THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

BLAIR ATHOLL HOMEOWNERS ASSOCIATION

v

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

The Supreme Court of Appeal (SCA) today dismissed an appeal by Wraypex (Pty) Ltd, the developer of the Blair Atholl Estate, against a judgment of the Gauteng High Court, with costs. The high court had dismissed its application to review and set aside a resolution of the City of Tshwane Metropolitan Municipality not to give preferential treatment to the property owners of the Blair Atholl Estate in its rates policy. The SCA rejected a contention on appeal that the policy was ‘inequitable’.

In the high court the Blair Atholl Home Owners Association represented the property owners. But a day before the appeal was heard it withdrew its appeal, leaving the developer as the sole appellant.

The Blair Atholl Estate is an upmarket residential development 50 km from

Pretoria. It is some 600 hectares in size and has 329 stands. What is unique about this development is that it provides for and maintains most of its own services at its own cost; it does not rely on the municipality as other ratepayers do. However, the property owners pay equivalent rates to other high value properties in the municipality's area.

The property owners complain that they should not have to pay equivalent rates to differently situated property owners because they maintain their own services and that it is therefore inequitable that they are made to pay these rates. They therefore made representations to the municipality in 2011 to give them preferential treatment in the assessment of their rates. For this purpose they relied on s 3(3) of the Local Government Municipal Property Act 6 of 2004 (the Rates Act), which says that a rates policy must be equitable.

The SCA ruled that neither the Constitution which gives municipalities the power to levy rates on property, not the Rates Act links services with rates. Rates are levied on property and have no bearing on the services for which ratepayers are liable. It was therefore not inequitable, the SCA ruled, for the property owners to pay equivalent rates to differently situated ratepayers.

The SCA also said that the municipality approved the development some years ago on the assumption that that the usual rates, as determined by its rates policy, would apply. These assumptions were included in an agreement. The property owners could therefore not now complain that the policy was inequitable.