

185.2.2 I am advised that the same objection would apply even if the tolls envisaged by sections 27(1)(a), 27(1)(b) and/or 27(3) of the SANRAL Act were to be regarded as fees or charges rather than as taxes. The matter will be fully addressed in argument.

186. For all of these reasons, the applicants seek (in the alternative to prayers 1, 2 and 4) an order declaring sections 27(1)(a), 27(1)(b) and/or 27(3) of the SANRAL Act to be inconsistent with the Constitution and invalid on the grounds that they:

186.1 were enacted in non-compliance with the requirements of section 77(2), section 77(3) and/or section 73(2) of the Constitution; alternatively

186.2 unlawfully purport to delegate to the Second Respondent and/or to the First Respondent the power to impose taxes, levies, duties, fees or charges.

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REVIEW OF THE ENVIRONMENTAL AUTHORISATIONS

187. I turn now to expand on the grounds upon which the Applicants contend the environmental authorisations granted to SANRAL by the Department of Environmental Affairs and Tourism (the "DEAT") are liable to be reviewed and set aside.
188. In so doing, I will principally rely on and refer to the Environmental Minister's record, which, as I stated herein before, is contained in three volumes and paginated from pages 951 to 3083.
189. To avoid prolixity I have been advised not to annex to this affidavit copies of the documents I refer to, but to indicate by reference to the page numbers where in the Environmental Minister's record the relevant documents may be found.
190. All references in this section of this affidavit to page numbers or to the record are therefore references to documents in the Environmental Minister's record, save where the contrary is specifically indicated or it appears from the context. I respectfully draw it to the attention of the Honourable Court that where I make references to pages in what seems to be reverse order, I do so because the documents have been filed in reverse order in the Environmental Minister's record.



191. In paragraph 287 of the founding affidavit I listed the seven authorisations the Applicants seek to have reviewed and set aside. Copies of six of these authorisations are attached to the Notice of Motion as annexures "B1" to "B6".
192. At the time of deposing to the founding affidavit the Applicants were not in possession of the environmental authorisation granted for the proposed upgrading of the Regional Route 21 between the N12 and Hans Strijdom Drive Interchanges. In response to the Applicants' request in paragraph 297 of its founding affidavit for the Respondents to provide the relevant authorisation, a copy thereof was delivered as part of the Environmental Minister's record. The authorisation may be found at pages 2497 to 2511 of the Environmental Minister's record. For convenience I attach a copy of this authorisation hereto as "SA19" but will also mark it as annexure "B7" to correspond with the other six authorisations.
193. The record apparently consists of copies of the contents of the seven relevant files of the DEAT. The files have not been incorporated in the record in any particular sequence, nor have the contents of each file been organized. To assist the Honourable Court to adjudicate the procedures that resulted in the decisions to approve each of the seven applications by SANRAL, I will deal with the authorisations in numerical (as opposed to chronological) order as follows:



- 193.1 Environmental Authorisation Reference 12/12/20/917 ("**Permit 917**"), a copy of which is attached hereto as "**SA19**" and also marked "**B7**". The contents of the file relating to this application by SANRAL appear in the Environmental Minister's record at pages 2491 to 2713.
- 193.2 Environmental Authorisation Reference 12/12/20/918 ("**Permit 918**"), a copy of which is attached to the Notice of Motion as annexure "**B1**". The contents of the file relating to this application by SANRAL appear in the Environmental Minister's record at pages 1291 to 1730.
- 193.3 Environmental Authorisation Reference 12/12/20/919 ("**Permit 919**"), a copy of which is attached to the Notice of Motion as annexure "**B2**". The contents of the file relating to this application by SANRAL appear in the Environmental Minister's record at pages 950 to 1290.
- 193.4 Environmental Authorisation Reference 12/12/20/920 ("**Permit 920**"), a copy of which is attached to the Notice of Motion as annexure "**B3**". The contents of the file relating to this application by SANRAL appear in the Environmental Minister's record at pages 2187 to 2490.
- 193.5 Environmental Authorisation Reference 12/12/20/922 ("**Permit 922**"), a copy of which is attached to the Notice of Motion as annexure "**B4**". The



contents of the file relating to this application by SANRAL appear in the Environmental Minister's record at pages 2008 to 2186.

193.6 Environmental Authorisation Reference 12/12/20/923 ("Permit 923"), a copy of which is attached to the Notice of Motion as annexure "B5". The contents of the file relating to this application by SANRAL appear in the Environmental Minister's record at pages 1731 to 2007.

193.7 Environmental Authorisation Reference 12/12/20/926 ("Permit 926"), a copy of which is attached to the Notice of Motion as annexure "B6". The contents of the file relating to this application by SANRAL appear in the Environmental Minister's record at pages 2714 to 3083.

194. Before I address the procedures followed by the DEAT in each of the SANRAL applications, I shall address two aspects that are common to all the decisions to grant the environmental authorisations:

194.1 The first aspect is that the Environmental Minister's record proves that the decisions to grant the environmental authorisations were not made by the Director-General of Environmental Affairs ("the Director-General"). As will be shown in the next section, the record clearly establishes that the environmental authorisations were issued by an



official in the DEAT, namely the Chief Director: Environmental Impact Management ("the Chief Director").

194.2 The second aspect is that the Chief Director was not authorised to grant the environmental authorisations.

The environmental authorisations were not granted by the Director-General

195. In paragraph 20.2 of the founding affidavit I indicated that the Director-General is the authority who apparently granted the environmental authorisations, alternatively granted the environmental authorisations on behalf of the Environmental Minister. In paragraph 298 of the founding affidavit I stated that it appears from the environmental authorisations that they were granted by the Director-General. I made these assertions in the absence of the record based on the fact that each of the environmental authorisations bears the name of Ms Pam Yako ("Ms Yako"), the Director-General of the DEAT.

196. However, scrutiny of the record makes it clear that the decisions to approve the applications by SANRAL for environmental approvals were not made by the Director-General.

197. In the following paragraphs I shall refer the Honourable Court to each of the environmental authorisations, as well as the DEAT's letters of confirmation of



the approvals to the EAP, to corroborate that the decisions were made by the Chief Director. I shall thereafter set out the grounds for the Applicants' submission that the Chief Director was not authorised to make such decisions.

198. Permit 917:

198.1 Pages 2491 to 2496 of the Environmental Minister's record contain a memorandum by the (Acting) Director: Environmental Impact Evaluation ("Director: EIE") to the Chief Director wherein an overview of the application for environmental authorisation by SANRAL is provided.

198.2 On page 2496 of the Environmental Minister's record the (Acting) Director: EIE recommended that authorisation be granted to SANRAL for the commencement of the proposed activities, subject to conditions as outlined in the draft record of decision. The recommendation was apparently signed by the (Acting) Director: EIE on 12 February 2008.

198.3 A week later, on 19 February 2008, the Chief Director approved SANRAL's application for environmental authorisation, as appears from page 2496 of the Environmental Minister's record.

198.4 On the same day the Chief Director signed the environmental authorisation, as may be seen on pages 2498 and 2508 of the




Environmental Minister's record. In the authorisation the Chief Director is identified as Lize McCourt ("Ms McCourt"). I point out that the signatures on pages 2496, 2498 and 2508 are similar and I submit that the documents were signed by Ms McCourt. Ms McCourt also apparently initialled and dated the pages of the environmental authorisation, as appears from pages 2497 to 2511 of the Environmental Minister's record.

199. Permit 918:

199.1 Pages 1333 to 1329 of the Environmental Minister's record is a memorandum by the Deputy Director: Environmental Impact Evaluation ("Deputy Director: EIE") to the (Acting) Chief Director wherein an overview of SANRAL's application for environmental authorisation is provided.

199.2 On page 1329 of the Environmental Minister's record the Deputy Director: EIE recommended that authorisation be granted for the commencement of the proposed activities, subject to conditions as outlined in the draft record of decision. The recommendation was apparently signed by the Deputy Director: EIE on 14 November 2007 and dated for the (Acting) Director: EIE on 16 November 2007.



199.3 On 23 November 2007 the Chief Director approved SANRAL's application for environmental authorisation, as appears from page 1329.

199.4 On the same day the Chief Director signed the environmental authorisation, as may be seen on pages 1327 and 1314 of the Environmental Minister's record. In the authorisation the Chief Director is identified as Sibusisiwe Hlela ("Mr Hlela"). I point out that the signatures on pages 1314, 1327 and 1329 of the Environmental Minister's record are similar and I submit that these documents were signed by Mr Hlela.

200. Permit 919:

200.1 Pages 989 to 986 of the Environmental Minister's record comprise a memorandum by the Deputy Director: EIE to the Chief Director wherein an overview of the application for environmental authorisation by SANRAL is provided.

200.2 On page 986 the Deputy Director: EIE recommended that authorisation be granted for the commencement of the proposed activities, subject to conditions as outlined in the draft record of decision. The recommendation was apparently signed by the Deputy Director: EIE on 14 November 2007 and by the Director: EIE on 15 November 2007.



200.3 On 23 November 2007 the Chief Director approved SANRAL's application for environmental authorisation, as evident from page 986.

200.4 On the same day the Chief Director signed the environmental authorisation, as may be seen from pages 984 and 971. In the authorisation the Chief Director is identified as Mr Hlela. I point out that the signatures on pages 971, 984 and 986 are similar and I submit that these documents were signed by Mr Hlela.

201. Permit 920:

201.1 Pages 2232 to 2229 of the Environmental Minister's record is a memorandum by the Deputy Director: EIE to the Chief Director wherein an overview of SANRAL's application for environmental authorisation is provided.

201.2 On page 2229 the Deputy Director: EIE recommended that authorisation be granted to SANRAL for the commencement of the proposed activities, subject to conditions as outlined in the draft record of decision. The recommendation was apparently signed by the Deputy Director: EIE on 14 November 2007 and by the Director: EIE on 15 November 2007.



201.3 On 23 November 2007, the Chief Director approved SANRAL's application for environmental authorisation, as evident from page 2229.

201.4 On the same day the Chief Director signed the environmental authorisation, as may be seen on pages 2227 and 2214. In the authorisation the (Acting) Chief Director is identified as Wynand Fourie ("Mr Fourie"), although he apparently did not sign the documents. I point out that the signatures on pages 2214, 2227 and 2229 of the Environmental Minister's record are similar and I submit that these documents were signed by Mr Hlela.

202. Permit 922:

202.1 Pages 2051 to 2046 consist of a memorandum by the (Acting) Director: EIE to the Chief Director wherein an overview of SANRAL's application for environmental authorisation is provided.

202.2 On page 2046 the (Acting) Director: EIE recommended that authorisation be granted to SANRAL for the commencement of the proposed activities, subject to conditions as outlined in the draft record of decision. The recommendation was apparently signed by the (Acting) Director: EIE on 12 February 2008.



202.3 On 19 February 2007 the Chief Director approved SANRAL's application for environmental authorisation, as evident from page 2046.

202.4 On the same day the Chief Director signed the environmental authorisation, as may be seen from pages 2059 and 2065 of the Environmental Minister's record. In the authorisation the Chief Director is identified as Ms McCourt. I point out that the signatures on pages 2046, 2059 and 2065 are similar and I submit that these documents were signed by Ms McCourt.

203. Permit 923:

203.1 Pages 1992 to 1987 of the Environmental Minister's record consist of a memorandum by the (Acting) Director: EIE to the Chief Director wherein an overview of SANRAL's application for environmental authorisation is provided.

203.2 On page 1987 the (Acting) Director: EIE recommended that authorisation be granted to SANRAL for the commencement of the proposed activities, subject to conditions as outlined in the draft record of decision. The recommendation was apparently signed by the (Acting) Director: EIE on 12 February 2008.

203.3 On 18 February 2007 the Chief Director approved SANRAL's application for environmental authorisation, as evident from page 1987.

203.4 On the same day the Chief Director signed the environmental authorisation, as may be seen from pages 1996 and 1980 of the Environmental Minister's record. In the authorisation the Chief Director is identified as Ms McCourt. I point out that the signatures on pages 1980, 1987 and 1996 are similar and I submit that these documents were signed by Ms McCourt.

204. Permit 926:

204.1 Pages 2749 to 2745 of the Environmental Minister's record comprise a memorandum by the Assistant Director: Environmental Impact Evaluation ("Assistant Director: EIE") to the Chief Director wherein an overview of SANRAL's application for environmental authorisation is provided.

204.2 On page 2746 the Assistant Director: EIE recommended that authorisation be granted to SANRAL for the commencement of the proposed activities, subject to conditions as outlined in the draft record of decision. The recommendation was apparently signed by the

Assistant Director: EIE on 30 October 2007, by the Deputy Director: EIE on 2 November 2007 and by the Director: EIE on 5 November 2007.

204.3 On 7 November 2007 the Chief Director approved SANRAL's application for environmental authorisation, as evident from page 2745.

204.4 On the same day the Chief Director: Environmental Impact Management signed the environmental authorisation, as may be seen on pages 2756 and 2766 of the Environmental Minister's record. In the authorisation the Chief Director is identified as Mr Fourie. I point out that the signatures on pages 2745, 2756 and 2766 are similar and I submit that these documents were signed by Mr Fourie.

205. Although each of the environmental authorisations bears the name of the Director-General, I respectfully submit that it is clear from what I set out above that the Director-General did not consider SANRAL's applications for environmental approval, nor did Ms Yako approve them.

206. It seems from the record that the practice existed in the DEAT for all its correspondence with third parties to bear the name of the Director-General, although the letters were issued and signed by other lower ranking officials. The record is replete of such examples and I shall only point out a few documents to substantiate the Applicants' contention in this regard:



206.1 The DEAT's letters of acknowledgment of receipt of the notifications of the applications bear the name of the Director-General, but is stated to be signed by a different official. I refer the Honourable Court to pages 1298, 958, 2194, 2017, 1769 and 2720 of the Environmental Minister's record. I respectfully submit that it is highly improbable that the Director-General had any involvement in the drafting and issuing of the letters of acknowledgment of receipt, yet the letters bear the name of Ms Yako.

206.2 The DEAT's letters of acknowledgment of receipt of the BARs bear the name of the Director-General, but are stated to be signed by other lower ranking officials. I refer the Honourable Court to pages 1305, 962, 2205, 2018, 1770 and 2739 of the Environmental Minister's record. The record contains no evidence that the Director-General had any hand in the drafting and issuing of the correspondence, although the letters bear the name of Ms Yako.

206.3 The DEAT's letters of acknowledgment of receipt of the environmental management plans ("EMPs") bear the name of the Director-General, but are stated to be signed by a different official. I refer the Honourable Court to pages 1336, 992, 2235 and 2801 of the Environmental Minister's record in this regard. I respectfully submit that it is improbable that the Director-General had any knowledge of these letters, despite the name of Ms Yako appearing thereon.



207. In further support of the Applicants' submission that the Director-General did not make the decision to approve the environmental authorisations, I respectfully refer the Honourable Court to an internal document styled as a "route form", which is included in certain of the DEAT's files. The form is apparently a checklist for the sequence of officials within the DEAT who dealt with SANRAL's applications.

208. On the route forms the officials are listed in a table in ascending order by rank. If one compares the acronyms on the route form at page 2750 of the Environmental Minister's record to the post descriptions on the DEAT memorandum at pages 2746 to 2745 of the Environmental Minister's record, the initials used in the route form are explained. The ascending order of the ranks of the DEAT officials listed in the route forms is:

208.1 Assistant Director: Environmental Impact Evaluation, abbreviated as "ASD" (or "AD" in certain of the forms);

208.2 Deputy Director: Environmental Impact Evaluation abbreviated as "DD: EIE";

208.3 Director: Environmental Impact Evaluation abbreviated as "D: EIE"; and



208.4 Chief Director: Environmental Impact Management abbreviated as "CD: EIM".

209. I am advised the other acronyms for the officials above the rank of Chief Director are listed in the route forms as follows:

209.1 Deputy Director General: Environmental Quality and Protection (DDG: EQ&P");

209.2 Director: Human Resources Management ("D: HRM");

209.3 Directorate: Land Settlement ("D: LS");

209.4 Chief Financial Officer ("CFO");

209.5 Office of the Director-General ("ODG"); and

209.6 Director-General ("DG").

210. I point out that the Minister of Environmental Affairs is the highest ranking official in the DEAT indicated on the route forms. The Director-General ("DG") is the third highest ranking official on the list, below the Minister and Deputy Ministers.



211. It appears from the route forms that each official would endorse the form once they had completed the tasks assigned to him or her, whereafter the application would progress to the next ranking official, who would repeat the exercise of signing off once his or her responsibilities in respect of the application had been discharged. In this way the progress of an application through the DEAT is monitored.

212. I respectfully submit that the last signature on a route form therefore indicates which official last dealt with an application and also at what level of authority the decision to approve (or refuse) the application was made. In each of the files in the record that contain a route form the highest ranking official who dealt with the application is the Chief Director, designated by the initials "CD: EIM" on the form. In this regard I refer the Honourable Court to the route forms in the following files of the DEAT:

212.1 Permit 918: The route form at page 1334 of the Environmental Minister's record was initialled by the (Acting) Chief Director, Mr Hlela, on 23 November 2007. This date corresponds with the date on which the environmental authorisation was granted, as is evident from page 1314.

212.2 Permit 919: The route form at page 990 of the Environmental Minister's record was dated for the Chief Director on 23 November 2007, but



apparently not initialled by the Chief Director. The date corresponds with the date on which Mr Hlela granted the environmental authorisation, as may be seen on page 971.

212.3 Permit 920: The route form at page 2233 of the Environmental Minister's record was initialled by the (Acting) Chief Director, Mr Hlela, on 23 November 2007. This date corresponds with the date on which the environmental authorisation was issued, as is evident from page 2214. I reiterate that although the name of Mr Fourie appears as the (Acting) Chief Director, the document was apparently signed by Mr Hlela.

212.4 Permit 922: This file contains two route forms, at pages 2045 and 2052 of the Environmental Minister's record, but they have not been initialled by Ms McCourt, who was the Chief Director at the time. I respectfully refer the Honourable Court to the table at the bottom of the route form on page 2045, where a number of manuscript remarks are made above the signature of Ms McCourt. The second line reads as follow: "*Made to acting CD. Not signed → please take more care!*" It seems that the failure for an official to initial the route form was not a unique event and not too much should be read into such omission.

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212.5 Permit 923: This file contains two route forms, at pages 1985 and 1986 of the Environmental Minister's record, but only the form on page 1985 was initialled by Ms McCourt on 18 February 2008. The date corresponds with the date on which the environmental authorisation was issued, as evident from page 1987.

212.6 Permit 926: The route form at page 2750 of the Environmental Minister's record was apparently initialled by Mr Fourie on 7 November 2007. The (Acting) Chief Director granted the environmental authorisation, as evident from page 2745.

213. I point out that, save for Permits 919 and 922, in every instance the date of signature of the route form by the Chief Director corresponds to the commensurate date of signature of the environmental authorisation. I respectfully submit that this shows that the last official who dealt with each of SANRAL's applications was the incumbent Chief Director. Although the Chief Director failed to initial the route forms in the files for Permits 919 and 922, it is evident from what is set out above that the incumbent Chief Director resolved to grant the environmental authorisations in those two applications.

214. It is further apparent from the route forms listed above that neither the Director-General nor the Minister of Environmental Affairs signed any of the forms. I respectfully submit that this proves that neither the Environmental Minister nor

A handwritten signature in black ink, appearing to be a stylized 'P' followed by a flourish.

the Director-General considered SANRAL's applications and resolved to approve the environmental authorisations.

215. There is further evidence in the Environmental Minister's record that the practice in the DEAT regarding the use of route forms is correctly described above. It appears that a similar type of route form is used by the DEAT in respect of other types of approvals, such as EMPs, as appears from pages 993 and 2803 of the Environmental Minister's record. It appears from these pages the Director: Environmental Impact Management (designated by the initials "D: EIM") signed off on the EMPs for Permit 919 and Permit 926 on 6 June 2008. This date corresponds with the date of the signature on the letters confirming such approvals at pages 994 and 999 for the EMP in respect of Permit 919 and pages 2804 and 2806 for the EMP in respect of Permit 926.
216. I respectfully submit that the preponderance of evidence supports the Applicants' submission that the mere fact that the Director-General's particulars appear on the environmental authorisations is no indication that Ms Yako considered SANRAL's applications or made the decision to approve them.
217. The overwhelming evidence from the Environmental Minister's record supports the conclusion that SANRAL's applications only advanced to the Chief Director and was dealt with at that level within the DEAT. None of the route forms bears any intervening signatures by the officials ranking between the Chief Director



and the Director-General and none of the route forms was signed by the Director-General.

218. The fact that the Director-General did not consider and approve the environmental authorisations is further supported by the fact that the covering letter in respect of each of the environmental authorisations state that "... the Department has decided to grant authorisation." [Own underlining.] In this regard I respectfully refer the Honourable Court to pages 2497 (Permit 917), 1328 (Permit 918), 985 (Permit 919), 2228 (Permit 920), 2060 (Permit 922), 1981 (Permit 923) and 2767 (Permit 926) of the Environmental Minister's record.
219. Each of the environmental authorisations also indicates that the "*Department*" decided to grant the environmental authorisation, which is in keeping with the Applicants' submission that SANRAL's applications were dealt with by various officials within the DEAT up to the level of Chief Director, as set out above. The first paragraph of each of the environmental authorisations, which may be found at pages 2501, 1324, 981, 2224, 2072, 2003 and 2763 of the Environmental Minister's record, reads as follows:

“

Decision

The Department is satisfied, on the basis of the information available to it and subject to compliance with the conditions of this environmental authorisation, that the applicant should be authorised to undertake the activity specified below.

Details regarding the basis on which the Department reached this decision are set out in Annexure 1." [Own underlining.]

220. In the premises I respectfully submit that the decisions to approve and grant each of the environmental authorisations were made by the incumbent Chief Director and not by the Director-General.

Decisions to grant environmental authorisations made without authority

221. The next question I shall address is whether the Chief Director was authorised to approve and grant each of the environmental authorisations that the Applicants seek to have reviewed and set aside.
222. As stated in paragraph 19.4 of the founding affidavit, the Minister of Environmental Affairs was the competent authority charged by section 24C(2) of the NEMA with evaluating the environmental impact of the listed or specified activities for which SANRAL requested the environmental authorisations.
223. Sub-section 42(1)(a) of the NEMA authorises the Minister of Environmental Affairs to delegate a power or duty vested in him in terms of the NEMA to the



Director-General. According to sub-section 42(2) such delegation must be in writing and may include the power to subdelegate.

224. In similar vein the Director-General may in terms of sub-section 42(3) of the NEMA delegate a power or duty vested in her by or under the NEMA to the holder of an office in the DEAT. Sub-section 42(5) requires such delegation by the Director-General to be in writing and does not prevent the exercise of the power or the performance of the duty by the Director-General herself.

225. In response to an enquiry by the Applicants' attorneys on 8 June 2012 the Office of the State Attorney, Pretoria addressed a letter to Messrs Cliffe Dekker Hofmeyr Attorneys on 12 June 2012, a copy of which is attached hereto marked "SA20". I respectfully refer the Honourable Court to paragraph 4 of the letter, which reads as follows:

"With respect to your request in paragraph 3.3 of your letter, we point out that we are of the view that we are not required to provide you with delegations as part of the record. However, in the interests of having this matter resolved, we attach a copy of the delegation in terms of which the Director-General for the Department of Environmental Affairs was authorised to grant the relevant environmental authorisations." [Own underlining.]

226. For convenience I have detached the delegation documents attachment to the State Attorney's letter and attached it hereto separately as "SA21" and "SA22".

227. Annexure "SA21" is an Instrument of Delegation of Powers issued by the Minister of Environmental Affairs to the Director-General.

227.1 In terms of sub-paragraph 4.1, read with sub-paragraph 4.1.4(c) of the delegation, the Minister of Environmental Affairs delegated to the Director-General "... *the powers and duties attached to my capacity as competent authority in those cases where the activity referred to in section 24C(2) of NEMA ...is undertaken, or is to be undertaken, by a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government;...*" This would include SANRAL's seven applications for environmental authorisation concerned.

227.2 In terms of sub-paragraph 4.2 of the delegation, the Minister further delegated to the Director-General his "... *power to deal with an application for environmental authorization with regard to any activity or class of activities referred to in section 24C(3)(b)*".

227.3 Sub-paragraph 4.3 of the delegation expressly states that the delegation includes the power to subdelegate.

227.4 The delegation was apparently signed and dated at Cape Town on 28 September 2006.



228. Annexure "SA22" is a delegation by the Director-General of various powers or duties delegated to her by the Minister of Environmental Affairs in terms of section 42(1)(a) of the NEMA to certain holders of office in DEAT.

228.1 In terms of paragraph 4.1, read with sub-paragraph 4.1.4(c) of the delegation, the Director-General delegated "... to the aforesaid holders of office the powers and duties delegated to me by the Minister in those case where the activity referred to in section 24C(2) of NEMA ... is undertaken, or is to be undertaken, by a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government; ..."

228.2 Paragraph 2 of the delegation by the Director-General lists the officials to whom the powers and duties were delegated and includes the Chief Director: Environmental Impact Management.

228.3 Crucially the delegation by the Director-General was apparently signed and dated at Pretoria on 27 July 2006.

228.4 I interpose to point out that Ms Yako's signature on the delegation is apparently different to any of the signatures on the environmental authorisations and correspondence by the DEAT referred to above.



229. The Applicants respectfully submit that by 27 July 2006 the Director-General had not yet acquired the authority to grant authorisation for activities in respect of which the Minister of Environmental Affairs was identified as the competent authority in terms of section 24C(2) of the NEMA. The Director-General only acquired this authority after it was delegated to her by the Minister of Environmental Affairs on 28 September 2006.
230. The effect of the premature delegation by the Director-General of powers and duties to the Chief Director: Environmental Impact Management is that no such authority was transferred to the latter official. Legal argument will be addressed to the Honourable Court in this regard at the hearing of the review applications.
231. The Applicants respectfully submit that the consequence of the Director-General's ineffectual delegation of the authority to grant environmental authorisations as contemplated in section 24C(2) of the NEMA is that the incumbent Chief Director who considered SANRAL's applications and decided to grant the environmental authorisations had no authority to have done so.
232. The Applicants have been advised that as a result of the ineffectual delegation the environmental authorisations are void. In the premises the environmental authorisations marked annexures "B1" to "B7" are without any force or effect.



The Environmental Minister's record substantiates the grounds of review in the founding affidavit

233. In paragraph 299 read with paragraph 287.7 of the founding affidavit I explained that the Applicants' legal representatives obtained a copy of a BAR for only one of the sections of the GFIP, namely the upgrade of Regional Route 21 between the N12 and Hans Strijdom Drive Interchanges. A copy of the BAR, without its annexures, is attached to the founding affidavit as annexure "FA62" at pages 590 to 635 of the pleadings.
234. A signed copy of this BAR is included in the Environmental Minister's record at pages 2512 to 2556. The annexures to the BAR that were not available on SANRAL's website and therefore not attached to the founding affidavit are included in the Environmental Minister's record from pages 2557 to 2713. For convenience I shall therefore refer in this affidavit to the BAR incorporated in the Environmental Minister's record and not to the version attached to the founding affidavit.
235. In paragraph 302 of the founding affidavit the Applicants postulated that "*on a balance of probability the contents of the other BARs that founded the environmental authorisations attached to the Notice of Motion are substantially similar to the contents of the BAR attached to this founding affidavit.*" Adhering to the Applicants' request in paragraph 297 of the founding affidavit, the

Environmental Minister included in the record the BARs on which the decisions to grant the environmental authorisations were based.

236. Scrutiny of the record confirms that the BARs submitted by Arup / Tswelopele Environmental ("Arup / Tswelopele") listed in paragraph 298.1 of the founding affidavit are substantially similar to the BAR attached to the founding affidavit as annexure "FA62". In the premises the grounds for review set out in the founding affidavit are substantiated by the contents of these six BARs as originally anticipated.
237. The BAR submitted by Knight Pièsold Consulting ("Knight Pièsold") in respect of Permit 926 is the only one of the seven BARs that incorporated specialist reports in respect of the socio-economic impacts that the proposed tolling might have on the environment. These reports were attached as Appendix F to the BAR at pages 2919 to 2884 of the Environmental Minister's record. I immediately point out that these socio-economic reports were only in draft and summary form. As a result of this difference between the applications submitted by Arup / Tswelopele and Knight Pièsold I shall address the applications submitted by each of these EAPs separately in the following paragraphs.

BARs submitted by Arup / Tswelopele



238. Firstly, the contents of the six BARs compiled by Arup / Tswelopele are substantially similar in each of the six applications dealt with by this EAP. In the following paragraphs I shall address each of the six applications and highlight the portions of the Environmental Minister's record that corroborate the conclusion that the issue of tolling and its commensurate socio-economic impacts were inadequately addressed therein.

239. Permit 917:

239.1 The BAR is included at pages 2512 to 2713 of the Environmental Minister's record.

239.2 Appendix D to the BAR at page 2573 contains no specialist reports. Appendix D in this report (and in the other five reports) is endorsed with a note that a specialist report is "*(n)ot applicable at this stage of the assessment.*"

239.3 In paragraph 4.3 of the draft Issues and Response Report attached as Appendix E to the BAR at page 2583 lists "*Tolling*" as an issue recorded in the Issues Report, but this is not further addressed in the BAR. I point out that page 7 of the BAR has been omitted from the record.

240. Permit 918:

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- 240.1 The BAR is included in reverse order in the record from pages 1729 to 1419 of the Environmental Minister's record.
- 240.2 Appendix D to the BAR at page 1645 contains no specialist reports.
- 240.3 In paragraph 4.3 of the Issues and Response Report attached as Appendix E to the BAR at page 1633 the issue of tolling is listed as an issue recorded in the report. In paragraph 4.1 at page 1634 of the report it is stated that "... *the possibility of tolling is regarded as negative.*"
- 240.4 On page 1564 of the section of the BAR dealing with comments and responses by interested and affected parties ("I&APs") a Mr David Martens enquired whether the road was going to be a toll road? [Manuscript in Afrikaans: "*Ja. Gaan pad tolpad wees?*"] The BAR addressed this question by the I&AP at page 1680 as follows:

"Tolling as a potential funding mechanism is being investigated, and if feasible, it is intended that the project will be implemented as a state toll project, which needs to be operated as a fully electronic tolling system (no physical toll plazas)

A toll road declaration process in terms of the SANRAL Act, which separate from the environmental authorization process will be concluded which includes a Public Participation process providing I&AP's the opportunity to raise issues and concerns pertaining to this process."



240.5 It is evident from the EAP's response that the issue of tolling was being investigated and it is inexplicable that the Chief Director did not insist on the outcome of these investigations before he granted the environmental authorisation.

241. Permit 919:

241.1 The BAR is included in scrambled format and in reverse order from pages 1287 to 1025 of the Environmental Minister's record.

241.2 Appendix D to the BAR at page 1209 contains no specialist reports.

241.3 In paragraph 4.3 of the Issues and Response Report attached as Appendix E to the BAR at page 1197 the issue of tolling is listed as an issue recorded in the report. In paragraph 4.1 at page 1198 of the report it is stated that "... *the possibility of tolling is regarded as negative.*"

241.4 Although tolling is listed as one of the issues addressed in the BAR, the EAP failed to expound thereon. I point out that in the summary of comments and responses compiled by the EAP at pages 1162 to 1160 the issue of tolling is not addressed.

242. Permit 920:



242.1 The BAR is included in scrambled format and in reverse order from pages 2462 to 2248 in the Environmental Minister's record.

242.2 Appendix D to the BAR at page 2404 contains no specialist reports.

242.3 In paragraph 4.3 of the Issues and Response Report attached as Appendix E to the BAR at page 2392 the issue of tolling is listed as an issue recorded in the report. In paragraph 4.1 at page 2393 of the report it is stated that "... *the possibility of tolling is regarded as negative.*"

242.4 Although tolling is listed as one of the issues addressed in the BAR, the EAP failed to expound thereon. I point out that in the summary of comments and responses compiled by the EAP at pages 2369 to 2368 the issue of tolling is not addressed.

243. Permit 922:

243.1 The BAR is included in scrambled format and in reverse order from pages 2184 to 2074 and pages 2044 to 2021 of the Environmental Minister's record.

243.2 Appendix D to the BAR at page 2140 contains no specialist reports.



243.3 In paragraph 4.3 of the Issues and Response Report attached as Appendix E to the BAR at page 2129 the issue of tolling is listed as an issue recorded in the report. In paragraph 4.1 at page 2130 of the report it is stated that "... *the possibility of tolling is regarded as negative.*"

243.4 Although tolling is listed as one of the issues addressed in the BAR, the EAP failed to expound thereon. I point out that in the summary of comments and responses compiled by the EAP at pages 2102 to 2098 the issue of tolling is not addressed.

244. Permit 923:

244.1 The BAR is included in scrambled format and in reverse order from pages 1975 to 1775 of the Environmental Minister's record.

244.2 Appendix D to the BAR at page 1916 contains no specialist reports.

244.3 In paragraph 4.3 of the Issues and Response Report attached as Appendix E to the BAR at pages 1905 to 1904 the issue of tolling is listed as an issue recorded in the report. In paragraph 4.1 at page 1905 of the report it is stated that "... *the possibility of tolling is regarded as negative.*"



244.4 On page 1899 of the summary of the comments and responses by I&APs prepared by the EAP a question by Mr S Everitt is summarised as follows, although the actual submission by Mr Everitt is not included in the record:

“This project has received a lot of press and it has been communicated that the Gauteng Road Network will be Tolled_(sic)? No mention is made in the BID about this section of National Freeway being tolled. Is this correct and do you wish us to raise issues about tolling and the Socio-Economic Impact of tolling?”

244.5 On page 1899 the EAP responded to the question by Mr Everitt as follows:

“Significant capital investment is required to provide an efficient primary network in Gauteng and inadequate funds are available from National treasury to fund the tens of billions of rands required to upgrade and complete the planned Gauteng Freeway Network. Current contributions to transport infrastructure development are insufficient considering governments social priority needs, commitments and responsibilities. Tolling as a potential funding mechanism is being investigated, and if feasible, it is intended that the project will be implemented as a state toll project, which needs to be operated as a fully electronic tolling system (no physical toll plazas). A toll road declaration process in terms of the SANRAL Act, which is separate from the environmental authorisations process will be conducted which includes a Public Participation process providing I&APs the opportunity to raise issues and concerns pertaining to this process.”



244.6 I point out that the question by Mr Everitt and the EAP's response thereto also appear in the BAR at page 1950 of the Environmental Minister's record. In the absence of the actual submission by Mr Everitt it is not possible for the Applicants, or the Chief Director for that matter, to assess whether Mr Everitt's enquiry has been properly summarised by the EAP.

244.7 However, what is clear is that even at that stage the EAP advised that "... *inadequate funds are available from National treasury to fund the tens of billions of rands required to upgrade and complete the planned Gauteng Freeway Network.*" The Chief Director could not have been under any misapprehension that Government had no funds to pay for the proposed road upgrades for the GFIP. This makes the decision to grant the environmental authorisations all the more perplexing.

244.8 The EAP advised the DEAT that "(t)olling as a potential funding mechanism is being investigated, and if feasible, it is intended that the project will be implemented as a state toll project, which needs to be operated as a fully electronic tolling system (no physical toll plazas)." It is inconceivable that the Chief Director did not request further information from the EAP to prove that tolling as a potential funding mechanism would be feasible before she granted the environmental authorisation.



244.9 A further disconcerting aspect of the EAP's response is that the EAP excluded the prospect of addressing the issue of tolling as part of the basic assessment process. In this regard the EAP referred the I&AP to comment in the process that would be conducted by the Minister of Transport by stating: "*A toll road declaration process in terms of the SANRAL Act, which is separate from the environmental authorisation process will be conducted which includes a Public Participation process providing I&APs the opportunity to raise issues and concerns pertaining to this process.*" As pointed out elsewhere in the Applicants' affidavits, the public participation process conducted by the Minister of Transport was entirely inadequate.

244.10 It is evident from the response that the issue of tolling was being investigated and it is inexplicable that the Chief Director did not insist on the outcome of these investigations before Ms McCourt granted the environmental authorisation.

BAR submitted by Knight Pièsold

245. The BAR submitted by Knight Pièsold, which appears at pages 3079 to 2814 of the Environmental Minister's record, is the only report that purported to address the social impacts of the proposed tolling of the relevant section of the GFIP.

Appendix F to the BAR incorporates two socio-economic reports:



245.1 The first report, which appears at pages 2915 to 2898, is described in the executive summary as an interim report that only gives some results to the macroeconomic analysis. The report expressly does not address the cost benefit analysis and second order costs and benefits, which the reports stated would be addressed in the final report.

245.2 Of particular significance is the advice by the author of the report that tolling is only the second best way of paying for the upgrading of the roads concerned. In this regard I respectfully refer the Honourable Court to the following paragraph of the executive summary at page 2915:

“The key issue is how to pay for the rehabilitation and upgrading. The political reality of extensive poverty and hardship in the country, as well as the need to address these issues, have resulted (and will probably continue to result) in budgetary allocations in favour of poverty alleviation, etc, and at the expense of other areas of expenditure – like road maintenance. In consequence, while tolling is a second best way of paying for roads, political realities suggest that it is the only likely option.”

245.3 In the introduction at page 2912 the author of the report further raised policy considerations that one would expect the competent authority to fully investigate before making any decision regarding the environmental authorisation:



“The key issue is how to pay for the rehabilitation and upgrading. The most cost-effective way to pay for this rehabilitation and upgrading is through a combination of fuel levies and special levies for heavy vehicles. The special levies are necessary because, while heavy vehicles do the most damage to the roads, these damages are not fully recovered in the fuel levy. The major constraint on the effective implementation of such a scheme is the financial policy on the part of government where fiscal integrity means that there should be no earmarking of funds. Hence all revenues raised, including the fuel levy, go into a common revenue fund and expenditures are made from this fund.

On the other hand the most equitable way to pay for the road network is through a system of user pays. Here the most cost effective would be a system of shadow tolling, followed by electronic toll collection (ETC) and finally a traditional toll plaza system.

The political reality of extensive poverty and hardship in the country, as well as the need to address these issues, has resulted (and will continue to result) in budgetary allocations in favour of poverty alleviation, etc, and at the expense of other areas of expenditure – like road maintenance. In consequence while tolling is a second best way of paying for roads, political realities suggest that it is the only likely option.” [Own underlining.]

245.4 The Applicants respectfully submit that the advice in the report raised material and substantial considerations that had to be considered by the competent authority. It is evident that the decision by the Chief Director to grant the environmental authorisation based on an interim report and where the policy considerations referred to in the report have not been

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fully investigated, is irrational. Legal argument will be addressed to the Honourable Court in this regard at the hearing of the application.

The second economic report is included in the record at pages 2897 to 2884 of the Environmental Minister's record and is the report prepared by SANRAL during May 2007, which is titled "Gauteng Freeway Improvement and^(sic) Expansion Scheme: Feasibility, Social and Economic Impact: Summary Report". This report is included in the SANRAL record from page 1706. The Applicants address the contents of this report elsewhere in their affidavits and it is not necessary to repeat those submissions herein. Suffice to state that the Applicants submit that the summary report is inadequate to support the decision by the Chief Director to grant the environmental authorisation.

246. The Applicants reiterate the grounds of review set out in the founding affidavit as supplemented by the evidence from the Environmental Minister's record. In the premises the Applicants respectfully request the Honourable Court to grant the relief set out in the revised notice of motion attached hereto.

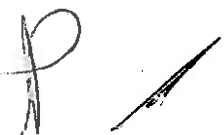


FURTHER REASONS FOR THE GRANTING OF CONDONATION

247. Detailed averments are already contained in the pleadings in support of the Applicants' request that the Honourable Court grant condonation in terms of section 9 of PAJA.
248. The Applicants submit that in addition to the reasons already advanced or appearing from the pleadings and what I have stated hereinabove, condonation should be granted in the interests of justice for the further reasons I set out below.

The consequences will otherwise be suffered by the public indefinitely

249. I am advised and I respectfully submit that one factor weighing heavily in favour of the granting of condonation is the ongoing material adverse effect that the perpetuation of the unlawful e-tolling scheme will have on the public.
250. SANRAL and the other Respondents' contraventions of the law and the constitution are neither limited in time nor in effect to the period 2007/2008.
251. The refusal of condonation in circumstances where the Honourable Court finds that the toll declarations, the Transport Minister's approvals and/or the environmental authorisations are liable to be set aside on the grounds



advanced by the Applicants, will enable SANRAL to force hundreds of thousands of road users to pay toll every day in terms of an unlawful and unconstitutional e-tolling scheme for a period of at least twenty years.

252. It is likely that the period will extend well beyond twenty years in that there will be no reason for SANRAL to stop the levying and collection of toll on the proposed toll road network indefinitely into the future for the purpose of raising revenue for the maintenance and future upgrades of this road on the strength of the same toll declarations.
253. I am advised and I respectfully submit that this Honourable Court ought not to countenance the public having to ensure the ongoing adverse effects of an unlawful and unconstitutional tolling scheme.

Gauteng's freeways would have been upgraded and expanded in any event

254. I am advised and I respectfully submit that a second factor weighing in favour of condonation being granted is that, as the record makes clear, Gauteng's freeways would have been upgraded in any event. SANRAL cannot be heard to complain of the Applicants' delay when the delay had no impact whatsoever on its decision to embark on the upgrading and expansion of the roads. The upgrading and expansion of the roads would have been carried out in any event, regardless of whether the decisions in this case were reviewed or not

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and regardless of whether e-tolling was the chosen method of funding. No reliance could have been placed, therefore, on the failure of the Applicants to challenge the decisions before they did, despite what is said in the Answering Affidavit in respect of Part A.

The state of the freeways and congestion in Gauteng was detrimental not only to commuters and the South Africa's economy

255. In the January 2008 application, SANRAL summarises the critical need for the upgrading and expansion of Gauteng's freeways for the Minister of Transport:

"Gauteng, the economic heartland of South Africa, has been classified as the fourth largest economy in Africa after the national economies of South Africa, Egypt and Algeria. The Gauteng economy is also amongst the top 40 country economies in the world. It generates nearly 38% of the total value of South Africa's Gross Domestic Product (GDP). As a result, development of residential, commercial and industrial properties has grown significantly over the past 10 years, resulting in above average sustained traffic growth. Unfortunately, road infrastructure provision has not kept up with the increased traffic demand, resulting in the current primary road network, including the freeway network, being beyond capacity during peak periods.



Transportation and its effectiveness have a major impact on the social and economic wellbeing of people, especially in the metropolitan areas in South Africa. Due to increasing demand on the transportation network, travel times between home and the work place in the Gauteng metropolitan area extends up to 3 hours per direction of travel, resulting in less time spent with family, and wasted productive person hours.

....

It is ... critical that the transportation network allows for the effective morning of goods and services, due to its impact on economic activities.

...

At a conservative value of time of R 45 per hour, the cost of wasted time is R 1.69 billion per annum.” (SANRAL record pages 3414.2 to 3414.3)

256. On page 3414.10 of the SANRAL record, SANRAL highlights for the Minister of Transport the findings of the Social Impact Assessment, Addendum B to the January 2008 application, that make clear that the congestion within Gauteng had to be addressed. The conclusion reached in the same Social Impact Assessment about the situation in Gauteng was as follows:

“[T]he current state of the system has an overall negative impact with regard to the time spent by commuters travelling to and from work and



perusing their daily business. The safety and health of these commuters is at risk and the economic implications for both commuters caught in traffic on a daily basis and the country as a whole are unacceptable. It is clear that the current situation is untenable and needs drastic attention. Left to continue the way it is the situation will deteriorate to a point that the South African economy will eventually be choked."

257. There are further many references earlier in the record to the pressing need to address the situation in Gauteng. Examples of significant documents from the record in which SANRAL spells out this need are:

257.1 the July 2005 Gauteng Freeway Improvement and Financing Proposal at pages 423 to 424 of the SANRAL record;

257.2 the Briefing Notes attached to SANRAL's letter to the Minister of Transport of 3 August 2005 at pages 429 to 430 of the SANRAL record;

257.3 SANRAL's presentation to the Minister of Transport on 4 August 2005 at pages 433 to 440 of the SANRAL record;

257.4 The 2006 Proposal at pages 635 to 637 of the SANRAL record;



257.5 Mr Alli's memorandum to the SANRAL board of 24 May 2007 at page 1403 of the SANRAL record presentation.

Gauteng's freeways would have been upgraded and expanded in any event: The 2010 World Cup imperative

258. In addition, I respectfully state that the portions of the record I referred to earlier herein in relation to the 2010 World Cup also make clear that Gauteng's freeways would have inevitably been upgraded in any event in order to keep South Africa's promises of infrastructural upgrades as well as ensure the successful hosting of the 2010 World Cup.

259. The language of the January 2008 application is decidedly forceful in this regard, and merits repeating:

"Taking the imperatives of providing the expected improvements to the road infrastructure into account, the construction works have to be completed timeously for the 2010 World Cup." (emphasis added)

260. It is clear from the same portions of the record referred to that:

260.1 the upgrade of airports and roads was promised by South Africa as part of the FIFA World Cup bid;



260.2 portions of Gauteng's freeways were targeted by SANRAL to be upgraded in time for the 2010 World Cup;

260.3 all of these portions were upgraded as part of the first phase of GFIP and form part of the sections of Gauteng's freeways that SANRAL intends to toll pursuant to the impugned toll declarations.

261. I am advised and I respectfully submit that whether for broader social and economic reasons or in order to ensure South Africa met its 2010 World Cup obligations, SANRAL and the South African Government in fact had no choice in 2007 to 2010 but to upgrade the sections of Gauteng's freeways forming the proposed toll road network and would have done so in any event had tolling not been approved.

The upgrades will be paid for in any event

262. Another factor that weighs in favour of the granting of condonation is the fact that the upgrades and expansion of the proposed toll road network will be paid for in any event.

263. Should SANRAL be precluded from tolling because the toll declarations and/or environmental authorisations are set aside, the upgrades will be paid for by the



use of one or the other or a combination of the funding sources provided to SANRAL in the SANRAL Act.

264. As is spelt out by Treasury in the leave to appeal, the cost of GFIP will be born by the public whatever the mechanism utilized.

265. In addition, the Government have made clear that SANRAL will not be allowed to run aground or default on its obligations. In this regard I respectfully refer the Honourable Court to the Cabinet statement dated 17 May 2012 attached as "SA23" in which Cabinet formally records Government's intentions to meet SANRAL's GFIP obligations.

The situation demands the upholding the rule of law

266. I am advised and I respectfully submit that another factor weighing heavily in favour of the granting of condonation is the public interest in the upholding of the rule of law.

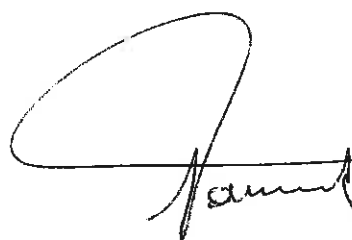
267. The e-toll saga has been the subject matter of repeated public outcry and has resulted in widely felt anger by the public towards SANRAL and the Government.

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268. The matter remains a matter of high public interest and its outcome will materially impact approximately a million commuters and other Gauteng roads users, who will be obliged to pay e-toll, every day.
269. I am advised and I respectfully submit that the matter is one that calls for the upholding of justice and the rule of law in favour of considerations of certainty that underlie the statutory time limit of 180 days.

PRAYER

270. For the reasons set out above and in my founding affidavit, the Applicants persist in seeking the relief set out in the notice of motion.



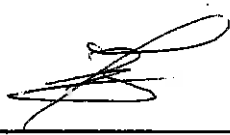
LEOPOLD JEAN JOSEPH PAUWEN

I hereby certify that the deponent has acknowledged that he:



- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on his conscience.

THUS signed and sworn to before me, at *Sandton* on *16 July* 2012,
 the Regulations contained in Government Notice No. R1258 of 21 July 1972 (as
 amended), having been fully complied with.



COMMISSIONER OF OATHS

PATRICIA FREDA BLAUW
 Commissioner of Oaths
 Residence: 1077/10 Randburg 05/07/2010
 22 Friedman Drive
 Sandton



IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

Case No:17141/2012

In the matter between:

OPPOSITION TO URBAN TOLLING ALLIANCE First Applicant

SOUTH AFRICAN VEHICLE RENTING AND LEASING ASSOCIATION Second Applicant

QUADPARA ASSOCIATION OF SOUTH AFRICA Third Applicant

SOUTH AFRICAN NATIONAL CONSUMER UNION Fourth Applicant

and

THE SOUTH AFRICAN NATIONAL ROADS AGENCY LTD First Respondent

**THE MINISTER, DEPARTMENT OF TRANSPORT
REPUBLIC OF SOUTH AFRICA** Second Respondent

**THE MEC, DEPARTMENT OF ROADS
AND TRANSPORT, GAUTENG** Third Respondent

**THE MINISTER, DEPARTMENT OF WATER
AND ENVIRONMENTAL AFFAIRS** Fourth Respondent

**THE DIRECTOR-GENERAL, DEPARTMENT OF
WATER AND ENVIRONMENTAL AFFAIRS** Fifth Respondent

NATIONAL CONSUMER COMMISSION Sixth Respondent

NATIONAL TREASURY Seventh Respondent

NOTICE OF MOTION



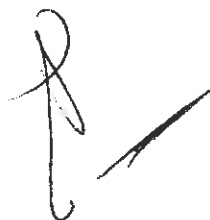
PART A

KINDLY TAKE NOTICE THAT the above-named Applicants intend to make application to the above Honourable Court, subject to the practice directives and any directions of the Deputy-Judge President of the Honourable Court, on Tuesday 24 April 2012 at 10h00 or as soon thereafter as counsel may be heard for an order in the following terms:

1. that the Applicants' non-compliance with the usual forms, time-periods and rules of service be condoned and that the application in Part A be dealt with as a matter of urgency in terms of Rule 6(12);
2. that pending the final determination of the application for the relief sought in Part B hereof, the First Respondent be interdicted and restrained from levying and collecting toll on the following roads:
 - 2.1 National Road N1: Section 20: from Armadale to Midrand;
 - 2.2 National Road N1: Section 21: from Midrand to the Proefplaas Interchange;
 - 2.3 National Road N3: Section 12: from Old Barn Interchange to the Buccleuch Interchange;
 - 2.4 National Road N4: Section 1: from Koedoespoort to Hans Strydom Drive;



- 2.5 National Road N12: Section 18: from Diepkloof Interchange to Elands Interchange;
- 2.6 National Road N12: Section 19: from Gillooly's Interchange to the Gauteng/Mpumalanga Provincial Border; and
- 2.7 National Road R21 (also known as the P157-1 and P157/2): Sections 1 and 2: from Hans Strydom Drive to Rietfontein Interchange (N12): Province of Gauteng;
3. that pending the final resolution of the complaint filed by the Fourth Applicant with the Sixth Respondent in terms of section 71 of the Consumer Protection Act 68 of 2008 in respect of the First Respondent's "*e-Toll Terms and Conditions*" dated 28 February 2012, or the elapse of the time period referred to in section 114(1) of that Act, the First Respondent be interdicted and restrained from levying and collecting toll on the roads referred to in paragraphs 2.1. to 2.7. above on the terms and conditions set out in the First Respondent's "*e-Toll Terms and Conditions*";
4. that the First Respondent and whomsoever of the additional respondents oppose the relief in Part A, be directed to pay the Applicants' costs including the costs of two counsel; *alternatively* directing that the costs of the application for the relief sought in Part A be reserved for determination in the application for the relief sought in Part B hereof;

A handwritten signature in black ink, consisting of a stylized, cursive letter 'R' followed by a horizontal line extending to the right.

5. that the Honourable Court grant to the Applicants such further and/or alternative relief as the Honourable Court may deem meet.

TAKE NOTICE FURTHER THAT if you intend opposing the application for the relief set out in Part A hereof, you are required:

- (a) to notify the Applicant's attorney in writing at the address set out below of such intention to oppose by no later than Wednesday 28 March 2012 and in such notice to provide the aforesaid attorney with an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings; and
- (b) to deliver your answering affidavit, if any, by Monday 9 April 2012, the Applicants to deliver their replying affidavit, if any, by Wednesday 18 April 2012.

TAKE NOTICE FURTHER THAT the Applicants have appointed the address of their attorneys Cliffe Dekker Hofmeyr Inc, 1 Protea Place, Sandown, Sandton, Ref. PJ Conradie, c/o Jasper van der Westhuizen & Bodenstein Inc., 887 Church Street, Arcadia, Pretoria, Ref. Y Coetzee as the address at which the Applicants will accept notice and service of all process in these proceedings (Part A).

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TAKE NOTICE FURTHER THAT the accompanying affidavit of **LEOPOLD JEAN JOSEPH PAUWEN** together with annexures thereto, will be used in support of the application.

Kindly set the matter in Part A down for hearing accordingly.

PART B

TAKE NOTICE FURTHER THAT the Applicants intend to make application to the above Honourable Court in terms of Uniform Rule of Court 53 on a date to be determined by the Registrar for an order:

1. that the decisions of the First Respondent to make the following declarations in terms of section 27(1)(a)(i) of the South African National Roads Agency Limited and National Roads Act 7 of 1998 be reviewed and corrected or set aside:
 - 1.1 the declaration of National Road N1, Section 20: from Armadale to Midrand as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 349 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 349 is attached hereto as annexure "A1";



- 1.2 the declaration of National Road N1, Section 21, from Midrand to the Proefplaas Interchange as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 350 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 350 is attached hereto as annexure "A2";
- 1.3 the declaration of National Road N3: Section 12: from Old Barn Interchange to the Buccleuch Interchange as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 351 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 351 is attached hereto as annexure "A3";
- 1.4 the declaration of National Road N4: Section 1: from Koedoespoort to Hans Strydom Drive as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 352 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 352 is attached hereto as annexure "A4";
- 1.5 the declaration of National Road N12: Section 18: from Diepkloof Interchange to Elands Interchange as a continuous toll road and the



establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 353 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 353 is attached hereto as annexure "A5";

1.6 the declaration of National Road N12: Section 19: from Gillooly's Interchange to the Gauteng/Mpumalanga Provincial Border as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 354 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 354 is attached hereto as annexure "A6"; and

1.7 the declaration of National Road R21 (also known as the P157-1 and P157/2) - Sections 1 and 2: from Hans Strydom Drive to Rietfontein Interchange (N12): Province of Gauteng, as a toll road and the establishment of electronic toll points, dated 28 July 2008 and published as Government Notice No. 800 in Government Gazette No. 31273 dated 28 July 2008. A copy of Government Notice No. 355 is attached hereto as annexure "A7";

2. that the decisions of the Second Respondent in terms of section 27(1)(a) read with section 27(4) of the South African National Agency Limited and National Roads



Act 7 of 1998 to grant approval to the First Respondent to make the declarations listed in paragraphs 1.1. to 1.7. above, be reviewed and corrected or set aside;

3. that the decisions of the Fourth and/or Fifth Respondents to grant the following environmental authorisations in terms of section 24 of the National Environmental Management Act 107 of 1998 be declared void and of no force and effect *alternatively* be reviewed and corrected or set aside:

3.1 Environmental Authorisation Reference 12/12/20/918 for the proposed upgrading of National Route 1 Section 20 and 21 between Buccleuch and Brakfontein Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to Government Notice No. R 386 published in Government Gazette No 28753 dated 21 April 2006 ("GN R386"). A copy of Environmental Authorisation Reference 12/12/20/918 dated 23 November 2007 is attached to the Notice of Motion as annexure "B1";

3.2 Environmental Authorisation Reference 12/12/20/919 for the proposed upgrading of National Route 1 Section 20 between Buccleuch and Fourteenth Avenue Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/919 dated 23 November 2007 is attached to the Notice of Motion as annexure "B2";



- 3.3 Environmental Authorisation Reference 12/12/20/920 for the proposed upgrading of National Route 1 Section 20 between the Misgund and Fourteenth Avenue Interchanges to commence and continue with activities 1(m), 4, 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/920 dated 23 November 2007 is attached to the Notice of Motion as annexure "B3";
- 3.4 Environmental Authorisation Reference 12/12/20/922 for the proposed upgrading of National Route 3 Section 12 between Dwars in die Weg and Geldenhuys Interchanges to commence and continue with activities 1(m), 4, 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/922 dated 19 February 2008 is attached to the Notice of Motion as annexure "B4";
- 3.5 Environmental Authorisation Reference 12/12/20/923 for the proposed upgrading of National Route 12 Section 18 between Uncle Charlies and Elands Interchanges to commence and continue with activities 1(m), 4, 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/923 dated 18 February 2008 is attached to the Notice of Motion as annexure "B5";
- 3.6 Environmental Authorisation Reference 12/12/20/926 for the proposed upgrading of National Route 1 between Brakfontein and the Waterkloof



Interchanges to commence and continue with activities 1(m), 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/926 dated 7 November 2007 is attached to the Notice of Motion as annexure "B6";

- 3.7 Environmental Authorisation for the proposed upgrading of the Regional Route 21 between the N12 and Hans Strijdom Drive Interchanges to commence and continue with the activities set out in paragraph 1 of section B of the undated basic assessment report compiled by Arup / Tswelopele Environmental, a copy of which report is attached to the Founding Affidavit as annexure "FA62";
4. declaring that the levying and collecting of toll pursuant to the declarations referred to in paragraphs 1.1 to 1.7 above would constitute an unjustifiable limitation of the right to property as envisaged in section 25(1) of the Constitution and would be invalid;
5. *in the alternative to paragraphs 1, 2 and 4 above:* declaring sections 27(1)(a), 27(1)(b) and/or 27(3) of the South African National Agency Limited and National Roads Act 7 of 1998 to be inconsistent with the Constitution and invalid;
6. that in consequence of paragraphs 1 to 5 above, the First Respondent be interdicted and restrained from levying and collecting toll on the sections of road specified in the declarations referred to in paragraphs 1.1. to 1.7. hereof pursuant



to such declarations and any tariffs that may be published in terms of section 27(3) of the South African National Agency Limited and National Roads Act 7 of 1998;

7. That in consequence of the alternative relief sought and obtained in terms of paragraph 3:

7.1 the First Respondent be ordered to refer its applications for environmental authorisation back to the Fourth Respondent with a direction that the First Respondent must comply with the relevant Environmental Impact Assessment Regulations, which the Fourth Respondent must duly consider before making his decision regarding the First Respondent's applications and imposing such conditions as may be appropriate;

7.2 without derogating from the generality of the previous paragraph, the First and Fourth Respondents must ensure that the environmental assessment practitioner as defined in section 1 of NEMA complies with the requirements in respect of the content of basic assessment reports and in particular:

7.2.1 a description of the environment that may be affected by the proposed activities and the manner in which the geographical,



physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activities; and

7.2.2 details of the public participation process conducted in terms of the relevant regulations in connection with the applications.

8. in terms of section 9(1) of the Promotion of Administrative Justice Act 3 of 2000, extending the 180-day period referred to in section 7(1) of PAJA until the date on which this application was launched in respect of the relief claimed in paragraphs 1 to 3 above;
9. that the First Respondent be ordered to pay the costs of the application, *alternatively*, in the event of any other Respondents opposing the application, that those Respondents be ordered to pay the costs of the application together with the First Respondent jointly and severally, the one paying and the other to be absolved;
10. that the Honourable Court grant to the Applicants such further and/or alternative relief as the Honourable Court may deem meet.

TAKE NOTICE FURTHER that the First, Second, Fourth and/or Fifth Respondents are called upon, in terms of Uniform Rule of Court 53(1)(a), to show cause why the decisions referred to in paragraphs 1 to 3 above should not be reviewed and set aside.



TAKE NOTICE FURTHER THAT the First, Second and Fourth and/or Fifth Respondents are called to despatch, within 15 days of the receipt of the Notice of Motion, to the Registrar of the High Court, Pretoria, a record of the proceedings sought to be reviewed and set aside in terms of paragraphs 1 to 3 above (including all correspondence, reports, memoranda, documents, evidence, transcripts of recorded proceedings and other information serving before them when the decisions were made), together with such reasons as the First, Second and Fourth Respondents are by law required or desire to give or make, and to give written advice to the Applicants that the Respondents have done so.

TAKE NOTICE FURTHER THAT the Applicants may, within 10 days after the Registrar of the above Honourable Court has made the record of proceedings available to the Applicants, amend, add to or vary the terms of the Notice of Motion and that the Applicants may supplement the founding affidavit.

TAKE NOTICE FURTHER THAT if any of the Respondents intend to oppose the application for the relief sought in Part B hereof, such Respondent shall:

- (a) within 15 days after receipt by the Respondent of the Notice of Motion and/or any amendment thereof deliver notice to the Applicants that the Respondent intends to oppose, in which notice such Respondent shall appoint an address within eight kilometres of the office of the Registrar at which the Respondent will accept notice and service of all process in the proceedings; and



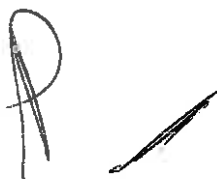
(b) within 30 days after the expiry of the time period referred to in Rule 53(4) of the Uniform Rules of the High Court, deliver such Respondent's answering affidavit.

TAKE NOTICE FURTHER THAT the Applicants have appointed the address of their attorneys, Cliffe Dekker Hofmeyr Inc, 1 Protea Place, Sandown, Sandton, Ref. PJ Conradie, c/o Jasper van der Westhuizen & Bodenstein Inc., 887 Church Street, Arcadia, Pretoria, Ref. Y Coetzee as the address at which the Applicants will accept notice and service of all process in these proceedings (Part B).

TAKE NOTICE FURTHER THAT the accompanying affidavit of **LEOPOLD JEAN JOSEPH PAUWEN**, together with annexures thereto, together with any further supporting affidavit that may be prepared in terms of Rule 53(4), will be used in support of the application.

DATED at SANDTON on this the 23rd day of MARCH 2012

CLIFFE DEKKER HOFMEYR
Attorney for the Applicants
1 Protea Place
Sandown



Sandton, 2196
Private Bag X40, Benmore, 2010
Docex 154 RANDBURG
Tel : (011) 562- 1071(direct line)
Fax : (011) 562-1671
Ref : PJ Conradie / 01933299
c/o JASPER VAN DER WESTHUIZEN &
BODENSTEIN INC.
887 Church Street
Arcadia 0083
PRETORIA
P O Box 781
Pretoria, 0001
Tel: 012 342 4890
Fax: 012 342 4896
Reference: Y Coetzee

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT, PRETORIA**

**AND TO: THE SOUTH AFRICAN NATIONAL
ROADS AGENCY LIMITED**
First Respondent
Ditsela Place
1204 Park Street
HATFIELD 0083

**AND TO: THE MINISTER OF TRANSPORT,
REPUBLIC OF SOUTH AFRICA**
Second Respondent
c/o THE STATE ATTORNEY
SALU Building
Corner Andries and Schoeman Streets
PRETORIA

**AND TO: THE MEC, DEPARTMENT OF ROADS
AND TRANSPORT, GAUTENG**
Third Respondent
SALU Building



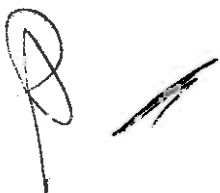
Corner Andries and Schoeman Streets
PRETORIA

AND TO: **THE MINISTER, DEPARTMENT OF WATER
AND ENVIRONMENTAL AFFAIRS**
Fourth Respondent
c/o **THE STATE ATTORNEY**
SALU Building
Corner Andries and Schoeman Streets
PRETORIA

AND TO: **THE DIRECTOR-GENERAL, DEPARTMENT OF
WATER AND ENVIRONMENTAL AFFAIRS**
Fifth Respondent
c/o **THE STATE ATTORNEY**
SALU Building
Corner Andries and Schoeman Streets
PRETORIA

AND TO: **NATIONAL CONSUMER COMMISSION**
Sixth Respondent
The DTI Campus
Mulayo (Block E)
77 Meintjies Street
SUNNYSIDE

AND TO: **NATIONAL TREASURY**
Seventh Respondent
c/o **THE STATE ATTORNEY**
SALU Building
Corner Andries and Schoeman Streets
PRETORIA



**IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

Case No:17141/2012

In the matter between:

OPPOSITION TO URBAN TOLLING ALLIANCE	First Applicant
SOUTH AFRICAN VEHICLE RENTING AND LEASING ASSOCIATION	Second Applicant
QUADPARA ASSOCIATION OF SOUTH AFRICA	Third Applicant
SOUTH AFRICAN NATIONAL CONSUMER UNION	Fourth Applicant
and	
THE SOUTH AFRICAN NATIONAL ROADS AGENCY LTD	First Respondent
THE MINISTER, DEPARTMENT OF TRANSPORT REPUBLIC OF SOUTH AFRICA	Second Respondent
THE MEC, DEPARTMENT OF ROADS AND TRANSPORT, GAUTENG	Third Respondent
THE MINISTER, DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS	Fourth Respondent
THE DIRECTOR-GENERAL, DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS	Fifth Respondent
NATIONAL CONSUMER COMMISSION	Sixth Respondent
NATIONAL TREASURY	Seventh Respondent

NOTICE OF MOTION

PART A

KINDLY TAKE NOTICE THAT the above-named Applicants intend to make application to the above Honourable Court, subject to the practice directives and any directions of the Deputy-Judge President of the Honourable Court, on Tuesday 24 April 2012 at 10h00 or as soon thereafter as counsel may be heard for an order in the following terms:

1. that the Applicants' non-compliance with the usual forms, time-periods and rules of service be condoned and that the application in Part A be dealt with as a matter of urgency in terms of Rule 6(12);

2. that pending the final determination of the application for the relief sought in Part B hereof, the First Respondent be interdicted and restrained from levying and collecting toll on the following roads:
 - 2.1 National Road N1: Section 20: from Armadale to Midrand;

 - 2.2 National Road N1: Section 21: from Midrand to the Proefplaas Interchange;

 - 2.3 National Road N3: Section 12: from Old Barn Interchange to the Buccleuch Interchange;

 - 2.4 National Road N4: Section 1: from Koedoespoort to Hans Strydom Drive;



- 2.5 National Road N12: Section 18: from Diepkloof Interchange to Elands Interchange;
- 2.6 National Road N12: Section 19: from Gillooly's Interchange to the Gauteng/Mpumalanga Provincial Border; and
- 2.7 National Road R21 (also known as the P157-1 and P157/2): Sections 1 and 2: from Hans Strydom Drive to Rietfontein Interchange (N12): Province of Gauteng;
3. that pending the final resolution of the complaint filed by the Fourth Applicant with the Sixth Respondent in terms of section 71 of the Consumer Protection Act 68 of 2008 in respect of the First Respondent's "*e-Toll Terms and Conditions*" dated 28 February 2012, or the elapse of the time period referred to in section 114(1) of that Act, the First Respondent be interdicted and restrained from levying and collecting toll on the roads referred to in paragraphs 2.1. to 2.7. above on the terms and conditions set out in the First Respondent's "*e-Toll Terms and Conditions*";
4. that the First Respondent and whomsoever of the additional respondents oppose the relief in Part A, be directed to pay the Applicants' costs including the costs of two counsel; *alternatively* directing that the costs of the application for the relief sought in Part A be reserved for determination in the application for the relief sought in Part B hereof;



5. that the Honourable Court grant to the Applicants such further and/or alternative relief as the Honourable Court may deem meet.

TAKE NOTICE FURTHER THAT if you intend opposing the application for the relief set out in Part A hereof, you are required:

- (a) to notify the Applicant's attorney in writing at the address set out below of such intention to oppose by no later than Wednesday 28 March 2012 and in such notice to provide the aforesaid attorney with an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings; and
- (b) to deliver your answering affidavit, if any, by Monday 9 April 2012, the Applicants to deliver their replying affidavit, if any, by Wednesday 18 April 2012.

TAKE NOTICE FURTHER THAT the Applicants have appointed the address of their attorneys Cliffe Dekker Hofmeyr Inc, 1 Protea Place, Sandown, Sandton, Ref. PJ Conradie, c/o Jasper van der Westhuizen & Bodenstein Inc., 887 Church Street, Arcadia, Pretoria, Ref. Y Coetzee as the address at which the Applicants will accept notice and service of all process in these proceedings (Part A).



TAKE NOTICE FURTHER THAT the accompanying affidavit of **LEOPOLD JEAN JOSEPH PAUWEN** together with annexures thereto, will be used in support of the application.

Kindly set the matter in Part A down for hearing accordingly.

PART B

TAKE NOTICE FURTHER THAT the Applicants intend to make application to the above Honourable Court in terms of Uniform Rule of Court 53 on a date to be determined by the Registrar for an order:

1. that the decisions of the First Respondent to make the following declarations in terms of section 27(1)(a)(i) of the South African National Roads Agency Limited and National Roads Act 7 of 1998 be reviewed and corrected or set aside:
 - 1.1 the declaration of National Road N1, Section 20: from Armadale to Midrand as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 349 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 349 is attached hereto as annexure "A1";



- 1.2 the declaration of National Road N1, Section 21, from Midrand to the Proefplaas Interchange as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 350 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 350 is attached hereto as annexure "A2";
- 1.3 the declaration of National Road N3: Section 12: from Old Barn Interchange to the Buccleuch Interchange as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 351 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 351 is attached hereto as annexure "A3";
- 1.4 the declaration of National Road N4: Section 1: from Koedoespoort to Hans Strydom Drive as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 352 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 352 is attached hereto as annexure "A4";
- 1.5 the declaration of National Road N12: Section 18: from Diepkloof Interchange to Elands Interchange as a continuous toll road and the



establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 353 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 353 is attached hereto as annexure "A5";

1.6 the declaration of National Road N12: Section 19: from Gillooly's Interchange to the Gauteng/Mpumalanga Provincial Border as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 354 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 354 is attached hereto as annexure "A6"; and

1.7 the declaration of National Road R21 (also known as the P157-1 and P157/2) - Sections 1 and 2: from Hans Strydom Drive to Rietfontein Interchange (N12): Province of Gauteng, as a toll road and the establishment of electronic toll points, dated 28 July 2008 and published as Government Notice No. 800 in Government Gazette No. 31273 dated 28 July 2008. A copy of Government Notice No. 355 is attached hereto as annexure "A7";

2. that the decisions of the Second Respondent in terms of section 27(1)(a) read with section 27(4) of the South African National Agency Limited and National Roads



Act 7 of 1998 to grant approval to the First Respondent to make the declarations listed in paragraphs 1.1. to 1.7. above, be reviewed and corrected or set aside;

3. that the decisions of the Fourth and/or Fifth Respondents to grant the following environmental authorisations in terms of section 24 of the National Environmental Management Act 107 of 1998 be declared void and of no force and effect alternatively be reviewed and corrected or set aside:

3.1 Environmental Authorisation Reference 12/12/20/918 for the proposed upgrading of National Route 1 Section 20 and 21 between Buccleuch and Brakfontein Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to Government Notice No. R 386 published in Government Gazette No 28753 dated 21 April 2006 ("GN R386"). A copy of Environmental Authorisation Reference 12/12/20/918 dated 23 November 2007 is attached to the Notice of Motion as annexure "B1";

3.2 Environmental Authorisation Reference 12/12/20/919 for the proposed upgrading of National Route 1 Section 20 between Buccleuch and Fourteenth Avenue Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/919 dated 23 November 2007 is attached to the Notice of Motion as annexure "B2";

- 3.3 Environmental Authorisation Reference 12/12/20/920 for the proposed upgrading of National Route 1 Section 20 between the Misgund and Fourteenth Avenue Interchanges to commence and continue with activities 1(m), 4, 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/920 dated 23 November 2007 is attached to the Notice of Motion as annexure "B3";
- 3.4 Environmental Authorisation Reference 12/12/20/922 for the proposed upgrading of National Route 3 Section 12 between Dwars in die Weg and Geldenhuys Interchanges to commence and continue with activities 1(m), 4, 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/922 dated 19 February 2008 is attached to the Notice of Motion as annexure "B4";
- 3.5 Environmental Authorisation Reference 12/12/20/923 for the proposed upgrading of National Route 12 Section 18 between Uncle Charlies and Elands Interchanges to commence and continue with activities 1(m), 4, 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/923 dated 18 February 2008 is attached to the Notice of Motion as annexure "B5";
- 3.6 Environmental Authorisation Reference 12/12/20/926 for the proposed upgrading of National Route 1 between Brakfontein and the Waterkloof



Interchanges to commence and continue with activities 1(m), 7, 14 and 15 listed in the schedule to GN R386. A copy of Environmental Authorisation Reference 12/12/20/926 dated 7 November 2007 is attached to the Notice of Motion as annexure "B6";

- 3.7 Environmental Authorisation for the proposed upgrading of the Regional Route 21 between the N12 and Hans Strijdom Drive Interchanges to commence and continue with the activities set out in paragraph 1 of section B of the undated basic assessment report compiled by Arup / Tswelopele Environmental, a copy of which report is attached to the Founding Affidavit as annexure "FA62";

4. declaring that the levying and collecting of toll pursuant to the declarations referred to in paragraphs 1.1 to 1.7 above would constitute an unjustifiable limitation of the right to property as envisaged in section 25(1) of the Constitution and would be invalid;

5. in the alternative to paragraphs 1, 2 and 4 above: declaring sections 27(1)(a), 27(1)(b) and/or 27(3) of the South African National Agency Limited and National Roads Act 7 of 1998 to be inconsistent with the Constitution and invalid;

4.6. that in consequence of paragraphs 1 to 5.4.3 above, the First Respondent be interdicted and restrained from levying and collecting toll on the sections of road specified in the declarations referred to in paragraphs 1.1. to 1.7. hereof pursuant



to such declarations and any tariffs that may be published in terms of section 27(3) of the South African National Agency Limited and National Roads Act 7 of 1998;

That in consequence of the alternative relief sought and obtained in terms of paragraph 3:

5.17.1 the First Respondent be ordered to refer its applications for environmental authorisation back to the Fourth Respondent with a direction that the First Respondent must comply with the relevant Environmental Impact Assessment Regulations, which the Fourth Respondent must duly consider before making his decision regarding the First Respondent's applications and imposing such conditions as may be appropriate;

5.27.2 without derogating from the generality of the previous paragraph, the First and Fourth Respondents must ensure that the environmental assessment practitioner as defined in section 1 of NEMA complies with the requirements in respect of the content of basic assessment reports and in particular:

5.2.17.2.1 a description of the environment that may be affected by the proposed activities and the manner in which the geographical,

P

physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activities; and

8.7.2.2 details of the public participation process conducted in terms of the relevant regulations in connection with the applications.

8.8. in terms of section 9(1) of the Promotion of Administrative Justice Act 3 of 2000, extending the 180-day period referred to in section 7(1) of PAJA until the date on which this application was launched in respect of the relief claimed in paragraphs 1 to 3 above;

8.9. that the First Respondent be ordered to pay the costs of the application, *alternatively*, in the event of any other Respondents opposing the application, that those Respondents be ordered to pay the costs of the application together with the First Respondent jointly and severally, the one paying and the other to be absolved;

8.10. that the Honourable Court grant to the Applicants such further and/or alternative relief as the Honourable Court may deem meet.

TAKE NOTICE FURTHER that the First, Second, Fourth and/or Fifth Respondents are called upon, in terms of Uniform Rule of Court 53(1)(a), to show cause why the decisions referred to in paragraphs 1 to 3 above should not be reviewed and set aside.



TAKE NOTICE FURTHER THAT the First, Second and Fourth and/or Fifth Respondents are called to despatch, within 15 days of the receipt of the Notice of Motion, to the Registrar of the High Court, Pretoria, a record of the proceedings sought to be reviewed and set aside in terms of paragraphs 1 to 3 above (including all correspondence, reports, memoranda, documents, evidence, transcripts of recorded proceedings and other information serving before them when the decisions were made), together with such reasons as the First, Second and Fourth Respondents are by law required or desire to give or make, and to give written advice to the Applicants that the Respondents have done so.

TAKE NOTICE FURTHER THAT the Applicants may, within 10 days after the Registrar of the above Honourable Court has made the record of proceedings available to the Applicants, amend, add to or vary the terms of the Notice of Motion and that the Applicants may supplement the founding affidavit.

TAKE NOTICE FURTHER THAT if any of the Respondents intend to oppose the application for the relief sought in Part B hereof, such Respondent shall:

- (a) within 15 days after receipt by the Respondent of the Notice of Motion and/or any amendment thereof deliver notice to the Applicants that the Respondent intends to oppose, in which notice such Respondent shall appoint an address within eight kilometres of the office of the Registrar at which the Respondent will accept notice and service of all process in the proceedings; and

(b) within 30 days after the expiry of the time period referred to in Rule 53(4) of the Uniform Rules of the High Court, deliver such Respondent's answering affidavit.

TAKE NOTICE FURTHER THAT the Applicants have appointed the address of their attorneys, Cliffe Dekker Hofmeyr Inc, 1 Protea Place, Sandown, Sandton, Ref. PJ Conradie, c/o Jasper van der Westhuizen & Bodenstein Inc., 887 Church Street, Arcadia, Pretoria, Ref. Y Coetzee as the address at which the Applicants will accept notice and service of all process in these proceedings (Part B).

TAKE NOTICE FURTHER THAT the accompanying affidavit of **LEOPOLD JEAN JOSEPH PAUWEN**, together with annexures thereto, together with any further supporting affidavit that may be prepared in terms of Rule 53(4), will be used in support of the application.

DATED at SANDTON on this the 23rd day of MARCH 2012

CLIFFE DEKKER HOFMEYR
Attorney for the Applicants
1 Protea Place
Sandown



Sandton, 2196
Private Bag X40, Benmore, 2010
Docex 154 RANDBURG
Tel : (011) 562- 1071(direct line)
Fax : (011) 562-1671
Ref : PJ Conradie / 01933299
c/o JASPER VAN DER WESTHUIZEN &
BODENSTEIN INC.
887 Church Street
Arcadia 0083
PRETORIA
P O Box 781
Pretoria, 0001
Tel: 012 342 4890
Fax: 012 342 4896
Reference: Y Coetzee

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT, PRETORIA**

**AND TO: THE SOUTH AFRICAN NATIONAL
ROADS AGENCY LIMITED**
First Respondent
Ditsela Place
1204 Park Street
HATFIELD 0083

**AND TO: THE MINISTER OF TRANSPORT,
REPUBLIC OF SOUTH AFRICA**
Second Respondent
c/o **THE STATE ATTORNEY**
SALU Building
Corner Andries and Schoeman Streets
PRETORIA

**AND TO: THE MEC, DEPARTMENT OF ROADS
AND TRANSPORT, GAUTENG**
Third Respondent
SALU Building



Corner Andries and Schoeman Streets
PRETORIA

AND TO: **THE MINISTER, DEPARTMENT OF WATER
AND ENVIRONMENTAL AFFAIRS**
Fourth Respondent
c/o **THE STATE ATTORNEY**
SALU Building
Corner Andries and Schoeman Streets
PRETORIA

AND TO: **THE DIRECTOR-GENERAL, DEPARTMENT OF
WATER AND ENVIRONMENTAL AFFAIRS**
Fifth Respondent
c/o **THE STATE ATTORNEY**
SALU Building
Corner Andries and Schoeman Streets
PRETORIA

AND TO: **NATIONAL CONSUMER COMMISSION**
Sixth Respondent
The DTI Campus
Mulayo (Block E)
77 Meintjies Street
SUNNYSIDE

AND TO: **NATIONAL TREASURY**
Seventh Respondent
c/o **THE STATE ATTORNEY**
SALU Building
Corner Andries and Schoeman Streets
PRETORIA



URGENT!

Also at Cape Town, Durban & Claremont

Werksmans Attorneys

Attention: Mr. D Hertz

BY EMAIL

Our Reference PJ Conradie / R Thomson
Account Number /01933299/3841176v1
01933299
Direct Line (011) 562-1171
Direct Telefax (011) 562-1671
Direct e-mail Rebecca.Thomson@dlacdh.com
Your Reference Mr D
Date Hertz/YS/SOUT3114.87/#2023912v1
22 June 2012

Dear Sirs

**OPPOSITION TO URBAN TOLLING ALLIANCE & OTHERS / THE SOUTH AFRICAN NATIONAL
ROADS AGENCY LIMITED & OTHERS - NORTH GAUTENG HIGH COURT REVIEW APPLICATION**

- 1 Counsel have perused the record filed by the SANRAL and the other respondents in the review application.
- 2 The OUTA applicants urgently require the production by SANRAL of the following documents that counsel have identified during the course of the reading of the record should have formed part of the record or are relevant to issues to be decided in the review application:
 - 2.1 Page "3 of 3" of the annexure to the letter of Nazir Alli to Minister of Transport Radebe dated 3 August 2005, SANRAL document reference: SANRAL Freeway Improvement Project Doc #181950. The document in the record is incomplete.
 - 2.2 The complete presentation entitled "Gauteng Freeway Improvement Proposal" dated August 2005 presented by SANRAL to Minister of Transport Radebe, SANRAL document reference: Gauteng Freeway Improvement Proposal Doc #182436. The document in the record is incomplete.
 - 2.3 The "Main Agreement" between the Gauteng Provincial Government and the South African National Roads Agency Limited referred to on p.3656 of the record in the preamble of the "Transfer of Road Memorandum of Agreement" dated 2 April 2008.
 - 2.4 The proposal "presented to Cabinet in October 2006" referred to in the Cabinet Memorandum dated July 2007 on p.1842 of the record.

CHAIRMAN CH Ewing CHIEF EXECUTIVE OFFICER B Williams CHIEF OPERATING OFFICER MF Whitaker CHIEF FINANCIAL OFFICER ES Burger

DIRECTORS: JOHANNESBURG N Alkiri CA Barclay E Beeler P Bhagatjee R Boda R Bonnet CJ Botes TE Brincker GWJ Charter PJ Conradie AR Curnow CJ Daniel QR du Plessis ML du Preez L Erasmus CH Ewing BV Faber TS Fletcher LR Fontana L Franca MR Friedman TG Fuhrmann MZ Gattoo SAP Gie S Gill MK Hart PJ Harvey IK Hayes AJ Hofmeyr Q Honey HS Jackson WH Jacobs WH Jones van Rensburg RSK Jarvis CM Jesseman JCA Jones TH Kamdoo LJ Kruger J Latsky AM le Grange FE Lapano Z Malinga B Meyer WJ Midgley M Mongosi R Moodley AL Morphet MG Mphahudi NA Napier BP Ntsha BP O'Connor SJ Oosthuizen A Patel JS Pennington GD Pilane V Pitya DB Pinnock AM Poiglet AVV Pretorius PH Prinsloo AG Reid KA Rice M Serfontein L Shadrach-Razzino L Smith JL Stolp WPS van Wyk NJ van Ey JG Webber NIF Whitaker JG White KB Whyte DA Wilken B Williams JM Witte-Hoivinson MP Yeates

DIRECTORS: CAPE TOWN RD Barendse TJ Brewis CM Britain-Renecke MA Bromley MR Collins A de Lange LF Egypt GT Ford S Franks DF Fyfer JW Green AJ Hannie AM Heberg PB Hessefing CI Hindley RC Horn JH Jacobs R Jaga AJ Jeffre A Kariem P J Krusche I Lessing GC Lumb RE Marcus NW Muller J Nezer FT Newham G Orrie L Rhoads BT Rubinstain GJ Stansfield BPA Strauss DM Thompson EG van Wyk GW Williams TJ Winstanley

DIRECTORS: DURBAN J Govender NTY Siwanda

CONSULTANTS: A Abercrombie R Beerman HS Coetzee AG Dose JMA Eynhuys* JJ Gomes MB Jackson NG Jooste EJ Kingdon FF Kolbe BC Maaasdorp CJ Scholtz CJ Viggott

SENIOR ASSOCIATES: JA Aukema S Barron KM Carew E Chang S Cohen EF Dempster JJ Ferris S Haroun L Horsley S Immelman L Jones Y Khatimani AG Lewis P Maharaj G Masina N Mchunu HW Mennen SI Meyer T Mokgwanane AT Moolman CP Muller L Naidu L Pillay A Savahl BJ Scriba AE Seaber M Sibanda P Singh-Dhulani LV Stansfield T Surman KS Thomas RL Thomeon F Valli-Gattoo LD Wilson

*British /Dutch /Cape Town Managing Partner

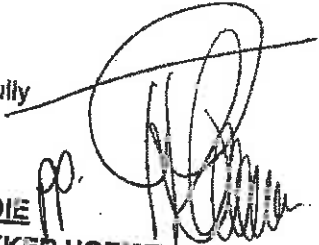
Cliffe Dekker Hofmeyr inc. Reg No 2008/018923/21

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- 2.5 Minutes of the meeting of the Gauteng Road Network Integration Committee referred to in the minutes of 25 November 2005 at p.530 of the record at which the Gauteng Network Integration Committee had decided to "give in principle support for tolling as a mechanism to fund the proposed Gauteng Freeway Improvement initiative".
- 2.6 The "feedback document" of "Gautrans and the municipalities" referred to in the minutes of the meeting of the Gauteng Road Network Integration Committee on 25 November 2005 on p.530 of the record;
- 2.7 The complete "South African National Road Agency Limited (SANRAL) business plan 2006/07-2008/09" presented to Minister of Transport Radebe in November 2005. The document in the record (beginning on p.538) is incomplete.
- 2.8 The complete versions of the "Presentation[s] to Portfolio Committee" excerpts of which are contained at pp.607-620 of the record. The documents in the record are incomplete.
- 2.9 The complete presentation of the "Gauteng Toll Highway Feasibility Study" presented at the "Traffic Cluster Meeting dated 6 December 2006" commencing on p.1166 of the record (together with a legible copy of p 1169). The document in the record is incomplete.
- 2.10 Contract NRA N.001-201-2008/1 "Procurement of an open tolling system in the Gauteng Province, South Africa and a national transaction clearing house", (ie. the contract between South African National Roads Agency Limited and Electronic Toll Collection Joint Venture (being a joint venture comprising Kapsch Trafficcom AB, Kapsch Trafficcom AG and TMT Services and Supplies (Proprietary) Limited), including the following:
 - 2.10.1 the letter of tender dated 20 July 2009;
 - 2.10.2 addenda nos 1-24;
 - 2.10.3 the conditions of contract (volume 1);
 - 2.10.4 the employer's requirements (volume 2);
 - 2.10.5 the completed returnable schedules;
 - 2.10.6 the operating licence, and
 - 2.10.7 the contractor's proposal.
- 2.11 Tender document for the procurement of an open road tolling system in the Gauteng Province, South Africa and a National Transaction Clearing Housing for project N.001-201-2008/1, inclusive of all its parts, including but not limited to:
 - 2.11.1 scope of works;
 - 2.11.2 description of services;
 - 2.11.3 pricing schedule;
 - 2.11.4 pricing data;
 - 2.11.5 general conditions of contract;
 - 2.11.6 contract data;
 - 2.11.7 agreements and contract data;
 - 2.11.8 returnable schedules;
 - 2.11.9 tender data;

- 2.11.10 conditions of tender;
- 2.11.11 tender notice and invitation to tender.
- 2.12 Tender pre-qualification document for the procurement of an open road tolling system in the Gauteng Province, South Africa and a National Transaction Clearing Housing for project N.001-201-2008/1, inclusive of all its parts.
- 3 In view of the parties' mutual commitment to an expedited review, the OUTA applicants require SANRAL to produce the above documentation by no later than Wednesday 27 June 2012.
- 4 We advise that should SANRAL fail to produce the above documentation, the OUTA applicants will launch proceedings for orders directing that SANRAL do so.

Yours faithfully



FJ CONRADIE
CLIFFE DEKKER HOFMEYR INC



DELIVERED BY EMAIL

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22 June 2012

Dear Pieter and Rebecca

THE SOUTH AFRICAN NATIONAL ROADS AGENCY & OTHERS / OPPOSITION TO URBAN TOLLING ALLIANCE & OTHERS – CONSTITUTIONAL COURT APPLICATION CCT38/12

- 1 We refer to your letter of 22 June 2012 and, with reference to the numbered paragraphs thereof, respond thereto below.
- 2 AD PARAGRAPHS 2, 2.10, 2.11 & 2.12
 - 2.1 We note your assertion that the documents listed in these paragraphs 'should have formed part of the record' or 'are relevant to the issues to be decided in the review application'.
 - 2.2 Please explain the relevance of each of the documents requested in these paragraphs, which you 'require' SANRAL to produce, to the issues required to be traversed in the review application.
- 3 AD PARAGRAPHS 2.1 TO 2.9
 - 3.1 We have requested our client to attempt to locate each of these documents and will respond to you as expeditiously as is possible in this regard. We are, unfortunately, not able to commit to the time period stipulated by you in paragraph 3 of your letter.
 - 3.2 That being said, these documents will be furnished to you on a piecemeal basis immediately that they are located.


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- 4 Our failure to respond more fully to your letter at this stage should not be construed as an admission as to the correctness of your assertions and our client's right to do so in due course is reserved.

Yours faithfully

Werksmans Attorneys

Also at Cape Town, Durban & Claremont

Werksmans Attorneys

Attention: D Hertz & N Kirby

BY EMAIL

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Date Hertz/YS/SOUT3114.87/#2023912v1
27 June 2012

Dear Sirs

OUTA & OTHERS / SANRAL & OTHERS - NORTH GAUTENG HIGH COURT REVIEW APPLICATION

- 1 We refer to paragraph 2 of your letter dated 22 June 2012 and your request that the OUTA applicants "explain the relevance" of the documents requested to issues to be decided in Part B.
- 2 The documents in question include the full contract between SANRAL and the toll operator, and the full tender and tender pre-qualification documents.
- 3 As you are aware, in the founding affidavit in the High Court, the OUTA applicants alleged that the approval by the Minister of Transport and the corresponding toll declarations was liable to be reviewed and set aside *inter alia*
 - 3.1 because the cost of e-tolling is disproportionate;
 - 3.2 because the Minister of Transport was misled in that the costs of e-tolling presented to him were the once-off toll infrastructure costs and not the costs of toll collection.
- 4 The OUTA applicants supported their case in this regard *inter alia* by referring to what was before the Minister of Transport in the HMKL record and by referring to the exorbitant costs of tolling, calculated from the tender figures disclosed in the GFIP Steering Committee Report.
- 5 The OUTA applicants invited the disclosure of the contract between SANRAL and ETC JV in order that the High Court be informed of the actual costs of toll collection for the first 5 years.

CHAIRMAN CH Ewing CHIEF EXECUTIVE OFFICER B Williams CHIEF OPERATING OFFICER MF Whitaker CHIEF FINANCIAL OFFICER ES Burger

DIRECTORS: JOHANNESBURG N Aitini CA Barclay E Baxter P Bhagatjee R Bode R Bonnel CJ Botas TE Brincker CWJ Charter PJ Conradie AR Cumow CJ Daniel CR du Plessis ML du Preez L Erasmus CH Ewing BV Feber TS Fletcher LR Fontaine L Franca MR Friedman TG Fuhrmann MZ Gettoo SAP Gle S Gill MK Hart PJ Harvey IK Hayes AJ Hofmeyr Q Honey HS Jackson WH Jacobs WH Jense van Rensburg RSK Jarvis CM Jessiman JCA Jones TH Kamdar LJ Kruger J Latsky AM le Grange FE Lappan Z Malinga B Meyer WJ Midgley M Mongaal R Moodley AL Morphet MG Mphahleli NA Napier BP Niha BP O'Connor SJ Ooshulzen A Patel JS Pennington GD Pliane V Pillay DB Pinnock AM Potgieter AW Pretorius PH Prinsloo AG Reid KA Rice M Serfontein L Shadrach-Razzini L Smith JL Stolp WPS van Wyk NJ van Ey JG Webber MF Whitaker JG Whittle KB Whyte DA Wilken B Williams JM Wits-Hewinson MP Yeates

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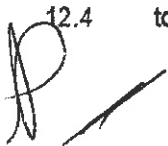
*British *Dutch Cape Town Managing Partner

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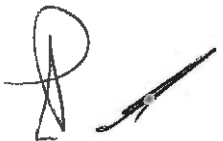
- 6 In its answering affidavit, SANRAL declined the invitation and answered that:
 - 6.1 the actual costs were not known at the time but only became known later after the conclusion of the tender process;
 - 6.2 the figures set out in the OUTA applicants' founding affidavit were correct but were based on 60% non-compliance;
 - 6.3 lower levels of non-compliance would reduce the cost of toll collection.
- 7 Further, SANRAL argued in Part A:
 - 7.1 that the cost of tolling as set out in the GFIP Steering Committee Report in 2011 is irrelevant to the setting aside of the decisions in 2008;
 - 7.2 that the Minister had the cost of toll collection before him when he gave approval for the toll declarations; and
 - 7.3 that the costs of tolling are in fact not disproportionate, regard being had to the project as a whole. SANRAL sought to hand into evidence at the hearing a schedule, which was disallowed.
- 8 SANRAL has subsequently expanded on the above on oath in its application for leave to appeal the decision of the High Court to the Constitutional Court and attached a schedule to its supporting affidavit containing the projected costs of tolling over 24 years. In the supporting affidavit, in dealing with the disproportionate cost ground, SANRAL has made detailed and specific allegations concerning the operating costs and its relationship to assumed rates of non-compliance to justify that the cost of toll collection is not disproportionate.
- 9 The OUTA applicants have also subsequently been presented with similar schedules by representatives from Treasury who
 - 9.1 have justified the amounts set out on such schedules with assumptions concerning:
 - 9.1.1 the link between the cost of collection and levels of compliance;
 - 9.1.2 the levels of non-compliance, initial and subsequent; and
 - 9.2 have affirmed that the above information has been obtained from SANRAL.
- 10 Finally, the OUTA applicants have found a part of the contract between SANRAL and the toll operator, which makes clear that the cost of toll collection for five years is R 8.3 billion. The part of the contract in the OUTA applicant's possession shows that this cost is unqualified.
- 11 It is in the above circumstances that OUTA applicants require discovery of the full contract, the tender and tender prequalification documents.
- 12 These documents are relevant to establish:
 - 12.1 the accuracy of the allegations by SANRAL before the High Court, eg. the alleged presumed levels of non-compliance and the alleged cost of compliant transactions;
 - 12.2 whether SANRAL's justification of the disproportionate cost of tolling during and subsequent to the Part A proceedings in the application for leave to appeal before the High Court has any foundation;
 - 12.3 whether the approvals of the Minister of Transport and corresponding toll declarations were irrational because they have been subsequently found to be based on materially inaccurate information;
 - 12.4 to the above end;



- 12.4.1 the basis upon which SANRAL solicited tenders for toll operators and in particular, information conveyed to prospective toll operators on cost and levels of non-compliance;
 - 12.4.2 the information in fact relevant to toll operation costs and whether compliance levels and violations processing are relevant at all as SANRAL alleges;
 - 12.4.3 the extent to which SANRAL was in fact able to determine or control the cost of collection initially;
 - 12.4.4 the extent to which SANRAL is able to project or determine the costs of toll collection, as it holds itself out to be able to do;
 - 12.4.5 whether SANRAL's projections, used to justify the cost of e-tolling by both SANRAL and the Minister of Finance on affidavit and in public statements, are in any way supported by the tender and contractual documents.
- 13 The exorbitant and disproportionate nature of the cost of toll collection was a major issue before the High Court in Part A. There is no doubt that it will be a major issue before the High Court in Part B.
 - 14 The documents sought are clearly relevant to the determination of this issue, and in order to respond to SANRAL's own justifications of the disproportionate cost of tolling in the proceedings thus far.
 - 15 In light of the above, we trust that SANRAL will deliver copies of the documents identified at 2.10, 2.11 and 2.12 of our letter dated 22 June 2012 by no later than close of business on Friday 29 June 2012.

Yours faithfully


PJ CONRADIE
CLIFFE DEKKER HOFMEYR INC



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29 June 2012

Dear Sirs

THE SOUTH AFRICAN NATIONAL ROADS AGENCY & OTHERS / OPPOSITION TO URBAN TOLLING ALLIANCE & OTHERS – NORTH GAUTENG HIGH COURT REVIEW APPLICATION

- 1 We refer to your letter ("your letter") dated 27 June 2012.
- 2 We advise that –
 - 2.1 in so far as your clients intend disputing the issues referred to in paragraph 3 of your letter is concerned, the information and documents are now in your clients' possession;
 - 2.2 the existence and terms and conditions of any contract between our client and a third party subcontractor do not influence the issues your clients dispute, set in paragraph 3 of your letter, or the matters recorded in the balance of your letter; and
 - 2.3 accordingly, the documents referred to in your letter are not relevant to the issues to be determined in the review.
- 3 We do not intend addressing each and every allegation contained in your letter and our failure to do so should not be construed as an admission of the correctness of any such allegation nor as a waiver of our client's right to reply to any of the allegations in due course, should the need arise, which right is reserved.

Yours faithfully



Werksmans Attorneys

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JOHANNESBURG . CAPE TOWN . STELLENBOSCH . TYGER VALLEY

Gauteng Freeway Upgrading & Expansion

Gauteng, the economic heartland of South Africa, generates nearly 38 % of the total value of South Africa's economic activities. As a result, development in housing, offices, retail and industrial properties has grown significantly over the past 10 years, resulting in above average traffic growth. Unfortunately, road infrastructure provision did not keep up with the increased traffic demand, resulting in a road network, including the freeway network that is over capacity.

Historically, traffic freeway volumes in Gauteng grown with 5% per annum over the last decade. This growth resulted in a doubling of traffic volumes from 1991 to 2004. In the current economic climate, it is expected that this growth will be maintained, or may even increase. Even with the Gautrain in place, it is expected that traffic volumes on the freeway network will continue to grow.

The over-saturated condition on the freeway network has the following effects on the people of Gauteng and direct and indirect effects on the economy:

- **Quality of Life**

Due to the rapid traffic growth experienced over the past 10 years, morning and afternoon traffic peak periods have extended to almost 3 hours respectively, resulting in increased travel times between home and work, and decreased private time for family and leisure.

Although public transport is often perceived to be non-road based, it should also be kept in mind that the bulk of public transport in South-Africa is road based. Traffic congestion therefore also affects the quality of life of many South Africans reliant on public transport who often need to commute long distances.

- **Productivity**

Many productive hours are wasted as a result of increased travel times.

- **Development potential**

The insufficient road capacity available negatively affects the profitability of developments in the province. Due to the inability of traffic reaching certain destinations (new developments), or the additional financial burden conveyed to the developer to provide road infrastructure as a condition of approval, makes many of these developments non-viable. As a result of this additional cost burden, business have and will continue to relocate and/or scale down their local operations

- **Direct cost of travel.**

Extended trip time and stop go conditions increases fuel consumption, and vehicle wear and tear and other externalities. These costs are further demonstrated in paragraph 5.

- **Environmental Impact**

The impact of the increase of vehicle emissions on the environment as a result of traffic congestion is obvious. World wide, great emphasis is placed on reducing environmentally unfriendly vehicle emissions, to reduce health risks associated with

these emissions and increased health costs.

The hosting of the 2010 FIFA Soccer World Cup in South Africa, will get a major boost from the Gauteng Freeway Project. The bid includes promises of major investments in roads, airports and transport systems. Without a fully developed freeway system in Gauteng, transport will become a nightmare when World Cup trips are added to the already congested freeway system. Furthermore, road based public transport utilizing the freeway network will operate ineffectively.

In order to provide a safe, secure and a congestion free road network, the following operations, maintenance and expansion strategy is anticipated:

- The implementation of Intelligent Transportation Systems (ITS) for the effective management of the network. ITS devices such as CCTV will assist in early detection of incident/crashes and assistance/clearance thereof. Thereby a safer and secure road environment can be achieved.
- Travel Demand Management (TDM) such as High Occupancy Vehicle lanes
- The provision of lighting which is required for ITS and will improve roadside security.
- Route patrol services to assist road users in the event where vehicles are stationary or where incidents/accident occurred.
- Effective routine road maintenance which include pothole repairs, guardrail repairs, grass cutting, road marking, picking up of litter, maintenance of fences, etc.
- Periodic maintenance actions such as road rehabilitation or overlays to ensure a trafficable road surface.
- Timely expansion of the road network to prevent breakdown in traffic flow.



Gauteng Freeway Improvement Scheme – what went wrong ?

Background

It was recognised that the severe congestion on freeways in Gauteng is having a negative economic, social and environmental impact on growth and urban development. As a result, there was further recognition that the upgrading and expanding of the freeway network was required to allow for further sustainable growth in the Province. This necessitated that the National Department of Transport (NDoT) in conjunction with Gauteng Department of Public Transport Roads and Works (GAUTRANS), the South African National Roads Agency Limited (SANRAL) and various municipalities to convene an inter-governmental workshop in June 2006 to look at improving the freeway capacity, this workshop agreed to, and coined the concept of the Gauteng Freeway Improvement Scheme.

The Gauteng Freeway Improvement Scheme (GFIS) must be viewed in the founding context of integration of various transport initiatives within the Province of Gauteng. The GFIS was to be implemented holistically to include the Gautrain, the upgrading of the commuter rail network (PRASA), bus rapid transit systems, high occupancy vehicle lanes, intercity public transport, intermodalism and park-&-ride facilities.

The June 2006 workshop reached agreement on a document entitled, ***Gauteng Transport Network Integration Process: Proposal for a Gauteng Freeway Improvement Scheme***. Included in this document is the following statement: "It is however emphasized that the success of this initiative depends on the commitment of all those spheres of Government to working together to arrive at an agreeable, integrated and demand responsive freeway system for the province."

Throughout the document, the need for co-operative governance by all three spheres of government working together is emphasized. This was intended to ensure that one sphere of government does not implement parts of the plan in an isolated, ad hoc fashion which might have negative repercussions on the other spheres of government if the implementation does not form part of integrated whole.

IP KB

What was the original intent of the GFIS ?

In terms of the June 2006 scheme that was agreed to jointly with the NDoT, GAUTRANS and the Municipalities, the following was to have happened:

- Upgrading and expansion of freeway road infrastructure, more specifically:
 - Construction of new roads PWV9 (Fourways to Pretoria), PWV5 (Roodepoort through Midrand to OR Tambo Airport), PWV14 (Germiston to Boksburg) and R80 (Lenasia to Alberton)
 - Proposed initial upgraded sections (additional lanes) : N1, N3, R21 and N12
 - Included in the initial scheme for ITS, maintenance, lighting etc: N14, M1, M2, N12 and R24, amongst others.
- Promotion of Public Transport through modal integration initiatives such as park and ride facilities and the extension of the bus rapid transit network to cover:
 - Greater Soweto
 - the southern parts of Johannesburg including Lenasia and Orange Farm
 - the northern parts of Johannesburg to include Sunninghill, Randburg, Cosmo City and Diepsloot
 - Bus rapid transit systems for Ekurhuleni and Tshwane.
- Travel Demand Management such as High Occupancy Vehicle (HOV) lanes and ramp metering
 - Categories identified that can use HOV lanes:
 - Passenger vehicles with 3+ occupants
 - Midibus taxis with Operating Licence for route
 - Minibus taxis with Operating Licence for route
 - Commuter buses with Operating Licence for route
 - Metered taxis
 - Inter-city coaches
- Intelligent Transport Systems
- Integrated (inter-modal) Ticketing System
- Improved Incident Management

KB

Toll Roads in Gauteng

- Sustainable Funding (Tolling) – specifically for the newly constructed roads (PWV9, PWV5, PWV14 and R80)

Where did it all go wrong?

At specially convened follow up workshop (follow up to the June 2006) involving the NDoT, GAUTRANS and various municipalities held on 7 November 2007, SANRAL unilaterally announced its intention to proceed with the implementation of a toll-road scheme in Gauteng *on the national freeways only*. The agreed implementation scheme (June 2006) and all the work done before and after had been ignored. A new dimension had instead been introduced, being the need to complete the work before the FIFA World Cup in June 2010.

In terms of the SANRAL announcement of 7 November 2007, all the Provincial and Metropolitan road sections had been left out. This has the following consequences:

- The implementation and upgrading of any new or existing provincial freeways will be delayed for a number of years while the SANRAL scheme is implemented.
- In the absence of a funding agreement, all toll revenues on national roads (which form substantial portions of the whole scheme) will revert to SANRAL with no possibility of being shared by other spheres of government. In the absence of this joint funding initiative, the provincial schemes will not be viable.
- Major traffic diversions onto the Provincial and Metropolitan road network will result from the national roads only scheme. These diversions will be especially acute during Initial Construction Works (ICW), when of necessity lane diversions, narrowing of lanes and loss of shoulders will reduce capacity, even if the numbers of through lanes are not reduced. The diversions will remain after construction due to the toll charge then being in place.

Given these facts, and the limited options available to the Province and Municipalities, a number of representations were made to NDoT – the following points were highlighted:


KB 

Toll Roads in Gauteng

- o Request that SANRAL to withhold their proposal until it can be implemented as agreed at the joint workshop of DOT, GPTRW, Municipalities and SANRAL of June 2006.
 - o In the event that SANRAL want to proceed on their own, that they take over all the existing and proposed provincial roads that form part of the agreed scheme and use their existing legislation to toll and upgrade / construct these provincial freeways.
 - o Preferably, that SANRAL wait for the proposed 'Gauteng Toll Roads Framework Bill, 2007' to be passed into law, following which both toll agencies (national and provincial) jointly implement and fund the proposed freeway upgrades.
 - o An alternative option would have been to construct the new freeways (PWV9, PWV5, PWV14 and R80) first. When the new freeways are opened, the tolls on the new roads are switched on, and the upgrading of the existing routes can then commence based on revenue sharing arrangements.
- o This would have had a number of advantages:
 - Substantial additional capacity is provided to the public as compensation for toll charges (instead of tolling existing roads).
 - Minimum disruption or diversion as the freeway system is treated as an integrated whole with no benefit from switching from one road to another.
 - Additional capacity of new freeways would have been in place while existing freeways are upgraded and public transport priority lanes are implemented.
 - Toll income from the total freeway system becomes available for the freeway implementation scheme as a whole which is necessary for viability – with particular focus on new roads (PWV 9, PWV 5, PWV 14 and R80).

Memorandum of Cooperation

The divergent views between SANRAL and GAUTRANS with regards to the details of a mutually beneficial relationship and the potential methodologies of implementing the Scheme had been a source of major contention between the parties for a substantial period

Handwritten signatures of KB and another person.