



AMAFa aKWAZULU-NATALI

AN INTERPRETATION OF

THE KWAZULU-NATAL HERITAGE ACT, 1997

(As it applies to the Conservation of the Built Environment)

NB: The Act 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.

Apart from provisions in the Act that allow for proclamation and listing of individual buildings, the Act also allows for the protection of groups of buildings forming a conservation area and it 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.

General Protections

Section 34 (1) of the National Heritage Act states that “No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority. Section 51 allows for a fine or imprisonment for a period not exceeding two years or both such imprisonment and fine of anyone contravening Section 31 (1) of the Act.

The KwaZulu-Natal Heritage Act provides the following protection:

26 (1) Structures:

Any proposed demolition, addition or alteration of structures or parts thereof which are older than 60 years shall be subject to the following:

- (a) **thirty days prior** to commencement of such a proposed demolition [addition or alteration] a permit shall be applied for from Amafa aKwaZulu-Natal;*
- (b) the Council may at its own discretion and through publication of a notice in the Provincial Gazette lift this provision within a defined geographical area, or for certain defined categories of sites within a defined geographical area when it is satisfied that heritage resources falling into the defined geographical area or category have been identified and are adequately provided for in terms of sections 19 – 25;*
- (c) should the Council believe it to be necessary it may, following a three month notice period which will be published in the Provincial Gazette, withdraw or amend a notice which has previously lifted this provision;*
- (d) conditions stipulated in terms of permits issued under this provision shall be of such a nature so as to facilitate the recycling of historical building materials and the revision of design proposals;*
- (e) where a permit is refused, the Council shall within a three-month period give consideration to the protection of the site in terms of one of the formal classifications provided for in section 19 – 25.*

Amafa/Heritage KwaZulu-Natal is the provincial authority referred to in the National Act governing heritage resources in this province. Although Section 26 (1) (a) of the provincial act only requires a

permit for “demolition”, this does not mean that a permit is only required for the demolition of the entire structure but covers demolition of parts thereof as well.

Formal Classifications:

Under Section 19: **Heritage Landmark** status can be granted to sites in private ownership and Section 20: **Provincial Landmark** status can be granted to sites owned by the Province, provincially supported bodies, local authorities and bodies supported by local authorities.

These sites shall be deemed to “*constitute, in the opinion of the Council, important elements of the heritage of the Province* (19 & 20 (1)) and

(2) *No person shall damage, alter, redecorate, remove from its original position, subdivide or amend any plan thereof except under the authority of a permit issued by Amafa a KwaZulu-Natali*

Applications for permits for interventions on these sites need to be made **90 days** before such work is envisaged as the applications need to be passed by the Amafa Council on recommendation of the relevant committee.

These sites automatically enjoy any incentives afforded to sites on the Heritage Register.

Section 22: **Heritage Register**. This register lists sites considered worthy of conservation. Listed sites

- (a) shall be marked with a badge;
- (b) shall have their title deeds endorsed
- (c) shall enjoy minimum incentives made available by local authorities and
- (d) additional incentives should the local authority so wish to make available.

Section 23: **Heritage Conservancies**: The status of these conservancies (streets/blocks of buildings) shall be clearly marked/signposted, endorsed on title deeds, and be recognised by the local authorities.

Section 24: **Provisional Protection**: a six month protection that shall 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.

COMPLIANCE

In order to control the above, the Council of Amafa aKwaZulu-Natali has established a Built Environment Section comprising three staff members who handle all matters pertaining to the conservation of the built environment. Council has also appointed Committees (as provided for in Section 6) to review applications and make recommendations as to their approval/revision/rejection. Members are competent persons in their fields of expertise e.g. architects/engineers/architectural technologists/architectural historians with a track record in conservation and serve on a voluntary basis. Meetings are held every three weeks and the resolutions are conveyed by staff to the applicants as soon thereafter as possible.

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 through an appointed retired academic qualified in architectural conservation. Should he/she approve the addition/alteration the permit will be issued.

All applications for the demolition of entire structures/main buildings on the site are forwarded to the committees along with any other applications of a sensitive nature not approved through the filtering process.

The committees 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/Heritage Landmarks has to be referred to the Council with a recommendation from the relevant committee.

There are two committees:

1. Ethekewini/Coast: this committee handles all applications for buildings within this metro i.e. from Amanzimtoti to Umhlanga and meets every third Monday afternoon at the Institute for Architecture, 160 Bulwer Rd, Durban.
2. Msunduzi/Inland: this committee handles all other applications for the rest of the Province. It meets every third Wednesday afternoon in the Regional Office of Amafa at 195 Longmarket Street, Pietermaritzburg.

Applicants may be requested or may request an opportunity to make presentations of their applications to the relevant Committee at the appropriate venue.

NB: There are deadlines for submissions for each three-week cycle and no exceptions are made.

APPLICATIONS

- (a) Applications should be motivated as fully as possible and must meet the requirements set out in the guidelines. Photographs and technically correct drawings, showing clearly the existing building and the proposed alterations, and that have been coloured to specifications will add significantly to your application and will assist in getting it passed as quickly as possible. Make sure there is a site plan included.
- (b) Don't assume that the building is not significant. The onus is on the owner/developer/agent to source as much information on the building as possible. Cultural significance as defined in the Act covers elements such as scientific, technical, spiritual and social in addition to the obvious architectural and historical significance. Ignorance is no excuse and false declarations on the application form could result in prosecution.
- (c) 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.

EVALUATION OF CONSERVATION WORTHINESS:

Architectural Significance:

1. Intrinsic Design Quality
2. Building Type
3. Period
4. Details
5. Technology
6. Association with a prominent architect/builder

Historical Significance:

1. Association with a cultural group
2. Association with a person
3. Association with an event
4. Historical context

Social/Spiritual Significance:

1. Association with a particular church/religious order
2. Significance for a particular group – gathering point, etc.
3. Social centre

Technological/Scientific Significance:

1. Innovation in construction process
2. Use of new materials
3. Association with technological/scientific innovation

Environmental Significance:

1. Context
2. Rarity/uniqueness for that area
3. Association with geographical/man made feature

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 charter, based on 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 Committees will ask the following questions when evaluating an application

1. What is the status of the building: e.g. whether listed or not? If not listed the committee will be allowed more flexibility in allowing demolition/addition/alteration of the building but will evaluate whether it should enjoy greater protection than that allowed under the general protection clause.
2. Is the proposed intervention reversible i.e. could the 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? Please motivate fully on the application form.

CRITERIA FOR APPROVAL OF APPLICATIONS:

The committees look at details as well as overall principles. The committees 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 Verandahs, particularly of the Natal Verandah 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 verandah posts with brick/precast concrete columns.
- Plastering/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.)
- 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 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.

- 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.
- 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 style building.
- Over restoration: the least intervention is the most desirable.

DEMOLITION PERMITS: The committees cannot be expected to grant demolition orders simply because the owner has neglected the building or has purchased a neglected building. The law requires that owners maintain their properties.

MUNICIPAL APPROVAL: Municipalities may not grant permission for demolition, addition, alteration of buildings over 60 years old without a permit from Amafa. Municipal approval does not constitute approval from Amafa, however.

Section 17 (3) requires that a municipality

- ascertain whether the KZN Heritage Act has been complied with;
- inform Amafa of any change in the planning or zoning status of properties on which protected structures are situated;
- assist in the identification of structures needing permanent protection; implement the minimum incentives for conservation;
- and offer to Amafa of any architectural/technical drawings it intends to dispose of.

APPEALS

Any decision of the Amafa Council regarding status of buildings may be appealed through the appeal process. Similarly any decision taken by the committees may also be appealed. The appeals are first heard by the Amafa Council and, if that is not satisfactory, an appeal may be made to the Provincial Minister concerned.

It is best to try to resolve issues with the committees by making representations to them before embarking on an appeal to the Amafa Council, 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.

- Neglect is no reason for 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 considered
- 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, 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.

DEFINITIONS CONTAINED IN THE KZN HERITAGE ACT:

(NB: Only the definitions pertaining directly to the built environment have been included here.)

The Act defines the following as:

“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 boardings*
- (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 Conservancy” 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;

The full set of definitions can be found in the Legislation section on the website

www.heritagekzn.co.za