
Clarification on the Meaning of “Land” in Section 57 of the Heritage Act

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The decision of *Stamford Property Services Pty Ltd v Mulpha Australia Ltd [2019]* handed down on 19 June 2019 has provided clarity in the word ‘land’ within the context of s57(1)(e) of the *Heritage Act 1977 (Act)*. This provided the requirement that approval for development must be obtained before commencement of such development “*in relation to the **land***” if it is a State heritage item or is subject to an Interim Heritage Order (**IHO**).

Meaning in Relation to s57(1)(e)

The Court of Appeal found that within s57(1)(e) the meaning of ‘*land*’ is in relation to the physical part of the land which the State heritage item or IHO applies. This is contrary to the Local Environment Court (**LEC**) which defined the meaning as the whole cadastral lot of the item or the land with a relevant nexus to the heritage item. Furthermore, all judges disagreed with the LEC which held that the word ‘*land*’ cannot be determined by evaluating the circumstances within the individual case due to the unavoidable detriment of the efficacy of the Act.

Within the interpretation of land under section 57(1)(e), the Court found that it was concerned with a specific heritage item and thus should not refer to anything beyond the actual land to which the actual item is located.

Contextual Importance

It was noted that the word ‘*land*’ is highly contextual and as such does not maintain a consistent definition throughout the Act. Therefore, the interpreter must look towards the context of the section with respect of the word and its contextual meaning. Consequently, the Court will have to ensure that the scope and purpose of the relevant statutory provisions is considered when defining it within a piece of legislation; even at different sections of the same act.