SUPREME COURT OF QUEENSLAND

CITATION:	*Ugarin Pty Limited v Lockyer Valley Regional Council* [2018] QCA 121
PARTIES:	**UGARIN PTY LIMITED** **ACN 010 254 038** **(appellant)** **v** **LOCKYER VALLEY REGIONAL COUNCIL** (respondent)
FILE NO/S:	Appeal No 7170 of 2017 SC No 10531 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2017] QSC 122
DELIVERED ON:	12 June 2018
DELIVERED AT:	Brisbane
HEARING DATE:	20 November 2017
JUDGES:	Sofronoff P and Philippides JA and Henry J
ORDER:	**Appeal dismissed with costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – JURISDICTIONAL MATTERS – where the appellant owns 22 hectares of land that has been developed for use as a shopping centre – where the appellant's land is situated within the local government area of the respondent – where the respondent issued a rates notice to the appellant in 2015 stating that its land was within differential general rates category 8 – where the effect of this was that the rates payable by the appellant increased compared to previous years – where the appellant submits that the respondent could only levy rates and categorise rateable land by resolution at its budget meeting – where the appellant submits that there had been no actual approval by resolution of the Land Use Codes that had altered the rates – where s 94 of the *Local Government Act* 2009 does not constrain the form of the resolution constituting a local government's decision to categorise rateable land – where reg 81 of the *Local Government Regulation* 2012 requires that the resolution state the different categories of rateable land and describe each of them – whether the Land Use Codes had been adopted by resolution in the manner required by reg 81 of the *Local Government Regulation* 2012

Local Government Act 2009 (Qld), s 94
Local Government Regulation 2012 (Qld), reg 81

Commissioner for Railways (NSW) v Agalianos (1955) 92 CLR 390; [1955] HCA 27, cited
Investors Compensation Scheme v West Bromwich Building Society [1998] 1 WLR 896; [1997] UKHL 28, cited
Minister for Lands (NSW) v Jeremias (1917) 23 CLR 322; [1917] HCA 41, cited

COUNSEL: D R Gore QC, with J G Lyons, for the appellant
R S Litster QC, with S P Fynes-Clinton, for the respondent

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

[1] **SOFRONOFF P:** The appellant applied for a declaration that the adoption by the respondent council of categories of rateable land in its local government area was invalid and that, accordingly, its decision that the appellant's land belonged to a particular category was also invalid. Mullins J declined to make such declarations and the appellant now appeals against her Honour's order dismissing its application.

[2] Section 94 of the *Local Government Act* 2009 provides, relevantly:

> "**94 Power to levy rates and charges**
>
> (1) Each local government—
>
> 1. Must levy general rates on all rateable land within the local government area; and …"

[3] Regulation 81 of the *Local Government Regulation* 2012 made under that Act provides:

> "**81 Categorisation of land for differential general rates**
>
> (1) Before a local government levies differential general rates, it must decide the different categories (each a ***rating category***) of rateable land in the local government area.
>
> (2) The local government must, by resolution, make the decision at the local government's budget meeting.
>
> (3) The resolution must state—
>
> (a) the rating categories of rateable land in the local government area; and
>
> (b) a description of each of the rating categories.
>
> *Example*—
>
> A resolution may state that the rating categories, and a description of each of the rating categories, are as follows—

(a) residential land—land that is used for residential purposes in particular urban centres, rural localities, park residential estates and coastal villages;

(b) commercial and industrial land—land that is used solely for commerce or industry in particular urban centres and rural localities, other than land used for manufacturing sugar or another rural production industry;

(c) grazing and livestock land—land that is used, for commercial purposes, for grazing and livestock;

(d) sugar cane land—land that is used for producing sugar cane;

(e) sugar milling land—land that is used for manufacturing sugar;

(f) rural land—

(i) land that is not in an urban centre or locality; or

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

(iii) land that is not sugar cane land or sugar milling land;

(g) other land—any other type of land.

(4) After the rating categories and descriptions have been decided, the local government must identify the rating category to which each parcel of rateable land in the local government area belongs.

(5) The local government may do so in any way it considers appropriate.

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

[4] The certificate of the Chief Executive Officer of the respondent, issued pursuant to s 251 of the Act, stated, relevantly:

"A. Council's records show that in adopting the 2015/16 budget, including adopting differential general rates and the categories of rateable land and their descriptions as provided for in the 2015/16 Revenue Statement pursuant to sections 80 and 81 of the *Local Government Regulation* 2012 (Qld), Council considered the following documents:

…

4. Corporate and Community Services Report entitled '2015/16 Revenue Statement' dated 23 July 2015 (Document 8 of exhibit CEO-1), attaching the Revenue

Statement (Document 9 of exhibit CEO-1), which did not at that stage include the amendment subsequently made by Council resolution on 19 August 2015 as described in paragraph B below; and

…

B. Council's records show that the documents noted in paragraph A above were adopted by Council at its 2015/16 budget meeting held on 28 July 2015. The minutes of that meeting were confirmed subject at a single amendment at a Council meeting held on 19 August 2015. That amendment changed the minimum general rate applicable to Category 6 on page 11 from $26,749 to $26,794.

C. Council's records show a land record database exists for all rateable land in Council's local government area revealing information about parcels of rateable land, including details of the following:

(a) the name and postal address of the owner of the land;

(b) a description of the land, including its location and size;

…

(d) information about rates or charges for the land, including:

(i) rates and charges levied and balances;

…

(f) land use codes;

…

D. Council's records show that the land record database relating to the land owned by the Applicant, namely Lots 1 and 2 on SP180782 (**Property**), revealed the information as set out below about the Property when the Property was included in Category 8 for the 2015/16 financial year.

“**Property ID**	218070
Property Address	Gehrke Road PLAINLAND QLD 4341
Land Area	22.0693 Hectares
Land Use Code	1600 – Drive in Shopping Centre
ZoneLSC	Industrial
ZoneLVRC14	T5Centres Major Centre Precinct”

[5] Document 8 referred to in the certificate provided, relevantly:

“DOCUMENT 8

2015/2016 Revenue Statement

Date: 23 July 2015

Author: Tony Brett, Manager Finance and Customer Services

Responsible Officer: David Lewis, Executive Manager Corporate and Community Services

File No:

Summary:

Section 169(2)(b) of the *Local Government Regulation* 2012 requires Council to include a Revenue Statement in its annual budget.

…

Officer's Recommendation:

THAT Council resolves to:

(a) Adopt, pursuant to Sections 80 and 81 of the *Local Government Regulation 2012*, the different categories of rateable land and a description of those contained in Table 1 of the 2015/2016 Revenue Statement as follows:

No	Name	Description
3	Commercial > $700,001 & </=$2Million	Land used for commercial purposes, other than primary production, with a rateable value greater than $700,000 and less than or equal to $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.
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 >7000sqm	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.

(b) …

(c) **Adopt pursuant to Section 169(2)(b) of the *Local Government Regulation* 2012 the 2015/2016 Revenue Statement (Attachment 1) for inclusion in the 2015/2016 Budget.**

…

(i) **Adopt, pursuant to Section 94 of the *Local Government Act 2009* the levying of differential general rates, minimum general rates, special rates and charged, utility charges and separate rates and charges for the 2015/2016 financial year at the values included within the 2015/2016 Revenue Statement.**"

[6] Document 9, also referred to in the certificate, provided, relevantly:

"**3.2 Categorisation of Land and Minimum General Rates**

Pursuant to section 81 of the *Local Government Regulation 2009*, the different categories of rateable land in the Region, and a description of each of those rating categories, are set out in **Table 1.**

Pursuant to section 80 of the *Local Government Regulation 2009*, the differential general rate which will be levied for each category of land is set out in **Table 1**.

Pursuant to section 77 of the *Local Government Regulation 2009*, the minimum general rate for each category of rateable land is set out in **Table 1**.

Council delegates its power under section 81(4) and (5) of the *Local Government Regulation 2009* to identify the rating category to which each parcel of rateable land in the Region belongs, to the Chief Executive Officer.

"**Table 1 – Differential General Rates Table**

No	Name	Description	Rate in $ 2015/16	Minimum General Rate 2015/16
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.	$0.010006	$23,467
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	$0.012439	$26,794

		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 other identified by the Chief Executive Officer.	$0.038889	$153,750”

“**7. DEFINITIONS**

Differential General Rates Table: means Table 1 in this Revenue Statement.

Land use codes: those land use codes approved by the Lockyer Valley Regional Council effective from 1 July 2015.

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.”

[7] The appellant’s land has an area of 22 hectares and has been developed as a shopping centre containing a supermarket which itself has an area of 3,410m^2. On 10 August 2015 the respondent issued the appellant with a rates notice which stated that its land was within differential general rates category 8. This had the effect of increasing the rates payable by the appellant compared to former years. On 7 September 2015 the appellant’s solicitors wrote to the respondent inquiring whether an error had been made. On the next day, those solicitors sent an email to the respondent as follows:

> “The 2015/2016 Lockyer Valley Regional Council Revenue Statement provides the following definition of page 21 of 22:
>
> > “*Land Use Codes*: *Those land use codes approved by the Lockyer Valley Regional Council effective from 1 July 2015*.”
>
> Can you please provide a list of all of the land use codes and their corresponding uses as approved by the Lockyer Valley Regional Council?”

[8] The respondent’s Rates Officer responded promptly, attaching to his email a copy of “the land use codes as provided by the Department of Natural Resources and Mines”. Those codes were set out in a table which provided a four figure code for

each particular use of land referred to within it. The first two numbers in the code referred to the primary use of the land. The last two numbers referred to any secondary use. A double-zero as the second pair of figures in the code signified that there was no secondary use.

[9] Under a heading "Retail Business/Comm" there appears code 16 which signifies "Drive in shopping centre". Category 8, into which the Council had placed the appellant's land, referred to land use code 16 as appears from paragraph [6] above.

[10] The appellant's solicitors then pressed the respondent for a document that evidenced that the Council had "made a decision to formally approve the Land Use Codes".[1] The respondent's Acting Chief Executive Officer replied on 16 October in the following terms:

> "**Rates Enquiry – Property ID218070 – Ugarin Pty Ltd – Gehrke Road Plainland**
>
> Council refers to your letter dated 14 October 2015. The definition of Land use codes was included in the Revenue Statement to assist in understanding Council's ratings categories and, in turn, add some transparency around the way in which Council intended to exercise its power under section 81(4) of the Local Government Regulations 2012 (Qld).
>
> 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.
>
> I have enclosed the more detailed listing of those codes which includes the descriptors used by DNRM when applying the codes to the parcel of land.
>
> Finally, I would like to apologise for the delay in responding to your previous enquiries. This came about due to the officer dealing with your matter taking leave at short notice leading to a breakdown in communication regarding your additional requests.
>
> I trust the above information has addressed your enquiry."

[11] The letter enclosed the codes that had been sent earlier and also, as "attachment B", a description applicable to each code.

[12] The appellant's argument that the respondent's use of the Land Use Codes was invalid proceeds by the following steps. First, it is submitted that the respondent, as a local authority, could only levy rates and categorise rateable land by resolution. Second, the respondent could only make the resolution at its budget meeting by a

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[1] See eg letters of 9 and 14 October 2015.

resolution that "must state … the rating categories …and … a description of each of the rating categories". These propositions are not controversial.

[13] This appeal turns upon the correctness of the third step of the appellant's argument. The appellant submits that there has been no actual approval of the Land Use Codes by resolution. By its second ground of appeal it contends that Mullins J was wrong to conclude that "the resolution of the respondent of 28 July 2015 constituted an approval of the land use codes" because "the descriptors (or explanations) of the land use codes are not themselves part of what has been 'approved' by the Council". The oral submissions on appeal emphasised a perceived lack of "transparency" and the difficulties that members of the public might face in trying to work out what each code actually meant. It was acknowledged that the codes themselves originally emanated from the Department of Natural Resources and Mines, which had created them and which used them for its own purposes. It was acknowledged that the codes were readily obtainable and identifiable. Indeed, when the appellant's solicitors asked for them they were furnished on the same day although the expansion of the meaning of the codes was not sent for another month.

[14] The appeal therefore raises two questions. The first is one of statutory interpretation and the second is one of interpretation of the contested resolution. It is therefore necessary first to determine what the statute requires of a resolution.

[15] Section 94 does not in any way constrain the form of the resolution constituting a local government's decision to categorise rateable land. However, regulation 81 requires three things of such a resolution. First, before levying differential rates, a local government must "decide the different categories … of rateable land". Second, that decision must be made "by resolution" at the local government's budget meeting. Third, the resolution "must state … the rating categories of rateable land … and … a description of each of the rating categories". There are no other requirements.

[16] The question in this case therefore resolves itself to whether, to paraphrase the regulation, the resolution states the different categories of rateable land and whether it states a description of each of them.

[17] It has been said that "[i]nterpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available".[2] As that statement makes clear, the question is not what was actually in the writer's mind. In the case of legislation, and also in the case of a resolution like the one with which the present appeal is concerned, there is no "writer" whose subjective understanding or intention is in issue. The document is the work of a group. For this reason, the task is to determine what meaning the words convey.

[18] That meaning cannot be discerned solely by reference to rules of grammar or rules of syntax or by resort to dictionaries. Context is the starting point.[3] Part of that context is established by the nature of the document, its purpose and, in this case, the legislative environment in which the words came to be selected.

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2 *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896 at 912 per Lord Hoffmann.

3 *Commissioner for Railways (NSW) v Agalianos* (1955) 92 CLR 390 at 397 per Dixon CJ; *Minister for Lands (NSW) v Jeremias* (1917) 23 CLR 322 at 332.

[19] In the context of local government resolutions it is necessary to bear in mind also that such resolutions may not have been drafted by a lawyer, consulting the precise words of the governing statute and with one eye on the way a judge might one day interpret it. The drafting may have been done by an accomplished professional in his or her own field using that profession's terms of art and jargon. Either way, the task is to give the resolution a meaning having regard to the background – namely the statutory duty imposed on the Council which it was intending to fulfil.

[20] Against that background to the task of interpretation of the resolution, it is necessary to determine whether the resolution makes it reasonably clear what were the different categories of land and what were their respective characteristics. In the context of this particular case, it is necessary to determine whether the respondent, upon a fair reading of the resolution, had as part of its decision resolved to adopt and to apply the Land Use Codes.

[21] Put in those terms, the question answers itself. The certificate referred to earlier establishes that the respondent at its budget meeting "adopted" the Revenue Statement that had been placed before it. At the time of the passing of the resolution, the respondent had within its records a list of all rateable land within its area which applied a Land Use Code to each piece of land. The Revenue Statement provided that the "different categories of rateable land" were those set out in Table 1. That table set out the name of each category of rateable land and its description. The category applicable to the appellant's land stated:

"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.	$0.038889	$153,750"

[22] The reference to "land use code 16" was not obscure or uncertain. The Revenue Statement also contained a section headed "Definitions". It provided that "Land Use Codes" meant "those land use codes approved by the Lockyer Valley Regional Council effective from 1 July 2015". When it is remembered that the Revenue Statement was a document prepared by an officer of the Council for consideration by the Council in due course, it is apparent that the choice of those words can only be understood as prompted by the author's anticipation that, by the Council's approval of the categories proposed, the Council will thereby also have approved the Land Use Codes as part of the description of the categories of rateable land. No sensible reading could involve thinking that the respondent was expected, and itself expected, to approve the Land Use Codes as part of the categorisation formula by means of a special resolution devoted to that single subject but that it then neglected to do so.

[23] For these reasons, in my respectful opinion Mullins J was correct in the conclusion that her Honour expressed as follows:

> "[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."

[24] I would dismiss the appeal with costs.

[25] **PHILIPPIDES JA:** I have had the considerable advantage of reading the reasons for judgment of Sofronoff P. I agree with those reasons and the order proposed.

[26] **HENRY J:** I agree with the order proposed by Sofronoff P and with the reasons given by his Honour.