

KWAZULU-NATAL HERITAGE ACT, 1997
Act No. 10 of 1997

To provide for the establishment of a statutory body to administer heritage conservation on behalf of the provincial government of KwaZulu-Natal, in particular the care for, maintenance, repair and management of historically important sites; architecturally important buildings; public monuments and memorials; military cemeteries and other important graves; traditional burial places; archaeological and palaeontological sites and artefacts; rock art; meteorites; historical shipwrecks, important cultural objects and trade therein, and the traditional building techniques of the people of the Province, by way of providing protections relevant to the type of site or artefact, and its relative significance; integration of protective measures into planning, development and local government systems and by providing for the establishment of educational, training, interpretive and tourism-related projects; and to provide for matters incidental hereto.

BE IT ENACTED by the Provincial Parliament of the province of KwaZulu-Natal, as follows:

Definitions

1. In this Act, unless the context requires otherwise -

"Amafa aKwaZulu-Natali" means the body established in terms of this Act;

"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 any other means;

"archaeological" means -

(a) material remains resulting from human activity which are in a state of disuse and are in or on land and are older than 100 years, including artefacts, human and hominid remains and artificial features and structures;

(b) rock art, being a form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and is older than 100 years including any area within 10 m of such representation; and

(c) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land or in the maritime cultural zone referred to in section 5 of the Maritime Zones Act 1994 (Act 15 of 1994), and any cargo, debris or artefacts found or associated therewith, which are older than 60 years or which in terms of national legislation are considered to be worthy of conservation;

(d) features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found;

"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.

"council" means the Council of Amafa aKwaZulu-Natali as established in terms of section 5;

"development" means any physical intervention, excavation or action, other than those caused by natural forces, which may in any way result in a change to the nature, appearance or physical nature of a place or influence its stability and future wellbeing, 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;

"export" has the meaning in the Customs and Excise Act, 1964 (Act No.91 of 1964);

"expropriate" means the process as determined by the terms of and according to procedures prescribed in the Expropriations Act, 1975 (Act No.63 of 1975 as amended);

"grave" means a place of interment and includes the contents, headstone or other marker of and any other structures on or associated with such place;

"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;

"heritage resource" means any place or object of cultural significance including -

- (a) places, buildings, structures and equipment;
- (b) places to which oral traditions are attached or which are associated with living heritage;
- (c) historical settlements and townscapes;
- (d) landscapes and natural features;
- (e) geological sites of scientific or cultural importance;
- (f) archaeological and palaeontological sites;
- (g) graves and burial grounds, including -
 - (i) ancestral graves,
 - (ii) royal graves and graves of traditional leaders,
 - (iii) graves of victims of conflict,
 - (iv) graves of important individuals,
 - (v) historical graves and cemeteries older than 60 years, and
 - (vi) other human remains which are not covered under the Human Tissues Act, 1983 (Act No.65 of 1983 as amended);
- (h) movable objects, including -
 - (i) objects recovered from the soil or waters of South Africa including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
 - (ii) ethnographic art and objects;
 - (iii) military objects;
 - (iv) objects of decorative art;
 - (v) objects of fine art;
 - (vi) objects of scientific or technological interest;

(vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings; and

(viii) any other prescribed categories,

but excluding any object made by a living person;

i. battlefields;

j. traditional building techniques;

"heritage site" means any place protected under this Act;

"improvement" in relation to heritage resources, includes the repair, restoration and rehabilitation of places protected under this Act;

"land" includes land covered by water and the airspace above land;

"local authority" means -

(a) a regional council established in terms of Proclamation 54 of 1996 as amended by Proclamation 73 of 1996; or

(b) any local government body as defined in section 1(1)(v) of the Local Government Transition Act, 1993 (Act No. 209 of 1993); or

(c) a municipality as provided for in Chapter 7 of the Constitution of South Africa Act, 1996 (Act No. 108 of 1996); or

(d) a tribal authority, community authority and/or a regional authority established in terms of section 5 of the KwaZulu Amakhosi and Iziphakanyiswa Act, 1990 (Act No. 9 of 1990);

"management" in relation to heritage resources, includes the conservation, presentation and improvement of places protected under this Act;

"meteorite" means any naturally occurring object of extraterrestrial origin;

"Minister" means the provincial MEC responsible for Education and Culture;

"Monarch" means a Monarch as referred to in section 13 of the KwaZulu Amakhosi and Iziphakanyiswa Act, 1990 (Act No. 9 of 1990).

"object" means any movable property of cultural significance which may be protected in terms of any provisions of this Act, including -

(a) any archaeological artefact;

(b) palaeontological and rare geological specimens;

(c) meteorites;

(d) other objects referred to in definition (h) under heritage resources;

"owner" includes the owner's authorised agent and any person with a real interest in the property and,

(a) in the case of a place owned by the State or a supported body, the Minister or any other person or body of persons responsible for the care, management or control of that place;

(b) in the case of tribal land, the recognised traditional authority;

"palaeontological" means any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace;

"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 group of buildings 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 a local authority which is legally invested with a physical planning capacity;

"prescribe" means prescribe by regulation;

"presentation" includes -

(a) the exhibition or display of;

(b) the provision of access and guidance to; and

(c) the provision, publication or display of information in relation to, heritage resources protected under this Act;

"public monuments and memorials" means all monuments and memorials -

(a) erected on land belonging to any branch of central, provincial or local government, or on land belonging to any organisation funded by or established in terms of the legislation of such a branch of government, or

(b) which were paid for by public subscription government funds, or a public spirited or military organisation and are on land belonging to any private individual;

"regulations" unless otherwise stated means regulations published in terms of this Act by the Minister;

"Royal Family" means all Zulu monarchs from the time of Nkosinkulu onwards and their consorts;

"site" means any area of land including land covered by water, and including any structures or objects thereon;

"small-scale agriculture" means any farming activity undertaken by a single farmer and his family working without labour employed from outside and on a total area of land not exceeding ten hectares;

"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;

"supported body" means a body funded by or established in terms of the legislation of any branch of government, and includes State-owned enterprises;

"this Act" includes the regulations;

"victims of conflict" means -

(a) certain persons who died in any area now included in the Province as a direct result of any war or conflict, excluding the periods covered by the Commonwealth War Graves Act, 1992 (Act No.8 of 1992) as prescribed in regulations;

(b) members of the forces of Great Britain and former British Empire who died on active service in any area now included in the Republic prior to 4 August 1914;

- (c) certain categories of persons who died in the civil and political strife known as the "liberation struggle", as prescribed in regulations, including -
 - (i) members of the forces of the liberation movements;
 - (ii) members of the State military and police forces for the area presently included in the Republic who were on active service;
 - (d) other persons and unknown victims of the liberation struggle as prescribed in regulations;
- "wreck" has the meaning given under the definition of "archaeology" in this section.

Establishment of Amafa aKwaZulu-Natali

2. (1) There is hereby established a Council known as Amafa aKwaZulu-Natali, established in terms of this Act, the English and Afrikaans names of which shall have the meaning 'Heritage KwaZulu-Natal' and 'Erfenis KwaZulu-Natal' respectively.
- (2) Amafa aKwaZulu-Natali shall be a body corporate, capable of suing and being sued in its own name and of performing, subject to the provisions of this Act, all such actions necessary for, or incidental to, the exercise of such powers.

Object of Amafa aKwaZulu-Natali

3. The object of Amafa aKwaZulu-Natali shall be the conservation, protection and administration of the heritage resources of the Province within the terms of this Act and to generally promote and coordinate heritage conservation for the benefit of present and future generations.

Heritage Resources

4. Heritage Resources within the Province shall, subject to the provisions of this Act, fall under the protection of Amafa aKwaZulu-Natali.

Constitution of the Council

5. (1) The Council shall consist of not less than six and not more than twelve members and a chairperson, appointed by the Minister, who, in the opinion of the Minister reflect a fair balance between sectoral interests, the geographic regions of the Province and the expertise and contacts necessary for the effective functioning of Amafa aKwaZulu-Natali;
- (2) Prior to the appointment of a person to the Council as contemplated in subsection (1) the Minister shall -
 - (a) by means of a notice published in the Provincial Gazette and newspapers circulating widely in the Province call for nominations for such appointments;
 - (b) by means of a notice published in the Provincial Gazette and newspapers circulating widely in the Province make known the intention to appoint such persons; and
 - (c) take into account any comment or objection in respect of such proposed appointment, which might have been received from any person or body; provided that where there is no such nomination or insufficient nominations, the Minister may nominate such person or persons who have the necessary qualifications for appointment.

Establishment of Committees

6. The Council may establish committees to assist it in the exercise of its functions and the performance of its duties. Where necessary such committees may be made up of persons whom the Council considers competent or who possess specific skills and expertise, but who are not members of the Council.

Powers, Functions, Rights and Duties of the Council

7. The Council shall, subject to the provisions of this Act, have power, in addition to any other power conferred on it by this Act -

- (1) to make such recommendations in order to enable the Minister to exercise her or his powers under this Act;
- (2) to advise the Minister regarding -
 - (a) the withdrawal of Heritage Landmark, Provincial Landmark and Heritage Object status,
 - (b) the withdrawal of other notices published in the Provincial Gazette in terms of the provisions of subsection 42(1); and
 - (c) regulations to be made by her or him in terms of this Act;
- (3) by notice in the Provincial Gazette to -
 - (a) designate any heritage resource as protected in terms of the provisions of sections 19 to 25, and
 - (b) where it has such powers, withdraw notices in the Provincial Gazette;
- (4) to annually submit to the Minister a draft budget and to present to her or him an independent auditor's report on the use of funds during the previous year;
- (5) to investigate any matter pertaining to heritage resources at the request of the Minister;
- (6) to perform such functions relating to the conservation of any artefact or site together with anything thereon or therein as the Minister may from time to time determine;
- (7) to collaborate with and enter into agreements with other branches of government and other organisations with a view to fulfilling its obligations in terms of this Act;
- (8) to cause to have drawn up, approve and establish policy and standards in terms of which the organisation and other relevant bodies and authorities will function with respect to the heritage of the Province, as prescribed by regulations;
- (9) to issue or cause to be issued permits and notices as required in terms of this Act and set conditions in such permits concerning amongst other things the -
 - (a) deposition of recovered materials in the storage facilities of Amafa aKwaZulu-Natali, or another appropriate institution, or
 - (b) erection of plaques recognising the importance of a heritage resource which is under threat of destruction;
- (10) to establish projects and research programmes aimed at documenting the heritage resources of the Province with a view to facilitating their conservation and increasing knowledge and understanding thereof;
- (11) to submit annually to the Provincial Legislature a report on the activities and concerns of the organisation, together with recommendations and suggestions for legislative amendment and enactment, if any;

(12) to purchase or otherwise acquire, hold, let, hire, receive in trust, make over to any person to hold in trust, or sell, exchange or otherwise alienate, or hypothecate, burden with a servitude or otherwise confer any real right in any property movable or immovable, subject to the consent of the Minister being required to alienate fixed property;

(13) to lend any heritage objects and material in its custody to a museum or public institution, subject to the proviso that such objects and materials are managed in accordance with standards prescribed for institutions affiliated to the provincial authority responsible for museums and which it may consider necessary and appropriate;

(14) by agreement with the owner of any land, to acquire or construct and maintain an access road over such land to any monument, or to construct upon such land fences, wall or gates upon, across or next to such road;

(15) to preserve, repair, restore or provide security for any immovable or movable property owned or otherwise controlled by Amafa aKwaZulu-Natali;

(16) to make recommendations to the Minister regarding the expropriation of property in terms of subsection 26(10);

(17) to raise funds and gain independent income for use in performing the functions of the organisation by way of inter alia the following methods -

(a) charging for services and other functions rendered in terms of this Act;

(b) use of commercial opportunities associated with the field of operations of Amafa aKwaZulu-Natali; and

(c) receipt of donations of property, materials or money;

(18) to establish and administer trust funds for use in performing the functions of the organisation;

(19) to invest, lend or borrow money;

(20) to spend the proceeds of fund-raising, investments, trust funds and other independent income on any activity covered by this Act and within the limitations prescribed by a donor or the terms of reference of a trust fund;

(21) to assess applications for and, where resources permit, grant -

(a) subsidies; and

(b) subject to adequate security, low-interest, or interest-free loans,

in respect of the purchase, restoration or maintenance of any site or artefact protected in terms of sections 19 to 25 and to, wherever appropriate, institute a covenant in terms of subsection 26(9) as a condition of such a subsidy or loan;

(22) to create and where necessary register with the relevant authorities a logo, or logos, for the organisation, its projects and other areas of responsibility and the categories of protection provided for in the Act;

(23) where possible and appropriate, to affix to any site protected in terms of this Act a badge, or otherwise mark an area, indicating its status of protection in terms of this Act;

(24) to publish or by other means make available or distribute, or cause to be published and distributed, any knowledge and information associated with the heritage resources of the Province, subject to withholding information in instances where it considers that revelation may impact negatively on the economic interests of owners or potential investors, or on the future conservation of a heritage resource;

- (25) to encourage and promote heritage conservation through the medium of the media, educational programmes and involvement with other conservation bodies, tourism initiatives and other similar activities;
- (26) to wherever appropriate interpret the heritage resources of the Province via -
- (a) erection of explanatory plaques;
 - (b) mounting of exhibitions;
 - (c) creation of interpretive centres;
 - (d) erection of public memorials; or
 - (e) creation of other tourist facilities necessary for effective interpretation of the heritage of the Province;
- (27) to wherever interpretation of the heritage takes place on sites owned by the Province, or other provincially supported bodies, be the provincial authority responsible for such activity and the provision of necessary facilities;
- (28) to hold and curate collections of artefacts and other material -
- (a) necessary for the educational, interpretive and research functions and duties of the organisation; or
 - (b) recovered in terms of permits issued under this Act and which in terms of a condition of such permits must be deposited with Amafa aKwaZulu-Natali, subject to the proviso that such collections are managed in accordance with standards prescribed for institutions affiliated to the provincial authority responsible for museums;
- (29) for as long as it desires to continue such a task, to run a formal cultural history museum at oNdini, subject to the proviso that the museum is managed in accordance with the norms and standards prescribed for institutions affiliated to the provincial authority responsible for museums and subject to the consent of the Minister and the manner in which this should occur, divest itself of this responsibility;
- (30) to maintain a store of historic building and other relevant materials for use in the conservation of structures protected in terms of this Act, such facility to be known as the 'KwaZulu-Natal Conservation Materials Bank';
- (31) where it is not the responsibility of another authority, to repair, restore, maintain and generally care for burial grounds and graves referred to in subsection 26(2) and subsection 26(3);
- (32) where such sites are threatened by what it considers to be unavoidable and/or necessary development, and subject to the provisions of any other law and at cost to the developer, to exhume and re-inter graves of victims of conflict;
- (33) to endeavour to have repatriated to the Province artefacts removed therefrom and which it considers to be an important part of the provincial heritage and identity.

Inspection and Documentation

8. Council shall -

- (1) on a regular basis, inspect those heritage resources protected in terms of sections 19 to 26, and maintain a register of such inspections;
- (2) inspect or document any aspect of the heritage of the Province which has the potential to become protected by the Act; for which the possible need for protection is being investigated; which is, or which it has reason to believe may be protected by the Act; which it wishes to document for research purposes or for purposes of building up a

public record of heritage resources; or as part of an investigation into a suspected offence in terms of the Act.

Admission of Guilt

9. Council may delegate to its staff and other responsible bodies powers to levy admission of guilt fines for contraventions of the provisions of this Act as prescribed in regulations.

Maintenance of registers

10. The Council shall maintain registers of all heritage conservation bodies operating in the Province; all sites and objects protected by this Act; all known royal graves, graves of victims of conflict, public memorials and battlefields, as prescribed by regulations.

Identification and documentation of heritage resources

11. The Council shall identify and document the heritage resources of the Province through procedures as prescribed in regulations.

Assistance to individuals and communities

12. Council shall endeavour to assist communities and individuals to conserve their heritage through procedures as prescribed in regulations.

Appointment of staff and conditions of service

13. The Council shall appoint from time to time to such posts and on such conditions and at such remuneration as may be approved by the Minister in consultation with the Minister of Finance such officers or employees as may be required for the performance of the functions and duties of Amafa aKwaZulu-Natali and subject to the following:

- (a) Such officers or employees being subject to the provisions of the Basic Conditions of Service Act, 1983 (Act No. 3 of 1983, as amended) and of the Labour Relations Act, 1995 (Act No. 66 of 1995, as amended).
- (b) One of the officers so appointed shall be called the Director, being designated as the Chief Executive official of Amafa aKwaZulu-Natali to perform those activities and duties assigned to him from time to time by the Council.

Employment of consultants

14. The Council may, where it deems it necessary, employ consultants to assist in the performance of the functions of Amafa aKwaZulu-Natali.

Provision of insurance

15. The Council shall provide insurance cover for -
- (a) any property under its control or insure itself against any risk arising out of the exercise of its powers or the performance of its duties; and
 - (b) the members of the Council and members of any committee established in terms of sections 5 and 6 or employee of Amafa aKwaZulu-Natali in respect of bodily injury, disablement or death incurred wholly within the course and scope of the performance of their duties on behalf of Amafa aKwaZulu-Natali.

Delegation of powers

16. The Council shall have a right to delegate its powers, functions and duties under the Act -

- (a) to its staff, committees it may establish, committee members, volunteers and other representatives of the organisation,
- (b) to honorary heritage inspectors appointed for their expertise in a field covered by any provision of this Act; and
- (c) to such bodies that show competence to perform such functions subject to a due process of consultation and agreement with the affected body or bodies, and the Council retaining the right to withdraw such delegated powers, functions and duties.

Rights and duties of other authorities and individuals

17. (1) In order to facilitate liaison between provincial departments regarding heritage conservation matters and to facilitate the duties of departments other than Amafa aKwaZulu-Natal in this regard, there shall be established 'the Provincial Heritage Liaison Committee' which shall meet at least three times per year and shall consist of -

- (a) a senior official of the Director-General's office who shall chair the meeting;
- (b) the Chief Executive official and relevant senior staff of Amafa aKwaZulu-Natali;
- (c) senior officials of all provincial departments and provincially supported bodies which have some or other duty concerning or impacting upon heritage matters; whose attendance shall be determined by regulations;
- (d) other government-sponsored institutions with duties similar to those mentioned in subsection 17(1)(c) and which it is felt may on a voluntary basis wish to contribute to inter-departmental liaison;
- (e) a nominated member of the House of Traditional Leaders; and
- (f) a secretary provided by Amafa aKwaZulu-Natali;

(2) All departments of the Provincial Administration and provincially supported bodies shall, free from charge, make available to Amafa aKwaZulu-Natali for its use and incorporation into its databases any information which they have on record or collect pertaining to the heritage of the Province;

(3) A competent local authority shall be obliged to -

- (a) ascertain that the terms of this Act, where applicable, have been complied with, prior to it granting authority in accordance with its jurisdictional powers to any development which will impact upon a site;
- (b) inform Amafa aKwaZulu-Natali of any change in the planning status and zoning determination of any site protected in terms of sections 19 to 26;
- (c) subject to minimum standards set in terms of regulations, maintain the graves of victims of conflict which fall within its area of jurisdiction if it is a local authority responsible for an urban area;
- (d) at the time of the revision of any plan, or on any other suitable occasion, and in consultation with and to the satisfaction of Amafa aKwaZulu-Natali, make provision for the identification and protection of the heritage resources of the area under its jurisdiction through use of the appropriate provisions of this Act;
- (e) implement the minimum incentives for conservation, as determined in this Act;

- (f) administer heritage resources in accordance with what Amafa aKwaZulu-Natali regards as its level of competence and according to powers delegated in terms of provisions of this Act; and
- (g) inform Amafa aKwaZulu-Natali of its intention to dispose of any architectural or technical drawings in any manner other than to a provincial archive and shall, free of charge, make them available to Amafa aKwaZulu-Natali should it wish to add them to its collections.
- (4) Where any site protected in terms of this Act is to be interpreted, the person wishing to undertake such interpretation shall, at least sixty days prior to the institution of interpretive measures or manufacture of associated material, consult with Amafa aKwaZulu-Natali regarding the contents of interpretive material or programmes and shall obtain a permit from Amafa aKwaZulu-Natali for the erection, in the vicinity of the site, of any plaque or other structure associated with such interpretation.

Applicability of national legislation and relations with other heritage bodies

18. (1) Amafa aKwaZulu-Natali may enter into agreements with national heritage bodies regarding the performance of functions in terms of national legislation on behalf of such a national body.

(2) Amafa aKwaZulu-Natali may assist and cooperate with other heritage bodies, both within and outside of South Africa, provided that this does not involve the transfer of funds to such a body and with due regard to the impact this will have upon its own resources or effectiveness and the financial and public relations benefits to be derived from such an arrangement.

Formal protections

19. The Council shall wherever it deems it necessary and subject to the provisions of this section introduce the following protections by way of publication in the Provincial Gazette.

- (1) Heritage Landmark status shall be conferred upon sites which constitute, in the opinion of the Council, important elements of the heritage of the Province, but which are not the property of the Province, a provincially supported body, a local authority or body which is supported by a local authority.
- (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 aKwaZulu-Natali.
- (3) Amafa aKwaZulu-Natali shall designate a site as a Heritage Landmark subject to -
- (a) the owner being given 90 days from the date of the Council's decision in which to object, or suggest reasonable conditions under which Heritage Landmark status is acceptable; and
- (b) where an objection is not received or conditions are not considered reasonable, the site shall automatically be included on the Heritage List.
- (4) Any Heritage Landmark shall automatically enjoy any incentives afforded sites on the Heritage List.
- (5) Subject to any successful objection in terms of subsection 19(3), sites which the Council has resolved to protect as Heritage Landmarks shall be deemed to be

protected as such for six months from the date of serving of notice of the Council's intention on the owner.

(6) Amafa aKwaZulu-Natali shall inform the local authority within whose area of authority a Heritage Landmark falls within two months of the designation thereof.

(7) Except in cases where the Council considers it inappropriate, all Heritage Landmarks shall be marked with a badge indicating their status.

(8) Where they exist, the title deeds and survey diagrams of all Heritage Landmarks shall be endorsed concerning their status.

(9) No Heritage Landmark may be demolished until such time as such status has been withdrawn by the Minister.

(10) Any Heritage Landmark which becomes the property of the Province, a provincially supported body, or a local authority or local authority supported body shall, upon date of registration of transfer, automatically become a Provincial Landmark.

(11) Regulations shall make provision for a process of consultation and arbitration between Amafa aKwaZulu-Natali, a relevant local authority, an appropriate community structure and/or any person/s in the declaration of a Heritage Landmark.

20. (1) Provincial Landmark status shall be applicable to sites considered to be important elements of the heritage and which are the property of the Province, a provincially supported body, or a local authority or body supported by a local authority.

(2) No person shall damage, alter, redecorate, remove from its original position, subdivide or amend any plan relating to the status of a Provincial Landmark except under the authority of a permit issued by Amafa aKwaZulu-Natali.

(3) Objection to the designation of a site as a Provincial Landmark shall be subject to regulations according to the appeal procedure governing the circumstances under which any person may object to such designation.

(4) The occupier of a Provincial Landmark shall be obliged to maintain a Provincial Landmark to a minimum standard and according to a procedure determined in regulations published by the Minister after consultation with the provincial Departments of Works, Local Government and Traditional Affairs.

(5) Provincial Landmarks shall automatically enjoy any incentives afforded sites on the Heritage List.

(6) Subject to any successful objection in terms of subsection 20(3), sites which the Council has resolved to protect as Provincial Landmarks shall be deemed to be protected as such for six months from the date of serving of notice of the Council's intention on the owner.

(7) Except in cases where the Council considers it inappropriate, all Provincial Landmarks shall be marked with a badge indicating their status.

(8) Where they exist, the title deeds and survey diagrams of all Provincial Landmarks shall be endorsed concerning their status.

(9) No Provincial Landmark may be demolished until such time as such status has been withdrawn by the Minister.

(10) Any Provincial Landmark which is no longer the property of the Province, a provincially supported body, or a local authority or body supported by a local authority, shall upon date of registration of title automatically become a Heritage Landmark.

21. (1) Heritage Object status shall be applicable to artefacts, or collections thereof, which are of substantial aesthetic, historic, scientific, or technological importance, or which have a significant connection to a site protected under this Act, and which shall be the subject of regulations.

(2) No person shall destroy, damage, alter, restore, or remove such an object from its place of storage except under the authority of a permit issued by Amafa aKwaZulu-Natali.

(3) Any designation of an object as a Heritage Object shall, other than in instances where it is the property of the Province, a provincially supported body, or a local authority or body supported by a local authority, be subject to the owner being given 90 days in which to object or to suggest reasonable conditions under which Heritage Object status is acceptable.

(4) Subject to any successful objection in terms of subsection 21(3), artefacts which the Council has resolved to protect as Heritage Objects shall be deemed to be protected as such for six months from the date of serving of notice of the Council's intention on the owner.

(5) All Heritage Objects shall be marked physically in accordance with recognised curation norms, or by way of the display of appropriate marking in their vicinity.

(6) No Heritage Object may be destroyed or permanently removed from the Province until such time as its status has been withdrawn by the Minister.

(7) Regulations shall make provision for a process of consultation between Amafa aKwaZulu-Natali, a relevant local authority, appropriate community structures and/or any person/s in the declaration of Heritage Objects.

22. (1) Amafa aKwaZulu-Natali shall by way of notice in the Provincial Gazette compile a Heritage Register of sites which it considers to be worthy of conservation and whose listing shall be the subject of regulations.

(2) Regulations shall make provision for a process of consultation between Amafa aKwaZulu-Natali, a relevant local authority, appropriate community structures and/or any person/s wishing to list or remove sites on or from the Heritage Register;

(3) Listed sites shall be protected in the following manner -

(a) except in cases where the Council considers it inappropriate, all Listed Sites shall be marked with a badge indicating their status;

(b) where they exist, the title deeds and survey diagrams of all Listed Sites shall be endorsed concerning their status;

(c) regulations jointly published by the Minister, the Minister of Local Government, and the Minister of Traditional Affairs shall provide for minimum incentives to be made available by local authorities for the conservation of Listed Sites;

(d) where a local authority so wishes it may in any plan, or by other means, provide incentives which are additional to those provided in terms of subsection 22(3)(c).

(4) Inclusion of a site in the Heritage Register shall not exempt persons from complying with those terms of this Act which apply to the destruction, excavation, alteration, or other disturbance of archaeological and palaeontological sites and artefacts, or meteorites.

(5) Regulations shall make provision for a process of consultation and arbitration between Amafa aKwaZulu-Natali, the relevant local authority, appropriate community

structures and any person/s wishing to damage, alter, redecorate, remove from its original position, subdivide or amend any plan relating to a Listed Site.

(6) Regulations shall establish guidelines for the circumstances under which work on a listed building may be prevented by means of the provisional protection afforded in terms of section 24.

23. (1) Heritage Conservancies shall be protected in terms of relevant plans or where there are no such plans, regulations made by the Minister.

(2) This provision shall be subject to the following -

(a) a local authorities shall, when amending any relevant plan, or at the instance of Amafa aKwaZulu-Natali, investigate the establishment of heritage conservancies and consult with Amafa aKwaZulu-Natali in this regard;

(b) regulations shall provide for a process of consultation with property owners and the communities affected by the provisions governing a heritage conservancy prior to the introduction of such measures;

(c) each conservancy shall be suitably signposted;

(d) where they exist, the title deeds and survey diagrams of all properties within a heritage conservancy shall be endorsed concerning their status;

(e) particular sites within a heritage conservancy may, in addition to the general provisions governing the conservancy, be afforded further protection in accordance with the other provisions of this section, or section 26;

(f) the provisions of any plans or regulations governing a heritage conservancy shall specifically state which general protections in terms of section 26 and aspects of protection in terms of this section will be excluded from application.

24. (1) Provisional Protection shall be applicable to any important heritage resource which is not protected as a Heritage Landmark, Provincial Landmark, or Heritage Object which the Council considers to be or is potentially under a threat with respect to its future conservation and which threat it believes may be alleviated through the provision of a period for reconsideration and negotiation.

(2) No person may damage, alter, redecorate, remove from its original position, restore, subdivide or amend any plan relating to a provisionally protected heritage resource except under the authority of a permit issued by Amafa aKwaZulu-Natali.

(3) At the discretion of the Council, Provisional Protection may apply for a period up to a maximum of two years, which period is to be stated in the notice instituting such protection.

(4) Heritage resources which the Council has resolved to provisionally protect shall be deemed to be protected as such from the time of the serving of a notice to this effect on the owner or his agent and provided that a notice is published in the Provincial Gazette within 30 days of serving such notice.

(5) Where they exist, the title deeds and survey diagrams of all sites which are provisionally protected for a period of more than six months shall be endorsed concerning their status and the date of expiry thereof.

(6) Amafa aKwaZulu-Natali shall inform the local authority within whose area of authority a provisionally protected site falls within two months of service of notice on the owner thereof.

(7) The Council may at its own discretion, or shall following a successful appeal against its decision, withdraw Provisional Protection via notice in the Provincial Gazette and the serving of such notice on the owner.

25. (1) The Council may protect the immediate environs of Heritage Landmarks and Provincial Landmarks by designating a suitable buffer area as a Sensitive Site.

(2) Such buffers shall be protected in that -

(a) no person shall damage, alter, subdivide or in any other way develop such a site without consulting Amafa aKwaZulu-Natali, such process of consultation being provided for in regulations to be jointly published by the Minister, the Minister of Local Government and the Minister of Traditional Affairs, and which shall provide for consultation to commence at least 60 days prior to the initiation of such changes to such sites;

(b) where they exist, the title deeds and survey diagrams of all sensitive sites shall be endorsed concerning their status;

(c) regulations jointly published by the Minister, the Minister of Local Government and the Minister of Traditional Affairs shall provide for minimum incentives to be made available by local authorities for the proper treatment of sensitive sites;

(d) where a local authority so wishes it may in any relevant plan, or by other means, provide incentives which are additional to those provided for in subsection 25(2)(c).

General protections

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 the commencement of such a proposed demolition a permit shall be applied for from Amafa aKwaZulu-Natali;

(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 to 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 sections 19 to 25.

(2) Graves of the Royal Family shall -

(a) without the need for publication of a notice in the Provincial Gazette, enjoy protection equivalent to that of Heritage Landmark or Provincial Landmark provided for in terms of sections 19 and 20;

(b) be subject to the proviso that no permit shall be issued by Amafa aKwaZulu-Natali without prior knowledge of the reigning monarch and his advisors, and in terms of regulations prescribed in this Act.

(3) Graves of Victims of Conflict

No person shall damage, alter, exhume, or remove from its original position the grave of a victim of conflict, cemetery made up of such graves, or that part of a cemetery which contains such graves except after consultation with Amafa aKwaZulu-Natali, and in terms of regulations prescribed in this Act.

(4) Traditional Burial Places

(a) All other graves not otherwise protected by this Act and not located in formal cemeteries administered by local authorities, shall not be damaged, altered, exhumed, removed from their original positions, or otherwise disturbed except under the authority of a permit issued after consultation with Amafa aKwaZulu-Natali, and in terms of regulations prescribed in this Act.

(b) The Council shall only recommend that such a permit be issued once it has been satisfied that the applicant has made a concerted effort to contact and consult communities and individuals who by tradition have an interest in the graves and have reached agreements regarding the future thereof;

(c) Regulations shall provide a time period and minimum requirements for such consultation.

(5) Battlefields and public monuments and memorials shall without the need to publish a government notice to this effect, be protected in the same manner as sites which are on the heritage register as established in section 22.

(6) Archaeology, rock art, palaeontology, battlefields and meteorite sites

(a) No person may destroy, damage, excavate, alter, write or draw upon, or otherwise disturb any archaeological, rock art, palaeontological, battlefield or meteorite site except under the authority of a permit issued by Amafa aKwaZulu-Natali, provided that Amafa aKwaZulu-Natali may, regarding archaeological sites, take account of existing small-scale agricultural activities.

(b) Upon discovery of archaeological or palaeontological material or a meteorite, a person engaged in small-scale agriculture shall immediately cease operations in the vicinity of such material and report their presence to Amafa aKwaZulu-Natali.

(c) After consultation with the owner, the Council may, by way of serving of notice to that effect on an owner or other controlling authority, prevent what it considers to be inappropriate activities within 50 m of sites which contain rock art.

(d) No person may exhume, remove from its original position, otherwise disturb, damage, destroy, own or collect any archaeological or palaeontological object or material; or objects which the Council deems to be associated with a battlefield; or meteorite, except under the authority of a permit issued by Amafa aKwaZulu-Natali.

(e) No person may bring any equipment which assists in the detection of metals and archaeological and palaeontological objects and material, or excavation equipment onto an archaeological or palaeontological site or a battlefield, or use similar detection or excavation equipment for the recovery of meteorites, except under the authority of a permit issued by Amafa aKwaZulu-Natali.

(7) Objects

- (a) All archaeological objects and palaeontological material, objects on battlefields, and meteorites shall at the time of discovery become the property of the Province as represented by Amafa aKwaZulu-Natali.
- (b) Amafa aKwaZulu-Natali may at its own discretion dispose of such objects and material to relevant and responsible institutions subject to it complying with the standards and procedures of disposal as prescribed by the provincial authority responsible for museums.
- (c) No person may trade in, export or attempt to export from the Province any category of archaeological object or palaeontological material, or objects which the Council deems to have been recovered from a battlefield, or meteorite, other than those categories of objects or material which may by regulations be excluded from such provisions.
- (d) Regulations shall prescribe how persons or institutions in possession of archaeological objects and palaeontological materials, or objects which could reasonably be expected to have been recovered from battlefields, shall lodge lists of such objects and material, and other required information, for auditing with Amafa aKwaZulu-Natali.
- (e) Subject to regulations, objects and materials listed in subsection 26(7) shall remain in the ownership of the person lodging the list.
- (f) Regulations shall provide a system whereby Amafa aKwaZulu-Natali regularly monitors such objects and materials.
- (g) All other such objects and materials not listed within the prescribed period shall be deemed to have been recovered after the date on which this Act came into effect.
- (h) Regulations may prescribe the manner in which a moratorium may be instituted on the declaration and possession of such material and objects.
- (i) Regulations may prescribe the manner in which objects of any form, material, or manufacture which have, in the opinion of Amafa aKwaZulu-Natali been in the Province for longer than 60 years, be protected in that they may not be removed from the Province and/or alienated or disposed of except under the authority of a permit issued by Amafa aKwaZulu-Natali.

(8) Standards and Conditions

The setting of standards and conditions regarding curation and excavation of material covered in this section and the conditions pertaining to their temporary or otherwise export, the lodging of a financial deposit which will be held in trust to establish bona fides before a permit is issued, conditions of forfeiture of deposit, the submission of reports on research, shall be the subject of regulations promulgated by the Minister.

(9) Covenants

Amafa aKwaZulu-Natali shall where it is in the interests of the conservation of heritage resources and by mutual agreement enter into a covenant with a local authority, community, person or persons regarding any arrangement whereby a certain clearly defined heritage resource, or a resource which it has facilitated, regardless of, and in addition to, any other provisions provided for in this Act, for any aspect of the conservation of that resource. Such a covenant may incorporate in its terms a provision for financial, or other assistance from Amafa aKwaZulu-Natali and shall be in the form of a binding contract.

(10) Expropriation

The Minister may, on the recommendation of the Council, under the following circumstances expropriate property protected in terms of sections 19 to 25 when -

- (a) in her or his opinion a site or artefact is neglected to the extent that it will lose its potential for conservation; and
- (b) following negotiation with and thereafter the serving of a notice of intention to expropriate on the owner;
- (c) if within at least sixty days from the date of serving such notice the Minister is of the opinion that no satisfactory steps have been taken to rectify the conservation problems; and
- (d) a site registered in terms of section 22 is threatened with demolition or alterations, or other actions, which will in her or his opinion severely compromise its value as a heritage resource and if the period of negotiations provided for has not resolved the matter to the satisfaction of the Minister.

Heritage resources management

27. (1) Any person wishing to undertake a project described in terms of the following categories:

- (a) construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300 m in length;
- (b) construction of a bridge or similar structure exceeding 50 m in length; and
- (c) any development, or other activity which will change the character of an area of land, or water -
 - (i) exceeding 10 000 m² in extent;
 - (ii) involving three or more existing erven or subdivisions thereof; or
 - (iii) involving three or more erven, or subdivisions 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; or
 - (v) any other category of development provided for in regulations,shall at her/his own initiative and at the very earliest stages of initiating such a development, notify the Council and furnish it with details regarding the location, nature and extent of the proposed development.

(2) Within 14 days of receipt of a notification under subsection 27(1) the Council shall -

- (a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development that it requires the submission to it of an impact assessment report compiled at the cost of the person proposing the development, by a person or persons approved by the Council with relevant qualifications and experience in heritage resource management; or
 - (b) notify the person concerned that the provisions of this section shall not apply.
- (3) Regulations shall specify the information to be provided in a report required under subsection 27(2)(a) provided that the following shall be included -
- (a) the identification and mapping of all heritage resources in the area affected;
 - (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in regulations;
 - (c) an assessment of the impact development on such heritage resources;

- (d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
- (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
- (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
- (g) plans for mitigation of any adverse effects during and after completion of the proposed development.

(4) The report shall be considered timeously by the Council which shall, after consultation with the person proposing the development, decide -

- (a) whether or not the development may proceed;
- (b) any limitations or conditions are to be applied to the development;
- (c) what general protections in terms of this Act apply, and what formal protections may be applied to such heritage resources;
- (d) whether compensatory action shall be required in respect of any heritage resources damaged or destroyed as a result of the development; and
- (e) whether the appointment of specialists is required as a condition of approval of the proposal.

(5) The Council shall not make any decision under subsection 27(4) above with respect to any development which impacts on a heritage resource protected at national level unless it has first consulted the national heritage conservation agency.

(6) The applicant may appeal against the decision of the Council to the Minister who -

- (a) shall consider the views of both parties; and
- (b) may at her or his discretion -
 - (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the provincial heritage authority;
 - (ii) consult the national heritage conservation agency; or
 - (iii) consult the provincial Cabinet regarding the appeal; and
- (c) shall uphold, amend or overturn such decision.

(7) The provisions of this section shall not apply to a development described in subsection 27(1) affecting any heritage resource formally protected by the Act or national heritage legislation unless the relevant authority concerned decides otherwise.

(8) The provisions of this section shall not apply to a development as described in subsection 27(1) if an evaluation of the impact of such development on heritage resources is required in terms of national legislation, inter alia the integrated environmental management (IEM) guidelines issued by the Department of Environment Affairs and Tourism, the Environment Conservation Act (Act No. 73 of 1989, as amended), the Minerals Act, 1991 (Act No. 50 of 1991, as amended) or other planning and development legislation applicable to the Province, provided that the Council shall ensure that the evaluation fulfils the requirements of the Act in terms of subsection 27(3) and any comments and recommendations of the Council with regard to such development have been taken into account prior to the granting of any consent.

(9) the Minister may, on the recommendation of the Council, and by notice in the Provincial Gazette, exempt from the requirements of this section, any place specified in the notice.

(10) Any person who has complied with the decision of the Council in subsection 27(4) or of the Minister in subsection 27(6) or other requirements referred to in subsection 27(8) shall be exempt from compliance with all other protections in terms of this section, but any existing heritage covenants made in terms of subsection 26(9) shall continue to apply.

Permits

28. (1) Regulations shall prescribe the manner in which an application shall be made to the Council for any permit under this Act and other requirements for permit applications, including -

- (a) any particulars or information to be furnished in the application and any documents, drawings, plans, photographs and fees which should accompany the application;
- (b) minimum qualifications and standards of practice required of persons making application for a permit to perform specified actions in relation to particular categories of protected heritage resources;
- (c) standards and conditions for the excavation and curation of archaeological and palaeontological objects and material and meteorites recovered under authority of a permit;
- (d) the conditions under which, before a permit is issued, a financial deposit must be lodged and held in trust for the duration of the permit or such period as the regulations may specify, and conditions of forfeiture of such deposit;
- (e) conditions for the temporary export and return of objects protected under section 21 or subsection 26(7);
- (f) the submission of reports on work done under authority of a permit; and
- (g) the responsibilities of the Council regarding monitoring of work done under authority of a permit.

(2) On application by any person in the manner prescribed under subsection 28(1), the Council may in its discretion issue to such person a permit to perform such actions at such time and subject to such terms, conditions and restrictions or directions as may be specified in the permit, including a condition -

- (a) that the applicant give security in such form and such amount determined by the Council, having regard to the nature and extent of the work referred to in the permit, to ensure the satisfactory completion of such work, or the curation of objects and material recovered during the course of the work; or
- (b) providing for the recycling or deposit in the Conservation Materials Bank referred to in subsection 7(30); or
- (c) stipulating that design proposals be revised; or
- (d) regarding the qualifications and expertise required to perform the actions for which the permit is issued.

(3) Notwithstanding (1) and (2) above no person shall, by obtaining any permit, permission or authority under this Act, be absolved from the duty to comply with the provisions of any other law.

Exemptions

29. The Minister may, on the recommendation of the Council, at her or his discretion, in respect of any heritage resource protected under this Act, by notice in the Provincial Gazette, grant an exemption from the requirement to obtain a permit from it for such activities or class of activities by such persons or class of persons in such circumstances as are specified in the notice.

Appeals

30. (1) Regulations shall provide for a system of appeal to the Council against the decision of a committee or other delegated representative of the Council and to the Minister against the decision of the Council.

(2) In considering an appeal referred to in subsection 30(1) the Minister shall have due regard to -

- (a) the advice of at least two independent assessors appointed by the Minister to assist in the matter by virtue of their expertise with regard to the matter;
- (b) the cultural significance of the heritage resource in question;
- (c) heritage conservation principles; and
- (d) any other relevant factors which are brought to her or his attention by the appellant or the heritage authority.

(3) Should the Minister find in favour of the appellant, she or he may require that appropriate compensation for the loss of heritage resources be made to the Council or another appropriate body for use in ensuring the continued conservation of other heritage resources;

(4) An appeal against the decision of a local authority regarding an application for special consent for a listing or removal of sites from the Heritage Register and matters connected therewith and protection of heritage conservancies and matters connected therewith shall, subject to the protective provisions referred to in section 22 and section 23 respectively, be made to the applicable planning appeal body in accordance with the planning appeal procedures applicable in the Province:

Provided that -

- (a) the local authority shall inform the Council on the institution of an appeal; and
- (b) in considering such appeal the planning appeal body shall have due regard to the cultural significance of the place in question, heritage conservation principles and any other relevant factors which are brought to its attention by the appellant, the local authority or the Council.

Appointments and powers of heritage inspectors

31. (1) The Council may appoint heritage inspectors, whose terms of appointment and reference shall be the subject of regulations, provided that if a heritage inspector is a staff member of a government department or a supported body such appointment shall

only be made by agreement with the Minister or other person in charge of the administration of such department or body.

(2) By force of this section, each member of the South African Police Services and each Customs and Excise Officer is deemed to be a heritage inspector.

Offences and penalties

32. Any person who contravenes a provision of this Act shall be guilty of a criminal offence and shall on conviction be liable to a fine or to a term of imprisonment determined by regulations.

Admission of guilt and penalties for contravention of permits

33. (1) The Minister may make regulations in terms of which the Council may -

- (a) levy admission of guilt fines up to an amount determined by such regulations, for infringement of the terms of this Act; and
- (b) serve a notice upon a person who is contravening a specified provision of the Act or has not complied with the terms of a permit issued by the Council, imposing a daily penalty for the duration of the contravention, subject to a maximum period of 365 days;
- (c) confiscate any vehicle, craft, equipment or other contraption utilised by any person who contravenes a specified provision of the Act.

Offences

34. Any person who -

- (1) whether or not on the request of the Council, fails to provide any information that is required to be given under this Act or the regulations;
- (2) for the purpose of obtaining, whether for herself or himself or for any other person, any permit, consent or authority under this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;
- (3) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to her or him under this Act;
- (4) obstructs the holder of a permit under this Act in exercising a right granted to her or him by means of such permit;
- (5) damages, takes or removes, or causes to be damaged, taken or removed from a place protected in terms of the provisions of this Act any badge or sign or any interpretive display or any other property or object erected by the national heritage agency, the Council, or a competent local authority,
- (6) receives any badge or any other property or object unlawfully taken or removed from a place protected in terms of the provisions of this Act;
- (7) within the terms of this Act commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any obligation imposed upon her or him by its terms, or who counsels, procures, solicits or employs any other person to do so, shall be guilty of an offence.

Laying of charges

35. Any person who believes that there has been an infringement of any provision of this Act may lay a charge with the South African Police Services or any other competent authority.

Jurisdiction of the magistrates court

36. A magistrate's court shall, notwithstanding the provisions of any other law, be competent to impose any penalty under this Act.

Orders to make good

37. Whenever any person has been convicted of any contravention of this Act which has resulted in damage to or alteration of a protected heritage resource the Court shall -

- (1) order such person to put right the result of the act of which he was found guilty, in the manner so specified and within such period as may be so specified, and upon failure of such person to comply with the terms of such order, order such person to pay to the Council a sum equivalent to the cost of making good; or
- (2) when it is of the opinion that such person is not in a position to make good damage done to a heritage resource by virtue of the offender not being the owner or occupier of a heritage resource or for any other reason, or when it is advised by the Council that it is unrealistic or undesirable to require that the results of the act be made good, order such person to pay to the Council a sum equivalent to the cost of making good.

No-development orders

38. (1) In addition to other penalties, if the owner of a place has been convicted of an offence against this Act involving the destruction of, or damage to, the place, the Minister on the advice of the Council, may serve on the owner an order that no development of such place may be undertaken (except making good the damage and maintaining the cultural value of the place) for a period not exceeding 5 years and that such be recorded against the title deeds of the property concerned.

(2) Before making the order, the local authority and any person with a registered interest in the land must be given a reasonable period to make submissions on whether the order should be made and for how long.

(3) A no-development order under subsection 38(1) attaches to the land and is binding not only on the owner as at the date of the order, but also on any person who becomes an owner of the place while the order remains in force.

(4) The Minister on the advice of the Council may reconsider a no-development order and may in writing amend or repeal such an order.

Community service

39. In any case involving vandalism, and whenever a Court deems it appropriate, community service involving conservation of heritage resources may be substituted for, or instituted in addition to a fine or imprisonment.

Forfeiture

40. (1) Where a court convicts a person of an offence against this Act, it may order the forfeiture to the Council of a vehicle, craft, equipment or any other contraption used or otherwise involved in the commission of the offence.

(2) A vehicle, craft, equipment or other contraption confiscated in terms of section 33(1)(c) may be sold or otherwise disposed of as the Council thinks fit.

Exemption from duties, taxes and fees

41. Notwithstanding anything to the contrary contained in any other law, no duty, tax or fees (other than duty, tax or fees under the laws relating to customs and excise and to the survey of land) shall be payable to the Province by the Council in respect of anything done or any transaction under this Act, or in respect of any document required in connection with anything so done or any such transaction.

Notices in the Provincial Gazette

42. (1) The Minister may, by publication of a further notice, amend or withdraw any notice in the Provincial Gazette which she or he has caused to have published;

(2) The Minister may prescribe the manner in which legally enforceable property descriptions may be published in notices in the Provincial Gazette in terms of the provisions of the Act including -

(a) methods of technology permissible in measuring areas; and

(b) methods to be used in compensating for margins of error in measurement.

Delegation of powers by the Minister

43. The Minister may delegate any power, duty or function conferred or imposed upon her or him under this Act to the Deputy Minister or the incumbent of a designated post in the Department of Education and Culture.

Bylaws by local authorities

44. A local authority wishing to publish bylaws pertaining to heritage management should do so in consultation with Amafa aKwaZulu-Natali.

Limitations of liability

45. No person shall be liable in respect of anything done under this Act in good faith and without negligence

Legal succession

46. (1) Amafa aKwaZulu-Natali shall be the legal successor in all respects, including liabilities, assets, contractual arrangements, staff, policy and other decisions of respective governing bodies, fixed and moveable property and personnel, to -

(a) both the National Monuments Council in the Province of KwaZulu-Natal and the KwaZulu Monuments Council in the former homeland of KwaZulu;

(b) the KwaZulu-Natal Provincial Administration and the KwaZulu-Natal Provincial Museum Services with regard to the Umgungundlovu archaeological site, Piet Retief's Grave and the Rorke's Drift/Shiyane Battlefield; and

- (c) the Voortrekker Museum with regard to the Majuba and Blood River/Ncome Battlefields and the Saailaer homestead, and subject to -
- (d) all staff currently employed by the National Monuments Council and KwaZulu Monuments Council in the area now under the authority of the Province and staff employed by the Natal Provincial Museums Services and the Voortrekker Museum on the sites mentioned in subsections 46(1)(b) and 46(1)(c) automatically enjoying uninterrupted continuation of service at a level and system of determination of remuneration and benefits equivalent to that prior to the creation of Amafa aKwaZulu-Natali and in terms of conditions of service no less favourable to them than those under which they were previously employed.
- (2) Sites within KwaZulu-Natal which prior to the coming into effect of this Act were already protected in terms of the KwaZulu Monuments Act, 1980 (Act No. 19 of 1980) and in terms of section 18 (2) of the KwaZulu Monuments Act, 1980 (Act No. 19 of 1980) and the town planning schemes of the former Durban and Pietermaritzburg Municipalities, will continue to be protected in terms of the following categories under this Act:
- (a) Heritage Landmarks:
Monuments in terms of section 10.1 of the KwaZulu Monuments Act, 1980, which are not the property of a provincial or local authority or a body or corporation owned by or set up in terms of legislation promulgated by the Province or a local authority.
- (b) Provincial Landmarks:
Monuments in terms of section 10.1 of the KwaZulu Monuments Act, 1980 (Act No. 19 of 1980), which are the property of a provincial or local authority or a body or corporation owned by or set up in terms of legislation promulgated by the Province or a local authority.
- (c) Heritage Register:
- (i) sites mentioned in Appendix 7 of the town planning scheme of the former Durban Corporation;
- (ii) sites mentioned in Annexure 7.2 of the town planning scheme of the former Pietermaritzburg Corporation,
and subject to the continuation of existing conservation incentives provided for in terms of the two town planning schemes until such time as they are revised in terms of provisions of this Act.
- (d) Heritage Conservancies:
- (i) Special Zone 51: Greyville Village, as established through Appendix 2 of the town planning scheme of the former Durban Municipality;
- (ii) The City Centre Zone, established in terms of sections 1.3.9 and 1.3.10 of the town planning scheme of the former Pietermaritzburg Municipality.
- (e) Provisional Protection:
Provisionally declared properties in terms of section 5.1(c) of the KwaZulu Monuments Act, 1980 (Act No. 19 of 1980).
- (3) The provisions of this Act shall also be of application to any trusts created in terms of prior legislation, the main trust object of which is concerned with conservation.

Repeal of law

47. The KwaZulu Monuments Act, 1980 (Act No.19 of 1980) is hereby repealed. Provided that anything done in terms of that law shall be deemed to have been done in terms of this Act.

Short title and commencement

This Act shall be called the KwaZulu-Natal Heritage Act, 1997, and shall come into operation on a date to be fixed by the Premier by notice in the Provincial Gazette.