

REPUBLIC OF SOUTH AFRICA



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

Reportable: Yes
Of Interest to other Judges: Yes

10 November 2025 Vally J

CASE NO: 2024-129928

In the matter between

**THE INDEPENDENT INSTITUTE OF
EDUCATION (PTY) LTD**

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 EXECUTIVE COUNCIL FOR CO-
OPERATIVE GOVERNANCE AND TRADITIONAL
AFFAIRS: GAUTENG PROVINCE**

Fifth Respondent

**MEMBER OF EXECUTIVE COUNCIL FOR
EDUCATION: GAUTENG PROVINCE**

Sixth Respondent

**COMMISSIONER OF THE SOUTH AFRICAN
REVENUE SERVICES**

Seventh Respondent

Judgment

Vally J

Introduction

[1] This case is about the proper categorisation of properties owned by the applicant, the Independent Institute of Education (the IIE), for purposes of determining the rates that the applicant should be paying to the first respondent, the City of Johannesburg Metropolitan Municipality (the City). The City has levied rates on the properties which the IIE says are unconstitutional and unlawful. At the centre of the dispute lies the Local Government: Municipal Property Rates Act 6 of 2004 (Rates Act). The IIE and the City cannot agree on the interpretation of some of its provisions and the application thereof. This is the third dispute on this issue between the parties that has entered the portal of the court.

[2] The IIE is a private for-profit company that owns properties within the jurisdiction of the City. It offers private educational services across primary and secondary schools, colleges and universities at the properties.

The Rates Act

[3] Rates are a property tax levied by the City in terms of a power conferred upon it by s 229 of the Constitution and the Rates Act. The power is subject to compliance with s 229 or any other provision of the Constitution, the Rates Act and the policy adopted by the municipality in terms of s 3 of the Rates Act.

[4] The City has in accordance with the Rates Act established categories for determining the rates to be charged to properties. The rates charged to a particular property are dependent on the category the property falls under. Section 3(1) compels a municipality such as the City to adopt a policy for the levying of rates on rateable properties. Section 3(3) requires the municipality to 'treat persons liable for rates equitably' and to determine the criteria to be applied by the municipality if it 'levies different rates for different categories of owners of properties', 'exempts a specific category of owners of properties, or the owners of a specific category of properties',

or 'increases or decreases' rates,¹ grants rebates to a 'specific category of owners of property or owners of specific category or properties'.

[5] Section 8 of the Rates Act deals with the issue of differential rates. Section 8(1) empowers a municipality to levy different rates for different categories of rateable properties. But the differentials must be determined on either 'the use of the property' (s 8(1)(a)), the 'permitted use of the property' (s 8(1)(b)) or a combination of the use and the permitted use of the property (s 8(1)(c)). In addition, s 8(2) sets out ten compulsory categories that must be adopted by all municipalities. Section 8(3) empowers the municipality to determine additional categories provided that the additional categories do 'not circumvent the categories of rateable property that must be determined in terms of subsection (2)'. Section 8(4) allows for a municipality to 'on good cause' seek to create a sub-category but must apply to the Minister for authorisation to create the sub-category.²

¹ Section 3(3) reads:

'3. Adoption and contents of rates policy

(1) The council of a municipality must adopt a policy consistent with 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.

(3) A rates policy must-

(a) treat persons liable for rates equitably;

(b) determine the criteria to be applied by the municipality if it-

(i) levies different rates for different categories of properties determined in terms of s 8;

(ii) exempts a specific category of owners of properties, or the owners of a specific category of properties, from payment of a rate on their properties

(iii) grants to a specific category of owners of properties, or to the owners of a specific category of properties, a rebate on or a reduction in the rate payable in respect of their properties; or

(iv) increases or decreases rates

(c) determine, or provide criteria for the determination of -

(i) categories of properties for the purpose contemplated in paragraph (b)(i); and

(ii) of levying different rates as categories of owners of properties, or categories of properties, for the purpose of granting exemptions, rebates and reductions as contemplated in paragraph (b)(ii) or (iii).

² Section 8 of the Rates Act reads:

'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, which may include categories 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;

[6] The Local Government: Municipal Finance Management Act 56 of 2003, obliges the legislative authority of the City to establish and implement a rates policy.³ Once the rates policy is adopted it must be promulgated into a by-law each year as the rates levied change from year to year.

The litigation history

[7] On 6 April 2021 the City's manager wrote a letter to the Minister of Co-operative Governance and Traditional Affairs (COGTA) informing her that the City, invoking s 8(3) of the Rates Act, had decided to create new categories, including one designated 'education', catering for public and private educational institutions. The rates to be levied on properties falling within this category would be one-quarter of the rates levied upon residential properties. The Minister responded on 10 December 2021, stating that some of the new categories did not meet the requirements to be determined as additional categories. The intended category of 'education' was not necessary as the City's 2021/2022 rates policy had already identified independent primary and secondary schools registered with the Gauteng Department of Education, together with colleges and universities established under the Higher Education Act, as institutions that engaged in 'specified public benefit activity' in the Rates Act. As a

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- (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.
- (b) Such application must –
 - (i) be accompanied by a motivation for such sub-categorisation;
 - (ii) demonstrate that such sub-categorisation is not in contravention of s 19; and
 - (iii) reach the Minister at least 15 months before the start of the municipal financial year in which the municipality envisages levying a rate on such sub-category property.'

³ Section 62(1)(f)(ii) thereof.

result, the properties should be categorised as 'public benefit organisation properties'. The same view was expressed in a later letter sent by the Acting Deputy Director-General of COGTA to the City's manager. This view, it was said, is consonant with COGTA's policy.

[8] Notwithstanding the Minister's view, during February 2022 the City informed the public that it would retain the category of 'education', which would be levied at the rate of twenty-five percent of the rates applicable to residential properties. This it did through a power-point presentation contained on its website.

[9] However, when it came to passing the by-law, the City decided to dispense with the category 'education' altogether. This is in line with the view of the Minister and the Acting Director-General of COGTA. It decided that the properties that would have fallen into this category would now be placed into one of the other categories already designated in s 8(2). In the case of IIE's properties it decided that these would fall into the category 'business and commercial'. The reasoning informing this decision is dealt with below. The owners of these properties were advised that the properties qualify for a rebate of up to 25%, and that they should apply for a rebate. A by-law to this effect was promulgated on 27 May 2022.⁴ It became the 2022-2023 by-law. The IIE and two other parties challenged the by-law in this court. A key-part of their challenge was directed at the decision to remove the category 'education' altogether.

[10] This court, per Kuny J, came to the conclusion that the Minister 'compelled' the City to dispense with the category 'education'.⁵ This, the court found to be outside (*ultra vires*) the powers of the Minister.⁶ It found further that the Minister was wrong in holding that the City was barred by law from establishing a category 'education'.⁷ At the same time it concluded that the City:

⁴ The by-law proclaimed, amongst others, that '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.'

⁵ *Afriforum NPC v The Council of the City of Johannesburg Metropolitan Municipality and Others* (Case No 22/24174); *The Independent Institute of Education (Pty) Ltd and Another v The City of Johannesburg Metropolitan Municipality and Others* (Case No 22/24372); *Curro Holdings Ltd v The City of Johannesburg Metropolitan Municipality and Others* (Case No 22.8831) (13 March 2023) para 72.

⁶ *Id.* para 77.

⁷ *Id.* para 83.

'... 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 [City]. They are not for the court to decide.'⁸

[11] These findings resulted in the court issuing several orders, two of them being, (a) the setting aside of the portion of the by-law categorising properties used for educational purposes as either 'business and commercial' or 'public service purpose' and, (b) ordering that these properties be rated at the same rate (0.25% of residential properties) as they were in the 2021-2022 years.⁹ Paragraph 5 of the the fifth order reads:

'It is declared that the [City] is not precluded from determining the category 'education' in terms of s 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.'¹⁰

[12] The underlining reason for the order is that the City is entitled to retain the category 'education', and that the City was wrong to follow the instruction of the Minister by dispensing with the category.¹¹ Thus, the City should not place the IIE's properties in the category 'business and commercial'. Notwithstanding this reasoning the court, as mentioned above, also recognised the right of the City to decide 'how properties used for educational purposes should be categorised or rated.'¹²

[13] The City lodged an appeal against the fifth order only. It takes the view that as the by-law only lasts for a year there is no purpose in appealing any order that has terminated by effluxion of time. However, the fifth order being a general declarator survives the by-law and has an impact on future by-laws. Hence the restricted appeal.

[14] A new by-law was promulgated in June 2023. In terms of this by-law properties used by educational institutions that are privately owned and provide private educational services on the property are placed in the category 'business and commercial', and the properties owned by the state which provide public educational services are placed in the category 'public service purpose'. The 2023-2024 by-law

⁸ Id, para 85.

⁹ Id. paras 1 and 3 of the order.

¹⁰ Id. para 5 of the order.

¹¹ Id paras 68 – 72.

¹² Id para 85 of the judgment.

has been challenged in this court in three different applications. Those matters are set down for February 2026.

[15] In the meantime, on 24 July 2024, the 2024-2025 by-law was promulgated. The rates policy on which it was based was made known as early as 22 April 2024. It provides for nine categories for the rating of properties, 'business and commercial' being one of them. The by-law in relevant part reads:

'3.4.1 Business and Commercial Property means:

3.4.1.1 Property used for the activity of buying, selling, or trading in commodities or services and includes any office or other accommodation on the same property, the use of which is incidental to such activity.

3.4.1.2 property used for the object of the acquisition of gain or profit by a natural or juristic person and the revenue which it derived thereby goes to the proprietary members as the proprietors of the concern.

3.4.2 Unless it qualifies in terms of another category in terms of this policy a property which is used for business or commercial purpose falls within this category, and includes property:

3.4.2.1 ...

3.4.2.6 used for the provision of education;'

[16] This by-law forms the subject matter of this case. Four months after its promulgation, and seven months after the rates policy on which it is based was published, the IIE launched the present application. The City complains that this constitutes unreasonable delay, which is prejudicial to it and therefore the IIE should be non-suited. On the conclusion I reach on the merits this is unnecessary.

IIE's case

[17] The IIE claims that the 2024-2025 by-law is unconstitutional, alternatively unlawful because (i) it levies a rate on the income of property owners contrary to section 229 of the Constitution; (ii) is contrary to the provisions of s 8(1) of the Act as it categorises the IIE properties on a basis other than the 'use' or 'permitted use' of the properties; (iii) it purports to create an additional category of 'business and commercial properties' contrary to s 8(3) of the Rates Act; and, (iv) it sub-categorises the IIE properties under the category 'business and commercial' contrary to s 8(4) of the Rates Act. In more than one respect the IIE repeats what it said in the previous applications. One of the issues in the present case is whether the City should have

retained the category 'education'. The IIE says that the Rates Act does not prevent the City from introducing a special category titled 'education'.

The City's rebuttal

[18] The City says that a category titled 'education' will impermissibly offend section 8(3) of the Rates Act. The City contends that categories established in sub paragraphs (c), (f) or (h) of 8(2) of the Rates Act¹³ sufficiently cater for properties used for education purposes. It says that properties used for purposes of providing education can be accommodated under one of the following categories: 'business and commercial'; 'public benefit organisation'; or 'public service purposes'. The City maintains that it lawfully and appropriately distinguishes between properties used by privately-owned educational institutions and properties 'owned and used by an organ of state'. Whether the City is correct or not is a matter that should be left to the Supreme Court of Appeal (SCA) to determine, as this is the very issue that is presently the subject of the appeal pending in the SCA. I enquired from the parties whether it would not be prudent for this court to await the outcome from the SCA before it determines the case. Both the IIE and the City took the view that such an approach would not be appropriate. They both strongly argued that the present dispute is about the 2024-2025 by-law, and that it should be finalised in this court. One of the main issues in this case is whether clauses 3.4.1 and 3.4.2 violate the Constitution or the Rates Act. And, of course, it is important to bear in mind that this matter must be determined based on the specific facts, circumstances, and arguments presented in this case, which may differ from those in the other cases.

Is the City impermissibly levying an income tax on IIE?

[19] Section 2(1) of the Rates Act only empowers the City to levy rates on property within its domain. The law does not allow the City to take into account who owns a property for determining which category the particular property should fall under. The law only allows the City to take into account the use of the property, or the permitted use of the property, or both when authorised when deciding which category the property should be placed in. The payment of income tax is an obligation imposed upon a defined taxpayer in the Income Tax Act 8 of 1962 (Tax Act). Income tax is a tax payable by the taxpayer for income it earned. The three concepts that are particularly

¹³ See n 2.

relevant for the determination of income tax are 'Gross Income', 'Income' and 'Taxable Income'.¹⁴ The law does not allow the City to levy an income tax on any of its residents. The issue here is whether the classification of the IIE properties by the City as 'business and commercial' is, in essence, an income tax imposed by the City

[20] Before taking the decision on the placing of the IIE properties into a particular category in accordance with the Rates Act, the City did not ask the IIE to submit its income statement indicating how much money it had earned. The decision was taken independent of the income, gross income or the taxable income earned by the IIE. There is no correlation between the amount to be paid by the IIE for rates on its properties and the income earned by it. That the City categorised the properties as 'business and commercial' has nothing to do with the income generated by the IIE. It follows that the IIE's assertion that the City is impermissibly imposing an income tax upon it is without merit.

Has the City contravened s 8(1) of the Rates Act?

[21] The IIE contends that categorising its properties as 'business and commercial' contravenes s 8(1) of the Rates Act as it is not based on the use, permitted use or a combination of use and permitted use of the properties. As noted above s 8(1) of the Rates Act is permissive. It allows the City to impose differential rates on properties under its domain. The differential rates may include categories which are to be determined according to the use of the property, the permitted use of the property or a combination of the use and the permitted use of the property.

[22] The IIE's case is that as its properties are used for educational purposes, the City, by rating them as 'business and commercial' has contravened s 8(1) in that it has failed to rate its properties on their use. Its properties are used as schools, colleges and universities. They are zoned as places of instruction in accordance with the City's Land Use Management Scheme. They are not, claims the IIE, used as business or commercial properties. The claim as I show below is clearly incorrect.

[23] The City does not deny nor ignore the fact that the IIE properties provide educational services. It regards all properties used for, or permitted to be used for education, as properties that would fall in either of the three categories, 'business and

¹⁴ Section 1 of the Tax Act.

commercial', 'public benefit organisation' or 'public service purposes' found in s 8 of the Rates Act. As the IIE's properties cannot fall into the latter two categories, it may fall into the first category. Noting that education is provided at the properties, the City maintains that unlike the education provided by organs of state, the education provided at the IIE properties is essentially sold to private persons. Put differently, unlike education provided by a state entity, the education provided at the IIE properties is a business conducted for the benefit of its shareholders. The organ of state's properties are used to provide education for the sake of educating the populace in compliance with its constitutional duties as set out in ss 29(1) and (2) of the Constitution. Conversely, the IIE's properties are used to carry out its business activities. The IIE's primary purpose is not the provision of education but the advancement of its business interests.

[24] Viewed from an economic perspective it means this. In a socio-economic system that allows for a private enterprise to operate and thrive, education can be a commodity – also referred to as a 'good' in some economic textbooks - or a service that can be bought and sold at a price. The IIE is a private enterprise that sells education at a price to whoever qualifies to purchase it. It provides this commodity or service on the properties that fall within the domain of the City. It uses or is permitted to use these properties for the sale of this specific commodity or service. In the parlance of the economists, the land on which it carries out its business activities is one of its 'factors of production'.¹⁵

[25] It is in this context that the definition of 'business and commercial property' in the Rates Act must be understood. Clauses 3.4.1 and 3.4.2 relate to this factual position of the IIE's properties. Clause 3.4.1 speaks of the 'activity of buying, selling, or trading in commodities or services and includes any office or other accommodation on the same property, the use of which is incidental to such activity', and of 'property used for the object of the acquisition of gain or profit by a natural or juristic person and the revenue which it derived thereby goes to the proprietary members as the proprietors of the concern.' Clause 3.4.2 recognises that education may be treated as a tradeable commodity bought and sold in the private marketplace. In the circumstances that the City is within its powers as set out in the Rates Act to place the

¹⁵ The four factors of production are land, labour, capital and entrepreneurship.

IIE properties within one of the categories established in terms of s 8(2) of the Rates Act. I therefore do not agree with the IIE's submission that the City contravened s 8(1) of the Rates Act by placing its properties within the 'business and commercial' category.

Has the City created an 'additional' category of 'business and commercial'?

[26] The IIE claims that the City has created an additional category of 'business and commercial' contrary to s 8(3) of the Rates Act. The IIE asserts without any substantiation that the 'business and commercial' category is additional to the ones listed in sub-para (a) to (j) in section 8(2). The claim is difficult to fathom given that s 8(2)(c) specifically establishes the category 'business and commercial properties'. The Rates Act does not define 'business and commercial properties'. Clause 3.4.1 of the by-law does that. Understandably, the definition *per se* is not attacked for being unconstitutional or unlawful. There is nothing constitutionally offensive or unlawful about the definition.

[27] The lack of a definition of the term 'business and commercial' in the Rates Act allowed for the by-law to fill the vacuum. The by-law provides the definition in clause 3.4.1. The definition is grounded in common-sense. It is not one that any sensible person can say is contrary to what is intended by the legislature in establishing the term. Clause 3.4.2 then merely identifies a property that is used for the provision of education as one that may possibly fall into the category 'business and commercial properties'. Clauses 3.4.1 and 3.4.2 are, I hold, consistent with s 8(2) of the Rates Act. In sum, the City was merely giving effect to, as well as acting in terms of, the Rates Act by placing the IIE properties in this category. It cannot be said to have created a new category in contravention of s 8(3) of the Rates Act.

Has the City created a sub-category?

[28] Section 8(4) allows for a municipality to 'on good cause' seek to create a sub-category. But it must apply to the Minister for authorisation to create the sub-category. The IIE says that the City places the applicant's properties under a sub-category of the 'business and commercial' category, contrary to s 8(4) of the Rates Act. Clauses 3.4.1 and 3.4.2 essentially create a sub-category of 'business and commercial' by forcing education within the category as a whole. Its contention is that 'education' can never be regarded as a business or a commercial activity. Places of education are

places of instruction and learning, not commercial activities. The contention forgets that education can be, and in the IIE's case is, a business involving the sale of a good or service called education at a price. The IIE is a trading entity engaging in commercial activities. Its primary business is the selling of educational services. In short, its operations qualify as business or commercial activities, even though they involve learning by its clients or customers, also referred to as 'learners'.

[29] To conclude on this issue: the City clearly did not create a sub-category by promulgating clauses 3.4.1 and 3.4.2 of the by-law. It merely gave content and meaning to the category of 'business and commercial' established in s 8(2)(c).

Has the City acted irrationally by classifying its properties as 'business and commercial'?

[30] The IIE claims that the City acted irrationally by classifying privately owned schools and institutions under the 'business and commercial' category. It relies on the definitions in Schedule 2 of the Spatial Planning Land Use and Management Act 16 of 2013 (SPLUMA) in support of the claim. In terms of those definitions its properties, it claims, do not fall under the 'business and commercial' category. Therefore, the City's decision to ignore SPLUMA's provisions and categorize the properties as such is irrational.

[31] SPLUMA deals with the land use management system. It defines 'business purposes' to mean:

'... normally or otherwise reasonably associated with the use of land for business activities, including shops, offices, showrooms, restaurants or similar businesses other than places of instruction, public garages, builder's yards, scrap yards and industrial activities.'

It defines 'commercial purposes' to mean:

'purposes normally or otherwise reasonably associated with the use of land for distribution centres, wholesale trade, storage warehouses, carriage and transport services, laboratories or computer centres, including offices and other facilities that are subordinate and complementary to such use.'

And it defines 'educational purposes' to mean:

'.... purposes normally or otherwise reasonably associated with the use of land primarily for instruction or teaching purposes including crèches, schools, lecture halls, monasteries, public libraries, art galleries, museums, colleges and universities.'

[32] Relying on these definitions, the IIE claims that the category 'business and commercial' in s 8(2)(c) of the Rates Act can only refer to all the properties falling under the definition 'business purposes' in SPLUMA. Since 'education' is excluded from that definition, it should also be excluded from the category in section 8(2)(c). I am not persuaded by the submission.

[33] The definition of 'educational purposes' in SPLUMA is uncontroversial. But it takes the matter nowhere. The question in this case is not about the definition of 'educational purposes' as presented in SPLUMA. It is about the use or permitted use of the IIE's properties as set out in the Rates Act. And even if it was about land use management – which is what SPLUMA is concerned with - it cannot be said that the land upon which the IIE conducts its business would qualify as land used for 'educational purposes'. According to the definition that land must be used 'primarily' for 'instruction or teaching purposes' to qualify as land used for 'educational purposes'. It is at least arguable that the primary purpose of the IIE is to advance its business interests which is to increase the wealth of its shareholders. Providing education as a commodity is incidental thereto. If this argument were to hold, then even in terms of SPLUMA the land would not be regarded as being used for 'educational purposes'.

[34] Furthermore, the City is empowered to consider a wider range of factors than those contained in SPLUMA when determining the category that best fits its use, permitted use or combination of use and permitted use. Thus, even if by having regard to the definitions in SPLUMA would have resulted in the City placing the property in another category, which as shown above is not a certainty, the City cannot be said to have acted irrationally by looking beyond the definitions contained in SPLUMA.

[35] SPLUMA provides a framework for spatial planning and land use management of the land in the country. It does not deal with the issue of the levying of rates. That is provided for by s 229 of the Constitution and the Rates Act. The contexts of the two legislations are different. They serve different purposes and have different objects. It would therefore be wrong to simply superimpose a definition of the same words used in one legislation on to the other. The point is well illustrated in a decision of the then House of Lords (now UK Supreme Court) where Lord Reid in dealing with the definition of 'owners' in two different legislations observed, '... it does not necessarily follow that,

if Parliament uses the same words in quite different context, they must retain the same meaning.¹⁶ The legislature is free to accord different meanings to the same words used in different statutes. The concept 'business and commercial' in the Rates Act can have a different meaning to the one accorded in SPLUMA.

[36] The City certainly has the power to place the IIE properties into one of the categories listed in s 8(2). The concept 'business and commercial properties' listed in s 8(2)(c) is to be considered by the City when deciding on an appropriate category for a property within its area. The City decided to define the concept – give meaning and content to the term – in clauses 3.4.1 and 3.4.2 of the by-law. It did so by taking the reality of the well-known facts on the ground into account. Thereafter, it decided that the category listed in s 8(2)(c) provided the best fit for the IIE properties. Its decision is captured in clauses 3.4.1 and 3.4.2 of the by-law. It is a perfectly rational decision and whether one agrees with it or not is irrelevant.

[37] It was submitted that the only reason the City decided to place the IIE properties in the category 'business and commercial' is to impose a higher levy on these properties in circumstances where the City is not entitled to these higher levies. I have already addressed the issue of the economic features relating to use of the property to sell the commodity or service 'education', and have already found that it is not irrational to do so. The allegation that the only reason for categorising the IIE's properties as 'business and commercial' is to impose a higher levy is without foundation.

[38] The IIE says that the City's decision is irrational as education is recognised as an essential activity that is central to the development of a child. It draws attention to an *obiter dictum* by the Constitutional Court which says, 'education is central to every child's development [and that] [i]t is the key to a better life'.¹⁷ The categorisation by the City does not detract from nor diminish the force of the *dictum*. However, it does not make the categorisation decision in relation to the IIE's properties irrational. The IIE is a commercial enterprise engaging in a commercial activity in the same way as a retail food enterprise is. The fact that the provision of food is essential for the sustenance and survival of the customers purchasing the food does not mean that the property

¹⁶ *Corporation of London v Cusack-Smith and Others* 1955 1 All ER 1 302 (HL) at 314G

¹⁷ *AB and Another v Pridwin Preparatory School and Others* 2020 (5) SA 327 (CC) para 1.

used by the retail enterprise cannot be categorised as 'business and commercial'. Similarly with a commercial enterprise whose operations involve providing educational services. The classification of a property based on its use, permitted use or a combination of both use and permitted use is not restricted solely by the type of good or service offered at the property. There is nothing in the law prohibiting the City from assessing the use or permitted use on broader criteria than simply on the basis of the kind of goods or services provided thereon.

Conclusion

[39] This dispute at its nucleus is about the rates that should be levied on the IIE properties. The IIE maintains that because it provides education it is entitled to a subsidised rate. The City does not agree. The IIE is asking for the other ratepayers to subsidise its business because it says its business is essential to the functioning of society. Whether it should be so subsidised is not a matter for the court. The City has a fiduciary duty to all its ratepayers not only the IIE. It is a policy issue that should only enter court if it can be genuinely shown that the party entitled to make that decision – the City in this case – acted unconstitutionally or unlawfully. That is not shown in this case. The City does however allow for the IIE to claim a rebate of twenty five percent of the rates applicable to all business and commercial properties. That is a decision for it to make. There is nothing irrational in either classifying the IIE properties as 'business and commercial' or in offering a rebate of twenty-five percent of the applicable rate to IIE.

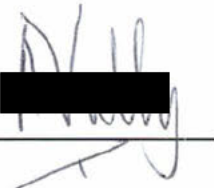
[40] The application is to be dismissed.

Costs

[41] The IIE's motivation for launching the application was to pursue and protect its commercial interests. It did not litigate in the interests of the public. In the circumstances the City is entitled to recover its costs. The parties agreed that costs should include the costs of two counsel to be taxed on the scale C. It is a sensible approach to adopt given the complexity of the case and given its importance to the parties.

Order

[42] The application is dismissed with costs of two counsel on the scale C.


Vally J

Gauteng High Court, Johannesburg.

Date of hearing:

13 October 2025

Date of judgment:

10 November 2025

For the Applicant:

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Instructed by:

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