I would like to thank the Cape Town Regional Chamber of Commerce and Industry for the invitation to talk to you today about the proposed tolling of portions of the N1 & N2 highways.

The timing of today's discussion couldn't be more perfect given the Deputy President's announcement last week of further interventions in the controversial Gauteng Freeway Improvement Project (GFIP) and reductions to the toll tariffs being charged there.

While there are substantial differences between the GFIP toll project and the Winelands (N1 & N2) Toll Road project there are also warning bells that should be ringing for SANRAL and there are precedents being set, by national government's inclination to intervene and to reduce toll fees. These precedents compound the calamity of the Winelands Toll Road project as I will explain later.

History

The Winelands Toll Road project had its origins in March 1998 when the Protea Parkways Consortium (PPC) submitted an unsolicited proposal to SANRAL to upgrade, construct, maintain, operate and toll sections of the N1 & N2 highways in the Western Cape.

Sanral has an Unsolicited Bids Policy which is meant to guide how they handle such proposals – the bottom line is that ultimately the proposal is put out to tender – as was the case with the Winelands Toll Road project.

Once the project is put out to tender the normal competitive process is followed except that the proponent of the project is given the opportunity to submit a "Best and Final Offer" even if its tender submission is not selected by Sanral as one of the best two tenderers.

The time-line for this project was thus:

- March 1998 PPC submitted an unsolicited proposal
- 2 September 2008 Sanral requested the Transport Minister's approval for the declaration of parts of the two highways as toll roads
- That approval was granted on the <u>very same day</u>
- 15 September 2008, CEO (Alli) made the declaration
- 16 March 2010 Sanral put the project out to tender
- 1 November 2010 – closing date for submission of tenders (by which date there had been 3 tenderers (PPC, Overberg Consortium & GTIMV Consortium)
- 19 April 2011 Sanral selected PPC and Overberg as to the two best tenderers
- 7 June 2011 Sanral sent a request to PPC & Overberg for a Best and Final Offer
- 7 September 2011 Sanral selected PPC – the consortium that proposed the project as an unsolicited bid some 13 years prior – as the preferred tenderer.
- 6 March 2013 Sanral gave notice of its intention to implement the project by negotiating, finalising and concluding an agreement with PPC. That led to the City's interdict application which culminated in the order granted by the Western Cape High Court on 21 May 2013 restraining Sanral from doing so pending the final determination of the review application.
- The Review application is set down for 11 August 2015.

Concession Contract

The concession contract, the one Sanral wanted to conclude in March 2013, governs how the concessionaire will undertake the project and the terms and conditions on which the tenderer will contract with Sanral.

The tender process is designed to progressively reduce the scope for renegotiating the terms of the concession contract so that by the time the preferred bidder is selected virtually all the key provisions of the concession contract have been determined.

Consequently, although Sanral and PPC have not yet signed the concession contract (having been prevented from doing so by order of the court) there has been a meeting of the minds and it is highly probable that the clauses in the concession agreement, we obtained through order compelling disclosure of documents, will be unchanged when finally concluded.

In the concession contract Sanral grants PPC the right to charge and collect tolls on the highway and raise revenue from the developments during the concession period which is 30 years from the effective date.

PPC will pay Sanral R400 million for the rights to operate the Hugenot Tunnel and the Hugenot Toll Plaza on the N1 during the 30 year concession period but will not pay for concession rights for the rest of the highways.

At the end of the concession period PPC will transfer the highway and associated facilities and the rights held by them free of charge to Sanral.

Despite the public claims by Sanral to the contrary, the Concession Contract (and the invitation to tender) make it clear that the concessionaire must promote the use of “open road tolling” involving “electronic toll collection” – **eTolls.**

The concession agreement also requires that the following are determined:

- Vehicle classification system that determines various classes of vehicles – so that different classes of vehicles can be charged different toll fees
- Determination of which categories of vehicles will be exempted
- Division of the highways into toll sectors to enable users of each portion of the highway to be charged for that use
- The base toll tariff in respect of each class of motor vehicle for each toll plaza or tolling point
- The adjustment of the Base Toll Tariff in accordance with CPI on each adjustment date
- The discounts that will be deducted from the base toll tariffs in respect of certain categories of users.

In terms of the SANRAL Act, the toll tariffs are determined by the Transport Minister. The concession contract addresses the risk that the Minister may determine lower values than the concessionaire is entitled to charge under the concession contract.

It provides that if this occurs Sanral must reimburse the concessionaire by an amount that will place the concessionaire in the same economic position that the concessionaire would have been in had the failure, refusal or delay on the part of the Minister not happened.

Thus the recent actions, taken by the national government with regards to GFIP, become relevant. If the Winelands Tolls fees are to have any sort of parity with the GFIP toll fees (and why shouldn't they – why should we pay 3 or 4 times more in Cape Town) then these economic or revenue protections create a completely untenable situation for Sanral, the National Treasury and our country.

Let us consider some of the fundamental problems we have with the project and the information Sanral relied upon to seek approval from the Transport Minister:

Toll revenue will exceed road users benefits

Clearly toll fees must be only a percentage of the savings to road users – in other words the toll fees may not exceed the savings to road users. If the toll fees exceed the expected savings to road users then the project would make road users worse off.

Sanral calculated the benefits to road users as being:

R11.1 billion (2007 values) on the N1

R0.4 billion on the N2.

A total of R11.5 billion in 2007 terms.

Their consideration of these benefits excluded toll fees – they calculated road user costs only – looking at reduced vehicle operating costs, reduced accidents, time saving due to reduced congestion.

Our experts took those results at face value and compared them with the total amount of revenue from toll fees expected from the project. The results are quite remarkable.

PPC's bid was made using 2010 values. Discounting the expected toll revenue to 2007 values (so as to make the comparison) brings this to R38.1 billion. The total revenue thus exceeds Sanral's own calculation of the road user benefits by R26.6 billion – the **tolls are more than 3 times the benefits to road users.**

Where will the toll money go?

Given that the revenue from the toll fees will exceed the benefits of the project the question arises: where will the toll money go?

First, PPC's bid indicates that the accumulated total amount of toll fees which it expects over the 30 year concession period, in 2010 values, is **R50.9 / R51 billion**.

Our experts have analysed PPC's cost matrix to see how this revenue to applied:

- The amount expected to be spent on construction, maintenance and operational work which will benefit road users is **R11.9 billion**
- Tolling related costs is **R7 billion**
- Development and finance costs are **R10.7 billion**

The difference between PPC's expected toll revenue and its total costs is PPC's profit and Sanral's Highway Usage Fee (the highway usage fee is the portion of the concessionaire's profit which it must share with Sanral if its profits exceed certain thresholds).

Thus, PPC's total costs are **R29.6 billion** – or 58% of revenue. PPC's profit and Sanral's Highway Usage Fee is **R21.1 billion** (or 42% of revenue).

For every rand collected in toll fees only 23c will be spent on construction, maintenance and operational work which will be of benefit to road users; while 77c will be spent on concessionaire's profit, tolling infrastructure and operations etc.

PPC's profit and Sanral's Highway Usage Fee would comprise 42c of every rand paid in tolls – an amount that nobody would have to pay if the project was not funded through tolling.

Even if Sanral, financing the project from its own funds, had to incur the full amount of the concessionaire's development and financing costs there would still be a saving of R28 billion (56% of the total amount of toll fees).

Toll tariffs and the reimbursement clauses

Under the likely contract Sanral shall make representations to the Transport Minister for the publication of the toll tariffs agreed between Sanral and the Concessionaire.

As I indicated earlier, if there is a failure or refusal by the Minister to sanction the base toll tariffs (agreed between Sanral and the Concessionaire) then Sanral shall reimburse the concessionaire by an amount that will place the concessionaire in the same economic position had the minister determined the toll tariffs in accordance with the agreement.

PPC's average base toll tariff is 74.20c/km (for light vehicles) at 2013 values, excluding VAT, including ETC (electronic toll collection – **e-**tag) discount. The price including VAT is 84.59c/km.

In order to calculate the possible amount of reimbursement Sanral may be in for; our experts looked at the GFIP toll fees to find a toll rate the Transport Minister may reasonably set.

The toll tariff the Transport Minister finally determined for the GFIP – before last week's intervention – is lower than PPC's toll tariff. It is reasonable to conclude that the minister would, or could, fail or refuse to sanction PPC's toll tariff and instead determine a toll for the Winelands which is no higher than that for GFIP.

This is especially so when one considers affordability – users of the Winelands Highways are substantially less well off than users of the GFIP roads.

The equivalent tariff for GFIP is **30c/km** (including VAT) and **26.32c/km** (excluding VAT) for light vehicles including e-tag discount.

The GFIP rate of 26.32c/km is thus 35% of PPC's rate of 74c/km – thus if the Transport Minister were to be consistent in the Winelands Project it would involve a 65% reduction in PPC's rate.

With regards to the potential reduction in the economic position of the concessionaire, as provided for in the concession contract, if the Transport Minister's tariff determination for the project amounted to a 65% reduction in PPC's base toll tariff then PPC's expected revenue of R50.9 billion would be reduced by an amount of R32.8 billion in 2010 values. In 2014 values the equivalent is **R40.9 billion**.

It follows that Sanral, in accordance with the terms of the concession contract, may have to reimburse the concessionaire by an amount of **R40.9 billion.**

To place this in perspective – the non-tolling costs of the construction, maintenance and operation of the Highways over the 30 year concession period totals **R11.955 billion** (2010 values) or **R19 billion** in 2014 values.

This means that Sanral may have to reimburse the concessionaire more than twice what it would pay if it simply funded the construction and maintenance directly as it does with other non-toll roads.

These estimates are conservative. We have assumed that the Transport Minister will sanction PPC's discount scheme and will not require it to provide road users of the Winelands scheme with the same discounts applicable to the GFIP. The GFIP discounts are more generous for example:

- Tolls for light vehicles in the GFIP are capped at R450 per month – as you know this has since been reduced – PPC's discount scheme does not provide for any cap;
- PPC also does not propose any time of day discounts;
- PPC's toll tariffs allow only a 50% discount for public transport compared to an effective 100% discount in the GFIP.

Socio-economic impacts

When we launched our review application in 2012 we did not have any of this information. This information did not form part of any public consultation process nor was it made available to the City or the public on request or at all.

In fact the City had to bring an application to the high court to compel Sanral to provide this information to us.

We then had to defend an application by Sanral to declare the information confidential and to prevent us from putting this information in the public realm.

I am able to share this with you today only because we fought that secrecy application all the way to the Supreme Court of Appeals in Bloemfontein – and were successful.

Access to this information has given us additional evidence and grounds to argue that the decisions that were taken should be set aside. However, the grounds we initially raised – many of which are based on the likely socio-economic impacts – are also still relevant and valid.

I do not want us to forget about these important impacts on our residents and our economy and will briefly remind you of what we were saying three years ago.

Now that the proposed toll fees have been made available to us, we have been able to calculate the fees to be charged at each plaza or tolling point and to confirm our initial views that road users are not able to accommodate these additional costs in their monthly household expenses.

The three planning districts within the City which are most likely to be affected by the project are Helderberg, Northern Planning District and Mitchells Plain / Khayelitsha.

The percentage of households in each district with an income of less than R6400 per month is 80.7% in Mitchells Plain Khayelitsha; 58.7% in Helderberg and 42.4% in the Northern Planning District. These fall within the definition of poor households.

More than half of those households are already spending more than 30% of household monthly income on transport costs.

For households earning between R7000 and R10 000 per month the mean transport costs as a proportion of expenditure is 16.31%.

Here are some examples of the impact using different journey scenarios:

1. For work commuters passing only through Joosetnbergvlakte Main Line Toll Plaza on the N1, the toll tariff discounted by frequent user discount of 25% will still cause monthly mean expenditure on transport to increase from 19.5% to 27.6% for drivers earning less than R6600 per month and from 16.31% to 20.87% for drivers earning up to R11700 per month.

2. For work commuters passing only through the Firlands toll plaza on the N2 the monthly mean expenditure on transport will increase from 19.50% to 32.30% for those earning less than R6600 per month and from 16.31% to 25.53% for those earning up to R11700 per month.

3. For road users who make 15 round trips a month using the Hugenot tunnel and Joostenbergvlakte Main Line Toll Plaza on the N1, the tolls will cause monthly mean expenditure on transport to increase from 19.5% to 46.12% for those in poor households and from 16.31% to 31.32% for those warning up to R11700 per month.

Local user discounts are only intended to be applied at the rural toll plazas located at De Doorns/Hexpoort and Botrivier.

They will not assist urban poor raod users at all, nor will they assist poor rural road users who need to travel beyond their immeadiate environment.

Low income communities in these areas have strong social links with towns such as Worcestor and Grabouw/Elgin and travel to these centres over weekends to visit family, shop and attend functions such as church and sports events. These trips will not qualify for local user discounts or for frequent user discounts.

With regards to the macro-economic impact we must remember that there is an important distinction between the construction of new toll roads, which provide an alternative to an existing road network and generally enhance economic efficiency and the situation where told are imposed on existing roads, which does not have that result.

We employed economists to assist us to understand the macro-economic effect of the project. They concluded that:

"Given their importance as essential routes for people and goods in and out of the province there is little doubt that the introduction of tolls following the upgrading of the N1 & N2 will lead to wasteful adjustment costs and distort the levels, structure and spatial patterns of consumption, production, investment and employment in the Western Cape".

For example, businesses may become uncompetitive and forced to relocate leading to decreased outputs, consumers are forced to increase their transport expenditure with an equivalent decrease in their consumption or are forced to use inferior routes, prices of products or services rise and in the long-run there will be falls in the level of investment and economic growth in the province.

The agricultural and manufacturing industries in the Western Cape are particularly sensitive to this effect because they operate in competitive markets and have high transport costs.

Other considerations

There are numerous other considerations that make up our case to review and set aside the decisions that led to the Winelands Toll Road Project. These include the impact and cost of traffic diversion, the failure to consider alternative funding models, and the exaggeration of projected traffic flow volumes.

Finally, as we all know, the Competition Commission has reached a settlement with 15 construction firms for collusive tendering. It appears from the information available on the Competition Commission website that members of each of the bidders have admitted to unlawfully colluding on toll road projects and other road projects at around the same time as the Winelands project. In the circumstances it is fair to say that this tender was born of a climate of collusion and secrecy.

There is no evidence to show that Sanral investigated this or obtained any information in this regard from the preferred bidder of any of the other bidders. In fact there is no indication that Sanral has done anything. In our papers we have invited Sanral to provide the court with records evidencing steps is has taken to investigate and comply with its obligation to ensure that the Winelands project was not tainted with collusive practices or similar illegality.

It is clearly not possible to spell out all the details of our case to prevent the tolling of the N1 & N2. However, I hope that I succeeded in demonstrating the enormous task this has been to get us to a point where we have secured access to vital information never before disclosed so that we can present a compelling argument for withdrawing this ill-conceived toll road scheme. As I indicated we are back in court on the 11 August. I am hopeful that we will be successful. I expect we still have a long journey to travel.