South Australia Environment Resources and Development Court

City of Onkaparinga v Becker & Inglis [2010] SAERDC 1 (18 January 2010)

This recent judgment from the ERD Court relates to a very unusual and interesting enforcement matter commenced under section 85 of the *Development Act 1993* ("the Act").

The respondents owned a dwelling at Port Noarlunga South. They had placed numerous blackboards and cardboard signs in the front yard of their property and had used chalk and other mediums to write messages upon them. In addition to the signs, the Respondents had also written messages on shade cloth which was affixed to their verandah, and had also from time to time made banners from shade cloth, tied them to a tree and displayed messages on them.

The messages themselves changed from time to time and promoted particular causes, the political ambitions of the Respondents or contained political messages, all in language which was described by the Court as *"frank"*.

The Council commenced enforcement proceedings under section 85 of the Act to obtain orders, for the removal of the boards and banners.

The Court determined that whether the placement of the boards and banners was an act or activity of development, depended upon whether this activity fell within the definition of *"detached dwelling"*, which was the approved use of the land. The Court examined the limited definition of detached dwelling and concluded that the placement of signs and political messages were outside of the definition of detached dwelling. Therefore, they required development approval, unless this act or activity was otherwise exempted under the *Development Act 1993* or *Development Regulations 2008*.

Firstly, the Court examined clause 5(1) of Schedule 3 of the *Development Regulations*. The Court determined that although the activity conducted by the Respondents was of a substantial benefit to the Respondents themselves, the dimensions of the boards and banners and the number of them on the land, meant that it could not be said that their placement was reasonably incidental to the residential use of the land.

The Court then examined clause 5(2) of Schedule 3 to the Regulations. The Court determined that the number and size of the messages on the boards and the banners had a detrimental impact on the amenity of the locality. Therefore, the activity of the Respondents did not fall within a *"home activity"* as defined and so were not exempt from the definition by clause 5(2) of the Schedule 3.

The Court then turned to the question as to whether the acts and activities undertaken by the Respondents fell within an act or activity declared by regulation to constitute development. The Council submitted to the Court that the acts and activities of the Respondents amounted to the commencement of the display of an advertisement and thus were *"development"* by operation of clause 7 of Schedule 2 to the *Development Regulations*. The Court, in agreeing with the Council, found that the definition of *"advertisement"*, by including the terms "sign" and "banner", encompassed the boards and banners containing messages which had been placed by the Respondents on their land.

Accordingly, the Court found that on each occasion that the Respondents commenced a display of a sign or banner (but not when they changed the contents of the sign), they commenced an act or activity of development, which required approval from the Council.

Lastly, the Court addressed an argument advanced by the Repondents to the effect that section 85 of the Act was invalid insofar as it contravened their implied freedom of political communication, having contended that their sole purpose of displaying the messages on the site was to exercise their freedom of expression in relation to political matters.

In dismissing this argument, the Court found that section 85 does not directly restrict political communication, and was therefore valid.