SUPREME COURT OF QUEENSLAND

CITATION:	*Chief Executive, Department of Environment and Heritage Protection v Alphadale Pty Ltd* [2017] QCA 216
PARTIES:	**CHIEF EXECUTIVE, DEPARTMENT OF ENVIRONMENT AND HERITAGE PROTECTION (applicant)** **v** **ALPHADALE PTY LIMITED ACN 050 409 008 (respondent)**
FILE NO/S:	Appeal No 11408 of 2016 LAC No 2 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Appeal from the Land Appeal Court
ORIGINATING COURT:	Land Appeal Court at Brisbane – [2016] QLAC 6 (Dalton J, President Kingham, Member Cochrane)
DELIVERED ON:	26 September 2017
DELIVERED AT:	Brisbane
HEARING DATE:	28 April 2017
JUDGES:	Fraser and Gotterson and McMurdo JJA
ORDERS:	**1. Grant leave to appeal.** **2. Appeal allowed.** **3. The orders of the Land Appeal Court made on 23 September 2016 are set aside.** **4. In lieu thereof, it is ordered that the appeal to the Land Appeal Court be dismissed.** **5. The respondent is to pay the appellant's costs of this appeal on the standard basis.**
CATCHWORDS:	ENERGY AND RESOURCES – MINERALS – COURTS OR TRIBUNALS EXERCISING JURISDICTION IN MINING MATTERS – QUEENSLAND – APPEAL OR REVIEW – where the respondent was required to pay $4,345,852 by way of financial assurance as a condition of an environmental authority – where that original decision was confirmed by the applicant after an internal review – where the respondent appealed to the Land Court and applied for a stay of the review decision pending the appeal – where the power to grant a stay conferred by s 522(2) of the *Environmental Protection Act* 1994 (Qld) ("the Act") is constrained by a requirement under s 522A(2) to provide

security for at least 75 per cent of the amount of financial assurance – where the respondent contended s 522(2) of the Act is limited only to stays pending the determination of an internal review and not thereafter – where the respondent further contended that the stay should therefore be granted under s 7A of the *Land Court Act* 2000 (Qld) ("the LC Act") – where the member of the Land Court rejected this argument and refused the stay on the basis that the respondent had not complied with s 522A(2) – where the respondent appealed to the Land Appeal Court – where the Land Appeal Court accepted the respondent's submissions and found the Land Court's power to stay a review decision is conferred by s 7A of the LC Act which is not constrained by a provision analogous to s 522A(2) of the Act – where the Land Appeal Court therefore allowed the appeal and ordered a stay of the review decision pending the substantive appeal – whether s 522 of the Act confers a power to grant a stay of the original decision for both the duration of a review and an appeal against a review decision – whether the power to grant an application for a stay made after a review decision is governed by s 522 or s 7A of the LC Act – whether s 522 is the sole source of power for the Land Court to stay an original decision in respect of a Schedule 2 part 1 matter under the Act – whether, consequently, the power for the Land Court to stay an original decision is constrained by the condition in s 522A(2) of the Act – whether the Land Appeal Court erred in ordering a stay of the review decision in reliance upon s 7A of the LC Act

Environmental Protection Act 1994 (Qld), s 292, s 521, s 522, s 522A, s 522B, s 523, s 524
Land Court Act 2000 (Qld), s 7A

COUNSEL: J M Horton QC, with J T Dillon, for the applicant
No appearance for the respondent

SOLICITORS: Department of Environmental and Heritage Protection for the applicant
No appearance for the respondent

[1] **FRASER JA:** I have had the advantage of reading the reasons for judgment of Gotterson JA. I agree with those reasons and with the orders proposed by his Honour.

[2] **GOTTERSON JA**: Environmental Authority EPML00771413 ("the EA") was issued to Alphadale Pty Ltd on 3 February 2016 pursuant to the provisions of Chapter 5 of the *Environmental Protection Act* 1994 (Qld) ("the Act"). The EA concerned environmentally relevant mining activities to be carried on by Alphadale on three mining leases. The Chief Executive of the Department of Environment and Heritage Protection was the administering authority in respect of the EA.

[3] A mining activity may not be carried out on a mining lease by the holder of an environmental authority unless the holder has first given a plan of operations for

such activity to the environmental authority.[1] The plan of operations must state the period to which it applies[2] and include a rehabilitation program for land disturbed or proposed to be disturbed under the mining lease.[3] A rehabilitation program must state a proposed amount of financial assurance for the environmental authority for the plan period.[4]

[4] Under s 292(1)(a) of the Act, the administering authority may, by condition of an environmental authority, require the holder to give financial assurance to it before the relevant activity is carried out under the authority. The financial assurance is security for compliance with the environmental authority and the costs or expenses, or likely costs or expenses, that the administering authority incurs, or may incur, for environmental harm prevention and rehabilitation arising from the carrying out of the activity.[5]

[5] It is for the administering authority to decide the amount and form of financial assurance required under a condition of an environmental authority.[6] The amount of the financial assurance may not exceed the amount that, in the administering authority's opinion, "represents the total of likely costs and expenses that may be incurred taking action to rehabilitate or restore and protect the environment because of environmental harm that may be caused by the activity".[7]

[6] **The financial assurance decision**: On 19 February 2016, Alphadale gave the Chief Executive, as the administering authority, a plan of operations under the EA for its "Big Rush" mining project. The plan of operations proposed an amount of financial assurance of $175,536.

[7] By notice dated 23 March 2016,[8] a delegate of the Chief Executive notified Alphadale that it had been decided that the total cost of rehabilitation was $4,345,852.42 (excluding GST) and that financial assurance in the amount of $4,170,316.42[9] was to be paid by Alphadale in the form of a bank guarantee ("the original decision").[10] Alphadale was required to lodge the financial assurance with the Department of Natural Resources and Mining by 6 May 2016.

[8] **The review**: As holder of the EA, Alphadale was an eligible "dissatisfied person" in respect of the original decision.[11] On 8 April 2016, it applied, in that capacity, to the Chief Executive for an internal review of the original decision under Chapter 11 Part 3 Division 2 (ss 521-522B) of the Act. The making of that application did not stay the original decision.[12]

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1 Section 287(a).
2 Section 288(1)(b).
3 Section 288(1)(c)(iii).
4 Section 288(2).
5 Sections 292(1)(b), 298.
6 Section 295(1).
7 Section 295(4).
8 AB6-9.
9 The amount of $4,170,316.42 was arrived at by subtracting from $4,345,852.42 the amount of $175,536.00 already held by way of financial assurance in respect of the mining leases.
10 A decision about the amount and form of financial assurance is an original decision for the purposes of Chapter 11 Part 3 of the Act: s 519(1); Schedule 2.
11 Section 520(1)(d).
12 Section 521(6).

[9] The internal reviewer decided to confirm the original decision as to the amount of financial assurance and extended the time for lodging it to 20 June 2016 ("the review decision"). Alphadale was advised accordingly on 22 April 2016.[13]

[10] **The appeal to the Land Court**: Alphadale filed a notice of appeal to the Land Court of Queensland against the review decision on 20 May 2016.[14] The final relief thereby sought was that the review decision be set aside and that the financial assurance be determined by the Land Court itself.

[11] Later, on 1 June 2016, Alphadale filed a general application in the Land Court in which it sought an order that the review decision be stayed until determination of the appeal or further order.[15] This application was heard by a member of the Land Court on 16 June 2016. On 29 June 2016, an order was made refusing the application.[16]

[12] **The appeal to the Land Appeal Court**: On 13 July 2016, Alphadale filed a notice of appeal to the Land Appeal Court of Queensland against the refusal of the stay application.[17] The Chief Executive was the respondent to the appeal. The appeal was heard on 23 August 2016. On 23 September 2016, the Land Appeal Court made orders allowing the appeal and ordering that the review decision be stayed until disposition of the appeal begun on 20 May 2016 or further prior order.[18]

[13] **The application to this Court**: The Chief Executive filed an application in this Court on 4 November 2016 for leave pursuant to s 74 of the *Land Court Act* 2000 (Qld) ("the LC Act") to appeal against the decision of the Land Appeal Court.[19] The proposed grounds of appeal are set out in a notice of appeal[20] exhibited to an affidavit in support of the application.

[14] This application was heard on 28 April 2017. The respondent to it, Alphadale, is now insolvent. It was not represented at the hearing.

Stay and other provisions of the Act and of the *Land Court Act* 2000 (Qld)

[15] The member of the Land Court at first instance, on the one hand, and the members of the Land Appeal Court, on the other, differed as to the construction and application of provisions in the Act relating to the grant of stays. I shall now set out the statutory context in which the relevant provisions appear as an aid to summarising the reasoning below and to analysing the submissions made on this application.

[16] Chapter 11 of the Act is headed "Administration" and Part 3 thereof is headed "Review of decisions and appeals". Part 3 consists of two divisions. Division 1 deals with definitional issues, principally the definition of "dissatisfied person" for an original decision or for a review decision. Division 2 is concerned with the internal review of original decisions. It consists of the following provisions:

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13 AB5.
14 AB1-4. Alphadale was also a "dissatisfied person" as defined in respect of the review decision: s 520(1).
15 AB10-13.
16 Reasons at AB20-28.
17 AB14-19.
18 AB54; Reasons at AB35-53.
19 AB30-32.
20 AB55-57.

"**Division 2 Internal review of decisions**

521 Procedure for review

(1) A dissatisfied person may apply for a review of an original decision.

(2) The application must—

(a) be made in the approved form to the administering authority within—

(i) 10 business days after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the ***review date***); or

(ii) the longer period the authority in special circumstances allows; and

(b) be supported by enough information to enable the authority to decide the application.

(3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—

(a) notice of the application (the ***review notice***);

(b) a copy of the application and supporting documents.

(4) The review notice must inform the recipient that submissions on the application may be made to the administering authority within 5 business days (the ***submission period***) after the application is made to the authority.

(5) If the administering authority is satisfied the applicant has complied with subsections (2) and (3), the authority must, within the decision period—

(a) review the original decision; and

(b) consider any submissions properly made by a recipient of the review notice; and

(c) make a decision (the ***review decision***) to—

(i) confirm or revoke the original decision; or

(ii) vary the original decision in a way the administering authority considers appropriate.

(6) The application does not stay the original decision.

(7) The application must not be dealt with by—

(a) the person who made the original decision; or

(b) a person in a less senior office than the person who made the original decision.

(8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.

(9) The notice must—

(a) include the reasons for the review decision; and

(b) inform the persons of their right of appeal against the decision.

(10) If the administering authority does not comply with subsection (5) or (8), the authority is taken to have made a decision confirming the original decision.

(11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, section 27A.

(12) This section does not apply to an original decision made by—

(a) for a matter, the administration and enforcement of which has been devolved to a local government—the local government itself or the chief executive officer of the local government personally; or

(b) for another matter—the chief executive personally.

(13) Also, this section does not apply to an original decision to issue a clean-up notice.

(14) In this section—

decision period means—

(a) if a submission is received within the submission period—15 business days after the administering authority receives the application; or

(b) if no submissions are received within the submission period—10 business days after the administering authority receives the application.

522 Stay of operation of particular original decisions

(1) If an application is made for review of an original decision mentioned in schedule 2, part 1 or 2, the applicant may immediately apply for a stay of the decision to—

(a) for an original decision mentioned in schedule 2, part 1—the Land Court; or

(b) for an original decision mentioned in schedule 2, part 2—the Court.

(2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.

(3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.

(4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.

(5) This section applies subject to sections 522A and 522B.

522A Stay of decision about financial assurance

(1) This section applies to an application under section 522 for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority.

(2) The decision may not be stayed unless the administering authority has been given security for at least 75% of the amount of financial assurance that was decided by the administering authority.

522B Stay of decision to issue environmental protection order

(1) This section applies to an application under section 522 for a stay of a decision to issue an environmental protection order.

(2) The Land Court or the Court must refuse the application if satisfied there would be an unacceptable risk of serious or material environmental harm if the stay were granted."[21]

[17] Division 3 of Chapter 11 is headed "Appeals". It comprises two subdivisions. Subdivision 1 is headed "Appeals to Land Court" and contains the following provisions:

"**523 Review decisions subject to Land Court appeal**

This subdivision applies if the administering authority makes an original decision mentioned in schedule 2, part 1.

524 Right of appeal

A dissatisfied person who is dissatisfied with the decision may appeal against the decision to the Land Court.

525 Appeal period

(1) The appeal must be started within 22 business days after the appellant receives notice of the decision.

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21 Sections 522(5), 522A and 522B were inserted by the *Environmental Protection (Chain of Responsibility) Amendment Act* 2016 (Qld) ("the 2016 Amending Act") ss 12, 13 effective from 27 April 2016.

(2) However, the Land Court may at any time extend the time for starting the appeal.

526 Land Court mediation

(1) Any party to the appeal may, at any time before the appeal is decided, ask the Land Court to conduct or provide mediation for the appeal.

(2) The mediation must be conducted by the Land Court or a mediator chosen by the Land Court.

527 Nature of appeal

The appeal is by way of rehearing, unaffected by the review decision.

528 Land Court's powers for appeal

In deciding the appeal, the Land Court has the same powers as the administering authority.

530 Decision for appeals

(1) In deciding the appeal, the Land Court may—

(a) confirm the decision; or

(b) set aside the decision and substitute another decision; or

(c) set aside the decision and return the matter to the administering authority who made the decision, with directions the Land Court considers appropriate.

(2) In setting aside or substituting the decision, the Land Court has the same powers as the authority unless otherwise expressly stated.

(3) However, this part does not apply to a power exercised under subsection (2).

(4) If the Land Court substitutes another decision, the substituted decision is taken for this Act, other than this subdivision, to be the authority's decision."

[18] Subdivision 2 of Division 3 relates to appeals to the Planning and Environment Court which is defined in Schedule 2 to the Act to be "the Court". Those who may appeal to that court under this subdivision are specified in s 531 which states:

"(1) A dissatisfied person who is dissatisfied with a review decision may appeal against the decision to the Court.

(2) However, the following review decisions can not be appealed against to the Court—

(a) a review decision to which subdivision 1 applies;

(b) a review decision that relates to an original decision mentioned in schedule 2, part 3.

(3) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.

(4) A dissatisfied person who is dissatisfied with an original decision to which section 521 does not apply may appeal against the decision to the Court."

[19] This subdivision contains the following stay provisions:

"**535 Stay of operation of decisions**

(1) The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) A stay may be granted on conditions the Court considers appropriate and has effect for the period stated by the Court.

(3) The period of a stay must not extend past the time when the Court decides the appeal.

(4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

(5) This section applies subject to sections 535A to 535C.

535A Stay of decision to issue a clean-up notice

(1) This section applies to an application under section 535 for a stay of a decision to issue a clean-up notice.

(2) In deciding the application, the Court must have regard to—

(a) the quantity and quality of contamination of the environment that is likely to be caused if the stay is granted; and

(b) the proximity of the place at or from which the contamination incident is happening or happened to a place with environmental values that may be adversely affected by the contamination.

535B Stay of decision about financial assurance

(1) This section applies to an application under section 535 for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority.

(2) The decision may not be stayed unless the administering authority has been given security for at least 75% of the amount of financial assurance that was decided by the administering authority.

535C Stay of decision to issue environmental protection order

(1) This section applies to an application under section 535 for a stay of a decision to issue an environmental protection order.

(2) The Court must refuse the application if satisfied there would be an unacceptable risk of serious or material environmental harm if the stay were granted."[22]

[20] The LC Act confers on the Land Court all the powers of the Supreme Court for the exercise of its jurisdiction. To that end, s 7A thereof provides:

"(1) The Land Court has, for exercising jurisdiction conferred under this Act or another Act, all the powers of the Supreme Court, and may in a proceeding before the Land Court, in the same way and to the same extent as may be done by the Supreme Court in a similar proceeding—

(a) grant any relief or remedy; and

(b) make any order, including an order for attachment or committal because of disobedience to an order; and

(c) give effect to every ground of defence or matter of set-off, whether equitable or legal.

(2) Without limiting subsection (1), the Land Court has, in a proceeding before it, power to grant relief—

(a) under a declaration of rights of the parties; or

(b) under an injunction, whether interim, interlocutory or final, in the proceeding; or

(c) by staying the proceeding or a part of the proceeding; or

(d) by appointing a receiver including an interim receiver.

(3) The Land Court may order that a record of, or information about, a proceeding before the Land Court must not be made available to the public.

(4) Without limiting the things the Land Court may have regard to in deciding whether to make an order under subsection (3), the Land Court may have regard to Aboriginal tradition and Island custom.

(5) Subsection (1) has effect subject to—

(a) another provision of this Act; and

(b) a provision of another Act under which jurisdiction is conferred on the Land Court."

The decisions below

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22 Sections 535(5), 535B and 535C were inserted by the 2016 Amending Act ss 14, 15 also effective from 27 April 2016.

[21] **The decision of the Land Court**: The member of the Land Court concluded that s 522(2) conferred a power on the Land Court to order a stay to secure not only the effectiveness of the internal review of an original decision but also the effectiveness of any later appeal. He rejected argument that the power conferred by this section was limited only to stays pending the determination of an internal review and not thereafter. The presence of provisions in Division 1 subdivision 3 dealing specifically with appeals to the Land Court did not, in his view, support such a limitation.[23]

[22] On the basis of this construction of s 522(2), the member was of the view that it was therefore unnecessary for him to consider any other possible source of power to grant a stay such as s 7A of the LC Act.[24] Further, relying on this construction, he regarded s 522A as applicable to the application before him by virtue of the operation of s 522(5).[25]

[23] Alphadale had not given security to the administering authority for at least 75 per cent of the amount originally decided as financial assurance. In that circumstance, the member held that s 522A(2) operated to preclude exercise of the power under s 522(2) to grant the stay and that the application for it must therefore be refused.[26]

[24] **The decision of the Land Appeal Court**: The Land Appeal Court upheld an interpretation of s 522(2) propounded by Alphadale that the provision conferred on the Land Court "a very limited jurisdiction which it would not otherwise have", namely, to stay the operation of a review decision between the time it is made and the time an appeal against it is begun in the Land Appeal Court.[27] The Land Appeal Court further held that once an appeal against a review decision was commenced, the only power to grant a stay of it was that conferred by s 7A of the LC Act. Exercise of the power under that section was not constrained by a provision analogous to s 522A(2).[28] On the basis of these conclusions, the Land Appeal Court allowed the appeal and ordered the stay of the review decision to which I have referred.[29] The Land Appeal Court identified "three important features" of Chapter 11 Part 3 of the Act which, in its view, supported its favoured interpretation of s 522(2).[30] The first feature was that "the scheme and words of s 522 are primarily designed to allow the Land Court and the Planning and Environment Court to grant a stay pending review" of an original decision.[31]

[25] The second feature was that the enactment of ss 535, 535B and 535C in Division 3 subdivision 2 applicable to the Planning and Environment Court would have been unnecessary, so far as that court was concerned, had s 522(2) operated to confer on both it and the Land Court a power to order a stay once an appeal against a review decision had been commenced. The interpretation favoured by it avoided a redundancy in those sections.[32]

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23 Reasons [29].
24 Reasons [30].
25 Reasons [31].
26 Reasons [32], [33].
27 Reasons [12], [51].
28 Reasons [16].
29 Reasons [66].
30 Reasons [19].
31 Reasons [20].
32 Reasons [22].

[26] The third feature was that provisions equivalent to ss 535, 535B and 535C had not been enacted in Division 2.[33] The Land Appeal Court rejected a submission by the Chief Executive that the Planning and Environment Court had power under ss 531(3) and (4) to hear appeals against original decisions directly, as well as review decisions and in that way differed from the Land Court.[34]

[27] This rejection was based upon the Land Appeal Court's view that the language in which ss 523 and 524 in Division 3 subdivision 1 were enacted did not unambiguously exclude a jurisdiction in the Land Court to hear appeals from original decisions directly without the interposition of an internal review.[35] Although the Land Appeal Court considered that ss 523 and 524 had been drafted in error and failed to reflect a legislative intention disclosed in the relevant Explanatory Memoranda, it "could not conclude that Parliament intended that original decisions never be the subject matter of appeals to the Land Court" and, consistently with such an intention, had determined that no equivalent to ss 535, 535B and 535C was needed for the Land Court.[36]

The enactment and amendment of s 522

[28] Section 522 of the Act is central to this appeal. Acquaintance with the history of its enactment and subsequent amendment assists, in my view, in resolving the aspects of statutory interpretation relevant to deciding the appeal.

[29] The section was originally enacted in 1994 as s 203 of the Act as follows:

> "**Stay of operation of original decisions**
>
> (1) If an application is made for review of an original decision, the applicant may immediately apply for a stay of the decision to the Court.
>
> (2) The Court may stay the decision to secure the effectiveness of the review and any later appeal to the Court.
>
> (3) A stay may be given on conditions the Court considers appropriate and has effect for the period stated by the Court.
>
> (4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Court allows the applicant to enable the applicant to appeal against the review decision"

The "Court", as defined in Schedule 4, was the Planning and Environment Court. Thus, when the section was enacted, it had no application to the Land Court. At that time, the Land Court had no jurisdiction under the Act and appeals under Division 3 were to the Planning and Environment Court only.

[30] It is of significance that when the Act was enacted, the Planning and Environment Court was not invested with the powers of the Supreme Court of Queensland for the exercise of its jurisdiction. There was no provision for it analogous to s 7A of the LC Act to which I have referred. Nor was there a specific power for it to order a stay of an

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33 Reasons [29].
34 Reasons [31].
35 Reasons [32].
36 Reasons [50].

administrative decision once made, before, or during, the currency of an appeal against it.

[31] The Planning and Environment Court was inaugurated by the *City of Brisbane Town Planning Act* 1964 (Qld). The powers given to it were regulated by s 30 of that Act. They were limited to summoning witnesses, production of documents, the taking of evidence and punishment for contempt. No power to grant a stay was given. This state of affairs was maintained upon the repeal of that Act and the continuation of the Planning and Environment Court by the *Local Government (Planning and Environment) Act* 1990 (Qld).[37] It pertained at the time of the enactment of the Act in 1994.

[32] In the Bill for the Act, s 203 was numbered s 202. The Explanatory Memorandum for the Bill said of the section that it:

> "provides (that) an applicant in an appeal may request that the Court delays the commencement of the original decision, while the appeal is being heard."

[33] Section 203(1) was amended by the *Environmental Protection and Other Legislation Amendment Act* 2000 (Qld) ("the 2000 Amending Act") to accommodate a bifurcation of jurisdiction with regard to curial review of decisions.[38] The amendment deleted the words "to the Court" and substituted the following:

> "to –
>
> (a) for an original decision mentioned in schedule 1, part 1 – the tribunal;
>
> (b) for an original decision mentioned in schedule 1, part 2 – the Court".[39]

Each of sub-ss 203(2) to (4) was amended to refer to the "tribunal or the Court".

[34] This amending Act also effected a subdivision of Division 3.[40] Notably, subdivision 1 (ss 203A – 203H) was introduced to allow for appeals to the newly inaugurated Land and Resources Tribunal ("the Tribunal"). It was invested with comprehensive powers analogous with those subsequently given to the Land Court by s 7A of the LC Act.[41] In this, it differed from the Planning and Environment Court.

[35] In due course, s 203 was re-numbered s 522. Upon the subsequent transition of jurisdiction from the Tribunal to the Land Court, the section was amended to refer to the Land Court in lieu of Tribunal.[42] Comparable amendments were made to Division 3 subdivision 1 (re-numbered ss 523 – 530). This amending Act, passed in 2007, also inserted a s 32J into the LC Act.[43] That section, itself subsequently amended, is now relocated and re-numbered as s 7A of that Act.

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37 See ss 7.3(1) and 7.5(1) thereof. So also upon the repeal of the *Local Government (Planning and Environment) Act* 1990 (Qld) and the continuation of the Planning and Environment Court by the *Integrated Planning Act* 1997 (Qld) ss 4.1.1, 4.1.4.

38 Section 38 thereof.

39 The references to "Schedule 1" have since been amended to "Schedule 2".

40 Section 39 thereof.

41 *Land and Resources Tribunal Act* 1999 (Qld) s 65.

42 *Land Court and Other Legislation Amendment Act* 2007 (Qld) ("the 2007 Amending Act") s 41.

43 Section 23 thereof.

Grounds of appeal

[36] At the hearing of the application for leave to appeal, the Court heard full argument for the Chief Executive on the proposed grounds of appeal. They are:[44]

> "1. The Land Appeal Court erred in construing sections 522, 522A and 522B of the *Environmental Protection Act* 1994 (Qld) as:
>
> a. conferring power limited to the stay of an original decision pending internal departmental review; and
>
> b. as having no application after an appeal from such a decision has been lodged.
>
> 2. The error in 1. above had the consequence that the Land Appeal Court wrongly granted a stay without security having been given for at least 75% of the financial assurance decided by the Appellant on 22 April 2016."

[37] At the hearing of the appeal, the Chief Executive advanced a range of arguments based on plain meaning and statutory context which, it was submitted, favour a conclusion that the requirement in s 522A(2) applied to the application on the part of Alphadale for a stay until determination of its appeal to the Land Court. Those arguments inform the following discussion of the merits of the appeal.

Discussion

[38] **Original decisions and review**: I preface my discussion with the following observations about original decisions and review decisions. A decision made on a Schedule 2 matter is an original decision. It is the decision that decides the matter.[45] A review decision is a decision which confirms, varies or revokes an original decision.[46] However, it does not, of itself, decide the Schedule 2 matter.

[39] If, on review, an original decision is revoked, then it ceases to exist, as would the basis for dissatisfaction of the dissatisfied person who requested the internal review. But, if an original decision is confirmed, it is that decision which continues as the decision which decided the matter. There is no provision in s 521 or elsewhere in the Act which has the effect of substituting the review decision for the original decision or otherwise superseding it as the decision that has determinatively decided the matter. So also, when an original decision is varied on review, it is the original decision, as varied, which continues in effect. By contrast, a decision of the Land Court on appeal under Division 3 subdivision 1 has substitutive effect.[47]

[40] In this legislative framework, a dissatisfied person who has sought an internal review will be concerned to have the original decision stayed pending the determination of the review. Similarly, a person who is dissatisfied with a review decision which confirms or varies an original decision will also be concerned to have the original decision, whether varied or not, stayed pending the determination of an appeal against the review decision. Although it is the review decision that is amenable to appeal, it is the original decision, confirmed or varied by the review

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44 AB56.
45 Section 519(1).
46 Section 521(5).
47 Section 530(4).

decision that, unless stayed, continues to have operative effect until the appeal is decided.

[41] **Operation of s 203 upon enactment**: Upon enactment, s 203(1) permitted an applicant for review of an original decision to apply immediately to the Planning and Environment Court for a stay of that decision. The provision did not require that the application be made immediately the review was sought. The word "immediately" connoted that the stay application might be made once a review application had been made and before the review had been carried out.

[42] Section 203(2) empowered the Planning and Environment Court to stay the original decision in order "to secure the effectiveness of the review and any later appeal to the (Planning and Environment) Court". The grant of power was made in circumstances where, as I have explained, the Planning and Environment Court had no power to grant a stay of an original decision either prior to performance of the review or during the currency of any subsequent appeal.

[43] Section 203(4) confined the period of a stay to the time during which the original decision was being reviewed "and any later period the Court allows the applicant to enable the applicant to appeal against the review decision". This section accommodated the provision in s 204(1) of Division 3 that a dissatisfied person who is dissatisfied with a review decision might appeal against that decision to the Planning and Environment Court.

[44] To my mind, it is tolerably clear that the stay which might have been ordered under s 203(2) was a stay of the original decision, and not of the review decision. Why that was so is explained by the continuing operative effect of an original decision if confirmed or varied on review.

[45] It is equally clear, in my view, that s 203(2) conferred a power on the Planning and Environment Court to grant a stay of the original decision not only for the duration of a review, but also for the currency of an appeal against a review decision. The express purpose of the power was to secure the effectiveness of both the review and any subsequent appeal. A stay order under the provision would not have secured the effectiveness of any such appeal if it did not stay the operation of the original decision, as confirmed or varied, during the currency of the appeal. To the contrary, a stay that terminated upon the making of the review decision would permit the original decision, as confirmed or varied on review, to operate according to its terms and so risk impairing the effectiveness of the appeal. As noted, the Planning and Environment Court did not have any other legislative source of power which would have enabled it to order a stay pending determination of the appeal.

[46] This interpretation of s 203(2) is fortified by the provisions of s 203(4). It is, I think, clear that the latter provision envisaged a stay during the currency of an appeal against a review decision. It is telling that the provision spoke of enabling the applicant to appeal against the review decision, and not merely of enabling the applicant to institute an appeal against the decision.

[47] To my mind, there was no disharmony between the heading of the section, which it retains, and its then provisions. The heading accurately reflected the grant of a power to the Planning and Environment Court to stay the operation of original decisions. The heading did not imply any limitation on the power such that a stay made under the section could be granted only for the period during which an original decision was being reviewed or, at the latest, until an appeal was instituted.

[48] It remains to note that the legislative intention that I have discerned in the text of s 203, namely, that the Planning and Environment Court have a power, which it did not otherwise have, to order a stay for the duration of a review of an original decision and of any appeal consequent upon the making of the review decision, accords with the role attributed to the provision in the Explanatory Memorandum for the Act to which I have referred.

[49] **The 2000 amendments**: It will be recalled that the amendments made to s 203 in 2000 were principally to s 203(1) to permit stay applications to the Tribunal for original decisions mentioned in Schedule 2 part 1, and to the Planning and Environment Court for original decisions mentioned in Schedule 2 part 2. The only amendments to sub-ss 203(2), (3) and (4) were to insert "tribunal or the Court" in lieu of "Court". No other explicit amendments were made to the provisions of the section.

[50] The amendment to s 203(2) to make it applicable to the Tribunal was apt to indicate that that provision was intended by the Parliament to be the Tribunal's specific source of power to make stay orders of the type referred to in it. In that way, the provision was to operate to the exclusion of a general grant of power such as s 65 of its Act which, otherwise, might arguably have been seen as a source of power to make an order staying an original decision pending appeal, if not pending a review.

[51] I am unable to infer from the amendment made to the section that any additional implicit change of meaning of its provisions was at that time intended. Nor am I able to draw such an inference from the terms in which Division 3 subdivision 1 for appeals to the Tribunal was enacted at the same time.

[52] Specifically, I am unable to detect, by inference, any intended change to the grant of power in s 203(2) such that a stay that might be made under it was to be one for the duration of the review only or, at the latest, until an appeal to either the Tribunal or the Planning and Environment Court was instituted. To the contrary, had such a change been intended, an expression of legislative intention to that effect might ordinarily have been expected. In addition, the Explanatory Memorandum for the Bill for the 2000 Amending Act to make amendments to the section does not suggest that any of them were to effect such a change.

[53] Furthermore, other considerations point against such an inference. Even if the Tribunal arguably had jurisdiction under s 65 of its Act to order a stay of an original decision during the currency of an appeal, the Planning and Environment Court did not. It is most unlikely, absent express words to that effect, that s 203(2) was intended to operate differentially as between the Tribunal and the Planning and Environment Court, conferring a power on the latter to order a stay pending appeal, but not on the former.

[54] **The 2007 amendments**: The amendments to s 203, renumbered s 522, made in 2007 and also the amendments to Division 3 subdivision 1 did no more than omit "tribunal" and insert "Land Court". They were contained in a Schedule to the 2007 Amending Act. Of themselves, they did not enact or imply any change of meaning to the operation of s 522.

[55] I acknowledge that the same amending Act enacted a s 32J into the LC Act which, in due course, was amended and renumbered as s 7A. That enactment was consistent with the transition of jurisdiction to the Land Court from the Tribunal

which already had comparable powers under s 65.[48] It did not, in my view, imply some unexpressed intended change of operation for s 522.

[56] **The 2016 amendments**: The 2016 Amending Act enacted ss 522(5), 522A and 522B. Section 522(2) was not amended. The amendments that were made do not ground an inference that a change to how s 522(2) operates was intended by them.

[57] To the contrary, the Explanatory Memorandum for the Bill for the 2016 Amending Act stated that ss 522A and 522B were "to address the circumstances in which certain decisions should, or may be, stayed while the subject of an application for internal review **or appeal**" (emphasis supplied). This explanation is consistent with the role of s 522(2) as the source of power for both the Land Court and the Planning and Environment Court to make orders staying original decisions pending internal review and any subsequent appeal. Indeed, ss 522A and 522B would fail to achieve their purpose as stated in the Explanatory Memorandum if they did not apply to stays pending both internal review and appeal.

[58] The statement in the Explanatory Memorandum is also consistent with the view that s 522(2) is intended to be the operative source of power for the Land Court to make stay orders of this kind pending both review and appeal, to the exclusion of the general grant of power in s 7A of the LC Act. It is difficult to imagine that Parliament would have intended there to be a regime in which the very substantial restraint in s 522A would apply when a stay was sought under s 522(2) pending a review but would not apply when a stay was sought under s 7A pending an appeal.

[59] I note at this point that the enactment of ss 535, 535B and 535C by the 2016 Amending Act applicable to appeals to the Planning and Environment Court, did not render redundant ss 522(2), 522A and 522B in their application to that Court. That is so because s 535 empowers the Planning and Environment Court to grant a stay of "a decision appealed against". Under s 531(1), it is a review decision in respect of a Schedule 2 part 2 matter that is appealed to the Planning and Environment Court, not the original decision. Thus, ss 522A and 522B remain applicable to an application under s 522(2) to that Court for a stay of the original decision, as confirmed or varied, concerning the matter.

[60] As well, those sections have an additional role to play in that they apply to appeals against original decisions to which s 521 does not apply, namely, original decisions for which there is no provision for internal review. It will be recalled that those decisions may be appealed directly to the Planning and Environment Court.

[61] **Summary and conclusions**: I have endeavoured through this survey of the legislative history of s 522 to reveal a consistent and clear legislative intention that s 522(2) be the sole source of power for the Land Court to stay an original decision in respect of a Schedule 2 part 1 matter not only during a review of the original decision but also during an appeal against a review decision.

[62] I am therefore of the view that the Land Appeal Court erred in holding, firstly, that s 522(2) is not the source of power to order a stay of an original decision, as confirmed or varied on review, once an appeal against a review decision is instituted,

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48 The Explanatory Memorandum for the Bill for the 2007 Amending Act stated that the powers were being conferred on the Land Court because the Tribunal had had such powers for exercising the transitioned jurisdiction under s 65 of its Act.

and, secondly, that s 7A of the LC Act empowers the Land Court to grant a stay pending appeal in respect of a Schedule 2 part 1 decision unconstrained by the condition in s 522A(2).

[63] As to the first of the three features in the reasoning of the Land Appeal Court to which I have referred, I would agree that s 522 confers a power to stay original decisions. It is, however, significant that the original decision is not substituted or superseded by the review decision. It is the original decision, as confirmed or varied, that a dissatisfied person will be interested in having stayed pending an appeal against the review decision.

[64] As to the second feature, I have explained why it is that ss 522(2), 522A and 522B have not been rendered redundant by the enactment of ss 535, 535B and 535C in the case of the Planning and Environment Court.

[65] With regard to the third feature, I accept that Division 3 subdivision 1 is imprecisely drafted, however, to my mind, it is to be interpreted as permitting an appeal of review decisions only to the Land Court. That is to say, a person who is dissatisfied with an original decision in Schedule 2 part 1 may not appeal it directly to the Land Court. Features which indicate that are the heading to s 523 "Review decisions subject to Land Court appeal", which itself appeared in the Explanatory Memorandum for the Bill for the 2000 Amending Act, and the provision in s 527 that the appeal is by way of rehearing "unaffected by the review decision". The use of the definite article implies that there will have been a review decision.

[66] That provisions equivalent to ss 535, 535B and 535C were not enacted in Division 3 subdivision 1 is, in my view, explained in part by the jurisdiction of the Planning and Environment Court to hear appeals from original decisions for which internal review is not available, which the Land Court does not have. It is also explained by the scope of operation of s 522(2) to empower the Land Court to order a stay of an original decision, as confirmed or varied on internal review, during the currency of an appeal against the review decision.

[67] I conclude that it was correct for the member of the Land Court to have refused the application for the stay. Technically, that could have been done on the basis that the stay sought was not of the original decision as confirmed, but of the review decision, given that there is no power under s 522(2) or elsewhere for the Land Court to order a stay of a review decision. Additionally, the stay could have been refused for lack of utility in a stay of a review decision on its own. As noted, despite such a stay, the original decision as confirmed would have continued as an operative decision.

[68] I note further that had the application been for a stay of the original decision as confirmed, the member of the Land Court would have acted correctly in refusing it for non-fulfilment by Alphadale of the condition in s 522A.

[69] I also conclude that, for these reasons, the Land Appeal Court erred in ordering a stay of the review decision purportedly in reliance upon s 7A of the LC Act. In particular, it erred in acting upon the footing that it could order a stay without regard for non-fulfilment of the condition in s 522A.

Disposition

[70] In light of these reasons, I consider that there should be a grant of leave to appeal. The appeal should be allowed. The orders made by the Land Appeal Court on 23 September 2016 should be set aside and substituted by an order dismissing the appeal to it. The Chief Executive has sought an order for costs of the appeal to this Court. Given the success of the appeal, such an order should be made.

Orders

[71] I would propose the following orders:

1. Grant leave to appeal.
2. Appeal allowed.
3. The orders of the Land Appeal Court made on 23 September 2016 are set aside.
4. In lieu thereof, it is ordered that the appeal to the Land Appeal Court be dismissed.
5. The respondent is to pay the appellant's costs of this appeal on the standard basis.

[72] **McMURDO JA:** The respondent, which I will call Alphadale, held an environmental authority (EA), issued under the *Environmental Protection Act* 1994 (Qld) (the EPA), in relation to mining leases over land near Greenvale in north Queensland. It was required to provide what the EPA calls "financial assurance," which is a financial security against the potential burden to the State of having to rehabilitate, restore and protect the environment because of some harm caused by activity on the site. The parties to this case disagreed on the amount of the financial assurance which should be given. In 1996, Alphadale had provided financial assurance in an amount of $175,536.00. In March 2016, a delegate of the applicant decided that the amount of financial assurance should be $4,345,852.42, which would require Alphadale to provide further security in an amount of $4,170,316.42.

[73] It was a condition of Alphadale's EA that it provide a financial assurance. Subject to the delegate's decision being successfully challenged, Alphadale was required to provide that further amount and, it was also decided by the delegate, in the form of a bank guarantee.

[74] The EPA provides for two ways in which the Department's quantification of the required amount of financial assurance can be challenged. The first is by a review of the decision conducted within the Department. The second is by an appeal to the Land Court, or in circumstances which do not exist here, the Planning and Environment Court. Alphadale pursued, as it was entitled to do, each of those courses. It applied for a review, the outcome of which was that by a decision in April 2016, the original decision of the delegate was confirmed. Alphadale then appealed to the Land Court.

[75] In the Land Court, Alphadale applied for a stay of the April decision. The stay was sought until the determination of Alphadale's appeal or further order. Alphadale's argument for the stay, in essence, was that it would incur substantial costs in providing a bank guarantee for an amount of this order, costs which it could not recover in the event that its challenge to the quantification of financial assurance was successful. Its case in the appeal was that it should have to provide no further financial assurance.

[76] Absent a stay, the original decision of the delegate was immediately effective, notwithstanding Alphadale's application for its review. By the original decision, Alphadale's EA had become subject to a condition that financial assurance, in the amount so quantified, be provided. Similarly, that remained a condition of the EA, although Alphadale appealed to the Land Court. Absent a stay, Alphadale was exposed to serious consequences in the event that it did not comply with that condition. Its EA could be cancelled or suspended for failing to provide the financial assurance required under a condition of the EA.[49] And the holder of an EA who contravenes a condition of the EA commits an offence.[50]

[77] Alphadale's application for a stay was refused by a member of the Land Court.[51] He held that, because of s 522A of the EPA, a stay could not be granted unless at least 75 per cent of the financial assurance, as decided by the delegate and confirmed upon the review, was provided.

[78] Alphadale appealed to the Land Appeal Court, which allowed the appeal.[52] That court held that s 522A did not apply to Alphadale's case, so that the discretionary power to grant the stay was not restricted by what can be described here as the 75 per cent requirement. That court further decided that a stay should be granted as Alphadale had sought. From that decision comes this application for leave to appeal.

[79] There was no appearance by Alphadale, as the respondent to the application, although it had been duly served. The court was informed that Alphadale is insolvent. Nevertheless, there would appear to be a real dispute which is the subject of this proceeding. Because the proposed appeal raises a point of general importance about the proper interpretation of certain provisions of the EPA, leave to appeal should be granted. However, in my view, the conclusion of the Land Appeal Court was correct and the appeal should be dismissed.

[80] Division 2 of Chapter 11 of the EPA is headed "Internal review of decisions". It begins with s 521, which provides the right to a dissatisfied person, here Alphadale, to apply for a review of "an original decision." That is a term which is defined by s 519(1). The delegate's decision in March 2016 was an "original decision".

[81] An application for a review, under s 521, is made to "the administering authority". In this case, that person is the Chief Executive, although he or she may delegate the power.[53] By s 521(5), the administering authority must review the original decision, and make what is called the "review decision", which is to "confirm or revoke the original decision" or to "vary the original decision in a way the administering authority considers appropriate".[54]

[82] After making the review decision, the administering authority must give notice of "the decision", which notice must "include the reasons for the review decision" and "inform the persons (to whom it is to be given) of their right of appeal against the

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49 EPA, s 278(2)(b).
50 EPA, s 430.
51 *Alphadale Pty Ltd v Department of Environment & Heritage Protection* [2016] QLC 38.
52 *Alphadale v Chief Executive, Department of Environment & Heritage Protection* [2016] QLAC 6.
53 EPA, s 518.
54 EPA, s 521(5)(c).

decision."[55] Notably, that refers to an appeal against the review decision, not the original decision.

[83] Section 522 is headed "Stay of operation of particular original decisions". It is necessary to set it out in full:

> "**522 Stay of operation of particular original decisions**
>
> (1) If an application is made for review of an original decision mentioned in schedule 2, part 1 or 2, the applicant may immediately apply for a stay of the decision to—
>
> (a) for an original decision mentioned in schedule 2, part 1—the Land Court; or
>
> (b) for an original decision mentioned in schedule 2, part 2—the Court.
>
> (2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.
>
> (3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.
>
> (4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.
>
> (5) This section applies subject to sections 522A and 522B."

[84] What I have called the 75 per cent requirement came, if at all, from s 522A which is as follows:

> "**522A Stay of decision about financial assurance**
>
> (1) This section applies to an application under section 522 for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority.
>
> (2) The decision may not be stayed unless the administering authority has been given security for at least 75% of the amount of financial assurance that was decided by the administering authority."

[85] Unambiguously, s 522A applies only to an application under s 522. Therefore, the question becomes one of the proper interpretation of s 522. Can an application be made under s 522 only where a stay is sought *before* the review decision is given? Or can a stay be sought under s 522 when the review decision has been given already? In several ways, the terms of s 522 indicate the former.

[86] Firstly, s 522(1) defines the circumstance in which a stay may be sought under this section as where there has been an application made for review of an original decision. That is an application for a review under s 521. Sections 521 and 522 (as well as s 522A) are within Division 2 which, as I have said, is headed "Internal

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55 EPA, s 521(9).

review of decisions". The stated circumstance is a pending application for a review, rather than a "review decision" having been made.

[87] Secondly, there are the terms of s 522(2) which (again) make clear the context in which this power, conferred by s 522, may be exercised. Section 522(2) empowers (relevantly here) the Land Court to "stay the decision to secure the effectiveness of the review *and* any later appeal to the Land Court …" The decision which is to be stayed is the original decision, then subject to the review process. And the reference to "any *later* appeal to the Land Court" is further confirmation of that interpretation. It refers to a possible appeal at a later time, rather than to an appeal already commenced. Section 522(2) empowers the Land Court (or the Planning and Environment Court) to stay the original decision ahead of an appeal to that Court.

[88] Thirdly, in s 522(4) it is provided that the period of the stay must not extend past the time of the review and, if allowed by the Land Court, any later period to enable the applicant to appeal. Absent such an allowance, the period of the stay cannot extend past the review decision. Again, the terms of this sub-section confirm the context in which a stay may be sought and granted under s 522(2), namely where there is a pending internal review of an original decision.

[89] Fourthly, s 522(4) refers to an appeal against the *review* decision, not the original decision. By distinguishing between an original decision and the review decision, again the context of the operation of s 522 is confirmed. The context is where an application is made for *review* of an *original* decision, as distinct from an *appeal* against the *review* decision.

[90] Other sections, with one possible exception, consistently refer to the review decision, rather than the original decision, as that which may be appealed to the Land Court (or the Planning and Environment Court). Division 3 of Chapter 11 is headed "Appeals". Subdivision 1 of Division 3 is headed "Appeals to Land Court". The first of its provisions is s 523:

> "**523 Review decisions subject to Land Court appeal**
>
> This subdivision applies if the administering authority makes an original decision mentioned in schedule 2, part 1."

At first sight, there might be thought to be a contradiction within s 523. Its heading refers to an appeal against "*review decisions*". Its text provides that subdivision 1 applies if the administering authority makes an *original* decision mentioned in Schedule 2, part 1. But there is not a contradiction: the review decision is the subject of the appeal, but only where it is a review decision from an original decision mentioned in Schedule 2, part 1.

[91] That interpretation is confirmed by s 525, which provides that the appeal must be started within 22 business days after the appellant receives notice of "the decision". That time period can be compared with the time periods prescribed for an internal review. An application for review must be made within 10 business days after notice of the original decision.[56] A further five business days is allowed for the so called "submission period".[57] If a submission is received within the submission period, the review decision must be given within 15 business days after receipt of

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56 s 521(2)(a)(i).

57 s 521(4).

the application for the internal review.[58] If no submission is received within that period, the decision must be made within 10 business days after receipt of the application.[59] Either way, a review decision need not be made earlier than 20 days from notice of the original decision. A further 10 business days is then allowed for written notice of the review decision, after it is made.[60] All of this means that "the decision" which is referred to in s 525(1), cannot be the original decision, because otherwise the appeal period could expire, and often would expire, before the outcome of the internal review is known. That is unlikely to have been intended. Rather, it is the review decision which may be appealed to the Land Court, within 22 business days of notice of it.

[92] There is further confirmation for this interpretation of s 522 in the provisions of subdivision 2, which deals with appeals to the Planning and Environment Court (described in the EPA as the Court). Subdivision 2 begins with s 531(1), which provides that a person dissatisfied with a *review* decision may appeal against the decision to the Court. Most significantly, s 531(2) provides:

> "(2) However, the following *review* decisions can not be appealed against to the Court—
>
> (a) a *review* decision to which subdivision 1 applies;
>
> (b) a review decision that relates to an original decision mentioned in schedule 2, part 3."

(emphasis added)

Section 531(2) thereby confirms, if further confirmation be needed, that subdivision 1 provides for an appeal against a review decision.

[93] Subdivision 2, unlike subdivision 1, specifically provides for a stay of the decision under appeal. It empowers the Planning and Environment Court to grant a stay until no later than the decision on the appeal. It provides that the exercise of that power is subject to, relevantly here, s 535B. That section imposes the 75 per cent requirement, where a stay is sought under s 535 of a decision about the amount of financial assurance required under a condition of an EA.

[94] Under s 535(3), the period of the stay is not to extend "past the time when the Court decides the appeal". Under s 522(4), the period must not extend past the time of the review "and any later period … the Court allows the applicant to enable the applicant to appeal against the review decision." That difference in wording is significant: it indicates the meaning of the expression "to enable the applicant to appeal" within s 522(4). It indicates that "appeal" there means the commencement of the appellate proceeding.

[95] In my view, the text of s 522, together with the context of the other relevant provisions which I have discussed, means that s 522 applies where, and only where, there is a pending internal review of an original decision. It confers a power to stay an original decision, not a review decision.

[96] Therefore this was not an application for a stay under s 522. The source of the Land Court's power to grant a stay here was in s 7A of the *Land Court Act* 2000 (Qld),

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58 s 521(5), (14).
59 Ibid.
60 s 521(8).

which provides that the Land Court has all the powers of the Supreme Court and may in a proceeding before it, in the same way and to the same extent as may be done by the Supreme Court in a similar proceeding, make "any order". There is no like provision in the legislation constituting the Planning and Environment Court, hence the need for the specific power to grant a stay, pending an appeal to that court, which is conferred by s 535 of the EPA.

[97] That difference explains the absence of an equivalent of s 535 in subdivision 1, dealing with appeals to the Land Court. It must be said, however, that it does not explain the absence of a counterpart to s 535B, either in subdivision 1 or in the *Land Court Act*. The explanation may be a legislative oversight. But such an equivalent provision cannot be inserted by an implication. Nor can s 522 be read as if it governed an application for a stay of a review decision, because that would be inconsistent with its express terms.

[98] The Land Appeal Court was therefore correct to hold that a stay could be granted without satisfaction of the 75 per cent requirement. If it was correct in that respect, it is not suggested that this Court should then interfere with the exercise by the Land Appeal Court of its discretion to grant a stay. The appeal should be dismissed.

[99] I would order as follows:

1. Grant leave to appeal.

2. Dismiss the appeal.