

APPENDIX C.1

PROCEDURAL GUIDELINE FOR WATER USE AUTHORISATION FOR INDIVIDUAL USE

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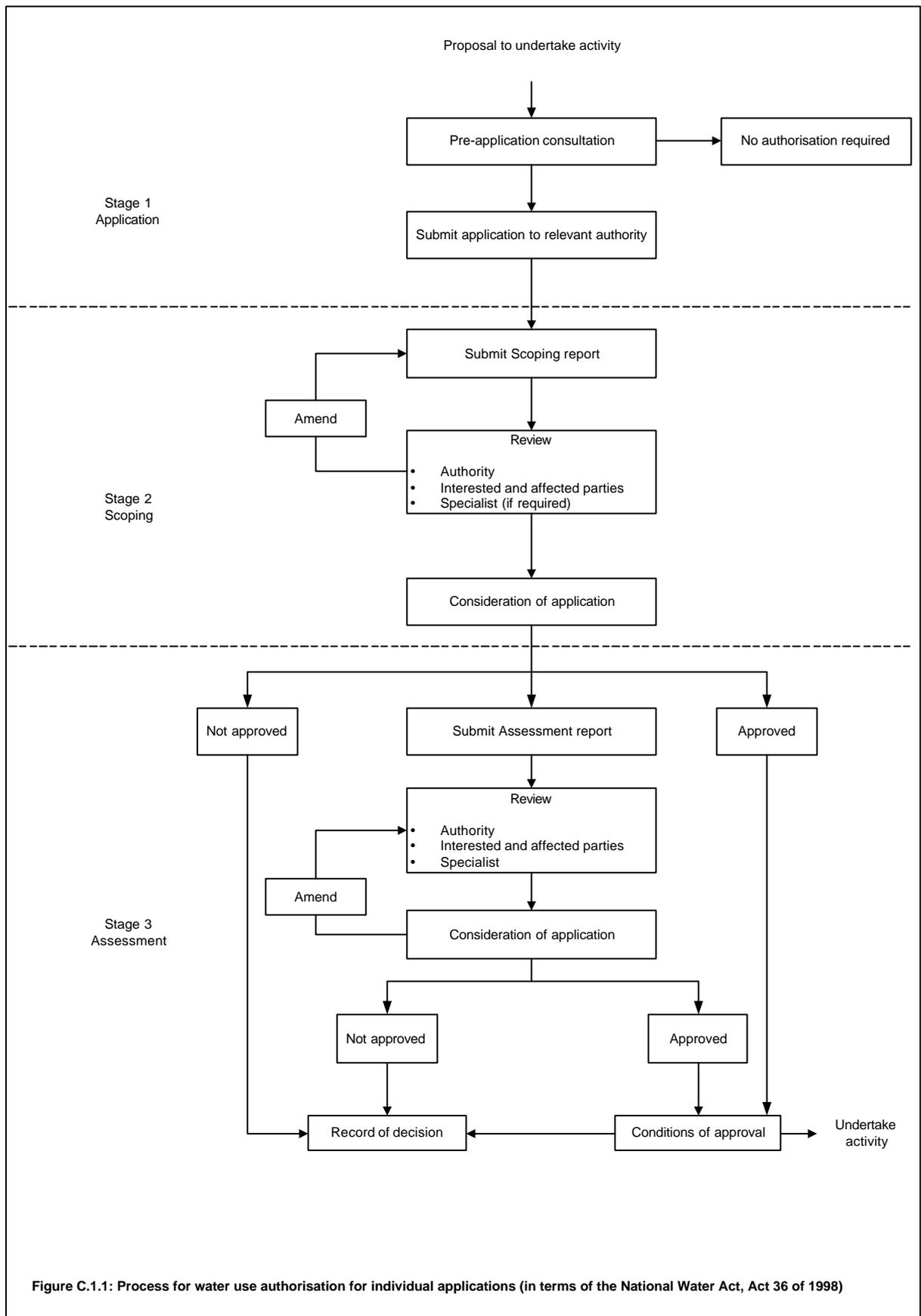
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1 PROCESS DIAGRAM



2 PROCEDURAL GUIDELINES

2.1 Roles and responsibilities of various role-players

2.1.1 The Applicant

The applicant is responsible for complying with all the applicable legal provisions and requirements of the regulations, which include:

- to be responsible for all processes, information, reports and plans that are required in complying with the regulations and in support of the licence application,
- to ensure that the relevant authority has access to all pertinent information,
- to be responsible for all costs incurred in applying for a water use licence,
- to be responsible for all public participation required, and
- to indemnify the government from any liability arising out of the content of any report, procedure or action for which the applicant is responsible for in terms of the regulations.

2.1.2 Interested and affected parties

The interested parties are responsible to:

- provide input and comments during the stages of the process, where appropriate, i.e.:
 - in determining the extent of any investigations required, through raising issues of concern that would require additional investigation,
 - in assessing whether the final application and supporting information have addressed such issues and concerns adequately.
 - in providing input into the recommendation, and where applicable, comment on the draft licence.
 - in monitoring impacts of the licensed water use and compliance with licence conditions.
- provide their inputs and comments within the context of the process and within the timeframes as specified by the applicant and the Department.

2.1.3 The Department of Water Affairs and Forestry (the Department)

The Department will have an involvement and responsibility in the water use authorisation process at three levels, namely, administrative, technical and control responsibilities. **Figure C.1.2** summarises the roles and responsibilities of the various Departmental role-players in the water use authorisation process. These roles and responsibilities are detailed in the sections below.

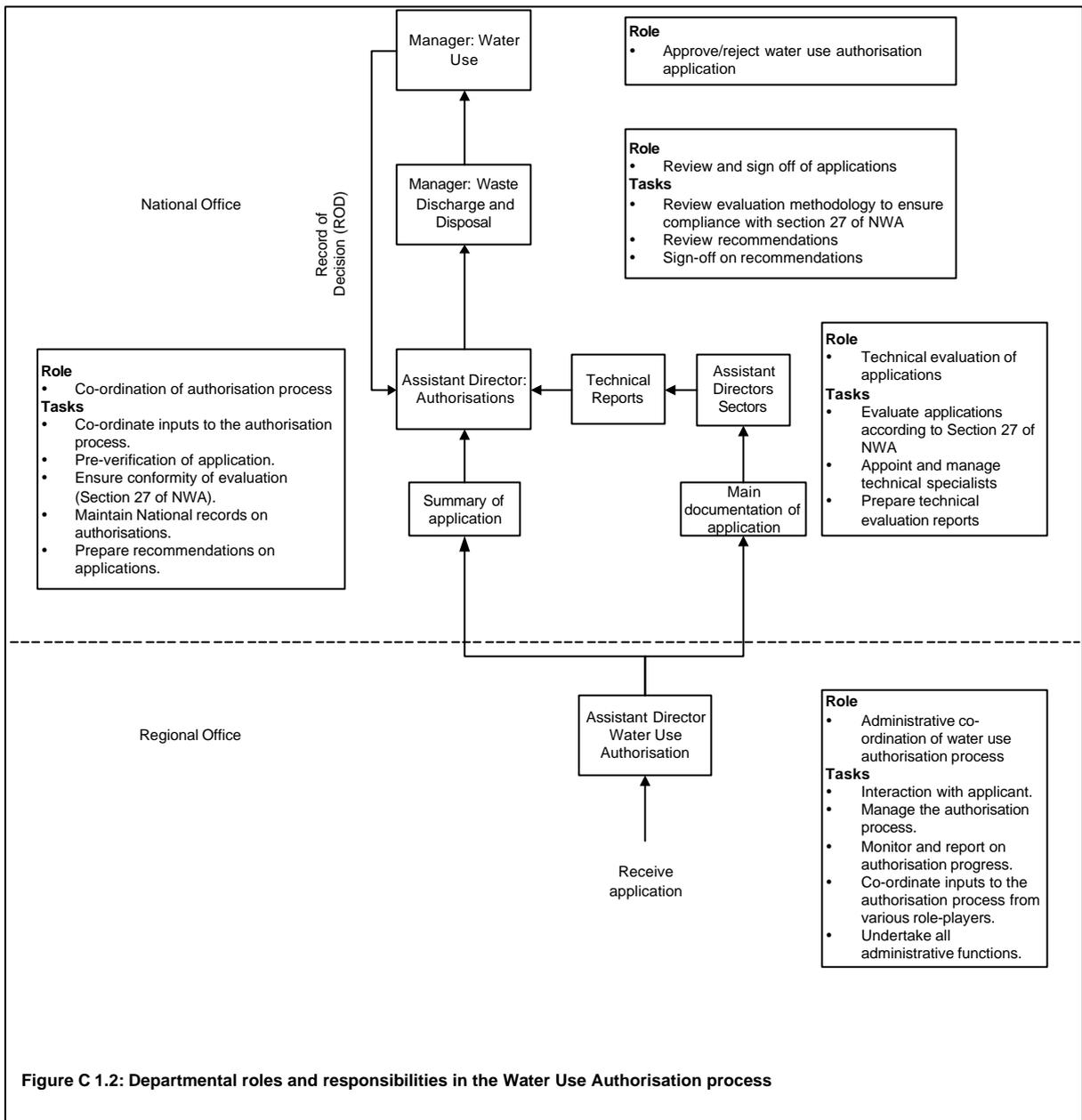


Figure C 1.2: Departmental roles and responsibilities in the Water Use Authorisation process

Administrative responsibility: Regional Office

The Assistant Director: Water Use Authorisation will be appointed by the Deputy Director: Water Quality Management in the Regional Office and will take responsibility for all administrative tasks relating to the water use authorisation process, including the following:

- ensure that the role-players involved in the authorisation process understand the application process and their responsibilities towards the process,
- ensure that the applicant complies with the relevant regulatory requirements, including all responsibilities at the various stages of the application procedure,
- ensure that intergovernmental co-operation and consultation is achieved for the harmonisation of the processes and for effective implementation of the regulations ; each regional office will be responsible for setting up adequate mechanisms for consultation and co-operation with other government departments,
- manage the authorisation process, including receiving information from the applicant, involving the applicable Departmental personnel (as required), receiving comments on the application from those involved and communicating continuously with the applicant and with other departmental personnel involved in the authorisation process including ensuring that the applicant is informed immediately of any delay and is provided with a written explanation for any delay that may occur,
- administrative check of the application to ensure that all necessary information is provided by the applicant,
- keep the inputs required from the applicant to the minimum that are necessary to make an informed decision in accordance with the appropriate guidelines , without putting any limitations on the rights that interested parties may have in terms of the regulations,
- monitor progress of the licence application and report to the Regional Deputy Director: Water Quality Management,
- ensure that decisions with regard to the application are recorded and that the applicant is informed in writing regarding the outcome of such decisions.

Administrative responsibility: National Office

The Assistant Director: Authorisations, Enforcement and Controlled Activities will be appointed by the Deputy Director: Source Control Policy in the National Office and will take responsibility for all administrative and co-ordination tasks relating to the water use authorisation process in the National Office, including the following:

- pre-verification of the application documents to determine the required inputs to the authorisation process in the National Office and co-ordinate the inputs to the process from the various sector-specific sub-directorates,

- ensure that the application is evaluated in accordance with agreed guidelines and procedures (in particular according to section 27 of the National Water Act), that there is conformity in the evaluation procedure and that the evaluation and reporting is undertaken according to the agreed timeframes,
- receive and collate the technical reports and prepare/verify the recommendation on the application, and
- maintain adequate national records of the progress and approval/rejection of water use authorisations.

Technical responsibility

The Assistant Director: Water Use Authorisation may, at his/her discretion, require specialist input from the sector-specific sub-directorates in the National Office in the technical evaluation of an application. The responsibility of these consultative parties is as follows:

- to provide the required technical input efficiently and timeously,
- to ensure that the investigations conducted by the applicant are to the appropriate level of detail and are technically acceptable,
- to oversee and control any technical investigations that may be conducted by the Department or third parties (if required) and to report on the results of these investigations within the agreed time-frame, and
- to evaluate the technical acceptability of the application according to the required guidelines and procedures .

Delegated Authority

The Delegated Authority is the person within the Department with the authority to issue the water use authorisation. The Delegated Authority has the following responsibilities:

- ensure that the licence is issued in accordance with legislation and that the issuance of the licence will not led to the contravention of other statutes or rights,
- ensure that the application has been properly considered in an administratively just manner, ensuring sustainable development and use of the water resource, and
- final decision with regard to the application for a licence for a water use.

The Delegated Authority for the approval of water use authorisations is currently the Manager: Water Use.

2.1.4 Other relevant authorities

Other relevant authorities that will be consulted include:

- Department of Minerals and Energy for authorisations involving hazardous waste;

- Department of Environmental Affairs and Tourism for authorisation involving high and medium risk industry and agricultural activities;
- Local Government for high risk sewage, waste and water activities.

Together with the Department, these authorities are responsible to ensure that the different application procedures are conducted in a harmonised manner and in parallel with each other, in order to ensure the co-ordination of decision making. Such co-ordination must occur within agreed upon timeframes, and may involve the establishment of a joint Advisory Committee, and the determination of guidelines for the operation of such a co-operative governance body.

2.2 Stage 1: Application for water use authorisation

2.2.1 Pre-application consultation

Pre-application consultation at an early stage is important as it can avoid later delays and provides an opportunity for exchange of views at a stage when there is still flexibility. Pre-application consultation can be in person, telephonic or in writing. During this stage, it is essential that the applicant consult with the relevant Departmental official to:

- determine whether a water use licence is required in terms of the National Water Act (1998) and if so, what are the possible water uses and which is the most appropriate water use,
- Determine whether the application is subject to a policy moratorium on the issuing of certain types of licenses (e.g. no abstraction water use authorisations in catchments that are stressed from a water quantity perspective),
- determine the correct Departmental contact person (The Assistant Director: Water use Authorisation) and obtain an application form,
- obtain general guidance on the procedures, information and reports required for the licence application,
- determine what other legislative and/or potential legal constraints (e.g. zoning requirements) are applicable to the water use(s), and
- determine whether other authorities are involved.

The pre-application consultation will determine the need for a water use licence.

A pre-consultation package of relevant documents has been prepared by the national office and will be available for use by the Regional Office personnel to streamline this process.

2.2.2 How applicant must apply

The applicant must apply to the Department for authorisation to undertake a specified water use. The application must be made on a specific application form obtainable from the Department and must be made to the relevant Assistant Director: Water Use Authorisation. **Appendix 1** indicates the relevant regional personnel responsible for water use authorisation.

2.2.3 Application form

The relevant Assistant Director: Water Use Authorisation will provide the applicant with the necessary application form. The applicant must complete the application form and submit this to the Assistant Director: Water Use Authorisation. Guidelines for completing the application form are enclosed in the document prepared by the Department of Water Affairs and Forestry entitled "A Guide to Registration of Water Use, March 2002". Relevant extracts from this document are enclosed in **Appendix 2**.

The Assistant Director: Water Use Authorisation will:

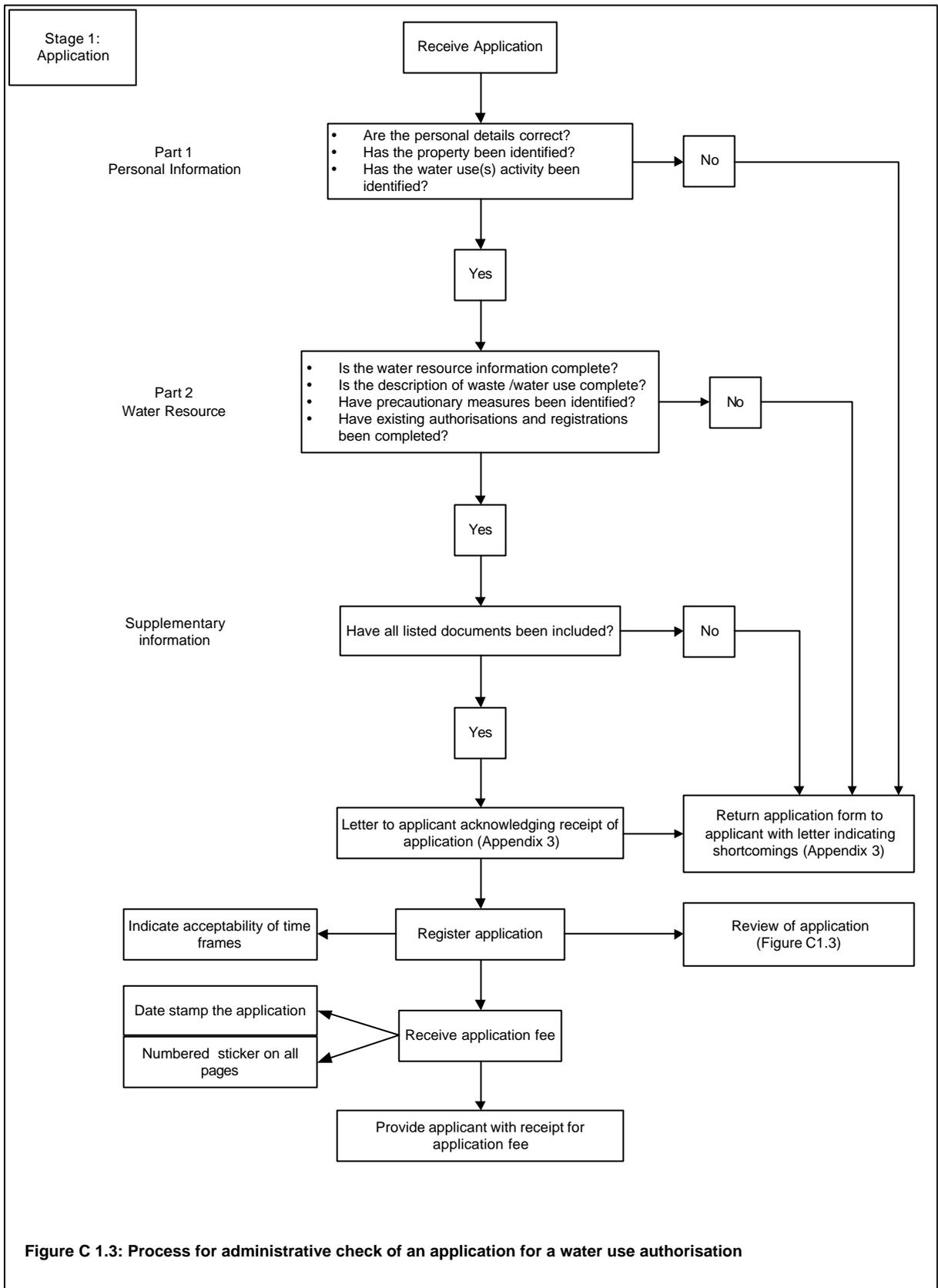
- check that the application form is completed correctly from an administrative perspective and that the submission indicates the desired time-frames; **Figure C.1.3** provides guidance on the process to follow for the administrative check of the application form; the application form will be returned to the applicant for revision, if incomplete in any way, under cover of a letter indicating the shortcomings (see **Appendix 3**),
- register the application (if completed correctly) by date-stamping the application, placing a numbered sticker on the forms and ensuring that the sticker number appears on all pages of the application and on the receipt given to the applicant for the application fee,
- acknowledge receipt of the application in writing, giving an indication of the acceptability of the envisaged time-frames.

2.3 Stage 2: Scoping

After submitting the application to the relevant Assistant Director: Water Use Authorisation, the applicant will be expected to submit a Scoping Report.

2.3.1 Purpose of the Scoping Report

The scoping report will provide details on the purpose, objectives, efficiency and need for the proposed water use from a water conservation and demand management perspective. In some instances, the Scoping Report may serve as sufficient detail to issue the water use license.



2.3.2 Contents of Scoping Report

A Scoping Report must be compiled in the form of an Integrated Water and Waste Management Plan (IWWMP). A typical Table of Contents for an IWWMP is provided in **Appendix 4**. The IWWMP will contain the following information:

Project and process description

Depending on the nature of the water use application and its site, this section will contain:

- a site plan of the project indicating its location, details of the project being considered and, where appropriate, schematic drawings and description of the production processes/activities and technology that are envisaged,
- an indication of the need for the water use and an estimate of the expected volume of water required for use (or discharged with waste),
- the classification of the sources of pollution (either high, medium or low risk) according to the Departments' classification details, and
- details of the legal requirements of the water use(s).

Objectives of the IWWMP

This section will cover the project goals and the guiding principles in the submission of the IWWMP. Any issues or areas of concern will also be highlighted in this section.

Baseline analysis

The Baseline Analysis will include the following information:

- a stormwater management plan, which provides details on:
 - stormwater runoff from the site for different recurrence intervals,
 - the division of the site into clean and dirty areas, and
 - the management plan to ensure that clean and dirty stormwater streams do not mix, that clean stormwater is discharged from the site and that dirty stormwater is retained on site for re-use or treatment prior to discharge.

- a description of the water supply: where the supply point will be, the volumes of water required and the measures that will be put in place to ensure a security of supply,
- a broad water and waste flow diagram and balance for the site, showing water, effluent and product circuits; the water circuits should indicate where re-cycling, storage, treatment and discharge of water will take place,
- a characterisation of the water and waste streams,
- details of the source directed controls and measures that will be put in place to minimise/eliminate the discharge of water containing waste to the water resource, including:
 - adherence to Best Practice guidelines and management techniques applicable to the sector,
 - water conservation measures, pollution prevention and waste minimisation,
 - use of cleaner production technologies and production alternatives,
- an impact assessment, if discharge to the water resource is unavoidable; the impact assessment will include the following:
 - measurement of the instream water quality above and below the point of discharge and for a distance downstream of the point of discharge, as required,
 - a comparison of the instream water quality at the point of discharge with the water quality objectives for a) the reserve and b) the other water users within the catchment,

the impact, if any, on the reserve flow requirements for the stream; this impact could be in the form of minimum flow exceedance or disruption of the flow patterns.

Description of alternatives/options considered

The identification and consideration of alternatives provides the decision-makers with the flexibility of choice. Alternatives can be identified either through informal discussions with the relevant authorities, “brainstorming” sessions or through creative design processes. Potential alternatives can be categorised as follows:

- demand alternatives: using water more efficiently rather than in greater volume,
- activity alternatives: providing alternate activities that will use less water,
- location alternatives: locating aspects of the project, or the entire project, in areas where water can be used most effectively,
- process alternatives: Re-use of process water or water efficient technology, and

- scheduling alternatives: scheduling processes/activities to be most water efficient.

The option not to act is often taken as the base case against which to evaluate the relative performance of the other alternatives.

The IWWMP will include the following for each option considered:

- details of the technology requirements, grouped as technology clusters,
- details on the envisaged costs for the option,
- methodology for the evaluation of the options, and
- recommendations on the preferred option(s).

Description of the public participation process

The description of the public participation process that was followed will include the following:

- the identification of parties that are either affected by the water use licence application or have an interest in the environment(s) that will be affected by the proposed water use,
- an indication of the procedures that were followed to engage the interested and affected parties and afford these parties the opportunity to participate at all appropriate stages and to express their views about the scope of the report and the alternatives investigated,
- a record of the issues that were identified as being of concern to the interested and affected parties, and
- notification details of where the report can be obtained and to whom comments should be addressed.

The IWWMP Plan

This section will include details on the proposed approach, the technology cluster(s) for the recommended or preferred option, the impact assessment for the preferred option and the details of any issues of concern that are outstanding

2.3.3 Review of scoping report

The Scoping Report must be reviewed by the relevant authorities, by a specialist (if applicable) and by the interested and affected parties.

Authority review

Figure C.1.4 indicates the process to be followed for the Departments review and consideration of a scoping document. The Assistant Director: Authorisation in the National Office will identify the personnel tasked with the review of the Scoping Report, as follows:

- for sources with a Class A and/or Class B level of risk: The Assistant Director: Water Use Authorisation will request, in writing, that the Scoping Report be reviewed by the appropriate directorates at National Office (depending on the nature of the water use application), as follows:
 - Directorate: Water Abstraction and Instream Use: Water uses under section 21 (a), (b), (c), (d), (e), (i), (j) and (k),
 - Directorate: Waste Discharge and Disposal: Water uses under section 21 (f), (g) and (h),
 - consultation will also be required with the Directorates of Hydrological and Geohydrological Information, Stakeholder Empowerment and Water Resource Planning, as required.
- for sources classified as Class C level of risk: The review will be undertaken at the regional level.

The authority review should determine whether:

- the procedures followed to date have been adequate and that the legal and procedural requirements have been complied with,
- consideration has been given to the issues covered in section 27(1) of the National Water Act, including:
 - a) existing lawful water uses,
 - b) the needs to redress the results of past racial and gender discrimination,
 - c) efficient and beneficial use of water in the public interest,
 - d) the socio-economic impact –
 - I. of the water use or uses if authorised,
 - II. of the failure to authorise the water use or uses,
 - e) any catchment management strategy applicable to the relevant water resource,
 - f) the likely effect of the water use to be authorised on the water resource and on other water users,
 - g) the class and the water resource quality objectives of the water resource,

- h) investments already made and to be made by the water user in respect of the water use in question,
 - i) the strategic importance of the water use to be authorised,
 - j) the quality of water in the water resource which may be required for the Reserve and for meeting international obligations, and
 - k) the probable duration of any undertaking for which a water use is to be authorised.
- there has been sufficient consultation with interested and affected parties,
 - the information provided in the Scoping Report is accurate, unbiased and credible and that no further information is required,
 - adequate attention has been given to alternatives and to the minimisation of the impact of the water use, and

Appendix 5 contains background information as well as guidelines and procedures for the consideration and evaluation of the various issues covered in section 27(1) of the National Water Act. The Department has prepared an electronic version of these guidelines for use by the personnel involved in the evaluation of water use authorisation applications.

Specialist review

A specialist review will be commissioned by the Assistant Director: Water Use Authorisation in instances when the assessment is highly technical in nature and the required expertise is lacking within the Department.

Public review

The public review will involve an assessment of the procedures followed and a review of the Scoping Report. A time-frame for receiving comments from the public must be set so as to avoid delays in the decision-making process. Access to the Scoping Report is provided in good faith and this trust should not be abused. The applicant should have recourse to the courts in the event of misuse of the information provided.

2.3.4 Consideration of application

The Department must accept the information in the Scoping Report, where after the Delegated Authority may decide:

- to issue a water use authorisation with or without conditions,
- that the information in the Scoping Report must be supplemented by more detailed assessments, in which case the applicant will progress to Stage 3: Assessment, or
- to decline the application.

A Record of Decision must be issued by the Delegated Authority to the applicant and made available to the interested and affected parties. The Record of Decision must include:

- the name, address and contact details of the applicant,
- a description of the proposed project, processes and activities,
- details of the water quantities to be used (or disposed),
- the decision of the Delegated Authority,
- the conditions of the authorisation, including measures required to mitigate the impact of the water use on the water resource,
- the name of the person to whom an appeal may be directed,
- the duration of the authorisation or the date of expiry,
- the signature of the Delegated Authority, and
- the date of the decision.

Appendix 6 contains an example of a Record of Decision.

2.3.5 Appeal

Any person, including the applicant, an interested party or a member of the public, who feels aggrieved by a decision made by the Delegated Authority, may lodge an appeal against the decision. The appeal should be directed to the Minister of Water Affairs and Forestry, as indicated in the Record of Decision.

Appeal procedure

An appeal to the Water Tribunal, under section 148 of the Act, must be done in writing within 30 days from the date on which the record of decision was issued to the applicant. The appeal must detail the facts and the grounds for the appeal and must be accompanied by all relevant documentation (copies of documents must be certified as true by a commissioner of oaths).

Consideration of appeal

The Water Tribunal shall, after considering all relevant facts and supporting documentation,

- uphold the original decision,
- uphold the original decision with modifications, or

- reverse the original decision.

An appeal against the decision of a Water Tribunal may be made to the High Court.

The Minister may at any time, at the request of a person involved or on the Minister's own initiative, direct that the persons concerned attempt to settle their dispute through a process of mediation and negotiation.

2.4 Stage 3: Assessment

If the Delegated Authority decides that the information contained in the Scoping Report should be supplemented by further investigations, the applicant must submit an Assessment Report.

2.4.1 When is an Assessment Report required?

An Assessment Report is likely to be required when the impact of the water discharge is such that:

- the instream water quality objectives for the catchment are exceeded, or
- the requirements of the reserve are not met, or
- the activity takes place in a demarcated area of national or international importance (see **Appendix 7**).

2.4.2 Contents of the Assessment Report

An Assessment Report must contain the following:

A description of the affected environment

The description will include details of the site, the proposed processes and activities, the discharge point(s) and the extent of the impacted water resource.

A quantitative risk assessment

The risk assessment must assess the:

- probability of occurrence: this describes the likelihood of the impact actually occurring and is indicated as:
 - improbable, where the likelihood of the impact is very low due to design requirements or historical experience,
 - probable, where there is a distinct possibility that the impact will occur,
 - highly probable, where it is very likely that the impact will occur, or

- definite, where the impact will occur regardless of any management or prevention measures.
- the consequence of occurrence, in terms of :
 - the nature of the impact: the type of affect the discharge will have on the water resource,
 - the extent of the impact, either local and contained to the immediate surroundings, regional, national or across international borders,
 - duration of the impact, either short-term (0 to 5 years), medium term (5 to 15 years), long-term (the impact will cease after the operational life of the activity) or permanent, where mitigation measures by natural processes or human intervention will not occur in a time span to consider the impact transient,
 - intensity of the impact, either a low, medium or high effect on the natural, cultural and social functions and processes.
- The significance level of the risk posed by the discharge, which is determined through a synthesis of the probability of occurrence and consequence of occurrence of the discharge,

Mitigation measures

The applicant must indicate what mitigation measures will be put in place to alter the processes so as to minimise or eliminate the negative impacts. Mitigation measures could include changes to the planning and design, alternatives methods of meeting the needs, improved monitoring and management and monetary compensation.

2.4.3 Review of the Assessment Report

Figure C.1.5 indicates the process to be followed for the Departments review and consideration of an Assessment Report. The Assessment Report must be reviewed by:

- the relevant personnel within the Department, as determined by the Assistant Director: Authorisation in the National Office, in liaison with the Delegated Authority, or
- an external specialist, should the expertise to review the report not reside within the Department, and
- the general public (if applicable) to determine that the correct procedures have been followed.

The review of the Assessment Report should consider the significance level of risk posed by the activity and the discharge and whether the issuance of a licence will adequately manage the risk level.

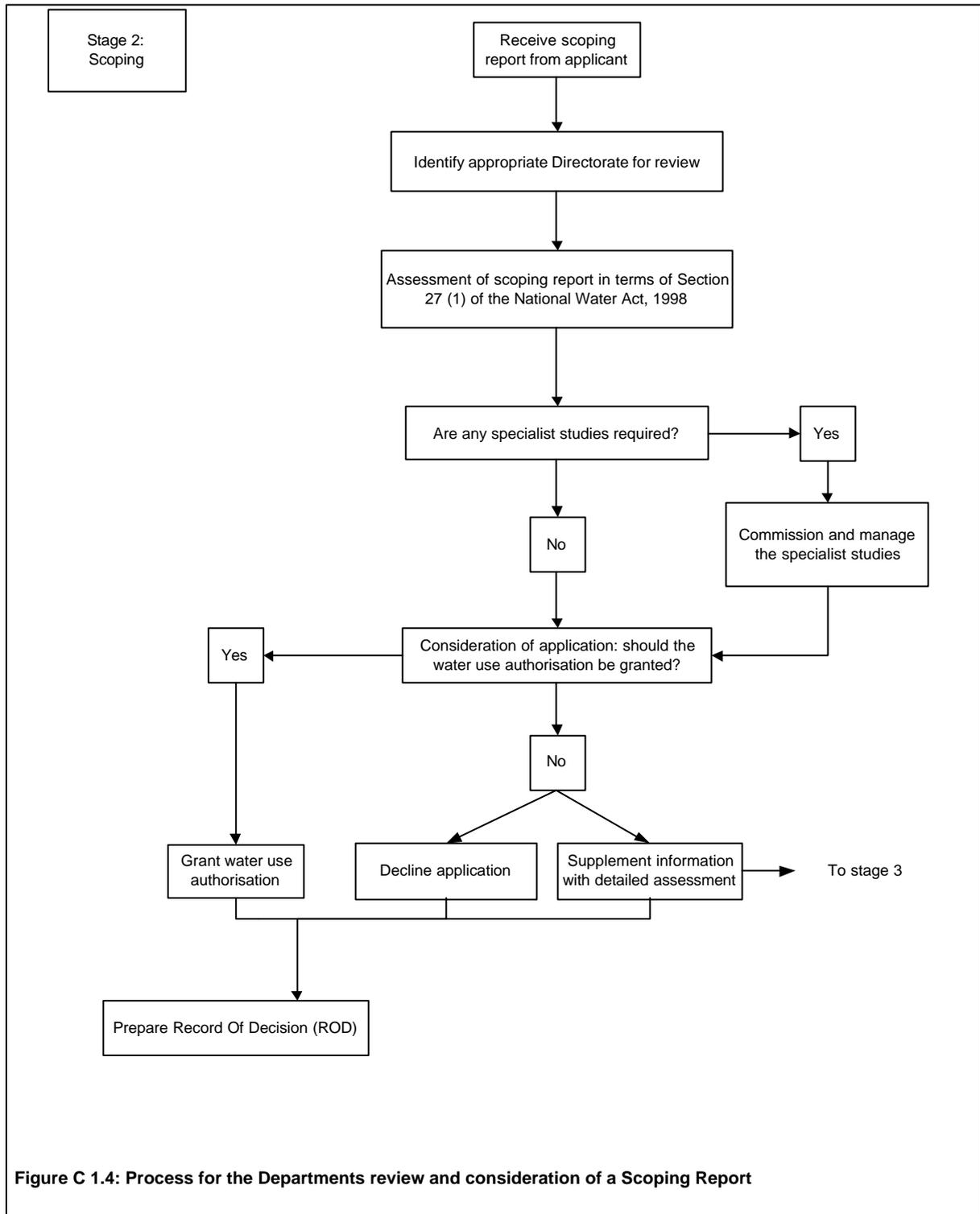
2.4.4 Consideration of application

When the review of the Assessment Report is complete, the Delegated Authority will decide to either issue an authorisation, with or without conditions, or reject the application. A record of Decision must be issued by the

Assistant Director: Water Use Authorisation to the applicant. The Record of Decision will also be made available to the interested parties.

2.4.5 Appeal

The appeal process, as described in section 2.3.5, will also be applicable here.



APPENDIX 1: CONTACT DETAILS FOR REGIONAL WATER USE AUTHORISATIONS

MPUMALANGA

Regional Director: WQM
Minolen Reddy
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Private Bag X9506
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Fax: (021) 946 3664

NORTH WEST

Regional Director: WQM
Petrus Venter
Department of Water Affairs & Forestry
Private Bag X352
HARTEBEESSPOORT
0216
Tel: (012) 253 1093
Fax: (012) 253 1905

APPENDIX 2: EXTRACTS FROM THE DEPARTMENT OF WATER AFFAIRS AND FORESTRY DOCUMENT ENTITLED "A GUIDE TO REGISTRATION OF WATER USE, MARCH 2002"

2.1 License application forms

License application forms consist of Part 1 and Part 2 as well as Supplementary forms.

- Part 1 forms require personal information on the applicant and associated users, the property where water use takes place and the particular water use activity.
- Part 2 forms require information specific to the water resource and the nature of each water use
- Supplementary forms require technical information on for example pump data and irrigation system types

One Part 1 form must initially be completed. One Part 2 form must be completed for each water use identified during discussions with a DWAF officer.

2.2 Licence application form numbers

The numbers of the various kinds of licence application forms are provided below.

2.2.1 Part 1 licence application forms numbers

- DW769 Individual
- DW770 Water Services Provider, including Water Boards
- DW771 Company Business or Partnership, National or Provincial Government
- DW772 Water User Association, including Irrigation Boards, Subterranean water Control Boards, Water Boards for Stock Watering, Settlement Boards, Water Conservation Boards

2.2.2 Part 2 licence application form numbers

DW773 Taking water from a water resource.

DW774 Storing water.

DW775 Impeding or diverting the flow of water in a watercourse.

DW776 Engaging in a stream flow reduction activity.

DW777 Engaging in a controlled activity: Irrigation of any land with waste or water containing waste.

DW778 Discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit.

DW779 Disposing of waste in a manner which may detrimentally impact on a water resource.

DW780 Disposing of water which contains waste from, or which has been heated in, any industrial or power generation process.

DW781 Altering the bed, banks, course or characteristics of a watercourse.

DW782 Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of any activity or for the safety of people.

DW783 Using water for recreational purposes.

2.2.3 Supplementary form numbers

DW784 Taking water from a water resource. Pump technical data.

DW787 Taking water from a water resource. Irrigated field and crop information.

DW788 Taking water from a water resource. Power generation, industrial or mining use.

DW790 Storing water. Dam and basin technical data.

DW799 Discharging or disposing of water. Quality of water, waste or water containing waste.

3 IMPORTANT NOTES

- Make sure that the correct Part 1 and all the applicable Part 2 forms are completed.
- The information fields or blocks marked with a dot, ., are compulsory and must be filled in.
- Make sure that the correct information is provided.
- Please write clearly in black ink.
- Use capital letters.
- Use one letter or digit per square.
- Return forms to the nearest office of the Department of Water Affairs and Forestry.

APPENDIX 3: EXAMPLE OF STANDARD LETTER OF REPLY TO APPLICANT INFORMING ON THE STATUS OF THE APPLICATION

PRO DWAF Official
(012) 338 7556
16/2/7/A123/B1/Z1

The Engineer
ACME Electricity Power Station
PO Box 4009
RODORA
1685

Sir/Madam

APPLICATION IN TERMS OF SECTION 40 OF THE NATIONAL WATER ACT, 1998 (ACT 36 OF 1998) FOR A SECTION 21 (g) WATER USE LICENCE: (PROPOSED) DISPOSAL OF WASTE ON LAND

Our discussion regarding an application/Your application (numbered XXXXXX) for a section 21 (g) water use licence in terms of section 40 of the National Water Act, 1998 (Act 36 of 1998) and documentation received by this office on/dated 2000-10-28 in support of this application for the (proposed) disposal of waste on land, refers.

According to section 41 (1) of the above-mentioned Act, any application for a water use must be made in the form and contain the information determined by the responsible authority. The relevant form for your specific intended water use is attached and should be completed according to the guidelines provided herewith to you/had not been completed correctly / was found to be incomplete / had been completed correctly and receipt there-of is hereby acknowledged.

AND/OR

You are hereby requested to prepare a Scoping Report/Assessment Report which should address the information requirements outlined in the attached guideline documents. Please note that the date on which this information is received, will be recorded as the time of the continuation of the processing of your licence application.

OR

The information contained in the Scoping Report submitted in support of your application has been evaluated, and on the basis of the information provided, the purpose, objectives and efficiency of the water use(s) applied for is hereby confirmed.

OR

The information contained in the Assessment Report submitted in support of your application has been evaluated, and on the basis of the information provided, the impact assessment on the water resource for the water use(s) applied for is hereby accepted.

OR

The information contained in the Scoping Report / Assessment Report submitted in support of your application has been evaluated, and the information submitted was found to be incomplete, and you are hereby requested to supply the necessary information as indicated in Annexure A. Please note that the date on which this information is received, will be recorded as the time of the continuation of the processing of your licence application.

Please do not hesitate to contact the Department should you have any enquiries.

Yours faithfully

REGIONAL DIRECTOR / DIRECTOR-GENERAL

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APPENDIX 5: THE ASSESSMENT OF WATER USE AUTHORISATIONS AND LICENSE APPLICATIONS IN TERMS OF SECTION 27(1) OF THE NATIONAL WATER ACT, 1998

1. INTRODUCTION

The National Water Act, 1998 (the Act), includes considerations set out in section 27(1) that must be applied in the assessment of licence applications for water use. These are drawn from the principles in the White Paper on a National Water Policy for SA and should be regarded as the minimum factors which have to be considered. This is indicated in section 27(1), by the use of the word "including", which implies that considerations need not be limited to those listed.

Procedures and tools are needed in order to apply these considerations when taking decisions. This document outlines a methodology for applying the principles of national water policy to decision taking about water use licence applications.

Decisions on water use licences must be taken within a strategic framework, emanating from the National Water Resource Strategy, as indicated in Figure 1.

Assessing water use applications requires information such as the catchment management strategy and the reserve to be available to the decision makers.

These strategies do not yet exist. Until they have been established, technical experts within the Department and elsewhere will need to provide the kind of information that would otherwise have come from a catchment management strategy.

Where required, Water Licensing Advisory Committees will be established and will assist in the development of indicators for the assessment of applications. These indicators may differ from one Catchment to the next, or from one Water Management Area to the next. They should be harmonised with other relevant statutes, such as the National Forests Act, the National Environmental Management Act and other relevant legislation. Indicators should be regularly reviewed as circumstances within the catchment and nationally, change.

Assessment criteria need to be applied scientifically and consistently in the evaluation of each application. However, scientific information is often incomplete. Furthermore, not all aspects of an evaluation can be assessed scientifically, for example, where people's values play a part. For these reasons, decisions must be taken both on the grounds of scientific assessments and on the outcome of debates amongst stakeholder representatives and consulted parties, involving non-scientific aspects of the relative merits of applications.

2. CONSIDERATIONS

The considerations listed in section 27(1) of the National Water Act overlap to some degree. This means that some decision criteria would satisfy the requirements of more than one consideration. The considerations, commencing with the National Water Resource Strategy, which will be the basis for licensing assessment, are discussed in paragraphs 2.1 to 2.19 below. In most cases, the term used in this document is "proposed use". This applies to the use under consideration, even if it is an existing use. The order in which the considerations are discussed has been chosen to coincide with the more logical sequence, given in Figure 2.

2.1 The National Water Resource Strategy

(Sections 5 – 7)

The National Water Resource Strategy will set the scene for ALL water licensing in South Africa. The Act gives guidelines as to the factors which are to be taken into account in drawing up the strategy and all allocations and licences issued must be in accordance with this strategy. This is of particular importance prior to the drawing up of Catchment Management Strategies.

The National Water Resource Strategy is being drawn up by the Strategic Planning Directorate and should be available by the end of 2000. In the mean time, a preliminary determination (Section 23) of the quantity of water for which a general authorisation or licence may be issued, may be made by the Minister. **This, read together with sections 17 and 22(5), which require at least a preliminary determination of the Reserve, is the route which will have to be followed in order to deal with any applications received prior to the National Water Resource Strategy and Reserve determinations being completed.**

The National Water Resource Strategy will identify shortages and surpluses in catchments and/or Water Management Areas. Surpluses will be made available for inter-basin transfers at a National Level. Other important issues such as international obligations, future demand and water for strategic purposes will also be dealt with.

The National Water Resource Strategy will be implemented in a phased and progressive manner. The delineation of the 19 Water Management Areas was the first official phase of the National Water Resource Strategy to be published. Licences will be considered, taking cognisance of whichever parts of the Strategy are available. It is therefore not necessary to wait for formal, completed documents.

2.2 The Catchment Management Strategy

(Sections 8 & 9)

There are to be 19 Water Management Areas as per Government notice 1160 of 1 October 1999. Where a Catchment Management Strategy has been formulated, all considerations regarding allocations and licences will have to be in accordance with the respective strategies, which will be in harmony with the National Water Resource Strategy.

Each Catchment Management Strategy will be implemented in a phased and progressive manner. Licences will be issued in line with those parts of the Strategies which have been implemented. It is envisaged that the considerations, indicators and checks in the evaluation tables in the second half of this document will be adapted and amended to conform to additional requirements, as determined by the strategy within each Water Management Area.

Catchment management strategies, will include:

- the strategies, objectives, plans, guidelines and procedures of the catchment management agency that manages the water management area within which the application is made (section 9(c) of the National Water Act)
- the water allocation plans (section 9(e)), in turn dependent on the allocatable quantity of water within the water management area (section 23) and the resource quality objectives including the Reserve, for each water resource within the water management area (section 13)
- the principles for allocating water (section 9(e)), contained within water allocation plans, and based upon the considerations of the National Water Act (section 27)
- the needs and expectations of existing and potential users (section 9(h))

- the contents of relevant national or regional plans, such as provincial economic development strategies, provincial Strategic Environmental Management Plans, Strategic Development Initiatives (SDI's) and Integrated Development Plans in terms of the Transitional Local Government Act, and Land Development Objectives in terms of the Development Facilitation Act or its equivalents, which in turn affect the contents of catchment management strategies (section 9(f))
- the outputs of the Strategic Environmental Assessments.

Decision criteria can therefore be formulated on the basis of the requirements of catchment management strategies, and the decision process can draw upon the information contained in these strategies and other development strategies (Figure 1).

2.3 The Reserve

(Section 1(1)(xviii), Section 27(1)(j))

i) Ecological Reserve

The determination of the ecological reserve is currently underway for a number of rivers in South Africa. This is a process which could take up to 2 years for each river.

The methodologies for determining the Reserve will only be published in two to three years' time. Only from then on, will the Department be empowered to determine the Reserve as stated in the Act. Before then, only the preliminary determination of the Reserve can be used. The Act makes provision for a preliminary determination of the Reserve, with a view to expediting the process of issuing licences, so as not to keep the public waiting and put a brake on development and possible job creation. **Where determined, this information should be available to the public, so as to indicate, prior to an application, whether there is available water.**

Four different methodologies have been developed for Reserve determination, the first three of which, may be considered preliminary determinations.

- **Desktop estimate (2 hour method)**
Normally one would not make licensing allocations, based on this method unless there is very large margin of safety. A set of graphs based on WR90 information will shortly be available and will be improved over time.
- **Rapid determination (2 day method)**
The same graphs as for the desktop study are used for this method, but a field visit by specialists is also done, in order to improve the classification of the water resource. The results of this method and the methods described below, can be used to plan for water allocations through licensing. This method can use actual river flow data if available instead of WR90 and can thus provide more accurate results compared to that of the Desktop Estimate method.
- **Intermediate determination (2 month method)**
For this method, a hydraulic calibration is done of the Instream Flow Requirements (IFR) site(s) and specialists involved on the study to undertake a field visit and then complete a one day workshop to determine the IFR's.
- **Comprehensive determination (2 year method)**

This method requires hydraulic calibrations, several field visits by specialists during different seasons, a specialist workshop and a public involvement process to obtain recommendations for the class of the river.

To decide on which method to use, one should look at the water availability in the catchment. The more water available, the less detailed Reserve determination method need be followed. For a catchment under water stress, the comprehensive method should be used. In most cases, a new application in a catchment under stress may have to be refused until more accurate information is available. The solution would then be for the applicant to negotiate the purchase of a licence or an existing allocation from an existing user.

The Department's Resources Directed Measures (RDM) team is determining the programme and type of Reserve determination to be done for different rivers.

It should be noted that the ecological Reserve is extremely complex and there is no way that it can be adequately dealt with in the content of this document.

ii) Human reserve

The Human Reserve is somewhat simpler to determine, now that the latest census figures are available. The low flow, after the licence under consideration has been granted, should be adequate to cater for the basic needs of all those who are now, or who will in the reasonably near future be relying upon; taking water from; or being supplied from the relevant resource. As a guide, a minimum of 25 litres per person per day should be used.

Anticipated growth in future demand for basic human needs must be taken into account. A ten year period is suggested.

In large metropolitan areas, care should be exercised to ensure that those for whom water is being "reserved" are actually dependent on that part of the resource. Some supply schemes draw on resources remote from where the consumers live and care should be exercised to ensure that consumers are not counted twice.

2.4 International obligations

(Section 27(1)(j))

Water must also be reserved for meeting international obligations. Quantities will be determined by negotiation undertaken by bodies established in terms of section 102 of the Act. This is the responsibility of the Water Resources Planning Directorate.

2.5 The Class and the Resource Quality Objectives of the water resource

(Section 27(1)(g))

Once the system for classifying the water resource of each catchment/sub-catchment is in place and the actual classification has taken place in accordance with section 13(4) of the Act, licences will have to be considered, taking account of the resource quality objectives outlined in section 13(3).

These include the Reserve, dealt with in paragraph 2.3 above, the instream flow, the surface and ground water levels, the presence and concentration of particular substances in the water, the instream riparian habitat, the distribution of aquatic biota, sediment loads and return flows. In most cases, the extent to which the water use being assessed impacts on both the quantity and the quality of the water resource should be assessed.

In addition, the extent to which the proposed use complies with waste standards in terms of the Water Services Act, 1997 as well as any discharges resulting from the use must be considered.

Where the classification system is not in place, the preliminary determination of the Class and Resource Quality Objectives envisaged in section 14(1)(b) will have to be used in the interim. This will be determined by the RDM team.

2.6 The strategic importance of the water use to be authorised

(Sections 6(1)(b)(iv) and 27(1)(i))

This will be considered in two ways :

Firstly, the strategic importance nationally, should be available as a given, and incorporated in the National Water Resource Strategy. This will provide water for power generation and other pre-identified national priorities such as interbasin transfers.

The strategic importance envisaged under section 27(1)(i), is more the regional significance of the application under consideration and should be used to prioritise the application and rank its importance when compared with other applications being considered.

2.7 The existing water use in the catchment/sub catchment under consideration

(Section 27(1)(a))

Existing lawful water use is referred to twice in section 27(1). The first reference is in sub paragraph (a) "existing lawful water uses" (being dealt with here) and the second in (f), which refers to "the likely effect the water use to be authorised on the resource and on the other water users".

Before a licence for water use can be considered, it is necessary to know how much water is already being used in the catchment. To this end all water use is currently being Registered. This will enable a determination to be made of the remaining water, available for allocation. *The difficulty lies in evaluating whether or not the use being Registered, is lawful or not.*

Existing lawful water use is very complex and is defined in the amended section 32 of the Act:

(1) *An existing lawful water use means a water use –*

(a) *which has taken place at any time during a period of two years immediately before the date of commencement of this Act and which –*

- (i) *was authorised by or under any law which was in force immediately before the date of commencement of this Act;*
- (ii) *is a stream flow reduction activity contemplated in section 36(1); or*
- (iii) *is a controlled activity contemplated in section 37(1); or*
- (b) *which has been declared an existing lawful water use under section 33.*

(2) *In the case of –*

- (a) *a stream flow reduction activity declared under section 36(1); or*
- (b) *a controlled activity declared under section 38, existing lawful water use means a water use which has taken place at any time during a period of two years immediately before the date of the declaration.*

Section 33 of the National Water Act came into effect on 1 January 1999, was amended on 6 December 1999 and allows certain discontinued and contemplated uses to be authorised as existing lawful water use.

On 10 May, 1999, the Minister approved that :

- All lawful scheduling in terms of sections 63 and 88 of the Water Act, 1956 on Government and Irrigation Board schemes, which has been annually paid for before 1 January 1999, be declared as existing lawful use in terms of section 33 of the National Water Act, 1998.
- Undeveloped water rights in the above category be given another three years to develop and continue to be paid for in full. Thereafter permanent descheduling and the re-allocation of water will be considered, where applicable.
- No temporary descheduling of water rights be further allowed on State water schemes, merely for saving annual payments.
- Dormant water rights paid for, can also be permanently descheduled, under certain conditions.
- Dormant water rights, which have been temporarily descheduled, be treated in terms of the conditions pertaining to the said descheduling and/or the permit holder must be given the choice either to permanently descheduling or start the payment of tariffs. A maximum period of 3 years extension for development will also be applicable from the date when payment of charges for such dormant rights commences.

On 17 June 1999, the Minister approved that the following were valid reasons for Discontinued use to be regarded as existing lawful water use in terms of section 33(3)(a) of the Act :

- (i) Death of ill health of the owner or the person responsible for a property where the water use took place.
- (ii) Change in ownership may lead to replanning, and restructuring.
- (iii) The subdivision of a property with a lawful water entitlement which may require replanning.
- (iv) Floods and other natural disasters.
- (v) Extended and severe droughts.
- (vi) Crop losses and temporary discontinuance of water use owing to deterioration in the quality of available water.
- (vii) Short-term national economic factors, like high interest rates.

In the same submission, the Minister further approved the following reasons as valid for the purpose of Contemplated water use in terms of section 33(3)(b) :

- (i) The applicant has an existing power point or has applied to Eskom for a power point at the proposed water abstraction site.
- (ii) The responsible person had been paying charges regarding water entitlement to the Department; an irrigation board/subterranean water control board on the commencement date of the NWA, or the property of such a person had been temporarily descheduled for known or acceptable reasons.
- (iii) The applicant has sufficient proof that he/she investigated and confirmed possible water entitlements or the applicant may have received a letter from the Department or an Irrigation Board confirming lawful entitlement to water.
- (iv) A property with a defined lawful water entitlement, such as scheduling or a right in a servitude or title deed had been bought or a loan obtained to buy it with the intention of development but no development had yet taken place before the promulgation date of the NWA.
- (v) A design, plan or quotation for a water work or irrigation scheme had been obtained from a known, reputable and recognised firm or person prior to promulgation of the NWA.
- (vi) An acceptable soil classification study had been done before promulgation of the NWA for the purposes of irrigation development and soils have been found suitable for irrigation.
- (vii) The site of a dam that would have been lawful under the Water Act, 1956, had been surveyed, mapped and pegged out by a, reputable and recognised firm or person.
- (viii) Water work equipment such as pumps, motors, pipes for abstraction of water that would have been lawful under the Water Act, 1956 have been ordered or bought and not yet installed.
- (ix) A borehole with a known yield had been drilled before the applicable commencement date of the NWA and the applicant can supply sufficient and acceptable proof that irrigation was intended.

In both the above cases, the actual submission B2/1 over B191/2 should be studied, as the descriptions given here have been shortened.

Actual use for which permits were issued under the old act, in terms of section 62, 9B or scheduled use in terms of section 63 or section 88, or use for which permits were issued under the Forest Act does not present a problem, since it is quantifiable from Departmental records. The problem arises when someone has lawfully exercised a riparian right and is abstracting what they regard as their fair share of the normal flow in terms of the previous act, but has no documentation to back it up. This also applies to pre 1972 afforestation. It is expected that these users will be identified during the Registration process currently underway.

The correct way of evaluating the legitimacy of the direct water use is to resort to the provisions of the old Act, 54 of 1956. As an initial guide, the use should be compared with the limits imposed by section 9B, of abstraction of 110 litres per second and storage of 250 000 m³ (and 9B(1C) where previously in force).

Users who are over-irrigating would then be licensed only for the lawful portion of their use and the rest would be licensed on a very short-term basis (say 2 - 5 years) if there is available water, after making provision for the Reserve and other lawful existing use. If there is insufficient water, the use in excess of their

lawful entitlement would not be licensed and use would have to be curtailed, without compensation (section 22(7)(b)).

It is envisaged that most previous riparian use will be dealt with by means of the fact that it is deemed to be existing lawful use and may continue in the short term, but will receive attention when compulsory licensing in terms of section 43 of the Act takes place. In order to check the lawfulness of existing use the Department has made arrangements to obtain a set of recent digital, ortho-rectified aerial photographs from Telkom, where coverage is available.

In the case of Government Water Control Areas without an approved allocation, or, as in cases of areas where there are provisional lists of allocations but not published yet, they will be managed by licensing.

Existing use may have to be subjected to water conservation and demand management measures, in order to accommodate new users or the Reserve.

In order to indicate the level of assessment required, it is also necessary to ascertain the status of the proposed use under consideration. It might range from a totally new use to a use for which there is an existing permit, to a riparian right with no documentation, or a declared existing lawful water use in terms of section 33 of the Act. It might also be an existing unlawful use !

2.8 The quantity and quality of available (unallocated) water in the catchment/sub catchment

Although not a specific consideration under section 27(1), this is the result of considering many of the other factors. Once the water resources have been assessed, the Reserve taken into account, the requirements of present and future applicable strategies are met and international obligations provided for, existing lawful use catered for, the remaining water may be allocated, taking account of the catchment management strategy (which must contain water allocation plans) and any other factors or restraints, pertinent to the catchment under consideration, if not included in the strategy. Once again, conservation and demand management measures should form part of the allocation strategy.

The Directorate : Water Resource Planning has prepared a Water Balance Model, which gives an indication of the water available for allocation in each quaternary sub-catchment. This will be updated when information becomes available from the Registration process.

Care should also be exercised when considering an application to assess the quality impacts of the proposed abstraction on the remaining downstream flow. Certain discharges may have been permitted or licensed, assuming that the water resource has a certain assimilative capacity, which may be compromised by the proposed abstraction.

Provision should also be made for growth in water demand by the applicant. A time horizon of 10 years is suggested. The quantity for which the licence is to be issued should cater for this, as well as the licensing period. The purpose for which the water may be used will, in some cases, be dictated by the quality of the resource.

If there is a large surplus, it may be in accordance with the National Water Resource Strategy that this be made available for transfer to adjacent catchments, where there may be shortages.

2.9 The likely effect of the water use to be authorised on the water resource and on other water users in the catchment/sub catchment *(Section 27(1)(f))*

It is important that the rights of existing lawful water users are not prejudiced by any new allocations made. This is also implied in section 27(1)(h). If a catchment/sub-catchment is approaching a level at which the water resources are becoming stressed, it may be wise to require compulsory licensing for all users prior to considering new applications. This will ensure that all users, existing and potential, can be given equitable treatment.

Obviously the capital invested by existing users must be taken into account. By compulsory licensing, unlawful use, inefficient use or use not in line with the national or catchment strategies or the public interests may be able to be identified, or it may become clear that the water resources of the catchment under consideration will not be able to meet the demands and extensive water conservation and demand management measures may have to be put in place. As a last resort, augmentation from an adjacent catchment may be required, but this should already have been identified in the National Water Resource Strategy.

The likely effect of the proposed use on the water quality of streams regarding their fitness for use compared with the SA Water Quality Guidelines must be considered. An abstraction may, for example reduce the assimilative capacity of the stream or river and render it less fit for other (existing) uses. Return flows or waste discharges may also have that effect.

As with most of the other licencing activities in the new Act, it is vital to have accurate knowledge of the existing situation on the ground at the date of implementation of the general authorisation or consideration of the licence application. Every effort should therefore be made to Register all water users as soon as possible, to enable a data base of existing water users to be built up via the Water Use Authorisation, Registration and Management System, (WARMS) currently being developed.

The need to obtain this information is not only relevant to storage and abstraction water works, but also all the other water uses in terms, of which we generally do not have a record and which are extremely difficult to assess, prior to Registration, e.g. impeding and diverting flow of water in a watercourse, pre 1972 afforestation or lawfully exercised (undocumented) riparian rights. Here, again, the aerial photography will be of value.

2.10 The impact on the environment

According to Government notice No. R1182 published in Government Gazette No. 5999 on 5 September 1997 certain activities were identified under section 21 of the Environment Conservation Act, 1989 (Act no 73 of 1989) as activities which may have a substantial detrimental effect on the environment.

Those relevant to the National Water Act, listed in schedule 1 of the notice are :

- *canals and channels, including diversions of the normal flow of water in a river bed and water transfer schemes between water catchments and impoundments;*
- *dams, levees or weirs affecting the flow of a river;*
- *reservoirs for public water supply;*
- *schemes for the abstraction or utilisation of ground or surface water for bulk supply purposes; and*
- *sewage treatment plants and associated infrastructure.*

Furthermore, the following changes in land use are also mentioned:

- agricultural or undetermined use to any other land use;
- use for grazing to any other form of agricultural use; and
- use for nature conservation or zoned open space to any other land use.

The former list came into effect on 2 March 1998 and the latter on 1 April 1998. The latter obviously also applies to stream flow reduction activities such as afforestation.

Section 41(3) of the National Water Act states that a responsible authority may direct that an assessment comply with the above requirements. The use of the word “may”, above, is erroneous, as compliance is compulsory.

Procedures for dealing with these activities are outlined in the remainder of the notice which deals with scoping reports and environmental impact assessments.

The Department of Water Affairs and Forestry licence application forms have been compiled in such a way, as to include an annexure with questions required by the environmental legislation, to facilitate initial scoping ***in the case of stream flow reduction activities (forestry)***, in order to simplify matters for the applicant and to give an indication as to whether or not a full EIA will be required.

In the cases of all other water uses, the onus is on the applicant to ensure that there has been compliance with the environmental legislation. **In the spirit of co-operative governance, the Department of Water Affairs and Forestry should, however, not issue a licence, if there is any doubt as to whether the necessary Environmental authorisation has been obtained.**

2.11 Comments/objections from stakeholders and interested and affected parties (Sections 41(4), 45 & 46)

Section 41(4) of the Act states that a responsible authority may at any stage of the application process, require the applicant to give suitable notice in newspapers and other media, describing the licence applied for and inviting written objections within 60 days. In the spirit of transparency and to avoid criticism, it is advisable to require all applicants (except in the case of compulsory licensing) to advertise the details of their application in a local and a regional newspaper, inviting written comment. These comments/objections have

to be considered and, *in the case of valid objections*, mitigated. It is not always an easy task to differentiate between substantive and frivolous objections, but in the event of problems being encountered, a public meeting or the appointment of an advisory committee may be the solution.

In the case of compulsory licensing, in terms of section 43, individual applicants need not advertise, as the public in the area will be aware, from the notice requesting applications, as to the fact that allocations are to take place. Furthermore, in terms of sections 45 and 46 of the Act, the proposed and preliminary allocation schedules or the address where they may be inspected, must be published in the Gazette. This should allow for adequate public involvement.

In both cases, objections must be considered and the schedules adjusted accordingly.

In terms of section 42 of the Act, objectors have to be informed as to the decisions taken by the responsible authority and, if requested, the responsible authority must inform them in writing as to how their objections were mitigated or the reasons for their objections being overruled. It is thus vital to keep a record of decision, with particular care being exercised to record how the decision was arrived at.

2.12 The need to reverse the results of past racial and gender discrimination (Section 27(1)(b))

In the past, under the old act, water was allocated to owners of land in terms of the riparian rights principle. In most cases it was the landowners who developed and used the water flowing past (or through) their properties. As very little or no development had taken place in the former homelands, water was in fair abundance and shortages only occurred in times of drought.

In order to rectify this imbalance, the catchment management strategy should take account of the needs of all stakeholders in the catchment and ensure that the allocation policy adopted makes provision for this. Equity should be the guiding principle. The human reserve must be met first, followed by the ecological reserve. Thereafter, other demands should be addressed in an equitable manner, with a view to addressing past imbalances.

It is important that the aspirations of previously disadvantaged persons be accommodated. In some cases, it may be necessary to restrict existing users by means of demand management in order to accommodate new previously disadvantaged users. Projects which actively reverse race and gender discrimination and empower and uplift historically disadvantaged individuals should be encouraged and capacity building will have to take place in order to ensure that the allocated water is used beneficially and sustainably. As a guide, when embarking on new schemes to empower emerging farmers, an attempt should be made to ensure that at least 50 % of those to be settled are women. The Department has a Financial Assistance scheme for emerging farmers who are members of Water User Associations. Requests should be well motivated, as there are budget restraints.

2.13 Efficient and beneficial use of water in the public interest (Sections 27(1)(c))

The concept of "public interest" is a very complex one. Previously, permits were issued, provided the water was to be used "beneficially". Use was usually considered beneficial if the applicant/irrigator was going to make a profit. Public interest goes much wider. The fact that applications are to be advertised as discussed

in paragraph 2.11 and the public opinion is to be elicited, means that, at least, the public opinion can be gauged by the response to the advertisements and criticism mitigated.

As public trustee of the nation's water resources, the National Government, acting through the Minister, must ensure that the water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner for the benefit of all persons (section 3(1)).

The Minister is ultimately responsible for ensuring that water is allocated equitably and used beneficially in the public interest, while promoting environmental values (section 3(2))

Generally, it can be accepted that if the considerations enumerated in section 27(1)(a) to (k) of the Act are satisfied, the criterion of issuing licences in the “public interest” will have been satisfied.

The converse should also be considered. In other words, water use which has negative effects, not in the public interest, should not be licensed unless the negative effects can be mitigated or are sufficiently overshadowed by the positive aspects.

Obviously demand management and water conservation programmes form part of ensuring that water is being used beneficially.

2.14 Socio-economic impact of water use or uses to be authorised or failure to authorise the water use or uses *(Section 27(1)(d))*

This calls for a comparison of the benefits of allocating the licence with the disbenefits.

In many cases, a water use application will go hand in hand with some sort of development, be it community water supply, municipal, agricultural, mining, industrial or other. The onus should be on the applicant to spell out and quantify the positive aspects in order to assist the evaluation.

As in the heading of this section, it is vital to also consider the socio-economic impacts of NOT issuing, or refusing a licence. The potential benefits above, could become potential losses. Here, the loss of potential jobs or foreign exchange must be weighed up against the reasons for not granting the licence. For example, will the benefit of, say, preserving the environment in its current state or a higher level of the Reserve, outweigh the disbenefit of the loss of potential jobs ?

In taking the likely net benefit of the proposed water use into account, as well as the possible number of jobs, one must be careful to evaluate the application in the correct local, regional or national perspective. Obviously the larger the proposed undertaking, the more jobs are likely to be created, but this must not be taken out of context. A smaller undertaking might use water more efficiently and create more local opportunities per cubic metre of water used.

Local traditions and customs as well as expected social changes likely to be brought about by the use, must also be considered.

It is unfortunately true that virtually no allocations can be made without impact on someone, somewhere in the catchment downstream. The philosophy of dealing with this dilemma should therefore be to maximise the advantages to the greatest number of people and to minimise the negative impacts. The question is, how much of the low flow of a river can be allocated without impacting on the economic viability of lower users? The principle of "acceptable prejudice" should be applied, which accepts that there will be an impact, but that it should be of a magnitude small enough so as not to be significantly detrimental to the prejudiced person's operations.

Some proposed uses may be highly efficient in water use, but may lead to losses of existing jobs with the change in use. This must be considered. Activities such as afforestation often lead to increased insurance premiums for potential fire damage to owners of neighbouring farms. If this type of impact is considered binding, virtually, no water use will be able to be allowed anywhere.

2.15 Investments already made and to be made by the water user in respect of the water use in question.

(Section 27(1)(h))

Existing use cannot be curtailed arbitrarily without good reason. If, for reasons other than to provide for the Reserve, to rectify an over-allocation or an unfair or disproportionate water use (sections 22 (6) and (7)), water use is curtailed, compensation will have to be paid if the existing user suffers severe prejudice. This factor must be considered by the licensing authority, so as not to become embroiled in lengthy compensation claims with the Water Tribunal (section 22 (8)) and the courts.

Investments made by water users may be heavily tied up with local and regional economies and must be considered. In some cases expansion may be vital to the continued existence of an undertaking. Overseas and local contractual obligations by the user must also be taken into account.

The responsible authority must also take due care to ensure that the water being allocated will be available for the entire licensing period.

2.16 The period for which the licence is to be issued

(Section 27(1)(k))

The periods for which licences for different water uses and various crops are to be valid have to be carefully considered by the responsible authority. The issue is the need to maintain flexibility in water use, without prejudicing the activity of the users. To achieve flexibility, one should aim for short term licences, whilst to give the applicant certainty, one would give longer terms.

The responsible authority should aim for the minimum acceptable period and disagreements between the applicants' and the Department's views should be negotiated. The reason for opting for a minimum, rather than a maximum period would be, to follow the Australian example, where they have a 15 year period and provided the use continues to be socially equitable, environmentally sustainable and economically efficient and provided the user is prepared to accept reasonable revised conditions, there is a degree of legitimate expectation of renewal. To grant too long a licence period would create inflexibility and would not encourage the continuing search for greater water use efficiency as the user will have a guaranteed volume for a long

time and be under no pressure to consider ways in which to use it more efficiently. This is particularly pertinent to waste discharges.

The payback period of the activity for which the application for water use is being made, should be a consideration. In the case of large industrial undertakings, where hundreds of millions of Rands of capital are being invested, there is no doubt that longer periods of 30 to 40 years should be recommended, so as to ensure a reasonable return on the investment by the user.

However, even small investors need adequate certainty and return periods for them to make a commitment to recoup their investment. The shorter the licence period, and the more uncertainly there is about the outcome of reviews, the less likely they would be to invest, or if they invest, the higher and the quicker the returns they would seek.

Cash crops should be licensed for relatively short periods. Some annual vegetable crops may have pipes and pumps with 5 year lives. However, in addition to the crops to be irrigated, or licensed, one would have to evaluate the strategic importance of the activity being considered, and the multiplier effect, such as the number of jobs dependent on the activity, the infrastructure (canning factories, sugar/paper mills) dependent on processing the crops and so forth.

Citrus could be licensed for 10 to 20 years considering the infrastructure such as packing sheds as well as the life cycle of the trees.

Sugar, although it has a shorter life cycle, has multi-million Rand infrastructure in the form of sugar mills. Here 20 to 30 years would be appropriate.

Power stations are built for 40 year lives.

With respect to stream flow reduction activities (at this stage only afforestation) it is suggested that provision be made for at least two planting cycles. Depending on the crop and the intended use, this may vary from 15 to 30 years and it is suggested that a 30 year period be specified in all cases unless the applicant specifically motivate a longer period.

Although Municipal water works are usually going to have to meet an ever-increasing demand, it is suggested that Local Authorities and Water Boards be licensed for shorter periods, say 10 to 15 years to enable pressure to be exerted on them to implement water conservation and demand management measures.

Mines have variable, but usually predictable lives and the period should be negotiated.

Another factor which might play a role is the level of stress on the water resource. If no problems are foreseen and the use is in line with the National and Catchment Management Strategies, a relatively longer period may be considered.

A short period should not be seen as a death knell. It must be borne in mind that the licences will be reviewed at least every 5 years and if circumstances permit, will be extended by the review period (5 years maximum).

The Licensing Authority should rely on the advice of consultative fora, Water Boards, Water User Associations, interested and affected parties, organised agriculture, organised labour and the like. See Figure 3.

2.17 Compliance with other legislation

In the spirit of co-operative governance, it is important that the Department of Water Affairs and Forestry does not do anything to compromise their relationship with other government or provincial departments. It would be very wrong and not convey the right message to the public, if one department was to issue an authorisation and raise false hopes only to have it refused by another department. The key here is to ensure that the applicant is aware of other authorisations required and to liaise with the relevant authorities, as per section 41(4)(b) of the Act.

2.18 Water Services Development Plans

In terms of the Water Services Act, 1997, all local authorities have to compile Water Services Development Plans. It is important to ensure that the proposed water use is in harmony with the relevant Development Plan, if applicable.

2.19 Technical Information

All applications differ, regarding the type of use, the quantity, quality, locality, level of assurance *et cetera*.

It is therefore important that those assessing the application apply their minds to ensure that sufficient technical (and other) information has been supplied in order to assess the licence application fairly, in terms of the requirements of the Act.

Should insufficient information be available, any additional information required, should be requested.

3. ASSESSMENT INDICATORS AND CHECKS

In the tables below, indicators and checks are listed for each of the considerations in section 27(1) of the Act, as well as a number of other factors. The extent to which the considerations are met is evaluated on a separate evaluation form (not included). In some cases, the evaluation will comprise a “yes” or “no”, and in other cases, a more complex answer is needed to evaluate the extent of compliance with the consideration.

4. REFERENCES

1. The National Water Act, Act 36 of 1998
2. The National Water Amendment Act, Act 45 of 1999
3. Numerous policy and strategy documents, still in draft form.
4. Inputs and comments from numerous task team meetings and workshops, involving amongst many others, the following: J J Wessels, W D Enright, H N Schoeman, B Schreiner, M Warren, F Kruger, P Viljoen, J A van Rooyen, W Rowlston.

Section 27 (1)(j)(ii)		Par 2.4
Consideration	THE QUANTITY AND QUALITY OF WATER IN THE WATER RESOURCE WHICH MAY BE REQUIRED FOR MEETING INTERNATIONAL OBLIGATIONS	
Indicators :		
1. The likely effect of the proposed use on the quantity and quality of water available to meet international obligations.		

Section 27 (1)(g)		Par 2.5
Consideration	THE CLASS AND THE RESOURCE QUALITY OBJECTIVES OF THE WATER RESOURCE	
Indicators :		
1. The likely effect on the proposed use on the Class and Resource Quality Objectives.		

Section 27 (1)(i)		Par 2.6
7.1.1.1.1.1.1.2	Consi derati on	THE STRATEGIC IMPORTANCE OF THE WATER USE TO BE AUTHORISED
Indicators :		
1. The extent to which the proposed use is in line with the Strategic Development Objectives of the Government.		

Section 27 (1)(a)		Par 2.7
Consideration	EXISTING LAWFUL WATER USES	
Check whether :		
<ol style="list-style-type: none"> 1. The use applied for has an existing licence, authorisation, permit, or is scheduled under a Government Water Scheme or Irrigation Board. 2. The use applied for is deemed to be an existing lawful water use under the previous act, Act 54 of 1956, but no documentation is available (e.g. an exercised riparian right). 3. The use under consideration has been declared an existing lawful water use under Section 33 of the National Water Act. 4. The applicant has already commenced the use being applied for, which may be considered unlawful, prior to a licence being issued. 5. The use being applied for is a new use. 		

Section 27 (1)(f)		Par 2.9
Consideration	THE LIKELY EFFECT OF THE WATER USE TO BE AUTHORISED ON THE WATER RESOURCE AND ON OTHER WATER USERS	
Indicators :		
<ol style="list-style-type: none"> 1. The likely effect of the proposed use on the water quality of streams regarding their fitness or use, compared to the South African water quality guidelines. 2. The extent to which the proposed use complies with waste standards [Section 26(1)(h)] or National standards in terms of the Water Services Act, 1997 [Section 6(1)(a)(ii)] of the National Water Act. 3. The likely effect of return flows emanating from the proposed use on water quality. 4. The impact of the proposed use on the volume of water allocated to other users in the catchment. 5. The impact of the proposed use on the volume of water available to future users, not yet in a position to develop. 		

Section 41(3)		Par 2.10
Consideration	COMPLIANCE WITH THE REQUIREMENTS CONTAINED IN REGULATIONS MADE UNDER SECTION 26 OF THE ENVIRONMENTAL CONSERVATION ACT, 1989 (Act No. 73 of 1989)	
Check whether :		
<ol style="list-style-type: none"> 1. Authorisation has been obtained from the relevant Provincial Environmental Authority. 2. Departmental EIA Requirements have been met. 		

Section 41(4)		Par 2.11
Consideration	COMMENTS/OBJECTIONS FROM STAKEHOLDERS AND INTERESTED AND AFFECTED PARTIES	
Check :		
1. Have objections been satisfactorily mitigated ?		

Section 27 (1)(b)		Par 2.12
Consideration	THE NEED TO REDRESS THE RESULTS OF PAST RACIAL AND GENDER DISCRIMINATION	
Indicators :		
<ol style="list-style-type: none"> 1. The extent to which economic empowerment of previously disadvantaged individuals, races and groups will take place through the proposed water use. 2. The extent to which the proposed water use will contribute to the upliftment of previously disadvantaged individuals, races and groups. 3. The extent to which the proposed water use will promote economic empowerment of women. 4. The extent to which the proposed water use will contribute to the upliftment of women. 		

Section 27 (1)(c)		Par 2.13
Consideration	EFFICIENT AND BENEFICIAL USE OF WATER IN THE PUBLIC INTEREST	
Indicators :		
<ol style="list-style-type: none"> 1. The level of efficiency of the proposed water use (Section 22(2)(d)). 2. The effect of the proposed use on accepted demand management/conservation programmes on the Water Quantity and Water Quality. 		

Section 27 (1)(d)(i)		Par 2.14
Consideration	THE SOCIO-ECONOMIC IMPACT OF THE WATER USE OR USES IF AUTHORISED	
Indicators :		
<ol style="list-style-type: none"> 1. The likely net economic benefit of the water use. 2. The effect of the proposed water use on the number of employment opportunities. 3. Indicated impacts on local skills programmes and/or expertise. 4. Expected social changes as a result of water use applied for. 		

Section 27 (1)(d)(ii)		Par 2.14
Consideration	THE SOCIO-ECONOMIC IMPACTS OF THE FAILURE TO AUTHORISE THE WATER USE OR USES	
Indicators :		
<ol style="list-style-type: none"> 1. The extent to which social and economic upliftment in the area will be negatively affected if the application is refused. 		

Section 27 (1)(h)		Par 2.15
Consideration	THE INVESTMENTS ALREADY MADE AND TO BE MADE BY THE WATER USER IN RESPECT OF THE WATER USE IN QUESTION	
Indicators :		
<ol style="list-style-type: none"> 1. The extent to which the net present value of the investment already made by the applicant will be prejudiced if the application is refused. 2. Future/existing overseas and local contractual obligations. 		

Consideration	THE PROBABLE DURATION OF THE UNDERTAKING FOR WHICH A WATER USE IS TO BE AUTHORISED
Check whether : <ol style="list-style-type: none"> 1. The proposed undertaking is of a temporary nature with a duration of 0-2 years. 2. The proposed duration of the undertaking is 2-5 years. 3. The proposed duration of the undertaking is 5-20 years. 4. The proposed duration of the undertaking is 20-40 years. 5. The proposed undertaking has an expected lifespan in excess of 40 years. 	

Section 41(4)		Par 2.17
7.1.1.1.1.1.1.3	Consi derati on	COMPLIANCE WITH OTHER RELEVANT LEGISLATION
Check : <ol style="list-style-type: none"> 1. Is authorisation from any other Government Department required? (e.g. Department of Agriculture – breaking new land). 2. Has the necessary authorisation been applied for, or obtained ? 		

Water Services Act, Section 7		Par 2.18
Consideration	WATER SERVICES DEVELOPMENT PLANS	
Check : <ol style="list-style-type: none"> 1. Is the proposed use in line with the accepted Water Services Development plans ? 		

Consideration	TECHNICAL INFORMATION Par 2.19
Indicators : 1. Has sufficient information in order to assess the application been supplied?	

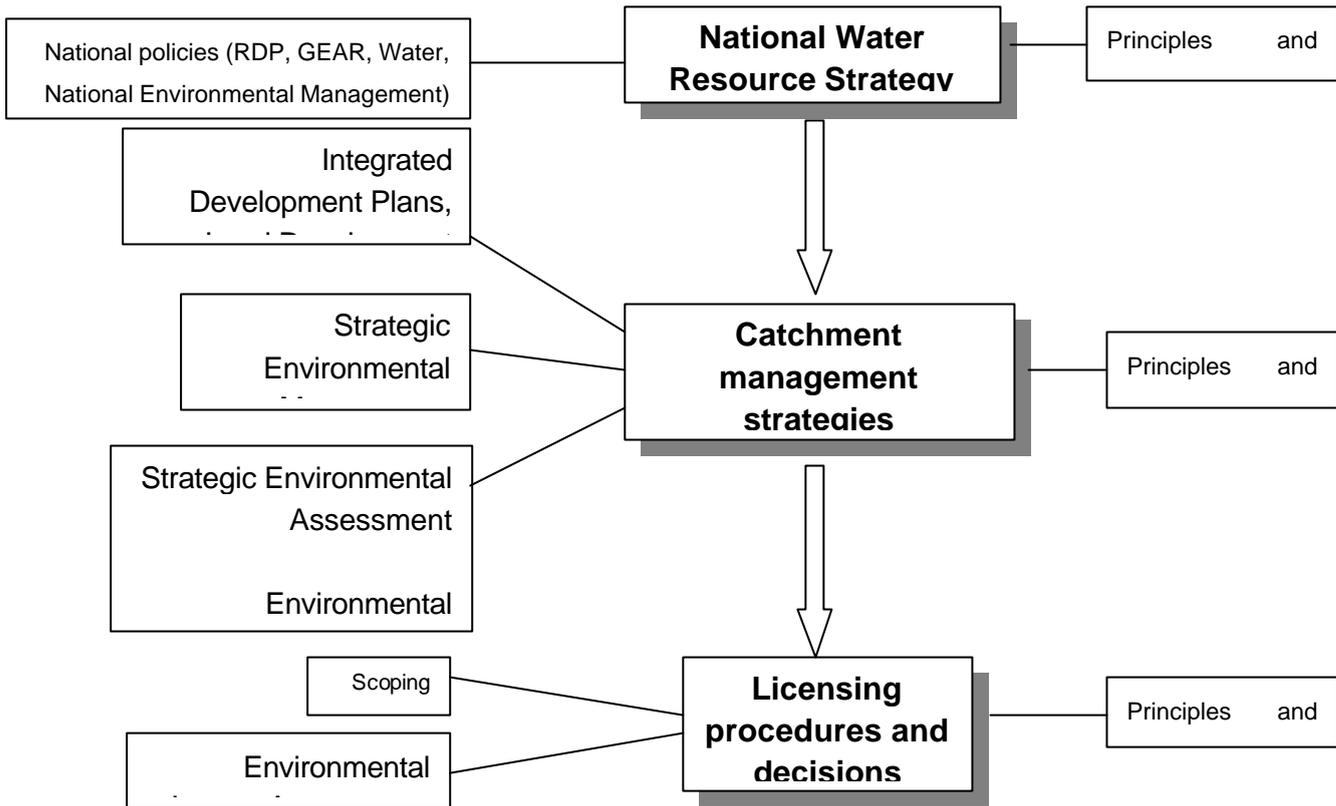
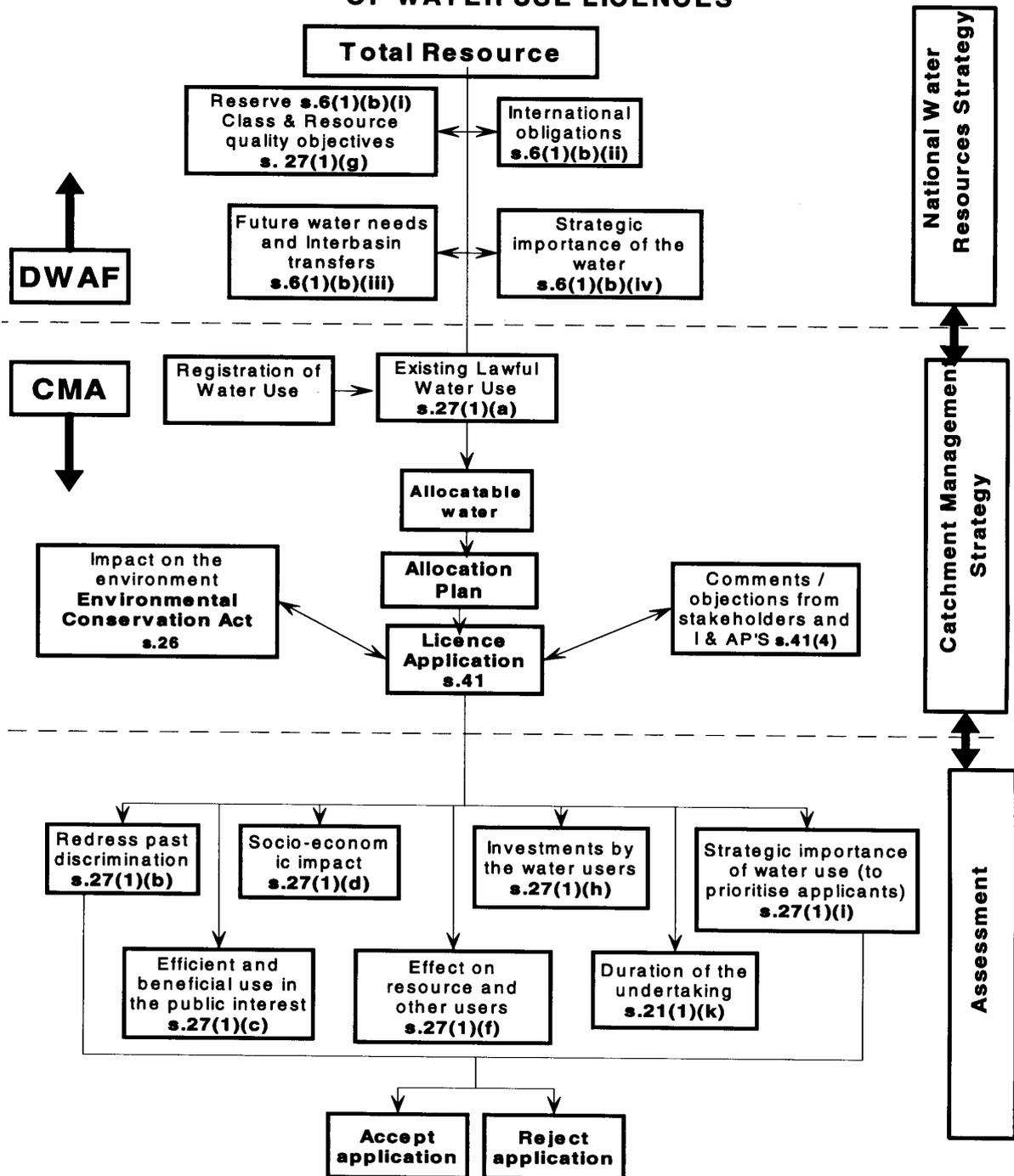


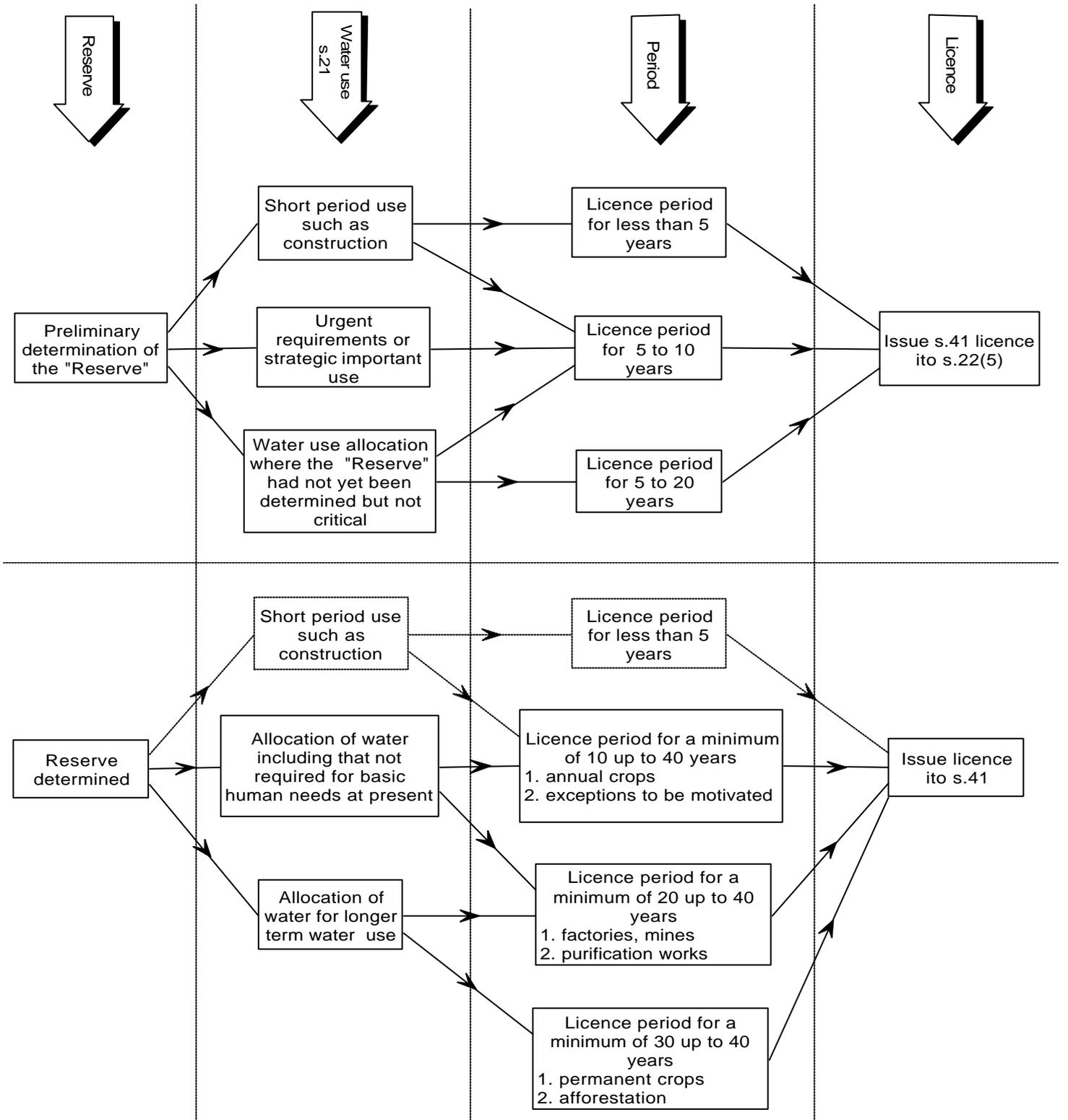
Figure 1. The relationships between licensing decisions and strategies. Many of the criteria to be applied in licensing decisions will come from catchment management strategies, although some come directly from the considerations in the National Water Act. Catchment management strategies, in turn, are informed by the National Water Resource Strategy, as well as by development and environmental strategies for the regions within which the catchments fall. The considerations of the National Water Act also apply both to the National Water Resource Strategy and the catchment management strategies.

Extract from Water Use Licensing : The Policy and Procedure for Licensing Stream Flow Reduction Activities – 6th draft.

CRITERIA TO BE CONSIDERED FOR THE ASSESSMENT OF WATER USE LICENCES



LICENCE PERIOD



EVALUATION ANNEXURE

These tables contain the methodology for evaluating water use licence applications and should be used in conjunction with the report entitled :

**"GUIDELINES FOR THE ASSESSMENT OF WATER USE
AUTHORISATIONS AND LICENCE APPLICATIONS IN TERMS
OF SECTION 27(1) OF THE NATIONAL WATER ACT, 1998,"**

which forms part of the National Water Resource Strategy.

NOTE:

The tables should be used as a guide. The intention is not that they be followed slavishly. A flexible approach should be adopted, as it is impossible to compile a system which covers all eventualities. In some cases indicators given will not apply, in others, different indicators may be required.

SUMMARY

Section 27(1) (b)	Race and gender
Section 27(1) (c)	Efficient and beneficial use
Section 27(1) (d)	Socio-economic impact
Section 27(1) (f)	Effect on water resource and water users
Section 27(1) (g)	Class and resource quality objectives
Section 27(1) (h)	Investments made and to be made
Section 27(1) (i)	Strategic importance
Section 27(1) (j)	Reserve and international obligations

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DATE OF ASSESSMENT

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ASSESSMENT TEAM	
NAME	SIGNATURE

EVALUATION CRITERIA FOR DECISIONS ON WATER USE APPLICATIONS

The tables in this Annexure have been drawn up to enable the extent to which the various subsections of section 27 (1) of the National Water Act have been satisfied to be evaluated. This is done by assigning one or more indicators to each consideration, to assist in the evaluation. The indicators are by no means exhaustive and in some cases, additional, more applicable indicators may need to be added. The tables will also serve as a record of evaluation leading to a decision.

Some tables are merely for the assessor to note the status of the application, whilst the remainder of the tables are for assessment purposes as described below.

The importance or relevance of each indicator should be assessed and entered in the appropriate column on a scale from 0 to 5 under "A" in the ensuing tables. If an indicator has no relevance, whatsoever, it gets 0 and if it is critically important it deserves a 5.

The extent to which the proposed water use meets the requirements of the indicator under discussion is also assessed on a scale from 0 to 5 under section "B", with 0 being "totally unacceptable" and 5 being "exceptional". An attempt has been made to describe the degree of compliance with the indicator in each of the categories. The wording should not be assumed to be cast in concrete, but should rather be taken as a broad guideline as to the degree of compliance with the indicator. When considering an application, its size will determine the extent to which the indicators should be applied on a local, regional or national basis where applicable.

The maximum number of points able to be scored is derived by multiplying the value given in column "A" by 5, whilst the actual number of points scored is obtained by multiplying the value in column "A" with that in section "B" for each indicator.

In this way, a total may be obtained for each of the sub section of section 27 (1). The percentage compliance can then be calculated for each consideration to get a "feel" for the acceptability of the application with respect to the particular consideration. Whilst an overall total and percentage could be calculated at the end, by aggregating the percentages, it is not suggested that the idea of say a 50% "pass mark" should be used for assessing an application. Scores can be used to compare applications as well as their degree of acceptability in order to prioritise applications.

It should be borne in mind that in some cases, an application which scores a "0" or a "1" under "B" may have to be rejected outright in a "fatal flaw" situation, if no mitigation is possible. As stated on each sheet of the table, all indicators which give an unacceptable and unsatisfactory score, must be managed until a reasonably acceptable impact has been obtained.

There may, on the other hand, be cases where a use may have to score a "5" in order to qualify.

Name of Applicant:

Reference No.

CONSIDERATION	THE NATIONAL WATER RESOURCE STRATEGY National Water Act - Sections 5-7	Paragraph 2.1		
Is the proposed water use in line with the National Water Resource Strategy?		N/A	NO	YES

CONSIDERATION	THE CATCHMENT MANAGEMENT STRATEGY APPLICABLE TO THE RELEVANT WATER RESOURCE National Water Act - Section 27(1)e	Paragraph 2.2		
Is the proposed water use in line with the Catchment Management Strategy?		N/A	NO	YES

* Tick the appropriate blocks

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.														
CONSIDERATION		THE QUALITY AND QUANTITY OF WATER IN THE WATER RESOURCE WHICH MAY BE REQUIRED FOR THE RESERVE										Paragraph 2.3		
National Water Act - Sections 27 (1)(j) (i)														
Indicators	Importance of Indicator *						Extent to which the assessment requirements are met						Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5
	(A)						(B)							
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
1)The likely effect of the proposed use on the quality and quantity of water required for the reserve for basic human needs in respect of: Water quantity Water quality							There will be a totally unacceptable negative impact on the human reserve with irreversible effects	There will be an unacceptable negative impact on the human reserve with short-term effects	There will be an impact on the human reserve	There will be an acceptable impact on the human reserve	The proposed use could have positive impacts on the human reserve	The proposed use will have positive impacts on the human reserve		
2)The likely effect of the proposed use on the quality and quantity of water required for the Reserve for the aquatic ecosystem in respect of: Water quantity Water quality							There will be a totally unacceptable negative impact on the ecological reserve with irreversible effects	There will be an unacceptable negative impact on the ecological reserve with short-term effects	There will be an impact on the ecological reserve	There will be an acceptable impact on the ecological reserve	The proposed use could have positive impacts on the ecological reserve	The proposed use will have positive impacts on the ecological reserve		

- * 0-Not applicable at all
- 1-Not really applicable
- 2-Applicable with shortcomings
- 3-Applicable requirement
- 4-Important requirement
- 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.

CONSIDERATION THE QUANTITY AND QUALITY OF WATER IN THE WATER RESOURCE WHICH MAY BE REQUIRED FOR MEETING INTERNATIONAL OBLIGATIONS National Water Act - Sections 27 (1)(j) (ii) Paragraph 2.4

Indicators	Importance of Indicator * (A)						Extent to which the assessment requirements are met (B)						Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
1)The likely effect of the proposed use on the quantity and quality of water available to meet international obligations							The proposed use will have an unacceptable impact on the water available to meet international obligations with large scale negative impacts in their region	The proposed use will have an unacceptable impact on the water available to meet international obligations	The proposed use will have an impact on the water available to meet international obligations	The proposed use will have an acceptable impact on the water available to meet international obligations	The proposed use will have no negative impact on the water available to meet international obligations	The proposed use will have no impacts whatsoever on the water available to meet international obligations		
Water Quantity														
Water Quality														

- * 0-Not applicable at all
- 1-Not really applicable
- 2-Applicable with shortcomings
- 3-Applicable requirement
- 4-Important requirement
- 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (j)

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Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.														
CONSIDERATION	THE CLASS AND THE RESOURCE QUALITY OBJECTIVES OF THE WATER RESOURCE													
	National Water Act - Section 27 (1)(g)													
Indicators	Importance of Indicator *					Extent to which the assessment requirements are met					Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5		
	(A)					(B)								
1)The likely effect of the proposed use on the Class and Resource Quality Objectives	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
							The proposed use will lower the class	The proposed use may lower the class	The proposed use will not alter the class	The proposed use may improve the class	The proposed use will improve the class by one level	The proposed use will improve the class by more than one level		

- * 0-Not applicable at all
 1-Not really applicable
 2-Applicable with shortcomings
 3-Applicable requirement
 4-Important requirement
 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (g)

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Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.

CONSIDERATION	THE STRATEGIC IMPORTANCE OF THE WATER USE TO BE AUTHORISED										Paragraphs 2.6			
National Water Act - Section 27 (1) (i)														
Indicators	Importance of Indicator *					Extent to which the assessment requirements are met						Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5	
	(A)					(B)								
1)The extent to which the proposed use is in line with the Strategic Development Objectives of the Government	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
							The proposed undertaking is of no strategic importance at any level	The proposed undertaking is of minimal strategic importance	The proposed undertaking has minor strategic importance	The proposed undertaking is of local strategic importance	The proposed undertaking is of Regional strategic importance	The proposed undertaking is of National strategic importance		

- * 0-Not applicable at all
 1-Not really applicable
 2-Applicable with shortcomings
 3-Applicable requirement
 4-Important requirement
 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (i)

	%

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.	
CONSIDERATION	EXISTING LAWFUL WATER USES National Water Act - Section 27 (1)(a) Paragraph 2.7
The use applied for has an existing licence, authorisation, permit, or is scheduled under a Government Water Scheme or Irrigation Board, or has a Water Court Order. In other words, some form of documentation is available. # NOTES:	
The use applied for is deemed to be an existing lawful water use under the previous act, Act 54 of 1956, but no documentation is available (e.g. an exercised riparian right). NOTES:	
The use under consideration has been declared an existing lawful water use under Section 33 of the National Water Act. NOTES:	
The applicant has already commenced the use being applied for, which may be considered unlawful, prior to a licence being issued. NOTES:	
The use being applied for is a <i>new</i> use. NOTES:	

If more detail is required, describe under "NOTES"

* Tick the appropriate blocks

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.														
CONSIDERATION	THE LIKELY EFFECT OF THE WATER USE TO BE AUTHORISED ON THE WATER RESOURCE AND ON OTHER WATER USERS													
	National Water Act - Sections 27 (1)(f)													
Indicators	Importance of Indicator *					Extent to which the assessment requirements are met					Total Points Obtained	Maximum Points Obtainable		
	(A)					(B)					(A)*(B)	(A)*5		
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
1)The likely effect of the proposed use on the water quality of streams regarding their fitness or use, compared to the South African water quality guidelines							The proposed use will cause a decline in water quality on a regional scale which is unacceptable when compared to the National Guidelines	The proposed use will cause a decline in water quality on a local scale which is unacceptable when it is compared to the National Guidelines	The proposed use will cause an imperceptible decline in water quality when compared to the National Guidelines	The proposed use will not cause a decline in water quality when compared to the National Guidelines	The proposed use will cause an improvement in water quality on a local scale when compared to the National Guidelines	The proposed use will cause an improvement in water quality on a regional scale when compared to the National Guidelines		
2)The extent to which the proposed use complies with waste standards [Section 26(1)(h)] or National standards in terms of the Water Services Act, 1997 [Section 6(1)(a)(ii)] of the National Water Act							The proposed use does not comply with any of the set standards	The proposed use does not comply fully with all the set standards	The proposed use will have to be strictly monitored to ensure compliance with the set standards	The proposed use is acceptable as it will satisfy the set standards	The proposed use will easily satisfy the set standards	The proposed use will always comply with the set standards		

- * 0-Not applicable at all
- 1-Not really applicable
- 2-Applicable with shortcomings
- 3-Applicable requirement
- 4-Important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.

CONSIDERATION THE LIKELY EFFECT OF THE WATER USE TO BE AUTHORISED ON THE WATER RESOURCE AND ON OTHER WATER USERS Paragraph 2.9 National Water Act - Sections 27 (1)(f)

Indicators	Importance of Indicator * (A)					Extent to which the assessment requirements are met (B)						Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5	
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good			5 Exceptional
3)The likely effect of return flows emanating from the proposed use on water quality							Return flows will have an unacceptable effect with a decline in water quality on a regional scale	Return flows will have an unacceptable effect with a decline in water quality on a local scale	Return flows will not have a significant impact on water quality	Return flows will have an acceptable impact on water quality	Return flows will have a positive effect with an improvement in water quality on a local scale	Return flows will have a positive effect with an improvement in water quality on a regional scale		
4)The impact of the proposed use on the volume of water allocated to other users in the catchment							The impact of the proposed use on the volume of water available to other users in the catchment is unacceptable and would have negative consequences	The impact of the proposed use on the volume of water allocated to other water users in the catchment is unacceptable	Proposed water use will impact slightly on the volume of water allocated to other water users in the catchment	An acceptable impact on the volume of water allocated to other water users in the catchment is expected	The impact of the proposed use on the volume of water allocated to other water users in the catchment can be accommodated	The impact of the proposed use on the volume of water allocated to other water users in the catchment can easily be accommodated with no prejudice		
Water Quantity														
Water Quality														
5)The impact of the proposed use on the volume of water available to future users, not yet in a position to develop							The impact of the proposed use on the volume of water available to future users in the catchment is unacceptable and would have negative consequences	The impact of the proposed use on the volume of water allocated to future water users in the catchment is unacceptable	Proposed water use will impact slightly on the volume of water allocated to future water users in the catchment	An acceptable impact on the volume of water allocated to future water users in the catchment is expected	The impact of the proposed use on the volume of water allocated to future water users in the catchment can be accommodated	The impact of the proposed use on the volume of water allocated to future water users in the catchment can easily be accommodated with no prejudice		
Water Quantity														
Water Quality														

- * 0-Not applicable at all
- 1-Not really applicable
- 2-Applicable with shortcomings
- 3-Applicable requirement
- 4-Important requirement
- 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (f)

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x

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.			
CONSIDERATION	COMPLIANCE WITH THE REQUIREMENTS CONTAINED IN REGULATIONS MADE UNDER SECTION 26 OF THE ENVIRONMENTAL CONSERVATION ACT, 1989 (Act No. 73 of 1989)	Paragraph 2.10	
	National Water Act - Section 41(3)	Note: In some cases this section may be adequately covered by the Provincial Department of Environmental Affairs	
	Authorisation has been obtained from the relevant Provincial Environmental Authority	N/A	NO
	Departmental EIA Requirements have been met	YES	

CONSIDERATION	COMMENTS/OBJECTIONS FROM STAKEHOLDERS AND INTERESTED AND AFFECTED PARTIES	Paragraph 2.11	
	National Water Act - Section 41(4)		
	Have objections been satisfactorily mitigated?	N/A	NO
		YES	

* Tick the appropriate blocks

Name of Applicant:							Reference No.							
ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.														
CONSIDERATION	THE NEED TO REDRESS THE RESULTS OF PAST RACIAL AND GENDER DISCRIMINATION											Paragraph 2.12		
	National Water Act - Section 27 (1)(b)												Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5
Indicators	Importance of Indicator * (A)						Extent to which the assessment requirements are met (B)							
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
1)The extent to which economic empowerment of previously disadvantaged individuals,races and groups will take place through the proposed water use							The proposed water use will have a totally unacceptable negative impact economic empowerment	The proposed water use will have an unacceptable impact on economic empowerment	The proposed water use may have a positive impact on economic empowerment	The proposed water use will have a positive impact on economic empowerment	The proposed water use will have a definite positive impact on economic empowerment	The proposed water use will result in a significant positive contribution to the cause of economic empowerment		
2)The extent to which the proposed water use will contribute to the upliftment of previously disadvantaged individuals,races and groups							The proposed water use will disrupt current upliftment initiatives in the area and will have negative impacts on the area	The proposed water use will not improve the current upliftment initiatives in the area and will have negative impacts on the area	The proposed water use may improve the current upliftment initiatives in the area	The proposed water use will improve the current upliftment initiatives in the area and may have positive impacts on the area	The proposed water use will aid current upliftment initiatives in the area and will have definite positive impacts on the area	The proposed water use will significantly boost current upliftment initiatives in the area and will have definite positive impacts on the area		

- * 0-Not applicable at all
1-Not really applicable
2-Applicable with shortcomings
3-Applicable requirement
4-Important requirement
5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one.
If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.

CONSIDERATION THE NEED TO REDRESS THE RESULTS OF PAST RACIAL AND GENDER DISCRIMINATION Paragraph 2.12
National Water Act - Section 27 (1)(b)

Indicators	Importance of Indicator * (A)						Extent to which the assessment requirements are met (B)						Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
3)The extent to which the proposed water use will promote economic empowerment of women							The proposed water use will have a totally unacceptable negative impact on the economic empowerment of women	The proposed water use will have an unacceptable impact on the economic empowerment of women	The proposed water use may have an impact on the economic empowerment of women	The proposed water use may have a positive impact on the economic empowerment of women	The proposed water use will have a definite positive impact on the economic empowerment of women (ie at least 50% are women)	The proposed water use will result in a significant positive contribution to the economic empowerment of woman		
4)The extent to which the proposed water use will contribute to the upliftment of women							The proposed water use will have a totally unacceptable negative impact on the upliftment of women	The proposed water use will have an unacceptable impact on the upliftment of women	The proposed water use may have an impact on the upliftment on women	The proposed water use may have a positive impact on the upliftment of women	The proposed water use will have a definite positive impact on the upliftment of women (ie at least 50% are women)	The proposed water use will result in a significant positive contribution to the upliftment of women		

- * 0-Not applicable at all
- 1-Not really applicable
- 2-Applicable with shortcomings
- 3-Applicable requirement
- 4-Important requirement
- 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (b)

%

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.

CONSIDERATION EFFICIENT AND BENEFICIAL USE OF WATER IN THE PUBLIC INTEREST Paragraph 2.13
National Water Act - Section 27 (1) (c)

Indicators	Importance of Indicator * (A)					Extent to which the assessment requirements are met (B)						Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5	
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good			5 Exceptional
1)The level of efficiency of the proposed water use [Section 22(2)(d)] Water Quantity Water Quality							The level of efficiency of the proposed water use is totally unacceptable and water will actually be wasted. Efficiency issues have not been addressed	The level of efficiency of the proposed use is unacceptable and it must be improved	The level of efficiency of the proposed water use can be improved	The level of efficiency of the proposed use is acceptable	Efficiency levels of the proposed water use are high and a management programme is in place	Efficiency levels of the proposed water use are high and a management programme is in place in addition to the latest technologies being utilised.		
2)The effect of the proposed use on accepted demand management/ conservation programmes on the: Water Quantity Water Quality							There is an unacceptable negative impact on demand management and/or conservation programmes	There is an unacceptable impact on demand management and/or conservation programmes	There is an impact on demand management and/or conservation programmes	There is an acceptable impact on demand management and/or conservation programmes	There is a positive impact on demand management and /or conservation programmes with a possible improvement in the existing situation	There is a positive impact on demand management and/or conservation programmes with a definite improvement in the existing situation		

- * 0-Not applicable at all
- 1-Not really applicable
- 2-Applicable with shortcomings
- 3-Applicable requirement
- 4-Important requirement
- 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (c)

%

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.														
CONSIDERATION THE SOCIO-ECONOMIC IMPACT OF THE WATER USE OR USES IF AUTHORISED											Paragraph 2.14			
National Water Act - Section 27 (1) (d) (i)											Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5		
Indicators	Importance of Indicator *					Extent to which the assessment requirements are met								
	(A)					(B)								
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
1)The likely net economic benefit of the water use.							Proposed use of the water will lead to economic loss	No economic benefit will accrue from the proposed water use	Minor economic benefits will accrue from the proposed water use	Reasonable economic benefits will accrue from the proposed water use	Considerable economic benefit will accrue from the proposed use of this water	Vast economic benefits will accrue from the the proposed water use		
2)The effect of the proposed water use on the number of employment opportunities							Proposal will actually lead to job losses	No employment opportunities are envisaged with proposed water use	Possibility exists that a number of employment opportunities will be created	Application will result in a reasonable number of employment opportunities	A considerable number of employment opportunities will be created by this proposal	A substantial number of employment opportunities will be created by this proposal		
3)Indicated impacts on local skills programmes and/or expertise							The proposed water use will negatively impact on local skills programmes, and/or expertise	The proposed water use could negatively impact on local skills programmes, and/or expertise	There will be no improvement in local skills programmes, and/or expertise	There will be reasonable improvements in skills programmes and/or expertise	There will be definite improvements in local skills programmes and/or expertise	There will be substantial large scale improvements in local skills programmes and/or expertise		
4)Expected social changes as a result of water use applied for							Existing social conditions could decline as a result of the proposed water use	There will be no improvement in social conditions as a result of the proposed water use	It is possible that social conditions could improve as a result of the proposed water use	Social conditions will definitely improve as a result of the proposed water use	It is expected that there will be considerable social upliftment as a result of the proposed water use	It is expected that there will be enormous social upliftment as a result of the proposed water use		

- * 0-Not applicable at all
- 1-Not really applicable
- 2-Applicable with shortcomings
- 3-Applicable requirement
- 4-Important requirement
- 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (d) (i)

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Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.

CONSIDERATION	THE SOCIO-ECONOMIC IMPACT OF THE FAILURE TO AUTHORISE THE WATER USE OR USES										Paragraph 2.14			
	National Water Act - Section 27 (1) (d) (ii)													
Indicators	Importance of Indicator *					Extent to which the assessment requirements are met					Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5		
	(A)					(B)								
1)The extent to which social and economic upliftment in the area will be negatively affected if the application is refused	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
							There will be an increase in socio-economic activity if the proposed use is not authorised	There will be no decline in socio-economic well being if the proposed water use is not authorised	The proposed water use has no relevance to current socio-economic initiatives in the area	There will be minor adverse cosequences if the proposed use is not authorised	There will be adverse consequences if the proposed use is not authorised	There will be severe adverse consequences if the proposed use is not authorised		

- * 0-Not applicable at all
 1-Not really applicable
 2-Applicable with shortcomings
 3-Applicable requirement
 4-Important requirement
 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (d) (ii) %

Section 27(1) (d) %
 [Average % of 27(1)(d) (i) + (ii)]

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.														
CONSIDERATION	THE INVESTMENTS ALREADY MADE AND TO BE MADE BY THE WATER USER IN RESPECT OF THE WATER USE IN QUESTION										Paragraph 2.15			
National Water Act - Section 27 (1)(h)														
Indicators	Importance of Indicator *					Extent to which the assessment requirements are met						Total Points Obtained (A)*(B)	Maximum Points Obtainable (A)*5	
	(A)					(B)								
	0	1	2	3	4	5	0 Totally Unacceptable #	1 Unsatisfactory #	2 Reasonable with Shortcomings	3 Acceptable	4 Good	5 Exceptional		
1)The extent to which the net present value of the investment already made by the applicant will be prejudiced if the application is refused							The applicant's current investment will benefit if the application is refused	The applicant's current investment will benefit marginally if the application is refused	The applicants current investment will be marginally prejudiced if the application is refused	It would not affect the continued existence of the applicant's undertaking that the application be granted	It is important to the continued existence of the applicant's undertaking that the application be granted	It is vital to the continued existence of the applicant's undertaking that the application be granted		
2)Future/existing overseas and local contractual obligations							The undertaking has absolutely no potential to develop local or overseas contractual obligations	The undertaking has no local or overseas contractual obligations	The undertaking has the potential to develop local contractual obligations	The undertaking has local contractual obligations and has the potential to expand overseas	The undertaking has local and overseas contractual obligations	The undertaking has large scale local and overseas contractual obligations		

- * 0-Not applicable at all
- 1-Not really applicable
- 2-Applicable with shortcomings
- 3-Applicable requirement
- 4-Important requirement
- 5-Critically important requirement

All unacceptable and unsatisfactory indicators must be managed to reflect a reasonable impact or a better one. If this cannot be achieved a full motivation must be supplied if a licence is still to be issued.

SUB-TOTAL 27(1) (h)

	%

Name of Applicant:

Reference No.

ASSESSMENT OF WATER USE LICENCE APPLICATIONS IN TERMS OF THE NATIONAL WATER ACT, Act No 36 of 1998.		
CONSIDERATION	THE PROBABLE DURATION OF THE UNDERTAKING FOR WHICH A WATER USE IS TO BE AUTHORISED	Paragraphs 2.16
	National Water Act - Section 27 (1)(k)	
	CHECK WATER AVAILABILTY FOR DURATION	CHECK FOR LICENCE PERIOD COMPATIBILITY
The proposed undertaking is of a temporary nature with a duration of 0-2 years		
The proposed duration of the undertaking is 2-5 years		
The proposed duration of the undertaking is 5-20 years		
The proposed duration of the undertaking is 20-40 years		
The proposed undertaking has an expected lifespan in excess of 40 years		

* Tick the appropriate blocks

Name of Applicant:

Reference No.

CONSIDERATION		COMPLIANCE WITH OTHER RELEVANT LEGISLATION		Paragraph 2.17		
		National Water Act Section - 41(4)				
Is authorisation from any other Government Department required? (eg. Department of Agriculture - breaking new land)				N/A	NO	YES
Department	Has the necessary authorisation been applied for, or obtained?					

CONSIDERATION		WATER SERVICES DEVELOPMENT PLANS		Paragraph 2.18		
		Water Services Act -Section 7				
Is the proposed use in line with the accepted Water Services Development Plans?				N/A	NO	YES

CONSIDERATION		TECHNICAL INFORMATION		Paragraph 2.19		
Has sufficient technical information in order to assess the application been supplied?				N/A	NO	YES

* Tick the appropriate blocks

Appendix 6: An example of a Record of Decision

RECORD OF DECISION

DATE:

FILE NO:

BRIEF DESCRIPTION OF THE WATER USE ACTIVITY:

LOCATION:

APPLICANT:
(Name, address, telephone number)

SITE VISITS:
(Dates, persons present)

DECISION

CONDITIONS:
(Specify or make reference)

KEY FACTORS FOR THE DECISION:
(List)

DURATION AND DATE OF EXPIRY:

APPEAL
(Name, address)

(Date & signature)

Appendix 7: Demarcated areas of national or international importance

For the purpose of implementing the regulation a demarcated area of national or international importance will include the following protected areas as listed in the table below:

PROTECTED AREA (DEMARCATED AREA)	LEGISLATION UNDER WHICH THE AREA IS DEMARCATED	ADMINISTRATION
National Parks	National Parks Act 57 of 1976	South African National Parks
Lake Area	Lake Areas Development Act 139 of 1975	South African National Parks
Mountain Catchment Areas	Mountain Catchment Areas Act 63 of 1970	Department of Water Affairs and Forestry: delegated to provinces
Protected Natural Environment	Environment Conservation Act 73 of 1989	Department of Environmental Affairs and Tourism: delegated to local authority/government institution.
Limited Development Area	Environment Conservation Act 73 of 1989	Department of Environmental Affairs and Tourism: delegated to local authority/government institution.
National Botanical Garden	Forest Act 122 of 1984	Department of Environmental Affairs and Tourism: National Botanical Institute.
State Forests	Forest Act 122 of 1984	Department of Water Affairs and Forestry: assigned to provinces.
Forest Nature reserves and Wilderness Area	Forest Act 122 of 1984	Department of Water Affairs and Forestry: assigned to provinces
Ramsar Site	Ramsar Convention	Department of Environmental Affairs and Tourism
National Monument	National Monuments Act 28 of 1969	National Monuments Council and provinces
Conservation areas	National Monuments Act 28 of 1969	National Monuments Council and provinces
Defence Area	Defence Act 44 of 1957	South African Defence Force
Marine Reserve	Sea Fishery Act 12 of 1988	Department of Environmental Affairs and Tourism: Directorate of Sea Fisheries and provinces in respect of coastal zone and specified resources.
Sea-Shore	Sea-Shore Act 21 of 1935	Department of Environmental Affairs and Tourism: assigned to provinces.
Most South African Islands	Sea Birds and Seals Protection Act 46 of 1973	Department of Environmental Affairs and Tourism: assigned to provinces in respect to sea birds.
Provincial, Local and Private Nature Reserves	Various provincial ordinances	Nine provincial administrators, numerous local authorities, private landowners.
Private Conservancies	No legal status	Private farmers.
Biosphere Reserves	No legal status	Conservation authority/neighbours.
Natural Heritage Sites	No legal status	Private landowners.