

Why the Roads Master Plan has no status in law

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The draft Roads Master Plan (RMP) presented at the Mobility Forum in September complies with none of the legislation and should hence be withdrawn. At best, it can serve as partial input into a new Roads Sectoral Plan.

The reasons for this claim requires some legal context. South African legislation is hierarchically structured in two ways:

The first hierarchy pertains to the sphere of government: national, provincial and municipal (local) government. Theoretically district government also exists but it does not play a large role. National laws govern provincial ones, and both in turn govern municipal ones. The lowest level of the hierarchy are so-called Sectoral Plans.

The second hierarchy pertains to the type of law. Acts at the top of the hierarchy often result in subordinate Frameworks. Acts and Frameworks together govern Regulations, Policies and Plans, and all together determine so-called Standard Operating Procedures and implementation.

The hierarchical structure is crucial: instances higher up in the hierarchy are mandatory for those lower down. A low-level Plan which contradicts a high-level Act or Regulation thereby becomes unlawful.

Where, then, does the Roads Master Plan appear in the hierarchy? The diagram sets out the relevant legislation. At the peak, we have the Constitution. The main national acts, shown in green, are SPLUMA (Spatial Land Use and Management Act), MSA (Municipal Systems Act), NLTA (National Land Transport Act), NEMA (National Environmental Management Act) and NHRA (National Heritage Resources Act). Relevant on national level are also the NLTSF (National Land Transport Strategic Framework) and MR16 (Minimum Requirements for drawing up an integrated transport plan).

On provincial level, LUPA (Land Use Planning Act) and PSDF (Provincial Spatial Development Framework) shown in green are directly relevant because they are required by SPLUMA. Similarly, the PLTF (Provincial Land Transport Framework) is required by the national NLTA.

The chief planning instrument on local-government level is the IDP (Integrated Development Plan) as required by the national MSA. The key municipal spatial planning instrument is the MSDF (Municipal Spatial Development Framework). It is required and governed both by spatial planning (SPLUMA, LUPA, PSDF, LUPB) and by transport planning (NLTSF), and of course the IDP. On the transport side, the key municipal planning instrument is the Comprehensive Integrated Transport Plan (CITP); it is mandatory in terms of the NLTSF, and the MR16 sets out in detail the type of contents of a CITP.

No Roads Master Plan is even mentioned in this hierarchy. It therefore cannot exist on its own; it is either illegal or it must have an optional place within these hierarchies. There is no doubt that the only lawful place for an RMP is that of a Sectoral Plan at the lowest level of the hierarchy. It is governed by all of the higher legislation and should therefore be called a Roads Slave Plan.

By contrast, the CITP is mandatory under the NLTA, and the MSDF is mandatory under multiple pieces of legislation. The principles and strategies of higher-order legislation, including the CITP and MSDF are binding on any RMP. The CITP and MSDF determine what a

RMP should contain and not vice versa. Naturally, funding priorities are also set not by the RMP itself.

Specific projects are at the very bottom of the hierarchy. Any and all new road construction must be considered within the parameters set by all of the above. A Roads Slave Plan has no freedom to pick and choose specific projects.

What type of projects does the legislation prefer? **The entire hierarchy of legislation is unambiguous that the future lies not in construction of more and wider roads but in densification and public transport.** By law, public transport and NMT must hence form the focus of the MSDF and CITP Project Teams and the Intergovernmental Steering Committees while road construction should be perpetually on the back burner. Any Roads Slave Plan should be an afterthought or not appear at all.

Traffic congestion by itself is not a valid ground for new road construction. All of the above legislation is well aware of congestion but nevertheless is unanimous and strident in requiring densification, public transport and NMT rather than road construction.

