



A multi-stakeholder
dialogue and research
process on institutional
approaches for water
and sanitation

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uThukela Water Case Study

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List of Acronyms

DBSA	Development Bank of Southern Africa
DLGTA	Department of Local Government and Traditional Affairs
DPLG	Department of Provincial and Local Government
DWAF	Department of Water Affairs and Forestry
IDP	Integrated Development Plan
JSB	Joint Services Board
KZN	KwaZulu-Natal
MFMA	Municipal Finance Management Act
MIG	Municipal Infrastructure Grant
MJSDP	Multi-jurisdictional Service Delivery Partnership
MSA	Municipal Systems Act
MIIU	Municipal Infrastructure Investment Unit
RDP	Reconstruction and Development Programme
RFP	Request for Proposals
UTW	uThukela Water (Pty) Ltd
VIP	Ventilated Improved Pit-latrine
WD	Water Dialogues
WSA	Water Services Authority
WSP	Water Services Provider
WSDP	Water Services Development Plan
WSS	Water and Sanitation Services

Preface

This report has been prepared on behalf of the Water Dialogues project. Water Dialogues-South Africa (WD-SA) is a national multi-stakeholder dialogue process and research project analysing the role of the public and private sector in the delivery of universal access to water and sanitation in the country. WD-SA is part of an international initiative. The uThukela case study was selected as one of a number of research case studies by the Water Dialogues Stakeholders.

The report does not represent the views of the Water Dialogues process or its stakeholders. Its purpose is to feed information and perspectives, generated by a group of independent researchers, into the Water Dialogues interaction in order to contribute to a deeper shared understanding between the stakeholders.

The report authors sought to comprehensively cover the main research parameters identified by Water Dialogues. However, the particular circumstances of the case study, as outlined in the report, placed some considerable constraints on the research process. Nonetheless, the report provides a substantial reflection on the particular institutional arrangements for water delivery in the target area.

1. Introduction

In 2004, on the advice of expert reports and supported by a variety of Provincial and National governments, the KwaZulu-Natal Districts of Amajuba, Umzinyathi and uThukela, together with the local municipality of Newcastle, launched Uthukela Water (Pty) Ltd. This entity, wholly owned by the municipal structures as a multi-jurisdictional service delivery institution, was mandated by its founding partners to be responsible for the bulk supply functions across the three districts and for reticulation to customers in the three districts.

This report examines the rationale, as understood by various stakeholders, to establish Uthukela Water (Pty) Ltd. It examines the processes followed that led to the establishment of the entity and looks at available reports on its performance, with a particular focus on delivery of services and governance arrangements. This is followed by an overview of the present circumstances surrounding Uthukela Water (Pty) Ltd – referred to in this report as UTW – and water and sanitation service delivery arrangements in the municipal areas involved in its original establishment. The report concludes with some reflection on lessons that might be applicable to the establishment of a similar water delivery and sanitation institution in other areas in South Africa.

The report draws heavily from publicly available documentation on the creation and operation of UTW. This is supported by some limited material obtained from UTW stakeholders and UTW itself. The writing of the report was further informed by a range of interviews with municipal officials, staff of some Provincial and National departments, UTW staff and some knowledgeable observers. Three factors should be noted with regard to the availability information: firstly, UTW is at present subject to both a forensic audit exercise and an inquiry under the auspices of the KZN Department of Local Government and Traditional Affairs (DLGTA) and as such there was an understandable reticence by some parties to share information on issues that might be deemed to fall within the brief of these formal processes; secondly, one of the weaknesses of the UTW entity as outlined in this report is the lack of availability of documentation related to its performance across key functional responsibilities – a factor which has left the research team with little more than the opinions of a variety of stakeholders to work with around some key areas of inquiry; and thirdly, the bulk of the those interviewed with some present responsibility for UTW directly or indirectly, are relative newcomers and did not always have experience to draw on in working with the entity during its establishment and early years of operations. Despite these limitations useful documentation was obtained and valuable insights were provided by those interviewed to allow for the researchers to reach their findings with a measure of confidence.

It should be noted that during 2006 two detailed reports were commissioned on UTW, by DBSA (Potgieter) and by DWAF (Sigodi Marah Martin). The terms of reference and mandates of these reports allowed for a much greater level of detailed investigation than was provided for in this report. As both these reports emerged from stakeholders the writers were also privy to documentation that the research team working on this report could not obtain. However, both reports have been critical to the preparation of this report and should be examined in conjunction with the findings expressed below.

Motivation for the study

The formation of UTW was the first case of a multi-jurisdictional water and sanitation service delivery partnership in KwaZulu-Natal and as such has been the subject of considerable interest by a range of stakeholders seeking to understand the benefits and pitfalls of various water and sanitation service delivery arrangements. As such the report explores if any aspect of the experiences of this process offer some lessons to other Water Services Authorities (WSAs). The experience of UTW to date has been one mired in considerable controversy. Under these circumstances it was deemed worthwhile, by Water Dialogues-SA, for other stakeholders to have available to them some exploration of the factors contributing to this with a hope that knowledge generated could help improve stakeholders capabilities to respond to such challenges in future.

A timeline of events considered

In order to guide the readers of this report the following timeline has been prepared outlining some of the key periods in the establishment and operation of the entity:

Period or Date	Activity
1996	Local Government elections for municipal entities based on revised boundaries
1997	Regional Water Services Study (RWSS) commissioned by 15 local municipalities and two regional service councils, with AusAid funding, to examine possible creation of a regional water board.
1999	RWSS findings presented. Findings suggest tariff rates to customers low to make a regional water board viable. Participating municipal and RSC entities reject formation of water board on the basis that accountability would be to the National Minister and Department of Water Affairs and the proposed focus on bulk supplies did not respond to the pressing need for accelerated reticulation. Parties agreed to continue to work towards the formation of a joint utility.
2000	Local government elections on basis of revised demarcation (creation of districts)
2001	Amajuba, Umzinyathi and uThukela Districts agree to form the uThukela Water Partnership on 7 September 2001 as a multi-jurisdictional service utility. The three districts approved a partnership agreement. R18 million was raised from the European Union and R14 million from DWAF to facilitate the process of moving from the broad agreements of the partnership to a specific decision on an institutional vehicle. November 2001 uThukela Water Partnership creates an establishment team to initiate studies and report on possible options. Establishment team advises municipalities that lack of identifiable legal entity under broad multi-jurisdictional arrangements of Municipal Systems Act would be unsuitable for a service delivery entity. uThukela Water Partnership board appoints Ceenex consulting company to prepare uThukela Water Strategic Plan SP 2030 to guide selection of appropriate institutional options and service delivery models.
2002	uThukela Water Partnership approves SP2030 and its recommendations that proposed the establishment of a wholly owned, non-profit, municipal entity in the form of a Proprietary Limited Company established in terms of the Companies Act (September). The three Districts each resolved that the creation of uThukela Water (Pty) Ltd was their preferred option to meet the requirements of SP 2030.

Period or Date	Activity
2003	<p>Newcastle Local Municipality granted WSA status by Minister of Local Government. In March 2003 the Newcastle Municipal Council adopted a resolution to participate in the uThukela Water Partnership.</p> <p>Municipal Systems Act Amendment gives clarity to options with respect to multi-jurisdictional service partnerships and section 78 processes.</p> <p>In July the uThukela Water Partnership recommends that participating municipal entities undertake a integrated Section 78 Assessment. Ceenex was appointed to do this after resolutions in support by the four participating municipalities.</p> <p>The aligned Section 78 Assessments for the municipalities reported that the four municipalities did not have the capacity to meet WSP requirements for their full geographic scope and that the creation of a multi-jurisdictional entity would best service the interests of effective delivery to users. Municipalities all approved the aligned Section 78 recommendations.</p>
2004	<p>On 1 July the uThukela Water Company (Pty) Ltd was formally established and began its initial operational processes.</p> <p>In December uThukela District Municipality withdrew from the uThukela Water Company citing irreconcilable differences with the approach of UTW to operationalising itself and with the majority of the Board, constituted by representatives from the other three municipalities.</p>
2005	<p>MEC for Local Government, Housing and Traditional Affairs, in terms of Section 106 of the Municipal Systems Act, appointed specialist consultants to review UTW.</p> <p>The findings of this report were conveyed to the Mayors of all four Municipalities, the Chairperson of uThukela Water (Pty) Ltd, the Minister of Provincial and Local Government, the Minister of Water Affairs and Forestry, and the Minister of Finance on 3 November 2005.</p> <p>No agreement could be reached with the municipal parties on a way forward.</p>
2006	<p>In June the full Board resigned in response to widespread criticism around the governance and management of uThukela Water (Pty) Ltd. The representation of politicians on the Board was deemed in contravention with the MFMA,</p> <p>In December 2006 participating municipalities agreed to the appointment of a new board.</p>
2007	<p>Newcastle, Umzinyathi and Amajuba reach agreement on reallocation of shares in UTW in an equitable manner to take account of Uthukela District's withdrawal in 2004.</p> <p>The three partner municipalities initiate a due diligence of UTW which is blocked by UTW Board of Directors resulting in the partner municipalities suspending the UTW Board and MD.</p> <p>MEC for Local Government obtains cabinet approval towards the end of 2007 for initiating an investigation and audit process into UTW, resulting in the UTW Board being suspended and an administrator appointed for the company with technical advisors.</p>
2008	<p>Provincial Department of Local Government investigation to report towards the end of year encompassing both an assessment of existing agreements and processes and the considering of future options for the effective delivery of services.</p> <p>The three participating municipalities consider dis-establishing the entity but cannot do so until financial audited financial records (since establishment) are available.</p> <p>DWAF advises municipal WSAs that prospects for them to assume the WSP roles independently with official approval are limited.</p>

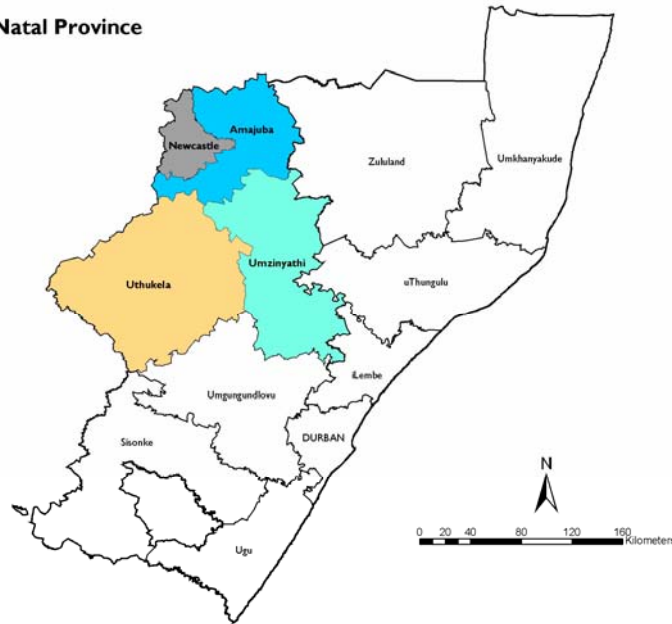
A brief overview of the north-western region of KwaZulu-Natal

The area under discussion is that of the north-western region of KwaZulu-Natal stretching from the northern reaches of the Drakensberg foothills and mountains through to areas in the far north-west of the Province and taking in substantial areas of the north-western sections of the KwaZulu-Natal Midlands. It includes towns such as Winterton, Bergville, Ladysmith/Ezakheni, Newcastle/Madadeni, Dundee and Greytown.

The area is clustered around the catchment of the Tugela River which rises in the Drakensberg Mountains. It is characterised by a large dispersed rural settlement pattern including extensive commercial agricultural, protected reserves and considerable areas of communal land under the Ingonyama Trust Act. The largest towns are Ladysmith and Newcastle, both characterised by with considerable industrial and tertiary economic activity. Other major centres include Greytown and Bergville which serve as agri-industry and service hubs. The bulk of households remain rural residents.

Map showing areas of the study

KwaZulu Natal Province



(Source: Sigodi Marah Martin, 2006)

2. Rationale for the establishment of UTW

This section explores the variety of factors, reported in documentation and outlined by stakeholders, which influenced the districts of Amajuba, uThukela and Umzinyathi, together with Newcastle Municipality, to establish a multi-jurisdictional service partnership and to do so through the creation of a company, wholly owned by the participating municipalities. This section reports on both the formal or documented rationale and also on perspectives of those interviewed who mentioned other factors they deemed critical in influencing the formation of UTW. These are important to reflect on as a number of respondents expressed that these additional factors gave critical weight and credibility to the formal rationales used. The section also seeks to examine the specific rationale(s) informing the specific choice of institutional form stakeholders decided to adopt within the multi-jurisdictional partnership arrangement (i.e. a company, wholly owned by the municipalities). It is important to distinguish between the factors influenced the choice to partner per se and the specific choices made subsequent to this decision as to the form of this partnership as different factors appear to inform these separate elements of the decision making process.

Background processes and the formal case for the establishment of UTW

The process leading up to the formation and subsequent operationalising of UTW was a relatively complex one that had its roots in attempts to find a sustainable way to maintaining previous water and sanitation systems linked to Joint Services Board regions and municipal structures established under apartheid-era local government. Interim local government structures, operating in the region prior to 2000, had inherited a highly fragmented and uneven set of service arrangements, some of which required levels of co-ordination across interim-municipal boundaries and dealing with institutional legacies of prior entities (such as the JSBs). A common view at the time was that such a fragmented system would not be able to respond to the massive backlogs and inequalities in service provision that characterised an expansive, largely rural, region. The case for collaboration at the outset was further supported by the fact that the districts were clustered around the upper reaches of a primary catchment, namely the Tugela River, which also happened to be a key bulk water source for many existing water users in the districts. The absence of a water board operating within the catchment, similar to the Umgeni Water Board in the middle and lower reaches of the Umgeni catchment was seen as a major challenge to the prospects of the various municipalities in being able to meet the service delivery obligations.

According to a senior Newcastle Municipality official, as early as 1996, informal discussions had been taking place about options with respect to collaborative endeavours by various local government structures with respect to municipal services. More than one respondent outlined that these interactions were, in part, made possible by the close working relationships that had evolved between the dominant parties that were involved in both the pre- and post-1994 interim municipal arrangements in the area in the form of the Inkatha Freedom Party and the National Party. In 1997, supported by funding from AusAid, a Regional Water Services Study (RWSS) was commissioned by 15 local municipalities and two regional service councils to examine possible creation of a regional water board. Most respondents identify this process as the point at which the original rationale for the creation of a multi-jurisdictional partnership shifted from a concept in the minds of a few individuals into a concrete goal.

The RWSS exercise provided a basis for ongoing interaction between both municipal officials and politicians from the entities that would ultimately form the core of the new municipal structures in the period after the 2000 elections. The findings of the RWSS process, which was finally concluded in 1999, identified an imperative for municipal collaboration in the area of water and sanitation to ensure progress on delivery goals. The study pointed to problems of skills shortages, fragmentation which did not allow for economies of scale in service provision and investment and necessity of managing the shared water resources of the area in an integrated manner.

Drawing from Gert Potgieter's description (2006), the RWSS described conditions in the region in the following manner:

- Most rural people did not have access to water services at the required RDP levels and only an average of 15 liters of potable water per person per day was available with the following average walking distances to water points:
 - Average walking distance Households within the category
 - 0 to 200 meters 16%
 - 201 to 400 meters 26%
 - 401 to 600 meters 19%
 - 601 to 800 meters 11%
 - 801 to 1,000 meters 8%
 - Above 1,000 meters 20%
- Most water services schemes were not operated and maintained at sustainable levels;
- Staff at operational level required training and support; and
- Although the rural population made up more than 50% of the population in the area, these communities only utilized a fraction of all water consumed as set out below:
 - Towns : 160,000 kl per day
 - Rural areas: 7,412 kl per day
 - Total consumption: 167,412 kl per day.
- The total estimated capital investment (designed for 25l/p/d) required for providing water at RDP standards in rural areas through a conventional treatment and reticulation system amounted to R1,104,863,444

At its conclusion the RWSS study concluded that the creation of a water board – responsible to the Minister of Water Affairs – would not be viable under circumstances where municipal charges were substantially below cost-recovery and subsidy levels. The RWSS report further argued that the Municipalities concerned had little choice but to set up a collaborative arrangement to try and scope with soaring costs of rural schemes that could not draw on the available infrastructure and skills of urban schemes. The report went on to recommend the creation of a Multi-jurisdictional committee, as envisaged in the Municipal Systems Act, referred to as the Tugela Water Partnership for the following reasons:

- The generation of adequate economy of scale to positively influence tariffs through regionalization, benefiting the poor;
- The creation of a political mechanism to jointly manage bulk water services systems crossing water services authority boundaries;
- The pooling of limited resources to provide cost effective services to rural schemes for the disadvantaged communities;
- Providing for a decision making mechanism to address cross subsidization and equity policy issues;

- Providing focused and expert water managers, engineers and scientists to be available to all municipalities participating in it, which could ensure that water related problems be addressed;
- Providing centralized water quality measurement control through a regional laboratory;
- The assembling of a customer care centre easily accessible to consumers; and
- Addressing equity by allowing “some for all” in the Tugela Catchment. (Drawn from Potgieter, 2006)

The impending 2000 local government elections resulted in a pause in these processes. However, immediately after the 2000 local government elections the elected leadership and officials had their hands full with the consolidation of the new municipal formations recommended by the Municipal Demarcation Board under the Municipal Systems and Structures Acts. However, by 2001, the newly created districts of Amajuba, Umzinyathi and uThukela had picked up the discussions of the pre 2000 era and decided to form the uThukela Water Partnership as a multi-jurisdictional service utility. The agreement was signed on 7 September 2001. A sum of R18 million was raised from the European Union and R14 million from DWAF to facilitate the process of moving from the broad agreements of the partnership to a specific decision on an institutional vehicle to deliver services. In November of 2001 the uThukela Water Partnership agreed to the formation of an establishment team to initiate studies and report on possible options. This establishment team, made up of municipal officials, advised their municipalities that a lack of identifiable legal entity under the schema of the broad multi-jurisdictional arrangements of the then provisions of the Municipal Systems Act would be unsuitable for the needs of a service delivery entity. Based on this advice, the uThukela Water Partnership board appointed Ceenex consulting company to prepare uThukela Water Strategic Plan SP 2030 to guide the selection of appropriate institutional options and service delivery models.

The scope for a process by which separate local government entities could assess the various options open to them in terms of water and sanitation service (WSS) institutional innovation was created both by the Section 78 provisions of the Municipal Systems Act (2000) and the promulgation of water service provider regulations relating to the Water Services Act 108 of 1997. It was in this context, encouraged by stakeholders such as DWAF, the DBSA and DPLG, that engagements were accelerated on how best to secure a more coherent set of WSS arrangements and a scaled up expansion of services between various municipal role players in the region.

The SP2030 process in 2002 solidified the formal case for the ultimate creation of UTW. The reports of this process highlighted the degree to which the three districts were struggling to convert the inherited 14 water schemes, 24 waste water schemes and 27 legal entities into a coherent process to scale up WSS delivery. The Ceenex consultants identified a considerable number of challenges that needed to be confronted. Some of these factors, which contributed to the technical rationale for a new approach, included:

- “The majority of customers do not receive adequate water services;
- Non-payment is a serious issue for most municipalities in the region;
- Capital has been invested in the region in a disparate way, with separate towns often duplicating assets;
- At least 24 assets are known to be close to, or do exceed the design capacity limits, requiring the extension of capacity;
- The average weighted age of water purification assets is 22 years and that of wastewater assets, 24 years. Assuming an average life span for utility assets of 30 years, the above

figure shows that certain assets may have to be replaced in the near future.” (Ceenex, 2002: 14-20)

However, the technical basis for the creation of a new multi-jurisdictional entity was not only framed in terms of the necessity to respond to enormous challenges and inherited institutional chaos. The SP2030 process also outlined how a new entity, should it be properly structured would be able to make rapid and significant inroads in delivery. It was also outlined that it would be in a position to generate significant grants in support of capital programmes and offer delivery cost savings to the participating entities. These claims were based on a set of assumptions documented in the SP2030 reports relating to political stability, reliability of source information, willingness of customers to pay and that sufficient management capacity would be transferred from participating entities. Here it is notable that the SP2030 plan suggested that, “The current tariffs are too low and could be seen as a perpetuation of practices of the apartheid era. It is not possible to provide a safe, sustainable water service at the current levels of tariffs. Even if the Water Service Provider default on the DWAF raw water payments, cut the billing costs to a water tax, defer depreciation, and assign equitable share at 30%, a short fall in the budget of 16% is inevitable. In general, it seems that some municipalities have been managing their water infrastructure into insolvency and destruction. At least R40m of additional tariff income per annum is required to bring the business into solvency again.” (UTW CEO communication: 7) Therefore, despite a favourable finding with respect to the creation of a new partnership entity, the SP2030 exercise also suggested that the partners would have considerable hurdles to overcome in making the new entity viable. Stakeholders familiar with the SP2030 process suggested that it left most participants with the sense that although there was no simple solution, the municipalities had little choice but to work towards the goal of a single entity if they wanted to realise any prospect of substantially improved services. Most respondents suggested that the claim attributed to Ceenex that humanitarian grants in the region of R3-5bn could be obtained by the new entity to meet its capital requirements carried considerable influence when the pros and cons of the SP2030 and subsequent Section 78 processes were being considered.

Central to the case made in these processes was the view that any MJSDP entity needed to operate at an arms length from Council structures in order to allow the entity the scope to mediate between competing interests, but also more critically to adopt private sector-type operating frameworks which were considered to offer greater efficiency and effectiveness than any possible public sector structures might offer (under the conditions of a partnership arrangement). These claims were further bolstered by business planning data which demonstrated that such an entity – given the requisite financial flows from the partners – could move rapidly to a position of viability. A further important factor was the perspective that a company-type structure would be in a position to secure greater levels of external financing (grant and loan) that the individual municipalities had been able to do up to that point. While it is true that municipalities are required to limit themselves to borrowing limits agreed with National Treasury, there is no particular information presented in the SP 2030 and in related documentation as to how such an entity could qualify for donor grants and how it might be able to carry the operating commitments that might be associated with a substantial and rapid increase in capital funding that was conceived.

In 2003 the Newcastle Local Municipality granted WSA status by Minister of Local Government. In March 2003 the Newcastle Municipal Council adopted a resolution to participate in the uThukela Water Partnership as the fourth partner. In July 2003 the uThukela Water Partnership recommends that the participating municipal entities undertake an aligned Section 78 Assessment. Ceenex was appointed to do this after resolutions in support by the four participating municipalities. The aligned Section 78 Assessments for the municipalities reported

that the four municipalities did not have the capacity to meet WSP requirements for their full geographic scope and that the creation of a multi-jurisdictional entity would best service the interests of effective delivery to users. The Section 78 process in 2003 identified considerable scope for improvement in a variety of performance indicators should the municipalities opt for an external single shared municipal entity suggesting that operating cost savings could range from 23%-35% from existing arrangements (UTW CEO communication: 14). Municipalities all approved the aligned Section 78 recommendations.

Other factors influencing the rationale

A number of the respondents interviewed gave some considerable weight to the less formal contextual factors that allowed for various partnership options to be considered in the first place. Foremost amongst these was that there had existed for some period of time a close working relationship and some degree of trust between individuals in the dominant political parties of the area, namely the Inkatha Freedom Party and the National Party. This allowed for the political leadership to operate from the basis of a common vision in terms of collaborative ventures. An institutional partnership appeared to be a logical extension of these relationships.

The claim was also made that the political leadership and many of the bureaucrats were struggling with the complexity of water and sanitation delivery of requirements and the rising levels of debt, billing administration challenges and with the maintenance difficulties and saw the options for an external dedicated structure as allowing municipal structures to avoid the negative associations with weak performance claims.

A further claim, also with a political dimension, was that various national and provincial government departments, and associated entities, were eager to support an approach of cross border municipal collaboration in seeking to allow for improved reach of available capacity and were seeking an opportunity to test the particular model of a multi-jurisdictional service delivery partnership. It was argued that resources were made available as an incentive to the municipalities and that less effort than might have been justified was put into assessing the true benefits and appropriateness of such an arrangement.

Others interviewed indicated that that were also aware that at various points in time claims had been made that the advisors to the process, in the form of Ceenex, were insufficiently independent to provide objective advice. Here it was also pointed out that the appointment of Ceenex to assess its own SP 2030 findings in the Section 78 process was problematic (*check this fact*). Some respondents also suggested that there was a view held by some that the partnership venture was the result of certain individuals seeking to further their own interests.

3. The process of establishing UTW

This section examines the processes to establish UTW. A brief overview will be provided of what actually transpired and will be supplemented with comment from those informants that expressed views on various aspects of the establishment.

As has already been outlined the process had its roots in collaboration between Regional Service Councils and municipalities in the mid to late 1990s. The RWSS report carried the following recommendations as they concluded their work in March 2000:

- That a Tugela catchment partnership be formed in terms of a multi-jurisdictional service district area as per the Municipal Systems Act;
- That a partnership committee be formed that would take responsibility to set up the legal entity and its work would include:
 - Identification of the details for the formation of a partnership;
 - Preparation of an implementation programme;
 - Employing transitional executive resource;
 - The transfer of the regional water services to the partnership; and
 - The establishment of the partnership by 1 July 2000

The partnership committee that was established moved rapidly, operating on the basis of a memorandum of understanding as an interim measure whilst a constitution was being prepared. Its early actions included:

- Appointing transition resources and staff and identifying sources for associated funding;
- Preparing a detailed program for implementation (including transfer of staff and assets) over a period of approximately 3 years;
- Applying for financial assistance from DWAF, DPLG and the MIIU to set up the water services provider, including an administrative operational system; and
- Embarking on a campaign to inform all interested parties of the outcome of the regional water study.

The process leading up to this stage of decision making had been centred largely on interim local council structures operating prior to the 2000 local government elections, who were generally the custodians of various water and sanitation schemes in operation. However, as is explained by Potgieter (2006), a substantial re-think of the partnership governance and operations was to be necessitated by, “the promulgation of Government Notice No 1269 of 28 November 2000 by the

Minister of Provincial and Local Government, authorizing certain municipalities to be water services authorities (as defined in the Water Services Act, 1997 (Act No 108 of 1997)), whereby water services authority status was given to the district municipalities.”

This resulted in an immediate reorganisation of the partnership structures to enable them to be driven by the three district municipalities formalised with the 2000 local government elections, namely Umzinyathi, uThukela and Amajuba. Officials involved in this process reflected that this generated a considerable degree of distress amongst the local municipalities who felt sidelined by a process they had been instrumental in engineering. The partnership agreement, which excluded local councils was approved in 2001, however, “The matter of authorizations was clarified by Government Notices 56 of 3 January 2003 and 840 of 13 June 2003, whereby water

services authority status was given solely to the Amajuba, uThukela and Umzinyathi districts - and Newcastle¹ local municipalities.” (Potgieter, 2006, p14)

The first Board meeting of the partnership took place in September 2001 and a process agreed to develop a business plan with the objective of initiating services by 1 July 2002. The process was supported by funding from the MIIU and DWAF. In this business planning process the Board initially considered the option of an incremental development path whereby responsibility for service provision would be gradually expanded starting with schemes that were struggling to function. However, in the adoption of a Strategic Plan 2030 document the board decided instead to proceed with what Potgieter refers to as a “big bang” approach. Essentially this involved the Partnership and its stakeholders aiming for what the SP 2030 document described as an Optimal Solution (with zero customer growth):

- A low pressure/full pressure water connection to 98% of the uThukela Water customers;
- A supportive basic service option (free water) in all areas where the density exceeds 24 customers per square kilometre.

It was calculated that the investment cost for this choice would amount to R5,275 billion over the implementation period (until 2030).

It was during consideration of this “big bang” option that advisors to the process indicated that securing funds for such an effort would in all likelihood be problematic for the Partnership as the status of the vehicle as a viable contracting entity with a risk profile identifiably separate from its partner entities would be difficult. Whilst the participating municipalities might be in a position to secure some resources from government grants and institutions such as the DBSA, the partnership would not necessarily be in a position to leverage private funding direct and would struggle in its own right to secure external donor or funding arrangements from agencies outside South Africa. In the light of this the Board resolved that the institutional model of a private company would be more appropriate to realise the objectives of SP 2030.

According to Potgieter (2006), “The board then assumed the role of a transformation structure to bring into effect the new approach and as a new strategy resolved that the water services institutions, provider and authority, should be restructured in an integrated manner through the partnership. This was justified by the fact that the partnership would not be the water services provider, it was representative of all the water services authorities that would enter into an agreement with uThukela Water (Pty) Ltd and the board of the partnership was constituted of high ranking political representatives i.e. mayors, deputy mayors, speakers and executive committee members.” (p18)

This process ran into some difficulties as Municipal Managers felt that the process for the creation of Water Services Authorities should take precedence followed by a appropriate process to determine the best model for water services provision, including the possibility of the proposed uTukhela Water Company (Pty) Ltd. These matters were only resolved during the course of 2003. As per the requirements of the Municipal Systems Act a non-political board was appointed and a company created on 1 July 2004.

Respondents interviewed for this report were generally very critical of the establishment process. The most common concerns raised (with the considerable benefit of hindsight) were:

¹ Newcastle, as a local municipality was given approval to participate in the Section 78 (of the Water Services Act) process by the Minister.

- The base information used in the SP2030 modeling and business planning appeared to be flawed more often than not which suggested inadequacies with the technical work conducted in advance of the company formation. Here matters such as inadequate billing systems and the rest had been previously identified but the scale of the inadequacies only became apparent as attempts were made to integrate and upgrade them. Also critical was costing information. Where municipal officials were expecting some immediate cost reductions it actually appeared that initial costings for delivery were considerably above those of the municipalities. Reasons given for this ranged from the fact that municipalities often cross subsidised activities through to the fact that private service providers either took advantage of UTW or priced in a premium for doing work for an entity with no track record.
- The broad level agreements reached between the partners required rapid conversion into action by all parties on issues such as staff, information and asset transfers. It had been assumed that this would be a relatively simple matter and would be supported by the goodwill of all parties. As such agreements only made general references to the obligations of parties. The founding municipal partners tended to wait for each other to act before “giving up resources” and so progress was incredibly slow. Furthermore, it proved to be difficult to identify dedicated resources to transfer. As regards skilled staff they often fulfilled functions in parallel to responsibilities around water and sanitation and so it proved difficult to identify resources that municipalities felt they could part with. The same held for various movable assets such as vehicles and various other pieces of equipment. Where water and sanitation had generally been part of more general municipal engineering services entities did not ring-fence particular assets. A truck might be used on roads projects on one day and to assist with water pipe repairs the next.
- Planning collaboration between the four WSAs which was core to the integrated WSP model was also absent after the 2003 Section 78 processes. Furthermore, it appears that at least some of the municipalities did little to invest in improving their planning as they were struggling with many other complex requirements. As such the quality of the planning material that UTW had to work with was often weak and it was left to try and work through system tradeoffs that were supposed to be negotiated by the WSAs before handing requirements over to UTW.
- Disputes arose around the inadequacy of legal agreements to help guide processes of UTW's governance structure and its operations with respect to the four founding partners.
- Some of the initial senior appointments at UTW did not secure the confidence of stakeholders as it appeared that some new staff lacked skills and there were immediate and damaging rumours of nepotism. This was aggravated by the much higher pay scales used by UTW which generated some resentment from municipal colleagues.
- Assumptions about political stability rapidly evaporated as increased fluidity in power dynamics took route across a number of the districts with some observers suggesting that political disputes appeared to being played out through the governance structure of the institution.

It is also important to reflect briefly on the involvement of other stakeholders in the establishment processes. Here it is important to recognise that the DBSA (MIU) and DWAF remained regular contact with the processes surrounding the establishment. Not only did they provide financial resources in support of the process, but they also offered feedback on various business planning processes and policy matters. Respondents interviewed pointed out that this involvement help give the partners confidence to proceed with what they were doing. However, beyond the involvement of core institutions such as those mentioned it does not appear the any significant and ongoing attempts were made to engage with civil society stakeholders around the process. Apart from normal interaction through standard municipal processes and some limited public communication by the municipalities through the Section 78 processes there was no significant drive to consult more broadly in a meaningful manner on the UTW formation.

In December 2004 a decision to withdraw its shareholding and participation in the UTW company was taken by the uThukela District Municipality. This decision was informed by a dispute over payment arrangements between the two entities. However, some observers also point to rising tensions of a political nature having exacerbated the conflict as there had been a number of shifts in the balance of political power between various parties in some of the municipal areas concerned, in particular those between the African National Congress and Inkatha Freedom Party. However, it was also pointed out that prior to the formation of UTW, the Uthukela District has been less involved in the various collaborative ventures then the other partners and as such there was not a background of such a close working relationship..

4. The Performance of UTW

From its first day of operations UTW has struggled to demonstrate consistent and significant performance improvements. Whilst there has been recognised performance in some fields much of this has been overshadowed by areas of weak performance, controversy and failure to provide adequate reporting on activities. The Water Service Delivery Plans of the WSAs reflect on widespread challenges that remain and comment on the inadequate pace of service delivery to date, largely with respect to rural schemes, but also in relation to expansion of urban and peri-urban schemes. Due to the fact that at the time this report was being prepared no annual reports had yet been issued for public scrutiny by UTW, available data on year on year performance is scarce. What is available generally refers to particular scheme-related projects and the various commitments related to these. In this sense progress against all the elements of the SP2030 targets (ranging from customer service to per capita investment and cost ratios) is somewhat difficult to comment on. The process initiated by the KZN DLGTA is geared towards the correcting of these gaps and will result in a much clearer sense of a present day baseline against which to measure on-going delivery improvements but is unlikely to provide significant detail on year-on-year backlog eradication and other indicators that might have been expected.

In the SP2030 documentation figures were provided as the 2002 delivery indicators for the partners in the uThukela Water Partnership. Key indicators included:

- 650 000 people in 119 000 households were being supplied with water leaving a backlog level of around 52%;
- The sanitation backlog was around 70% with 420 000 people or 75 000 households being supplied with sanitation related services;
- The total customer base was estimated at 250 000;
- Payment levels were estimated to be at best around 60% but deemed to be considerably lower than this in some areas;
- Tariff levels were deemed to be below those charged by other municipalities and did not allow for recovery of costs of delivery and capital – although the absorption of certain delivery costs into other functions made clear accounting on this difficult (Ceenex, 2002: 11).

Present day figures obtained from DWAF (2007) do not necessarily use the same methodology or draw on the same definitions as the SP2030 but do give some indication as to present delivery patterns. Clearly the withdrawal of uThukela District from UTW impacted substantially on overall delivery figures as 40% of the population was removed from the original estimates. Nonetheless, it is notable that for the three remaining municipalities, at least with respect to water provision the following percentage backlogs remain (calculated from table below):

- Amajuba: 68% of population receiving water services below RDP levels
- Umzinyathi: 74% of population receiving water services below RDP levels
- Newcastle: 37% of population receiving water services below RDP levels

For the entire UTW area this translates into a water services backlog of around 58% using the RDP standards as a measure. This increase from the 52% figure of the SP2030 is explained in part by the statistical effect of withdrawing a relatively better serviced district from the data such as uThukela thereby increasing the impact of more poorly serviced districts such as Umzinyathi. However, it is also explained by the fact that delivery that has taken place has often been of a basic service level that does not attain the RDP standards. Municipal and UTW staff pointed out that meeting RDP standards on predominantly rural schemes in an area of almost 20 000 km² with dispersed settlement patterns, low infrastructure and complex topography was no easy matter. Under these circumstances one municipal official suggested that water delivery was probably better than 50% if such basic delivery was taken into account.

WSA	Settlement and population (2006)			Total Population Water Needs (2006)		Population Below RDP (2006)				
	Total # settlements	Population	# Households	Population above RDP	Population Below RDP	Quantity of services	Quality of service	Distance to source of service	Availability of Service	Assurance of service
Amajuba	151	118008	44893	37263	80745	6056	6056	24224	32298	12112
Newcastle	52	387474	69535	243949	143525	10764	10764	43058	57410	21529
Umzinyathi	1330	472327	95636	124671	347656	52148	56668	114726	71965	52148
uThukela	825	641369	126451	287650	353719	70744	8843	114959	106116	53058

Municipal stakeholders tended to be quite critical of this overall performance pointing out that such delivery was some way off what was indicated in SP2030 where originally it had been deemed, that should the assumptions hold true, backlogs in water could be eradicated by the end of 2009. UTW staff on the other hand point to the fact not only did the withdrawal of uThukela District result in a loss of critical mass in resources and assets to meet collective targets, but also that subsequently funding flows from the municipalities proved to be somewhat below the Section 78 process indicative figures.

Table: Performance against projected costs of S78 assessment report

	uMzinyathi	Amajuba	Newcastle	Total
S78 2004 budget target	R 40,480 246	R15,041,141	R73,429,348	R128,950,735
S78 2005 budget target incr. by 9% for growth + CPI	R 44, 123, 468	R16,394,844	R80,037,989	R140,556,301
S78 2006 budget target incr. by 9% for growth + CPI	R 48,094, 580	R17,870,380	R87,241,408	R153,206,368
S78 2007 budget target incr. by 11% for growth + CPI	R 53,384,984	R19,836,121	R96,837,963	R170,059,069
S78 2007 budget target incr. by 10% for growth + CPI	R 58, 723,483	R21,819,734	R106,521,760	187,064,976
UTW 2008 Opex budget Approved	R48,435,886	R15,322,946	R80,246,998	R144,005,830
UTW 2008 Opex budget Proposal	R59,610,540	R20,139,646	R97,881,219	R177,631,405

(sourced from UTW report; Managing Director, UTW)

The table above is presented with costs escalated for CPI and growth (for new schemes and increases in demand). It thus deduced from the table that the approved budget has been lower than the budget based on the 2003 S78 assessment report by more than R33 million. The Managing Director of UTW stressed that despite the lack of funding it was notable that UTW unit costs were lower than those projected in the Section 78 process, however, this also came at a cost as under these circumstances, UTW indicated that due to insufficient funding, they have not been able to carry out their full mandate in terms of the WSP agreement. This has constrained alleviating backlogs, refurbishment of old infrastructural assets and upgrading to meet the increasing demands, and where the insufficient maintenance expenditure has affected the reliability of the supply. Therefore UTW have justified the need for budget increases resulting from lack of adequate and sufficient skills; as qualified operators at water and waste works and maintenance staff that has resulted in inadequate monitoring of operations with slow response time to reported failure from customers and WSA queries: and finally inadequate/delayed reporting to the WSAs. There is also mention of the poor condition of infrastructure (pump stations, water works, waste water works, pipe lines and reservoirs), the large geographical water schemes where unit costs are high and due to the need to sustain water services within each financial year's budget resources. As a consequence of the lack of funding UTW mention that there have been forced to engage in risky operating practices (as an inadequate number of treatment works operators) that breach DWAF regulations, OHS acts and basic conditions of employment act due to excessive working hours.

Since the establishment of UTW over R400 million has been rolled out for infrastructure. In the light of this the Managing Director of UTW feels that there has been an achievement as a number of projects have been implemented and backlogs have been reduced. Yet, he acknowledges that the challenge is still huge. As of present (as previously discussed), most projects undertaken have been standalone local solutions, yet even if not part of the original plan people are getting water. But, with the funds (or promise of funding) by DWAF, small projects have recently started at the beginning of the financial year. These projects are inline with the big picture, such as pipelines being laid across municipal boundaries. Thus, since there is still 26 years of the 30 year plan, the Managing Director of UTW feels that the overall 2030 objectives can possibly be met depending of course on available funding. This slightly optimistic perspective of the MD of uThukela Water is not shared by the participating municipalities WSA staff who suggest that there is little in the way of effective delivery to reflect on, although some did express the view that this did not necessarily mean the entity could not improve its functioning in the future.

In governance terms the performance of UTW has also been the subject of considerable criticism. The resignation of the Board in 2006 and the subsequent suspension of the replacement Board in 2007 reflect some major governance challenges. These were aggravated by changes in key personnel – including the direct intervention by the Provincial MEC for Local Government in the appointment of a previous CEO. This followed a review into UTW initiated by the MEC for Local Government, Housing and Traditional Affairs in 2005 where an attempt was made to plot a path forward for the foundering entity. This process did produce a report, but no success was achieved in subsequent efforts to secure agreement with the three partner municipalities on a set of decisions. With regard to the governance challenges it is clear that the participating municipalities have to take some level of responsibility as it has ultimately been their representatives that have not managed to secure a sound corporate governance environment for the entity. This has in turn seen poor accountability of UTW to its stakeholders and users more widely. It is important to recognise, as outlined by a DWAF official interviewed, that the challenges UTW has faced are not only of its own making, but have also arisen out of the failures within the respective municipalities both individually and collectively.

5. Present operational and governance context of UTW

Influenced substantially by the rising levels of concern articulated by Provincial and National government departments the three partners in the UTW initiated some processes to try and reach agreement on a solution. This entailed in part the bringing in of some new skilled personal and the reworking of partnership agreements to reflect an more equitable share structure that had not been adjusted since the departure of the Uthukela District some years previously. Once the transfer of shares was effected the three partner municipalities initiated a due diligence study into UTW. However, the team undertaking this exercise was blocked by the UTW Board who were unhappy that certain preconditions they had set were not met. In response the three partner municipalities moved for the suspension of the UTW Board and its MD.

In response to this evolving governance crisis, in late 2007 the MEC for Local Government in KZN was authorised by the Provincial Cabinet to suspend the Board of UTW and replace them with an administrator (see Appendix 1 for briefing document). This step was taken because of ongoing concerns about the performance of the entity, failure to provide audited financial statements and allegations of impropriety. The process initiated had both a forensic audit element as well as an exercise to work with stakeholders to determine the best route to meet their service delivery obligations in future. At the time of writing of this report this process had not reached its conclusion.

As part of this exercise some additional technical expertise was also brought into UTW in order to try and secure the effective governance and operations of the entity. This took the form of a senior Umgeni Water official acting as administrator in place of the Board and direct technical inputs from staff of Umgeni Water and eThekweni Water. The results of this intervention are already to be seen in revised planning and information systems, improved communication between UTW and the municipalities and systematic management processes being introduced – for example the building of a dynamic asset register with detailed information on asset conditions, location and performance. All those interviewed for the process indicated that such changes were important positive steps. However, there remained considerable scepticism as to the longer term prospects of the UTW entity. Some respondents indicated that it had no real future and should be shut down whilst others hoped that the process initiated by the Provincial MEC would galvanise all parties, and perhaps even the uThukela District, to work together. It was also suggested that in order for the entity to survive that some restructuring in its mandate and mode of operation might be required. Options in this regard included:

- Leaving bulk functions with UTW and shifting reticulation back to the WSAs;
- Maintaining the mandate of UTW but bringing in an operator to carry some or all of the functions on a management contract either from the private sector or from an existing parastatal such as Umgeni Water;
- Reworking existing business plans and legal agreements to reflect the contemporary reality – recognising the previous assumptions and lack of follow up on generalised agreements resulted in major disputes.

6. Lessons for the possible replication of MJSDP model

All stakeholders interviewed were asked to reflect on what others might be able to learn from the UTW experience with regard to the possible creation on a multi-jurisdictional service delivery partnership. Here it is important to note that some respondents felt such reflections were difficult as they suggested that UTW had not really reached a stage of operational maturity and as such any comments might be premature. Nevertheless, a range of comments were made which have been organised into a number of broad themes.

On the broad concept of a MJSDP

All respondents indicated that there was nothing wrong with the concept of a service delivery partnership operating across municipal boundaries. Whilst there was considerable comment that the challenges of such partnerships should not be under-estimated, there was a sense that citizens would benefit in many instances if such partnerships could live up to their potential.

Preconditions for the creation of a MJSDP

Respondents pointed out that considerable effort might need to be invested in the creation of the necessary preconditions for such a partnership to have prospects. Whilst the UTW case emerged on the back of almost eight years of processes, it relied excessively on assumptions on continuity of political leadership in an environment where there was considerable flux and major institutional change (in the form of new municipal legislation). Furthermore, it was indicated that a critical mass of strong and organised partners would be important to create sufficient institutional momentum to allow for a MJSDP to operate – it could not necessarily be expected that an MJSDP would be able to be effective and capable if the constituting parties (in his case the WSAs and previous WSP arrangements did not have some of these capabilities to transfer. Such capability would also enhance accountability and oversight by partners.

Process

Considerable comment was made on lessons from the UTW formation processes. Some of the key points highlighted here were:

- The technical foundations must be clear – reliable information must be sourced and available to all parties on the full scope of issues and be subject to independent testing and review.
- Governance processes must be thorough and transparent and subject to external independent review and public accountability.
- Expert advice must be subject to independent review and experts must have a demonstrated track record in the field (perhaps even be subject to some type of accreditation system).

On the particular institutional model of MJSDP

Considerable input was received from the respondents that suggested a more gradualist approach to partnership would have been appropriate. Whilst it is true that the UTW exercise did emerge from a longer process, the actual move to get the entity up and running after the 2003 Section 78 process was accelerated. In this regard the entity began its operations well before some important pre-conditions had been met including the further detailing out of agreements and obligations, the demonstration of a track record of collaborative and integrated planning and clear processes on transfer of resources and obligations. A number of respondents suggested that whilst the company model itself was not necessarily problematic, there should have been a series of steps or hurdles that the partners should have demonstrated progress on before the hand over of WSP mandates into a new entity. However, a handful of respondents did express some considerable misgivings about the company-type structure pointing out that once things seemed to go wrong the municipalities seemed to have little in the way of effective power to correct matters in a direct manner. Here municipal officials reflected on the immense challenges of creating new entities from scratch and how government was generally not very good at doing this. This point is reinforced by Potgieter, (undated) who argues, “When establishing a services provider mechanism, it must be ensured that the authorities are empowered to manage the agreements. In the case of uThukela Water it will appear that too much emphasis was placed on the establishment of the services provider, but that the capacity of the authorities to oversee establishment or regulate agreements was not sufficiently developed.” (Potgieter, undated: 26) Concern was also expressed at the relative inflexibility of government legislative processes with regard to managing and implementing partnership arrangements that were of a more of a hybrid nature. Such experiences might have allowed for more preconditions to be met and a building of confidence and a culture of working together.

On the operational scope of an MJSDP

Matters relating to the operational scope of the MJSDP were also mentioned a number of times. These points overlapped in part with comments on the process and the institutional model. Probably the most important issue raised here was whether or not the MJSDP should have limited itself to bulk processes in its initial form where the benefits of collaboration were to be most immediately felt.

Role of external influencing parties

Some comments were also made about the role of various external parties – in particular government departments in relation to the process. Here concern was raised that there might have been lapses in oversight of what the municipal partners were doing and in terms of the functions of UTW. A more active oversight role and a greater preparedness to intervene might have been in the interests of the citizenry. Here a further issue was worth looking at in that stakeholders suggested that the levels of coordination between various national and provincial departments and entities was not ideal.

Allowing for funding models and institutional frameworks to match partnerships

Two respondents made the point that the creation of a MJSDP generated considerable complications in terms of alignment with multiple WSAs and in terms of management of flows of resources. Here it was suggested that there might be scope to create a multi-jurisdictional WSA to enable a common mandate and voice to be generated as well as a single integrated WSDP. However, the point was made here that this would only really make sense if national government grant mechanisms could deal directly with such an entity to avoid complex and unwieldy transaction costs and coordination mechanisms.

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Appendix 1. List of people interviewed

Name of Person interviewed	Position and Organisation
V Naidoo,	Regional Manager, DWAF
N Macleod	eThekweni Water Services (DLGTA advisor on uThukela Water (Pty) Ltd)
F Stevens	eThekweni Water Services (DLGTA technical advisor seconded to uThukela Water (Pty) Ltd)
Thava Kelly	acting water services authority manager, Newcastle municipality
Enny Yacoop	Director of Cooperate services in the Amajuba district municipality
Mr Malunga	WSA manager for Umzinyati District Municipality
Mr Bongani Mdletshe	Chief financial officer for Umzinyati District Municipality
Mr. Cele	MD of uThukela Water (Pty) Ltd

Appendix 2: Shareholders Briefing Document

BRIEFING DOCUMENT ON THE INTERVENTION IN UTHUKELA WATER (PTY)LTD WITH SHAREHOLDERS BEING THE AMAJUBA AND UMZINYATHI DISTRICT MUNICIPALITIES AND THE NEWCASTLE LOCAL MUNICIPALITY

1. PURPOSE

To provide a briefing report to the Select Committee on Local Government and Traditional Affairs on the intervention by the Executive Council of the Province of KwaZulu-Natal undertaken in terms of Section 139 of the Constitution at Uthukela Water and the present status quo in the entity.

2. LEGISLATIVE PROVISIONS

Section 106 (1) (b) of the Municipal Systems Act, provides as follows:-

“(1) If an MEC has reason to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the MEC must-

(b) if the MEC considers it necessary, designate a person or persons to investigate the matter”

Section 139 (1) (b) of the Constitution, provides as follows:-

“When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking the appropriate steps to ensure fulfillment of that obligation, including-

(b) assuming responsibility for the relevant obligation in that the municipality to the extent necessary to –

(i) maintain essential national standards or meet established minimum standards for the rendering of a service;

(ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or

(iii) maintain economic unity; or”

3. BACKGROUND

The reasons for the section 139 (Constitution) intervention have their roots in a section 106 (Municipal Systems Act) intervention instituted by the MEC responsible for local government.

The background to the intervention in terms of section 139 of the Constitution is briefly the following :-

1. Resulting from the allocation of powers and functions to District and Local Municipalities, and the assessment in terms of section 78 of the Local Government: Municipal Systems Act, 2000, undertaken by the uThukela District Municipality, Amajuba District Municipality, Umzinyathi District Municipality, and Newcastle Local Municipality relating to the mechanisms through which the water service is to be delivered, the said municipalities in their capacity as Water Service Authorities, established uThukela Water Partnership.
2. The rationale behind the establishment of the partnership was ostensibly an economy of scale, and to provide water and sanitation services to all relevant communities as economically as possible.
3. uThukela Water (Pty) Ltd was subsequently established and considered as a municipal entity reporting to the four municipalities contemplated above in terms of the provisions of the Local Government: Municipal Finance Management Act, 2003. The uThukela District Municipality subsequently resiled from the partnership due to differences with the other partners of the partnership, and continued to perform its own Water Services Authority functions.
4. During the latter part of 2004 correspondence from various parties was submitted to the Department, and the Department was notified of various activities of uThukela Water (Pty) Ltd and the uThukela District Municipality.
5. As a result of these allegations, the MEC for Local Government, Housing and Traditional Affairs deemed it necessary to establish the details surrounding the establishment of uThukela Water (Pty) Ltd, and the legal, administrative, financial and service delivery mechanisms and the implications thereof, by instituting an investigation in terms of Section 106 of the Local Government: Municipal Systems Act, 2000.
6. Enhance Strategies CC was appointed to conduct the investigation with the following terms of reference:
 - 6.1. research the process of establishment of the Company, its legal status, form and organisational structure;

- 6.2. determine the shareholding of the four water service authorities, the assets/liabilities contributed by each municipality and the computation of the share allocation;
 - 6.3. determine the quantum of water and sanitation tariffs throughout the area served by the Company, subsequent to its establishment and assess the impact on the communities;
 - 6.4. determine the extent to which the establishment of the Company has enhanced the provision of free basic services;
 - 6.5. determine any possible personal or private business interests which directors and senior management, including family, spouses, partners or business associates, may have in the company;
 - 6.6. determine the recruitment process followed in the appointment of senior management of the Company;
 - 6.7. determine the remuneration and allowances paid to the directors and senior management of the Company;
 - 6.8. ascertain the institutional framework for accountability and corporate governance;
 - 6.9. determine the financial status and health of the company;
 - 6.10. determine the reasons for and the process followed in the expulsion of uThukela District Municipality from the Company; and
 - 6.11. determine the impact of such expulsion on water service delivery within the uThukela District Municipality as well as the remaining area served by the Company.
7. The findings of this report were conveyed to the Mayors of all four Municipalities, the Chairperson of uThukela Water (Pty) Ltd, the Minister of Provincial and Local Government, the Minister of Water Affairs and Forestry, and the Minister of Finance on 3 November 2005.
 8. The Mayors of the relevant municipalities were also instructed to table the findings of the investigation report at a full council meeting, and were given 21 days to respond to the

findings contained in the report. No formal responses were received from any of the municipalities.

9. A briefing session was held with the Minister of Water Affairs on 5 July 2005 resulting in the establishment of a multi-disciplinary task team, comprised of all relevant stakeholders, to develop and implement a turn-around strategy.
10. This task team met on numerous occasions, and meetings were also held with the municipalities, which were attended by the MEC for Local Government, Housing and Traditional Affairs, as well as Senior Officials in the Department, in an attempt to assist the municipalities to regularise the provision of their water service authority functions in relation to uThukela Water (Pty) Ltd.
11. Despite undertakings from the municipalities to co-operate in the implementation of the turn-around strategy, no positive results were achieved due to a lack of commitment from the said municipalities.
12. On 17 October 2007, a meeting was held at offices of the Department, which was attended by Mayors and Municipal Managers of the parent municipalities as well as officials of the Department of Water Affairs and Forestry, and uMngeni Water. At this meeting the Department was informed that the municipalities intended adopting resolutions with regard to uThukela Water (Pty) Ltd, and the Department was also informed that the shares into uThukela Water (Pty) Ltd had finally been transferred to the parent municipalities on 11 September 2007.
13. The Department was subsequently informed that the municipalities all adopted resolutions that –
 - a. a due diligence investigation in respect of uThukela Water (Pty) Ltd be instituted forthwith, in order to inter alia establish the exact current assets and liabilities of the company;
 - b. a forensic investigation in respect of uThukela Water (Pty) Ltd be instituted forthwith to ensure accountability;
 - c. pending the results of the above and the discussion thereof and report thereon by the shareholders to their various Executive Committees, the planned joint

assessment in terms of Section 78 of the Local Government: Municipal Systems Act, 2000, be held in abeyance;

- d. the cost in respect of the above be carried equally by the three Water Service Authorities; and
- e. the timeframe for completing these investigations be set at 2 months.

14. The Municipalities appointed Ngubane and Company on 31 October 2007, to perform the due diligence and forensic audit of uThukela Water (Pty) Ltd.

15. On 8 November 2007 Ngubane and Company met with the Managing Director of uThukela Water (Pty) Ltd, to commence the audit and investigation. However, Mr. Ngubane was advised by the Managing Director of uThukela Water (Pty) Ltd not to commence, in view of the fact that the Board had advised the parent municipalities of certain pre-conditions they wanted to be met before the audit and investigation was to commence.

16. The parent municipalities decided that they cannot be prescribed to by the Board of Directors of uThukela Water (Pty) Ltd, and by 20 November 2007 all three Executive Committees of the parent municipalities resolved that –

all the Non-Executive Directors of uThukela Water (Pty) Ltd be relieved from their duties for the duration of the investigation;

the Managing Director of uThukela Water (Pty) Ltd, for the duration of this investigation, be requested to be absent from office on special leave on full pay;

that the shareholder representatives be authorised to appoint an interim Administrator to perform the functions of the Board of Directors; and

legal guidance be obtained to ensure compliance with the relevant legislation.

It is evident that:-

- Continued complaints by communities of the non-delivery of water and sanitation services that have been carried by various provincial and national newspapers reflect poorly on public confidence in our system of local

government, and indicate that there appears to be poor financial management within uThukela Water (Pty) Ltd.

- The lack of commitment by the parent municipalities and the poor performance by the Board of Directors of uThukela Water (Pty) Ltd, have given rise to an untenable situation, which is having a detrimental impact on the communities they serve.
- The non-compliance by the parent municipalities and the Board of Directors with legislative prescripts applicable to both municipalities and companies has created a legal risk that the actions of the Board of Directors may be declared to be ultra vires and void.
- Although the parent municipalities had embarked on a process to attempt a review of the performance of the municipal entity in compliance with sections 109 of the Local Government: Municipal Finance Management Act, 2003 and 93C of the Local Government: Municipal Systems Act, 2000, it is the view of the Provincial Executive committee that this is a case of “too little, too late”, and that an immediate intervention was required by the Provincial Executive Council to ensure service delivery and to restore governance in respect of this crucial function.

17. The Provincial Executive Council therefore resolved to intervene in Uthukela Water, as follows :-

17.1 The executive council intervenes in terms of section 139 (1) (b) of the Constitution in the Amajuba District Municipality, the Umzinyathi District Municipality and the Newcastle Local Municipality, and to assume responsibility for those municipalities’ water service authority functions;

17.2 Cabinet mandates and authorises the MEC for Local Government:-

- a) to appoint a multi-disciplinary task-team of specialists with appropriate expertise and knowledge in the relevant disciplines to undertake a forensic investigation and an assessment of uThukela Water (Pty) Ltd, including of that entity’s company, governance structure and operational structure; provisioning, procurement and recruitment systems and practices, as well as the implementation thereof in the recent past; compliance with applicable legislation; verification of assets, liabilities, revenue and expenditure; and other related matters;

- b) to prepare recommendations for the future provision of basic water supplies for the communities served by the Amajuba District Municipality, the Umzinyathi District Municipality, and the Newcastle Local Municipality, including of the future of the entity; the best means of providing such services, and any other recommendations flowing from the assessment process to be undertaken, as well as on the course of action and turn around strategy to be implemented as a result assessment of the process.
- c) To undertake any actions he/she deems necessary arising from the recommendation process necessary for the provision of basic water supplies for the communities served by the Amajuba District Municipality, the Umzinyathi District Municipality, and the Newcastle Local Municipality in an efficient, effective and cost-effective manner, including;
 - i) to determine how best future water service provision in the area should be delivered, and through which structures, and if necessary to remove all Directors of uThukela Water (Pty) Ltd as contemplated in section 93G of the Local Government: Municipal Systems Act, 2000, and to liquidate uThukela Water (Pty) Ltd as contemplated in section 93C (b) of the Local Government: Municipal Systems Act, 2000, in the event that the performance review commenced by the parent municipalities justifies such a decision;
 - ii) to ensure the adoption and implementation thereof by the Amajuba District Municipality, the Umzinyathi District Municipality, and the Newcastle Local Municipality;
 - iii) to determine an exit and handover strategy to the entity or organs determined by the MEC as the best vehicle for future water service provision in the area;

17.3 Pending the outcome of the process referred to above, the MEC is mandated and authorised:-

- a) to suspend or recall all Directors of uThukela Water (Pty) Ltd as contemplated in terms of section 93G of the Local Government: Municipal Systems Act, 2000;
- b) to appoint a multi-disciplinary task-team of specialists with appropriate expertise and knowledge in the relevant disciplines to manage uThukela Water (Pty) Ltd pending the outcome of the 3-stage process referred to above.

4. CURRENT STATUS

The following actions have occurred:-

- An interim Administrator, Mr D Naidoo of Umgeni Water, to perform the functions of the Board of Directors as per section 93H of the Municipal Systems Act, has been appointed.
- Mr Frank Stevens of eThekweni Metro has been appointed to manage uThukela Water (Pty) Ltd, to ensure service delivery, as well as to do an assessment of the operational structures, procedures, systems and policies of the entity.
- Ngubane & Co have been appointed as the preferred service provider, to do the performance review and forensic investigation originally intended by the parent municipalities.

It is necessary to involve the parent municipalities in the process to ensure continuity in the performance of the water function and this will assist with the adoption of outcomes of the intervention and the ultimate handover after completion of the intervention process.

It is clear that this intervention is legally complicated and complex. As the process unfolds in implementation, it will be required, from a legal perspective, that compliance with all legislation is maintained.

A meeting of all members of the intervention team including the departmental management responsible for the process as well as the administrator, technical support team and service providers undertaking the performance review and forensic investigation was held on 22 February 2008 and roles, responsibilities, timeframes etc. agreed to.