SUPREME COURT OF QUEENSLAND

CITATION:	*Ugarin Pty Ltd v Lockyer Valley Regional Council* [2017] QSC 122
PARTIES:	**UGARIN PTY LTD** (applicant) **v** **LOCKYER VALLEY REGIONAL COUNCIL** (respondent)
FILE NO:	BS10531 of 2015
DIVISION:	Trial Division
PROCEEDING:	Application for statutory order of review
DELIVERED ON:	15 June 2017
DELIVERED AT:	Brisbane
HEARING DATE:	9 February 2017
JUDGE:	Mullins J
ORDER:	**Application dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – JURISDICTIONAL MATTERS – where the applicant owns land within the respondent's local government area where a drive in shopping centre is conducted with 280 car parks – whether the first decision by the respondent to adopt different categories of rateable land and descriptions for the different categories was an improper exercise of power and contrary to law – where the respondent by resolution adopted the different categories of rateable land and a description of each category including reference to land use codes – where land use codes were defined in the revenue statement that accompanied the resolution as land use codes approved by the respondent – where land use codes used in the respondent's land record database – whether land use codes were part of the descriptions of the differential general rates categories – whether the respondent was required to approve the land use codes by resolution – whether the second decision of categorising the applicant's land in differential general rates category 8 was an improper exercise of power as it relied on the land use code for the applicant's land which had not been approved by resolution – whether it was reasonable to categorise the applicant's land in the differential general rates category 8 *Judicial Review Act* 1991 (Qld) , s 20, s 23 *Local Government Act* 2009 (Qld), s 94, s 251, s 257, s 259

Local Government Regulation 2012 (Qld), s 80, s 81, s 88, s 91, s 92, s 93, s 154, s 155, s 169, s 170

APT Petroleum Pipelines Pty Limited v Western Downs Regional Council [2014] QLC 18, cited
Lewiac v Gold Coast City Council [1995] 1 Qd R 38, cited
Ostwald Accommodation Pty Ltd v Western Downs Regional Council [2016] 2 Qd R 14; [2015] QSC 210, considered
Russell v Brisbane City Council [1955] St R Qd 419, considered

COUNSEL: D R Gore QC and J G Lyons for the applicant
S P Fynes-Clinton for the respondent

SOLICITORS: Anderssen Lawyers for the applicant
McCullough Robertson Lawyers for the respondent

[1] The applicant seeks the review of two decisions made by the respondent relating to differential general rates. The first decision was made by the respondent on 28 July 2015 pursuant to s 80 and s 81 of the *Local Government Regulation* 2012 (Qld) (LGR) to adopt different categories of rateable land and different rates for different categories. The second decision made by the respondent between 28 July and 10 August 2015 pursuant to s 81(4) of the LGR was to identify differential general rates category 8 as the rating category to which the applicant's land belongs.

The applicant's land

[2] The applicant owns the land within the respondent's local government area upon which the Plainland Shopping Centre is operated. The rateable land has an area of 22 hectares. The shopping centre contains a 3,410m² supermarket currently leased to Woolworths, 1,087m² of specialty retailers and about 280 car parks and comprises about 2.5 hectares of the rateable land. The applicant's land had a valuation of $4.85m at the valuation effective date of 30 June 2014.

The legislative scheme

[3] Under s 94(1)(a) of the *Local Government Act* 2009 (Qld) (LGA) each local government must levy general rates on all rateable land within the local government area.

[4] Section 94(1A) of the LGA provides:

> "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."

[5] Section 80(1) of the LGR provides that a local government may levy general rates that differ for different categories of rateable land in the local government area. It is then specified in s 80(2) that these rates are called differential general rates.

[6] Section 81 of the LGR provides:

> "(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.
>
> (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."

[7] There are no specified factors to constrain the exercise of the local government's discretion in deciding the different categories of rateable land and the description of each of the categories: *Ostwald Accommodation Pty Ltd v Western Downs Regional Council* [2016] 2 Qd R 14 at [58]-[59].

[8] Where a local government decides to levy differential general rates on rateable land for a financial year, the local government is required by s 88(2) of the LGR to ensure the first rate notice for the financial year given to the owner of the land is accompanied by, or contains, a rating category statement. Under s 88(4) the rating category statement must set out the rating categories for land in the local government area and the description of each of the rating categories, the rating category for the relevant owner's land, and advise that the owner may object to the categorisation of the owner's land on the ground that the rating category is wrong in reference to the local government's description of the rating categories. The chief executive officer of the local government then makes a decision on the objection to the rating category pursuant to s 91 of the LGR. There is provision in s 92 of the LGR for an appeal by the owner against the decision on the objection by filing an appeal notice in the Land Court. Pursuant to s 93 of the LGR, the Land Court on an appeal against the decision of the chief executive officer on the owner's objection to the rating category of the land may change the rating category for the land or not allow the appeal.

[9] Under s 154(1) of the LGR, a local government must keep a land record. Section 154(2) sets out what information must be included for each parcel of rateable land in the local government's area which includes the name and postal address of the owner of the land, a description of the land including its location and size, its value and the day of effect of the relevant valuation under the *Land Valuation Act* 2010 (Qld), information about rates or charges for the land, and any other information that the local government considers appropriate. Members of the public are permitted pursuant to s 155(1) of the LGR on payment of the reasonable fee decided by a local government to inspect the land record kept by the local government, but pursuant to s 155(2) the owner, lessee or occupier of the subject land or adjoining land (or an agent of any such person) may inspect particulars of the subject land in the land record free of charge.

[10] Section 169 of the LGR sets out the basis of the preparation and the content of the budget, specifying that the budget must include a Revenue Statement. Section 170(1) of the LGR mandates that a local government must adopt its budget for a financial year after 31 May in the year before the financial year, but before 1 August in the financial year (or a later day decided by the relevant Minister).

[11] Under s 257(1) of the LGA a local government may by resolution delegate a power under the LGA, the LGR or another Act to the office holders or entities listed in that provision, including the chief executive officer. Under s 259 of the LGA, the chief executive officer may delegate the chief executive officer's powers to an appropriately qualified employee or contractor of the local government, unless a power delegated by the local government to the chief executive officer has been the subject of a direction to the chief executive officer not to further delegate the power.

Adoption of the 2015/2016 budget

[12] The respondent's chief executive officer provided a certificate pursuant to s 251 of the LGA (which is evidence of the matters contained in the certificate) which shows the documents adopted by the respondent at its 2015/2016 budget meeting held on 28 July 2015. The minutes of that meeting were confirmed, subject to a single amendment that is not relevant for the purpose of this proceeding, at a council meeting held on 19 August 2015. One of the documents that was adopted was the Corporate and Community Services Report entitled "2015/16 Revenue Statement" dated 23 July 2015 that attached the 22 page Revenue Statement that was also adopted.

[13] The report included a resolution that the respondent adopt the different categories of rateable land and a description of those contained in table 1 of the 2015/2016 Revenue Statement that was then set out. Relevantly categories 4, 6 and 8 were described in these terms:

4	Commercial > $2Million	Land used for commercial purposes, other than primary production, with a rateable value greater than $2 million, other than land included in category 5 to 10, 17 to 20, 37 to 39 or 43 to 45. Includes land with the following land use codes: 10 to 46 and as otherwise identified by the Chief Executive Officer.

6	Supermarkets > $1Million	Land used for a Supermarket, with a rateable value greater than $1 million. Includes land with the following land use codes: 10-15, 17-27 and as otherwise identified by the Chief Executive Officer but does not include any land with land use code 16.
8	Shopping Centres > 7000 sq m	Land used or capable of being used for a Shopping Centre that has a property land area greater than 7000 sq metres, or more than 120 onsite carparking spaces. Includes all land of the relevant size with land use code 16 and as otherwise identified by the Chief Executive Officer.

[14] The report also included a resolution that the respondent delegate to the chief executive officer the power (contained in ss 81(4) and (5) of the LGR) of identifying the rating category to which each parcel of rateable land belongs with no restriction or further delegation.

[15] Definitions are set out in s 7 of the Revenue Statement. The definition of "land use codes" is "those land use codes approved by the Lockyer Valley Regional Council effective from 1 July 2015". There are also definitions of "Shopping Centre" and "Supermarket":

> "**Shopping Centre**: land which has a ***predominant use*** of major retail activities or retail warehouses or to which land use code 16 applies.
>
> **Supermarket**: land which is used for a detached supermarket purpose typically involving a self-service retail store or market selling food and other domestic goods but not forming part of a Shopping Centre. This land does not include land to which land use code 16 applies."

Grounds for review

[16] The grounds for review relied on by the applicant in respect of the first decision are those set out in s 20(2)(e) and (i) of the *Judicial Review Act* 1991 (Qld) (the Act). With respect to the ground in s 20(2)(e) that the making of the first decision was an improper exercise of the power conferred under the LGA and LGR, the applicant relies on paragraphs (b), (g) and (h) of s 23 of the Act.

[17] Although articulated by reference to different provisions of the Act, the primary issue argued by the applicant was that the respondent's first decision was made by reference to land use codes, but the respondent's resolution did not approve the land use codes that were used in establishing the differential categories of rateable land. Another way of expressing the issue is to answer these two questions:

(a) was the land use code an integral component of the description of category 8?

(b) if so, did the land use code have to be approved by a resolution of the respondent?

[18] With respect to the second decision, the ground for review is s 20(2)(e) of the Act and, in particular, whether the decision to place the applicant's land in differential general rates category 8 was so unreasonable that no reasonable local government could so exercise the power or made taking into account an irrelevant consideration which was the land use codes that had not been approved by resolution of the respondent.

Land use codes

[19] When the applicant received the rate notice for the subject land that was issued on 10 August 2015 that showed the land to be in category 8, the applicant's solicitors requested the respondent to provide a list of all the land use codes and their corresponding uses as approved by the respondent. What the respondent provided was the land use codes as provided to the respondent by the Department of Natural Resources and Mines (DNRM). In the respondent's letter dated 16 October 2015, it was explained:

> "For the purposes of assisting to identify the ratings category to which particular parcels of rateable land belong, where relevant, Council has approved the Land Use codes provided by the Department of Natural Resources and Mines (DNRM) and recorded in that Department's property files in the Integrated Valuation and Sales system.
>
> Council's approval of these Land Use codes is evidenced by the reflection of those codes in Council's rates system and the provision of a listing of those codes to ratepayers who enquire about them."

[20] The respondent's manager of finance and customer services, Mr Brett, swore an affidavit for the purpose of the proceeding that explains the respondent's systems in relation to its rating database as follows. The respondent's rating system is linked to the land valuation process administered by DNRM. DNRM maintains a State wide database of Queensland Valuation and Sales Information (QVAS). According to Mr Brett, some of the information contained in QVAS is replicated in the respondent's land record which is a fully electronic record. On a monthly basis, the respondent receives an email from DNRM containing updates to the QVAS database and that information is used by the respondent's officers to ensure any relevant updates to QVAS are also updated in the respondent's land record. Included in the QVAS information for every property in Queensland is a land use code and these land use codes are then included in the information contained in the respondent's land record. The land use code assigned to any individual property in the respondent's land record is a direct reflection of the land use code recorded for that property in QVAS.

[21] The land use code is generally relied on to make the initial identification of land use in order to determine the rating category to which a property belongs. If the respondent becomes aware, as a result of information provided by a landowner or from any other reliable source, that the actual use of a given parcel of land is different to the use which corresponds to the land use code assigned in the land record, the land is categorised for differential rating by applying the category description which corresponds to its actual use. In such a case, the respondent advises DNRM that the land use code assigned in QVAS appears to be incorrect for the actual use.

[22] According to the s 251 certificate of the chief executive officer, details of land use codes are included in the land record database for all rateable land in the respondent's local government area and the land use code for the applicant's land in the respondent's land record database at the time the applicant's land was included in category 8 for the 2015/2016 financial year was 1600 which was 16 for its primary use which was designated in the land record for the applicant's land as "Drive in Shopping Centre". That means that the respondent pursuant to s 154(2)(e) of the LGR has included the relevant land use code in the land record database as a category of information that it considers appropriate for each parcel of rateable land in its area.

[23] The respondent concedes there was no document setting out the land use codes before the meeting when the first decision was made. The respondent also concedes that the identification of category 8 for the applicant's land was based on the content of the respondent's electronic land use record and the second decision was not made at the budget meeting or at any other ordinary meeting of the elected Council.

The applicant's arguments

[24] The reference to land use codes is essential to determining which of categories 4, 6 or 8 applied to the applicant's land and, on that basis and having regard to the definition of "land use codes" in the Revenue Statement, the respondent was required to approve the land use codes by resolution. In other words, the respondent is stymied by its own definition of "land use codes" which required the respondent to approve the land use codes that are critical for making sense of the respondent's resolution adopting the different categories of rateable land and the descriptions of those categories. As the definition of "land use codes" in the Revenue Statement is part of a comprehensive statutory scheme which requires various decisions by resolution, that is a strong indicator that the word "approved" in the definition also requires approval of the land use codes by resolution. In addition, the definition of "land use codes" contemplates that the approval of the codes will be "effective from 1 July 2015" which requires some act on the part of the respondent that can be pointed to as giving effect to the land use codes from 1 July 2015. That is a further indicator that a resolution of the respondent was required.

[25] The mere fact that the respondent incorporates the land use codes it receives from the DNRM into the land record database for each parcel of rateable land does not amount to approval by the respondent of the land use codes. The reference to "approved" in the definition of "land use codes" in the Revenue Statement should therefore be interpreted to mean "approved by resolution".

[26] The applicant relies on *Russell v Brisbane City Council* [1955] St R Qd 419, 431 as authority for the proposition that the only way a local government can act to approve something is by resolution.

[27] An owner of land should be able to look at the Revenue Statement and the resolution to impose differential general rates with the description of each of the rating categories to work out in which category the owner's land is likely to be categorised. That is a

problem when the land use codes referred to in the first decision were not approved as part of that decision.

[28] The applicants did advance another argument based on excluding all words of inclusion and exclusion from the descriptions of each of the categories 4, 6 and 8 to submit that it would be difficult to classify the applicant's land, because the land fits within the description of each of the three categories. As some of the words of exclusion relate to other categories, I do not consider it is a valid exercise to exclude all words of inclusion and exclusion, but it would reflect the applicant's approach to limit the exercise otherwise to excluding all words of inclusion and exclusion that are related to land use codes. Category 4 is described as not including land in categories 5 to 10 which therefore means that the applicant's land would not fall within category 4, if it fell within either or both of categories 6 and 8. If it becomes necessary to consider this argument, I will therefore consider it on the basis that it were put in terms that if the descriptions of the categories did not include any reference to land use codes, the applicant's land could fall within either category 6 or category 8.

[29] The reference in each of categories 4, 6 and 8 to land "as otherwise identified by the Chief Executive Officer" is asserted as not providing a basis for distinguishing between the categories, because no criteria are expressed or implied for providing the basis for any "other" identification by the chief executive officer and any other identification by the chief executive officer must therefore be arbitrary or capricious.

[30] The applicant points out what are described as "logical differences" between categories 4 and 8 and concludes the respondent's identification of categories 4, 6 and 8 was unreasonable, for the purposes of s 20(2)(e) and s 23(g) of the Act, because the descriptions of a categories lack an evident and intelligible justification.

[31] The applicant's main argument in respect of the second decision depends upon succeeding in its argument on the first decision. It is submitted the respondent relied upon an irrelevant consideration, namely land use codes which had not been lawfully approved, so the second decision under s 81(4) of the LGR to identify category 8 for the applicant's land by relying on the land use code of 16 for the applicant's land was invalid. In addition, the applicant submits that the making of the decision was so unreasonable that no reasonable local government could so exercise the power.

The respondent's arguments

[32] The respondent by resolution adopted a scheme of differential general rating and created categories of land for that purpose determining the description for each category, including category 8, into which the applicant's land was then included.

[33] The fully accurate description of category 8 is the first part of what appears next to category 8 in the resolution: "Land used or capable of being used for a Shopping Centre that has a property land area greater than 7000 sq metres, or more than 120 onsite carparking spaces". The concluding words of the description "Includes all land of the relevant size with land use code 16 and as identified by the Chief Executive Officer" are an explanatory inclusion but, if the subject land falls within the primary

description of land within category 8, it becomes irrelevant whether or not the additional words by way of inclusion are expansive or explanatory.

[34] Subsections (2) and (3) of s 81 of the LGR require establishment of the differential rating regime including the decision to levy differential general rates for different categories of rateable land and a description of each of the rating categories to be made by resolution at the budget meeting. That restriction on how that regime is established does not apply to the identification of an applicable category for each parcel of rateable land, as s 81(5) permits the local government to categorise each parcel of land "in any way it considers appropriate" and in contrast to s 81(2) and s 81(3) does not require a resolution of the local government.

[35] What the respondent did by adding in the description of category 8 the words of inclusion was to commence undertaking the identification exercise that was otherwise delegated to the chief executive officer. There has been conflation by the respondent of the description and the identification processes.

[36] It follows from the inclusion of the land use codes in the descriptions of the categories against the background where the land use codes were pre-existing in the respondent's land record database when the resolution was passed that they were thereby approved by the respondent. It also follows in the context of what was included in the respondent's land record database that there was no uncertainty or ambiguity as to what land use codes were referred to in the description of the categories of differential general rates. The use of the word "approved" in the definition of land use codes in the Revenue Statement should not be construed in an overly technical way: *Myer Queenstown Garden Plaza Pty Ltd v City of Port Adelaide* (1975) 33 LGRA 70, 91-92.

[37] Even if the applicant's submission about the land use codes point succeeded, that would only result in treating those words of inclusion as legally ineffective and the resolution of the Council in respect of creating the differential rate categories, including category 8, would be valid. This fallback argument relies on characterising the respondent's resolution as a statutory instrument under s 7 of the *Statutory Instruments Act* 1992 (Qld) which by s 14 of that Act is made subject to the *Acts Interpretation Act* 1954 (Qld). The respondent relies on s 9(2) of the latter Act, arguing that to the extent the description of a rating category may have exceeded the power of the respondent by referring to land use codes that were not approved by resolution of the council, the description of the category is valid to the extent that it does not exceed power.

[38] Because the owner of land may search the relevant land record for that land free of charge which would reveal that land use code for the land, there is no difficulty for any owner in working out the likely categorisation of the owner's land from the Revenue Statement and the respondent's resolutions about differential rate categories.

[39] The LGR recognises there will be disputes over the identification of the differential rating category applicable to a rateable piece of land and provides for an objection and appeal process and there is jurisprudence that has developed over the test to be applied by the Land Court for the purpose of determining the appropriate designation of the use of the land. The respondent relied on a recent example of how the Land Court resolves

such issues on a "best fit" basis, referring to *APT Petroleum Pipelines Pty Limited v Western Downs Regional Council* [2014] QLC 18 at [8]-[11].

Was the land use code of 16 part of the description of category 8?

[40] Although the parties focused their submissions on the descriptions of categories 4, 6 and 8, for the purpose of construing the description for any particular category, the description must be considered in the context of the descriptions for all 45 categories set out in the differential general rates table in the Revenue Statement and repeated in the respondent's resolution adopting those different categories of rateable land and corresponding descriptions. With the exception of categories 9 and 35 to 39, each category refers to relevant land use codes, specifying that the particular category includes land with identified land use codes. There are only two categories that refer to a land use code for the purpose of excluding land. They are categories 5 and 6 in respect of excluding land with land use code 16. Descriptions for all categories include a reference to land either "as otherwise identified by the chief executive officer" or "as identified by the chief executive officer".

[41] The pattern for the description of the land within a category (though not invariable) is to describe the use of the land and, in some categories, specify the rateable value. In some instances land included in other categories is then excluded. By then describing the land as including land with specified land use codes and as otherwise identified by the chief executive officer, it follows that not all land with those specified land use codes will fall within that category, but that land with those specified land use codes may fall within that category, if otherwise complying with the description of use and/or rateable value and/or other specified criteria. It may also be that land that does not have the specified land use codes, but is otherwise identified by the chief executive officer as complying with the description for that category will be identified as land falling within that category.

[42] There may well have been some conflation by the respondent in setting out the description for each rating category between description and identification, but the respondent elected to use land use codes in the descriptions which assist in adding another criterion to the description of the category. The reference to the land use codes within the description for a differential category of rateable land must therefore be characterised as part of the description of that category.

Did the land use code have to be approved by a resolution of the respondent?

[43] Although *Russell* remains authoritative (*Lewiac v Gold Coast City Council* [1995] 1 Qd R 38, 43), its operation has been diminished by specific legislative provisions dealing with how a local government can act. In *Russell*, the Council was in recess and under the relevant ordinance, the Establishment and Co-ordination Committee was empowered to act for and on behalf of the Council, but "subject to confirmation by the Council". The Committee approved the rezoning of a certain property, but subsequent to that decision being conveyed to the owner of the property by letter signed by the Lord Mayor, the Council decided not to confirm the decision of the Committee.

[44] It was stated by Macrossan CJ (with whom the other members of the Full Court agreed) at 431 that:

> "A statutory corporation such as the defendant can act only by resolution, and there cannot be a confirmation by the Council of an act of the Committee except by resolution.
>
> I think the effect of the phrase 'subject to confirmation by the Council' is that acts done by the Committee purporting to act on behalf of the Council during a recess of the Council are ineffective if they are not confirmed by the Council by resolution. If they are so confirmed the acts, of course, have effect as from the time when they were done by the Committee."

[45] Section 81(2) and s 81(3) of the LGR are unambiguous as to the requirement of a resolution for the decision in respect of the different categories of rateable land in the local government area and the description of each of the rating categories. By way of contrast, s 81(5) of the LGR allows the local government to undertake the process of identifying the rating category to which each parcel of rateable land in the local government area belongs "in any way it considers appropriate" and therefore does not require that process to be undertaken by resolution.

[46] The applicant's submissions treat the land use codes as information that must be adopted formally by the respondent by resolution before they can be used in the description of a differential rating category.

[47] It is unequivocal from the s 251 certificate that the land use codes obtained by the respondent from the DNRM were in use in the respondent's land record database (together with the description that attached to each land use code), when the descriptions for the categories were approved by resolution of the respondent.

[48] The land use codes that are referred to in the descriptions of the differential rate categories are 1 to 6, 8 to 50, 60 to 89 and 91. Perhaps the definition of "land use codes" in the Revenue Statement could have been more precise either as to the source of the land use codes (QVAS) or that each relevant land use code (with its corresponding description) was already set out in the land record that the respondent is obliged to keep under s 154 for each parcel of rateable land in its area.

[49] In the context, however, of the respondent's existing statutory land record database (of which the respondent's councillors must have been taken to be aware) and the incorporation of the land use codes in the descriptions of the differential rating categories, the definition of "land use codes" in section 7 of the Revenue Statement must be construed as a reference to those land use codes used by the respondent in the descriptions, and thereby approved. The use of the word "approved" in this context within the Revenue Statement does not mandate any separate resolution of the Council adopting the land use codes. The effective date that is used in the definition of the "land use codes" accords with the timing of the relevant resolution under s 81(2) and s 81(3) of the LGR. In any case, the evidence of Mr Brett shows that the respondent had the means of identifying the effective date of the land use codes from the input of QVAS information into its land record database.

[50] No owner or potential purchaser of rateable land in the respondent's area is disadvantaged in endeavouring to work out which of the differential rating categories will apply to any particular parcel of land, as a search of that parcel of land in the respondent's land record database pursuant to s 155 of the LGR will reveal the land use code the respondent has recorded for that parcel of land.

[51] The applicant has therefore not succeeded on its primary argument about the validity of the reference to land use codes in the descriptions of the differential categories of land that relates to both decisions.

Other arguments

[52] The reference in the description of each differential rating category to the effect of "as otherwise identified by the Chief Executive Officer" in the context of the resolution that was passed at the same time as adopting the different categories of rateable land and their descriptions to delegate to the chief executive officer the power of identifying the rating category to which each parcel of rateable land belongs is merely a reference to that process of identification. Even though it is included in the part of the table setting out the descriptions for each of the differential categories of rateable land, it reflects the process the respondent has selected pursuant to s 81(5) of the LGR for identifying the rating category to which each parcel of rateable land belongs. In fact, the LGR anticipates that there will be different views as to the identification of the rating category to which each parcel of land belongs and provides for the means for resolving it by the objection and appeal processes. The inclusion of "other" identification by the chief executive officer in the description of each differential rating category is therefore not arbitrary or capricious.

[53] The fact that the respondent uses rateable value as a criterion for some categories and uses different expressions for use in the categories (such as "used for commercial purposes" for category 4, but "used or capable of being used" for a shopping centre for category 8) or includes different criteria for describing each of the categories, does not make the categorisation unreasonable. As other decisions in relation to a local government's decision on establishing a scheme for differential categories of rateable land show, it is difficult to show unreasonableness on the part of the local government, having regard to the nature of the power and the lack of statutory constraint on its exercise: *Ostwald* at [37]-[43] and [63]-[65]. This ground for attacking the first decision was ultimately only faintly argued by the applicant, as there is no sustainable basis for the attack.

[54] In light of the conclusion that the reference to the land use codes in the descriptions of the differential rating categories is valid, there is no difficulty in classifying the applicant's land as category 8. It is land that is used for a shopping centre, as that term is defined in the Revenue Statement and fulfils all the other criteria that are set out in the description, including being land with the land use code of 16.

[55] Reference was made in the applicant's material to the extent of the increase in general rates charged on the applicant's land as a result of its identification as category 8 for 2015/2016. That is not a relevant matter in the circumstances for review under the Act.

In any case the applicant has its merits review in the Land Court on the identification of the land as category 8.

[56] In view of the basis on which I have found that the reference to land use codes in the descriptions is valid, it is not necessary to consider the respondent's alternative argument based on characterising the resolution in relation to differential rating categories and their descriptions as a statutory instrument.

Orders

[57] It follows that the application must be dismissed. Subject to hearing submissions from the parties on the issue of the costs of the application, it seems that the applicant should pay the respondent's costs.