

## **TERMS OF REFERENCE FOR A SOLICITED WRC PROJECT**

<b>THEME</b>	<b>Water Availability</b>
<b>TITLE</b>	<b>Research, innovation and implementation support for compulsory licensing in the Kaap River catchment, Mpumalanga</b>
<b>TOR NUMBER</b>	<b>1010038</b>

### **Rationale**

The National Water Act (NWA) enables the Minister of Water and Sanitation to initiate a process of compulsory licensing to review, reallocate, or confirm existing water use entitlements in a particular area. Sections 43-48 of the NWA set out the framework and triggers for compulsory licensing. These include areas where the demand for water exceeds, or will soon exceed, the available supply, or where it is necessary to protect the quality of water resources. Compulsory licensing also provides a mechanism for reviewing and addressing inequalities in how water is allocated between existing users, or to make provision for the entrance of new users.

Ultimately, it provides a tool for the Minister to facilitate more efficient water resource management and use, protect the quality of water resources, and address problems of over-allocation and inequitable allocation. This enables the country's limited water resources to be allocated in a way that redresses race and gender inequalities, addresses poverty, generates economic growth, creates jobs, promotes social stability and stimulates investor confidence.

Compulsory licensing is separate from, but not unrelated to, processes for validation and verification (V&V) of water uses that were in place two years immediately before the NWA came into effect. The primary

purpose of V&V is to measure the extent of Existing Lawful Use (ELU) of water, as defined in sections 32-35 of the NWA. Validation is a technical process to confirm how much water was being used in the qualifying period, whereas verification is a legal process to determine the lawfulness of this water use. Compulsory licensing is a systematic process for requiring all ELU holders in a particular area to apply for conversion of their existing entitlement into a water use licence regulated under the NWA. Besides these users, compulsory licensing also applies to anyone using water under any relevant General Authorisation issued under section 39 of the NWA, or who is using water without any authorisation. It does not apply to small-scale uses of water (e.g. domestic, gardening, recreational) that are listed in Schedule 1 of the NWA, nor to those users who already have valid water use licences issued by the Department of Water and Sanitation (DWS) under the NWA.

The three compulsory licensing processes concluded to date in other catchments in the country have proven to be costly and complex to implement. There is a need to examine how the process can be expedited and simplified within the parameters set down in the NWA. There is an equally strong need to examine how to enhance the transformative outcomes of compulsory licensing as a tool for bringing about more equitable sharing of water resources. Potential exists for the introduction of innovation in aspects including process automation and the participatory dimensions of compulsory licensing.

The Water Research Commission (WRC) is working with DWS to accelerate the implementation of compulsory licensing. The scope of work outlined in these terms of reference focuses on the provision of specialist support to DWS and the Inkomati-Usuthu Catchment Management Agency (IUCMA) for the implementation of compulsory licensing in the Kaap River catchment (X23) in Mpumalanga Province (Appendix A). This will entail supporting implementation of the process prescribed in sections 43-48 of the NWA, alongside an embedded research and evaluation approach that continually feeds into the Kaap River catchment compulsory licensing and extracts lessons for future compulsory licensing processes in other catchments.

## **Objectives**

### ***General***

Provide research, innovation and implementation support for compulsory licensing in the Kaap River catchment.

## **Specific**

### **1. Enable the full potential of compulsory licensing to bring about more equitable sharing of water resources**

The ability of compulsory licensing in the Kaap River catchment to give effect to the NWA objectives for equity and redress requires particular attention. This will include identifying current and future obstacles in the Kaap to more equitable allocation of water and developing solutions that can be pursued through compulsory licensing, in consultation with stakeholders. Attention must be given to the full range of enablers to allow Historically Disadvantaged Individuals (HDIs) to take up and use water productively. This will involve examining current allocations to HDIs in the Kaap that are not being used to full potential, and how this can be addressed within and beyond the compulsory licensing process.

This objective also covers the identification of current or prospective HDI water users and building their capacity to participate meaningfully in the compulsory licensing process. This includes provision of support to HDIs to compile and submit licence applications. Inclusion of innovative mechanisms for capacity building and participation is encouraged. At a minimum, this must include the sessions listed below:

- Water user engagement session prior to publication of the call for compulsory licensing
- Provision of technical and administrative support during the water use licence application stage
- Water user engagement session prior to the gazetting of the Proposed Allocation Schedule
- Water user engagement session prior to the gazetting of Preliminary Allocation Schedule

The costs of catering, translation of materials into local languages and interpretation into local languages in meetings must be included in the project budget.

### **2. Support the implementation of compulsory licensing in the Kaap River catchment**

The formal compulsory licensing process begins with gazetting the call for applications for licences, followed by evaluating applications, developing the allocation schedules prescribed in the NWA, and issuing water use licenses. At least 650 licence applications are expected. This includes certified holders of ELU entitlements but excludes water users covered under General

Authorisations and those using water without any authorisation. Administrative, technical and research support is needed at each of these stages, including:

- Undertake an analysis of all interested and affected parties, develop a plan for reaching these parties and publish the relevant gazette notices and other advertisements, in addition to other actions identified in the plan. Provision must be made for communication and interpretation in siSwati, isiZulu, Afrikaans and English.
- Assemble a team of technical specialists to support the IUCMA and DWS to screen and evaluate licence applications, develop allocation schedules, and issue licences. This will include developing draft licences and administering any objections and appeals received during the process. Expertise must include, but is not limited to:
  - Hydrology (surface and groundwater)
  - Agronomy
  - Economics
  - Legal
  - Environmental science
  - Project management/administrative
- Provide project management and administrative support
  - Coordination of stakeholder engagements with DWS and IUCMA
  - Secretariat for project steering committee and other management structures
  - Record keeping e.g. project management reports, minutes of meeting and stakeholder engagements
  - Meeting logistics (not necessary to budget for venue hire)
  - Coordination between the various technical specialists involved in the project
  - Reconciliation of licence application fee payments

### 3. Analyse the financial implications of the proposed allocations

Activities under this objective must include:

- Financial/revenue analysis of the implications of the proposed allocations for revenue generated through the Water Resource Management Charge and other relevant raw water use charges
- Further investigation of trade-offs that may arise between achieving a more equitable allocation of water in the catchment and the potential impacts of this re-allocation on

revenue from raw water use charges. Building on this analysis, approaches must be developed for managing and mitigating potential trade-offs between equity/redress and the financial sustainability of water resource management institutions. These approaches should be applicable in the specific context of the Kaap and in any other catchments where compulsory licensing may be undertaken in future.

4. Build capacity within DWS and IUCMA

Implementation of the DWS Water Allocation Reform Programme is dependent on the establishment of a core of suitably capacitated staff in DWS and the CMAs. Consequently, a clear and detailed capacity building programme is needed that includes specific actions to enable ongoing capacity building throughout the lifespan of the project. This programme should include skills that are necessary to implement compulsory licensing, as well as for enabling the sustainability of the outcomes of compulsory licensing.

5. Investigate the review of existing licences within the context of compulsory licensing

Section 49 of the NWA makes provision for the review of licences and the amendment and substitution of their conditions. It further provides for a “general review process” but does not go into detail of what this translates to in practice. Research is required to:

- Compile all existing formal and informal guidance on the review of licences, and specifically general review processes
- Examine the opportunity provided by compulsory licensing to initiate the general review of licences in the affected area, as a means to harmonise the conditions of existing licences with new licences issued through compulsory licensing.
- Provide recommendations on the general review of licences within the context of compulsory licensing
- Use the Kaap as a case study by analysing the existing licences in this catchment and identifying potential amendments to their conditions that could be effected through a review process. There are approximately 43 existing water use licences issued in the Kaap.

6. Evaluate the outcomes of compulsory licensing in the Kaap

An approach of continuous learning and improvement is required that feeds into the Kaap compulsory licensing process and extracts lessons for future compulsory licensing processes.

## Deliverables

The following deliverables are indicative and may be tailored to suit the proposed approach:

1. Inception report including a project implementation plan, gap analysis and risk assessment
2. Report on current and potential future water use by HDIs in the Kaap catchment
3. Water user engagement sessions
4. Stakeholder analysis and communication plan
5. Gazette notices (call for licence applications, publication of allocation schedules)
6. Progress reports on evaluation of licences, development of allocation schedules and processing of objections and appeals
7. Draft water use licences for all successful applications received through compulsory licensing
8. Report on review of existing licences within the context of compulsory licensing
9. Report on financial implications of proposed allocations
10. Capacity building programme for DWS and IUCMA staff
11. Final report

## Notes:

1. Proposals must be submitted online via the WRC [Business Management System](#) (BMS). A user guide to BMS is available [here](#). For technical queries regarding BMS, contact [bms-support@wrc.org.za](mailto:bms-support@wrc.org.za). **Closing date for submission of proposals is 16:00 on 12 August 2025.**
2. Prior to capturing a proposal on BMS, proposers should familiarise themselves with the [guidelines for submission of research proposals](#). Please take note of the section in the guidelines on budgeting.
3. Project team composition must reflect the full range of experience and skills necessary to undertake this assignment. Proposals must include the details of all team members, their experience and expertise relevant to this assignment and their role in the project.
4. Contact person for enquiries on these terms of reference: John Dini ([johnd@wrc.org.za](mailto:johnd@wrc.org.za))

## Time Frame:

Planned project start date: 1 October 2025

Duration: 24 months

## Total Funds Available:

R4,750,000 including VAT

## Appendix A

### Compulsory licensing in the Kaap River catchment

Located in the Inkomati-Usuthu Water Management Area in Mpumalanga, the Kaap River is a major tributary of the Crocodile River, which in turn joins the Komati River at the border with Mozambique to form the Incomati River (Figure 1).

The Kaap River catchment is deemed to be stressed, with demands for water regularly exceeding the yield that the catchment is able to supply sustainably. This situation is compounded by the lack of large dams in the catchment, which forces most users to rely on abstraction of water directly from the river. Imbalances in supply and demand, especially in the dry season, result in severe restrictions being imposed annually and conflicts between water users. It is also proving difficult to adequately implement the approved ecological water requirements for the catchment, which are vital to maintain water resources in the desired condition.

Transfers of water into the Kaap catchment from the Lomati and Shiyalongubo dams in the upper reaches of the Lomati River have not resolved these constraints. The feasibility of a new large dam (the Mountain View Dam) at the bottom of the catchment is currently being explored, but even this will not alleviate all the problems being experienced.

As a result, compulsory licensing has been identified as an appropriate mechanism for resolving these water resource management challenges, by bringing supply and demand back into balance, making provision for the Ecological Reserve and addressing inequalities in access to water.

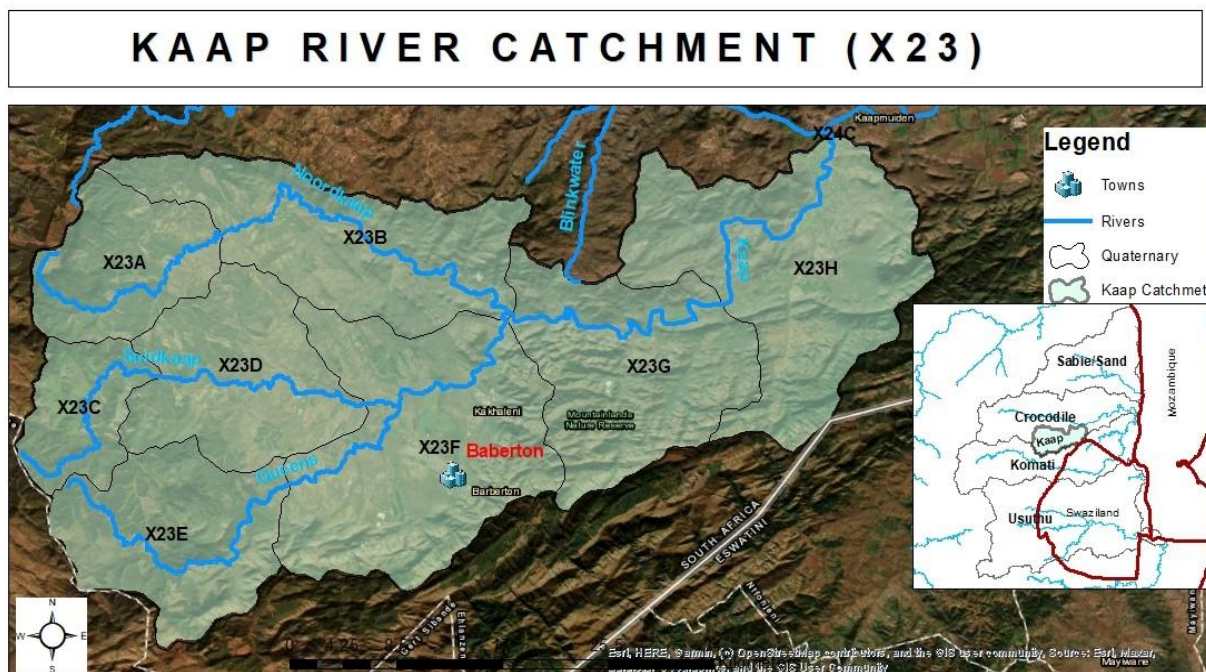


Figure 1: Quaternary catchments X23A-H comprising the Kaap River tertiary catchment