

IN THE MATTER of an application for review called in by the Minister pursuant to section 246(2)(a) of the *Planning and Development Act 2005* (WA)

B E T W E E N:

DR 33 OF 2024

RUAH COMMUNITY SERVICES LTD

Applicant

and

CITY OF PERTH

Respondent

**RESPONDENT'S SUBMISSIONS
IN REPLY TO THE APPLICANT'S SUBMISSIONS**

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Filed on behalf of: The Respondent

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Background

- 1 The purpose of this document is for the Respondent to provide its further submissions to the Minister, in reply to the outline of submissions provided by the Applicant on 22 April 2024 (**Applicant's Submissions**).
- 2 The Applicant's Submissions are broadly consistent with the grounds that were included with the application for review that was lodged with the State Administrative Tribunal on 6 March 2024.
- 3 With that in mind, the substance of the Applicant's Submissions has already been largely addressed in the primary outline of submissions provided by the Respondent on 22 April 2024 (**Respondent's Submissions**), which attempted to address the grounds included with the application for review.
- 4 This further reply submission is therefore intended to only address those particular points in the Applicant's Submissions that comprise new matters that were not addressed or contemplated by the grounds included with the application for review.

Duration of development approval

- 5 At paragraphs 61 and 62 of the Applicant's Submissions, the Applicant says that the 30 month duration of the development approval should be measured from the date of the Minister determining this application for review.
- 6 The Respondent does not oppose the 30 month duration being measured in this manner (although the Respondent does observe that the 30 month duration was originally proposed by reference to when the Applicant expects alternative premises to become available).

Personal development approval

- 7 At paragraph 69 of the Applicant's Submissions, the Applicant proposes a new condition 5 of the development approval, which would say that the development approval is personal to the Applicant and does not run with the land.
- 8 The Respondent does not support the imposition of a condition of development approval to this effect.
- 9 It would be unorthodox for such a condition of development approval to be imposed and the Respondent considers that the Applicant has not identified any particular planning purpose behind such a condition and has not otherwise identified any special circumstances in this matter that would necessitate such a condition.

Validity of conditions

- 10 At paragraph 70 of the Applicant's Submissions, the Applicant contends that conditions 2 to 4 of the development approval, as currently worded, are legally "invalid" by reason of uncertainty and lack of finality.
- 11 The Respondent accepts the general principle that conditions of development approval should be expressed in clear and certain terms.
- 12 The Respondent however rejects the suggestion that any uncertainty within the wording of development approval conditions necessarily renders them legally "invalid" and says that the case law cited in the Applicant's Submissions does not actually support such a conclusion.
- 13 In advancing its argument on the "validity" of the conditions of the development approval, the Applicant relies upon the decision in *Mison v Randwick Municipal Council* (1991) 73 LGRA 349 (***Mison***).

- 14 The Respondent submits that the *Mison* decision does not actually address the question of validity of conditions of development approval and instead addresses the question of validity of development approvals, in circumstances where a development approval itself has been granted on uncertain terms.
- 15 The development approval considered in the *Mison* case was held to not be a valid grant of a development approval (under the applicable legislation in New South Wales), because a particular condition of that development approval created genuine uncertainty as to what exactly had been authorised.
- 16 The Applicant does not appear to allege that conditions 2 to 4 of the development approval create fundamental uncertainty as to the nature of the authorised use (the development approval still clearly authorises the proposed “safe night space for women” use), so the principles in *Mison* do actually not arise for consideration on the facts of this matter.
- 17 In any event, for the reasons as outlined in the Respondent’s Submissions, the conditions of development approval as currently worded are lawful, certain and consistent with case law principles, including those set out by the State Administrative Tribunal in *Phil Lukin Pty Ltd and Shire of Busselton* [2006] WASAT 124.
- 18 In relation to condition 2 of the development approval, the Applicant has only asserted invalidity as a consequence of the current inclusion of the words “to the satisfaction of the City”, which are words that the Respondent has now confirmed (in the Respondent’s Submissions) it would not oppose being removed (from condition 2 only).

- 19 In relation to conditions 3 and 4 of the development approval, there is nothing unusual or inherently uncertain about conditions of development approval requiring existing versions of management plans (that accompanied a development application) having to be updated prior to commencement of development.

A handwritten signature in black ink, appearing to read 'Alan', is positioned above a horizontal line.

Lavan
Solicitors for the Respondent