

# DO MUNICIPALITIES IN SOUTH AFRICA REFLECT CAPACITY AND UNDERSTANDING TO GIVE EFFECT TO PLANNING REQUIREMENTS OF THE NATIONAL LAND TRANSPORT ACT NO. 5 OF 2009?

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## ABSTRACT

Section 156(1) of the Constitution of the Republic of South Africa provides that a municipality has executive authority in respect of, and has the right to administer:

- (a) The local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
- (b) Any other matter assigned to it by national or provincial legislation.

The National Land Transport Act No. 5 of 2009 (NLTA) provides for amongst others, planning powers and functions for the municipalities. The performance of municipalities regarding their transport planning function has been marred with various challenges.

This study reflects on whether the municipalities, based on a sample, have the capacity and understanding to give effect to the planning requirements of the NLTA read with Minimum Requirements for the Preparation of ITPs, 2016.

It also reflects on state of transport planning in South Africa through the absence of integrated transport plans in many municipalities. It also establishes the inadequacy of integrated transport planning in many instances where the ITPs exist but do not comply with the legislation requirements of the NLTA as well as the Systems Act. The study further identifies material deficiencies in the process and content of ITP development and lack of its inclusion in the IDP contrary to statutory requirements of both transport and local government legislation.

## 1. INTRODUCTION

### 1.1 Aim of the Paper

The aim of the paper is to reflect on whether the municipalities in South Africa do have the capacity and understanding to give effect to the planning requirements of the National Land Transport Act Act No. 5 of 2009 (hereinafter called NLTA) read with Minimum Requirements for the Preparation of Integrated Transport Plans, 2016 *published in Government Gazette No.40174 under Government Notice No. 881 of 29 July 2016* (hereinafter called Minimum Requirements).

## 1.2 Problem Statement

All municipalities are planning authorities in terms of section 14 of the NLTA and are required to prepare the integrated transport plans (hereinafter called ITPs) as contemplated in section 36. In terms of section 36(1) all planning authorities must prepare and submit to the MEC, by the date determined by the Minister, ITPs for their respective areas for the five-year period commencing on the first day of the financial year determined by the MEC, and must update them in the prescribed manner and as frequently as prescribed.

Currently many municipalities do not have ITPs as required in terms of section 36 or at all. Of those who have ITPs, many are not compliant with legislation.

The desirable situation is for all the municipalities to have compliant ITPs that are able to serve the purposes for which they are meant to be used.

## 1.3 Scope of the Paper

This paper will address the municipal transport planning framework, the brief summary of the outcome of the research and review conducted to establish the state of municipal transport planning in South Africa as well as the conclusions.

## **2. BODY OF PAPER**

### 2.1 Municipal Transport Planning Framework

The municipal transport planning framework starts with section 156 of the Constitution of the Republic of South Africa, 1996 (the Constitution). Section 156 (1) of the Constitution provides that a municipality has executive authority in respect of, and has the right to administer:

- (a) The local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
- (b) Any other matter assigned to it by national or provincial legislation.

Part B of Schedule 4 lists, amongst others municipal planning and municipal public transport. Part B of Schedule 5 lists, amongst others local amenities, municipal roads, traffic and parking.

In line with section 156(1)(b) of the Constitution, the NLTA has assigned certain responsibilities as more fully listed in section 11(1)(c) to the municipal sphere of government. Section 11(1)(c)(iv) of the NL T A provides that the municipal sphere of government is responsible in its capacity as planning authority for preparing transport plans for its area, ensuring the implementation thereof and monitoring its performance in achieving its goals and objectives.

Section 31 of the NLTA provides for general principles for transport planning and its integration with land use and development planning. The section provides that the land transport planning must be integrated with the land development and land use planning processes, and the integrated transport plans required by the NLTA are designed to give structure to the function of municipal planning mentioned in Part B of Schedule 4 of the Constitution, and must be accommodated in and form an essential part of the integrated

development plans (hereinafter called IDPs), with due regard to legislation applicable to local government, and its integrated transport plan must form the transport component of the IDP of the municipality.

In terms of section 33(1)(a) a planning authority may enter into an agreement with any other planning authority or the provincial department to assist it in performing its functions in terms of transport planning chapter of the NLTA.

As contemplated in section 36(2), the Minister in consultation with Members of the Executive Council) MECs responsible for transport published the Minimum Requirements that prescribe the content of the integrated transport plans and requirements.

As part of the development of the integrated transport plan, the municipality is required to submit to the MEC for approval of the matters listed in section 36(4)(a) to (h). In terms of section 36(5), the planning authority is required to submit its integrated transport plan to the Minister for approval of the commuter rail component of the integrated transport plan.

## 2.2 Review of the State of Municipal Transport Planning in South Africa

On reviewing the state of municipal transport planning in South Africa, we conducted a desktop-research to find integrated transport plans for each municipality in South Africa. We also did a review of a sample of integrated transport plans and integrated development plans, ranging from metropolitan municipalities, the district municipalities and local municipalities.

In the majority of municipalities we searched, we could not find record of ITPs. In order to satisfy ourselves that we are not missing something, we then went through the IDPs hoping to find the ITPs as a chapter as contemplated by section 31 of the NLT A read with section 26 (d) of Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (hereinafter called Systems Act). Section 26(d) of the Systems Act provides that an integrated development plan must reflect the council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation.

We were unable to establish any link between the IDPs and the ITPs in most municipalities. The challenge of not having a compliant ITP and having it incorporated as part of the IDP affects accessibility of funding for the transport function, amongst others. Some municipalities, including the metropolitan ones either do not have ITPs or they have outdated ones up to more than ten years in some instances. The content of the ITPs is mostly not compliant with the provisions of Minimum Requirements. The process of developing the ITPs is also very important as it determines compliance as well as usefulness of the document. The process in some cases indicates lack of appreciation of the goals and objectives of the ITPs and as such render the final outcome not useful for the purpose it is being developed for. In some instances, instead of collecting available data and conducting surveys as required in the development of relevant chapters of the ITP, the process uses old and dirty data that does not reflect the state of transport in the municipality. There is also an obvious misunderstanding of transport modes and disregard of some that should be considered in the identification of services and infrastructure. In some instances, a minibus taxi-type service is only recognised if minibus and midibus vehicles are used whilst sedans and LDVs operating within the municipality are either ignored or the sedans classified as metered taxis. The incorrect collation of data on legal and illegal operators makes it impossible for the ITP to be of use when the planning

authority is required to supply directions to the entities responsible for the granting, renewal, amendment or transfer of operating licences in terms of their integrated transport plans as contemplated in terms of section 14(c) of the NLTA. The same situation applies when the planning authority is required to rationalise public transport services in its area in terms of section 39 of the NLTA. Rationalisation cannot be supported where the ITP is defective as many appear to be.

The opportunity for the introduction of new services like commercial service contracts in terms of section 43 of the NLTA do not arise when the ITP does not acknowledge same and identify where it may be considered. In terms of section 70(1) of the NLTA, tuk-tuks may be used for public transport services where relevant transport plans allow for them. Many ITPs are silent on tuk-tuks which creates a challenge when the service is sought to be introduced as the municipality cannot legally block it whilst allowed by national legislation but the ITP does not provide for environment to properly regulate as contemplated in section 70(2) of the NLTA.

The ITPs generally do not provide for adapted light delivery vehicles either despite their extensive use in the rural municipalities. Section 71 of the NLTA provides that adapted light delivery vehicles may be used for public transport services in a particular area in prescribed circumstances where there is no other appropriate or acceptable public transport, and subject to prescribed conditions. The fact that the ITPs have a tendency of turning a blind eye on LDVs makes the appropriate planning and regulation of safe rural transport to be postponed despite the dangers presented by the LDVs that do not meet the safe canopy standards for the transportation of passengers.

The ranking facilities are also misidentified to the extent that it would make it impossible for the municipality to use the ITP for its intended purpose.

The Minimum Requirements require the Integrated Rapid Public Transport Network Plans (IRPTNs) and Integrated Public Transport Network Plans (IPTNs) to be contained in the Public Transport Plan chapter of the ITPs and not be prepared as separate plans. In many instances we have seen, these plans are not part of the ITP and in some cases are even contradicting each other.

In reviewing the state of ITPs in South Africa we also noticed what may be considered challenges with both the professionals who are generally appointed by the municipalities or provinces that commission the ITPs as well as the officials who are responsible for appointments, project management and motivating for approvals by the local councils. The municipality or the province when procuring the services of a service provider to develop the ITP needs to be aware of what it is looking for, not just in name but have an understanding of the requirements and content. It must be able to ensure that the entire process is project managed by people who are well versed with every aspect of the ITP. The development of each chapter must be consistent with the legal requirements in content, process and form. Failure of the municipality to develop an ITP or a compliant ITP affects its ability to source the necessary funding for the transport function and also have the ITP used for the purpose for which it was meant to be developed.

Section 214(2)(h) of the Constitution provides that obligations of provinces and municipalities in terms of national legislation must be taken into account during national revenue allocation. The ITP is a product of national legislation and therefore understanding its implications for resource allocation is critical for municipal capacitation and service delivery. During the review we also noticed that in some instances the MEC does not even

respond to the submission of the draft ITP in terms of section 36(4). The failure of the MEC to respond and how the municipality addresses such a challenge is a matter that requires attention from all involved including the Minister. We have made attempts to determine how the provinces are dealing with the ITPs or their absence in the development of the Provincial Land Transport Frameworks (PLTFs) and were surprised by the wording that practically hides the state of transport planning in the province.

In terms of section 36(1) of the NLTA, the ITP is required to be prepared for every five years and updated annually. The Minimum Requirements clarify the frequency of plan preparation and update. Every five years the planning authority needs to have a new ITP and on annual basis, the ITP must be updated in selected aspects.

We have noticed that most municipalities that developed an ITP at some stage, such ITP does not get updated annually and renewed every five years. Out of all the ITPs we reviewed only one was done in compliance with the legislative framework and renewed within the required timeframe. In some cases, we could only find very old ITPs that are obviously not useful for planning purposes and other uses. We have noted also that besides ITPs that are developed for just five years and nothing gets done after the expiry of the five years, some municipalities commission what they call updates when they are meant to have new ITPs as required by legislation.

### 2.3 Findings

The state of municipal transport planning in South Africa reflects chronic lack of capacity and understanding to give effect to planning requirements of the NLTA.

The municipalities generally lack the capacity and understanding to give effect to planning requirements of the NLTA read with the Minimum Requirements.

The absence of ITPs in many municipalities reflects lack of capacity to have them developed as well as lack of understanding of the value they bring in a municipal area.

The lack of ITPs also reflects lack of capacity and understanding of the role of the province in assisting the municipalities with transport planning in the province. The challenge with the absence of ITPs is that appropriate provincial transport planning as required through the Provincial Land Transport Framework cannot take place or be credible. Where ITPs do not exist, not compliant or updated the PLTF cannot comply with section 35(5), (6) and (7) of the NLTA.

The quality of the ITPs and the lack of appropriate responses consistent with legislative requirements reflect lack of skilled human resource and material resources for municipalities to comply with legislation.

The non-inclusion of the ITPs in the IDPs as required by section 31 of the NLTA read with section 26 of the Systems Act as a general trend within the municipalities reflects lack of understanding of the value of the ITP in enabling appropriate funding for the transport function as empowered by section 214(2)(h) of the Constitution.

The general approach by the majority of the municipalities and those commissioned to assist in developing the ITPs appears to be a tick-box exercise as opposed to developing an ITP that is envisaged through the Minimum Requirements, being:

Strategic in nature and focused on desired outcomes, as derived from national, provincial and local transport policy which include the following:

- Improved accessibility.
- Reduction of congestion.
- Affordability.
- Improved travel times.
- Increased use of NMT.
- Solving problems relating to parking.

The municipalities generally do not even consider the improvements that are needed in order to enable the achievement of the desired outcomes of the ITPs such as:

- Proactive transport planning.
- Facility planning.
- Better informed law enforcement.
- Infrastructure planning.
- Integration of public transport services.
- Land-use /spatial planning.

The process of developing ITPs that does not include collection of current appropriate data and conducting of surveys makes a mockery of what an ITP is meant to be. Such a practice constitutes a very serious risk in the proper functioning of a planning authority as the actions of the planning authority may be challenged by the stakeholders purely on the basis that the ITP is not worth the paper it is written on.

The practice of not dealing with commercial service contracts, tuk-tuk transport services as well as the LDVs where appropriate create gaps that enable non-compliance facilitated by government to the detriment of the public.

The non-inclusion of the IRPTNs and IPTNs in the Public Transport Plan chapter of the ITP creates a misrepresentation of the state of transport in the area of the planning authority and makes the ITP non-compliant.

## 2.4 Recommendations

The planning cycle for the ITPs may best be reviewed to allow for longer period for the life of the ITP considering the development and implementation challenges experienced by the municipalities.

In addition to the minimum requirements for the preparation of the ITPs, it is necessary for the Minister to provide a standard operating procedure for the evaluation of complaint ITPs for the three types of ITPs provided in legislation.

## **3. CONCLUSIONS**

Based on the findings above, we conclude that municipalities in South Africa reflect lack of capacity and understanding to give effect to planning requirements of the NLTA.

Both the officials involved with transport planning within the municipalities as well as at the provincial sphere do need appropriate capacitation to ensure that the planning authorities develop and implement compliant ITPs for the municipalities.

The non-inclusion of the ITPs in the IDPs disempower the municipalities in accessing the appropriate funding in terms of the Constitution for the municipal transport function.

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