SUPREME COURT OF QUEENSLAND

CITATION:	*Ut-Alkar Aboriginal Corporation v Chief Executive Department of Environment* [2026] QSC 263
PARTIES:	**UT-ALKAR ABORIGINAL CORPORATION RNTBC** ICN 10231 (applicant) **v** **CHIEF EXECUTIVE, DEPARTMENT OF ENVIRONMENT, TOURISM, SCIENCE AND INNOVATION** (first respondent) **BROKEN HILL GOLD LIMITED** ACN 636 421 782 (second respondent) **LAND COURT OF QUEENSLAND** (third respondent)
FILE NO:	SC No 47 of 2026
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Cairns
DELIVERED ON:	30 October 2026
DELIVERED AT:	Cairns
HEARING DATE:	11 September 2026
JUDGE:	Henry J
ORDERS:	**1. The Land Court's orders of 31 March 2026 in appeals EPA 200-25 and EPA201-25 are set aside.** **2. The appeals are remitted to the Land Court for determination in accordance with law.** **3. The parties have liberty to apply to be heard as to any consequential orders within 28 days, on the giving of two business days' notice in writing.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – PROCEDURE – ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES – ABORIGINAL AND TORRES STRAIT ISLANDER CORPORATIONS – NATIVE TITLE – HERITAGE PROTECTION – where the applicant seeks judicial review of orders made by the Land Court as a result of a successful appeal by the second respondent – where the applicant was not afforded the opportunity to be heard in

respect of the appeal to the Land Court – where the appeals sought the removal of an exclusion zone condition in the second respondent's environmental authorities for its activities on the applicant's land – where the first respondent is the chief executive of a government department who had rejected the second respondent's applications to amend its authorities previously – where the applicant was not a party to the Land Court appeals – where the applicant applies for a statutory order of review on the grounds that it was not afforded natural justice – whether the applicant should have been given a reasonable opportunity to be heard in the Land Court appeals – whether the applicant did have a reasonable opportunity to be heard in the Land Court appeals

Aboriginal Cultural Heritage Act 2003 (Qld), s 23, s 24
Environmental Protection Act 1994 (Qld), s 18, s 107, s 110, s 223, s 228, s 242, s318, s 318B, s 426, s 524, s 527, s 528, s 530, s 533
Environmental Protection Regulation 2019 (Qld), sch 7
Judicial Review Act 1991 (Qld), s 20(2)(a)
Land Court Act 2000 (Qld), s 7
Land Court Rules 2022 (Qld), r 36, r 44
Uniform Civil Procedure Rules 1999 (Qld), r 3, r 17, r 69

Badari v Minister for Territory Families and Urban Housing (2025) 100 ALJR 30, cited
Brisbane City Council v Leahy (2023) 15 QR 101, cited
Cobbold Gorge Tours Pty Ltd v Terry [2023] QLC 7, cited
Commissioner for ACT Revenue v Alphaone Pty Ltd (1994) 49 FCR 576, applied
Commonwealth v Yunupingu (2025) 284 CLR 1, cited
LPDT v Minister for Immigration (2024) 280 CLR 321, cited
Ross v Queensland (No 24) (2024) 305 FCR 88, cited
Szbel v Minister for Immigration (2006) 228 CLR 152, cited

COUNSEL: D Yarrow SC for applicant
J Horton KC, with S Campbell, for first respondent
M McKechnie for second respondent

SOLICITORS: Cape York Land Council Aboriginal Corporation for applicant
Crown Solicitor (Qld) for first respondent
Ashurst Perkins Coie for second respondent
Third respondent appearance not required

[1] Ut-Alkar Aboriginal Corporation seeks judicial review of the Land Court's orders in appeals by a mining company, Broken Hill Gold Ltd,[1] in which the named respondent was the Chief Executive of the Department of Environment. Ut-Alkar is aggrieved at not having been given an opportunity to be heard in those appeals.

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1 Formerly PAC Gold Limited.

[2] The appeals sought to remove an exclusion zone condition in the mining company's environmental authorities for its activities on Ut-Alkar's land. One such authority concerns mining activities authorised by a number of mining leases. The other concerns exploration activities authorised by an exploration permit for minerals.

[3] The Department had earlier refused the mining company's applications to it to amend the authorities. It later rejected the mining company's subsequent applications to the Department to review its refusal decision. Ut-Alkar had been consulted by and made a submission to the Department in that process. The Department well knew Ut-Alkar opposed the easing of the exclusion zone condition.

[4] Ut-Alkar was not informed of the mining company's appeals to the Land Court against the Department's review decisions. It learned only belatedly of the proceedings' existence on 2 March 2026, when it was advised by an email from the Land Court Registrar that the appeals were listed for a two-day hearing on 20 and 21 May 2026, with a review hearing listed for 11 May 2026. Ut-Alkar then commenced taking steps to become a party in the appeal.

[5] However, the disposition of the appeals was accelerated, without any notice to Ut-Alkar, after the Chief Executive decided to reverse the Department's past position of resistance. The Chief Executive decided to consent to the removal of the exclusion zone condition from the environmental authorities, agreeing to the making of so-called 'consent orders' in the appeals – so-called because it was a decision for the Court's own judgment. The Land Court made 'consent orders' removing the exclusion zone condition, without publishing its reasons, and apparently without a hearing, on 31 March 2026 – over seven weeks before the listed hearing. Ut-Alkar only learned of these events afterwards.

[6] Ut-Alkar applies for a statutory order of review, grounded, per s 20(2)(a) *Judicial Review Act 1991* (Qld), upon a breach of the rules of natural justice. It complains that breach was a failure to observe the requirements of procedural fairness, because Ut-Alkar was not given a reasonable opportunity to be heard.

[7] There are two such applications because there were two appeals regarding the Department's two decisions in respect of the two environmental authorities. The issues are identical in both. They are:

1. What interest does Ut-Alkar have in the land to which the mining company's environmental authorities relate?

2. What is the exclusion zone condition which the mining company sought to remove from its environmental authority?

3. What process brought the mining company's quest to remove the exclusion zone condition before the Land Court?

4. Should Ut-Alkar have been given a reasonable opportunity to be heard in the appeals?

5. Did Ut-Alkar have a reasonable opportunity to be heard in the appeals?

[8] These reasons conclude Ut-Alkar should have been, but was not, given a reasonable opportunity to be heard in the appeals. The result is that the Land Court's orders should be set aside and the appeals remitted to the Land Court for determination according to law.

1. What interest does Ut-Alkar have in the land to which the mining company's environmental authorities relate?

[9] Ut-Alkar holds native title on trust for the Olkola People over a substantial area of land on Cape York, around the Alice River. It does so pursuant to the decision of the Federal Court in *Ross on behalf of the Cape York United #1 Claim Group v State of Queensland (No 24) (Olkola Determination)*.[2] The mining company's mining leases and exploration permit, and thus the environmental authorities for them, apply to land within that area.

[10] Under the Federal Court determination, the Olkola People's native title rights are, other than in relation to water, 'the right to possession, occupation, use and enjoyment of the area to the exclusion of all others subject to the laws of the State and the Commonwealth and to there being no native title rights in or in relation to minerals'. The determination provides that rights such as living on and taking resources from the area and protecting 'places of importance and areas of significance to the Native Title Holders under their traditional lores and customs on the area' are 'non-exclusive rights'. The determination also deems Ut-Alkar to be the relevant body corporate holding the native title of the Olkola People in trust.

[11] It follows that Ut-Alkar, as native title holder of the land to which the environmental authorities relate, has a proprietary interest in the land,[3] albeit that its interest is subject to the potential for minerals to be explored for and mined on its land, in ways authorised by law.

2. What is the exclusion zone condition which the mining company sought to remove from its environmental authority?

[12] Environmental authorities are issued pursuant to the *Environmental Protection Act 1994* (Qld). Environmentally relevant activities with which such authorities deal include resource activities, pursuant to ss 18, 107 and 110. Section 426 makes it an offence for a person to carry out an environmentally relevant activity unless the person holds or is acting under an environmental authority for the activity.

[13] Environmental authorities may be amended pursuant to the Act. Such amendments generally fall into the categories of 'minor amendment' and 'major amendment'. Pursuant to s 223 a major amendment is an amendment that is not a minor amendment. Relevantly to the present case, a minor amendment includes an amendment that is, for an environmental authority, 'a minor amendment (threshold)', which, pursuant to s 223, means an amendment that is not a change to a condition identified in the authorities as a standard condition other than 'a change that will not result in a change to the impact of the relevant activity on an environmental value' and 'does not significantly increase the level of environmental harm caused by the relevant activity'. Section 228 of the Act requires the administering authority, after

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2 (2024) 305 FCR 88.

3 See, for example, *Commonwealth v Yunupingu* (2025) 284 CLR 1, 54 [50].

receiving an amendment application, to decide whether the proposed amendment is a major or minor amendment. In this case it decided the proposed amendment was a minor amendment.

[14] Section 242 obliges the administering authority to either issue the amended environmental authority to the applicant, if it decides to grant it, or, if it refuses the application, to give the applicant an information notice about the decision. There does not appear to be a like obligation to specifically notify other persons of the decision, although the content of any environmental authority as amended from time to time would appear in what is referred to in s 242(1)(c) as 'the relevant register'.

[15] Section 318 *Environmental Protection Act* provides for the Chief Executive to make a standard for the standard conditions for an environmentally relevant activity, and s 318B obliges the Chief Executive to consider all submissions made during a consultation period prior to making the standard.

[16] Relevantly to the present case, the *Environmental Protection Regulation 2019* (Qld) contains approved standards at sch 7 which, at pt 2 s 24, specifies the 'Eligibility criteria and standard conditions for exploration and mineral development projects – version 2'. Among the standard conditions, the condition of present relevance, referred to in these reasons as the exclusion zone condition, is:

> **A14:** The holder of the environmental authority must not carry out activities within 100m of a Historical, Archeological or Ethnographic site.
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> Note 21 – Refer to the *Aboriginal Cultural Heritage Register* established under the *Aboriginal Cultural Heritage Act 2003* and the *Queensland Heritage Act 1992*. Prior to carrying out activities on the mining tenement, the holder of the environmental authority should consult with the administrating authority if a site has the potential to be designated as a historical, archaeological or ethnographic site. (emphasis added)

[17] This creation of a 100m exclusion zone is a concrete means of protecting historical, archaeological or ethnographic sites. That is not to say there are no other legal protections – a point which the mining company argued in seeking the removal of the condition.

[18] For example, the applicant is the Aboriginal party, under the *Aboriginal Cultural Heritage Act 2003* (Qld), for most of the areas collectively covered by the mining company's mining leases and exploration permits. Section 23 of that Act imposes a cultural heritage duty of care to ensure an activity does not harm Aboriginal cultural heritage, making it an offence not to comply with that duty of care. A protection against alleged breach is contained in s 23(3), which deems a person carrying out activity to have complied with the cultural heritage duty of care if acting in compliance with an array of stipulated circumstances, one of which includes the owner's agreement. Similar exceptions are imposed in s 24, which makes it an offence to harm Aboriginal cultural heritage if the person knows or ought reasonably to have known that it was Aboriginal cultural heritage.

[19] However, neither that Act nor any other State or Federal legislative protections involve the unqualified, concrete measure of an exclusion zone.

3. What process brought the mining company's quest to remove the exclusion zone condition before the Land Court?

[20] In summary, the *Environmental Protection Act* provides a framework by which a delegated decision-maker of the Chief Executive of the Department of Environment decides whether to allow an application for amendment to an environmental authority. This is described as an 'original decision'.

[21] A dissatisfied person may, in turn, apply for a 'review decision', which involves a more senior delegate of the Chief Executive, confirming, revoking or varying the original decision as considered appropriate.[4]

[22] Pursuant to s 524 of the Act, a dissatisfied person who is dissatisfied with the review decision may, in turn, appeal against the decision to the Land Court. In the present case there was an original decision, then a review decision and then the appeal, which provoked this judicial review.

The original decision went against the mining company

[23] On 18 March 2025, the mining company submitted an application to amend the environmental authority for its exploration permit. It ticked the relevant categorisation box for the amendment as being a minor amendment and ticked the 'conditions' box to indicate the character of amendment sought. The annexed clarification of the amendment sought indicated the mining company sought to amend standard condition A14 – the exclusion zone condition. A like application was submitted on 28 March 2025 in respect of the mining leases.

[24] The applications prompted consultation of Ut-Alkar by the Department. On 29 April 2025, Ms Ramsay, a team leader within the Department of the Environment's Minerals Business Centre, emailed Ut-Alkar's legal representatives seeking their advice as to whether there were 'any human rights concerns with the proposed condition changes for the mining amendment applications' being pursued by the mining company. This correspondence mentioned, among other things, that, in making a decision, the Department considered human rights and was seeking the advice of Ut-Alkar's legal representatives whether they considered the proposal would impact Ut-Alkar's human rights.

[25] On 9 May 2025 Mr Barker, a senior legal officer of Cape York Land Council, which was acting for Ut-Alkar, responded to Ms Ramsay's letter in a detailed seven-page submission with annexures.

[26] The submission noted that for the last four years the mining company had 'chosen not to engage with Ut-Alkar's people's proposal for a [cultural heritage management plan]'. It observed, the amendments sought by the mining company involved 'amending the terms of its environmental authorities to alter the legal protection given to the Historical, Archeological and Ethnographic sites of the Aboriginal people

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[4] Section 520(1)(c) relevantly defines a dissatisfied person, for an original or review decision which is about an environmental authority, as 'the holder of the authority'.

(Olkola people) who are the custodians of sites and cultural values of the exploration and mineral development tenements held … and to which the application relates'.

[27] The submission asserted:

> The right to protect the space of 100m around [Aboriginal Cultural Heritage] which can also be classified as an Archeological, Historical or Ethnographic site is certain under the [Standard Conditions]. This ensures a degree of protection to the environment that is integral to the Olkola people's belief and kinship system. It would be unfair and unjust to amend the conditions to create ambiguity in the standard of environmental protection.

[28] The submission also explained that back on 22 December 2023, the mining company had written to the Olkola People, suggesting their position regarding a recommended buffer zone was excessive and unreasonable. The submission noted that, thereafter, the mining company was found liable 'of conducting exploration activities that breached the terms of its environmental authority (namely condition A14 ...)'. Ut-Alkar submitted the true character of the mining company's application for amendment was a response to the Department's finding of liability for the mining company's unlawful mining and exploration activities, by which the mining company was seeking 'to exclude its exposure to liability in the future for essentially similar conduct and to limit the protection of the Olkola people's legal capacity' to protect their Aboriginal cultural heritage.

[29] The submission also asserted:

> The applicant has been found liable of breaching a Standard Condition which is proposed to be excluded and replaced with an amended and diluted alternative. The proposed amendment is both illusory and ineffective for the purpose of ensuring the property rights of the Olkola people are not further limited.

[30] The content of the submission could therefore leave the reader in no doubt that Ut-Alkar considered itself to be directly affected by the decision being sought by the mining company and opposed the decision. The Department was of course aware of the submission. So too was the mining company. On 15 May 2025, the Department's Michelle Ramsay discussed the company's amendment applications with it that morning and then wrote to the mining company's representative, attaching the Cape York Land Council's submission of 9 May 2025 for its consideration and to allow it 'to consider how' it 'would like to respond'.

[31] In the end result, the original decision, published by notice on 6 June 2025, refused the mining company's application.

The review decision went against the mining company

[32] The mining company thereafter applied for a review decision, received by the Department on 11 June 2025.

[33] On 16 July 2025 a notice of the internal review decision and statement of reasons was published. It indicated the Chief Executive had decided to confirm the original decision.

[34] The delegate's statement of reasons noted a submission by the mining company that there have been decisions of the Land Court , such as *Cobbold Gorge Tours Pty Ltd v Terry*,[5] in which legislation such as the *Aboriginal Cultural Heritage Act* was held to be sufficient protection of cultural rights. However, the decision in *Cobbold Gorge Tours* was distinguished by the delegate, who noted that case involved no submission from the native title holders, whereas, in the present case, there were submissions from the Olkola People, expressing 'the view that the 100m buffer is an essential tool to assist them in protecting country'.

[35] The review delegate also observed:

> Notwithstanding the continued application of the cultural heritage duty of care, if the amendment were approved, it would result in sites constituting Aboriginal Cultural Heritage for the Olkola people using access to a protection in the form of a physical buffer zone that is afforded to other Historical, Archeological, or Ethnographic sites.
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> As a result, the regulatory protections for these sites would change, and to the extent that the Aboriginal Cultural Heritage duty of care does not establish an immediate, equivalent level of protection there is potential that this change will have an adverse impact on the protection of cultural sites.

[36] In weighing competing proportionality considerations, the decision-maker observed that, even without the proposed amendment, the mining company and the Olkola People could negotiate a Cultural Heritage Management Plan under the *Aboriginal Cultural Heritage Act* and that the Olkola People were desirous of doing so. The decision gave weight to a submission by the mining company that the removal of the condition would simplify regulatory compliance, but concluded the potential limitations to the Olkola's human rights outweighed the potential benefit to the mining company and that benefit was not proportional to the potential limitations.

The mining company appealed against the review decision

[37] On 4 August 2025 the mining company filed its notices of appeal, seeking orders allowing the appeal, setting aside the review decisions and substituting them with a decision to approve the relevant application. Ut-Alkar was not notified of the filing of the appeals.

4. Should Ut-Alkar have been given a reasonable opportunity to be heard in the appeals?

The appeal was supposed to be by rehearing

[38] Section 527 *Environmental Protection Act* requires that the appeal 'is by way of rehearing, unaffected by the review decision'.[6] Pursuant to s 528, the Land Court, in deciding such an appeal, 'has the same powers as the administering authority' and, pursuant to s 530, it may confirm the decision or set it aside and substitute another decision, or set it aside and return the matter to the administering authority.[7]

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5 [2023] QLC 7.

6 Also see s 536(2) to the same effect.

7 To similar effect see s 539.

[39] The Land Court's statutory obligation to conduct a rehearing required it to perform the same statutory decision-making role of the senior delegate who made the review decision, to reach its own decision on whether or not the exclusion zone condition should be removed from the mining company's environmental authorities.

The appeal resolved by consent orders

[40] It will be recalled the appeal had been listed for a two-day hearing on 20 and 21 May 2026, with a review hearing listed for 11 May 2026. However, on 26 March 2026, joint submissions were filed in the appeal by the mining company and the Department, proposing orders to 'be made by the court by consent' (those orders were different than those applied for, but not materially different for present purposes).

[41] The Land Court promptly determined both appeals by orders of 31 March 2026. In each appeal the member's orders commenced:

> The Court **ORDERS**, by consent that:
>
> The appeal be allowed.
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> … (underlined emphasis added)

The orders went on to substitute the review decisions with decisions approving the mining company's application by removing the exclusion zone condition from the terms of its environmental authorities and ordering that each party bear its own costs.

It is not apparent whether there was any consideration of the filed materials

[42] Notably both orders were expressed as orders made 'by consent'. Rule 44 *Land Court Rules 2022* (Qld) provides the court may give judgment or other order by consent if the parties consent and 'it is appropriate' to do so. It was not appropriate to do so here. This was not a mere commercial dispute which had been settled. The Court was statutorily obliged to reach its own decision on the appeals on a rehearing. It was submitted against Ut-Alkar, citing *Badari v Minister for Territory Families and Urban Housing*,[8] that because it was a minor, rather than major, amendment which was under consideration the content of procedural fairness required considerably less than a full hearing. But that did not remove the statutory requirement that the appeal was by rehearing.

[43] There may be good reason why a rehearing of an appeal of this kind might occur without an oral hearing, for example, managing the competing workload demands of cases upon finite court time and resources. Further s 7 *Land Court Act 2000* (Qld) allows the court to inform itself in the way it considers appropriate and without regard to legal technicalities. Moreover, r 36 *Land Court Rules 2022* permits the Land Court to dispense with an oral hearing, deciding a proceeding on written material and submissions, 'if it is appropriate' to do so. But even if not conducted as an oral hearing, there could not be a 'rehearing' without the member making a judicial decision on a proper consideration of the materials before the court.

[44] There having been no hearing or reasons published, it is not apparent from the making of an order 'by consent' whether the member made such a decision. It is unnecessary

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8 (2025) 100 ALJR 30, 39 [34].

to arrive at a more specific conclusion about that because Ut-Alkar's complaint is not that the Court erred by not conducting a rehearing. The nub of Ut-Alkar's complaint is that in the chain of events which unfolded, Ut-Alkar was not given a reasonable opportunity to be heard.

[45] The absence of any positive indication that the order by consent involved a judicial decision on a proper consideration of the materials before the Court is nonetheless relevant in nullifying one argument put against Ut-Alkar. That argument was that the presence, among the materials filed in the appeals, of Ut-Alkar's submission of 9 May 2025, opposing the removal of the extension condition, meant, as a matter of inference, that it had an opportunity to be heard. Such an inference cannot safely be drawn where it is not apparent that the Court's order was the product of a judicial decision made on a proper consideration of such filed materials.

Ut-Alkar's interest in the appeals was readily apparent from the filed materials

[46] Had the filed materials, including Ut-Alkar's submission of 9 May 2025, been considered, it should have exposed that what was being proposed was controversial, in that it was at odds not only with Ut-Alkar's submission but also with the Department's past position.

[47] The controversy was inferentially apparent from the content of the original and review decisions and the joint written submissions. Those submissions included the following:

> The parties consider the provisions contained in the ACH Act provide sufficient protection for the rights of the Olkola people even where a Cultural Heritage Management Plan is not in place. Any interference with the rights of the Olkola people caused by the proposed amendments to the EA is minimal in light of the protection afforded by the ACH Act.

Of course, the *Aboriginal Cultural Heritage Act* imposes a duty of care, but it is not apparent how that equates to 'sufficient protection' for, if it did, that would beg the question why the exclusion zone condition exists as a Standard Condition in the first place.

[48] The joint submissions also contained several other transparently controversial assertions, for example:

> There is no evidence to support the conclusion that an 'exclusion zone' – be it 100m or another size – is anything other than an arbitrary restriction on authorised activities.

This was a surprising submission to have been joined in by the Chief Executive because the 100-metre exclusion zone is part of a special condition that has the force of a regulation which adopts a Standard that was made by the Chief Executive.

[49] Another controversial submission was that the exclusion zone condition 'adds nothing to the existing protections under the ACAH Act and the NTPCs'. Plainly it does add to existing protections. As earlier explained, the exclusion zone condition provides an unqualified, concrete geographical protection which is not provided for by other State or Federal legislative protections.

[50] The joint submission did at least contain reference to what was presented as being a divergence in the views of the parties, in that the mining company submitted the removal of the exclusion zone condition would not limit the Olkola People's human rights, whereas the Department submitted that 'given the inherently environmental disruptive effect of authorised activities, increasing the area in which they can be carried out inevitably increases the risk of some environmental harm'. That part of the submission also included an acknowledgment by the Department that, given the Olkola People's 'close spiritual connection with the country', environmental harm would limit their right to protect their cultural heritage, maintain and strengthen their spiritual relationship with the land and conserve and protect their country's environment. Nonetheless, the joint submission went on to submit:

> However, despite the divergence in their views on this point, the parties agree that it is open to the court to be satisfied that any potential limitation of these human rights is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

[51] The point of these reasons highlighting those features of the materials before the Land Court is not to express any view of the merits of the matter. Rather, it is to demonstrate both that Ut-Alkar's interest in the appeals should have been apparent to the Land Court and that it was not inevitable that the mining company should succeed in the appeals.

[52] The latter point is relevant because of an argument foreshadowed in the respondents' written outlines of argument that the decision articulated under the Land Court's order was so inevitable that, even if all of Ut-Alkar's potential arguments were advanced to the Court by Ut-Alkar, there was no reasonable possibility of a different decision. That flagged argument relied on the principle that an error will only be jurisdictional if material to the decision made, in the sense that there is a realistic possibility that the decision that was made could have been different.[9] However, that argument was not pressed in oral submissions and properly so.

[53] After all, the Chief Executive's delegates had twice rejected the mining company's application. The reasons of the review delegate, discussed before, make it obvious that Ut-Alkar's arguments have sufficient substance for there to have been a reasonable possibility of a rehearing decision in favour of Ut-Alkar.

[54] Further, it is self-evident, if Ut-Alkar had been heard, that the order which followed would not have been a 'consent order'. If Ut-Alkar been heard, the Court would have had the benefit of argument advocating in favour of a status quo which reflected a standard condition approved by regulation. Instead, the only potential contradictor among the existing parties, the Chief Executive, chose to acquiesce by consent to an order contrary to the effect of the standard condition. There is obviously a realistic possibility that the decision could have been different had Ut-Alkar been heard as an interested party.

Ut-Alkar should have been given a reasonable opportunity to be heard in the appeals

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9 *LPDT v Minister for Immigration* (2024) 280 CLR 321, 327.

[55] There was no statutory obligation for the mining company to include Ut-Alkar as a party to the appeal. Nor did the *Enviromental Protection Act* expressly oblige the mining company to have served Ut-Alkar with notice of the appeal.

[56] Curiously, s 533 of the Act obliges an appellant, if the appellant is not the Chief Executive, to serve notice of an appeal within eight days of its filing upon 'persons who were given notice under this Act of the original decision'.[10] In the present context, where notice would have been given by the Department, it is not apparent who such persons would be. Ut-Alkar was notified of the original decisions, by Ms Gibbs of the Department advising Mr Barker of them by telephone on 6 June 2026. However, as earlier mentioned, s 242 of the Act only required that the applicant, that is, the mining company, be given notice of the original refusal of its application. Given it is the mining company who is the appellant, a literal reading of s 533 could have the result that no-one was required to be served with notice of the appeal. In any event, this is not a case in which the terms of the relevant statute expressly or inferentially exclude the affording of procedural fairness to persons who hold an interest in the subject matter of the proceeding, or the relief sought in it and seek to become parties to it.[11]

[57] The *Land Court Rules 2022* do not contain rules about the addition of parties in an appeal to the Land Court.[12] However, r 3 has the effect of adopting the *Uniform Civil Procedure Rules* 1999 (Qld) if the *Land Court Rules* do not provide for a matter. Rule 62(1) of the *UCPR* provides that each person whose presence is necessary to enable the court to adjudicate effectually and completely on all matters in dispute in the proceeding must be included as a party to the proceeding. Rule 62(2) provides the court may order the inclusion of such a person as a party. Further, r 69 provides the court may at any stage of a proceeding order the inclusion of a party whose presence before the court would be desirable, just and convenient to enable the court to adjudicate effectually and completely on all matters in dispute.

[58] The parties acknowledge that the Land Court was obliged to act in accordance with the rules of procedural fairness in determining the appeal. This required that directly affected parties had a right to be heard. As much is apparent from the High Court's approval in *Szbel v Minister for Immigration*,[13] of the following statement of the Full Federal Court in *Commissioner for ACT Revenue v Alphaone Pty Ltd*:[14]

> It is a fundamental principle that where the rules of procedural fairness apply to a decision-making process, the party liable to be directly affected by the decision is to be given the opportunity of being heard. That would ordinarily require the party affected to be given the opportunity of ascertaining the relevant issues and to be informed of the nature and content of adverse material.

[59] While the Court there spoke of 'the party liable to be directly affected', it will not always be the case that a person or body corporate directly affected by the decision is an existing party to the proceeding. Matters of degree are obviously involved in

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10 Section 534 in turn provides a person 'who properly files in the Court a notice of election becomes a respondent to the appeal'.

11 *Brisbane City Council v Leahy* (2023) 15 QR 101.

12 As distinct from appeals to the Land Appeal Court – see r 52.

13 (2006) 228 CLR 152, 162.

14 (1994) 49 FCR 576, 590-591.

weighing whether a person or body corporate is so directly liable to be affected by the decision that they ought be given an opportunity to be heard.

[60] In the present case it is true that, notwithstanding the Land Court's decision, Ut-Alkar retains other legal protections calculated at safeguarding their land's Aboriginal cultural heritage and their interest in it. However, Ut-Alkar's interest goes beyond an interest in safeguarding cultural heritage and any human rights which may be associated with it. Prior to the Land Court order, the existing environmental authority contained a protective standard condition preventing the mining company from carrying out activities within 100m of a historical, archeological or ethnographic site on Ut-Alkar's land. Ut-Alkar has a proprietary interest in the land within that exclusion zone. It follows that the making of a change which removed the exclusion zone condition directly affected Ut-Alkar.

[61] Had the Land Court considered the materials before it for the rehearing, it should have been apparent that:

- the Chief Executive had abandoned the Department's previous acceptance of Ut-Alkar's submission that the exclusion zone condition should remain; and
- there was no longer a contradictor to advocate effectually in favour of the retention of the exclusion zone condition; and
- Ut-Alkar was interested in, affected by and opposed to the potential removal of the exclusion condition.

[62] As a matter of procedural fairness, the Land Court should have postponed determination of the appeals until it had confirmed that Ut-Alkar had been notified of the appeals, so as to ascertain whether Ut-Alkar wished to seek to be heard. The fact it did not do so was itself relied upon by Ut-Alkar as a breach of the rules of natural justice, sufficient to ground this Court's intervention. I find it unnecessary to reach a concluded view about that point because Ut-Alkar did wish to be heard. The point is thus subsumed by the broader consideration that Ut-Alkar should have been given a reasonable opportunity to be heard, by having a reasonable time within which to attempt to become a party to the proceedings and prepare for the hearing. As will shortly be concluded, it did not have a reasonable opportunity to take the steps necessary to be heard.

[63] Before articulating that conclusion, it should be acknowledged that in the process of Ut-Alkar seeking to be heard, the existing parties would also have been entitled to be heard as to whether Ut-Alkar should be permitted to become a party. However, no submission was made before me as to how such a step could sensibly be opposed. After all, Ut-Alkar owned the land to which the exclusion zone condition related and the original decision-maker had sought out Ut-Alkar's submission. Further, the Chief Executive of the Department was no longer participating in the appeal as a contradictor, having abandoned the Department's past acceptance, in both the original decision and the review decision, that the exclusion zone condition should remain. Against that background it would be unlikely that the new decision-maker – the Land Court rehearing the matter – would decline to hear from Ut-Alkar.

5. Did Ut-Alkar have a reasonable opportunity to be heard in the appeals?

[64] Mr Barker, the senior legal officer with Cape York Land Council Aboriginal Corporation, which was acting for Ut-Alkar, only became aware that there may be a matter before the Land Court between the mining company and the Department of Environment in early February 2026. It was submitted against Ut-Alkar that, knowing it did not have a statutory right to be included as a party to any appeal and knowing the mining company had a right of appeal, it should have been more vigilant, earlier, in monitoring whether an appeal had been lodged. However, the force of that submission is eroded by events up to that point making it unlikely the Department would do other than fight any appeal. It is also eroded by the events which followed Ut-Alkar becoming aware there may be a matter before the Land Court between the mining company and the Department.

[65] Between 16 February 2026 and 1 March 2026 Mr Baker made repeated unsuccessful attempts to contact the Department by telephone and email to ascertain whether the Land Court matter related to the mining company's past unsuccessful applications to amend its environmental authorities.

[66] Eventually, on 2 March 2026, Mr Barker was advised in an email by the senior registrar of the Land Court of the existence of the appeals against the Department's decisions in relation to the amendments of the environmental authorities. The email further advised:

> The appeals are listed for review on 11 May 2026 and then for a two-day hearing on 20 May 2026 in Brisbane.

Mr Barker was thus led to believe the appeals would not be heard for some months yet.

[67] On 4 March 2026 Mr Barker submitted a request to the Land Court to access the Court file. On 5 March 2026 the Land Court senior registrar notified Mr Barker the request for access had been approved and enclosed the notices of appeal. The email also stated:

> The Court has made a direction that this request be made aware to the appellant and respondent in these proceedings. The registrar will facilitate this notification.

In other words, the existing parties to the appeal were informed of Ut-Alkar's request to see the Court file. That did not prompt either of them to contact Ut-Alkar. Indeed, they accelerated the disposition of the appeals, with their joint submissions being filed by 26 March 2026 and the Court making its consent orders on 31 March 2026.

[68] In the meantime, Ut-Alkar, which had been told nothing of that acceleration, was taking steps to become a party to the proceeding. On 11 March 2026 Mr Barker called the Land Court registry, enquiring after the appropriate procedure to be undertaken for a party to join a proceeding before the Land Court. He understood from that phone call that there was no specific court form applicable to the joinder process and wrote seeking clarification as to the procedure he understood was to be followed.

[69] On 12 March 2026 the senior registrar of the Land Court wrote to Mr Barker, generally confirming his understanding of the procedure to be followed was correct, and the email concluded:

> The court will list a directions hearing as soon as practicable. In this case, the hearing member for EPA 200-25 and EPA 201-25 will most likely hear the joinder application and make orders accordingly.

[70] The following day, 13 March 2026, Mr Barker tabled the available material concerning the appeals with Ut-Alkar's Board and the decision was taken to retain senior counsel 'to advise, and draft and settle documents in relation to [Ut-Alkar] joining the proceedings'.

[71] However, while Ut-Alkar was in that way taking steps to join appeal proceedings listed for hearing two months hence, the disposition of the proceedings was accelerated and concluded within a few weeks, without any notice to Ut-Alkar. Mr Barker was still in the process of preparing the necessary documents for Ut-Alkar to apply to be joined as a party in the proceedings when, on 7 April 2026, he became aware the proceedings had been finalised.

[72] Mr Barker made enquiries with the Land Court registry, which confirmed that consent orders had been made on 31 March 2026. He pursued other enquiries about what had transpired with the Land Court registrar. This culminated in an email to Mr Barker from the senior registrar of the Land Court on 14 April 2026, advising:

> I can confirm that the court hasn't produced or is going to publish reasons in these matters.
>
> The consent orders made has satisfied the court to close its files.

[73] The Department and the mining company submitted in the present application that, between Ut-Alkar learning of the existence of the appeals on 2 March 2026 and the making of the Court's orders on 31 March 2026, Ut-Alkar had had a reasonable opportunity to be heard, in that it had had a reasonable opportunity to file an application to join the proceedings as a party, but it failed to do so by 31 March 2026.

[74] Further, it was submitted the assessment of the reasonableness of that opportunity should be considered in light of Ut-Alkar not in the interim having notified either the Chief Executive or the mining company of its intention to apply to join the proceedings. That consideration deserves little weight for two reasons in combination. First, Ut-Alkar already had reason to think the Chief Executive and mining company knew it was showing interest in the appeal, the registrar having told them of Ut-Alkar's recent request to see the Court file. Secondly, Ut-Alkar was not to know that, within the four-week period between learning of the existence of the appeals and their finalisation by consent orders, there had been any change to the listing status of the case, namely that it was listed for review on 11 May 2026 and for a two-day hearing on 20 May 2026.

[75] The Department's counsel went so far as to submit that it is a common enough occurrence that the disposition of litigation can be accelerated because parties agree to a compromise of it. Accordingly, it was submitted Ut-Alkar should have acted with more urgency from the moment it learned of the existence of the appeals, if it

wished to become a party to them. This gives no reasonable weight to the cumulative force of three considerations.

[76] First, as already discussed, this was not the kind of proceeding which involved a mere commercial dispute which the parties could agree to settle. It was a proceeding in which the Court was required to conduct a rehearing and reach its own independent conclusion as to the correct disposition of the appeals. The character of the proceeding did not suggest it was susceptible to the accelerated manner of disposition which occurred.

[77] Second, the notices of appeal had been filed on 4 August 2025, a mediator's certificate had been filed on 4 December 2025 (presumably certifying to the failure of the mediation) and the matters had been listed for review on 11 May 2026 and for a two-day hearing on 20 May 2026. This was not a litigation history suggesting the parties were likely to rush to a compromise and seeking of consent orders during the month of March 2026.

[78] Third, it is no small step to decide whether to join in litigation, a potentially costly process, and to in turn settle and file the materials necessary to do so. Moreover, it is known in this case that that process involved seeking advice of senior counsel and also involved a need to double-check with the Court's registry the procedure to be followed in applying to become a party, a procedure which was not readily apparent from the Court's Rules.

[79] In light of all of the above considerations, the facts that Ut-Alkar could have but did not either apply to become a party or notify the Chief Executive and mining company of its intention to do so, before or between 2 and 31 March 2026, do not demonstrate it had a reasonable opportunity to be heard or failed to take steps to be heard within a reasonable time. To the contrary, weighing all of those considerations, having learned of the proceedings' existence on 2 March, Ut-Alkar had not by 31 March had a reasonable opportunity to have become a party to the appeals. Nor had it had a reasonable time to take steps to be heard.

[80] Ut-Alkar did not have a reasonable opportunity to be heard in the appeals. It follows Ut-Alkar has made good its complaint of a failure to observe the requirements of procedural fairness and thus a breach of the rules of natural justice.

Orders

[81] In light of the above conclusion, Ut-Alkar should be granted the orders sought in its judicial review applications.

[82] No order as to costs is needed, it having previously been ordered that the parties to this application are to bear their own costs regardless of the outcome.

[83] It appears the changes to the environmental authorities allowed by the consent orders were made. Whether those changes need to be declared ineffectual by this Court, as an order consequential to the setting aside of the consent orders, was not addressed in argument. I will give liberty to apply for consequential orders within a limited period.

[84] My orders are:

1. The Land Court's orders of 31 March 2026 in appeals EPA 200-25 and EPA 201-25 are set aside.
2. The appeals are remitted to the Land Court for determination in accordance with law.
3. The parties have liberty to apply to be heard as to any consequential orders within 14 days, on the giving of two business days' notice in writing.