

# FORMULATING TRANSPORT AUTHORITIES AT THE MUNICIPAL LEVEL

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## ABSTRACT

**The National Land Transport Transition Act provides for the establishment of transport authorities at the municipal sphere of government. The concept behind transport authorities is to improve transport service delivery at the local sphere of government by grouping transport functions into a single well-managed institutional structure. A number of investigations are currently under way in various provinces to establish transport authorities at both metropolitan municipalities as well as district municipalities. This paper identifies a number of the issues and considerations that need to be addressed in the establishment of a transport authority. It addresses issues related to the area of the transport authority, its functions, and the position of a transport executive in relation to local government legislation.**

## 1. INTRODUCTION

The White Paper on National Transport Policy (NDOT 1996), which followed a major review and an overhaul of transport policy, identified the fragmentation of functions and responsibilities between different spheres of government as one of the major problems besetting the proper management, co-ordination and provision of transport. It put forward the notion of transport authorities as the appropriate institutional structures for the effective overall management of transport.

This was given effect in legislation in the National Land Transport Transition Act (Act No.22 of 2000) (NLTTA), which provided for the establishment of transport authorities at the municipal sphere of government. The sections of the Act dealing with transport authorities was, in effect, enabling legislation which set out a number of options and variants for the formation of transport authorities.

At first, progress was quite slow, although a number of pilot projects were initiated, notably, Durban, Port Elizabeth and Bloemfontein. The Durban Municipality, now the eThekweni Municipality, became the leader and was the first municipality to establish its transport authority with the Founding Agreement signed in the early part of 2004.

Over the last year there has been a substantial interest in transport authorities, and a number of municipalities both metropolitan and district are engaged and well advanced in investigations to form transport authorities.

This paper draws on the experience gained in a number of investigations in both metropolitan municipalities as well as district municipalities.

The purpose of the paper is to identify a number of the key issues and considerations that need to be addressed in the establishment of a transport authority, which may assist municipalities in their deliberations. It is not intended to be in any way prescriptive but rather to identify the various issues that will need to be negotiated and considered by municipalities, taking into account their particular

socio-economic and political environment.

It is important to recognise that establishing a transport authority is essentially a negotiated process and there may not necessarily be a single technical answer or model, but an array of options which can be tailored to suit the particular local circumstances. It is also important to recognise that it is as much a political process as a technical one, bearing in mind that it deals with areas of jurisdiction, institutional structuring, re-organisation and functional mandates.

## **2. LEGISLATIVE PROVISIONS**

The establishment of transport authorities in South Africa is governed by the National Land Transport Transition Act (Act No.22 of 2000) (NLTTA). The Act is structured such that Chapter 2 deals with matters of national concern and applies countrywide, while Chapter 3 deals with matters of provincial concern. Chapter 3 can be replaced by provincial legislation, in part or in its entirety, in which case provincial legislation prevails over Chapter 3, as long as it falls within the broad framework of the principles of the Act. The consideration of transport authorities in any particular province must therefore take account of the national Act as well as any replacing provincial legislation.

In brief summary and by way of introduction, the NLTTA provides for:

- a single municipality or a number of municipalities to enter into an agreement with the MEC to establish a TA
- a founding agreement governing the structure and modus operandi of the TA
- the transport area of the TA
- the functions to be performed comprising of a number of mandatory functions as well as a number of optional functions
- a governing body which must consist only of councillors of the participating municipalities and which acts for the TA
- options for the performance of the technical and administrative functions of the TA
- financial arrangements

The establishment of transport authorities also needs to take into account the provisions of local government legislation, in particular the Municipal Systems Act (Act No.32 of 2000) and the Municipal Finance Management Act (Act No.56 of 2003). These pieces of legislation have a bearing on the procedures to establish a transport authority and its possible structuring. This aspect will be dealt with later in this paper.

The latter Act is due to come into operation on 1 July 2004. There is also a significant amendment to the Systems Act, namely the Municipal Systems Amendment Act (Act No.44 of 2003). Although the date when this amendment is to come into operation had not been established at the time of writing this paper, it is logical that it should coincide with the Municipal Finance Management Act since many of the provisions of the two Acts are closely tied together.

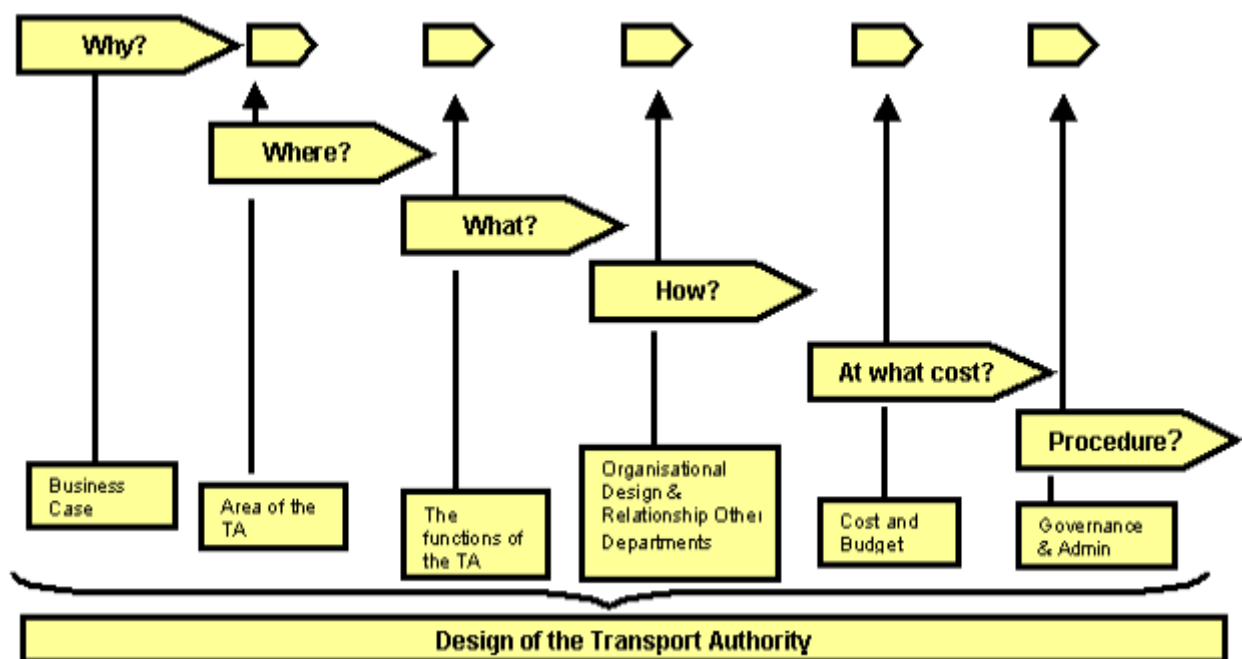
## **3. PROCESS**

The decision to establish a transport authority has far-reaching implications for municipalities impacting on aspects such as:

- municipal functions
- administrative structure and organisational design
- inter-government relationships
- service delivery mechanisms
- human resource capacity
- funding requirements, etc

An in-depth and detailed investigation is therefore required to assess the full implications and the merits for taking this step. It is important to recognise that it is as much a political exercise as a technical one. As soon as one is dealing with issues of the areas of jurisdiction, functional apportionment, institutional restructuring, governance one enters the political realm and rightly so. It is therefore essential that the political players within the municipality are involved in the process from the outset

Without wishing to diminish or understate the complexity of the debate that needs to take place, in a nutshell the critical issues that need to be considered in the decision to establish a transport authority revolve around six simple questions as depicted in Figure 1. This model appears to have served successfully in the investigations conducted to date.



**Figure 1. Design of the Transport Authority.**

#### **4. CONSIDERATIONS OF THE AREA OF THE TRANSPORT AUTHORITY**

The NLTTA sets out a number of criteria to be considered in defining the appropriate area of a transport authority:

- dominant passenger movements
- economic inter-dependency between inhabitants
- integrated land use and transport development potential
- extent to which public transport services are provided efficiently and effectively
- demographic, natural, and geographic characteristics
- capacity to perform the functions

Essentially, the aim is to define a transport functional area which embraces the major share of existing and near-term potential transport movements. This would facilitate planning and co-ordination of an integrated transport system, avoid fragmentation of responsibility for transport services which traverse municipal boundaries, obviate the need for separate agreements for subsidised services crossing municipal boundaries, and bring about better co-ordination between land use and transport.

Ideally and for the reasons given above, one would wish to adhere to transport functional areas and comply with the spirit and the letter of the NLTTA. However, there are political and practical realities which may preclude the option of joint transport authorities across municipal jurisdictions. It is important to qualify this assertion depending upon whether one is considering a complex metropolitan conurbation or a less urbanised district municipality environment. The two scenarios are quite different and will be discussed later.

The political and practical realities referred to above which could hamper the option of a joint TA include the following:

- governance, accountability and representation by the various authorities on the governing body
- possible divergence of political objectives between the various municipalities
- different development priorities
- the placing of the technical responsibility if this body internal to municipality
- the contribution of funding of the TA by the various municipalities
- different budgeting cycles and funding mechanisms
- different delivery mechanisms
- possibly different scales of transport issues between vastly different municipalities leading to possible marginalisation of the smaller authority

All these would need to be considered otherwise these issues could conspire to frustrate the effective operation of a TA.

It is also necessary to recognise the very different institutional and demographic characteristics between metropolitan (Category A) municipalities and district and local municipalities (Category C and B) in how these practical and political considerations impinge on the decision on the area of the TA. It is important to distinguish between the two cases.

In complex metropolitan areas with diverse administrative structures, dealing with complex transport systems, multi-modal transport, major development and demographic changes, urban growth management pressures, the issues listed above tend to be more sharply focussed and possibly more politicised. This suggests that the option to restrict the area of the TA to a single metropolitan boundary would be preferable to avoid some of the difficulties listed above. However, since the formation of a TA is by agreement, the final decision would be a matter of discussion between the relevant municipalities at which the issues identified above would need to be resolved.

At a district municipality, the argument is rather different. Where a case for a TA at this level exists, it is predicated on the inclusion of the district and local municipalities to streamline delivery and overcome fragmentation and deal with critical capacity issues. The district and the local municipalities would need to be parties to the founding agreement. While the issues identified above will still exist and will need to be debated and resolved, it is likely that they will be less complex and may not pose the same obstacles as in complex metropolitan areas.

## **5. FUNCTIONS**

The NLTTA specifies six mandatory functions as well as a number of optional functions which can be the subject of the agreements reached.

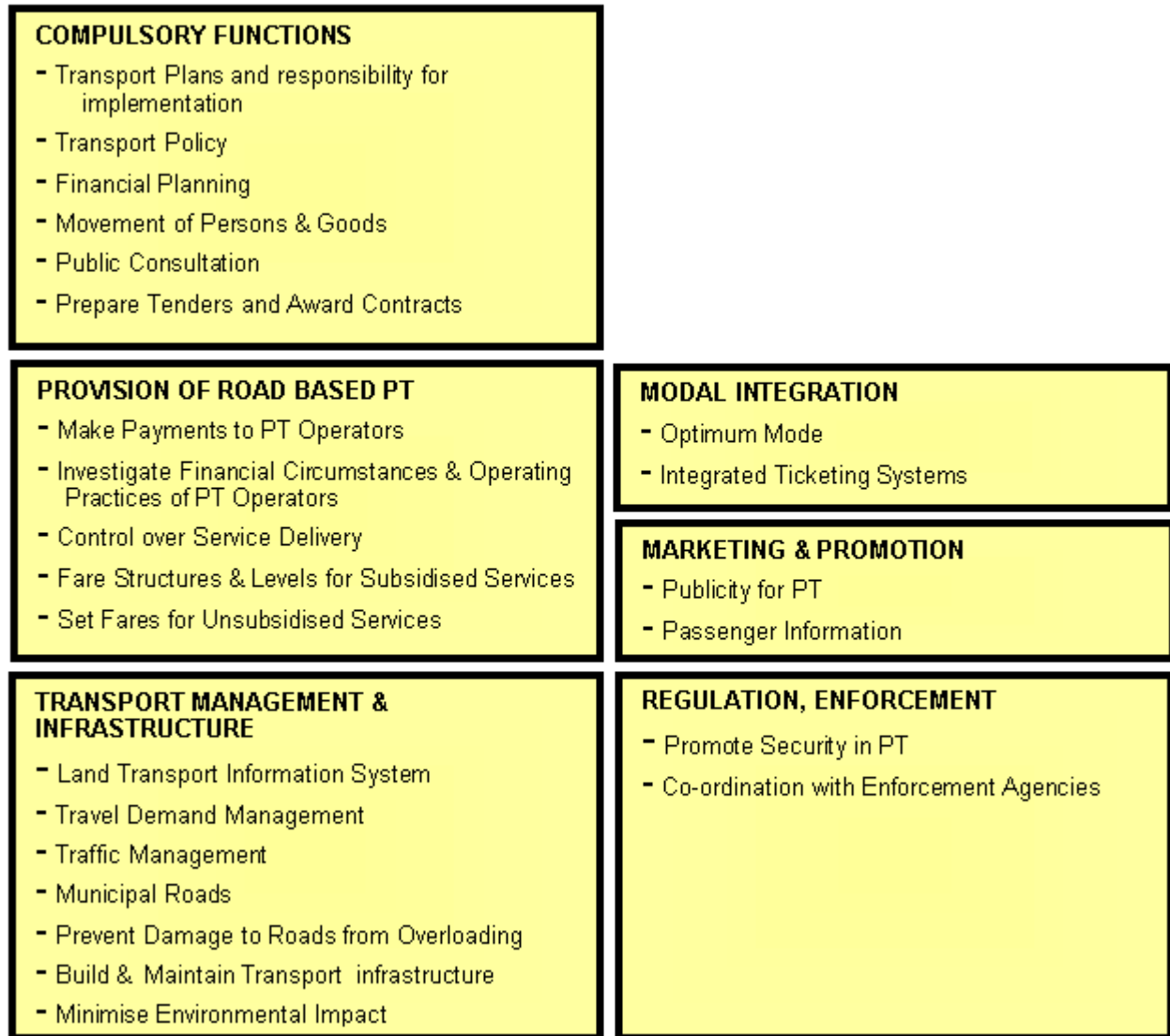
The mandatory functions can be summarised as:

- prepare transport plans and responsibility for implementation
- develop land transport policy
- perform financial planning with regard to land transport
- manage the movement of persons and goods by co-ordinating such movement

- encourage and facilitate public consultation
- call for, prepare, adjudicate and award tenders for public transport service contracts

The last function may be taken after the declaration of the TA but not later than a date determined by the Minister in agreement by the TA and the MEC.

In addition to the compulsory functions, the Act specifies a number of optional functions, summarised here for convenience into a number of generic categories, and shown in Figure 2.



**Figure 2. Possible TA Functions.**

It is evident that this full range of functions would present a major challenge to a TA with far reaching implications in terms of capacity, resources, organisational adjustments and funding requirements. A municipality or municipalities contemplating the formation of a TA would need to assess each function in detail and assess the implications of taking the function.

In considering the appropriate functions, a few pointers are of relevance.

### 5.1 Relation to Existing Municipal Functions

A detailed analysis of the functions indicates that a number are existing municipal functions assigned in terms of the Constitution and the Municipal Structures Act. They may not in all cases be carried out to the fullest extent due to lack of capacity and resources, but the mandate still vests

with the municipality

### 5.2 Relationship Between Mandatory and Optional Functions

Inspection of the functions shows a close correlation and overlap between the mandatory functions and a number of the optional functions. In performing the compulsory functions, the TA would inevitably become involved in a number of the optional functions.

The point that needs to be considered here is that for a TA to take on compulsory functions and leave out the closely related optional functions merely perpetuates the fragmentation of responsibility, which is the very shortcoming that the concept of the TA seeks to overcome.

### 5.3 Attainment of Strategic Transport Objectives and Programmes

It is also necessary for the municipalities to assess the powers and functions it requires in order to attain its transport vision and objectives as set out in the Integrated Development Plan, Integrated Transport Plan, and other strategic instruments. This will assist in determining the interventions it requires to make and hence the functions it requires.

A case can be made for a phased take-up of transport functions by a TA, possibly starting with the compulsory functions followed by the phased assignment of certain of the optional functions. This approach is built on the argument of the need for a transition to a new organisation and the need to build up capacity and expertise.

In metropolitan areas, there is a compelling argument for more assertive and interventionist approach. The complexity of the transport system, the need for integration, the existence of the vitally important service delivery element of subsidised service contracts, the benefits of more sophisticated passenger information systems, etc. call for a more assertive approach and a wider array of functions. Given that many of the functions are existing municipal functions and that as a planning authority it already has the responsibility for transport plans, to leave out key delivery functions would appear to be “business as usual” and would call into question the merit of going to the extent of establishing a TA. Such functions relate to the provision of public transport services through the award of service contracts, and its related aspects namely modal integration, marketing and promotion, passenger information etc. Adding to this, the inevitable overlap of functions, calls for more assertive approach.

In a district municipality context, there is a more solid case for a phased assignment of functions. This derives largely from the constraint of capacity within the municipalities and that, in general, there is a limited number of subsidised public transport contracts. There is a case for retaining these at the provincial sphere rather than replicate this expertise at the district municipality sphere, at least in the short term. However, if the intention is purely to limit the functions of a TA at the district sphere to the planning functions in the long term, one may wish to question the merits of establishing a TA on this basis. In any event, in terms of the regulations of the NLTTA on the minimum requirements for transport plans, the district municipality is already charged with this function as a planning authority.

## **6. POSITIONING OF THE TRANSPORT EXECUTIVE**

The NLTTA provides for the technical functions of the Transport Authority may be undertaken either:

- by a municipal department or departments of one or more of the participating municipalities
- or by a separate body under the auspices and control of the transport authority

The Municipal Systems Act regulates the various options open to municipalities for the delivery of municipal services and particularly with respect to the types of vehicles which can be used in the case of external bodies.

It is necessary to reflect at this stage and address the definition of a “municipal service” and to question whether the functions of the TA comply with the definition, and as such fall under the ambit of the Municipal Systems Act.

In the chapter in the Municipal Systems Act dealing with municipal services, section 74 refers to service tariffs and the need for a municipality to implement a tariff policy on the levying of fees for municipal services. This reference to “service fees” would seem to provide some limitation to the scope of “municipal service”. Traditionally one would associate tariff-based municipal services with services such as electricity, water and sewerage which are subject to direct user charges.

However the definition of “municipal services” was clarified and made more specific in the Local Government Laws Amendment Act (Act No.51 of 2002) which amended the Municipal Systems Act:

“Municipal service” means a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether—

- (a) such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism contemplated in section 76; and
- (b) fees, charges or tariffs are levied in respect of such a service or not”

This amendment therefore removes the limitation that might be attached to the definition by reference to direct user charges. It also broadens the definition by not placing any qualification whether the service is provided either through an internal or external mechanism.

Inspection of the scope of the functions of a Transport Authority and the services provided by the Transport Executive suggests that it complies with the definition of a municipal service, and hence falls within the ambit of the relevant local government legislation, namely:

- Municipal Systems Act (Act No.32 of 2000)
- Municipal Systems Amendment Act (Act No.44 of 2003)
- Municipal Finance Management Act (Act No.56 of 2003)

The Municipal Systems Act sets out the occasions when a municipality must review and decide on the mechanisms to provide a municipal service. This relates, inter alia, to the upgrading, extension, improvement or provision of a new municipal service.

In this event, the municipality is required to make an assessment of a number of aspects including:

- the direct and indirect costs and benefits
- the municipality’s capacity to provide the service
- the extent of the re-organisation of its administration and human resource development
- the impact of job creation and employment
- the views of organised labour

If the service is to be provided through an external mechanism, it must in addition undertake a detailed feasibility study.

The NLTTA is closely aligned with the Municipal Systems Act in respect of the options for the transport executive. The Municipal Systems Act, Section 76, provides that a municipality may provide a municipal service through either an internal mechanism or an external mechanism.

Whilst the NLTTA provides for the option of the transport executive (TE) to be established as a separate body, it is silent on its legal status other than to define it.

*“...a transport executive as a separate body under the auspices and subject to the control of the transport authority...” (NLTTA)*

It is difficult to envisage how the Governing Body, acting for the Transport Authority, could exercise the hands-on management and governance of the Transport Executive as required in terms on the intent behind local government legislation as reflected in the Municipal Systems Act and the Municipal Finance Management Act.

The intent behind local government legislation is to bring sound governance and administration, inclusive mechanisms, and financially sustainable practices to municipalities and other municipal institutions. Among the objects of the Municipal Systems Act is:

*“to provide for the core principle, mechanisms and processes that are necessary to enable municipalities to move progressively towards social and economic upliftment of local communities.” (MSA)*

and of the Municipal Finance Management Act:

*“to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government.”*

The option of an external body as a transport executive and the need to comply with the Municipal Systems Act is open to a legal interpretation. A municipality will need to assess its stance from a legal perspective.

It would appear, however, that the principle of good governance and financial accountability as set out in local government legislation suggests the need to comply with the spirit and letter of local government legislation in establishing an external TE.

Section 76(b) sets out a number of options for an external mechanism:

- “76(b) an external mechanism by entering into a service delivery agreement with-
- (i) a municipal entity;
  - (ii) another municipality
  - (iii) an organ of state, including
    - (aa) a water services committee established in terms of the Water Services Act, 1997 (Act No.108 of 1997);
    - (bb) a licensed service provider registered or recognised in terms of national legislation; and
    - (cc) a traditional authority;
  - (iv) a community based organisation or other non-governmental organisation legally competent to enter into such an agreement; or
  - (v) any other institution, entity or person legally competent to operate a business activity.”
- (MSA)

Clearly most of these are not appropriate to a transport executive, and the option of a municipal entity emerges as the candidate.

The Municipal Systems Act, as amended, identifies the nature of possible municipal entities. The Municipal Systems Amendment Act substantially tightens the scope of the form of possible external



bodies in the form of municipal entities. The Municipal Finance Management Act further restricts external entities in terms of compliance with good governance and financial accountability.

The Act defines a municipal entity as:

- either a private company under the Companies Act (Act No.61 of 1973) which must be wholly owned by the municipality or municipalities or where the municipalities retain effective control
- or a service utility, which is a juristic person under the sole control of the municipality
- a multi jurisdictional service utility under the shared control of on the parent municipalities

Local government legislation lists very specific compliance procedures in the structuring of municipal entities. It would involve a fairly complex exercise.

Municipalities contemplating the establishment of transport authorities would need to critically assess the option of an internal or external body as the transport executive.

A number of factors may need to be considered:

- broad policy objectives
- the precise role of the Transport Executive
- the relationship the Transport Executive needs to maintain with other transportation actors both within and outside the municipality
- human resource implications
- efficiency and effectiveness

The White Paper on National Transport Policy reviewed the role of government in terms of its key policy principles. It noted the strong tendency in the past for government to assume the role of provider of transport and involvement in operations. Policy formulation and strategic planning was seen as weak. It sought to reverse this tendency and saw government's prime role to focus on policy, strategy formulation and substantial regulation.

Translating this philosophical position to the TA context, raises the question whether a body whose main role is policy formulation, planning strategy and regulation would sit more appropriately within government or as an external body.

The placing of the Transport Executive needs to be informed by reviewing its role against the ideological position described above. The TE has a strong focus of policy development, strategy, plan development, regulation and standards. This policy is often articulated as the "client-contractor" model. Sitting within government, a "client" would be charged with the main tasks of formulating policy, developing strategy, securing budgets, determining standards and monitoring. Delivery and operational matters would rest with the "contractor" according to this model.

There is somewhat of a dichotomy in that the TE also has substantive delivery focus in terms of the provision of infrastructure and public transport services.

National and provincial policy emphasises the importance of integration of transportation and land use development. One of the principal motivations behind a TA is to eliminate fragmentation. This applies to horizontal fragmentation just as much as to vertical fragmentation between spheres of government. Placing the TE within the municipality may serve to retain, facilitate, and enhance integration with other important functions but particularly land use and spatial development, so vital to sustainable transport solutions.

The issues of efficiency and effectiveness, as well as the human resource implications will need to be fully assessed.

The position of the Transport Executive is a complex decision. The Municipal Systems Act places fairly onerous requirements in terms of governance and financial provision. Municipalities would need to assess their stance in terms of the role of the Transport Executive and the requirements of local government legislation.

## **7. CONCLUSIONS**

A number of observations and conclusions can be drawn:

- The legislation is formulated in such a way to provide a number of variants or models for the establishment of a TA. A number of the key issues for debate and negotiation have been identified.
- The particular model for a TA will need to respond to the local socio-economic and political environment pertaining to the local area.
- The establishment of a TA is as much a political process as a technical one. The involvement of political players from the outset of the investigation is well advised.
- In complex metropolitan areas where the issues of integration, multi-modalism, co-ordination, are paramount, a more assertive and interventionist approach with a wider array of functions including the vital service delivery elements such as public transport services contracts is called for.
- The position of the Transport Executive is a complex decision. The Municipal Systems Act places fairly onerous requirement in terms of governance. Municipalities would need to assess their stance in terms of the role of the Transport Executive and the requirements of local government legislation.
- It is recognised that the formation of a transport authority will have far-reaching implications in terms of capacity, resources, organisational re-design, upskilling of the expertise level, etc. The municipality would need to be assured of political support for a TA backed by a financial commitment.

## **8. ACKNOWLEDGEMENT AND DISCLAIMER**

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