



SOUTH AFRICAN LOCAL
GOVERNMENT ASSOCIATION

SALGA

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**FEASIBILITY FOR ESTABLISHING A REGIONAL
MUNICIPAL TRANSPORT AUTHORITY TO IMPROVE
INTEGRATION OF PUBLIC TRANSPORT SERVICE IN
GAUTENG PROVINCE**

DRAFT REPORT 6

TABLE OF CONTENTS

1.	Introduction	4
1.1	Significance of transport in urbanisation	4
1.2	Transport in Gauteng	5
1.3	Objectives of this research	7
2.	Analysis of role and definition of different transport authorities	9
2.1	Introduction	9
2.2.	Role, scope and definition of Transport Authorities	10
3.	Examples of transport authorities.....	12
3.1	Research on the international situation.....	12
3.2	Transport Authorities in South Africa.....	24
3.3	Key issues for Gauteng	27
4.	Legislative Framework – transport authorities.....	29
4.1	The National Land Transport Transitional Act, No 22 of 2000 (Repealed).....	29
4.2	The National Land Transport Act No 5 of 2009	33
4.3	Municipal Systems Act NO 32 of 2000	34
4.4	National Policies	34
4.5	Key decision making points	36
5.	Unpacking powers and functions.....	38
5.1	Roles and responsibilities.....	38
5.2	Allocation of powers and functions.....	40
5.3	Determining the functions for assignment to local government	44
5.4	Managing the assignment within a regional transport authority	46
5.5	Financial/funding considerations	47
5.6	Key decision making points	47
6.	Options for a regional municipal transport authority in Gauteng	48

6.1	Introduction	48
6.2	Key decision point 1 – the geographic extent of the regional municipal transport Entity.....	48
6.3	Key decision point 2 –the regional transport entity type.....	57
6.4	Key decision point 3 – operational and related matters	60
6.5	Key decision point 4 – assignment of functions	60
7.	Conclusion.....	62
	References	63

1. INTRODUCTION

1.1 SIGNIFICANCE OF TRANSPORT IN URBANISATION

Transportation is critically important to the spatial transformation of cities¹, and this is particularly true of public transportation as has been shown in cities such as Curitiba in Brazil. This is even more so in South Africa, where apartheid planning has distorted the spatial form of the city, and located poor people far from economic opportunities and social amenities. The Curitiba model integrated land use and transport planning, and involved persistent long term implementation of the plan which was based on a strategic vision and principles that guided development². Following the introduction of more efficient public transport in that city, 85% of residents used public transport, they claimed to spend only 10% of their income on transport, and fuel consumption was said to be 25% less than that in similar cities in Brazil.

It is clear that passenger transportation must become foremost on the agenda for municipalities. This is likely to “shape the productivity and competitiveness of cities and countries for the foreseeable future”³.

Public transport, housing and land-use patterns are integrally linked and face various challenges in South Africa. The demand for transport and travel patterns is determined by the nature and location of human settlements. Thus decisions around human settlements and transport investment planning need to be undertaken within the broader framework of land-use patterns⁴. There is a need to improve land-use patterns and integrated planning between land use and transport. The promotion of densification and improved planning and coordination are key to more efficient and inclusive cities. Investment in BRT provides an opportunity for cities to improve land-use patterns. Cities therefore need to plan efficiently how to use the land around these routes more intensively for developments of higher densities. Coordination between public transport and human settlements is imperative to achieve this⁵.

The NDP recommends ‘an integrated approach to the challenges of development. The potential economic dynamism of a metropolitan municipality cannot be achieved without also considering where people live and how they get to work. This means that municipalities need to think holistically about issues such as housing, transport and spatial planning so that housing can be well positioned with adequate access to public transport. To achieve this, metropolitan municipalities need more comprehensive control over the core built environment functions’⁶. Current moves to devolve functions to municipalities recognise the

¹ National Development Plan, 2013

²Todes, 2009

³ Williams and Hammond, 2015

⁴Mtantato, undated

⁵Mtantato, undated

⁶ Ibid

fact that the key functions of municipal planning, land use management, human settlements and transport are inextricably linked and best coordinated at metro level⁷.

1.2 TRANSPORT IN GAUTENG

Gauteng is the economic hub of South Africa and consists of three metropolitan municipalities (City of Johannesburg, Ekurhuleni Metro Municipality and City of Tshwane), and two district municipalities (Sedibeng and West Rand), which together contain seven local municipalities. In many areas of the province, urban development is contiguous, with transportation routes necessarily crossing municipal boundaries.

Increasing urbanisation in Gauteng increases demand for travel. Population densities in South Africa's cities are very low in comparison with most other countries, which means longer travel distances, with a negative impact on the viability of public transport. In 2007 DBSA showed that car ownership was rising with increasing urbanisation and decreasing average household sizes. The metro areas had the highest trip generation rates especially Johannesburg. Between 1996 and 2003, trips to work increased by 22.1% compared with a population increase of 14.3% and the market share of minibus-taxis for work trips increased from 57 to 63% of public transport trips. In the same period, intensity of car use increased in the morning peak period in metropolitan areas, with a 1.5% shift towards starting trips before 6h30, accompanied by a spreading of the peak on either side of the traditional morning peak hour. Metropolitan areas experienced the most significant changes⁸.

Currently, the road network in Gauteng is fairly extensive, especially in the metros, while the Province has relatively few rail networks, as indicated in the figures below.

⁷ Dawood and Mokonyame, 2014

⁸DBSA, 2007

Figure 1: Road network in Gauteng

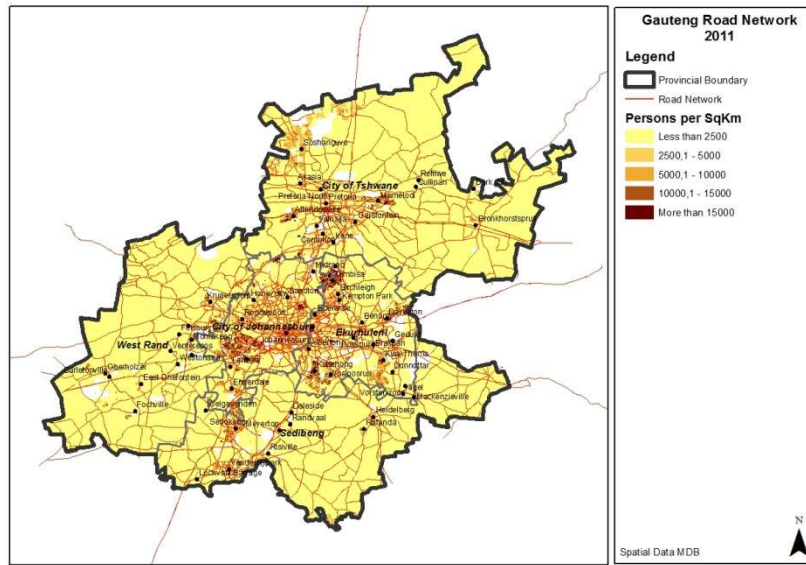
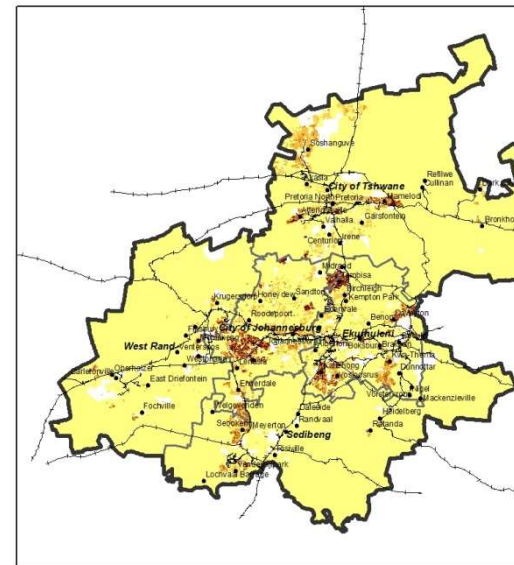


Figure 2: Rail network in Gauteng



As is the case with the rest of the country, transportation in Gauteng is extremely fragmented and complicated. The different modes of transportation in the province fall under different spheres of government, and the private sector. Transportation routes also fall under national, provincial or local government. Thus the “various transport components of current systems are operated and regulated by different governmental agencies and private operators, at all three spheres of government. Generally there is little coordination amongst key stakeholders, which means each agency and operator tries to improve those elements under its jurisdiction without consideration of the efficiency and effectiveness of the overall rural and urban transportation systems, and sometimes at the expense of the other components of the various modes of transport”⁹. There is often little to no coordination between agencies governing transport and those providing and operating infrastructure facilities and transport systems. “Transport authorities are responsible primarily for strategic and collective public planning and policy formulation and regulation; whilst the private sector (bus and taxi operators, airlines etc.) and government operating agencies (e.g. SARCC/Metrarail, ACSA, SANRAL, Metrorail) are responsible for detailed operational planning”¹⁰.

At national, provincial, and local government levels various structures have been set up to coordinate transportation activities, such as MINMEC, Minister and Members of Executive Council, COTO, the Committee of Transport Officials from national, provincial and local government, Transport Forums at district and local level and provincial structures such as the Gautrain Management Agency (GMA), Gauteng Freeway Improvement Scheme, and Gauteng Urban Transport Board (GUTB). Despite this, there is still a need for far greater alignment between the key role-players and different spheres of government. Recently, the Department of Transport has established a National Transport Forum in order to address issues of coordinated planning and implementation amongst the three spheres of government.

1.3 OBJECTIVES OF THIS RESEARCH

This research investigates how best local government in Gauteng can provide a coordinated and accessible public transport system through the implementation of a regional transport authority which would enable citizens of Gauteng municipalities to reach social and economic activities with ease. Specifically the research will consider the following:

- (1) To investigate the possibility of establishing a regional transport authority that would provide a coordinated and accessible public transport system in Gauteng
- (2) To identify the gaps and barriers in the integration of different modes of public transport and see how these could be overcome
- (3) To investigate the possibility of the coordination and pooling of resources by Gauteng municipalities to maximise accessibility to public transport
- (4) To provide possible strategies and identify the best type of local government programmes that would coordinate and integrate public transport for all Gauteng municipalities

⁹ National Transport Master Plan (Natmap 2050), 2010

¹⁰ Ibid

- (5) To determine the most appropriate institutional (legal) entity to fulfil the role of regional transport authority, distinct from the role of the province

This report provides an overview of the literature around transport authorities. It is based on a review of international and national literature, and relevant legislation. It first considers the role, scope and definition of transport authorities, experience around transportation authorities, and provides some international and local examples. It then examines in more detail the legislative framework around transportation and the establishment of such authorities in South Africa, putting forward some possible options for consideration in Gauteng.

2. ANALYSIS OF ROLE AND DEFINITION OF DIFFERENT TRANSPORT AUTHORITIES

2.1 INTRODUCTION

In considering the establishment of a regional transport authority for Gauteng that would provide coordinated and accessible public transport in the province, it is critical to consider the roles of transport authorities, their scope and definition, both legally and practically. This chapter therefore focuses on researching existing or past transport authorities in South Africa, examining whether they have operated at municipal, regional, provincial or national level.

As will be discussed in this report, the assignment of the transport function to local government is crucial in ensuring the coordinated delivery of the service, the management of public transport, routes, fares etc. at a local level, and the integration of transport into local planning. Specifically, the municipal transport function, including municipal public transport, 'involves primary responsibility to plan, implement and manage modally integrated public transport networks and travel corridors, including operational planning and to integrate municipal transport planning with land use planning.'¹¹ The executive authority as outlined in the Constitution extends only to the municipal public transport and municipal roads functions. Transport planning and related functions are not often aligned across neighbouring municipalities, across the three spheres of government and or public entities which results in a general lack of coordination and integration. "The urban transport infrastructure action which is required as we enter the 21st century is the speedy implementation in all metropolitan areas of adequately resourced and professionally empowered passenger transport authorities to manage all modes of transport within a specific geographical area. Only in this way is there a possibility for progress – providing an effective urban transport system in this country."¹²

In the 2015/16 Division of Revenue report, it is stated that there is support for the assignment of transport functions to the 'lowest appropriate level of government'¹³. This will facilitate improved planning and service delivery. However, it is also noted that 'transport service delivery has been shown to be strongly linked with politics and is therefore susceptible to political manipulation, which may not have long-term benefits'¹⁴. Therefore, when reassigning functions to municipalities, it is important to ensure that long-term service delivery objectives override short-term political interests'¹⁵.

¹¹Ovens, W, 2013

¹² Mitchell, M. 2014

¹³DoT, 1996; FFC, 2013b in Dawood and Mokonyama, 2014

¹⁴Iles, 2005

¹⁵Dawood and Mokonyama, 2014

The devolution of transport management to municipalities is aimed at enhancing alignment; however this also needs to include the strengthening of appropriate institutions and alignment of legislation, policy and practice¹⁶. The Gauteng 2055 strategy has suggested that in the case of Gauteng, where metropolitan municipalities are adjacent, a regional transport authority may be more appropriate.

2.2. ROLE, SCOPE AND DEFINITION OF TRANSPORT AUTHORITIES

Transport authorities are 'responsible for the planning, organisation and financing of public transport services and, as such, provide public services that would not be provided on a commercial basis. Transport authorities help to ensure the integration of and improvements to public transport by providing for public transport on the road, integrated ticketing and fare management, incentives to improve quality, integrated timetables, coordinated information systems and marketing campaigns, etc'¹⁷.

It is not viable, especially in a predominantly urban province such as Gauteng, to live without public transport. It is also difficult in such large urban areas for municipalities to manage every aspect of public transport with different operators and forms of transport operating in different areas, and with complex institutional arrangements. 'Integration of modes and operators (physical integration, integration of fares etc.) is therefore a fundamental task of transport authorities so as to be able to offer travellers a seamless trip. This is still a challenge for South Africa's cities. This requires major institutional reform'¹⁸.

The objectives, priorities and challenges addressed by transport authorities include the following¹⁹:

- Mobility aims of transport policy and the level of modal shift in favour of public transport
- Structural policy (land use and urban planning) and economic development
- Mobility and transport planning (with the aim of reducing road congestion, increasing road safety and encouraging modal shifts in favour of public transport)
- Environmental and energy planning (with targets to reduce pollutant and greenhouse emissions and achieve energy savings)
- Social equity and social inclusion policies
- Global urban governance policies and coordinated transport policies at the different planning levels (regional, provincial, municipal and among neighbouring municipalities)
- Improved quality and attractiveness of public transport services
- Efficiency and effectiveness of public spending on mobility or transport

¹⁶Ovens, W, 2013

¹⁷ UITP, A Vision for Integrated Urban Mobility: Setting up your Transport Authority

¹⁸Futshane, M and Wosiyana, M, 2005

¹⁹ UITP, A Vision for Integrated Urban Mobility: Setting up your Transport Authority

- Possible functions include the preparation of transport plans, the development of land transport policy, financial planning for land transport, the management of the movement of persons and goods, the promotion and facilitation of public involvement and calling for tenders for public transport services²⁰.

The integration with other functions is critical. These include land-use and municipal planning, as well as environmental planning, service delivery and infrastructure plans and long-term strategic plans of all relevant municipalities.

It is useful also to examine the benefits of establishing a transport authority. The first clear benefit is addressing institutional weaknesses that may exist – on setting up the authority, skills can be acquired to manage the various functions and ensure that there is integrated planning. This will 'result in a move away from the current 'silo-based' transport operations and planning that leads to suboptimal modal arrangements'²¹. Examples include the development of the Gautrain in Gauteng, which was not integrated with existing public transport services. While local municipalities may now start trying to address this issue individually, it will again not be an integrated approach across neighbouring metropolitan municipalities.

A further advantage can be that institutional memory will not be threatened when elections are held, as employees are not subject to shifting political administrations in provincial or local government. Finally, given that these employees (mainly professionals) would be experienced in urban transport planning, policy implementation will be more effective and consistent²².

²⁰Cameron, B

²¹Walters, J, 2014

²²Walters, J, 2014

3. EXAMPLES OF TRANSPORT AUTHORITIES

3.1 RESEARCH ON THE INTERNATIONAL SITUATION

Transport authorities first emerged in Hamburg, Germany approximately 50 years ago²³. Since then there have been numerous examples of transport authorities in other countries. This section examines a few of these, in order to understand their scope, their functions and how they are structured. In each case the geographic area covered has been identified, along with participating parties in the transport authority, the functions performed and key issues for Gauteng. As far as possible, authorities with some similarity to a future Gauteng Transport Authority have been selected, either those that are a regional authority, or those that are an authority that, while not necessarily regional, involves multiple government agencies or spheres of government.

Country: USA

Area covered: Atlanta metropolitan area

Participants: Three funding counties (the City of Atlanta, Fulton County and DeKalb County), Atlanta Regional Commission and the Georgia Regional Transportation Authority

Functions performed: Management and operation of primary bus and rail system

Overview: The Metropolitan Atlanta Rapid Transit Authority (MARTA) is one of the oldest examples of transport authorities worldwide. A study conducted in the 1960s recommended a 66 mile, 5 county rail system with feeder bus operations and park-and-ride facilities, and as such as governance solution was required. The Metropolitan Atlanta Rapid Transit Authority Act, 1965 created MARTA which 'is part of a regional solution to transportation, and is working across the region with transit partners and planning agencies. Even as fuel prices fluctuate, MARTA will be part of environmental and traffic alleviation goals. MARTA is planning new services, upgrades, transit partnerships, and is part of envisioning new transit solutions such as the Beltline'²⁴.

In 1972, MARTA purchased the Atlanta Transit System and took control of the area's primary bus transportation system. Fares were reduced and by the end of the year, MARTA had had an increase of 21% in the number of passengers carried. In 1979, trains were introduced marking the start of MARTA's combined bus and rail service. New stations were opened and the airport rapid rail system was constructed. The North Line was the first time that a line segment spanned all

²³Nothnagel, A, Campbell, D and Stanway RA

²⁴ www.Itsmarta.com

three funding counties (the City of Atlanta, Fulton County and DeKalb County). Partnerships with the private sector were implemented to set up communities around rail stations (i.e. 'live, work and play' areas).

In 2006, MARTA 'joined the Atlanta Regional Commission and the Georgia Regional Transportation Authority in partnership to create the Transit Planning Board (TPB). The TPB's mission is to create the next regional plan for expanding and funding public transportation for the entire Atlanta Region'²⁵.

Key issues for Gauteng: Involves different spheres of government - three counties in the metropolitan area plus the Atlanta Regional Commission and the Georgia Regional Transportation Authority

Impact included reduced fares, increased number of passengers

Involved partnerships with private sector linked to human settlement development around rail stations

Country: USA

Area covered: South Florida

Participants: Three counties: Miami-Dade, Broward and Palm Beach

Functions performed: Planning, management and operation of Tri-Rail system

Overview: South Florida is the fifth largest urbanised area in the United States and one of the fastest growing regions. The South Florida Regional Transportation Authority (SFRTA), set up on July 1, 2003, initiated the three counties 'efforts to work together to ensure a viable regional transportation system'²⁶.

SFRTA is also responsible for long term strategic planning, including projects to provide for the future mobility needs of the area. The organisation has requested a dedicated source of funding in order to increase regional mobility and connectivity, attract federal transit administration funding, provide greater return on investment for state and counties, support sustainable economic growth, enhance quality of life, and accelerate transit expansion projects²⁷.

Key issues for Gauteng: Involves local government only

Focuses on regional mobility and includes long term strategic planning

²⁵ www.ltsmarta.com

²⁶ www.sfrta.fl.gov

²⁷ www.sfrta.fl.gov

Country: Germany

Area covered: Saxony

Functions performed: Implementation and management

Overview: Public transport authorities have been set up in a number of areas in Germany. An example of these is the VerkehrsverbundOberelbe (VVO), set up in 1994 and operating in Saxony. This authority is responsible for implementing an integrated network of public transport and is divided into three levels. These include:

- Strategic (to provide political leadership)
- Tactical (responsible for designing and managing the network, setting tariffs, timetables, marketing and service level agreements with operators)
- Operational (companies that operate the various modes of transport in the area).

‘Since being established, public transport patronage has reportedly increased, despite a regional decline in the population being served’²⁸.

Key issues for Gauteng: Increase in public transport patronage since implementation

Clear divisions in responsibility – political leadership, management, and operations

Country: United Kingdom

Area covered: London

Functions performed: Planning, management and contracts with private operators

Overview: Transport for London (TfL) was established as a statutory body under the Greater London Authority Act (1999) and took over many of the functions of the previous London Regional Transport. The role of the organisation, according to their website, is to implement the Mayor’s Transport Strategy. In this regard, the organisation is managed by a board appointed and chaired by the Mayor, with a Commissioner heading the technical team. This technical team covers ‘transport planning, integrated ticketing, transport infrastructure management, network design and entering into contracts with private operators’. Three units are in place – surface transport covering buses, cycling, river services etc.; rail and underground; and crossrail. There are also a number of specialist companies in the TfL including the London Underground Ltd., London Buses Ltd., Dial-a-Ride etc.

²⁸Dawood, G and Mokonyame, M, 2014

It should be noted that the City of London is made up of 32 boroughs. TfL works with these individual boroughs through its Borough Engagement Team, working on local transport initiatives including road safety schemes, town centre improvements and walking and cycling projects. Five sub-regional panels are in place made up of borough officers and business representatives²⁹.

Key issues for Gauteng: Separate body that works with individual boroughs

Integrated ticketing across a range of transport options

Country: Singapore

Area covered: Singapore

Participants: Previously separate government departments

Functions performed: Planning, policy and management

Overview: The Land Transport Authority in Singapore was founded in 1995 and is responsible for transport planning, policy-setting and management in the city. This organisation merged 'previously separate transport-related functions in government: the Registry of Vehicles, the Mass Rapid Transit Corporation, Roads and Transportation Division of the Public Works Department, and Land Transport Division of the Ministry of Communications'³⁰ and is governed by a board reporting to the Ministry of Transport.

The authority's functions include the following³¹:

- Formulation of land transport policies; integration of transport planning with land use (working closely with town and land use planners from the Urban Redevelopment Authority, Housing Development Board, and Jurong Town Corporation to ensure that roads and other transport systems, such as new rail lines and bus routes, are well planned and properly integrated with urban, residential, industrial, and commercial developments)
- Planning, design, and development of rapid transit systems (RTS) and road infrastructure systems (focusing on system integration and technical design details of roads, tunnels, pedestrian overhead bridges, and other structures and management of construction for new RTS projects and extensions as well as upgrades of existing rail lines)

²⁹www.tfl.gov.uk

³⁰Dawood, G and Mokonyame, M, 2014

³¹ The International Bank for Reconstruction and Development, World Bank, 2013

- Management of road traffic and maintenance of related road infrastructure and systems
- Promotion and regulation of public transport (imposing, monitoring, and measuring minimum operating performance standards for bus and rail services in terms of service quality, safety assurance, and equipment performance)
- Regulation of private transport ownership and usage
- Centralised bus network planning

One of the key successes of the organisation has been its ability to implement transport management solutions that combine travel demand management and sustainable transport infrastructure. This is linked to its long-term planning for Singapore's transport needs³².

Key issues for Gauteng: Management of a range of transport options

Separate body reporting to the Ministry

Linked to long term planning for the area's transport needs

Country: France

Area covered: Paris

Participants: Representatives from all spheres of government in the region

Functions performed: Coordination of public transport, policy development, financing and implementation

Overview: The SyndicatTransportes Ile de France (STIF) manages and finances public transport in France, similar to the National Transport Forum recently established in South Africa by the Department of Transport³³. This is a public agency governed by representatives from all spheres of government: national, regional and local governments of the cities of the Il de France region. The organisation is responsible for coordinating public transport in the region, setting general policies for services (including the operations such as routes, fares and schedules to be provided by the operating agents) and co-finances and coordinates the implementation and modernisation of public transport facilities. However, STIF does not regulate safety issues around transport, nor is it responsible for issuing driving licences and registration of vehicles. The focus of the organisation is on public transport.

³²Dawood, G and Mokonyame, M, 2014

³³Dyodo, S, comment received 2015

Funds used by the STIF come primarily from an employment tax where each employer in the region contributes a percentage of their wage bill towards public transport.

Three operating agencies are in place. The main agency (RATP) is a publicly owned company that operates through a contract with the public transport authority, who determines the service level required. The second agency (RER) operates regional services in a joint venture between RATP and the national railroad company. The third agency (OPTILE) operates some of the fringe area services³⁴.

Key issues for Gauteng: All spheres of government are represented with the focus being on public transport

Includes various operating agencies

Country: Canada

Area covered: Vancouver

Functions performed: Planning, financing and management

Overview: In 1999, TransLink was set up as a regional transportation authority in Vancouver – the first North American transportation authority to be responsible for the planning, financing and managing of all public transit in addition to major regional roads and bridges³⁵. This authority is responsible for the region's entire strategic transportation system, including intelligent transportation system programmes, and delivers these services through subsidiary companies such as the Coast Mountain Bus Company, British Columbia Rapid Transit Company Ltd. (SkyTrain) and West Coast Express Ltd., as well as contractors³⁶. However, TransLink determines the routes, schedules, fares and hours of operation for these contractors and subsidiary companies.

A review of the system notes that³⁷:

- It is a hugely successful and well-used system, with ridership up 56% since 1999. Translink has one of the highest per capita ridership among North America's major urban transit systems, with 20% of commuters in Metro Vancouver using public transit to get to work.

³⁴ LUTP, Governance: Institutional Arrangements for Urban Transport

³⁵ www.translink.ca

³⁶ LUTP, Governance: Institutional Arrangements for Urban Transport

³⁷ McMartin, 27 March 2015

- It has been getting leaner as an organisation, realizing \$240 million in efficiencies between 2012 and 2014, including trimming its executive staff from 33 to 17, doing away with the executive bonus program, rescheduling bus service from under-performing routes to high-demand routes and centralizing procurement of equipment.
- TransLink is the only transit service in the country to finance its investments through the bond market.
- Breakdowns are rare, with a total of 1 272 371 trips scheduled over the last five years, of which only 25 were delayed more than an hour.
- TransLink serves those who need it most, and does so at an efficient cost for those who need it least. Its user profile is divided sharply along age and income lines. Over 70% are between the ages of 15 and 45 and 54% of all transit-reliant commuters earn less than \$30,000.

Key issues for Gauteng: Delivers services through subsidiary companies and private operators

Finances investments through the bond market

User profile indicates users are mainly between the ages of 15 and 70 and over half earn less than \$30,000

Country: Canada

Area covered: **Greater Toronto and Hamilton Area**

Functions performed: Implementation

Overview: Metrolinx, previously the Greater Toronto Transportation Authority, was created to 'improve the coordination and integration of all modes of transportation in the Greater Toronto and Hamilton Area. The organisation's mission is to champion, develop and implement an integrated transportation system for our region that enhances prosperity, sustainability and quality of life'³⁸. A Memorandum of Understanding was signed with the Ministry of Transportation that sets out the working relationship including issues of corporate governance, funding, reporting and communication.

However, in a recent article it is stated that this role is not always respected by member municipalities. This governance study found that³⁹:

- Tensions between Metrolinx and some local transit operators are being blamed for causing unproductive delays.

³⁸Warren, M, 2015

³⁹Warren, M, 2015

- The slow roll-out of the Presto fare card system and perceived protracted delivery of projects has prompted calls to bring local transit operators within the control of one organisation or body.
- Suggestions for change include “uploading all of the local authorities and integrating all functions into a single, consolidated provincial agency.”
- It further noted that the authority does not have the policy freedom to set up a GTHA transit authority.

Key issues for Gauteng: Limited policy freedom has hindered set up of authority

Delays in implementation due to tension with local operators

Country: Jamaica

Area covered: Jamaica- urban areas

Functions performed: Regulation, licensing, scheduling

Overview: The Jamaican authorities identified the need for a regional solution to transportation, and so developed the Jamaica Transport Authority which works across the region with different transport partners and planning agencies. Specific roles and functions include⁴⁰:

- Regulating and monitoring public transportation in the urban areas of the Kingston Metropolitan Transport Region (KMTR), Montego Bay Metropolitan Transport Region (MMR) and all other urban and rural routes and areas in the island of Jamaica. This is done through the employment of route inspectors.
- Licensing of all public passenger vehicles and commercial carriers island-wide
- Maintaining a transport register
- Conducting technical surveys for granting licences and determining routes
- Scheduling of routes and preparing timetables
- Investigation of complaints

Key issues for Gauteng: Integrated management of routes and timetables

Partnerships with different transport partners and planning agencies

Country: Finland

Area covered: Helsinki

Participants: All member municipalities

⁴⁰<http://ta.org.jm/roles-and-functions>

Functions performed: Planning, management of service level agreements with operators

Overview: The Helsinki Regional Transport Authority (Helsinginseudunliikenne-kuntayhtymä – HSL) began operating on 1 January 2010 as a result of the new Finnish public transportation law that was effected on 3 December 2009. HSL is responsible for the planning and procurement of public transportation in Greater Helsinki including buses, trams, ferries and commuter train services. The member municipalities own the authority together, subject to a treaty which regulates the operations and governance of the transport authority.

The organisation does not have buses or rail stock of its own, and instead operates through service level agreements with operators. A travel card system is in place that can be used on all public transport services⁴¹.

The public transport system is made up of route networks with different modes of transport. 'Commuter train services and the metro form the backbone of the transport network, complemented by bus services and in the inner city of Helsinki also by tram services'⁴². Flexible transfer interchanges and feeder services are in place in order to attract more users to the service. In addition, different travel needs and user groups are included in the overall planning of the system.

The authority's website notes that 'municipalities and other stakeholders have different preferences for the level of service and financing of the services'⁴³ and as such, ongoing engagement with municipalities is critical.

Key issues for Gauteng: Authority is owned by the member municipalities subject to a governance treaty

Ongoing engagement with municipalities regarding level of service and financing thereof

Operates through service level agreements with operators

Country: United Arab Emirates

Area covered: **Dubai**

Functions performed: Oversees transport networks

Overview: The Dubai Roads and Transport Agency (RTA) oversees the roads, rail and marine transportation networks in Dubai and between Dubai and other emirates of the UAE and neighbouring countries. Its mission is to 'provide an effective, safe and integrated transportation system, and its wide-ranging responsibilities include

⁴¹www.hsl.fi

⁴²www.hsl.fi

⁴³www.hsl.fi

buses, taxis, tolls, road and rail engineering, traffic safety, marine transportation, and registration and licensing'⁴⁴.

A large emphasis of the authority has been on smart solutions such as an integrated call centre which has been implemented, and planning for the use of SMS communication and database integration.

Key issues for Gauteng: Smart solutions e.g. call centre, planned SMS communication etc.

Includes road, rail and marine transport networks

Country: Columbia

Area covered: **Metropolitan Area of Centre Occidente**

Participants: Three local municipalities

Functions performed: Regulation, management of fares and routes, authorisation of new companies

Overview: In Columbia, legislation allows for municipalities to form metropolitan areas, where two or more municipalities integrate around a core city, as could arguably be the case in Gauteng, with three metros. In 1992, three municipalities agreed to the establishment of the *Area Metropolitana de Centro Occidente* (Metropolitan Area of Centre Occidente) (AMCO), which functions as the lead agency for transport in their metropolitan area. 'AMCO is responsible for the regulation of all public transport (except for BRT services, managed by Megabus), design of public transport routes, fare fixing for public transport, authorisation of new companies to enter the public transport market, issuance of permits for a vehicle to operate as a public service vehicle, authorisation of fuel stations, and collection of the gasoline tax'⁴⁵.

Key issues for Gauteng: Does not include management of BRT services

Integrates public transport routes across the region, and fare fixing

Country: Nigeria

Area covered: **Lagos**

Participants: Local and state government

Functions performed: Planning and regulation

Overview: The Lagos Metropolitan Area Transport Authority (LAMATA) was created by an Act on 13 January 2002 and launched in December of the following year. The

⁴⁴Avaya, 2011

⁴⁵The International Bank for Reconstruction and Development/The World Bank Group, 2013

initial Act allowed LAMATA to collect levies and user charges in connection with the provision of its services, as well as any other tariffs or fees that were authorised by the governor. However, in 2007 this law was strengthened to include planning and regulatory functions across the various modes of transport.

Key functions include⁴⁶:

- Coordinate transport policies, programmes and actions of all agencies
- Maintain and manage the Declared Road Network (DRN), mainly bus public transport routes of about 632km
- Plan, coordinate, manage and develop the supply of adequate and effective transportation
- Recommend route planning and general location of bus shelters, pedestrian ways and bridges
- Collect and levy transport road user charges and establish a Transport Fund (TF) as a user reform financing mechanism to increase the low level of cost recovery in the transport sector, and to sustain the performance of LAMATA
- Collect 50% of net Motor Vehicle Administration (MVA) revenue (specific items) to be paid directly into the authority
- Regulate Bus Rapid Transit (BRT) along prioritised corridors
- Coordinate activities of the State Licensing Authority and all vehicle inspection units
- Make policy recommendations on public transportation to the Governor, including mechanisms for implementation
- Prepare plans for the development and management of an integrated multimode public transport system
- The organisation's successful performance of these functions will assist in poverty alleviation by increasing economic efficiency through lower transport costs and prices, and enhancement of employment and social opportunities.

Key issues for Gauteng: Charges levies and user charges to fund authority

Coordinates and manages all aspects of public transportation

Focused on poverty alleviation through lower transport costs

⁴⁶<http://www.lamata-ng.com/background.php>

Country: India

Area covered: Various

Functions performed: Planning and regulation

Overview: The Indian cities of Indore and Jaipur provide examples of a separate entity being established under a generic statute to perform the functions of a lead agency for public transport. The Indore City Transport Service Limited and the Jaipur City Transport Service Limited were set up under a generic national law that regulates commercial and business entities in the country. This appears to work well when the lead agency has responsibility only for the management of public transport and is not involved in regulatory issues or the collection and use of government taxes.

A number of Indian cities have set up a Unified Metropolitan Transport Authority (UMTA) by government order. Bangalore, Chennai, and Mumbai are a few examples (IUT 2013). UMTAs are essentially committees composed of senior officials of all the related government departments and headed by the chief secretary of the province. They are powerful by virtue of all the key players involved in the decision-making process. Their effectiveness depends, however, on how often they convene and the interest of senior officials to participate in UMTA meetings. Attempts to delegate responsibility to junior officers or delays in organising regular meetings have often resulted in reducing the effectiveness and value of such committees⁴⁷.

Key issues for Gauteng: Creation of separate entity to manage public transport

Includes representatives of all related government departments

Country: Egypt

Area covered: Cairo

Functions performed: Planning and regulation

Overview: In 2013, Cairo established the Transport Regulatory Authority for Greater Cairo to plan, regulate, and deliver sound urban transport services in the Cairo region. In 2014, the World Bank provided funding for the establishment of this body, with this expected to be in place and operational by November 2016.

⁴⁷The International Bank for Reconstruction and Development, World Bank, 2013

3.2 TRANSPORT AUTHORITIES IN SOUTH AFRICA

As has been mentioned, the establishment of transport authorities in South Africa is more recent than some of the more established international cases. However, it would appear that to date South African transport authorities have been restricted to municipal entities only. Although province can plan for aspects of transportation within their jurisdiction (e.g. PLTFs and the Gauteng Transport Master Plan), no specific provincial or regional transport authority has yet been established to manage transportation in provinces or regions in South Africa.

eThekwin became the first municipality to set up a transport authority, as a pilot project for the Department of Transport. This was established in terms of the now repealed NLTTA. The overall goal of this initiative was to coordinate all transport functions in the city and to improve the quality of life for the city's residents through the provision of an Integrated Rapid Public Transport Network (IRPTN) that is safe, secure, convenient, clean, affordable, and socially equitable⁴⁸. A review of the performance of this authority in 2005 found that it functioned as an ordinary department of the city, instead of as a separate authority, which affected its ability to make independent decisions. Funding to the authority was discretionary and the transport authority did not have complete management of all transport functions, with many transport functions still spread across all three spheres of government. Rail in particular was not completely devolved to the transport authority⁴⁹.

Benefits of the separate eThekweni Transport Authority (ETA) included the quick turnaround times for decision making and the ability to attract key technical skills. However, as contracting and licensing functions have not been assigned to the city, the authority has had to work with provincial government, leading to some challenges in verification of data, difficulty in coordinating municipal, provincial and national plans and strategies, and the management of freight transport as it is unclear under which sphere of government this responsibility falls⁵⁰.

The ETA developed an integrated package of rail and bus rapid transit systems, as well as trunk routes with dedicated right of ways for public transport vehicles. Key elements of the system include⁵¹:

- Nine main transport corridors with associated trunk routes, feeder routes and complementary routes
- Transfer stations
- "Park and ride" facilities
- An electronic fare management system (EFMS)
- Non-motorised transport facilities, including bicycle lanes

The fact that the NLTA does not address transport authority arrangements led to the City attempting to reconfigure the ETA to meet legislative requirements. The eThekweni Transport Authority has not yet

⁴⁸Pearton, M and Hughes, M

⁴⁹Dawood, G and Mokonyame, M, 2014

⁵⁰Dawood, G and Mokonyame, M, 2015

⁵¹Pearton, M and Hughes, M

implemented the coordination structures provided for as they are awaiting guidance from the national Department of Transport with regard to the terms of reference for these structures⁵².

The **City of Cape Town** established Transport for Cape Town (TCT) in October 2012 which intends to consolidate and integrate all transport functions in the municipality. According to the MyCiti business plan it will be responsible for overseeing planning, contracting, finance, licensing, training, marketing and operator regulations that relate to public transport in Cape Town. Its goal is to 'introduce an integrated transport system that allows for one network, one timetable, one ticket, one unified standard for structure and operations, as well as one transport enforcement unit'⁵³. Roles and responsibilities for the TCT include⁵⁴:

- Planning
- Contracting, in terms of which it would contract services such as MyCiti operators and the current Golden Arrow Bus Services
- Municipal transport regulation, in terms of which it would issue operating licences and regulate the minibus-taxi and broader public transport industry
- Myconnect, the card-based fare system that will be rolled out across all public transport operators
- Transport Management Centre and Transport Information Centre
- Setting of standards and monitoring and evaluation
- Rail management, in terms of which the City will exercise some level of control over the rail function in the City

TCT has requested reassignment of functions (contracting and licensing) to the municipality, and if approved, Cape Town will become the first municipality to have an authority managing its road-based public transport⁵⁵. Three Memorandums of Action (MOA) have been signed between the municipality and key stakeholders. The first of these is with the University of Cape Town, wherein the University will provide advice on technical and research issues. The second MOA is also an academic one, signed with the SENSEable City Lab of the Massachusetts Institute of Technology (MIT). This partnership will examine more efficient and intelligent city systems, in order to 'further integration and movement at intermodal public transport interchanges as well as look at managing timing versus quality of service and demand'⁵⁶. Finally, an MOA was signed with the Passenger Rail Agency of South Africa (PRASA).

The **Gauteng Transport Management Authority** is also noted in literature, to include all subsidised public transport services, the municipal bus operators such as Metrobus and Pretoria City Transport, the proposed new Bus Rapid Transit Systems (BRT) for Johannesburg and Tshwane, Gautrain and its bus feeder systems and the Wits and Tshwane Metrorail services. This authority was intended to manage, coordinate and implement strategic provincial transportation functions on all levels: resulting

⁵²Dawood, G and Mokonyama, M, 2015

⁵³ <https://www.capetown.gov.za/en/TransportCapeTown/Pages/default.aspx>

⁵⁴2012 MyCiti Business Plan

⁵⁵Dawood, G and Mokonyama, M, 2015

⁵⁶<http://www.capetownpartnership.co.za/2012/10/an-integrated-transport-authority-launched-in-cape-town/>

instreamlined, coordinated and integrated service delivery across all provincial transport-related functions. In 2014 it was noted that this had been delayed given a number of concerns from both municipalities and other stakeholders e.g. PRASA⁵⁷. The responsibilities for this authority envisaged by provincial government include items such as a common timetable and schedules, one electronic ticketing system and fare harmonisation, overseeing contracts, subsidies, norms and standards, and funding, as well as the infrastructure needs of the province⁵⁸.

At the end of 2013, all municipalities signed a Memorandum of Understanding (MoU) to establish the Gauteng Transport Commission, which is supported by politicians. This stated that the Commission would be responsible for the following⁵⁹:

- Integrated rail planning
- Promotion, coordination and support of standardised Intelligent Transport Systems, particularly in respect of integrated ticketing and integrated fare management; Gauteng wide passenger transport information and traffic management
- Promotion and support of the integration and alignment of the development of the Bus Rapid Transport Systems (BRT)
- Promotion and support of sustainable transport options, including non-motorised transport (NMT)
- Promotion and support of the effective implementation and integration of travel demand management
- Foster cooperation with transport stakeholders on matters relating to transport; and
- Any other role assigned to it by the Governing Body

Following the signing of the MoU, an office for the Gauteng Transport Commission was established, funded by the Province⁶⁰. All politicians who signed the MoU form the governing body, which is not a Board, in order to comply with the PFMA. All MMCs responsible for transport from each municipality sit on the Commission, with the MEC of Roads and Transport serving as Chair. Seven areas of cooperation have been identified, with five workstreams established. These are chaired by MMCs. Target setting is underway, identifying what needs to be achieved in the province in each workstream, and how GTC can assist. Some workstreams are further advanced than others. Challenges are also experienced in municipal attendance in some workstreams, with better attendance where municipalities feel they have a vested interest.

⁵⁷Munshi, R, 14 March 2014

⁵⁸Munshi, R, 14 March 2014

⁵⁹Gauteng Province, 2013

⁶⁰Gauteng Province, 2013

Key issues which the Commission is expected to address are which functions are involved, what are the legislative issues around these, which municipalities will be included, what will the institutional arrangements be, what funding mechanisms will be needed, and what levels of autonomy will be involved⁶¹.

This is seen as an interim measure towards the establishment of a fully-fledged authority, which is expected to be operational in three years' time.

3.3 KEY ISSUES FOR GAUTENG

The International Bank for Reconstruction and Development, part of the World Bank, completed a study in 2013 which compared transport authorities of a few major world cities (as noted in the box below). The same study identified two key questions to ask in looking at the functions of the institutions: firstly, is the institution responsible only for public transport or is it responsible for a comprehensive set of urban transport actions, including those related to the roadway system?; and secondly, is the lead institution responsible only for planning and organising urban transport services or does it also have an active role in the operation of services?⁶²

Table 2: Functions Performed by Different Lead Agencies

City	Lead Agency	Strategic Planning	Transport Policy Planning	Fare Setting	Planning		Driver Licensing / Vehicle Registration	Traffic Management and Enforcement	Infrastructure Construction and Maintenance	Common facilities (terminals, bus stops, depots)	Public Transport Operations	Jurisdiction
					Infrastructure Planning	Service Planning						
Cities with a lead agency												
Lagos	LAMATA	✓	✓	✓	✓	✓	✗	✗	✗	✗	✗	Lagos metropolitan area
London	TfL	✓	✓	✓	✓	✓	✗	✓	✓	✓	✗	Greater London
Paris	STIF	✓	✓	✓	✓	✓	✗	✗	✗	✗	✗	1,284 municipalities
Singapore	LTA	✓	✓	✗	✓	✓	✓	✓	✓	✓	✗	All city-state
Vancouver	TransLink	✓	✓	✓	✓	✓	✗	✗	✓	✓	✗	Greater Vancouver region

✓ Means this function is performed by the lead institution, and

✗ means it is not performed by the lead institution

It is clear from this, and the other international case studies examined, that a number of similarities and differences in transport authorities can be noted. These include:

- Transport authorities (whether regional or municipal) are in almost all cases, the lead institution responsible for strategic, multi-modal transport planning. In these examples, the transport authority has responsibility for the overall strategic planning of public transport in the area.
- In some examples (e.g. London, Singapore and Vancouver), the responsibilities of the authority are more comprehensive, when compared to transport authorities in cities such as Paris, where

⁶¹Alexander, L, Gauteng Transport Commission, meeting 12 June 2015

⁶²The International Bank for Reconstruction and Development, World Bank, 2013

the authority is restricted only to public transport and does not play a role in issues such as parking, roads and other infrastructure etc.

- However, most authorities are responsible for public transport and roads.
- The enforcement of traffic laws, and licencing of drivers and vehicles is generally not the responsibility of the traffic authority.
- Services are implemented through either public subsidiaries or private operators, or a mix of both. In most instances, the transport authority is not directly responsible for operations but oversees and manages this task.
- There are differences in fare-setting among the authorities studied. While this is generally the responsibility of the transport authority, in examples such as Singapore, there is a separate entity that is responsible for this.
- According to the World Bank study, ‘the relationship between the lead institution and public transport service operators has been evolving. The trend since the 1990s has been to separate the service planning function from actual operations. The rationale for this is that the planning function is performed in the public interest—that is, serving a common public good—while service operations are performed by entities with a commercial interest. Thus, the emerging trend is for a public entity to plan services and then contract them, through a competitive process, to operating companies. The nature of operating companies varies, ranging from private sector, public sector, mixed, and monopolistic to a competitive arrangement’⁶³.

Key lessons learned in South Africa thus far are the quick turnaround time, and the increased ability to attract key technical skills. Challenges relate mainly to the assignment of functions to the city.

⁶³ The International Bank for Reconstruction and Development, World Bank, 2013

4. LEGISLATIVE FRAMEWORK – TRANSPORT AUTHORITIES

There is a vast body of legislation impacting and guiding the transport sector. However, for the purposes of considering the establishment of a regional municipal transport authority for Gauteng, in addition to provisions contained in the Constitution and in the relevant sections in Local Government Legislation, the key legislation is the National Land Transport Act No 5 of 2009.

This section examines the relevant sections of the latter two Acts concluding with some key decision points required in establishing a regional transport authority within the province.

4.1 THE NATIONAL LAND TRANSPORT TRANSITIONAL ACT, NO 22 OF 2000 (REPEALED)

The National Land Transport Transitional Act, No 22 of 2000 (NLTTA) was repealed in its entirety by the National Land Transport Act No 5 of 2009. Notwithstanding, it is important to reflect on the content of the NLTTA as it provided extensive guidance with respect to the establishment of transport authorities which was lost in the National Land Transport Act. This could assist in guiding many aspects of the establishment of a transport authority in Gauteng.

The now-repealed NLTTA indicated that a Transport Authority could be established for transport areas through a written founding agreement between the MEC and a single municipality or the MEC and municipalities whose areas of jurisdiction fell wholly or partly within the transport area. Section 10(3) states that:

“Transport authorities may be established if the effect is to improve transport services in the local sphere of government by grouping transport functions into a single, well managed and focussed institution.”

The Act spelt out the factors relevant to the determination of the transport area boundary. Regard needed to be given to at least the following factors:

- Dominant passenger movements
- Economic interdependency between inhabitants
- Integrated land use and transport development potential
- The extent to which public transport services were provided and operated effectively and efficiently within the area
- Demographic, natural and geographic factors and characteristics

- Sufficient capacity within the area for performing and carrying out any technical or specialised function arising from the governance of a transport area
- Any other criteria in provincial law
- MEC could also prescribe additional factors

The MEC for Transport was required to consult the MEC for Local Government and Finance before taking any decision to establish a transport area.

Section 13 indicated that subject to applicable local government legislation, a transport authority was required to perform the following functions as well as those which were assigned to it by provincial laws:

- Preparation of a transport plan for the area as well as the implementation and monitoring thereof
- Development of a land transport policy within its area based on national and provincial guidelines, which included a vision for the area, incorporating its vision for the area, spatial development policies linked to densification, infill and development corridors
- Management of the movement of persons and goods on land
- Encouragement, promotion and facilitation of public consultation, participation or involvement of the public through hearings, seminars, workshops etc.
- Managing related tendering processes

The functions and the competencies of a transport authority were set out in Section 68(1) of the NLTTA. Subject to any local government legislation and with the agreement of the MEC, the transport authority was required to perform the functions assigned in terms of the Act which included:

- a) Promoting security in public transport
- b) Encouraging and promoting the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reducing traveling time and costs
- c) Developing, operating and maintaining a land transport information system;
- d) marketing and promoting and assuming responsibility for publicity associated with the transport system
- e) Providing information to users or potential users of public transport
- f) in the case of subsidised services, determining fare structures and fare levels and fares for special categories of passengers, and periodically adjusting fares in consultation with stakeholders, if the MEC had entrusted the subsidy to the transport authority
- g) In the case of unsubsidised public transport services, the setting of the minimum fares
- h) Making payments to public transport operators operating public transport services in terms of subsidised service contracts and fare agreements to which it is a party, if the MEC had entrusted this function to the authority
- i) Instituting and conducting investigations into the financial circumstances and operating practices of:
 - i. persons who, at the time, existing or potential operators of public transport

- services in relation to in the transport area
- ii. the holders of operating who, at the time, were operating public transport services in relation to or in that area, and, if the holder is a company belonging to a group of companies, also into those circumstances and practices of any other company in that group of companies
- j) Introducing or establishing, or assisting in or encouraging, promoting and facilitating the introduction or establishment of integrated ticketing systems and determine or prescribe measures for the regulation and control revenue-sharing among the operators involved in that system
- k) Exercising control over service delivery through:
 - i. the setting of operational and technical standards, and monitoring compliance therewith, and
 - ii. the monitoring of contracts and concessions
- l) Developing, implementing and monitoring a strategy to prevent, minimise or reduce any adverse impacts of the land transport system on the environment
- m) In agreement with relevant participating
 - i. take over functions relating to municipal roads
 - ii. applying measures to limit damage to the road system in that part of the transport area

Importantly, the Act made provision for the MEC to intervene in the underperformance of the transport authority.

In considering the different options for the establishment of a regional municipal transport authority, Section 69 would have had relevance in the Gauteng context in that it allowed for a transport authority to enter into an agreement with a non-participating municipality to exercise or perform on behalf of that municipality, any power or function entrusted to the municipality by or in terms of the NLTTA or any applicable provincial laws. The powers and functions of the two municipalities would however have needed to be similar. Hence it would have been possible, for example, for the City of Johannesburg Transport Authority to render support to the West Rand or Sedibeng.

Section 70 addressed the governance aspects of the transport authority by stating that it is governed and controlled by the governing body established in the founding agreement which included the participation of councillors from the constituent municipalities. In the case of a regional authority for Gauteng, each municipality would then have needed to have councillor representation on the governing structure. The governing body then represented the transport authority.

In terms of Section 10(6) of the Act, the Founding Agreement was required to be in writing and reflecting the agreement reached between the different parties including at least the following:

- the parties to the agreement
- the basis for establishment of a governing body for the transport authority and its structure
- operational, financial and procedural arrangements, including voting procedures
- Description of the transport authority boundary.

Section 65(2) stated that “The parties to a founding agreement may agree to amend the boundaries of the transport area concerned, provided that should such an amendment involve the area of an additional municipality, the transport authority, if already established, is dissolved in terms of section 71 and reconstituted”. It would therefore have been legally possible to dissolve the existing transport authorities in Gauteng and reconstitute an authority in the Gauteng Region as a whole.

Section 72 of the NLTTA spelled out the management of the finances of the transport authority which were generally in line with good accounting practices. Importantly Section 72(2) stated that each transport authority was required to prepare a statement of the estimated income and expenditure for the next financial year which was to be adopted by Council. The Act appeared to be silent on the implications of non-compliance by one or more of the participating municipalities in the transport authority.

The Act allowed for the Governing Body of the Authority to delegate powers and functions. The founding agreement of the Transport Authority was required to specify how the professional, technical, administrative, clerical and other work arising from the functioning of the transport authority would be managed. This could have been done by:

- a single municipality
- one or more departments within the specified municipality
- one or more specified department in participating municipalities
- the establishment by the Transport Authority, a transport executive.

In terms of Section 12 of the Act, the Province could have provided staff or other assistance to a transport authority which would have enabled it to perform its professional, technical, administrative and related work.

The founding agreement was required to include inter alia at least the following:

- Where not all the professional, technical, clerical and associated work of the transport authority was to be performed by the transport executive, specification of the type or category of work for the performance of which the transport executive was to be responsible;
- the place where offices of the transport executive would be situated;
- the manner in or procedure according to which the staff establishment of the transport executive would be determined; and
- the repository of the power to appoint and dismiss its staff

Lastly, a key provision in the NLTTA allowed for the establishment of joint executives whereby the MEC and any two or more transport authorities authorised by their respective participating municipalities could have entered into an agreement providing for the formation of a transport executive under the

auspices of those transport authorities jointly. In so doing the joint executive could have performed, for each of them, the professional, technical, administrative, clerical other work arising from, necessary for, associated with or incidental to its functioning as a transport authority in terms of the Act and exercising or carrying out its powers and functions.

Towards the establishment of the Joint Transport Executive, the agreement was required to at least address matters relating to the management of the joint executive, the powers of the participating authorities and the supervision and control over the joint transport executive. In addition, the agreement was required to spell out the contribution of each of the participating transport authorities to the funding of the joint transport executive.

The level of guidance provided by the NLTTA with respect to the establishment of transport authorities was lost when it was replaced by the NLTA.

4.2 THE NATIONAL LAND TRANSPORT ACT NO 5 OF 2009

The National Land Transport Act No 5 of 2009 is surprisingly less prescriptive in relation to the establishment of Transport Authorities, and provides very little assistance in this respect. Cross municipal collaboration is contained in Section 12 of the Act which states the following:

(1) A province may enter into an agreement with one or more municipalities in the province to provide for the joint exercise or performance of their respective powers and functions contemplated in this Act and may establish a provincial entity or similar body in this regard, subject to the Constitution and this section.

*(2) One or more adjacent municipalities may agree on the joint exercise or performance of their respective powers and functions contemplated in this Act or may establish **municipal entities in terms of the Systems Act** for this purpose.*

(3) If the spheres of government cannot agree subject to this Act, on the division of land transport functions between them, they must act in a manner and spirit consistent with the principles of co-operative government prescribed by section 41 of the Constitution and apply the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005)

It may be necessary to confirm the Constitutionality of Section 12(1) in which a provincial entity is established which is responsible for the rendering of municipal powers and functions. A clear Constitutional precedent has been set in relation to preventing provinces from performing municipal functions. In this regard, it would be necessary to reflect on the Constitutional Court judgement in relation to the “municipal planning” function. To circumvent any possible challenge, any agreement reached in terms of Section 12(1) of the NLTA would need to be fully compliant with the Municipal Systems Act and the Municipal Finance Management Act.

In terms of the transitional matters, contained in NLTA Section 93(5) states the following:

Any transport authority established in terms of the NLTTA would cease to be a juristic person independent from the relevant municipality or municipalities, on a date to be determined by the Minister, and those municipalities must amend or restructure their administrations as soon as possible after the determined date, to bring them in line with this Act.

4.3 MUNICIPAL SYSTEMS ACT NO 32 OF 2000

A municipal entity is defined in the Municipal Systems Act No 32 of 2000 as being:

- (a) a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities, and includes, in the case of a company under such ownership control, any subsidiary of that company; or*
- (b) a service utility;*

The establishment of a municipal entity would allow for all municipal transport functions to be included within the operations of the entity. This would include any function which was assigned to one or all of the affected municipalities and the roles and responsibilities for local government as outlined in the NLTA.

Section 76 of the MSA allows for the provision of a service by entering into a service level agreement with a municipal entity (which may include more than one municipality), another municipality or an organ of state would include a structure established in terms of Section 12(1) of the NLTA.

All municipalities participating in either a provincial structure (section 12(1)) or a municipal entity (Section 12(2)) would be required to undertake a section 78 investigation addressing the criteria and process to be followed when deciding on a mechanism to provide municipal services. In addition, there would need to be compliance with Section 80(3) of the Municipal Structures Act to assess the impact on the municipality and any other municipality participating in the structure established.

4.4 NATIONAL POLICIES

NATIONAL DEVELOPMENT PLAN

Key national policies related to transport include the National Development Plan (NDP) and the White paper on transport.

The NDP indicates that it is important to “**Devolve transport management to local government.** Governmental policy is to devolve transport management to local government. This will help align the fragmented and conflicting interests of multiple transport authorities, each with separate funding sources and mandates. However, handling responsibility for transport over to municipal authorities will only succeed if it is accompanied by strengthening of institutions and alignment of legislation, policy and

practice. Where metropolitan municipalities are adjacent, a regional transport authority may be appropriate to support integration, as proposed in the Gauteng's 2055 strategy, which prioritises harmonizing transportation efforts within its city region".

The reading of the "regional transport authority" in the NDP should assume compliance with Section 12 of the NLTA even though it could be provincial lead or municipalities lead.

WHITE PAPER ON TRANSPORT – 1996 AND THE NATIONAL LAND TRANSPORT ACT, 5 OF 2009

The White Paper on Transport, released in 1996 outlined the vision for the South African Transport System as being one which would:

"Provide safe, reliable, effective, efficient, and fully integrated transport operations and infrastructure which will best meet the needs of freight and passenger customers at improving levels of service and cost in a fashion which supports government strategies for economic and social development whilst being environmentally and economically sustainable".

The strategic objectives for achieving the vision included inter alia the need to:

- Establish sound intermodal co-ordinating structures
- Maintain and develop the transportation infrastructure system, and prioritise its development in terms of sustainable economic and development needs
- Foster a sound financial base for transportation infrastructure
- Aid the promotion of a strong, diverse, efficient and competitive transportation industry within the limits of sustainable transport infrastructure
- Promote environmental protection and resource conservation
- Enhance the competitiveness of South African industry and the quality of life of its citizens by providing protection of consumers, safety and security, and meeting accessibility, reliability and mobility needs by providing transport infrastructure to serve the purpose

The policy imperatives included the need to establish coordinating structures for the purposes of coordinating planning to meet identified transport infrastructure needs. The White Paper promoted the establishment of Provincial/ Local Government structures for addressing this requirement.

In relation to promoting a strong and diverse, efficient and competitive industry, the policy requirements included the need to ensure the separation of the ownership and the regulation of transport infrastructure. In addressing Land Passenger Transport, the White Paper acknowledges the principle of subsidiarity and as such the need to devolve power to the lowest competent level of government.

The overall mission toward promoting land passenger transport was reflected in the White Paper as the following:

"The promotion of a safe, reliable, effective, efficient, co-ordinated, integrated, and environmentally friendly land passenger transport system in South African urban and rural areas, and the southern African region, managed in an accountable manner to ensure that people experience improving levels of mobility and accessibility".

Policy considerations were then outlined addressing at least the following aspects:

- Land use and spatial development in support of land passenger transport
- Institutional structures
- Framework for provision of services
- Supporting policies for monitoring of performance, human resource development and comprehensive integrated planning.

In relation to the latter, the White Paper acknowledged the need for land passenger transport planning being carried out in an integrated manner addressing all modes of transport. The planning should be carried out at the lowest level as possible and by the relevant transport authority. Independent planning by modal operators, was to be discouraged since the passenger transport plan were to be comprehensive covering all modes and the spatial integration of land use activities.

The provisions of the Transport White Paper has found expression in the National Land Transport Transition Act, 22 of 2000 and the National Land Transport Act, 5 of 2009. The White Paper itself is now almost 20 years old and while many aspects and principles remain relevant, it is also outdated and requires urgent revision. For example, stronger policy imperatives are required for addressing modal integration, improved management of intergovernmental relations and greater guidance with respect to the assignment of powers and functions.

4.5KEY DECISION MAKING POINTS

The following important aspects emerge from an assessment of the legislation addressing the establishment of a regional transport authority:

- The type of cooperation agreement to be reached in terms of Section 12 of the NLTA
- The process to be followed in undertaking the necessary studies in terms of the MSA for the establishment of a structure for rendering the transport functions
- The potential for the preparation of Provincial Legislation providing for more detail in relation to the entity or structure to be established in the province. At least the following should be included:
 - How the regional authority would be managed

- If not the provincial boundary, then what would boundaries would apply to the regional structure or entity
- The content of the founding agreement
- The management of the municipal process towards the establishment of the Regional Transport Entity
- What funding arrangements and mechanisms will be put in place

5. UNPACKING POWERS AND FUNCTIONS

The land transport sector is highly fragmented with a range of key actors responsible for an array of different aspects. The powers and functions of the sector cut across all three spheres of government. It also includes significant participation by non-governmental and statutory bodies such as Transnet, PRASA which includes Metrorail and the private sector. All aspects of the sector require management and regulation. This section of the report examines the powers and functions for the rendering of the transport function across the three spheres of government and the related roles and responsibilities. It also outlines the mechanisms for assignment of functions for local government and the possible functions to be considered should the regional transport authority be established.

5.1 ROLES AND RESPONSIBILITIES

The National Land Transport Act, No 5 of 2009 (NLTA) adds to the transformation and restructuring of the national land transport system which was initiated by the National Land Transport Transition Act No 22 of 2000 (NLTTA). Importantly, the NLTA outlines the responsibilities for National, Provincial and Local Government in relation to institutional arrangements for land transport.

In terms of the Act, municipalities perform a critical role in managing the movement of persons and goods within its area of jurisdiction. This includes for example, preparing the transport plans, promoting the use of different transport modes, addressing the adverse impacts of land transport on the environment, managing road safety including the management of traffic, limiting road damage, formulating and applying travel demand measures. The local sphere also has extensive responsibilities in relation to the management of public transport which includes inter alia:

- Marketing and promoting public transport
- Providing public transport information
- Promoting safety and security in public transport
- Accommodate special categories of passengers within the system
- Planning, implementing and managing the modally integrated public transport system
- Include the passenger rail in the public transport planning
- Determine fare concessions
- Concluding subsidised service contracts with operators within their area.

In relation to public transport, the province is responsible for ensuring sufficient capacity within municipalities to undertake their responsibilities and the implementation of a provincial integrated development strategy and public transport strategy. It is clear that the day to day planning, management, overall coordination of public transport rests within the local sphere. This has implications for considering

which powers and functions should be assigned to local government for a more effective and efficient management of the public transport system.

The provinces' responsibilities include the coordination *between* municipalities as well as other government departments in the national and provincial sphere with responsibilities that impact on transport and land use planning. This includes bring together all the role players. The municipality is responsible for coordination between the departments and agencies within the municipal sphere itself.

Importantly, a responsibility outlined for National Government includes the assignment of functions to the most appropriate sphere of government. This would require the National Department of Transport to undertake an assessment of the constitutional allocation of powers and functions, determine which sphere would be responsible for what function within an assignment framework, support and facilitate the functional assignment and monitor the effectiveness and impact thereof.

The table below provides the detailed provisions as outlined in Section 11(1)(a)(b) and (c) of the National Land Transport Act, No 5 of 2009:

Table 1: Section 11 of the NLTA

NATIONAL	PROVINCIAL	LOCAL
<ul style="list-style-type: none"> • The formulation of national transport policy and strategy • National strategic transport planning and co-ordination, and preparing a National Land Transport Strategic Framework in accordance with the Act • Co-ordination between provinces and to address arrangements between the three spheres of government and public entities with a view to ensuring the effective and efficient execution of the land transport function • Assigning functions to the most appropriate sphere of government • Liaising with other government departments in the national sphere with responsibilities that impact on transport issues with a view to co-ordinating land transport • Capacitating and monitoring provinces and municipalities that lack capacity or resources to perform their land transport functions • Co-ordinating transport relations between the Republic and other countries and implementing international agreements • Performing the functions contemplated in this Act in relation to applications for operating licenses • Regulation of tourism transport 	<ul style="list-style-type: none"> • The formulation of provincial transport policy and strategy, within the framework of national policy and strategy • Planning, co-ordination and facilitation of land transport functions in the province and preparing the Provincial Land Transport Framework in terms of section 35 • Co-ordination between municipalities with a view to ensuring the effective and efficient execution of land transport in the province and promoting provincial legislation with a view to promoting the objects of this Act • Liaising with other government departments in the national and provincial spheres with responsibilities that impact on transport and land use planning issues, and bringing together key players • Ensuring that municipalities that lack capacity and resources are capacitated to perform their land transport functions • Building capacity in municipalities to monitor the implementation of this Act • Ensuring implementation of the provincial integrated development strategy and public transport strategy, with due attention to rural areas with the focus on less capacitated municipalities or those that do not fulfil their responsibilities in respect of transport service delivery, either by direct implementation or assistance • Performing the other provincial functions assigned to the MEC in terms of this Act. 	<ul style="list-style-type: none"> • Developing land transport policy and strategy within its area based on national and provincial guidelines which includes its view for the area and incorporates spatial development policies on matters such as densification and infilling as well as development corridors • Promulgating municipal by-laws and concluding agreements, as appropriate, in the municipal sphere • Ensuring co-ordination between departments and agencies in the municipal sphere with responsibilities that impact on transport and land use planning issues, and bringing together the relevant officials • Initiating capacity as planning authority, preparing transport plans for its area, ensuring the implementation thereof and monitoring its performance in achieving its goals and objectives • Financial planning with regard to land transport within or affecting its area, with particular reference to transport planning, infrastructure, operations, services, maintenance, monitoring and administration, with due focus on rehabilitation and maintenance of infrastructure • Managing the movement of persons and goods on land within its area by co-ordinating such movement • Encouraging and promoting the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reduce travelling time and costs • Developing, implementing and monitoring a strategy to prevent, minimise or reduce any adverse impacts of the land transport system on the environment in its area developing, operating and maintaining a land transport information system in its area • Encouraging, promoting and facilitating public consultation and participation in the planning, regulation and implementation of public transport, and applying the requirements of the Systems Act in that regard • Marketing and promoting public transport and promoting publicity associated with the public transport system • Providing information to users or potential users of public transport • Promoting safety and security in public transport

<ul style="list-style-type: none"> • Regulation of interprovincial road transport • Acting as contracting authority for subsidised service contracts, interim contracts, current tendered contracts and negotiated contracts concluded in terms of the Transition Act • Performing other functions assigned by the Minister in terms of the Act 		<ul style="list-style-type: none"> • Ensuring there is provision for the needs of special categories of passengers in planning and providing public transport infrastructure, facilities and services to meet their needs, in so far as possible by the system provided for mainstream public transport • Liaising on a continuous basis with the South African Police Service, the Road Traffic Management Corporation the relevant provincial law enforcement authorities or agencies, and the inspectors appointed under the Cross-Border Act, with a view to ensuring co-ordinated transport law enforcement within its area • Applying traffic management techniques aimed at improving road traffic movement • Undertaking functions relating to municipal roads, as well as measures to limit damage to the road system • <i>The planning, implementation and management of modally integrated public transport networks and travel corridors for transport within the municipal area and liaising in that regard with neighbouring municipalities</i> • <i>In relation to the planning functions contemplated in paragraph (iv) include service level planning for passenger rail on a corridor network basis in consultation with the South African National Commuter Corporation</i> • Introducing, establishing or assisting in or encouraging and facilitating the establishment of integrated ticketing systems and the managing thereof including through-ticketing and determining measures for the regulation and control of revenue sharing among operators involved in those systems • Subject to standards set by the Minister under section 5(5), if any, set standards for interoperability between fare collection and ticketing systems in its area • Formulating and apply travel demand management measures in its area • In the case of gross cost contracts for subsidised services, determining fare structures and fare levels and periodically adjusting fares after publishing the proposed adjustment for public comment • Determining concessionary fares for special categories of passengers in the prescribed manner • Exercising control over service delivery through <ul style="list-style-type: none"> ○ the setting of operational and technical standards and monitoring compliance therewith; and ○ the monitoring of contracts and concessions; • Concluding subsidised service contracts, commercial service contracts, and negotiated contracts contemplated in section 41(1) with operators for services within their areas • Developing and managing intelligent transport systems for the areas in the prescribed manner • Performing the other functions of municipalities in terms of the Act
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5.2 ALLOCATION OF POWERS AND FUNCTIONS

The national, provincial and local government transport related functions are outlined in schedules 4 and 5 of the Constitution. For the purposes of this report, the functions have been separated into those which are core transport functions and those which may be deemed as being allied or related functions.

CORE FUNCTIONS

Transport related functions are spread across the Constitution's Schedule 4 Parts A and B and Schedule 5 Parts A and B. While interrelated, this in part points to the complexity of the sector and the varying aspects requiring specific attention such as air, road, public transport and traffic management. Notwithstanding, the extent of the concurrency across all three spheres of government itself creates a number of challenges especially in the absence of clear definitions, norms and standards and related aspects.

Within the local sphere, there is a further division of functions between district and local municipalities which is outlined in section 84 of the Municipal Structures Act, 117 of 1998. The more significant functions are the roads function and the district requirement relating to the regulation of passenger transport. In terms of Section 85, the MEC for Local Government has the ability to adjust the functions between the district and local municipalities and vice versa.

With regard to core functions associated with transportation, the distribution of powers and functions across the three spheres of government is as follows:

National and Provincial Schedule 4 Part A of the Constitution	Local Government Schedule 4 Part B Constitution	Provincial Schedule 5 Part A of the Constitution	Local Government
<ul style="list-style-type: none"> Airports other than international and national airports Public Transport Road traffic regulation Vehicle licensing 	<ul style="list-style-type: none"> Municipal airports Municipal public transport <p>Section 84(1) of the Municipal Structures Act – applicable to district and local municipalities</p> <ul style="list-style-type: none"> Section 84(1)(f) Municipal roads which form an integral part of the road transport system for the area of the district municipality as a whole Section 84(1)(g) Regulation of passenger transport services Section 84(1)(h) Municipal Airports serving the area of the district municipality as a whole The local municipalities performing the remaining aspects of the above functions 	<ul style="list-style-type: none"> Provincial Roads and Traffic 	<ul style="list-style-type: none"> Municipal roads Traffic and parking

The current allocation of functions especially those allocated to local government form part of the functions to be addressed by the transport authority at local level. Based on the Constitutional Court judgement in relation to the municipal planning function which resulted in the legislating of SPLUMA, it would be inappropriate for the province to establish a transport authority which then assumes to perform the local government functions. In short, the authority must be established by municipalities and managed and administered by municipalities.

ALLIED FUNCTIONS

The transport functions are linked to a range of other functions outlined in the Constitutional schedules. The effective and efficient management of the transport responsibilities either promotes or supports the appropriate management of functions such as the environment and or underpins the success of functions such as housing and trade.

The table below then outlines the allied functions associated with transportation with the distribution of powers and functions occurring across the three spheres of government:

Schedule 4 Part A	Schedule 4 Part B
<ul style="list-style-type: none">• Environment• Housing• Regional planning and development• Urban and rural development• Tourism• Trade	<ul style="list-style-type: none">• Municipal Planning• Local Tourism

THE ASSIGNMENT OF POWERS AND FUNCTIONS

In terms of section 156 (1) of the Constitution, a municipality has executive authority and has the right to administer the functional areas listed in Schedule 4 Part B and Schedule 5 Part B. These powers are commonly referred to as the “original” powers of local government and are the most significant for this sphere. These powers may not be removed or amended by any ordinary national legislation or provincial Act. Any amendment which may include an addition, remove or rewording, would require an amendment to the Constitution itself⁶⁴.

⁶⁴Community Law Centre “Paper 1: Developmental Local Government: Determining Appropriate Functions and Powers” Page 16

Local government may also obtain powers through assignment, delegation or agency arrangements. In some instances both the authority and the service provider responsibilities are transferred while in others it may just be for example the service provider responsibilities.

The “authority” role confers the statutory responsibility for a function to a municipality. “This includes responsibilities for policy development, planning to ensure that the function is undertaken effectively, monitoring or execution, control of funds, legislation (by-laws), regulation, and ownership of assets. A municipality performing the authority role takes for responsibility for exercising the powers necessary to fulfil the function. As such the exercise of the authority role attracts funds directly from national Treasury”⁶⁵

The “service provider” role focuses on the delivery of services to the end-user. Any municipality to which this role has been transferred, does not assume full responsibility for the role and is therefore accountable to (and constrained by) other organs of state or sphere of government in fulfilling this function. The financial responsibility for undertaking this responsibility is usually retained by the transferring authority (organ of state or sphere of government).⁶⁶

The means of transferring powers and functions to local government which include assignment, delegations and agency arrangements are explored in greater detail below.

AGENCY RELATIONSHIPS

Section 238 (a) of the Constitution addresses an agency relationship in which for example a municipality would act as an “agent” for another organ of state, “the principal”. In this type of arrangement, “the municipality acts in the name of and on behalf of the principal, and binds the principal in any decision taken within its mandate. The municipality is therefore constrained to act within the parameters of the agency agreement. Agency arrangements are usually concluded on an annual basis, by agreement, and with the full funding of the mandate. An agency agreement may be cancelled at any time”.⁶⁷

DELEGATION OF POWERS AND FUNCTIONS

Section 238 (a) of the Constitution allows for any executive organ of state in all three spheres of government to delegate any power or function to be exercised or performed in terms of legislation to any other organ of state. The delegation must be consistent with the legislation in which the power or function is performed. A delegation is often used as a means of transferring the service provider responsibility and as such the municipality remains accountable to the delegating authority. In addition,

⁶⁵ DeVisser 2005 in Community Law Centre “Paper 1: Developmental Local Government: Determining Appropriate Functions and Powers” Page 7

⁶⁶ Ibid

⁶⁷ Community Law Centre “Paper 1: Developmental Local Government: Determining Appropriate Functions and Powers” Page 8

the function is normally performed within a framework set in legislation and by the delegating authority. Importantly, a delegation can be revoked at any point⁶⁸.

ASSIGNMENT OF POWERS AND FUNCTIONS

Section 156(4) of the Constitution promotes the principles of subsidiarity by stating that:

“The national government and provincial governments must assign to a municipality by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 and Part A of Schedule 5 which necessarily relates to local government, if–

- (a) that matter would most effectively be administered locally; and*
- (b) the municipality has the capacity to administer it”.*⁶⁹

There are a number of ways in which functions may be assigned from national and provincial government to local government. The first is by way of Constitutional provisions for **individual assignment** which may occur via legislation (section 44 and 104) or by executive agreement (section 99 and 126).

- **Legislative assignment:** In terms of section 44(1)(a)(iii) and 104(1)(c) of the Constitution, national or provincial legislatures may assign legislative powers to local government councils. In this form of assignment, the competence would be transferred via an assigning Act of Parliament or the provincial legislature. Assignment would remain in place as long as the Act is in place and can only be removed once the Act or relevant section within an Act is revoked.
- **Executive assignment:** Sections 99 and 126 of the Constitution make provision for Cabinet members and provincial MECs to assign **executive powers** to municipal councils. Any assignment made in terms of either of these provisions would need to be consistent with the Act governing the power or function. Importantly, a municipality cannot be compelled to accept the assignment of the function. In the case of executive assignment, it terminates when one or both of the parties withdraw from the agreement.⁷⁰

As outlined in section 156(1)(b) of the Constitution, a **general assignment** by way of legislation to municipalities is also possible. Within this provision, the function is transferred to all local governments within the country⁷¹.

5.3 DETERMINING THE FUNCTIONS FOR ASSIGNMENT TO LOCAL GOVERNMENT

When determining the transport functions which should be considered for assignment to local government, the broad principle of subsidiarity must be applied. However, municipalities must demonstrate that they have sufficient capacity to undertake the additional responsibilities. Within the current governance arrangement, local government is required to prepare integrated transport plans for

⁶⁸ Community Law Centre “Paper 1: Developmental Local Government: Determining Appropriate Functions and Powers” Page 8

⁶⁹ Constitution Section 156(4)

⁷⁰ Ibid, Page 17

⁷¹ Community Law Centre “Paper 1: Developmental Local Government: Determining Appropriate Functions and Powers” Page 7

their municipal area. However, they do not have the authority to fully implement these plans as the required functions are spread across the three spheres of government.⁷²

As is noted in the FFC policy brief, within the framework of the National Land Transport Act (2009) various transport functions may be assigned to for example local government. “Municipalities are responsible for compiling integrated transport plans but often do not have the powers to fully implement the plans because the powers are fragmented across government”. The report commented that “devolving public transport functions can result in a public transport system that supports inclusive growth”.⁷³

The FFC report outlines the principles which should be considered in relation to the assignment of transport functions to local government:

- Consolidate functions which allows for greater efficiencies
- Demonstration of sufficient resources (capacity) and accountability
- Ensure clear lines of authority and responsibility for function
- Ensure sufficient funding for the rendering of the functions – funds following function
- Elimination of any conflict of interest

Dawood and Mokonyame (2014) indicate a number of questions which should be addressed in considering the assignment of transport functions to local government, such as:

- Which functions should be assigned
- What are the conditions necessary for assignment
- What are the potential risks associated assignment and how should these be managed
- What process should be followed for the effective assignment
- What are the resource implications for the assignment to be effective

Based on research undertaken by the FFC, at least the following functions should be considered for assignment to local government:

- Managing public transport contracts which includes the design, adjudication, awarding and monitoring of contracts
- Licensing function including receiving and adjudicating operating applications

⁷²Dawood, G and Mokonyame, M “Effective Devolution of Transport Functions to Municipalities: Towards an Optimal Transport System”

⁷³Financial and Fiscal Commission “Conditions Needed for Effective Devolution of Transport Functions to Municipalities” 6/2013 Page 1

- Vehicle licensing

The management of passenger rail transport could be considered for assignment to local government to allow for greater integration of the public transport system. However, in the short term, this may be better addressed through service level performance agreements.

Within the Gauteng context, it may be worth considering the assignment of the entire public transport function from provincial government to the municipalities to be included in the regional authority.

5.4 MANAGING THE ASSIGNMENT WITHIN A REGIONAL TRANSPORT AUTHORITY

The legislation allows for the assignment of functions to local government only and not to an entity. However, the entity may perform that function once it has been assigned.

If and when a decision is taken within the Gauteng Province with respect to the assignment of transport function to local government, it would be necessary to ensure that the same functions are assigned to each of the municipalities participating in the regional transport entity.

5.5 FINANCIAL/FUNDING CONSIDERATIONS

An important consideration is the ability of the Province and Local Government to raise capital for the expansion and development of transport infrastructure. Municipalities argue that they are in a better position than the province to do this as a single decision making authority and greater flexibility in the Municipal Finance Management Act than is possible for provinces.

5.6 KEY DECISION MAKING POINTS

The following important aspects emerge in relation to the assignment of powers and functions to local government within the Gauteng context:

- The transport entity may only perform local government functions which would include functions assigned to it
- Given the potential importance of the Regional Transport Entity, it is necessary to determine which provincial functions should be assigned to local government to allow for a rationalisation of the transport function and to allow for greater efficiencies at the local level
- When and how would such assignments take place also needs to be determined
- What process will be followed to ensure the assignments take place needs to be considered
- What process will be followed to ensure sufficient capacity and resources are available at the local level to render the transport functions needs to be addressed
- Who will be the driver of the process?
- Is there sufficient political and administrative will within the Province to ensure the assignments take place?

6. OPTIONS FOR A REGIONAL MUNICIPAL TRANSPORT AUTHORITY IN GAUTENG

6.1 INTRODUCTION

This section of the reports reflects on possible spatial options for a regional municipal transport entity, how these could be structured and key decisions that would need to be taken in each case.

6.2 KEY DECISION POINT 1 – THE GEOGRAPHIC EXTENT OF THE REGIONAL MUNICIPAL TRANSPORT ENTITY

Section 11(1) of the NLTTA outlined the factors relevant to determining the boundaries of transport areas. Notwithstanding the fact that the Act has been repealed, the criteria remain useful in guiding the consideration towards a regional transport entity and as such could be used within the Gauteng context to determine the geographic extent:

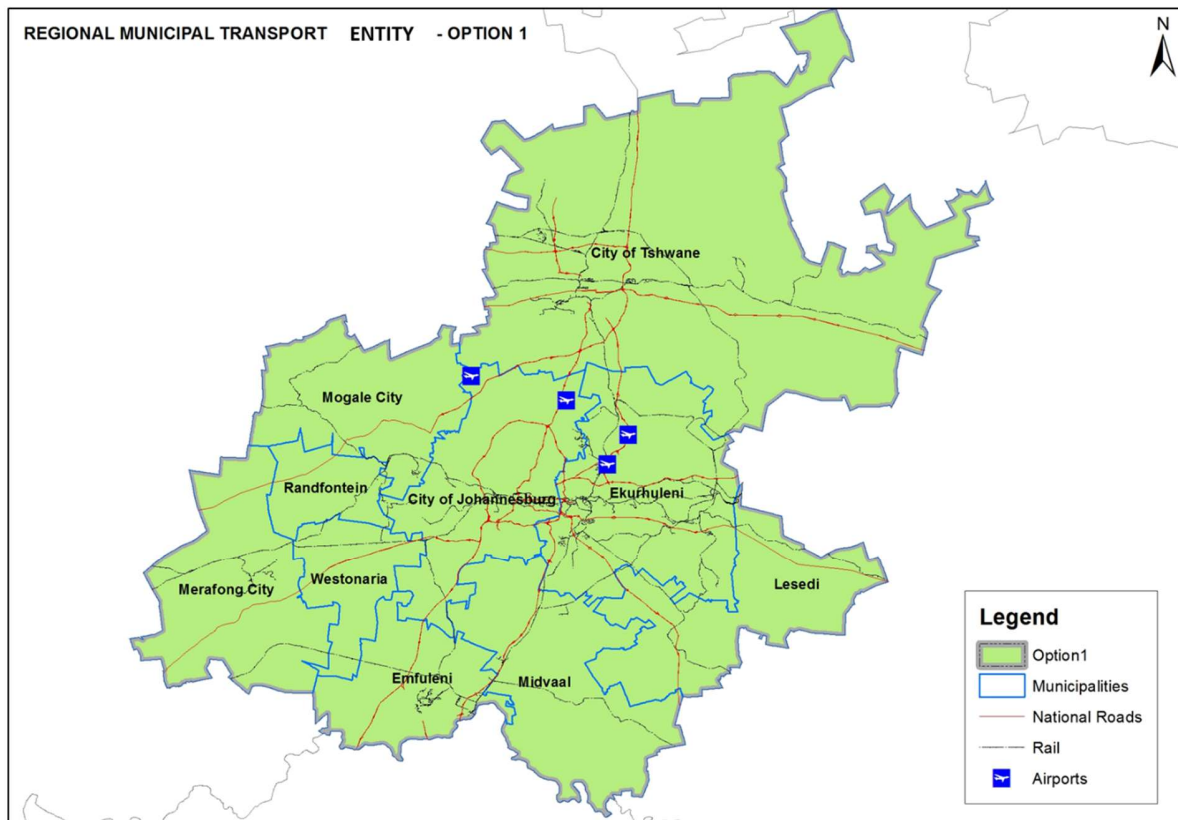
- Dominant passenger movements
- Economic interdependency between inhabitants
- Integrated land use and transport development potential
- The extent to which public transport services are provided and operated effectively and efficiently within the area
- Demographic, natural and geographical factors and characteristics
- Whether there is capacity within the area to perform and carry out any technical or specialised functions

In order to assess the most appropriate spatial coverage of a regional municipal transport authority it is necessary to take into account all of the above. Where sufficient up-to-date and relevant data is not currently available, it is recommended that detailed research be conducted. This would be the case, for example, with passenger movements across the province, travel distances, origins and destinations, existing capacity at municipal and provincial level etc.

OPTION 1 – ENTIRE AREA OF THE PROVINCE – METROS AND LOCAL MUNICIPALITIES

DESCRIPTION

Option 1 for the establishment of a regional municipal transport authority would include the entire area of jurisdiction of the metropolitan municipalities of Tshwane, Johannesburg and Ekurhuleni and all the local municipalities contained within the Gauteng Province. This would result in 10 participating municipalities within the transport authority.



ADVANTAGES

The following are the possible advantages of Option 1:

- The regional municipal transport authority would cover the entire provincial area and as such ensure that all the functional linkages and the daily cross municipal boundary movement is captured within a single transport authority
- The single authority would allow for integrated transport planning
- The single authority would allow for modal integration and the expansion and or integration of the public transport routes across municipal boundaries

- It would allow for a more efficient means of engaging transport entities such as PRASA as it would only need to engage with one transport authority within the province
- This option would require the adjustment of the district section 84(1)(g) function as contained in the Municipal Structures Act from the district to the local municipalities. The adjustment of the function would eliminate any duplication or sharing of the municipal public transport functions between the two tiers of local government.

DISADVANTAGES

The following are the possible disadvantages with respect Option 1:

- Ten municipalities would be participating in the regional municipal transport authority and as such would require the approval from each Council. The coordination and ensuring compliance across the municipalities would require significant effort
- It would require the adjustment of the Section 84(1)(g), Regulation of passenger transport function from the district to the local municipalities contained within their area of jurisdiction. According to Section 85 of the Municipal Structures Act, the local municipality would need to demonstrate capacity for undertaking the responsibility. It is possible that there may be some capacity deficits at the local level.

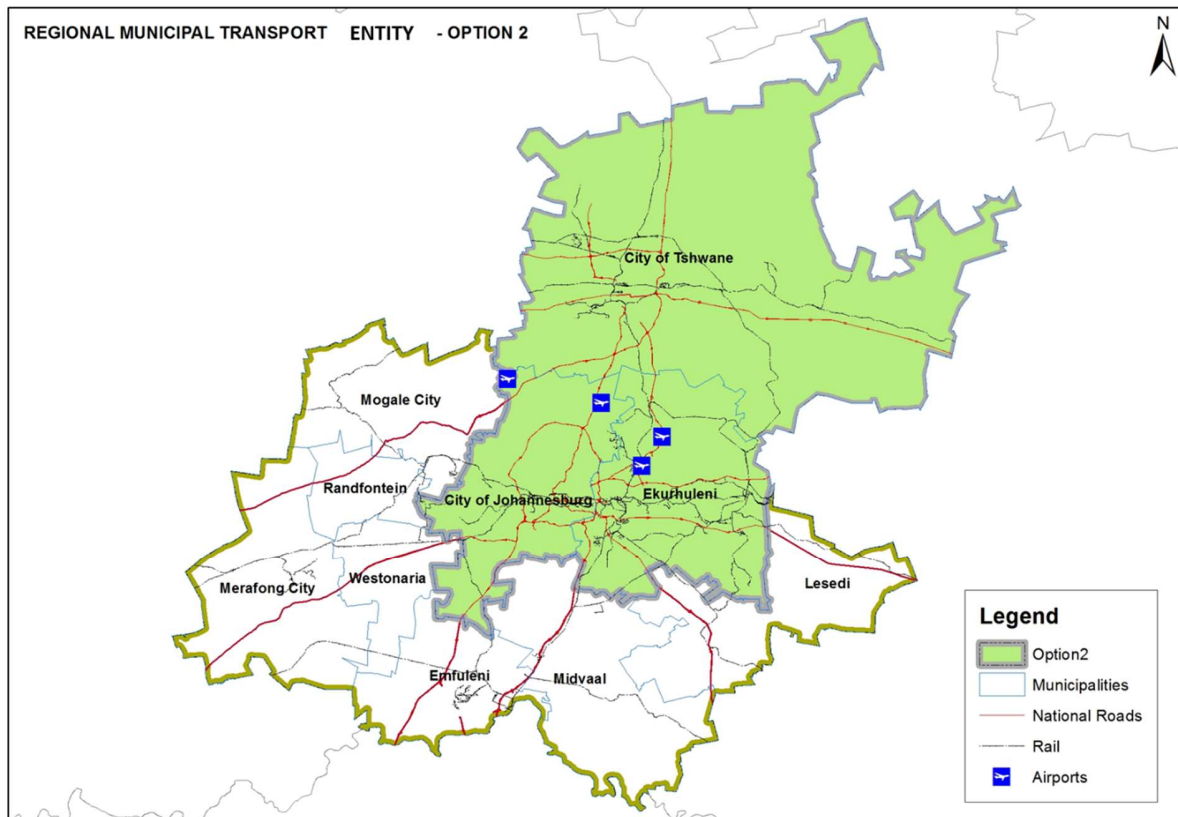
BROADLY APPLYING THE GEOGRAPHIC AND FUNCTIONAL LINKAGES

Criteria	YES	PARTIAL	NO
Dominant passenger movements	●		
Economic interdependency between inhabitants	●		
Integrated land use and transport development potential	●		
The extent to which public transport services are provided and operated effectively and efficiently within the area	●		
Demographic, natural and geographical factors and characteristics	●		
Whether there is capacity within the area to perform and carry out any technical or specialised functions	●		

OPTION 2 – THREE METROPOLITAN AREAS ONLY

DESCRIPTION

Option 2 for the establishment of a regional municipal transport entity would include the entire areas of jurisdiction of the metropolitan municipalities of Tshwane, Johannesburg and Ekurhuleni. This would result in only three participating municipalities within the transport authority.



ADVANTAGES

The following are the possible advantages of Option 2:

- The single authority would allow for integrated transport planning across the three metropolitan municipal areas
- The single authority would allow for modal integration and the expansion and or integration of the public transport routes across the metropolitan municipal boundaries
- It would allow for a more efficient means of engaging transport entities such as PRASA as it would only need to engage with one transport authority for addressing the needs of the metropolitan municipal areas

- No adjustment of functions would be necessary between local and district municipalities
- Only three council resolutions would be necessary for facilitating the establishment of the transport authority. This would require less coordination and effort.

DISADVANTAGES

The following are the possible disadvantages of Option 2:

- The regional municipal transport authority would not cover the entire provincial area and as such would not address current the functional linkages and/or the daily cross municipal boundary movement which occurs within the province.
- Some of the areas which should form part of the integrated transport planning would be excluded
- The option would not be aligned to the long term strategy for Gauteng to be a metro province

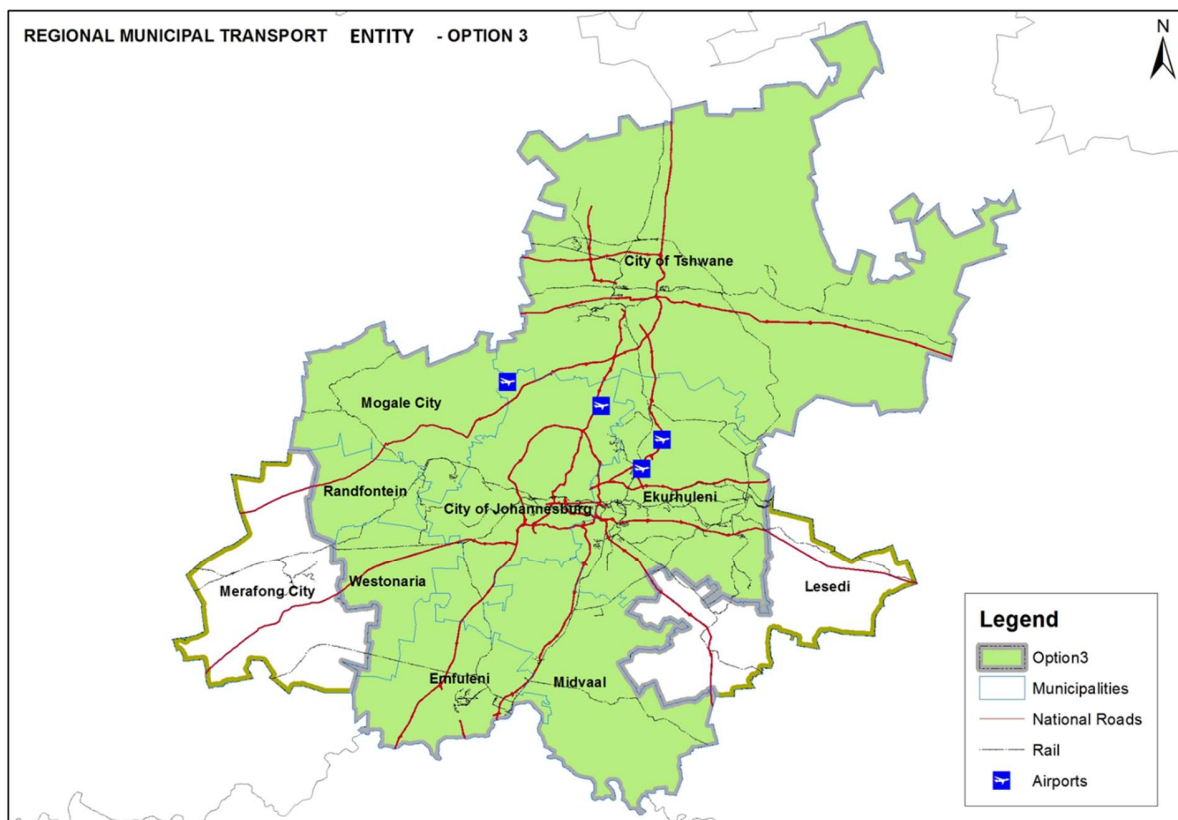
BROADLY APPLYING THE GEOGRAPHIC AND FUNCTIONAL LINKAGES

Criteria	YES	PARTIAL	NO
Dominant passenger movements		●	
Economic interdependency between inhabitants		●	
Integrated land use and transport development potential		●	
The extent to which public transport services are provided and operated effectively and efficiently within the area	●		
Demographic, natural and geographical factors and characteristics	●		
Whether there is capacity within the area to perform and carry out any technical or specialised functions	●		

OPTION 3 – THREE METROPOLITAN AREAS WITH SOME LOCAL MUNICIPALITIES

DESCRIPTION

Option 3 for the establishment of a regional municipal transport entity would include the entire area of jurisdiction of the metropolitan municipalities of Tshwane, Johannesburg and Ekurhuleni and the local municipalities whose built environment abuts that of the metropolitan areas. At least the following local municipalities of Mogale City, Randfontein, Westonaria, Emfuleni and Midvaal. This would result in 8 participating municipalities within the transport authority.



ADVANTAGES

The following are the possible advantages of Option 3:

- The regional municipal transport authority would cover most of provincial area and as such ensure that most the functional linkages and the daily cross municipal boundary movement is captured within a single transport authority
- The single authority would allow for integrated transport planning which includes the local municipalities with adjoining built environments with metropolitan areas

- The single authority would allow for modal integration and the expansion and or integration of the public transport routes across municipal boundaries
- It would allow for a more efficient means of engaging transport entities such as PRASA as it would only need to engage with one transport authority for addressing at least the needs of the metropolitan municipal areas
- This option would require the adjustment of the district section 84(1)(g) function as contained in the Municipal Structures Act from the district to the local municipalities for those municipalities forming part of the regional municipal transport authority. The adjustment of the function would eliminate any duplication or sharing of the municipal public transport functions between the two tiers of local government.

DISADVANTAGES

The following are the possible disadvantages with respect Option 3:

- Eight municipalities would be participating in the regional municipal transport entity and as such would require a resolution from each of the participating municipalities. The coordination and ensuring compliance across the municipalities would require significant effort
- It would require the adjustment of the Section 84(1)(g), Regulation of passenger transport function from the district to the local municipalities contained within their area of jurisdiction. According to Section 85 of the Municipal Structures Act, the local municipality would need to demonstrate capacity for undertaking the responsibility. It is possible that there may be some capacity deficits at the local level.
- The respective district municipalities could retain the function for the two non-participating local municipalities resulting in retention of unnecessary capacity for the function at the district level.
- As not all municipalities in the Province would be involved, the option would not be aligned to the long term strategy for Gauteng to be a metro province and as such would require a revision to the transport authority if and when it is established

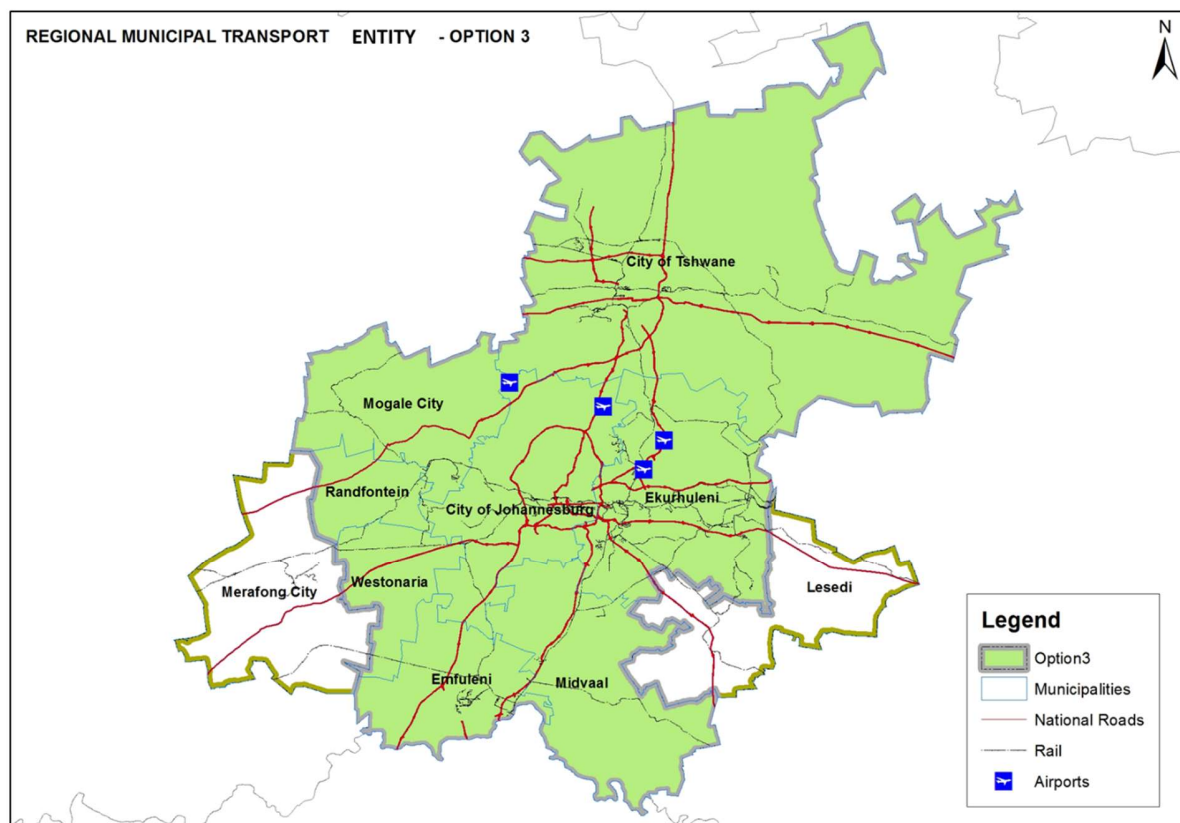
BROADLY APPLYING THE GEOGRAPHIC AND FUNCTIONAL LINKAGES

Criteria	YES	PARTIAL	NO
Dominant passenger movements	●		
Economic interdependency between inhabitants	●		
Integrated land use and transport development potential	●		
The extent to which public transport services are provided and operated effectively and efficiently within the area	●		
Demographic, natural and geographical factors and characteristics	●		
Whether there is capacity within the area to perform and carry out any technical or specialised functions	●		

OPTION 4 – ENTIRE PROVINCE – METROPOLITAN AND DISTRICT MUNICIPALITIES

DESCRIPTION

Option 4 for the establishment of a regional municipal transport entity would include the entire area of jurisdiction of the metropolitan municipalities of Tshwane, Johannesburg and Ekurhuleni and both district municipal areas contained within the Gauteng Province. This would result in 5 participating municipalities within the transport authority.



ADVANTAGES

The following are the possible advantages of Option 4:

- The regional municipal transport authority would cover the entire provincial area and as such ensure that all the functional linkages and the daily cross municipal boundary movement is captured within a single transport authority
- The single entity would allow for integrated transport planning
- The single entity would allow for modal integration and the expansion and or integration of the public transport routes across municipal boundaries

- It would allow for a more efficient means of engaging transport entities such as PRASA as it would only need to engage with one transport entity within the province
- This option would require the adjustment of at least the local municipality municipal public transport function in accordance with section 84(2) of the Municipal Structures Act from the local to the district municipalities. The adjustment of the function would eliminate any duplication or sharing of the municipal public transport functions between the two tiers of local government.

DISADVANTAGES

The following are the possible disadvantages with respect Option 4:

- Five municipalities would be participating in the regional municipal transport entity and as such would require a resolution from each Council. The coordination and ensuring compliance across the municipalities would require some effort.
- It would require the adjustment of the municipal public transport function from the local to the district municipalities contained within their area of jurisdiction. According to Section 85 of the Municipal Structures Act, the district municipality would need to demonstrate capacity for undertaking the responsibility.
- The adjustment of the function would need to be implemented by the MEC for Co-operative Governance within the Province.

BROADLY APPLYING THE GEOGRAPHIC AND FUNCTIONAL LINKAGES

Criteria	YES	PARTIAL	NO
Dominant passenger movements	●		
Economic interdependency between inhabitants	●		
Integrated land use and transport development potential	●		
The extent to which public transport services are provided and operated effectively and efficiently within the area	●		
Demographic, natural and geographical factors and characteristics	●		
Whether there is capacity within the area to perform and carry out any technical or specialised functions	●		

6.3 KEY DECISION POINT 2 –THE REGIONAL TRANSPORT ENTITY TYPE

The structure of the regional municipal transport entity would vary depending on the option selected. Possible structures for each option are presented below.

OPTION 1 – REGIONAL TRANSPORT ENTITY ESTABLISHED BY THE PROVINCE

DESCRIPTION

In option 1, would comply with Section 12(1) of the NLTA in which the Gauteng Province would enter into an agreement with the municipalities to be included in the provincial entity. Any agreement would need to comply with the Constitution and the Municipal Structures Act.

ADVANTAGES

- A single structure would be established to manage the transport functions efficiently and effectively within the Gauteng Province
- The inclusion of the Province in the structure would allow for the better coordination of the municipal and provincial functions
- As the province will actively be part of the structure, this option may circumvent the challenges experienced with the assignment of functions to the municipalities

DISADVANTAGES

- All the participating municipalities would need to undertake a section 78 investigation and comply with section 80(3)(b) of the Municipal Systems Act. Such studies require capacity and resources and take time to complete
- No municipality would be able to be included in the Entity and or sign any agreement until the necessary aspects of the MSA had been completed. Due to capacity constraints, it is likely that this would be done within different timeframes by municipalities within the province, either delaying the operationalisation of the entity or staggering the inclusion of municipalities.
- The staggering of the inclusion of municipalities would impact both the planning and operations of the provincial entity

No municipality can be compelled to be part of the Entity and as such any municipality can opt not to be included. The impact would be the most serious and would undermine the intention of the Entity if such a decision was taken by one or more of the metropolitan municipalities.

OPTION 2 - A REGIONAL MUNICIPAL TRANSPORT ENTITY

DESCRIPTION

Option 2 would comply with the NLTA section 12(2) in which one or more adjacent municipalities may agree on the joint exercise or performance of their respective powers and functions as outlined in the NTLA.

ADVANTAGES

- No structure would need to be established. Rather each municipality would agree to cooperate through an agreement.
- As each municipality would be performing their functions internally, there would be no need to undertake any section 78 and or section 80(3)(b) investigation in terms of the MSA
- This would possibly be the quickest route to improving coordination within the transport sector across the municipalities

DISADVANTAGES

- This is the weakest possible option for improving transport coordination across the municipalities as the effectiveness will only be as good as the content of the agreement signed between the municipalities.
- The option may reduce the level of accountability for the underperformance of one of the municipalities forming part of the agreement
- Again, a municipality could opt not to form part of the joint agreement undermining the intention for regional transport coordination within the province. This would be most serious if one such municipality was one of the Gauteng metros.

OPTION 3 – ESTABLISHMENT OF A REGIONAL MUNICIPAL TRANSPORT ENTITY

DESCRIPTION

Option 3 would comply with Section 12(2) of the NTLA whereby adjacent municipalities decide on the establishment of a “regional” municipal entity.

ADVANTAGES

- A separate municipal entity would be established and as such would be accountable to all municipalities included in the structure
- It would allow for the development of capacity and capabilities for managing the transport functions regionally

DISADVANTAGES

- All the participating municipalities would need to undertake a section 78 investigation and comply with section 80(3)(b) of the Municipal Systems Act. Such studies require capacity and resources and take time to complete
- No municipality would be able to be included in the Entity and or sign any agreement until the necessary aspects of the MSA had been completed. Due to capacity constraints, it is likely that this would be done within different timeframes by municipalities within the province either delaying the operationalisation of the entity or staggering the inclusion of municipalities.
- The staggering of the inclusion of municipalities would impact both the planning and operations of the municipal transport entity
- No municipality can be compelled to be part of the Entity and as such any municipality can opt not to be included. The impact would be the most serious and would undermine the intention of the Entity if such a decision was taken by one or more of the metropolitan municipalities.
- Given that option 3 would be a municipal entity only, the assignment of provincial functions to local government would remain necessary.

6.4 KEY DECISION POINT 3 – OPERATIONAL AND RELATED MATTERS

If the provincial or municipal entity option is selected, the participating municipalities would be required to sign a service level agreement. Any such agreement would need to be in compliance with Section 81 of the Municipal Structures Act. Notwithstanding, at least the following matters will need to be addressed:

- The parties to the agreement
- The basis for the establishment of the governing body for the transport authority and the structure thereof
- The operational, financial and procedural arrangements including the voting procedures.

It will therefore be necessary to determine the number or percentage representation of councillors from each participating municipality such as:

- Equal representation (one, two or three councillors each)
- Proportional representation based on for example:
 - Extent of contributing transport assets
 - Financial contribution
 - Combination of the above
 - Other factors to be determined during the negotiations

The financial contribution to be made by each municipality will need to be determined. This may vary from financial year to financial year. Notwithstanding, it is recommended that a set of principles are agreed upfront.

6.5 KEY DECISION POINT 4 – ASSIGNMENT OF FUNCTIONS

An efficient and effective transport system is essential within the context of the Gauteng Province given the importance of the province within the national economy along with the need to manage growth, ensure spatial transformation and the creation of inclusive city region. It is therefore equally important to ensure the rationalisation of the transport functions with those provincial and national functions necessary for supporting the transport system at the local level, are assigned to local government. At least the following should be considered in the establishment of the Regional Municipal Transport Authority:

- Which functions must be assigned
- What process will be followed to ensure the assignment takes place

- The timeline for the assignment of the functions
- The capacity and resource requirement arising from the assignment of the function
- Confirmation that funds follow functions

This would possibly only be necessary if the decision is taken not to establish a provincial entity.

7. CONCLUSION

Recognising the importance of an integrated and efficient public transport system in the province, SALGA Gauteng has initiated an initial investigation into transport authorities, the legal framework in which they operate in South Africa, and possible options for municipalities in Gauteng.

Having considered several examples of transport authorities internationally and in South Africa, this report has provided a detailed examination of the legislative framework around transportation and the establishment of such authorities in South Africa, suggesting several options for consideration in Gauteng.

While the NLTTA was very prescriptive with respect to the establishment of a Regional Transport Authority, the reverse is true in the NLTA, which now applies. The establishment of either a municipal or a provincial entity would require full compliance with the Municipal Systems Act in relation to determining the use of an external service provider.

When examining the legal framework, it is apparent that significant effort and resources will be necessary to ensure that whatever structure is selected operates effectively and efficiently in addressing the objectives for a regional transport entity.

Moreover, the option selected would require political cooperation across all the affected municipalities, agreed timeframes set for undertaking the necessary feasibility studies, and the terms and conditions of the service level agreement carefully negotiated.

Based on the findings of this report, the recommended options would include **Option 4** in relation to municipal participation and geographic extent (a regional municipal transport entity which would include the entire area of jurisdiction of the metropolitan municipalities of Tshwane, Johannesburg and Ekurhuleni and both district municipal areas contained within the Gauteng Province) and either Option 1 or Option 3 for the type of entity to be established, the preference being for **Option 3** (a regional municipal transport entity).

REFERENCES

- Cameron, B, Overview of the legislative framework for the establishment of Transport Authorities in South Africa, TRC Africa
- Cape Town Partnership (2012) An integrated transport authority launched in Cape Town, <http://www.capetownpartnership.co.za/2012/10/an-integrated-transport-authority-launched-in-cape-town/>
- City of Cape Town, <https://www.capetown.gov.za/en/TransportCapeTown/Pages/default.aspx>
- Dawood, G and M. Mokonyama (2014) Effective Devolution of Transport Functions to Municipalities: Towards an Optimal Transport System, 2014/15 Division of Revenue, Chapter 9
- Dawood, G and M. Mokonyama (2015) Effective Assignment of Transport Functions to Municipalities: Towards an Optimal Transport System, 2015/16 Division of Revenue, Chapter 8
- Futshane, M and M. Wosiyana (2005) Transport authorities in South Africa: Current initiatives, developments and challenges
- Gauteng Province, 2013 Memorandum of Understanding on the Establishment of the Transport Commission
- Lagos Metropolitan Transport Authority, <http://www.lamata-ng.com/background.php>
- Leaders in Urban Transport Planning, Governance: Institutional Arrangements for Urban Transport
- Metropolitan Atlanta Rapid Transit Authority, www.itsmarta.com
- Mitchell, M. (2014) Urban transport – a saga of political indecision and lost opportunities, Civil Engineering, July 2014
- Mtantato, S. (2011) Impact of current land-use patterns on public transport and human settlements, Chapter 11, FFC Submission for the 2012/13 DORA
- Munshi, R. (14 March 2014) 'Protecting of turf' slows plans for Gauteng Transport Authority, Business Day Live
- MyCiti Business Plan (2012) Phases 1A, 1B and N2 Express of Cape Town's MyCiti IRT system
- Nothnagel, A., D. Campbell and R.A. Stanway The advent of transport authorities in South Africa
- Ovens, W (2013) The Role and Significance of State Owned Enterprises, Public Entities and other Public Bodies in the Promotion of Urban Growth and Development in South Africa
- Pearton, M. and M. Hughes, eThekweni's Muvo Card: A first for South Africa
- Salberg, A, K. Fang, K. Heanue, and S. Zimmerman, Metropolitan Transportation Governance Institutions: International Experience for Metropolitan Areas and Mega Regions in Developing Countries
- South African Cities Network (2013) Literature review on public transport and mobility in municipalities
- South Florida Regional Transportation Authority, www.sfrta.fl.gov
- Todes, A (2009) Chapter 8: Planning, Spatial Structure of Cities and Provision of Infrastructure, Planning sustainable cities, Global Report on Human Settlements
- Transport Authority, Government of Jamaica, <http://ta.org.jm/roles-and-functions>
- Translink, www.translink.ca

Transport for London, www.tfl.gov.uk

UITP, A Vision for Integrated Urban Mobility: Setting up your Transport Authority

Walters, J. (2014) 'Public transport policy implementation in South Africa: Quo vadis?', *Journal of Transport and Supply Chain Management* 8(1), Art. #134

Warren, M. (2015) Greater Toronto and Hamilton Area needs one regional transit authority, 12 Jan 2015
http://www.thestar.com/opinion/commentary/2015/01/12/greater_toronto_and_hamilton_area_needs_one_regional_transit_authority.html

Williams, R.J. and P. Hammond (2015) Passenger Transportation Trends, Strategy &
(<http://www.strategyand.pwc.com/perspectives/2015-transportation-trends>)

World Bank Group, (2013). The International Bank for Reconstruction and Development, The Designing a way out for improving urban transport services: lessons from current practice