

## Case Note: O’Sullivan and City of Subiaco

### Extending discontinued non-conforming uses

In *O’Sullivan v City of Subiaco* [2018] WASC 284 the Supreme Court considered the City’s decision to approve the continuation of a discontinued non-conforming use, for a period of 24 months since the discontinuation, without development approval. The judgement found that a development approval was not a necessary condition for a valid decision by the City to approve a period longer than six months under cl 15(2)(b) of the City’s local planning scheme, noting that: “In approving a longer period, the City does not grant development approval for the use.” The relevant clause in the City’s scheme, cl 15(2)(b), is consistent with model provisions set out in Schedule 1 Pt 3 cl 22(2)(b) of the *Planning and Development (LPS) Regulations 2015*. The judgement is available [here](#).