SUPREME COURT OF QUEENSLAND

CITATION:	*The Mount Isa Irish Association Friendly Society Ltd v Mount Isa City Council* [2017] QSC 316
PARTIES:	**THE MOUNT ISA IRISH ASSOCIATION FRIENDLY SOCIETY LTD** (applicant) **v** **MOUNT ISA CITY COUNCIL** (respondent)
FILE NO:	13137 of 2016 and 253 of 2017
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court of Queensland at Brisbane
DELIVERED ON:	18 December 2017
DELIVERED AT:	Brisbane
HEARING DATE:	19 September 2017
JUDGE:	Daubney J
ORDERS:	**1. I will hear the parties on the form of orders required to give effect to this judgment and on the question of costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – ERROR OF LAW – 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 held a special meeting and resolved to levy utility charges for water – where the respondent issued rates notices to the applicant charging the applicant for utility charges for water in respect of rateable land owned by the applicant pursuant to s 94 of the *Local Government Act* 2009 (Qld) and s 101(1) of the *Local Government Regulation* 2012 (Qld) – where the utility charges were not a 2-part charge – where the utility charges were worked out as comprising a fixed amount calculated in accordance with a number of units which were allocated in accordance with the use, or uses, to which the particular parcel of rateable land was being put – whether the respondent's utility charges were charged wholly according to the water used under s 101(1)(a) *Local Government*

Regulation 2012 (Qld) – whether the utility charges are invalid

Acts Interpretation Act 1958 (Qld) s 14D
Local Government Act 2009 (Qld) ss 3, 4, 94
Local Government Regulation 2009 (Qld) ss 41, 99, 101

E Cocco & Sons Investments Pty Ltd v Gold Coast City Council [2014] QSC 10
Hume Doors & Timber (Qld) Pty Ltd v Logan City Council (2000) LGERA 110
Minister for Immigration and Multicultural Affairs v Palme (2003) 216 CLR 212
Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355
Whiting v Somerset Regional Council [2010] QSC 200

COUNSEL: P F Mylne for the applicant
S Fynes-Clinton with J Hastie for the respondent

SOLICITORS: McKeering Down Lawyers for the applicant
King and Company for the respondent

Introduction

[1] These proceedings comprise two applications for declarations to the effect that the respondent invalidly levied utility charges for water services on the applicant.

[2] The first application seeks to challenge the respondent's decision of 21 July 2016 to levy utility charges for water services on a particular basis. The second application challenges the respondent's application of that decision by giving rates notices to the applicant demanding payment of the charges.

[3] It was agreed between the parties that the lawfulness of the respondent's conduct with regard to the second application would be determined by answering the question raised on the first application.

[4] The applicant is the registered owner of:

(a) 3 – 9 Twentyfirst Avenue Mount Isa Lot 2 3 5 7 8 9 10 11 Plan MPH 21953 Lot 8318 8571 Plan MPH 30031 Lot 2 Plan MPH 40018 A2 3 4 5 6 7 8 9 10 S132 ROCHEDALE NORDEN, which was the subject of rates notice 04095-00000-000;

(b) 1 Twentyfirst Avenue Mount Isa Lot 1 Plan MPH 40018 A1 S132 ROCHEDALE NORDEN SHOP, which was the subject of rates notice 04098-40000-000;

(together, "the properties").

[5] On 19 August 2016, the respondent gave the applicant the notices which are the subject of the second application, which demanded payment of rates incurred in respect of the properties between 1 July 2016 and 31 December 2016 ("the rates period").

[6] The applicant argues that it is not liable to pay the amounts charged for water in both notices. It submits that the manner in which the respondent charged for water under the notices failed to comply with s 101 of the *Local Government Regulation* (2012) (Qld) ("LGR"), and this was a pre-requisite to the exercise of power to charge rates set out in s 94 of the *Local Government Act* 2009 (Qld) ("LGA").

Statutory context

[7] There was no issue before me as to the relevant statutory context.

[8] Section 94 of the LGA provides:

> "**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."

[9] Sections 96 and 270 of the LGA together permit regulations to be made by the Governor in Council, and that such regulations may provide "for any matter connected with rates and charges".

[10] Chapter 4, Part 7 of the LGR deals specifically with the utility charges which are the subject of the impugned the rates notices:

> "**Part 7 Utility charges**
>
> **99 Utility charges**
>
> (1) A local government may levy utility charges on any basis the local government considers appropriate.
>
> (2) For example, utility charges may be levied on the basis of any, or any combination, of the following—
>
> (a) the rateable value of land;
>
> (b) the use made of—
>
> (i) a particular parcel of land; or
>
> (ii) a particular structure; or
>
> (iii) a class of land or structure;
>
> (c) any circumstances that are peculiar to the supply of a service to—
>
> (i) a particular parcel of land; or
>
> (ii) a particular structure; or
>
> (iii) a class of land or structure.
>
> (3) A local government may do 1 or both of the following—
>
> (a) levy utility charges for service that have been supplied or are to be supplied during part of the financial year and part of another financial year;
>
> (b) levy differing utility charges for services that have been supplied or are to be supplied during various periods in 1 or more financial years, and decide the way the charges are to be apportioned.
>
> (4) However, a local government may only levy utility charges for services—
>
> (a) supplied in the last financial year; or
>
> (b) supplied, or to be supplied, in the current financial year; or
>
> (c) to be supplied in the next financial year."

[11] It is clear that s 99(1) LGR confers on a local government a broad discretion to determine an appropriate method for levying utility charges on ratepayers. Utility charges are defined in s 92 of the LGA under the heading, "Types of rates and charges":

> "(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."

[12] Section 101 of the LGR then sets out a specific framework for the charging of utility charges for water services:

> "**101 Working out utility charges for water services**
>
> (1) The utility charges for a water service must be charged–
>
> (a) wholly according to the water used; or
>
> *Note –*
>
> See, however, the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.
>
> (b) partly according to the water used, using a 2-part charge.
>
> (2) The utility charges for the water used must be worked out on the basis of–
>
> (a) if the water used is not measured by a water meter–
>
> (i) the estimated average water usage of the consumers within a group of consumers who have similar water usage; or
>
> (ii) another method that is appropriate to decide a consumer's likely water usage; or
>
> (b) if the water used is measured by a water meter–
>
> (i) an amount for each unit, or part of a unit, of water that is used; or
>
> (ii) a fixed amount plus an amount for each unit, or part of a unit, of water that is used over a stated quantity.
>
> *Example for paragraph (b)(ii)—*
>
> A local government's utility charges are worked out on the basis of an access charge of $100 for domestic consumers, and $600 for

commercial consumers, plus a usage charge of $1 for each kilolitre of water used.

The local government works out that–

(a) the actual usage of a domestic consumer was 300kL a year; and

(b) the actual usage of a commercial consumer was 2000kL a year.

The utility charges for the year would be–

(a) $400 for the domestic consumer (i.e. $100 +[$1 x 300kL]); and

(b) $2600 for the commercial consumer (i.e. $600 +[$1 x 2000kL).

(3) Utility charges for water are not invalid only because the local government does not comply with this part."

[13] A "2-part charge" as described in s 101(1)(b) is defined in s 41(4) LGR:

"(4) A ***2-part charge*** is a utility charge that is made up of the following 2 parts—

(a) a fixed charge for using the infrastructure that supplies water to a person (a ***consumer***) who is liable to pay the charge;

(b) a variable charge for using the water, based on the amount of water that is actually used by the consumer."

[14] The structure of s 101 LGR presents two options for the local government by which it must charge a ratepayer for a water service: either "wholly according to the water used", or "partly according to the water used, using a 2-part charge". Section 101(2) then obliges the local government to choose between two options to work out what the utility charges are to be, depending on whether or not the water used is measured by a meter. Where water is measured using a meter, the local government must work out the charges on the basis of either "an amount for each unit, or part of a unit, of water that is used", or "a fixed amount plus an amount for each unit, or part of a unit, of water that is used over a stated quantity".

[15] These particular provisions in question must be read in the context of the objects and purposes of the LGA:

"**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.

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;…"

Factual context

[16] On 21 July 2016, the respondent's councillors held a special meeting where rates and charges for the 2016/2017 financial year were adopted.

[17] According to the minutes of that meeting,[1] under the headings "Utility – Water" the respondent adopted a "rate per unit, charge or service" for water of $202.00, and included a charge of $2.60 for "Water consumed above allocated allowance per kL".

[18] According to the minutes, the respondent also resolved to adopt a 2016/2017 Revenue Statement in accordance with ss 169(2) and 172 of the LGR.[2] This Statement provided:

> "Water charges shall be assessed by the Council upon all land and premises within the water area.
>
> The basis of charges shall be on a unit basis in accordance with the classification of such land as described in the schedule below."

[19] The schedule classified various types of land and for each class a certain value of units is allocated. The Revenue Statement then said: "[f]or the purpose of the above charges, one unit shall entitle the ratepayer to 112.5 kL of water". Under a further heading

---

1 Exhibit BG-10 to the affidavit of Bernard Gillic sworn 30 March 2017.
2 Exhibit BG-11 to the affidavit of Bernard Gillic sworn 30 March 2017.

"Water Consumption Above Allocated Entitlement", the Revenue Statement provided that "Commercial shall be at the rate of $2.60 kl or part thereof for water consumed in excess of the allocated entitlement."

[20] On 19 August 2016, the respondent issued the two impugned rates notices to the applicant. The notices charged the applicant a total of $49,187 for water in respect of both properties for the relevant period. That amount was arrived at by multiplying the $202.00 per annum rate[3] by the combined water units allocated to the properties pursuant to the schedule in the Revenue Statement. The first property was allocated 446 units for water, while the second property was allocated 41 units.

[21] The Revenue Statement also explained the respondent's methodology in determining the units by which the utility charges for water would be levied:

> "Utility Charges have been calculated on the basis of Full Cost Pricing (FCP) pursuant to National Competition Policy (NCP) principles. The units applied to different types of properties have been established for many years and Council is generally satisfied that they reflect the relative costs of service.
>
> Service charges are apportioned on the basis of "Units" for water and per service or connection rendered to each Ratepayer. Each service unit has a $ equivalent and these are detailed below."

[22] It was an agreed fact in the hearing before me that the applicant's properties used a water meter and that the respondent's method of levying the utility charges did not constitute a "2-part charge" as described by s 41(4) LGR.

The applicant's case

[23] The applicant argued that the respondent's decision to adopt the rate of $202.00 per unit allocated meant that it had failed to comply with s 101(1)(a) LGR, which obliges a local government to charge for a water service "wholly according to the water used".

[24] The applicant submitted, correctly in my view, that the broad power in s 99(1) LGR to levy utility charges "on any basis the local government considers appropriate" is impliedly restricted by the mandatory and specific terms of s 101 LGR, which provides

---

[3] As the notices charged for a period of six months, the rate used in the notices was $101.00 per unit.

that a local government "must charge" a ratepayer for utility charges for water in the manner prescribed by that section.[4]

[25] The applicant's submissions were structured in two parts:

(a) As the respondent did not charge for utility charges using the 2-part charge method:

(i) Section 101(1)(a) LGR obliged the respondent to levy utility charges for water services "wholly according to the water used".

(ii) As the charges had to be charged to a ratepayer "wholly according to the water used", they could not be worked out as comprising a "fixed amount plus an amount for each unit, or part of a unit, of water that is used over a stated quantity" and be charged to a ratepayer consistently with s 101(1)(a), as the process would involve a charge that is not "wholly according to the water used".

(b) Section 101(3) LGR does not mean that the respondent's charges for water remain valid notwithstanding its failure to comply with s 101(1)(a) LGR. The respondent also failed to exercise its general power to levy rates in s 94 LGA in accordance with the local government principles underpinning the LGA in ss 3 and 4 LGA. The respondent's failure to comply with s 101(1)(a) LGR was such that it also exercised its power in s 94 LGA in a way that was not consistent with "transparent and effective processes, and decision-making in the public interest". The respondent's charges for water are therefore invalid, as it not only failed to comply with Part 7, Chapter 4 of the LGR, but also with ss 4 and 94 of the LGA.

The respondent's case

[26] The respondent argued that its decision to levy utility charges for water complied with s 101(1) LGR, because:

---

[4] Applicant's submissions, [45]; *Anthony Horden & Sons Ltd v Amalgamated Clothing and Allied Trades Union of Australia* (1932) 47 CLR 1 at 7 per Gavan Duffy CJ and Dixon J.

(a) Section 101(2)(b) LGR provides that "utility charges for the water used must be worked out" by a local government in making a choice between two options:

(i) An amount for each unit, or part of a unit, of water that is used; or

(ii) A fixed amount plus and amount for each unit, or part of a unit, of water that is used over a stated quantity.

(b) The respondent's utility charges for water were structured as follows:

(i) A fixed amount calculated in accordance with the number of units calculated in accordance with the use or uses to which a particular parcel of land is being put; and

(ii) An amount for each unit of water used over a quantity calculated by reference to the applicable number of units.

(c) This approach complied with the option set out in s 101(2)(b)(ii) LGR. As the respondent worked out its utility charges pursuant to s 101(2)(b)(ii), it was able to charge them pursuant to s 101(1).

[27] Counsel for the respondent argued further that even if the respondent was wrong about its suggested construction of ss 101(1) and 101(2) LGR, non-compliance with s 101(1) LGR did not render the respondent's water charges invalid. The respondent pointed to s 101(3) LGR and a case construing a similar legislative regime as indicating an intention on the legislature's part that utility charges for a water service would remain valid and recoverable as a debt, even where a local government fails to comply with the terms of the LGA and LGR.

Construction of s 101(1) and (2) LGR

[28] There is an apparent conflict between the necessity for the respondent to charge for a water service (where it does not use a 2-part charge) "wholly according to the water used", and s 101(2)(b)(ii) LGR which then provides that such a charge may be "worked out" on the basis of comprising "a fixed amount".

[29] In *Project Blue Sky Inc v Australian Broadcasting Authority* ("*Project Blue Sky*"), the High Court stated (omitting footnotes and citations) that:

> "[w]here conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court "to determine which is the leading provision and which the subordinate provision, and which must give way to the other". Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme."[5]

[30] In my view, s 101(1) LGR is the leading provision as it obliges a local government to ensure that it charges a ratepayer for water in a particular way. Section 101(2) must, in turn, be the subordinate provision as it provides a mechanism by which how such a charge is to be worked out, but the starting point is the local government's choice to charge for water either on a basis "wholly according to the water used", or by way of a 2-part charge.

[31] The respondent's submission that a charge levied pursuant to s 101(1)(a) LGR must be interpreted with reference to s 101(2)(b)(ii) LGR, has the effect of subordinating the language of s 101(1)(a) such that a charge "wholly according to the water used" can be worked out by reference to a "fixed amount". That, in my view, would be an incoherent result which would render the meaning of the words "wholly according to the water used" a nullity.

[32] In the course of oral argument, I raised with counsel for the respondent the possibility of an alternative construction of s 101 LGR: that s 101(2)(b) be read down such that s 101(2)(b)(i) would apply in cases where a local government charges for water according to s 101(1)(a), and that s 101(2)(b)(ii) would apply in cases where a local government charges for water using a 2-part charge.

[33] This would mean that when a local government charges for water "wholly according to the water used", its method will be limited to a working out the charge on the basis of

---

5 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 381-2 (McHugh, Gummow, Kirby and Hayne JJ).

an amount for each unit of water that is used. In my view, this must have been what the subordinate legislature intended when requiring a utility charge to be levied wholly according to the water used.

[34] It was suggested in argument that this construction of s 101(2)(b)(ii) would also help to clarify the example beneath that subsection, which, in explaining how a charge is to be worked out according to s 101(2)(b)(ii), plainly refers to a 2-part charge scenario; the example describes using a fixed "access charge" independent of water usage and a separate charge for water used.

[35] In the respondent's further written submissions, it was argued that to the extent that there is tension between the example and the text of s 101(2)(b)(ii) LGR, s 14D(c) of the *Acts Interpretation Act* 1954 (Qld) applies such that the example cannot be relied upon if it is inconsistent with the provision. In my view, however, s 14D(c) requires one to read first "the example and the provision in the context of each other and the other provisions of the Act" (in this case, the LGR). This is a situation where two potential constructions of s 101(2)(b)(ii) are open, and the second construction, that s 101(2)(b)(ii) was only intended to apply in circumstances where a 2-part charge is used, clearly encompasses the example and resolves the conflict with s 101(1)(a), while the other construction does not.

[36] Accordingly, the respondent's submissions must be rejected. The respondent failed to comply with s 101(1)(a) LGR when it levied the utility charges for water on the applicant for the rates period.

Does s 101(3) LGR protect the respondent's charges from invalidity?

[37] As outlined above, the respondent submitted that even if it did not comply with the terms of s 101(1) LGR, any charge purportedly levied under that subsection is nonetheless valid due to the operation of s 101(3) LGR:

> "Utility charges for water are not invalid only because the local government does not comply with this part".

[38] The High Court also considered this issue in *Project Blue Sky*, where the plurality stated:

> "An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition. Unfortunately, a finding of purpose or no purpose in this context often reflects a contestable judgment."[6]

[39] I agree with the respondent's submission that s 101(3) LGR is an express intention on the subordinate legislature's part to limit the invalidity of charges where a local government fails to comply with s 101 LGR.

[40] Counsel for the respondent pointed to a similar type of provision being the subject of discussion by the High Court in *Minister for Immigration and Multicultural Affairs v Palme*.[7] In that case, s 501G(4) of the *Migration Act* 1958 (Cth) stated: "A failure to comply with this section in relation to a decision does not affect the validity of the decision". McHugh J observed that "it is beyond argument that the Act did not intend that failure to comply with section 501G should invalidate the decision".[8]

[41] However, the provision discussed in *Palme* was structured such that there was no carve-out of the protection of a relevant decision from invalidity. In the present case, the use of the words "only because" in s 101(3) LGR means that the legislature explicitly left open the possibility that invalidity might arise in circumstances where a local government failed to comply with ss 101(1) and (2) LGR, coupled with some other further default on the local government's part with the terms of the LGA or LGR.

[42] Counsel for the applicant submitted that the charges are invalid in this case because, not only did the respondent fail to comply with s 101(1)(a) LGR, it also did not comply with s 94 LGA, which confers power on the respondent to levy rates and charges in a manner consistent with the local government principles in s 4 LGA. The applicant argued that the respondent did not exercise its power to levy utility charges for water in a way that reflected "transparent and effective processes, and decision-making in the public interest".

---

6 (1998) 194 CLR 355, 388-9 (McHugh, Gummow, Kirby and Hayne JJ).
7 (2003) 216 CLR 212.
8 (2003) 216 CLR 212, 227 (McHugh J).

[43] Counsel for the applicant referred to *E Cocco & Sons Investments Pty Ltd v Gold Coast City Council*,[9] in which Margaret Wilson J held[10] that ensuring that local governments exercise power pursuant to s 94 LGA in a transparent and accountable manner was a purpose of s 28 of the predecessor regulation to the LGR (which was an enabling provision giving a local government power to levy special rates and charges subject to prerequisite steps, including the adoption of an "overall plan").[11] Her Honour referred to the judgment of McMurdo J in *Whiting v Somerset Regional Council*,[12] where His Honour held that

> "the adoption of an overall plan in accordance with s 971 of the 1993 Act was a prerequisite to the validity of the rate or charge … in reaching that conclusion his Honour had regard to the intention of the 1999 amendments as expressed in the Explanatory Notes and 'the broader purpose of s 971 to limit the levy of a special rate or charge according to a transparent correlation with certain work at a certain cost'".[13]

[44] It is true that Margaret Wilson J did not ultimately conclude in that case that the local government's exercise of power in s 94 LGA failed to comply with the local government principles in s 4 LGA. Her Honour was also not concerned with a provision similar to s 101(3) LGR in that case. However, it is clear from Her Honour's reference to *Whiting v Somerset Regional Council*, and from McMurdo J's judgment in that case, that the failures of those local governments to exercise their powers consistently with the specific terms of the Act or Regulation were not by themselves the ultimate grounds for holding that the charges in those cases were invalid. What was significant was the fact that those instances of non-compliance also offended the "overall legislative scheme intended to provide transparency and accountability in the conduct of local government".[14]

[45] In the course of oral argument, counsel for the respondent explained the respondent's method in adopting of the utility charges for water. He pointed to the Revenue Statement which explained that the "units applied to different types of properties have been established for many years, and council is generally satisfied that they reflect the

---

9 [2014] QSC 10.
10 At [56].
11 *Local Government (Finance, Plans and Reporting) Regulation* 2010 (Qld).
12 [2010] QSC 200.
13 [2014] QSC 10, at [94] quoting *Whiting v Somerset Regional Council* [2010 QSC 200, at [32].
14 [2014] QSC 10, at [99].

relative costs of service".[15] It was also pointed out that the respondent's judgment on this question could give rise to a challenge on grounds of Wednesbury unreasonableness, but that this was not a ground of challenge on the present applications. Counsel for the respondent characterised the requirements of ss 4(1)(a) and 4(2)(a) LGA as aspirational, and that the respondent's conduct was more than sufficient to meet those aspirational requirements.

[46] Be all that as it may, I find that the respondent did not exercise its power under s 94 LGA to levy rates and charges in a manner consistent with s 4 LGA, particularly with the local government principles of transparent and effective processes and decision-making in the public interest.

[47] The respondent's explanation in the Revenue Statement that it was "generally satisfied" that the amounts levied for utility charges for water by way of allocation of units reflected "the relative costs of service" is not indicative of a transparent or effective process. Nowhere on the material before me was there an explanation as to why the respondent chose to adopt a method for determining the utility charges for water which did not give any consideration to charging for (at least partly) the **water used** by the ratepayer in a case where it is conceded a water meter existed.

[48] Counsel for the respondent posed a rhetorical question in oral argument: when a council has complied with transparency requirements, such as adopting a budget, determining rating resolutions and a revenue statement, what more could be required? The answer, as it seems to me in this case, is that the respondent should have turned its mind to the local government principles in the LGA when it resolved to determine its utility charges for the rates period. For instance, a local government's power to levy utility charges in s 99 LGR is indeed broad, but not unfettered. A local government may levy utility charges on "any basis" that it considers appropriate, provided that such a basis is consistent with the context, objects and purpose of the Act which is the source of the power to levy the charge.

[49] Section 4 LGA is more than merely aspirational. Section 3(b) LGA states that the purpose of the Act is to provide for a system of accountable, effective, efficient and sustainable local government. Section 4(1) LGA is phrased to give effect to that

---

[15] T1-38.

purpose, with Parliament requiring "any action that is taken under this Act to be taken in a way that is consistent with the local government principles". That language clearly places a duty on any decision-maker before performing a responsibility, or exercising a power, under the Act to at least turn his or her mind to the principles, especially where such a decision concerns compliance with a procedure imposed by legislation. On the facts of this case, the manner in which the respondent decided to levy the utility charges for water did not disclose any attempt by the respondent to consider, and act consistently with, the principles set out in s 4(2)(a) LGA.

[50] Counsel for the respondent submitted further that *Hume Doors & Timber (Qld) Pty Ltd v Logan City Council* ("*Hume Doors*")[16] is direct authority "for the proposition that noncompliance with provisions relating to the method for charging for water should not result in the invalidity of the charge".

[51] In that case, Thomas JA (with whom Ambrose J agreed) held, in relation to a predecessor regime to the LGR and LGA, that where a general power existed for a local government to levy charges, its failure to comply with a prescriptive part of the regime did not lead to a conclusion that the legislature intended that a charge levied under the general power would be invalid:

> "It is difficult to infer any legislative intent that non-compliance with any particular requirement of Ch 10 means that any charge levied under Ch 14 is a nullity. Even if the local authority had failed to comply with the procedures contemplated by Ch 10, this would not in my view have invalidated the charge which was made."[17]

[52] In reliance on that, counsel for the respondent argued that the presence of the broad power in s 99 LGR to levy utility charges on "any basis" which the local government considers appropriate:

> "provides yet further contextual support for the proposition advanced by the Respondent … it is submitted that the inclusion of such a provision would, when the LGR is construed as a whole, tell against an intention on the part of the legislature that the Impugned Decisions are invalid in the event of noncompliance with s 101(1)…"

---

16 (2000) LGERA 110.
17 (2000) LGERA 110, 118 per Thomas JA.

[53] However, in *Hume Doors*, the relevant prescriptive provisions of the former Act required a local government to conduct a cost-effectiveness assessment and prepare a report in relation to a certain kind of charge for water services. The local government was required to give consideration to the introduction (via production of the assessment and report) of a type of charge, and if it decided to introduce the charge, that it had to implement and fulfil certain criteria by a given date. Those provisions, it was held, did not displace the local government's pre-existing general power to impose the same kind of charge in another part of the Act:

> "It appears to me to be a strong step to read into Ch 10 that a report in perfect compliance with the express terms of s 773 invalidates the levy which ultimately ensues, if the report fails to deal with any matter on which the council had expressed a desire to be informed …
>
> …
>
> I agree that there is nothing in Ch 10 which expressly or by implication limits or restricts the powers given to the respondent to implement the new two-tier tariff under challenge at relevant times under s 973."[18]

[54] On the present case, the structure and language in the LGR are quite distinct from the former legislative regime considered in *Hume Doors*. Section 101(1) uses mandatory language – charges for a water service "must be charged" by the local government either "wholly according to the water used" or "partly according to the water used, using a 2-part charge". Unlike the prescriptive provisions construed in *Hume Doors*, the words "must be charged" in s 101(1) do have the effect of impliedly restricting the local government's general power to levy rates in s 99 LGR.

[55] Accordingly, I reject the respondent's submission that *Hume Doors* stands as authority for the general proposition that non-compliance with water charging provisions will nonetheless not result in the charge being invalid. It is clear that the outcome in that case turned on a narrow point of construction under the former legislative regime.

---

[18] (2000) LGERA 110, 115 (Pincus JA); 119 (Ambrose J).

[56] I therefore find that the respondent failed to comply not only with Part 4 of Chapter 7 of the LGR, but that it also failed to exercise its power under s 94 LGA in a manner consistent with s 4 LGA when it adopted the utility charges for water at its special meeting on 21 July 2017. The respondent's utility charges for water are therefore invalid.

[57] The applicant is therefore entitled to relief substantially in the form sought by the originating applications.

[58] I will hear the parties further on the form of orders required to give effect to this judgment and on the question of costs.