Project Name:	Mine water management Project. Phase 2 Options analysis for sustainable water management in the Witbank coalfields
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Status of Report:	Business Case for the Establishment of the Coordinating Body in the Witbank Coalfields – Final Report
Date of Issue:	2015-09-30
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Task 3: Business Case for the Establishment of the Coordinating Body in the Witbank Coalfields

Mine Water Management Project - Phase 2

Final Draft: July 2015





# **EXECUTIVE SUMMARY**

A crucial outcome of this phase of the project (i.e. Phase 2) is that the treatment of mine impacted water requires the collaboration of the various stakeholders in the Witbank Coalfields. This can be achieved through joint action, namely a partnership that has specific objectives and functions. This necessitates the establishment of a centralised Coordinating Body to enable the collaboration and to perform the required catchment-wide water management approaches. This Coordinating Body will be required to facilitate the management and conservation of the water resources in the Olifants Catchment. The body will be required to source, manage and disburse financial resources, ensuring the best principles of governance, financial oversight and control, accountability and transparency are maintained.

## **Role and Functions of the Coordinating Body**

Therefore, the role of the Coordinating Body is to enable and/or facilitate collaboration between stakeholders in order to minimise, eliminate and mitigate mine impacted water in the Witbank Coalfields. The Coordinating Body can enable the implementation of water management interventions by performing various functions. The functions are aimed at allowing the Coordinating Body to meet its overall objective in the most cost-effective, institutionally viable, as well as financially and environmentally sustainable manner possible. These functions include:

- FUNCTION 1: Coherent Catchment or Regional Water and Environmental Planning for Mining.
- FUNCTION 2: Improved Governance and Regulatory Environment
- FUNCTION 3: Aligned Cooperative governance and Coordinated Information Sharing
- FUNCTION 4: Collective Treatment and Re-use of Mine Impacted Water
- FUNCTION 5: Collective Mitigation or Management of Mine Water
- FUNCTION 6: Collective Long-Term Financial Provisioning for Mine Rehabilitation and Water Management

The Witbank CIF provides a more detailed overview of each of the 6 functions provided above. The 6 functions can be categorised into 3 distinct types of roles as presented in the table below.

Table E1: Potential Roles and Functions for the Coordinating Body

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COORDINATION AND REGULATORY	OPERATIONAL ROLE*	FUNDING AND FINANCIAL
ROLE <sup>#</sup>		MANAGEMENT ROLE
■ FUNCTION 1: Coherent Catchment or	■ FUNCTION 4: Collective Treatment and	■ FUNCTION 6: Collective Long-Term
Regional Water and Environmental	Re-use of Mine Impacted Water	Financial Provisioning for Mine
Planning for Mining	■ FUNCTION 5: Collective Mitigation or	Rehabilitation and Water Management
■ FUNCTION 2: Improved Governance	Management of Mine Water	
and Regulatory Environment		
■ FUNCTION 3: Aligned Corporate		
Governance and Coordinated		
Information Sharing		

<sup>&</sup>lt;sup>#</sup> Although this role is currently considered as one, this role can be categorised as two separate roles, namely a coordination role and a regulatory role. This includes supporting the regulatory environment, as well as coordinating the planning and information sharing functions. There is currently no intention to take over the development and implementation of legislation in the region.

As extensive work done by the mines and research/collaborative institutions (such as Coaltech and WRC) on technical interventions, the Coordinating Body will primarily focus on the coordination and regulatory

<sup>\*</sup> The Witbank CIF provides various short and long term interventions that can be implemented by the Coordinating Body.

role as well as the funding and financial management role. Therefore, the operational role is not an immediate priority for the Coordinating Body, although there may be an opportunity in the future to expand into the operational role and possibly either take on additional responsibilities, such as liaising with an implementing agent.

The implementation of the functions as well as the associated with the functions will evolve over an extended period of time. This is due to institutional capabilities and resource availability, particularly the availability of funding. In addition, at the early stages the body has to obtain buy-in from mining companies, which will enable the implementation of more innovative and capital intensive interventions at later stages of the collaboration.

# **Corporate Form of the Coordinating Body**

The functions mandated to the Coordinating Body should inform the corporate form as well as the institutional and financial arrangements. Contractual agreements that are specified and managed by the Coordinating Body can also be used to maximise the advantages offered by each of the corporate forms. Under this arrangement, the following can be achieved:

- The coordination and regulation advisory role will be conducted through institutions that have the required governance and statutory mechanisms.
- In the long-term, the operational aspects will be achieved through the operational efficiencies that are offered by the private companies, public entities or special purpose vehicles (SPV).
- Ring-fenced and effectively governed trusts, financial institutions or hosted accounts will be able to perform the required funding and financial management roles.<sup>1</sup>

Various corporate forms are suitable to enable the Coordinating Body to fulfil its functions, short, medium and long-term. This dictates that a phased approach is the most pragmatic approach to addressing how the Coordinating Body should be arranged in the short to long term. The figure below represents the institutional evolution. In the initial phase a partnership will be established, this will evolve into a trust, and ultimately into a statutory committee.

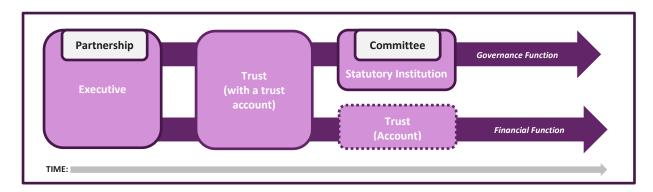


Figure E1: Institutional Evolution

As a partnership does not require substantial legal and financial commitments and can be established in a short time frame, this mechanism should be utilised to perform the immediate and short term functions of the corporate.<sup>2</sup> This partnership will, as part of its mandate, be required to establish a Trust. The partners will act as trustees and the Trust will perform governance and financial functions, which will

<sup>&</sup>lt;sup>1</sup> SWPN. 2014. Note on Institutional Arrangements and Structures. Strategic Water Partners Network (SWPN)

<sup>2</sup> Ibid

be enabled through a trust deed. The establishment of an independent financial body ensures that the funds are housed in a ring-fenced environment, and therefore that the risks associated with a public sector institution holding private sector funds are reduced. Over time, the trust will evolve into a more permanent form, which is a statutory committee housed within a statutory institution, with the governance functions being transferred to the committee and the trust (account) remaining with financial functions. The legal structure of each of the three above mentioned corporate forms will be:

- A partnership that is established as a Voluntary Association ("VA"). This partnership will be hosted, with NEPAD possibly acting as the host institution.
- The Trust will be established as a discretionary trust by agreement between the partners of the Coordinating Body and will be regulated in terms of the Trust Property Control Act 57 of 1988.
- A statutory committee established as a CMA Committee or a Regional Mining Development and Environmental Committee under the MPRDA. The Coordinating Body will, during the strategic planning processes of the partnership or trust, decide which statutory committee is suitable.

# **Institutional Arrangements**

The broad variety of stakeholders in the catchment means that the manner in which the stakeholders are involved in the joint action will vary, and so will the manner in which the stakeholders are engaged. Therefore, in order to ensure a concise and structured engagement, the stakeholder engagement process between the stakeholders and the Coordinating Body will be arranged as a broader stakeholder group that has a consultative and advisory relationship with the body. The broader stakeholder group will assign different representatives (from the different stakeholders). This allows for more concise and structured engagement, with the sector representatives only raising key issues that had been previously agreed upon during separate stakeholder consultation.

The statutory committee should comprise of stakeholders that will be responsible for providing funds to the Coordinating Body as well as implementing the water management activities. Representatives from these member institutions will be housed in the body, and will be responsible for the coordination of the partnership. In addition, a catchment forum representative will be part of the body, as this will enable oversight and assurance of the preservation of water user's interest. In the longer term, additional stakeholders will include local government as well as any other signatories to the partnership (e.g. junior miners). This will ensure that all relevant stakeholders are involved in the initiatives, and that the initiatives are aligned with the regulations, long-term objectives and development plans of the region.

An independent body may be assigned with assisting the Coordinating Body in implementing its functions. This body is a special purpose vehicle (SPV), which is a separate independent body that is established by the partners of the Coordinating Body. It is inherently a PPP that is assigned functions by the Coordinating Body, with the aim of assisting the Coordinating Body to perform its required functions. A contractually binding relationship will exist between the SPV and the Coordinating Body, which will enable the SPV to perform specifically assigned functions.

## **Governance Mechanisms**

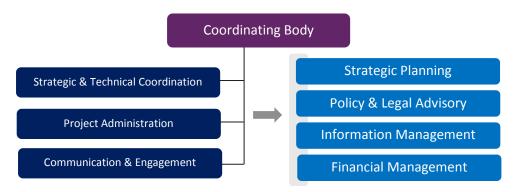
The Coordinating Body will fulfil the functions of a Governing Board, and will thus be responsible for ensuring good governance and for being the custodian of the strategic plan. Critical to the successful operation of the Coordinating Body and the evolution from the partnership to the trust and statutory committee will be the iterative approach to developing the governance structure of the body. The legal entity (i.e. the voluntary association) will initially be established with a constitution that sets out the

necessary rules for good governance and efficient operations. The constitution will form the basis of the trust deed, and then the code of conduct of the statutory committee.

It is critical that the establishment of the body is not delayed by the parties' attempts to draft a comprehensive governance document from the outset. Notwithstanding, the parties will be required to determine general rules for the conduct of the Coordinating Body. In addition, the Coordinating Body should put governance systems and controls in place to ensure that the principles of good governance are embedded into its operations. Standard systems include the strategic plan, business plan and budget, monitoring and evaluation, the internal and external audit, as well as regular reporting.

# **Organisational Design**

The functional requirements of the Coordinating Body are illustrated in the figure below. These functions do not equate to organisational positions (HR requirements), but are more aligned with the operational activities that the body will ensue.



**Figure E2: Possible Functional Structure** 

In order to implement the functions, the Coordinating Body will have to enter into arrangements with either internal partnership members (through in-kind contributions, sourcing internal resources, or with external service providers (through contractual agreements). The functional structure is built under the assumption that the body will rely on outsourcing and in-kind contributions from the partners. This will reduce the financial and human resources required by the body. Over time, as the body grows and its project load increases, functional restructuring may be required. However, if outsourcing and in-kind contributions are ensued, then the functional structure can used as the organisational design. Therefore, the organisational design is shown in the figure below.

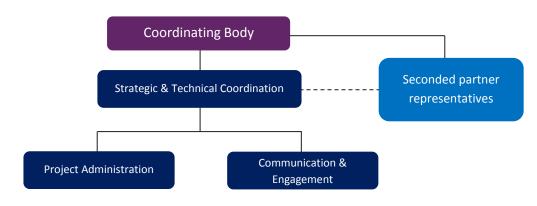


Figure E3: Possible Organisational Design

Under this organisational design, seconded partner representatives will provide the required resources through in-kind contributions. These partners will be required to devote 50% of their time to the body. Therefore, external service providers or contracted personnel will not be required to fulfil this function. However, should additional assistance be required by the seconded partner representatives, service oriented contractually binding agreements can be signed between the Coordinating Body and SPVs. These may be related to non-core professional activities such as technical projects, legal services, IT and communications system support, as well as publishing communications materials and annual reports.

A staff complement of 3 will be sufficient to support the Coordinating Body in fulfilling its objectives. Only one staff member will be housed under each the three internal structures, namely a Project Manager and Senior Technical (Mining and Water) Professional, a Project Administrator, as well as a Communications and Stakeholder Liaison Professional.

# **Financial Arrangements**

As a hosted partnership, the body will be able to utilise the host institution's bank account, systems and processes. This will enable the body to efficiently and effectively perform its financial management functions. The body should be able to oversee how the funds are managed by the host. However, as previously indicated, the Coordinating Body will evolve; therefore the relationship between the Coordinating Body and the financial mechanisms will change over time;

- In the medium term, the trust (with a trust account) will be established and utilized.
- After the establishment of a statutory committee, the trust account will be utilized by the committee to perform the financial functions, while the statutory committee will perform the governance functions.

Therefore, while in the short term the Coordinating Body will initially utilise the financial systems of host institution and will therefore have no need for a separate financial system, in the longer term, the body will be required to establish its own systems and processes, and to source internal resources. A fund manager, accounting officer, or dedicated implementing agent will be required to perform the required financial management functions.

The costs required for the functions and the Coordinating Body will be covered by the various sources of funding that will be received by the Coordinating Body. The flow of funds will be obtained from two main sources, namely the partners to the agreement (and committee) and/or mines and other water users in the catchment, as well as other external sources.

- Contributions from internal partners and mine-water users in the catchment include frequent (monthly/quarterly) funding contributions, as well as once-off or project related contributions.
- Contributions from external stakeholders and other sources may include regular funding contributions, as well as once-off or project related contributions.

The table below presents the expected annual cost for the Coordinating Body. Based on the overview provided above, the annual costs for the Coordinating Body include establishment costs, overhead costs and operational costs (governance and coordination activities and on-going operational activities). For 2015, a pro-rata rate will be applied to the annual costs estimates, depending on when the body is established and is functional. The costs for the initial 4 year period have been estimated, based on a projected 6% inflation-based increase in cost annually.

**Table E2: Costs Associated with the Coordinating Body** 

	Year			
	2015	2016	2017	2018
Establishment Costs	R435 000	181 900	R200 000	0
Recruitment Costs	290 000	-	-	-
Institutional Costs	145 000	181 900	200 000	0
Operational Activities	R6 050 000	R5 515 000	R3 725 900	R3 949 454
Human Resources	R1 450 000	R1 819 000	R1 928 140	R2 043 828
Activities to be Outsourced	R4 600 000	R3 696 000	R1 797 760	R1 905 626
Operational Costs (Overheads)	-		R1 117 770	R1 184 836
TOTAL COSTS	R6 485 000	R5 696 900	R5 043 670	R5 134 290
TOTAL COSTS (excl. outsourcing)	R1 885 000	R2 000 900	R3 245 910	R3 228 665

There will be a minimum of 5 initial partners in the Coordinating Body (i.e. Anglo Coal, Exxaro, BHP Billiton, Eskom, and DWS). As each partner will contribute to the partnership, it is essential that these contributions are projected, as shown in Table E2.

**Table E2: Contributions from Partners** 

	Year			
	2015	2016	2017	2018
Partner Contributions (5 members) – incl. Outsourcing	R1 300 000	R1 140 000	R1 010 000	R1 030 000
Partner Contributions (5 members) – excl. Outsourcing	R380 000	R410 000	R650 000	R650 000

It should be noted that the costs associated with the outsourced operational activities may be offset through in-kind contributions from partners. Therefore the Coordinating Body should consider the costs associated with including or excluding outsourcing activities as part of the internal operations activities, as shown in Table E2 and Table E3. Other sources of funds, such as fiscal contributions or donor support, should therefore be explored.



# **TABLE OF CONTENTS**

EXECUTIVE SUMMARY	i
LIST OF FIGURES	х
LIST OF TABLES	х
1. INTRODUCTION	1
1.1. Background	1
1.2. Process to Date	1
1.3. Purpose of this Document	2
1.4. Structure of this Document	3
2. MOTIVATION FOR THE COLLABORATION	4
2.1. Current Situation	4
2.2. Rationale for Solving Mine-Impacted Water Challenges	5
2.3. Opportunities for Solving Mine-Impacted Water Challenges	7
2.4. Rationale for the Coordinating Body	7
3. THE ROLE AND FUNCTION OF THE COORDINATING BODY	8
3.1. Role of the Coordinating Body	8
3.2. Functions of the Coordinating Body	8
3.3. Priorities of the Coordinating Body	9
3.4. Evolution of Functions of the Coordinating Body	11
3.5. Corporate Form of the Coordinating Body	12
3.5.1. Possible Corporate Forms	12
3.5.2. Selection of Appropriate Corporate Form	13
3.6. Evolution of the Corporate Form of the Coordinating Body	14
3.7. Legal Establishment for the Corporate Forms	15
3.7.1. Partnership	15
3.7.2. Trust	16
3.7.3. Statutory Committee	17
4. INSTITUTIONAL ARRANGEMENTS	18
4.1. Arrangements with Stakeholders	18
4.1.1. Stakeholders in the Catchment	18
4.1.2. Stakeholder Engagement	19



	4.2. Partnership Arrangement	20
	4.3. Hosted Partnership	21
	4.4. Special Purpose Vehicle	22
5	5. GOVERNANCE MECHANISMS	25
	5.1. Good Governance Characteristics	25
	5.2. The Governing Board	25
	5.2.1. The Role and Purpose of the Governing Board	25
	5.2.2. Governing Board Establishment and Structure	25
	5.2.3. Tenure of the Governing Board	26
	5.2.4. The Powers of the Governing Board	26
	5.2.5. Statutory Governance Requirements	26
	5.3. Other Key Governance Systems and Processes	27
	5.4. Strategic Plan	27
6	6. ORGANISATIONAL CONSIDERATIONS	28
	6.1. Functional Structure	28
	6.2. Organisational Design	29
	6.2.1. Implementation of Functions	29
	6.2.2. Organisational Design	29
	6.3. Staffing and Job Description	30
	6.3.1. Project Manager and Senior Technical (Mining and Water) Professional	30
	6.3.2. Communications and Stakeholder Liaison Professional	31
	6.3.3. Project Administrator	31
	6.3.4. Seconded Partner Representatives	31
7	7. FINANCIAL ARRANGEMENTS	32
	7.1. Funding and Financial Arrangement	32
	7.2. Financial Systems	33
	7.3. Funding Sources	33
	7.4. Expenditure	34
	7.4.1. Establishment Expenditure	35
	7.4.2. Once-Off Setup Costs	35
	7.4.3. Operational (Overhead) Costs	35
	7.4.1. Capital Costs	36



7.5. Cost Considerations		36
8. IMPLEMENTATION CONSIDERATIONS		38
9. RISK ANALYSIS		39
9.1. Identification of Key Risks		39
9.2. Quantification and Management of Key	Risks	<b>1</b> C



# **LIST OF FIGURES**

Figure 1: Catchments in the Upper Olifants (Source: SWPN, 2013)	4
Figure 2: Complex System Diagram of the Twelve Clustered Issues (Source: SWPN, 2013)	5
Figure 3: Evolution of the Functions of the Coordinating Body	12
Figure 4: Institutional Evolution	14
Figure 5: Stakeholders in the Witbank Coalfields	18
Figure 6: Arrangements between Stakeholders and the Coordinating Body	19
Figure 7: Possible Partnership Arrangements	21
Figure 8: Arrangements Involving the Special Purpose Vehicle (SPV)	22
Figure 9: Post-closure Arrangements Involving the Special Purpose Vehicle (SPV)	23
Figure 10: Possible Functional Structure	28
Figure 11: Long-term Arrangements for Implementing the Operational Aspects	29
Figure 12: Possible Organisation Design	30
Figure 13: Funding and Financial Mechanisms for a Hosted Partnership	32
Figure 14: Short, Medium and Long-Term Funding and Financial Mechanisms	32
LIST OF TABLES	
Table 1: Potential Roles and Functions for the Coordinating Body	9
Table 2: Summary of the Witbank Catchment Intervention Framework (Short to Medium	Term)10
Table 3: Summary of the Witbank Catchment Intervention Framework (Medium to Long T	erm)11
Table 4: Possible Corporate Forms for the Coordinating Body	12
Table 5: Legal Forms for the Partnership	15
Table 6: Available Statutory Committee	17
Table 7: Membership of the Coordinating Body and Stakeholder Representatives	20
Table 8: Possible Partnership Arrangements	21
Table 9: Costs Associated with the Coordinating Body	
Table 10: Contributions from Partners	37
Table 11: Quantification and Management of Key Risks	40



# 1. INTRODUCTION

# 1.1. Background

The water resources in the Witbank Coalfields, particularly the Upper Olifants River, are extensively impacted by mine water, particularly acid mine drainage (AMD). The region consists of numerous closed and abandoned mines, and operational mines with approximately 20 years' worth of coal remaining. Due to this abundance, there is continued risk to water quality. The area has thus been identified by the Department of Water and Sanitation (DWS) as an area that requires attention and immediate action to minimise and mitigate further impact on water resources and populated areas along the river basin.<sup>3</sup> It is envisaged that the lessons learned in this catchment will be applied to the Waterberg, to prevent the legacy of AMD occurring there.

The possible shift in the operational-mining landscape offers different challenges and opportunities, and the different stages need to be evaluated. The next 20-years of coal mining operations (with rolling rehabilitation) will be characterised by dewatering and runoff impacts, with the opportunity for the mines to finance management or treatment of their impacts (as well as contribute to provisions for future management costs). The following 20-years will involve a transition to non-operational conditions, likely to be characterised by increasing decant and possibly runoff from rehabilitated or abandoned mines (which is expected to be highly contaminated as the voids fill and sulphate is mobilised)<sup>4</sup>. As AMD is often described as a complex problem with inter-connected factors, it is essential that a holistic and long-term view to the challenge is taken. This will allow for interventions that are applicable to the different mine stages to be implemented, which can be achieved through a combination of short-, medium- and long-term interventions.<sup>5</sup>

The range of possible interventions, as well as the various stakeholders that are required to ensure the success of the interventions, requires that the different stakeholders collaborate and thus collectively resolve the mine impacted water challenge in the region. A mechanism where various stakeholders can work collaboratively to address the water related issues in the catchment is therefore required. This is essential as water quality and water supply are major concerns in the area, particularly in the context of climate change and changing economic, demographic and population trends.

## 1.2. Process to Date

The Thematic Working Group for Effluent and Waste Water Management (EWWM) of the Strategic Water Partnership Network (SWPN) is looking to address the issue of mining impacts and has adopted a 3-phased approach. In addressing the required objectives, Phase 1b identified the issues, opportunities and constraints around mine water management for new, operational and closed mining regions in South Africa (i.e. the Waterberg coalfields, Witbank coalfields and the Witwatersrand goldfields respectively). Phase 1b included a discussion of several response options and approaches to the AMD challenge, such as collaborative planning, regulation, governance, treatment and mitigation. These approaches were aimed at ensuring that the remaining 20-year coal mining operational life-span does

<sup>&</sup>lt;sup>3</sup> SWPN. 2014. Witbank Catchment Intervention Framework. Strategic Water Partners Network (SWPN)

<sup>&</sup>lt;sup>4</sup> SWPN. 2013. Institutional and Pricing Models for the Sustainable Treatment and Reuse of Mine Water: Issues, Opportunities and Constraints. Strategic Water Partners Network (SWPN)



not further deteriorate the water quality in the catchment, whilst also promoting the rehabilitation of the water and land resources and the implementation of long-term solutions to water quality management and regional mine closure strategies

Due to the complexity of the AMD phenomenon, the range of possible functions and approaches identified translates into a variety of institutional-financial business model(s) that may be relevant. Therefore, Phase 2 of the project, which is the current phase, supports the development of institutional-business models for sustainable mine water management in the Witbank Coalfields. The form of the institutional-financial business model(s) should fulfil the function that it is required to perform, should be adaptable to changes whilst also being sustainable in the long-term, and should implement or at best foster the implementation of the required objectives (i.e. through outsourcing certain functions). It is recognised that this is part of a broader programme that must inform the Phase 3 implementation, which should catalyse effective mining and mine water management in the Witbank Catchment and beyond. The Terms of Reference recognise this by distinguishing four fundamental and inter-related aspects of this study, namely:

- → the collaborative technical-institutional interventions required to address mine water impacts throughout the mining lifecycle;
- → the institutional arrangements required to plan and implement these interventions, including possible policy and regulatory changes;
- the funding (and financing) plan that should enable long-term sustainability of these interventions and enabling institutional arrangements; and
- consultation and agreement by key stakeholders around the proposed interventions, institutions and funding, supported by the establishment of a Coordinating Body.

# 1.3. Purpose of this Document

The implementation and operation of collaborative action poses specific challenges and risks to government and mining companies. Collaboration must be done with the spirit of sharing risks and benefits, through good cooperative governance, management and implementation by all partners. While various institutional models may be developed by Government or the private sector (i.e. mining companies in the catchment) to provide this function, an autonomous statutory committee housed by a public entity may provide particular advantages in ensuring credibility, independence and stakeholder acceptability, while still maintaining quality and managing risk.

Therefore, this document provides motivation for this collaboration and thus proposes the establishment of a Coordinating Body that will facilitate and manage the collaboration in the Witbank Coalfields. The business case serves to explore and present strategic considerations for the establishment of the Coordinating Body, including discussion on how it will evolve over time. This will be done by proposing an appropriate corporate form, considering functions and proposing a high level structure and related capacity requirements, describing institutional arrangements, indicating financial requirements and sources of funding, conducting an initial risk analysis and developing a high level implementation plan. The business case therefore, not only outlines the goals of the Coordinating Body, but also provides details on the resources required and how the body aims to achieve its goals.



This document is aimed at the partners and primary stakeholders of the Coordinating Body. The strategic outline of the business case and critical decisions required to develop this business case have been discussed with the Project Steering Committee in March 2015, as well as tested and finalised with the Reference Group in May 2015.

# 1.4. Structure of this Document

The document follows the standard structure for a business case, as outlined below;

**Chapter 2** provides the motivation for the collaboration, and provides context of the water challenges associated with the Witbank Coalfields.

**Chapter 3** provides the function and mandate of the Coordinating Body, and the corporate form it would take, as well as the transition into other corporate forms.

**Chapter 4** describes how the Coordinating Body will relate to existing institutions and how those relationships will be structured.

**Chapter 5** describes how the Coordinating Body will be governed, including the systems and processes required to ensure governance.

**Chapter 6** highlights the human resources required to run the partnership as well as if in the long term, any additional resources will be required to enable the statutory committee to take on additional responsibilities. In addition, the contractual relationship between these resources and the implementing agent with the Coordinating Body will also be investigated.

**Chapter 7** covers both the institutional expenditure for the partnership, as well as the sources of funding that are envisioned for the partnership. The evolution of activities from the partnership, trust and to the statutory committee will also be discussed.

**Chapter 8** outlines the implementation activities to be taken forward by the Coordinating Body.

**Chapter 9** outlines the key risks to the Coordinating Body. The chapter will also look at ways to manage and/or mitigate these risks going forward.



# 2. MOTIVATION FOR THE COLLABORATION

# 2.1. Current Situation

The water resources in the Witbank Coalfields, particularly the Upper Olifants River, are extensively impacted by mine water, particularly acid mine drainage (AMD). The Upper Olifants catchment is characterized by intensive coal mining, energy and manufacturing industries; the landscape in the southern and central part of the catchment is dominated by mining operations and mining-related infrastructure. Much of the catchment falls within the Witbank Coalfields, where most of South Africa's coal is mined.

The Upper Olifants, shows in Figure 1 below, has three impoundments (Middelburg, Witbank and Loskop Dams) supplying water primarily to urban and agricultural users. Water in these impoundments is currently impacted by dewatering, leachate/runoff from operating and reopened mining facilities, as well as decant (and leachate/runoff) from the non-operational and abandoned mines.

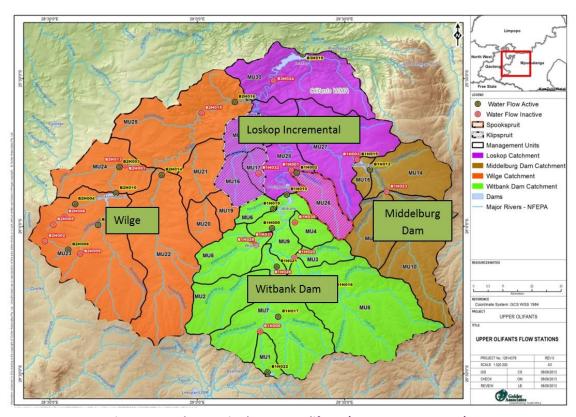


Figure 1: Catchments in the Upper Olifants (Source: SWPN, 2013)

The main contributor to the poor water quality in the Witbank Coalfields is the mining industry as well as other industrial and agricultural activities in the region. As the coal mining industry is considered as the major contributor to AMD, the abundance of coal resources will continue to pose water quality concerns in this area; the region consists of numerous closed and abandoned mines and operational mines have approximately 20 years' worth of coal remaining. The acid leachate from mines contributes to poor instream and water resources conditions, although this is mostly confined to a few streams and dams in the upper Olifants River Catchment.



There is currently a wide variety of water users in the catchment, and each has different water quality requirements. The current state of the water means that downstream water users such as the domestic, industrial, power and agriculture sectors have access to water that is not fit for use. The poor quality of water resulting from mining activities is caused and exacerbated by several interconnected factors, which are shown in the figure below. These factors can be considered as either facility or regional level, and can result from mine that are at different stages of the life cycle (i.e. developing, operational, and non-operational).

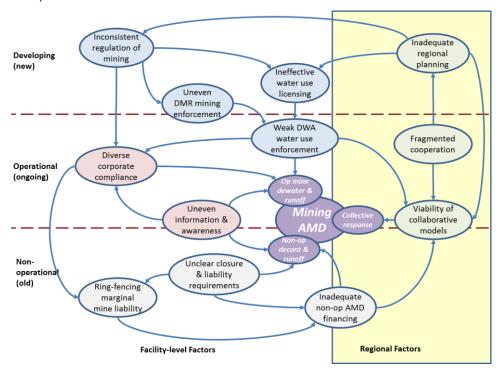


Figure 2: Complex System Diagram of the Twelve Clustered Issues (Source: SWPN, 2013)

From the figure above, it is evident that AMD is a complex problem. The facility level water management practices, combined with factors such as unclear institutional responsibilities and poor enforcement exacerbate the situation. Non-operational mines, and the associated unclear liability and unenforced water management legal requirements, create additional challenges to the mining AMD. Added to that, over the next two decades there is expected to be an increase in non-operational mines in the region, which may increase the pollution load in the catchment, depending on the mining and rehabilitation practices at specific mines. As AMD is often described as a complex problem with inter-connected factors, it is essential that a holistic and long-term view to the challenge is taken. This will allow for interventions that are applicable to the different stages to implemented, and this can be achieved through a combination of short- medium- and long-term interventions.

# 2.2. Rationale for Solving Mine-Impacted Water Challenges

The possible shift in the mining operational landscape offers different challenges and opportunities, and the different stages need to be evaluated. The next 20-years of coal mining operations (with rolling rehabilitation) will be characterised by dewatering and runoff impacts, with the opportunity for the mines to finance management or treatment of impacts (as well as contribute to provisions for future management costs). The following 20-years will involve a transition to non-operational conditions, which



is likely to be characterised by increasing decant and possibly runoff from rehabilitated or abandoned mines. Therefore, an important consideration is whether over the 40 year period, the AMD problem will persist, or whether natural processes will intervene resulting in decreased mobilisation of decant loads which bring the water quality back into acceptable water quality targets. The latter will favourably result in AMD mitigation efforts not being required beyond 40 years.

The mines in the Witbank Coalfields are located in proximity to populated areas. Poor mine water management practices in some existing and closed mines create water pollution challenges for populations that are located in close proximity to affected water resource, particularly rural communities that do not have access to water treatment facilities. In addition, there is a high competition for access to water due to the diversity of water users in the region. These factors constrain the existing water resources, which are either not fit for use, or are not sufficient to supply the region's water demands. As the region is largely considered as water stressed, water supply and the quality of available water resources are areas of concern in the catchment.

The Upper Olifants Catchment is linked to the Middle Olifants Catchment and the Vaal Catchment. These catchments have high water demands as they supply water to the country's mining and thermal power activities, which are integral to continued regional and national economic growth, and the growing population in the region. The Vaal system is linked to the water abundant (Upper) Orange-Senqu Catchment, and may be relied upon to provide supplementary water resources (through transfers) to the Olifants Catchment. This may however have high transportation costs resulting in the high cost of water.

The Mpumalanga and Highveld power stations are due to be operational for the next 10 - 20 years. Post closure, the decrease in water demand will release the water supply pressure on the system. The Vaal and Olifants Catchment are therefore likely to experience a decrease in water demand associated with the energy sector. However, there is currently uncertainty on the growth prospects of the regions. As the coal resources are depleted and mines reach their closure period, workers and the communities are likely to migrate to regions with economic activity. A change in the economic activities (and opportunities for employment) in the region and in surrounding areas are likely to influence the population distribution and therefore the associated domestic water demands. However, there is also the possibility that the region will not have a decrease in economic activity, but merely a change in the nature of economic activity. The increase in water availability may, for example, result in an increase in industrial and agricultural activities.

Climate change is likely to have added impacts on the water resources in the region. There is relative certainty around an increase in average temperatures, but great uncertainty on the change in annual rainfall. Although the region is projected to have an overall reduction in rainfall events, intense and variable rainfall is likely to be experienced during the summer season (thus causing uncertainty on the change in annual rainfall). A drier climate will result in a decrease in an ingress of AMD, but will also cause water shortages in the region and an increase in the cost of water (due to the water transportation that is intended to supplement water supply); a wetter climate will result in an increase in water availability, which also unfortunately results in an increase in ingress (causing an increase in mine impacted water). There is currently uncertainty of which climate future will prevail.

<sup>&</sup>lt;sup>6</sup> SWPN. 2013. Institutional and Pricing Models for the Sustainable Treatment and Reuse of Mine Water: Issues, Opportunities and Constraints. Strategic Water Partners Network (SWPN)



# 2.3. Opportunities for Solving Mine-Impacted Water Challenges

The opportunity to solve the water quality challenge in the Witbank Coalfields exists in the remaining 20-year coal mining operational life-span before the region transitions into a non-operational phase. Appropriate planning, regulation and management of mine impacted water will allow the long-term sustainability of the region by mitigating AMD. This can be achieved through the establishment of sustainable institutional, financial and technical mechanisms that will minimise, eliminate and mitigate mine-impacted water in the region.

As explored in Phase 1b, there are a number of interventions that have been or are in the process of being implemented in the Olifants Catchment. These interventions are aimed at addressing the water quality challenge, and include the controlled release of mine water, the treatment of AMD through reverse osmosis, and regional water management strategies such as the Resource Quality Objectives and the Waste Discharge Charge System for the Olifants River Catchment. However, additional interventions need to be implemented that result in significant improvements to the status of the region and also provide benefits to the local population such as through the increased access to water.

International best practice has pointed to the management of water at the basin or catchment level, rather than according to administrative and political boundaries. In addition, the principles of Integrated Water Resource Management reflect the importance of effective engagement of stakeholders and interested and effected parties so as to develop co-owned water management solutions. This therefore implies that in order to solve the water quality challenge, a holistic and catchment-wide approach to addressing the mine impacted water challenges in the region needs to be considered. Mining companies currently operating in the Witbank Coalfield and other role-players need to share the risks of AMD and the responsibility of managing it. Therefore, approaches involving partnerships between the various mining companies and other role-players are required. These partnerships will perform activities and interventions to address the water quality issues in the catchment.

# 2.4. Rationale for the Coordinating Body

There is a widespread and significant interest by key private and public role-players in resolving the water quality challenges associated with the Witbank Coalfields. A suite of approaches needs to be pursued that involve the participation of various role-players. However, as the mines are often not connected hydraulically, physical infrastructure and other interventions may have to be implemented by individual mines, but through a coordinated plan. Therefore, joint action by all relevant role-players will allow for an optimal solution, as well as coherent and integrated catchment-wide water resource management. This joint action can be achieved through a partnership that has specific objectives and functions, and is centralised through a Coordinating Body. This body is discussed in detail in Chapter 3.



# 3. THE ROLE AND FUNCTION OF THE COORDINATING BODY

# 3.1. Role of the Coordinating Body

In order for joint-action to be successful, a centralised Coordinating Body will be required to facilitate the management and conservation of the water resources in the Witbank Coalfields (Olifants Catchment). Therefore, the role of the Coordinating Body is to enable and/or facilitate collaboration between stakeholders in order to minimise, eliminate and mitigate mine impacted water in the Witbank Coalfields. The body will be required to source, manage and disburse financial resources, as well as to manage and/or implement interventions that are aimed at tackling the water quality challenge.

This should be achieved while ensuring the best principles of governance, financial oversight and control, accountability and transparency are maintained. In addition, it is important that the appropriate partnering companies are chosen that will best assist in the attainment of the ultimate goal of the intended partnership. This will ensure that the Coordinating Body that is ultimately established is sustainable, efficient and implements all its required functions.

# 3.2. Functions of the Coordinating Body

As indicated in Phase 1b, the role of the body can be achieved through several avenues. Phase 1b identified severable possible interventions, and the Coordinating Body can enable the implementation of interventions by performing various functions. The functions are aimed at allowing the Coordinating Body to meet its overall objective in the most cost-effective, institutionally viable, as well as financially and environmentally sustainable manner possible. These functions include:

- FUNCTION 1: Coherent Catchment or Regional Water and Environmental Planning for Mining. This function involves the establishment of water and environmental plans at a regional and/or catchment level. The plans should provide guidance for the management of the water resources and environmental aspects, and should also be formally accepted by the mines in the area. The success of this function should result in joint planning that provides guidance for the development and management of individual mine's operational and closure plans.
- FUNCTION 2: Improved Governance and Regulatory Environment. This function involves the effective management and governance of mines and associated water related activities in the Witbank Coalfields, in line with the catchment and/or regional plans. This may require the strengthening of existing governance capacity, the introduction of regulatory mechanisms by the regulating institution, or improved governance to allow the mining companies to take ownership, self-regulate and also regulate its peers. The success of this function should result in consistent and coherent regulation of the mining industry at all stages of the lifecycle. The complexity of this function means that the corporate body can be led by different role-players, namely government or the mining industry, and can be achieved by performing advisory services.
- **FUNCTION 3: Aligned Cooperative governance and Coordinated Information Sharing.** This function involves the sharing of information to enable monitoring, and so that companies can



jointly benefit from successful methods used by their peers. This is because new approaches and new technologies are constantly being tested and implemented by different companies. In addition good practice and adaptive management approaches on corporate governance strategies are often being practices, and other less progressive mining companies could learn from these approaches. The success of this function should result in the sharing of information and promotion of good corporate governance.

- FUNCTION 4: Collective Treatment and Re-use of Mine Impacted Water. This function involves the development and operation of infrastructure to collect, treat and distribute water from a suite of mines. Collective treatment of water is potentially more cost effective than individual treatment, and allows for treated water to contribute to the local bulk water supply system to supplement local water needs. However, sufficient financing and management is required. The success of this function should result in the sustainable treatment of mine impacted water beyond the individual mine's operational period.
- FUNCTION 5: Collective Mitigation or Management of Mine Water. This function involves the implementation of good regional rehabilitation of mining operations and the leveraging of land use opportunities. This requires collective action for passive treatment in line with a regional rehabilitation plan. This function provides an important option that may be financially sustainable in the long-term; however, effective mechanisms to ensure adequate rehabilitation and redevelopment of land for other purposes are required. The success of this function should result in the sustainable mitigation and management of mine impacted water.
- → FUNCTION 6: Collective Long-Term Financial Provisioning for Mine Rehabilitation and Water Management. This function involves the funding of interventions through finances that are collected from mining companies during their operational period. This is aimed at ensuring adequate rehabilitation and management of mine impacted water post-closure. The success of this function should result in the collection and investment of funds to independently finance the long-term management of mine impacted water and the sustainable collection, investment and disbursement of funds.

# 3.3. Priorities of the Coordinating Body

The Witbank CIF provides a more detailed overview of each of the 6 functions provided above. The 6 functions can be categorised into 3 distinct types of roles as presented in the table below.

Table 1: Potential Roles and Functions for the Coordinating Body

COORDINATION AND REGULATORY ROLE#	OPERATIONAL ROLE*	FUNDING AND FINANCIAL MANAGEMENT ROLE
<ul> <li>FUNCTION 1: Coherent Catchment or Regional Water and Environmental Planning for Mining</li> <li>FUNCTION 2: Improved Governance and Regulatory Environment</li> <li>FUNCTION 3: Aligned Corporate Governance and Coordinated Information Sharing</li> </ul>	<ul> <li>FUNCTION 4: Collective Treatment and Reuse of Mine Impacted Water</li> <li>FUNCTION 5: Collective Mitigation or Management of Mine Water</li> </ul>	FUNCTION 6: Collective Long-Term Financial Provisioning for Mine Rehabilitation and Water Management

<sup>&</sup>quot;Although this role is currently considered as one, this role can be categorised as two separate roles, namely a coordination role and a regulatory role. This includes supporting the regulatory environment, as well as coordinating the planning and information sharing functions. There is currently no intention to take over the development and implementation of legislation in the region.

<sup>\*</sup> The Witbank CIF provides various short and long term interventions that can be implemented by the Coordinating Body.



The functions should provide short, medium and long term solutions for the management of water quality, with a potential secondary outcome being the supply of treated water to meet local or regional water demands. As there has been extensive work done by the mines and research/collaborative institutions (such as Coaltech and WRC) on technical interventions, both passive and active as well as within the boundary of the mine and out, the Coordinating Body will primarily focus on the **coordination** and regulatory role as well as the funding and financial management role. Water treatment, mitigation and management approaches that are currently being practiced in the region are associated with the operational role, therefore, this role is not an immediate priority for the Coordinating Body. There may be an opportunity in the future to expand into the operational role and possibly either take on additional responsibilities, such as liaising with an implementing agent.

This implies that the Coordinating Body will focus on, to varying degrees, 4 distinct functions:

- FUNCTION 1: Coherent Catchment or Regional Water and Environmental Planning for Mining
- **FUNCTION 2:** Improved Governance and Regulatory Environment
- FUNCTION 3: Aligned Cooperative Governance and Coordinated Information Sharing
- **FUNCTION 6:** Collective Long-Term Financial Provisioning for Mine Rehabilitation and Water Management

The Coordinating Body will not be able to carry out its mandate in isolation, and requires support from both the regulators and the mining companies in the Witbank Coalfield as well as other institutions in the area. The summarised Witbank CIF below outlines the key priorities that can be achieved over the short and medium- to long-term, based on what is institutionally possible. Given that the role and function of the Coordinating Body has been clearly defined, the intervention framework focuses only on the interventions of the function areas that have been mandated to the Coordinating Body. The table below provides a summary of the short to medium term intervention framework, while the following table provides a summary of the short to medium term intervention framework.

Table 2: Summary of the Witbank Catchment Intervention Framework (Short to Medium Term)

# FUNCTION PRIORITY INTERVENTIONS AND REQUIRED COLLABORATORS

### SHORT TO MEDIUM TERM

# FUNCTION 1: Coherent Catchment or Regional Water and Environmental Planning for Mining

### **PRIORITY INTERVENTIONS:**

 Facilitate the outlining of an integrated strategic plan for the area looking at elements such as integrated planning tools, funding of initiatives and coordinated monitoring and evaluation

## **KEY COLLABORATORS:**

- DWS, CMA, DMR, DEA, COMSA, SWPN, WUAS, JIA
- Mining companies

## **FUNCTION 2: Improved Governance and Regulatory Environment**

## PRIORITY INTERVENTIONS:

- Advocate to the regulators on the legislative requirements to improve integrated resource planning and development
- Provide guidance on how to improve regulatory capacity in the Witbank Coalfield
- Coordinate and advise mining companies on how to comply with regulation and compliance standards

# KEY COLLABORATORS:

DWS, CMA, DMR, DEA, COMSA, SWPN, WUAs, JIA

### **FUNCTION 3: Aligned Cooperative Governance and Coordinated Information Sharing**

# PRIORITY INTERVENTIONS:

- Advocate for the alignment of cooperative governance
- Determine and utilise the platforms that can be used for coordinated information sharing
- Use the monitoring and evaluation tools as a way to foster and promote self and peer-regulation with the mines



#### **KEY COLLABORATORS:**

- DWS, CMA, DMR, DEA, COMSA, SWPN, WUAS, JIA, ORF
- Mining companies

# FUNCTION 6: Collective Long-Term Financial Provisioning for Mine Rehabilitation and Water Management PRIORITY INTERVENTIONS:

- Determine the requirements to access the existing mine rehabilitation fund and facilitate the disbursement **KEY COLLABORATORS**:
- DWS, CMA, DMR, DEA, COMSA, SWPN, JIA, NT,

## Table 3: Summary of the Witbank Catchment Intervention Framework (Medium to Long Term)

# FUNCTION PRIORITY INTERVENTIONS AND REQUIRED COLLABORATORS

## **MEDIUM TO LONG TERM**

#### FUNCTION 1: Coherent Catchment or Regional Water and Environmental Planning for Mining

#### PRIORITY INTERVENTIONS:

Support the development of an integrated strategic regional plan

#### **KEY COLLABORATORS:**

- DWS, CMA, DMR, DEA, COMSA, SWPN, WUAS, JIA
- Mining companies

### **FUNCTION 2: Improved Governance and Regulatory Environment**

#### **PRIORITY INTERVENTIONS:**

• Support the development of integrated regulatory and statutory mechanisms

#### **KEY COLLABORATORS:**

DWS, CMA, DMR, DEA, COMSA, SWPN, WUAs, JIA

#### **FUNCTION 3: Aligned Cooperative Governance and Coordinated Information Sharing**

#### PRIORITY INTERVENTIONS:

• Develop a consolidated information hub

#### **KEY COLLABORATORS:**

- DWS, CMA, DMR, DEA, COMSA, WUAS, JIA, ORF
- Mining companies

#### **FUNCTION 4: Collective Treatment and Re-use of Mine Impacted Water**

## PRIORITY INTERVENTIONS:

Localised treatment schemes

## **KEY COLLABORATORS:**

Mining companies, DWS

# **FUNCTION 5: Collective Mitigation or Management of Mine Water**

## **PRIORITY INTERVENTIONS:**

- Mitigation through removal of load
  - o Regional mitigation scheme or infrastructure
  - o Regional mitigation project
- WR system management
  - o Management of river-reservoir systems to reduce impact
- Mitigation for abstraction water users
  - o Recovery of costs in developing and operating additional treatment
- Treatment of a particular source
  - o Where effective for a single source to reduce load

# KEY COLLABORATORS:

• Mining companies, DWS

## FUNCTION 6: Collective Long-Term Financial Provisioning for Mine Rehabilitation and Water Management

## PRIORITY INTERVENTIONS:

• Support the development of a funding and financial management plan

## **KEY COLLABORATORS:**

• DWS, CMA, DMR, DEA, COMSA, SWPN, NT, Private sector funders

# 3.4. Evolution of Functions of the Coordinating Body

Section 3.2 and 3.3 provide an overview of the functions of the Coordinating Body, as well as the interventions that the Coordinating Body will implement. However, the implementation of the functions as well as the associated with the functions will evolve over an extended period of time. This is due to



institutional capabilities and resource availability, particularly the availability of funding. In addition, at the early stages the body has to obtain buy-in from mining companies, which will enable the implementation of more innovative and capital intensive interventions at later stages of the collaboration. The evolution, from the immediate future to the longer term, is laid out in the figure below.



Figure 3: Evolution of the Functions of the Coordinating Body

# 3.5. Corporate Form of the Coordinating Body

# 3.5.1. Possible Corporate Forms

In the South African context, there are broadly 7 different corporate forms that can be considered to fulfil the functions provided in the previous sections. This list of corporate forms is not exhaustive, but is merely an identification of corporate forms that are the most viable options to fulfil these functions. These corporate forms briefly described in the table below.

**Table 4: Possible Corporate Forms for the Coordinating Body** 

CORPORATE FORM	DESCRIPTION
Public Entity	Public entities are listed in Schedule 2 and 3 of the Public Finance Management Act (1999). Schedule 2 public entities are major national public entities whereas Schedule 3 public entities can be national or provincial, but are less autonomous than Schedule 2 entities. All national public entities have to be established under specific national legislation, and require listing in the Schedules of the PFMA, which requires the approval of National Treasury.
Statutory Committee	A statutory committee is a body that is housed in a public institution and is therefore bound by the same regulatory requirements as that public institution. Examples of public sector institutions that may create statutory committee that may function as the Coordinating Body include the Catchment Management Agency (CMA) Committee established by the CMA under the NWA, or a Regional Mining Development and Environmental Committee established by the Minister and Board of the Department of Mineral Resources (DMR) under the Mineral and Petroleum Resources Development Act (MPRDA).
Water User Association (WUA)	A Water User Association (WUA) is statutory body that is established under Section 92 of the NWA. The primary purpose for WUA is to undertake water related activities that aim to achieve mutual benefit, through the pooling of resources to allow for more effective water related activities. They therefore allow local water users to benefit from addressing local needs based on local priorities, and also provide a mechanism through which a CMA can implement local scale activities. However, the longer term future of WUAs is uncertain due to possible amendments to the legislative environment.



Private Company	A private company is a legal entity that must also register as a tax payer as stipulated under the Companies Act. It is considered as a separate entity from its owners/shareholders. Shareholders have limited liability; however, under the Companies Act, liability is only imposed on the directors who knowingly take part in an illegal or fraudulent act. Private companies are deemed to be relatively stable as they have a perpetual lifespan. Private companies are different to Non-profit Companies (NPC), which are regulated by the Companies Act, have a public benefit object and are required to utilise all of its assets and income to meet its stated objectives.
Non-Profit Organisation (NPO): Trust	As a Trust is a NPO that is regulated by the Non-Profit Organisation (NPO) Act. A Trust is an institutional arrangement that is regulated by the Common Law and the Trust Property Control Act 57 of 1988. In addition to registering with the Master of the High Court, a Trust that is registered as an NPO is recognised by the law as a body corporate with an independent legal person. The purposes and requirements of the Trust are set out in the Trust Deed. Other common types of NPOs are Voluntary Associations (VAs) and previous Section 21 companies, which are also regulated by the NPO Act.
Partnership	A partnership is a type of business that exists between 2 or more natural or legal persons (i.e. individuals or companies). A partnership is not a separate legal person or taxpayer; instead the partners are taxed individually for their share in income. It is formed when persons reach a legally binding 'Partnership Agreement' where contributions are made to make and/or share profits, or to act in a way that contributes to society for the greater good, e.g. a 'joint venture'. The rights, duties and liabilities of a partnership belong to the all the partners. Should the partnership be, such as the death or departure of a partner, a new partner cannot be added. The old partnership has to be dissolved and a new partnership with a new 'Partnership Agreement' has to be established.
Financial Institutions	The regulation of private and public sector investment is headed by National Treasury. The administration of these regulations and policies is done by the Financial Services Board (FSB) and the South African Reserve Bank (SARB). The regulations administered by the FSB are broad, with individual pieces of regulation for each of the sub-sectors in the financial sector. The different types of financial institutions and financial services providers regulated by the FSB include exchanges, clearing houses, securities depositories, trade repositories, credit ratings agencies, insurance companies, pension funds, collective investment schemes, friendly societies and financial services providers <sup>7</sup> .

# 3.5.2. Selection of Appropriate Corporate Form

The corporate form of the Coordinating Body should be informed by the functions mandated to it. However, as indicated above, there are various forms that this body can take. Contractual arrangements between various corporate forms can aid the Coordinating Body to perform all its functions without compromising institutional and resource efficiency. Contractual agreements that are specified and managed by the Coordinating Body can be used to maximise the advantages offered by each of the corporate forms. Under this arrangement, the following can be achieved:

- The coordination and regulation advisory role will be conducted through institutions that have the required governance and statutory mechanisms.
- In the long-term, the operational aspects will be achieved through the operational efficiencies that are offered by the private companies, public entities or special purpose vehicles (SPV).
- Ring-fenced and effectively governed trusts, financial institutions or hosted accounts will be able to perform the required funding and financial management roles.<sup>8</sup>

It is essential that the Coordinating Body take into account available resources. Therefore, the selection of the corporate form should not only be based on the suitability of that corporate form, but also on the available resources and institutional environment that may or may not enable the corporate form to its

<sup>&</sup>lt;sup>7</sup> ENSAfrica: https://www.ensafrica.com/news/Asset-management-South-Africa-2014?Id=1252&STitle=tax+ENSight

<sup>8</sup> Ibio

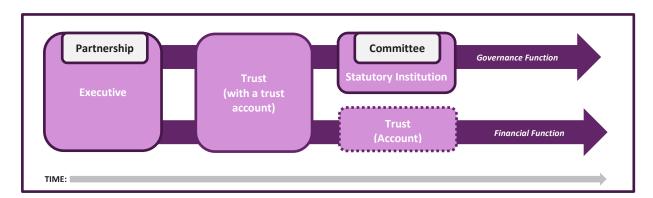


function and also implement water management approaches that are within the scope of the available resources. For example, the legislative concerns of the WUA deem it unsuitable for the long-term.

With the above considerations in mind, a statutory committee is the most suitable corporate form in the medium term, due to institutional capabilities and funding mechanisms. However, the establishment of the statutory committee will take time (probably a few years). Therefore, a corporate form that is able to perform functions immediately with the available resources should be considered; this ideal corporate form was deemed to be a partnership. The dependence on a statutory committee (associated with a public entity) poses establishment risks, because it would be established under legislature and thus has legally binding political constraints and operational limitations. On the other hand, partnerships have long-term sustainability concerns and may not be appropriate for the liability and funding requirements of the later operational phases required to manage this area. This raises the possibility of an alternative ("plan B") arrangement built around a formal trust, to be established for coordination, management and/or funding purposes.

# 3.6. Evolution of the Corporate Form of the Coordinating Body

As is apparent from Section 3.5, various corporate forms are deemed as suitable. Short, medium and long-term consideration dictate that a phased approach is the most pragmatic approach to addressing how the Coordinating Body should be arranged in the short to long term. The figure below represents the institutional evolution. In the initial phase a partnership will be established, this will evolve into a trust, and ultimately into a statutory committee.



**Figure 4: Institutional Evolution** 

As a partnership does not require substantial legal and financial commitments and can be established in a short time frame, this mechanism should be utilised to perform the immediate and short term functions of the corporate body. Once a statutory committee has been established, the necessary transition can be made. This partnership will, as part of its mandate, be required to establish a Trust through a Memorandum of Agreement (MoA). The partners will act as trustees and the Trust will perform governance and financial functions, which will be enabled through a trust deed. The establishment of an independent financial body ensures that the funds are housed in a ring-fenced environment, and therefore that the risks associated with a public sector institution holding private sector funds are reduced.

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<sup>9</sup> Ibid



Over time, the trust will evolve into a permanent form, which is a statutory committee housed within a statutory institution. Once the committee has been established, the governance functions of the Trust will be transferred to the committee, while the trust (account) will remain with financial functions. The trustees will then be transferred to the committee where they will perform the governance functions. The trustees of the new trust (account) will have to be re-established, and can either be all Coordinating Body members, or a selected number of members that are assigned with performing oversight of the financial management aspects of the trust (account). Alternatively, an independent Financial Institution can be assigned with performing financial management aspects of the trust (account).

# 3.7. Legal Establishment for the Corporate Forms

# 3.7.1. Partnership

The partnership phase will require the establishment of an entity tasked with coordinating the activities for the Coordinating Body. This includes developing an implementation plan as well as the establishment of the ultimate corporate form (i.e. trust or statutory committee), which will ultimately be responsible for the long-term management of both the assets and the affairs of the Coordinating Body. This interim entity, has to have various characteristics, such as:

- 1. Separate legal identify and have the ability to contract
- 2. Limited liability of the founding partners and/or members
- 3. Ease of formation and operation, with limited regulatory hurdles for establishment
- 4. Ease of adaptation into the ultimate statutory committee or trust

In light of the above, three legal structures were considered for the partnership, as shown below.

Table 5: Legal Forms for the Partnership

LEGAL STRUCTURE	DESCRIPTION
Limited Liability (En Commandite) partnership	The limited liability (or En Commandite) partnership is established and governed by contract and has no registration requirements. It is required to have a managing or named partner that is disclosed to 3rd Parties and bares unlimited liability to creditors of the partnership in the event that the partnership's assets are not sufficient to settle the obligations of the partnership. The unnamed partners' bare limited liability, which is limited to the extent of their initial capital contribution to the partnership. This partnership allows for ease of establishment, separate legal personality and limited liability for the unnamed partners.
The Voluntary Association ("VA")	A VA is established and governed by an agreement, and is required to conform to the applicable sections of the Non Profit Organizations Act 71 of 1997 ("NPO Act") as well as Common Law. A VA is formed by 3 or more people, it has an independent legal personality, perpetual succession and the assets and liabilities are held separate from its members. It is able to contract and may own property in its own name. The constitution of the association governs its operation and, apart from a number of mandatory requirements stipulated in the NPO Act, allows the founding members of the association a high degree of discretion. The VA may be terminated as per the agreement of the members as set out in its constitution.
The Co-Operative	A Co-Operative is formed in terms of the Co-Operatives Act, 14 of 2005. The Co-Operative is an autonomous association of persons formed for the purpose of achieving mutual benefit. It is an entity born of agreement between the founding members and governed by a committee or board of directors. If it is registered and recognised by the Registrar of Co-operatives then it is a separate legal personality and its members enjoy limited liability. The assets of the organisation belong to and are registered in the name of the organisation, not its members or office-bearers. In addition, the Co-Operative has perpetual succession and may contract in its own name. The Co-Operative is required to conform to the requirements as set out in the Act.

While the limited liability partnership would be the least onerous interim structure to establish and operate, the need to nominate a named or "liability" partner who bares the risk of the partnership's



unsatisfied liabilities may provide that this structure is unsuited for the founding members of the Coordinating Body. A Co-Operative on the other hand as extensive establishment and regulatory requirements, and can thus not be established and be functional in the short time period required by the Coordinating Body. Therefore, the Voluntary Association ("VA") is the most viable legal structure, as it allows assets of the Coordinating Body to be transferred from one corporate form to another, and it can be registered in a short time period.

## 3.7.2. Trust

There are several essential considerations for the development of the trust.

- The trust needs to be transformed from the initial partnership, and therefore needs to be designed to facilitate the transition of the Coordinating Body. This includes the management of the assets of the body, and also the ability of the body to perform management and oversight.
- The control of the assets of the entity need to be separate from, but still accountable to the management of the controlling entity. Therefore, the asset owing entity needs distinct and perpetual succession, which is separate from the controlling and management entity. This will ensure that any threat to the management committee structure must not place the assets at risk. To address this, many trusts have clear objectives and functions, which may be split off to distinguish the asset management and the management and oversight structure

The Trust will be established as a discretionary trust by agreement between the partners of the Coordinating Body and will be regulated in terms of the Trust Property Control Act 57 of 1988. The trust has to be registered by the Master of the High Court, who is also responsible for regulating the affairs of the trust and the supervision of the appointment and conduct of the trustees. While the trust does not have a separate legal personality, it does have perpetual succession. In addition, the assets of the trust are afforded protection as they belong to the trust and are separate from the estates of the trustees.

The trust deed is the foundation document which both establishes the trust and also stipulates the rules for the governance and operations. The trust deed will be developed by the partnership to ensure that it addresses the specific requirements of the partners, and that it evolves into a comprehensive governance document agreed on by all the members of the partnership. By tasking the partnership with the drafting up of the trust deed, many of the potential areas of conflict and risk can be addressed and a resolution process and mitigation provision decided upon. The trust deed will therefore set out the purpose, objectives, governance structure of the trust and rights and duties of the trustees. In addition, procedural processes such as meeting procedure, financial management procedures and dispute resolution procedures will be stipulated.

The trust is governed by the board of trustees and the trustees are obligated and have a fiduciary duty to manage the assets of the trust in accordance with the requirements of the trust deed and for the benefit of the beneficiaries alone. The trust deed will be required to nominate the beneficiaries of the trust, or provide for the trustees to retain the right to select the beneficiaries from a pre-determined group of persons. The beneficiaries of the trust obtain rights to the property of the trust, only once the property vests in the beneficiaries, or where a beneficiary accepts the right. The trustees will be the partners of the Coordinating Body, while the beneficiaries will be the water users in the Olifants Catchment.



# 3.7.3. Statutory Committee

The Coordinating Body will ultimately be established as a statutory committee, as having a statutory basis will enable the body to not only perform its functions, but also be able to enforce activities (such as monthly contributions) from the partners. There are two different statutory committees that are possible, as shown in the table below.

Table 6: Available Statutory Committee			
LEGAL STRUCTURE	DESCRIPTION		
Catchment Management Agency (CMA) Committee	A Catchment Management Agency (CMA) Committee is a statutory committee that is established by a public entity, namely the CMA, under Section 82 of the National Water Act. CMA Committees are considered as useful structures for assigning functions by the CMA board, implementing the Catchment Management Strategy (CMS) and any other functions that may be assigned by the board. Functions therefore remain within the control of the CMA. In addition, as the committee may comprise of external stakeholders (such as mines), the CMA Committee will be able to perform catchment-wide activities. In this regard, CMA Committee may act as an executive committee for the entire WMA, focused upon the management of a specific technical or operational issue (i.e. water quality) or as consultative strategic committees for individual catchments. <sup>10</sup>		
Regional Mining Development and Environmental Committee	The Mineral and Petroleum Resources Development Act (MPRDA), 2002 (Act 28 of 2002) states that a Regional Mining Development and Environmental Committee can be established in terms of Section 64. The committee is a permanent or ad hoc committee that is established by the Board with the aim of assisting it in performing its functions. The functions of the Board include advising the Minister on "any matter which must be referred to the Board by or under the Act" and "the sustainable development of the nation's mineral resources". In addition, the Board may "(i) report to the Minister on any matter relating to the application of this Act; and (ii) enquire into and report to the Minister on any matter concerning the objects of this Act." Under the Act, the Minister is responsible for the "prevention, control and combating of pollution of the air, land, sea or other water, including ground water, where such pollution is connected to prospecting or mining operations". Therefore, the implementation of this function may be administered as a function of the Board, and can thus be assigned to a Regional Mining Development and Environmental Committee.		

As the CMA Committee and the Regional Mining Development and Environmental Committee are both statutory committee, either of these committees may be possible. However, the CMA Committee is focused on water management, while the Regional Mining Development and Environmental Committee is focused on the management of mineral resources and the enforcement and/or implementation of the MPRDA. In addition, it is important to note that the CMA Committee is a statutory committee that is hosted by a public entity (i.e. CMA) and therefore has a legal basis, while a Regional Mining Development and Environmental Committee is only set-up to assist the Minister to implement the MPRDA and therefore does not have a legal basis. Therefore, the CMA Committee has the required statutory basis to enforce contributions and implement activities. Therefore the CMA Committee is more advisable, with buy-in and cooperation from DMR.

The Coordinating Body will, during the strategic planning processes, be assigned with deciding which statutory committee is suitable. This is likely to be decided during the trust phase, and should therefore include negotiations with ministers and other regulating entities. This process should also include manners in which the body will obtain buy-in and support from regulators, particularly support from DMR if established as a CMA Committee, or from DWS if established under the MPRDA. It should be noted that the Coordinating Body looks to support the existing regulatory framework, and not supplant any of its functions.

<sup>&</sup>lt;sup>10</sup> Ibid.



# 4. INSTITUTIONAL ARRANGEMENTS

As previously stated, the various stakeholders in the catchment should also have a voice in the partnership. Therefore, the arrangement of the Coordinating Body with the different stakeholders needs to be defined. In addition, as the Coordinating Body will go through institutional shifts - from the establishment as a partnership, a trust and ultimately a statutory committee housed in a statutory institution, it is essential that the institutional arrangement of the Coordinating Body, during various stages of its lifecycle is defined.

# 4.1. Arrangements with Stakeholders

#### 4.1.1. Stakeholders in the Catchment

There are several stakeholders in the Witbank Coalfields. Stakeholders can either be classified as direct or indirect; direct stakeholders are individuals, groups or entities that have a direct *impact on* the water resources and are *responsible* for the management of water resources, while indirect stakeholders are *impacted by* the poor water quality, or are *interested* in the management of the water resources. The figure below illustrates the various direct or indirect stakeholders in the catchment.

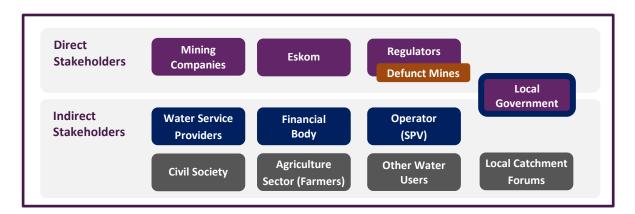


Figure 5: Stakeholders in the Witbank Coalfields

The stakeholders shown in the figure above are individuals, groups or entities who are responsible for the poor water quality, are affected by the mine impacted water, or are interested in the resolution of the water challenges in the area. It is essential that a representative mixture of stakeholders is ensued, as this is critical to successful management and local buy-in.

As can be seen from the figure, mining companies in the area and Eskom are deemed as direct stakeholders, as they have a direct *impact on* the water quality and responsible for the water quality challenges in the region, while the regulators are responsible with the management of water resources in the catchment. Local government on the other hand, may be considered as both a direct and indirect stakeholder, as they are responsible for the regulation of the region through, for example, by-laws and land-use approvals, and are also interested in the management of the water resources as this will impact how the region is regulated and managed. All these stakeholders are shown in purple in the figure above. Defunct mines, on the other hand, will have a direct relationship with the regulators; the regulators are responsible for the management of defunct mines (shown in brown).



Other integral stakeholders are the operator (performing the water management activities), the financial body, as well as the local water service provider (responsible for water allocations in the region). These stakeholders can be considered as indirect stakeholders as they are interested in the management of the water resources (and are shown in blue).

Finally, other stakeholders in the catchment are those individuals, groups or entities that are impacted by the poor water quality (shown in grey). These stakeholders are shown in grey in the figure above, and include the water users in the catchment. These stakeholders can either be individual stakeholders (such as farmers) or groups of water users (such as local stakeholder forums).

## 4.1.2. Stakeholder Engagement

As can be seen above, there are different stakeholders in the catchment, each with varying interests and responsibilities in the water quality challenges and the management of the water pollution. When addressing shared water challenges, it is imperative that benefits are accrued to all participants and stakeholders. Therefore, joint action needs to ensure that benefits are not generated for only a few stakeholders, to the detriment of other stakeholders, interests (such as biodiversity) or society as a whole. The following integrity principles are suggested as guidance to help ensure that joint action efforts lead to shared benefits, and should therefore be incorporated in the design and implementation of water management activities in the catchment. Joint action with integrity ideally has:

- Clear objectives and demonstrable outcomes that advance sustainable water management;
- Trustworthy, credible, and accountable participants; and
- Inclusive, transparent, and responsive processes that lead to informed and balanced decisionmaking.

As there is a broad variety of stakeholders in the catchment, the manner in which the stakeholders are involved in the joint action will vary, and so will the manner in which the stakeholders are engaged. The engagement and relationship between these stakeholders and the Coordinating Body should therefore be defined. The engagement between the broader stakeholder group and the body can take either one of two forms (as illustrated in the figure below), namely:

- A broader stakeholder group that engages directly with the body; or
- A broader stakeholder group that assigns different representatives (from the different stakeholders), who will act in a consultative and advisory capacity with the body.

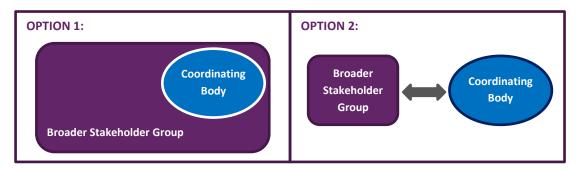


Figure 6: Arrangements between Stakeholders and the Coordinating Body

While the first option will allow all stakeholders to be involved in the partnership, there is a possibility that the engagement will be extensive, with issues being raised, discussed and agreed upon



simultaneously. This allows for more concise and structured engagement, with the sector representatives only raising key issues that had been previously agreed upon during separate stakeholder consultation. The stakeholders that impact on water resources and are responsible for water management should be primarily responsible for the funding and implementation of the water management activities, while the stakeholders that are impacted by the poor water quality and/or are interested in the resolution should be informed of the and how the water quality challenges are being addressed. Therefore, while the former should drive the initiatives, the latter will be consulted and will oversee the successful implementation of the initiatives. The engagement between the stakeholders and the body will be therefore be a broader stakeholder group that assigns different representatives (from the different stakeholders), that has a consultative and advisory relationship with the body.

# 4.2. Partnership Arrangement

The members of the broader stakeholder group and the statutory committee will be derived from the stakeholders that are shown in Figure 5. The stakeholders, and the roles that they will encompass, are shown in the table below. The statutory committee will comprise of stakeholders that will be responsible for providing funds to the Coordinating Body as well as coordinating the water management activities. Representatives from these member institutions will be housed in the body, and will be responsible for the coordination of the partnership. In addition, a catchment forum representative will be part of the body, as this will enable oversight and assurance of the preservation of water user's interest. In the longer term, additional stakeholders will include local government as well as any other signatories to the partnership (such as junior miners). This will ensure that all relevant and direct stakeholders are involved in the initiatives, and that the initiatives are aligned with the regulations, long-term objectives and development plans of the region.

Table 7: Membership of the Coordinating Body and Stakeholder Representatives

Table 7. Wellibership of the coordinating body and stakeholder hepresentatives			
Туре	Stakeholders in the Short-term	Additional Stakeholders for the Medium - Long-term	
Coordinating Body	<ul> <li>National government: DWS, DMR</li> <li>Mining companies in the catchment</li> <li>Eskom</li> <li>Catchment forum representative</li> </ul>	<ul> <li>National government: DEA, DoA</li> <li>Local government</li> <li>Junior minors' representative</li> <li>Mining bodies/associations: SACMA, CoM</li> <li>Other signatories of the partnership</li> </ul>	
Broader Stakeholder Group	<ul> <li>Key stakeholder groups within the catchment (e.g. Olifants River Forum)</li> <li>Downstream water users</li> </ul>	Other representative stakeholder body	
Other	Financial institutions	<ul><li>Operator (SPV)</li><li>Local water service provider</li></ul>	

Local catchment forums, including water user group representatives, are stakeholder groups that are affected by the mine impacted water. These stakeholders should thus be informed about the water management activities in the catchment. This relationship will be infrequent, and will largely address water user concerns about mine impacted water.

Other integral stakeholders are the operator (performing the water management activities), the financial body or a partner that oversees the financial body (providing funds to enable the management of the water quality), as well as the local water service provider (responsible for water allocations in the region). These indirect stakeholders will have a contractually-based relationship with the Coordinating Body, and will thus be engaged when deemed necessary.



The appropriate level of engagement for the different stakeholders in the catchment will not only ensure that the engagement is structured, but will also ensure that stakeholders' concerns are addressed in the most optimal and efficient manner. However, even with varying engagement and involvement, the Coordinating Body should ensure that the benefits of the joint action are shared by all stakeholders.

# 4.3. Hosted Partnership

As previously stated, in the interim, the Coordinating Body should be established as a partnership, with all the key members being partners. This will allow the Coordinating Body to perform its functions without the time and cost delay associated with establishing the statutory committee or even a trust. The initial partnership will be assigned with the establishment of the ultimate corporate form, i.e. trust and the statutory committee. Therefore, it is essential that an enabling environment for the partnership is ensured. In addition, it is important to discern how the transition into a different cooperate form will affect the implementation of the functions. This will ensure that the Coordinating Body is able to perform its functions, and should also enable the easy transition into the ultimate corporate form. Section 3.1 investigated how the partnership will be structured; however, it is also important to discern where the partnership will be housed. The 3 possible interim arrangements for the partnership include:

- A partnership that is hosted by an existing institution
- A partnership that is established with a seconded or contracted executive
- A partnership that is established through an independent entity with its own systems

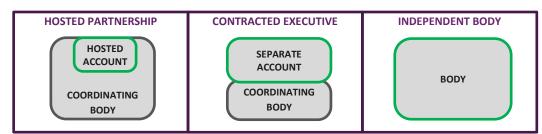


Figure 7: Possible Partnership Arrangements

**Table 8: Possible Partnership Arrangements** 

ARRANGEMENT	DESCRIPTION
Hosted Partnership (e.g. SWPN is hosted by NBF)	As a hosted institution, the partnership can benefit from the use of the established systems and processes of the host institution. As a partnership is not a legal entity, the partnership can rely on the host institution's legal basis. This will assist the partnership in its fund collection endeavours; funds can go through the host institution, which is already established as a ring-fenced entity.
Contracted / Seconded Executive	For a partnership that is established with a seconded or contracted executive, the selection of this seconded (i.e. from the partners to the agreement) or contracted (i.e. from an independent service provider) executive will have to be carefully managed to ensure credibility of the partnership. Ideally, the executive should have the required processes, systems and structures in place to enable the partnership to perform its required functions. As a partnership is not a legal entity, the entity acting as executive or one of the partners will have to act on behalf of the partnership. Contractual agreements for financial and operational activities can be utilized to maximize the benefits offered by other institutions, and thus also compensate for weakness (without compromising institutional effectiveness and resource efficiency). In addition, in-kind contributions from partners (e.g. Eskom, Anglo American) can be utilized to assist the body in fulfilling its functions without the financial expenditure required for contractual agreements.
Independent Body	As an independent body that is also a legal entity, the partnership can benefit from independence and



control. As a legal entity, the independent body will be able to initiate the collection of funds, and enforce compliance. However, the independent body would need to establish its own governance and management systems, as well as its own resources and possibly staffing.

The hosted partnership is the most advantageous of the three arrangements is it allows the partnership to compensate for resource shortages by leaning on the host institution. The most suitable host institution is NEPAD, as there is an existing relationship with SWPN. The associated funding and financial arrangement is discussed in Chapter 7.

# 4.4. Special Purpose Vehicle

A special purpose vehicle (SPV) is a separate independent body that is established by the partners of the Coordinating Body. It is inherently a PPP that is assigned functions by the Coordinating Body, with the aim of assisting the Coordinating Body to perform its required functions. A contractually binding relationship will exist between the SPV and the Coordinating Body, which will enable the SPV to perform specifically assigned functions. The SPV will only be required in the medium term, after the establishment of the trust (and associated trust account).

The relationship between the SPV and the Coordinating Body, as well as other stakeholders in the catchment is presented in the figure below. The SPV will be the vehicle through which the Coordinating Body implements its functions (in the medium to long-term). Therefore, the SPV will, depending on the assigned function, have a direct relationship with the stakeholders in the catchment. These relationships will be associated with the capital aspects (such as collecting waste water charges) and/or the implementation of operational activities (such as the treatment of polluted water).

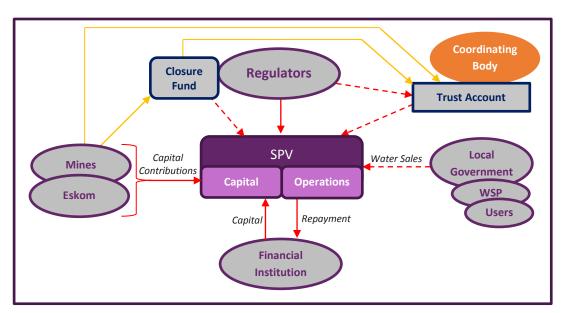


Figure 8: Arrangements Involving the Special Purpose Vehicle (SPV)

These possible relationships are described below;

The regulator is assigned with ensuring that the Coordinating Body is regulatory compliant.
 Therefore should the body implement a function that requires engagement with regulators or



the establishment of a best-practice guide (for example), the SPV will ensure this function is achieved and that engagement with the required personnel happens.

- The partners are expected to provide frequent and long-term contributions to the Coordinating Body. These contributions can be managed by the SPV, who will ensure that the contributions are sourced from the required entities. In addition, funds for defunct mines (currently administered by government) as well as fiscal contributions will be managed by the SPV. These funds may also be contributed to the trust account, and then transferred to the SPV through previously established financial mechanisms.
- The SPV may be required to perform water management activities and/or build water management infrastructure. This will require large amounts of capital. The SPV could be required to source capital from financial institutions in order to be able to fund the water management activities.
- Relationships with the local government will be required if treated water is sold to local water service providers. Local government will be required to oversee the water sales to the WSP, such as ensuring that the water rates are acceptable for local water users, and that the quality of the water is of the required standard. Therefore, in this instance, the SPV will be required to administer the sale of the water and the collection of the costs, as well as implementing the operational activities required to ensure that the water is saleable.

It is important to consider the fact that mine operations do not have a perpetual life span. Therefore, funding for post-closure activities needs to be secured prior to mines being closed and that the capital is paid back prior to the mines reaching closure. This is to ensure that post-closure, liability for the capital is not transferred from the mining companies to the remaining partners in the body, and that the SPV only has operational functions post-closure. This will allow the SPV and the Coordinating Body to be able to perform water management initiatives even after mines have closed. Post-closure, the envisaged relationship between the SPV and other stakeholders in the catchment can be expressed in the figure below.

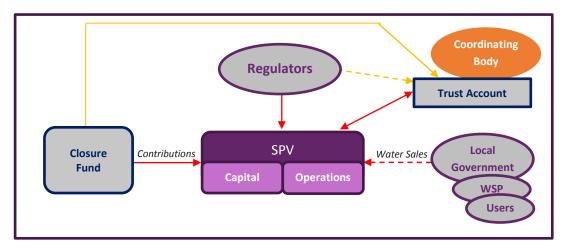


Figure 9: Post-closure Arrangements Involving the Special Purpose Vehicle (SPV)

Mining company's liability is currently sustained through contributions to the closure fund, which ensures that mines are still liable for water management activities even after operations have seized.



Therefore, post-closure, the SPV will obtain the required contributions from the closure fund. At this stage, strategic direction on how these funds will be sourced from NT is required, or other sources need to be secured (as discussed in Chapter 7).

The main difference between the medium and post-closure arrangements is that the mines and Eskom will no longer be required to contribute to the Coordinating Body. The closure funds will provide long-term financial sustainability to the Coordinating Body. In addition, the capital that had been sourced by the Coordinating Body to implement its functions would have been paid back. Therefore, the relationship between the SPV and financial institution will seize to exist. The financial function will therefore be performed by the trust account.

The arrangement provided above are intended to not only avoid the transfer of liability from one party to another, but are intended to ensure that the Coordinating Body is sustainable in the long-term, particularly once the mines have closed. The effective utilization of the SPV will enable the Coordinating Body to be operationally efficient in meeting its ultimate objective, which is to minimize, eliminate and mitigate mine impacted water in the Witbank Coalfields.



# 5. GOVERNANCE MECHANISMS

#### 5.1. Good Governance Characteristics

The Coordinating Body will fulfil the functions of a Governing Board, and will thus be responsible for ensuring good governance and for being the custodian of the strategic plan. It is important that the Coordinating Body endeavours to promote good governance by practicing the King III characteristics of good governance such as accountability, discipline, fairness, independence, responsibility, transparency and ensuring social responsibility.

Critical to the successful operation of the Coordinating Body and the evolution from the partnership to the trust and statutory committee will be the iterative approach to developing the governance structure of the body. The legal entity that houses the Coordinating Body initially (i.e. the voluntary association) will be established with a constitution that sets out the necessary rules for proper governance and efficient operations. The constitution will in turn form the basis of the trust deed, and then the code of conduct of the statutory committee.

It is critical that the establishment of the body is not delayed by the parties' attempts to draft a comprehensive governance document from the outset. Notwithstanding, the parties will be required to determine general rules for the conduct of the Coordinating Body; below are some of the matters that the constitution will be required to address to enable successful implementation of its mandate.

# 5.2. The Governing Board

### 5.2.1. The Role and Purpose of the Governing Board

The Governing Board should provide leadership and should retain full and effective control over the direction and performance of the body. A key element of control is the management of risk; the Governing Board must ensure that risk is adequately understood and that all necessary measures to manage risk are implemented.

In line with the principles of leadership and good governance, the Governing Board should provide strategic direction to the Coordinating Body, develop the required business strategies and policies, ensure good governance through appropriate systems and controls, provide guidance and advice to the internal personnel, monitor and review the performance and fulfilment of objectives, and ensure compliance with all relevant laws, regulations and codes of business practice.

### 5.2.2. Governing Board Establishment and Structure

The Governing Board should be an independent body with a professional focus structured around the core functions and objectives of the Coordinating Body. Therefore, to ensure that the objectives of the body are fulfilled and that the Governing Board takes ownership of the responsibility of the body, it is vital that the members of the Governing Board are derived from the partners and stakeholders. The Governing Board should be composed of a mix of governmental and non-governmental representatives, and board size should compromise between adequate representation and efficiency in decision-making.



The Governing Board composition should be in the mostly non-government, with some key government ex officio positions representing government interests. Civil society should be represented, as the Governing Board should be responsive to the needs and concerns of community groups. However, representation should be beneficial to the body. Representation of the private sector (particularly mining companies and Eskom) is vital, as the private sector often have experience serving on boards, bringing a high level of financial expertise, and are important donors to the body. The mechanism for the secondment to the Board, on either a permanent or temporary basis will need to be confirmed by the partners in the course of the discussions on the formation of the Governing Board. The commitment of staff and resources by the partners will also need to be agreed upon.

### 5.2.3. Tenure of the Governing Board

The Governing Board tenure should be considered to enable sufficient time for the implementation of the body's strategy, but also adequate turn-over to enable the introduction of new ideas. Consistency between one board and the next should be ensured by retaining a critical mass of board members and through good induction processes. As the body will go the institutional evolution, it is essential that the procedures for transformation, dissolution and/or reestablishment of the Governing Board during the transition from one corporate form to the other are clearly stipulated and agreed upon. This should ideally also include how the Governing Board will be structured during the institutional evolution.

### 5.2.4. The Powers of the Governing Board

The powers and mandate of the board, their ability to contract and the oversight procedures of the board will need to be agreed by the partners. It is important that these provisions allow sufficient authority for the board to conduct the affairs of the association with the necessary level of autonomy to be effective, but that also provides the partners with the required level of comfort to ensure that board member institutions are not negatively impacted by body's operational activities and risks. The board should establish its own proceedings, in line with the requirements of the memorandum of association, trust deeds, and code of conduct of the statutory committee. These proceedings will include quorum, adjournment, voting, board delegation, recording of minutes, resolutions, and the appointment of committees and committee chairs.

#### **5.2.5. Statutory Governance Requirements**

During the partnership phase, the constitution of the body is required to set out the objectives of the association and is procedures. The constitution will need to set out the procedures regarding meetings, voting, adoption of resolutions as well as the manner in which the constitution of the association may be amended. The constitution will also need to set out the accounting and financial management rules for the association, including the reporting requirements, the appointment of an accounting officer and the maintenance of proper accounting records. The financial management practicalities of who represents the association and the internal requirements to ensure that financial risks are mitigated also need to be established.

As the association has a separate legal status and the assets of the body remains vested in the association, it is essential that the procedures of dissolution and the transfer of assets are stipulated. Again however, the establishment of exhaustive procedures should be determined during the course of the association's lifespan and should not create an impediment for the establishment of the association.



# 5.3. Other Key Governance Systems and Processes

The Coordinating Body needs to put governance systems and controls in place to ensure that the principles of good governance are embedded into its operations. Standard systems include the strategic plan, business plan and budget, monitoring and evaluation, the internal and external audit, as well as regular reporting. These systems and controls are relatively standard in corporate governance, and should thus be consistent with the requirements and recommendations of the PFMA, National Treasury Regulations and the King III Report.

- **Planning Systems** there are three main planning tools that should be used to ensure good governance through enforcing principles such as accountability, discipline and transparency. These are the Strategic Plan, the Business Plan and the detailed budget.
- Monitoring and Evaluation (M&E) Systems there are two types of M&E systems that ensure
  good governance through enforcing principles such as accountability and responsibility. These
  are management appraisal and performance management systems and project M&E systems.
- External and Internal Audit the Companies Act requires all companies to be audited regularly.
   Although the three corporate forms are not required to be audited, good corporate governance recommends that the Coordinating Body subject themselves to regular internal and external audits, particularly since the body is a partnership between public and private sector institutions.
- Reporting regular reporting of management and financial information should be practiced. This
  includes both external internal quarterly reporting to the partners and key stakeholders, to
  ensure transparency. Reporting keeps partners and stakeholders informed of the body's financial
  position, performance, future direction and fulfilment of body objectives.

Initially, as a hosted partnership, some of these systems and processes will be housed in the host institution and also performed by/with the resources of the host institution. However, as the Coordinating Body evolves into a trust and statutory committee, the body will be required to establish its own systems and processes.

### 5.4. Strategic Plan

The strategic plan is integral to the effective functioning of the Coordinating Body. The strategy should assist the body in meeting its objectives, and should guide the body on the systems and processes required to fulfil its functions. The strategy should guide the body in its governance function by stipulating the principles of leadership and good governance and also provide strategic direction to the Coordinating Body on developing the required business strategies and policies, ensuring good governance through appropriate systems and controls, providing guidance and advice to the internal personnel, monitoring and reviewing the performance and fulfilment of objectives, and ensuring compliance with all relevant laws, regulations and codes of business practice. The strategic plan is also a plan on how to manage the catchment, and should therefore contain water management aspects, as defined in Chapter 3.

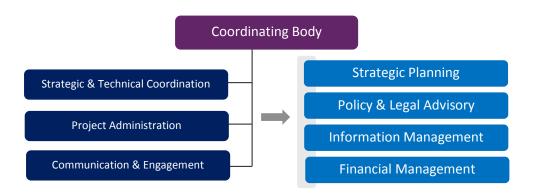


# 6. ORGANISATIONAL CONSIDERATIONS

The organisational design for the Coordinating Body is heavily dependent on the institutional-business model adopted, the functions of the body and the resources that it has available. Accordingly, this section of the business case will assume a simple structure for the body, which is easily adjustable as the body evolves.

### 6.1. Functional Structure

The first step in the organisational design process is understanding the functional requirements of the Coordinating Body. These functions do not equate to organisational positions (HR requirements), but are more aligned with the operational activities that the body will ensue.



**Figure 10: Possible Functional Structure** 

The high-level functional structure is built on the following elements, which are cornered around the core functions of the Coordinating Body:

- Strategic and Technical Coordination: this function relates to implementing the strategic direction of the body, the day-to-day management of the institution, as well as ensuring the water management projects are implemented effectively.
- Project Administration: this function relates to performing corporate service activities, administering and monitoring the implementation of projects, as well as supporting the implementation of other functions.
- Communication and Engagement: this function relates to the coordinating and communication
  with stakeholders, to enable transparency and to promote the sharing of knowledge and
  information.
- **Strategic Planning**: this function relates to the establishment and/or implementation of water and environmental plans at a regional and/or catchment level.
- **Policy and Legal Advisory**: this function relates to the effective management of mine impacted water through the provision of policy and regulatory support to stakeholders.



- Information Management: this function relates to the collection, management and sharing of
  information to enable knowledge sharing so that companies can jointly benefit from methods
  and new technologies used by their peers.
- Financial Management: this function relates to financial management, investment and income, accounting, budgeting, reporting and management of financial risk.

The manner in which these elements will be implemented is discussed below. It is worth noting that the functional structure identified above is mostly applicable for the partnership phase. There may be room for expansion during the trust and statutory committee phase, although this may require an expansion or redesign of the functional structure.

# 6.2. Organisational Design

### 6.2.1. Implementation of Functions

In order to implement the functions, the Coordinating Body will have to enter into arrangements with either internal partnership members (through agreements), or with external service providers (through contractual agreements). These arrangements are illustrated in the figure below.

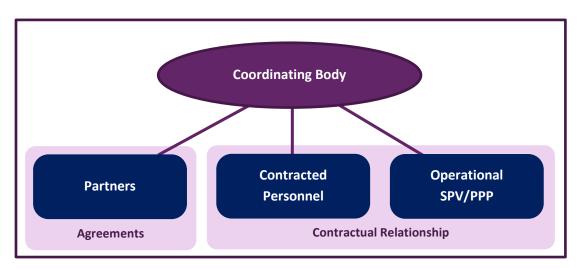


Figure 11: Long-term Arrangements for Implementing the Operational Aspects

The Coordinating Body can implement its functions by performing required activities internally. This can be achieved either through sourcing internal resources, or through in-kind contributions from the partners. On the other hand, external personnel can be contracted in to perform required activities; these activities are often aligned with activities that would have been performed by internal staff members. In addition, specialized activities can be outsourced to external service providers (such as the water quality monitoring activities).

#### 6.2.2. Organisational Design

Based on an understanding of the early partnership as a small entity, with relatively limited resources and small project load, the functional structure was developed. The functional structure is built under the assumption that the body will rely on outsourcing and in-kind contributions from the partners. This will not only reduce the financial resources required by the body, but will reduce the number of



personnel that are hired by the body. Over time, as the body grows and its project load increases, organisational structuring based on functional distinction may be required. However, if outsourcing and in-kind contributions are ensued, then the functional structure can be used as the organisational design. Therefore, the organisational design is shown in the figure below.

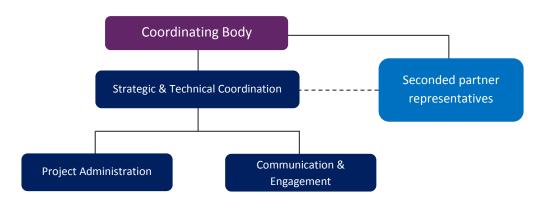


Figure 12: Possible Organisation Design

Under this organisational design, seconded partner representatives will provide the required resources through in-kind contributions. These partners will be required to devote 50% of their time to the body. This will mean that external service providers or contracted personnel will not be required to fulfil this function. However, should additional assistance be required by the seconded partner representatives, service oriented contractually binding agreements can be signed between the Coordinating Body and SPVs. These may be related to non-core professional activities such as legal services, IT and communications system support, as well as publishing communications materials and annual reports.

### 6.3. Staffing and Job Description

A staff complement of 3 will be sufficient to support the Coordinating Body in fulfilling its objectives. Only one staff member will be housed under each the three internal structures, namely a Project Manager and Senior Technical (Mining and Water) Professional, a Project Administrator, as well as a Communications and Stakeholder Liaison Professional.

Due to the size of the organisation, infrequent activities such as reporting or financial audits do not require internal expertise and should therefore be outsourced. The staff compliment will not grow to above the estimated number. The costs associated with the staff for each of these departments is provided in Chapter 7 below. The job descriptions for the 3 staff members, as well as the seconded partner representatives are provided below.

# 6.3.1. Project Manager and Senior Technical (Mining and Water) Professional

The candidate will be required to have a BSc Engineering degree and should be professionally registered. In addition, the candidate will be required to have at least 10 years of work experience, focused on the management of water associated with mining activities. This should include project management activities, financial oversight and the coordination of project teams. The candidate will be required to:

- provide strategic coordination of water management activities and ensure quality control
- manage subordinate professionals and administer other internal management activities



- manage contractual agreements with external service providers as well as in-kind contributions from partners and ensure quality control
- perform activities as required by the partners and be accountable to the board

#### 6.3.2. Communications and Stakeholder Liaison Professional

The candidate will be required to have a Communications degree. In addition, the candidate will be required to have at least 5 years of work experience, with exposure to the mining sector. This should include providing strategic direction to communication and engagement for the institution, the development of communications and engagement strategy and the implementation of stakeholder engagement sessions. The candidate will be required to:

- develop and implement communication and engagement strategies/plans
- perform on-going liaison and communication with relevant stakeholders, donors and partners
- organise and drive stakeholder engagement sessions
- develop communication and knowledge management material

In the first year, this professional is only expected to provide 50% of the time to the Coordinating Body, which will increase to 100% in the second year.

#### 6.3.3. Project Administrator

The candidate will be required to have Secretarial, Administration, Project Administration or Bookkeeping qualification. In addition, the candidate will be required to have at least 3 years of work experience, focused on the administration of projects within the mining and/or engineering sector. This should include very good MS Office, financial administration and report writing skills as well planning, time management and organisational skills. The candidate will be required to:

- perform the administrative and logistical functions of the body
- perform project related administrative activities such as cost tracking and compiling report
- assisting during reporting, auditing and other corporate service related activities
- providing support to stakeholder engagement sessions where necessary (such as organising and taking minutes)

### **6.3.4. Seconded Partner Representatives**

Seconded partner representatives will be experienced professionals that are hired by the partner institution. The partners will be required to dedicate 25% - 50% of their time to the partnership, depending on the requirements stipulated by the Coordinating Body. The partner will be required to perform one or more of the following activities:

- strategic planning
- policy and legal advisory
- information management
- financial management



# 7. FINANCIAL ARRANGEMENTS

# 7.1. Funding and Financial Arrangement

As indicated in Chapter 4, in the interim, the Coordinating Body should be established as a partnership, with all the key members being partners. This will allow the Coordinating Body to perform its functions without the time and cost delay associated with establishing the statutory committee or even a trust. The initial partnership will be assigned with the establishment of the ultimate corporate form, i.e. a trust and then ultimately a statutory committee or trust. Therefore, it is essential that an enabling environment for the partnership is ensured.

As a hosted partnership is deemed as the most suitable arrangement to enable the partnership to perform its functions, the body will be able to utilise the host institution's bank account, systems and processes. This will enable the body to efficiently and effectively perform its financial management functions. The body should be able to oversee how the funds are managed by the host. The flow of funds through the hosted institution is illustrated in the figure below.



Figure 13: Funding and Financial Mechanisms for a Hosted Partnership

As indicated in the figure above, in the short term the arrangement will entail a hosted partnership with a hosted account. However, it is worth noting that this financial arrangement is not viable for all the institutional forms. As the Coordinating Body will evolve, the relationship between the Coordinating Body and the financial mechanisms will change over time, as stipulated in the figure below.

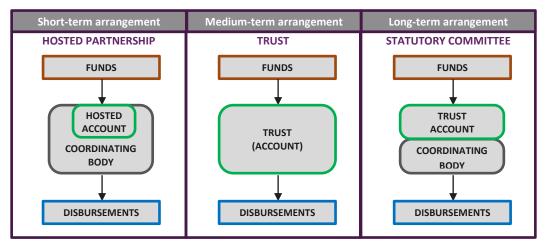


Figure 14: Short, Medium and Long-Term Funding and Financial Mechanisms

Due to the institutional evolution:



- In the short term, this arrangement will entail a hosted partnership with a hosted account.
- In the medium term, the trust (with a trust account) will be established and utilized.
- After the establishment of a statutory committee, the trust account will be utilized by the committee to perform the financial functions, while the statutory committee will perform the governance functions.

# 7.2. Financial Systems

The Coordinating Body will initially utilise the financial systems of the host institution and will therefore not need a separate financial system. The host institution will need to maintain separate financial records to allow the body to report separately. However, in the longer term, the body will be required to establish its own systems and processes, and to source internal resources. A fund manager, accounting officer, or dedicated implementing agent will be required to perform the required financial management functions. As public sector partners and public sector funds are envisaged, the host institution should be PFMA compliant. Most standard small business accounting packages now have the ability to deal with this level of complexity. The body should therefore not have to invest in a customised financial system.

# **7.3. Funding Sources**

The costs required for the functions and the Coordinating Body will be covered by the various sources of funding that will be received by the Coordinating Body. The flow of funds will be obtained from two main sources, namely the partners to the agreement (and committee) and/or mines and other water users in the catchment, as well as other external sources. Contributions from internal partners and mine-water users in the catchment include frequent (monthly/quarterly) funding contributions, as well as once-off or project related contributions. These sources can be:

- Contributions from one or more of the government and/or private sector partners, which could be either once-off, or over an extended period of time. This may be financial or in-kind contribution to the committee functioning. These contributions can also be activity related; for example, one entity may contribute the funds required for the strategy, while another contributes the set-up costs/activities. This can be activated as the partnership is formed, so provides a possible initial funding source.
- Waste water charges, such as the WDCS, are mitigation charges that should be administered to all water users in the area. These charges are established under the NWA, and are administered by the water service provider. The charges are intended to serve as a motivation for stakeholders to manage their waste water effectively, and to also join the partnership. Being a partner will enable water users to not only be involved through the contribution of funds, but will also allow water users to have a voice and possible hand on the water management activities. This will enable the partnership to be expanded beyond large mines, to also include junior and/or noncompliant mines. Establishing the waste water charges in a catchment is a longer-term process (12 to 18 months), so is more viable as a medium term funding source, although much of the establishment work has already been completed in the Upper Olifants.



- AMD, mining and/or water pollution levies that are administered by government. The levies should be based on environmental degradation and/or liability, and should be enforced on all mining companies in the area, by virtue of the fact that they are mining in an environmentally degraded catchment. This provides an even longer term option (at least 3 years), as the process of establishing and disbursing these resources through Treasury will take time and there is no guarantee that the funds will be ring-fenced for local activities.
- Environmental risk and closure funds are currently legislated by the DMR, and are controlled by National Treasury. With the new requirement to make provision for water related impacts, this provides an important long term sources of funding, but will only be available post closure and thus in the much longer term. However, there have previously been challenges associated with accessing these funds. Strategic direction on the access of the funds is required; these funds will appease the concerns raised by several mining houses of repeatedly paying for environmental rehabilitation. In addition, the funds will provide a boosts to the Coordinating Body's financial resources particularly when considering long-term water management activities.
- Potential revenue from the sale of treated water, which will benefit the local water users as well
  as the Coordinating Body. The local water users will have access to clean water, while the body
  will obtain the funds required to gain capital, which will enable the implementation of other
  water management activities. This will require a partnership with the local municipality and/or
  the local water service provider.

Contributions from external stakeholders and other sources may include regular funding contributions, as well as once-off or project related contributions. These sources can be attributed to:

- Financial contributions (through subsidies) and fiscal support from government.
- Funding and financial contributions from private sector donors, development banks and/or other environmental (water) project related funds.

Apart from the contributions discussed above, additional sources of income may include investment income earned on the funds or endowment. These and other sources of funding need to be further investigated.

# 7.4. Expenditure

This section provides a high-level summary of the institutional expenditure that is required for the Coordinating Body to perform its functions. The expenditure will be composed of the following aspects:

- Establishment Costs
- Once-Off Setup Costs
- Operational Costs
  - Governance and coordination activities
  - On-going (daily) activities
- Capital Costs



An overview of each of these costs is provided below.

### 7.4.1. Establishment Expenditure

A statutory committee is the preferred corporate form for the Coordinating Body. However, as previously stated, due to resource and institutional limitations the body will be established as a partnership, a trust, and then ultimately a statutory committee. The costs required to establish these institutions depend on the type of the institution (i.e. corporate form) that is being established. These costs involve getting the actual institution established, and thus differ for each of the corporate forms;

- Partnership: Partnerships are relatively easy and inexpensive to establish as there are no formal requirements for the establishment of a partnership. As the partnership will be hosted, it is estimated that the costs associated with initiating the hosted partnership will be R145 000 for the first year, and R180 00 for the second year.
- Trusts: Trusts are established through the registration as an NPO as well as at the local High Court. A Trust deed that stipulates the purpose and modus operandi has to be developed, which may require professional expertise. Professional expertise will be required for this process, which can have costs estimated at R200 000.
- Statutory committee: Statutory committees are established by the public entities, which are ultimately responsible for all the costs associated with the establishment of the committee.

### 7.4.2. Once-Off Setup Costs

Once-off set-up costs are costs that are common to all corporate forms. These costs are associated with getting the institution ready for the fulfilment of its institutional requirements, and thus involve setting up offices for the partnership and the recruitment of staff. As a hosted partnership, the body will rely on the resources provided by the host institution, and will this not be required to set-up the institution. Recruitment costs on the other hand, are expected to be approximately R290 000 (approximately 20% of staff costs).

# 7.4.3. Operational (Overhead) Costs

Operational costs are associated with the daily activities of the Coordinating Body. These costs are ongoing and include the daily expenses of running the body, such as the governance and coordination activities, as well as the activities associated with the delivery of the functions and the strategic plan.

Governance and coordination costs can be attributed to on-going costs such as:

- Any remuneration of Coordinating Body members. As the body should be an independent body
  with wide, equal and fair stakeholder representation, the body should be composed of both
  public and private sector representatives. The remuneration of members should be based on the
  institutional remuneration guidelines for public and private sector representatives, as well as
  other stakeholders.
- Management costs related to costs incurred by executive level personnel, such as meeting costs, venue, travel and accommodation.

On-going delivery costs can be attributed to operational activities such as:



- Office costs related to the lease of building, telephone, network and fax lines, equipment, IT hardware, etc.
- The installation and setting up of systems such as a HR systems, payroll system or integrated data monitoring software.
- Communication costs, including the required stationary and equipment.
- Insurance costs on fixed assets as well as indemnity insurance for staff and visitors.
- Staff training and development costs.
- Staff remuneration costs (based on best-practice), which should be market related and be based on best-practice, i.e. including benefits such as pension/provident fund and medical aid.
- Outsourcing costs, which may materialise due to specific labour and expertise related activities
  that the body may not be able to perform (e.g. audit function). It may therefore be necessary to
  outsource activities to service providers that have the required expertise.

The costs associated with the governance and coordination activities are expected to be approximately R2 000 per meeting for each partner. However, as the members of the Coordinating Body have not been finalised, the total costs associated with these activities needs to be finalised. The costs associated with the remuneration of staff members are expected to be approximately R1 450 000, while the costs associated with operational activities, which are likely to be outsourced, are projected to be R4 600 000. The costs associated with the outsourced operational activities may be offset through in-kind contributions from partners; this cost reduction strategy should be considered by the Coordinating Body.

### 7.4.1. Capital Costs

Capital costs are mainly associated with the actual water management projects and activities. As these costs are separate from the daily operational activities, it is important that they are dealt with separately, i.e. in a ring-fenced environment (even though the source of funding may be the same). This will ensure that the project related costs are properly managed, particularly due to the high likelihood of a contractual relationship with an external service provider.

The capital cost will be based on the water management projects and activities. It is however worth noting that with additional financial resources, there will be scope for an expansion of projects / activities and the associated budget.

#### 7.5. Cost Considerations

The table below presents the expected annual cost for the Coordinating Body. Based on the overview provided above, the annual costs for the Coordinating Body include establishment costs, overhead costs and operational costs (governance and coordination activities and on-going operational activities).

For 2015, a pro-rata rate will be applied to the annual costs estimates, depending on when the body is established and is functional. The costs for the initial 4 year period have also been estimated, based on a projected 6% inflation-based increase in cost annually.

**Table 9: Costs Associated with the Coordinating Body** 

	Ye	ar	
2015	2016	2017	2018



Establishment	R435 000	181 900	R200 000	0
Recruitment Costs	290 000	-	-	-
Institutional Costs	145 000	181 900	200 000	0
Hosted Partnership	145 000	0 181 900		-
Trust	-	-	200 000	-
Statutory Committee	-	-	-	-
Operational Activities	R6 050 000	R5 515 000	R3 725 900	R3 949 454
Human Resources	R1 450 000	R1 819 000	R1 928 140	R2 043 828
Project Management Department	1 100 000	1 166 000	1 235 960	1 310 118
Project Manager / Senior Technical Professional	900 000	954 000	1 011 240	1 071 914
Project Administrator	250 000	265 000	280 900	297 754
Communication & Engagement Department	300 000	600 000	636 000	674 160
Communication & Stakeholder Liaison Professional	300 000	600 000	636 000	674 160
Activities to be Outsourced	R4 600 000	R3 696 000	R1 797 760	R1 905 626
Strategic Planning	3 000 000	2 000 000	-	-
Policy & Legal Advisory	400 000	424 000	449 440	476 406
Information Management	1 000 000	1 060 000	1 123 600	1 191 016
Financial Management	200 000	212 000	224 720	238 203
Operational Costs (Overheads)	-	-	R1 117 770	R1 184 836
TOTAL COSTS	R6 485 000	R5 696 900	R5 043 670	R5 134 290
TOTAL COSTS (excl. outsourcing)	R1 885 000	R2 000 900	R3 245 910	R3 228 665

There will be a minimum of 5 initial partners in the Coordinating Body (i.e. Anglo Coal, Exxaro, BHP Billiton, Eskom, and DWS). As each partner will contribute to the partnership, it is essential that these contributions are projected, as shown in Table 9.

**Table 10: Contributions from Partners** 

	Year			
	2015	2016	2017	2018
Partner Contributions (5 members) – incl. Outsourcing	R1 300 000	R1 140 000	R1 010 000	R1 030 000
Partner Contributions (5 members) – excl. Outsourcing	R380 000	R410 000	R650 000	R650 000

It should be noted that the costs associated with the outsourced operational activities may be offset through in-kind contributions from partners. Therefore the Coordinating Body should consider the costs associated with including or excluding outsourcing activities as part of the internal operations activities, as shown in Table 9 and Table 9. Other sources of funds, such as fiscal contributions or donor support, should therefore be explored.



# 8. IMPLEMENTATION CONSIDERATIONS

The following key steps are required in taking this process forward:

- Buy-in for the collaboration from all primary stakeholders
- Development of a partnership agreement for all partners to be sign, including the Memorandum of Agreement (MoA).
- Legal establishment of the Coordinating Body
  - Secure host institution (envisaged to be NEPAD)
  - Sign legal documentation for hosted partnership
  - o Establish clear institutional and management arrangements for hosted partnership
- Functional establishment of the Coordinating Body
  - o Establishment of the Board
  - o Draft/Outline strategic plan
  - Organisational design
  - o Establish required policies and systems
  - o Develop strategic plan
- Recruitment of key staff and establishing in-kind contributors
- Financial strategy for the Coordinating Body
  - Develop funding and financial management strategy
  - Secure funding, focussing on ensuring sustainability
  - Develop investment strategy
- Develop mandate for long-term institutional evolution.
- Implementation of water management activities, through outsourcing and reliance on SPVs. This will be in line with the Witbank CIF.



# 9. RISK ANALYSIS

There are several risks facing the Coordinating Body, some that are internal to the body itself, and which relate to the standard business and governance risks facing any institution, and some which are external to the body and are driven by the specific context within which the body operates.

# 9.1. Identification of Key Risks

Risks that may impact the Coordinating Body include:

- Lack of participation from primary stakeholders: The body will serve the partners along the
  Witbank Coalfields. There is a possibility that not all the required partners will be involved in
  the collaboration. This is a concern as political buy-in is not strong from the regulators (from
  DMR, DEA and DWS) and may cause delays, reduce viability and affect the credibility.
- **Insufficient funding**: In the current context of a global financial crisis and the slow-down of economies both internationally and in the country, the potential exists that less money may be available for water management activities than may have been expected. Partners will be required to provide funds to the body; should this also not materialise or not be sustainable, the body will not be able to meet its objectives.
- Poor financial management: In a body that manages substantial funds, the potential for poor
  financial management poses a significant risk. In this case, the body will be managing funds
  obtained from a number of sources, including private and public sector institutions, and will
  need to be able to account to such sources for the effective and productive use of those funds.
- Lack of agreement and co-operation between stakeholders: There exists the possibility of disagreement between the partners on key decisions, such as the allocation of funds to projects. This potential may be exacerbated if the water management activities are focused on a single part of the catchment of partners feel that the collaboration is not equal and fair. This has the ability of not only disrupting the body, but of ensuring that the body does not meet its objectives.
- Poor governance: Closely linked to the risk of poor financial management is the more general
  risk of poor governance of the institution. The body will have a Governing Board, with full
  fiduciary responsibility. It is important that the members of the Board have, between them,
  the appropriate capabilities to exercise their full fiduciary and legal responsibilities to ensure
  good governance of the body.
- Lack of credibility: The sustainability of the body will depend on the credibility not only of the
  body, but of the partners involved in the collaboration. Sustainable, long-term funding will
  depend on the body being seen as credible, and offering good value for money. Lack of
  credibility will impact negatively on the willingness of donors and stakeholders to provide
  resources to the body, which will impact the body's ability to expand.



# 9.2. Quantification and Management of Key Risks

The key risks that are identified in Section 9.1 are quantified in the table below. In addition, approaches that can be initiated to manage the risks have also been provided.

Table 11: Quantification and Management of Key Risks

RISK	LIKELIHOOD	IMPACT	MANAGEMENT
Lack of participation from primary stakeholders	High	High	Obtain buy-in from all required partners; development of a fair partnership agreement
Insufficient funding	High	High	Development of a realistic financing strategy; diversification of financial sources; matching of finances to projects
Poor financial management	High	High	Appropriate determination of required staff capacity; appointment of and reliance of skilled and experienced staff; development and implementation of good financial management systems; effective monitoring and oversight
Lack of agreement between partners	Medium	Medium	Development of agreed principles and criteria for selection and implementation of projects; transparent and inclusive processes; dispute mechanism in place
Poor governance	Medium	Medium	Appointment of appropriately qualified/ experienced people to Board; training for Board members; Board performance assessments conducted
Lack of credibility	Medium	Medium	Ensure Coordinating Body is responsive to the needs of the region and stakeholder groups; identify "quick wins" to establish the body as an effective and important player in poor water quality prevention