

Case Note: Rando and City of Gosnells

Land use classifications and reading of schemes

In *Rando and City of Gosnells* [2019] WASAT 6, the applicants sought review of the City's decision to refuse their application to allow certain additional activities as part of an approved development. The additional activities were considered by the City to be Motor Vehicle Repair uses, prohibited under the lot's Mixed Business zoning.

The judgement considered the interpretation of land use definitions for "Industry – Service" and "Motor Vehicle Repair" and noted that cl 3.4.1 of the City's scheme provides that "...where a land use falls within two definitions, the more specific definition is to prevail over the more general." (59). The Tribunal found that the applicant's additional activities were properly classified as Motor Vehicle Repair, and by force of cl 3.4.1 of the City's Scheme, these activities cannot then be classified within the more general Industry-Service land use.

The Tribunal emphasised that "(t)he applicants' proposed construction (of the scheme's land uses) demands a level of precision in the drafting of planning schemes that is unrealistic... Planning schemes are to be read and applied broadly and not pedantically..." (94).

The case also considered whether the proposed use is incidental or ancillary to the approved use, as well as the effect of a draft amendment to the LPS which will have the effect of rezoning the land in question, meaning that the proposed use will become a use that is capable of approval. Regarding the latter, the Tribunal noted that cl 67 of the LPS Regulations' deemed provisions "requires the Tribunal to consider 'any' proposed local planning scheme amendment" (120); however, "(p)revious Tribunal decisions on land use classification have declined to give effect to draft scheme amendments for the purposes of land use classification" (122) and therefore "the draft amendment is not relevant to the classification of the proposed use."

The full judgement is available [here](#).

An examination of the case, prepared by Kott Gunning, is available [here](#).