SUPREME COURT OF QUEENSLAND

CITATION:	*Island Resorts (Apartments) Pty Ltd v Gold Coast City Council* [2021] QCA 19
PARTIES:	**ISLAND RESORTS (APARTMENTS) PTY LTD** ACN 613 135 783 (appellant) **v** **GOLD COAST CITY COUNCIL** (respondent)
FILE NO/S:	Appeal No 6027 of 2020 SC No 12297 of 2019
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2020] QSC 145 (Applegarth J)
DELIVERED ON:	12 February 2021
DELIVERED AT:	Brisbane
HEARING DATE:	25 September 2020
JUDGES:	McMurdo JA and Boddice and Jackson JJ
ORDERS:	**1. The appeal is dismissed.** **2. The appellant pay the respondent's costs of the appeal.**
CATCHWORDS:	LOCAL GOVERNMENT – POWERS, FUNCTIONS AND DUTIES OF COUNCILS GENERALLY – PARTICULAR POWERS AND FUNCTIONS – MISCELLANEOUS POWERS – where the appellant owns properties within the local government area of the respondent – where one of the respondent's functions as a council is to levy general rates on all rateable land within its local government area – where the respondent considers that land used for tourism and tourism-related business and industry should generate a greater contribution to general rate revenue than land that is not used for a commercial purpose – where residential lots used to provide rental accommodation to "permanent residents" were categorised as Category 2T and residential lots used to provide rental accommodation to "itinerants" were categorised as Category 3T – whether the primary judge erred in not finding that deciding rating categories based on whether the rateable land was rented to an "itinerant" or "permanent resident" was characterising land solely on the basis of the personal characteristics of the occupant from time to time – whether the primary judge erred in not finding that the differential general rating categories 2T and 3T

characterised land based upon the personal characteristics of a person who may occupy the land from time to time – whether the primary judge erred in not finding that the respondent impermissibly took into account an irrelevant consideration – whether the appeal should be dismissed

Judicial Review Act 1991 (Qld), s 20(2)(e), s 23(a)
Local Government Act 2009 (Qld), s 4(2), s 92, s 93, s 94, s 96
Local Government Regulation 2012 (Qld), s 80, s 81

Ostwald Accommodation Pty Ltd v Western Downs Regional Council [2016] 2 Qd R 14; [2015] QSC 210, cited
Paton & Ors v Mackay Regional Council [2014] QSC 75, cited
Wellington City Council v Woolworths New Zealand Ltd (No 2) [1996] 2 NZLR 537; [1996] NZAR 348, cited
Xstrata Coal Qld Pty Ltd v Council of the Shire of Bowen [2010] QCA 170, explained

COUNSEL: M D Martin QC, with B Kabel, for the appellant
A Wheatley QC, with J Hastie, for the respondent

SOLICITORS: Mills Oakley for the appellant
King & Company Solicitors for the respondent

[1] **McMURDO JA:** For the reasons given by Jackson J, this appeal should be dismissed. In particular, I wish to express my agreement with his Honour's judgment in *Ostwald Accommodation Pty Ltd v Western Downs Regional Council*,[1] in its analysis of the effect of this Court's judgment in *Xstrata Coal Qld Pty Ltd v Council of the Shire of Bowen*,[2] that the references in *Xstrata* to some "attribute" or "characteristic" of the land need to be understood as a reference to some "quality of the land or its use".[3] More generally, it is the statutory text and context which must be considered, and the guidance which is provided by other judgments cannot be elevated to restrictions upon the relevant discretionary powers if those restrictions are neither expressed nor necessarily implied.

[2] **BODDICE J:** I agree with Jackson J.

[3] **JACKSON J:** This appeal is from an order dismissing an originating application for a statutory order of review of six resolutions made by the respondent to levy differential general rates and related decisions as to relevant rating categories for the financial years ending 30 June 2015 to 30 June 2020 inclusive.[4]

[4] The relief sought by the application was an order that the resolutions and decisions be set aside. The relevant ground of the application was that the resolutions and decisions were improper exercises of the powers to decide rating categories under s 81 of the *Local Government Regulation* 2012 (Qld) ("LGR") and to levy differential general rates under s 94 of the *Local Government Act* 2009 (Qld) ("LGA"), within the meaning of ss 20(2)(e) and 23(a) of the *Judicial Review Act* 1991 (Qld) ("JR Act"), because the respondent took into account an irrelevant consideration in the exercise of those powers, namely the personal characteristics of

---

1 [2016] 2 Qd R 14.
2 [2010] QCA 170.
3 *Ostwald* [2016] 2 Qd R 14, 36 [117].
4 *Island Resorts (Apartments) Pty Ltd v Gold Coast City Council* [2020] QSC 145 ("Reasons").

the person in occupation of the residential lots to be rated, which is not an attribute or characteristic of that rateable land.[5]

[5] The grounds of the appeal are that:

(a) the primary judge erred in not finding that deciding rating categories based on whether the rateable land was rented to an "itinerant" or "permanent resident" was characterising land solely on the basis of the personal characteristics of the occupant from time to time, namely the occupant's principal place of residence;

(b) alternatively, that the primary judge erred in not finding that the differential general rating categories 2T and 3T characterised land based upon the personal characteristics of a person who may occupy the land from time to time; and

(c) for one or both of those reasons, the primary judge erred in not finding that the respondent impermissibly took into account an irrelevant consideration.

[6] Most of the factual background to the appeal is set out in passages from the reasons of the primary judge, as follows:

> "The applicant owns more than 70 properties within the Couran Cove Resort on South Stradbroke Island. The properties are within the local government area of the respondent.
>
> One of the respondent's functions as a council is to levy general rates on all rateable land within its local government area.
>
> Between 2014 and 2019, the respondent passed annual resolutions providing for differential general rates within certain categories and fixing a minimum general rate within those categories.
>
> In each of those years, the respondent explained its approach to levying differential general rates in its revenue statement. For example, in the 2014/15 year, it stated:
>
>> 'A differential system of general rates provides equity through recognising different uses made of different rateable lands (both generally and with respect to revenue-producing potential) and different service levels generated or potentially generated by different ratepayer land.'
>
> In that year, rateable land in the city was differentiated into 87 rating categories, detailed in tables.
>
> Each Revenue Statement and Resolution of Rates and Charges for the relevant year stated the following (or words to similar effect):
>
>> 'When categorising land for differential rating purposes, Council has also had regard to **the extent to which tourism and tourism-related business and industry uses continue to contribute to the demand for the provision of Council services across the City. Council considers that land used for those businesses (including premises used to provide**

5 AB 2/37.

> **rental accommodation to itinerants) and industries should generate a greater contribution to general rate revenue than land that is not used for a commercial purpose** (including premises used to provide rental accommodation to itinerants).
>
> In addition, Council has had regard to its inspection program of all rental properties within the City. This program operates on a 3-year cycle during which all rental premises are inspected either internally or externally by Council officers in an effort to maintain an acceptable standard of rental accommodation throughout the City in accordance with its local laws. In such circumstances, Council considers that those rental properties should generate a greater contribution to general rate revenue than land that is not rented.' (emphasis added)

Among the rating categories that the respondent adopted for residential lots was a Category 2T and a Category 3T. The respondent resolved each year to levy minimum general rates for Categories 2T and 3T. Each category depended on whether the lot was used to provide rental accommodation to "permanent residents" (2T) or to "itinerants" (3T). The word "itinerant" was defined to mean a visitor or tourist, as distinct from a permanent resident.

…

The applicant challenges various resolutions that in different years created a Category 2T and a Category 3T. This is what I have described as a rating category decision. The challenge is concerned with the power to create such a category, not with whether a particular property owned by the applicant falls within that category.

As highlighted… above, in each of the relevant years, the Council stated that one of the factors it had taken into account in setting differential rates was:

> '… the extent to which tourism and tourism-related business and industry uses continue to contribute to the demand for the provision of Council services across the City. Council considers that land used for those businesses (including premises used to provide rental accommodation to itinerants) and industries should generate a greater contribution to general rate revenue than land that is not used for a commercial purpose …'

In each resolution, save for minor drafting changes, the rating categories 2T and 3T were described as follows. I have highlighted words which are central to the issues in this proceeding.

Category 2T	**Category 3T**
A residential lot: (1) created on a Building Units	A residential lot: (1) created on a Building

plan or Building Format plan that is part of a community titles scheme; (2) located up to including 4 levels above ground; and (3) either: (a) **used to provide rental accommodation to permanent residents at any time during the financial year**; or (b) not used as a principal place of residence.	Units plan or Building Format plan that is part of a community titles scheme; (2) located up to including 4 levels above ground; and (3) **used to provide rental accommodation to itinerants at any time during the financial year**.

The relevant definitions in each year (which did not materially change throughout the relevant financial years) were:

(a) itinerant: "… a visitor or tourist, as distinct from a permanent resident";

(b) visitor or tourist: "… a person visiting a person or place for a temporary period";

(c) permanent resident: "… a person who lives in the local government area, as distinct from an itinerant";

(d) lives: "… to make one's home in a particular place on a permanent basis"; and

(e) rental accommodation: "… land required to be licensed under Local Law No.16 (Licensing) 2014 for the operation of rental accommodation and for the purpose of categorisation includes land the subject of a time share scheme, or similar arrangement; includes land the subject of a lifetime lease, lifetime licence, company share scheme or time share scheme, or similar arrangement"."[6] (emphasis in original)

[7] Each of the challenged rating categories relates to rateable land that is colloquially described as a home unit or a town house on a building units plan or building format plan located no higher than 4 levels above ground. It is also relevant to note that in each of the relevant years there was another rating category for the same kind of residential lot upon which differential general rates were levied, namely rating category 1T as follows (noting that paragraph (4) was added from the financial year ending 30 June 2018):

Category 1T
A residential lot: (1) created on a Building Units plan or Building Format plan that is part of

6 Reasons, [1]-[6] and [22]-[25].

	a community titles scheme; and
(2)	located up to including 4 levels above ground; and
(3)	**not used to provide rental accommodation to either permanent residents or itinerants at any time during the financial year;** and
(4)	is used as a principal place of residence by at least one of the owners.[7]

(emphasis added)

[8] In addition, the differential general rates for rateable land in rating categories 1T, 2T and 3T were resolved in the following amounts of cents in the dollar:

Financial Year (ending 30 June)	**1T**	**2T**	**3T**
2015 - 2017	0.7046	0.8459	1.5874
2018 - 2020	0.5797	0.6962	1.4082

[9] The appellant submits that, in making the decisions to adopt rating categories 2T and 3T, and in resolving upon the differential general rates for those rating categories, the respondent took into account an irrelevant consideration being the personal characteristics of the person in occupation of the residential lot. The appellant submits that whether the user is a "permanent resident" or an "itinerant" is not an attribute or characteristic of the relevant rateable land.

Increased burden

[10] The primary judge held that:

> "…[i]f the use of land may be a relevant characteristic because of the increased burden which that use may place upon the Council's budget, it is impossible to sustain the proposition that the choice of the owner to use the land in that particular way is an irrelevant personal characteristic."[8]

[11] The appellant submits that finding operates on the premise that it is an attribute of rateable land, and a relevant consideration, that a use of land may impose an increased burden upon the respondent's budget. The appellant submits that was referred to as the "demand consideration" before the primary judge.

---

7 AB 2/51.

8 Reasons, [52].

[12] The appellant relies on the observation by the primary judge that the rating category 3T adopted by the respondent would be "difficult to justify by reference to the demand consideration".[9]

Contribution of tourism

[13] The appellant submits further that the primary judge found that it was permissible to have regard to:

(a) "… the perceived contribution of tourism to the demand for the provision of Council services across the city";[10] and

(b) "… according to the respondent's evaluation,… [the use] contribut[ed] to tourism, which increased demand for the provision of Council services."[11]

[14] The appellant submits that in determining the rating categories the respondent did not in fact take into account the extent to which accommodation is let to permanent residents or itinerants or any consequential impact that might have upon the respondent's resources.

[15] The appellant submits that the primary judge did not engage with its argument that the rating categories bore no relationship to the extent to which there could be any impact on tourism.

Providing rental accommodation to different classes of occupying persons

[16] The appellant submits that the issue on the appeal is that in deciding rating categories 2T and 3T the respondent took into account that rateable land is used to provide rental accommodation to an occupying person of one class or another, being a permanent resident or an itinerant, and that was an irrelevant consideration.

[17] The appellant relies on *Xstrata Coal Qld Pty Ltd v Council of the Shire of Bowen*[12]and *Paton & Ors v Mackay Regional Council*[13] as supporting its submission that the challenged rating categories turn on the "personal characteristics" of the occupier and not on any inherent attribute or quality of the rateable land or its improvements.

Persons who live in the local government area

[18] On the hearing of the appeal, the appellant orally advanced a further ground of invalidity, based on the definition of "permanent resident" as a person who "lives in the local government area".

[19] The appellant submits that, because of that definition, rating category 2T applied where a residential lot was used to provide temporary accommodation, such as a week's accommodation in a beach-front unit to a person who lived elsewhere on a permanent basis, but still within the local government area.

---

9 Reasons, [64]. It should be noted that the observation was made because rating category 3T applied irrespective of whether the rental accommodation was provided for a short period or for the entire year.

10 Reasons, [67].

11 Reasons, [68].

12 [2010] QCA 170.

13 [2014] QSC 75.

[20] The appellant submits the use of that criterion in the description of rating category 2T invalidated that rating category or that category and rating category 3T because the relevant rating category was not based on any attribute of the land.

A procedural question not raised

[21] This and earlier similar cases in this jurisdiction[14] have proceeded on the basis that a decision of different rating categories under ss 80 and 81 of the LGR and a resolution to levy differential general rates under s 94(1) of the LGA, or their predecessor provisions, are decisions to which the JR Act applies, because they are "decisions of an administrative character" made under an enactment.[15] As such, they would be amenable to an application for a statutory order of review.[16]

[22] However, a resolution to levy differential general rates under s 94 of the LGA may not fit within the description of a decision of an administrative character. It is an exercise of a taxing power by a body with limited but broad functions and powers of government, including legislative and executive power, exercisable for a geographical local government area. The body is constituted by individuals who are elected as councillors by the electors who reside in the local government area. It functions in meetings of the elected councillors and mayor, where decisions are made by resolution and the elected councillors and mayor are entitled to exercise their votes according to political considerations. The elected councillors and mayor are thus responsible for their votes to the electors in a form of responsible government at the local level.[17] The taxation power itself is limited, but the power to levy differential general rates conforms broadly to the model of the power of a superior legislative body politic to exercise a taxation power to raise money for the general purposes of executive government.[18]

[23] Without argument, I would not decide that the decisions in question in the present case were decisions of an administrative character.[19] The power of a local authority to impose or levy differential rates has been described as "quasi-legislative" in both this jurisdiction[20] and elsewhere.[21] However, the respondent did not contend that the appeal should be dismissed on that ground and it is not necessary in the circumstances to consider it further. If s 94(1) did not authorise a levy of differential general rates on the basis of the rating categories decided by the respondent in the present case, this court has the power to declare that the levy was

---

14 *Ugarin Pty Ltd v Lockyer Valley Regional Council* [2017] QSC 122; *Ostwald Accommodation Pty Ltd v Western Downs Regional Council* [2016] 2 Qd R 14; *Paton v Mackay Regional Council* [2014] QSC 75; *Tarong Energy Corporation Ltd v South Burnett Regional Council* [2012] 1 Qd R 171 and *Xstrata Coal Qld Pty Ltd v Council of the Shire of Bowen* [2010] QCA 170.

15 *Judicial Review Act* 1991 (Qld), s 4.

16 *Judicial Review Act* 1991 (Qld), s 20.

17 *Paterson v MacPherson* (2011) 109 SASR 547, [115]; *Linville Holdings Pty Ltd v Fraser Coast Regional Council* [2017] QSC 252, [44]; *Unions New South Wales v New South Wales* (2013) 252 CLR 530, 583-584 [158].

18 *MacCormick v Federal Commissioner of Taxation* (1984) 158 CLR 622, 639.

19 Compare *Ostwald Accommodation Pty Ltd v Western Downs Regional Council* [2016] 2 Qd R 14, 29 [62]; *Braemar Power Project Pty Ltd v Chief Executive, Department of Mines and Energy in his capacity as regulator under the Electricity Act 1994 (Qld)* [2010] 1 Qd R 403, 425 [62]-[65], 426 [68] and 434 [113]; *Griffith University v Tang* (2005) 221 CLR 99, [29] and *Neat Domestic Trading Pty Ltd v AWB Ltd* (2003) 216 CLR 277, [29].

20 *Tarong Energy Corporation Ltd v South Burnett Regional Council* [2012] 1 Qd R 171, 190 [78].

21 *Marrickville Metro Shopping Centre Pty Ltd v Marrickville Council* (2010) 174 LGERA 67, 92 [99].

invalid.[22] The question of substance raised in the present appeal does not depend on the availability of a proceeding by way of a statutory order of review. Accordingly, it is appropriate to consider the questions of substance.

Differential general rates – the statute

[24] Local authority rates may be traced back to early modern history in England. In 2015, Lord Sumption said of that history:

> "Local authority rates are the oldest tax in continuous existence in England, having originally been introduced in the reign of Queen Elizabeth I by the *Poor Relief Act* 1601 (43 Eliz 1, c 2). Historically, they were payable in respect of the rateable occupation of hereditaments, and that continues to shape the law in this area even though non-domestic rates are today imposed on unoccupied hereditaments also. The core concepts underlying the assessment of rates are that they are a tax on property and not on persons or businesses, and that the 'hereditament' is the unit of assessment. Each hereditament is separately identified in the rating list and separately assessed, notwithstanding that the same occupier may have more than one."[23]

[25] The history of local authority and government rates in Queensland is also statutory, but it has proceeded without reliance on the concept of an hereditament. Instead, the engaging unit of assessment is "rateable land"[24] and the rate is payable by the "owner"[25] rather than the occupier.[26] But general rates retain the other essential characteristic that they are a tax on property, must be levied on all rateable land,[27] by reference to the "value" of the land,[28] and are payable in an amount calculated as the product of the rate (the multiplier), expressed as a number of cents per dollar, applied to the dollar value of the land rated (the multiplicand), or as it is traditionally described, *ad valorem*.

[26] The power to levy a general rate or differential general rates is now contained in the *Local Government Act* 2009 (Qld). Historically, those powers can be traced back through the prior iterations of the *Local Government Act*.[29] Each of the earlier Acts contained a power to levy a general rate, but a power to levy differential general rates was first introduced in this State by the *Local Government Act Amendment Act* 1985 (Qld), s 6. That section conferred the power to categorise land in a local authority's area or within each division, if the area was divided into divisions, for the purpose of imposing differential general rates in the categories so created.

[27] 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 —

---

22 For example, *Re Gold Coast City Council By-Laws* [1994] 1 Qd R 130.

23 *Woolway (Valuation Officer) v Mazars* [2015] AC 1862, 1866 [1].

24 *Local Government Act* 2009 (Qld), s 93(1) and (2) and Schedule 4, definition of "rateable land".

25 *Local Government Act* 2009 (Qld), Schedule 4, definition "owner" and *Local Government Regulation* 2012 (Qld), s 127.

26 Compare, for earlier legislation in New South Wales, *Commissioner for Main Roads v North Shore Gas Co Ltd* (1967) 120 CLR 118, 132.

27 *Local Government Act* 2009 (Qld), s 94(1)(a).

28 *Local Government Regulation* 2012 (Qld), s 72.

29 *Local Government Act* 1993 (Qld); *Local Government Act* 1936 (Qld) and *Local Authorities Act* 1902 (Qld).

(a) general rates (including differential rates); and

(b) special rates and charges; and

(c) utility charges; and

(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."

[28] Section 96 of the LGA provides for the making of a regulation for matters connected with rates and charges, including the categorisation of land for rates and charges. The regulation is the LGR. In particular, ss 80 and 81 of the LGR provide:

"80 Differential general rates

(1) A local government may levy general rates that differ for different categories of rateable land in the local government area.

(2) These rates are called ***differential general rates.***

(3) For example, a local government may decide the amount of the general rates on a parcel of residential land will be more than the general rates on the same size parcel of rural land.

(4) However, the differential general rates for a category of rateable land may be the same as the differential general rates for another category of rateable land.

(5) If a local government makes and levies a differential general rate for rateable land for a financial year, the local government must not make and levy a general rate for the land for the year.

(6) A differential general rate may be made and levied on a lot under a community titles Act as if it were a parcel of rateable land.

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) that is not in an urban centre or locality; or

(ii) that is not used for grazing and livestock; or

(iii) 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."

[29] There are machinery provisions in the LGR for identification of the rating category that applies to a particular parcel of land,[30] notice to the land owner of that,[31]

[30] *Local Government Regulation* 2012 (Qld), s 81(4)-(6) and Part 5 Division 2.
[31] *Local Government Regulation* 2012 (Qld), s 88.

objection by the land owner on the ground that the land should belong to a different rating category,[32] decision by the local government of the objection[33] and appeal from the decision of the local government of the objection to the Land Court.[34]

Statutory context – budget and policy

[30] Levy of differential general rates is provided for in Chapter 4 of the LGA. Under s 94(2) the local government must decide at the local government's budget meeting[35] for the financial year what rates and charges are to be levied for that financial year.

[31] To ensure financial sustainability, a local government must establish a system of financial management[36] that must include: (1) financial planning documents, including a long term financial forecast and an annual budget including revenue statement;[37] (2) financial accountability documents, including general purpose financial statements[38] and (3) financial policies, including a revenue policy.[39]

[32] Chapter 5 of the LGR contains further provision for a number of these matters. The long term financial forecast must cover at least 10 years including income and expenditure for each year.[40] The annual budget for each financial year must include cash flow and income and expenditure statements for the financial year for which it is prepared and the following two financial years and must also include a revenue statement and revenue policy.[41] The statement of income and expenditure must include rates and utility charges excluding discounts and rebates.[42] If the local government levies differential general rates, the revenue statement must state the rating categories for rateable land and a description of each rating category.[43] It must also include information for the financial year of an outline and explanation of the measures that the local government has adopted for raising revenue, including an explanation of the rates and charges to be levied in the financial year and relevant concessions.[44] The financial statements for a year must be prepared in compliance with prescribed accounting standards.[45] The local government must allow the public to inspect and purchase copies of the financial and planning documents.[46]

[33] A local government must adopt its budget for a financial year after 31 May in the year before the financial year and before 1 August in the financial year.[47]

Statutory context - purposive provisions

---

32 *Local Government Regulation* 2012 (Qld), s 90.
33 *Local Government Regulation* 2012 (Qld), s 91.
34 *Local Government Regulation* 2012 (Qld), ss 92 and 93.
35 The "budget meeting".
36 *Local Government Act* 2009 (Qld), s 104(1).
37 *Local Government Act* 2009 (Qld), s 104(5)(a).
38 *Local Government Act* 2009 (Qld), s 105(5)(b).
39 *Local Government Act* 2009 (Qld), s 105(5)(c).
40 *Local Government Regulation* 2012 (Qld), 171(1).
41 *Local Government Regulation* 2012 (Qld), 169(1) and (2).
42 *Local Government Regulation* 2012 (Qld), 169(3)(a).
43 *Local Government Regulation* 2012 (Qld), 172(1).
44 *Local Government Regulation* 2012 (Qld), 172(2).
45 *Local Government Regulation* 2012 (Qld), 176-177.
46 *Local Government Regulation* 2012 (Qld), 199.
47 *Local Government Regulation* 2012 (Qld), 170(1).

[34] The purpose of the LGA is to provide for the way in which a local government is constituted and the nature and extent of its responsibilities and powers, and a system of local government that is accountable, effective, efficient and sustainable.[48] To ensure the system is accountable, effective, efficient and sustainable, Parliament requires action taken under the LGA to be taken in a way that is consistent with the local government principles stated in s 4(2).[49]

[35] The local government principles are:

> "**4 Local government principles underpin this Act**
>
> …
>
> (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."

[36] It was not suggested in argument that these provisions elucidated the issues to be decided on the appeal. However, it is permissible to observe that good governance by a local government in levying differential general rates is informed not only by the particular provisions for deciding the rating categories and resolving to levy differential general rates, but also by the broader considerations of context discussed above and in the next part of these reasons. Despite the modern structure and the breadth of the range of the provisions of the LGA, some of the essential equity considerations that inform the levy of a general rate are in no way modern. A treatise by Professor Edwin Cannan of the London School of Economics, economist and historian, in 1912 discussed most of the relevant considerations fully in the context of then developments of English rating law,[50] ending with the following:

> "The conclusion to which we are driven is that the prevalent ideas about equity provide no great guidance in regard to our existing system of local taxation. They only indicate that it may be left alone without inequity."

Statutory context – constitutional and general matters

[37] The power of the State of Queensland to impose taxation, subject to the operation of *The Constitution* of the Commonwealth, is regulated by the constitutional precept, accepted as settled since the fourth declaration contained in the *Bill of Rights* of 1688 or 1689,[51] that taxation must be imposed only under the authority of legislation. As a delegated and limited repository of the State's legislative power, a local government's power of taxation is also limited by s 65 of the *Constitution of Queensland* 2001 that a requirement to pay a rate must be authorised under an Act.

48 *Local Government Act* 2009 (Qld), s 3(1)(a)-(b).

49 *Local Government Act* 2009 (Qld), s 4(1)(b).

50 Cannan E, *The history of local rates in England: in relation to the proper distribution of the burden of taxation*, London: PS King & Son, 1912, Chapter VII, "The Equity of Local Rates", pp159-172.

51 1 Will & Mary, (sess 2) c 2; *Cam & Sons Pty Ltd v Ramsay* (1960) 104 CLR 247, 258; *Commissioner of Stamps v Telegraph Investment Co Pty Ltd* (1995) 184 CLR 453, 466-467.

[38] Each local government is a statutorily constituted body corporate,[52] with the power to do anything that is necessary or convenient for the good rule and local government of its local government area.[53] The local government's express powers include the legislative power to make a local law and the executive power to enforce any local law that is necessary or convenient for the good rule and local government of its local government area,[54] within specified limits and subject to procedural requirements. However, the words of that power "directed as they are to the welfare and good government of a [local government] and its inhabitants… are not to be read as going beyond the accepted notions of local government."[55]

The principles from *Xstrata*

[39] In *Xstrata*, differential general rates were levied for separate rating categories for land used for the purposes of and incidental to the extraction of coal in particular localities. The challenge in that case was not to the different uses identified by the rating categories as such. It was held, as a matter of fact, that the amount of the differential general rates were levied having regard to the "capacity to pay" of the owner of land on which coal mining was carried out.[56]

[40] Chesterman JA reasoned as follows:

> "A ratepayer's wealth is irrelevant to the process of deciding what rates should be levied on its property. That proposition is undoubted. The comparative wealth of the owner of a particular type of land, in this case coal mines, as against the wealth of owners of other uses of land, is likewise irrelevant. In both cases what forms the reference point for the levying of the rate is the worth of the land owner, not the value or some other attribute of the property to be rated."[57]

[41] The principles from which that reasoning proceeded appeared earlier in the reasons:

> "The appellants submit that by taking capacity to pay into account, the Council's resolution fixing the differential general rates for their land in categories 11, 17, 19 and 20 is vitiated because their presumed capacity to pay was irrelevant to the decision. They argue the Act did not contemplate anything other than some attribute or characteristic of the land which was to be categorised and differentially rated being taken into account when determining the rate. The appellants submit that what might be taken into account were such things as the use to which the land might be put, including its highest and best use, the burden the land or its use may have upon the Council's budget and, of course, the value of the land including its potential to earn income for the land owner. The appellants submit, emphatically, that the Council was not entitled to take into

52 *Local Government Act* 2009 (Qld), s 11(a).
53 *Local Government Act* 2009 (Qld), s 9(1).
54 *Local Government Act* 2009 (Qld), s 28.
55 *Lynch and Standon v Brisbane City Council* (1961) 104 CLR 353, 364; *Attorney-General (SA) v Corporation of the City of Adelaide* (2013) 249 CLR 1, 28-31 [37]-[40], 52-54 [102]-[106], 79-81 [187]-[190] and 90 [224].
56 [2010] QCA 170, [29]-[31].
57 [2010] QCA 170, [36].

account any characteristic of the owner of the land, such as wealth, when fixing a differential rate.

The submission, must, I think, be accepted. It is clear from the statutory provisions earlier set out, and in particular s 520A and s 977, that a differential general rate must be set by reference to some attribute of the land which is the basis for its inclusion in a particular category for the purposes of setting a differential general rate. That is to say, if a Council is to utilise the statutory powers to set a differential general rate it must divide the land in its area into categories; and the categorisation must occur by reference to identifiable criteria which in some way describe the land. The fact that a differential general rate must be applied to each category is an explicit statutory recognition that it is some attribute of the land which leads to its categorisation which in turn forms the basis for the setting of the differential rate."[58]

[42] In *Ostwald Accommodation Pty Ltd v Western Downs Regional Council*,[59] it was submitted that *Xstrata* held that the ability of an owner of rateable land to pay a rate, taken independently of any quality of the subject land, was an irrelevant consideration.[60] I held that *Xstrata* is not authority for the proposition that the capacity of an owner of land to pay the different rate is an irrelevant consideration, except in the sense that it is the personal capacity of the owner, independent of any quality of the land or its use.[61]

[43] In the present case, the applicant relies on *Xstrata* and *Paton*. It was held in *Paton* that resolving upon differential general rates after the adoption of separate rating categories as between an "investor residential band 2" category and a "residential band 2" category was invalid, because the rating categories were distinguished by the criterion that for investor residential band 2, the land was not the owner's principal place of residence, whereas for residential band 2, the land was owned by an individual and the owner's principal place of residence. It was held that the LGA did not permit the local government to categorise land for differential general rating purposes by reference to whether or not it was occupied by the owner.[62]

[44] That result was said to follow, in part, from the reasoning in *Xstrata*, which was explained in *Paton* as follows:

"… [A]s Chesterman JA pointed out in *Xstrata Coal*:

'To make an assessment of wealth, or capacity to pay, one needs more than an indication of the ownership of valuable land, or an apparently profitable enterprise conducted on land, or the income of the rate payer. Before an assessment could be made, one must know also the level of debt obligation and the cost of operations. I doubt that any local authority would have access to such information concerning its ratepayers.'

---

58 [2010] QCA 170, [21] – [22].
59 [2016] 2 Qd R 14.
60 [2016] 2 Qd R 14, 35 [112].
61 [2016] 2 Qd R 14, 36 [117].
62 *Paton & Ors v Mackay Regional Council* [2014] QSC 75, [52].

> This was said in the context of explaining why the legislature did not envisage that the personal capacity of the owner to pay could be adopted as a criterion for the setting of rates. But the factors identified in the passage quoted above highlight the *non sequitur* involved in the Council's approach and apply with equal force to the argument here."[63]

[45] Cases like *Xstrata* and *Paton* were decided against three relevant background developments in the laws providing for and regulating the levying of rates by a local government. The first development was the power to impose differential rates in respect of general rates. By definition, a differential general rate alters the incidence of an *ad valorem* general rate of all rateable land in a local government area. The second development was the introduction of a minimum amount of general rates in the context of a general rate or differential general rates.[64] Again, by definition, a minimum amount of general rates alters the incidence of the *ad valorem* general rate or differential general rates. The third development was the unbundling of some services provided by a local government, so that separate charges are imposed for particular categories of service.[65] The latter development has been informed by notions of transparency, reflected in the local government principles, and the concept of "user pays" as a relevant equity consideration.[66]

[46] A seminal case of the present kind is *Wellington City Council v Woolworths New Zealand Ltd (No 2)*.[67] In that case, commercial rate payers challenged the differential rates as between residential and commercial land use or categorisation levied by a city council. The primary judge held that the primary consideration justifying a differential rating must be disparity of use of council outputs and that the ratio of distribution of the budgeted amount to be recovered by general rates as between commercial and residential land of 67:33 could not be justified. The levying of the rates on that basis was held to be an unreasonable decision. On appeal, it was held by the Court of Appeal of New Zealand that the decision was not so unreasonable as to be invalid. The reasons of the court reflected the construction of the statutory provisions under consideration in that case. However, there are some relevant statements.

[47] One of the questions raised in *Wellington* was the extent to which a local government might be characterised as having a fiduciary duty to rate payers. That question is not raised in this case. But in *Wellington*, it was held that it was a question subject to two obvious considerations. The court continued:

> "The first is that rates are levied on property, not on ratepayers as such and, materially for present purposes, the criteria specified under s 81 are directed to the characteristics of property rather than of ratepayers."[68]

---

63 *Paton & Ors v Mackay Regional Council* [2014] QSC 75, [50] – [51].

64 *Local Government Regulation* 2012 (Qld), s 77.

65 *Local Government Act* 2009 (Qld), s 92(3)-(5) and the definitions of "special rates and charges", "utility charges" and "separate rates and charges" and s 94(1)(b).

66 Describing them as services does not make a compulsory exaction a "fee for service" rather than a tax: *Air Caledonie International v The Commonwealth* (1988) 165 CLR 462, 469.

67 [1996] 2 NZLR 537.

68 [1996] 2 NZLR 537, 546.

[48] That passage informed Chesterman JA's reasoning in *Xstrata* as supporting the conclusion that it is some attribute of the land which leads to its categorisation which in turn forms the basis for the setting of the differential rate.[69]

[49] Another passage from the reasons of the court in *Wellington* concerned the scope of the legislative authority to adopt a differential general rate under the relevant statutory provisions as follows:

> "Third, the authority to adopt a differential system for its general rate assumes the entitlement to discriminate as between types or groups of properties. The very concept of differential rates involves casting a heavier burden than justified solely by relative capital values on one sector rather than another.
>
> The legislation contains no express criteria or purpose statement applicable in this case for making the various choices under those three heads. It imposes significant process obligations… in the decision making. But the substantive decisions are not expressly circumscribed. The legislation proceeds on the premise that the wider substantive judgments are made by the popularly elected representatives exercising a broad political assessment, and of particular relevance in the present case, having regard to the full range of matters specified in the s 84(1)(c) explanation which forms part of the resolution introducing or altering differential rating without the explicit mandatory linkage to benefits required where special purpose authorities adopt differential rating.
>
> To confine the acceptable justification for the differentiation to those differences as correspond or are reasonably related to the enjoyment of the benefit of services provided by the territorial authority is to ignore the scheme of the legislation and to disregard the breadth of the statutory powers. The legislation permits a territorial authority in making those choices which impact on the incidence of rates to make its own judgment on as to what is appropriate and equitable. That decision-making is the prerogative of the local authority subject to the statutory limitations and process constraints already referred to – and to amenability to judicial review."[70]

[50] It must be recognised that, for the reasons previously described, the levy of differential general rates is inexorably connected to and informed by the subject of the tax, being the ownership of rateable land and the value of that land. Nevertheless, having regard to the breadth of that passage, it may have been of assistance to identify relevant economic concepts and theories that may inform a local government's decision making as to the determination of rating categories of rateable land. However, there was no evidence of that kind adduced in the present case, beyond the contents of parts of the revenue policy and revenue statement.

[51] For 2014-2015 to 2017-2018, the respondent's revenue policy stated:

> "**General rates**

---

69 [2010] QCA 170, [22] – [24].

70 (1996) 2 NZLR 537, 544 – 545.

> Council operates a rating system whereby land is categorised according to rates categories developed by Council for differential rating purposes having regard to such factors as usage made of the land and nature and size of improvements on the property.
>
> Differential general rates for each property will be calculated on the basis of the value of the land as assessed by the Department of Natural Resources and Mines… (For clarity the value of the land is either the site value… or the unimproved value...)…
>
> Regardless of the value of the land there will be a minimum contribution required from each ratepayer towards the overall running of the city… accomplished by the application of minimum general rates."[71]

[52] There were some minor changes in that text for the years 2018-2019 onwards, but they are not material to the questions in dispute.

[53] For the years from 2014-2015 to 2017-2018, the respondent's revenue statement stated as follows:

> "A differential system of rates provides equity through recognising different uses made of different properties (both generally and with respect to the revenue-producing potential)…
>
> The basis for developing criteria that distinguish a category is the identification of particular characteristics… for example:
>
> - Residential land is characterised by taking into account, but not limited to, whether or not the land is:
>   - a principal place of residence…; or
>   - rented to permanent residents or is not a principal place of residence…; or
>   - rented to itinerants…
>
> When categorising land for different rating purposes, Council has also had regard to the extent to which tourism and tourism-related business and industry uses continue to contribute to the demand for the provision of council services across the City. Council considers that land used for those businesses (including premises used to provide rental accommodation to itinerants) and industries should generate a greater contribution to general rate revenue than land that is not used for a commercial purpose (including premises used to provide rental accommodation to itinerants)…"[72]

[54] For the later years there were some immaterial changes and from 2018-2019 the last paragraph was deleted.

---

71 AB 2/118.

72 AB 2/98-99.

[55] The central principle of *Xstrata* is that it must be some "attribute of the land"[73] that forms the basis of the determination of a rating category to which a differential general rate applies. The basis for that proposition was said to be that before a differential rate could be levied a local government must decide, by resolution, the different rating category to which the rate relates and the resolution "must state… a description of each of the rating categories". However, nothing in those provisions stated that the description must be of an "attribute of the land". There is no significant difference between the form of the legislation when *Xstrata* was decided and the current provisions of the LGA.

[56] Put another way, the central principle of *Xstrata* is an implied restriction of the power to decide a rating category by description that may form the basis for a levy of differential general rates under s 94(1)(a) of the LGA, derived (under the present legislation) as a matter of statutory interpretation of ss 80 and 81 of the LGR made under s 96(b) of the LGA.

[57] As an initial observation, it should be noted that the power and duty to levy general rates on all rateable land under s 94(1)(a) of the LGA is cast in general terms. As well, s 94(1A) of the LGA, which commenced on 14 June 2014 and was apparently introduced to reverse the decision in *Paton* made a few months earlier, specifically provides that differential general rates may be decided according to whether land is used as a principal place of residence of the owner. Whether land is the principal place of residence of the owner was held to be an attribute or status of the owner, not an attribute of the land, in *Paton*. By parity of reasoning, whether a residence is rented for a short period or a long period is said to be an attribute or status of the occupier not an attribute of the land including its improvements. Yet, s 94(1A) expressly permits the categorisation of land according to whether land is a principal place of residence of the owner and does so "without limiting subsection (1)".

[58] Second, the definition of "general rates" in s 92(3) of the LGA makes it clear that there is no relationship required between levying a general rate and any service, facility or activity provided for or related to the rateable land to which the rate applies. The 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), such as an owner or occupier of the rated land.

[59] Third, there is no definition of what is a "differential general rate" in the LGA, but s 80 of the LGR provides that they are general rates that differ for different categories of rateable land that, for example, may be more for residential land than rural land of the same area.[74] Section 81(3) of the LGR provides that the resolution for the different rating categories must state a description of each of the rating categories and gives an example of six possible categories.[75] Five of those categories state the use to which the land is put as the relevant description and three of them further state the locality of the relevant land.[76]

---

73 [2010] QCA 170, [22].

74 The reference to "area" in the example is a little confusing, since it is common for residential land and rural land of the same area to have different values that determine the amounts payable for an *ad valorem* general rate.

75 An example in an Act of the operation of a provision of the Act is part of the Act: *Acts Interpretation Act* 1954 (Qld), s 14(3). And that section applies to a regulation as a statutory instrument: *Statutory Instruments Act* 1992 (Qld), ss 7, 14(1) and Schedule 1.

76 The present case is not concerned with a distinction between rating categories based on locality.

[60] Fourth, if the use of land is a relevant attribute of land within the meaning of the central principle in *Xstrata*, the use of residential land by an owner as occupier is not in ordinary language the same use as the use of residential land by an owner as an investment property to provide rental accommodation to either a long term or short term tenant or occupier. For example, as a matter of ordinary use of language, the letting of a row of houses or a number of units by an owner would not be considered to be the use of residential land for residential purposes by the owner, although from the tenant's perspective, as a matter of ordinary use of language, it could be said that the land is used for residential purposes or short term accommodation, depending on the period of the tenancy.

[61] A relevant question in interpreting s 94(1)(a) is: what is the purpose of that provision?[77] In general terms, it is a provision intended to permit unequal recovery of the whole of the general rate that would otherwise be imposed, that would be payable by owners of rateable land in equal proportions although differing amounts as determined by the value of the owner's rateable land.

[62] Despite that broad purpose, the appellant submits that the general language of ss 94(1) and 96 of the LGA and ss 80 and 81 of the LGR should be construed as subject to an implied limit that a criterion for the description of a rating category under s 81 must be an attribute of the land and that a description of a rating category by reference to the use of residential land to provide rental accommodation for permanent residents, on the one hand, or itinerants, on the other hand, exceeds the statutory power.

[63] The primary judge reasoned that the respondent's decisions were not invalid thus:

> "In summary, it was not an impermissible consideration that a lot is used to provide rental accommodation to "itinerants" rather than to "permanent residents" at any stage during the year. I do not accept the applicant's contention that the respondent took into account an irrelevant consideration, being the personal characteristics of the person in occupation of the property. It took into account a relevant consideration, namely the use of the property to provide rental accommodation to "itinerants". The use of the property to provide rental accommodation to "itinerants" is an attribute of the property. It is a use which, according to the respondent's evaluation, resulted in premises used across the city to provide rental accommodation to "itinerants" contributing to tourism, which increased demand for the provision of Council services."[78]

[64] If it is accepted that *Xstrata* is binding authority that to decide a rating category by reference to something other than an "attribute of the land" is to take into account an irrelevant consideration, I agree with that reasoning and would have little to add.

[65] However, I would not treat *Xstrata* as binding authority requiring that a rating category must be decided by reference only to an attribute of the land, as such. The text of the legislation does not refer to an attribute of the land and, in my view, the context does not require that ss 94 and 96 of the LGA and ss 80 and 81 of the LGR

---

77 *Acts Interpretation Act* 1954 (Qld), s 14A.
78 Reasons, [68].

are to be construed as limited by that requirement and I do not consider that the court in *Xstrata* meant that they should.

[66] In my view, the answer to the question raised in the present case may be arrived at without measuring the impugned rating categories against the implied requirement that only an attribute of the land may be taken into account in deciding a rating category. In particular, in my view, s 94(1A) of the LGA provides a strong contextual indication that rating categories 2T and 3T are not invalid because they turn on the nature of the occupation of residential land.

[67] It will be recalled that *Paton* was decided by reference to the view that *Xstrata* required that a rating category must be decided by reference only to attributes of the land and that to decide different rating categories for residential land by distinguishing between land used as the owner's principal place of residence and land occupied by a tenant from the owner was invalid.

[68] Within months, the LGA was amended by the introduction of s 94(1A),[79] that categorisation could be decided and differential rates levied according to whether or not the land was a principal place of residence, and that was done expressly without limiting the power in s 94(1) otherwise.

[69] In my view, the introduction of s 94(1A) throws light on the true view or meaning of s 94(1), by the aim and provision of s 94(1A).[80]

[70] Without intending to be exhaustive, and recognising that there may be exceptions to the following statements of generality, in my view, it should be accepted that under ss 94(1), 94(1A) and 96 of the LGA and ss 80 and 81 if the LGR, use of land in one way or another may be selected as a basis for a rating category, including a category that distinguishes between a non-business use and a business use or one that distinguishes between one non-business use and another non-business use by reference to factors going to intensity or duration of use. More particularly, for a residential lot, whether or not the land is used as a principal place of residence may be selected as a basis for a rating category.

[71] Subject to a possible exception raised by the appellant about the operation of rating categories 2T and 3T in this case, in my view, it follows that the selection of whether residential land is used to provide rental accommodation for permanent residents for one rating category and to itinerants for another rating category is not outside the scope of the legislative power conferred by ss 94 and 96 of the LGA and ss 80 and 81 of the LGR for a local government to decide rating categories and to levy differential general rates.

Persons who live in the local government area - consideration

[72] The possible exception raised by the appellant is that the operation of rating category 2T turns on the use of residential land to provide rental accommodation to permanent residents and, as defined, a "permanent resident" is a person who lives in the local government area as distinct from an "itinerant" who, as defined, is a visitor or tourist as distinct from a permanent resident.

---

79 See also *Local Government Act* 2009 (Qld), s 307, that retrospectively validated decisions to categorise rateable land and decide differential general rates in the way stated in s 94(1A).

80 *Masson v Parsons* (2019) 368 ALR 583, 592 [28]; *Deputy Federal Commissioner of Taxes v Elder's Trustee and Executor Co Ltd* (1936) 57 CLR 610, 625-626.

[73] The appellant submits that provided a person lives in the local government area, it is irrelevant whether they are a permanent resident at the residential lot to which rating category 2T applies and that, accordingly, rating category 2T turns on a distinction that does not relate to the intensity or duration of the use of the residential lot or any other matter that is related to that land or its use that is an attribute of the land.

[74] This contention depends on whether, properly construed, rating category 2T applies when the relevant residential lot is used to provide rental accommodation to a person who does not occupy it as a permanent resident. That depends on the meaning of the definition of "permanent resident" set out previously.

[75] The respondent submits that the text of paragraph 3(a) of rating category 2T should be construed to apply that subparagraph to a permanent resident who makes their home on a permanent basis in the relevant residential lot.

[76] In construing a provision in a statutory instrument to which a definition applies it is appropriate to interpolate the text of the definition of the defined term,[81] which applies except so far as the context or subject matter otherwise indicates or requires.[82]

[77] *Mutatis mutandis*, interpolating the definitions of "permanent resident", "lives", "itinerant" and "visitor or tourist" into the text of paragraph 3(a) of rating category 2T, would read:

> "[a] residential lot… used to provide rental accommodation to *a person who makes [their] home in a particular place on a permanent basis in the local government area, as distinct from a person visiting a person or place for a temporary period* at any time during the financial year."

[78] The first part of the definition of "permanent resident" interpolated into paragraph 3(a) of rating category 2T can apply to a residential lot used to provide rental accommodation to a person who does not make their home on a permanent basis in the residential lot, provided they live in the local government area. However, interpolating the second part of the definition of "permanent resident" including the definitions of "itinerant" and "visitor or tourist" into paragraph 3(a) requires the person in view as the relevant permanent resident to be distinguished from a person visiting a person or place for a temporary period. To take the appellant's example of a person who makes their home on a permanent basis in the local government area but who holidays at another residential lot for a short time during the financial year, that person would be a person providing the rental accommodation of the residential lot as a place for a temporary period.

[79] A possible contextual indicator as to the meaning of paragraph 3(a) is that paragraph 3(b) of rating category 2T also applies that category to a residential lot "not used as a principal place of residence". Accordingly, it applies where the lot is not used to provide rental accommodation to a permanent resident and not used as the principal place of residence of the owner, such as a holiday or secondary residence of a person who lives elsewhere as their principal place of residence.

---

81 *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27, 44 [40]; *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* (2005) 221 CLR 568, 574-575 [12].

82 *Acts Interpretation Act* 1954 (Qld), s 32A and *Statutory Instruments Act* 1992 (Qld), ss 7, 14 and Schedule 1.

[80] The text of paragraph 3 of category 3T with the interpolated definitions of "itinerant", "visitor or tourist", "permanent resident" and "lives" may also be used in contextual analysis of the appellant's submission. *Mutatis mutandis*, it would read:

> "[a] residential lot… used to provide rental accommodation to *a person visiting a person or place for a temporary period* as distinct from *a person who makes [their] home in a particular place on a permanent basis* in the local government area, at any time during the financial year."

[81] Compared to rating category 2T, rating category 3T operates where the residential lot is used to provide rental accommodation to an itinerant at any time during the financial year.

[82] On the applicant's construction of paragraph 3(a) of rating category 2T, if a residential lot were used at any time during the financial year to provide rental accommodation for a temporary period, as a visitor, to a person who lived elsewhere in the local government area, rating category 2T would apply to it. However, if the same lot were used in the same way to provide rental accommodation to a person visiting the lot for a temporary period to a person who did not live in the local government area, at any other time in the financial year, rating category 3T would apply to it.

[83] So construed, the application of categories 2T and 3T would turn on whether the accommodation is provided to a person who lives in or out of the local government area, without regard to whether the rental accommodation provided was either temporary or permanent. There is no apparent purpose in distinguishing between the two rating categories in that way.

[84] On the respondent's construction, rating category 2T will apply to a residential lot used for providing rental accommodation to a person who makes their home on a permanent basis in that lot in the local government area and to a residential lot where the owner does not provide it for rental accommodation and does not live in it as a principal place of residence.

[85] In contrast, rating category 3T will apply to the same residential lot used to provide rental accommodation for a temporary period, to a visitor or tourist. There is a discernible reasonable purpose for distinguishing between the two rating categories in the use of residential lots in those ways because a higher differential rate is to be applied to the lot used for rental accommodation by visitors for temporary periods as opposed to the lot used for rental accommodation by a person who lives there or not used for rental accommodation or as a principal place of residence.

[86] In the result, in my view, the respondent's submission as to the proper construction of paragraph 3(b) of rating category 2T should be accepted. It follows that the appellant's submission that the operation of rating category 2T turns on a distinction that does not relate to the intensity or duration of the use of the residential lot or any other matter that is related to that land or its use that is an attribute of the land should be rejected.

[87] Having reached that point, it is unnecessary to consider the *ratio decidendi* or the scope of the principle decided by *Xstrata* further. It is also not appropriate to do so,

as the respondent did not submit that *Xstrata* was wrongly decided or that the principle of that case should be re-examined.

[88] In my view, the appeal should be dismissed with costs.