

**KWAZULU-NATAL
AMAFA AND RESEARCH INSTITUTE**

**THE HERITAGE LEGISLATION AND ITS IMPACT ON THE
BUILT ENVIRONMENT**

The KZN Heritage Act was first promulgated in 1997. The promulgation of the National Heritage Resources Act in 1999, based on the KZN Act, necessitated changes to the 1997 Act and a new Act was promulgated in 2008. This Act contained a number of flaws and there was a need to amalgamate the Heritage Unit in the Office of the Premier with Amafa/Heritage KZN so a new Act came into being on the 14 December 2018. The KwaZulu-Natal Amafa and Research Institute Act (5/2018) needs to be read in conjunction with the National Heritage Resources Act, No 25 of 1999. The Provincial Act may add to but not subtract from the National Act but takes precedence over the National Act. In this document all references to the KZN Act will mean the KwaZulu-Natal Amafa and Research Institute Act (5/2018). As this Act is now more fully aligned with the National Act the Provincial Act will be used as reference. All references to The Institute shall mean the KwaZulu-Natal Amafa and Research Institute, its Council, including sub-committees, and staff.

LEGAL DEFINITIONS RELATING TO THE BUILT ENVIRONMENT:

“Alter” means any action affecting the structure, appearance or physical properties of a place or object whether by way of structural or other works, by painting, plastering or other decoration or by other means;

“Cultural Significance” means of aesthetic, architectural, historical, scientific, social, spiritual or technological value or significance;

“Conservation” in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance;

“Development” means any physical intervention, excavation or action, other than those caused by natural forces, which may in any way result in a change in the nature, appearance or physical nature of a place or influence its stability and future well-being, including

- (a) construction, alteration, demolition, removal or change of use of a place or a structure on the place;*
- (b) carrying out any works on or over or under the place;*
- (c) subdivision or consolidation of land comprising a place, including the structures or airspace;*
- (d) construction or putting up for display signs or hoardings*
- (e) any change to the natural or existing condition or topography of land;*
- (f) any removal or destruction of trees or removal of vegetation or topsoil*

“Heritage Area” means a declared area of land surrounding a heritage resource or resources to reasonably ensure the protection or reasonable enjoyment of the resource, or the protection of the view of or from the resource;

“Place” includes –

- (a) a site, area or region;*
- (b) a building or other structure (which may include equipment, furniture, fittings and articles associated with or connected with such building or other structure);*
- (c) a group of buildings or other structures (which may include equipment, furniture, fittings and articles associated with or connected with such building or other structures); and*
- (d) an open space, including a public square, street or park; and in relation to the management of a place, includes the immediate surroundings of a place;*

“Plan” means any plan envisaged by the Physical Planning Act, 1991 (Act No 125 of 1991) or any other town and land use planning legislation applicable to the Province;

“Planning” means urban and regional planning as covered by the Development Facilitation Act, 1995 (Act No 67 of 1995) or any other town and land use planning legislation applicable to the Province;

“Planning authority” means an office of the State, including a province or local authority which is legally invested with a physical planning capacity;

“Structures” means any building, works, device, or other facility made by people and which is fixed to land and any fixtures, fittings and equipment associated therewith older than 60 years;

Apart from provisions in the Act that allow for proclamation and listing of individual buildings, the KZN Act also allows for the protection of groups of buildings forming a conservation area or a protected area under Section 42. The legislation also provides for the general protection of all buildings over 60 years of age. The latter provision confuses owners and architects/architectural technologists alike and this guide attempts to clarify this provision along with other provisions in the Act as they pertain to the built environment. The provisions of the KZN Act are italicised.

General Protections

The KZN Act provides the following protection:

s37 General Protection: Structures, - (1)(a) *No structure which is, or which may reasonably be expected to be, older than 60 years, may be demolished, altered or added to without the prior written approval of the Institute having been obtained on written application to the Institute.*

(b) *Where the Institute does not grant approval, the Institute must consider special protection in terms of sections 44, 45, 46, 47 and 49 of Chapter 9.*

s41.(1) *Any person who intends to undertake a development categorised as –*

(a) *the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300 m in length;*

(b) *the construction of a bridge or similar structure exceeding 50 m in length;*

(c) *any development or other activity which will change the character of a site –*

(i) *exceeding 5 000 m² in extent;*

(ii) *involving three or more existing erven or subdivisions thereof;*

(iii) *involving three or more erven or divisions thereof, which have been consolidated within the past five years; or*

(iv) *the costs of which will exceed a sum set in terms of regulations;*

(d) *the rezoning of a site exceeding 10 000 m² in extent; or*

(e) *any other category of development provided for in regulations,*

must, at the very earliest stages of initiating such a development, notify the Institute and furnish it with details regarding the location, nature and extent of the proposed development.

NB: the definition of development is very broad (see definitions attached to the end of this document).

Formal Protections:

s44: **Heritage Landmark** status can be granted to sites in private ownership and s45: **Provincial Landmark** status can be granted to sites owned by the state, the Province, provincially supported bodies, local authorities and bodies supported by local authorities.

s44.(1) *No person may damage, alter, redecorate, remove from its original position, subdivide or amend any plan –*

(a) *of a Heritage Landmark site; or*

(b) *of a site in respect of which a notice referred to in subsection (3) has been published, without the prior written approval of the Institute having been obtained on written application to the Institute.*

s45.(1) *No person may damage, alter, redecorate, remove from its original position, subdivide or amend any plan –*

(a) *of a Provincial Landmark site; or*

(b) *of a site in respect of which a notice referred to in subsection (3) has been published, without the prior written approval of the Institute having been obtained on written application to the Institute.*

Applications for permits for interventions on these sites need to be made on Form H **90 days** before such work is envisaged as the applications need to be passed by the Council on recommendation of the relevant committee. These sites automatically enjoy any incentives afforded to sites on the Heritage Register.

Section 48: **Heritage Register**. **48.(1)** *The Institute must establish and maintain a consolidated register of all heritage resources in the Province as prescribed in section 30 of the National Heritage Resources Act, 1999*

This register includes sites considered worthy of conservation by local authorities as well as the permanently protected sites mentioned above. Listed sites (Grade III in the national Act, Section 30) must also be protected separately through amendments to the town planning schemes governing planning in the relevant local authority area of jurisdiction

Section 31 of the National Act allows for the protection of **Heritage Areas/Conservancies**: The status of these conservancies (streets/blocks of buildings) must be clearly protected through the town planning scheme of the relevant local authority.

Section 29 of the National Act allows for **Provisional Protection**: a six-month protection can be applicable to any important heritage resource not protected as a Heritage Landmark considered by the Council to be under threat. This protection can be extended to up to 2 years.

s42.(1) Protected Areas: *The Institute may, with the consent of the owner of an area, by notice in the Provincial Gazette designate as a protected area –*

(a) such area of land surrounding a provincial heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or

(b) such area of land surrounding any archaeological or palaeontological site or meteorite as is reasonably necessary to ensure its protection.

(2) No person may damage, disfigure, alter, subdivide or in any other way develop any part of a protected area unless, at least 60 days prior to the initiation of such changes, he or she has consulted the heritage resources authority which designated such area in accordance with a procedure prescribed by that authority.

(3) A local authority may, with the agreement of the Institute which designated a protected area, make provision in its town planning scheme or in by-laws for the management of such area.

COMPLIANCE

In order to control the above, The Institute has an established a Built Environment Section to handle all matters pertaining to the conservation of the built environment.

The Council may also appoint Built Environment Committees (as provided for in Section 16) to review applications and make recommendations as to their approval/revision/rejection. Members of Committees must be competent persons in their fields of expertise e.g. architects/engineers/architectural technologists/architectural historians/urban designers or planners with a track record in conservation and who serve on a voluntary basis.

APPLICATIONS

- (a) Applications must be made on the relevant application form: Application Form A for buildings that are generally protected; Form H for Heritage Landmarks and Listed buildings; and Form I for work that has been started, stopped, or to regularise completed work. Methods of submission can be found in the guidelines attached to the forms.
- (b) Applications must be motivated as fully as possible and must meet the requirements set out in the guidelines attached to each application form. The application must be supported by
 - Annotated post-card size photographs that clearly show the existing buildings on site and the surrounding buildings; and
 - Technically correct drawings, showing clearly the existing building and the proposed alterations, and that have been coloured to specifications. Make sure that a site plan is included.
- (c) Applications must be completed in full: Don't assume that the building is not significant and ignore that section of the form. The onus is on the owner/developer/agent to source as much information on the structures on the site as possible. Cultural significance as defined in the legislation covers elements such as scientific, technical, spiritual and social significance in addition to the more obvious architectural and historical significance. Ignorance is no excuse and false declarations on the application form could result in prosecution.
- (d) If you are unsure of the construction date, check the local authority's records at the Planning Division or, if there are no plans, check the municipal valuation rolls of sixty years ago to see if the property was rated for buildings and land. If rated for land only the building would not be over sixty years old. Street directories can also be of assistance and can be found in the Pietermaritzburg Archives Repository, 231 Pietermaritz St. Remember that the Act protects buildings that can reasonably be assumed to be over 60 years of age even if the actual date of construction is unknown.

NB: Applications are handled in the order in which they are received and no exceptions are made for fast tracking of applications. The regulations allow 90 days for the processing of applications.

When applications are received, they are registered and filtered

1. First through the staff of the Built Environment Section who check the documents for any missing or incomplete information
2. Secondly and where necessary through appointed retired academics, qualified in architectural conservation, who serve external reviewers on a consultancy basis.
3. If the proposed work is of a sensitive nature the application may be referred to the compliance Review Committee: Most applications for the demolition of entire structures/main buildings on the site are forwarded to the Review Committee.

4. The committee can approve applications for demolition, addition, alteration of buildings over 60 years and those listed in terms of municipal regulations but anything that affects buildings that have been declared National Monuments (now relegated to Grade II Heritage Sites) or Heritage Landmarks has to be referred to the **Council** with a recommendation from the relevant committee.

Applicants may be requested or may request an opportunity to make presentations of their applications to the Built Environment Committee which meets at The Institute offices in Pietermaritzburg. Special site or presentation meetings can be arranged at a cost of R4000.00 per meeting or inspection. These meetings will only be arranged after The Institute and its reviewers/committees have reviewed the application and provided a response.

EVALUATION OF CONSERVATION WORTHINESS:

The following criteria are used in assessing conservation worthiness:

<p>Architectural Significance:</p> <ol style="list-style-type: none"> 1. Intrinsic Design Quality 2. Building Type 3. Period 4. Details 5. Technology 6. Association with a prominent architect/builder 	<p>Social/Spiritual Significance:</p> <ol style="list-style-type: none"> 1. Association with a particular religious group or order 2. Significance for a particular group – gathering point, etc. 3. Social centre
<p>Historical Significance:</p> <ol style="list-style-type: none"> 1. Association with a cultural group 2. Association with a person 3. Association with an event 4. Historical context 	<p>Technological/Scientific Significance:</p> <ol style="list-style-type: none"> 1. Innovation in construction process 2. Use of new materials 3. Association with technological/scientific innovation
<p>Environmental Significance:</p> <ol style="list-style-type: none"> 1. Context 2. Rarity/uniqueness for that area 3. Environmental Association with geographical/man made feature 	<p>Intangible Significance:</p> <ol style="list-style-type: none"> 1. cultural tradition; 2. oral history; 3. performance; 4. ritual; 5. popular memory; 6. skills and techniques; 7. indigenous knowledge systems; and 8. the holistic approach to nature, society and social relationships;

EVALUATION OF APPLICATIONS IN ACCORDANCE WITH CONSERVATION PRINCIPLES

Throughout the process of evaluation, applications are subject to internationally accepted conservation principles. These are outlined in the Australian Burra Charter and its predecessor, the Venice Charter. These charters were accepted by UNESCO. The Burra Charter was used as a model because it deals with multicultural sites and is therefore more applicable to conditions in this Province than its predecessor.

Generally, the Reviewer/Committees will ask the following questions when evaluating an application

1. What is the status of the structure/building: e.g. whether listed or not? If not listed more flexibility is possible in permitting the demolition/addition/alteration of the building but the reviewers/committees will evaluate whether the structure should enjoy greater protection than that allowed under the general protection clause.
2. Is the proposed intervention reversible i.e. could the structure/building be easily restored should a future owner so desire?
3. Does the proposed intervention affect the visual appearance of the building, particularly the street front? It is here that the applicant's motivation including photographs of other houses in the street is of utmost importance. This is also of vital importance when applying for a permit for the demolition of the entire structure.
4. Is the proposed intervention sympathetic to the original yet not mimicking it? Here the committee will pay particular attention to details like fenestration (do the windows match originals in proportion and glazing?) and door openings. Members will also look at other elements peculiar to that type of building style to check whether the intervention is compatible.
5. Is the proposal justified in terms of need, desirability and hardship of the applicant as opposed to the loss to architectural conservation? The motivation must cover this aspect fully.

CRITERIA FOR APPROVAL OF APPLICATIONS:

The reviewers look at details as well as overall principles. The reviewers are likely to approve applications

- that are sensitive to the conservation of the built environment,
- that involve the least intervention possible and the most necessary to sustain the continued use of the building,

Out of form are:

- Alterations to roofs: the roof is the cap of the building and often occupies as much as a third of the total building. As such it is an important design element.
- Enclosure of Verandas, particularly of the Natal Veranda house. (Enclosures of large glass sheets to the columned porticos of the City Hall, the Post Office and the Parliament in Pietermaritzburg have been allowed as these have minimum impact on the visual appearance of the buildings.)
- Replacement of wooden Veranda posts with brick or precast concrete columns.
- Plastering and or Painting of stone or face brick, particularly the traditional salmon pink brick. (If moisture is sealed into the walls, the surface finish is likely to crack or flake off)
- The replacement of lime plaster with cement plaster. (Cement is not as compatible as lime with materials such as the softer clay bricks and stone and can also trap moisture into the walls resulting in cracking, bowing of the walls, etc.)
- Replacement of windows and doors with those that do not match the existing in proportion and materials e.g. steel or aluminium casements to replace wooden sliding sashes or sliding doors to replace French doors. Such alterations require changes to the openings that affect the visual appearance of the building.
- Full or partial replacement of timber floors with concrete slabs on fill that would affect under-floor ventilation, blocking of air vents under timber floors, the removal of encaustic/traditional ceramic tiles and their replacement with modern ceramic/Italian tiles, etc. Where absolutely necessary a suspended concrete floor will be allowed provided that the under-floor vents remain open to allow the walls to "breathe".
- The use of unconventional and un-tested products that can cause damage to sensitive material if not properly tested under all conditions over the long term.
- The inappropriate and over-use of mock-heritage products. e.g. "Broekie Lace" is not appropriate to a Union period (1910 – 1960) building.
- Over restoration: the least intervention is the most desirable.

DEMOLITION PERMITS: In most cases the reviewers will err on the side of conservation and cannot be expected to grant demolition permits simply because the owner has neglected the building or has purchased a neglected building. The municipal by-laws require that owners maintain their properties.

MUNICIPAL INVOLVEMENT IN HERITGE CONSERVATION:

Plans Approval: Municipalities may not grant permission for demolition, addition, alteration of buildings over 60 years old without the submission of a permit from The Institute. The Institute's approval process is completely separate from the Municipal approval process and approval from the Municipality does not constitute approval from The Institute. Similarly, approval from The Institute does not automatically guarantee municipal approval as The Institute concentrates on the conservation aspects and the municipality must check compliance with building regulations and municipal by-laws. No work may begin on the site prior to municipal approval having been obtained.

The legislation also requires that a municipality:

- inform The Institute of any change in the planning or zoning status of properties on which protected structures are situated. This triggers a referral for Change of Use applications to be made to The Institute even if there are no proposed interventions to the structures on the site except amendments to plans to indicate the changed use;
- assist in the identification of structures needing permanent protection (Grade III Listings);
- implement the minimum incentives for conservation (rates and tax rebates) ; and
- offer The Institute any architectural/technical drawings it intends to dispose of.

APPEALS

Any decision of the Council regarding status of buildings may be appealed through the appeal process. Similarly, any decision taken by the reviewers/committees may also be appealed. The appeals are first heard by the relevant Committee and then a review by the Council can be called for if it is felt that the committee did not take relevant factors into account (the Council cannot hear Appeals on the merits of the application – see Section 16(c)). If that process is not satisfactory, an Appeal may be made to the Provincial Minister concerned Cultural Matters (The Institute fell under the MEC for Cultural Matters – Department of Arts, Culture, Sport & Recreation - as of 1 April 2019)

It is best to try to resolve issues with the committees by making representations to them before embarking on an appeal, as this process can be time consuming.

CONSERVATION PRINCIPLES USED IN KWAZULU-NATAL

The Conservation Principles used in this Province are based on principles contained in the international charters accepted by UNESCO and ICOMOS, namely the Burra Charter (Australia) and the Venice Charter.

The maxim followed is the same for conservation of any items of significance i.e.

It is better to maintain and preserve than to conserve,
It is better to conserve than to restore,
It is better to restore than to reconstruct and
It is better to reconstruct than to demolish

MAINTENANCE is fundamental to conservation. As the word implies it refers to basic work such as keeping water out of the building by maintaining roofs, gutters, and flashings; painting timber elements and plastered walls

- Neglect is no reason to permit demolition or radical alteration.

PRESERVATION protects the fabric without obscuring the evidence of its construction and should be applied where the fabric should not be altered or where there is insufficient evidence to support any other course.

CONSERVATION often involves the least work and can be inexpensive

- Change as little as possible and the most necessary for conservation
- Changes should not be based on conjecture or distort the evidence (historicism)
- Changes should be reversible

RESTORATION AND RECONSTRUCTION should reveal culturally significant aspects of the building.

- Traditional techniques should be applied and only in special circumstances replaced with modern materials and techniques
- All aspects of cultural significance must be taken into account
- Written statements of significance and policy should be prepared and incorporated into a management plan of the place. Continual updating and review of these statements and policies is required
- Understanding of cultural significance may change but this should not justify actions that do not retain cultural significance
- Individuals and groups associated with the place should be consulted and involved in conservation
- Proposed changes on the cultural significance of the place should be analysed with reference to the statement of significance and management policy

A full analysis of the building must be undertaken before work can be undertaken i.e. analysis of the physical, documentary, oral and other evidence, drawing on appropriate knowledge, skills and disciplines

- Disturbance of fabric to obtain evidence should be minimised
- Existing fabric, use, associations and meanings should be fully recorded before any changes are made
- Sufficient evidence is required for restoration to an earlier state
- Sufficient evidence is required for reconstruction of damaged/altered areas
- Reconstruction must be identifiable
- The visual setting should be retained as far as possible
- Streetscape and context must be taken into consideration
- Contents, fixtures and objects should be retained in the building and should only be removed on a temporary basis to ensure their safety
- Related places or objects must be taken into consideration
- Co-existence of cultural values should be recognized, respected and encouraged
- Different periods and aspects of cultural significance should be given equal treatment unless one period/aspect is of greater importance compared to a period/aspect of lesser importance
- Original fabric must be retained or replaced with that to match
- The integrity of the original design – roof, veranda posts, etc. – must be conserved

RELOCATION is generally unacceptable but, if it is the only way of saving a building, the new location should be appropriate to its original use

DEMOLITION is generally not acceptable on identified heritage resources, except minor demolitions and reinstatement as part of conservation

- Buildings cannot be demolished for no real reason other than they are deemed irreparable/redundant by the owner

ADAPTATION: Continuing use may require changes to existing fabric and involve new work

- Adaptation must be limited to the essentials i.e. utilities, etc. and should have minimal impact and involve minimal change
- The incorporation of utilities must be sympathetic to the original structure
- Security installations must be as inconspicuous as possible
- Additions must not distort, obscure or detract from the appreciation of the original
- Verandas should not be enclosed
- New work must be readily identifiable
- New work must be obvious as such and links from new work to original fabric must also be obvious
- The original appearance must be preserved
- Historicism is to be avoided
- The layers of the history of the place need to be appreciated and should not concentrate only on one era

ASSOCIATIONS AND MEANINGS relating to a place should be respected

- Public participation in preservation should be encouraged
- Interpretation may be necessary to enhance the understanding and enjoyment of a place
- Those responsible for decision-making should be named
- Direction and supervision should be maintained at all stages and changes should be implemented by people with appropriate knowledge and skills
- A log of evidence and decisions should be kept and placed in a permanent archive which is publicly available
- All removable fabric should be catalogued and protected and, where possible, kept at the place from which it was removed.