

SUPREME COURT OF QUEENSLAND

CITATION: *Linville Holdings P/L v Fraser Coast Regional Council*
[2017] QSC 252

PARTIES: **LINVILLE HOLDINGS PTY LTD ACN 009 944 325**
(applicant)
v
FRASER COAST REGIONAL COUNCIL
(respondent)

FILE NO/S: BS12922/16

DIVISION: Trial Division

PROCEEDING: Originating Application

DELIVERED ON: 6 November 2017

DELIVERED AT: Brisbane

HEARING DATE: 29 May 2017

JUDGE: Jackson J

ORDER: **The order of the court is that:**

- 1. It is declared that for each of the financial years ending 30 June 2015, 30 June 2016 and 30 June 2017 the respondent failed to validly make and levy rates and charges within its local government area because it did not decide by resolution at its budget meeting for that year what rates and charges were to be levied as required by section 94(2) of the *Local Government Act 2009*.**

CATCHWORDS: LOCAL GOVERNMENT – ORDINANCES, REGULATIONS, BY-LAWS AND LOCAL LAWS – VALIDITY – POWER TO MAKE – PARTICULAR ORDINANCES, REGULATIONS, BY-LAWS AND LOCAL LAWS – where the councillors of the respondent at a special meeting resolved to adopt the 2014/15 budget – where the budget was described as being presented in a variety of documents, including a revenue statement and a schedule of rates and charges – where similar resolutions were carried adopting the 2015/16 budget and 2016/17 budget – where section 94 of the *Local Government Act 2009* (Qld) provided that a local government must decide, by resolution at the local government’s budget meeting for a financial year, what rates and charges are to be levied for that financial year – whether the respondent’s general differential rates, special rates and charges for the 2014/15, 2015/16 and

2016/17 financial years were made invalidly

Local Government Act 2009 (Qld), s 92, 94

Local Government Regulation 2012 (Qld), r 81, r 94, r 107A, 169, r 172

City of Camberwell v Woolf (1932) 48 CLR 547, discussed

Dainford Ltd v Smith (1985) 155 CLR 342, discussed

Dorfler v Pine Rivers Shire Council [1994] 1 Qd R 507, distinguished

E Cocco & Sons Investments Pty Ltd v Gold Coast City Council [2014] QSC 10, cited

Foley v Padley (1984) 154 CLR 349, distinguished

Ostwald Accommodation Pty Ltd v Western Downs Regional Council [2016] 2 Qd R 14, cited

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355, applied

Sandringham Corporation v Rayment (1928) 40 CLR 510, distinguished

Whiting v Somerset Regional Council [2010] QSC 200, applied

COUNSEL: D Gore QC and J Hastie for the applicant
B O'Donnell QC and N Shaw for the respondent

SOLICITORS: DJ Hinton Lawyers for the applicant
CLH Lawyers for the respondent

- [1] **Jackson J:** This proceeding is an application for declarations that the respondent's general differential rates, special rates and charges for the 2014/15, 2015/16 and 2016/17 financial years were made invalidly, so that no valid rates or charges were levied on land owned by the applicant in the respondent's local government area.
- [2] The applicant is the registered owner of lots 207, 208, 212 and 213 on plan T9013 Parish of Tiaro County of March title references 16749198, 16749197, 16749196 and 16749195 ("the land").
- [3] The respondent levied rates and charges on the land by giving the applicant rates notices and water notices dated 25 August 2014, 10 November 2014, 9 March 2015, 15 June 2015, 17 August 2015, 9 November 2015, 7 March 2016, 13 June 2016 and 15 August 2016.

Applicant's arguments

- [4] There are four points. Each is a contention that the respondent failed to comply with the statutory requirements to make or levy valid rates and charges in the relevant year. The same points apply in each of the relevant years.
- [5] The statutory requirements are contained in the *Local Government Act 2009* (Qld) ("LGA") and the *Local Government Regulation 2012* (Qld) ("LGR"). The LGA and LGR require a resolution to levy the rates and charges. The applicant submits that the resolution levying the rates and charges did not comply with the requirements in the following ways:

- (a) first, contrary to s 94 of the LGA and r 81 of the LGR, there was no separate resolution to levy the rates and charges from the resolution to adopt the budget for the relevant year;
- (b) second, contrary to s 94 of the LGA and r 81(3) of the LGR, the challenged resolution failed to state the rating categories of rateable land for the differential general rates and a description of the rating categories;
- (c) third, contrary to s 94 of the LGA and r 94 of the LGR, the challenged resolution failed to identify the rateable land to which the special rates or charges apply; and
- (d) fourth, contrary to s 94 of the LGA and rr 81 and 94 of the LGR the challenged resolution is uncertain or too vague.

The resolutions

[6] On 11 June 2014 the councillors of the respondent held a special meeting at the Council Chambers in Maryborough. The minutes of the meeting record the budget highlight address given by the mayor in support of the proposed 2014/15 budget.

[7] Later, movers proposed a resolution that:

“1. Council **adopt the 2014/15 Budget as presented in the following:**

- (a) 2014/15 Operational Plan as presented (refer to **attachment 4**);
- (b) 2014/15 Financial Year Budget and the Ten Year Budget Estimates for 2015/16 to 2023/24 as presented (refer Attachment 1 - page 116-126, Attachment 2 – Capital Works 2014/15, and Attachment 3 – Schedule of Fees & Charges 2014/15);
- (c) **Revenue Policy and Statement 2014/15;**
 - (i) The Revenue Policy in respect of the 2014/15 financial year as presented (refer **Attachment 1 page 1**);
 - (ii) The **Revenue Statement** in respect of the 2014/15 financial year as presented (refer **Attachment 1 page 4 – 30**);
 - (iii) The Overall Plan for Special Rates & Charges for the 2014/15 financial year as presented (refer **Attachment 1 page 31**);
 - (iv) The **Schedule of Rates & Charges** for the 2014/15 financial year as presented (refer **Attachment 1 pages 35-42**);
 - (v) The Schedule of Fees and Charges for 2014/15 as presented (refer Attachment 3);

(d) ...

2. Council adopt the revised Expenses and Provision of Facilities for Mayor and Councillors Policy as per Attachment 5” (emphasis added)

[8] The resolution was carried by 8 votes to 3 (“challenged resolution”). There being no further business the meeting closed at 10:32am.

[9] Attachment 1, as described in the resolution, was contained within the text of an indexed booklet comprising 127 pages. The full booklet index, including those parts was:

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SUMMARY OF INFRASTRUCTURE INVESTMENT PRIORITY FRAMEWORK”

[10] Page 4 of the booklet, in the Revenue Statement, provided in part as follows:

“A. DETERMINATION OF RATES & CHARGES

Rates and charges levied are to be determined after due consideration of Council’s 2014/15 Revenue Policy.

B. GENERAL RATES

DIFFERENTIAL GENERAL RATES

1. Basis of rate

Council will continue a system of differential general rates for the 2014/15 financial year. Council is required to raise an amount of revenue appropriate to maintain assets and provide services to the Local Government area as a whole. In deciding how that revenue is raised, Council has taken into account the following factors:

- The rateable value of the land and the rates which would be payable if only one general rate were adopted;
- The level of services provided to that land and the cost of providing the services compared to the rate burden that would apply under a single general rate;
- The use of land in so far as it relates to the extent of utilisation of Council’s services;
- The location and access to services.

The differential general rates will be determined having regard to the land valuations, the number of multiple dwellings/villas, units, flats or car parks that applies within the relevant categories, the land area, the land use codes and property type codes, property zones identified in the current planning scheme, together with the application of Council’s minimum general rate.

2. Minimum general rates

In accordance with *Section 77* of the *Local Government Regulation 2012*, Council may fix a minimum general rate for each differential general rate category determined during the course of the budget deliberations.

The minimum general rate will be determined at a level that also takes into account the minimum cost per annum of providing common services which are provided to every ratepayer as well as basic general administration costs.

3. Rate categories

Pursuant to *Section 80* of the *Local Government Regulation 2012* the scheme will have 31 categories of land.
...”

[11] Page 7 of the booklet, in the Revenue Statement, continued:

“The categories and the considerations taken into account in determining the differential general rates are:

RESIDENTIAL

...

Category 10 – Commercial/Industrial

A differential rate will be levied on rateable parcels of land used for commercial, business, industrial, multi-residential bed and breakfast or other similar purposes not included in any other category. This includes all vacant land zoned, high impact industry, medium impact industry, low impact industry, mixed use, principal centre, district centre or specialised centre in Councils Planning Scheme.

Land in this area is used for commercial, business, industrial or other similar purpose and demand for local government services to this land exceeds that required for other uses.

A limitation of increase in accordance with s 116 of the *Local Government Regulation 2012* (rate capping) of 30% will apply to this category for the 2014/5 year.”

[12] Page 11 of the booklet, in the Revenue Statement, provided:

“C. UTILITY CHARGES

Utility charges are levied under s 99 of the *Local Government Regulation 2012*. Utility and commercial charges are assessed where applicable on full cost pricing principles so that total income received, will fund the cost of provision of local government services to the community and the effective administration of these services.
...”

[13] Page 14 of the booklet, in the Revenue Statement, provided, in part:

“WATER CHARGES

1. Basis of charge

Water charges are determined by a user pays basis to recover the cost of Council’s controlled water entity providing the infrastructure and cost of operating and maintaining the water supply system, including a commercial return on Council’s investment, in respect of all land and premises in the water area of the Local Government area.
...”

[14] Page 21 of the booklet, in the Revenue Statement, provided, in part:

“D. SPECIAL & SEPARATE RATES & CHARGES

COUNCIL RURAL FIRE LEVY

A special charge will be levied on all rateable land under *Section 94* of the *Local Government Regulation 2012* for the purpose of raising funds for the Fraser Coast Rural Fire Group and Brigades as set in Council’s Overall Plan for Special Rates & Charges for the Council Rural Fire Levy.

...”

- [15] Page 24 of the booklet, in the Revenue Statement, provided, in part:

“E. REBATES & CONCESSIONS

In accordance with *Sections 119-122* of the *Local Government Regulation 2012*, Council shall allow remissions and concessions as follows:

...”

- [16] Pages 31 to 34 of the booklet set out the Council’s Overall Plan for Special Rates & Charges for 2014/15, as an addendum to the Revenue Statement 2014/15.
- [17] Pages 35 to 42 of the booklet set out the Schedule of Rates & Charges, including differential general rates, utility charges, special rates and charges, rebates and concessions, a conservation areas rates rebate, interest on overdue rates and discount on rates. The differential general rates were broken into 31 different categories.
- [18] On 17 June 2015, the Councillors of the respondent met at the Council Chambers in Maryborough and resolved to adopt the 2015/16 Budget. The terms of the resolution were equivalent to those of the challenged resolution, for the purposes of deciding the issues raised on this application.
- [19] On 19 July 2016, the Councillors of the respondent met at the Council Chambers at Torquay and resolved to adopt the 2016/17 Budget. Again, the terms of the resolution were equivalent to the challenged resolution, for the purposes of deciding the issues raised on this application.

Powers to make and levy rates

- [20] In *Ostwald Accommodation Pty Ltd v Western Downs Regional Council*,¹ I traced the earlier history,² constitutional basis³ and the current legislative powers of local government to make and levy rates,⁴ including differential general rates. Those general observations also form the backdrop to the disputes in the present case. It is unnecessary to repeat them.
- [21] Sections 92 to 94 of the LGA, in part, are as follows:

“92 Types of rates and charges

- (1) **There are 4 types of rates and charges—**
- (a) general rates (including differential rates); and**
 - (b) special rates and charges; and**
 - (c) utility charges; and**

¹ [2016] 2 Qd R 14.

² [2016] 2 Qd R 14, [15]-[16].

³ [2016] 2 Qd R 14, [18] and [23]-[29].

⁴ [2016] 2 Qd R 14, [19]-[22].

(d) separate rates and charges.

- (2) **General rates** are for services, facilities and activities that are supplied or undertaken for the benefit of the community in general (rather than a particular person).

Example—

General rates contribute to the cost of roads and library services that benefit the community in general.

- (3) **Special rates and charges** are for services, facilities and activities that have a special association with particular land because—
- (a) the land or its occupier—
 - (i) specially benefits from the service, facility or activity; or
 - (ii) has or will have special access to the service, facility or activity; or
 - (b) the land is or will be used in a way that specially contributes to the need for the service, facility or activity; or
 - (c) the occupier of the land specially contributes to the need for the service, facility or activity.

Examples—

Special rates and charges could be levied—

- *for the cost of maintaining a road in an industrial area that is regularly used by heavy vehicles*
- *for the cost of replacing the drainage system in only part of the local government area*
- *on land that is used only by businesses that would benefit from the promotion of tourism in the local government area.*

- (4) **Utility charges** are for a service, facility or activity for any of the following utilities—
- (a) waste management;
 - (b) gas;
 - (c) sewerage;
 - (d) water.
- (5) **Separate rates and charges** are for any other service, facility or activity.

93 Land on which rates are levied

- (1) Rates may be levied on rateable land.
- (2) **Rateable land** is any land or building unit, in the local government area, that is not exempted from rates.
- ...

94 Power to levy rates and charges

- (1) **Each local government—**
- (a) **must levy general rates on all rateable land within the local government area; and**
 - (b) **may levy—**
 - (i) **special rates and charges; and**

- (ii) **utility charges**; and
 - (iii) separate rates and charges.
- (1A) Without limiting subsection (1), a local government may categorise rateable land, and decide differential rates for rateable land, according to whether or not the land is the principal place of residence of the owner.
- (2) A local government **must decide, by resolution at the local government's budget meeting** for a financial year, **what rates and charges are to be levied** for that financial year.” (emphasis added)

[22] Regulation 81 of the LGR provided:

“81 Categorisation of land for differential general rates

- (1) **Before a local government levies differential general rates, it must decide the different categories** (each a *rating category*) of rateable land in the local government area.
- (2) **The local government must, by resolution, make the decision at the local government’s budget meeting.**
- (3) The **resolution must state—**
 - (a) **the rating categories** of rateable land in the local government area; **and**
 - (b) **a description of each** of the **rating categories**.

Example—
A resolution may state that the rating categories, and a description of each of the rating categories, are as follows—

 - (a) residential land—land that is used for residential purposes in particular urban centres, rural localities, park residential estates and coastal villages;
 - (b) commercial and industrial land—land that is used solely for commerce or industry in particular urban centres and rural localities, other than land used for manufacturing sugar or another rural production industry;
 - (c) grazing and livestock land—land that is used, for commercial purposes, for grazing and livestock;
 - (d) sugar cane land—land that is used for producing sugar cane;
 - (e) sugar milling land—land that is used for manufacturing sugar;
 - (f) rural land—
 - (i) land that is not in an urban centre or locality; or
 - (ii) land that is not used for grazing and livestock; or
 - (iii) land that is not sugar cane land or sugar milling land;
 - (g) other land—any other type of land.
- (4) After the rating categories and descriptions have been decided, the local government must identify the rating category to which each parcel of rateable land in the local government area belongs.
- (5) The local government may do so in any way it considers appropriate.

- (6) The fact that some parcels of rateable land are inadvertently not categorised does not stop differential general rates being levied on rateable land that has been categorised.” (emphasis added)

[23] Regulation 94 of the LGR provided:

“94 Levying special rates or charges

- (1) This section applies if a local government decides to levy special rates or charges.
- Note—*
- See the Act, section 92(3) (Types of rates and charges), definition *special rates and charges*.
- (2) **The local government’s resolution to levy special rates or charges must identify—**
- (a) **the rateable land to which the special rates or charges apply;**
and
- (b) the overall plan for the service, facility or activity to which the special rates or charges apply.
- (3) The ***overall plan*** is a document that—
- (a) describes the service, facility or activity; and
- (b) identifies the rateable land to which the special rates or charges apply; and
- (c) states the estimated cost of carrying out the overall plan; and
- (d) states the estimated time for carrying out the overall plan.
- (4) The local government must adopt the overall plan before, or at the same time as, the local government first resolves to levy the special rates or charges.
- (5) Under an overall plan, special rates or charges may be levied for 1 or more years before any of the special rates or charges are spent in carrying out the overall plan.
- (6) If an overall plan is for more than 1 year, the local government must also adopt an annual implementation plan for each year.
- (7) An ***annual implementation plan*** for a financial year is a document setting out the actions or processes that are to be carried out in the financial year for the service, facility or activity to which the special rates or charges apply.
- (8) The local government must adopt the annual implementation plan before or at the budget meeting for each year of the period for carrying out the overall plan.
- (9) The local government may at any time, by resolution, amend—
- (a) an overall plan; or
- (b) an annual implementation plan.
- (10) The local government may fix a minimum amount of the special rates or charges.
- (11) Subsection (12) applies if the local government decides to levy special rates or charges on particular rateable land for a service, facility or activity.
- (12) The amount of the special rates or charges for the particular rateable land may be different to the amount for other rateable land because, in the local government’s opinion—
- (a) the land or its occupier—
- (i) specially benefits from the service, facility or activity; or
- (ii) has or will have special access to the service, facility or activity; or
- (b) the land is or will be used in a way that specially contributes to the need for the service, facility or activity; or

- (c) the occupier of the land specially contributes to the need for the service, facility or activity.
- (13) For subsection (12), the local government may levy the special rates or charges on any basis the local government considers appropriate.
- (14) In any proceedings about special rates or charges, a resolution or overall plan mentioned in subsection (2) is not invalid merely because the resolution or plan—
 - (a) does not identify all rateable land on which the special rates or charges could have been levied; or
 - (b) incorrectly includes rateable land on which the special rates or charges should not have been levied.
- (15) To remove any doubt, it is declared that a local government may make and levy a special rate or charge for a service, facility or activity whether or not supplied or undertaken by the local government itself, including a service, facility or activity supplied or undertaken by another local government—
 - (a) in the other local government’s local government area; and
 - (b) conducted as a joint government activity by the local governments.” (emphasis added)

Budgeting and financial management

- [24] By s 12(4)(b) of the LGA the mayor had the responsibility for preparing a budget to present to the local government.
- [25] By s 104(5)(a)(iv) of the LGA, the system of financial management established by a local government must include an annual statement including a revenue statement.
- [26] Section 107A of the LGA provided:

“107A Approval of budget

- (1) **A local government must** consider the budget presented by the mayor and, **by resolution, adopt the budget** with or without amendment.
 - (2) The mayor must give a copy of the budget, as proposed to be presented to the local government, to each councillor at least 2 weeks before the local government is to consider adopting the budget.
 - (3) The local government must adopt a budget before 1 August in the financial year to which the budget relates.” (emphasis added)
- [27] Regulation 169 of the LGR provided, in part:

“169 Preparation and content of budget

- (1) **A local government’s budget** for each financial year **must**—
 - (a) be prepared on an accrual basis; and
 - (b) **include statements of** the following for the financial year for which it is prepared and the next 2 financial years—
 - (i) financial position;
 - (ii) cash flow;
 - (iii) **income and expenditure**;
 - (iv) changes in equity.
- (2) **The budget must also include**—
 - (a) a long-term financial forecast; and
 - (b) **a revenue statement**; and
 - (c) a revenue policy.

- (3) The **statement of income and expenditure must state** each of the following—
- (a) **rates and utility charges** excluding discounts and rebates;
 - (b) contributions from developers;
 - (c) **fees and charges**;
 - (d) interest;
 - (e) grants and subsidies;
 - (f) depreciation;
 - (g) finance costs;
 - (h) net result;
 - (i) the estimated costs of—
 - (i) the local government’s significant business activities carried on using a full cost pricing basis; and
 - (ii) the activities of the local government’s commercial business units; and
 - (iii) the local government’s significant business activities.
- (4) ...” (emphasis added)

[28] Regulation 172 of the LGR provided:

“172 Revenue statement

- (1) **The revenue statement** for a local government **must state**—
- (a) **if the local government levies differential general rates—**
 - (i) **the rating categories for rateable land in the local government area; and**
 - (ii) **a description of each rating category;** and
 - (b) if the local government levies special rates or charges for a joint government activity—a summary of the terms of the joint government activity; and
 - (c) if the local government fixes a cost-recovery fee—the criteria used to decide the amount of the cost-recovery fee; and
 - (d) if the local government conducts a business activity on a commercial basis—the criteria used to decide the amount of the charges for the activity's goods and services.
- (2) Also, **the revenue statement** for a financial year **must include** the following information for the financial year—
- (a) an outline and explanation of the measures that the local government has adopted for raising revenue, including **an outline and explanation of**—
 - (i) **the rates and charges to be levied** in the financial year; and
 - (ii) the concessions for rates and charges to be granted in the financial year;
 - (b) whether the local government has made a resolution limiting an increase of rates and charges.” (emphasis added)

Purpose and structure as context

[29] The regulations are made, at least in part, under the power to make regulations in relation to rates and charges under s 96 of the LGA.⁵ It provides, relevantly:

“96 Regulations for rates and charges

⁵ Compare *Local Government Act 2009* (Qld), s 270(1) and (2)(j) and (k).

A regulation may provide for any matter connected with rates and charges, including for example—

- (a) ...
- (b) the categorisation of land for rates and charges; ...
- (c)”

[30] The particular provisions in question occur in the context of the wider objects and purposes of the LGA as set out in ss 3 and 4:

“3 Purpose of this Act

The purpose of this Act is to provide for—

- (a) the way in which a local government is constituted and the nature and extent of its responsibilities and powers; and
- (b) a system of local government in Queensland that is accountable, effective, efficient and sustainable.

Note—

The system of local government consists of a number of local governments. See the *Constitution of Queensland 2001*, section 70 (System of local government).

4 Local government principles underpin this Act

- (1) To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires—
 - (a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and
 - (b) any action that is taken under this Act to be taken in a way that—
 - (i) is consistent with the local government principles; and
 - (ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.
- (2) The *local government principles* are—
 - (a) transparent and effective processes, and decision-making in the public interest; and
 - (b) sustainable development and management of assets and infrastructure, and delivery of effective services; and
 - (c) democratic representation, social inclusion and meaningful community engagement; and
 - (d) good governance of, and by, local government; and
 - (e) ethical and legal behaviour of councillors and local government employees.”

[31] Section 94 of the LGA may be analysed into two elements. First, it confers the power to levy rates and charges of the identified types, including differential general rates and special rates. Second, it requires that the rates and charges for a relevant year be levied by resolution made by the Council at the budget meeting.

[32] Regulation 81 of the LGR is concerned with differential general rates, while r 94 is concerned with special rates and charges. But the purpose of both provisions is similar. If there are to be differential rates, that which differs must be identified by reference to categories that are defined by a description. If there are to be special rates, the rateable land to which they apply must be identified. In each case, the

application of the rate or charge is thereby made transparent and the contingent⁶ obligations of the owners of the rateable land to pay the rate are ascertainable.

- [33] Other aspect of the process of budgeting and making and levying rates inform those purposes. The LGA requires the council to budget annually. The budget must be prepared to meet the detailed requirements for financial management and accountability. It must be presented by the mayor. It must be notified in advance to councillors. It must be voted upon at a specific budget meeting. The meeting must be held within a time constraint. The resolution to levy the rates and charges must be passed at the budget meeting. The resolution to adopt the budget must be passed at the meeting.
- [34] The LGA specifically links the budgeting process and the adoption of a budget to the process of making and levying rates for the year in question. The logic of that connection is obvious: the rates made and to be levied are a principal source of the cash inflows intended to meet the budget statement of income.

Separate resolutions

- [35] Although the point did not emerge until the applicant's reply, the applicant submits that the challenged resolution is invalid because the LGA and LGR make separate provision to decide by resolution about rates and charges, on the one hand, and to adopt a budget, by resolution, on the other hand. Two questions emerge: first, can a single resolution perform both the statutory requirements of a resolution levying the rates and charges and adopting the budget? Second, if so, does the challenged resolution satisfy the requirements for both processes?
- [36] In my view, the answer to the first question is unclear. Section 94(2) of the LGA required a resolution to decide what rates and charges are to be levied for the financial year. Section 107A of the LGA separately required a resolution to adopt the budget. Nothing in the text of either section suggests that a single resolution can fulfil the requirements of both. The rates and charges to be levied and the budget to be are undoubtedly related. Strict logic might suggest that the rates and charges are ascertained by the resolution levying those rates and charges and that a resolution to adopt a budget based on those rates and charges should follow their ascertainment. But it is unnecessary to decide whether there is an implied order upon which the two matters for resolution should proceed or whether, on the other hand, they might be resolved upon simultaneously.
- [37] However that may be, in my view, the requirement of s 94(2) of the LGA is that there must be a resolution deciding what rates and charges are to be levied. The challenged resolution did not expressly do so. In form, it simply adopted the budget as presented, including the Revenue Statement and the Schedule of Rates & Charges.
- [38] As rr 169 and 172 of the LGR show, the budget to be considered and adopted under s 107A of the LGA must include both a statement of income and expenditure and a Revenue Statement. The statement of income and expenditure must state the rates and utility charges and fees and charges. The Revenue Statement must state, if differential rates are to be levied, the rating categories and a description of each

⁶ The rate is made payable on levying the rate by notice to the owner.

- rating category. That is to say, the appearance of the Schedule of Rates & Charges stating the rates and utility charges and fees and charges and the Revenue Statement stating the rating categories and a description of each rating category in the booklet prepared for the budget meeting were required items for the budget to be considered. Accordingly, to resolve to adopt the budget as presented in attachment 1, being the relevant parts of the booklet, did not necessarily connote that the Council was resolving to levy the rates and charges as provided in the budget.
- [39] On the other hand, the absence of any other resolution considered or passed at the budget meeting suggests that the resolution passed to adopt the budget was intended to fulfil any requirements in relation to the subject of the budget.
- [40] The respondent relied on *Foley v Padley*⁷ as supporting its contention that the form of the challenged resolution, that the respondent “adopted the budget as presented in...”, had the effect of a resolution deciding what rates and charges are to be levied and stating the rating categories and a description of each category in compliance with s 94 and r 81.
- [41] But the problem in *Foley* was different. Section 11(1)(a) of the *Rundle Street Mall Act 1975* (SA) authorised the relevant council to make by-laws prohibiting activity in the Mall that “[wa]s, **in the opinion of the Council**, likely to affect the use or enjoyment of the Mall.” The council resolved to adopt a recommendation of a committee of the council. The committee had earlier resolved to recommend to the council that the council be of the relevant opinion. The question was whether the council itself formed the required opinion by adopting a resolution recommending that it do so. The High Court held that it did.
- [42] The difference between that case and the present is that s 94 of the LGA and r 81 of the LGR required the Council to consider and resolve upon levying general rates, while s 107A of the LGA required the Council to consider and resolve upon the adoption of the budget.
- [43] In my view, the respondent failed to comply with the requirement in s 94(2) that it must decide by resolution at the budget meeting what rates and charges are to be levied for the financial year. Having regard to the text and structure of s 94(2) in the context of the other provisions of the LGA, a resolution to adopt a budget (as is required by s 107A of the LGA) does not, without more, satisfy the requirement for a resolution to decide what rates and charges are to be levied.
- [44] Did that non-compliance invalidate the rates and charges? At the highest level of generality, it must be kept in mind that the making and levying of rates is a system of taxation that has the funding of local government as its purpose, with the underlying attendant expectation, in our democratic system of responsible government, as to observance of the requirements for the imposition of a valid tax.
- [45] More specifically, s 94 meets the requirement of s 65 of the *Constitution of Queensland Act 2001* (Qld) that a requirement to pay a rate must be authorised under an Act and s 94 furthers the s 3 objects of the LGA for an accountable, effective, efficient and sustainable system of local government in requiring that the rates made and levied on rateable land must be resolved upon. The local

⁷ (1984) 154 CLR 349, 352.

government principles in s 4 of the LGA, of transparent and effective processes, and decision-making in the public interest, are also furthered by the requirement that the rates that are made and levied on rateable land are resolved upon.

- [46] The applicant relies on *Sandringham Corporation v Rayment*⁸ as supporting the conclusion that because the object of s 94 is to impose a pecuniary liability on owners of property within the local government area “the Council should be held strictly to the performance of the ‘conditions’ on which it is authorised to exercise the power.”
- [47] The applicant also relies on *E Cocco & Sons Investments Pty Ltd v Gold Coast City Council*⁹ and *Whiting v Somerset Regional Council*¹⁰ as recent illustrations of invalidity of resolutions by councils to make a special charge because of non-compliance with the requirement that the council adopt an overall plan before making a special charge.
- [48] In my view, adapting the language of P McMurdo J in *Whiting v Somerset Regional Council*, the relevant question is: “whether it was the purpose of this statute that a rate or charge imposed without compliance with these requirements should be invalid?”¹¹
- [49] In my view, because of non-compliance with s 94(2) of the LGA, there can be no doubt that the answer to the question is that the rates and charges provided in the Schedule of Rates & Charges in the budget as adopted are invalid.

Failure to state the rating categories and a description of each category

- [50] Against the possibility that I am incorrect in that view, I proceed to consider the applicant’s other grounds of invalidity. For this purpose, I assume that a resolution to adopt a budget may be sufficient to comply with the requirement under s 94(2) of the LGA for a resolution to decide what rates and charges are to be levied. However, because of the conclusion I have already reached, it is preferable to state my views as briefly as I can.
- [51] The applicant’s next contention is that the challenged resolution must itself set out the rating categories of rateable land for the differential general rates and a description of the rating categories, because that is required by that part of the text of r 81 of the LGR, that “the resolution must state... the rating categories... and a description of each of the rating categories.” The point is founded on the ordinary meaning of the word “state”.¹² Even so, it must be recognised that it is a technical approach to the purposes and structure of the relevant provisions, as identified previously.
- [52] The 31 rating categories were identified in the cross-referenced Revenue Statement as “Attachment 1 page 4 – 30”. The text appears in the booklet at pages 7 to 11. Each of the rating categories was described in that text. The substance of the applicant’s submission is that a resolution made under s 94 of the LGA and r 81 of

⁸ (1928) 40 CLR 510, 516.

⁹ [2014] QSC 10.

¹⁰ [2010] QSC 200.

¹¹ [2010] QSC 200, [32].

¹² Macquarie Dictionary, 7 ed, definition “state”, p 1461.

the LGR must include those sections in full in the text of the resolution. If that were required, even an express schedule or appendix to the resolution that was confined to stating the rating categories and a description of each of the rating categories would not comply with the requirements of s 94 and r 81.

- [53] In law, the applicant’s argument as to invalidity on this ground poses two questions: first, did the form of the challenged resolution fail to state the rating categories and a description of each category? Second, if so, did the non-compliance have the effect of invalidating the making of the rate?
- [54] In the present case, it is convenient to answer the second question at the same time as the first. There are several considerations. Before *Project Blue Sky Inc v Australian Broadcasting Authority*,¹³ a relevant question, as a matter of the law of statutory interpretation, was whether the provision was “mandatory”, on the one hand, or “directory” on the other hand. If directory, and non-compliance was not substantial, invalidity would not follow. *Project Blue Sky* replaced that approach by the question whether the intention of the legislature is that the non-compliance under consideration, the act that was done in breach of the statute, should be invalid. The plurality reasons observed that:

“Courts have always accepted that it is unlikely that it was a purpose of the legislation that an act done in breach of a statute should be invalid if public inconvenience would be a result of the invalidity of the act.”¹⁴

- [55] However, the concept of substantial compliance still has a role to play when dealing with prescribed forms. Section 48A of the *Acts Interpretation Act 1954* (Qld) provides:

“48A Compliance with forms

- (1) If a form is prescribed or approved under an Act, strict compliance with the form is not necessary and substantial compliance is sufficient.”

- [56] Regulation 81 does not prescribe a form, but its purpose is to require that the rate making resolution complies with formal requirements.
- [57] The making of delegated legislation in some cases requires a formal notification. For example, where a statute requires that subordinate legislation be made by an order in council, the order in council must be notified by being published in accordance with s 47 of the *Statutory Instruments Act 1992* (Qld). But that is not a requirement for a valid resolution to make a rate under s 94 and r 81.
- [58] The applicant relies on *Dorfler v Pine Rivers Shire Council*.¹⁵ But it concerned a different problem. Section 34(10) of the *Local Government Act 1936* (Qld) authorised a Council to impose a condition upon an approval of sub-division of land, but s 33(16C)(a) provided that a condition was unlawful unless, inter alia, it was one “prescribed by... by-law”. In that context, the Court of Appeal considered whether a condition could be prescribed by by-law if it was not set out in the publication of the by-law in the gazette. It was held that a by-law may be properly

¹³ (1998) 194 CLR 355.

¹⁴ (1998) 194 CLR 355, 392.

¹⁵ [1994] 1 Qd R 507.

published in the gazette even though it incorporates another document not published, at least where the identity of the incorporated document is clear and, perhaps, so long as the incorporated material is not essential.¹⁶

- [59] There is no requirement that the resolution of the Council levying differential rates under s 94 that states the rating categories and a description of each of the categories under r 81 must be published in the gazette, or elsewhere.
- [60] Nevertheless, the requirements in r 81 that the resolution must state the rating categories and a description of each of the categories fulfil important legislative goals and are informed by the objects of the LGA as explicated by the local government principles.
- [61] The requirements of the LGA that, before doing so, the mayor must prepare the budget in the required way, including the long term documents that must be prepared, and the Council must consider those matters before or at the same time as resolving upon the current year's rates and charges, also serve as important context for the construction of r 81.
- [62] The applicant again relies on *Sandringham Corporation v Rayment*¹⁷ as supporting the conclusion that because the object of s 94 and r 81 is to impose a pecuniary liability on owners of property within the local government area “the Council should be held strictly to the performance of the ‘conditions’ on which it is authorised to exercise the power.” But not all requirements are of the same importance. In *Sandringham Corporation*, the condition was the service of a notice 14 days before the council was authorised to consider whether to impose the liability for making a road on adjacent landowners. It was not a requirement as to the form of the resolution to impose the relevant liability.
- [63] The applicant also relies on *City of Camberwell v Woolf*.¹⁸ It is closer to the problem presented in the present case. The council considered whether to impose liability for a scheme to make a road on adjacent landowners, but it was held that the relevant resolution was not sufficient to comply with the statutory requirement to adopt the scheme, because a proviso to the resolution required a reconsideration of the proposal. In the end, it is a decision on its own facts, although the following passage is of some interest:

“Upon the question what adherence to the requirements of the section is needed for a valid adoption, it is not desirable to go beyond the facts of the present case. But it must be remembered that one of the very purposes of the adoption is to make immaterial any prior failure to comply with the directions of the Statute. This consideration tends against construing the provisions which prescribe the mode of adoption as being themselves directory. It is enough, however, to say that the Council must express or clearly imply a definitive intention to accept or adhere to a proposal ascertained from documents, and that it must do so upon the date fixed by the notice or upon some date to which the consideration of the matter has been adjourned by the Council.”¹⁹

¹⁶ [1994] 1 Qd R 507, 513.

¹⁷ (1928) 40 CLR 510, 516.

¹⁸ (1932) 48 CLR 547.

¹⁹ (1932) 48 CLR 547, 556-557.

- [64] The applicant’s argument is that the resolution doing so cannot incorporate material in the attachments being the identified parts of the booklet.
- [65] In opposition to that point, the respondent relied on *Dainford Ltd v Smith*.²⁰ But the question in that case is only marginally relevant. Section 30(7) of the *Building Units and Group Titles Act 1980* (Qld) permitted a body corporate to make a by-law conferring exclusive use of common property. A question was whether it required that the by-law itself should set out the relevant common property. The sub-section did not in terms require that it do so. It was held by Gibbs CJ that “[t]here is no general principle that a power to make by-laws may not be exercised by referring to some other document and incorporating or applying it.”²¹
- [66] The respondent also relies on *P v Board of Australian Crime Commission*.²² In that case the Full Court of the Federal Court of Australia commented that there is:
- “...no difference in theory or practice between, on the one hand, reading two instruments together and, on the other, reading the first instrument in conjunction with its attached schedules. The use of schedules is a common and convenient drafting technique... The difference between the use of schedules and incorporating one document into another by reference is one of degree. The question is whether the statutory prescription has been satisfied.”²³
- [67] In my view if, contrary to s 94 and r 81, the challenged resolution did not state the rating categories and a description of each of the different categories, that non-compliance did not amount to a breach of the statute that made the rate making resolution invalid.

Failure to identify the rateable land for special charges

- [68] The applicant’s next contention is that the challenged resolution must itself identify the rateable land to which any special charges apply, because that is required by that part of the text of r 94(2) of the LGR, that “the... resolution to levy special... charges must identify... the rateable land to which the special... charges apply.” Again it is a technical approach to the purposes and structure of the relevant provisions, as identified previously.
- [69] The respondent contends that the applicant only has a limited standing to challenge the special charges included in the rates and charges under the challenged resolution. In the circumstances, it is unnecessary to determine that question. There is no dispute that the respondent claims that the applicant is liable to pay a special charge for the Council Rural Fire Levy as described in the Revenue Statement at pages 21 and 22 of the booklet.
- [70] I note that the rateable land to which the charge applies is identified at those pages as being “all rateable land”. However, the Overall Plan, at page 31 of the booklet, says that the charge “will be levied on all rateable land not included in the Urban Fire Brigade area”. However, in summary, the substance of the arguments advanced by the parties on this this point was the same as that made about the

²⁰ (1985) 155 CLR 342, 348, 358 and 362.

²¹ (1985) 155 CLR 342, 348.

²² (2006) 151 FCR 114, 124 [34]-[35].

²³ (2006) 151 FCR 114, 124 [34].

alleged failure to state the rating categories and a description of each category. No additional argument was made by the applicant that even by cross referencing in the booklet, the resolution did not identify the rateable land to which the special charge applied. Accordingly, I do not consider this question further.

- [71] The resolution of this argument follows the reasoning on the previous point. In my view if, contrary to s 94 and r 94, the challenged resolution did not identify the rateable land to which the special charges applied, but only because the identification was made in the cross-referenced parts of the booklet, that non-compliance did not amount to a breach of the statute that made the rate making resolution invalid.

Uncertainty

- [72] The applicant's uncertainty point begins from the point that the statement of the general differential rates and charges in the challenged resolution must be ascertained from the contents of the cross-referenced Revenue Statement in the booklet. In particular, among other things, the Revenue Statement in the booklet states that:

- (a) page 4 – “Pursuant to *Section 80* of the *Local Government Regulation 2012* the scheme will have 31 categories of land”;
- (b) pages 7-11 - “A differential general rate will be levied on ...”;
- (c) page 11 – “A sewerage charge will be levied on each rateable property ...”;
- (d) page 19 – “Council will levy a waste charge on the owner of each parcel of occupied land or structure”;
- (e) page 16, under the heading “Charges to Apply – Consumption Charges” – “A water usage charge per kilolitre shall be levied for all water used”.

- [73] These references are instanced by the applicant as statements of what the council will do rather than, as the applicant submits is required, a resolution stating what has been decided. The applicants submit that those statements show a lack of the degree of finality or definitiveness necessary for validity.

- [74] In my view, as the respondent submitted, the explanation for the use the future tense is that the Revenue Statement was prepared before it was adopted by the council as part of the budget.

- [75] In my view, this is not an uncertainty argument. It is the same point, in substance, as was dealt with in *Foley v Padley*. If the resolution of the council adopting the budget as presented is properly construed as a decision by the council to levy the rates and charges for the 2014/2015 year, there is no further point that the resolution is invalid because the statements instanced were made in the future tense, as a matter of grammar.

- [76] I reject the contention that the challenged resolution is invalid because it is uncertain by reason of the use of the future tense in the Revenue Statement.

Conclusion

- [77] Because the applicants have succeeded upon the argument that, contrary to s 94 of the LGA and r 81 of the LGR, there was no resolution to levy the rates and charges

for the relevant years, it follows that the applicants are entitled to a declaration substantially in the form sought by the originating application.

[78] I will hear the parties on the question of costs.