

**Attention: Ms Michelle Pienaar
George Herald**

Thank you very much for enquiry as outlined in your email dated 11 June 2019. I will respond seriatim to the questions raised therein.

1. It is stated in the affidavit of Mr Saptoe and in the newspaper article (George Herald – 13 June 2019) that the municipality has a moratorium in place on all new taxi licences since 2009. It is further implied that the granting of the operating licence to Mr Heathcote compromises the stance of the municipality. It is important to understand that the National Land Transport Act (Act no. 5 of 2009) ("NLTA") makes provision for different types of public transport services viz minibus-taxi type services, staff services, scholar services, charter services, metered taxi services, long distance services, etc. These terms are often used interchangeably when in fact there are different requirements and standards. These services are also loosely referred to as "taxi" services event though the NLTA deals disjunctively with each category. In terms of section 50(2) of the NLTA, an operating licence may authorise the vehicle to which it relates to provide more than one service or type of service. Operators must apply for the correct passenger category. A fine may be issued and/or the vehicle impounded if services are provided contrary to the authority of the operating licence.
2. The impression is created that the moratorium adopted by George Municipality is applicable to all types / categories of public transport services and that the PRE has ignored this moratorium. This is absolutely misleading. At a special Council meeting on 17 August 2018 (at which PRE members were present), the issue around the moratorium was clarified. It was resolved that the so-called late renewal taxi operating permits (lodged as new applications) not be regarded as new applications for the purpose of the moratorium dated 02 December 2009. It was further resolved that a distinction be made between minibus-taxi type services and other forms of public transport services. The moratorium adopted by George

Municipality is therefore only applicable to minibus-taxi type services and not to other categories / types of public transport services i.e. staff, scholar, charter, bus, metered taxi, etc. This was confirmed in meetings with the municipality.

3. It is also important to note that the George Municipality did not request the Provincial Regulatory Entity to impose this moratorium. Section 39 of the National Land Transport Act (Act no.5 of 2009) ("NLTA") makes provision for a municipality to impose a moratorium on the issuing of new operating licences on a particular route or routes where it is in the process of rationalising public transport services and there is a surplus of non-contracted services. George Municipality has been advised on the process that should be followed but to date such a request has not been received by the PRE. Applications therefore cannot be rejected at point of entry and the PRE is duty-bound to consider each application on its merits.
4. In terms of the National Land Transport Act (Act no.5 of 2009) ("NLTA"), a charter service is a public transport service operated by road involving the hire of a vehicle and a driver for a journey at a charge arranged beforehand with an operator. Neither the operator nor the driver may charge the passengers individual fares and the person hiring the service has the right to decide the route, date and time of travel. Passengers should also be conveyed to a common destination. In other words, it should be a homogenous group i.e. a church group attending a funeral in Knysna. Fares must be pre-booked. This type of operating licence cannot be relinquished by operators as part of the George Integrated Public Transport Network in turn for compensation.
5. Given that there is no requirement for a municipality to provide for charter services in its Integrated Transport Plan, it is basically regarded as off-plan services because passengers have to book trips in advance. For this reason, the Provincial Regulatory Entity (PRE's) is not required to refer such applications to municipalities for directions (see section 55(1) of the NLTA. The PRE will however publish such applications in the government gazette for a period of 21 days (in accordance with section 59(1) of the NLTA) to allow interested parties to submit comments and representations within the prescribed period. The municipality may object to the application as an interested party. George Municipality has been informed on several occasions that objections against charter applications must be made in term of section 59 of the Act. The PRE is not bound by such inputs. Section 57 of the NLTA requires the PRE to consider recommendations and documents duly submitted with the application by the applicant and other interested parties.
6. In September 2014, the National Department of Transport issued an operational practice note to PRE's in respect of operating licences for charter services. In the

practice note the National Department of Transport indicates that there is no basis to regulate market entry in the case of charter services on an economic basis. Furthermore, free-market competition should be encouraged provided that the regulatory entity is comfortable that the authority will not be abused to provide other forms of public transport services. Paragraph 6 of the same document provides that where a charter operating licence is issued, the regulatory entity must exercise its discretion and issue the operating licence for the period that it considers appropriate, but not more than seven years. In terms of section 52 of the NLTA, the maximum validity period of an operating licence is seven years.

7. A major consideration for the Western Cape PRE is whether or not the service will be abused. It is common practice for operators to provide other forms of public transport services (in particular minibus-taxi type services) under the guise of charter service operating licence. This is in contravention of the objectives of the NLTA and operating licence conditions. It is therefore vitally important to determine if the applicant is a bona fide charter operator or whether the intention is to provide other forms of public transport services. For this reason, the Western Cape PRE has developed a policy on charter services.
8. In the case of a new entrant to the market (an applicant applying for his / her first charter service operating licence), the operating licence is issued for a two-year period. This is seen as a probation period to determine if the operator is serious about providing pre-booked charter services and also to determine if the operating licence is being abused. If following the probation period there is conclusive evidence that the authority has not been abused, the operating licence may be issued for a five year period. One of the indicators used by the PRE to determine if the authority has been abused is the survey results contained in the Integrated Transport Plan. This allows the PRE to gauge whether a vehicle linked to a dedicated charter operating licence has been observed at minibus-taxi ranks or other public transport facilities. In terms of the charter policy, where an existing charter operator applies for additional operating licences (expansion of business), the new operating licence can be granted for a five-year period.
9. We can confirm that a charter operating licence has been granted to Mr Heathcote. The operating licence was granted for a five-year period but has not yet been uplifted. Mr Heathcote is a member of George Huurmotor Vereniging. It is important to note that Mr Heathcote is an existing charter operator. He has been providing charter services since 2006 when his first charter operating licence was granted. He is currently the holder of two operating licences conferring authority to provide charter services. A third operating licence authorising charter services is no longer active in his name. Mr Heathcote is therefore an existing operator of charter

services. He scored 5725 points on the operator assessment database that takes into account existing licences, facilities, vehicles, experience, expertise, etc. This placed the application in the automatic grant range (>5000). His previous application was declined because he was not present at the hearing and the duly authorised representative could not provide sufficient information on the proposed operation and the applicant's experience and expertise as a charter operator.

10. The impression is also created in the article of 13 June that the 2nd application of Mr Heathcote was not channelled through the municipality. The application in question (842 1244) was lodged by Mr Heathcote on 31 January 2019. The said application was published in the government gazette on 8 February 2019 (notice N895) for a period of 21 days in accordance with section 59(1) of the NLTA. Applications are published to allow interested persons an opportunity to comment and make representations within the prescribed period. The municipality was also notified of the application on 19 February 2019. A response was sent to the PRE via e-mail. The letter from the municipality dated 26 February 2019 stipulates that the PRE is directed not to grant the application of Mr Heathcote. The heading of the letter also states "Directions in respect of public transport operating licence applications". The municipality was also represented at the hearing called by the PRE.
11. As mentioned, these are off-plan / pre-booked services and the PRE is not required in terms of law (section 55(1) of the NLTA) to refer such applications to municipalities for directions. The response of the municipality is clearly made in terms of section 55(3) of the NLTA. This is not the correct process. The municipality has to object as an interested party in terms of section 59(1) of the NLTA when the application is published in the government gazette. This process was not followed and legally no objections were registered against this application in the prescribed manner. The municipality was advised in the past to follow due process in respect of charter applications. The PRE is not bound by such inputs received from interested parties. Section 57 of the NLTA requires the PRE to consider recommendations and documents duly submitted with the application by the applicant and other interested parties. An interested party affected by a decision of the PRE may also appeal to the Transport Appeals Tribunal. This process is outlined in section 92 of the NLTA. To our knowledge, no such appeal has been lodged.
12. Decisions on operating licence applications are made by a panel of adjudicators. The adjudicators have been appointed by virtue of their specialised knowledge, training or experience of public transport and related matters (including the law)

and are accountable to the head of provincial government. The PRE exercises independent discretion.

13. We also want to point out that Mr Heathcote is not the only registered taxi operator that have been granted authority to provide charter services neither is he the only operator to be granted a validity period of five years. Since 2018, the PRE has granted authority to 15 registered minibus-taxi operators to provide charter services. A number of these operating licences were granted for a five-year period because the applicants were deemed to be bona fide / existing charter operators. Operators applying for authority to provide charter services for the first time were issued operating licences for a two-year period.

Kind Regards

Mark Skriker

Chairperson

Western Cape Provincial Regulatory Entity

Date: