

THE CASE FOR MUNICIPAL TRANSPORT AUTHORITIES REVISITED

J W M CAMERON

TRC Africa (Pty) Ltd, P.O. Box 95230, Waterkloof, Pretoria, 0145

ABSTRACT

The recent history of transport in South Africa has been dominated by the policies outlined in the Department of Transport White Paper on National Transport Policy of 1996. The White Paper based its land transport policies on regulated competition of public transport, guided by transport plans to be prepared at the lowest competent level of government, which, it was anticipated, would be the municipal level of government.

An important component of the National Land Transport Transition Act (the Act) is the establishment of transport and/or planning authorities. The thinking behind the transport authorities (TAs) contained in the Act was that transport decision-making and administration should be based on broad functional transport regions, to ensure holistic planning with a minimum of cross-border movement. Notions about the establishment of transport authorities predated the Municipal Structures Act, and the Demarcation Act which eventually resulted in the establishment of six metropolitan municipalities in December 2000. The metropolitan municipalities are similar in scale to the areas envisaged as transport authorities. The 1996 White Paper wanted to unite local authorities into functional transport entities known as transport authorities, only in the more populous metropolitan transport areas (MTAs).

The establishment of transport authorities was never intended to be a country-wide phenomenon. Persons responsible for the thinking behind national transport policy and the enactment of legislation were most concerned with the highly complex transport situation which exists in large metropolitan areas. It was never envisaged that transport authorities should be developed in a district or rural context.

The paper discusses transport authorities in the context of metropolitan and large urban, municipalities. The advantages and disadvantages of the establishment of separate transport administrations are discussed with reference to various factors. These factors include the devolution and exercising of powers by municipalities and the municipal decision-making process. The latter was established in terms of the Municipal Structures Act which made provision for the Executive Mayor system. Anomalies between the intentions of the Act and the current reality of municipal government are highlighted.

The paper concludes by suggesting the need to revisit the idea of municipal transport authorities in the light of legal, institutional, financial and manpower constraints.

1. INTRODUCTION

This paper aims to be controversial in order to precipitate debate about the establishment of transport and planning authorities in metropolitan and district municipalities in South Africa. After the publication of the National Land Transport Transition Act in 2000 (the Act) stakeholders in land transport tended to automatically accept that if provision was made in the Act for transport authorities, they must be necessary and desirable. While there were many criticisms of parts of the Act, the need for transport authorities was never seriously questioned.

The challenge in this paper is based on the author's understanding of, and participation in, the process followed in land transport policy formulation in the post 1994 era, leading up to the White Paper on National Land Transport Policy in 1996 and the promulgation of the Act in August 2000. The paper is a personal viewpoint which stems from a conviction that state intervention in enterprises such as transport, should be minimal and should be kept as simple as possible.

The main reason to challenge the establishment of authorities is that the municipal legislation establishing category A municipalities in conurbations, effectively overcame the problem of fragmentation and multiple authorities (Municipal Structures Act No. 117 of 1998). The problem of fragmented and overlapping powers at the municipal level of government was the reason why the White Paper transport policy required the establishment of metropolitan or regional transport authorities.

Accordingly, the need for transport authorities is challenged, especially in areas where there is already metropolitan government, covering broad functional transport areas. The paper also challenges the establishment of transport and/or planning authorities in every municipal district in the RSA. In many, transport problems are minimal and it is unnecessary to go to the lengths envisaged in the Act to produce transport plans. South Africa does not have the human resources to devote to such costly and unnecessary activities.

Fortunately, to date only one transport authority has been established, namely, the eThekweni Transport Authority (ETA). The first year of operation has not been all that auspicious and the ETA is reportedly functioning more like a department of the municipality than as an "authority" in the true sense of the word. An "authority" should have autonomous powers and be capable of making independent decisions, pursuant to the carrying out of its duties, subject to its mandate and its performance contract with the Minister and/or the provincial Member of the Executive Committee. So far this definition of an authority is not apparent.

2. BACKGROUND

Prior to 1994, land transport legislation was only concerned with transport in the large urban areas. Metropolitan transport areas (MTAs) had been established in eleven municipal regions, in terms of the Urban Transport Act of 1977, which resulted from the Committee of Enquiry into Urban Transport Problems in the Republic (RSA, 1974). The MTAs were based on metropolitan city regions. Responsibility for planning was exercised by so-called core cities in the MTAs. The core cities often experienced problems of co-ordination because of the number of local authorities in any one MTA. These problems provided the motivation for the establishment of transport authorities based on various world models, including the passenger transport authorities (PTAs) and passenger transport executives (PTEs) in the United Kingdom.

Because of the problems of co-ordination, fragmentation of powers and limited local authority responsibility for public transport, core cities began to evaluate alternative institutional models for transport during the 1980's. The Johannesburg MTA (JOMET) commissioned a study of European models of passenger transport authorities in 1984. Much of the material in this study influenced the contents of the White Paper.

After the 1996 publication of the White Paper, transport legislation evolved through various stages. The initial draft transport legislation was referred to as the Land Transport Bill. This Bill was extensively debated with provincial and municipal government between 1997 and 2000. Participation was facilitated through the Committee of Land Transport Officials (COLTO) which mainly comprised senior officials of the provinces and the existing MTAs or core cities and its technical arm, the Land Transport Co-ordinating Committee (LTCC).

The legislation was eventually published in August 2000 as the National Land Transport Transition Act (NLTTA). During the process of establishing the Act, it became obvious that there was a need for interim legislation to take account of the need to "level the playing fields" between the various public transport modes. Accordingly, the Land Transport Bill was extensively modified to incorporate a transition period which would allow the minibus-taxi industry to be formalised and for various measures to be taken to promote the industry, leading up to the proposed minibus-taxi recapitalisation. The proposed devolution of the commuter rail function to transport authorities was omitted and severely weakened the case for transport authorities. In hindsight, the repeated rewriting of the Act, helped to change its emphasis, clarity and intent. At 72 pages of fine print, it is too long, overly complex and is generally not proving to be easy to implement.

Ever since the first draft Land Transport Act appeared in 1998, various municipalities and cities have undertaken studies and research and made overseas trips to help facilitate the establishment of transport authorities. In Gauteng a task team of the Transport Co-ordination Committee evaluated various options for 18 months in 2001 and 2002. Cape Town undertook a major study of transport resources and needs in 2000 and got as far as preparing a Founding Agreement. There were a number of sticking points concerning funding, powers and the devolution of functions and as a result, this initiative is no further forward.

3. DEFINING A TRANSPORT AUTHORITY

There is a need for clarity and possibly redefinition of the meaning scope and functions of transport authorities. In the United Kingdom, authorities function primarily to plan, co-ordinate and manage public transport systems. In South Africa, they are conceptualised in broader terms to cover public and private transport, services and infrastructure.

In terms of the Act a "transport authority" means an authority contemplated in terms of Section 10 of the Act, for a transport area. A transport area means the area of a transport authority contemplated in Section 11 of the Act. Sections 10 and 11 state that these areas may be a single municipality [10(1)(a)] or municipalities whose areas of jurisdiction fall only or partially within the transport area.

The Act defines a planning authority as any body, which in terms of Section 20, has to prepare transport plans for its area. Section 20 states that the plans stipulated in the Act must be prepared by the following authorities to be known as planning authorities:

- (a) Transport authorities in respect of their transport areas.
- (b) Core cities in respect of their Metropolitan Transport Areas.
- (c) Other municipalities where their jurisdictional areas have not been included wholly or partly in transport areas or MTAs, in respect of their jurisdictional areas and where such areas are partly included in a transport area or MTA, in respect of that part of such area that is not so included.

The Act further states that in respect of district municipalities, they and relevant local municipalities must agree as to which will prepare the plans contemplated in the Act. In this regard it is quite clear that the Act envisaged that there should be wall-to-wall transport or planning authorities in the Republic.

4. DOUBTS ABOUT THE ADVISABILITY OF TRANSPORT AUTHORITIES

There are many reasons to reconsider the advisability of the establishment of transport authorities and wall-to-wall transport planning authorities in South Africa. Amongst these are the following:

- (i) Lack of capacity of municipal government;
- (ii) Cost of implementing the Act in 53 metropolitan and district municipalities;
- (iii) Questions about the cost, scope, content, shelf-life and legality of transport plans specified in terms of the Act;
- (iv) Bureaucratic tendencies in government;
- (v) The difficulty of dismantling an authority once established;
- (vi) An absence of leadership in the transport sector;
- (vii) Lack of clarity about transport powers at municipal level of government;
- (viii) Reluctance to devolve powers and assign functions to municipalities;
- (ix) Low priority for transport in government and an absence of funding mechanisms;
- (x) Inability of institutions to solve problems;
- (xi) Questions about the legality of Councillors serving on the Governing Body.

4.1 Lack of capacity in municipal government

There is, in general, a lack of skilled manpower to undertake essential functions in all levels of government. In municipal government, the situation is chronic. At present, the Department of Provincial and Local Government has specialists assisting in 139 “at risk” municipalities. Universities and technikons have not been producing sufficient quantities of skilled graduates and technicians for the transport sector, particularly in the fields of civil engineering, transportation engineering and transport economics. The planning and financial skills required for successful implementation of the Act presently go well beyond those that are available. There seems to be little sense in establishing and starting transport authorities when posts would have to be filled by unqualified persons.

4.2 Costs of implementing the Act in metropolitan and district municipalities

Apart from personnel costs in 53 planning authorities, the production of the five plans, according to the minimum requirements, is costly. In a metropolitan context, a Current Public Transport Record (CPTR) currently costs between R1.5 and R2 million. At a conservative estimate, the cost of preparing all five of the specified transport plans can easily exceed R5 million per authority. In metropolitan areas, a figure nearer R10 million is probably more realistic, for the five-year ITP and other transport plans. Annual updates can be completed for less, but if the CPTR is to be an annual or even biennial survey, the updating of the Operating Licences Strategy (OLS) and the other transport plans will still be expensive.

In consideration of the lack of human resources and the cost of implementing the Act, it is obvious that it needs to be revised. Requirements for transport planning procedures should be simplified. The plans should apply only to areas of transport complexity such as metropolitan areas and large urban centres.

4.3 Questions about the context, “shelf-life” and legality of plans prepared by transport authorities

Although there are good reasons for the failure of some authorities to produce transport plans, the fact that, nationwide, only one plan has been approved by a provincial MEC some five years after the Act was promulgated, reflects on the inability of authorities to comply with the provisions of the Act. The need for separate Rationalisation, Operating Licence and Public Transport Plans (PTPs) can also be questioned and could all be collapsed into a single Integrated Transport Plan, better integrated with the municipal IDP. The “shelf-life” of many plans is relatively short on account of rapid changes that take place in the sector. Accordingly, the legality of plans, which are based on an outdated CPTR could be challenged. As soon as the approved plans, as envisaged in the Act, start to influence the issue of licences, litigation can be expected to occur.

The point of the foregoing discussion is to emphasize the complexity of planning procedures and the poor performance and lack of readiness of municipalities to undertake statutory planning tasks. Establishing transport authorities will not overcome these problems.

4.4 Bureaucratic tendencies in government

An effective transport authority would need to operate on business principles, be responsive to day-to-day problems in the transport industry and be in a position to offer timely information to the travelling public about public transport services, tickets and through-ticketing. Although there are successful examples of bureaucracies in Europe and the Americas undertaking these management and co-ordination tasks, in view of the manpower problems in South Africa it would be risky to establish new bureaucracies before these problems have been resolved. No transport authority should be established while mismanagement and even corruption are prevalent in government administration and while technical and business skills are lacking.

4.5 Absence of leadership in the transport sector

In all instances of successful transport authorities around the world, they have generally been characterised by sound and visionary leadership. It is early days in South Africa, but people of expertise, vision and drive have not yet emerged to provide leadership in the transport sector. Classic examples of the type of leadership that will be required if transport authorities are to succeed, come from London where the incumbent mayor, Ken Livingstone, stood for office as an independent on a platform of the reform of transport in the city, including the introduction of unpopular congestion measures in central London. A similar example can be cited from the city of Curitiba in Brazil where the mayor, Jamie Lerner, had the vision to conceive and implement a strategic corridor-based public transport system, supported by appropriate land development. To date, examples of this type of leadership in South Africa are rare. Most managers toe the party line and keep their heads down. This is not necessarily a criticism of existing mayors and City managers, but rather people within the sector who are not succeeding in raising the profile of transport in municipal service delivery.

4.6 Lack of clarity about transport powers at the municipal level of government

The Act refers to the devolution of transport functions, but is relatively silent on the devolution of powers to authorities, including the powers of taxation and user-charging. The founding agreement for the eThekweni Transport Authority (ETA) contains no specific powers. In respect of funding, although there are contributions by all three parties to the agreement, no guarantees are given and it is understood that the funding is relatively short-term. In the addendum to the founding agreement, the funding contributions outlined are restricted to the 2003/04 municipal year.

In the preparation of a founding agreement for the proposed City of Cape Town transport authority in 2000, specific powers were written into the agreement, as follows:

- the power or right to make by-laws and traffic regulations and measures to enforce regulations;
- the power to impose conditions on operators designed to facilitate customer protection, including but not limited to accident liability, the deployment of police and security services and even the appointment of a transport Ombudsman;
- the power to apply public funds to services and infrastructure in the interests of approved customer support, including but not limited to capital or operating ticket subsidies and concessionary fare schemes;
- property rights and expropriation powers, including ownership of roads and streets and state property acquired or used to execute transport functions;
- the power to impose levies, fees or tolls to give effect to the principle of economic charges for the use of roads, facilities or services provided by the authority. Such fees to be in keeping with the lifecycle cost and replacement, rehabilitation or upgrading of the facilities;
- rights to exercise user-charging mechanisms through direct measures such as tolls or fuel levies;
- the power to raise loans for capital or current expenditure in accordance with reasonable conditions determined by the municipal council;
- earmarking of grant funds and user-charging revenues for the specific purposes for which they were awarded or collected;
- the power to apply transport revenue to any of the specified functions assigned to the authority;
- enforcement powers in keeping with an approved law enforcement strategy contained in the Integrated Transport Plan; and
- veto powers in respect of substantial changes or intensification of land uses which are shown by traffic impact assessments to materially affect transport infrastructure facilities, or the power to impose requirements on developers to conduct traffic impact and/or public transport assessments at their own cost.

There is a considerable difference between these powers and those contained in the ETA agreement which is the only legally approved founding agreement. Until such time as there is general agreement about the assignment of powers and funding of the transport mandate, it would be unwise for municipalities to accept the transport mandate by establishing transport authorities.

4.7 Reluctance to devolve powers and assign functions to municipalities

The negative reaction by the provincial and national Departments of Transport to the founding agreement prepared by the City of Cape Town in 2000, indicates that there is a reluctance to devolve powers to municipalities. It is known that many provinces are reluctant to devolve the bus subsidy function to municipal transport or planning authorities. At national level, there is an understandable reluctance to devolve the powers and functions of the South African Rail Commuter Corporation (SARCC) to the authorities. There are regional bodies responsible for Commuter Rail Services in four of the metropolitan areas and there is no good reason why these resources should not be transferred to a metropolitan transport authority, together with the relevant commuter rail powers.

While there remains a tendency to assign duties rather than devolve powers to municipalities, municipalities should resist being coerced into becoming transport authorities and thereby taking responsibility for functions which national government is struggling to carry out.

4.8 Low priority for transport in government and an absence of funding mechanisms

Despite talk to the contrary, there have been very few indications that government is serious about increasing the priority of the transport sector. Although the accelerated infrastructure programme has promised much, the actual expenditure is still largely in the hands of Transnet and the SARCC. It may be early days, but it could be hoped that the pressures of the 2010 Soccer World Cup (2010 SWC), which will be experienced at municipal level, might change this situation.

4.9 Institutional problem-solving

Generally, it is not institutions which solve problems and achieve breakthroughs, but committed individuals. The example has been given of the mayors of London and Curitiba. In decision-making, too much emphasis should not be placed on the ability of institutions established by law to function effectively in all circumstances. In the United Kingdom, there are still only seven passenger transport authorities, whereas South Africa is contemplating having 53. It should be noted that in terms of the Act, there is no difference between the planning and implementation duties between transport and planning authorities.

4.10 The legality of Councils serving on the governing body

Doubts have been raised by the National Treasury in respect of the legality of transport authorities in terms of the Municipal Financial Management Act. Also, the Municipal Systems Act 32 of 2000, amended by Act 34 of 2003, stipulates in Section 86(b)(2) that no municipality may establish or participate in the establishment of, or acquire or hold an interest in a corporate body including a trust, except where such corporate body is a private company, service utility or multi-jurisdictional service utility referred to previously. Clarification on the potential legal pitfalls is currently being sought.

5. COMPELLING REASONS FOR ESTABLISHING TRANSPORT AUTHORITIES

Despite the negative comments about transport authorities contained in the previous section, there are some compelling reasons why government should proceed with the intention of the Act of establishing transport authorities. Establishment of TAs should, however, be conditional upon progress being made in the implementation of the Act at

municipal level and should be phased to ensure that the authorities can be adequately staffed before they are finally established.

The main reasons for supporting the establishment of transport authorities, despite the doubts expressed earlier, are as follows.

5.1 Fragmentation of responsibility for transport

In municipal government, there are still numerous autonomous or semi-autonomous agencies carrying out transport functions and taking decisions without reference to the Integrated Transport Plans (ITPs) of the local municipality. Examples of this include the following:

- South African National Road Agency Limited's (SANRAL) which constructs and tolls national roads in urban areas without reference to municipalities and, in some cases, having negative impacts on traffic in the municipal area;
- Rail commuter services continuing to be planned and operated without reference to the municipal Public Transport Plan or any municipal policy on the role, co-ordination or integration of public transport modes operating in the city;
- Interim and tendered bus contracts reflecting historic subsidisation practice and not being responsive to changes in line with shifting patterns of demand, or in line with rationalisation proposals suggested in municipal transport plans.

The lack of progress in implementing the Act and in the preparation of transport plans can, to some degree, be explained in terms of the foregoing problems and fragmentation. Many plans which have been produced in the past are not implementable because of the absence of funding or powers in municipal government. The autonomous transport agencies operating in the cities do not shape their operations or investments in line with the municipal transport plans.

5.2 Lack of implementation powers

Without implementation powers, municipalities are not in a strong position to implement plans. Examples of this problem include the following:

- In some parts of the country, the newly established Operating Licences Boards (OLBs) are continuing to function as the old Local Road Transportation Boards, granting permits to applicants and ignoring the fact that there are new licensing policies which are intended to comply with Operating Licences Strategies prepared as part of Integrated Transport Plans. Accordingly, the planning work undertaken by municipalities is being ignored in some instances and is not influencing the extension or granting of operating licences in others. In order for plans to be implementable, it is essential that the licensing function also be devolved to metropolitan authorities.
- Many cities have identified the need for strategic public transport networks. Without power over the contracting of subsidised services, it is not possible for the municipalities to implement these strategies. In many cases, contracting has been placed on hold and interim contracts are being extended on an annual or biennial basis.
- Municipal government generally does not have funds available for necessary transport improvements. These include public transport interchanges, dedicated public transport lanes, improvements to train services and stations as well as general road improvements, particularly in disadvantaged areas. Without the funds

for the necessary improvements, many of which are described in plans, nothing happens and the credibility of the ITP is called into question.

- Much of the problem with public transport in South Africa relates to lawlessness and predatory behaviour. Without law enforcement powers and contracts with operators, this state of affairs will prevail to the detriment of the market share of public transport as a whole. Resources should be provided for the appointment of law enforcement inspectors who should be the regulatory implementation arm of the transport authority.

5.3 Lack of co-ordination and marketing

Currently, public transport services are operated as discreet modal entities. There is no overall co-ordination and the services are not marketed as a city-wide public transport service. The United Kingdom and European Passenger Transport Executives (PTEs) carry out an extremely valuable function in this regard. There is a need for transport authorities to manage co-ordination, marketing, timetables, monitoring and supervision functions of public transport services. This remains one of the most compelling reasons to establish a transport authority with powers of implementation and funds to achieve the necessary improvements.

5.4 Accountability

There is no question that the municipal level of government is the closest to citizens who require services. This should, through the appropriate democratic process, make a municipal TA far more accountable to the voting public. There is no reason, however, why the municipality should not establish an accountable external transport executive under its authority, responsible for carrying out the necessary transport planning and implementation.

6. CONCLUSIONS

There are compelling reasons why municipalities should not be too hasty in the preparation of founding statements to establish transport authorities. Overall in the RSA, the municipal level of government should prepare a unified position on terms and conditions which will be necessary to make transport authorities a viable and appropriate institution. There will be a need, once this agreement has been achieved, for a capacity-building period to enable the necessary skills to be developed. In the first instance, transport authorities should be limited to those areas where transport is a complex municipal function. This means that at least for the next ten years, the only municipalities which should qualify to establish transport authorities should be the six metropolitan municipalities.

7. REFERENCES

- [1] Cape Metropolitan Council (Prepared by TRC Africa {Pty} Ltd). The Establishment of a Transport Authority in the City of Cape Town Council Areas: Status Quo Audit. Final Draft position paper. 19 July 2000.
- [2] Cape Metropolitan Council. (Prepared by TRC Africa [Pty] Ltd). Founding Agreement for the City of Cape Town Transport Authority. Discussion document: Third Draft. 27 June 2000.
- [3] Department of Transport Kwazulu-Natal. eThekweni Transport Authority Founding Agreement. 5 March 2004.
- [4] Eastern Gauteng Services Council. Regional Planning. Project: Public Transport Services. Investigation into the Establishment of a Transport Authority in the EGSC area. Report No. 23/96. December 1997.
- [5] Ethekewini Municipality. Strategic Plan for the eThekweni Transport Authority 2004-2009 Second Draft. 30 September 2004.
- [6] National Department of Transport. National Land Transport Transition Act 22 of 2000. September 2001.
- [7] Republic of South Africa. Local Government: Municipal Finance Management Act 2003. Government Gazette No. 26019, Vol. 464. Cape Town. 13 February 2004.
- [8] Republic of South Africa. Local Government: Municipal Structures Act 1998. Government Gazette No.19614, Vol. 402. 18. Cape Town. December 1998.
- [9] Republic of South Africa. Local Government; Municipal Systems Act 2000. Government Gazette No. 21776, Vol. 425. Cape Town. 20 November 2000.
- [10] Republic of South Africa. National Land Transport Transition Act, No 22 of 2000. Government Gazette No. 21493, Vol. 422. Cape Town. 23 August 2000.
- [11] Transport Co-Ordination Committee. Discussion Document on Transport Authority Areas in Gauteng. TCC Report 1/2000. August 2000.