



DEPARTMENT: WATER AFFAIRS AND FORESTRY
REPUBLIC OF SOUTH AFRICA

**TERMS OF REFERENCE & GUIDELINES
FOR
STREAM FLOW REDUCTION ACTIVITY
LICENCE ASSESSMENT ADVISORY
COMMITTEES**

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i. ACRONYMS USED

| | |
|------|---|
| AC | Advisory Committee |
| CMA | Catchment Management Agency |
| NWA | National Water Act (Act No. 36 of 1998) |
| SFRA | Stream Flow Reduction Activity |
| WMA | Water Management Area |

1. THE CONTEXT

The National Water Act (Act No. 36 of 1998) requires the licensing of stream flow reduction activities (SFRAs) (Section 36). A stream flow reduction activity is "... any activity (including the cultivation of any particular crop or other vegetation) ... [that] ... is likely to reduce the availability of water in a watercourse to the Reserve, to meet international obligations, or to other water users significantly" (NWA section 36(2)). By implication, the definition of a SFRA is limited to land-based activities (see introduction to Chapter 4 Part 4 of the NWA). Stream flow reduction activities are classified amongst 11 different forms of water use with the NWA (Section 21).

Although only commercial plantation forestry is currently identified in the Act as a SFRA, others will be added to this list.

The policy and procedure for the licensing of a land use activity that reduces stream flow is set out in the document: "Water-use Licensing – the Policy and Procedure for stream flow reduction activities". The document consolidates current policy and practice while taking account of the implications of the provisions of the National Water Act (NWA). The approach adopted is based on the fact that within any one water management area as defined in the Act, SFRAs are among several kinds of water use that must all be treated fairly in the process of allocating and licensing water use.

2. NEED TO ESTABLISH LICENCE ASSESSMENT ADVISORY COMMITTEES FOR SFRAs

Since the various changes to the Afforestation Permit System were instituted in 1995, the Afforestation Permit Review Panels, established under the Forest Act (Act No. 122 of 1984), have successfully acted as representative forums, advising the Department on permit applications. The decisions to approve or refuse such applications are based on the recommendations made by these Review Panels.

Further changes to the Afforestation Permit System are foreseen in the near future, requiring the transformation of the Afforestation Permit System into a reconstituted system for licensing all stream flow reduction activities (SFRAs). In terms of the National Water Act of 1998 (NWA), existing forums, such as the Review Panels, are to be reconstituted as Licence Assessment ACs. Chapter 9 of the NWA provides Advisory Committees with powers and functions determined by the Minister and supported by regulations. These committees may be empowered by appropriate delegations in terms of the NWA.

Simultaneously, the functions of the proposed SFRA Licence Assessment Advisory Committee will have to be widened, extending their capacity to

making recommendations on the water-use licensing of all SFRAs, when deemed to be such activities by the Minister.

3. PURPOSE OF THE ADVISORY COMMITTEES FOR SFRAs

The primary purpose of the Licence Assessment ACs is to review permit/licence applications for SFRAs and to make recommendations to the Minister, or delegatee whether to approve or refuse such applications.

The Licence Assessment ACs for SFRAs will operate according to the Department's latest policy and guidelines for the water-use licensing of stream flow reduction activities.

Important statutes to be integrated into the various procedures can include, but are not limited to: the Local Government Transition Act (Act No. 61 of 1995), Development Facilitation Act (Act No. 67 of 1995), The Environment Conservation Act (Act No. 73 of 1989), Conservation of Agricultural Resources Act (Act No. 43 of 1983), National Environmental Management Act (Act No. 107 of 1998) and the National Forests Act (Act No. 84 of 1998). These may vary in accordance with Provincial legislation and requirements.

The Strategic Environmental Assessment, currently undertaken by the Subdirectorate: Stream Flow Reduction Allocations within the Directorate: Water Utilisation, aims to streamline the procedure for processing SFRA licence applications. The information gathered through the Strategic Environmental Assessment will also be transferred to CMAs, further facilitating the water resource management of catchments.

Although it would be ideal for the Committees to operate on a standardised basis, it is recognised that there are provincial differences that require for each region or Water Management Area to develop their own assessment criteria, through modification of the generic procedure set out for SFRAs, according to those local requirements.

4. DUTIES AND POWERS OF THE COMMITTEES

The Licence Assessment AC for SFRAs plays an important advisory role in the overall licence application and allocation process. (For the overall process, please refer to the Department's latest draft policy and guidelines on water-use licensing for stream flow reduction activities.)

4.1 The Committee's role in Scoping

The DWAF office sends copies of the scoping questionnaire and accompanying documents to all members of the Licence Assessment AC and to interested and affected parties.

Members respond with comments and requests for additional information within 10 days. Members may request an extension from the DWAF office, which however must not exceed 30 days. If a Committee member does not submit a response, the Chairperson of the Committee will assume that he or she has no serious objections to the proposal as stipulated in the application.

The DWAF office co-ordinates and executes a site inspection by the members of the Committee and interested and affected parties. This inspection allows all parties to discuss the various aspects of the proposed activity with the applicant, including mitigation of the impacts of the activity, and the alternatives to it. This must be done within 14 days of receiving the application, unless the Chairperson agrees to an extension because of the complexity of the case.

Members and parties have a further 10 days to send written comments and requirements with respect to the scoping to the DWAF office.

The DWAF office provides copies of the scoping report to Licence Assessment AC members.

The Licence Assessment AC meets to consider this report. When it considers the report it must pay close attention to the outputs of the SFRA Strategic Environmental Assessment, the catchment management strategy for the area, the Strategic Environmental Management plan for the province, and Integrated Development Plans or their equivalents.

If the Licence Assessment AC decides that a full Environmental Impact Assessment is needed then the DWAF office requests the applicant to commission an impact assessment as required in terms of the ECA. The Licence Assessment AC will advise the applicant on the scope of the Environmental Impact Assessment. The Licence Assessment AC considers the full Environmental Impact Assessment as soon as the applicant is able to have it completed.

4.2 The Recommendation Process

The Licence Assessment AC considers the application on the basis of the scoping report or of the Environmental Impact Assessment, whichever is applicable.

In considering the application, it must apply the criteria and principles outlined in Section 6 of the policy and guidelines for water-use licensing of stream flow reduction activities. The Licence Assessment AC gives the applicant and any other interested parties the opportunity to make representations on the application, according to Section 27(1) and 41 (2)(d) of the NWA.

Should the Licence Assessment AC not find in favour of the application it must set out its reasons according to the relevant criteria and present the case for the preferred alternative.

Should the Licence Assessment AC find in favour of the application it should establish reasonable minimum standards for the activity, as required by the NWA, the National Forests Act, the Environmental Conservation Act and the Conservation of Agricultural Resources Act. These should be proposed as conditions to be placed on the licence (Section 29 of the NWA).

As far as possible, the Licence Assessment AC should make its recommendations on the basis of consensus. If consensus cannot be reached, the Chairperson should adopt the majority view, but carefully note and report the minority opinions on the recommendation. All recommendations should spell out the biophysical, social and economic consequences of the decision.

The Licence Assessment AC submits its recommendations to the decision-making authority, documenting its reasons, together with a summary of procedures followed, and copies of all supporting documents.

4.3 Review of the Licence

The Licence Assessment AC reviews the licence and its conditions once every five years.

Once again, the Licence Assessment AC must apply the criteria in Section 6 of the Policy and procedure for licensing stream flow reduction activities and hence the considerations of the NWA in conducting its review.

5. APPOINTMENTS TO THE COMMITTEE, INCLUDING CHAIR AND DEPUTY CHAIRPERSON

5.1. Composition of the Committee

The composition of each Licence Assessment AC will vary somewhat from one province to the next, but membership of each should reflect the following:

- i. Representative from the appropriate Catchment Management Forum/ Committee/ Agency.
- ii. Department of Water Affairs and Forestry – Water Resources component
- iii. Department of Water Affairs and Forestry – Forestry component
- iv. Provincial Department of Economics
- v. Department of Environmental Affairs and Tourism
- vi. Provincial Environmental/ Conservation Authority
- vii. Department of Agriculture
- viii. Provincial Department of Agriculture

- ix. Department of Land Affairs
- x. Provincial Department of Local Government and Housing
- xi. The organised forest industry: South African Timber Growers Association (SATGA), Forest Owners Association (FOA), as well as a representative of community forestry/ woodlots.
- xii. Appropriate organs of organised agriculture, representing crops or other forms of land use which have been declared as SFRAs and are subject to licensing procedures based on licence applications. Typically these agricultural activities might include sugar, maize, fibre crops, indeed any form of land use which is seen to use more water than the natural example it replaces.
- xiii. Environmental and development Non-Government Organisations (NGOs), such as Wildlife and Environmental Society of South Africa. NGOs must be selected according to their relevance and ability to impartially contribute to the Committee.
- xiv. Any independent reviewers and experts, e.g. community representatives, appointed ad hoc as required

The appropriate Regional Director: DWAF will advise the Minister or delegated official on the composition of the Licence Assessment AC within the region/ Water Management Area. It is the responsibility of the Regional Director to ensure that the Licence Assessment AC consists of a cross-section of interested and affected statutory parties, as well as the inclusion of non-Government bodies/ organisations representing and having interests in SFRAs, and non-Government bodies representing social and environmental interests, or other body or person who ought to serve on it. Ideally the Committee should be comprised of not less than 9 and not more than 20 members.

DWAF Head Office will play a co-ordinating role among all Licence Assessment ACs to ensure congruency and uniformity between all related Licence Assessment ACs.

5.2 Representivity

In terms of section 99(7)(b), the Licence Assessment ACs must represent various relevant interests. According to section 2 of the NWA, when suitable institutions are established, they should ensure that they have appropriate racial, gender and community representation as far as reasonably possible.

The Chairperson may nominate more than one person from any group listed in the composition of the Licence Assessment AC, should it be desirable. However, the Licence Assessment AC should be kept as small and as capable as possible, so that quick yet informed recommendations can be made. While remaining representative in terms of race, gender and community, the Committee must display the necessary expertise required to exercise its powers and perform its duties effectively (section 99(7)(c)).

It is essential that representatives of the sectors and interests attend the meetings on behalf of the sector for which they have been elected and do not exploit this position for self-gain. If there is reason to believe that a representative is not acting in the interest of his/ her constituency but rather in his/ her own interest or for any other motive, s/he may be requested to step down from membership by the Minister or delegated official, allowing for another more suitable person from that interest group to fulfil that role.

5.3 Membership

Any changes in membership must be negotiated with the Chairperson. If a member cannot attend a certain meeting, with at least one week's notice and with permission of the Chairperson, a nominated and acceptable alternate with the full member status and privileges may be sent, so long as such a replacement is fully informed on all matters pertaining to that meeting, and is of such rank as to be in a position to take immediate important decisions with minimum referral to any senior. The attendance of a replacement member must not occur more than twice in succession. Meetings will be scheduled approximately once every six weeks, depending on the workload, and members who miss more than four meetings in one year, will be requested to be replaced by an alternate member of their organisation, unless there are extenuating circumstances.

Observers/ advisors may attend the meetings with permission from the Chairperson, in consultation with at least one other Licence Assessment AC member. No powers are vested in such observers/ advisors. The Chairperson may restrict the number of observers/ advisors to avoid making the Committee clumsy and inefficient.

5.4 Chairperson

The Regional Director: DWAF or the appropriate regional (water resources) DWAF official delegated by the Regional Director shall serve as the chairperson of the Licence Assessment AC. The Chairperson should maintain a balanced, objective and transparent standpoint, and be guided by the provisions/ requirements of the NWA and any other related legislation.

It is the responsibility of the Chairperson to effectively summarise the previous dealings with each case as a means of introduction to the proceeding discussions. This will ensure that all attendees will have a greater understanding of the case at hand. The Chairperson should also summarise the outcome or conclusion after each discussion for purposes of a true reflection of that outcome for the minutes.

5.5 Deputy Chairperson

The Deputy Chairperson will be a DWAF official, nominated to that role. The Deputy Chairperson will take over functions in the absence of the Chairperson.

5.6 Voting powers

The Licence Assessment AC will do its utmost to achieve consensus on any issue. All recommendations and objections made at the meeting must be noted and recorded. When making a decision the decision-making authority should take account of all the views presented with regard to an application.

5.7 Veto powers

Although the decision to approve or refuse a licence remains the Minister's or delegated authority's responsibility, good reason must be shown if a recommendation from any Licence Assessment AC is not accepted. This situation should be avoided to instil certainty in the work of the committee.

6. MEETING FREQUENCY

The meeting frequency of the existing Review Panels are governed by 30 days + 30 days, hence every 4-6 weeks. However, meetings can be postponed if no new applications are in process.

Once further types of SFRA are declared, meetings for each type of SFRA will be scheduled consecutively so they follow on directly from each other. This is to keep travel costs and other inherent costs of the core team to a minimum. A hypothetical example: Day 1 will deal with all applications around SFRA 1; Day 2 will deal with SFRA 2 in the morning and SFRA 3 in the afternoon. The core team will consist of members required for all SFRA Licence Assessment AC meetings, such as DWAF, Department of Environmental Affairs & Tourism, Department of Agriculture, etc. Members representing the interest of SFRA 1 need only to attend that part of the meeting relevant to their interests.