

## *New legislation for cultural heritage*

The National Monuments Act (No. 28 of 1969) has guided the management of South Africa's cultural heritage for the last three decades through the activities of the National Monuments Council (NMC). The National Monuments Act provided for several different categories of protection for heritage sites. Archaeological, meteorological and palaeontological sites for example, received a general blanket protection. All were protected from destruction, damage or alteration in any way (including scientific excavation), except in terms of an NMC permit. Blanket protection was extended to all sites older than 50 years in 1986.

Other than this blanket protection, the NMC protected cultural heritage sites in three ways. Sites considered sufficiently important were declared national monuments. Many deemed of lesser importance were placed on the NMC's National Register in consultation with local authorities. This brought the NMC into any local town planning decisions that might have affected the property. The NMC designated conservation areas of special historic, aesthetic or scientific interest. Independently, some local planning authorities 'list' heritage sites, so providing protection through various planning incentives and by a stringent application of the National Building Regulations. This system of listing important sites was sometimes poorly integrated with NMC strategies.

Though heritage legislation prior to 1969 introduced the concept of 'monuments', the National Monuments Act subtly altered the concept in that it provided for the declaration of 'national monuments'. This change has considerable implications; it raises the question of what exactly is meant by 'national', particularly in a country as divided and culturally diverse as South Africa. The term emphasised the political nature of monument proclamation. Section 10.1 of the act stated: 'Whenever the Minister considers it to be in the national interest that any immovable or moveable property of aesthetic, historical or scientific value or interest be preserved, protected and maintained he may ... on the recommendation of the council ... declare any such property ... to be a national monument'. Clearly, some monuments recently declared, such as the John Dube House (Dube was first president of the South African Native Congress, subsequently African National Congress) or the Passive Resistance Site in Durban, would not have been considered as being 'in the national interest' during the apartheid era, however sympathetically interested parties within and outside of the NMC might have motivated their declaration to the Minister. Their recent declaration is part of the process of the creation of a new past, one that acknowledges the oppression of past South African society. With respect to other interests, the generality of the criteria for monuments

(namely, aesthetic, historical or scientific value or interest) allowed individuals or local interest groups to recommend sites for declaration, whether or not those sites had a national character, whatever that might be. In practice therefore, the legislation allowed for the creation of a diverse suite of monuments other than those that represented opposition to the state. A Claim Your Heritage project (launched September 1998) provides an example: the NMC married national and local interests by inviting the public to honour democracy (a national interest) by nominating sites 'you consider to be of cultural significance in your community. [These] might include the homesteads of our leaders, or founders of democracy, or sites where historic events occurred, or places where people gathered to discuss community affairs' (NMC poster 1998).

The National Heritage Resources Act which replaced the National Monuments Act came into operation on 1 April 2000. The act established the South African Heritage Resources Agency (SAHRA) which replaced the NMC. The SAHRA is charged with the overall management of the national estate which comprises sites or objects which are and will be of significance or value to South Africans now and in the future. Of interest is that the act promotes research into 'living heritage' – oral tradition, ritual, indigenous knowledge systems.

The act provides for a three-tier system for the management of South Africa's cultural heritage resources. Underlying this system is the principle of devolving responsibility for cultural heritage matters to the lowest competent authority. The SAHRA is responsible for national level functions, provincial heritage authorities for provincial level functions and local authorities for local level functions. The SAHRA will act in the place of provincial and local authorities in the event that none exists.

Formal protections are similar to those provided by the National Monuments Act, though the management of the protected resources is somewhat different. Blanket protection for cultural heritage sites older than 60 years, including archaeological, meteorological and palaeontological sites, is retained, as is the permit system through which work on these sites is managed. Existing national monuments will become provincial heritage sites in terms of the act, though they require assessment by provincial heritage authorities within five years to determine if any are nationally significant resources. As such, they will become national heritage sites and the responsibility of the SAHRA. Both the SAHRA and provincial heritage authorities may designate protected areas around cultural heritage sites; the provincial authorities are required to maintain registers of conservation-worthy resources and local authorities may designate heritage areas to protect places of environmental or cultural interest. Finally, objects or collections of objects may be declared heritage objects.

A major departure from earlier heritage legislation is the provision made for impact assessments, what is commonly termed in the cultural heritage field 'cultural resource management' (CRM). This gives the heritage authorities a greater compliance role than any earlier heritage authority had. Developers are required in terms of the legislation to notify heritage authorities of their intentions for any development over certain specified size categories. The heritage authorities may require that an impact assessment is carried out at the developers' cost. The criteria for evaluating heritage resources are not specified, though reference is made to management principles that are applicable to both national and provincial heritage authorities. The most important of these are the following, laid out in Section 5.7:

The identification, assessment and management of the heritage resources of South Africa must –

- (a) take account of all relevant cultural values and indigenous knowledge systems;
- (b) take account of material or cultural heritage value and involve the least possible alteration or loss of it;
- (c) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;
- (d) contribute to social and economic development;
- (e) safeguard the options of present and future generations; and
- (f) be fully researched, documented and recorded.

There is recognition here of the existence of multiple and different values systems and of the principle of minimal impact (cf. Carver 1996). If these requirements are to be properly fulfilled, it is critical that CRM teams have a multi-disciplinary character incorporating, for example, archaeological, anthropological, historical, architectural, economic and museum expertise. We are a long way from this in South Africa.

Thus far, only the province of KwaZulu-Natal has developed its own legislation and heritage authority. The roots of this independence lie in the fact that KwaZulu was the only homeland created by apartheid with a relatively effective heritage agency. The KwaZulu Monuments Council (KMC) had enjoyed close working relationships with several structures in Natal concerned with cultural heritage, such as the Natal Museum, the Natal Provincial Museum Service and the regional office of the NMC. Once it became clear that cultural heritage under democratic rule would be a provincial competence, the regional office of the NMC and the KMC entered into discussions to establish new legislation and a provincial heritage authority. A new body, *Amafa aKwaZulu-Natali* (Zulu for Heritage KwaZulu-Natal), was established on 1 April 1998 in terms of the KwaZulu-Natal Heritage Act (No. 10 of 1997). The act anticipated the national legislation, providing some inspiration to its authors. Not surprisingly given the order of their evolution, there are inconsistencies between the national and KwaZulu-Natal legislation which may require amendments at some stage in the future.

Like the earlier and new national legislation, the KwaZulu-Natal Heritage Act provides blanket protection to archaeological, meteorological and palaeontological sites and objects, but with an interesting rider that does not quite amount to an exception: ‘provided that *Amafa aKwaZulu-Natali* may ... take account of existing small-scale agricultural activities’ (Section 26.6.a). People engaged in small-scale agriculture are, however, required to cease operations upon discovery of archaeological material. Since a huge percentage of KwaZulu-Natal’s population is engaged in subsistence agriculture, often on land that is rich in cultural heritage sites (especially archaeological sites), legislation without this rider would be practically impossible to enforce. There was also concern for avoiding a situation in which thousands of people would be made law-breakers upon enactment of the legislation.

In a recent case in the Thukela valley, an important first millennium AD Iron Age site with evidence of large-scale industrial activity (see Van Schalkwyk 1994) was cleared of vegetation during the course of an NGO-driven project to establish community gardens. *Amafa*’s negotiations with the garden committee and the traditional authorities achieved a successful resolution whereby the gardens would not be located on that part of the site with the greatest concentration of archaeological material. *Amafa* accepted

this compromise knowing that the gardens would be subject to hoe rather than mechanical tillage. The community clearly appreciated the sensitivity of the archaeological remains and was prepared to work around them, even though their presence affected the development of what had the potential to become an important economic resource. This willingness to compromise may in part have been due to the excavation projects that had been going on in the immediate area since the late 1970s – one member of the garden committee had actually worked on one such excavation project. Amafa has demonstrated skill in negotiations of this sort, but it is going to be interesting to see the results of similar negotiations in areas in which archaeology, and indeed the conservation of an ‘alien’ cultural heritage generally, are unfamiliar concepts.

The KwaZulu-Natal Heritage Act provides for several types of formal protections. Amafa may confer Provincial Landmark status upon a site with ‘important elements of the heritage’ of the province (Section 19.20.1) should that site be on land owned by the province or a local authority or a body supported by the province or a local authority. Formally-protected sites of equivalent significance which are not the property of the province will be termed Heritage Landmarks. Amafa is required to compile a Heritage Register of conservation-worthy sites and may also designate buffer areas (Sensitive Sites) around Heritage and Provincial Landmarks for the protection of those landmarks. Further, Amafa may provide Provisional Protection to any heritage resource. Significant objects or collections thereof may be given Heritage Object status. The act provides no clue as to how significance will be defined in each of these cases. It does, however, indicate that assessment criteria for CRM projects will be set out in regulations (Section 27.3.b). As already noted, these must be consistent with principles established in the national legislation.

Nationally, the tiered management system for cultural heritage resources is linked to a system of grading resources that the SAHRA is meant to establish. The grading must include at least three grades (Section 7.1) such that Grade I comprises sites and objects of national significance that are the responsibility of the SAHRA; Grade II comprises sites and objects of provincial or regional significance that are the responsibility of provincial heritage authorities; and Grade III other conservation-worthy sites and objects that are the responsibility of local authorities. The SAHRA is required to develop criteria ‘to assess the intrinsic, comparative and contextual significance of a heritage resource and the relative benefits and costs of its protection, so that the appropriate level of grading of the resource and consequent responsibility for its management may be allocated’ (Section 7.1). The criteria should be consistent with principles in the act which rate significance in terms of old chestnuts such as community or historical importance, rarity value, information value, aesthetics and cultural associations.

Despite the recognition in the act of different value systems, the significance grading system is fundamentally empiricist in that significance is considered to reside within heritage resources rather than be assigned to them by people and interest groups (cf. Tainter & Lucas 1983). Indeed, the whole idea of grading heritage resources against defined assessment criteria seems at odds with the principle of devolving responsibility to the lowest level and I suspect that it will not be possible to do so unproblematically. Significance is always assigned by interest groups, which are by definition local or in some sense limited. Significance is associated with sectoral interests and is therefore a political resource. This particular characteristic of significance provides an interesting

conundrum for the SAHRA, which is required to 'guard against the use of heritage for sectarian purposes or political gain' (Section 5.1.d). Given this, what would make a cultural heritage site so exceptional that it was rated Grade I? Two things, I think. The site must either be culturally and therefore politically neutral (should such a thing be possible) or it must somehow be exploitable in pursuit of current governmental priorities, such as President Mbeki's vision of an African renaissance. For Mbeki, the African renaissance is a process that 'links the past to the future and speaks to the interconnection between an empowering process of restoration and the consequences or the response to the acquisition of that newly restored power to create something new' (Mbeki 1998). Cultural neutrality may be achieved by great time depth, such that the sites may be claimed by all humanity rather than sectoral interests within South Africa. (The fact that creationists would disagree with such a proposal indicates how unattainable 'cultural neutrality' is: the term is in fact an oxymoron.) Examples include the hominid sites in the Sterkfontein valley and the long-sequence Middle Stone Age site Border Cave in northern KwaZulu-Natal which yielded evidence of early anatomically-modern humans. Sites that may be exploited for the African renaissance include the K2-Mapungubwe complex representing precolonial African state formation and with the potential to contribute much to state-formation research worldwide, and the rock art of the Drakensberg representing aesthetic achievements of indigenous Africans. In both these cases I suspect the motivations for Grade I status will emphasize the general Africanness of the resources rather than the specific identity of their creators, allowing for their appropriation by all South Africans. This process has already begun.

Other governmental priorities may also be served by cultural heritage sites. Mbeki noted in his state of the nation address in February 2000 their potential for tourism and job-creation opportunities. Within the next five years and beyond, the SAHRA will assess motivations for Grade I status. At least one other criterion will play a significant role in their evaluation. The SAHRA is likely to ask how each heritage resource can contribute to the social and economic welfare of South Africans, in particular those that might live immediately adjacent to the resource. The problem heritage authorities face is similar to that faced by conservationists throughout Africa: to show that conservation can improve the day-to-day lives of people (Hall 1992). Said another way: 'If monuments pay they stay' (Van Schalkwyk 1995: 41). An example from KwaZulu-Natal illustrates one strategy.

The battle of Isandlwana was fought on the 22 January 1879. During the course of that day, the Zulu army put to rout British forces in one of the worst defeats the British army ever suffered. The battle site has since become a place of pilgrimage for local and international Anglo-Zulu war enthusiasts. The KMC inherited the management of the site from the NMC in the early 1980s and was confronted with vandalism, an extremely limited protected area, and homesteads, a road, a shop and a school constructed on the battlefield. Through a consultative process involving the local peasant community and other provincial structures, the KMC initiated a project which resulted in the replacement of the road by an upgraded version routed around the battlefield; the removal of the school and shop from the battlefield and their construction elsewhere; and a protected area increased from 2.8 ha to 815 ha encompassing the larger part of the battlefield. The protected Historical Reserve was fenced. Locals have free access to the reserve and may collect firewood and graze a limited number of cattle therein. Other

members of the public are now charged an entry fee. The Traditional Authority receives 25% of all revenue received. Furthermore, the reserve is a source of jobs and local school-goers are trained as guides. The process has taken more than ten sometimes difficult years and is still not complete. Amafa, however, now has a product of considerable value (Van Schalkwyk 1995). In 1999 a monument to the Zulu dead was unveiled at the battlefield, another appropriation of a heritage site that seemingly cements Isandlwana's value in modern South Africa.

REFERENCES

- Carver, M. 1996. On archaeological value. *Antiquity* **70**: 45–56.
- Hall, A. 1992. National Monuments: a new focus in Natal. *Natalia* **22**:55–64.
- Mbeki, T. 1998. The African renaissance, South African and the world. Speech delivered at the United Nations University, 9 April 1998.
- Tainter, J. A. & Lucas, G. J. 1983. Epistemology of the significance concept. *American Antiquity* **48**(4): 707–719.
- Van Schalkwyk, L. O. 1994. Mamba confluence: a preliminary report on an Early Iron Age industrial centre in the lower Thukela Basin, Natal. *Natal Museum Journal of Humanities* **6**: 119–152.
- Van Schalkwyk, L. O. 1995. A new relevance for old monuments: the Isandlwana model. *SAMAB* **21**: 40–43.

G. WHITELAW