

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 22/24174

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

JUDGE KUNY

13 MARCH 2023

In the matter between:

AFRIFORUM NPC

Applicant

and

THE COUNCIL OF THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER OF THE CITY OF
JOHANNESBURG METROPOLITAN MUNICIPALITY

Second Respondent

THE MINISTER OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS

Third Respondent

THE MINISTER OF BASIC EDUCATION

Fourth Respondent

MEMBER OF THE EXECUTIVE COUNCIL
FOR EDUCATION, GAUTENG PROVINCE

Fifth Respondent

THE MINISTER FOR HIGHER EDUCATION
AND TRAINING

Sixth Respondent

THE EXECUTIVE MAYOR OF THE CITY OF
JOHANNESBURG METROPOLITAN MUNICIPALITY

Seventh Respondent

AND

Case Number: 22/24372

In the matter between:

THE INDEPENDENT INSTITUTE OF EDUCATION
(PTY) LTD

First Applicant

ADVTECH LTD

Second Applicant

and

THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY

First Respondent

MUNICIPAL MANAGER OF THE CITY OF
JOHANNESBURG METROPOLITAN MUNICIPALITY

Second Respondent

MINISTER OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS

Third Respondent

MINISTER OF FINANCE

Fourth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE AND TRADITIONAL
AFFAIRS, GAUTENG PROVINCE

Fifth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
EDUCATION, GAUTENG PROVINCE

Sixth Respondent

And

Case Number: 22/8831

In the matter between:

CURRO HOLDINGS LTD

First Applicant

and

THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY

First Respondent

MUNICIPAL MANAGER OF THE CITY OF
JOHANNESBURG METROPOLITAN MUNICIPALITY

Second Respondent

MINISTER OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS

Third Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE AND TRADITIONAL
AFFAIRS, GAUTENG PROVINCE

Fourth Respondent

MINISTER OF FINANCE

Fifth Respondent

MEMBER OF EXECUTIVE COUNCIL FOR GAUTENG
PROVINCIAL TREASURY, GAUTENG PROVINCE

Sixth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
EDUCATION, GAUTENG PROVINCE

Seventh Respondent

JUDGMENT

KUNY J

1 This judgment concerns three opposed special motions heard on 24 and 25 November 2022 and 13 and 14 February 2023. On 28 February 2023 I granted a single order in favour of all the applicants. These are the reasons for the order that I gave.

2 The applications concern the imposition of property rates by the CoJ on properties zoned and used educational purposes and the determination of rating categories in respect of these properties.

3 In Case No 22/24372 the applicants are the Independent Institute of Education (Pty) Ltd and Advtech Ltd ("IIE"). In Case No 22/24174 the applicant is Afriforum NPC ("Afriforum"). In Case No 22/8831 the applicant is Curro Holdings Ltd ("Curro").

4 The first three respondents in each application are respectively, the City of Johannesburg Metropolitan Municipality ("CoJ"), the Municipal Manager of the City of Johannesburg Metropolitan Municipality and the Minister of Co-operative Governance of Traditional Affairs ("the Minister"). The Minister has only opposed the application in which the IIE and Advtech are the applicants.

5 Each applicant was represented by their own attorneys and counsel. The CoJ was represented by counsel and attorneys and the Minister was separately represented by counsel and the State Attorney. There were no appearances for any of the other respondents who included the Minister of Basic Education and the MEC for Education, Gauteng Province (in Case No 22/24174) and the Minister of Finance and MEC for Co-operation Governance and Traditional Affairs, Gauteng Province (in Case No 22/24372 and Case No 22/8831).

6 The applicants all have in common the fact that they seek to declare unlawful and set aside certain limited portions of:

6.1 CoJ's Property Rates Policy for 2022/2023 ("the 2022/23 Rates Policy").

6.2 CoJ's Property Rates By-law adopted by the CoJ on 27 May 2022 and published

in the Provincial Gazette on 29 June 2022 (“the Rates By-law”).

6.3 CoJ’s annual budget for 2022/2023.

6.4 The supplementary valuation roll for 2022/2023.

7 The applicants sought relief only to the extent that in terms of CoJ’s 2022/23 Rates Policy (and consequently the Rates By-law, annual budget and supplementary valuation roll for 2022/23), privately owned properties zoned for educational purposes have been placed under the rating category ‘business and commercial’. Afriforum raises the additional complaint that public educational institutions, previously falling under the rating category ‘education’ in the 2021/22 Rates Policy, now fall under the category ‘public service purpose’. Afriforum and the IIE also complain that the CoJ has removed the category ‘education’ that had been applied in previous CoJ rates policies.

8 Prior to the 2022/23 Rates Policy, properties falling under the category ‘education’ enjoyed the benefit of a favorable rating ratio of 1:0.25 (ie. 25% of the rating for residential properties, rated at a ratio of 1:1). Having dispensed with the category ‘education’ in the 2022/23 Rates Policy, the following rating ratios apply:

8.1 Properties zoned and used for educational purposes that are privately owned have now been assigned under the category ‘business and commercial’ and are rated at a ratio of 1:2.5.

8.2 Schools, pre-schools, early childhood development centers or further education and training colleges conducted on properties owned and used by organs of State, falling under the category ‘public service purpose’, are rated at a ratio of 1:1.5.

8.3 Schools that operate on properties in the category ‘specified public benefit activity’ and that qualify as public benefit organisations are rated at the ratio of 1:0.25.

STATUTORY FRAMEWORK

9 The Local Government: Municipal Property Rates Act 6 of 2004 (“Rates Act”) was enacted with effect from 2 July 2005. The Rates Act was amended by the Local Government: Municipal Property Rates Amendment Act 29 of 2014. The amendments came into effect on 1 July 2015

10 In terms of section 93B of the Rates Act as amended the provisions of the amended section 8 must be applied by a municipality within seven years of the date of the commencement of the amended Rates Act. Section 8 as amended commenced on 1 July 2015 and accordingly, it had to be fully applied by 1 July 2022.

11 In section 1 of the Rates Act (pre- and post amendment) ‘rate’ is defined as a municipal rate on property envisaged in section 229(1)(a) of the Constitution. ‘Ratio’ is the relationship between the cent amount in the Rand applicable to residential properties and different categories of non-residential properties.

12 There were no provisions in section 8, prior to its amendment, that entitled a municipality to determine additional categories of rateable property or to apply to the Minister to create sub-categories. This was introduced by way of the addition of subsections 8(3) and 8(4) in the amended Rates Act.

13 Section 8 of the Rates Act as amended provides as follows:

8 Differential rates

(1) Subject to section 19, a municipality may, in terms of the criteria set out in its rates policy, levy different rates for different categories of rateable property, determined in subsections (2) and (3), which must be determined according to the -

(a) use of the property;

(b) permitted use of the property; or

(c) a combination of (a) and (b).

(2) A municipality must determine the following categories of rateable property in terms of subsection (1): Provided such property category exists within the municipal jurisdiction:

(a) Residential properties;

(b) industrial properties;

(c) business and commercial properties;

(d) agricultural properties;

(e) mining properties;

(f) properties owned by an organ of state and used for public service purposes;

(g) public service infrastructure properties;

(h) properties owned by public benefit organisations and used for specified public benefit activities;

(i) properties used for multiple purposes, subject to section 9; or

(j) any other category of property as may be determined by the Minister, with the concurrence of the Minister of Finance, by notice in the Gazette.

(3) In addition to the categories of rateable property determined in terms of subsection (2), a municipality may determine additional categories of rateable property, including vacant land: Provided that, with the exception of vacant land, the determination of such property categories does not circumvent the categories of rateable property that must be determined in terms of subsection (2).

(4)(a) Where a municipality can, on good cause, show that there is a need to sub-categorise the property categories listed in subsection (2), a municipality must apply to the Minister in writing for authorisation to create one or more of such sub-categories.

14 The determination of rates policies is provided for in section 3 and section 5 of the Rates Act. A distinction is made between the adoption of a rates policy (section 3) and the annual review of a rates policy (section 5).

15 Section 3(1) and 3(2) of the Rates Act (pre- and post amendment) provide as follows:

3 Adoption and contents of rates policy

(1) The council of a municipality must adopt a policy consistent with this Act on the levying of rates on rateable property in the municipality.

(2) A rates policy adopted in terms of subsection (1) takes effect on the effective date of the first valuation roll prepared by the municipality in terms of this Act, and must accompany the municipality's budget for the financial year concerned when the budget is tabled in the municipal council in terms of section 16(2) of the Municipal Finance Management Act.

16 Section 4 of the Rates Act (pre- and post amendment) provides:

4 Community participation

(1) Before a municipality adopts its rates policy, the municipality must-

(a) follow a process of community participation in accordance with Chapter 4 of the Municipal Systems Act; and

(b) comply with subsection (2).

- (2) The municipal manager of the municipality must-
 - (a) conspicuously display the draft rates policy for a period of at least 30 days -
 - (i) at the municipality's head and satellite offices and libraries; and
 - (ii) if the municipality has an official website or a website available to it as envisaged in section 21B of the Municipal Systems Act, on that website;
- and
- (b) advertise in the media a notice -
 - (i) stating-
 - (aa) that a draft rates policy has been prepared for submission to the council; and
 - (bb) that the draft rates policy is available at the municipality's head and satellite offices and libraries for public inspection during office hours and, if the municipality has an official website or a website available to it, that the draft rates policy is also available on that website; and
 - (ii) inviting the local community to submit comments and representations to the municipality concerned within a period specified in the notice which may not be less than 30 days.
- (3) A municipal council must take all comments and representations made to it or received by it into account when it considers the draft rates policy.

17 The Rates Act (pre- and post amendment) defines a 'specified public benefit activity' as an activity listed in item 1 (welfare and humanitarian), item 2 (health care)

and item 4 (education and development) of Part 1 of the Ninth Schedule to the Income Tax Act, 58 of 1962.

18 The Rates Act as amended creates a new definition of ‘public service purpose’, that does not appear in the pre-amended Rates Act. It is as follows:

‘public service purposes’, in relation to the use of a property, means property owned and used by an organ of state as -

- (a) hospitals or clinics;
- (b) schools, pre-schools, early childhood development centres or further education and training colleges;
- (c) national and provincial libraries and archives;
- (d) police stations;
- (e) correctional facilities; or
- (f) courts of law,

but excludes property contemplated in the definition of ‘public service infrastructure’;

RATES POLICY FOR 2021/2022 AND PUBLIC PARTICIPATION IN RESPECT OF NEW RATES POLICY

19 Property rates policies are reviewed annually. The 2021/2022 Rates Policy sets out a list of 24 categories of property designated for the purposes of levying differential rates in terms of section 8. Amongst the list is the category of ‘education’, defined as follows:

- (e) Education

(i) This category refers to property built on land zoned educational/institutional owned by educational institutions wherein [it] is [a] primary school or high school that is registered with the Gauteng Department of Education, and

a. Also registered with South African Revenue Services in terms of Section 30 of the Income Tax Act 58 of 1962,

b. That provides education and development services as contemplated in Item 4 of the Ninth Schedule to that Act. Property owner[s] are required to provide proof of registration with the Gauteng Department of Education

(ii) College established or declared as a college under Higher Education Act No 101 of 1997; and

(iii) University established or deemed to be established or declared as a University under Higher Education act 101 of 1997.

20 The tariff ratios for the categories 'education' and 'business and commercial' in the 2021/2022 Rates Policy is as follows:

<u>Category</u>	<u>Ratio 2021/2023</u>	<u>Tariff for 2021/2022</u>
4. Business and Commercial	1:2.5	0.020550
5. Education	1:0.25	0.020550

21 In February 2022, in the form of a public presentation, the CoJ disseminated a document entitled "2022/2023 Rates Policy & Rates Bylaw Review". The document sets out *inter alia*, the legislative background to rates policies, reasons for the annual policy review, proposed changes to the 2021/2022 rates policy and the rates policy review process for 2022/2023.

22 The following was stated in the presentation in regard to the rates policy review

process:

- *First phase of Rates Policy public participation meetings 2022/2023*
- *Hybrid meetings will start on the 8th of February 2022 with the Councilor briefing session.*
- *Public meetings will start on 15 February and envisaged date of completion is 7th March 2022.*
- *The due date for the submission of comments and inputs is 7th of March 2022*
- *The Second phase of the Rates Policy public participation process and proposed Tariffs will form part of the IDP and Budget meetings which will be scheduled by the office of the Speaker.*
- *The Rates Policy 2021/2022 is available on [w\[...\]](#)*
- *Written comments can be emailed to [r\[...\]](#) by close of business.*

23 A schedule appears in the presentation under the heading “Proposed Category Changes as per Section 8 for 2022/2023”.¹ Listed are the current rating categories, proposed future categories and proposed future ratios to be applied in the rates policy for 2022/2023. The category ‘education’ is listed under the future categories with the same rating ratio as applied in the 2021/2022 Rates Policy. The presentation therefore represents that ‘education’ will be retained as a category in the 2022/23 Rates Policy at the same ratio that was applied in the previous rates policy.

24 On 8 February 2022 a media release was disseminated by the CoJ in regard to a series of public meetings to be held between 15 February 2022 and 7 March 2022. Reference was made to the fact that municipal legislation requires the CoJ to review its

¹ Afriforum’s application, (Case Number: 22/24174), Caselines 001-87

policies on “Property Rates and Credit Control & Debt Collection” on an annual basis and ratepayers were called to give input.

25 A social media notice, said to have targeted *inter alia* academia, business, women, PWD, LGBTQIA+, youth, property investors/developers and faith-based organisations called for public comments on the 2022/23 - 2022/27, Draft 5 year Integrated Development Plan (IDP) and Medium Term Budget and Tariffs.

26 Virtual and hybrid meetings in respect of the above stakeholder engagement process were held from 14 April to 6 May 2022. There is no indication from CoJ’s answering affidavit whether an agenda was circulated at or prior to the meetings and what documents and information was placed before the participants.

27 On 30 March 2022, in the Sowetan and Business Day (also in Afrikaans in Beeld), the CoJ published the following notice:

*“The CoJ Speaker for Council
Cllr Vasco da Gama*

Request for comments on the City of Johannesburg’s Draft 2022/27 Integrated Development Plan, the Draft 2022/23 - 2024/25 Budget and Tariffs.

A notice is hereby given in terms of Local Government Municipal Systems Act (32 of 200), Municipal Finance Management Act (56 of 2003) and the Local Government: Municipal Property Rates, (Act 8 of 2004), that the City of Johannesburg noted the 2022/27 Draft IDP, Draft 2022/23 - 2024/25 Budget Tariffs at Council on the 17th of March 2022.

The Draft 2022/27 IDP, Draft 2022/23 - 2024/25 Budget and the Proposed Tariffs per department or entity are made available for comments in the City’s website; w[...].

Comments on all the draft IDP can be forwarded in writing on the following email address: l[...]

Comments on the Draft Budget and proposed Tariffs can be forwarded in writing on the following email address: B[...]

All comments should reach the City on or before 30 April 2022”.

#JoburgIDP

28 A further notice was given on CoJ website calling for requests for comments on the CoJ's Draft 2022/27 IDP and Draft 2022/23-2024/25 Budget and Tariffs. The public was informed that the 2022/27 Draft IDP, Draft Budget and proposed tariffs per department or entity were available for comment on the City's website.

29 In the IIE's February 2022 CoJ rates statement, in small print at the foot of the first page, appears the note:

the COJ will review its current Property Rates & Credit Control & Debt Collection Policies, Public mtgs will be held during Feb/March 2022, For more info visit w[...].

30 CoJ has referred to the above notices and public meetings to support its contention that it did all that was necessary to bring the proposed rates policy for 2022/23 to the public's attention. The applicants submit that the steps taken by CoJ did not comply with minimum legal requirements. In particular, they submit that the crucial amendments to the draft 2022/23 rates policy was buried in a mass of documentation relating to CoJ's draft 2022/27 Integrated Development Plan and draft 2022/23 - 2024/25 Budget and Tariffs.

ENGAGEMENT WITH COGTA

31 On 6 April 2021, the Executive Mayor of CoJ addressed a letter to the Department of Cooperative Governance and Traditional Affairs ("CoGTA"), making application for the designation of categories and sub-categories for rating purposes. The basis of the application is explained as follows:

City of Johannesburg is in the process of preparing for the implementation of section 8

of the Municipal Property Rates Act (MPRA) as amended. To ensure compliance [with] Section 8, the City will be implementing the categories of properties as provided for in the Act on 1 July 2022. In the current General Valuation Roll implemented on the 1 July 2018 the City has 23 different categories. The implementation of Section 8 of the MPRA refers to ten (10) mandatory categories that are to be considered, with an option provided in Section 8(3) and (4) for additional ratable categories.

32 CoGtA was informed that CoJ intended in terms of section 8(3) to maintain the following eight rating categories:

- Municipal property
- Residential with consent use
- Public Service Infrastructure Private
- Private open space
- Education
- Remainder of the Township
- Religious property
- Vacant Land.

33 'Education' was described as follows:

This ratable property category caters for public and private educational institutions. This category is rated at the quarter of the residential tariff.

34 The Minister was requested to consider and approve the creation of the sub-categories 'sectional title other' and 'agricultural other' in line with the provisions of Section 8(4) of Municipal Property Rates Act 6 of 2004 as amended.

35 On 10 December 2021 the Minister addressed a letter to the Executive Mayor stating *inter alia*:

With respect to the eight (8) additional categories that the municipality intends to continue to use in terms of section 8(3) of the Act:

- Two (2) are found to be non rateable, these being “religious property” (excluded from rating by section 17 of the Act) and municipal property (by the municipality’s own discretion),
- Two (2) are acceptable and in line with section 8(2) and (3) of the Act, these being vacant land and residential with consent use, and
- it is found that four (4), namely “educational”, “private open space”, “public service infrastructure private” and “remainder of township” do not meet the requirements of being determined as additional categories (please refer to the attached addendum for the reasons).

36 In the final paragraph of the above letter the Minister states that “*schools must be categorised as public service purpose if these are public schools and as PBO properties if they are qualifying independent schools*”.

37 In the addendum attached to the letter, CoGTA stated that registered independent primary and secondary schools, as well as colleges and universities established under the Higher Education Act as contemplated in the definition of ‘specified public benefit activity’, should be categorised as public benefit organisation properties and be rated in line with the Regulations on the Rate Ratios between Residential and Non-Residential categories of Properties.² It was contended that on the information at hand there was therefore no need for the additional category of rateable properties called ‘educational’.

² These regulations were gazetted on 12 March 2010. They provided for a rating ratio of 1:0.25 in

38 CoJ states in its answering affidavit that at a meeting held on 2 March 2022 with COGTA officials, it was made clear to the City that CoGTA would not accept 'education' as a separate category.

39 On 24 March 2022 the Minister addressed a letter to the CoJ stating that CoGTA is responsible for the administration of the Rates Act and to that end, her department must monitor compliance with the Act and its regulatory framework. The Minister stated that CoGTA had reviewed the municipality's 2021/22 rating practices and found that the categories 'agricultural other', 'education', 'private open space', 'public service infrastructure private', 'remainder of the township', 'sectional title other' and 'state', were not in line with section 8.

40 The Minister filed an answering affidavit in the IIE application deposed to by the Director-General of CoGTA dealing the Ministry's position on the determination of rating categories by municipalities. In summary the following is stated:

40.1 In view of the fact that 'education' was not a category of rateable properties in terms of section 8(2) of the Rating Act, the CoJ was advised to consider including the properties categorised as 'educational' under the category 'public service purpose' or 'public benefit organisation', if the properties complied with the definitions in the Act.

40.2 CoGTA could not interfere with the setting of rates for different categories of rateable properties, nor could it give an instruction as to the cent in the Rand rates that a municipality must levy on any category of rateable properties. The Minister also did not have the power to determine relief measures for ratepayers, such as rebates.

40.3 CoJ was advised that 'education' is not a rateable category in terms of section 8. However, the rating ratio for properties zoned for education that were assigned under the category 'business and commercial' could still be maintained at a ratio of 1:0.25 by the application of rebates.

40.4 The determination of a category ‘education’ for rating purposes in terms of section 8(3) would circumvent two categories that must be determined in terms of section 8(2), namely, ‘public service purpose’ and ‘public benefit activity’.

40.5 If the court were to grant the applicants the relief sought, as a custodian of the Rating Act, the Minister would be divested of her “*legislative authority and power, to ensure that a municipality’s determination of the rateable properties and categories is in line with the proviso in section 8(3)*”.³

41 The Minister prays in her affidavit that the three applications be dismissed with costs.

THE DRAFT AND ADOPTED 2022/23 RATES POLICY

42 The Rates By-law was approved by the Council on 27 May 2022 and the 2022/23 Rates Policy was gazetted on 29 June 2022.

43 It was not disputed that the enactment of the 2022/23 Rates Policy amounted to the adoption of a policy in terms of section 3 and not the review of an existing policy in terms of section 5. This is confirmed in the draft rates policy for 2022/23 where it is stated to have been drafted in compliance with the provisions of sections 3(1) and 6(1) of the Rates Act. The 2022/23 Rates Policy states that it was prepared and adopted in terms of the provisions of section 3(1) of the Rates Act.

44 Accordingly, it was common cause between the parties that the provisions of section 4 in relation to community participation were applicable. This is in contrast with the position that pertains to the annual review of a rates policy, where, in terms of section 5(2) of the Rates Act, community participation must be effected through the municipality’s annual budget process.

45 The following description under the category ‘business and commercial’ appears

³ Third respondent’s answering affidavit, Case No 2022/24372 paragraph 50

in both the draft and final 2022/23 Rates Policy:

- (i) Property zoned for business and commercial;
- (ii) Property used for game farming and/or ecotourism;
- (iii) Property used as a racecourse for any racing in connection with which betting is carried on by means of a totalizator or otherwise;
- (iv) Properties zoned and used for educational purpose but privately owned will be categorised as business and commercial. These properties zoned and used for educational purpose but privately owned will qualify for a rebate upon application. The property owner should apply at the walk-in centres and the rebate will be applicable from the date of application unless indicated otherwise; [emphasis added]**
- (v) - (ix)

46 In paragraph 16 of the Rates By-law there is a rebate provision stating that privately owned schools, colleges and universities, on application, qualify for an education rebate of up to 25%. This rebate item was not included in the draft rates policy for 2022/23 and strangely, does not appear in the final 2022/23 Rates Policy (this issue was not mentioned or raised in argument by any of the parties).

47 The following observations are made in regard to categories determined by CoJ in 2022/23 Rates Policy:

47.1 Section 8(2) of the Rates Act as amended, designated ten categories. The last category is unspecified and is determined by the Minister with the concurrence of the Minister of Finance by notice in the *Gazette*.

47.2 18 categories are designated in the 2022/23 Rates Policy. Nine new categories were created that are not in fact provided for in section 8(2).

47.3 Education was excluded as a category.

47.4 Two new categories were created, namely 'private open spaces' and 'public services infrastructure-private', contrary to the Minister's direction that they did not meet the requirements for determination as additional categories.

COGTA GUIDELINES

48 In terms of subsection 16(5) of the Rates Act (pre- and post amendment) the Minister, after consultation with the Minister of Finance, may by notice in the gazette issue guidelines to assist municipalities in the exercise of their power to levy rates consistent with subsection 16(1).

49 The applicants relied in argument on a document issued by CoGTA entitled 'General Guidelines on the Municipal Property Rates Act (March 2020)'. The guidelines deal extensively with the rating of properties for public and independent schools. The following is stated in the guidelines, in relation to the rating of property of the independent schools:

If a municipality does not exempt independent schools from rating, it should consider when giving them rebates to prioritise those independent schools receiving state subsidy and the rebates could follow the subsidy table. Provincial education departments will have information on the subsidy levels applicable to independent schools. In a case where the municipality does not exempt public and independent schools from rating, public schools should enjoy more preferential rebates compared with independent schools in line with government policy on the funding of these kinds of schools. Municipal policy should complement national and provincial government policies. **Municipalities should seriously consider exempting both public and independent schools from rating.** [emphasis added]

50 The above guidelines make reference to the National Norms and Standards for School Funding (promulgated in 2006 in terms of the Schools Act, 84 of 1996). Recognition is given to the significant role that independent schools play as follows:

The independent school sector

47. Independent schools vary substantially in age, size, location, socioeconomic status, facilities, staff, mission, governance, representivity, religious or secular identity, community service, cost structure, endowments, financial viability, rates of fees, and quality of teaching and learning. It is impossible to generalise about them. Many deliver valuable educational services and have loyal clienteles. Others deliver services of low quality and exploit the ignorance of parents. Some pride themselves on conservative principles of governance and teaching. Others value innovation. Some have an inward focus. Others have a deliberate mission of social concern and professional co-operation with public schools serving the poor.

48 Independent school enrolment amounts to about two percent of total school enrolment nation-wide. This percentage may be increasing. Within provinces, independent school enrolments vary from a fraction of a percent of total school enrolment, to several times the national average. If all learners were to transfer to public schools, the cost of public education in certain provinces might increase by as much as five percent.

MUNICIPALITIES AND THE CONSTITUTION

51 The imposition of rates on property is one of the means by which a municipality finances its affairs.⁴ In terms of section 11(3)(i) of the Local Government: Municipal Systems Act 32 of 2000 ("Municipal Systems Act"), a municipality exercises its legislative and executive authority *inter alia* by imposing, amongst others, rates, taxes and levies and this includes setting and implementing tariffs, rates and taxes.

52 Chapter 7 of the Constitution deals with Local Government. Section 160 provides:

160 Internal procedures

⁴ See section 4(1) of the Local Government Municipal Systems Act, 32 of 2000

(1) A Municipal Council-

(a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;

(b) - (d)

(2) The following functions may not be delegated by a Municipal Council:

(a) The passing of by-laws;

(b) the approval of budgets;

(c) the **imposition of rates** and other taxes, levies and duties; and [emphasis added]

(d) the raising of loans.

53 Section 229(1)(a) of the Constitution provides:

229 Municipal fiscal powers and functions

(1) Subject to subsections (2), (3) and (4), a municipality may impose-

(a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; ...

54 In terms of section 4(2)(j) of the Municipal Systems Act a municipality, within its financial and administrative capacity and having regard to practical considerations, has a duty, with other organs of state, to promote the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.

55 The Municipality can only exercise the powers and perform the functions

conferred upon it by the Constitution and by law that is consistent with the Constitution. This is a basic requirement of the principle of legality and the rule of law.⁵ Such powers may be regulated by national legislation.⁶

56 In *Fedsure Life Assurance Ltd & Others*, in a matter decided under the Interim Constitution, 1993, the Constitutional Court held as follows:

[26] Under the interim Constitution (and the 1996 Constitution) a local government is no longer a public body exercising delegated powers. Its council is a deliberative legislative assembly with legislative and executive powers recognised in the Constitution itself.⁷

At paragraph [42] the following was held:

[40] It is not necessary in the present case to attempt to characterise the powers of local government under the new constitutional order, or to define the grounds on which the exercise of such powers by an elected local government council itself can be reviewed by the Courts. The exercise of such powers, like the exercise of the powers of all other organs of State, is subject to constitutional review which, as we describe later, includes review for 'legality'. Whether they are also subject to review on other grounds need not now be decided.

57 The principle of legality is trenchantly dealt with in paragraph 58 of the *Fedsure* judgment:

[58] It seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. At least in this sense, then, the principle of legality is implied within the terms of the interim Constitution. Whether the principle of the rule of law has

⁵ *Democratic Alliance v Minister of International Relations and Cooperation and Others* 2017 (3) SA 212 (GP), para [54]

⁶ Section 229(2)(b) of the Constitution

⁷ *Fedsure Life Assurance Ltd & Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC) at para [26]

greater content than the principle of legality is not necessary for us to decide here. We need merely hold that fundamental to the interim Constitution is a principle of legality.

58 The principles set out above were restated by Chaskalson P in *Pharmaceutical Manufacturers Association of SA and Another*⁸ as follows:

[17] In *Fedsure* this Court held that the doctrine of legality, an incident of the rule of law, was an implied provision of the interim Constitution .. This was reaffirmed in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* (Sarfu 3), where this Court outlined different ways in which the exercise of public power is regulated by the Constitution. One of the constitutional controls referred to is that flowing from the doctrine of legality. Although *Fedsure* was decided under the interim Constitution, the decision is applicable to the exercise of public power under the 1996 Constitution, which in specific terms now declares that the rule of law is one of the foundational values of the Constitution.

PUBLIC PARTICIPATION

59 The CoJ accepted that it was obliged by law to comply with the requirements of section 4 of the Rates Act adopting its rates policies. It contended that it had done so.

60 The applicants referred to a number of authorities in regard to the duty upon municipalities to engage in public participation.⁹ In *Matatiele Municipality and Others v President of the RSA and Others* (No 2)¹⁰ the court held:

[68] The nature and the degree of public participation that is reasonable in a given

⁸ *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) at para [17]

⁹ *Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality* 2014 (5) SA 256 (ECP), *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (6) SA 416 (CC), *Kungwini Local Municipality v Silver Lakes Home Owners Association and Another* 2008 (6) SA 187 (SCA)

¹⁰ 2007 (6) SA 477 (CC)

case will depend on a number of factors. These include the nature and the importance of the legislation and the intensity of its impact on the public. The more discrete and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the Legislature to be astute to ensure that the potentially affected section of the population is given a reasonable opportunity to have a say....

61 In *Doctors for Life International v Speaker of the National Assembly*¹¹ the court held:

[115] The participation by the public on a continuous basis provides vitality to the functioning of representative democracy. It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government and become familiar with the laws as they are made. It enhances the civic dignity of those who participate by enabling their voices to be heard and taken account of. It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice. It strengthens the legitimacy of legislation in the eyes of the people. Finally, because of its open and public character, it acts as a counterweight to secret lobbying and influence-peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist.

62 In my view the community participation process in relation to the re-categorisation of properties zoned for 'education' and in particular, in relation to dispensing with 'education' as a rateable category, was fundamentally flawed. My finding in this regard is based on the following considerations:

62.1 In the so-called first phase of consultation, the CoJ published a document stating that 'education', as it appeared in the rates policy for 2021/22, would be retained as a category and that the rating ratios would remain the same. This

¹¹ *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (6) SA 416 (CC)

lulled the entities and institutions that would have been concerned about the removal of this category into a false sense of security that the *status quo* would be maintained.

62.2 The notices that were published on 30 March 2022 in various newspapers, focused on the 2022/27 Draft IDP and Draft 2022/23 - 2024/25 Budget and proposed tariffs. No mention was made of the draft rates policy for 2022/23. The public's attention was not drawn to the fact that the adoption of a new rates policy was an integral part of the process for the approval of the forthcoming budget.

62.3 The media notices, as required by section 4(2)(b), did not state that the draft rates policy has been prepared for submission to the council and was available for public inspection at the municipality's head and satellite offices and at libraries (during office hours) and on the CoJ's website.

62.4 The mere mention in the notices of proposed tariffs and budget tariffs, in my view, was not sufficient to draw the public's attention to the significant changes that had been proposed in the draft rates policy for 2022/23 in relation to the re-categorisation of properties zoned for educational use. This criticism also applies to the notice that was published on CoJ's website.

62.5 The targeted stakeholder engagement by means of virtual and hybrid meetings was inadequate. The meetings were stated to be in respect of the 2022/23 - 2022/27, Draft five-year Integrated Development Plan (LDP) and the Medium-Term Budget and Tariffs. No mention whatsoever was made of the draft rates policy for 2022/23 and CoJ's intention to discard 'education' as a category and reassign properties zoned for educational use. No documentation was disclosed in the proceedings, indicating that CoJ had drawn this issue to the attention of the stakeholders in the virtual and hybrid meetings.

62.6 The media release in relation to the stakeholder meetings in February and

March 2022 was perfunctory. The list of targeted stakeholders,¹² in itself, indicates a failure to engage the entities most affected by the re-assignment of properties zoned and used for educational purposes.

62.7 The notification on the IIE's ratepayers' statement that property rates would be reviewed did not alert the affected ratepayers to the impending changes to the CoJ's rates policy. The rates statements are a direct means by which the CoJ can communicate impending changes with ratepayers. The CoJ overlooked this method of alerting ratepayers to important policy changes.

63 Crucially, there was no evidence of the physical display of the draft rates policy for a period of 30 days at CoJ's head and satellite offices and at libraries, as required in terms of section 4(2)(a).

64 The issues relating to the re-assignment of properties under new categories in terms of section 8 were discrete and identifiable. Inevitably, the decisions taken and implemented by CoJ resulted in independent schools facing massive increases in their rates. Changes in rating were also applied to properties falling under the category 'education' that were reassigned under the category 'public service purpose'. The issue of a rebate on rates for independent schools was never brought to the public's attention.

65 On 29 June 2022 Afriforum's attorney addressed a letter to Minister of Basic Education in relation to the 2022/23 Rates Policy. A prompt response was received from the Director General on 5 July 2022 who drew attention to the fact that his department:

65.1 had not been consulted by CoJ when it decided to impose these tariffs.

65.2 was concerned by the tariffs seeing that schools are required to pay the same tariffs as that which is imposed on farming and this would cause financial hardship for schools.

65.3 CoJ adopted its new rates policy despite the fact that the Department of

¹² Women, Academia, Youth, Property, PWD, Business, LGBTQIA+ Faith based Organisations

Basic Education was engaged in ongoing discussions with the South African Local Government Association to classify all schools as not for profit organisations in order for schools to pay less tariffs than what businesses are currently paying.

65.4 The Department of Basic Education would request the Gauteng Education Department to engage with the CoJ in order to raise concerns regarding the tariffs for schools as indicated in the new rates policy.

66 The Gauteng Education Department, having been cited in Afriforum and IIE's application, is conspicuously silent on the increase in rates in respect of properties where schooling is conducted. In my view, it was vital that this department be consulted and provide input in relation to the draft 2022/23 rates policy insofar as education and properties used for education were concerned.

67 The implementation of section 8 under the amended Rates Act on 1 July 2022 was a turning point, after the seven-year respite afforded to municipalities to make the changes required in terms of section 93B. In my view, more could and should have been done to bring the proposed changes to the attention of the ratepayers involved in education. Section 4(a) and (b) of the Rating Act should have been strictly complied with. The public participation process fell so far short of what was required, that on the grounds of procedural irregularities, the applicants have established a proper basis for the relief they seek.

PRESSURE EXERTED BY THE MINISTER

68 The applicants conceded that in terms of PAJA¹³ the executive powers and functions of a municipal council are expressly excluded from the definition of 'administrative action'. They accordingly rely on the principle of legality to set aside the 2022/23 Rates Policy and the By-law.

69 The Minister's reason for insisting that the category 'education' be removed was

¹³ The Promotion of Administrative Justice Act, 3 of 2000

that there was no need to have 'education' as a separate rating category. However, the Minister did not take into consideration educational institutions that did not fall under the category 'public service purpose' and that did not qualify as public benefit organisations.¹⁴ The conclusion that the Minister reached was based on an incomplete assessment of the facts and circumstances relating to properties used for educational purposes.

70 It appears that the CoJ, having been told by the Minister in March 2022 that the category 'education' must be dispensed with, needed to find a category under which to place independent privately owned schools. There is no indication from the minutes of the Mayoral committee meeting (or indeed from any other documents placed before the court), that the assignment of privately owned independent schools under the category of business and commercial was ever discussed or properly considered. No reasons were given for the reassignment and there was no evidence of engagement with the public as to how these educational institutions should be dealt with.

71 Furthermore, it was never contended by the Minister or the CoJ at the time the ratings policy for 2022/23 was being considered, that maintaining the category 'education' would circumvent the provisions of section 8(2). This was raised *ex post facto* by the CoJ's and the Minister in their answering affidavits filed in opposition to relief sought.

72 In my view, the evidence shows that CoJ was compelled to discard 'education' as a separate rating category at the Minister's insistence. This is confirmed in paragraph 84 of the CoJ's answering affidavit filed in the IIE application where it is stated that at the meeting of 2 March 2022, officials made it clear to the CoJ that CoGTA would not accept 'education' as a rating category. The Minister's position was subsequently confirmed in a letter from COGTA dated 24 March 2022 wherein the following was stated:

Your municipality is advised to take note of the findings and/or observations that are

¹⁴ There is no definition of a public benefit organisation in the Rates Act. 'Specified public benefit activity' applies to activities listed in items 1 to 4 of Part 1 of the Ninth Schedule to the Income Tax Act (referred to in section 30). Public benefit organisations are defined in section 30.

referred to in this correspondence and take the necessary actions to rectify the areas of non-compliance or observations made and to ensure that the municipality fully complies with the provisions of the Act where findings have been made. The municipality is expected to make the necessary refinements such that in the 2022/23 municipal financial year, these matters are corrected.

DETERMINATION OF ADDITIONAL CATEGORIES

Does the Minister have the power to prescribe that the CoJ may not determine ‘education’ as a separate rating category?

73 The rate that a property owner is required to pay is determined by the tariff imposed and the rating ratio. A ‘tariff’ is not defined or referred to in the Rates Act. However, the setting of tariffs is implicit in section 11(1).¹⁵ Both the rating tariff and rating ratio are part of the process of determining the Rands and cents amount that ratepayers are ultimately required to pay.

74 The power to determine additional categories is given expressly to municipalities in terms of section 8(3). This is in contrast to section 8(4), where in order to create a sub-category, a municipality must apply to the Minister in writing for authorisation and must show good cause.

75 In my view, section 8(3) does not give the Minister the power to prescribe to the CoJ what categories it can or cannot create. This is clear from a plain reading of section 8(3). This interpretation is also supported by the Constitution where it is expressly provided that the functions relating to the imposition of rates may not be delegated by municipal council.¹⁶

76 In *Catholic Bishops Publishing Co v State President and Another* 1990 (1) SA 849 (A) at p863, Corbett CJ stated this in relation to the delegation of powers:

¹⁵ 11(1)(a) states that a rate levied by a municipality on property must be an amount in the Rand on the market value of the property

¹⁶ Sections 160(2)(c) read with 229(1)(a) of the Constitution

Such an incompetent subdelegation may occur where the repository of the legislative power, the *delegatus*, in the purported exercise of that power (say, by regulation) confers upon another an unlimited discretion to deal with the matter which is the subject of the regulation. In such a case the effect of the regulation is to make such other person, and not the *delegatus*, the legislator on the matter with which the regulation seeks to deal. It amounts to an abdication by the *delegatus* of his power to legislate. This, in general, the *delegatus* cannot do, unless authorised thereto by the empowering statute.

77 There is nothing in the empowering legislation to suggest that the CoJ can delegate the power to create additional categories under section 8(3) to the Minister. The Minister was therefore not entitled to direct the CoJ to remove ‘education’ as a rateable category, and the CoJ’s compliance with the Minister’s direction in this regard was a fundamental flaw in the process leading to the formulation of the 2022/23 Rates Policy and the gazetting of the Rates By-law.

Would ‘education’ as a separate rating category circumvent the provisions of section 8(2)?

78 Section 8 contemplates for rating purposes, that properties will be categorised according to their permitted and/or actual use. However, sections 8(3) and (4) recognise that there may be properties that, according to use, cannot properly or appropriately be assigned to one of the categories established in terms of section 8(2). In these instances, the municipality can create an additional category provided that it does not result in properties that would ordinarily be assigned in terms of section 8(2), being placed in the newly created category.

79 The Minister and CoJ’s view that the category ‘education’ would circumvent the category “business and commercial” appears to be based on the premise that private independent schools carry on business for commercial gain.

80 In my view, however, it does not follow that properties zoned for education that do not qualify under ‘public service purpose’ or ‘specified benefit activity’, must necessarily be assigned under ‘business and commercial’. Even if profitable educational

activities are conducted on these properties, they are distinguished by the educational nature of the use and the fact that there is a discernable and recognised social benefit to such education.

81 The state recognises the importance of private independent schools and the fact they complement public schools. Independent schools are required to be registered and are regulated in terms of sections 46 to 50 of the South African Schools Act, 84 of 1996. Section 29(3) of the Constitution preserves the right to establish and maintain independent educational institutions and such institutions are not precluded from obtaining state subsidies. It has been recognised that they play a role in providing basic education as envisaged in section 29(1)(a) of the Constitution. *In AB and Another v Pridwin Preparatory School* ¹⁷ the Constitutional Court held the following:

[81] To find that only the state provides a basic education, and that only the state bears the burden of providing a basic education, is to misconstrue what this court has held in *Juma Masjid and Kwa-Zulu Natal Joint Liaison Committee*.The notion that the School, because it is arguably superior and operates independently of the state, does not provide basic education, and therefore owes no constitutional duties of fair consideration to the children for whose education the parents have contracted with it, errs in the same way. 82 It should also be considered that public schools may not necessarily be conducted on a property owned by an organ of state.¹⁸ If such an institution does not qualify as a public benefit organisation (in terms of the Income Tax Act), how is such property to be categorised for rating purposes?

83 In my view, the legislation applicable to property rates contemplates a flexible and practical approach to the categorisation of properties for rating purposes. This is demonstrated in practice by the fact that CoJ saw fit to determine nine new categories in the 2022/23 Rates Policy. The view expressed by the Minister and CoJ that the establishment of 'education' as a category would circumvent section 8(2), is narrow and restrictive. Such approach would unduly hamper municipalities in formulating a fair and equitable rates policy and in fulfilling its general mandate to its citizens.

¹⁷ *AB and Another v Pridwin Preparatory School and Others* 2020 (5) SA 327 (CC) [80] and [164]

¹⁸ The South African Schools Act 84 of 1996 draws a distinction in section 12 and 13 between public schools and public schools conducted on State property

84 I come to the conclusion that the establishment of 'education' as a separate rating category would not circumvent section 8(2). This is a further basis for setting aside the portions of the 2022/23 Rates Policy and Rates By-laws complained about.

85 It must however, be emphasised that the CoJ has the power and competence to decide how properties used for educational purposes should be categorised or rated. These are matters that are governed by legislation and they fall within the purview of the CoJ. They are not for the court to decide.

RELIEF

86 All the applicants have sought relief setting aside those aspects of the rates policy 2022/23 and the Rates By-law that pertain to the rates levied by CoJ on privately owned properties zoned for educational use.

87 The IIE and Afriforum also seek relief pertaining to the determination of 'education' as a separate rating category. Curro did not seek any relief in this regard.

88 In my view all three applications raise constitutional issues in that:

88.1 The disputes concern the exercise of the powers of a municipality prescribed by the Constitution.

88.2 The issues impact on the objects of municipalities as set out in section 152(1) of the Constitution, *inter alia*, to ensure the provision of sustainable services to communities, promote social and economic development and encourage community involvement in matters of local government.

88.3 The applicants allege that the right to basic education as envisaged in section 29 of the Bill of Rights is prejudiced.

89 Section 172 of the Constitution provides as follows:

Powers of courts in constitutional matters

(1) When deciding a constitutional matter within its power, a court -

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and

(b) may make any order that is just and equitable, including-

(i) an order limiting the retrospective effect of the declaration of invalidity; and

(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.

(2)(a) The Supreme Court of Appeal, the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

(b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.

90 I find for the reasons and to the extent set out in my judgment that the conduct of the CoJ complained about by the applicants was inconsistent with the Constitution. The relief reflected in my order of 28 February 2023, accords with the court's duty in terms of section 172 of the Constitution.

91 The IIE and Afriforum, in addition, sought declaratory relief in relation to the category 'business and commercial'. The grant of declaratory relief lies within the discretion of the court. The issues must not be merely abstract, academic or

hypothetical.¹⁹

92 The CoJ will have an opportunity afresh to consider how properties used for education should be categorised and rated. However, the controversy in relation to the determination of 'education' as a separate rating category was an integral part of the dispute between the parties. The issues were fully canvassed on the papers and the applicants cited all the parties who have an interest in the dispute. I accordingly considered it necessary to deal with this issue and for the court to exercise its discretion in favour of the grant of declaratory relief.

COSTS

93 The applicants are entitled to their costs. Curro submitted that because CoJ employed three counsel, it should similarly be entitled to the costs of three counsel. However, the CoJ was faced with three separate applications and in these circumstances, the employment of three counsel was reasonable. The same does not apply to Curro and an award of the costs of two counsel is appropriate.

94 Afriforum instituted urgent proceedings on 8 July 2022 and the IIE did the same on 12 July 2022. The CoJ agreed to a consent order in the Afriforum matter on 27 July 2022. According to this order, it would not take any credit control action in relation to any increased rates contained in its 2022/23 Rates Policy in respect of any private or public educational institution within its jurisdiction. The consent order appears to have been in place by the time that Curro brought its urgent application.

95 None of the parties sent proper letters of demand to the CoJ before instituting urgent applications. The urgency arose from the increase in property rates and the knock-on effect that this would have on learners. This was not shown to have taken effect. All parties appeared to rely on an urgent need for certainty. In my view, the urgency was largely self-created. Accordingly, each party should pay their own costs in relation to the bringing of the urgent applications.

¹⁹ J T Publishing (Pty) Ltd v Minister of Safety & Security 1997 (3) SA 514 (CC) at para 15

96 In all the circumstances, I confirm the order granted on 28 February 2023 in the following terms:

1 The property rates policy, municipal property rates by-law, annual budget and supplemented valuation roll set out below are declared to be unlawful and are set aside only insofar as they relate to the rates levied by the City of Johannesburg Metropolitan Municipality (the “City”) on properties used for education (whether by independent, private or public educational institutions) that have been included in the categories ‘business and commercial’ or ‘public service purpose’ in terms of sections 8(2)(c) and 8(2)(f) of the Local Government: Municipal Property Rates Act 6 of 2004) (“the Rates Act”):

1.1 The City of Johannesburg Metropolitan Municipality’s Property Rates Policy for 2022/2023;

1.2 The City of Johannesburg Municipal Property Rates By-law 2022/23 adopted by the City on 27 May 2022 and published in the Provincial Gazette on 29 June 2022;

1.2 The City’s annual budget for 2022/2023;

1.4 The supplementation of the City’s valuation roll for 2022/2023.

2 The decision of the City in its 2022/2023 Rates Policy, rating properties owned and/or used by public and independent educational institutions (whether used privately, for a ‘public service purpose’ or ‘specified public benefit activities’), with a ratio exceeding 1:0.25 and a rate tariff exceeding 0.002155, is declared unlawful and is set aside with effect from 1 July 2022.

3 Pending the City’s adoption of its rates policy, budget, municipal property rates by-law and supplementary valuation roll for the 2023/2024 financial year, the City is directed in respect of its property rates policy for the 2022/2023 financial year, to levy and collect rates on the properties referred to in paragraphs 1 and 2 above, at the same rate and on the same tariff imposed in

the 2021/2022 financial year, together with an inflationary increase of 4,85%.

4 Save as aforesaid, the City's Property Rates Policy 2022/2023, annual budget for 2022/2023, Municipal Property Rates By-Law 2022/2023 (promulgated on 29 June 2022), Amendment of Property Rates and Tariff of Charges and supplementary valuation roll for 2022/23, are of full force and effect.

5 It is declared that the first respondent is not precluded from determining the category of 'education' in terms of section 8(3) of the Rates Act in prospective municipal property rates policies on the grounds, only, that it would circumvent any of the categories set out in section 8(2) of the Rates Act.

6 In the matters under case number 22/24174 (Afriforum NPC as applicant) and case number 22/8831 (Curro Holdings Ltd as applicant) the following costs order shall apply:

6.1 Each party shall pay their own costs in respect of the urgent applications brought by the applicants in or about June and July 2022 against the first and further respondents.

6.2 Save as aforesaid, the first and second respondent are ordered to pay the applicants' costs (including the costs of the hearing on 24 and 25 November 2022), such costs to include the costs of two counsel.

7 In the matter under case number 22/24372 (Independent Institute of Education (Pty) Ltd) the following costs order shall apply:

7.1 Each party shall pay their own costs in respect of the urgent applications brought by the applicant in or about June and July 2022 against the first and further respondents.

7.2 Save as aforesaid, the first, second and third respondent are ordered to pay the applicant's costs (including the costs of the hearing on 24 and 25 November 2022), jointly and severally, the one paying the others to be absolved,

such costs to include the costs of two counsel.

**JUDGE S KUNY
JUDGE OF THE HIGH COURT
SOUTH GAUTENG DIVISION**

Date of hearing: 25, 26 November and 13, 14 February 2023

Date of Order: 28 February 2023

Date Reasons provided: 13 March 2023

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