

# PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

## ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

THURSDAY, 14 SEPTEMBER 2017

### ANNOUNCEMENTS

The Speaker:

**1. Assent of Bill by the Acting Premier**

Western Cape Adjustments Appropriation (Emergency Funds) Act, Act 2 of 2017, assented to and signed by the Acting Premier on 6 September 2017.

**2. Publication of Act 2 of 2017**

Publication of the Western Cape Adjustments Appropriation (Emergency Funds) Act, Act 2 of 2017, in the *Provincial Gazette Extraordinary* 7823, dated 12 September 2017.

### COMMITTEE REPORT

Report of the Standing Committee on Transport and Public Works on its oversight visit to the George Provincial Traffic Centre, the George Municipality and George Link (Pty) Ltd as follows:

#### Delegation

The delegation consisted of the following members:

Hinana, NE (Chairperson and leader of the delegation)  
Dugmore, CM  
Mackenzie, RD  
Mnqasela, M  
Nkondlo, ND

The Committee Co-ordinator, Ms S Niekerk, accompanied the delegation.

## **1. Introduction and Background**

Section 114 (2)(b)(i) of the Constitution of the Republic of South Africa, 1996, mandates provincial legislatures to provide for mechanisms to maintain oversight over the Provincial Executive Authority in the province. To this end the Standing Committee on Transport and Public Works undertook an oversight visit to the Provincial Traffic Centre, the George Municipality and George Link (Pty) Ltd (hereinafter “George Link”) in George. The purpose of the visit was to engage with relevant stakeholders on the implementation and impact of the George Integrated Public Transport Network (hereinafter “the GIPTN”), to gain an understanding of Evidentiary Breath Alcohol Testing (hereinafter “EBAT”) and to investigate the effective usage of space at the George Impound Facility.

Go George is part of the GIPTN and is a scheduled bus service aimed at providing reliable, accessible, safe and affordable public transport for the people of George. It is a result of a partnership between the George Municipality, the Western Cape Provincial Government, the National Department of Transport and local taxi and bus operators. George Link has been appointed as the operating company that manages the Go George bus service. Various concerns have come to the Committee’s attention, including that of compensation paid to taxi and bus operators affected by the GIPTN, the training of operators, the allocation of tenders and the fact that no further operating licences will be awarded on routes operated by the GIPTN.

## **2. Overview**

The Committee visited the Provincial Traffic Centre, the George Municipality and George Link in George on Tuesday, 25 July 2017, and met with officials from the respective Institutions. The engagement commenced with a briefing by the Department of Transport and Public Works (hereinafter “the Department”) on EBAT that was followed by a tour of the Provincial Traffic Centre. The delegation then visited the George Municipality where engagements continued with a briefing by the Department on the GIPTN, followed by further engagement at the Go George Bus Depot with the Directors of George Link. It must be noted that the Directors of George Link left the meeting venue before the Committee arrived without an explanation and that, as a result, the meeting was adjourned resulting in a time delay on the Committee’s programme.

## **3. Findings and observations**

### **3.1 Evidentiary Breath Alcohol Testing**

- 3.1.1 The State v Hendricks [2011] 4 ALL SA 402 (WCC) case was a landmark case in terms of previous procedures that was utilised by traffic services to determine if drivers were over or under the legal prescribed limit in terms of the National Road Traffic Act (Act 93 of 1996).

The key challenges that were highlighted by the magistrate in terms of the findings were the specifications of the previous machine that was utilised, the calibration procedure that was followed, deficiencies in record keeping and the training of officers. The judgement found that the breathalyser was a reliable method for the

testing of alcohol in suspects and that it should be used as a tool to eradicate the scourge of drinking and driving.

- 3.1.2 EBAT differs from blood tests in that the results are available immediately. Motorists whose alcohol level is below the legal limit can be released immediately after receiving their test results. On the contrary, blood test results are not available immediately thus leading to the indefinite detention of motorists who may face months of legal uncertainty.
- 3.1.3 Drinking and driving remains a challenge to law enforcement officials in terms of civil obedience where motorists either intentionally or wilfully contravene the law even though mechanisms such as weekend alcohol blitzes and random breath testing have been put into place.
- 3.1.4 Five working groups were established to address the following key issues identified in the judgement, namely, specifications, legislation, prosecuting guidelines, training and infrastructure.
- 3.1.5 EBAT has been progressing successfully at the Athlone Shadow Traffic Centre. It is the only approved centre in the City of Cape Town for breath alcohol testing. The Department has now trained their Patrol Officers to perform the testing function. The Patrol Officer will screen the motorist and perform the function of the Arresting Officer. Once it has been determined that the motorist could possibly be over the legal limit, the motorist will be accompanied to the Shadow Traffic Centre. There are specifically trained operators at the traffic centre. The arresting officer will then hand the suspect over to the operator who will administer the tests in accordance with standard operating procedures. Once the tests have been done and all relevant documentation completed, the suspect will be handed over to the arresting officer who then escorts the suspect to the South African Police Services to be incarcerated.
- 3.1.6 From an operational point of view, and to ensure the maximum deterrence to driving under the influence of alcohol, the Department combines its manpower with that of the local municipalities as well as with the South African Police Services.

## **3.2 George Integrated Public Transport System**

- 3.2.1 Go George is a part of the GIPTN and is a scheduled public transport service that is provided with a fleet of buses. It is the result of a partnership between the George Municipality, the Western Cape Provincial Government, the National Department of Transport and local taxi and bus operators from the George area. The introduction of bus services within the municipal area will be rolled out in phases and there will be a limited number of minibuses operating in the future. Long-distance bus and taxi operations, and charter services, will not be affected.
- 3.2.2 There are six phases to the implementation of the GIPTN of which three phrases have already been implemented.
- 3.2.3 A consultation process was embarked upon with taxi and bus operators who were in possession of valid operating licenses. Numerous public engagements were held and all persons employed in the industry were called upon to register their names on an

Affected Persons Register. All the shareholders of the Vehicle Operating Company (VOC) called George Link were local taxi and bus operating license holders.

- 3.2.4 The following three choices and compensation options were offered to those affected within the industry:
- Buy In Option – Government compensates the operator for the relinquished licence(s). The operator then becomes a shareholder and possibly an employee in the new transport company;
  - Buy Out Option – Government compensates the operator for the relinquished licence(s). The operator will not become a shareholder but may still be employed in the new transport company; and
  - Do Nothing Option.
- 3.2.5 The GIPTN has positively impacted the industry, local business and the public by offering job security, acting as a catalyst for small local business development and also by creating access to work opportunities, education, social, medical and recreational facilities.
- 3.2.6 The August 2015 protest action saw four buses burnt and two buses stoned. To date no arrests have been made. The acts of vandalism to the GIPTN and infrastructure are being addressed by the Department through the following mechanisms:
- Reviewing the materials used in the bus shelter panels;
  - Engagement with the ward councillors;
  - Planned community ownership initiatives;
  - Geo-plotting of incidents for hot-spot analysis;
  - Expansion of on-bus CCTV to include forward-facing cameras;
  - Interaction with municipal traffic and law enforcement;
  - Increasing patrols by municipal traffic and law enforcement; and
  - Launching of criminal cases and Section 79 proceedings.
- 3.2.7 To date there are still groups that are dissatisfied with the implementation of the GIPTN. The Department, through the compensation process, has observed that, members in the taxi industry could not differentiate between operational expenses and profit. The Department has conducted many workshops in this regard. However, the supply sometimes exceeds the demand and this opens the window to illegal taxi operators that takes away legitimate income from legal operators. This leads to tension and dissatisfaction.
- 3.2.8 There were 29 operators that were found to have participated in the protest action that lead to the burning and vandalising of the state property. Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be held liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment. The taxi drivers participated in the protest without the owner's knowledge. The operating licence conditions dictate that charges are brought against the owners of the vehicles and because of the vicarious liability clause within the operating licence conditions, the owner had to take responsibility for his taxi driver's actions.

- 3.2.9 In terms of the tripartite agreement between the Provincial Department of Transport and Public Works, the George Municipality and George Link, the Department receives a grant allocation from the National Department of Transport that is intended to be used for specific matters. The operational subsidy cannot be paid from this allocation as it forms part of the provincial allocation. The allocation to this project during the 2017/18 financial year is R95 million. Dedicated support is also received from the George Municipality from an infrastructure perspective and they have participated and contributed. In terms of the contribution from the Vehicle Operating Company, George Link, a negotiated contract was entered into and they were required to assist in terms of infrastructure. The profits of the operating company are to be used in capitalising their business.
- 3.2.10 All persons employed in the industry were called upon to register their names on an Affected Persons Register. All the shareholders of George Link are/were local taxi and bus operating license holders. However there were too many people registered in comparison to available job opportunities within the company. This register was a result of the negotiating process and is administered by the Department.
- 3.2.11 Officials within the George Municipality who were doing work relating to the GIPTN received an additional 5% of their salary for this additional duty. This practice has come to an end on 30 June 2017 as the Municipality is of the view that the administration relating to Go George is part of the official's job function that does not require additional compensation.
- 3.2.12 At an Annual General Meeting (AGM) that was held in August 2016, the Directors of George Link explained to its shareholders that there are many legal requirements that the company has to comply with when it considers the dividend to be paid to its shareholders in terms of the Company Act (Act 71 of 2008).
- 3.2.13 It has been an incentive of George Link to investigate other business opportunities in order to expand the business. The company has a reserve fund to be able to seize other business opportunities should they arise. The shareholders were promptly informed that the company was in negotiation with government to acquire, through the process as set out in the operating contract, an additional 10 to 20 buses. The deposit for these buses would be approximately R9 million. Prior to the AGM there was a lot of campaigning by certain shareholders to remove Directors from the Board. A summary of the George Link Dividend Policy was provided to shareholders. Dividends are paid in April and October.
- 3.2.14 A share cost R30 000. The dividend payments in 2015/16 were R30 000 and in the beginning of 2017 it was R35 000. Shareholders received an average of R3 600 per month for the 12 month period.
- 3.2.15 The affected persons had a choice when negotiations were underway in terms of choosing a lump sum or monthly payment. Most of the affected persons opted for the lump sum payment. In an attempt to assist members with this decision, a further R10 000 was given to every member upfront to enable them to seek business advice before making a decision on this matter. The National Department's process dictated that the Department must compensate taxi owners because they have the right to operate on the road.

- 3.2.16 Public comments were received from Mr Cornelius Esau and Mr Mark Junkers who expressed their dissatisfaction with the process and compensation relating to the implementation of the GIPTN.

#### **4. Resolutions/Actions**

- 4.1 The Committee REQUESTED that the Department provides it with:

- 4.1.1 The Audited Financial Statements of George Link to date;
- 4.1.2 The Project Implementation Plan, including time-frames, for phase 4 of the GIPTN roll-out;
- 4.1.5 A copy of the Mediation Process Report that was compiled by the National Department of Transport; and
- 4.1.6 A breakdown of the subsidy allocation year on year since 2014 to all stakeholders involved in GIPTN.

- 4.2 The Committee REQUESTED that George Link provides the Committee with it's:

- 4.2.1 Corporate Social Responsibility & Corporate Social Investment Plan;
- 4.1.3 Supply Chain Management Policy; and
- 4.1.4 Employment Equity plan with specific reference to the representivity of black, coloured and Indian woman on management and board level.

- 4.3 The Committee RESOLVED that it would:

- 4.3.1 Invite the Department to brief it on the level of impact that EBAT has on deterring drinking and driving traffic offences that is supported by statistics as well as the level of marketing from the Department to raise public awareness;
- 4.3.2 Request the Chief Financial Officer of George Link to brief it on the company's Audited Financial Statements; and
- 4.3.3 Visit George Link annually in order to keep abreast of development in the sector.

- 4.4 The Committee RECOMMENDED that:

- 4.4.1 The safety and security of the Directors are paramount and that the municipality considers ways to assist them to ensure that their lives are not under threat as it is currently;
- 4.4.2 The mediation sub-committee that was established should work alongside all stakeholders and mitigate misinformation or stand-offs between the taxi members;
- 4.4.3 The George Municipality and the Department compile a safety plan with mechanism in place to combat vandalism in order to ensure that this initiative succeeds;
- 4.4.4 The Department, in consultation with the other relevant stakeholders, compile a case study on the formalisation of the transport network that highlights the scenario before the implementation, challenges experienced, mechanisms to overcome these challenges and long term strategic goals so that the process is formally documented; and
- 4.4.5 Taxi operators should not be excluded from participating in the roll out plan of the GIPTN and that ways be explored to accommodate those who wish to participate after the cut off dates.

## **5. Acknowledgements**

The Chairperson thanked the Department, the George Municipality and the Directors from George Link for availing themselves to address the Committee. The Committee acknowledges that the GIPTN is a complex institutional project involving all three spheres of government, and expressed its satisfaction with the implementation thereof as well as with the associated benefits to the George community.