

Understanding the role of Provincial Heritage Resources Authorities

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To understand heritage approvals and the legal process, it is necessary to understand the role that the Provincial Heritage Resources Authorities play in this process. This reviews the role of the Provincial Heritage Resources Authority Gauteng (PHRA-G) specifically.



Cradle of Humankind. Image source: www.vocfm.co.za

PHRA-G is a governmental organisation that is responsible for the protection of heritage sites in Gauteng, established and governed in terms of the National Heritage Resources Act 25 of 1999. In terms of this Act, any building or site which is identified as a heritage site by PHRA-G or any building 60 years or older, can only be altered or demolished once one has made application for and been granted a permit from PHRA-G.

Obtaining permission

There are various requirements and procedures that need be followed in order to apply for these permits and failure to follow these requirements could lead to unnecessary delays in (or even a complete cessation of) the proposed construction, alteration, or demolition. Application is made on prescribed forms and by submitting supporting documents as prescribed on the application form, which is available on PHRA-G's website.

The Heritage Council of PHRA-G decides all applications based on merit. Depending on its caseload, applicants can wait two months or more, although usually applications are dealt with within the two-month period. The Heritage Council sits approximately once a month and hears from 12-20 applications at a time, depending on their complexity. The Heritage Council has the power to approve, approve with conditions or deny, any application made.

Can decisions be challenged?

Decisions of the Heritage Council can be challenged firstly in terms of the Act, which provides for a right to appeal a decision to the Heritage Council itself, and secondly in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), in which case the appeal lies to a judge of the High Court.

The applicant can manage the first type of appeal without an attorney but the second must be brought before a High Court and needs to be handled by a legal professional. Ultimately, if the challenger is not satisfied after making use of the 'internal appeal' - the appeal to the Heritage Council in terms of the Act - or it is denied this opportunity for some reason, it can approach the High Court for an order that the decision be set aside, varied, substituted, or remitted for reconsideration to PHRA-G.

Failure to seek approval has consequences

A failure to obtain the necessary approvals before commencing construction, demolition or alteration on a heritage site could lead to the Heritage Council refusing to grant the relevant permission at all, or imposing conditions on the approval. In some cases, a failure to comply with the provisions of the Act amounts to a criminal offence, leading to a fine or even imprisonment. In addition, PHRA-G is given powers to conduct investigations, require documents or information to be furnished and even to apply to court to stop works that have not been approved.

This could cause a lengthy delay of several months and may even result in a refusal to grant approval at all, which would result in the permanent suspension of the works, unless the decision to refuse to grant approval is overturned on appeal. This could cause severe financial harm to the property owner or developer in the situation where the holding costs of the undeveloped property are significant. This could also lead to damages claims against property professionals where they should have known to apply for approval, but failed to, in cases where the client has suffered financial harm.

Getting approval after work has begun

Although PHRA-G is empowered to grant retrospective approval, the Heritage Council does not deal lightly with those who have commenced works without approval. In certain instances, it is difficult to get retrospective approval and in others instances it is refused entirely. It is thus critical to seek and obtain your permit before commencing works, as failure could cost thousands in the resulting delay when PHRA-G orders work to stop.

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