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INTRODUCTION

BUSA is a confederation of business organisations, including chambers of commerce and industry, professional associations, corporate associations, and sectoral organisations. It represents South African business on macro-economic and high-level issues that affect it at the national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development, and transformation and create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As a principal representative of business in South Africa, BUSA represents the views of its members in several national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

BUSA provided comments on the draft WUL templates for mining and industry on 19 November 2021, and for irrigation on 4 November 2021 for consideration by the DWS. The final templates have now been published for implementation from 1 July 2022.

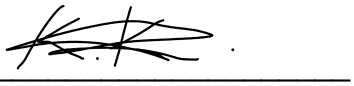
BUSA ISSUES OF CONCERN

During review of the draft templates, BUSA members highlighted significant concerns on the amended templates. It is noted that many of the comments have been incorporated into the final templates, but various clauses remain problematic for implementation. It is disappointing that the opportunity to workshop the templates, as agreed at the BUSA DWS Bilateral meeting on 8 February, was not held as this would have clarified the concerns of business and mitigated potential issues arising with their implementation. Key issues of concern are included in the attached appendix.

In the absence of further engagement, BUSA would appreciate receiving a comment and response document to understand why some of the submitted comments were not considered by DWS.

CONCLUSION

BUSA is of the opinion that the templates can still be further streamlined, and unambiguous text be amended to eliminate uncertainty and misinterpretation. BUSA members would be willing to engage further with DWS to clarify issues of concern and to refine the templates to mitigate potential implementation problems.



Happy Khambule

Energy and Environment Manager, Business Unity South Africa

Appendix 1: Detailed comments on mining and industry templates

Clause	Comment
Licence In Terms Of Chapter 4 of the National Water Act, 1998 (Act No. 36 Of 1998) (the Act)	
5. Definitions	
Buffer zone" means a scientifically determined area where water use activities are excluded.	New definition Can a blanket statement be made about the exclusion of water use activities?
"Sensitive riffle habitats" is a Pool riffle rapid sequences that occur where a mixture of flows and depth provide a variety of habitats to support fish and invertebrate life. Pools are deep with slow water. Riffles are shallow with fast, turbulent water running over rocks. Runs are deep with fast water and little or no turbulence.	New definition.
"Extent of the watercourse" means:	This definition comes from a general authorisation for c + i activities (GA promulgated in GN509 (GG 40229 of 26 September 2016). Subordinate legislation (the GA, a regulation under the NWA) is attempting to change primary legislation (the descriptions of water use in section 21 of the NWA itself). This is

Clause	Comment
	however an error in law, as per section 6 of the PAJA, because the incorrect empowering provision is used.
"Regulated area of a watercourse" means:	As per above, the DWS selectively uses definitions in the GA promulgated in GN509 (GG 40229 of 26 September 2016) to apply to the description of "water use" in terms of section 21(c) and (i) of the NWA, by establishing a "regulated area". By creating the concept of "regulated area", subordinate legislation (the GA, a regulation under the NWA) is attempting to change primary legislation (the descriptions of water use in section 21 of the NWA itself). This is however an error in law, as per section 6 of the PAJA, because the incorrect empowering provision is used: The empowering provisions in terms of which an activity can be regarded as a "water use" is section 21 of the NWA, while section 22(1) of the NWA prescribes the manner in which water uses as described in section 21 can be authorised, i.e.: Schedule 1, Existing Lawful Water Use, General Authorisation, or a WUL. The GAs are promulgated under section 39, which is not the empowering provision for determining whether an activity is a "water use". A GA can merely specify limitations under which a water use is not generally authorised, and most certainly not

Clause	Comment
	what is regarded as a “water use” that require authorisation under a WUL.
GENERAL PROVISIONS AND CONDITIONS OF THE LICENCE	
1. GENERAL PROVISIONS	The current WUL-Template does not properly address exemptions from for example GN R.704, and section 25 transfers are not addressed at all.
1.8 If the water use entitlement is not fully utilised within the 5 (five) year period referred to in condition 2.4 in Appendix I, the licence may be amended to reflect the extent of the water use that is being utilised, or the licence may be cancelled	It is unclear what is implied by “fully utilising” a water use. Does it mean that the full capacity of a pollution control dam must be filled? Does it mean that all river crossings, even crossings planned for future rehabilitation, must be fully constructed within the timeframes specified? It appears that the DWS is under the impression that a WUL is a “planning authorisation” like an EIA, for which a timeframe for undertaking the activity to its “fullest extent” should be specified. In this respect, it must be noted that the descriptions of ‘water use’ as contained in section 21 of the NWA are all in the *present continuous tense* and do not authorise “future” or “planned” activities. This implies that as long as the water use is not being undertaken, the WUL is not valid, and has not “commenced” – it

Clause	Comment
	only becomes valid (“commences”) once the water use is being undertaken. Alternatively, it appears that the DWS is under the impression that an authorisation of a water use which is not yet being undertaken, somehow ‘reserves’ that use (including non-consumptive uses such as the discharge of effluents), so that it is not “available” to other users. This is not the case, and the DWS is fully empowered to withdraw a WUL that has been issued, but for which the activity has not commenced, in accordance with the provisions of section 54 of the NWA, which contains certain procedural requirements that the responsible authority must comply with. These provisions do not include a limitation on the timeframes within which water uses should be “fully utilised.

Clause		Comment
1.9	A request for extension of time to fully utilise an entitlement to use water must be submitted to the Provincial Head/ CEO, at least three months, before the expiry of the 5 (five) years referred to in condition 2.4 in Appendix I. An extension may only be made after the Delegated Authority has considered all relevant factors.	Including these provisions in the WUL Template in the current way that they are formulated is in direct contradiction of the provisions of section 54 of the NWA itself, and a WUL is subordinate legislation to the primary legislation in terms of which it is issued, the NWA, and as such, a WUL cannot duplicate or contradict the provisions of the primary legislation, the NWA. It is therefore 'beyond the powers' of the WUL to specify aspects already specified in the NWA, and to create restrictions or limitations in a procedurally unfair manner.
1.12	Amendment of the licence to reflect the name of the new owner will not be approved if there are any outstanding charges or levies imposed by the Responsible Authority to the previous owner.	The new owner cannot and should not be held to ransom by DWS for a previous owner that owes money to DWS. This is between DWS and the applicable party. [In a municipal case, the High Court found in terms of section 25 of the Constitution that new owners of property are not liable for municipal debts incurred by previous owners.] Making this a condition of a WUL is in direct conflict with the requirements under both PAJA, and the provisions under section 50, and in Chapter 5 of the NWA.
1.18	No water taken may be pumped, stored, diverted, or alienated for any other purpose other than as intended in	Repeat of clause 1.6

Clause		Comment
	this licence without the written approval of the Delegated Authority.	Delete
1.19	While effect must be given to the Reserve as determined in terms of the Act, where a desktop determination of the Reserve has been used in issuance of a licence, when a comprehensive determination of the Reserve has finally been made, it shall be given effect to.	The responsibility for giving effect to the Reserve lies with the responsible authority, and not with the Licensee. The WUL should therefore clearly specify what the requirements of the Licensee are in this regard.
1.26	The Provincial Head/ CEO may at any time direct a licensee, at the licensee's expense, to have the accuracy of the licensee's water measuring device/s verified, in addition to the requirements of their inspection and calibration schedule by a person or an institution accredited to verify the accuracy.	Not all water uses for which WULs are being issued have an impact on flow, or require the measurement of flow - this type of condition only relates to water uses as described under section 21(a), certain uses under section 21(e), section 21(f), section 21(h) and section 21(j). The condition should therefore clearly indicate which specific water uses require such flow measurement, to which these requirements apply.
2	**GENERAL CONDITIONS**	
2.4	The water uses authorised in this licence must be fully utilised within five (5) years from the date of issuance of this licence.	Repeat of above (General conditions) – same comments as 1.8 – 1.11.

Clause		Comment
2.5	If the licensee cannot fully utilise the water use entitlement within 5 (five) years, the licensee may request from the Provincial Head/ CEO, with reasons, an extension of time to fully utilise the said water use entitlement.	Repeat of above (General conditions) – same comments as 1.8 – 1.11.
2.6	If the above (condition 2.5) is not adhered to, the water use entitlement may be cancelled or amended accordingly.	Repeat of above (General conditions) – same comments as 1.8 – 1.11.
2.9	If the licensee is not the end user/beneficiary of the water user related infrastructure and will not be responsible for long term maintenance and management of the infrastructure, the licensee must provide a hand over report to the successor in title including a brief management/maintenance plan and the agreement for infrastructure along with allocation of responsibilities, within sixty (60) days after the date of change of end user or beneficiary	Not legally correct. It conflates a number of persons and aspects, including a different end user of water-related infrastructure, a different beneficiary of water-related infrastructure, and a successor-in-title. It is assumed for the purpose of this comment that the "water-related infrastructure" mentioned, is associated with water uses authorised in the WUL. In this case, there are specific provisions in the NWA that make provision for successors in title of authorised water use.

Clause		Comment
		In cases where there is a different end-user or a different person who also benefits from the infrastructure associated with the water use, or who can be regarded as an end-user of the infrastructure, at the same time that the Licensee uses the infrastructure and benefits from it, the details of such persons benefiting or using the infrastructure should be clearly outlined and contained in the WUL as co-beneficiaries of the water uses authorised in the WUL.
2.12	Oils and other potential pollutants must be disposed of at a licensed site, with the necessary agreement from the owner of such a site.	NEMWA – not in DWS mandate.
2.13	The licensee must handle, transport, store and use any hazardous substances according to the relevant legislation or South African National Standards (SANS).	Not DWS mandate.
2.25	Storm water management facilities must be constructed, operated and maintained in a sustainable manner throughout the project as detailed in the Storm Water Management Plan	Define project. Some officials interpret this as a construction project, others deem all water uses a project. This leads to unnecessary compliance concerns just because this condition is vague.
2.28	The dirty storm water system shall be designed and implemented to provide suitable routing and pumping	This can only be a condition for new water users.

Clause		Comment
	capacity for contaminated storm water from the individual facilities to the respective storm water dams in accordance with the design specifications.	
2.34	The licensee must install the flow metering devices to all water uses and readings must be taken on each flow meter on a monthly basis.	How do you install flow metering devices for 21 c, i, g as example? DWS has written these templates from a licencing perspective, not considering it from a compliance perspective.
2.37	If a water user association exists or is established in the area to manage the resource, it is compulsory for the licensee to be a member of the water user association. The licensee must adhere to the rules, regulations and water management stipulations of the water user association.	If there is a water use association for irrigation, then a steel manufacturer that has nothing to do with irrigation needs to be a member? DWS must specify relevant water user association. Alternatively: As per NWA Section 29 1(e) DWS can only insist on such membership “in the case of taking or storage of water”.
2.41	The licensee must appoint an independent external auditor to conduct biennial (every two (2) years) external audits on compliance with the conditions this licence. The first audit must be conducted and finalised within one (1) after commencement of a water use. A report on the audit	One year / month / day? Assume year.

Clause	Comment
must be submitted to the Provincial Head/ CEO within sixty (60) calendar days of the finalisation of each audit.	
2.43 The licensee must prevent adverse effects on other water users. All complaints must be recorded in complaints register and be investigated by a suitable qualified person accredited by a institution/ Registration Body and if investigations prove that the licensee has impaired the rights of other water users, the licensee must implement appropriate compensative measures as determined by the Provincial Head/ CEO. Check discussions and irrigation template.	Where does this come from? A water user investigates their own complaints. Only those complaints that have longer term impacts will be investigated by a specialist. This is neither practical nor reasonable.
APPENDIX II **Section 21 (a) of the Act – Taking water from a water resource**	
Table <*xx*>: Summary of water uses authorised **Co-ordinates**	Important to stipulate the format: <always use Degrees, Minutes, Seconds, e.g., 26°34'45.0"S, 29°11'45.00"E>

Clause	Comment
3.1 The construction, enlargement, alteration or repair of a dam with a safety risk, must be carried out under a licence issued in terms of the above Regulations. 3.2 The licensee must supply any information, drawings, specifications, design assumptions, calculations, documents and test results when requested by the Provincial Head/ CEO.	Dam Safety does not belong in a WUL issued under Chapter 4 of the NWA but is governed under Chapter 12 of the NWA. This Appendix should therefore include requirements for the construction of in-steam dams that are not large enough to be governed by the Dam Safety regulations, but the construction of which does have the potential to cause negative impacts on water resources.
APPENDIX IV	
Section 21(c) water use: Impeding or diverting the flow of water in a watercourse/s **Section 21(i) water use: Altering the bed, banks, course or characteristics of a watercourse/s**	It's because DWS continues to group these two water uses together that officials always add both to a WUL. **They are two distinctly different water uses with different impacts.** This results in a lack of definitive and unambiguous conditions that are only applicable to impedances or diversions of the flow regime of a water course, which is unrelated in most respects to activities that can alter the characteristics of a water course. **This implies that these distinctly different water uses should contain their respective conditions in separate Appendices.** For section 21(c) water uses, specific conditions that deal with the impacts of activities that impede or divert the flow of water in a water course from its natural flow pattern should be included.

Clause	Comment
	For section 21(i) water uses, specific conditions that deal with the impacts of activities that alter the bed, banks, course or characteristics of a water course should be included. These conditions should clearly distinguish between the different management measures for (1) activities that alter the characteristics of a water course; (2) activities that directly cross over, under, or through a water course; and (3) activities that take place in the floodline of a water course, as the management measures associated with these different types of alterations to water courses, will be different.
2.1 For all the activities listed under condition 1.1, Table<<xx>>, “as-built” plans and engineering drawings prepared by a registered professional engineer, must be submitted to the responsible authority <within six (6) months of completion of new activities and for existing water uses within six (6) months of the date of issuing of this licence>. These plans and drawings must indicate the watercourse/s including wetland boundaries and layout and structure location/s of all infrastructure impeding and/or diverting flow of water in the	For new facilities, it makes sense that "as built" drawings are to be prepared by the engineer who undertook the construction after completion of construction and submitted to the Department/CMA. However, for existing facilities, which have already altered the watercourse, this does not make sense, as the person who supervised the construction may no longer be traceable. If the "as built" drawings of existing facilities were available, they should have been submitted as part of the application for the WUL, as they become insignificant after-the-fact. This requirement for existing facilities should therefore form

Clause		Comment
	watercourse/s as well as alternations to watercourse/s on the property/ies.	part of the application for a WUL and should not be a requirement in a WUL condition.
3.1	Structures must withstand a 1:100 year flood.	How does the licencee guarantee this?
5.4	Indigenous riparian vegetation, including dead trees, outside the limits of disturbance indicated in the site plans must not be removed from the area.	There is no empowering provision in the NWA that provides the mandate to the DWS/CMA to regulate the removal of dead trees, which could pose a safety or security risk to operations.
5.5	Alien and invader vegetation must not be allowed to further colonise the area, and all new alien vegetation recruitment must be sustainably eradicated or controlled.	It contains ultra vires, and incorrect, reference to the requirements of the NEM:BA, which the DWS is not empowered to administrate, since it is outside their administrative jurisdiction. It is also unclear how alien vegetation should 'not be allowed to further colonise' the area, and it is not evident what is meant by ‘sustainably eradicated or controlled’.
10.6	A bio-monitoring programme (SASS) must be implemented along the affected length of the watercourse/s and must include a habitat assessment. Guidance to bio monitoring.	This condition does not clearly distinguish between the measurement of the physical attributes of the aquatic habitat, making use of the Integrated Habitat Assessment System (“IHAS”) method to determine physical habitat features such as stream hydrology, average width and depth, and features such as colour, anthropogenic disturbances and riparian vegetation, and the species response of aquatic and riparian biota, making use of the South African Scoring System, version 5 (“SASS5”);

Clause	Comment
	the Riparian Vegetation Response Assessment Index ("VEGRAI"); and the Fish Response Assessment Index ("FRAI").
12.1 In-stream water quality must be analysed on a two-weekly basis during construction otherwise monthly at monitoring points both upstream and downstream of the activities for the following variables until pre-construction water quality levels have been reached	It must be site specific and scientific.
Section 21(e) of the Act: Engaging in a controlled activity; Irrigation of any land with waste or water containing waste	
1.3 The licensee must prevent at all occurrence of invasive alien vegetation on all areas irrigated with water containing waste authorised under this licence.	It contains ultra vires, and incorrect reference to the requirements of the NEM:BA, which the DWS is not empowered to administrate, since it is outside their administrative jurisdiction.
3. QUALITY OF WATER CONTAINING WASTE TO BE DISPOSED<<If water quality of wastewater to be irrigated (21(e)) is the same as the one to be discharged into a water resource (21(f) the limits for discharge will be used.	As the impacts and aspects to be considered in the irrigation of a wastewater are not similar to the aspects and impacts and aspects associated with the discharge of an effluent into a water course (a section 21(f) water use), it is scientifically incorrect to make a statement like this. As water is nutrient-poor, an excessive amount of nutrient in surface water leads to eutrophication, and these nutrients should

Clause	Comment
	therefore be avoided in discharges to surface water bodies (section 21(f) water uses). On the other hand, it is the nutrients in especially sewage effluent that makes it suitable for use to irrigate certain crops, which needs these nutrients. To therefore indicate that the same limit values to be used for the discharge of effluents into a water resource, should be used for the irrigation of effluents on land is not correct.
3.1 Quality of treated waste water used for irrigation	Variables must be aligned with composition of the effluent being irrigated. If parameters are not present in effluent, then not necessary to monitor
The above variables are compulsory.	It should not be compulsory as this is flawed. Sewage that is irrigated should have different parameters than abattoir effluent irrigated or inorganic effluent irrigated for example.
Additional variables can be added if industrial effluent is received at the works, based on the composition of the inflow received.	Define inflow. Inflow to where? Inflow into the process is fresh water and if this is the intent, it does not make sense. If it is inflow into the irrigation dam, state as such. Conditions imposed should not be open for interpretation.

Clause	Comment
4.12 Monitoring for the quantity of the water containing waste for irrigation must be done at the point where the effluent is piped into the irrigation dam.	Not all irrigation activities are undertaken from irrigation dams - some are undertaken from final maturation ponds.
5.1.3 Fly breeding, public health hazard, odour or secondary pollution.	Not applicable to all effluents irrigated. Site-specific condition
5.1.5 The site of the irrigation area shall be adequately fenced to prevent the entry of animals and unauthorised persons.	Site specific.
APPENDIX VI	
< applicable limits set will be according to general or special standards)>	If this is referring to the GA limits, it is legally incorrect. If an applicant can comply with GA limits, there is no need for a WUL.
3.1.2 Monitoring for the quantity of effluent/ water containing waste must be done at the inlet and the outlet of the << name of the facility >>.	There is not just one inlet point and as this is under surface water monitoring under 21f it makes no sense. This condition should be deleted. Outlet is discharge point as per 3.1.1.
3.3.2 The biomonitoring must be undertaken using latest Invertebrate Habitat Assessment System (IHAS) and the South African Scoring System (SASS). Sampling must be conducted seasonally (once in summer and once in winter) and the results must be compared against the	This condition does not clearly distinguish between the measurement of the physical attributes of the aquatic habitat, making use of the Integrated Habitat Assessment System ("IHAS") method to determine physical habitat features such as stream hydrology, average width and depth, and features such

Clause		Comment
	selected reference condition or reference condition within the same ecoregion in a case where upstream of selected discharge point is not accessible or representative of discharge point.	as colour, anthropogenic disturbances and riparian vegetation, and the species response of aquatic and riparian biota, making use of the South African Scoring System, version 5 ("SASS5"); the Riparian Vegetation Response Assessment Index ("VEGRAI"); and the Fish Response Assessment Index ("FRAI").
3.3.4	The licensee shall monitor quarterly, (biomonitoring depends on activity) the toxicity of the water containing waste/effluent in accordance with Direct Estimation of Ecological Effect Potential (DEEEP) initiative to determine the effect of water containing waste	Unduly costly and unreasonable. Effluent does not change "toxicity" quarterly.
3.3.7	The toxicity report highlighting hazard class of effluent and its impact on deterioration or improvement of the aquatic invertebrates or ecosystem must be submitted with or as part of biomonitoring report to the (Provincial Head/ CEO) within a month after each assessment.	There seems to be a lack of understanding of the basics of water chemistry and the impacts of effluent on environmental systems, as the equation of effluent toxicity with the results of aquatic bio-monitoring, namely that "the toxicity report indicating effluent class must be submitted with or as part of the bio-monitoring report". This condition is not only vague, but it also makes no sense, as one cannot equate the short-term and acute toxicity of effluents, with the results of bio-monitoring surveys, which can only be properly interpreted in the long term (minimum over a period of four years, with surveys done twice a year).

Clause	Comment
APPENDIX VII Section 21(g) of the Act: Disposing of waste in a manner which may detrimentally impact on a water resource	
1. DISPOSAL OF WASTE /WATER CONTAINING WASTE	There is a difference between the facilities that are used for the storage and disposal of “waste” as opposed to facilities that are used for the storage and disposal of “water containing waste”. This Appendix of the WUL that deals with section 21(g) water uses should include a separate section that lists facilities that are water uses as described under section 21(g), but that have been authorised under for example the NEM:WA, for which the requirements for a WUL is being dispensed with in accordance with section 22(3) of the NWA, but this is not addressed at all. If this is not covered here, the water uses for which the requirements for a WUL are being dispensed with, should be listed in the Main Part of the WUL.
Table <<xx>>.: Groundwater monitoring variables and frequency	The variables must be site specific.
5.1 The licensee shall update the water balance annually and calculate the loads of waste emanating from the activities. The licensee shall determine the contribution of their	Why is this under 21g as it involves all water uses?

Clause		Comment
	activities to the mass balance for the water resource and must furthermore co-operate with other water users in the catchment to determine the mass balance for the water resource reserve compliance point.	This is DWS responsibility and furthermore this is information that will not be released from one water user to a different water user.
6.	**INTEGRATED WATER AND WASTE MANAGEMENT**	Doesn't make sense that this is under 21g, as it includes all water uses. Should be in the main part / general conditions of a WUL.
6.1	The Integrated Water and Waste Management Plan (IWWMP) and Rehabilitation Strategy and Implementation Plan (RSIP) must be updated annually and submitted to the Provincial Head/ CEO for approval.	The DWS has never published any guidelines as to the purpose and content of such an "RSIP". Furthermore, this will not be applicable to all sites and should not be included as a blanket requirement. It must be clear that the IWWMP action plans must be updated annually but the IWWMP once every 5 years. It is extremely costly to do a proper IWWMP, every time and resource intensive and aspects do not change annually.
APPENDIX VIII Section 21(h) of the Act: Disposing in any manner of water which contain waste from, which has been heated		Section 21(h) water use is similar to a section 21(g) water use, as it relates to heated water that will harm aquatic organisms should it be directly discharged into a water resource. It therefore requires containment in a facility that is best regulated under section 21(g) so that it can cool down before discharge.

Clause	Comment
APPENDIX IX **Section 21(j) of the Act**: **Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people**	The WUL-Template as it currently stands, only refers to the removal of water found underground, and not with the discharge or disposal of such water in cases where it is uncontaminated. Furthermore, the rest of the conditions in this Appendix deal with the measurement of water in an aquifer, and not with water not in an aquifer, or the discharge or disposal of water found underground.