

SUPREME COURT OF QUEENSLAND

CITATION: *Beechmont Cricket Club Inc v Scenic Rim Regional Council*
[2026] QCA 187

PARTIES: **BEECHMONT CRICKET CLUB INC**
(applicant)
v
SCENIC RIM REGIONAL COUNCIL
(first respondent)
BEECHMONT RECREATION, ARTS & SPORTS ASSOCIATION INC
(second respondent)

FILE NO/S: Appeal No 1796 of 2026
SC No 5457 of 2025

DIVISION: Court of Appeal

PROCEEDING: Application for Leave/Judicial Review

ORIGINATING COURT: Supreme Court at Brisbane – Unreported, 31 March 2026
(Muir J)

DELIVERED ON: Date of Orders: 28 August 2026
Date of Publication of Reasons: 25 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 28 August 2026

JUDGES: Bond JA, Brown JA, Doyle JA

ORDERS: **Date of Orders: 28 August 2026**

- 1. The application for leave to appeal is dismissed.**
- 2. The applicant must pay the first respondent's and second respondent's costs of the application, to be assessed on the standard basis.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – DECISIONS TO WHICH JUDICIAL REVIEW LEGISLATION APPLIES – MEANING OF DECISION – GENERALLY – where the applicant is a local cricket club who use a public park contained within a reserve – where the first respondent (council) is trustee of the reserve land – where the second respondent manages the park under an agreement with the first respondent – where a proposal was tabled at a council meeting that the council enter into a trustee lease agreement with the second respondent for the park – where that proposal was deferred and has not subsequently been considered – where the applicant sought judicial review of the alleged failure of council to make a decision required under

s 57 *Land Act 1994* (Qld) – where council successfully applied for summary dismissal of the review application under s 48 *Judicial Review Act 1991* (Qld) on the basis it had no reasonable basis – whether the primary judge erred in finding there was no failure by council to make a decision reviewable under s 22 *Judicial Review Act* – whether the primary judge erred in granting summary dismissal under s 48 *Judicial Review Act* – whether the primary judge failed to accord procedural fairness to the applicant – whether the primary judge erred in awarding indemnity costs against the applicant

Judicial Review Act 1991 (Qld), s 22, s 48, s 49
Land Act 1994 (Qld), s 57

Amos v Wiltshire [2019] 2 Qd R 232; [\[2018\] QCA 208](#), cited
Australian Competition and Consumer Commission v Colgate-Palmolive Pty Ltd (No 5) (2021) 151 ACSR 26; [2001] FCA 246, considered
Chen v State of Queensland (Queensland Health) [\[2024\] QCA 42](#), cited
Yasmin v Attorney-General (Cth) (2015) 236 FCR 169; [2015] FCAFC 145, cited

COUNSEL: C Edmond in a representative capacity for the applicant
 W D J Macintosh for the first respondent
 B J Forshaw (*sol*) for the second respondent

SOLICITORS: No appearance for the applicant
 King & Company Solicitors for the first respondent
 Mullins Lawyers for the second respondent

- [1] **BOND JA:** I have had the advantage of reading in draft the reasons for judgment of Brown JA, with which I agree. I wish only to make some additional observations.
- [2] The applicant was an incorporated association. By leave, it was represented in this Court and below by its President, who had no legal qualifications. The applicant determined not to seek legal advice from a legal practitioner, because, so its President explained to the primary judge, it could not afford the ongoing expense of legal advice. The applicant, by its President, explained to this Court that the applicant had obtained advice from some form of Generative Artificial Intelligence tool.
- [3] It may be acknowledged that the applicant’s written submissions to this Court were not characterized by some of the deficiencies which often bedevil submissions created by self-represented litigants through the use of Gen AI tools, in that they contained neither hallucinations nor confabulations nor misleading statements of fact. The problem for the applicant was that they failed to grapple with the critical point.
- [4] The applicant’s application below was explicitly founded on s 22 of the *Judicial Review Act*. As Brown JA has explained, reliance on that section meant that the applicant had to demonstrate that the Council was under a duty to make a decision and that the applicant was aggrieved of the Council’s failure to comply with its duty.

- [5] The primary judge's reasons for judgment had explained the problem to the applicant. The applicant refused to accept the correctness of her Honour's decision and sought leave to appeal to this Court. But, unaccountably, the applicant's written submissions to this Court made no attempt to formulate an argument that the proper construction of the *Land Act* or any other enactment imposed a duty on the Council to make any relevant decision. The applicant, by its President, was not able to advance any oral submissions which improved on that position. Accordingly, the applicant's argument failed.
- [6] The applicant's misconceived forays into litigation in the trial division and in this Court have resulted in two failed applications and two sets of adverse costs orders. Whether the applicant's decision to litigate in the manner it did was due to its reliance on advice obtained from a Gen AI tool is unclear. But if it was, then that choice was regrettable.
- [7] For the above reasons, I joined in the making of the orders made at the hearing.
- [8] **BROWN JA:** The applicant sought leave to appeal an order of Muir J made on 31 arch 2026 dismissing its application for statutory review filed 26 November 2025 (review application) under s 48(1) of the *Judicial Review Act 1991* (Qld) (JRA) as there was no reasonable basis for the review application disclosed. Her Honour also ordered the applicant pay the respondents' costs on an indemnity basis.
- [9] The applicant sought to challenge that dismissal and the costs order.
- [10] At the hearing of the application the Court made the following orders:
1. the application for leave to appeal is dismissed; and
 2. the applicant must pay the first respondent's and the second respondent's costs of the application, to be assessed on the standard basis.
- [11] These are my reasons for joining in the orders made.

Background

- [12] The applicant is a local cricket club who, along with other members of the public, use Graceleigh Park at Beechmont within the Scenic Rim local government area. According to a 2010 Land Management Plan, the park is contained in a reserve, the primary use of which is to provide a park and recreational area. The first respondent, the Scenic Rim Regional Council (Council), is the trustee of the reserve land. The second respondent, the Beechmont Recreation, Arts and Sports Association (BRASA) manages the park under a management agreement with the Council dated 10 August 1990.¹ BRASA facilitates the use of Graceleigh Park for a variety of sporting activities as well as family friendly areas.
- [13] Leave was given for the President of the applicant, Mr Edmond, to appear on behalf of the applicant. According to him the cricket club had been unable to obtain legal representation, and they were concerned that a trustee lease may be granted without compliance with the Land Management Plan. Leave was given by the Court on that basis. No objection was taken to his appearance in this matter by the respondents below or on appeal.

¹ ARB Vol 2.1 p 30.

- [14] At a general meeting of the Council held on 26 November 2025, a proposal was tabled requesting the Council consider entering into a 5-year trustee lease agreement with BRASA for the park. That proposal was contained within Item 11.8 of the meeting agenda. Of significance to the present application is that the proposal stated that “[t]he current and proposed uses under the terms of the proposed trustee lease to BRASA, are considered consistent with the purpose of the reserve, and a Land Management Plan is not required, under the terms this[sic] legislation”, namely the *Land Act 1994* (Qld) (Land Act). According to Item 11.8 a draft lease had been provided to BRASA and it had indicated it was prepared to sign a standard community trust lease.
- [15] Section 57 of the Land Act provides for trustee leases and includes a provision for leasing trust land if the trustee first obtains the Minister’s written approval. It relevantly states:

“57 **Trustee leases**

- (1) A trustee may lease all or part of the trust land if the trustee first obtains the Minister’s written ‘in principle’ approval to the lease.
- (2) The Minister’s approval may include conditions.
- (3) Despite subsections (1) and (2) a trustee may, without the Minister’s approval, grant a lease that is a trustee lease (construction) or a trustee lease (State or statutory body) over all or part of the trust land.
- (4) A trustee lease (construction) or a trustee lease (State or statutory body) may be granted under subsection (3) even if the purpose of the lease is inconsistent with the purpose for which the trust land is dedicated as a reserve or granted in trust.
- (5) A lease of trust land is a ***trustee lease (construction)*** if the lease is granted to the State for the construction of transport infrastructure and the provision of transport services on the trust land.
- (6) A lease of trust land is a ***trustee lease (State or statutory body)*** if—
 - (a) the trustee of the trust land is the State or a statutory body; and
 - (b) for a lease the purpose of which is inconsistent with the purpose for which the trust land is dedicated as a reserve or granted in trust—
 - (i) the trustee has prepared a management plan for the land that states how the lease would not diminish the purpose of the trust or adversely affect the public interest; and
 - (ii) the lease is consistent with the management plan.

...”

- [16] The meeting minutes record that the Council resolved to defer Item 11.8 to an ordinary meeting to be held on 10 December 2025. The matter has however not subsequently been considered in any ordinary meeting of the Council. The Council has neither entered nor resolved to enter into any lease with BRASA in the terms proposed by Item 11.8.

The summary dismissal

- [17] On 26 November 2025, the same day the Council meeting was held, the applicant filed an application for a statutory order of review against the Council and BRASA under s 22 of the JRA. That application sought to review the alleged failure of the Council to make decisions concerning “matters required under the Land Act 1994 (Qld)”. The applicant contended that the Council failed to make a decision as to whether the statutory conditions governing the grant of a trustee lease over the park were satisfied, particularly s 57(3) and s 57(6) of the Land Act.
- [18] The Council applied under s 48 of the JRA for summary disposal of the review application on alternative bases including that it would be inappropriate for the proceedings to continue, and that no reasonable basis for the review application had been disclosed.
- [19] The learned primary judge found that there was no failure to make a decision reviewable under the JRA, that there was no reasonable basis for the review application and it should be dismissed with the applicant to pay indemnity costs.

Legal principles

- [20] An appeal from a decision under s 48 of the JRA may only be made with the leave of the Court of Appeal.
- [21] The Court’s discretion to grant leave is not limited. However, two factors generally relevant to a grant of leave are whether a reasonably arguable case of error on the part of the Court below has been demonstrated, and whether some substantial injustice or prejudice will be suffered by the applicant if that error is not corrected.² The proposed appeal does not identify any reasonably arguable error in the decision of the primary judge nor has the representative of the applicant identified any substantial injustice if leave is not granted.
- [22] Mr Edmond was candid with the Court that he had sought the assistance of AI tools to formulate the applicant’s argument. Sadly for the applicant, the present case is a salutary lesson in the pitfalls in using AI absent legal skills. While the product may sound convincing it may, as in this case, present an entirely flawed argument.

No arguable error in the decision below

- [23] While the applicant may well have valid concerns as to compliance or lack thereof by Council with a Land Management Plan in respect of any proposed trustee lease, given that the Council is not required to and has not made any decision as to whether or not it will grant a trustee lease, those concerns do not find any basis for any legal remedy under s 22 JRA.
- [24] Section 57 of the Land Act is a permissive provision. It allows for the leasing of trust land with the Minister’s written approval, whereby the Minister’s approval may

² *Amos v Wiltshire* [2019] 2 Qd R 232.

include conditions. A trustee, like the Council in this case, may without the Minister's approval grant a lease that is a trustee lease. Relevant to the present case, s 57(6) provides that a lease is a trustee lease when it satisfies the conditions in s 57(6)(a) and s 57(6)(b) of the Land Act. Section 57 provides a power to grant a trustee lease in a number of ways. It does not oblige the Council to grant a lease under s 57(1) or s 57(3). If the Council determined to grant a trustee lease within s 57(6) it would need to satisfy s 57(6)(b) if the lease was for a purpose inconsistent with the purpose for which the trust land is dedicated as a reserve or granted in trust.

- [25] The applicant did not contend in the court below nor does it contend in this appeal that the Council was required by s 57 to grant, refuse or complete a trustee lease. It contends that there is a narrower question, namely once the Council commenced formal consideration of the proposed trustee lease with the second respondent and placed Item 11.8 before Council stating that no Land Management Plan was required it was at least arguable that the Council was required to consider or determine the statutory conditions governing that trustee leasing power before progressing the proposed lease. Section 57 does not support such an obligation.
- [26] In order to succeed in an application under s 22 JRA for failure to make a decision, the applicant was required to show that the provision giving power can be construed as carrying a duty to consider its exercise and that the decision was one to which the JRA applies.³ The applicant could not identify any error in the primary judge's decision below as neither s 57(3) nor s 57(6) imposed a duty upon the Council to determine whether the statutory considerations in s 57(6) were met before processing consideration of the proposed trustee lease.
- [27] A proposal to grant a trustee lease tabled as an agenda item at a Council meeting, the consideration of which is deferred to a later date, does not enliven any obligation on the part of the Council to make a decision under s 57(3) or s 57(6) of the Land Act. In the present case there was no decision to grant a lease nor any commitment by the Council to grant a trustee lease. No occasion has yet arisen for the Council to decide whether the statutory conditions in s 57(3) and s 57(6) were satisfied.
- [28] The primary judge's decision was plainly correct. The Council had no duty to make a decision as to whether the statutory conditions governing trustee leasing of the reserve land under the Land Act, including s 57, were satisfied until it determined that it was going to grant a trustee lease to which s 57(6) applied. No decision had yet been made by the Council to grant a trustee lease nor was there any obligation to do so.
- [29] There was therefore no arguable error by the primary judge in finding there was no reasonable basis to the review application and that it was inappropriate for the proceedings to continue.
- [30] Nor does the applicant identify any substantial injustice if leave is not given nor any basis justifying the grant of leave. If the Council resolved to enter a trustee lease that did not comply with s 57, the applicant would still likely have a remedy to seek review based on the Council's decision. The applicant could not identify any substantial injustice that would be caused if leave was not granted and any alleged error was not corrected at this stage of the Council's consideration, or perhaps more accurately lack thereof. Ground 1 must fail.

³ *Yasmin v Attorney-General (Cth)* (2015) 236 FCR 169.

- [31] The applicant also does not demonstrate any basis upon which BRASA, notwithstanding it was the proposed lessee of a possible trustee lease, has been joined. The proposed lessee was not a decision maker and had no interest in the application until the proposal was advanced.

Procedural fairness

- [32] The further ground of appeal is that there was a lack of procedural fairness shown towards the applicant and that it wasn't given a fair practical opportunity to complete submissions on s 57 or to reply as to why BRASA was a proper respondent. Prior to the hearing, the Council had written to Mr Edmond informing him that the basis of its application was that the review application disclosed no reasonable basis and provided written submissions at the hearing. The second respondent had written to the applicant on two occasions stating there was no basis upon which it had been made a party to the proceedings.
- [33] At the hearing, in response to enquires of the Court, Mr Edmond, who was representing the applicant, indicated to the Court that the applicant could not afford legal advice and confirmed he was in a position to deal with the summary disposal application under s 48 of the JRA. He was permitted to make submissions in response and made submissions in relation to s 57 of the Land Act. He was not prevented from making any further argument he wished to make. The primary judge told the parties in plain terms she would adjourn the matter and deliver a decision later that day. The fact that Mr Edmond did not appreciate that and might have wished to make further submissions, a matter not communicated to the primary judge, was not a lack of procedural fairness.

Costs

- [34] The applicant seeks leave to appeal the costs order made against it to pay the first and second respondent's costs of the application on an indemnity basis. The applicant further contends that the proposed appeal raises an important costs issue concerning the award of indemnity costs "against a small community sporting club in a public-law proceeding concerning trustee land, public reserve governance, access to governing documents, disclosure/mediation history, and public-authority conduct consistent with the Queensland Model Litigant Principles".
- [35] In relation to the costs order made, the applicant contends it should be set aside on the ground that the Court did not refer to or exercise its statutory discretion under s 49 of the JRA. It contends the review application was not for private gain but to answer a statutory question. It further contends that the Council's Calderbank letter did not "compel indemnity costs" and it had insufficient time to respond to the affidavit presented by the second respondent as to costs.
- [36] Section 49 of the JRA provides the Court with a discretion as to costs orders where an application is dismissed under s 48 of the JRA, as it was here. While the applicant made submissions that there should be no order as to costs, no party raised s 49 of the JRA and no costs application was made. The applicant did not present any information to the Court under s 49(2)(a) as to its financial resources. No broader public interest considerations were identified beyond raising issues as to the usability of public reserve land as it pertained to the applicant's use of the land. Further, the review application had no prospects of success. Thus, the discretion under s 49 was

not properly enlivened for the Court's consideration. There was no error in the Court failing to refer to and apply s 49(1) of the JRA. Section 49(4) of the JRA provides that the UCPR applies subject to the operation of s 49.

- [37] As to the award of indemnity costs, correspondence to the applicant from the Council put the applicant on notice that there was no reasonable basis for the application prior to the hearing. BRASA had invited the applicant twice to discontinue the application against it. The applicant had a reasonable opportunity to not pursue the judicial review application but refused to do so.
- [38] The decision to award costs and the basis upon which it is made is a discretionary decision. There is no mistake of law or fact made by the primary judge in awarding indemnity costs that warrants correction, nor on the material before her Honour evidencing the parties' conduct of the matter, could it be said that the primary judge's decision to award indemnity costs was *House v The King* type error.⁴ Given that the applicant had been informed by both respondents that the review application against them had no proper basis, which was found by her Honour, it was open to the primary judge to award costs on an indemnity basis.⁵ The applicant plainly had the opportunity to make submissions as to costs and has also not established that it was denied procedural fairness by the primary judge at the hearing below. Grounds 2 and 3 are unsuccessful.
- [39] **DOYLE JA:** I had the advantage of reading in draft the reasons of Brown JA. I gratefully adopt her Honour's summary of the facts and statement of the various statutory provisions which are relevant. These are my reasons for joining in the orders that were made when the matter was heard on 28 August 2026 as recited in the reasons of Brown JA.
- [40] I agree with the reasons given by her Honour for rejecting the challenge to the decision below on the basis of there having been a denial of procedural fairness and also the reasons given by her Honour for rejecting the challenge to the decision to award costs and on an indemnity basis.
- [41] I otherwise agree with her Honour's conclusion that this is not an appropriate matter in which leave to appeal should be granted. I do so for the reason that the applicant does not identify any substantial injustice to it, should leave not be granted.

⁴ See *Chen v State of Queensland (Queensland Health)* [2024] QCA 42 at [23].

⁵ *Australian Competition and Consumer Commission v Colgate-Palmolive Pty Ltd (No 5)* [2021] FCA 246 at [53].