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Business Case for the Inkomati-Usuthu Catchment Management Agency

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1 Introduction

The National Water Act (1998) mandates the Minister of Water and Environmental Affairs to establish catchment management agencies (CMAs) for the management of water resources at the catchment level. To this end, the Minister has already established eight out of a proposed 19 CMAs, of which two are currently functional. One of these is the Inkomati CMA in Mpumalanga. The Mlhatuze-Usuthu CMA, which adjoins the Inkomati water management area to the south, has been established on paper, but does not exist as a functional organisation.

Since the establishment of these CMAs, the Department has reviewed the appropriateness of having 19 CMAs across the country, and has proposed a reduction in the number of water management areas, and by implication the number of CMAs, to nine. In this reduction, new boundaries for the nine water management areas are being demarcated through the National Water Resources Strategy (NWRS) as is required under the National Water Act.

As part of this process, the former Inkomati water management area, and the Usuthu catchment from the Mlhatuze-Usuthu water management area are being combined into one water management area, to be called the Inkomati-Usuthu water management area. The intention is that one CMA, called the Inkomati-Usuthu CMA for the purposes of this report, will manage the water resources in this water management area.

To achieve this, the non-functional Mlhatuze-Usuthu CMA will be disestablished (as described in section 5 of this document), and the boundaries of the Inkomati CMA extended to include the Usuthu catchment. The name of the Inkomati CMA will also be changed to the Inkomati-Usuthu CMA.

This document sets out the business case for this change, in line with the requirements of National Treasury in this regard, in order to facilitate approval by National Treasury of the required changes. It also sets out the required processes to be followed by the Minister to achieve the required changes.

The report is structured as follows:

- Section 2 provides a description of the new water management area and the key water resource management challenges in the WMA;
- Section 3 deals with the strategic motivation for the establishment of CMAs, while section 4 deals with the appropriate corporate form for CMAs;
- Section 5 deals with the legal process to be followed to achieve the necessary changes;
- Section 6 deals with the functions to be performed by the CMA while section 7 addresses the organisational requirements to perform these functions;
- Section 8 deals with the financial issues of viability and cost comparison;
- Section 9 deals with institutional and governance issues;
- Section 10 deals with regulation and oversight issues;

- Section 11 deals with the need for change management to ensure a smooth and effective transition;
- Section 12 deals with risk and
- Section 13 deals with implementation considerations and actions

2 Description of Water Management Area

2.1 Location

The Inkomati-Usuthu Water Management Area (WMA) is situated in the north-eastern part of South Africa and borders on Mozambique and Swaziland. It also occupies the south-eastern corner of the Mpumalanga province, west of Swaziland. Its main rivers include the Sabie-Sand, the Crocodile (East), Komati and Usuthu Rivers. The Komati River first flows into Swaziland and re-enters South Africa before flowing into Mozambique. Three of the four rivers draining the WMA confluence to form the Incomati River in Mozambique, which flows to the Indian Ocean, while the Usuthu joins the Pongola River just before the Mozambican border.

The Usuthu sub-catchment entirely falls under the Goven Mbeki District Municipality and encompasses the towns of Amsterdam and Piet Retief. Four local municipalities are either entirely or partially covered by the Usuthu catchment – Albert Luthuli, Mkhondo, Pixly-ka-Seme and Msukaligwa municipalities. The Inkomati sub-catchment includes the municipalities of Carolina, Eerstehoeek, Machadodorp, Dullstroom, Barberton, Nelspruit, Driekoppies, Komatipoort and Skukuza.

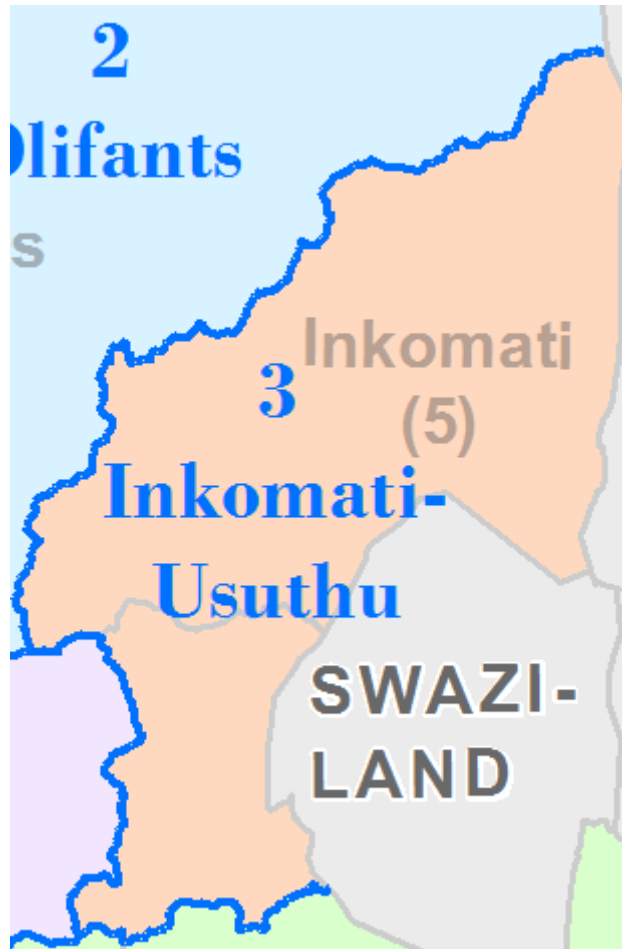


Figure 2.1: Map of Inkomati-Usuthu CMA

The Inkomati sub-catchment is divided into the following sub-areas, Upper and Lower Inkomati, Sabie-Sand and the Crocodile, while the Usuthu is treated as one area.

2.2 Topography

The Inkomati-Usuthu WMA is divided by the Drakensberg Mountains into a western plateau and the sub-tropical Lowveld in the east, with altitudes ranging from over 2 000 m in the west to as low as 140 m in the east.

2.3 Climate

The biggest part of the Inkomati WMA is below the northern reaches of the Drakensberg escarpment, which has a warm sub-tropical climate suitable for growing many frost-sensitive crops and tropical fruit, including bananas, avocados, pawpaws and mangoes.

2.3.1 Rainfall

The Inkomati sub-catchment of the WMA has rainfall that varies from over 1 200 mm/annum along the eastern escarpment to as little as 400 mm/a in the east. It is comprised of areas with rainfall of around 1 000mm per annum in the elevated western and southern portion and a much lower rainfall of around 500mm per annum in the lower lying

eastern portion. The Usuthu sub-catchment has rainfall that ranges between 550mm in its eastern areas to 850mm on the eastern escarpment of the Drakensberg

2.4 Socio-Economic Dynamics

2.4.1 Population

According to the WMA Report (DWAF, 2003), the population in the Inkomati-Usuthu WMA was estimated to be 1 682 872 in 1995, consisting of an urban and semi-urban population of 1 047 948 people and the remainder classified as rural. Adjusting these figures for average 1.5% annual growth rate gives the approximate population figures in table 2.1. The urban and semi-urban population makes up 62.3% of the total population and the rural make up the remaining 37.7%.

Table 2.1: Population figures for the Inkomati-Usuthu WMA (DWAF, 2003, extrapolated according to a 1.5% per annum population growth)

	Inkomati	Usuthu	Inkomati-Usuthu
Urban	1 211 000	137 000	1 348 000
Rural	662 500	143 000	805 500
Total	1 873 500	280 000	2 153 500

Over 85% of the WMA's population resides in the Inkomati catchment.

2.4.2 Economic Activity

The Gross Geographic Product (GGP) of the Inkomati-Usuthu water management area is estimated at around R9 billion per annum and makes up just about 0.3% of South Africa's Gross Domestic Product (GDP). This gives a per capita GGP of R5 329 which is just over 10% of the national GDP per capita of R53 260 if we assume a population of 50 million.

The GGP of the WMA by sector is broken down as in Figure 2. The manufacturing and mining sector is the biggest contributor with 28.6% - a total of just over R2.5 billion per annum. The calculation for the contribution of the Usuthu sub-catchment was based on its share of the urban and the rural populations of the Usuthu-Mhlathuzi WMA. This estimation was necessitated by the lack of economic statistics specific to the Usuthu sub-catchment.

Economic contribution (%) per sector

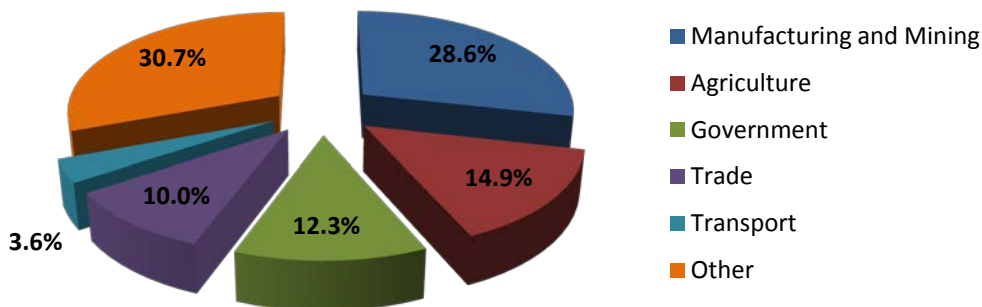


Figure 2: Sector Contribution to GGP (%)

2.5 Water Availability and Requirements

2.5.1 Availability

The water availability estimate for the Inkomati-Usuthu WMA, at a 98% assurance (1:50 Year Yield) of supply is shown in table 2.2. Surface water makes up the bulk of the water available in the CMA, with ground water only minimally available in part of the WMA. A substantial amount of the available water is set aside for the ecological reserve (363 million m³/annum), while a significant amount is also taken out of the system by invasive alien plants (92 million m³/annum), mainly in the Inkomati catchment of the new WMA.

With the exception of the Sabie River sub-area where higher confidence estimates of the Reserve have been obtained through various studies, estimates of the ecological reserve are desktop estimates and do not yet incorporate a complete understanding of the functioning of the relevant ecosystems.

Table 2.2: Water Availability (Mm³/annum)

Water Availability			
Resource Category	Availability (million m ³ /annum)		
	Inkomati	Usuthu	Total Inkomati-Usuthu
Gross Surface Water Resource	1099	249	1348
- Ecological Reserve	311	52	363
- Invasive Alien Plant	91	1	92
Ground Water	21	2	23
Return Flows	70	4	74
Transfers In	39	0	39

Total Local Yield	827	202	1029
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Primary porosity groundwater aquifers are only present in the WMA to a very limited extent, as sand of up to 5 and 6m depth in major river beds in places do not represent very significant exploitable groundwater resources, except very locally. By far the greatest proportion of groundwater in the WMA occurs in the secondary porosity aquifers of the weathered and fractured classes. Groundwater mean annual recharge varies from 100 to 150 mm in the higher rainfall elevated areas along the western boundary and in the south of the WMA to 10 to 20 mm in its low rainfall, much lower standing easternmost portion. These annual groundwater recharge values are equivalent to rates of about 120 000 m³/km² and about 10 000m³/km² to 20 000m³/km² respectively.

The water requirements of Swaziland and Mozambique are an important factor in the Inkomati-Usuthu catchment, international agreements with Swaziland and Mozambique do not allow much, if any, scope for further development in this catchment.

2.5.2 Current Requirements

Irrigation takes up the greatest amount of the local water requirements, making up 48.5% of the requirement total. Transfers out represent 19.1% of the water requirements, and afforestation 13.2%. Another element of water requirement that is a prominent feature in the Inkomati-Usuthu WMA is the international requirements, which represent the amount of water that must be allowed to flow across the borders into the neighbouring states of Mozambique and Swaziland.

Table 2.3: Inkomati-Usuthu Water requirements

Water Requirements			
User Sector	Requirements (million m³/annum)		
	Inkomati	Usuthu	Total Inkomati-Usuthu
Irrigation	565	13	578
Urban	62	5	67
Rural	21	8	29
Industrial and Mining	24	0	24
Afforestation	114	43	157
Total Local requirements	786	69	855
Transfer Out	97	131	228
International Requirements	109	0	109
Grand Total	992	200	1192

The Usutu catchment is of strategic importance because the 131 million m³/annum that is transferred from there is water for the cooling of coal-fired power generation plants, situated in the Vaal and Olifants systems.

2.5.3 International Considerations

Southern Mozambique is largely dependent on water from the upstream catchments of the Inkomati-Usuthu WMA. The Interim IncoMaputo Water Use Agreement sets out the water protection and sustainable utilisation (sharing arrangements) of the water resources of the three basin states, that is, South Africa, Swaziland and Mozambique.

According to the operating rules proposed by the Incomati System Operation Task Group (ISOTG) the Komati River must contribute 55% of the requirements of Mozambique at the border at Komatipoort (Ressano Garcia) while the Crocodile River must contribute 45%. Accordingly, 60 million m³/annum at a 1:50 year equivalent assurance must be contributed from the Komati River and 49 million m³/annum at a 1:50 year equivalent assurance from the Crocodile River. The contribution from the Komati River needs to be apportioned between South Africa and Swaziland. In terms of the proposals of the ISOTG, the South African contribution would therefore be 42 million m³/annum at a 1:50 year equivalent assurance and 18 million m³/annum from Swaziland.

Table 2.4: Minimum Flows Required at Ressano Garcia

Minimum Flows Required at Ressano Garcia				
River	Contribution (million m ³ /annum)		Total	
	South Africa	Swaziland	million m ³ /annum	Percentage
Komati	42	18	60	55
Crocodile	49	0	49	45
Total	91	18	109	100

In addition to the above, an amount of 87 million m³/annum is reserved in the interim for the city of Maputo. The water will be drawn from the total water available after further development of the Incomati watercourse. There are also key points and target flows to be maintained to sustain the ecology of the watercourse including the estuaries of the various water bodies that have been agreed upon. The figures that affect that Inkomati-Usuthu WMA are listed in Table 2.5 below.

Table 2.5: Key Points and Target Flows

River	Key Point	Interim Target Instream flows	
		Mean (million m ³ /a)	Minimum (m ³ /s)
Sabie	Lower Sabie	200	0.6
	Incomati River	200	0.6
Crocodile	Tenbosch	245	1.2
Komati	Diepgezet	190	0.6
	Mananga	200	0.6
	Lebombo	42	1
Incomati	Ressano Garcia	290	2.6

	Sabie	450	3
Usuthu	GS 23	20	0.1
	Big Bend (GS 16)	520	1.7

The IncoMaputo Water Use Agreement also places limitations on the consumptive water use from the Incomati and Maputo watercourses by South Africa, including water transfers. These water uses are at different assurances of supply and not directly comparable with the water use expressed at a 1:50 year level. For South Africa, these limitations are as in Table 2.6. From each of the four rivers that are part of the agreement, there is a level of water use that cannot be exceeded for each of three use areas. First Priority supplies include water for domestic use, livestock use and industrial water use. The limitation on irrigation use is higher than the limitations on the other types of use. This can be attributed to the fact that the areas of South Africa that are impacted by this agreement are agricultural/rural areas wherein the livelihoods of the majority depend on irrigated farming.

Table 2.6: IncoMaputo Water Use Agreement Limitations

Catchment	Water Use Limitations by Type (million m ³ /annum)			
	First Priority Supplies	Irrigation	Afforestation	Total
Komati River Catchment	183	381	99	663
Crocodile River Catchment	73	307	247	627
Sabie River Catchment	80	98	129	307
Usuthu River Catchment	38	0	14	52

2.5.4 Water Requirements vs. Availability

The current yield balance within the Inkomati-Usuthu WMA, given the water availability and water requirements estimates, is an estimated 163 million m³/annum deficit. The breakdown of the yield balance can be seen in table 2.7 below.

Table 2.7: Inkomati-Usuthu Reconciliation of Availability and Requirements

Reconciliation of Water Availability and Requirements				
Description		WMA Sub-areas		Total Inkomati-Usuthu
		Inkomati	Usuthu	
Available Water	Local Yield	788	202	990
	Transfers In	39	0	39
	Total	827	202	1029
Water Requirements	Local Requirements	786	69	855
	Transfers Out	206	131	337
	Total	992	200	1192
Balance		-165	2	-163

The Inkomati catchment is responsible for the deficit largely due to the high irrigation and forestry use of water, which together account for nearly 80% of the local water

requirements within the Inkomati sub-catchment. There is little scope to develop more water sources in the Usuthu sub-catchment due to the international obligations, and the fact that almost all the water in this sub-catchment has been allocated.

2.6 Water Challenges

The water quality varies in each sub area of the sub-catchments. Though in more places than not the water is good to excellent, there are some pockets of concern that warrant a mention.

2.6.1 Upper Komati and Usuthu

The water quality in the Upper Komati River is generally very good. However, coal mining around this catchment poses a very serious threat to the quality of the water in this sub-area and the Usuthu. Coal mining activities could increase the sulphate levels in the water, which would have major implications for Eskom, and by implication to all electricity users. In Carolina acid mine drainage is already impacting negatively on the quality of municipal water supplies. It is important that ways to mitigate this risk are found.

There are a few water quality problems that were identified in the Usuthu catchment. The first is due to industrial effluent from the tannery in Piet Retief. This has resulted in pollution of the Assegaai River. The effluent from the tannery is currently irrigated onto fields as a disposal measure but a longer-term solution must be found.

The Usuthu also has some significant challenges with the sanitation treatment works in the catchment. In the Piet Retief area the aerators are not working and the effluent is not properly working as a result. In Amsterdam the pumps are not working which leads to uncontrolled discharge into the dams and higher than desired levels of pollution. In Chrissiesmeer the irrigation taking place next to the lake there is done using wastewater which then runs back into the lake.

The mines discharge untreated wastewater into the rivers while Mondi irrigates their trees with wastewater which seeps into the ground. The pollution control dams where the mining takes place and where Mondi operates are unlined, thereby leading to the pollution in the water either seeping into the ground or flowing with the run-off.

2.6.2 Lower Komati and Crocodile

Deterioration in the water quality is evident from the recorded water quality data in the lower reaches of the Komati River catchment due to irrigation return flows. However, the water quality can still be considered to be acceptable. Maintaining an acceptable quality of water in the Lower Komati River catchment is important as it is also a requirement of the Interim IncoMaputo Water Use Agreement.

The water quality in the Crocodile sub-area is generally good although some deterioration of the quality in the lower Kaap River (often high levels of arsenic) and lower Crocodile River is observed. This is due to return flows from upstream users including irrigation, urban areas and old gold mining activities. Irrigation return seepage is noticeable during periods of low flow. There is also a potential water quality problem emanating from the SAPPI paper mill at Ngodwana which is probably the most serious water quality problem in the WMA. Effluent

has been disposed of through irrigation for a number of years but the soil has become saturated with salts (especially chlorine) and these leach out into the Elands River and then enter the Crocodile River.

2.6.3 Sand and Sabie River

The surface water quality in the Sand River sub-catchment is not as good as in the Sabie River sub-catchment due to over-abstraction which reduces the natural assimilative capacity of the river. Occasional elevated levels of nutrients in the Sand River are noted, with informal housing developments a suspected cause. The large number of rural settlements which rely on pit latrines is cause for concern as far as ground-water pollution goes but to date there have been no reported incidences of groundwater pollution

Groundwater quality in the WMA also deteriorates from west to east over the area, following the average annual rainfall. Thus in the west it usually has a Total Dissolved Solids (TDS) content of less than 300 mg/litre. while in the extreme east of the area it is much poorer, rising to 500 to 1000 mg/litre. Over the greater portion of the area, however, in that portion that is underlain by crystalline igneous and metamorphic rocks of the granite and gneiss type, the groundwater is of good to moderate quality, generally having a TDS value of less than 500 mg/litre. The average annual groundwater recharge from rainfall over the entire area of the WMA is estimated to be in the order of 1 000 million m³/annum.

2.7 Summary of challenges in the Inkomati WMA

The Inkomati CMS identifies a number of challenges that will require a response from the CMA. These challenges include a high degree of public discontent about water management in the area, as well as scepticism and resultant apathy towards water resource issues. This is related to both the perceived and actual poor progress in implementing the requirements of the National Water Act and integrated water resources management by DWA. In addition, poor inter-governmental planning, co-ordination and control has led to uncontrolled urban and rural development, mining and forestry expansion, degradation of scenic areas and pollution from poorly maintained infrastructure. The following have been highlighted as critical challenges:

- A continued lack of infrastructure (small dams, canals, off-stream storage, etc.) and extension support in the lower reaches of the catchment entrenches and exacerbates the imbalances of the past and the plight of the historically disadvantaged.
- Corruption, continued circumvention of regulations by developers and mining, and continued lack of law enforcement impact negatively on the sustainable use of water resources in the area.
- Non-implementation of the Reserve and flow regimes biased toward agriculture are undermining the sustainability of the water resources and the protection of aquatic ecosystems.
- Ineffective cooperative governance at national, (Dept of Water and Environmental Affairs, Department of Agriculture, Forestry and Fisheries, Department of Mineral

Resources), provincial (e.g. land use planning) and local (service delivery) levels is undermining the management of water resources for improved equity, efficiency and sustainability.

- Low water use charges impact negatively on the financing of effective management of the resource.
- There is a shortage of skilled personnel in the sector.

3 Strategic motivation

The National Water Policy for South Africa and the National Water Act were developed on the basis of extensive public participation and considerable international expertise and advice. This gave rise to the recommendation to follow international good practice in the decentralisation of water management, and the establishment of water management institutions based on hydrological rather than political boundaries. In the development of the National Water Resources Strategy (2004), a process which included extensive public participation, 19 water management areas were defined for the country, in each of which, it was envisaged, a Catchment Management Agency (CMA) would be established.

To date, there are two functional CMAs, one in the Inkomati Water Management Area, and one in the Breede-Overberg CMA. Six others have been formally established on paper. Further development of these CMAs was, however, halted as the Department reconsidered the appropriateness of establishing nineteen CMAs and the possibility of redefining the water management area boundaries in order to create a smaller number of CMAs each with a larger area of jurisdiction. A smaller number of CMAs was seen as enabling better economies of scale with regard to utilising scarce technical skills, and reducing the regulatory and oversight requirements on the Minister and Department. The current decision of DWA is to establish nine CMAs – one in each of nine water management areas that cover the whole country.

As has been mentioned in the introduction, the intention is to amend the boundaries and name of the Inkomati CMA to meet the new requirements for nine CMAs. The following sections set out some of the reasoning behind the need to establish a CMA to manage water resources in the Inkomati-Usuthu water management area.

3.1 Water as a finite resource.

South Africa is a water scarce country, with less than 1700 m³ per capita water available per annum. Even in areas where water is relatively bountiful, there is serious inequity in distribution and availability. Some of the particular challenges facing water management in the Inkomati-Usuthu water management area have been highlighted in the previous section.

3.1.1 Integrated water resource management in the South African context

Integrated water resource management (IWRM) has been internationally recognised as the most appropriate paradigm for managing water. The principles of IWRM are enshrined in

the White Paper on a National Water Policy, and the National Water Act. Some of these aspects are highlighted below.

3.1.2 Management according to hydrological boundaries

Water is best managed in an integrated manner, taking cognisance of the linkages between land and water, between groundwater and surface water, and between the social and natural environment. Water is most easily managed within the natural boundaries of catchments (within which water drains into one river system) allowing for integrated management of that system. The establishment of a CMA allows for the management of scarce water resources according to hydrological rather than political boundaries, as is best practice internationally.

The National Water Policy also recognises the protection of aquatic ecosystems as critical to ensuring sustainable delivery of resource-related goods and services. Management of water resources according to hydrological boundaries will enable more effective and integrated protection of river systems.

3.1.3 Principle of subsidiarity

As a social and economic good, water is critical to peoples' lives and livelihoods. Accordingly, to ensure equity and sustainability water resource management must be based on the principle of subsidiarity (i.e. taking decisions at the lowest appropriate level) such that all relevant stakeholder groups are actively involved in the decision-making process. This is also important in the effective functioning of a democratic developmental state.

3.1.4 Developmental / empowerment role

International best practice shows that decentralised institutions often have a greater developmental and empowerment role than centralized institutions. Decentralised institutions have a greater ability to respond to developmental needs and opportunities on the ground as a result of reduced bureaucracy and smaller, more effective organizations. Additionally, by involving stakeholders in the decision-making process and the management of the resource, decentralized water resource management will contribute significantly to the redress of historical inequities and support the equitable allocation and effective management of this limited resource.

3.1.5 Financial viability of the CMA

This issue will be discussed in much greater detail later in this document, but effective water resources management is premised on efficient and effective institutions with the appropriate resources to deliver. The financial viability of institutions is crucial to ensure adequate resources in the delivery and sustainability of these functions over the longer term. Ensuring financial viability and good governance requires strong financial systems and controls, linked to the requirements of the Public Finance Management Act (Act 1 of 1999) and Treasury Regulations, amongst others. Financial viability refers to the requirement for the CMA to be financially sustainable in the long-term, taking into account all possible

sources of funding, which include, in particular, revenue from water use charges and fiscal transfers from DWA.

3.2 Framework for CMA Establishment

3.2.1 Principles

Reform of the South African public service following the new dispensation to i) service delivery and adoption of the principles of Batho Pele and ii) transformation of the public sector to ensure employment equity and redress of historical inequality, informs an institutional, organisational and cultural transformation from the way in which water resources were managed in the past. Chapter 1 of the National Water Act (Act 36 of 1998) sets out *equity, sustainability, efficiency and representivity* as guiding principles in the protection, use, development, conservation, management and control of water resources in South Africa, as captured in the slogan of the White Paper¹: “*some, for all, forever*”.

This implies a shift in water resource management to an approach based on *integrated water resource management (IWRM), stakeholder involvement/ participation* in decision-making (empowerment of citizens), and *cooperative governance*. Moreover, institutional change is indicated; water management institutions must develop a *service delivery orientation*, which must reflect a *customer approach* to the business of water resources management.

These principles of institutional reform, sustainability and equality, in conjunction with the philosophy of *social and economic development* and *poverty eradication*, are reflected in the National Water Act (NWA) as a process of decentralisation and subsidiarity. This implies an organisational and institutional change process within the Department of Water Affairs (DWA), resulting in the formation of catchment-based water management institutions. Associated with, and inherent to, this process is the significant transfer of roles, responsibilities and functions from central government (DWA) to the Catchment Management Agencies (CMAs) as catchment-based organs of state.

3.2.2 Legal basis

Chapter 7 of the National Water Act makes provision for the progressive establishment of CMAs and states the *purpose* of establishing a CMA is to assign or delegate water resource management to the regional or catchment level and to involve local communities in the decision-making processes. The intention is for water resource management to:-

- meet the basic human needs of present and future generations,
- promote equitable access to water,
- redress the results of past racial and gender discrimination, and
- facilitate social and economic development.

¹ DWA. 1997. *White Paper on a National Water Policy for South Africa*. Department of Water Affairs and Forestry, Pretoria, South Africa.

Broadly, the initial role of a CMA is articulated in the Act as:- i) managing water resources in a WMA, ii) co-ordinating the functions of other institutions involved in water related matters and iii) involving local communities in water resource management. Further functions are then to be assigned or delegated to the CMA as it evolves. These functions and the phased development of the CMA are detailed below and captured in detail in Appendix A.

The Act requires the progressive development of a national water resource strategy² (NWRS) that provides the framework for water resource management for the country as a whole, and guides the establishment of CMA institutions to manage water resources at a regional or catchment scale³ in defined water management areas⁴ (WMA). In addition, the Act requires for the progressive development of a catchment management strategy (CMS) for each WMA by each CMA. This CMS must be in harmony with the NWRS⁵. Both the NWRS and CMS must engage stakeholders and ensure participation⁶.

3.3 Evolution of the CMA

The principles guiding reform and transformation in resource management, and the legal requirements of decentralisation and subsidiarity contained with the NWA, imply a process of institutional change in the management of water resources. This process moves the responsibility for resource management from DWA to the CMA as the catchment-based organ of state. A number of stages can be identified that describe this process of shifting responsibilities and the evolution of the CMA.

The first stage following the *establishment of the CMA* is about creating **legitimacy** within the WMA, during which relationships are developed between the CMA, other water management institutions (WMIs) and stakeholders in the WMA. The CMA undertakes the critical role of advising on, and coordinating water resource management, and developing the catchment management strategy (CMS). This stage is about building relationships, and establishing credibility and legitimacy within the WMA. The CMA assumes a number of initial functions, as defined in Section 80 of the NWA:

- to investigate and advise interested persons on the protection, use, development, conservation, management and control of the water resources in its water management area;
- to develop a catchment management strategy;
- to co-ordinate the related activities of water users and of the water management institutions within its water management area;

2 Section 5(1) of the NWA

3 Section 6(1)(j), (k) and (l) of the NWA

4 Section 6(1)(c) of the NWA

5 Section 9(b) of the NWA

6 Section 5(5)(b) and (c) and Section 8(5)(b) and (c) of the NWA

- to promote the co-ordination of its implementation with the implementation of any applicable development plan established in terms of the Water Services Act, 1997 (Act No. 108 of 1997); and
- to promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area.

In order to perform these functions, the CMA has some inherent powers under the NWA:- i) the powers of a natural person of full capacity (Section 79(1)), ii) a range of powers related to planning and conducting the routine administrative and organisational business of the CMA (Schedule 4) and iii) powers to make and recover charges in terms of the Minister's pricing strategy for water use charges to cover their costs in executing (at least) the initial functions (Section 84(1)).

Following legitimisation of the CMA, a phase of **consolidation** is entered during which the CMA is focused on building capacity and strengthening the organisation to undertake its water resource management functions. This implies strengthening of systems within the organisation, including fiduciary management and governance of the CMA, and the establishment of stable information and implementation systems. Additional water use management functions are delegated to the CMA. Proto-CMA staff, possibly seconded to the CMA during the legitimisation phase, are now transferred to the CMA as a coherent business unit, with the requisite infrastructure and budget. The CMA (led by the Governing Board and CEO) should compile its comprehensive business plan. This must also link to the DWA timeframes for establishing water use charges (under the Pricing Strategy).

The final phase during the evolution of the CMA is the delegation or assignment of **responsible authority** functions⁷ as contemplated in sections 73 and 63 of the National Water Act. The majority of water resource management and implementation roles and responsibilities are now seated in the CMA, which assumes the role of Responsible Authority. The relationship between the CMA and DWA is well established, and the systems and processes within and between these institutions are stable. Under Section 73(1)(a) of the NWA, the Minister can **assign** the powers and duties of a responsible authority to a CMA. The most significant of these are the powers and duties related to authorisation of water use and the issuing, review and amendment of licences. In Section 63 of the NWA,

⁷ The powers and duties of a responsible authority are described as:- i) issue general authorisations and licences in respect of water use subject to conditions, ii) extend the licence period under certain conditions, iii) review licences at periods stated in the licence and make amendments to its conditions or renew it, iv) waive the need for a licence if the water use is authorised under another law, v) promote "one-stop shop" licensing, vi) require license applicants to provide security for licence obligations, vii) require registration of existing lawful water uses, viii) require an existing water user to apply to verify its water use, ix) undertake compulsory licensing where there is water stress, x) suspend or withdraw entitlements to use water and xi) enforce licence conditions.

there is provision for the *delegation* of powers and duties vested in the Minister⁸, rather than assignment. However, the Minister is prohibited from delegating certain powers under Section 63(2)⁹. In addition to providing the legal basis to the CMA performing its functions in its WMA, the NWA also allows the CMA to perform functions outside its WMA, under the condition that this does not impinge on the execution of its functions or detrimentally affect other water management institutions.

3.3.1 Status of CMAs in the Inkomati-Usuthu Water Management Area

The Inkomati CMA has been established and is functional, with a Governing Board, CEO and staff in place. It has developed its first catchment management strategy which has been approved by the Minister.

The Usuthu-Mhlatuze CMA has been formally established on paper, but the process was halted before a governing board was appointed, and it remains an institution on paper only. The intention currently is to amalgamate the Inkomati water management area with the Usuthu catchment (a sub-section of the Usuthu-Mhlatuze WMA) into one, under the revised National Water Resources Strategy, and to establish one CMA to manage water resources in the extended water management area. In order to do this, the Usuthu-Mhlatuze CMA will need to be disestablished and the area of jurisdiction of the Inkomati CMA extended to cover the new water management area. The name of the Inkomati CMA will also need to be changed, possibly to the Inkomati-Usuthu CMA. The legal process for achieving this is addressed in section 5 of this report.

The Inkomati CMA has been established as a schedule 3 public entity. The section below outlines the reasoning behind this decision and the recommendation that a similar corporate form be adopted for the Inkomati-Usuthu CMA.

⁸ Some additional powers and duties may be delegated to the fully-functional CMA, as described in Schedule 3 of the NWA:- i) power to manage, monitor, conserve and protect water resources and to implement the CMS, ii) establishment of water-use rules, iii) establishment of management systems, iv) require alterations to waterworks and may direct users to terminate illegal use and v) temporarily control, limit or prohibit the use of water during periods of water shortage.

⁹ i) the power to make a regulation, ii) the power to authorise a water management institution to expropriate under Section 64(1) of the NWA, iii) the power to appoint a member of the Governing Board of a CMA and iv) the power to appoint a member of the Water Tribunal.

4 Corporate Form

4.1 Legal nature of CMA

The Policy Framework for the Governance and Administration of Public Sector Institutions (October 2005) sets out the following possible corporate forms for public institutions:

Public Service including:

- National Government Agencies
- Provincial Government Agencies

Public Entities including:

- Stewardship and Research Entities
- Service Delivery Entities
- Regulatory and Statutory Advisory Entities

Government Enterprises including:

- Statutory Corporations and Financial Intermediaries
- State Owned Companies
- Subsidiary Companies of public entities
- State Interest Companies

Public Interest Institutions including:

- Education, Welfare, Recreation Institutions and Professional Bodies

The appropriate corporate form must be informed by the purpose of the entity, and specifically by the risks, powers and functions of the CMA. A distinction should be drawn between delegation of functions within DWA, and agentising the functions. Agentising is an integral part of strengthening and improving governance, by assigning responsibility and accountability to the institution best placed to ensure efficient use of resources and effective service delivery. It is appropriate only where there are good reasons for independent governance and control.

An added requirement is that once public sector institutions are legally established, the National Treasury through the Accountant General lists them in Part A, Schedule 3 of the PFMA to enable effective financial management and accountability.

The drivers for devolution and various corporate forms for the Inkomati-Usuthu CMA were considered. These are discussed briefly below.

4.2 A case for devolution

The National Treasury/DPSA Governance Framework highlights several reasons for devolution of government functions. A number of these reasons are relevant here:

Stakeholder participation

As has been mentioned above, stakeholder participation in water resources management is required by South African policy and legislation, but also by international best practice. Participation of stakeholders is necessary to find appropriate and acceptable solutions to a

number of the complex issues facing water managers in the Inkomati-Usuthu water management area.

Both public confidence and stakeholder participation are mutually reinforcing objectives where one strengthens the other to create a synergistic relationship. Stakeholder participation will ensure that the needs for use of water resources are provided as best expressed by the stakeholders. Mechanisms put in place must promote ongoing and continuous engagement with stakeholders and between stakeholders, and particularly with historically disadvantaged communities.

Ring-fencing risk

The establishment of a public entity allows for a coherent, integrated approach to managing risk through tight controls and good governance. One of the key risks that is best managed outside government is the financial risk associated with effective tariffing, billing and revenue collection. Since the CMA will be dependent on income from water use charges, there will be a much greater incentive for effective revenue management than is the case in the Department.

Access to professional, specialist skills

Access to specialist skills is particularly important for the operational management of the CMA, including financial management, contract management, and specialist water resource management skills (hydrology, geohydrology, water quality, engineering, aquatic ecology, toxicology, etc). Accessing such skills will require moving outside the government remuneration structures and developing the CMA as an employer of choice by creating an innovative, stimulating and conducive work environment.

Public confidence in decision-making

The NWA recognizes that the ultimate aim of water resources management is to achieve the beneficial use of water in the public interest. In doing this it is important to build confidence amongst users that water as a resource is a public good and must be managed in such a manner that all must benefit. There is a multi-layer accountability at the CMA level that does not exist within a government department: there is accountability to the accounting authority (the Board); there is more direct accountability for stakeholders; and there is formal accountability to the Minister of Water and Environmental Affairs.

Given the complexity of water management in the Inkomati-Usuthu water management area, and the importance of this area to the economy, public confidence will be improved by demonstrating good governance through appropriate accountability and governance structures. Separation of functions will allow DWA to act as a regulator (visibly), particularly with regard to the regulation of tariffs, but also through setting of national norms and standards (e.g. for water quality).

4.3 Appropriate corporate form

Based on the assessment above, various corporate forms were considered. These are discussed briefly below.

4.3.1 Departmental programme or dedicated business unit

Based on the assessment of the rationale for the CMA, a programme within the Department or a departmental agency are not considered appropriate. A programme is limited in its ability to ring-fence risk and to manage relationships with stakeholders effectively and accountably. While a departmental agency can overcome some of these problems, it also presents challenges in terms of its legitimacy with stakeholders and other spheres of government, and a ring-fencing risk. Moreover, managing complex risk within a departmental agency is difficult, particularly as access to specialist skills in managing entity risk may be limited by departmental systems and process.

4.3.2 Public entity vs. business enterprise

The public entity corporate form is suitable for functions that require the involvement of stakeholders and experts to ensure effective and efficient delivery and where a moderate degree of autonomy in decision-making is desirable, or functions where it is necessary to assign decision-making to an independent juristic person in order to enhance public confidence in the implementation of a policy framework or the provision of policy advice or research. A business enterprise, on the other hand, is primarily focused on the provision of goods and services in a market environment.

There are four key reasons why creation of a public entity is preferred for the CMA:

- The Inkomati CMA already exists in the water management area as an effective public entity, on which to build the extended responsibilities of the Inkomati-Usuthu CMA
- The CMA is a service-delivery entity performing a function of government
- The CMA does not directly provide goods and services in a market environment but it is dependent on revenue from water users for the delivery of the services
- The CMA needs to involve stakeholders in the management of water resources and to build public confidence in its implementation of water resources policy.

It is therefore proposed that the CMA be established as a national public entity and listed under Schedule 3 (a) of the PFMA because it:

- would be established in terms of National legislation
- may be partially funded from the National Revenue Fund
- would be accountable to Parliament
- would not be authorized to carry out on a business activity providing goods and services in a market environment.

4.3.3 Associated Attributes of the Public Entity

Following the Governance Framework, the attributes of a public entity (for service delivery) are presented below, and form the basis for the CMA, particularly in terms of governance, organisational and financial arrangements.

4.3.3.1 Legal issues

- *Legal status:* the CMA is a separate juristic person in terms of the NWA.
- *Establishment:* created in terms of the National Water Act (s78(1)) by the Minister of Environmental and Water Affairs
- *Dissolution:* dissolved in terms of the National Water Act (s88(1)) by the Minister of Environmental and Water Affairs.

4.3.3.2 Accountability relationships

- *Political accountability:* the Minister, as the Executive Authority, is accountable to Parliament and represents government's policy and shareholder interests. The Governing Board is accountable to the Minister, and the Minister should develop a service level agreement with the Board.
- *PFMA statutory accountability:* the Governing Board is the Accounting Authority in terms of the PFMA.
- *Reporting arrangements:* the CMA prepares a separate annual report and annual financial statements, which are sent to Minister via the accounting officer of DWA. The Minister tables these documents in Parliament.

4.3.3.3 Governance arrangements

- *Appointment of Board:* the Governing Board is appointed by the Minister, taking cognizance of the recommendations of the Advisory Committee (s81(1) of NWA). The Minister determines performance criteria for the Board.
- *Dissolution of the Board:* The Minister as the Executive Authority
- *Replacement of Board members:* The Minister as Executive Authority appoints alternative members to the Board where Board members resign or are removed before completion of their term of office. Board members are removed by the Minister under s83(1) of the National Water Act. Alternatives are appointed for the remainder of the term of office.
- *Appointment of CEO:* The Governing Board appoints the Chief Executive Officer (with the approval of the Minister) and determines performance criteria and assesses performance of the CEO. The Minister is empowered to remove the CEO after consultation with the Board.

4.3.3.4 Financial arrangements

- *Tabling of plans:* The Governing Board must approve and submit a strategic plan to the Minister.
- *Submission and approval of budgets:* The Governing Board approves the budget and submits it to Minister.

- *Funding/ Budget:* cost recovery (water charges), grants-in-aid, donations and DWA subsidies / financial aid.
- *Spending autonomy:* The Entity is autonomous within the limits of relevant legislation and agreements.
- *Pricing:* By the Entity, in line with the national Pricing Strategy on Raw Water.
- *Borrowing powers:* the CMA will need specific approval from the Minister of Finance for borrowing, but should only require overdraft facilities for working capital.
- *Surpluses/dividends:* The Entity may not make a profit.
- *Accounting basis:* accrual-based GAAP.

4.3.3.5 HR arrangements

- *Human resource regime:* The CMA will develop its own HR regime within DWA CMA Guidelines and aligned to the framework prescribed by DPSA. It will be responsible for determining positions, job evaluations and for appointing and dismissing staff.
- *Wage determination:* The CMA will determine salaries within the DWA CMA Guidelines and aligned to the framework prescribed by DPSA

4.3.3.6 Powers of the entity

- *Procurement:* Procurement will done within the PPPFA and the CMAs own governance rules

5 Legal Process

5.1 Introduction

The establishment of the Inkomati-Usuthu CMA is different in nature from the original establishment of the Inkomati or Gouritz CMAs in the sense that two individual CMAs have already been established and one is fully functional. The intention is now to establish one CMA for the combined territory of the two existing CMAs.

This requires some consideration of the appropriate legal process to be followed. An examination of the National Water Act has been done, and the legal issues pertaining to the process are set out below, as well as the appropriate process to be followed to establish the Inkomati-Usuthu CMA.

5.2 Legal requirements

The overriding imperative of the NWRS is that the nation's water resources are an **indivisible national asset** to be **managed** in an equitable, sustainable, socially, economically and environmentally **optimal** manner for the **benefit** of society. Furthermore, The Minister, DG, organs and WMI, **must** give effect to the NWRS when exercising any power or duty under the Act.

There are 19 water management areas designated in terms of the NWRS but only 8 CMAs have been established thus far, two of which are functional with the remainder existing on paper only – as so-called 'shelf' CMAs. One of these is the Mhlatuze-Usuthu CMA.

The required 5 year review of the NWRS is currently being undertaken, and part of this process will be to revise the proposed water management area boundaries. As a result, it is necessary to re-organise the CMAs by way of amalgamation and /or re-delimitation. This necessitates a change in the number and geographical definition of CMAs.

There does not appear to be any mechanism or combination of mechanisms in the Act which will allow for the truncation or short-circuiting of the provisions of section 88 regarding the disestablishment of CMAs.

The process of reducing the number and re-delimiting the boundaries of existing WMAs is under way and, although nothing has yet been formally adopted, the need to address the establishment of 'matching' CMAs is pressing.

The preference is to keep the Inkomati CMA functional and intact until such time as the new WMAs are proclaimed and to use it as the kernel of the new Inkomati-Usuthu CMA.

The recommended approach is therefore as follows:

- The process of disestablishing the Mhlatuze-Usuthu CMA should proceed immediately so as to allow for the establishment of the Inkomati-Usuthu CMA which will align to the proposed new WMA boundaries.
- The National Water Resources Strategy must be amended to change the boundaries of the water management areas according to the nine new proposed areas; and then
- The provisions of section 78(1)(b) and (4) and section 89(1) should be applied to realign the existing Inkomati CMA with the newly proclaimed WMA, rename the CMA, and transfer any assets and liabilities accordingly.

5.2.1 Disestablishment of the Mhlatuze-Usuthu CMA

Section 88 of the National Water Act deals with the disestablishment of a CMA. The Minister must, under this section, publish in the Government Gazette a notice of her intention to disestablish the Mhlatuze-Usuthu Catchment Management Agency, for reasons pertaining to section 88 (1) (a) and (c) and calling for written comments on the proposed disestablishment.

Once she has received and considered the comments, she can proceed to disestablish the Mhlatuze-Usuthu CMA, on condition that, having considered the comments, she is convinced there are no cogent reasons given that militate against such action.

Section 89 of the Act deals with the transfer of assets and liabilities in the case of the disestablishment of a CMA. In the disestablishment of the Mhlatuze-Usuthu CMA, however, because the organisation has never been functional, there are no assets or liabilities to be dealt with, and so there are no actions required under this section.

5.2.2 Amendment of the boundaries of the water management area

The amendment of the boundaries of the water management area must be done through an amendment to the National Water Resources Strategy (NWRS). In order to expedite this, it is possible to publish this section of the NWRS separately from the main body of the NWRS. This will enable publication for comment earlier than the main body of the NWRS, the taking into account of comments received, and the final publication of the new water management areas and boundaries within a period of 4 to 5 months. The rest of the NWRS revision is expected to take longer than this.

5.2.3 Amending of the water management area and name of the Inkomati CMA

Once the water management areas have been reproclaimed through the NWRS according to the new division into 9 WMAs, the Minister must amend the water management area and name of the Inkomati CMA to align with the new Inkomati-Usuthu WMA as per section 78 (4) of the NWA.

If the Minister is satisfied that the amendments will not affect the rights of person, this can be done without following the requirements for publication and comment specified in subsection (3). It is argued that the process will, indeed, not affect the rights of any person, and therefore the publication for comment is not needed, particularly since the amendments to the water management areas will have received comment through the stipulated procedures to amend the NWRS. As a result, it is recommended that the Minister simply publish in the Government Gazette the amendments to the water management area and name of the CMA.

6 Functions of CMA

6.1 Introduction

As briefly discussed above, the Inkomati and Mhlatuze-Usuthu CMAs were established as separate corporate entities with powers of juristic persons and full capacity (s 79(1)). However, the Inkomati CMA is fully functional with a governing board, staff and offices, and delegated functions, while the Mhlatuze-Usuthu CMA has only achieved a legal establishment status. The intention of this Business Case is to support the establishment of a single CMA for the combined territory of the two existing CMAs. This means that the scope of functions performed by the functional CMA will be expanded in terms of geography and the type of water resource management challenges to be addressed.

The functions that the Inkomati-Usuthu CMA will perform are informed by the National Water Act, as described below.

The functions to be performed by a CMA fall into three categories:

- Initial functions as described under the National Water Act (S80),
- Inherent functions conferred on a CMA under the National Water Act, and
- Other functions that may be delegated or assigned to the CMA by the Minister.

In addition to these functions, there are a number of functions not specified in the Act which are required for the CMA to achieve its objectives, such as human resource management, which do not require delegation, but are functions that must be performed by any organisation.

Some functions, such as water resources planning and monitoring, will be split between DWA and the CMAs, and clarity will be needed on which elements will be performed by DWA and which by CMAs to prevent gaps and overlaps.

This section describes briefly the powers and functions of a CMA when it has achieved full functionality. It also sets out those functions that will remain with DWA. Annexure A contains a detailed table that sets out the three categories of functions per section of the National Water Act, and which describes, where a function will be performed by both DWA and the CMA, how this function is to be split between the two organisations. For example, authorisation of water use for strategic water use will remain with DWA, while other water use authorisation functions will be delegated or assigned to CMAs.

6.2 Delegation vs assignment

The NWA enables the Minister either to delegate or to assign functions to a CMA. It is important to understand clearly the differences between these two actions.

Delegation refers to the transfer of powers to another functionary or body to enable that body to exercise those powers. Delegation is 'a revocable act by which an organ of state transfers a power or function, vested in it by legislation, to another organ of state.'¹⁰ Section 238 of the Constitution provides that an organ of state may delegate a power or function to any other executive organ of state. The important element of delegation is that a delegated function can be withdrawn by the delegatee, and the delegatee retains the right to exercise the delegated function as well. Thus it is not a permanent transfer of the power or function.

Assignment of a power or function, on the other hand, constitutes the **permanent** transfer of that power or function to another body or person.

In this regard, DWA must carefully consider what functions are to be assigned and what functions are to be delegated to a CMA. It is recommended that, until the institutional arrangements have matured and been tested, functions and powers should only be delegated to the CMAs and not be assigned. Assignment of powers and functions may be considered once the full responsible authority functions have been delegated to and performed by the CMA.

¹⁰Joanna Amy Eastwood 'Managing the relationship between the national government and the provinces. A discussion of provincial environmental initiatives with reference to section 24 of NEMA' (unpublished LLM dissertation) at 21.

6.3 Delegation of functions

There are some functions on which the Minister has discretion with regard to delegation, and there are certain functions which the Act prohibits the Minister from delegating. For example, the Minister may not delegate the power to make regulations, authorise a water management institution (WMI) to expropriate land, appoint a member of the Water Tribunal or the governing board of a CMA.

The policy position underpinning this functional analysis is that CMAs will, in due course, perform most of water resources management functions, and that DWA will only retain those strategic and national level functions. Thus, in determining whether a function should be delegated to a CMA, the following issues should be considered:

- The spatial scale at which the function must be performed, in particular national or regional multi-WMA functions should not be delegated, while WMA or local functions should be.
- The significance of the potential impact of the function;
- The capacity to perform the function, which would include a plan to build that capacity for the delegation, rather than the need to demonstrate existing capacity; and
- The principle that a WMI cannot regulate or audit itself.

Based on these principles, and the identification of those functions that a CMA would not perform, the water resources management functions may be delegated and performed by a fully functional CMA are outlined below (and summarised in Table 1).

Develop Policy & Strategy

The formulation of policy and legislation will remain a DWA function, to which a CMA would provide input. At the strategy level, a CMA is responsible for the development of a catchment management strategy, as well as financial and business planning for the organisation.

DWA will continue to:

- Develop legislation, methodology and guidelines to enable WRM.
- Develop the national water resources strategy, the pricing strategy and the institutional roles and responsibilities.
- Determine the water resources class, as well as the Reserve and RQOs in resources of national significance¹¹.

In some cases, DWAF may delegate the determination of the Reserve and resource quality objectives (RQOs) to the CMA for those resources that are not considered to be of national significance.

¹¹ This concept has not been defined, and must be defined in order to be able to distinguish between what will be done by DWA and what by the CMA

Regulate Water Use

A fully functional CMA will perform most of the responsible authority functions in relation to authorising and enforcing water use, and setting and collecting water use charges. However, DWA will retain authorisation and allocation of water for strategic purposes, inter-WMA transfers and where the CMA is the proposed water user.

Water use registration, validation and verification will be done by the CMA. DWA will, however, maintain the national WARMS database and CMAs will have to provide the information to DWA for this.

Establish, Support and Regulate Institutions

DWA will remain responsible for the establishment, support and regulation of CMAs, Water User Associations that manage government waterworks or have government guaranteed loans, and any national level bodies such as the TCTA and WRC. DWA will also be responsible for inter-WMA coordination and conflict resolution.

A CMA may establish, regulate and support water management institutions that have been specified in its catchment management strategy, such as water user associations, as long as these do not manage government water schemes or have government guaranteed loans. The CMA is obliged to coordinate water related activities of institutions and ensure community participation in WRM within the WMA.

Monitoring and planning

DWA will remain responsible for the development of the national information monitoring system, and for monitoring of water resources at those points defined as part of a national monitoring system. This is necessary to maintain national level monitoring and assessment of the state of water resources. The actual monitoring may be outsourced or delegated to a CMA.

Each CMA will be responsible for any additional monitoring of water resources that is necessary for the implementation of the catchment management strategy in their water management area and for assessment and evaluation based on this monitoring.

DWA will remain responsible for national water resources planning, including the determination of allocable water per water management area. The CMA will plan for the allocation and management of water within the allocable water determined by DWA. The CMA may prepare reconciliation scenarios for its area of jurisdiction, but will need to coordinate this carefully with DWA to avoid duplication.

The CMA will be responsible for the water resource rehabilitation, emergency interventions and disaster management. The CMA will be responsible for issuing flood warnings within the WMA, with DWA issuing flood warnings with inter-WMA impacts or implications. Drought rules will be determined and implemented by the CMA.

Infrastructure

The funding, development, refurbishment, operation and maintenance of national water resources infrastructure will remain a function of DWA and the TCTA. The CMA will be empowered to develop infrastructure in the service of its core functions, such as monitoring infrastructure.

DWA will remain responsible for dam safety regulation across the country.

6.4 Phased transfer of functions

The transfer of functions to a CMA will be done in a series of phases. While the actual transfers can be adjusted to meet the specific requirements of a particular CMA, an outline of the generic phases of transfers of functions is given below as a guideline to support effective development and functioning of the CMAs.

The phases of transfer of functions should be discussed with the CMA Board as soon as they have been appointed, so that they can plan for the appropriate development of capacity to support the transfer of functions.

It is recommended that a plan for the transfer of functions, staff and budget over a period of 3 – 5 years be agreed to between the Board and DWA within 6 months of the establishment of the CMA so that both sides are clear on what is to be transferred and when, and so that appropriate arrangements can be made by both sides to support the effective, efficient and smooth transfer of functions, staff and budget.

When established, CMAs are expected to carry out their *initial and inherent functions* (as specified in Section 80 of the NWA). Apart from these functions, all other functions must be delegated or assigned to the CMA. As discussed above, the Minister may delegate or assign a wide range of additional powers and duties to a CMA, including those of a responsible authority (Chapter 4) and any of those in Schedule 3 of the NWA. This section sets out a generic phasing of the transfer of functions that should be used as a guideline in the development of a plan for the transfer of functions for each CMA.

Three phases of the development of a CMA and the associated transfer of functions are envisaged, as described below.

6.4.1 Phase 1: Developing relationships and legitimacy

The first two years of the CMA's existence are seen as being focused on developing administrative systems, developing a catchment management strategy, building relationships and building its profile amongst stakeholders in the WMA.

During this period the CMA will be engaged in implementing its initial functions, such as development of the catchment management strategy and engagement with stakeholders,, and the delegation of functions will be minimal.

Within the first two years, the following additional functions may be delegated to the CMA:

- Involvement in water use registration and verification of water use

- Advising and supporting licence applicants on the licensing process and requirements
- Advising DWA on water use authorisations and licenses
- Checking of water use against licence conditions and informing DWA of the results where compliance enforcement is required.
- Validation of information submitted for registration.

As an inherent function, CMAs should, during this phase, be responsible for determining their water user charges for abstraction uses, based on information provided by DWA in relation to registered water use and allocable water quantity.

The CMA should also be responsible, during this phase, for verifying account information generated by DWA before the distribution of bills, and the managing of customer queries and customer care.

6.4.2 Phase 2: Build capacity and consolidate

The second phase will start after the CMS has been developed and will see an increase in capacity within the CMA and the undertaking of WRM functions as they have been prioritised in the CMS. Functions to be performed and delegated are outlined below:

(i) Resource Directed Measures

The NWA prescribes in chapter 3 that for all significant water resources, the class, reserve and resource quality objectives have to be determined as soon as reasonably practicable. S14 requires that all water management institutions give effect to these while executing their functions. During this second phase, the CMA should be in a position to determine these factors for water resources within the WMA that are not considered to be of national significance, and the relevant powers must be delegated to the CMA. All reserve determinations that are inter-WMA or have strategic importance will be undertaken by DWA.

(ii) Water Resources Monitoring¹²

Water resources monitoring includes both water quality and quantity monitoring of surface and ground water. The monitoring required for the national information monitoring system must be kept under the control of DWA. However, the CMA will be delegated the power to monitor water resources as necessary for the implementation of the CMS and the management of water at the WMA level. Since this monitoring will have to feed into the national systems, the CMA must comply with monitoring standards and protocols determined by DWA.

In the delegation of this function, DWA must set conditions for the provision of information and data to DWA and the necessary protocols and standards for such.

(iii) Disaster Management

¹² Refer to Appendix 1 for additional information

During this phase 2, the CMA will be delegated the authority to assess and manage droughts, floods and water quality disasters in the WMA. The CMA should have developed a disaster management plan (DMP) as part of the CMS, which it should now implement.

(iv) Water Conservation and Demand Management

The implementation of WC/WDM is the encouragement of water users to conserve water, thus lowering the overall demand for water. During this phase, the CMA should be involved in assisting to implement WC/WDM strategies. This does not, however, require the delegation of specific powers or functions.

(v) Operating of Waterworks

Under specific circumstances CMAs may be required to either develop or operate waterworks. During this phase this function may be delegated if necessary. If not, this function should be delegated during phase 3.

(vi) Issuing of general authorisations and limited authorisation functions

During this phase the issuing of general authorisations can be delegated to the CMA, as well as authorisation of water use with limited impacts, along the lines of the powers currently delegated to regional offices.

(vii) Institutional Oversight

The CMA will, from establishment, be responsible for institutional oversight within the WMA, which includes co-ordinating with institutions, establishing stakeholder forums and providing support to other water management and water services institutions.

During this phase, the CMA should be delegated the power to establish Water User Associations (WUAs) that do not manage government waterworks and do not have government guaranteed loans.

6.4.3 Phase 3: Fully functional and responsible authority

During the third phase the following powers and functions will be delegated to the CMA:

(i) Water Use Authorisation and Licensing

Water use authorisation and licensing are continued from phase 1, at which stage the CMA would have been involved with processing applications and advising DWA on issues related to license applications, and phase 2 where general authorisations and limited licensing powers were delegated to the CMA.

During the final phase, the CMA will be delegated the power to authorise water use and issue licenses. These functions will be delegated to the CMA for non-strategic water use as authorizing strategic water uses will remain a function of DWA.

(ii) Compulsory Licensing

In areas with water stress (demand exceeds availability) or inequitable access to water resources, compulsory licensing is undertaken to assess the volume and quality of water available and allocating that available resource in an equitable and sustainable way. In phase 3, the CMA will be delegated the power to undertake compulsory licensing.

(iii) Issuing of Directives¹³

As the responsible authority, the CMA should be delegated the power to issue directives (over and above the inherent powers in this regard conferred by the NWA). The directives could include, but will not be limited to:

- Requesting alterations to waterworks
- Determining operating rules for systems
- Controlling, limiting, and prohibiting water use.

6.5 Considerations for the delegation process

Both the Governing Board of a CMA and the Minister will have its own view of what functions should be delegated to the CMA at what point in time, and these outline offered above should be seen as a guideline only, not a proscriptive list.

The rate and order of the powers and functions to be delegated may be influenced by:

- Water resources management priorities of the CMA as outlined in the CMS
- Functions in the WMA that are not performed adequately by the regional office
- The ability of DWA to reconfigure current information systems in order to accommodate the WMA geographical demarcation
- WRM initiatives of other institutions
- Whether the CMA has adequate capacity and resources to perform the proposed functions, or has a clear plan to address possible capacity limitations
- Whether the regional office staff are available for secondment and/or transfer as a critical mass with the functions, and the implications for the remaining functions performed by DWA
- The status of support functions such as finance and corporate services within the CMA.
- The division of functions under the National Water Act into initial functions of a CMA, inherent functions implicit in the NWA, functions to be delegated to CMAs, and functions to remain the responsibility of DWA and/or the Minister are captured in detail in Annexure A.

Outsourcing or development a technical support pool

It is not necessary for the CMA to perform all of its functions in-house. Certain functions could be out-sourced to other water management institutions, consulting firms or technical contractors. The possibility also exists, in due course, for a number of CMAs to develop a

¹³ Refer to Annexure A for additional information

shared technical pool which can bring together scarce technical resources to serve more than one CMAs.

However, it must be noted that In this case, the CMA does not relinquish any powers or duties but simply hires in skills and resources as may be required from time to time.

6.5.1 Current powers and functions of the Inkomati CMA

Currently, the Inkomati CMA has its initial functions, the functions inherent under the Act, and further powers functions delegated by the Minister. The functions delegated by the Minister are captured in Annexure B, but are currently under revision. These powers relate to general management of water resources in the water management area contemplated in terms of Schedule 3 items 2(a-e), 3(1and 6), 4(1 and 2), 5(1, 2 and 4), 6(1, 2, 3, 4 and 5). These powers were delegated to the Inkomati CMA in terms of Chapter 2 and sections 72 and 73 of the NWA and are summarised below as:

- the power to manage, monitor, conserve and protect water resources and to implement catchment management strategies
- the power to make rules to regulate water use
- the power to require establishment of management systems
- the power to require alterations to waterworks
- the power to temporarily control, limit or prohibit use of water during periods of water shortage.

However, these delegations are dependent on various conditions, one of which is access to the Water Authorisation Registration Management System (WARMS system) which is, unfortunately, not yet accessible to the CMA.

The Inkomati CMA has made significant progress with regard to functional establishment and hence implementation of some of the initial functions. However, no progress has been made in this regard in the Mhlatuze-Usuthu CMA which remains a 'shelf' company. In this area work will need to start from the beginning including ensuring mobilisation of stakeholders, promoting the CMA and building legitimacy.

6.6 Implications for DWA structure and functions

Once all CMAs have been established as responsible authorities, the functions to be performed by DWA will be significantly reduced, with implications for the structure and budget of DWA as well. It is envisaged that the water resources management staff in the regional offices will be very small, with a limited number of functions. There will also be an impact on the staff in the national office, with some or part of the functions currently performed in the national office being taken over by CMAs as well.

The functions that will be retained by DWA in the long term are:

- Development, revision and amendment of policy and legislation

- National water resources planning and reconciliation of supply and demand, ensuring that CMAs operate within such planning parameters, and ensuring that South Africa operates with an appropriate level of water security at the national level;
- Development, operation and maintenance of national monitoring and information systems
- Authorisation of strategic water use, national infrastructure development and operation, and determination of inter-basin transfers
- Regulation and oversight of CMAs, and WUAs managing government waterworks or with government guaranteed loans
- Determination of classification, reserves and resource quality objectives for water resources of national significance or with significant inter-water management area implications and ensuring that CMAs implement such requirements
- Developing and ensuring the implementation of the National Water Resource Strategy, including the raw water pricing strategy
- Determination of monitoring and information protocols and standards
- Flood monitoring and management in national systems
- Development, operation and maintenance of national water resources infrastructure
- Determination of guidelines and regulations for establishment of institutions
- Ensuring water use authorisations are in line with national policy, procedures and guidelines, including policies on redress and equity
- Providing technical support to CMAs
- Negotiating and overseeing agreements in transboundary basins.

7 Organisational arrangements

7.1 Proposed functional structure of the Inkomati CMA

In the Inkomati CMA a significant amount of work has been done with regard to functional establishment and implementation of its initial functions. The Mhlatuze-Usuthu CMA, on the other hand, is essentially a non-functional 'shelf'-CMA. The disestablishment of the latter and the integration of its area of jurisdiction into the Inkomati-Usuthu CMA means that the operational scope of the current Inkomati CMA will expand, which may have implications for how the various functions are structured and carried out. Integration also means that the implementation of the initial functions will have take place in the Usuthu sub-area to mobilise stakeholders, promote the CMA and built legitimacy.

The Inkomati-Usuthu CMA functional structure must, in addition to providing for implementation of the initial functions, provide a systematic response to the water resource management challenges listed above. A possible high level functional organisation of the Inkomati-Usuthu CMA consists of functional areas captured in the diagram below and briefly described in the subsequent sections.

Figure 3: High level proposed Inkomati-Usuthu CMA functional structure

The water resource management functional area is responsible for coordinating and managing all water resource related functions including water resource planning, water use management and related responsibilities such as water resource protection and regulation, and water allocation reform.

A summary list of activities per sub-function are presented below.

- Water Resource Planning is responsible for planning the development, allocation and utilisation of water resources (including water quality aspects) to meet resource quality objectives (RQO), and to reconcile supply and demand, including the operation of water resources infrastructure. This division will be responsible for performing the following functions:
 - Conducting and commissioning water resources studies and investigations on water resources, advising DWA and interested parties on the matter and providing support to integrated water resources planning through:
 - Developing a catchment management strategy (CMS) in accordance with the national water resources strategy. This function includes:

- Conducting, commissioning and participating in investigations and studies to gather information to support management decisions for strategy development
 - Developing management strategies, including WRM/ reconciliation, allocation and water quality management plans
 - Investigating and providing advice to DWA on WMA planning to inform the NWRS and other national processes
 - Advising users/institutions on implications of CMS/ NWRS for water resource development
- Investigating and providing advice on disaster management to DWA and other institutions on the management of floods, droughts and pollution incidents, putting in place early warning systems and supporting municipalities in preventing development within floodplains;
- *Water Use Management and Regulation*: The water use management and regulation programme includes activities such as licensing, registration of water users, pollution control and ensuring water use compliance and enforcement for the 11 prescribed water uses. The BOCMA has highlighted the urgency of fast-tracking the registration and licensing process and ensuring the backlog is addressed, which will be achieved by engaging DWA and water users on the existing backlog, validating identified water users and improving turnaround times. The water quality management priority includes the registration of waste discharge and developing measures for effective resource protection and compliance.

While the CMA will initially focus on making recommendations to DWA regarding water use authorisations, promoting and implementing demand management interventions and issuing directives and restrictions on water use during emergencies, ultimately it will take over the licensing function, including compulsory licencing.

- *Resource Protection* includes determining reserves and resource quality objectives, managing the river health programme, and protecting the state of water resources.

7.1.2 Institutional and Stakeholder Coordination

The institutional and stakeholder coordination functional area will focus on

- establishing and fostering credibility within the water management area
- establishing, overseeing and providing support to water user associations, (except those that manage government waterworks or have government guaranteed loans)
- ensuring co-ordination between water management institutions and relevant government departments and organs of state in the water management area, and
- establishing and maintaining stakeholder consultation fora and mechanisms, with a particular focus on ensuring the participation of poor and marginalised communities.

Due to the different contexts of the two water management areas under the jurisdiction of the Breede-Gouritz CMA, it may be necessary to split this unit in two, with one focusing on Breede and the other on the Gouritz.

In the Gouritz WMA, the initial focus should be on coordination and mobilisation of stakeholders, including focusing on building legitimacy and strategic relationships with key partner institutions, and establish and supporting consultative bodies such as forums.

7.1.3 Information Management

Data and information acquisition, management and sharing/dissemination is a key to fulfilling the role of the Breede-Gouritz CMA. The information management functional area will focus on providing comprehensive and consistent information at all levels, set-up effective information systems, including establishing strategic interfaces with DWA information systems where necessary to improve access to information by stakeholders. The key aspects of this function are set out below:

- *Monitoring systems:* the CMA must put in place the necessary monitoring of water use and resource status that they need to perform their functions, over and above the national monitoring conducted by DWA;
- *Data and information systems:* the CMA must put in place the necessary databases and information systems to capture the relevant data to be provided by DWA from the national information system and from their own monitoring systems. These must cover water use (registration and authorisation), and resource status (water quality and quantity). These systems must interface effectively with the DWA systems and with other related CMA systems. DWA will need to put in place appropriate protocols to ensure that this is possible.
- *Information assessment:* The CMA must be in a position to analyse the information to provide trends and evaluation assessment to the planning and management sections so that they are able to respond appropriately to ensuring effective use and management of water resources.

The information manager must be an integrator, facilitating the integration of water resource information to corporate and strategic information systems, in particular keeping up to date information on registrations and water use to support revenue collection and strategic planning process at WMA and National level.

7.1.4 Corporate Services, Finance and Support

The corporate service, finance and support functional area will be responsible for collection and administration of water resource management charges, corporate financial management, corporate strategic planning, human resource management, and general administration of the organisation. Some of its key areas of focus include:

- *Billing, revenue collection and management:* focusing primarily on the billing and collection of water resource management charges, and the administration of all

activities related to revenue collection, including issuing of invoices and managing debt associated with non-payment, including managing transfer of revenue collection from DWA.

- *Finance*: to ensure general financial sustainability and viability of the CMA through effective financial planning and budgeting and management of accounts for the CMA, including ensuring that financial controls and reporting systems are in place.
- *Administration*: to manage and ensure effective office administration and general logistic / office support is in place, including effective records management
- *Human resource management*: The human resource development and performance management will be oriented towards the broader human capital management and to ensure employee well-being through processes such as:
 - Development and implementation of human resource systems and policies
 - Recruitment and retention of staff
 - Managing staff performance
 - Managing the internal Breede-Gouritz CMA change management and transformation process
 - Employee assistance programmes
 - Managing employee occupational safety
 - Awareness and capacity building programmes
 - Coordinated training and skills development interventions

8 Organisational requirements

Given the functional analysis and description of key areas of focus discussed above, the proposed organisational structure is discussed below. The Inkomati-Usuthu CMA will require four executive management positions consisting of Executive Managers for Water Resource Strategy and Planning, Water Use Management and Institutional and Stakeholder Coordination, and Corporate Support and Finance lead by the CEO. The company secretary located in the office of the CEO will perform legal management and administration of the business of the Inkomati-Usuthu CMA. The CEO reports directly to the Board and will also provide support to the CEO and executive management. Below a proposed organisational structure is discussed, together with high level description of posts senior managers, and a description of responsibilities to be performed by the CEO of the CMA. In addition this chapter considers remuneration, performance management, conditions of employment, human resource management systems and policies.

Figure 4: Possible high level organisational design

The diagram above represents a high-level organisational design indicating the relationship between the Board, the CEO, senior managers and operational personnel responsible for the functional areas. Further unpacking of the organisational structures and detailed descriptions of posts in each functional area will form part of the business planning process to be spearheaded by the CEO as part of the establishment process.

8.1 Staffing requirements

8.1.1 Office of the CEO

Implementation of the strategy and business plan of the Inkomati-Usuthu CMA will be driven by an executive management team lead by the CEO. The executive management team will consist of the CEO, Company Secretary, and all Executive Managers. The Office of the CEO is the strategy hub – providing strategic guidance, and shaping the direction of the Inkomati CMA. Strategic branding and marketing for the CMA will take place in this office with a staff compliment of four (3), including the CEO. The Company Secretary will play a

dual role. The first role is that of providing strategic legal support to the Board. The second role is providing support to the executive management team of the CMA and managing the legal affairs of the CMA. Whilst the Company Secretary reports directly to the Board, he/she will operate at the same grade/ post level as executive managers that report directly to the CEO.

8.1.2 Water Resources Planning and Programmes

The Executive Manager Strategy and Planning will lead the water resources planning and programmes division of the CMA, managed by a qualified engineer with at least 10 years' experience. Technical specialists in GIS and WMS, and Integrated Water Resource Planning will manage each sub-division of the component. It is envisaged that the Water Resources Strategy and Planning sub-division will rely on strategic relationships with other public and private institutions to implement its mandate. In total the division will have a compliment of 5 staff members.

8.1.3 Water Use Management

This is a highly technical division of the CMA with an initial staff complement of 13 including the executive manager and two senior managers responsible for resource protection and water utilisation. Since most of the functions and posts of this division are the responsibility of the Proto-CMA, DWA needs to assist the CMA and Regional Office with transfer of functions and related staff. This division will be lead by an engineer with significant experience relating to water utilisation by various water users, and must understand the role of water in socio-economic development and poverty alleviation in the WMA. A technical team with industrial water use, legal /enforcement and environmental acumen will provide operational support to the executive manager.

8.1.4 Institutional and Stakeholder Coordination

This division is critical for developing trust, building legitimacy and publicising the institution as a champion for water resource management in the WMA. The function must therefore be lead by a water sector institutional coordinator with extensive knowledge of the water sector and related institutional arrangements and their impact on water resource management in the WMA. The institutional specialist will be supported by an operational team of 6 coordinators managing localised stakeholder engagement and mobilisation activities.

8.1.5 Corporate Support and Finance

The Corporate Services component is a support function of the Inkomati CMA. Its management and staff complement is lead by an executive manager who is a Chief Financial Officer. The senior management team of the unit will consist of a revenue manager and a accounts manager supported by debtor clerk and accounts clerk respectively. The revenue

manager and accounts manager will report directly to the CFO with the revenue manager responsible for the function of administering the collection and management of activities related to the water use charges. While the accounts managers focus will be on managing and administering the general finances of the CMA. Organisational development, staffing and general human capital management will be the responsibility of the human resource Practitioner. These management posts will operate at a similar grade level, with possible variations depending on the number of positions directly reporting to each post.

8.2 Human resource considerations

Although the CMA has been functional for the past 5 years, its focus has been on implementing the five initial functions stipulated in Section 80 of the NWA. This means that some powers and functions earmarked for assignment to the CMA remained in DWA Regional Offices (Proto-CMA). In some cases implementation of inherent functions has been hampered by lack of associated powers. This has often led to stakeholder apathy and reluctance to continue participating in CMA activities. Clearly a gradual process of transferring remaining powers and functions should be initiated. Such a process will however, directly impact on staff currently employed by the Proto-CMA performing water resource related functions. This section discusses some of the key considerations that relate to staff transfer, including remuneration, performance management, systems and policies necessary for effective human capital management.

8.2.1 Transfer of staff

Section 197 of the Labour Relations Act (LRA) allows for staff to be transferred as part of “a going concern” to another organisation provided that the conditions of service are “substantively the same”. As a result, we propose to consult with affected staff and ensure that the conditions of employment are at least as good as that which they enjoyed as DWAF employees. Where appropriate, staff could be seconded to the CMA within parameters as envisaged in the Labour Relations Act 66 of 1995 (as amended) (LRA). Seconded staff will then be transferred from the Regional Office to the CMA in line with the requirements of Section 197 as mentioned above. Consultation with affected parties is critical and it must be ensured, and where possible written agreements may be put in place, and salaries and conditions of employment need not be less than those applicable currently.

8.2.2 Grading and remuneration

The topic on remuneration of staff is a vexed one as it affects the organisation’s capacity to attract and build its internal capacity, and staff motivation. Clearly, the Inkomati-Usuthu CMA will be a technical institution, with a requirement to enable government meet its national obligations while also building a reputable international presence through acceptable IWRM practices. This means that it will depend largely on the availability of high level technical and coordination skills to perform its functions effectively. Such technical skills are required for both strategic and operational management. With these issues in

mind, we propose two remuneration models, one for the Board and another for staff of the CMA. Each of these systems has a sound basis and is defensible.

8.2.2.1 Board remuneration

Where a board consists of members from the public and private sectors the following principles may be applied:

Public Sector Board Members: As these individuals will be employed and paid through public sector funds, the principle is that they do not earn fees for sitting on the Board. In essence, they should spend part of their working day on the Board in an official capacity and, as a result, should not accrue additional fees. Obviously, expenses would need to be reimbursed at cost. In addition, the risks incurred in terms of fiduciary accountability would not necessarily reflect directly on the individual in his/her personal capacity. Should a breach occur, it is unlikely that the Public Sector Board Members would face direct repercussions from their host Department. The proviso would naturally be that the individual would need to act in good faith in terms of the mandate given by their employer. The net effect is that the risk for the individual is minimised directly by the nature of their employment.

Private Sector Board Members: In contrast, those individuals serving in a personal professional capacity on the Board would do so in their own time. As a result, there is a good case for remunerating them for their contribution. In addition, as full members of the Board, their risk exposure is greater than their public sector counterparts are. The rationale is that breaches in governance would have a direct effect on the future employment prospects of such individuals or their credibility to serve on other boards of directors.

For both their time as well as reward for exposure to risk we propose to remunerate these individuals on the basis of a grading system as stipulated by National Treasury.

8.2.2.2 Remunerating of staff

The CMA is already in operation; therefore it makes sense to continue implementing the current grading and remuneration system with proviso that it has clear links to external benchmarks and salary surveys, particularly DPSA salary scales. Effective implementation of any remuneration system requires a clear definition of job descriptions in preparation for benchmarking and grading.

8.2.2.3 Performance management

Performance management is a two way process integrating both the organisation and the individual. This is based on the understanding that the success of both the individual and the organisation are interdependent. However, it is not the scope of this document to suggest a specific approach to performance management by the CMA. That responsibility is vested in the board.

8.2.2.4 Organisational systems and policies

It is our understanding that the Inkomati CMA, by virtue of its functionality, already has systems and procedures in place to support various functions and activities. However, from a water resource management point of view, information management systems are critical. Since the CMA will be required to collect and manage revenue to ensure its sustainability, a standardised revenue management system is desirable. This should be coupled with water resource management systems to capture and management of data. Key among these are:

- Geographical Information Systems
- Hydrological Information Systems
- A standardised billing system
- WARMS
- Waste Discharge Charge System
- General administrative systems for finance and HR

8.2.2.5 Organisational policies

It is important to ensure marketability and stability from the early stage of CMA establishment. From a human capital management perspective organisational policies are critical. A table of contents for a typical set of policies would include sections on:

- Employment practices
- Performance management
- Salary administration
- Leave
- Employee benefits
- Labour relations
- Discipline and rules
- Training and development

It is our understanding that best practice policies currently utilised within the CMA may continue to be used.

9 Financial Arrangements

The viability of any institution is made up of a number of aspects that go beyond the purely financial. Whilst very important, some of these aspects can be addressed and developed over time, whereas financial viability has a very direct impact from early on in the institutional development process and remains a key factor in the longer term. It is equally important to note that these financial aspects are not static and shift over time, and this is particularly the case in the establishment and development of new institutions or where there are functional, and financial, transitions from a certain management regime to another.

The CMA's financial arrangements need to support the performance of water resource management functions in the Inkomati-Usuthu WMA, and should provide for an increasing level of responsibility over time, whilst the DWAs role also fundamentally shifts over time.

9.1 Source of Finance

Principally, the establishment costs of the Inkomati-Usuthu CMA are to be funded by the department, from its parliamentary appropriation. Water use charges are to be ring-fenced for implementation of water resources management in the catchment, not for the establishment of new institutional arrangements.

While the intention is that the CMA should be funded from water use charges, some operational funding from the DWA may be required where subsidy arrangements exist.

Section 84 of the National Water Act (NWA) gives the CMA full authority to raise funds for the purpose of exercising its powers and duties. The Act details the sources of funding for the CMA as:

- Parliamentary appropriation
- Water use charges
- Money obtained from any other lawful source, including:
 - i. recreational concessions,
 - ii. license application fees,
 - iii. donor support and sponsorship,
 - iv. contractual payments,
 - v. return on Investment, and
 - vi. in-kind contributions.

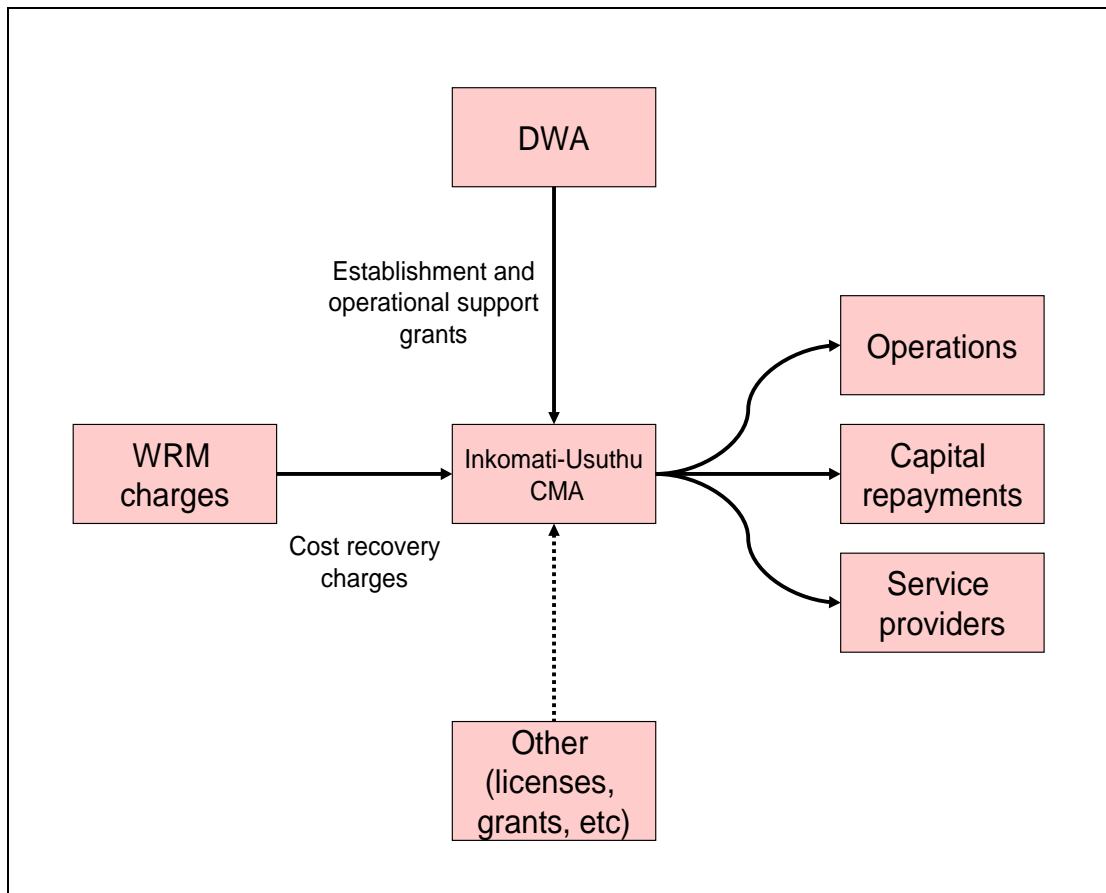


Figure 5: Financial Arrangements for the Inkomati-Usuthu CMA

9.1.1 Water Use Charges and the Pricing Strategy

The primary source of finance for the CMA will come from water users. Water uses as defined in the NWA can be broadly grouped under three categories:

- Abstraction related uses¹⁴
- Waste discharge related uses¹⁵
- Non-consumptive uses¹⁶

Over time, the Pricing Strategy, established under the NWA, will allow DWA/CMA to levy charges for most of the water uses defined above, after consultations with stakeholders. Charges are already in place for abstraction related uses and are currently collected by the DWA. The Waste Discharge Charge Strategy, on the other hand, will be piloted in three catchments around the country over the next two years. While assumptions can be made about the implication of implementing the waste discharge charges strategy, the pilot testing will reveal the real implications of the system. Lastly, a strategy has been developed

14 Section 21 (a), (b) and (d) of the NWA (1998)

15 Section 21 (e), (f), (g) and (h) of the NWA (1998)

16 Section 21 (c), (e), (i), (j) and (k) of the NWA (1998)

for charging for recreational use, as a non-consumptive water use, however, there is some institutional clarity required as to roles and responsibilities in this regard. These will be clarified by the DWAs Institutional Reform and Realignment process.

To be clear there are also a number of water uses that are not subject to pricing under the Pricing Strategy. These include:

- water use under Schedule 1 of the NWA,
- basic human needs (Reserve),
- ecological sustainability (Reserve), and
- international obligations.

9.1.2 Financial support

Although the objective is to have water users pay for water resources management, DWA will also need to financially support the CMA for the performance of certain functions, particularly those with national significance. There are a number of reasons that serve as motivation for this financial support, at least in the short-term:

- The Inkomati-Usuthu CMA will be performing water resource management functions that are in the national strategic interest. For example, a large inter-basin transfer between the Inkomati-Usuthu and the Olifants WMAs is of national and strategic importance, and as such there are responsibilities attached to ensuring this water remains available.
- A need exists for allocation reform and redress within the WMA, as a national and regional priority, and therefore issues of affordability and equity require careful consideration.
- Although the long-term financial viability of the CMA is not a cause for concern because the WMA is regarded as mixed agriculture, urban and industry, initial financial support may be required to ensure short-term viability until there is adequate cost recovery. Issues of ability-to-pay and willingness-to-pay are anticipated in the WMA in the short-term and for a young institution these can be challenging to deal with and hence the DWA support both financially and technically will prove critical.
- Whilst the Inkomati-Usuthu CMA is legally mandated to perform the function of billing and collecting of water use charges there are a range of institutional and systems issues that require attention. Therefore, DWA will be collecting water use charges in the interim and hence, financial support/transfers from DWA will be required.
- The Pricing Strategy introduces a cap on water use charges for agriculture (1.5c/kl) and forestry (R10/ha). Where water resource management costs are in excess of this cap, that portion of the charge in excess of the cap should be provided as a subsidy transfer from DWA

9.2 Flow of capital

Funds flow into the Inkomati-Usuthu CMA from water use charges, and from DWA establishment and operational support grants, in the first instance. As described above, other sources of finance may be identified, but these are unlikely to represent long-term sustainable sources of funding.

Funds from the WRM charge will ultimately flow into the CMA on a monthly basis, with some water users billed monthly (characteristically large users) and other users billed six-monthly (characteristically smaller users). The CMA will, in due course, collect these charges and be responsible for debt management. The efficiency of collection of charges has been a matter of concern in some parts of the country. In Mpumalanga this efficiency seems to have been particularly low, and at one point was in the order of 40%. WRM charges represent a stable source of income and cash-flow for the CMA and as an institution that is closer to water users, has a more direct relationship with stakeholders than DWA, and will be more directly dependent on revenue from water use charges than DWA, it is expected that the CMA can quickly improve upon these levels of collection.

As the establishment of the Inkomati-Usuthu CMA is an institutional shift from an already functional institution, the establishment grant from DWA will cover the first year's operating expenditure of the CMA (as the CMA will not be in a position to collect charges yet) and the "once-off" establishment costs of the CMA, within the Usuthu sub-area. These funds should be transferred into the CMA account as a lump sum early in the establishment of the institution, to enable it to continue the establishment process without encountering cash-flow constraints.

A 3 year budgetary cycle needs to be put in place for ongoing operational support grants required by the CMA to make effective planning and execution possible. This can be transferred at the beginning of each financial year as a lump sum deposit, after the necessary adjustments for incorrect assumptions about key determinants of the budget e.g. inflation. A lump sum transfer is justified, as the funds are relatively small and interest accruing over the financial cycle will be limited. Significantly, lump-sum transfers enable the CMA to conduct its operations and undertake its functions without encountering cash-flow constraints.

During the initial institutional establishment period capacity may well be stretched and the use of service providers will be required to assist with key operational matters, particularly within the Usuthu sub-area. Payments from the Inkomati-Usuthu CMA will be based on contracts between it and the service providers.

9.3 Financial systems arrangements

Importantly, differing financial arrangements will exist during the evolution of the CMA, which have an important bearing on their financial responsibility and CMA viability. It is anticipated that the billing and collection of WRM charges for CMAs will initially be undertaken centrally, but that once a CMA has been established and is demonstrating sound

governance and revenue management, a process of decentralisation would begin (probably resulting in the development of a separate billing and financial management system by the CMA). This process is discussed here in more detail:

- While DWA is still performing CMA functions in parts of the WMA that are not yet managed by the Inkomati-Usuthu CMA (mainly the Usuthu sub-area), the DWA regional office (and importantly a different Regional Office to that of Inkomati) will collect revenue and allocate funds within DWA (from the Trading Account). The existing system and business process for billing and collection of water use charges, with a consolidated invoice and centralised management of the system, is appropriate. All risk is borne by DWA and this is supportive of a fledgling institution.
- Following establishment of the Inkomati-Usuthu CMA and the secondment of staff, the early CMA will be focused on stakeholder buy-in and becoming a credible, customer-oriented organization within the Usuthu sub-area as well as continuing to work towards the implementation of the Catchment Management Strategy within the Inkomati sub-area. Noting the institutional shifts, the CMA will seek to cement its credibility and legitimacy around its role in the new WMA and must be able to respond to queries on water use authorisation and associated billing soon after establishment. Concurrently, the CMA will encounter a range of establishment costs, within the Usuthu sub-area as area office premises are secured and information systems are developed. At this point, the billing and collection cycle will be split between the CMA and DWA as follows.
 - the CMA will take over the customer relations responsibility, begin to set water use charges and undertake revenue collection.
 - DWA will ensure that the CMA has access to key systems such as WARMS that assist the CMA with issues regarding registration of water use.
 - The centralised DWA billing system will be used for billing, debt management and financial accounting, with WRM charges submitted to DWA by the CMA. Transfers from the trading account would be made to the CMA account according to the arrangements agreed to in the CMA business plan. These transfers would include funds generated through WRM charges and establishment support¹⁷ from DWA. Operational support from DWA may also be required.
- During consolidation of the CMA, DWA staff will have been transferred, the financial, information and HR systems strengthened and the CMA will have assumed its fiduciary and governance responsibilities. If revenue recovery rates are adequate and revenue flow approximates the requirements of the business plan, the billing and debt management function may be decentralised to the CMA.
 - Account payments would be directly to the CMA account and relevant entries would be made by the CMA onto the billing system.

¹⁷ Including:- i) establishment infrastructure, ii) setting up financial, HR and information systems, iii) developing a first CMS and iv) extending participation. In addition, there are a number of once-off strategic interventions, including:- i) transformation, ii) classification, iii) compulsory licensing, and iv) development of functioning information systems and water use databases.

- Limited or no payments would be due to DWA for WRM functions (as these would largely have been taken up by the CMA as legally mandated), but there may be payments for WRC levy and/or Working for Water (WfW) projects if these are included in this invoice.
- Operational support from DWA may be required where a subsidy is in place for the agricultural/forestry sectors (i.e. capping of the WRM charge at 1.5c/kl escalated at CPI per annum) or where the CMA is not able to recover the costs of delivering efficient and effective WRM services through user charges, due to low affordability of charges following redress and allocation reform.
- Accordingly, risk is shared between the CMA and DWA, with the business plan as the key reference for the financial and governance audit.
- After the CMA takes up the responsible authority functions, it assumes full responsibility for cost recovery and is largely financially self-sufficient.
 - At this point, the CMA may develop its own billing, debt and/or financial management systems, with oversight and support from the DWA;
 - Risk is shifted to the CMA in its entirety, with the CMA fully accountable for fiduciary management and corporate governance. The business plan serves as the framework for audit and DWA oversight;
 - It is likely that cost recovery will be dramatically improved as the CMA is dependent on this source of revenue for its financial viability.

9.4 Financial analysis

The financial analysis has been based on a simple financial model for the CMA for the 5 years 2012/13 to 2016/17. It is based on detailed expenditure, differentiating salary, overhead, outsourcing and capital repayment costs, with recovery through a combination of water use charges and financial support. It takes account of a number of issues, including non-payment by users. As the establishment of the Inkomati-Usuthu CMA effectively develops from an already operational CMA, the five year strategic plan developed by the Inkomati CMA is an important starting point for this analysis, noting that this institution is already moving towards a higher level of functionality, with Minister having delegated a suite of powers and duties.

9.4.1 CMA Expenditure

Based on the assumption that the Inkomati-Usuthu CMA would be fully functional after 5 years¹⁸, Table 9.1 presents the possible increase in costs over the five years, based on extrapolation of the expenditure estimates contained within the Inkomati CMA's annual reports, strategic plans and business plans and all available data on the Usuthu sub-catchment.

Unlike a newly established institution where one would experience a delay between establishing the governance structures and the development of operating expenditure, the

¹⁸ year 1 - initial functions, year 3 - intermediate and year 5 - fully functional

Inkomati-Usuthu will continue to perform functions in the Inkomati sub-area whilst still establishing itself in the Usuthu. There will be a process to appoint a new Governing Board as well as a process to appoint a CEO. During this period, considerable effort will be applied in engaging stakeholders and some service provider support will be engaged.

In addition to the routine operating expenditure, the process of setting up the CMA would incur various once-off costs, to be funded by DWA. These may distinguish between those that are necessary for the CMA organisational establishment and initial WRM costs associated with functions that may also be funded through water use charges (and therefore may not require DWA support in the first few years). The proposal makes certain assumptions about this support, which are not dissimilar to the figures outlined in Table 9.1.

Organisational establishment costs include:

- appointing the governing board and initially building its capacity (additional to the cost of the Board operations and administration covered in the CMA expenditure) as well as including change management processes;
- setting up the CMA business and information management systems to enable its operation, including the first business plan and human resources strategies;
- setting up the CMA in terms of appointing or transferring its initial staff complement and developing the first revised business plan; and
- initial capital expenditure on communications, computers and obtaining / remodelling premises.

Initial WRM costs (depending upon funding available) may include:

- extending stakeholder participation, initial empowerment/capacity building of disadvantaged communities, and awareness creation around WRM and CMA establishment (some of which would be done through the IWRM project); and
- developing the first catchment management strategy for the entire WMA (an initial function of the CMA), bearing in mind that a CMS for the Inkomati area has already been developed.

Table 9.1: Estimated CMA expenditure (in Rands)

Inflation adjusted at an annual rate of 6%		Year (Figures in Thousands of Rands)				
		2013	2014	2015	2016	2017
Operations of Inkomati-Usuthu	Board	R 3 120	R 3 489	R 3 901	R 4 363	R 4 879
	Staff	R 13 990	R 15 465	R 16 393	R 17 377	R 18 420
	Overheads	R 13 282	R 16 718	R 18 708	R 20 902	R 23 319
	Outsourcing	R 5 596	R 4 640	R 4 918	R 5 213	R 5 526
	Sub-total	R 35 988	R 40 312	R 43 921	R 47 855	R 52 144
Inkomati-Usuthu Establishment	Inductions and change management	R 500	R 106	R 225		
	Recruitment	R 200	R 530	R 56	R 0	R 0
	Setup costs	R 50				

	Initial capital items	R 175	R 66	R 70		
	Legal	R 20	R 11	R 6		R 0
	Marketing and Launch	R 250				
	Subtotal	R 1 195	R 712	R 356	R 0	R 0
Intial IWRM	Participation	R 350	R 371	R 393	R 417	R 442
	CMS		R 2 650	R 1 124		
	Subtotal	R 350	R 3 021	R 1 517	R 417	R 442
Activities	Reserve Determination	R 1 348	R 1 429	R 1 515	R 1 606	R 1 702
	Water Authorisation					R 8 550
	Control and Enforcement			R 11 816	R 12 525	R 13 276
	Disaster Management	R 958	R 1 016	R 1 077	R 1 141	R 1 210
	Water Management Programmes	R 5 171	R 5 482	R 5 811	R 6 159	R 6 529
	Institutional Development	R 3 102	R 3 288	R 3 486	R 3 695	R 3 916
	Geohydrology and Hydrology	R 18 359	R 19 461	R 20 629	R 21 866	R 23 178
	Sub-total	R 28 939	R 30 676	R 44 332	R 46 992	R 58 362
TOTAL CMA		R 66 472	R 74 722	R 90 126	R 95 265	R 110 947

9.4.2 Projected revenue

Water use charges

The registered water use for domestic-industrial, irrigation and forestry (streamflow reduction activities) totals 1 363 million m³/ annum and includes transfers out of the Inkomati-Usuthu WMA of 131 million m³/ annum. The volumes and water use charges for these sectors are shown in Table 9.2.

Table 9.2: CMA WRM water use charges (c/m³)

WMA Charges proposed for 2012/13						
	Domestic and Industrial		Irrigation		Streamflow Reduction Activities (Forestry)	
	Volume (m ³)	Charge (cents/m ³)	Volume (m ³)	Charge (cents/m ³)	Volume (m ³)	Charge (cents/m ³)
Inkomati	184 536 974	2.05	975 733 090	1.50	1 122 664	0.87
Usuthu	136 000 000	1.31	21 000 000	1.05	43 000 000	0.49

Two possible scenarios for the CMA charging are addressed to indicate the impact upon revenue, using a CPIX related increase for the water use charges:

- Full recovery of current charges (including the irrigation cap), with implementation of the WDCS
- Under-recovery of capped charges and WDCS, starting at a current assumed average recovery of 40% and reaching 80% by 2016/17.

Table 9.3 below shows the potential revenue under the current pricing strategy. The WDCS is only implemented from 2014/15 due to the piloting of this system over the next two years and accounts for R1.8 million in 2014/15 through to R2.02 million in 2016/17. There is, however, a significant difference between expenditure and revenue, and the WDCS does little to close this gap.

Table 9.3: Revenue against operational expenditure under different scenarios

Scenario	Financial Year				
	2012/13	2013/14	2014/15	2015/16	2016/17
Capped WRM and WDCS	R 12 495 900	R 13 245 654	R 15 841 344	R 16 791 825	R 17 799 334
Operational Expenditure	R 66 472 397	R 74 721 517	R 90 126 073	R 95 264 587	R 110 947 357

Noting that there have been varying levels of under-recovery, the second scenario, reflected in Table 9.4, looks at the impacts of this under collection upon revenue and support requirements. This was done using the capped charges as until such point as the pricing strategy is reviewed, DWA will continue to use these capped charges. It must be noted that in this instance the difference in the charges for capped and uncapped scenarios is not significant.

Table 9.4: Impacts of improved collection on revenue

Scenario	Financial Year				
	2012/13	2013/14	2014/15	2015/16	2016/17
Collection Rate	40%	50%	60%	70%	80%
Capped WRM and WDCS	R 4 998 360	R 6 622 827	R 9 504 807	R 11 754 277	R 14 239 468
Operational Expenditure	R 66 472 397	R 74 721 517	R 90 126 073	R 95 264 587	R 110 947 357

This under-recovery serves to widen the already significant gap between expenditure and revenue, and therefore, there is a need to consider adjusting the charges in order to provide sufficient revenue for the CMA. Table 9.5 reflects the impact of removing the cap on water use charges which reduces support needs, though it still does not cover the full cost of the Inkomati-Usuthu CMA.

Table 9.5: Impacts of improved collection on revenue and increased WRM charges

Scenario	Financial Year				
	2012/13	2013/14	2014/15	2015/16	2016/17
Collection Rate	40%	50%	60%	70%	80%
Uncapped WRM and WDCS	R 6 756 256	R 8 952 039	R 11 386 994	R 14 081 916	R 17 059 235
Operational Expenditure	R 66 472 397	R 74 721 517	R 90 126 073	R 95 264 587	R 110 947 357

9.4.3 Financial support to the CMA

In addition to the establishment and commissioning grants implied by Table 8, there will be a need for operational support to the CMA based on capping of the agriculture/ forestry charge as well as due to historic under-recovery of charges.

The table below indicates possible financial support implications of the scenarios, distinguishing between establishment and operating support, assuming a 1.5 c/m³ cap on irrigation and forestry, and PPI related increases. A number of assumptions underpin this table:

- Urban and industrial users can generally pay the charges and, therefore, no support could be considered for these users. However, this assumption would have to be tested, particularly for local authorities providing water to poor rural communities.
- Support to emerging farmers in terms of waiving a portion of their water use charges for 5 years, has not been included in the analysis owing to a lack of detailed information regarding this support.
- PPI(%) related increases have not been considered in calculating the operational support.

Table 9.6: WRM Financial Support (R000s) to Inkomati-Usuthu CMA

	Year				
	20012/13	2013/14	2014/15	2015/16	2016/17
Establishment support					
<i>CMA establishment grant¹</i>	R 1 195 000	R 712 320	R 356 181	R 0	R 0
<i>CMA initiation grant²</i>	R 35 988 000	-	-	-	-
<i>Optional CMA WRM support³</i>	R 350 000	R 3 021 000	R 1 516 860	R 416 856	R 441 867
TOTAL	R 37 533 000	R 3 733 320	R 1 873 041	R 416 856	R 441 867
Waste Discharge Charge Income				R 2 454 076	R 2 601 321
Operating support⁴					
<i>Under-recovery & WDCS recovery</i>	R 35 225 657	R 41 599 973	R 48 147 546	R 50 767 348	R 58 860 411
<i>Uncapped under recovery & WDCS</i>	R 60 832 901	R 67 249 185	R 80 621 266	R 83 510 310	R 96 707 889

¹ This is equivalent to the organisational establishment costs from Table 8.

² The first year CMA operating expenditure will have to be fully covered, as water use charges for the CMA could not be included in the tariff tables. Depending upon when the CMA is established and can develop a business plan, similar support may be required for the 2008/09 financial year.

³ This is equivalent to the initial WRM support from Table 8.

⁴ This represents the irrigation and forestry subsidy related to capping these sector charges.

From the above analysis the establishment grant, excluding the first year's operating expenditure, totals R8.010 million over a period of 5 years. The operational deficit that the CMA faces is large. It is important that a proper analysis of the cost drivers in the CMA be conducted and a review of the services rendered and the charges collected be conducted in order to determine the exact cause of the deficit and formulate a possible solution to the problem.

However, operating support will be required to cover the subsidy imposed by the cap on agriculture and forestry, subsidies provided to emerging farmers or even subsidies to urban users that are unable to pay and continue service delivery. The increases in charges required are not insignificant and will require interventions with key stakeholders. Certainly, this places the CMA at risk and places the onus on DWA to provide the necessary support. As the data for the budgets has been provided by the ICMA, through their strategic planning process, there will be a need to explore differing models with the ICMA.

Table 9.7: Capped Charges vs. Full Cost

WRM charges in cents/m ³			
	D&I	IRR	Forestry
Capped Charge	2.05	1.5	0.87
Full Cost	2.19	1.81	1.4
Increase to Full cost	0.14	0.31	0.53
% Increase	7%	21%	61%

A significant challenge facing the sustainable development of CMAs around the country is the lack of proper and thorough management of the revenue and expenditure due to a lack of data availability. DWA does not know what the real cost of operating a CMA is, does not know how much revenue should be collected and does not know how much revenue is being collected. This poses an obvious risk to the financial viability of the water management institutions. The process of establishing the nine realigned CMAs presents two key opportunities:

- Opportunity to fix the financial management processes – ring-fencing, imposed financial rigour, etc.
- Little asset transfer – perhaps some monitoring assets down the line if they are not part of the national monitoring system

10 Institutional and governance arrangements

10.1 Corporate Governance Principles

Although targeted at private sector institutions, the King II and III reports on corporate governance are increasingly recognised as important guides to the good governance of public entities. The King II report¹⁹ lists seven characteristics that constitute good corporate governance: discipline, transparency, independence, accountability, responsibility, fairness and social responsibility. Further the report refers to triple-bottom-line accounting which embraces the economic, environmental and social aspects of a corporation's activities²⁰. These are elements that are critical for good corporate governance, and are characteristics

¹⁹ King Report on Corporate Governance for South Africa. Institute of Directors in Southern Africa 2002

²⁰ King op cit p9

and elements that should, broadly, be reflected in the governance of the Inkomati-Usuthu CMA.

While corporate governance in the public sector must reflect these broad principles and good corporate governance, it is also required that public sector institutions in the water sector:

- Contribute to achieving government’s objectives as outlined in the twelve outcomes, the State of the Nation Address (SONA) and the Minister’s performance agreement with the President.
- Achieve government’s transformation objectives, relating to service delivery (Batho Pele), employment equity and preferential procurement.

The CMA as a service delivery entity must reflect and achieve the principles and elements indicated above.

10.2 CMA Governing Board

10.2.1 Role of the CMA Board

Based on the nature of the CMA as a public entity with service delivery and stakeholder participation elements, the board will have to have strong integrated management, financial management, legal, human resource and participatory management capabilities.

The role of CMA board will be as set out in Schedule 4 of the Act as well as a service level agreement between the Executive Authority (Minister and Department) and the Accounting Authority (CMA Board). The agreement will require a board charter that will outline the roles, functions and conduct for board members. The charter will be tailored to meet conditions in the Inkomati-Usuthu CMA. Among a number of roles for the board the following will be included:

- Ensure that CMA contributes to the achievement of national development objectives and the strategic objectives of DWA;
- Provide financial management oversight on the CMA
- Review and monitor the CMA’s performance and service delivery objectives.
- Review the performance of the CEO and senior management.
- Ensure effective stakeholder participation.
- Ensure internal systems and controls that will ensure effective decision making within the CMA.

10.3 Board membership

The National Water Act sets out certain provisions regarding the membership of the governing board of a CMA:

S81(1) states that: “The members of a governing board of a catchment management agency must be appointed by the Minister who, in making such appointment, must do so with the

object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups.”

The Inkomati Catchment Management Agency (ICMA) was established in March 2004, in terms of section 78(1) of the National Water Act, 1998 (Act NO 36 of 1998), [The Act]. The Governing Board was appointed for three years on 23 June 2005 in compliance with section 81 of the Act. The term of office for the current board was extended from 31 May 2008 to 31 December 2009. The first Chief Executive Officer (CEO) was duly appointed in May 2006.

In January 2010, the former Minister appointed an Advisory Committee to make recommendations on the nature and structure of the new Governing Board. The advisory committee has finalised its recommendations on the composition of the Governing Board for the ICMA as stipulated in Section 81(3) of the National Water Act.

Subsequent to the recommendations of the Advisory committee, the evaluation committee which comprised of Institutional Oversight, Mpumalanga Region and a representation from the Advisory committee evaluated the received nominations and made recommendations for the members to be appointed on the ICMA Governing Board with DWA Mpumalanga Regional Office represented as an ex officio/non-voting member and submitted them to the Minister for consideration and approval in October 2010. The criteria used by the Evaluation Committee for the composition of the Governing Board included competence; professional skills (skills related to or experience in the water sector as a priority); geographical location; local knowledge; community representation, gender representatives and race

Based on the recommendations made by the Advisory Committee and the evaluation committee on the composition of the board through the submission, The Minister requested that a cabinet memo be drafted and submitted to cabinet to obtain its concurrence on the appointments. The cabinet memo was drafted and submitted to the Minister for approval in May 2011. To date the appointment of ICMA governing Board is still pending.

Two issues need to be addressed in the appointment of the new Board for the Inkomati-Usuthu CMA. The first of these is the appropriate size of the Board. It is clearly not appropriate or financially feasible to double the size of the current board in order to reflect the larger WMA boundaries. The issue of size of the Board should thus be addressed. The DWA guideline is that the Board should consist of between 9 and 14 members.

The second issue is that the current board is strong on stakeholder representation but weak on some of the critical skills required for exercising proper fiduciary responsibility. This is a critical matter to address to ensure the board is able to carry out its fiduciary responsibilities appropriately.

It is therefore recommended that the advisory committee, in considering the membership of the Board, should take into account:

- The DWA guideline on the proposed size of the Board and the intention to appoint a small and efficient Board; and
- The need to have specific legal, financial and human resources skills represented on the Board, in addition to the “object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups”.

10.4 Process for appointment of board

While the Act specifies the process to be followed in terms of the establishment of a CMA board, the appointment of a Board for the Inkomati-Usuthu CMA must engage with the fact that there is an existing Inkomati CMA Board already in place. The question then becomes how to move from this existing Board to the appointment of a Board that is appropriate to the larger WMA boundaries.

The process set out in the National Water Act for the appointment of the Board is that the Minister must establish an advisory committee to advise her on “which organs of state and bodies representing different sectors and other interests within the water management area of the catchment management agency should be represented or reflected on the governing board; and the number of persons which each of them should be invited to nominate”.

The Minister may also then appoint additional members selected by herself in order to-

- (a) represent or reflect the interests identified by the advisory committee;
- (b) achieve sufficient gender representation;
- (c) achieve sufficient demographic representation;
- (d) achieve representation of the Department;
- (e) achieve representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to water; and
- (f) obtain the expertise necessary for the efficient exercise of the board's, powers and performance of its duties.

Under the provisions of the National Water Act, the existing ICMA Board may continue to function until such time as a new Board has its first meeting. It is therefore recommended that:

- The current Board is allowed to continue to function until such time as the amendments to the name and boundaries of the CMA have been completed, at which time a new Board should be appointed;
- In order to ensure a smooth and swift transition, the process to nominate and appoint the new Board should begin as soon as the new WMA boundaries have been gazetted for comment, so that the new Board can be appointed as soon as the required legal procedures have been completed to amend the boundaries of the WMA and to change the name of the CMA;
- The Minister appoints one national Advisory Committee to advise on the Board membership of all nine CMAs to be established.

10.5 Governance Committee Structures

As a new institution the IUCMA will have a number of institutional development tasks that may require professional support to the board, although the experience of the ICMA will provide an excellent platform for these institutional development tasks.

It is proposed that the CMA board establish the necessary committees to support its effective functioning, in line with corporate good practice. The committees will not have powers to make decisions but to make recommendations to the board for decision making, unless they have been granted powers to make decisions in writing, by the Board. The following Board committees are recommended:

10.5.1 Finance and Audit Committee

Sometimes these are separate committees, however since the CMA is in its early stage it is recommended that these committees be combined. The Board can decide in due course if it is appropriate to separate them. This committee will be chaired by a professional to be appointed to support the Board or by a Board member with the appropriate training and skills. The role of the audit committee will be to ensure the integrity of financial recording, management, policies and reporting of the CMA. In performing its functions it will work closely with internal and external auditors (possibly DWA) on how best to manage auditing related challenges of the CMA.

The finance committee will be responsible for the overall financial management and financial performance of the CMA. It will be the role of the committee to provide support that will ensure CMA is in a sound financial footing. This will be done by ensuring that financial challenges are identified, measured and rectified, secondly helping in developing financial strategies that will ensure the CMA's financial viability.

10.5.2 HR and Remuneration Committee

The Human Resources Committee will provide support on organisational structure issues, conditions of employment, employment equity and staff transfer from DWA. It will help develop appropriate policies and procedures that will govern human resource related issues. Sub committees may be established to look at specific issues, such as staff contracts, job grading, remuneration, if necessary.

10.5.3 Technical Committee

The Technical Committee will be tasked with supporting the CMA Board to address technical issues relating to water resource management. The WMA is made up of a number of sub-catchment; a catchment management (CMC) for each sub-catchment with at least one Board member, will be established to assist the Technical Committee to consult with and involve the stakeholders on strategic and water resources related issues.

10.6 Appointment of CEO

The current CEO position of the Inkomati CMA is vacant. This gives the Board of the IUCMA the option to consider the current salary level and job description of the CEO, as well as the

administrative, technical and financial support provided to the CEO, and to advertise the post of CEO in line with the expanded mandate of the CMA.

11 Mechanisms for Regulation and Oversight

Regulation and oversight of the CMA will be facilitated through a number of mechanisms which include the following:

- Ministerial and DWA oversight based on the legislation, policy as well as a service level agreement that will be entered into between the Minister and the CMA Board.
- The Board will be subject to an annual audit of performance, including a review of individual members' performance against clear criteria.
- Accordance with the requirements of the PFMA
- Approval of annual tariffs and the catchment management strategy as being in line with the Raw Water Pricing Strategy and the National Water Resources Strategy;
- Regulation of tariffs by an economic regulator to be established within DWA
- Approval of annual business plans by the Minister

11.1 CMA Business Planning

In terms of the NWA, section 21 schedule 3, the CMA Governing Board must prepare its first business plan for not less three years within a period of 6 months of its establishment. While this has already been done by the Inkomati CMA, the development of a new business plan will need to be done for the Inkomati-Usuthu CMA. In doing so, the new CMA can build on the experience and work done by the ICMA in this regard.

Schedule 4 section 22 of the NWA indicates the contents of the business plan (in addition to the requirements of the PFMA). The business plan must:

- set out the objectives of the institution;
- outline the overall strategies and policies that the institution is to follow to achieve the objectives;
- include a statement of the services which the institution expects to provide and the standards expected to be achieved in providing those services;
- include the financial and performance indicators and targets considered by the board to be appropriate;
- may include any other information which the board considers appropriate;
- may include any other information determined by the Minister.

In relation to financial matters the business plan must:

- outline the overall financial strategies for the institution including the setting of charges, borrowing, investment and purchasing and disposal strategies;
- include a forecast of the revenue and expenditure of the institution, including a forecast of capital expenditure and borrowings;
- provide for capacity building amongst its board members and officials;
- include any other financial information which the board considers appropriate; and

- include any other financial information determined by the Minister.

Financial Control

The CMA as a public entity under schedule 3 of the PFMA will, 6 months before the start of the financial year, submit to the Executive Authority (Minister) through the DG a budget of estimated revenue and expenditure for approval. The Minister, through the department, will ensure that the submitted budget for the CMA is appropriate. DWA will be responsible for submitting the information to the Auditor General or National Treasury as and when required.

12 Change management

Change management can be described as a structured approach to moving individuals or an organisation from a current state to some desired future state. Very importantly, it is process that aims to help staff to understand, accept and engage with changes in the organisational environment.

In the establishment of the IUCMA, the change management issues pertain particularly to the internal aspects of the organisation, but also relate to the perceptions of stakeholders of the organisation.

12.1 Internal change management

In terms of internal change management, the key challenge is that the ICMA has already been in existence for some years, and has built an identity and internal culture of its own. The structure and staffing of the organisation will now change in order to incorporate staff and responsibilities relating to the Usuthu area.

While the staff of ICMA have been operating in an agency environment for some time, the staff from the KwaZulu Natal DWA Regional Office who are responsible for the Usuthu will bring with them the experience and habits of working in government.

The challenge to the new Board and management of the IUCMA will be to:

- Ensure the building of a common identity and culture amongst staff of the IUCMA, and that, within this, all staff feel a commitment to and identify with the new institution. It will be important to ensure that no invisible lines exist between the original ICMA staff and the new staff to be transferred across from the DWA regional office;
- Ensure equal commitment to and attention to the different sub-catchments within the Inkomati-Usuthu water management area, not only within business plans and budgets, with through implementation as well;
- Manage staff concerns and fears regarding change and possible resistance to change.

To achieve this, the IUCMA Board and management will need to develop and ensure the implementation of a proper change management strategy. Key elements of this strategy might include:

- Understanding the assumptions, risks, dependencies, and organisational cultural issues that might affect the change, and how best to address these;
- Effective communication with staff on the need for the change, the nature of the change, and the benefits of successful implementation. Such communication should also contain information on the details of the change, such as timeframes, activities, who will be involved and how it will affect them. The communication should enable a two-way communication process so that employees are able to contribute suggestions and ask questions about the process. The people affected by the change need to agree with, or at least understand, the need for change, and have a chance to influence how the change will be implemented. Face-to-face communications for sensitive elements of the change process, particularly those affecting employees' careers should be used. Email and written reports written are very poor tools in the context of major organisational change.
- A training or capacity building programme for relevant staff so that they can benefit from the change and see it in a positive light;
- Identification and countering of resistance from staff and the alignment of the staff with the new mandate of the organization;
- The provision of personal counselling (where required) to reduce and manage any change related fears;
- Monitoring of implementation and adjustment of the strategy as needed.

12.2 Rebranding and stakeholder engagement strategy

It will be important to ensure that stakeholders in the water management area are fully informed about the proposed changes and about the establishment, purpose and functions of the IUCMA. This will require a good communication and rebranding strategy which reaches all stakeholders, particularly the marginalised and disadvantaged. Amongst other things, the rebranding strategy should ensure that stakeholders understand the functions of the CMA, the purpose of the CMA, and how to contact the CMA.

In this process, there is an opportunity to engage with stakeholders about how they view the existing and future CMAs, what services they are expecting, what their requirements are etc so that the new CMA and the rebranding strategy can address these needs and expectations.

13 Risk

Given an understanding of the nature of the initiative and the purpose of establishment of the IUCMA, it is useful to articulate some of the key implementation risks. Managing these risks becomes a central function of the CMA and of DWA in its oversight and regulatory role.

13.1.1 Complexity of the project

This water management area is complex and is already under water stress. Management of the area will require balancing the needs of highly vocal and well resourced sectors with poor, marginalized and water deprived communities. Management will require a high level of technical skills and understanding, as well as social and economic analysis capacity, and the ability to drive transformation in the water sector in the catchment with a particular focus on redress and meeting the needs of poor communities. The issue of capacity is dealt with below.

13.1.2 Spheres of Government

Both Local and Provincial Government have a key role to play in ensuring effective water management in the water management area. The boundaries of the water management area do not coincide with the political boundaries of provincial and local government, and the CMA will need to expend considerable effort to ensure effective relationships with relevant local authorities and provincial departments, and to ensure a proper understanding of the role, boundaries and purpose of the CMA. Buy-in, coordination and cooperation between the three spheres of government are pre-requisites for achieving optimal water management in the area. This has already been achieved to quite a large extent in the Inkomati area, but will need to be addressed in the Usuthu area.

13.1.3 Stakeholder acceptability

The CMA establishment puts forward a new “business model” based on a public entity for water resources management in the Inkomati-Usuthu area, while building on the success of this model in the Inkomati area. In addition to government, it is key that this new model is accepted by stakeholders, both current water users and would-be water users across the area of jurisdiction.

13.1.4 Delegation of powers and functions

The service delivery relates to the rate at which water resources management functions are delegated to the CMA. A number of functions have already been delegated to the ICMA. Once the boundaries of ICMA are changed and the institution is transformed into the IUCMA, these delegations will automatically apply across the entire new WMA. The risk is that the capacity may not be in place to implement these delegations across the whole WMA, and so the transfer and recruitment of staff and building of capacity must be done in a way that aligns with the need to implement these delegations.

However, there is a further risk that the delegation of the final functions to the CMA may take too long, particularly the delegation of the power to authorise water use and for billing and revenue collection. An agreement should be put in place between DWA and the IUCMA regarding the timeframes and requirements for the final delegation of functions to the IUCMA.

13.1.5 Financial management

There are a number of dimensions associated with the financial viability risk. The most critical include the inability to collect water use charges as a result of either poor legitimacy of the CMA, inadequate systems and capability on the part of DWA prior to this function being delegated, or the CMA after delegation. The willingness to pay by stakeholders is a critical risk. The issue of affordability is also pertinent, in relation to user groups such as resource poor farmers. Poor revenue collection will mean that the operating costs of the CMA will need to be recovered from a small base of users and as such there is the potential for higher charges that could worsen the cycle of affordability and debt collection.

13.1.6 Climate change and natural disasters

Climate change and disasters such as droughts and floods are significant risks that could impact on the water availability and safety within the WMA. In particular the effect of climate change could lead to changing water use patterns, reduced availability and allocation of the resource, and lower ability-to-pay amongst users as enterprises become marginal. Mitigation of this risk through augmentation is limited and accordingly this risk should be quantified and considered carefully in the strategic planning of the Agency.

13.1.7 Human Resources

The human resources risk is fairly critical and has a major impact on the CMA's ability to undertake its functions effectively. There are a number of sub risks associated with the human resources risk area. These include taking transfer of de-motivated, demoralised staff from DWA, the inability to attract and develop appropriately skilled staff and the inability to retain these staff once they have been developed. A key concern is that the market for appropriately skilled WRM staff will become more competitive as other CMAs are established.

13.1.8 Organisational Technologies

The technology risks relate to the integrity of the data to be handed over by DWA. Data of poor integrity may impact on the CMA's ability to undertake its WRM functions effectively, on its financial viability and on the credibility of the CMA. Other concerns around organisational technology relate to the adoption of DWA systems, by the CMA, and the suitability or appropriateness of this technology to the CMA, given its smaller scale.

13.2 Risk management

It is critical that the IUCMA builds its relationship with relevant institutions and stakeholder bodies in the WMA, particularly in the Usuthu area where there has not been an active CMA to date. Strong stakeholder relationships, participatory planning and management, and strong governance will go a long way to reducing a number of the risks raised above.

The complex nature of the work of the CMA, including managing complex financial arrangements, requires good strategic, organisational and financial management. Such management will be achieved through appropriate staffing of the CMA, and may require

moving beyond the human resource and remuneration policies and approaches of government.

Ultimately, the management of risk will be dependent on strong governance arrangements for the CMA. The role of DWA in regulating and overseeing the performance of the CMA will also be important in this regard. DWA has considerable experience in the oversight of 15 Water Boards, the WRC and the TCTA, and will draw on this experience to ensure effective oversight and regulation of the CMA.

14 Implementation considerations

The table below sets out some considerations for the implementation of the Inkomati-Usuthu CMA. In this process, it is important to note that the ICMA is already in place and functioning well, and that the activities will build off this base, rather than starting from scratch.

Process	Key Milestones	Actions	Considerations	Timeframes
Institutional establishment				
Finalise WMA boundaries and institutional route map	Gazetting of the NWRS	Understand institutional and legal implications Develop priorities and route map	Differences between water management areas because of previous progress	Publish for comment: January – April 2012 Revise according to comments received: May 2012; Publish in Government Gazette: June 2012
Amend boundaries and name of CMA (S78(4))	Gazetting of amendment of boundaries and name	Amend boundaries and name of CMA (S78(4)) by publishing such in the Government Gazette		June 2012
Ring-fencing of WRMC revenue per WMA	Revenue ring-fenced	Ring-fence revenue per WMA in the Water Trading Entity and ensure systems are in place for easy transfer of funds to CMA	Timely transfer of funds to the CMA is critical for its effective functioning.	January 2012 – July 2012
Develop business case for CMA	Approval of business case by NT/DPSA JEP	Initial meetings with NT/DPSA towards alignment Develop and submit business case List as Public Entity	Need to ensure close working relationship with NT/DPSA	November 2011 – July 2012
Stakeholder engagement		Engagement with stakeholders on the changes to the WMA boundaries and the establishment of the Inkomati-Usuthu CMA	Careful management of stakeholder engagement in the Usuthu area is required to ensure that they do not feel marginalised by the more advanced processes in the Inkomati area	February – April 2012
Establishment of CMA	Establishment of CMA	Gazette for public comment	Stakeholder awareness of	September 2012

Process	Key Milestones	Actions	Considerations	Timeframes
	via Govt Gazette	Take comments on Board Gazette for establishment	processes critical	
Organisational development				
Appoint Governing Board	Inaugural meeting of the Governing Board held Board Committees established	Appoint Advisory Committee Advisory Committee submits recommendation to Minister Ministerial approval of Board structure Call for nominations in parallel with Advisory Committee work Minister appoints Governing Board Inaugural meeting of the Board Initial Governing Board training Board charter developed, based on generic Board charter Board Committees established	Need to create strong sense of good governance and therefore, look towards stronger governance model than previous Boards that had a strong emphasis on participation	Advisory Committee appointed: June 2012; Advisory Committee makes recommendations to Minister: Sept 2012 Ministerial approval of Board structure: Oct 2012 Minister appoints Governing Board: Dec 2012 Initial Board Training and Inaugural Meeting: Jan/Feb 2012 Board Charter developed: March 2012
Establish initial systems	Initial internal systems including financial, procurement and HR	Purchase initial financial system Apply for permission to AG for permission to open account Account opened Pro-forma internal systems presented to the Board	Must ensure there are financial controls in place prior to opening of account and any funds transferred	Financial procedures and controls developed: March 2012; approved by Board by May 2012 Apply to AG for permission to open account: March 2012 Account opened: July 2012 Financial system purchased: July 2012
Appoint CEO	CEO appointed	Job description finalised and post advertised Obtain approval of CEO salary (DPSA and Minister: DWA)	Consider getting blanket approval for CEO posts against a range of packages for large , medium and	Approval of CEO salary June 2012 Post advertised: July 2012

Process	Key Milestones	Actions	Considerations	Timeframes
		Interview candidates and appoint	small CMAs	Interview candidates: Sept/Oct 2012 Appoint candidate: Oct 2012
Transfer and appoint staff	DWA staff transferred New staff appointed	Ensure Proto CMA is in place and all staff details and functions are documented Functional development plan developed in conjunction with Regional Office Organisational structure developed and job descriptions developed and approved Identification of staff to be seconded and transferred. Staff transfer committee established and process to transfer staff fully monitored Equipment / asset plan developed Offices acquired Posts that cannot be filled by DWA staff advertised and filled.	Buy-in of organised labour essential Regional Office alignment with functional development of CMA critical Transfer or purchase of equipment for new staff important	
Operationalisation				
Develop first Business Plan	Business plan submitted to DWA	CEO drives BP development process Submit first business plan to Minister for approval Ministerial approval of business plan	Needs to be completed within 6 months of the appointment of the Board	
Transfer of seed funds	Initial seed funding transferred to CMA	Obtain NT approval for transfers Transfer initial tranche to support BP development and initial functions Transfer second tranche upon approval of business plan	Ensure NT aligned with financial transfers and institutional development plan	
Delegations of functions	Functions delegated by	Initial delegations to support initial functions	Plan for the phased delegation of	

Process	Key Milestones	Actions	Considerations	Timeframes
	Minister	Second round of delegations to support expanded mandate and implementation of Business Plan	powers and duties to be developed and approved by Minister in order to streamline all processes	
Oversight and monitoring	DWA overseeing and monitoring CMAs	DWA provides support to institutional establishment and development DWA provides Governance support to Board DWA supports organisational development After receiving business plan DWA establishes monitoring routine	Monitoring schedule for all milestones for CMAs to be developed includes NWA and PFMA requirements	
Stakeholder Engagement and Capacity Building				
Establish and implement engagement plan	Stakeholder Reference Group functional	Develop stakeholder engagement framework and implementation plan. Establish stakeholder database Establish new Reference groups	Some areas have long history of participation that needs to be carefully considered in order for DWA to regain lost ground	
Establish and implement capacity building and support regime	Support and capacity building programme implemented	Identify key groups requiring support Identify needs and develop appropriate support plan Provide ongoing support and guidance.	The need to support marginalised groups must not be underestimated	

15 Annexure A Powers and functions under the National Water Act to be performed by CMAs as initial, inherent or delegated/assigned functions, and functions to remain with DWA.

Functions highlighted in yellow are likely to be transferred to the CMA within phase 1 of its existence, highlighted in orange for phase 2, and in red for phase 3

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
Chapter 2: Water Management Strategies			
Part 2: Establishment of a Catchment Management Strategy			Part 1: National water resource strategy Development of the National Water Resource Strategy
Chapter 3: Protection of Water Resources			
Part 1: Classification system for water resources			
			12. Prescription of classification system
Part 2: Classification of water resources and resource quality objectives			
		13. Determination of reserve and resource quality objectives for those resources that do not have a high protection class or are not of national significance	13 Determination of water resources and resource quality objectives
			14. Preliminary determination of class or resource quality objectives

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
		<p>15. Giving effect to any determination of a class of a water resources and the resource quality objectives</p> <p><i>This is premised on the CMA having the powers to take any action that will impact on the class of a resource</i></p>		
Part 3: The Reserve				
			<p>16, In some cases, DWA may delegate the determination of the Reserve in those resources that do not have a high protection class (eg. Class I).</p>	
				<p>17. Preliminary determinations of Reserve</p>
		<p>18. A CMA must give effect to the Reserve as determined in terms of this Part when exercising any power or performing any duty in terms of this Act</p> <p><i>This is premised on the CMA having the powers to take any action that will impact on the class of a reserve</i></p>		
		<p>19. Prevention and remedying effects of pollution</p>		

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
Part 5: Emergency incidents			
	S20(4)(d) The CMA may give verbal or written instructions to a responsible person on measures to be taken regarding an emergency incident. A verbal directive must be confirmed in writing within 14 days.		
	S20(6) – (9): The CMA may take remedial action and claim for the costs of that remedial action.		
Chapter 4: Use of Water			
		<p>S22(3) Once the CMA has been delegated the responsible authority functions in relation to authorising water use it may use S22(3) to dispense with the requirement for a licence if it is satisfied that the purpose of this Act will be met by the grant of a licence, permit or other authorisation under any other law.</p> <p><i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i></p>	
		S22(3) Once the CMA is the	

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			<p>responsible authority it may choose to combine licence requirements into a single licence requirement with other government departments.</p> <p><i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i></p>	
			<p>S22(4): a responsible authority may promote arrangements with other organs of state to combine their respective licence requirements into a single licence requirement</p> <p><i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i></p>	
			<p>S22(5): A responsible authority may, subject to section 17, authorise the use of water before -</p> <ul style="list-style-type: none"> (a) a national water resource strategy has been established; (b) a catchment management strategy in respect of the 	

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			<p>water resource in question has been established;</p> <p>(c) a classification system for water resources has been established;</p> <p>(d) the class and resource quality objectives for the water resource in question have been determined; or</p> <p>(e) the Reserve for the water resource in question has been finally determined.</p> <hr/> <p><i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i></p>	
				S(23): Determination of quantity of water which may be allocated by responsible authority
			S24: Licences for use of water found underground on property of another person	
			<p>S(25): Transfer of water use authorisations</p> <p><i>On condition that the transfer takes place within national regulations and</i></p>	<p>S(25): Transfer of water use authorisations</p> <p><i>Where the transfer occurs between WMAs</i></p>

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			<i>within the boundaries of the CMA</i>	
		S25(3): Preparation of an annual report containing details of transfers of water entitlements under S25 (1) or (2)		
			S30: A responsible authority may, if it is necessary for the protection of the water resource or property, require the applicant to give security in respect of any obligation or potential obligation arising from a licence to be issued under this Act. <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	S26: Making of regulations on use of water
				S33: Declaration of water use as an existing lawful use <i>It is recommended that this clause should not be delegated and should not be utilised in future as it was intended as a transitional clause which is now out of date.</i>
			S35: Verification of existing water uses <i>This function does not need to be delegated to a CMA but is automatic</i>	

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
		<i>along with the delegation of the water use authorisation function</i>	
Part 4: Stream flow reduction activities			
		S36(2): The Minister may, by notice in the Gazette, in relation to a particular area specified in that notice, declare any activity (including the cultivation of any particular crop or other vegetation) to be a stream flow reduction activity if that activity is likely to reduce the availability of water in a watercourse to the Reserve, to meet international obligations, or to other water users significantly.	
Part 5: Controlled activities			
		S38: Declaration of certain activities as controlled activities <i>Within the boundaries of the WMA only</i>	S38: Declaration of certain activities as controlled activities <i>At a national level where appropriate</i>
Part 6: General Authorisations			
		S39: General authorisations to use water <i>Within the WMA boundaries only</i>	S39: General authorisations to use water <i>At a national level</i>
Part 7: Individual applications for licences			
		S40(3): A responsible authority may charge a reasonable fee for	S40(3): A responsible authority may charge a reasonable fee for

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			<p>processing a license application which may be waived in deserving cases</p> <p><i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i></p>	<p>processing a license application which may be waived in deserving cases</p> <p><i>For strategic water use only</i></p>
			<p>S40(4): A responsible authority may decline to consider a licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use or under a general authorisation.</p> <p><i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i></p>	<p>S40(4): A responsible authority may decline to consider a licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use or under a general authorisation.</p> <p><i>For strategic water use only</i></p>
			<p>S41 Procedure for licence applications:</p> <p><i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i></p>	
			<p>S42: Reasons for decisions</p> <p><i>This function does not need to be delegated to a CMA but is automatic</i></p>	

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			<i>along with the delegation of the water use authorisation function</i>	
Part 8: Compulsory licences for water use in respect of specific users				
			S43: Compulsory licence applications <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	
			S44: Late applications <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	
			S45: Proposed allocation schedules <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	
			S46: Preliminary allocation schedules <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	
			S47: Final allocation schedule <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the</i>	

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
		<i>water use authorisation function</i>	
Part 9: Review and renewal of licences, and amendment and substitution of conditions of licences			
		S49: Review and amendment of licences <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	S49: Review and amendment of licences <i>For strategic water use only</i>
		S50: Formal amendment of licences <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	S50: Formal amendment of licences <i>For strategic water use only</i>
		S51(1): Successors in title <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	S51(1): Successors in title <i>For strategic water use only</i>
		S52 (2), (3), (4): Procedure for earlier renewal or amendment of licences <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	S52 (2), (3), (4): Procedure for earlier renewal or amendment of licences <i>For strategic water use only</i>
Part 10: Contravention of or failure to comply with authorisations			
		S52: Rectification of contraventions <i>This function does not need to be</i>	S52: Rectification of contraventions <i>For strategic water use only</i>

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			<i>delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	
			S54: Suspension or withdrawal of entitlements to use water <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	S54: Suspension or withdrawal of entitlements to use water <i>For strategic water use only</i>
			S55: Surrender of licence <i>This function does not need to be delegated to a CMA but is automatic along with the delegation of the water use authorisation function</i>	S55: Surrender of licence <i>For strategic water use only</i>
Chapter 5: Financial provisions				
				S56: Pricing strategy for water use charges
		S57(2): Application of pricing strategy: making of charges within a specific water management area and payable directly to the CMA		
				S57(3) Charges made on a national or regional basis and payable to DWA
				S58 (1): Recovery of water use charges – directive to a WMI to

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			recover charges made by the Minister under S57(1)
			S59(3)(a): Determination of interest rate on unpaid water use charges, with the concurrence of the Minister of Finance
		S59(3)(b): Restriction of the supply of water to the water user from a waterwork or the restriction or suspension of the authorisation to use water until charges have been paid <i>For charges made under S57(2)</i>	S59(3)(b): Restriction of the supply of water to the water user from a waterwork or the restriction or suspension of the authorisation to use water until charges have been paid <i>For charges made under S57(3)</i>
		S60(2): issuing of a certificate stating the amount of unpaid water charges and any interest due <i>For charges made under S57(2)</i>	S60(2): issuing of a certificate stating the amount of unpaid water charges and any interest due <i>For charges made under S57(3)</i>
Part 2: Financial assistance			
		S61: Financial assistance	
			S62: Regulations on financial assistance
Chapter 6: General powers and duties of Minister and Director General			
Part 1: Delegations, directives, expropriation, condonation and additional powers			
		S63(3) Delegation of a delegated power and function to another person where the delegation by the Minister allows this	S63: Delegation of powers and functions by Minister

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
		S64: Expropriation of property <i>Where authorised by the Minister in writing</i>	S64: Expropriation of property
		S65: Expropriation for rehabilitation and other remedial work <i>For functions that fall under the CMA</i>	S65: Expropriation for rehabilitation and other remedial work <i>For functions that remain with DWA</i>
		S66: Condonation of failure to comply with time period <i>For functions falling under the CMA</i>	S66: Condonation of failure to comply with time period <i>For functions that remain with DWA</i>
		S67: Dispensing with certain requirements of the Act <i>Where this has been authorised under S67(1)(c)</i>	S67: Dispensing with certain requirements of the Act
		S68: Intervention in litigation	
Part 2: General provisions regarding regulations			
			S69: Making of regulations
			S70: Consideration of regulations
			S71(1): Rejected regulations
Part 3: Powers relating to catchment management agencies			
			S72: Powers and duties of catchment management agencies vest in Minister in certain circumstances
			S73: Assignment of powers and

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
				duties to catchment management agencies
				S74: Directives to water management institutions
Part 4: Powers of Director-General				
				S75: Delegation of powers by Director-General
Chapter 7: Catchment Management Agencies				
				S76: Appointment of persons on contract
				S78 Procedure for the establishment of CMAs
		S79: General powers and duties of CMAs		
	S80: Initial functions of CMAs (a) to investigate and advise interested persons on the protection, use, development, conservation, management and control of the water resources in its water management area; (b) to develop a catchment management strategy;			

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
	<p>(c) to co-ordinate the related activities of water users and of the water management institutions within its water management area;</p> <p>(d) to promote the co-ordination of its implementation with the implementation of any applicable development plan established in terms of the Water Services Act, 1997 (Act No. 108 of 1997); and</p> <p>(e) to promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area.</p> <hr/>			
				S81: Appointment of governing board of CMA
				S82(1) Convening of the first

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
				meeting of the CMA
		S82(2): Recommendation by members of the governing board of members to be appointed as chairperson and deputy chairperson		
				S82(3): Appointment of the Chairperson and deputy Chairperson
		S82(5): Establishment of committees, including an executive committee and consultative bodies		
				S83: Removal of members from the governing board
Part 3: Operation of CMAs				
		S84(1): Funding of CMAs: A CMA may raise any funds required by it for the purpose of exercising any of its powers and carrying out any of its duties in terms of this Act.		
		S85: Documents relating to litigation: A CMA must provide to the Director General copies of all pleadings, affidavits and other documents in possession of the CMA relating to any proceedings		

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
	instituted against the CMA		
	S86: Delegation of powers by CMA		
Part 4: Intervention, disestablishment or change of water management areas of catchment management agencies			
			S87: Intervention by Minister
			S88: Disestablishment of CMA
			S89: Transfer of assets and liabilities after change of water management area or disestablishment
			S90: Regulations on CMAs
Chapter 8: Water User Associations			
		S92: Procedure for establishment of water user associations <i>Where the WUA does not have government owned infrastructure or government guaranteed loans</i>	S92: Procedure for establishment of water use associations <i>Where the WUA has government owned infrastructure or government guaranteed loans</i>
		S95: Directives to water user associations <i>Where the WUA does not have government owned infrastructure or government guaranteed loans</i>	S95: Directives to water user associations <i>Where the WUA has government owned infrastructure or government guaranteed loans</i>
		Section 96: Disestablishment of water user association <i>Where the WUA does not have government owned infrastructure or government guaranteed loans</i>	Section 96: Disestablishment of water user association <i>Where the WUA has government owned infrastructure or government guaranteed loans</i>

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			S97(1)(b); (4) Winding up affairs of disestablishment water user association <i>Where the WUA does not have government owned infrastructure or government guaranteed loans</i>	S97(1)(b); (4) Winding up affairs of disestablishment water user association <i>Where the WUA has government owned infrastructure or government guaranteed loans</i>
				S98 (5), (6), Transitional provisions for certain existing organisations – acceptance of proposal to transform an irrigation board into a water user association and declaration of such water user association
Chapter 9: Advisory Committees				
				S99: Establishment of advisory committees
				S100: Regulations regarding advisory committees
Chapter 10: International Water Management				
				S102: Establishment of bodies to implement international agreements
				S103: Governance and functions of bodies
				S106(4) The Director General must send a copy of the report to the Secretary to Parliament

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			S107: Investigation of affairs or financial position of bodies
Chapter 11: Government Water Works			
		S109: Acquisition, construction, alteration, repair, operation and control of government waterworks <i>In relation to government waterworks pertaining to monitoring infrastructure for CMA requirements only</i>	S109: Acquisition, construction, alteration, repair, operation and control of government waterworks <i>For all government waterworks excluding CMA waterworks for monitoring purposes</i>
		S110: Consultation and environmental impact assessment <i>In relation to government waterworks pertaining to monitoring infrastructure for CMA requirements only</i>	S110: Consultation and environmental impact assessment <i>For all government waterworks excluding CMA waterworks for monitoring purposes</i>
		S111: Financing of government waterworks <i>In relation to government waterworks pertaining to monitoring infrastructure for CMA requirements only</i>	S111: Financing of government waterworks <i>For all government waterworks excluding CMA waterworks for monitoring purposes</i>
		S112: Water from government waterworks <i>For all water use other than strategic water use within the WMA</i>	S112: Water from government waterworks <i>For strategic water use, and transfers between WMAs</i>
			S113: Access to and use of

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			government waterworks for recreational purposes
		S115: Disposal of government waterworks <i>In relation to government waterworks pertaining to monitoring infrastructure for CMA requirements only</i>	S115: Disposal of government waterworks <i>For all government waterworks excluding CMA waterworks for monitoring purposes</i>
			S116: Regulations regarding government waterworks
Chapter 12: Safety of dams			
			S118(2), (3), (4), (5): Declaration of a dams to be dams with a safety risk, issuing of directives and intervention where directive is not complied with
			S122: Exemptions from compliance with provisions of this chapter or regulations made under this chapter
			S123: Making of regulations regarding dam safety
Chapter 13: Access to and rights over land			
Part 1: Entry and inspection			
	S124: Appointment of authorised person		S124: Appointment of authorised person
Part 2: Servitudes			

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
	S135: Ownership of waterworks on land belonging to another		S135: Ownership of waterworks on land belonging to another
	S136: Transfer of personal servitudes		S136: Transfer of personal servitudes
Chapter 14: Monitoring, assessment and information			
Part 1: National monitoring systems			
			S137: Establishment of national monitoring systems
			S138: Establishment of mechanisms to co-ordinate monitoring of water resources
Part 2: National information systems on water resources			
			S139: Establishment of national information systems
		S141(b): Provision of information	S141: Provision of information
			S142: Access to information
			S143: Making of regulations for monitoring, assessment and information
Part 3: Information on floodlines, floods and droughts			
	S145(1): Duty to make information available to the public		S145(1): Duty to make information available to the public
		S145(2) Establishment of an early warning system <i>In relation to issue pertaining within the WMA only</i>	S145(2) Establishment of an early warning system <i>In relation to issues with an impact or cause spanning two or more</i>

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			WMAs.
Chapter 15: Appeals and dispute resolution			
			S146: Appointment of members of the Tribunal, determination of conditions of employment of members of Tribunal and termination of membership of Tribunal
			S147: Operation of Tribunal – provision of support to the Tribunal by the Department
			S150: Mediation: directives by the Minister for persons to settle disputes by mediation
Chapter 16: Offences and remedies			
	S155: Interdict or other order by High Court – CMA may apply to the High Court for an interdict against a person who has contravened the Act		S155: Interdict or other order by High Court – the Minister may apply to the High Court for an interdict against a person who has contravened the Act
Chapter 17: General and transitional provisions			
	S159: Effect of delegation: Delegation of a power does not prevent the exercise of that power by the person who made the delegation; delegation may be made subject to conditions;		S159: Effect of delegation: Delegation of a power does not prevent the exercise of that power by the person who made the delegation; delegation may be made subject to conditions;

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
Schedule 3: Powers which may be exercised and duties to be performed by CMAs on assignment or delegation (Sections 72, 73 and 151(1)(l))			
		<p>Schedule 3(2): Power to manage, monitor, conserve and protect water resources and to implement catchment management strategies. A catchment management agency may</p> <ul style="list-style-type: none"> (a) manage and monitor permitted water use within its water management area; (b) conserve and protect the water resources and resource quality within its water management area; (c) subject to the provisions of the Act, develop and operate a waterwork in furtherance of its catchment management strategy; (d) do anything necessary to implement catchment management strategies within its water management area; and (e) by notice to a person taking water, and after having given that person a reasonable opportunity to be heard, limit 	

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
		the taking of water in terms of Schedule 1.	
		Schedule 3(3): Catchment management agencies may make rules to regulate water use	
		Schedule 3(4): CMA may require establishment of management systems	
		Schedule 3(5): CMA may require alterations to waterworks	
		Schedule 3(6): CMA may temporarily control, limit or prohibit use of water during periods of water shortage	
Schedule 4: Management and planning of water management institutions			
Part 1: Governing Board			
	Schedule 4(1): Functions and powers of governing board		
	Schedule 4(3): Appointment of CEO by Board		
	Schedule 4(3): Removal of CEO by Board		Schedule 4(3): Directive to Board to remove CEO
			Schedule 4(8): Recovery of improper profits
	Schedule 4(9): Convening		

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
	meetings of the Board		
	Schedule 4(10): Notices of meetings.		
	Schedule 4(15): Minutes of Board meetings		
	Schedule 4(16) Participation in meetings		
	Schedule 4(17): Resolutions without meetings		
	Schedule 4(18): Execution of documents		
	Schedule 4(19): Appointment of committees by the Board		
	Schedule 4(20): Power to regulate its own proceedings subject to Part 3 of Schedule 4		
Part 4: Institutional Planning			
	Schedule 4(21): Preparation of business plans by the Board		
			Schedule 4(21): Power of Minister to issue directive to Board to review and revise a business plan
			Schedule 4(22): Determination of form of the business plan of a CMA
	Schedule 4(25): Submission of business plan to Minister		
			Schedule 4(25): Minister may make

	Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
				comments on the business plan
		Schedule 4(25)(3): Board to consult with Minister and revise business plan according to changes agreed between it and the Minister		
				Schedule 4(25)(4): Minister may direct the Board to include or omit any matter from a business plan
		Schedule 4(26): Board to inform Minister of significant events that might prevent or materially affect achievement of the objectives of the institution		
				Schedule 4(28): Minister may require information from the Board
Part 5: Monitoring and Intervention				
				Schedule 4(29)(2): Minister may appoint a person to investigate the affairs or financial position of an institution
				Schedule 4(30): The Minister or a person authorised by the Minister may enter premises of an institution and take any book, record or asset of the institution where this is necessary to obtain

Initial Function of CMA	Inherent function of CMA under the NWA	Function of CMA to be assigned or delegated by Minister	Ongoing Function of DWA
			information
Part 6: Records and reporting			
	Schedule 4(32): Board must ensure proper financial records and accountability		
	Schedule 4(33): Preparation and submission of annual report to Minister and tabling in Parliament		
Schedule 6: Water Tribunal			
Part 1: Water Tribunal Members			
			Schedule 6(3): Nominations for appointment to the Water Tribunal
Part 2: Lodging and hearing of appeals and applications			
	Schedule 6(5)(3): A CMA against whose decision or offer an appeal or application is lodged must within a reasonable time - (a) send to the Tribunal all documents relating to the matter, together with the reasons for its decision; and (b) allow the appellant or applicant and every party opposing the appeal or application to make copies of the documents and reasons.		Schedule 6(5)(3): A responsible authority against whose decision or offer an appeal or application is lodged must within a reasonable time - (a) send to the Tribunal all documents relating to the matter, together with the reasons for its decision; and (b) allow the appellant or applicant and every party opposing the appeal or application to make copies of the documents and reasons.

16 Annexure B: Powers and functions currently delegated to the Inkomati CMA
