

Application for review before the Hon. Minister for Planning  
pursuant to section 246(2)(a) of the *Planning and Development  
Act 2005*

BETWEEN:

**RUAH COMMUNITY SERVICES LTD**

Applicant

and

**CITY OF PERTH**

Respondent

---

APPLICANT'S RESPONSIVE SUBMISSIONS

---

Date of Document: 25 July 2022  
Filed on behalf of: The Applicant  
Date of Filing: 25 July 2022  
Prepared by:

[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]

**Introduction**

1 Pursuant to the timetable established by the Hon. Minister for Planning (**Hon. Minister**) with respect to this review, the parties have provided to the Hon. Minister and each other their respective submissions.

2 The submissions of Ruah Community Services Ltd (**Ruah**) were prepared by [REDACTED], are dated 5 July 2022, [REDACTED]  
[REDACTED]

- 3 The submissions of the City of Perth (**City**) were prepared by [REDACTED], [REDACTED], are dated 6 July 2022, [REDACTED]  
[REDACTED]
- 4 The timetable established by the Hon. Minister allows the parties until 5pm on Monday 25 July 2022 to review the submissions exchanged and provide any response.
- 5 These submissions are Ruah's response to the City's submissions.

### **Response to the City's submissions**

- 6 Ruah relies upon its submissions to the extent that they provide a response to both components of the City's submissions. Set out *below* at 7-18 is Ruah's additional responses to both components of the City's submissions.

### **Submissions prepared by [REDACTED]**

- 7 'Legal Issues' and 'Exercise of Call In Power' – paragraphs 6-12, 14-17, 51 and 56
- 7.1 The matters raised by the City regarding the Hon. Minister's exercise of power pursuant to section 246(2)(a) of the *Planning and Development Act 2005 (Act)* are irrelevant to the decision the Hon. Minister now has to make as to whether the application ought to be approved or refused and, if to be approved, on what conditions.
- It is not open before the Hon. Minister to challenge her exercise of power pursuant to section 246(2)(a) of the Act.
- 7.2 The City has not been 'denied a proper hearing'. The parties have been subject to the same timetable. Significantly, at no time has the City sought to amend the timetable established by the Hon. Minister, despite having expressly reserved its right to make submissions in the respect of the timetable.<sup>1</sup>
- 7.3 Paragraph 12 is a little odd.
- Paragraph 12 reads 'It is contrary to the public interest and good planning and government that one section of the population should be overtly favoured over others'.
- It is unclear what paragraph 12 means and how it is a 'legal issue'.

[REDACTED]

If paragraph 12 is asserting that approval of the application would result in 'one section of the population [being] overtly favoured over others' then it is an inappropriate way to describe a planning approval and is unhelpful in the context of this review.

7.4 Paragraph 17 cannot go unremarked upon.

Paragraph 17 reads in part that 'in the SAT proceedings in this case, before the call in, RUAH opposed mediation, which again shows a regrettable aversion to due process, inclusiveness and transparency'.

It is correct that Ruah, [REDACTED], did verbally advise [REDACTED], that Ruah was opposed to mediation. The remainder of the extract from paragraph 17 set out *above* is incorrect.

[REDACTED] advised [REDACTED] as follows:

- (i) due to the impending construction of the approved development at 29-35 Shenton Street, Northbridge<sup>2</sup>, the Shenton Street Centre<sup>3</sup>, 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 had determined that proceeding to mediation was not in its interests because of the delay that would be occasioned.

There is no basis whatsoever for the statement that Ruah's action in opposing mediation 'again shows a regrettable aversion to due process, inclusiveness and transparency'. The statement is inaccurate, inappropriate, unhelpful and irrelevant in the context of this review before the Hon. Minister. Furthermore, Ruah does not know why the word 'again' has been included.

---

<sup>2</sup> See [36] and [37] of Ruah's submissions.

<sup>3</sup> Defined in [2] of Ruah's submissions.

8 Insufficient information to determine merits - paragraphs 3, 13 and 52

- 8.1 The submission that there is insufficient information to make a determination on the merits is without merit.<sup>4</sup>
- 8.2 What is relevant is the sufficiency of the information that the Hon. Minister has to hand when she determines this review.
- 8.3 The totality of the information regarding the application was more than sufficient to enable a proper determination of the application to be made by the City.

This position is made evident by the fact that the executive of the City was able to recommend to the Council the manner in which the application ought to be determined and the Council was able to determine the application.

- 8.4 Since the determination of the application further information has been provided as set out in Ruah's submissions<sup>5</sup>.
- 8.5 A particular allegation is made that there was/is an insufficiency of information regarding 'potential amenity impacts'.

There is more than sufficient information regarding the application to determine 'potential amenity impacts', as the executive of the City and the Council were able to do.

- 8.6 There is, therefore, more than sufficient information regarding the application to enable the Hon. Minister to properly determine the review.
- 8.7 The City's submissions are inconsistent. It submits there is insufficient information 'for a proper determination to be made on the planning merits'<sup>6</sup>, whilst at the same time submitting that on the merits the application should be refused<sup>7</sup>.

9 Use classification – paragraphs 4 and 18-35

- 9.1 In response to the City's submissions and to assist the Hon. Minister, particularly on the issue of use classification, please find *attached* as

---

<sup>4</sup> If Ruah is correct on the issue of use classification and permissibility (see [54]-[88] of Ruah's submissions), i.e. the application cannot be refused, then the question of the sufficiency of information to enable a determination on the merits can only arise in respect of conditions.

<sup>5</sup> See particularly [3], [17], [18], [26]-[28], [30], [31], [33]-[35], [39]-[44], [103], [113] and [116].

<sup>6</sup> See paragraph 3 of the submissions prepared by [REDACTED].

<sup>7</sup> For example, see paragraphs 4, 5, 53 and 54 of the submissions prepared by [REDACTED].

'Attachment 2' the witness statement of [REDACTED] dated 25 July 2022.

The witness statement of [REDACTED] provides evidence, amongst other matters, as to the area that clients of the Ruah Centre at 29-35 Shenton Street, Northbridge inhabit and which is also, therefore, the area they live in.<sup>8</sup>

It is also to be noted that not all clients are experiencing homelessness.<sup>9</sup>

9.2 As to the City's submissions:

- (i) The statement in paragraph 23 that the application is 'unfortunately vague when it comes to defining the proposed use' is incorrect.<sup>10</sup>
- (ii) The propositions<sup>11</sup> that to 'live ... in the surrounding locality'<sup>12</sup>:
  - (a) requires "Living' in a home in [the] locality';
  - (b) 'does not encompass those who exist in or frequent an area'; and,
  - (c) does not include those 'experiencing homelessness in a locality',

are incorrect.

The City cites no authorities or definitions for these propositions.

The propositions are incorrect for the reasons set out in [71]-[76] of Ruah's submissions. In addition to those submissions Ruah makes the following submissions:

- (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.

<sup>8</sup> See particularly paragraphs 7 and 8 of the witness statement of [REDACTED].

<sup>9</sup> See particularly paragraphs 5 and 6 of the witness statement of [REDACTED].

<sup>10</sup> See [8] above.

<sup>11</sup> All contained in paragraph 26 of the submissions prepared by [REDACTED].

<sup>12</sup> Within the definition of 'community centre' in the *City of Perth City Planning Scheme No. 2*.

- (b) People who are experiencing homelessness in the locality and undertaking their domestic activities there (e.g. sleeping, eating etc.) are living there.
- (iii) The statement that 'A person experiencing homelessness may be existing in the area one day and somewhere else the next'<sup>13</sup> will only rarely be correct as a matter of fact. This is made clear by paragraph 8 of the witness statement of [REDACTED].
- (iii) The proposition that

*The intention behind the special status of the 'Community and Cultural' use group is clearly the provision of facilities of the kind exemplified in the definition of 'community centre', not specialised facilities of the kind proposed in this case<sup>14</sup>*

has no basis, insofar as it asserts that 'specialised facilities of the kind proposed in this case' do not come within 'Community and Cultural', in the clear wording of 'Community and Cultural' and 'community centre'.

The City is seeking to reword the definitions of 'Community and Cultural' and 'community centre'.

- (iv) The proposition that 'the construction of the 'Community and Cultural' use group which makes most sense from a planning perspective is that the word 'community' refers to those who ordinarily live or work in the area for whom the provision of services and facilities in a precinct raises no special planning issues'<sup>15</sup> has no basis in the clear wording of either 'Community and Cultural' or 'community centre'.

Again, the City is seeking to reword the definitions of 'Community and Cultural' and 'community centre'.

Furthermore, this proposition is inconsistent with the City's earlier submission that the 'community' referred to in the definition of 'Community and Cultural' 'is the whole community of the City'<sup>16</sup>.

<sup>13</sup> See paragraph 27 of the submissions prepared by [REDACTED].

<sup>14</sup> See paragraph 31 of the submissions prepared by [REDACTED].

<sup>15</sup> See paragraph 32 of the submissions prepared by [REDACTED].

<sup>16</sup> See paragraph 22 of the submissions prepared by [REDACTED].

10 If use is 'Community and Cultural' – paragraphs 5, 47 and 54

10.1 The City's submission that a preferred use can be refused, including for reasons of 'amenity or orderly and proper planning or other matters for consideration under clause 67 of the Deemed Provisions'<sup>17</sup> is clearly erroneous.

10.2 Clause 32(b) of the *City of Perth City of Planning Scheme No. 2 (CPS2)* is clear that where a use group category is classified in a precinct as a preferred use a development application involving a use from that category in that precinct cannot be refused. That is the case whether the application is to begin or continue the use. That is the beginning and end of the matter.

11 If use is 'unlisted' – paragraphs 4, 36-46, 48, 49, 53 and 57

11.1 The City asserts that the 'use is inconsistent with the Statement of Intent for the Northbridge Precinct' and 'is inconsistent with the objectives and intentions set out in clause 6 of CPS 2'<sup>18</sup>. However, no basis or bases is articulated for either alleged inconsistency.

In any event, the use achieves the objectives and intentions set out in clause 6(b) and clause 6(c) of CPS2 as follows:

- (i) With respect to clause 6(b), by catering for the diversity of demands and by facilitating and encouraging the provision of a wide range of choices in housing and access opportunities.
- (ii) With respect to clause 6(c), by protecting and enhancing the health, safety and general welfare of the local government's inhabitants.

11.2 The City asserts:

*The buildings and land uses in the vicinity of the Property include cafes and restaurants, residential apartments, and other businesses. This amenity is not consistent with the provision of specialised services for people experiencing homelessness.<sup>19</sup>*

This assertion overlooks the fact that the existing service in Shenton Street is in the same locality as 247-249 James Street.

<sup>17</sup> See paragraph 47 of the submissions prepared by [REDACTED].

<sup>18</sup> See paragraphs 40 and 41 of the submissions prepared by [REDACTED].

<sup>19</sup> See paragraph 44 of the submissions prepared by [REDACTED].

- 11.3 As to the public submissions in respect of the application, two matters need to be taken into account:
- (i) Whilst public submissions were made, no advertising has been undertaken.
  - (ii) In respect of the use currently undertaken at 29-35 Shenton Street, Ruah has received only three complaints since 2019, two of which were actually about behaviour in Russell Square.<sup>20</sup>
- 11.4 The City submits that 'It is contrary to the public interest and good planning and government that one section of the population should be overtly favoured over another'<sup>21</sup>. Presumably this submission is intended to be a reason why the review ought not be allowed. To say that the submission is an obviously inappropriate way to characterise a decision made by the Hon. Minister, and unhelpful, is an understatement.
- 11.5 There are three matters of significance favouring approval, if there is discretion, that the City has not taken into account.

Firstly, the use involves significant community benefit, of which there can be no doubt. The State Administrative Tribunal made it clear in *West Australian Shalom Group Inc. and City of Swan*<sup>22</sup> that the community benefit of a use weighs in favour of approval.

Secondly, and related to the first point, if the application is not approved then there is every eventuality that the use will not be undertaken given the difficulty experienced to date in locating an appropriate property.<sup>23</sup>

The second point is of enhanced significance because the use currently carried on at 29-35 Shenton Street is one of only two services (the other being Tranby Engagement Hub (run by Uniting WA)) in the Perth metropolitan area which provide 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.

---

<sup>20</sup> See [35] and [115] of Ruah's submissions.

<sup>21</sup> See paragraph 49 of the submissions prepared by [REDACTED].

<sup>22</sup> [2019] WASAT 80, particularly at [182] and [201].

<sup>23</sup> See [38] of Ruah's submissions.



Thirdly, if the application is not approved there is a high probability that other existing homelessness services will not be able to manage demand and this will have a negative impact within the Perth central business district.

12 Conditions – paragraphs 50 and 58

12.1 Proposed condition 1 provides as follows: 'This approval is limited to a trial period of six months from the date of approval [note: the applicant must reapply at the end of the six months if it wishes to continue the use]'.

This proposed condition is not needed and is unreasonable. The use has been operating from 29-35 Shenton Street since 1959 and is well understood. A temporary approval provides no certainty to Ruah regarding leasing 247-249 James Street.

12.2 Proposed condition 3(c) provides as follows:

3. *The operator will submit a business plan that includes how the operator will:*

...

(c) *accommodate persons waiting to access services within the building not outside of it.*

This condition is contested. Ruah cannot stop people waiting outside.

12.3 Ruah otherwise relies on [119] and [120] of its submissions dated 5 July 2022.

**Letter from** [REDACTED]

13 Insufficient detail in application

13.1 Ruah repeats [8] above.

14 Paragraphs 24 and 38

14.1 Paragraph 24 includes the following:

*Importantly, the registration process documents indicate the persons who are attending the premises who are violent will be required to leave the premises and "walk around the block". Clearly there are potential issues and impacts on the neighbourhood and these would extend to safety and amenity impacts.*

The reference to 'walk around the block' needs to be understood in context. [REDACTED]

[REDACTED] The context is that what is expected from clients is 'No violence – if needed, go for a walk around the block to cool down'.

Similarly, security is used to ensure a safe environment for clients and staff, like bouncers at nightclubs and security at hospitals.

14.2 The comments in [14.1] *above* apply equally to paragraph 38.

## 15 Characterisation of use

15.1 [REDACTED] was expressly instructed by [REDACTED] to not characterise the use<sup>24</sup>, but nonetheless proceeded to do so.

15.2 The classification analysis<sup>25</sup> undertaken by the author is superficial and erroneous.

An example of error is the proposition that the 'Community and Cultural' use group includes the land uses of 'Community Centre', 'Exhibition Centre', 'Public Library' and 'Place of Worship' 'exclusively'<sup>26</sup>. This is contrary to the definition of 'Community and Cultural', which states that those uses are included, rather than being the exclusive uses within that use group. This error flows through to paragraph 55 where it is said that 'The proposed development does not align with the 'Community and Cultural' use group in that it does not align with the described uses as required'.

## 16 Due consideration of planning principles

16.1 The author has not undertaken a balanced assessment in that no reference is made of factors that support approval. For example, no reference is made of the obvious point that the use involves benefit to the community<sup>27</sup>. Furthermore, [REDACTED] was expressly instructed to 'consider what planning considerations would work in favour of approval'<sup>28</sup>.

<sup>24</sup> In the letter from [REDACTED] dated 29 June 2022, [REDACTED] is instructed that 'your advice is not sought on that that (sic) underpins our above conclusions as to the legal framework'. The conclusions referred to are that the use is either an 'unlisted use' or a 'discretionary use'.

<sup>27</sup> See [11.5] *above*.

- 16.2 Whilst clause 67(2)(a) of the Deemed Provisions is said to be relevant and reference is made to clause 6 of CPS2, there is no accompanying analysis.<sup>29</sup>
- 16.3 Paragraph 63 ignores that the use at 29-35 Shenton Street is within the same locality as 247-249 James Street.
- 16.4 Paragraph 67 provides as follows:

*Management plans would only apply to the subject site and the immediate area adjoining the subject site. Concerns relating to the anti social behaviours and impacts expressed in the public submissions were not limited to the subject site or even the land immediately adjoining the subject site.*

Many of Ruah's clients who will use the services are already in the area – they live there. Ruah is simply providing services to them.

This thread runs through much of the City's submissions. Despite many of Ruah's clients already living in the area, the position appears to be that the provision of services to these people somehow creates problems – it does not; the people are already there.

## 17 Provision of management plans in response to amenity concerns

- 17.1 In respect of paragraph 69, Ruah repeats [16.4] above. Many of Ruah's clients who will use the services are already in the area – they live there. Ruah is simply providing services to them.
- 17.2 Paragraph 70 refers to the new development at 29-35 Shenton Street<sup>30</sup>. The current use at 29-35 Shenton Street is proposed to be relocated by this application. There will not be an 'expansion' at 29-35 Shenton Street, there will be a different facility.

There is a further aspect of paragraph 70 that requires comment.

In part, paragraph 70 states as follows:

*The current position in relation to adverse impacts is expressed by those making submissions, as a result (sic) their own lived experiences in the locality. The submissions should be given appropriate weight and should be taken into account in the decision making associated with the determination.*

Similarly, the lived experience of those experiencing homelessness should also be valued. It is accepted that people who experience

<sup>29</sup> §

<sup>30</sup> See [36] of Ruah's submissions.

homelessness are more likely to be victims of crime rather than perpetrators of crime.

18 The existing service is already present in the local area

18.1 Paragraph 71

The existing use at 29-35 Shenton Street forms part of the locality and, if approved, the relocated use at 247-249 James Street will form part of the same locality. The intensity of the use will not be increased. The new facility at 29-35 Shenton Street is a completely different use.

18.2 Paragraph 72

The author 'considers' that his first hand observations of anti-social behaviours 'are associated with those members of the public who use the services of RUAH'.

His questionable basis for that view is that he has 'observed the congregation of people in the area immediately in front of the RUAH premises prior to opening in the morning'. He appears to accept the questionable basis for his view, stating that he has 'not asked each person involved'.

He goes further, and with no disclosed analysis, states that he considers the RUAH premises 'to be a primary source of attraction of the people drawn to the area'.

In any event, Ruah repeats [16.4] *above*. Many of Ruah's clients who will use the services are already in the area – they live there. Ruah is simply providing services to them.

**Conclusion**

19 Ruah relies upon its submissions dated 5 July 2022 and these submissions in support of its position that:

19.1 It is clear that, as a matter of law, the application must be approved.

19.2 The application be approved on the conditions noted at [119] of its submissions dated 5 July 2022.



Application for review before the Hon. Minister for Planning  
pursuant to section 246(2)(a) of the *Planning and Development  
Act 2005*

BETWEEN:

**RUAH COMMUNITY SERVICES LTD**

Applicant

and

**CITY OF PERTH**

Respondent

---

WITNESS STATEMENT OF [REDACTED]

---

Date of Document: 25 July 2022  
Filed on behalf of: The Applicant  
Date of Filing: 25 July 2022

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Personal details**

- 1 My full name [REDACTED]
- 2 I reside at [REDACTED]
- 3 I am employed by Ruah Community Services Ltd [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED] Between 2013-2019 I worked at the Ruah Centre with [REDACTED]  
[REDACTED] This role primarily provided front desk security to the clients and staff at the Ruah Centre, but included supporting and building rapport with the clients to support a calm and therapeutic environment.

### My role at Ruah

- 4 [REDACTED]  
[REDACTED] I work with them through their time using the service to build trust and rapport which enables a relationship where we can support clients with basic needs and link them into other Ruah and sector supports. We provide engagement, access to basic supports, brief intervention and referrals to other services and accommodation.

### Clients of the Ruah Centre at 29-35 Shenton Street, Northbridge

- 5 In my experience 85% to 90% of the Ruah Centre's clients are rough sleeping and experiencing homelessness.
- 6 The balance of the Ruah Centre's clients, whilst not all are experiencing rough sleeping, are recently housed often for the first time in their life. They require support and practical help to ensure they maintain their tenancy and remain housed. This may be supporting them to pay bills or connecting with medical teams.
- 7 Many of those clients that are experiencing homelessness inhabit Northbridge, particularly in the area of the Ruah Centre.
- I know this because I see them in the area, whether begging, sleeping or otherwise.
- Often, I will see clients sleeping in Russell Square, opposite the Ruah Centre, in the morning before the Centre opens.
- 8 Many clients have their possessions with them in trolleys, which to me means they inhabit the area in and around the Ruah Centre. They are not able to travel on public transport or travel long distances with their trolleys, and do not have storage.
- 9 Some of the Ruah Centre's clients that are experiencing homelessness are provided with temporary accommodation at one of the following locations:

- 9.1 Foundation Housing at 297 Vincent St, Leederville.
- 9.2 Beacon at 9 Aberdeen St, Northbridge.
- 9.3 St Bart's at 7 Lime St, East Perth.
- 9.4 Backpackers, primarily the Emperors Crown at 85 Stirling St, Perth and Hive Hostel at 55/63 Stirling St, Perth.

### **Homelessness in Perth**

- 10 There are clearly people experiencing homelessness who inhabit the City of Perth, including Northbridge. You can see them.
- 11 The Zero Project, amongst other things, tracks people experiencing homelessness in Western Australia. In June 2022 the Zero Project recorded that there were 718 people experiencing homelessness in Perth.

