

Co-operative government at work

Earlier this year, the City of Cape Town (the City) entered into an innovative public-public partnership with the Department of Water Affairs and Forestry (DWAF). This is a good illustration of co-operative government principles at work to ensure effective service delivery.

The Minister of Water Affairs and Forestry directed the Trans-Caledon Tunnel Authority (TCTA), a public entity, to finance and implement the Berg Water Project in terms of which a storage dam and other waterworks will be constructed near Franschhoek to augment the Western Cape's supply of water. The Minister also directed that borrowing by TCTA be on the strength of the revenue from the sale of raw water to the City.

DWAF, TCTA and the City established a forum to negotiate the necessary legal agreements. Negotiations took place over a significant period of time with robust, yet constructive, dialogue and interaction between all the parties.

A key aspect in the partnership is the delineation of powers, functions and responsibilities between the different levels of government and TCTA, calling into play the constitutional principles that all organs of state must respect the constitutional status, institutions, powers and functions of government in other spheres, must not assume any power or function except those conferred on them in terms of the Constitution and must not encroach on the geographical, functional or institutional integrity of government in another sphere.

Even though the TCTA is implementing and financing the Berg Water Project, it is doing so on behalf of DWAF. The Berg Water Project remains a government water scheme that will be operated and maintained by DWAF after construction. The City therefore entered into an agreement with DWAF, not TCTA. DWAF is obliged to

deliver the Berg Water Project to the City and the City is responsible to DWAF for payment of the water resource development (capital) costs of the dam and related waterworks.

The City has a duty to all consumers in its area to progressively ensure efficient, affordable, economical and sustainable access to water services. It therefore had to make sure that it "gets what it is pays for" and that the capital costs are affordable. The City secured agreement by DWAF that the costs must be calculated within a structure affordable to the end user.



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The City is also entitled to financial relief in a number of circumstances. For example, it will not be liable for any additional costs due to war, terrorism, earthquakes etc., or to defects in the design or construction of the waterworks. Should the City's water supply be significantly affected for more than a year due to such events or defects, it will be entitled to proportionately reduce its payments to DWAF. If there is a lengthy delay in construction, the City is entitled to withhold its capital payments and to re-negotiate the amount payable once construction resumes. It also has remedies available to it in terms of the agreement if DWAF does not operate and maintain the waterworks properly once the project is yielding water.

DWAF, TCTA and the City agreed that the Berg Water Project should continue to be implemented in a consultative manner and established appropriate governance structures.

In the event of disputes, the parties shall endeavour to resolve matters amicably or by mediation, giving further effect to principles of co-operative government.

This public-public partnership provides a good precedent for partnerships between different levels of government in respect of service delivery to prove the basic services much needed by the people of South Africa.



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