

BETWEEN

RUAH COMMUNITY SERVICES LTD

Applicant

- and -

CITY OF PERTH

Respondent

**DECISION OF THE MINISTER FOR PLANNING
PURSUANT TO SECTION 246(2)(a) OF THE
*PLANNING AND DEVELOPMENT ACT 2005***

BACKGROUND

Application

1. I refer to the application for review DR 95 of 2022 (**the Application**) between Ruah Community Services Ltd (**Applicant**) and the City of Perth (**Respondent** or **City**). The Application was lodged with the State Administrative Tribunal (**SAT** or **the Tribunal**) and I have called it in for determination, as Minister for Planning, pursuant to section 246(2)(a) of the *Planning and Development Act 2005* (**PD Act**).
2. The Application is for review of a decision made by the City to refuse a development application for a change of use for an existing two-story building at 247-249 James Street, Northbridge (**subject site**).

The Proposal and location

3. The subject site falls within the area governed by the Metropolitan Region Scheme (**MRS**) and the City of Perth City Planning Scheme No.2 (**CPS 2**).
4. The Application proposes a change of use from an 'Education facility-upper' use (which falls within the 'Education 2' use group category under CPS 2) to a 'Community Centre' use (which falls within the 'Community and Cultural' use group category under CPS 2) (**the Proposal**).
5. The Application does not propose any external works.
6. The planning report prepared by City of Perth officers (**City's Officer Report**) at paragraphs 8-10 helpfully summarises the nature of the proposed use:

The applicant has advised that the proposed Community Centre will provide services for people experiencing homelessness, including linking people with accommodation services, specialist services such as alcohol and other drug support, mental health services and legal services. The service will also provide emergency relief and light food that people can take away.

The Community Centre is proposed to be open between 8:30am to 2.00pm Monday to Friday only. The Centre will not be open overnight, on weekends or public holidays.

Four support workers (staff) will be on site each day, and those staff will use the parking bays on site. Security, as required, will also attend on site during opening hours.

7. The Applicant currently operates these services from a nearby location at 29-35 Shenton Street, Northbridge (**the Shenton Street Centre**). Some iteration of these services have been operating from this location for the past 60 years. The Applicant recently received development approval for the redevelopment of 29-35 Shenton Street for a 7-story building specifically designed for the provision of services to women and children escaping domestic violence called the Ruah Centre for Women and Children.
8. To allow for the demolition of the building at 29-35 Shenton Street, the homeless services currently provided by the Applicant at that location are proposed to be moved to the subject site (**proposed James Street Centre**). I understand that these homeless services will not be returning to 29-35 Shenton Street when the new facility has been constructed. Rather, the Applicant has secured a lease of the subject site for a term of five-years, with the potential for extension.
9. The proposed James Street Centre is located approximately 200 metres as the crow flies, or a 3-minute walk, from the existing Shenton Street Centre. An approximate visual representation of this distance is as follows:



Source: Department of Planning Lands and Heritage, 2022

History of the Application

10. The Applicant lodged a development application for the proposed change of use with the City on 17 February 2022.
11. The City's professional officers assessed the proposal and recommended that the Council approve the application subject to a number of conditions.
12. On 31 May 2022, the Council considered and resolved to refuse the Proposal.
13. On 10 June 2022, the Applicant filed the Application with the Tribunal.
14. On 22 June 2022, I wrote to the President of SAT and directed the Application be called-in, by being referred to me for determination in accordance with section 246(2)(a) of the PD Act.
15. On 22 June 2022, the call-in notice was laid before the Legislative Assembly in accordance with section 246(4) of the PD Act.
16. On 9 August 2022, the call-in notice was laid before the Legislative Council in accordance with section 246(4) of the PD Act.

17. On 23 June 2022, I informed the Legislative Assembly that I had called-in the Application from SAT.
18. On 5 July 2022, a copy of the direction was published in the Government Gazette in accordance with section 246(4) of the PD Act.
19. Thereafter, a process was put in place as to collate submissions for my consideration, including:
 - a. The Applicant and the City (**the Parties**) were invited to provide written submissions by no later than 5pm on 6 July 2022.
 - b. Submissions were exchanged on 11 July 2022.
 - c. Submissions from members of the public were also collated and provided to the Parties on 11 July 2022.
 - d. The Parties were invited to provide written submissions in reply by no later than 5pm on 25 July 2022.
 - e. A letter was sent to the Parties on 4 August 2022 from the Director General of the Department of Planning, lands and Heritage (**the Department**) on my behalf requesting that the Applicant's management plans referred to in the submissions, and provided to the City as part of its assessment of the development application, be provided to me, as Minister for Planning. This letter also provided the Parties with several attachments to public submissions which may not have been previously provided to the Parties when the submissions were exchanged on 11 July 2022. The Parties were given a further opportunity to review these attachments and provide any further submissions in reply with respect to any new information contained therein.
 - f. On Wednesday 31 August 2022, I conducted a site walk of the area surrounding the current Shenton Street Centre and the proposed James Street Centre, accompanied by my advisor and officers of the Department.
 - g. The submissions of the Parties and other persons were published by making them available to the public during the office hours of the office of the Western Australian Planning Commission (**the Commission**), in accordance with regulation 44 of the *Planning and Development Regulations 2009 (PD Regulations)*.

Submissions received and considered

20. In determining this Application, I observe that under section 246(6) of the PD Act I am to have regard to the submissions of the Parties. I have had regard to the submissions of the Parties, comprising:
- a. two sets of initial submissions (**submission or submissions**);
 - b. two sets of submissions in reply (**reply submission or reply submissions**); and
 - c. a further set of submissions from the Applicant in reply to the additional attachments provided to the Parties on 4 August 2022 (**further reply submission**).
- comprising 5 separate submissions in total.
21. The Applicant also provided its operation management plan for the proposed James Street Centre, as well as its complaints management procedure and process guidelines, registration procedure, working with police guidelines and risk management procedures (**Applicant's management plans**) in response to the 4 August 2022 letter sent by the Department on my behalf requesting copies of the Applicant's management plans. I have considered these documents in my determination.
22. I also observe that under section 246(6) of the PD Act I may have regard to any other submissions received. The 'may' would denote a discretion. In any event, I have exercised my discretion to consider submissions from other persons. I have considered all submissions from other persons received up to 5pm on 6 July 2022, which is the time that initial submissions needed to be submitted by the Parties. This encompasses 52 submissions, which includes 41 objections and 11 submissions in support of the Application.

STATUTORY FRAMEWORK

The basis of jurisdiction

23. The jurisdictional basis for my decision is set out in sections 246 and 247 of the PD Act, which relevantly state the following:

246. Minister may call in application to SAT for review

(1) This section applies to an application made to the State Administrative Tribunal if the Minister considers that the application raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Minister.

- (2) The Minister may direct —
- (a) the President to refer an application to which this section applies to the Minister for determination; or
 - (b) the State Administrative Tribunal to hear the application but, without determining it, to refer it with recommendations to the Minister for determination.
- (3) The Minister cannot give a direction under subsection (2) —
- (a) in respect of an application made to the State Administrative Tribunal under the Heritage of Western Australia Act 1990; or
 - (b) more than 14 days after the application was made to the State Administrative Tribunal; or
 - (c) after a final determination has been made in relation to the application.
- (4) The Minister, within 14 days after a direction is given, is to cause a copy of it to be published in the Gazette and, as soon as is practicable, is to cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.
- (5) If the Minister gives a direction under subsection (2)(a), each party to the proceeding may present the case of that party to the Minister.
- (6) The Minister is to have regard to the submissions of the parties and may have regard to any other submission received by the Minister.
- (7) A copy or transcript of any submission to which the Minister has regard is to be —
- (a) given to each party; and
 - (b) published in the manner prescribed by the regulations.

247. Determination of application by Minister

- (1) In determining an application the Minister is not limited to planning considerations but may make the determination having regard to any other matter affecting the public interest.
- (2) When the Minister determines an application that determination has effect according to its tenor.
- (3) When an application is referred to the Minister under section 246(2)(b) the executive officer of the State Administrative Tribunal is to —
- (a) give a copy of the recommendations that accompanied the referral to each party within a reasonable time after the referral; and
 - (b) make a copy of the recommendations available during office hours for inspection by any person without charge.
- (4) The Minister is to —

(a) give to each party written reasons for the determination of the Minister on the application; and

(b) as soon as is practicable, cause a copy of those reasons to be laid before each House of Parliament; and

(c) upon payment of a fee determined in the manner prescribed by the regulations, supply a copy of those reasons to any other person.

(5) The decision of the Minister is final.

24. I understand the nature of my role is not simply to critique the manner of the Council's original decision of 31 May 2022, but rather consider the Application anew.
25. Section 247(1) of the PD Act provides me with broad power to consider not just planning matters, but other matters that affect the public interest.
26. However, I am still bound by the scope of duties and functions set out in the PD Act. In this regard, I am guided by the remarks in *Hanson Construction Materials Pty Ltd and City of Vincent* [2017] WASAT 81 (*Hanson Construction*) at [35] that:

In fact the PD Act does not specify what powers are available to the Minister when determining a review application called in pursuant to s 246 of the PD Act. The powers of the Tribunal on determining a review application, including one made under Pt 14 of the PD Act, are specified in s 29 of the SAT Act. The Minister is to determine the review application as specified in s 247(1) of the PD Act. That determination is to have effect according to its tenor: s 247(2) of the PD Act.

Key planning principles

27. In determining the Application, I have had regard to the planning merits of the proposal. In considering the potential planning merits, I have duly considered the points raised in submissions as well as the information originally presented to the Council by way of the City's Officer Report.
28. In considering that information, and in forming my own views on the planning merits, I have had due regard to the planning principles set out in but not limited to the following documents:
- a. The provisions of CPS 2. Including the objectives of Precinct Plan No.1 – Northbridge (**Northbridge Precinct Plan**) which is made under CPS 2.
 - b. The deemed provisions set out in Schedule 2 (**deemed provisions**) of the *Planning and Development (Local Planning Schemes) Regulations 2015* (**the LPS Regulations**). This

includes but is not limited to clause 67, which prescribes thirty-plus factors a decision-maker is to have due regard when considering a development application, where those matters are relevant.

- c. Relevant local planning policy, including *Local Planning Policy 3.5 – Non-Residential Uses in or Adjacent to Residential Areas (LPP 3.5)*.
- d. Other State government policies, including the Department of Communities ‘*All Paths Lead to a Home: Western Australia’s 10-year Strategy on Homelessness 2020-2030*’ (**10-year Strategy on Homelessness**).

Key public interest principles

29. While the Tribunal usually makes decisions of this nature, and does so with utmost professionalism, Parliament has provided me with the power to call-in applications if, on rare occasions such as this one, the matter is one of State or regional significance. Part of the legislative intent behind such a power is that, pursuant to section 247(1) of the PD Act, I am not limited to planning considerations but may make my determination having regard to any other matter affecting the public interest. In addition to any ground of planning merit, I have duly considered any points raised in the submissions going to issues of public interest.
30. Pursuant to section 247(4)(b) of the PD Act, I must cause this decision to be laid before each House of Parliament. In having regard to other matters affecting the public interest, I have also reflected upon my own role as a Minister of the Crown ultimately responsible for this determination to the People of Western Australia through Parliament.

ISSUES

Original reasons for refusal by Council on 31 May 2022

31. As set out in the City’s Council minutes, Council resolved to refuse the development application for the following reasons:
 - a. the proposal is contrary to clause 67(2)(a) of the deemed provisions as the proposed use is inconsistent with the statement of intent for the Northbridge Precinct to provide a diverse, interesting and dynamic inner-city precinct that will be promoted as attractive for the local population and interstate and overseas visitors;
 - b. the proposal is contrary to clause 67(2)(n) of the deemed provisions as the proposed use will adversely impact upon the amenity and character of the locality which includes the permanent residential

dwellings located in the surrounding locality, by way of adverse noise, reduced public safety and antisocial behaviour; and

- c. the proposal is contrary to clause 67(2)(y) of the deemed provisions as the proposal does not adequately address community concern relating to increased antisocial behaviour, a reduction in public safety, loss of residential amenity, and an adverse impact on business.

Scope of issues as set out in submissions

32. The submissions and reply submissions provided by the Parties and the submissions provided by others assist in canvassing the issues relevant to this matter. These submissions raise issues that extend beyond those raised in the Council's reasons for refusal. This is to be expected as I am considering the Application afresh and may have regard to the additional legal, planning and public interest matters that are raised.

33. The following issues have been raised through submissions and have been thoroughly considered in the determination of the Application:

a. Preliminary issues including:

- i. the proper exercise of the call-in power under section 246(1) of the PD Act; and
- ii. the use of section 246(2)(b) of the PD Act and procedural fairness issues.

b. Planning issues including:

- i. whether sufficient information was supplied with the Application;
- ii. the appropriate characterisation of the proposed use under CPS 2;
- iii. the permissibility of the proposed use under CPS 2 which in turn raises questions as to whether the Application is exempt from the need for development approval or if the Application is required to be approved under CPS 2;
- iv. matters argued to be relevant to the exercise of planning discretion including the aims of CPS 2, relevant policy of the State, relevant local planning policy, amenity, character, traffic and community need; and
- v. additional issues raised in public submissions including management of antisocial behaviour and public safety, reduction in property values, economic impacts with respect to future development, investment and tourism and appropriateness of the location.

- c. Other matters in the public interest regarding the need for homeless services.

ANALYSIS

Preliminary issues

Proper exercise of call-in power under section 246(1)

34. As outlined above, section 246(1) of the PD Act allows for the Minister to call-in an application made to the SAT 'if the Minister considers that the application raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Minister.'
35. The City has contended that the Application does not raise issues of State or regional significance and, therefore, I should not have called-in the Application under section 246(1).
36. The City provides at paragraph 15 of their submission that the Application does not raise issues of State or regional significance because:

This matter concerns the determination of a change of use application for a building. It should not be considered an issue of State or regional importance as it does not impact or affect any area beyond its immediate local surrounds.
37. I disagree with this contention made by the City. The Application raises issues of State or regional importance because homelessness is not an issue that only affects single local government areas. It is a state-wide issue. This issue is of such importance to the State that the Department of Communities has released the 10-year Strategy on Homelessness, which is a whole-of-community plan setting direction for all levels of government, business and the community sector in responding to and preventing homelessness in Western Australia.
38. Further, the Application raises issues that are so important to the Western Australian community that a question without notice was raised in Parliament on Thursday 23 June 2022 questioning what role the State government would have with respect to the Application. I explained to Parliament that I had agreed to call-in and determine the Application and made the following statement explaining the importance of the Proposal for the State:

We know that the issues surrounding homelessness are difficult, and they are difficult to manage throughout the community. However, it is important that we stay strong and make decisions that benefit the entire community, and in particular those who are at risk and need the services. Without this decision, and without this process, not only would the drop-in-centre for the homeless be impacted, but also the

application and proposal to build a seven-story new dedicated facility for family and domestic violence. It is important that the overall package from the state government be considered from a strategic point of view.

Use of section 246(2)(b) of the PD Act and procedural fairness issues

39. The City contends that the use of section 246(2)(a) of the PD Act instead of section 246(2)(b) in this instance gives rise to procedural fairness issues.

40. This concern is as outlined at paragraphs 16 - 17 of the City's submission:

...the approach taken, is artificially short and opaque. It is designed to favour one party, and one section of the population, at the expense of a number of others, given our understanding that RUAH has scheduled works to begin at its existing premises in August of this year.

41. The PD Act does not place any limitations on my ability to choose to call-in an application to SAT under section 246(2)(a). The PD Act gives me the option of either directing that an application be referred to me for determination under section 246(2)(a) or directing that the SAT hear an application first and then refer its recommendations to me for determination. Therefore, I reject the City's contention that my use of section 246(2)(a) is in any way inappropriate.

42. Even though I am not required to do so by the PD Act, I have accepted and considered 52 public submissions from local residents, land owners and local businesses with respect to the Application. Therefore, in my view, these stakeholders have been offered significant transparency and fairness through this process.

43. I reject the suggestion being made by the City that I am in some way biased and that the process has been designed to favour one party. Both parties were given identical timeframes to provide submissions and these submissions, as well as 52 other public submissions, have been duly considered in reaching this decision.

44. The City stated in its reply submission that I should conduct a mediation, or mediation like process with the Parties prior to determining the Application. Section 246 does not contemplate or require that I conduct a mediation prior to determining the Application. In fact, section 246(7) of the PD Act and the regulation 44 of the PD Regulations require that the transcript (or a copy) of any submission is to be published by making it available to the public at the WAPC's offices during business hours. This suggests that a confidential 'without prejudice' mediation between the Parties would not be appropriate or arguably

may not even be permitted. I also note, as advised by the Applicant at paragraph 7.4 of its reply submission, that the Applicant's legal representatives have already advised the City's legal representatives that the Applicant was not agreeable to mediation because:

- (i) due to the impending construction of the approved development at 29-35 Shenton Street, Northbridge, the Shenton Street centre, if it were to continue, would have to relocate;
- (ii) as a consequence of (i), the review needed to be determined as promptly as possible, irrespective of whether the decision was favourable or unfavourable to Ruah; and
- (iii) in light of the Council's unanimous decision, Ruah has determined that proceeding to mediation was not in its interests because of the delay that would be occasioned.

45. The City further contends that insufficient time has been allowed for the City to obtain independent planning advice regarding the planning merits of the Application. I found this curious as a 12-page planning advice prepared by Planning Solutions (**Planning Solutions advice**) is attached to the City's submission, which I have given due consideration in reaching my decision.
46. Nevertheless, I disagree with the City's contention. The PD Act does not prescribe any timeframes for the Parties to make submissions. The setting of timeframes for submissions is at my discretion. Further, while the PD Act does not require the Parties to be given an opportunity to provide reply submissions, I have allowed for this.
47. The length of the timeframes for submissions and reply submissions by the Parties for this matter are very similar to other applications that I have called-in from SAT. The Applicant requested a 4-day extension to the timeframe for reply submissions and this was granted for both Parties. The City, while contending in their submission that inadequate time had been allowed for the City to obtain independent planning advice, did not make any requests for additional time to provide submissions.
48. While not required, I was sympathetic to the City's concerns raised in its submission about lack of time and, in a letter sent to the City on 11 July 2022 from my acting Chief of Staff, the City was invited to request a reasonable extension of time for the Parties to prepare reply submissions if necessary. The City did not request any additional time in response to this letter.

Planning issues

49. Before providing my analysis of the planning matters that I have considered in reaching my decision, I have outlined the general planning framework that applies. This list of provisions is not exhaustive. Further relevant clauses are outlined in the sections that follow.

Metropolitan Region Scheme

50. The proposed James Street Centre is located within the 'Central City Area' zone under the MRS.
51. Clause 24(1) of the MRS provides that approval of the responsible authority is required for the development of zoned areas, subject to the exceptions in subclause (2).
52. Clause 26 of the MRS provides that, where a local planning scheme exists, an approval given by the local authority to develop land which is zoned under the MRS is deemed to be an approval under the MRS.

City of Perth CPS 2

53. Clause 11 of CPS 2 divides the Scheme area into precincts and for each precinct there is a precinct plan. These precinct plans set out the planning intentions for each precinct.
54. The proposed James Street Centre is located within the 'P1 Northbridge (CC)' precinct (**Northbridge Precinct**). Precincts denoted 'CC' comprise part of the Scheme area referred to as the 'City Centre' within CPS 2.
55. CPS 2 provides for 'use groups' and 'use group categories' which form the basis for land use permissibility within each precinct.
56. Clause 15(1) of CPS 2 defines a 'use group' as:
- a) a described use; or
 - b) a group of described uses having generally similar functional characteristics, within the 'use group categories' set out in Schedule 2.
57. Clause 15(2) of CPS 2 lists all of the use group categories, which includes 'Community and Cultural.' These use group categories are defined in Schedule 2 of CPS 2.
58. Clause 15(3) of CPS 2 provides:
- Where a particular use is referred to in a use group, it is to be taken to be excluded from any other use group that might otherwise have been construed to include the use within its general terms.

59. Schedule 3 of CPS 2 provides 'use group tables' which provides the land use permissibility within each of the precincts by reference to the use group categories.
60. Schedule 4 of CPS 2 provides land use definitions and designates these land uses to certain use group categories.
61. Clause 16(4) of CPS 2 provides that if a proposed use does not fall within any use group and does not come within the general terms of any use group, it is taken to be an unlisted use.
62. Clause 60 of the deemed provisions provides that a person must not commence or carry out works on or use land in the Scheme area unless:
 - (a) the person has obtained the development approval of the local government under Part 8; or
 - (b) development approval is not required for the development under clause 61.
63. Clause 18(1) of CPS 2 largely replicates clause 60 of the deemed provisions and provides that a change of use, other than a use that is listed in clause 61 of the deemed provisions, requires development approval.

Insufficient information supplied with the Application

64. The City contends that inadequate information was initially provided by the Applicant to determine the nature of the proposed use to be carried out at the site and the amenity impacts of the Proposal. This contention was also made in the Planning Solutions advice attached to the City's submission.
65. The City has argued at paragraph 13 of their submission that:

...the facts and considerations relevant to the exercise of the planning power are insufficient for a proper determination to be made. No reasonable planning authority, be it the City, the SAT or the Minister, can approve an application validly in the circumstances.
66. The Application describes the proposed use as the services that currently operate from Shenton Street Centre. The Applicant explained that the services were purely being relocated as a result of the redevelopment of the Shenton Street Centre for the Ruah Centre for Women and Children. As the Applicant has operated the Shenton Street Centre for the past 60 years, presumably the services provided are well known to the City.
67. Nevertheless, the Applicant has now provided extensive information at paragraphs 25 to 35 of their submission as to the nature, as well as amenity impacts, of the services currently

provided from the Shenton Street Centre that are proposed to be relocated to the proposed James Street Centre.

68. In my view, the Applicant's submission provides sufficient information for me to determine the Application.

Characterisation of the proposed use

69. There appears to be substantial disagreement between the Parties as to the appropriate categorisation of the proposed use.

70. The Applicant has characterised the proposed use as a 'Community Centre' which, under Schedule 4 of CPS 2, falls within the 'Community and Cultural' use group category. The City's Officer Report also categorises the proposed use this way.

71. Conversely, the City has argued in their submission that the proposed use should not be categorised as a 'Community Centre' or within the 'Community and Cultural' use group category. Instead the City contends that the proposed use should be treated as an unlisted use.

72. I am cognisant that planning schemes are principally written by and for town planners, not lawyers, and should therefore be read and applied in a sensible and practical manner.

73. The 'Community and Cultural' use group category is described in Schedule 2 of CPS 2 as:

Premises used to provide social, cultural or recreational facilities and services, generally on a non-profit basis, for the benefit of the community including: community centre, exhibition centre, public library, place of worship.

74. 'Community Centre' is defined in Schedule 4 of CPS 2 as:

means premises accommodating services (such as health or social services) or facilities (such as meeting or recreation facilities) primarily for the benefit of those who live or work in the surrounding locality.

75. Therefore, to be considered as a 'Community Centre' the premises needs to satisfy the following limbs:

- a. accommodate services (such as mental health or social services) or facilities (such as meeting or recreation facilities); and
- b. be primarily for the benefit of those who live or work in the surrounding locality.

76. With respect to the first limb of the ‘Community Centre’ definition, the Applicant has submitted that it proposes to use the premises to provide ‘social services.’ To support this submission the Applicant references the SAT’s interpretation of the meaning of ‘social services’ within the context of a ‘Community Purpose’ land use in the case of *Western Australian Shalom Group Inc. and City of Swan* [2018] WASAT 36. The SAT in this case considered the meaning of ‘social services’ to include ‘organised systems... designed to remedy or alleviate certain unfavourable conditions of life in a community.’
77. I am satisfied by the Applicant’s submissions that the premises will accommodate ‘social services’ by providing emergency relief and other assistance to people experiencing homelessness and other vulnerable members of society, which will in turn reduce the impact of homelessness and other social issues. Accordingly, I am satisfied that the first limb of the ‘Community Centre’ definition has been met.
78. The second limb of the ‘Community Centre’ definition requires the services provided at the premises to be ‘primarily for the benefit of those who live or work in the surrounding locality.’
79. The Applicant submits that the words ‘live’ and ‘work’ in the definition of ‘Community Centre’ should be given their ordinary meaning. At paragraph 73 of its submission the Applicant provides the following definitions from the *Macquarie Dictionary Online*:
- The *Macquarie* defines ‘live’ to include ‘to dwell or reside.’ In turn, the *Macquarie* defines ‘dwell’ to include ‘to reside as a permanent resident’ and ‘reside’ to include ‘to dwell permanently or for a considerable time; have one’s abode for a time: *he resided in Box Hill.*
80. Applying these dictionary definitions, the Applicant argues at paragraph 74 of their submission that:

The term ‘live’ in the definition of ‘community centre’ does not require a ‘bricks and mortar’ residence. That much is clear from the definitions in [73] *above*. Many people experiencing homelessness dwell/reside in a particular locality and do not have a ‘bricks and mortar’ residence at all. Any suggestion that a person experiencing homelessness who spends most of their time in a particular locality (i.e. dwells/resides there) does not live there because they do not have a ‘brick and mortar’ residence is, with respect, unsustainable. Such an interpretation would not be sensible or practical.

Many of the clients of the Shenton Street Centre do dwell/ reside in the surrounding locality and therefore live there. The same will be the case with the James Street Centre.

81. The Applicant makes the following additional points in this regard at paragraph 9.2 of its reply submission:

(a) The definition of 'community centre' distinguishes between those who are in the locality for the purpose of living or working, and those who are visiting the locality for other purposes. People who are experiencing homelessness in the locality are there for the purpose of living.

(b) People who are experiencing homelessness in the locality and undertaking their domestic activities there (e.g. sleeping, eating etc.) are living there.

82. Conversely, the City, as well as several public submitters, contend that people experiencing homelessness should not be regarded as 'living' within the locality for the purpose of the 'Community Centre' definition. The City explains at paragraph 26 to 28 of its submission:

A person experiencing homelessness may be existing in the area one day and somewhere else the next. They cannot be said, within the ordinary meaning of homelessness, to be living or working in the area.

In other words, the word 'live' as used in CPS 2 does not encompass existing in or frequenting a locality, to some greater or lesser extent, by spending parts of days or nights there on the streets, in public places or on private areas. To say that people experiencing homelessness 'live' in an area is to describe a completely different idea to that described by saying that people with homes in the area 'live' in the area. Nothing could be further removed from the concept of 'living' in a home and existing as a person experiencing homelessness in the area.

83. A legal submission prepared by a QC barrister attached to a submission from a land owner in the area (**QC legal advice submission**) provides at paragraph 46 that people who 'exist' in the way of people experiencing homelessness 'do not share the connection with the locality that those who reside or work in the locality share' and therefore do not 'live' in those places, in the ordinary sense of the word 'live.'

84. I reject the contention that persons experiencing homelessness are not 'living' but rather merely 'existing' in that locality. I also disagree with the argument that people experiencing homelessness in an area cannot 'share a connection' with the locality because they have more vulnerable living arrangements. This is not consistent with general planning principles or something of a standard that general society would expect of a decision maker.

85. In my view, these arguments are also inconsistent with the meaning of the term 'homelessness.' The Australian Bureau of Statistics (**ABS**) defines homelessness on its website as follows:

When a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement:

- is in a dwelling that is inadequate;
- has no tenure, or if their initial tenure is short and not extendable;
- does not allow them to have control of, and access to space for social relations.

86. The Department of Communities 10-year Strategy on Homelessness also explains on page 23 that:

According to the ABS definition people who fall into the following categories are considered homeless: people living in improvised dwellings, tents to sleeping out; people in supported accommodation for the homeless; people staying temporarily in other households; people living in boarding houses; people living in other temporary lodgings; and people living in severely crowded dwellings.

87. In my view, this illustrates the practical, ordinary, common sense meaning of homelessness which includes 'living' other than in a 'bricks and mortar' residence that is owned or rented by the occupant.

88. The City's submission and the QC legal submission appear to equate homelessness to 'rough sleeping.'

89. The Applicant provides the following definition of rough sleeping at paragraph 6.1 of its further reply submission:

Living without shelter or improvised dwellings such as sleeping on the streets and parks, in tents, in caves, in cars and in squats or on buses and trains and in buildings not designed for residential use.

90. The Applicant clarifies at paragraph 6.1 of its further reply submission that approximately 85% to 90% of the clients of the Shenton Street Centre are experiencing 'homelessness' in accordance with the ABS definition, not just rough sleeping.

91. I agree with the Applicant's interpretation that people experiencing homelessness 'live' within the surrounding locality. I believe that this interpretation is correct applying relevant planning principles and on public interest grounds as a matter of public policy. I am also satisfied that the services provided by the Applicant at the proposed James Street Centre would be for the benefit of those people experiencing homelessness that 'live' in the surrounding locality.

92. Even if I were to accept the City's argument that people experiencing homelessness are not 'living' in the locality, the Applicant's reply submission provides evidence that 10 – 15%

of the patrons attending the existing Shenton Street Centre are not experiencing homelessness but are recently housed (often for the first time in their life). These people are offered support and practical help by Ruah to ensure that they maintain their tenancy and remain housed. This includes supporting these people to pay bills and connecting them to medical teams. The Applicant's reply submission also provides evidence that some of the Shenton Street Centre's patrons are housed in temporary accommodation in and around the Perth CBD. Therefore, it could be said, consistent with the City's arguments, that these patrons do 'live' within the locality.

93. For the abovementioned reasons, I am of the view that the second limb of the 'Community Centre' definition is also met and that the proposed use can reasonably be categorised as falling within the 'Community Centre' land use definition.

94. In the alternative, if I am incorrect in my categorisation of the proposed use as a 'Community Centre,' it is arguable that the proposed use still falls within the 'Community and Cultural' use group category generally.

95. The City submits that the 'Community and Cultural' use group category definition focuses on the facilities and services being for the benefit of the 'community' and that the reference to 'community' is to the 'whole community of the City.' I agree with this submission and with the observations made at paragraphs 25 and 26 of the QC legal advice submission that:

In the present case, the context in which the words "the community" are used is that of a planning scheme which relates to a capital city. The overall objectives of the scheme place emphasis upon the role of the City as the capital city: cl 6.

Bearing these considerations in mind, the words "community" as they apply in the description of the Community and Cultural use group, bear a wide connotation, extending to members of the public of the entire city of Perth, not just those who live or work within the local government area of the City.

96. The City contends that, due to the designation of the 'Community and Cultural' use group category as a 'preferred use' in CPS 2, the interpretation of the land use definition needs to distinguish between those who need the services and those who do not and the word 'community' in this definition refers to those who ordinarily live or work in the area for whom the provision of services and facilities raises no special planning issues.

97. In this regard, the QC legal advice submission argues at paragraph 32 - 34 that:

Social services or facilities (as well as cultural or recreational services and facilities) may be provided to ordinary members of the public or to specific classes of persons, including some whose need for or use of services and facilities distinguishes them clearly from ordinary members of the public, from a planning perspective.

Obvious examples of the latter classes, especially (but not only) in relation to the provision of social services and facilities, include persons who are affected by alcohol and drug abuse or who have a propensity for repeated commission of sexual offences, as well as homeless persons (many of whom have behavioural and other problems). The use of premises for the provision of services and facilities for members of the public who are within those classes obviously raises special and sensitive planning issues.

It is one thing for the scheme to treat the use of premises for the provision of social and other services for ordinary members of the public as raising no special consideration and thus to designate that use as a preferred use in particular areas.

It would be a very different thing altogether for the scheme to treat the use of premises for the provision of services to persons affected by alcohol and drug abuse, deviant behaviour or homelessness as raising no special planning considerations and to accord such uses the special status of cl 32.

98. I do not agree that people experiencing homelessness do not form part of the Perth community and do not accept the categorisation of people experiencing homelessness as not being 'ordinary' members of the public. Similar to my observations above with respect to the contention that experiencing homelessness in an area is 'existing' rather than 'living,' I think any attempt to exclude the City's homeless population in this way would not accord with planning objectives, would not be consistent with contemporary community standards and would be contrary to the public interest.
99. I also do not accept the argument that the 'Community and Cultural' use group only captures social services that are relevant to the Perth community generally, not a special class of persons, who are being supported by a use that is of a less controversial nature.
100. I observe that the 'Community and Cultural' use group definition also includes a 'place of worship.' Places of worship are not premises that necessarily contemplates use by every member of the local community. As past decisions have acknowledged, including for example *Canterbury Municipal Court v Moslem Alawy Society Ltd* [1987] HCA 8, a place of worship can be considered as providing a public service or community benefit even though it may restrict attendance and participation to those limited to that particular religious group or sect.

101. Moreover, it is self-evident that many places of worship can and often do involve special planning issues and controversial planning considerations.
102. I am of the view that the Proposal will be of benefit to the Perth community, notwithstanding that those who actually utilise this service are more likely to be a class of persons within that community. As well as providing necessary support to those people experiencing homelessness, the Proposal will benefit the entire Perth community more broadly by reducing the impacts of homelessness.
103. I see no reason to treat people experiencing homelessness and the premises that might provide facilities and services to them as somehow being in a different category to those who wish to attend, for example, a place of worship. There is no discernible planning rationale to support such an exclusive reading of the Scheme, which would discriminate amongst members of the Perth community in this way. Even if I was required, on planning grounds, to read the Scheme in this manner, I would favour my more inclusive interpretation on account of non-planning grounds in the public interest.
104. I am of the view that the proposed use would fall within the 'Community and Cultural' use group category because:
- a. for the reasons outlined above, I am satisfied that the services to be provided by the Applicant are a social service;
 - b. I accept the Applicant's submission that the services will benefit those members of the community who need to access them, as well as the wider Perth community by assisting to alleviate the consequences of homelessness and other social issues; and
 - c. I am satisfied that the Applicant is a non-profit organisation and the services to be provided will be on a non-profit basis.
105. As I am persuaded that the proposed use falls within the 'Community and Cultural' use group category, I do not agree that the proposed use is an unlisted use as contended by the City.
106. However, even if the proposed use was to be categorised as an unlisted use, as I am not limited to planning considerations and may make my determination having regard to other matters affecting the public interest, I have given due regard to all the matters relevant to

the exercise of discretion in reaching my decision, as outlined in the remainder of these reasons.

Use permissibility

Is the Application exempt from the need for development approval under clause 61(2)(b) of the deemed provisions?

107. The Applicant questions in its development application whether approval is required for the proposed change of use as clause 61(2)(b) of the deemed provisions provides that development approval is not required for:

development that is a class P use in relation to the zone in which the development is located if –

- (i) the development has no works component; or
- (ii) development approval is not required for the works component of the development.

108. The Planning Solutions advice attached to the City's submission contends that the Application is not exempt from the need for development approval under clause 61 of the deemed provisions. However, the Planning Solutions advice does not go further to explain why this is.

109. A 'class P use' is defined in clause 1 of the deemed provisions as 'in relation to a zone, means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is permitted in the zone if it complies with any relevant development standards and requirements of this Scheme.'

110. Within the Northbridge Precinct the 'Community and Cultural' use group category is listed as a 'P' use. Clause 17(2) of CPS 2 explains that a land use designated with a 'P' is a 'preferred use.'

111. Pursuant to section 257B of the PD Act, these deemed provisions automatically form part of CPS 2 and override any inconsistent provisions within CPS 2 to the extent of the inconsistency. Therefore, it is arguable that a 'P' preferred use under CPS 2 is to be regarded as a 'class P use' under the deemed provisions and subject to the exemption from the need for development approval under clause 61(2)(b).

112. The Application does not propose any external works to the building. It appears that internal works may be proposed. However, I note that those internal works would be exempt from the need for development approval under item 5 of clause 61(1) of the deemed provisions.

113. Therefore, it is arguable that a development approval is not required at all and I find this convincing.

114. Nevertheless, given that I am not limited to planning considerations and may make my determination having regard to other matters affecting the public interest, I have considered the Application on the presumption that development approval is required.

Is the Application required to be approved under CPS 2?

115. Clause 32 of CPS 2 outlines how an application is to be determined for a 'preferred use:'

Where, in a precinct, a use group category is classified as a preferred use then, in considering an application involving a use from that category in that precinct, the local government –

(a) shall refuse the application if it involves a change of use prohibited by clause 35;

(b) cannot otherwise refuse the application by reference to the proposal to begin or continue the preferred use.

116. Clause 35 of CPS 2 relates to applications that involve a change of use within a specific development that has previously been granted bonus plot ratio for a specific use.

117. The Applicant and the City appear to agree that clause 35 is not applicable to the Application.

118. However, there does appear to be disagreement between the Parties as to the correct application of clause 32(b).

119. The Applicant submits that, in accordance with clause 32(b), there is no discretion to refuse the Application and it must be approved. This is consistent with the interpretation of the effect of clause 32(b) in the City's Officer Report which states at paragraph 21-22 that:

In accordance with part (b) of Clause 32 of CPS2, the application cannot be refused based on the proposed land use. This position is supported by internal legal advice.

This application proposes a change of use only (no development). The proposed use is therefore not subject to any specific development requirements under CPS2 and cannot be refused on the basis of non-compliance with specific development provisions of CPS2.

120. Whereas the City contends that the effect of clause 32(b) does not prevent a decision maker from refusing a development application. Rather, it allows for a development application to be refused for reasons that are not based on the nature of the use. The City gives the example

that a 'Community Centre' could be refused on the basis of amenity, orderly and proper planning, or some other matter listed in clause 67 of the deemed provisions.

121. These considerations listed by the City denote an exercise of discretion, which a 'C' contemplated use appears to cater for under CPS 2. I do wonder what the purpose of a 'P' preferred use is if I was to accept the interpretation provided by the City. Further, considerations relating to amenity and orderly and proper planning in this context appear to relate to the nature of the use. The City has conceded, if the use falls into the 'Community and Cultural' land use category, that under clause 32(b) the application cannot be refused on the basis of the nature of the use, so its argument is puzzling.
122. I am minded to agree with the Applicant that, under clause 32(b) of CPS 2, the Application cannot be refused on planning grounds as it is purely an application for a change of use and does not involve any external works.
123. However, given that I am not limited to planning considerations and may make my determination having regard to other matters affecting the public interest, I have given due regard to all the matters relevant to the exercise of discretion in reaching my decision, as outlined in the remainder of these reasons for decision.

Consideration of the matters relevant to the exercise of discretion

Clause 36 of CPS 2

124. A submission by a town planning consultancy, on behalf of 3 landowners in close proximity to the proposed James Street Centre (**planning consultancy submission**), draws my attention to clause 36 of CPS 2. Clause 36 provides:

DETERMINATION OF NON-COMPLYING APPLICATIONS

- (1) In this clause –
 - a) an application which does not comply with a standard or requirement of this Scheme (including a standard or requirement set out in a planning policy, the relevant precinct plan or minor town planning scheme), is called a 'non-complying application;'
 - b) a non-complying application does not include an application involving a prohibited use or an application or an application to increase the maximum plot ratio which exceeds the limits set out in clause 28 and/or 30.
- (2) Subject to subclause (3), the local government may refuse or approve a non-complying application.

(3) The local government cannot grant approval for a non-complying application unless –

...

c) The local government is satisfied by absolute majority that –

(i) If approval were to be granted, the development would be consistent with –

(A) the orderly and proper planning of the locality;

(B) the conservation of the amenities of the locality; and

(C) the statement of intent set out in the relevant precinct plan; and

(ii) the non-compliance would not have any undue adverse effect on:

(A) the occupiers or users of the development;

(B) the property in, or the inhabitants of, the locality; or

(C) the likely future development of the locality.

125. The planning consultancy submission contends that LPP 3.5 is relevant to my consideration of the Application. It argues that the Proposal does not comply with the aims of LPP 3.5 and, therefore, I should consider clause 36 of CPS 2 in making my decision.

126. Clause 36 relates to a ‘standard or requirement’ of the Scheme, including a ‘standard or requirement’ set out in a local planning policy. As the Application is for a change of use only and proposes no external works, physical development standards and requirements are not relevant. LPP 3.5 does not appear to contain any other standards or requirements relevant to the Application.

127. Nevertheless, my consideration of the relevant factors listed in clause 67 of the deemed provisions outlined below sufficiently addresses the matters listed in clause 36(3)(c) of CPS 2 also.

Relevant considerations under clause 67 of the deemed provisions

128. Clause 67(2) of the deemed provisions prescribes thirty-plus factors that a decision maker is to have due regard to when considering a development application, where those matters are relevant to the application. I have given due regard to the factors listed in clause 67(2) and, for the purpose of these reasons for decision, have specifically outlined below the factors to which have the greatest relevance and I have given the most weight in reaching my determination.

Aims of the Scheme - clause 67(2)(a) of the deemed provisions

129. The Council's first reason for refusing the Application was:

The proposal is contrary to clause 67(2)(a) of the deemed provisions as the proposed use is inconsistent with the statement of intent for the Northbridge Precinct to provide a diverse, interesting and dynamic inner-city precinct that will be promoted as attractive for the local population and interstate and overseas visitors.

130. Clause 67(2)(a) of the deemed provisions requires consideration of 'the aims and provisions of the Scheme and any other local planning scheme operating in within the Scheme area.'

131. The City's Officer Report argues that the aims of the local planning scheme are high level and not considered to have a strong or clear link to the specific proposal.

132. The Planning Solutions advice attached to the City's submission also provides that CPS 2 does not explicitly state 'aims' but notes that clause 6 of CPS 2 provides 'objectives and intentions of the Scheme' which could be construed as encompassing the 'aims' of the Scheme. The City's submission draws my attention to subclause (3)(a) – (c) of clause 6 of CPS 2 in particular, which provides that the general objectives of the Scheme are:

- a) to recognise and reinforce the role of Perth as the capital of Western Australia and the administrative, financial and political centre of the State;
- b) to cater for the diversity of demands, interests and lifestyles by facilitating and encouraging the provision of a wide range of choices in housing, business, employment, education, leisure, visitor accommodation and attractions, transport and access opportunities;
- c) protect and enhance the health, safety and general welfare of the local governments inhabitants and the social, physical and cultural environment of the local government.

133. In my view, the services provided by the Applicant at the proposed James Street Centre are consistent with the objectives of the Scheme outlined in clause 6(3). As submitted by the Applicant, people experiencing homelessness already live in the Northbridge area. It is self-evident that this is the case because Northbridge forms part of Perth's Capital City, where people naturally congregate. This is part of the 'diversity' of the locality that the Scheme needs to cater for. The services provided by the Applicant will assist these vulnerable people, thereby reducing the social impacts that stem from homelessness and enhancing the safety and general welfare of the entire locality.

134. The planning consultancy submission also draws my attention to clause 6(3)(f) of CPS 2, which provides that an objective of the Scheme is to ‘promote and safeguard the economic wellbeing and functions of the local government.’ This submission argues that the Proposal has the potential to risk the economic wellbeing and functions of established businesses in the immediate locality. I think this function listed in clause 6(3)(f) of the Scheme is referring to the economic wellbeing and functions of the local government itself, rather than the economic wellbeing and functions of businesses that operate in the local government area. Nevertheless, I have given due regard to this issue in further detail below in my consideration of the impacts on existing businesses that have been outlined in submissions.

135. Schedule 1 of CPS 2 establishes more bespoke zone objectives for the City Centre scheme use area including:

The City Centre is the State’s primary location for business and administration as well as commercial, civic, cultural, entertainment and retail activity. It is also a major focus for tourism, both as a sightseeing destination and for the tourist accommodation it provides. Residential development is strongly encouraged in the central core to create a ‘living’ city. Diversity and vitality are fundamental to the overall land use profile of the city centre and should be facilitated by providing a wide range of facilities and services which enable the city to fulfil its many functions while sustaining interest and activity on a virtually continuous basis. The scale and intensity of activities in the city centre also help to distinguish it from surrounding areas and are therefore important to its land use character.

136. Both Parties in their submissions have drawn my attention to the statement of intent for the Northbridge Precinct contained in the Northbridge Precinct Plan which states:

The Northbridge Precinct will continue to evolve as a diverse, interesting and dynamic inner-city precinct and will be promoted as an attractive destination for the local population and interstate and overseas visitors. This Precinct will remain Perth’s primary entertainment and night life area and provide a variety of residential and visitor accommodation and commercial services. It will be a unique area in terms of uses and character and the social and cultural diversity that clearly distinguishes the Precinct will be fostered.

137. The Applicant notes that the Northbridge Precinct Plan does not form part of CPS 2 by virtue of clause 3. Nevertheless, a precinct plan is made under the Scheme and appears to be akin to a local planning policy (or possibly regarded as a local planning policy). Therefore, I have given due regard to the planning intent for the area outlined in the Northbridge Precinct Plan.

138. The City, as well as several public submissions, contend that the Proposal is inconsistent with this statement of intent for the Northbridge Precinct. It is argued that the Proposal does not align with the future plans for Northbridge to be a ‘vibrant entertainment precinct.’

139. Conversely, the Applicant argues at paragraph 97 of their submission that the Proposal is consistent with this statement of intent for the following reasons:

The Shenton Street Centre currently exists with the precinct the subject of the Precinct Plan, as will the James Street Centre, and therefore forms part of the existing locality and existing service provision in that precinct.

The Shenton Street Centre provides, and the James Street centre will provide in its place, for a diverse, interesting and dynamic inner-city precinct in that the use provides an important community service to those in the area.

140. I agree with the Applicant that the Proposal provides an important social service. By providing people experiencing homelessness with the services that they need, the social problems linked with homelessness will be reduced. This enables the Northbridge Precinct to be attractive to interstate and overseas visitors and allows the area to continue to evolve as a ‘diverse, interesting and dynamic inner-city precinct.’

141. In general, the objectives contained in CPS 2, the City Centre scheme use area and the Northbridge Precinct Plan seek to cater for a diversity of demands, and this includes a range of social and cultural facilities and services, which is consistent with the Proposal.

142. This is particularly evident from Schedule 3 of CPS 2 which contemplates a range of entertainment, educational, healthcare, and community and cultural uses within the Northbridge Precinct.

143. Further, the Northbridge Precinct Plan seeks to locate compatible non-residential uses, such as ‘community activities,’ west of Milligan, Shenton and Palmerston streets, which is where the proposed James Street Centre is located.

Policy of the State – clause 67(2)(f) of the deemed provisions

144. Clause 67(2)(g) of the deemed provisions requires consideration of any ‘policy of the State.’

145. As outlined above, the State government’s 10-year Strategy on Homelessness is a whole-of community plan setting direction for all levels of government, business and the community sector in responding to and preventing homelessness in Western Australia. Two 5-year

Action Plans will drive the implementation of the 10-year Strategy on Homelessness and help to achieve its outcomes. The first of these Action Plans for 2020-2025 (**Action Plan 2020-2025**) focusses on ending rough sleeping. Priority Action 2.2 outlined in this Action Plan aims to ensure that people sleeping rough are connected to appropriate supports. This includes a plan to review and expand assertive outreach services to ensure rough sleepers are better connected to appropriate support and accommodation services. This Priority Action is being led by the Department of Communities in partnership with the City of Perth, other local governments and the community services sector.

146. The Application is consistent with the 10-year Strategy on Homelessness and directly assists in the implementation of the Action Plan 2020-2025. Therefore, I have given significant weight to this relevant consideration in reaching my decision.

Relevant local planning policy – clause 67(2)(g) of the deemed provisions

147. Clause 67(2)(g) of the deemed provisions requires consideration of any ‘local planning policy for the Scheme area.’

148. The planning consultancy submission contends that LPP 3.5 should be considered in determining the Application because the proposed James Street Centre is located nearby to residential development. The submission argues that the Proposal does not comply with the intent or provisions of this policy.

149. The City’s Officer Report provides that LPP 3.5 only applies within areas zoned ‘Residential’ under CPS 2. The Northbridge Precinct is not within the Residential zone, but rather the City Centre zone.

150. It is not entirely clear from reviewing LPP 3.5 whether the policy is only intended to apply to land that is zoned Residential under CPS 2 or whether it is intended to apply to any area where residential uses are able to be located.

151. Nevertheless, even if it may be arguable from a planning perspective that LPP 3.5 is not relevant to my determination of the Application, in the public interest I have given due consideration to LPP 3.5.

152. The aim of LPP 3.5 is to ‘ensure that non-residential uses in or adjacent to residential areas are compatible with existing nearby dwellings.’ The relevant policy outlined in LPP 3.5 is as follows:

Non-residential development on land which abuts land which is or may be used for residential purposes shall only be permitted where the nature of the non-residential use will not cause undue conflict through the generation of traffic and parking or the emission of noise or any other form of pollution which may be undesirable on residential areas.

153. I have given due regard to the compatibility of the proposed use with nearby residential uses, traffic impact, and amenity concerns (including noise) and address these issues in detail below.

Amenity of the locality - clause 67(2)(n) of the deemed provisions

154. The Council's second reason for refusing the Application was:

The proposal is contrary to clause 67(2)(n) of the deemed provisions as the proposed use will adversely impact upon the amenity and character of the locality which includes the permanent residential dwellings located in the surrounding locality, by way of adverse noise, reduced public safety and antisocial behaviour.

155. Clause 67(n) of the deemed provisions requires consideration of the amenity of the locality including the following –

- (i) environmental impacts of the development;
- (ii) character of the locality;
- (iii) social impacts of the development.

156. Clause 1 of the deemed provisions defines 'amenity' as 'all those factors which combine to form the character of an area and include the present and likely future amenity.'

157. The City's submission draws my attention to the leading case on amenity in Western Australia *Tempora Pty Ltd v Shire of Kalamunda* (1994) 10 SR(WA) 296 (*Tempora*). In this case the Town Planning Appeal Tribunal (TPAT) at page 304 of its decision sets out the following three-step analysis as to how the consideration of amenity is to be approached:

- a. make an assessment of the existing amenity as a matter of fact;
- b. determine the manner in which the proposed use will affect the existing amenity; and
- c. determine the degree to which the new use will have on the existing amenity.

158. The City's reply submission includes substantial information relating to what it argues to be the 'locality' which is to be considered when giving due regard to the amenity impacts

of the Proposal. The City cites the case of *Ridgecity Holdings Pty Ltd and City of Albany* [2006] WASAT 187 at [42] which provides:

[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.

159. The City's reply submission also draws my attention to multiple cases which considered the amenity impacts of development on a single property, neighbouring properties and a section of a street.

160. The City submits at paragraph 9 of its reply submission that, in this matter, the proposed James Street Centre will impact the adjacent and nearby properties and those who use that area and 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.

161. I accept the City's submission that the immediate 'locality' of James Street between Melbourne Street and Fitzgerald Street needs to be considered when having due regard to the amenity impacts of the Proposal. However, I also note the following extract from the case of *Focus Video Pty Ltd v Enfield* (1985) 55 LGRA 214, 220 which was cited in the case of *Cranston and Shire of Serpentine-Jarrahdale* [2019] WASAT 19 at [82]:

the extent of the relevant 'locality' for planning purposes varies from case to case but care must be always...taken not [to] unduly...restrict the locality, for the tighter the locality is defined, the greater [the] impact of the impugned subject matter...and the greater is the risk of distorting the relevant planning criteria.

162. In my view, to consider the amenity impact of the Proposal on the immediate 'locality' of James Street between Melbourne Street and Fitzgerald Street in isolation without regard to the existing character and amenity of the surrounding streets would be erroneous and unduly distort the perceived amenity impact of the proposal.

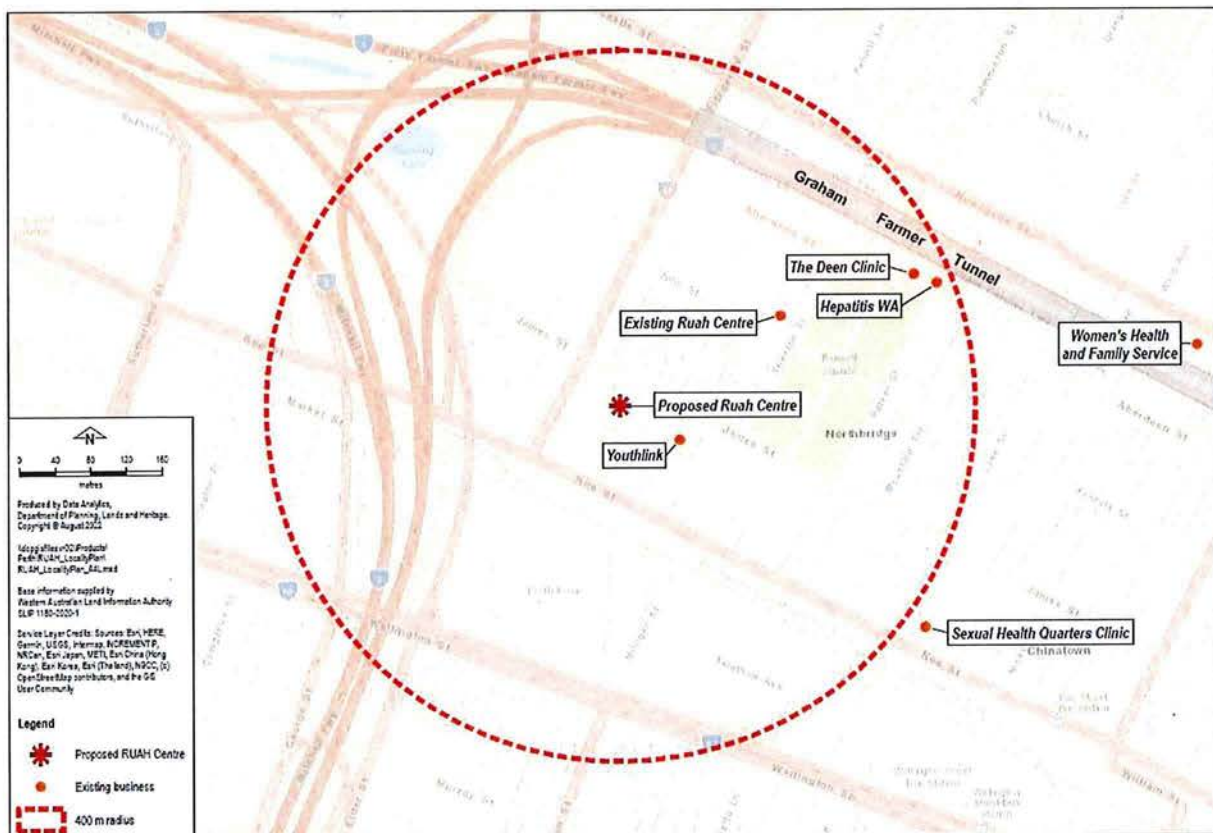
163. With respect to determining the existing amenity of the area, I accept the Planning Solutions advice attached to the City's submission which provides that the existing character is an

inner-city mixed-use urban area, with a focus on residential uses. The following description of the locality provided at paragraph 40 of the Applicant’s submission is also helpful:

The locality can be defined as a mixed-use area with commercial uses (shops, offices, and restaurants) at ground level on both sides of James Street and Special Residential (Best Western Hotel) and Residential Dwellings at the upper levels on the northern side of James Street.

164. The Applicant submits that the Shenton Street Centre and the proposed James Street Centre are in the same area (approximately 200 metres apart). Accordingly, I accept that the Shenton Street Centre already forms part of the existing character and amenity of the area.

165. I also note that YouthLink WA, The Deen Clinic, Hepatitis WA, Sexual Health Quarters and Womens Health and Family Services are all located nearby to the proposed James Street Centre and form part of the existing character and amenity of the area. A visual representation of the approximate location of these services is as follows:



Source: Department of Planning, Lands and Heritage, 2022

166. YouthLink WA is a state-wide specialist mental health service providing counselling, therapy and case management to young people aged 13-24 years with significant mental health problems. The Deen Clinic is a walk-in primary healthcare service created by

Hepatitis WA to increase screening for and treatment of blood-borne viruses. Hepatitis WA is a community based organisation providing services to those affected by and living with viral hepatitis. Sexual Health Quarters offers a range of clinical services including testing and treatment of STIs, contraception information and supply, unintended pregnancy and cervical screening, as well as counselling services specialising in relationships and sexual health issues. Womens Health and Family Services is a not-for-profit organisation which provides programs and services to women and their families which include medical, counselling, drug and alcohol support, domestic violence, mental health and other health services.

167. The City draws my attention to the comments made by the TPAT at page 305 of *Tempora* that '[t]he views of the residents that refine and explain the objective analysis of amenity or which raise new matters of amenity, not canvassed by the experts, must be given great weight.' Similarly, in the case of *Sunbay Developments Pty Ltd and Shire of Kalamunda* (2006) 150 LGERA 116, which is also referenced in the City's submission, the Tribunal explained at [21] that in considering amenity, in addition to the expert opinions of town planners, the views of residents assist this inquiry as residents are often well placed to identify particular qualities and characteristics which contribute to residential amenity.
168. Many public submissions argue that approval of the Application will negatively impact residents' enjoyment of the area due to increased safety concerns, increased noise and adverse visual amenity.
169. Residents and business owners are concerned about the antisocial behaviour of people experiencing homelessness in the area including physical and verbal abuse, loitering, shouting and fighting, intoxication, alcohol and drug use, violence, begging, stealing, vandalism and public urination/defaecation.
170. Concerns have also been raised in public submissions that the location of the proposed James Street Centre will deter customers from local businesses, resulting in loss of income. Several business owners have submitted that they will be forced to close due to patrons avoiding the area due to safety concerns and antisocial behaviour.
171. These amenity concerns largely stem from observations made with regard to the Shenton Street Centre.

172. I think it is important that I distinguish actual evidence of deleterious behaviour of patrons of Ruah services from mere stigma or stereotype. The Applicant has provided evidence in its submission that, while it offers a complaint system as an integral part of continuous quality improvement, in the past 6 months the Shenton Street Centre has not received any complaints from neighbours or the broader community. The Applicant provides that there have only been 3 complaints made about the Shenton Street Centre since 2019, two of which related to behaviour in Russell Square.

173. The City contends in its reply submission that there have been more than 3 incidents involving the Shenton Street Centre since 2019. The City submits that since January 2022, Citywatch recorded 20 complaints involving the Shenton Street Centre (including assault, disorderly conduct, fighting and theft). However, the City then says that any further information relating to these complaints is unavailable.

174. The City argues at paragraph 18 of its reply submission that:

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.

175. I think here the City raises a pertinent point. As the Applicant explains multiple times in its submissions, people experiencing homelessness already live in the area. The antisocial behaviour and other social issues that result in these complaints already exists in the area. As the Applicant explains at paragraph 104 of its submission, the services provided by Ruah aim to reduce these impacts, rather than add to them:

Homelessness is a complex issue. People experiencing homelessness live within the City and Northbridge and therefore the Shenton Street Centre provides services to those that are already in the area. The James Street Centre will continue this provision of service to these people. To suggest that the Shenton Street Centre itself has resulted, and that the James Street Centre will result, in impacts from noise, reduced public safety and antisocial behaviour is misconstrued. The nature of the services provided at the sites assists in improving the social impacts on people experiencing homelessness and the social impacts of homelessness on the community.

176. Accordingly, it is not correct for Ruah to be responsible for antisocial behaviour that occurs nearby to its premises or which involves patrons of the service which occur outside of the Centre. This behaviour would exist whether homeless services were provided in the area or

not. This is clear because, as the City itself notes, it is the capital city of the State. People of course are going to congregate in the capital city.

177. In considering how the Proposal will affect the existing amenity and the degree of this impact, I accept the comments made in the City's Officer Report that, from a planning point of view, it is difficult to argue that relocation of an existing use within 200 metres of its current location would have an impact on the character of an existing diverse, mixed use area.

178. As a matter of planning merit, community services form part of the fabric that underpins the amenity of the area surrounding the proposed James Street Centre. In this respect, it is unlikely that the Proposal will detract to any significant degree from the present or likely future amenity of the area.

179. I understand that, similar to other land uses in Northbridge, people congregating, noise and behaviour of clients attending the James Street Centre could potentially negatively impact nearby residents and business owners from time to time. This is the 'diverse, interesting and dynamic' nature of the Northbridge Precinct.

180. The Applicant provides the following evidence at paragraphs 106-108 of their submission as to how any amenity concerns will be managed:

The James Street Centre is 50 metres from the Perth Police Station and therefore any impacts to public safety or antisocial behaviour can be addressed promptly.

Ruah has established management plans and procedures to address amenity impacts at their service locations, including a complaints system.

Ruah's management plans and procedures relate to the Shenton Street Centre, and will relate to the James Street Centre, during the hours of operation.

181. The City's Officer Report agrees that any amenity concerns are able to be managed and mitigated through ongoing implementation of management plans developed by the Applicant and through conditions imposed on the development approval. I have reviewed the Applicant's management plans and am satisfied as to this point. I have imposed a condition of development approval which requires a comprehensive Business Management Plan, which encompasses additional details to assist in addressing concerns raised in submissions, to be submitted for my approval prior to the commencement of the use. I have also imposed several other conditions of development approval which assist in addressing

concerns relating to amenity, antisocial behaviour and safety. Further discussion of the relevant conditions of development approval are outlined in the following section of these reasons for decision.

182. I am sympathetic to the concerns raised by submitters. It is a difficult task to balance the competing interests in this situation and I am aware that not everyone will be happy with the outcome, but this is unavoidable. I have balanced the perceived negative amenity impacts described in submissions against the community benefit of the continuance of the Applicant's services for people experiencing homelessness and other vulnerable individuals in Northbridge. I am satisfied that the Proposal will not significantly impact the existing amenity of the locality and I am satisfied that amenity concerns can be effectively managed.

Compatibility with character of the setting - clause 67(2)(m) of the deemed provisions

183. The Planning Solutions advice attached to the City's submission and the City's Officer Report has raised clause 67(2)(m) of the deemed provisions as a relevant consideration.

184. Clause 67(2)(m) of the deemed provisions requires consideration of the compatibility of the development with its setting, including:

- (i) the compatibility of the development with the desired future character of its setting; and
- (ii) the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely height, bulk, scale, orientation and appearance of the development.

185. As there is no physical development proposed to the exterior of the building as part of this Application it appears that only paragraph (i) of clause 67(2)(m) – the compatibility of the desired future character of its setting – is relevant.

186. I agree with the comments made at paragraph 33 of the City's Officer Report on which provide:

Ruah's existing Community Centre is located 200m from the site and already contributes to the character of the setting. From a planning point of view, it may be difficult to defend a position that relocation of a use that is currently located 200m away, within a precinct that already accommodates a diversity of land uses, would unduly change or impact the character of the setting.

187. As observed above, the area surrounding the proposed James Street Centre is undoubtedly characterised by a mix of land uses. Accordingly, I am of the view that the proposed change

of use is compatible with its surrounds, having regard to the established character of the locality.

188. I acknowledge the concerns raised in both the City's submission and several public submissions that the Proposal is contrary to plans for the desired future character of Northbridge to be developed as a vibrant entertainment precinct. Some submissions argue that the proposed use should not be located in Northbridge as these services act as a 'magnet' for people experiencing homelessness and create 'ghettos' of people experiencing homelessness in Northbridge.
189. In my view, these arguments are misconceived. The proposed James Street Centre is intended to replace the Shenton Street Centre, not add more homeless services to the area. As I have outlined above, Northbridge forms part of the State's capital city. People naturally congregate in capital cities, where a myriad of social services are provided. The proposed James Street Centre will not draw people experiencing homelessness to the area, these people are already there. The Applicant's services aim to decrease the impact of homelessness in the community, thereby enabling Northbridge to be a vibrant entertainment precinct that is 'diverse, interesting and dynamic.'
190. Further, as provided in the City's Officer Report, the City of Perth *Rough Sleeper Plan* supports these services being provided in the City to improve the overall health and wellbeing of persons who experience homelessness.

Traffic – clause 67(2)(t) of the deemed provisions

191. The City's Officer Report has raised clause 67(2)(t) of the deemed provisions as a relevant consideration.
192. Clause 67(2)(t) of the deemed provisions requires consideration of 'the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.'
193. Several public submissions have drawn my attention to traffic problems and safety concerns related to the proximity of the proposed James Street Centre to a busy intersection and surrounding streets by patrons loitering on the road.
194. The City's Officer Report helpfully explains at paragraph 41 that:

Four support workers (staff) will be onsite each day, and those staff will use the parking bays on site. The amount of vehicular traffic likely to be generated by the proposal is considered very low, based on the operations at the current Ruah facility. Most clients are pedestrians and the numbers are very low in terms of the pedestrian capacity of James Street and other streets in the vicinity. The surrounding street network currently accommodates large vehicle and pedestrian traffic numbers at night and over the weekends when the entertainment activities in Northbridge operate. This facility will only be open on weekdays (excluding public holidays) up to 2 pm and, therefore the traffic impact of this development on surrounding residents/ businesses will be negligible.

195. I agree with these comments made in the City's Officer Report and determine that the Application is likely to have minimal, if any, traffic impacts.

Question of community need – clause 67(2)(x) of the deemed provisions

196. Several public submissions in support of the Application argue that there is a community need for the proposed James Street Centre.

197. Clause 67(2)(x) of the deemed provisions requires consideration of 'the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals.'

198. It is explained by Senior Member, Dr Stephen Willey in *Planning and Environmental Law in Western Australia* (2021) at page 368 that clause 67(2)(x) of the deemed provisions likely includes questions of 'need' for a particular land use particularly where the use is for the public benefit. Dr Willey goes further to explain at page 370 that there are cases where a community or public need overrides considerations as to loss of amenity of the locality caused by a proposed development. This was the case of *Pinder Architects Pty Ltd v City of Stirling* [No 1] (1995) 15 SR (WA) 13. The TPAT was satisfied that there was a public need for the development, a hostel for Aboriginal patients from regional locations in order for them to receive medical treatment in Perth. Therefore, the TPAT approved the development, finding that the public need for the medical facility outweighed the possible local amenity impacts for nearby neighbours, including noise and impacts on property values.

199. The Applicant has provided evidence that there are significant unmet needs with housing and homeless support services in Western Australia.

200. The Applicant provides evidence at paragraph 21 of their submission that Australian Institute of Health Data indicates that in 2020-21 one in 109 people in Western Australia received homelessness assistance, which equates to 24,500 people.
201. The Applicant has further submitted that the COVID-19 related moratorium on rentals, evictions and increases in rent, an overcrowded rental market and lack of public and community housing stock mean that it is more difficult to find housing for people experiencing homelessness, and there has been a new wave of people experiencing homelessness for the first time.
202. The Applicant has provided evidence at paragraph 11.5 of its reply submission that the Shenton Street Centre is one of only two services (the other being Tranby Engagement Hub operated by Uniting WA) in the Perth metropolitan area which provides a 'true engagement hub' for people experiencing homelessness in Perth 'in that they provide the crisis support of food, clothing and shelter but also link-in support for GP services, Centrelink, Legal Aid, drug and alcohol support, financial counselling and mental health counselling.' The Applicant explains in their reply submission that there is 'every eventuality' that Ruah will not be able to continue to provide these services if the Application is refused due to the difficulty experienced to date in locating an appropriate property. If this occurs, then it is likely that existing homeless services will not be able to cope with the demand of new clients.
203. Based on this evidence, I am of the view that there is a community need for the Shenton Street Centre to be relocated. Therefore, as a matter of planning merit and in the public interest, I have given considerable weight to the community need for the proposed James Street Centre in my consideration of the Application.

Consideration of submissions – clause 67(2)(y) of the deemed provisions

204. The Council's third reason for refusing the Application was:

The proposal is contrary to clause 67(2)(y) of the deemed provisions as the proposal does not adequately address community concern relating to increased antisocial behaviour, a reduction in public safety, loss of residential amenity, and an adverse impact on business.

205. Clause 67(2)(y) of the deemed provisions requires consideration of any submissions received with respect to the Application.

206. The City's Officer Report states that the City received 71 public submissions with respect to the Application. I have also accepted and considered 52 public submissions including 41 objections and 11 submissions in support of the Application.

207. The issues raised in the submissions that I have received are generally consistent with those received by the City as outlined at paragraphs 42-59 of the City's Officer Report.

208. The main concerns raised in the submissions which are in addition to those that I have already outlined above in my consideration of other relevant matters under clause 67 of the deemed provisions are as follows:

- a. management of antisocial behaviour and public safety;
- b. reduction in residential property values;
- c. economic impacts with respect to future development, investment and tourism; and
- d. appropriateness of the location.

209. I will address each of these issues in turn.

Management of antisocial behaviour and public safety

210. Many submissions raised concerns about the antisocial behaviour of people experiencing homelessness in the vicinity of the Shenton Street Centre and concerns about there being lack of a management plan and security in the evening and at night when the James Street Centre is closed.

211. Several local residents and business owners submitted that the police have been unable to control the current antisocial behaviour and violence occurring in Northbridge and argue that this will become worse if the Application is approved.

212. However, on reviewing the information contained in the City's Officer Report, it appears the location of the proposed James Street Centre is superior and will have less adverse impacts than the Shenton Street Centre.

213. The City's Officer Report explains that the characteristics of the locations of the Shenton Street Centre and the proposed James Street Centre are very different. The Shenton Street Centre is located on a corner with two large street frontages and directly opposite a large park. Given the location for the proposed James Street Centre has a smaller street frontage

and is not next to a large area of public space, it is expected that patrons would be less inclined to linger outside of the centre and antisocial behaviour is likely to be reduced.

214. I also note that the proposed James Street Centre is close to the Perth Police Station, which is open 24 hours. It appears that this close proximity to the Perth Police Station would enable any antisocial behaviour or concerns to public safety to be addressed more promptly and outside of opening hours. The proximity of the proposed James Street Centre to the Perth Police Station may also act as a visual deterrent for antisocial behaviour. Further, the Applicant has existing guidelines for working with the WA Police, which I have reviewed, to assist in managing antisocial behaviour and safety concerns.

215. Finally, as outlined above and in further detail in the section below, I have imposed a condition of development approval which requires approval of a comprehensive Business Management Plan to adequately mitigate and manage perceived antisocial behaviour. Several other conditions of development approval have also been imposed to assist in addressing these concerns relating to antisocial behaviour and safety.

Reduction in residential property values

216. Several submissions raised concerns with respect to the impact that the proposed James Street Centre will have on property values in the Northbridge area.

217. It is explained by Senior Member, Dr Stephen Willey in *'Planning and Environmental Law in Western Australia'* (2021) at page 370-371 that generally impacts on property values arising from a proposed development are not a relevant planning consideration. Nevertheless, as a matter of public interest, I have given these issues due consideration in my determination of the Application.

218. I have balanced these perceived concerns against the community need for the services provided by the Applicant.

Economic impacts with respect to future development, investment and tourism

219. Several public submissions have suggested that approval of the Application is likely to adversely impact other proposed developments and future investment in the locality and result in more derelict vacant commercial properties in the area.

220. While future development and investment in the Northbridge area is very important, I have given more weight to the likely impact of the development on existing businesses. As I have

explained, the services to be provided from the proposed James Street Centre already exist in the locality and are just being relocated. Therefore, approval of the Application is unlikely to result in additional negative impacts on existing businesses to any significant degree.

221. As the Applicant has been operating from the Shenton Street Centre for the past 60 years, any future developer, investor or resident is likely to be aware that these services already form part of the existing amenity of the locality.
222. Several submissions also argue that the proposed James Street Centre will deter tourists and visitors to the area.
223. Again, the proposed services are already being provided in the locality, which still attracts tourists and visitors. I am of the view that the services provided by the Applicant at the proposed James Street Centre are more likely to reduce the social issues associated with homelessness which may deter tourists, rather than increase them.

Appropriateness of location

224. Several submissions contend that the location of the proposed James Street Centre is too close to a liquor store, a TAB, a petrol station, a hardware store selling inhalants and the proposed Ruah Centre for Women and Children, which vulnerable individuals will attend.
225. Many submissions argue that a better location could be found for the proposed James Street Centre. Suggestions include the Claisebrook Rail area, east of Stirling street (near Royal Perth Hospital, Salvation Army, Uniting Church, Shelter WA, Noogar Patrol and train stations), Old Red Cross Blood Bank and Wellington street (which is close to Royal Perth Hospital and existing welfare services) or another location in Northbridge away from restaurants, offices and residences.
226. There appears to be no easy solution to finding the perfect location for the proposed James Street Centre that all residents and businesses would be happy with.
227. The Applicant has provided evidence at paragraph 38 their submission that:

A thorough market search for a property that would meet the requirements of a relocated Shenton Street Centre within the CBD fringe was commenced in August 2021. After assessing 120 properties, of which many landlords were not willing to entertain a relocated Shenton Street Centre as a tenant, 247-249 James Street was identified as the only suitable property with a landlord willing to lease.
228. Therefore, it appears that at this point in time, this is the only viable site.

229. Appropriately locating these services is a difficult task and further illustrates why this matter is of State or regional significance.

230. For the reasons outlined above, I am satisfied that the Application should be approved on planning grounds subject to conditions outlined below.

Other matters in the public interest

231. In addition to the points already canvassed, and noting I have already raised issues of public interest in relation to the above planning considerations, there is the question of whether there are any other matters in the public interest that warrant analysis and comment.

232. I have received a submission from a social worker who works for the not-for-profit sector providing counselling focused on suicide prevention. She raises the importance of drop-in centres like that provided by the Applicant for suicide prevention. She explains that over a quarter of her clients have experienced homelessness and the lack of resources in this area means that it is hard to keep these people safe. She says that:

My clients are often left with little choice but presenting to Royal Perth Hospital (RPH) emergency department at risk of suicide. They are typically discharged as soon as they are assessed, on the basis that their problems are psychosocial in nature. In other words, RPH determines that homelessness is the cause of their distress and so the medical system cannot assist. It is services like RUAH who they are referred to, and who take considerable pressure of our already struggling healthcare system.

233. The impact of homelessness on the State's healthcare system is a very important public interest consideration, particularly given the strain that the health system is under currently due to the COVID-19 pandemic. It is important that services like those provided by the Applicant are encouraged and permitted to help to alleviate this strain.

234. In the public interest, I accept the submissions that if the Shenton Street Centre is not relocated, a significant number of people would be left without the services that it provides, and this would result in the homeless crisis in Perth to become worse. This will adversely affect those experiencing homelessness, as well as the wider Perth community who are affected by the social issues which stem from the homeless crisis.

235. The State government is committed to ensuring that everyone in Western Australia will have a place to call home with the supports needed to sustain it. To achieve this bold vision, the Department of Communities is leading a whole-of-community response to effectively

tackle the complex issue of homelessness in Western Australia through the State government's 10-year Strategy on Homelessness.

236. The 10-year Strategy on Homelessness goes hand-in-hand with broader social policy reform through strategic projects like the *Sustainable Health Review* and the *WA Housing Strategy 2020-2030*.
237. The Perth City Deal, a \$1.7 billion partnership between the Commonwealth government, State government and the City of Perth, also includes \$36 million to provide facilities, safety improvements and services for people experiencing homelessness in the city.
238. The Applicant provides evidence at paragraph 30 of their submission that between 1 July 2021 and 31 December 2021 the Shenton Street Centre was open for 128 days and during that time an average of 70 people per day attended the centre of which 28% identified as Aboriginal or Torres Strait Islander and 12% identified as LGBTQI+. It is in the public interest that these vulnerable groups continue to be supported.
239. I understand that if the Shenton Street Centre is not relocated, then the Ruah Centre for Women and Children, which will provide services for women and children escaping domestic violence, cannot be constructed. This would exacerbate domestic violence issues that the Western Australian Community faces and put vulnerable women and children at risk.
240. I also accept submissions that issues associated with homelessness will not be addressed by relocating these services to Perth's outer suburbs. The City's own Scheme and section 7 of the *City of Perth Act 2016* recognise the City of Perth as Western Australia's capital city. People experiencing homelessness can face multiple difficulties and often require access to a wide range of supports and services. It is in the public interest that homeless services be located centrally, alongside other social services and provided in a location that is readily accessible to those who need it. The Applicant's reply submission provides evidence that many clients of the Shenton Street Centre have their possessions with them in trolleys and these people 'are not able to travel on public transport or travel long distances with their trolleys, and do not have storage.' Therefore, to expect people to take public transport to access homeless services in outer suburbs is likely to be impractical, unrealistic and impede access to these services.

241. I again acknowledge that the issue of homelessness is difficult to manage and address, but it is important that the State government makes decisions strategically that will benefit the entire community, as well as those at risk of homelessness, domestic violence and other social concerns. Encouraging services, like those provided by the Applicant, will benefit the entire community by reducing homelessness, reducing antisocial behaviour and improving public safety.

242. For these reasons, notwithstanding the planning merit of the Proposal, I believe the Application should be approved in the public interest.

Conclusion

243. In light of the above, I have come to the view that the Application:

- a. is either exempt from the need for development approval under clause 61 of the deemed provisions or should not be refused as per clause 32 of CPS 2;
- b. alternatively, warrants approval based on planning merit; or
- c. alternatively, warrants approval on non-planning grounds in the public interest.

MINISTER'S ADDITIONAL OR AMENDED CONDITIONS

244. The conditions attached to this approval largely mirror the recommended conditions outlined in the City's Officer Report, with some amendments and additional conditions based on issues raised in submissions.

245. I explain these amendments and additional conditions below.

Conditions expressed as to the satisfaction/ approval of the Minister

246. I am cognisant that planning conditions are normally worded 'to the satisfaction of the responsible authority' (being the local government or Commission respectively), lest they be considered ambulatory.

247. However, in this instance, I do not merely make a decision on behalf of the local government and then return the decision to it.

248. I take note of the guidance from the decision of *Hanson Construction* about the nature of a Ministerial decision, which 'has effect according to its tenor' under section 247(2) of the PD Act and is 'final' pursuant to section 247(5). The Tribunal makes clear that unlike SAT, which makes a decision on behalf of the responsible authority and then effectively 'hands it

back' to that responsible authority to manage planning conditions, the nature of a Ministerial decision is different. My decision is *not* deemed a decision of the local government. Member Eddy at [43] and [44] explains:

[43] The notice of the Minister's decision before the Tribunal is located at tab 8 of the agreed bundle. The Minister's letter relevantly states: 'I have determined that the application for review is allowed, and the deemed refusal of the respondent is set aside and conditional approval is granted'. The letter then states that 'I attach a notice which gives *effect to my decision*'.

[44] There is *nothing in the letter* or the attached notice that states that the decision is to have effect *as if it were a decision of the local government*. (emphasis added)

249. Therefore, all conditions have been expressed 'to the satisfaction of the Minister, on the advice of the City.'
250. In my view, this is appropriate having regard to my broad powers and functions, which go beyond planning considerations, under section 246 and 247 of the PD Act.

Scope to amend or waive conditions as necessary

251. I take note of the guidance from the decision in the *Hanson Construction* case that because a Ministerial decision 'has effect according to its tenor' and 'is final' it cannot be subject to a further amendment application to the City under clause 77 of Schedule 2 of the deemed provisions. To allow such an amendment would undermine my function, assigned by Parliament, in having the final word on this matter. As the Tribunal observed in *Hanson Construction*, there was no power for the City or the Tribunal on review to amend a condition of approval, where that approval had been granted by the Minister under section 246:

[40] As indicated above, the relevant context here provides that the Minister is not limited to determining the review application based on planning considerations. The Minister's decision is also 'final'. This is very different to the considerations both the local government and the Tribunal are required to have regard to in determining a development application (cl 67 of Sch 2 of the LPS Regulations, plus s 241 of the PD Act, as well as some powers available under the SAT Act when it is the Tribunal determining the matter). Neither the decision of the local government nor the decision of the Tribunal is final. Both are subject to a form of review/appeal, albeit of a different nature.

[41] The effect of the determination of a review application when made by the Minister is identified in s247(2) of the PD Act. The PD Act does not define or explain what this phrase means. That phrase is not one with a fixed single meaning. The most relevant dictionary definition (taken from the *Oxford Dictionary Online* (2017) identifies 'tenor' as meaning 'the general meaning [or] sense'. However, the term 'tenor' has very specific meaning in some areas of law, for example, in relation to bills, and in the area of

libel, it means the exact words, whereas in relation to wills 'the tenor of the will' it has a meaning closer to the dictionary meaning (see D Greenberg and Y Greenberg (eds), *Stroud's Judicial Dictionary of Words and Phrases* (9th ed, 2016)...

[48] While I am of the view that, while on the particular facts of a case, an application to amend a development approval may result in the decision maker (and the Tribunal upon review) having to review the entire development proposal rather than simply the condition(s) sought to be amended, this does not mean that an application to amend a development application is in substance the same as an application for development approval. If that is correct, it is simply not open to the Tribunal to purport to deem the application made under cl 77 of Sch 2 of the LPS Regulations as an application for development approval under cl 66 of Sch 2 of the LPS Regulations...

[50] For the reasons outlined above, the Tribunal is satisfied that there is not a reviewable determination before it in this application. The Tribunal, therefore, does not have any power to grant or refuse to grant the application for amendment of the existing development approval in relation to the site. Therefore, the correct and preferable decision is to dismiss this application.

252. As the Applicant may not be able to avail themselves of the ability to apply to the City to amend this approval, it would be appropriate to draw the Applicant's attention to the longstanding principle set out in *Esther Investments Pty Ltd v Town of Mosman Park* (TPAT appeals 26, 27 and 28 of 1995), which permits conditions to be amended, waived or varied if they relate to modifications or variations of a minor nature that do not constitute a mere change in mind but rather reflect changed circumstances:

The power [to vary] arises from the due administration of town planning in the absence of any provision in the Act or scheme. However, as this power is one of administration, it only applies to modifications or variations of a minor nature which arise not because the development has had a change of mind but rather because of changed circumstances.

253. Such a power is also consistent with the intent of clause 74, if not also clause 77(3), of the deemed provisions. A similar power already exists with respect to subdivision approvals under section 251(5) of the PD Act.
254. In my view it is appropriate to regularise such an arrangement in an appropriate condition. This has been included in as condition 1 in Annex A. Further and in the alternative to any planning ground, such a condition would be appropriate on public interest grounds, lest this approval become potentially unworkable for denying the Applicant of the ability to make further modest changes that would not substantially change the development approved.

Time limit to commence the use

255. Generally, it is in the interests of orderly and proper planning that once a development approval for works or use is granted, it should be acted upon or should expire within a reasonable time. It is further explained by the Tribunal in the case of *Auscon Pty Ltd and Town of Cambridge* [2021] WASAT 116 at [49] that:

A development approval is a right granted at a particular point in time, in a particular context and pursuant to a particular planning framework. The rights granted by that approval should be acted upon in a timely fashion. It is contrary to the public interest for that right to commence that development to endure indefinitely, given that the planning context is always changing as are community needs and attitudes.

256. Accordingly, a new condition has been imposed (condition 2 in Annex A) which requires the use to be commenced within 2 years from the date of approval or it shall lapse.

Business Management Plan

257. Condition 2 outlined in the City's Officer Report, which is now condition 4 in Annex A, relates to the approval of a comprehensive Business Management Plan prior to commencement of the use.

258. Condition 2(a) outlined in the City's Officer Report, which is now condition 4(a) in Annex A, has been amended to require the Business Management Plan to provide for at least 1 security personnel to be present at the premises during opening hours. The Applicant has provided evidence in its submission that it has 'static security guards on duty during opening hours'. This condition will ensure that this security presence during opening hours is maintained to assist with managing any antisocial behaviour and loitering, as this was a common concern raised in public submissions.

259. This condition has also been amended to remove the requirement that the Business Management Plan to address how the operator will control any noise and other disturbances that are *associated* with the activities or customers of the proposed James Street Centre and are 'close to' the premises. The City's argues at paragraph 24 of its reply submission that this condition is intended to require the Applicant to manage 'any potential impacts that extend beyond their site that can reasonably be linked to the provision of their services.' As I have outlined above, people experiencing homelessness already live in the area and any noise and disturbances that stem from this already exist in the area. The services provided by the Applicant do not create these impacts, but rather aim to reduce them. Therefore, it is

not appropriate for the Applicant to be responsible for noise or disturbances that may be linked with people experiencing homelessness nearby to the proposed James Street Centre. As I understand, noise and other disturbances would exist whether the Ruah provided services in the area or not.

260. The Applicant explains at paragraph 120.2 of its submission that:

Ruah can control noise and other disturbances on its site and has procedures in place to do this, however, Ruah cannot control noise and other disturbances 'close to it'. Firstly 'close to it' is vague and uncertain and secondly it is beyond the legal ability for Ruah to control noise and disturbances in the public domain. This is a matter for the relevant authorities in a similar way to a tavern or the like.

261. I accept the Applicant's submission and the condition has been amended accordingly.

262. Condition 2(b), which is now condition 4(b) in Annex A, has been similarly amended. Condition 2(b) outlined in the City's Officer Report required that the Business Management Plan address how the operator will arrange for the removal of unwanted or unattended personal belongings of customers of the site 'within the immediate vicinity of the property.' I accept the Applicant's submission that it does not have the ability to remove belongings that are not in front of its premises. Also, the phrase 'within the immediate vicinity' is uncertain. How far does the 'immediate vicinity' extend? Therefore, this condition has been amended to provide that the Business Management Plan needs to address how the operator will arrange for the removal of unwanted or unattended personal belongings within the verge and footpath areas, directly in front of the property.

263. Condition 2(c) outlined in the City's Officer Report has been removed. This condition required the Business Management Plan to address how the operator will accommodate persons waiting to access services within the building, rather than outside of it. The City clarifies at paragraph 24 of its reply submission that this 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 opening hours, anticipating that people might arrive at the building prior to its opening at 8:30 am.' The Applicant submits that it cannot stop people from waiting outside the premises for the Centre to open. I agree with the Applicant's submission that, outside of opening hours, Ruah is unable to control who waits outside its premises. However, condition 5 outlined in the City's Officer Report, which is now condition 8 in Annex A, has been amended to assist in addressing the concerns raised.

264. Condition 2(d) outlined in the City's Officer Report, which is now condition 4(c) in Annex A, requires the Business Management Plan to address how the operator will manage the congregation of customers, or people associated with customers, outside the property during operational hours. The Applicant has submitted that while Ruah has procedures in place to manage its customers, it cannot influence people who are not customers of the proposed James Street Centre. I accept this submission and the condition has been limited to customers only.
265. Condition 2(e) outlined in the City's Officer Report, which is now condition 4(d) in Annex A, requires the Business Management Plan to address how the operator will establish and maintain a complaints management service, that enables and facilitates easy access (by the community) during hours of operation to a designated contact person(s), including after hours and emergency contact details. The City has outlined at paragraph 24 of its reply submission that:
- 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 linked to the operations of RUAH, however, the operator should provide access to a complaints services that can investigate and respond to issues.
266. The City's submission here supports the notion that the Applicant should not be responsible for after-hours disturbances near the proposed James Street Centre. Again, I understand that these 'disturbances' being referred to exist in the area and would exist regardless of whether the Applicant operated in the area. The disturbances being referred to are not 'linked' to or a consequence of the Applicant's operations.
267. The Applicant has submitted that, while Ruah has a system for making complaints that is used during operational hours, the services provided at the proposed James Street Centre will not be crisis care or accommodation services. Therefore, the Applicant argues that it is not appropriate for Ruah to provide an after-hours contact or emergency contact details. If there is an emergency, this should be reported to the appropriate authorities. I agree with this submission and the references to after-hours contact details and emergency contact details has been removed from this condition.
268. For these same reasons, condition 5 outlined in the City's Officer Report, which is now condition 8 in Annex A, has been amended to remove the requirement for the sign, which is required to be installed on the building detailing the centre's opening hours, to include after-

hours contact details. The requirement that the sign detail the general and emergency phone numbers for the police has been retained. Further, this condition has been amended to include a requirement that the sign explain that waiting or loitering outside of the building outside of opening hours either before the Centre opens or after it closes is not permitted. This amendment is intended to assist in addressing concerns raised in submissions regarding people waiting outside the Centre prior to it opening or loitering outside the Centre after it has closed.

External security lighting

269. A new condition (condition 6 in Annex A) has been included to require external security lighting to be installed at the entrance of the venue prior to commencement of the use. This new condition was included as a result of concerns raised in submissions relating to safety concerns at night after the premises is closed.

DECISION

270. For the reasons outlined above, I affirm the Proposal as presented to the City of Perth for determination be approved, subject to conditions.

271. A full copy of the conditions that now apply to this approval are set out in Annex A. The wording of conditions in the Annex prevail to the extent of any ambiguity or inconsistency with these reasons.

272. I now will cause these reasons to be given to the Parties, laid before each House of Parliament, and provided to any other person as requested, pursuant to 246(4) of the PD Act.

A large, stylized handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke.

**HON RITA SAFFIOTI MLA
MINISTER FOR PLANNING**