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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no: 7157/2023

In the matter between:

CHOISY-LE-ROI (PROPRIETARY) LIMITED

APPLICANT

and

THE MUNICIPALITY OF STELLENBOSCH

FIRST RESPONDENT

THE APPEAL AUTHORITY

IN RESPECT OF THE MUNICIPAL PLANNING

TRIBUNAL OF THE MUNICIPALITY OF STELLENBOSCH

SECOND RESPONDENT

Coram: BHOOPCHAND AJ

Heard: 28 July 2025

Delivered: 11 August 2025

Summary: Administrative Law. Municipal Planning Law. Second judicial review of the Municipality's Appeal Authority to confirm the decision of the Planning Tribunal to reject the Applicant's rezoning application. Municipal planning instruments and

reliance on 'corrected' Municipal Spatial Development Framework. Uncorrected Gazetted MSDF is legally binding on the Municipality in its interactions with the public. Appeal Authority's decision influenced by an error of law. Review upheld and matter remitted to the Appeal Authority for further reconsideration.

ORDER

1. The decision of the second respondent dated 9 November 2022 confirming the decision of the Stellenbosch Municipal Planning Tribunal to refuse the applicant's application for the rezoning of Erf 1[...], Stellenbosch, is reviewed and set aside.
2. The applicant's appeal against the Municipal Planning Tribunal's decision is remitted to the second respondent for further reconsideration.
3. The Respondents shall pay the costs of this application.

JUDGMENT

Bhoopchand AJ:

[1] Amid heady hills overlooking valleys of vineyards, green belts, and golf courses on the urban edge of Stellenbosch, lies Techno Park, once envisaged as an enclave of science and innovation. Though the purity of its founding purpose has gradually softened, diluted by a variety of enterprises entering its fold, the municipality remains resolute that no residential development shall take root here. Yet, within its borders, a solitary landowner tests its boundaries, challenging the vision with stubborn steadfastness, stirring a tension between the park's original blueprint and a changing tide.

[2] This is a second application for judicial review of the decision of the Second Respondent ('the Appeal Authority'), of the Stellenbosch Municipality ('the

Municipality'), arising from the Applicant's application submitted in 2017 for rezoning of the erf it owns in Technopark. The Applicant applied for the rezoning of its property from a special zone 1: Technology or Science Park to Specific Business to permit a mixed land use development comprising a building with three storeys of shops, offices, and retail stores on the ground floor and 18 duplex apartments on the second and third floors, and a private roof garden. The First Respondent appears resolute in its Council's vision and position that Techno Park should be developed and promoted to become an even more specialised zone for technological invention and a hub for specialised business. This Court accepts that the reconsidered appeal decision constitutes administrative action within the meaning of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA').

[3] Municipal planning is the formal process through which local governments manage land use, development, and spatial organisation within their demarcated areas.¹ Section 151(3) of the Constitution² empowers municipalities to govern on their own initiative subject to national and provincial legislation. A rezoning application in a municipality like that of Stellenbosch triggers a multilayered legal and procedural framework encompassing national, provincial and municipal legal instruments. The Spatial Planning and Land Use Management Act of 2013 ('SPLUMA') was enacted to create a unified, equitable, and efficient system of spatial planning and land use management across South Africa. The Western Cape's Land Use Planning Act of 2014 does not dictate municipal planning, but requires municipalities to ensure consistency with provincial and national spatial frameworks. The Stellenbosch Municipal Spatial Development Framework ('MSDF') guides land use and development decisions in the municipality. It must align with SPLUMA and LUPA. Section 20 of SPLUMA requires the Municipality to give notice of its framework and any proposed amendments in the Gazette and the media. The Stellenbosch Municipal Land Use Planning By-law (2023) governs local rezoning

¹ *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal & others* [2010] ZACC 11; 2010 (6) SA 182 (CC) para 57, where the apex Court described municipal planning as: 'the term [municipal planning] is not defined in the Constitution. But "planning" in the context of municipal affairs is a term which has assumed a, well-established meaning which includes the zoning of land and the establishment of townships. In that context, the term is commonly used to define the control and regulation of the use of land.'

² The Constitution of the Republic of South Africa, Act 108 of 1996

procedures, including application requirements, public participation, decision timelines, and appeal mechanisms.³

[4] The Integrated Development Plan (IDP) is the Municipality's master plan for development. It sets out, among others, the land use vision in the Municipality. In a rezoning application, the proposed changes must align with the strategic vision contained in the IDP. The MSDF is a spatial expression of the IDP, the latter being the benchmark against which rezoning proposals are measured. If a proposed rezoning change contradicts the IDP, e.g., an application for a mixed land use comprising a largely residential component in a technology or science park, it will require sufficient motivation or risk rejection. The Stellenbosch Zoning Scheme by-law defines permissible land uses per zone and overlays. It determines whether rezoning is needed and what new rights may be granted.

[5] A zoning scheme overlay is an extra layer of rules that apply to a base zoning of a property, usually adding something extra, e.g., a mixed-use overlay may allow a blend of residential and commercial uses in specific zones. Another key consideration in rezoning applications is site-specific factors like location, the size and shape of the property, topography, existing infrastructure, surrounding land use, and environmental or heritage factors.⁴

[6] The Applicant's rezoning application fell to be considered under the 1996 MSDF. The Municipality's Planning Tribunal (SMPT) refused the rezoning application of erf 1[...] on 20 July 2018. The Municipality's Appeal Authority, constituted by its Executive Mayor, confirmed the SMPT's decision on 3 February 2020. By the time the first appeal was heard, the 2019 MSDF had been adopted by the Municipal Council, and the adoption history and the gazetted MSDF featured prominently in the Appeal Authority's decision. The Appeal Authority relied upon the approved 2019 MSDF, but interpreted it against the draft documents, which contained content that conflicted with the Municipal Council's decision in 2019 to exclude residential development in Technopark.

³ Section 65 sets out the appeal process.

⁴ Sources for the information contained in this paragraph: Western Cape. Gov.za, Stellenbosch. Gov.za

[7] The Applicant approached this Court for a judicial review of that decision. The Court's judgment appears as *Choisy-Le-Roi Owners (Pty) Ltd v The Municipality of Stellenbosch and Another*⁵. The first review Court found that the Executive Mayor had regard to irrelevant considerations, while at the same time failing to have regard to the relevant ones.⁶ The *ratio* of the Court, after providing an insight into the proper interpretation of statutes and acknowledging that the MSDF was not a statute, but had a binding legal effect on the Municipality and the users and developers of land, found that the Appeal Authority was obliged to interpret the text of the gazetted MSDF, and not rely on the earlier drafts to give the text a contextual meaning inconsistent with the language used.⁷ The enquiry should determine the effect of the text on the citizen who did not participate in its articulation, as opposed to contract interpretation, where its effect is directed at what was mutually intended by the parties. The Executive Mayor's approach to interpreting the MSDF conflicted with the objective of a spatial development framework, which must 'provide clear and accessible information to the public and private sector and provide direction for investment purposes'.⁸ The Court expressed the view that the operative parts of sections 5 and 6 of the gazetted framework did not exclude residential development in Technopark.⁹ The first review Court set aside the Appeal Authority's decision on 11 May 2022, and remitted it for reconsideration.

⁵ (10240/2020) [2022] ZAWCHC 71; 2022 (5) SA 461 (WCC) (11 May 2022) ('*Choisy-Le-Roi*')

⁶ *Choisy-Le-Roi* at para 41

⁷ *Choisy-Le-Roi* at paras 35-40, *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13 (16 March 2012); [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) at para 18, *University of Johannesburg v Auckland Park Theological Seminary and Another* [2021] ZACC 13 (11 June 2021); 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 (CC), *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99 (9 July 2021); [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) at para 49. The reasoning of the first review Court is not inconsistent with *Dexgroup Pty Ltd v Trustco Group International (Pty) Ltd* [2013] ZASCA 120; [2014] (1) All SA 375(SCA) where it was stated that: "...These cases make it clear that in interpreting the starting point is inevitably the language of the document but it falls to be construed in the light of its context, the apparent purpose to which it is directed and the material known to those responsible for its production. Context, the purpose of the provision under consideration in the background to the preparation and production of the document in question are not secondary matters introduced to resolve linguistic uncertainty but are fundamental to the process of interpretation from the outset'

⁸ *Choisy-Le-Roi* at para 40

⁹ *Choisy-Le-Roi* at para 41

[8] An examination of the respective sections of the gazetted MSDF reveals a conflict between its content and the stated policy of the Municipal Council to make Techno Park an even more specialised zone. Table 20, under part 5 of the gazetted MSDF, referring to plans and settlement proposals, deals with the spatial proposal for Technopark. It supports the park's further development as a balanced community, emphasising residential opportunity. In Table 28, under the implementation framework and the development and land use, the focus was to establish balanced precincts, e.g., Techno Park. Table 50 under policy refers to the pursuit of mixed use of land in Techno Park.

[9] The Spatial Planner of the Municipality corrected tables 20 and 28 of the MSDF on 17 May 2022. On 25 May 2022, its Council noted and approved the 'corrections' and the placement of the 'corrected' MSDF on the Municipality's website. Neither a notice of the 'corrections' nor the 'corrected' MSDF appeared in the provincial gazette, as the Municipality insisted that the 'corrections' did not amount to an amendment necessitating the MSDF to be re-gazetted. The 2019 MSDF, as gazetted, remained the same as the MSDF scrutinised by the first Appeal Authority and the first review Court.¹⁰

[10] The Appeal Authority reconsidered the rezoning application pursuant to the outcome of the first judicial review. It reminded the Applicant that it purchased property in an area with development restrictions, referred to the financial implications voiced by the Applicant if the rezoning was not granted and the negative impact on other property owners in the park who conformed to the vision for the area.

[11] The Appeal Authority resolved on 9 November 2022 to once again dismiss the Applicant's appeal against the Municipality's Planning Tribunal. In arriving at this decision, the Appeal Authority appraised the process in correcting the MSDF pursuant to the first judicial review in detail. Reference to the 2019 Zoning Scheme by-law was fleeting as the Appeal Authority got to and concentrated on the focus of

¹⁰ Respondents' Counsel was unaware as to whether the 'corrected' MSDF was re-gazetted and declined to commit himself as this aspect was not covered in the answering affidavit. A search conducted by this Court could not confirm that the corrected MSDF was re-gazetted.

the report, ‘the material consideration in the adjudication of the appeal’, supporting the decision against rezoning, namely the 2019 MSDF. It affirmed that the 2019 MSDF was still in place when the appeal was reconsidered. The Municipality asserted its Council’s constitutional authority to govern at the municipal level and to determine its planning and zoning schemes and its MSDF.¹¹

[12] The Appeal Authority emphasised five parts of the MSDF that were relevant to the application for rezoning, namely tables 20, 28, 50, 51, and the paragraph entitled ‘Techno Park’. This was bound to raise questions on review as to whether the Executive Mayor’s reliance on the ‘corrected MSDF’ as opposed to the legally binding gazetted version was applicable. In relying upon its ‘corrected version’, the Appeal Authority paradoxically reiterated the first review Court’s explication that reviews are focused on the legality of the decision. Section 18 of the Western Cape’s LUPA specifies the conditions relating to the publication of spatial development frameworks. Section 18(1) requires the Municipality to publish a notice of the adoption or amendment of an MSDF in the Provincial Gazette.¹² A notice in this context means a formal announcement, not the publication of the full MSDF. The purpose is to inform the public of the adoption or amendment, and where the document can be accessed. Neither SPLUMA nor LUPA make provisions for corrections. If the ‘corrections’ are material, i.e., the changes are material in that they change the substance or interpretation of the MSDF, they should be treated as amendments to the MSDF. There is, however, no collateral challenge to the Municipality’s decision to correct the 2019 MSDF or the Council’s decision to note the corrections and publish the corrected MSDF on its website. It does matter that the ‘corrected’ version was not gazetted as the uncorrected one is legally binding on the Municipality and the Applicant’s contentions that the second appeal was based on a non-binding document are conclusive of this review.

[13] The Applicant raised seven grounds of review under PAJA. It belatedly instituted this review, even though it barely complied with the prescribed 180 days

¹¹ In *Tronox KZN Sands (Pty) Ltd and KwaZulu-Natal Planning and Development Appeal Tribunal and Others* [2016] ZACC 2; 2016 (4) BCLR 469 (CC), the Constitutional Court confirmed that municipal planning decisions lie within the exclusive competence of municipalities

¹² As alluded to earlier in this judgment, Section 20 of SPLUMA requires the Municipality to give notice of its framework and any proposed amendments in the Gazette and the media.

after learning of the Municipality's intention to amend the 2019 MSDF.¹³ The notice does not refer to Techno Park. It isn't easy to understand the Applicant's contention that the Municipality's position concerning Techno Park remained unchanged based on the notice. The Applicant's grounds of review emanate from three alleged errors or misdirections in the second appeal decision. They relate to the reliance upon the 'corrected MSDF', the provisions of the gazetted MSDF, and the Applicant's knowledge that the property was subject to a developmental restriction. The Applicant denies the 'corrections' to the MSDF are relevant to the appeal decision but alleges that if they are considered to be applicable by this Court, then Table 51 makes positive remarks about residential use within Technopark. Be that as it may, the thrust of the Applicant's complaints relating to the MSDF has been addressed.

[14] As for the Applicant's knowledge of the restrictions that applied to the development of its property, the report informing the decision refers to the Applicant's submission that it would suffer financially if the rezoning to mixed use with a prominent residential component was not granted and the effect on other property owners if the rezoning was granted. This Court can find no procedural or legal impediment that prohibits the Appeal Authority from addressing the Applicant's contentions that were raised during the latter's exercise of its legitimate expectation to a hearing.¹⁴ The Court is cognisant of the Applicant's submission that a rezoning application is directed at the restrictions that apply to a particular property.

[15] The Respondents defended the Appeal Authority's reliance on the 'corrected' MSDF. They asserted that the decision of the Municipal Council to note the 'corrections' was not the subject of a review. The Respondents confirmed that the 'corrected' MSDF was published on the Municipality's website. They contend that the Council's decision (to note the corrections to the MSDF) stood until challenged and set aside.¹⁵ The Respondents submitted that even if they committed an error of law

¹³ The Court did not consider it necessary to grant condonation for the belated application as it complied with the 180 days prescribed in PAJA.

¹⁴ In general town planning schemes are conceived not only in the interests of the general public but in the interests of inhabitants of the area covered by the scheme. (*Administrator Transvaal and the Firs Investments (Pty) Ltd v Johannesburg City Council* 1971 (1) SA 56 (A) at 70D; *BEF (Pty) Ltd v Cape Town Municipality & others* 1983 (2) SA 387 (C) at 401F)

¹⁵ *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 622 (SCA) [2004] 3 All SA 1

in this respect, it did not vitiate the whole appeal as the Appeal Authority considered other factors as well, in arriving at its decision. In oral argument, Respondents' Counsel asserted that the Applicant was unable to disentangle the complaints against the MSDF from the other legal instruments that applied to rezoning, e.g., the Zoning Scheme. As alluded to earlier in this judgment, the focus of the appeal decision is on the MSDF, and the argument thus raised is unsustainable.

[16] The Respondents assert that the only question before this Court in this review is whether the Second Respondent committed a reviewable irregularity in deciding the appeal against the rezoning decision of the MPT under, among others, the rectified MSDF, or not. The Respondents explained that the point of the Applicant being bound by the zoning restrictions imposed on its property is simply that until there is a rezoning, the zoning conditions remain.¹⁶ The latter contention would mean that any rezoning application would be superfluous. The report does not support this proposition. The Respondents further assertion that the Second Respondent simply recorded the Applicant's knowledge of the restrictions on the property as a fact, and as she was required to consider all the facts relating to the appeal, has already found accord with this Court.

[17] As long as the 2019 MSDF remained in its original form with tables 20 and 28 as published in the provincial gazette, the gazetted MSDF represented the law relating to spatial development in the Stellenbosch Municipality. The Appeal Authority's reliance on a 'corrected' MSDF is a decision that is procedurally unfair, irrational, and materially influenced by an error of law. The Appeal Authority's decision was irrational as it ignored the binding version of the Municipality's own planning instrument. The first judicial review found that the gazetted MSDF was the legal instrument that bound the Municipality in its interactions with its citizens. Gazetting is not just a formality; it is the official act of publication that gives a planning instrument like the MSDF legal force and public visibility. Publication on a website does not equate to gazetting. This Court finds that the second appeal conducted by the Municipality's Appeal Authority must suffer a similar fate as the first judicial review, albeit that the review succeeds on different grounds. The second

¹⁶ *KwaDukuza Municipality v Lahaf (Pty) Ltd* (940/18) [2020] ZASCA 9; [2020] 2 All SA 356 (SCA) (18 March 2020)

appeal decision falls to be set aside and remitted to the Appeal Authority for further reconsideration.

[18] In setting aside the Appeal Authority's second appeal decision, this review Court, as was the case with the first review Court, is not concerned with the merits of the impugned decision, but only with its legality. The setting aside of the Appeal Authority's decision does not presuppose a different outcome to the further reconsideration of the rezoning application. A different incarnation of the MSDF was imminent after a 2023 public participation process and may influence the outcome of a further reconsideration of the Applicant's application to rezone its property.

ORDER

1. The decision of the second respondent dated 9 November 2022 confirming the decision of the Stellenbosch Municipal Planning Tribunal to refuse the applicant's application for the rezoning of Erf 1[...], Stellenbosch, is reviewed and set aside.
2. The applicant's appeal against the Municipal Planning Tribunal's decision is remitted to the second respondent for further reconsideration.
3. The Respondents shall pay the Applicants party and party taxed or agreed costs and Counsels fees on scale B.

BHOOPCHAND AJ
Acting judge
High Court
Western Cape Division

Judgment was handed down and delivered to the parties by e-mail on 11 August 2025

Applicant's Counsel: A Toefy

Instructed by Hofmeyr Attorneys

Respondent's Counsel: D Borgstrom SC

Instructed by Rufus Dercksen Inc