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Submission from
Cities Network
to
The Portfolio Committee on Transport
in respect of
**The National Land Transport Bill
(B51-2008)**

17th July 2008

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1 Introduction

This submission is made by the Cities Network in response to an advertisement that appeared in the Sunday Times on 29th June 2008 inviting submissions on the National Land Transport Bill (B51-2008).

The South African Cities network (SACN) is an organisation made up of South Africa's six metropolitan authorities and the three next largest cities, namely, Johannesburg, eThekweni, Cape Town, Tshwane, Ekurhuleni, Nelson Mandela Bay, Buffalo City, Msunduzi and Mangaung. It is an initiative of the Minister of Provincial and Local Government and these nine city municipalities, in partnership with the South African Local Government Association (SALGA). It seeks to encourage the exchange of information, experience, and best practices on urban development and city management.

The Cities Network regards the National Land Transport Bill as amongst the most important and strategic legislative initiatives affecting its members in their attempts to create a better life for their residents, who comprise a very substantial proportion of the total population of South Africa; and to grow their economies.

The Cities Network is supportive of the contents of the National Land Transport Bill as introduced in the National Assembly (B51-2008)

The Cities Network is particularly supportive of the fact that the bill seeks to assign responsibility for public transport in the cities clearly to city government, while also seeking to establish clear revenue streams for the funding of this responsibility. The failure to do so up till now, despite the policy intentions contained in the 1996 White Paper and re-iterated in the 1999 study entitled 'Moving South Africa', has had – and continues to have – a severely debilitating effect on the successful provision of public transport in South Africa's major cities.

We note that the bill (B51-2008) is also consistent with the document of 13th August 2007 of the national Department of Transport entitled 'National Land Transport Strategy for the drafting of the National Land Transport Bill'. While we were not involved in the compilation of this document we support its contents.

It has been brought to our notice that since the publication of this bill there have been attempts to amend it in ways which will seriously undermine the clarity with which accountability for transport is assigned to city governments, as well as funding arrangements. We understand that new proposed versions of the bill seek to give crucial powers to provincial MECs over how powers over city transport are devolved. Given our experience of the accreditation process in housing we are of the view that such alterations would be highly detrimental to public transport. We are also of the view that such amendments are not consistent with the designation of 'Municipal Public Transport' as a Schedule 4(B) function in the Constitution.

We are also aware that legal considerations may require changes to the conceptualisation of Transport Authorities as currently contained in the bill.

This submission is thus aimed at

- articulating support for the intentions and content of the Bill as introduced in the National Assembly (B51-2008)
- conveying our broad ideas around areas that are likely to become the subject of debates in the deliberations of the Portfolio Committee on Transport
- signalling our interest and willingness to engage with lawmakers on these matters as they might arise during the Bill's passage through parliament

The body of this memorandum is structured into four sections.

Section Two briefly articulates our conceptual framework which explains the basis of our arguments. This is done only in brief and summary form in order to emphasise the main points of the arguments. Section Three notes the legal and constitutional basis for our position. Section Four discusses Transport Authorities. Section Five discusses the funding of public transport and the establishment of Municipal Transport Funds.

2 Conceptual framework

2.1 Public transport and the urban fabric

2.1.1 Good access and mobility makes cities work

The key rationale for the existence of cities is that they enable intense interaction between people and organisations in a concentrated space. This interaction is both social and economic – from recreational activities such as visiting friends and family, to going to work, shopping, trading amongst producers and consumers, going to football matches, etc. Economists sometimes refer to city economies as 'agglomeration economies'.

However, if this interaction is too slow, difficult or costly, the very rationale for a city is undermined. Thus the social and economic basis for a city depends on good access and mobility across the city. Cities which cannot offer this become socially fragmented and economically inefficient.

2.1.2 Effective public transport systems depend on good integration into the overall urban fabric

The effectiveness of public transport is dependent not just on the public transport system itself, but on many other factors related to the management of urban spaces and the built environment.

For example, urban densities are critical to establishing a threshold of public transport demand that in turn facilitates a regular and cost effective service. This, in turn, is dependent upon a coherent strategic approach to town planning decisions, such as zoning, and building plan regulations, as well as the location of key public and private facilities.

These need to be supported by complementary decisions on infrastructure such as roads, water supply, electricity, sewerage and solid waste systems. They can also be supported by strategic design of the property tax system. Successful integration of these

decisions will increase the property tax base and thus the revenue available to the city to provide services.

2.1.3 The need for clarity of accountability

The starting point for effective decision making and implementation is clarity of accountability. All significant public sector activity requires difficult decisions and risk taking. Where there is no clarity of accountability it becomes very difficult to make progress. A large part of the failure of delivery, especially in relation to the built environment can be attributed to confusion of accountability between spheres of government.

Most significant initiatives require some co-operation between spheres of government. However, co-operative government has often been wrongly interpreted so as to assume that all spheres of government must be involved in all activities in a manner that results in no specific sphere being clearly responsible and accountable. Meanwhile there is continual competition between spheres to optimise their own position and profile. This was never the intention behind the concept. Instead, there needs to be

- clear differentiation between what each sphere is responsible for, and
- a clear main locus of responsibility amongst the spheres

Unfortunately the hierarchical nature of inter-governmental relations, combined with the transport related responsibilities given to the provincial administrations by the apartheid state have resulted in this confusion being particularly severe in relation to public transport.

This is evident, for example, in the fact that while cities are responsible for integrating transport through the transport planning function, key responsibilities such as the management of subsidised bus contracts, and the management of rail services currently lie with provincial and national government respectively. This leads to initiatives by other spheres of government which run completely counter to local needs, policies and strategies.

2.2 Co-operation across municipalities

In a number of cases, where travel patterns extend across municipal boundaries there is a need for co-operation amongst municipalities. However, this does not justify responsibility being shifted to other spheres of government. The integration that such an approach might be intended to achieve is far outweighed by the dislocation and fragmentation it will cause between transport and other related responsibilities.

Co-operation across municipalities needs to be rooted in the municipalities themselves and built from the bottom up. Other spheres of government may have a role to play in facilitating this, but any institutional arrangements to do so should be based primarily on the municipal sphere.

Travel patterns in the nine cities

In most of the nine cities and other larger Category B municipalities over 95% of trips with either origins or destinations in the municipality do not cross the municipal boundary; they remain entirely within the city boundaries.

Within the cities of Gauteng there is a higher proportion of trips which cross municipal boundaries. But even here, movements within each of the cities far outweigh movements between the cities. The latest official origin-destination figures indicate that of all morning peak trips with destinations within the City of Johannesburg only 15.6% of those trips originate from outside the metropolitan municipality – mostly from Tshwane and Ekurhuleni. The figure for Tshwane is even smaller, with only 5.1% of morning peak trips originating from outside the municipality.

Thus, while co-operation is clearly required amongst the cities making up the area referred to as the 'Gauteng City Region' the substantial emphasis of movement is within the cities and the key locus of responsibility for managing such movement should lie at city level.

2.3 Financing of public transport

Public transport requires a sound funding model. Fare box revenues should be able to cover a significant proportion of operating costs, but the extent to which this is possible depends on a wide range of factors. Some of these are driven by features such as urban form, the ratio between peak and off-peak demand, and user income levels.

However, where public authorities are able to exercise skilful strategic control over a city wide public transport system it is possible to reduce costs and enhance service levels. Important factors include measures to manage demand as well as supply, cross-subsidise between routes, and reduce peak level trip times by providing dedicated rights of way for public transport vehicles.

Well directed capital expenditure on infrastructure (such as dedicated rights of way) and systems should reduce the need for operating subsidies; although given the dispersed nature of South African cities it is likely that some form of ongoing subsidy from sources other than fare box revenues will be required to provide an acceptable level of service. For the foreseeable future significant publicly funded investment in infrastructure will be required to establish cost effective systems that are both car competitive and minimise the need for ongoing operational subsidies.

Currently most funding for public transport is derived from capital and operating subsidies originating from national government. While these need to continue it is preferable to combine these with local own revenues dedicated to public transport. This provides more flexibility at city level while also providing an incentive to use revenues more effectively. However, the own revenue sources currently available to city governments are insufficient to support the substantial new investment and support for public transport now required.

2.4 Summary

From the above it is evident that it is necessary to establish city government control over integrated public transport networks funded by a combination of subsidies from national governments and own revenues.

In some cases where there are adjacent cities with significant movements between them it is necessary to create mechanisms for co-operation between these cities. However, these should not significantly compromise the responsibility that such cities have to address public transport within their own areas of jurisdiction and should be designed around city level authority and institutions.

3 The legal and constitutional basis of our position

Our position is consistent with the assignment in the Constitution of 'Municipal Public Transport' and 'Municipal Planning' as functions under Schedule 4 Part B, and 'Municipal Roads' and 'Traffic and parking' as functions under Schedule 5 Part B.

We understand 'municipal public transport' to mean public transport services conducted within municipal areas aimed at promoting the sustainable social and economic development of the members of their local communities. We regard city government to be the sphere of government primarily responsible for the management of space and movement within its area and thus the key locus of government responsibility for public transport within its boundaries.

We recognize that where movement is primarily provincial or inter-provincial in its nature other spheres of government are the key locus of responsibility. However, this is qualified by the fact that, public transport is a function under Schedule 4 Part A, and, according to section 156(4) of the Constitution, such functions must be assigned to local government if 'that matter would most effectively be administered locally, and the municipality has the capacity to administer it'.

4 Designated planning authorities, transport authorities and municipal entities

4.1 Designated planning authorities

We note that the bill provides for 'designated planning authorities' which means any 'transport authority' as well as all the cities of the Cities Network, together with Mbombela, Polokwane and Rustenburg. All 'designated planning authorities' must perform all the functions listed in section 20 as the powers and functions of transport authorities.

We are in agreement that the nine cities of the Cities Network be granted the powers listed in section 20. We believe that the argument for this is *incontrovertible* in relation to any municipality which has been defined by the Demarcation Board as a metropolitan authority. By their definition as metropolitan authorities they should logically have such powers and functions.

In the case of Category B municipalities it may be appropriate to assign the functions as listed in section 20 in some instances and not in others. Indeed, the bill does so in respect of 6 named Category B municipalities. However, while assignment should be automatic in the case of Category A municipalities, it may be preferable to set out criteria for assignment in Category B municipalities based on

- the nature of the municipality and the patterns of movement across the municipality
- the potential for the municipality to develop the capacity to administer the functions
- whether the municipality has requested to be a designated planning authority

While provincial government should be consulted in relation to such an assignment to Category B municipalities, the power to decide on this should *not* lie with provincial

government, but rather with national government acting on the advice of an objective body such as the Demarcation Board. Because of competition between provincial and local governments, giving this power to provincial governments makes them both 'referee' and 'player'. As the experience in the housing sector has shown, provincial governments are extremely reluctant to give over any functions to local governments.

4.2 Transport Authorities

The concept of a 'transport authority' as contained in the Bill may lead to confusion. It is understood that National Treasury is opposed to the concept unless a transport authority is classified as a 'municipal entity'.

However, a municipal entity is best not understood as an 'authority'. In South Africa *authority* is generally associated with political representation. A municipal entity is an organisation created by a municipality to carry out the functions of the municipality. It does so under the 'authority' of the municipality, but does not ultimately have the 'authority' itself; 'authority' is retained by the municipality. For this reason the board of a municipal entity may not include political representatives of the municipality.

The notion of a transport authority arose in the context of the much more fragmented local government system in existence when the National Land Transport Transition Act was passed. It was recognised at the time that responsibility for public transport in cities needed to be located at the municipal level, but that it also needed to be addressed in a more wholistic manner than was permitted by the fragmented local government system. Once single tier metropolitan municipalities were created the need for such authorities largely fell away.

It may therefore be more appropriate to use the term 'transport authority' for those municipalities given the powers of 'designated planning authorities' in the bill rather than for entities created by the municipalities.

Where adjacent municipalities wish to run operations through a single combined entity this is possible through the creation of a municipal entity, which, in terms of current legislation can be owned by more than one municipality. Authority, however, should remain with the municipalities, who, in respect of such functions could develop appropriate co-operative arrangements in order to effect joint decision making.

5 Municipal Transport Funds

There are a few reasons why it might be appropriate for municipalities to have Municipal Transport Funds into which revenues can be paid for expenditure on transport functions only.

Firstly, where municipalities implement local taxes or charges intended to be used for municipal transport functions they are likely to gain greater public acceptance if they can be seen to be paid into a ring-fenced account.

Secondly, where national or provincial governments wish to provide funds for transport they can require that they be paid into such a fund as a means of placing conditions on the grant without dictating the use of the funds in detail. Currently, the conditional grants provided by national government for transport tend to be too tightly controlled with

insufficient responsibility for making appropriate allocations placed in the hands of receiving authorities. This leads to slow and unsuitably bureaucratic processes.

Thirdly, having such a fund and therefore being able to show clearly the revenues available from such funds may be useful in demonstrating the necessity in some instances to limit expenditure or increase fares.

It is crucial that if municipalities are to undertake the functions assigned to them under this legislation they should be provided with the appropriate grants or own revenues sources. The current wording of the bill encourages National Treasury to provide for such funding through, for example, a share of the fuel levy. However, it cannot force National Treasury to do so. While this matter cannot be fully addressed in this legislation it is crucial that it is addressed through other mechanisms.