

Non-complying office or merit undefined use – what is the test? *District Council of Coober Pedy v Aboriginal Family Support Services* [2014] SASCF 133.

You may recall our article from the June edition of [LG Leader](#) concerning the ERD Court's judgment in *Aboriginal Family Support Services v District Council of Coober Pedy*.

This matter concerned the proposed change in use of an existing building (a dwelling) in the Residential Zone of the Council's Development Plan to accommodate the activities of AFSS, a not-for-profit organisation which offers various programs and family support services to the Aboriginal community. Staff members employed by AFSS to deliver services at the site do not hold professional qualifications.

In the Residential Zone, "office with a gross leasable area greater than 50 square metres" is a non-complying form of development. The Council determined the proposed development as a non-complying form of development.

The ERD Court determined that the proposed development was not an "office" as defined in Schedule 1 to the *Development Regulations 2008*, but rather an undefined "institution" or "community support facility" on the basis that the activities proposed within the development were broader than just simply administration and that the other proposed activities were not being undertaken by persons with professional qualifications and therefore did not constitute the practice of a profession.

The Council appealed this decision to the Full Court of the Supreme Court. The Full Court delivered its judgment on 28 November 2014 and overturned the ERD Court's decision.

In its judgment, the Full Court stated that when determining whether a development is non-complying, the proper approach to adopt is to compare the proposed development to the kinds of development described as non-complying by the Development Plan. If the proposal fits the description of **one or more** of the non-complying developments, then it should be characterised as non-complying.

In this case, the existing building comprised 10 rooms. Rooms 1 and 10 were proposed to be used primarily for hosting activities and programs for clients of AFSS. Rooms 2, 3 and 7 were proposed to be used by staff as an "office" in the sense that each of those rooms had desks, filing cabinets and computers and were to be used by staff to complete paperwork, file documents and perform other administrative tasks.

A further room (Room 4) was to be used to provide financial counselling to clients (albeit not by a professionally-trained counsellor). The remaining rooms were ancillary to Rooms 1-4, 7 and 10.

Applying the above approach to the nature of the proposed development, the Court was satisfied that the use of Rooms 2, 3, 4 and 7 constituted "offices" as defined in Schedule 1 and that the proposed development was correctly determined to be a non-complying form of development on this basis.

The Court held this view despite the fact that the staff working in the offices often worked off-site.

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This decision is significant in that it demonstrates that the correct approach to determining the nature of a proposed development is a practical one.

Where a proposed development comprises a number of activities, and one or more of those activities are designated by the Development Plan as a non-complying form of development in the relevant Zone, then the development will be properly characterised as non-complying.

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