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10 January 2025

Dubbo Regional Council
PO Box 81
Dubbo NSW 2830

Attention: Shaun Reynolds / Bo Moshage

Dear Shaun and Bo,

RE: Dubbo Residential Rehabilitation Centre, Spears Drive, Dubbo (D2024-240)

I am writing in response to Dubbo Regional Council's Request for Information (RFI) letter dated 13 December 2024 for development application no. D2024-420.

In response to point (1) in the letter, we provide confirmation by way of legal advice from Holding Redlich (**Attachment 1**) that the Western NSW Local Health District (WNSWLHD) is a public authority for the purposes of Crown development. As explained in the legal advice, the WNSWLHD's status as a public authority is pursuant to clause 4.32(2)(a) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), section 294 of the *Environmental Planning and Assessment Regulation 2021* and under the definition of 'public authority' in the EP&A Act.

Regarding point (2) in the RFI letter, we are contacting the RFS directly in the first instance.

If you have any questions, please contact me at the details below.

Yours sincerely,



Jayne Klein
Principal Planner

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Email: Jayne.Klein@smec.com

Attachment 1 – Legal advice from Holding Redlich

10 February 2023

Adrian Lazarou
Infrastructure Manager
Planning, Performance, Funding & Corporate
Services Directorate
KELSO, NSW, 2795
By email Adrian.Lazarou@health.nsw.gov.au

Partner Thomas Kwok
Direct Line (02) 8083 0420
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Our Ref TBK 19750557

Dear Adrian

Western Sydney Local Health District – Crown status for development applications

Dear Adrian

1. Summary

Question	Summary
Would a development application by the LHD be a 'Crown development application'?	Yes.

2. Your request for advice

You have asked whether the Western New South Wales Local Health District (**LHD**), which is a body corporate established under the *Health Services Act 1997* (NSW) (**HSA**), is the 'Crown' for the purposes of the Crown development application provisions in the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

3. Advice

Section 4.32(1) of the EP&A Act states that:

'Crown development application means a development application made by or on behalf of the Crown.'

Read in isolation, this definition would mean that Crown development applications could only be made by or on behalf of the Crown itself. However, s 4.32(2)(a) of the EP&A Act **expands** the definition of the 'Crown' – specifically for the purposes of Division 4.6 of the EP&A Act – to include bodies and persons which may not otherwise be the 'Crown'. Section 4.32(2)(a) states that:

*'A reference in this Division to the Crown...**includes** a reference to a person who is prescribed by the regulations to be the Crown for the purposes of this Division.'*

Section 4.32(2)(b) of the EP&A Act also **excludes** the following from the term 'Crown':

- (i) *a capacity of the Crown that is prescribed by the regulations not to be the Crown for the purposes of this Division, or*
- (ii) *a person who is prescribed by the regulations not to be the Crown for the purposes of this Division.'*

Without the expansion of the meaning of 'Crown' for the purposes of Division 4.6, the LHD would not be the 'Crown' because while it is a body corporate established under s 17 of the HSA, s 22(1)(e) of the HSA states that a local health district *'does not represent the Crown'*.

For general purposes, s 22(1)(e) of the HSA means that under s 13A of the *Interpretation Act 1997*, the LHD body *'does not have the status, privileges and immunities of the Crown'*. Section 13A was introduced into the *Interpretation Act 1997* to overcome a High Court case which *'effectively reversed its previous decision in Wynyard Investments and held that the Crown's immunities do not automatically extend'* to statutory bodies representing the Crown (Second Reading Speech, Interpretation Amendment Bill 2006).

However, in the context of the EP&A Act Division 4.6, the LHD would not rely on the word 'Crown' in its usual meaning, but rather, on the **expanded** meaning of 'Crown' under s 4.32(2)(a). Section 294 of the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)* states that *'a public authority, other than a council'* is *'prescribed as the Crown'* for the purposes of s 4.32(2)(a).

In our view, the fact that EP&A Act s 3.32(2)(a) states that other persons may be *'prescribed'* as the Crown for the purposes of Division 4.6 emphasises that the term 'Crown' under the Division is meant to allow persons and bodies who otherwise would not be the 'Crown' to make Crown development applications under Division 4.6 of the EP&A Act.

Since the expansion of the meaning of 'Crown' is limited to the purposes of Division 4.32 of the EP&A Act, the expansion does not give the prescribed persons any rights or interests of the Crown beyond those articulated in Division 4.6 of the EP&A Act.

The EP&A Act defines 'public authority' to mean *'a public...authority constituted by or under an Act'*. While s 22(1)(e) states that the LHD is does not represent the Crown it is still, under s 17 of the HSA, a 'public authority' which is 'constituted under an Act'.

While for general purposes relating to the 'status, immunities and privileges' of the Crown, the LHD is not the Crown, the LHD clearly comes within the meaning of Crown 'prescribed' under s 294 of the EP&A Regulation, and under the definition of 'public authority' in the EP&A Act.

In our view, the more specific provisions in Division 4.6 of the EP&A Act which expand the definition of Crown for limited purposes prevail over the more general provision in the HSA that the LHD is not the Crown.

While this is clear from the wording of EP&A Act s 4.32(2) and EP&A Regulation s 294, it also finds support in the interpretive principle *generalia specialibus non derogant* under which specific provisions prevail over more general provisions.

It follows that the Proposed Development can be *'carried out by...the Crown'* for the purposes of s 4.32(1) of the EP&A Act if carried out by the LHD.

In the alternative:

- (a) LHD could lodge a Crown development application and carry out Crown development on behalf of the Health Administration Corporation which under s 9(2)(f) of the *Health Administration Act 1982* is a statutory body representing the Crown; or
- (b) Other people, including the Secretary of a Department, the head of Department (if the head is an employee of the agency and not a statutory officer) or other Public Service senior executive band employee may also lodge a Crown development application as a public authority for the purposes of the EP&A Act.

Further advice on this can be given on alternate arrangements for the lodgement of a Crown development application if required, having regard to any arrangements between the LHD and the Ministry.

Please let us know if you would like to discuss the advice above.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Holding Redlich', is written above the printed name.

Holding Redlich