



WORKING PAPER

Favourable Policy and Forgotten Contracts

Private Sector Participation in Water and
Sanitation Services in Stutterheim, South Africa

Janelle Plummer
November 2000

Working Paper 442 01

Research for

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THE UNIVERSITY
OF BIRMINGHAM

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BUILDING MUNICIPAL CAPACITY
for PRIVATE SECTOR PARTICIPATION
DFID Knowledge and Research Project R7398
in collaboration with the UNDP PPPUE

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Building Municipal Capacity for Private Sector Participation

The Building Municipal Capacity research series is supported with Engineering Knowledge and Research (EngKARs) Programme Funding from the British Department for International Development (DFID). This Building Municipal Capacity Building for *Private Sector Participation* undertaken by GHK International, is being carried out in collaboration with the International Development Department (IDD), University of Birmingham and the UNDP Public-Private Partnerships for the Urban Environment (PPPUE) Programme.

The research aims to analyse and document municipal experiences of private sector involvement in the delivery of services and infrastructure and to formulate a strategic framework for municipal capacity building in private sector participation. The elements of this framework will be supported by in-depth illustrations of the lessons that have been learnt by municipalities in various parts of the world. The purpose of this case study series is therefore to compile a source of material that will inform and illustrate the capacity building framework.

A number of parameters describe the nature and scope of the work. First, the research and outputs are concerned with the participation of the (for profit) private sector in service delivery in cities overwhelmingly troubled with poverty and service constraints. The scope is also limited to those services that fall within the responsibility of municipalities. Combining these parameters has enabled us to focus the research on water and sanitation services and solid waste management.

Second, the research seeks to explore PSP in relation to urban management. Where possible, it intends to explore linkages between the private sector participation, municipal management and poverty reduction. A key concern of each study will be the lessons relevant for dissemination to smaller cities where financial and human resources are particularly constrained.

The case studies in this series are published as working papers and will be made available on the website www.ghkint.com. It is important that they are seen as part of a process and not an end in themselves. It is hoped that the transparency of this work-in-progress will produce greater awareness of the initiatives being undertaken, and promote peer learning amongst municipal officials. We hope it will also promote an openness in the vast arena of private sector participation research. Comments are very welcome.

Janelle Plummer

GHK International
November 2000

Definitions

*Private Sector Participation
(PSP)*

'PSP' refers to the involvement of the private sector in some form, at some stage in the delivery of services. It is a general term that is used to cover a wide range of private sector involvement from the service contract, management contract, concession and BOT. It may also include informal sector participation.

*Public-Private Partnerships
(PPP)*

'PPP' specifically refers to those forms of partnership in which government establishes an arrangement with the private sector in which the private sector provides some form of investment. As such, the terminology PPP tends to exclude service and management contract arrangements, but includes leases and concessions.

Privatisation

This term is used to mean the transfer of ownership to the private sector. Divestiture is beyond the scope of the research.

Service delivery or service provision

The terminology 'service delivery' has generally replaced 'service provision' removing the implication that there is a provider and a recipient. This distinction is not always adhered to and so will not be overly stressed in this work.

Pro-poor or poverty focused

These terms have achieved different levels of favour at different times. Pro-poor implies that the overall aim is beneficial towards the poor, while poverty focused implies a greater degree of targeting.

Consultation or Participation

These terms have very different meanings in participation literature, and are not used interchangeably. Consultation means that a stakeholder was contacted and their views sought. Participation is generally used to refer to a two-way flow of information and implies a greater degree of influence over the decision-making process.

Municipal

The term municipal refers to the local level of government. It is at the 'municipal' level of government that is frequently, and increasingly, responsible for urban services and infrastructure. It is also the implementation arm of government, being responsible for executing policy. Technically this work also includes local level (line) agencies responsible for service delivery.

Capacity Building

The term 'capacity building' draws on a UNDP definition which includes a broader understanding of capacity which includes organisational development, human resource development and regulatory framework. The terminology municipal capacity building refers specifically to organisational and HRD issues and whatever regulatory framework issues are within the scope of municipal government.

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Acronyms

ADC	Amatola District Council
BOTT	Build-Own-Train-Transfer
CBO	Community Based Organisation
COSATU	Congress of South African Trade Unions
DBSA	Development Bank of Southern Africa
DCD	Department for Constitutional Development now DPLG
DFID	Department for International Development
DPLG	Department for Provincial and Local Government
DWAF	Department of Water Affairs and Forestry
GEAR	Growth Employment and Redistribution
GoSA	Government of South Africa
HH(s)	household(s)
IDP	Integrated Development Plan
IGG	Inter-Governmental Grant
ISD	Institutional and social development
LED	Local Economic Development
MIIF	Municipal Infrastructure Investment framework
MIIP	Municipal Infrastructure Investment Plan
MIIU	Municipal Infrastructure Investment Unit
MSP	Municipal Service Partnership
NBI	National Business Initiative
NEDLAC	National Economic Development and Labour Advisory Council
NGO	Non-Governmental Organisation
PPP	public private partnerships
PSP	private sector participation
RDP	Reconstruction and Development Plan
SABS	South African Bureau of Statistics
SALGU	South African Local Government Association
SAMWU	South African Municipal Workers Union
SDF	Stutterheim Development Forum
STLC	Stutterheim Transitional Local Council
UFW	unaccounted for water
USAID	United States Agency for International Development
WPLG	White Paper on Local Government
WRC	Water Research Commission
WSA	Water Services Act
WSSA	Water and Sanitation Services South Africa

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Partnership Profile

In 1993, prior to the democratic elections in South Africa, the Stutterheim municipality formed an affermage contract with Aqua Gold (now WSSA, a joint venture between Northumbrian-Lyonnaise International and a local company Group 5) to manage, operate and maintain water and sanitation services in the town. The council objective was to streamline municipal functions, delegate management and improve efficiency by buying in the necessary technical skills to operate efficient water and sanitation services.

A number of contractual and capacity issues characterise the Stutterheim affermage. Originally aligned with the functions of an apartheid municipality, today the contract coverage can best be described as complex and problematic. WSSA is responsible for nearly all sanitation services (with the exception of the small network in the Mlungisi low-income area) including conservancy services and wastewater treatment. They are also responsible for all bulk water supply and treatment, and for distributing water in the former white areas of the town. The STLC runs a parallel team of municipal workers to construct, operate and maintain water distribution at the tertiary and secondary level in the former township area of Mlungisi. The council has repeatedly resisted proposals from WSSA to expand the arrangement to distribute in these poorer areas and to take responsibility for customer services, both of which would simplify the division of responsibilities.

The municipality perceives the arrangement as being costly, although this is neither supported by a systematic cost benefit analysis nor by a simple comparison of water costs in other towns in the Eastern Cape. WSSA is responsible for the cost of operation and maintenance and the Council is responsible for all capital investment. The dichotomy between investment and operation and maintenance inherent in the affermage contract is difficult for the municipality to manage and is one of the primary reasons for the sometimes difficult relations between the council and the operator.

In 2000, the council in power in Stutterheim is motivated by very different concerns than those that compelled the 1993 council to initiate a partnership with a private company. While the previous council was dominated by businessmen and adopted a commercial approach to town management, the current council is socially aware and firmly focused on developing community-oriented and participatory approaches to development.

However, while it is obvious that the contract no longer meets the needs of a town undergoing reconstruction and development in post-apartheid South Africa, there has been no attempt to renegotiate the arrangement into one that is compatible with council objectives. The council is aggrieved about the contract they have inherited, but feels powerless to bring about change. Council action and understanding has been limited by the nature and scope of this (very limited) contract. They have had no exposure to alternatives. Not only does the contract lack important clauses on renegotiation, but the councillors are fearful of the process. They have little experience of the private sector, and have assumed to date that any change or renegotiation could only result in increased costs.

The arrangement has been constrained, to some extent, by an ambiguous political context, a lack of understanding of the constraints and opportunities for water resource management, and a lack of municipal skills, knowledge and confidence in

public-private partnership activities. The municipality has perpetuated difficulties by relying on assumptions not fact, particularly with regard to costs.

However, the context and the goals of the council provide a number of opportunities for developing a more appropriate PPP. The completion of the demarcation process in South Africa provides a natural juncture for the negotiation of an effective and optimal contract that benefits the poorer communities. The council is visionary in their perspective of a future PPP – one in which the community plays a central role, which is integrated with economic development activities in the town and which develops capacity in community and public sector organisations.

The case of Stutterheim therefore provides an illustration of a partnership arrangement that is misread to some extent by municipal decision-makers. It also provides an illustration of an arrangement that needs to be reoriented to meet the new demands and visions of the post-apartheid council. The need for investment is significantly greater than it was under the previous apartheid regime; the desire to pass on additional risk to the private sector; the need to embrace the potential role of communities in demand-led decision-making and implementation; and the need to build institutional and community capacity are all vital ingredients of a municipal service partnership designed to meet reconstruction and development objectives.

The primary concerns expressed by council officials in Stutterheim, and echoed by the private operator, concern the capacity of the municipality to act as an equal party in the contract. The Stutterheim case clearly illustrates that a municipality needs capacity building to become an effective partner, that there is a need to provide support structures that can respond to the changing circumstances of councils and that capacity can be built by exposure to other partnership initiatives. One of the primary capacities issues arising is that the skill level of the private sector and the municipality is diverging. The private sector has reached a much higher level of maturity with respect to municipal service partnerships, while the council does not develop or institutionalise capacity to act as a partner.

Many of the lessons in Stutterheim expose the difficulties of the affermage contract, the need for explicit and watertight definitions of capital improvements versus operation and maintenance, and ultimately the need for an independent regulator to effectively implement the contract. Seen in the context of PSP development in South Africa, a crucial lesson is the need for better links between those with the capacity (policy-makers and the private sector) and those without (local government implementing bodies).

Partnership Data

Location	Stutterheim, South Africa
Sector	Water supply and sanitation
Level of Infrastructure	primary, secondary and tertiary
Target Group	Bulk water supply and treatment to all areas of the municipality (population 35-40,000). Some area responsibilities for secondary and tertiary level water services. Most sanitation services.
PPP Objective	Delegating the management of municipal functions, improving efficiency and technical input.
Contract type	Affermage Contract
Duration	10 years commencing 1993
Primary Stakeholders	Stutterheim Transitional Local Council (STLC) WSSA (a consortium of Northumbrian Lyonnaise International and G5)
Ownership	Public, no transfer of ownership
Key Characteristics	Complex area responsibilities. Traditional contract not meeting needs of the council Costs compare favourably with costs for services in neighbouring towns, but a cost benefit analysis is urgently needed to enable decision-making in the council Partnership lacks equality, due to severe differences in capacity.
Issues concerning service delivery to the poor	The municipality runs a parallel service delivering tertiary level water services to lower-income groups. Tariff structure benefits middle income groups and high-volume users. Cost recovery for the services delivered by the council in the former township areas is approx. 28%.
Lessons learnt	Contracts may need to adapt to changing objectives. Renegotiation is vital for the implementation of successful public-private partnerships. The contract stage is the crucial stage. Confidence comes with a well-prepared contract and is undermined by a weak contract. The Affermage contract requires absolute clarification of the definition of operation and maintenance versus capital works. It is a difficult form of contract to administrate. Developing linkages between poverty reduction activities and PSP in service delivery is essential to maximise benefit for the poor. Municipalities must consider the cost-benefits of service options if decision-making is to be well informed and beneficial to all. More attention should be given to building links between policy and implementation processes.
Capacity Issues	A municipality needs capacity to act as an effective partner. Skill levels between the private operator and the municipality are diverging. Structural problems in the partnership are created by an imbalance in capacity. Capacity is severely affected by changing councils and support structures are needed for ongoing capacity building. Municipal action can be limited by the nature and scope of the contract, and their lack of exposure to other alternatives. There has been no capacity building at any level or with any group. Significant support and capacity building is available in South Africa, but isolated municipalities do not know how to access it.

1 Introduction

Over the last 3 years, the commitment to, and emergence of public-private partnerships in South Africa has escalated. In the mid-1990's, when the Water Services Act (1997) was being formulated, the South African Government had not yet taken a clear stance on public-private partnerships and policy development was ambiguous about the World Bank's advocacy for private sector partnerships. Yet in 2000, with the ongoing development of a policy and regulatory framework, supported by a number of capacity building initiatives, the GoSA shows the signs of establishing ongoing commitment to private sector participation in development. There are now 10 municipal public-private partnerships in place, over 50 partnerships being developed for various municipal functions, and a waiting list of municipalities hoping to access support through national institutions.¹ Perhaps the most significant turnaround has occurred in the water and sanitation sector. In 1997, there were still only the three water and sanitation partnerships in the country and these were in place at the time of the democratic elections. While investment in the water sector in South Africa is still considered problematic due to the lack of a regulator,² today the most innovative partnerships have been developed in the water and sanitation sector.

From the municipal perspective, particularly those metros covering extensive areas, with large problems and substantial budgets, the policy environment for private sector participation is providing a shining light, a means to address the insurmountable tasks of urban management. Yet for the weaker municipal relatives the enabling environment makes less difference. Their lack of internal capacity itself seemingly excludes them from the opportunity to improve their capacity through the development of effective public-private partnerships. Even if they had the mind for pursuing a private sector initiative and had some knowledge of the policy and capacity building context, it is unlikely that they would be able to gather private sector confidence or access the support available to formulate initiatives. There is a marked contrast between the opportunities available for able municipal government and those open to municipalities in economically marginalised areas of South Africa.

Unlike other case studies in this series (that focus specifically on issues concerning municipal government), this paper is intended to operate at two levels. First, it describes the confident policy environment being established in South Africa. Many aspects of this environment are instructive for governments elsewhere. Second, the paper will examine the rather isolated experience of a water and sanitation affermage in the town of Stutterheim in the Eastern Cape. This provides a rather different view of the South African context of public-private partnerships. It reveals practical experience that is thwarted by capacity blockages and apprehension, and exposes the contrast that can lie between policy and practice unless communication is developed between policy-makers and implementers. In so doing, it presents the lessons that have been learnt in Stutterheim - many of which should be noted in the ongoing development of the policy environment for municipal service partnerships in South Africa.

The following section considers the context of public-private partnerships in service delivery to the poor in South Africa. It first, briefly, outlines the nature and extent of poverty in the country, secondly describes the regulatory and policy framework, and finally the national efforts to build capacity in private sector participation in municipal service delivery.

¹ MIIU (1999)

² Jean Pierre Mas, Director Operations WSSA, Meeting June 2000

2 The context of private sector participation in South Africa

Poverty in South Africa

While South Africa is considered an upper middle income country in per capita terms, the majority of South African households live in outright poverty or are vulnerable to being poor. The inequality of individuals and households in South Africa is amongst the greatest in the world³. The specific cause of this inequality can be attributed to the harsh impacts of institutionalised discrimination established by colonial administration and extended through the policies of the apartheid regime. These policies resulted in a chronic loss of assets and the denial of opportunity to develop access to markets, infrastructure and education.⁴

Refuse removal

One of the primary priorities of the South African National Government is the rapid improvement of the living conditions of the previously disadvantaged groups and individuals, specifically improving the access people have to water, sanitation and electricity. The current shortfall in basic infrastructure for water supply for instance (see Figure 1) has significant social implications. Like most developing countries, the burden of inadequate access to water falls most heavily on women and children.⁵ In South Africa, 40% of women and children, some 3 million people, are actively involved in obtaining water for domestic use on a daily basis.

Figure 1
Household levels of service in South Africa, 1996⁶

	Full	Intermediate	Basic	Inadequate
Water Supply	44% (piped water in dwelling)	16% (piped water in yard)	26% (public tap, tanker, borehole, well, tank)	14% (water carried from river, spring other))
Sanitation	50% (flush toilet)	-	10% (VIP latrines, chemical toilet)	41% (pit latrine, bucket, etc)

While the backlog in infrastructure has been difficult to quantify, various estimates provide an indication of the sheer scale of the inadequacy created by the inequalities of the apartheid regime. The Municipal Infrastructure Investment Framework (MIIF) in 1996 estimated capital expenditure of \$10.6 billion annually for 10 years to increase service coverage to meet policy objectives.⁷

The enormous challenges of development in South Africa are therefore considered far beyond the capacity of government and the government recognises the need to draw

³ GoSA (1998) p1

⁴ ibid

⁵ Annecke 1992 quoted in ibid p37.

⁶ Table adapted from Jackson, B and Hlahla, M (1999) p552

⁷ GoSA (1999) p1. These estimates do not account for the deterioration of existing infrastructure.

on resources outside the public sector. The option to pursue partnerships at all spheres⁸ of government is preferred for a number of reasons:

- the state has come to realise that it does not have the financial and managerial resources to handle the infrastructure requirements alone;
- public-private partnerships help in mobilising private finance which is not available from other sources while releasing money from the fiscal budget for other social priority areas; and
- the private sector is able to introduce efficiency gains, skills and technologies which are not inherent in the public sector.⁹

Yet despite the intention to develop investment-based private sector participation, the resource capacity of most local authorities makes it impossible for them to meet the requirements of the private sector capital market. It is estimated that only about 15% (100-150 municipalities out of 843) would meet such conditions, and the remainder are limited to obtaining loans from the DBSA or grant financing from the national government.¹⁰ Despite the scarcity of these loans, past experience shows that many of these grants have been spent ineffectively. In many situations, high levels of service have been provided to a limited number of recipients without regard for affordability, replicability or sustainability. In this context therefore the shift toward private sector investment is not only conceived in terms of financial resources but also in terms of supplementing human resource capacity at the municipal level of government. The vision is to replace inefficient, irrational investment with a systematic approach based on long term planning, running costs and ongoing operations and maintenance.¹¹

In order that the opportunities for partnerships in municipal service delivery are pursued and optimised, the national government has taken a number of significant steps to underpin actions at the local sphere of government. The two central pillars to the development of this enabling environment, are the policy framework and the support for capacity building. Both these pillars fundamentally distinguish the operating context of South Africa from its other African neighbours.

The Regulatory and Policy Framework

The regulatory and policy framework in South Africa is undergoing constant development and change. At this stage the regulatory framework defines the minimum level of service to be provided to all South African people, and allows municipalities to grant concessions and establish contracts with the private sector. However there is no independent regulator for the water sector and it is not clear at this stage what regulatory body is intended or what role DWAF will play in the regulation of water and sanitation services in the future.

The policy framework in South Africa for service delivery, and private sector participation generally, is established at the broadest level by the Constitution, the RDP (Reconstruction and Development Plan), the Growth Employment and Redistribution (GEAR) and the White Paper on Local Government. The RDP states the role of local government in the integration of settlements once divided under apartheid. The GEAR encourages municipalities to take initiatives to enhance private sector investment in infrastructure. Without removing their responsibility and

⁸ The term 'sphere' of government is used in South Africa rather than 'level' to remove any implication of hierarchy in government.

⁹ GoSA (1999)

¹⁰ GoSA (1998a)

¹¹ *ibid.*

accountability for all service delivery, the framework gives the local level of government the authority to choose how they will deliver services.

The role of local government

During the apartheid regime, local government in South Africa created and perpetuated local separation and inequity. The principal legislation that instituted spatial separation was applied at the local level, and thus the extent to which affluent white municipalities bore the financial burden of servicing disadvantaged black areas was also a result of local level action.¹² In the 1980's a community level uprising over the appalling social and economic conditions in townships and bantustans led to a crisis at the level of local government which ultimately acted as a major driving force towards the collapse of the apartheid regime.¹³ Recent developments in policy and legislation on the role of local government in South Africa are therefore driven not only by the need to bring the government closer to the people but the need to reverse the policy and planning of the past and redefine the nature and objective of local government.

Following the national democratic elections in 1994, a phased process was instigated to bring about local government transformation. While this process is still incomplete, significant steps towards deracialisation and democratisation have been achieved.¹⁴ It is currently intended that the process will be strengthened by the reorganisation of boundaries which will dismantle the geographical bias of resources. This demarcation process, due for completion in November 2000, will reduce the number of municipalities to less than half the 843 currently managing local affairs,¹⁵ and is likely to have widespread affects on service delivery capacity and mechanisms.¹⁶

Despite massive change, local government in South Africa is still characterised by limited financial and human resource capacity, in some cases by corruption and inaction. Financially, local government has little capacity to fulfil municipal obligations for underserviced households. Political decision-makers are generally from previously disadvantaged sections of the community and have been historically denied access to training and personal development opportunities¹⁷, most have not had any significant experience of the commercial sector. Administrative arms are predominately white and historically schooled in rigid, authoritarian and outdated management practices.¹⁸ Internal reform processes require both empowerment initiatives and managerial change in order to bring about a new vision towards the role of civil society and the private sector in municipal management.

¹² This refers to the Group Areas Act. GoSA (1998a) p1

¹³ ibid. p3

¹⁴ Unlike many developing countries, local government in South Africa is not a level of government (implying a hierarchical relationship to the higher levels). Instead the constitution grants local government the status of a 'sphere' of government - distinctive, interdependent and interrelated to national and provincial government but nevertheless with a right to govern the affairs of their communities (subject to national and provincial legislation).

¹⁵ The demarcation process will reduce the number of municipalities from 843 to: 6 metropolitan, 46 district and 232 local municipalities and 26 district management areas. MIIU (2000b).

¹⁶ The Department of provincial and Local Government included the following advice to municipalities on the demarcation implications on MSP. 'The exact modalities for this transfer of liabilities and responsibilities will need to be worked out by the appropriate parties. Partnership agreements currently negotiated or under exploration in the pre election period will need to be done very sensitively. A given principle must be that service delivery to residents and consumers cannot be halted during this period. It may be wise to defer finalising major partnership agreements that will have long term financial, human resource and institutional implications for the local government. Quoted in MIIU (2000b).

¹⁷ GoSA (1998a) p95

¹⁸ ibid.

The White Paper on Local Government

In this context, the White Paper on Local Government (WPLG) creates the policy framework for municipal governance. It includes for a developmental form of local government which prioritises social development and economic growth and promotes the role of the community in the design and delivery of municipal programmes. It also stresses the need for services to be affordable and to be integrated with other service provision and housing. It explicitly recommends that municipalities look to alternatives for accelerating the delivery of basic services, and cites public-public, public-private and community partnerships as options for consideration.¹⁹

Decision-making on the mechanisms and actors to be involved in service delivery is implemented through a mechanism called the Integrated Development Plan (IDP) and the integral Municipal Infrastructure Investment Plan (MIIP) which set out how the municipality will achieve service delivery targets. The IDP is the primary tool for local government to plan local, strategic and holistic development interventions i.e. for municipal councils, in consultation with stakeholders (e.g. communities) to articulate their short, medium and long-term goals. As such, integrated development planning is the process through which municipalities develop a strategy to achieve their development objectives, including the mobilisation of resources and capacity and the approach to service delivery. This includes, *inter alia*, municipal service partnerships.

The process envisaged therefore facilitates an integrated approach to municipal management – one which has the potential to bring public-private partnerships under the same umbrella as local economic development. In practice, this relationship has not been developed to any significant extent, but policy presents clear opportunities for co-ordinating environmental and social interventions and for linking formal, informal, large and small scale enterprise in the development of service partnerships.

The Water Services Act

In the specific case of water and sanitation PPPs, the provisions of the Water Services Act (1997) are of some concern. The Act was developed and promulgated at a time when there was some resistance to private sector participation in the delivery of basic services. As with much South African legislation, the Act provides a framework to facilitate and direct decision-making. Consequently the critical clauses of the Water Services Act allow for private sector participation in service delivery without being prescriptive. Notwithstanding this, two important clauses create a risk for private sector operations in water services in South Africa. First, the Act requires that the first choice by local government should be the public sector if this is appropriate. Second, the Act provides powers to the Minister to set prices for bulk water, and determine norms and standards for tariffs.

Municipal Service Partnerships Policy Framework

The development of the municipal service partnerships framework has involved three primary initiatives: the Municipal Services Bill, the MSP White Paper and the MSP Guidelines.

¹⁹ Public-private partnership types are described in detail in Section F. GoSA (1998a) p97-100

- *Municipal Services Bill*

The Municipal Services Bill (1999) actualises the provision for private sector participation included in the Constitution (s152 (1) and s153(b)). In particular it enacts the constitutional requirement for equality of service provision stating that services are to be provided in a fair and equitable manner; that highest quality service is to be ensured at the lowest cost; and that services are financially and environmentally sustainable. It also states that councils remain responsible for service provision, and must regulate, monitor and assess implementation of any service agreements, including the performance of the service provider, and control the setting and adjustment of customer tariffs.²⁰

- *Municipal Services Partnerships Draft White Paper*

The policy and regulatory framework for service delivery involving non-municipal actors is being developed under the broader scope of 'municipal services partnerships' (MSP), rather than the internationally accepted terms 'private sector participation' or 'private-public partnerships'. This distinction aims to focus the arrangement on the ends (the provision of services at the local level) rather than a particular means, which may involve the private sector, another public agency or NGOs/CBOs. The MSP covers all types of service delivery, including those which have significant impact on the poor (e.g. water and sanitation, solid waste disposal, public transport and street lighting).

The objective of MSP policy is to ensure that partnerships are developed in a manner that supports the constitutional obligations of municipalities and the constitutional rights of their communities. In particular the development of the municipal service partnership regulatory framework is aimed to promote public accountability, consumer participation and worker rights.²¹

The MSP Draft White Paper responds to two primary issues. First, the need to deliver municipal services to underserviced communities; and secondly to address the lack of financial and technical capacity which will enable networks /coverage to be extended at the rate required to meet national targets. A key aspect of the framework is that it emphasises that the role of local government is not necessarily to provide services, but to ensure that services are delivered. The framework addresses:

- monitoring, oversight and consultative mechanisms;
- tendering and procurement practices (including the issue of unsolicited proposals) to ensure procurement processes are accountable and transparent;
- contractual arrangements, tariffs and price regulation; and
- conflict resolution.

It also addresses the potential of multi-jurisdictional MSPs.²² The framework therefore aims to improve service delivery by creating conditions in which private companies will have the confidence to invest.

The White Paper draws attention to a number of barriers to the development of an effective enabling environment in the current policy framework. For example it identifies:

²⁰ Despite the intention to create an enabling environment, the bill is descriptive and promotional in part. The content of the bill is criticised as being prescriptive and overly detailed.

²¹ GoSA (1999a)

²² Multi-jurisdictional MSPs refer to a situation where two or more municipalities engage jointly in a partnership with a service provider for the purposes of cost –efficiency in procurement and economies of scale.

- the scope, extent and responsibility of provinces or national departments and how they may intervene in municipal functions (e.g. to increase tariffs);
- the authority of local government to delegate tariff setting methodologies and tariff collection is not clear and represents a potential impediment to lease and concession agreements.
- onerous reporting requirements on MSPs
- the limitations on a local authority to enter into a contract without consultation with the provincial premier.

As a result, legislation is proposed which will enable local government to set tariffs, permit municipalities to enter into binding contracts which provide for tariff adjustment, and delegate tariff collection to service providers.

- *Municipal Services Partnerships Guidelines*

The intention is to issue municipalities with MSP Guidelines to underpin and promote confidence in developing partnership approaches. The Guidelines include issues such as:

- stakeholder consultation
- MSP project identification
- feasibility studies and project structuring
- public sector support mechanisms for MSP projects
- MSP procurement procedures, including linkages to economic development and affirmative action
- MSP contracting, contract monitoring and compliance
- council management structures and decision-making procedures for MSP planning and implementation
- NGO involvement in MSPs
- MSP reporting requirements

The effectiveness of the distribution of these guidelines will be a key factor determining the degree to which they will become effective sourcebooks that improve municipal capacity for decision-making and implementation.

Developing South African Capacity

- *An Advisory Unit*

In 1997 the Departments of Finance and Constitutional Development and the DBSA joined forces to establish a support unit to act as a catalyst for PPPs in the country. This unit, the *Municipal Infrastructure Investment Unit (MIIU)* has the explicit objectives of (a) encouraging private sector investment in municipal services and (b) building sustainable capacity in the municipal, private sector and consultancy sectors. Located at the DBSA, the MIIU is conceived as a 5 year intervention. Staff are either seconded from the DBSA or supported with funding from USAID.

In practical terms, the MIIU provides technical assistance for municipalities to prepare service projects for private sector investment. It provides funding support, on a cost sharing basis, for municipalities to appoint specialist consultants needed for project preparation and also provides direct technical assistance to municipalities in the process of structuring PPPs. Typically this includes guidance on the conceptualisation and design of PPP initiatives; the selection, supervision and evaluation of local consultants tasked with preparing feasibility studies and bid document packages; the

negotiation of PPP contracts; and appropriate means and methods for interacting with national level stakeholders such as labour unions and relevant ministries.²³ It then provides limited support for municipalities to move forward into the initial stages of implementation.

The MIIU is currently addressing approximately 40 municipal projects²⁴ (in water, electricity and solid waste as well as other non-basic municipal services) and has about 40 applications from other interested municipalities. Support is demand-led. Municipalities must request assistance and meet rigorous procedures to qualify for technical and financial assistance. Given the aim of creating PPP 'success stories' within the country, it is therefore likely that those municipalities receiving support from the MIIU and launching PPP initiatives already have a significant degree of financial capacity and technical skill.

The process adopted by the MIIU in the development of PPPs also aims to build a national consultancy sector with the ability to underpin municipal initiatives in the future. This is envisaged as a key tool in the creation of a sustainable market for PPPs in South Africa. To this end, local consultants have worked beside international consultants on the projects developed, building skills as core team members, but accompanied with the expertise and experience gained by establishing partnerships elsewhere. The unit places a high degree of importance on learning from international experience and the inputs of the World Bank and bi-lateral donors.

- *Guidelines*

In 1998, the Department for Constitutional Development (now Provincial and Local Government), with the support of the MIIU, developed a set of guideline documents for councillors, mayors and municipal managers. These are intended to provide guidance on the techniques and issues related to municipal service partnerships, including stakeholder consultation, project identification, procurement, contracting and decision-making processes. Officials interviewed in the Eastern Cape had neither seen such documents nor heard of the MIIU.

- *MSP Training Programmes*

The MSP Training Programme was a nation-wide, one-off capacity building programme organised in 1998 by the Department for Constitutional Development (now DPLG). It formed a key part of the overall strategy to support local government efforts to improve service delivery. It aimed to empower municipal councillors and officials to plan and manage municipal service partnerships in order to meet service delivery targets.²⁵ Supported by USAID, the training programme included:

- (a) *a training of trainers programme* which provided instruction on all aspects of the MSP project development and implementation life cycle to 25 participants from university, technikons and NGO training institutions.
- (b) *a series of workshops* for councillors and officials conducted in 3 locations designed to introduce and clarify MSP concepts, opportunities and risks. 220

²³ Jackson, B and Hlahla, M (1999) p565-583

²⁴ These projects include the concessions in Nelspruit and the Dolphin Coast.

²⁵ It is interesting to note here that the training only concerned public-private partnerships. Despite the rhetoric of municipal service partnerships, in practice capacity building has focused on partnerships that bring the investment of the private sector. Despite the rhetoric of MSP versus PPP, the development of the role of civil society and the capacity of local authorities to include civil society in MSPs has not been addressed to the same degree.

officials and councillors from 30 municipalities attended these courses in 1998. The content of the course included:

- strategies, policies and stakeholder consultation on MSPs
- financial analysis and structuring of MSPs
- legal structuring of MSP projects
- contract administration, monitoring and performance compliance

The training was formulated and facilitated by a US based organisation specialising in PPPs. Feedback from municipal officials and other key participants suggest that the training lacked detail, was too broad and superficial to provide meaningful learning, did not focus effectively on the specifics of the South African context, and did not develop the concept of *pro-poor* PPPs. In particular, the training omitted to address labour aspects and community participation, both critical components of MSP formulation in South Africa.

- *PPP Resource Centre*

The National Business Initiative (NBI) PPP Resource Centre is an initiative aimed at enhancing municipal capacity by improving access to information on PSP. The centre intends to become a focal point for the development, co-ordination and dissemination of information on public-private partnerships in South Africa. To this end the PPP Resource Centre provides training programmes, facilitates forums and exchange on PSP issues, provides a library of contracts and learning materials and conducts outreach programmes. The training programme promotes service partnerships in the broader context of urban management skills. It aims to empower councillors and officials to make informed choices about PSP options within the framework of the Integrated Development Plan and to build basic understanding of financial, contractual, social and labour issues involved in PPPs. It also provides an overview of the MIIU and how municipalities can access MIIU support.

Over the last 3 years the Centre has organised workshop training for over a thousand councillors and officials. While it played a key role in the development of new water and sanitation concessions, it has not yet targeted the weaker municipalities, and does not have the funding to reach the more marginalised municipalities in the Eastern Cape and Northern Province.²⁶

- *Capacity building in the water sector*

Within the water and sanitation sector the Department of Water Affairs and Forestry has a mandate to support local government to fulfil its constitutional duties with respect to water services. Two directorates (the Interventions and Operations Support (IOS) Directorate and the Local Institutional and Development Support (LIDS) Directorate are directly concerned with this capacity building. The IOS directorate has focused recently on developing policies, guidelines and tools that will assist local authorities to undertake their Water Service Authority (WSA) and Water Service provider (WSP) role. As required under the Water Services Act. This support includes technical, institutional development, capacity building aspects as well as assistance in the commercial aspects of water services; the development of a regulatory framework to enable local authorities to fulfil their duties; and various guidelines, model contracts and by-laws. Many of the activities converge with the work of the department for Provincial and Local Government responsible for more general capacity building initiatives at the local level of government.

²⁶ (MIIU 1999) and conversation with Jabu Sindane NBI May 2000

The Implementing Sustainable Water Services Institutions (ISWIP) programme is one programme that supports municipalities for their role as a water service authority. It includes, inter alia, capacity building for municipalities to assist in deciding on service delivery arrangements and options and also to assist them to fulfil their development, planning, regulatory and policy roles. The ISWIP is currently being piloted in 3 provinces.²⁷ DWAF efforts stress the importance of capacity building but it is necessary to underline the difficulties which local authorities across the country have in knowing about and accessing them.

Learning from existing partnerships

A number of significant partnership initiatives have been developed within this poverty context and policy environment. In 1998-9, concessions were established for water and sanitation services in the town of Nelspruit and in the Dolphin Coast area of KwaZulu Natal, as the first significant partnerships to be developed in this sector. Despite their infancy, the experiences and impacts of these initiatives are closely monitored and evaluated.²⁸

Given the interest in partnerships as a mechanism for improved service delivery, it might be assumed that the experiences of the well-established water and sanitation PPPs in the Eastern Cape would be well documented, that the municipal officials and councillors inheriting these contracts would be a source of information on municipal experience and that they would have found support in the midst of this capacity building framework. One might have expected that the lessons learnt in these projects would be fed into the pool of information for dissemination. This is not the case however. Little attention has been paid to learning from the collective experience of Queenstown (1992), Stutterheim (1993) and Fort Beaufort (1995) contracts and virtually no support has been provided. While there has been some, albeit limited and superficial, interaction with administrative officials and private operator involved in the Queenstown concession, there has been little objective evaluation of this experience. There has been little interest in pursuing the experiences of the Stutterheim and Fort Beaufort affermage arrangements. A number of reasons can be mooted for this absence of exchange. These include:

- that the Queenstown and Stutterheim contracts were established prior to the local democratic elections and may be perceived to be a part of the legacy of apartheid;
- that the Stutterheim and Fort Beaufort contracts are relatively small and the lessons may not be particularly relevant elsewhere; and/or
- that the contracts in Stutterheim and Fort Beaufort do not involve significant private sector investment and may be perceived as less relevant and informative.

These reasons can and should be challenged. Despite the fact that the contracts were established in a different political and social environment, in practice, the current councillors (voted into power in the democratic local elections) have had to assume responsibility for these partnerships. They have been forced to make significant decisions (such as large scale extension into former township areas) and in the case of Queenstown will continue to act as partners in the decision-making process for another 18 years.

While these contracts may be small at present, they are nevertheless typical of many municipalities throughout South Africa, and the jurisdiction of these municipalities

²⁷ I am grateful to Sanjay Wijesekera, IOS Directorate, DWAF for providing this information .

²⁸ Evaluation of Dolphin Coast MIIU (2000b)

will change considerably with the final stage of demarcation. By the end of 2000 these municipalities will serve a significant proportion of the people in the Eastern Cape. Individually they offer important lessons for capacity constraints and the problems of changing councillors. It is also inconsistent to argue that the Stutterheim and Fort Beaufort contracts are irrelevant because they lack the significant private sector investment of concessions. A key principle of the policy framework of Municipal Service Partnerships (MSPs) outlined above is to promote an understanding of a range of partnership options. The WSSA partnerships in the Eastern Cape together form an interesting juxtaposition of concession and affermage contracts.

A more convincing reason is that these contracts do not reflect the vision of municipal service partnerships developed in recent years and advocated by the national government. They are, to some extent at least, perceived as mediocre examples which will not promote the case for PSP in South Africa and may be better ignored than explored. Whether or not this perspective is justified, it is unfortunate that the government and other supporting bodies (at the national level where policy is being made) have made no attempt to underpin or assist municipal efforts to turn these contracts around to meet both national and local policy goals. While these agencies have underpinned the development of a number of new and innovative partnership arrangements, no support has been provided to the 'forgotten' contracts of the Eastern Cape, no support has been made available to assist them in the renegotiation of arrangements that place people and capacity building at the centre of the process. Moreover, in the context of national capacity building and policy rhetoric, no priority has been given to learning from these existing partnerships.

The next section of this paper describes one of these municipal partnerships, the Stutterheim affermage. While this contract was established in the policy context and political instability in South Africa in 1993, the capacity issues and lessons are instructive for municipalities everywhere.

3 The Stutterheim Affermage

Introduction

The municipality of Stutterheim, located in the Eastern Cape of South Africa, first adopted a 10 year affermance contract for the delivery of water and sanitation services in 1993, prior to the democratic elections in South Africa. The contract was formed with Aqua Gold (now WSSA, a joint venture between Northumbrian-Lyonnaise International and a local company Group 5). The shift towards the private sector as a vehicle for the delivery of municipal services of all types came at a time when the local council was dominated by businessmen, keen to streamline the municipality and delegate the responsibility for service functions to private sector companies. In the case of water and sanitation, the intention was to delegate the management of *all* water and sanitation responsibilities. In the apartheid context of segregation in South Africa, this included the provision of all water supply and sewerage services to the people living within the white areas of the town, and the provision of bulk water and treatment of sewerage effluent for the segregated township areas.

After the national and local elections in 1994-5, Stutterheim Council was amalgamated with the administration previously responsible for providing services to the township areas. Despite this vast change and a six fold increase in population under the municipal jurisdiction, the new Stutterheim Transitional Local Council (STLC) chose to establish in-house capacity to deliver water and sewerage to the underserviced parts of the municipality and *not* to contract the private operator to extend their operations.²⁹ At the instigation of WSSA, this decision has been revisited a number of times. There is no question that WSSA would prefer to deliver all services at all levels in all parts of the municipality. The current arrangement does not optimise efficiency of service delivery and they are criticised for being involved in a contract that appears to perpetuate unequal services.³⁰ Nevertheless, the council has consistently chosen to retain responsibility for delivering and upgrading some tertiary level water and sanitation services, believing this to be a more cost effective in the low-income areas of the municipality.

The case of Stutterheim provides an illustration of a partnership arrangement that is, to some extent, misread by municipal decision-makers. It also provides an illustration of an arrangement that needs to be reoriented to meet the new demands and visions of the post-apartheid council. The primary concerns expressed by council officials in Stutterheim, and echoed by the private operator, concern the capacity of the municipality to act as an equal party in the contract. This lesson is relevant for all municipalities, particularly those, like Stutterheim, which are managed by political representatives who had no involvement at the formulation stage. Amongst other messages discussed in this paper, it highlights the need for ongoing capacity building throughout the duration of a contract if the political wing of a municipality is to act as

²⁹ This is on contrast to Queenstown where the WSSA proposal to extend to include the former township areas was taken up, and WSSA is now responsible for all water and sanitation service delivery in the municipality.

³⁰ This understanding differs from the views expressed in Bond, P (1998), where WSSA are accused of ‘cherry-picking’ the middle-income areas of the town. WSSA have, from the outset (as Annexure 14 to the original contract) proposed that they would take over service delivery to the former township areas. We did not find any evidence (through discussion with the Mayor and Councillors or WSSA) to suggest that this ‘cherry picking’ occurred. Since 1993, WSSA have been unequivocal in their objective to take responsibility for tertiary level network in Mlungisi, and have followed up with further costed submissions. The council has not accepted any of these proposals.

an effective decision-making partner, able to optimise the role of the private sector in changing circumstances.

This section on the Stutterheim Affermage is structured in 6 parts. Section 1 sets out the background to the private sector involvement in water and sanitation service delivery in Stutterheim. Section 2 presents the nature and scope of the contractual arrangement and Section 3 details the key issues arising throughout the contract. Section 4 considers the constraints and opportunities for a pro-poor partnership. Section 5 provides an analysis of the capacity constraints and capacity building requirements of the municipality and the case is concluded in section 6 with an outline of the key lessons for other municipalities. A case study datasheet and a project profile are provided separately to present a snapshot of the partnership arrangement.

The main text is supplemented by Annex A which outlines a possible way forward for the partnership. Developed with stakeholders through individual interviews and group meetings, this structures and documents the main proposals for revising existing arrangements.

Background

The Stutterheim Transitional Local Council (a grade 5 local authority) currently serves a population of 35-40,000.³¹ The urban area exhibits the severe divisions of the former apartheid regime, particularly with regard to environmental conditions. The former white areas of the town are well serviced with street lighting, potable water supply, underground drainage and some surfaced roads. The area of Mlungisi is typical of the former townships of South Africa: a medium density settlement with inadequate water supply, septic tanks, inadequate drainage and mainly unsurfaced roads. Since the 1995 local government election, efforts have been made by the STLC to begin the process of redressing the imbalance in service provision and significantly improve the living conditions of the majority of the people.³²

The primary concern for the council in the current context is the increased jurisdiction that the demarcation process will bring (the final stage in the GoSA reorganising local government).³³ This reorganisation of boundaries incorporates the responsibilities of Stutterheim with Cathcart, Kerskamahoek, Keroad Town Councils and Amatola District Council. This will not only increase the population to over 250,000 and increase the municipal area from 81 sq. km to 3600 sq. km, but will introduce the complexity of a rural-urban mix to a municipality currently accustomed only to the specific problems of a small urban area.

Stutterheim is unique in its historical position in South African history. In 1978, during the apartheid regime in South Africa, a 9 month consumer boycott crippled business in the area. This action ultimately led to structural changes in the management of the town and the development of institutional mechanisms for conflict resolution. In an attempt to reduce racial conflict a community development forum, the Stutterheim Forum, was established with black civic leaders to initiate and promote a development agenda for the area. Following the national democratic elections in 1994 and the local elections in 1995, the former civic leaders of the black

³¹ STLC Dept. of Health and Community Services. Population figures vary but this range is agreed by all parties.

³² It is argued that service improvements have been taking place since the late 1980's when efforts were initiated to address the chronic service deficiency, nevertheless the former township areas are still very poorly serviced in parts.

³³ See p8.

community assumed offices in the council.³⁴ The town is known for its particular approach to Local Economic Development (LED) initiatives.³⁵ The current Mayor has received widespread exposure to other municipal activities through the dissemination of Stutterheim LED initiatives throughout South Africa.

Before the democratic elections in 1994, the Stutterheim Local Council acted as provider of water and sanitation services to Stutterheim town. This included all stages of service to the household level in the white areas and the provision of water supply and waste water treatment at the primary level for the township area of Mlungisi. The administrations responsible for the townships obtained these bulk services from Stutterheim but had responsibility for secondary and tertiary level distribution within these areas. Within the Stutterheim Local Council, day-to-day responsibility for the network was lodged with the Town Engineering Department and the Public Health Department.

The Chief of Health and Community Services in the Council reports that the council has very little information on the nature and extent of poverty in the municipality.³⁶ At present however, 1667 households receive some form of rebate on service payments, having declared an income of less than R1100 (approx. \$150) per month. Approximately one-third of these are estimated to live on an income of less than R500 (approx. \$75) per month. As this figure excludes households in areas without metered services it is estimated that approximately 10,000 people in Stutterheim live in poverty - 20% in poor and 10% in very poor conditions.³⁷

The municipality provides various social services, mostly oriented towards accessing adequate health care and education services, but there are no targeted poverty reduction programmes which focus on the poorest and most vulnerable groups. The 4-5 NGOs active in the area provide some support and assist in community mobilisation. A number of small (governmental and non-governmental) initiatives attempt to address the chronic employment problem. However, these poverty reduction activities are not linked to council efforts to improve infrastructure and services for previously disadvantaged communities.

Physical living conditions have improved for a number of low-income households over the last 12 months with the construction of 500 serviced houses (located in a marginal area of the town). If we consider both the low-income areas of Mlungisi and Mzamomhle, just under 20% have no service, 40% obtain water from street standpipes, and 44% have water in their yard or house.³⁸

The Partnership

Objectives of private sector involvement

At the time the partnership in Stutterheim was established, a primary goal of the council was to streamline municipal functions. The council at the time (particularly

³⁴ The former Mayor now plays a role in the economic development of the town through the Stutterheim Development Foundation. The community development forum still exists but no longer plays the same role in the development of the town.

³⁵ Although there is some debate as to the efficacy of these initiatives, particularly the apparent lack of institutionalisation of processes.

³⁶ According to the STLC, there are no socio-economic surveys or household expenditure analyses.

³⁷ Interpreted from data provided by the Town Treasurer, September 2000.

³⁸ These figures are not dissimilar to the national averages shown in Figure 1. Council records do not distinguish between full or intermediate service.

the Chair of the Public Works Committee) aimed to redirect conventional forms of management to address the resource deficiencies of the council. To this end, the council envisaged partnerships with actors outside the government and co-ordination with other municipal bodies. Amongst other issues they sought to tackle the problems of small municipalities that can not sustain sufficient technical capacity to run a properly skilled water and sanitation service. As the engineering department was going through a difficult stage (beset by uncertainty in contracting practices), service was deteriorating, and a partnership arrangement with the private sector for water and sanitation services solved both particular and strategic problems. The objective of private sector participation was to buy in the technical skills needed to improve the efficiency, management and delivery of water and sanitation services to the population of Stutterheim.³⁹ However, the objective at that time did not include capital investment, and the pre-democratic council was only concerned with bulk supply to low-income areas. Decisions were set within the context of political change in South Africa.

Establishing the Contract

In 1992, the council in power agreed to pursue private sector involvement in a range of municipal functions. In order to initiate the process the council agreed to test the market and advertised nationally for expressions of interest for the management of water and sanitation services in the town. In the early nineties there was little direction for public-private partnerships in South Africa (nor was there any significant assistance available internationally) and the process of preparation, tender and evaluation process was carried out with the same methodology as that undertaken for the construction of civil works.

The council at the time was dominated by business acumen, the councillors were willing and able to identify gaps in council skills and were then agreeable to the appointment of (and fees for) consultants to fill these gaps and manage the formulation of a contract. However it should be noted that expertise in public-private partnerships were not available in South Africa in 1993. As late as 1995, the WRC in their guidelines for private sector participation noted "*the complexity and nature of long term contracts makes it imperative for local authorities to appoint a multi-disciplinary team of professional advisers ... It should be noted that very few firms in South Africa have all the expertise that is likely to be required and the experts will have to be drawn from different firms. The disciplines needed cover business and financial management, legal as well as engineering and technical fields.*"⁴⁰

The consultant appointed was a well-established, national engineering firm skilled in technical aspects of water supply and sanitation and project management but with only limited financial and legal expertise, and no experience in the formulation of contracts with a private operator for the delivery of municipal services. The consultant was responsible for preparing tender documents, evaluating tenders and negotiating the contract. The evaluation was conducted on the basis of technical proficiency and cost (and an assessment of cost when compared with the council provision of the services) and did not involve the council to any significant degree.⁴¹

The proposal for the form of contract was presented by WSSA in their tender. An investigation into alternative contract types was not pursued. The contract was

³⁹ Hamish Scott, May 2000. Technical and efficiency objectives were fuelled by the complexity of the Stutterheim system. The municipality currently draws from one of five raw water sources and is considered by WSSA to be particularly complex for the population served (Jean Pierre Mas, WSSA).

⁴⁰ WRC (1995) p7-2

⁴¹ Conversation with former Councillor, Hamish Scott, May 2000

considered appropriate because it met the key technical, managerial and efficiency objectives of the council and did not include a significant investment component.⁴² Despite their interest in private sector involvement in the delivery process, the council in power in the early 1990's was too cautious to enter into a twenty or thirty year commitment.

In that context there was little concern for the mechanics of public consultation or the explicit involvement of stakeholders in the decision to enter into a partnership arrangement. The council had a mandate to manage the town and was not concerned with building in a consultative approach or obtaining explicit approval for a decision on delegating management. The decisions made over the contract during its formulation were not specifically linked to poverty reduction initiatives in the adjacent areas where the poorer communities lived. Effective town management was however a key issue and the council envisaged a key role for the private sector in attaining this end.⁴³

Partnership Arrangements

The partnership arrangement in Stutterheim is an affermage contract for 10 years. The affermage (or lease) form of contract *farms-out* or contracts out to the private sector responsibility for providing management, operation and maintenance.⁴⁴ Unlike the management form of contract, the private operator must provide working capital, but capital investments remain the responsibility of the authority.

The scope of the contract in Stutterheim includes the management, operation and maintenance of the water and sewerage system, replacement of pipework due to normal wear and tear and record keeping. It also includes for customer management services as a future option. In addition, WSSA has an obligation for some rehabilitation works on the existing system: to replace a fixed amount of pipework annually, to replace all meters (older than 7 years) by the 5th year of their contract and to replace any malfunctioning electro-mechanical equipment. Thus, maintenance, replacement and ongoing repair are the responsibility of the Operator, while upgrading and expansion is the responsibility of the Stutterheim Council.

Partners, roles and relationships

The key actors in the formulation of the partnership were WSSA (then Aqua Gold), the representatives of the political arm of the Stutterheim Council (particularly the Chairman of the Public Works Committee) and the engineering consultant involved in the appointment. It is important to note that the political arm of the council provided the driving force for the partnership arrangement. It would appear that the playing field at this time was relatively level as the commercial skills and capacities of the council at the time, together with the role of consultants, meant that there was no obvious imbalance of power. In 1992-3, such arrangements were new and untested for all concerned.

Eight years later, the actors and their roles and relationships have changed considerably. The elected council is oriented towards the achievement of social goals

⁴² In some respects this decision has proven to be prudent, STLC has been very successful in obtaining RDP funds.

⁴³ The Council had intended to outsource a number of other municipal functions, but ultimately water and sanitation was the only sector in which a contract was established. Conversation with Mr Hamish Scott, May 2000.

⁴⁴ The French word 'affermage' is translated to English as 'farms out'

and have to some extent seen these goals at odds with private sector involvement in basic service delivery. They have stronger skills in social issues and focus resources in this area rather than the pursuit of commercial management (including the potential role of the private sector). On the other hand, private sector skills have developed significantly over the last decade and WSSA has consolidated its position in the water sector in South Africa.⁴⁵ This divergence of skills has created a significant imbalance in the capacities of the partners in the partnership.

The operational interface between the partners is formally established through the monthly meeting and, informally, through direct communication between the Town Engineer or Town Treasurer with the WSSA Regional Manager. The Town Treasurer of the STLC, now in place for 2 years has played an important role in maintaining the contractual relationship, particularly in the light of the frequent and unsettling turnover of town engineers.⁴⁶ The councillors are involved in all decision-making over the contract although they do not play an executive role in implementation or day-to-day business. Community based organisations and trade unions have not played a role in the contract to date

Responsibilities and coverage

While the Stutterheim water and sanitation services contract is frequently described as one which only serves the former white areas of the town, the contract is actually now characterised by a complicated set of area and task responsibilities and a more correct description is that the division in responsibilities is abnormally complex (see Figure 2). The contract actually requires the operator to manage raw water supply and treatment for all areas of the municipality (the town and Mlungisi), as well as the requirements of the neighbouring Amatola District Council (ADC). The pumping and distribution of water to Mlungisi from the treatment works is the responsibility of the STLC, while reticulation in the former white areas of the town is the responsibility of WSSA.

Responsibility for sanitation services is yet more complex. At the primary level, WSSA operate and maintain a waste water treatment works for the entire municipality. They manage and operate sewerage reticulation within the town of Stutterheim and provide conservancy services for both the town area and Mlungisi. Given that perhaps 80% of the service in Mlungisi is pit latrines and septic tanks, WSSA effectively serves the majority of the municipality.⁴⁷ STLC operates the limited network in Mlungisi.

WSSA bears the operational costs (including manpower, energy, consumables and chemicals) of water and waste water management. The operating fee is calculated to cover the fixed expenses of the contractor plus a variable charge for the volume of water supplied and sewage treated. This variable fee represents approximately one-third of the monthly fee paid by the council. The nature and scope of the payment is structured to provide a number of incentives for the operator to ensure the ongoing maintenance of the system. The variable fee is based on the volumes of water used at the meter and sewage effluent treated. This means that water leakages in the secondary network are not paid for by the council but WSSA.

⁴⁵ WSSA is also responsible for 2 of the BOT contracts let by DWAF, for the Queenstown Concession and the Management Contract in Fort Beaufort, Zandvliet Waste Water works for the CMC, and 30 waste water treatment works in KwaZulu Natal. Internationally, Lyonnaise des Eaux (the primary shareholder of WSSA) is a partner in some of the more innovative partnerships in the water and sanitation sector (e.g. Buenos Aires, Le Paz-ElAlto).

⁴⁶ see pages 38-9

⁴⁷ The broad extent of WSSA responsibility for sanitation services is not widely understood.

Figure 2
Responsibility for water and sanitation services in Stutterheim

	WSSA Responsibility	Municipal (STLC) Responsibility
Water		
• Primary	Raw water supply and water treatment from sources (4 sources) to Stutterheim town, Mlungisi and the semi-rural villages of the Amatola District Council.	Upgrade and new infrastructure Safety, maintenance and repair of dams and water sources. Bye law enforcement
• Secondary	Secondary distribution and reticulation within Stutterheim town area .	Pumping and secondary distribution network to and within Mlungisi. ⁴⁸
• Tertiary	Operation and maintenance of neighbourhood level distribution within Stutterheim town area	Operation and maintenance of neighbourhood level network distribution within Mlungisi area
Sanitation		
	Operation and Maintenance of sewerage network in Stutterheim town. Treatment of effluent for all areas. Operation of conservancy tanker services to all areas (including 80% of the population of Mlungisi).	Operation and maintenance of sewerage network in Mlungisi. Provision of capital equipment for all tasks (including new tankers for sanitation services);
Customer Services		
	WSSA is responsible for operation and maintenance of meters and technical complaints.	Stutterheim TLC is responsible for meter reading, billing, collection and account complaints.

Although legislation requires that meters be read on a monthly basis, the STLC currently reads water meters every three months. As a result, projections are necessary for balancing the system and consequently efficiency gains that might be achieved through optimal balancing are limited. At the same time WSSA argue that the length of time between meter reading creates a backlog of faulty meters.

The Stutterheim affermance contract therefore allocates risk in a manner typical to lease/affermance arrangements. While the authority carries the risk of asset ownership and capital investment, the operator assumes the responsibility for operations and maintenance. Commercial risk is shared, although the STLC assumes a significantly greater part due to the coverage of the contract.

Investment and improvements

In 1993, when WSSA took over operational responsibility for water and sanitation services in Stutterheim, the condition of the network was considered fair although there were some particularly weak links in need of upgrade.⁴⁹ The council has financed (with both grants and loans) approximately R9.1 million (\$1.3m) of upgrades which were vital to ensure the proper functioning of the system and to cater for demand and growth. Improvements to the water treatment works and the sewerage treatment works were taken into consideration in Contract Addendum 4 and Addendum 6 respectively. It is not clear what impacts other capital improvements have had on WSSA operations and the council has not considered the need for renegotiation in relation to these improvements.

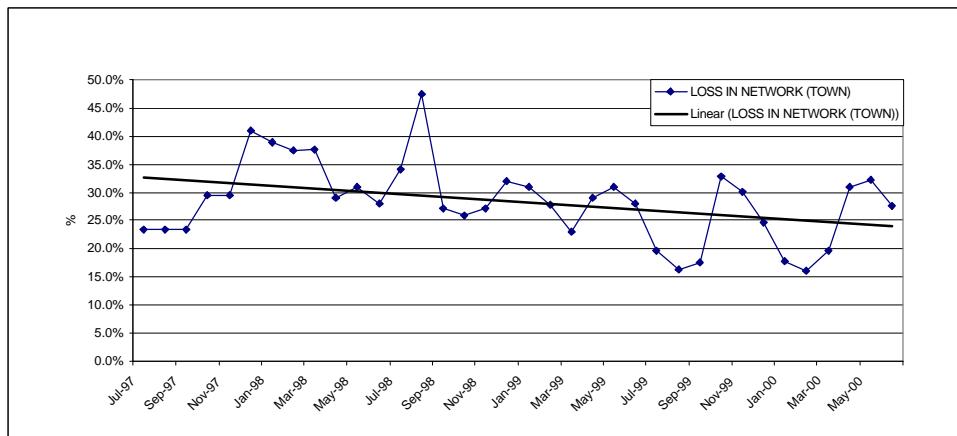
⁴⁸ Operator proposals to the STLC to extend the contract to include distribution in Mlungisi have been refused on every occasion.

⁴⁹The low pH of the water has caused massive corrosion of the asbestos cement pipework.

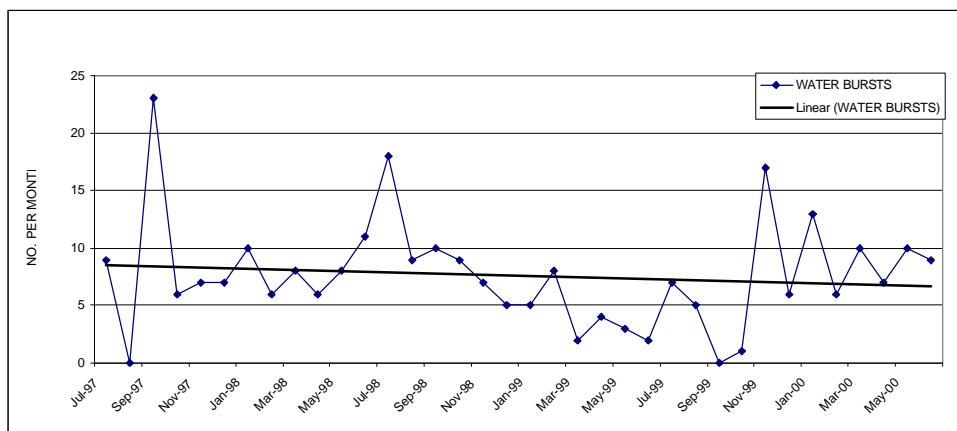
In addition, the day-to-day maintenance carried out by WSSA and the ongoing pipe replacement programme provides marginal improvements to efficiency. It is difficult to provide precise figures for unaccounted for water (UFW) as WSSA can only provide distribution losses for the town of Stutterheim and not Mlungisi (where they do not distribute water). However, trends since 1997 (see Figures 3-5) indicate that:

- the average number of leaks in the system has declined by 70%;
- the average number of bursts in the water network has declined by 20-30%;
- the average number of sewerage blockages has reduced by over 40%; and
- UFW in Stutterheim town has steadily declined over the contract period from 38% in 1993, to 33% in 1997 and 24% in 2000.

**Figure 3⁵⁰
Unaccounted for Water**

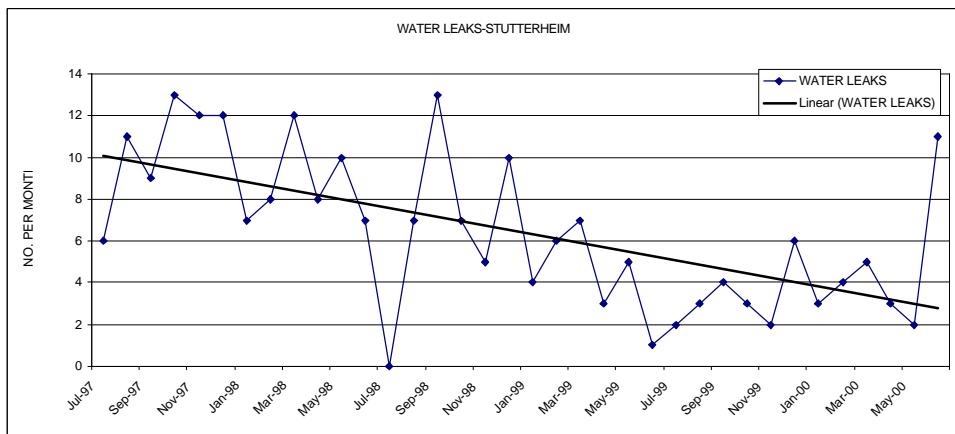


**Figure 4
Water bursts**



⁵⁰ I am very grateful to Marius van Aardt Regional Manager WSSA, for preparing the following graphs from WSSA data for the purposes of this case study.

**Figure 5
Water Leaks**



Costs

The cost of water delivered by WSSA in 2000 varies, but over the last 4 years has fallen between R1.53 and R1.71 (\$0.21-\$0.23) per kilolitre.⁵¹ This includes reticulation up to the household in Stutterheim town, and bulk water to pump stations for the other areas served, at neighbourhood level, by STLC or ADC. This compares favourably (around 61% of the cost) of the R2.80 (\$0.38) per kilolitre paid by neighbouring municipalities for bulk water supplied by the Amatola Water Board.⁵²

In 1998-99, the cost of water and sanitation services reported in the STLC Financial Report was approximately R1.5 million (\$210,000). This means that approximately 12% of annual council expenditure is paid to WSSA.⁵³ In addition to the expenditure reported, the operating costs for water and sanitation service delivery in Stutterheim include staff, equipment and vehicle maintenance costs as well as the cost of operating, managing and maintaining the distribution system in Mlungisi. It is not immediately apparent that STLC ‘ringfences’ water (or sewerage) services in this way and reported figures on costs may be misleading if compared with a municipality which has identified and included all direct and indirect costs.⁵⁴

Capital costs over 5 years show an average annual expenditure of R1.8 million (approx. \$250,000). In 1998-99, investment in network upgrade (including the major work to trunk mains and sewerage treatment works) totalled R1.5 million (approx. \$210,000 or 13% of annual municipal expenditure). Interest on loans is charged to, and is included in, the expenditure for each service. Capital repayments are not included in the annual costs of the service and there is no mechanism in place to account for or plan specific contributions to capital improvements.

⁵¹ This figure varies dependent on the water source used. See page 29 for detailed escalation figures provided by WSSA.

⁵² The Amatola Water Board price of R2.80 is for bulk water, while the WSSA price of R1.71 is for bulk water over 50% of which is distributed.

⁵³ Conversation with the Mr Geoffrey Hill, Town Treasurer, May 2000. This is higher than the WSSA figures shown in detail on p31, some capital works carried out by WSSA may be included in this figure.

⁵⁴ The Town Treasurer reported that a small surplus was achieved in the 1998/1999 financial year given that expenditure was not as high as revenue. It should be noted that this calculation only includes direct costs and interest on loans, and does not include for staff, maintenance, equipment costs. It is also apparent that revenue includes connection costs which should be off set against capital financing. Council figures also include the national government grant currently subsidising low-income groups.

Tariffs and Charges

WSSA plays no role whatsoever in setting tariffs. Tariffs for water and sewerage services in Stutterheim are tightly controlled by the council. Given the elected council's explicit concern for improving basic services and the past conflict over non-payment and disconnection, it might be expected that a major revision of the tariff structure would have been undertaken. This is not the case. The current tariff structure has evolved since 1994 and is not one that has been specifically or adequately designed to meet the Council's stated 'pro-poor' objectives, nor has it been designed in relation to affordability and willingness to pay surveys. In practice, the tariff structure is *unfair* and *unfavourable* for poor households.

Despite a long standing determination to introduce a user-pays principle, STLC has not yet undertaken methodical and comprehensive studies in low-income areas which would expose the willingness and the ability of householders to pay for services. As a result, the outdated tariff structure does not take into account low income households willingness to pay or affordability.

Figure 6
Service Tariffs

	Level of Service	Monthly charge (including VAT)
Water		
• Domestic	Communal Standpipe	flat rate R27.32 per household (sharing a street standpipe)
	Mlungisi Household connection	basic charge per stand R24.24 plus R2.77 /kl consumed
	Stutterheim town Household connection	R19.68 basic charge + a minimum purchase of 11 kl at R24.54. R2.77 per kl thereafter
• Commercial	Service connection	As above
Sewerage		
• Domestic	Tanker service	R35.84 per tanker service removal (average 2 per month)
	Mlungisi Service connection	R37.41 basic charge
	Stutterheim town Service connection	R56.17 basic charge
• Commercial	Tanker Service	R56.19 per tanker service
	Network Charge	R77.33 basic charge for 3 WCs. 11.44 per additional WC
Refuse Removal		
• Domestic	Mlungisi	R31.82 basic charge
	Stutterheim town	R31.82 basic charge
• Commercial	All locations	R42.87 basic charge

The tariff structure (shown in Figure 6) provides for 3 marginally different tariffs for the (low-income) former township areas of Mlungisi and Amatolaville; the (middle-income) Stutterheim town and for business. The council considers this tariff structure to be beneficial to the poorer households because a marginally lower tariff is applied in the low-income areas of the town. Closer examination (see Figure 7) reveals a very different situation. In the case of water supply, low-income groups fall (equally) into one of two categories. A household with an income of R1100 per month is charged R27.32 (\$3.80) for the use of a communal standpipe while those with a household

connection utilising, for example, 11 kilolitre per month are charged R54.71 (\$7.60).⁵⁵ Yet, middle-income households and businesses in Stutterheim town are charged R44.22 (\$6.15) some 20% less for the same 11 kilolitre amount.

Analysis shows that for any amount over 7 litres, the poor are charged more for their water than their better-off neighbours in Stutterheim. The tariff is therefore working to the benefit of the middle income groups rather than the poorer groups. While it is not uncommon in developing countries for the poor to pay more for their water than wealthier groups - usually by procuring water informally - this situation in Stutterheim is clearly not the intention, nor the policy of the council. It is likely that this reflects a lack of past capacity in the STLC in relation to tariff structures and this will be rectified in the near future.⁵⁶

Moreover, the tariff structure does not differentiate between low-volume and high-volume users i.e. the unit cost of water remains constant no matter what quantity of water is used. Far from being beneficial to the poor this tariff structure penalises low-income households and, in a country approaching water scarcity, provides no incentive for conserving water (especially by high-volume users).

Figure 7
Typical Household Service Costs

	Income group	Level of Service	Typical Cost
Water			
			\$1= R7.2
	Low-income < R1100	Standpipe / Connection	R0-R27.32 up to 54.71
	Low-income > R1100	Standpipe	27.32
		Household Connection	54.71 for 11 litres
	Middle-High income	Household Connection	44.22 for 11 litres
	Business	Connection	44.22 for 11 litres
Sewerage			
	Low-income < R1100	Septic tanks/ Pit Latrines	R71.68 for 2 removals
	Low-income > R1100	Household Connection	R37.41
	Middle-High income	Household Connection	R56.17
	Business	Household Connection	R77.33 minimum
Refuse Removal			
	Low-income < R1100	Household Collection	R0-R31.72
	Low-income HH	Household Collection	R31.82
	Middle-High income	Household Collection	R31.82
	Business	Household Collection	R31.82

Examination of sewerage service standards versus charges tells a similar story. The majority of people in the low-income areas of the town may well be charged more for sewerage services than the middle income groups. While network sewerage charges in Mlungisi are R37.41, the majority (70-80%) of households use septic tanks and request 2 removals a month. For this service they are charged R71.68. This is higher than the charge of R56.17 (22% lower) for middle income HHs connected to the sewerage network and receiving a higher level of service.

⁵⁵ It is possible for Mlungisi residents to restrict their usage and pay lower bills and this option is not open to the middle income areas. However, standpipes are removed once yard connections are provided thus removing options for fixed and lower charges.

⁵⁶ The Mayor confirmed that investigation into the tariff structure would be prioritised after the forthcoming election.

The inequitable tariffs for water and sewerage are compounded by refuse removal charges. These are the same for low-income as middle-income households, despite the fact that there is marked evidence that low-income households generate significantly less waste.

The continuation of a tariff structure that benefits the middle-income at the expense of low-income households is countered by two factors:

- *A remission system for the poor on service payments.* Approximately 30% of the households billed are subsidised through a remission system funded by a national government grant.⁵⁷ Households with an income less than R1100 per month (\$150.00)⁵⁸ receive a rebate for basic services. This is calculated on a sliding scale in relation to their income and an income of R300 (\$42.00) per month draws the full rebate. The remission system means that there is effectively a fourth band of approximately 10% of the population which receive water and sanitation services free of charge or with payments of less than R6 (\$0.80) per month.
- *The pattern of non-payment for services amongst low-income groups.* Cost recovery in the low-income areas is very low (28%) compared with the middle-income areas of the town. While, in practice, this results in a cross-subsidy for service delivery to the low-income area of Mlungisi, two points concern the poor. First, current efforts to install pre-paid meters will gradually remove this indirect subsidy and reinforce the impact of the biased tariff structure. Second, a common problem with non-payment is that it only assists those with some form of service and not those who are currently unserved. It can be argued that payment by all groups would increase the finances available for service expansion.

Despite the immediate benefits of these formal and informal mechanisms, both are ultimately unsustainable. Cost recovery, through a fair tariff structure, is essential to address poverty and sustainability. The Municipal Services Bill (1999) and the Water Services Act (1997) both emphasise the importance of charging tariffs that ensure a financially sustainable service, covering all recurrent costs, repair and replacement of physical assets and a surplus which contributes to access to capital for future improvements.⁵⁹ Moreover, even if the national government continues to provide the funding, on which the remission system depends, it should be noted that local government can use this fund for any purpose and there is an opportunity cost associated with its use to subsidise water and sewerage payments.

Payment and Cost Recovery

STLC staff read meters (individual and communal) and prepare computerised invoices for customers on a three monthly basis. The bill unifies the basic services provided by the municipality (water, sewerage and refuse). It is hand delivered (with the exception of a mobile unit on pension day) but payments must be made in the Council offices in the town. There is no system of house-to-house collection or payment at a satellite office for residents of the low-income areas.

Current debt on unpaid bills in June 2000 totalled R6.8 million (approx. \$1m) - on an annual operating budget of R13.5 million (approx. \$2m). Revenue is made up of customer receipts and the national government grant the municipality allocates as a

⁵⁷ *Equitable Share of Nationally Raised Revenues* are used for this purpose (see note 16).

⁵⁸ For households with 5 or more members this represents a maximum of \$1.00 per person per day.

⁵⁹ Jackson, B and Hlahla, M. (1999)

subsidy for water and sanitation services.⁶⁰ Revenue collection in Mlungisi is estimated at 28%, with an additional 30% of households paid for, in part or full, under the remission scheme. Since 1998 there have been few, if any, disconnections. The political backlash after the harsh measures taken in many municipalities in 1997, plus the fact that disconnections failed to stop people accessing water,⁶¹ has resulted in the council relaxing the enforcement of their once rigid policy. The solution now proposed is the installation of pre-paid meters throughout Stutterheim and Councillors have developed public support for this payment option.⁶²

However, the council has not collected any data to inform decision-making on the most appropriate approach to improving collection rates. Apart from the lack of willingness to pay and affordability studies mentioned above, to date there has not been any analysis of who is paying, who is not paying and why. For instance, little is known about the make-up of the, or reasons for the 72% non-payment in Mlungisi. Information on these consumers has not been disaggregated in such a way that the council can identify whether:

- recipients of a rebate for services are paying the remainder of their share;
- customers with lower standards of service (such as septic tanks and standpipes) are resisting payment; or whether
- customers recently connected into the network are paying etc.

This information is essential if the STLC is to understand non-payment and target their efforts for improved cost recovery.

In the near future it is expected that the council will invest further in upgrades to the waterworks to achieve yet higher outputs. There is an implicit acceptance that the increasing demand for water in the municipality is irreversible. Efforts to reduce the demand for water through public awareness campaigns, sanctions against high-water usage by individual HHs or a progressive tax on water usage have not yet been entertained. Despite their experience in this area of work, WSSA play absolutely no role in the promotion of water conservation.

Key Experiences

The experience of the contract arrangement with WSSA has been mixed. On the one hand the quality of the water provided has improved dramatically. Those who remember the service provided by the Stutterheim Council report that the brown water of dubious quality (common in the eighties and early nineties) was replaced by clear water when WSSA took over as operator. However a number of issues have arisen in the implementation of the contract which have seriously damaged the overall partnership experience. These are considered in detail below.

- *Contract Type*

Perhaps the primary issue for the democratically elected council is that the contract inherited in 1995 does not meet the new objectives of council. The need for investment is significantly greater than it was under the previous regime; the desire to pass on additional risk to the private sector; the need to embrace the potential role of communities in demand-led decision-making and implementation; and the need to

⁶⁰ STLC allocates the *Equitable Share of Nationally Raised Revenues* for this purpose. This is a continuation of the former IGG scheme which was intended for services.

⁶¹ Consumers simply bypassed the meter and continued using the water.

⁶² Max July, SDF September 2000

build institutional and community capacity are all vital ingredients of a municipal service partnership designed to meet reconstruction and development objectives. The Stutterheim experience also illustrates the assertion made by the World Bank that the lease contract is politically demanding and complex to administrate.⁶³

- *Performance Measurement and Management*

Most contracts for water and sanitation services attempt to define the type and quality of service required. The more prescriptive contracts define *inputs* or how an end should be achieved (e.g. the types of materials to be used, the specifications of the design and the procedures for undertaking the work). Others define the performance in terms of *outputs* or what an operator must do (e.g. the type of service, the service quality and reliability, the time taken for repairs), while others define the *outcomes* (e.g. using indicators such as a reduction in water or faecal-borne disease or a reduction in the time spent collecting water) that must be achieved.

Despite the advantages to all parties of the *outcome* approach to performance measurement, it is still common for performance to be measured through technical specifications that are designed to prescribe what an operator must do.⁶⁴ In 1993, at the time the contract with WSSA was established, donors and advocates of PPPs had not developed the sophisticated guideline documents and sample contracts now available, and well-defined standards and performance criteria similar to those now found in PPP contracts were not common place.

Like many other early PPPs, the Stutterheim contract was based on standard form of contract accepted elsewhere – in this case a typical affermage contract used in France in the early 1990s. In the Stutterheim contract the standards for water quality are prescribed by the Water Act and local byelaws, but there are no legal mechanisms defining the standards for the operation of the network.⁶⁵ As the Stutterheim contract does not provide a set of criteria against which the municipality can judge the performance of WSSA, both parties agree that the existing contract has exposed the municipality to risk and, on occasions, made it necessary for them to consult legal and technical advice.

In contracts where performance criteria are established effectively and where a regulator exists, a municipality must ensure that performance is properly monitored and sanctions applied for non-compliance. In Stutterheim, the lack of performance criteria makes effective monitoring difficult and sanctions impossible. At the present time the town engineer carries out checks twice a month on the water and waste water treatment works, to ensure that the reporting of the operator (in terms of flow rates, water quantities and dosages) is accurate. He is also monitors daily leakage and attempts to track the annual pipe replacement obligation of the operator.⁶⁶

In the earlier days of the contract, due at least in part to the unqualified contractual arrangement, WSSA did not meet the expectations of the council. Response time to customer complaints and time taken for the rectification of leaks are cited as examples of under-performance which could have been addressed if the contract stipulated response times. For instance, the contract does not stipulate the time by which a malfunctioning meter should be brought back to working order. The Council is concerned that a great deal of revenue is lost due to a backlog in meter repairs, but

⁶³ World Bank (1999a) p6

⁶⁴ Komives (1999) p7

⁶⁵ The Stutterheim contract does not outline the operator's responsibility in quantifiable terms that can be monitored.

⁶⁶ STLC argue that WSSA have not been as transparent as they could be in their documentation of the location of the pipe replacement works.

they are unable to control the speed at which WSSA attends to them. This concern was first noticed when the current treasurer took office and found that the local hospital meters were malfunctioning and had not been rectified for some years.

During the past 1-2 years however, WSSA have introduced their own performance guidelines and in-house performance is measured and monitored so as to comply with the best practices of ISO9002 (quality assurance). WSSA argue that their performance has improved since that time and their operations meet international standards and are measured within the company.⁶⁷

- *Escalation*

There is some confusion, uncertainty and a lack of understanding within the STLC over the escalation of prices in Stutterheim over the last 5 years. Both administrative officials and councillors expressed the view that price escalation is unnecessarily high as a result of the PSP (although this has not been subject to any cost analysis and it is unclear why this view has developed). There is also a strong perception that the council would be able to avoid price escalation if it had control over labour and material inputs.⁶⁸

For the period 1996-7 to 1999-2000, Figure 8 provides a breakdown of (a) actual WSSA prices; (b) WSSA rates per kilolitre and (c) the percentage increases in WSSA rates per kilolitre.

**Figure 8
WSSA Costs 1996-2000**

	96/97	97/98	98/99	99/00
Fixed	R 726,303.21	R 790,599.84	R 870,430.85	R 949,226.07
Variable water charge⁶⁹ (volumes vary)	R 347,000.00	R 381,429.18	R 304,015.46	R 405,816.93
Variable sewage (volumes vary)	R 91,147.33	R 103,655.69	R 92,971.92	R 91,044.66
Total Charge	R1,164,797.54	R1,275,684.71	R1,303,418.23	R1,446,086.66

Water R/kl⁷⁰ (sold)	R1.53	R1.54	R1.58	R1.71
Sewage R/kl (treated)	R1.16	R1.29	R1.39	R1.44
Water % increase⁷¹		.65%	2.6%	8.23%
Sewage % increase⁷²		11.21%	7.75%	3.60%

⁶⁷ The introduction of in-house performance monitoring in WSSA is an indication of the degree of company maturity attained during the 1990s. This is particularly marked when juxtaposed with the capacity of the municipality.

⁶⁸ The Town Treasurer states that the escalation clauses contained within the contract have made the council susceptible to sudden price adjustments which could have been avoided if the council itself was undertaking the work e.g. By substituting materials or labour to accommodate for such change; also that the council has been unable to gain from improved technologies. Recent changes to the chemicals being used for water treatment are thought to have reduced WSSA costs significantly, a benefit which would result in reduced costs for the municipality if they were responsible for the operation.

⁶⁹ The variable water and variable sewage charges are linked respectively to the water sales volume, and the sewage treated volumes. These volumes vary due to seasonal variations in rainfall and temperature, as well as a result of consumer behaviour. These figures cannot be interpreted to determine increases in cost over time.

⁷⁰ The lower table reflects the unit rate of the variable costs, into which the fixed charge was apportioned. As these figures have been normalised for variations in volume, it provides a more accurate indication of increases in cost over time.

⁷¹ The variable water ratio increased by 11.76% from R1.53/kl to R 1.71/kl or an average of 3% per annum. The figures are based on the water retail sales volumes, and also include the pro-rata portion of the fixed charge.

From these figures it is possible to directly compare the current costs of water with costs which would be incurred if water were procured from another bulk supplier. For instance, the R2.71/kl cost of bulk water from the Amatola District Water Board compares favourably with the 2000 level of R1.71kl in Stutterheim.⁷³ It is also possible to consider the rate of increase and to examine the causes of annual increases and in so doing to check the council assumption that these costs could have been avoided if the STLC were not contracted to a private operator. While some annual increases have been significant, average annual increases over the last 4 years have been lower than inflation. WSSA currently consider that the existing agreement is protecting the STLC from some of the significant increases being incurred.⁷⁴ These have been incurred due to a number of critical national price increases, each of which would have still been incurred had the municipality been responsible for delivery. For instance:

- (a) *Increases in the raw water levy amount.* One component of the variable water and sewerage charges is directly attributable to the cost at which WSSA obtains the raw water. In South Africa this is called the raw water levy. Since 1993 there have been massive increases in the raw water levy to respond to national policy for sustainable water pricing. The DWAF raw water levy increased from R0.0953/kl in October 1993 to R0.43/kl in June 2000 (average 12.5% per annum). When Amatola Water took over the function on 1 July 2000, the levy increased a further 16.3% to R0.50/kl. This constitutes an increase of R0.4047/kl or some 525% over this 7-8 year period. The levy currently contributes 30% of the variable water and 23% of the variable sewerage charges.
- (b) *Salary increases.* Figure 8 shows that the fixed charge element has increased by 30.69% over the past 4 years. The fixed charge is comprised of a 5% fixed fee 45% staff costs and 50% material costs. WSSA staff salary increases follow salary increases agreed by the South African Local Government Association (SALGA) and required under the contract. Over the last 4 years there has been an annual average increase in salaries of 7.67% or 30.68%.

The following figure takes this analysis one step further and relates this price escalation to the consumer by comparing the tariff increases described earlier, with the WSSA price escalation. Based on a proportion of 60% sewerage treated to volume of water sold, the following figures shows that total tariff increases over the last 4 years are almost double WSSA increases. Whereas the STLC asserts that the rate of increase relates to WSSA increases, in practice, it appears significantly higher.⁷⁵

**Figure 9
WSSA Costs versus STLC Tariff increases 1996-2000**

	96/97 to 97/98	97/98 to 98/99	98/99 to 99/00
WSSA price increase (Combined water and sanitation)	3.95%	4.32%	6.63%
STLC water and sanitation tariff (increase passed on to the consumer)	Average 8-10% ⁷⁶		

⁷² The variable sewage ratio increased from R 1.16/kl to R 1.44/kl, or 24%, relating to an average annual increase of 6%. These figures are based on the volume of sewage received and treated at the Sewage Works, and again the pro-rata portion of the fixed charge is included

⁷³ see note 51

⁷⁴ Interview with JP Mas, WSSA October 2000

⁷⁵ Unfortunately we do not have disaggregated figures showing council costs and cost increases of providing water distribution services to Mlungisi, nor does council accurately isolate water and sanitation expenditure. In order to fully understand the council justification for such rapid price increase such information would need to be included.

⁷⁶ Figure provided by STLC Treasurer, August 2000

On examination, price escalation in Stutterheim does not appear to be unusual, relatively high or particularly avoidable. The cost of water is comparable with adjacent municipalities, lower than the district water board, and a percentage of the increased costs of water can be attributed to national water pricing. This situation is not widely understood in the council. The disaggregated figures do not seem to have been absorbed by administrators or councillors, and informants were not versed in the reasons for the escalation.

In addition to the degree of escalation, a number of administrative staff stated that the formulas are complex and not easily interpreted. Examination of the escalation formulas in the original contract show that irrespective of their complexity, the formulas are not adequately annotated, and more care could have been taken in their presentation to make it more accessible to the council. While it is also likely that they are complex, WSSA argue that the formula for escalation is standard for all their contracts. WSSA have given a number of presentations to council over the last 2 years and have included the following points:

- that the escalation formula is based on standard engineering practice (including labour, material and energy price indices);
- that the calculations of price increases are based on South Africa Bureau of Statistics (SABS) data for the construction industry; and
- that the escalation clauses (which include for inflation and devaluation) also allow for decreases in pricing. E.g. the prices in 1999 were lower than the 1998 financial year due to a decrease in price indices.

The Stutterheim case illustrates the need for capacity building over issues of price and price escalation as well as tariffs. If municipal decision-makers are to make effective financial decisions, they must have the skills to understand the full extent and implications of the problem.

- *The Affermage Contract*

Perhaps the primary problem of the affermage contract is that the responsibilities for operation and maintenance, on the one hand, and for investments, on the other, are conferred upon different parties, yet are often difficult to distinguish.⁷⁷ For an affermage contract to succeed it is commonly agreed that it must *clearly* define which items constitute operation and maintenance (and are therefore the responsibility of the operator); and those items which are long term and strategic (and are therefore the responsibility of the authority).⁷⁸ In Stutterheim a number of problems have arisen due to the lack of agreement over the definitions and scope of maintenance versus capital improvement. A primary question in such a contract is *who* will distinguish between routine maintenance and capital expenditure⁷⁹ and this is not resolved in Stutterheim or in South Africa because of the lack of a regulating body. WSSA acknowledge that they do pursue ‘exceptional cost’ items with the council (because of the difficulty in achieving efficiency gains) and that this has caused tension between the partners. The lack of clarity and the ambiguity in the contract has been at the core of many disagreements. Some of these are described in Figure 8.

⁷⁷ DCD (1998) p4.

⁷⁸ White (1998)

⁷⁹ World Bank (2000)

Figure 10
Typical Problems

During the severe floods in Southern Africa early in 2000 a length of trunk main on a steep hill was badly damaged by the heavy rainfall and flooding in the vicinity. The pipework had been designed and constructed by the council some months before. The town engineer responsible for the design has since left the council, but was not replaced at the time. The gap in technical skills meant that a number of issues slipped through the net, specifically that proper insurances were not taken out and that the pipework was not officially handed over to WSSA despite it being operational and essential for ongoing water supply to the town. The council is now in a dispute with the private operator over the responsibility for the cost of rectification of this pipework. WSSA has argued that the pipework foundation was not properly compacted and failed due to poor preparation and workmanship during construction - that they sent the council a letter to this effect some months before the damage occurred, and that rectification costs are not therefore a matter of maintenance. The Council however interprets the operator's obligation under the contract to ensure joint supervision and assistance to optimise operations, they argue that WSSA were invited to oversee the works and comment on any problems with specification or workmanship. The council argues that WSSA did not play this role or respond as well as they could have at the time, and should bear some responsibility for the failure of the design under unusual flooding conditions. While WSSA have reduced the invoice to some extent, this difference of opinion has not been resolved.

More recently, a failure at the boreholes has meant that WSSA has undertaken large scale replacement and essential rectification works. The operator argues that the bore holes (constructed in 1990 prior to the WSSA contract) were not properly lined, and that the specification of the pump size was too great for the mechanism. As a result, unexpected vibration led to the collapse of the lining. WSSA commissioned an independent consultant to evaluate the problem. The council argues that the boreholes have been functioning adequately since 1990 and that the lessee did not notify the council of there being any deficiency in the quality of the equipment provided, that the problem was one of operation and maintenance. This disagreement also remains unresolved at this time.

A disagreement also arose when a pit latrine vacuum tanker, specially designed to enter narrow streets, broke down and needed replacing. Under the contract such capital equipment must be provided by the municipality. The process of approving the expenditure on a new vehicle was slow. To cover the period of 4 months, WSSA brought in another vehicle from a nearby town which could operate but required maintenance and upgrade to carry out the task. In the final event a new conservancy tanker was purchased (but cannot service streets with limited access). WSSA have since billed the council for the maintenance carried out on the tanker to make it operational for the interim period. Disagreement has ensued over responsibility for the costs of upgrading a tanker which was not owned by and no longer benefits the council.

When the wastewater treatment works was extended in 1994-95, WSSA noted that ungraded river sand was being provided as the media on the sludge drying beds. At this time WSSA wrote to the council concerned that this cheaper ungraded river sand was specified by the consulting engineer, instead of graded sand in accordance with standard engineering practice. The Council did not accept WSSA concerns but chose to go ahead with the sand specified by the local consulting engineer. Following an exchange of correspondence, an independent investigation was carried out, and the final report stated that ungraded river sand has reduced filtration capacity, restricts the drying tempo of the sludge and results in a higher rate of sand loss. This is of particular concern during extended wet periods when sludge drying capacity becomes critical. WSSA has therefore stated that it cannot be held responsible for the early replacement of the sand due to non-performance and higher rate of loss.

Apart from the contract ambiguity, the lack of effective communication between the partners has added to their disagreements. While it is clear that STLC prefers not to negotiate at a strategic or practical level, WSSA has not communicated as well as they could have especially since they have significantly more experience in such a partnership than the council. WSSA's lack of effective public relations at times has accentuated their difficulties. This was exemplified most recently when WSSA carried out capital works (upgrading the chlorination process) without the prior approval of

the council.⁸⁰ Despite the fact these works were required by government regulations, the contract requires them to agree capital works with the STLC before carrying them out. At the very least, the STLC will then be expecting additional invoices for payment.

The affermage form of contract requires trust between the client and the operator and particularly requires some mutual understanding over investment. At its worst, the contract falters if a client does not invest in the infrastructure necessary for the operator to provide an acceptable level of service. While this is certainly not the case in Stutterheim (where the council has invested appropriately) there is nevertheless a lack of mutual agreement in the manner and spirit in which capital works are carried out. On the one hand, the council believes that WSSA do not provide the joint supervision described in the contract, and do not always show the interest they should.⁸¹ On the other hand, WSSA argue that their voice is not heard,⁸² that the council does not accept that the technical resources of an international water operator exceeds the generalist skills of a local engineering consultant, and that the council has acted naively towards investment at times. Capital works in an affermage contract becomes a 3-way partnership of client, operator and engineering consultant. *This relationship has not been an easy one in Stutterheim.*⁸³

- *An Independent Regulator*

From the perspective of international operators currently working in South Africa in water and sanitation, the most problematic issue in the water sector is the lack of an independent regulator. While larger cities currently have the financial and human resources to establish an independent regulator, WSSA argue that Stutterheim and similar under-resourced towns would benefit significantly from the supporting framework provided by an independent regulator at the provincial level.⁸⁴

A pro-poor partnership for water and sanitation services?

There is little about the arrangement, process or the actors involved in the municipal service partnership in Stutterheim which could be considered *pro-poor*. While WSSA have provided the majority of sanitation services to the low-income areas of the municipality, the council has controlled the contract coverage of neighbourhood level water supply and has thus limited the operator's overall responsibility in low-income areas. The council has also controlled and unknowingly perpetuated a tariff structure which works to the favour of the better-off water users. The council operates a municipal team to maintain the water supply services to Mlungisi, resulting in parallel

⁸⁰ In August 2000 for instance, STLC were given an invoice by WSSA for upgrading the chlorination process. While this work was necessary to meet new government regulations, the Council was not consulted beforehand. This is in breach of the contract that stipulates that capital works must be agreed with the municipality before they are carried out.

⁸¹ e.g. compaction of pipework

⁸² e.g. the sand used in the wastewater treatment works extension

⁸³ Jean Pierre Mas, WSSA, September 2000. Relationships between the engineering consultancy sector and watsan operators in South Africa are generally problematic. The consultancy sector has, to date, failed to embrace the changes which private sector operators bring to municipal services. Traditionally consultants have had an unchallenged position in providing technical advice. Despite the specialist (and probably more advanced) skills of an international water operator, many consultants are not willing to take advice from operators on technical matters.

⁸⁴ To date proposals have focused on establishing a national level regulator. However in the context of local agreements (such as Stutterheim) between local water service providers and authorities, WSSA argue that a national regulator would be inappropriate, that the decentralisation of service provision requires a decentralised regulatory framework.

public and private structures. This in turn means that economies of scale in the contract arrangement are not achieved and benefits cannot be passed on to the poor. The contract in Stutterheim does not include for institutional development activities, nor does it provide for social development inputs that might support low-income groups to gain access to improved services through the development of human and social assets.

The process of establishing the contract at the outset did not involve the community, and the decision-making process over extending WSSA coverage to include Mlungisi did not include a consultative process.⁸⁵ As the contract provisions were formulated prior to democratic elections, no principles were established which ensured opportunities for poorer groups to become directly involved in the implementation process. This has not been amended and the contract still lacks incentive for the private operator to incorporate methods and procedures that explicitly benefit the poor. By extension, the contract has not been used to contribute to economic development objectives in the area and no convergence has been established with other poverty reduction or service delivery initiatives that improve the quality of life of poor households.

Constraints

The key constraints influencing the partnership and the potential for pro-poor development are discussed below. Capacity issues are considered in detail in the following section.

- *Political will*

Perhaps the primary constraint to the development of a partnership that effectively addresses the needs of the poorer groups in Stutterheim, is *unequivocal political support*. After the 1995 democratic elections, politicians in Stutterheim belonged to the school which ideologically opposed private sector participation in basic service delivery. More recently, councillors have softened this stance. As their understanding of governance and appreciation of finance constraints has developed, and as the national and provincial level political structures have formed agreements, the political wing has recognised the importance of external investment and management support. It is therefore likely that, given the choice and with extensive public consultation, they would themselves enter into a partnership with the private sector in the future. Nevertheless, they are cautious and sceptical, and have grievances towards the arrangement they have inherited. Their understanding of, and decision-making over, issues concerning the role of the private sector is based on the experience of ambiguous political messages, a weak contractual position, unclear financial information and an unequal playing field.

Policy promoting the role of civil society in reconstruction and development of South Africa has only recently established links with policy promoting private sector partnerships, and as a result there is little knowledge of, or exposure to, practical solutions for implementation. Moreover the council has been affected, directly or indirectly, by the impending changes accompanying the final stage of the local government transformation process. Understandably the complexity of this situation has meant that there has been little *political motivation* to redesign a contract, which may become inappropriate again following demarcation.

⁸⁵ Given the political opposition to private sector participation at the time it is likely that the consultation process would have resulted in the same decision.

- *Lack of a cost benefit analysis*

One of the keys to political motivation is *cost*. The council has a mandate to provide services of the highest quality at the lowest cost. In Stutterheim it is currently assumed that the council can deliver the same standard of service at a lower cost, and as a result they have pursued a dual system of municipal and private sector delivery. It is not immediately clear what underlies this assumption,⁸⁶ there is no evidence available to prove this is the case.

It is therefore essential that a cost-benefit analysis be carried out which itemises all costs and benefits and enables a proper comparative assessment of alternative delivery approaches. Such a study should compare operator performance with international benchmarks. Accurate cost information will strengthen the municipal position whatever the findings. If private sector costs are indeed found to be high, the council will be in a strong position to negotiate. If they are found to be low, this knowledge will create a more receptive and conducive operating environment in which a more appropriate contract can be developed.

A second common assumption in Stutterheim is that the water and sanitation contract with WSSA cannot be changed because the council cannot afford it. This assumption is based on the understanding that costs would be higher with additional private sector involvement, but revenue would remain the same. The council has not seriously examined the revenue benefits that the private operator could bring if an effective contract extension was negotiated which included customer management and payment awareness campaigns. Conversely, the private operator has not explored willingness-to-pay, nor has it effectively framed or communicated the opportunities for linking increased cost recovery, capacity building, community development with improved levels of service amongst the poorer communities.

- *Contract size*

Quite apart from the inefficiencies created by council decisions (e.g. restricting coverage, 3 monthly meter readings requiring projections) the size of the Stutterheim service presents problems typical of small municipalities.⁸⁷ The limited size of the network offers fewer possibilities to exploit economies of scale, average household income is lower than in large municipalities in South Africa restricting returns, municipal capacity is inevitably weaker than large cities and the system itself is relatively complex and divided for such a small population. Demarcation (see below) will change the scope of service needs but will not necessarily change capacity.

- *WSSA goals and objectives in South Africa*

Since the Stutterheim affermage was established, WSSA has become a significant private sector operator in South Africa, and to some extent, their work in Stutterheim has been marginalised by high-profile activities elsewhere. The Stutterheim contract is insignificant when compared to the large-scale rural BOT programme for the Department of Water Affairs and Forestry (DWAF)⁸⁸ which tests new partnership approaches with communities and NGOs. This is likely to have diverted WSSA

⁸⁶ A number of councillors suggested that *any* private sector involvement implies a ‘profit’ element to the work and it is therefore necessarily more expensive than the cost of *effective* public sector operations. Unfortunately this argument ignores the efficiencies and savings that can be made in the private sector. It is not supported by cost comparisons in the region or evidence to the contrary from other parts of the world.

⁸⁷ See World Bank (1999a) p25

⁸⁸ 16.7 million annual turnover for Eastern Cape and Northern province contracts. Komives and Mas (1999)

attention to partnerships with greater impacts. It is also likely that the limitations placed on the coverage created a disincentive for pro-active capacity building efforts.⁸⁹

Opportunities

Despite these constraints, there is considerable scope for changing the partnership arrangements in Stutterheim – both within the existing contract (short term) and in the alternatives considered for the future (long term). Numerous opportunities can be identified by drawing on the strengths of both the council and the operator, recognising that considerable experience has been accumulated at the local and national levels since 1993.

- *Agreement that change is needed*

Despite the lack of action on the part of the council to bring about a ‘pro-poor’ contractual arrangement there is a general agreement by both contract parties that change is needed. Councillors have a vision of how the contract could become more beneficial to the poorer communities. In the short term, this includes a number of practical activities to involve the community in the delivery process. Particular examples cited by councillors and supported by WSSA include:

- undertaking hygiene promotion and other community development activities directly related to water and sanitation services;
- building community capacity to improve understanding of the user-pays principle and developing mechanisms to improve cost recovery in poor areas;
- increasing the role of the community in determining indicators and monitoring acceptable performance.

In the long term the council is interested in pursuing strategic change in the partnership arrangement - to create a different kind of public-private partnership - one that involves the community in a fundamental way. This would include building links between the private operator and the town community development initiatives to empower poor communities through community management initiatives, incorporating labour from the informal sector through joint employment schemes, and developing skills development opportunities for local youth. Despite the hesitation the council has shown in pursuing these objectives, their vision for change is clearly in line with the methodologies and approaches being developed in rural areas in South Africa (e.g. employment schemes, labour intensive capital works, community management and water committees).

- *Encouraging policy environment*

Recent developments in the policy environment in South Africa provide a very different context for establishing public-private partnerships from that which existed in 1993. Not only is the policy environment improving but also support systems (such as those described in Part 1) have been established, and national initiatives are supplemented by a wealth of donor interest. Different avenues of technical assistance are likely to be available should the council choose to initiate change.

- *Demarcation*

The final reorganisation of municipal boundaries in South Africa has created a level of uncertainty amongst government and in the market place. The process will soon be complete and will introduce a range of new problems into local government. In

⁸⁹ The original contract outlines an option for the inclusion of Mlungisi which prioritises the role of the community.

Stutterheim, where the population will increase 10 fold, management problems will change from those of a small town to the reconstruction and development of a town and a large resource constrained rural area. New skills and significant resources will be required to meet this challenge. The human and financial resources of the private sector are seen by many to be crucial to this end.

- *Potential improvements to cost recovery*

The current rate of cost recovery for water and sanitation services in the poorer parts of the municipality is in the order of 28%. Tariffs are in urgent need of revision to create greater distinction between poor and non-poor. While it is impossible to predict what level of cost recovery might be achieved with better service and a more reasonable tariff structure, an opportunity exists to enable cost recovery approaches to be improved by more just pricing and to be informed by proper information. Subsequent to this it is possible that capacity building with poorer communities in payment for services, when combined with marked improvements in service options and collection systems, could produce higher revenue.

- *Applying WSSA experience*

A common assumption in Stutterheim is that the private sector is unlikely to enter into community-oriented activities. This assumption is based on the performance (and contract obligations) of WSSA in a traditional contract which does not prescribe any relationship to the poor communities. Elsewhere however, WSSA and a number of other international private operators, are developing experience in pro-poor municipal service partnerships that aim towards sustainable development. Exposure to such initiatives would be extremely beneficial, broadening the municipality's understanding of PPP arrangements.

WSSA have learnt a great deal about how to improve cost recovery, achieve operational sustainability and manage water systems in difficult environments through the BOTT in the Eastern Cape Rural Water and Sanitation Project.⁹⁰ In particular, the operating procedures meet many of the social requirements of the council, particularly the inclusion of an institutional and social development (ISD) component. They also define an NGO role to support communities and capacity building.

Institutional and social development support would significantly change the current approach to service delivery pursued by the council. It would, for instance, ensure stakeholder involvement, provide health and hygiene awareness, assess community preferences, provide labour for construction, promote community participation in design decisions, and provide training for community representatives. At the same time the ISD approach developed in the Eastern Cape BOTT contract has aimed to develop appropriate levels of service, tariff and billing for low income communities in order to improve cost recovery. It would be particularly beneficial for the council and officials to visit the work of WSSA elsewhere in the province, to discuss the opportunities and constraints with NGO actors and broaden their understanding of the potential of private sector activities.

- *Local Economic Development initiatives*

In the context of Stutterheim there is a well-developed political structure for co-ordinating and consulting with the community, and a prioritisation of community development. Unlike its Queenstown neighbour, councillors' also display a clear sense of the need for effective interaction between business, government and civil society.

⁹⁰ See Komives and Mas (1999) This is not to say that the BOTT has proceeded without problems, but the inclusion of a social and institutional component is one of the successful elements of the programme.

Linking Local Economic Development initiatives to the watsan partnership is one of the primary opportunities for change. There is substantial opportunity for micro-enterprise development initiatives to converge with the activities and implementation approach of a reoriented partnership.

Capacity Constraints and Capacity Building

Perhaps the most critical issue in Stutterheim is the marked imbalance in the capacity of the partners. This is closely linked to the Council's perception that they are severely hampered in the existing partnership because they lack the knowledge and skills⁹¹ needed to create a level playing field. While capacity deficiencies affect ongoing partnership arrangements, the lack of confidence to bring about structural change in the partnership to embrace the council's pro-poor alternatives, is particularly relevant in Stutterheim. In order to understand the lack of municipal capacity it is necessary to disaggregate this term and consider the skills, organisational capacity and attitudes of the municipality and to distinguish between those capacity issues which are perceived and those that are likely to affect the partnership in practice.⁹²

Skills⁹³

- *Understanding of the external operating context for Municipal Service Partnerships*

Over the 6 month period in which this case study was carried out, knowledge of the political and policy context of MSPs in South Africa improved significantly amongst the councillors - specifically those who have become familiar with national government policy and the agreements between SALGA, COSATU and NEDLAC.⁹⁴ However, the schism between the policy context developed at national level and the implementation context in the Eastern Cape is still so significant as to warrant particular attention from national level supporting organisations. Both administrative staff and councillors would benefit from capacity building to enhance, for instance:

- understanding of the opportunities and constraints created by the national policy context;
 - understanding of MSP policy in relation to the integrated development planning (IDP) approach and specifically in relation to service delivery to the poor; and
 - the council's ability to feedback problems of implementation to national level policy makers.
- *Strategic understanding of public-private partnerships*

The most significant capacity constraint in Stutterheim is in the strategic understanding of public-private partnerships. While this study has not enabled a detailed skills assessment, gaps are evident in both political and administrative arms. In particular, there is a fundamental lack of understanding of risk, and of the links

⁹¹ While stakeholders identify the key skill gaps in the Stutterheim Council as being technical, administrative and legal, it is important to acknowledge that the current contract has placed some pressure on the council to have skills which may not be needed in the forms of contract currently recommended.

⁹² The purpose of this case study is to consider municipal capacity issues, but there can be no doubt that WSSA have also lacked capacity in public relations.

⁹³ This analysis is based on the Framework of Core Competencies for pro-poor PSP in municipal service delivery developed by Janelle Plummer and Graeme Gotz, for the Building Municipal Capacity for Private Sector Participation research, publication forthcoming.

⁹⁴ (South African Local Government Association (SALGA), Congress of South African Trade Unions (COSATU) and National Economic Development and Labour Advisory Council (NEDLAC).

between risk and contract duration.⁹⁵ There is little knowledge of contracts apart from the affermage contract in Stutterheim, of the role of MSPs as a part of urban management, or understanding of the strategic role of the private sector. In particular there is little understanding of MSPs in the context of poverty reduction activities, and the potential role and benefits of private sector involvement in low-income areas.

Training in PPPs and exposure to the development of MSPs elsewhere in South Africa (e.g. Nelspruit and the Dolphin Coast) is likely to result in a broader understanding of the potential of social and institutional aspects partnerships in the municipal context as well as the implications of long term partnership arrangements.

Understanding of the constraints of private sector involvement in municipal service delivery is not well developed either. At this stage it is based on assumption and limited exposure and it would be beneficial to all if there was a more sound knowledge of all sides of the argument.

- *Strategic management of the contract*

Closely linked to the skill sets described above is the strategic management of the partnership arrangement. One of the primary constraints to the development of a pro-poor contract is the capacity of the Stutterheim Council to negotiate. In Stutterheim, the municipal management of the partnership has been limited to day-to-day operational management. Decision-makers have lacked the confidence to renegotiate the contract such that it meets the redefined objectives of the municipality. Yet the council does have a strategic vision, which would appear to be compatible with the institutional and social development objectives of contracts elsewhere. This lack of capacity can be attributed to the imbalance in negotiating skills and the lack of understanding of the potential of the contract.

- *Financial analysis and planning*

Another fundamental constraint to the effective implementation of the contract has been a lack of financial analysis and planning specifically in relation to water and sanitation services. Yet, the council have a strong record in financial management in the province and, properly motivated is more than able to lead a meaningful cost benefit analysis. The reason for this lack of analysis of the PPP to date stems from the narrow understanding of the contract – that it is inflexible - and a strong view amongst the financial team that such an exercise would be pointless.⁹⁶ There has been no attempt to compare with international benchmarks. This constraint is one of attitude and not skill.

Improved understanding of the customer base and the implications of tariff structures are essential. The formulation of a tariff structure that benefits the poor over the non-poor and promotes water conservation and cost recovery is a specific skill that is urgently needed. Exposure to alternatives developed elsewhere would broaden understanding of options available.

- *Ability to develop a consultative and inclusive process*

Most Stutterheim councillors are confident and skilled actors in relation to civic organisations such as CBOs and trade unions. The structures for consultation are well established and effective. If and when the contract is renegotiated, the council is committed to conducting a consultative process, and to establishing a contract which

⁹⁵ Many councillors expressed a desire for the private operator to take on more risk, but the same individuals argue for shorter contracts.

⁹⁶ It is interesting to note that both the Town Treasurer and the Councillor responsible for finances were the only two individuals to oppose the proposal for cost benefit analysis.

includes community involvement. STLC has less experience in working with NGOs but key councillors appreciate the importance of filling gaps with NGO expertise.⁹⁷

- *Ability to maximise the potential benefits for the poor*

The municipality requires support in developing links between private sector activities in watsan and low-income groups. The council's strategic goal currently stands in contrast to the existing implementation arrangements in which the municipality itself carries out the extension work to the low-income areas and is responsible for the tertiary level of service. The council itself does not carry out hygiene promotion or community development activities in relation to the water and sanitation service delivery.

In addition to the issue of tariffs discussed above, the Council does not have the in-house knowledge to understand the role of willingness-to-pay and affordability studies (e.g. pre-paid meters are being introduced without such studies), and critically the concept of service gradation for the poor is not understood. Significant capacity building in both pro-poor water and sanitation services and pro-poor partnerships would benefit the decision-making process.

- *Understanding of legal and contractual aspects of partnerships*

With the notable exception of the town treasurer there is only limited understanding of the legal and contractual aspects of the contract. The legal jargon has proven to be a major blockage in generating understanding of key contract provisions, and the lack of ownership can be attributed at least in part to the lack of involvement of the existing council in the formulating the contract. Although some staff members were in place at the time, the contract is not owned by anyone.

There is of course some debate as to what extent knowledge on legal and contractual aspects is required. A number of factors currently make it necessary to improve capacity in-house: the complexity of administrating this particular contract, the marked disillusionment with the consultancy sector and the reliance on municipal staff to undertake all tasks.

- *Ability to initiate and conduct contract negotiations*

STLC has clearly exposed a lack of confidence and ability to initiate contract negotiations. To date the prevailing attitude has been to leave the contract be. All nine contract amendments have been initiated by WSSA – none by the council - and yet the council has been discontent with the arrangement for some time. The lack of action can be attributed to the lack of detailed provision for renegotiation in the contract⁹⁸, the imbalance in perceived negotiating skills, the lack of access to 'objective' support and the fear over the implications of decisions made. Capacity building in negotiation is essential if the council is not willing to accept the support of skilled specialists.

- *Understanding of the management of water and sanitation services*

Given the council commitment to ongoing investment in infrastructure, it is essential that the administrative arm of the municipality is able to translate technical issues for the council. Over the last 7 years technical understanding has varied and capacity to advise council has been mixed. Most importantly, there is a general lack of appreciation on the complexities involved in managing water resources, on the social,

⁹⁷ All actors were invited (by STLC) to participate in the municipal meetings conducted for this study.

⁹⁸ 'Carefully specified provision must be made for renegotiating aspects of the contract and for adjusting contractual terms. Over the life of the partnership, these provisions can turn out to be even more important to success than the initial terms of the contract' World Bank (1999b) p28

health, economic and urban management issues surrounding water and sanitation services. Capacity to promote innovative mechanisms to meet service needs is not apparent. Skills gaps in these areas need to be addressed, through training or external support, if council is to be properly advised in the future.

- *Understanding capacity constraints and capacity building*

It is now widely accepted in many low and middle income countries, that municipal officials undertake their work in a vastly different environment than in the past and training and development of staff is critical to the achieving the changes outlined in policy. This is particularly relevant in the RDP in South Africa.

Like many municipalities in South Africa, human resources in the Stutterheim are characterised by a mostly white administration working with black councillors in town management. The issue of administrative capacity is somewhat contentious in Stutterheim. The administrators are able managers but there is no doubt that they would benefit from specific training in private-public partnerships. Since this private sector approach to service delivery was introduced, there has not been any training undertaken by any official. Their lack of exposure to contract options has been limited and attitudes have developed solely in relation to the one limited contract with which they are involved. In comparison to other municipalities researched administrative managers lack the skill of recognising skills deficiencies. This has proven to be particularly problematic, as they are the main advisers to council.

The councillors are politically agile but for historical reasons have not yet had significant exposure to management practices or governance. Since the election in 1995, the attitudes of council have shifted. Originating in a school of thought which was fundamentally anti-private sector, the changing policy environment and the development of skills and understanding of governance has resulted in an acknowledgement that private sector resources are needed to meet reconstruction and development targets. Exposure to the development of MSP policy and implementation would be extremely beneficial.

Organisational constraints

Apart from the lack of exposure to PPPs and a the lack of literacy in respect to partnerships in municipal service delivery, a number of other institutional and human resource issues have weakened the ability of the council to engage in the contract with WSSA. These include:

- *The turnover of councillors*

Council members have changed twice since the contract was established in 1993. This means that there has been little internalised learning around the key issues, and the opportunities and constraints of the partnership. In any contract a gap in skills is created when those responsible for launching a partnership arrangement are voted out of office. Councillors left making decisions over a contract need to be supported with targeted capacity building.

- *Lack of effective engagement of councillors*

There is a lack of agreement between WSSA and the municipality about the necessary role of the key political representatives in the management of the contract. The monthly meetings established for reporting and feedback are rarely attended by councillors and executive staff see no need for this. Attendance figures⁹⁹ show that 1-4 administrative officials attend these meetings. Despite an underlying concern with

⁹⁹ WSSA Monthly Meeting Minutes (1999)

the arrangement established with WSSA, there is a lack of politician interest in the operation of the partnership. The opportunity to build capacity through exposure to the problems and discussions is not taken up by the chairperson of the relevant council working committees.¹⁰⁰

- *Lack of continuity in town engineers*

Since the start of the contract with WSSA, the council has employed four town engineers of varying qualifications, experience and interests; and there has been extended periods between each appointment.¹⁰¹ The difficulties created by this high turnover have therefore been compounded by the different skills and the views of each engineer on the role of the private sector in municipal service delivery. The absence of an institutional mechanism to induct new engineers has exacerbated capacity deficiencies. In particular:

- There has been little continuity in the advice given to councillors. The council has received mixed messages over an extended period of time, as each engineer has promoted a very different approach and given very different advice. Moreover at times when there has been no technical expertise within the council, the lack of day-to-day advice has made the political and administrative arms of the Council very cautious in their decision-making.
- WSSA has managed the learning curves of four engineers and has liaised with a variety of officials with no technical skills. The short duration of the engineering appointments has meant that there has been little opportunity for each engineer to develop the capacity needed to act as the liaison with WSSA, and there has been little opportunity for any institutional learning. Each new engineer has been unfamiliar with private sector contracts. Indeed some have felt uncomfortable with their monitoring role and have attempted to carve a more traditional engineering niche (e.g. specification and design of capital works). Consequently, the reporting obligations of the contract and the methods adopted by the operator are still not well understood and there is only limited engagement with the work of the operator.

Attitudes

Capacity in Stutterheim to work effectively with the private sector is not only affected by skills and organisational constraints but by attitudes. Whether these attitudes pre-existed or developed through experience, they have seriously affected the partnership. Various causes can be identified, and capacity building efforts will need to address these causes to bring about the attitudinal change necessary to work towards a pro-poor partnership.

- *Attitudes caused by ideological disagreement to private sector involvement in service provision*

Much of the early resistance to the partnerships can be attributed to ideological opposition to the private sector. However, during the 6 month period over which this case study was undertaken these attitudes began to shift as the national policy environment filtered down and began visible in the actions of representative

¹⁰⁰ At present the meetings are not held at regular times and the internal distribution of meeting dates and times is not effectively carried out. One councillor stressed that this attendance issue would be solved if WSSA held the meetings with strict regularity. The lack of attendance conflicts with the Mayor's view that politicians must become involved and aware of the key issues of the partnership - that the contract was not just a technical concern. The Council recently asked that WSSA not submit detailed data that they did not understand, but a one-page summary.

¹⁰¹ In many country towns, the salary grade open to a town engineer is limited. The position of town engineer is therefore used as a stepping stone to a larger municipality and while it may be possible to attract personnel, it is difficult to sustain experienced and well-qualified engineers.

organisations such as SALGA, COSTU and NEDLAC.¹⁰² Understanding of the constraints of private sector involvement in municipal service delivery can be very useful in ensuring that arrangements, processes and relationships are beneficial.

- *Attitudes caused by the constraints of the Affermage Contract*

The affermage contract has created significant disharmony between the partners. The lack of clarity between operation and maintenance and capital works described in detail in section 3 is an ongoing cause of tension between the partners. Clarification of the contract in terms of those issues outlined above will make a significant difference in the day-to-day relationship between the partners.

- *Attitudes caused by WSSA action and disillusionment with the operator*

Closely linked with the contract, the actions of WSSA, also described in Section 3, have not always satisfied the council. Efforts from WSSA to account for the peculiarities in capacity and approach of the council would make a significant difference to the relations. Ultimately however a change to the content and direction of the contract is the only way this disillusionment will subside.

Capacity Building Requirements

There has been little opportunity for councillors or administrative officials to develop pro-poor skills through focused learning activities (such as study visits to other projects or participating in the national training programme on PPPs). Greater capacity is required on the part of all executive and elected municipal officials. The councillors are the trustees of the municipality and need capacity building to fulfil this role. The introduction of a *capacity building* component within the contract (directed at both the elected and administrative wings) would ensure that the municipality has enhanced its own capacity for planning and managing private sector involvement before the end of the current contract. This will help to ensure that decision-making is informed with the knowledge of the pitfalls and benefits of different options for delivery.

The benefits and pro-poor objectives of capacity building initiated by the national level of government (such as training or the services offered by the MIIU or the NBI) have not reached Stutterheim. Both Councillors and executive officials stressed that they were not aware of the support system now available at the national level, and that their management of the contract with WSSA would have benefited significantly from external and objective support.¹⁰³ This 'perceived isolation' is an important lesson and can be easily rectified by establishing lines of communication between supporting agencies and the municipality.

Conclusion

Stutterheim serves, potentially, as both teacher and student in Municipal Service Partnerships. As one of the three early public-private partnerships in South Africa, Stutterheim can provide important feedback and lessons for peer learning. Conversely, it needs significant support at this time if it is to overcome the barriers hindering efficiency improvements and pro-poor arrangements. The process of

¹⁰² South African Local Government Association, National Economic Development and Labour Advisory Council, Congress of South African Trade Unions

¹⁰³ It is interesting to note that Councillors do not perceive support from Consultants as being objective. They stressed the need for assistance from the public sector, not another part of the private sector.

demarcation provides a potential turning point for the contract and an opportunity for WSSA and the Stutterheim Council to build – in the last years of the contract – an effective and sustainable partnership approach, convergent with the principles of reconstruction and development. Stutterheim also serves, potentially, as a pilot for the development of linkages between Local Economic Development and Municipal Service Partnerships in South Africa. It is up to the contract parties, the supporting institutions and other parts of civil society to seize this opportunity and explore the possibilities that the partnership may offer.

4 Lessons for other Municipalities

The Stutterheim-WSSA contract and the South African policy context provide a number of important lessons for municipal officials, policy-makers and professionals facilitating private-public partnerships in the delivery of municipal services. Key lessons are summarised below.

- *A municipality needs capacity to act as an effective partner*
Structural problems in the partnership are created by an imbalance in the capacity of the partners. While the Government of South Africa has established capacity building initiatives to instigate partnerships, attention also needs to be paid to building capacity for implementation. Capacity also implies stability in staffing.
- *By definition, a democratically elected government will change and capacity will be lost*
Support structures are necessary to provide assistance for municipalities to respond to changing circumstances be they new councils or revised objectives. Access to capacity building must be ongoing and available throughout the duration of the contract to assist newcomers to council make informed and confident decisions.
- *Lack of exposure means that weak partnerships are self-perpetuating*
A municipality's vision of PSP can be limited by the nature and scope of the existing contract, and their lack of exposure to other alternatives. Sharing the lessons and experiences of municipalities in a range of contexts is essential. It provides information on the range of options and possibilities open to municipalities, and empowers decision-makers to take action.
- *Avoiding unclear provisions in the affermage form of contract*
The affermage contract requires absolute clarification of the definition of operation and maintenance versus capital works; and must describe who will determine the responsibility for works should there be a dispute.
- *The contract stage is the crucial stage.*
Confidence comes with a well-prepared contract and is undermined by a weak contract. It is essential that municipal officials get involved and understand the implications of the contract before it is signed. This is the stage at which fears can be addressed and commitment built.
- *The lack of capacity at the municipal level of government makes the need for a regulator more urgent.*
The affermage contract is a difficult contract to manage. Disagreements between the partners would be more easily resolved if the operating context included a regulator which could be called upon where necessary to distinguish between routine maintenance and capital expenditure.
- *Contracts need to adapt to changing objectives*
Renegotiation is vital for the implementation of successful public-private partnerships. Municipalities should not find themselves enduring an inappropriate contract.
- *Converging poverty reduction activities with PSP requires a skilled champion*
Linkages between poverty reduction activities and private sector participation in basic service delivery requires skills in each area and overarching and innovative management skills to establish convergence.

- *Cost benefit analyses are crucial to informed decision-making*

The case illustrates how decision-making frequently takes place without adequate financial information. Municipalities should question whether they fully *understand the cost-benefits* of service delivery options.

- *Links between policy and implementation processes are essential*

Finally, this South African case provides evidence that more attention should be given to building links between policy and implementation processes. In the context of resource deficient municipalities, unsupported by a regulatory body, implementing levels of government need pro-active and ongoing advice and support. There is a need to bridge the gap between those with the capacity (policy-makers and the private sector) and those without (local government implementing bodies).

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Annex A: A Way Forward

The completion of the demarcation process and the forthcoming election, provides an opportunity to bring about a reorientation in water and sanitation service delivery – a reorientation which could bring substantial benefits to poorer households and communities. The discussions that were held during this research highlighted four key areas of action:

- *Clarification of costs through a thorough cost benefit analysis*

There is general agreement that a cost benefit analysis is urgently needed. It should be structured to provide the information required for councillors to make informed decisions about contract alternatives (and should consider existing responsibilities and the increased responsibilities following demarcation). A review of the tariff structure is urgently required.

- *Capacity building activities for councillors and senior management staff*

A number of activities have been proposed to build the capacity of officials and councillors.

- a study visit to other Eastern Cape initiatives undertaken by WSSA to expose officials and councillors to the methods taken up elsewhere - particularly the impacts and opportunities for social and institutional development components in a PPP, the mechanisms for community involvement in the delivery process; and the role of NGOs as a facilitator.
- a joint workshop with WSSA to induct new councillors and discuss the opportunities and constraints of PPPs;
- a discussion with the MIIU to explore opportunities for obtaining specialist expertise to assist the council move forward.

- *A joint review of the contract to identify problem clauses*

In order to move forward to a generally more favourable and appropriate contract it is generally agreed that it is necessary, in the near future, to review the existing contract, and take up the opportunity to change those contract clauses which place the municipality at some risk. These include:

- network management performance requirements;
- remove ambiguity (capital work / maintenance)
- escalation clauses (are they still appropriate? are they too complex?)
- incentives to correct/ fix leakages in areas which are not pumped
- community education (hygiene, water conservation, community development)
- increase WSSA obligation for pipe replacement

- *The strategic reorientation of the contract to meet the social objectives of the municipality*

This is likely to result in the council proposing changes to the contract to provide a social/community development component to enhance the community's capacity to play a key role in the partnership (e.g. monitoring and management); and to consider the potential role of NGOs in this process.

- piloting an initiative (e.g. Khayletshia).
- Creating links between LED activities and the partnership
- Introducing employment schemes

Annex B: Participants and Key Informants

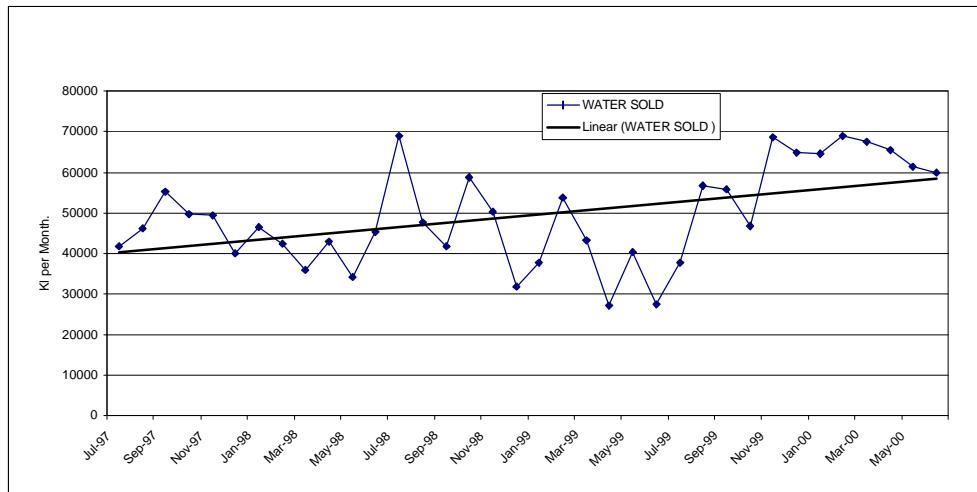
The Stutterheim case study was undertaken over the period March 2000 to September 2000. Stutterheim officials were willing and informative participants in two workshops. The process involved a group workshop at the outset, individual meetings with the regional and national WSSA offices, a joint feedback round table meeting to consider a draft report, and a number of individual meetings and discussions with key informants at local and national level. The following people participated in the group and individual discussions.

Mr Chris Magwangqana	Executive Mayor, STLC
Mr MC Mbulawa	Deputy Mayor, STLC
Mr YO Gxowa	Councillor, STLC
Mr MC Nongqayi	Councillor, STLC
Mrs Thea Robinson	Councillor, STLC
Mr Dan Kropf	Councillor, STLC
Mrs D.M Mayekiso	Councillor, STLC
Mr LP Ngwangqa	Councillor, STLC
Mr Les Du Randt	Town Clerk, STLC
Mr Hector Paper	Town Secretary
Mr Geoffery Hill	Town Treasurer, STLC
Mr Alan Ahlschlager	Town Engineer, STLC
Mr Hans Moerdyk	Town Electrical Engineer, STLC
Mr Ben Cooper	Chief Health and Social Services, STLC
Mr P Ayoub	CEO WSSA
Mr Archer Davis	Managing Director WSSA
Mr Jean Pierre Mas	Director Operations WSSA
Mr Anton Bekker	Regional Managing Director WSSA (Eastern Cape)
Mr Marius Van Aardt	Regional Manager WSSA (Eastern Cape)
Mr M Hoko	Marketing Manager WSSA (Eastern Cape)
Mr Pierre Smit	Process Manager WSSA (Eastern Cape)
Mr Hamish Scott	Former Councillor Stutterheim Council
Mr Nico Ferriera	Former Mayor, Stutterheim Council Chairman, Stutterheim Development Foundation
Mr Max July	Stutterheim Development Foundation
Mr Sanjay Wijesekera	Interventions and Operations Support Directorate, DWAF
Mr Barry Jackson	Project Manager & Policy Co-ordinator, MIIU
Dr Paul Kibbuuka	Policy Analyst, DBSA

Annex C: Volumes of water sold and sewage treated

Variable charges are directly related to the volume of water sold or sewage treated.

**Figure C.1
Volume of water sold**



**Figure C.2
Volume of Conservancy Tanker**

