric of a site structure or object. Repair constitutes alteration.

“Development”: Any physical intervention excavation or action other than those caused by natural forces, which in the opinion of a heritage authority in any way result in a change to the fabric of a site, structure or object.

“Heritage Authority” - Any agency empowered by national or provincial heritage legislation



Roads and bridges often impact on sites of historical significance. The John Ross bridge approaches cut through the Battlefield of Ndongakasuka on the Thukela River

CONTACT DETAILS

Amafa staff will be happy to answer any queries you may have heritage legislation and its application in KZN. Please contact either the archaeology or built environment staff at Amafa if you have any queries. The Amafa website also contains all the relevant information, including advice on completion of the different application forms.

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WEBSITE & DOWNLOAD LINKS

www.heritagekzn.co.za

KZN Heritage Act :

<http://www.heritagekzn.co.za/images/stories/docs/legislation/provincial.pdf>

Download Application forms:

<http://www.heritagekzn.co.za/permits/download.html>

