

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.

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

- 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:

- 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.
 - 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.
 - 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.
 - 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.
- 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

of time. In January 2008, with the mediation of the NDoT, the parties sought to resolve these differences and reached a common understanding in the interests of intergovernmental relationships and the public.

During February 2008, the parties negotiated a Memorandum of Co-operation (“MOU”) that reflected their more amicable relationship and was intended to form the main agreement regarding the overall implementation of the Scheme. According to the MOU, the parties realigned their individual mandates so that they could work towards the fulfilment of their mutually shared objective of a robust road infrastructure.

The primary objectives of the MOU include:

- The promotion of the role of SANRAL with regard to the management and control of the national roads system, and of GAUTRANS with regard to its constitutional responsibilities concerning provincial roads and public transport within the Province;
- The partnership of the parties and the substantive decision-making capacity of each party;
- The intention of the parties to articulate a formula according to which they will share between themselves the revenue accrued from the functioning of the Scheme; and
- The promotion of the rational forward-planning of the phases of the Scheme in an efficient, systematic manner.

Notwithstanding the signing of the MOU, the misunderstandings and disagreements between GAUTRANS and SANRAL with regards to the implementation of the GFIS Scheme persisted. Yet another workshop was convened on 27 March 2009, it was apparent that the parties still had several disagreements as to how the Scheme should be operated. None of the June 2006 key issues were being considered by SANRAL, in particular, the issue of adequate public transport, the associated park & ride facilities, the construction of new roads such as the PWV 9, PWV 5, PWV 15 and R80, and more especially, the introduction of HOV lanes, not only for taxis and busses, but also for regular private vehicles with 3 occupants to encourage lift clubs and rides sharing.

Joint decision making

The national and provincial governments are each custodians of portions of the road network that traverses the Gauteng Province. SANRAL is the main authority charged with the responsibility to inter alia plan, design, construct, control and maintain national roads in the Republic. GAUTRANS in turn, has authority over all provincial roads and public transport in the Gauteng Province.

The MOU, which constitutes the founding agreement regulating the relationship between SANRAL and GAUTRANS, provides that the GAUTRANS and SANRAL have an individual and joint commitment to ensure that the Scheme is conducted as a comprehensive programme in accordance with the principles of co-operative government. To this end, the MOU:

- Establishes a professional and co-operative partnership arrangement;
- Works towards the achievement of the objectives and general principles of efficient roads and transport management;
- Enhances transparency and accountability on the part of both parties in the performance of their commitments;
- Establishes a framework within which the regulation and operation of the Scheme can be implemented and appropriate action taken where problems arise; and
- Seeks to promote the respective roles of SANRAL with regard to the management and control of the national roads system, and of GAUTRANS with regard to its constitutional responsibilities concerning provincial roads and public transport within the Province.

In recognition of the need to observe the principles of co-operative governance as the key component to the successful implementation and fulfilment of the objectives of the MOU, the lack of joint decision making was raised as an area of major concern by the GAUTRANS at the March 2009 workshop. There was a concern that SANRAL did not involve GAUTRANS in substantive decision making regarding the implementation of the Scheme, and further that all the June 2006 agreements have not been carried through the implementation process.

A further impetus for substantive joint decision making by SANRAL and GAUTRANS in the implementation of the Scheme is reflected in clause 18 of the MOU which acknowledges the fact that, in terms of the Constitution, GAUTRANS possesses exclusive provincial legislative competence regarding provincial roads. To this end, GAUTRANS is obliged to ensure that the use and function of the said roads are in keeping with its constitutional mandate and the dictates of national and provincial legislation pertaining to roads and public transport. In order to achieve this end, GAUTRANS shall be a joint partner and decision-maker with SANRAL in the substantive aspects of the Scheme as set out in the founding documents of the Scheme to ensure that:

- The Scheme is consistent with the GAUTRANS's constitutional obligations regarding provincial roads;
- The Scheme is in keeping with the principles of the macro transport and road strategic plans of the GAUTRANS; and
- The duty of the GAUTRANS to provide a comprehensive public transport system is observed in the implementation of the Scheme.

Transfer of Roads and Revenue Sharing

As part of the co-operation between GAUTRANS and SANRAL for the successful implementation of the Scheme, the MOU sets out that the GAUTRANS shall transfer its provincial roads forming part of the Scheme to SANRAL, in order to enable SANRAL to upgrade these roads. In this regard, it is specifically recorded in clause 49 of the MOU that where a provincial road is declared to be a national road, this shall be for the purposes of inclusion in the toll road network; thus the revenue collected from the specific road shall be shared in accordance with revenue-sharing method that shall be agreed upon at the time. To this end, portions of N1 and N17, along with R21 and R24 were transferred to SANRAL by GAUTRANS in good faith.

However, despite this unambiguous provision of the MOU which explicitly states that the contemplated transfers shall be effected subject to the proviso that the revenue accrued from the tolls by SANRAL would be shared with the Province, SANRAL have categorically

stated that they do not envisage any revenue sharing with the GAUTRANS and any of the municipalities. The logic advanced by SANRAL for the reluctance to commit to revenue sharing was apparently by virtue of the fact that any possible revenue sharing would only become a reality after a period of thirty years into the implementation phase of the Scheme, as per the calculated assumptions of SANRAL's financial model. Such logic untenable as it reflects a lack of commitment to joint decision making by SANRAL as contemplated in the MOU. It had always been the GAUTRANS contention that the final model for the Scheme would necessarily require adequate input from GAUTRANS to constitute a mutually acceptable and workable document which sufficiently caters for both parties interests. Furthermore, SANRAL's position on the issue of revenue sharing undermines the underlying principles of co-operative government which necessarily encompass joint decision making by the parties.

As intimated above, the MOU contemplates that should a provincial road be declared a national road for purposes of inclusion in the toll road network, the revenue collected from such specific road shall be shared in accordance with the revenue sharing methodology agreed upon by the parties. In summary, the process contemplated would entail the following:

- GAUTRANS would transfer some of its existing and future provincial roads to SANRAL;
- SANRAL would acquire the permission from the Minister responsible for Transport to declare such roads as national roads;
- SANRAL would then obtain ministerial approval permitting the tolling of such roads in terms of the relevant provisions of the SANRAL Act; and
- The revenue accrued from the tolling of such roads would be shared accordingly between SANRAL and GAUTRANS.

The MOU between the parties provides that for the achievement of the government's goals and policy objectives with regards to roads throughout South Africa and macro transport and road planning, a revenue sharing model shall be entered into between the parties to enable each party to have financial shares in the Scheme which are proportional and equitable. The model of revenue sharing was envisaged as both SANRAL and the GAUTRANS

need to fulfil their constitutional and legislative mandates regarding national and provincial roads respectively.

Revenue sharing as agreed upon in the MOU between the parties is envisaged to take place in two phases. In phase one, the revenue generated by the Scheme shall be applied as follows:

- Repayment of the capital debt;
- A portion reserved for investment in the Scheme with regard to the maintenance of existing roads and the construction of new roads;
- A minimum portion allocated to SANRAL for its role as the implementing agent for use in accordance with its legislative imperatives; and
- A minimum portion allocated to the GAUTRANS which the GAUTRANS may use for the purposes of major transport and infrastructure projects in Gauteng.

In phase two, the revenue generated shall be shared proportionally taking into account the following considerations:

- Any future projects that may be implemented as a direct part and a continuation of the Scheme;
- Funds that SANRAL requires in order to fulfil its broader mandate and priorities in terms of the SANRAL Act; and
- Funds that the GAUTRANS requires in order to fulfil its strategic objectives with regard to its comprehensive road and transport plans for Gauteng.

In order to give effect to and realise the revenue sharing contemplated by the parties, SANRAL is required in terms of the MOU to take all reasonable steps that may lead to the amendment of the relevant sections of the SANRAL Act in order to enable the parties to bring into effect the method of revenue sharing envisaged by the MOU. It would appear that SANRAL has reneged on what was agreed in the MOU in as far as the issue of revenue sharing is concerned and that it does not intend to attend to the necessary amendment of the SANRAL Act as agreed. The only amendments to the SANRAL Act, the National Road Traffic Act 93 of 1996 ("NTA") and the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 ("AARTO") are those that would facilitate the enforcement of toll payments.

In this regard, SANRAL's position is at odds with what is clearly stated in the MOU to the effect that SANRAL shall take any reasonable steps in order to have its legislation amended to provide for revenue sharing.

Financial model

Another concern flagged in the context of lack of information sharing and joint decision making in the implementation of the MOU, is the reluctance of SANRAL to share its financial model with GAUTRANS. SANRAL indicated that it was not able to share its full financial model with the GAUTRANS as the model constituted intellectual property of the financial consultant hired by SANRAL. The financial consultant is known as Tollplan and was hired by SANRAL on its own account.

At the March 2009 workshop, SANRAL furthermore indicated that the current financial model was not the final model that will be used for the Scheme (due to outstanding information that was yet to be incorporated) and that the consultant was still constructing the final product. At this juncture it is important to indicate that the financial consultant was constructing the financial model on the instruction of SANRAL and the construction of this model would thus be done in the best interest of SANRAL and not necessarily in the best interest of all parties to the Scheme. It was indicated by SANRAL that a provisional financial model would be available only in three months from the date of the March 2009 workshop. SANRAL did not, however, indicate that the GAUTRANS would be allowed access to the model despite GAUTRANS's demand that SANRAL gives this undertaking in the spirit of openness, accountability and responsiveness.

Conclusion

It is against this backdrop that I deem it appropriate to highlight the fact that the spirit of mutual and substantive co-operative partnership as underlined by the imperatives of the principles of co-operative government are not being observed by SANRAL with regards to the implementation of the Scheme. It is thus my contention that it would be premature for

SANRAL to switch on the payment gantries as a number of key principles as contained in the June 2006 scheme and agreed to jointly with the NDoT, GAUTRANS and the Municipalities have not been incorporated in the current arrangements.

The road users of Gauteng cannot be charged any tolls before the upgrading and expansion of the entire freeway road network, more specifically new sections being PWV9 (Fourways to Laudium), PWV5 (Roodepoort to OR Tambo Airport through Midrand), PWV14 (Germiston to Boksburg) and R80 (N12 south of Johannesburg to Alberton).

The tolling system cannot go live before the Public Transport through modal integration initiatives such as park and ride facilities and the extension of the bus rapid transit network covering 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, along with the further extension of the system into Ekurhuleni and Tshwane.

The tolling system is far from complete without the Travel Demand Management system that will allow for High Occupancy Vehicle (HOV) lanes – the June 2006 agreement identified categories that can use HOV lanes which included private passenger vehicles with 3+ occupants to encourage lift clubs and ride sharing where public transport is not practical and is not readily available.

In its current form, the tolling system has not attended to the major traffic diversions onto the Provincial and Metropolitan road network as a result of the national roads only scheme. These diversions were 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 were not reduced. These diversions will remain after construction due to the toll charge then being in place.

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