SUPREME COURT OF QUEENSLAND

CITATION:	*Mount Isa City Council v The Mount Isa Irish Association Friendly Society Ltd* [2018] QCA 222
PARTIES:	**MOUNT ISA CITY COUNCIL** (appellant) **v** **THE MOUNT ISA IRISH ASSOCIATION FRIENDLY SOCIETY LTD** ACN 087 649 349 (respondent)
FILE NO/S:	Appeal No 557 of 2018 SC No 13137 of 2016 SC No 253 of 2017
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2017] QSC 316
DELIVERED ON:	18 September 2018
DELIVERED AT:	Brisbane
HEARING DATE:	21 May 2018
JUDGES:	Sofronoff P and Gotterson and Philippides JJA
ORDERS:	**1. Leave to file the notice of contention refused.** **2. Appeal allowed.** **3. The orders made in proceeding No 13137 of 2016 and proceeding No 253 of 2017 respectively on 1 February 2018 are set aside.** **4. The relief sought by way of originating application in each of those proceedings is refused.** **5. The respondent is to pay the appellant's costs of and incidental to the appeal and each proceeding on the standard basis.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – ERROR OF LAW – where the appellant resolved to levy utility charges for water – where the appellant issued rates notices to the respondent, which charged the respondent for utility charges for water in respect of rateable land owned by the respondent – where the utility charges were made pursuant to s 94 of the *Local Government Act* 2009 (Qld) and s 101 of the *Local Government Regulation* 2012 (Qld) – where the utility charges for the

water were not charged using a "2-part charge" – where the utility charges were worked out on the basis of a fixed amount plus an amount for each unit, or part of a unit, of water that is used over a stated quantity – whether the appellant's utility charges for water were charged "wholly according to the water used" under s 101(1)(a) of the *Local Government Regulation* 2012 (Qld)

Acts Interpretation Act 1954 (Qld), s 14D(c)
Local Government Act 2009 (Qld), s 4(1)(a), s 4(2)(a), s 94
Local Government Regulation 2012 (Qld), s 99, s 101(1)(a), s 101(2)(b)(ii)

E Cocco & Sons Investments Pty Ltd v Gold Coast City Council [2014] QSC 10, distinguished
KC Park Safe (Brisbane) Pty Ltd v Cairns City Council [1997] 1 Qd R 497, considered
Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 335; [1998] HCA 28, applied
Whiting v Somerset Regional Council [2010] QSC 200, distinguished

COUNSEL: R G Bain QC, with S D Fynes-Clinton and J P Hastie, for the appellant
G Gibson QC, with P F Mylne, for the respondent

SOLICITORS: King & Company Solicitors for the appellant
McKeering Down Lawyers for the respondent

[1] **SOFRONOFF P:** I agree with the reasons of Gotterson JA and the orders proposed by his Honour.

[2] **GOTTERSON JA:** The Mount Isa Irish Association Friendly Society Ltd ("Friendly Society"), the respondent to this appeal, is the registered proprietor of land at Mt Isa within the local government area administered by the appellant, the Mount Isa City Council ("Council"). The Friendly Society conducts a licensed club and provides rental accommodation on its land.

[3] The Friendly Society's land is comprised of many adjacent lots. Together they occupy a substantial area between Twenty First Avenue and Twenty Third Avenue, Mount Isa.[1] The Council assesses rates for the Friendly Society's land on the basis that it consists of two separate properties. The larger property, which contains all but one of the lots, is described as 3 – 9 Twenty First Avenue. The smaller property, which contains the other lot, is described as 1 Twenty First Avenue.

[4] Over the years, the Friendly Society has constructed accommodation blocks on its land. The blocks contain rooms, with or without ensuite facilities, which are available as rental accommodation. Each block is identified by a letter of the alphabet. The series begins with Block A and continues to Block N. All but Block N are located on the larger property. That block and an adjacent shop known as the Happy Valley Store, are located on the smaller property.

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1 There is no Twenty Second Avenue.

[5] On 21 July 2016, the Council, at a special meeting, passed the following resolutions[2] that are relevant for present purposes:

(i) a resolution adopting the Council's 2016/2017 Revenue Statement;[3] and

(ii) a resolution adopting "the following rates and charges … for the 2016/2017 financial year".[4]

[6] The rates and charges set out in the second resolution included Water Charges for the Mount Isa city area. These charges comprised an amount of $202.00 per unit where units were assigned to property in accordance with a schedule of land classifications set out in the Revenue Statement. One unit entitled the ratepayer to 112.5 kilolitres of water. There was an additional charge of $2.60 per kilolitre for water consumed in excess of the allocated allowance.

[7] The land classifications in the schedule included "Motel", for which eight units were assigned to the first motel unit and four units to each additional unit; and "Serviced Rooms", for which 14 units were assigned to accommodation with a capacity for up to 10 guests and two units for each additional guest capacity. It is uncontroversial for present purposes that, based on the schedule, the larger property was assigned 446 units and the smaller property 41 units.

[8] On 19 August 2016, the Council issued rate assessment notices to the Friendly Society for the larger property (Assessment 04095-00000-000)[5] and for the smaller property (Assessment 04098-40000-000).[6] The assessments were for the half year ending 30 December 2016. Each notice contained a Water Charge calculated on a per unit amount of $101.00, one half of the yearly amount of $202.00. For the larger property, the water charge was $45,046 based on 446 units; and for the smaller property, it was $4,141 based on 41 units. There was no additional per kilolitre charge in either assessment.

[9] On 16 December 2016, the Friendly Society filed an application in the Supreme Court for a statutory order of review under Part 3 of the *Judicial Review Act* 1991 (Qld).[7] This application sought to have judicially reviewed the decisions made by the Council on 21 July 2016 to which I have referred insofar as they related to the adoption of Water Charges. Later, on 10 January 2017, the Friendly Society filed a second application for a statutory order of review.[8] It sought to have judicially reviewed the decisions made by the Council sometime between the 21 July 2016 and 19 August 2016 to apply the land classification-based, per unit methodology adopted on 21 July 2016 for assessing Water Charges in respect of both the larger property and the smaller property.

[10] Each application was based on the same grounds, namely:

"1. The [Council] did not have jurisdiction to make any of the decisions referred to in this application.

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2 Affidavit of BF Gillic sworn 30 March 2017 exhibit "BG10" p 2/7: AB63.
3 Ibid exhibit "BG11": AB69-91.
4 Ibid exhibit "BG10" pp 2/7–6/7: AB63-67.
5 Ibid exhibit "BG4": AB60.
6 Ibid exhibit "BG5": AB61.
7 Proceeding 13137 of 2016: AB111-114.
8 Proceeding 253 of 2017: AB214-217.

Particulars

(a) The adoption of units as the basis of water charges for the 2016/2017 financial year has no legal basis;

(b) The adoption of a monetary charge per unit for water charges for the 2016/2017 financial year has no legal basis;

2. Each decision was unauthorised by any enactment;

3. Each decision was an improper exercise of power conferred by the *Local Government Act* 2009 or the *Local Government Regulations* 2012, particulars of which are supplied in paragraph 1 hereof;

4. There was no evidence or other material to justify the making of the decision particulars of which are supplied in paragraph 1 hereof."

Further, each application sought relief in similar terms: an order quashing or setting aside each decision under review, and a declaration that the Water Charges levied by the Council in 2016-2017 are not legally due.

[11] The applications were heard together. On 18 December 2017, the learned primary judge published reasons for his conclusion that the Friendly Society was entitled to relief substantially in the form sought by it.[9] Formal orders setting aside each of the decisions from the date it was made and ordering the Council to pay the Friendly Society's costs, were made on 1 February 2018.[10]

[12] On 15 January 2018, and before the formal orders were made, the Council filed a notice of appeal to this Court against the judgment pronounced on 18 December 2017.[11] At the hearing of the appeal, the notice of appeal was amended to appeal also against the orders made on 1 February 2018.

Statutory framework for the resolutions

[13] The *Local Government Act* 2009 (Qld) ("LGA") provides for four types of rates and charges.[12] They include a general rate which a local government must levy on all rateable land within its area and utility charges which a local government may levy.[13] Utility charges include a charge for water.[14] Pursuant to s 96 of the LGA, a regulation may provide for any matter connected with rates and charges including the categorisation of land for rates and charges.

[14] The *Local Government Regulation* 2012 ("LGR") is a regulation authorised by the LGA. Under the LGR, a local government must adopt a budget for each financial year.[15] The budget must include a revenue statement.[16] The revenue statement must include, *inter alia*, an outline and explanation of the rates and charges to be levied for the financial year.[17]

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9 AB224-241.
10 AB242, 243.
11 AB245-248.
12 LGA s 92(1).
13 LGA ss 94(1)(a), (b)(ii).
14 LGA s 92(4)(d).
15 LGR s 170.
16 LGR s 169(1)(2).
17 LGR s 173(2).

[15] Chapter 4, Part 7 of the LGR (ss 99 – 102) concerns utility charges. Section 99 provides:

> "(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 services 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."

[16] Section 101 is headed "Working out utility charges for water services". It states:

> "(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.
>
> (a) 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 2,000kL a year.

The utility charges for the year would be—

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

(b) $2,600 for the commercial consumer (i.e. $600 + [$1 x 2,000kL]).

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

[17] I note at this point that it was common ground at first instance that the Friendly Society's properties used a water meter. It was also common ground that the Council's method of levying utility charges did not constitute a 2-part charge as defined in s 41(4) of the LGR,[18] that is to say, a charge made up of the following 2 parts, namely:

"(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."

The Revenue Statement

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18 Reasons at [22].

[18] The Revenue Statement adopted by the Council contained a part headed "Utility Charges". It began with the following:[19]

> "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:"

There followed a table which included the rate per unit charge and the excess charge for water to which I have referred.

[19] Next, there was a sub-heading "Water Charges". It began:[20]

> "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."

The land classification schedule to which I have also referred, followed. It concluded with this statement:[21]

> "For the purpose of the above charges, one unit shall entitle the ratepayer to 112.5 kL of water.
>
> …
>
> Domestic shall be at the rate of $2.60 kl or part thereof for water consumed in excess of the allocated entitlement."

[20] The Revenue Statement noted that the Council had resolved to apply ss 101 and 102 of the LGR for the purpose of levying Water Charges.

The judgment at first instance

[21] At first instance, the Friendly Society submitted that the Water Charges levied by the Council were invalid because they were not in accordance with s 101(1)(a) of the LGR; that is, they were not "wholly according to the water used". The Council submitted that the charges were valid because they accorded with s 101(2)(b)(ii) of the LGR; that is, where water used was measured by a water meter, the charges comprised "a fixed amount plus an amount for each unit … that is used over a stated quantity".

[22] The learned primary judge proceeded upon a footing that there is "an apparent conflict" between s 101(1)(a) and s 101(2)(b)(ii) of the LGR.[22] His Honour regarded the former as "the leading provision".[23] He rejected a submission for the

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19 At 13: AB82.
20 At 14: AB83.
21 At 16: AB85.
22 Reasons at [28].
23 Reasons at [30].

Council that the former must be interpreted with reference to the latter. To do so, his Honour said, would render the words "wholly according to the water used" a nullity.[24] Those words, he considered, limited the local government "to working out the charge on the basis of an amount for each unit of water that is used".[25] It would be an "incoherent result" were they to be interpreted as accommodating a water charge worked out by reference to "a fixed amount".[26]

[23] His Honour concluded that, in its application, s 101(2)(b)(ii) ought to be taken as applying only to the circumstance where a local government charges for water using a 2-part charge.[27] That conclusion, he observed, was supported by the example in the section which he took as reflecting a 2-part charge.[28] Further, his Honour considered that this conclusion avoided any tension between the example and s 101(2)(b)(ii) itself, and foreclosed potential application of s 14D(c) of the *Acts Interpretation Act* 1954 (Qld). In a separate submission, the Council had contended that if there was any tension between example and the section, then that provision would have precluded reliance upon the example for interpretation purposes.[29]

[24] Consistently with those reasons, his Honour held that the Water Charges failed to comply with s 101(1)(a) of the LGR.[30]

[25] The learned primary judge also rejected a submission for the Council that even if the Water Charges failed to comply with s 101(1), they were not invalid by reason of the operation of s 101(3). His Honour observed that that provision protected a utility charge against invalidity if the local government had not complied with Part 7 only.[31] He accepted an argument for the Friendly Society and found that, here, invalidity arose also from a failure on the Council's part to exercise its power under s 94 of the LGA to levy rates and charges in a manner consistent with s 4 of the LGA, particularly with local government principles of transparent and effective processes and decision-making in the public interest, in levying the Water Charges.[32]

[26] As noted, s 94 imposes the obligation to levy general rates and confers the power to levy utility charges. Section 4(1)(a) LGA provides that "[t]o ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires anyone who is performing a responsibility under this Act to do so in accordance with the local government principles". The local government principles are enacted in s 4(2) of the LGA. The first of them, in (a), is "transparent and effective processes, and decision-making in the public interest".

[27] The learned primary judge held that the manner in which the Council "decided to levy the utility charges for water did not disclose any attempt by (the Council) to consider, and act consistently with, the principles set out in s 4(2)(a) LGA."[33] His Honour criticised the explanation in the Revenue Statement that the Council was

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24 Reasons at [31].
25 Reasons at [33].
26 Reasons at [31].
27 Reasons at [32].
28 Reasons at [34].
29 Reasons at [35].
30 Reasons at [36].
31 Reasons at [41].
32 Reasons at [46], [56].
33 Reasons at [49].

"generally satisfied" that the amounts levied for utility charges by way of allocation of units reflected "the relative costs of service" as being "not indicative of a transparent or effective process".[34] Moreover, he noted the absence in any of the material before him, of any explanation as to why the Council "chose to adopt a method for determining the utility charges for water which do 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".[35]

[28] Finally on this point, his Honour distinguished the decision of this Court in *Hume Doors & Timber (Qld) Pty Ltd v Logan City Council*[36] on which the Council had relied. He did so on a basis that the structure and language in the LGR is "quite distinct" from the legislative regime under consideration in that case.[37]

The grounds of appeal and the notice of contention

[29] The Council relies on the following grounds of appeal:[38]

> "1. The learned primary judged erred in law in holding that there is an apparent conflict between:
>
> (a) the necessity for a local government (where it does not use a 2-part charge) to charge for a water service under s 101(1)(a) of the *Local Government Regulation 2012* ("**LGR**") "wholly according to the water used"; and
>
> (b) s 101(2)(b)(ii) of the LGR which then provides that such a charge may be "worked out" on a basis which includes "a fixed amount",
>
> in circumstances where, on the proper construction of those provisions, there is no conflict.
>
> 2. In consequence, the learned primary judge erred in law in holding that:
>
> (a) s 101(2)(b)((ii) (sic) of the [LGR] states a basis for making water utility charges which applies only if the local government is using a 2-part charge as referred to in s 101(1)(b) of the LGR;
>
> (b) the water utility charges made by the appellant and challenged by the respondent ("**impugned charges**") were not charges wholly for the water used within the meaning of and for the purposes of s 101(1)(a) of the LGR.
>
> 3. The impugned charges were:
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> (a) as a fact, worked out on the basis stated in s 101(2)(b) of the LGR; and

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34 Reasons at [47].
35 Ibid.
36 (2000) 110 LGERA 110; [2000] QCA 389.
37 Reasons at [54].
38 AB246-247.

(b) on the proper construction of s 101 of the LGR as a whole, made and levied wholly according to the water used within the meaning of and for the purposes of [s 101(1)(a)] of the LGR.

4. In those premises, the learned primary judge erred in law in holding that the appellant did not comply with s 101 of the LGR in making the impugned charges.

5. Further or alternatively to grounds 1 to 4, the learned primary judge erred in law in holding that the validity of the impugned charges was not preserved by s 101(3) of the LGR because, even if (contrary to grounds 1 to 4) the appellant did not comply with s 101 of the LGR in making the impugned charges, there was no provision relevant to the validity of the charges contained:

   (a) in the LGR, other than in chapter 4, part 7 thereof; or

   (b) in the *Local Government Act 2009* ("**LGA**"); or

   (c) in any other statute or regulation,

   with which the appellant did not comply.

6. To the extent that the learned primary judge held to the contrary on the basis that, in addition to not complying with s 101 of the LGR, the appellant failed to comply with s 94 of the LGA, by reason of failing to comply with ss 4(1)(a) and 4(2)(a) of the LGA ("**LGA provisions**"), the appellant did not, on the evidence before the Court below, fail to comply with those provisions.

7. Further or alternatively to ground 6, to the extent (if any) that the appellant failed to comply with the LGA provisions in making the impugned charges, and on the proper construction of the LGA and the LGR read together (as relevant to water utility charges):

   (a) compliance with the LGA provisions was not a requirement for or pre-requisite to the validity of water utility charges otherwise made in compliance with s 101 of the LGR (or otherwise saved from invalidity by s 103(3) of the LGR); and, or alternatively

   (b) it was not a legislative purpose of the LGA provisions to invalidate water utility charges otherwise made in compliance with s 101 of the LGR (or otherwise saved from invalidity by s 103(3) of the LGR) by reason of non-compliance with the LGA provisions."

[30] Ground 1 to 4 are interrelated. They concern the proper construction of ss 101(1)(a) and 101(2)(b)(ii) of the LGR respectively and the validity of the Water Charges as levied under those provisions. It is convenient to consider these grounds together. Ground 6 relates to s 94 of the LGA and whether there was non-compliance with local government principles in levying the Water Charges. Ground 5 and 7 are

focussed upon s 101(3) of the LGR and its operation. They are relevant only if the Water Charges were otherwise invalidly levied.

[31] At the hearing of the appeal, the Friendly Society sought leave to file a notice of contention. The contention in it is that s 101(3) of the LGR is invalid. The grant of leave was opposed. The issue of whether leave ought to be granted was reserved until determination of the appeal.[39]

Grounds 1-4

[32] **Council's submissions:** The Council submitted that the learned primary judge erred in acting upon a footing that there is an apparent conflict between s 101(1)(a) and s 101(2)(b)(ii). The error lay in a misattribution to the word "wholly" in the expression "wholly according to the water used" of a requirement that a charge under s 101(1)(a) must be a variable charge based directly or solely on each kilolitre of water actually used.[40] There is no such requirement.

[33] Further, the Council submitted that the words "for the water used" in s 101(2) link that provision to each of ss 101(1)(a) and (b), both of which contain the expression "according to the water used". Section 101(2)(b) stipulates how a local government may levy a water charge under s 101(1)(a) where a water meter is used. It may do so by either the method in (b)(i) or the method in (b)(ii) thereof. Here, the Water Charges were levied in accordance with the method in (b)(ii) and were valid.[41]

[34] The Council also submitted that the method in s 102(2)(b)(ii) is not a 2-part charge as defined in s 41(4) of the LGR. The fixed amount in the former is an amount entitling the consumer to consume metered water up to a set volume; it is not a fixed infrastructure usage-charge of the kind described in the definition of a 2-part charge. Moreover, the example given in the former is not an accurate illustration of a 2-part charge as defined.[42]

[35] **Friendly Society's submissions:** The Friendly Society submitted that there is a tension between s 101(1)(a) of the LGR in obliging the Council (when not using a 2-part charge) to charge for a water service "wholly according to water used" and s 101(2)(b)(ii) LGR. The approach to statutory interpretation affirmed by the plurality judgment in *Project Blue Sky Inc v Australian Broadcasting Authority*[43] warranted the adoption of an interpretation of s 101(2) that gave effect to the plain meaning of the wording of s 101(1)(a) and reconciled an apparent conflict between it and s 102(2)(b)(ii). The interpretation adopted by the learned primary judge achieved that. It did not involve a "judicial rewriting" of those provisions.[44] Further, it better achieved the purpose of the LGA in promoting transparency and clarity.[45]

[36] As to the example in s 101(2)(b)(ii), the Friendly Society submitted that it referred to "2-part charge scenario" and that it assisted in resolving the conflict with s 101(1)(a).[46]

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39 Appeal Transcript ("AT") 1-2 ll14-29.
40 Appellant's Outline of Submissions ("AOS") at [17].
41 AOS at [21], [22].
42 AOS at [24].
43 (1998) 194 CLR 355 per McHugh, Gummow, Kirby and Hayne JJ at 381-382.
44 Respondent's Outline of Submissions ("ROS") at [19]-[23].
45 ROS at [24].
46 ROS at [26].

[37] The Friendly Society suggested additional instances of alleged disconformity of the Water Charges as levied with s 101(1)(a). It submitted that the assignments in the land classification schedule of six units per allotment to vacant land not used for any listed purpose and wholly or partly within 93 metres of a Council water main, and of an eight unit minimum charge for water supplied by meter, led to the imposition of such charges regardless of the quantity of water used.[47]

[38] **Discussion:** It is common ground that a utility charge that a local government may levy under s 94(1)(b)(ii) of the LGR must be one that accords with the LGR. Specifically, utility charges for water services must accord with s 101 of the LGR. That provision prescribes how such charges must be charged and worked out.

[39] Section 101(1) LGR requires that the utility charges for a water service be charged by either of two methods. The first is expressed to be "wholly according to the water used"; the second is "partly according to the water used, using a 2-part charge". The expression "partly according to the water used" accurately reflects a 2-part charge in which there is a fixed element or charge for using water supply infrastructure and a variable element or charge based on the amount of water actually used by the consumer.

[40] This case is, however, concerned with the meaning of the expression "wholly according to the water used" in the first alternative. Unlike the term "2-part charge", that expression is not defined for the purposes of the LGR. The words "according to the water used" are apt to require a relationship between the quantum of the charge and the volume of the water used. However, a requirement expressed in such general terms does not prescribe the permissible way or ways in which charges for the water used may be worked out. It is the role of s 101(2) to do that.

[41] In my view, s 101(2) is intended to complement s 101(1) by specifying how utility charges are to be levied according to the water used for both alternatives in s 101(1). In the case of s 101(1)(a), s 101(2) is applicable to the whole of the Water charges; whereas, in the case of 2-part charge in s 101(1)(b), it is applicable to the variable component of it only.

[42] I infer from the structure of s 101 in its entirety, that the role intended for the word "wholly" in s 101(1)(a) is to make it clear that, other than in the case of a 2-part charge, utility charges for a water service are to be charged wholly according to the water used as worked out by one of the methods for which s 101(2) provides. By contrast, its role is not to disassociate s 101(1)(a) from s 101(2). Nor is it to imply, by disassociation from s 101(2), that a charge under s 101(1)(a) must be one worked out on a per unit basis for each unit of water actually used.

[43] So construed, there is no conflict between s 101(1) and s 101(2), particularly s 101(2)(b)(ii). In this respect, I take a different approach to that taken by the learned primary judge. Section 101(2)(b)(ii) sets out one of two methods by which utility charges for water may be worked out when water usage is measured by a water meter. It is, I think, apparent that the fixed amount to which this provision refers is a fixed monetary amount which entitles the consumer to use up to a fixed volume of water.

[44] I also take a different approach to his Honour with regard to the circumstances to which s 101(2)(b)(ii) applies. It will be recalled that his Honour concluded by

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47 ROS at [25].

reference to the example in it, that this provision is applicable to a 2-part charge only. I would not adopt this conclusion for the following reasons.

[45] In the first place, the method described in the language of s 101(2)(b)(ii) does not reflect a 2-part charge as defined. Under the latter, the fixed charge is an infrastructure usage charge; whereas under the provision, it is for water usage. Further, under the latter, the variable charge is on the amount of all water that it is actually used by the consumer; whereas, under the provision, it is applicable only to water used over a stated quantity.

[46] Secondly, the example given in s 101(2)(b)(ii) does not replicate a 2-part charge as defined. The fixed charge ($100 for a domestic consumer and $600 for a commercial consumer) is described as an "access charge", rather than as an infrastructure usage charge.

[47] Thirdly, and in any event, the example should be ignored for construction purposes consistently with s 14D(c) of the *Acts Interpretation Act* 1954 (Qld). That is because it is incompatible with the method of working out a charge as described in s 101(2)(b)(ii). In the example, no quantity is stated. The variable charge is imposed on all water used by the customer and not only on water used by the customer over a stated quantity.

[48] Lastly, I do not regard the attribution of a minimum charge based on eight units for water supplied by meter as incompatible with s 101(2)(b)(ii). It is a fixed charge entitling the ratepayer to use 900 kilolitres of water, for which this provision allows. So also, the attribution of units to allotments of vacant land within 93 metres of a Council water main facilitates the calculation of a fixed charge which entitles the owner of each allotment to use water from the water main for the allotment.

[49] For these reasons, the Water Charges as levied comply with s 101(2)(b)(ii) in Part 7 of the LGR. I would therefore uphold these grounds of appeal.

Ground 5

[50] Given that the Water Charges as levied do comply with Part 7, it is unnecessary for the Council to rely on s 101(3) of the LGR to avoid invalidity for non-compliance on that account. It is therefore unnecessary to determine this ground of appeal. It is also unnecessary to determine the challenge to the validity of s 101(3) raised by the notice of contention. In this circumstance, I would refuse leave to file the notice.

Grounds 6 and 7

[51] These grounds concern the finding by the learned primary judge of invalidity in the levying of the Water Charges beyond the validating scope of s 101(3), that is to say, the finding of invalidity for non-compliance with s 94 of the LGA. It is convenient to consider these grounds together.

[52] **Council's submissions:** The Council submitted that the learned primary judge erred in finding a non-compliance with s 94 when read with ss 4(1)(a) and 4(2)(a).[48] The basis for the finding is not clearly articulated by his Honour.[49]

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48 AOS at [43].
49 AOS at [37].

[53] However, even if a non-compliance with s 94 had been established, it would have invalidated the Water Charges only if, upon a proper construction of the LGA, invalidity of the Water Charges was an intended consequence. The approach taken in *KC Park Safe (Brisbane) Pty Ltd v Cairns City Council*[50] would suggest that it did not.[51]

[54] Further, his Honour erred in relying on the decisions in *E Cocco & Sons Investments Pty Ltd v Gold Coast City Council*[52] and *Whiting v Somerset Regional Council*[53] to support a proposition that non-adherence to a local government principle set out in s 4(2) is a distinct and separate basis for invalidity beyond the scope of s 101(3). Those cases do not support such proposition.[54]

[55] **Friendly Society's submissions:** The Friendly Society submitted that the principle of "transparency and accountability" is not satisfied merely by summarising the results of an economic analysis or of a policy decision. Here, explanations of the following were required for transparency and accountability in the Revenue Statement:[55]

(a) the basis on which units were allocated to the various classifications of land listed in the schedule;

(b) how the volume of 112.5 kilolitres was adopted as the unit entitlement; and

(c) why $2.60 per kilolitre was chosen as the rate per unit for water consumed in excess of the entitlement.

[56] In addition, the Friendly Society submitted that to propose that for invalidity to result from a non-adherence to a local government principle, such an intention must be discerned in the LGA properly construed, is to place a "gloss on the operation of s 101(3)".[56] The decisions in *Whiting* and *E Cocco* are analogous and support a finding of invalidity.

[57] **Discussion:** The finding made by the learned primary judge was that the Council had failed to exercise its power under s 94 consistently with s 4. It had failed to perform a duty implied by s 4(1) to at least turn its mind to the local government principles.[57] His Honour inferred that the Council had not done so.[58]

[58] The inference appears to have been based upon an absence from the Revenue Statement of "an explanation as to why the [Council] 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".[59] The criticism is elaborated by the three matters which the Friendly Society submitted warranted explanation.

[59] In my view, the criticism is misplaced. It assumes that the per unit charge of $202.00 was not in respect of water usage as s 101(2) permits water usage charges

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50 [1997] 1 Qd R 497.
51 AOS at [46], [47].
52 [2014] QSC 10.
53 [2010] QSC 200.
54 AOS at [51].
55 ROS at [31], [32].
56 ROS at [30].
57 Reasons at [49].
58 Ibid.
59 Reasons at [47]; (emphasis in original).

to be worked out. That assumption is incorrect. Moreover, it implies that compliance with local government principle (a) required the Council in its Revenue Statement to articulate a range of available charging options for water, to choose one of them, and then to present reasons for its choice.

[60] To my mind, such a requirement is neither expressed nor implied in the principle as stated. A requirement of that kind would necessitate the inclusion in a Revenue Statement of matters that are beyond those listed in s 172(1) of the LGA as the matters that must be stated or included in a Revenue Statement. I consider that the required transparency was demonstrated in the preparation of the Revenue Statement, the setting out in it of the land-use based units to be applied in calculating the Water Charges; the statement that to the Council's satisfaction the units generally reflected "the relative costs of service"; and the adoption of the charges at a special budget meeting.[60]

[61] In any event, a non-adherence to local government principle (a) would not, in my view, have resulted in invalidity of the Water Charges. To require that invalidity be intended as a consequence of non-adherence to such a principle is consistent with authority. No gloss upon s 101(3) is involved. That provision is neutral with respect to the topic.

[62] Guided by the plurality judgment in *Project Blue Sky*, I consider that the generality in which local government principle (a) is expressed taken with its frame of reference, focused as it is upon normative values rather than specific conduct, together suggest that the legislature did not intend that a non-adherence to the principle is to result in invalidity where a charge of a kind permitted by regulations made under the LGA is levied in accordance with the regulations.

[63] It remains to note that the decisions referred to by the learned primary judge do not support a contrary view. In *Whiting*, McMurdo J held that a special charge on three allotments was invalidly levied for failure to comply with a provision of the *Local Government Act* 1993 (Qld) which required the adoption of an overall plan with content as specified by the provision, as part of the process for levying the special charge. His Honour held that compliance with the process was integral to the validity of the charge. That provision was not analogous to s 4 of the LGA; it stipulated the process that was to be undertaken to levy the charge. Moreover, the legislative scheme in question did not contain a provision akin to s 101(3).

[64] In *E Cocco*, which followed *Whiting*, it was held that a special charge on land used for a caravan park to raise funds to construct a new bridge of benefit to the land, was invalid. The resolution had failed to comply with specific provisions in s 28 of the LGR, comparable with those under consideration in *Whiting*, for levying a special charge of that kind. Margaret Wilson J rejected a submission that non-compliance with s 28 would not necessarily lead to invalidity. Again, the specific content requirements in s 28 markedly distinguish it from the broadly stated, normative values-focussed s 4 of the LGA. As well, no provision analogous to s 101(3) fell for consideration in that case.

[65] For these reasons, I would also uphold Grounds 6 and 7. The Water Charges are not invalid for non-compliance with s 94 of the LGA read with ss 4(1)(a) and 4(2)(a) thereof.

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60 The decision in *KC Park Safe* is, in my view, of marginal relevance. It contains an observation at 501 with which I agree, that proof of breach of broadly expressed statements of principle tends to be difficult.

Disposition

[66] Given that Grounds 1 to 4, 6 and 7 have succeeded, this appeal must be allowed. The declaration and orders made at first instance should be set aside; the relief sought refused; and the Friendly Society ordered to pay the Council's costs both on appeal and at first instance.

Orders

[67] I would propose the following orders:

1. Leave to file the notice of contention refused.
2. Appeal allowed.
3. The orders made in proceeding No 13137 of 2016 and proceeding No 253 of 2017 respectively on 1 February 2018 are set aside.
4. The relief sought by way of originating application in each of those proceedings is refused.
5. The respondent is to pay the appellant's costs of and incidental to the appeal and each proceeding on the standard basis.

[68] **PHILIPPIDES JA:** I have had the advantage of reading the reasons for judgment of Gotterson JA. I agree with his Honour's reasons and the orders proposed.