

SALGA

South African Local Government Association

**Water Services Local Regulation
Mangaung Local Municipality Case Study
Report**

August 2011

1 Introduction

1.1 Aim of case study

PDG had been commissioned by SALGA to conduct a study on the local regulation of municipal services. One of the key aims of the project is to understand and document current practises on the local regulation of water services by different types of municipalities with varying capacities and service delivery mechanisms.

The aim of this case study is to reflect on the way in which **Margaung LM** regulates its internal delivery of water services.

1.2 Methodology

The data for this case study was collected through secondary research as well as through a key informant interview held with the Engineering Services Manager. The Manager was nominated by the Directorate of Infrastructure Services for the interview.

The case study focused on the regulation of water and sanitation services by Margaung LM. Since Margaung opted to deliver water services internally, the focus of the case study was to learn about the municipality's experience in self regulation and to establish whether it has managed to effectively separate its WSA role from its WSP role.

More specifically, the aim of the interview was to understand the current arrangements pertaining to water services, how these arrangements are regulated and the lessons that can be distilled from Margaung LM's experience in self regulation. Annexure A sets out the questions that were used to guide the discussions with the WSA.

In general, the interview aimed to understand the challenges that are being experienced in respect of the effective regulation of water services, including the gaps and bottlenecks; the lessons that can be learnt in respect of local regulation; and the ways in which the local regulation of water services could be improved.

1.3 Limitations to the study

The limitations to this study were the lack of public secondary data to inform the study and that only one key informant interview was held. In terms of data, only a few secondary sources were used and some, such as the IDP, did not have much information that was relevant for the purpose of this study.

With regard to interviews, within the time-frame of the study, only one interview was confirmed. Numerous attempts were made for telephonic follow-ups and interviews; however, these were unsuccessful.

2 Contextual background

This section presents an overview of Margaung LM in terms of social-economic and institutional factors that impact on water services. Information available in the public domain on water backlogs, water provision as well as institutional arrangements within Margaung LM is presented below.

2.1 Locating Mangaung Local Municipality

Mangaung LM falls within the City of Bloemfontein and within Motheo District Municipality. Bloemfontein is the sixth largest City in South Africa and the capital City of the Free State province. The City is also the commercial hub of the Free State and the judicial hub of South Africa. The local municipality was formed at the end of 2000 when the transitional councils of Bloemfontein, Botshabelo, Thaba Nchu and two Rural Councils were amalgamated. Through this the municipality inherited significant developmental backlogs and concomitantly experienced new growth challenges brought about by the expansion of the City.

According to data from the Census (2001) and the more recent Community Survey (2007) the population has grown from 645 440 persons to 752 904 (IDP 2010/11). This growth in population has service delivery implications for Mangaung LM as well as for planning and regulating service provisioning.

The Mangaung municipal area covers more than 6 263 square kilometres and hosts a population of about 850 000 people. The languages spoken in the area are mainly Sesotho, Afrikaans, English and Setswana.

2.2 Overview of water services context in Mangaung

Mangaung LM has one water treatment plant in Maselspoort. The plant is fed from the Modder and Caledon rivers. Bloemfontein Water Board has a treatment plant that is situated near Wepener, which is also fed by the Caledon River. Mangaung Local Municipality purchases 70% of its water from Bloemfontein Water Board.

The municipality supplies water to four towns: Bloemfontein, the Old Mangaung Township, Botshabelo and Thaba Nchu.

Household access to piped water

The 2010/2011 IDP indicates that Mangaung LM has continually expanded its household access to water. These increases have been to RDP standard as well as to higher levels of service. For example, community stand pipes have been increased to piped water inside a yard and in some instances to piped water inside a dwelling. The table below shows the household access to different levels of service in 2001 and in 2007.

Table 1: Households access to different levels of water access in 2001 and 2007

	<i>Census: 2001</i>	<i>Community Survey: 2007</i>
Access to piped (tap) water	7960	1254
Community stand pipes (tap) water	50100	35101
Piped water (tap) inside a yard	81645	70962
Piped water (tap) inside a dwelling	49164	94815

Service levels in Mangaung LM

The Repair and Maintenance Plan (2008) developed by the Infrastructure Services Directorate provides insights into the level of population in different areas of the municipality and the level of services rendered in each area. This is shown in the table below.

Table 2: Population levels and service levels in Mangaung

	<i>Bloemfontein</i>	<i>Botshabelo</i>	<i>Thaba Nchu</i>
Population	95 689	50 666	22 259

Communal taps	2 789	0	883
Stand connections	82 719	46 420	12 425

Source: Mangaung LM Repair and Maintenance Plan (2008)

The table above indicates that a large portion of the population in the municipality has access to a stand connection, that is, piped water inside a yard. The IDP also indicates that the municipality has incrementally reduced the number of water backlogs.

3 Local Regulation

3.1 Understanding local regulation

The Strategic Framework for Water Services (SFWS) sets out the regulatory framework for Water Service Authorities (WSAs) and provides that WSAs are ultimately responsible and accountable for the effective delivery of water services. WSAs are required to regulate all aspects of water service provision at a local level. In the instance where the WSA is also the Water Services Provider (WSP) there is self-regulation. In the case of Mangaung LM, the WSA is both the regulator and provider.

From the research and the interview for this case study, it emerged that there is no clear distinction between the water authority role and the water provider role. The water services function was not ring-fenced, and in general, the municipality has been carrying out its WSA and WSP functions in an unstructured, ad-hoc manner.

This section discusses the current practices relating to local regulation of water services in terms of the mechanisms that are used to regulate, the lines of accountability, economic regulation and management of the contract with Bloemfontein Water Board.

3.2 Mechanisms for local regulation

As a WSA, Mangaung LM is expected to undertake the following functions:

- Determine policies related to tariffs, subsidies and service standards;
- Set tariffs;
- Implement and enforce water services by-laws;
- Plan the provision of water services (the Water Services Development Plans);
- Finance investments through, for example the Municipal Infrastructure Grant (MIG); and,
- Monitor outcomes such as drinking water standards and waste water discharges.

As a WSP, Mangaung LM is expected to undertake the following:

- Business planning;
- Operations of water services; and,
- Report on operational performance and outcomes.

In practice, Mangaung LM utilises the mechanisms below to regulate its water and sanitation services. These include:

- Regular planning through the IDP process and the IDP review;
- A set of by-laws;

- Tariff policy;
- Set of tariffs;
- Drinking water standards;
- Water demand management initiatives; and,
- Capacity to regulate.

Planning

The process of planning for water services is the responsibility of the Division: Water and Sanitation and is carried out in line with the IDP requirements. The officials in the department are responsible for developing draft plans and budgets. They engage communities for their input to inform the planning process. These plans are then incorporated into the IDP, which is submitted to Council for approval. The Council approval process is carried out in line with the Municipal Planning and Performance Management Regulations.

The approved IDP together with the Local Government Municipal Turnaround Strategy (developed by CoGTA) is used by the Directorate: Infrastructure Services for planning initiatives that need to be implemented for the year in order to achieve the desired service delivery outcomes. It should be noted that the Division: Water and Sanitation is within the Directorate: Infrastructure Services and reports to the Director.

The Division of Water and Sanitation also develops departmental plans such as the Water Service Development Plan and Repair and Maintenance Plans. These plans articulate more specifically the technical and management needs of water and sanitation services.

The documents reviewed for this study as well as the interview pointed to a weakness in the implementation of the above mentioned plans. Also noted were challenges in the planning and budgeting for the areas of operations, maintenance and the expansion of water and sanitation infrastructure. The problems pertaining to implementation of plans and investments in infrastructure are discussed in a subsequent section on Key Challenges experienced by the municipality.

Setting tariffs

The Water and Sanitation tariff policy provides guidance on how the tariffs for the services need to be set. The tariff policy aims to ensure that the service is financially sustainable, but at the same time, cost effective to the consumers of the service.

Water quality

Mangaung LM has achieved Blue Drop Status for drinking water quality for the past two consecutive years, 2009 and 2010. This indicates that the municipality is supplying water of high quality.

It is unclear who is who is responsible for water quality monitoring and how this is taking place. Numerous attempts to follow up with the municipality have been made but responses have not been received.

Water demand management

Pertaining to the WSA function, secondary data indicates that the municipality is grappling with the problem of water management due to indigents using more water than the basic level they are entitled to as set out in the Indigent Policy. Mangaung LM is currently participating in the national Water Conservation and Water Demand Management Programme. Through this, the municipality has developed social awareness and public education programmes aimed at educating the general public on

a range of issues to enhance water use efficiency. For example, consumers are encouraged to retrofit water outlets with more efficient plumbing fixtures such as replacing bath tubes with shower heads; using dual toilet flush systems; and, more efficient gardening practices such as drip rather than overhead irrigation. The municipality disseminates this information mainly through pamphlets that are simplified and made user friendly.

Capacity to regulate

One of the key enablers for regulation is dedicated capacity with relevant skills. Currently there are 590 employees reporting to Sectional Managers within the Division: Water and Sanitation (see Figure 2 below). Most of these employees are placed in water purification, water reticulation, sewer purification and vacuum services. In the Repair and Maintenance Plan, a note of caution is mentioned warning against the practice of an 'oversupply' of unqualified staff, which becomes a burden to the administration. This suggests that a large staff complement is not an obvious asset, particularly if they lack dedicated capacity that is needed in the respective authority and provider functions.

3.3 Accountability

As previously noted, the functions of water services authority and provider are not clearly separated. This has resulted in poor planning and reporting where roles and responsibilities are blurred. Accountability between the functions is also unclear since the same officials report on both the authority and provider functions.

Water and sanitation services are provided by the Division: Water and Sanitation which is one of the divisions within the Directorate: Infrastructure Services. The Director: Infrastructure Services reports to the Municipal Manager through the same accountability mechanisms, such as Service Delivery and Budget Implementation Plans (SDBIP) like any other department in the municipality. In other words, this area of regulation is done through the municipality's performance management system.

The Division: Water and Sanitation is headed by a General Manager who reports to the Director. Below the General Manager are Sectional Managers who report to the General Manager. The line staff in the division work under the Sectional Managers.

Below is a figure showing the lines of accountability for water and sanitation services.

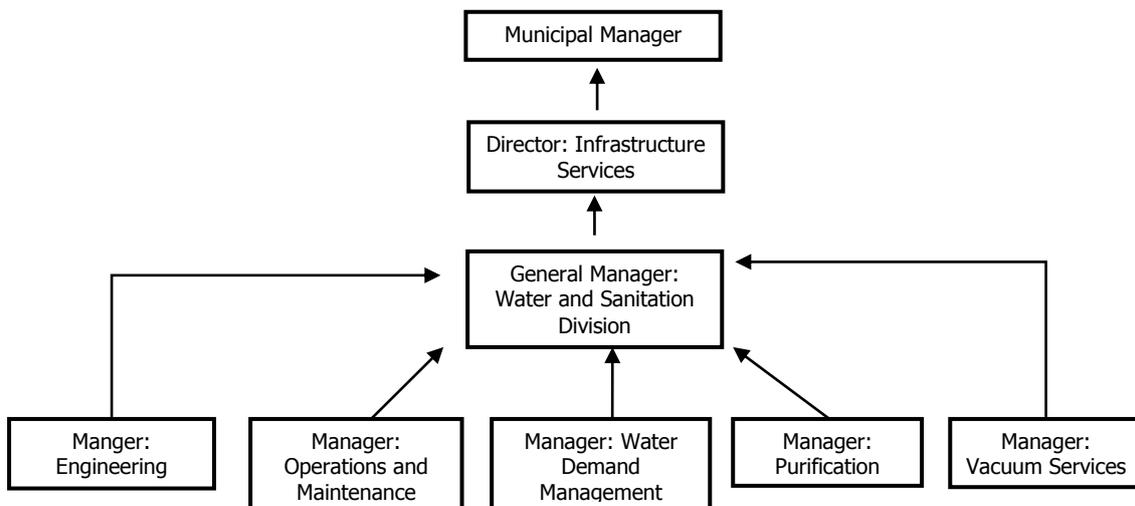


Figure 1: Lines of accountability in the Directorate: Infrastructure Services

The Manager: Operations and Maintenance is responsible for ensuring the delivery of water services and reports to the General Manager: Water and Sanitation. The General Manager: Water and Sanitation could be seen as the person that is tasked with the role of the WSA and the Manager: Operations and Maintenance as the WSP.

3.4 Economic regulation

The financial performance of the internal WSP is not ring fenced as required by section 20 of the Water Services Act. As such Mangaung LM can not really account for the performance of the internal delivery mechanisms or to determine the viability and sustainable of the service provided. Revenue derived from water is pooled into the municipal account along with revenue from other sources such as the sale of electricity.

In terms of budgets and funding, the Division: Water and Sanitation applies processes specified by Council as per the Municipal Systems Act and the Municipal Finance Management Act. Draft budgets are prepared and submitted to Council for approval. Based on Council decisions taken for all departments, water and sanitation services are allocated resources. This is based on budget votes received against different expenditure items.

Therefore, planning, budgeting and budget allocation is similar to that of any other municipal department. This approach has introduced a challenge of competing budget needs which has resulted in the deferment of maintenance and expansion of water and sanitation infrastructure. The interviewees also indicated that one of the objectives of the section 78 investigation that was initiated in 2000 was to determine whether the internal service delivery option was an effective option. This is further explored below.

3.5 Contract management

Mangaung LM had a dispute with Bloem Water Board pertaining to the contract signed by both parties for the provision of bulk water. The contract stipulates that Mangaung LM will purchase 70% of bulk water, as a minimum, from Bloem Water. It was further agreed that should Mangaung LM not purchase this minimum percentage of water, the municipality remains obligated to pay Bloem Water for the 70% minimum. A dispute arose when the municipality did not purchase the minimum percentage and Bloem Water, as per the contract, billed for 70%. The Department of Water Affairs was called in to assist in resolving the dispute.

It is unclear what the current status of the dispute is. Numerous attempts were made for further information; however, these were not responded to.

Based on the interview and secondary information, the agreement between Mangaung LM and Bloem Water Board shows a lack of foresight on the part of the municipality at the time it was entering into the contractual agreement. This may stem from a lack of dedicated legal and administrative capacity to negotiate and enter into a contract with the Water Board. At the same time, failure to honour the contractual agreement is a concern and raised questions about contract management and regulation within the WSA.

4 Effectiveness of regulation

The case study reflects that Mangaung LM has made some improvements through the mechanisms it has in place for local regulation; however, there are a series of challenges that continue to hamper effective regulation.

4.1 Key challenges

The main challenges are the lack of separation between the water authority and water provider functions, the failure to ring-fence the water and sanitation services, and the lack of dedicated skills and capacity. The effect of these is that they have given rise to further challenges in the municipality's water and sanitation service delivery.

Secondary data as well as information from the interview indicates that the Division: Water and Sanitation is grappling with the lack of financial autonomy from the municipality. The revenue generated from water and sanitation services is pooled into the municipal account and the Division: Water and Sanitation receives a budget allocation from Council. In this approach the Division competes with other departments for its budget allocation. The challenge in this is that the water business is a critical component of the financial viability and sustainability of the municipality and poor management and regulation places the institution at risk.

One of the issues that stems from the water and sanitation services not being ring-fenced is the deferred maintenance and expansion of water and sanitation infrastructure. A key objective of the National Water Services Regulation Strategy developed by the Department of Water Affairs is financial sustainability. Specifically, water service providers are required to be financially sustainable, to have sufficient resources to operate and maintain the water services infrastructure, to expand the network as necessary, and to invest in the rehabilitation and replacement of the network over time. In the case of Mangaung LM where the distinction between the authority and provider function is unclear and operations are not ring-fenced, the Division faces challenges related to low capital investment, which results in deferred maintenance and expansion of water and sanitation infrastructure. The problem highlighted during the interview was that the maintenance and rehabilitation does not present any urgency *"as long as water is still running in households"*. The long term effects of neglecting assets are not taken into account *"possibly because the decision makers do not understand the implications"*. The Repair and Maintenance Plan therefore recommends the need for a certain degree of autonomy for the Directorate: Infrastructure Services, which would be possible through financial ring-fencing.

In terms of the capacity and skills to regulate, the municipality does not have a significant level of knowledge and skills to regulate the internal WSP. The municipality has struggled with the loss of skilled people who take with them the institutional memory and knowledge on established business practices. The Repair and Maintenance Plan indicates that the scenario in the municipality is that there seems to be a belief that filling all vacant posts translates into capacity. The document cautions that

"An over-supply of inexperienced and incompetent staff (that needs constant attention) places a much higher demand on the management than to cope without them."

The document further identifies that political interference has made it difficult to retain staff.

The interviewee also noted that there has been a perception that water and sanitation is given a lower level of political priority since politicians vote in favour of projects that have social appeal since such investments appease the community of voters.

4.2 Attempts to mitigate the challenges

Mangaung has taken some steps towards improving its effectiveness as a WSA. Among the steps taken is a benchmarking study that was undertaken under the Division: Water and Infrastructure Services. This aimed to understand the challenges faced by

other municipalities in the country and to gain insight on how they in similar or different circumstances have attempted to deal with their challenges in the delivery of water services. Also, the 2010/2011 IDP notes that the municipality is undergoing a Section 78 process in accordance with the Municipal Systems Act.

Section 78 process

The Section 78 process was first initiated in early 2000 when Mangaung LM restructured. The Municipal Systems Act requires municipalities to undergo a Section 78 process when they restructure in order to determine whether services would be delivered internally or externally. When Mangaung restructured in 2000, the municipality was obliged to review all its services including water and sanitation services.

The status of the section 78 process is that Phase 1: Initial Assessment of the process was successfully undertaken and completed in March 2003 by a consortium comprising of three consultancy firms. The recommendations pointed to the option of collapsing Bloem Water Board and combining it with Mangaung LM's Water and Sanitation Division. The argument was that since Mangaung LM purchased about 90% of bulk water from Bloem Water, a logical arrangement would be that Mangaung LM and Bloem Water Board combine efforts to become the WSP in the area. There were further duplications between Bloem Water Board and Mangaung LM; which suggested that combining the two would curb the duplication. Effectively, the emergent WSP would then provide water in all the municipalities within the Motheo District Municipality (Mangaung, 2003).

Anecdotal evidence and interview opinions suggest that the recommendation did not gain political support because the arrangement would presumably 'swallow' other local municipalities. The merger would also mean that DWA would not have a water board in the Bloemfontein area with which to work with in matters relating to water and sanitation.

The section 78 process stalled after the first phase was completed in 2003. In exploring the reasons for this, it was mentioned that the lack of political support for the recommendations from the initial assessment coupled with the need for support from local communities in Phase 2: Further Assessment contributed to the stalemate. The current IDP, however, notes that the municipality is undergoing a section 78 process. The interviewee; however, noted that the process is on hold.

Several attempts were made to gain further insight into the current standing of the process; however, no responses were received from the municipality.

Deriving lessons from other municipalities

Mangaung has been pro-active in trying to learn about possible ways of strengthening its water services function from the experiences and lessons of other municipalities in the country.

The municipality sent staff from the Directorate: Infrastructure Services to visit other major municipalities in the country to distil lessons of experience on challenges faced and possible options of overcoming these challenges.

The officials visited the Johannesburg City, eThikwini Metro and the Nelson Mandela Bay Municipality. The visit highlighted challenges that are uniform across the country and how these municipalities attempted to address them. According to the findings noted in the Repair and Maintenance Plan (Mangaung, 2010), the common challenges identified in the three municipalities were a growing backlog in maintenance and

institutional bottlenecks, such as the loss of technical capacity, that have impacted the efficacy of the water and sanitation services function.

The lessons derived from that engagement have been used extensively to inform the Repair and Maintenance Plan (Mangaung, 2010).

5 Conclusion

From the research undertaken and reflecting on the case study, Mangaung LM has so far managed to improve the quality of water and sanitation services over time through the upgrade of services. While this is both positive and important, there are challenges that remain in relation to the WSA and WSP functions.

The main challenge lies in the lack of understanding and clarity in the roles and responsibilities of the WSA and WSP functions. The blurred lines between the WSA and WSP have resulted in the overall poor regulation of Mangaung's water and sanitation service.

The lack of dedicated internal capacity and resources has been a challenge in the effective monitoring of the internal WSP and of the contract with Bloem Water Board. The Directorate: Infrastructure Services has a large staff complement; however, the challenge lies in having qualified people with the relevant operational, financial and legal skills to carry out the function of the WSA. Weaknesses in the area of contract management have led to a case where the municipality seems to have entered into an agreement without taking into consideration the long term implications of the agreement. The contract entered between the municipality and the bulk water supplier obligates the municipality to purchase a fixed minimum amount of water without room for flexibility.

With regard to financial sustainability, the SFWS advises municipalities to ensure that water services providers are financially sustainable; and, that they have sufficient resources to operate and maintain their water services infrastructure. The financial needs of the WSP are handled through ordinary Council processes since financial operations are not ring-fenced. This prevents the municipality from ensuring a more effective flow of financial resources to the water and sanitation service.

As part of a way forward, the Division: Water and Sanitation Services has prepared a Repair and Maintenance Plan for water and sanitation services. Citing challenges such as loss of skills, low budgetary allocation and political interference, the plan emphasises the need for the water services to be granted some degree of autonomy to enable it to operate sustainably. It also cites the lack of autonomy or failure to ring-fence and political interference as key obstacles that threaten the sustainability of services.

5.1 Lessons learnt

The lessons summarised below were eminent from the study.

Clarifying expectations

There is a need to clarify expectations between the water services provider and water services authority since there is no explicit separation between the functions. This is particularly important where the WSP function is carried out internally. It also necessitates proper planning so that functions are not carried out in an ad hoc manner.

Dedicated capacity and skills

It is evident from the case study that in order for regulation to be effective dedicated capacity and skills is critical.

Prioritising water and sanitation services

Municipalities, in general and Mangaung LM in particular, need to take into account the important role played by water and sanitation services in the sustainability of the municipality. This function should be well resourced to help facilitate the smooth running of the unit.

Political interference

Political interference in the running of departments may have long term costs for the municipality. This is particularly applicable in a case like Mangaung where resources have been prioritised in areas that are non-service delivery. Political interference was also cited as an issue in the retention of staff. The impact of this is on the stability of the institution.

Ring-fencing water services

Ring-fencing of water and sanitation services is a legislative framework set out in the Water Services Act. Mangaung LM has not ring-fenced and the lack of ring-fencing seems to present challenges in investments, financial accountability and sustainability of the water and sanitation service.

For municipalities opting to deliver services internally, ring-fencing is a necessary step in ensuring that water and sanitation service operates in a financially and technically sustainable manner. This would also assist in preventing the long term costs from the lack of maintenance and expansion of infrastructure.

Systems for monitoring and reporting

There is need to put in place mechanisms that would require municipalities to monitor and report on the municipality's water and sanitation business.

Deferring maintenance

The long-term effects of the deferment of maintenance are widely underestimated and the interviewee recommended that the regulation framework should highlight the problem and bring it to the attention of the councillor. Preferably, the framework should attempt to shed light on what the lack of maintenance implies for the future of municipal infrastructure.

References

Mangaung Local Municipality (2003) *Report on Section 78 Investigation*

Mangaung Local Municipality (2009) *Turnaround Strategy*

Mangaung Local Municipality (2010) *2010/2011 Integrated Development Plan*

Mangaung Local Municipality (2010) *Repair and Maintenance Plan, Infrastructure Services*

Annexure A: Interview Questions

Introduction

Get a sense as to what people understand by the term “local regulation of water services?”

- What does the WSA and the WSP understand as their respective roles in respect of local regulation.
- Ask them to list the local regulation functions that need to be undertaken so as to get a clear sense as to what they understand to be their responsibilities.
- Then ask them how well they think they are doing on these tasks, and how these functions could be improved.

Does the WSA and the WSP have any thoughts as to at which point in the local regulatory relationship would national government have to step in, if at all.

Capacity to Regulate

We need to get a sense as to the WSA’s capacity to regulate water services. Questions would include

- How does the WSA regulate the WSP?
- What capacity does it have to regulate?
- Is this capacity “dedicated capacity”? (doing only this function)
- Who in the municipality is tasked with this role?

Effectiveness of Regulation

The objective of regulation is to protect the interests of the consumer and public through the effective regulation of water services. In order to achieve the above objective, the WSA has to regulate both the performance of the WSP and behaviour of the citizenry with regard to water services.

- How effective has the WSA been in regulating water services?
- What are the things that can be done to improve the WSAs ability to effectively regulate water services?

Consumers

There are three areas of consumer regulation

1. By-laws;
2. Customer contracts (explicit or implicit)
3. Customer charter (rights and responsibilities of the consumer and the service provider with respect to each other)

Questions to be probed should there be time in the interview

1. How does the WSA regulate consumers?
2. What have been the challenges?

Conclusion

SALGA is in the process of developing a Framework that will guide municipalities on how to regulate municipal services. Do you think this will be useful? How can a guideline help you? Do you have any suggestions as to what should be covered in this Framework?

Where the WSA is the WSP

In instances where the WSA is also the WSP (such as Mangaung and the City of Cape Town), the key interest is to establish how the WSA separates its authority role from its provider role. Section 20 of the Water Services Act provides that when a WSA performs the functions of a WSP, it must manage and account separately for those functions.

From the interview we need to establish from the WSA:

- How does the WSA account for its WSP functions?
- Whether there is clarity around who is accountable for the WSA and the WSP functions
 - Is there clear understanding of the different roles of the WSA versus that of the WSP
 - Does the WSA hold the WSP accountable for its performance? How?
- Whether there is clarity around how financial transparency is achieved
 - Are the WSP activities accounted for separately? Section
- In terms of planning, does the WSP provide water services in accordance with a business plan? What form of planning takes place?
- What are the challenges experienced with regard to regulating an internal WSP?
- How can the WSA improve the WSPs accountability in terms of both compliance and performance?
- Where the WSA is also the WSP, do you think it is useful to see the WSA and WSP as separate? What are the benefits of doing this? If there are benefits, why has it not been done? If there are no benefits, should the policy be changed?