

inconsistent with the real life experience of thousands of urban commuters and road users in Gauteng.

462. The contents of paragraph 161.2 are admitted only insofar as it is submitted that by continuing to use the highways currently available for their use at no additional charge that both would be in a position to operate effectively and without the obvious and dramatic disadvantages, hindrances, loss of customers and reduction in the number of calls that either would be in a position to make and which would inevitably result were they to be forced onto such alternative secondary routes where available. The contents thereof are otherwise denied.

AD PARAGRAPH 162

463. The contents hereof amount to speculation on the part of SANRAL the logic of which escapes me. It is clear that any additional cost imposed by e-tolling upon these deponents currently represents an amount that each will be hard pressed to pay given their current respective financial positions.

AD PARAGRAPH 163

464. While I admit that there will be reduced wear and tear on a well maintained road, the Minister of Transport has himself already acknowledged that the benefits that SANRAL alleges will accrue, will not.

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465. I accordingly deny the balance of the allegations contained herein.

AD PARAGRAPH 164

466. I deny the content of paragraph 164.1 for the reasons set out above.

467. The allegations set out in 164.2 and 164.3 are likewise denied. The assumptions presented by SANRAL herein are irrelevant. The fact is that Maphoroma travels 27 kilometers to and from work each day representing a total of 54 kilometers a day. Based on SANRAL's map appearing on its web site Maphoroma will upon completion of the initial phase of the GFIP projects in development and including Gantry 26 ("Tiptol") travel through at least 7 Gantries to Norwood and again through 7 Gantries upon her return. At R0.30 per kilometer (being the lowest rate per kilometer advised to date and payable by a registered e-tag user) she will be required to pay R16.20 per day (27km x R0.30 x 2). The cost to her per month would accordingly amount to R405.00 (R16.20 x 25 days). I do not understand SANRAL's calculations as its costs over the route over 22 days amount to R0.12 per kilometre (R141.43 / 22 days / 2 trips / 27 km). This computation and the one below with reference to Leatswe produce an improbable result of rates that are approximately 50% lower than R0.30c per kilometre.

468. The allegations set out in 164.4 are similarly denied.

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469. The contents of 164.5 are denied in respect of Mr Maphoroma. By my calculations, and having regard to the aforementioned SANRAL map, and following the route suggested by SANRAL, and assuming a distance of 40 km which represents the shortest possible route which Mr. Maphoroma might possibly travel (being shorter than that used for the calculation set out in his wife's affidavit), Mr. Maphoroma, as a registered e tag user will still be required to pay an amount of R 528,00 per month.

$$(R24 \text{ 40km} \times R0.30 \times 2) = R528.00 \text{ (R24} \times 22 \text{ days)}$$

AD PARAGRAPH 165

470. The allegation that Ms. Maphoroma's costs are overstated is denied for the reasons set out above.

AD PARAGRAPH 168

471. The allegations are denied for the reasons set out above.

AD PARAGRAPH 169 -170

472. I deny that Ms Leatse's costs are overstated on the basis alleged by SANRAL.

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473. Based on a calculation using SANRAL's map downloaded from its website and a distance of approximately 30 km at R0.30 per kilometer Ms Leatswe will as a registered e-tag user be required to pay e-tolls in the amount of R432.00 per month based on the following calculations:

R18 (30km x R0.30 x 2). R432 (R18 x 24 days)

474. SANRAL's computations produce a curious result which in the absence of any detail and explanation suggest a rate per kilometre of

R0.15./km (R0.15 - R196.07 /22 days /2 trips/ 30km)

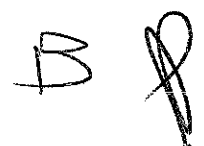
475. I deny the remaining allegations.

AD PARAGRAPHS 173-174

476. The allegations of the deponent in the paragraph under reply concerning the arguments for and against the fuel levy are disingenuous and inconsistent.
477. Firstly, as regards the assertion by the deponent that the GFIP debt is "*not a national obligation*", this is undermined by the very rationale for the need to develop the Gauteng freeways to the benefit of the Gauteng Province and South Africa as a whole that is contained in the 2006 Proposal and the Cabinet memorandum.

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478. Secondly, in response to paragraph 173.1, it is not the Applicants' contention that in supporting the fuel levy "*all future toll projects*" should be funded by an increase in the fuel levy.
479. I pause to state that whilst the Applicants support the fuel levy as an alternative funding model in the case of the proposed toll road network, the position of the Applicants in the present application is not prescriptive.
480. The position of the Applicants is that the tolling of the proposed toll road network is an irrational choice of funding mechanism in light of other available funding mechanisms such as the fuel levy.
481. Thirdly, I am informed by the Applicants' legal representatives that the process for the increase in the fuel levy is the tabling of an increase by the Commissioner for Customs and Excise before the National Assembly in terms of the Customs and Excise Act 91 of 1964 as an amendment to Schedule 1 of that Act and ordinarily occurs on an annual basis.
482. The amount by which the fuel levy is increased each year is determined by the Commissioner in his discretion taking into account all the relevant factors and public participation occurs within the confines of the ordinary parliamentary process.
483. The fuel levy was raised by 28 cents this year without (as far as I am aware) protest from the public. It is startling that SANRAL and/or the Minister of



Transport is not prepared to motivate an increase of 11 cents in order to service the debt incurred in upgrading GFIP.

484. Once again, it is not the contention of the Applicants that by their support of the fuel levy as one of the alternative funding methods that may appropriately be utilised to fund GFIP that every proposed toll project by SANRAL should be funded by the fuel levy and therefore the deponent's further argument that there would need to be a public participation process on a "*per project basis*" is simply fallacious.
485. Fourthly, in response to 173.3, I acknowledge that COSATU have expressed their opposition to the fuel levy option.
486. It is not the Applicants' case that the fuel levy is unanimously supported.
487. The Applicants do, however, hold that the fuel levy increase that would be required to fund the debt is marginal, being only 11 cents per litre in regard to which I attach as "RA9" a table prepared by Wayne Duvenage, the president of SAVRALA, that bears out this calculation with the use of simple mathematics.
488. I am advised and I respectfully submit that people within Gauteng, as well as the country as a whole, would be far more accepting of a marginal increase of the fuel price given that the fluctuation of the fuel price (and more recently the fluctuation being in an upward direction) is a fact of life within South Africa regularly experienced by motor vehicle owners whose response is typically to

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go and fill their petrol tanks before midnight on the particular day of the increase.

AD PARAGRAPH 173.4

489. While it is correct that numerous persons within South Africa would bear the burden of the 11 cent increase in the fuel price who would not make use of the Gauteng freeway network themselves, I do not understand how the deponent can maintain that this is "*iniquitous*" or unacceptable given that South Africans have, since the early 1980s, contributed to the development of roads and other infrastructural investments through the fuel levy nationally without necessarily directly benefiting from the use of such roads or infrastructural investments.
490. In this regard, I point out that it is ironically SANRAL that is being inconsistent and selective in its application of the user pay principle since many roads are developed in South Africa using funds contributed by South Africans generally which many such South Africans would never themselves make use of.
491. Likewise, hospitals and schools are developed using general taxpayers' money which hospitals and schools are not necessarily used by the persons whose money is used for such developments and upgrades.
492. This is ordinary fiscal policy.

493. Fifthly, I deny that *"the diminishing revenue from a fuel levy per vehicle due to improved fuel efficiencies"* is a material consideration.
494. I attach hereto as "RA10" an excerpt from the 2011 budget review obtained from the South African Revenue Services website by Marc Corcoran that shows a consistent and significant increase in revenue obtained from the fuel levy from 2001 to present date and projected increase in future.
495. The SAPIA annual report excerpt which I attach as "RA11", also obtained by Marc Corcoran, this time from the SAPIA website, is to similar effect.
496. Sixthly, as regards battery operated motor vehicles, I respectfully submit that the number of battery operated motor vehicles in operation on South Africa's roads is negligible and that this is not a material consideration in the determination of whether the fuel levy would be an appropriate funding model for GFIP.
497. I attach hereto as "RA12" a further extract from the SAPIA annual report which shows a consistent long-term increase in the consumption of petrol and diesel fuel from 1998 to 2009.
498. This was similarly obtained from Marc Corcoran from the SAPIA website and I respectfully refer the Honourable Court to the confirmatory affidavit of Marc Corcoran.

499. As regards the introduction of a regional fuel levy, while the Applicants hold the view that this might be another funding model worthy of consideration in preference to e-tolling in this particular instance, I am advised that it is not necessary for the purposes of Part A of the application for the Applicants to dispute the allegations of SANRAL concerning the introduction of a regional fuel levy, and will accordingly refrain from doing so for present purposes.

AD PARAGRAPHS 175-177

500. I deny that the decision by SANRAL to implement tolling on the proposed toll road network and the election of tolling as a funding mechanism was "*reasoned and rational*".

501. The fact that, undisputed on the papers, SANRAL requires road users to pay more for the administration of tolling than the full cost of the upgrades of the roads themselves is manifestly so unreasonable that it was not open to SANRAL to select tolling as a funding mechanism in this instance.

502. SANRAL has, moreover, displayed itself as being hardened and indifferent to the plight of the most vulnerable, such as the members of QUASA and the individuals whose affidavits are annexed to my founding affidavit who, like many others, are not really able to afford the additional monthly expense of paying for tolls.

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503. SANRAL's insistence on proceeding with the upgrades and with tolling despite the fact that there are no viable public transport alternatives or viable secondary routes available for such individuals is a further example of SANRAL's hard-headed indifference.

AD PARAGRAPHS 179-197

504. I note the attachment of SANRAL's 2012 MTF budget submission as "NA17".

505. The Applicants deny that the 2012 MTF budget submission is relevant to the present application and will refrain from responding thereto herein for the purposes of Part A.

506. To the extent necessary, legal argument will be addressed in this regard at the hearing of the application.

507. Applicants reserve their rights to address the content of the 2012 MTF budget insofar as may be necessary for the purposes of the relief sought in Part B.

AD PARAGRAPH 200

508. The first meeting that I attended that related to toll roads is recorded in the founding affidavit and took place in about mid-2009.

509. The position of SAVRALA, and the levels on which it has engaged with SANRAL leading up to the launching of the present application is contained in the founding affidavit.
510. I admit that the present proceedings are the first proceedings in which I deposed to affidavits on behalf of Applicants in relation to the tolling of the GFIP.

AD PARAGRAPH 201

511. Insofar as SANRAL challenges my authority to depose to the founding affidavit and this affidavit on behalf of the First to Fourth Applicants, I am advised and I respectfully submit that I need not be authorised to depose to an affidavit.
512. I am advised that if SANRAL wishes to challenge the fact that the present proceedings were not authorised by the Applicants it should make use of the procedures set out in Rule 7, which it has not done.
513. Insofar as SANRAL challenges the ability of the Third and Fourth Applicants to institute proceedings, I am advised and I respectfully submit that these entities are, as voluntary associations, juristic persons entitled *ex lege* to institute and defend legal proceedings.
514. I am advised and I respectfully submit further that:



- 514.1 such powers are implied in their respective constitutions as powers that are necessary or ancillary to the fulfilment of the objective of such associations;
- 514.2 it has been held that a voluntary association formed to protect the rights of a vulnerable constituency and, as in the present matter, with the object of holding a public body accountable should not be subjected to unnecessary restrictions before being heard by our courts. I am advised and I respectfully submit that this would apply to both QASA and SANCU.
515. Insofar as SANRAL challenges the resolution by the Applicants to institute proceedings, while denying that there is any basis for such challenge, resolutions by each of the Applicants to institute the present proceedings and ratifying, insofar as may be necessary, all things done and actions taken to date of resolution, will be available and handed up to the Honourable Court at the hearing of the application.

AD PARAGRAPH 204

516. The minutes of the meeting dated 12 March 2012 at page 303 of the papers filed of record expressly record the resolution by the Management Committee of the First Applicant to proceed to legally challenge the e-tolling of the GFIP and



to instruct the Applicants' attorney-of-record, Cliffe Dekker Hofmeyr Inc, for that purpose.

517. I am advised and I respectfully submit that such resolution was sufficiently broad to encompass the institution of the present proceedings and that the allegations by the deponent herein are without merit.
518. I admit that the meeting was held by OUTA on 12 March 2012 and that the quotation in paragraph 204.1 is taken from such minutes.
519. In any event, I am advised and I respectfully submit that any complaint by SANRAL in this regard is completely answered by the resolution referred to above.

AD PARAGRAPHS 206-207

520. I respectfully refer the Honourable Court to what I have stated above concerning the *locus standi* of QUASA and SANCU and the power of these associations to institute legal proceedings.

AD PARAGRAPH 211

521. I have already dealt at the outset with the publication of the toll tariffs and the Minister's determination that tolling would commence on 30 April 2012 in Government Notice No. 35263 dated 13 April 2012.



AD PARAGRAPH 213

522. Contrary to what is stated herein:

522.1 the grounds summarised in paragraph 29.2.5 of the founding affidavit are dealt with *inter alia* in paragraphs 217 to 221;

522.2 the grounds summarised in paragraph 29.2.6 are dealt with *inter alia* in paragraph 279 of the founding affidavit;

522.3 the grounds summarised in paragraph 29.2.8 are dealt with in paragraph 280 of the founding affidavit.

AD PARAGRAPH 214

523. I have already dealt with the question of OUTA's authority to bring this application and I refer the Honourable Court to what I have stated above.

524. I attach as "RA13" a printout from the OUTA website on which the AA has caused itself to be listed as a registered supporter of OUTA.

525. The confirmatory affidavit of Gary Ronald, the CEO of the AA will also by his confirmatory affidavit, confirm that the Automobile Association supports OUTA in the bringing of this application and, moreover, confirm the correctness of the content of paragraphs 37 and 38 of the founding affidavit.

526. It is not disputed that the AA is not a party before this court.
527. The support of the AA and its membership serves, however, to bolster the Applicants' standing on behalf of road users and in the public interest and undermines the claim by SANRAL that the present application is not generally supported.

AD PARAGRAPH 215

528. SANRAL's response to the affidavits annexed to the founding affidavit as "FA5" to "FA8" has been dealt with above.

AD PARAGRAPHS 217.1 - 217.2

529. I do not understand how, in the face of the allegations in the founding affidavit, SANRAL can allege that SAVRALA members will not be materially financially and administratively prejudiced by reason of the fact that SAVRALA and its members "*will be entitled to receive substantial discounts...by the use of e-tags*".
530. The material financial and administrative prejudice that will be suffered by SAVRALA is clear and will materialise whether or not discounts on toll charges will be received.



AD PARAGRAPHS 217.3-217.5

531. I have already dealt with the content hereof and I respectfully refer to what I have stated above.

AD PARAGRAPHS 217.6 - 217.9

532. It is precisely the inability of SANRAL to deal with the very real concerns of SAVRALA and its members including *inter alia*:

532.1 the inability of SANRAL to provide SAVRALA and its members with real time system interface that would ensure that SAVRALA and its members would have full information on the toll charges incurred by its clients by the latest when the clients return rented vehicles to them;

532.2 cloned number plates;

532.3 terms of payment by SAVRALA members to SANRAL;

that has caused, in part, SAVRALA members to oppose the e-tolling of the proposed toll road network.

533. The above reasons, in addition to the further reasons and objections that are set out by me in the founding affidavit, and were set out by SAVRALA in its various representations at public hearings, are what have led SAVRALA to



oppose the system as an unreasonable, extravagantly expensive, unlawful and unworkable funding mechanism.

534. Notwithstanding this, SAVRALA and its members have sought to continue to meet with SANRAL on a without prejudice basis in order to do what is necessary to ensure that they are compliant with the launch of e-tolling should it be found to be lawful and go ahead.
535. The members referred to in paragraph 217.9 have all been prevented from doing so in bad faith by SANRAL which has effectively refused to continue with technical meetings with such members because of their refusal to sign in an unqualified manner the letter of intent that I have referred to above and attached as "RA6".
536. In regard to the Europcar Group and Tempest Car Hire, it is correct that these members have signed the memorandum attached as "NA18" to "NA21" to the answering affidavit.
537. According to Dawn Jones the CEO of the Europcar Group, who I have no reason to disbelieve, the signature by Europcar of the attached documents was for the purpose of being compliant should the system go ahead and was done on the strength of an undertaking by Alli, that the memorandum of understanding would not be made public and not be used in a manner that would prejudice or embarrass SAVRALA in legal proceedings.

538. By the attachment of the agreements, the deponent, Alli, has breached his undertaking.
539. As regards Tempest Car Hire, I am advised by Leslie Matthews, CEO of Tempest Car Hire and a divisional director of Imperial Group (Pty) Ltd, that the agreement was likewise signed strictly with a view to that company being ready for the implementation of tolling should e-tolling be found to be lawful.
540. I attach the confirmatory affidavit of Leslie Matthews hereto as "RA14", who in his capacity as divisional director of Imperial Group (Pty) Ltd, deposes to such affidavit also on behalf of Europcar.

AD PARAGRAPH 218

541. For the reasons stated in my founding affidavit and repeated earlier in this affidavit, the offer of exemption to QASA members is of no use to them.
542. SANRAL fails to deal with the untenable position of disabled persons with mobility impairment and the gross injustice of their having to pay toll from the R1 200.00 disability grant received by them each month.
543. I am advised and I respectfully submit that SANRAL's failure to deal with the material allegations concerning the prejudice to be suffered by QASA members has the effect of causing such allegations to stand uncontested.

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544. It is clear that SANRAL has not applied its mind or considered the plight of the most vulnerable and that its expression of sympathy is insincere.

AD PARAGRAPH 219

545. I have already dealt with the challenge to SANCU's *locus standi*.

AD PARAGRAPH 224

546. It is telling that SANRAL seeks to deny a distinction in this paragraph between "rural" or "long haul" tolling and urban tolling.

547. It is precisely because SANRAL has ignored that the tolling of GFIP would have a material impact on hundreds of thousands of urban commuters who use the urban road network every day and have failed to conduct a public participation process pursuant to section 27 of the Act that is commensurate with the massive size and impact of the proposed toll road scheme that the toll declarations and the implementation of tolling on the proposed toll road network is unlawful and should be set aside.

548. Ironically, the same term, namely "rural" tolling is used by Tolplan (Pty) Ltd in the toll feasibility report forming part of the HMKL record.

549. I attach the relevant excerpt of such report hereto as "RA15".

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AD PARAGRAPH 225

550. I draw it to the attention of the Honourable Court that SANRAL does not challenge the allegation that the proposed toll road network is different from the "rural" or "long haul" toll routes referred to in the paragraph before.

AD PARAGRAPH 226

551. While it is correct that the tolled roads referred to herein run adjacent to or nearby urban centres and may be used by urban commuters, they do not constitute an urban arterial network used by hundreds of thousands of commuters on a daily basis in the same manner or degree that the proposed toll road network is.

552. They also do not have a comprehensive system of toll collection points but instead only isolated toll plazas.

AD PARAGRAPH 227

553. The Applicants do not challenge the upgrading and maintenance of the proposed toll road network, but the unlawful and unconstitutional choice of the funding of such upgrades.

AD PARAGRAPH 228

554. The Applicants deny that the fact that tolling might have been used in other countries to deal with congestion and environmental consequences means that it is an appropriate choice of funding mechanism of the proposed toll road network in this country and in the case of this proposed toll road network.
555. SANRAL has failed to produce evidence, moreover, to support the allegation that tolling will in fact reduce congestion and have a positive effect on the environment.
556. The possible effect of increased congestion and adverse impact on the environment of the introduction of tolling on the secondary metropolitan road networks has not been explored due to the failure of SANRAL to properly disclose its intentions to the Fourth and Fifth Respondents.
557. The failure to disclose this material information has effectively been admitted by SANRAL in this application and forms part of the review on the basis that the environmental authorisations that were granted by the Fourth and Fifth Respondents were thereby rendered liable to be reviewed and set aside.

AD PARAGRAPH 229

558. The allegations contained herein to the effect that the road users in Gauteng are not captive to the proposed toll road network is directly contradicted by the

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everyday experience of urban commuters in Gauteng, including the individuals whose confirmatory affidavits are attached as "FA5" to "FA8" to the founding affidavit.

559. The inadequacy of the public transport available within the greater Pretoria and Johannesburg area is likewise an undeniable fact that is borne out by the plans of the National Department of Transport as well as the Department of Roads and Transport in Gauteng to address such inadequacy.
560. Further in regard to the disingenuous denial by SANRAL that the commuters and road users in Gauteng are captive to the proposed toll road network is the fact that the motivation in the 2006 Proposal for the adding of new portions to the Gauteng freeway system is said to be "*designed to open up the hitherto 'silo' design of the Gauteng freeway system in order to give more options to the road user and provide multiple routes to any single destination*".

AD PARAGRAPH 230

561. The point made in the founding affidavit is that long haul road users travelling from south of Johannesburg to north of Pretoria, for all practical purposes, have no option but to use the main arteries forming part of the proposed toll road network.

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562. SANRAL fails to address this point, and fails in particular to name for the Honourable Court the realistic alternative routes that might be used by such long haul road users instead of the proposed toll road network.
563. The CSIR "*sixth State of Logistics survey for South Africa - 2009*" report referred to herein is not provided and the Applicants therefore are not able to deal with the allegations in respect thereof for the purposes of Part A of the application.

AD PARAGRAPH 231

564. I respectfully draw it to the attention of the Honourable Court that the 2006 Proposal, the Cabinet memorandum, the Steering Committee Report and the plans by the national and provincial departments of transport to improve the public transport offering in Gauteng all provide evidence that the public transport offering in Johannesburg and Pretoria is inadequate.
565. I note the deponent's allegation in paragraph 231.1 that "*the existence of a public transport system is not a prerequisite to whether or not a toll system is to be applied over a particular road network*".
566. I deny that the existence of a public transport system and viable public transport alternatives is not directly relevant to the fairness of imposing a toll system over a particular road network.



567. While I acknowledge that there may be instances in which the need to consider public transport alternatives in the context of a decision to toll a particular road network may not arise in certain circumstances, the present proposed toll road network made use of by hundreds of thousands of urban commuters every day is manifestly not such an instance.

AD PARAGRAPH 232

568. I draw it to the Honourable Court's attention that SANRAL admits that urban sprawl within the Johannesburg and Pretoria area contributes to the captive nature of the proposed toll road network.

AD PARAGRAPH 233

569. The continued denial by SANRAL of the relevance of a public transport system within the context of a decision to toll itself demonstrates that SANRAL failed to properly apply its mind in the course of determining which mode of funding would be appropriate for GFIP.

AD PARAGRAPH 235

570. I deny that open road tolling was either viable or reasonable as a method of funding for GFIP.

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AD PARAGRAPH 237

571. I have no knowledge of whether a presentation was made to the Gauteng Legislature in August 2007 or not or whether the indicated tariff of 50 cents per kilometre was disclosed but, for the purposes of Part A, the Applicants will not dispute the content hereof.

AD PARAGRAPH 241

572. I confirm that the HMKL record was received from the Applicant in the matter *HMKL 3 Investments (Pty) Ltd v The South African National Roads Agency Limited and Others* (NGP Case No. 67620/2010).

573. The record was provided to the legal representatives of the Applicants after Marc Corcoran had made contact with the attorney-of-record for HMKL 3 Investments during the course of the preparation of the present application in order to find out whether such attorney might be able to assist the Applicants with the preparation of the application.

574. There is no relationship between the Applicants and HMKL 3 Investments and nothing sinister, I respectfully submit, about the manner in which the HMKL record came into the hands of the Applicants' legal representatives.

575. I do not understand why SANRAL wishes to apply for the striking out of the HMKL record when it is directly relevant to the present application. I



respectfully submit that the only inference to be drawn from SANRAL's expressed need and intention to strike out the HMKL record is in order to hide from the Honourable Court the further grounds for review that appear from such record for the purposes of the application for the relief sought in Part A of the notice of motion.

576. I place on record that any application to strike out the HMKL record at the hearing of the matter will be opposed by the Applicants.
577. Further, and in any event, I draw it to the attention of the Honourable Court that SANRAL itself has attached the most important part of the HMKL record to its answering affidavit in this application, namely, the application or report to the Minister of Transport which is attached as "NA5".
578. I deny that the facts founding the "*primary issues in dispute*" have been available to the Applicants since 2010 as alleged herein.
579. To the contrary, the bulk of the evidence supporting the grounds for review, which include *inter alia* the DRT response, the Steering Committee report and the Minister of Transport's reply to questions in Parliament were all obtained during or after June 2011.

AD PARAGRAPH 244

580. This is a matter for legal argument.

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AD PARAGRAPH 246

581. It is denied that the declaring of toll roads "*was certainly a matter of great public discussion, debate and interaction in 2007*" as alleged herein.
582. The declaration of the roads as toll roads in Gauteng and the amount of toll to be paid became a matter of "*great public discussion, debate and interaction*" following publication of the tolls on 4 February 2011.
583. The reason why the Applicants and the public did not make written representations in 2007 is manifestly because of the failure by SANRAL to publish the notice of intent to toll properly and adequately as is alleged in the founding affidavit.
584. The petition referred to by the deponent was not a public petition but a domestic petition in the sense that it was signed by all the employees of a single company in Woodmead, Sandton.
585. I attach the complaint hereto together with the list of signatories as "**RA16**".
586. The petition is therefore not evidence of "*heated and various remarks and debates...occurring within the public sphere*" in 2007.

AD PARAGRAPH 247

587. SANRAL's denial that the letters written in reply by SANRAL to the written representations used *pro forma* responses that had been prepared by SANRAL is directly contradicted by the "*technical procedure report*" which is Addendum "E" in the HMKL record which states on page 12:

"Drafting response letters

SANRAL provided Afrosearch with a number of proforma responses to various issues and comments. Afrosearch used these as the basis for drafting issue specific responses to the various stakeholders."

588. I attach the relevant page of the technical procedure report hereto as "RA17".

AD PARAGRAPH 249

589. I dealt elsewhere in the founding affidavit with the respects in which SANRAL did not properly consider the representations of the public or public authorities.

590. In this regard I respectfully refer the Honourable Court to the section on review grounds arising from the HMKL record.

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591. The Applicants have, for the purpose of the relief sought in Part A of the notice of motion, not proceeded with the above complaint in respect of the public authorities.

AD PARAGRAPH 250

592. The time lapses are dealt with later in the founding affidavit in the section on condonation.

AD PARAGRAPH 255.1

593. It is clear that the deponent failed to read the content of the paragraphs under reply and most particularly paragraph 131 wherein I stated that "*I have only recently obtained [the media release dated 9 May 2008] from the SANRAL website*".

AD PARAGRAPH 255.2

594. For the reasons stated in the founding affidavit and in this affidavit:

594.1 I deny that the Applicants require condonation; alternatively

594.2 I deny that this is not pre-eminently a matter in which condonation should be granted in the interest of justice.

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AD PARAGRAPH 256

595. I deny that the public outcry in February 2011 was *'very well informed of the particular issues concerning the tolling system'*.
596. The Applicants themselves, and all their members or employees involved with the bringing of the present application, only learned of many of the facts underlying the grounds for review much later than February 2011 as I have stated above.
597. The Applicants, indeed, only learned of the facts underlying the review in relation to NEMA within two weeks of the launching of the application. The same applies to the grounds for review that arise from the HMKL record which were learnt one week before the launch of the application.
598. This is notwithstanding the fact that several of such persons, for instance, Marc Corcoran and myself, had attended meetings with SANRAL in relation to e-tolling for several months prior to February 2011 and throughout the rest of 2011.
599. The reason why the application was not launched within 180 days from 4 February 2011 is dealt with elsewhere in this affidavit and in the founding affidavit and I respectfully refer the Honourable Court thereto.



AD PARAGRAPHS 257.2 - 27.3

600. It is correct that the express mandate of the Steering Committee did not extend to reviewing the tolling process *per se*, but that this had implications for the date on which the Applicants should have launched the present application as suggested herein does not follow.
601. The view of the deponent in fact does not do justice to the situation within Gauteng at the time. Many, including SAVRALA, QUASA, SANCU and the numerous stakeholders who made representations at the Steering Committee hearings to the effect that tolling should be discontinued *per se*, reasonably believed that SANRAL and the Minister of Transport may reconsider and withdraw the implementation of tolling as a whole.
602. This belief was fuelled by the widespread and unparalleled nature of the opposition to tolling within society that even crossed political dividing lines.

AD PARAGRAPH 260

603. I respectfully refer the Honourable Court to what I have stated above in response to paragraphs 257.2 to 25.3 of the answering affidavit.
604. I deny that the Applicants have "*conveniently conflated*" the declaration of the roads as toll roads with the publication of the toll tariffs or that such has been done "*by sleight of hand*" as the Applicants are accused of by the deponent.



605. The declaration of tolling cannot be separated from the publication of the toll tariffs. The two are each part of a composite picture, the whole of which must be present before toll can be levied and collected from users of a road.
606. The present application is aimed at preventing the levying and collection of toll on the proposed toll road network and involves a reviewing and setting aside of all the parts of the composite picture.
607. As is stated earlier on herein, the toll tariffs were published and the date for the commencement of tolling was proclaimed on 13 April 2012.
608. 13 April 2012 is therefore a date which is highly relevant for both urgency and condonation which is to be decided in Part A (and Part B) of the present application.
609. In regard to the above, further legal argument will be addressed to the Honourable Court at the hearing of the application.
610. I am advised and I respectfully state that to the extent that is required, the Applicants legal representatives will, seek leave to amend the Applicants' Notice of Motion to include also a challenge to the notice published in terms of Section 27(3) on Friday 13 April 2012.

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AD PARAGRAPH 262

611. The Minister of Transport has significantly not denied that the Steering Committee should have been composed of representatives from the private sector as well.

AD PARAGRAPH 266

612. According to the best of my knowledge, the rate per kilometre endorsed by the Steering Committee was an amount of 40 cents per kilometre.

613. I attach as "RA18" a news report bearing detail of the Steering Committee's recommendations.

AD PARAGRAPH 267

614. Despite the announcement that Cabinet had approved "*the revised toll tariffs*" because of the revival of the public outcry and the further suspensions of the implementation of tolling that followed it, it would have been premature for SAVRALA or the other Applicants to institute the present proceedings then.

615. After all, tolling was further postponed indefinitely in January 2012 and the "*revised toll tariffs*" approved then by Cabinet were revisited and further reduced in February 2012.



AD PARAGRAPH 274

616. Once again, the assertions herein by the deponent for SANRAL do not do justice to the circumstances that obtained in January and February 2012 where public opposition and the heavy political pressure that was being brought to bear on the government by COSATU over the implementation of e-tolling was such that the public and interested stakeholders continued to preserve the belief that the plans for the implementation of e-tolling may well be discontinued.

617. Certainly, the public and interested stakeholders all watched and waited during this time for the definitive sign from government that notwithstanding all of the opposition, the implementation of e-tolling would nevertheless proceed.

618. That moment, reasonably speaking, came with the remarks concerning e-tolling made by the Minister of Finance in the budget speech on 22 February 2012.

619. While this was still not the legal manifestation of the final decision by government to proceed with e-tolling on the proposed toll road network (which would come finally on 13 April 2012) in the circumstances which obtained at the time this was certainly a definitive sign.

AD PARAGRAPH 276

620. This is a matter for legal argument.

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AD PARAGRAPHS 285 - 291

621. I note that SANRAL admits that no information was placed before the public concerning the amount that they would have to pay for tolling.
622. I deny that it could possibly have been the intention of the legislature that SANRAL was not obliged to include in their notice of intent to toll the very information that would enable the public to assess the extent to which tolling would impact them.
623. The remainder of the allegations herein constitute legal argument.

AD PARAGRAPH 292

624. The content hereof constitutes legal argument and will be dealt with at the hearing of the application.
625. In regard to what is stated at paragraph 292.5 of the answering affidavit, it appears again that the deponent has failed to properly consider the founding affidavit. The Applicants make some suggestions on what SANRAL easily could and should, at least, have done to properly inform Gauteng residents of the tolling system that would have a material impact upon them.



AD PARAGRAPHS 293-294

626. The content hereof likewise consists of legal argument that will be dealt with at the hearing of the application.

AD PARAGRAPH 294.5

627. The allegation contained herein is denied.

628. The alleged actions by SANRAL referred to herein, in any event, do not amount to compliance with SANRAL's obligation to publish proper notice of intent to toll in terms of section 27 of the Act.

AD PARAGRAPH 294.9

629. The feasibility study referred to herein is presumably that which was conducted by Toll Plan (Pty) Limited, to which I have referred in the founding affidavit and which is attached as Addendum "D" in the HMKL record.

630. This study did not deal with the reasonableness of the tolling system from the perspective that road users would be required to pay more for the administration of the toll system than the cost of the upgrades themselves.



631. The toll feasibility study concerned whether the recouping of finance by means of tolling would work given the volume of traffic on the proposed toll road network.
632. The Applicants will not, for the purposes of the application for the relief in Part A, mount a challenge on the toll feasibility report but reserve the right to do so for the purposes of the application for the relief in Part B.

AD PARAGRAPH 296

633. The Applicants' contentions for why the imposition of tolling as a funding model is "*illegal, unreasonable or unconstitutional*" are contained in the founding affidavit.
634. Notably, SANRAL fails to deal with the facts giving rise to these grounds which are alleged in the founding affidavit.
635. The entire content hereof essentially constitutes argument that I am advised is unnecessary for me to respond to and will be dealt with at the hearing of the application.

AD PARAGRAPHS 297-298

636. The point made in the founding affidavit, which is not addressed herein, is that the choice of tolling the proposed toll road network as a funding mechanism

necessarily implied that a very costly tolling system would have to be set up and that very large amounts of public money would have to be spent on the administration of such system alone.

637. This was clearly not given sufficient, or any, consideration by SANRAL and the Minister of Transport (who was not informed of this material fact) at the time the decision was made to toll the proposed toll road network.

AD PARAGRAPH 300

638. The "*extremely expensive*" nature of open road tolling is contained in the Steering Committee report itself and has been placed before the Honourable Court in the founding affidavit.
639. SANRAL has failed to properly address the Applicants' allegations in this regard and has continued to keep hidden the true (and by all accounts even greater) cost of administering the toll scheme from the Honourable Court.
640. I am advised and I respectfully submit that the only inference to be drawn is that the administration of open road tolling is even more expensive than what may be deduced from the tender figures set out in the GFIP Steering Committee report which have been set before the court in the founding affidavit.



AD PARAGRAPH 301

641. The inordinate cost of open road tolling is not properly disclosed or discussed in the 2006 Proposal, the Cabinet memorandum or the application to the Minister for approval to toll together with its various addenda (i.e. the HMKL record).

AD PARAGRAPHS 302-303

642. The "*estimated costs*" of open road tolling referred to herein were also not placed squarely before the Minister when SANRAL applied for his approval for the declaration to toll the proposed toll road network.

643. Instead, and misleadingly, the "*tolling costs*" that were put before the Minister included only the infrastructure cost of the open toll road system.

644. SANRAL is unable to gainsay the allegations in this regard in the founding affidavit.

645. It is therefore clear that the Minister of Transport gave approval on the basis of insufficient and misleading information.

646. The balance of the allegations contained herein constitutes argument which will be dealt with at the hearing of the application.

AD PARAGRAPH 304

647. I draw it to the attention of the Honourable Court that, in response to the positive allegation that the deponent, Alli, avoided answering the direct questions of the journalist, Angelique Serrao, of the Star concerning the true cost of collection. The deponent states "*I have no knowledge of the contents of these paragraphs and defer to the affidavit delivered by the second respondent*".
648. The same response is given by the deponent to the Applicants' invitation to "*take the Honourable Court and the public into its confidence and disclose its contract with ETC JV and the actual amount that it will cost to operate the open road tolling system over the next five years*".
649. I am advised and I respectfully submit that the Honourable Court can only draw an adverse inference from SANRAL's deliberate lack of transparency.

AD PARAGRAPH 305

650. The allegations by the deponent in the answering affidavit in the paragraph under reply are confusing and non-sensical.
651. The deponent implies that the tender amounts used by me in the founding affidavit to calculate the cost of tolling, similarly "*are those that are estimated based on public non-compliance in excess of 60%*".

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652. The Steering Committee report from which the figure is taken, the relevant excerpt of which is attached to the founding affidavit as FA51, does not state that the tender amount is based on such a high level of public non-compliance, or any level of public non-compliance at all.

653. Once again, SANRAL has failed to deal with the material allegations contained in the founding affidavit on the cost of tolling.

AD PARAGRAPHS 306.1 to 306.2

654. The content hereof constitutes argument.

AD PARAGRAPH 306.3

655. I deny that it is fair or reasonable to impose such a disproportionate cost on the users of the proposed toll road network in addition to the cost of the upgrade itself.

656. I deny also that the cost of collection is "*directionally proportional to the effect of the tolling system*" on the road users.

657. In this regard, I respectfully refer to what I have already stated earlier herein concerning acknowledgments by the Minister of Transport himself that the benefits of GFIP contemplated originally would "*unfortunately not be forthcoming*".

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AD PARAGRAPH 306.4

658. It is untrue that a ring-fenced fuel levy increase of 11 cents would have a "*dire effect on the economy*" and cause inflation.
659. The recent budget of February 2012 added an additional 28 cents per litre onto the fuel price, a general revenue raising exercise and also as a ring-fenced addition to the road accident fund levy. This measure provoked virtually no public opposition or resistance, and no comment made on the effect on inflation.
660. The ring-fence increase in the fuel levy supported by the Applicants is raised in this application as one available alternative method of funding that provides sure illustration that the option of e-tolling was so unreasonable that it was not open to SANRAL or the Minister of Transport to choose such method.

AD PARAGRAPH 306.6

661. Neither the answering affidavit of SANRAL nor that of the Second and Third Respondents provide any evidence that SANRAL and/or the Minister of Transport gave due consideration to other funding options available to them prior to electing and/or approving tolling as the funding mechanism to be used in the case of the proposed toll road network.

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AD PARAGRAPH 307

662. The content hereof constitutes empty argument in view of the fact that SANRAL has failed to take the Honourable Court into its confidence and disclose the true costs of open road tolling.

663. Save as aforesaid, the content hereof will be dealt with at the hearing of the application in legal argument.

AD PARAGRAPH 309

664. The denial by SANRAL of the Applicants' case regarding the practical impossibility of open road tolling on the proposed toll road network rests on the denial of the accuracy of the information contained in the article attached as "FA54".

665. However, if the article is disregarded and the figures stated by the deponent on oath and in the BUSA letter alone are used, the figures are in fact worse for SANRAL.

666. At paragraph 153 of SANRAL's answering affidavit, the deponent, on behalf of SANRAL, states that "*approximately one million vehicles...utilise the proposed toll road network each day*".

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667. Using the figure then of 7% non-compliance which is relied upon by the deponent for SANRAL in the BUSA letter, the number of individuals who would need to be summonsed would be 70 000 per day.
668. Further, even if it were correct that SANRAL will not send invoices to non-compliant persons by post prior to the issue of summons (which is denied), SANRAL will nevertheless be required to summons 70 000 users per day in order to recoup toll fees from such persons.
669. I pause to state that realistically, the international figure of 7% is probably far lower than the level of non-compliance that will be experienced in South Africa, especially given the lack of legitimacy of the tolling system in the eyes of the public.
670. At paragraph 309.6 of the answering affidavit, the deponent for SANRAL indicates that the same methods that are already used "*throughout the country in relation to road traffic users*" would be used.
671. I am advised and I respectfully state that the systems that are available and are used in relation to road traffic users arise from the AARTO Act, the Criminal Procedure Act and the Rules of the Magistrate's Court and consist of registered post or physical service of summons or warrant of arrest.



672. All of these methods are cumbersome and expensive when considered in the context of a toll road scheme that anticipates that 70 000 summonses per day (2.1 million summonses per month) will have to be sent out.
673. I repeat that as stated in the founding affidavit, it is clear that neither the deponent nor SANRAL have properly thought through the logistical impossibility of the implementation of the e-tolling system.
674. This is made abundantly clear by the fact that, notwithstanding the content of the paragraph under reply and the figures provided by the deponent for SANRAL himself, such deponent states on oath that "*there are therefore no anticipated logistical difficulties that will cause the system to become impractical*".
675. Finally, I deny that the figures given by the CEO of ETC JV and recorded in the article at "FA54" are unreliable. The Applicants are, however, content to make use of the figures provided by the deponent to the Honourable Court on oath in paragraph 153 and in his letter to Business Unity South Africa which is attached to the founding affidavit "FA33".

AD PARAGRAPH 310.3

676. I reiterate that one of the major difficulties that is experienced by vehicle renting and leasing companies is precisely the recovery of fines and tolls incurred by

the clients of such companies who commit offences or incur tolls whilst using the companies vehicles.

677. The deponent assumes that SAVRALA has attained significant success in addressing the administrative burden of the traffic fine management process.

678. In fact, the industry has advanced major concerns about the inefficiency and administrative effectiveness of AARTO in Tswane and Johannesburg which has resulted in significant administrative costs and consumption of human and financial resources.

679. In any event, to draw a comparison between e-tolling and administration of traffic fines is entirely inappropriate given the massive volumes of e-tolling transactions. SANRAL show themselves once again to have not thought through the logistics of e-tolling.

AD PARAGRAPH 310.4

680. SANRAL has conceded that cloned number plates will impact the implementation of e-tolling.

681. The introduction of e-tolling will make this problem worse since it is likely that persons will make use of cloned number plates in order to avoid e-tolling.

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682. While the use of an e-tag might reduce the risk of cloned number plates, it will not eliminate it.

AD PARAGRAPH 310.5

683. It is untrue that SANRAL has offered adequate systems integration to SAVRALA and its members.

684. The fact that the systems will not be fully integrated and will be susceptible to delays is precisely one of the reasons why SAVRALA's members will be materially prejudiced by the implementation of e-tolling.

AD PARAGRAPH 310.6

685. It is self-evident that road users who are charged for e-tolling as a result of cloned number plates or the use of their vehicles without their consent will be prejudiced notwithstanding that they may make representations to SANRAL.

686. SANRAL's position, as set out in its e-toll terms and conditions, is that the user will be liable unless such user can demonstrate otherwise.

687. Despite that such terms and conditions will be changed, it is a matter of practical reality that the users affected by cloned number plates or the use of their vehicles without their permission will have to motivate to SANRAL's satisfaction that they ought not to be charged.



688. Such individuals will be prejudiced by the waste of time and resources in making such representations to SANRAL alone.

689. In the case of large fleet owners, such as the members of SAVRALA, the waste of time and resources will be multiplied.

AD PARAGRAPH 310.7

690. SANRAL cannot make any assumption that SAVRALA members can draw any benefit from the discount. Feedback from customer surveys shows that they expect to receive the benefit of the discounts themselves.

AD PARAGRAPH 311.3.3

691. The primary complaint is not that that SANRAL used pro forma responses in responding to the public.

692. This provided evidence of SANRAL's failure to take into proper consideration the representations made by the public.

693. The primary complaint is that SANRAL simply ignored the objection by members of the public to tolling where there are no adequate public transport alternatives or viable secondary or metropolitan route alternatives.

AD PARAGRAPH 311.3.6

694. I admit that the quote herein is also taken from Annexure "FA59", but the quote is taken out of context.

695. Changing public attitudes will not by magic create public transport and viable alternative routes where none exist.

AD PARAGRAPH 311.3.7

696. The content hereof constitutes legal argument.

AD PARAGRAPH 316

697. I repeat what I stated herein above in respect of paragraph 12 of the Respondents' answering affidavit. There is no internal remedy available to the Applicants under NEMA and its associated regulations.

AD PARAGRAPH 320

698. I repeat what I stated herein above when I addressed the Applicants' prospects of success in the review of the environmental authorizations.

699. The Applicants contend that the proposed funding of the road upgrades through tolling is a material and relevant aspect that should have been



considered when granting authorizations for the activities listed in terms of section 24 of NEMA. The only way in which interested and affected parties could have meaningfully commented on the socio-economic and other environmental impacts hereof, is if they were advised in the relevant notices of the intention to toll. To the extent that the notices failed to advise interested and affected parties of SANRAL's intention to toll, the purpose of the notice and comment procedures under NEMA and the EIA Regulations was frustrated.

700. The failure to address the proposed funding of the listed activities through tolling was not limited to the notices alone, but also occurred in the Basic Assessment Reports ("BARs"). This omission not only prejudiced the Applicants and the public in general, but also resulted in the Fourth and/or Fifth Respondents not considering the relevant environmental impacts when granting the environmental authorizations.

701. As stated above, these adverse environmental impacts are not restricted to construction activities or adjoining property owners only.

AD PARAGRAPH 326

702. The Applicants deny that the basic assessment had to address only "... the construction of road infrastructure."

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703. It is common cause that the BARs did not address the environmental impacts relating to the proposed funding of the listed activities through tolling as they should have. It is also common cause that these impacts were not considered by the Fourth and/or Fifth Respondents when granting the environmental authorizations.

AD PARAGRAPH 329

704. I reiterate that the recoupment of costs through tolling should be "*... included within the confines of environmental authorisations required by NEMA*" and the Fourth and/or Fifth Respondents were required to consider this. To the extent that the deponent contends otherwise, the correctness thereof is denied.

AD PARAGRAPH 330

705. In response to paragraph 309 of the founding affidavit, where the Applicants quoted SANRAL's Project and Regional Manager to have stated in his answering affidavit in the HMKL case that "*... an environmental authorisation is not required for the declaration of the establishment of toll points because it has no impact on the environment*", SANRAL does not deny that this is indeed its contention, but merely avers that it will apply to have the paragraph struck because the quote came from an affidavit.

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706. It is significant that nowhere in its current answering affidavit in response to this paragraph, or elsewhere, does SANRAL contend that the impact of tolling on the environment was considered by any of the Respondents. The Applicants respectfully submit that it is therefore common cause that these environmental impacts were not considered by Fourth and/or Fifth Respondent, or by SANRAL itself.
707. The Appellants contend that the establishment of toll points have severe socio-economic and other environmental impacts on the environment and that these impacts should have been considered by the Respondents. SANRAL apparently believes otherwise. The Appellants respectfully submit that the source from which SANRAL's belief is established is both credible and legally competent and therefore the Appellants deny that SANRAL is entitled to strike the contents of paragraphs 309 and 310.
708. I point out that the Respondent's duties under NEMA was debated in the HMKL matter, as may be gleaned from paragraphs 29 and 30 of the judgment by His Lordship Mr Acting Justice Bam dated 7 February 2011. In paragraphs 30 and 31 of the judgment the Honourable Court made a preliminary finding that SANRAL was obliged to consider the impact of the toll gantry on the environment and that its failure to do so "*... is clearly a non-compliance with a material issue and requirement of natural justice which amounts to an irregularity.*"

AD PARAGRAPH 333

709. I am advised that the deponent's contention that the Development Facilitation Act 67 of 1995 ("DFA") does "... *not include the development of national roads, which is dealt with by the Act, or the obligation to pay toll*" is not correct. Section 2 of the DFA expressly provides that the general principles set out in section 3 apply to the actions of the State and shall serve to guide the administration of *inter alia* any transport plan administered by any competent authority in terms of any law. Legal argument will be addressed to the Honourable Court in this regard.

AD PARAGRAPH 335

710. The Applicants' reply on condonation is made at the outset in this affidavit and I respectfully refer the Honourable Court thereto.

AD PARAGRAPH 338

711. It is self-evident that Maphoroma and her fellow deponents were and are unable to bring an application for the reviewing and setting aside or otherwise the prevention of the planned e-tolling of the proposed toll road network.

712. I am advised and I respectfully submit that it is also self-evident that they are several examples of hundreds of thousands of commuters who themselves

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could not realistically legally challenge SANRAL as the Applicants have done in this application.

AD PARAGRAPH 340

713. The point made in the founding affidavit is that it was only subsequent to 4 February 2011 that members of the public fully appreciated the impact that the tolling of the proposed toll road network would have on them.

714. Those who will have seen the notice of intent to toll in 2008 would, by contrast, not have known the impact given that the notices did not provide any indication of how much the public would pay for the use of the proposed toll road network.

AD PARAGRAPH 350

715. I deny the allegation that the case for condonation by OUTA rests on "*contrary indications in the press*" alone.

716. I have already dealt in detail with the reasons for condonation earlier on in this affidavit and in the founding affidavit and I respectfully refer the Honourable Court thereto.

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AD PARAGRAPH 351

717. I note that SANRAL admits that the implementation of tolling in Gauteng is a matter of "*unprecedented public controversy and may be in the public interest*".
718. It is a matter of public record that the massive public controversy and heated debate around the tolling of the proposed toll road network only ensued after 4 February 2011 when the implications of tolling became known to the public for the first time.
719. The balance of the allegations contained herein have been dealt with elsewhere in this affidavit and/or will be addressed in legal argument at the hearing of the application.

AD PARAGRAPH 352

720. I have dealt with the allegations contained herein above and I respectfully refer the Honourable Court thereto.

AD PARAGRAPH 360.1

721. It was expected that the concerns raised by Van den Bergh and persisted with by those who succeeded her, including Marc Corcoran, would be resolved in the course of the technical meetings and negotiations between SAVRALA



members and other key account holders on the one hand and SANRAL on the other.

722. It is not correct, and the Applicants do not contend, that these concerns are necessarily a basis for legal action in themselves. They are, however, reasons why SAVRALA members will be materially prejudiced should e-tolling be proceeded with.
723. The basis for legal action includes the grounds for review set out in the founding affidavit.
724. The Applicants came to knowledge of the facts forming the basis of such grounds of review only later as I have stated at the outset.

AD PARAGRAPHS 360.3 - 360.6

725. The allegations contained herein have either been dealt with elsewhere in this affidavit or constitute argument which will be dealt with at the hearing of the application.

AD PARAGRAPH 364

726. The representations made by SAVRALA that are attached as "FA74" were made on 1 February 2012 and were the product of information learned by

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SAVRALA, and by Marc Corcoran in particular, during the course of the public engagement processes and research conducted late into 2011 and early 2012.

727. The submission is to be contrasted with the letter written to the Minister of Transport on 17 February 2011 which demonstrates the obvious lack of awareness by SAVRALA in February 2011 of the problems and flaws of the planned implementation of tolling on the proposed toll road network.
728. The delay of SAVRALA in taking legal steps is further explained in the founding affidavit and earlier in this affidavit and I respectfully refer the Honourable Court thereto.

AD PARAGRAPH 370

729. I deny that exemption processes will be of assistance to QASA members for the reasons I have stated in the founding affidavit and in this affidavit.
730. Exemption processes will also be of no assistance to the members of SAVRALA, the members of OUTA and the commuting public since it is clear that SANRAL has no intention of granting exemption to such persons.
731. The statements by the deponent for and on behalf of SANRAL in the answering affidavit, who shows no sympathy to individuals in the position of Maphoroma and others like her, but instead states that they simply "*fail to appreciate the*

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manifold benefits" that will accrue to them, provides firm indication of SANRAL's intention in this regard.

AD PARAGRAPHS 371.3 - 371.4

732. Whilst SANRAL states that if tolling is delayed it will "*forego approximately R225 million of revenue*" each month, the deponent does not allege that such funds cannot be recouped from elsewhere, or later, if and when tolling were to commence after an unsuccessful review.

733. The allegations of prejudice are, surprisingly, of a very general nature and are the same as were made by SANRAL in the HMKL application. On two occasions, the Court was informed on oath that should SANRAL be prevented from proceeding with the implementation of tolling by a specific date, the economic consequences to SANRAL would be "*severe*".

734. However, notwithstanding the allegations on oath,

734.1 on both occasions, tolling was postponed indefinitely or for several months apparently without any real explanation for such postponement being given by SANRAL;

734.2 the announcement of such postponements occurred days before the authorised deponent for SANRAL made the allegations on oath.

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735. In this regard, I refer again to what I have stated above in this regard and to the excerpts from the affidavits filed of record in the HMKL application attached as "RA1".

736. Further, as I have stated above, in addition to the postponements from April 2011 to June 2011, and again from June 2011 to November 2011 dealt with in the HMKL record, the commencement of tolling was postponed again:

736.1 from November 2011 to February 2012; and

736.2 from February 2012 until April 2012.

737. As I have made clear, SANRAL does not establish in the present application why the implementation of tolling cannot be postponed in the same manner it had readily been postponed previously.

738. The prejudice to the Applicants and the persons represented by the Applicants, and in particular the members of QASA and those who are most vulnerable economically, is serious and is of the kind that cannot be remedied in due course.

739. Finally, I have already dealt with the inherent lack of sincerity in SANRAL's offers that they would consider exempting road users generally or the Applicants in particular.

AD PARAGRAPHS 375-380

740. I refer the Honourable Court to what I have stated above concerning the challenge of SANCU on the basis of the CPA.

741. The balance of the allegations contained herein will be dealt with by the Applicants' legal representatives in legal argument.

AD PARAGRAPH 381

742. I have already dealt with the issue of urgency at the outset in this affidavit and I respectfully refer the Honourable Court thereto.

THE ANSWERING AFFIDAVIT OF THE SECOND AND THIRD RESPONDENTS

743. I now turn to deal with the answering affidavit of the Minister of Transport and the MEC, Department of Transport, Gauteng ("the Minister of Transport's affidavit").

744. In so doing, I shall only respond to allegations that have not already been answered hereinabove. As with SANRAL's affidavit, any allegation that I do not specifically deal with is denied by the Applicants.

AD PARAGRAPH 1.5



745. The Applicants respectfully draw it to the attention of the Honourable Court that, like SANRAL, the Minister of Transport wholly fails to deal with the detailed averments of the Applicants setting out the grounds of review in the founding affidavit.
746. There is, in particular, no attempt by the Minister of Transport to deal with the application for approval for tolling which served before him, the material (or lack thereof) that was before the Minister of Transport and the extent to which the Minister of Transport applied his mind when giving approval.
747. In the circumstances, I am advised and I respectfully submit that the Applicants have established a clear right to final relief on review and that the application for interim relief should accordingly be granted.

AD PARAGRAPHS 2.1 TO 2.5

748. I deny that the contentions listed herein are substantiated by what follows in the Minister of Transport's affidavit.

AD PARAGRAPHS 3 TO 5

749. It is plain from the DRT's response attached to the founding affidavit that the intention to toll the proposed toll road network was conceived long before July 2006. SANRAL states that the tolling of Gauteng's freeways was conceived of in 1998.

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750. I have already identified annexure "AA1" as the 2006 Proposal and I will continue to refer it as such herein.

751. It is clear from the 2006 Proposal that, in fact, no serious consideration was given to other means of funding and that such document was aimed at justifying the already-made decision to toll the proposed toll road network.

AD PARAGRAPHS 7.1 TO 7.4

752. I respectfully draw it to the attention of the Honourable Court that already in 2006 it was clear, so the Minister of Transport alleges, that the only feasible means of tolling the proposed toll road network was "*the introduction of gateless tolling*" or "*e-tolling*".

AD PARAGRAPHS 7.5 to 7.6

753. I deny that 2006 Proposal shows that proper consideration was given by to alternative means of funding the upgrade of Gauteng's freeways.

754. The 2006 Proposal is patently a document justifying tolling, as I have indicated above.

755. The exorbitant cost of e-tolling is neither mentioned nor considered. According to paragraph 7 itself, the other four modes of funding were only considered in "*overview of some of the available funding options*".



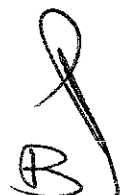
756. Then in the section ("paragraph 7.1 of the 2006 Proposal) dealing with "*fuel taxes*" the fact that alternative funding models were given a passing glance in overview is evident again from the last sentence of the paragraph which states that:

"The DOT has indicated that it will investigate this matter further with the intention of tabling it again at a later stage."

757. Notably, at page 11 of the 2006 Proposal (p 1782), it is acknowledged that problems relating to the inadequate funding of road infrastructure "*can be traced back to 1988 when the dedicated fuel levy was abolished. Budgets for road projects were reduced significantly immediately thereafter. Hardly any significant new road construction projects have been launched since then, whilst funding for maintenance has been lowered. South Africa has been spending considerably less than half of the international benchmark for road construction and maintenance over the past decade.*"

758. Finally, and somewhat surprisingly, it is recorded in the document that, according to the authors thereof, "*fuel levies do not guarantee a dedicated on-going revenue stream*".

759. I respectfully submit that nothing could be further from the truth.



760. It is self-evident that as long as there are roads, and as long as there are vehicles on the road, there will be the purchase and use of petrol and distillate fuel.

761. I also respectfully refer the Honourable Court to the statistics on the fuel levy that are included above as "RA10", "RA11" and "RA12".

762. As regards the consideration of other "*available funding options*", I am advised and I respectfully submit that the Honourable Court will note that similarly the treatment thereof is likewise decidedly superficial.

763. The last paragraph of the section on "*shadow tolling*" likewise makes clear that this funding option is considered only in passing but may nevertheless be a viable option:

"The current PPP framework in South Africa has not been tested in this regard, but more importantly extensive lobbying will need to be made at National Treasury to get commitment of public funds for repayment of the private investment over concession period typically 30 years."

764. Further, despite the hint that "*shadow tolling*" might still be considered as a funding option, the section that follows on "*tolling*" makes clear that the authors of the document had already invested in the proposed freeway improvement project as a toll road.

765. In this regard I respectfully draw it to the attention of the Honourable Court that in the last paragraph of the particular section it is stated as follows:

"It is thus proposed that improvements the (sic) Gauteng Freeway Network be financed as a State Toll Road. A preliminary financial analysis of the scheme showed that it could be viable to implement as a State Toll Road, which will provide excellent benefits to road users as an acceptable tariff."

(my emphasis)

AD PARAGRAPHS 9-10

766. I deny that either the 2006 report or the content of the Minister of Transport's affidavit provides any basis for the conclusion that the choice of e-tolling as a funding mechanism was made reasonably with due consideration of the costs of such method and with due consideration of alternative methods of funding.

AD PARAGRAPHS 11-15

767. The Minister of Transport fails to provide the Honourable Court with any insight into the "*application*" that was set before the previous Minister of Transport.

768. The general reference to the reports annexed to the application provide no assistance to the Honourable Court in determining the present application, and in no way controvert the Applicants' material allegations found in the grounds of review.

Handwritten signature and initials, possibly 'B' and 'P', located in the bottom right corner of the page.

AD PARAGRAPH 15

769. I deny that the previous Minister of Transport was in a position to, or did in fact, give proper consideration and evaluation to the declaring of the proposed toll road network as toll roads.

AD PARAGRAPH 22

770. It is clear from what I have set out in my founding affidavit that the Steering Committee were fettered in their discretion and had their minds closed to a review and reconsideration of tolling *per se*.

771. Save as aforesaid, I deny the allegations contained herein.

AD PARAGRAPH 23

772. The revised toll tariffs that were published on 13 April 2012 were not those recommended by the Steering Committee to Cabinet. The standard discounted rate of tariff recommended by the Steering Committee was 40 cents per kilometre.

773. The tariffs published on 13 April 2012 were further amended tariffs that were announced by the Minister of Finance in the budget speech of 22 February 2012. The standard discounted rate in the latter instance was 30 cents per kilometre.

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774. While the Minister of Finance announced that tolling would commence on 30 April 2012 in the budget speech, the public was given legally effective notice of the determination of the date of commencement only on 13 April 2012.

AD PARAGRAPH 26

775. The concerns of the public were not addressed by the Steering Committee and the Steering Committee closed off its mind to the reconsideration and review of the tolling or the proposed toll road network.

776. The Steering Committee report which was produced was self-evidently a document written for the purpose of justifying tolling.

777. The Steering Committee had no independent members as part of it and the Steering Committee report displayed no independence.

AD PARAGRAPHS 31-33

778. I have already set out the prejudice that will be suffered by the Applicants and the hundreds of thousands of Gauteng road users whom the Applicants represent in this application.

779. I have also made it clear that the prejudice that will be suffered will not only be financial prejudice, but prejudice to the legal and constitutional rights of the Applicants and the road users in Gauteng.

