



AN AGENCY OF THE DEPARTMENT OF SPORT, ARTS, AND CULTURE

SOUTH AFRICAN HERITAGE RESOURCES AGENCY

Policy on Peer Review of Applications



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1. DEFINITIONS, ABBREVIATIONS, AND WORDS IMPORTING

- 1.1. Unless listed in this section, terms used in this document shall have the meaning assigned to them in the National Heritage Resources Act, No. 25 of 1999.
- 1.1.1. “Application” means a request for provision of a service by SAHRA submitted via SAHRIS.
- 1.1.2. “Case decision” means a formal determination or outcome issued by SAHRA in response to an application, including but not limited to approvals, refusals, and/or conditional authorisations made in accordance with the NHRA and relevant policies or guidelines.
- 1.1.3. “Case ID” means the unique identifying number of a SAHRIS application.
- 1.1.4. “Case officer” means a SAHRA official assigned to process a SAHRIS application.
- 1.1.5. “Comment” means a written submission, representation, opinion, objection, or recommendation submitted by an external commentator in relation to an application on SAHRIS, whether voluntarily or at SAHRA’s request, for consideration as part of SAHRA’s administrative decision-making process.
- 1.1.6. “Conflict of interest” means any actual, potential, or perceived personal, financial, professional, or other interest or relationship that may reasonably be considered capable of influencing, or appearing to influence, the objectivity, independence, or impartiality of a submission by an external commentator.
- 1.1.7. “Expert” means an external commentator who possesses demonstrable specialist knowledge, qualifications, professional registration, or substantial experience in a field relevant to a particular application, and who is requested or recognised by SAHRA to provide input in that capacity.
- 1.1.8. “Constitution” means the Constitution of the Republic of South Africa, 108 of 1996.
- 1.1.9. “External commentator” means any person who is not an employee or office bearer of SAHRA and who submits written comments, representations, or information in relation to an application on SAHRIS, whether voluntarily or at the request of SAHRA.

- 1.1.10. "Inventory of the National Estate" means the official national database of South Africa's heritage resources, comprising identified heritage sites, objects, structures, and places of cultural, historical, scientific, or social significance, and which is publicly accessible on SAHRIS, subject to lawful restrictions on disclosure.
 - 1.1.11. "Peer review" means a process whereby SAHRA seeks and considers the views of one or more experts for the purpose of assisting SAHRA in the assessment of an application, without delegating or transferring decision-making authority.
 - 1.1.12. "Policy" unless the context implies otherwise, means this policy, the Policy on Peer Review of Applications.
 - 1.1.13. "Published" unless the context implies otherwise, refers to applications, case decisions, and associated content published on SAHRIS.
 - 1.1.14. "Submitted" unless the context implies otherwise, refers to submission of comments via SAHRIS/using the form attached to the policy as Annexure A.
 - 1.1.15. "Unit" means a unit that performs functions at SAHRA, including, but not limited to, the Archaeology, Palaeontology, and Meteorites unit, the Built Environment Unit, the Burial Grounds and Graves unit, the Development Applications Unit, the Heritage Objects Unit, the Heritage Protection unit, and the Maritime and Underwater Cultural Heritage unit.
- 1.2. For the avoidance of doubt, an expert is a category of external commentator for the purposes of this policy.
 - 1.3. Abbreviations used in this policy shall denote the following—
 - 1.3.1. "NHRA" means the National Heritage Resources Act, No. 25 of 1999,
 - 1.3.2. "PAIA" means the Promotion of Access to Information Act, No. 2 of 2000,
 - 1.3.3. "PAJA" means the Promotion of Administrative Justice Act, No. 3 of 2000,
 - 1.3.4. "POPIA" means the Protection of Personal Information Act, No. 4 of 2013,
 - 1.3.5. "SAHRA" means the South African Heritage Resources Agency, and
 - 1.3.6. "SAHRIS" means the South African Heritage Resources Information System, the open-source online platform for the management of the National Estate which, *inter alia*, is used by SAHRA to process applications.
 - 1.4. For the purposes of this policy, unless the context otherwise requires, words importing the singular shall include the plural, and vice versa, and words importing persons shall include natural and juristic persons.

2. PURPOSE, SCOPE, AND APPLICABILITY

- 2.1. The purpose of this policy is to ensure that, in performing its statutory functions under the NHRA, SAHRA handles comments on applications in a manner that is lawful, reasonable, and procedurally fair as contemplated in PAJA, and consistent with the information law frameworks established by PAIA and POPIA.
- 2.2. This policy provides—
 - 2.2.1. the background, legislative framework, and procedures associated with SAHRA's consideration and use of comments on applications submitted to it,
 - 2.2.2. measures to guard against prejudice in SAHRA's consideration of comments,



- 2.2.3. requirements governing the disclosure of conflicts of interest by external commentators, and
- 2.2.4. conditions and limitations relevant to SAHRA's consideration and disclosure of comments and associated information.

2.3. SAHRA staff, SAHRA office bearers, and external commentators must adhere to the provisions of this policy.

3. INTRODUCTION

- 3.1. SAHRA is a statutory authority established in accordance with section 4 of the NHRA to oversee the management of the National Estate of South Africa.
- 3.2. SAHRA regulates development-related impacts, and issues permits for interventions affecting the National Estate, in accordance with the provisions of sections 38 and 27, 32, 34, 35, and 36 of the NHRA respectively.
- 3.3. Due to the diversity of heritage resources in South Africa, SAHRA may need to consult experts to inform decision-making on applications. Such experts can assist SAHRA in making effective, fair, and defensible decisions where internal knowledge gaps exist.
- 3.4. SAHRIS serves as the primary platform through which SAHRA facilitates access to applications and case decisions and enables public and peer comment in its application process where applicable.
- 3.5. This policy is implemented in accordance with SAHRA's statutory mandate set out in the NHRA.

4. POLICY STATEMENT

- 4.1. SAHRA shall exercise its statutory functions in a manner that promotes reliable, transparent, and fair interaction with external commentators, and that is consistent with the principles of administrative justice.
- 4.2. SAHRA shall make independent and unbiased decisions on applications, relying on internal expertise where such expertise is reasonably available.
- 4.3. SAHRA may utilise the advice of external experts and other commentators to inform its assessment of applications where material knowledge gaps exist, without delegating or transferring its decision-making authority.
- 4.4. SAHRA shall consider all comments received on applications with due consideration to their relevance, substantiation, and any known or declared factors that may reasonably influence the views expressed.
- 4.5. SAHRA shall protect the identity and personal information of external commentators and shall not disclose such information to any external party without consent, unless disclosure is required by law or ordered by a court.
- 4.6. SAHRA shall ensure that all comments on applications are handled consistently and reasonably, without favour, bias, or improper influence.

5. LEGISLATIVE FRAMEWORK

5.1. This policy must be read and applied in the context of the constitutional and statutory framework governing heritage resources management in South Africa. This context is framed in relation to administrative action, access to information, and protection of personal information by SAHRA in the execution of its mandated functions.

5.2. National Heritage Resources Act, No. 25 of 1999

The NHRA establishes SAHRA as the national authority responsible for coordination of the management of heritage resources in South Africa, including their identification, assessment, recording, and protection. In the context of this policy, the provisions of the NHRA and its Regulations highlighted below together state the empowering statutes for SAHRA's mandate to coordinate management of the National Estate, process applications, and publish case decisions that may be informed by external commentary and peer review.

- 5.2.1. Section 5 of the NHRA sets out the general principles governing heritage resources management in South Africa, including cooperative governance, public participation, transparency, and the systematic identification and assessment of heritage resources. These principles guide SAHRA in exercising its statutory functions and inform the manner in which applications are processed, comments are considered, and decisions are recorded and published in accordance with this policy.
- 5.2.2. Section 9 of the NHRA regulates the alienation of heritage resources owned or controlled by a State-supported bodies and requires that any proposed transfer, sale, or other disposal of such resources be submitted to SAHRA for consideration. In terms of this section, SAHRA must assess the proposal and issue written comments, which may include support, conditional support, or recommendations for alternative measures to ensure the continued protection and appropriate management of the heritage resource concerned. In exercising this function, SAHRA may consider relevant information and expert input where necessary to inform its comments and to ensure that its response is rational, consistent with the general principles set out in section 5 of the NHRA, and aligned with its mandate to safeguard the National Estate.
- 5.2.3. Sections 27, 34, 35, and 36 of the NHRA regulate specific categories of heritage resources, including declared heritage sites, protected structures, archaeological and palaeontological resources, and burial grounds and graves, respectively. These sections require that certain interventions be authorised by permit issued by the relevant heritage resources authority. In assessing permit applications under these provisions, SAHRA must consider all relevant information before it, which may include public comments and expert input where required, in order to reach a lawful and rational decision consistent with its mandate to protect the National Estate.
- 5.2.4. Section 32 of the NHRA provides for the control of the movement of heritage objects and empowers SAHRA to regulate the export, loan, or transfer of such objects. In exercising this function, SAHRA is required to assess applications and may consider specialist input or representations from relevant experts to determine whether the proposed movement is consistent with the protection and management of the National Estate.
- 5.2.5. Section 38 of the NHRA requires that certain categories of development be assessed for their potential impact on heritage resources and that such developments be reported to the relevant heritage resources authority. In performing its functions under this section, SAHRA must evaluate heritage impact assessments and other relevant

submissions and may consider comments from interested and affected parties or experts to inform its assessment and any decision or comment issued in response.

- 5.2.6. Section 39 of the NHRA assigns SAHRA responsibility for the coordination and management of the Inventory of the National Estate, including the identification, recording, and systematic documentation of heritage resources falling within its competence. This function entails the collection, verification, updating, and maintenance of information relating to the location, significance, and status of such resources, and the facilitation of appropriate public access to that information, subject to lawful restrictions. In fulfilling this mandate, SAHRA may receive, record, and assess information and representations from external commentators and experts for purposes of ensuring the accuracy, completeness, and integrity of the Inventory. The publication of applications, comments, and case decisions on SAHRIS gives practical effect to section 39 by promoting transparency, informed participation, and the coordinated management of information concerning the National Estate.
- 5.2.7. Regulation 2.4 of the SAHRA Permit Regulations, Notice No. R. 548 of 2000, provides that SAHRA may, at its discretion, refer a permit application to one or more experts in the relevant field for assessment and advice regarding the issuing of a permit and any conditions that should be imposed. This Regulation prescribes peer review as a discretionary procedural mechanism available to SAHRA in the exercise of its statutory functions. In applying this discretion, SAHRA retains full decision-making authority and may consider the advice received, together with other relevant information and comments, in order to ensure that its decisions are lawful, rational, and consistent with its mandate under the NHRA.

5.3. Promotion of Administrative Justice Act, No. 3 of 2000

PAJA gives effect to section 33 of the Constitution by regulating the exercise of administrative action and requiring that such action be lawful, reasonable, and procedurally fair. Within the scope of this policy, the provisions of PAJA highlighted below reinforce its administrative-law relevance in the context of SAHRA's receipt, consideration, and recording of peer review and public comments on applications.

- 5.3.1. In terms of section 1 of PAJA, decisions taken by SAHRA in relation to applications and permits constitute administrative action, as they involve the exercise of public powers in terms of legislation and may adversely affect rights or have a direct, external legal effect. Such decisions are therefore subject to review and must comply with the requirements of lawfulness, reasonableness, and procedural fairness.
- 5.3.2. Sections 3 and 4 of PAJA require that administrative action be procedurally fair in a manner appropriate to the circumstances, including, where applicable, affording interested and affected parties a reasonable opportunity to make representations. Within the scope of this policy, the receipt, consideration, and recording of public comments and peer-review input form part of SAHRA's compliance with its duty to act fairly and to consider relevant information before reaching a decision.
- 5.3.3. Section 5 of PAJA entitles affected persons to request written reasons for administrative decisions. This reinforces the need for SAHRA to consider and record comments and peer-review inputs in a manner that supports transparent, rational, and defensible decision-making, without compromising the lawful protection of personal information.

5.4. Promotion of Access to Information Act, No. 2 of 2000

PAIA gives effect to section 32 of the Constitution by providing for the right of access to information held by the State where required for the exercise or protection of rights. Within the scope of this policy, PAIA provides the framework within which access to information relating to applications, comments, and peer-review material may be granted or limited.

- 5.4.1. In terms of section 11 of PAIA, a requester has a right of access to records of a public body, subject to compliance with the procedural requirements of that Act. Records relating to applications, comments, and peer-review processes may therefore be accessible upon request, unless a lawful ground for refusal applies.
- 5.4.2. Chapter 4 of PAIA sets out mandatory and discretionary grounds upon which access to records may be refused, including where disclosure would involve the unreasonable disclosure of personal information, breach a duty of confidentiality, or prejudice legally protected interests. SAHRA must balance the principles of transparency and access to information with these statutory protections when responding to requests for records relating to comments and peer review.

5.5. Protection of Personal Information Act, No. 4 of 2013

POPIA regulates the processing of personal information by public and private bodies and gives effect to the constitutional right to privacy by establishing conditions for the lawful and responsible processing of personal information. Within the scope of this policy, the provisions of POPIA highlighted below guide how SAHRA collects, stores, discloses, and retains personal information associated with comments, ensuring that transparency is balanced with the mandatory protection of personal information.

- 5.5.1. In terms of section 4, read with Chapter 3, of POPIA, personal information must be processed lawfully and in accordance with the conditions for lawful processing, including accountability, purpose specification, data minimisation, information quality, openness, security safeguards, and data subject participation. SAHRA's collection and management of personal information submitted as part of comments or peer review must comply with these conditions.
- 5.5.2. Information submitted to SAHRA as part of comments or peer review processes may constitute personal information for the purposes of POPIA and may only be processed to the extent necessary for the performance of SAHRA's statutory functions under the NHRA. Such information must be retained, disclosed, or restricted in accordance with applicable legal requirements.

6. ADMINISTRATIVE USE OF COMMENTS AND PERSONAL INFORMATION

- 6.1. All comments received shall be considered by SAHRA subject to the condition that the probative value and evidentiary weight attributed to such comments may differ depending on their relevance, substantiation, and whether they are submitted by an expert or other external commentator, in the interests of lawful, reasonable, and procedurally fair administrative decision-making as contemplated in PAJA.
- 6.2. SAHRA may request external commentators to elaborate on, clarify, or provide evidence in support of any claims, opinions, or allegations made in their comments pertaining to an application. Failure to provide reasonable substantiation when requested may result in such comments being afforded reduced evidentiary weight in the assessment of the application.

- 6.3. SAHRA shall treat the identity of external commentators as confidential, and shall not disclose such information except with consent, where required by law, or where disclosure is permitted in terms of PAIA or ordered by a court
- 6.4. SAHRA may use all, part, or none of the advice it receives from external commentators providing comments on any application. The provisions of this policy do not create a right or legitimate expectation that an application will be approved or denied by SAHRA on the basis of comments submitted.
- 6.5. Nothing in this section shall be construed as limiting SAHRA's obligation to provide adequate reasons for its decisions, as required under PAJA. Reasons set out in SAHRA's case decisions may therefore include reference to the substance, nature, or conclusions of comments submitted to it without disclosing the identity of the individual concerned.

7. ACCESS TO INFORMATION AND PEER REVIEW

- 7.1. Any person may view applications and case decisions published on SAHRIS.
- 7.2. Visibility of applications on SAHRIS does not create an obligation on the part of any person to submit comments or engage published information.
- 7.3. SAHRA may subject applications to peer review on an exceptional basis where it has identified a material knowledge gap that cannot reasonably be addressed through existing internal expertise.
- 7.4. Peer review may be undertaken to obtain input from one or more experts to assist SAHRA in the rational assessment of an application and shall not be initiated solely on the basis of unsubstantiated objections or the number of comments received.
- 7.5. SAHRA is not obligated to subject any application to peer review, nor is it restricted from doing so, and may exercise its discretion in this regard in accordance with its statutory powers under the NHRA, provided that such discretion is exercised lawfully, rationally, and in a manner consistent with the principles of administrative justice.

8. SUBMISSION OF COMMENTS

- 8.1. Any external commentator must create a profile on SAHRIS.
- 8.2. Comments must be submitted using the form attached to this policy as Annexure A to the case officer via email.
- 8.3. External commentators must disclose conflicts of interest regarding the application concerned at the time of submitting a comment.
- 8.4. External commentators offer their comments on applications voluntarily. Nothing in this policy shall be construed as conferring decision-making authority on any person or organisation other than SAHRA.
- 8.5. External commentators may request that their identity not be disclosed to other external parties, subject to applicable law.
- 8.6. Failure on an external commentator's part to provide evidence for, or elaborate on, comments submitted may limit the utility of such comments in SAHRA's assessment of the application.
- 8.7. Should an appeal be lodged against a case decision, SAHRA may request supplementary information or clarification from external commentators who submitted comments on the application, for the limited purpose of compiling a complete and accurate record for purposes of an appeal.

9. ANNEXURE A – TEMPLATE: SUBMISSION OF COMMENTS ON AN APPLICATION

1. EXTERNAL COMMENTATOR'S DETAILS

1.1. Name and surname:

1.2. Title (mark with 'X'):

Dr. Mr. Mrs. Ms. Mx. Prof.

1.3. Organisation:

1.4. Position:

1.5. Contact details (cell & email):

1.6. SAHRIS Case ID for application being commented on:

1.7. Capacity under which commentary is provided (mark with 'X'):

Expert Non-expert

If expert, please state your—

a) Field of expertise:

b) Highest qualification in above field of expertise:

c) Relevant experience in above field (brief):
