

Application for review before the Hon. Minister for Planning
pursuant to section 246(2)(a) of the *Planning and Development
Act2005*

BETWEEN:

RUAH COMMUNITY SERVICES LTD

Applicant

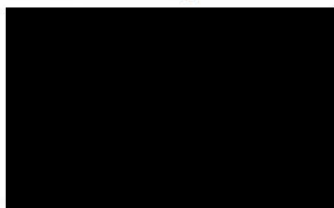
and

CITY OF PERTH

Respondent

APPLICANT'S SUBMISSIONS

Date of Document: 5 July 2022
Filed on behalf of: The Applicant
Date of Filing: 6 July 2022



Telephone: [REDACTED]
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Reference: [REDACTED]

Introduction

1 Ruah Community Services Ltd (**Ruah**), through PTS Town Planning Pty Ltd, sought planning approval from the Respondent to change the use of 247-249 James Street, Northbridge (**247-249 James Street**).

The change sought was, using the terminology of the *City of Perth City Planning Scheme No. 2 (CPS2)*, from 'Educational facility - upper' within the use group category 'Education 2' to 'Community centre' within the use group category 'Community and Cultural'.

[REDACTED]

- 2 Amongst other locations, Ruah currently provides services at 29-35 Shenton Street, Northbridge (**29-35 Shenton Street**) through what is known as the Ruah Centre (**Shenton Street Centre**). The purpose of the approvals is to relocate the Centre to 247-249 James Street (the relocated Shenton Street Centre is referred to in these submissions as the **James Street Centre**), approximately 200m. away from 29-35 Shenton Street.
- 3 The services provided at the Shenton Street Centre, and therefore to be provided at the James Street Centre, are for people experiencing homelessness. A more detailed description of the use to be carried on at the James Street Centre is set out at [26] *below*.
- 4 A report was prepared by the executive of the City in respect of the applications for consideration by the Council of the City. That report recommended conditional approval of the applications.

[REDACTED]

- 5 The City refused the applications at the meeting of its Council on 31 May 2022.

[REDACTED]

- 6 Ruah lodged an application for review with the State Administrative Tribunal (**Tribunal**) on 10 June 2022 seeking approval of the applications.

[REDACTED]

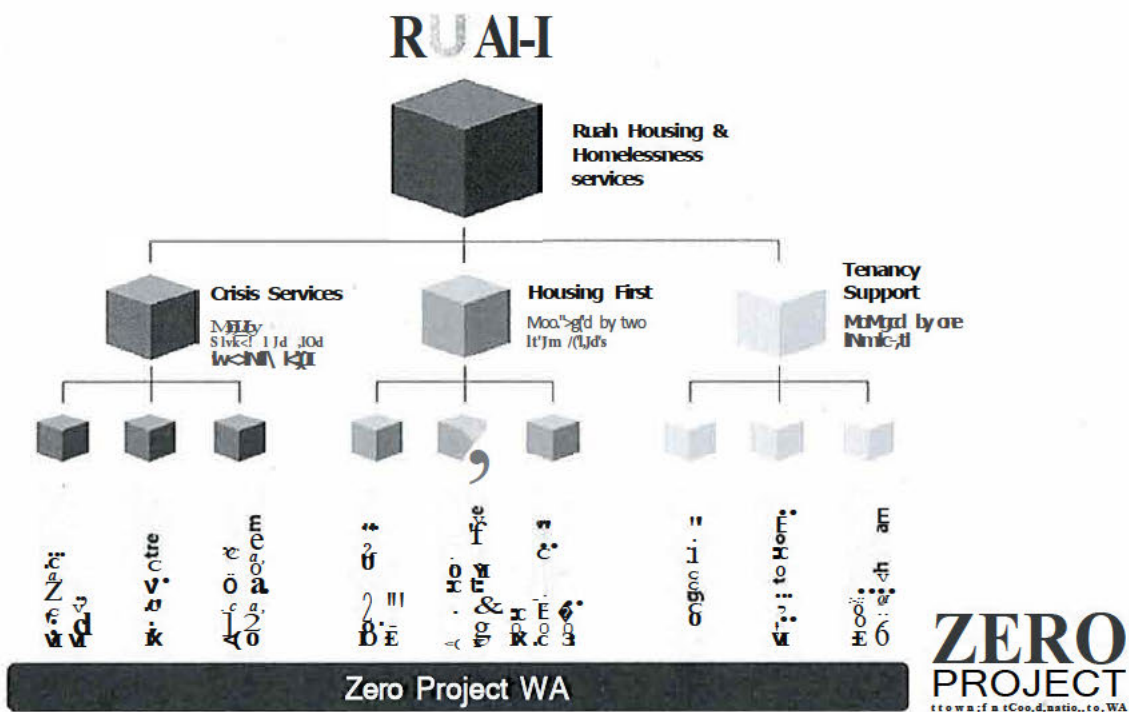
- 7 On 22 June 2022 the Hon. Minister for Planning exercised the power available to her in section 246(2)(a) of the *Planning and Development Act 2005 (Act)* and directed the President of the Tribunal to refer to her the application for review for her determination.
- 8 These submissions are in response to the Hon. Minister's invitation to the parties to make submissions by 5pm Wednesday 6 July 2022.

Background

Ruah

- 9 Ruah was founded in 1959 by the Daughters of Charity- an order of nuns founded by St Vincent de Paul in Europe. A group of four courageous Sisters set up Perth's first soup kitchen on the site of 29-35 Shenton Street and Perth's first women's shelter and first Aboriginal women's refuge.
- 10 By the 1990s, the foundation of Ruah as a modern, professional organisation was taking shape. The Sisters established a public company - Daughters of Charity Services WA Ltd - and began handing over their operations to a lay management team. Professional staff were employed to develop an integrated therapeutic model to tackle the complex problems for vulnerable Western Australians and their families.
- 11 In 2009, after 50 years in Perth, the Daughters of Charity officially relinquished control of the not-for-profit company and the organisation changed its name to Ruah Community Services. This severed formal ties with the Catholic Church and completed the transition to an independent entity. The De Paul Centre, which started out as the original soup kitchen, was renamed the Ruah Centre. It launched a progressive new model to fill emerging gaps in services for people experiencing homelessness including a new generation of young people struggling with drug addiction. The long-established women's refuge at Ave Maria House, now Harmony Place, was brought under the new corporate umbrella, along with Anawim, the first shelter for Aboriginal women in WA, now Kambarang Place.
- 12 In 2019, Ruah Community Services merged with the Mental Health Law Centre - the first merger of its kind in Western Australia - to provide even more comprehensive services for vulnerable people. In 2020, Ruah expanded its legal services to include care and protection services and other support for people with whom it works, under the broader banner of Ruah Legal Services.
- 13 Today, Ruah is an independent, not-for-profit organisation lead by a very experienced Board and Executive. Ruah is moving forward with 'open hearts and bold strides', but never loses sight of the pioneering and courageous work its founders began. Social, economic, political and cultural circumstances change, but what has lived on from decade-to-decade is the drive to make a difference for people who are vulnerable, disadvantaged and discriminated against.

- 14 Ruah continues the tradition of its founders, particularly when it comes to innovation. Ruah's work is benchmarked through several different accreditation and quality assurance processes, and through sector awards programs where its work addressing the complex issues of homelessness has been well-recognised for setting new standards in industry best practice.
- 15 Ruah is driven to make a difference for people who are vulnerable, disadvantaged and discriminated against. Its service areas include mental health, peer support, family & domestic violence, and legal support. In addition to these, housing and homelessness services is also one of its core areas, supporting a range of programs as detailed below:



- 16 Across its service areas, Ruah delivers high quality wrap around supports to more than 3,000 people a year. Its model of care recognises the universality that underpins all human needs and operates through a 'no wrong door' approach. Whichever pathway people enter Ruah's services they can access the support they need when they need it and for as long as they need it.
- 17 Ruah's capacity to help change the lives of the people it works with is underpinned by strong corporate and clinical governance frameworks and processes that are robust and authentic - built from supporting people at a grassroots level and accredited against the National Safety and Quality Health Service Standards and National Standards for Mental Health Services. Ruah is also Rainbow Tick accredited.

- 18 Ruah has a robust Quality Assurance system in place that will ensure compliance with all Quality Assurance requirements. Organisational and strategic risks are monitored by a Governance Team, reporting to senior leadership and Ruah's Board through a Risk and Quality Committee (comprised of Executive and Managers) that meets regularly (at least every six weeks), and a Finance & Audit Committee (comprised of Ruah Directors, CFO and CEO) which meets monthly.
- 19 Across the organisation, team members and services are regularly recognised for excellence with a raft of industry awards, including most recently:

Community Service Excellence Awards (March 2021)

- Finalist Large Organisation of the Year - Ruah Community Services
- Finalist Above and Beyond (Individual Award) - Margaret Potangaroa (Ruah Community Services)

HESTA Awards for Excellence (November 2020)

- Winner Community Services Team Excellence - Wongee Mia

Shelter WA Awards (November 2020)

- Winner Innovations for People Award -After Hours Support Service

Voice Project (November 2020)

- Best Workplace 2020.

Homelessness in WA

- 20 There are significant unmet needs with housing and homeless support services in WA.
- 21 The Australian Institute of Health and Welfare data indicates that in 2020-21 one in 109 people in Western Australia (WA) received homelessness assistance (24,500 people). The top 3 reasons people sought assistance were:
- family and domestic violence (39%)
 - financial difficulties (32%)
 - lack of family and/or community support (25%).
- 22 It is well understood that without stable accommodation, vulnerable people find it difficult to address their issues, concerns and needs.
- 23 The end of 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 it is not only more difficult to find housing for people already identified as sleeping rough or experiencing chronic

homelessness, but there has been a new wave of people entering homelessness for the first time.

- 24 Additionally, the steady rise in residential property value and rents that has occurred over the last 12 months has put severe strain on the private rental market, reducing opportunities for those seeking a way out of homelessness. The reopening of borders in WA this year has put further pressure on the housing market as residents and international students return, immigration recommences, and the building industry struggles to catchup from a slowdown through labour and materials shortages due to the COVID-19 pandemic.

Shenton Street Centre

- 25 Ruah has successfully run the Shenton Street Centre for people experiencing homelessness for more than 60 years, since opening Perth's first soup kitchen in 1959.

- 26 The Shenton Street Centre:

- 26.1 Operates Monday to Friday (excluding public holidays) from 8.30am to 2.00pm.
- 26.2 Offers a first point of contact for people experiencing homelessness without preconditions and a place for those who have been homeless for a period of time where they can get their essential needs met.
- 26.3 Provides linkage with other services such as accommodation services, alcohol and other drug support, mental health services, numerous counselling services, legal services and other crisis supports.
- 26.4 Offers clothing, emergency relief funding, showers and light food that people can take away.
- 26.5 Has static security guards on duty during opening hours.
- 26.6 Has a positive working relationship with the local police. If Centre staff call the police, the police know they are needed and attend immediately.
- 26.7 Is staffed with support workers to meet the presenting needs of the people who use the Centre and this is done through building relationships and responding and supporting in times of crisis.

- 26.8 Always has four staff on site throughout the day. During the service operating hours they are working with clients and then after 2.30pm they are writing notes, attending to referrals and other matters, and preparing the Centre for the next day.
- 26.9 Implements trauma-informed practice specifically tailored to the demographics of the people who use the service, with support workers completing training in trauma-informed practice and applying the key principles and practices of trauma-informed care in all that they do.
- 26.10 Provides a central location where visiting services including allied health, podiatry and dental are provided.
- 26.11 Runs the 'Ruah ID Clinic' where relevant government services, supported by Ruah's legal team, arrange fast-tracked identification.
- 27 The Shenton Street Centre does not provide emergency medical support or overnight accommodation.
- 28 For the period of 1 July 2021 to 31 December 2021, the Centre had 9,123 instances of clients accessing the services compared to the same period the previous year which had 7,360 instances.
- 29 The number of instances of clients accessing the services increased despite the Perth and Peel area entering COVID-19 lockdowns and Ruah's services having to pivot to meet social distancing requirements and limitations governed by state regulation.
- 30 During 1 July 2021 to 31 December 2021 the Centre was open for 128 days and the following statistics can be provided for that period:
- total daily average of people attending was 71 (similar to the daily average for all of 2021 of approximately 70 people);
 - 28% of clients identifying as Aboriginal or Torres Strait Islander;
 - 12% of clients identifying as LGBTQI+;
 - 30% of clients were walk-in clients having heard about the Centre from others sleeping rough or by searching for homelessness services online; and,
 - 30% of new clients were referred to the Centre by a family and/or close community member.
- 31 The Centre client group includes:

- those in middle age (especially men) who are also at risk of longer-term homelessness;
- Indigenous and Culturally and Linguistically Diverse (CALO) communities;
- those (especially women and children) who have experienced domestic or family violence; physical, emotional, or sexual abuse; or, losing a partner;
- those who have experienced mental ill-health and/or substance abuse;
- people exiting prison, foster or state care, or the military;
- those with previous experiences of homelessness;
- those with low education and/or unemployed; and,
- First Nations people.

32 Recent pressures (see [23] and [24] *above*) have contributed even more to the already significant unmet need for people experiencing rough sleeping in Perth and have made hard times for the clients at the Shenton Street Centre even harder.

33 The Shenton Street Centre has many strategies in place to mitigate risk and ensure a safe environment for staff, clients and the community. Ruah is committed to the health and safety of our people and the environment around us. Our corporate-wide framework will straddle is aligned to AS/NZ 31000:2018 Risk Management Guidelines and includes the following components:

- Delegation of Authority
- Risk Appetite Statement, with zero tolerance for safety risks
- Risk Management Procedure and Process Chart
- Risk Matrix: supports consistent assessment of risk
- Safety Management Procedure
- Critical Incident Process: reporting, investigation, and review
- Risk and Quality Committee
- Organisational Risk Register and Strategic Risk Register

Collectively, the framework ensures that Ruah understands, monitors, and manages the risks associated with the type of work that Ruah does.

34 Ruah takes complaints as an integral part of the continuous quality improvement and will endeavour to resolve complaints in connection with the services it provides. Listening and early communication are key to resolving concerns with clients, neighbours and the community. Complaints (which could be in connection with a client or the services Ruah provides) are able to be made via the feedback form on the website, by calling 13 RUAH (you will

be directed to the appropriate service/area), or by e-mailing connecting@ruah.org.au or feedback@ruah.org.au.

- 35 Over the last six months the Shenton Street Centre has not received any complaints from neighbours or the broader community. Indeed, there have only been three complaints about the Centre since 2019, two of which were actually about behaviour in Russell Square.

247-249 James Street

- 36 Ruah has obtained planning approval to construct at 29-35 Shenton Street a seven (7) storey building and use it for providing services for women and children escaping domestic violence. Demolition of the existing building at 29-35 Shenton Street will commence mid-August 2022.
- 37 To facilitate construction of the Centre for Women and Children the Shenton Street Centre needs to be relocated. To not relocate the Shenton Street Centre would leave a significant number of people without the services it provides and make the homelessness issue in Perth worse.
- 38 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.

The applications

- 39 247-249 James Street:
- 39.1 Is 'portion of Perth Town Lot Y113 including Lot 1 on plan 1324' and is all of the land comprised in Certificate of Title Volume 1106 Folio 252.
- 39.2 Is 507m² in area.
- 39.3 Contains a two-storey building fronting James Street and a single storey building to the rear. The building was most recently used as an education facility for the Skills Institute of Australia.
- 40 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. The Perth

Police Station is located approximately 50 metres to the west of 247-249 James Street.

- 41 The applications involve a change of use from 'Educational facility - upper' within the use group category 'Education 2' to 'community centre' within the use group category 'Community and Cultural'.
- 42 The change of use relates to the majority of the ground level and the first-floor level.
- 43 The use for which approval is sought is effectively the Shenton Street Centre relocated. Therefore, the use will be as set out in [26] above, which in summary provides services for people experiencing homelessness, including linking them with other services and providing clothing, emergency relief funding, showers and light food that can be taken away.
- 44 The applications do not include any external physical alterations to the existing building. Any internal works are exempt under clause 61 (1)(a) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Planning framework

- 45 247-249 James Street is:
 - 45.1 Zoned 'Central City Area' under the *Metropolitan Region Scheme*.
 - 45.2 Under CPS2, located within precinct P1 Northbridge (CC) and the City Centre use area.
 - 45.3 Not listed by the Heritage Council of Western Australia and is not on the heritage list under CPS2.
 - 45.4 Not located within a bushfire prone area.
- 46 The Statement of Intent in 'Precinct Plan No. 1 - Northbridge' (**Precinct Plan**) contains the following:

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.

A mixture of compatible, complementary activities is essential to maintain the diversity of activity in this Precinct. East of Russell Square, entertainment activities will predominate. However, a rich mix of other commercial uses, including short stay accommodation such as hotels and serviced apartments will be encouraged. The remainder of the Precinct, generally west of Russell Square, will have a residential emphasis, accommodating a variety of residential dwellings, visitor accommodation and other compatible non-residential uses. Mixed residential and commercial developments will be encouraged throughout the Precinct to strengthen its residential component, as well as create employment opportunities. The design of residential and mixed use developments will take into account the need for residential and non-residential uses to coexist in the Precinct, and therefore the need to minimise conflict between the uses. The uses which characterise Northbridge will be encouraged to extend along William Street.

47 The section titled 'Uses' in the Precinct Plan contains the following:

- (b) *West of Milligan, Parker and Palmerston Streets a greater residential component, accommodating a variety of residential and visitor accommodation and other compatible non-residential uses, including small local shops, community facilities, recreational uses, restaurants, coffee shops, medical consulting rooms, service industries and small showrooms and workshops will be supported. (underlining added)*

Review

- 48 This review has been 'called in' from the Tribunal by the Hon. Minister for Planning pursuant to section 246(2)(a) of the Act.
- 49 In determining this review 'the Minister is not limited to planning considerations but may make the determination having regard to any other matter affecting the public interest'¹.

Issues

- 50 What is the correct classification under CPS2 of the use the subject of the application?
- 51 What is the permissibility of the use under CPS2?
- 52 How ought any discretion be exercised?
- 53 What conditions should be imposed on an approval?

¹ Section 247(1) of the Act.

Use classification

Interpretation of planning schemes

- 54 The correct classification of the use for which approval has been sought necessarily involves interpretation of *CPS2*.
- 55 *CPS2* is a 'written law' for the purposes of the *Interpretation Act 1984*.²
- 56 In the context of the Act, and therefore local planning schemes, the Western Australian Court of Appeal has confirmed the importance of the text of statutory instruments in undertaking statutory interpretation.³
- 57 The judgment of Senior Member Willey of the Tribunal in *Corp and Town of Cambridge*⁴ at [45], [47] and [48] sets out a useful statement of the principles of interpretation that apply additionally to planning schemes:

{45} *Both counsel submitted that in construing the various definitions contained in the R-Codes, the Tribunal should apply the orthodox canons of construction including those applicable to planning schemes. This includes the principle that the R-Codes should be read and applied in a sensible and practical manner: Australian Unity Property Ltd v City of Busse/ton [2018] WASCA 38 at [84] (Buss P, Murphy JA and Mitchell JA) (Australian Unity); Re Shire of Mundaring; ex parte Solomon [2007] WASCA 132 at [25] (McLure JA, Steytler P and Pullin JA agreeing) and Johnson v Minister for Planning [2018] WASC 334 at [125] (Smith J).*

{46} *At [82] of Australian Unity, the Court of Appeal noted that:*

{T}he terms of planning schemes are regularly referred to, often without the assistance of professional legal advice, by planners, government officials, landowners and prospective landowners to identify the permissible uses of land to which the scheme applies. Placing a counter-intuitive judicial gloss on the plain language of a planning scheme reduces the capacity of those persons to comprehend its meaning.

...

² See the definitions of 'subsidiary legislation' and 'written law' in section 5

³ *Australian Unity Property Limited as responsible entity for the Australian Unity Diversified Property Fund v City of Busse/ton* (2018) WASCA 38 at (77) - (86).

⁴ [2019] WASAT 65.

[48] *The Tribunal agrees with counsels' submissions on the correct approach to construction but, consistent with their observations, the Tribunal is mindful that the R-Codes is not a statutory instrument per se, rather it is a policy.*

(my underlining)

58 In a similar vein:

In construing a planning scheme, it is also relevant that schemes are not usually drafted by Parliamentary Counsel and are often expressed in terms which lack the precision of an Act of Parliament. Planning schemes should be construed broadly rather than pedantically and with a sensible practical approach. Planning schemes should not be applied narrowly nor pedantically.⁵

Use to be classified

59 The use to be classified is that of services for people experiencing homelessness as set out in [26] above.

Classification

60 The use to be carried out at the James Street Centre is that of 'community centre' which is within the use group category 'Community and Cultural'⁶.

61 The use 'community centre' is defined in Schedule 4 of CPS2 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.

62 The elements of the definition of 'community centre' are:

62.1 Premises.

62.2 Accommodating services (such as health or social services) or facilities (such as meeting or recreation facilities).

62.3 Primarily for the benefit of those who live or work in the surrounding locality.

63 The first element of the definition of 'community centre', namely 'premises', is obviously met.

⁵ *Rando and City of Gosne/1s* (2019] WASAT 6 at (55).

⁶ See the definition of 'Community and Cultural' at (78] below.

- 64 Will the James Street Centre be 'accommodating services (such as health or social services) or facilities (such as meeting or recreation facilities)'?
- 65 In *West Australian Shalom Group Inc. and City of Swan*⁷ (**Shalom**) operated a residential rehabilitation programme which aimed 'to restore the lives of men with serious drug or other addictions or other 'life-dominating' issues, such as emotional trauma, anxiety and depression'⁸.
- 66 One of the issues in *Shalom* was whether the residential rehabilitation programme was properly classified as 'Community Purpose' under the *City of Swan Local Planning Scheme No. 17 (LPS17)*.
- 67 The term 'Community Purpose' was defined in *LPS17* as:
- means the use of premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organisations involved in activities for community benefit.*
- 68 In dealing with the 'social services' aspect of the definition of 'Community Purpose' the Tribunal said the following:

[123] *The City submits that the adjective 'social' relevantly 'refers to gatherings for gregarious reasons; not to "social services" such as unemployment, mental health, antenatal exercises etc.'. However, in my view, 'social', when used in the definition of 'community purpose', includes both of these meaning (although the provision of antenatal exercises is an educational service, rather than a social service). The relevant meanings of the adjective 'social' are:*

1. relating to, devoted to, or characterised by friendly companionship or relations: a social club. 4. living, or disposed to live, in companionship with others or in a community, rather than in isolation. [and] 7. denoting or relating to activities designed to remedy or alleviate certain unfavourable conditions of life in a community, especially among the poor: social work. ...

[124] *The expression 'social services', therefore, refers to organised systems relating to companionship or relations with others or in a community or designed to remedy or alleviate certain unfavourable conditions of life in a community. This ordinary meaning of the expression 'social services' is also consistent with the element of the definition of 'community purpose' that the social services must be provided by organisations involved in activities for 'community benefit'. The meaning of the expression 'community benefit' is discussed below. An organisation involved in activities for community benefit may well provide 'social services' relating to companionship or relations with others or in a community or*

⁷ [2018] WASAT 36.

⁸ *Shalom* at 'Summary of Tribunal's decision'.

designed to remedy or alleviate certain unfavourable conditions of life in a community.

[125] *In my view, the use of the site by Shalom as a rehabilitation centre for men with serious drug and other addictions and other life-dominating issues clearly is, or involves, the provision of an organised system to remedy and alleviate certain unfavourable conditions of life in a community, and an organised system for teaching, instruction or training of participants to enable their rehabilitation from their addictions or other life-dominating issues and to restore their lives so as to be able to live functional and productive lives in the community.*⁹

69 The provision of services to people experiencing homelessness as intended to be carried out at the James Street Centre clearly 'is, or involves, the provision of an organised system to remedy and alleviate certain unfavourable conditions of life in a community', namely homelessness and the consequences that flow from that.

70 Therefore, the James Street Centre will be accommodating 'social services' and the second element of the definition of 'community centre' is met.

71 Will the 'social services' be 'primarily for the benefit of those who live or work in the surrounding locality'?

72 As the terms 'live' and 'work' are not defined in CPS2, nor are they terms of art, their ordinary and common meanings should apply.¹⁰ In this circumstance in *Moles*, the Tribunal proceeded to use the *Macquarie Dictionary Online (Macquarie)*¹¹.

73 The *Macquarie* defines 'live' to include 'to dwell or reside'. In turn, the *Macquarie* defines 'dwell' to include 'to abide 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*.

74 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

⁹ *Shalom* at [123]-[125].

¹⁰ See *Moles and City of Armadale* [2021] WASAT 140 (*Moles*) at [127].

¹¹ At [128].

do not have a 'bricks and mortar' residence is, with respect, unsustainable. Such an interpretation would not be sensible or practical.

- 75 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.
- 76 The James Street Centre will be accommodating social services 'primarily for the benefit of those who live ... in the surrounding locality' and the third element of the definition of 'community centre' is met.
- 77 In the alternative, if the use to be carried out at the James Street Centre is not that of 'community centre' it is still within the use group category 'Community and Cultural'.
- 78 The use group category 'Community and Cultural' is defined in Schedule 2 of CPS2 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.*
- 79 Leaving aside the issue of 'community centre', to come within the use group category 'Community and Cultural' it is only necessary for the proposed use at the James Street Centre to:
- 79.1 Provide social services.
- 79.2 Generally on a non-profit basis.
- 79.3 For the benefit of the community.
- 80 Clearly the first two elements are met. As to 'social services' see [64] - [70] *above*. As to 'Generally on a non-profit basis', Ruah is a non-profit organisation and the services that will be provided at the James Street Centre will therefore be on a non-profit basis.
- 81 The services that will be provided at the James Street Centre will obviously be for the benefit of the community. The services will be for the benefit of the members of the community who access them (many of whom live in the surrounding locality) and for the benefit of the community generally (whether or not they live in the surrounding locality) in alleviating the consequences of homelessness¹². Therefore, the third element is met.

¹² See, in the context of drug addiction, *Shalom* at [129] - [140].

Use permissibility

82 On either of the alternative classifications available in respect of the proposed use at the James Street Centre¹³, it is within the use group 'Community and Cultural'.

83 247-249 James Street is within precinct 'P1 Northbridge (CC)' under CPS2.

84 The use group table in Schedule 3 of CPS2 for precinct 'P1 Northbridge (CC)' specifies the use group 'Community and Cultural' as a 'P' use.

85 A 'P' use in the use group table 'means that a use within the relevant use group is a preferred use'¹⁴.

86 Clause 32 of CPS2 is titled 'DETERMINATION OF APPLICATION FOR A PREFERRED USE' and provides as follows:

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.

87 Clause 35 of CPS2 is not applicable.

88 Therefore, clause 32(b) applies and the applications cannot be refused. That is, there is no discretion to refuse the applications and they must be approved.

How ought any discretion be exercised?

89 As there is no discretion to refuse the applications and they must be approved, this question does not arise for consideration. However, as the City has cited reasons for its refusal we have set out *below* our brief reply to those reasons.

90 The City cites three reasons for its refusal to approve 'Change of use of the existing building to Community Centre ('Community and Cultural')'¹⁵.

91 At the outset it is important to note that the City's determination does not challenge the advice of the executive that the use for which approval is sought

¹³ See [60] and [77] *above*.

¹⁴ Clause 17(2) of CPS2.

¹⁵ See the City's 'Notice of Determination on Application for Development Approval'.

is 'Community centre' within the use group category 'Community and Cultural'.

92 The City's first reason for refusal is that:

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 an attractive destination for the local population and interstate and overseas visitors.

93 The term 'deemed provisions' is a reference to Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions)*.

94 Clause 67(2) of the Deemed Provisions commences with:

In considering an application for development approval (other than an application on which approval cannot be granted under subclause (1)), the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application ...

and there follows thereafter twenty-eight (28) 'matters', including, as a 'catch-all', 'any other planning consideration the local government considers appropriate'.

95 Clause 67(2)(a) of the Deemed Provisions is to the effect in this matter that in determining the application the City 'is to have due regard to ... the aims and provisions of CPS2.

96 The Precinct Plan is not part of CPS2.¹⁶

97 In any event, the Statement of Intent within the Precinct Plan speaks of 'a diverse, interesting and dynamic inner city precinct'.

The Shenton Street Centre currently exists within 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.

98 The City's second reason for refusal is that:

¹⁶ See clause 3 of CPS2.

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

99 Clause 67(2)(n) of the Deemed Provisions is to the effect in this matter that in determining the applications the City 'is to have due regard to:

(n) *the amenity of the locality, including the following -*

(i) *environmental impacts of the development;*

(ii) *the character of the locality;*

(iii) *social impacts of the development.*

100 29-35 Shenton Street and 247-249 James Street are in the same locality. The Shenton Street Centre therefore currently forms part of the relevant locality, and part of the character and amenity of that locality. The James Street Centre will not be introducing a new use to the locality, nor changing the character and amenity of the locality.

101 The Shenton Street Centre is located directly adjacent to permanent residential dwellings. The James Street Centre is not adjacent to permanent residential dwellings with the dwellings located on the opposite side of James Street.

102 A change of use only is sought and therefore approval will not have any physical impacts on the character of the locality.

103 Like the Shenton Street Centre, the James Street Centre will:

103.1 Only be open between 8:30am to 2:00pm Monday to Friday (closed on weekends and public holidays).

103.2 Not provide any accommodation on site.

103.3 Not result in adverse noise, reduced public safety and antisocial behaviour.

104 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 site

assists in improving the social impacts on people experiencing homelessness and the social impacts of homelessness on the community.

- 105 Similar to other land uses within Northbridge, which is a diverse area of the City, people congregating, noise and behaviour of clients attending the James Street Centre could potentially have a negative social impact on nearby residents and business owners/operators from time to time. The same can be said of other land uses and businesses in the area.
- 106 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.
- 107 Ruah has established management plans and procedures to address amenity impacts at their service locations, including a complaints system. The complaints system
- 108 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. Ruah is not responsible for general homelessness or the impacts of people experiencing homelessness after hours when these people are already in the area.
- 109 The City's third reason for refusal is that:
- the proposal is contrary to clause 67(2)(y) of the deemed provisions as the proposal does not adequately address community concern relating to an increase in antisocial behaviour, a reduction in public safety, loss of residential amenity, and an adverse impact on business.*
- 110 Clause 67(2)(y) of the Deemed Provisions is to the effect in this matter that in determining the applications the City 'is to have due regard to ... any submissions received on the application'.
- 111 The City received seventy-one (71) submissions from the public with respect to the applications, with sixty-four (64) raising objections, four advising support and three seeking further information.
- 112 The City identified that the submissions related to antisocial behaviour/public safety/management of the site; loss of amenity, impact to existing businesses and properties; traffic and car parking; and, loss of property values/economic fallout.
- 113 247-249 James Street is 50m. from the Perth Police Station, which is open 24 hours a day. Ruah has existing guidelines regarding working with the WA Police who, along with providing supportive services to Ruah (welfare checks,

missing persons checks, etc), can assist in instances where antisocial behaviour requires their attendance.

- 114 The James Street Centre will only be open between 8:30am to 2:00pm Monday to Friday (closed on weekends and public holidays).
- 115 Ruah has established management plans and procedures to address amenity impacts from its centres, including a complaints system on its website. There have only been three complaints about the Shenton Street Centre since 2019, two of which were actually about behaviour in Russell Square.
- 116 The James Street Centre will not generate traffic or car parking issues given the nature of the people who will use the services provided. Notwithstanding, there are ample car parking bays located on-street and staff car parking is catered for on the adjoining site.
- 117 Concerns about potential loss of property values and economic fallout have not been established and it needs to be remembered that the Shenton Street Centre currently exists within the locality. In any event, loss of property value is not a proper planning consideration.

Conditions

- 118 The report that was prepared by the executive of the City in respect of the applications for consideration by the Council of the City contained recommended conditions [REDACTED]
- 119 Set out *below* are the recommended conditions marked-up with the changes sought by Ruah:
1. The proposed use (Community Centre) operating Monday to Friday from 8.30am to 2.00pm only (excluding public holidays).
 2. Submission of a final Business Management Plan for approval by the City prior to the commencement of the use that addresses the operation and management of the Community Centre during the operational hours of 8:30am to 2pm Monday to Friday, including how the operator will:
 - a. control any noise and other disturbances on the site or close-to-it, that are associated with the activities or customers on site.
 - b. arrange for the removal of unwanted or unattended personal belongings of customers of the site within the immediate-vicinity verge area directly in front of the property to the City's satisfaction.

- c. ~~accommodate persons waiting to access services within the building.~~
 - d. managing the congregation of customers, or people associated with customers, outside the property during operational hours to the City's satisfaction.
 - e. establish and maintain a complaints management service, that enables and facilitates easy access (by the community) during the hours of operation to a designated contact person(s), ~~including after-hours and emergency contact details,~~ to the City's satisfaction.
3. The approved Business Management Plan being implemented by the operator/manager on an on-going basis and to the satisfaction of the City.
 4. A Waste Management Plan, satisfying the City's waste servicing requirements, being submitted for approval by the City prior to applying for an Occupancy Permit, with the Plan being implemented by the operator/manager on an on-going basis and to the satisfaction of the City.
 5. Installation of a sign on the building, which is clearly visible from the adjoining footpath, and provides detail on the approved opening hours⁷ ~~an after-hours contact services for users of the centre;~~ and general and emergency Police contact details for the public. Final details of the design, location, dimensions, and content of the sign need to be submitted for approval by the City, prior to the commencement of the use, with the sign being installed and maintained thereafter to the City's satisfaction.

120 The reasons for the changes sought to the recommended conditions are as follows:

120.1 Ruah is funded to provide its homelessness services between the hours of 8:30am to 2pm Monday to Friday. The services provided are not crisis care/accommodation and therefore the business management plan needs to reflect the operation of the centre and not the matters which are beyond the services of Ruah or are related to general homelessness in Perth and Northbridge.

- 120.2 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.
- 120.3 Ruah currently arranges for cleaning and clearance of unwanted goods in front of the Shenton Street Centre on the verge area and will continue this process, however, it cannot remove belongings which are not located in front of its premises.
- 120.4 While Ruah has procedures in place to manage its customers, it cannot influence people who are not customers of the James Street Centre. Furthermore, there are complex issues that could occur between its customers and other associated people which are a matter beyond the ability of Ruah to control.
- 120.5 Ruah has a system for the making of complaints that is used during operational hours. The services provided are not crisis care or accommodation services and therefore it is not appropriate to require after hours emergency contact details. If it is an emergency, it should be reported to the appropriate authorities. We note there is a 24 hour Police station within 50 metres of the site.

Conclusion

- 121 It is clear that, as a matter of law, the applications must be approved.¹⁷
- 122 Ruah requests that the applications be approved on the conditions noted at [119) *above*.



¹⁷ See (54) - [88) *above*.