

SALGA

South African Local Government Association

**Local Regulation Case Study Report for
Chris Hani District Municipality**

August 2011

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1 Introduction

1.1 Aim of case study

One of the key aims of the project is to understand and document current practises on local regulation by different types of municipalities with varying capacities and service delivery mechanisms. The aim of the case studies will be to understand the current practises of these municipalities in regulating **water services**.

This case study focuses on water services within Chris Hani District Municipality (CHDM), located in the Eastern Cape. The aim of the case study is to understand the way in which water services are being regulated.

1.2 Methodology

The methodology informing this research included a review of secondary sources as well as face-to-face interviews and focus-group discussions with the Water Services Authority (WSA) – CHDM and the Water Services Providers (WSPs) – local municipalities within the district and the Amatola Water Board.

1.2.1 Interviewees

The list of individuals interviewed in this research is shown in the table below:

Table 1: Individuals interviewed

Name	Organisation	Designation	Date of Interview	Contact Details
Moses Shasha	Engcobo LM	Area Manager (Water and Sanitation)	18/11/2010	0727244606
Mawetu Mtengwane	Emalahleni LM	Area Manager (Water and Sanitation)	18/11/2010	084 222 4002
Babalo Tutu	Sakhisizwe LM	Area Manager (Water and Sanitation)	18/11/2010	079 381 3429
BG Badenhorst	Inxuba Yethomba	Manager: Technical Services	18/11/2010	082 7733292
Zuziwe Bukani	Tsolwana LM	Area Manager (Water and Sanitation)	18/11/2010	045 8460195
Matthews Mmotsa	Inkwanca LM	Area Manager (Water and Sanitation)	18/11/2010	079 3378008
Nkulu Mbede	Lukhanji LM	Infrastructure Manager	18/11/2010	045 807 6006
Makhaya Dungu	CHDM	Director: Engineering Services	19/11/2010	045 808 4713
Nobuhle Dyasi	CHDM	Manager: Water Services Authority	19/11/2010	045 808 4713
Xola Bomela	Amatola Water Board	Director: Operations	19/11/2010	043 707 3700

1.3 Risks to case study research and how these were mitigated

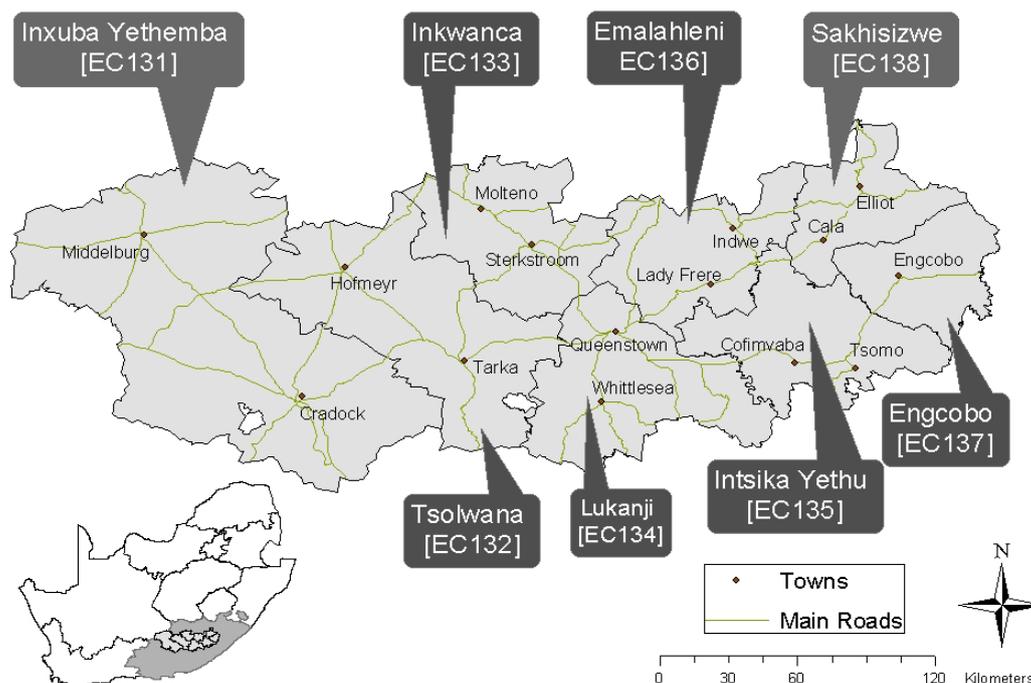
Risks associated with this research include that the researcher were not able to engage directly with the Community Service Providers (CSPs). Attempts were made to address this by speaking to the Support Services Agents (SSAs) responsible for managing the CSPs. At the time of drafting this report, a telephonic discussion was held with Mr J Gibson of Maluti GSM, one of the SSAs.

2 Context and Background

2.1 Chris Hani District spatial overview

The Chris Hani District Municipality (CHDM) is a landlocked district located in the central area of the Eastern Cape and is composed of eight Local Municipalities (LMs). Its eastern LMs (Emalahleni, Engcobo, Intsika Yethu, Sakhisizwe and part of Lukhanji) were part of the former homelands, Transkei and Ciskei, whilst the western LMs (Inkwanca, Inxuba Yethemba, Tsolwana and part of Lukhanji) were part of the Republic of South Africa. As a result, the settlement and land-use patterns in the western LMs are markedly different from those of the former Transkei and Ciskei. Nodal urban development (small service towns and extensive commercial farms) characterises the western LMs whilst settlement in the former Ciskei and Transkei is made up of dispersed "traditional" rural village settlements, typically embracing subsistence-farming activities. About 71 percent of the population lives in rural areas. Generally, the spatial pattern of the area is a combination of separate rural and urban areas, which are nevertheless functionally interrelated and dependent on the main area – Queenstown. Agriculture is regarded as the backbone of the economy (The Water Dialogues Synthesis Report 2009-Chris Hani Case Study).

Figure 1: Map of Chris Hani District Municipality



Source: Water Dialogues-SA Chris Hani Case Study. The Water Dialogues Synthesis Report 2009 - Chris Hani Case Study.

2.2 Water sources in Chris Hani DM

The CHDM lies on the watershed of four major river systems: the Great Fish River, the Kei River, the Mbashe River and the Orange River. The majority of towns in the CHDM are supplied from surface water sources, while some exceptions rely on groundwater supplies. Communities in the rural areas generally rely on unprotected springs, streams and boreholes for their water supply. Commercial farms are usually supplied by groundwater from boreholes.

2.3 Mandates and institutional arrangements

2.3.1 Water services authority (WSA) and water services provision (WSP) mandates

Chris Hani District Municipality is a Water Services Authority (WSA) for its entire area of jurisdiction, and has delegated the provision of water services to each of the eight Local Municipalities (LMs) within the District, namely: Inxuba Yethemba (West), Tsolwana (West), Inkwanca (West), Lukanji (West), Intsika Yethu (East), Emalahleni (East), Engcobo (East) and Sakhisizwe (East).

CHDM's status as a WSA in its area of jurisdiction was confirmed with the announcement of powers and functions by the Minister of Local Government in 2003. At the time very little service delivery was taking place in the rural areas within the area of jurisdiction of the municipality.

The WSA underwent a section 78 process to determine the most suitable service delivery option in respect of the provision of water services. The findings of the Section 78 assessment indicated that the four western LMs should be appointed as WSPs for their areas of jurisdiction. It found that the four eastern municipalities of Emalahleni, Intsika Yethu, Ngcobo and Sakhisizwe lacked sufficient capacity to oversee an outside provider; in these four municipalities the DM should continue the provider function in the short- to medium term (The Water Dialogues, 2009).

This was viewed as an interim solution and every effort should be made by the DM to build the capacity of these LMs, in order for provision to be outsourced. Where Chris Hani retained the provider function, a contract was entered into with an external service provider, Amatola Water Board, to assist the DM with this function (The Water Dialogues, 2009).

2.3.2 Service delivery mechanisms: community based organisations

Community based organisations (CBOs) have been in place prior to 2003 in the eastern LMs (including more than 600 stand-alone schemes, or about 2000 people that operate local small-scale water and sanitation projects in rural villages) and have been continuously involved and increasingly formalised as community service providers (CSPs) at the local level. CSPs are used for all operations and maintenance.

CHDM has encountered numerous challenges related to provision of water services in rural areas. One of the major difficulties was that numerous water schemes had been implemented by NGOs in the district and in some cases the DM did not even know where these schemes were situated. A primary task was to engage communities who had received water services and draft an asset register of all rural schemes. They found that a number of the schemes were in bad condition and some not operational – also established that in most areas the communities had been paying for O&M costs themselves.

Pending the finalisation of the Section 78 process at CHDM, the WSA entered into temporary arrangements with the LMs regarding the provision of water services. The LMs on the eastern side were assisted by a Service Provider, Amatola Water, who was involved in monitoring, mentoring and training in these LMs. In the rural eastern areas, Amatola Water appointed the previously contracted four support services agents (SSAs) to ensure the continuation of assistance to the CSPs in running rural schemes: The Mvula Trust¹, WSSA² (Water Solutions Southern Africa), Amanz'abantu³ and Maluti GSM⁴.

Once these agreements were concluded in mid-2009, the WSA decided to contract each local municipality as a WSP. To capacitate these LMs to assume the WSP function, CHDM recruited staff into posts (i.e. they were seconded to LMs). CHDM strives for the transformation of the CSPs into "Co-ops" that will allow for an institutional framework (compliant with the MFMA) that the LM can contract with. This challenge has been noted in the 2006/07 Amatola Water Annual Report:

"The institutional challenge in the contract is the management and transformation of the community-based organizations (CSP's) that have been utilised extensively in the CHDM to provide water services in the region. This approach to water service provision allowed the municipality to impact positively on unemployment and skills transfer in the region. The challenge to the municipality has been to use this approach in a manner that meets legislated requirements for the water sector and to satisfy community expectations in terms of remuneration for services rendered. Amatola Water has been instructed by the CHDM to transform this service delivery approach to meet the requirements of legislation, whilst improving efficiencies. This will be an ongoing process in the 07/08 financial year with an emphasis on investigating the possibility of transforming the CSP's into viable small business entities that can contract directly with the CHDM to undertake support service agent services".

Institutional arrangements time-line (2003-present)⁵

The following table summarises the main events from 2003, when CHDM became a WSA, to the present.

Table 2: Institutional arrangements timeline

Time	Event
2003	<ul style="list-style-type: none"> • Powers & Functions devolved to local government. CHDM becomes the WSA.
2003, August	<ul style="list-style-type: none"> • Shortly after assuming the role of WSA, CHDM begins Section 78 assessment.
Period before the	<ul style="list-style-type: none"> • The four western LM areas (made up of farm areas with some

¹ Mvula Trust is the largest Non-Governmental Organisation supporting Water and Sanitation Development in South Africa.

² Established in 1986, Water and Sanitation Services South Africa (Pty) Ltd (WSSA) is a specialised provider of sustainable water services within the municipal, industrial and mining sectors across southern Africa.

³ Amanz' abantu Services (Pty) Ltd is a private company whose shareholders include both Eastern Cape and nationally based companies, representing the full range of skills and experiences required for implementing rural water supply and sanitation projects. Amanz' abantu Services is active in the Eastern Cape Province and operates out of its Head Office in East London. There are area offices located in Mthatha and Queenstown.

⁴ Consulting Engineers

⁵ The events and times of the timeline are based on various sources listed in the references.

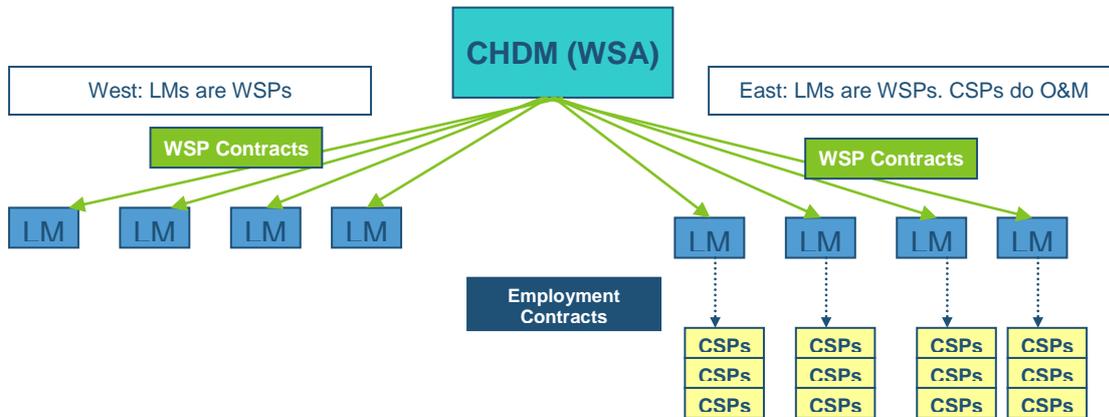
<i>Time</i>	<i>Event</i>
implementation of the Section 78 decision	<p>small urban centres) temporarily appointed as WSPs for their municipal areas. The focus of these LMs was on urban centres, leaving farm areas with no service delivery and dependent on water provision by farmers.</p> <ul style="list-style-type: none"> The four eastern LMs, (made up of rural communal villages and some urban centres) are temporarily appointed as WSPs servicing urban centres only. The rural communal villages are serviced by CSPs with the support of four SSAs contracted to CHDM.
2005/06	<ul style="list-style-type: none"> Section 78 completed. CHDM adopted Section 78 recommendations in December 2005. Recommendations: four western LMs are appointed as WSPs for their areas of jurisdiction; CHDM retains the WSP function for the four eastern municipalities in the short to medium term as they lack the capacity to fulfil the WSP function. (Seen as interim solution and CHDM is required to build the capacity of these LMs so that they can eventually be contracted as full WSPs.) Steering Committee established to drive process of formalising the relationships between CHDM and the new WSPs. For the four eastern municipalities, a contract was entered into with an external service provider (Amatola Water Board) to assist the municipality with this function. CSPs doing a good job of ensuring ongoing water services provision in the eastern LMs, particularly regarding quick turnaround time for attending to breakdowns. CHDM decides that it would be very complicated for them to engage directly with large numbers of CSPs principally in terms of labour and health and safety issues, and that it would be more effective if they were to contract SSAs to fulfil this function. Their brief was to focus on rural areas and to ensure that CSPs were formed for all new water schemes.
2006, July	<ul style="list-style-type: none"> Section 78 recommendations come into effect
2007	<ul style="list-style-type: none"> Amatola Water Board (WB) contracted by CHDM as SSA for 2 years to provide Water Service Provision Management Support services in the eastern LMs. Amatola Water commenced operations on 1 April 2007 and contracted the existing private sector service providers to ensure service continuity. CHDM in process of concluding service contracts with LM service providers for the period beginning in July 2007 to the end of June 2009. There were no contracts for the period ending in June 2007. Even while the DM is concluding service agreements with LMs no mechanisms were put in place to regulate the performance of the WSPs based on these agreements.
2009, June	<ul style="list-style-type: none"> Contract with Amatola WB ends, but is extended for 6 months. Council to decide on future "model" for CSPs.
2009, August	<ul style="list-style-type: none"> Contract with Amatola WB ends. Four eastern LMs take over as WSPs from CHDM, making all eight LMs WSPs.

2.4 Current arrangements between WSA and WSPs

The current set of arrangements is reflected in the diagram below. The CHDM is the WSA and has contracts in place with all of the LMs that play the WSP role. In the East, which is largely made of rural areas, Community Service Providers (CSPs) play a key

role in the operations and maintenance of the rural water schemes. These individuals have employment contracts with the WSP to fulfil specific tasks.

Figure 2: Current arrangements between WSA and WSPs

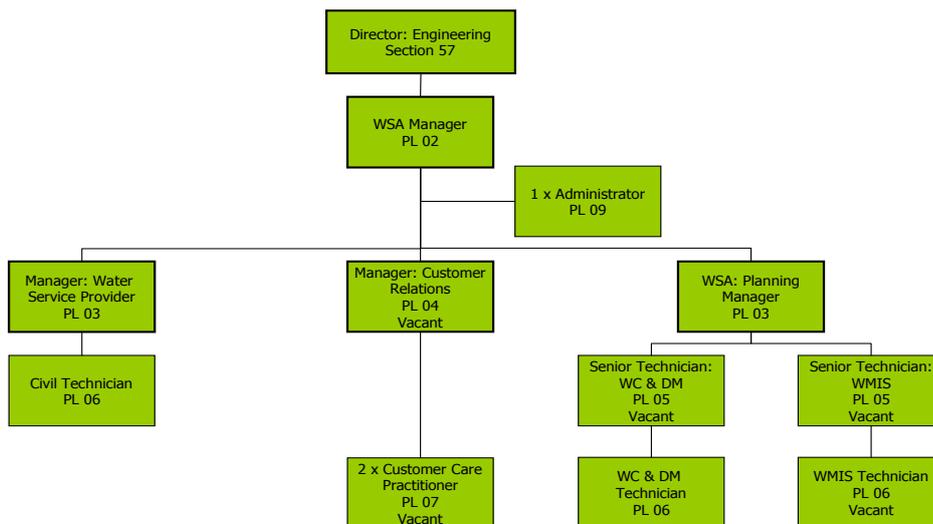


Since the start of the current financial year, July 2009 the CHDM has undertaken the following set of arrangements

- The CHDM is the WSA. The organogram of this department, which is located within the Engineering Directorate of the district, is shown below.

Figure 3: Organogram of WSA

Engineering Directorate Water Services Authority



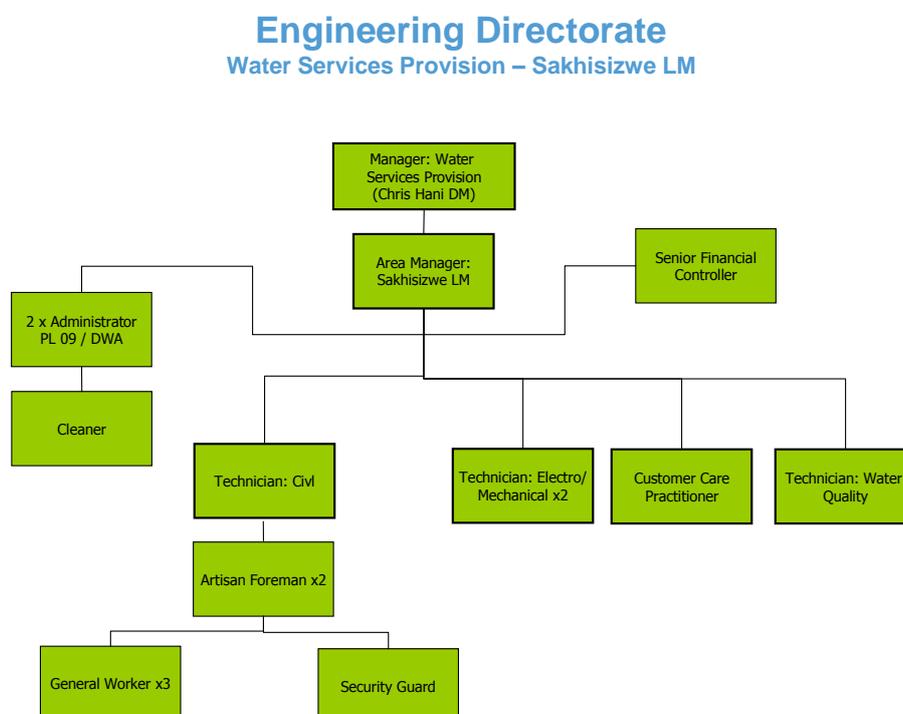
- All 8 local municipalities are Water Services Providers, with contracts signed with the WSA.
- In 7 of the 8 local municipalities, the CHDM as seconded newly appointed staff to fill the capacity gap within these municipalities in respect of water services and to enable them to fulfil their water services provision responsibilities. These appointments include the following positions:
 - a. Area manager (1 in each WSP)
 - b. Civil engineering technicians (between 1-2 in each WSP)
 - c. Electrical technicians (between 1-2 in each WSP)
 - d. Customer care (1 in each WSP)
 - e. Financial controller (1 in each WSP)
 - f. Water quality technician (1 in each WSP)

The Area Managers are on three year contracts which may be renewable, depending on performance.

The exception to the above is the case of Lukhanji LM where there is a 25 year concession in place with Queenstown which forms part of the Lukhanji LM. There is about two years remaining in the concession. The WSA is having talks with the WSP to encourage them to have more staff in the area outside the concession.

The WSP staff seconded from the CHDM is typically located in the Engineering Directorate of the local municipality. An example of one of the organograms of the local municipalities, Sakhisizwe is shown below:

Figure 4: Organogram of WSP: Sakhisizwe



2.4.1 Current role of Community Service Providers

The CHDM has maintained the involvement of CSPs as role players in the delivery of water services. The community based organisations are largely responsible for the day-to-day operations and maintenance (O&M) tasks of rural water schemes within the district. Their operations are limited to basic maintenance as they are unable to deal with more specialised and sophisticated maintenance. The district therefore appointed the electro/mechanical technicians to deal with complex maintenance and operations.

The individuals who work within the CSPs have signed employment contracts with the WSPs. The CSPs are provided with basic training on O&M, offered by the WSP. The individuals who work for the CSPs are selected by the community, with the local ward committees playing an important role in this selection process. Typically each ward committee, headed by a ward councillor, would establish a specific water committee responsible for the selection individuals to be employed by the WSP.

There are over 1200 villages within CHDM and there is an estimated 600 rural schemes in place.

3 Local Regulation

3.1 What do they understand local regulation to be?

For the WSPs interviewed, local regulation is understood to include:

- Playing a role in ensuring that the goals for the WSDP are fulfilled
- Business Plans are developed and delivered upon
- The quality of water and waste water is in line with national standards (including meeting Blue drop and Green drop standards)
- Ensuring that the content of the contractual agreement between the WSA and WSP is adhered to
- Submitting reports as required and in the required format
- Monitoring the finances allocated to the WSPs to ensure that they are effectively managed and ring-fenced
- Managing customer care effectively

The WSPs expressed a sentiment of generally doing well with respect to the fulfilment of their roles. There is recognition that they are in a transition stage, with the current institutional arrangements having only come in place over the last 12-18 months. Many of the seconded staff members are therefore relatively new. Some areas for improvement include:

- Enforcement of by-laws – the main challenges relating to capacity to ensure compliance
- Customer care – there was a view that two customer care officers are required, particularly because of the large numbers of CSPs in operation within CHDM
- Knowledge sharing – the WSPs believe that there is room for learning from each other and that platforms for knowledge sharing should exist

The WSA has a clear sense of its legal roles and responsibilities and a strong awareness of these in terms of the Strategic Framework for Water Services. During the

discussions with the WSA staff, mention was made of the following, in terms of how they understand their role in regulating water services:

- Monitoring the performance of the WSPs with respect to the delivery of water services (including their role in planning)
- Monitoring compliance with water quality
- Developing the WSDP in co-operation with the WSPs
- Playing a role in building the capacity of the WSPs to deliver
- Providing tools and mechanisms for reporting
- Ensuring that it has the capacity to fulfil its WSA functions
- Establishing by-laws
- Setting tariffs
- The development of an Indigent Policy
- The development of Services Standards and a Client Services Charter for CHDM

There were a number of areas for improvement mentioned. These include the following:

- Capacity to monitor, regulate and support WSPs – the WSA has appointed two new managers to assist in addressing this
- Dealing with a eight different Indigent Policies presents a challenge for the WSA to establish one single Indigent Policy
- Economic regulation needs to be enhanced as there is no Tariff Policy in place. The WSA intends to address this during the course of the current financial year
- The WSA has yet to establish its Service Standards and Client Services Charter.

3.2 Mechanisms for local regulation

3.2.1 Regulatory instruments in place

There are a number of regulatory mechanisms in place to manage the accountability relationship between the WSA and the WSPs in operation within CHDM. These are discussed in more detail below.

Contractual agreements

Each of the eight local municipalities, which are now WSPs, have signed contractual agreements with the WSA (CHDM). The contracts have been in place since July 2009. The arrangement is such that the WSA has contracted each of the WSPs as external service providers.

Business Plans

The WSPs have to submit business plans for approval to the WSA, detailing strategic objectives and the financial plan associated with the plans. The WSP is obliged to ensure that it conducts itself in accordance with its undertakings in the business plan.

The WSA is responsible for drafting the Water Services Development Plan (WSDP). This is developed through a process of engagement with Area Manager in each of the WSPs.

Monitoring and reporting

The WSP is expected to record and maintain a complete record of its contractual duties and obligations by the use of appropriate technology. Records to be submitted to the WSA must include, *inter alia* –

- Monthly reports with information in a format specified by the WSA
- Quarterly reports with information in a format specified by the WSA
- Annual reports with information in a format specified by the WSA
- The following data must be maintained at the offices of the WSP –
 - water meters: locations, consumer's name, reference number, diameter, age, date of control, reading at the time of installation, consumption; and
 - drawings and technical documentation in respect of the water services system.
- Subject to reasonable notification from the WSA, all records should be made available to the WSA or its appointed agents during normal working hours with the objective of verifying that they are being correctly maintained and to facilitate the regulatory and monitoring functions of the WSA in respect of the provision of water services.

The WSA's responsibilities with respect to monitoring and reporting are to:

- monitor the activities, performance and compliance of the WSP in accordance with the contract and take any action as is necessary to ensure performance where necessary;
- monitor the compliance of the WSP with the approved budget;
- perform inspections of the water services and monitor any impact with the supply of the services may have on the environment;
- monitor the financial records of the WSP;
- monitor the implementation of customer care; and
- monitor the operating procedure on a regular basis.

Within CHDM there is currently a monitoring system in place, whereby each WSP is expected to report on a monthly basis to the WSA. The monthly reports submitted by each WSP covers the following components for each strategic activity:

- Progress to date
- Challenges
- Actions recommended/taken

The reports are thus largely qualitative in nature. In addition each WSP reports on its

- monthly income and expenditure;
- water quality monitoring and
- customer care (log of complaints).

The WSA has an assigned Water Services Manager who meets with the WSPs on a monthly basis. She also receives all the reports submitted by the WSPs.

By-laws

Chris Hani District Municipality gazetted a set of by-laws for water services in 2006. The WSPs are responsible for monitoring enforcement and compliance of the by-laws (for example dealing with illegal water connections).

Compliance of by-laws represents a challenge to the WSA and WSPs as they do not have the capacity and resources to effectively play their enforcement role.

Water quality monitoring

The WSA is expected to deliver reports to DWA regarding its performance on water quality in line with the Blue Drop and Green Drop initiatives. Therefore the WSA is tasked with compliance monitoring for water quality standards.

Water quality testing is conducted by the Municipal Health Services department within CHDM. This department therefore provides an internal service to the WSA to conduct regular sample testing. Compliance monitoring is done on a monthly basis.

Within each WSP there is a water quality technician who deals with operational monitoring on a daily basis and also conducts tests.

Economic regulation

At present the WSA does not have a Tariff Policy in place. It does however assist the WSPs in setting tariffs by providing guidelines each year, in line with National Treasury guidelines.

It was acknowledged by the WSA that this represents a gap in their regulatory framework. There is a plan to have a Tariff Policy in place by June 2011.

Customer care

Consumers of water services play an important role in regulating the quality of the services provided, through for example, submitting queries and complaints. Each WSP is expected to have a consumer charter in place and to review the existing consumer charter in consultation with consumers in the contract area and the WSA, from time to time.

According to the contractual agreement between the WSA and the WSP, the WSP undertakes to interact with consumers concerning matters related to the provision of water services, in particular to provide information about the provision of water services as requested and communicate with consumers about the conditions for provisions of water services.

The WSP is also responsible for conducting educational and awareness programmes in the communities within the water services area in respect of water demand management, water conservation, health and hygiene awareness, payment for services and other matters related to water services.

3.2.2 Capacity to regulate

The WSA does not have capacity specifically dedicated to regulating its WSPs. At present the Water Services Authority Manager fulfils this role. The WSA acknowledges that there are a number of gaps in its capacity to regulate the WSP. In order to address these gaps, as of December 2010 the WSA will appoint two more full-time management positions to assist with building its own capacity to perform its functions as the WSA. These posts are the:

- Manager: Water Services Provider
- Manager: WSA Planning

These posts, along with the post of Manager: Customer Relations (all overseen by the Manager: WSA) are intended to form the main institutional layer for managing the WSPs, which includes regulation, monitoring and support.

Water quality monitoring capacity

As noted in the earlier section, regulation with respect to water quality monitoring takes place through the Municipal Health Department of the municipality. This unit is therefore largely responsible for providing scientific services to the municipality.

Economic regulation capacity

In terms of monitoring and regulation from a financial perspective, the WSA has a WSA Finance Manager, who assists the district in monitoring expenditure by the WSPs for the delivery of water services. It is understood that each year the WSA provides each WSP with a ring-fenced allocation for the delivery of water services and that WSPs need to report on spending on a regular basis. Within each WSP there is a financial controller who is responsible for complying with the WSA's requirements around financial management. For example, the WSPs need to submit invoices for expenditure in order to be reimbursed. These invoices must be submitted in a specific format and contain all the required information in order to be considered for payment by the WSA.

With respect to tariffs, the WSA provides only guidelines to the WSPs on how to establish tariffs and what annual tariff adjustments should be implemented.

3.3 Accountability

The Water Services contracts which are in place are the main mechanisms for accountability between the WSA and WSPs.

Other mechanisms of accountability come in the form of the WSP staff that are appointed by the CHDM, but are based within the WSP and report directly to the relevant Head of Engineering or Technical Services within each municipality. These managers are therefore accountable on two fronts, to the CHDM as their 'employer' and to the WSP for which they work and perform their functions.

3.4 Regulation between the WSPs and the CSPs

THE CHDM model for water services includes the active involvement of CSPs in the delivery of water services. In this model the community plays an important role in holding the employees (of the CSPs) accountable for the quality and efficiency of the service they provide. If there are any signs of poor performance the community being served is likely to convey their concerns and complaints to the ward committee or ward councillor. This would then be relayed to the WSP and a process of addressing the community's concerns would follow.

Within each WSP, the customer care official is largely responsible for engagement with CSPs. The CSPs regularly meet the customer care official and are required to submit reports. Due to the many number of CSPs in operation, these meetings usually take place as clusters, where meetings are held with a number of CSPs at a time.

4 Effectiveness of Regulation

When reflecting on regulatory effectiveness there are a number of different “layers” of regulation which need to be considered. The first layer speaks to the role of the WSA in regulating the WSPs. The second refers to the regulation and monitoring of CSPs by the WSPs.

It should be noted this chapter of the report provides only preliminary conclusions, drawn from the views of the interviewees. Given that the current model has only been in place for 18 months it is too early to draw concrete conclusions.

4.1 Regulation of WSPs by WSA

This section of the report reflects on how effective the WSA has been in regulating the WSP, as well as how effective the WSP has been in fulfilling its responsibilities. In light of the current arrangement being relatively new, this analysis offers only a preliminary and subjective view of lessons learnt.

4.1.1 Contractual arrangements

The WSA has signed contracts with each of the eight WSPs. This is essentially a legally binding service level agreement between the two parties. According to the Area Managers interviewed, the contracts were established through a process of negotiation between the administrative and political arms of both the CHDM the WSA and the LMs as the WSPs. This negotiation process was seen as a key success factor to ensuring the process was inclusive and received buy-in from all quarters. The agreement also includes a programme and targets which are to be met over the course of the contract, as well as a set of reporting requirements.

The WSPs interviewed felt that the WSA was fulfilling its role, noting that they are “not rigid” in their approach. One gets the sense that there is a relatively good working relationship between the WSPs and the WSA. The WSA is not seen to be a watchdog, but rather a source of support to assist the WSPs to deliver water services. The WSPs indicated that the service level agreements provide the “lead” to staff on their goals, objectives and targets and has clarified the expectations, roles and responsibilities.

The WSA indicated that the approach to managing the contract with the LMs as WSPs was quite different to the previous arrangement where Amatola Water was the service provider. In the previous arrangement, it seems that the WSA was somewhat disengaged from Amatola Water Board, with the contract being the basis of the relationship. It does seem as though the WSA left the water board to its own devices somewhat. One gets the sense that the two organisations did not relate to each other, as noted by the WSA, the water board is not a municipality and is not subject to council decisions and did not necessarily “share its vision” for the district in the context of developmental local government. They focused on satisfying the conditions of the contract and were not engaged in the bigger picture issues.

The WSA expressed a view that the new arrangement is more effective because it is contained within local government and there are a set of expectations around intergovernmental relations which assists in managing the relationship. There is also a greater sense of “shared vision” and commitment to the goals of the district. Institutionally the relationship of accountability is perceived to be easier to manage in the new model as the WSA and WSPs have a clear sense of roles and responsibilities and there is a greater sense of partnership, according to many of those interviewed.

In terms of accountability from the perspective of the community, the WSA and WSPs felt that it was easier for consumers to hold local government accountable than an external service provider as external parties do not feel the same responsibilities around public participation etc. In the new arrangement communities are said to be clearer on the role of local municipalities and have the mechanisms of democratic local governance such as ward committees and customer complaints desks at the local municipalities available to hold them to account.

4.1.2 Institutional arrangements

Institutional arrangements in themselves are not typically considered to be part of the regulatory mechanisms, but in this case study they play an important role in terms of the relationship between the WSA and the WSP.

The CHDM as the WSA had through a consultative process adopted an institutional model which saw the secondment of staff (who were specifically recruited and employed by CHDM) to each of the local municipalities where a specific unit was established to fulfil the WSP role. These water services units are typically located in the Technical Services or Engineering Services Directorate. The staff working within this unit report directly to the local municipality's relevant Head of Technical Services and need to ensure that their performance targets are aligned with the Service Delivery Budget Implementation Plans (SDBIPs) of the department. The Area Managers also represent the local municipality as the WSP when engaging with the WSA and are therefore responsible for reporting directly to the WSA.

The **seconded** staff however also report to the district as their employer and need to ensure that they meet the expectation set out in their individual performance contracts which are signed with the CHDM. Therefore there is a relationship of accountability in place, according to the seconded staff interviewed. They acknowledged that establishing themselves as part of the local municipality, while being employed by the district was challenging at times and there tensions which arose in certain instances with other LM staff. However they were very clear that they see their primary role as part of the machinery of the local municipality and ensuring that the WSP function is performed effectively. As remarked by one of the Area Managers:

"We report to the local municipality every step of the way. We work with the local municipality and are not there to enforce the will of the district municipality".

Many of the Area Managers felt that the current model (the secondment of staff to the WSPs) was a step in the right direction, mainly because the WSA has injected resources and human capacity into the WSPs. Some believe that the establishment of a new unit with each WSP was a positive step because it has allowed the local municipalities to ring-fence water services, from an institutional and financial perspective and therefore has allowed these units to focus their energy on one particular area. It has also meant that the Technical Services departments within these local municipalities are freed up to focus on other areas of service delivery.

4.1.3 Economic Regulation

It is fair to say that economic regulation needs to be improved within this district. The WSA provides guidance to the WSPs on annual tariff adjustments but there is no Tariff Policy in place.

Each year, the WSA provides an allocation to the WSPs, which is a ring-fenced amount for the delivery of water services.⁶ In order to ensure that the finances of the WSPs are managed effectively, each has been allocated a financial controller. The financial controller (seconded by the CHDM but based in the WSP) is responsible for ensuring that these funds are spent appropriately and that financial reporting is transparent and in line with regulation requirements. The financial controller reports to the WSA Finance Manager.

The WSPs indicated that the financial controls in place are rigorous and requires that invoices submitted to the WSA are in the correct format, required by the WSA. This format requires that each item is detailed clearly and specified. The model aims to ensure that the WSPs "account cent-by-cent", according to one of the WSPs interviewed. One of the WSPs expressed concern at their capacity to report as required, indicated that delays in the payment of invoices was often due to non-compliance with the invoice specifications. This stems from the Finance Departments within the LMs. The WSA has assisted by providing training and guidance on the specific expectations around financial reporting and invoicing.

Other concerns raised around managing finances include maintaining the ring-fencing of the allocations. A few of the WSPs indicated that councillors would want to "dip into" the water services allocation for other purposes. The WSP has to therefore exercise tight control of these funds and have had to remind councillors of the agreement which they entered into which disallows using these funds for anything other than water services.

The WSA acknowledged that the financial audits carried out by the Auditor General have raised a number of concerns which has indicated poor financial reporting and economic regulation. The district has received Disclaimers for the last few years, largely due to its inadequate financial reporting (e.g. debtor age analysis).⁷ These audits have proven very useful in identifying areas which need improvement with respect to the accuracy and detail of its financial reporting. The Director of Engineering services indicated that economic regulation is an area where they feel they need the greatest support. He commented that "there is no manual in terms of the audits for water services and financial regulation", indicating that they need more guidance in terms of accounting for things clearly and accurately in terms of the Auditor General's requirements.

Allocation of funds to WSPs

The CHDM takes responsibility for distributing Equitable Share (ES) allocations to each of the WSPs. The distribution of these funds is determined in part by the Division of Revenue Act allocations for each local municipality. However the CHDM also makes use of the business plans submitted by each WSP and their budget for the year ahead to determine the allocations. When asked about whether the local municipalities ever questioned their allocations the WSA Finance Manager indicated that there have been concerns raised by some WSPs in the past. For example, some municipalities received less than the amount stipulated in DORA for 2009/10, and have questioned this. The district indicated that the allocations they received were based on their business plans

⁶ None of the representatives from the LMs raised concern around how much they are allocated and the mechanisms used by the district to determine these allocations. However it is worth considering whether this may be an issue in future years.

⁷ It should be noted that the WSA feels that many of the aspects which it received a poor audit are beyond its control, such as the lack of compliance on the part of the WSPs in terms of Supply Chain Management when procuring water related services. In this respect the WSA is in disagreement with the AG that it should be penalized for shortcomings on the part of the WSPs.

and ability to spend (not solely on DORA). The CHDM has had extensive engagements with the WSPs to explain the basis for the fund distribution.

The ES allocations are not given as an upfront allocation to each LM, but rather the WSPs present the CHDM with detailed invoices for expenditure. Since the WSPs collect revenue from billing, the ES allocation is only intended to cover the shortfall which municipalities face as a result of revenue from billing being insufficient to cover their costs. These local municipalities typically have very low revenue bases and therefore tend to rely heavily on the ES. However the WSPs need to clearly demonstrate this shortfall and provide transparent information on their spending. For this purpose the financial controller is based in each of the WSPs. One of the main challenges they face is underspending and municipalities therefore need to improve their ability to spend if they are to realise their business plans.

The WSA takes responsibility for capital spending through the MIG, with projects implemented through the Project Management Unit of the district. The WSPs therefore don't take implement capital projects.

4.1.4 By-laws

The WSA has a set of by-laws established for water services. Enforcement of these by-laws is the responsibility of the WSPs, based in the eight local municipalities of CHDM.

In terms of how effective the WSA and WSP have been in ensuring compliance, there is acknowledgement that this is an area in need of great improvement. With over 1200 villages in the rural parts of the district, policing of water users represents a challenge. In addition to the lack of sufficient capacity to enforce, taking action against guilty parties is difficult, because there "the legal processes are not established", according to the Head of Technical Services at the CHDM. In terms of the prioritisation of their efforts and resources, the delivery of services to secure basic water needs takes precedence over by-law enforcement. The WSA has indicated its intention to address these issues, however there is a sense that enforcement of by-laws is somewhat secondary in light of the service delivery backlogs which need to be addressed in the district.

4.1.5 Customer Care

With respect to customer care, there were some concerns raised by the WSPs in the eastern local municipalities that capacity needs to be increased and that two customer care officials may be required in each. This is largely due to the customer care officials having to play the main role in managing and supporting large number of the CSPs.

From the perspective of the WSA, the main gap at present is the lack of a customer services charter and service standards. They are however working towards developing these during the course of the financial year and have engaged with other municipalities (such as City of Joburg) to learn more about what they are doing around customer care.

It is difficult to assess customer care in the context of this study, having not engaged directly with any customers.

4.1.6 Performance Monitoring

The WSA acknowledged that one of the primary steps in setting up the current arrangements was to improve their own data and information. As such, they established a new GIS system with the intention of assisting in tracking and monitoring progress. The GIS system is managed by the GIS unit which is housed in the Department of Integrated Planning and Economic Development. The system is linked

to Water Affairs GIS system and all new information that is added in the database is backed electronically onto the Water Affairs GIS system. CHDM system assists in the overall planning of water and sanitation. Due to this system the WSA had managed to identify details at household level as to which communities are served with water and sanitation. The WSA had managed to identify major regional schemes which were converted into projects. These projects are already in the implementation or tender stages.

As mentioned earlier there is a system of reporting in place whereby the WSPs submit monthly reports to the WSA. These are largely qualitative reports, taking to specific programmes or schemes being implemented as per the business plans. There does seem to be a need to improve reporting with quantitative measures and targets to complement the qualitative reports.

The WSPs feel that they have the capacity to meet their reporting requirements and have a good understanding of the expectations around reporting.

Water quality monitoring

With respect to water quality monitoring, the WSPs feel that the WSA has been effective. The WSPs have indicated that they are confident to receive improved Blue Drop and Green Drop status.

The WSA has indicated that it has a good set of internal working relationships, specifically with the Municipal Health Department responsible for water quality testing.

4.2 The WSPs regulation and monitoring the CSPs

All interviewees indicated that the CSP model worked well because it was self-regulating in the sense that the community and the ward committee structure in particular played a key role in ensuring that the staff employed to do O&M functions performed. The involvement of community members in the delivery of water also instils a sense of ownership.

In addition the model is seen by the WSA to be "well suited" to a scenario where there are a number of rural schemes across a large district – managing of the O&M of these schemes from a central point would be particularly difficult and costly. The CSP model therefore allows for the decentralisation of these functions.

The WSPs play a role in monitoring and regulating the CSPs. The customer care officers at each WSP are primarily responsible for this. They meet on a monthly basis and the CSPs expected to submit reports. There was a feeling from a number of the WSPs that more customer care officers may be necessary to deal with the large number of rural communities which they are required to engage with.

It is not clear to what extent the absence of the SSA's is being felt and impacting on the management of the CSOs and their operations. In the past, the four SSAs played a direct role in managing the CSOs and this layer of management support has been replaced only by the new staff seconded to the WSPs, specifically the customer care officials. It is anticipated that this gap may have a negative impact in the medium term.

Feedback from one of the SSAs responsible for managing CSP's under the contract with Amatola Water Board suggest that community based organisation play an important role in managing day-to-day operations in deep rural areas. However the SSA raised concerns about whether WSPs are able to effectively administer CSO's in the context the local government where legal and bureaucratic factors supply chain management policies, labour laws etc may prove to delay processes. The concern is

that the administrative systems required to manage CSOs are not easy for municipalities to implement in this context. WSPs therefore have the challenge of finding appropriate mechanisms for engaging local communities.

4.3 Summary comments on effectiveness

The WSA has a number of processes and system in place to regulate the WSPs; for example all contracts have been signed with WSPs and they report regularly on progress against business plans. Water quality monitoring is being undertaken by the WSA and a number of by-laws have been established, indicating that regulatory tools have been put in place.

However there are significant areas for improvement. Specifically, there is a need to greatly enhance economic regulation, the first requirement being the drafting of a Tariff Policy and improved financial reporting. In addition there is insufficient capacity to enforce by-laws and this aspect of regulation does seem to be prioritised by the district. In terms of customer care, the WSA has indicated its plans to develop a Customer Charter. While it is too early to conclusively comment on the adequacy of staff in the WSPs to manage the CSOs, early indication suggest that more customer care officials are necessary.

5 Conclusion

5.1 Challenges and Lessons Learnt

It is worth reiterating that the current arrangements in CHDM are fairly new and thus it is difficult to make recommendations based on the findings of this case study. However to date there have been a number of lessons learnt from the experience of this municipality since 2003 when it took over the WSA role.

In reflecting on the challenges and lessons learnt from the CHDM case study, this section looks first reviews some of the main lessons from the period 2007 – 2009. It is important to reflect on these lessons as they are seen to have influenced the decisions taken in 2009, especially around the implementation of the current model.

5.1.1 Regulation challenges identified for the period 2007 – 2009 (Amatola Water WSP contract period)

Research undertaken by the Water Dialogues-SA gathered information using in-depth interviews and participatory community workshops to understand the approach taken by CHDM in the provision of water services. The Amatola Water Board was contracted as a SSA in 2007 for two years to assist with the four eastern municipalities. Key issues have mostly been identified in the Water Dialogues-SA Chris Hani Case Study (2009) for the period of the Amatola Water contract. Both these observations and those resulting from the PDG interviews are touched on below:

Responsibility for complex structure of contracts

The structure of contracts between CHDM and Amatola Water was complex and the management of contracts was thus identified as a challenge for accountability. The contracts delayed procurement processes sometimes, affecting response times negatively.

However, CHDM did not have to contract CSPs and deal with the labour issues, such as minimum wage. The contracts were between the SSAs and the CSPs.

Non-core services of SSA

Amatola Water was considered as an inappropriate agent for the operation and maintenance of rural water services as it is not their core business. Amatola Water was the service provider of choice in the region and because decisions had to be made quickly the Amatola Water Board was a preferred service provider since, as a public entity it was not subject to the lengthy procurement processes typically necessary when contracting external, private service providers. Amatola Water thus sub-contracted the other SSAs to ensure capacity to guarantee continuity of provision.

Multi-layered institutional arrangements

CHDM wanted to guarantee a continuation in supply to rural areas and appointed Amatola Water given the relative ease in dealing with a public entity over a private sector agent. The arrangement was found to be expensive given the longer supply chain arrangement with Amatola's sub-contracts. Other challenges mentioned in the Water Dialogues report include:

- Confusion regarding reporting channels
- Problems with the reporting of complaints, where communities are often not clear as to who they are supposed to direct their complaints to
- DWAF staff not being absorbed into Amatola Water as originally envisaged

Even though Amatola is a public entity, it was referred to as less desirable than having provision undertaken within the sphere of local government.

Lack of clarity in contracts

The WSA-WSP contracts lacked clarity on the roles and responsibilities. CHDM recognized that details were lacking in the contract and that this was problematic.

Lack of WSA capacity

The areas of technical services, contractual management, regulation and monitoring were found to lack capacity at CHDM. High staff turnover was also mentioned as a contributing factor. Monitoring of Amatola Water by CHDM was also inadequate.

Weak division between WSA and WSP

Where CHDM played both the role of the WSA and the WSP, this was identified as a problem for real monitoring and regulation.

Community participation

Mechanisms to improve participation of the community in the IDP and WSDP processes were lacking and needed to be put in place.

Financial management

The Water Dialogues case study found a lack of funds for operations and maintenance costs for basic services, which puts pressure on the systems. Officials said that ring-fencing would improve the situation. Some LMs responsible for revenue collection did not have revenue collection policies.

Data management

Data management was identified as a constraint to decision-making, particularly for backlog information. However, monitoring and regulation took place through a web-based system with a monthly upload of information from Amatola Water that could be accessed at any time.

Delivery performance

Delivery performance remained short of targets but the community level service provision arrangements provided service in areas that would have had no service otherwise. Good relationships existed between the SSA and the CSPs in some of the areas that were interviewed for the Water Dialogues case study and the concern about the implications of the discontinuation of these relationships were raised.

Amatola Water reported on KPAs to CHDM on a monthly basis.

Role of civil society

A locally-based WSP was found to be better for rural service delivery as response times are minimised. The need to define the structure, roles and responsibilities, financial viability and contractual relationships of the CSPs was identified. There were no mechanisms for CSPs to engage with CHDM or the relevant LM, although contact was made with the communities and the relevant SSA.

Regulation of CSOs

Feedback from the SSAs suggest that clear and open communication with communities as well as regular monthly reporting by the CSO was highly beneficial for the providing reliable operational information and improving their ability to plan.

The engagement of the community in oversight was also important since it instilled a sense of ownership and the active engagement of community leaders such as ward councillors promoted greater accountability.

5.1.2 Lessons learnt from the period post 2009 (LM WSP contract period)

The following lessons learnt are preliminary in the sense that the current arrangements have only been in place for the last 12- 18 months.

Streamlined arrangements

Streamlining the arrangements by appointing the LMs as WSPs and the secondment of CHDM staff as capacity in the LMs was found to be more cost effective and engaging with the WSA became easier. The secondments have secured capacity for water service provision that the LMs would not have been able to afford from their budgets.

WSA capacity

CHDM sought to employ two more staff based at the district to engage with the WSPs to address capacity shortages.

Secondments at the LMs are said to have helped the DM implement strategic issues and set the pace capital project implementation. The secondments have ensured that high level processes such as the WSDP are prioritised.

Provision within the sphere of local government

Having the LMs undertake provision was found to make engagements with politicians and the DM easier as the decision for the arrangements were taken by the political and management arms of both the DM and LMs.

The WSA notes a number of benefits associated with establishing contracts within the realm of local government, compared to the period where Amatola Water was appointed. Amatola Water felt that under the time of their contract with the CHDM, the DM disengaged with the responsibility of provision somewhat. This was corroborated by CHDM, who agreed that the "accountability was 'put' to Amatola Water".

The secondment arrangement encourages the DM to be more involved. Monitoring and regulation has been considered effective with the new arrangement. Furthermore, getting required information directly from the WSP is now quicker with a team of seconded staff at the LMs. The level of confidence in the information is also higher.

When the WSP function was outsourced to Amatola Water, areas of non-performance were easy to notice but communities find it is easier to hold the LMs accountable, rather than a SSA. The staff of CHDM seconded to the LMs also plays a strong role in ensuring the ring-fencing of water services funds.

Communities now see government more involved as the provider, rather than the SSAs. They approach local councillors as these are government services. This gets support from local councillors and improves response times, since they do not have to wait for a SSA response when calling the DM. The arrangement has also had a positive impact on education and awareness in communities.

One of the biggest financial lessons learnt from the adoption of the new model was that it was "far cheaper" than the financial cost associated with contracting the entire provision function to a single external entity (e.g. in the case of Amatola Water). While the recruitment of new staff and secondment to local municipalities added a new dimension of human resource management responsibilities (such as managing employment contracts, labour relations etc), the costs associated with these appointments were less and from the feedback received these have also resulted in better returns. It is believed by the majority of the interviewees that the new model also improves accountability and facilitates better co-ordination and co-operation of service delivery because of the intergovernmental framework within which they now operate.

Ongoing commitment

One gets the sense that there is a mutual understanding amongst the WSA and WSPs that the process is a dynamic one and they deal with new challenges as they arise. A case in point is the findings of the audit report that alerted the WSA and WSPs to issues that were not addressed before and the subsequent willingness to improve the way they operate is indicative of their commitment to progress.

Regulation of by-laws

Regulation of by-laws, (e.g. illegal connections) is left with the LMs. There is a need for improved enforcement as well as processes and systems for prosecution in this regard. The situation is particularly difficult for rural areas. There is acknowledgement that regulation at this level is generally weak, even in urban areas.

5.2 Areas of caution

The views of those interviewed suggest that there is a level of optimism about the future of this district and the relationship between the WSA and the WSPs. It is important however to mention some cautions which the CHDM should take note of going forward:

- The allocation of funds from the CHDM to the LMs may be questioned by the LMs at some stage, particularly in terms of how the distribution of funds from the Equitable Share and MIG is determined and managed. The criteria and formula used and the fairness hereof may be questioned and the CHDM should therefore ensure that it is transparent and inclusive in this regard.
- The CHDM was not able to comment on what will happen to the seconded staff after the three year contract period ends. This is somewhat concerning since in

some cases the end of the three year term is only 18 months away. It will be important for the WSA to have a medium-to-long term plan in place.

- There is some concern about whether the CHDM has sufficient capacity regulate the WSPs effectively. The district has recently appointed two new managers to assist in this regard, however it is expected that more capacity will be necessary in future, especially given that there are a large number of WSPs (8 in total).
- It is not clear to what extent CHDM as the WSA has the ability to effectively enforce its contracts with the local municipality. This is an area of concern, which will only be fully understood if the WSPs fail to comply with their contractual arrangements.
- It is not clear to what extent the WSPs are able to adequately replace the four previously contracts SSAs in terms of monitoring and supporting the CSPs. Already some of the WSPs indicated the need for more customer care officials (who are responsible for the CSPs). It is anticipated that the absence of the SSAs in the management of the CSPs may present a challenge to the management of the CSPs.

5.3 Framework

Interviewees were asked whether a Framework or Guideline for managing municipal services would be useful. Many of those interviewed indicated that while a guideline could add some value, their main challenges were around implementation. This is where their main support needs rest.

Interviewees were unclear about to what extent the proposed guideline differs or improves upon existing guidelines and frameworks, such as the Strategic Framework for Water Services but were open to seeing how it could be improved upon.

The WSA indicated that it would benefit from more guidance and support in the area of economic regulation and financial reporting.

The SSA interviewed felt that a well-thought through operational reporting system is necessary, since this will assist municipalities and service providers in measuring performance and responding appropriately hereto.

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