



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 13 Mar 2025 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S121/2024
File Title: La Perouse Local Aboriginal Land Council ABN 89136607167
Registry: Sydney
Document filed: Form 27F - Second Respondent's outline of oral submissions
Filing party: Respondents
Date filed: 13 Mar 2025

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

LA PEROUSE LOCAL ABORIGINAL LAND COUNCIL ABN 89136607167

First Appellant

NEW SOUTH WALES ABORIGINAL LAND COUNCIL ABN 82726507500

Second Appellant

and

QUARRY STREET PTY LTD ACN 616184117

First Respondent

MINISTER ADMINISTERING THE CROWN LAND MANAGEMENT ACT 2016

Second Respondent

SECOND RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I Certification

1. This outline of oral submissions is in a form suitable for publication on the internet.

Part II Propositions to be advanced in oral argument

The Minister's limited role in this appeal (MS [5]-[6])

2. In this appeal, the second respondent (the **Minister**) does not contend for any particular outcome, consistent with *R v Australian Broadcasting Tribunal; ex parte Hardiman* (1980) 144 CLR 13: **MS [5]**.
3. Instead, the Minister limits his submissions to two points as to the consequences of the Appellants' interpretation of s 36(1)(b) of the *Aboriginal Land Rights Act 1983* (NSW) (**ALR Act**) (**Vol 1, Tab 3**), being consequences for the Minister's administration of the ALR Act, and consequences for tenants which in turn may impact the orderly development of Crown land: **MS [6]**.
4. The consequences of a particular construction are relevant to the task of statutory interpretation, because it is presumed that Parliament did not intend to enact legislation with consequences which are improbable or impracticable: *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408 per Brennan CJ, Dawson, Toohey and Gummow JJ.

Consequences for the Crown as lessor (MS [19]-[30])

5. The effect of the Appellants' construction is that, where Crown land is leased by the Crown, some use or occupation by the tenant is necessary for s 36(1)(b) to be engaged. On that construction, in some cases, whether land is claimable under the ALR Act turns on the delinquency of the lessee. That would produce the following consequences:
 - a. *First*, the Crown would need to engage in regular monitoring of the degree of tenants' use of land to ensure that use is more than to a "notional degree", which would involve complex evaluations to be undertaken frequently, across the State.
 - b. *Secondly*, depending on the terms of a lease, the Crown may have few practical tools available to it to address insufficient use of the land by a tenant.

- c. *Thirdly*, even if a lease did contain terms permitting termination for lack of use, termination processes can be lengthy, during which time a land claim may be made: **ABFM 511, cl 42(b)**.
 - d. *Fourthly*, in the event a lease was terminated and the tenant removed in consequence of insufficient use of the land, a land claim could be made until such time as a new tenant took possession and began sufficient activities on the land.
6. Similar consequences may arise in the context of reserved land leased by a Crown land manager under the *Crown Lands Management Act 2016* (NSW): **MS [25]**; see also *Crown Lands Act 1989* (NSW), ss, 92, 102 and 106 as at the date of the claim.

Consequences for lessees and investors (MS [31]-[33])

7. The Appellants' construction could discourage investment in Crown land by third parties due to the risk of claims under the ALR Act being made during periods of inactivity. Even where Crown land has been leased, there may be inactivity while a development application is prepared and assessed, during which time it makes little economic sense for a tenant to invest in order to continue or establish interim uses of the land: **MS [33]**.

Orders sought

8. The Minister does not seek his costs of this appeal, and no costs order should be made against him in the appeal, regardless of the result: **MS [34]**. If the appeal is allowed, the Minister likewise does not press for costs in the Court of Appeal.

Dated: 13 March 2025



Zelie Heger



Olivia Ronan