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Brian Cullinane
EME Advisory
Email: brian@emeadvisory.com

Dear Brian

Health Research Facility, Alexandria (SSD-63067458) (Health Facility Project)

We refer to the EIS for the Health Facility Project by the Kurraba Group over multiple lots on Botany Road and Wyndham Street, Alexandria, Development Application (D/2024/885) (**DA**) for construction of a commercial office building by Kurraba Group at 78-82 Wyndham Street, Alexandria (**Commercial Office Project**) and the new electrical substation that is proposed for the Health Facility Project (**Substation Project**).

The Health Facility Project, Commercial Office Project and Substation Project are clearly linked for the following key reasons:

- the Statement of Environmental Effects (**SEE**) for the Commercial Office Project notes:

'the application is made as an 'Amending DA', utilising Section 4.17 of the EP&A Act. This mechanism is intended to impose a condition that, once satisfied, will administratively 'modify' the adjoining State Significant Development Application (SSDA) (SSD-63067458) for a new health research facility, which is also being developed by Kurraba Group. This administrative modification is intended to merge the two consents to allow for a consolidated development precinct. Further consideration of the Amending DA pathway is to be undertaken in consultation with Council.'

- the SEE for the Commercial Office Project also describes the proposed integration of the Commercial Office Project and Health Facility Project as follows:

'As mentioned, while the proposed development subject to this DA is a capable of a standalone development for planning purposes, it is intended to be constructed and delivered concurrently with the adjoining SSDA at 100 Botany Road.

Minor 'amendments' will be required predominately to the basement and ground floor of the site to facilitate the integration of the proposal with the adjoining site at 100 Botany Road. This includes amendments to create an integrated basement car park including integrated loading and servicing arrangements and resulting changes to the ground floor. Additionally, the setback to the northern boundary is anticipated to become a pedestrian access path which links to the central laneway network to be delivered as part of the 100 Botany Road development';

- the Health Facility Project and Commercial Office Project are proposed to be constructed concurrently; and

- section 3.5.2 of the EIS notes the new Substation Project is required to supply the Health Facility Project based on the proposed electrical demand of that Project.

Neither the EIS or SEE considers the cumulative impacts of the Health Facility Project, Commercial Office Project and Substation Project – despite those Projects being clearly linked and related development for the reasons set out above.

In the absence of that assessment, the consent authority and members of the public are not able to understand the combined impacts of those Projects (including without limitation construction traffic and noise impacts) and whether those impacts will be mitigated to acceptable levels.

It is our view that:

- section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* requires the consent authority to consider the likely impacts of the Project which includes (among other matters) the cumulative impacts of the Health Facility Project, Commercial Office Project and Substation Project (see *Hoxton Park Residents Action Group Inc v Liverpool City Council* [2011] NSWCA 349 and *Bingman Catchment Landcare Group Incorporated v Bowdens Silver Pty Ltd* [2024] NSWCA 205);
- the consent authority is not able to satisfy that mandatory consideration absent any assessment of the cumulative impacts of the Health Facility Project, Commercial Office Project and Substation Project in the EIS; and
- any decision by the consent authority to approve the Health Facility Project in the above circumstances would expose that decision to a risk of judicial review challenge, and being declared void and of no effect by the Land and Environment Court of NSW.

In order to address that issue, the SSD Application for the Health Research Facility Project should be amended to include the Commercial Office Project, and for an updated EIS to be prepared to assess the combined or total impacts of the Health Research Facility Project, Commercial Office Project and Substation Project. The amended SSD Application and updated EIS should be re-exhibited to comply with the requirements of the EP&A Act (and associated Regulations).

Please call if you would like to discuss any aspect of this advice.

Yours faithfully
Gilbert + Tobin



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