THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 369/2024

In the matter between:

STEREA DIGITAL CC	**FIRST APPELLANT**
SANDENBERGH NEL HAGGARD	**SECOND APPELLANT**
and	
THE CITY OF CAPE TOWN	**FIRST RESPONDENT**
APPEAL AUTHORITY OF THE CITY OF CAPE TOWN	**SECOND RESPONDENT**
THE MUNICIPAL PLANNING TRIBUNAL OF THE CITY OF CAPE TOWN	**THIRD RESPONDENT**

Neutral citation: *Sterea Digital CC and Another v The City of Cape Town and Others* (369/24) [2025] ZASCA 166 (31 October 2025)

Coram: MOLEMELA P, MEYER, MOLEFE AND SMITH JJA AND KUBUSHI AJA

Heard: 21 AUGUST 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 31 October 2025.

Summary: Municipal law – property – rezoning application. Administrative Law – Promotion of Administrative Justice Act 3 of 2000, ss 6(2)*(e)*(iii) and 6(2)*(a)*(iii) - whether the Municipal Planning Tribunal's decision to refuse an application to rezone property in a secluded residential neighbourhood from Single Residential 1 to Local Business 1 was correct – whether the internal appeal authority was biased or reasonably suspected of bias and failed to consider relevant considerations in dismissing the appeal.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Gamble, Cloete and Samela JJ sitting as court of appeal):

1 The appeal is upheld in part.

2 The full court's order is set aside and replaced with the following:

'1. The appeal is upheld.

2. The high court's order is set aside and replaced with the following:

The application is dismissed.'

JUDGMENT

Meyer JA (Molemela P, Molefe and Smith JJA, and Kubushi AJA concurring)

[1] The first appellant, Sterea Digital CC (Sterea), and the second appellant, a firm of attorneys, Sandenbergh Nel Haggard (SNH) or collectively 'the appellants', seek to appeal the order of the Western Cape Division of the High Court, Cape Town, per Gamble, Cloete and Samela JJ (the full court), delivered on 21 November 2023. The matter before the full court was the judicial review of administrative action.

[2] Sterea had applied to the first respondent, the City of Cape Town (the city), under the City of Cape Town Municipal Planning By-Law, 2015 (the By-Law), to rezone its property, situated at 1 Basson Street, Durbanville (the property), which is in a secluded residential neighbourhood, from a Single Residential 1 zoning (SR1) to a Local Business 1 zoning (LB1). The property is 1,514m² in extent with a dwelling house and outbuildings erected on it. Sterea sought the rezoning to convert the residential dwelling to business premises from where SNH were to operate its attorneys' firm. SNH was a mid-sized firm at the time when the application for rezoning was made, it employed six attorneys, four paralegals and 12 support staff.

[3] According to the By-Law, SR1 zoning:[1]

'provides for predominantly single-family dwelling houses and additional use rights in low- to medium-density residential neighbourhoods, whether these incorporate small or large erven. Limited employment and additional accommodation opportunities are possible as primary or consent uses, provided that the impacts of such uses do not adversely affect the surrounding residential environment'.

The By-Law defines 'consent use' to mean: 'a land use permitted in terms of a particular zoning with the approval of the City.'[2] Under item 21*(a)* of Schedule 3 to the By-Law – 'Development Management Scheme' – the primary uses for SR1 zoning 'are dwelling house, private roads and additional use rights'. Item 21*(c)* lists the consent uses for SR1 zoning as 'utility service, place of instruction, place of worship, house shop, institution, guest house, rooftop base telecommunication station, wind turbine infrastructure, open space, urban agriculture, second dwelling and halfway house'.[3]

[4] On 10 March 2020, the third respondent, the Municipal Planning Tribunal of the City of Cape Town (MPT), refused the rezoning application. On 12 October 2020, the second respondent, the Appeal Authority of the City of Cape Town (AA), who was the city's former executive mayor, Mr Daniel Plato, dismissed Sterea's administrative appeal. On 6 April 2022, the Western Cape Division of the High Court, Cape Town, per Goliath DJP (the court of first instance) granted Sterea's application for judicial review. On 21 November 2023, the full court upheld the city's appeal and determined the review in the city's favour.

[5] On 10 October 2017, the city granted the then owner of the property a 'consent use' to use the property for a limited period of two years as a 'place of instruction' for a private school for children with learning disabilities. On 18 February 2019, Sterea signed a sale agreement to purchase the property to use as law firm offices. At the beginning of March 2019, the school vacated the property. On 8 March 2019, Sterea's representative (Mr Scott of Pro-Konsort Town Planners) emailed the city asking for information about 'existing rights that have been awarded' in respect of the property.

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[1] City of Cape Town Municipal Planning By-Law, 2015(the By-Law).
[2] Chapter 1, definitions of the By-Law.
[3] Item 21(*a*) of Schedule 3 of the By-Law.

[6] After being told of the plan to use the property as attorneys' offices, a city official in the Urban Integration Department, Ms De Klerk, expressed her views and the likely position of the department, in an email to Mr Scott. She explained that, from a policy perspective, she did not anticipate that the city's spatial planning department would support the proposed use of the property in a residential precinct for business purposes. The property fell outside Durbanville's primary precinct for business purposes. Its rezoning would conflict with the Northern District Plan (the NDP), the district spatial development framework and the local spatial development framework,[4] which supported mixed uses only in appropriate areas. The NDP is a district spatial development framework.[5] In any planning application under the By-Law concerning a property, the NDP must be complied with and can be deviated from 'only if the circumstances justify the deviation'.[6] If the deviation is unjustified, the application 'must be refused'.[7]

[7] She explained that a business use in that position would be 'business creep', with negative consequences for the surrounding residential properties.[8] Rezoning to business would fundamentally differ from the school consent use. First, the permission was temporary, for two years, to assess its impact and to give the special needs school time to find alternative premises. Second, the educational use was consistent with the property's existing SR1 zoning. Rezoning to business would be permanent, give different rights and have more impact.

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[4] Section 16 deals with the status of a district spatial development framework and a local spatial development framework. It reads:

'(1) If an application is inconsistent with an applicable district spatial development framework or a local spatial development framework, the applicant must describe the inconsistency in –

(a) the application; and

(b) the advertisement of the application.

(2) A person who takes a decision in terms of this By-Law –

(a) must be guided by an applicable district spatial development framework and/or local spatial development framework;

(b) subject to section 22, may deviate from the provisions of an applicable district spatial development framework and/or local spatial development framework only if the circumstances justify the deviation.

(3) A district spatial development framework and a local spatial development framework do not confer or take away rights.'

[5] The NDP was approved as a structure plan under s 4(10) of the Land Use Planning Ordinance 15 of 1985 on 31 October 2012 and is listed in Schedule 1 of the By-Law. In terms of s 20 of the By-Law, the NDP is deemed to be a district spatial development framework approved in terms of the By-Law.

[6] Section 16(2)*(b)* of the By-Law.

[7] Section 99(1)*(a)* of the By-Law.

[8] Business creep is the incremental conversion of residential properties to businesses, gradually undermining an area's residential character.

[8] On 16 May 2019, ownership of the property passed to Sterea. On 5 June 2019, it applied for rezoning of the property. On 10 March 2020, the MPT refused the application under s 98*(c)* of the By-Law. The MPT's reasons included: (a) the NDP designates Basson Street as a 'secluded neighbourhood that does not form part of the CBD demarcation'; (b) the NDP seeks to retain and protect the residential character of the Basson Street neighbourhood, which has a unique character because of its size, vegetation and location; (c) the NDP prohibits business creep; (d) under the By-Law, a decision-maker may deviate from the NDP 'only if the circumstances justify the deviation'. Sterea failed to justify the deviation it sought; (e) the proposed rezoning of the property to LB1 is not in keeping with the surrounding land use and residential character and is not supported from a planning and spatial planning perspective. Title deed restrictions for the area protect the residential character, which should be retained; (f) employing at least 25 staff members is large scale, which is not conducive in a purely residential area; (g) the proposal would create a negative visual/social impact on the residential interface along Basson Street; and (h) the property falls outside the Durbanville CBD where land use intensification and employment-generating land uses are encouraged.

[9] Sterea appealed the MPT decision to the AA. A city official, Mr Snyman, prepared a report describing and assessing the appeal grounds and all comments and objections on the appeal, as required under the By-Law (the appeal report). On 6 August 2020, the appeal report was considered at the meeting of the Planning Appeals Advisory Panel, which recommended the dismissal of the appeal.

[10] The AA, exercising wide appeal powers under s 114(3) of the By-Law, and having considered all the appeal grounds, the relevant considerations, the appeal report, and the recommendation from the Planning Appeals Advisory Panel, exercised its discretion to refuse the rezoning application, and dismissed the appeal under s 98*(c)* of the By-Law (the appeal decision). It, too, found that Sterea had not justified a deviation from the NDP.

[11] Sterea seeks to assail the appeal decision under the provisions of subsections 6(2)*(e)*(iii) and 6(2)*(a)*(iii) of the Promotion of Administrative Justice Act (PAJA).[9] It argues that in taking the appeal decision the city's former executive mayor was biased or reasonably suspected of bias and failed to consider relevant considerations. The crux of the complaints advanced by Sterea is the AA's alleged predisposition to rigidly follow the NDP to the exclusion of all else, and that it failed to consider that the property had already lost its exclusive residential character as a result of it having been used as a school. On the other hand, it argues that the outcry from the surrounding community following the use of the property as a school influenced the city's officials at the local planning level as well as the AA to have a preconceived notion that rezoning of the property would adversely affect the property and secluded neighbourhood; a 'once bitten twice shy' approach which led to a failure to apply an unbiased mind to Sterea's rezoning application.

[12] Such bias, Sterea argues, permeated the entire decision-making process, from beginning to end, tainting both the decisions of the MPT and the AA thereafter. The same official who previously motivated the granting of a consent use for the school in a report to the MPT, Ms de Klerk, informed Sterea before any rezoning application had been made to the city, that its rezoning application would 'not be supported'. Such sentiment of Ms de Klerk was repeated in the appeal report and subsequently rubber stamped by the MPT.

[13] An application for rezoning of property is regulated by the By-Law. It provides in relevant part that no person may use or develop land unless the use or development is permitted in terms of the zoning scheme or an approval is granted or deemed to have been granted in terms of the By-Law.[10] An applicant who requires approval for

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[9] Promotion of Administrative Justice Act 3 of 2000. Subsections 6(2)*(e)*(iii) and 62*(a)*(iii) read:
'6(2) A court or tribunal has the power to judicially review an administration action if-
(a) the administrator who took it-
(iii) was biased or reasonably suspected of bias;
. . .
(e) the action was taken-
(iii) because irrelevant considerations were taken into account or relevant considerations were not considered;'

[10] Section 35(2) stipulates that '[n]o person may use or develop land unless the use or development is permitted in terms of the zoning scheme or an approval is granted or deemed to have been granted in terms of this By-Law'.

the use or development of land must apply to the city in terms of s 42. The determination of a rezoning application is governed by s 99.[11] Section 99(1) prohibits the approval of such an application if certain minimum threshold requirements are not met. Amongst those threshold requirements are those concerning a district spatial development framework. The NDP is such a framework. Section 16, in turn, instructs a municipality to be guided by the district spatial development framework and to deviate from its provisions 'only if the circumstances justify the deviation'. All municipal planning decisions that encompass zoning and subdivision, no matter how big, lie within the exclusive competence of municipalities.[12]

[14] Here, both the MPT and the AA found that Sterea had not justified a deviation from the NDP, and thus withheld approval of the subdivision applied for. The court of first instance disregarded the city's discretion to refuse to rezone the property. Instead of considering the regularity of the impugned decisions, it concerned itself with the correctness thereof and substituted its views on the merits of the rezoning application for those of the MPT and the AA. It, *inter* alia, held that the city was inconsistent in its

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[11] Section 99 deals with the criteria for deciding an application. It reads:
'(1) An application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements –
(a) the application must comply with the requirements of this By-Law;
(b) the proposed land use must comply with or be consistent with the municipal spatial development framework, or if not, a deviation from the municipal spatial development framework must be permissible;
(c) the proposed land use must be desirable as contemplated in subsection (3); and
(d) in the case of an application for a departure to alter the development rules relating to permitted floor space or height, approval of the application would not have the effect of granting the property the development rules of the next subzone within a zone.
(2) If an application is not refused under subsection (1), when deciding whether or not to approve the application, the decision maker must consider all relevant considerations including, where relevant, the following –
(a) any applicable spatial development framework;
(b) relevant criteria contemplated in the development management scheme;
(c) any applicable policy or strategy approved by the City to guide decision making, which includes the Social Development Strategy and the Economic Growth Strategy;
(Para. (c) substituted by s. 7 of City of Cape Town: Municipal Planning Amendment By-Law, 2017)
(d) the extent of desirability of the proposed land use as contemplated in subsection (3);
(e) impact on existing rights (other than the right to be protected against trade competition);
(f) in an application for the consolidation of land unit –
(i) the scale and design of the development;
(ii) the impact of the building massing;
(iii) the impact on surrounding properties;'

[12] *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* [2010] ZACC 11; 2010 (6) SA 182 (CC); 2010 (9) BCLR 859 (CC)paras 49-57; *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v Habitat Council and Others* [2014] ZACC 9; 2014 (5) BCLR 591 (CC); 2014 (4) SA 437 (CC) paras 13 and 19.

approach to granting consent use for a school and its approach to Sterea's rezoning application. This fundamental error made by the court of first instance was subsequently corrected by the full court.

[15] I now turn to Sterea's argument of bias. In *Turnbull-Jackson v Hibicus Coast Municipality and Others*,[13] the Constitutional Court applied the *SARFU 11*[14] test of bias in judicial proceedings to administrative action by an administrator who is 'biased or reasonably suspected of bias'. A reasonable suspicion of bias is tested against the perception of a 'reasonable, informed and objective person'.

[16] In *MEC for Environmental Affairs and Development Planning v Clairison's CC*[15] this Court held:

'Government functionaries are often called upon to make decisions in relation to matters that are the subject of pre-determined policies. As pointed out by Baxter: '[It] is inevitable that administrative officials would uphold the general policies of their department; in this broad sense it follows that they must be prejudiced against any individual who gets in their way. But this "departmental bias", as it has been labelled, is unavoidable and even desirable for good administration. It does not necessarily prevent the official concerned from being fair and objective in deciding particular cases.

. . .

If the MEC was predisposed to refusing the application because it was contrary to the policy of his department that is not objectionable "bias". A government functionary is perfectly entitled to refuse an application because it conflicts with pre-determined policy. No doubt when exercising a discretion on a matter that is governed by policy the functionary must bring an open mind to bear on the matter, but as this court said in *Kemp NO v Van Wyk*, that is not the same as a mind that is untrammelled by existing principles or policy. It said further that the functionary concerned "was entitled to evaluate the application in the light of the directorate's existing policy and, provided that he was independently satisfied that the policy was

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[13] *Turnbull-Jackson v Hibicus Coast Municipality and Others* 2014 (6) SA 592 (CC); 2014 (11) BCLR 1310 (CC) para 30 *(Turnbull-Jackson)*.

[14] *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (4) SA 147 (CC) para 48. There it was held:

'The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel . . . '

[15] *MEC for Environmental Affairs and Development Planning v Clairison's CC* [2013] ZASCA 82; [2013] 3 All SA 491(SCA); 2013 (6) SA 235 (SCA) paras 30 and 32.

appropriate to the particular case, and did not consider it to be a rule to which he was bound, I do not think it can be said that he failed to exercise his discretion".' (References omitted.)

[17] There was no basis for finding, as the court of first instance did, that the officials concerned exhibited either actual or a reasonable suspicion of bias. First, Sterea contends that the AA 'elevated the NDP to the sole or at least main determinative', that it had a 'predetermined mindset' and that asked the 'wrong question' by considering whether the MPT was correct in refusing the rezoning in the face of the NDP. It contends that they should have asked if it was correct not to grant a 'deviation from the existing zoning'. However, it was for Sterea to justify a deviation from the NDP. As was said by Rogers J in *Booth and Others v Minister of Local Government, Environmental Affairs and Development Planning and Another*,[16] the applicant must 'put up [something] convincing' to show a justification for deviating from a spatial planning policy. The city was not satisfied that Sterea had done so. The 27-page appeal decision considered each ground of appeal and all relevant considerations, not just the NDP. As pointed out by the full court: 'there is nothing persuasive to refute the Mayor's version that he took the NDP into account as but one of the guiding factors, and nevertheless independently applied his mind to the particular application before him'. Refusing the rezoning because Sterea failed to justify a deviation from the NDP was, in my view, compliant with the city's statutory duty, not an objectionable bias.

[18] Second, Sterea argues that the school consent use evidenced bias. However, it is their pleaded case that '[t]he previous use of the property was not afforded sufficient weight'. It did not plead that the school consent use evidenced bias. Before us, Sterea argues that the school consent use application was not considered or given any weight'. This contradicts Sterea's argument that the decision-makers were biased against its application for rezoning of the property, because they considered the consent use and the fact that the school's operation had created an uproar in the local community. It argues that the community's backlash influenced-

'. . . the City's officials at the local planning level to have a pre-conceived notion that rezoning was not appropriate for the property, a "once-bitten twice shy" approach which led to the failure to apply an unbiased mind to the rezoning application'.

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[16] *Booth and Others v Minister of Local Government, Environmental Affairs and Development Planning and Another* [2013] ZAWCHC 47; [2013] 2 All SA 275 (WCC); 2013 (4) SA 519 (WCC) para 35.

There is, however, no evidence that the consent use approval and the community's response resulted in the refusal of the rezoning application. Sterea relies on Ms De Klerk's email, but she was not a decision-maker. The AA, like the MPT, does not mention the community's response.

[19] Sterea further seeks to assail the AA's appeal decision by contending that in taking the appeal decision, the city's former executive mayor failed to consider relevant considerations: the effect of the school's operation on the property. It is incorrect that the decision-makers attached 'no weight' to this fact. Rather, they concluded that the consent use had not changed the character of the property to that of business use because (a) the school consent use was in keeping with the residential zoning of the property; (b) the consent use was granted for a limited period of two years which means that it was not a permanent feature and had ended; and (c) it did not irrevocably change the character of the area.

[20] The AA did consider the property's previous use as a school and the school's consent use. It found:

'The appellants however fail to recognise that each application should be assessed upon its own facts and in its context. This is peculiar since the argument is used to justify the appellant's deviation from the NDP. The school in any event was not a business offering professional services but rather educational services which benefits the surrounding community and fits into the residential fabric of the area. This is evident by the DMS permitting places of instruction in a SR1 zone as a consent use. Yet, even the place of instruction, which did not require rezoning, which affords a subject property different development rights, was only approved for a two-year period.'

[21] In conclusion: the decision-makers considered whether the school consent use of the property justified rezoning it to business use. They decided it did not. Sterea's disagreement with that finding and with the weight afforded to the issue does not establish a reviewable irregularity.

[22] Finally, the matter of costs. Sterea argues that it should not pay the city's costs should the appeal be dismissed. It also argues that this Court should in that event interfere with the full court's award of costs in the city's favour. In support of these

arguments, it relies on the general rule enunciated in *Biowatch Trust v Registrar Genetic Resources and Others*,[17] that in constitutional litigation an unsuccessful litigant ought not to be ordered to pay costs. The general rule is subject to qualifications, such as where 'an application is frivolous or vexatious, or in any other way manifestly inappropriate',[18] 'conduct on the part of the litigant that deserves censure by the court',[19] or in the case of 'wanton, gratuitous allegations of bias – actual or perceived – against public officials'.[20]

[23] The city argues that each of the mentioned qualifications finds application in this case and that Sterea is accordingly not immunised against an adverse costs award. I do not consider Sterea's application for review as frivolous or vexatious or manifestly inappropriate or that its allegations of bias against the relevant public officials are of the kind that deserve censure by this Court. I accept that since a review of administrative action amounts to a constitutional issue, the parties' legal dispute falls within the purview of litigation that involves the vindication of a fundamental right protected by the Constitution. It follows that the appeal should be dismissed without an adverse costs order against Sterea. Also, the full court's adverse costs order should be set aside.

[24] In the result, the following order is made:

1 The appeal is upheld in part.

2 The full court's order is set aside and replaced with the following:

'1. The appeal is upheld.

2. The high court's order is set aside and replaced with the following:

The application is dismissed.'

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P.A. MEYER
JUDGE OF APPEAL

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[17] *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC) 2009 (10) BCLR 1014 (CC) para 28 *(Biowatch)*.
[18] *Biowatch* para 24.
[19] Affordable Medicines Trust and Others v Minister of Health and Others [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) para 138.
[20] *Turnbull-Jackson* para 35.

Appearances

For appellant:	R Stelzner SC with J Whitaker
Instructed by:	Sandenberg Nel & Haggard, Bellville
	Spangenberg Zietsman Bloem, Bloemfontein
For respondent:	R Pashke SC with M O'Sullivan SC
Instructed by:	Toefy Attorneys, Glen Marine
	Honey & Partners Inc., Bloemfontein.