



## Department of Water Affairs and Forestry

### CHIEF DIRECTOR: Water Use

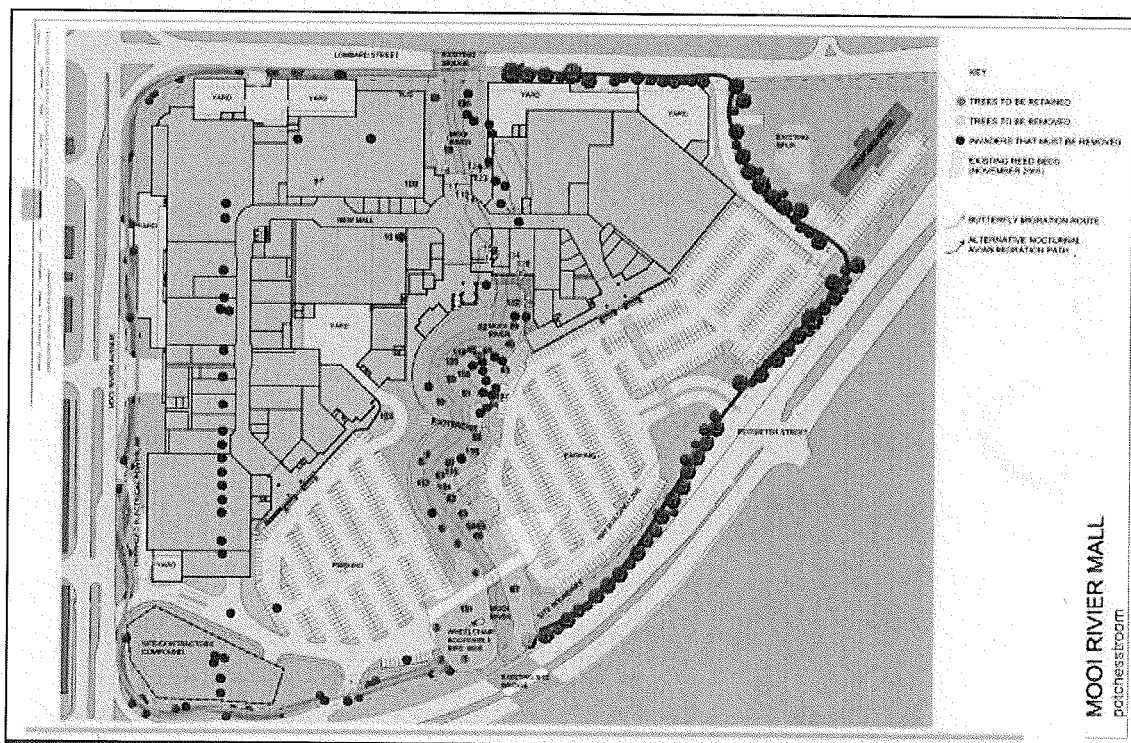
# LICENCE APPLICATION IN TERMS OF SECTION 40 OF THE NATIONAL WATER ACT, NO 36 of 1998: SECTION 21(c) AND (i) WATER USE

Regarding the application by:

**Mooi River Mall (Pty) Ltd**

For:

***S21(c) Impeding or diverting the flow of water in a watercourse, and  
S21(i) Altering the bed, banks, or characteristics of a watercourse***



## RECOMMENDATION

Regarding the application by:

**Mooi River Mall (Pty) Ltd**

For:

***Impeding or diverting the flow of water in a watercourse, and  
Altering the bed, banks or characteristics of a watercourse***

The following recommendation is made regarding the attached application from the above concern:

**The application for this water use licence is recommended for approval**

### Background to the application:

The Mooi River Mall Shopping centre in Potchefstroom is designed to cross the Mooi River. There will also be a footbridge crossing and a car crossing as part of the development over the Mooi River. All three water uses must be authorised in terms of section 21 (c) and (i) of the National Water Act, 1998.

### The following aspects were taken into account with regard to this recommendation:

#### 1. Section 27 of the NWA:

Rectification of the results of past racial and gender discrimination	The development of the Mooi River Mall will significantly contribute to the regional economy and a significant amount of revenue to the local economy through the purchase of goods and services and the creation of employment.
Efficient and beneficial use of water in the public interest	The concept of "public interest" is a very complex one. Under the Water Act ,1956 permits were issued to users provided that they use the water beneficially. The use was considered beneficially if the applicant was going to make a profit. Under the National Water Act, Act 36 of 1998, public interest goes much wider. The fact that the applicant has to undertake a public participation process, and the public's opinion is to be elicited, means that, at least, the public opinion can be gauged by the response and the comments and concerns received. A full public participation process was

	<p>undertaken as part of the EIA and Water Use License Application for the Mooi River Mall development. All comments and concerns received were incorporated into the mall design.</p> <p>As public trustee of the water resources, the Department of Water Affairs and Forestry, must ensure that the water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner for the benefit of all users. The Minister, through the department has to ensure that the water is allocated equitably and used beneficially in the public interest, while promoting environmental values.</p>
The socio-economic impact -	
i) of the water use or uses if authorised; or	<p>The location of the property together with the adjacent land offers a unique opportunity at the entrance to Potchefstroom, to create a sustainable development that will make an enormous positive financial impact on the region, create employment, aesthetically enhance the town and boost tourism spending.</p> <p>50% of retail spending is currently outside of Potchefstroom, due to the lack of proper facilities and offering. 1 200 permanent job opportunities could be created by the Potchefstroom council. Local traders will get new trading opportunities and tourism will increase due to proper facilities. The development will also increase the tax-base for the Local Council.</p>
ii) of the failure to authorise the water use or uses;	<p>Failure to approve the water use license will result in no development. The area for the development of the mall only on one side of the river will be too small to accommodate the space required for a regional mall.</p> <p>The area is currently used as a truck stop for large trucks entering Potchefstroom. Failure to authorise the use will result in a continuation of this activity. All the invested up this stage will be lost.</p>
The likely effect of the water use on the water resource and on other water uses	Based on the approach followed, there should be no negative impact on the surface or groundwater resource.
Investments already made and to be made by the water user in respect of the proposed water use	<p>The water user has invested in the following manner:</p> <ul style="list-style-type: none"> <li>• Purchase of the site;</li> <li>• Environmental Impact Study with numerous specialist studies;</li> <li>• Water Use License Application;</li> <li>• Agreements with the Potchefstroom Local Municipality with regards to the development of an Urban Framework in order to protect the Mooi River within the jurisdiction of the Local Council as a "Greenbelt".</li> </ul>
The probable duration of any undertaking for which a water use is to be authorised	The development of the mall will be permanent. The Licence must be issued for the maximum allowed period, 40 years for this application.
<p>2. A completed set of application forms for a licence for impeding or diverting the flow of water in a watercourse and supporting document (See Annexure B of Submission)</p>	

**The following key factors were taken into account with regard to drafting of the licence:**

- 1. Reserve determination, EIA document compiled by [REDACTED] and RoD, all documentation submitted by EcoRisk SA (Pty) Ltd as well as Flood Hydrology and Flood Lines report compiled by Uhambiso Consult (Pty) Ltd.*

*ADD THAT CIVIL DESIGN AND E&R WAS CONSULTED AND RECOMMENDS THE USE.*

### **RECOMMENDATION**

The application is recommended and the granting of a licence supported, subject to the conditions of the draft licence (See Annexure B).

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REGIONAL DIRECTOR:

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DATE:

ANNEXURE A

**ROUTE FORM FOR APPROVAL OF A SECTION 21 (c) AND (i) WATER USE LICENCE APPLICATION UNDER SECTION 40 OF THE NATIONAL WATER ACT, NO.36 OF 1998.**

Applicant's Name:	Mooi River Mall (Pty) Ltd
Address:	PO Box 3317 TIGER VALLEY 7536
Date of Application:	March 2006

Herewith a LICENCE prepared by **Mr D.J. Koekemoer** for your consideration and approval. Attached is a copy of the application form, motivation and supporting information.

To DIRECTOR: ADMINISTRATION

I recommend the issuing of the LICENCE based on the Motivation hereby attached and subject to the draft LICENCE conditions and refer it for further processing.

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
REGIONAL DIRECTOR:

To DEPUTY DIRECTOR: ENVIRONMENT AND RECREATION  
LICENCE for your comments and verification

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
DIRECTOR: ADMINISTRATION

To DIRECTOR: WATER ABSTRACTION AND INSTREAM USE  
LICENCE for your comments and verification

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
DEPUTY DIRECTOR: ENVIRONMENT AND RECREATION

To DIRECTOR: LEGAL SERVICES  
LICENCE for your comments and verification

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
DIRECTOR: WATER ABSTRACTION AND INSTREAM USE

To DEPUTY-DIRECTOR: ENVIRONMENT AND RECREATION  
LICENCE for your finalisation and forwarding to Manager: Water Use

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
DIRECTOR: LEGAL SERVICES

To CHIEF DIRECTOR: WATER USE  
Licence for your comments and verification

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
DEPUTY-DIRECTOR: ENVIRONMENT AND RECREATION

To DIRECTOR: ADMINISTRATION

Herewith approved and signed LICENCE. Arrange for original to be sent to applicant and other copies to be distributed according to standing instructions.

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
CHIEF DIRECTOR: WATER USE



**LICENCE IN TERMS OF CHAPTER 4 OF THE  
NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) (THE ACT)**

I, *Deborah GabaakelweMochotlhi*, in my capacity as Chief Director: Water Use in the Department of Water Affairs and Forestry and acting under authority of the power delegated to me by the Minister of Water Affairs and Forestry, hereby authorise the following Water Use in respect of the Licence attached hereto.

SIGNED: .....

DATE: .....

**LICENCE NO:** \_\_\_\_\_

**1. Water User**

The water user authorised in terms of this licence is:

**Licensee:** Mooi River Mall (Pty) Ltd  
**Postal Address of applicant:** P.O. Box 3317  
TIGER VALLEY  
7536

CHIEF DIRECTOR: WATER USE

## 2. Water Uses

(a) Impeding or diverting the flow of water in the Mooi River as defined in Section 21(c) of the Act by:

(1) Constructing the proposed Mooi River Mall shopping centre over the Mooi River in Potchefstroom on portion 915 of the Farm Vyfhoek 428 IQ.

(b) Altering the bed, banks, course or characteristics of the Mooi River as defined in Section 21 (i) of the Act by:

(1) Constructing the proposed Mooi River Mall shopping centre over the Mooi River in Potchefstroom on portion 915 of the Farm Vyfhoek 428 IQ.

subject to the conditions as set out in Appendices I and II.

## 3 (a) Properties on which the water is to be used

3.1 Title deed number: T23661/2006

Description of property: Portion 915 of the farm Vyfhoek 428

District: IQ

Province: North-West

Quaternary Catchment Number: C23H

### (b) Registered owner of the property

Mooi River Mall (Pty) Ltd

The water use in terms of section 21 (c) and (i) may be carried out on the following properties of land:

3.2 Title deed number: G105/1907

Description of property: Portion 2 of Town and Townlands of Potchefstroom 435

District: IQ  
Province: North-West  
Quaternary Catchment Number: C23H

**(b) Registered owner of the property**

Potchefstroom City Council Local Municipality

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**(a) Licence Period**

This licence is valid for a period of 40 years from date of issue.

**(b) Review period of licence**

As provided under section 49 of the National Water Act, 1998 (Act No. 36 of 1998), this licence may be reviewed at intervals of 5 years or 60 months. Upon review of this licence any condition of the licence, other than the licence period, may be amended if:

- It is necessary or desirable to prevent deterioration or further deterioration of the quality of the water resource; or
- It is necessary or desirable to accommodate demands brought about by changes in socio-economic circumstances, and it is in the public interest to meet those demands.

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**Definitions**

*Any terms and definitions contained in the National Water Act are applicable to this licence.*

"The Act" means the National Water Act, 1998 (Act 36 of 1998).

"Regional Director" means the Regional Director: Gauteng, Department of Water Affairs and Forestry, who may be contacted at the following address:

Private Bag X 995  
PRETORIA  
0001

## APPENDIX I

### 1. GENERAL CONDITIONS

1. The responsibility of complying with the provisions of the licence is vested in the licensee and may not be ceded to any other person or body.
2. The licence is subject to sections 43, 45 and 54 of the Act.
3. In terms of section 151 of the Act, any contravention of or failure to comply with any condition of the licence, constitutes an offence.
4. In terms of section 124 of the Act, the Minister and any person authorised by him/her in writing may at any time enter upon the premises of the licensee to perform the functions contemplated in sections 125(1), (2) and (3) of the said Act.
5. The licence shall not be construed to be exempting the licensee from compliance with the provisions of the Health Act, 1977 (Act 63 of 1977), the Environment Conservation Act, 1989 (Act 73 of 1989) or any other applicable act, ordinance, regulation or by-law.
6. In terms of section 148(1)(f) of the Act any person who has lodged a written objection against the application for this licence may appeal to the Water Tribunal and the Tribunal may confirm, amend or withdraw the licence or make any other order as it deem appropriate.
7. Any incident that causes or may cause water pollution shall immediately be reported to the Regional Director or his/her representative.
8. The licensee must inform the Regional Director of any change in his name, address and/or premises and legal status within 60 days of such a change.
9. The Department reserves the right to construct storage works at any time or any stream and to store all surplus water reaching such works and to control the allocation of such water.
10. The licensee shall be responsible for any water use charges or levies imposed from time to time by the responsible authority.
11. The licence and any amendment of this licence are also subject to all the applicable procedural requirements and other applicable provisions of the Act, as amended from time to time.

12. The licensee must inform the Department at least 90 days before the expiring date of the licence whether the licence must be considered for another term.
13. This license does not exempt the licensee from complying with the requirements of the Dam Safety Office.
14. The licence holder must, within three months, submit to the Director: Gauteng Region a development schedule, to the Director's satisfaction, containing significant milestones in the proposed development. The Director: Gauteng Region must be given timely notification of any delay of a milestone of more than six months and a new schedule must then be negotiated with the Director. If notification is not given or agreement cannot be reached this licence will lapse.
- ~~15. The licensee shall appoint an independent auditor to conduct annual audits based on the conditions of the license and the commitments contained in the report Proposed Mini Hydro Power Scheme at Saulspoort Dam and along the As river: Bethlehem District, South Africa, Scoping Report, September 2003, Environmental Section, compiled by Ninham Shand (Pty) Ltd. These audit reports and corrective actions that may result from these audits shall be forwarded to the Regional Director: Gauteng for his scrutiny.~~

## APPENDIX II

### SECTION 21 (c) OF THE ACT

#### IMPEDING OR DIVERTING THE FLOW OF WATER IN THE MOOI RIVER

### SECTION 21 (i) OF THE ACT

#### ALTERING THE BED, BANKS, COURSE OR CHARACTERISTICS OF THE MOOI RIVER

#### 1. CONDITIONS OF LICENCE

##### 1.1. The licence authorises

- the impeding or diverting of flow in the Mooi River and
- the alteration of the bed, banks, course or characteristics of the Mooi River on portion 915 of the farm Vyfhoek 428 IQ and portion 2 of the farm Town and Townlands of Potchefstroom 435 IQ located within the Upper Vaal Water Management Area

##### 1.2. The licensee shall carry out and complete all the activities according to the following:

- a) Proposed Mooi River Mall Shopping centre and two bridge crossing over Mooi River: Bethlehem District, South Africa, Scoping Report, September 2003, Environmental Section, compiled by Ninham Shand (Pty) Ltd submitted to the Department;
- b) The conditions of this licence; and
- c) Any other written direction issued by the Regional Director to the licence.

##### 1.3. If the properties mentioned in paragraph 1.1 is subdivided, sold or consolidated this Department must be notified within 60 days after the said transactions took place.

##### 1.4. If the properties mentioned in paragraph 1.1 is subdivided, sold or consolidated the owners of the new properties must enter into a written mutual agreement to determine every separate property's share in the allocated water.

##### 1.5. The Department accepts no liability for any damage, loss or inconvenience of whatever nature, suffered as a result of the water resource.

##### 1.6. If the water use authorised in terms of this license can not be carried out and completed, in accordance with the relevant provisions of the license, the licensee shall stop all activities immediately and take the necessary steps to prevent the possibility of: pollution of any water resources or if the water resource has already

been polluted from being further polluted or damaging of the environment or if the environment has already been damaged from being further damaged and within 7 days report the matter to the Regional Director.

- 1.7. Within 30 days after the completion of the activities, the licensee shall in writing inform the Regional Director thereof. (Included with this notification will be a signed certificate of approval by the competent person to the effect that the construction was completed according to design.)
- 1.8. The activity authorised by this licence must commence within 2 years from the date of issuance of the licence.
- 1.9. The conditions of the authorisation shall be brought to the attention of all persons (employees, sub-consultants, contractors etc.) associated with the undertaking of this activity and the applicant shall take such measures that are necessary to bind such persons to these conditions.
- 1.10. A layout plan and records relating to the compliance/non-compliance with the conditions of the licence must be kept in good order and must be made available to the Regional Director or his representative on request.
- 1.11. The Licensee shall draft and submit an Environmental Management Plan (EMP) specific to the site addressing the entire life cycle of the authorised development. In the operational phase of the EMP one of the aspects the licensee has to address is the management of the river. The following conditions should form part of this aspect:
  - "Cleaning" is limited to removal of dead trees and debris that block bridges/openings during flood events;
  - No dredging will be allowed, and
  - An external engineer is to undertake bi-monthly inspections and monitor clean-up operations where necessary, as indicated above.
- 1.12. To manage the various authoritative conditions it is recommended that the EMP contain the conditions from the RoD and water use licence.

## 2. MITIGATION OF IMPACTS

- 2.1. The licensee must comply with the mitigation measures contained in the report (Indicated in Condition 1.2(a)) submitted to the Department, the conditions of this licence and any other written direction issued by the Regional Director to the licence.
- ~~2.2. Construction activities must not take place within the 1:100 year flood line or within a horizontal distance of 100 meters from any watercourse, estuary, borehole or well, whichever is the greatest, unless authorised by this licence (as part of the activities described in the report submitted to the Department).~~
- 2.3. Compensation measures for damage to and or mitigation measures must be recommended if avoidance or minimisation of the impacts of the proposed development is not possible or if mitigation measures fail to adequately protect the instream and riparian habitat

- 2.4. Construction activities must be scheduled to take place during the dry seasons when flows are lowest. Should the activities not be completed during low flow conditions, a detailed stormwater management plan, developed by a suitably qualified person, including details of designs and indicating compliance with legislation, must be submitted to the Regional Director.
- 2.5. Material must not be stored within the riparian zone, and must be well above the 1:50 year floodline or 100 meters horizontally or more from any watercourse or estuary, whichever is the greatest.
- 2.6. The construction camp shall not be located within the 1:100 year flood line or within 100 meters of any watercourse whatever the greatest.
- 2.7. Proposed activities should not increase bank instability and the erosive potential of a stream. Where stream diversions lead to a shorter length of the river, the corresponding increase in gradient should be compensated with a corresponding increase in stream width. Likewise where stream diversions lead to a narrower river or floodplain, steps should be taken to ensure that the new channel is able to withstand the most probable max flood events without undue bank instability or erosion.
- 2.8. Increased runoff due to vegetation clearance and/or soil compaction must be managed, and steps must be taken to ensure that storm water does not lead to bank instability and excessive levels of silt entering the watercourse.
- 2.9. Storm water leaving the licensee's premises must in no way be contaminated by any substance, whether such substance is a solid, liquid, vapour or gas or a combination thereof which is produced, used, stored, dumped or spilled on the premises.
- 2.10. The structure of temporary crossings must be non-erosive, structurally stable and must not induce any flooding or safety hazard. Temporary crossings must be inspected regularly for accumulation of debris, blockage, erosion of abutments and overflow areas. Debris must be removed and damages must be repaired and reinforced immediately.
- 2.11. Construction activities shall start up-stream and proceed into a down-stream direction, so that the recovery processes can start immediately, without further disturbance from upstream construction works.
- 2.12. Soils that have become compacted must be loosened to an appropriate depth to allow seed germination.
- 2.13. The natural migration of aquatic biota and upstream movement of fish must not be disturbed.
- 2.14. The development may not impede natural drainage lines.

- 2.15. No material with pollution generating potential will be used in any construction activities.
- 2.16. Design plans should incorporate and cater for the release of the Reserve
- 2.17. The licensee must develop and submit an operational plan including aspects for Reserve releases, and the operation of the scheme in terms of dropping volumes.
- 2.18. The licensee must develop and submit an Environmental Management Plan to the Regional Director: Gauteng for scrutiny and approval prior to construction commencing. The EMP shall include aspects relating to construction (end of diversion discharge back into the As River), and operational aspects including erosion monitoring. Combine with 1.11.
- 2.19. A wetland rehabilitation plan for offsite wetland rehabilitation as indicated in the Scoping Report (Condition 1.2(a)) shall be submitted to the Regional Director: Gauteng within 2 years of the issuing of this licence. The implementation of this plan shall be complete one year after the necessary authorisation has been approved for this plan.

### **3. RIPARIAN AREA**

- 3.1. Unless authorised by this licence, as part of the activities described in the report submitted to the Department, access roads must not encroach into the riparian zone.
- 3.2. All activities within the riparian zone must be restricted as far as possible.
- 3.3. Riparian vegetation, including dead trees, outside of the construction area must not be removed during or after construction. Minimise removal of vegetation that falls within the construction footprint.
- 3.4. Alien vegetation must not be allowed to colonise the area, and all new alien vegetation must be controlled.
- 3.5. Vehicles and other machinery must be serviced well above the 1:50 year floodline or within a horizontal distance of 100 meters from any watercourse or estuary. Oils and other potential pollutants must be disposed off at an appropriate licensed site, with the necessary agreement from the owner of such a site.

### **4. INTEGRATED WATER AND WASTE MANAGEMENT**

- 4.1. Waste must be disposed off in accordance with the provisions of Section 20(1) of the Environment Conservation Act (Act 73 of 1989).
- 4.2. Measures must be provided to avoid disposal or spillage of any material which could destroy or degrade the instream or riparian habitat.

**5. REHABILITATION**

- 5.1. Rehabilitation must be performed in accordance with the report submitted to the Department.
- 5.2. Any mitigation measures and recommendations regarding both the implementation of additional measures to protect the riverine environment and any changes required to existing recommended measures must only be implemented after approval from the Regional Director or his representative.
- 5.3. Plants that are indigenous to the immediate surroundings must be used in the rehabilitation of the disturbed areas.
- 5.4. A photographic record must be kept of the rehabilitation process.

END OF LICENCE