

BETWEEN:

RUAH COMMUNITY SERVICES

Applicant

- and -

CITY OF PERTH

Respondent

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

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**INTRODUCTION**

1. The Minister for Planning Hon John Carey MLA, on 15 March 2024, transferred to me his powers and functions under legislation to consider and determine this review application (DR 33 of 2024). This decision is made in my capacity to act for and on behalf of the Minister for Planning with respect to this matter.
2. This decision concerns an application by Ruah Community Services (**'Ruah'** or **'Applicant'**) for the review of certain conditions (the **'Application'**) attached to a planning approval (**'Approval'**) granted by the City of Perth (**'City'** or **'Respondent'**) for the operation of a Safe Night Space program (**'SNS'** or **'SNS Program'**), which is proposed to operate at 247-249 James Street, Northbridge<sup>1</sup> (the **'Subject Site'** or **'Site'**) under this Approval (**'Northbridge SNS'** or **'Proposal'**).
3. The Applicant was operating a SNS Program at the Rod Evans Community Centre in East Perth (**'East Perth SNS'**). This provided an overnight space and support for women in crisis. This service ceased at the end of November 2023.

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<sup>1</sup> More particularly described as Lot Y 112 on Deposited Plan 223033, being the whole of the land within Certificate of Title Volume 2017 Folio 937

4. The Applicant wished to relocate its SNS to the Subject Site and sought the City's approval to this.
5. On 27 February 2024, the City granted approval, subject to conditions. The conditions were directed at managing potential impacts associated with the operation of the Northbridge SNS. They largely addressed matters of operational management, community interactions and security.
6. The Applicant applied to the State Administrative Tribunal ('SAT' or '**Tribunal**') for review of the City's decision. In the Applicant's view, based on its experience of operations in the East Perth SNS, the conditions required amendment to better reflect operational realities and learned experiences from a previous similar service.
7. Three conditions of the City's approval are in dispute between the Applicant and the City (together '**the Parties**').
8. This matter has been called-in from the SAT, pursuant to section 246(2)(a) of the *Planning and Development Act 2005* ('**PD Act**'), for determination by the Minister for Planning,<sup>2</sup> in which capacity I am acting in making this decision.

## THE BACKGROUND

### Initial Proposal

9. In December 2023, the Applicant applied for development approval to use the Subject Site for the purposes of the Northbridge SNS.

### *The nature of the Northbridge SNS*

10. A SNS service is a community service established to support vulnerable women who may be experiencing an immediate crisis such as domestic and family violence. It provides a safe environment for vulnerable women from areas in Perth CBD and surrounds. The Applicant describes the Northbridge SNS at paragraphs 36 and 37 of its Initial Submission, as follows:

[36] The Northbridge SNS will be an overnight service responding to the urgent need for a safe and culturally secure night space for women sleeping rough in Perth.

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<sup>2</sup> See *Planning and Development Act 2005*, sub-s246(2)(a) ('PD Act').

[37] The Northbridge SNS will be a space where vulnerable people can go to rest and seek informal support. The space will not provide beds but will have comfortable spaces for rest and sleep. While attending the Northbridge SNS, women will receive basic assistance, such as access to clothing, toiletries, tea and coffee, device chargers, and shower facilities. Northbridge SNS staff will provide emotional support as well as advice and information about services the women can connect into for support to access accommodation.

11. The City's professional planning staff assessed the Applicant's application for development approval to the proposed use. They prepared a report ('**Report**' or '**Officer's Report**') for consideration by Council ('**Council**') at the City's Ordinary Council Meeting on 27 February 2024 ('**OCM**'). The report was provided to the councillors and made publicly available as part of the OCM agenda on the City's website. The Officer's Report recommended approval, subject to conditions.<sup>3</sup> I have had regard to the Officer's Report in assessing and determining this matter.
12. The Officer's Report succinctly summarised the Northbridge SNS as follows:

The applicant's written submission outlines that:

- a. The Safe Night Space provides an emergency overnight space for women in crisis, including those seeking to escape domestic violence situations. It is a place where women can rest and connect to support services.
- b. No beds will be provided – there will be access to basic services (laundry, toilets, shower).
- c. There will be a maximum capacity of 30 women a night, limited to:
  - 20 referral clients - can stay for 10 consecutive nights with a five-night break between
  - Five self-presenting clients - can stay one night with a one-night break between
  - Five emergency clients - can stay one night with a one-night break between.
- d. The Safe Night Space will operate from 7:00pm to 7:00am seven days a week, with a curfew on attendance via the main entrance from 10:00pm.
- e. Two staff members (key worker/support worker/engagement worker) will be present on site between 6:30pm and 7:30am.
- f. Two security staff will be present between 7:00pm and 8:00am.
- g. A temporary approval is sought given that new facilities and services will come online within this period, meaning that the service will likely no longer be required from the subject site.

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<sup>3</sup> See, City of Perth website, OCM Agenda 27 February 2024 <[Ordinary Council Meeting | City of Perth](#)>.



13. Having regard to the Parties' submissions, I accept that this summary continues to accurately describe the use at the core of the Applicant's Proposal.
14. The Applicant proposed its Northbridge SNS would operate for a time limited period of 30 months. At the conclusion of this period, I believe the Applicant's intention was (and is) to relocate operations to the new Ruah Centre for Women and Children, which is currently under construction at 29 Shenton Street, Northbridge; approximately 200m (or a 3-minute walk) north from the Subject Site.
15. The Applicant did not propose to undertake any external works.
16. The Applicant sought to operate from the Subject Site, where it currently undertakes the Ruah Engagement Hub. The 'Ruah Engagement Hub' was proposed in 2022 on the Subject Site, and was approved on 21 September 2022 as DR 95 of 2022 through a Ministerial 'call-in' decision-process pursuant to section 246(2)(a) of the PD Act<sup>4</sup> (the '**Minister's 2022 Decision**').
17. The Northbridge SNS is a separate development to the Ruah Engagement Hub. The Ruah Engagement Hub is a daytime drop-in space, open between 8am and 2pm, for people experiencing homelessness or at risk of becoming homeless.
18. The Officer's Report acknowledged this point and illustrated key differences between the activities of the operations of the Ruah Engagement Hub and the Northbridge SNS. The report identified:

The proposed new temporary service is intended to operate for a period of 30 months, in addition to the existing Ruah Engagement Hub (Community Centre), which will continue under the terms and conditions of the Minister's approval dated 21 September 2022.<sup>5</sup>

***Commentary on multiple approvals for a site***

19. It is convenient at this point to observe that multiple approvals can be obtained on the same land, and generally co-exist without controversy. For example, in the case of a shopping centre, this arrangement would seem obvious. However, less obvious examples

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<sup>4</sup> PD Act (n 1) sub-s 246(2)(a).

<sup>5</sup> OCM 27 February 2024 (n 3) [18].



can occur just as equally on land with approvals for more discrete kinds of proposals, as would seem to be the case for this review.

20. Importantly, I note, this Application under DR 33 of 2024 concerning the Northbridge SNS will not replace the Minister's 2022 Decision concerning the Ruah Engagement Hub. They remain separate matters. This is not an opportunity to revisit the terms of that previous approval granted as DR 95 of 2022 by some collateral means.
21. I observe that the Proposal which is now before me to consider, is substantially the same as the proposed use submitted to the City for its consideration and approval.

### **The City's Decision**

22. On 27 February 2024, Council considered the Applicant's proposed use of the Site and resolved to approve this subject to the conditions recommended by the Officer's Report, but with modification to the wording of condition 3.
23. The Officers Report recommended condition 3 read as follows:

The Safe Night Space for Women being managed and operating at all times in accordance with the amended Operational Management Plan (dated 23 January 2024) at Attachment C, to the satisfaction of the City.

24. The Council's motion was passed to modify condition 3 as follows:

Prior to the commencement of the Safe Night Space, an updated Operational Management Plan, that includes:

- a. a provision to require the presence of one (1) security personnel to be positioned external to the building at all times that the Safe Night Space is operational; and
- b. specific provisions to engage with the Northbridge Neighbourhood Group on a regular basis to discuss any potential issues relating to the operation of the Safe Night Space and measures to resolve these issues

must be submitted to and approved by the City. The Safe Night Space being managed and operated in accordance with the approved Operational Management Plan at all times to the satisfaction of the City.

### **The Applicant applies to the Tribunal.**

25. On 6 March 2024, the Applicant submitted an application to the Tribunal to review three of the four conditions imposed by the City's Decision. Those three conditions were:

Condition 2: The Safe Night Space for Women having a limited approval period of 30 months from the date of this determination, after which time the use must cease to the satisfaction of the City.

Condition 3: Prior to the commencement of the Safe Night Space, an updated Operational Management Plan, that includes:

- a. a provision to require the presence of one (1) security personnel to be positioned external to the building at all times that the Safe Night Space is operational; and
- b. specific provisions to engage with the Northbridge Neighbourhood Group on a regular basis to discuss any potential issues relating to the operation of the Safe Night Space and measures to resolve these issues

must be submitted to and approved by the City. The Safe Night Space being managed and operated in accordance with the approved Operational Management Plan at all times to the satisfaction of the City.

Condition 4: Prior to the commencement of the Safe Night Space, an updated Waste Management Plan shall be submitted to and approved by the City providing the following:

- a. Specify what measures are being taken to mitigate the disposal of illegal items.
- b. Specify what measures are being taken to mitigate biohazard items.

with the approved Waste Management Plan being implemented at all times by the operator/manager, to the satisfaction of the City.

26. The Applicant sought from the Tribunal the following orders:

- 1 The application for review is allowed.
- 2 Condition 2 of the Approval is amended by deleting ‘, after which time the use must cease to the satisfaction of the City’.
- 3 Condition 3 of the Approval is replaced with the following worded condition:  
  
‘The Safe Night Space for Women being managed and operated at all times in accordance with the attached Operational Management Plan dated 4 March 2024’.
- 4 Condition 4 of the Approval is replaced with the following worded condition:  
  
‘The attached Waste Management Plan dated 22 December 2022 being implemented at all times’.

27. It is my observation that the core aspects of the Proposal were not in dispute between the Parties.

28. The disagreement concerns conditions imposed by the City, which regulate incidental aspects of the Northbridge SNS.
29. A comparison between the respective positions of the Parties at this point reveals there were relatively minor differences in opinion as to how the Northbridge SNS should operate.

### **Ministerial Call-in and Transfer of Ministerial Authority**

30. On 6 March 2024 (the same day the Applicant submitted its application to SAT), Flint Legal wrote to the Minister for Planning on behalf of the Applicant, stating an application for review had been lodged with the SAT seeking the Minister for Planning call-in the Application for determination, instead of the Tribunal, under section 246 of the PD Act.
31. On 15 March 2024, the Minister for Planning wrote, to the President of SAT and directed the Application be referred to the Minister for Planning for determination in accordance with section 246(2)(a) of the PD Act (**‘Direction Notice’** or **‘call-in notice’**).
32. On 15 March 2024, the Minister for Planning also released a media statement confirming a Direction Notice had been issued to the President of SAT that day, and provided the following reasons for the Application’s State or regional importance:

The Ruah Safe Night Space is a key service established to support vulnerable women who may be experiencing immediate crisis such as family and domestic violence. It assists to provide a safe environment for vulnerable women, for example, those escaping family and domestic violence from areas in the Perth CBD and surrounds.

The Safe Night Service is the only accessible drop-in service, and is often utilised by WA Police as a safe, supported place to take vulnerable women during the night rather than lock up. Ruah developed the model and their organisation and staff have particular expertise in supporting the vulnerable women who present with a range of highly complex needs.

The State Government remains committed to the All Paths Lead to a Home: Western Australia’s 10-Year Strategy on Homelessness 2020–2030 and the Path to Safety – Western Australia’s strategy to reduce family and domestic violence 2020-2030.

Given the significance of the Safe Night Service as a key service in the system that is accessible over-night for vulnerable women, including those experiencing family and domestic violence, the question of the appropriateness of the current conditions of approval goes to the effective operation of the services provided by Ruah on this site.



The effective operation of the Safe Night Service is crucial to the State Government's support of vulnerable women, many of whom may be experiencing family and domestic violence, supporting the broader homelessness sector by providing this specialist service and implementation of the State's strategies to end homelessness and reduce family and domestic violence.

33. On 19 March 2024, the call-in notice was laid before the Legislative Assembly in accordance with section 246(4) of the PD Act.<sup>6</sup>
34. On 19 March 2024, the call-in notice was laid before the Legislative Council in accordance with section 246(4) of the PD Act.<sup>7</sup>
35. On 26 March 2024, a copy of the direction was published in the Government Gazette in accordance with section 246(4) of the PD Act.
36. On 15 March 2024, the Hon. John Carey MLA, as Minister for Planning, formally wrote to me about this matter – in light of concerns about a potential perceived conflict of interest – seeking that I, as a Minister of the Crown, act for and on his behalf in exercising the Minister for Planning's powers and functions under legislation committed to the administration of the Minister for Planning to consider and determine this review application.
37. In his 15 March Ministerial media statement, the Hon. John Carey MLA also stated:<sup>8</sup>

... I am advised that as the Minister for Homelessness, Planning and the Member for Perth, I do not have a conflict of interest in this matter. However, I consider that there is a minor risk of a perception of such and, out of an abundance of caution, I have asked that the Honourable Amber-Jade Sanderson MLA, as a Minister of the Crown, act for and on my behalf in exercising the Minister for Planning's powers and functions under legislation, committed to the administration of the Minister for Planning, to consider and determine this review application.
38. On 19 March 2024, I wrote back to Hon. John Carey MLA accepting this responsibility.
39. I note the City has raised some questions about the vesting of these powers in me as a matter of proper jurisdiction. Noting such arrangements are not uncommon, I am confident that I can exercise the Minister for Planning's powers and functions under

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<sup>6</sup> See *PD Act* (n 1) sub-s 264(4).

<sup>7</sup> Ibid.

<sup>8</sup> See, Media Statement of Hon John Carey MLA Minister for Planning; Lands; Housing and Homelessness, released 15 March 2024, page 2 <[minister-statement-ruah\\_safe-night-space-callin.pdf \(www.wa.gov.au\)](https://www.wa.gov.au/government/media-statements/minister-statement-ruah_safe-night-space-callin.pdf)>.

legislation committed to the administration of the Minister for Planning with responsibility for the consideration and determination of the call-in of SAT Application DR 33 of 2024.

## **THE PROCESS TO DATE**

40. I am bound to follow a statutory process set out by section 246 of the PD Act, particularly sub-sections 246(2), (4) and (7). I have stated sections 246 and 247 of the PD Act in full, at paragraph 50 below; for the sake of brevity and avoiding duplication, I do not repeat those sub-sections here.

### **Scheduled Program for Facilitating Submissions**

41. A process was put in place to collate submissions for my consideration. Accordingly, the following three-stages of consultation were planned and implemented:
- a) **First round of submissions:** The first round of submissions occurred between Wednesday 27 March 2024 and Monday 22 April 2024.
  - b) **Exchange of submissions:** The submissions received by each Party in the first round, were to be exchanged between the Parties by Monday 29 April 2024.
  - c) **Second round of submissions:** The second round of submissions allowed the Parties to provide written reply to the other Parties first round of submissions and occurred between Tuesday 30 April 2024 and Tuesday 14 May 2024.

### **The Parties Submissions**

42. On 2 April 2024, the Parties were invited to provide written submissions by 5pm on 22 April 2024.
43. I was also open to receiving public submissions, with details of the call-in published on the website for the Department of Planning, Lands and Heritage. Public comment was open for 20 days between 2 April and 22 April 2024. No public submissions were received.
44. Submissions were exchanged between the Parties on 24 April 2024, and the Parties were invited to provide written submissions in reply by no later than 5pm on 14 May 2024.

45. The Parties provided their first round of written submissions on 22 April 2024, and their respective second round of submissions in reply on 14 May 2024.

46. 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 (**‘Primary Submission(s)’**); and
- b) Two sets of submissions in reply (**‘Reply Submission(s)’**).

Comprising four separate submissions in total

47. I observe in the order of 400 pages of material has been submitted by the Parties.

#### **Invitation for Public Submissions**

48. I also observe that under section 246(6) of the PD Act, I may consider any other submissions received. The ‘may’ would denote discretion; however, as mentioned above, no submissions from other persons were received.

49. As a result, I have considered no submissions other than the Submissions of the Parties.

#### **THE MINISTER’S ROLE**

50. The jurisdictional basis for my decision is set out in sections 246 and 247 of the PD Act, which warrant being stated in full:

##### **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 Act 2018; or



- (b) more than 28 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.
51. I understand that my role is not only to critique the conditions imposed with the City's original decision of 24 February 2024, but also to consider the decision anew.
52. Section 247(1) of the PD Act grants me broad powers to consider not only planning matters but also other issues that affect the public interest.

53. 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 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.

54. 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 importance. 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 planning merit, I have duly considered any points raised in the submissions going to issues of public interest.
55. 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 IN DISPUTE**

56. The Primary Submissions and Reply Submissions of each Party assisted me by canvassing issues relevant to this matter and identifying the matters in dispute.
57. Two preliminary issues arose from these. One concerned confirmation of the Applicant's legal name, which was further clarified by the Applicant. The second was a new, fifth condition proposed by the Applicant. These matters are further addressed in paragraphs 62-64 of this decision.
58. Regarding the substantive matters in dispute:

- a) In broad terms, the Applicant disputes the validity of Conditions 2, 3 and 4 of the Approval and has submitted alternative wording for these conditions. In addition, the Applicant requests any approval I grant be personal to the Applicant and commence from the date of my decision.
- b) In broad terms, the City's contends Conditions 2, 3 and 4 are appropriately worded and valid, but also submits alternative wording that it would support. The City does not support a condition that makes any approval personal to the Applicant. As already dealt with, the City also sought to clarify the Applicant's corporate identity.
59. It is important to note that while this matter in effect deals with only three conditions (plus the additional condition 5), there appears to be multiple issues of dispute in relation to each of these conditions. This does add a level of complexity to this matter.
60. In that context, I find it useful to present each Party's proposed conditions, in the table below. I am assisted by the City's use of tracked changes in its proposed conditions. These show the original conditions it imposed, together with the version it proposes I apply in my decision. Underlined text is new, whilst the removal of text is illustrated by a line through it.

<b>Applicant's proposed final conditions</b>	<b>City's proposed final conditions</b>
1. The Safe Night Space for Women only operating from 7pm to 7 am seven days a week.	1. The Safe Night Space for Women only operating from 7pm to 7 am seven days a week.
2. The Safe Night Space for Women having a limited approval period of 30 months from [the date of this determination of the review].	2. The Safe Night Space for Women having a limited approval period of 30 months from the date of this determination, after which time the use must cease. <del>to the satisfaction of the City.</del>



<p>3. The Safe Night Space for Women being managed and operated at all times in accordance with the attached Operational Management Plan dated 4 March 2024.</p>	<p>3. Prior to the commencement of the Safe Night Space, an updated Operational Management Plan, that includes:</p> <ul style="list-style-type: none"> <li>a. a provision to require the presence of one (1) security personnel to be positioned external to the building at all times that the Safe Night Space is operational; and</li> <li>b. specific provisions to engage with <del>Northbridge Neighbourhood Group</del> <u>Northbridge Common Incorporated</u> on a regular basis to discuss any potential issues relating to the operation of the Safe Night Space and measures to resolve these issues</li> </ul> <p>must be submitted to and approved by the City. The Safe Night Space being managed and operated in accordance with the approved Operational Management Plan at all times to the satisfaction of the City.</p>
<p>4. The attached Waste Management Plan dated 22 December 2022 being implemented at all times.</p>	<p>4. Prior to the commencement of the Safe Night Space, an updated Waste Management Plan shall be submitted to and approved by the City providing the following:</p> <ul style="list-style-type: none"> <li>a. Specify what measures are being taken to mitigate the disposal of illegal items.</li> <li>b. Specify what measures are being taken to mitigate biohazard items.</li> <li>c. <u>Specify what measures are being taken in relation to the disposal of any unclaimed items left behind by individuals who have attended the premises.</u></li> </ul> <p>with the approved Waste Management Plan being implemented at all times by the operator/manager, to the satisfaction of the City.</p>

5. The approval is personal to Ruah Community Services Ltd and does not run with the land.	-
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61. A comparison between the respective positions of the Parties reveals differences as to how they contend Northbridge SNS should operate.

## **ANALYSIS**

### **Preliminary issues**

62. Before turning to the matters in dispute, there are two preliminary issues that arose during the process of this matter, but which I am pleased to say largely resolved themselves.
63. The first preliminary issue was the question of the Applicant's formal name. I note the City raised a question, which was subsequently resolved in the Applicant's Reply Submissions, such that despite the content of the forms submitted with the application for review, the phrase 'Ltd' will be excluded from the name of the operator 'Ruah Community Services'. I thank the Parties for their cordial resolution of this preliminary issue, which would otherwise distract from the narrow focus for this review on conditions 2, 3 and 4 of the Approval.
64. The second preliminary issue concerned a new 5<sup>th</sup> condition, which the Applicant proposed in its first round of submissions. The Respondent did not initially have an opportunity to make submissions on this proposal, but now has had that opportunity. This new fifth condition proposes to make the approval run with the Applicant, as an entity, as opposed to the usual planning scenario where planning approvals run with the land. I have included proposed Condition 5 as part of this decision.

### **Planning issues**

65. Having regard to the Parties' submissions, and the presentation of the proposed conditions in the Table, my initial observation is that there is broad agreement on fundamental matters. For instance, neither Party disputes that the proposed development is permissible under the planning framework. Neither Party opposes the imposition of conditions to regulate specific subject matter, incidental to this approval, namely its duration, the amelioration of amenity factors or disposal of waste and biohazards.

66. However, there is disagreement as to the scope and precision of the obligations imposed upon the Applicant under conditions 3 and 4, and opposite views as to whether approval should be personal to the Applicant.
67. For these reasons, whilst I have considered the general planning framework and submissions in totality, I shall briefly discuss the appropriateness and suitability of approval to the Proposal (which is largely agreed between the Parties), before focusing special attention on an analysis of the conditions designed to regulate this (which in effect is the primary matter in dispute between the Parties).

## **APPROVAL OF THE PROPOSAL AS A SUITABLE AND APPROPRIATE USE**

### **Relevant planning framework**

68. 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***

69. The proposed James Street Centre is located within the 'Central City Area' zone under the MRS.
70. 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).
71. 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 City Planning Scheme No. 2 ('CPS 2')***

72. 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.
73. 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.



74. CPS 2 provides for ‘use groups’ and ‘use group categories’ which form the basis for land use permissibility within each precinct.
75. 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.
76. 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.
77. 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.
78. 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.
79. Schedule 4 of CPS 2 provides land use definitions and designates these land uses to certain use group categories.
80. 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.
81. Clause 60 of the deemed provisions<sup>9</sup> 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.

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<sup>9</sup> The “deemed provisions” are contained in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

82. 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.

**Use classification.**

83. The Applicant currently operates an Engagement Hub from the Site. As detailed previously, this use was approved by the Minister's 2022 Decision. That Minister formed the view that use as an Engagement Hub was correctly classified as a "Community Centre" use and fell within the "Community and Cultural Use" group category under CPS2.
84. The Applicant now proposes to temporarily use the Site as a safe night space service for women, in addition to its approved use as its Engagement Hub. That is to say, the Applicant proposes to offer an emergency overnight space for women facing a crisis due to factors such as domestic violence, homelessness, mental or addiction issues, or for those who are referred to the Applicant from other community service providers, amongst other matters. Up to 30 women per night can be accommodated. The Applicant will provide basic services (laundry, toilets, shower), respite and connection to support services. These women may stay for a limited number of consecutive nights (no more than 10), depending on their circumstances. The SNS Program will operate between 7pm to 7am, during which time two staff and two security officers will be present.
85. The Applicant submits this proposed use for the Site, similar to its Engagement Hub, constitutes a "Community Centre" or could be more generally classified as a use within the "Community and Cultural" use group category under CPS2. The City accepts the classification of the SNS Program as a "Community Centre" use, or, in the alternative, that it is a use within the "Community and Cultural" use group.
86. CPS2 defines:
- a) a "Community Centre" as *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;*
  - b) and the broader use group of "Community and Cultural" 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.”*

87. The case of *Western Australian Shalom Group Inc. and City of Swan* [2018] WASAT 36 provided an interpretation of the meaning of ‘social services’ within the context of a “Community Purpose” land use. The Tribunal considered the meaning of ‘social services’ to include ‘*organised systems... designed to remedy or alleviate certain unfavourable conditions of life in a community.*’
88. I am satisfied the Applicant’s proposed use of the Site for the SNS Program, will deliver “social services” as contemplated by the first limb of the definition of “Community Centre” under CPS2. This is because providing temporary, emergency shelter to vulnerable women and connecting them to other support services, represents an organised system designed to remedy or alleviate the unfavourable conditions caused by family and domestic violence, mental health, drug or homelessness issues, which regrettably exist within any community.
89. However, the second limb of the term must also be satisfied, which is that these services be “*primarily for the benefit of those who live or work in the surrounding locality.*”
90. The Parties significantly disagreed over the interpretation of this phrase, in their submissions to the Minister concerning the 2022 determination of Ruah’s Engagement Hub application. Central to that dispute was whether the persons benefitted by Ruah’s Engagement Hub could be classified as living or working in the surrounding locality, when the facility was designed to principally service persons experiencing homelessness.
91. No such dispute has arisen in this matter.
92. The Applicant classified the proposed use as a “Community Centre.” The City, in its planning assessment, accepted this position, having regard to the Minister’s 2022 Decision, and it further posited that the broader land use category of “Community and Cultural” use could apply, in the alternative.
93. The Subject Site will be readily available for women in crisis who present from the surrounding locality and, for the reasons articulated in the Minister’s 2022 Decision, I accept that women experiencing homelessness in Northbridge, who may present to the



Applicant's SNS, "live" within the Applicant's surrounding locality. Further, I consider the public interest is served in adopting a broader, inclusive interpretation of the term that does not seek to parse each technical element, particularly where there is agreement between the Parties as to its application. I therefore accept the Parties' assessment as to the proposed use classification under CPS2. Consequently, I do not propose to address the interpretation or application of the second limb of term "Community Centre" further.

94. However, in the alternative, if the categorisation of the land use as a "Community Centre" is considered incorrect, then for the reasons set out below, it is arguable that the proposed use falls within the 'Community and Cultural' use group category generally.
95. The facility is operated by a not-for-profit organisation, and as discussed in paragraph 84, delivers a social service by providing emergency shelter to women in crisis. The community benefited by this service is not constrained by reference to those in the immediate locality of the Applicant, but rather, as I understand it on its ordinary meaning and in the context of a local planning scheme for the capital City of Perth, contemplates the broader community of Perth in general. The delivery of such services, designed to alleviate the suffering of vulnerable people and connect them with other support services, benefits the community at large by working to reduce the impacts of homelessness, mental illness and domestic violence. I am therefore satisfied, if the use is not properly classified as a "Community Centre", the Applicant's proposed use of the Site to provide social services on a non-profit basis, for the benefit of the community, qualifies as a use within the "Community and Cultural" use category under the CPS2.

### **Use Permissibility**

96. Having determined the proposed use's classification, its permissibility under the applicable planning schemes must be assessed. It is important to note, the application seeks approval to a proposed use of the Site only. It does not propose any external works. The question is therefore contained to permissibility of the proposed use.
97. The Site is located in the "Central City Area" zone under the MRS. Under this planning scheme, approval to the proposed use is required, unless an exception to this principle applies (clause 24(1)). Further, under clause 26, 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.

98. Turning to the zoning under the applicable local planning scheme, CPS2, the Site falls within the 'P1 Northbridge (CC)' precinct (Northbridge Precinct) of CPS2. In that zone, uses classified within the "Community and Cultural" use group category are designated as a "P" use. Both the Applicant's planning consultants and the Officer's Report interprets the use permissibility as "preferred" under CPS2. They agree clause 32 of CPS2 applies.
99. 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 a proposed use.
100. Neither Party has suggested clause 35 of CPS2 applies.
101. Both Parties accept that the effect of 32(b) under CPS2, is that the planning authority cannot refuse the proposal. The Applicant's Planning Consultants contend this means it cannot be refused on planning grounds. The Officer's Report explains this in terms that the use cannot be refused on the basis it is said to be unacceptable.
102. I am minded to agree with the Parties that, under clause 32(b) of CPS 2, the Proposal cannot be refused on planning grounds as it is purely an application for a preferred use and does not involve any works.
103. I also consider, there is a compelling argument, raised in the Minister's 2022 Decision, that the deemed provisions override CPS2 to the extent of any inconsistency, and it is arguable approval is not required at all.
104. As outlined in the Minister's 2022 Decision, 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.*'<sup>10</sup>
- This application seeks approval for a use only and proposes no works, therefore, physical

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<sup>10</sup> See the Minister's 2022 Decision (DR 95/2022) at [109].



development standards and requirements are not at issue here. Pursuant to section 257B of the PD Act, these deemed provisions automatically form part of CPS 2 and override any inconsistent provisions within CPS2 to the extent of the inconsistency. Therefore, it is arguable that a 'P' preferred use under CPS2 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).<sup>11</sup>

105. The Parties do not object to the proposed use's permissibility, and I am satisfied that the proposed use is either permitted as of right, by virtue of the deemed provisions, or, in the alternative, approval cannot be refused under CPS2 and that the use may be undertaken.<sup>12</sup>
106. Further, I consider the public interest is served by a determination that regards the Proposal as a use permitted to be undertaken, either as of right, or because approval to what is proposed, cannot be refused. The Applicant's submissions detailed how its SNS will be the only low barrier night service dedicated to women in crisis. As an emergency overnight space, this provides a critical, safe, service to women who would otherwise have no other accommodation options and, if required to sleep rough, would be exposed to the risk of assault, health issues from exposure to the elements and other risks of substance abuse and further mental health challenges. It is in the public interest that these vulnerable members of our community be supported.
107. The Applicant also outlined how the SNS connects women to housing support initiatives like the state-wide By-Name List which enables organisations across the homelessness sector to identify the most vulnerable and needy, and allocate resources accordingly. The SNS will also connect these vulnerable women with specialist services, such as alcohol and other drug support or mental health services or legal services. This demonstrates not only support for vulnerable people at a moment of crisis, but a broader plan and strategy towards assisting them towards overcoming the challenges they face.
108. Consequently, I consider the SNS provides a considerable benefit to the whole community, as it constructively supports our most vulnerable whilst also reducing homelessness and improving public safety.

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<sup>11</sup> See deemed provisions (n 9) *sub-cl 61(2)(b)*.



### ***Approval of the Proposal as a suitable and appropriate use***

109. In conclusion, I observe the question of whether the Proposal itself is capable of approval, is not in dispute. Both Parties agree the Proposal should be approved. Nonetheless, for the sake of completion, and in light of the above, I have confirmed that the Proposal:

- 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 in the public interest.

### **MINISTER'S CONDITIONS OF APPROVAL**

110. I am satisfied the Northbridge SNS is a suitable and appropriate use for the Subject Site and now consider what conditions may be necessary and appropriate to regulate incidental aspects of this development. In this regard, I am assisted by the fact neither Party opposes the imposition of conditions to regulate specific subject matter incidental to this approval, namely its duration, the amelioration of amenity factors or disposal of waste and biohazards.

111. The disagreement between the Parties principally relates to the scope and precision of the obligations imposed upon the Applicant under conditions 3 and 4, and whether approval should be personal to the Applicant.

#### **Condition 1 - Operating hours**

112. Firstly, a condition is imposed confining the hours of operation will be from 7pm to 7am, seven days a week. Neither Party disputes these operating hours or a condition regularising this. Accordingly, such a condition is included as Condition 2 in Annexure A.

#### **Condition 2 – Time limited approval**

113. The Applicant proposed to use the Site as a SNS for a limited period of 30 months. Accordingly, the City imposed Condition 2 which read:

The Safe Night Space for Women having a limited approval period of 30 months from the date of this determination, after which time the use must cease to the satisfaction of the City.

114. The Parties accepted the time limit of 30 months, but both disputed the wording following the comma. Both Parties' submissions persuasively argue the phrase "to the satisfaction of the City" should be removed. I agree that the conclusion of a stipulated timeframe is not open to interpretation.
115. The Applicant would prefer the wording "*after which time the use must cease*" also be deleted, but the City contends these words should remain as they impose a positive requirement for the land use to cease.
116. I accept the Applicant's position that once the approval's term expires, it no longer has approval to operate and must cease. However, a positive requirement for the use to conclude does not introduce any uncertainty into the condition and, in fact, clarifies the Applicant's obligations. The City's submissions cite recent Tribunal determinations which illustrate requirements for uses to cease upon the conclusion of a time limited approval, are acceptable. Further, the Applicant's Reply Submissions accepted that such wording could be imposed.
117. I am cognisant of the Applicant's concern expressed in its Primary Submissions to me, that any approval period commences from the date of this decision. It is a long-held principle of planning law, now reflected in the deemed provisions, that an approval takes effect when communicated in writing to the Applicant.<sup>13</sup> However, I see no reason to depart from the acceptance between the Parties through their submissions, that the period of 30 months commences from the date of my decision in this matter.
118. Moreover, I note that I am not confined to planning considerations, and am also able to consider matters in the public interest. Notwithstanding questions of planning legislation and case law, I take the view it serves the public interest for there to be greater clarity as to what occurs at the expiry of the 30 months.
119. Accordingly, a condition limiting the approval to 30 months, and requiring the use to cease upon expiry of that time, is included as Condition 3 in Annexure A.

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<sup>13</sup> See deemed provisions (n 9) cl 70.

### **Condition 3 – the Operational Management Plan**

120. Condition 3 relates to an Operational Management Plan ('OMP') for the Site.
121. In its application to the City, the Applicant proposed to undertake the use in accordance with an OMP.
122. This plan addressed the operations of the facility, security management, risk and complaint management of activities on the Site, which included (amongst other matters) management of noise and other disturbances, security personnel arrangements, and congregation and queuing of women outside the property. It also addressed local engagement with the community.
123. In assessing the development application for the SNS Program, the City's officers identified amenity as an important factor that required consideration, as they regarded operating the SNS may give rise to noise and behaviour that could negatively impact the amenity of the area. To address potential amenity issues, the officers requested the Applicant amend the OMP or provide further information on the following:
- a. the management of those who are not able to be accommodated.
  - b. security staff to provide ongoing management of external spaces.
  - c. whether the staffing numbers of Ruah staff and security staff are sufficient.
  - d. how access to the building will be monitored (i.e., CCTV).
  - e. management of non-admitted individuals sleeping in cars.
  - f. cleaning of biohazards, cleaning of public spaces and cleaning of personal belongings.
  - g. immediate response protocols for out-of-hours public, city and agency complaints/concerns.
  - h. management of clients being allowed outside for fresh air.
  - i. incident escalation procedures.
  - j. frequency and reasons for local engagement.
  - k. protocols for disturbances after-hours.



124. The Officer's Report discloses that the Applicant responded favourably to this request.

It stated:

More information was provided by the applicant/operator and changes were made to the Operational Management Plan, in relation to: extending security staffing times; availability of additional staff during peak times or situations of high demand; development of a comprehensive response protocol for a security team including addressing incident escalation; site hygiene; external noise management; litter and abandoned belongings; CCTV monitoring; external monitoring of outside spaces by security staff; updates to the servicing and cleaning strategy for the site; and more rigour in the complaints management procedure, including details of staff responsibilities and signage installed at premises directing clients to alternative sites.

125. The Officer's Report accepted the amendments to the OMP and recommended a condition be imposed requiring the Applicant to implement the OMP at all times, to the City's satisfaction. Relevantly, I shall call the version of the OMP considered by Council on 23 January 2024, the "**January OMP.**"

126. The January OMP was comprehensive, containing detailed provisions designed to mitigate potential risks to the area's amenity.

127. The Council, in resolving to approve the application, then enlarged the obligations on the Applicant.

128. It required the Applicant to further update its OMP to provide for a security guard to be stationed outside the SNS, at all operational times, as well as to engage with a specific local community group. After updating this, the Applicant could commence its proposed use of the Site, provided it managed and operated it, at all times, to the City's satisfaction.

129. In its submissions to me, the City maintains Condition 3 should remain substantially unchanged, save that reference to the local community group be updated. It submits Condition 3 should read:

Prior to the commencement of the Safe Night Space, an updated Operational Management Plan, that includes:

- a) a provision to require the presence of one (1) security personnel to be positioned external to the building at all times that the Safe Night Space is operational; and
- b) specific provisions to engage with Northbridge Common Incorporated on a regular basis to discuss any potential issues relating to the operation of the Safe Night Space and measures to resolve these issues

must be submitted to and approved by the City. The Safe Night Space being managed and operated in accordance with the approved Operational Management Plan at all times to the satisfaction of the City.

130. Conversely, the Applicant submitted an amended OMP, dated 4 March 2024, for my consideration. I shall refer to this as the “**March OMP.**” The Applicant contends Condition 3 should read:

The Safe Night Space for Women being managed and operating at all times in accordance with the attached Operational Management Plan dated 4 March 2024.

131. I observe that the Parties do not dispute the appropriateness, or need, for the SNS to be conducted in accordance with an OMP.
132. However, they disagree on the additional terms pertaining to security and engagement with the community, as well as which version should be used. They have opposing legal views on whether the Condition, expressed in terms that require the OMP’s amendments and later implementation to be to the City’s approval and satisfaction, is legally valid.

***My consideration of the different versions of the OMP***

133. The Applicant’s Primary Submissions contained the March OMP. It summarised and explained, in a separate document, the multiple changes it made to the January OMP to produce the March version. Its Reply Submissions contained a “tracked changes” version of the March OMP.
134. The scale of the amendments to the January OMP appear to have been unexpected. The presentation of these changes, through a description of them in a separate document, and then by production of a tracked changes document, was respectfully not always easy to follow. Nonetheless, I appreciate the spirit of compromise in which the Applicant made these changes.
135. The Applicant contends the January OMP was revised to the March OMP for multiple reasons, such as in response to recent engagement with the community, its practical experience in operating such a service, and, as I note, to reflect, “*a clear strategic approach to past and anticipated concerns and is designed to address concerns proactively ensuring that the Northbridge SNS operates effectively within the community context.*” The changes, amongst other matters, the Applicant states, are “*an improvement*



*in clarity, service responsiveness, safety protocols and community engagement strategies.”*

136. The Applicant submits the March OMP is designed to answer the Council’s requirements for greater security, in a way that adequately addresses Council’s concerns. For instance, it cites evidence of these measures in paragraphs 89 and 90 of its Primary Submissions.
137. My observation is that many of the changes presented in the March OMP are stylistic and improve clarity or remove repetition.
138. In my assessment of the changes, overall, I consider the content and substance of the March OMP to be substantially the same as the January OMP, save for certain key adjustments to the terms, which, in my view, are those that relate to security, changed curfew requirements and the change to security staffing hours.
139. Of the substantive changes relevant to the question of security, the March OMP incorporates new provisions requiring security personnel to undertake hourly patrols of the facility, including the external areas, with a positive requirement to report illegal behaviour and safety concerns to WA Police. These new, hourly patrols, are cited in sections dealing with security management and incident escalation, building management, notably in relation to access to the Site and in sections addressing areas external to the Site, such as a proactive management of persons resting in cars near the Site and these patrols are specifically listed as a mitigation measure for the management of noise and other disturbances that may arise at the Site.
140. Updated provisions reflect that security personnel, when not actively engaging with clients or performing other security duties, are to be stationed at the entrance desk, which affords passive surveillance of the front and immediate surroundings of the building. The Applicant has retained a requirement that two security officers be stationed at the SNS whilst it is operating.
141. Of other changes I consider substantive, I observe the Applicant has amended its provisions pertaining to a 10pm curfew. The January OMP provided, *“To respect our neighbours, a 10pm attendance curfew is enforced for clients entering through [the main] door.”* The March OMP changes this to, *“clients are encouraged to ... present to the SNS between 7 -10pm for planned visits.”* The March OMP explains this is to enable



the service to “*focus on emergency presentations after 10pm... Encouraging early presentation supports the safety and smooth operation of the service helping to manage the flow of clients efficiency through the evening.*” The Applicant has also reduced the security officers’ hours of attendance to match the operating hours exactly (from 7pm – 7am). The January OMP provided for security to remain on-site in the hour between the SNS closing (7am) and the Engagement Hub opening (at 8am).

142. As the March OMP contains substantially similar provisions to the January OMP, I am prepared to use the March OMP. Having settled on the question of which OMP versions, in favour of the March OMP, I will now turn to considering its suitability.

***Limb (a) – external security***

***Is the March OMP adequate?***

143. The City in its submissions, recognises the Applicant’s proposed hourly security patrols are a compromise on its part, in lieu of stationing a security officer outside of the SNS during operating hours.
144. However, the City maintains its view that this is not enough.
145. The City asserts “*hourly patrols would be insufficient to mitigate the risk of adverse amenity impacts arising from activities external to the premises that occur as a consequence of the proposed use.*”
146. In requesting a security guard outside the SNS at all times, I understand the City’s objective is to ensure the SNS does not “*give rise to any adverse amenity impacts associated with persons attending the premises congregating or otherwise remaining in the public areas external to the premises.*” For the City, this presence is to act as a deterrent to and “*otherwise control potential antisocial behaviour in front of the premises and in the immediate locality...*” (emphasis added).
147. I recognise that amenity, and the minimisation of disruption to this from the SNS, is an important factor for the locality.

***The applicant takes amenity seriously and has lived experience of this issue***

148. It appears to me that the Applicant took the risk of amenity impacts seriously, as demonstrated by the amendments it made to produce the January OMP (as detailed in

paragraphs 123 - 124 above), and the further increased security measures included in its March OMP, comprising of hourly security patrols incorporating external areas, throughout operating hours.

149. The Applicant has over 60 years' experience in providing services to the Western Australian community. At present, it provides "wrap around" support to more than 3,000 people each year in the areas of mental health, housing, homelessness, family and domestic violence and community legal services. The Applicant is a mature, successful organisation with direct experience of working with the most vulnerable in a mixed use, urban environment. More particularly and relevantly, from May 2021 to November 2023, it operated a SNS at the Rod Evans Centre in the City of Perth.
150. The Applicant points to its successful operation of a SNS at the Rod Evans Centre, without recourse to a permanent external security guard, and cites that model in direct reference to successful admissions management, mechanisms used to avoid congregation and to achieve the redirection of persons whom it cannot accommodate (e.g. see March OMP; 2.1 (8)). In its opinion, an external security guard does not provide a deterrent, which I understand to be a visual deterrent to those proposing to engage in antisocial behaviour in the vicinity of the SNS.
151. Based on its operational experience, the Applicant says the correct approach to mitigate a risk of disruptive behaviour by persons accessing its premises, or in nearby cars, is to use proactive risk management, the types of which are disclosed in the procedures outlined in its comprehensive March OMP. This document discloses that the Applicant has procedures for triaging admissions, setting behavioural expectations from clients, uses comprehensive incident response protocols and develops close working relationships with other support services and security authorities (e.g. rangers and WA Police), all of which ensure it is well placed to minimise any potential negative impacts on amenity and can contact the proper authorities should persons remaining in the public areas external to the premises behave in an antisocial manner necessitating such a response.

*Applicant's actual experience of amenity risk VS the City's perceptions of risk to amenity*

152. I observe that there is a difference between antisocial, disruptive behaviour occurring, and a perception that it might occur.



153. The Applicant discloses, from its operational experience, incidents of actual disturbance external to its SNS at the Rod Evans Centre. These involved persons resting in cars and were described as “*minimal and have not constituted a significant concern.*” The Applicant raised this in the context of mechanisms it has in place in its March OMP, to mitigate the risk of similar incidents at the Site.
154. Conversely, in its submissions to me, the City did not provide any examples or evidence of negative amenity impacts or antisocial behaviour at, or in the locality of, the Rod Evans Centre, which were attributed to the Applicant’s conduct of a SNS there.
155. It appears to me from the City’s submissions that it *perceives* a risk of antisocial behaviour occurring in front of the Applicant’s premises or in the immediate locality, on account of the SNS. It asserts that the risk of antisocial behaviour disrupting the amenity of the locality is a genuine concern, and that this was a key theme in public submissions made to it when it chose to advertise this proposed development.
156. Whilst I take the City’s concerns very seriously, I am also mindful that the perception of a risk, is quite different to direct evidence of an actual risk. The evidence before me as to actual incidents of antisocial behaviour attributable to an SNS are, as outlined by the Applicant, in paragraph 153 above. The measures the Applicant proposes to use to mitigate these in the March OMP, which are grounded in its extensive operational experience of such matters, appear reasonable.

Dealing with the removed 10pm curfew

157. Having regard to the City’s concerns, I have carefully considered the fact the Applicant has removed the requirement for a curfew of 10pm for planned presentations to the SNS. I was specifically directed to this change by the City, as a factor which heightens its concerns.
158. On examination, I consider the Applicant has not abandoned the concept of a curfew.
159. The Applicant retains its intention, and includes provisions in the OMP, to direct planned visitors to arrive by 10pm. Its focus and intention is to accept emergency cases after 10pm. These adjustments do not propose the presentations of women in a disorderly way throughout operating hours. Rather, they appear a proportionate adjustment to reflect that regular presentations should be made by 10pm to minimise potential impacts on the



amenity of the locality, whilst preserving the Applicant's capacity to appropriately respond to emergency presentations throughout its hours of operation.

160. I consider it would be inconsistent with the purpose of an emergency shelter service for women in crisis, which operates between 7pm – 7am, to have a curfew that restricts presentations after 10pm. In my assessment, the Applicant has adjusted its position to better reflect the reality of operating a service designed to assist women in crisis, presenting on an emergency basis. Emergencies are, by their nature, largely unpredictable. I am satisfied that the March OMP contains provisions designed to regulate admissions, with the majority of clients encouraged to arrive before 10pm, whilst preserving the necessary capacity to admit emergency presentations at all times. This strikes a necessary balance between the need for the Applicant to take measures that mitigate the risk of potential disruption and noise from the SNS, against the necessary public benefit delivered by the service operating and providing shelter to the vulnerable.
161. The Applicant's Reply Submissions proposed a revised presentation of the wording pertaining to these provisions. I do not consider that necessary. The style used in the March OMP, notably at clause 5.2 (1), adequately conveys this concept.

*Reasonableness of stationing security guard*

162. I have genuinely considered how the SNS might affect existing amenity and the degree to which conducting this service may have a negative impact on this. I have seriously considered the City's submissions that the placement of an external security guard to the premises, is necessary to mitigate the risk of adverse amenity impacts arising from activities external to the premises which occur as a result of the SNS operating.
163. However, on balance, having regard to the matters discussed from paragraphs 133 to 161, I am inclined to accept the view of the experienced operator of a SNS that stationing a security guard external to the premises, at all operational times, is not appropriate or necessary to address the City's concerns. I am satisfied the Applicant has extensive provisions in the March OMP to address the risk of adverse amenity impacts on the locality.
164. In particular, I observe that professional security services will be engaged at all times when the SNS is operational, and that the Applicant's staff are appropriately trained and

supported to competently deliver the services. I am further satisfied, in relation to the March OMP, with the following measures:

- a) It comprehensively provides for security management for the Site, including response protocols, incident escalation processes and processes by which to manage persons who cannot be admitted, or those who present to the Site but are not authorised to be there, nor will be permitted to enter. The Applicant has established working relationships and links with partner organisations (like Noongar Patrol, HEART Team and street chaplains) to redirect such persons to alternative support services. It also fosters positive working relationships with the WA Police, the City Watch team and Rangers, providing clear lines of communication for the Applicant should the need to request law enforcement arise.
- b) In terms of physical measures, the March OMP details the building is extensively lit, under continuous internal and external CCTV surveillance, and the entrance is designed to funnel clients in at one place and glass panelling enables passive surveillance of the external area. External signage directs persons not to congregate in the area and provides for public incident reporting and outlines the escalation process the Applicant follows to address incidents, should they occur.
- c) There are multiple provisions detailing regular cleaning of the Site, management of litter and rubbish, and the disposal of unclaimed items, ensuring the premises are hygienic and presentable (as explored below).
- d) Chapter 7 comprehensively outlines noise management strategies and how security staff perform a key role in the SNS operations, from monitoring and managing client behaviour both within and outside the premises, regulating queuing for the service and assisting with client admission, and following escalation procedures and contact with law enforcement as necessary. It also explains how the Applicant does not tolerate antisocial behaviour. Women wishing to use the service must agree to meet certain standards of behaviour, both inside and outside the facility.

165. In my assessment, provisions of the nature described above demonstrate that the Applicant operates using competent staff and security personnel, has an established support network to refer non-admissions to, can rely on positive working relationships with law enforcement and has a set of operational strategies, developed through years of



experience in this sector, all of which promote the use of the Site in a safe and peaceful manner, for the benefit of both its clients and the surrounding community.

166. In this context, the Applicant's proposal that its security staff will also conduct hourly patrols of the Site, including the external areas, seems a reasonable additional measure to propose as a further step to ensure it can respond to and mitigate any negative amenity impacts arising from its service, in lieu of stationing security outside the premises at all relevant times.
167. As the City's submissions suggest, having an external security guard is "*a preventive measure to deter and otherwise control potential antisocial behaviour ...in the immediate locality.*" However, it is not clear what "otherwise control" is understood to extend to, or whether this carries an expectation that they would physically intervene to stop persons from engaging in antisocial behaviour in public areas.
168. Whilst security officers are professionally trained, it would be inappropriate for them to intervene in matters or areas that are properly the responsibility of law enforcement. It is in the public interest to ensure that there is no confusion on this matter. I therefore do not consider it appropriate to require the Applicant to provide an external security guard, as suggested, in this matter, lest it lead to confusion as to the scope of their capacity to address matters that are properly the responsibility of our professionally trained and authorised police force. The Applicant has more than sufficient surveillance protocols in place, and this combined with hourly patrols, ensures they have sufficient oversight of the Site and its immediate vicinity, such that it can appropriately respond to potential negative behaviour according to its protocols, or contact appropriate law enforcement authorities, if required.

#### The locality and further questions of amenity

169. The SNS is located on James Street in Northbridge. I observe the locality of this place was examined as part of the Minister's 2022 Decision at [163], which says:

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.



170. While this Proposal is different from that considered in the Minister's 2022 Decision, and nearby businesses have changed, I find these comments useful in terms of broadly understanding the context of the area.

171. I further note as the City correctly identifies in its submissions, there are existing residential, hospitality, entertainment and tourism land uses in close proximity to the Site. Owing to the nature of these land uses, they too carry the potential to give rise to people congregating and generating noise within the locality. I therefore consider the existing character and amenity of the area will not be unduly, negatively impacted by the operation of the SNS, particularly where the measures to mitigate the risk of disruption and potential anti-social behaviour are properly applied through the March OMP and by the law enforcement agencies where necessary.

#### The public interest

172. I am not confined to planning considerations in determining this application and am also able to consider matters in the public interest. Incidents of domestic violence towards women continue to occur at a time when there is an unprecedented shortage of affordable accommodation. The SNS will provide up to 30 women, per night, with emergency shelter. Whilst the City raises concerns about the potential risk of negative amenity impacts this proposal could have on the locality, the services provided by the Applicant will serve to reduce the impacts of homelessness in the area. The reduction of homeless persons in the public spaces within the locality is a factor that not only sees some of the most vulnerable in our society being provided with shelter, but it also mitigates the effect of homelessness within our society.

173. As mentioned, I also consider that it would be contrary to the public interest to impose an obligation upon the Applicant that requires it to station a security guard external to the premises. The maintenance of law and order in the immediate locality and in public areas external to the Site, is not the responsibility of the Applicant. It is not in the public interest to use this Application in such a collateral manner.

#### Conclusion on the question of stationing a security guard

174. I have balanced the perceived negative amenity impacts described in submissions from the City, against the community benefit the Applicant's SNS will provide to women in crisis and those experiencing homelessness. It is not an easy task to weigh the competing

interests, but I consider both the planning merits and broader public interest is better served by permitting the service to be provided, on conditions that do not require the stationing of a security guard, at all times, external to the premises. I consider the perceived risks to amenity can be managed appropriately and to a satisfactory degree through the March OMP and therefore impose a Condition 4 in Annexure A.

***Limb (b) – community engagement***

175. The City maintains the OMP should also contain:

- (b) specific provisions to engage with Northbridge Common Incorporated on a regular basis to discuss any potential issues relating to the operation of the Safe Night Space and measures to resolve these issues

176. It submits that its intention in requiring this is to “*ensure there are appropriate confirmed avenues for community engagement in connection with the proposed land use*”. It appears to me from its submissions, that the City wants to ensure the Applicant undertakes formal engagement with recognised community groups.

177. However, there is nothing in the City’s submissions disclosing Northbridge Common Incorporated views on belonging to the community advisory group the Applicant proposes to form, or if it has been approached by the City regarding this matter.

178. Conversely, the Applicant has detailed in its March OMP and submissions, how it proposes to engage with the community through both formal and informal means. It would welcome Northbridge Common Incorporated’s inclusion, in accordance with an expression of interest process, as applied to other members of its now formed Safe Night Space Community Advisory Group (**‘the Group’**).

179. The Applicant identifies the current membership of the Group as:

- a) Liz Macleod (Independent Chair)
- b) Bianca Moore (Lived Experience Community Member)
- c) Noella Cook (James Street Neighbour Community Member)
- d) Gayle Mitchell (Office of Housing and Homelessness, Dept. of Communities)

- e) Dr Amanda Stafford (Clinical Lead, RPH Emergency Department)
- f) Hilton Mtanda (Social and Emotional Wellbeing Member, Derbarl Yerrigan Health Service)
- g) Dean Ball (City of Perth)
- h) Jacqueline Pelczar (CAG Secretary).

180. I observe the Group's current membership encompasses representatives of the James Street Neighbour Community, relevant government services and the City of Perth, amongst others. The Group will meet regularly and its composition should be open to change in accordance with the Applicant's operational needs.
181. The Applicant's March OMP also discloses community engagement processes, which provide for complaints and feedback mechanisms (the website discloses phone numbers, forms and email addresses that can be used by members of the public, or agencies, to contact the Applicant should the need arise).
182. The March OMP demonstrates that the Applicant takes the question of community engagement seriously. It readily accepts and has made it possible for anyone to contact it, plus it has formed an advisory group, where community and key stakeholder interests are broadly represented, to assist it in the delivery of its services both for the benefit of the community and its clients.
183. Moreover, in addition to planning considerations, I consider it in the public interest to adopt consultation measures through the Group compared with the City's somewhat uncrystallised proposal. I would consider there would likely be greater public confidence in the Applicant's more defined consultation plans, which can in any event include Northbridge Common Incorporated.
184. On balance, taking into account the views of both Parties, I am persuaded that the City's objective in ensuring there are appropriate avenues for community engagement, are adequately met through the March OMP, without the need to stipulate the inclusion of a specific body such as Northbridge Common Incorporated.



### ***The legal validity of the condition 3***

185. In addition to the first two limbs, the Applicant challenges the validity of Condition 3, on the grounds that it is not certain or final as required by established planning law. It submits that the requirement to update the OMP, and then implement it at all times “to the satisfaction of the City” is not certain and final because it is subject to future determination by the City. The concern appears to be that elements of the OMP may be subjectively interpreted, and the phrase “to the satisfaction of the City” leaves it exposed to disagreement with the authority responsible for enforcing its implementation, over what is actually required of the Applicant.
186. The Applicant’s Reply Submissions concede that if the phrase “to the satisfaction of” are to remain in the condition, it would consider “to the satisfaction of the Minister for Planning” to be acceptable. Based on its Primary Submissions I understand this apprehension stems from differing views being expressed between stakeholders as to the meaning of elements of the OMP for its Engagement Hub, when it has been alleged the Applicant is not operating the Hub in accordance with that OMP.
187. The City acknowledges the principle that to be valid conditions should be expressed in clear and certain terms. However, its Primary and Reply Submissions reject that Condition 3, expressed as it is, is “invalid” by reason of uncertainty and lack of finality. It raises an important point, pertaining to enforcement of the Condition. It indicates that unless the condition identifies the authority responsible for enforcing the implementation of the plan (currently achieved by wording requiring implementation to the satisfaction of the City), there would be ambiguity on this point.
188. The City argues, with reference to persuasive caselaw, that approval can be granted, subject to conditions that require the later preparation of a plan for approval by the original decision maker, and implementation of the approved plan. I understand the original decision maker’s discretion not to accept a later plan is circumscribed to the specific aspect in question and there is an expectation of reasonableness upon the decision maker. I am inclined to accept the City’s views.
189. The Parties appear to accept that the condition can be expressed, such that the changes to an OMP (if any) and enforcement of its implementation are “to the satisfaction” of a particular body. The Applicant would accept the Minister as that body, and the City,

whilst its preference would be a reference to itself as the responsible local government, acknowledges that it could also be to the Minister. I am minded, consistent with planning case law, to consider using the word “approval” rather than “satisfaction.”

190. Moreover, looking beyond planning considerations, I consider it in the public interest to bring clarity to this issue. Given the importance of this Proposal, the history of the SNS Program, and perhaps some of the historic interactions between the Parties, it serves the public interest for the condition to have a reference to an approval by an authority, albeit that authority be the Minister rather than the City.

### ***Conclusion on condition 3***

191. In light of the Parties’ submissions to me, and reflective of their concerns, I have determined that it is appropriate to impose the Condition (as set out in Annexure A) upon terms that require the March OMP to be implemented to my approval, on advice from the City. This approach is consistent with that applied by the Minister’s 2022 Decision. It enables the Parties to understand that the Minister for Planning will be responsible for enforcement of this Condition, but allows for input from the responsible local government.

### **Condition 4**

192. Condition 4 relates to a Waste Management Plan (‘WMP’) for the Site.
193. In its application to the City, the Applicant proposed to undertake the use in accordance with a WMP. Its planning consultants proposed using the approved WMP for the Engagement Hub, as the floor area for the Site remained the same. The WMP addressed equipment and procedures the Applicant would adopt to manage waste.
194. In assessing the development application for the SNS Program, the City’s officers listed the cleaning of biohazard waste management as an issue that arose in the context of public submissions made to it, when it chose to advertise this proposed development. It did not, otherwise, specifically canvass the question of waste management, but recommended a fourth condition be imposed on the approval, which read;

Prior to the commencement of the Safe Night Space, an updated Waste Management Plan shall be submitted to and approved by the City providing the following:

- a. Specify what measures are being taken to mitigate the disposal of illegal items.



b. Specify what measures are being taken to mitigate biohazard items.

with the approved Waste Management Plan being implemented at all times by the operator/manager, to the satisfaction of the City.

195. Council resolved to impose this condition unaltered.

196. The WMP considered by Council on 23 January 2024, was dated 22 December 2022. The Applicant proposes I consider and accept the WMP presented to Council. I shall refer to this plan simply as “**the WMP.**”

197. The City, in its submissions to me, considers Condition 4 should be enlarged. It proposes adding subclause (c) to address the disposal of items abandoned by the Applicant’s clients. It submits Condition 4 should read:

Prior to the commencement of the Safe Night Space, an updated Waste Management Plan shall be submitted to and approved by the City providing the following:

- a. Specify what measures are being taken to mitigate the disposal of illegal items.
- b. Specify what measures are being taken to mitigate biohazard items.
- c. Specify what measures are being taken in relation to the disposal of any unclaimed items left behind by individuals who have attended the premises.

with the approved Waste Management Plan being implemented at all times by the operator/manager, to the satisfaction of the City.

198. Conversely, the Applicant contends that Condition 4 should be amended to read:

The attached Waste Management Plan dated 22 December 2022 being implemented at all times.

199. Again, I observe that the Parties do not dispute the appropriateness, or need, for the SNS to be conducted in accordance with a WMP.

200. However, they disagree on elements of the WMP’s content. Again, their opinions differ over the validity of the condition, on account of including terms that require the OMP’s amendments and later implementation to be to the City’s approval and satisfaction.

***Limb (a) – Specify what measures are being taken to mitigate the disposal of illegal items.***

201. In its Primary Submissions, the Applicant expresses confusion as to the meaning of “mitigate the disposal of illegal items”. It basically asks, what does “mitigate the disposal of illegal items” entail? The City’s submissions do not offer a precise explanation of this phrase. Instead, the City explains the fundamental rationale behind this condition is that,



in its assessment, "... *"illegal items" and "biohazard items" will potentially arise in connection with the proposed land use, [and] would invariably need to be appropriately disposed of and should therefore also be addressed in the waste management plan (not just the OMP).*"

202. I have some sympathy for the Applicant's point in this regard. The meaning of the verb "mitigate" according to the Macquarie dictionary, includes to *"lessen in force and intensity," "to moderate the severity of" or "to become milder; moderate in severity,* whilst "disposal" is a noun which means *"the act of disposing or of disposing of, something; arrangement" "a disposing of as by gift or sale; bestowal or assignment" and "the power or right to dispose a thing; control".* "Mitigate" and "disposal" are two different measures and I think, on balance, the combination of the two in this manner does not express the City's intention, as outlined in its submissions, with sufficient clarity. The City does not appear to intend moderating or lessening the act of disposing of illegal items.
203. I accept that there is a potential risk of illegal items being brought to the Site or its immediate vicinity, and that there is a corresponding need to make provision for the disposal of such items.
204. The Applicant's March OMP specifically explains, in the section addressing its Servicing and Cleaning Plan, that any illegal items found will be promptly surrendered to WA Police, consistent with the Applicant's commitment to safety and respect for the law. The March OMP contains provisions relating to the monitoring and patrolling of the Site. These processes create a reasonable, to high, chance that the presence of any such items may be found and addressed.
205. I am therefore satisfied that there is an adequate process for the monitoring of the Site and vicinity, and a suitable protocol for the responsible disposal of any illegal items that may be found on or around it. This is expressed in clear terms in the March OMP. Whilst this is not expressly dealt with in the WMP, I am satisfied the risk apprehended by the City is sufficiently addressed. I do not propose to require amendments to the WMP to replicate these provisions.
206. Further, in my view, to impose an amendment of this nature and require it to be made ahead of the service commencing operations, is not in the broader public interest.

Notwithstanding the City's legitimate concerns, on balance, the public interest is better served by the SNS opening and delivering a service to vulnerable women in crisis and reducing the impacts of homelessness.

***Limb (b) – Specify what measures are being taken to mitigate biohazard items.***

207. In its Primary Submissions, the Applicant also expresses confusion as to the meaning of “mitigate biohazard items.” Unlike limb (a), I consider this clause is more readily understood. I understand the Applicant is being asked to identify the steps it will take to reduce or moderate the severity of what constitutes “biohazard items” generated by the proposed use. I consider the Applicant is uncertain in its understanding of what would be sufficient, in terms of the measures it should specify, to adequately address this risk.

208. In any event, the Applicant contends the City's apprehended risk underpinning limb (b) is appropriately addressed by the management measures stipulated in the March OMP. It cites the following sections as evidence of this:

‘Security will conduct hourly patrols as part of their shift schedule, covering the ... external side of the building, and the area directly outside the front of the building, ensuring that any hazards are identified, removed, and properly disposed of’ (clause 5.1 (4)).

‘Biohazard Management: On-site biohazard bins, focusing on sharps disposal, are maintained. Staff receive extensive training in the safe handling of sharps and biohazardous waste.’ (Clause 5.5 (5)).

‘Staff Training: Comprehensive training on biohazard management is provided, ensuring staff are well-equipped with knowledge on safe disposal practices and the use of PPE.’ (Clause 5.5 (7)).

209. The Applicant's March OMP refers to both biohazard items and biohazardous waste whereas, the City's proposed condition only relates to biohazard items. I take the reference to “waste” to refer to that of an organic nature, whilst the term “items” is intended to cover manufactured items, like needles or what are referred to as “sharps.”

210. I accept that there is a potential risk of biohazard items being brought to, or used at, the Site or in its immediate vicinity, and that there is a corresponding need to make provision



for the disposal of such items. I acknowledge this is particularly important given the City does not offer a disposal service for such items.

211. Where land uses carry the potential to generate biohazardous waste or items, I consider it is very important, from both an amenity and public health perspective, that this be properly managed. I consider it in the interests of both the Applicant's clients and the broader public, that such uses are undertaken in a way that maintains high standards of public health and that risks posed to it are sufficiently mitigated. In my assessment, clause 5 of the March OMP outlines measures the Applicant can readily implement, to manage biohazard items.
212. However, I also accept that whilst these measures address the onsite identification and onsite disposal of such matters, the March OMP could benefit from some relatively minor changes to improve clarity as to the removal of such items from the Site and their ultimate disposal.
213. I recognise it is reasonable and appropriate to require the Applicant to ensure biohazard items are properly removed from the Site and disposed of. This is particularly so, given the City does not provide this service and an inadequate disposal service would be detrimental to amenity and the health of the women using the service and the broader community.
214. Accordingly, I encourage the Applicant to update its OMP to specify measures it will take to achieve the safe disposal of biohazard items off the Site.
215. I do not wish to unduly delay the Applicant from undertaking the proposed use and therefore I will not require an updated OMP before operations commence.
216. However, I will ensure the important requirement for the safe disposal of biohazard items off the Site is integrated into the Applicant's operations as part of Condition 5.
217. I therefore propose a subcomponent to Condition 5 requiring the Applicant to ensure the Site is serviced by a professional waste management contractor to ensure the removal of biohazard items from the Site and their responsible disposal, is achieved.
218. I understand the City's views that the proper place for such measures is in the WMP as opposed to the OMP. However, I am minded that this is a not-for-profit organisation,



which will deliver an essential community service. I do not wish to amplify the administrative burden on the organisation by having it replicate waste management measures addressed in its OMP, in its WMP.

219. Moreover, in addition to planning grounds, I consider the public interest is better served by preferring substance over form. To my mind, the priority is to ensure appropriate waste management measures exist and are implemented, and not to focus on their location in a document. The March OMP already manages several elements of this incidental aspect of the approval and I see little utility in requiring the WMP to be updated to replicate the cleaning and waste management processes in the March OMP.

***Limb (c) – Specify what measures are being taken in relation to the disposal of any unclaimed items left behind by individuals who have attended the premises.***

220. I propose to deal with this matter briefly.

221. The City's submissions propose the addition of this subclause. This enlarges the scope of Condition 4, compared to what the City proposed in its determination of the matter in February. The City submits that, on reflection, the Applicant should specify in an updated WMP the measures it will take to dispose of unclaimed items.

222. The Applicant opposes the imposition of this additional requirement, citing that the provisions in its March OMP recognise and propose strategies for identifying and disposing of unclaimed items.

223. The March OMP dedicates clause 7.3 to dealing with this issue. The provisions encompass how clients are required to commit to contributing towards the cleanliness of the Site, they are not to leave personal items unattended, and are warned both by staff and signage that unattended items will be disposed of. This is balanced by the Applicant's recognition for sensitivity in this regard, whilst it also refers to operating according to internal protocols which include inspections and disposal of unattended items.

224. This indicates to me addressing unclaimed items would form part of the Applicant's routine processes. In light of the Applicant's experience as an operator of such services and its proactive plans to manage this potential risk, I am inclined to accept its view that the March OMP is sufficient in addressing this concern. Unclaimed items do not present

the same level of risk to the community, as biohazard items or waste, consequently further specification of the disposal processes does not appear warranted.

225. Moreover, as a matter of public interest, I again do not think imposing additional administrative burdens on the Applicant is warranted, in order to amend the WMP, when the proposed March OMP is sufficient.

***The legal validity of Condition 4***

226. Consistent with its submissions for Condition 3, the Applicant objects to terms in Condition 4 which:

- a) require updates to the WMP to be subject to the City's approval, and
- b) the ongoing implementation of the WMP to be "to the satisfaction of the City."

227. The Applicant submits this renders the condition uncertain and lacking in finality. The City rejects this position. It holds wording a condition in this manner is usual, lawful and certain.

228. Both Parties repeat their reliance upon principles raised in support of their respective positions for Condition 3.

229. In its Reply Submissions, I understand the Applicant to no longer takes issue with the question of updates being to the City's approval. It would accept matters being to the satisfaction of the Minister.

230. For essentially the same reasons as I outlined in relation to Condition 3, I believe on both planning and public interest grounds that it would be appropriate for the condition to have a reference to an approval by an authority, and that authority be the Minister on advice of the City.

***Conclusion on Condition 4***

231. Accordingly, I propose to impose a condition requiring the WMP, as dated 22 December 2022 to be implemented by the Applicant at all times, to the approval of the Minister, on the advice of the City of Perth. This is now Condition 5 in Annexure A.



232. Moreover, this condition will require the Applicant to ensure the Site is serviced by a professional waste management contractor, to ensure the removal and responsible disposal of biohazard items from the Site.

**Condition 5 – new condition – approval personal to the Applicant**

233. As I noted in the preliminary issues section above, in its submissions, the Applicant proposes the addition of a fifth condition, purporting to make the approval personal to it. This would be contrary to the ordinary method of attaching the approval to the land associated with the Proposal, which in this case, is the Subject Site. The wording for this condition, as proposed by the Applicant, reads as follows:

The approval is personal to Ruah Community Services Ltd and does not run with the land.

234. The Applicant cites the time limited nature of the proposed use, as a reason to support this request. It cites an example of where such a condition was imposed, but does not explain why or how this is relevant to its circumstances. It does not present any other detail or reasoning as to why this position should be adopted.
235. The City opposes this. In its view, such a condition is unorthodox and the Applicant has not identified a particular planning purpose which supports the grant of such a condition, nor has it submitted any special circumstances apply to necessitate this.
236. In terms of planning merit, it is an established principle that planning approvals run with the land. With respect to the imposition of a condition which departs from this, as the Tribunal observed in *Phillips and Shire of Mundaring* [2009] WASAT 193 at [39] – [42] (*Phillips*), this is generally not the preferred approach to take:

[40] As the Tribunal said in *GMF Holding Pty Ltd and Shire of Serpentine-Jarrahdale* [2006] WASAT 353; (2006) 48 SR (WA) 1 at [67]:

Planning law 'is concerned with the use of land - not with the identity of the user': per Cripps J in *Moslem Alaway Society Ltd v Canterbury Municipal Council* (1983) 51 LGRA 79 at 82. Development approval is not personal to an applicant for approval, but rather runs with the land.

...

[41] Therefore, generally, development approvals should not be made personal to an applicant, but rather should run with the land for the benefit of subsequent owners and occupiers. Certainly, in special circumstances, such as:



... [w]here the management expertise and experience of the applicant are likely to be significant in reducing the amenity impacts of proposed uses such as billiard parlours, amusement parlours, dog kennels, broiler chicken sheds etc, the tribunal may impose a condition which makes the permit 'personal' to the applicant. (*Stein and Shire of Chapman Valley* [2006] WASAT 105 at [87])

[42] However, even in such cases, a preferable alternative may be to impose a time-limited approval to be able to review how a development operates in practice, rather than to make the approval personal to the applicant.

237. I recognise that the Applicant is highly experienced in the delivery of community services and that this expertise is an important factor in reducing the potential amenity impacts that might arise from the operation of the SNS. However, the Applicant also proposes to operate the SNS for a limited period of 30 months. As a time-limited approval is already in place, a condition specifying the approval being limited to Ruah Community Services appears unnecessary, as the effects are one of the same.

238. I am inclined to therefore adopt the Tribunal's views in *Phillips*, and accept it would be preferable not to make the approval personal. This is particularly so, where the Applicant fails to identify sufficiently, the reasons or grounds that support the exercise of planning discretion in this unusual manner.

239. Moreover, in my view it is not in the public interest to depart from established planning norms, unless cogent and substantial grounds are established for doing so.

#### **Scope to amend or waive conditions as necessary**

240. 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.

241. 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.

242. 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.

243. In my view it is appropriate to regularise such an arrangement in an appropriate condition. This has been included as Condition 1 in Annexure A. Further, and in the alternative to any planning grounds, 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.

#### **DECISION**

244. For the reasons outlined above, I affirm the Proposal be approved, subject to conditions.

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

246. 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 section 246(4) of the PD Act.

#### **EFFECTIVE DATE**

This decision takes effect immediately. Thank you to the Parties for your attention, cooperation, and engagement in this matter.



**HON AMBER-JADE SANDERSON MLA**  
MINISTER FOR HEALTH; MENTAL HEALTH

Date 20/6/24.....