

BETWEEN:

**RUAH COMMUNITY SERVICES LTD**

Applicant

AND

**CITY OF PERTH**

Respondent

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**CITY OF PERTH'S SUBMISSIONS IN RESPONSE TO  
THE APPLICANT'S SUBMISSIONS TO THE MINISTER FOR PLANNING  
DATED 5 JULY 22**

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Date of Document:  
Prepared on behalf of:

25 July 2022  
City of Perth



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1. This document sets out the City of Perth's submissions in response to the Applicant's Submissions dated 5 July 2022 (**Applicant's Submissions**) in the called in matter of DR 95 of 2022: RUAH Community Services Ltd and The City of Perth.
  2. This response is set out as follows:
    - (a) Amenity;
    - (b) Complaints;
    - (c) Management Plans;
    - (d) Conditions;
    - (e) Mediation;
    - (f) Urgency of the Matter; and
    - (g) Conclusion.

**Amenity**

3. The Applicant contends in [100] of the Applicant's Submissions that 29-35 Shenton Street and 247-249 James Street are in the same locality, and the RUAH Centre at 29-35 Shenton Street (**Existing Shenton St Centre**) currently forms part of the relevant locality and part of the character and amenity of that locality. Therefore, it is said that the proposed RUAH Centre at 247-249 James Street (**Proposed James St Centre**) will not change the character and amenity of the locality.

4. This position, with respect, is not correct. The concept and definition of amenity and the relevant locality has been considered in numerous planning decisions of the State Administrative Tribunal (SAT).
5. In *Ridgecity Holdings Pty Ltd and City of Albany*<sup>1</sup> the SAT said '[t]he concept of the locality in town planning is necessarily flexible. However, the determination of the boundaries of the locality in any given case is generally concerned with town planning impacts. The locality of a site is the topographical area which relevantly affects or is affected by the proposed development. The characterisation of the locality will depend on the impact in question and the circumstances of the case' (emphasis added).
6. In *Sunbay Holdings Pty Ltd and Shire of Kalamunda*<sup>2</sup> his Honour Justice Barker stated that '...[p]rovided that the "locality" to which a site is related and of which it forms part is properly determined, it is open in a planning assessment to focus on the impact of a development on a particular part of the locality. Indeed, experience in planning assessment suggests that this will often be the case. Although an assessment on the impact of a development on the existing or likely future amenity of the locality must take into consideration positive, negative and neutral impacts on all parts of the locality, it is open in planning assessment to refuse an application because of the extent of the impact on part of the locality or on a single property. Were it otherwise, the overall amenity of a locality would be undermined incrementally, application by application' (emphasis added).
7. There are examples of the locality and amenity impact being confined to a street or even a house in the SAT. In *BHY Alexander Unit Trust and City of Nedlands*<sup>3</sup> his Honour Judge Parry found that the relevant immediate locality for the matter was 'the section of Alexander Road between Philip Road and Waratah Avenue'. His Honour also stated '[w]e conclude that the proposed development will have an unacceptable adverse impact on the amenity of No. 8A Alexander Road'.
8. In relation to change of use applications, the SAT found in both *Kogon v City of Vincent*<sup>4</sup> and *Lawrence v City of Rockingham*<sup>5</sup> when discussing the impact to amenity, that the proposed use would have a negative impact on neighbouring properties. In *Kogon* the relevant locality was the street of the relevant premises and the lots located to the rear; the amenity impact was 'especially [to] those dwelling which adjoin the Premises'. In *Lawrence* the unacceptable amenity impacts were to the adjoining residents.
9. The above cases determine locality in relation to the impact that a development may have, and state that this impact can be to one or a few properties in the immediate area. In this matter, the Proposed James Street Centre will impact the adjacent and nearby properties and those who use that area. Therefore, the relevant locality for this application is not the Northbridge area as a whole, or even the area west of Russell Square. The relevant locality for this application is James Street between Melbourne Street and Fitzgerald Street.

<sup>1</sup> *Ridgecity Holdings Pty Ltd and City of Albany* [2006] WASAT 187 at [42].

<sup>2</sup> *Sunbay Development Pty Ltd and Shire of Kalamunda* [2006] WASAT 74 at [28].

<sup>3</sup> *BHY Alexander Unit Trust and City of Nedlands* [2021] WASAT 41 at [10] and [107].

<sup>4</sup> *Kogon and City of Vincent* [2019] WASAT 75 at [118].

<sup>5</sup> *Lawrence and City of Rockingham* [2022] WASAT 36 at [72]-[73].

10. The Existing Shenton Street Centre is surrounded by permanent residences whereas the location of the Proposed James Street Centre is mixed-use, surrounded by different businesses: see paragraphs [40] and [101] of the Applicant's Submissions. However, the Existing Shenton Street Centre is also opposite a park – Russell Square – whereas 247-249 James Street is opposite Best Western apartments, a mix of short-term and permanent residential accommodation. The location at James Street is also likely to see more foot traffic throughout the day with people attending businesses and cafes, and without Russell Square across from the Centre, there is less space for people to gather either before or after they receive services. The locality of the areas is therefore quite different and it cannot be argued that the change in location and proposed use won't result in amenity impacts.
11. The Applicant also, at [105] of the Applicant's Submissions, states that other land uses and businesses in the Northbridge area could also potentially have a negative social impact on the area. While it is true that Northbridge contains many different land uses and likely has negative social impacts, what is relevant for this matter is the location and the timing of those impacts.
12. As discussed above, the relevant locality for this matter is James Street between Melbourne Street and Fitzgerald Street. This area, unlike other areas in Northbridge, does not contain any nightclubs, but instead is a mix of daytime commercial businesses (such as cafes and hair salons) and short-term and permanent residences. Given these differences, the negative social impacts on this area of James Street are likely to be very different compared to other areas in Northbridge.
13. Further, the impact from nightclubs and other like businesses in Northbridge mostly occurs in the early hours of the morning on the weekend. This does not have as big of an impact on residents and those who use the cafes and other businesses compared to any antisocial or other negative behaviours occurring on weekdays during business hours. The amenity that a Centre providing these types of services will most likely impact is that in the morning and to the early afternoon, when the Centre is expected to operate. It is not, therefore, accurate to state that the Centre will have the same negative social impacts as other land uses and businesses in the Northbridge area.
14. Even if the Northbridge area is currently negatively impacted, that does not justify adding to the negative impacts by relocating the Centre to James Street.
15. Finally, the amenity impacts that the proposed use will likely have on James Street are known by the community, residents and business owners. This appears to be tacitly acknowledged by [38] of the Applicant's Submissions, which states that, of 120 properties in the area, the property at 247-249 James Street was the only one with a landlord willing to lease to RUAH. In other words, the Applicant has admitted that the use will have a negative impact on the amenity of the locality. The fact that the Applicant has found it difficult to find alternative premises does not justify the negative amenity impact of the proposed use.

### **Complaints**

16. The Applicant states at [35] of the Applicant's Submissions that the Existing Shenton Street Centre has not received any complaints from neighbours or the broader community, and that only 3 complaints had been received since 2019.

17. Since January 2022 alone, Citywatch recorded 20 complaints at the Existing Shenton Street Centre (assault, disorderly conduct, fighting, theft). Further information on the individual complaints is unavailable.
18. While it is unclear when complaints were made and when the conduct occurred, there are clearly more complaints about the area around the Centre than was stated by the Applicant. The complaints (or lack thereof) cited by the Applicant therefore cannot be relied upon as it appears that it may be related to the internal complaints procedure. That is, the Applicant's complaints do not take into account complaints related to the Centre but made outside the Centre.
19. The complaints are also another indication of the current amenity of the area and the likely impact the Centre will have once it is moved from Shenton Street to James Street.

### **Management Plans**

20. The management plans noted in [33] of the Applicant's Submissions relate to the practices and risk management inside the Centre. These plans do not provide for how the Centre will operate to manage risk to the community from those who access the services outside of the Centre and outside of the operating hours.
21. The Applicant has stated at [108] of the Applicant's Submissions that RUAH 'is not responsible for general homelessness or the impact of people experiencing homelessness after hours when these people are already in the area'. RUAH is responsible for the amenity impacts on the community this proposed use will cause. This does include ensuring safety and providing risk and waste mitigation measures for the vicinity as well as inside the Centre.
22. The Applicant appears to rely on the police and the nearby police station to control behaviour associated with the Centre: [26.6], [106] of the Applicant's Submissions. This is not an appropriate plan as it relies heavily on a third party to address any issues or complaints and as no further information has been provided from the Police it is unclear how they will control the behaviours, the type of behaviours they will respond to and the priority of these calls.

### **Conditions**

23. The Applicant has proposed amended conditions at [119] of the Applicant's Submissions.
24. The response to the amended conditions is in the table below.

<b>Amended Condition</b>	<b>City's Response</b>
2	The City expects each component of the Management Plan to outline parameters, including hours of management and the area of management, therefore it is recommended that the condition be retained as is.

Amended Condition	City's Response
2(a)	<p>It is acknowledged that the words 'close to it' do not specifically define the exact area the City is expecting RUAH to manage, and it may be difficult to enforce compliance with such a condition. The condition is intended to require RUAH to manage their operations on site and any potential impacts that extend beyond their site that can be reasonably linked to the provision of their services. In order to provide more certainty regarding the area that RUAH's management plan will need to cover, like the applicant's proposed amendment for condition 2b, it is recommended that the condition be modified to read as follows:</p> <p style="text-align: center;"><i>“control any noise and other disturbances on the site <u>and in the area close to the property</u>, that are associated with the activities or customers on site.”</i></p>
2(b)	<p>It is acknowledged that there is no definition for 'immediate vicinity', and it may be difficult to enforce compliance with such a condition given the uncertainty of the area it applies to. The condition is intended to require RUAH to manage its operations on site and any potential impacts that extend beyond their site that can reasonably be linked to the provision of their services. In order to provide more certainty regarding the area that RUAH's management plan will need to cover, it is recommended that the condition link the requirement to manage its operations by reference to off-site impacts that are linked to the operation of the centre.</p>
2(c)	<p>The condition is intended to require RUAH to manage its operations in a way that minimises any potential disturbances resulting from people waiting outside of the building outside of its opening hours, anticipating people might arrive at the building prior to its opening at 8:30am. Details of how RUAH can minimise any potential disturbances can be negotiated with the City – this does not necessarily require the site to be staffed outside of business hours. It is recommended that the condition be retained.</p>
2(d)	<p>The condition is considered similar to condition 2a to manage noise and disturbances on site and within the verge area directly in front of the property, which is associated with its operations or customers. The applicant accepts this condition, subject to a minor change to specify the area external to the site. Therefore, the condition should be retained.</p>
2(e)	<p>It is acknowledged that the site is capable of being secured after hours, with access prohibited. Therefore, any after-hours disturbances are likely to occur off-site. It is acknowledged that it may be difficult to ascertain if any disturbances are directly linked to the operations of RUAH, however, the operator should provide access to a complaints service that can investigate and respond to issues. It is recommended that the condition be modified to read as follows:</p> <p style="text-align: center;"><i>“establish and maintain a compliance management service, that enables and facilitates easy access (by the community) to a designated contact person(s) <u>or after-hours message service</u>, to the City's satisfaction.”</i></p>

Amended Condition	City's Response
5	The applicant's advice that RUAH is not funded to provide a service outside of its business hours is acknowledged, but that is irrelevant. It is not a planning consideration. RUAH must maintain a compliance management service as stated in condition 2e above, which is capable of dealing with all complaints including emergencies.

### Mediation

25. Most matters in the SAT go to mediation prior to a final determination of the issues. Mediation allows the parties to hear each other's arguments in a confidential space with a trained mediator, and most often resolves or significantly narrows the issues for determination.
26. By calling in the matter, mediation at the SAT and the benefits along with it are no longer an option for the parties. A mediation or mediation-like process should be provided to the parties by the Minister for Planning in this matter to allow the parties to discuss the issues on a without prejudice basis before the Minister makes her decision. The City would agree to a representative of the Minister attending the mediation.
27. If necessary, the recommended outcome of the mediation could be put to Council for a further decision but whether that is necessary should be entirely at the discretion of the City's representatives at the mediation.
28. It is suggested that the SAT be invited to provide a mediator and in the absence of such provision, the parties agree on the appointment of a private mediator being a retired Judge.

### Urgency of the matter

29. The Applicant has stated that demolition of the building at 29-35 Shenton Street will commence in mid-August 2022: [36] of the Applicant's Submissions. This is the reason for relocating the Existing Shenton Street Centre, and likely the reason for the tight timeline in this matter.
30. However, the City notes that an application for a demolition permit for the proposed works at 29-35 Shenton Street has yet to be lodged by RUAH. This matter is not as urgent as the Applicant submits and therefore more time for the parties to discuss the matter, provide submissions to the Minister and explore other solutions should be provided.

### Conclusion

31. For the reasons stated in our submission of 6 July 2022 and further elaborated in the above reasons, the application should be refused.