IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B60 of 2015

BETWEEN:

MORETON BAY REGIONAL COUNCIL
Appellant

and

MEKPINE PTY LTD
Respondent

RESPONDENT'S SUBMISSIONS

Part I: Certification for internet publication

1. It is certified that these submissions are in a form suitable for publication on the internet.

Part II: Issues

2. The appeal raises two issues, *viz*:

   (a) whether the registration of the plan of survey had the effect of varying the Mekpine Lease to include a leasehold interest over all of the new amalgamated lot, which gave rise to a relevant interest for the purposes of the ALA; and

   (b) whether the definition of "common areas" in the RSLA was intended to have substantive effect.

Part III: Notification under Judiciary Act

3. The respondent (**Mekpine**) has considered whether notice should be given in compliance with section 78B of the *Judiciary Act* 1903 (Cth) and certifies that no such notice is required.

Part IV: Material facts in contention

A. Relevant Facts

4. Subject to the following observations, Mekpine agrees with the background facts as outlined at paragraphs 8 to 13 of the appellant's submissions.

RESPONDENT'S SUBMISSIONS
Filed on behalf of the Respondent
Form 27d, r 44.03 HCR

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5. While the Mekpine Lease (**lease**) defined "Land" to mean *"the lot described in Item 2 of the Form 7 in this Lease"*,[1] the lease otherwise classified the land into:

   (a) *"Premises"* that were subject of the leasehold interest, defined as: *"part of the ground floor of the building erected on the land as hatched in black on the plan in the schedule hereto"*;[2] and

   (b) *"Common Areas"*, defined as: *"... those areas of the Building or the Land which have not been leased or licensed by the Lessor"*.[3]

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6. The hatched diagram in the schedule of the lease identified the leasehold area as the ground floor area (445m2) of the building marked "1" on that diagram.[4]

7. Mekpine otherwise had a contractual right to use the *"Common Areas"*.[5] The lease anticipated that there could be future dealings with or alterations to the Common Areas in the following terms:[6]

   > *"The Lessee acknowledges that:-*
   > *(a) the Common Areas:-*
   > *(i) are the property of the Lessor; and*
   > *(ii) may be used, controlled, managed, altered, closed or dealt with as the Lessor from time to time sees fit; ..."*

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8. Upon the amalgamation, the shopping centre was expanded to that area of New Amalgamated Lot 1 that previously comprised the Old Lot 1, which works were completed in about March 2008.[7] This area is shown in the plans and photographs in evidence to include areas that were external to any tenancies in the centre, including concourse / walkway areas, carparking areas, driveways and gardens.[8]

30 **B. Decisions in the courts below**

9. In relation to the appellant's account of the findings in the courts below, it is necessary to identify the bases on which the matter has been determined in the lower courts.

10. As noted by Member Isdale, the application in the Land Court sought determination of whether, *"by virtue of the provisions of the Lease"*, or by operation of the

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[1] In turn, Item 2 of the Form 7 described the Lot as *"Lot 6 on RP 809722"*. See Mekpine Lease at AB111.
[2] AB111, 113.
[3] AB114.
[4] AB137.
[5] AB123, ln 23; Lease, cl 6.8. See also AB111, Item 3 of the Reference Schedule, which relevantly defines the "Premises" as *"Shop 1 at Castle Hill Shopping Court ..."*.
[6] AB130, ln 39; Lease, cl 15(a).
[7] As noted by the Land Appeal Court at AB422, at [9] per the Court.
[8] See for example: AB88 – 89, 211, 259 – 269 and 274. See also 'Zacsam' Lease at AB167 – 198 and the findings of the Land Appeal Court at AB434 – 436, paragraphs [70] – [71] in particular, which were not subject to any appeal by the appellant.

RSLA, Mekpine had an interest in the Resumed Land within the meaning of s 12(5) of the ALA.[9] The decision of the Court was that:

(a) as a matter construction, the lease, by its terms, did not confer rights on Mekpine over the Resumed Land;[10] and

(b) the provisions of the RSLA varied the lease, such that Mekpine did have an interest in the Resumed Land relevant to the ALA.[11]

11. The Land Appeal Court found that:

(a) nothing within the lease or arising from the registration process conferred an interest in Mekpine in the Resumed Land under s 12(5) of the ALA.[12] In so determining, the Court accepted the present appellant's submission that one refers to the lease instrument itself to determine whether Mekpine's interest extended to the Resumed Land;[13] and

(b) the definition of *"common areas"* in the RSLA had no substantive effect and did not override, or amend, the definition in the lease.[14]

12. In the Court of Appeal, the majority found in Mekpine's favour, both in respect of Mekpine's interest under the lease and pursuant to the RSLA.

13. Perusal of the judgments reveals that the majority ultimately:

(a) against the background of the amalgamation, approached the matter as a question of construction of the lease; and

(b) construed the definition of "Land" in the lease as referring to New Amalgamated Lot 1 after the registration of the survey plan.[15]

14. Holmes JA also approached and determined the matter as one of construction of the lease in light of the amalgamation, albeit with a different conclusion.[16]

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[9] AB361, ln 1-10; decision of the Land Court of Queensland per Member W.A. Isdale at [9], quoting terms of the Originating Application in the Land Court of Queensland, paragraph 9 (AB5, ln 49-53).
[10] AB367, ln 8-18, decision of W.A. Isdale in the Land Court of Queensland at [23].
[11] AB368 – 372, decision of W.A. Isdale in the Land Court of Queensland at [27]-[35].
[12] AB431, ln 7 – 30; decision of the Land Appeal Court of Queensland per the Court (P Lyons J, CAC MacDonald and PA Smith) at [56]-[57].
[13] AB430, ln 18 – 34; decision of the Land Appeal Court of Queensland per the Court (P Lyons J, CAC MacDonald and PA Smith) at [52].
[14] AB430, ln 5 – 45; decision of the Land Appeal Court of Queensland per the Court (P Lyons J, CAC MacDonald and PA Smith) at [62] – [63].
[15] Per McMurdo P see: AB451, ln 25 – 55; decision of the Court of Appeal of Queensland at [18]-[19]; per Morrison JA see AB470 – 474 at [114]-[128], [131] last sentence, and [134].
[16] AB461, ln 1 – 18; decision of the Court of Appeal of Queensland, per Holmes JA at [54].

Part V: Relevant provisions

15. Mekpine accepts the statutes as identified in the appellant's list of authorities as those applicable to this appeal, save that both parties refer generally to the provisions of Part 6 of the RSLA,[17] the provisions of which[18] should be included.

Part VI: ARGUMENT

A. Appeal ground 2(a) – the amalgamation

16. The majority did not err as contended; their judgments did not make the conclusions attributed to them by the appellant. In particular, neither of the judgments concluded that:

(a) Mekpine's *"leasehold interest"* was extended or varied; and

(b) Mekpine's interest in the Resumed Land arose solely *"as a result of the amalgamation"*.

17. The majority judgments go no further than to conclude that the effect of s 182, upon the registration of the survey plan, was to transfer or create a *"leasehold interest"* in the New Amalgamated Lot 1, such that that new Lot was burdened or encumbered by Mekpine's pre-existing leasehold interest.[19]

18. Neither of the majority judgments concluded that the respondent's *"leasehold interest"*[20] was extended or otherwise varied. In this regard, the appellant confuses Mekpine's "leasehold interest" – an interest *in* land – with its contractual right to use the common areas, a right of personal property.[21] Such personal property constitutes an *"interest in the land"* for the purposes of s 12(5) of the ALA,[22] but is neither registerable nor otherwise regulated by the LTA.

19. It is important to note that Mekpine's claim for compensation under the ALA is based upon Mekpine's contractual rights to use the Common Areas.[23] It does not arise from any leasehold interest, or other interest in land, that would be of concern to the LTA or the registration of such interests thereunder.

20. Thus, in this case, the question addressed by the Court of Appeal, and that which ultimately determined the outcome in that court, was not the extent of Mekpine's leasehold interest, but the extent of Mekpine's contractual right to use *"Common*

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[17] Appellant's submissions, para 50(c); Respondent's submissions, para 40(c).
[18] Sections 24 – 50A.
[19] Per McMurdo P at [18]-[19], AB451, ln 25 – 55; per Morrison JA at [131], AB473, ln 24 – 38. Their Honours' conclusions on the point were not materially different to that of Holmes JA at CA[54] (1st sentence), AB461, ln 1 – 3.
[20] As was identified in the hatched area of the plan attached to the lease (see AB137).
[21] *Sorrento Medical Service Pty Ltd v Chief Executive, Department of Main Roads* [2007] 2 Qd R 373 per McMurdo P at p. 378 [10]; Chesterman J p. 384 [37] and 386 [45].
[22] *Sorrento Medical Service Pty Ltd v Chief Executive, Department of Main Roads* [2007] 2 Qd R 373.
[23] These rights are of the nature considered in *Sorrento Medical Service Pty Ltd v Chief Executive, Department of Main Roads* [2007] 2 Qd R 373; special leave from which was refused: *Chief Executive, Department of Main Roads v Sorrento Medical Service Pty Ltd* [2007] HCATrans 474 (31 August 2007).

Areas". In this regard, ground 2(a) of the appeal fails to raise any issue that could disturb the outcome of the case.

21. What the majority in fact concluded was that, as a matter of construction of the lease in the circumstances following the amalgamation, the parties to the lease intended that the reference to *"Land"* in the lease definition of *"Common Areas"* was to be read as a reference to New Amalgamated Lot 1.[24]

22. Margaret McMurdo P found that, in circumstances where the old Lot 6 had ceased to exist, the reference to *"Land"* for the purposes of identifying the *"Common Areas"* then became a reference to the new Lot.[25] This was a matter of "construction" of the lease in the circumstances of the amalgamation.[26]

23. Morrison JA concluded that the necessary consequence of the amalgamation was that the *"Land"* over which the lease was granted became New Amalgamated Lot 1.[27] However, similar to McMurdo P, his Honour's conclusion was not based upon the operation or effect of s 182, but was arrived at by analysis and construction of the terms of the lease in light of the amalgamation. His Honour tied his conclusion at CA[131] to his analysis at CA[125].[28] That his Honour determined the matter as one of construction is further confirmed by the observations in CA[134] to [141].[29]

24. In the premises, ground 2(a) of the appeal is misconceived and should be dismissed. Notwithstanding, Mekpine further responds to the appellant's submissions as follows.

25. Paragraphs 19(a) and (c), 29, 30, 31, 32, 34, 35, 37, 38 and 40 of the appellant's submissions:

    (a) proceed on the same misconception of the conclusions reached in the majority judgments; and

    (b) further confuse Mekpine's "leasehold interest" under the LTA with its contractual rights in respect of Common Areas.

26. Further, the appellant's submission at paragraph 19(a), with respect, does not comprehend the terms and effect of the majority judgments. The central concern of the reasons of each of the majority judges (as referred to above) is to identify the extent of Mekpine's right to use Common Areas under the lease. Each of the majority judges, and indeed Holmes JA with a different result,[30] identified the extent of that interest by construing the lease. The construction arrived at by the majority is not the subject of this appeal, nor was it the basis upon which special leave was sought.

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[24] Per McMurdo P at [18] (last sentence) – [19], AB451, ln 25 – 55; per Morrison JA at [131] and [125], AB473, ln 24 – 38 and AB472, ln 17 – 26.
[25] Per McMurdo P at [18] (last sentence), AB451, ln 37 – 39.
[26] Per McMurdo P at [19], AB451, ln 41 – 52.
[27] Per Morrison JA at [131] and [125], AB473, ln 24 – 38 and AB472, ln 17 – 26.
[28] AB473, ln 36.
[29] AB474 – 475.
[30] AB461, ln 1 – 3 per Holmes JA at [54].

27. As to paragraph 19(b) of the appellant's submissions, it is submitted that the plan of survey was the relevant instrument which created Mekpine's interest as registered lessee in New Amalgamated Lot 1. The lease was not expressed to transfer or create any leasehold interest in New Amalgamated Lot 1. The lease may have been an instrument for the purposes of the old Lot 6, but the only document that could have transferred or created Mekpine's leasehold interest in New Amalgamated Lot 1 was the plan of survey, noting Mekpine's existing lease allocation. But the question is inconsequential where:

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(a) each of the judges accepted that New Amalgamated Lot 1 was encumbered by, or was otherwise subject to, the lease;[31] and

(b) the substantive issue was determined by the construction of that lease as to Mekpine's contractual rights to use Common Areas.

28. As to paragraphs 20 to 26 of the appellant's submissions, the majority judgments do not conclude that Mekpine's rights in respect of Common Areas were expanded 'by operation of s 182 of the LTA'. Rather, and relevantly, Mekpine's "interest" in
20 the Resumed Land was found by construction of the lease and, in particular, the fact that the parties thereto had defined "land" as "the Lot".[32] The registration of the plan of survey was of course important, but only insofar as it created a different factual context in which the terms of the lease had to be construed, so as to give sensible commercial effect to Mekpine's contractual right to use the Common Areas.

29. Further as to paragraph 25 of the appellant's submissions, the appellant misconstrues the terms and effect of s 179 of the LTA. Under that section, it is only *"particulars of the registered instrument recorded in the freehold land*
30 *register"* which are made conclusive, not the entire terms of the lease. The particulars referred to are only those recorded on the register to identify the relevant interest in freehold land.[33] Relevantly, those particulars state:[34]

> *"LEASE No 705357977*
> *MEKPINE PTY LTD A.C.N. 084 587 744*
> *OF PART OF THE GROUND FLOOR*
> *Lodged at 16:17 on 25/01/2002"*

30. Even if s 179(c) means that the register is conclusive evidence of all terms stated in
40 the lease, there was and is no dispute here as to what those terms were. What was determined by the Court below was the meaning of those terms.

31. Paragraph 28 of the appellant's submissions are not contentious, save for any implicit submission that the majority found that s 182, of itself, created or vested

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[31] Per McMurdo P at [18], AB451, ln 25 – 40; per Holmes JA at [54], AB461, ln 1 – 3; per Morrison JA at [100], AB468, ln 22 – 28.
[32] Per McMurdo P at [18] (last sentence) – [19], AB451, ln 25 – 55; per Morrison JA at [125], AB472, ln 17 – 25.
[33] Having regard to ss 28 and 3 of the *Land Title Act* 1994 (Qld).
[34] AB203, ln 37 – 40 (Historical Title Search, item 19).

the lease. Clearly it did not. Nor does Mekpine contest Holmes JA's observation that *"The premises leased continued to be identified by the sketch plan ..."*. However, the "premises leased" should not be confused with the Common Areas.

32. As to paragraph 29 of the appellant's submission, the majority judgments do not hold that a lease over a lot cannot survive an amalgamation.[35] The judgments are merely to the effect that, having regard to the terms of the lease, and in the circumstances of the amalgamation and expansion of the shopping centre, the Common Areas were to be construed by reference to whole of New Amalgamated Lot 1.[36] The leasehold interest remained as one that was over part of a lot.

33. Further as to paragraph 32 of the appellant's submission, s 67 of the LTA is of no relevance. The area leased was not found to have been increased.

34. As to paragraph 33 of the appellant's submission, it is accepted that each of the Land Court and the Land Appeal Court found against Mekpine on the question of whether it had any relevant interest in the Resumed Land. However, such views were, respectively, based solely and primarily on the construction of the lease, and not on the operation of the provisions of the LTA.[37]

35. Further as to paragraph 38 of the appellant's submission, there is no leap of reasoning in paragraph CA[21].[38] Paragraph CA[21] follows shortly after, and self-evidently is referable to, her Honour's explanations in CA[18] (last sentence) and CA[19].[39] The majority's construction of the lease is not an issue in this appeal.

36. By reason of the foregoing, this appeal should be dismissed.

B. Appeal ground 2(b) - the RSLA

37. With respect to the definitions of *"common areas"* in both the lease and the RSLA, the majority judgments:

(a) accepted that *"common areas"* in the RSLA was a defined term to which the principle in *Gibb v Federal Commissioner of Taxation*[40] would normally apply;[41]

(b) recognised that the principle in *Gibb* is not an absolute rule, and is capable of modification by clear contrary legislative intent;[42] and

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[35] The appellant does not cite any passage from either of the majority judgments to make good their submission.

[36] Per McMurdo P at [18] (last sentence) – [19], AB451, ln 25 – 55; per Morrison JA at [124] – [134], AB472 – 474.

[37] Mekpine refers to paragraphs 10 and 11 above of this submission.

[38] AB452, ln 1 – 10.

[39] AP451, ln 25 – 55. Similarly, Morrison JA's conclusion in [131] (AB473, ln 23 – 38) is based upon a construction of the lease and for the reasons set out in [125] (AB472, ln 17 – 25).

[40] (1996) 118 CLR 628 per Barwick CJ, McTiernan and Taylor JJ at p. 635.

[41] Per McMurdo P at [36] – [37], AB456 – 457; per Morrison JA at [143], AB475, ln 20 – 23 and at [157], AB478, ln 14 – 22.

[42] Per McMurdo P at [37], AB457, ln 24 – 40; per Morrison JA at [143], AB475, ln 20 – 23 and at [157], AB478, ln 14 – 22. No contention is raised against that conclusion. This is conclusion is also consistent with

(c) concluded that the provisions of the RSLA to which they referred sufficiently demonstrated a legislative intention to displace the operation of the general principle in *Gibb*.

38. It is that third step which is presently in issue.

39. It is submitted that the analysis and conclusions of the majority disclose no error.

10 40. For the purposes of the argument, it is accepted that s 6 of the RSLA defines the meaning of *"common areas"*. The relevant question is whether the Act discloses an intention to displace the operation of the general principle in *Gibb*.

41. The starting point is that the plain words of the Act exclude the operation of the principle in *Gibb*. While s 6 is a definition, it is also a provision of the Act.[43] By s 20, a provision of a retail shop lease which is inconsistent with a provision of the Act is void to the extent of the inconsistency. Section 20 draws no distinction between the definitional and other provisions of the RSLA. The section is a plain expression of legislative intent that the Act prevail over an inconsistent provision in
20 a lease. It is submitted that the section warrants no gloss or further construction. It should be applied according to its terms.

42. The construction adopted by the majority judges nonetheless best achieves the purpose of the RSLA.[44] Dealing in turn with the matters raised at paragraph 50 of the appellant's submissions:

(a) *"the scheme of the Act"*. The analysis made by McMurdo P of the scheme of the Act cannot be dismissed as being *"merely introductory"*.[45] Examination of the context in which provisions appear is an essential part of
30 construing a statute.[46] The summary of the scheme of the Act made by McMurdo P at CA[24]-[30][47] supports a broad legislative intent to impose mandatory protections and minimum standards for the benefit of those with inferior bargaining power;[48]

(b) *the inclusion of "common areas" as an "extended definition"*. This must have some meaning or purpose. The extended definitions do not appear to have been singled out because of their length.[49] Nor do the references to common areas, turnover and outgoings elsewhere in the Act explain why

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s 32A of the *Acts Interpretation Act* 1954 (Qld). See also *Kelly v R* (2004) 218 CLR 216 per McHugh J at p. 245 [84] and *San v Rumble (No 2)* (2007) MVR 492.

[43] As noted by Morrison JA at [158], AB478, ln 23 – 27, and which is accepted by the appellant at paragraph 51 of the appellant's submissions.

[44] Section 14A of the *Acts Interpretation Act 1954* (Qld); *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 per McHugh, Gummow, Kirby and Hayne JJ at p. 381 [69] and at p. 384 [78].

[45] See appellant's submission at paragraph 50(a).

[46] *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 per McHugh, Gummow, Kirby and Hayne JJ at p. 384 [78].

[47] AB452 – 455.

[48] Per McMurdo P at [34]; AB456, ln 10 – 20.

[49] It is noted that the definition of "retail shop lease", found in the Dictionary schedule, contains 187 words, whereas the extended definition of "common areas" contains 97 words.

those terms have specific extended definitions. Rather, the extended definitions appear to relate to those key concepts (particularly outgoings, common areas, turnover etc.) common to retail shopping centre leases.[50] In this regard, there is no difficulty in construing an intention that these definitions were to have general application beyond the Act itself. Further, the standard definitions are subject to the express restriction under s 5, which states:

> *"The dictionary in the schedule defines particular words used in this Act."*

It is noted that the definition of *"dividend"* in the decision of *Gibb* was subject to similar words of restriction, namely: *"In this Act, unless the contrary intention appears ..."*. In the present case, such words of restriction are absent from the extended definitions in Part 3, Division 2 of the Act. Moreover, while it is true that ss 6 to 9 are picked up in the schedule Dictionary, this is only to direct the reader back to those separate sections of the Act which are not subject to the restrictive words of s 5. In this regard, the structure and context of the Act is consistent with an intention that ss 6 to 9 are to have both internal and external operation. Had the legislature intended the extended definitions to be confined to the internal operation of the Act, there would be no reason to isolate those definitions in a separate Division not subject to the words of limitation as used in s 5. The appellant's submission should be rejected as it renders the separation of the definitions and the label of *"extended"* meaningless;

(c) *"the object of the Act and how it is to be achieved"*. With respect, it is not difficult to comprehend that the imposition of regulatory definitions for concepts such as common areas, outgoings and turnover promotes *"efficiency and equity in the conduct of"*[51] retail shop leases. It creates certainty and protects those with inferior bargaining power.

But it would be wrong to conclude that the mandatory minimum standards sought by the Act were confined to the provisions of Part 6 of the RSLA. Although each of the extended definitions are picked up in Part 6 (and elsewhere),[52] the use of those terms in Part 6 is consistent with an intention that they form part of the minimum standards applicable to retail shopping centre leases under the Act.

Giving the terms a meaning operating outside of the Act and indeed within the terms of the leases themselves ensures a conformity of meaning within the leases and the Act, in turn ensuring that the other operative provisions of the Act have effect.

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[50] Cf: the balance of the schedule definitions which relate to concepts and words arising under the Act itself.
[51] Section 3, *Retail Shop Leases Act* 1994 (Qld).
[52] *"Turnover"* is referred to in ss 25, 26 and 27. *"Outgoings"* is referred to in ss 24, 24A, 29, 37, 37A, 38 and 41, and further in ss 53, 83, 97 and 109. *"Common areas"* is referred to elsewhere only in the s 8 extended definition of *"retail shopping centre"*, however that term is picked up in ss 15, 24, 30, 37, 38, 40, 41, 43, 49, 51, 53, 83, 97, 109 and 127.

(d) *"the intended wide application of the Act"*. Sections 12 and 13(1) referenced by McMurdo P are a relevant consideration in the construction of the Act. That the Act was intended to have wide protective effect supports the conclusion of the majority in the Court below;

(e) *"the implication of the Act's provisions in all retail shop leases"*. Whilst it is correct that s 18 is concerned with duties imposed, or entitlements conferred, by the RSLA, the terms of ss 6 to 9 of the Act do, when read with Part 6 of the Act, impose duties and entitlements on lessees and lessors;

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(f) *"the prohibition on contracting out of the Act"*. The exclusion of a provision of the Act need not be express. It is submitted that a provision which is inconsistent with, or contrary to, a provision of the Act equally purports to exclude the operation of the Act. The existence of s 19 is relevant to and supportive of the majority's construction of the Act; and

(g) *"the Act prevails to the extent of an inconsistency with a lease"*. The Act requires an inconsistency between a provision of the Act and a provision of the lease. Their Honours respectively discussed the inconsistency at
20 CA[34][53] and CA[148]-[156].[54] It is submitted that the matters identified by their Honours, and particularly identified by Morrison JA at paragraphs CA[149] to CA[151],[55] are inconsistencies for the purposes of s 20. The appellant's contention that there is no inconsistency in paragraph 50(g) rests on an assumption that the definition only applies within the Act itself.

43. The appellant's submissions, at paragraphs 51 to 55, fail to identify any error in the reasoning of his Honour at CA[159] to CA[161].[56] Further, the appellant fails to acknowledge or address the detailed examination given by Morrison JA at CA[148] – CA[156][57] as to the inconsistency between the lease and statutory provisions.
30 The most relevant inconsistency here is that [assuming the appellant were correct on the Amalgamation ground, appeal ground 2(a)] Mekpine's right to use the common areas under the lease definition would extend only to the boundaries of old Lot 6. Conversely, under the statutory definition, the common areas available to Mekpine would extend to the whole shopping centre (ie: the whole of New Amalgamated Lot 1) excluding leased areas.

44. Specifically as to paragraph 54(b) of the appellant's submissions, it is the lease subject to s 6 of the RSLA that creates the interest for the purposes of s 12(5) of the ALA.

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45. As to paragraphs 56 and 57 of the appellant's submissions:

(a) s 20 of the RSLA contains no reference to "substantive provisions". It refers to the "provisions" of the Act; and

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[53] AB456, ln 10 – 20.
[54] AB476 – 478.
[55] AB476 – 477.
[56] AB478, ln 28 – 51.
[57] AB476 – 478.

(b) it is submitted that the inconsistency would be such that Mekpine's rights would extend to the boundaries of New Amalgamated Lot 1 (excluding leased areas).

46. It is submitted that:

(a) each of the majority judgments paid due consideration of the principle in *Gibb* and identified a contrary legislative intention by orthodox process of statutory construction;

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(b) the decision of the majority discloses no error, whether as contended by the appellant or otherwise; and

(c) the appeal should be dismissed accordingly.

Part VII: (Not applicable)

20 **Part VIII: Time estimate for respondent's oral argument**

47. One hour.

Dated: 18 November 2015

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