

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

PRETORIA, 25 SEPTEMBER 2020

CASE NO: 42344/2020

BEFORE THE HONORABLE MR. JUSTICE DE VOS J

In the matter between:

SAFE WATERKLOOF NPC

APPLICANT

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

RESPONDENT

DRAFT ORDER

After having heard Counsel, and having read the documents filed of record, the Court grants the following ex tempore order:

1. The respondent's failure to take a decision in respect of the applicant's application in terms of Chapter 7 of the **Rationalisation of Local Government Affairs Act**, No. 10 of 1998, constitutes a failure to take a decision as contemplated in section 6(2)(g) of the **Promotion of Administrative Justice Act**, No. 3 of 2000.

2. The decision is declared unlawful and constitutionally invalid and reviewed and set aside.

3. The matter is remitted to the respondent for reconsideration, subject to the following directions:
 - 3.1. the Office of the Speaker shall place the following items on the hearing agenda of the Municipal Planning Tribunal (established in terms of section 35 of the **Spatial Planning and Land Use Management Act**, 16 of 2013) on 30 September 2020:

` _____`

 - 3.2. the Municipal Planning Tribunal, in terms of bylaw 15(1)(h) of the **City of Tshwane Land Use Management Bylaws**, shall

consider the item, as contemplated in section 44, read with section 45(3), of the **Rationalisation of Local Government Affairs Act**, for purposes of:

- 3.2.1. establishing whether at least two thirds of the persons affected by the circumstances giving rise to the application approve of the restriction in respect of which the application is sought, and whether the non-refundable administrative fee, determined by the Municipal Council, had been paid;
- 3.2.2. determining the content of the notice contemplated in section 44(1)(c) of the Act;
- 3.3. the Office of the Speaker shall notify the applicant of the outcome of the Municipal Planning Tribunal hearing within 1 (one) week of the hearing;
- 3.4. should the applicant's application comply with the administrative requirements set out in 3.2.1 supra:

- 3.4.1. the applicant shall, within 28 days of having been informed of the outcome of the Municipal Planning Tribunal hearing, place the approved notice in the Provincial Gazette and 2 (two) newspapers circulating in the area in respect of which the restriction is sought;
- 3.4.2. after the notice and comment period had lapsed, the Office of the Speaker shall, within one week of the period having lapsed, place the application for approval of the restriction on the hearing agenda of the Municipal Planning Tribunal of 27 January 2020, for consideration and recommendation to the respondent's Executive Authority;
- 3.4.3. the Office of the Speaker shall, 14 days prior to the Municipal Planning Tribunal hearing, notify any body or person who commented on the notice of the date of the hearing;
- 3.5. should the Municipal Planning Tribunal recommend the application for approval, the Office of the Speaker shall, within 1

(one) week of the recommendation, refer the recommendation to the respondent's Executive Authority for approval;

- 3.6. should the respondent's Executive Authority fail to take a decision in respect of the Municipal Planning Tribunal's recommendation, within 6 (six) weeks of the recommendation having been referred to it by the Office of the Speaker, such failure will constitute a failure to take a decision as contemplated in section 6(2)(g) of the **Promotion of Administrative Justice Act**, No. 3 of 2000, and will be substituted with the following:

'The recommendation by the Municipal Planning Tribunal constitutes a final decision on the applicant's application in terms of Chapter 7 of the **Rationalisation of Local Government Affairs Act**'.

4. The respondent is ordered to pay the costs of the application on a party and party scale.

BY ORDER OF COURT

REGISTRAR

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