

Supreme Court of Appeal of South Africa

MEDIA STATEMENT

From: The Registrar, Supreme Court of Appeal

Date: Wednesday 28 March 2007

Status: Immediate

On 28 March 2007 the Supreme Court of Appeal handed down judgment in *eThekwin Municipality v Tsogo Sun Kwazulu-Natal (Pty) Ltd* (Case no 86/2006).

The respondent is developing a casino complex on the Village Green site in Durban. The relationship between the municipality and the respondent is governed by contract and the townplanning scheme. Both limit the ability of the respondent to erect buildings on the site unless they are in accordance with ‘an Integrated Development Plan’ approved for the site.

The provincial Gambling Board approved an amendment to its licence which required the respondent to construct a parkade. The respondent submitted a building plan to the municipality in terms of s 4 of the National Building to allow it to do so. The municipality did not approve the building application. The respondent contended that its notification demonstrated neither approval nor a refusal to approve and that the municipality was merely avoiding a decision in order to force it to agree to other development concessions in exchange for approval. The Durban High Court agreed.

On appeal the SCA found that the notification by the municipality constituted an unequivocal refusal to approve the building application under s 7(1) of the Act. The respondent had therefore been bound to exhaust the appeal remedies provided by s 9

of the Act before approaching the court. The SCA also found that the erection of the parkade on the site was in any event not provided for in the IDP and the municipality was accordingly prohibited by the zoning conditions from approving the building application.

The appeal was upheld with costs.

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