

QUICK REFERENCE GUIDE

Background

South Africa must address inequities in access to and use of water if we are to continue to sustain our development. This must not only address the disproportionate use of water, but must also increase our capacity to use water in the most beneficial manner. The Department has therefore initiated the Water Allocation Reform Programme, which is addressing how the provisions of the National Water Act could be used to allocate, and if necessary re-allocate water, in the best interests of the nation as a whole.



This Quick Reference Guide supplements the Toolkit, and outlines how the provisions of the National Water Act can be used to promote race and gender equity with respect to the use of water for productive purposes.

This Toolkit does not address the provision of basic water supply and sanitation needs, but focuses on the water required to improve livelihoods and food security, to generate an income, and to contribute to economic development.

The intention of the Quick Reference Guide

The process of allocating water is technically demanding and contentious, particularly where water has to be re-allocated between users to realize equity. Most importantly, however, the way in which this is done, and the way in which stakeholders are engaged is critical to avoiding unnecessary legal action.

This Quick Reference Guide is, therefore, intended to support the more detailed processes outlined in the complete Toolkit, and serves as a reminder of the processes discussed in the Toolkit.

The importance of applying your mind

One of the key principles behind any allocation of water must be that water resource managers must “apply their minds” to the individual merits of each case. This Quick Reference Guide therefore outlines considerations and processes to guide the allocation process, and is not a recipe to be followed in a rote fashion.



The structure of the Quick Reference Guide

The Quick Reference Guide has been structured around three scenarios reflecting the differing impacts the use of the water will have on the availability of water and the prioritization of the catchment for compulsory licensing as outlined in the NWRS. These scenarios are as follows;

- Catchments where water is unlikely to limit development in the foreseeable future. In these catchments the allocation of water to ‘A’ is unlikely to deny ‘B’ of water, and applications can be dealt with on an individual basis.
- Catchments where the current or expected applications for water use may exceed the availability of water. In these catchments allocation to ‘A’ may potentially deny ‘B’ of water, and so the allocations process must consider other applications as well as potential future users when deciding on allocations in the public interest.
- Catchments where the compulsory licensing process is being initiated. In these catchments water is allocated or re-allocated on a catchment wide and equal basis.

The following pages provide a summarized process for each of these catchments, which could be used as a quick reference guide. The main report provides more details on each step and should be used to support the water allocations process.

This Guide and all the Tools are available at www.dwaf.gov.za/WAR

How do you allocate in catchments where water is unlikely to limit development in the foreseeable future?

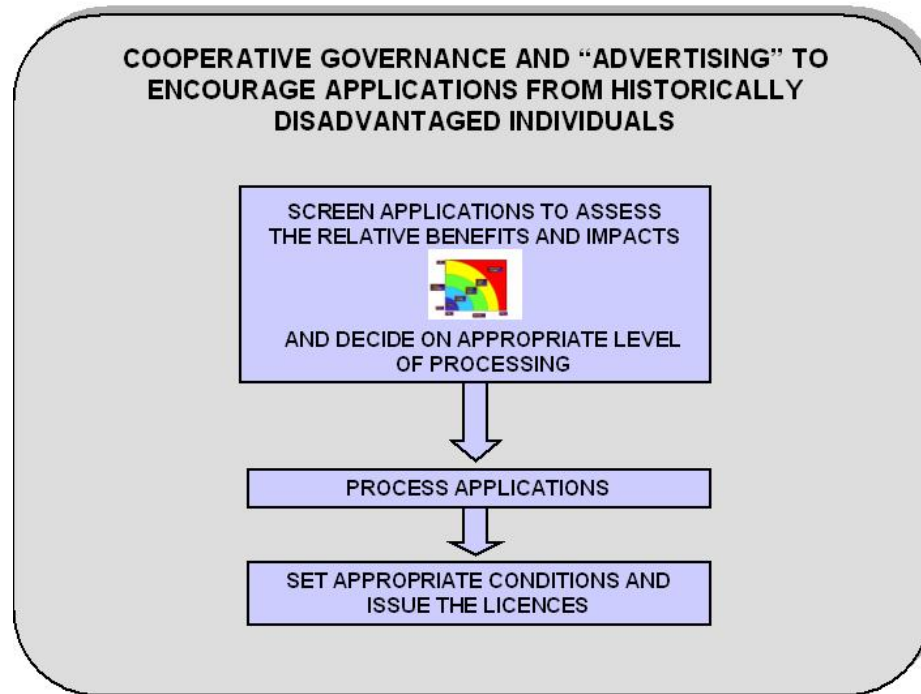


These catchments would have sufficient allocable water (as outlined in the NWRS and ISPs) to meet the demands for the foreseeable future. This means that you are unlikely to be denying existing or potential future users water by allocating the water to any applicant. This means the applications can be dealt with on an individual basis.

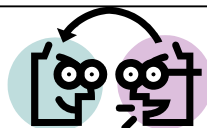
The approach in these catchments should be to evaluate all applications for water use – but to encourage historically disadvantaged individuals, especially those who are organized into water management institutions to apply for water. This is particularly important where other government agencies or private enterprise may support the establishment beneficial and productive use of water.

The role of the responsible authority in development would be primarily supportive.

THE OVERALL PROCESS RECOMMENDED FOR THESE CATCHMENTS IS AS FOLLOWS



HOW DO YOU PROMOTE APPLICATIONS FROM HDI USERS?



WHAT IS THE AIM OF THIS PROCESS?

This process aims to take proactive actions to promote applications from historically disadvantaged individuals who are organized in water management institutions.

This creates an enabling environment where water can be used to address race and gender reform.

The intention is to work with other agencies inside and outside government to identify opportunities for groups or individuals to use water to improve their livelihoods.

These “applications” may either be authorized as General Authorisations or as Licences.

This process is based mostly on establishing formal or informal arrangements with other government agencies or with the private sector to support the establishment of productive water use.

WHAT STAKEHOLDERS SHOULD KNOW

You should set up meetings with stakeholders in other government agencies to determine what poverty eradication programmes are being initiated.

This should concentrate on national and provincial Depts of; Land Affairs Agriculture, Trade and Industry and Economic Development.

Local government, and the Local Development Officers are important stakeholders, and their IDPs may highlight opportunities to expand water use by HDIs.

Private enterprise can offer markets for products and are therefore useful partners in this process.

Potential water users should be informed of the need to form WUAs and of the options to use water to improve livelihoods.

Rainwater harvesting can be a valuable way to improve livelihoods use of water.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- Working with local government to promote productive water use.
- Financial Assistance to Resource Poor Farmers
- Financial Assistance Grants Available to the Poor.
- Assistance to establish rainwater harvesting.
- Various awareness materials

Some tips to assist with this step:

- Cooperative governance approaches have the best chances of success. Briefing sessions or workshops with other agencies could be used as information sessions – perhaps leading to bilateral or multilateral agreements.
- Partnerships between HDI applicants and the private sector should also be encouraged.
- Tapping into and supporting existing development efforts make this process easier.
- You should familiarize yourself with the components that make up productive water use and try to support projects where most of these elements are present.

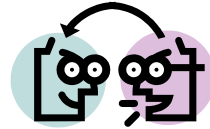
REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Section 2b-2eSection 3(2):

See also the Constitution Section 9 (2)

SCREENING THE APPLICATIONS TO DETERMINE APPROPRIATE IMPACT ASSESSMENT



WHAT IS THE AIM OF THIS PROCESS?

This process screens the applications to determine how to process them. This speeds up the processing of applications that promote WAR, but which have low impacts.

This uses the screening tool, based on Section 27 of the NWA, to balance the benefits and potential impacts of the proposed water use.

The following can guide the pre-processing of applications using this tool;

- 1) High Benefit/Low Impact – Impact assessments can be done at a scoping level.
 - 2) High Benefit/High Impact – Medium level of impact assessments, approach applicant to mitigate impacts.
 - 3) Low Benefit/Low impact – Medium level of impact assessments, approach applicant to increase benefits.
 - 4) Low Benefit/High Impact – Detailed impact assessments, approach applicant to mitigate impact and increase benefits.
- LAACs can also be used to pre-

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders need to be informed of where their application was placed in terms of Beneficial Use and Potential Impact.

This should be used to encourage applicants to increase the benefits or decrease the potential impacts of their applications.

It is important to tell stakeholders (particularly the applicants) that this process aims to balance the benefits of the proposed water use, with the likely impacts so that allocations can be made in the best interests of the country as a whole.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- The screening tool forms the core of this process, and helps determine the relative benefit and impact of the proposed water use.
- The Policy and Guidelines for Establishing LAACs.
- Various awareness materials

Some tips to assist with this step:

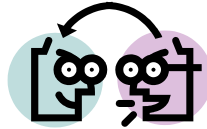
- The screening process is a powerful means of supporting the goals of Water Allocation Reform – particularly where it is used as a basis for interacting with stakeholders.
- You should make every effort to support applications that score high on the benefits scale.
- The LAAC process is recommended for applications that require authorization from multiple agencies.
- Very detailed impact assessments should be undertaken for low benefit / high impact water use – the applicant should pay for these assessments.
- This process can also help decide on an appropriate level of Preliminary Reserve determination where the Resource Class has not yet been determined.

REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Section 17(1)
- Section 23(1)
- Section 27
- Promotion of Administrative Justice Act.

PROCESSING THE APPLICATIONS THROUGH THE LICENSING PROCEDURE



WHAT IS THE AIM OF THIS PROCESS?

This includes the processing of the applications through a generic seven-step process.

The application is accompanied by the results of the pre-processing in the previous step which informs the ongoing processing.

The process includes the development of a submission from the regional office or the CMA (at least until this is delegated) for evaluation by the national office.

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders should be kept informed of how their application is being processed.

You can refer them to the WAR webpage (www.dwaf.gov.za/WAR) for more information.

Processes should be put in place to allow for this feedback.

Stakeholders must be handled according to *Batho Pele* principles.

Stakeholders need to be informed if their application requires separate authorization by another agency – for example DEAT

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- The Licensing Process
- The Delegation of Powers and Duties under the NWA (i.e. who makes the decision to allocate)
- Links to the ISPs to assess water availability (see the WAR webpage).
- Links to the IDPs to align with regional planning goals.
- Guidelines for establishing user specific General Authorisations

Some tips to assist with this step:

- An application can only be refused for good reason.
- If the application is refused – clear reasons for this must be communicated to the applicant.
- General authorizations can be considered for if there are large numbers of similar low impact/high benefit potential users in an area.
- You should consider asking the applicant to advertise the intended use if the potential impact is high.
- Applicants with low public benefit scores could be encouraged to increase HDI participation in the enterprise.

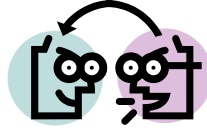
REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

The whole of Chapter 4 Parts 1-7 are relevant, but especially;

- Section 27
- Section 28
- Section 41

IDENTIFY SUITABLE CONDITIONS AND IMPLEMENT



WHAT IS THE AIM OF THIS PROCESS?

This process identifies the conditions that should be attached to the licence or general authorisation.

These conditions can allow for a use to be authorized that would otherwise have to be refused due to the potential impacts. As such the conditions mitigate the potential impacts, for example to protect low flows at certain times of the year.

The conditions should address the concerns raised during the evaluation of the application as well as any agreements made with the applicant to increase the benefits or decrease the potential impacts.

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders need to be informed of the conditions attached to the licence or general authorisation, as well as the registration of their use, and the water use charges applicable. .

Where user specific general authorizations are applicable, the users need to be informed of the need to register.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- A Pro-Forma Licence

Some tips to assist with this step:

- Conditions are powerful tools to authorize a water use that would otherwise have to be turned down due to its potential impacts.
- Conditions should address the potential impacts or concerns raised during the evaluation, or any agreements made with the applicant.
- Problems highlighted during the Preliminary Reserve determination process could also be addressed by conditions.
- Conditions should include minimum monitoring requirements.
- Conditions should encourage the most efficient use of water.

REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Section 29
- Section 139 (2)
- Section 148(f)
- Promotion of Administrative Justice Act.

How do you allocate in catchments where water may limit development in the near future?

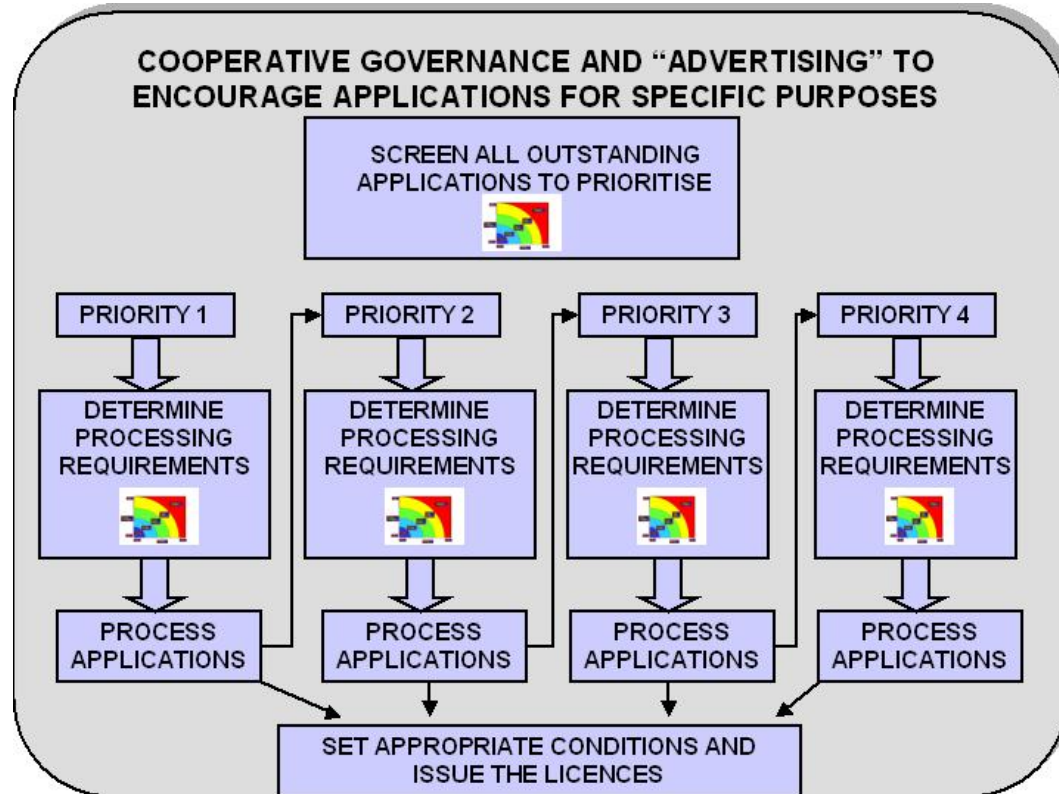


In these catchments existing or short to medium term (5-10 year) demands for water may exceed the availability of water. It is therefore important to take other existing and potential new users into account before allocating water or deciding on the most beneficial allocations in the public interest. It is also important to make sure that you account for potential future users that may support the aims of water allocation reform.

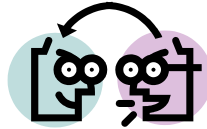
The approach in these catchments should be to firstly prioritise all the outstanding applications (As well as possible future demands from developments aimed at poverty eradication) based on their potential impacts and likely benefits to the country. Then to allocate water according to these priorities. This process should be used in stressed catchemnts, to promote the aims of WAR before compulsory licensing is implemented.

Special efforts may be needed to “find” water for high priority uses. This can include identifying and stopping unlawful water use, promoting water use efficiency, voluntary reductions, lowering assurance of supply or water trading.

THE OVERALL PROCESS RECOMMENDED FOR THESE CATCHMENTS IS AS FOLLOWS



HOW DO YOU PRIORITISE THE APPLICATIONS?



WHAT IS THE AIM OF THIS PROCESS?

This process screens the applications to both prioritise them and to decide on how to process them. It allows the responsible authority to continue evaluating applications in spite of the limited water supply. (All applications must be evaluated in any event)

This uses the screening tool, based on Section 27 of the NWA, to balance the benefits and potential impacts of the proposed water use.

The following can guide the pre-processing of applications using this tool;

- 1) High Benefit/Low Impact – Priority 1.
- 2) High Benefit/High Impact – Priority 2.
- 3) Low Benefit/Low impact – Priority 3.
- 4) Low Benefit/High Impact – Priority 4.

LAACs can also be used to help prioritise applications. The appropriate level of impact assessments can also be determined.

WHAT STAKEHOLDERS SHOULD KNOW

Applicants need to be informed of how their application was prioritized in terms of Beneficial Use and Potential Impact.

Every effort needs to be made to find water for the Priority 1 and 2 applications, and this should be used to encourage applicants to increase the priority of their application.

It is important to tell stakeholders (particularly the applicants) that this process aims to balance the benefits of the proposed water use, with the likely impacts so that allocations can be prioritized to highly beneficial low impact uses.

It is also important to let stakeholders know that water is becoming limited, and that special efforts will need to be made to ensure that the available water is allocated to beneficial uses in the public interest.

Similarly, stakeholders need to be informed of when compulsory licensing may be initiated.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- The screening tool forms the core of this process, and determines the relative benefits and impacts of the potential water use.
- The Policy and Guidelines for Establishing LAACs.

Some tips to assist with this step:

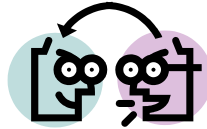
- The prioritization process is a powerful means of supporting the goals of Water Allocation reform – particularly where it is used as a basis of interacting with stakeholders.
- You should make every effort to support priority 1 and 2 applications first, in spite of the limited availability of water.
- The LAAC process is recommended for applications that require authorization from multiple agencies.
- Very detailed impact assessments should be undertaken for low benefit / high impact water use – the applicant should pay for these assessments.
- This process can also help decide on an appropriate level of Preliminary Reserve determination where the Resource Class has not been determined.

REFERENCE TO LEGISLATION

The following legislation is relevant.

- Section 17(1)
- Section 23
- Section 27
- Promotion of Administrative Justice Act.

HOW DO YOU IDENTIFY INITIATIVES BY OTHER AGENCIES?



WHAT IS THE AIM OF THIS PROCESS?

It is important to identify potential future demands, particularly those that may represent highly beneficial uses, before allocating the last available water, and before allocating to priority 3 and 4 users.

This process should specifically target poverty reduction and development initiatives by other government agencies (especially local and provincial government), which may have significant water demands.

It is suggested that this is done by setting up workshops with these agencies. These should outline the water situation in the catchment, and how outstanding applications could be addressed.

It is also important to encourage applications from any HDI individuals who wish to use water.

WHAT STAKEHOLDERS SHOULD KNOW

Other government agencies, as well as private enterprise need to be informed of the fact that water is becoming limiting, and that allocations need to focus on the most beneficial uses of water in the public interest.

Similarly, these agencies and other stakeholders need to participate in finding innovative ways to find water for the priority 1 and 2 applicants or potential future uses.

Awareness campaigns should encourage individuals who want to become commercial water users to make applications for water use.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- It is recommended that workshops/information sessions are used to inform other development agencies of the water situation in the catchment.
- Various awareness materials

Some tips to assist with this step:

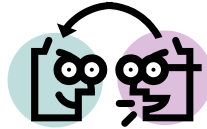
- This process should focus on those areas where priority 3 and 4 applications may need to be processed.
- The process should focus on local and provincial government's development plans for the area.
- The private sector can be approached where large water using enterprises have extension or outreach programmes that target HDIs.
- Much of the information needed to support this may be available in the ISPs, CMS and IDPs.
- If a CMS has been prepared by the CMA, this must be used as a basis for allocating water.

REFERENCE TO LEGISLATION

The following legislation is relevant.

- Section 2b-e –i.e. the need to support race and gender reform, as well as beneficial use in the allocations process.
- Section 9(e)
- Section 23

HOW DO YOU FIND WATER TO SUPPORT ALLOCATION REFORM?



WHAT IS THE AIM OF THIS PROCESS?

This process aims to find water to support high priority uses, The following mechanisms could be explored;

- Finding and addressing finding nearby unlawful users of water,
- Removal of alien vegetation in cooperation with the Working for Water campaign,
- Promoting water conservation and demand management,
- Voluntary reductions in water use by some of the existing lawful users,
- Lowering the assurance of supply taking into account the impacts on the various users,
- Improved operation of upstream impoundments, and
- Lowering the category of preliminary Reserves (only where the Class has not been determined – and with the intention of correcting this under compulsory licensing)

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders need to be informed that the responsible authority is identifying ways in which the available water supplies can be stretched to accommodate all the priority 1 and 2 water uses, as well as to accommodate future beneficial uses that may emerge before compulsory licensing.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- The procedural guideline for water trading
- Links to the Water Conservation / Demand Management Strategies
- The Guide to verification
- Links to the ISP documents

Some tips to assist with this step:

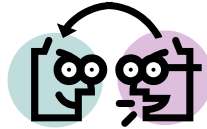
- This process should actively try to find water for highly beneficial uses.
- Less beneficial uses could still be accommodated, but these uses could be asked to trade their water from existing lawful uses.
- The NWRS indicates the amount of water that can be allocated – this process looks at innovative ways in which some of this could be re-allocated before compulsory licensing, or ways in which the amount of allocable water can be increased.

REFERENCE TO LEGISLATION

The following legislation is relevant.

- Section 23 – Outlines that the amount of water that can be allocated as specified in the NWRS.

PROCESSING THE APPLICATIONS THROUGH THE LICENSING PROCEDURE



WHAT IS THE AIM OF THIS PROCESS?

This includes the processing of the applications through a generic seven-step process.

The application is accompanied by the results of the pre-processing which informs the ongoing processing.

The process includes the development of a submission from the regional office or the CMA (when this is delegated) for evaluation by the national office.

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders should be kept informed of how their application is being processed.

Processes should be put in place to allow for this feedback.

Stakeholders must be handled according to *Batho Pele* principles.

Stakeholders need to be informed if their application requires separate authorization by another agency – for example DEAT

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- The Licensing Process
- The Delegation of Powers and Duties
- Links to the ISPs to assess water availability.
- Links to the IDPs to align with regional planning goals.
- Guidelines for establishing user specific General Authorisations

Some tips to assist with this step:

- An application can only be refused for good reason.
- If the application is refused – clear reasons for this must be communicated to the applicant.
- General authorizations can be considered for large numbers of low impact/high benefit users.
- You should consider asking the applicant to advertise the intended use if the potential impact is high.

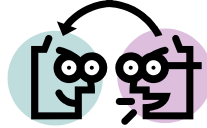
REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

The whole of Chapter 4 Parts 1-7 are relevant, but especially;

- Section 27
- Section 28
- Section 41

IDENTIFY SUITABLE CONDITIONS AND IMPLEMENT



WHAT IS THE AIM OF THIS PROCESS?

This process identifies the conditions that should be attached to the licence or general authorisation.

These conditions can allow for a use to be authorized that would otherwise have to be refused due to the potential impacts.

The conditions should address the concerns raised during the evaluation of the application as well as any agreements made with the applicant to increase the benefits or decrease the potential impacts.

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders need to be informed of the conditions attached to the licence or general authorisation, as well as the need to register their use.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- A Pro-Forma Licence

Some tips to assist with this step:

- Conditions are powerful tools to authorize a water use that would otherwise have to be turned down due to its potential impacts.
- Conditions should address the potential impacts or concerns raised during the evaluation, or any agreements made with the applicant.
- Problems highlighted during the Preliminary Reserve determination process could also be addressed by conditions.
- Conditions should include minimum monitoring requirements.
- Conditions should encourage the most efficient use of water.

REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Section 29
- Section 139 (2)
- Section 148(f)
- Promotion of Administrative Justice Act.

How do you undertake compulsory licensing?



Compulsory licensing is a mechanism to re-consider all the entitlements to use water to ensure everyone is fairly considered for access to water. The rollout of the compulsory licensing process is outlined in the NWRS, but catchments may be reprioritized if the need arises.

The compulsory licensing process is primarily intended to redress race and gender imbalances in the allocation of water, but also considers the potential impacts on existing lawful water uses, as well as the potential socio-economic impacts associated with the re-allocation of water.

The compulsory licensing process converts existing lawful water use into a licence that has been considered in terms of the provisions of the National Water Act. These licences have greater security in use.

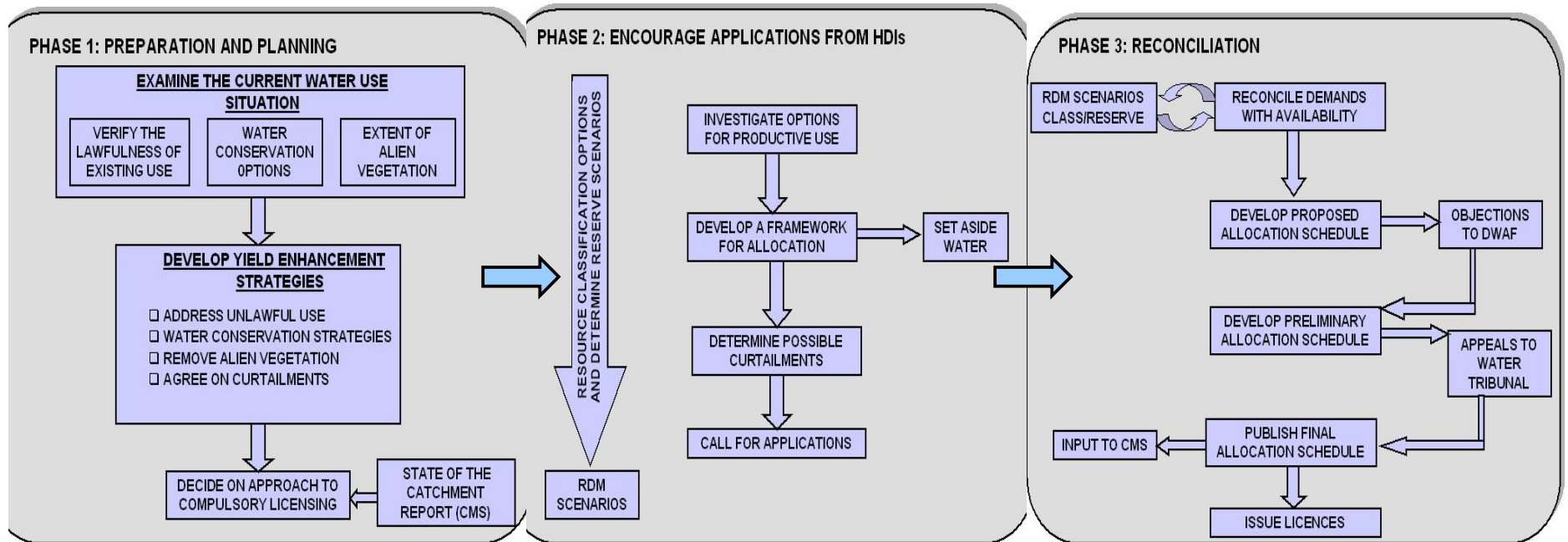
In this respect, the compulsory licensing process may be used to;

- **Achieve a fair allocation in water stressed areas,**
- **To review the prevailing allocations to achieve equity in allocations**
- **To promote the beneficial use of water in the public interest**
- **To facilitate efficient management of water, or**
- **To protect water quality.**

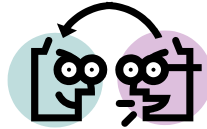
Compulsory licensing should not aim for equal distribution of water, but rather the more equitable distribution of the benefits of water use. Similarly, the process should level the playing field with respect to water use, thereafter water trading, water pricing and market forces could gradually realise more economically beneficial uses of water.

Compulsory licensing can only be undertaken once in any catchment. However, water allocations can be reappraised as a general review of licences, or when they expire.

THE OVERALL PROCESS RECOMMENDED FOR COMPULSORY LICENSING IS AS FOLLOWS



PLANNING FOR COMPULSORY LICENSING



WHAT IS THE AIM OF THIS PROCESS?

Because the compulsory licensing process is resource intensive this process ensures that:

- the regional office has the resources to support compulsory licensing,
- support from national office component can be mobilised,
- all the information for the catchment is collated, and all existing studies in the catchment (for example Preliminary Reserve or Classification studies and yield analyses) are aligned,
- the area to be compulsory licensed is clearly identified.

The idea is to establish a timetable for the implementation for implementation, and to ensure that you have the resources in place.

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders may be involved in the rollout of the process and should be involved in the initial planning. The following stakeholders can be considered as part of a compulsory licensing implementation committee;

- Other government departments (especially local government),
- The CMA (if established),
- Private enterprise that could offer markets for products,
- Representatives of the existing water users or WUAs,
- Representatives of emerging users,
- Nature conservation bodies, and
- Relevant NGOs and CBOs.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

Links to the NWRs, ISPs and IDPs

Some tips to assist with this step:

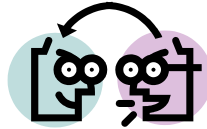
- It is recommended that at least one person who has undergone detailed training in the use of this Toolkit is included at the outset.
- Much of the work may have to be outsourced, an adequate budget should be allowed for this.
- Compulsory licensing should be done at, at least a primary catchment level, however, when demands for emerging users can be met from adjacent catchments, it may be necessary to look at the whole Water Management Area. This will be particularly important if the existing use is a small percentage of the expected demands.
- Under special circumstances compulsory licensing could be considered for smaller areas, provided that water users affected by any reallocation of water are consulted and considered.

REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Sections 43-48 – Deal with the compulsory licensing process

EXAMINE THE CURRENT WATER USE SITUATION (VERIFY THE EXTENT OF ELU)



WHAT IS THE AIM OF THIS PROCESS?

This formulates a better picture of the present water use in the catchment, and concentrates on identifying unlawful use. It also includes an assessment of the potential for water conservation and demand management and the removal of alien vegetation

This helps find water that could be allocated to emerging users and limits the need to curtail existing lawful use.

The verification/validation process consists of the following steps;

1. Estimating the current use of water,
2. Comparing this current use to the registered use on WARMS to confirm if the use is a) Correctly registered, b) Under registered, c) Over registered or d) Unregistered.
3. Comparing the current use to the use in the qualifying period.
4. Assessing if the current use is likely to be unlawful, which may require more detailed investigations, or is likely to be lawful.

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders should be told that the idea of this process is to “find” water for HDI users, and as such will limit the curtailments to existing lawful water users.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- A Guide to Verification

Some tips to assist with this step:

- Verification can be costly and time consuming. The method used should therefore be appropriate to the level of detail required.
- It is strongly recommended that the Guide to Verification is used as a starting point, and that people involved in previous verification studies are consulted.
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REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Sections 32-35 definition of and verifying the lawfulness of existing water use.
- Pay particular attention to Section 35.

DEVELOP AND IMPLEMENT STRATEGIES FOR ENHANCING YIELD



WHAT IS THE AIM OF THIS PROCESS?

This process aims to develop and start implementing strategies to find water. This will help limit curtailments to existing lawful use of water, and will help ensure that the limited water is used in the most efficient manner.

This process includes developing strategies for;

- ❖ Curtailing unlawful use,
- ❖ Voluntary reductions in existing lawful water use,
- ❖ Removal of alien vegetation,
- ❖ Water conservation and demand management, and
- ❖ Improved operation of storage.

One of the most important components of this process is to address unlawful users first. In this respect is recommended that you concentrate on the clearly unlawful users first – and then publicize these successes.

But, remember that it may be easier to curtail a lawful use in compulsory licensing, than to prove some of the use is unlawful on technical grounds.



WHAT STAKEHOLDERS SHOULD KNOW

It should be made clear that the implementation of many of these strategies would be gradual and will be paralleled with the gradual uptake of water by emerging users.

It is recommended that you use stakeholder forums to effect a measure of self policing to identify potential unlawful use.

It is important to indicate to stakeholders that the process of compulsory licensing will continue, but will take consistance of these strategies.



TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- Water Resources Planning Models
- Guidelines for User Specific General Authorisations
- Guidelines for empowerment under compulsory licensing

Some tips to assist with this step:

- Aim your processes at finding sufficient water to meet immediate demands from emerging users. When issuing licences under compulsory licensing – set the period of licenses to fit in with this medium term scenario planning.
- The water that is found must be set-aside to address race and gender reform, and may be authorised as a General Authorisation or could be allocated under compulsory licensing.
- This must include programmes to empower the rural poor to make use of these General Authorisations.
- Where the extent of the unlawful use is not that clear cut, the existing lawful use should rather be curtailed under compulsory licensing.
- As far as possible, the approach should be to get users to apply for verification of volumes that are acceptable to all. Groundwater sources are often ignored as a potential source of water particularly for the rural poor.



REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Sections 53 and 151 – addressing unlawful use of water

DECIDE ON AN APPROACH TO COMPULSORY LICENSING



WHAT IS THE AIM OF THIS PROCESS?

This process helps you make an informed decision on the approach to compulsory licensing.

This process is supported by a "Catchment Assessment Report", which highlights;

- The economic returns from the current use of water.
- Downstream knock on benefits of the water use.
- Current demands for water from emerging users.
- The availability of markets for products produced by emerging users.
- Existing successful and failed attempts to establish emerging users.
- The viability of establishing water use.
- Existing initiatives by other government agencies in the area.

Most importantly, this step serves to announce compulsory licensing



WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders need to understand the water issues in the catchment. The compulsory licensing process should also explained. You should discuss the following issues with stakeholders;

- ❖ The most appropriate way ahead for compulsory licensing,
- ❖ Defining the area for compulsory licensing more accurately,
- ❖ The extent of the empowerment programmes required,
- ❖ What needs to be done to support the productive use of water, and
- ❖ Who should be doing this.
- ❖ How the compulsory licensing process will be rolled out



TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- Guidelines for Public Participation
- Links to the ISPs and IDPs
- Example Catchment Assessment Reports for the Mhlathuze and Inkomati

Some tips to assist with this step:

- If there are significant existing demands from emerging users, and clear opportunities for productive use by these users –compulsory licensing must focus on finding water for these users.
- If there are few demands from emerging users, then the focus of the process would be to empower emerging users to participate in the process, and to help identify opportunities for productive water use by these users.
- If there are opportunities for small-scale use by the rural poor, then you may want to set water aside, and to Generally Authorise this use. This would be paralleled with working with other agencies to support the uptake of this water.
- If there may be significant knock-on impacts on the regional economy – for example in food processing, then the approach may be to open up these opportunities for HDI users, while making sure that curtailments to existing use do not have unforeseen consequences.



REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- This process is not supported by any specific provisions of the Act.
- However, the Act makes reference to public participation, taking proactive steps to address race and gender reform, and supporting the uptake of water by these groups.
- Promoting the most beneficial use of water in the public interest is one of the key principles of the Act.

IDENTIFY OPPORTUNITIES FOR PRODUCTIVE USE



WHAT IS THE AIM OF THIS PROCESS?

This process helps identify what opportunities exist for HDIs to generate viable and sustainable incomes from water use.

This process examines the potential for productive use of water in the catchment in the light of the components outlined below, and then in discussion with stakeholders, attempts to fill in any gaps that may exist.

- The mandate to the land.
- The financial resources.
- Technical skills and extension support.
- Markets for the products of the water use.
- Institutional arrangements .
- Planning skills.
- Security for water using equipment
- Enthusiasm.
- Sense of catchment

(Studies have shown that the markets for the use of the water appear to be the key element in productive use.)



WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders should be made aware of the elements that make up the capacity to make productive use of water, and where to get help to ensure that all these elements are in place.

Other government agencies are critical in this process, as much of the mandate to do this lies outside the Department of Water Affairs and Forestry.

Large commercial enterprises that could offer markets for the products could also be approached.

Stakeholders should also be made aware of the fact that they can identify their own opportunities for productive use.



TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- Financial assistance to Resource Poor Farmers
- Financial assistance available to the poor. (an analysis of the grants available throughout government.
- Links to the IDPs
- Guidelines for User Specific General Authorisations

Some tips to assist with this step:

- Large commercial enterprises that take on raw materials should engaged with respect to taking on the products of small scale water use. Food processing enterprises are an obvious target, but food retail and other enterprises should also be targeted.
- Opportunities for these enterprises to support the establishment of productive use by HDIs should be explored.
- The Department of Land Affairs needs to be engaged with respect to making land available.
- Similarly, the Departments of Trade and Industry and Agriculture could be approached to ensure that the relevant extension support can be made available.
- You should familiarise yourself with all the grants that may be available to the poor.
- Provincial and local plans for development will also indicate what water uses would be



REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Sections 27 and 28 outline how water use must be evaluated.

DEVELOP A DRAFT WATER ALLOCATION PLAN



WHAT IS THE AIM OF THIS PROCESS?

This develops a framework for allocating water, (in the absence of a CMS) and /or other information. The following should be included in the draft allocation plan;

- Water uses that may be supported.
- Water that may be set aside and/or Generally Authorised.
- Possible curtailments to existing lawful use, and the point at which Severe Economic Prejudice may occur.
- Criteria that would be used for evaluating applications.
- Trading options between larger commercial enterprises.
- A programme for gradual re-allocation of water.
- Benefits to regional stability and growth offered by supporting particular allocations.
- Cautions for curtailing some users to avoid knock on effects on the regional economy.
- The timeframes for compulsory licensing,
- Where applications could be submitted.

WHAT STAKEHOLDERS SHOULD KNOW

The draft Water Allocation Plan must be developed together with stakeholders. This may require some iterative development of the framework. Once developed the framework needs to be widely distributed and needs to be in an accessible form (i.e. with respect to language, content and other media for communication.).

Stakeholders should be informed of the likely water resource constraints, and should be encouraged to come up with innovative solutions to these problems.

Stakeholders should be informed where water use has been/ will be generally authorised.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- A Guide to Developing a CMS
- A Guide to minimizing the potential for compensation claims
- A Guide to Empowerment
- A Guide to establishing GAs
- The Framework for Water Allocation Reform

Some tips to assist with this step:

- This process could reduce the complexities of the remaining steps, and the likelihood for legal action.
- This process can be facilitated by developing several options , which can be discussed with stakeholders.
- This process should be based on broad sector based allocations and possible curtailments in each part of the catchment.
- Agreements on viable curtailments at this point could limit the possibility of objections and appeals at a later stage. These could be based on 1) Agreed curtailments, 2) Calculated curtailments required to satisfy emerging demands, 3) Detailed analysis of the likely economic impacts on the individuals and/or regional economy.
- Iteration with the various Reserve scenarios is required for this step.
- **The development of the WAP must be**

consistent with the principles in the Framework for Water Allocation Reform

REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- This process is not required by legislation, but is recommended to provide a framework to guide stakeholders when the call for licences is made.
- Section 9e of the NWA indicates that a CMS must contain Water Allocation Plans. If a CMS is in place before compulsory licensing this will form the basis of this step. If a CMS is not in place – a draft water allocation plan must be developed – which could be incorporated into the final plan once the CMS is prepared.

CALL FOR LICENCE APPLICATIONS



WHAT IS THE AIM OF THIS PROCESS?

This is the formal call for licence applications as required by the NWA. This notification must;

- Identify the water resource and water use to be subjected to CL
- State where application forms may be obtained
- State the address to which licence applications are to be submitted
- State the closing date for licence applications
- State the applicable application fee
- Provide the appropriate information as the responsible authority considers appropriate

Special efforts may be required to bring the notice to the attention of the rural poor. These efforts can be guided by the draft water allocation plan described in the previous step.

It may be necessary to provide support to the rural poor to apply, at venues closer to them.



WHAT STAKEHOLDERS SHOULD KNOW

It is important that all existing and emerging users of water are informed about the call for licences, and special communications processes may have to be implemented to make sure all potential water users are informed of the call for licences, and that they are empowered to make application.

Stakeholders that are generally authorised need to be informed of this.



TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- A Guide to Empowerment

Some tips to assist with this step:

- The number of applications received from HDI users will determine the success of the compulsory licensing process.
- All applications must be processed equally, and if HDI users have not applied correctly or if their use is not viable, every effort should be made to assist these applicants. Particularly if these are consistent with the allocation framework
- It is counter-productive to invite HDI users to apply for licences only to refuse these based on Section 27.
- Generally, too many applications would be better than too few.
- The draft water allocation plan should provide a guide for applications, is means that if particular uses of water have been identified for HDI users in the framework – then special efforts may be needed to get applications in from these users.
- The CMA, WUAs, Water Boards as well as local government agencies can be used to support the call for licences, the collection of these as well as providing support to the applicants.
- A different application form may need to be developed for applications under compulsory licensing



REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Section 41 – Procedures for licence applications
- Section 43 – Call for applications under compulsory licensing

COMPILE A PROPOSED ALLOCATION SCHEDULE



WHAT IS THE AIM OF THIS PROCESS?

This reconciles applications received, General Authorisations, and any water that must be set aside for future use, with the availability of water. The following steps should direct this process;

- Water must be assigned to the Reserve and for International Obligations.
- Water must be assigned to strategic users.
- Water must be assigned to existing licence holders. – Thereafter;
- Water must be allocated to the applicants to redress the effects of past discriminatory legislation.
- Water may be allocated to existing lawful users of water who have applied for this water use.

This levels the playing field so that water trading and pricing can gradually result in a shift towards the most economically beneficial uses. Stakeholders raise objections to the proposed schedule with the Department.

This process must be guided by



WHAT STAKEHOLDERS SHOULD KNOW

The stakeholders need to have access to the proposed allocation schedule. It may be necessary to provide simplified explanatory notes indicating what allocations were made, and how these compare to the applications made and the existing lawful use of water. This means individual applicants cannot only see how their application was treated, but also how they fared against the other applications.

The Department should, in addition to informing every individual applicant, consider publishing the schedules and explanatory notes in the same venues used to collect applications.

Stakeholders also need to be informed of their right to lodge an objection with the Department.

Stakeholders need to be informed that the allocation process was guided by the draft Water Allocation Plan, and that applications consistent with this plan can be processed quickly.



TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- Tools that help determine whether users may suffer severe economic prejudice
- A report on economic considerations in water allocations

Some tips to assist with this step:

- Section 27 needs to be applied to applications.
- If the re-allocation of water may have severe impacts on the regional economy some new applicants need not get the water applied for.
- Re-allocating just the water required to establish a viable enterprise – but to promote water trading to meet full demands.
- Stakeholders may agree to compromises in order to allow reconciliation. – Intractable reconciliation problems could therefore be put to the stakeholders for potential solutions.
- Water can be put aside for future use – particularly if the response from emerging users has been poor and to deal with successful objections
- If it is possible to reconcile all the demands after reasonable curtailments to existing lawful users, excess water may be auctioned off. This will promote the most economically beneficial uses of water.

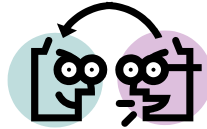


REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Section 45 – Proposed allocation schedules
- Section 27 considerations for licence applications.

COMPILE A PRELIMINARY ALLOCATION SCHEDULE



WHAT IS THE AIM OF THIS PROCESS?

While the proposed allocation schedule must be based on the likely impacts on user sectors and the draft water allocation plan, the preliminary allocation schedule can respond to impacts on individual users.

It allows the Department to respond to objections before they are submitted to the Water Tribunal. Applicants must be given at least 60 days to raise objections.

After considering all the objections a Preliminary Allocation Schedule must be prepared and published as per **Section 46 (1)**. Only those applicants who lodged an objection to the proposed allocation schedule may lodge an appeal to the Water Tribunal. These appeals must be lodged within 30 days of the publication in the Gazette.

The Department must amend the preliminary allocation schedule as directed by the Water Tribunal.

WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders (and specifically the applicants) need to be informed of where the preliminary schedules may be viewed.

It is important to indicate that only those applicants who raised objections may appeal to the Water Tribunal. Objectors therefore need to be informed of the procedures for raising an appeal, where these can be lodged, as well as the time periods allowed.

TOOLS AND TIPS

Key references and tools, included in the Appendices are as follows:

- Tools to help determine where irrigation users may suffer severe economic prejudice.

Some tips to assist with this step:

- The idea is to look at the merits of each individual case, in relation to the generic decisions made to develop the proposed schedule.
- Objectors could be asked to indicate why their particular circumstances differ from the generic decisions made in the development of the draft Water Allocation Plan.
- Applicants raising objections could be informed of the options of using water trading, or of installing water conservation measures.
- It may also be important to indicate that curtailments may be gradual and will be paralleled with the gradual uptake of the water by the emerging users.

REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Section 46 Requirements of the Preliminary Allocation Schedule and its publication.
- Section 148 Appeals to the Tribunal

COMPILE THE FINAL ALLOCATION SCHEDULE AND ISSUE LICENCES



WHAT IS THE AIM OF THIS PROCESS?

This is required by **Sections 47 & 48** of the NWA, and results in the compiling of a final allocation schedule, and issuing the licences.

This converts all the existing lawful water uses (which are not time bound and have not been evaluated against **Section 27** of the NWA), to a licence with associated conditions and which are time bound.

The final allocation schedule is prepared either;

- If no appeal against the preliminary allocation schedule is lodged
- As directed by the Water Tribunal following the appeals process.

The Department must publish a notice indicating that the preliminary schedule has become final, where it may be inspected.

If appeals are unsuccessful, the applicant may be issued a licence for the curtailed use, and may then lodge an appeal for compensation under Section 22 (6-10).



WHAT STAKEHOLDERS SHOULD KNOW

Stakeholders (and specifically the appellants) need to be informed of where the final schedules may be viewed. All applicants also need to be issued with their licences.

In cases where the applicant may not be familiar with the language used in the licence, special efforts may need to be made to ensure the applicant understands the reason for, and the implications of the conditions specified.

This could be particularly important where the use has been Generally Authorised.



TOOLS AND TIPS

Some tips to assist with this step:

- The conditions that can be attached to licences after compulsory licensing should provide for a measure of security to the applicants, but can also allow for the gradual curtailments of existing lawful water use.
- Those applications consistent with the draft Water Allocation Plan can be finalised quickly.



REFERENCE TO LEGISLATION

The following provisions of the NWA are relevant.

- Section 47 – Finalise the allocation schedule
- Section 48 – Licences replace existing lawful use
- Section 139 (2d) – Update the WARMS database
- Section 22 (6-10) Compensation claims.

