

7

The Approval Process

Consultation with the Minister and the approval process



7.1 Introduction

The Catchment Management Strategy (CMS) is established through a Government Notice, after which it is binding to the Minister and the Catchment Management Agency (CMA) to give effect to the strategy. In order to get to this stage, the CMA must first go through a process of consultation with the Minister and DWAF regarding the implications that the CMS may have for policy and institutional arrangements, both for DWAF and for other institutions. Undertaking this process before final gazetting is designed to reduce risk and conflict. Thereafter the CMS is submitted for approval by the Minister.

The purpose of this section of the guideline is to provide the procedures that the CMA must follow to:

- a) ensure the approval of the CMS by the DWAF so that it may be legislated in the Government Gazette as expeditiously as possible;
- b) ensure implementation of the strategies before review and update within five years.

To this end, the guideline provides a detailed description of both of the aforementioned steps: consultation with the Minister and DWAF, and the steps necessary to ensure that written consent is provided by the Minister before publication of the strategy in the Gazette. Estimated time frames are given for guidance.

7.2 Legislative requirements

In addition to the legislative requirements for the CMS set out in Chapters 1 and 2, Section 8(4) of the National Water Act (1998; NWA) requires that the CMS or any component of that strategy may be established only “with the written consent of the Minister.” Only then is it binding on the Minister and the CMA to give effect to the strategy.

Furthermore, section 10(3) of the Act requires that the CMA refer to the Minister “any component of the strategy which raises issues of policy or issues concerning the relationship between the CMA and other organs of state or DWAF”. Given the fact that the CMS seeks to achieve integrated water resource management, it is highly likely that the CMS will require a reorientation towards water resources by different sectors and institutions. This invariably means that the CMS will impact on the activities of other organs of state. Thus the consultation process prior to the approval of the CMS is very important in ensuring integration through meaningful and appropriate co-operative arrangements.

Given these legislative requirements, guidance is needed for the CMA on the process for approaching the Minister for her/his consideration and determination regarding matters of policy or co-operative governance. Secondly, guidelines are required in support of securing written consent from the Minister so as to gazette the CMS (see S 11 of NWA). In this regard, two stages are presented below. The first – called Stage 1- deals with the consultation process with DWAF on matters of policy implications and co-operative governance in developing and implementing the CMS. The second – called Stage 2- is a guideline for the approval of the draft CMS for final gazetting.

7.3 Stage 1: Consultation process with the Minister and DWAF on implications for policy and co-operative governance

As mentioned above, before the CMA can publish a notice in the Gazette, it must refer those components of the draft CMS that raise material questions of policy, or may affect other organs of state or DWAF to the Minister. For example, the National Water Resource Infrastructure Agency needs to be cognisant of infrastructural needs and implications. This process is shown in Figure 7.1 and elaborated below. Box 7.1 indicates which directorates may be involved in this stage.

Directorates that may be involved in the policy and co-operative governance review of the CMS

Box 7.1

Depending on the issues submitted by the CMA for the Minister's consideration, it may be necessary for the Directorate: Policy and Strategy Co-ordination to establish an evaluation committee comprising the relevant directorates, namely:

CD: Strategic Co-ordination, involving:

- Dir: Policy & Strategy Co-ordination who will be responsible for convening the evaluation meetings of the advisory committee.
- Dir: International Development Co-operation, for support with any international issues.

CD: Institutional Oversight, involving:

- Dir: Water Management Institutions Governance in terms of the linkage to the business plan and institutional development aspects of the CMS;
- Dir: Stakeholder Empowerment regarding stakeholder participation, social justice and the consultation process for the CMS.
- Dir: Water Resource Finance & Pricing, in terms of adherence to the National Pricing Strategy

CD: Resource Directed Measures:

- in terms of adherence with the classification of the water resource and its implications to socio-economic development and the Reserve.

CD: Integrated Water Resources Planning, involving:

- Dir: National Water Resources Planning, in terms of consistency with the NWRS on allocatable water and reconciliation.
- Dir: Water Resources Planning Services, in terms of adherence to groundwater guidelines, and operational guidelines for systems and dams.
- Option Analysis for consideration of possible new water resource infrastructure.

Water Use

- Dir: Water Allocation in terms of consistency with the water allocation reform process and government's policy objective for redress.
- Dir: Water Use Efficiency in terms of water conservation and demand management strategy.
- Dir: Water Abstraction and Instream Use in terms of consistency with the issuing of licences.

Information Management

- Dir: Information Programmes in terms of consistency with the existing monitoring and information systems
- Hydrological Services, for maintenance and expansion of the national monitoring network
- Resource Quality Services, in terms of linking into existing water resource quality monitoring programmes
- Spatial & Land Information Management, in terms of cadastral data, surveys, etc.

Water Services

- Dir: Planning & Information in terms of alignment with Water Services Development Plans

Legal Services

- This to ensure all legal processes have been followed

Step 1: CMA prepares report on matters of policy and governance emanating from draft

The CMA identifies policy and governance issues that emanate from the draft CMS. It should notify the Minister through the National DWAF: Policy and Regulatory Branch. As a matter of protocol, the CMA must make its submission to the Minister through the relevant DWAF Regional Office.

Step 2: DWAF undertakes review

The Department will review the submission by the CMA, through an evaluation committee on behalf of the Minister. The three criteria used for this evaluation will deal with the (i) legal, (ii) policy, and (iii) administrative aspects of the CMS. It should be noted that not all Directorates will be involved but only those whose oversight role and regulatory function may be affected by the component of the draft CMS. The evaluation committee should convene and respond within 20 days from the date of submission.

Step 3: Recommendation by evaluation committee

If the CMS draft does not have implications for policy alignment and co-operative governance, then the DDG: Policy & Regulation would recommend to the Minister to give the CMA the go-ahead to publish a notice in the Gazette in terms of Section 8(5). This will not require the consideration by the Water Resource Functional Management Committee.

However, where implications are identified, the evaluation committee will submit their findings to the DDG: Policy & Regulation for submission to the Water Resource Functional Management Committee for their consideration.

Step 4: Consideration of the evaluation by the Water Resource Functional Management Committee (in the event of amendments)

The Water Resource Functional Management Committee prepares a report for the Minister regarding the implications above within 20 days.

Step 5: Minister reviews findings and drafts determination to CMA

Within 20 to 30 days, the Minister will inform the CMA of DWAF's position, and whether or not amendments to the draft CMS are required. The Department must ensure that sufficient time is allowed for revision of the CMS. The CMA can then proceed with Stage 2.

7.4 Stage 2: The approval process

The approval process, although fairly stringent in terms of time, is designed to facilitate an efficient process that enables the CMA to begin implementation of the CMS without undue delays (see also comments in Section 8 below). The process, structured to ensure that it is as simple as possible, is illustrated (together with suggested time frames) in the flow chart in Figure 7.2.

Section 8 (5) of the NWA requires that before the CMA establishes "a catchment management strategy or any component of that strategy in terms of subsection (1), a catchment management agency must:

a) publish a notice in the Gazette –

iii) invite written comments to be submitted on the proposed strategy or the component in question"



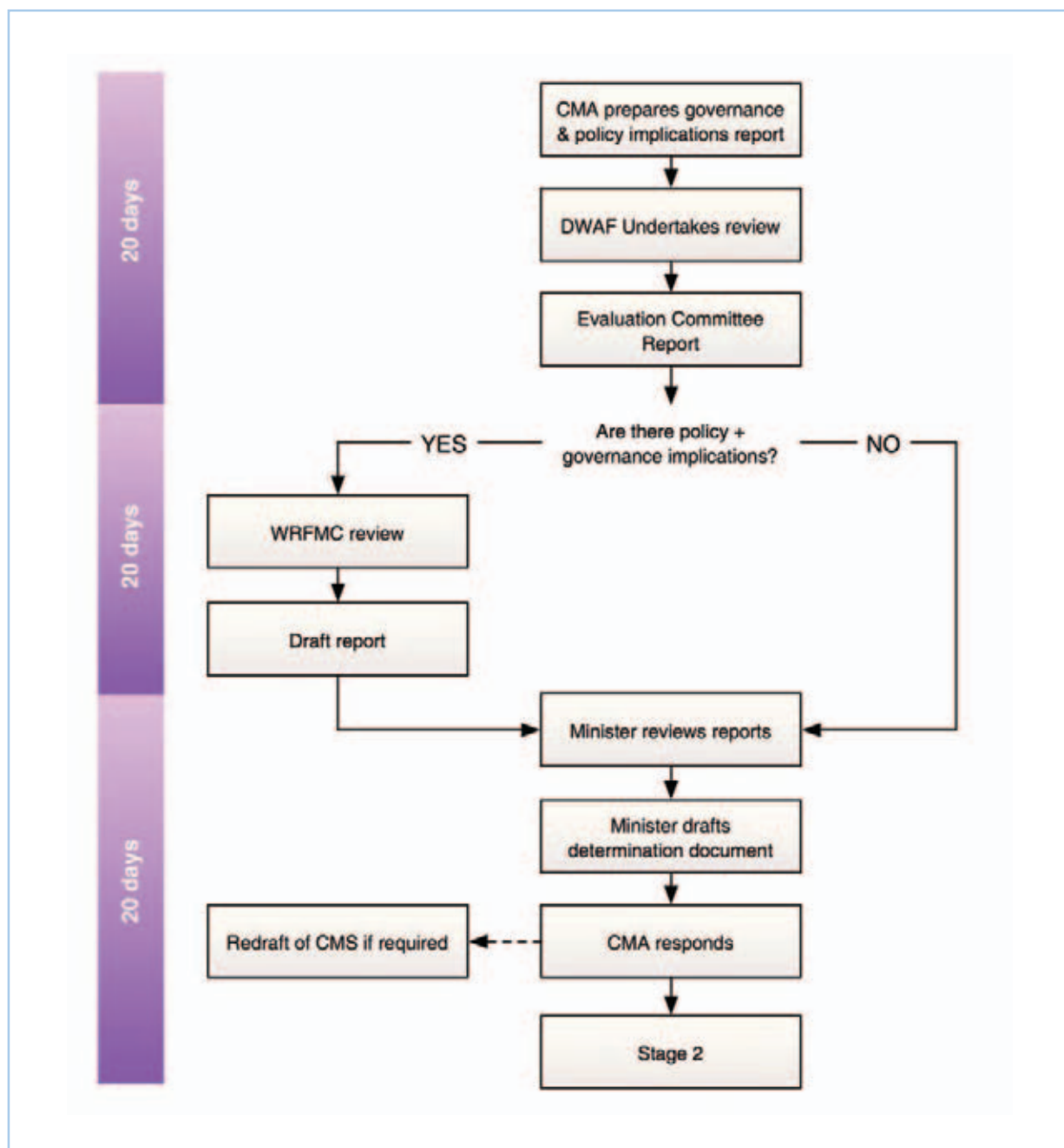


Figure 7.1

Flow chart for Stage 1 of the approval process which deals with policy alignment and institutional implications [WRFMC = Water Resource Functional Management Committee.]

Step 1: Preparation of the Gazette notice calling for public comment

The CMA will prepare the notice as required and inform the public where the CMS may be accessed. In this regard, the CMA must ensure that the CMS document is distributed in places accessible to the public. This will be followed by a 90 - day period during which the comments are received and documented. This will be done by the CMA and all the issues and comments will be summarised and presented to DWAF.

Step 2: Review and consider public comments and amend CMS

Any comments received during 90-day period must be formally considered by the CMA, and the relevant amendments must be made. Once the CMA has considered all comments, it will prepare a report that summarises the comments received and how these were dealt with. It will also submit an update of the draft CMS to DWAF.

This step should take a maximum of 30 days.

Step 3: DWAF reviews how public comments have been considered and the CMS revised

The revised CMS and comments register will be reviewed by the Directorate: Policy & Strategy Co-ordination to ensure that all issues raised by the public have been well considered and how they have been dealt with.

Where necessary the updated CMS should be submitted to the evaluation committee for further review if the comments received warrant this. If accepted, a recommendation would be submitted to the Minister for approval and gazetting. Any queries or comments would be returned to the CMA to be addressed.

This step should take a maximum of 30 days.

Step 4: DWAF prepares submission for approval of CMS

Once the Directorate: Policy & Strategy Co-ordination is satisfied that all the public comments have been substantially considered, a submission will then be prepared for the Minister to provide the written consent as required by S8 (4) of the Act.

The ministerial determination should highlight the content of the CMS and the process followed in ensuring that every opportunity was provided to the public for their comment. The submission should describe how these comments were considered in the final CMS.

Step 5: Written consent by the Minister

The Minister, once satisfied that all administrative procedures have been followed and the content of the CMS has the general support of relevant stakeholders, will then provide a written consent to the CMA.

Step 6: Gazetting of the final CMS

With the written consent, the CMA will prepare a notice in the Gazette informing of the establishment of a CMS for the protection, use, development, conservation, management and control of water resources within its water management area.

Steps 4, 5 and 6 should take 30 days.

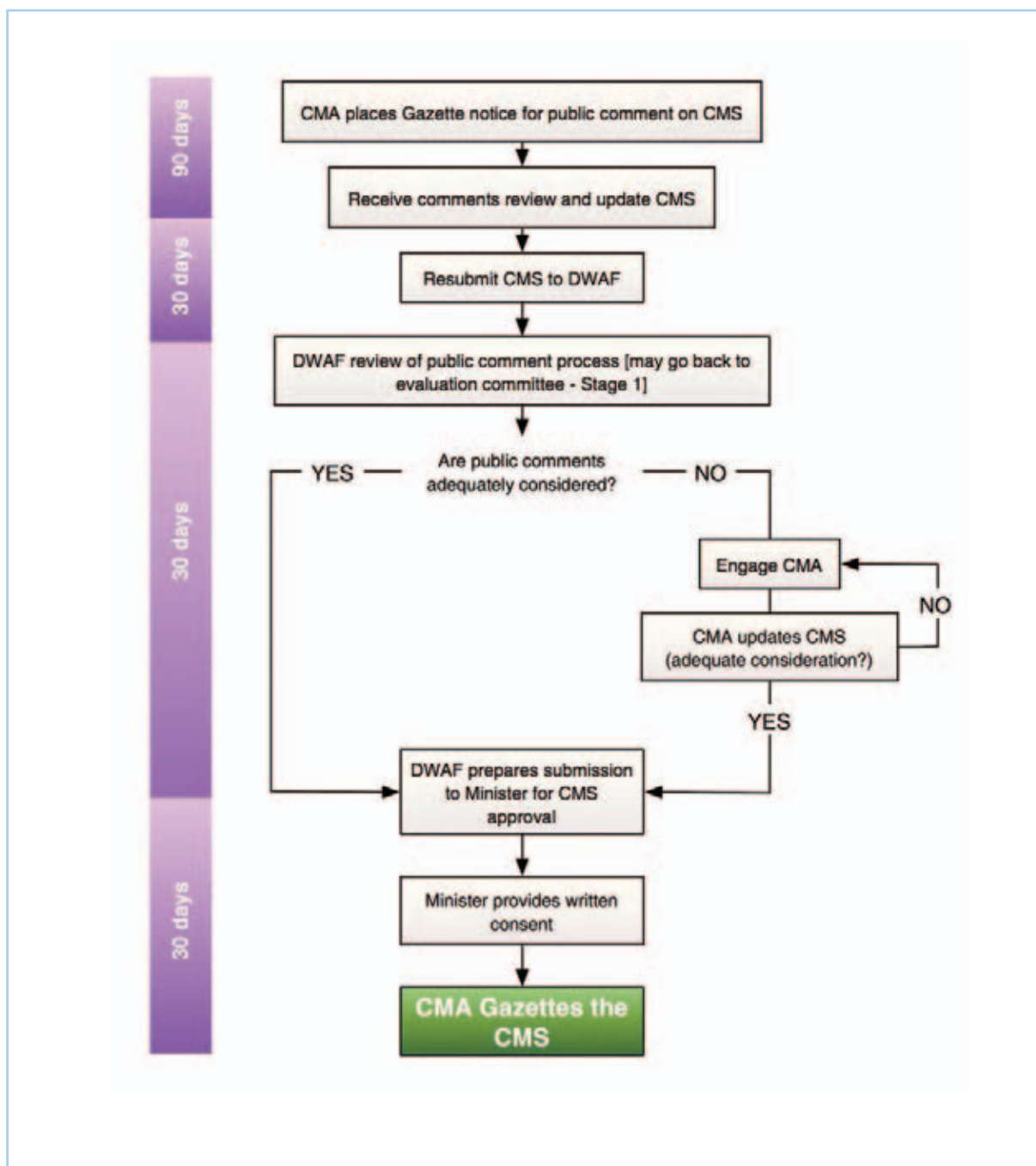


Figure 7.2

Flow chart for Stage 2 showing the approval process.

7.5 Concluding remarks

The time frame provided in this chapter which amounts to some 6 to 8 months in total, is based on the assumption that the CMA and the DWAF will collaborate closely right from the beginning of the CMS preparation process (see Figure 4.1). By working together, the DWAF officials will be acquainted with all issues that will impact on policy and co-operative government from the start so that issues can be dealt with as they arise. If the CMA does not involve DWAF at an early stage, the process will take longer than indicated in the flow diagrams and the CMA will run the risk of having to redo work that is not in line with current policies and the NWRS.

Furthermore, it must be kept in mind that the first CMS will have to describe a transitional situation where certain activities will still be performed by DWAF where these activities have not yet been delegated or assigned to the CMA. This also emphasizes the requirement that DWAF and CMA have to work together closely.

